

## **ARTICLE XIII DENSITY AND DIMENSIONAL REGULATIONS**

### **Section 1. Minimum Lot Size**

Subject to the provisions of Section 8 of this Article, all lots shall have at least the amount of square footage indicated for the appropriate zone. The total gross floor area in all buildings on the lot shall be considered in determining the adequacy of lot area.

### **Section 2. Residential Density**

1. Subject to Subsection 2. and the provisions of Section 8 of this Article, every lot developed for residential purposes shall have the number of square feet per dwelling unit indicated in the Schedule of Zone Regulations (Section 9 of this Article). In determining the number of dwelling units permissible on a tract of land, fractions shall be rounded to the nearest whole number.
2. The maximum residential density permissible on a tract of land shall be as set forth in the Schedule of Zone Regulations (Section 9 of this Article).

### **Section 3. Minimum Lot Widths**

1. No lot may be created that is so narrow or otherwise so irregularly shaped that it would be impracticable to construct on it a building that:
  - a. Could be used for purposes that are permissible in that zoning district, and
  - b. Could satisfy any applicable setback requirements for that district.
2. The Schedule of Zone Regulations (Section 9 of this Article) indicates minimum lot widths and depths that are recommended and are deemed presumptively to satisfy the standard set forth in Subsection 1.
3. No lot created after the effective date of this Ordinance that is less than the recommended width shall be entitled to a variance from any building setback requirement.
4. Lot Shape. Excessive depth in relation to width should be avoided, with a proportion of 2.5 to 1 normally considered a desirable maximum for lot widths of sixty (60) feet or greater. Pointed or very irregular-shaped lots shall be avoided where possible. Additional depth of at least twenty (20) feet over the minimum lot depth shall be required on lots that back up to railroads or are through lots.

### **Section 4. Building Setback Requirements**

1. Subject to Section 3 of this Article, and the other provisions of this section, no portion of any building or any freestanding sign may be located on any lot closer to any lot or property line than is authorized in the table set forth in Section 9 of this Article.
  - a. If the lot or property line is not readily determinable (by reference to a recorded map, set irons, or other means), the setback shall be measured from the boundary line of any adjacent right-of-way. If the boundary line of the right-of-way is not readily determinable the setback shall be measured from the centerline of the

right-of-way and half the width of the right-of-way shall be added to the minimum setback requirement.

- b.** As used in this section, the term "lot boundary line" refers to lot boundaries other than those that abut streets.
  - c.** As used in this section, the term "building" includes any substantial structure which by nature of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associated with a building. Without limiting the generality of the foregoing, the following structures shall be deemed to fall within this description:

    - (1)** Gas pumps and overhead canopies or roofs.
    - (2)** Fences running along lot boundaries adjacent to public street rights-of-way if such fences exceed six (6) feet in height and are substantially opaque.
  - d.** Notwithstanding any other provision of this chapter, a sign may be erected on or affixed to a structure that (1) has a principal function that is something other than the support of the sign (e.g., a fence), but (2) does not constitute a building as defined in this chapter, only if such sign is located so as to comply with the setback requirement applicable to freestanding signs in the district where such sign is located.
- 2. Front Yards.**
- a.** Averaging setbacks for existing alignment. In any zone, when the average depth of front yard of existing buildings located within two hundred (200) feet of each side of a lot in the same block front is less than the least front yard depth prescribed for a building on such lot, then the least front yard of any building or structure on such lot shall not be greater than the average depth of said existing front yards, but shall be at least ten (10) feet. In no event shall any building be constructed closer than any setback established on a plat of record.
  - b.** Yard on street side on lot adjoining or facing residence zone. On a lot in any non-residential zone sharing the same block front with a lot in any residential zone the minimum front yard required shall equal in depth the front yard required for that residential zone.
  - c.** Front yards not parallel to the building. Where the front wall of a building is not parallel with the front lot line or is broken or otherwise irregular, the average depth of the front yard shall not be less than the otherwise required front yard, provided however, that such front wall shall at all points be within five (5) feet of the otherwise required front yard depth.
- 3. Side Yards.** Side yard exceptions for attached dwellings. In the case of attached dwelling units, the entire structure shall be considered as a single building with respect to side yard requirements.

4. Rear yards. Where the rear wall of a building is not parallel with the rear lot line or is broken or otherwise irregular, the average depth of the rear yard shall not be less than the otherwise required rear yard provided however, that such rear wall shall at all points be within five (5) feet of the otherwise required rear yard depth.
5. Yard requirements adjoining a more restrictive zone. Where a property adjoins the side or rear yard of a lot in another zone, the side or rear yard in the zone with the less restrictive yard requirements shall equal the adjoining side or rear yard (as appropriate) of the zone with the more restrictive yard requirements.
6. Setback distances shall be measured from the property line or street right-of-way line to a point on the lot that is directly below the nearest extension of any part of the building that is substantially a part of the building itself and not a mere appendage to it (such as a flagpole, etc.).
7. Whenever a private road that serves more than three lots or more than three dwelling units or that serves any nonresidential use tending to generate traffic equivalent to more than three dwelling units is located along a lot boundary, then:
  - a. If the lot is not also bordered by a public street, buildings and freestanding signs shall be set back from the centerline of the private road just as if such road were a public street.
  - b. If the lot is also bordered by a public street, then the setback distance on lots used for residential purposes shall be measured from the inside boundary of the traveled portion of the private road.
8. Walls and Fences.
  - a. Definitions
    - (1) *Fence* - Any structure regardless of composition, except a living fence, that is erected or maintained for the purpose of enclosing a piece of land or to divide a piece of land into distinct portions.
    - (2) *Front Yard* - A yard extending along the full length of the front lot line of the zoning lot. In the case of a corner lot, both yards extending along the public streets shall be considered front yards. However, this definition shall specifically not apply for purposes of swimming pool protection.
    - (3) *Fence Height* - The distance measured from the existing grade to the top of the fence.
  - b. Approval Required - No fence, wall or other type of construction shall be erected without the approval of the Zoning Inspector.
  - c. Application for Permit - Any person or persons, corporation, firm or association intending to erect a fence or wall shall, before any work is commenced, make application for permit. Application shall be accompanied by a plan or sketch showing the proposed location of any fence, the material proposed to be used,

which must be in accordance with this Ordinance, and be accompanied by an appropriate fee. Upon approval by the Zoning Inspector, a permit shall be issued which will be in effect for a period of one (1) year from the date thereon.

- d.** Height Limitations - Rear, front and side yards. No fence shall be more than six (6) feet in height at the rear of homes or buildings situated in all residential zoned districts. No fence shall extend forward of the rear building line more than three (3) feet beyond any existing building or proposed building. No other fence or portions of a fence shall be higher than forty-eight (48) inches.
- e.** Location Restrictions - Any fence erected under this Ordinance may be located on the property line except in the front yard. Any fence erected in a front yard shall be placed at least one (1) foot back from the front line and/or property line. No front yard fences are allowed in townhouse projects.
- f.** Materials and Composition (amended effective July 27, 2010)
  - (1)** Any fence, wall or similar structure, which may cause a nuisance, a fire hazard or a dangerous condition or an obstruction affecting the public safety is prohibited. Further, no fence shall be erected in a front yard in a residential district or along a public right-of-way unless the fence is uniformly less than fifty percent (50%) solid.
  - (2)** The following fences and fencing materials are specifically prohibited:
    - (a)** Barbed wire.
    - (b)** Pointed fences less than three (3) feet in height.
    - (c)** Canvas fences.
    - (d)** Cloth fences.
    - (e)** Poultry fences.
    - (f)** Turkey wire.
    - (g)** Temporary fences such as snow fences.
    - (h)** Expandable fences and collapsible fences, except during construction of a building.
  - (3)** Approvals or permits for wire fences will be at the discretion of the Planning Commission. The Building Inspector will check for adequacy and safety.
  - (4)** All chain link fences erected shall be erected with the closed loop at the top of the fence.
  - (5)** All entrances or gates shall open into the property.

- (6) A permit may be issued for the construction of a security fence for commercial and industrial properties, upon application.
- (7) All fences or walls must be erected so as not to encroach upon a public right-of-way or easements unless a waiver is granted by the Mayor and Commissioners of the Town of Elkton with the stipulation that the fence be removed or relocated upon request by appropriate town officials. All fences or walls must be erected with the property line, and none shall be erected so as to interfere with vehicular or pedestrian traffic or interfere with visibility on corner lots and/or other structures or vehicles, whether stationary or transitory, on public or private property.
- (8) Non-lethal electrically charged fences to prevent trespass may be permitted by Special Exception by the Board of Zoning Appeals in the B-I Zone. Any request shall demonstrate all of the following:
- (a) The use of security measures are necessary to safeguard the property against unauthorized entry, to protect stored goods and products from theft and/or other unauthorized handling.
  - (b) Reserved.
- (9) And be subject to the following standards and conditions:
- (a) Electric fences shall be constructed or installed in conformance with the specifications set forth in International Electro-technical Commission (IEC) Standard No. 60335-2-76.
  - (b) The energizer for the electric fence shall be driven by a commercial storage battery not to exceed twelve (12) volts DC. The storage battery shall be charged primarily by a solar panel. However, the solar panel may be augmented by a commercial trickle charger.
  - (c) The electric charge produced by the fence upon contact shall not exceed energizer characteristics set forth in paragraph 22.108 and depicted in Figure 102 of IEC Standard No. 60335-2-76.
  - (d) No electric fence shall be installed or used unless it is completely surrounded by a non-electrical fence or wall that is not less than six (6) feet in height. The distance between the electric and non-electric fence shall be as set forth in IEC Standard No. 60335-2-76., Edition 2.1 as amended.
  - (e) Electric fence shall have a minimum height of eight (8) feet and a maximum height of ten (10) feet and shall be two (2) feet taller than the perimeter fence.
  - (f) The front yard setback shall be 30' for the perimeter non-electric fence.

- (g) Electric fences shall be clearly identified with warning signs that read: "Warning-Electric Fence" at intervals of not more than fifty (50) feet. A minimum of one (1) sign shall be placed on each side (length) of the fence.
- (h) A Hold Harmless Agreement shall be recorded with the Town by the fence owner releasing the Town of all liability regarding the fence.
- (i) The area near the electric fence must be clear of vegetation so as to avoid causing brush fires.
- (j) The electric fence shall not interfere or degrade performance of nearby telephone and data connections, radio and/or TV reception.

**g.** Powers and Duties of the Zoning Inspector - The Zoning Inspector shall have the authority to direct, in writing, the removal or modification of any fence, wall, hedge or other structure on private or public property wherever the same shall interfere with adequate visibility of operators of motor vehicles at street intersections or curbs. Any person who shall refuse or neglect to comply with the written direction of the Zoning Inspector shall be guilty of a violation of this Ordinance and shall be subject to its penalties.

**h.** Violation and Penalties - Any violator of any of this provision of this chapter shall be guilty of a misdemeanor and shall be punished as provided in the Article VII.

**i.** Appeals - Any change, other than provided in the provision of this Ordinance, as to height, area, size, location or materials uses, shall not be allowed unless approved by the Board of Zoning Appeals.

**9. Projections.**

Chimneys, flues, belt courses, leaders, sills, pilasters, lintels, ornamental features, cornices, eaves, gutters, and the like may extend no more than twenty-four (24) inches into any required yard.

**Section 5. Accessory Building Requirements**

**1.** The following provision shall regulate the location of accessory buildings with respect to required yards:

- a.** Accessory buildings shall be prohibited in any required front yard or side street side yard.
- b.** Accessory buildings shall be distant at least five (5) feet from rear lot boundary lines.

- c. Where an accessory building is located in a district requiring a side yard and such building is entirely to the rear of the principal structure, the accessory building shall be located at least five (5) feet from any side or rear lot line. Where an accessory building is located in a district not requiring a side yard, the accessory building shall be located at least three (3) feet from the side lot line.
  - d. Where any portion of an accessory building projects between a principal structure and the side lot line, the accessory building shall comply with the required side yard restriction for a principal structure on that lot.
  - e. Where a corner lot adjoins in the rear a lot in any residential zone, no part of an accessory building within twenty-five (25) feet of the common lot line shall extend closer to street than the actual or required (whichever is less) depth of the front yard for the principal structure on adjoining lot.
2. Accessory buildings shall not exceed the maximum height restriction for the zone in which they are located.
  3. Accessory buildings in residential zones shall not exceed the lot coverage nor the total square footage of the building to which it is accessory.
  4. Where the high point of the roof or any appurtenance of any accessory building exceeds twelve (12) feet in height, the accessory building shall be set back from rear lot boundary lines an additional two (2) feet for every foot of height exceeding twelve (12) feet.

**Section 6. Building Height Limitations**

1. For purposes of this section:
  - a. Except as hereinafter provided, no building or structure, or part thereof, shall hereafter be erected or altered to a height greater than the maximum specified for the respective zone.
  - b. The "height" of a wall or structure or a part of a building is the vertical distance from the highest point of a structure, excepting chimney or antenna on a building, to the average ground level of the grade where the walls or other structural elements intersect the ground. Where a lot abuts on two or more streets or alleys, of different average established grades in front of the lot, the higher of such grades shall control.
  - c. A point of access to a roof shall be the top of any parapet wall or the lowest point of a roof's surface, whichever is greater. Roofs with slopes greater than seventy-five (75) percent are regarded as walls.
2. Subject to the remaining provisions of this section, building height limitations in the various zoning districts shall be as indicated in The Schedule of Zone Regulations.
3. Exceptions to height limits. Notwithstanding other regulations in this Article or the maximum specified for the respective zone, the height limits of this Zoning Ordinance shall not apply to the following:

- a. Church spires, belfries, and cupolas, not for human occupancy; water towers, chimneys, flag poles, radio tower, masts, and aerials.
- 4. Television antennas are allowed in all zoning districts.

**Section 7. Reserved**

**Section 8. Density on Lots Where Portion Dedicated to the Town**

- 1. Subject to the other provisions of this section, if (1) any portion of a tract lies within an area designated on any officially adopted Town plan as part of a proposed public park, greenway, or bikeway, and (2) before the tract is developed, the owner of the tract, with the concurrence of the Town, dedicates that portion of the tract so designated, then when the remainder of the tract is developed for residential purposes, the permissible density at which the remainder may be developed shall be calculated in accordance with the provisions of this section.
- 2. If the proposed use of the remainder is a single-family detached residential subdivision, then the minimum lot size and minimum setbacks in such subdivision may be reduced, as determined appropriate by the Planning Commission to achieve the development, and the permitted density shall be calculated by regarding the dedicated portion of the original lot as if it were still part of the lot proposed for development.
- 3. If the proposed use of the remainder is a two-family or multi-family project, then the permissible density at which the remainder may be developed shall be calculated by regarding the dedicated portion of the original lot as if it were still part of the lot proposed for development.
- 4. If the portion of the tract that remains after dedication as provided in Subsection 1. is divided in such a way that the resultant parcels are intended for future subdivision or development, then each of the resultant parcels shall be entitled to its pro rata share of the "density bonus" provided for in Subsections 2. and 3.