

Review by P&Z Commission: 02/27/19

Sponsor: Councilman Johnson

First Reading: 04/15/19

Ord. No.: 004-19

AN ORDINANCE TO AMEND APPENDIX A (“ZONING”) OF THE TOWN CODE OF THE TOWN OF SMYRNA TO CLARIFY AND ESTABLISH THE MAXIMUM GROSS DENSITIES PERMITTED BY THE ZONING CODE

WHEREAS, the Town Council of the Town of Smyrna is authorized pursuant to 22 *Del. C.* Chapter 3 and Section 4.2.37 of the Town Charter to enact zoning regulations in the town, which regulations have been enacted by the Town of Smyrna;

WHEREAS, 22 *Del. C.* § 301 authorizes Delaware municipalities to adopt regulations pertaining to population density;

WHEREAS, the Town Council has previously adopted regulations granting increased development density in subdivisions that include superior building design features as part of a planned village community or by incorporating certain development features into a standard subdivision;

WHEREAS, the maximum gross densities have been governed in some instances in the Zoning Code by minimum lot sizes and in other instances by maximum unit per acre calculations. Having two different standards for determining maximum gross density can create confusion in calculating the permitted densities;

WHEREAS, in the opinion of the Town Council, in order to eliminate confusion and create consistency in the calculation of maximum gross densities, it is necessary to amend the Zoning Code to express all maximum gross densities in terms of the maximum number of units per acre that may be developed in a subdivision;

WHEREAS, the Planning Commission considered this ordinance at more than one duly noticed meeting, with the most recent meeting being held on February 27, 2019, and recommended to the Town Council that this ordinance be adopted;

WHEREAS, the Town Council held a public hearing on April 15, 2019, notice for which was published in the Smyrna/Clayton Sun Times on March 27, 2019 and posted at Town Hall on March 27, 2019, at which time all interested members of the public were given an opportunity to comment on this ordinance; and

WHEREAS, after considering the recommendation of the Planning Commission and the comments presented at the public hearing, in the opinion of the Town Council, in order to further the public health, safety, and welfare, it is necessary to amend the Zoning Code to clarify and establish the maximum gross densities, which shall be calculated by the number of units permitted per acre.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that Section 5 (“District Regulations”) of Appendix A (“Zoning”) of the Town Code of the Town of Smyrna be and hereby is amended as follows:

Section 1. Amend Section 5.2 (“Residential district R-1”), subsection 5.2.D(4)(d) by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (d) *Minimum requirements.* Notwithstanding anything herein to the contrary, planned village communities in this zoning district shall be subject to the following requirements:
- (1) Minimum lot area: 8,500 sq. ft.
 - (2) Minimum lot width: 85 ft.
 - (3) Minimum lot depth: 100 ft.
 - (4) Maximum height: 35 ft.
 - (5) Minimum front yard setback, principal dwelling 10 ft.
 - (6) Maximum front yard setback, principal dwelling 20 ft.
 - (7) Minimum front yard setback, open front porch, steps 6 ft.
 - (8) Minimum side yard setback: 6 ft.
 - (9) Minimum rear yard setback: 20 ft.
 - (10) Maximum lot coverage: N/A
 - (11) Anything herein to the contrary notwithstanding, the maximum gross density for a planned village community shall be 4.5 units per acre.

Section 2. Amend Section 5.2 (“Residential district R-1”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

- G. *Accessory buildings.* For minimum requirements, see section 6.8, Accessory buildings.
H. Maximum gross density. The maximum gross density shall be 3.75 units per acre.

Section 3. Amend Section 5.3 (“Residential district R-1A”), subsection 5.3.D(4)(a) by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (a) *Minimum requirements.* Notwithstanding anything herein to the contrary, planned village communities in this zoning district shall be subject to the following requirements:
- (1) Minimum lot area: 7,000 sq. ft.
 - (2) Minimum lot width: 70 ft.
 - (3) Minimum lot depth: 100 ft.
 - (4) Maximum height: 35 ft.
 - (5) Minimum front yard setback, principal dwelling 10 ft.
 - (6) Maximum front yard setback, principal dwelling 20 ft.
 - (7) Minimum front yard setback, open front porch, steps 6 ft.
 - (8) Minimum side yard setback: 6 ft.
 - (9) Minimum rear yard setback: 20 ft.
 - (10) Maximum lot coverage: N/A
 - (11) Anything herein to the contrary notwithstanding, the maximum gross density for a planned village community shall be 5.5 units per acre.

Section 4. Amend Section 5.3 (“Residential district R-1A”), by making insertions as shown by underlining and deletions as shown by strike through as follows:

- G. *Accessory buildings.* For minimum requirements, see section 6.8, Accessory buildings.

H. Maximum gross density. The maximum gross density shall be 4 units per acre.

Section 5. Amend Section 5.4 (“Residential district R-2”), subsection 5.4.D(4)(a) by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (a) *Minimum requirements.* Notwithstanding anything herein to the contrary, planned village communities in this zoning district shall be subject to the following requirements:
- (1) Minimum lot area: 4,000 sq. ft.
 - (2) Minimum lot width: 50 ft.
 - (3) Minimum lot depth: 80 ft.
 - (4) Maximum height: 35 ft.
 - (5) Minimum front yard setback, principal dwelling 10 ft.
 - (6) Maximum front yard setback, principal dwelling 20 ft.
 - (7) Minimum front yard setback, open front porch, steps 6 ft.
 - (8) Minimum side yard setback: 6 ft.
 - (9) Minimum rear yard setback: 20 ft.
 - (10) Maximum lot coverage: N/A
 - (11) Anything herein to the contrary notwithstanding, the maximum gross density for a planned village community shall be 8 units per acre.

Section 6. Amend Section 5.4 (“Residential district R-2”), by making insertions as shown by underlining and deletions as shown by strike through as follows:

G. *Accessory buildings.* For minimum requirements, see section 6.8, Accessory buildings.

H. Maximum gross density. The maximum gross density shall be 6 units per acre.

Section 7. Amend Section 5.5 (“Residential district R-2A”), subsection 5.5.D(4)(a) by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (a) *Minimum requirements.* Notwithstanding anything herein to the contrary, planned village communities in this zoning district shall be subject to the following requirements:
- (1) Minimum lot area: 4,000 sq. ft.
 - (2) Minimum lot width: 50 ft.
 - (3) Minimum lot depth: 80 ft.
 - (4) Maximum height: 35 ft.
 - (5) Minimum front yard setback, principal dwelling 10 ft.
 - (6) Maximum front yard setback, principal dwelling 20 ft.
 - (7) Minimum front yard setback, open front porch, steps 6 ft.
 - (8) Minimum side yard setback: 6 ft.
 - (9) Minimum rear yard setback: 20 ft.
 - (10) Maximum lot coverage: N/A
 - (11) Anything herein to the contrary notwithstanding, the maximum gross density for a planned village community shall be 8 units per acre.

Section 8. Amend Section 5.5 (“Residential district R-2A”), by making insertions as shown by underlining and deletions as shown by strike through as follows:

I. *Density provisions*

- (1) ~~The maximum gross density shall be 6 units per acre. Within the R2-A residential zoning district, the maximum gross density is six units per acre. Gross density per acre is to be calculated by dividing the total number of dwelling units in the subdivision by the total acreage of the subdivision tract (including all undevelopable areas.).~~
- (2) A density bonus of up to ~~two~~ three additional units per acre above the maximum gross density per acre may be granted by the ~~planning and zoning commission and town council, after considering the recommendation of the planning and zoning commission,~~ if a developer provides improvements in accordance with the ~~following~~; standards outlined herein. Planned village communities shall not be eligible for density bonuses under this provision.

Section 9. Amend Section 5.6 (“Residential district R-3”), subsection 5.6.D(4)(a) by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (a) *Minimum requirements.* Notwithstanding anything herein to the contrary, planned village communities in this zoning district shall be subject to the following requirements:
 - (1) Minimum lot area: 3,000 sq. ft.
 - (2) Minimum lot width: 50 ft.
 - (3) Minimum lot depth: 60 ft.
 - (4) Maximum height: 35 ft.
 - (5) Minimum front yard setback, principal dwelling 10 ft.
 - (6) Maximum front yard setback, principal dwelling 20 ft.
 - (7) Minimum front yard setback, open front porch, steps 6 ft.
 - (8) Minimum side yard setback: 6 ft.
 - (9) Minimum rear yard setback: 20 ft.
 - (10) Maximum lot coverage: N/A
 - (11) Anything herein to the contrary notwithstanding, the maximum gross density for a planned village community shall be 13 units per acre.

Section 10. Amend Section 5.6 (“Residential district R-3”), by making insertions as shown by underlining and deletions as shown by strike through as follows:

I. *Density provisions.*

- (1) The maximum gross density shall be 12 units per acre. ~~Within the R-3 residential zoning district, the maximum gross density is twelve (12) units per acre.~~
 - (a) The density bonus provisions ~~for townhouse and apartment dwellings~~ in the residential R-3 district shall be the same as those found in subsection 5.I(2)~~2~~ of the residential R2-A district and are incorporated herein by reference.

Section 11. Amend Section 5.9 (“Central commercial district CC”), subsection 5.9.a(14) by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (14) *Uses permitted as a special exception.* The following uses are permitted only if approved as a special exception pursuant to section 9(2) of this ordinance:

- (a) One-family, semidetached, townhouse, and apartment dwellings as permitted in residential district R-3; lot, height, density, and yard requirements shall be the same as in the R-3 district.

Section 12. Amend Section 19 (“Definitions”) by inserting in alphabetical order the definition “Density, maximum gross” as follows:

Density, maximum gross. The maximum number of individual dwelling units permitted per acre in a subdivision, calculated by dividing the total number of dwelling units in the subdivision by the total acreage of the subdivision tract (including all undevelopable areas).

Section 13. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Town Council’s intent.

Section 14. Effective Date. This Ordinance shall become effective immediately upon its adoption by the Town Council.

SYNOPSIS

This ordinance amends the Zoning Code to clarify and establish the maximum gross densities for the zoning districts as indicated in the following table.

Zone	Standard Development Max. Density	Standard Development Max. Density w/ bonus	Planned Village Community Max. Density
R-1	3.75	N/A	4.5
R-1A	4.0	N/A	5.5
R-2	6.0	N/A	8.0
R-2A	6.0	9.0	8.0
R-3	12.0	15.0	13.0

This ordinance defines maximum gross density and specifies that it is calculated by dividing the total number of dwelling units in a subdivision by the total acreage of the subdivision tract (including all undevelopable areas). This ordinance makes some minor clarifications, such as specifying that residential uses in the CC district must conform to the density requirements in the R-3 district. This ordinance states that the Town Council must approve density bonuses after considering the recommendation from the Planning and Zoning Commission.

This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on _____, 2019.

ATTEST:

Council Secretary

Mayor

This shall certify that the title and synopsis of this Ordinance was published in the “Smyrna/Clayton Sun Times” on _____, 2019 and posted at the Town Hall on _____, 2019.

So Certifies:

Town Clerk