MADEIRA CITY COUNCIL
PUBLIC HEARING
SEPTEMBER 25, 2017

ORDINANCE NO. 17-10 AMENDING MADEIRA CODE SECTIONS 31.05, 31.24, 150.05, 150.09, 150.12, 150.16, 150.17, 150.23, 150.24, 150.25, 150.26, 150.29, 150.30, 150.34, 150.35, 150.37, 150.38, 150.39, 150.40, 150.41, 150.42, 151.022, 151.125, 151.126, 151.127, 152.12, 153.26, 154.01, 158.02, 159.03, 159.12, 159.23, 159.26, 160.009, 160.027, 160.065, 160.066, 160.067, 160.068, 160.069, 160.070, 161.04, 161.09, 164.04, 164.14, 166.06, 167.06, AND ADOPTING CHAPTER 168 TO TITLE XV OF THE MADEIRA CODE OF ORDINANCES – THIRD READING

AGENDA
7:30 PM

I. CALL TO ORDER

II. ROLL CALL

III. NOTICE OF PUBLIC HEARING READ

IV. PRESENTATION BY PETITIONER

V. COMMENTS/QUESTIONS FROM AUDIENCE

VI. COMMENTS/QUESTIONS FROM COUNCIL

VII. PUBLIC HEARING CLOSED

ORDINANCE NO. 17-10

AMENDING MADEIRA CODE SECTIONS 31.05, 31.24, 150.05, 150.09, 150.12, 150.16, 150.17, 150.23, 150.24, 150.25, 150.26, 150.29, 150.30, 150.34, 150.35, 150.37, 150.38, 150.39, 150.40, 150.41, 150.42, 151.022, 151.125, 151.126, 151.127, 152.12, 153.26, 154.01, 158.02, 159.03, 159.12, 159.23, 159.26, 160.009, 160.027, 160.065, 160.066, 160.067, 160.068, 160.069, 160.070, 161.04, 161.09, 164.04, 164.14, 166.06, 167.06, AND ADOPTING CHAPTER 168 TO TITLE XV OF THE MADEIRA CODE OF ORDINANCES

WHEREAS, from time to time, City officials are temporarily absent from office, and it is necessary to designate persons to perform the functions and duties of the same;

WHEREAS, the Council for the City of Madeira desires to amend Section 31.24 of the Code of Ordinances to create more clarity regarding the process for designating persons to perform the functions of a temporarily absent City official;

WHEREAS, the Planning Commission held a Public Hearing on November 21, 2016 in accordance with the Charter, and recommended to Council certain amendments to the zoning code pertaining to setbacks, accessory structures, lot requirements, balconies, decks, landings, and stoops;

WHEREAS, on May 2, 2017, the electors for the City of Madeira adopted certain amendments to the City Charter creating a Board of Zoning Appeals, and modifying the role and responsibilities of the Planning Commission;

WHEREAS, Title XV of the City of Madeira Code of Ordinances does not currently reference or account for a Board of Zoning Appeals;

WHEREAS, it is necessary to amend certain sections of Title XV of the City of Madeira Code of Ordinances to modify the role and duties of the Planning Commission, and shift certain duties to the newly created Board of Zoning Appeals, consistent with the Charter; and

WHEREAS, the Council for the City of Madeira desires adopt legislation revising and updating the aforementioned sections of the City of Madeira Code of Ordinances.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

Section 1. That the City of Madeira hereby amends **Section 31.05** of the Code of Ordinances as set forth in **Exhibit A** attached hereto and incorporated herein by reference.

Section 2. That the City of Madeira hereby amends **Section 31.24** of the Code of Ordinances as set forth in **Exhibit B** attached hereto and incorporated herein by reference.

Section 3. That the City of Madeira hereby amends **Section 150.05** of the Code of Ordinances as set forth in **Exhibit C** attached hereto and incorporated herein by reference.

Section 4. That the City of Madeira hereby amends **Section 150.09** of the Code of Ordinances as set forth in **Exhibit D** attached hereto and incorporated herein by reference.

Section 5. That the City of Madeira hereby amends **Section 150.12** of the Code of Ordinances as set forth in **Exhibit E** attached hereto and incorporated herein by reference.

Section 6. That the City of Madeira hereby amends **Section 150.16** of the Code of Ordinances as set forth in **Exhibit F** attached hereto and incorporated herein by reference.

Section 7. That the City of Madeira hereby amends **Section 150.17** of the Code of Ordinances as set forth in **Exhibit G** attached hereto and incorporated herein by reference.

Section 8. That the City of Madeira hereby amends **Section 150.23** of the Code of Ordinances as set forth in **Exhibit H** attached hereto and incorporated herein by reference.

Section 9. That the City of Madeira hereby amends **Section 150.24** of the Code of Ordinances as set forth in **Exhibit I** attached hereto and incorporated herein by reference.

Section 10. That the City of Madeira hereby amends **Section 150.25** of the Code of Ordinances as set forth in **Exhibit J** attached hereto and incorporated herein by reference.

Section 11. That the City of Madeira hereby amends **Section 150.26** of the Code of Ordinances as set forth in **Exhibit K** attached hereto and incorporated herein by reference.

Section 12. That the City of Madeira hereby amends **Section 150.29** of the Code of Ordinances as set forth in **Exhibit L** attached hereto and incorporated herein by reference.

Section 13. That the City of Madeira hereby amends **Section 150.30** of the Code of Ordinances as set forth in **Exhibit M** attached hereto and incorporated herein by reference.

Section 14. That the City of Madeira hereby amends **Section 150.34** of the Code of Ordinances as set forth in **Exhibit N** attached hereto and incorporated herein by reference.

Section 15. That the City of Madeira hereby amends **Section 150.35** of the Code of Ordinances as set forth in **Exhibit O** attached hereto and incorporated herein by reference.

Section 16. That the City of Madeira hereby amends **Section 150.37** of the Code of Ordinances as set forth in **Exhibit P** attached hereto and incorporated herein by reference.

Section 17. That the City of Madeira hereby amends **Section 150.38** of the Code of Ordinances as set forth in **Exhibit Q** attached hereto and incorporated herein by reference.

Section 18. That the City of Madeira hereby amends **Section 150.39** of the Code of Ordinances as set forth in **Exhibit R** attached hereto and incorporated herein by reference.

Section 19. That the City of Madeira hereby amends **Section 150.40** of the Code of Ordinances as set forth in **Exhibit S** attached hereto and incorporated herein by reference.

Section 20. That the City of Madeira hereby amends **Section 150.41** of the Code of Ordinances as set forth in **Exhibit T** attached hereto and incorporated herein by reference.

Section 21. That the City of Madeira hereby amends **Section 150.42** of the Code of Ordinances as set forth in **Exhibit U** attached hereto and incorporated herein by reference.

Section 22. That the City of Madeira hereby amends **Section 151.022** of the Code of Ordinances as set forth in **Exhibit V** attached hereto and incorporated herein by reference.

Section 23. That the City of Madeira hereby amends **Section 151.125** of the Code of Ordinances as set forth in **Exhibit W** attached hereto and incorporated herein by reference.

Section 24. That the City of Madeira hereby amends **Section 151.126** of the Code of Ordinances as set forth in **Exhibit X** attached hereto and incorporated herein by reference.

Section 25. That the City of Madeira hereby amends **Section 151.127** of the Code of Ordinances as set forth in **Exhibit Y** attached hereto and incorporated herein by reference.

Section 26. That the City of Madeira hereby amends **Section 152.12** of the Code of Ordinances as set forth in **Exhibit Z** attached hereto and incorporated herein by reference.

Section 27. That the City of Madeira hereby amends **Section 153.26** of the Code of Ordinances as set forth in **Exhibit AA** attached hereto and incorporated herein by reference.

Section 28. That the City of Madeira hereby amends **Section 154.01** of the Code of Ordinances as set forth in **Exhibit BB** attached hereto and incorporated herein by reference.

Section 29. That the City of Madeira hereby amends **Section 158.02** of the Code of Ordinances as set forth in **Exhibit CC** attached hereto and incorporated herein by reference.

Section 30. That the City of Madeira hereby amends **Section 159.03** of the Code of Ordinances as set forth in **Exhibit DD** attached hereto and incorporated herein by reference.

Section 31. That the City of Madeira hereby amends **Section 159.12** of the Code of Ordinances as set forth in **Exhibit EE** attached hereto and incorporated herein by reference.

Section 32. That the City of Madeira hereby amends **Section 159.23** of the Code of Ordinances as set forth in **Exhibit FF** attached hereto and incorporated herein by reference.

Section 33. That the City of Madeira hereby amends **Section 159.26** of the Code of Ordinances as set forth in **Exhibit GG** attached hereto and incorporated herein by reference.

Section 34. That the City of Madeira hereby amends the definition for "accessory structure" in **Section 160.009** of the Code of Ordinances as set forth in **Exhibit HH** attached hereto and incorporated herein by reference.

Section 35. That the City of Madeira hereby amends **Section 160.027** of the Code of Ordinances as set forth in **Exhibit II** attached hereto and incorporated herein by reference.

Section 36. That the City of Madeira hereby amends **Section 160.065** of the Code of Ordinances as set forth in **Exhibit JJ** attached hereto and incorporated herein by reference.

Section 37. That the City of Madeira hereby amends **Section 160.066** of the Code of Ordinances as set forth in **Exhibit KK** attached hereto and incorporated herein by reference.

Section 38. That the City of Madeira hereby amends **Section 160.067** of the Code of Ordinances as set forth in **Exhibit LL** attached hereto and incorporated herein by reference.

Section 39. That the City of Madeira hereby amends **Section 160.068** of the Code of Ordinances as set forth in **Exhibit MM** attached hereto and incorporated herein by reference.

Section 40. That the City of Madeira hereby amends **Section 160.069** of the Code of Ordinances as set forth in **Exhibit NN** attached hereto and incorporated herein by reference.

Section 41. That the City of Madeira hereby amends **Section 160.070** of the Code of Ordinances as set forth in **Exhibit OO** attached hereto and incorporated herein by reference.

Section 42. That the City of Madeira hereby amends **Section 161.04** of the Code of Ordinances as set forth in **Exhibit PP** attached hereto and incorporated herein by reference.

Section 43. That the City of Madeira hereby amends **Section 161.09** of the Code of Ordinances as set forth in **Exhibit QQ** attached hereto and incorporated herein by reference.

Section 44. That the City of Madeira hereby amends **Section 164.04** of the Code of Ordinances as set forth in **Exhibit RR** attached hereto and incorporated herein by reference.

Section 45. That the City of Madeira hereby amends **Section 164.14** of the Code of Ordinances as set forth in **Exhibit SS** attached hereto and incorporated herein by reference.

Section 46. That the City of Madeira hereby amends **Section 166.06** of the Code of Ordinances as set forth in **Exhibit TT** attached hereto and incorporated herein by reference.

Section 47. That the City of Madeira hereby amends **Section 167.06** of the Code of Ordinances as set forth in **Exhibit UU** attached hereto and incorporated herein by reference.

Section 48. That the City of Madeira hereby adopts **Chapter 168**, "Board of Zoning Appeals," to the Code of Ordinances as set forth in **Exhibit VV** attached hereto and incorporated herein by reference.

Section 49. That all other Sections of the Code of Ordinances not specifically revised herein shall remain in full force and effect.

Section 50. That this Ordinance is adopted in accordance with the Charter of the City of Madeira and all amendments to the Code of Ordinances as shown in Exhibits A through PP shall become effective 180 days after its passage.

PASSED ON THE ___ DAY OF _____, 2017

BY THE FOLLOWING _____ VOTE:

YEA:	NAY:	ABSTAIN:	ABSENT:
Melisa Adrien			
Traci Theis			
Tom Ashmore			
Chris Hilberg			
Nancy Spencer			
Scott Gehring			
Mike Steur			

_____

Melisa Adrien, Mayor

_____

Christine Doyle, Clerk of Council

CERTIFICATE

The undersigned, Clerk of Council of the City of Madeira, hereby certifies this to be a true and exact copy of Ordinance No.17-10, adopted by the Council of the City of Madeira on _____, 2017.

_____

Clerk of Council

§ 31.05 INTENTIONALLY DELETED.

§ 31.24 TEMPORARY ABSENCE FROM OFFICE.

(A) *Purpose*. The purpose of this section is to provide for the continuity of governmental functions when either the Clerk or Manager of the city is temporarily absent from office. The intent of this section is to provide a mechanism that will allow designated persons to perform the functions of the Clerk or Manager in a manner that is consistent with the City Charter and which clarifies the responsibility for actions taken when either the City Manager or the Clerk is not available.

(B) *Manager*.

(1) The Manager, in accordance with § 2, Art. IV of the Charter, may by letter filed with the Clerk, designate a qualified person, subject to the approval of Council, to perform the duties of Manager during his or her temporary absence from office. If the Manager does not designate a person or designates a person or persons other than those approved consistent with this section, then the Council may either approve the alternative appointment or appoint a qualified person to perform the duties of the Manager until the Manager returns or the disability ends.

(2) While it is not the intent of this section to, in any away, limit the Charter authority of the City Manager to designate any qualified person, Council hereby approves the appointment of the Chief of Police and the City Tax Commissioner, if so designated by the Manager, during the Manager's temporary absence from office, subject to the following limitations and guidelines.

(a) Copies of the required letter of designation which is filed with the Clerk shall be concurrently delivered to all Council members. A letter shall be deemed delivered when posted in the Clerk's and each Council member's mailbox in the Municipal Building. Additional telephonic notice is recommended but not required. Such letter shall provide that the Chief of Police and the Tax Commissioner are designated to perform the duties of the City Manager during his or her temporary absence or disability and he or she shall perform the duties in accordance with the guidelines and limitations set forth in this section. If the letter of designation authorizes any deviation from this section, then Council must consider by separate action whether it so approves.

(b) The letter of designation shall limit authority of designees to perform only such duties as are essential and which duties or actions cannot be reasonably deferred until the return of the Manager. The Tax Commissioner shall be designated as the responsible person for signing checks and approving purchase orders during the Manager's absence. All other duties and decisions of the City Manager shall be performed by the Chief of Police.

(c) The letter of designation shall withhold authority of the Tax Commissioner to approve expenditures or sign checks unless such action has been specifically authorized in said letter or is

deemed essential for the preservation of the health, safety and welfare of the community and its citizens or employees of the city by both the Tax Commissioner and the Chief of Police.

(d) The designees shall maintain a file or a log of all actions taken in the performance of the duties of the City Manager as well as those matters specifically deferred until the return of the Manager. The designees may consult with other public officials and advise Council members or request Council action as the designees deem appropriate.

(3) The Manager shall review all actions taken on his or her behalf. The Manager is hereby authorized to ratify and affirm any action of any public official if it is determined that it was the City Manager's responsibility or duty. Such ratification and affirmation shall be in writing and shall validate the action as if the City Manager had acted in the first instance. Any such ratification and affirmation shall be reported to Council without undue delay. However, it is not the intent of this section to require that the City Manager ratify or affirm any specific action taken by any public official if the action is deemed inappropriate or illegal.

(C) *Clerk*.

(1) Council recognizes that the Charter makes no specific provisions for the transfer of the duties of the Clerk when the Clerk is temporarily absent from office or disabled.

(2) Subject to the provisions and limitations set forth here, Council hereby designates the Assistant to the Clerk to perform certain duties if the Clerk is temporarily absent from office or is deemed disabled. The Clerk shall be considered temporarily absent from office during such times as notification is provided to the City Manager and/or the Mayor. Council may also designate the Clerk as temporarily absent from office or disabled if it has received reasonable information that permits Council to make that determination. In such event, Council hereby designates the Assistant to the Clerk as the Acting Clerk to perform such duties as are necessary to maintain continuity of the performance of the duties required to be performed by the Clerk.

(3) Upon the return of office by the Clerk, the Clerk shall review all actions taken on his or her behalf by the Acting Clerk. The Clerk is hereby authorized to ratify and affirm any action of any public official if it is determined that it was the Clerk's responsibility or duty. Such ratification and affirmation shall be in writing and shall validate the action as if the Clerk had acted in the first instance. Any such ratification and affirmation shall be reported to Council without undo delay. However, it is not the intent of this action to require the Clerk to ratify or affirm any specific action taken by any public official including the Acting Clerk, if the action is deemed inappropriate or illegal.
(1985 Code, § 31.14) (Ord. 91-93, passed 12-2-1991; Ord. 96-09, passed 2-26-1996)

§ 150.05 CONVERSION OF EXISTING ACCESSORY BUILDINGS.

(A) *Purpose*. There are three primary purposes for authorizing certain existing accessory buildings to be converted to permit habitation that is accessory and incidental to the habitation of the principal dwelling.

(1) The limited conversion of existing accessory buildings for habitation is intended to enable an extension of the residential use of a lot that is compatible with existing residence district uses. This means that the habitation of an existing accessory building is intended and shall be limited to uses that are incidental and accessory to the occupation of the principal building for residential purposes. Furthermore, this means that a property owner who chooses to extend the habitation to an existing accessory building shall not permit the occupation of such building unless it is consistent with one or more of the limited uses set forth in this section. ***CONVERSION***, as used in this section, does not mean or require that an applicant prove that a portion of the existing accessory building is actually used or has been used for habitation previously.

(2) The conversion of certain existing accessory buildings is intended to slow the assemblage of existing parcels for subdivision development and thus slow the acceleration of increased density within residential districts. This purpose is consistent with maintaining existing green space in residential districts.

(3) Permitting the extension of habitation to certain existing accessory buildings will provide an incentive to preserve some of the historical aspects of the city. In lieu of the removal and/or replacement, immediate neighbors can benefit by the continuity of buildings that reflect and maintain the historical fabric of the community. As used in this section ***HISTORICAL ASPECTS*** and ***HISTORICAL FABRIC*** are intended to mean the reasonable preservation of the exterior appearance of the accessory building. The terms are not intended to be a total prohibition from replacing siding, painting, replacing windows or roofing. However, any expansion of the volume of the building, as measured by the exterior walls shall not be considered consistent with this historical purpose, nor shall such expansion be permitted as part of any requested conversion.

(B) *Conversion of existing accessory buildings.* Existing accessory buildings may be converted to use primarily for habitation as a dwelling on the condition that all the criteria set forth below are met, as determined by the Board of Zoning Appeals, after a public hearing, which shall be advertised and noticed in the same manner as requests for variances. The conditions imposed by this section are crucial, necessary and designed to protect the fundamental single-family residential nature of the city and in furtherance of the aforesaid purposes. As mandated in the City Charter, the Board of Zoning Appeals is not authorized to grant a variance in any cases in which the deviation from an existing zoning ordinance is so substantial that it is equivalent to a change in the zoning district. It is hereby determined that any relaxation of the conditions or any deviation from the terms set forth herein is contrary to the spirit and

intent of this section and shall be deemed a use variance equivalent to a zoning change. The conditions are as follows:

(1) The accessory building to be converted was constructed prior to 1959.

(2) The conversion must not alter the exterior of the building in such a manner that will make its appearance either incompatible with the principal building or detract from any historical significance identified with the existing accessory building, nor shall the conversion expand the existing envelope or footprint of the building.

(3) The conversion of the existing accessory building shall be intended to provide use of the accessory building that is subservient and incidental to the residential use of the principal dwelling. The occupant(s) of the converted accessory building shall provide services to promote and sustain the residential use of the principal dwelling by its occupants. Such valid uses shall include but not be limited to childcare for children living on the premises, maintenance of yard and improvements on the lot, temporary occupation by guests and assisted-living care. The converted accessory building shall not be used as a rental unit, business or home occupation, pool house or party room.

(4) The applicant shall provide on its application historical information regarding the lot and buildings and describe how conversion will help sustain those existing historical elements of the property. The Board of Zoning Appeals shall review and condition any approval on continued preservation of historical features of the accessory building so identified. However, the Board of Zoning Appeals shall not impose requirements that require significant changes to the exterior of the accessory building.

(5) The intended conversion of the existing accessory building shall not reduce the number or square footage of pre-existing enclosed parking areas for motor vehicles.

(6) The owners (as listed on the County Auditor's records) of the lot and any occupants (other than minors) of the principal and accessory unit shall provide to the city by delivery to the City Manager, with the initial application and, thereafter, on an annual basis, an affidavit confirming that the use of the converted accessory building remains in conformity to the requirements of this section. The city shall provide the form of the affidavit to the property owners who shall complete and return it within 30 days of receipt.

(7) The owner(s) of the lot who applies for the conversion of the accessory building shall include with the application a statement recognizing that, if approved, the use of the converted accessory building is limited and if it is not used for a permitted use, it shall remain uninhabited. This shall be in the form of an affidavit filed with the application and reaffirmed on an annual basis in the affidavit required by division (B)(6) above.

(8) The existing accessory building shall meet the existing setback, area coverage of building and height limitations applicable to other accessory buildings within the particular zoning district. Additionally, the lot on which the accessory building is located must meet the minimum area requirements of a lot for the zoning district within which it is located.

(9) The lot at all times must be in compliance with federal, state and local laws, and conform to, and demonstrate compliance with utility regulations. The owners of the lot shall ensure that the accessory building and the principal building shall be serviced by the same utility meter and not by separate meters.

(10) No separate mailing address or identification of either the principal building or the accessory building as an apartment unit, or any other category or subcategory shall be utilized for postal services or deliveries. There shall not be separate mailboxes or mail slots or other devices, signs or directions for delivery of mail to more than a single container, device or location on the lot or adjacent public right-of-way.

(11) The owner(s) of the lot who applies for the conversion of an accessory building, if approved, and who subsequently sells the property, shall note the restrictions contained in this section in the Residential Property Disclosure Form required pursuant to R.C. § 5302.30. Such notation shall be in paragraph 2 of Section K on page 3 of the form and shall state as follows: "Property is subject to the City of Madeira Code of Ordinances § 150.05."

(C) *No additional accessory buildings*. Approval of the conversion of an accessory building for dwelling purposes shall not be construed to permit or create the right to any additional accessory buildings.

(D) *Penalties*. In the event that the owner(s) or occupant(s) of a lot violates any provisions of the section, including but not limited to failing to submit an affidavit required under division (B)(6) above, misrepresents the activities on the affidavit or submits an affidavit that does not meet the requirements of this section, or fails to notify the purchaser of the property of the restrictions contained in this section as provided in division B(11) above, the owner(s) or occupant(s) shall be subject to all civil or criminal penalties provided in §§ 150.32 and 150.99 of this code.
(1985 Code, § 150.041) (Ord. 07-34, passed 11-12-2007) Penalty, see § 150.99

§ 150.09 RESIDENCE "AAA" DISTRICT USES.

(A) *Purpose*. It is the primary purpose of the Residence "AAA" District to establish and maintain an area for high quality single-family detached homes with a relatively low population and building density. A secondary purpose is to permit specifically identified institutional uses that are determined to be compatible with single-family district uses, but only if certain conditions and restrictions are met.

(B) *Primary permitted use*. The primary permitted uses of land in this district are for one single-family residential dwelling unit per lot, or for vacant unimproved land.

(1) A ***SINGLE-FAMILY DWELLING UNIT*** shall mean a building designed exclusively for the occupancy by one non-transient family or housekeeping unit. ***DWELLING*** shall mean a building designed exclusively to be used for residential purposes, but not including a tent, cabin, trailer, trailer coach, recreational vehicle or camper on a truck.

(2) ***FAMILY*** shall mean a person living alone, or two or more persons customarily living together as a single housekeeping unit and using common cooking facilities, but shall not include a group occupying a hotel, club, boarding or lodging house, motel, sorority house, fraternity house or group home.

(3) The dimensional requirements for single-family "AAA" District Uses are set forth in § 150.29.

(C) *Permitted accessory uses for single-family dwellings.* Accessory uses, buildings or other structures customarily incidental to the use of a lot for single-family dwelling purposes may be established, erected or constructed, provided that such accessory uses shall not involve the conduct of any business, trade or industry or any private way or walk giving access to such activity, or any billboard, sign or poster other than authorized herein. Permitted accessory uses for single-family dwellings and lots are limited to the following:

(1) *Gardening and pets.* Gardening, hobby greenhouses, the raising of vegetables or fruits and the keeping of household pets exclusively for the use or personal enjoyment of residents of the dwelling and not for commercial purposes shall be permitted subject to any setback or other limitations imposed within this Zoning Code or the Building Code of the city;

(2) *Parking facilities.* Garages, carports or other parking spaces for the exclusive use of residents of the dwelling and their guests, subject to the rules and regulations of this section;

(3) S*wimming pools.* Swimming pools, exclusively for the use of the residents of the dwelling and their guests, and subject to the provisions of the applicable Building Code. Water surface area of

swimming pools shall not be included in lot coverage calculations conducted for the maximum lot coverage set out in Table 5.1 of § 150.29;

(4) *Signs.* All signs allowed in a residential district are subject to the provisions of Chapter 159;

(5) *Home occupations.* Home occupations shall be subject to the provisions in § 150.12;

(6) *Accessory buildings and structures.* Accessory buildings and structures customarily incidental to any use permitted in this district and located on the same lot with the dwelling to which they are accessory shall be permitted provided that they comply with the following.

(a) *Purpose*. The purpose of the regulations under this division is to control the size and number of all accessory buildings or structures located on lots in residential districts, and to eliminate conditions which may be detrimental to the residential character and property values of real estate located in such residential districts. No accessory buildings or structures shall be permitted in residential districts except as explicitly set forth herein.

(b) *Accessory building or structure defined*. An ***ACCESSORY BUILDING OR STRUCTURE*** is any permanent building or structure which: (i) is subordinate to and serves a principal building; (ii) is subordinate in area and extent to the principal structure served; (iii) contributes to the comfort, convenience or necessity of the occupants, business or industry of the principal structure served; and (iv) is located on the same lot as the principal structure, except as otherwise expressly authorized by the provisions of this Zoning Code. Accessory buildings or structures include, but are not limited to, the following: detached garages, carports, decks, gazebos, ~~pergolas~~ and sheds.

(c) *Limits and regulations*. Accessory buildings and structures shall be related, subordinate and customarily incidental to the use of the principal building or structure located on the same lot. They shall have the same ownership as the principal building or structure located on the same lot and shall only service the needs of the occupants of the principal building or structure located on the same lot. No accessory buildings, uses, or structures in a residential district shall include any business activity unless specifically permitted and regulated by express provision of the Zoning Code.

1. *Location*. Accessory buildings and structures shall be located only in a side or a rear yard, and shall be located a minimum of three feet from side and rear lot lines; except that in a case of lots occupied by a country club, swimming club, tennis club, or the like, accessory buildings and structures shall be located a minimum of 100 feet from every property line of such club.

2. *Height*.

a. *Residence AAA, AA, A and A2*. Accessory buildings and structures shall not exceed a maximum height of 20 feet from grade as regulated in § 150.29(D).

b. *Residence B*. Accessory buildings and structures shall not exceed a maximum height of 15 feet from grade as regulated in § 150.29(D).

3. *Maximum square footage*. The combined square footage for all accessory buildings and accessory structures located on the same lot shall not exceed the square footage as shown in the table below (for overall maximum lot coverage refer to § 150.29):

Zoning District	***Maximum Square Footage***
AAA	800 sq. ft.
AA	800 sq. ft.
A-2	600 sq. ft.
A	600 sq. ft.
B	160 sq. ft.

~~4. *Permit process*. No person shall construct, expand, or reconstruct any accessory building or structure regulated by this zoning code without first obtaining a zoning certificate from the City Manager certifying compliance with these provisions. If the City Manager determines that the proposed structure does not comply with the zoning code, then the applicant may appeal the decision to the Board of Zoning Appeals.~~

(d) *Structures for Children's Play or Which Contain Pets or Animals.* Playsets, treehouses, dog houses/runs, chicken coops, or other structures used for play or to contain pets or animals shall not be located in a front yard, and must conform to setback requirements of the relevant district.

(7) *Permit process*. No person shall construct, expand or reconstruct any accessory building or structure regulated by this Zoning Code without first obtaining a zoning certificate from the City Manager certifying compliance with these provisions. If the City Manager determines that the proposed structure does not comply with the zoning code, then the applicant may appeal the decision to the Board of Zoning Appeals.

(D) *Secondary permitted uses*. Secondary permitted uses for this district are the conditional uses authorized by § 150.13, upon application and approval by the Planning Commission set forth therein pursuant to the standards and conditions.

(E) *Recreational vehicles*. Motor homes, automobile trailers, house trailers, motorcycle trailers, boat trailers, boats, camping trailers, campers and similar units, whether truck- or chassis-mounted or

unmounted, shall be permitted on any of the premises of this District, but may not be occupied for residence, business, demonstration or any other purposes.

(1985 Code, § 150.08) (Ord. 1084, passed 1-17-1972; Ord. 87-02, passed 2-2-1987; Ord. 88-44, passed 11-7-1988; Ord. 88-45, passed 11-7-1988; Ord. 88-58, passed 1-25-1989; Ord. 94-52, passed 1-22-1996; Ord. 02-40, passed 1-13-2003; Ord. 05-06, passed 3-28-2005; Ord. 13-10 passed 3-11-2013)

§ 150.12 HOME OFFICES IN RESIDENTIAL DISTRICTS.

(A) The use of dwellings in residential districts for businesses shall not be permitted unless specifically authorized by this section. Home offices in residential dwellings will have a deleterious effect on the enjoyment of property for residential purposes unless the activity is strictly limited, regulated and enforced. The activity is intended to be regulated in a manner that conceals it from adjoining properties and does not permit a business or activity that intrudes on the enjoyment of other residential dwellings in the area. Specifically, increased vehicular or pedestrian traffic, exterior lighting, expanded parking surfaces, outside storage, retail sales or any such use which creates dust, noise or offensive odors are intended to be prohibited by this section if those activities are connected with the home office(s). On the other hand, it is recognized that many types of home offices are an integral part of residential activities. Home offices which do not generate the inappropriate secondary effects stated above are not intended to be discouraged. However, unless the home office(s) is specifically identified in division (B) of this section, and the activity is consistent with the conditions in division (C) of this section, the home office(s) shall be prohibited unless a variance is granted by the Board of Zoning Appeals after the determination that the proposed home office use meets the conditions provided in division (C) of this section.

(B) Home offices are permitted for the following type of occupations:

(1) Financial planner;

(2) Software designer;

(3) Personal trainer;

(4) Counselor;

(5) Manufacturers/sales representatives;

(6) Insurance agents;

(7) Realtors;

(8) Accountants;

(9) Teachers;

(10) Attorneys;

(11) Architects;

(12) Secretarial services;

(13) Food preparation for catering service;

(14) Artists and crafts;

(15) Brokers;

(16) Writers;

(17) Childcare consistent with Class B childcare;

(18) Photographer; and

(19) Other similar occupations that are consistent with these guidelines established herein, as demonstrated by the applicant, and have been approved by the Planning Commission.

(C) A home office, even as it is set forth in division (B) of this section shall not be permitted unless it complies with all of the following conditions:

(1) Members of the immediate family residing within the residence and one nonresident may work, practice or assist in such office(s) or occupation(s), but, in no case may more than two residents of the actual home where the home office is occurring (whether or not one is the employee of the other) work, practice or assist in the office or occupation;

(2) Any such office or occupation must be conducted wholly within a space not exceeding 20% of the floor area of one story of that residence;

(3) The residential character of the exterior of the property shall not be changed, nor shall any structural alterations or construction features be made or used which are not customary in dwellings, and no display or sign pertaining to such use shall be visible from any street;

(4) The number of vehicles attracted to the premises, or to a street in the immediate vicinity of the premises, as a result of the home office(s), shall not exceed two at any one time, including the nonresident employee, but excluding delivery vehicles temporarily stopped for purposes of pick-up or delivery, and not more than four persons, excluding residents of a dwelling, may enter such dwelling as patrons, clients or otherwise attracted to the premises as a result of the home office(s) in a single day, and not more than 20 such persons in a single week. Any entrance to any office or area of any home

office(s) shall be from within the dwelling;

(5) No merchandise, product or commodity may be sold on the premises;

(6) No bulk storage of merchandise, products, commodities or equipment is permitted, nor shall any vehicle connected with the office(s), other than up to two passenger vehicles, be parked on the premises;

(7) Any device equipping the office or occupation shall be only of the type normally used or found in a single-family dwelling, and no mechanical equipment shall be used which creates any dust, noise, odor, light, glare, vibration or electrical disturbance beyond the lot; and

(8) Multiple offices or occupations are permitted, provided that the aggregate impact or effect complies with all the regulations herein.

(D) ***PROHIBITED HOME OFFICES*** include but are not limited to activities such as a barber or beauty shop, shoe repair, automotive repair, motorcycle repair, lawnmower repair, heavy equipment repair, commercial breeding, raising or selling of animals or any similar activities.
(1985 Code, § 150.101) (Ord. 02-40, passed 1-13-2003)

§ 150.16 OUTDOOR DINING REGULATIONS

(A) *Purpose*. The purpose of this section is to permit, subject to certain guidelines and standards, outdoor dining as an accessory use to buildings occupied by a business that serves food or drink for on-premises consumption.

(B) *Definitions*. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ENCROACHMENT. Stands, tables, umbrellas, chairs, displays, signs, banners, flags, objects related to the business or other items of private property placed on sidewalks or other areas of the public right-of-way to provide or enhance outdoor dining.

OUTDOOR DINING. An area not enclosed in a building and which is intended as an accessory area to a restaurant or other retail establishment which provides food and/or drink to customers for consumption on the premises. Specifically not regulated by this section are city parks, residential districts, city-authorized special events such as street dances and street block parties, and activities on property primarily used for institutional purposes such as schools, churches, governmental uses and private clubs such as swim, golf and tennis clubs.

PREMISES. The real estate owned, leased or rented by the licensed indoor dining establishment.

(C) *Criteria*. Outdoor dining shall be permitted as an accessory use only if all of the following criteria are met:

(1) The primary activity of the business offering the outdoor dining is the sale of prepared food and/or drink for consumption by purchasers;

(2) The seating capacity of the outdoor dining area does not exceed the approved seating capacity of the indoor dining area;

(3) The outdoor dining area meets all applicable laws and regulations, including Board of Health Regulations, Department of Liquor Control Regulations and building and zoning regulations of the city;

(4) The outdoor dining area shall not be open before 6:00 a.m., nor after 12:00 a.m., on any day;

(5) The outdoor dining area shall be located on a surface which can be readily cleaned or hosed down;

(6) Outdoor dining equipment must be constructed of non-reflective materials;

(7) No part of the outdoor dining area may be within 100 feet of any residential district;

(8) No cooking utilities, including grills, shall be permitted in the outdoor dining area. Cooking facilities shall be contained within the principal building unless specific written authorization is granted by the City Manager for special events;

(9) Signage in the outdoor dining areas shall be in compliance with the Sign Code. Specifically, signs on umbrellas and other items in the outdoor dining area are not permitted unless they are in compliance with the Code. However, directional signs may be permitted if specifically approved by the ARO as conducive for safety;

(10) Noise, music or sounds emanating from the outdoor dining area shall be in accordance with existing regulations prohibiting excessive noise in the city. Outdoor music shall not be significantly audible off premises;

(11) The outdoor dining facilities area must be kept clear of litter and maintained in a safe, sanitary and first-rate condition, including tables, chairs, umbrellas and any screening;

(12) The outdoor dining plan of the premises shall be consistent with, any other development plans, conditions, variances or other special restrictions that apply to the property;

(13) All outdoor dining equipment, including tables, chairs and umbrellas must be stored indoors or off the premises when the outdoor dining area is closed for the season; and

(14) The outdoor dining area shall be in accordance with the standards and criteria approved in writing by the ARO and countersigned by the applicant which shall be incorporated into the outdoor dining plan. The ARO shall consider all of the following criteria before approving or denying the outdoor dining plan:

(a) The arrangement of the outdoor dining area shall facilitate pedestrian traffic patterns and not unreasonably impede the exit from the principal building or access to nearby businesses or residences. Low fences and plants in containers may be required where appropriate;

(b) Appropriate waste receptacles with affixed lids shall be provided. All waste receptacles shall be approved by the ARO in the outdoor dining plan;

(c) The outdoor dining area shall not be unreasonably distracting to vehicular traffic. The ARO shall consider lighting, proximity to roadways, color schemes and desirability of screening or fencing the outdoor dining area;

(d) The type of activity that will occur in the outdoor dining area;

(e) The ARO shall not approve any lighting of the outdoor dining area that is distracting or unnecessarily impacts on adjoining properties or roadways;

(f) The ARO shall consider the zoning setback requirements of the district and evaluate the proposed outdoor dining facility to insure that there are no encroachments of permanent improvements in the required setbacks. The ARO shall also consider the visual and aesthetic impact of chairs, tables, umbrellas and other items placed within a required setback area, including the aesthetic elements set forth in the existing CBD regulations;

(g) The ARO shall not approve any plan that will cause any public sidewalk to be unreasonably impeded by the proposed plan. Any permit which approves the use of any public right-of-way (including sidewalks) shall be revocable at any time, without cause, by the city;

(h) The ARO shall consult, as appropriate, with the Fire Chief, Police Chief, Building Inspector or City Manager for advice and recommendations; and

(i) The ARO shall determine that the plan provides for sufficient screening of lights, noise and other activity in outdoor dining area from nearby residences. Consultation with affected residents is encouraged.

(D) *Outdoor dining plan*.

(1) Each application for an outdoor dining area must be specifically approved in writing by the ARO and City Manager. The approval of the City Manager shall signify that the plan has been approved by the ARO and that it meets the criteria set forth in divisions (C)(1) through (C)(14) above. The approval of the ARO shall signify approval of those items listed under (C)(14) above. No final approval shall be granted for any plan that does not comply with the City Zoning Code. No variances shall be permitted except by appeal to the Board of Zoning Appeals.

(2) An outdoor dining plan must be submitted as part of the application for the permit approval. The plan shall include the following items:

(a) A sketch to scale of the premises clearly defining the area proposed for outdoor dining including any encroachment into a public right-of-way and/or sidewalks. The sketch must depict the proposed location of each item to be placed within the area, such as chairs, tables and umbrellas;

(b) Pictures or other adequate description of chairs, tables, umbrellas, fencing, screening, plantings and other changes proposed for the area;

(c) Description of service to be provided in the outdoor dining area, including the proposed hours of operation; whether alcoholic beverages will be served, consumed or mixed in the area; and the type of food to be served or brought into the area;

(d) Explanation of availability of parking, any agreements to share parking between property owners, and any proposed changes to traffic patterns (pedestrian and/or vehicular); and

(e) If the applicant is not the owner of the premises, an authorization of the owner of premises to apply for the outdoor dining permit is required.

(E) *Permit*. Application for a permit shall be made to the City Manager with the proposed outdoor dining plan.

(1) No outdoor dining area shall be allowed without a permit, or as otherwise approved by variance.

(2) A permit shall be issued only if the application complies with this chapter, and the required fee has been paid.

(3) Each permit shall be annual and shall expire on December 31 of the calendar year in which it is issued.

(4) The fee for the initial outdoor dining permit shall be $25. Annual renewals of the permit shall be $10 unless modifications to the plan have been made, in which case the permit fee shall be $25.

(F) *Violation and enforcement*. The permit may be revoked upon written notice if the outdoor dining area is determined to violate the regulations of this chapter or the terms and criteria approved by the ARO and/or City Manager. The permit holder will have ten days to correct the specified violations unless there is determined to be a public hazard which will require the immediate removal or correction of the violation. Failure to correct the violations shall cause the permit to be revoked.

(G) *Appeal*. If application for a permit for an outdoor dining area is denied by ARO and/or City Manager, the applicant may appeal the decision to the Board of Zoning Appeals within 30 days from the denial. Such appeal shall be filed in writing with the City Manager.
(1985 Code, § 150.131) (Ord. 97-03, passed 2-10-1997) Penalty, see § 150.99

§ 150.17 MANUFACTURING DISTRICT USES.

In any manufacturing district, no building, structure or premises shall be used, and no building or structure shall be erected that is tended or designed to be used, in whole or in part, for any of the following specified uses:

(A) Dwellings, tourist homes, apartment hotels, hotels and motels;

(B) Abattoirs and slaughterhouses or fertilizer manufacture;

(C) Ammonia, bleaching powder and chlorine manufacture;

(D) Asbestos manufacture;

(E) Asphalt manufacture or refining;

(F) Babbit metal manufacture;

(G) Bag cleaning;

(H) Blast furnace, cupola, metal smelting furnace or metal melting furnace;

(I) Boiler shops, structural steel fabricating shops, steel car or locomotive shops, railway repair shops and metal-working shops operating machine driven hammers or chisels;

(J) Brewing or distilling liquors;

(K) Brick, tile or terra cotta manufacture;

(L) Metal powder manufacture;

(M) Carbon, lampblack or graphite manufacture;

(N) Celluloid or pyroxylin manufacture or explosive or flammable cellulose or pyroxylin or other explosive products manufacture;

(O) Coal tar manufacture, tar distillation or mineral dye manufacture, except as accessory to a permitted use, and upon condition that any emission of odor, dust, smoke, gas, fumes, water-carried waste, noise or vibration in connection therewith is so controlled as not to be obnoxious or offensive;

(P) Coal yards, coke ovens or distillation of coal;

(Q) Crematory;

(R) Creosote manufacture or treatment;

(S) Disinfectant or insecticide manufacture, preparation or compounding on a commercial scale;

(T) Emery cloth or sandpaper manufacture, except where dust or grit is not allowed to escape from the building;

(U) Enameling, japanning or lacquering, except:

(1) Where incidental to permitted uses;

(2) In repair operations in a garage; or

(3) Where used in jewelry, artwork or novelty manufacture.

(V) Excelsior and fiber manufacture;

(W) Explosive or fireworks manufacture, or the storage or loading of explosives in bulk;

(X) Fat rendering, tallow, grease or lard refining, or manufacture of candles from fats;

(Y) Felt manufacture, except where dust is not allowed to escape from the building;

(Z) Fertilizer manufacture from organic material or bone distillation or compounding on a commercial scale;

(AA) Flour milling;

(BB) Foundry or forge shop, except as accessory to a permitted use;

(CC) Gas manufacture;

(DD) Storage above ground of gasoline or other combustible liquids in quantities in excess of 60 gallons per type of liquid stored;

(EE) Glucose manufacture;

(FF) Glue or size manufacture or processes involving recovery from fish or animal offal, or fish

smoking or curing;

(GG) Gypsum, cement, plastic or plaster of paris manufacture;

(HH) Incineration, or reduction or dumping of offal, dead animals, garbage or refuse on a commercial basis, including loading and transfer platforms;

(II) Lime or lime products manufacture;

(JJ) Match manufacture;

(KK) Nitrating processes;

(LL) Oil cloth, oiled clothing manufacture or the impregnation of any fabric by oxidizing oils;

(MM) Ore reduction, or the smelting or corrosion of lead, aluminum, copper, iron, tin or zinc ores;

(NN) Paint, oil, shellac, varnish or enamel manufacture;

(OO) Penal or correctional institutions, or institutions for the care and treatment of drug or drink addicts or the insane;

(PP) Petroleum refining;

(QQ) Poison manufacture, except for pharmaceutical or medical purposes;

(RR) Potash refining;

(SS) Pulp or paper manufacture;

(TT) Radium or other radioactive material extraction;

(UU) The curing, dressing or tanning of raw or green salted hides or skins;

(VV) Rock crushing;

(WW) Rolling or blooming mills;

(XX) Rubber and gutta-percha manufacture from crude or scrap material, or the manufacture of articles therefrom or from balata;

(YY) Salt works;

(ZZ) Sand blasting or cutting, except where the dust is controlled by effective devices;

(AAA) Sewage disposal plants;

(BBB) Soap, soda ash, caustic soda or washing compound manufacture;

(CCC) Starch, glucose or dextrine manufacture;

(DDD) Stock yards, stables, livery stables and riding academies or stables;

(EEE) Stone or monument works;

(FFF) Storage, baling or treatment of junk, iron, rags, bottles or scrap paper;

(GGG) Sugar refining;

(HHH) Sulphurous, sulphuric, nitric, picric, hydrochloric or other corrosive acid manufacture, or use of any such acid (except as incidental to a manufacturing process), or the storage of any such acid for sale, shipment or distribution;

(III) Tar or asphalt roofing or waterproofing manufacture;

(JJJ) Turpentine manufacture;

(KKK) Vinegar manufacture;

(LLL) Wood distillation;

(MMM) Wool pulling, or scouring or shoddy manufacture;

(NNN) Night clubs, cocktail lounges, saloons, roadhouses, dance halls, billiard halls, pool halls, skating rinks and other such business establishments and places of recreation or entertainment;

(OOO) The use of house trailers, mobile homes, mobile offices, mobile shops, automobile trailers, truck trailers, camping trailers, campers, boats, motor homes, temporary structures and similar units (whether truck or chassis mounted or not), when occupied for residence, demonstration or business purposes (except when under construction or modification as part of a permitted manufacturing

operation);

(l) Parking lots for the above and for trucks, truck trailers, horse trailers, motorcycle trailers, boat trailers, tractors of any type, road machinery or similar units, unless such are required as an accessory to a permitted use, in which event there shall exist and be maintained on the same premises a fence or wall, of such height (not less than six feet) and so made or constructed, and so placed, as to completely obscure such property from ordinary view at grade from the premises adjoining the premises on which such property is stored. To the extent, however, that such property is obscured by natural objects or topographical features or by structures, no such fence or wall shall be necessary. Any and all fences and/or walls shall be of commonly accepted type and construction for such applications and the type and construction shall be subject to approval of the City Manager. Appeals from the City Manager's decision in this regard shall be to the Board of Zoning Appeals and the decision of the Board of Zoning Appeals shall be final. Fences and walls shall be maintained in good condition, and wherever possible the decorative side of such fence or wall shall face away from the objects obscured from view; and

(2) None of the above vehicles, mobile units or boats may be parked on the street for longer than necessary to load and/or unload and in no event longer than 24 hours at any one time.

(PPP) Junk yards, dumps or scrap car storage, automobile junk yards, used automobile part yards and storage of wrecked automobiles and automobiles undergoing scrap or salvage operations;

(QQQ) The use of alpha ray, beta ray, gamma ray, X-ray or other radiation devices, except as an accessory to a permitted use and then only when properly shielded and controlled in accordance with standards as established from time to time by the United States, the United States Atomic Energy Commission, the state, the county, the city or any agency or instrumentality of any of the foregoing authorities;

(RRR) The operation of nuclear reactors;

(SSS) Unenclosed storage of materials, goods, articles, machinery, equipment, appliances, vehicles, junk or other objects, unless such are required as an accessory to a permitted use and unless there exists and is maintained on the same premises, screening, as specified in division (OOO)(1) above. Section 150.19, entitled "Existing Nonconforming Use," shall not apply to this division (SSS) shall apply and be in force as of the day after this Zoning Code becomes effective. A violator of this division may be permitted a maximum of six months, at the discretion of the City Manager, and after notification of the violation, to comply with any and all of the provisions of this division (SSS);

(TTT) Drive-in theaters; and

(UUU) Any use that may be hazardous, obnoxious or offensive, by reason of the emission of odor,

dust, smoke, gas, fumes, water-carried waste, refuse matter, noise or vibration in connection therewith, to a degree equaling or exceeding that to which any of the uses specifically prohibited above in this section would be hazardous, obnoxious or offensive. The standard by which any use that is not specifically prohibited by this section is to be judged for the purposes of this division (UUU) shall be that of the use that is, of those that are specifically prohibited by this section, the least hazardous, obnoxious or offensive by reason of the factors listed above in this division (UUU).

(1985 Code, § 150.14) (Ord. 1084, passed 1-17-1972; Ord. 1636, passed 11-7-1983; Ord. 97-03, passed 2-10-1997) Penalty, see § 150.99

§ 150.23 RESIDENCE ZONE FENCING.

Within the limits of a front or side yard in any residence district, no fence or wall shall be more than four feet high or occupy more than one-fourth of the air space through which it passes. Within the limits of a rear yard in any residence district, no fence or wall shall be more than six and one-half feet high. These provisions do not apply, however, to retaining walls. Any and all fences and/or walls shall be of commonly accepted type and construction for such applications and the type and construction shall be subject to approval of the City Manager. Appeals from the City Manager's decision in this regard shall be to the Board of Zoning Appeals and the decision of the Board of Zoning Appeals shall be final. Fences and walls shall be maintained in good condition and the decorative side of such fence shall face away from the residence on such lot.
(1985 Code, § 150.19) (Ord. 1084, passed 1-17-1972) Penalty, see § 150.99

§ 150.24 PARKING.

(A) For the purposes of this Zoning Code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

~~***BAR.*** An establishment which primarily and principally functions to serve alcoholic beverages to its customers for consumption on the premises.~~

~~***RESTAURANT.*** An establishment where prepared and ready-to-consume food is available to the general public for consumption on or off the premises.~~

PARKING LOT. A parcel of land devoted to the unenclosed multiple parking of motor vehicles.

PARKING SPACE. A permanently surfaced driveway permitting the satisfactory ingress and egress of a standard automobile.

(B) Parking space or spaces shall be provided on each lot on which a residence structure is hereafter erected, and the number of such spaces that shall be so provided shall be at least two in the case of a single-family dwelling. No driveway entrance, in any district, shall hereafter be constructed with, or altered to, a width of less than ten feet or more than 26 feet at the curb or roadway, and no driveway shall hereafter be constructed with, or widened to, a width greater at the property line than at the curb or roadway. Driveway entrances shall not hereafter on any lot be constructed or widened to occupy more than an aggregate of 26 feet of such lot's frontage on the same street. On any lot that has or shall have more than one driveway entrance from all abutting streets combined, no such entrance or part thereof shall hereafter be provided within ten feet from the adjacent side line of the nearest such entrance on the same lot. However, in districts other than residential the limit of 26 feet may be increased upon approval of the City Manager, if, in his or her judgment, such increase is necessary or desirable to provide easy and safe entrance and exit of motor vehicular traffic.

(C) Before any building hereafter erected within any business district or manufacturing district, or any part of such building, is put to any use that customarily requires the receiving or distributing of material or merchandise by vehicle, at least one off-street space, suitable for truck use, not less than ten feet in width and 25 feet in length, shall be provided within or contiguous to such building.

(D) There shall be provided, at the time any building or structure or addition thereto, is erected, or at the time any use is extended or changed, off-street parking spaces for motor vehicles in accordance with the requirements hereinafter specified. Each such space shall contain an area of not less than 160 square feet, exclusive of access drives and aisles, shall be of usable shape and condition, and shall be provided with an access drive not less than ten feet in width. Such requirements shall apply whether or not such building, structure, addition or use is nonconforming and whether or not such requirements have been,

or were required to be, met with regard to any prior use of the premises. Where any such structure is an addition to an existing structure, or where any such building, structure or use is on the same premises with an existing building, structure or use, and where such requirements do not apply to such existing building, structure or use, such requirements shall be calculated in terms of the area, facilities or population as the case may be, of such additional building, structure or use, in and of itself, but where such requirements do apply with regard to such existing building, structure or use, such requirements shall be additive and no such additional building, structure or use shall be permitted unless the total of such requirement, as applicable both to such existing and such additional building, structure or use, has been or is met.

(E) The required off-street parking spaces shall in each case be located on the same premises as the principal building in connection with which they are required, or on adjoining premises, or, in any manufacturing district, on premises within 300 feet from such building. Such distance shall be measured from the nearest point of the parking facility to the nearest point of the premises occupied by such building.

(F) For the purpose of determining off-street parking requirements under this Zoning Code, ***FLOOR AREA*** shall mean gross floor area, excluding any area used for parking within the principal building and any area in such building used for incidental service storage, mechanical equipment, ventilators and heating systems and similar uses.

(G) In churches and other places of assembly in which those in attendance occupy benches, pews or similar seating facilities, each 18 inches of such seating facilities shall be counted as one seat for the purpose of determining off-street parking requirements under this Zoning Code.

(H) Where a place of assembly has both fixed seats and open assembly area, such requirements shall be computed separately for each and added together.

(I) When the number of required off-street parking spaces, computed in accordance with this Zoning Code, includes a fraction that is in and of itself greater than one-half, such fraction shall be deemed to require an entire additional parking space.

(J) Whenever the floor area or fixed seating facilities of a building are increased, or land use is extended, additional off-street parking spaces shall be provided for such increase, and the number of such required spaces shall be computed in accordance with this Zoning Code.

(K) In the case of mixed uses, the requirements for off-street parking facilities shall be the sum of the requirements for the various uses computed separately.

(1) Where a use is not specifically mentioned, the requirements for the use that is so mentioned and that is similar to the use not so mentioned shall apply.

(2) Off-street parking facilities provided for one use shall not be considered as meeting the requirements for any other use, except as hereinafter specified relative to joint use.

(L) Off-street parking requirements shall be as follows:

(1) For permitted residential, institutional, community facility and other uses:

Use	***Space Required***
Assembly halls or rooms without fixed seats; exhibition halls (except church assembly rooms)	1 for each 50 square feet of floor area used for assembly, dancing, or dining
Banks and similar financial institutions; medical and dental floor area on the first floor, clinics; medical and dental offices	1 for each 150 square feet of and 1 for each 400 square feet on each other floor
Business, insurance and professional offices	1 for each 125 square feet of floor area
Churches	1 for each 5 seats in principal assembly area
Clubs, lodges, fraternal and similar organizations	1 for each bedroom and 1 for each 50 square feet of floor area used for assembly; dancing or dining
Funeral homes and mortuaries	1 for each 50 square feet of floor area
Hospitals, sanitariums, nursing homes and nonprofit independent living units for the elderly	1 for each 2 beds or living units and 1 for each day shift employee
Libraries, museums, art galleries and educational research centers	1 for each 500 square feet of floor area
Schools; public, parochial and other	
Elementary and junior high	1 for each 3 seats in an auditorium, or 1 for every 20 classroom seats, whichever is greater
Senior high	1 for each 3 seats in an auditorium, or 1 for each 10 classroom seats in all grades

(2) For permitted business, commercial, manufacturing, industrial, recreational uses:

Use	***Space Required***

Banquet halls	1 for each 50 square feet of floor area used for assembly or recreation
Bowling alleys	5 for each lane
General retail, wholesale and service establishments of all kinds, other than retail food stores	5 for the first 2,000 square feet or less of floor area and 1 for each 300 square feet of floor area in excess of 2,000
Greenhouses, nurseries and truck gardens	1 for each 500 square feet of selling area
Manufacturing plants, laboratories, food products industries and other industrial uses (except public utility buildings)	1 for each 500 square feet of floor area or 2 for each 3 employees on the maximum shift, whichever is greater
Nightclubs, saloons, and cocktail lounges	1 for each employee plus 1 space for every 30 square feet of customer occupied area, or 1 for every 2 seats, whichever provides the greatest number of spaces, plus 5 additional spaces for carry-out services when provided
Public utility buildings primarily devoted to storage or mechanical equipment, gas and electric stations, dial exchange buildings and water pumping stations	1 for each 5,000 square feet of floor area
Restaurants, cafes, lunch rooms and cafeterias and other eating places	1 for each employee plus 1 space for each 50 square feet of customer occupied area, or 1 for every 3 seats, whichever provides the greatest number of spaces, plus 5 additional spaces for carry-out service when provided
Retail food stores, including delicatessens, grocery stores, meat-fruit-vegetable markets and supermarkets	5 for the first 2,000 square feet or less of floor area and 1 for each 150 square feet of floor area in excess of 2,000
Tennis courts	3 for each court
Theaters and similar uses, including commercial arenas	1 for each 4 seats

(M) Every parcel of land hereafter used as a public or private parking lot, regardless of whether or not the parking spaces provided therein are required by this Zoning Code, shall be developed and maintained in accordance with the following requirements, and shall not be used for parking at any time during which such requirements are not met.

(1) *Screening.* Off-street parking areas for more than one vehicle and that are within 100 feet of, or across the street from, any premises situated in any residence district (unless such premises are developed with a nonresidential use), shall have on the same premises a fence or wall, of such height (not less than six feet) and so made or constructed, and so placed, as to completely obscure such vehicles from the ordinary view at grade from the residence district premises adjoining the premises on which

such vehicles are parked. To the extent, however, that such vehicles are obscured by natural objects or topographical features or by structures, no such fence or wall shall be necessary. Any and all fences and/or walls shall be of commonly accepted type and construction for such applications and the type and construction shall be subject to the approval of the City Manager. Appeals from the City Manager's decision in this regard shall be to the Board of Zoning Appeals and the decision of the Board of Zoning Appeals shall be final. Such fence, wall or shrubbery shall be maintained in good condition and the decorated side of the fence shall face outside. A violator of this division may be permitted a maximum of six months, at the discretion of the City Manager, and after notification of the violation, to comply with any and all of the provisions of this division (L)(1).

(2) *Surface.* Parking lots and access drives thereto shall at minimum be surfaced with an asphaltic or cement binder, or other comparable dust-preventive material.

(3) *Lighting.* Any and all lighting used to illuminate any parking lot shall be equipped so as to reflect light away from all premises in any adjoining residence district(s).

(N) Every parking space provided in compliance with this Zoning Code shall be accessible to and from a public way abutting some part of the premises, and shall be so situated and arranged as to permit the practicable and reasonable expeditious turnaround of standard automobiles when all such parking spaces on such premises are filled.

(O) Parking lots shall not be permitted in any residential district.
(1985 Code, § 150.20) (Ord. 1084, passed 1-17-1972; Ord. 1226, passed 2-2-1976; Ord. 1530, passed 6-20-1981; Ord. 1636, passed 11-7-1983; Ord. 89-48, passed 12-4-1989) Penalty, see § 150.99

§ 150.25 PARKING AND STORING OF COMMERCIAL VEHICLES IN RESIDENTIAL DISTRICTS.

(A) *Purpose.* The parking and storage of motor vehicles in residential districts should be consistent and incidental to the residential use of those properties. The purpose of this section is to prohibit the parking and storage of large commercial vehicles which are not providing a service that is incidental to the residential use of the property. Large commercial vehicles, unless providing a service, detract from the residential atmosphere of such districts by creating visual clutter and projecting an image more consistent with commercial or industrial usage.

(B) *Prohibition.* No person shall cause to stand, park, store or permit the standing, parking or storage of any commercial vehicle in or upon any driveway, side yard, front yard or rear yard, unless enclosed within a garage within any residential zoning district.

(C) *Exception.* The foregoing prohibition shall not apply to commercial vehicles which are temporarily parked incidental to providing maintenance, construction, repair, or delivery services at or upon the premises, including the delivery or loading of property or passengers.

(D) *Definition*. ***COMMERCIAL VEHICLE*** means:

(1) Any vehicle, no matter what its gross vehicle weight, used or designed to be used for business or commercial purposes and which, in addition, negatively infringes upon the residential character of a residential district. These vehicles include but are not limited to a bus, cement truck, panel truck, semi-tractor, semi-trailer or any other non-recreational trailer used for commercial purposes, stake bed truck, step van, tank truck, tar truck, dump truck; or

(2) Any other vehicle that is designed or rated by the manufacturer for more than 8,800 pounds gross vehicle weight and is licensed by the State Bureau of Motor Vehicles as either a truck or a commercial vehicle.

(E) *Enforcement.* For the purpose of enforcement with respect to the foregoing, citations or summons shall be issued for such violations through the Police or Building Departments. Any appeal regarding the within sections shall be submitted to the Board of Zoning Appeals which shall not grant a variance unless a hardship is demonstrated by the applicant. If the Board of Zoning Appeals does grant a variance, it shall impose sufficient conditions for the screening of such vehicle from adjacent properties and for minimizing the duration that such vehicle may be parked or stored on the premises as well as such other conditions to mitigate the impact of the vehicle on the residential area. The mere fact that the commercial vehicle is essential to one's employment or occupation shall not constitute hardship.
(1985 Code, § 150.201) (Ord. 94-42, passed 1-16-1995; Ord. 03-27, passed 4-10-2004) Penalty, see § 150.99

§ 150.26 DIMENSIONAL VARIANCE.

(A) The purpose of this section is to establish the standards of review to be used by the Board of Zoning Appeals in evaluating any request for a dimensional variance from the provisions of this Zoning Code. As used herein, a dimensional or area variance shall not include variances that deviate from the activities regulated within the various zoning districts. Dimensional or area variances shall be considered those variances from a zoning regulation that establish minimum or maximum areas, heights, distances, separation, volume or any other measurement which is expressed in terms of a geometric measurement.

(B) The Board of Zoning Appeals shall consider an application for a variance only after a properly completed application and fees have been submitted to the City Administration not less than twenty-eight (28) days prior to the meeting of the Board of Zoning Appeals at which the variance is to be considered. The specific form shall include all information determined by the Board of Zoning Appeals and the City Manager to be necessary and appropriate for a full and fair consideration of the application for a variance. The information necessary for an application shall include at least the following, unless waived by the City Manager for the reason that it is not essential to the consideration of the variance request and is unduly expensive or burdensome for the applicant to prepare:

(1) Name, address and phone number of owner(s) of property;

(2) Name, address and phone number of applicant and relationship to owner (i.e., same, builder, purchaser and the like);

(3) If applicant and owner are not the same, authorization of the owner for the applicant to request the variance;

(4) Street address of subject parcel;

(5) Designate zoning district of the subject property and adjoining property;

(6) Signatures of owner and applicant;

(7) Plat of property depicting existing structures and all proposed structures on the subject property as well as location of structures on adjoining property. Such plat should indicate all relevant distances as well as identify any existing deviations from the current Zoning Code, whether those deviations are nonconforming uses, Zoning Code violations or dimensional variances;

(8) If appropriate, the existing topography and any changes proposed to be made;

(9) A determination or evaluation of whether a proposed variance would result in any change of surface water drainage in either direction or volume;

(10) Drawing of the proposed improvement, including accurate renderings of the proposed final improvement; and

(11) Such additional information as may be determined by the City Manager to be helpful in the evaluation and processing of the application.

(C) Where the strict application of any provision of this Zoning Code establishing minimum or maximum dimensional requirements would cause practical difficulties upon the owner of specific property, the Board of Zoning Appeals shall have the power, upon application by or on behalf of such owner and after public hearing, notice of which has been given as described in § 3 of Art. VII of the Charter of the city, to modify such provision or to interpret such meaning, provided that no such modification or interpretation shall be made that is not in harmony with the general purpose and intent of this Zoning Code and provided that the Board of Zoning Appeals considers each of the following factors, in addition to any other factors deemed appropriate under the circumstances, before deciding whether to grant a variance.

(1) Will the property in question yield a reasonable return or can there be any beneficial use of the property without the variance?

(2) Is the variance necessary to preserve a substantial property right (the reasonable enjoyment and use of the property) which is already possessed by the owners of other properties in the same area?

(3) Are there exceptional or extraordinary conditions which apply to the subject property that do not apply generally to other properties in the same area?

(4) Would the essential character of the neighborhood be substantially altered or would adjoining properties suffer a substantial detriment as a result of the variance?

(5) Would the variance adversely affect the delivery of government services (e.g., water, sewer, garbage)?

(6) Were the applicable zoning restrictions in place when the property was purchased or acquired by the applicant? Did the applicant have a reasonable means of determining what zoning restrictions were in effect at the time the property was acquired?

(7) Can the property owner's predicament feasibly be obviated through some method other than a variance (such as a zoning change or redesign of the proposed plan)?

(8) Can the spirit and intent behind the zoning requirement be observed and substantial justice done if the variance is granted?

(D) In accordance with the Charter, no variance shall be granted unless a majority of the members appointed to the Board of Zoning Appeals vote affirmatively to grant the variance.

(E) The Board of Zoning Appeals may impose conditions when granting a variance, but such conditions must have a substantial relationship (essential nexus) to a public purpose or regulations specifically set forth in the Zoning Code. In establishing such a condition, the Board of Zoning Appeals shall set forth in writing the condition and describe the relationship between the variance being granted and the condition being imposed.

(1985 Code § 150.21) (Ord. 1084, passed 1-17-1972; Ord. 88-45, passed 11-7-1988; Ord. 95-24, passed 4-3-1995)

Cross-reference:

Review of zoning variance request by Architectural Review Office, see § 161.09

§ 150.29 LOT REQUIREMENTS.

(A) The following terms shall, for the purposes of this Zoning Code, have the following meanings.

(1) ***HEIGHT OF BUILDING.*** This shall be calculated by determining the difference in elevation from the ground level, at the designated point, to the highest elevation of the roof of the building (excluding any chimney or antenna). The designated point at which to measure the ground level elevation shall be at the horizontal center of the side of a building nearest a public street where the foundation of the building intersects with the ground level. Generally, this will be the front of the building. On a corner lot if the building is equidistant from each street, it shall be the side with the lower ground elevation. The natural or existing topography shall be used to determine elevation of the ground level at the location unless the City Manager or ARO provides approval in writing that a higher ground elevation is appropriate because of unusual difficulties with topography or site development. See Exhibit 5 in § 150.29(F).

(2) ***LOT COVERAGE.*** The percentage of the lot area which is covered by buildings. Accessory buildings or structures shall be included in the lot coverage maximums set out in Table C.1, below.

(3) ***YARD, FRONT.*** A yard extending across the full width of a lot between any part of the principal building or dwelling located thereon and the front lot line. See exhibits in § 150.29(F).

(4) ***YARD, REAR.*** A yard extending the full width of a lot between any part of the principal building or dwelling located thereon and the rear lot line. See exhibits in § 150.29(F).

(5) ***YARD, SIDE.*** A yard extending from a front yard to a rear yard between any part of the principal building or dwelling and the nearest side lot line. See exhibits in § 150.29(F).

(6) ***YARDS ON CORNER LOTS.*** The depth of the front yard on a corner lot shall be not less than the required setback from the front lot line. The width of the side yard on the side street shall be not less than the required front yard setback for said side street. See exhibits in § 150.29(F).

(B) For the purposes of this Zoning Code, the depth of a front or rear yard, on any lot, shall be deemed to be the horizontal distance between the front or rear lot line, as the case may be, and the part of the building or principal dwelling, on such lot, nearest to such line, and the width of a side yard shall be the horizontal distance between the relevant side lot line and the part of the principal building or dwelling, on such lot, nearest thereto.

(C) The lot requirements listed in Table C.1 shall apply to the designated districts and to each lot therein, as respectively applicable thereto. All figures are in feet unless otherwise stated. All setback measurements shall be to the farthest projections of the foundation wall of the principal building or dwelling but excluding physical projections permitted in § 150.29(E). See exhibits in § 150.29(F).

Table C.1

Residence District Lot and Principal Building or Dwelling Requirements					
	"AAA"	"AA"	"A"	"A-2"	"B"
Minimum lot width	150	80	75	60	50
Minimum lot width at right-of-way	60	30	30	25	25
Minimum lot width at front yard setback	150	80	70	60	42
Minimum side yard setback	25	12	9	9	6
Minimum total side yard setback	50	24	20	20	~~12~~---12
Minimum rear yard setback	60	40	40	30	30
Minimum front yard setback	50	50	50	40	40
Maximum height of principal building or dwelling	35	35	35	28	28
Maximum lot coverage	35%	35%	35%	35%	28%
Minimum lot area sq. ft.	43,500	20,000	11,700	11,700	7,000
Minimum sq. ft. for new residential construction (includes finished basements but not garages)	2,000	2,000	2,000	2,000	N/A
For requirements for accessory structures see § 150.09(C)(6)					

(D) In any residence district where aerobic household sewage disposal systems are permitted (see § 151.087), the minimum lot size shall be 20,000 square feet with a minimum width of 80 feet (Excluding handle of panhandle lot).

(E) The physical elements of a principal building or dwelling, or elements affixed to a principal building or dwelling, may project into the front, side, or rear yard setback as listed in Table E.1. All figures are in feet, unless otherwise stated. All measurements shall be to the farthest projection of the applicable element. Elements not listed below shall not be permitted to project into any front, side, or rear yard setback.

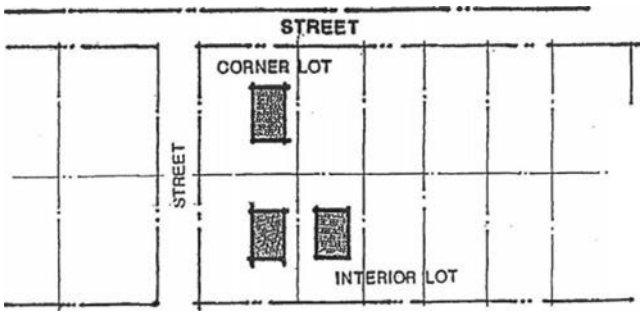
Table E.1 Permitted projections into setbacks.

Physical Element	***Maximum Depth***	***Maximum Width***	***Maximum Total Coverage (per side)***
Eaves, cornices, and gutters	2	N/A	N/A
Chimneys, flues, cantilevered walls, and bow/bay windows, window wells	2	6	25%
Landings, stoops, and stairs *	4	N/A	N/A
Mechanical equipment (A/C units, generators, heat pumps, etc.) **	10	N/A	N/A
Sills and belt courses	6 inches	N/A	N/A

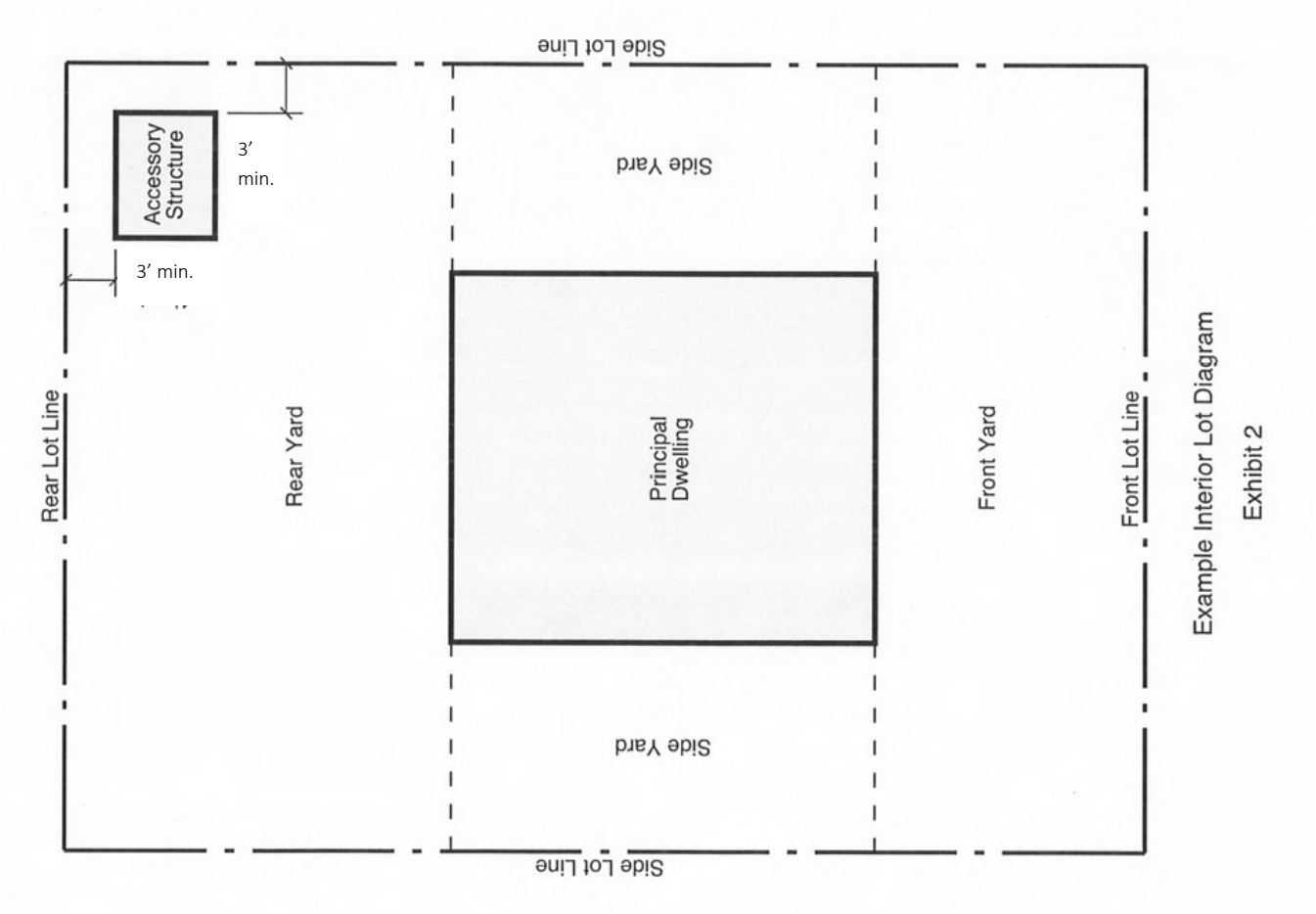
* See § 150.41 regarding landings and stoops
** Mechanical equipment shall only be permitted to project into the rear yard setback

(F) Exhibits.

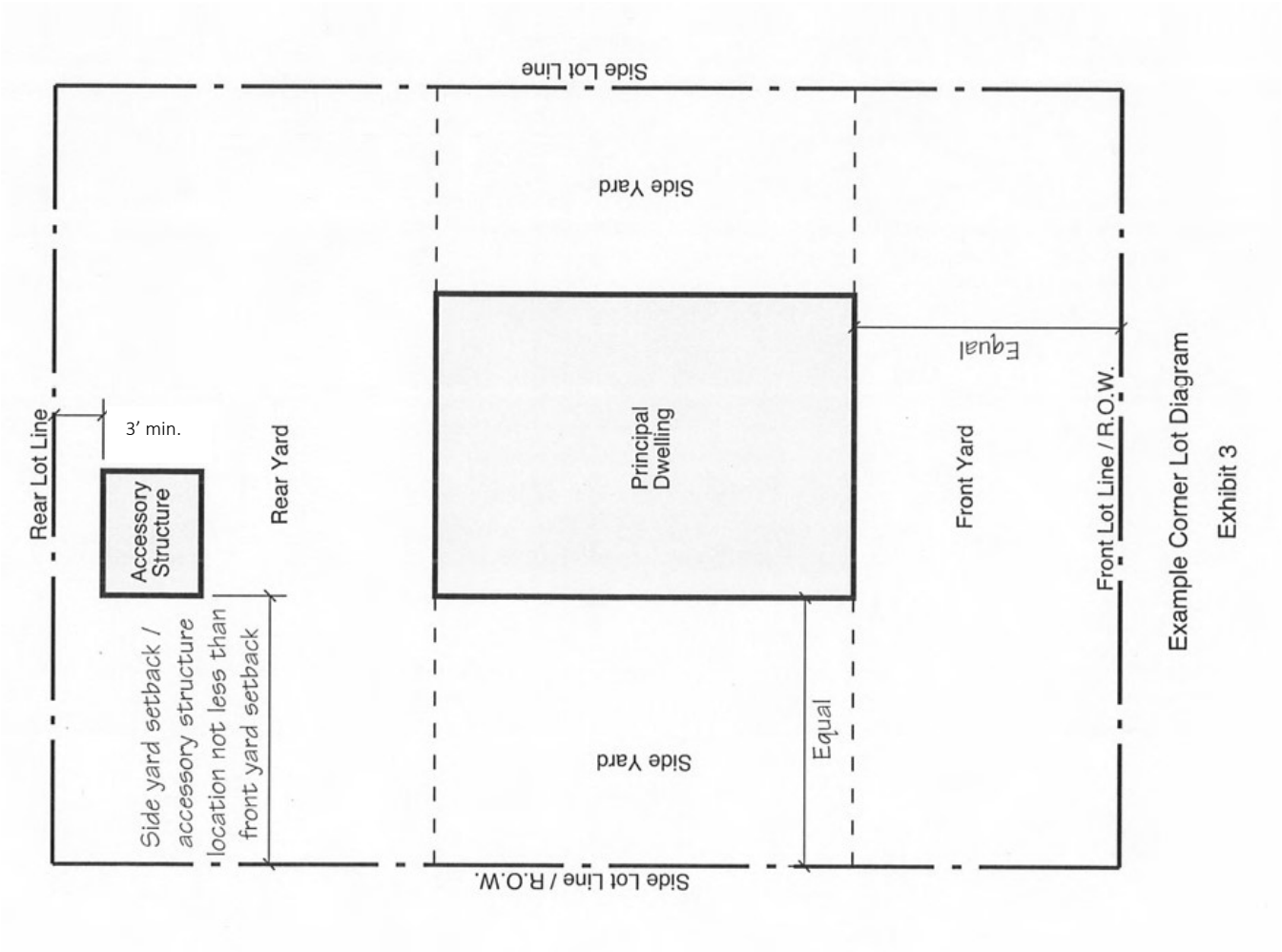
1.



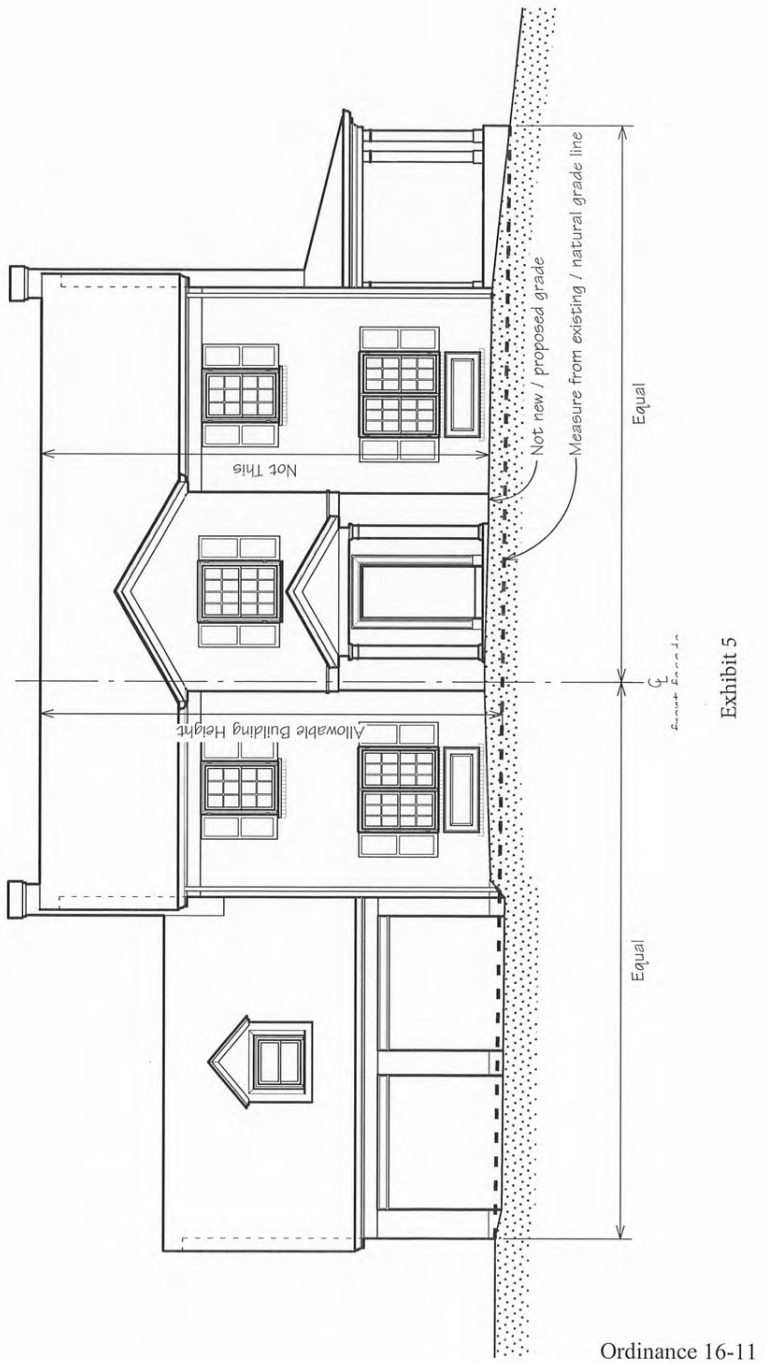
2.



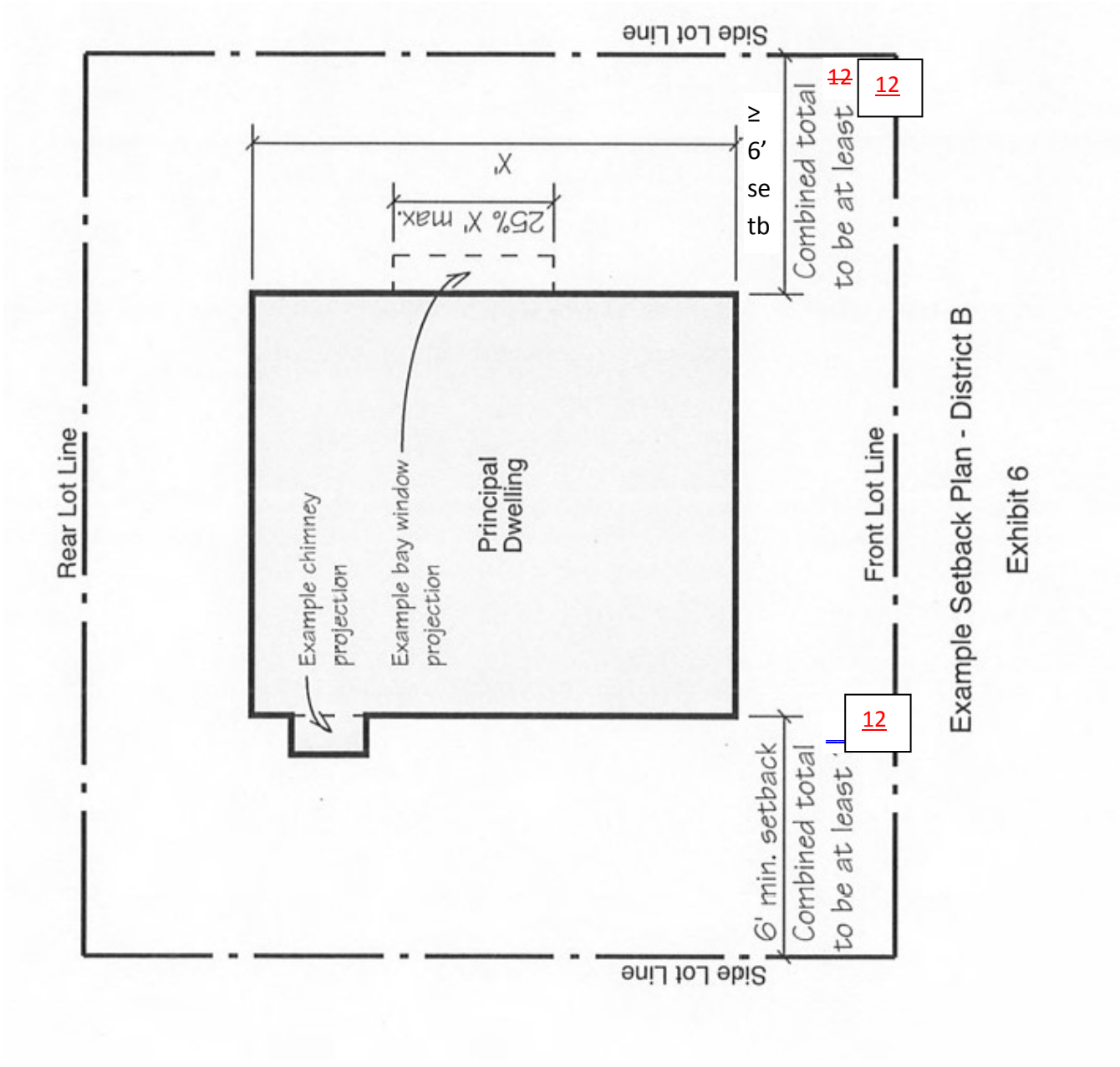
3.


Side Lot Line
Side Yard
Principal Dwelling
Equal
Front Yard
Front Lot Line / R.O.W.
Rear Lot Line
3' min.
Accessory Structure
Rear Yard
Side yard setback / accessory structure location not less than front yard setback
Equal
Side Yard
Side Lot Line / R.O.W.
Example Corner Lot Diagram
Exhibit 3

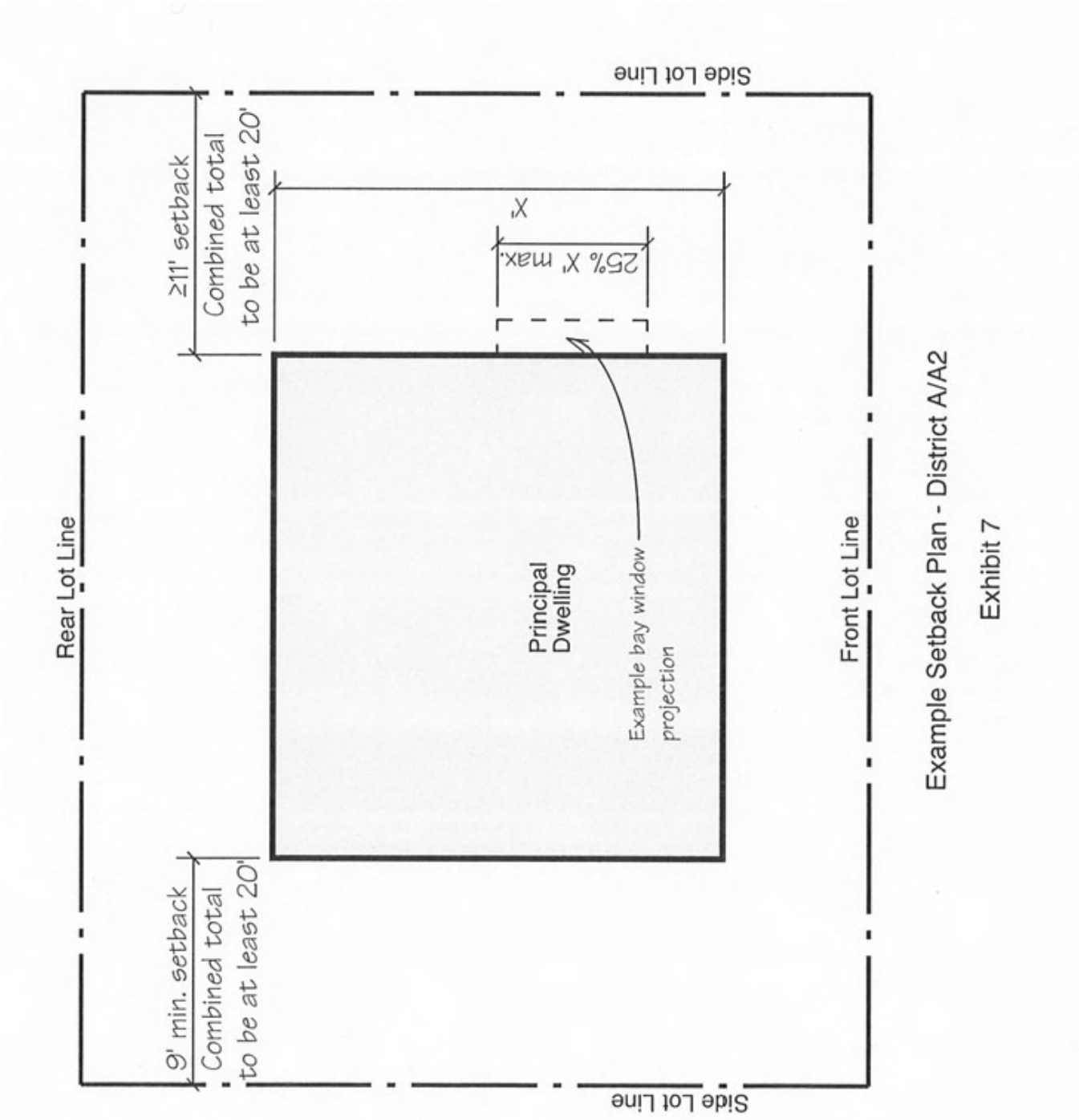
4.


Not new / proposed grade
Measure from existing / natural grade line
Equal
Not This
Allowable Building Height
Equal
Exhibit 5
Ordinance 16-11
Page 11 of 16

5.


Side Lot Line
Rear Lot Line
Front Lot Line
Side Lot Line
X'
25% X' max.
≥ 6' setb
Combined total to be at least
12
12
Example chimney projection
Example bay window projection
Principal Dwelling
6' min. setback
Combined total to be at least
12
Example Setback Plan - District B
Exhibit 6

6.


Side Lot Line
≥11' setback
Combined total
to be at least 20'
X'
25% X' max.
Rear Lot Line
Principal
Dwelling
Example bay window
projection
Front Lot Line
9' min. setback
Combined total
to be at least 20'
Side Lot Line
Example Setback Plan - District A/A2
Exhibit 7

§ 150.30 PANHANDLE LOTS.

(A) *Generally*. Panhandle lots are not generally accepted as a form of land development for single-family residential dwelling units. Such lots do not enhance an urban residential community unless their development and use are strictly regulated to ensure they do not negatively impact on the surrounding property, access points, service of utilities, or public safety requirements. Terrain or topography must not be so difficult as to create severe problems with access or building sites. Special consideration must be given to the control of surface water runoff. Front, rear and side yard designations present special problems as well as the presentation of the dwelling and accessory buildings to adjoining properties. Panhandle lots are not deemed to be appropriate for the development of lots other than in residential districts. Creation of panhandle lots can create an excessive number of curb cuts, which may have negative aesthetic and safety considerations.

(B) *Definition.* For purposes of this Zoning Code and subdivision regulations, a ***PANHANDLE LOT*** shall be considered any lot that has all the following characteristics:

(1) It does not front on a public right-of-way except by a strip of property which is narrower than the required frontage or width of lots in the zoning district;

(2) The majority of the area of the panhandle lot is situated immediately behind one or more lots (front lots) relative to the right-of-way to which the panhandle lot has access. The front lot does have sufficient width and frontage; and

(3) The intended use of the panhandle lot is for a single dwelling, separate and apart from the front lot.

(C) *Approval of application.* The Planning Commission is hereby authorized to approve applications for development of a dwelling on a panhandle lot and/or subdividing parcels in a manner that creates a panhandle lot and associated front lot, only if a review of the documentation and information required by division (D) below shows that the application is complete and that the dwellings and/or subdivided lots which are proposed meet the criteria and standards set forth in division (F) and (G) below, and the subject property is located in either a Residence "AAA," "AA" or "A" single-family district and the front and rear lots are used or shall be used as residences.

(D) *Application*.

(1) Application forms for panhandle lots and/or dwellings shall contain the following information:

(a) Name, address and phone number of owner(s) of property;

(b) Name, address and phone number of applicant and relationship to owner (i.e., same, builder, purchaser and the like);

(c) Street address of subject parcel;

(d) Such additional information as may be determined by the City Manager to be helpful in the evaluation and processing of the applications;

(e) Existing zoning district of subject property and adjoining property; and

(f) Signatures of owner and applicant.

(2) The additional information and documentation listed below shall be submitted with and considered part of the application:

(a) Legal description of original tract, as well as legal description of the proposed panhandle (rear) lot and the front lot;

(b) Plat in a form satisfactory for recording at County Recorder's office.

(c) Plat(s) or drawings to scale (one or more) depicting the following:

1. *Distances of lot lines and area of lots.* Rear lot shall show area both with and without panhandle portion of the property included;

2. *Topography.* Contour lines shall depict each two-foot change in elevation. Topography shall be shown for the existing site as well as the site as it will exist after construction of residential dwelling and other improvements;

3. *Existing utilities on, adjacent or available for serving property.* The proposed paths for accessing said utilities to any proposed buildings on front and rear lots;

4. *Existing and proposed surface storm water drainage patterns.* Any significant changes in direction or quantities must be identified and certification provided by a qualified engineer that such surface water can be tied into existing storm sewers or non-erosive drainage systems or held by adequate retention/detention basins on the property;

5. *Easements.* Existing easements on or serving subject property;

6. *Screening.* Location and description of existing and any proposed screening;

7. *Location.* Location of the area within the panhandle lot which meets all zoning requirements and is suitable for building a principal building. Distances to lot lines must also be depicted;

8. *Footprint.* Footprint of the proposed dwelling and indication of the direction the front of the dwelling would face;

9. *Yards.* Proposed front yard, side yards and rear yards;

10. *Existing buildings and structures.* Location of any existing building and structures and distances from all relevant lot lines;

11. *Dimensions.* All adjoining lots shall be depicted with dimensions, location of existing structures, driveways, parking areas, access points and significant drainage courses (natural or human-made);

12. *Driveway.* Distance from the proposed driveway at curb cut to nearest drives in either direction on same side of street; and

13. *Sewers.* Documentation from Metropolitan Sewer District showing that front and rear lots will be served by existing sewers.

(d) Detailed architectural drawings of the primary building which demonstrate, at a minimum, the exterior appearance and construction materials, the building elevations with dimensions, building orientation on the lot, height from the roof peak to the final grade, exterior dimensions with outline and orientation of the buildings on the planned lot.

(E) *Procedure*.

(1) Applications for panhandle lots and/or dwellings along with supporting documentation shall be submitted to the City Manager. All information and documentation listed in division (D) above must be presented. The City Manager shall cause that information to be reviewed for completeness. If it is determined to be incomplete, the applicant shall be notified. No further review shall be undertaken until all information has been submitted or a specific waiver is granted by the City Manager for good cause. However, Planning Commission may require by majority vote that the omitted information be provided before making a decision upon the application.

(2) Once the completed application and documentation have been received, City Manager shall seek reports from following officials:

(a) Police Chief and Fire Chief or their authorized designee shall review for purpose of determining whether police and fire services may be reasonably provided.

(b) Police Chief may comment regarding location of curb cut. Any safety issues relating to line of sight concerns or other traffic or visibility issues may be identified.

(c) City Engineer and Architectural Review Officer shall comment upon any potential development problems or concerns, such as surface water drainage, grading, elevations, screening, utilities and siting of proposed dwelling unit and accessory buildings. The Architectural Review Officer shall also review the proposed residence pursuant to the criteria below.

(d) The plan and specifications presented to the Planning Commission must be consistent with the review comments and recommendations of the Architectural Review Officer. The Planning Commission may, but is not required, to accept or impose alterations to such Architectural Review Officer-approved plans if the Planning Commission determines that such alterations shall improve the compatibility of the proposed buildings and structures on the front and rear lots, with the existing buildings on other lots in the vicinity. The Planning Commission should determine that such alterations shall improve the compatibility of the proposed buildings and structures on the front and rear lots, with the existing buildings on other lots in the vicinity.

(e) If additional information is desirable for assisting the reviewing officials, the applicant shall be notified. No further action shall be taken until such information is received.

(f) The City Manager may, in addition, request a legal opinion regarding any facet of the proposed subdivision.

(g) Such reports will generally be expected to be completed within two weeks of the request. However, additional time may be granted to any reviewing official by the City Manager.

(3) Upon receipt of the reviewing officials' reports, the City Manager shall review them. The applicant shall be advised regarding the contents of the reports and may withdraw the application, resubmit an amended application or proceed with the application. If applicant elects to proceed, he or she shall provide 15 copies of all plats to the City Manager. Thereupon, the City Manager shall distribute the information to members of the Planning Commission. No application shall be considered by the Planning Commission sooner than three weeks after the submission of the final information to the City Manager. The City Manager shall note in his report to the Planning Commission any omissions in the application or documentation and identify any areas of special concern. The City Manager shall notify all property owners within 200 feet of subject property of all hearings. All notices, advertisements and public hearings shall be in conformity with the procedures for consideration of variances by the

Board of Zoning Appeals.

(F) *Criteria for panhandle lots*. Planning Commission shall approve the creation of a panhandle lot only if the proposed plan meets the following criteria:

(1) The area, lot layout and/or land contours are such that a subdivision with streets and sidewalks, as defined in the city subdivision rules and regulations, would be impractical for economic, engineering, land planning reasons or because such a subdivision plan would be otherwise inconsistent with the intent of the zoning or subdivision code;

(2) The lot or lots that would front the dedicated street if the panhandle lot is approved (hereinafter referred to as the front lot or lots) shall, after being subdivided, meet all the requirements of the district in which they are situated;

(3) The proposed rear lot (i.e., the panhandle lot) shall meet all zoning requirements for the district in which it is located except that:

(a) The minimum area requirements shall be as follows:

1. Zoning District A: 400% of the minimum zoning requirements of the district or 100% of the area of the remaining front lot, whichever is larger in size;

2. Zoning district AA: 300% of the minimum zoning requirements of the district or 100% of the area of the remaining front lot, whichever is larger in size; and

3. Zoning District AAA: 200% of the minimum zoning requirements of the district or 100% of the area of the remaining front lot, whichever is larger in size.

(b) In calculating the area of a panhandle lot for purposes of determining whether it meets the minimum area requirements, the access strip to the rear lot shall not be considered part of the area of the rear lot. In other words, only that portion of the lot which conforms to the minimum width requirements of lots in the district shall be included in determining area.

(c) Any portion of a lot (front or rear) which is located in a public right-of-way easement shall not be included when calculating minimum area.

(4) No additional panhandle lots shall be created behind a rear lot.

(5) The minimum width of the entrance to rear lots (the entire length of the panhandle) shall be 20 feet. In order to assure that the drive to the rear lot shall support all emergency vehicles, the

depth/thickness of the drive shall be not less than the depth/thickness required for a public street, as set forth in the city's subdivision rules and regulations. However, curbs and gutters shall not be required unless such a condition is imposed by the Planning Commission to mitigate drainage problems. In addition, adequate pavement must be provided for turning vehicles, including emergency vehicles, around on the rear lot. The improved surface of the driveway shall be at least 12 feet in width, unless a greater width is directed and authorized by the Architectural Review Officer or, ultimately, the Planning Commission. It shall be maintained in good repair. The Architectural Review Officer and Planning Commission may require that landscaping, walls, drainage areas and other improvements be placed and maintained in the unpaved areas of the panhandle.

(6) A single access to public right-of-way, shared by the front lot and the panhandle lot, shall be required, unless it is not practicable for reasons of safety, aesthetics, economics, engineering or because this requirement would be inconsistent with accepted land planning concepts. The driveway to a rear lot shall limit changes of direction, so as to permit the easy entrance and exit of emergency vehicles. An alternative access to the rear lot over the panhandle may be approved for reasons of safety, aesthetics, benefit to adjoining properties or other reasons that are consistent with valid land planning and zoning within this community. Planning Commission shall provide in the record of its proceeding the reasons for granting the alternative and any requirements which are a condition of granting the second entrance drive. The location of any curb cut must be identified on plans approved by Planning Commission.

(7) Except as provided otherwise herein, all zoning and subdivision requirements, such as sewer connections, shall apply to front and rear lots. No panhandle lot shall be created unless sewer connections are available for front and rear lots.

(8) A minimum of two outdoor parking spaces must be provided in addition to a minimum of two garaged parking spaces. None of these spaces shall be located in the panhandle portion of the lot.

(9) If either the Fire Chief, Police Chief or City Engineer identify any specific concerns for safety, such as may be caused by the location of curb cuts, the topography of the access drive, or such other factors as may raise concern regarding public health, safety and welfare, including the rendering of public safety services to the proposed front or rear lots, the Planning Commission may deny the application for this reason alone if it determines that such safety issue is a valid concern. In any event, this section does not create liability on the part of the city for any damages that may arise as a result of the granting of any application for the creation of a panhandle lot. Any review of such applications is intended only for the safety, health and welfare of the general public, and is not intended as a representation of safety to any specific party or person.

(10) Adequate provisions, as specifically approved by Planning Commission, must be shown to ensure the proper disposal of surface water runoff from the front and rear lots. Planning Commission shall decide which type of drainage system is acceptable. It may consider the relative costs, relative

impact on adjoining property, capacity of systems and ease the cost of maintenance of systems.

(11) Motor vehicles

(a) No parking of motor vehicles shall be permitted on any shared portion of a common access unless within the designated parking spaces on improved paved surfaces. ***PAVED SURFACES*** means either asphalt or cement surface or other improved surface which is specifically approved by Planning Commission. Consistent with concerns for the health, safety, morals and general welfare of residents, including preserving and protecting the orderly development and the character and integrity of single-family neighborhoods, controlling surface water drainage, minimizing light and air obstructions to neighboring properties, ensuring access for safety services vehicles, and preventing reduction in property values, no exterior parking of boats, (including but not limited to jet skis, canoes and sailboats) trailers or recreational vehicles, as defined in division (F)(11)(b), shall be permitted on either front or rear (panhandle) lot except for loading, unloading or cleaning, but in no event for more than 96 hours during any 14 consecutive days.

(b) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

RECREATIONAL VEHICLE. A vehicular portable structure designed and constructed to be primarily used as a temporary dwelling for travel, recreational, camping and vacation uses, including but not limited to the following:

1. ***MOTOR HOME.*** A self-propelled recreational vehicle constructed with permanently installed facilities for cold storage, cooking and consuming of food, and for sleeping.

2. ***TRAVEL TRAILER.*** A non-self-propelled recreational vehicle that includes a tent-type fold-out camping trailer, as defined in R.C. § 4517.01.

3. ***TRUCK CAMPER.*** A non-self-propelled recreational vehicle, without wheels for road use, and designed to be placed upon and attached to a motor vehicle.

(12) If there are nonconforming uses on a proposed front lot, Planning Commission, as conditions for approval of a new panhandle lot, may require that one or more of the non-conforming uses be either discontinued or reduced (mitigated). Planning Commission may approve then new panhandle lot without conditions for discontinuance or mitigation if it deems the conditions(s) would not promote reasonable compatibility with the neighborhood, or would not be economically feasible under the circumstances. No building permit shall be issued of the panhandle lot unless adequate assurance is provided to the city that all conditions imposed by the Planning Commission will be met.

(G) *Criteria for panhandle dwellings*. Planning Commission shall approve the development of a

dwelling on a panhandle lot only if the proposed plan meets the following criteria:

(1) The Architectural Review Officer shall review the application, including the architectural plans, to ensure that the proposed new building(s) and structures are compatible and complement the existing buildings in the vicinity, including architectural style, exterior construction materials, size of building, and the height and relative elevation of the buildings. In addition, the Architectural Review Officer shall review the application to ensure that the principal building meets the minimum square footage required by this Zoning Code and, also, that the proposed building is no larger than 120% of the largest conforming building on a lot contiguous to the proposed panhandle lot, including the principal building (existing or proposed) on the front lot.

(2) The front of the dwelling on the rear lot shall face toward and be substantially parallel to the rear yard line of the front lot, unless the Planning Commission determines that a different alignment is preferable and will have no greater impact on the use and enjoyment of adjoining properties. Planning Commission shall designate in writing any specific conditions which must be completed as part of the approval.

(3) The principal dwelling on the rear lot shall not be constructed closer than 50 feet from the front property line of the subject panhandle lot.

(4) The principal dwelling on the rear lot shall not be constructed closer than 40 feet from the rear and side property lines of the subject panhandle lot.

(5) Adequate screening shall be required for aesthetic or privacy purposes whenever the Planning Commission determines that the proposed dwelling, parking area, driveway or accessory structures would be detrimental to the use and enjoyment of adjoining residential property unless the screening was provided and maintained. Consideration shall be given to recommendations of the Architectural Review Officer in these matters.

(H) *Prior to voting*. Prior to voting on whether to approve the creation of any proposed panhandle lot and/or dwelling, the Planning Commission shall consider each of the following conditions. If the Planning Commission determines, by a majority vote of the members attending the meeting, that one or more of the conditions set forth below exist, then such vote shall also constitute a decision of the Planning Commission to deny approval of the application for a panhandle lot:

(1) Considering the lots, structures, building, topography and uses of real estate in proximity to the proposed panhandle and the front lot, the application does not depict a future development that is significantly compatible with surrounding areas;

(2) The natural or existing surface water drainage will likely be altered (increased, retained or

diverted) to such an extent that an adverse impact to other properties or to any public rights-of-way will probably occur under some circumstances;

(3) The height, elevation, orientation, location or architectural features of any proposed building or structure intended to be placed on either a panhandle or a front lot is unreasonably inconsistent with the orientation, location or architectural features of existing buildings or structures in the vicinity;

(4) The location of the access point, the length, the width or the grade of a proposed driveway presents features that are not consistent with safety, in any and all weather, or will cause the creation of an impervious driveway/parking surface that will cover such a large area of open ground or require removal of significant trees or other landscaping that existing green spaces will suffer excessive reduction;

(5) Proposed grading of site, proposed walls, fences, terraces, or the proposed location of other structures or buildings will unreasonably interfere with natural topographic patterns which contribute to the appearance of the existing site; and

(6) The proposed panhandle lot, if created, would unreasonably inhibit future uses, structures or buildings on adjacent lots which would be permitted by the existing zoning regulations. Such structures, buildings or uses need not actually exist at the time this condition is considered.

(I) *Variances*. No variance from any of the criteria set forth in any division of this section shall be approved by the Board of Zoning Appeals unless the conditions set forth in division (H) shall be determined by the Board of Zoning Appeals to be maintained. In addition, the Board of Zoning Appeals shall consider the seven criteria for a dimensional variance, which must be considered in order to determine whether practical difficulties exist.

(J) *Final approval*. Final approval of any application for creation of a panhandle lot and/or dwelling shall be put in the form of a written resolution by Planning Commission with appropriate attachments. Any conditions, restrictions or limitations on said property which are imposed as a consideration of granting the application shall be set forth or referenced in the resolution. The resolution must be approved by a majority of vote of the members attending the meeting.

(K) *Contingent-Approval Permitted.* In circumstances where an applicant needs a variance from the requirements of this Code, the Planning Commission may provide contingent-approval of a Final Application. Such contingent-approval shall mean their approval of the Final Application is subject to the applicant obtaining any required variance(s) from the Board of Zoning Appeals. If the Planning Commission provides contingent-approval of a Final Application and the Board of Zoning Appeals subsequently denies the applicant's requested variance(s), said denial shall constitute a rejection of the Final Application.

(L) *Appeals*. Any applicant that seeks approval from Planning Commission of his or her application, pursuant to this section, and whose application is denied by the Planning Commission, may appeal such decision to the Board of Zoning Appeals.

(a) *Timing of Appeal*. The applicant appealing the decision must provide notice of his or her intent to appeal such decision to the Planning Commission and the Board of Zoning Appeals within thirty (30) days of the Planning Commission's provision of written notification of its denial to the applicant.

(b) *Hearing on Appeal*. The Board of Zoning Appeals shall hold a public hearing evaluating the appeal based upon the standards of review applied by the Planning Commission to the initial application, within sixty (60) days of receiving applicant's notice of appeal.

(M) *Effective date*. This section shall become effective on and after January 15, 2002. It shall be applicable to the creation of panhandle lots and/or dwellings and front lots considered by the Planning Commission on or after the aforesaid effective date. Those panhandle lots and/or dwellings and front lots previously approved and recorded prior to the effective date of this section shall continue to be regulated by the regulations in effect at the time of approval.
(1985 Code, § 150.25) (Ord. 1084, passed 1-17-1972; Ord. 88-45, passed 11-7-1988; Ord. 91-67, passed 10-31-1991; Ord. 01-36, passed 11-22-2001; Ord. 13-11 passed - -2013)

§ 150.34 INTENTIONALLY DELETED.

§ 150.35 INTENTIONALLY DELETED.

§ 150.37 CELLULAR OR WIRELESS COMMUNICATION SYSTEMS.

(A) *Purpose*. It is the purpose of this section to:

(1) Accommodate the need for cellular or wireless communications towers and facilities for the provision of personal wireless services while regulating their location and number in the city;

(2) Minimize adverse visual effects of communications towers and support structures through proper siting, design and screening;

(3) Avoid potential damage to adjacent properties from communications towers and support structure failure; and

(4) Encourage the joint use of any new and existing communications towers and support structures to reduce the number of such structures needed in the future.

(B) *Definitions*. For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CELLULAR COMMUNICATION SERVICES. Personal communications accessed by means of cellular equipment and services.

CELLULAR OR WIRELESS COMMUNICATIONS ANTENNA. Any structure or device used to receive or transmit electromagnetic waves between cellular phones, pagers, commercial mobile services, wireless services and ground-wired communications systems including both directional antennas, such as panels, microwave dishes and satellite dishes, and omni-directional antennas such as whips and other equipment utilized to serve personal communication services.

CELLULAR OR WIRELESS COMMUNICATIONS SITE. A tract, lot or parcel of land that contains the cellular or wireless communications tower, antenna, support structures, parking and any other uses associated with and ancillary to cellular to cellular or wireless communications transmission.

CELLULAR OR WIRELESS COMMUNICATIONS SUPPORT STRUCTURE. Any building or structure, including equipment shelter, guy wire anchors, accessory to but necessary for the proper functioning of the cellular or wireless communications antenna or tower.

CELLULAR OR WIRELESS COMMUNICATIONS TOWER. Any freestanding structure used to support a cellular or wireless communications antenna.

CELLULAR OR WIRELESS COMMUNICATIONS TOWER, HEIGHT OF. The height from

the base of the structure, at grade, to its top; including any antenna located thereon. Grade shall be determined as the elevations of the natural or existing topography of the ground level prior to construction of the tower.

MICRO ANTENNAS. Any cellular or wireless communication antennas which consist solely of the antenna and which do not have any supporting structures other than brackets, including micro cells. ***MICRO ANTENNAS*** shall be equal to or less than five feet in height and with an area of not more than 580 square inches.

PERSONAL WIRELESS SERVICES. Commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services, including cellular services.

TALL STRUCTURES. Any structure or building, including but not limited to smoke stacks, water towers, buildings over 35 feet in height, antenna support structures of other cellular or wireless communication companies and other communications towers.

(C) *Application procedure*.

(1) Any person or company intending to apply for the placement or operation of a cellular or wireless communications antenna, tower, or site within the city shall first schedule a pre-application conference with the City Manager or his or her assignee. At this conference, the prospective applicant must present in writing to the City Manager the number of towers needed by the prospective applicant in the city and identify the area in which each tower is intended to be located. The prospective applicant shall certify that this information is based on its engineering studies, and that to the best of the applicant's knowledge, no additional towers or locations shall be needed within the city. The applicant shall provide to the City Manager a map identifying all sites within the city which would satisfy its needs and which would meet these zoning requirements without a variance. This information should identify the area within which each tower may be located, the minimum height of the proposed towers and identify any possible users that may co-locate at any of the sites. The purpose of the pre-application conference will be to, generally, evaluate the impact on adjacent areas and neighborhoods, discuss possibilities of co-location, identify alternative suitable sites that may minimize the negative impact on residential areas.

(2) Upon completion of the pre-application conference, an application may be filed with the office of the City Manager. The application shall be in compliance with the requirements of this section and in such form as approved by the City Manager. If the application does not conform with the requirements of this section, the applicant shall be notified by the City Manager and no further consideration of the application shall occur until it is in compliance with the terms of this section.

(3) The application fee for a cellular or wireless communication system, tower, antenna or site shall

be $500 for each proposed location and $200 for each new user proposing to co-locate. In addition, each applicant shall pay, prior to the issuance in obtaining independent expert consultation that the city determines is necessary to review the application and advise the city, and to conduct such post-construction test of signal emissions as is determined appropriate by the consultant, not to exceed $1,500.

(D) *Use regulations*. The following use regulations shall apply to cellular or wireless communication antennas and towers:

(1) A cellular or wireless communications site may only be permitted in manufacturing zoning districts subject to the requirements set forth herein;

(2) Cellular or wireless communications sites in a manufacturing zoning district shall not be located any closer to any residential zoning district than as follows:

(a) Cellular or wireless communication towers less than 100 feet in height shall be located no closer than 100 feet to any residential zoning district; and

(b) For any cellular or wireless communication tower exceeding 100 feet in height, the tower may not be located closer to any residential zoning district than a distance equal to 100 feet plus one foot for each foot of height that the tower exceeds 100 feet.

(3) A cellular or wireless communications antenna may be mounted to an existing structure, such as a communications tower (whether the tower is for cellular or wireless purposes or not), smoke stack, water tower or other tall structures in any manufacturing zoning district. Cellular or wireless communication antennas may only be placed on the top of buildings that are no less than 35 feet in height;

(4) Micro antennas not exceeding five feet in height may be placed on any building in a business or manufacturing zoning district. A micro antenna may be attached to any existing building located in an area described in the preceding sentence, and shall not be subject to the setback requirements of other cellular or wireless communication towers provided it is placed on the roof of an existing building;

(5) All other uses accessory to the cellular or wireless communications antenna and towers, including but not limited to business offices, maintenance depots and materials and vehicle storage are prohibited from the site unless otherwise permitted in the zoning district in which the cellular or wireless communications antenna and/or tower is located; and

(6) Annually, each owner of a cellular or wireless communication tower or antenna shall file with the city, not later than June 1 of each year, a study or studies demonstrating that the operation of its

antenna and all antennas located on its tower are within current standards for effective radiated power and standards for radiation exposure established by the Federal Communications Commission (FCC). The FCC standards shall be the standards in effect on the first day of May immediately preceding the June 1 around deadline for filing.

(a) Each study shall provide a minimum of ten measurements, each taken on different dates, during peak operating conditions. All such measurements shall be taken within 120 days of the due date for filing the study. Such studies shall include documentation sufficient to demonstrate that the tests were conducted at peak operating conditions. However, if the city is advised by its engineering consultant that the determination that the antennas are operating within the above standards can be achieved with fewer measurements or less costly methods, the City Manager shall so advise the antenna owners and accept the alternative studies. This includes consideration by the engineering consultant as to whether the FCC reporting requirements may provide the necessary information to evaluate, with reasonable certainty, actual radiated power of the antennas.

(b) Such studies shall be accompanied by a single filing fee of $200. Two or more providers located on the same tower may submit joint studies along with a single application fee.

(c) If all antennas on a tower have been in operation less than six calendar months as of June 1, then the due date for such filing shall be the next annual filing date. If any antenna on a tower has been in operation six months or more as of June 1, then the owner of the tower and the owner of all antennas in operation six months or more shall file the required studies.

(E) *Standards of approval for cellular or wireless communications antennas and towers*. The following standards shall apply to all cellular or wireless communications antennas and towers.

(1) The cellular or wireless communications company shall demonstrate, using the latest technological evidence, that the antenna or tower must be placed in a proposed location in order to serve its necessary function in the company's grid system. Part of this demonstration shall include a drawing showing the boundaries of the area around the proposed location which would probably also permit the antennas to function properly in the company's grid system. This area shall be considered the allowable zone.

(a) The applicant shall provide to the city all engineering studies which the applicant has completed or intends to complete to establish the necessity of placing an antenna within the city in general and within allowable zone, in particular.

(b) The applicant shall provide a map of all current locations of wireless communication antenna sites and all future proposed wireless communication antenna sites which will provide service under a license issued by the FCC to users in the city. This map shall include:

1. The location of all existing wireless communication antennas and towers that provide service to users located in the city;

2. The identification of each parcel of real estate within the manufacturing district that is also within the allowable zone of the applicant and is of sufficient size to comply with the setbacks and other requirements of this zoning regulation;

3. The geographic areas which are served by each tower location that provides service to users within the city; and

4. The geographic areas into which the provider must install an antenna or tower in order to provide service to users within the city.

(2) If the communications company proposes to build a cellular or wireless communications tower (as opposed to mounting the antenna on an existing structure), it is required to demonstrate that it has contacted the owners of nearby tall structures within the allowable zone, asked for permission to install the cellular communications antenna on those structures and was denied for either non-economic reasons or that a clearly unreasonable economic demand was made by the owner, based on prevailing market values. Tall structures shall include but not be limited to smoke stacks, water towers and buildings over 35 feet in height, antenna support structures of other cellular or wireless communication companies or other communication towers. The city many deny the application to construct a new cellular or wireless communications tower if the applicant has not made a good faith effort to mount the antenna on existing structures.

(3) The applicant shall provide the city with its plan of operation of the antenna structure, including a description of the nature of the expected and intended usages including:

(a) The radio wave frequency range of the expected or intended usage;

(b) The effective radiated power under peak operation conditions of each antenna on the proposed tower; and

(c) The types of services that the applicant expects or intends to provide to customers of the applicant through the signals received and transmitted by the antenna.

(4) The applicant shall provide engineering calculations demonstrating anticipated levels of effective radiated power and shall provide a study which demonstrates the mapping of actual radiation levels actually produced by all antennas on a tower under maximum operating conditions at ground level within 800 feet of the tower. The readings shall be taken at 45-degree intervals around the tower of

every 100 feet from the tower (plus or minus ten feet). Upon written request of any applicant, the City Manager, in his or her discretion, can waive the requirement for measurements at particular intervals or distances from the tower or he or she may require any person will be exposed at the locations specified in this provision or that the applicant has no authority to enter upon the land needed for the measurements, or that the city's engineering consultant has advised that specific locations or other tests are not necessary to determine to the consultant's satisfaction the effective radiated power of the facility. The City Manager's decision shall be stated in writing with written justification for the decision.

(F) *Standards of approval of all cellular or wireless communications antennas and towers*. For cellular or wireless communications antenna to be placed on an existing structure, with no new tower to be erected, the applicant needs to submit to the City Manager only such information as required to ensure compliance with the applicable provisions of this section. Such requirements for an application which is only for an antenna are identified by an asterisk (*) in this division (F). All other regulations set forth in this section shall be applicable unless clearly limited to towers only.

(1) *Antenna/tower height.** The applicant shall demonstrate that the antenna/tower is no higher than necessary to function satisfactorily and to accommodate the co-location requirements as set out in division (F)(6) below. An antenna that is taller than the minimum necessary height may be approved if it would significantly increase the potential for co-location. Cellular or wireless communication towers shall be exempt from the maximum height requirements contained in § 150.29. Cellular towers shall be monopole construction unless it is demonstrated that another type of tower is required for safety purposes, or that the aesthetics of the tower would be significantly improved.

(2) *Setbacks from the base of the tower.* If a new cellular or wireless communications tower is to be constructed in a manufacturing zoning district, the minimum distance between the base of the tower or any guy wire anchors and any property line which abuts a zoning district other than a residential district shall be no closer than the greater of the following:

(a) Forty percent of the tower height; and

(b) Fifty feet.

(3) *Cellular or wireless communications tower safety.**

(a) All cellular or wireless communications towers shall be fitted with anti-climbing devices as approved by the manufacturers. Furthermore, the applicant shall demonstrate that the proposed cellular or wireless communications tower and its antenna are safe and that the surrounding properties will not be negatively affected by tower failure, falling ice or other debris, electromagnetic fields or radio frequency interference. However, if a specific safety issue in question is determined to be regulated by either FCC regulations or applicable Building Code regulations, and the operation or

construction is in compliance with such regulations, then this requirement for safety shall be deemed to have been met.

(b) Subsequent to the installation of a cellular or wireless communications tower site, if it is determined by the City Council, upon presentation of proper and sufficient documentation, and after a public hearing, that the operation of a cellular or wireless communications tower is inherently dangerous or is a demonstrable health hazard, the cellular or wireless tower shall be declared to be a nuisance and all operation shall cease. The tower or antenna shall also be removed as provided under division (H) below. However, no order of removal shall be made if it is inconsistent with existing FCC regulations.

(4) *Fencing.** A fence shall be required around the cellular or wireless communications tower and its support or accessory structures, unless the antenna is mounted on an existing structure. The fence shall be a minimum of eight feet in height and shall be erected in a manner to prevent access to non-authorized personnel.

(5) *Landscaping.** Landscaping, in compliance with a plan approved by the ARO, shall be approved to screen as much of the support structure and ground level features as is possible but shall not unreasonably reduce visibility needed for security purposes. In addition, existing vegetation on and around the site shall be preserved to the greatest extent possible.

(6) *Limiting the number of cellular or wireless communications towers.*

(a) In order to reduce the number of antenna support structures needed in the city in the future, the owner of an existing cellular or wireless communications tower shall not unreasonably deny a request to accommodate other uses, including other cellular or wireless communications companies, and the antenna of local police, fire and ambulance departments. The owner of the existing cellular or wireless communications tower may request reasonable compensation for the use of the tower.

(b) For the purposes of encouraging co-location of cellular or wireless antenna and other uses, cellular or wireless communication towers shall be designed, engineered and constructed as follows, unless waived for good cause to minimize impact on adjoining property by the City Manager:

1. Towers less than 75 feet tall shall be designed, engineered and constructed to support antennas installed by one or more cellular or wireless communication service users;

2. Towers more than 75 feet in height but less than 150 feet shall be designed, engineered and constructed to support antennas installed by two or more wireless communication service users; and

3. Towers 150 feet in height or taller shall be designed, engineered and constructed

to support antennas installed by three or more wireless communication service users.

(c) As used in divisions (F)(6)(b)1. through (F)(6)(b)3. above, the term ***USERS*** shall include the antennas of Police, Fire and Ambulance Departments. In addition, an applicant must demonstrate that the area acquired by lease or otherwise acquired for the use and construction of the cellular tower and accessory structures is sufficient in size to accommodate any additional structures that may be required if additional users are added to the tower.

(7) *Licensing.** The communications company must demonstrate to the city that it is licensed by the FCC. The owner of the tower must also annually provide to the city on January 1 of each year, a list of all users of the tower and each user shall provide the city with a copy of each user's license with the FCC. No approval will be granted to any applicant unless proof of current FCC license for the proposed use of the tower is provided.

(8) *Required parking.** If the cellular or wireless communications site is fully automated, adequate parking shall be required for maintenance workers. If the site is not fully automated, adequate parking shall be required for the number of employees working on the largest shift. All parking specifications and requirements as established in the Zoning Code.

(9) *Appearance.** Cellular or wireless communications towers under 200 feet in height shall have a galvanized finish. Cellular or wireless communications towers shall meet all Federal Aviation Administration (FAA) regulations. No cellular or wireless communications towers may be artificially lighted except when required by the FAA. Except for safety or warning signs approved by the ARO and City Manager, no cellular or wireless communication towers or antenna and accessory buildings and structures, including fences, shall contain any signage. All utility lines serving the towers shall be underground.

(10) *Site plan required*. A full site plan shall be required for all proposed cellular or wireless communications sites, except antenna to be placed on existing structures, at a reasonable scale, but not smaller than one inch to 100 feet, indicating, as a minimum, the following:

(a) The total area of the site;

(b) The existing zoning of the property in question and of all adjacent properties;

(c) All public and private right-of-way and easement lines located on or adjacent to the property which is proposed to be continued, created, relocated or abandoned;

(d) Existing topography with a maximum of five-foot contours intervals;

(e) The proposed finished grade of the development shown by contours not exceeding five-foot intervals;

(f) The location of all existing buildings and structures and the proposed location of the cellular or wireless communications tower and all cellular or wireless communications support structures including dimensions, heights and where applicable, the gross floor area of the buildings;*

(g) The locations and dimensions of all curb cuts, driving lanes, off-street parking and loading areas including the number of spaces, grades, surfacing materials, drainage plans and illumination of the facility;*

(h) All existing and proposed sidewalks and open areas on the site;*

(i) The location of all proposed fences, screening and walls;*

(j) The location of all existing and proposed streets;

(k) All existing and proposed utilities including types and grades;*

(l) The schedule of any phasing of the project;

(m) Documentation which shows all building and structures on adjacent and any additional lot which has a lot line within 500 feet of the lot on which the cellular tower is proposed to be located. The approximate elevation of the highest point of each building or structure shall be noted. The applicant may identify any additional features in the area (such as existing screening, fences, and topography) which might be helpful in considering the impact of the proposed tower on nearby property;

(n) The names and addresses of all property owners within 500 feet of the parcel of property on which the tower is to be placed; and

(o) Any other information as may be required to determine the conformance with this Zoning Code.*

(G) *Maintenance.* Any owner of property used as a cellular or wireless communications site and any owner of a cellular or wireless communications antenna or tower shall maintain such property and all structures in good condition and free from trash, outdoor storage, weeds and other debris. Any owner of a cellular or wireless communications tower shall be required to notify the City Manager of its intent in writing within 30 days of its cessation of business, its discontinuance of service or transfer of ownership.

(H) *Removal.*

(1) Any cellular or wireless communications tower or antenna that has discontinued its service for a period of six continuous months or more is hereby determined to be a nuisance. A tower declared to be a nuisance must be removed by the owner of the tower or antenna and by the owner of the property on which the tower or antenna is located, along with all accessory structures related thereto. ***DISCONTINUED*** shall mean that the structure has not been properly maintained, has been abandoned, become obsolete, is unused, is no longer used for its original purpose or is no longer transmitting the same type of radio wave signals that is was originally designed to transmit, or has ceased the daily activities or operations which had occurred.

(2) Whenever, upon inspection it shall appear that a cellular or wireless communications tower has been abandoned or its use discontinued, the City Manager or a designated representative shall notify, either by personal delivery or by certified mail, the owner of the property on which the tower is located that the tower must be taken down and removed. The City Manager or a designated representative, in addition to any other citations, notices, penalties or remedies provided by law or ordinance, is authorized to proceed in a manner consistent with and pursuant to R.C. §§ 715.26 and 715.261 to maintain the public health, safety and welfare and to recover costs as appropriate.

(I) *Prohibitions*.

(1) No cellular or wireless communications tower shall be permitted on any lot on which any nonconforming building or structure is located nor on which any nonconforming use or activity is occurring without first obtaining a variance from the Board of Zoning Appeals.

(2) No cellular or wireless communications tower shall be constructed, replaced or altered without first obtaining the applicable building permit.

(3) A cellular or wireless communications antenna or communication site shall not be placed, operated, constructed, affixed or otherwise located within the city except as allowed and permitted by this chapter.

(J) *Public hearing*.

(1) No permit shall be issued for the construction or placement of any telecommunications tower or antenna without the City Manager conducting a public hearing which shall be published as a legal advertisement. Notice shall be sent to all property owners within 500 feet of the parcel on which a tower or antenna is intended to be located. Such notice shall be sent by regular mail not less than ten days prior to public hearing.

(2) The City Manager shall conduct the public hearing and may continue it if he or she determines that it is in the best interest of obtaining additional relevant information.

(K) *Appeals*. Any decision of the City Manager to issue or deny issuance of a permit may be appealed by an interested party in writing to the Board of Zoning Appeals within 30 days of the decision. Any property owner or occupant of real estate, within 500 feet of the subject parcel shall be presumed to be an interested party. The date of the decision shall be the date the decision is mailed to the applicant and to all property owners within 500 feet of the subject parcel. Such mailing shall be by regular mail. Any decision to deny the application shall be set forth in writing and be supported by substantial evidence.

(1) *Timing of Appeal*. The interested party appealing the decision must provide notice of his or her intent to appeal such decision to the City Manager and the Board of Zoning Appeals within thirty (30) days of the City Manager's provision of written notification of its decision to the applicant and all interested parties.

(2) *Hearing on Appeal*. The Board of Zoning Appeals shall hold a public hearing, evaluating the appeal based upon the standards of review applied by the City Manager to the permit application, within sixty (60) days of receiving the interested party's notice of appeal.

(L) *Severability*. If any requirement for reporting or measuring radiated power from an antenna is determined to be illegal or invalid for any reason, then the standards for the reporting or measuring of radiated power which has been approved, authorized or directed by the FCC and is the most similar to the original requirement shall be used instead.
(1985 Code, § 150.32) (Ord. 97-33, passed 8-25-1997) Penalty, see § 150.99

§ 150.38 TRANSITIONAL OVERLAY DISTRICT.

(A) *Purpose*.

(1) (a) It is the intent of the ~~Special Public Interest~~ Transitional Overlay District (hereinafter referred to as "T District") to designate a sensitive transitional area of the city for certain types of controlled development, which development is consistent with the goals of the city as set forth herein. The request for approval of a Transitional Overlay District development plan within a T District may only be approved if it is initiated or authorized by the property owner(s). The area of T District is set forth on Exhibit A, attached to Ordinance 98-43, passed February 8, 1999.

(b) Contrary to conventional development control strictly by type of use, the T District provides a more flexible instrument which governs development by the criteria of intensity and impacts of a use rather than its general nature. The meaning of ***USE*** is intended to encompass both the activity intended and permitted to take place on the property, as well as the improvements, including structures, landscaping, mounding, detention and drainage areas and parking, intended or planned for the site. As an alternative to the use of a property strictly in accordance with the underlying district designated for the parcel, this allows for different types of compatible land use within the zone designated as a T District.

(c) The creation of the T District is meant to identify an area (Exhibit A) within the city in which the Planning Commission may approve, approve with modifications or deny specific detailed plans proposed by the property owner (the Transitional Overlay District development plan) which meets the criteria established for the T District.

(2) The specific purposes of the T District are:

(a) To provide adequate buffering for the protection of residential districts from the adverse impacts of less restrictive uses which may be permitted in a T District;

(b) To protect and enhance the environmental, cultural, aesthetic and historic assets of the community through careful planning in the design and arrangement of buildings, activities, preservation of open or green space and the optimal utilization of natural site features;

(c) To permit the creation of a transitional zone within the city that will provide for the orderly transition from an existing Residence "A" District to the south to less restrictive districts located to the north of the Transitional Overlay District. This must be done in a manner that promotes harmony within the T District as well as providing transition between surrounding districts; and

(d) To reconcile the existing different uses that are in place at the inception of the T District

so that the long term value of the property within the district is enhanced, without unreasonable harm occurring to the existing activities. Consideration shall be given to permitting reasonable residential use of the existing dwellings to continue.

(B) *Definitions.* For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

T DISTRICT. The district designated by Council on the zoning map and attached to Ordinance 98-43, passed February 8, 1999 as Exhibit A and adopted in accordance with this code. The ***T DISTRICT*** is an overlay district which is superimposed upon the designated areas within the zoning district, and which shall be identified on the zoning map by a prefix of "T" to the underlying district. In the ***T DISTRICT*** all zoning regulations applicable to the Residential "B" District shall remain in effect until such time as approval may be given to a final transitional development plan for the lot or parcel.

T DISTRICT DEVELOPMENT PLAN.

(a) As used in this section, a plan for the development and use of a specified parcel or tract of real estate, in a form recordable at the County Recorder's Office, illustrated by a plat and containing:

1. A legal description, and dimensions of the proposed development and acreage;

2. Topography at two-foot contour intervals, which shall show the proposed development area, including property lines, easements and features, existing thereon, and including a certificate, by a registered engineer or surveyor, of the gross area of the development in acres and in square feet;

3. All landscaping and screening of the development including the placement of trees, flowers, shrubs, mounding, grass and open spaces of the proposed development, including the planned buffer areas;

4. The location, construction materials, illumination and dimension of all signs intended to be located on the property;

5. The location and dimension of all parking facilities, vehicular and pedestrian ways, the location and directional flow of existing and proposed storm and sanitary sewers, areas for on-site water detention, and an estimate of the traffic volume to be generated;

6. A notarized sworn statement explaining in detail the use to which the property shall be put and the anticipated effect which the proposed development shall have upon adjacent property;

7. Detailed plans of all proposed buildings and structures to be located on the site. A depiction of the required 100-foot buffer yard and the location of trees, shrubs, mounding and other screening shall also be identified. Also shown on a separate document must be the improvements on said property existing at the time of the T District application. The removal or alteration of such improvements shall be identified as well as the relative time frame that this work shall occur;

8. The declarations of covenants running with the land, if any;

9. Any additional information as reasonably required by Planning Commission during its review process may be requested from time to time; and

10. A schedule for construction and cost estimates for the completion of the development, including all public and private improvements in the development area.

(b) The T District development plan, unless otherwise specified, shall be prepared by professional persons qualified in the planning of land development, traffic engineering and building and landscape design. The architectural and engineering services required for the preparation of the site development plan shall be rendered by licensed professional persons.

(C) *Applicability*. This T District is established as an overlay district by Council superimposed on specific areas of a Residential "B" District designated on Exhibit A, attached to Ordinance 98-43, passed February 8, 1999. This specific T District is designed to address zoning issues in this location and is not intended to be applicable to other areas unless the Zoning Code is amended in accordance with the procedures set forth in the Charter of the city.

(D) *Permitted buildings, uses, and other regulations*.

(1) As a matter of right, those buildings and uses permitted in the underlying Residential “B” District shall be permitted in accordance with all applicable regulations of that underlying district, until such time as buildings and uses authorized by a T District development plan are approved. Thereafter, only those buildings and uses approved for a T District development plan shall be valid on the property.

(2) The following buildings and uses shall only be permitted pursuant to a T District development plan, subject to review and approval in accordance with the provisions of this chapter:

(a) Offices for professional use (such as attorneys, doctors, architects, dentists and engineers) and office-type business uses (such as real estate, insurance and manufacturers' representatives). Activities which are normal, necessary and subordinate to the office use listed herein shall be permitted. Examples of such activities include the preparation of dental supplies for patients, examination of and

treatment of patients of a physician, meeting with clients and provision of services by attorneys and insurance representatives, and closings held at a real estate office. There shall be no permitted use of such offices that is not clearly within the types of activities described herein;

(b) Nursing homes and assisted care facilities, but no services shall be provided to persons who are not residents thereof;

(c) Single-family residential uses, which may be combined with the permitted office uses set forth in division (D)(2)(a) above, as long as a resident of the residential unit is a primary participant in the business of the office. No more than one residential dwelling shall be permitted in any T District development plan when it is combined with the permitted office uses set forth in division (D)(2)(a) above; and

(d) Medical clinics, and treatment rooms, but no urgent care facilities or other medical facilities that normally require emergency services transportation and no hospital or emergency facilities shall be permitted.

(3) Accessory buildings and uses. Accessory buildings and uses may be permitted if approved by the Planning Commission as being consistent with the purposes and provisions of this chapter.

(4) All plans for the uses permitted in the T District shall be prepared to maximize buffering of adjacent districts to the south, east, and west. Additional trees and plantings shall be part of the landscaping plans based on consideration of the view from those adjoining districts. The overall intent and focus of the final plan is to encourage the uses listed above but to minimize the visual impact to adjacent residential districts. In that regard, parking for such businesses should, where feasible, be designed for the front side of such buildings, on the Camargo Road side of the T District development. Architectural features which resemble or emphasize a residential look of buildings shall be required as approved by the ARO and shall satisfy the specific requirements set forth in Division (E) below. Common drives and access points to Camargo Road should be considered.

(E) *Standards for T District development plan review and approval*.

(1) The active use of property and the design of the buildings in the T District shall only be approved if it meets the following general conditions as determined by Planning Commission:

(a) The active use and design do not significantly create an adverse influence on any abutting or surrounding properties;

(b) The plan provides for an orderly transition from more restrictive (residential) to less restrictive districts;

(c) The plan is designed to maximize the public interest and private benefit in a balanced manner; and

(d) The plan permits and encourages improved development within the remaining sites in the T District.

(2) Specific requirements and standards that must be clearly set forth in a T District development plan before it may be approved are as follows.

(a) Architectural features shall incorporate such characteristics as are normally associated with single-family residential homes, including the following: exterior construction shall be similar to typical residential construction in such combination as approved by the ARO as being consistent in character with surrounding residential areas. The side of a building facing Camargo Road may differ in appearance (for example it may be predominately glass); gabled or hipped roofs shall be required (no flat roofs); the height of new buildings shall be limited to 35 feet, consistent with other residential structures in the city; air conditioning units and waste disposal dumpsters must be specifically shielded by suitable fencing/landscaping as determined to be reasonable by the ARO for purposes of shielding these items from adjacent residential areas. These requirements shall not apply to an existing residential building which is converted to an office use, provided the exterior features of the residential structure, including air conditioning and other exterior equipment, are maintained.

(b) A rear yard setback of 100 feet shall be maintained from the residential district located adjacent to the T District as depicted on Exhibit A, attached to Ordinance 98-43, passed February 8, 1999. No structures, including parking areas or driveways, shall be placed within this 100-foot setback area.

(c) New parking areas shall be placed, where practical and feasible, between the building and Camargo Road. Parking areas which must be placed on the side or rear of the buildings shall be softened by the placement of landscaping islands in order to reduce the visual mass of impervious surface and parked motor vehicles. The number of parking spaces required shall be four spaces per 1,000 square feet of floor area of the building, excluding areas devoted exclusively to mechanical (physical plant) equipment, storage or common hallways. However, shared parking areas may be permitted if it is determined by the Planning Commission that the overall coverage of impervious areas could be reduced, it would enhance the green areas available on the development plan and would permit the new building to be erected closer to Camargo Road. (The city is attempting to minimize required parking surfaces while ensuring that there is adequate parking.)

(d) Impervious surfaces shall not cover more than 70% of an area within the entirety of a T District development plan. The required 100-foot setback area of each lot is included in the T District

development plan. Therefore, in calculating the percentage of the area in the development plan that impervious surface will cover, the green area within the 100-foot setback shall be included as part of the total area of the plan. Impervious surface shall include all areas of ground within the development plan designated as a parking area, (but not including landscape islands) buildings, structures, driveways and walkways.

(e) Evergreen landscaping within the 100-foot buffer area that is of sufficient height to block the line of sight view of any parking areas located in the rear or side of any building to be used in a T District development plan. Mounding may be included as part of the line of sight screening. The line of sight shall be from a ten-foot height located in all points along the residential property line which abuts the T District development.

(f) No development plan shall be approved which incorporates a proposed property line(s) the primary purpose of which appears to be avoiding the requirements imposed by this chapter.

(g) Exterior lighting shall be kept low and shall be reasonably shielded from adjacent residential districts.

(h) Development plan shall provide a written acknowledgment that all landscaping, screening, mounding, buffering, structures drives and parking areas and buildings shall be maintained in first class condition and that failure to so maintain these items shall be a violation of this Zoning Code, enforceable in all ways available in law and equity as any other violation of the City Zoning Code.

(3) No uses in addition to those permitted in the underlying zoning shall be permitted unless the developer demonstrates compliance with each of the above standards to the satisfaction of the Planning Commission.

(4) To secure the application of all relevant standards to a development in a T District, the Planning Commission shall require that the following are specifically set forth in any T District development plan:

(a) Front, side and rear yard requirements, density requirements, height and bulk of building requirements and intensity of use; no minimum setbacks are required to be included in the development plan except there shall be sufficient setback for necessary screening and that the 100-foot setback depicted on Exhibit A, attached to Ordinance 98-43, passed February 8, 1999, shall be maintained;

(b) The use of materials or designs in the erection of structures which shall minimize the adverse impact of the uses proposed by the development plan on neighboring properties;

(c) Permits for business signs, outdoor storage, parking spaces and driveways;

(d) Screening or other areas of land to serve as a buffer of the proposed use in the T District from adjacent properties by walls, fences, landscaping or open spaces; and

(e) Such additional conditions and limitations on the use, building dimensions, open spaces and the like as may be deemed necessary to carry out the intent of this chapter and this Zoning Code.

(F) *Submission and review of site development plan.*

(1) Application procedure.

(a) Any person or company intending to apply for approval of a T District development plan shall first schedule a pre-application conference with the City Manager or his or her assignee. At this conference, the prospective applicant must present in writing to the City Manager a preliminary proposal for a T District development plan.

(b) The purpose of the pre-application conference will be to, generally, evaluate the impact on adjacent areas and neighborhoods and identify the benefits achieved, such as better use of property, stabilizing future changes and providing a transition area. This information should also identify the adjoining property owners and any existing nonconforming uses.

(c) Upon completion of the pre-application conference an application may be filed with the office of the City Manager. The application shall be in compliance with the requirements of this chapter and in such form as approved by the City Manager. If the application does not conform with the requirements of this chapter, the applicant shall be notified by the City Manager and no further consideration of the application shall occur until it is in compliance with the terms of this chapter.

(2) *Public hearing and decision.*

(a) Upon receipt of an application in the format prescribed by this chapter, the City Manager shall forward the application to the Planning Commission for consideration. The Planning Commission shall review said T District development plan and shall hold a public hearing on such application. Notice of such hearing shall be sent to all property owners within 200 feet of the proposed T District Development not less than ten days prior to the scheduled hearing.

(b) Subsequent to the public hearing, the Planning Commission shall either approve the T District development plan as submitted, approve a modified plan with conditions or deny approval of the plan. Five members of Planning Commission must vote in the affirmative to approve any such application either as submitted or modified. Approval of this plan shall be considered approval of a preliminary T District development plan. Approval of the preliminary development plan shall not

constitute any authority to proceed with construction or development. Such approval shall only authorize the applicant to submit a proposed final development plan.

(c) A proposed Final T District development plan shall be submitted within six months of the date of the Planning Commission meeting at which the preliminary plan was approved. The Planning Commission may extend this period for a reasonable period upon a showing of good cause by the applicant. The final plan must be substantially consistent with the preliminary plan in all respects. If the Planning Commission finds that a proposed final plan of a development area is in substantial accordance with and represents a detailed expansion of the preliminary plan, as previously approved, that the final plan complies with all of the conditions and adjustments which may have been imposed in the approval of the preliminary plan, that it is in accordance with the criteria and provisions and purpose of this chapter and this code, that all agreements, contracts, deed restrictions, dedications, declarations of ownership and other required documents are in acceptable form and have been executed, that all fee payments have been made, then the Planning Commission shall approve such final plan and certify its approval to the City Manager and City Council. Certification of the approval shall be for informational purposes only.

(d) Following the approval of a final plan, the City Manager shall issue such permits as are necessary and under his or her jurisdiction upon payment of the required fees.

(e) Amendment of plan.

1. A major amendment of an existing plan shall require a review and approval of the Planning Commission in the same manner and with the same requirements imposed by this chapter for approval of an original T District development plan. A major amendment shall include any change of use from one category to another as listed in division (D)(2) hereof, any increase in the impervious area coverage in excess of 5% over the amount approved in the original plan, the enlargement of any building from that originally approved, or the consolidation of use of adjoining T District development plans.

2. Minor amendments to a T District development plan must be approved by the City Manager and the ARO. Either official may refer the request for approval of a minor amendment to the Planning Commission if the official determines that the request should be considered a major amendment. Minor amendments shall include internal changes to buildings and structures, changes to the front of a building, changes to signs which are not being enlarged and are consistent with what was previously approved by the Planning Commission, amendments to drainage pattern or replacement of existing lighting provided it remains effectively shielded. A minor amendment shall also include any change of use that does not change the category of use as those categories are set forth in division (D)(2) hereof. For example, a change in use of an office from real estate to insurance shall be considered a minor amendment. However, a change of use from any office use to a medical clinic shall be considered a major amendment.

(3) *Contingent-Approval Permitted.* In circumstances where an applicant needs a variance from the requirements of this Code, the Planning Commission may provide contingent-approval of a Final Application for a development plan. Such contingent-approval shall mean their approval of the Final Application is subject to the applicant obtaining any required variance(s) from the Board of Zoning Appeals. If the Planning Commission provides contingent-approval of a Final Application and the Board of Zoning Appeals subsequently denies the applicant's requested variance(s), said denial shall constitute a rejection of the Final Application

(4) *Appeals.* Pursuant to this section, if the Planning Commission, City Manager, or ARO deny an applicant's request for approval of a development plan or an amendment to a previously-approved development plan, such applicant may appeal the decision denying their request to the Board of Zoning Appeals.

(a) *Timing of Appeal*. The applicant appealing the decision must provide notice of his or her intent to appeal such decision to the Planning Commission and the Board of Zoning Appeals within thirty (30) days of the Planning Commission's provision of written notification of its denial to the applicant.

(b) *Hearing on Appeal*. The Board of Zoning Appeals shall hold a public hearing, evaluating the appeal based upon the standards of review applied by the Planning Commission to the initial conditional use application, within sixty (60) days of receiving applicant's notice of appeal.
(1985 Code, § 150.33) (Ord. 98-43, passed 2-8-1999)

ORDINANCE NO. 17-10
EXHIBIT R

§ 150.39 TRANSITIONAL OVERLAY DISTRICT #2.

(A) *Purpose*.

(1) (a) It is the intent of the ~~Special Public Interest~~ Transitional Overlay District #2 (hereinafter referred to as "T District #2") to designate a sensitive transitional area of the city for certain types of controlled development, which development is consistent with the goals of the city as set forth herein. The request for approval of a Transitional Overlay District #2 development plan within a T District #2 may only be approved if it is initiated or authorized by the property owner(s). The area of a T District #2 is set forth on Exhibit B attached to Ordinance 05-05.

(b) Contrary to conventional development control strictly by type of use, the T District provides a more flexible instrument which governs development by the criteria of intensity and impacts of a use rather than its general nature. The meaning of ***USE*** is intended to encompass both the activity intended and permitted to take place on the property, as well as the improvements, including structures, landscaping, mounding, detention and drainage areas and parking, intended or planned for the site. As an alternative to the use of a property strictly in accordance with the underlying district designated for the parcel, this allows for different types of compatible land use within the zone designated as a T District #2.

(c) The creation of the T District #2 is meant to identify an area within the city in which the Planning Commission may approve, approve with modifications or deny specific detailed plans proposed by the property owner (the Transitional Overlay District #2 development plan) which meets the criteria established for the T District #2.

(2) The specific purposes of the T District #2 are:

(a) To provide adequate buffering for the protection of residential districts from the adverse impacts of less restrictive uses which may be permitted in a T District #2;

(b) To protect and enhance the environmental, cultural, aesthetic and historic assets of the community through careful planning in the design and arrangement of buildings, activities, preservation of open or green space and the optimal utilization of natural site features;

(c) To permit the creation of a transitional zone within the city that will provide for the orderly transition from an existing Residential "B" District to the south to less restrictive districts located to the north of the Transitional Overlay District #2. This must be done in a manner that promotes harmony within the T District #2 as well as providing transition between surrounding districts; and

(d) To reconcile the existing different uses that are in place at the inception of the T District

#2 so that the long-term value of the property within the district is enhanced, without unreasonable harm occurring to the existing activities. Consideration shall be given to permitting reasonable residential use of the existing dwellings to continue.

(B) *Definitions*. For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

T DISTRICT #2. The district designated by Council on the zoning map and attached to Ordinance 05-05 as Exhibit B and adopted in accordance with this code. The T District #2 is an overlay district which is superimposed upon the designated areas within the zoning district, and which shall be identified on the zoning map by a prefix of "T" to the underlying district. In the ***T DISTRICT #2,*** all zoning regulations applicable to the Residential "B" District shall remain in effect until such time as approval may be given to a final transitional development plan for the lot or parcel.

T DISTRICT #2 DEVELOPMENT PLAN.

(a) As used in this section, a plan for the development and use of a specified parcel or tract of real estate, in a form recordable at the County Recorder's office, illustrated by a plat, and containing:

1. A legal description, and dimensions of the proposed development and acreage;

2. Topography at two-foot contour intervals, which shall show the proposed development area, including property lines, easements and features, existing thereon, and including a certificate, by a registered engineer or surveyor, of the gross area of the development in acres and in square feet;

3. All landscaping and screening of the development including the placement of trees, flowers, shrubs, mounding, grass and open spaces of the proposed development, including the planned buffer areas;

4. The location, construction materials, illumination and dimension of all signs intended to be located on the property;

5. The location and dimension of all parking facilities, curb cuts, vehicular and pedestrian ways, the location and direction flow of existing and proposed storm and sanitary sewers, areas for on-site water detention and an estimate of the traffic volume to be generated;

6. A notarized sworn statement explaining in detail the use to which the property shall be put and the anticipated effect which the proposed development shall have upon adjacent property;

7. Detailed plans of all proposed buildings and structures to be located on the site. A depiction of the required 30-foot buffer yard and the location of trees, shrubs, mounding and other screening shall also be identified. Also shown on a separate document must be the improvements on said property existing at the time of the T District application. The removal or alteration of such improvements shall be identified as well as the relative time frame that this work shall occur;

8. The declarations of covenant running with the land, if any;

9. Any additional information as reasonably required by the Planning Commission during its review process may be requested from time to time; and

10. A schedule for construction and cost estimates for the completion of the development, including all public and private improvements in the development area.

(b) The T District #2 development plan, unless otherwise specified, shall be prepared by professional persons qualified in the planning of land development, traffic engineering and building and landscaping design. The architectural and engineering services required for the preparation of the site development plan shall be rendered by licensed professional persons.

(C) *Applicability*. This T District #2 is established as an overlay district by Council superimposed on specific areas of a Residential "B" District designated on Exhibit B, attached to Ordinance 05-05. This specific T District #2 is designed to address zoning issues in this location and is not intended to be applicable to other areas unless the Zoning Code is amended in accordance with the procedures set forth in the Charter of the city.

(D) *Permitted buildings, uses and other regulations*.

(1) As a matter of right, those buildings and uses permitted in the underlying Residential "B" District shall be permitted in accordance with all applicable regulations of that underlying district, until such time as buildings and uses authorized by a T District #2 development plan are approved. Thereafter, only those buildings and uses approved for a T District #2 development plan shall be valid on the property. The transition from original use to T District #2 use shall be in accordance with the time table approved as part of the T District #2 application. Failure to complete the improvements and obtain a final certificate of occupancy within the approved time frame, including any authorized extensions, shall cause the approval of the T District #2 development plan to lapse, and only buildings and uses permitted in the underlying district shall be permitted thereafter.

(2) The following buildings and uses shall only be permitted pursuant to a T District #2 development plan, subject to review and approval in accordance with the provisions of this section:

(a) Offices for professional use (such as attorneys, doctors, architects, dentists and engineers) and office-type business uses (such as real estate, insurance and manufacturers' representatives). Activities which are normal, necessary and subordinate to the office use listed herein shall be permitted. Examples of such activities include the preparation of dental supplies for patients, examination of and treatment of patients of a physician, meeting with clients and provision of services by attorneys and insurance representatives, and closings held at a real estate office. There shall be no permitted use of such offices that is not clearly within the types of activities described herein;

(b) Low density retail use. A ***LOW DENSITY RETAIL USE*** shall de defined as follows:

1. The hours of operation (hours held open to the public) are limited to 9:00 a.m. to 6:00 p.m., Monday through Saturday and 10:00 a.m. to 5:00 p.m. on Sunday; and

2. The retail use shall not occupy more than 2,000 square feet of usable floor area of any existing or new structure. These uses shall include:

a. Specialty shop;

b. Clothing store;

c. Bank;

d. Bookstore;

e. Barbershop/salon;

f. Pet grooming;

g. Gift shop;

h. Florist;

i. Arts and crafts; and

j. Other similar uses that are consistent with these guidelines established herein, as demonstrated by the applicant, and have been approved by the Planning Commission.

(c) Single-family residential uses, which may be combined with the permitted uses set forth in divisions (D)(2)(a) and (D)(2)(b) above, as long as a resident of the residential unit is a primary

participant in the business. No more than one residential dwelling shall be permitted in any T District #2 development plan when it is combined with the permitted uses set forth in division (D)(2)(a) above; and

(d) Medical clinics and treatment rooms, but no urgent care facilities or other medical facilities that normally require emergency services transportation and no hospital or emergency facilities shall be permitted.

(3) Accessory buildings and uses. Accessory buildings and uses may be permitted if approved by the Planning Commission as being consistent with the purposes and provisions of this section.

(4) All plans for the uses permitted in the T District #2 shall be prepared to maximize buffering of adjacent districts to the south. Additional trees and plantings shall be part of the landscaping plans based on consideration of the view from those adjoining districts. The overall intent and focus of the final plan is to encourage the uses listed above but to minimize the visual impact to adjacent residential districts. In that regard, parking for such businesses should, where feasible, be designed for the front side of such buildings, on the Camargo Road side of the T District #2 development. Architectural features which resemble or emphasize a residential look of buildings shall be required as approved by the ARO and shall satisfy the specific requirements set forth in division (E) below. Common drives and access points to Camargo Road should be considered.

(E) *Standards for T District #2 development plan review and approval*.

(1) The active use of property and the design of the buildings in the T District #2 shall only be approved if it meets the following general conditions as determined by the Planning Commission:

(a) The active use and design do not significantly create an adverse influence on any abutting or surrounding properties;

(b) The plan provides for an orderly transition from more restrictive (residential) to less restrictive districts;

(c) The plan is designed to maximize the public interest and private benefit in a balanced manner; and

(d) The plan permits and encourages improved development within the remaining sites in the T District #2.

(2) Specific requirements and standards that must be clearly set forth in a T District #2 development plan before it may be approved are as follows.

(a) Architectural features shall incorporate such characteristics as are normally associated with single-family residential homes, including the following: exterior construction shall be similar to typical residential construction in such combination as approved by the ARO as being consistent in character with surrounding residential areas. The side of a building facing Camargo Road may differ in appearance (for example it may be predominantly glass); gabled or hipped roofs shall be required (no flat roofs); the height of new buildings shall be limited to 28 feet, consistent with other residential structures in the city; air conditioning units and waste disposal dumpsters must be specifically shielded by suitable fencing/landscaping as determined to be reasonable by the ARO for purposes of shielding these items from adjacent residential areas. These requirements shall not apply to an existing residential building which is converted to an office use, provided the exterior features of the residential structure, including air conditioning and other exterior equipment, are maintained.

(b) A rear yard setback of 30 feet shall be maintained from the residential district located adjacent to the T District #2 as depicted on Exhibit B, attached to Ordinance 05-05. No structures, including parking areas or driveways, shall be placed within this 30-foot setback area.

(c) New parking areas shall be placed, where practical and feasible, between the building and Camargo Road. Parking areas which must be placed to the side or rear of the buildings shall be softened by the placement of landscaping islands in order to reduce the visual mass of impervious surface and parked motor vehicles. The number of parking spaces required shall be five spaces per 1,000 square feet of floor area of the building, excluding areas devoted exclusively to mechanical (physical plant) equipment, storage or common hallways. However, shared parking areas may be permitted if it is determined by the Planning Commission that the overall coverage of impervious areas could be reduced, it would enhance the green areas available on the development plan and would permit the new building to be erected close to Camargo Road. (Note: The city is attempting to minimize required parking surfaces while ensuring that there is adequate parking.)

(d) Impervious surfaces shall not cover more than 70% of an area within the entirety of a T District #2 development plan. The required 30-foot setback area of each lot is included in the T District #2 development plan. Therefore, in calculating the percentage of the area in the development plan that impervious surface will cover, the green area within the 30-foot setback shall be included as part of the total area of the plan. Impervious surface shall include all areas of ground within the development plan designated as a parking area (but not including landscape islands), buildings, structures, driveways and walkways.

(e) A landscape plan shall be required and will include evergreen landscaping within the 30-foot setback area that is of sufficient height to block the line of sight view of any parking areas located in the rear or side of any building to be used in a T District #2 development plan. Mounding may be included as part of the line of sight screening. The line of sight shall be from a ten-foot height located in all points along the residential property line which abuts the T District #2 development.

(f) No development plan shall be approved which incorporates a proposed property line(s) the primary purpose of which appears to be avoiding the requirements imposed by this chapter.

(g) Exterior lighting shall be kept low and shall be reasonably shielded from adjacent residential districts.

(h) The development plan shall provide a written acknowledgment that all landscaping, screening, mounding, buffering, structure drives and parking areas and buildings shall be maintained in first class condition and that failure to so maintain these items shall be a violation of this Zoning Code, enforceable in all ways available in law and equity as any other violation of the City Zoning Code.

(i) Redevelopment of the property shall require improvements to the property including the installation of appropriate curbs, sidewalks, lighting and other streetscape treatment as designated by the ARO. If a variance is requested by the owner and granted by the Board of Zoning Appeals, the Board of Zoning Appeals shall require the owner to post a bond for the full amount of the improvements to be installed at a later date.

(j) Access to these properties shall be limited to Camargo Road only.

(k) Developments are encouraged to limit the number of curb cuts per site. The Planning Commission will approve the number and location of curb cuts for each site. If there is ever a conflict between the requirements in the T District #2 and the parking regulations, the T District #2 requirements will supersede the underlying requirements.

(3) No uses in addition to those permitted in the underlying zoning shall be permitted unless the developer demonstrates compliance with each of the above standards to the satisfaction of the Planning Commission.

(4) To secure the application of all relevant standards to a development in the T District #2, the Planning Commission shall require that the following are specifically set forth in any T District #2 development plan:

(a) Front, side and rear yard requirements, density requirements, height and bulk of building requirements and intensity of use; no minimum setbacks are required to be included in the development plan except there shall be sufficient setback for necessary screening and that the 30-foot setback depicted on Exhibit B, attached to Ordinance 05-05, shall be maintained;

(b) The use of materials or designs in the erection of structures which shall minimize the adverse impact of the uses proposed by the development plan on neighboring properties;

(c) Permits for business signs, outdoor storage, parking spaces and driveways;

(d) Screening or other areas of land to serve as a buffer of the proposed use in the T District #2 from adjacent properties by walls, fences, landscaping or open spaces; and

(e) Such additional conditions and limitations on the use, building dimensions, open spaces and the like as may be deemed necessary to carry out the intent of this chapter and this Zoning Code.

(F) *Submission and review of site development plan*.

(1) *Application procedure*.

(a) Any person or company intending to apply for approval of a T District #2 development plan shall first schedule a pre-application conference with the City Manager or his or her assignee. At this conference, the prospective applicant must present in writing to the City Manager a preliminary proposal for a T District #2 development plan.

(b) The purpose of the pre-application conference will be to, generally, evaluate the impact on adjacent areas and neighborhoods and identify the benefits achieved, such as better use of property, stabilizing future changes and providing a transition area. This information should also identify the adjoining property owners and any existing nonconforming uses.

(c) Upon completion of the pre-application conference, an application may be filed with the office of the City Manager. The application shall be in compliance with the requirements of this chapter and in such form as approved by the City Manager. If the application does not conform with the requirements of this chapter, the applicant shall be notified by the City Manager and no further consideration of the application shall occur until it is in compliance with the terms of this chapter.

(2) *Public hearing and decision*.

(a) Upon receipt of an application in the format prescribed by this chapter, the City Manager shall forward the application to the Planning Commission for consideration. The Planning Commission shall review said T District # 2 development plan and shall hold a public hearing on such application. Notice of such hearing shall be sent to all property owners within 200 feet of the proposed T District #2 development not less than ten days prior to the scheduled hearing.

(b) Subsequent to the public hearing, the Planning Commission shall either approve the T District #2 development plan as submitted, approve a modified plan with conditions or deny approval of the plan. Five members of the Planning Commission must vote in the affirmative to approve any such

application either as submitted or modified. Approval of this plan shall be considered approval of a preliminary T District #2 development plan. Approval of the preliminary development plan shall not constitute any authority to proceed with construction or development. Such approval shall only authorize the applicant to submit a proposed final development plan.

(c) A proposed final T District #2 development plan shall be submitted within six months of the date of the Planning Commission meeting at which the preliminary plan was approved. The Planning Commission may extend this period for a reasonable period upon a showing of good cause by the applicant. The final plan must be substantially consistent with the preliminary plan in all respects. If the Planning Commission finds that a proposed final plan of a development area is in substantial accordance with and represents a detailed expansion of the preliminary plan, as previously approved, that the final plan complies with all of the conditions and adjustments which may have been imposed in the approval of the preliminary plan, that it is in accordance with the criteria and provisions and purpose of this chapter and this code, that all agreements, contracts, deed restrictions, dedications, declaration of ownership and other required documents are in acceptable form and have been executed, that all fee payments have been made, then the Planning Commission shall approve such final plan and certify its approval to the City Manager and City Council. Certification of the approval shall be for informational purposes only.

(d) Following the approval of a final plan, the City Manager shall issue such permits as are necessary and under his or her jurisdiction upon payment of the required fees.

(e) Amendment of plan.

1. A major amendment of an existing plan shall require a review and approval of the Planning Commission in the same manner and with the same requirements imposed by this chapter for approval of an original T District #2 development plan. A major amendment shall include any change of use from one category to another as listed in division (D)(2) hereof, any increase in the impervious area of coverage in excess of 5% over the amount approved in the original plan, the enlargement of any building from that originally approved, or the consolidation of use of adjoining T District #2 development plans.

2. Minor amendments to a T District #2 development plan must be approved by the City Manager and the ARO. Either official may refer the request for approval of a minor amendment to the Planning Commission if the official determines that the request should be considered a major amendment. Minor amendments shall include internal changes to buildings and structures, changes to the front of a building, changes to signs which are not being enlarged and are consistent with what was previously approved by the Planning Commission, amendments to drainage pattern or replacement of existing lighting provided it remains effectively shielded. A minor amendment shall also include any change of use that does not change the category of use as those categories are set forth in division (D)(2)

hereof. For example, a change in use of an office from real estate to insurance shall be considered a minor amendment. However, a change of use from any office use to a medical clinic shall be considered a major amendment.

(3) *Contingent-Approval Permitted.* In circumstances where an applicant needs a variance from the requirements of this Code, the Planning Commission may provide contingent-approval of a Final Application for a development plan. Such contingent-approval shall mean their approval of the Final Application is subject to the applicant obtaining any required variance(s) from the Board of Zoning Appeals. If the Planning Commission provides contingent-approval of a Final Application and the Board of Zoning Appeals subsequently denies the applicant's requested variance(s), said denial shall constitute a rejection of the Final Application.

(4) *Appeals.* Pursuant to this section, if the Planning Commission, City Manager, or ARO deny an applicant's request for approval of a development plan or an amendment to a previously-approved development plan, such applicant may appeal the decision denying their request to the Board of Zoning Appeals.

(a) *Timing of Appeal*. The applicant appealing the decision must provide notice of his or her intent to appeal such decision to the Planning Commission and the Board of Zoning Appeals within thirty (30) days of the Planning Commission's provision of written notification of its denial to the applicant.

(b) *Hearing on Appeal*. The Board of Zoning Appeals shall hold a public hearing, evaluating the appeal based upon the standards of review applied by the Planning Commission to the initial conditional use application, within sixty (60) days of receiving applicant's notice of appeal.
(1985 Code, § 150.34) (Ord. 05-05, passed 8-22-2005)

§ 150.40 TRANSITIONAL OVERLAY DISTRICT #3.

(A) *Intent*. It is the intent of the Transitional Overlay District #3 (hereinafter referred to as "T District #3") to designate a sensitive transitional area of the city for certain types of controlled development consistent with the purposes of the city as set forth herein. The request for approval of a T District #3 development plan within a T District #3 may only be approved if it is initiated or authorized by the property owner(s). The area of a T District #3 is set forth on Exhibit B attached to Ordinance 10-22, passed on February 14, 2011.

(B) *Purposes*. The specific purposes of the T District #3 are:

(1) To encourage development of appropriate land uses in the district given the existing surrounding development;

(2) To provide adequate buffering for the protection of existing adjacent residential uses and districts from the adverse impacts of more intense uses that may be developed in the T District #3; and

(3) To provide for the orderly transition from an existing Residence "A" District to the south and east of the T District #3 to the higher intensity uses of the Business "A" District to the north and west. This must be done in a manner that promotes harmony within the T District #3 as well as providing a transition between surrounding districts.

(C) *Applicability*. This T District #3 is established as an overlay district by Council superimposed on specific areas of a Residence "A" District designated on Exhibit B, attached to Ordinance 10-22 passed on February 14, 2011. It shall be identified on the zoning map by a "T District #3." This specific T District #3 is designed to address zoning issues in this location and is not intended to be applicable to other areas unless the Zoning Code is amended in accordance with the procedures set forth in the Charter of the city. In the T District #3, all zoning regulations applicable to the Residence "A" District shall remain in effect until such time as approval may be given to a final T District #3 development plan for the lot or parcel.

(D) *Development plan required.* Redevelopment of the property shall require a development plan which includes necessary public improvements. The development plan requirements are listed in division (G) below.

(E) *Definitions.* For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUFFERYARD. An area of healthy and viable vegetation, natural or planted, installed and maintained for the purposes of separating and screening the effects of a higher intensity land use upon a

lower intensity land use. The ***BUFFERYARD*** is to be placed within the setbacks, as described herein, and is to contain only vegetation; and no part of the ***BUFFERYARD*** is to be used for parking or driveways.

IMPERVIOUS SURFACES. Surfaces (e.g., parking lots and rooftops) covered by impenetrable materials such as asphalt, concrete, brick and stone.

INDEPENDENT LIVING BUILDING. A building which contains complete housing units for individual use, each including kitchen, bathroom, living room and at least one bedroom. Transportation services and facilities such as congregate dining, social gathering areas, library, prayer chapel and exercise room may also be included. No nursing type facilities are included.

(F) *Permitted uses*.

(1) As a matter of right, those buildings and uses permitted in the underlying Residence "A" District shall be permitted in accordance with all applicable regulations of that underlying district, until such time as buildings and uses authorized by a T District #3 development plan are approved. Thereafter, only those buildings and uses approved for a T District #3 development plan shall be valid on the property. The transition from original uses to T District #3 uses shall be in accordance with the schedule for construction approved as part of the T District #3 application. Failure to complete the improvements and obtain a final certificate of occupancy within the approved time frame, including any authorized extensions, shall cause the approval of the T District #3 development plan to lapse, and the site shall revert to only buildings and uses permitted in the underlying district.

(2) Multi-family residential uses, including attached townhouses, pursuant to a T District #3 development plan, subject to review and approval in accordance with the provisions of this chapter, that meet the following standards:

(a) Two and twenty-four one hundredths acres minimum site size;

(b) No more than 15 dwelling units per acre calculated on the entire gross acreage of the development site;

(c) One hundred-foot minimum setback from the side property line to the south;

(d) Ten-foot minimum setback from the side property line to the north;

(e) Ten-foot minimum rear yard setback from the east property line abutting a non-residential use;

(f) Fifty-foot minimum rear yard setback from the east property line abutting a residential use;

(g) Thirty-foot minimum attractively landscaped setback from Hosbrook Road which includes a combination of grass, groundcover and trees, and does not interfere with visibility for drivers entering and exiting the property;

(h) Twenty-five-foot minimum landscaped bufferyard within the 100-foot and 50-foot setbacks, pursuant to division (I)(8) herein;

(i) Minimum unit size of 750 square feet;

(j) Minimum of two enclosed parking spaces per unit; and

(k) Minimum of one visitor parking space per unit that can either be enclosed or a surface parking lot.

(3) Independent living for adults age 55 and older, defined as in division (E) above, pursuant to a T District #3 development plan, subject to review and approval in accordance with the provisions of this chapter, that meet the following standards:

(a) Two and twenty-four one hundredths acres minimum site size;

(b) No more than 15 dwelling units per acre calculated on the entire gross acreage of the development site;

(c) One hundred-foot minimum setback from the side property line to the south;

(d) Ten-foot minimum setback from the side property line to the north;

(e) Ten-foot minimum rear yard setback from the east property line abutting a non-residential use;

(f) Fifty-foot minimum rear yard setback from the east property line abutting a residential use;

(g) Thirty-foot minimum attractively landscaped setback from Hosbrook Road which includes a combination of grass, groundcover, and trees, and does not interfere with visibility for drivers entering and exiting the property;

(h) Twenty-five foot minimum landscaped bufferyard within the 100-foot and 50-foot setbacks, pursuant to division (I)(8) herein;

(i) Minimum unit size of 750 square feet;

(j) Minimum of one enclosed parking space per unit; and

(k) Minimum of seven employee parking spaces and one visitor parking space per unit that can either be enclosed or a surface parking lot.

(4) Offices for professional use (such as attorneys, doctors, architects, dentists, and engineers) and office-type business uses (such as real estate, insurance and manufacturers' representatives). Activities which are normal, necessary and subordinate to the office use listed herein shall be permitted. Examples of such activities include the preparation of dental supplies for patients, examination of and treatment of patients of a physician, meeting with clients and provision of services by attorneys and insurance representatives, and closings held at a real estate office. There shall be no permitted use of such offices that is not clearly within the types of activities described herein.

(a) Offices converted from residential structures existing at the time of adoption of these T District #3 regulations for which no expansion or other exterior changes are proposed must meet the following standards:

1. One parking space for each 500 square feet of gross office space;

2. Compliance with all other parking requirements of § 150.24 of the City Zoning Code;

3. New parking areas abutting a residence use must not be placed within 25 feet of the property; and

4. Some submission requirements may be waived by the City Manager.

(b) Offices which are new construction must meet the following standards:

1. Two and twenty-four one hundredths acres minimum site size;

2. One hundred-foot minimum setback from the side property line to the south;

3. Ten-foot minimum side yard setback from the side property line to the north;

4. Ten-foot minimum rear yard setback from the east property line abutting a non-residential use;

5. Fifty-foot minimum rear yard setback from the east property line abutting a residential use;

6. Thirty-foot minimum attractively landscaped setback from Hosbrook Road which includes a combination of grass, groundcover, and trees, and does not interfere with visibility for drivers entering and exiting the property;

7. Twenty-five foot minimum landscaped bufferyard within the 100-foot and 50-foot setbacks pursuant to division (I)(8) herein; and

8. Must comply with all requirements of § 150.24 regarding parking.

(5) Accessory buildings and uses may be permitted if approved by the Planning Commission as being consistent with the purposes and provisions of this chapter.

(G) *Development plan requirements*.

(1) Full size plat of development, drawn to a scale of one inch equals 50 feet, with north arrow, and identification of site in relation to adjacent main roads;

(2) Existing and proposed property lines, and dimensions and acreage of the proposed development, certified by a licensed engineer or registered surveyor;

(3) Existing and proposed topography at two-foot contour intervals prepared and certified by a registered surveyor;

(4) Footprints of existing structures on lots to be developed and all adjacent lots, with notations for proposed demolition of any structures;

(5) Footprints of all proposed structures;

(6) All proposed setbacks, indicating dimension and distance from property lines to proposed structures, including decks, porches and patios;

(7) Location and dimension of all parking areas and facilities, park or playground areas, vehicular and pedestrian ways, other common areas, and all other impermeable public or private paved surfaces;

(8) Location and dimension of all entrances into and exits from the development;

(9)Information on all signage to be located on the property pursuant to the City Sign Code and application;

(10) Location, construction material, illumination in footcandles of all proposed lighting, and photometric study;

(11) Location of dumpsters, with required sufficient screening, and location of mailboxes;

(12) Location of all utilities, and location and directional flow of existing and proposed water lines, storm and sanitary sewers and areas for on-site water retention and detention;

(13) Elevations of proposed structures, including notation for proposed building height;

(14) A landscape plan including the following:

(a) The location of all existing vegetation, noting whether it will remain or not;

(b) The location of proposed bufferyards, landscaping and screening, including tress, flower beds, shrubs, mounding, grass and open space, and all irrigation devices for the landscaping; and

(c) A table listing the common botanical names of all proposed plants to be planted or retained on the site pursuant to division (I)(9) herein.

(15) Traffic circulation and access including the adequacy of adjacent streets, entrances and exits, traffic flow, sight distance, curb cuts, turning lanes and existing or recommended traffic signalization, and emergency vehicle access.

(H) *Additional submission requirements*.

(1) A traffic management plan, provided by a licensed engineer, that includes but is not limited to a traffic count along Hosbrook Road, prior to development, and a projection of the traffic impact after development, illustrating line of sight issues, alignment with driveways or streets on Hosbrook Road, identification of sight-distance issues related to access to the proposed development, and distance to adjacent driveways on Hosbrook Road;

(2) A statement explaining in detail the use to which the property shall be put and the anticipated effect which the proposed development shall have upon adjacent property;

(3) A letter from MSD indicating the availability of sewer service;

(4) A legal description of the lots;

(5) A description of all exterior building materials and colors;

(6) A schedule for construction, and cost estimates for the completion of the development including all public and private improvements;

(7) Plans, if any, to dedicate any streets or other property to the city;

(8) A performance bond or other acceptable security and other legal data to ensure completion of streets, bufferyard and amenities in accordance with the accepted plans may be required for the final development plan; and

(9) The development plan shall provide a written acknowledgment that all landscaping, screening, mounding, buffering, structure drives, and parking areas and buildings shall be maintained in first class condition, to the satisfaction of the City Manager and his or her designee, and that failure to so maintain these items shall be a violation of this Zoning Code, enforceable in all ways available in law and equity as any other violation of the City Zoning Code.

(I) *General standards for T District #3 development plan approval.* The active use of property and the design of the buildings in the T District #3 shall only be approved if the Planning Commission determines that they do not significantly create an adverse influence on any abutting or surrounding properties; provide for an orderly transition from more restrictive (residential) to less restrictive districts; and if the plan is designed to maximize the public interest and private benefit in a balanced manner. The following standards apply to all uses:

(1) Waste disposal dumpsters and any other ground level mechanical units must be shielded by suitable fencing/landscaping as approved by the ARO;

(2) Any rooftop mechanical units including satellite dishes must be shielded from residential areas and approved by the ARO;

(3) The site must maintain an impervious surface ratio of 60% (ISR = total area of buildings and impervious surface areas divided by the total area of the lot) or 40% open space;

(4) Maximum height permitted is 827 feet above mean sea level (includes rooftop mechanicals which must be screened as stated above in division (I)(2) above);

(5) Loading areas must be to the rear of the site;

(6) Exterior lighting shall be kept low (-0- footcandles net increase at property line abutting residential district or use) and shall be shielded from adjacent residential districts or use with house side shields;

(7) New parking areas shall be placed, where practical and feasible, behind the building, with parking in the front of the building limited to short term pick-up and drop off and valet parking. Parking areas which must be placed to the side or rear of the buildings shall be softened by the placement of landscaping islands in order to reduce the visual mass of impervious surface and parked motor vehicles;

(8) Landscaping shall be installed in the bufferyard which creates a physical and visual buffer from adjoining properties, and for this purpose, a combination of live plantings shall be planted within the side and rear yard setbacks and described herein, according to acceptable nursery industry standards and shall comply with the following criteria:

(a) All landscaping materials shall consist of only live plantings, and shall be installed and maintained according to accepted nursery industry procedures;

(b) Landscaping materials shall be of sufficient height to block the line of sight of any residential areas adjacent to the T District #3 site. Mounding may be included as part of the line of sight screening. The line of sight shall be from a ten-foot height located in all points along the residential property line which abuts the T District #3 development;

(c) Landscaping planted within the bufferyard shall create a dense vegetative screen, which shall be equally effective in winter and summer;

(d) Shrubs planted in the bufferyard shall be a minimum height of three and one-half feet when planted, and shall achieve a height of six feet, no later than 24 months after the initial installation;

(e) When required landscaping is located along the area extending from the building to the street, the height shall be consistent with sight distance from the street for safety purposes;

(f) Each shrub shall be planted sufficiently close to the next shrub, according to nursery industry standards, to provide an effective, dense screen;

(g) Deciduous trees shall be a minimum caliper of three inches at the time of planting (if deciduous trees are used for screening purposes, additional materials must be used to create a dense buffer);

(h) Evergreen trees shall be a minimum of eight feet in height at the time of planting; and

(i) No driveways or parking areas shall be placed within the bufferyard;

(9) Access to these properties shall be limited to Hosbrook Road only;

(10) Developments are encouraged to limit the number of curb cuts per site;

(11) If there is a conflict between the requirements in the T District #3 and the parking regulations, the T District #3 requirements will supersede the underlying requirements; and

(12) Violation of these provisions shall be grounds for the city to refuse to issue a certificate of occupancy.

(J) *Submission and review of site development plan*.

(1) *Application procedure*.

(a) Any person or company intending to develop a use other than a single-family residential use must apply for approval of a T District #3 development plan, and shall first schedule a pre-application conference with the City Manager or his or her assignee. At this conference, the prospective applicant must present in writing to the City Manager a preliminary proposal for the development plan.

(b) The purpose of the pre-application conference will be to, generally, evaluate the impact on adjacent areas and neighborhoods and identify the benefits achieved, such as better use of property, stabilizing future changes and providing a transition area. This information should also identify the adjoining property owners and any existing nonconforming uses.

(c) Upon completion of the pre-application conference an application may be filed with the office of the City Manager. The application shall be in compliance with the requirements of this chapter and in such form as approved by the City Manager. If the application does not conform with the requirements of this chapter, the applicant shall be notified by the City Manager and no further consideration of the application shall occur until it is in compliance with the terms of this chapter.

(2) *Public hearing and decision*.

(a) Upon receipt of an application in the format prescribed by this chapter, the City Manager shall forward the application to the Planning Commission for consideration. The Planning Commission shall review said T District #3 development plan and shall hold a public hearing on such application.

Notice of such hearing shall be sent to all property owners within 200 feet of the proposed T District #3 development not less than ten days prior to the scheduled hearing.

(b) Subsequent to the public hearing, the Planning Commission shall either approve the T District #3 development plan as submitted, approve a modified plan with conditions, or deny approval of the plan. Five members of the Planning Commission must vote in the affirmative to approve any such application either as submitted or modified. Approval of this plan shall be considered approval of a preliminary T District #3 development plan. Approval of the preliminary development plan shall not constitute any authority to proceed with construction or development. Such approval shall only authorize the applicant to submit a proposed final development plan.

(c) A proposed final T District #3 development plan shall be submitted within six months of the date of the Planning Commission meeting at which the preliminary plan was approved. The Planning Commission may extend this period for a reasonable period upon a showing of good cause by the applicant. The final plan must be substantially consistent with the preliminary development plan in all respects. If the Planning Commission finds that a proposed final plan of a development area is in substantial accordance with and represents a detailed expansion of the preliminary plan, as previously approved, that the final plan complies with all of the conditions and adjustments which may have been imposed in the approval of the preliminary plan, that it is in accordance with the criteria and provisions and purpose of this chapter and this code, that all agreements, contracts, deed restrictions, dedications, declaration of ownership and other required documents are in acceptable form and have been executed, that all fee payments have been made, then the Planning Commission shall approve such final plan and certify its approval to the City Manager and City Council. Certification of the approval shall be for informational purposes only.

(d) Following the approval of a final plan, the City manager shall issue such permits as are necessary and under his or her jurisdiction upon payment of the required fees.

(3) *Amendment of plan*.

(a) A major amendment of an existing plan shall require review and approval of the Planning Commission in the same manner and with the same requirements imposed by this chapter for approval of an original T District #3 development plan. A major amendment shall include any change of use from one category to another as listed in division (F) hereof; any increase in the impervious area of coverage in excess of 5% over the amount approved in the original plan; the enlargement of any building from that originally approved; or the consolidation of use of adjoining T District #3 development plans.

(b) Minor amendments to a T District #3 development plan must be approved by the City Manager and the ARO. Either official may refer the request for approval of a minor amendment to the Planning Commission if the official determines that the request should be considered a major

amendment. Minor amendments shall include internal changes to buildings and structures; changes to the front of a building; changes to signs which are not being enlarged and are consistent with what was previously approved by the Planning Commission; amendments to the drainage pattern; or replacement of existing lighting provided it remains effectively shielded. A minor amendment shall also include any change of use that does not change the category of use as those categories are set forth in division (F) hereof.

(4) *Contingent-Approval Permitted.* In circumstances where an applicant needs a variance from the requirements of this Code, the Planning Commission may provide contingent-approval of a Final Application for a development plan. Such contingent-approval shall mean their approval of the Final Application is subject to the applicant obtaining any required variance(s) from the Board of Zoning Appeals. If the Planning Commission provides contingent-approval of a Final Application and the Board of Zoning Appeals subsequently denies the applicant's requested variance(s), said denial shall constitute a rejection of the Final Application

(5) *Appeal to the Board of Zoning Appeals*. Pursuant to this section, if the Planning Commission, City Manager, or ARO deny an applicant's request for approval of a development plan or an amendment to a previously-approved development plan, such applicant may appeal the decision denying their request to the Board of Zoning Appeals.

(a) *Timing of Appeal*. The applicant appealing the decision must provide notice of his or her intent to appeal such decision to the Planning Commission and the Board of Zoning Appeals within thirty (30) days of the Planning Commission's provision of written notification of its denial to the applicant.

(b) *Hearing on Appeal*. The Board of Zoning Appeals shall hold a public hearing, evaluating the appeal based upon the standards of review applied by the Planning Commission to the initial conditional use application, within sixty (60) days of receiving applicant's notice of appeal.
(Ord. 10-22, passed 2-14-2011)

§ 150.41 BALCONIES, DECKS, LANDINGS/STOOPS, PORCHES, AND RAMPS.

(A) *Purpose*. The purpose of this section is to establish standards for the construction or reconstruction in any residential or commercial district of balconies, decks, landings or stoops, porches, and ramps. Building materials as well as the style of construction of such structures determine whether the structure adds to the value of the residence and the surrounding properties or detracts from such value. The structures identified in this regulation are intended to be regulated in such a manner as to protect or increase the value of properties within the city, while permitting reasonable use of properties. This section shall also provide guidance to the Planning Commission and the administration in determining if a proposed structure conforms to the Zoning Code or whether a variance needs to be requested.

(B) *Definitions*. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BALCONY. An exterior floor system projecting from an adjoining structure that is attached to or supported by the adjoining structure, with no additional independent supports. A balcony may be covered or uncovered.

DECK. An exterior floor system constructed of wood, metal, composite or other like material, which is either attached to or detached from the principal building or dwelling and is supported by an adjoining structure and/or posts, piers or other independent supports. A deck detached from the principal building or dwelling is an accessory structure. A deck attached to or detached from the principal building or dwelling shall be included in calculations for maximum lot coverage set out in Table C.1 of § 150.29.

LANDING or ***STOOP.*** An elevated, open structure that is located at the head or foot of a staircase or ramp, or a platform in a flight of stairs or ramp. Landings and stoops are exempt from rear and side yard setback requirements set out in Table C.1 of § 150.29. Landings and stoops located in a front yard setback must be constructed of concrete or masonry.

PORCH. An open structure entirely covered with a roof and attached to the principal building or dwelling.

RAMP. A sloping walkway or passage used to join and provide a smooth transition between two levels of different elevations.

(C) *Requirements and permitted location of structures*. The following requirements shall apply to the above-mentioned structures.

(1) *Decks or ramps*.

(a) A deck or ramp may be erected in the side or rear yard only, unless such ramp or deck is for resident's medical necessity, and constructed in compliance with The Americans with Disability Act, 42 U.S.C. § 12101, *et seq.*

(b) A deck or ramp shall meet all the setback requirements for the rear and side yard, unless such ramp or deck is for resident's medical necessity, and constructed in compliance with The Americans with Disability Act, 42 U.S.C. § 12101, *et seq.*

(c) If a deck or ramp encroaches within the minimum rear or side yard setback and thus requires a variance, it shall meet the following standards.

1. The deck or ramp materials must be finished with paint or an opaque stain and shall not include raw decking material.

2. The deck or ramp must have skirting or an apron at the bottom.

(2) *Landings or stoops*.

(a) A landing or stoop may be located in the front, side or rear yards.

(b) A landing or stoop is exempt from the setback requirements but in no case shall be built or extend more than four feet from the principal building or dwelling or accessory building or structure to which it abuts and shall not be any larger than 36 square feet.

(3) *Porches*.

(a) A porch may be erected in the front, side or rear yards.

(b) A porch shall meet all the setback requirements as stipulated in these regulations.

(c) A porch shall be a one-story structure.

(d) If a porch encroaches within the front, side or rear yard setback and thus requires a variance, it shall meet the following standards.

1. ~~The~~ If constructed of wood or similar material, the porch ~~materials~~ must be finished with paint or an opaque stain and shall not include raw decking material.

2. The porch must have skirting or an apron at the bottom.

3. The porch must contain appropriate roofing materials that are compatible with the design of the porch or principal building or dwelling.

4. The porch flooring materials must be constructed from concrete, masonry or finished tongue-and-groove type wood or composite flooring.

(4) *Balconies*.

(a) A balcony may be erected in the front, side or rear yards.

(b) A balcony shall meet all the setback requirements as stipulated in these regulations.

(c) If a balcony encroaches within the front, side or rear yard setback and thus requires a variance, it shall meet the following standards.

1. If constructed of wood or similar material, the balcony must be finished with paint or an opaque stain and shall not include raw decking material.

2. The balcony flooring materials must be constructed from concrete, masonry or finished tongue-and-groove type wood or composite flooring.
(1985 Code, § 150.35) (Ord. 05-22, passed 12-12-2005)

ORDINANCE NO. 17-10
EXHIBIT U

§ 150.42 TRANSITIONAL RESIDENTIAL OVERLAY DISTRICT.

(A) *Intent and purpose*.

(1) It is the intent of the Transitional Residential Overlay District (hereinafter referred to as the "TRO District") to designate an area of the city for increased density of residential development, to provide more housing options while maintaining the value and quality of the city's housing stock.

(2) The existing Residence B single-family zoning within the District shall remain intact but the designated areas shall be eligible for increased density of residential development provided the criteria, conditions and requirements set forth in this section are met as determined by and as established by the city Planning Commission, following approval of an application for a Transitional Residential Overlay Development Plan within the TRO District.

(3) A TRO District Development Plan must be submitted to the Planning Commission, and must be initiated or authorized in writing by the property owner(s); the Planning Commission may approve, approve with modifications, or deny the detailed specific TRO Plan submitted with the application.

(4) The creation of the TRO District on the south side of Euclid Avenue between Miami Avenue and Laurel Avenue, recognizes the following unique factors which are compatible with alternative, higher density single family housing development:

(a) Commercial uses on Laurel Avenue, abutting the TRO District to the south;

(b) The high level of traffic in the intersection of Miami and Euclid, occupied by an office, the municipal building, a fire station, and a library;

(c) A power station, and additional business uses to the east; and

(d) The high level of traffic on the two lane primary street (Euclid Avenue) to the north.

(B) *Applicability*. This TRO District is established as an overlay district superimposed on specific areas, including the existing Residence "B" district, designated on Exhibit "A" attached to Ordinance No. 08-05, passed on February 28, 2008 and is not intended to be applicable to other areas unless the zoning code is amended in accordance with the procedures set forth in the Charter of the City of Madeira.

(C) Permitted uses.

(1) Permitted uses in the TRO District shall be those uses permitted in the underlying Residence

"B" District, which allows single-family detached residences.

(2) In addition, permitted uses in the TRO District shall include "attached townhouse" style residences, with a minimum of 1,000 square feet of floor area. For the purposes of this section, ***FLOOR AREA*** shall only include first floor and above living areas. Floor areas of garages, cellars and basements shall not be included in the calculation of total floor area.

(a) An ***ATTACHED TOWNHOUSE STYLE RESIDENCE*** is defined as a residential structure in which each dwelling unit has its own entrance and exit, and each unit occupies the ground level on at least one floor.

(b) No structure is permitted to consist of more than four attached townhouses, except for buildings referenced under division (G)(9) herein.

(D) *Conditional and home office uses.* Conditional uses in the TRO District shall be the same as those for other residential districts pursuant to § 150.13 and home offices, pursuant to § 150.12.

(E) *Accessory structures not allowed.* Except for fences identified and approved as part of the development plan, detached accessory structures, including detached parking structures shall not be allowed on the subject property anywhere within the TRO District, unless the property is used in accordance with Residence B zoning.

(F) *TRO development plan submission requirements.* The TRO development plan shall be prepared, and stamped if appropriate by licensed professional persons qualified in the planning of land development, traffic engineering and building and landscape design. No plan shall be approved by Planning Commission unless all of the criteria set forth below are met. A TRO development plan may only be adopted upon determination that all the information set forth below has been provided in the application (which shall include the proposed site plan) and is in compliance (as determined by the Planning Commission) with the criteria set forth below.

(1) *Site plan requirements*.

(a) Full size plat of development, drawn to a scale of one inch equals 50 feet, north arrow, and identification of site in relation to adjacent main roads;

(b) Existing and proposed property lines, and dimensions and acreage of the proposed development, certified by a registered engineer or surveyor;

(c) Existing and proposed topography at two-foot contour intervals prepared and stamped by a licensed surveyor;

(d) Footprints of existing structures on lots to be developed and all adjacent lots, with notations for proposed demolition of any structures;

(e) Footprints of all proposed structures;

(f) All proposed setbacks, indicating dimension and distance from property lines to proposed structures, including decks, porches and patios;

(g) Location and dimension of all parking facilities, park or playground areas, vehicular and pedestrian ways, other common areas, and all other impermeable public or private paved surfaces;

(h) Location and dimension of all entrances into and exits from the development;

(i) Location, construction materials, illumination and dimension of all proposed signage and lighting;

(j) Location of dumpsters, with required sufficient screening, and location of mailboxes;

(k) Location of all utilities, and location and directional flow of existing and proposed water lines, storm and sanitary sewers, and areas for on-site water retention and detention (see list below, approval contingent upon approval of the Metropolitan Sewer District);

(l) Elevations of proposed structures, including notation for proposed building height;

(m) Location of all existing vegetation, noting whether it will remain or not, and proposed landscaping and screening, including trees, flower beds, shrubs, mounding, grass and open space, as well as location of all irrigation devices for the landscaping;

(n) Elevations of all proposed vegetation, and a table listing the common and botanical names of all proposed plants to be planted or retained on the site;

(o) Traffic circulation and access including adequacy of adjacent streets, entrances and exits, traffic flow, sight distance, curb cuts, turning lanes and existing or recommended traffic signalization, and emergency vehicle access; and

(p) Public sidewalks which shall be maintained and/or extended wherever proposed development is adjacent to Euclid Avenue.

(2) *Additional submission requirements*.

(a) A traffic management plan, provided by a licensed engineer, that includes but is not limited to a traffic count along Euclid Avenue, prior to development, and a projection of the traffic impact after development, illustrating line of sight issues, alignment with driveways or streets on the north side of Euclid Avenue, identification of sight-distance issues related to access to the proposed development, and distance to adjacent driveways on the south side of Euclid Avenue;

(b) A notarized statement explaining in detail the use to which the property shall be put and the anticipated effect which the proposed development shall have upon adjacent property;

(c) A letter from MSD indicating the availability of sewer service;

(d) A legal description of the lots;

(e) A description of all exterior building materials and colors;

(f) A plant list (an accepted plant list from the city may be used) indicating the common name and botanical name of plants shown on the development site plan;

(g) A schedule for construction, and cost estimates for the completion of the development including all public and private improvements, and landscaping;

(h) Plans, if any, to dedicate any streets or other property to the city;

(i) A performance bond or other acceptable security and other legal data to ensure completion of streets, buffer and amenities in accordance with the accepted plans; and

(j) The ratio of pervious to impervious surface areas.

(G) *TRO development plan criteria.* The Planning Commission may not approve any TRO Development unless it has been reviewed by the Architectural Review Officer (ARO), and meets all of the criteria set forth below:

(1) Density of the TRO development shall be limited to no more than ten dwelling units per acre, calculated on the entire (gross acreage of the) development site;

(2) The plan shall depict a ten-foot minimum side and rear yard landscaped setback from property lines which abut a commercial use or commercial zone;

(3) The plan shall depict a 15-foot minimum side and rear yard landscaped setback from property

lines where the subject property abuts a residential use or zoning district;

(4) The plan shall depict a 2-foot minimum front yard landscaped setback from the right-of-way (Euclid Avenue);

(5) The plan shall depict a minimum of ten feet between structures;

(6) Structures fronting on Euclid Avenue shall be no more than 35 feet in height, measured from the existing pre-development grade on Euclid Avenue to the peak of the roof, at the front of each dwelling unit; structures not adjacent to Euclid Avenue shall be no more than 35 feet in height, measured from the grade established after the installation of the street and utilities;

(7) Each dwelling unit shall have a minimum of two enclosed parking spaces, and, in addition, a minimum of two unenclosed parking spaces per unit available on site. Garage doors shall not face directly onto Euclid Avenue;

(8) The architect/artist rendering of buildings and the landscaping must provide evidence to the Planning Commission that such buildings and landscaping shall be designed and built in such a manner as to be compatible with the look and feel of single-family dwelling units, and Planning Commission will take into consideration the orientation and finishes of all buildings relative to the surrounding properties; flat roofs are not deemed to be compatible with the look and feel of single-family dwelling units; therefore pitched roofs shall be required on all buildings constructed in accordance with the TRO District;

(9) The massing of buildings adjacent to the frontage of Euclid Avenue shall be controlled such that no more than three units shall be constructed as one single building, and all buildings adjacent to Euclid Avenue shall have their architectural front facing toward Euclid Avenue;

(10) Architectural features shall incorporate such characteristics and materials as are normally associated with single-family residential homes, and must be approved by the ARO as being in character with the surrounding residential areas; neither exterior insulation finishing system ("EIFS"), nor aluminum, nor vinyl siding materials shall be permitted;

(11) Landscaping shall be installed which creates a physical and visual buffer from adjoining properties, and for this purpose, a combination of live plantings shall be planted within the front, side and rear yard setbacks, and common areas, shall be planted according to acceptable nursery industry standards; and shall comply with the following criteria:

(a) All landscaping materials shall consist of only live plantings, and shall be installed and maintained according to accepted nursery industry procedures;

(b) Landscaping planted within the side and rear setbacks of the TRO development site shall create a dense vegetative screen, which shall be equally effective in winter and summer;

(c) Shrubs planted in the side and rear setback areas of the TRO development site shall be a minimum height of three and one-half feet when planted, and shall achieve a height of six feet, no later than 24 months after the initial installation;

(d) When the required screening is located along the area extending from the building to the street, the height shall be consistent with sight distance from the street for safety purposes;

(e) Each shrub shall be planted sufficiently close to the next shrub, according to nursery industry standards, to provide an effective, dense screen;

(f) Deciduous trees shall be a minimum caliper of three inches at the time of planting (if deciduous trees are used for screening purposes, additional materials must be used to create a dense buffer);

(g) Evergreen trees shall be a minimum of eight feet in height at the time of planting; and

(h) Violation of these provisions shall be grounds for the city to refuse to issue a certificate of occupancy.

(12) Air conditioning units and dumpsters must be shielded from view by suitable fencing and or landscaping as determined reasonable by the ARO;

(13) Exterior lighting shall be minimal and limited to that necessary for safety, and shielding; height and overflow of lighting shall be analyzed and only approved if it minimizes impact onto adjacent property, and as determined reasonable by the ARO;

(14) Storm water drainage must be based upon a minimum of 25-year storm frequency, utilizing on-site absorption and/or temporary detention;

(15) The plan shall depict a public sidewalk which shall be maintained and/or installed parallel with Euclid Avenue wherever the applicant's property is adjacent to Euclid Avenue;

(16) (a) Dwelling units within the subject property need not be located on separate lots or separate units divided by lot lines; and dwelling units, including garages, may share common walls. Subject property that is within a Transitional Residential Overlay District may be developed as a condominium provided the development adheres to the applicable requirements of the Ohio Revised

Code and the requirements of this section. If the developer intends to subdivide the property, it may request approval for subdivision either as part of the final development plan approval process or subsequent to the Planning Commission's approval of the final development plan. However, the subdivision of the property shall only be authorized as incidental and accessory to the requirements for buildings, infrastructure, easements and other physical features that conform to the requirements and criteria set forth elsewhere in these Transitional Residential Overlay District regulations. Therefore, no subdivision of property intended for development pursuant to the regulations of this section shall be permitted prior to approval of a final development plan that meets the requirements of this Transitional Residential Overlay District. The purpose of this requirement is to prohibit the establishment of any new lot that does not meet the dimensional and other requirements of the underlying zoning district (including but not limited to minimum area, depth and width), unless the lot is part of a final development plan approved in accordance with this section.

(a) Thus, approval of any lots that are intended to be part of a Transitional Residential Overlay District is specifically conditioned upon the lot being developed in accordance with final development plans approved in accordance with the Transitional Residential Overlay District regulations. There shall be no zoning certificate, building permit nor any certificate of occupancy issued for any lot that has been created as part of a Transitional Residential Overlay District unless the improvements are substantially consistent with the final development plan. Furthermore, all plats depicting a subdivision of land, in whole or in part, of a final development plan shall contain thereon an appropriate executed declaration limiting development of lots to only buildings and improvements depicted on an approved final development plan.

(b) This amendment to this section specifically finds that the lots depicted on Exhibit A (attached hereto and incorporated as part of the amendment to this section) do, in fact, comply with the requirements of this section and may, therefore, be approved for recording as long as the lots submitted substantially comply with those depicted on Exhibit A.

(c) Any and all lots proposed to be created as part of a final development plan in a Transitional Residential Overlay shall comply with the following criteria:

1. The creation of the lots shall not alter any of the building layouts or other improvements, including but not limited to roadways, sidewalks, easements and fences depicted on the applicable final development plan approved for the Transitional Residential Overlay District by the Planning Commission;

2. The establishment of any and all lots shall not alter or lessen the responsibility of the homeowners' association to maintain or construct the infrastructure and other improvements and grounds that exist within the common areas of the Transitional Residential Overlay District; and

3. No property line proposed or approved on a final development plan shall intersect with dwelling units except to track a common wall.

(17) It is recognized that the unique lots created within the Transitional Residential Overlay District, in furtherance of the final development plan, do not meet numerous requirements for lots that may be created in other residential districts. The lots do not meet minimum requirements of other lots within the city in residential districts. For example, these lots within the Transitional Residential District do not meet frontage requirements, minimum area requirement, minimum setback requirement, shape requirements and other requirements not specifically named herein which are required in other residential districts. The approval of lots within the Transitional Overlay District shall not be construed as permitting or authorizing any other lots to be approved by variance or by other application for subdivision of other property not located within this Transitional Residential Overlay District.

(18) While this amendment authorizes the subdivision of property within the area of a final development plan formed within a Transitional Residential Overlay District, it is recognized and assumed that the developer may apply for record plat approval of lots in phases as small as two lots at a time. The City Manager shall issue any necessary documentation to allow these lots to be recorded at the County Auditor and Recorders' offices, provided the record plat submitted for review is substantially consistent with the lots depicted on Exhibit A or on any other lots approved in conjunction with any other final development plan approved within this Transitional Residential Overlay District.

(19) This division (G) establishes certain setback and landscaping criteria that must be satisfied by a final development plan. The establishment of additional interior lot lines do not alter the minimum setbacks and landscaping requirements set forth in this division (G). The requirements of division (G) should not be construed to be applied to any interior lots proposed or created.

(H) *Application and review*. The applicant submitting a TRO development plan shall, in the application, address all the criteria set forth above. The applicant may identify certain portions of any criteria if it intends to supplement the information at a later time. The application shall contain an acknowledgment by the applicant that Planning Commission shall not be bound nor shall it be permitted to make a final decision until such time as the information necessary to satisfy the requirements of each criteria is presented in sufficient detail. The application shall also provide an acknowledgment by the applicant that if Planning Commission modifies or composes conditions for the approval of an application, no final approval shall be granted until documents or other evidence indicating compliance with the modifications or conditions has been incorporated into the application, submitted and reviewed by Planning Commission, before final approval by Planning Commission is determined.

(1) *Application procedure*.

(a) Any person or company intending to apply for approval of a TRO District Development

Plan shall first schedule a pre-application conference with the City Manager or his or her designee. At this conference, the prospective applicant must present in writing to the City Manager a preliminary proposal for a TRO District development plan.

(b) The purpose of the pre-application conference will be to, generally, evaluate the impact on adjacent areas and neighborhoods and identify the benefits achieved, such as better use of property, stabilizing future changes and providing a transition area. This information should also identify the adjoining property owners and any existing non-conforming uses.

(c) Upon completion of the pre-application conference an application may be filed with the office of the City Manager. The application shall be in compliance with the requirements of this chapter and in such form as approved by the City Manager. If the application does not conform to the requirements of this chapter, the applicant shall be notified by the City Manager and no further consideration of the application shall occur until it is in compliance with the terms of this chapter.

(2) *Public hearing and decision*.

(a) Upon receipt of an application in the format prescribed by this chapter; the City Manager shall forward the application to the Planning Commission for consideration. The Planning Commission shall review said TRO District development plan and shall hold a public hearing on such application. Notice of such hearing shall be sent to all property owners within 200 feet of the proposed TRO District Development not less than ten days prior to the scheduled hearing.

(b) Subsequent to the public hearing, the Planning Commission shall either approve the TRO District development plan as submitted, approve a modified plan with conditions, or deny approval of the plan. Five members of Planning Commission must vote in the affirmative to approve any such application either as submitted or modified. Approval of this plan shall be considered approval of a preliminary TRO District development plan. Approval of the preliminary development plan shall not constitute any authority to proceed with construction or development. Such approval shall only authorize the applicant to submit a proposed final development plan.

(c) A proposed final TRO District development plan shall be submitted within six months of the date of the Planning Commission meeting at which the preliminary plan was approved. The Planning Commission may extend this period for a reasonable period upon a showing of good cause by the applicant. The final plan must be substantially consistent with the preliminary plan in all respects. If the Planning Commission finds that a proposed final plan of a development area is in substantial accordance with and represents a detailed version of the preliminary plan, as previously approved, that the final plan complies with all of the conditions and adjustments which may have been imposed in the approval of the preliminary plan, that it is in accordance with the criteria and provisions and purpose of this chapter and this code, that all agreements, contracts, deed restrictions, dedications, declarations of ownership and

other required documents are in acceptable form and have been executed, that all fee payments have been made, then the Planning Commission shall approve such final plan and certify its approval to the City Manager and City Council. Certification of the approval shall be for informational purposes only.

(d) Following the approval of a final plan, the City Manager shall issue such permits as are necessary and under his or her jurisdiction, upon payment of the required fees, and conditioned upon the receipt and approval by the City Law Director of the homeowner's association by-laws and the declarations of covenants and restrictions which shall require the continued property maintenance of all landscaping material and shall keep them in a proper neat and orderly appearance free from refuse and debris at all times and all unhealthy or dead plant material shall be replaced within a one year or by the next planting period, and shall provide for the maintenance of all landscaping, screening, mounding, buffering, structures, drives and parking areas, and buildings; and that failure to do so shall be a violation of this Zoning Code enforceable in all ways in law or in equity as any other violation of the Zoning Code.

(3) *Major amendments of the plan.* A major amendment of an existing plan shall require a review and approval of the Planning Commission in the same manner and with the same requirements imposed by this chapter for approval of an original TRO District development plan. A major amendment shall include:

(a) Any increase in the impervious area coverage in excess of 5% of the amount approved in the original plan;

(b) The enlargement of any building from the size originally approved, or the consolidation of use of adjoining TRO District development plans;

(c) A change in the arrangement or massing of buildings or any changes in the use of building spaces designated on the original development plan;

(d) An increase in the number of residential units;

(e) A change in the vehicular circulation or the placement or arrangement of parking spaces;

(f) Any significant reduction in the effectiveness of open spaces, landscape buffers and edges; and

(g) Any significant change in the design elevations, roof pitch, materials or massing of the buildings.

(4) *Minor amendments of the plan.* A TRO District development plan must be approved by the

City Manager and the ARO. In any event, all applications for minor amendments shall be in writing and all actions of the City Manager and ARO shall be documented. Either official may refer the request for approval of a minor amendment to the Planning Commission if the official determines that the request should be considered a major amendment. Minor amendments shall include:

(a) Internal changes to buildings and structures;

(b) Changes to the front of a building;

(c) Changes to signs which are not being enlarged and are consistent with what was previously approved by the Planning Commission;

(d) Amendments to the drainage pattern; and

(e) Replacement of existing lighting provided it remains effectively shielded. (1985 Code, § 150.36)

(5) *Contingent-Approval Permitted.* In circumstances where an applicant needs a variance from the requirements of this Code, the Planning Commission may provide contingent-approval of a Final Application for a development plan. Such contingent-approval shall mean their approval of the Final Application is subject to the applicant obtaining any required variance(s) from the Board of Zoning Appeals. If the Planning Commission provides contingent-approval of a Final Application and the Board of Zoning Appeals subsequently denies the applicant's requested variance(s), said denial shall constitute a rejection of the Final Application

(6) *Appeals*. Pursuant to this section, if the Planning Commission, City Manager, or ARO deny an applicant's request for approval of a development plan or an amendment to a previously-approved development plan, such applicant may appeal the decision denying their request to the Board of Zoning Appeals.

(a) *Timing of Appeal*. The applicant appealing the decision must provide notice of his or her intent to appeal such decision to the Planning Commission and the Board of Zoning Appeals within thirty (30) days of the Planning Commission's provision of written notification of its denial to the applicant.

(b) *Hearing on Appeal*. The Board of Zoning Appeals shall hold a public hearing, evaluating the appeal based upon the standards of review applied by the Planning Commission to the initial conditional use application, within sixty (60) days of receiving applicant's notice of appeal.
(Ord. 08-05, passed 2-25-2008; Ord. 09-28, passed 11-23-2009)

§ 151.022 ESTABLISHING A MINOR SUBDIVISION.

(A) A proposed division of a parcel of land along an existing public street, not involving the opening, widening or extension of any street or road, and involving no more than five lots after the original tract has been completely subdivided, may be submitted to a representative designated by the Planning Commission for the purpose of reviewing such proposed division, and if found not contrary to applicable platting, subdividing or zoning regulations, he or she shall within seven working days after submission of such proposed division approve the same, and, on presentation of a conveyance of said parcel, stamp the same "Approved by the Madeira Planning Commission, No Plat Required." Such representative may require the submission of a sketch and such other information as is pertinent to his or her determination hereunder.

(B) Plats of subdivision will not be required for subdivisions as defined in R.C. § 711.001 for subdivisions not involving the opening or extension of any street or easement of access and in which past subdivision and development has so far proceeded that the preparation and recording of a plat would serve no public or planning purpose. The representative is authorized to approve conveyances without a plat in such cases as are expected herein. In case of doubt, such representative may refer the question to the Planning Commission. If such representative refuses approval for a subdivision without a plat, the applicant may appeal to the Board of Zoning Appeals.
(1985 Code, § 151.017) (Ord. 1030, passed 10-19-1970)

Statutory reference:

Approval by planning authority without plat, see R.C. § 711.131

§ 151.125 VARIANCES TO BE BASED ON HARDSHIP.

Where the Board of Zoning Appeals finds that unique practical difficulties and extraordinary hardships from unusual conditions may result from strict compliance with any of these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent and purpose of these regulations.

(1985 Code, § 151.100) (Ord. 1030, passed 10-19-1970)

§ 151.126 CONDITIONS UPON GRANT OF VARIANCE

In granting variances and modifications, the Board of Zoning Appeals shall require and may impose such additional requirements and conditions regarding the location, character and other features of the proposed uses as it may deem necessary to secure substantially the objectives of the standards or requirements of these subdivision regulations, to carry out the intent and purpose of the subdivision regulations, and to otherwise safeguard the public health, safety and general welfare.
(1985 Code, § 151.101) (Ord. 1030, passed 10-19-1970)

§ 151.127 PUBLIC HEARING; NOTICE OF DECISION.

(A) Prior to making a decision on any application, the Board of Zoning Appeals shall notify by mail of the time and place of a public hearing, the property owner or petitioner and all abutting property owners who, in the opinion of the Board of Zoning Appeals, may be affected by such variance.

(B) Following the public hearing and the completion of any additional studies or acquisitions of additional data necessitated by hearing, the Board of Zoning Appeals shall make a decision within 30 days and notify the property owner or petitioner of such decision.
(1985 Code, § 151.102) (Ord. 1030, passed 10-19-1970)

ORDINANCE NO. 17-10
EXHIBIT Z

§ 152.12 VARIANCES AND APPEALS PROCESS FOR THE RESIDENTIAL BUILDING CODE.

(A) *Purpose.* The city has adopted the Hamilton County Building Code which in turn has adopted the Residential Code of Ohio (Chapters 4101:8-1 to 4101:8-43 of the Ohio Administrative Code, as amended and Chapter 3781 of the Ohio Revised Code, as amended). The purpose of this section is to promote the public health, safety and welfare by creating a local appeals process in order to hear and decide appeals of orders, decisions or determinations made by the City Manager or Building Inspector relative to the application of the Residential Code of Ohio (Chapters 4101:8-1 to 4101:8-43 of the Ohio Administrative Code, as amended and Chapter 3781 of the Ohio Revised Code, as amended).

(B) *Appeals process.*

(1) Any owner, builder, contractor or any person, firm or corporation having a legal or equitable interest in a residential property ("eligible appellant") has the right to appeal any decision, order or determination made by the City Manager or Building Inspector relative to the application of the Residential Code of Ohio to said residential property. An eligible appellant desiring to appeal any decision, order or determination made by the City Manager or Building Inspector may do so by filing a written appeal to the Board of Zoning Appeals.

(2) Requests for an appeals hearing shall be made in writing to the Board of Zoning Appeals within 30 days of the date of the decision, order or determination of the City Manager or Building Inspector. Each request shall be accompanied with a processing fee of $75. The Board of Zoning Appeals shall schedule a hearing within 60 days of receipt of the request and notify the appellant of the hearing time, date and location by regular mail.

(3) All adjudication proceedings of the Board of Zoning Appeals shall be conducted in accordance with R.C. §§ 119.09 and 119.13, as required by R.C. § 3781.031. The Board of Zoning Appeals shall have the authority to affirm, modify or reserve the order, decision or ruling of the City Manager or the Building Inspector and the authority to grant a variance from the terms of the Residential Code of Ohio as set forth below. All decisions of the Board of Zoning Appeals pertaining to appeals and variances related to the Residential Code of Ohio shall be in writing.

(a) A decision, order or determination made by the City Manager or Building Inspector may be reversed or modified, in full or in part, by the Board of Zoning Appeals if it finds:

1. The decision, order or determination is contrary to the Residential Code of Ohio or any other applicable law, rules, regulations, and ordinances;

2. The decision, order or determination is contrary to a reasonable interpretation or application of the Residential Code of Ohio or any other applicable law, rules, regulations and ordinances; or

3. That a variance from the provisions of the Residential Code of Ohio, rules, regulations or ordinances, in a specific case, depending on the facts established by the appellant, will not be contrary to the public interest or safety of persons using said premises and where a literal enforcement of such code provisions would result in unnecessary hardship.

(b) Such determination by the Board of Zoning Appeals shall be based on the evidence presented at the hearing.

(4) For purposes of the appeals hearing, the Board of Zoning Appeals may solicit the attendance of witnesses, production of records or documents and may take the testimony of witnesses. All testimony shall be under oath, with a record made and kept, along with such evidence as submitted.

(5) The Board of Zoning Appeals shall render its decision in writing within 60 days after the conclusion of the appeals hearing. A certified copy of the decision shall be mailed to the appellant by regular mail. Decisions of the Board of Zoning Appeals, including all conditions, shall be enforced by the City Manager or Building Inspector in keeping with the deadlines set by the Board of Zoning Appeals.

(6) All decisions of the Board of Zoning Appeals are final. However, an appeal from the decision of the Board of Zoning Appeals may be made to the Court of Common Pleas in accordance with the applicable law, rule or regulation. Such appeals must be made within 30 days of the date of the written order of the Board of Zoning Appeals.

(7) Notwithstanding anything to the contrary contained in this section, all appeals related to the Commercial Building Code (Chapters 4101:1-1 et seq. of the Ohio Administrative Code, as amended and Chapter 3781 of the Ohio Revised Code, as amended) shall be to the Hamilton County Board of Building Appeals, if so contracted by the City Council or the Ohio Board of Building Appeals, in accordance with the Ohio Revised Code.
(1985 Code, § 151.12) (Ord. 91-22, passed 3-4-1991; Ord. 13-12, passed 3-11-2013)

§ 153.26 APPEAL TO BOARD OF ZONING APPEALS.

Appeals from any decision or action of the City Manager in the administration or enforcement of the provisions of this chapter may be taken to the Board of Zoning Appeals of the city, and the Board of Zoning Appeals shall have the authority to permit, on appeal in any given case, methods, standards or materials other than those required by this chapter if, in its opinion, strict compliance with the provisions of this chapter is unnecessary in such case, provided deviant methods, standards or materials other than those required by this chapter are consistent with the objectives of this chapter.
(1985 Code, § 153.26) Penalty, see § 153.99

Cross-reference:

Board of Zoning Appeals, see Ch. 168

§ 154.01 PLANNING COMMISSION ESTABLISHED.

(A) *Appointment.* See Charter Art. VII, § 1.

(B) *Powers and duties.* See Charter Art. VII, § 2.

(C) *Action of Council necessary.* See Charter Art. VII, § 3.

(D) *Membership.* The Planning Commission shall consist of seven voting members.

(E) *Terms of Council appointee.* One Council member appointed to the Planning Commission shall serve until his or her Council term expires.

(1985 Code, § 154.01) (Ord. 85-32, passed 1-6-1986)

Cross-reference:

Interpretation of subdivision rules, see § 151.050

§ 158.02 SCOPE.

(A) The provisions of this Property Maintenance Code are supplementary to the sections of the Building Code. Conditions not in compliance with the requirements of this Code or the Building Code relating to the construction, use and maintenance of buildings and structures are deemed to be safety and sanitation hazards. All the provisions of this Code and Building Code as related above shall be retroactive and shall apply to all buildings and structures; except whenever the applicable provisions of the Building Code exceed this Code or other legal requirements that were in effect at the time of either the original construction, addition or reconstruction, as applicable, then the least restrictive requirements of that particular construction, addition or reconstruction shall apply.

(B) However, if the City Manager determines that the application of the least restrictive requirement will result in an unsafe, unsanitary or other hazardous condition, the City Manager shall apply a more restrictive requirement up to, but not exceeding, the requirements of the then-current Building Code.

(C) Appeals from the City Manager's application of the more restrictive requirement shall be heard by the Board of Zoning Appeals upon proper application.

(D) The final determination shall be by a majority vote of the Board of Zoning Appeals members.

(E) A public hearing shall not be required. If this Code is determined to be in conflict with the Building Code, the Building Code shall apply.
(1985 Code, § 158.02) (Ord. 93-27, passed 6-21-1993)

§ 159.03 DEFINITIONS.

The following words and phrases are explained as follows with the intention that they be interpreted in this chapter to have the meanings described to them in this section. The words and phrases may be cumulative and are not intended to be exclusive. For example, even though a ground sign and an illuminated sign are separately defined, both definitions may apply to the same sign. If the definition of any word or phrase is unclear, or the word or phrase is used elsewhere in the chapter in a context which makes its intended use unclear, such word or phrase shall be construed in the manner that best fulfills the purposes and objectives set forth in §§ 159.01 and 159.02.

ANIMATED SIGN. Any sign that uses movement or change of lighting, either natural or artificial, to depict action or create a special effect or scene.

AREA OF BUILDING WALL. The length times the height of a wall. It shall include the area of any windows located within the wall. The roof of a building shall not be included as part of the height of the wall.

AREA OF SIGN. This is the area within a polygon formed by the edges of the frame of a sign or the surface of the sign capable of displaying a message or the background of a message, whichever is greatest. The ***AREA OF A SIGN*** will generally not include the structural supports for freestanding signs unless those supports display all or a part of a message thereon.

BACKGROUND. The portion of the facing of a sign which is free of letters, words, logos, symbols and other representations that actively convey the message of the sign.

BANNER. Any type of temporary sign made of cloth or other light fabric designed and intended to be displayed without a rigid frame. Generally, the face of the sign is made of fabric or plastic and is anchored and secured by cord, rope or similar lines.

BEACON. A type of attraction device which may or may not be part of a larger display. This device is a stationary or revolving light which flashes or projects illumination, single color or multi-colored, in any manner which is intended to attract or divert attention. While this definition includes lighting devices which are required or necessary under safety regulations prescribed by governmental agencies and flashing lights on emergency vehicles, those used for public safety are not intended to be regulated by this chapter.

BUILDING MARKER. Corner stones and tablets which are used as a memorial or to show the name of a building or the date of the erection of the building, where such cornerstones or tablet is built into the wall of a building and is constructed of bronze, brass, marble or stone or other incombustible material.

BUILDING SIGN. Any sign attached to any part of a building such as but not limited to a

projecting sign, a wall sign, an awning sign, a roof sign or a window sign. This is intended to be contrasted with the other general category of signs, which is the freestanding sign.

BULLETIN BOARD. See ***INSTITUTIONAL BULLETIN BOARD.***

BUSINESS CENTER. Any lot or adjoining lots under single ownership on which there is located more than one separately owned and operated business (other than home occupations) each of which business occupies separate floor space from other businesses located on the lot or lots and is located in a business or manufacturing zoning district.

CANOPY SIGN. Any sign that is part of or attached to an awning, canopy or other fabric, plastic or structural protective cover over a door, entrance, window or outdoors area.

CHANGEABLE COPY SIGN. A device which is designed so that all or a portion of a message, information, design or illustration may be changed or rearranged without replacing the background or the frame of the sign. Examples of this type of sign include but are not limited to signs at service stations which display the price of gas or other commodities, boards which may be written or drawn upon and then wiped clear for a new message, devices by which letters or other symbols or pictures may be affixed either by magnetic means, by hooks, grooves or snaps or any similar mechanical or electronic arrangement such as bulletin boards and movie marquees.

COMMERCIAL CORRIDOR SIGN. A freestanding sign designed to primarily display its commercial message to vehicular traffic traveling on a state or federal roadway with a minimum of four lanes. In addition, such sign shall be erected in an area adjacent to such a roadway and be located on property located in an "O," "A" or "B" Business District and which has frontage along such roadway.

COMMERCIAL MESSAGE. Any display of words, logos, symbols, pictures or combination thereof which is capable and which is intended to call attention to a business, commodity, service or entertainment.

COMMERCIAL SIGN. Any sign which displays a commercial message.

DIRECTIONAL SIGN. See ***INFORMATIONAL SIGN.***

ERECT. To build, construct, attach, hang, place, suspend or affix and also includes the painting of wall signs.

ESTATE SALE SIGN. See ***GARAGE SALE SIGN.***

FLASHING SIGN. An illuminated sign in which artificial or reflected light is not maintained stationary and constant intensity and color at all times when in use.

FREESTANDING SIGN. A sign designed to be self-supporting, and independent for support from buildings and other structures. A sign which is primarily self-supporting but is incidentally attached to a building or other structure for additional support or for other reasons shall generally be considered to be a ***FREESTANDING SIGN.*** This type of sign may also be referred to as a ***GROUND SIGN*** or ***POLE SIGN.***

GARAGE SALE SIGN. A sign displaying a message that personal household possessions are for sale. The only message on such a sign shall be either the words "garage sale," "yard sale," "estate sale" or "rummage sale," the hours of such sale and the address or direction to such sale.

GROUND SIGN. See ***FREESTANDING SIGN.***

IDENTIFICATION SIGN. See ***INFORMATIONAL SIGN.***

INFORMATIONAL SIGN. A sign which provides only information regarding location, direction (such as "entrance" "exit") and which bears no commercial message. Examples of ***INFORMATIONAL SIGNS*** include but are not limited to signs with the following messages: "no parking," "entrance," "loading only," "telephone," street address, "no trespassing," office hours, "open," "full service," "self service" and similar directives.

INSTITUTIONAL BULLETIN BOARDS. A changeable copy sign which displays only messages relating to public or charitable events such as meetings, bazaars, fund raising events and recognition of achievement in other than commercial ventures.

MAINTENANCE (MAINTAIN). The cleaning, painting, repair or replacement of defective parts of a sign in a manner that does not alter the original copy, original colors, design or structure of the sign. See also ***REPAIRS.***

NAMEPLATE. A sign with the name, address and/or profession of a person occupying the lot or part of a building thereon.

NONCONFORMING SIGN. One of the following:

(1) A sign which was erected legally but which does not comply with the subsequently enacted sign restrictions or regulations; or

(2) A sign which does not conform to the explicit regulations of the Sign Code but for which a variance or other authorized approval has been granted, any such variance (by the Board of Zoning Appeals) or authorized approval (by the City Manager) shall be noted on the permit for such a sign.

PERSONAL MESSAGE SIGN. A sign with a message incidental to residential use of property such as birth announcements ("It's a Girl"), "Welcome Home" and similar messages of a

noncommercial nature.

POLE SIGN. See ***FREESTANDING SIGN.***

POLITICAL SIGN. A sign indicating support or disapproval of a public issue or political candidate.

PORTABLE SIGN. A sign designed in a manner that emphasizes its portability and ease of relocation. A primary feature of such signs is that the supporting structure need not be attached to a building or affixed to the ground. Such signs include portable swinger signs, "A" frame signs, sandwich board signs, portable signs on wheels, vehicles, platforms or other means of resting the sign and supporting structure on the ground. ***PORTABLE SIGNS*** are distinguished from temporary signs that are designed to be primarily anchored by cords (such as banners) or by staking (typical political and real estate signs).

PROJECT OR CONSTRUCTION SIGN. A sign which directs attention to the promotion, development and construction of the property on which it is located and which identifies the architects, engineers, contractors, developers and other individuals or firms involved with the construction. The length of time such sign is displayed shall be dependent upon the scope of the project undertaken on such property.

PROJECTING SIGN. A sign, other than a wall sign, erected on the outside wall of a building, which projects at an angle from the wall to which it is attached.

REAL ESTATE SIGN. A sign advertising the sale, rental or lease of the premises on which the sign is displayed, or which indicates the sale of the premises is pending or the property sold.

REMOTE SIGNS OR BILLBOARDS. Signs or billboards displaying a commercial message or advertising any services or commodities not available on the site on which the sign is erected.

REPAIRS. Routine and systematic work done to a sign to keep it in good order, using similar materials, not involving changes in materials or design which constitute rebuilding and reconstruction. See also ***MAINTENANCE.***

RUMMAGE SALE SIGN. See ***GARAGE SALE SIGN.***

ROOF SIGN. Any sign erected, constructed, painted or maintained upon or over the roof of any building, and having its principal support on the roof or walls of the building.

SETBACK FROM ADJACENT PROPERTY. The distance from the adjacent side or rear property lines. Setback requirements vary as to the zoning district of the adjacent property.

SIGN(S). Any writing, word, number, pictorial, illustration, decoration, emblem, symbol, trademark, flag, banner, pennant insignia, flashing light, beacon or other device which is placed in a

manner that the communication, announcement, message, attraction, advertisement or promotion inherent to the device is visible or appears to be intended to be visible to persons on adjoining property or nearby public rights-of-way.

STREET MAIL BOX. A mail receptacle containing only the identification of a postal address and/or name of resident located at the street curb, conforming to United States postal regulations.

SUBDIVISION SIGN. A permanent sign containing only the subdivision name and other information approved by the Planning Commission.

TEMPORARY SIGN.

(1) A sign which has either or both of the following characteristics:

(a) The primary purpose of the sign will be completed by the occurrence of an event which is likely to take place within a period of a few days to a few months such as an election or sale of real estate; and/or

(b) The material of which the sign is made or the manner in which the sign is affixed to the ground or a structure are of such nature as not to be suitable for permanent display because exposure to the elements will unreasonably deface the message, discolor or tear the material or loosen the methods by which such a sign is anchored.

(2) Examples of ***TEMPORARY SIGNS*** include but are not limited to political signs, "For Sale" signs, garage sale signs, sale signs and some project signs.

TENANT. Single business unit exclusively occupying and operating in a separately secured building or portion thereof.

VEHICULAR PORTABLE SIGN. A sign mounted or painted on a vehicle or trailer, and includes vehicles parked strategically with sign messages in order to advertise a product or business. Flashing, blinking, revolving and visible reflective spotlights are prohibited.

WALL SIGN. A sign integral with the exterior face of an exterior wall of a building, or attached to and parallel with the wall and projecting not more than 12 inches therefrom.

YARD SALE SIGN. *See* ***GARAGE SALE SIGN.***
(1985 Code, § 159.03) (Ord. 93-08, passed 3-1-1993)

§ 159.12 SIGNS NOT PERMITTED IN ANY DISTRICT.

The following signs shall not be permitted, erected or maintained in any district:

(A) Signs which rotate or move in any plane;

(B) Any sign or sign structure which:

(1) Is structurally unsafe;

(2) Constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation or abandonment;

(3) Is not kept in good repair; or

(4) Is capable of causing electrical shocks to persons likely to come in contact with it.

(C) Any sign which, by reason of its size, location, content, coloring or manner of illumination, constitutes a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, or by obstructing or detracting from the visibility of any traffic sign or control devise on public streets and roads;

(D) Any sign which obstructs free ingress to or egress from a required door, window, fire escape or other required entrance or exit way;

(E) Signs which make use of words such as “Stop,” “Look,” “Danger” or any other words, phrases, symbols or characters, in such a manner as to interfere with, mislead or confuse traffic. However appropriate signs shall be allowed without permit when necessary to warn persons concerning high voltage, explosive gases or temporary dangers associated with construction;

(F) Any sign or other advertising structure containing any obscene matter;

(G) Any sign unlawfully installed, erected or maintained;

(H) Any sign now or hereafter existing which no longer advertises a bona fide business conducted or a product sold on the premises. Such sign and its supporting structure shall be removed within a period of 90 days after the business ceases operation. A request for a variance may be made to the Board of Zoning Appeals, which shall grant the variance if it determines that it is probable that the next occupant is likely to use sign or supporting structure, that the sign will be kept in good repair and that the sign otherwise conforms to this chapter.

(I) Exterior exposed gaseous tube type signs (neon);

(J) Billboards;

(K) Signs which incorporate in any manner flashing or moving lights;

(L) Mobile or portable signs whether on wheels, runners, casters, parked trailers, parked vehicles or other mobile devices or any other temporary sign except as specifically permitted in this chapter;

(M) Signs which are painted on or attached to any trees, telephone poles, public benches, street lights or traffic-control devices, unless for a valid public purpose and unless specifically permitted in writing by the City Manager for good and necessary cause;

(N) Searchlights;

(O) Any signs which imitate or resemble official traffic or government signs or signals;

(P) Any sign which displays cartoons, pictures, photographs, cutouts or figures, unless they are part of a registered trademark or corporate identity and are approved by the City Manager; and

(Q) Any sign not in conformance with the Building Code.
(1985 Code, § 159.12) (Ord. 93-08, passed 3-1-1993; Ord. 96-24, passed - -1996) Penalty, see § 159.99

§ 159.23 VARIANCES.

(A) The Board of Zoning Appeals shall have the authority, by a majority vote of the members appointed to hear appeals from the decisions of the City Manager or ARO and to grant relief from those decisions.

(B) A sign not constructed or erected in conformity with this chapter may be permitted by the Board of Zoning Appeals when the use of such proposed sign will not be detrimental to public health, safety and general welfare or when a substantial hardship or injustice will prevail in refusing to issue a permit for use of such a proposed sign. The owner shall submit detailed drawings of the proposed sign and its locations to the Board of Zoning Appeals for its review prior to rendering a decision on the issuance of a building permit. The Board of Zoning Appeals may request the Architectural Review Officer to evaluate the drawings and other available material and report his or her findings to the Board. Any variance should be in accordance with the general intent of this chapter.
(1985 Code, § 159.23) (Ord. 93-08, passed 3-1-1993)

§ 159.26 FIRST AMENDMENT PROTECTION.

(A) *Purpose*. It has never been the intent of the city to infringe on the rights of property owners and occupiers to display messages protected by the First Amendment. Therefore, this section is adopted in order to clarify the existing regulations and to remove any doubt that it is the public's right to receive and display First Amendment protected messages, including but not limited to religious, political, economic, social and philosophical messages. It is the further purpose to reaffirm that an expedient appeal process exists that addresses these First Amendment concerns.

(B) *Definition.* For the purpose of this Chapter 159, ***FREE SPEECH MESSAGE*** shall mean any message that is not intended to convey a commercial message. Free speech messages include but are not limited to religious, political, economic, social and philosophical messages. ***COMMERCIAL MESSAGE*** means any message intended to call attention to a business or promote the sale of any goods or services.

(C) *Conflict with existing provisions.* In furtherance of the purpose of this Chapter 159, if there is any conflict between the provisions of this section, with any other section of the Zoning Code, including those provisions regulating signs, and such conflict could be construed to infringe on free speech messages, the provisions of this section shall control.

(D) *First Amendment safeguards.* In order to safeguard the protections offered by the First Amendment, the following provisions shall apply.

(1) Every parcel in all zoning districts shall be permitted to display one two-sided or one one-sided sign containing any free speech message. Each side of the sign shall not exceed six square feet in area. Such sign shall not require a building or zoning certificate. However, such sign must be kept in good and safe condition. In no event shall such sign be erected in the right-of-way.

(2) At any time that the County Board of Elections has identified a candidate or issue that will be placed on the ballot at the next general or special election, one additional sign may be erected for each candidate or issue that the occupant wishes to support or oppose. Such political signs shall still be subject to the dimensional regulations set forth in division (D)(1) of this section. No such sign may be erected in the right-of-way. All such signs, except for one sign as permitted by division (D)(1) above, shall be removed from display not later than the first Friday immediately following the election.

(3) If the sign permitted in division (D)(1) or (D)(2) above is not maintained in good and safe condition, notice shall be sent to the property owner by regular mail. The property owner shall have seven days from the date of mailing indicated on the notice to restore or replace the sign to a good and safe condition. If the sign is not restored to good and safe condition within seven days, and the owner or occupant of the property has not filed an appeal from the notice, then the owner and/or occupant shall be

in violation of this section and guilty of a minor misdemeanor. Each day that the sign remains in violation of the notice to remove is a separate violation. No additional notices shall be required after the first has been sent.

(4) Every parcel that is permitted to display a sign containing a commercial message or other permitted message pursuant to the Zoning Code shall be permitted to display a free speech message in lieu of the permitted commercial or other permitted message. However, this provision shall not apply to existing signs displaying a message necessary for public safety, such as message directing vehicular or pedestrian flow, parking restriction signs or fire lane signs. Such sign shall still be subject to the dimensional regulations imposed on each zoning district, including but not limited to size, height, area and setback. This sign shall be permitted in addition to the free speech message permitted by division (D)(1) of this section.

(E) *Signs not a principal use.* Signs shall be considered an accessory use and regulated as an accessory use pursuant to underlying zoning district regulations. However, a sign authorized by divisions (D)(1) and (D)(2) of this section shall be permitted to be displayed by the owner on undeveloped lots.

(F) *Appeal process for sign application denials.* In order to confirm a property owner's ability to exercise his or her First Amendment rights without undue delay, a special process shall be instituted for the appeal of the denial of a zoning certificate or building permit for any sign (if a building or zoning certificate is required) or for the appeal of an order to remove a sign displayed that is purported to be displayed in accordance with division (D)(1) or (D)(2) of this section. To the extent that the appeal process of this section conflicts with other provisions of the Zoning Code, the appeal process of this division (F) shall control.

(1) It shall be the duty of the City Manager or his or her designee to either approve or deny applications for zoning certificates or building permits for signs within seven business days of the date of application. The ARO shall be consulted and shall provide a written recommendation within this period. If a recommendation against approving the sign is made by the ARO, the matter shall be presented to the Planning Commission for consideration. Any application that is returned because it is incomplete shall be deemed a denial. Any aggrieved applicant shall have the right to appeal the denial of a zoning certificate or building permit for a sign. Such appeal shall be heard by the Board of Zoning Appeals.

(2) Any such appeal must be taken within ten days after the decision of the City Manager or his or her designee by filing a notice of appeal, stating the grounds for such appeal, with the City Manager and the Board of Zoning Appeals. The City Manager shall cause the transmittal to the Board of Zoning Appeals of all the papers constituting the record upon which the action appealed from was taken.

(3) The Board of Zoning Appeals shall fix a time for the hearing of the appeal not sooner than 15 days and not later than 30 days from the filing of the notice of appeal. The Board of Zoning Appeals shall give at least ten days' notice of such public hearing by posting the time and place of the hearing on the official website of the municipality and in the lobby of the municipal building. The Board shall, in addition, give written notice of the hearing to all interested parties, deposited in the mail ten days in advance of such hearing. The appealing party has the right to waive any and all of the time restrictions imposed on the Board of Zoning Appeals. However, absent such waiver, failure of the Board to act within these time limitations shall be deemed an approval of the application for the zoning certificate or building permit.

(4) The Board shall render a written decision on the appeal not later than 30 days after the date of the public hearing.
(1985 Code, § 159.26) (Ord. 05-10, passed 5-23-2005) Penalty, see § 159.99

§ 160.009 DEFINITIONS.

ACCESSORY STRUCTURE. Any permanent structure which: (i) is subordinate to and serves a principal building; (ii) is subordinate in area and extent to the principal structure served; (iii) contributes to the comfort, convenience or necessity of the occupants, business or industry of the principal structure served; and (iv) is located on the same lot as the principal structure, except as otherwise expressly authorized by the provisions of this Zoning Code. Accessory buildings or structures include, but are not limited to, the following: detached garages, carports, decks, gazebos, ~~pergolas~~ and sheds.

§ 160.027 REVOKING A FLOODPLAIN DEVELOPMENT PERMIT.

A floodplain development permit shall be revocable, if among other things, the actual development activity does not conform to the terms of the application and permit granted thereon. In the event of the revocation of a permit, an appeal may be taken to the Board of Zoning Appeals in accordance with § 160.067 of these regulations.
(1985 Code, § 160.17) (Ord. 04-14, passed 5-10-2004)

§ 160.065 APPEALS BOARD ESTABLISHED.

The Board of Zoning Appeals is hereby established as the Appeals Board for variance applications submitted under these regulations.
(1985 Code, § 160.32) (Ord. 04-14, passed 5-10-2004)

§ 160.066 POWERS AND DUTIES.

(A) The Board of Zoning Appeals shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the City Manager in the administration or enforcement of these regulations.

(B) The Board of Zoning Appeals shall authorize variances in accordance with § 160.068 of these regulations.
(1985 Code, § 160.33) (Ord. 04-14, passed 5-10-2004)

§ 160.067 APPEALS.

(A) Any person affected by any notice and order, or other official action of the City Manager regarding this Chapter 160, may request and shall be granted a hearing on the matter before the Board of Zoning Appeals, provided that such person shall file, within 30 days of the date of such notice and order, or other official action, a brief statement of the grounds for such hearing or for the mitigation of any item appearing on any order of the City Manager's decision. Such appeal shall be in writing, signed by the applicant, and be filed with the City Manager. Upon receipt of the appeal, the City Manager shall transmit said notice and all pertinent information on which the City Manager's decision was made to the Board of Zoning Appeals.

(B) Upon receipt of the notice of appeal, the Board of Zoning Appeals shall fix a reasonable time for the appeal give notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted.
(1985 Code, § 160.34) (Ord. 04-14, passed 5-10-2004)

§ 160.068 VARIANCES.

(A) *General*. Any person believing that the use and development standards of these regulations would result in unnecessary hardship may file an application for a variance. The Board of Zoning Appeals shall have the power to authorize, in specific cases, such variances from the standards of these regulations, not inconsistent with federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

(B) *Application for a variance*.

(1) Any owner, or agent thereof, of property for which a variance is sought shall make an application for a variance by filing it with the Floodplain Administrator, who upon receipt of the variance shall transmit it to the Board of Zoning Appeals.

(2) Such application at a minimum shall contain the following information: name, address and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; and reason for the variance request.

(3) All applications for a variance must be accompanied by an application fee of $50 for each variance under request.

(C) *Notice for public hearing.* The Board of Zoning Appeals shall schedule and hold a public hearing within 30 days after the receipt of an application for a variance from the City Manager. Prior to the hearing, a notice of the time and place of such hearing shall be posted on the official website of the municipality and in the lobby of the municipal building. The Board shall, in addition, give notice of any such hearing by letter to property owners where property is located within 200 feet of the subject property and other deemed interested parties by the City Manager, deposited in the mail ten days in advance of such hearing and addressed to their last known residences, in those cases where the proposed change does not directly affect more than 30 such owners.

(D) *Public hearing.* At such hearing the applicant shall present such statements and evidence as the Board of Zoning Appeals requires. In considering such variance applications, the Board of Zoning Appeals shall consider and make findings of fact on all evaluations, all relevant factors, standards specified in other sections of these regulations and the following factors:

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the community;

(5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

(6) The necessity to the facility of a waterfront location, where applicable;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

(11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(E) *Issuance.*

(1) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant;

(c) A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public or conflict with existing local laws;

(d) A determination that the structure or other development is protected by methods to

minimize flood damages; and

(e) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) Upon consideration of the above factors and the purposes of these regulations, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of these regulations.

(F) *Other conditions for variances*.

(1) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(2) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing divisions (D)(1) through (D)(11) of this section have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
(1985 Code, § 160.35) (Ord. 04-14, passed 5-10-2004)

§ 160.069 PROCEDURE AT HEARINGS.

(A) All testimony shall be given under oath.

(B) A complete record of the proceedings shall be kept, except for valid executive sessions of the Board of Zoning Appeals, but including all documents presented and a verbatim record of the testimony of all witnesses.

(C) The applicant shall proceed first to present evidence and testimony in support of the appeal or variance.

(D) The City Manager may present evidence or testimony in support or opposition to the appeal or variance.

(E) All witnesses shall be subject to cross-examination by the adverse party or their counsel.

(F) Evidence that is not admitted may be proffered and shall become part of the record for appeal.

(G) The Board of Zoning Appeals shall issue subpoenas upon written request for the attendance of witnesses. A reasonable deposit to cover the cost of issuance and service shall be collected in advance.

(H) The Board of Zoning Appeals shall prepare conclusions of fact supporting its decision. The decision may be announced at the conclusion of the hearing and thereafter issued in writing or the decision may be issued in writing within a reasonable time after the hearing.
(1985 Code, § 160.36) (Ord. 04-14, passed 5-10-2004)

§ 160.070 APPEAL TO THE COURT.

Those aggrieved by the decision of the Board of Zoning Appeals may appeal such decision to the County Court of Common Pleas, as provided in R.C. Chapter 2506.
(1985 Code, § 160.37) (Ord. 04-14, passed 5-10-2004)

§ 161.04 APPEAL.

A building permit denied based upon input from the Architectural Review Office may be appealed to the Board of Zoning Appeals for an administrative hearing. The decision of the Board of Zoning Appeals shall be final.
(1985 Code, § 161.04) (Ord. 85-21, passed 9-23-1985)

§ 161.09 VARIANCES.

In the event a zoning variance is required by an applicant to comply with the requirements established by the Architectural Review Office, the ARO may recommend to the Board of Zoning Appeals as to the nature and extent of said zoning variance request. The Board of Zoning Appeals may consider the recommendation as constituting a hardship sufficient to comply with the City Charter.
(1985 Code, § 161.09) (Ord. 85-21, passed 9-23-1985)

Cross-reference:

Zoning variances based on hardship, see § 151.125

§ 164.04 LOCATION OF SEXUALLY ORIENTED BUSINESS.

(A) Sexually oriented businesses may locate anywhere within the commercial zone identified in § 164.03, provided that:

(1) There is an intervening visual barrier on the property between the sexually oriented business and any protected use. Such barrier shall be either an intervening building, fence, mound or other visual buffer, or combination thereof, of sufficient height and density to provide a visual barrier between the sexually oriented business and any adjacent protected use; and

(2) No two sexually oriented businesses are located on the same lot or adjacent lots.

(B) The adequacy of any proposed intervening visual barrier required in division (A)(1) shall be reviewed by the Planning Commission at a public hearing, which shall provide notice of such a hearing by posting the time and place thereof on the official website of the municipality and in the lobby of the municipal building at least ten days in advance of such hearing. The Planning Commission shall also give written notice to interested parties. Upon application for approval of the intervening visual barrier, the Planning Commission shall consider, at a minimum, the following factors:

(1) Distance that the sexually oriented business is located from the property line and occupied structures in the protected use;

(2) Aesthetics;

(3) Cost of barrier;

(4) Line of sight; and

(5) Ability and responsibility to maintain barrier.

(C) In no event shall the proposed intervening visual barrier be required to exceed ten feet in height from ground level of the property at time of installation on which the proposed sexually oriented business is located, although the intervening visual barrier may in fact exceed ten feet.
(1985 Code, § 164.04) (Ord. 96-12, passed 3-11-1996)

§ 164.14 JUDICIAL REVIEW OF PERMIT DENIAL, SUSPENSION OR REVOCATION.

An applicant or permittee may seek review of a denial of an application, denial of a renewal of an application, suspension or revocation of a permit through the Board of Zoning Appeals or special review board if one is established. If the denial, suspension or revocation is affirmed on review, the applicant or permittee may seek review of the administration decision in the County Court of Common Pleas. (1985 Code, § 164.14) (Ord. 96-12, passed 3-11-1996)

§ 166.06 APPLICATION PROCESS.

(A) Any modification, alteration or enhancement of a site or structure exterior within the District shall require a zoning and building permit.

(B) Projects identified by the City Manager or his or her designee as "essentially minor" shall be granted a zoning and building permit with administrative approval.

(C) The applicant for any project not identified as “essentially minor” by the City Manager or his or her designee shall submit the application to the Planning Commission for review and approval.

(D) All applications submitted under the provisions of this Chapter shall be reviewed in accordance with the following procedure:

(1) *Stage 1: Initial Application*. The purpose of Stage 1 is for the City Manager or his or her designee to determine whether proposed construction (including renovation, repair, maintenance or other similar activities) shall be reviewed administratively as an “essentially minor” application or by Planning Commission. The pre-application meeting is recommended with the City Manager or his or her designee to determine the submission requirements.

(a) The City Manager or his or her designee shall review the proposed construction and may consult with the Architectural Review Officer (ARO) or the Chair of the Planning Commission before he or she makes the decision whether the proposed construction is essentially minor.

(b) Construction shall be deemed (designated) essentially minor if it, when completed, will have primarily preserved the use, function, form, scale and accessory uses that existed prior to the construction.

(c) Construction deemed essentially minor shall be granted an essentially minor certificate, and applicants shall submit application for a building permit under administrative review. All other projects shall require Planning Commission review and approval prior to the issuance of a building permit.

(d) Stage 1A: Determination of Modification Type. The following factors shall be weighed and considered in determining whether the construction is essentially minor.

1. Will the proposed construction significantly alter the exterior appearance of the existing building or site design in one or more of the following ways?

a. Height;

b. Setbacks;

c. Footprint;

d. Entrance;

e. Fenestration;

f. Envelope (volume);

g. Exterior materials or colors; and

h. Landscaping or parking.

2. Will the construction essentially preserve the form and use of the existing building and site?

3. Is the estimated cost of the construction to the exterior of the building and site sufficient to justify that the modifications be compatible with the aesthetic vision of the Main Street Core District regulations?

(e) Stage 1B: Determination of Modification Magnitude.

1. For the City Manager or his or her designee to determine that a project is essentially minor, management must find that:

a. The construction will not increase the dimensions of a building or structure by more than 10% of the square footage of the existing building or structure, exclusive of the alteration or expansion;

b. The project will not involve additional land other than the lot of record;

c. The cost of the exterior renovation of the structure does not exceed 25% of the assessed value of the building or structure to be altered, prior to the renovations; and

d. The alterations do not require dimensional variances from the regulations of this chapter.

2. If the City Manager or his or her designee determines that the construction is essentially minor, he or she shall so certify in writing. A file containing the certification, copies of the proposed construction and staff comments and recommendations shall be assembled and retained for not less than five years after completion of the proposed construction.

3. For the purposes of this chapter, it shall be presumed that any additional construction proposed within five years of an essentially minor certification will not qualify as essentially minor. The intent of this presumption is to prevent or discourage circumvention of ultimate design guidelines of this chapter through the cumulative effect of multiple minor improvements.

(f) Stage 1C: Administrative Review Application. Once a project has been certified essentially minor, the applicant may apply for a zoning and building permit without requesting approval of the Planning Commission. However, the application shall be reviewed for specific compliance with applicable sections of the Main Street Core District regulations and deemed in compliance by the City Manager or his or her designee, prior to the issuance of a building permit.

(2) *Stage 2: Planning Commission Review Application.* In the event the City Manager or his or her designee does not find an application to be essentially minor or in conformance with the standards of this Chapter 166, the City Manager or his or her designee shall make the determination that the application must be reviewed and approved by Planning Commission. The Planning Commission shall review the application for appropriateness and equivalency to the intent and purpose of this chapter. The Planning Commission may grant an equivalency or modification of a requirement if it makes a finding that the effect of the proposed submission is consistent with the intent and purpose of this chapter. The equivalency finding shall be part of the official record of approval and issuance of the certificate of appropriateness and the zoning permit.

(a) Prior to the issuance of a building permit, the Planning Commission must approve proposed construction or modification of buildings within the Main Street Core District that has not been certified as essentially minor by the City Manager or his or her designee. Implicit in such an application is that an essentially minor certification has not been issued. Application to and review by the Planning Commission shall be evaluated in the same manner whether or not an essentially minor certification has been sought (and denied).

(b) As they are form based, the regulations for the Main Street Core District include both dimensional and flexible aesthetic standards. Review for substantial or equivalent compliance with both types of standards shall be required for zoning approval and issuance of a building permit.

(3) *Stage 3: Dimensional Review*.

(a) Upon receipt of an application for proposed construction within the Main Street Core District, the City Manager or his or her designee shall review and determine dimensional compliance with these standards. This shall include identification of any proposed reconstruction of existing buildings that are dimensionally nonconforming. Variances that are identified shall be set forth in a report to the Planning Commission and the Board of Zoning Appeals. The notice and process of review shall be the same as required for other dimensional variances.

(b) The Board of Zoning Appeals shall weigh and consider the "Duncan" factors for each dimensional variance identified.

(4) *Stage 4: Design Review of Aesthetic Standards*.

(a) The Planning Commission shall serve as a Design Review Board and evaluate the proposal for reasonable compliance with the overall aesthetic guidelines.

(b) The standard of compliance is intended to be "reasonable" rather than "strict" to allow for design review that is flexible for both the applicant and city to achieve a product that is appropriate for the district.

(c) The standard of compliance with the aesthetic guidelines should be the determination of the Planning Commission stating that the proposed construction achieves a significant compatibility with the aesthetic guidelines set forth in the Main Street Core District regulations.

(d) The Planning Commission should find that the proposed construction avoids a direct conflict with the overall images, impressions and net impact of buildings and accessory structures, including parking, landscaping and lighting described in the Main Street Core District regulations.

(e) The Planning Commission shall refrain from imposing additional aesthetic requirements if the proposed construction does substantially resemble the examples set forth in the Main Street Core District regulations. Aesthetic guidelines are inherently subjective and, therefore, the Planning Commission shall endeavor to adhere to the guidelines as they are substantially expressed in these regulations.

(f) It is recognized that it is unlikely and unreasonable to require a building to comply with all examples in the regulations because the regulations anticipate variation in final appearances (eclectic) from building to building.

(g) The Planning Commission shall make findings that the application:

1. Conforms in all pertinent respects to the requirements contained in this chapter;

2. Adequate provision is made for safe and efficient pedestrian and vehicular circulation within the site and to adjacent property;

3. The development has adequate public services and open spaces;

4. The development provides adequate lighting for safe and convenient use of the streets, walkways, driveways and parking areas without unnecessarily spilling or emitting light into adjacent properties; and

5. The landscape plan will enhance the principal building and site and maintain existing trees where appropriate; buffer adjacent incompatible uses; break up large expanses of pavement with natural material; and provide appropriate plant materials for the buildings, site and climate.

(h) The approval by Planning Commission shall not be construed to imply compliance with all other local, state and federal laws and regulations.

(i) An affirmative vote of approval of the majority of the Planning Commission members may determine whether the proposed construction complies with the aesthetic guidelines of the district or has been found to be equivalent by Planning Commission.

(5) *Submission Requirements*. The following material should be submitted with each application.

(a) *Initial Application.* Applicants shall provide the following information and materials:

1. A conceptual site plan at a minimum scale of one inch equals 50 feet showing the size and location of all existing and proposed structures, indicating dimensions and square footage. The site plan shall also show the location of access and drive aisles, and the number of parking spaces;

2. Photographs or illustrations showing all four elevations of existing and proposed buildings;

3. A hard cost estimate for the new construction or alterations; and

4. An external finish building materials and colors list, with samples or examples.

(b) *Final Application*.

1. All applications for Planning Commission or administrative review for zoning approval or building permits shall include:

a. A land survey;

b. A site plan depicting the exact dimensions of the site and all buildings, structures and parking areas;

c. A landscaping plan showing the location and type of all proposed landscape areas, plantings and screening/buffering;

d. A signage plan showing the location, size and type of all signs, illustrations or elevations showing the proposed appearance of all signs;

e. A lighting plan showing the location, type, height and intensity and photometric of all lighting;

f. Building plans showing general dimensions, materials and uses;

g. Exterior building elevations showing the proposed appearance of the building, including a proposed materials list; and

h. Any other information deemed necessary by the City Manager or his or her designee, Architectural Review Officer or Planning Commission to determine compliance with this chapter.

2. In the case of a project with an essentially minor certificate, the City Manager or his or her designee may waive any of the above submission requirements that he or she deems unnecessary for the comprehensive review of the proposed project.

(6) *Contingent-Approval Permitted.* In circumstances where an applicant needs a variance from the requirements of this Code, the Planning Commission may provide contingent-approval of a Final Application. Such contingent-approval shall mean their approval of the Final Application is subject to the applicant obtaining any required variance(s) from the Board of Zoning Appeals. If the Planning Commission provides contingent-approval of a Final Application and the Board of Zoning Appeals subsequently denies the applicant's requested variance(s), said denial shall constitute a rejection of the Final Application.

(7) *Appeals*. Pursuant to this section, if the Planning Commission, City Manager, or ARO deny an applicant's request for approval of an application or an amendment to a previously-approved application, such applicant may appeal the decision denying their request to the Board of Zoning Appeals.

(a) *Timing of Appeal*. The applicant appealing the decision must provide notice of his or her intent to appeal such decision to the Planning Commission, City Manager, or ARO and the Board of Zoning Appeals within thirty (30) days of the Planning Commission's provision of written notification of its denial to the applicant.

(b) *Hearing on Appeal*. The Board of Zoning Appeals shall hold a public hearing evaluating the appeal based upon the standards of review applied by the Planning Commission, City Manager, or ARO to the initial application, within sixty (60) days of receiving applicant's notice of appeal.
(Ord. 10-23, passed 2-14-2011)

§ 167.06 APPLICATION PROCESS.

(A) Any modification, alteration or enhancement of a site or structure exterior within the District shall require a zoning permit.

(B) Projects identified by the City Manager or his or her designee as "essentially minor" shall be granted a zoning and building permit with administrative approval.

(C) The applicant for any project not identified as “essentially minor” by the City Manager or his or her designee shall submit the application to the Planning Commission for review and approval.

(D) All applications submitted under the provisions of this Chapter shall be reviewed in accordance with the following procedure:

(1) *Stage 1: Initial Application.* The purpose of Stage 1 is for the City Manager or his or her designee to determine whether proposed construction (including renovation, repair, maintenance or other similar activities) shall be reviewed administratively as an "essentially minor" application or by Planning Commission. A pre-application meeting is recommended with the City Manager or his or her designee to determine the submission requirements. See division (B)(5) below.

(a) *Review.* The City Manager or his or her designee shall review the proposed construction and shall consult with the Architectural Review Officer (ARO) before he or she makes the decision whether the proposed construction is essentially minor.

(b) *Essentially minor designation.* Construction shall be deemed (designated) essentially minor if it, when completed, will have primarily preserved the use, function, form, scale and accessory uses that existed prior to the construction.

(c) *Stage 1A: Determination of Modification Type.* The following factors shall be weighed and considered in determining whether the construction is essentially minor.

1. Will the proposed construction significantly alter the exterior appearance of the existing building or site design in one or more of the following ways?

a. Height;

b. Setbacks;

c. Footprint;

d. Entrance;

e. Fenestration;

f. Envelope (volume);

g. Exterior materials or colors; and

h. Landscaping or parking.

2. Will the construction essentially preserve the form and use of the existing building and site?

3. Is the estimated cost of the construction to the exterior of the building and site sufficient to justify that the modifications be compatible with the purpose (§ 167.03) of the Residential-Scale Business Overlay District regulations?

(d) *Stage 1B: Determination of Modification Magnitude*.

1. For the City Manager or his or her designee to determine that a project is essentially minor, management must find that:

a. The construction will not increase the dimensions of a building or structure by more than 10% of the square footage of the existing building or structure, exclusive of the alteration or expansion;

b. The project will not involve additional land other than the lot of record;

c. The cost of the exterior renovation of the structure does not exceed 25% of the assessed value of the building or structure to be altered, prior to the renovations; and

d. The alterations do not require dimensional variances from the regulations of this chapter.

2. If the City Manager or his or her designee determines that the construction is essentially minor, he or she shall so certify in writing. A file containing the certification, copies of the proposed construction and staff comments and recommendations shall be assembled and retained for not less than five years after completion of the proposed construction.

3. For the purposes of this chapter, it shall be presumed that any additional

construction proposed within five years of an essentially minor certification will not qualify as essentially minor. The intent of this presumption is to prevent or discourage circumvention of ultimate design guidelines of this chapter through the cumulative effect of multiple minor improvements.

(e) *Stage 1C: Administrative Review Application.* Once a project has been certified essentially minor, the applicant may apply for a zoning and building permit without requesting approval of the Planning Commission. However, the application shall be reviewed for specific compliance with applicable sections of the Residential-Scale Business Overlay District regulations and deemed in compliance by the City Manager or his or her designee, prior to the issuance of a building permit.

(2) *Stage 2: Planning Commission Review Application*. In the event the City Manager or his or her designee does not find an application to be essentially minor or in conformance with the standards of Chapter 167, the City Manager or his or her designee shall make the determination that the application must be reviewed and approved by Planning Commission. The Planning Commission shall review the application for appropriateness and equivalency to the intent and the purpose of this Chapter. The Planning Commission may approve an equivalency or modification of a requirement if they make a finding that the effect of the proposed submission is consistent with the intent and purpose of this chapter. The equivalency finding shall be part of the official record of approval and issuance of the certificate of appropriateness and the zoning permit.

(a) Prior to the issuance of a building permit, the Planning Commission must approve proposed construction or modification of buildings within the Residential-Scale Business Overlay District that has not been certified as essentially minor by the City Manager or his or her designee. Implicit in such an application is that an essentially minor certification has not been issued. Application to and review by the Planning Commission shall be evaluated in the same manner whether or not an essentially minor certification has been sought (and denied).

(b) As they are form based, the regulations for the Residential-Scale Business Overlay District include both dimensional aesthetic standards. Review for substantial or equivalent compliance with both types of standards shall be required for zoning approval and issuance of a building permit.

(3) *Stage 3: Dimensional Review*.

(a) Upon receipt of an application for proposed construction within the Residential-Scale Business Overlay District, the City Manager or his or her designee shall review and determine dimensional compliance with these standards. This shall include identification of any proposed reconstruction of existing buildings that are dimensionally nonconforming. Variances that are identified shall be set forth in a report to the Planning Commission and the Board of Zoning Appeals. The notice and process of review shall be the same as required for other dimensional variances.

(b) The Board of Zoning Appeals shall weigh and consider the "Duncan" factors for each dimensional variance identified.

(4) *Stage 4: Design Review of Aesthetic Standards.*

(a) The ARO shall review and make recommendations to the Planning Commission and evaluate the proposal for reasonable compliance with the overall aesthetic guidelines.

(b) The standard of compliance is intended to be "reasonable" rather than "strict" to allow for design review that is flexible for both the applicant and city to achieve a product that is appropriate for the district.

(c) The standard of compliance with the aesthetic guidelines should be the determination of Planning Commission stating that the proposed construction achieves a significant compatibility with the aesthetic guidelines set forth in the Residential-Scale Business Overlay District regulations.

(d) The Planning Commission should find that the proposed construction avoids a direct conflict with the overall images, impressions and net impact of buildings and accessory structures including parking, landscaping, and lighting described in the Residential-Scale Business Overlay District regulations.

(e) The Planning Commission shall refrain from imposing additional aesthetic requirements if the proposed construction does substantially resemble the examples set forth in the Residential-Scale Business Overlay District regulations. Aesthetic guidelines are inherently subjective and, therefore, the Planning Commission shall endeavor to adhere to the guidelines as they are substantially expressed in these regulations.

(f) It is recognized that it is unlikely and unreasonable to require a building to comply with all examples in the regulations because the regulations anticipate variation in final appearances from building to building.

(g) The Planning Commission shall make findings that the application:

1. Conforms in all pertinent respects to the requirements contained in this chapter;

2. Adequate provision is made for safe and efficient pedestrian and vehicular circulation within the site and to adjacent property;

3. The development has adequate public services and open spaces;

4. The development provides adequate lighting for safe and convenient use of the streets, walkways, driveways and parking areas without unnecessarily spilling or emitting light into adjacent properties; and

5. The landscape plan will enhance the principal building and site and maintain existing trees where appropriate; buffer adjacent incompatible uses; break up large expanses of pavement with plant material; and provide appropriate plant materials for the buildings, site and climate.

(h) The approval by Planning Commission shall not be construed to imply compliance with all other local, state and federal laws and regulations.

(i) In order to receive Planning Commission approval a majority of Planning Commission members must vote affirmatively that the proposed construction complies with aesthetic guidelines of the district.

(5) *Submission Requirements.* The following materials should be submitted with each application.

(a) *Initial Application.* Applicants shall provide the following information and materials:

1. A conceptual site plan at a minimum scale of one inch equals 50 feet showing the size and location of all existing and proposed structures, indicating dimensions and square footage. The site plan shall also show the location of access and drive aisles, and the number of parking spaces;

2. Photographs or illustrations showing all four elevations of existing and proposed buildings;

3. An itemized cost estimate for the new construction or alterations; and

4. An external finish building materials and colors list, with samples or examples of external finishes.

(b) *Final Application*.

1. All applications for Planning Commission or administrative review for zoning approval or building permits shall include:

a. A survey by a registered engineer;

b. A site plan depicting the exact dimensions of the site and all buildings,

structures and parking areas;

c. A landscaping plan showing the location and type of all proposed landscape areas, plantings and screening/buffering;

d. A signage plan showing the location, size and type of all signs, illustrations or elevations showing the proposed appearance of all signs;

e. A lighting plan showing the location, type, height and intensity and photometric of all lighting;

f. Building plans showing general dimensions, materials and uses;

g. Exterior building elevations showing the proposed appearance of the building, including a proposed materials and color list and all exterior utility housings, junctions and other exterior duct work or conduits attached to a structure; and

h. Any other information deemed necessary by the City Manager or his or her designee. The Architectural Review Officer or Planning Commission shall determine compliance with this chapter.

2. In the case of a project with an essentially minor certificate, the City Manager or his or her designee may waive any of the above submission requirements that he or she deems unnecessary for the comprehensive review of the proposed project.

(6) *Contingent-Approval Permitted.* In circumstances where an applicant needs a variance from the requirements of this Code, the Planning Commission may provide contingent-approval of a Final Application. Such contingent-approval shall mean their approval of the Final Application is subject to the applicant obtaining any required variance(s) from the Board of Zoning Appeals. If the Planning Commission provides contingent-approval of a Final Application and the Board of Zoning Appeals subsequently denies the applicant's requested variance(s), said denial shall constitute a rejection of the Final Application.

(7) *Appeals*. Pursuant to this section, if the Planning Commission, City Manager, or ARO deny an applicant's request for approval of an application or an amendment to a previously-approved application, such applicant may appeal the decision denying their request to the Board of Zoning Appeals.

(a) *Timing of Appeal*. The applicant appealing the decision must provide notice of his or her intent to appeal such decision to the Planning Commission, City Manager, or ARO and the Board of

Zoning Appeals within thirty (30) days of the Planning Commission's provision of written notification of its denial to the applicant.

(b) *Hearing on Appeal*. The Board of Zoning Appeals shall hold a public hearing evaluating the appeal based upon the standards of review applied by the Planning Commission, City Manager, or ARO to the initial application, within sixty (60) days of receiving applicant's notice of appeal.
(Ord. 11-19, passed 11-28-2011)

ORDINANCE NO. 17-10
EXHIBIT VV

CHAPTER 168: BOARD OF ZONING APPEALS

Section

General Provisions

GENERAL PROVISIONS

§ 168.01 BOARD OF ZONING APPEALS ESTABLISHED.

(A) *Appointment*. See Charter Art. XVII, § 1.

(B) *Meetings*. See Charter Art. XVII, § 2.

(C) *Powers and Duties*. See Charter Art. XVII, § 3.

(D) *Variances*. See Charter Art. XVII, § 4.

(E) *Membership*. The Board of Zoning Appeals shall consist of five voting members.

Cross-reference:

Zoning variances based on hardship, see § 151.125
Appeals, see § 160.067

§ 168.02 BOARD OF ZONING APPEALS JURISDICTION.

(A) *Direct Review of Variances*. The Board of Zoning Appeals shall have the authority to review applications for variance, and to grant relief from strict application of the Zoning Code.

(1) *Scope of Review*. Pursuant to this section, an applicant may apply directly to the Board of Zoning Appeals for a variance under the following sections:

(a) §150.05, "Conversion of Existing Accessory Buildings;"

(b) §150.09, "Residence 'AAA' District Uses;"

(c) §150.12, "Home Offices in Residential Districts;"

(d) §150.16, "Outdoor Dining Regulations;"

(e) §150.26, "Dimensional Variance;"

(f) §150.30, "Panhandle Lots;"

(g) §150.37, "Cellular or Wireless Communication Systems;"

(h) §150.39, "Transitional Overlay District #2;"

(i) §151.001, *et seq.*, "Subdivision Regulations;"

(j) §152.12, "Variances and Appeals Process for Residential Building Code;"

(k) §159.01, *et seq.*, "Signs;"

(l) §160.001, *et seq.*, "Flood Hazard Reduction;"

(m) §166.01, *et seq.*, "Main Street Core District Zone Regulations;"

(n) §167.01, *et seq.*, "Residential-Scale Business Overlay District Regulations;" and

(o) Any other section of the City of Madeira's Zoning Code not referenced above and which permits applications for variance.

(2) *Review Process.*

(a) *Public Hearing.* The Board of Zoning Appeals shall hold a public hearing, evaluating the application for variance based upon the standards of review established under Ohio law, within sixty (60) days of receiving applicant's variance application.

(b) *Burden of Proof.* Pursuant to this section, an applicant seeking a variance must demonstrate that a practical difficulty exists in conforming to the applicable Zoning Code provision.

(c) *Standard of Review.* In reviewing an application for variance under this section, the Board of Zoning Appeals shall weigh the following Duncan Factors:

1. Will the property yield a reasonable return or can there be a beneficial use of the

property without the variance?

2. Is the variance substantial?

3. Will the essential character of the neighborhood be substantially altered or will adjoining properties suffer a substantial detriment if the variance is granted?

4. Will the variance adversely affect the delivery of governmental services?

5. Did the property owner purchase the property with knowledge of the zoning restrictions?

6. Can the problem be resolved by some manner other than the granting of the variance?

7. Will the variance preserve the "spirit and intent" of the zoning resolution and will "substantial justice" be done by granting the variance?

(d) *Decision.* The Board of Zoning Appeals shall issue a written decision to the applicant approving, denying, or conditionally approving an application for variance within thirty (30) days of the public hearing.

(B) *Appellate Review*. The Board of Zoning Appeals shall have the authority to hear appeals of decisions rendered by the Planning Commission, City Manager, and/or ARO while enforcing the provisions of this Zoning Code.

(1) *Scope of Review*. Pursuant to this section, if the Planning Commission, City Manager, or ARO denies requested relief to an applicant, such applicant may appeal the decision to the Board of Zoning Appeals. The Board of Zoning Appeals shall have jurisdiction to hear appeals brought under the following sections:

(a) §150.16, "Outdoor Dining Regulations;"

(b) §150.17, "Manufacturing District Uses;"

(c) §150.23, "Residence Zone Fencing;"

(d) §150.24, "Parking;"

(e) §150.25, "Parking and Storing of Commercial Vehicles in Residential Districts;"

(f) §150.30, "Panhandle Lots;"

(g) §150.38, "Transitional Overlay District;"

(h) §150.39, "Transitional Overlay District #2;"

(i) §150.40, "Transitional Overlay District #3;"

(j) §150.42, "Transitional Residential Overlay District;"

(k) §151.001, *et seq.*, "Subdivision Regulations;"

(l) §152.12, "Variances and Appeals Process for Residential Building Code;"

(m) §153.01, *et seq.*, "Excavating, Filling and Grading of Land;"

(n) §158.01, *et seq.*, "Property Maintenance Code;"

(o) §159.01, *et seq.*, "Signs;"

(p) §160.001, *et seq.*, "Flood Hazard Reduction;"

(q) §161.01, *et seq.*, "Architectural Review Office;"

(r) §164.01, *et seq.*, "Location of Sexually Oriented Businesses Regulated;"

(s) §166.01, *et seq.*, "Main Street Core District Zone Regulations;"

(t) §167.01, *et seq.*, "Residential-Scale Business Overlay District Regulations;" and

(u) Any other section of the City of Madeira's Zoning Code not referenced above and which permits the appeal of a decision rendered by the Planning Commission, City Manager, or ARO.

(2) *Timing of Appeal*. The applicant appealing a decision of the Planning Commission, City Manager, or ARO must provide notice of his or her intent to appeal such decision to the Planning Commission, City Manager, or ARO, and the Board of Zoning Appeals within thirty (30) days of the provision of written notification of denial to the applicant.

(3) *Hearing on Appeal*. The Board of Zoning Appeals shall hold a public hearing, evaluating the

appeal based upon the standards of review applied by the Planning Commission, City Manager, or ARO to the initial application, within sixty (60) days of receiving applicant's notice of appeal.

Cross-reference:

Conversion of Existing Accessory Structures, see §150.05
Conditional Uses, see §§ 150.09, 150.12, 150.018, 165.05, 166.22
Outdoor Dining Regulations, see § 150.16
Manufacturing District Uses, see § 150.17
Residence Zone Fencing, see § 150.23
Parking, see §§ 150.24, 150.25
Dimensional Variance, see § 150.26
Panhandle Lots, see § 150.30
Cellular or Wireless Communication Systems, see §150.37
Transitional Overlay Districts and Transitional Residential Overlay Districts, see §§ 150.38, 150.39, 150.40, 150.42
Variances and Appeals Process for Residential Building Code, see § 152.12
Excavating, Filling and Grading of Land, see § 153.01, et seq.
Property Maintenance Code, see § 158.01, et seq.
Signs, see §§ 159.12, 159.26
Flood Hazard Reduction, see § 160.001, et seq.
Architectural Review Office, see § 161.01, et seq.
Location of Sexually Oriented Businesses Regulated, see § 164.01, et seq.
Main Street Core District Regulations and Residential-Scale Business Overlay District Regulations, see §§ 166.06, 167.06

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Comparison Details	
Title	**compareDocs Comparison Results**
Date & Time	9/13/2017 9:06:50 AM
Comparison Time	10.11 seconds
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Sources	
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Modified Document	[#7719265] [v5] Ordinance No. 17-10 - Second Council Reading - 09.11.17.docx

Comparison Statistics	
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Deletions	7
Changes	2
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TOTAL CHANGES	43

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Insertions	
~~Deletions~~	
Moves / ~~Moves~~	
Inserted cells	
Deleted cells	
Merged cells	
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Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

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Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
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Include Moves	Word	False
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Show Reviewing Pane	Word	True
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Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True