



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## LANNING AND ZONING BOARD STAFF REPORT

### Building Elements and Site Improvements Allowed in Building Setbacks

Meeting	File No.	Application Type
May 20, 2024	2020-169-LDR	Amendment to the Land Development Regulations

#### Request

Provide a recommendation to the City Commission on Ordinance No. 13-24, a City-initiated request to amend and update Section 4.3.4(H), "Setbacks," Section 4.6.15(G), "Yard Encroachment," and Appendix A, "Definitions," of the Land Development Regulations (LDR) relative to building elements and site improvements allowed in building setbacks.

#### Background

On January 16, 2024, a zoning in progress was adopted via Resolution No. 38-24 to halt approvals of balconies that encroach into building setbacks. The Resolution recognizes "zoning in progress" with respect to the preparation and review of proposed amendments to the City's Land Development Regulations (LDR) to develop regulations governing the encroachment of balconies into the required building setbacks. The Resolutions adopt the pending ordinance doctrine and Florida law as applied to City's review of its zoning regulations relating to requests to approve balcony encroachment in building setbacks. During the zoning in progress period, the City is deferring the acceptance and processing of applications for these requests.

The LDR is silent on balcony encroachment into required building setbacks; the regulations do not contemplate architectural elements common in current development trends. The review of previous requests to encroach into the setbacks relies on an administrative interpretation of balconies that equates the features as equivalent with "House Eaves," which are allowed to encroach up to three feet into the building setback. This lack of clear standards has made the review process challenging for Staff and inconsistent over time. Development Services receives numerous requests for balcony encroachment, and the review process would benefit from clear standards on the circumstances and extent of permitted encroachment. Ordinance No. 13-24 proposes regulations governing balconies, as well as updates to multiple other related items within the relevant and related subsections.

NOTE: The Planning and Zoning Board heard this item as discussion-only on March 18, 2024, and continued the item to allow staff to revise the proposed ordinance pursuant to discussion.

#### Description of Proposal

The proposal is initiated by the City to simplify and provide clear guidance on the placement of certain structures and building features within the setbacks, such as balconies and porch entries. The following changes are proposed to multiple sections of the LDR.

#### Section 4.3.4(H), Setbacks

Subsection (4), "Structures allowed in setbacks." The subsection is repealed in its current form, and substituted with a table instead of a list. The subsection is renamed "Building elements or site improvements allowed in building setbacks" and the table is divided into two sections: building elements and site improvements. Building elements are allowed a certain amount of encroachment into the setbacks, whereas site improvements are regulated in the distance from the property line.

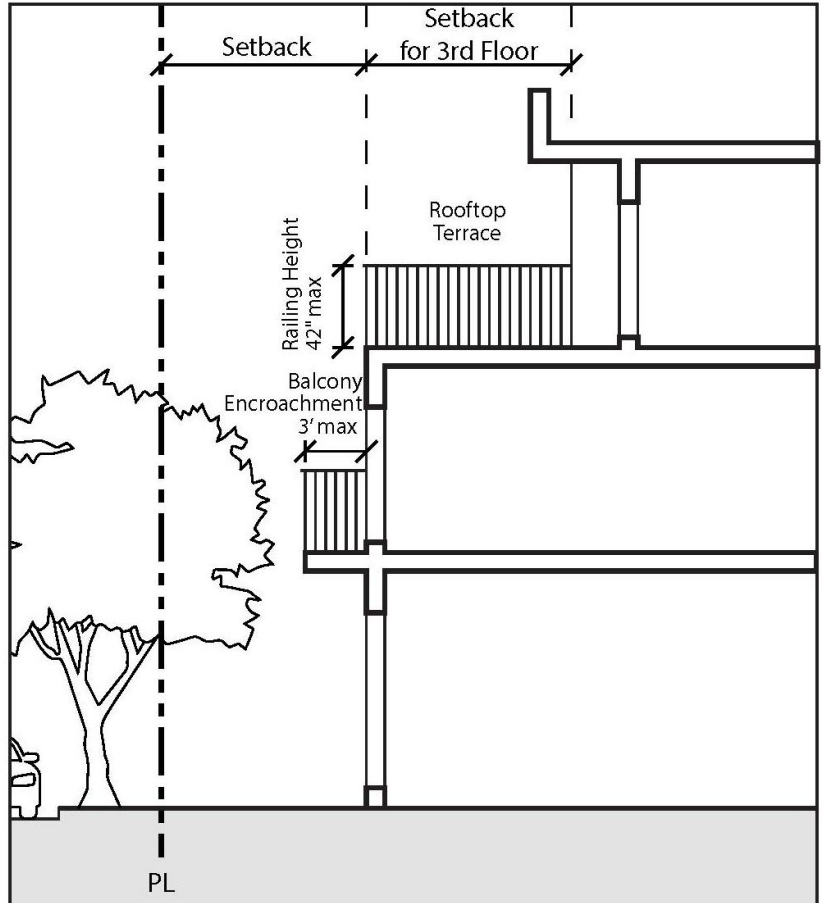
The following substantive changes are made to this subsection:

- **Additions:**
  - Bay windows may encroach up to 3 feet into the setbacks.

- Uncovered patios and walkways are allowed 5 feet from the property line.
- Decorative architectural features, such as lintels, stone veneer, stucco banding, or similar may encroach 6 inches.
- Sculptures and other similar objects of art with a maximum encroachment of 3 feet.
- Recreational equipment may be 5 feet from the property line.
- Balconies, which may extend no more than 3 feet into the front and side setbacks. Vertical privacy walls higher than 42 inches between balconies are not allowed in the required setbacks. The diagram at right depicts what the new regulations would allow.

• **Modifications:**

- “Canopies, marquees, and covered walkways” is changed to “awnings, porches, and covered entries,” and general caveat that it “may extend within front and side setback areas in commercial zone districts” is quantified to allow 3 feet of encroachment. The regulation now applies to commercial, mixed use, and residential districts.
- Lot line walls not to exceed 6 feet in height is combined with fences and walls.
- Barbeque pits are currently allowed in the setbacks; amended to read “barbeque pits and outdoor kitchens.”
- Fish and lily ponds are currently allowed; splash pools are added.
- Air conditioning units, with reference added to the screening requirement for front and side street yards.
- Steps and platforms may extend up to 6 feet into the setback; only the max height was regulated previously.
- Detailed regulations for generators are replaced with a reference to another section.



• **Deletions:**

- Rock gardens were removed because it is an unnecessary item to regulate.

Subsection (5). A general reference to accessory structures is removed, because the regulations only apply to screen enclosures (as opposed to structures with a solid roof and solid walls). The subsection is also updated to improve clarity and to provide consistency with the changes proposed to Section 4.3.4(H)

The term “Open Space” is replaced by the term “Common Open Area” in both LDR Section 4.3.4 and LDR Section 4.6.15(G). Using the term “Open Space” with a different definition than the definition in Appendix A, that applies to the rest of the LDR, has caused significant confusion in the review process.

### Section 4.6.15(G), Yard Encroachment (for Swimming Pools, Whirlpools, and Spas)

- Subsection (G) is rewritten to improve clarity and to provide consistency with the changes proposed to Section 4.3.4(H).
- Pool setbacks for townhouse developments were subject to administrative interpretation, because townhouses are not specifically included in the regulation. Encroachment up to 5 feet from the interior side property line is currently allowed for zero lot line homes; the amendment establishes a 5-foot setback for townhomes.

### Appendix A, Definitions

The following new definition is proposed:

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

### Modifications after Planning and Zoning Board (PZB) on March 18, 2024

The following items were modified in the proposed ordinance after the PZB meeting.

- Regulations for air conditioning units, barbeque pits / outdoor kitchens, and pool pump houses were modified to provide some setback from the property line (rather than up to it).
- The sculpture language was updated to specify that it applies to permanent art pieces.
- Fire escapes. The existing regulations govern a type of fire escape that is no longer used.
- Flagpoles. State law provides regulations that would preempt any regulation adopted by the City.
- The proposed amendment to the definition of a porch is eliminated, over concerns with unintended conflicts with the CBD regulations governing frontage types.
- The proposed amendment to the definition of balcony is eliminated. Staff determined that the existing language is sufficient.

The proposed amendment is in full in the attached draft of Ordinance No.13-24.

## Review and Analysis

### LDR Section 1.1.6, Amendments

*The text of these Land Development Regulations may from time to time be amended, changed, supplemented, or repealed. No such action however, shall be taken until a recommendation is obtained from the Planning and Zoning Board and until a public hearing has been held by the City Commission.*

### LDR Section 2.4.7(A), Amendments to the Land Development Regulations

*Amendments to the LDR may be initiated by the City Commission, Planning and Zoning Board, or City Administration, or by a member of the public.*

The proposed amendment is initiated by City staff in response to direction by the City Commission.

### LDR Section 2.4.7(A)(5), Findings

*For any approval, the City Commission must make a finding that the text amendment is consistent with the Comprehensive Plan, and that the amendment furthers the implementation of an adopted neighborhood plan, if applicable.*

The following Objectives and Policies of the adopted Comprehensive Plan are applicable to the proposed amendment.

## Neighborhoods, Districts, and Corridors Element

Objective NDC 3.5 Update Land Development Regulations Regularly review and update the Land Development Regulations to provide timely, equitable and streamlined processes including, but not limited to, building permit processes for residential developments and to accommodate mixed-use developments, address market changes and development trends, and other innovative development practices.

Policy NDC 3.5.1 Review the uses and use descriptions in the Land Development Regulations to provide consistent terminology.

The proposed amendment will improve the development review process for residential and non-residential proposals by providing clear standards for City staff, development professionals, and property owners within the city. The proposed amendment will address development design trends by allowing (with limitations) building features, such as balconies, bay windows, and covered entries, to encroach within the setbacks. The current development trend is to occupy the entire buildable area (building envelope), which leaves little or no space for architecture features, such as balconies, bay windows and covered entries. By allowing certain building features to encroach within the setbacks, an incentive to include certain architectural elements is created; these structures do not increase lot coverage nor account as part of the total building square footage. The proposed changes to said subsection were drafted to provide a mutual benefit for the property owner and community. The ability to include architectural elements outside of the building envelope can provide a more appealing design and harmonious human scale design by softening the overall building mass and size.

Additionally, the entire subsection is being updated to simplify and modernize the verbiage of this section.

### Review By Others

The **City Commission** is anticipated to review the proposed LDR Amendment on May 21, 2024 and June 18, 2024.

### Options for Board Action

- A. Recommend **approval** to the City Commission of Ordinance No. 13-24, on a City-initiated request to amend Land Development Regulations Section 4.3.4 “Base District Development Standards”, Subsection (H) “Setbacks,” amending Section 4.6.15, “Swimming Pool, Whirlpools, and Spas,” and amending Appendix A “Definitions” to add a definition for “Bay Window” by finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Land Development Regulations.
- B. Recommend approval to the City Commission of Ordinance No. 13-24, **as amended**, on a City-initiated request to amend Land Development Regulations Section 4.3.4 “Base District Development Standards”, Subsection (H) “Setbacks,” amending Section 4.6.15, “Swimming Pool, Whirlpools, and Spas,” and amending Appendix A “Definitions” to add a definition for “Bay Window” by finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Land Development Regulations.
- C. Recommend **denial** to the City Commission of Ordinance No. 13-24, on a City-initiated request to amend Land Development Regulations Section 4.3.4 “Base District Development Standards”, Subsection (H) “Setbacks,” amending Section 4.6.15, “Swimming Pool, Whirlpools, and Spas,” and amending Appendix A “Definitions” a definition for “Bay Window” by finding that the amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in Land Development Regulations.

### Public and Courtesy Notices

N/A Courtesy Notices are not applicable to this request

N/A Public Notices are not required for this request.