

CASE NUMBER: PZC
000024-2021

TYPE: TEXT
AMENDMENT



Village Board of Trustees Board Memorandum March 25, 2021

Item for Planning & Zoning Commission Consideration:

Consider the following staff suggestion for a Zoning Code text amendment:

- Zoning Ordinance text amendment to the Village of Westmont Code of Ordinances, Appendix “A,” Zoning, Article IV, Section 4.05(E)(39) to allow “Window Wells” as permitted encroachments, under certain circumstances, in all required yards in the residential zoning districts.

Action Requested:

Consider the proposed text amendment in light of the following findings of fact criteria.

Findings of Fact:

- The proposed text amendments further the purpose of the Westmont Zoning Code by promoting the general health and welfare; and
- The proposed text amendments further the purposes of their respective Articles by clarifying procedures, correcting mistakes, and adding relevant new regulations and requirements; and
- The proposed text amendments further the purpose of their respective Sections of the Westmont Village Zoning Code by correcting mistakes or making improvements to the zoning code as determined by the Zoning Administrator and Plan Commission; and
- The proposed text amendments will cause the Village of Westmont zoning code to more appropriately and clearly provide procedures and appropriate regulations.

I. Basis of Suggestion

A. Background

A window well is semi-circular excavation that surrounds a basement window. It is typically constructed from a solid barrier made from corrugated galvanized metal, masonry, plastic or pressure-treated wood.

Window wells are usually installed for the following purposes:

- emergency egress. If the window serves a living area — as opposed to an unfinished basement with exposed utilities, emergency escape at a minimum of two locations is required. Window wells allow windows to be used by escaping occupants and emergency crews attempting to enter the house;
- to prevent moisture damage to basement windows that are at or below grade. The window wells keep the soil away from openings in the foundation walls while still allowing proper grading and drainage away from the house; and
- to allow sunlight into a below-grade room that would otherwise require artificial lighting.

A request has been made to establish a minimum distance between the outermost edge of window wells and property lines, to take into account required setbacks and minimum easement or desired easement areas, where easements are not established. Existing dwellings that are in noncompliance with the Zoning Ordinance will continue to be legal nonconforming structures. This proposal will also consider accommodations for existing dwellings to allow window well encroachment to be no closer than 5 feet from the property line in order to eliminate any noncompliance issues concerning the encroachment of window wells within required setbacks. Future dwellings will be required to comply with the maximum of 3 feet encroachment into a required setback, provided that the 5 foot easement is maintained clear of any encroachments, providing a minimum effective side yard width of 8 feet, rather than 6, when the maximum allowable window well encroachment is reached.

Existing Language

Sec. 4.05 E

Permitted accessory structures and uses in yards. The following structures and uses are permitted and may be encroachments in required yards as follows:

	...			
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(39)	Window wells (not to exceed 2 feet in width)	F	S	R
	...			

Proposed language is shown in the attached Exhibit “A”.

The Community Development Committee of the Village Board of Trustees discussed this proposed text amendment at their meeting of February 25, 2021 and agreed to allow staff to present this text amendment suggestion to the Planning and Zoning Commission for further review and a recommendation.

B. Critical Issues

Staff initiated proposal to alter the amount of encroachment into the required yards to accommodate emergency egress window wells. This is equally important for property owners of existing houses that wish to come into compliance with current adopted life safety and building codes when maintaining, upgrading, or remodelling their homes as well as proposed new construction that wishes to utilize the property in more efficient ways.

This staff initiated text amendment relates to window wells and basement egress. Window wells are a typical component of dwellings with basements. The building codes require a means of egress from basements. In certain cases “egress windows”, accompanied by concrete or similar prefabricated retaining walls, that form the window wells, are used to meet this requirement.

The Zoning Code, in part, will define the side yard setback as a space measured perpendicular from the side lot line to the minimum required yard setback line. A yard is *an open area on a lot which is unobstructed from its lowest level to the sky*. The Zoning Code provides for limited projections into the unoccupied and unobstructed open space created by the yard.

By definition, the intent of these Zoning Code provisions is to limit the mass of the principal structure within the yard setbacks from the ground upward. By nature, a window well is located below ground level or grade, and serves as a retaining wall to protect the adjacent window. A window well serving as a retaining wall is not a fence and is, therefore, not subject to the limitations for fencing.

Given that setbacks apply to principal structures or projections located above the ground and based on the definitions and the provisions of the Zoning Code relative to setbacks and yards

referenced above, window wells located below ground level that project from the principal structure are excluded from the setback provisions for the zoning districts, with two exceptions:

1. They are to clear all required, platted easements; and,
2. They are subject to distance limitations from the building facade plane, regardless of whether the subject facade is also considered the building line or not.

The lot sizes for detached dwellings in all districts have a wide range of lot widths, starting at roughly 50 feet for the older residence districts in the central part of town.

The narrow lots have small side yards which limits the opportunity for encroachments. Many homes with basement bedrooms use an emergency ingress/egress window well to comply with the building code regulations. At times, these emergency ingress/egress window wells encroach into the side yard. This is also true for the outside exit stairs for basements. These encroachments can pose a conflict with the Zoning Ordinance where an emergency exit well encroaches into a required side yard setback. Currently, the Zoning Ordinance allows for encroachments into a setback up to six feet, but no closer than six feet to the property line.

Building permits have been approved with window wells being placed closer than six feet to the property line. Staff has discussed this with the builders and they understand that not only does the location of the dwelling need to comply with the regulations of the building code but also with the regulations of the Zoning Ordinance. A request has been made to establish a distance of 3 feet as the maximum encroachment into the required yard in all districts, in addition to the 5 feet typically required for easements, or the full width of an established easement, whichever is greater.

This means that for a property whose lot width is 50 feet, the minimum side yards would be 8 feet, or more to the degree to which a prior established easement is more than 5 feet. This will result in a buildable area width of only 34 feet. For typical residential lots of 60 feet in width, the maximum buildable area would result in 44 feet in width, for easements or easement areas of 5 feet from the property line. This buildable area would be the area that would include any outdoor patio areas, walkways, stoops and the like, in addition to the actual residential structure.

See Exhibit "A".

C. Policy

The Adopted 2012 Building Code requires adequate egress from a basement bedroom. Egress can be in the form of a door or large window where the adjacent grade is below that level of the building (walk-out or English basement dwelling style). If the adjacent grade is higher than the bottom of a door or window, an emergency exit well must be installed. These wells are required to be nine square feet in area. The Code also requires that a fire wall be constructed on a

dwelling that is closer than five feet to the property line. The dwellings are built on the lots to comply with the setback to avoid the fire wall construction but will locate the window wells within the side yard. The building code does not consider window wells to be an extension of a wall. As such, the window wells are too close to the property line. Currently the zoning setback for encroachments is typically a minimum of six feet and these features are being placed within five feet of the property line due to the fact that window wells typically extend more than 1 foot past the perpendicular wall, into the required yards. This is especially an issue of concern in side yards, which typically provide narrower widths than the rear and front yards required by code, both of which typically clear required easements by a significant measure (front yards typically do not require utility or stormwater easements, although it is a trend in the utility industry to request access to utility lines along the front lot line). The proposed text amendment will allow the zoning code to be in better alignment with fire wall regulations, stormwater and utility easement area requirements, and other elements of the Zoning Ordinance, for encroachments into setbacks when constructing dwellings in residential districts.

D. Legal

Notification: Westmont Village codes and Illinois State statutes require proposed Zoning Text Amendments to be advertised with a published legal notice and to be considered by the Planning and Zoning Commission at a public hearing. The required legal notice was published in the Westmont Suburban Life on February 18, 2021.

Other Required Actions: Village Board action is required for this proposed Ordinance Amendment. After the Planning and Zoning Commission has made a recommendation, the appropriately-worded Text Amendment will be taken to the Village Board for review and a final decision. This item is tentatively scheduled for Village Board consideration on March 25, 2021.

Code Reference: Village Zoning Code Article XIV lists Definitions pertaining to the Zoning Code. Section 13-11 specifies the requirements to follow when making Zoning Code Text Amendments.

II. **Recommended Conditions, Stipulations, or Other Requirements**

None

III. **Attachments and References**

1. Exhibit “A”—Proposed new ordinance language.

Exhibit “A”

PROPOSED LANGUAGE

Permitted accessory structures ~~and uses~~ in yards. The following structures ~~and uses~~ are permitted and may be encroachments in required yards as follows:

	...			
(39)	Window wells (not to exceed 2 feet in width) (Maximum of 3 feet into any required yard setback but no closer than 5 feet from the property line, nor encroach into any drainage or utility easement).	F	S	R