



MEMORANDUM

To: Development Services staff
From: Tina Axelrad, Zoning Administrator
Date: Revised April 2, 2020
Re: **Denver Zoning Code (DZC) Interpretation — Setback Permitted Encroachments for Window Wells and/or Emergency Basement Egress Areas**

Summary

This memo provides a written DZC interpretation that addresses the following related questions:

1. Is a window well allowed to encroach into a required zoning setback area if it does not allow emergency egress?

Answer: No

2. Where are the maximum window well dimensions outlined in the setback encroachments measured from?

Answer: The maximum 6' x 3' dimension is the maximum interior dimension of each window well.

3. Are multiple window wells in side interior and side street setback areas allowed to be located adjacent to each other?

Answer: Only if they are structurally independent from each other, and only if each allows emergency egress.

Discussion

Denver Zoning Code (DZC) permits certain encroachments into setback areas in Sections 3.3.7.4, 4.3.7.4, 5.3.7.4, 6.3.7.4, 7.3.7.4, etc. The general intent behind allowing setback encroachments is stated in the cited sections: "To allow minor elements to encroach into a setback while maintaining an open and unobstructed minimum setback space." The general standard following this general intent statement, applicable to all setbacks, is: "Required minimum setbacks shall be open and unobstructed." Both these statements emphasize that, in general, the required setback area must remain open and unobstructed, and any encroachments must be relatively minor to allow the setback area to remain primarily open and unobstructed (from ground to sky).

The DZC then lists several categories and types of minor setback encroachments allowed. One of the categories of allowed encroachments is for "Service and Utility Elements" which are intended "To allow for minor service and utility elements while maintaining an open and unobstructed setback space." The subject of this interpretation, window wells, is a specific type of "Service and Utility Element" that is permitted a minor setback encroachment (more specially, the encroachment is for "Window well and/or emergency basement egress areas"). The intent of this permitted encroachment is, "To allow for emergency egress." Therefore, a window well may be permitted to encroach into the required setback as long as the window well meets the stated intent statements and allows emergency egress.

This written interpretation of the DZC clarifies that:

1. A window well or emergency basement egress area is permitted to encroach into a required setback area only if it allows emergency egress.

Window wells and emergency basement egress areas will be considered as providing emergency egress if they are associated with an emergency escape and rescue opening or an emergency escape and rescue door, as defined in the adopted International Residential Code and International Building Code. Window wells that physically do not allow for emergency egress shall not encroach into the required setback area. Such window wells are allowed, provided they do not encroach into the required setback area.

2. The permitted window wells dimensions outlined in the setback encroachments shall be the interior dimensions of the window well.

In Side Interior and Side Street setback areas, the DZC specifies that “Each (window well and/or emergency basement egress area) may be no more than 3’ in width as measured perpendicular to the side interior/side street zone lot line and 6’ in length as measured parallel to the building façade facing the side interior/side street zone lot line.” These dimensions shall be measured using the interior surfaces of the window well as the starting points for measurement.

3. Window wells adjacent to each other are only allowed to encroach into required Side Interior or Side Street setback areas if they are structurally separate from each other.

In Side Interior and Side Street setback areas, the DZC specifies that “Each (window well and/or emergency basement egress area) may be no more than 3’ in width as measured perpendicular to the side interior/side street zone lot line and 6’ in length as measured parallel to the building façade facing the side interior/side street zone lot line.” The DZC is clear that a single window well encroaching into the Side Interior and Side Street setback area may be no more than 6’ in length. When more than one window well is provided along the same exterior building wall, and each window well qualifies for a setback encroachment, each window well must be no more than 6’ in length and must be structurally separate from all other window wells. For example, to be considered structurally separate, two cast-in-place concrete window wells shall not share a wall(s).

Authority and Review Criteria for Interpretation

DZC §12.4.6.1.A.2 authorizes the Zoning Administrator to make Code Interpretations when additional clarity is required to guide general application of the Code. DZC §12.4.6.4 requires the Zoning Administrator to make Code Interpretations only upon finding that the interpretation is:

1. Consistent with the intent of this Code; and
2. Consistent with the intent of the subject Neighborhood Context and Zone District(s) and with the intent of any specific Code provision(s) at issue.

Zoning Administrator Findings

1. This interpretation of the DZC clarifies for review staff and customers the circumstances in which window wells are permitted to encroach into a required zoning setback area, and guides general application of the code by providing staff and customers consistent guidance on how such window well dimensions are to be measured. Per DZC §12.4.6.4.A.1, the Zoning Administrator finds this

interpretation is consistent with the intent of this code to guide Denver’s prosperous and sustainable future by providing clear regulations and processes that result in predictable, efficient, and coordinated review processes.

2. Per DZC §12.4.6.4.A.2, the Zoning Administrator finds this interpretation is consistent with the intent of the Suburban, Urban Edge, Urban, and General Neighborhood contexts to provide certainty to property owners, developers and neighborhood interests about the limits of what is allowed in such areas. This interpretation is also consistent with the intent of the Urban Center Neighborhood context to ensure new development contributes positively to established neighborhoods and character; and is consistent with the intent of the Master Planned Context to provide clarity and predictable outcomes as development proceeds.

Appeal

This code interpretation is a final decision of the Zoning Administrator and may be appealed to the Denver Zoning Board of Adjustment within 15 days from the date issued according to DZC §12.4.8, Appeal of Administrative Decision.