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Memo

To: Members of the Planning and Zoning Commission
From: Jennifer M. Rauch, AICP, Director of Planning
Date: July 20, 2023
Initiated By: Zachary C. Hounshell, Planner II
Re: 22-178ADMC – Open and Uncovered Structures

Summary

The Board of Zoning Appeals (BZA) has requested an amendment to the Zoning Code addressing open and uncovered structures and where they are permitted to encroach side or rear yard setbacks. Planning Staff has researched and proposed draft code language for the applicable sections, which was initially reviewed by the Planning and Zoning Commission (PZC) in May. Staff has made modifications based on this feedback and request review and recommendation of the draft ordinance to City Council.

Background

In February 2022, the BZA heard an Administrative Appeal case regarding a determination made by Staff regarding the installation of a trellis/ pergola over an existing patio that encroached 5 feet into the required rear yard setback. Staff determined the pergola was not permitted to encroach 5 feet within the rear yard setback, as the encroachment, regulated by Zoning Code Section 153.071(B)(1)(c), is only permissible for open and uncovered porches/patios and not for covered structures. The applicant requested an Administrative Appeal to the determination that a pergola is considered "open and uncovered". The BZA upheld the determination of Staff, but directed Staff to more clearly define the terms open, uncovered, pergola, patio, trellis, porch, and any other definition regarding these accessory structures in the Zoning Code.

Update

In May 2023, the PZC provided feedback for the draft Code Amendment to open and uncovered structures. The Commission was supportive of the draft language proposed, and recommended updates to the text to clarify specific code section. The recommendations included:

- Provide further clarification to the definition of a trellis
- Address artificial height increases for structures
- Clarify grading requirements with patios
- Address play equipment requirements for residential properties

Staff has made the following updates to the code amendment:

- Updated the definition of a Trellis to read: "Standalone latticework used as a screen or as

- a support for climbing plants that is not structurally connected to a building.”
- Added a requirement that “the height of a structure may not be artificially increased by the use of mounding unless otherwise required by the zoning district regulations.”

Staff did not update the text to speak toward grading. Engineering Staff is included in patio permits when a drainage easement is proposed to be impacted. Each applicant is required to obtain an Easement Encroachment agreement when a proposed structure, that meets zoning requirements, encroaches an easement that could impact drainage for a site.

Additionally, Staff has provided the Ordinance 28-05 concerning no-build zones and play equipment. The Ordinance was adopted to allow swing sets/play structures to be located within a no-build zone. This reversed a decision in 2000 to require swing sets/play structures to meet zoning and platted requirements. This decision was only to allow play equipment that can be freely moved and does not require a foundation or permanent anchoring to the ground to be placed anywhere on a residential lot. Staff is not proposing to change this direction from Council.

Code Amendments

Definitions

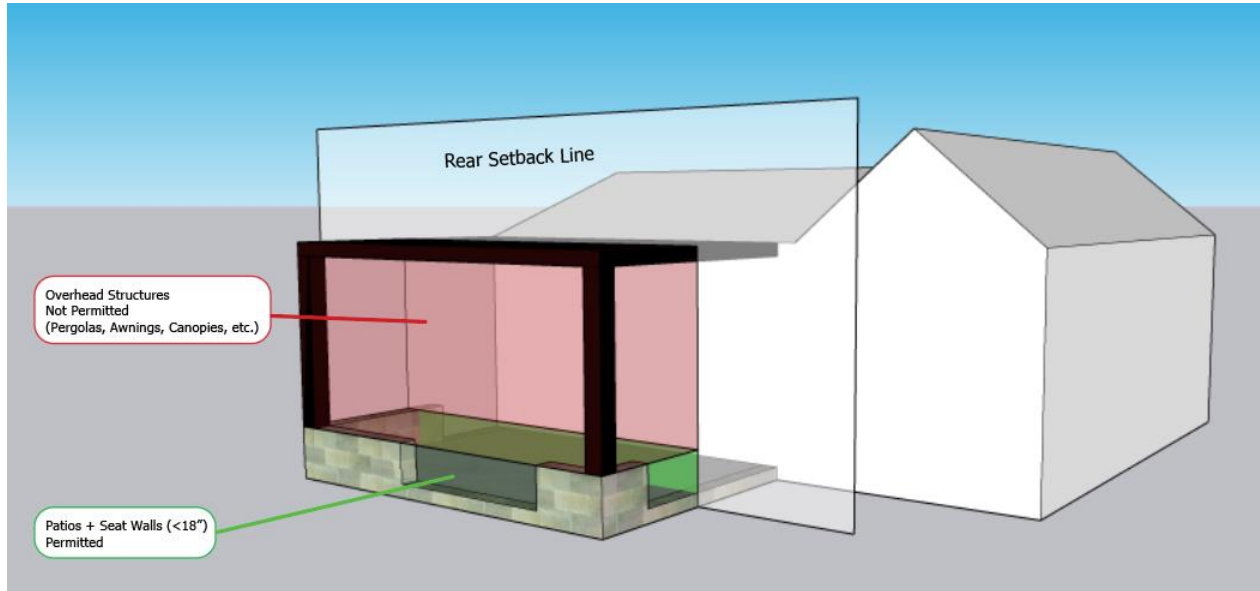
The BZA provided direction to define several terms currently not located in Zoning Code Section 153.002, Definitions. Staff has provided a redline version of the Code Section, with definitions for the following terms: awning, patio, pergola, porch, portico, and trellis. Staff removed any reference to open and uncovered in the Zoning Code to eliminate any room for interpretation or subjectivity regarding whether a structure qualifies as open or uncovered.

Lot and Yard Requirements

Currently, Zoning Code Section 153.071(B)(1)(c) states that open and uncovered porches may project beyond the front building setback line or into a required rear yard a distance not to exceed 5 feet. Staff has interpreted this requirement to allow for at-grade patios to encroach, with the intent to provide additional usable amenity space for all residential lots in the City. The intent behind the rear yard setback requirements is to preserve the view shed of adjacent properties and to preserve a ‘green buffer’ between adjacent property owners and adjacent uses. At-grade patios do not hinder this intent, as there are no vertical elements to impact the view sheds.

Planning Staff has provided draft language to clarify this requirement to maintain the intent of rear yard setback requirements, while allowing for at-grade patios to continue to encroach 5 feet into the rear yard setback. Structures that are not built at-grade, including porticos, pergolas, awnings, decks, and canopies, are not permitted to encroach the rear yard setback requirement. Seating walls that are incorporated into the design of the patio and do not exceed combined height of 18 inches would be permitted to encroach 5 feet, along with the patio. Additionally, Staff has provided clarity regarding the projection of porches into the front building setback line not to exceed 5 feet, which is consistent with the current Code provisions. Finally, Staff has included language that specifies that the height of a structure cannot be artificially increased by the use of mounding. This new requirement limits the increase of fill or natural cover to allow for an increase in height for a structure, such as a patio.

The following example visualizes how this Code requirement would work for future applications:



Recommendation

Planning Staff is recommending a recommendation of approval to City Council.