



**ZONING ORDINANCE INTERPRETATION #2-23**  
EFFECTIVE JULY 28, 2023  
EAST ROCKVILLE DESIGN GUIDELINES CLARIFICATIONS

The East Rockville Design Guidelines (ERDG) were adopted on February 1, 2021 along with a zoning text amendment to incorporate the ERDG document into the Zoning Ordinance by reference. As such, all building permits within the ERDG area are subject to review against and compliance with the ERDG.

As staff has begun reviewing building permits within the ERDG area, several items requiring interpretation and clarification have been identified:

1. Applicability of the ERDG to accessory structures
2. Threshold for applicability of the ERDG to additions
3. Whether the guidelines are mandatory or optional
4. When is Alternative Compliance approval required?
5. How specific guidelines are applied to new construction or substantial additions
  - a. Roof Pitch (Issue 8)
  - b. Building Articulation (Issue 9)
6. When the ERDG lot coverage calculations apply in place of the Zoning Ordinance lot calculations
7. The definition of a “major addition” as a threshold for Mature Tree Preservation (ERDG Issue 12)

Each of these items is addressed below.

**1. Applicability of the ERDG to accessory structures**

There is a slight conflict between the Purpose statement of the ERDG and the Applicability statement of the ERDG.

The Purpose statement notes that “the purpose of the East Rockville Design Guidelines is to establish a clear set of expectations for new detached home construction and additions to existing homes in East Rockville...” (emphasis added).

The Applicability statement notes that “These design guidelines apply to all new residential detached construction whether an entirely new building or an addition(s) to an existing building...” (emphasis added).

Staff has reviewed the legislative history of the ERDG, including staff reports to the Planning Commission and Mayor and Council, and determined that the ERDG were intended to apply to new detached dwelling units and additions to existing detached dwelling units. Where the guidelines apply to accessory structures, they are explicitly identified.

*Interpretation:* Where not explicitly identified, accessory structures are generally not subject to the ERDG. Exceptions are Building Placement (Issue 2) and Lot Coverage (Issue 3) which specifically address the location and footprint size of accessory structures.

## **2. Threshold for applicability of the ERDG to additions**

The ERDG document is clearly applicable to additions to existing homes. However, there is no threshold for what is considered an addition or when compliance with the ERDG is triggered.

Chapter 25, Zoning Ordinance, does not provide a definition of “addition.” Chapter 5, Buildings and Building Regulations, does include a definition of addition:

ADDITION. A modification to an existing building which increases the gross floor area. Any increase in building height or lot coverage is subject to current zoning standards.

*Interpretation:* Any modification to an existing building is subject to the ERDG. The area of compliance with the ERDG may be limited to the building addition facade facing a primary or secondary frontage, if any.

## **3. Whether the Design Guidelines are mandatory or optional**

The ERDG includes guidelines that are activated by “must” and “will” and are mandatory (or required), as well as guidelines that are activated by “should” and are advisory (or optional). This approach is reinforced by Section 25.03.01.3 of the Zoning Ordinance which states that “the words ‘shall,’ ‘may not,’ and ‘must’ are always mandatory and not discretionary. The words ‘should’ and ‘may’ are permissive.”

However, the ERDG document does not differentiate between guidelines (“should”) and standards (“must/will/shall”) which has caused confusion when applying the document to building permit review.

The importance of whether a guideline is a “should” or a “must/will/shall” has to do with the level of discretion required to review “should” and “must/will/shall” guidelines.

*Interpretation:* Given the fact that the ERDGs are applied at the time of building permit review, which is a ministerial review, and there is no opportunity for public review or participation in application of the discretionary design guidelines, “must/shall” guidelines are mandatory and must be applied during building permit review; “should” guidelines are recommendations and must be considered by the applicant, but do not need to be met for building permit approval.

#### 4. When is Alternative Compliance approval required?

The ERDGs provide an option for Alternative Compliance if a guideline is not met. This is an administrative review without public notice that is appealable to the Board of Appeals. The ERDG document does not provide clarity about whether Alternative Compliance review is required for development that does not meet a “must/will/shall” guideline (standard), a “should” guideline, or both.

*Interpretation:* Because compliance with “should” guidelines is voluntary, Alternative Compliance approval is required only when “must/will/shall” guidelines (standards) are not met.

#### 5. How specific guidelines are applied to new construction or substantial additions

The text of some of the “must/will/shall” guidelines (or standards) is unclear regarding their applicability:

- a. Roof Pitch (Issue 8) Item 2 states:

*“Porch roofs and attached shed roofs must be 2:12 to 4:12.”*

The text does not clarify whether attached shed roofs refer to a roof type or a roof location (e.g., a roof attached to a shed).

The accompanying graphic referenced within the text indicates an attached single-pitch roof (also known as a shed roof).

*Interpretation:* This item applies only to shed roofs (also known as single-pitch, mono-pitch, or skillion roofs) that are attached to the primary dwelling. It does not apply to detached sheds.

- b. Building Articulation (Issue 9) Item 2 states (emphasis added):

*“Side elevations must utilize one or more of the following methods to avoid large, blank walls:*

- *Include windows. Windows are required on side walls in the second layer. These windows are required to follow the standards for windows facing frontages.)*
- *Horizontal element: In addition to the side windows, houses over 2 stories must utilize a horizontal eave or band on the wall or a change in material (refer to photo).”*

The maximum height of houses in the ERDG area is 2.5 stories. Per the definition of building height within the ERDG document, which reflects the definition of building height in the Zoning Ordinance, a half-story is “a story under a gable, hip, or gambrel roof, the wall plates of which on the [sic] least two (2) opposite exterior walls are more than 2 feet above the floor of such story.”

The photos referenced in the standard show houses that are 2 stories per the definition above, which confuses rather than clarifies the requirement.

*Interpretation:* Per Section 25.03.01.2 of the Zoning Ordinance, if there are differences in meaning and implication between the Zoning Ordinance text and any caption, illustration, summary table, or illustrative table, the text controls. Therefore, this guideline/standard applies only to houses that are 2.5 stories.

**6. When the ERDG lot coverage calculations apply in place of the Zoning Ordinance lot calculations**

Lot Coverage (Issue 3) addresses the building footprint of homes in East Rockville. This item defines lot coverage differently than the Zoning Ordinance. The ERDGs specifically exempt covered or uncovered porches from lot coverage calculations. Per Sec. 25.01.07.b.2, “Notwithstanding the above, where this chapter [25] imposes a greater restriction upon the use or development of a building or a site than are imposed or required by other ordinances, rules, regulations, or permits or by easements, covenants, or agreement between parties, the provisions of this chapter will prevail.” As such, the ERDG document cannot be more permissive than Chapter 25 (Zoning Ordinance).

Sec. 25.03.02 definition:

*Lot coverage* means the percentage of lot area covered by buildings, including covered porches and accessory buildings.

ERDG definition (emphasis added):

Lot coverage by buildings must be a maximum 35% of the lot with the exception of covered or uncovered porches facing frontages.

The homes in East Rockville are primarily zoned R-60, which has a minimum lot size of 6,000 sq. ft. and a maximum lot coverage of 35%. In most cases, the lot coverage allowances of the R-60 zone exceed the ERDG lot coverage/maximum footprint allowances. See the table below.

The minimum dimensions of a porch within the ERDG area is 5 ft. deep, with 8 ft. preferred. This could result in an additional 20+ sq. ft. of footprint that is excluded from the lot coverage calculations in the ERDG area. In the case of unusually small lots, excluding porches from the lot coverage calculation could exceed the base zone lot coverage allowances.

<b>Standard</b>	<b>R-60 Zone Maximum</b>	<b>ERDG Maximum</b>
Minimum lot size	6,000 sq. ft., or 5,000 sq. ft. for qualifying undersized lots	None
Lot coverage	35%	35% + porch area
Maximum footprint	None, based on lot coverage  Lot of 4,500 sq. ft.:	Lots up to 7,499 sq. ft: 1,500 sq. ft. (~20% of 7,499 sq. ft.)

Standard	R-60 Zone Maximum	ERDG Maximum
	1,575 sq. ft.  Lot of 5,000 sq. ft.: 1,750 sq. ft.  Lot of 7,499 sq. ft.: 2,624.65 sq. ft.	2,100 sq. ft. with addition (~28% of 7,499 sq. ft.)  Lots 7,500 sq. ft. and larger 1,875 sq. ft. 2,635 sq. ft. with addition

*Interpretation:* Staff will compare calculations of the permitted lot coverage of the base zone and the ERDG lot coverage for lots smaller than 4,500 sq. ft. and apply the most restrictive area.

**7. The definition of a “major addition” as a threshold for Mature Tree Preservation (ERDG Issue 12)**

The ERDG document uses some terms that are not defined within the document or in the Zoning Ordinance. Mature Tree Preservation (Issue 12) Item 2 establishes an applicability threshold for the provision of 3 shade trees, which is “rebuilds or major additions.”

Neither of these terms is defined in the Zoning Ordinance or other Articles of the Municipal Code, and an interpretation is needed to determine when this requirement applies.

*Interpretation:* Until the Zoning Ordinance can be updated to include a formal definition for “Rebuild” and “Major Addition,” the following definitions will be applied when reviewing permits for compliance with the ERDG:

*Rebuild* means substantial reconstruction that removes and replaces more than fifty (50) percent of the building floor area, as defined in chapter 5.

*Major Addition* means adding more than 500 square feet of new interior space and expanding the structure’s footprint or envelope. The new interior space does not include areas of existing space within the building envelope. To qualify as a major addition, the project must both increase the interior space and expand the footprint or envelope.

These clarifications will be addressed by future updates to the East Rockville Design Guidelines. In the meantime, City staff will apply this interpretation as stated above.



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