

ORDINANCE NO. 13-24

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH CODE OF ORDINANCES, BY AMENDING CHAPTER 4, "ZONING REGULATIONS," ARTICLE 4.3, "DISTRICT REGULATIONS, GENERAL PROVISIONS," SECTION 4.3.4, "BASE DISTRICT DEVELOPMENT STANDARDS," SUBSECTION (H), "SETBACKS," BY AMENDING SUBSECTION (4), "STRUCTURES ALLOWED IN SETBACKS," TO MODIFY THE STRUCTURES AND BUILDING FEATURES PERMITTED WITHIN REQUIRED BUILDING SETBACKS; AMENDING CHAPTER 4, "ZONING REGULATIONS," ARTICLE 4.6, "SUPPLEMENTAL DISTRICT REGULATIONS," SECTION 4.6.15, "SWIMMING POOL, WHIRLPOOLS, AND SPAS," FOR CONSISTENCY WITH OTHER EDITS; AND AMENDING APPENDIX A, "DEFINITIONS," TO ADD A DEFINITION FOR "BAY WINDOW;" PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations ("LDR") of the City of Delray Beach ("City") Code of Ordinances provide authority for the City Commission to amend, change, supplement, or repeal the LDR from time to time; and

WHEREAS, LDR Section 4.3.4(H), "Setbacks" has a limited list of detached structures and attached building features that are permitted to encroach into setback area; and

WHEREAS, staff regularly reviews development applications with building elements and site improvements proposed within the building setbacks, but the language is neither clear nor responsive to current development trends; and

WHEREAS, applicants and staff would benefit from clear standards for the placement of certain architectural features and structures within building setbacks; and

WHEREAS, Resolution No. 38-24 was approved by the City Commission on January 16, 2024, adopting the pending ordinance doctrine and Florida law as applied to the City's review of its zoning regulations relating to applications that propose to build balconies in setbacks; and

WHEREAS, during the zoning in progress period of 180 days, the City defers the acceptance and processing of development applications that propose to build balconies in setbacks.

WHEREAS, the City Commission recognizes the appropriateness and necessity of allowing certain building elements and reasonable site improvements to be located within building setbacks and outside the building envelope area to promote the high quality of architecture and human scale design; and

WHEREAS, pursuant to Florida Statutes 163.3174(4)(c), the Planning and Zoning Board for the City of Delray Beach, sitting as the Local Planning Agency, reviewed the proposed text amendment to the Land Development Regulations at a public hearing on May 20, 2024, and voted ___ to ___ to recommend that the proposed text amendment be approved, finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The recitations set forth above are incorporated herein.

Section 2. The City Commission of the City of Delray Beach finds the Ordinance is consistent with the Comprehensive Plan.

Section 3. Chapter 4, “Zoning Regulations,” Article 4.3, “District Regulations, General Provisions,” Section 4.3.4, “Base District Development Standards,” Subsection (H) “Setbacks”, of the Land Development Regulations of the City of Delray is hereby amended to read as follows:

(H) Setbacks

(1) - (3) (These subsections shall remain in full force and effect as adopted.)

~~(4) **Structures allowed in setbacks.** The following structures are allowed in required setbacks pursuant to stipulations contained herein.~~

~~(a) Barbecue pits, not to exceed six feet by six feet.~~

~~(b) Fences and walls pursuant to Section 4.6.5.~~

~~(c) Fish or lily ponds, not to exceed a depth of 24 inches.~~

~~(d) House eaves, not to exceed a three foot overhang.~~

~~(e) Lot line walls not to exceed six feet in height.~~

~~(f) Planter walls, not to exceed three feet in height.~~

~~(g) Pump houses, not to exceed three feet in height.~~

~~(h) Rock gardens.~~

~~(i) Swimming pools in conformance with provisions of Section 4.6.15.~~

~~(j) Air conditioner units, transformers.~~

~~(k) Permanently installed generators, not to exceed a height of 4.5 feet, subject to the provisions of LDR Section 4.3.3(ZZ).~~

~~(l) Steps and platforms for the principal building but not to exceed three feet in height.~~

~~(m) Trellises which may extend to no more than five feet from the side of the principal building or extend more than two feet from the front or rear of the principal building.~~

~~(n) Boat slips, whether attached or detached, which shall not be built closer than ten feet from any abutting property line, and which shall not occupy more than 20 percent of the total lot area.~~

- (o) ~~Canopies, marquees, and covered walkways may extend within front and side setback areas in commercial zone districts.~~
- (p) ~~Underground parking, with any portion of the structure located above grade subject to the setback requirements.~~

(4) Structures allowed in setbacks. Building elements or site improvements allowed in setbacks.
The building elements and site improvements identified in Table 4.3.4(A) are allowed in building setbacks, subject to the limitations herein. These limitations apply to both structural and decorative features. When in conflict with the Central Business District (CBD) standards in Section 4.4.13, the CBD standards shall govern.

<u>Table 4.3.4(A)</u>					
<u>Building Elements or Site Improvements Allowed in Building Setbacks</u>					
<u>Building Elements</u>					
<u>Building Element</u>	<u>Maximum Encroachment into the Setback (Feet)</u>				<u>Limitations</u>
	<u>Front</u>	<u>Side Street</u>	<u>Side Interior</u>	<u>Rear</u>	
<u>Attached arbors and trellises</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	=
<u>Awnings and covered entries</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>Supporting brackets are allowed; columns are not allowed in the required setback.</u>
<u>Balconies</u>	<u>3</u>	<u>3</u>	=	=	<u>Elements such as, but not limited to, columns, privacy walls, louvres, screens, and railings taller than 42 inches are not allowed in the required setback.</u>
<u>Bay windows</u>	<u>3</u>	<u>3</u>	=	=	<u>Limited to 25% of width of associated interior space/room.</u>
<u>Decorative architectural features</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>	<u>Lintels, trim, cornices, stucco banding, moulding, or similar detailing</u>
<u>Roof eaves</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	=
<u>Underground parking</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>Any portion of the structure located above grade is subject to setback</u>

					<u>requirements</u>
<u>Site Improvements</u>					
<u>Site improvements, less than 3 feet in height</u>	<u>Minimum Setback from Property Line (Feet)</u>				<u>Limitations</u>
	<u>Front</u>	<u>Side Street</u>	<u>Side Interior</u>	<u>Rear</u>	
<u>Air conditioning units, transformers</u>	<u>10</u>	<u>5</u>	<u>2</u>	<u>5</u>	<u>Subject to manufacturer specifications. Requires screening if located within the front or side street yards.</u>
<u>Barbecue pits or outdoor kitchens</u>	<u>=</u>	<u>=</u>	<u>5</u>	<u>5</u>	<u>Uncovered, not to exceed 6 by 6 feet</u>
<u>Boat slips</u>	<u>=</u>	<u>=</u>	<u>10</u>	<u>0</u>	<u>No more than 20 percent of the total lot area</u>
<u>Permanently installed generators</u>	<u>See Section 4.3.3(ZZ)</u>				<u>Subject to Section 4.3.3(ZZ)</u>
<u>Uncovered patio, walkways</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>=</u>
<u>Steps or platforms leading to buildings</u>	<u>0</u>	<u>0</u>	<u>3</u>	<u>6</u>	<u>Not to exceed 3 feet in height</u>
<u>Open-air ramps leading to buildings</u>	<u>0</u>	<u>0</u>	<u>4</u>	<u>4</u>	<u>For the purpose of ADA accessibility.</u>
<u>Splash pools, fish or lily ponds</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>Maximum of 24 inches in depth</u>
<u>Planter walls</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>=</u>
<u>Pool pump houses</u>	<u>=</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>Pool pump houses are only allowed a reduced setback when associated with a variance request.</u>
<u>Permanently installed sculptures and other similar objects of art</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>=</u>
<u>Swimming pools, residential zoning districts</u>	<u>See Section 4.6.15</u>				<u>Subject to Section 4.6.15</u>
<u>Site improvements</u>	<u>Minimum Setback from Property Line (Feet)</u>				<u>Limitations</u>

<u>greater than 3 feet in height</u>	<u>Front</u>	<u>Side Street</u>	<u>Side Interior</u>	<u>Rear</u>	
<u>Fences, walls</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>Subject to Section 4.6.5, including maximum height limitations</u>
<u>Recreational equipment</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>=</u>
<u>" - " indicates building element or site improvement is not allowed within the setback.</u>					

- (5) ~~Setbacks for screen porches, Reduction in setbacks for screen enclosures, and accessory structures in rear yards,~~ shall comply with the following requirement Setbacks may be reduced for screen enclosures in rear yards in residential zoning districts under the following conditions:
- (a) ~~In all residential zoning districts, the~~ The minimum rear setback for attached screen porches attached to residential type buildings on residential dwelling units shall be ten feet whenever at least 50 feet of open space common open area, as defined in subsection (c) below, separates that rear property line from the next rear property line directly across and abutting the open space common open area.
 - (b) ~~The accessory structure of a screen enclosure around sSwimming pools screen enclosures and other accessory structures may have a zero rear yard setback whenever at least 50 feet of open space common open area as defined in sSubsection (c) below separates the rear property line from the property line directly across and abutting the open space common open area. However, this subsection does not constitute a change to provisions of Section 4.3.4(H)(4) (Structures Allowed in Setbacks) or Section 4.6.5 (Walls, Fences, Hedges and the Like) in the interpretation of height restrictions. Any accessory structure which has a solid roof shall not be allowed a height greater than that allowed by the above sections.~~
 - (c) ~~For the purpose of this sSubsection (5), open space common open area shall mean any exterior open area clear from the ground upward, except as noted below, such as canals, lakes, golf courses, parks, sidewalks, streets, parking areas, and bicycle paths, and the like. If an area of open space a common open area, such as a golf course, includes buildings or structures utilized in connection therewith, the reduced setback provision contained above shall still apply if there is a minimum of 50 feet between such buildings and structures, and the property line on which the subject screen porch is to be located.~~
 - (d) ~~In order to qualify for the reduced setback provision, the~~ The open space common open area must either consist of common open space that is owned or leased by the owners of residential units within the subdivision of which that open space is a part, or be dedicated to the public, or restricted to such open space use by covenants, declarations, easements, or deed restrictions in order to provide a reasonable degree of assurance of that guarantee the continuity of the common open area space status of the property.

~~(de)~~ In zero lot line developments ~~only~~, screened enclosures may extend into the interior side setback areas, but ~~shall not be placed~~ no less than five feet from the property line.

~~(e)~~ ~~(f)~~ ~~Any conflicts between this subsection (5), and the regulations as set forth in individual residential zoning districts shall be governed by the provisions of this subsection.~~ In the case of a conflict between this subsection and the regulations in an individual residential zoning district, this subsection shall take precedent.

(6) - (7) (These subsections shall remain in full force and effect as adopted.)

Section 4. Chapter 4, "Zoning Regulations," Article 4.6, "Supplemental District Regulations," Section 4.6.15, "Swimming Pool, Whirlpools, and Spas," of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

Sec. 4.6.15. - Swimming pools, whirlpools, and spas.

(G) ***Yard encroachment.*** Swimming pools at grade level are allowed to encroach into the required setbacks as follows.

(1) ***Conventional single-family lots.***

(a) Swimming pools, ~~the tops of which are no higher than grade level~~, may extend into the rear, interior or street side setback areas but no closer than ten feet to any property line, ~~except as provided in subsection (2) and (4) below.~~ Swimming pools shall not extend into the front setback area ~~noted in~~ required by Section 4.3.4(K).

~~(b)~~(2) When adjacent to at least 50 feet of ~~open space~~ common open area, as defined in Section 4.3.4(H)(5)(~~e~~) and (~~d~~), swimming pools at grade level may extend into the rear or interior side setback area, but to no closer than five feet to the property line.

~~(c)~~(3) ~~Although swimming pools may extend into side and rear setback areas, a~~ A screened or other pool enclosure shall not be permitted to encroach into such side and rear setback areas except as provided allowed in Section 4.3.4(H)(5)(~~b~~) and (~~e~~).

~~(2)~~(4) ***Zero lot line developments.***

~~(a)~~ ~~When located in a zero lot line development, s~~Swimming pools at grade level may extend into the interior side setback ~~but no closer than~~ no closer than five feet from the property line.

~~(b)~~ A swimming pool may ~~also~~ extend no closer than five feet from the rear property line ~~in a zero lot line development~~, except along the perimeter of the development where a 10 foot setback is required, unless the rear setbacks noted in Section (G)(1) shall apply, except when adjacent to at least 50 feet of open space common open area as provided in subsection (G)(2) defined in Section 4.3.4(H)(5).

(3) *Townhouse developments.* Swimming pools in townhouse developments may have a five foot side interior setback.

~~(4)(5)~~ Swimming pools are prohibited in dedicated easements unless written approval of the easement holder is obtained and a hold harmless agreement is executed.

Section 5. Appendix A, “Definitions,” of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

BAY WINDOW. An angular or curved cantilevered feature that projects outward from an exterior wall and predominantly comprised of fenestration.

Section 6. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 7. Should any section or provision of this Ordinance, or any portion thereof, any paragraph, sentence, or word, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 8. Specific authority is hereby given to codify this Ordinance.

Section 9. This ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2024.

ATTEST:

Katerri Johnson, City Clerk

Thomas Carney, Jr., Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

First Reading _____

Second Reading _____