

Chapter 64 Unified Development Code

Contents

Article 5 Procedures	1
Sec. 64-5-1 General Procedural Requirements.....	1
Sec. 64-5-2 Filing Applications	2
Sec. 64-5-3 Pre-Application	2
Sec. 64-5-4 Neighborhood Meetings.....	4
Sec. 64-5-5 Rezoning and Text Amendments	7
Sec. 64-5-6 Conditional Use Permits	13
Sec. 64-5-7 Planned Development	24
Sec. 64-5-8 Previously approved Planning Approvals and Planned Unit Developments	30
Sec. 64-5-9 Appeal of Administrative Zoning Decisions	36
Sec. 64-5-10 Variance of Zoning Ordinance	39
Sec. 64-5-11 Special Exception	41

Article 5 Procedures

Sec. 64-5-1 General Procedural Requirements

- A.** Generally. This Article establishes rules and procedures for specific land use decisions under the jurisdiction of the Planning Commission, Board of Adjustment, the City Council and Administrative decisions; including procedures for pre-application, neighborhood notification, notices and public hearings. See Appendix A for additional procedural requirements that may apply to Developments within the Downtown Development District.
- B.** Permits and Licenses. If a use is subject to the provisions of this Chapter, no permit, license or other document of approval shall be issued by any City department, agency or board until the Director certifies that it complies with this Chapter.
- C.** Failure to Provide Notice. The failure of the City of Mobile to provide any notice not otherwise required under State law does not affect the validity of any action undertaken pursuant to this Chapter, and no person may challenge an action for lack of notice where the City has complied with the applicable state law governing notice.
- D.** Concurrent Applications. All Applications related to the same site are to be filed and heard concurrently.

Sec. 64-5-2 Filing Applications

A. General Requirements

1. Applications filed under this Chapter must include the information required by Article 10 and be made on forms prepared by the Director.
2. The Council shall establish fees for all Applications required in this Chapter and all fees shall be paid at the time of Application submission.

B. Completeness Review

1. All Applications will first be reviewed for completeness. If the Application is not complete, the Applicant will be notified of those parts of the Application that are incomplete.
2. An Application is not considered complete until all required items are submitted.
3. The time period to process an Application does not commence until the Applicant has corrected any deficiencies in the Application and the Application is determined to be complete.
4. Review of Applications for completeness is solely to determine whether preliminary information required for submission is sufficient to allow further processing. It does not constitute a decision as to whether an Application complies with this Chapter.
5. Incomplete Applications will not be processed.

Sec. 64-5-3 Pre-Application

A. Applicability

1. This Section applies to any of the following Applications:
 - (a) Rezoning; or
 - (b) Conditional Use Permit; or
 - (c) Planned Development.

Article 5 Procedures

2. A Pre-Application meeting may be:
 - (a) Requested by the Applicant; or
 - (b) Required by the Director if the Applicant has insufficient familiarity with the approval process; or
 - (c) Scheduled if the Application process would be best served due to the technical aspects, scope or complexity of the proposed project.

B. Timing

1. If the Application requires a Neighborhood Meeting (see Sec. 64-5-4 below), the Pre-Application meeting shall occur at least 14 days before the Neighborhood Meeting is scheduled; or
2. If a Neighborhood Meeting is not required, the Pre-Application meeting shall occur within 180 days prior to filing the Application.

C. Conduct of Pre-Application Meeting

1. The Applicant and Director shall meet at the Planning Department offices or as otherwise agreed.
2. The Applicant shall provide a brief overview of the project, including proposed location, uses, densities, project layout and design features.
3. The Pre-Application meeting shall include the following:
 - (a) A discussion of technical studies, plans and other information deemed relevant to the specific Application request;
 - (b) Discussion of the anticipated level of citizen interest;
 - (c) Identification of neighborhood notification and Neighborhood Meeting requirements, if applicable; and
 - (d) A discussion of the general project consistency with the Comprehensive Plan.
4. The Director will provide information and comments at the Pre-Application meeting but will not take formal action on the Application.

Article 5 Procedures

5. The Applicant's and Director's comments are for purposes of information only and are not binding on either the City or the Applicant.

Sec. 64-5-4 Neighborhood Meetings

A. Applicability

1. Applications. This Section applies to any of the following Applications:
 - (a) Any Rezoning to a higher classification;
 - (b) Any Application to create or modify a Planned Development; or
 - (c) Any Conditional Use Permit.

B. Timing. The Applicant shall facilitate at its sole cost and expense at least one Neighborhood Meeting as follows:

1. Applicants are encouraged to hold the required Neighborhood Meeting prior to the submission of the Application, but the meeting shall be held no more than 60 days prior to the Planning Commission hearing date.
2. If the Neighborhood Meeting has not been held prior to the submission of the Application, then it shall be held no less than twenty-one (21) days prior to the Planning Commission hearing date.

C. Notice

1. Signs
 - (a) The Applicant will provide and place at least one (1) weatherproof sign on the property at a location that is visible from the public right-of-way and no more than ten (10) feet from the front street line of the project site. Minimum height for letters and numbers is four (4) inches for uppercase and three (3) inches for lowercase letters.
 - (b) The sign shall contain the following information:

Article 5 Procedures

- (1)** Type of Application (Rezoning, Conditional Use, Planned Development);
 - (2)** Applicant or Agent's valid phone number; and
 - (3)** the time, date and location of the Neighborhood Meeting.
 - (c)** Posting of multiple signs on the property may be required based on the configuration of the site and the total linear feet of street frontage abutting the development site, as follows:
 - (1)** Corner lots shall include at least one (1) sign posted along each street abutting the project site.
 - (2)** Project sites with continuous frontage abutting existing Streets shall post signs at a ratio of one (1) additional sign per four hundred (400) linear feet of street frontage.
 - (d)** The Applicant shall, at its sole cost and expense:
 - (1)** Install the signs no more than thirty (30) calendar days before, and no later than ten (10) calendar days before, the proposed Neighborhood Meeting.
 - (2)** Remove the sign(s) within three (3) working days after the Neighborhood Meeting.
- 2.** Postal notification. The Applicant shall mail notice of the Neighborhood Meeting, as required for the corresponding Application, fifteen (15) days prior to the Neighborhood Meeting.

D. Proceedings of Neighborhood Meeting

- 1.** At the Neighborhood Meeting the Applicant shall provide a complete overview of the proposed Application, including a project description and a complete explanation and details of the proposed Development which are sufficient for residents to gain an understanding of the specific Application.

Article 5 Procedures

- (a)** For Conditional Use Permits and Planned Developments, a site plan and building elevations shall also be provided.
- 2.** The meeting shall be held on weekdays, between the hours of 4:00 P.M. and 8:00 P.M.
- 3.** Meetings must be held in a public or institutional building such as a school, library, community center or similar facility, which will accommodate the anticipated attendance and be located near the proposed site.

E. Neighborhood Meeting Documentation

- 1.** After the Neighborhood Meeting, the Applicant shall prepare the following summary material as exhibits to the Application:
 - (a)** Dated photograph(s) of the posted sign(s);
 - (b)** The verified address list of surrounding property owners to whom notification was provided;
 - (c)** The date and location of the meeting;
 - (d)** A sign-in sheet documenting meeting attendance;
 - (e)** Written summary or minutes of the meeting;
 - (f)** Copies of any site plans, building elevations or other documents provided or referenced at the meeting.
- 2.** The Neighborhood Meeting documentation, signed by the Applicant, will become part of the Application. The written summary or minutes of the Neighborhood Meeting will be posted on the Planning Commission's website and provided along with the staff report to the Planning Commission.
- 3.** If at the time of Application the Neighborhood Meeting has not occurred, then the Application shall include the following:
 - (a)** Statement of the date, time and location where the Neighborhood meeting will occur; and

Article 5 Procedures

- (b) A list of all property owners receiving notice.
- 4. If at the time of Application the Neighborhood Meeting has not occurred, complete Neighborhood Meeting documentation must be submitted no later than 15 days prior to the Planning Commission hearing date.
 - (a) Failure to submit required Neighborhood Meeting documentation within the prescribed time period will result in an automatic holdover of the Application(s).
 - (b) Holdovers due to failure to submit required documentation will be charged an amount equal to the initial Application fee, including postage.
 - (c) Any material changes to the Application(s) and associated required plans and documents will result in an automatic holdover. Holdovers will be charged an amount equal to the initial Application fee, including postage.
- 5. An Application subject to the requirements of this Section will not be considered complete unless the above requirements are met and the required documentation is timely submitted.

Sec. 64-5-5 Rezoning and Text Amendments

- A. Applicability. This Section applies to any Rezoning or text amendment, defined as follows:
 - 1. Rezoning. Any amendment by Ordinance to the Zoning Map or any requirements or restrictions imposed as a condition of a previous Rezoning.
 - 2. Text Amendment. Any amendment by Ordinance to the regulations or standards established in this Chapter.

Article 5 Procedures

B. Initiation

1. A Rezoning may be initiated by:
 - (a) The City Council on its own motion;
 - (b) The Planning Commission on its own motion; or
 - (c) The property Owner, or any authorized agent of the property Owner, by filing a written Application with the Director.

2. A Text Amendment or the Creation or Amendment of a Specific Area Plan (regulating plans, Neighborhood Plans and overlay districts) may be initiated by:
 - (a) The City Council on its own motion;
 - (b) The Planning Commission on its own motion; or
 - (c) A citizen, neighborhood based/community action group/neighborhood that has developed a formalized plan and built neighborhood consensus, with the support of their City Council representative; said plan to consist of design standards, use regulations and corresponding zoning districts.

C. Notice

1. The following notice is required for a Rezoning, Text Amendment or the Creation or Amendment of a Specific Area Plan:
 - (a) Notice Format

Article 5 Procedures

Table 64-5-5.1 Type and Description of Notice--Rezoning and Text Amendments

Notice	When	Where / To Whom / Additional Requirements
Mail	15 days prior to hearing before the Planning Commission and the City Council	<ul style="list-style-type: none"> • Mailed notice to each owner of property which either abuts or lies within 300 feet of the property the subject of the Application. • Applicant to furnish names and addresses. • The Director or City Clerk as applicable, will mail the notices. • First Class mail is sufficient.
Sign	Posted 15 days prior to hearing before the Planning Commission	<ul style="list-style-type: none"> • Posted on subject Property. • All signs must be posted in visible locations.
Publication	15 days or 3 consecutive weeks prior to the hearing before the City Council	<ul style="list-style-type: none"> • Newspaper of general circulation in the City, per Code of Ala. § 11-52-77.

(b) The sign and mailing requirements above may be waived in whole or in part, when the proposed amendment is initiated by the City Council or the Planning Commission, and:

- (1)** The proposed amendment is a text amendment; or
- (2)** The proposed amendment would affect a general or substantial change in the districts set out on the Zoning Map.

(c) Notice shall be given:

(1) Before the Planning Commission Hearing:

a. Mail: Notice shall include the following information:

- 1.** A synopsis of the proposal;
- 2.** Time, date, and place of the public hearing or meeting;
- 3.** A telephone number for the Planning Department; and
- 4.** The Planning Department’s website address (URL).

b. Sign: Posted by the City.

(2) Before the City Council Hearing:

a. Mail: Notice shall include the following information:

- 1.** A synopsis of the proposal;
- 2.** Time, date, and place of the public hearing or meeting;
- 3.** A telephone number for the City Council Office; and

Article 5 Procedures

4. The City Council's website address (URL).

b. Publication in accordance with the requirements of Alabama Code Section 11-52-77.

D. Decision

1. Administrative Review. The Director shall transmit the Application with a report to the Planning Commission within forty-five (45) days after it is deemed complete.
2. Planning Commission Action
 - (a) If an Application is withdrawn after notice for a public hearing has been sent, then the Planning Commission shall not consider the same or similar Application within a period of six (6) months.
 - (b) An Application may receive a maximum one (1) holdover request and the Applicant shall be responsible for any costs incurred for re-notification of property owners.
 - (c) Following the public hearing, the Planning Commission shall prepare a record of its proceedings and recommend that the Application be approved, approved with conditions, or denied. The Planning Commission recommendation shall be filed with the City Council within fifteen (15) days after the date of the public hearing.
3. City Council Action
 - (a) The Council shall not take action on the Application until the Council receives the Planning Commission's final report and recommendation.
 - (b) Within thirty (30) days of receipt of the Planning Commission's final report and recommendation, the City Council shall place the item on its agenda for the scheduling of a public hearing.
 - (c) No amendment shall be enacted unless the City Council conducts a public hearing. The City Clerk shall notify the Applicant of the time

Article 5 Procedures

and place of the public hearing and give public notice as required by this Chapter.

(d) At the conclusion of the hearing, the City Council shall approve, approve with conditions or deny the amendment.

4. Conditions. A decision may:

(a) Attach appropriate conditions to mitigate the impacts of the proposed development, such as restrictions relative to the site plan and any future modifications, Setback requirements, and other restrictions appropriate to mitigate the impacts of the development; and

(b) Conditions fixed in amendments relating to rezoning, including voluntary use restrictions, shall run with the land in the area involved and bind Applicants for amendments, their heirs, successors and assigns, and be recorded in the Office of the Judge of Probate, by the Applicant, with a copy of the probated record provided to the Director.

E. Approval Criteria

1. This Chapter, including the zoning map, is based on comprehensive planning studies and is intended to carry out the objective of a sound, stable and desirable development. It is recognized that casual change or amendment to the Chapter would be detrimental to the achievement of that objective.

2. Changes to this Chapter are committed to the City Council's legislative discretion and should be consistent with the Comprehensive Plan.

3. An Application shall include a statement of the justification for the proposed amendment that addresses all of the following:

(a) Consistency. Whether the proposed amendment is consistent with the Comprehensive Plan;

Article 5 Procedures

- (b) Mistake. For a Rezoning, whether there was a mistake or error in the original zoning map; and
 - (c) Compatibility. Whether the proposed amendment is compatible with:
 - (1) The current development trends, if any, in the vicinity of the subject property;
 - (2) Surrounding land uses;
 - (3) Would adversely impact neighboring properties; or
 - (4) Cause a loss in property values.
 - (d) Health, Safety and General Welfare. Whether the proposed amendment promotes the community's public health, safety, and general welfare;
 - (e) Capacity. Whether the infrastructure is in place to accommodate the proposed amendment; and
 - (f) Change. Whether changed or changing conditions in a particular area make an amendment necessary and desirable.
 - 4. Benefits Consideration. In addition, consideration should also be given to the City's and the larger community's best interests and the need, benefit, or public purpose of the proposed request.
- F. Subsequent Rezoning Applications.** The area or any portion thereof that is the subject of a proposed rezoning shall not be considered again by the Planning Commission or City Council for the same or similar Application or use for at least six (6) months from the date the Application was denied or the date of withdrawal if any of the following applies:
- 1. The Application has been recommended for denial by the Planning Commission;
 - 2. The Application has been denied by the City Council;

Article 5 Procedures

3. The Application has been formally noticed for public hearing with the Planning Commission but is subsequently withdrawn; or
4. The Application has been formally noticed for public hearing with the City Council but is subsequently withdrawn.

G. Appeals. Appeal of any City Council action may be made to the Mobile County Circuit Court within forty-two (42) days of the date of the final Council action.

H. Recording and Recordkeeping

1. Restrictions and conditions concerning the permissible uses of the property shall be recorded in the Office of the Judge of Probate. A copy of the recorded document shall be provided to the Director. Any and all recording costs shall be borne by the Applicant.
2. Upon receipt of the recorded document, the Director shall revise the applicable map layers in the City of Mobile Geographic Information Systems (GIS) to conform to the approved rezoning.

Sec. 64-5-6 Conditional Use Permits

A. Applicability. This Section applies to any use designated as a Conditional Use in the applicable zoning district.

B. Initiation. A Conditional Use Permit application may be initiated by the property owner, or any authorized agent of the property owner, by filing a written Application with the Director.

C. Notice

1. The following notice is required for a Conditional Use Permit Application:

Article 5 Procedures

Table 64-5-6.1 Type and Description of Notice—Conditional Use Permit

Notice	When	Where / To Whom / Additional Requirements
Mail	15 days prior to hearing before the Planning Commission and the City Council	<ul style="list-style-type: none"> • Mailed notice to each owner of property which either abuts or lies within 300 feet of the property the subject of the Application. • Applicant to furnish names and addresses. • The Director or City Clerk as applicable, will mail the notices. • First Class mail is sufficient.
Sign	Posted 15 days prior to hearing before the Planning Commission	<ul style="list-style-type: none"> • Posted on subject Property. • All signs must be posted in visible locations.
Publication	15 days or 3 consecutive weeks prior to the hearing before the City Council	<ul style="list-style-type: none"> • Newspaper of general circulation in the City, per Code of Ala. § 11-52-77.

2. Notice shall be given:

(a) Before the Planning Commission Hearing:

(1) Mail: Notice shall include the following information:

- a.** A synopsis of the proposal;
- b.** Time, date and place of the public hearing or meeting;
- c.** A telephone number for the Planning Department; and
- d.** The Planning Department’s website address (URL).

(2) Sign: Posted by the City.

(b) Before the City Council Hearing:

(1) Mail: Notice shall include the following information:

- a.** A synopsis of the proposal;
- b.** Time, date and place of the public hearing or meeting;
- c.** A telephone number for the City Council Office; and
- d.** The City Council’ s website address (URL).

(2) Publication in accordance with the requirements of Alabama Code Section 11-52-77, as may amended.

D. Decision

1. Administrative Review. The Director shall transmit the Application with a report to the Planning Commission within forty-five (45) days after it is deemed complete.
2. Planning Commission Action
 - (a) If an Application is withdrawn after notice for a public hearing has been sent, then the Planning Commission will not consider the same or similar Application within a period of six (6) months.
 - (b) An Application may receive a maximum one (1) holdover request and the Applicant shall be responsible for any costs incurred for re-notification of property owners.
 - (c) Following the public hearing, the Planning Commission shall prepare a record of its proceedings and recommend that the Application be approved, approved with conditions, or denied. The Planning Commission recommendation shall be filed with the City Council within fifteen (15) days after the date of the public hearing.
3. City Council Action
 - (a) The Council shall not take action on the Application until the Council receives the Planning Commission's final report and recommendation.
 - (b) Within thirty (30) days of receipt of the Planning Commission's final report and recommendation, the City Council shall place the item on its agenda for the scheduling of a public hearing.
 - (c) No Conditional Use Permit shall be enacted unless the City Council conducts a public hearing. The City Clerk shall notify the Applicant of the time and place of the public hearing and give public notice as required by this Chapter.
 - (d) At the conclusion of the hearing, the City Council shall approve, approve with conditions, or deny the Conditional Use Permit.

Article 5 Procedures

4. Conditions

- (a)** The City Council may attach appropriate conditions to mitigate the impacts of the proposed development, such as restrictions relative to the site plan and any future modifications, Setback requirements and other restrictions appropriate to mitigate the impacts of the development;
- (b)** If a Conditional Use Permit and site plan is approved, the Applicant may not commence construction or use of any building, structure or use unless:
 - (1)** The Applicant submits a final site plan reflecting site specific conditions of approval to the Director, and
 - (2)** The Director determines that the site plan is consistent with the approved site Plan and any conditions of approval; and,
 - (3)** All required permits are issued.
- (c)** Conditions, including voluntary use restrictions, and required conformance with an approved Site Plan, shall run with the land and bind Applicants, their heirs, successors and assigns, and be recorded by the Applicant in the Office of the Judge of Probate, with a copy of the probated record provided to the Director.

E. Approval Criteria. The Planning Commission shall not recommend a Conditional Use Permit for approval, and the City Council shall not approve the Conditional Use Permit, unless the proposed use:

- 1.** Is consistent with all applicable requirements of this Chapter, including:
 - (a)** Any applicable development standards; and
 - (b)** Any applicable use regulations.
- 2.** Is compatible with the character of the surrounding neighborhood;

Article 5 Procedures

- 3.** Will not impede the orderly development and improvement of surrounding property; and
- 4.** Will not adversely affect the health, safety or welfare of persons living or working in the surrounding neighborhood, or be more injurious to property or improvements in the neighborhood. In making this determination, the Planning Commission and City Council shall consider:
 - (a)** The location, type and height of buildings or structures;
 - (b)** The type and extent of landscaping and screening;
 - (c)** Lighting;
 - (d)** Hours of operation; and
 - (e)** Other conditions that might require mitigation of the adverse impacts of the proposed development.
- 5.** Is designed to provide ingress and egress that minimizes traffic hazards and traffic congestion on the public roads;
- 6.** Is designed to minimize the impact on storm water facilities;
- 7.** Will be adequately served by water and sanitary sewer services;
- 8.** Is not noxious or offensive by reason of emissions, vibration, noise, odor, dust, smoke or gas; and
- 9.** Shall not be detrimental to or endanger the public health, safety or general welfare.
- 10.** Benefits Consideration. In addition, consideration should also be given to the City's and the larger community's best interests and the need, benefit, or public purpose of the proposed request.
- 11.** Criteria by Use. The Planning Commission and City Council shall give careful consideration to the warrants and criteria set forth in this section in judging applications for Conditional Use Permits involving the following uses. In considering a Conditional Use Permit, the Planning Commission and City Council may attach such reasonable conditions and safeguards in addition to those set forth in this section, as they may deem necessary to implement the purposes of this Chapter.

Article 5 Procedures

- (a)** Bed and Breakfast Establishments. It is the intent of this Chapter that Bed and Breakfast uses in an area where they are, or may be permitted, will create no greater impact than that of any private residence with temporary houseguests. In line with these general considerations, the following site and design criteria are established:
- (1)** The owner of the establishment must reside on the site. There shall be no more than one (1) nonresident employee.
 - (2)** No more than eight (8) guest rooms shall be included in any one establishment.
 - (3)** Except for serving meals to overnight guests, the establishment shall not engage in the restaurant business.
 - (4)** Guest rooms shall not contain cooking facilities.
 - (5)** Guest stays shall not exceed fourteen (14) consecutive nights.
 - (6)** The operation shall not alter the residential nature of the neighborhood or the character of the dwelling as a residence.
 - (7)** The refuse area shall be screened from view, and shall be no closer than twenty (20) feet from any property line and 100 feet from any dwelling on an adjacent lot.
 - (8)** There shall be a minimum of two (2) off-street parking spaces for the principal occupants of the residence, and a minimum of one (1) additional parking space per guest room. The additional parking spaces shall not be located in any required front or side yard setback area and shall be screened from the view of adjacent properties by natural or artificial means.
 - (9)** No more than one (1) identification sign shall be permitted for the Bed and Breakfast use. Such signs shall state only the name and street address of the establishment. It shall not exceed four (4) square feet in sign face area. No other signage or advertising copy such as Vacancy/No Vacancy, Rent/Lease, etc. is permitted.

Article 5 Procedures

(b) Bar/Lounge

- (1)** The Planning Commission and City Council should determine to their satisfaction that the activities to be conducted on the premises will not be detrimental to the neighborhood, taking into account the physical relationship of the proposed use to the surrounding structures and properties, the probable hours of operation, parking and the beneficial or adverse effects of the proposed use and structure upon the neighborhood.
- (2)** No outside entertainment or music shall be permitted.
- (3)** Entertainment or music shall not be audible outside the interior of the licensed premises.
- (4)** No entertainment or music shall be permitted or be audible in the areas of any private sidewalk, courtyard, or patio seating; and
- (5)** As a condition of approval, the Planning Commission and City Council may limit the hours of operation and/or the hours when entertainment or music can be provided.

(c) Community Residences

- (1)** Must meet all criteria and requirements set forth in Article 4.

(d) Daycare, Child (Home Based 7-12 Children)

- (1)** All parking shall comply with the Parking Requirements of Article 3, Section 12, except that the parking and driveway may be of an Approved Alternative Paving Surface, and shall comply with the size, location, and other specification requirements set forth in Section 64-3-12.
- (2)** The following minimum amount of off-street parking must be provided:

Article 5 Procedures

- a. The minimum number required for residences as set forth in Section 64-3-12 and Table 64-3-12.1 (i.e., two (2) per dwelling unit for a single-family detached dwelling); plus
 - b. One (1) space for each employee who is not a full-time permanent resident of the home; plus
 - c. One (1) space for every three (3) children that the home daycare is licensed to serve by the Department of Human Resources.
 - (3)** The indoor floor space of the home must be adequate in size to accommodate the number of children served but in no event may be less than the number required by applicable regulations of the Department of Human Resources.
 - (4)** The outdoor play area shall be adequate in size to accommodate the number of children served but in no event may be less than the number required by applicable regulations of the Department of Human Resources.
 - (5)** The outdoor play area shall be enclosed by a fence or wall at least four (4) feet in height.
 - (6)** The home must be the primary residence of the operator of the daycare.
- (e)** Marina
- (1)** Shall not include activities such as boat building or the repair of barges or other commercial watercraft.
- (f)** Private or Parochial School
- (1)** Building coverage shall not exceed forty (40) percent of the total lot area.
 - (2)** Not less than two (2) off-street parking spaces per classroom shall be provided for an elementary school, three (3) per

Article 5 Procedures

classroom for a junior high school and eight (8) per classroom for a senior high school.

- (3)** Minimum yard dimensions should be: Front Yard depth, thirty (30) feet; Side Yard width, forty (40) feet; Rear Yard depth, forty (40) feet, provided that each of these dimensions should be increased by one foot for every foot by which the height of the building exceeds thirty-five (35) feet.
 - (4)** Playgrounds, play fields and other active recreation facilities should not extend into required yards, and no structure for seating spectators at athletic events (except a gymnasium or auditorium completely enclosed within a building) should be located closer than two hundred (200) feet to any residential property line. One off-street parking space should be provided for every three (3) spectator seats in any such facility.
 - (5)** Off-street school bus loading spaces should be provided when school buses are to be used.
 - (6)** Fences or planted buffer strips should be provided as determined by the Board to be necessary for safety purposes or to minimize possible adverse effects upon adjacent property.
- (g)** Short-Term Rentals. It is the intent of this Chapter that Short-Term Rental uses in an area where they are, or may be permitted, will create no greater impact than that of any private residence with temporary houseguests. In line with these general considerations, the following site and design criteria are established:
- (1)** There shall be no on-site employees.
 - (2)** No more than eight (8) guest rooms shall be included in any one establishment.
 - (3)** The establishment shall not serve meals.
 - (4)** Guest rooms shall not contain cooking facilities.

Article 5 Procedures

- (5)** A valid City of Mobile business license must be obtained for each discrete Short-Term Rental location and the business license number must be stated on any advertisement or listing for each Short-Term Rental. Provided, however, that Short-Term Rentals containing multiple units within a single structure that can be rented separately shall only be required to obtain a single license for each structure.
- (6)** The operation shall not alter the residential nature of the neighborhood or the character of the dwelling as a residence.
- (7)** The refuse are shall be screened from view, and shall be no closer than twenty (20) feet from any property line and 100 feet from any dwelling on an adjacent lot.
- (8)** There shall be a minimum of two (2) off-street parking spaces for the principal occupants of the residence (if any), and a minimum of one (1) additional parking space per guest room. The additional parking spaces shall not be located in any required front or side yard setback area and shall be screened from the view of adjacent properties by natural or artificial means.
- (9)** No signage or advertising copy such as Vacancy/No Vacancy, Rent/Lease, etc. is permitted.
- (10)** The name and telephone number of a local responsible party shall be conspicuously posted within each Short-Term Rental. The local responsible party shall answer and respond to calls twenty-four (24) hours a day, seven (7) days a week for the duration of each Short-Term Rental period to address problems or complaints associated with the Short-Term Rental.
- (11)** Each Short-Term Rental must meet applicable building and fire codes and be equipped with the following safety equipment and features:
 - a.** Operational smoke and carbon monoxide detectors.

Article 5 Procedures

- b. One (1) 2.5 lb. Class A-B-C fire extinguisher per floor.
- c. Prominently displayed and legible 9-1-1 address on building exterior.

(12) May not occupy any accessory structure, accessory dwelling unit, outdoor space, or recreational vehicle on the site.

(13) A Short-Term Rental shall only be rented to one (1) group or person at a time (ex. renting out multiple individual rooms to multiple separate groups or persons is not permitted).

- F.** Subsequent Applications. The area or any portion thereof that is the subject of the proposed Conditional Use Permit shall not be considered again by the Planning Commission or City Council for the same or similar Application or use for at least six (6) months from the date the Application was denied or the date of withdrawal if any of the following applies:
- 1. The Application has been recommended for denial by the Planning Commission;
 - 2. The Application has been denied by the City Council;
 - 3. The Application has been formally noticed for public hearing with the Planning Commission but is subsequently withdrawn; or
 - 4. The Application has been formally noticed for public hearing with the City Council but is subsequently withdrawn.
- G.** Appeals. Appeal of any City Council action may be made to the Mobile County Circuit Court within forty-two (42) days of the date of the Council Action.
- H.** Expiration. If no construction permit is obtained to implement the approved Conditional Use Permit within two (2) years of final approval, the approved Conditional Use Permit shall expire, unless

Article 5 Procedures

an extension request is filed with the Planning Commission prior to expiration, and subsequently approved by the City Council.

I. Recording and Recordkeeping

1. The Conditional Use Permit, including all restrictions and conditions concerning the uses of the property, shall be recorded in the Office of the Judge of Probate. A copy of the recorded document shall be provided to the Director. Any and all recording costs shall be borne by the Applicant.
2. Upon receipt of the recorded document, the Director shall revise the applicable map layers in the City of Mobile Geographic Information Systems (GIS) to reflect the approved Conditional Use Permit.

Sec. 64-5-7 Planned Development

- A. Applicability. This Section applies to any Application seeking a Planned Development zoning district designation.
- B. Initiation. A Planned Development Application may be initiated by the property owner, or any authorized agent of the property owner, by filing a written Application with the Director.
- C. Notice
 1. The following notice is required for a Planned Development Application:

Article 5 Procedures

Table 64-5-7.1 Type and Description of Notice—Planned Development

Notice	When	Where / To Whom / Additional Requirements
Mail	15 days prior to hearing before the Planning Commission and the City Council	<ul style="list-style-type: none">• Mailed notice to each owner of property which either abuts or lies within 300 feet of the property the subject of the Application.• Applicant to furnish names and addresses.• The Director or City Clerk as applicable, will mail the notices.• First Class mail is sufficient.
Sign	Posted 15 days prior to hearing before the Planning Commission	<ul style="list-style-type: none">• Posted on subject Property.• All signs must be posted in visible locations.
Publication	15 days or 3 consecutive weeks prior to the hearing before the City Council	<ul style="list-style-type: none">• Newspaper of general circulation in the City, per Code of Ala. § 11-52-77.

2. Notice shall be given:

(a) Before the Planning Commission Hearing:

(1) Mail

- a.** A synopsis of the proposal;
- b.** Time, date and place of the public hearing or meeting;
- c.** Telephone number for the Planning Department; and
- d.** The Planning Department’s website address (URL).

(2) Sign: Posted by the City.

(b) Before the City Council Hearing:

(1) Mail: Notice shall include the following information:

- a.** A synopsis of the proposal;
- b.** Time, date and place of the public hearing or meeting;
- c.** A telephone number for the City Council Office; and
- d.** The City Council’s website address (URL).

(2) Publication in accordance with the requirements of Alabama Code Section 11-52-77, as may amended.

D. Decision

- 1. Administrative Review.** The Director shall transmit the Application with a report to the Planning Commission within forty five (45) days after it is deemed complete.
- 2. Planning Commission Action**
 - (a)** If an Application is withdrawn after notice for a public hearing has been sent, then the Planning Commission shall not consider the same or similar Application within a period of six (6) months.
 - (b)** An Application may receive a maximum one (1) holdover request and the Applicant shall be responsible for any costs incurred for re-notification of property owners.
 - (c)** Following the public hearing, the Planning Commission shall prepare a record of its proceedings and recommend that the Application be approved, approved with conditions, or denied. The Planning Commission recommendation shall be filed with the City Council within fifteen (15) days after the date of the public hearing.
- 3. City Council Action**
 - (a)** The Council shall not take action on the Application until the Council receives the Planning Commission's final report and recommendation.
 - (b)** Within thirty (30) days of receipt of the Planning Commission's final report and recommendation, the City Council shall place the item on its agenda for the scheduling of a public hearing.
 - (c)** No Planned Development shall be enacted unless the City Council conducts a public hearing. The City Clerk shall notify the Applicant of the time and place of the public hearing and give public notice as required by this Chapter.
 - (d)** At the conclusion of the hearing, the City Council shall approve, approve with conditions or deny the amendment.

Article 5 Procedures

4. Conditions

- (a)** The City Council may attach appropriate conditions to mitigate any impact of the proposed development, such as restrictions relative to the site plan and any future modifications, Setback requirements and other restrictions appropriate to mitigate the impacts of the development.
- (b)** An Application for a Planned Development must include a site plan. The City Council may place conditions on the Planned Development requiring the development to comply with the site plan. If a Planned Development and site plan is approved, the Applicant may not commence construction or use of any building, structure or use unless:
 - (1)** The Applicant submits a final site plan reflecting site specific conditions of approval to the Director;
 - (2)** The Director determines that the site plan is consistent with the approved Site Plan and any conditions of approval; and,
 - (3)** All required permits are issued.
- (c)** Conditions, including voluntary use restrictions, and required conformance with an approved Site Plan, shall run with the land and bind Applicants, their heirs, successors and assigns, and be recorded by the Applicant in the Office of the Judge of Probate, with a copy of the probated record provided to the Director.

E. Approval Criteria. The Planning Commission shall not recommend a Planned Development for approval, and the City Council shall not approve such an Application, unless the proposed Planned Development:

- 1.** Is consistent with all applicable requirements of this Chapter;
- 2.** Is compatible with the character of the surrounding neighborhood;

Article 5 Procedures

- 3.** Will not impede the orderly development and improvement of surrounding property; and
- 4.** Will not adversely affect the health, safety or welfare of persons living or working in the surrounding neighborhood, or be more injurious to property or improvements in the neighborhood. In making this determination, the Planning Commission and City Council shall consider:
 - (a)** The location, type and height of buildings or structures;
 - (b)** The type and extent of landscaping and screening;
 - (c)** Lighting;
 - (d)** Hours of operation; or
 - (e)** Other conditions that might require mitigation of the adverse impacts of the proposed development.
- 5.** Is designed to provide ingress and egress that minimizes traffic hazards and traffic congestion on the public roads;
- 6.** Is designed to minimize the impact on storm water facilities;
- 7.** Will be adequately served by water and sanitary sewer services;
- 8.** Is not noxious or offensive by reason of emissions, vibration, noise, odor, dust, smoke or gas;
- 9.** Shall not be detrimental or endanger the public health, safety or general welfare;
- 10.** Satisfies the minimum contiguous acreage requirements of Section 64-2-23.A;
- 11.** Accommodates existing urban amenities and natural features;
- 12.** Optimizes available public utilities, Streets and community facilities; and
- 13.** Provides open space through efficient or innovative site design.
- 14.** Benefits Consideration. In addition, consideration should also be given to the City's and the larger community's best interests and the need, benefit, or public purpose of the proposed request.

Article 5 Procedures

- F. Subsequent Applications.** The area or any portion thereof that is the subject of the proposed Planned Development shall not be considered again by the Planning Commission or City Council for the same or similar Application or use for at least six (6) months from the date the Application was denied or the date of withdrawal if any of the following applies:
1. The Application has been recommended for denial by the Planning Commission;
 2. The Application has been denied by the City Council,
 3. The Application has been formally noticed for public hearing with the Planning Commission but is subsequently withdrawn; or
 4. The Application has been formally noticed for public hearing with the City Council but is subsequently withdrawn.
- G. Appeals.** Appeal of any City Council action may be made to the Mobile County Circuit Court within forty-two (42) days of the date of the Council Action.
- H. Expiration.** If no construction permit is obtained to implement the approved Planned Development within two (2) years of final approval, the approved Planned Development shall expire, unless an extension request is filed with the Planning Commission prior to expiration, and subsequently approved by the City Council.
- I. Recording and Recordkeeping**
1. The Planned Development, including all restrictions and conditions concerning the uses of the property, shall be recorded in the Office of the Judge of Probate. A copy of the recorded document shall be provided to the Director. Any and all recording costs shall be borne by the Applicant.

Article 5 Procedures

2. Upon receipt of the recorded document, the Director shall revise the applicable map layers in the City of Mobile Geographic Information Systems (GIS) to reflect the approved Planned Development.

Sec. 64-5-8 Previously approved Planning Approvals and Planned Unit Developments

A. Applicability

1. **Planning Approvals.** All Planning Approvals approved prior to the effective date of this Chapter shall expire if development has not commenced within two (2) years of the effective date of this Chapter, unless an extension request is filed with the Planning Commission prior to the date of expiration, and is subsequently approved by the City Council.
2. **Planned Unit Developments.** All Planned Unit Developments approved prior to the effective date of this Chapter shall expire if development has not commenced within two (2) years of the effective date of this Chapter, unless an extension request is filed with the Planning Commission prior to the date of expiration, and is subsequently approved by the City Council.

B. Modifications

1. **Minor changes.** Landscaping and tree plantings, building elevation, building materials, parking lot design, screening fences or walls, building location (not reducing Setbacks or buffers), or similar elements of site or building design, may be allowed, subject to administrative approval of a revised site plan.
2. **Major modifications.** Major modifications to an unexpired Planning Approval or Planned Unit Development require review and recommendation by the Planning Commission and approval by the City Council.

Article 5 Procedures

(a) Notice. The following notice is required for Major modifications to a Planning Approval or Planned Unit Development:

Table 64-5-8.1 Type and Description of Notice—Previously Approved Planning Approvals and Planned Unit Developments

Notice	When	Where / To Whom / Additional Requirements
Mail	15 days prior to hearing before the Planning Commission and the City Council	<ul style="list-style-type: none"> • Mailed notice to each owner of property which either abuts or lies within 300 feet of the property the subject of the Application. • Applicant to furnish names and addresses. • The Director or City Clerk as applicable, will mail the notices. • First Class mail is sufficient.
Sign	Posted 15 days prior to hearing before the Planning Commission	<ul style="list-style-type: none"> • Posted on subject Property. • All signs must be posted in visible locations.
Publication	15 days or 3 consecutive weeks prior to the hearing before the City Council	<ul style="list-style-type: none"> • Newspaper of general circulation in the City, per Code of Ala. § 11-52-77.

(1) Notice shall be given:

a. Before the Planning Commission Hearing:

1. Mail: Notice shall include the following information:

- i** A synopsis of the proposal;
- ii** Time, date and place of the public hearing or meeting;
- iii** Telephone number for the Planning Department; and
- iv** The Planning Department’s website address (URL).

2. Sign

b. Before the City Council Hearing:

1. Mail: Notice shall include the following information:

- i** A synopsis of the proposal;
- ii** Time, date and place of the public hearing or meeting;

Article 5 Procedures

- iii** A telephone number for the City Council Office;
and
- iv** The City Council's website address (URL).

- 2.** Publication in accordance with the requirements of Alabama Code Section 11-52-77, as may amended.

(b) Decision.

- (1)** Administrative Review. Applications for major modifications shall be filed with the Director. The Director shall transmit the Application with a report to the Planning Commission within forty-five (45) days after it is deemed complete.

(2) Planning Commission Action

- a.** If an Application is withdrawn after notice for a public hearing has been sent, then the Planning Commission shall not consider the same or similar Application within a period of six (6) months.
- b.** An Application may receive a maximum one (1) holdover request and the Applicant shall be responsible for any costs incurred for re-notification of property owners.
- c.** Following the public hearing, the Planning Commission shall prepare a record of its proceedings and recommend that the Application be approved, approved with conditions, or denied. The Planning Commission recommendation shall be filed with the City Council within 15 days after the date of the public hearing.

(3) City Council Action

- a.** The Council shall not take action on the Application until the Council receives the Planning Commission's final report and recommendation.

Article 5 Procedures

- b.** Within thirty (30) days of receipt of the Planning Commission's final report and recommendation, the City Council shall place the item on its agenda for the scheduling of a public hearing.
- c.** No major modification shall be made unless the City Council conducts a public hearing. The City Clerk shall notify the Applicant of the time and place of the public hearing and give public notice as required by this Chapter.
- d.** At the conclusion of the hearing, the City Council shall approve, approve with conditions, or deny the amendment.

(4) Conditions

- a.** The City Council may attach appropriate conditions to mitigate any impact of the development as modified, such as restrictions relative to the site plan, setback requirements, and other restrictions appropriate to mitigate the impacts.
- b.** An Application for a Major Modification must include a site plan. If a Major Modification is approved, the Applicant may not commence construction or use of the site unless:
 - 1.** The Applicant submits a final site plan reflecting site specific conditions of approval to the Director, and
 - 2.** The Director determines that the site plan is consistent with the approved site Plan and any conditions of approval; and,
 - 3.** All required permits are issued.
- c.** Conditions, including voluntary use restrictions, and required conformance with an approved Site Plan, shall run with the land and bind Applicants, their heirs, successors and assigns, and be recorded by the Applicant in the Office

Article 5 Procedures

of the Judge of Probate, with a copy of the probated record provided to the Director.

- (5) Approval Criteria.** The Planning Commission shall not recommend a major modification for approval, and the City Council shall not approve the modification, unless the proposed modification:
- a.** Is consistent with all applicable requirements of this Chapter;
 - b.** Is compatible with the character of the surrounding neighborhood;
 - c.** Will not impede the orderly development and improvement of surrounding property;
 - d.** Will not adversely affect the health, safety or welfare of persons living or working in the surrounding neighborhood, or be more injurious to property or improvements in the neighborhood:
 - 1.** In making this determination, the Planning Commission and City Council shall consider the location, type and height of buildings or structures, the type and extent of landscaping and screening, lighting, hours of operation or any other conditions that mitigate the impacts of the proposed development; and
 - 2.** Includes adequate public facilities and utilities;
 - e.** Is subject to adequate design standards to provide ingress and egress that minimize traffic hazards and traffic congestion on the public roads;
 - f.** Is not noxious or offensive by reason of emissions, vibration, noise, odor, dust, smoke or gas; and

Article 5 Procedures

- g.** Shall not be detrimental or endanger the public health, safety or general welfare.
 - h.** Benefits Consideration. In addition, consideration should also be given to the City's and the larger community's best interests and the need, benefit, or public purpose of the proposed request.
- (c)** Subsequent Applications. The site subject to the Major Modification shall not be considered again by the Planning Commission or City Council for at least six (6) months from the date the Application was denied or the date of withdrawal if any of the following applies:
 - (1)** The Application has been recommended for denial by the Planning Commission;
 - (2)** The Application has been denied by the City Council,
 - (3)** The Application has been formally noticed for public hearing with the Planning Commission but is subsequently withdrawn;
or
 - (4)** The Application has been formally noticed for public hearing with the City Council but is subsequently withdrawn.
- (d)** Appeals. Appeal of any City Council action may be made to the Mobile County Circuit Court within forty-two (42) days of the date of the Council Action.
- (e)** Expiration. If no construction permit is obtained to implement the approved modification within two (2) years after approval, the approved modification shall expire, unless an extension request is filed with the Planning Commission prior to expiration, and subsequently approved by the City Council.
- (f)** Recording and Recordkeeping
 - (1)** The modification, including all restrictions and conditions concerning the uses of the property shall be recorded in the

Article 5 Procedures

Office of the Judge of Probate. A copy of the recorded document shall be provided to the Director. Any and all recording costs shall be borne by the Applicant.

- (2) Upon receipt of the recorded document, the Director shall revise the applicable map layers in the City of Mobile Geographic Information Systems (GIS) to reflect the approved Planned Development.

Sec. 64-5-9 Appeal of Administrative Zoning Decisions

- A. **Applicability.** Any administrative decision by the Director regarding the applicability or interpretation of the any provision of this Chapter may be appealed to the Board of Adjustment by any person aggrieved or by any officer, department or board of the City affected by any decision of the Director with respect to the administration or enforcement of this Chapter. The Board of Adjustment is authorized to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this article or of any ordinance adopted pursuant thereto.
- B. **Initiation**
 1. An appeal is initiated by filing a notice of appeal with the Director and the Board of Adjustment.
 2. The notice of appeal shall be filed within ten (10) days from the date of the decision.
 3. The notice of appeal shall specify the grounds upon which the appeal is taken.

Article 5 Procedures

4. Upon receipt of a notice of appeal, the Director shall transmit to the Board of Adjustment all of the original documents and materials, or true copies, constituting the record upon which the order or decision appealed from is based.

C. Effect of Appeal

1. 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 that by reason of facts stated in the certificate a stay would in his or her 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 offices from whom the appeal is taken and on due cause shown.

D. Hearings

1. The Board shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time.
2. The hearing shall be open to the public.
3. Any interested party may appear in person or by agent or by attorney.

E. Notice The following notice is required for a hearing on an Appeal of an Administrative Zoning Decision:

Article 5 Procedures

Table 64-5-9.1 Type and Description of Notice—Appeal of Administrative Zoning Decisions

Notice	When	Where / To Whom / Additional Requirements
Mail	15 days prior to the hearing	<ul style="list-style-type: none">• Mailed notice to each owner of property which either abuts or lies within three hundred (300) feet of the property the subject of the Application.• Applicant to furnish names and addresses.• The Director will mail the notices.• First Class mail is sufficient.
Publication	Once each week for 2 consecutive weeks prior to hearing	<ul style="list-style-type: none">• Newspaper of general circulation in the City, per Code of Ala. § 11-52-77.

F. Approval Criteria. The Board of Adjustment, in reaching its decision, shall consider the following:

1. Whether there was error in any order, requirement, decision or determination made by an administrative official;
2. Whether the decision was the result of an arbitrary or capricious interpretation of the requirements of this Chapter; or
3. Whether the decision was an incorrect interpretation of this Chapter.

G. Decision.

1. After the hearing is concluded, the Board of Adjustment shall render a decision based upon findings of fact supported by evidence in the record, and may:
 - (a) reverse or affirm, wholly or partly, the decision, or
 - (b) modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision, or determination as ought to be made, and, to that end, shall have all the powers of the officer from whom the appeal is taken.

H. Appeals

1. Any party aggrieved by any final judgment or decision of the Board of Adjustment may within 15 days thereafter appeal therefrom to the Mobile County Circuit Court by filing with the Board a written notice of appeal

Article 5 Procedures

specifying the judgment or decision from which the appeal is taken. In case of such appeal, the Board shall cause a transcript of the proceedings in the action to be certified to the Court to which the appeal is taken, and the action in such Court shall be tried de novo.

Sec. 64-5-10 Variance of Zoning Ordinance

- A. Applicability.** This Section applies to any request for a variance from the zoning requirements of this Chapter. The Board of Adjustment is authorized to grant upon appeal in specific cases such variance from the terms of this Chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Chapter will result in unnecessary hardship and so that the spirit of this Chapter shall be observed and substantial justice done.
- B. Initiation**
1. A variance request is initiated by filing an Application requesting a specific variance with the Director for consideration by the Board of Adjustment.
 2. The Application shall specify with particularity the grounds upon which the variance is requested.
- C. Hearings**
1. The Board shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time.
 2. The hearing shall be open to the public.
 3. Any interested party may appear in person or by agent or by attorney.

Article 5 Procedures

D. Notice. The following notice is required for a hearing on an Application for a variance:

Table 64-5-10.1 Type and Description of Notice—Variance of Zoning Ordinance

Notice	When	Where / To Whom / Additional Requirements
Mail	15 days prior to the hearing	<ul style="list-style-type: none">• Mailed notice to each owner of property which either abuts or lies within 300 feet of the property the subject of the Application.• Applicant to furnish names and addresses.• The Director will mail the notices.• First Class mail is sufficient.
Publication	Once each week for 2 consecutive weeks prior to hearing	<ul style="list-style-type: none">• Newspaper of general circulation in the City, per Code of Ala. § 11-52-77.
Sign (Use Variance Only)	Posted 15 days prior to hearing	<ul style="list-style-type: none">• Posted on subject Property.• Posted by the Director or designee.

E. Approval Criteria

- 1.** The Board of Adjustment may grant a variance if the Applicant demonstrates that the variance shall not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Chapter will result in unnecessary hardship and the spirit of this Chapter will be observed and substantial justice done.
- 2.** No variance shall be granted:
 - (a)** In order to relieve an owner of restrictive covenants that are recorded in Mobile County Probate Court and applicable to the property;
 - (b)** Where economic loss is the sole basis for the requested variance; or
 - (c)** Where the variance is otherwise unlawful.

F. Decision. After the hearing is concluded, the Board of Adjustment shall render a decision based upon findings of fact supported by evidence in the record that:

- 1.** Grants the variance;
- 2.** Denies the variance; or
- 3.** Grants the variance with conditions or stipulations as deemed necessary.

G. Subsequent Applications

1. There is no limit on subsequent variance requests. However, findings of fact from prior appeals for the same Application that were not reversed by a higher tribunal (such as on appeal to a court with subject matter jurisdiction) are binding on successive requests.
2. Applications for re-hearings or new Applications may be made in the same manner as original Applications provided that the same shall not be considered for hearing sooner than six months from the date of the original hearing.
3. Withdrawals: An Application that is withdrawn shall be treated in the same manner as a denial.

H. Appeals

1. Any party aggrieved by any final judgment or decision of the Board of Adjustment may within fifteen (15) days thereafter appeal therefrom to the Mobile County Circuit Court by filing with the Board a written notice of appeal specifying the judgment or decision from which the appeal is taken. In case of such appeal, the Board shall cause a transcript of the proceedings in the action to be certified to the Court to which the appeal is taken, and the action in such Court shall be tried de novo.

Sec. 64-5-11 Special Exception

A. Applicability

1. Special Exceptions are those uses that may have some special impact which differs from the potential impacts of permitted uses or exceeds them in intensity, or have a uniqueness such that their effect on the surrounding environment cannot be determined in advance of the use being proposed in a particular location.

Article 5 Procedures

2. The Board of Adjustment is authorized to hear and decide requests for Special Exceptions expressly allowed by this Chapter, subject to the approval criteria set-forth in this Section.
3. There shall be a public hearing on each Application for a Special Exception as required by law.

B. Initiation. A request for Special Exception is initiated by filing an Application with the Director for consideration by the Board of Adjustment.

C. Hearings

1. The Board shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time.
2. The hearing shall be open to the public.
3. Any interested party may appear in person or by agent or by attorney.

D. Notice. The following notice is required for a hearing on an Application for Special Exception:

Table 64-5-11.1 Type and Description of Notice—Special Exception

Notice	When	Where / To Whom / Additional Requirements
Mail	15 days prior to the hearing	<ul style="list-style-type: none">• Mailed notice to each owner of property which either abuts or lies within 300 feet of the property the subject of the Application.• Applicant to furnish names and addresses.• The Director will mail the notices.• First Class mail is sufficient.
Publication	Once each week for 2 consecutive weeks prior to hearing	<ul style="list-style-type: none">• Newspaper of general circulation in the City, per Code of Ala. § 11-52-77.
Sign	Posted 15 days prior to hearing	<ul style="list-style-type: none">• Posted on subject Property.• Posted by the Director or designee.

E. Approval Criteria

1. The Board of Adjustment will not approve an Application for Special Exception unless:

Article 5 Procedures

- (a)** The proposed use is in harmony with the general purpose, goals, objectives and standards of this Chapter, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the City.
- (b)** The proposed use at the proposed location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, or other matters affecting the public health, safety and general welfare either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of this Chapter, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the City or other governmental agency having jurisdiction to guide growth and development.
- (c)** The proposed use will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, and services specified in this subsection. Where any such improvements, facilities, utilities or services are not available or adequate to service the proposed use in the proposed location, the Applicant shall, as part of the application and as a condition to approval of the proposed Special Exception permit, be responsible for establishing ability, willingness and commitment to provide such improvements, facilities, utilities and services in sufficient time and in a manner consistent with this Chapter, and other plans, programs, maps and ordinances adopted by the City to guide its growth and development. The approval of the Special Exception Permit shall be conditioned upon such improvements, facilities, utilities and services being provided and guaranteed by the Applicant.
- (d)** The proposed use is consistent with all applicable requirements of this Chapter, including:

Article 5 Procedures

- (1)** Any applicable development standards in Article 3; and
 - (2)** Any applicable use regulations in Article 4.
- (e)** The proposed use is compatible with the character of the neighborhood within the same zoning district in which it is located;
 - (f)** The proposed use will not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district; and
 - (g)** The proposed use will have no more adverse effects on health, safety or comfort of persons living or working in the neighborhood, or will be no more injurious to property or improvements in the neighborhood than would any other use generally permitted in the same district.
- (1)** In making this determination, the Board of Adjustment shall consider:
 - a.** The location, type and height of buildings or structures;
 - b.** The type and extent of landscaping and screening;
 - c.** Lighting;
 - d.** Hours of operation; or
 - e.** Other conditions that might require mitigation of any adverse impacts of the proposed development.
- (h)** The site is designed to provide ingress and egress that minimize traffic hazards and traffic congestion on the public roads;
 - (i)** The site is designed to minimize the impact on storm water facilities;
 - (j)** The use will be adequately served by water and sanitary sewer services;
 - (k)** The use is not noxious or offensive by reason of emissions, vibration, noise, odor, dust, smoke or gas; and
 - (l)** The use will not be detrimental or endanger the public health, safety or general welfare.

Article 5 Procedures

2. Benefits Consideration. In addition, the Board of Adjustment should also give consideration to the City's and the larger community's best interests and the need, benefit, or public purpose of the proposed request.
3. Criteria by Use. The Board of Adjustment shall give careful consideration to the warrants and criteria set forth in this section in judging applications for Special Exceptions involving the following uses. In granting a Special Exception, the board may attach such reasonable conditions and safeguards in addition to those set forth in this section, as it may deem necessary to implement the purposes of this Chapter.

(a) Club or Lodge

- (1) The club or lodge shall be incorporated in the State of Alabama as a nonprofit corporation.
- (2) The structure should be primarily a meeting hall for fellowship, ceremonies and club business meetings. Any amusement or recreation facilities should be clearly secondary to the primary purposes of the building.
- (3) The Board should determine to its satisfaction that the activities to be conducted on the premises will not be detrimental to the neighborhood, taking into account the physical relationship of the proposed use to the surrounding structures and properties, the probable hours of operation, social activities to be conducted and the number of people to be assembled or to use the premises at any one time.

(b) Adult and Child Daycare Facilities

- (1) Safe, convenient driveways shall be provided. All loading and unloading of children or infirm adults shall take place on the premises of the day care facilities and not on the street.
- (2) If the facility is for the care of children, it should be adequate in size, suitably fenced and adequately landscaped to provide a

Article 5 Procedures

suitable environment for children and to prevent adverse effects upon adjacent uses.

(c) Electric Substation

- (1)** Must be enclosed within a solid masonry wall or wood fence at least eight (8) feet high to obstruct view, noise and passage of persons; or must be placed underground.
- (2)** Storage of materials, trucks or repair equipment shall not be permitted on the site.

(d) Marina

- (1)** Shall not include activities such as boat building or the repair of barges or other commercial watercraft.

(e) Medical or Dental Clinic

- (1)** The Board should determine to its satisfaction that the activities to be conducted on the premises will not be detrimental to the neighborhood, taking into account the physical relationship of the proposed use to the surrounding structures and properties, the probable hours of operation, parking and the beneficial or adverse effects of the proposed use and structure upon the neighborhood.

(f) Private or Parochial School

- (1)** Building coverage shall not exceed forty (40) percent of the total lot area.
- (2)** Not less than two (2) off-street parking spaces per classroom shall be provided for an elementary school, three (3) per classroom for a junior high school and eight (8) per classroom for a senior high school.

Article 5 Procedures

- (3)** Minimum yard dimensions should be: Front Yard depth, thirty (30) feet; Side Yard width, forty (40) feet; Rear Yard depth, forty (40) feet, provided that each of these dimensions should be increased by one foot for every foot by which the height of the building exceeds thirty-five (35) feet.
 - (4)** Playgrounds, play fields and other active recreation facilities should not extend into required yards, and no structure for seating spectators at athletic events (except a gymnasium or auditorium completely enclosed within a building) should be located closer than two hundred (200) feet to any residential property line. One off-street parking space should be provided for every three (3) spectator seats in any such facility.
 - (5)** Off-street school bus loading spaces should be provided when school buses are to be used.
 - (6)** Fences or planted buffer strips should be provided as determined by the Board to be necessary for safety purposes or to minimize possible adverse effects upon adjacent property.
- (g) Recreational Vehicle Park**
- (1)** The proposed park shall comply with applicable regulations of the Alabama Board of Health and with all applicable City ordinances.
 - (2)** The park shall be used for the temporary placement and occupancy of recreational vehicles only. No mobile or manufactured homes shall be placed or occupied in such a park.
 - (3)** No recreational vehicle shall be occupied by a person or family longer than two (2) weeks.

Article 5 Procedures

(h) Self-Service Storage Facilities

- (1)** Should not abut a residential district unless adequate separation and screening is provided by vegetation, topography and the like.
- (2)** The Board should determine to its satisfaction that the activities to be conducted on the premises will not be detrimental to the neighborhood, taking into account the physical relationship of the proposed use to the surrounding structures and properties, the probable hours of operation, parking and the beneficial or adverse effects of the proposed use and structure upon the neighborhood.

(i) Veterinary Clinic

- (1)** Means satisfactory to the board shall be provided for the safe, hygienic disposal of clinic wastes, especially infectious-disease-bearing wastes.
- (2)** The Board should determine to its satisfaction that the activities to be conducted on the premises will not be detrimental to the neighborhood, taking into account the physical relationship of the proposed use to the surrounding structures and properties, the probable hours of operation, parking and the beneficial or adverse effects of the proposed use and structure upon the neighborhood.

(j) Telecommunications Facilities Requiring a Class 2, 3, or 4 Permit

- (1)** Must meet all criteria and requirements set forth in Article 4.

F. Decision

- 1.** After the hearing is concluded, the Board of Adjustment shall render a decision based upon findings of fact supported by evidence in the record that:
 - (a)** Grants the Special Exception;
 - (b)** Denies the Special Exception; or
 - (c)** Grants the Special Exception with conditions or stipulations as deemed necessary.

- 2.** The Board of Adjustment may attach reasonable conditions for Special Exception approval, including additional criteria dealing with buffer yards, parking, lighting, building materials, signage or any other aspect of site plan approval necessary to mitigate the impact of the proposed Special Exception on the surrounding property. All conditions imposed upon any Special Exception permit approval, except those which are otherwise required by this Chapter, shall be expressly set forth in the order granting such Special Exception permits. Unless and until prescribed conditions are met, no Zoning Compliance, Certificate of Occupancy or Business License shall be granted for the Applicant for the Special Exception at the property.

- 3.** No Special Exception shall be granted:
 - (a)** In order to relieve an owner of restrictive covenants that are recorded in Mobile County Probate Court and applicable to the property; or
 - (b)** Where the Special Exception is otherwise unlawful.

G. Subsequent Applications

- 1.** There is no limit on subsequent Special Exception requests. However, findings of fact from prior appeals for the same Application that were not reversed by a higher tribunal (such as on appeal to a court with subject matter jurisdiction) are binding on successive requests.

Article 5 Procedures

2. Applications for re-hearings or new Applications may be made in the same manner as original Applications provided that the same shall not be considered for hearing sooner than six months from the date of the original hearing.
3. Withdrawals: An Application that is withdrawn shall be treated in the same manner as a denial.

H. Appeals. Any party aggrieved by any final judgment or decision of the Board of Adjustment may within fifteen (15) days thereafter appeal therefrom to the Mobile County Circuit Court by filing with the Board a written notice of appeal specifying the judgment or decision from which the appeal is taken. In case of such appeal, the Board shall cause a transcript of the proceedings in the action to be certified to the Court to which the appeal is taken, and the action in such Court shall be tried de novo.