

1ST READING

12-9-08

2ND READING

12-76-08

INDEX NO.

ORDINANCE NO. 12194

AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, BY AMENDING ARTICLE VI, HEIGHT AND AREA EXCEPTIONS, TO CREATE UNIFORMITY IN THE LISTED REQUIREMENTS AND TO INCLUDE GUIDELINES FOR MOVEMENT OF SINGLE-FAMILY RESIDENCES AS SET OUT BY RECENT CHANGES IN TENNESSEE LAW.

WHEREAS, the State of Tennessee has adopted certain guidelines for the movement of single family residences in its legislative assemblies in 2007 and 2008; and

WHEREAS, guidelines created by such legislation (T.C.A. §§ 13-3-501 through 504) requires the regional planning commission to ascertain compliance under certain conditions; and

WHEREAS, in order to provide placement of such guidelines within the current zoning regulations, modification is needed within Article VI, Height and Area Exceptions, requiring extensive reconfiguration; and

WHEREAS, The Chattanooga-Hamilton County Regional Planning Agency has recommended that Article VI, Height and Area Exceptions, should be deleted in its entirety, restructured to maintain present regulations, and include movement of single family residences guidelines to create uniformity within the Article.

NOW, THEREFORE

SECTION 1. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Ordinance No. 6958, known as the Zoning Ordinance be and hereby is amended by deleting Article VI, Height and Area Exceptions, in its entirety and substituting in lieu thereof the following:

**ARTICLE VI. HEIGHT AND AREA EXCEPTIONS AND
OTHER SPECIAL EXCEPTIONS**

The following requirements or regulations qualify, or supplement as the case may be, the following regulations or requirements appearing elsewhere in this Ordinance.

100. Height and Area Exceptions

101. Chimneys, water tanks or towers, penthouses, scenery lofts, elevator bulkheads, stacks, ornamental towers or spires, wireless or broadcasting towers, monuments, cupolas, domes, false mansards, parapet walls, similar structures, and necessary mechanical appurtenance may be erected to a height in accordance with existing or hereafter adopted Ordinance to the City of Chattanooga, Tennessee.

102. Every part of a required yard shall be open from its lowest point to the sky unobstructed; except for the ordinary projections of sills, belt courses, cornices, buttresses, ornamental features and eaves; provided, however, that none of the above projections shall project into a minimum side yard more than twenty-four (24) inches, except eaves which shall not project more than thirty-six (36) inches. Heating, air conditioning, or mechanical equipment shall not project into the required side yard over 5 feet.

(1) Detached small storage building, private automobile storage garages, private shops for woodworking, metal working, ceramics, etc. and other similar accessory building or structures may be located in side and rear yards provided that the following requirements are met. Areas zoned C-3 are exempt from subsections (a), (b), (c) and (f) below:

- (a) the building or structure shall be set back at least five (5) feet from the side and rear lot lines; and
- (b) in the case of a corner lot, the accessory building or structure may not project into the side yard adjacent to the street; and
- (c) the building are not more than one (1) story in height; and
- (d) buildings used for agricultural purposes are allowed on tracts of land two (2) acres or more in size without a principal residential structure; and
- (e) detached accessory building or structures are to be separated by not less than three (3) feet from the principal structure on a lot; and

(f) attic space within any accessory building shall be non-habitable and shall be a maximum of 6' from the highest point of the roof to the attic floor.

(2) A detached accessory building for purposes of storage only may be located on a separate, vacant lot abutting a lot on which the main building is located provided that the storage building is not larger than 12' x 12' and with a maximum height to the low point of the eaves of 6'. Said storage building shall also be subject to the provisions of Article VI, Sections 102 (1) (a), (b) and (c).

103. Open or enclosed fire escapes, fireproof outside stairways and balconies projecting into a minimum yard or court not more than three and one-half (3 ½) feet and the ordinary projections of chimneys and flues may be permitted by the Building Inspector.

104. An uncovered deck may be located ten (1) feet from the rear property lines if it:

- does not encroach on required side yards, easements, areas reserved for septic tank and field lines, and
- has a maximum deck elevation no greater than the average finished first floor elevation.

A porch, portico, entry landing or similar structure five (5) feet or less in width may extend into the front and rear required yards (setback areas) no more than five (5) feet.

105. A single-family dwelling may be built on any lot that was recorded, by deed at the time of passage of Zoning Ordinance No. 5149 on June 20, 1961, or on any lot legally platted on record with the Hamilton County Register of Deeds on or before June 20, 1961, in any zone where dwellings are permitted, regardless of lot size.

If the "lot of record" is an interior lot:

- (a) There shall be a front yard of not less than fifteen (15) feet
- (b) There shall be a side yard of not less than five (5) feet
- (c) The rear yard shall conform to the setback requirements of the Zone where such lot is located.

Other than allowable eave overhang, no other permitted element of the building/structure or accessory building/structure shall be permitted within the five (5) foot side yard setback, including but not limited to heating, ventilation and air conditioning systems (HVAC), porches, decks, porticos, entry landings or similar structures.

For single-family houses on "lots of record", off street parking shall be required according to the zone requirements where such lot is located.

A single-family dwelling may be built on any lot resulting from a resubdivision of "lots of record"; provided that the resubdivided lot(s) are as large or larger than the previous lots(s) and the lot thus created is located in a zone where dwellings are permitted.

106. A duplex may be built on any lot which was a separate unit at the time of the passage of this Ordinance in any zone where duplexes are permitted, provided that the yard requirements are met and that the lot has an area of 7,500 square feet or more in the R-2 Zone, or 5,000 square feet or more in the R-3 and R-4 Zones.

For duplexes on "lots of record", off street parking shall be required according to the zone requirements where such lot is located.

107. Nothing in this Ordinance is intended to prevent the conversion or alteration of existing buildings to include or accommodate more dwelling units or persons than previously included or accommodated provided the following requirements are met:

- (a) The building is located in a residential or the C-3 Zone;
- (b) All requirements of the Chattanooga Housing Code are met;
- (c) The proposed number of dwelling units does not exceed the number permitted for the zone in which it is located, or in the case of lodging, boarding, fraternity or sorority houses, these uses are permitted in the zone in which the structure is located;
- (d) The dwelling shall meet the lot area requirements for the proposed number of dwelling units or lodgers for the zone in which the building is located.
- (e) Parking space shall be provided according to the requirements of the appropriate zone regulations.

108. On corner lots, in all zones, the side yard requirements on the street side shall be the same as the front yard requirements.

Except that where a corner lot was recorded by deed at the time of the passage of the Zoning Ordinance No. 5149 on June 20, 1961, or on any corner lot legally platted on record with the Hamilton County Register of Deeds on or before June 20, 1961, the following minimum side yards on the street shall apply:

ZONES

LOT WIDTH	R-1, R-5, A-1	R-2, R-3, R-4, RZ-1, RT-1, R-T/Z, R-3MD	O-1, C-1, C-2, C-4, C-5, C-6, C-7, M-1, M-2, M-3, M-4
50 feet or less	10 feet	5 feet	5 feet
50.1 feet to 60 feet	10 feet	10 feet	10 feet
60.1 feet or more	25 feet	25 feet	25 feet

For the lots listed above, the interior sidelines shall be permitted to have a side yard setback of five (5) feet.

109. The location and design of all curb-cuts, points of access to and from all streets and parking and loading areas, parking and loading areas for all uses except single and two-family residences shall be submitted to and approved by the city Traffic Engineer before building permits can be issued.

110. Access to commercial, industrial or other non-residentially zoned property

Access to commercial, industrial or other non-residentially zoned property shall be permitted only through a non-residential zone.

Access to residentially zoned or developed property may be through any other zone.

The R-3 Residential Zone, for purposes of access, shall be considered a non-residential zone if developed with multi-family residences.

The R-4 Special Zone, for purposes of access, shall be considered a residential zone if undeveloped or developed residentially; it shall be considered a non-residential zone if developed with non-residential uses as multi-family residential uses.

111. Setbacks in commercial and manufacturing zones

The following rule shall apply to commercial and/or manufacturing zones that abut the R-4 Special Zone:

For purposes of setback, the R-4 zone shall be considered the same as any other non-residential zone if developed with non-residential uses. The R-4 zone shall be considered the same as any other residential zone, if undeveloped or developed with residential uses.

200. Other Special Exceptions

201. Special Exceptions for Cemeteries

(1) The development and use of property as a cemetery may be permitted as a special exception by the City Council provided that the following criteria are met:

- (a) Minimum size of any tract of land intended for such use shall be twenty-five (25) acres. However, if said tract abuts or adjoins an existing cemetery is shall be one (1) acre. Memorial gardens, where human ashes are spread upon the earth, shall be excluded from any side requirements.
- (b) Access and egress shall be obtained only from an arterial or collector street;
- (c) For proposed cemeteries of twenty-five (25) acres or more there shall be a one hundred (100) foot buffer area, for proposed cemeteries of less than twenty-five (25) acres there shall be a twenty-five (25) foot buffer area, said buffer are should be set aside along all property lines abutting other residentially zoned land, and said buffer shall be used only for the location of trees, shrubs, fencing or other site-obscuring ornamentation, but specifically shall not be used for grave sites, interior drives, parking or services buildings.
- (d) All land intended for grave sites shall be above the elevation of the 100 Year Flood.

(2) Application Procedure for a Cemetery Special Exceptions:

The owner of a tract of land proposed for development as a cemetery shall apply to the City Council for a Special Exception Permit through the Chattanooga-Hamilton County Regional Planning Commission.

The applicant must submit a site plan to the Planning Commission for the proposed development drawn at a minimum scale of one inch equals one hundred feet (1"=100') and shall:

- (a) Define the location, size, accessibility and existing zoning of the proposed site;
- (b) Indicate the surrounding type of development and land use
- (c) Illustrate the proposed plan of development, including the location of all structures, parking areas and open space;
- (d) Show a plan for new public streets, thoroughfares, public utility easements of other public or community uses, if such are intended as part of the development;

(e) In addition to the above, the Planning Commission or City Council may require such other additional information as may be determined necessary to adequately review the proposed development.

(3) The planning staff of the Chattanooga-Hamilton County Regional Planning Commission shall conduct an analysis of the proposed cemetery site, which will include, but shall not be limited to, the following:

- (a) A land use survey of the surrounding development;
- (b) Evaluation of the probable impact of the proposed development;
- (c) Proposed points of access and ease of ingress and egress;
- (d) The lot, yard and open space requirements.

(4) The Planning Commission shall submit the findings of the Chattanooga-Hamilton County Regional Planning Commission staff, along with the recommendations of the Chattanooga-Hamilton County Regional Planning Commission, to the City Council for consideration and action.

The recommendation of the Planning Commission shall be accompanied by a report stating the reasons for approval or disapproval of a Special Exception Permit for a cemetery. This report is to include, but is not limited to, the following areas of concern:

- (a) The probable effect on the property adjacent to the site under consideration;
- (b) The consistency of the proposal with the intent and purpose of this Ordinance to promote the public health, safety, morals and general welfare;
- (c) Additional requirements which are needed in order to make the development more compatible with the surrounding land use.
- (d) The City Council of the City of Chattanooga shall hold a public hearing on the request for the Special Exceptions Permit. The notice and publication of the public meeting shall conform to the procedures as prescribed in Article XI hereof for hearings before the Council on changes and amendments.

202. Special Exceptions for Existing Cemeteries

A. Existing cemeteries may be expanded by a Special Exceptions Permit issued by the City Council subject to a review and recommendation by the Planning Commission. The following criteria must be met:

(1) Ingress and egress shall be approved by the City Traffic Engineer.

(2) All land intended for grave sites shall be above the elevation of the 100-Year Flood;

(3) For expansions of less than twenty-five (25) acres, a twenty-five (25) foot buffer shall be set aside along all property lines abutting residentially used land or residentially zoned land. Said buffer shall:

(a) Be used only for the location of trees, shrubs, fencing or other sight obscuring ornamentation;

(b) Shall not be used for grave sites, interior drives, parking, structures or buildings.

(4) For expansions of twenty-five (25) acres or more there shall be a one hundred (100) foot buffer area, subject to the above restrictions.

B. Application Procedure for a Special Exceptions Permit for Expansion of an Existing Cemetery:

(1) The owner shall submit plans as required in Article VI, Section 201 (2).

(2) The Planning Commission staff shall conduct an analysis of the request subject to the provisions of Article VI, Section 201 (3) and (4).

(3) The Planning Commission shall hold a public hearing to review the staff analysis and shall make a recommendation to the City Council.

(4) The City Council shall hold a public hearing on the request. Notice of the public hearing shall conform to the procedures prescribed in Article XIII of the zoning ordinance.

203. Special Exceptions for a Residential Home for Handicapped and/or Aged Persons Operated on a Commercial Basis

A. Upon approval of a Special Exceptions Permit by City Council, the applicant must apply for a license for a "Residential Home for the Aged" from the Tennessee Department of Public Health; or shall apply for license for a "Boarding Home Facility", or a "Large Group Home Facility", to be submitted to the Tennessee Department of Mental Health and Mental Retardation, as the case may be. Prior to operating either of the above, both the Special Exceptions Permit and the State License must be obtained.

B. Application and Procedure for a Special Exception Permit:

(1) The applicant shall apply to the City Council through the Chattanooga-Hamilton County Regional Planning Commission, following the same procedures used for a rezoning request, including a public hearing before the Chattanooga-Hamilton County Regional Planning Commission, a recommendation by the Planning Commission to the City Council, and a public hearing by the City Council.

(2) The City Council may issue a Special Exceptions Permit with or without special conditions that must be met by the applicant. In granting the Special Exceptions Permit, the City Council may allow exceptions in minimum site area (lot) requirements, and in off-street parking requirements.

204. Special Exceptions for a Two-family Dwelling in the R-1 Residential Zone

A. INTENT:

The City of Chattanooga has rezoned property in several neighborhoods from R-2 Residential Zone to R-1 Residential Zone. A Special Exceptions Permit would allow structures that were constructed as two-family dwellings to be able to continue such use after the loss of nonconforming status. The purpose of this Special Exception Permit is to provide relief to property owners of certain two-family dwellings, which, under current zoning, could only be used for single-family residences. The intent of issuance of a Special Exceptions Permit is not to encourage similar requests in an area.

B. Any future zoning studies shall provide guidance on the suitability of maintaining two-family dwellings in the area of the zoning adjustment.

C. Applies to:

- (1) One duplex for each Special Exceptions Permit, not multiple structures.
- (2) Two-family dwellings constructed with a building permit and/or constructed on a Lot of Record.
- (3) Dwellings that are easily identified as being constructed for two-families. Most often this would be determined by two front doors facing either the same street, or if on a corner, one door facing each street, or by the existence of two electric meters.
- (4) Dwellings that lost nonconforming status due to a rezoning to R-1 Residential Zone through the zoning study process by the City of Chattanooga as determined by the Chattanooga-Hamilton County Regional Planning Agency.

D. Does not apply to:

- (1) Single-family structures that were converted to two-family structures.
- (2) New construction.
- (3) Multiple structures on one lot.

E. A Special Exceptions Permit may be granted if City Council, after recommendation by Planning Commission, determines that:

- (1) The request is consistent with the adopted plans for the area.
- (2) The request is consistent with the zoning study that rezoned requested property from R-2 Residential Zone to R-1 Residential Zone.
- (3) Issuance of a permit will benefit a neighborhood by encouraging an increase in investment in the property.

F. Application and Procedure for a Special Exception Permit:

- (1) The applicant shall apply to the City Council through the Chattanooga-Hamilton County Regional Planning Commission, following the same procedures used for a rezoning request, including a public hearing before the Chattanooga-Hamilton County Regional Planning Commission, a recommendation by the Planning Commission to the City Council, and a public hearing by the City Council.

(2) The City Council may issue a Special Exceptions Permit with or without special conditions that must be met by the applicant. In granting the Special Exceptions Permit, the City Council may allow exceptions in minimum site area (lot) requirements, and in off-street parking requirements.

205. Special Exception for Movement of Single Family Residences

A. INTENT:

(1) In order to insure that the movement of single family dwellings is compatible to the area where the residence is to be moved, the following guidelines and criteria listed (pursuant to T.C.A. 13-3-501 through 504) shall be followed by the specified body as referred to below.

(2) This applies to single family dwellings only and does not apply to manufactured homes or modular homes.

(3) "Developed area of single family residences" (as used in this part) means an area generally referred to as a subdivision as indicated on a plat filed in the Register of Deeds Office.

B. Requirements. Requirements for moving single family residence from one foundation to another are as set forth below.

(1) No single family residence shall be moved from an existing foundation to another foundation located within a developed area of single family residences unless:

(a) The residence to be moved is consistent with the **age, value, size and appearance** of existing residences within the developed area of single family residences to which the single family residence is to be moved and provided that the value of the house may be greater than that of the existing residences and the size of the house may be larger than that of the existing residences; **AND**

(b) Approval for the movement of the single family residence to a foundation within a developed areas of single family residences has been given by the following specified body:

(i) The home owners' association of the development where the residence is to be moved, if a home owner's association is in existence;

- (ii) A neighborhood association where the residence is to be moved that has been in existence for more than one (1) year prior to the date the residence is to be moved, if a neighborhood association is in existence in the area; or
- (iii) The Chattanooga-Hamilton County Regional Planning Commission by issuance of a special exceptions permit, if (i) or (ii) above does not apply.

C. Age, Value, Size and Appearance Criteria. Consistency of residence with age, value, size and appearance of existing residences.

- (1) The residence to be moved shall be consistent with:
 - (a) The **age** of existing residences within the developed area of single family residences, if the residence to be moved is within ten (10) years of the average age of the existing structures within the developed area;
 - (b) The **value** of existing residences within the developed area of single family residences, if the valuation of the residence being moved appraised, prior to being moved, at a value that is at least equal to the average appraisal of the existing structures within the developed area; provided that nothing in this subdivision shall be construed to prevent such residence from exceeding the value of such existing structures. In establishing the value of existing structures, the value of modular homes located in such developed area shall not be used in arriving at the average appraisal of the existing structures.

If the value of the residence, prior to being moved, appraised at a value that is at least equal to the average appraisal of the existing structures within the developed area, then it shall be presumed that such residence shall appraise at least at the same or greater value once it is moved.

In obtaining approval from the specified body as proof that the value of the residence or appearance of the residence is consistent with the value or appearance of such existing residences, evidence may be presented that includes photographs of the inside and outside of the residence to be moved as well as the appraised value of such residence as determined by the assessor of property, or the fair market value of such residence as determined by an independent

appraiser. Such proof shall be a rebuttable presumption that the value and appearance of the residence is at least equal to the value and appearance of the existing structures within the developed area. Additional documents showing intended improvements may also be presented.

(3) The **size** of existing residences within the developed area of single family residences, if the size of the residence being moved is at least within one hundred (100) square feet of the average size of the existing structures within the developed area, provided that nothing in this subdivision shall be construed to prevent such residence from exceeding such average square footage. In establishing the average size of existing structures, the square footage of a modular home shall not be used in making such calculations.

(4) The **appearance** of existing residences within the developed area of single family residences as determined by the specified body giving its approval for the single family residence to be moved to the developed area.

C. Enforcement

(1) An approval letter from the specified body, along with documentation of the required criteria, shall be submitted to the Land Development Office before the issuance of a building permit for the movement of a single family residence.

(2) All structural improvements which will affect the value and appearance of the residence moved to the developed area of single family residences shall be made to such residence in accordance to applicable codes and ordinances in effect. If improvements have not been completed on the residence at least equal to the average standards in the developed area, such residence shall be deemed to be in violation of the local government building codes, and penalties associated with such violations may begin to accrue in accordance with all relevant local building codes and ordinances adopted and in effect in the local jurisdiction where the residence is located.

SECTION 2. BE IT FURTHER ORDAINED, That this Ordinance shall take effect two

(2) weeks from and after its passage.


PASSED on Second and Final Reading

December 16th, 2008.


CHAIRPERSON

APPROVED: DISAPPROVED:

DATE: Dec 19, 2008


MAYOR

/add