

## ARTICLE 7. GENERAL PROVISIONS

### 7.01 USE

No building, structure or land shall hereafter be used or occupied, and no building or part thereof shall be erected, constructed, moved, or altered except in conformity with the regulations herein specified for the district in which it is or is to be located. It shall be the responsibility of the owner/developer to allow proof of compliance with the requirements of this Ordinance.

### 7.02 LOTS

**7.02.01** No lot, even though it may consist of one (1) or more adjacent lots of record, shall be reduced in size so that lot width or depth, front, side or rear yard, inner or outer courts, lot area per family or other requirements of this Ordinance are not maintained. This Section shall not apply when a portion of a lot is acquired for public use.

**7.02.02** All lots shall front on a public or private street and shall have a minimum frontage width as indicated in *Section 8.11*. On irregularly shaped lots, a minimum street frontage of thirty (30) feet is required and residential lots shall not front on a collector street without Planning Commission approval. An “irregularly shaped lot” includes any lot located on a cul-de-sac or abutting a curved section of a roadway with a centerline radius of less than 200 feet.

**7.02.03** Flag lots may be permitted in moderation to allow for the more efficient use of irregularly shaped parcels of land, sites with physical limitations or where the integrated nature of multiple buildings on a site dictates the need for such lots. Lots in the flag shape but meeting the zoning district’s minimum lot width requirement and street access requirements, are not considered flag lots.

**7.02.03.01** The minimum frontage at the right-of-way line and width for the “flagpole” portion of a flag lot is thirty (30) feet. The length shall be a maximum of 300 feet and is subject to the requirements of the City of Bay Minette Fire Department. Owners/applicants may be required to install fire hydrants to meet fire code standards.

**7.02.03.02** The “flagpole” driveway cannot serve more than one (1) lot or dwelling unit without Planning Commission approval.

**7.02.03.03** The “flagpole” portion of the lot shall not be considered in determining the minimum lot area, dimensions, density or building coverage.

**7.02.03.04** No more than the number of flag lots shown in the table below may be authorized in a subdivision.

Size of Subdivision	Maximum Number or Percentage of Flag Lots
15 lots or less	1
16 – 25 lots	2%
26 – 50 lots	10%
51 lots or more	20%

### 7.03 BUILDING HEIGHTS

No building shall hereafter be erected, constructed, or altered so as to exceed the height requirement specified in the regulations for the zoning district in which the development is to occur, except as otherwise provided herein.

#### 7.03.01 Height Measurements

Building height shall be measured from finished grade except where base flood elevations apply, in which case building height shall be measured from the minimum base flood elevation as established by Flood Insurance Rate Maps (FIRM).

#### 7.03.02 Height Exceptions

The height limits for the various districts shall not apply to church spires, belfries, cupolas, penthouses, or

domes not used for human habitation, nor to chimneys, ventilators, skylights, water tanks, parapet walls, cornices, radio and television transmitting and receiving antennas, or necessary mechanical appurtenances usually carried above the roof level, provided that such features are limited to that height necessary for their proper functioning.

## **7.04 YARDS**

No part of a yard or other open space required for any building for the purpose of complying with the provisions of this Ordinance shall be included as part of a yard or other open space similarly required for another building. Every part of a required yard or court shall be open from its lowest point to the sky unobstructed, except for the ordinary projection of sills, cornices, buttresses, ornamental features, chimneys, flues, and eaves, provided such projections shall not extend more than two (2) feet beyond the yard area requirements.

### **7.04.01 Yard Requirements**

Yard requirements shall be modified subject to the following conditions:

**7.04.01.01** On double frontage lots, the required front yard shall be provided on each street.

**7.04.01.02** Whenever a rear property line of a lot abuts upon an alley, one-half (½) of the alley width shall be considered as a portion of the required rear yard.

**7.04.01.03** An unroofed porch shall not project into a required front yard for a distance exceeding five (5) feet.

**7.04.01.04** On substandard lots of record, the front, side and rear setbacks may be less than required in this Ordinance; provided that, no front setback shall be less than the average setback of the existing developed lots on the same block and on the same side of the street; no side setback shall be reduced to less than five (5) feet; and no rear setback shall be reduced to less than fifteen (15) feet. The amount of reduction up to these limits shall be determined by the Building Inspector in consideration of the lot size and the size of the proposed structure. In no case shall any structure be placed on or across an existing utility or drainage easement.

**7.04.01.05** The setback requirements for side yards and/or front yards on corner lots shall not apply to any lot where the average setback on residentially developed lots located, wholly or in part, 100 feet on each side of such lot and within the same block and zoning district and fronting on the same streets as such lot, is less than the minimum required setback. In such cases, the setback on such lot may be less than the required setback, but not less than the average of the existing setbacks on the existing developed lots.

## **7.05 ONE PRINCIPAL BUILDING ON LOT**

Every residential building, including hotels, motels, condominiums, single-family and multi-family dwellings, and duplexes hereafter erected or moved shall be located on a lot, and in no case shall there be more than one (1) principal residential building on a lot except as follows:

**7.05.01** In any district where multi-family structures, motels or hotels are permitted, two (2) or more such residential structures may be permitted on a lot provided that no building shall be located closer to another building on the same lot than a distance equal to half the sum of the heights of both buildings. In Flood Hazard areas identified on the Flood Insurance Rate Maps (FIRM), the height of a building shall be measured from the floor level of the first habitable story for purposes of this Section. In addition, the front or rear of any building may be no closer to the front or rear of any other building than forty (40) feet. The side of any building shall be no closer to the side, front or rear of any other building than thirty (30) feet.

## **7.06 RESIDENTIAL USES IN BUSINESS DISTRICTS**

Residential uses established in any Business District must comply with the minimum requirements set forth in *Article 8*.

## **7.07 LOTS OF RECORD**

Where the owner of a lot of record or his successor to the title thereto does not own sufficient land to enable him to

conform to the dimensional requirements of this Ordinance, the following exceptions may be allowed:

- 7.07.01** Where a lot, tract or parcel of land has an area or width that does not conform to the requirements of the district in which it is located, said lot may be used for a single-family dwelling in any Residential District, provided the lot to be so used has a minimum area of 4,000 square feet and a minimum lot width at the building line of forty (40) feet, provided it is located on a public sewer. In Business and Industrial Districts, such lot may be used for any use permitted in the district in which it is located.
- 7.07.02** When two (2) or more adjoining and vacant lots with continuous frontage are in a single ownership at the time of application and such lots have a frontage or lot area less than is required by the use district in which they are located, such lots may be platted or re-parcelled so as to create one (1) or more lots which conform to the minimum frontage and area requirements of the use district.
- 7.07.03** Buildings or structures located on substandard lots of record may be improved provided that such improvement is not detrimental to the area, does not increase the non-conformance, or is required by other laws or Ordinances of the City of Bay Minette.

## **7.08 CORNER VISIBILITY**

In any district requiring a front yard setback, no fence, wall, shrubbery, sign, marquee or other obstruction to vision between the heights of three and one-half (3½) feet and fifteen (15) feet above street level shall be permitted within twenty (20) feet of the intersection of the right-of-way lines of two streets or railroads or of right-of-way lines of a street and a railroad. Accessory structures within twenty-five (25) feet of the rear lot line of a corner lot shall be set back the minimum front yard depth required on the side street.

## **7.09 ACCESS TO PUBLIC STREETS**

Access to public streets shall be maintained in accordance with the following requirements:

- 7.09.01** Each principal use shall be placed on a lot or parcel which provides frontage on a public or private street having a right-of-way of not less than sixty (60) feet, except where existing public rights-of-way are less than sixty (60) feet.
- 7.09.02** Any additional dwelling shall have access to a public street by means of a passageway open to the sky at least fifteen (15) feet in width.

## **7.10 FUTURE STREET**

Any lot, which at the time of adoption of this Ordinance or at the time this Ordinance is changed by amendment hereafter, which may be reduced in area by the widening of a public street to a future street line as indicated on the fully adopted Major Street Plan, or as same may be hereafter amended, the minimum required yards, the minimum required lot area, the minimum required lot width and the maximum building area shall be measured by considering the future street lines as the lot line of such lot.

## **7.11 OFF-STREET PARKING**

In each district, each structure hereafter erected or altered shall be provided with off-street parking spaces as specified in the district schedule, *Article 9*. No off-street parking space required for a building or structure shall, during its life, be occupied by or counted as off-street parking space for another building or structure but may be included in the required yard space.

## **7.12 UTILITIES**

### **7.12.01 Septic Tanks**

In areas where there are no sewerage facilities, septic tanks may be used in accordance with current regulations of the Alabama Department of Public Health.

### **7.12.02 Water and Sewer Connections**

Developments or individual lots in all districts must connect to public or private community water and sewer systems where such systems border any development or lot line or are reasonably available and the

appropriate utility has the capacity to provide the service; otherwise, lots must meet the minimum size requirements of the ADPH for on-site wells and/or septic systems. Existing private wells and septic systems that are functioning properly and meet the ADPH requirements may continue to be used.

**7.12.02.01** It is the intent of this Ordinance to eliminate by attrition all existing private wells and septic systems in areas where public or private community water and sewer systems are available. Therefore, at such time as any private well or septic system is destroyed or must be replaced, the owner must connect to the public or private community water and sewer system where such systems border any development or lot line or are reasonably available and the appropriate utility has the capacity to provide the service.

**7.12.02.02** While parked or stored, no recreational vehicle shall be occupied or used as a temporary or permanent residence as defined herein and shall not be connected to sanitary sewer.

### **7.13 SURFACE DRAINAGE**

Owners, particularly developers of larger paved areas such as those in connection with apartment complexes, shopping centers, etc., shall be responsible for increased runoff resulting from these developments which cause flood damage to neighboring property. The City Planner shall, in consultation with a Certified Engineer, determine that reasonable provisions for properly handling surface drainage have been made in the applicant's design and report these findings for the Planning Commission's consideration in acting on building applications. If such reasonable provisions are not made in the applicant's design, the Planning Commission shall make such remedies as may be available to the applicant as a condition of the building permit issuance.

### **7.14 EROSION AND SEDIMENT CONTROL**

Erosion and sediment control shall be in accordance with *Article 12*.

### **7.15 ABATEMENT OF NOISE, SMOKE, GAS, VIBRATION, FUMES, DUST, FIRE AND EXPLOSION HAZARD OR NUISANCE**

The Board of Adjustment may require the conduct of any use, conforming or non-conforming, which results in unreasonable noise, smoke, gas, vibration, fumes, dust, fire, radio interference, or explosion hazard or nuisance to surrounding property to be modified or changed to abate such hazard health, comfort, and convenience. The Board of Adjustment may direct the City Planner or City Building Official to issue an abatement order, but such order may be directed only after a public hearing by the said Board; the notice of which shall be sent by registered mail to the owners and/or operators of the property on which the use is conducted in addition to due notice of advertisement in a newspaper of general circulation. A hearing to consider issuance of an abatement order shall be held by the Board of Adjustment either upon petition signed by any person affected by the hazard or nuisance or upon the initiative of the Board. An abatement order shall be directed by the Board of Adjustment only upon reasonable evidence of hazard or nuisance and such order shall specify the date by which the hazard or nuisance shall be abated.

### **7.16 FENCING, SCREENING, LIGHTING AND SPACE**

**7.16.01** In any Commercial District, any operation not conducted within a building, such as drive-in businesses, outdoor recreation, outdoor storage of materials, and outdoor servicing activities, shall be enclosed by a wall or fence of solid appearance or tight evergreen hedge not less than six (6) feet in height where necessary to conceal such areas or facilities from a residential district adjoining or facing across a street in the rear or on the side of the principal building or use.

**7.16.02** In any district where reference is made requiring adequate screening of a specified operation, such screening shall be a wall or fence of solid appearance or tight evergreen hedge not less than six (6) feet in height.

**7.16.03** Outdoor lighting of all types shall be directed so as to reflect away from all adjacent properties and shall be so situated as not to reflect directly into any public right-of-way.

**7.16.04** All fencing, screening, lighting, space, etc., shall be in good condition and appearance. The City Planner may cause to be removed, replaced, repaired or corrected, at the owner's expense, any screening, lighting and space improperly maintained.

**7.16.05** Fencing and screening in residential districts.

- 7.16.05.01 Maximum height in a front yard is four (4) feet.
- 7.16.05.02 Maximum height in a rear or side yard is seven (7) feet.
- 7.16.05.03 Fencing and screening on corner lots must meet *Section 7.08 Corner Visibility*.
- 7.16.05.04 Fences, walls and screening shall be located within the property lines, unless express written permission is provided by adjacent property owners. Determining the location of lot lines is the responsibility of the property owner. The City will not mediate property line disputes.
- 7.16.05.05 Fences may not be located within five (5) feet of the edge of pavement or other roadway surfacing, or public sidewalk.
- 7.16.05.06 Fences may not be bermed for the purpose of increasing allowable height.
- 7.16.05.07 The following materials are prohibited for use in wall or fence installations:
  - a. Corrugated or sheet metal
  - b. Cloth, tarps, canvas or similar material
  - c. Corrugated or plastic sheeting
  - d. Plywood or similar material
  - e. Barbed wire, single-strand wire, wire mesh/grid or chicken wire along the perimeter or boundary of a property (except for agricultural uses)
  - f. Fencing charged with or designed to be charged with electrical current
  - g. Other materials not manufactured for or typically used for fences, walls or screening

**7.17 EXISTING COVENANTS**

Where subdivisions, lots, or parcels exist which have already been recorded or which will be recorded with deed restrictions or other such restrictive covenants, such restrictions and covenants shall apply if they are more stringent than the requirements of this Ordinance; otherwise, the requirements of this Ordinance shall apply. It is the responsibility of the property owner and/or authorized agent to ensure compliance with any and all applicable deed restrictions or restrictive covenants prior to submitting an application to the Planning & Development Services Department.

**7.18 NONCONFORMANCE**

It is the intent of this Ordinance to recognize that the elimination of existing buildings and structures or uses that are not in conformance with the provisions of this Ordinance is as much a subject of health, safety and general welfare as is the prevention of the establishment of new uses that would violate the provisions of this Ordinance. It is the intent of this Ordinance to administer the elimination of nonconforming uses, buildings, and structures so as to avoid any unreasonable invasion of established private property rights. Any structure or use of land existing at the time of the enactment of this Ordinance and amendments thereto, not in conformity with its use regulations and provisions, may be continued subject to the following provisions:

**7.18.01 Unsafe Structures**

Any structure or portion thereof declared unsafe by any authority shall be restored to a safe condition subject to the provisions of this Ordinance.

**7.18.02 Alterations**

Any change in a non-conforming building site or yard area is subject to the following:

- 7.18.02.01 Any improvements, alterations, repairs or installation of new fixtures or equipment for an existing non-conforming structure may be accomplished by the owner of the structure upon obtaining the proper permits or applications from the City Planner and Building Official, provided that such improvements will bring into conformity, if possible, or that it will at least not increase, unnecessarily, the non-conformity and will in all other respects, meet the requirements of the district in which it is located.

**7.18.02.02** Should a non-conforming building be moved; all non-conforming yard areas shall be eliminated.

**7.18.02.03** A non-conforming use of land shall be restricted to the lot occupied by such use as of the effective date of this Ordinance. A non-conforming use of a building or buildings shall not be extended to include either additional buildings or land after the effective date of this Ordinance.

**7.18.02.04** If a non-conforming structure is hereafter destroyed or damaged by any cause, and the cost of reconstruction or repair of the structure does not exceed fifty percent (50%) of the fair market value of the structure prior to sustaining damage, the structure may be repaired and restored to a condition comparable to its nonconforming condition prior to sustaining damage; provided that such repairing, rebuilding or replacement will bring it into conformity, if possible, or that it will at least not increase, unnecessarily, the non-conformity, and will, in all other respects, meet the requirements of the district in which it is located.

**7.18.03 Change in Use**

A non-conforming use which is changed to a conforming use shall not be permitted to revert to the original or a less restrictive use.

**7.18.04 Discontinuance**

A non-conforming use which became such upon the adoption of this Ordinance and which has been discontinued for a continuous period of nine (9) months shall not be re-established and any future use shall be in conformity with the provisions of this Ordinance.

**7.18.05 Adjacent Land**

The presence of a non-conforming use in a zoning district shall not be allowable as legal grounds for the granting of variances or zoning amendments for other surrounding properties by the Board of Adjustment or the City Council.

**7.18.06 Uses Under Special Exception Provisions Not Non-Conforming Uses**

Any use which is permitted as a Special Exception in a district under the terms of this Ordinance (other than a change through Board of Adjustment action from a non-conforming use to another use not generally permitted in the district), shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.

**7.19 GRANDFATHER CLAUSE**

Any use of buildings or land existing on the date of adoption of this Ordinance and not in compliance with its provisions shall be allowed to continue as a nonconforming use. Any land development projects within the territorial and legal authority of this Ordinance, that are not located in a district designated for the intended use, may be permitted to continue provided that:

**7.19.01** The project was under construction prior to the date of adoption of this Ordinance. For the purposes of this Section, under construction shall mean that a legal building or construction permit has been issued and that actual construction has been or will be started within the initial period of validity of the permit, exclusive of any time extensions, or that a permit application has been submitted to the ADEM.

**7.19.02** The project complies in other aspects with the requirements of this Ordinance for districts in which similar uses are permitted.

**7.19.03** Other conditions may be required by the City of Bay Minette due to the unique circumstances of the land.