

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; PROVIDING 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 AMEND THE TITLE AND MODIFY THE BUILDING ELEMENTS AND SITE IMPROVEMENTS 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 EDITS TO SECTION 4.3.4(H); AND AMENDING APPENDIX A, "DEFINITIONS," TO ADOPT A DEFINITION FOR BAY WINDOW; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AUTHORITY TO CODIFY, PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

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" outlines the types of detached structures and attached building features that are permitted in the required building setback area; and

WHEREAS, staff regularly reviews development applications with requests to place building elements and site improvements within the building setback area; and

WHEREAS, the types of building elements and site improvements permitted in the building setback areas should be clarified and updated to be responsive to current developmental models; and

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

WHEREAS, during the zoning in progress period of 180 days, the City has and continues to defer the acceptance and processing of development applications that propose to build balconies in setbacks; and

WHEREAS, the City Commission recognizes that it is appropriate and necessary to allow 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 4 to 1 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

WHEREAS, the City Commission has considered Ordinance No. 13-24 and the respective findings as set forth in the Comprehensive Plan and Land Development Regulations.

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 that Ordinance No. 13-24 is consistent with the Comprehensive Plan, meets the criteria set forth in the Land Development Regulations, and is in the best interests of the City; and

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 as follows:

(H) *Setbacks*

- (1) **General.** Setbacks are measured at right angles to the lot line and represent the minimal distance within which a structure may come to said lot line. Setbacks are established for front, interior side, street side, and rear lot lines. Lot lines along rights-of-way are established, for setback purposes, as being for the ultimate right-of-way as required for the minimum section for the class of street or as otherwise required by the Traffic Network as contained in the Transportation Element of the Comprehensive Plan.
- (2) **Large lot development.** Where structures are established within a development which does not have interior lot lines (apartment complex), building setbacks shall be measured from the right-of-way or easement or other description provided for the interior street system and distance between building requirements as set forth in Section 4.6.2. However, in any event the setback requirements for the district shall be observed around the perimeter of the overall development.
- (3) **Zero lot line development.**
  - (a) A zero lot line development allows the placement of a structure coterminous to a side property line provided the distance between the structure and the structure on the adjacent lot is a minimum of 15 feet. A zero lot line cannot occur adjacent to property which is not a part of a zero lot line development.

- (b) All accessory buildings, structures, or uses attached or unattached to the principal structure shall comply with the applicable setbacks for the zoning district in which the development is located except that attached garages may be placed contiguous to the side property line on which the principal structure is located.
- (c) Roof eaves may project over the zero lot line up to a maximum of 18 inches if adequate gutters are provided to prevent runoff onto the contiguous property and if an appropriate easement is recorded for roof encroachment. Eaves or other overhangs may not project over utility easements.
- (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.

**Table 4.3.4(A)**  
**Building Elements or Site Improvements Allowed in Building Setbacks**

**Building Elements**

<b><u>Building Element</u></b>	<b><u>Maximum Encroachment into the Setback (Feet)</u></b>				<b><u>Limitations</u></b>
	<b><u>Front</u></b>	<b><u>Side Street</u></b>	<b><u>Side Interior</u></b>	<b><u>Rear</u></b>	
<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, molding, 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 requirements</u>
<b><u>Site Improvements</u></b>					
<b><u>Site improvements, less than 3 feet in height</u></b>	<b><u>Minimum Setback from Property Line (Feet)</u></b>				<b><u>Limitations</u></b>
	<b><u>Front</u></b>	<b><u>Side Street</u></b>	<b><u>Side Interior</u></b>	<b><u>Rear</u></b>	
<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>5</u>	<u>5</u>	<u>Uncovered, not to exceed 6 by 6 feet</u>

<u>Boat slips</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>Steps or platforms leading to buildings</u>	<u>0</u>	<u>0</u>	<u>3</u>	<u>6</u>	Not to exceed 3 feet in height
<u>Open-air ramps leading to buildings</u>	<u>0</u>	<u>0</u>	<u>4</u>	<u>4</u>	For the purpose of ADA accessibility.
<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>Pool pump houses</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>Swimming pools, residential zoning districts</u>	<u>See Section 4.6.15</u>				<u>Subject to Section 4.6.15</u>
<u>Site improvements greater 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>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>“ - ” 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 s~~Subsection (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) **Special setbacks.** Three types of special setbacks are established in order to provide for preservation of area for expansion of roadways and/or streetscape beautification. These are: special building setbacks, special landscape setbacks, and a combination thereof.
  - (a) **Special building setbacks.** Within the following special building setbacks, no structures shall be altered, erected, or reconstructed:

- \* Along Ocean Boulevard (State Road A1A), a twenty-foot setback shall be provided from the "Brockway Line," as shown in Plat Book 20, Page 4, Public Records of Palm Beach County, Florida. The "Brockway Line" shall be the "building line" for Lots 1 thru 7 inclusive, Block 1, Ocean Park, as shown in Plat Book 5, Page 15, Public Records of Palm Beach County, Florida.
  - \* Reserved.
  - \* Within the residential district along the west side of S.W. 8th Avenue, between West Atlantic Avenue and S.W. 1st Street, a 50-foot setback shall be provided from the east property line.
  - \* Along Lake Ida Road extending from Swinton Avenue westward to Military Trail, a 64-foot setback shall be provided on both sides of the centerline.
  - \* Along George Bush Boulevard, between Swinton Avenue and A-1-A, a 50-foot setback shall be provided on both sides of the centerline.
- (b) ***Special landscape setbacks.*** Within the following special landscape setbacks, no structures shall be altered, erected, or reconstructed; nor shall any paving be allowed except for driveways and sidewalks which lead to structures on, or provide access to, the site and then only when generally perpendicular to the frontage. However, waivers may be granted to these restrictions at the time of site plan review in order to accommodate landscape features, decorative walls, meandering sidewalks, and other decorative pedestrian ways.
1. Along Federal Highway (U.S. Highway 1), including the one way pairs (5<sup>th</sup> and 6<sup>th</sup> Avenues), extending from the south City limits to S.E. 10<sup>th</sup> Street, special landscape areas shall be provided as shown below on both sides of the ultimate right-of-way:

LOT DEPTH	SINGLE FRONTAGE	DOUBLE FRONTAGE*
Up to 200'	10'	10'
201 to 250'	15'	10'
251 to 300'	20'	15'
Over 300'	25'	20'

\* Includes frontage on both Federal Highway and Dixie Highway

2. Along Federal Highway (U.S. Highway 1), including the one-way pairs (5<sup>th</sup> and 6<sup>th</sup> Avenues), extending from S.E. 10<sup>th</sup> Street to the north City limits, but excluding the blocks between S.E. 1<sup>st</sup> Street and N.E. 1<sup>st</sup> Street, a ten- foot special landscape area shall be provided on both side of the ultimate right-of-way.

The special landscape area shall not be required between the front building edge and the ultimate right-of-way where storefronts face the roadway and no parking or vehicular circulation areas are provided between the building and the right-of-way. However, the body acting upon the development application may require that foundation plantings, street trees or other landscape features be installed in front of the building to add interest and provide relief from the building mass.

3. Along West Atlantic Avenue, From I-95 to the Western City Limits, a special landscape area shall be provided on both sides of the ultimate right-of-way.

This landscape area shall be the smaller distance of either 30 feet or ten percent of the average depth of the property; however, in no case shall the landscape area be less than ten feet.

4. Along Linton Boulevard, from A-1-A to the western City limits, a special landscape area shall be provided. This landscape area shall be the smaller distance of either 30 feet or ten percent of the average depth of the property; however, in no case shall the landscape area be less than ten feet.
5. Along Congress Avenue, from the L-38 Canal northward to the L-30 Canal, a special landscape area shall be provided. This landscape area shall be the smaller distance of either 30 feet or ten percent of the average depth of the property; however, in no case shall the landscape area be less than ten feet.
6. Along Military Trail, from the L-38 Canal northward to the L-30 Canal, a special landscape area shall be provided. This landscape area shall be the smaller distance of either 30 feet or ten percent of the average depth of the property; however, in no case shall the landscape area be less than ten feet.

- (c) ***Combination building and landscape setbacks.*** Within the following special setbacks, no structures shall be altered, erected, or reconstructed. Further, within the first ten feet thereof there shall be no paving except for driveways and sidewalks which lead to structures on, or provide access to, the site and then only when generally perpendicular to the frontage.

- \* Along South 10th Street and Lowson Boulevard, extending from S.E. 5th Avenue to Military Trail, a 30-foot special combination setback shall be provided.

- (7) ***Reduction along cul-de-sacs:*** When at least 50 percent of the frontage of a lot is located on a cul-de-sacs, the front building setback may be reduced by five feet.

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 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 F. Carney, Jr., Mayor

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Lynn Gelin, City Attorney

First Reading\_\_\_\_\_

Second Reading\_\_\_\_\_