



PLANNING COMMISSION STAFF MEMORANDUM

DATE: March 5, 2025
TO: Chairman Shockey and Planning Commissioners
FROM: Josh Olhava, AICP, Town Planning Consultant - Planning Department
SUBJECT: **Land Use Regulations** – Interpretations and direction on elements that are unclear, contradictory, and/or are not specified.

Overview and Analysis

Staff have identified a few land use regulations and intended criteria that may be unclear or cause inconsistencies when interpreting and applying the regulations. This list is a result of our team's ongoing review and familiarity with the code, industry best practices, and property owner and resident inquiries.

1. Building Façade Step Backs: Sec. 12-7-4(C)1.(a)2. – Design Standards for Structures.
"After the first two (2) stories or twenty-four (24) feet, each additional story shall step back the street wall a minimum of twelve (12) feet to preserve the viewshed from street level."

Questions:

- Should the step back criteria apply to a mixed-use structure and/or when a building's setback from the property line is at specified minimum distance creating relief from the sidewalk and street, as intended in code?
- Does the step back height limit of twenty-four (24) feet include parapet walls, balcony or patio railings, or other architectural design or safety features?

Staff Analysis:

- The code prefaces that the step back criteria is for the street wall *adjacent to the sidewalk and/or street when a building is constructed to or near the front or side property lines of a site. The goal is to continue the connected network of comfortable and inviting pedestrian paths that form a transition...*
- The code further specifies that this criteria applies to commercial structures and commercial projects. The only definition related to commercial in the code is 'commercial space' in Sec. 12-2-6, which states: *"Uses permitted by right in the Commercial District and the Commercial Transitional District excluding single family, multi-family attached rental units, condominiums, townhouses, condo/hotels, and parking lots."*
- The code does not clearly state at what distance away from the sidewalk and/or street that the step back criteria may no longer apply. The phrasing *...constructed to or near the front or side property lines of a site* leave a gap for interpretation.
- Additionally, the code is not completely clear if the step back criteria should apply to mixed-use structures, in addition to commercial structures.
 - **Consideration 1:** The step back criteria applies to all commercial and mixed-use projects as specified in code. Mixed-use projects include commercial uses, and the intent is architectural design and relief from buildings "adjacent to" and *"...constructed to or near the front and side property lines."*
 - **Consideration 2:** The step back criteria may not apply to structures when the primary building mass is setback from the main property line as the code language specifies *"...constructed to or near the front or side property line..."* With the step back criteria listing a minimum of twelve (12) feet being the step



back distance, we could consider that if the primary building mass is setback a minimum of twelve (12) feet and meets the other code criteria for height and architectural design elements, then you could theoretically construct a two and a half or three-story structure without the step back requirement applying.

- **Consideration of step back twenty- four (24) feet measurement:** Parapet walls, railings roof pitches, and other architectural or safety elements do not count towards the twenty-four (24) foot height requirement of the step back as the intent is to create relief in building mass and large wall surfaces.

2. Private Open Space Eligible Elements: Sec. 12-2-6 – Open Space (Private) Definition.
“Undisturbed, revegetated or improved land dedicated to the common use of all residents of a subdivision, condominium, townhouse, or mixed-use development which is intended to provide visual openness and recreational use for that development.” ... “Uses listed below include but are not limited to the following:”

<i>PERMITTED (May be used in the Private Open Space Land Area Requirement)</i>		<i>NOT PERMITTED (May not be included in the Private Open Space Land Area Requirement)</i>	
1.	<i>Uncovered swimming pools</i>	1.	<i>Covered swimming pools</i>
2.	<i>Sports field*</i>	2.	<i>Bleachers</i>
3.	<i>Pathways, trails</i>	3.	<i>Driveways, parking and loading areas</i>
4.	<i>Tennis courts (open air)</i>	4.	<i>Tennis courts (enclosed or covered)</i>
5.	<i>Volleyball courts</i>	5.	<i>Racquetball courts</i>
6.	<i>Playgrounds</i>	6.	<i>Handball courts</i>
7.	<i>Picnic grounds</i>	7.	<i>Bandstands, theaters</i>
8.	<i>Shuffleboard, horseshoes, badminton</i>	8.	<i>Club houses</i>
9.	<i>Unenclosed basketball courts</i>	9.	<i>Saunas, hot tubs</i>
10.	<i>Ponds, lakes, creeks</i>	10.	<i>Balconies***</i>
11.	<i>Pedestrian bridges</i>	11.	<i>Greenhouses</i>
12.	<i>Gardens</i>	12.	<i>Decks***</i>
13.	<i>Horse corrals</i>	13.	<i>Streets</i>



<i>PERMITTED (May be used in the Private Open Space Land Area Requirement)</i>		<i>NOT PERMITTED (May not be included in the Private Open Space Land Area Requirement)</i>	
14.	<i>Patios and plazas**</i>	14.	<i>Buildings/Other accessory structures</i>
15.	<i>Walkways</i>	15.	<i>Recreation center buildings</i>
16.	<i>Fences and walls</i>	16.	<i>Gazebos</i>
17.	<i>Snow Storage****</i>	17.	<i>Boathouses</i>
		18.	<i>Animal stables and shelters</i>
		19.	<i>Golf Courses</i>
<i>*Includes baseball, soccer, football, rugby, etc.</i>			
<i>**Independent of structure and at grade</i>			
<i>***Connected to structures and at or above grade</i>			
<i>****No more than 50% may be counted and only if placed on pervious landscaped areas that have been designed to connect to an adequate drainage system, as approved by the Town</i>			

Questions:

- Can private open space be counted for covered walkways and at-grade patios?
- Do rooftop gardens and garden spaces not at grade level count towards private open space calculations?

Staff Analysis:

- Staff is interested in learning more about the makeup of the permitted and non-permitted private open space uses and how they were determined. There are similarities and conflicts between permitted uses compared to non-permitted uses. For example, volleyball courts are permitted but racquet courts are not permitted, and at grade patios and plazas are permitted but balconies and decks are not permitted. These are good examples of similar spaces or uses that create conflict in code for why one is permitted and the other is not. This may be a strong candidate for a future code clean-up. Many communities allow some of the non-permitted uses above as permitted open space considerations as it achieves and meets the intent and goals for private open space.
 - Code is clear that connected at or above grade decks and balconies are not-permitted, and plazas and patios need to be at grade; however, in Sec. 12-7-5(B)1.b. – Design Standards for Public and Open Spaces, and image of an above grade deck structure for outdoor seating is listed as an “example of



positive open space development.” This raises the question if balconies and decks were intended to count as a permitted open space originally if the design criteria shows this example.

- While not expressly stated within Sec. 12-2-6, Sec. 12-7-5 – Design Standards for Public and Open Spaces does highlight covered boardwalks as allowed and supported open space design.
 - Gardens may take many shapes and forms. The Code is absent on a definition for garden and when looking at industry examples, gardens can include rooftop, raised gardens, garden walls, and areas that serve as a garden on a balcony. Based on this understanding, a garden could be defined on a space above ground level if shown and incorporated in plans.
 - **Consideration of covered walkways and patios:** Covered walkways and patios may be counted within the appropriate open space category and towards a project’s open space requirements, consistent with the images and statements within Sec. 12-7-5 - design standards for public and open spaces.
 - **Consideration of alternative garden designs:** Rooftop gardens, wall gardens, and other innovative and unique applications of what comes to mind as a garden space may be counted as part of the open space calculations and considerations consistent with Sec. 12-2-6 and the permitted and not-permitted table for public and private open spaces.
3. Private Open Space Location: Sec. 12-2-26(A)4. Regulations for Mixed Use Developments.
“...The Open Space Land Area Requirement is to be provided on-site...”

Question:

- If a project includes more than one adjacent parcel in a development plan, can one of the parcels carry the majority of the private open space for the development plan? If so, can the parcel be used exclusively for open space?

Staff Analysis:

- When looking at a multi-lot development, some standards or criteria is often allowed to shift between the parcels, if master planned together. By looking at code, we could interpret that on-site when considering a multi-lot development could mean within the overall development plan area. Applicants are encouraged to combine lots where practical.
- Sec. 12-7-5 – Design Standards for Public and Open Spaces emphasizes that these spaces should create harmony and balance between a proposed development and existing street configurations and other developments within the adjacent blocks and the overall town open space and pathway system.
 - A project may be allowed to allocate more open space calculations throughout areas of a development plan, but the design and integration with the overall project and balance and harmony with the adjacent uses and characteristics need to be taken into consideration and will require careful review.
 - **Consideration of on-site open space interpretation:** If a development plan includes more than one lot, the open space calculations would be allowed to shift between the lots and be located in the most beneficial location to the development and surrounding area. The design of such open space areas do need to take into consideration the harmony with surrounding sites and balance the character of the area and adjacent properties.



Planning Commission Discussion and Determination

Staff is asking the Commission to review the analysis considerations above and provide confirmation and final direction on staff's interpretation and past guidance to inform future inquiries and land use applications in the Town. This information will carry forward and be incorporated in staff memos for applicable applications or letters of determination from staff to applicants.

No formal action