



Department of Planning and Economic Development

Staff Report to the Zoning Board of Appeals

September 3, 2025

PVAI2025-0008

1737 Fairview – Requested Interpretations

REQUEST

The applicant is requesting a total of three (3) interpretations, of three different sections of the Zoning Ordinance.

First, the applicant is seeking an interpretation of Article 1, Chapter 3 Permits and Certificates, Section 138-1.300 Duties, Powers, and Limitations, specifically subsection C.

Second, the applicant is seeking an interpretation of Article 5, Chapter 1 Schedule of Regulations, Section 138-5.101 Footnotes to the Schedule of Regulations, specifically subsection A.

Third, the applicant is seeking an interpretation of Article 10, Chapter 1 Accessory, Buildings and Structures, Section 138-10.102 Detached Accessory Structures, specifically subsection A.

The applicant is not seeking any variances at this time.

APPLICANT

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FILE NO.

PVAI2025-0008

STAFF

Chris McLeod, Planning Manager

Requested Interpretations

Pursuant to Section 138-2.400 and more specifically, Section 138-2.406, of the City's Zoning Ordinance that addresses the Zoning Board of Appeals authority to consider "interpretations", the applicant is asking for the Zoning Board of Appeals to provide interpretations on three (3) different sections of the Zoning Ordinance. The ordinance language with regard to ZBA interpretations is provided below, followed by the three applicable sections as requested by the applicant. It is important to note that pursuant to the application filed, these requests are interpretations. These interpretations would be applicable city-wide, including the applicant's property, and do not represent a specific appeal or variance request.

SECTION 138-2.400 - Jurisdiction, Powers and Duties

A. **Powers and Duties.** *The Zoning Board of Appeals shall have the power and it shall be its duty to:*

1. *Hear and decide on all matters referred to it by the provisions of this ordinance.*
2. *Hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the building, planning, or public services department in the enforcement of this ordinance. See [Section 138-2.404](#) for additional considerations.*
3. *Interpret the text and map and all matters relating thereto whenever a question arises in the administration of this ordinance as to the meaning and intent of any provision or part of this ordinance. Any interpretations shall be in a manner as to carry out the intent and purpose of this ordinance and zoning map, and commonly accepted rules of construction for ordinances and laws in general. See Section 138-2.405 and [Section 138-2.406](#) for additional considerations.*
4. *Where there are practical difficulties or unnecessary hardships, within the meaning of state law and this ordinance, in the way of carrying out the strict letter of this ordinance, the Zoning Board of Appeals shall have the power upon appeal in specific cases to authorize such variation or modification of the provisions of this ordinance so that the spirit of this ordinance shall be observed, public safety and welfare secured and substantial justice done. See [Section 138-2.407](#) and [Section 138-2.408](#) for additional considerations.*

SECTION 138-2.406 - Interpretation of Zoning Ordinance Provisions

The Zoning Board of Appeals shall have the power to hear and decide requests for interpretations of Zoning Ordinance provisions in such a way as to preserve and promote the character of the zoning district in question, and carry out the intents and purposes of the Zoning Ordinance and Master Plan.

Interpretation #1

SECTION 138-1.300 - Duties, Powers, and Limitations

- A. *The building department shall have the power to grant zoning compliance and occupancy permits, and the building and public services, and fire departments shall have the authority to make inspections of buildings or premises necessary to carry out their respective duties in the enforcement of this ordinance.*
- B. *The City shall have the authority to conduct inspections as necessary to assure that landscaping and irrigation systems are installed according to approved plans and permits.*
- C. *The building, public services, and fire departments are under no circumstances permitted to make changes in this ordinance or to vary the terms of this ordinance in carrying out their duties.*

The applicant is requesting an interpretation of Paragraph C of Section 138-1.300 regarding the Duties, Powers, and Limitations of City Officials and Administration in regards to implementation of the Zoning Ordinance. Paragraph C indicates that the Building, Public Services, and Fire Departments are not permitted to make changes to the ordinance or to vary its terms. This section of the Zoning Ordinance is located within Chapter 3 Permits and Certificates of Article 1 Administrative and Enforcement.

Therefore, within the context of this specific section, the Building, Public Services and Fire Departments cannot change or vary the specific zoning ordinance provisions themselves. Under State law, changes to a Zoning Ordinance provision or regulation requires Planning Commission and City Council action after a public hearing is conducted, therefore no individual or department is permitted to change or modify the terms of the Ordinance.

The zoning ordinance also has provisions within Section 138-1.106 Conflicting Provisions that discuss the interpretation of the zoning ordinances and how it is applied to help maintain the public safety, health, morals and general welfare. And further, Section 138-13.101 Definitions discusses how the specific prevails against the general and that terms and meanings, if not specifically defined in the Ordinance itself, shall take on meanings customarily assigned to them. These provisions become pertinent in regards to the application of the City's Zoning Ordinance since every scenario or circumstance cannot be foreseen or accounted for, but then allows the appropriate interpretations to be made to ensure the intent of the Ordinance is maintained.

Interpretation #2

SECTION 138-5.100 - Schedule of Regulations

Table 6. Schedule of Regulations - RESIDENTIAL DISTRICTS

District	Minimum Lot		Maximum Building Height ^A		Minimum Yard Setback (feet)				Min. Floor Area (sq. ft.)	Max. Lot Coverage (all buildings)
	Area (sq. ft.)	Width (ft.)	Stories	Feet	Front	Side (each)	Side (total)	Rear		
RE	43,560	120	2	35	40 ^B	15 ^{C, D}	30 ^D	35 ^D	1,500	25%
R-1	20,000	100	2	35	40 ^B	15 ^{C, D}	30 ^D	35 ^D	1,500	25%
R-2	15,000	100	2	35	40 ^B	15 ^{C, D}	30 ^D	35 ^D	1,400	25%
R-3	12,000	90	2	30 ^P	30 ^B	10 ^{C, D}	20 ^D	35 ^D	1,200	30%
R-4	9,600 ^R	80 ^R	2	30 ^P	25 ^{Bj}	10 ^{C, D}	20 ^D	35 ^D	912	30%
R-5	See Article 6 , Chapter 7 for one-family flex residential district regulations									
RM-1	See Article 6 , Chapter 1 for multiple family district regulations									
RCD	See Article 6 , Chapter 2 for one-family residential cluster district regulations									
RMH	See Article 6 , Chapter 4 for manufactured housing park district regulations									
MR	See Article 6 , Chapter 5 for mixed residential (overlay) district regulations									

SECTION 138-5.101 - Footnotes to the Schedule of Regulations

- A. **Building Height Measurement.** In the R-1 through R-5 and RE districts, building height shall be measured from the average grade on the front façade of the building.

The applicant is seeking an interpretation of the Zoning Ordinance as it relates to building height, specifically Subsection A of Section 138-5.101, that defines how building height is measured. This section of the Zoning Ordinance pertains to maximum height of structures within each Zoning District. Footnote A is a footnote to the maximum building height provision, generally applicable to any of the City's One Family Residential Districts. The ordinance, as modified by the footnote, indicates that building height is measured from the average grade of the front façade of a building. This is the method of height measurement used for principal residential structures in each one of the City's One Family Residential Districts. The maximum building heights for principal residential structures noted in the table above are 2 stories and either 30 or 35 feet depending in which residential district the subject property is located. Again, these height limitations are for principal structures and based on conversations with the Building Department have been consistently applied for such structures.

The applicant's inquiry appears to be more focused on heights for accessory structures. The City's Zoning Ordinance, Section 138, Article 10 General Provisions, Chapter 1, Accessory Structures and Buildings, which is specific to Accessory Structures, further regulates the maximum height of accessory structures as being 14 or 16 feet, depending on the roof pitch. Therefore, the height requirements in this section would prevail over those in Sections 138-5.100 and 138-5.101. Further, since the accessory structure section does not specifically address how building height is defined or how it is measured, then the definition section of the Zoning Ordinance should

be referenced.

The definition section of the zoning ordinance indicates that building height is the vertical distance from average grade to:

- A. The mean level of the highest gable or slope of a hip, gable, or gambrel roof.
- B. The top of the highest roof beam for flat roofs.
- C. The deck line for mansard roofs.
- D. The mean level for a shed roof, from highest point to lowest point of roof.

Where buildings have multiple or conflicting roof styles, the most restrictive method applies.

Interpretation #3

SECTION 138-10.102 - Detached Accessory Structures

- A. **Area.** Detached structures accessory to a residential or non-residential building may be located in the side or rear yard. Such structures shall not be located in the front yard. The combined floor area of all detached accessory buildings on a single parcel shall not exceed the limits set forth in the following table, so long as total building area of all structures does not exceed the maximum lot coverage as provided in [Section 138-5.100](#):

Lot or Parcel Size	Maximum Permitted Combined Accessory Structure Floor Area
0.01 - 0.99 acres	1,000 square feet
1.00 - 1.99 acres	1,200 square feet
2.00 - 2.99 acres	1,400 square feet
3.00 - 3.99 acres	1,600 square feet
4.00 - 4.99 acres	1,800 square feet
5.00 or more acres	2,000 square feet

For purposes of this subsection, floor area of an accessory structure shall be defined as the exterior footprint of the structure supporting a roof measured from the exterior of the exterior walls, assembly or structural supports. A structure shall be considered detached when it is completely separate from the main structure and when it does not meet one of the conditions noted in Section 138-10.101.A.2, above.

1. Exception: Decks constructed in the front yard shall be permissible provided such deck does not exceed the width of the residence and does not project more than ten feet from the front plane of the residence.

The applicant is requesting an interpretation as to whether this specific provision should exclude fireplaces, chimneys, stoops, planter boxes, etc. which do not support a roof. The Ordinance indicates that the floor area of the accessory structure is measured from the exterior of the exterior wall, assembly or structural supports, or stated differently, the outermost dimensions of the structure. The floor area would typically include any additional ancillary features that are integral to the overall structure, particularly those that require a foundation. The definition of “structure” within the zoning ordinance is “anything constructed or erected and designed for a permanent location on the ground”.

Therefore, while certain items such as a planter box would likely not be integral to the structure or otherwise require a foundation, other features, such as a fireplace or chimney that are integral to the overall larger structure and have a foundation due to their size would typically be a part of the overall floor area of the building.

Interpretation #1

MOTION by _____, seconded by _____, in the matter of File No. PVAI2025-0008, to interpret that Section 138-1.102 of the Zoning Ordinance does not permit the Building, Public Services or Fire Departments to make changes or vary provisions of the Zoning Ordinance; however, other applicable sections of the Zoning Ordinance allow for interpretations that promote the general health, safety, morals and welfare of the community and are consistent with the intent of the Zoning Ordinance and Master Plan.

Interpretation #2

MOTION by _____, seconded by _____, in the matter of File No. PVAI2025-0008, to interpret that Section 138-1.501(A) requires that maximum building height of structures within the One Family Residential Districts be measured from the average grade of the front façade. Further, this method of measurement is not applicable to accessory structures since the section of the ordinance regulating accessory structures (Sec. 138-10.102) provides specific regulations limiting the height of accessory structures and the Ordinance has general definitions for determining building height.

Interpretation #3

MOTION by _____, seconded by _____, in the matter of File No. PVAI2025-0008, to interpret that Section 138-10-102(A) indicates that the area of accessory structures is calculated by measuring from the exterior of the exterior walls, assembly or structural supports of the structure supporting the roof, including any additional ancillary structures that are integral to such accessory structure.