

MICHAEL LOGRANDE
CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS

GARY BOOHER
PATRICIA BROWN
R. NICOLAS BROWN
SUE CHANG
ANIK CHARRON
LARRY FRIEDMAN
DANIEL GREEN
LOURDES GREEN
ERIC RITTER
MICHAEL S.Y. YOUNG

CITY OF LOS ANGELES
CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

**DEPARTMENT OF
CITY PLANNING**

S. GAIL GOLDBERG, AICP
DIRECTOR

**OFFICE OF
ZONING ADMINISTRATION**

200 N. SPRING STREET, 7TH FLOOR
LOS ANGELES, CA 90012

(213) 978-1318
FAX: (213) 978-1334
www.lacity.org/PLN

September 21, 2007

Interested Parties

Department of Building and Safety

**CASE NO. ZA 2007-3430(ZAI)
ZONING ADMINISTRATOR'S
INTERPRETATION**

Sections 12.03, 12.21.1-A,5 and 12.21-G,2(b)(2) of the Los Angeles Municipal Code - Floor Area Ratio and Private Open Space (Balconies and Decks)

CITYWIDE

Regardless of its size or shape any balcony or deck or portion thereof, covered or uncovered, shall not also create floor area as defined in Section 12.03 of the Los Angeles Municipal Code, or be included in the computation of a building's floor area ratio pursuant to Section 12.21.1-A,5 of the Code, so long as it: (1) is not recessed but projects beyond the perimeter of the building; (2) remains unenclosed except for the guard rails required by the Building Code; and (3) qualifies as private open space pursuant to Section 12.21-G,2,(b)(2) of the Code.¹

Section 12.21-A, 2 of the Code provides in pertinent part as follows:

"2. Other Uses Determined by Administrator- The Administrator shall have the authority to determine other uses, in addition to those specifically listed in this Article, which may be permitted in each of the various zones, when in his judgment, such other uses are similar to and no more objectionable to the public welfare than those listed. The Zoning Administrator shall also have the authority to interpret zoning regulations when the meaning of the regulation is not clear, either in general or as it applies to a specific property or situation."

These provisions have also been interpreted to permit resolution of conflicts between disparate sections of the Code, and to provide clarity where ambiguity exists.

Background

On October 10, 2002, the Chief Zoning Administrator and Zoning Engineer issued a joint memorandum (attached) whose topic was a "consideration of projections on a building for the definition of 'height' and 'floor area.'" A key purpose of the memorandum was to clarify when the area under an architectural projection should be counted as floor area for the purpose of computing a building's floor area ratio. The calculation of a building's floor area

¹ Section 12.21-G,2(b)(2) of the Code allows private open space to be provided above the first habitable room level "in developments built at an R3, RAS3, R4, RAS4, and/or R5 density regardless of the underlying zone."



ratio is guided, in part, by the definitions of “building” and “floor area” as set forth in Section 12.03 of the Code:

Building. Any structure having a roof supported by columns or walls, for the housing, shelter or enclosure of persons, animals, chattels or property of any kind.

Floor Area. Is that area in square feet confined within the exterior walls of a building, but not including the area of the following: exterior walls, stairways, shafts, rooms housing building-operating equipment or machinery, parking areas with associated driveways and ramps, space for the landing and storage of helicopters, and basement storage areas.

Section 12.26-A of the Code grants the Los Angeles Department of Building and Safety (LADBS) “the power to enforce the zoning ordinances of the City.” In carrying out this responsibility LADBS has developed detailed procedures to ensure compliance with the Code’s height district regulations, which restrict the total amount of floor area that can be constructed on any given lot. Specifically, as set forth in the October 10, 2002 joint memorandum referenced above, LADBS has interpreted the Code’s definitions of “building” and “floor area” to mean that a deck attached to a building and supported by columns is a part of the building, with the outermost supporting columns defining the building’s perimeter. If the perimeter defines an assumed building wall and the deck defines the roof, then the area beneath the deck is considered as “floor area”.

A different approach is taken for a cantilever balcony.² Here the area beneath a cantilever balcony is not considered as floor area so long as the balcony projects no more than 5 feet beyond the portion of the building providing the support. In cases where the balcony projects more than 5 feet, up to 5 feet of the balcony is not considered part of the building. An assumed building wall is interposed between the portion of the balcony closest to the building and the remaining 5-foot extension. The area beneath the 5-foot extension is not considered as floor area, while the area beneath the projection between the assumed building wall and the actual building wall is. As a further measure against a building owner turning the space beneath a deck, balcony or other architectural projection into usable space an LADBS information bulletin³ on calculating floor area states that:

“The plan check supervisor shall have the discretion of requiring the recordation of a Covenant and Agreement Regarding Maintenance of Building and identifying areas under projections and specifying that they are not to be used for any occupancy.”

Discussion

LADBS’s historical procedures to enforce the Code’s height district regulations have been justified as a precaution against the conversion of architectural projections into floor area. It should be noted, however, that these procedures are entirely prospective: they are designed to mitigate the effects of illegal actions that may or may not occur at some point in the future. Unfortunately, these procedures have also had the unintended consequence of creating a disincentive to comply with the Code’s private open space provisions for multi-family projects of six or more dwelling units, which went into effect approximately ten years

² “Cantilever” means supported at a wall or beam/column line pursuant to the October 10, 2002 memorandum issued by the Chief Zoning Administrator and the Zoning Engineer.

³ Document No. P/BC 2002-021 took effect on May 17, 1979 and was revised on November 1, 2002.

ago.⁴ For example, the Code requires that private open space provided in developments built at a density of R3 or greater (regardless of the underlying zone) “have no horizontal dimension less than six feet when measured perpendicular from any point on each of the boundaries of the open space area.”⁵ Since LADBS excludes no more than 5 feet of a deck or balcony from floor area, many developers are thus placed in a double bind and consequently, the City is receiving more and more requests for reduced open space.

As set forth in Section 12.21-G of the Code, the purpose of the City’s open space provisions is to provide opportunities for outdoor living and recreation, to provide safer play areas for children, and to provide a more desirable living environment, all in furtherance of Goal 3C of the General Plan Framework:

“Multi-family neighborhoods that enhance the quality of life for the City’s existing and future residents.”

A deck or balcony that is not recessed but projects beyond the perimeter of a building is exposed to the elements, and so therefore is not habitable space that intensifies a building’s use in the same way that an extra bedroom, bathroom or other habitable room would. A balcony or deck is accessory to the main dwelling unit. In a multi-family residential project it takes the place of a front or back yard. The developer of a multi-family project complying in good faith with the Code’s open space provisions should not be penalized for this compliance by having these types of balconies or decks counted against the project’s floor area cap.

As noted, supra, over the course of the years, Section 12.21-A,2 of the Code has been drawn upon to provide some rational result from application of various sections of the Code to an individual set of circumstances. This Section has also been interpreted to include authority to resolve conflicts between disparate narrative passages, to transcend unnecessary bureaucratic hurdles, and to provide logical results from sometimes arcane and esoteric nuances obscured within the City’s Zoning Regulations.

Determination

Accordingly, in recognition of modern building practices and to provide a more reasonable balance between LADBS’s responsibility to enforce the Code’s height district regulations and the Code’s provisions concerning private open space in multi-family residential projects, I have determined that regardless of its size or shape any balcony or deck or portion thereof, covered or uncovered, shall not also create floor area as defined in Section 12.03 of the Code, or be included in the computation of a building’s floor area ratio pursuant to Section 12.21.1-A,5 of the Code, so long as it:

- (1) is not recessed but projects beyond the perimeter of the building;
- (2) remains unenclosed except for the guard rails required by the Building Code; and
- (3) qualifies as private open space pursuant to Section 12.21-G,2(b)(2) of the Code.

⁴ Ord. No. 171,753 took effect on November 17, 1997.

⁵ Section 12.21-G,2(b)(2)(ii) of the Code.

To qualify as private open space the balcony or deck must contain a minimum of 50 square feet as set forth in sub-subparagraph (i) and also meet the requirements set forth in sub-subparagraphs (ii), (iii), and (iv) concerning horizontal dimensions, vertical clearances, and projections, respectively. While sub-subparagraph (i) further limits to 50 square feet per dwelling unit the amount of private open space that may count toward a project's total open space requirement, all qualifying private open space that a project provides shall benefit from this interpretation. For example, if a project provides 10,000 square feet of qualifying private open space but only 5,000 square feet may count toward the total open space requirement the entire 10,000 square feet shall still benefit from this interpretation.

For purposes of this interpretation the perimeter of a building shall follow the exterior walls (and not any supporting columns or posts), except as modified by the following rules:

- Rule #1. When a continuous straight line can be drawn across the unenclosed side of a recessed balcony or deck then the perimeter shall follow that line and not the exterior walls. The recessed portion shall be considered part of the building and thus assumed to create floor area.
- Rule #2. If the angle created by the two exterior walls that border a corner balcony or deck is at least 90 degrees then the perimeter shall follow the exterior walls. The projecting portion shall not be considered part of the building and thus assumed to not create floor area. If the angle is less than 90 degrees or the balcony or deck is bordered by a single curving wall then rule #1 above shall apply.

The attached diagrams are a part of this interpretation. In order for this interpretation to apply to a particular project a "Covenant and Agreement Regarding Maintenance of Building" must be approved by LADBS and recorded with the Los Angeles County Recorder. The Covenant and Agreement must state that the balcony or deck must remain unenclosed except for the guard rails required by the Building Code and that the area beneath shall not be used for any occupancy.

Wing Walls and Privacy Screens

Wing walls that exceed 42 inches in height that divide a single deck or balcony shared by two or more residential units shall be considered exterior walls for determining which portion of the deck or balcony is recessed and thus must be included in floor area. If no more than 42 inches in height then the wing walls shall be considered guard rails and not exterior walls. Privacy screens regardless of height shall not be considered exterior walls. A wing wall is a wall perpendicular to an exterior wall that provides structural support to a building. A privacy screen is a decorative feature fastened to a building but that does not provide structural support.

October 10, 2002 Memorandum

This interpretation shall only apply to multi-family residential developments of six or more units built at an R3 or above density regardless of the underlying zone. In all other instances the rules set forth in the attached memorandum issued by the Chief Zoning Administrator and the Zoning Engineer on October 10, 2002 shall apply. A project may not benefit from both this interpretation and the October 10, 2002 memorandum. Only one set of rules shall be applied to a project.

APPEAL PERIOD - EFFECTIVE DATE

The Zoning Administrator's determination in this matter will become effective after OCTOBER 9, 2007, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at www.lacity.org/pln.** Public offices are located at:

Figueroa Plaza
201 North Figueroa Street,
4th Floor
Los Angeles, CA 90012
(213) 482-7077

Marvin Braude San Fernando
Valley Constituent Service Center
6262 Van Nuys Boulevard, Room 251
Van Nuys, CA 91401
(818) 374-5050

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.



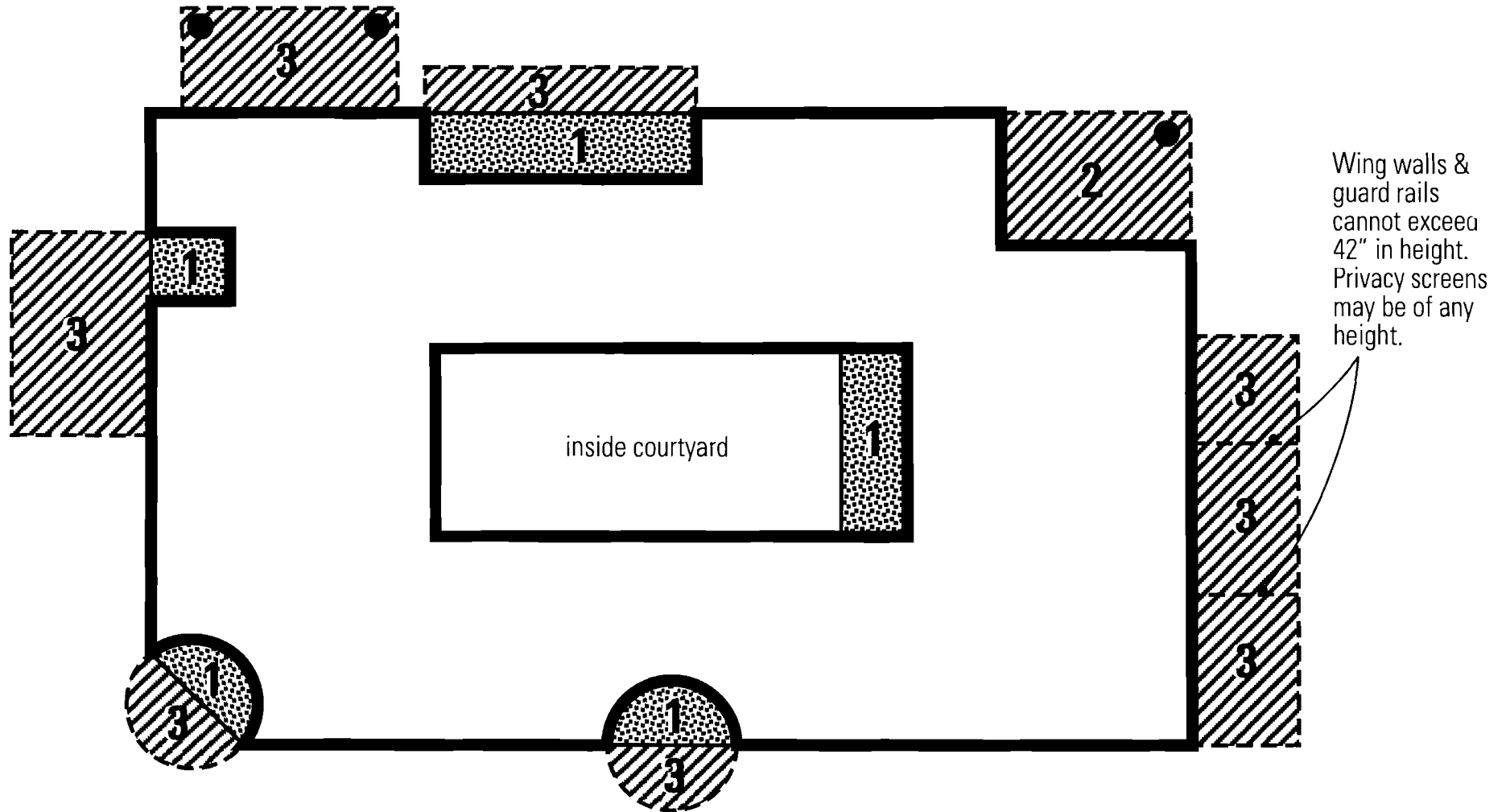
MICHAEL LOGRANDE
Chief Zoning Administrator
Telephone No. (213) 978-1318


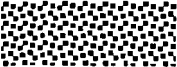


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Attachments:

1. Diagram "A"
2. Diagram "B"
3. Memorandum issued by the Chief Zoning Administrator and the Zoning Engineer dated October 10, 2002

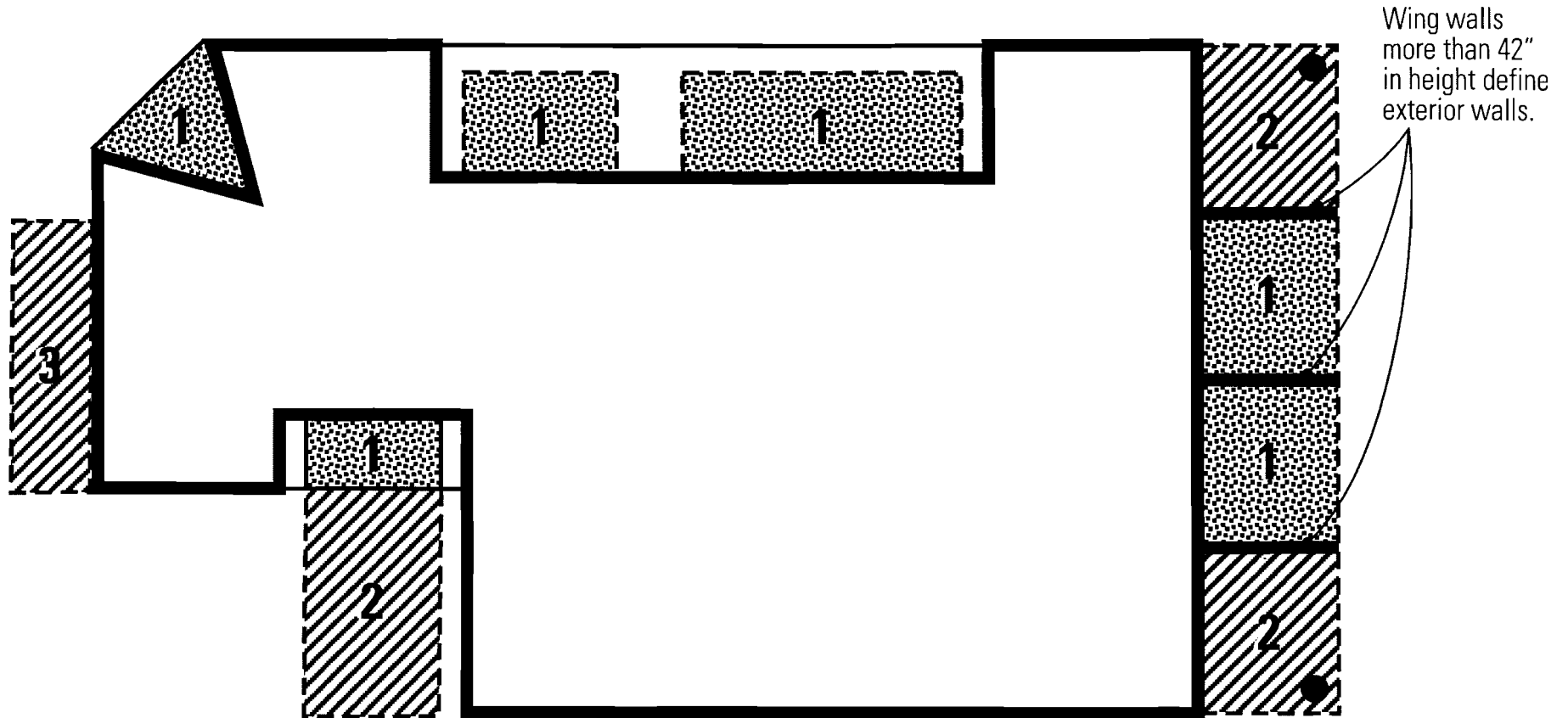
Case No. ZA 2007-3430 (ZAI) - Floor Area Ratio and Private Open Space (Balconies and Decks)
Diagram "A"







-  Exclude from Floor Area Ratio
-  Include in Floor Area Ratio
-  Column/post
-  Exterior wall

- 1** Rule #1 applies
- 2** Rule #2 applies
- 3** Projects beyond perimeter of the building, so is excluded from Floor Area Ratio

Case No. ZA 2007-3430 (ZAI) - Floor Area Ratio and Private Open Space (Balconies and Decks) Diagram "B"



- | | | | | |
|---|-------------------------------|---|---------------|--|
|  | Exclude from Floor Area Ratio |  | Column/post | 1 Rule #1 applies |
|  | Include in Floor Area Ratio |  | Exterior wall | 2 Rule #2 applies |
| | | | | 3 Projects beyond perimeter of the building, so is excluded from Floor Area Ratio |



TAILGATE DATE: 11/11/2002
 BUREAU: Engineering
 CODE SECTION:
 CATEGORY: Tailgate Training

DATE: **10/10/2002**
 TO: **Department of City Planning, Office of Zoning Administration Staff
 Department of Building and Safety, Plan Check and Inspection Staff**
 FROM: **Robert Janovici, Chief Zoning Administrator
 Peter Kim, Zoning Engineer**
 SUBJECT: **CONSIDERATION OF PROJECTIONS ON A BUILDING FOR THE DEFINITION
 OF "HEIGHT" AND "FLOOR AREA"**

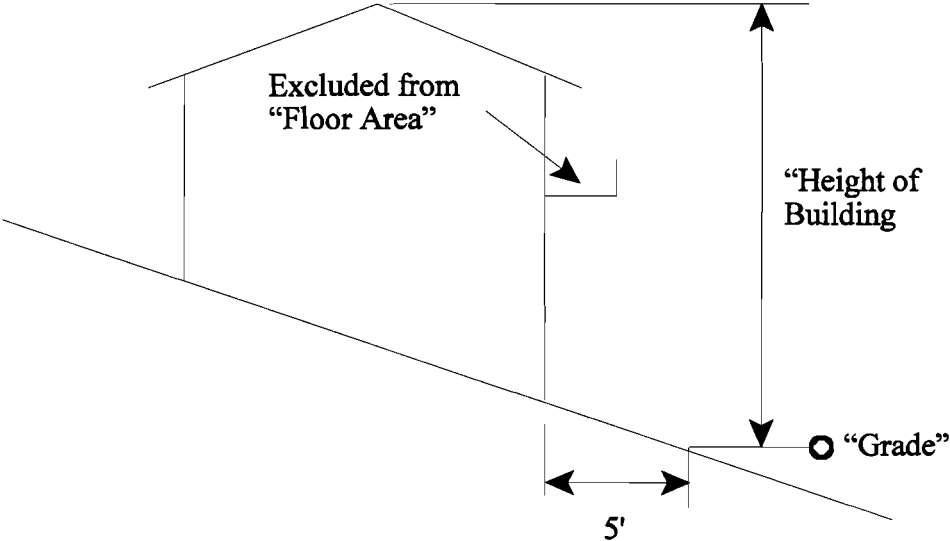
The terms "Height of Building or Structure" and "Floor Area" are defined in Section 12.03 of the Zoning Code. Specifically, "Height of Building or Structure" is defined, in part, as "... the vertical distance above **grade** measured to the highest ..." The term "Grade (Adjacent Ground Elevation)" is further defined, in part, as "... lowest point of elevation of ... between the building and the property line, or when the property line is more than 5 feet from the building, between the building and a line 5 feet from the **building**." Similarly, "Floor Area" is defined, in part, as "...confined within the exterior walls of a **building**..."

The term "Building" is then defined as "Any structure having a roof **supported by columns or walls**, for the housing, shelter, or enclosure of persons, animals, chattels or property of any kind." Thus, if there are any exterior walls or columns on a structure, that wall and/or columns defines the perimeter of a building. For example, attached decks which are supported by columns are considered to be part of the building and therefore the outermost supporting columns of the deck are considered to be the perimeter of the building.

There are some instances in which there are no supporting walls or columns under certain elements of a building. For example a "cantilever balcony" is supported at a wall or beam/column line at some distance from the edge of the balcony. The "Projection" is not defined in the Zoning Code. However, historically, up to 5 feet of cantilever projection was allowed without it being considered as part of a "building". For many years, the Building Code allowed up to 5 feet of projection beyond a building line without having it be considered as part of the floor area.

Thus, when determining "height" or "floor area" of a building, any **open, unenclosed, cantilever** balconies, not exceeding 5 feet beyond the support, are not to be included in the definition of a building. In cases in which balconies exceed 5 feet, up to 5 feet of the balconies may be excluded from the definition of the building. See the attached sketches for illustrations. The first sketch illustrates a case in which a projection does not exceed 5 feet. The second sketch illustrates a case in which a projection exceeds 5 feet. This interpretation is limited to only those balconies with no enclosures on three sides except for the guardrails required by the building code.

Projection less than 5 ft.



Projection more than 5 ft.

