

INTERPRETATION REQUEST

SETBACKS FOR STRUCTURES BELOW GRADE

Code Sections:

<u>Coastal</u>	<u>Inland</u>
• 20.06.1060	21.06.1060
• 20.06.1200	21.06.1220
• 20.62.040 (D)	21.62.040 (D)

Date: 12/28/2006

Requested by: Craig Spencer

Subject: Required setback for structures below grade

What are the Question?

1. Is a structure contained completely below grade subject to the setback minimums allowed in their zoning district?
2. Is a light well (required by the building code to create habitable space below grade) counted as an extension of the structure?
3. Are "light wells" that are expanded to be a terrace with accessible space and a stairway subject to setback requirements?

Short Answers:

1. Yes. Zoning district regulations require and specify setbacks for structures.
2. Yes, if the light well is enclosed by a structure as defined in the zoning ordinance.
3. Yes, subject to the exceptions noted in Section 21.62.040 or Section 20.62.040.

Discussion:

Discussion of Question 1: The answer to the basic question here is simple. Structures are required to hold setbacks whether located above or below grade. What may not be as simple is determining when is something that is built considered to be a structure? Three definitions are significant in this discussion (the definitions cited are from Title 21, but are matched in Title 20):

- Structure is defined by zoning as "...anything constructed or erected, except fences under six feet in height, the use of which requires location on the ground or attachment to something having location on the ground, but not including any trailer or tent."
- Height of a structure is defined by zoning as "...the vertical distance from the average level of the highest and lowest point of the natural grade of that portion of the building site covered by the structure, to the topmost point of the structure, but excluding certain features, as specified in Chapter 21.62 (Height and Setback Exceptions) of this Title."
- Setback is defined by zoning as "...a minimum distance required by this Title to be maintained between structures or between structures and property lines."

Therefore, unless the object that is "...constructed or erected..." is a "...fence under six feet in height..." it is a structure and is required to hold the minimum setbacks required in the district regulations.

As a matter of practice, retaining walls have been treated as fences. Retaining walls less than six feet in height are then, by zoning, not a structure and are not subject to setback requirements. Retaining walls six feet and over in height are subject to setback requirements.

Discussion of Question 2: The key issue here is determining whether or not the light well is enclosed by a structure (see Question 1). If it is, then setback requirements apply. In most all cases, light wells will be enclosed by retaining walls located at- and below-grade that will be under six feet in height, so setbacks will not apply.

Discussion of Question 3: Section 21.62.040 D that states "Uncovered decks, porches, or stairways, fire escapes or landing places may extend into any required front or rear setback not exceeding six feet, and into any required side setback not exceeding three feet. For the purpose of this Section, a normal roof overhang up to two and one-half feet does not constitute coverage." There is no distinction for structures located at, above or below grade, so the same standards should be applied in those cases.

In reviewing a plan, some judgment must be exercised in determining whether the part of the project in question is a light well solely for the purpose of the provided needed light and ventilation or to accommodate some other use.

Facts of the situation:

Many times in Carmel where there is a restriction on height and floor area, property owners choose to create a floor below grade that does not count in floor area and allows additional height in an area limited by height restrictions and small lot sizes. In this particular case a light well is proposed that is expanded to include a 4-foot wide area that can be accessed from the front porch by a stairway and sliding doors on the lower floor. The retaining wall required for the light well extends to the side property line.

Interpretation Prepared By: Craig Spencer, Dale Ellis, Carl Holm

Interpretation/Opinion Confirmed by Managers Mr. Mr.