



**AN AMENDMENT TO TITLE 8 TO ADD A NEW SECTION:  
PROJECTIONS INTO SETBACKS**

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Public Hearing of December 13, 2012

- APPLICANT:** Teton County Planning Department
- APPLICABLE CODE:** Title 8 Teton County Zoning Ordinance, as amended June 14, 2012
- REQUESTS:** Add a subsection E to Section 8-4-4. Projections into Setbacks
- APPLICABILITY:** County wide, all zoning districts

**AMENDMENT DESCRIPTION:** The addition of the proposed amendment would clearly state that uncovered decks, bay windows, chimneys, roof eaves, and porches may extend into a property line setback up to 6-feet. Presently, there are no clear zoning specifications about architectural features permitted in a setback. Presently the code calls out fences, walls, and hedges as being allowed. This amendment would make the rules more clear and inclusive of the type of features allowed to be within a setback.

**PLANNING & ZONING COMMISSION RECOMMENDATION:**

*Having found that the proposed text amendment to Title 8, Section 4-4-E provides greater clarity about the types of architectural projections that can be permitted within a setback, and having determined the staff report's findings of facts support the text amendment, The Planning & Zoning Commission recommended **approval** of the amendment, with a modification that clarified the rules about "uncovered" decks and porches.*

**BACKGROUND:** Teton County code does not allow architectural projections of a structure within a property line setback. Presently in the two residential districts, the building foundation wall is not permitted to be less than 30 feet from the property lines or public right of way boundary in the front yard and side yard setbacks, and 40 feet for the rear yard setback. That regulation would not be changed in this amendment. If the setback for structures is measured from the foundation wall, then the roof eaves, bay windows, porches, decks and stairways might protrude out beyond the foundation wall and into a setback.

Occasionally, a building permit is submitted where some architectural features, such as roof overhang or an uncovered deck extend into a side, rear, or front yard setback. In the rural county, with 2.5 acre and larger lots, even these types of projections into a setback are not common but possible. For example, when the building permit site plan shows a deck protruding from the foundation wall and into a 30-foot side yard setback, is that permitted? Or, is it acceptable for only an uncovered deck, but not a deck with a roof above it? Does it matter whether the property is 100 acres or ¼ acre?

The usual departmental determination has been that no structural wall foundation can encroach into a setback. That rule would remain in effect. However, sometimes a particular deck or porch design falls into a grey area. When a lot is particularly small or narrow, the question about what can be built in the setback becomes more important to the homeowner. For example, there are town-sized lots that were platted on original town sites such as the old Cache, Felt, Darby or Clawson. These lots are often narrow or less than ½ acre and the building area on these lots is highly constrained. The amendment would make it clearer that uncovered decks could be added up to 6-feet into a setback. However, the building of a walled or roofed structure into the setback (such as a garage) would still need a variance in order to be approved.

The rules to allow a deck, porch, or covered deck are not written down and given this, similar situations could have different interpretations applied. It is better to have written rules that everyone involved can read before building plans are drawn.



Some of the lots shown above are about ½ acre, yet the setback requirements are the same for 20-acre properties. Some homes have been built closer than 30-feet from side yards throughout the county. The proposed amendment would clearly state that uncovered decks, roof eaves and chimneys are excluded from the setback rules for up to six feet within a setback. This is the Clawson Town site near Tetonia.

#### **AMENDMENT TO TITLE 8 -TETON COUNTY ZONING ORDINANCE**

See the attached Section 8-4-4, which shows the entire section about setbacks from property lines. In italics below, is the new section being proposed.

***E. PERMITTED PROJECTIONS INTO SETBACKS:*** *Underground installations such as septic tank systems and wells, walks, driveways, and retaining walls may be located in a required setback area for structures, but not within any area required by the Teton County Engineer for additional right-of-way for roads. In addition, architectural projections of buildings such as chimneys, eaves, bay windows, outside stairways and uncovered balconies, uncovered decks, and uncovered porches may extend into a required setback area not more than six (6) feet. ~~Planned Unit Development subdivisions with lots less than 2.5 acres in size are not entitled to the~~*

~~architectural projections listed above unless they were specifically enumerated in the Master Plan approval.~~

The section above was advertised as the proposed amendment on the Teton County website. With the benefit of public comments, the Planning Staff proposes to strike out the last sentence above and replace it with the following:

*Lots with a designated building envelope, and lots subject to the unique setbacks specified in a Planned Unit Development are not entitled to the architectural projections listed above unless those exceptions are specifically enumerated on the subdivision's plat, recorded master plan, or development approval documents.*



The east end of the uncovered deck above is about 28 feet from the property line and is 2-feet into the 30-foot setback. The proposed amendment allows this. A proposal to put a roof on this deck would not be approved unless a variance was granted, and that is unlikely given the present standards.

**PUBLIC NOTIFICATIONS:** Idaho Code, Title 67; Sections 67-6509, 67-6511, 67-6512 stipulate the notifications procedures for Planning and Zoning agenda items. The amendment to add a section about projections into required setbacks was advertised in the following way:

1. The public hearing of the Board of County Commission was noticed in the Teton Valley News and this amendment to the setback regulations was listed as an agenda item. The publication of the agenda item occurred twice and was in accordance with State statutes.

2. This item was listed on the agenda for the Public Hearing of the Board of County Commission of December 13, 2012 and was posted on the public notice display case in the County Courthouse.

**PUBLIC COMMENTS RECEIVED:**

An email from Anna Trentadue of VARD was received November 2, 2012. The issue about building envelopes and lots on Planned Unit Developments was brought to Staff's attention and this has resulted in a redrafting of part of the proposed amendment in order to make it clearer. The revised amendment was presented to the Planning Commission before the public hearing and they discussed it.

**FINDINGS OF FACT TO AMEND THE TETON COUNTY ZONING ORDINANCE:**

1. **Notifications.** The Amendment to Title 8 was properly noticed in the newspaper of record and it was posted on the courthouse notice board in accordance with State Statutes.
2. **Consistent with purposes.** The proposed amendment to specify the types of projections allowed with setbacks is consistent with Section 8-1-3 Purposes of Zoning Ordinance. In particular the following enumerated purpose in Title 8 would be advanced by adding the amendment:

*“To ensure that additions and alterations to or remodeling of existing buildings or structures is completed in accordance with the restrictions and limitations imposed in this title.”*

By specifying the types of architectural projections that are acceptable within a setback, the County's rules are better defined and less subject to inconsistent application over time. Presently a structure that is 200 square feet or less is allowed to be only 12-feet from a property line. However, there are no specifications whether an uncovered deck can be built with 30 feet of a property line. The ordinance would allow an uncovered (but not roofed) deck to be no less than 24-feet from a side or front property line and 34-feet from a rear property line. A 6-foot encroachment into the setbacks would be allowed for these types of architectural projections.

3. **Consistent with Comprehensive Plan.** The proposed amendment is consistent with the new 2012-2030 Teton County Comprehensive Plan. While there were few exact goals or policies about setbacks that directly relate to this amendment, there is mention of the use of elements of Form-Based Code. This type of code emphasizes the shape and form of buildings. The fact that the existing code is silent about architectural projections is not consistent with the principles of Form-Based code. Providing greater clarity and specifics about buildings, which is the purpose of the amendment, is consistent with the general ideas in the Comprehensive Plan.
4. **Consistent with other sections of the Teton County Zoning.** The proposed amendment is consistent with other provisions of the Teton County Code. In particular, Section 8-4-4 (footnote d.) states the following: *“Setbacks for a detached accessory structure 200 square feet in size or less shall be a minimum of 12 feet from any property line and easement.* The

proposed amendment would not conflict with this footnote provision and would likewise be consistent in allowing some small structural elements to be within a setback.

**COUNTY COMMISSION ACTION:**

- A. APPROVE the proposed text amendment as modified and recommended by the Planning Commission and Planning Staff, having determined that the required findings of facts justify the addition of the amendment.
- B. APPROVE WITH MODIFICATIONS to the proposed text amendment having determined that the required findings of facts and all the criteria in section 9-3-2 (C-8) can be met.
- C. DENY of the text amendment application and provide the reasons and justifications for the denial.
- D. CONTINUE consideration of the application to a future Commission Public Hearing with reasons given as to the continuation or need for additional information.
- E. REMAND: The text amendment could be sent back to the Planning Staff for further refinement and with suggestions for changes, additions or removing selected sections of the proposed text.

**PLANNING COMMISSION AND PLANNING STAFF RECOMMENDATION:**

Action A, approve the proposed text amendment as modified by the Planning Commission and that is attached to this staff report.

Suggested motion:

*Having found that the proposed text amendment to Title 8, Section 4-4-E provides greater clarity about the types of architectural projections that can be permitted within a setback, and having determined the staff report's findings of facts support the text amendment, I recommend **approval** of the amendment as written (or as modified).*

**ATTACHMENTS:**

- Revised (by PZC) Zoning Ordinance for Projections into Setback
- Planning & Zoning Commission Draft minutes of Public Hearing Nov. 13, 2012
- VARD Letter of November 2, 2012
- Alice Stevenson comment letter- email of November 12, 2012
- Planning Staff diagram of setback projections example