

**ORDINANCE NO. 1794**

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE  
OF THE CITY OF MOUNTAIN BROOK**

**WHEREAS**, the City Council of the City of Mountain Brook, Alabama appointed a committee in 2008 to study the effect of variances in some of the City's Residence B & C zoning districts, particularly with respect to density, surface water runoff, light, air, open space and other factors impacting the health, safety and welfare of the City; and

**WHEREAS**, the City Council charged the committee with analyzing the effect of Section 129-333 of the City Code on the subject areas to determine whether modification thereof would ameliorate any of the negative impacts created thereby; and

**WHEREAS**, the committee undertook a study of variances in Residence B & C Districts, particularly those sought under §129-333 and determined that the fundamental character of many of those areas had been, in some instances, and had the potential to be compromised as a result of the side setback reductions contemplated by §129-333; and

**WHEREAS**, the committee determined to develop an alternative approach to addressing the building challenges present on nonconforming Residence B & C lots which would best address the negative impact of reduced side setbacks, while respecting the expectations and interests of property owners of those lots; and

**WHEREAS**, the approach recommended was to prescribe uniform side setbacks depending on lot widths for such nonconforming lots, but to increase the side setback for upper floors, which would mitigate the "canyon effect" when large structures were constructed side by side with reduced setbacks; and

**WHEREAS**, the committee further recommended that the setback for secondary frontage on certain corner lots be reduced to permit more reasonable use of affected residential properties; and

**WHEREAS**, the Planning Commission of the City of Mountain Brook was presented with the recommendations, held a public hearing thereupon, and recommended that the Council approve the zoning changes; and

**WHEREAS**, the City Council, after consideration thereof, a public hearing, and considerable deliberation, has determined it to be in the best interest of the City to adopt the zoning changes and further determined the changes are necessary and proper.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Mountain Brook, Alabama as follows:

**Section 1. Amendatory Provisions.** The Zoning Ordinance of the City of Mountain Brook and corresponding provisions of the City Code shall be amended by replacing Article IV, Residence B District of the City Code (Sections 129-51 and 129-52) with the following:

Sec. 129-51. Permitted uses.

The uses permitted in Residence B Districts shall be any use permitted in Residence A Districts. The uses permitted under subsections 129-31 (a) – (o) shall be subject to the conditions and requirements contained in sections 129-32 and 139-33. The conditions and requirements contained in subsections 129-52 and 129-53 shall apply to all such uses in a Residence B District.

Sec. 129-52 Area and dimensional requirements for Residence B

(a) *Minimum dimensions of parcel.*

- (1) Minimum area of parcel . . . 10,000 square feet
- (2) Minimum width of parcel at all points between the street line and the front setback line . . . 75 feet
- (3) Minimum number of feet of the parcel which must abut a street . . . 75 feet

(b) *Minimum yards and building setbacks.*

- (1) Minimum front (primary) yard setback ...35 feet
- (2) Minimum rear yard setback ...35 feet
- (3) Minimum side yard setback ...12-1/2 feet
- (4) Minimum front (secondary) yard setback on corner lots where primary frontage is opposite a dedicated alley . . . 17-1/2 feet

(c) *Building limitations.*

- (1) Maximum building area . . . 35 percent of the total area of the parcel
- (2) Maximum building height . . . 35 feet
- (3) Maximum number of stories . . . 2

Sec. 129-53 Special Provisions for Nonconforming Residence B Lots

Any lot zoned Residence B created on or before January 23, 1950, in accordance with the then applicable law, which does not conform to the Area & Dimensional Requirements for the Residence B District as a result of insufficient land to allow for the required lot width shall be subject to the following area and dimensional requirements in lieu of those set forth above:

(a) *Lot dimensions and size.*

- (1) Area of parcel . . . No minimum
- (2) Width of parcel at all points between the street line and the front setback line . . . Less than 70 feet
- (3) Number of feet of the parcel which abuts a street . . . Less than 70 feet

(b) *Minimum yards and building setbacks.*

- (1) Minimum front (primary) yard setback: . . .35 feet
- (2) Minimum rear yard setback . . . 30 feet
- (3) Minimum side yard setback:

	Portion of building below 22' in height	Portions of building 22' or greater in height
Lots between 60'-70' wide at front street line	9 feet	13 feet
Lots less than 60' wide at front street line	8 feet	12 feet

(4) Minimum front (secondary) yard setback on corner lots where primary frontage is opposite a dedicated alley:

	Portion of building below 22' in height	Portions of building 22' or greater in height
Lots between 60'-70' wide at front street line	14 feet	18 feet
Lots less than 60' wide at front street line	13 feet	17 feet

(c) *Building limitations.*

- (1) Maximum building area . . . 35 percent of the total area of the parcel
- (2) Maximum building height . . . 35 feet
- (3) Maximum number of stories . . . 2

**Section 2. Amendatory Provision.** The Zoning Ordinance of the City of Mountain Brook and corresponding sections of the Mountain Brook City Code shall be amended by replacing Article V, Residence C District of the City Code (Sections 129-61 through 129-62 with the following:

Sec. 129-61. Permitted uses.

The uses permitted in Residence C District shall be any use permitted in a Residence A District. The uses permitted under subsections 129-31 (a) – (o) shall be subject to the conditions and requirements contained in sections 129-32 and 139-33. The conditions and requirements contained in subsections 129-62 and 129-63 shall apply to all such uses in a Residence C District.

Sec. 129-62 Area and dimensional requirements for Residence C

(a) *Minimum dimensions of parcel.*

- (1) Minimum area of parcel . . . 7,500 square feet
- (2) Minimum width of parcel at all points between the street line and the front setback line . . . 70 feet
- (3) Minimum number of feet of the parcel which must abut a street . . . 70 feet

(b) *Minimum yards and building setbacks.*

- (1) Minimum front (primary) yard setback. . . 35 feet
- (2) Minimum rear yard setback . . . 35 feet
- (3) Minimum side yard setback... 10 feet
- (4) Minimum front (secondary) yard setback on corner lots where primary frontage is opposite dedicated alley. . . 15 feet

(c) *Building limitations.*

- (1) Maximum building area: . . . 35 percent of the total area of the parcel
- (2) Maximum building height . . . 35 feet
- (3) Maximum number of stories . . . 2

Sec. 129-63 Special Provisions for Nonconforming Residence C Lots.

Any lot which was created on or before January 23, 1950, in accordance with the then applicable law, which does not conform to the Area & Dimensional Requirements for the Residence C District as a result of insufficient land to allow for the required lot width shall be subject to the following area and dimensional requirements in lieu of those set forth above:

(a) *Lot dimensions and size.*

- (1) Area of parcel . . . No minimum
- (2) Width of parcel at all points between the street line and the front setback line . . . Less than 70 feet
- (3) Number of feet of the parcel which abuts a street . . . Less than 70 feet

(b) *Minimum yards and building setbacks.*

- (1) Minimum front (primary) yard setback . . . 35 feet
- (2) Minimum rear yard setback . . . 30 feet
- (3) Minimum side yard setback:

	Portion of building below 22' in height	Portions of building 22' or greater in height
Lots between 60'-70' wide at front street line	9 feet	13 feet
Lots less than 60' wide at front street line	8 feet	12 feet

- (4) Minimum front (secondary) yard setback on corner lots where primary frontage is opposite a dedicated alley:

	Portion of building below 22' in height	Portions of building 22' or greater in height
Lots between 60'-70' wide at front street line	14 feet	18 feet
Lots less than 60' wide at front street line	13 feet	17 feet

(c) *Building limitations.*

- (1) Maximum building area . . . 35 percent of the total area of the parcel
- (2) Maximum building height . . . 35 feet
- (3) Maximum number of stories . . . 2

**Section 3. Amendatory Provision.** The Zoning Ordinance of the City of Mountain Brook and corresponding provisions of the Mountain Brook City Code shall be amended by adding Section 129-317 of the Code with the following:

Sec. 129-317 Front yard requirements on double-frontage parcels and corner parcels.

Double-frontage parcels and corner parcels must comply with the front yard requirements with respect to both streets to which they are adjacent; except as provided in Article IV, Sections 129-52 and 129-53 and Article V, Sections 129-62 and 129-63.

**Section 4. Amendatory Provision.** The Zoning Ordinance of the City of Mountain Brook and corresponding provisions of the Mountain Brook City Code shall be amended by eliminating Section 129-333(b) in its entirety so that Section 129-333 shall be set forth as follows:

Sec. 129-333. Exceptions for lots of record at time of adoption of this chapter.

In general. If a lot which was created, in accordance with then applicable law, on or before January 23, 1950 does not have sufficient land to allow for the required area, setbacks, yards and related requirements of this chapter, an appeal may be made to the board of zoning adjustment for permission to use such lot as a building site. Said board shall hear such appeal as a variance, taking into consideration that the setback, yard, lot area or other matter for which a variance is requested should conform as closely as possible to the requirements for the district in which the lot is located.

**Section 5. Amendatory Provision.** The Zoning Ordinance of the City of Mountain Brook and corresponding sections of the Mountain Brook City Code shall be amended by replacing Article I, Definitions, of the City Code (Sections 129-2; Yard, front) with the following:

*Yard, front (primary).* The portion of the yard (extending across the entire width of a parcel) between the front exterior wall of the main building (or the front line of any covered porch) and the front boundary line of such parcel; opposite the rear yard. Any part of the yard lying beneath an eave which extends beyond the front exterior wall of such building or the front line of a covered porch for a distance of not more than two (2) feet shall constitute a part of the front yard.

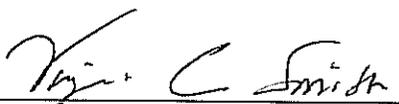
*Yard, front (secondary).* The portion of the yard (extending across the entire width of a parcel) between the front exterior wall of the main building (or the front line of any covered porch) and the front boundary line of such parcel; opposite the interior side yard. Any part of the yard lying beneath an eave which extends beyond the front exterior wall of such building or the front line of a covered porch for a distance of not more than two (2) feet shall constitute a part of the front yard.

**Section 6. Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama, that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

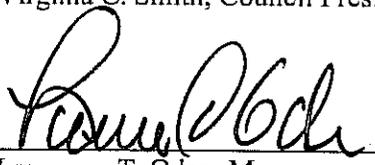
**Section 7. Severability.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

**Section 8. Effective Date.** This ordinance shall become effective immediately upon adoption and publication as provided by law.'

**ADOPTED:** The 27th day of April, 2009.

  
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Virginia C. Smith, Council President

**APPROVED:** The 27th day of April, 2009.

  
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Lawrence T. Oden, Mayor

### CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, at its regular meeting on April 27, 2009, as same appears in the minutes of the record of said meeting and published by posting copies thereof on April 28, 2009, at the following public places, which copies remained posted for five (5) days as required by law:

City Hall, 56 Church Street  
Gilchrist Pharmacy, 2850 Cahaba Road  
The Invitation Place, 3150 Overton Road  
Joe Muggs Newsstand, 2037 Cahaba Road  
Piggly Wiggly Food Store 4, 93 Euclid Avenue

  
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Steven Boone, City Clerk