

## **Ordinance 3883**

AN ORDINANCE

To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, CHAPTER 98, ADMINISTRATION; ARTICLE 3. - PROCEDURES AND ARTICLE 4. - NONCONFORMITIES; CHAPTER 118, ARTICLE 1. – GENERAL PROVISIONS, ARTICLE 2. - BASE DISTRICTS AND ARTICLE 3. - PERMITTED LAND USES; LAND DEVELOPMENT CODE; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FORT MYERS,**

**FLORIDA**, that:

**SECTION 1.** The City Code of the City of Fort Myers, Florida, Sub-Part B, Land Development Code, Chapter 98 – Administration and Chapter 118 - Land Use Regulations, is hereby amended and attached hereto as Exhibit A to this ordinance.

**SECTION 2.** Severability. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than that part to be declared invalid.

**Section 3.** Effective Date. This ordinance shall become effective immediately upon adoption.

## **Exhibit A**

### **Chapter 98 - ADMINISTRATION**

#### **ARTICLE 3. - PROCEDURES**

##### **98.3.6 – Other Administrative Approvals.**

- A. Warrants.** Section 118.8.3 establishes the warrant approval process for the downtown smart code. Appeals of a warrant decision shall be made to the city council pursuant to the procedures of the downtown smart code.
- B. Renewal registration of garage apartments.** See section 98.4.6.B.2.
- C. Administrative interpretation.** The community development director shall prepare administrative interpretations regarding this land development code as the director shall deem appropriate, and maintain a record of those interpretations for public use. Interpretations of the City of FortMyers Growth Management Code, predating the adoption of this land development code, shall be considered non-binding on the city.
- D. Master Development Plan administrative deviations.** See section 118.5.3.
- E. Non-commercial guesthouses.** Administrative approvals for non-commercial guesthouses, as defined in Chapter 142, that are accessory to a single-family detached dwelling unit in conventional zoning districts are subject to the following review criteria and procedures, in addition to all other applicable regulations. See also Section 118.3.11 for supplementary regulations governing non-commercial guesthouses. All vested garage apartments or new garage apartments in Dean Park shall meet the standards set forth in Chapter 98, Article IV, and are not subject to these provisions.

- (1) Submittal requirements. An applicant requesting a non-commercial guesthouse in accordance with this subsection must submit the following information, in addition to the application form provided by the City, to demonstrate mitigation of adverse impacts to neighboring properties as stated in Section 98.3.8.D:
  - a. A site plan providing the location, square footage, on-site parking spaces, and setbacks of the proposed non-commercial guesthouse, and the location and adequacy of utilities.
  - b. A written narrative that explains measures to ensure the parking, noise, building scale and location will not present a nuisance to adjacent properties.
- (2) Exterior and/or site improvements related to the construction of non-commercial guesthouses on properties located in a historic district or designated as a landmark may require review and approval by the Historic Preservation Commission. If required pursuant to Chapter 114 of this code, the applicant must obtain Historic Preservation Commission approval prior to issuance of administrative approval by the Community Development Director.
- (3) Appeals of decisions by the Community Development Director shall comply with Section 98.3.7 of this code.

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## ARTICLE 4. - NONCONFORMITIES

### 98.4.6 - Nonconforming Uses of Vested Garage Apartments.

#### A. Nonconforming use of garage apartments.

1. **Intent.** Pursuant to land development code, subsection 118.1.5.D, it is the present policy and requirement of the city that only one single-family principal building may be permitted on a single-family residential lot except as specifically permitted otherwise herein, or in accordance with the procedures and standards for non-commercial guesthouses set forth in Sections 98.3.6 and 118.3.11 of this code. Garage apartments as defined in the land development code represent a separate accessory structure. However, garage apartment rental use for garage apartments

existing on December 31, 2002, except in Dean Park ("vested garage apartments"), will be permitted in conjunction with a separate single-family dwelling only pursuant to the registration process as completed on July 1, 2004. All rental of garage apartments shall cease by January 1, 2007 except where specifically permitted in the zoning district or as approved pursuant to this registration process.

**2. – 4. *No change.***

**5. Required development standards and effect of designations for vested garage apartments.**

a. All vested garage apartments shall meet the following development standards:

- 1) Garage apartments registration shall be renewed with the city pursuant to this section, except garage apartments as permitted in the Dean Park Historic District must register at the time that the garage apartment use is requested.
- 2) There shall be no rental or leasing of the garage apartment unless the principal residence is occupied by the property owner as a full time resident of the city. Full time resident means living at the residence for at least nine months of the year and possessing a current Florida Homestead Exemption for that property from the Lee County Property Appraiser.
- 3) Every garage apartment shall meet minimum Standard Housing Code Standards as adopted in City Code, section 54-396, or its equivalent Florida Building Code standards, and every garage apartment shall be required to have or to obtain a certificate of occupancy demonstrating compliance with the Life Safety Code regulations.
- 4) Every garage apartment shall be occupied only by one family, which may be different from the family which owns the property.
- 5) No more than one garage apartment shall be permitted in association with a single-family dwelling.
- 6) Every garage apartment shall provide a minimum of one and maximum of two paved (or other approved alternative surface acceptable to the public works director) off-street parking spaces for the garage apartment, in addition to the minimum parking required for the single-family dwelling. The garage apartment parking shall be safely and appropriately located, consistent with the standards identified in section 86-69 of the City Code. If the garage apartment has been

designated a garage apartment as permitted in the Dean Park Historic District, constructed prior to 1953 or located in one of the above referenced historic neighborhoods, the required parking spaces shall be paved or be of other approved alternative surface. The garage apartments to be amortized shall not be required to provide paved parking.

7) No new garage apartments shall be permitted to be constructed in any single-family zoning district except the Dean Park Historic District.

- b. Garage apartments registered pursuant to this section shall be treated as a lawful nonconforming use subject to the additional standards contained in this section.
- c. Registered garage apartments will be permitted to continue the residential occupancy and rental of the apartment until January 1, 2007, after which the occupancy of the garage apartment shall be limited to only members of the family consistent with single-family residential use. These structures must comply with applicable Life Safety Code regulations.
- d. Code enforcement of non-designated accessory structures used as garage apartments. Any accessory structure which has not received a written designation as a garage apartment pursuant to the foregoing registration and designation process or approved as a non-commercial guesthouse pursuant to an administrative approval per Section 98.3.6. E. of this code will be presumed not to be a permitted garage apartment. Residential occupancy and use of an accessory structure for living and sleeping quarters without it being designated and registered as a garage apartment pursuant to the foregoing provisions of the land development code is prohibited and is subject to code enforcement pursuant to the chapter 2 of the City Code.

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**CHAPTER 118**  
**LAND USE REGULATIONS**

**ARTICLE 1.**

**118.1.6 - Measurements and Exceptions.**

**A. Density.** The number of residential dwelling units permitted per gross acre of land.

1. For multifamily density calculation purposes only:

- a. A studio unit with 750 square feet or less or a one-bedroom unit with 750 square feet or less is equivalent to 0.5 dwelling unit;
- b. A two-bedroom unit with 1,200 square feet or less is equivalent to 0.75 dwelling unit;
- c. All other unit types are considered equivalent to one dwelling unit.
- d. An applicant may request alternative multifamily unit density equivalencies on a case-by-case basis (i.e. a two-bedroom unit larger than 1,200 square feet is equivalent to a fraction of one dwelling unit). The applicant must conclusively demonstrate that wastewater flows will be less than average of 75 gal/capita/day, or household size will be less than average of 2.5 persons per household. Alternative multifamily unit density equivalencies may be approved upon finding by the City staff that: (1) the requested equivalency is justified based on sound engineering analysis, and (2) the potential impact to City services is adequately addressed. If an alternative equivalency is approved, it will be enforced through monitoring of the actual flows following construction. If the flow levels exceed the levels that were provided as justification, the City is authorized to impose utility fee surcharges for the overages.

2. For group living density calculation purposes, assisted care facilities shall be restricted to the same multifamily density regulations applicable within the district in which they are allowed. For the purposes of determining conformance with the densities requirements and all other district requirements, every 1.93 occupants of an assisted care facility shall be deemed to equal one dwelling unit. To calculate future occupants and subsequent density when number of bed spaces is used as opposed to number of units, 1.0 bed space shall equal 1.0 occupant. The number of occupants divided by the household size (1.93) shall equal the number of units.

3. As defined in chapter 142, article 2 a guest house, cottage, or garage apartment accessory to a principal dwelling unit, as regulated in Section 118.3.11, ~~are is~~ not subject to density calculations.

4. Hotels and hospitals are not subject to density calculations.

**B. Site.** A continuous quantity of land to be developed as a single project.

**C. Area.** Site area is measured in gross acres and is the total land area of a proposed development. A site may include multiple lots.

**D. Open space.**

1. The minimum open space required in a development under common ownership or unified control, or within a subdivision, shall be property under public or common private ownership. Such open space may be held privately. All open space shall be unoccupied or predominately unoccupied by buildings or other impervious surfaces. Unoccupied or predominately unoccupied by buildings or other impervious surfaces shall mean that not more than five percent of the area of any required open space shall be occupied by such surfaces.
2. Required open space in RS- and RM- districts shall be measured exclusive of any individual lots, except in the RS-E District.
3. Open space may be used for parks, recreation, agriculture, conservation, preservation of native habitat and other natural resources, stormwater management, historic or scenic purposes. When used for recreation, the following shall apply:
  - a. Recreational activities in conservation or preservation open space areas shall maintain the areas in their natural state with little or no land disturbance. Structures are limited to improvements such as boardwalks, permeable pathways and signage necessary for resource management.
  - b. Recreational activities in all other open space areas may include, but are not limited to, structures or other active, player-oriented facilities such as playgrounds, ball fields, golf courses, club houses, tennis courts and associated accessory facilities such as parking areas and restrooms, subject to the limits on occupation of open space in Section a. above.
  - c. Any property within 20 feet of any structure (except any accessory structures within the designated open space) or having a dimension of less than 15 square feet, regardless of ownership, shall not be considered open space in meeting the requirements of this Land Development Code.

**E. Lot.** A parcel of land occupied or capable of being occupied or designed to be occupied by one or more principal buildings or uses, for the district in which located, and the

accessory buildings or uses customarily incidental to it, including such open spaces as required.

1. **Area.**

- a. Lot area is measured in gross square feet and is the area included in a single, undivided piece of land.
- b. Minimum lot areas shall be exclusive of existing or proposed public right-of-way.

2. **Width.** The horizontal distance between the side lot lines measured at the front setback line.

3. **Depth.** The distance measured from midpoint of the front lot line to the midpoint of the rear lot line.

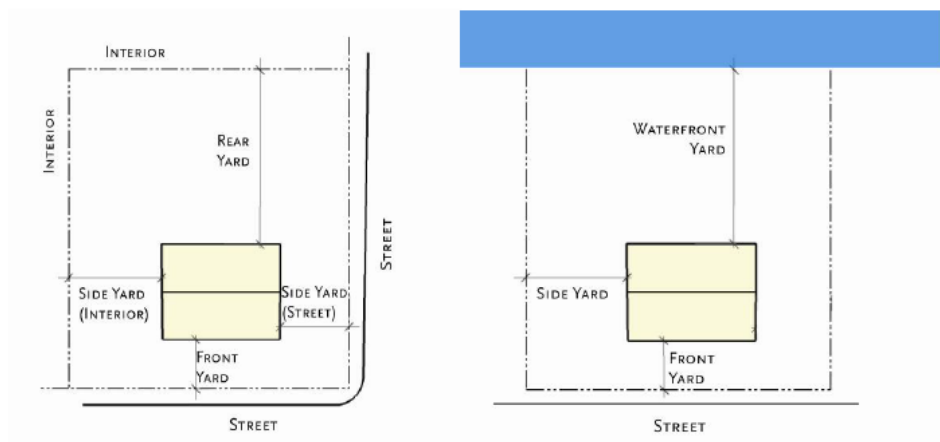
F. **Yard setbacks.**

1. **Applicability.**

- a. No part of a yard or other open space required by the provisions of this Land Development Code shall be included as a part of any yard or other open space similarly required for another structure or use.
- b. Unless specifically set forth in section 118.3.4, Accessory Uses and Structures, the district setback requirements apply to principal and accessory structures.

2. **Types of yards.**

- a. There are five types of yards - front, side (street), side (interior), rear, and waterfront yard.
- b. Double frontage lots shall be considered to have two front yards.

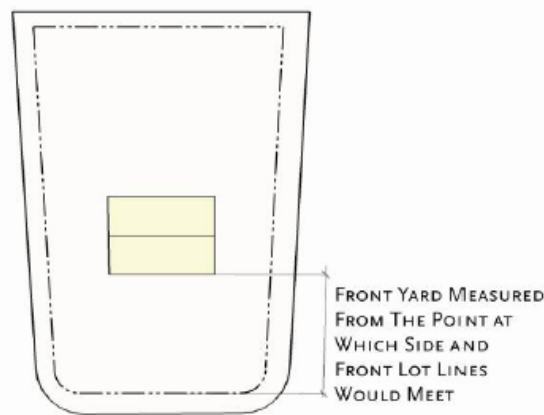


3. **Measurement of yards.**

- a. All front yard and side yard (street) setbacks shall be measured from the edge of the right-of-way.



- b. Depth of a required front yard shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot lines, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding.
- c. Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.
- d. Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line.



#### 4. **Setbacks.**

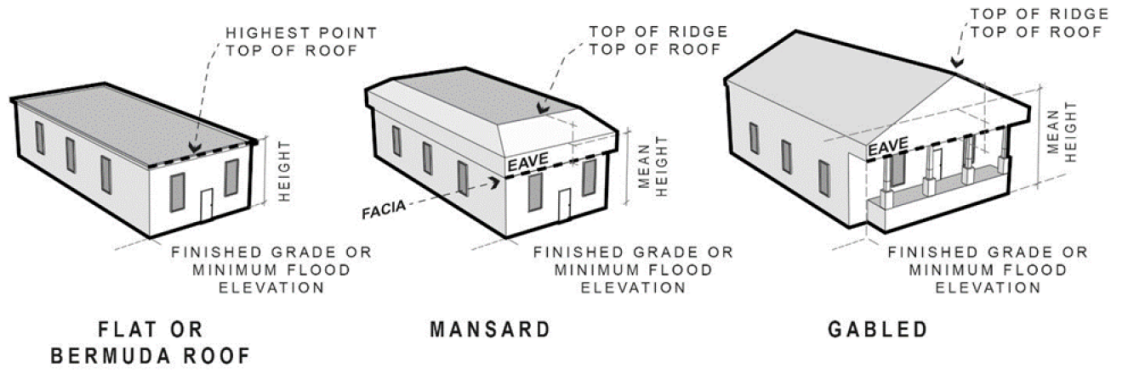
- a. The front setback shall be as stated in this Land Development Code. All setbacks shall be based on the future right-of-way line established in the Comprehensive Plan, or as identified on the Metropolitan Planning Organization's Long Range Transportation Plan, 2030 Adopted Highway Element. All lots shall have the minimum lot width as prescribed by this Land Development Code and shall be located on an improved dedicated street right-of-way.
- b. Attached residential garages shall have a minimum front setback of 25 feet where the doors face the right-of-way.
- c. On corner lots, the secondary front yard, or yard not accessed by a driveway or vehicular accessway, shall be not less than 25 percent of the lot width; however, when the lot is less than 50 feet, the minimum side yard shall be a minimum of 12½ feet. When the lot width is greater than 80 feet, the secondary front yard shall be a minimum of 20 feet.

5. **Encroachments.** Every part of a required yard shall be open from its lowest point to the sky unobstructed, except for the encroachments listed below. See also section 118.3.4, Accessory Uses and Structures, and section 118.3.5, Temporary Uses and Structures.
- a. Fences as noted in section 118.3.8, flag poles, sidewalks, and driveways.
  - b. Projection of sills, belt courses, cornices, buttresses, ornamental features, bay windows where allowed by the building code, chimneys, flues and eaves; however, no such projection shall exceed 30 inches into a minimum yard area.
  - c. Parking structures may extend into the rear yard of a lot, where there is access through an alley. Such structures shall be located either within three feet or less from the rear property line, or at least 20 feet from the rear property line.
  - d. Security gates and guard stations may be located within any required yard.
  - e. Covered porches may encroach a maximum of eight feet into a required street yard setback or 20 percent of the required street yard setback depth, whichever is less.
  - f. Mechanical equipment for residential uses, such as HVAC units, generators and security lighting, may extend into any required side yard but shall remain at least three feet from the property line.
  - g. Driveways may extend into any required yard, if acceptable to the engineering division.
  - h. Utility lines located underground and minor structures accessory to utility lines (such as hydrants, manholes, and transformers and other cabinet structures) may encroach into any required yard.
  - i. Sport courts, trampolines, swingsets and other similar equipment shall be located to the rear of the front building line, and outside of any required side yard setbacks.

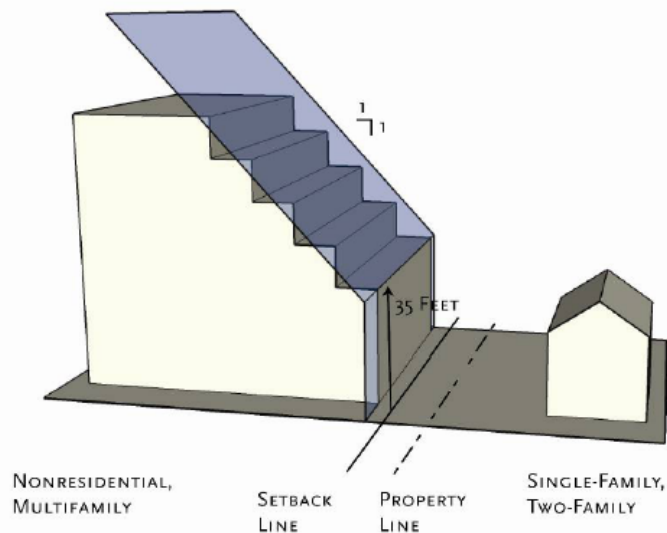
**G. Bulk.**

**1. Height.**

- a. **Applicability.** Unless specifically set forth in section 118.3.4, Accessory Uses and Structures, the base district height requirements apply to principal and accessory structures.
- b. **Determination.** Height shall be determined by the vertical distance measured from the mean finished grade to the highest point of the roof surface of a flat or Bermuda roof, the mean height between the fascia and highest point of a mansard roof and to the mean height level between eaves and ridge of gable, hip and gambrel roofs. Where minimum floor elevations in flood hazard areas have been established by law, height shall be measured from such required minimum floor elevations.



- c. **Exemptions.** The height limits of this Land Development Code shall not apply to church spires, belfries, monuments, transmission towers, telecommunications towers, water towers, flagpoles, chimneys, cooling towers, fire towers and other structures not intended for human occupancy, and subject to approval by the director. These exceptions shall not apply in an airport flight zone.
- d. **Bulk plane.** Any new building that abuts an existing RS- district shall be subject to a bulk plane starting at 35 feet in height at the side or rear setback line, and extending upward one additional foot for every additional foot into the site from the setback line.



2. **Building coverage.** The maximum area of the lot that is permitted to be covered by buildings, including both principal structures and accessory buildings. Building coverage does not include paved areas such as driveways, uncovered porches or patios, decks, swimming pools or pool cages.

3. **Living area.** Living area shall include all areas within the enclosing walls of a building except garages, outside utility rooms, carports, cabanas, porches, patios and unroofed or unenclosed areas.
4. **Building separation.** The required separation between any two buildings located on the same lot or site. Where this land development code allows a building separation of less than ten feet, additional fire code requirements may apply.

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## ARTICLE 2. BASE DISTRICTS

### 118.2.1 - Residential Districts.

#### A. Intent statements.

##### 1. Residential single-family districts.

- a. **Estate (RS-E).** This district is intended to accommodate low density single-family dwellings and other selected uses that are compatible with the open residential character of the area. Single-family detached structures are appropriate in this district. The maximum density permitted is 1.5 dwelling units per acre and minimum lot size is 32,000 square feet. See Tables 118.2.1.A. and G. for additional dimensional requirements.

#### **Permitted Uses**

- 1) Park, Recreation field, Beaches.
- 2) Residential, Single-family detached, including accessory non-commercial guesthouses (See 118.3.11).
- 3) Water management structures, wells, reservoirs.

#### **Conditional Uses**

- 4) Commercial Wireless Telecommunication Facility (See 118.3.10).
- 5) Community or neighborhood arts center (public).
- 6) Golf course, Tennis, Country club, Clubhouse.
- 7) Museum, Library.
- 8) Police, Fire, EMS substation.
- 9) Religious Institutions (See 118.3.3.B.2).

10) School public/private (K—12).

- b. **Single-family (RS-5).** This district is intended to accommodate single-family residential development and protect existing neighborhoods from incompatible uses. The maximum density permitted is five dwelling units per acre and minimum lot size for residential uses is 8,000 square feet and 10,000 square feet for all other uses. See Tables 118.2.1.A, B and G for additional dimensional requirements.

**Permitted uses**

- 1) Park, recreation field, beaches.
- 2) Residential, single-family detached, including accessory non-commercial guesthouses (See 118.3.11).
- 3) Residential, zero lot line.
- 4) Water management structures, wells, reservoirs.

**Conditional uses**

- 5) Commercial wireless telecommunication facility (See 118.3.10).
  - 6) Convenience store without gas pumps.
  - 7) Golf course, tennis, country club, clubhouse.
  - 8) Museum, library, community center (public).
  - 9) Police, fire, EMS substation.
  - 10) Religious institutions (See 118.3.3.B.2).
  - 11) School public/private (K—12).
- c. **Single-family (RS-6).** This district is intended to accommodate single-family residential development and protect existing neighborhoods from incompatible uses. The maximum density permitted is six dwelling units per acre. See Table 118.2.1.A, B, C and G for additional dimensional requirements.

**Permitted uses**

- 1) Park, recreation field, beaches.
- 2) Residential, single-family attached.
- 3) Residential, single-family detached, including accessory non-commercial guesthouses (See 118.3.11).
- 4) Residential, zero lot line.

- 5) Water management structures, wells, reservoirs.

**Conditional uses**

- 6) Commercial wireless telecommunication facility (See 118.3.10).
- 7) Convenience store without gas pumps.
- 8) Golf course, tennis, country club, clubhouse.
- 9) Museum, library, community center (public).
- 10) Police, fire, EMS substation.
- 11) Religious institutions (See 118.3.3.B.2).
- 12) School, public or private (K—12).

- d. **Single-family (RS-7).** This district is intended to accommodate single-family residential development and protect existing neighborhoods from incompatible uses. The maximum density permitted is seven dwelling units per acre. See Tables 118.2.1.A, B, C and G for additional dimensional requirements.

**Permitted uses**

- 1) Park, recreation field, beaches.
- 2) Residential, single-family attached.
- 3) Residential, single-family detached, including accessory non-commercial guesthouses (See 118.3.11).
- 4) Residential, zero lot line.
- 5) Water management structures, wells, reservoirs.

**Conditional uses**

- 6) Commercial wireless telecommunication facility (See 118.3.10).
- 7) Convenience store without gas pumps.
- 8) Day care center (adult or child), preschool.
- 9) Golf course, tennis, country club, clubhouse.
- 10) Museum, library, community center (public).
- 11) Police, fire, EMS substation.
- 12) Religious institutions (See 118.3.3.B.2).
- 13) School, public or private (K—12).

- e. **Duplex districts (RS-D).** This district is intended to accommodate single-family and two-family residential development and protect existing neighborhoods from incompatible uses. The maximum density permitted is seven dwelling units per acre. See Tables 118.2.1.A, B, C, D, E and G for additional dimensional requirements.

**Permitted uses**

- 1) Park, recreation field, beaches.
- 2) Residential, single-family attached.
- 3) Residential, single-family detached, including accessory non-commercial guesthouses (See 118.3.11).
- 4) Residential, townhouse (See 118.3.3.A.1).
- 5) Residential, two-family (See 118.3.3.A.2).
- 6) Residential, zero lot line.
- 7) Water management structures, wells, reservoirs.

**Conditional uses**

- 8) Commercial wireless telecommunication facility (See 118.3.10).
- 9) Convenience store without gas pumps.
- 10) Day care center (adult or child), preschool.
- 11) Golf course, tennis, country club, clubhouse.
- 12) Museum, library, community center (public).
- 13) Police, fire, EMS substation.
- 14) Religious institutions (See 118.3.3.B.2).
- 15) School, public or private (K—12).

**2. Residential multifamily districts.**

- a. **Residential multifamily (RM-12).** This district is intended to accommodate low density multifamily residential development. The maximum density permitted is 12 dwelling units per acre. See Tables 118.2.1.A—G for additional dimensional requirements.

**Permitted uses**

- 1) Assisted living facility, nursing home, life care facilities.
- 2) Bed and breakfast.

- 3) Day care center (adult or child), preschool.
- 4) Park, recreation field, beaches.
- 5) Residential, multifamily (See 118.3.3.A.3).
- 6) Residential, single-family attached.
- 7) Residential, single-family detached, including accessory non-commercial guesthouses (See 118.3.11).
- 8) Residential, townhouse (See 118.3.3.A.1).
- 9) Residential, two-family (See 118.3.3.A.2).
- 10) Residential, zero lot line.
- 11) Student dormitory, fraternity, sorority.
- 12) Water management structures, wells, reservoirs.

#### **Conditional uses**

- 13) Art studio, gallery (See 118.3.3.C.2).
- 14) Boarding facility, youth hostel.
- 15) Commercial wireless telecommunication facility (See 118.3.10).
- 16) Convenience store without gas pumps.
- 17) Golf course, tennis, country club, clubhouse.
- 18) Museum, library, community center (public).
- 19) Police, fire, EMS substation.
- 20) Religious institutions (See 118.3.3.B.2).
- 21) School, public or private (K—12).

- b. **Residential multifamily (RM-16).** This district is intended to accommodate medium density multifamily residential development. The maximum density permitted is 16 dwelling units per acre. See Tables 118.2.1.A—G for additional dimensional requirements.

#### **Permitted uses**

- 1) Assisted living facility; nursing home; life care facilities.
- 2) Bed and breakfast.
- 3) Day care center (adult or child), Preschool.
- 4) Park; recreation field, beaches.



- 5) Residential, multifamily (See 118.3.3.A.3).
- 6) Residential, single-family attached.
- 7) Residential, single-family detached, including accessory non-commercial guesthouses (See 118.3.11)..
- 8) Residential, townhouse (See 118.3.3.A.1).
- 9) Residential, two-family (See 118.3.3.A.2).
- 10) Residential, zero lot line.
- 11) Student dormitory, fraternity, sorority.
- 12) Water management structures, wells, reservoirs.

**Conditional uses**

- 13) Art studio, gallery (See 118.3.3.C.2).
- 14) Boarding facility, youth hostel.
- 15) Commercial wireless telecommunication facility (See 118.3.10).
- 16) Convenience store without gas pumps.
- 17) Golf course, tennis, country club, clubhouse.
- 18) Hotel, motel, inn, extended stay facility.
- 19) Manufactured home (See 118.3.3.A.4).
- 20) Museum, library, community center (public).

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## **ARTICLE 3. PERMITTED LAND USES**

### **118.3.4 - Accessory Uses and Structures.**

- A. No change.**
- B. Garage apartments and Non-commercial guesthouses.** Garage apartments are only permitted in the Dean Park Historic District (see section 98.4.6, Nonconforming uses of structures and premises). Non-commercial guesthouses as defined in chapter 142 are regulated in accordance with section 118.3.11.
- C. No change.**
- D. No change.**
- E. No change.**

**F. No change.**

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**118.3.11 – Non-commercial guesthouses.**

- A. Purpose.** The purpose of these provisions is to provide homeowners with flexibility in establishing separate living quarters within or adjacent to their homes for the purpose of providing housing for their children, elderly parents, or other dependents; and to ensure accessory non-commercial guesthouses do not negatively impact public health, safety or welfare, particularly the stability and character of established single-family neighborhoods.
- B. Applicability.** The following provisions are applicable to non-commercial guesthouses permitted in all single-family and multifamily residential zoning districts (RS-E, RS-5, RS-6, RS-7, RS-D, RM-12, RM-16) pursuant to the process and procedures set forth in Chapter 98 of this land development code. The standards for non-commercial guesthouses contained in this section supersede the standards in section 118.3.4 – Accessory Uses and Structures. All vested garage apartments shall meet the standards set forth in Chapter 98, Article IV., and are not subject to these provisions.
- C. Owner occupancy of property.** Non-commercial guesthouses are only permitted where the property owner is a full-time resident of the subject property. Full time resident means living at the residence for at least nine months of the year and possessing a current Florida Homestead Exemption for that property from the Lee County Property Appraiser. The property owner may reside in either the non-commercial guesthouse or the principal dwelling unit.
- D. Leasing or renting of non-commercial guesthouses prohibited.** No guesthouse, whether freestanding or structurally integrated with the principal dwelling unit, may be leased, rented or utilized for commercial purposes.
- E. Minimum standards.** All non-commercial guesthouses are subject to compliance with the following minimum standards.
1. A certificate of occupancy must be obtained from the City upon demonstration that the structure meets the minimum Florida Building Code and Florida Fire Prevention Code standards, and all other National Fire Protection Association (NFPA) requirements, as applicable.
  2. The minimum lot size for parcels containing a non-commercial guesthouse is 10,000 SF.

3. No more than one (1) non-commercial guesthouse shall be permitted in association with a single-family dwelling, regardless of lot size.
4. The entrance to the non-commercial guesthouse shall not be visible from the primary street frontage or frontage of the dwelling containing the entrance to the principal dwelling, unless the dwelling unit contained additional entrances before the non-commercial guesthouse was proposed. An exception to this regulation is entrances that do not have access from the ground such as entrances from balconies or decks, or as otherwise determined by the Community Development Director. Detached non-commercial guesthouses are exempt from this standard.
5. In no case shall a non-commercial guesthouse be more than 40 percent of the living area of the principal dwelling unit, or more than 1,200 square feet, whichever is lesser. The non-commercial guesthouse shall contain no more than one (1) bedroom. The non-commercial guesthouse shall be a minimum of 400 square feet.
6. The property must maintain compliance with all dimensional requirements for the underlying zoning district for both principal and accessory structures, including maximum building coverage. Attached non-commercial guesthouses, or those non-commercial guesthouses located within the principal structure, shall meet or exceed the minimum setbacks for principal structures in the applicable zoning district. Detached non-commercial guesthouses shall meet or exceed the minimum setbacks for accessory structures set forth in this code.
7. The property must have a minimum of one (1) dedicated on-site parking space for the non-commercial guesthouse, in addition to the minimum parking required for the principal single-family dwelling.

**F. Density calculations.** Non-commercial guesthouses are not subject to density calculations in accordance with section 118.1.6.A.

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## **CHAPTER 142**

### **DEFINITIONS**

*Density* means the number of residential dwelling units per gross acre of land.

(1) For multifamily density calculation purposes only:

a. A studio unit with 750 square feet or less or a one-bedroom unit with 750 square feet or less is equivalent to 0.5 dwelling unit;

b. A two-bedroom unit with 1,200 square feet or less is equivalent to 0.75 dwelling unit;

c. All other unit types are considered equivalent to one dwelling unit.

d. An applicant may request alternative multifamily unit density equivalencies on a case-by-case basis (i.e. a two-bedroom unit larger than 1,200 square feet is equivalent to a fraction of one dwelling unit). The applicant must conclusively demonstrate that wastewater flows will be less than average of 75 gallons/capita/day, or the household size will be less than average of 2.5 persons per household. Alternative multifamily unit density equivalencies may be approved upon finding by the city that: (1) the requested equivalency is justified based on sound engineering analysis, and (2) the potential impact to city services is adequately addressed. If an alternative equivalency is approved it will be enforced through monitoring of the actual flows following construction. If the flow levels exceed the levels that were provided as justification, the city is authorized to impose utility fee surcharges for the overages.

(2) For the density equivalency calculation for assisted living facilities, see subsection 118.3.A.5.

(3) As defined herein, a non-commercial guesthouse, cottage, or garage apartment accessory to a principal dwelling is not subject to calculations.

(4) Hotels and hospitals are not subject to density calculations.

*Non-commercial guesthouse or cottage* means an accessory dwelling unit which might, or might not, include cooking facilities, which is incorporated, attached to, or detached from a principal dwelling, and which is used exclusively for the noncommercial accommodation of friends or relatives of the occupant or owner of the principal dwelling.