ADMINISTRATIVE DETERMINATION

Date: August 2008
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RE: Allowable development in the Shoreline and River Environs Zone 50’ Setback
(MCC 3.7.023)

The following Administrative Determination addresses allowable development in the Shoreline and River Environs Zone 50’ setback.

A stipulation of the Shoreline and River Environs Zone (a 150’ wide strip of land around the lakes and river) is that no Building Permit be issued (nor any development, grading, or alteration of any land in the zone permitted) unless the 50’ setback requirement is met. The requirement is that no structures be permitted within the 50’ setback, with the following exceptions:

- Paths, steps, or sidewalks less than 49” wide
- In-ground patios
- Landscaping features less than 30” (including retaining walls less than 30”)
- Docks and pier (not including construction connecting to docks and piers)

All other structures, including “anything constructed or erected, the use of which requires location on the ground or attachment to something having a fixed location on the ground” are prohibited.

Below is a technical explanation of the above determination.

Per 3.7.023: REQUIREMENTS FOR DEVELOPMENT:

(B) Permit Criteria: No conditional use or building permit shall be issued, nor is any development, grading, or alteration of any land within this zone permitted, unless the applicant establishes to the satisfaction of the commission and council in the case of a conditional use, or of the administrator in the case of a building permit, that:

... 5. The fifty foot (50’) building setback line is met per subsection (C)3(c) of this section.

Per subsection (C)3(c):

(c) All structures other than those addressed by subsection (C)4 and following subsections of this section regardless of underlying zone shall be set back fifty feet (50’) from the lake water pool shore contour and fifty feet (50’) from the stream high water mark.

The exceptions in subsection C(4) and “following subsections” address the following improvements:
Given the statement in (C)3(c), the scope of allowable development in the 50’ setback then hinges upon the definition of “structure”. Per MCC 3.2.02: DEFINITIONS:

**STRUCTURE**: Anything constructed or erected, the use of which requires location on the ground or attachment to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences, decks, patios, satellite dishes, billboards, fuel tanks, refuse enclosures, and piers or any other construction erected to connect docks to the shore; “structure” does not, for purposes of setbacks from the lot lines, include:

(A) Paths, steps, and sidewalks of less than forty nine inch (49”) width; and driveways from access street to automotive vehicle storage areas;
(B) In-ground patios;
(C) Detached planter boxes, or other landscaping features, which landscaping features are not more than thirty inches (30”) above the natural terrain, or lot line fences; and
(D) Docks and retaining walls otherwise permitted by this title.

The importance of this Administrative Determination rests on the interpretation of those “structures” that are exempt from the 50’ setback consideration. The following explanations articulate the interpretation of these four exceptions:

**Paths, steps, and sidewalks less than 49” wide**
This exception to the structure definition is self-explanatory. In conjunction with the intent of the following exceptions, paths, steps, and sidewalks less than 49” wide that are raised more than 30” above the existing grade shall not be considered an exception.

**In-ground Patios**
The interpretation of this exception revolves around the meaning of “in-ground”. To be consistent with the following exception, “in-ground” shall mean that any part patio shall not be more than 30” above existing grade.

**Detached planter boxes and other landscaping features less than 30”**
The interpretation of this exception revolves around the interpretation of the term “other landscaping features”. “Other landscaping features” shall include all improvement to terrain, including, as examples, leveled lawns, boulders/boulder walls, retaining walls, raised in-ground patios, etc.

**Docks and retaining walls otherwise permitted**
This exception shall include docks, but shall not include any structures, piers, or other construction connection to docks. The exception shall also include only those retaining walls permitted below the High Water Mark.