

**Chapter 2.16 Proposed Changes/Deletions  
Special Exceptions C, D, F, J, K, L, and M  
June 2011**

**NOTE:**

- Proposed deletions are lined out.
- Proposed additions are underlined.
- New proposed change re carport measurement is in [blue](#).

***Special Exception B - NO CHANGE***

**B. Two or More Nonconforming Lots.** Permit the modification of setback requirements as the board deems necessary to secure an appropriate development of a lot; provided, however, that:

1. The lot is in a legally recorded and developed subdivision of at least ten years;
2. There are two or more lots that do not conform to Title 20 located within the same block on the same side of the street or within the block directly across and abutting the street;
3. The modifications are in the same nature as the existing nonconforming lots and do not permit construction less conforming than the least conforming of the nonconforming lots; and
4. If the subject lot is located at the intersection of two streets (a corner lot), then nonconforming lots within the same block on the same side of either intersecting street or directly across and abutting either intersecting street, but not lots located diagonally from the subject lot, may be used in determining the nonconforming lot restrictions of this special exception.

***Special Exception C- CURRENT***

**C. Rear yard setback, single-family residence.** Permit an extension of a single-family residential structure into the required rear yard, which shall be measured to the rear property line, not to the centerline of the alley, if one exists; provided, however, that:

1. The residence has been in existence with a valid certificate of occupancy for one continuous year;
2. The maximum square footage allowed shall not exceed the result of multiplying one-third of the average width of the lot by three-fifths of the required rear yard;
3. A minimum ten-foot rear yard setback shall be required;
4. The minimum side and side street yards shall not be reduced;
5. The total floor area of all detached accessory structure(s) existing or later constructed on the site shall not exceed one hundred eighty square feet;
6. Unless otherwise provided in this section, all remaining areas of the required rear yard shall be permanent open space; and
7. The extension shall not permit the creation of an additional dwelling unit for rental purposes.

**Special Exception C- PROPOSED**

**C. Rear yard setback, single-family residence.** Permit an extension of a single-family residential structure into the required rear yard setback, which shall be measured to the rear property line, ~~not to the centerline of the alley, if one exists~~; provided, however, that:

1. The residence has been in existence with a valid certificate of occupancy for one continuous year;
2. The maximum square footage allowed shall not exceed the result of multiplying one-third of the average width of the lot by three-fifths of the required rear yard setback;
3. A minimum ten-foot rear yard setback shall be required;
4. The minimum side and side street yards setbacks shall not be reduced; and,
- ~~5. The total floor area of all detached accessory structure(s) existing or later constructed on the site shall not exceed one hundred eighty square feet;~~
- ~~6.5.~~ Unless otherwise provided in this section, all remaining areas of the required rear yard shall be permanent open space; and,
- ~~7. The extension shall not permit the creation of an additional dwelling unit for rental purposes.~~

**Special Exception D - CURRENT**

**D. Rear yard setback, duplex.** Permit an extension of a duplex residential structure into the required rear yard which shall be measured to the rear property line, not to the centerline of the alley, if one exists; provided, however, that:

1. The duplex has been in existence with a valid certificate of occupancy for one continuous year;
2. The maximum square footage allowed to each unit of the duplex shall not exceed the result of multiplying one-sixth of the average width of the lot by three-fifths of the required rear yard; except that, subject to the approval of all owners, the total of all extensions that could be granted to each unit may be combined and granted to one unit provided that the total of all extensions granted for both units of the duplex shall not exceed the result of multiplying one-third the average lot width by three-fifths of the required rear yard;
3. A minimum ten-foot rear yard setback shall be required;
4. The minimum side and side street yards shall not be reduced;
5. The total floor area of all detached accessory structure(s) existing or later constructed on the site shall not exceed one hundred square feet per unit;
6. Unless otherwise provided in this section, all remaining areas of the required rear yard shall be permanent open space; and
7. The extension shall not permit the creation of an additional dwelling unit for rental purposes.

**Special Exception D - PROPOSED**

**D. Rear yard setback, duplex.** Permit an extension of a duplex residential structure into the required rear yard setback which shall be measured to the rear property line, ~~not to the centerline of the alley, if one exists~~; provided, however, that:

1. The duplex has been in existence with a valid certificate of occupancy for one continuous year;
2. The maximum square footage allowed to each unit of the duplex shall not exceed the result of multiplying one-sixth of the average width of the lot by three-fifths of the required

rear yard setback; except that, subject to the approval of all owners, the total of all extensions that could be granted to each unit may be combined and granted to one unit provided that the total of all extensions granted for both units of the duplex shall not exceed the result of multiplying one-third the average lot width by three-fifths of the required rear yard setback;

3. A minimum ten-foot rear yard setback shall be required;
4. The minimum side and side street yards setbacks shall not be reduced;
5. The total floor area of all detached accessory structure(s) existing or later constructed on the site shall not exceed one hundred square feet per unit;
- ~~67.~~ Unless otherwise provided in this section, all remaining areas of the required rear yard shall be permanent open space; ~~and.~~
- ~~76.~~ The extension shall not permit the creation of an additional dwelling unit ~~for rental purposes.~~; and.

### ***Special Exception E- NO CHANGE***

**E. Yard Requirements for Public Schools.** Modify the yard requirement for public schools where the following conditions are met:

1. The applicant is a governmental body to whom the Legislature has delegated the Constitutional duty to "establish ... an efficient system of public free schools" and has conferred upon its trustees "exclusive power to manage and govern the public free schools of the district"; and
2. The proposed modification is for one or more of the following purposes:
  - a. To construct, remodel, revitalize, upgrade or add to existing school facilities in order to preserve a school campus in an existing neighborhood,
  - b. To make the best utilization of available school campus land for the academic and physical educational needs of students,
  - c. To conform with existing structures on the school campus,
  - d. To prevent or reduce the need for portable buildings on the school campus,
  - e. To prevent or reduce the need to transport students out of their neighborhood school due to the lack of sufficient facilities,
  - f. To avoid or reduce the need for the school district to condemn adjacent properties,
  - g. In all of the above cases, before granting a special exception, the board shall:
    - i. Obtain written verification from authorized representatives of the school district that the above required condition or conditions are met and that the granting of the special exception will not be detrimental to the health, safety or welfare of the students and personnel of the school. This verification is presumed to be valid as to the students and personnel, and
    - ii. Find that the granting of the special exception is not detrimental to the public health, safety or welfare of the general public, particularly the neighborhood in the vicinity of the school.

### ***Special Exception F - CURRENT***

**F. Side street yard setback.** Modify district side street yard requirements where the following conditions are met:

1. The proposed modification does not exceed fifty percent of the required side street yard requirement;
2. The minimum front and rear setbacks shall not be reduced;

3. The zoning board of adjustment has received the written approval, based on traffic safety considerations, of the traffic engineer; and
4. The proposed modification does not permit the creation of an additional dwelling unit for rental purposes.

**Special Exception F - PROPOSED**

**F. Side street yard setback.** Modify district side street yard requirements where the following conditions are met:

1. The proposed modification does not exceed fifty percent of the required side street yard setback requirement;
2. The minimum front and rear yard setbacks shall not be reduced; and,
3. The zoning board of adjustment has received the written approval, based on traffic safety considerations, of the traffic engineer; and,
4. ~~The proposed modification does not permit the creation of an additional dwelling unit for rental purposes.~~

**Special Exception G - NO CHANGE**

**G. Builder Error.** Permit the encroachment of the principal building or structure into the required yard setbacks in all districts, caused by an error in construction; provided, however, that:

1. The permitted encroachment into any front yard setback shall not exceed ten percent of the required setback, or one foot whichever is greater;
2. The permitted encroachment into any side yard or side street yard setback shall not exceed ten percent of the required setback or one foot whichever is greater;
3. The permitted encroachment into any rear yard setback shall not exceed fifteen percent of the required setback or one foot whichever is greater;
4. The owner shall demonstrate through testimony or documentation that the error causing the encroachment was inadvertent and not intentional; and
5. The number of properties requesting encroachment permission under this section which involve the same builder, contractor, or owner shall not exceed three in any twelve-month period.

**Special Exception H - NO CHANGE**

**H. Lot Size.** Permit the construction of a single-family residence in a residential (R) district on a lot that does not meet the required minimum lot width, minimum lot depth, or minimum lot area; provided, however, that:

1. The lot is in a legally recorded and developed subdivision of at least ten years;
2. A minimum of one of the required amounts, lot width, lot depth or lot area, meets the required minimum amount;
3. The lot width, lot depth or lot area amounts which do not meet the required minimum amounts are not less than ninety percent of the respective required minimum amount;
4. The residential structure conforms to the yard setbacks of the zone in which it is located; and
5. The maximum number of lots for which this exception may be granted in any subdivision shall be five percent of the total number of lots in the subdivision or one lot, whichever is greater.

**Special Exception I - NO CHANGE**

**I. Authorize the reduction of off-street parking requirements;** provided, however, that:

1. The owner shall demonstrate through testimony or documentation that the required number of off-street parking spaces cannot be reasonably accommodated on the property involved;
2. The zoning board of adjustment has received the written approval of the city traffic engineer who shall review the request to determine the impact on the surrounding properties. The city traffic engineer may request a parking study in order to determine the impact on the surrounding properties; and
3. The reduction authorized shall not modify the number of required off-street parking spaces by more than fifteen percent.

**Special Exception J - PROPOSED TO DELETED ENTIRELY**

~~**J. Condemnation or Eminent Domain.** Authorize the reduction of zoning restrictions as to lot area, yards or setbacks as applied to a structure that is to be relocated on any lot, a portion of which was acquired under the threat of condemnation or in an eminent domain action; provided, however, that the following conditions are met:~~

- ~~1. The proposed configuration of the lot, including setbacks, yards, location of structures, landscaping and other proposed buffers prevents adverse impact on adjacent property;~~
- ~~2. The board receives a recommendation from the zoning administrator or any department required to provide relevant input;~~
- ~~3. The use of the structure or structures does not extend into an area that was previously used to accommodate off-street parking, unless the applicant demonstrates that the parking provided adequately serves the need generated by the use; and~~
- ~~4. The board imposes those conditions reasonably necessary to protect the health, safety and welfare of the surrounding property owners and the general public.~~

**Special Exception - CURRENT**

**K. Carport over a driveway.** Permit the encroachment into the required front yard setback for a lot in a residential (R) district beyond other allowed modifications for a carport covering a driveway; provided, however, that:

1. The residence has been in existence with a valid certificate of occupancy for one continuous year; and,
2. The zoning board of adjustment has received the written approval of the structural design from the building official; and,
3. The carport shall be constructed of the same material, architectural design, and color scheme as the residential structure, open on three sides, and attached to the main structure; and,
4. The area of the carport shall not exceed one-fifth of the first-floor area of the dwelling, nor shall the carport rise above the highest point of the roof of the dwelling; and,
5. Elevation drawings of the proposed structure shall be submitted; and,
6. For a duplex, the total of all extensions granted shall not exceed one-third the average width of the site, and the total of all extensions for either unit of the duplex shall not exceed two-thirds of the average width of that unit; and,
7. Unless otherwise provided in this chapter, all remaining areas of the required front yard shall be permanent open space; and,

8. There is no other reasonable alternative to provide a carport in the front yard of the subject property without exceeding the encroachments allowed in Title 20 of this Code; and,
9. The extension shall not permit the creation of an additional dwelling unit for rental purposes nor shall it constitute an extension of the living area of the dwelling.

***Special Exception K - PROPOSED***

~~K.~~ **J. Carport over a driveway.** Permit the encroachment into the required front yard setback for a lot in a residential (R) district beyond other allowed modifications for a carport covering a driveway; provided, however, that:

1. The residence has been in existence with a valid certificate of occupancy for one continuous year; and,
2. The zoning board of adjustment has received the written approval of the structural design from the building official; and,
3. The carport shall be constructed of the same material, architectural design, and color scheme as the residential structure, ~~open on three sides, and attached to the main structure; and;~~ shall be open on three sides, shall be attached to the main structure and shall rise no higher than the highest point of the roof of the dwelling; and,
4. ~~The area of the carport shall not exceed one-fifth of the first-floor area of the dwelling; nor shall the carport rise above the highest point of the roof of the dwelling; and;~~ shall be measured from outside of posts to outside of posts; and, carport eaves and cornices shall extend no more than twenty-four inches into a required side or side street yard setback and no more than thirty inches into a required front yard setback; nor shall the carport rise above the highest point of the roof of the dwelling; and,
5. Elevation drawings of the proposed structure shall be submitted; and,
6. For a duplex, ~~the total of all extensions granted shall not exceed one-third the average width of the site, and the total of all extensions for either unit of the duplex shall not exceed two-thirds of the average width of that unit; and,~~
- ~~7~~8. Unless otherwise provided in this chapter, all remaining areas of the required front yard shall be permanent open space; ~~and,~~
- ~~8~~7. There is no other reasonable alternative to provide a carport in the front yard of the subject property without exceeding the encroachments allowed in Title 20 of this Code; and,
- ~~9. The extension shall not permit the creation of an additional dwelling unit for rental purposes nor shall it constitute an extension of the living area of the dwelling.~~

***Special Exception L - PROPOSED (re-lettered)***

~~L.~~ **K. In Existence Fifteen Years or More.** Permit the encroachment into the required yard setbacks for structures; provided, however, that the applicant can prove the following conditions:

1. The encroachment into the required yard setback has been in existence for more than fifteen years;
2. Neither the applicant nor current property owner is responsible for the construction of the encroachment;
3. Neither the applicant nor the current property owner owned the property at the time the encroaching structure was constructed or built;

4. The encroachment, if into the required front yard setback, does not exceed fifty percent of the required front yard setback; and
5. The encroachment does not violate any other provision of the Municipal Code.

***Special Exception M - CURRENT***

**M. Front yard setback.** Permit an extension of a single-family residential structure into the required front yard, which shall be measured to the property line; provided, however, that:

1. The residential structure has been in existence with a valid certificate of occupancy for one continuous year; and,
2. The total length of all extensions granted shall not project into the required front yard a depth in excess of ten feet; and,
3. The total width of all extensions granted shall not exceed one-third of the average width of the site; and,
4. The minimum side and side street yards shall not be reduced; and,
5. A minimum of a ten-foot front setback from the property line shall be maintained; and,
6. If the proposed modification is for an enclosed garage, a minimum twenty-foot driveway shall be required; and,
7. Unless otherwise provided in this section, all remaining areas of the required front yard shall be permanent open space; and,
8. The extension shall not permit the creation of an additional dwelling unit for rental purposes.

***Special Exception M - PROPOSED***

~~**M-L. Front yard setback.**~~ Permit an extension of a single-family residential structure into the required front yard setback, which shall be measured to the property line; provided, however, that:

1. The residential structure has been in existence with a valid certificate of occupancy for one continuous year; and,
2. The total length of all extensions granted shall not project into the required front yard setback a depth in excess of ten feet; and,
3. The total width of all extensions granted shall not exceed one-third of the average width of the site; and,
4. The minimum side and side street yards setbacks shall not be reduced; and,
5. A minimum of a ten-foot front setback from the property line shall be maintained; and,
6. If the proposed modification is for an enclosed garage, a minimum twenty-foot driveway shall be required; and,
7. Unless otherwise provided in this section, all remaining areas of the required front yard shall be permanent open space; ~~and,~~
8. ~~The extension shall not permit the creation of an additional dwelling unit for rental purposes.~~