

**ARTICLE X. ADMINISTRATION AND ENFORCEMENT****Section 1000. Purpose.**

The powers and duties of the following officers and boards are specified herein insofar as administration of this Ordinance is concerned: the Planning Commission; the Board of Zoning Adjustment; the Town Clerk; and the Building Official. This Article also specifies the requirements for amendments, variances, administrative appeals, and interpretations of this Ordinance.

**Section 1001. Town Clerk: Duties and Powers.**

The Town Clerk, or other duly authorized official shall, under the guidance of the Planning Commission, administer all staff activities regarding planning, zoning, and development review. He/she shall perform duties prescribed by this Ordinance, as well as any other assigned by the Planning Commission or the Town Council. The Town Clerk shall have a thorough knowledge of the provisions of this Ordinance.

The Town Clerk shall be appointed by the Mayor and shall have the following additional powers and responsibilities:

- A. Advise and cooperate with the Planning Commission in the implementation, amendment and enforcement of this Ordinance.
- B. Attend all public hearings at which zoning matters are discussed, including meetings of the Planning Commission, Board of Zoning Adjustment and Town Council.
- C. Collect and account for all application fees required for zoning actions and subdivision approvals.
- D. Evaluate each proposed site plan and subdivision plat for consistency with this Ordinance.
- E. Ensure that all time limits prescribed by this Ordinance are met.
- F. Monitor the progress of all development applications through the review process and be available to respond to inquiries from interested persons.
- G. Receive and review all applications for zoning certificates required herein.
- H. Process zoning certificate and conditional use permit applications.
- I. Record and file all applications for zoning certificates with accompanying plans and documents. All applications, plans, and documents shall be a public record.

- J. Receive applications for variances and forward them to the Board of Zoning Adjustment for action.
- K. Following refusal of a permit, receive applications for interpretation and appeals and forward them to the Board of Zoning Adjustment for action.
- L. Receive and review all site plans whose submission are required by Section 902 and review all proposed zoning amendments and prepare a report on said zoning amendments for the Planning Commission and the Town Council.
- M. Promptly indicate any zone boundary or other change to the Official Zoning Map, and make available for public inspection an up-to-date copy of the Official Zoning Map, as amended.
- N. Issue a monthly report on all site plan approvals to the Planning Commission.
- O. Other duties assigned by the Mayor.

**Section 1002. Building Official: Duties and Powers.**

The Building Official shall have the following powers and responsibilities:

- A. Receive and examine all applications for building permits and certificates of occupancy.
- B. Process all building permit applications and applications for certificates of occupancy.
- C. Issue permits only where there is compliance with the provisions of this Ordinance. Permits for construction of uses requiring a variance shall be issued only upon order of the Board of Zoning Adjustment. Permits shall be issued only after receipt of a zoning certificate.
- D. Conduct inspections and surveys to determine compliance or non-compliance with the terms of this Ordinance.
- E. Revoke, by writing, a permit or approval issued contrary to this Ordinance or based on a false statement or misrepresentation in the application.
- F. Stop, by written order, work being done contrary to the building permit or to this Ordinance. Such written order, posted on the premises involved, shall not be removed except by order of the Building Inspector. Removal without such order shall constitute a violation of this Ordinance.

- G. Institute any appropriate action or proceedings to prevent unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; restrain, correct, or abate such violation, so as to prevent the occupancy or use of any building, structure, or land; or prevent any illegal act, conduct, business, or use in or about such premises.
- H. Record and file all applications for permits with accompanying plans and documents.

### **Section 1003. Duties of the Planning Commission.**

The Planning Commission shall have the authority to interpret the intent and meaning of this Ordinance in situations where its applicability is not clear. Appeals of administrative decisions of the Planning Commission may be made to the Board of Zoning Adjustment.

The Planning Commission may also revoke any zoning certificate issued under a mistake of fact or contrary to the law or provision of this Ordinance.

#### **A. General Duties:**

1. The Planning Commission, in cooperation with the Town Clerk or other duly authorized officials shall study land use and development trends, collect data and analyze such information with regard to future development of the Town of Elmore.
2. The Planning Commission shall study and report on all proposed amendments to the text of this Ordinance. When reviewing any such proposed amendments, the Planning Commission shall, within 45 days of receipt of same from the Town Clerk, submit its recommendations and findings to the Town Council.
3. The Planning Commission shall study and report on all proposed amendments to the Official Zoning Map, the procedure for which is contained in Section 1006 of this Article.
4. The Planning Commission shall review and approve, approve with conditions or deny, all site plans submitted to it by the Town Clerk in accordance with Section 902.
5. The Planning Commission shall hear all applications for conditional use permits and shall make a report and recommendation to the Town Council in accordance with Section 903.
6. The Planning Commission shall cause the posting of notice in the form of a sign on property that is subject to a public hearing for conditional use permit or rezoning.

7. The Planning Commission shall review the character, location, and extent of any street, square, park or other public way, ground or open space or public building or structure or major utility project whether publicly or privately owned, in accordance with Section 11-52-11 of the Code of Alabama of 1975, as amended.

**B. Triennial Review Duties:**

The Planning Commission shall review this Ordinance and report on it to the Town Council at least once every three (3) years, commencing three (3) years from the date of adoption of each triennial review amendment. Specifically, the Planning Commission shall:

1. Analyze the extent to which development has occurred in Elmore as compared to the projected growth at the time of the last mapping of the districts created by this Ordinance.
2. Recommend any changes in the mapping of Elmore which would be required in order to accommodate the expected 20-year growth of Elmore for residential, industrial, commercial, and other land uses.
3. Analyze the continued validity of any other regulations imposed by this Ordinance in terms of changed conditions since the last review.

**Section 1004. Board of Zoning Adjustment: Duties and Powers.**

The Board of Zoning Adjustment heretofore established is continued, and shall be appointed as provided by State law. No member of the Board shall vote upon any matter in which he or she, a spouse or a dependent has a direct interest. No member of the Board shall vote upon any matter involving a business with which he or she, a spouse or dependent has any interest or ownership. The Board shall have the following powers and duties:

- A. The Board of Zoning Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the chairman, or any three (3) members, at such times and places as the Board may determine. The chairman, or in his/her absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.
- B. The Board of Zoning Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board.

- C. The Board of Zoning Adjustment shall hear and decide appeals from a decision of the Planning Commission, or their duly authorized official, made in the performance of their duties.
- D. The Board of Zoning Adjustment shall hear and decide all petitions for variances, as provided for in Section 1007.
- E. The Board of Zoning Adjustment shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Planning Commission or the Building Official in the enforcement of this Ordinance.
- F. The Board of Zoning Adjustment shall cause the posting of notice in the form of a sign on the property that is subject to a public hearing on matters coming before it.

### **Section 1005. Interpretations.**

**1005.01. Purpose.** The provisions of this section are intended to provide a simple and expeditious method for clarifying ambiguities in the text of this Ordinance, the zoning map which it incorporates, and the rules and regulations adopted pursuant to it. It is also intended to provide a simple procedure for overcoming rigidities and limitations of finite use lists.

**1005.02. Authority.** The Planning Commission may, subject to the procedures, standards, and limitations set forth in this Section, render interpretations of any provision of this Ordinance or any rule or regulation issued pursuant to it, including interpretations of the various uses in any district not expressly mentioned in this Ordinance.

### **1005.03. Procedure.**

- A. **Written Request for Non-Use Interpretation.** Except as provided below, a request for interpretation of any provision of this Ordinance, the zoning map, or any rule or regulation adopted pursuant to this Ordinance shall be submitted in writing to the Town Clerk. No fee shall be required in connection with any such request. Each such request shall set forth the specific provision or provisions to be interpreted, the facts of the specific situation giving rise to the request for an interpretation, and the precise interpretation claimed by the applicant to be correct. Before rendering any interpretation, the Planning Commission shall receive such further facts and information as are in their judgment necessary to a meaningful interpretation of the provision in question.
- B. **Application for Use Interpretation.** Applications for a use interpretation shall be submitted to the Town Clerk and shall, in all instances, contain at least the following information and documentation:
  1. The applicant's names, address, and interest in the subject property.

2. The owner's name and address, if different from the applicant's, and the owner's signed consent to the filing of the application.
3. The names and addresses of all professional consultants advising the applicant with respect to the interpretation.
4. The street address and legal description of the subject property.
5. The zoning classification and present use of the subject property.
6. A complete description of the proposed use.
7. The uses permitted by the present zoning classification, which are most similar to the proposed use.
8. Documents, statements, and other evidence demonstrating that the proposed use will comply with all use limitations established for the district in which it is proposed to be located.
9. Such other and further information or documentation as the Planning Commission may deem necessary or appropriate to a full and proper consideration and disposition of the particular application.

C. Town Clerk/Planning Commission. Within 45 days following the receipt of a completed request or application for interpretation, the Town Clerk shall mail a written copy of the interpretation to the applicant. The Planning Commission shall state the specific precedent, reasons, and analysis on which such interpretation is based. The failure of the Planning Commission to render an interpretation within such time, or such longer period of time as may be agreed to by the applicant, shall be deemed to be a rejection of the applicant's proposed interpretation. The Town Clerk shall keep a copy of each such interpretation on file and shall make a copy of each such file interpretation available for public inspection during normal business hours.

D. Appeal. Appeals on interpretations rendered by the Planning Commission pursuant to this Section may be taken to the Board of Zoning Adjustment as provided in this Article.

**1005.04. Conditions on Use Interpretations.** The following conditions shall govern the Planning Commission, and the Board of Zoning Adjustment on appeals from the Planning Commission, in issuing use interpretations:

- A. No use interpretation shall allow the establishment of any use that was previously considered and rejected by the Board of Zoning Adjustment on an application for amendment.

- B. No use interpretation shall permit any use in any district unless evidence shall be presented which demonstrates that it will comply with each use limitation established for the particular district.
- C. No use interpretation shall permit any use in a particular district unless such use is substantially similar to other uses permitted in such district and is more similar to such other uses than to uses permitted or conditionally permitted in a less restrictive district.
- D. If the proposed use is more similar to a conditional use than a permitted use in the district in which it is proposed to be located, then any use interpretation permitting such use shall be conditioned on the approval of a conditional use by the Planning Commission.
- E. Any use permitted pursuant to this Section shall fully comply with all requirements and standards imposed by this Ordinance.

**1005.05. Effect of Favorable Use Interpretation.** No use interpretation finding a particular use to be permitted or conditionally permitted in a specific district shall authorize the establishment of such use or the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing, and processing of applications for any permits and approvals which may be required by the codes and ordinances of the Town of Elmore, or other governmental agencies having jurisdiction. These permits and approvals include, but are not limited to, zoning certificates, conditional use permits, building permits, and certificates of occupancy.

**1005.06. Limitations on Favorable Use Interpretations.** No use interpretation finding a particular use to be permitted or conditionally permitted in a specified district shall supercede subsequent amendment to this Ordinance.

#### **Section 1006. Amendments.**

This Ordinance may be amended from time to time as conditions warrant in the following manner. As used herein, the term "application" includes Town Council resolution.

- A. **Initiation Procedures.** A proposed change to the zoning district boundaries or of the regulations may be initiated by the Town Council, the Elmore Planning Commission, or by petition of one or more owners, or authorized agents of such owners, of property within the area proposed to be changed.
- B. **Text Amendments.** The application for an amendment to the text of this Ordinance shall state in particular the article, section, subsection, and paragraph sought to be amended. The application shall contain the language of the proposed amendment and shall recite the reasons for such proposed change in the text.

**C. Map Amendments.**

1. Applications to rezone any property, or any application which seeks to change or modify the standards and requirements imposed on a particular piece of property by the text and maps of this Ordinance, including applications for variances and conditional use permits, may be instituted by the Town of Elmore or all the owners of the property sought to be affected, or their assigns.
2. In the case where the applicant is not the owner of the subject property, said applicant shall secure a notarized authorization to act as applicant from the property owner, along with the regularly required copy of the deed for the property.
3. When a development proposal involves approval of a site plan or subdivision plat in addition to a zoning map amendment, no site plan or subdivision plat approval shall be granted prior to approval of the map amendment. If a development plan and the corresponding request for zoning change are to be addressed at the same public hearing, the Planning Commission shall render a decision on the zoning application before considering any related site plan or subdivision plat. Such decision shall be based on the requirements of this Ordinance and the full range of uses permitted in the requested district, and not on the specific development concept proposed by the applicant.
4. All properties annexed into the Town of Elmore shall receive the FAR District designation. If another zoning designation is desired, the owner or authorized representative shall make application for rezoning in accordance with these regulations.

**D. Public Hearing.** Upon application, the Planning Commission shall, after giving 15 days notice, conduct a public hearing on the proposed amendment. The Planning Commission shall consider and make recommendations on all proposed amendments, taking into account: (1) the testimony at the hearing; (2) a site inspection of the property in question; (3) the recommendations from interested official bodies; and (4) the standards provided below.

**1006.01. Report of the Planning Commission.**

- A. The Planning Commission shall make a report to the Town Council. No amendment shall be passed except by a majority vote of the members of the Town Council present.
- B. The Planning Commission shall not recommend the adoption of a proposed amendment unless it finds that the adoption of such an amendment is in the public interest and not solely for the interest of the applicant.

C. For each disapproved map amendment, the Planning Commission shall make findings on each of the following matters based on the evidence presented to it:

1. The suitability of the property in question for the uses permitted under the proposed zoning.
2. The adequacy of public facilities, such as sewer and water, and other required public services.

### **Section 1007. Variances.**

**1007.01. Purpose.** The purpose of this Section is to empower the Board of Zoning Adjustment to vary or adapt the strict application of any of the requirements of this Ordinance. It is expected that the granting of variances will be rare; however, a variance may be appropriate where, by reason of exceptional narrowness, shallowness, or shape or by reason of other exceptional topographic conditions or other extraordinary and exceptional situations or conditions on a piece of property, the strict application of any regulation enacted under this Ordinance would result in peculiar, exceptional, and undue hardship on the owner of such property.

Those developments requiring a variance from any regulation of this Ordinance in conjunction with site plan review shall have the appropriate request acted upon by the Board of Zoning Adjustment. This shall include existing development sites, proposed for expansion or reconfiguration, which are nonconforming to any requirement of this Ordinance. The site plan may be reviewed concurrently with review and action on the variance request, but the site plan shall not be approved until the variance has been approved.

**1007.02. Application.** Any property owner may apply to the Board of Zoning Adjustment for a variance using forms to be obtained from the Town Clerk Department at least 15 days prior to the next regularly scheduled meeting of the Board.

**1007.03. Standards for Variances.** The Board of Zoning Adjustment shall grant no variance in the strict application of the provision of this Ordinance unless it finds that the following requirements and standards are satisfied. In general, the power to authorize a variance from the terms of this Ordinance shall be sparingly exercised. It is the intent of this Ordinance that the variance be used only to overcome some exceptional physical condition of a parcel of land which poses practical difficulty to its development and prevents its owner from using the property as intended by the Zoning Ordinance. Any variance granted shall be the minimum adjustment necessary for the reasonable use of the land.

The applicant must prove that the variance will not be contrary to the public interest and that practical difficulty and unnecessary hardship will result if it is not granted. In particular, the applicant shall establish and substantiate in writing that the appeal for the variance conforms to all of the requirements and standards listed below:

- A. The granting of the variance shall be in harmony with the general purpose and intent of the regulations imposed by this Ordinance on the district in which it is located and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- B. The granting of the variance will not permit the establishment of any use, which is not permitted in the district.
- C. There must be proof of unique circumstances: there must exist special circumstances or conditions fully described in the findings, applicable to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the district, and which circumstances or conditions are such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or building.
- D. There must be proof of unnecessary hardship. It is not sufficient proof of hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created; nor can it be established on this basis by one who purchases with or without knowledge of the restrictions; it must result from the application of this Ordinance; it must be suffered directly by the property in question; and evidence of other variances granted under similar circumstances shall not be considered.
- E. That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board of Zoning Adjustment is the minimum variance that will accomplish this purpose.
- F. That the proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the adjacent neighborhood.
- G. That the granting of the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.

The Board may prescribe any safeguard that it deems necessary to secure substantially the objectives of the regulations or provisions to which the variance applies.

**1007.04. Public Hearing.** Upon application, the Board of Zoning Adjustment shall schedule a public hearing on the proposed variance to be held ten (10) days after a public notice has been published in the local newspaper, after signs announcing the public hearing have been erected on the property in question, and after the adjacent property owners most affected by the variance request have been notified by certified mail. The Board of Zoning Adjustment shall consider and

decide all proposed variances taking into account the standards enumerated above. After the close of a public hearing and within ten (10) days the Board of Zoning Adjustment shall render a written decision, setting forth the reasons for such decision, which shall be accompanied by finding of fact(s) specifying the reason(s) for such decision. All such decisions are final and binding on all parties.

### **Section 1008. Appeals.**

Appeals to the Board of Zoning Adjustment may be taken by any person aggrieved or affected by any provision of this Ordinance or by any decision, or any order to stop, cease, and desist, issued by the Planning Commission in enforcing the provisions of this Ordinance.

#### **1008.01. General Rules and Procedures for Appeals.**

- A. Any appeals from the ruling of the Planning Commission concerning the enforcement and interpretation of any provision of this Ordinance shall be filed with the Town Clerk within 15 days after the date of the Planning Commission's decision thereon.
- B. All appeals and applications made to the Board shall be in writing on forms prescribed by the Board and accompanied by fees prescribed by resolution of the Town Council.
- C. All appeals and applications shall refer to the specific provisions of this Ordinance involved.
- D. The Board shall select a reasonable time and place for hearing the appeal and give due notice thereof to the parties and shall render a written decision on the appeal without unreasonable delay. The Board may affirm, reverse, wholly or in part, or modify the order, requirement, decision, or determination, as in its opinion it determines ought to be done, and to that end shall have all the powers of the officer from whom the appeal is taken. The Town Clerk shall maintain complete records of all appeal actions of the Board.
- E. Within ten (10) days after the close of a public hearing the Board shall render a written decision giving the reason(s) for its decision.
- F. In rendering a decision with respect to an appeal from any order, decision, or determination the Board shall strictly interpret the language of the Ordinance and shall find that the Planning Commission was correct in their decision or in error. However, the Board shall not render any decision which shall modify an order, decision, or determination which confers rights or privileges on the appellant that are not otherwise permissible under the strict interpretation of the language of this Ordinance.
- G. Such decision shall be submitted to the appellant and the Planning Commission.

**1008.02.** All decisions rendered by the Board shall be final and binding on all parties. No request for a variance or appeal of an administrative decision shall be reheard, and no further application shall be accepted, once a decision has been given, except under one or more of the following conditions:

- A. New evidence or information pertinent to the request has been discovered which was not available to the applicant at the time of the original hearing.
- B. The decision resulted from an error in procedures required by the Ordinance or State law made by the Board, the Planning Commission, or any other Town official.
- C. The decision resulted from an error in substantive law under the provisions of this Ordinance or the Code of Alabama.

Where no error is alleged and no new evidence is available a new or more effective presentation by the applicant shall not constitute grounds for rehearing a decision of the Board of Zoning Adjustment. Any applicant wishing a rehearing shall appear before the Board to present one or more of the qualifying conditions listed in this Section.

If the Board finds that one or more of these conditions exists, the applicant shall be permitted to submit a new application, together with the required fees. The new application shall be heard at a subsequent meeting, and shall be subject to all regular advertising and procedural requirements. Allowing a new application does not obligate the Board to grant the request.

Any person aggrieved by any decision of the Board may within 15 days after such decision appeal to the Circuit Court having jurisdiction.