



## Legislation Details (With Text)

**File #:** 17-647B **Version:** 1  
**Type:** Ordinance **Status:** Agenda Ready  
**File created:** 11/2/2017 **In control:** City Council  
**On agenda:** 11/21/2017 **Final action:**  
**Title:** Deny the request at 1821 Appaloosa Drive (PZC 17-1-095), for a deviation to allow a patio to encroach into the front yard setback.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Ordinance, 2. Exhibit A - Legal Description, 3. Exhibit B - Plat of Survey, 4. Exhibit C - Standards, 5. Exhibit D - REHA Letter, 6. Development Petition, 7. Location Map, 8. Plat of Survey, 9. Patio Plan, 10. REHA Letter & Photos, 11. 11/1/17 Draft PZC Minutes

Date	Ver.	Action By	Action	Result
11/21/2017	1	City Council	approved with conditions	Pass

### CITY COUNCIL AGENDA ITEM

#### **ACTION REQUESTED:**

Deny the request at 1821 Appaloosa Drive (PZC 17-1-095), for a deviation to allow a patio to encroach into the front yard setback.

**DEPARTMENT:** Transportation, Engineering and Development

**SUBMITTED BY:** Kasey Evans, AICP

#### **BOARD/COMMISSION REVIEW:**

The Planning and Zoning Commission considered PZC 17-1-095 on November 1, 2017 and voted to recommend denial of the case (denied, 3-4). Staff concurs.

#### **BACKGROUND:**

The property is located on Lot 10 of the University Heights Unit 4 Planned Unit Development (PUD), which is located southeast of the intersection of 77<sup>th</sup> Street and Ranchview Drive, and is zoned R1B (Medium Density Single-family Residence District) PUD. The property is approximately 0.13 acres and is improved with an attached single-family home.

#### **DISCUSSION:**

The petitioners, Hany Tadorus and Marine Hana, request approval of a deviation to the University Heights Unit 4 PUD to allow a patio to encroach approximately 14.5' into the front yard setback on the subject property. The patio was constructed without a permit, as is allowed because it is less than 500 square feet in area; however, the patio is still required to comply with all applicable Building and Zoning Code regulations, such as setbacks. Staff learned about the existence of the patio through a Code Enforcement complaint. Some modifications have been made to the patio based on feedback from the Ranchview Estates Homeowners Association, but it continues to not comply with

the City's regulations as further described below.

The University Heights Unit 4 PUD established setbacks for the development, including a platted front yard setback. The minimum front yard setback for the subject property is 20'. Per [Municipal Code Section 6-2-3:3.2 \(Yard Requirements\)](https://library.municode.com/il/naperville/codes/code_of_ordinances?nodeId=TIT6ZORE_CH2GEZOPR_6-2-3YARE) [patios, decks and porches may extend up to 5' into the front yard setback](https://library.municode.com/il/naperville/codes/code_of_ordinances?nodeId=TIT6ZORE_CH2GEZOPR_6-2-3YARE). The existing home is setback 21' from the front property line, therefore a patio up to 6' deep would be permitted. The petitioner requests a deviation to permit a 15.5' deep by 22.6' wide (350 square feet) patio in the front yard, which extends approximately 14.5' into the front yard setback (9.5' further than is permitted).

The petitioner's responses to the Standards for Granting a Deviation are included in the Development Petition. The determination of whether a PUD deviation will be granted for a PUD shall be made using the standards below as guidelines. Staff does not concur with the responses to the standards submitted by the petitioner. Staff's comments with respect to the deviation standards, based upon a review of the subject property and applicable Code provisions are as follows:

*Deviation Standard #1: Whether the requested deviation would undermine the intent and purpose of the underlying zoning district.*

Staff Comments: The R1B district has a minimum front yard setback of 30'; however, the University Heights Unit 4 PUD established an alternative minimum front yard setback of 20' by listing the setback on the PUD plat. The intended 20' front yard setback was further reinforced by the platting of the front yard setback line on the subdivision plat. The 20' platted front yard setback applies to all lots abutting Appaloosa Drive. Section 6-2-3 (Yard Requirements) limits the type and size of structures that may be located in required front yards regardless of zoning district. The Code provides an allowance for patios, decks, and porches to extend up to 5' into the front yard setback to enhance the residence and neighborhood, while still maintaining an open front yard. The proposed patio, extending 14.5' into the front yard setback, far exceeds the 5' permitted, and sits only 6.25' from the public sidewalk along Appaloosa Drive.

*Deviation Standard #2: Whether the requested deviation would be a detriment to the provision of municipal services and infrastructure.*

Staff Comments: The property is subject to a Public Utility and Drainage Easement (PU&DE) which extends along the south and west sides of the property. The PU&DE grants the City the right to construct, operate and maintain utilities within the easement and prohibits any permanent structures. Approximately 215 square feet (9.5' by 22.6') of the patio encroaches into the PU&DE. The City's Engineering, Water and Electric Departments have determined the patio does not currently conflict with any existing public utilities; however, if the deviation is approved, the petitioner will be required to enter into an Easement Encroachment Agreement with the City. The patio may be subject to removal if it interferes with the construction, operation and/or maintenance of utilities within the easement.

*Deviation Standard #3: Whether the requested deviation would contribute to a planned unit development which offers a superior level of design, amenity enhancement, or environmental benefit; or would enhance community vitality through the inclusion of attainable or barrier free housing.*

Staff Comments: The patio does not contribute to a superior level of design or amenity. The railing and brick columns around the patio are not consistent with the character of the building and existing front porch.

The patio could be constructed directly west of the home, in an area of approximately 342 square feet (19' by 18', including the existing 5' by 13' front porch) which lies outside of the PU&DE, and in compliance with applicable front and side yard setbacks. This would allow a substantially similar patio to what is requested by the petitioner, while remaining in compliance with the City's Zoning Code. This location would have the added benefit of being located further from the street, thereby mitigating some of the petitioners' concerns about privacy and safety.

#### *Letter from the Homeowners Association*

The Ranchview Estates Homeowners Association (REHA) has provided a statement and photos regarding the patio on the subject property. While the REHA is not requiring the size of the patio be reduced, they are requiring several modifications be made, including adjustments to the railing, painting of the railing and brick, and installation of landscaping. While the City does not enforce HOA regulations, this information is provided for reference.

#### ***Planning and Zoning Commission***

The Planning and Zoning Commission conducted the public hearing to consider PZC 17-1-095 on November 1, 2017. The Planning and Zoning Commission inquired about other patios in the neighborhood, and the REHA's recommendations. A member of the REHA Board asked the Commission to consider the REHA Board's letter. The Planning and Zoning Commission closed the public hearing and made a motion to approved PZC 17-1-095. The motion failed (3-4). Commissioners B. Hanson and Losurdo supported the request and recommended the petitioner comply with the REHA's recommendations for the patio. Chairwoman Martinez cast one of the 3 votes in favor of the request, however after the vote she indicated she voted in error, having intended to vote against the request. Staff concurs with the Planning and Zoning Commission's recommendation for denial.

#### *Other Adjacent Patios*

Given questions raised at the Planning and Zoning Commission meeting regarding other existing patios in the vicinity of the subject property which are believed to also be non-conforming, staff conducted additional research following the meeting. There appear to be 9 other patios along this block of Appaloosa Drive. Very rough measurements taken from the City's GIS map, appear to show one patio setback approximately 8.5' from the front property line, seven patios setback between approximately 10' to 12', and one patio is setback approximately 15'. It does not appear that the other patios in question were constructed in recent years. Per City records, only one patio on the street applied for a city permit in 1996; this permit was later administratively closed due to no activity. Staff also reached out to the REHA and they indicated they have not maintained any records of patios on the street, including whether these patios were approved by REHA prior to construction. Accordingly, staff has limited information regarding the current level of conformance of the other existing patios and whether they would be classified as legal or illegal non-conforming. However, the existence of other non-conforming patios in the area does not necessitate the issuance of the requested deviation for the subject patio as staff can confirm that this patio was constructed without a permit and not in compliance with Code allowances. Rather, the requested deviation should be reviewed for its compliance with the deviation standards established in the Code.

#### ***City Council Action***

If City Council disagrees with the Planning and Zoning Commission and staff's recommendation to deny the request, and seeks to approve the setback deviation, staff has prepared an ordinance approving the requested setback deviation which can be amended to include any conditions City Council finds appropriate.

***Key Takeaways***

- The petitioner requests a setback deviation to allow the patio to extend 14.5' into the front yard setback, in lieu of the 5' maximum permitted by Code.
- Staff does not support the requested deviation as the patio is not consistent with the underlying Code requirements, nor does it add a superior level of design to the PUD.

**FISCAL IMPACT:**

N/A