



## Agenda Abstract

### BOARD OF COMMISSIONERS

Meeting Date:	April 14, 2025
Department:	Planning and Economic Development Division
Agenda Section:	Regular
Public hearing:	Yes
Date of public hearing:	March 20, 2025

#### PRESENTER/INFORMATION CONTACT

Tom King, Senior Planner  
Shannan Campbell, Planning and Economic Development Manager

#### ITEM TO BE CONSIDERED

**Subject:** Unified Development Ordinance text amendment – Section 9.1.5.2, Permissible Encroachment into Required Setbacks (resident initiated)

##### Attachments:

1. Unified Development Ordinance Text Amendment application
2. Sub-paragraph 9.1.5.2 reflecting proposed amendment (written by staff)
3. Planning Board statement
4. Consistency statement
5. Ordinance

##### Summary:

Currently, there are no clearly stated setback or yard requirements for swimming pools. Staff has historically relied upon two definitions found in Unified Development Ordinance Subsection 9.2 (Definitions) to establish pool setbacks: “setback” and “structure.” These definitions read as follows with applicable language underlined:

“Setback - The minimum distance between a property line or street right of way and structure including any projection thereof but excluding eaves and gutters, not to exceed twenty-four (24) inches (see 9.1.5 for further information). Pedestrian or vehicular access ways may be constructed within the required setback line (see Figure 9-2).”

“Structure - Anything constructed, erected, or placed on the land, above or below grade. It includes, but is not limited to: buildings, signs, load bearing walls docks, columns, and pools. Walkways, fences, patios, or one- and two-family driveways are not considered structures.”

Based on the definitions, and the fact pool setbacks aren’t covered separately elsewhere in the ordinance, a pool is required to meet principal structure setbacks/yards for the specific district in which it is to be constructed. A further historic staff interpretation is that the water area of the pool must meet the required principal structure setbacks. Associated grade-level patios and decking are regulated by separate setback provisions found in Unified Development Ordinance Item 9.1.5.2.b (see Attachment #2).

Staff aren’t sure why pools have been regulated in this manner; it may be to alleviate neighbor nuisance situations or safety. However, its application to the various residential zoning districts yields interesting outcomes. For example, a backyard pool in the Agricultural Residential district, where the minimum lot area is 40,000 square feet (just under an acre), the water area of a pool could be 30 feet from side and rear property lines. In the R-10

(Residential) district, where the minimum lot area is 10,000 square feet (just under ¼ acre), the water area could be 15 feet to a side, and 20 feet to a rear, property line. Therefore, it would seem a backyard pool in an R-10 neighborhood would be more of a nuisance to neighbors (if that is the reason pools are regulated in this way) than a pool in an Agricultural Residential neighborhood.

The applicant for the amendment request received a permit to construct a backyard, in-ground pool last year. Upon its completion, it was found a portion of the water area extends a few feet into the required 30-foot rear yard setback for their Agricultural Residential-zoned lot. This situation has occurred once before in the past several years. In the previous case, the water area extended less than one foot into a R-20, 20-foot rear yard setback. That situation was resolved by a property exchange between neighbors (e.g., adjusting the property line so the setback was met).

Update from March 20, 2025, Joint Public Hearing:

After the close of the March 20 public hearing on the amendment request, the Planning Board had additional conversation about the proposed amendment, mainly regarding the amendment and pool safety. The Planning Board was informed that safety fencing is required for pools under the state building code. The Planning Board ultimately recommended the amendment, as written, be forwarded to the Board of Commissioners for adoption.

On the morning of March 21, 2025, the applicant for the amendment contacted staff expressing concern the proposed amendment, as recommended, doesn't fully cure the problem it was designed to correct; the pool equipment, where located, would encroach into the proposed five-foot pool setback. Staff reviewed the applicant's permit for the pool and found the plans did show the pool equipment in a location that would violate the proposed pool setback as written.

Based on this staff error, it's requested the language regarding pool equipment be removed from the proposed amendment language. The ordinance currently allows residential Heating, Ventilation, and Air Conditioning systems' mechanical equipment and generators to encroach into required setbacks (see Attachment #2, Unified Development Ordinance Item 9.1.5.2.e). Staff believe the requested change in initial wording is not out of character with how the town has address residential auxiliary equipment.

The language in Attachment #2 has been updated from that presented on March 20, 2025, to reflect the staff-requested change. If adopted, as updated, it will fully resolve the applicant's dilemma and provide setback regulations for future pool projects by allowing pools to be closer to property lines than currently allowed; in essence treating them in a similar manner to accessory buildings.

**Comprehensive Sustainability Plan goals:**

Town Government and Public Services Goal 2: Adopt local laws, regulations and policies that help to achieve sustainable and equitable outcomes.

- Strategy: Develop and adopt policies that help accomplish town goals.
  - Implementation Action: Regularly review and update town policies as new information is garnered and achievements are met.

**Financial impacts:**

None.

**Staff recommendation and comments:**

Approve the proposed amendment with the requested change.

**Action requested:**

Approve the proposed amendment with the requested change.