



COMMUNITY DEVELOPMENT DEPARTMENT

120 S. McKenzie St.

Foley, Alabama 36535

www.cityoffoley.org

(251) 952-4011

December 13, 2024

Mayor and City Council
City of Foley
407 East Laurel Avenue
Foley, Alabama 36535

RE: Zoning Ordinance Amendments Recommendation

Dear Mayor Hellmich and City Council Members:

The City of Foley Planning Commission held a regular meeting on December 11, 2024 and the following action was taken:

Zoning Ordinance Amendments

Planning Commission Action:

Commissioner Hinesley made a motion to recommend the zoning ordinance amendments to the Mayor and Council. Commissioner Engel seconded the motion. All Commissioners voted aye.

Motion to recommend the requested zoning ordinance amendments to the Mayor and Council passes.

Please let me know if you have any questions or concerns.

Respectfully,

Melissa Ringler

Melissa Ringler
Planning & Zoning Coordinator
mringler@cityoffoley.org

MAYOR: Ralph Hellmich

CITY ADMINISTRATOR: Michael L. Thompson

CITY CLERK: Kathryn Taylor

COUNCIL MEMBERS: J. Wayne Trawick; Vera Quaites; Richard Dayton; Cecil R. Blackwell; Charles Ebert III

ARTICLE XXVI - BOARD OF ADJUSTMENT AND APPEALS

26.1 APPOINTMENT, DUTIES AND RESPONSIBILITIES

In accordance with Code of Alabama, 1975, article 11-52-80 A Zoning Board of Adjustment and Appeals is hereby established by the legislative body of City of Foley. The board of adjustment shall consist of five members, each to be appointed for a term of three years, except that in the first instance one member shall be appointed for a term of three years; two for a term of two years and two for a term of one year, and thereafter each member appointed shall serve for a term of three years or until his successor is duly appointed. In addition to the five regular members provided for in this subsection two supernumerary members shall be appointed to serve on such board at the call of the chairman only in the absence of regular members and while so serving shall have and exercise the power and authority of regular members. Such supernumerary members shall be appointed to serve for three year terms and shall be eligible for reappointment. Appointed members may be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

26.2 PROCEEDINGS OF THE BOARD OF ADJUSTMENT

The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this article. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman or, in his/her absence, the acting chairman may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and of other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

26.3 POWERS AND DUTIES OF THE BOARD

A. Appeals to the Board of Adjustment

Any person aggrieved by a final decision of the Community Development Director, or any officer, department, board, or bureau of the municipality affected by such decision, may appeal the decision to the Board of Adjustment. The appeal must be filed within 30 days of the date the decision is rendered. The 30-day period begins on the date the written decision is provided to the applicant or aggrieved party.

1. **Administrative Decision**

An Administrative Decision refers to any written order, requirement, decision, or determination made by the Community Development Director in the enforcement of the zoning ordinance. This includes but is not limited to decisions regarding building permits, site plan approvals, zoning interpretations, and other zoning-related matters.

2. **Filing of Appeal**

To initiate an appeal, the appellant must submit a written notice of appeal to the Board of Adjustment. The notice must specify the grounds of the appeal, citing any errors or issues with the application of the zoning ordinance.

3. **Transmission of Record**

Upon receipt of the notice of appeal, the Community Development Director must promptly forward all records, documents, and papers constituting the basis for the decision to the Board of Adjustment in accordance with meeting schedules. This ensures the Board has the necessary materials to review the case.

4. **Stay of Proceedings**

Filing an appeal automatically stays all proceedings related to the decision under appeal. However, if the Community Development Director certifies that continuing the stay would cause imminent peril to life or property, the stay may be lifted.

5. **Hearing and Decision**

The Board of Adjustment shall fix a reasonable time for the hearing in accordance with standard meeting schedule, provide public notice, and notify all interested parties.

During the hearing:

a) **Burden of Proof**

The burden of proof rests with the appellant, who must demonstrate that the decision of the Community Development Director was in error or inconsistent with the provisions of the zoning ordinance. To successfully appeal, the aggrieved party must establish that the decision involved one or more of the following errors:

- i. **Misapplication of Ordinance Provisions** – The appellant must show that the Community Development Director incorrectly applied specific terms or provisions of the ordinance. This may include, but is not limited to, errors in the classification or designation of land uses, dimensional standards, or procedural requirements.
- ii. **Improper Interpretation** – The appellant must demonstrate that the Community Development Director misinterpreted the language, intent, or purpose of the ordinance, leading to a decision that conflicts with the goals, objectives, or legal standards established within the ordinance.

b) **Substantial Evidence and Testimony**

The Board's decision must be based on substantial evidence presented during the hearing. The appellant is responsible for providing credible testimony, documentation, or expert evidence to support their claim. The Board is also required to consider all relevant evidence and testimony provided by other parties or public participants during the hearing.

c) **Decision**

The Board of Adjustment must issue a written decision within a reasonable time after the hearing. This decision must include clear factual findings and conclusions that demonstrate how the evidence presented supports or does not support the appeal. The Board has the authority to affirm, reverse, or modify the decision of the Community Development Director, ensuring that the outcome is fair, consistent with the zoning ordinance, and based on the evidence provided.

B. Special Exceptions

The Board of Adjustment and Appeals (ZBAA) shall hear and decide special exceptions to the terms of the zoning ordinance where such authority is conferred under the ordinance.

Standards for Approval of a Special Exception

The ZBAA may grant a special exception from the zoning ordinance only if the following criteria are met:

1. **Consistency with the Zoning Ordinance**
The special exception must be a permitted use under the applicable zoning district and explicitly authorized by the zoning ordinance. It must comply with all zoning ordinance regulations, such as setbacks, height, and bulk requirements. The board shall ensure that the proposed use is consistent with the intent and purpose of the ordinance for the district in which it is located.
2. **No Detriment to Public Health, Safety, or Welfare**
The proposed use shall not adversely affect public health, safety, morals, comfort, or general welfare. It must be demonstrated that the special exception will not create conditions that pose risks to the community or cause harm to neighboring properties.
3. **Compatibility with Surrounding Land Uses**
The special exception must be compatible with the existing uses and character of the surrounding properties. The use should not generate excessive traffic, noise, light, odor, or other nuisances that could negatively affect adjacent properties.
4. **Consistency with the Comprehensive Plan**
The proposed special exception should be consistent to the City's comprehensive plan. The use should support the long-term vision for development, land use, and growth management in the area, as outlined in the comprehensive plan.
5. **Mitigation of Potential Adverse Impacts**
The board may impose conditions as necessary to mitigate potential adverse impacts of the special exception. These conditions may include restrictions on hours of operation, buffering requirements, noise control, traffic management, or other safeguards to protect neighboring properties and the community.

6. **No Substantial Alteration of Neighborhood Character**

The proposed use shall not substantially alter the essential character of the neighborhood or district in which it is located. The special exception must not disrupt the balance of land uses or undermine the existing neighborhood character.

7. **Substantial Evidence Required for Special Exceptions**

The decision to grant or deny a special exception must be based on substantial, credible evidence presented during the public hearing. The applicant bears the burden of proof to demonstrate that the proposed use meets the applicable standards of the zoning ordinance, supported by appropriate documentation such as expert testimony, property surveys, or impact studies.

The board's decision must be based solely on the evidence presented and documented with clear factual findings and conclusions. These findings must explain how the evidence supports or fails to support compliance with the ordinance, ensuring the decision is fair, consistent, and not arbitrary.

The board may impose reasonable conditions to mitigate any potential adverse impacts or ensure consistency with the zoning ordinance's intent. These conditions must be directly related to the evidence presented and tailored to address the specific circumstances of the special exception request.

~~C. Variances: The Board may authorize, upon appeal in specific cases, such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship and so that the spirit of the Ordinance shall be observed and substantial. A variance from the terms of this Ordinance shall not be granted by the Board unless and until:~~

~~1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.~~

~~2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.~~

1. **Standards for Approval of a Variance**

The Board of Adjustment and Appeals (ZBAA) may grant a variance from the zoning ordinance only if all the following criteria are met:

a. Unnecessary Hardship

i. The hardship must arise from unique physical characteristics of the property, such as irregular shape, topography, or size, which make strict

compliance with the zoning ordinance impractical. Financial difficulty or convenience alone does not justify a variance.

ii. The hardship must prevent the applicant from making reasonable use of the property while adhering to the zoning ordinance. Compliance must effectively render the property unusable for its intended purpose.

b. Hardship Not Self-Imposed

i. The hardship cannot result from actions taken by the applicant or property owner. For example, subdividing the property, making alterations in violation of the zoning ordinance, or purchasing the property with knowledge of the existing zoning restrictions does not qualify as an undue hardship.

ii. The hardship must originate from factors beyond the control of the property owner, ensuring the variance addresses inherent property issues rather than problems created by the owner's actions.

c. No Adverse Impact on the Public Interest

i. The variance must not negatively affect the character of the surrounding area or undermine the objectives of the zoning ordinance.

ii. It must not alter the essential character of the neighborhood or cause adverse effects on neighboring properties. The variance should align with the broader goals and intent of the zoning regulations.

d. Minimum Necessary to Afford Relief

i. The variance granted must be the minimum adjustment necessary to address the identified hardship. The relief provided should be as limited as possible while still addressing the hardship.

ii. The ZBAA may consider alternative solutions that could mitigate the hardship without requiring a full variance, such as modifications to the property layout or design adjustments.

e. Variance Consistent with Zoning Ordinance Intent

i. The variance must not contradict the spirit or intent of the zoning regulations.

ii. It must support the long-term goals and planning vision for the zoning

district, ensuring compatibility with surrounding uses and preserving the community's character.

f. Not for Personal Benefit

i. The variance request must address the unique needs of the property, not provide personal or financial gain to the applicant.

ii. Variances cannot be granted solely due to financial inconvenience or potential profit loss. The hardship must be directly related to the physical characteristics of the land.

2. Substantial Evidence Required for Variances

The decision to grant or deny a variance must be based on substantial, credible evidence presented during the public hearing. The applicant bears the burden of proof to demonstrate that strict enforcement of the zoning ordinance would result in an unnecessary hardship unique to the property and that the requested variance is the minimum necessary to alleviate that hardship.

The ZBAA's decision must be supported by a detailed record of factual findings and legal conclusions that clearly explain how the request satisfies the legal criteria for a variance. This ensures the decision is fair, consistent, and not arbitrary.

~~In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance.~~

3. Conditions and Safeguards

In granting any variance, the Board is authorized to impose conditions and safeguards to ensure compliance with the intent of its decision and the spirit of this Ordinance. These conditions and safeguards are designed to uphold the integrity of the Board's decision and the objectives of the Ordinance. Should any condition or safeguard imposed by the Board be violated, the variance granted shall be considered null and void. Furthermore, such a violation shall be deemed a breach of this Ordinance, subject to all legal remedies available to address and remedy the violation.

26.3.1 ~~PROCEDURE FOR APPEALS~~

~~Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative~~

~~officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall transmit forthwith to the board all papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. Such proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due.~~

26.4 DECISIONS OF THE BOARD OF ADJUSTMENT AND APPEALS

In exercising the above mentioned powers, the Board may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end shall have powers of the officer from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirements, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance.

26.5 DUTIES OF THE BOARD OF ADJUSTMENT AND APPEALS, CITY GOVERNMENT AND COURTS ON MATTERS OF APPEAL

It is the intent of the governing authority of the City that all questions of interpretation and enforcement of this Ordinance shall be presented first to the Building Official or Community Development Director. Other than those applications and matters upon which the terms and provisions of this Ordinance may require action and decision by the Board, only the appeals taken in the manner and form as provided in this Ordinance from the actions and decision of the ~~Building Official or~~ Community Development Director will be considered and acted upon by the Board. However, any interested party who is aggrieved by any action or decision of the Board may take an appeal there from to a Circuit court of law, as provided for in the State Law.

26.6 BOARD OF ADJUSTMENT AND APPEALS FEES

All applications to the Board for interpretations, special exceptions, or variances must be accompanied by a credit card payment via Citizenserve, a check made payable to the City of Foley, or cash in the amount of \$150.00.

All other Ordinances and Regulations are hereby repealed to reflect the above change.

Proposed Changes to ZO - PO Zoning

Prepared by Eden Lapham, Nov 2024

2.1 DEFINITIONS APPLICABLE TO THIS ORDINANCE

Professional service and office uses: This group of uses includes business and professional offices, medical offices or clinics, financial institutions without drive-up windows, and personal service businesses where the service is performed on an individual-to-individual basis as opposed to services which are performed on objects or personal property. Examples of personal service businesses are barber shops, beauty shops, or photography studios. This group of uses may include a dispatching/communications/office center for the distribution of goods, but specifically excludes the warehousing or actual distribution of goods.

18.2 PO - PREFERRED OFFICE DISTRICT

A. Uses / Structures Permitted: Any governmental use or structure having characteristics compatible with this district; professional service and office uses (see definition) and ~~business offices which shall include, but not be limited to, offices for lawyers, architects, engineers, insurance and real estate companies; research or testing laboratories compatible with other permitted uses; medical and dental offices (including clinics); churches; daycares; small scale educational facilities; residential single family dwelling units; accessory dwelling units.~~

B. Uses / Structures Permitted on Appeal: ~~Schools, clinics, mortuaries, banks,~~ small retail establishments related to the office use such as snack bars and pharmacies provided the sole entrance to such establishment is inside the office structure; class 2 clubs or lodges; residential duplexes; modular dwellings, home occupations; and other uses not prohibited.

C. Uses / Structures Prohibited: Any use or structure not specifically permitted or permitted on appeal in this section or in Section 13.1.1 or 13.1.2 of Article XIII; any retail business or establishment that is not related or incidental to the office use or any retail business or establishment that has an entrance other than from inside the office structure; veterinary clinics / hospitals; pet grooming; kennels; poultry and livestock; mobile/manufactured dwellings; recreational vehicles.

D. Requirements: No minimum lot area or size requirements exist; however, when a subdivision or lot line adjustment is proposed, the lot sizes, setbacks, and building heights must align with those of the adjoining neighborhood or street to ensure a seamless transition and maintain residential character.

Minimum Lot Area	7,200 square feet*
Minimum Lot Width at Building Line	60 feet
Minimum Depth of Front Yard	20 feet
Minimum Depth of Rear Yard	20 feet
Minimum Depth of Side Yard	10 feet
Maximum Building Area:	50%
Maximum Building Height (feet):	50 feet
Maximum Building Height (stories):	3
Off-Street Loading Requirements	See Article X, Section 10.1.4
Off-Street Parking (commercial):	See Article X, Section 10.1.4
Off-Street Parking (residential):	2

*or meet Health Department requirements.

E. Commercial New Construction Compatibility Criteria

The following compatibility criteria will be used to ensure that proposed office uses are consistent with the residential character of the surrounding neighborhood:

1. Building Design and Architectural Compatibility:

- a. Office Buildings must resemble residential structures in style and scale.
- b. Facade materials should match those of nearby homes, such as brick or wood siding.
- c. Roofs must incorporate residential design elements (e.g., pitched roofs, gables) and avoid commercial flat roofs.
- d. Front doors and windows must reflect typical residential designs, with front entrances facing the street and residential-scale windows in traditional patterns.

2. Scale and Massing:

- a. Office structures must not exceed the height, bulk, or massing of neighboring homes, typically limited to 1 or 2 stories.
- b. Setbacks should match those of surrounding homes to maintain consistency in front yards and green space.

3. Traffic and Parking:

- a. Offices must generate minimal traffic, with parking located at the rear or side and screened from public view with landscaping or fencing.
- b. Corner lot driveways should access higher-function streets (e.g., collectors) or streets with more commercial uses, rather than primarily residential streets.
- c. Parking should be minimal and reflect residential patterns, avoiding large surface lots.

4. Landscaping and Screening:

- a. A landscaped buffer must be provided between the office and adjacent residential properties, using trees, shrubs, or fencing to provide privacy and reduce noise.
- b. Parking and utility areas must be screened from public view.

5. Signage:

- a. Signs must be low-profile, unobtrusive, and consistent with the residential aesthetic.

- b. One (1) double sided monument or single sided flat wall-mounted sign is allowed, with a maximum size of 12 square feet per face.
- c. No electronic signs are allowed.
- d. No direct or internal illumination of signs is allowed.

6. Lighting:

- a. All exterior lighting must be residential in style, with low-intensity fixtures that prevent glare or light spillover onto adjacent properties.

7. Hours of Operation:

- a. Office hours should generally be limited to standard business hours (e.g., 8 AM to 6 PM) to prevent disturbance to neighbors.

8. Noise and Activity Levels:

- a. Office uses must generate minimal noise, with special attention to mechanical equipment, HVAC systems, and outdoor spaces to ensure they do not create excessive noise.

F. Residential New Construction Compatibility Criteria

The following compatibility criteria will be used to ensure that proposed residential uses are consistent with the character of the surrounding neighborhood:

1. Single Family or BAA approved Duplex:

- a. Residential structures are limited to 1 or 2 stories.
- b. Setbacks should match those of surrounding existing homes to maintain consistency in front yards and green space.
- c. BAA approved Duplexes must also comply with the form based code requirements for duplexes found in Section 14.1.6.E as defined for Zone R-2.

2. Accessory Dwelling Unit (ADU):

- a. An ADU may not exceed 60% of the size of the principal residence.
- b. If the ADU is to be built in conjunction with a commercial primary structure, the ADU may not exceed 60% of the ground floor square footage of the principal structure, or 60% of the size of the average square footage of the surrounding residential structures, whichever is less.
- c. ADUs may not be located in any front yard or any street side yard on a corner lot.
- d. ADUs must be a minimum of 10 feet from the property lines and any other structures on the same lot.
- e. No ADU may be built prior to a primary structure on the same lot.
- f. Only one ADU is allowed per lot.

22.5 - SIGNS REQUIRING A PERMIT

D. OFFICE SIGNAGE

- 1. The following Zones areas are considered "office use" for the purposes of these sign regulations: PO, and Office areas of a PUD or PDD.

E. OTHER SIGNAGE

OTHER SIGNAGE ALLOWED

Zone	Purpose	Sign Type	Max Area per Face	# Faces	Max Height	Illumination	Number Signs	Electronic allowed?
OA	Identification	Ground	200 sf	2	25 ft	Indirect/Internal	1 per Entrance	yes
		Promotional/Sponsorship materials within Park boundaries are exempt from the Sign Regulations						
PO	Choice of one of the following:							
		Monument	12 sf	2	4 ft	Indirect	1	no
		Wall	12 sf	1	12 ft or at Roofline, whichever is lower	Indirect	1	no
FMOD		Ground	36 sf	2	6 ft	Indirect	1	no
		Wall	36 sf	1	20 ft or at Roofline, whichever is lower	Indirect	1	no