

CASE NUMBER:	PZC 000026-2021
TYPE:	TEXT AMENDMENT



Village Board of Trustees Board Memorandum March 25, 2021

Item for Planning & Zoning Commission Consideration:

Consider the following staff suggestion for a Zoning Code text amendment:

- A. Zoning Ordinance text amendment to the Village of Westmont Code of Ordinances, Appendix “A,” Zoning, Article XIV, Definitions, to amend the definition for “lot coverage”.

Action Requested:

Consider the proposed text amendment in light of the following findings of fact criteria.

Findings of Fact:

- The proposed text amendments further the purpose of the Westmont Zoning Code by promoting the general health and welfare; and
- The proposed text amendments further the purposes of their respective Articles by clarifying procedures, correcting mistakes, and adding relevant new regulations and requirements; and
- The proposed text amendments further the purpose of their respective Sections of the Westmont Village Zoning Code by correcting mistakes or making improvements to the zoning code as determined by the Zoning Administrator and Plan Commission; and
- The proposed text amendments will cause the Village of Westmont zoning code to more appropriately and clearly provide procedures and appropriate regulations.

1. Basis of Suggestion

A. Background

This is a staff-initiated proposal to eliminate stormwater-related content from the definition of *Lot coverage*. The Planning and Zoning Commission is a body that administers policies, regulations and initiatives relative to planning and zoning matters (such as land use intensity, density, bulk, height, design criteria, aesthetics and open space). Stormwater Management and Flood Control are engineering functions, and these are addressed in Chapter 34 of the Village of Westmont Municipal Code (Engineering and Flood Control).

When applied to certain structures, materials, construction standards, and post-construction monitoring practices, and other stormwater management variables, both within a particular zoning lot and *if used for* the purposes of flood control, watershed planning and infrastructure, lot coverage ratios are difficult and time consuming to administer, monitor and control.

Using the *Lot coverage* definition to manage stormwater runoff is an inefficient and inaccurate tool for the following reasons.

Reason #1: Definitions of terms should not be mixed in with policy directives, regulations, benchmarks or standards. Instead, policies, regulations, standards and benchmarks should be incorporated into the pertinent regulations portions of the Zoning Code.

Reason #2: Planning and Zoning standards should be administered separately and distinctly from stormwater management objectives. From a zoning standpoint, the term *Lot coverage* is intended to be a measure of land use intensity, and not a stormwater management solution. Stormwater management includes quantitative measures that consider objective elements such as topography, soils types, permeability of soils and materials, hydrologic matters at the watershed level, maintenance of BMPs over time, etc., while land use intensity is limited to considering more qualitative, subjective elements such as aesthetics, design, impact on the neighborhood character of nearby properties, adopted design guidelines, and landscaped and natural green areas, among other similar elements, and all within a particular zoning lot. (A third element, life-safety, is largely the purview of the Building Code).

Reason #3: *Lot coverage* ratios can be useful tools to measure and control aspects of land use intensity, such as density, but only when used in tandem with other factors and criteria, such recreational open space, heights, setbacks, adopted design guidelines, floor area ratios, and other bulk and area criteria. It has been determined in planning practice and in this Village that to be effective, land use intensity measures, of which lot coverage is only one type, need to be accompanied by additional variables that, in combination, help to create a complete picture of the planning and zoning elements that affect particular properties under review.

Existing Language

Article XIV

(B)

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Lot coverage: The percentage of a zoning lot's area covered by any building or structure, including but not limited to, patios, sidewalks, driveways or in-ground or above-ground swimming pools. Fifty percent of the square footage of decks shall count towards calculating lot coverage in instances where a semi-permeable membrane is installed at grade level or the ground below is left entirely uncovered. This bonus shall only apply to decks which are constructed to allow a reasonable amount of stormwater to flow freely between the slats to the ground below. Fifty percent of the square footage of permeable pavers and other permeable materials shall count towards calculating lot coverage. The village's community development department shall maintain specifications, which may be amended from time to time, which define acceptable permeable pavers and other permeable materials that may be used to qualify for the 50 percent lot coverage.

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B. Critical Issues

Stormwater Management

Over the course of the past decade or so, since the lot coverage definition was expanded to include pervious paving bonuses along with permeability assumptions for certain deck types, policies and practices at the administrative level have not been able to adequately ascertain whether individual projects have been able to maintain suitably draining soils as a result of the installation of decking and pervious paving.

While building specifications were created for each of these elements, additional factors exist outside of the criteria used to determine whether certain decks and pervious paving installations are able to meet their stormwater management goals. Code enforcement personnel are not in a position to monitor the extent to which decks and pervious pavers are able to infiltrate water through the underlying soils in an adequate fashion that meets stormwater management goals, and creates a potentially problematic situation for the community as a whole by providing a false sense of security when it comes to flood control.

Current practice simply calculates lot coverage and arrives at a maximum ratio allowed by code. However, together with other science based measurement tools -- such as the cumbersome "runoff curve number" from a popular Natural Resources Conservation service method for estimating potential stormwater runoff from specific types of natural and manufactured land surfaces located on specific underlying types of soils -- using calculated lot

coverage ratios as a way to mitigate the effects of heavy rainfalls would be more suitably administered through comprehensive stormwater management programs outside of the Zoning Code.

This is not to say that “lot coverage”, as measured by the ratio of impermeable asphalt, concrete, paving, wood or gravel layers vs. the areas covered by grass or soil, is not a useful tool that a stormwater management professional can use to estimate the overall stormwater runoff dynamic in the community. In fact, such data can be used in conjunction with additional variables, such as soil permeability, soil types, topography, watersheds and other stormwater management tools, to create a unique picture for a particular property, when determining easement requirements, stormwater detention and BMPs.

Lot coverage ratios alone do not provide an accurate picture of stormwater dissipation and soil infiltration. While this measure may have an effect on stormwater runoff, lot coverage by itself cannot, on the whole, be used as the sole, or even as a primary, stormwater management tool. Stormwater management initiatives could include lot coverage standards and ratios to implement stormwater management solutions, but a singular maximum lot coverage standard, currently set at 35% by right, and 40% by administrative approval, cannot provide a universal solution to stormwater mitigation and flood control, and if used for this purpose, would seem arbitrary. This is because applying a one-size-fits all ratio to all properties in town would negate the impacts that low depressional areas have on certain properties’ ability to handle stormwater, for example, or the benefit that newer properties enjoy in relation to newer stormwater detention basins or public infrastructure solutions, as well as other aspects that are unique to each and every property. For this reason, stormwater management approaches can only be properly determined through the application of engineering calculations to each and every property, on a case by case basis.

Therefore, it is recommended for this text amendment to be accompanied by a review of existing regulations leading to future text amendments, recommendations, if deemed appropriate, to be incorporated into the Municipal Code’s Chapter 34, Article III (Flood Damage Prevention) at a later date.

Land Use Intensity

At its most basic purpose, *lot coverage* is a measure of “land use intensity”. In standard planning practice, land use intensity is an umbrella term that includes lot coverage as a way to determine or control the intensity with which land is developed:

An organized and comprehensive system for determining or controlling the intensity with which land use developed, replacing conventional fixed yard, height, spacing, etc. and density (i.e. lot area per dwelling unit) controls with more sensitive regulatory devices. The heart of the system is a land-use-intensity scale that establishes ratios to be applied to gross land area in determining maximum residential floor area,

minimum total livability and recreation open space requirements, and ratios based on the number of dwelling units to determine parking requirements. (PAS Report No. 322, The Language of Zoning).

It is the opinion of the Community Development Department staff that Land Use Intensity measures such as lot coverage, and other similar criteria, can be qualitatively useful measures when ascertaining whether a particular zoning lot meets standards related to neighborhood character, open space characteristics, aesthetic qualities, landscaping requirements and other elements valued by the community. Therefore, it is not the intent of this text amendment to remove or modify the lot coverage standard, but to properly frame this measure as a zoning-related standard for the purpose of maintaining neighborhood character and natural areas.

This lot coverage standard is intended to provide a more accurate and straightforward ratio that can be used seamlessly over time, and easily calculated, regardless of materials used; without the need for maintaining aggregate calculations and comparisons to other properties in town over a period of years; and, without having to apply other monitoring tools such as permeability indexes or other elements that would require scientific rigor to administer. Instead, the lot coverage standard should be used simply to help ascertain whether a proposed development or improvement is able to generally preserve and maintain the green appearance and natural environment in the community on a zoning lot by lot basis.

Code Enforcement

The Community Development Department staff has determined, through day to day practice, permitting reviews and code enforcement approaches, that applicants do not typically maintain the “permeable” paver layer, or similar hard material improvements, in ways that continue to promote post construction best management practices that allows for the dissipation of stormwater as designed. This lack of maintenance results in intended permeable improvements that over time become, by default, impermeable, which in turn often results in excessive lot coverage ratios, sometimes far exceeding the maximum lot coverage benchmark of 35%, resulting in an unintended consequence of greater true lot coverage ratios than originally planned.

In cases where property lot coverages are already “maxed out” with an incorporated “permeable” surface improvement, this condition hampers a property owners’ efforts if they (or future owners) opt to change the material of an existing “permeable” improvement to an impermeable material even without increasing the size/area.

Eliminating the “50% bonus” for permeable pavers will remove an impediment for property owners, simplify the review process and result in a more accurate measure of land use intensity and enable staff to maintain lot coverage ratios in a more comfortable space.

The success of this text amendment can only be realized following a thorough review of the flood control regulations chapter, as part of a comprehensive approach to managing stormwater related improvements at the Village, by placing and buttressing stormwater management measures and regulations in the appropriate sections of the Municipal Code, and remove them from the Zoning Code. This effort could begin with a review of Appendix A, Article VI, Section 6.04 Note 11, which gives administrative authority to the Community Development Director or designee to approve lot coverages between 35 - 40 percent, provided that the property is not identified within any building moratorium area, known drainage problem area, or within any identifiable drainage sub basin area.

And finally, this text amendment will also be successful only when accompanied by the appropriate modifications to the construction standards for decks and other horizontal features, such as driveways, landings and walkways, which could be composed of pervious pavers as a preferred or required material under certain conditions, such as in certain residential zone districts or for larger lots.

C. Policy

If approved, this text amendment will redefine lot coverage as a measure of a ratio of the built environment and land left in its natural state for the zoning purpose of maintaining the desired neighborhood character of the Village's residential areas. It will also make it easier for zoning administrators and project reviewers to calculate lot coverage for the purposes of maintaining a reasonable maximum percentage of impermeable land cover of 35-40% Village-wide, and reduce the code enforcement caseload. Stormwater management solutions and construction standards will be administered outside of the Zoning Code.

D. Legal

Notification: Westmont Village codes and Illinois State statutes require proposed Zoning Text Amendments to be advertised with a published legal notice and to be considered by the Planning and Zoning Commission at a public hearing. The required legal notice was published in the Westmont Suburban Life on February 18, 2020.

Other Required Actions: Village Board action is required for this proposed Ordinance Amendment. After the Planning and Zoning Commission has made a recommendation, the appropriately-worded Text Amendment will be taken to the Village Board for review and a final decision. This item is tentatively scheduled for Village Board consideration on March 25, 2021.

Code Reference: Village Zoning Code Article XIV (B) defines lot *coverage*. Section 13-11 specifies the requirements to follow when making Zoning Code Text Amendments.

I. **Recommended Conditions, Stipulations, or Other Requirements**

None

II. Attachments and References

1. Exhibit “A”—Proposed new ordinance language.

Other Applicable PZC Cases

Ordinance 13-109 - An ordinance amending the definition of lot coverage in Article XIV(B) of the Westmont Zoning Ordinance to define the lot coverage for pervious pavers and similar pervious materials.

Exhibit "A"

ARTICLE XIV. - DEFINITIONS

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(B) Definitions

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Lot coverage: The percentage of a zoning lot's area covered by any and all buildings, structures and permanent hardscape improvements. ~~or structure, including but not limited to, patios, sidewalks, driveways or in-ground or above-ground swimming pools. Fifty percent of the square footage of decks shall count towards calculating lot coverage in instances where a semi-permeable membrane is installed at grade level or the ground below is left entirely uncovered. This bonus shall only apply to decks which are constructed to allow a reasonable amount of stormwater to flow freely between the slats to the ground below. Fifty percent of the square footage of permeable pavers and other permeable materials shall count towards calculating lot coverage. The village's community development department shall maintain specifications, which may be amended from time to time, which define acceptable permeable pavers and other permeable materials that may be used to qualify for the 50 percent lot coverage.~~

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