

An Interpretation of the Planning Commission
(June 1, 1998)

Section 5.080 of the Rivergrove Land Development Ordinance (RLDO) establishes General Building Setbacks in All Zones and Districts. Sections 5.080(a) and 5.080(b) establish setbacks for detached and attached residential structures. They read as follows:

"Section 5.080 General Building Setbacks in All Zones and Districts.

- (a) All new detached residential structures built with any zone or district in the City of Rivergrove shall maintain the following setbacks from the property lines of the lot on which they are constructed or erected.

Front Setback - 25 feet.

Side Setback - 10 feet.

Side Setback on a Corner Lot - 15 feet (to insure better visibility).

Rear Setback - 25 feet (from the read [sic] lot line or the ordinary high water mark - whichever is greater).

- (b) All new attached residential shall maintain the same set backs as detached residential around the perimeter of the structure."

The above provisions do not clearly specify whether the terms front, rear, and side relate to the orientation of the structure or to the orientation of the lot. When there is only one residential structure on the lot, the orientation of lot and structure will be the same (the orientation of the residential structure will determine the orientation of the lot as in the case of a corner lot OR the orientation of the lot will dictate the orientation of the residential structure) and there will be no ambiguity concerning the application of this ordinance provision. When there is more than one residential structure per lot, and when the orientations of the residential structures on that lot are not all the same as the lot itself, then there can be uncertainty and ambiguity concerning the application of this ordinance provision. The uncertainty / ambiguity that results from this lack of specificity within the text of the RLDO can be eliminated by an "interpretation" of the Planning Commission.

In "interpreting" this provision, the Planning Commission finds the following two factors pertinent and persuasive:

- 1) Setback requirements are often identified and expressed as "yard" setback requirements (front yard setback, side yard setback, rear yard setback -- see, for example, the Tualatin Development Code Section 41.060). The fundamental purpose and intent of setback requirements (and thus the setback distance selected) are based to a great extent

To be Filed in Article 5 of the Rivergrove Land Development Ordinance

on the activities that are expected to occur in the "yard" for which the setback is required and the character of the side of the residential structure that faces the "yard" in question.¹ For "yard" setbacks, it is the orientation of the residential structure that is most important for determining the "yard" setback requirement. The fundamental purpose and intent of setback requirements are exactly the same whether they are expressed as "yard" setbacks or just as setbacks. Therefore, the fundamental purpose and intent of the setback requirements of Sections 5.080(a) and (b) will be satisfied only if the orientation of the residential structure (as well, perhaps, as the orientation of the lot -- see discussion that follows) is taken into consideration.

2) The RLDO already includes clear and explicit guidance on how conflicts between more restrictive criteria and less restrictive criteria should be resolved. Section 1.040 reads as follows: "Where the conditions imposed by a provision of this ordinance are less restrictive than comparable conditions imposed by any other provisions of this or any other ordinance, the more restrictive provision shall govern." The fundamental policy contained in and enunciated by Section 1.040 can be applied to an interpretation of Sections 5.080(a) and (b) as follows: Where the conditions imposed by an interpretation of a provision of this ordinance are less restrictive than comparable conditions imposed by another interpretation of that provision, the more restrictive interpretation shall govern.

The Planning Commission has the authority and responsibility to interpret the RLDO (Section 3.090 of the RLDO). That interpretation shall be in writing and shall be available with copies of the RLDO. The following interpretation of Sections 5.080(a) and (b) is hereby adopted by the Planning Commission at its regular meeting on June 1, 1998. Until these Sections are revised or until a different interpretation of these Sections is adopted by the Planning Commission, these Sections shall be applied and enforced in accordance with the following interpretation:

INTERPRETATION

Sections 5.080(a) and (b), Rivergrove Land Development Ordinance

The Planning Commission hereby interprets Sections 5.080(a) and (b) of the Rivergrove Land Development Ordinance to include the following requirements:

All setbacks referred to in these sections shall be determined based upon the orientation of the residential structure, unless the setback requirement(s) would be more restrictive (greater) if determined based upon the orientation of the lot.

¹ Section 41.060(2) of the Tualatin Development Code is instructive on this point: "Where living spaces face a side yard, the minimum setback shall be 10 feet [rather than 5 feet]."