

ORDINANCE NO. 6 , 2010

AN ORDINANCE UPDATING AND AMENDING THE LAND USAGE CODE

WHEREAS, at the request of Council, the staff has undertaken an extensive review of the Land Usage Code to update and amend certain sections of the Code as necessary to update the standards for development within our community, to recognize changes in the law which affect the Land Usage Code, and to preserve and protect the aesthetic qualities of our community consistent with our comprehensive plan and the general purposes of the Land Usage Code; and

WHEREAS, these amendments have been reviewed and recommended by the Planning Commission and Council does desire to adopt such recommendations.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The Land Usage Code, as revised March 15, 2010, attached hereto and incorporated herein by reference, is hereby adopted in its entirety. All sections of the Land Usage Code inconsistent herewith are hereby amended and/or repealed as is appropriate.

SECTION 2. All sections, subsections, parts and provisions of the Land Usage Code, as amended, are hereby declared to be independent sections, subsections, parts and provisions, and the holding of any section, subsection, part or provision to be unconstitutional, void or ineffective for any reason shall not affect or render invalid any other section, subsection, part or provision of this Ordinance.

SECTION 3. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: July 7, 2010

ATTEST: Susan J. Hamm
Susan J. Hamm, Clerk of Council

Gerri Harbison
Gerri Harbison, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director

CHAPTER 150.03
Definitions

150.0301 Interpretation of terms and words.

150.0302 Definitions

§ 150.0301 INTERPRETATION OF TERMS AND WORDS.

For the purpose of this Code, certain terms and words used herein shall be interpreted as follows:

- (a) The word “shall” is a mandatory requirement, the word “may” is a permissive requirement, and the word “should” is a preferred requirement.
- (b) The word “building” includes the word “structure.”
- (c) The words “used” and “occupied” include the words “intended, designed or arranged to be used or occupied.”
- (d) The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.
- (e) The word “person” includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.
- (f) Whenever a number of days are specified, days shall mean calendar days unless specifically noted otherwise.
- (g) The words “include”, “for example”, “such as”, or words of similar meaning are nonexclusive and interpreted to mean “including, but not necessarily limited to” any items or provisions following such words.
- (h) In the case of any real or apparent conflict between the text of this zoning code and any other illustration explaining the text, the text shall apply.

(i) Section and subsection headings contained herein, are provided for illustrative purposes only, and shall not be deemed to limit, govern, modify, or otherwise affect the scope, meaning, or intent of any provision of this zoning code.

(j) Unless the context clearly indicates the contrary, the following conjunctions shall be interpreted as follows:

- (i) “And” indicates that all connected items or provisions apply.
- (ii) “Or” indicates that the connected items or provisions may apply singly or in any combination.
- (iii) “Either...or” indicates that the connected items or provisions shall apply singly, but not in combination.

§ 150.0302 DEFINITIONS.

- (a) Words used in this Code are used in their ordinary English usage.
- (b) For the purpose of this Code the following terms, whenever used in this Code, shall have the meaning herein indicated:
 - (1) **ACCESS DRIVE.** A paved strip, which provides a vehicular connection between off-street parking spaces and a public street.
 - (2) **ACCESSORY USE OR BUILDING.** Subordinate use or building customarily incidental to and located on the same lot with the principle building or use.

- (3) **ADULT DAY-CARE FACILITY.** An establishment that during any part of the normal business day provides supervised educational, recreational and social activities to elderly and/or handicapped adults, but not including persons suffering from acute or chronic alcoholism or other drug dependency and persons who regularly require restraint.
- (4) **ALTER OR ALTERATION.** Any material change in external architectural feature(s) of any property or any change to an archaeological feature of the property, including a change or rearrangement in the structural parts or building service equipment or an enlargement, whether by extending on a side or by increasing height. **ALTERATION** shall include a change in design, color, texture, materials or exterior architectural feature. Ordinary maintenance to correct any deterioration or damage to a structure or to restore the structure to its condition prior to such deterioration or damage is excluded from the definition of **ALTERATION**, provided such work does not involve a change in design, color, texture, material or exterior architectural feature.
- (5) **ANIMAL ENCLOSURE.** Any structure used to restrict an animal or animals to a limited amount of space, such as a pen, cage, coop or hutch. Animal enclosures shall also include any structure used to house an animal or animals and/or provide protection from the elements, such as a dog house. Animal enclosures shall not include bird houses.
- (6) **ANIMAL HOSPITAL OR CLINIC.** A place where animals are given medical or surgical treatment and the boarding of animals occurs only as an incidental use.
- (7) **APPLICANT.** Any owner, owners, association, partnership, corporation, or agents thereof, who applies for a zoning certificate, building permit, certificate of occupancy, variance, conditional use permit, sign permit, zoning amendment or certificate of approval.
- (8) **ARCHITECTURAL FEATURE.** Ornamentation or decorative features attached to or protruding from an exterior wall of a building, including, but not limited to: cornices, eaves, gutters, belt courses, sills, lintels, bay windows, chimneys, and other decorative ornaments.
- (9) **ASSOCIATION.** A legal entity operating under recorded land agreements or contracts through which each unit owner in a single-family detached cluster development, single-family attached dwellings or multi-family development is a member and each dwelling unit is subject to charges for a proportionate share of the expenses of the organization's activities such as maintaining common open space and other common areas and providing services needed for the development. An association can take the form of a homeowners' association, community association, condominium association or other similar entity.
- (10) **AUTOMOBILE SERVICE STATION** (See also Gasoline Station): A building, part of a building, structure or space which is used for the retail sale of lubricants and motor vehicle accessories.
- (11) **AUTOMOBILE/TRUCK RENTAL AGENCY.** The use of any building, land area or other premise for the

leasing of automobiles, vans, and/or single axle trucks or trailers.

- (12) **AUTOMOBILE/TRUCK SALES AGENCY.** Any establishment engaged in activities such as displaying, offering for sale and selling new **and used** motor vehicles at retail, and which may also include, **as a incidental use to such sales**, operating a service facility to perform repairs and maintenance on motor vehicles, offering for sale and selling motor vehicle parts at retail, and conducting all other acts that are usual and customary to the operation of a new **or used** motor vehicle dealership. For purposes of this ordinance, possession of either a valid new **or used** motor vehicle dealer franchise agreement or a new **or used** motor vehicle dealer license, or both of these items, is not evidence that a person is operating as **an automobile/truck sale** agency. Also for purposes of this ordinance, the terms used herein not specifically defined in this ordinance, shall be defined as in Ohio Revised Code Chapter 4517 and successors.
- (13) **AWNING.** An awning shall include any structure made of cloth, metal, plastic or any other similar material with a frame attached to a building or other structure and projecting outward therefrom. An awning may be retractable so as to permit it to be raised to a position flat against the building when not in use, but its general purpose will be to provide shelter or shade.
- (14) **BASEMENT.** A story or an area of the building having its floor sub grade (below ground level) on all sides and for that part, it shall not have more than 1/2 of its height below grade. A basement is counted

as a half-story for the purposes of height regulation.

- (15) **BED AND BREAKFAST.** A private owner-occupied or manager-occupied residence where overnight accommodations are available and compensation is paid by guests for overnight stay.
- (16) **BLOCK.** The area between two adjacent streets or if no streets are present an area not to exceed 600 feet in length or width.
- (17) **BOARD.** The Montgomery Board of Zoning Appeals, as established by Charter.
- (18) **BUFFER.** An area of healthy and viable vegetation, natural or planted, adjoining or surrounding a land use and unoccupied in its entirety by any building structure, paving or portion of such land use, for the purpose of separating screening and softening the effects of the land use. A buffer may include a wall, fence or berm. No part of this buffer is to be used for active recreation, parking, or interior access drives.
- (19) **BUILDABLE AREA.** The area of the lot remaining after the minimum zoning requirements for yards, setbacks, coverage and allowance for panhandles, easements and restrictions have been met. See Figure 1.

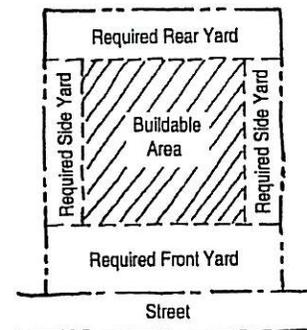


Figure 1. Buildable Area.

- (20) **BUILDING.** Any structure designed or intended for the support, enclosure, shelter, or protection of persons, animal or property.
- A. **BUILDING, ACCESSORY.** A subordinate building detached from, but located on the same lot as the principal building, the use of which is incidental to that of the principal building or use. The footprint of an accessory building shall be smaller than the footprint of the principal building on a residential lot.
- B. **BUILDING, PRINCIPAL.** A building occupied by the main use of the lot on which said building is located.
- (21) **BUILDING COVERAGE.** The lot area covered by the principal building(s) and any roofed over accessory buildings or structures, measured from the exterior faces of exterior walls, but excluding decks, terraces and other accessory uses which are open to the sky.
- (22) **BUILDING DEPARTMENT.** The building department of the City of Montgomery, Ohio its chief enforcement official or his/her regularly authorized deputy.
- (23) **BUILDING, HEIGHT OF.** The vertical distance from the average lot grade at the front of the structure to the highest point of the structure, i.e. to the coping of a flat roof or to the deck line of a mansard roof, or the mean height between eaves and ridge for hip and gable roofs.
- (24) **BUILDING LINE:** An imaginary linear extension of the building wall parallel to the street right-of-way line defining the limits of the front yard, or in the case of a corner lot, either yard abutting the street.
- (25) **CANOPY.** A canopy shall include any structure, made of cloth, metal, plastic, concrete or any other similar material which is supported by poles, stanchions or a frame projecting from the ground which has as its general purpose providing shelter or shade.
- (26) **CAR WASH.** A building or enclosed area that provides facilities for washing and cleaning motor vehicles, which may use production line methods with a conveyor, blower, or other mechanical devices and/or which may employ hand labor.
- (27) **CELLAR.** A space between the floor and the ceiling next above it having more than ½ of its height below grade. A cellar is counted as a story for the purposes of height regulation only if it is used for dwelling purposes.
- (28) **CERTIFICATE OF APPROVAL.** A document issued by the Landmarks Commission signifying that the proposed demolition or moving of a designated landmark or the construction, reconstruction or alteration of a designated landmark has been reviewed by the Landmarks Commission, and found to be in compliance with the requirements for historical and architectural landmarks, as outlined in this Zoning Code. Certificates of Approval shall also be issued by the Zoning Administrator for exterior changes to buildings in the Heritage Overlay District that are neither a designated landmark nor subject to development plan review, in accordance with the provisions of this Zoning Code.
- (29) **CERTIFICATE OF OCCUPANCY.** A certificate stating that a building or structure, as illustrated on approved plans and as constructed,

- conforms to the provisions of this Zoning Code.
- (30) CHILD DAY-CARE. Administering to the needs of infants, toddlers, pre-school children, and school children outside of school hours by persons other than their parents or guardians, custodians, or relatives by blood, marriage, or adoption for any part of the twenty-four hour day in a place or residence other than a child's own home.
- (31) CHILD DAY-CARE CENTER. Any place other than a family day-care home in which child day-care is provided.
- (32) CLINIC. An establishment where sick, ailing, infirm, or injured persons are admitted for examination and treatment on an outpatient basis by one or more physicians, dentists, or other medical personnel and where patients are not kept longer than 23 hours. Such clinics may include ambulatory or emergency care centers.
- (33) CLUB. A building or portion thereof or premises owned or operated by a corporation, association, or group of persons for a social, educational, recreational, charitable, political, patriotic or athletic purpose, but not primarily for profit or to render a service which is customarily carried on as a business.
- (34) COMMISSION. The Landmarks or Planning Commission of the City of Montgomery.
- (35) COMMON AREA. Any land area, and associated facilities, within a single-family detached cluster development, attached single-family development or multi-family development that is held in common ownership by the residents of the development through a Homeowners' Association, Community Association or other legal entity, or which is held by the individual members of a Condominium Association as tenants-in-common.
- (36) COMMON DRIVE. A shared means of vehicular ingress and egress located within an easement of access serving 2 to 6 lots not dedicated to the City of Montgomery by recorded instrument that is maintained solely by the party or parties using such drive for private access.
- (37) COMPOST HEAP. A pile of organic materials kept under controlled conditions so that the original raw materials are transformed by decay and degradation into compost.
- (38) COMPREHENSIVE PLAN. A document adopted by City Council which sets forth the community characteristics, articulates goals, and explores alternative long-term plans for the future of the City.
- (39) CONDITIONAL USE. See USE, CONDITIONAL.
- (40) CONDITIONAL USE PERMIT. A permit issued by the Zoning Administrator upon approval by the Planning Commission and/or Council to allow a use other than a principally permitted use to be established within the district on a specific parcel. See also; Use, Conditional.
- (41) CONSTRUCTION & MECHANICAL SERVICES. Contracting businesses including heating, air conditioning, plumbing, electrical, and general contracting, which typically require storage of machinery, equipment, and/or material on premise in addition to administrative offices and service counters.

- (42) **CONTRIBUTING PROPERTY.** A building, structure, or site within the heritage overlay District that is not a designated Landmark, but which adds to the historic significance of the District because of its historic associations, historic architectural qualities, or archaeological values for which the District is significant. A contributing property must also retain its “integrity”, meaning it must retain enough of its historic physical features to convey its significance as part of the District.
- (43) **COUNCIL.** City Council of the City of Montgomery.
- (44) **CREMATORY.** A building where human bodies or human remains are burned to ashes.
- (45) **DENSITY.** A unit or measurement describing the number of dwelling units permitted per gross acre of land.
- (46) **DESIGN CONSISTENT PROPERTY.** A property located in the Heritage Overlay District that was built since the adoption of the Heritage District Design Guidelines and conforms to those guidelines.
- (47) **DISTRICT.** A section of the municipality for which the regulations governing the use of buildings, the size of yards, and the area of lots are uniform.
- (48) **DRIVE-THRU FACILITY.** An establishment which is designed to provide service to customers while in their motor vehicles, which may be in addition to similar services offered within the building. The term “drive-thru” shall also include “drive-up” and “drive-in”, including kiosks and ATM’s, but shall not include Car Wash, Gasoline Station, and Automobile Service Station.
- (49) **DRIVEWAY, PRIVATE RESIDENCE.** A paved drive extending from the street pavement to a private garage or garages on a residential lot which is used by residents of the lot for vehicular access to and from such street and for the temporary storage of registered and licensed motor vehicles.
- (50) **DWELLING.** Any building or portion thereof containing one or more dwelling units which is designed or used for residential purposes exclusively, except as expressly permitted in this Zoning Code.
- (51) **DWELLING, ATTACHED SINGLE-FAMILY.** Dwelling units that are structurally attached to one another, side by side, and erected as one building, each dwelling unit being separated from the adjoining unit or units by a party wall without openings extending from the basement floor to the roof and each such building being separated from any other building by space on all sides, and including such elements as separate ground floor entrances, services and attached garages.
- (52) **DWELLING, CLUSTER SINGLE-FAMILY.** A dwelling unit which is designed and used exclusively by one family and separated from all other dwelling units by open space from ground to sky, which is grouped with other dwelling units on a site and which may be located on its own subdivided lot without a front, side and/or rear yard in compliance with the standard zoning district regulations.
- (53) **DWELLING, DETACHED SINGLE-FAMILY.** A dwelling unit designed for or occupied exclusively by one family situated on a lot

- located on a public street with a front, side and rear yard and separated from all other dwelling units by open space from ground to sky.
- (54) DWELLING, MULTIPLE. A dwelling or portion thereof designed for or occupied by more than 2 families living independently of each other in more than 2 dwelling units where the units are separated by party walls with varying arrangements of entrances.
- (55) DWELLING, TWO-FAMILY. A dwelling designed for or occupied exclusively by two families living independently of each other in two dwelling units. The dwelling units may be either attached side by side or one above the other.
- (56) DWELLING UNIT. A group of rooms comprising living, dining, sleeping room or rooms, storage closets, as well as space and equipment for cooking, bathing and toilet facilities, all used by only one family.
- (57) EASEMENT. A grant by a property owner of the use, for a specific purpose or purposes, of a designated strip of land to the general public, a corporation, or other individuals.
- (58) ENVIRONMENTAL CONSERVATION AREA. A tract of land that has been awarded protected status in order to ensure that natural features or biota are safeguarded.
- (59) FAMILY. One (1) or more persons related by blood, adoption, marriage or legal guardianship plus no more than two unrelated individuals; or not more than three unrelated individuals eighteen (18) years of age or older occupying a dwelling unit and living and cooking together as a single housekeeping unit, as distinguished from a group occupying a motel or hotel, as herein defined.
- (60) FAMILY DAY CARE HOME, TYPE B. A permanent residence of the provider in which child day-care or child day-care services are provided for one to six children at one time and in which no more than three children may be under two years of age at one time. In counting children for the purposes of this division, any children under six years of age who are related to the provider and who are on the premises of the type B home shall be counted. "Type B family day-care home" does not include a residence in which the needs of children are administered to, if all of the children whose needs are being administered to are siblings of the same immediate family and the residence is the home of the siblings, nor does it include any child day camp.
- (61) FENCE. A vertical structure of a linear nature that is a barrier and is used as a boundary, as a means of protection, confinement, decoration, or as part of a buffer, which is made of traditional manufactured fencing material, such as but not limited to chain link, wood or stone material.
- (62) FIRE PIT. A below ground pit or a manufactured portable device intended to contain and control outdoor wood fires. Below ground fire pits shall be at least 4' in depth, no greater than 16 square feet or 4' in diameter and shall be surrounded on the outside, above ground, by a noncombustible material such as steel, brick or masonry. Manufactured portable fire pits shall be used in accordance with the manufacturer's specifications.

- (63) FLOOR AREA, GROSS. The total number of square feet of all floor space contained within the outside surface of the exterior walls of a building or from the center line of a common wall separating two buildings but not including space in cellars or basements, space in machinery penthouses or floor space used for accessory off-street parking. However, if the cellar or basement is used for business or commercial purposes, including storage in a habitable space, it shall be counted as floor area in computing off-street parking requirements.
- (64) FLOOR AREA, DWELLING UNIT. The sum of the gross horizontal area of a building devoted to residential use measured from the exterior faces of exterior walls or from the centerline of common walls separating two dwelling units. It shall not include unfinished basements, attached garages, attics, terraces, breezeways, open porches, and covered steps.
- (65) FRONTAGE. That portion of the boundary of a lot which abuts a dedicated public street right-of-way or easement.
- (66) FUNERAL HOME. A building or part thereof used for human funeral services. Such building may contain space and facilities for: (a) embalming and the performance of other services used in preparation of the dead for burial; (b) the performance of autopsies and other surgical procedures; (c) the storage of caskets, funeral urns, and other related funeral supplies; and (d) the storage of funeral vehicles, but shall not include facilities for cremation. Where a funeral home is permitted, a funeral chapel shall also be permitted.
- (67) GARAGE, PARKING (see also PARKING LOT). A principal or accessory building or an enclosed space within the principal building in which motor vehicles owned by the general public are parked, including facilities operated as a business enterprise with a service charge or fee paid to the owner or operator of such facility, with no facilities for mechanical service or repair of a commercial or public nature.
- (68) GARAGE, PRIVATE. An accessory building or portion of the main building designed or used principally for the storage of self-propelled passenger vehicles or trailers by the families resident upon the premises.
- (69) GASOLINE STATION (see also Automobile Service Station). An establishment where liquids used as motor fuels are stored and dispersed into the fuel tanks of motor vehicles by an attendant or by persons other than the station attendant and may include facilities available for the sale of other retail products.
- (70) GRADE. The elevation of the finished surface of the ground adjoining the building after final grading and normal settlement. The grade shall be determined by:
- A. For buildings five feet or less from a street, the grade is the sidewalk elevation at the center of the building. If there is more than one street, an average sidewalk elevation is to be used. If there is no sidewalk, the Zoning Administrator shall establish the sidewalk grade.
- B. For buildings more than five feet from any street, the grade is the average level of the finished surface of the ground within 50 feet of the exterior walls of the building.

- (71) GREEN SPACE: An area that is permanently set aside in a natural, undisturbed or re-vegetated condition and will not be developed with any impervious cover and/or structures.
- (72) HANDICAPPED. A physical or mental impairment, as defined in 42 U.S.C. 3602 (h), that substantially limits one or more of such person's major life activities so that such person is incapable of living independently. However, "handicapped" shall not include current illegal use of or addiction to a controlled substance, nor shall it include any person whose residency in a home would constitute a direct threat to the health and safety of other individuals.
- (73) HOME FOR HANDICAPPED PERSONS, FAMILY. A residential facility that provides room and board, personal care, rehabilitative or habilitative services, and supervision in a family setting for four to eight handicapped persons. (See HANDICAPPED.) One to three persons, including resident staff, living in such a residential facility constitute a family for the purposes of this Zoning Code (see FAMILY), and are not subject to the conditional use regulations for family homes. The term "family home for handicapped persons" does not include "halfway house" or other housing facilities serving as an alternative to incarceration, "nursing home", "rest home", "boarding house", "rooming house", "lodging house", "residential treatment home/center", "special care home" or any other such similar building or use of a building.
- (74) HOME FOR HANDICAPPED PERSONS, GROUP. A residential facility that provides room and board, personal care, rehabilitative and habilitative services, and supervision in a family setting for at least 9 handicapped persons. (See HANDICAPPED.) The term "group home for handicapped persons" does not include "halfway house" or other housing facilities serving as an alternative to incarceration, "nursing home", "rest home", "boarding house", "rooming house", "lodging house", "residential treatment home/center", "special care home" or any other such similar building or use of a building.
- (75) HOME OCCUPATION. Any activity carried out for gain by a resident conducted as an accessory use in the resident's dwelling.
- (76) HOSPITAL. An institution providing health services primarily for in-patient medical or surgical care and emergency services for human patients and including related facilities such as laboratories, out-patient departments, training facilities, and staff offices that are an integral part of the facilities.
- (77) HOTEL (or MOTEL). A building in which lodging is provided and offered to the public for compensation on a daily rate and which is open to occupancy for periods of less than one week.
- (78) IMPERVIOUS COVER. Any surface in the urban/suburban landscape that cannot effectively absorb or infiltrate rainfall.
- (79) INDOOR RECREATION. An indoor facility for any number of uses such as game courts, exercise equipment, exercise and/or dance floor area, pools, locker rooms, spa, whirlpool or hot tub, and which may include an accessory retail shop for the sale of related equipment.

- (80) **INSTITUTION.** A building occupied by a non-profit corporation or a non-profit establishment for public use.
- (81) **LANDSCAPE AREA.** A portion of property where the surface of the ground has been purposely planted, cultivated and maintained to create an aesthetic effect, which includes, but is not limited to lawn grass, ornamental grass, bushes, trees, flowers or other vegetation and surface covering, such as gravel, rocks, shale, bark, mulch, soils and paving stones, but does not include weeds or noxious weeds.
- (82) **LANDMARK PROPERTY.** Any property which has special character, historical aesthetic, architectural, or archaeological value as part of the heritage, development, or cultural characteristics of the City of Montgomery, State of Ohio, or the United States, and which has been designated as an approved landmark pursuant to the provisions of this Zoning Code.
- (83) **LOADING SPACE, OFF-STREET.** An area located on the same lot with a building or contiguous to a group of buildings, completely outside of any public right-of-way, for the temporary parking of vehicles entering the premises for picking up and making delivery of goods and materials.
- (84) **LOT.** A combination of complete lots of record, a combination of complete lots of record and portions of lots of record, or a combination of portions of lots of record. If more than one lot or a portion of a lot is used collectively to meet the minimum lots requirements, the lots must be contiguous and allow for either the construction with appropriate setbacks for any proposed building on the site, or the safe movement within the site of motor vehicle traffic between the lots over a surface drive of appropriate width and meeting all Code requirements for setbacks and two way travel. The term "zoning lot" is used synonymously with "lot" in this Zoning Code. A lot may consist of:
- A. A single lot of record;
 - B. A portion of a lot of record;
 - C. A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record. If more than one lot is used collectively to meet the minimum lot requirements, they must be contiguous and allow for the safe and convenient movement of automobile and customer movement between the lots and allow for adequate construction of a proposed building on site.
- (85) **LOT AREA.** The area contained within the lot lines exclusive of any portion of the right-of-way of any public street.
- (86) **LOT COVERAGE.** The ratio of total ground floor area of all buildings on a lot to the area of the lot expressed as a percentage.
- (87) **LOT, DEPTH OF.** The mean horizontal distance between the front and rear lot lines.
- (88) **LOT LINE.** The boundary line defining the limits of the lot. Lot line is synonymous with "property line". See Figure 2.
- A. **LOT LINE, FRONT.** The lot line separating a lot from a street right-of-way.
 - B. **LOT LINE, REAR.** The lot line opposite and most distant from the front lot line; or in the case of

triangular or irregularly shaped lots, a line ten (10) feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

C. LOT LINE, SIDE. Any lot line other than a front or rear lot line.

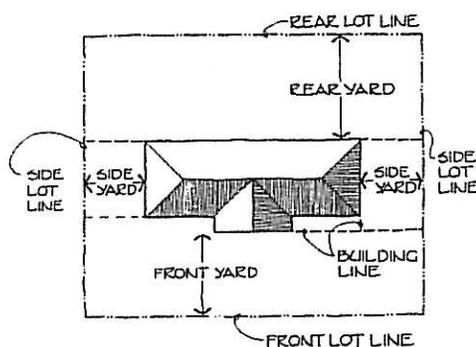


Figure 2. Lot Lines.

(89) LOT OF RECORD. A lot which is part of a subdivision, the map of which has been recorded in the office of the recorder of Hamilton County, Ohio, or a parcel of land, the deed to which was on record on or prior to the effective date of this Zoning Code. For the purposes of these regulations, any plan of a subdivision which has been approved by official action of the City Planning Commission on or before the effective date of this Zoning Code shall have the same status as if the subdivision plan was

officially recorded in the office of the recorder of Hamilton County, Ohio.

(90) LOT TYPES (See Figure 3).

A. CORNER LOT. A lot abutting upon two or more streets at their intersection or upon two or more parts of the same street which, in either case, form an interior angle of less than 135 degrees.

B. DOUBLE FRONTAGE (OR THROUGH) LOT. A lot having frontage on two streets not at an intersection, as distinguished from a corner lot.

C. INTERIOR LOT. A lot abutting or with frontage on only one street.

D. PANHANDLE LOT. A lot utilizing a strip of land to provide access to or legal frontage on a public street, but where the majority of the area of the lot is situated immediately behind one or more lots (front lots) relative to the street right-of-way to which the panhandle lot has access. Such lots are commonly referred to as "rear lots" and "flag lots". The intended use of the panhandle lot is for a residential dwelling, separate and apart from the front lot.

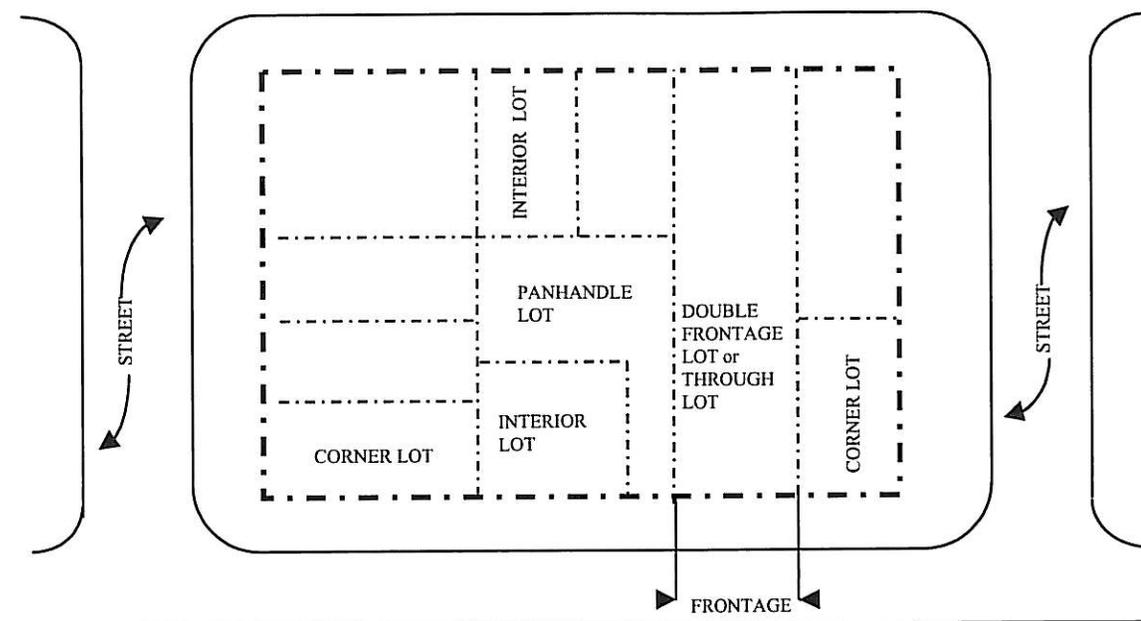


Figure 3. Lot Types.

- (91) LOT WIDTH. The horizontal distance between the side lot lines, measured along a straight line parallel to the front lot line at the required setback line.
- (92) MANSARD. A sloped roof or roof-like facade architecturally comparable to a building wall.
- (93) MAUSOLEUM. Any building designed or intended as a tomb for the interment of one or more human bodies or human remains at or above grade level.
- (94) MEDICAL OFFICE. A building or portion thereof where human patients are admitted for examination and treatment by members of the medical, dental, or healing arts profession in group or individual practice, but who are not lodged overnight.
- (95) MINOR ALTERATION. Any incidental construction, addition or modification of a building or structure, as set forth in §150.1405.
- (96) MOTEL. See HOTEL.
- (97) NEW MOTOR VEHICLE. A motor vehicle, the legal title to which has never been transferred by a manufacturer, remanufacturer, distributor or dealer to an ultimate purchaser.
- (98) NONCONFORMING BUILDING. A building or other structure existing when this Zoning Code or any amendment thereto became effective which does not conform to the regulations governing structures of the district in which it is located.
- (99) NONCONFORMING LOT. A lot lawfully existing on the effective date of this Zoning Code or any amendment thereto, which on such effective date, does not conform to the lot area, width or frontage

requirements of the district in which it is located.

- (100) **NONCONFORMING SITE CONDITION.** Any structure lawfully existing on the effective date of this Zoning Code or any amendment thereto, which, on such effective date, does not conform to the yard regulations, off-street parking and loading requirements, sign regulations, landscaping or screening requirements or other development standards of the district in which it is situated.
- (101) **NONCONFORMING USE.** Any structure or land lawfully occupied by a use on the effective date of this Zoning Code or any amendment thereto but which does not conform to the use regulations, off-street parking and loading requirements, or performance standards of the district in which it is located.
- (102) **NON-CONTRIBUTING PROPERTY.** A property within the Heritage Overlay District that does not add historic significance to the District because it was built prior to the adoption of the Heritage District Guidelines and is not consistent with the 19th century village theme, or a building which may have originally had architectural characteristics that represented the desired 19th century village theme, but has been altered over time and no longer contributes to the District theme.
- (103) **NURSING HOME.** An extended or intermediate care facility which provides skilled nursing and dietary care for persons who are ill or incapacitated or which provides service for the rehabilitation of the persons who are convalescing from illness or incapacitation, excluding homes or similar institutions or facilities for persons suffering from acute or chronic alcoholism or other drug dependency, or persons who are mentally incapacitated from causes other than simple senility or who regularly require constraint.
- (104) **OPEN SPACE.** An area that is permanently set aside for public use and may be used for passive or active recreation, stormwater management, landscaped areas and other similar uses.
- (105) **OUTDOOR DISPLAY.** The placing of merchandise in an outdoor area that is open to the general public when the merchandise on display is removed from its shipping packaging and is representative of merchandise that is available for purchase inside the building and/or is available for purchase by the general public directly from the display area.
- (106) **OUTDOOR BOILER, STOVE OR FURNACE.** An accessory structure, designed and intended, through the burning of wood or other solid fuel for the purpose of heating the principal structure or any other site, building, or structure on the premises.
- (107) **OUTDOOR FIREPLACE.** A permanent outdoor fireplace consisting of such elements such as a center firebox, chimney, screen and back wall. Materials include prefabricated metal, terracotta, brick, stucco and stacked stone. For the purposes of this ordinance, fire pits are not considered outdoor fireplaces. See also "FIRE PIT".
- (108) **OUTDOOR KITCHEN.** A permanent cooking area in an outdoor living space, usually designed for dining and entertaining. Outdoor kitchens may consist of a simple barbecue and counter or can

- be more involved with a grill, cook stove or cook top, sink, refrigerator, lighting, cabinetry, fireplace, countertops, etc. For the purposes of this ordinance, portable grills are not considered outdoor kitchens.
- (109) PARAPET. The extension of a false front or wall above a roofline.
- (110) PARKING LOT (see also GARAGE, PARKING). A paved area made up of marked, unenclosed parking spaces where vehicles may be stored for the purposes of temporary, daily or overnight off-street parking.
- (111) PARKING SPACE, OFF-STREET. An open or enclosed area sufficient in size to store an automobile with room for opening doors on both sides and with access to a public street. Arrangement of the parking space shall be such as to allow satisfactory ingress and egress of an automobile, and shall be located totally outside of any public right-of-way.
- (112) PATIO. A paved outdoor space that adjoins a dwelling unit, includes an area also referred to as terrace.
- (113) PELLET STOVE. A device that burns compressed wood or biomass pellets to create a source of heat.
- (114) PERGOLA. An arbor or passageway of columns supporting a roof of trelliswork on which climbing plants are often trained to grow.
- (115) PLACE OF WORSHIP. A building, structure, or other indoor or outdoor facility used for public worship. The word "place of worship" includes the words "church," "chapel," "synagogue," "tabernacle," "mosque," and "temple" and their uses and activities that are customarily related.
- (116) PLAN, DEVELOPMENT. Drawing(s) and map(s) illustrating the proposed design, layout and other features for the development of one or more lots.
- A. GENERAL DEVELOPMENT PLAN: Drawings and maps including all the elements set forth in § 150.1406.
- B. FINAL DEVELOPMENT PLAN: Drawings and maps including all the elements set forth in § 150.1407.
- (117) POLE BUILDING. A permanent structure which has the primary support derived of wood or metal posts supported by individual submerged footers, rather than a single continuous foundation, and the framing of the structure is horizontal rather than vertical. Pole structures include freestanding unattached, unenclosed carports, with or without poured footers.
- (101) PROPERTY LINE. See "LOT LINE"
- (102) PUBLIC SAFETY FACILITY. A governmentally owned and operated facility established to provide local police or fire safety services to the surrounding area.
- (103) PUBLIC SERVICE FACILITY. The erection, construction, alteration, operation, or maintenance of buildings, power plants, or substations, water treatment plants, or pumping stations, sewage disposal or pumping plants, and other similar public service structures by a public utility, a railroad, whether publicly or privately owned, or a municipal or other governmental agency, including the furnishing of electrical, gas, rail transport, communication, public water and sewage service.

(104)RAIN BARREL: A barrel used as a cistern to hold rainwater.

(105)RECONSTRUCTION. The reproducing by new construction of the exact form and detail of a vanished structure, or a part thereof, as it appeared at a specific period of time, as detailed in the Secretary of the Interior’s guidelines.

(106)REHABILITATION. The restoration, rehabilitation or conservation of blighted premises by improvement, modernization or repair of a structure or structures thereon to bring it into conformance with applicable building and zoning provisions of the City. The restoration, rehabilitation or conservation of a deteriorating or blighted area by:

A. Formulating and carrying out a plan for a program of voluntary improvement, modernization or repair or rehabilitation of privately owned structures;

B. The acquisition of real estate and the demolition or removal of buildings thereto where necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen density or eliminate blight or incompatible land uses detrimental to the public health and welfare;

C. Otherwise removing or preventing the spread of blight or deterioration;

D. Constructing or reconstructing necessary streets, playgrounds, utilities, parks and other public improvements;

E. Acquiring and clearing land for development of privately owned community facilities;

F. Disposing, for uses in accordance with the urban renewal plan, of property acquired;

G. Purchasing, repairing and rehabilitating for guidance purposes and reselling of buildings which are located in the urban renewal area and which, under the urban renewal plan, are to be repaired or rehabilitated for dwelling use or related facilities, provided that there shall not be acquired for such purposes, in any urban renewal area, buildings which contain or will contain more than 100 dwelling units, or five (5) percent of the total number of dwelling units in such area which under the urban renewal plan are to be repaired or rehabilitated, whichever is the lesser;

H. Rehabilitation shall not include the construction or improvement by the City of any building other than municipal buildings, except as provided in subsection G hereof.

(107)RESTAURANT, COUNTER SERVICE. A retail service establishment whose principal business is the sale of foods, frozen desserts, or beverages in ready-to-consume individual servings, for consumption either within the restaurant building or for carry-out, and where customers are not served their food, frozen desserts, or beverages by a restaurant employee at the same table or counter where the items are consumed.

(108)RESTAURANT, TABLE SERVICE. A retail service establishment wherein the entire business activity, or substantially all of the business activity, consists of the sale of food and service to patrons seated at tables for consumption within the building.

(109)RETAIL ESTABLISHMENT. An establishment engaged in the selling of goods or merchandise to the general public for personal or household consumption, which is open to the general public during regular business hours and which has display areas that are designed and laid out to attract the general public. In determining a use to be a retail use, the Planning Commission may consider the proportion of display area vs. storage area and the proportion of the building facade devoted to display windows.

(110)RETIREMENT VILLAGE. A residential facility to provide for the personal, social and/or medical needs of individuals who are elderly. The facility may include one or more of the following types of residential facilities: independent living with congregate dining facilities, congregate living, or assisted living, any of which may include nursing care as an accessory use.

(111)RIGHT-OF-WAY. A strip of land taken, dedicated, or otherwise recorded as an irrevocable right-of-passage for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, water and sewer lines, lighting, and drainage facilities, and may include special features (required by the topography or treatment) such as grade separation, landscaped areas, viaducts, and bridges.

(112)RIGHT-OF-WAY LINE. The line between a lot, tract, or parcel of land and a contiguous public street, and demarcating the public right-of-way. "Right-of-way line" also means "street line."

(113)ROOFLINE. The top edge of a roof or building parapet, whichever is higher, excluding any cupolas,

pylons, chimneys or minor projections. See Figure 4.

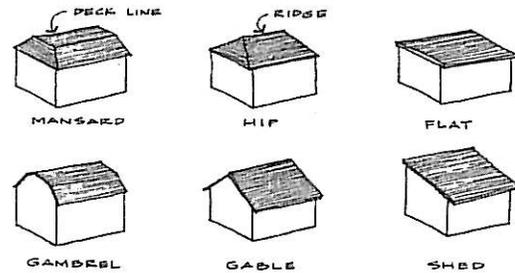


Figure 4. Roof Types.

(114)SATELLITE DISH. A device capable of receiving communications from a transmitter or a transmitter relay located in planetary orbit. This definition is meant to include, but not be limited to, what are commonly referred to as satellite earth stations, and satellite microwave antennas.

(115)SCHOOL FACILITIES: Publicly or privately owned facilities providing full-time or part time instruction and training at the elementary, junior high and high school levels in accordance with the requirements of Chapter 3313 of the Ohio Revised Code; or publicly or privately owned facilities providing kindergarten or nursery school training and care which are operated by a board of education or an established religious organization.

(116)SCHOOL, COMMERCIAL AND TRADE: A higher education facility primarily teaching useable skills that prepare students for jobs in a trade.

(117)SCREEN: A method of reducing the impact of noise and unsightly visual intrusions with more harmonious elements, such as plants, berms, fences, walls, or a combination thereof, in compliance with this Zoning Code.

- (118)SETBACK: The required minimum horizontal distance between a lot line and a structure as established by this Zoning Code.
- (119)SETBACK LINE (See also "YARD, REQUIRED"): A line established by this Zoning Code generally parallel with and measured from the lot line, defining the limits of the required yard in which no building, or structure may be located above ground, except as may be provided in this Zoning Code. The term "setback line" shall also include "required setback line."
- (120) SIDEWALK. That portion of a right-of-way between the curb line and the adjacent property lines, intended for the use of pedestrians.
- (121)SIGN. Any object, device, display, graphic, architectural feature, structure, or part thereof, which is situated indoors or outdoors or is attached to, painted on, or displayed from any premises in order to direct attention to or announce an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images.
- (122)STABLE, PRIVATE. An accessory building to a residential, principal use that shelters animals for the exclusive use of the occupants of the premises.
- (123)STORMWATER BEST MANAGEMENT PRACTICE ("STORMWATER BMP"). A structural or non-structural technique designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce pollution, and provide other amenities. Examples include rain gardens, bio-retention areas, filter strips, swales, and other progressive environmental methods.
- (124)STORY. That portion of a building, other than a cellar as defined herein, included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it.
- (125)STORY, HALF. A space under a sloping roof which has the line of intersection of roof decking and wall face not more than three feet above the top floor level and in which space not more than two-thirds of the floor area is finished off for use, or a basement.
- (126)STREET. All property dedicated for public street, highway, freeway, or roadway purposes or subject to public easements. Included is the land between the street right-of-way lines, whether improved or unimproved, and may comprise pavement, gutters, sidewalks, division strips or other areas within the right-of-way lines. Streets are further classified as follows:
- A. ALLEY. A street used primarily for service access to the rear or side of properties abutting also on other streets.
- B. ARTERIAL STREET. A street primarily for through traffic usually on a continuous route. This facility provides for through traffic movement between areas, across the country, and to and from expressways.
- C. COLLECTOR STREET. A street that primarily carries traffic from local to arterial streets, including the principal entrance and circulation routes within residential subdivisions.

- D. LOCAL STREET. A street primarily for providing access to residential or other abutting property.
- E. PRIVATE STREET. A local private way that provides vehicular access to more than one residential structure that is not and will not be dedicated to public use, but which is owned and maintained by an Association.
- F. PUBLIC STREET. An existing State, County, or City street or public road shown on the recorded subdivision plat.
- (127)STREAM BUFFER: A vegetated area bordering a stream which exists or is established to protect a stream system.
- (128)STREET LINE. See RIGHT-OF-WAY LINE.
- (129)STREETSCAPE. The planned system of pedestrian walkways and improvements on major and secondary arteries in historic downtown Montgomery as specified by Ordinance.
- (130)STRUCTURAL ALTERATION. Any change in the supporting members of the building, such as bearing walls or partitions, columns, beams or girders, or any increase in the area or cubical content of the building.
- (131)STRUCTURE. Anything constructed or erected, having permanent location on or in the ground or attached to something having a permanent location on or in the ground, including, but not limited to, buildings, barriers, bridges, decks, fences, gazebos, outdoor seating facilities, platforms, poles, advertising signs, back stops for athletic fields or courts, pergolas, pools, patios, sheds and walls.
- (132)STUDIOS FOR INSTRUCTION. A building, or portion thereof, that is used or intended to be used for nonacademic group instructional purposes for a fee, which include but are not limited to arts, crafts, dance, and computer instruction.
- (133)SWIMMING POOL. An outdoor structure, in-ground or above-ground, used for recreational swimming, which is designed to contain at least two (2) feet of water at any point and has a diameter greater than six (6) feet.
- (134)TRANSFER. "Transfer" means any sale, lease, assignment, or other conveyance by an applicant, either voluntary or by operation of law, of any permit or approval granted to such applicant under this zoning code, or occupancy or management by any person other than the applicant or its employees of any property which is the subject of such a permit or approval, without the prior written consent of the Planning Commission, Board of Zoning Appeals, or City Council, as applicable. If the applicant is a corporation, then any merger, consolidation, dissolution or liquidation, or any change (whether in one or a series of transactions) in ownership or power to vote of fifty (50%) per cent or more of its outstanding voting stock shall constitute a transfer requiring prior written consent. If the applicant is a limited liability company, partnership, joint venture or other entity, then any liquidation or dissolution, or any transfer of ownership of interests totaling fifty (50%) per cent or more of the total interests in such entity (whether in one or a series of transactions) shall constitute a transfer requiring prior written consent. These provisions shall not be applicable so long as the

stock of the applicant is traded at a recognized regional stock exchange.

(135)USE: The purpose for which land, a building or structure is arranged, designed, intended, maintained or occupied; or any occupation, activity or operation carried on in a building or structure or on land.

A. USE, ACCESSORY: A use of land incidental to the principal use of a lot or building located on the same lot.

B. USE, CONDITIONAL: A use permitted in a district, other than a principal use permitted by right, which is allowed only under certain conditions as set forth in Chapter 151.20 and which requires a conditional use permit and approval in accordance with the standards and procedures set forth in Chapter 150.16.

C. USE, PERMITTED: A use that is authorized by this Zoning Code as either a use permitted by right, a conditional use or an accessory use.

D. USE PERMITTED BY RIGHT: A permitted use that is approved administratively when it complies with the standards and requirements set forth in the Zoning Code, the approval of which does not require a public hearing.

E. USE, PRINCIPAL: The primary or main use or activity of a building or lot.

(136)VARIANCE. A grant of relief from the strict requirements of the Zoning Code, provided, however, that such grant does not have the effect of nullifying the intent and purpose of the Zoning Code.

(137)VARIANCE, DIMENSIONAL. A grant of relief from the dimensional or area requirements (i.e. height,

setbacks, yard) of the Zoning Code, when it is determined that the strict enforcement of the Code will result in practical difficulty to the applicant, pursuant to § 150.2010.

(138)VEHICLE MAINTENANCE & REPAIR FACILITY. The repair, rebuilding or reconstruction of motor vehicles or parts thereof including collision service, painting, washing and steam cleaning of vehicles. This also includes general maintenance facilities such as tire and/ or exhaust system replacement, and oil and lube facilities.

(139) WALL. A vertical structure of a linear nature that is a barrier and is used as a boundary, as a means of protection or confinement or as a buffer, which is made of manufactured material, such as but not limited to wood or stone material.

(140)YARD (See Figure 5). An open space on the same lot with a principal building extending between the lot line and the extreme front, rear or side wall of the main building or structure.

A. YARD, FRONT. A yard extending across the full width of the lot between the front of the principal building and the front lot line. Where a lot is located at the intersection of two or more streets, there shall be a front yard on each street side of a corner lot. Where a lot has frontage on two streets not at an intersection (double frontage or through lots), there shall be a front yard on both streets.

B. YARD, REAR. A yard extending across the full width of the lot between the rear of the principal building and the rear lot line. On corner lots, the rear yard

shall be considered as parallel to the street upon which the lot has its least dimension.

C. YARD, REQUIRED (see also SETBACK LINE). The open space between a lot line and a setback line for a building, parking area or use that is the minimum area required to comply with the regulations of the district in which the lot is located, and within which no structure shall be located except as expressly permitted in this Zoning Code.

D. YARD, SIDE. A yard between the principal building and the side lot line and extending from the front yard or front lot line to the rear yard or rear lot line.

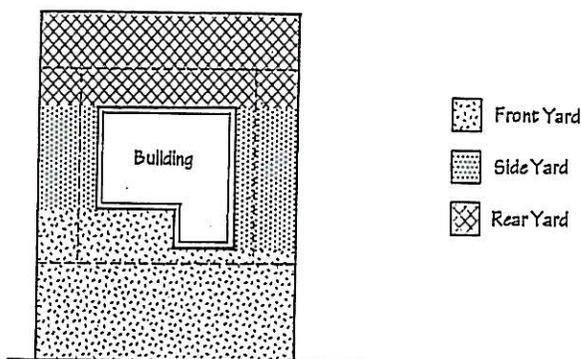


Figure 5. Yards.

(141)YARD STRUCTURE. A subordinate structure detached from, but located on the same lot as the principal building, the use of which is incidental to that of the principal building or use and having permanent location on or in the ground. Yard structures include, but are not limited to gazebos, play equipment, trellises, arbors, pergolas, basketball hoops, fire pits, dog houses, skateboard ramps, fountains, sculptures, ponds, and animal enclosures.

(k) If the project is to be carried out in progressive stages, each stage shall be so planned that the foregoing conditions are complied with at the completion of each stage.

(l) The project complies with all other local, state and federal laws and regulations.

§ 150.1411 REQUEST FOR ADDITIONAL INFORMATION.

In their review of an application, the Planning Commission may request that the applicant supply additional information that the Commission deems necessary to adequately review and evaluate the proposed development.

§ 150.1412 SIMULTANEOUS PLAT APPROVAL.

If the proposed development includes the subdivision of land, the development shall be subject to the requirements of the plat approval process in accordance with Chapter 156. Preliminary development plan approval and subdivision plat approval may proceed simultaneously at the discretion of the Planning Commission.

§ 150.1413 ACTION BY PLANNING COMMISSION.

(a) For a general or final development plan, the Planning Commission shall either:

- (1) Approve the development plan as submitted; or
- (2) Approve the plan subject to specific conditions not included in the plan as submitted, such as, but not limited to, improvements to the yard layout, open space arrangement, on-site control of access to streets or such features as fences, walls and plantings to further protect and improve the

proposed and surrounding developments; or

- (3) Deny the development plan when the application does not demonstrate that the required standards have been met. Such denial may be appealed to Council by the applicant if a Notice of Appeal is filed with the Planning Commission and the Clerk of Council within 14 days of the date the applicant's development plan is denied in writing by the Planning Commission. Such appeal shall be heard as provided in Section 150.1415.

(b) If the Planning Commission fails to act on the application within 120 days from the date the application was determined to be administratively complete, or an extended period as may be agreed upon, then the applicant may deem the development plan to be denied and such denial may be appealed to Council by filing a written Notice of Appeal with the Planning Commission and the Clerk of Council at anytime after the 120 day date, and before a final decision on such development plan is made by the Planning Commission.

§ 150.1414 EQUIVALENCY PROVISION.

In reviewing the application, the Planning Commission may find that a **general or final** development plan either adheres or is equivalent to the requirements of this Zoning Code.

(a) The Planning Commission may consider elements of a **general or final** development plan to be equivalent to a requirement if:

- (1) The proposed **general or final** development plan substantially complies with all specific requirements and with the purposes,

intent and basic objectives of the zoning district;

- (2) Through imaginative and skillful design in the arrangement of buildings, open space, streets, access drives and other features, as disclosed by the application, the proposal results in a development of equivalent or higher quality than that which could be achieved through strict application of such standards and requirements; and
- (3) The development, as proposed, shall have no adverse impact upon the surrounding properties or upon the health, safety or general welfare of the community.

(b) It shall be the responsibility of the applicant to demonstrate to the Planning Commission that the provisions of this Section have been satisfied. When evaluating the application with respect to this Section, the Planning Commission shall make any finding of equivalency in writing which explains how and why the proposal has satisfied the above criteria. When making such finding, the Commission may approve the proposed application, including waivers from the numerical or dimensional standards herein, as if the application were in strict compliance with the standards and requirements in this Zoning Code. Any plan approval which includes an equivalency approved by the Planning Commission must be reviewed and confirmed by Council before finally approved for development.

(c) If the Planning Commission fails to find that an equivalency waiver is appropriate, Planning Commission shall complete its review, after which the applicant may apply for an appropriate variance from the Board of Zoning Appeals. The 120-day period for development plan review, as required in §150.1413(b), shall be suspended during

the Board of Zoning Appeals' review of such variance request on a final development plan.

§ 150.1415 ACTION BY COUNCIL.

(a) Council shall hold a public hearing on any appeal brought before Council under Section 150.1413(a) or (b), or to review and confirm a development plan with equivalencies approved by the Planning Commission pursuant to §150.1414(b). Such public hearing shall be held within thirty days (30) of the date the appeal is appropriately filed with both the Planning Commission and the Clerk of Council, or within thirty days (30) of the Planning Commission's written approval of the equivalencies as provided in Section 150.1414(b).

(b) Notice of such public hearing shall be given by first class mail to the applicant/appellant and to the property owners within three hundred feet (300) of the property to which the appeal relates, or to the property to which the development plan relates for which such equivalencies were granted. Such notification shall be sent to the names and addresses of such owners appearing on the County Auditor's current tax list. If the address appearing on the tax list is that of a lending institution or other person or entity clearly recognizable as not being the owner, then written notice shall be mailed to such institution, person, or entity at the listed address and to the named owners at the street address of the property. Further notice shall be given in one or more newspapers of general circulation in the City. Such written notice shall be mailed, and such publication shall be made, at least fourteen days before the date of said public hearing. All notices shall set forth the time, place and nature of the public hearing. Failure of the delivery of such notice shall not invalidate any action taken as a result of such public hearing. The Council may

**CHAPTER 151.10
Residential District Regulations**

<p>151.1001 Purpose.</p> <p>151.1002 Use regulations.</p> <p>151.1003 Schedule of permitted uses.</p> <p>151.1004 Lot requirements for standard single-family detached dwellings and two-family dwellings.</p> <p>151.1005 Yard requirements for standard single-family detached dwellings and two-family dwellings.</p> <p>151.1006 Lot requirements for single-family detached cluster developments, single-family</p>	<p>attached dwellings and multi-family dwellings.</p> <p>151.1007 Site development requirements for single-family detached clusters, single-family attached dwellings or multi-family dwellings</p> <p>151.1008 Height regulations.</p> <p>151.1009 Accessory use regulations.</p> <p>151.1010 Regulations for home occupations.</p> <p>151.1011 Family day care home, type "B".</p>
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§ 151.1001 PURPOSE.

Single-Family and Multi-Family Residential Districts (A, B, C, D-2, and D-3) and their regulations are established in order to achieve, among others, the following purposes (Note: The D-1 District was deleted during the update of the Montgomery Zoning Code in 2000):

- (a) To regulate the bulk and location of dwellings and accessory buildings or structures to obtain proper privacy and useable open spaces on each lot appropriate for the various districts;
- (b) To provide for proper location of institutions and other community facilities so as to increase the general convenience, safety and amenities within the community;
- (c) To protect the desirable characteristics and promote the stability of existing residential development;
- (d) To regulate the density and distribution of population in accordance with the Comprehensive Community Plan to avoid congestion and provide adequate public services.

§ 151.1002 USE REGULATIONS.

(a) Uses Permitted By Right. A use listed in Schedule 151.1003 shall be permitted by right as a principal use in a district when denoted by the letter "P" provided that all requirements of other City Ordinances and this Zoning Code have been met;

(b) Conditional Uses. A use listed in Schedule 151.1003 shall be permitted as a conditional use in a district when denoted by the letter "C", provided the Planning Commission and/or Council make the determination that the requirements of Chapter 151.20 have been met, according to the procedures set forth in Chapter 150.16.

(c) Accessory Uses. An accessory use that is clearly incidental and subordinate to a use listed in Schedule 151.1003 shall be permitted provided that the requirements of all other City Ordinances and this Zoning Code have been met. Accessory uses are further regulated in § 151.1009 of this chapter and as listed below.

- (1) Dish-type satellite signal receiving stations.
 - (2) Family day care home, "type B" in compliance with § 151.1011
 - (3) Fences, walls, landscape features in compliance with Chapter 151.34.
 - (4) Home occupations in compliance with § 151.1010.
 - (5) Private garages and off-street parking areas in compliance with Chapter 151.32.
 - (6) Signs in compliance with Chapter 151.30.
 - (7) Swimming pools, tennis courts, sports courts, basketball courts and other recreational and play equipment uses.
 - (8) Utility/storage sheds.
- (d) Use Not Listed in Schedule. Any use not specifically listed as either a permitted principal or conditional use shall be a prohibited use in these zoning districts and shall only be permitted upon amendment of this Code and/or the Zoning Map as provided in Chapter 150.22 or upon a finding that a use is substantially similar as provided in § 150.1611.

§ 151.1003 SCHEDULE OF PERMITTED USES.

Land Use Category	"A" Single-Family District	"B" Single-Family District	"C" Single and Two-Family District	"D-2" Multi-Family District	"D-3" Multi-Family District
A. Residential					
1. Single-family detached dwellings	P	P	P	P	P
2. Single-family detached cluster dwellings				P	P
3. Single-family attached dwellings			P	P	P
4. Two-family dwellings			P	P	P
5. Multi-family dwellings				P	P
6. Family home for handicapped persons (4 to 8 persons)	C	C	C	C	C
7. Group home for handicapped persons (at least 9 persons)				C	C
B. Community Facilities					
1. Places of worship	C	C	C	C	C
2. Cemeteries	C	C	C	C	C
3. Day care within churches, schools	C	C	C	C	C
4. Day care center (child and adult)				C	C
5. Electric substations	C	C	C	C	C
6. Libraries, museums	C	C	C	C	C
7. Retirement villages				C	C
8. Schools, public & private	C	C	C	C	C
P = Permitted Use C = Conditional Use					

Land Use Category	“A” Single-Family District	“B” Single-Family District	“C” Single and Two-Family District	“D-2” Multi-Family District	“D-3” Multi-Family District
9. Public offices	C	C	C	C	C
10. Public safety facilities	C	C	C	C	C
C. Entertainment - Recreation					
1. Public and private parks	C	C	C	C	C
2. Golf courses	C	C	C	C	C
3. Clubs, lodges or other assembly halls				C	C
D. Other					
Wireless Telecommunications Facilities	See Chapter 151.36				
P = Permitted Use C = Conditional Use					

§ 151.1004 LOT REQUIREMENTS FOR STANDARD SINGLE-FAMILY DETACHED DWELLINGS AND TWO-FAMILY DWELLINGS.

Lots created for single-family detached dwellings in any residential district and two-family dwellings where permitted shall comply with the area and dimension requirements specified in Schedule 151.1004 for the district in which the lot is located.

(a) Minimum Lot Area. The area of a lot that may be used for the purposes of a dwelling unit shall not be less than the area set forth in Schedule 151.1004 except as otherwise permitted in subsection (d) below.

(b) Minimum Lot Width. The width of a lot, measured at the building line, shall not be less than the width set forth in Schedule 151.1004.

(c) Minimum Lot Frontage. The minimum lot frontage shall be the same as the minimum lot width except for lots on cul-de-sacs as set forth in Schedule 151.1004 and as otherwise permitted in subsection (d) below.

(d) Exceptions for Panhandle Lots.

(1) The minimum lot frontage required for panhandle lots shall be 20 feet measured at the public street right-of-way which provides access to the lot.

(2) Panhandle lots can only be created, however, when the lot area is 150% of the permitted minimum lot area of the district or 100% of the area of the front lot of which the panhandle lot is located immediately behind, whichever is larger in size. If the lot is located behind more than one lot, the new lot must be 150% of the

permitted minimum area or 100% of the area of all the lot area that it is located behind, whichever is greater, provided, however, that no lot need exceed 200% of the permitted minimum area.

- (3) In calculating the area of the panhandle lot for purposes of determining whether it meets the minimum area requirements, if the panhandle or portion of the lot providing access to the street right-of-way is less than 35 feet in width at any point of the panhandle, the area of the panhandle shall not be included in the lot area calculations.
- (4) The principal dwelling of a panhandle lot shall not be constructed closer to the side and rear lot lines than 150% of the respective minimum side and rear yard setback requirements established in Schedule 151.1005, and shall be a minimum of 50 feet from the front lot line. For the

purposes of this §151.1004(d), the front lot line shall be that portion of the property line nearest and perpendicular to the access strip or panhandle of the lot. The rear lot line is the lot line opposite and parallel to the front lot line.

- (5) Adequate screening may be required for the panhandle lot if the Zoning Administrator determines that the proposed dwelling, parking area, driveway or accessory structures infringes on the privacy and enjoyment of adjoining residential properties. In such case, appropriate landscaping shall be provided as determined by the Zoning Administrator.
- (e) One Dwelling per Lot. There shall not be more than one dwelling constructed on a lot, except as otherwise regulated in § 151.1006 for single-family clusters, attached single-family or multi-family developments.

Schedule 151.1004

LOT REQUIREMENTS FOR STANDARD SINGLE-FAMILY DETACHED DWELLINGS AND TWO-FAMILY DWELLINGS

	“A”	“B”	“C”	“D-2”	“D-3”
(1) Minimum lot area (square feet)					
A. Single-family	20,000	15,000	12,000	7,400	6,250
B. Two-family	--	--	12,000	10,000	8,500
(2) Minimum lot width at building line (feet)					
A. Single-family	80	70	65	60	60
B. Two-family	--	--	65	65	65
(3) Minimum lot frontage for lots on cul-de-sacs (feet)					
A. Single-family	50	45	45	40	40
B. Two-family	--	--	45	40	40

**§ 151.1005 YARD
REQUIREMENTS FOR STANDARD
SINGLE-FAMILY DETACHED
DWELLINGS AND TWO-FAMILY
DWELLINGS.**

Single-family detached dwellings and two-family dwellings shall be located on a lot in a manner that maintains the minimum front, side and rear yards specified in Schedule 151.1005 for the district in which the lot is located.

(a) Front Yard. Each lot shall maintain a front yard in compliance with Schedule 151. 1005, except as otherwise permitted in subsection (b) below.

(b) Front Yards on Built-up Blocks. If 40 percent or more of the frontage on the same side of the street between two intersecting streets is improved with buildings that were lawfully constructed before the effective date of this Zoning Code, but which could not now be constructed under the terms of this Code because they do not meet the required front yard setback, then new buildings may project into the front setback established for that district up to the average front yard setback of the nearest four lots located on the same side of the street of the proposed lot.

(c) Side Yards. Except for corner lots, each lot shall have and maintain two side yards in compliance with Schedule 151.1005.

(d) Rear Yards. Each lot shall maintain a rear yard as specified in Schedule 151.1005.

**Schedule 151.1005
YARD REQUIREMENTS FOR STANDARD SINGLE-FAMILY DETACHED
DWELLINGS AND TWO-FAMILY DWELLINGS (in feet)**

	“A”	“B”	“C”	“D-2”	“D-3”
(1) Front Yard					
A. Single-family	50 ^(a)				
B. Two-family	--	--	50 ^(a)	50 ^(a)	50 ^(a)
(2) Side Yard					
A. Single-family	15	12	10	8	8
B. Two-family	--	--	10	10	10
(3) Rear Yard					
A. Single-family	35	30	30	25	25
B. Two-family	--	--	30	30	30
Notes to Schedule 151.1005:					
^(a) Except as otherwise provided in § 151.1005 (b).					

§ 151.1006 LOT REQUIREMENTS FOR SINGLE-FAMILY DETACHED CLUSTER DEVELOPMENTS, SINGLE-FAMILY ATTACHED DWELLINGS AND MULTI-FAMILY DWELLINGS.

Land area divided and developed for single-family detached clusters, single-family attached dwellings or multi-family dwellings in the D-2, D-3 and OMG Districts shall comply with the following regulations:

(a) Minimum Development Area. The gross area of a tract of land shall not be less than that set forth in Schedule 151.1006. The entire tract of land to be developed shall be considered one zoning lot.

(b) Maximum Density.

- (1) The density of a residential development shall not exceed the number of dwelling units per acre set forth in Schedule 151.1006 for the district in which the development is located.
- (2) The total number of dwelling units permitted shall be calculated by multiplying the total development area, exclusive of public rights-of-way existing at the time the development plan is submitted, by the number of dwelling units permitted per acre.

(c) Maximum Coverage. The maximum coverage of the lot, including all areas covered by buildings, vehicular drives and parking areas shall not exceed the percentage of total area of the development project set forth in Schedule 151.1006.

shall not exceed the number of units set forth in Schedule 151.1006.

(d) Maximum Number of Attached Single-Family Units. A building comprised of attached single-family units

(e) Minimum Lot Frontage. Each zoning lot shall abut upon a public street for not less than the distance set forth in Schedule 151.1006. On corner and through lots, each frontage must meet this requirement.

Schedule 151.1006

LOT REQUIREMENTS FOR SINGLE-FAMILY DETACHED CLUSTER DEVELOPMENTS, SINGLE-FAMILY ATTACHED DWELLINGS AND MULTI-FAMILY DWELLINGS

	“D-2”	“D-3”	“OM-Outer”	“OMG”
Minimum Development Area (acres)	2	2	.75	.75
Maximum Density	5 dwelling units per acre	6 dwelling units per acre	10 dwelling units per acre	12 dwelling units per acre
Maximum Impervious Surface Coverage	60%	60%	80%	80%
Maximum Number of Attached Single-Family Units per Building ^(a)	4	6	-----	-----
Minimum Lot Frontage	100	100	90	-----
Notes to Schedule 151.1006:				
^(a) The limitation on the number of units per building does not apply to apartments				

(f) Supplemental Requirements for Single-Family Detached Cluster Developments.

(3) Additional development requirements formulated to achieve the objectives of this section may be established at the time the general development plan is reviewed. Any such development requirements adopted with such plan shall become binding land use requirements for the proposed development.

(1) Privacy for individual principal buildings shall be maintained through the use of landscaping and screening.

(2) Street lighting and street signs shall be adequate for safety and security.

§ 151.1007 SITE DEVELOPMENT REQUIREMENTS FOR SINGLE-FAMILY DETACHED CLUSTERS, SINGLE-FAMILY ATTACHED DWELLINGS OR MULTI-FAMILY DWELLINGS.

The following regulations are established to regulate the design and development of single-family detached clusters, single-family attached dwellings or multi-family dwellings in the D-2 or D-3 district.

(a) Setback from Existing Rights-of-Way. The setback of a principal or accessory building and off-street parking areas from an existing public right-of-way shall not be less than the distances set forth in Schedule 151.1007 and Schedule 151.1009(d).

(b) Setback from Project Boundary. The setback of a principal or accessory building and off-street parking areas from any project boundary that is not an existing public right-of-way shall not be less than the distances set forth in Schedule 151.1007.

(c) Building Spacing. The minimum distance between buildings on the same site, shall not be less than the distance set forth in Schedule 151.1007. The following definitions shall apply to terms used in this section:

(1) Main Wall. The wall of a building which contains the primary windows of any living, family or dining room.

(2) End Wall. The walls, other than a main wall of a building, which may be blank or contain windows not considered to be primary windows.

(d) Building Arrangement. Single-family detached clusters, single-family attached dwellings or multi-family dwellings may be arranged in a group and need not directly front onto a street.

**Schedule 151.1007
Site Development Regulations for Single-Family Detached Clusters, Single-Family Attached Dwellings or Multi-Family Dwellings**

	D-2	D-3	OM Outer
(1) Minimum principal building setback from public street right-of-way	35 feet	35 feet	10 feet
(2) Minimum parking setback from public street right-of-way	20'	20'	10'
(3) Minimum principal building setback from:			
A. Project boundary line when adjacent to residential districts	30 feet	30 feet	15 feet
B. Project boundary line when adjacent to non-residential districts	15 feet	15 feet	15 feet
(4) Distance between buildings within the same project boundary			
A. Main wall of one principal building facing a main wall of another principal building	40	40	--
B. Main wall of one principal building facing an end wall of another principal building	30	30	--
C. End wall of one principal building facing an end wall of another principal building	20	20	--

§ 151.1008 HEIGHT REGULATIONS.

All buildings and structures in the residential districts shall comply with the following:

(a) Principal buildings shall not exceed 2 1/2 stories or 35 feet, whichever is less, except for multi-family dwellings in the D-3 district, which shall not exceed 3 stories or 45 feet.

(b) For a residence being constructed on a lot where the previous house was demolished, the top of the foundation of the new residence shall not be set higher than 12" above the top of the foundation of the previous residence unless it is determined by the city engineer that the

foundation needs to be raised to insure proper drainage.

(c) Accessory buildings and structures shall not exceed a height of 15 feet, except as otherwise permitted in § 151.1009 and §150.0204(b).

§ 151.1009 ACCESSORY USE REGULATIONS.

Accessory uses, buildings and structures permitted in any residential district shall conform to the location, coverage and maintenance standards contained in this section. No accessory building or use shall be established on a lot unless a principal building or use has first been established and constructed on the lot in conformance with all applicable provisions of this Zoning Code.

(a) Measurement Requirements.

- (1) The setback requirements for an accessory building or structure shall be measured from the property line to the outer most edge of any paved or fixed surface attached to, surrounding, or supporting such building or structure, such as a poured base or wood boundaries surrounding a play set or an aboveground pool.

- (2) The coverage area of an accessory structure shall be measured from the outer most point of any paved or fixed surface upon which the building or structure rests, or the outer most projection of any support structure for the building or structure, or the outer most edge of any paved, wood or other fixed surface attached to or surrounding such building or structure.

(b) Minimum Yard Requirements for Detached Accessory Buildings or Structures on Lots with Standard Detached Single-Family Dwellings and Two-Family Dwellings. A detached accessory building or structure permitted on lots with standard detached single-family dwellings and two-family dwellings in the residential districts shall be located as set forth in §151.1009(b) and as otherwise provided for in this Section.

Schedule 151.1009(b)

Minimum Yard Requirements for Detached Accessory Buildings or Structures on Lots with Standard Detached Single-Family Dwellings and Two-Family Dwellings

Permitted Structure, Building	Yard in which Permitted	Minimum Distance (in feet) From:		
		Front Lot Line	Side Lot Line	Rear Lot Line
(1) Detached garages, storage sheds or similar accessory buildings ^(a)	Side, Rear	--	(b)	(b)
(2) Pole buildings	Not Permitted			
(3) Driveways	Front, Side and Rear	NA	5 (c)	5
(4) Accessory off-street parking area	Front, Side, and Rear	25 (d) (h)	5	5
(5) Fences, walls	Side and Rear	(e)	None (f)	None (f)
(6) Swimming pools	Rear	--	10	10
(7) Fire pits ⁽ⁱ⁾ , outdoor fireplaces & kitchens	Side, Rear	--	10	10
(8) Outdoor boiler, stove or furnace	Not Permitted			

(9) Yard Structures	Side, Rear	(g)	5	5
<p>Notes to Schedule 151.1009(b):</p> <p>(a) Shall have a 10-foot setback from the principal building.</p> <p>(b) Shall comply with the side yard requirements for principal buildings set forth in Schedule 151.1005.</p> <p>(c) Except where part of a legally established shared access easement.</p> <p>(d) See also §151.1009(f)</p> <p>(e) See §151.1009(i) for fences and walls in the front yard.</p> <p>(f) Applies only to fences/walls up to 6' high. See §151.1009 (i).</p> <p>(g) See §151.1009(j) for permitted structures in the front yard.</p> <p>(h) Or right-of-way, if front property line extends to the centerline of the road.</p> <p>(i) Shall have a 25-foot setback from any combustible structure, unless in an approved container. Fire pits in an approved container shall maintain a 15-foot setback from any combustible structure.</p> <p>NA = Not Applicable</p>				

(c) Permitted Attached Structures in Front, Side, and Rear Yards. The attached accessory structures outlined in Schedule 151.1009(c) are permitted to extend into the required yards so established by the yard

requirements set forth in Schedules 151.1005 and 151.1007, provided that all other applicable provisions of the Zoning Code are met.

Schedule 151.1009(c)

PERMITTED ATTACHED STRUCTURES IN REQUIRED FRONT, SIDE AND REAR YARDS

Attached Projections into Yards	Yard in Which Permitted	Maximum Projection into Required Yards
(1) Building wing wall not greater than 5 feet	Side	10 feet, provided it is a minimum of 5 feet from the side property line
(2) Skylights, sills, fireplaces, bay windows, gutters, belt courses, cornices, and other ornamental and architectural features	Front, Side, Corner Side, Rear	1 ½ feet
(3) Deck or patio (Terraces, uncovered porches, platforms, and ornamental features) also: HVAC units	Side, Rear	Provided it is a minimum of 10 feet from the side or rear property line

Attached Projections into Yards	Yard in Which Permitted	Maximum Projection into Required Yards
(4) Open or lattice-enclosed fire escapes, fire-proof outside stairways, and balconies opening upon fire towers	Side, Rear	5 feet
(5) Unenclosed or covered porch, one story high, or paved terrace	Front	10 feet
(6) Pellet Stove	Rear	--

(d) Minimum Distance Requirements for Accessory Uses of Single-Family Detached Cluster Developments, Single-Family Attached Dwellings and Multi-Family Dwellings. The minimum distances from any accessory building or use to certain walls of

principal buildings, streets and boundaries of the development area of single-family detached cluster developments, single-family attached dwellings and multi-family dwellings shall be not less than that set forth in §151.1009(d) below.

**Schedule 151.1009(d)
Minimum Distances for Accessory Uses of Single-Family Detached Cluster Developments Single Family Attached Dwellings and Multi-Family Dwellings.**

Accessory Building or Use	To Wall of Principal Buildings (in feet)		To the ROW of a Public Street (in feet)	To Side and Rear Lot Lines Abutting District	
	Main	End		A, B, C Districts	All other Districts (including D-2 and D-3) OM-Outer
(1) Accessory building	20	10	35	30	15
(2) Parking area	20	10	35	20	10
(3) Driveway	20	10	35 ^(a)	10	5
(4) Project walk	15 ^(b)	5	0	10	5
(5) Active recreation areas, including pool and tennis court	30	15	40	20	10

Notes to Schedule 151.1009(d):

^(a) Except as required to access the public street.

^(b) A project walk may be less than 15 feet, but not less than five feet, from a main wall if all windows have sills at least 8 feet above the finished grade.

e) Maximum Area and Rear Yard Coverage of Accessory Buildings and Structures on Lots with Standard Detached Single-Family Dwellings and Two-Family Dwellings. The maximum area and rear yard coverage of accessory buildings and structures on lots with standard detached single-family dwellings and two-family dwellings shall comply with the following requirements:

- (1) The maximum footprint for a detached garage or other accessory building shall be 576 square feet.
- (2) The maximum coverage area for all accessory buildings and structures, including pavement for driveways, patios and/or pools and decks shall not exceed 30 percent of the rear yard.

(f) Additional Regulations for Parking Areas and Vehicles. Open, off-street parking areas and vehicles shall comply with the following:

- (1) Accessory off-street parking spaces: Accessory off-street parking areas shall be provided in compliance with the parking requirements set forth in Chapter 151.32, which shall be located on the same lot as the dwelling served. The maximum impervious surface coverage in the front yard on residential lots with a width of 70' or greater, and panhandle lots, is 35%. On lots with a width of 50'-70', the impervious surface coverage in the front yard is limited to 40%. On irregular shaped lots with reduced frontage at the end of a cul-de-sac, the impervious surface coverage in the front yard is increased to 50%. Accessory off street parking spaces must be accessed from a driveway and not directly from a public right of way.

- (2) The repainting, rebuilding, overhauling or dismantling of a vehicle or the storage of tires, motor, or auto body parts, in an open yard, is prohibited on a residential lot.
- (3) The parking of a disabled vehicle within a residential district for a period of more than 2 weeks shall be prohibited, except that the vehicle may be stored in an enclosed garage or other accessory building, provided that no business shall be conducted in connection therewith while the vehicle is parked or stored. For the purposes of this subsection, a disabled vehicle shall be defined as a non-operable vehicle in its current condition or a vehicle with expired or invalid license plates.

(g) Dish-type Satellite Signal Receiving Stations. Dish-type satellite signal receiving stations may be permitted as accessory structures and may be located as specified in the Zoning Code, subject to regulations established in this section. For the purpose of this section, non-residential installations shall include elementary and secondary schools, and places of worship.

- (1) Location and Setbacks.
 - A. Stations shall be located only in the rear yard of the lot as defined in the Zoning Code, and behind the principal dwelling or structure located on the same lot. When necessary, in order to get reception, stations may be mounted on or attached to the dwelling or building; however, in the case of a residential building installation, the dish antenna may not exceed two (2) meters in diameter.
 - B. Stations shall be located in conformance with the setback requirements for accessory structures set forth in this Chapter.

Nonresidential installations must maintain a minimum of 5 feet from the side and rear property lines when abutting non-residential districts. When abutting a residential district, a nonresidential installation must provide a setback equal to that required for the residential zoning district that it abuts. Setback requirements apply to any guy anchorage or similar device.

C. Stations shall not be linked to receivers which are not located on the same lot as the station.

D. Not more than 1 station shall be located on any lot.

(2) Height and Diameter.

A. Residential installations shall not exceed 13 feet in height. Nonresidential installations shall not exceed 15 feet in height. The height is determined by measuring the distance from the ground to the highest point of the antenna when turned perpendicular to the ground.

B. The maximum diameter of any dish antenna shall not exceed 4 meters for nonresidential installations, or 2 meters for residential installations.

(3) The station shall be placed on a base sufficient to safely support the unit in a secure, wind resistant manner and shall be adequately grounded.

(4) Permit Required.

A. A permit must be obtained prior to the installation of a dish antenna having a diameter of one meter or more. The permit application must include construction drawings showing the method of installation, a

site plan showing the proposed antenna, principal building and their respective setbacks, sectional drawings showing the antenna height and diameter, and a landscaping plan showing screening of the antenna from neighbors. The screening may rely upon existing and/or proposed vegetation. Any vegetation utilized for screening purposes must be maintained in a condition that achieves the goal of the screening.

B. Dish antennas having a diameter less than one meter may be erected in compliance with these regulations without obtaining a permit.

(h) Swimming Pools. Private swimming pools for the exclusive use of residents of the premises may be located in any residential district provided they comply with the locational and coverage requirements of accessory structures set forth in this Chapter and the supplemental regulations set forth below.

(1) All swimming pools, together with adjacent walkways, shall be completely enclosed by a wall or fence having a minimum height of 4 feet.

(2) For aboveground pools, the height of the pool, from the surrounding grade to the top of the pool wall, may be used as credit to meet the 4-foot fence height requirement so long as the pool has a removable ladder or other operational device approved by the building code.

(3) All fences and other pool enclosures shall be equipped with suitable locking devices to prevent unauthorized access.

- (4) The construction and operation of a pool shall meet all other applicable City regulations.
- (i) Fences and Walls. Fences and walls in the residential districts shall comply with the following:
 - (1) Front Yards. Fences and walls over 2 feet high may not be located in any part of the front yard, except in the front yard of a panhandle lot. **Wrought iron fences up to 4 feet in height may be permitted in the front yard in the Heritage District.** Retaining walls required to maintain a grade, may also be permitted by the Zoning Administrator. Wrought iron fences up to 4 feet in height may be permitted in the front yard in the Heritage District.
 - (2) Side and Rear Yards. Fences and walls in the side or rear yard shall not exceed 6.25 feet in height above the average natural grade and may be located in any part of the side or rear yard.
 - (3) Construction, Maintenance and Repair. Fences shall be of chain link, picket, split rail, sapling, louver or other commonly used design, and if painted, shall be one color. Electric or barbed wires fences are prohibited. Fences and walls shall be maintained in good repair at all times by the owner and/or occupant of the lot on which they are located. The smooth finished side of the fence or wall shall be the side of the fence that faces outward from the yard being fenced.
 - (4) No Permit Required. No permit is required for fences **6.25** feet or less in height, provided that all applicable regulations of this Chapter are complied with. Fences or walls higher than **6.25'** are considered

structures and must meet the height and setback requirements for other accessory structures. These structures require a building and zoning permit.

- (j) Yard Structures. In the residential districts, yard structures shall comply with the location and setback requirements for accessory structures set forth in this Chapter, except as otherwise regulated below:

- (1) Yard structures that are not installed on a paved or hard surface shall be exempt from the rear yard coverage requirements set forth in § 151.1009(e), provided they cover an area of less than 80 square feet. If the yard structure utilizes a paved or similar hard surface, it shall be subject to the rear yard coverage requirements set forth in § 151.1009(e).
- (2) Basketball hoops shall be permitted in the front or side yard, provided they do not require a paved surface in addition to an existing driveway or are mounted to a garage. The basketball hoop must be setback at least 5' from the side property line and 10' from the right of way line. If located in the rear yard, the maximum rear yard coverage requirements set forth in § 151.1009(e) are applicable if any additional paved surface is utilized.

§ 151.1010 REGULATIONS FOR HOME OCCUPATIONS.

The purpose of this section is to set forth regulations, which control the establishment and operation of home occupations. The intent of these regulations is to control the nonresidential use of a residential dwelling unit so that the nonresidential use is limited to an accessory use, and shall not in any way

adversely affect the uses permitted in the residential district of which they are a part. Compliance with these regulations should result in all home occupations being located and conducted in such a manner that their existence is not detectable in any manner from the outside of the dwelling unit.

(a) Not more than one person other than a person residing on the premises shall be employed in a home occupation.

(b) A home occupation shall occupy no more than 25% of the floor area of the dwelling and shall be clearly incidental and secondary in importance to the use of the dwelling for dwelling purposes.

(c) Any merchandise that is sold from the premises shall be produced on the premises.

(d) The business activity, including the storage of equipment, supplies or any apparatus used in the home occupation shall be conducted entirely within the dwelling unit and no use of a garage, an accessory building or an outdoor area shall be permitted.

(e) There shall not be any change in the outside appearance of the building or premises, or other visible exterior change related to the home occupation. Structural modifications such as a separate business entrance, colors, materials, or the construction of accessory structures not currently permitted are prohibited.

(f) No equipment or process shall be permitted or used in such home occupation that creates a nuisance by reason of generating any noise, vibration, glare, fumes, odors, or electrical interference, or which is determined unsafe.

(g) No signs shall be permitted on the lot that designates employment or home occupations.

(h) Traffic.

(1) Employee parking shall be located off the street with the applicable front, side and rear yard requirements maintained.

(2) The conduct of a home occupation shall not reduce or render unusable areas provided for required off-street parking areas for the dwelling unit

(3) Traffic generated by a home occupation shall not exceed the average daily volume normally expected for a residence in a residential neighborhood, which for the purpose of this § equals up to 10 round trips per day.

(4) Deliveries for the business are limited to an average of once per day. Delivery by a truck with more than two axles is prohibited.

(i) All persons wishing to conduct a home occupation shall apply for an accessory use permit, as required in Chapter 150.12.

§ 151.1011 FAMILY DAY CARE HOME, TYPE “B”.

This Zoning Code recognizes that the availability of safe and affordable, good-quality child day care is important to the well being of parents and children. Furthermore, it is the purpose of this Section to regulate the operation of child day care in a manner that preserves the residential character of neighborhoods. According to ORC 5104.054, any type B family day-care home, whether certified or not certified by the county director of human services, shall be considered to be a residential use of property for purposes of zoning and shall be a permitted use in all zoning districts in which residential uses are permitted. A type “B” family day-care home is a permanent residence of

the provider where child care is provided for 1 to 6 children and where no more than three children are under two years of age. For the purpose of this definition, any children under six years of age who are related to the provider and who are on the premises of the day-care home shall be counted. Type "B" family day-care homes are a permitted accessory use in residential districts, and do not require a zoning certificate.

list all of the products for sale when there are four or more different types of products on display. The sign must be oriented toward customers at the display and not off site. Permanent outdoor display signs may be either fixed message or hand-decorated, must meet the requirements of Section 151.3016, and can not be illuminated.

§ 151.1209 TEMPORARY USES INCLUDING OUTDOOR SALES AND DISPLAYS.

Temporary uses such as community events, programs and festivals or temporary outdoor sales and displays, including sales of plants, flowers, arts and crafts, temporary inventory reduction or liquidation sales, shall be permitted in compliance with the following regulations:

- (a) Temporary uses that extend for a period no longer than three consecutive days, not to exceed 12 days in a calendar year, shall be authorized by the Zoning Administrator.
- (b) Temporary uses which exceed the time period outlined in subsection (a) above but no longer than 60 days must be pre-approved by an administrative board comprised of the City Manager, Zoning Administrator, and Director of Public Works.
- (c) Temporary uses which extend for a period longer than 60 days must be pre-approved by the Planning Commission. Temporary use must demonstrate they meet the required setbacks, parking and lighting restrictions for permanent uses in that district. They must demonstrate they will not create traffic congestion and that they will maintain hours of operation similar to permanent uses in that area.
- (d) Outdoor display areas shall not be located in areas intended for traffic circulation and must maintain pedestrian

access. Outdoor display areas must maintain setbacks equivalent to setbacks for parking areas of that district.

- (e) The area of the lot devoted to outdoor display shall not exceed 20% of the ground floor area of the principal building.
- (f) On vacant lots, not more than 50% of the lot may be used for outdoor display. Outdoor displays on vacant lots must be setback a minimum of 20' from the front and rear property line and 10' from the side property lines. Temporary uses on vacant lots must meet the off street parking requirements of Chapter 151.32 for similar permanent uses.
- (g) In addition to signage permitted in Section 151.3015, one informational sign per product(s), not exceeding one (1) sq. ft in size and oriented for pedestrians on the site shall be permitted to provide information on or next to the product being displayed and its cost. As an alternative, a business may display a single sign up to six (6) sq. ft. to list all the products for sale when there are four or more different types of products on display. Temporary outdoor display signs may be either fixed message or hand-decorated and must meet the requirements of Section 151.3017.
- (h) Regardless of the duration of the temporary use, in all cases the owner of the property on which the activity is to be conducted shall sign the permit application.

§ 151.1210 OUTDOOR DINING.

Outdoor dining shall comply with the following regulations:

- (a) Outdoor dining shall only be permitted as an accessory use to an indoor restaurant. Outdoor seating shall not obstruct a public right-of-way or sidewalk nor any entrance or exit to the restaurant,

except as provided in subsection (h) below.

(b) **Outdoor dining areas must meet the setback requirements for principal buildings.**

(c) The number of seats permitted outdoors shall be no greater than 30 percent of the number of seats inside the restaurant.

(d) The outdoor dining area shall be limited to seating only and shall not include table bussing facilities or cooking facilities.

(e) **Permanently installed sound systems that are used for low level background music and as part of a television system may be permitted by the Planning Commission when the dining area is located at least 100' from a single family residential district.** Any sound system to provide entertainment on a temporary basis must be portable and must be removed at the end of each business day. All outdoor dining activities, including any entertainment, are subject to the City's noise ordinance and related limitations thereto.

(f) Outdoor heaters in the dining area may be permitted only pursuant to appropriate health and fire codes enforced in the City of Montgomery.

(g) No separate advertising is permitted for the outdoor dining area, including any advertisement for the business or any supplier to the business on any umbrellas, awning or other structure attending to the outdoor dining facilities.

(h) The property owner shall be responsible to keep the outdoor dining area free and clear of all garbage, trash and other debris and shall provide an appropriate trash receptacle within the outdoor dining area for the deposit of refuse and litter. Such trash receptacle shall be emptied on a regular basis and

shall be moved indoors at the end of each business day.

(i) Any outdoor dining located upon a public sidewalk or within the public right-of-way requires a separate annual permit from the City Manager which must be accompanied by sufficient surety or insurance to protect and indemnify the City from any third party claims.

§ 151.1211 ACCESSORY USE REGULATIONS.

Accessory uses permitted in any O, L-B, G-B or OM District shall conform to the regulations of this Section.

(a) Accessory Buildings. Accessory buildings shall conform to all lot and yard regulations and development plan review and approval requirements for principal buildings of the zoning district in which the parcel or lot is located.

(b) Fences and Walls. Fences and walls may be erected in compliance with the requirements set forth in Chapter 151.34.

(c) Signs. Signs shall conform to the regulations specified in Chapter 151.30.

§ 151.1212 LANDSCAPING AND SCREENING REQUIREMENTS.

Visual screening and landscape buffers shall be provided for all lots in nonresidential districts in accordance with the provisions set forth in Chapter 151.34.

§ 151.1213 PERFORMANCE STANDARDS.

All uses shall comply with the following performance standards.

(a) Trash Receptacles. All solid waste products, including empty packing boxes, that result from any permitted principal, conditional or accessory use shall either be disposed of, stored in buildings, or completely enclosed in containers. Such building, container or dumpster shall be located in a side or rear yard and in 'O'

§151.1508 BUILDING SETBACKS.

The setbacks for buildings in the OMG shall be determined as follows:

- (a) The use of a parking structure for setback purposes shall be determined as follows: A parking structure shall be considered non-residential unless residential and only residential uses are built above the parking structure at the point of measure.
- (b) **Front Yard Setback.** Front yard setbacks in the OMG are encouraged to create a street wall and buildings should be set a consistent distance from the right-of-way. The following regulations apply to front yard setbacks:
- (1) The maximum front yard setback for buildings shall be 10 feet from the right-of-way.
 - (2) To meet the required minimum 10 foot setback, a building's façade must meet the site layout and building configuration requirements of § 151.1509 (a) (1).
 - (3) For panhandle lots see §151.1509(c) (2).
 - (4) *Exception for Upper Stories.* The facades of buildings above the required minimum height established in § 151.1513 (a) (1) may be set back farther than 10 feet from the right-of-way.
 - (5) *Exception for Multiple-Buildings.* An adequate number of buildings and front façades on each site must meet the maximum required setback of 10 feet from the right-of-way to create a consistent street wall along the frontage of the site in conformance with §151.1509. However, if the frontage of the site is designed with buildings at the setback line, the City may allow

additional buildings on the site to exceed this setback if they find that the development meets the other standards of this Chapter and accomplishes the purpose of this district.

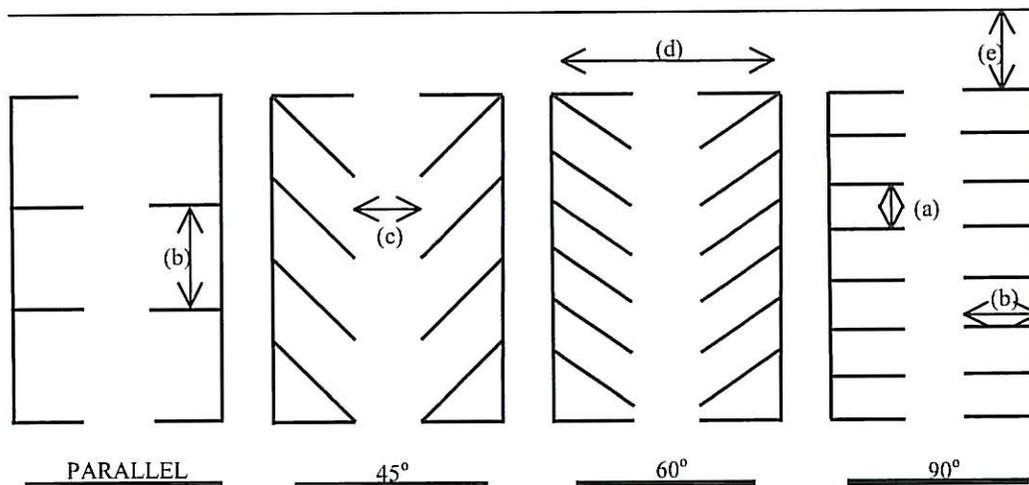
- (c) **Side Yard Setbacks.** Side yard setbacks for development in the OMG shall be determined as follows:
- (1) Buildings shall be set back a minimum of 5 feet from the side lot line when adjacent to any non-residential use outside of the OMG.
 - (2) When adjacent to a residential use outside of the OMG a building must be setback a minimum of 15 feet from the side lot line.
 - (3) Zero side lot line structures with a shared firewall may be permitted in a development under initial, common ownership.
- (d) **Rear Yard Setbacks.** Rear yard setbacks for development in the OMG shall be determined as follows:
- (1) Commercial or non-residential structures shall be setback a minimum of 45 feet from the rear lot line or boundary line of adjacent residential properties outside of the OMG district.
 - (2) Commercial structures shall be setback 15 feet from the rear property line when adjacent to a lot within the OMG district **or other non-residential district or use.**
 - (3) Residential structures shall be located no closer than eight feet or one-half the height of the building whichever is greater, to the rear project boundary line of the development.

**Schedule 151.3210(b)
PARKING DESIGN STANDARDS FOR COMPACT VEHICLES**

	45°	60°	90°	PARALLEL
(a) Width of Parking Space	8 ft	8 ft	8 ft	8 ft
(b) Length of Parking Space	16 ft ⁽¹⁾	16 ft ⁽¹⁾	16 ft ⁽¹⁾	18 ft
(c) Width of Parking Aisle	11 ft	16 ft	22 ft	12 ft
(d) Width of Double-loaded Parking Module	47 ft	52 ft	54 ft	28 ft
(e) Circulation Aisle (one way)	17 ft	14 ft	14 ft	14 ft

Notes to Schedule 151.3210:
⁽¹⁾ When a parking space is adjacent to a landscaped area or sidewalk that has a width greater than six feet, the length of the parking space may be reduced by not more than 2 feet.

**Figure 151.3210
ILLUSTRATION OF PARKING DESIGN STANDARDS**



() Letters refer to subsections on Schedule 151.3209.

§ 151.3211 REGULATIONS FOR ACCESS DRIVES.

The driveway for a single or two-family dwelling, behind the street right-of-way shall be not less than 8 feet nor more than 20 feet in width and a minimum distance of 5 feet from the side lot line, **except where two or more properties share a common drive through a joint access**

easement, in which case, no setback is required between the properties sharing the easement. Residential access drives must also be in conformance with Chapter 93 of Montgomery Codified Ordinances. In all other cases, the location, width, and number of entrance and exit access drives to accessory parking spaces shall be in accordance with the following:

(a) Location. The location and width of entrance and exit driveways to parking facilities shall be planned to interfere as little as possible with the use of nearby property and with pedestrian and vehicular traffic on the nearest streets. Access driveways shall be located at least 50 feet from the right-of-way line of the nearest intersecting street and no less than 10 feet from the side property line, unless there is a shared easement with the abutting property.

(b) Number of Drives.

(1) Each lot shall be permitted one two-way access drive per street frontage, or, upon review of the site plan, the Planning Commission and/or Council may permit a pair of one-way drives. Planning Commission and/or Council may permit an additional entrance on lots with a street frontage exceeding 250 feet.

(2) Entrances and exits shall be limited to two lanes, except where one driveway provides the sole access to the property and serves as both an entrance and exit, and then it shall be limited to three lanes.

(3) Width of Access Drives. The width of such entrance and exit lanes shall be not less than 12 feet or more than 15 feet per lane and shall not exceed a total of 40 feet.

(c) Radius. The radius of the edge of the access drive apron shall be at least 30 feet so that a vehicle may enter from or exit onto the curb lane without obstructing vehicles in other traffic lanes.

§ 151.3212 OFF-STREET LOADING REQUIREMENTS.

When off-street loading spaces are provided for business and commercial buildings, they shall comply with the following regulations:

(a) No loading space shall be located closer than 50 feet to a lot in any residential district, unless wholly within a completely enclosed building or unless enclosed on all sides by a wall or fence no less than 6 feet in height.

(b) No loading spaces shall face a street right-of-way unless the Planning Commission determines that loading spaces facing the street right-of-way minimizes the impact on adjoining properties. Such loading spaces, if approved, shall be enclosed on all sides by a wall or fence no less than 6 feet in height.

(c) Screening for all loading areas shall be provided along any perimeter that faces a street right-of-way or adjoining property according to the screening requirements of Chapter 151.34.

(d) All loading spaces shall be located on the same lot as the use served and no part of any required yard, off-street parking area, or access drive thereto, shall be used for loading or unloading purposes unless permitted by Planning Commission and/or Council.

(e) Access to truck loading and unloading space shall be provided directly from a public street or alley or from a right-of-way that will not interfere with public convenience and that will permit the orderly and safe movement of trucks.

(f) Streets, sidewalks, alleys or other public rights-of-way or other public property shall not be used for loading purposes nor shall vehicles be parked on such areas during loading and unloading.

(g) Off-street loading spaces shall not be used for repair or servicing of motor vehicles.

§ 151.3213 IMPROVEMENT AND MAINTENANCE STANDARDS.

All driveways, parking areas, curbs, and bumper guards shall be constructed in accordance with standards established by the City Engineer and the following:

- (2) For the purpose of this Section, the area of a parking lot shall be the total vehicular surface area including circulation aisles.

(b) Screening Along Streets and Perimeter of Parking Areas. Whenever parking areas consisting of 5 spaces or more are located such that the parked cars will be visible from a public or private street, screening, in addition to the interior landscaping required in subsection (a) above, shall be provided and maintained between the parking area and the street right-of-way.

- (1) All shrubs, berms, walls, and fences, shall have a minimum height of 3 feet, and shall cover 100% of the perimeter of the parking area. When the screening or a portion thereof is intended to be provided with landscaping, the minimum height at installation must be 24".
- (2) Such landscaping and/or screening shall be located parallel to and within five (5) feet of the edge of the parking lot.

§ 151.3409 SCREENING OF ACCESSORY USES.

For single-family attached and multi-family developments, Office, Business, Old Montgomery Districts, and for non-residential conditional uses in residential districts, screening of accessory uses shall be provided according to the following:

- (a) Trash receptacles. Trash receptacles shall be enclosed on all four sides by a wall or fence with a gate or landscaping that creates a continuous visual screen and matches or compliments the principal building. A chain link fence shall not be permitted. The screening shall have a minimum height of 6 feet or the height of the receptacle, whichever is greater. The gate shall be enclosed at all times, except during collection.

- (b) Loading and Service Areas. Each loading area shall be screened along any perimeter that faces a street right-of-way or adjoining property according to the screening requirements of subsection 151.3406(c).

§ 151.3410 REQUIREMENTS FOR FENCES AND WALLS IN OFFICE AND COMMERCIAL DISTRICTS.

(a) Fences and walls, when not used for screening and buffering as required by § 151.3407, may be used in commercial districts for the following purposes:

- (1) For decorative purposes in the front yard, not to exceed a height of 4 feet; or
- (2) For security and/or containment of equipment or vehicles in the side or rear yard. Fences shall be of chain link, picket, split rail, sapling, louver, board on board, or other design, and, if painted, shall be one color. The maximum height of the fence is six feet. The smooth finished side of the fence or wall shall be the side of the fence that faces outward from the lot or yard being fenced.

(b) All fences and walls shall be approved with appropriate landscaping as part of a final development plan.

§ 151.3411 APPROVAL PROCESS FOR REQUIRED LANDSCAPING, FENCES AND WALLS.

- (a) Proposed landscaping, fences or walls required to fulfill the standards and criteria of this chapter shall be reviewed and approved as part of a development plan pursuant to Chapter 150.14.
- (b) When a fence or wall is proposed at a separate time from any other