

ORDINANCE NO. 1972

AN ORDINANCE AMENDING III, IV, V, VI, VII, VIII, IX, XXII, and XXVIII and RESIDENCE F-LEGACY DISTRICT OF THE CITY CODE

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, that Articles III, IV, V, VI, VII, VIII, IX, XXII, and XXVIII and Residence F-Legacy District of the City Code are hereby amended to as follows:

Section 1.

“Article III. – Residence A District

Sec. 129-31. – Permitted Uses.

The uses permitted in a Residence A District shall be as follows:

- (a) Single-family dwellings;
- (b) Accessory structures; accessory buildings customarily incidental to residential occupancy; provided, that no accessory building may be used as a dwelling, or occupied by any person, either on a long-term or temporary basis; further provided, that such prohibition shall not apply to any accessory building which was designed for human habitation and was in existence or in the process of construction on June 28, 1993;
- (c) Gardens and greenhouses customarily incidental to residential occupancy; provided, that the products grown there may not be sold **on the premises**;
- (d) Church buildings which are used primarily as places of public worship, but with such related uses which are customarily conducted in churches generally or are limited to churches of a specific religion or denomination, such as meetings of secular groups, the sale of books and gift items related to religious matters, the sale of prepared food for a meal which is related to a church service or function and the sale of unprepared kosher food;
- (e) Public libraries;
- (f) Art museums;
- (g) Public schools and private schools offering general educational courses; any such private school may conduct on the premises of the school a day care center, provided that all children who attend any such day care center must be under four years of age;
- (h) Playgrounds;
- (i) Parks;
- (j) Golf courses not operated for profit;
- (k) Tennis courts not operated for profit;
- (l) Swimming pools not operated for profit;
- (m) Philanthropic institutions;
- (n) Cultural or civic clubs, except a club the chief activity of which is a service customarily carried on as a business;
- (o) Municipal government buildings and facilities, including, but not limited to, fire stations, police stations and city hall.

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Sec. 129-32. - Conditions on certain permitted uses.

The uses referred to in subsections 129-31(d)—(o) shall not be subject to the area and dimensional requirements noted in Section 129-34 (b) and (c), and shall not be subject to the provisions in Section 129-314 (Accessory Structures and Buildings) and Section 129-319 (Fences and Walls) of this chapter, but shall be subject to the following conditions: no permit shall be issued for any of such uses, structures or other improvements to be constructed in connection therewith (in this subsection such structures and improvements shall be individually referred to as "improvement" and collectively referred to as "improvements") except with the prior written approval of the planning commission and subject to such reasonable conditions as the planning commission may require to preserve and protect the established character of the area surrounding the property proposed to be used for such purpose (the property proposed to be used for such purpose shall be referred to in this subsection as "property"), and otherwise to promote the purposes of this chapter.

Such conditions shall include, without limitation, the establishment of such offstreet parking areas as may be required by the planning commission and the determination by the planning commission that the streets abutting the property are of sufficient width and arrangement to allow adequate, safe and unimpeded traffic flow to and from the property and the areas adjacent to the property. In determining whether any such use or improvement is proper, the planning commission may require the party applying for the approval of such use or improvement to furnish to the planning commission any or all of the following information and documents and such additional information and documents which the planning commission may consider necessary or helpful in deciding whether a proposed use or improvement is subject to its approval and, if it is, whether to approve such requested use or improvement:

- (a) A survey of the property;
- (b) A topographical survey of the property;
- (c) A site plan for the property, showing the location, size, height and elevation of all existing and proposed improvements, the location, number and size of parking spaces and such other information about the existing and proposed improvements and the development plan for the property which the planning commission considers reasonably necessary for its consideration of the request for approval;
- (d) Plans for all proposed improvements;
- (e) A map or drawing showing the proximity of the property, and any improvements on the property or to be located on the property, to buildings and other improvements located on property adjacent to or near the property;
- (f) The type of construction materials to be used in the proposed improvements;
- (g) A traffic study with respect to the traffic expected to be generated by the use;
- (h) Information concerning outdoor lighting (including freestanding lighting fixtures and lighting fixtures to be attached to the improvements);
- (i) Information concerning fuel storage tanks (the type, size, location, proposed contents and other relevant facts concerning the fuel storage tanks shall be subject to the approval of the city's fire marshal);
- (j) The hours of operation of the activities proposed to be conducted on the property;
- (k) Information concerning the visibility of the proposed improvements from adjacent property, buildings and public streets;

- (l) Information concerning the proposed screening of the proposed improvements by fences, walls, berms, shrubs, trees or other means;
- (m) Whether any trees or other vegetation which would serve to screen the proposed improvements and the use thereof from adjacent property will be removed from the property; and
- (n) Information concerning vehicles, equipment and materials which may be stored on the property or within the improvements.

Sec. 129-33. - Additions to, or modification of, improvements subject to conditions.

After one or more of the uses (including improvements to be used in connection therewith) referred to in subsections 129-31(d)—(o) have been approved by the planning commission, the following additions to, or modifications of, such uses and improvements which are made subsequent to such approval by the planning commission, shall or shall not require the prior written approval of the planning commission, as stated hereafter:

- (a) Any additional improvement which is to be built on property for which a use has previously been approved by the planning commission, shall be subject to the prior written approval of the planning commission, except that minor improvements ancillary to the use of improvements previously approved by the planning commission shall not require the approval of the planning commission. As used in this section, "minor" shall mean an improvement, the total cost of which, including labor, materials and all other costs, does not exceed \$25,000.00.
- (b) A new improvement whether of the same type or a different type, which is to replace an improvement which was previously approved by the planning commission, and is to be razed, shall be subject to the prior written approval of the planning commission. A minor improvement which replaces an existing minor improvement shall not be subject to the approval of the planning commission.
- (c) An improvement which is to be constructed to replace an improvement destroyed by accidental fire, other casualty or an act of God shall not be subject to the approval of the planning commission (even if a portion of the improvement was razed because of damage to the improvement caused by such fire, casualty or act of God) so long as there is no change in the size, appearance or location of the original improvement or the purpose for which the improvement is to be used. Plans for any such replacement improvement shall be submitted to the ~~zoning officer planning commission so that the planning commission may determine for determination as to~~ whether such replacement improvement is subject to ~~its~~ **planning commission** approval.
- (d) If an improvement previously approved by the planning commission is to be repaired or renovated because of normal wear and tear, obsolescence or damage caused by casualty, such repair or renovation shall not be subject to the approval of the planning commission so long as there is no change in the size, appearance or location of the improvement or the purpose for which the improvement is to be used. Plans for any such repair or renovation shall be submitted to the ~~zoning officer planning commission so that the planning commission may determine for determination as to~~ whether such replacement improvement is subject to ~~its~~ **planning commission** approval.
- (e) The proposed use of additional land for a use previously approved by the planning commission, and any improvements located on such additional land, shall be subject to the approval of the planning commission, even if such improvements are minor improvements.

Sec. 129-34. - Area and dimensional requirements

(a) *Minimum dimensions of parcel.*

- (1) Minimum area of parcel..... 30,000 square feet
- (2) Minimum width of parcel at all points between the street line and the front setback line..... 100 feet
- (3) Minimum number of feet of the parcel which must abut a street..... 100 feet

(b) *Minimum yards and building setbacks.*

- (1) Minimum front yard setback..... 40 feet
- (2) Minimum rear yard setback..... 40 feet
- (3) Minimum side yard setback..... 15 feet

(c) *Building limitations.*

- (1) Maximum building area..... 25 percent of the total area of the parcel
- (2) Maximum building height..... 35 feet
- (3) Maximum number of stories..... 2

Article IV. – Residence B District

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 (d)—(o) shall be subject to the conditions and requirements contained in sections 129-32 and ~~139-33~~ 129-33. The conditions and requirements contained in subsections 129-52 and 129-53 shall apply to all such uses in a Residence B District.

Article V. – Residence C District

Sec. 129-61. – 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 (d)—(o) shall be subject to the conditions and requirements contained in sections 129-32 and ~~139-33~~ 129-33. The conditions and requirements contained in subsections 129-62 and 129-63 shall apply to all such uses in a Residence C District.

Article VI - Estate Residence District

Sec. 129-71. - Permitted uses.

The uses permitted in Estate Residence Districts shall be as follows:

- (a) *Any use permitted in a Residence A District.* The uses permitted under subsections 129-31 ~~(d)~~ ~~(e)~~ ~~(f)~~ ~~(g)~~ ~~(h)~~ ~~(i)~~ ~~(j)~~ ~~(k)~~ ~~(l)~~ ~~(m)~~ ~~(n)~~ ~~(o)~~ shall be subject to the conditions and requirements contained in sections 129-32 and 129-33. The conditions and requirements contained in this subsection shall apply to all such uses in an Estate Residence District.
- (b) Stables housing horses may, if incidental to residential occupancy, be permitted as an accessory structure, subject to the following limitations and conditions: (i) A stable may not be located in a side yard or a front yard; (ii) No stable may be used for commercial purposes, including, without limitation, the boarding or breeding of horses owned by a person who is not a resident

of the dwelling on the parcel on which the stable is located; (iii) No stable may be closer than 80 feet to any property line; and (iv) No stable may be closer than 100 feet to any dwelling located on an adjacent parcel.

Article VII. – Residence D District

Sec. 129-91. – Permitted Uses.

The uses permitted in Residence D Districts shall be as follows:

- (a) Duplexes;
- (b) Apartment houses;
- (c) Townhouses;
- (d) The dwelling units in any of the above permitted uses may be condominium dwelling units;
- (e) Accessory structures; accessory buildings, such as private garages, customarily incidental to residential occupancy; provided, that no accessory building may be used as a dwelling or occupied by any person, either on a long-term or temporary basis;
- (f) Gardens and greenhouses customarily incidental to residential occupancy; provided, that the products grown there may not be sold **on the premises**.

Article VIII. – Residence E District

Sec. 129-111. – Permitted Uses.

The uses permitted in Residence E Districts shall be as follows:

- (a) Duplexes;
- (b) Apartment houses;
- (c) Condominium dwelling units;
- (d) Townhouses;
- (f) Accessory structures; accessory buildings, such as private garages, customarily incidental to residential occupancy; provided, that no accessory structure may be used as a dwelling, or occupied by any person, either on a long-term or temporary basis;
- (g) Gardens and greenhouses customarily incidental to residential occupancy; provided, that the products grown there may not be sold **on the premises**.

Article IX – Clustered Residential

Sec. 129-131. - Permitted uses.

The uses permitted in Clustered Residential Districts shall be as follows:

- (a) Single-family dwellings;
- (b) Accessory structures; accessory buildings, such as private garages, customarily incidental to residential occupancy; provided, that no accessory buildings may be used as a dwelling or a residence or occupied by any person, either on a long-term or temporary basis;
- (c) Gardens and greenhouses customarily incidental to residential occupancy; provided, that the products grown there may not be sold **on the premises**;

- (d) Recreation areas, which may include a golf courses, playgrounds, swimming pools, tennis courts and other similar recreational uses; provided, that no such area or use may be operated for profit, or may be operated in a manner which produces noise, glare, odor, smoke, fumes, or any safety hazard which may be detrimental or annoying to the neighborhood;
- (e) Gate houses.

Article XXVIII – Residential Infill District
Sec. 129-492. - Permitted uses.

- (a) ~~Within a residential infill district, only D~~ detached single-family dwellings shall be permitted.
- (b) Accessory structures; accessory buildings customarily incidental to residential occupancy; provided, that no accessory building may be used as a dwelling, or occupied by any person, either on a long-term or temporary basis; further provided, that such prohibition shall not apply to any accessory building which was designed for human habitation and was in existence or in the process of construction on June 28, 1993;
- (c) Gardens and greenhouses customarily incidental to residential occupancy; provided, that the products grown there may not be sold on the premises.

Article ___ Residence F-Legacy District (applicable only to properties zoned Residence F prior to 2001)

Sec. 129-xx. Uses permitted.

The uses permitted in a Residence F- Legacy district shall be as follows:

- (a) Duplexes;
- (b) Accessory structures; accessory buildings customarily incidental to residential occupancy; provided, that no accessory building may be used as a dwelling, or occupied by any person, either on a long-term or temporary basis; further provided, that such prohibition shall not apply to any accessory building which was designed for human habitation and was in existence or in the process of construction on June 28, 1993;
- (c) Gardens and greenhouses customarily incidental to residential occupancy; provided, that the products grown there may not be sold on the premises.

Sec. 129-xx. Area and dimensional requirements.

- (a) Minimum total site area15,000 square feet
- (b) Minimum width of parcel at all points between the street line and the front setback line..... 100 feet
- (c) Minimum number of feet of the parcel which must abut a street..... 100 feet
- (d) Minimum front yard setback 40 feet
- (e) Minimum rear yard setback40 feet
- (f) Minimum side yard setback:

1. 1 to 1½ stories high 15 feet
 2. 2 to 2½ stories high ...20 feet
- (g) Maximum building area25%
- (h) Maximum building height 35 feet
- (i) Maximum number of stories 2-1/2

Sec. 129-xx. Parking spaces.

Minimum number of parking spaces required for each dwelling unit2, each not less than ten 10 feet wide by 20 feet long.

Sec. 129-xx. Applicability.

The Residence F District in place in 2001 shall hereby be renamed the Residence F – Legacy District. The Residence F – Legacy District will only apply to properties zoned Res-F prior to 2001, as the City ceased using the District at that time. The Residence F – Legacy District regulations remain in place only for those properties so zoned and no property that was not zoned as the Residence F District as of 2001 shall be zoned or rezoned to the Residence Legacy-F District. In the event that all properties zoned Residence F prior to 2001 (and are now noted as zoned to Residence F – Legacy District) are rezoned to other districts and no more such Residence F – Legacy properties in the City remain, this district shall be repealed and removed from the Zoning Ordinance of the City as of the date that the last Residence F – Legacy District property is so rezoned.

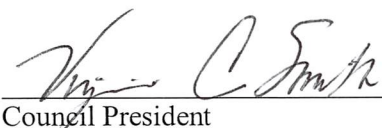
Article XXII – Nonconforming Uses

Sec. 129-372. - Extension or alteration of nonconforming uses and structures.

No nonconforming use or **nonconforming portion of a** structure may be enlarged or altered, except as may be permitted by the board of zoning adjustment in accordance with article XXVI of this chapter.’

2. **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.
3. **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.
4. **Effective Date.** This ordinance shall become effective immediately upon adoption and publication as provided by law.

ADOPTED: The 27th day of February, 2017.



Council President

APPROVED: The 27th day of February, 2017.




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, as its meeting held on February 27, 2017, as same appears in the minutes of record of said meeting, and published by posting copies thereof on February 28, 2017, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Overton Park, 3020 Overton Road

Gilchrist Pharmacy, 2805 Cahaba Road
Cahaba River Walk, 3503 Overton Road



City Clerk

Proposed Zoning Amendments

The ZOR (Zoning Ordinance Review) committee and the Planning Commission recently reviewed several proposed zoning amendments regarding the zoning code of the City of Mountain Brook, specifically pertaining to Articles III, IV, V, VI, VII, VIII, IX, XXII, and XXVIII and Residence F-Legacy District, and has forwarded the recommendations herein to the City Council.

The exact language of all proposed changes is attached—new language is written and underlined in red ink.

All amendments are discussed at length below and the draft ordinance is attached:

1. Amend language regarding gardens and greenhouses as permitted uses in residential districts.

Within each residential article of the zoning code there is a regulation which allows gardens and greenhouses as permitted uses, but *prohibits products grown to be sold*. The proposed amendment would disallow products grown to be sold on the premises, but would not prohibit the off premise sale of products grown. Note that this would not allow a commercial agricultural operation, only gardens customarily incidental to the primary residential use of property in residential districts.

“Article III. – Residence A District

Sec. 129-31. – Permitted Uses.

The uses permitted in a Residence A District shall be as follows:

- (a) Single-family dwellings;
- (b) Accessory structures; accessory buildings customarily incidental to residential occupancy; provided, that no accessory building may be used as a dwelling, or occupied by any person, either on a long-term or temporary basis; further provided, that such prohibition shall not apply to any accessory building which was designed for human habitation and was in existence or in the process of construction on June 28, 1993;
- (c) Gardens and greenhouses customarily incidental to residential occupancy; provided, that the products grown there may not be sold on the premises;”

The attached proposed language inserts this change into each of the following residential articles: Res-A, Res-B, Res-C, Res-D, Res-E, Estate, ID and Clustered Residential.

2. Regarding the development regulations for those conditional uses that are currently reviewed by the planning commission under the Res-A district regulations:

Insert specific language that indicates that any planning commission approval of conditional uses is site plan driven (like a PUD), and that the area and dimensional requirements under Section 129-34 (b) and (c) do not apply to conditional use approval.

The current practice of the planning commission is to review and approve conditional uses (d-o under Section 129-31, *primarily institutional uses such as churches and schools*) based on the plans submitted, and subject to conditions that the planning commission may require to preserve and protect the established character of the area surrounding the property proposed to be used for such purpose. It has recently been noted that Section 129-32 may not clearly outline this process; this amendment seeks to clarify the current practice of the planning commission.

Note that the following section is lengthy... most of which is not to be amended but is included here for context.

“Article III. – Residence A District

Sec. 129-31. – Permitted Uses.

The uses permitted in a Residence A District shall be as follows:

- (d) Church buildings which are used primarily as places of public worship, but with such related uses which are customarily conducted in churches generally or are limited to churches of a specific religion or denomination, such as meetings of secular groups, the sale of books and gift items related to religious matters, the sale of prepared food for a meal which is related to a church service or function and the sale of unprepared kosher food;
- (e) Public libraries;
- (f) Art museums;
- (g) Public schools and private schools offering general educational courses; any such private school may conduct on the premises of the school a day care center, provided that all children who attend any such day care center must be under four years of age;
- (h) Playgrounds;
- (i) Parks;
- (j) Golf courses not operated for profit;
- (k) Tennis courts not operated for profit;
- (l) Swimming pools not operated for profit;
- (m) Philanthropic institutions;
- (n) Cultural or civic clubs, except a club the chief activity of which is a service customarily carried on as a business;
- (o) Municipal government buildings and facilities, including, but not limited to, fire stations, police stations and city hall.

Sec. 129-32. - Conditions on certain permitted uses.

The uses referred to in subsections 129-31(d)—(o) shall not be subject to the area and dimensional requirements noted in Section 129-34 (b) and (c), and shall not be subject to the provisions in Section 129-314 (Accessory Structures and Buildings) and Section 129-319 (Fences and Walls) of this chapter, but shall be subject to the following conditions: no permit shall be issued for any of such uses, structures or other improvements to be constructed in connection therewith (in this subsection such structures and improvements shall be individually referred to as "improvement" and collectively referred to as "improvements") except with the prior written approval of the planning commission and subject to such reasonable conditions as the planning commission may require to preserve and protect the established character of the area surrounding the property proposed to be used for such purpose (the property proposed to be used for such purpose shall be referred to in this subsection as "property"), and otherwise to promote the purposes of this chapter.

Such conditions shall include, without limitation, the establishment of such offstreet parking areas as may be required by the planning commission and the determination by the planning commission that the streets abutting the property are of sufficient width and arrangement to allow adequate, safe and unimpeded traffic flow to and from the property and the areas adjacent to the property. In determining whether any such use or improvement is proper, the planning commission may require the party applying for the approval of such use or improvement to furnish to the planning commission any or all of the following information and documents and such additional information and documents which the planning commission may consider necessary or helpful in deciding whether a proposed use or improvement is subject to its approval and, if it is, whether to approve such requested use or improvement:

- (a) A survey of the property;
- (b) A topographical survey of the property;
- (c) A site plan for the property, showing the location, size, height and elevation of all existing and proposed improvements, the location, number and size of parking spaces and such other information about the existing and proposed improvements and the development plan for the property which the planning commission considers reasonably necessary for its consideration of the request for approval;
- (d) Plans for all proposed improvements;
- (e) A map or drawing showing the proximity of the property, and any improvements on the property or to be located on the property, to buildings and other improvements located on property adjacent to or near the property;
- (f) The type of construction materials to be used in the proposed improvements;
- (g) A traffic study with respect to the traffic expected to be generated by the use;
- (h) Information concerning outdoor lighting (including freestanding lighting fixtures and lighting fixtures to be attached to the improvements);
- (i) Information concerning fuel storage tanks (the type, size, location, proposed contents and other relevant facts concerning the fuel storage tanks shall be subject to the approval of the city's fire marshal);
- (j) The hours of operation of the activities proposed to be conducted on the property;
- (k) Information concerning the visibility of the proposed improvements from adjacent property, buildings and public streets;
- (l) Information concerning the proposed screening of the proposed improvements by fences, walls, berms, shrubs, trees or other means;

- (m) Whether any trees or other vegetation which would serve to screen the proposed improvements and the use thereof from adjacent property will be removed from the property; and
- (n) Information concerning vehicles, equipment and materials which may be stored on the property or within the improvements."

"Sec. 129-34. - Area and dimensional requirements.

- (a) *Minimum dimensions of parcel.* Applicable to all permitted uses in Section 129-31 (a) – (o)
 - (1) Minimum area of parcel..... 30,000 square feet
 - (2) Minimum width of parcel at all points between the street line and the front setback line..... 100 feet
 - (3) Minimum number of feet of the parcel which must abut a street..... 100 feet
- (b) *Minimum yards and building setbacks*
 - (1) Minimum front yard setback..... 40 feet
 - (2) Minimum rear yard setback..... 40 feet
 - (3) Minimum side yard setback..... 15 feet
- (c) *Building limitations.*
 - (1) Maximum building area..... 25 percent of the total area of the parcel"

3. Regarding minor changes to development plans approved as conditional uses by the planning commission in residential districts.

The current code gives a specific list of which types of deviations from a planning commission approved development plan (for uses d-o in Section 129-31) are permitted. The proposed amendment indicates that the zoning officer may determine whether or not certain modifications to an approved development plan warrant planning commission approval, thereby streamlining the process.

"Sec. 129-33. - Additions to, or modification of, improvements subject to conditions.

After one or more of the uses (including improvements to be used in connection therewith) referred to in subsections 129-31(d)—(o) have been approved by the planning commission, the following additions to, or modifications of, such uses and improvements which are made subsequent to such approval by the planning commission, shall or shall not require the prior written approval of the planning commission, as stated hereafter:

- (a) Any additional improvement which is to be built on property for which a use has previously been approved by the planning commission, shall be subject to the prior written approval of the planning commission, except that minor improvements ancillary to the use of improvements previously approved by the planning commission shall not require the approval of the planning commission. As used in this section, "minor" shall mean an improvement, the total cost of which, including labor, materials and all other costs, does not exceed \$25,000.00.
- (b) A new improvement whether of the same type or a different type, which is to replace an improvement which was previously approved by the planning commission, and is to be razed, shall be subject to the prior written approval of the planning commission. A

minor improvement which replaces an existing minor improvement shall not be subject to the approval of the planning commission.

- (c) An improvement which is to be constructed to replace an improvement destroyed by accidental fire, other casualty or an act of God shall not be subject to the approval of the planning commission (even if a portion of the improvement was razed because of damage to the improvement caused by such fire, casualty or act of God) so long as there is no change in the size, appearance or location of the original improvement or the purpose for which the improvement is to be used. Plans for any such replacement improvement shall be submitted to the ~~zoning officer planning commission so that the planning commission may determine for determination as to~~ whether such replacement improvement is subject to its ~~planning commission~~ approval.
- (d) If an improvement previously approved by the planning commission is to be repaired or renovated because of normal wear and tear, obsolescence or damage caused by casualty, such repair or renovation shall not be subject to the approval of the planning commission so long as there is no change in the size, appearance or location of the improvement or the purpose for which the improvement is to be used. Plans for any such repair or renovation shall be submitted to the ~~zoning officer planning commission so that the planning commission may determine for determination as to~~ whether such replacement improvement is subject to its ~~planning commission~~ approval.
- (e) The proposed use of additional land for a use previously approved by the planning commission, and any improvements located on such additional land, shall be subject to the approval of the planning commission, even if such improvements are minor improvements."

4. Regarding an outdated Res-F zoning district, insert previous area and dimensional requirements.

In the past the zoning ordinance contained a duplex district called "Residence-F." At some point the city ceased assigning this district to properties for rezoning, since the Res-D district allows for duplexes, so was duplicative. However, there are still a handful of properties zoned the legacy Res-F district along the north side of Montclair Road. There is a handwritten note on a 2001 city zoning map that indicates that the Res-F district will not be assigned in future, and that existing properties zoned Res-F would continue to be governed by the area and dimensional requirements for the legacy Res-F district.

This proposed amendment is simply inserting the original legacy Res-F language back into the zoning code for use by the city for any future improvements proposed on those properties still governed by the legacy Res-F district, since citing the language in the zoning code is a more reliable method of documentation than a paper map that is no longer in use by staff.

The essence of the language proposed herein has not changed from the older version, with the exception of:

1. Inserting the same language about accessory gardens and greenhouses that is contained in all other residential districts in the city;

2. Adding an “Applicability” section to clarify that the legacy Res-F zoning district will not be applied to any new properties in the city (much like the language in the Mixed Use District, which the council has determined will not be assigned to new properties, but which still govern properties currently zoned Mixed Use).

“Article ___ Residence F-Legacy District (applicable only to properties zoned Residence F prior to 2001)”

Sec. 129-xx. Uses permitted.

The uses permitted in a Residence F- Legacy district shall be as follows:

- (a) Duplexes;
- (b) Accessory structures; accessory buildings customarily incidental to residential occupancy; provided, that no accessory building may be used as a dwelling, or occupied by any person, either on a long-term or temporary basis; further provided, that such prohibition shall not apply to any accessory building which was designed for human habitation and was in existence or in the process of construction on June 28, 1993;
- (c) Gardens and greenhouses customarily incidental to residential occupancy; provided, that the products grown there may not be sold on the premises.

Sec. 129-xx. Area and dimensional requirements.

- (a) Minimum total site area15,000 square feet
- (b) Minimum width of parcel at all points between the street line and the front setback line..... 100 feet
- (c) Minimum number of feet of the parcel which must abut a street..... 100 feet
- (d) Minimum front yard setback 40 feet
- (e) Minimum rear yard setback ...40 feet
- (f) Minimum side yard setback:
 1. 1 to 1½ stories high 15 feet
 2. 2 to 2½ stories high ...20 feet
- (g) Maximum building area25%
- (h) Maximum building height 35 feet
- (i) Maximum number of stories 2-1/2

Sec. 129-xx. Parking spaces.

Minimum number of parking spaces required for each dwelling unit2, each not less than ten 10 feet wide by 20 feet long.

Sec. 129-xx. Applicability.

The Residence F District in place in 2001 shall hereby be renamed the Residence F – Legacy District. The Residence F – Legacy District will only apply to properties zoned Res-F prior to 2001, as the City ceased using the District at that time. The Residence F – Legacy District regulations remain in place only for those properties so zoned and no property that was not zoned as the Residence F District as of 2001 shall be zoned or rezoned to the Residence Legacy-F District. In the event that all properties zoned Residence F prior to 2001 (and are now noted as zoned to Residence F – Legacy District) are rezoned to other districts and no more such Residence F – Legacy properties in the City remain, this district shall be repealed and removed from the Zoning Ordinance of the City as of the date that the last Residence F – Legacy District property is so rezoned.”

5. Improvements to Nonconforming Buildings

In permitting additions and alterations to nonconforming buildings the question often arises as to whether or not a conforming alteration triggers the need for a variance simply because the building is nonconforming in some way unrelated to the proposed improvement. For example, if a house is encroaching into a rear setback, and the owner seeks to add to the front of the house with a conforming addition, does this constitute the need for a variance?

The practice of staff has been that any structural alteration that is not in compliance with the zoning ordinance requires a variance. However, if the proposed alteration or addition conforms to the area and dimensional requirements for the district in which the house is located, that improvement may be permitted without the need for a variance. This amendment will align the zoning code with the current practice.

“Article XXII – Nonconforming Uses

Sec. 129-372. - Extension or alteration of nonconforming uses and structures.

No nonconforming use or **nonconforming portion of a** structure may be enlarged or altered, except as may be permitted by the board of zoning adjustment in accordance with article XXVI of this chapter.”

Legacy Residence F

