

ARTICLE 14. REVIEW BODIES

14.01 CITY COUNCIL

The City Council shall exercise all final legislative authority over zoning matters as provided in this Ordinance.

14.02 PLANNING COMMISSION

14.02.01 Establishment and Authority

The Planning Commission of the City of Bay Minette is established according to *Title 11, Chapter 52 of the Code of Alabama (1975)*, as amended. The Planning Commission shall exercise the authority granted by the *Code of Alabama*, the *City Code*, and the *Zoning Ordinance*.

14.02.02 Memberships

14.02.02.01 The Commission shall consist of nine (9) members having the following qualifications:

- a. A member of the City Council, to be selected by it upon the recommendation of the Mayor;
- b. The Mayor;
- c. An Administrative Official of the City, appointed by the Mayor;
- d. Six (6) members, appointed by the Mayor, who shall reside in the City of Bay Minette, Alabama who hold no other public office in the City of Bay Minette;
- e. This subsection is intended to comply with the terms of *Chapter 52 of Title 11 of the Code of Alabama (1975)*, as amended, with respect to the members of the Planning Commission. To the extent those terms are altered, amended, replaced or otherwise changed, this subsection shall be construed so as to apply with such altered, amended, replaced or changed terms.

14.02.02.02 The Mayor, the City Councilperson, and the City Administrative Official shall be ex-officio members of the Commission having full privilege of participation in the business of the Commission, including voting privileges. Their terms shall correspond to their respective official tenures except that the terms of the Administrative Official selected by Mayor shall terminate with the term of the selecting Mayor.

14.02.02.03 All members shall serve without compensation but may be reimbursed for actual expenses incurred in connection with their official duties. All members shall be provided with relevant information outlining conflict of interest laws.

14.02.02.04 The terms of the six (6) members shall be in accordance with the applicable law; provided; however, that nothing in this *Zoning Ordinance* shall be construed so as to shorten the term of any current citizen appointee.

14.02.02.05 Any vacancy on the Commission shall be filled for the un-expired term by the Mayor in the case of members appointed by the Mayor or by the Council in the case of a member selected by the Council. Members appointed by the Mayor may be removed by the Mayor and the member appointed by the Council may be removed by the Council for inefficiency, neglect of duty or malfeasance in office after a public hearing held pursuant to written charges.

14.02.03 Rules of Procedure

The Planning Commission shall establish bylaws under which to operate as provided by law.

14.02.04 Duties and Powers Under Zoning Ordinance

The Planning Commission shall have the following powers and duties under the *Zoning Ordinance*:

14.02.04.01 The Planning Commission is charged with the responsibility to review, apply and monitor the enforcement of this Ordinance in accordance with the adopted Comprehensive Plan or portions thereof which are adopted.

- 14.02.04.02**The Planning Commission shall hear and take action on matters which require Commission "approval" as herein specified and shall render decisions on uses not provided for in the Table of Permitted Uses.
- 14.02.04.03**The Planning Commission shall hear and recommend to the City Council on all matters of zoning and rezoning and zoning of newly annexed land when R-1 is determined by the Planning Commission not to be the proper zone.
- 14.02.04.04**The Planning Commission shall hear and recommend to the Board of Adjustment on all requests for Special Exceptions and Variances.
- 14.02.04.05**Requests before the Planning Commission shall adhere to the requirements specified herein and as may be established by the Commission for the lawful rendering of its duty.

14.03 CITY PLANNER

The City Planner shall be the municipal Zoning Administrator whose duties shall be as follows:

- 14.03.01** The City Planner or their designee is authorized and empowered on behalf and in the name of the Council to administer and enforce the provisions of this Ordinance including:
- a. Receive applications;
 - b. Inspect premises, and issue certificates of zoning compliance for uses and structures which are in conformance with the provisions of this Ordinance;
 - c. Interpret the meaning of the Ordinance in the course of enforcement;
 - d. Propose zoning amendments as provided in this Ordinance; and,
 - e. Advise the Planning Commission and City Council on implementation of the Comprehensive Plan.
- 14.03.02** The City Planner shall keep records of all Land Use Certificates issued, maps, plats and other documents with notations of all special conditions involved. They shall file and safely keep copies of all sketches and plans submitted, and the same shall form a part of the records of their office and shall be public record.

14.04 ESTABLISHMENT AND MEMBERSHIP OF THE BOARD OF ADJUSTMENT

The Board of Adjustment shall consist of five (5) members, appointed by the Mayor for overlapping terms of three (3) years. All members of the Board of Adjustment shall reside within the municipal limits of the City of Bay Minette. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall be removed for cause by the Mayor upon written charges and after public hearing thereon. The Mayor shall appoint two (2) supernumerary members in accordance with *Alabama Code, Section 11-52-80*.

14.04.01 Meetings, Procedures and Records

- 14.04.01.01** Meetings of the Board shall be held at the call of the Chairman and at such other times as a majority of the Board may determine. The members of the Board of Adjustment shall elect one (1) of its members as chairman to serve a one (1) year term or until re-elected or a successor is elected. Such Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. Four (4) members shall constitute a quorum.
- 14.04.01.02**The Board shall adopt and publish its own rules of procedure and keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and of other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

14.04.02 Powers and Duties

The Board of Adjustment shall have the following powers and duties:

- 14.04.02.01 Appeals.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an Administrative Official in the enforcement of this Article or of any Ordinance adopted pursuant thereto.

- a. Such Appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the Officer from whom the Appeal is taken and with the Board of Adjustment, a Notice of Appeal specifying the grounds thereof.
- b. The Officer from whom the Appeal is taken shall transmit forthwith to the Board all papers constituting the record upon which the action appealed was taken. An Appeal stays all proceedings unless the Officer, from whom the Appeal is taken, certifies to the Board of Adjustment that by reason of facts stated in the Certificate, a stay would, in their opinion, cause imminent peril to life or property.
- c. When such Certificate is filed, proceedings shall not be stayed except by restraining order which may be granted by the Board of Adjustment or by a court of competent jurisdiction.
- d. The Board of Adjustment shall fix a reasonable time for the hearing of the Appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the Appeal within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

14.04.02.02 Special Exceptions - Conditions Governing Applications; Procedures. To hear and decide only such Special Exceptions as the Board of Adjustment is specifically authorized to pass on by the terms of this Ordinance; to decide such questions as are involved in determining whether Special Exceptions should be granted; and to grant Special Exceptions with such conditions and safeguards as are appropriate under this Ordinance, or to deny Special Exceptions when not in harmony with the purpose and intent of this Ordinance. A Special Exceptions shall not be granted by the Board of Adjustment unless and until:

- a. A written application for a Special Exceptions is submitted indicating the section of this Ordinance under which the Special Exception is sought and stating the grounds on which it is requested. The application shall be submitted no less than thirty (30) days prior to the Planning Commission meeting at which it is to be reviewed. The application shall be considered by the Planning Commission, which shall make a recommendation to the Board of Adjustment with regard to approval, approval with conditions or disapproval. A public hearing shall not be required before the Planning Commission. The Planning Commission's recommendation is not binding on the Board of Adjustment, it is merely advisory.
- b. Upon receipt of a recommendation from the Planning Commission, the Board of Adjustment shall schedule a meeting at which to consider the application and shall give notice at least fifteen (15) days in advance of a public hearing. The owner, or their agent, of the property for which Special Exception is sought, adjacent property owners and any other parties identified that may have interest in the Special Exception request, shall be notified by registered/certified mail. Notice of such hearings shall be posted on the property for which Special Exception is sought, at the City Hall, and in one public place at least fifteen (15) days prior to the public hearing.
- c. The public hearing shall be held at the date and time designated in the notice. Any party may appear in person, or by agent or attorney.
- d. The Board of Adjustment shall make a finding that is empowered under the section of this Ordinance described in the application to grant the Special Exception, and the granting of the Special Exception will not adversely affect the public interest.
- e. The Board shall review requests for Special Exceptions under the following criteria and relief granted only upon the concurring vote of four (4) Board members:
 1. Compliance with the Comprehensive Plan.
 2. Compliance with any other approved planning document.
 3. Compliance with the standards, goals, and intent of this Ordinance.
 4. The character of the surrounding property, including any pending development activity.
 5. Adequacy of public infrastructure to support the proposed development.

6. Impacts on natural resources, including existing conditions and ongoing post-development conditions.
 7. Compliance with other laws and regulations of the City.
 8. Compliance with other applicable laws and regulations of other jurisdictions.
 9. Impacts on adjacent property including noise, traffic, visible intrusions, potential physical impacts, and property values.
 10. Impacts on the surrounding neighborhood including noise, traffic, visible intrusions, potential physical impacts, and property values.
 11. Overall benefit to the community.
 12. Compliance with sound planning principles.
 13. Compliance with the terms and conditions of any zoning approval; and
 14. Any other matter relating to the health, safety, and welfare of the community.
- f. Limitation on resubmission. An application for the same parcel of land shall not be submitted within 365 days of the final decision of the Board of Adjustment. Any application may be withdrawn without prejudice prior to the opening of the hearing by the Board of Adjustment. All notices to withdraw shall be submitted in writing.

14.04.02.03 Variances - Conditions Governing Applications; Procedures. To authorize upon request in specific cases such Variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. A Variance from the terms of this Ordinance shall not be granted by the Board of Adjustment unless and until:

- a. A written application for a Variance is submitted demonstrating:
 1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or other buildings in the same district.
 2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
 3. That the special conditions and circumstances do not result from the actions of the applicant.
 4. That granting the Variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
 5. No non-conforming use of neighboring lands, structures, or buildings in the same district, and no prohibited/permitted or non-conforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a Variance.
- b. The application shall be submitted no less than thirty (30) days prior to the Planning Commission meeting at which it is to be reviewed. The application shall be considered by the Planning Commission, which shall make a recommendation to the Board of Adjustment with regard to approval, approval with conditions or disapproval. A public hearing shall not be required before the Planning Commission. The Planning Commission's recommendation is not binding on the Board of Adjustment, it is merely advisory.
- c. Upon receipt of a recommendation from the Planning Commission notice of public hearing shall be given as in *Section 14.04.02.02(b)* above.
- d. The public hearing shall be held as scheduled. Any party may appear in person, or by agent or by attorney.

- e. The Board of Adjustment shall make findings that the requirements of *Section 14.04.02.03(a)* have been met by the applicant prior to granting a Variance.
- f. The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the Variance, and that the Variance is the minimum Variance that will make possible the reasonable use of the land, building or structure.
- g. The Board of Adjustment shall further make a finding that the granting of the Variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 - 1. In granting any Variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the Variance is granted, shall be deemed a violation of this Ordinance and punishable under *Section 15.05* of this Ordinance.
 - 2. Under no circumstances shall the Board of Adjustment grant a Variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.
 - 3. Board has Powers of Administrative Official on Appeals; Reversing Decision of Administrative Official. In exercising the above-mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of Administrative Official from whom the appeal is taken.
 - 4. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Administrative Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance.
- h. Limitation on Resubmission. An application for the same parcel of land shall not be submitted within 365 days of the final decision of the Board of Adjustment. Any application may be withdrawn without prejudice prior to the opening of the hearing by the Board of Adjustment. All notices to withdraw shall be submitted in writing.

14.05 APPEALS FROM ACTION OF THE BOARD OF ADJUSTMENT

Any party aggrieved by any final judgment or decision of the Board of Adjustment may, within fifteen (15) days thereafter, appeal therefrom to the circuit court or court of like jurisdiction, by filing with the Board a written notice of appeal specifying the judgment or decision from which appeal is taken. In case of such appeal, the Board shall cause a transcript of the proceedings in the cause to be certified to the court to which the appeal is taken and the cause in such court be tried de novo.