

**WORKSHOP STAFF REPORT FOR:
AN AMENDMENT TO THE COUNTY ZONING ORDINANCE
TO ADD A SECTION OF TEXT DESCRIBING THE TYPE OF
STRUCTURES SUBJECT TO SPECIAL STANDARDS THAT DIFFER FROM
THE GENERAL HEIGHT STANDARDS IN TABLE 2 OF SECTION 8-4-4**

Prepared March 5 for the Planning & Zoning Commission
Public Workshop of March 13, 2012

APPLICANT: Teton County Planning Department

APPLICABLE CODES: Title 8-4-4 of the Teton County Zoning Ordinance,
as amended August 11, 2011.

REQUEST: Consider a future an Amendment to Title 8 to include a new section of text that further refines the types and heights of structures that would have different standards from those in Section 8-4-4 (A) Height of Buildings. The new section would be entitled Heights for Specialized Structures

DESCRIPTION: The proposed text that the Planning Staff is hoping to develop into an ordinance would make refinements about height-limits for specialized structures that are not the same as the usual type of buildings or structures that are governed under the general standards in Table 2 of section 8-4-4. Presently, footnote b in that Table only specifies that silos, barns, and granaries may exceed the general height limits in the AR 2.5 District, A-20 District, and R-1 District.

FINDINGS OF FACT REGARDING NOTIFICATIONS Idaho Code, Title 67; Section 67-6509, 67-6511, 67-6512, and Title 8, Section 8-6-1 of the Teton County Zoning Ordinance do not apply to non-voting workshops held by Planning & Zoning Commission, however, this project was originally advertised as a public hearing. It was advertised in the following ways:

1. A hearing for the Planning & Zoning Commission was noticed in the Teton Valley News for an amendment to the building height regulations.
2. No notifications were sent via mail to surrounding property owners because this text amendment would apply county-wide and not to a specific area.
3. There was no subject property to be posted in accordance with Idaho Code 67-6511 and 67-6509. The text amendment would apply county-wide.

ISSUES:

Why are changes to the County's building height regulations being proposed?

1. Recent Idaho Supreme Court Determination – Burns Concrete
2. Common above-roof architectural features not addressed in our existing code
3. Cell towers, rooftop mechanical equipment not addressed in our existing code
4. Variance and Conditional Use Permits are not the best means to allow deviations to the general height limits specified
5. Agricultural structures up to sixty-feet tall are allowed on every 2.5 acre lot in the county

Why are changes to the County's building height regulations being proposed?

Planning Staff Analysis

1. The Idaho Supreme Court (Burns Concrete) recently made a ruling on the local batch plant, which had a height issues at the center of the controversy. That case involved the approval, via Conditional Use Permit, of a structure that was taller than the zoning height limit allowed in the ordinance. The decision, in favor of Teton County, indicated that there was indeed a requirement to review and approve a variance in addition to simply approving a Conditional Use Permit to allow a building to be taller than the zoning ordinance permits. It is probably true that many jurisdictions have permitted various structures by simply specifying that the height listed in the CUP application is acceptable and then approving it without specifically processing a variance and making the findings of fact.
2. Rooftop Architectural Features. The recent application for a Victor LDS church proposed at 7000 S presented a situation with a steeple that was not addressed in the code. After looking over the footnote "b" in Table 2 of Section 8-4-4, planning staff realized that there are several other types of rooftop structures and architectural features such as belfries, cupolas, steeples, antennae, church spires, chimneys that are not explicitly exempted in our code.
3. Public Utility Towers. Most noticeably missing in the code for exceptions to the general height limits are public utility structures such as transmission towers, cell towers or Wireless Communication Facilities (WCF). These specialized structures commonly have height rules that differ from the general height limits for houses and barns in rural areas. Cell towers and associated public utility facilities have been either approved with a CUP or granted variances for height. Rather than be subjected to variance findings about undue hardship, WCF and other utility structures could be subject to a separate type of height review during the conditional use permit review.
4. Height Variances. There is a need to include more common structures and be more explicit about the structures that are allowed to be taller than the general district height limit. When an antenna, a chimney, a cupola, a parapet wall, cell tower, wind turbine or other structure comes before a Building Official or zoning reviewer, those structures could potentially be treated differently by different people and in different ways over time. If the code specifies what is exempted then the building/zoning evaluator does not need to make a decision as to whether a variance is needed. Even when a variance is heard, different Planning & Zoning boards will render different decision about variance, even for similar projects that may have a small cupola, for example. These decisions by Building Officials and planners may not be consistent from one individual to the next and over time.
5. Agricultural structures. Presently the only exceptions to the general height regulations are for silos, barns, and granaries. These exempted buildings are agricultural uses that are permitted on lots as small as 2.5 acres. Since agricultural buildings can be built on all lots in the A-20 and A/RR 2.5, the only requirement is to obtain a building permit. No CUP review or fee would be needed- only a \$25 building permit fee for an agricultural building. It is much more defensible to limit barns, silos, and granaries to a sixty-foot height if said structures are truly on parcels where large scale agriculture is practiced.

What is the Planning Staff suggesting for new height regulations?

The Planning Staff has found various regulations in areas somewhat like Teton County, or at least in Idaho, to consider as a basis for re-writing or making amendments to our Title 8 Zoning

Ordinance. The staff believes the regulations that we approve should address various types of structures and consider what types of height standards should apply. A “one-size-fits-all” height limit approach is rare for really large zoning districts. The County’s height regulations in the M-1 District really only affect a relatively small area. On the other hand, the A-20 and A/RR 2.5 zoning districts cover almost all the private land in the unincorporated county.

What are some considerations that need to be accounted for when writing a new height exceptions ordinance?

- Minimize need for future variance applications. Creating an ordinance that would require variances to it on a regular basis is not desirable. The ordinance should therefore be written so that a large category of structures is not missed. Structures that are not addressed in our present code include cell towers, transmission power lines, wind turbines, and church spires. These structures and some others should not need to get a variance approved. However, it is all too common for jurisdictions to use the variance method to allow tall structures to be approved. In other states, it is fairly common to use variances to approve buildings that did not comply with the standards. The Idaho state statutes have difficult variance findings, especially when applied to building height situations. Variances in rural counties oftentimes involve property line setbacks, not heights. Height variance should be almost unheard of in rural counties- but that requires a land use code to be precise enough to specify heights or a range of heights or specifications for various specialized structures.
- Make the height standards understandable and have well-defined, unambiguous terms.
- Consider what similar jurisdictions have in their code. Compare other jurisdictions in the region and examine what other scenic counties have written into their codes. Stay aware of which jurisdictions use variances to make exceptions to the standards and which jurisdictions use well-written, precise ordinance language to regulate heights. Discuss whether Teton County needs more restrictive standards than some nearby areas or whether height standards in similar counties are appropriate here.
- Scenic Corridor. Consider whether certain height restrictions should only apply in areas designated for scenic protection. Should the height restrictions in the Scenic Corridor be different from those outside of it?
- Structure shape. Should tall narrow structures such as a 60-foot cell towers, steeples, or radio antennae be treated differently than a long, bulky 60-foot barn?

FINDINGS OF FACTS FOR AMENDING THE TEXT OF THE ZONING ORDINANCE:

Once an ordinance for height exceptions is being considered for approval, the Commission should consider whether the proposed amendment is consistent with the standards below.

Consistent with purposes. The proposed amendment is consistent with Section 8-1-3 Purposes of Zoning Ordinance of the Teton County Subdivision Ordinance.

Consistent with Comprehensive Plan. The proposed amendment is consistent with the Teton County Comprehensive Plan 2004-2010.

Consistent with other sections of the Zoning Ordinance. The proposed amendment is consistent with other provisions of this Teton County Code.

Cupola

From Wikipedia, the free encyclopedia



In [architecture](#), a **cupola** is a small, most-often [dome](#)-like, structure on top of a building.^[1] Often used to provide a lookout or to admit light and air, it usually crowns a larger [roof](#) or dome.

Cupolas often appear as small buildings in their own right. They often serve as a [lantern](#), [belfry](#), or [belvedere](#) above a main roof. In other cases they may crown a [tower](#), [spire](#), or [turret](#).^[3] The [chhatri](#), seen in [Indian architecture](#), fits the definition of a cupola when it is used atop a larger structure.

From Wikipedia, the free encyclopedia

A **steeple**, in [architecture](#), is a tall tower on a building, often topped by a [spire](#). Steeples are very common on [Christian churches](#) and [cathedrals](#) and the use of the term generally connotes a religious structure. They may be stand-alone structures, or incorporated into the entrance or center of the building.



CELL PHONE TOWERS



1. ADA COUNTY IDAHO

http://www.sterlingcodifiers.com/codebook/index.php?book_id=447

8-4A-10: DIMENSIONAL STANDARDS:

D. Height Limit Exceptions: See subsection [8-1-5B1](#) of this title, regarding how structure height is measured.

1. Height Limit Applicability:

- a. The maximum height limitations set forth in the applicable base district shall not apply to the following architectural features: church spire or steeple, belfry, cupola, chimney, or smokestack. Such architectural features shall have a maximum height limit of sixty feet (60'). A maximum height of eighty feet (80') may be allowed for a church spire, steeple, belfry, or cupola that complies with subsection D2 of this section.
- b. The maximum height limitations set forth in the applicable base district shall not apply to the following: agricultural structure, amateur radio antenna, distributed power facility, wind freestanding tower, water tower, fire and hose tower, observation tower, power line tower, radio tower, paging facility, cellular phone facility, cellular tower, television tower, bridge tower, or other commercial or personal tower and/or antenna structure.
- c. A church spire, steeple, belfry, or cupola which will exceed eighty feet (80') in height requires variance approval. A chimney or smokestack which will exceed sixty feet (60') in height also requires variance approval.

2. Height Of Architectural Features:

- a. An architectural feature(s) listed in subsection D1a of this section which exceeds sixty feet (60') in height but does not exceed eighty feet (80') in height shall comply with the following standards:
 - (1) The mass of the architectural feature is in visual proportion and scale with the building to which it is attached;
 - (2) The exterior materials and colors of the architectural feature are appropriate to its mass, and are visually complementary with the building to which it is attached;
 - (3) The architectural feature does not significantly impede views from adjacent properties;
 - (4) The architectural feature does not include signage; and
 - (5) Lighting of the architectural feature is limited to indirect lighting.
- b. An architectural feature(s) which exceeds sixty feet (60') in height but does not exceed eighty feet (80') in height shall be reviewed for compliance with the standards listed in subsection D2a of this section by a county design professional, in conjunction with director review of a master site plan for the building to which the architectural feature(s) is attached. (Ord. 389, 6-14-2000; amd. Ord. 426, 9-26-2001; amd. Ord. 490, 4-9-2003; amd. Ord. 658, 3-14-2007; amd. Ord. 713, 11-12-2008; amd. Ord. 772, 7-27-2011)

2. **BONNEVILLE COUNTY IDAHO (IDAHO FALLS AREA)**

<http://www.co.bonneville.id.us/images/PDF/PandZ/pzordinance.pdf>

CHAPTER 13 - R-1, RESIDENCE ZONE

Section 1-809. Height of Buildings.

No building shall be erected to a height of greater than twenty (20) feet, and no building shall be erected to a height of less than one story above grade, except as permitted under the provisions of Section 1-406 of this ordinance. Roofs above the square of the building, chimneys, flagpoles, television antennas, church towers and similar structures not used for human occupancy are excluded in determining height.

CHAPTER 11 - RA-4, RESIDENTIAL AGRICULTURAL ZONE

Section 1-1109. Height of Buildings.

No building shall be erected to a height of greater than twenty (20) feet, and no building shall be erected to a height of less than one story above grade, except as permitted under the provisions of Section 1-406 of this ordinance. Roofs above the square of the building, chimneys, flagpoles, television antennas, church towers and similar structures not used for human occupancy are excluded in determining height.

CHAPTER 14 - R-1.5, RESIDENCE ZONE

Section 1-1408. Height of Buildings.

No building shall be erected to a height of greater than twenty (20) feet, and no building shall be erected to a height of less than one story above grade, except as permitted under the provisions of Section 1-406 of this ordinance. Roofs above the square of the building, chimneys, flag poles, television antennas, church towers and similar structures not used for human occupancy are excluded in determining height.

3. KOOTENAI COUNTY, IDAHO

[http://www.sterlingcodifiers.com/codebook/index.php?book_id=505&keywords=Height Exceptions](http://www.sterlingcodifiers.com/codebook/index.php?book_id=505&keywords=Height%20Exceptions)

A. Exception To Height Requirements: Height limitations contained in this title, except those shown in subsection 9-16-3A of this title pertaining to the airport district, do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

B. Exceptions To Setback Requirements:

1. The setback requirements as previously stated in this title shall not apply to:
 - a. Fences less than eight feet (8') in height and retaining walls;
 - b. Poured concrete structures on grade, such as patios and sidewalks;
 - c. Platforms necessary for access from roadways to garages or for parking purposes and which are not enclosed;
 - d. Stairways and walkways (which do not exceed 4 feet in width) and stairway landings (which do not exceed 6 feet in width or length), subject to the following setback requirements:
 - (1) Front and rear yard: None;
 - (2) Side yard: Five feet (5');
 - e. Eave projections which:
 - (1) Do not exceed two feet (2'), or
 - (2) Are for the purpose of covering a stairway or walkway as previously defined and which shall not exceed the setback requirements contained in this section. (Ord. 393, 12-14-2006)

4. **FREMONT COUNTY, IDAHO**

http://www.co.fremont.id.us/departments/planning_building/devcode/ADOPTED_FCDevCode_2011_Edition.pdf

Fremont County Development Code – 2011 Edition Ordinance # 2011-04

CHAPTER 4 - ESTABLISHMENT OF ZONING DISTRICTS Page 50 of 305

Maximum height (in feet):	4			
Single Family	30	30	30	30
Multifamily, Commercial, Industrial	40	40	40	40
Accessory Structures	25	25	25	25

1. Setback distance shall be determined from the edge of the right-of-way (ROW). Where the edge of the ROW is unknown, a measurement from the centerline of the roadway shall be made until reaching ½ of the overall ROW width as provided by the Fremont County Public Works Director.
2. Any lot located on a corner of two roads shall meet the required setbacks along both road frontages.
3. Lot coverage shall not exceed 14,000 square feet without the granting of a special use permit.
4. A special use permit may be requested to exceed this limit.

? TETON COUNTY, IDAHO 2012?

Staff made an attempt at a height regulation to consider- look at the suggested heights shaded in yellow and think about whether it is the best height for the use and the county's character.

Section 8-4-4 of Teton County Zoning Code.

B. HEIGHTS FOR SPECIALIZED STRUCTURES:

1. Agricultural structures. The maximum height limitations for an agricultural structure such as a silo, granary, or barn shall be no taller than sixty (60) feet when located in the A-20 or M-1 zoning districts. The roofline for new agricultural structures in the A-2.5 Zoning District shall be thirty (30) feet with an allowance for an architectural feature's top elevation to be no greater than forty (40) feet above adjacent grade.
2. Residential rooftop architectural features such as chimneys, bell towers, spires, cupolas, and domes are allowed by right to be ten (10) feet taller than the maximum height of the a residential structure but shall not exceed forty feet above the adjacent grade in the A-2.5 and A-20 zoning districts.
3. Non-residential architectural features extending above the rooftop, such as a smoke stack, bell tower, cupola, steeple, and dome may be granted a height up to thirty (30) feet above the maximum building height but no greater than sixty (60) feet above adjacent grade. Approval for architectural features more than ten (10) feet taller than the maximum building height may be approved by the Board of County Commission after being reviewed by the Planning and Zoning Commission for compliance with all the standards listed below.
 - a. The proposed structure is not within the Scenic Corridor.
 - b. The architectural feature is not used for human occupancy.
 - c. The proposed structure is a place of worship, an educational institute, a building used for processing agricultural products, or a publicly owned building.
 - d. The architectural feature does not include signage.
 - e. There is no lighting directed upon and no lighting emanating from the architectural feature.
 - f. All exterior materials on the architectural feature are non-reflective.
 - g. The combined areas of all architectural features do not cover more than ten (10%) percent of the total roof area of the building.
 - h. The maximum height of a spire, minaret, or steeple is not greater than thirty (30) feet above the roofline of the building and may not exceed sixty (60) feet in height above the adjacent grade.
 - i. The architectural feature does not significantly impede a primary view from an adjacent residence.
 - j. The diameter of the architectural feature taller than forty (40) feet above grade may be no more than one (1) feet in width. The diameter of the architectural feature taller than 50 feet above grade may be no more than 4 inches in width.

4. Mechanical equipment. The height limitation of this Code shall not apply to mechanical equipment and penthouses, provided that the equipment and penthouses comply with the following criteria:
 - a. The mechanical equipment and penthouses are set back a minimum of twenty (20) feet from any face of a building
 - b. The mechanical equipment and penthouses do not exceed eight (8) feet above the roofline of the building.

5. Wireless Communication Facilities and Public Utilities: The following structures are exempt from the general height limits enumerated in Table 2 but are subject to individual review within a required conditional use permit review: distributed power facility, wind farms, commercial wind turbine, freestanding tower, water tower, fire and hose tower, observation tower, power line tower, radio tower, paging facility, cellular phone facility, cellular tower, television tower, and bridge tower.

6. Miscellaneous structures.
 - a. Wind Energy Systems, or windmills supplying onsite residential or agricultural uses shall be no taller than sixty (60) feet.
 - b. Batch plants for asphalt or concrete manufacturing are subject to individual review within a required conditional use permit review
 - c. Sports field lighting is subject to individual review within a required conditional use permit review.
 - d. Transfer stations are subject to individual review within a required conditional use permit review.
 - e. Water towers, flag poles, amateur radio or personal antenna structures, and lighting rods are exempt from the building height limits in Table 2 of Section 8-4-4.

Model Code:

Colorado Department of Local Affairs. 2008. *Model County Land Use Code*. Article 3, Zoning; Division 3, Use Regulations; Section 3-305, Church. PDF available for download at <http://www.colorado.gov/cs/Satellite/DOLA-Main/CBON/1251594474243> .

- See p. 3-17. "The structural height limitations of the zone district shall not apply to church spires, belfries, or cupolas."

Sample Idaho County Codes, Population < 10,000:

Boise (Idaho), County of. 2008. *Zoning and Development Ordinance*. Chapter 6, Supplementary Regulations; Section 6-4, Height Requirements. Available at http://www.boisecounty.us/Content/Site101/Articles/01_01_2008/222ZONINGANDDEV_000000059.pdf .

- See p. 42. "The height limitations contained in each district section do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys or other equipment usually required to be placed above the roof level and not intended for human occupancy except where the height of such structures will constitute a hazard to the safe landing and take-off of aircraft at an established airport."
- Caribou County zoning ordinance has an identical provision, Section 8.1.3 at http://www.co.caribou.id.us/Content/site102/Articles/01_01_2008/319ZoningOrdina_00000002574.pdf , as does Custer County

Butte (Idaho), County of. 2011. *Zoning Ordinance – Draft 3*. Section 24-50, Height Limit Exceptions; Part C, Allowed Exceptions. PDF available at http://www.buttegeneralplan.net/products/2011-11-16_Draft_3_ZO/Butte_ZoningCode_CleanVersion.pdf .

- See pp. 100-101. The most recent draft of the new zoning ordinance provides that towers, spires, cupolas, and similar structures may exceed maximum permitted heights if the structure covers an area 15% or less than the total structure footprint area; it is not used for eating or sleeping but for purposes incidental to the primary use of the structure; and it does not exceed the maximum permitted height in the county's Military Review Area. Includes illustration.
- Administrative permit is required if the structure exceeds the height limit by up to 10 feet, minor use permit if it exceeds the height limit by more than 10 but no more than 20 feet.

Clearwater (Idaho), County of. 2011. *Zoning Ordinance*. Article IV, Zoning District Provision; Section 423, Exceptions; part 4. Available at http://www.clearwatercounty.org/departments/building_plan/PlanningSub/zoningordinance/docs/Article_IV.pdf .

- "The following exceptions to building height limitations shall apply to structures in any district:
 - a. Chimneys, tanks, church spires, belfries, domes, monuments, fire-hose towers, observation towers, transmission towers, smokestacks, flagpoles, cooling towers, elevator shafts, and other similar structures and projections

shall not be subject to height limitations unless they occur in airport approach zones;

- b. Building permits may be issued for buildings which exceed 45 feet in height, only if such height is approved by the Board, and is not in violation of applicable building codes.”

Washington (Idaho), County of. 2011. *Municipal Code*. Title 5, Zoning; Chapter 3, Section 5-3-3, Maximum Height of Buildings and Structures. Available at http://www.sterlingcodifiers.com/codebook/index.php?book_id=283 .

- Sets maximum building heights, but provides that “towers and similar structures may be exempted from the below listed requirements by special permits, which may be obtained from the commission.”