

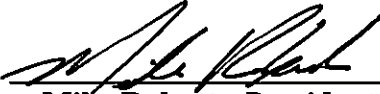
**ORDER: ACCEPT ZONING ADMINISTRATOR JOEL HOLLOWELL'S DECISION
ON INTERPRETATION OF THE ZONING REGULATIONS PRESENTED BY
WIL MATTHEWS FOR LAFAYETTE COUNTY PARCEL 192Y-09-112**


Motion was made by Brent Larson, duly seconded by David Rikard, to accept Zoning Administrator Joel Hollowell's decision on interpretation of the Zoning Regulations for Lafayette County parcel 192Y-09-112.

The vote on the motion was as follows:

Supervisor Brent Larson, voted yes
Supervisor Larry Gillespie, voted yes
Supervisor David Rikard, voted yes
Supervisor Chad McLarty, voted nay
Supervisor Mike Roberts, voted yes

After the vote, President Roberts, declared the motion carried, this the 15th day of March, 2021.


Mike Roberts, President
Board of Supervisors


Sherry Wall, Chancery Clerk



Lafayette County Development Services
Planning, Zoning & Building Inspection

3-3-21

Wil Matthews
807 Tuscan Ridge
Oxford, MS 38655

Re: Zoning Verification for Lafayette County parcel 192Y-09-112

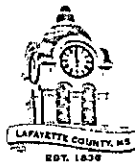
Mr. Matthews,

The property that is the subject of this letter is a 4.691 acre portion of Lafayette County parcel 192Y-09-112. It is located between 78 and 90 CR 415. According to the Lafayette County Zoning Map, the property is designated as Low Density Residential (R-1) District. The proposed use of this property is the development of six 1 to 2 bedroom detached dwellings intended to be non-owner occupied units.

The Lafayette County Zoning Ordinance does not include a definition for rental complex. However, the Lafayette County Land Development Standards and Regulations, which is an integral part of the Zoning Ordinance, defines rental complex as, *"multiple structures (three or more) consisting of non-owner occupied residential units, to include mobile homes, on a parcel of land as such to require the construction of improvements such as streets, roads, and utilities that will connect to existing streets, roads, and utilities."* Therefore, the proposed use is classified as a rental complex.

The purpose of this letter is to verify the permissibility of the proposed use, a rental complex known as Lake View Cottages, and if the use is permitted, given that more than half of the subject property, 2.327 acres, is permanently covered by water, how the maximum density should be calculated.

In accordance with Article IX, Section 900 of the Lafayette County Zoning Ordinance, *"The purpose of this district is to provide areas for the development of low density, single-family detached dwellings and related compatible uses in relatively spacious surroundings which provide ample, usable open space for leisure time activities. No new single-family residential subdivisions, shall be developed in R-1 districts after the effective date of this Ordinance without public or any other approved sewerage. It is the further intent that development support and protect the rural character and natural resources of Lafayette County while providing for limited low-density residential development that is consistent with the principles emphasized in the Lafayette County Comprehensive Plan. The clustering of development is allowed in this district, with the provision that land be set aside for open space."*



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In accordance with Section 901 of the Lafayette County Zoning Ordinance, the following uses are permitted outright in the R-1 District:

- A. Single-family detached dwellings with only one dwelling per lot.*
- B. Accessory uses and structures associated with the use of the land for residential purposes.*
- C. Public or private recreational or open space facilities, excluding country clubs and the like which shall be regulated as public/quasi-public facilities and utilities subject to the provisions of Section 402 of this Ordinance. All lakes associated with this or any other usage shall comply with Lafayette County Land Development Standards and Regulations.*

According to Section 901 of the Lafayette County Zoning Ordinance, single-family detached dwellings with only one dwelling per lot are a permitted use in the R-1 District. The Lafayette County Zoning Ordinance defines a single-family detached dwelling as, *"a site-built residential building designed for occupancy by one family. For the purposes of this ordinance, single-family dwelling does not refer to Mobile, Manufactured, Modular, Panelized or Pre-Cut homes."* Furthermore, the Zoning Ordinance defines family as, *"one person living alone, or two or more persons living together as a single, housekeeping unit, whether related to each other legally or not, as distinguished from a group occupying a boarding house, lodging house, hotel, motel, dormitory or similar dwelling for group use."*

Therefore, although the proposed development consists of multiple non-owner occupied single-family detached dwellings on a single parcel, the Zoning Ordinance does not preclude the development of a rental complex in an R-1 District so long as the developed units comply with the dimensional requirements of the R-1 District.

Turning our attention now to density calculations, although the intent of the typical zoning ordinance, especially those governing urban areas, is to determine the highest and best use for each parcel of property in a jurisdiction, as an ordinance governing the unincorporated areas of Lafayette County, the Lafayette County Zoning Ordinance and all of the zoning districts are instead designed and intended to protect and preserve existing uses. The Lafayette County Zoning Ordinance is not an urban plan designed to create dense neighborhoods and maximized ad valorem tax revenue. With goals and objectives such as, *"Protect and preserve existing neighborhoods and rural residences from encroachment of incompatible development,"* the Comprehensive Plan confirms the intent and purpose of the Lafayette County Zoning Ordinance.

Accordingly, the language of the residential districts contained within the Lafayette County Zoning Ordinance was designed and intended for a progression in intensity and density from the Residential Estate (RE) District being the least dense to the Residential High Density (R-3) District obviously being the highest density.



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The purpose statement of the R-3 District bears noting at this juncture in order to point out the stark contrast in the language and purpose of the R-3 and R-1 Districts. Article XI Section 1100 of the Lafayette County Zoning Ordinance states, *"The purpose of this district is to provide areas for the development of higher density multiple family (i.e., three or more) residential uses with adequate, usable open space to prevent overcrowding...."* The R-3 District requires adequate, usable open space while the R-1 District requires ample, usable open space. Merriam-Webster defines adequate as sufficient for a specific purpose and ample as generous or more than adequate in size, scope, or capacity. Put another way, the language of the R-3 District does not concern neighborhood character as much as satisfying a service or function. Conversely, the language of the R-1 District, in its entirety, is intended to create an atmosphere, specifically, a rural atmosphere.

The purpose statement in both of these districts refers to usable open space. The usability of open space is the subject of provisions in the R-1, R-2 and R-3 Districts that prohibits a developer from using more than fifty percent of an area covered by water to satisfy open space requirements and requires areas with slopes greater than twelve percent to be evaluated for usability purposes in order to meet the open space requirements of each of these districts. Is it conceivable that the language of the Lafayette County Zoning Ordinance would require fifty percent of the required open space to not be permanently covered by water and there be no consideration that minimum lot areas should also not be permanently covered by water?

The Low Density Residential (R-1) District is designed to be the second least dense R district. As the purpose statement of the R-1 District states, *"It is the further intent that development support and protect the rural character and natural resources of Lafayette County..."*, the R-1 District is designed to protect rural character and the minimum lot sizes and dimensional requirements of the R-1 District are intended to create rural character when development occurs. In the R-1 District, the maximum density of 1.3 units per gross acre, 33,500 square feet minimum lot requirement and the 80' minimum lot width are designed to put space between houses and, although clustering is permitted in the R-1 District when optimum conditions exist, with the limitation of one unit per lot, a minimum lot size of 20,000 square feet and the requirement of an additional 15% open space, the purpose of the R-1 District is still intended to maintain a low density character. (It should be noted that optimum conditions are described in Article V Section 5 E of the Lafayette County Land Development Standards and Regulations which states, *"Lot sizes are determined by the Lafayette County Zoning Ordinance. Maximum density may only be achieved when Community/ Public water and Public Sewer is provided."*)

Finally, according to the Lafayette County Comprehensive Plan, *"Lafayette County as a whole primarily consists of soil types where the use of septic tank absorption fields is highly limited (see Map 4.4)."* For this reason, in rural areas where central sewer service is rarely available, minimum lot areas are a safety feature for on-site waste water systems. To add credence to this interpretation, I return to Article V Section 5 E of the Lafayette County Land Development Standards and Regulations which was specifically



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designed to create a failsafe for on-site waste water systems in cases where minimum lot sizes in the Zoning Ordinance fail to maintain an adequate level of safety. If you will recall, Article V Section 5 E states, *"Lot sizes are determined by the Lafayette County Zoning Ordinance. Maximum density may only be achieved when Community/ Public water and Public Sewer is provided."* It further states, *"In NO case shall subdivision lots be smaller than the following criteria:*

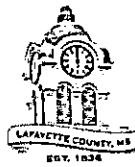
<u>Proposed Development with:</u>	<u>Minimum Lot Size:</u>
<i>Individual wells and Septic Systems</i>	<i>30,000 sq. ft.</i>
<i>Community/Public Water and Septic System</i>	<i>20,000 sq. ft.</i>

Lot area requirements, which are specifically and exclusively designed for the safe disposal of human waste, cannot be interpreted as anything other than property not permanently covered by water.

In the Lake View Cottages case, multiplying 1.3, the maximum density per gross acre permitted in the R-1 District, times 4.691 results in a maximum density of six units. However, central sewer is not available for this property. Therefore, maximum density cannot be achieved. Furthermore, since there is only 2.291 acres of property not permanently covered by water, which is 99,796 square feet, 99,796 square feet divided by six units results in only 16,632 square feet of property not permanently covered by water per each unit. By these calculations, 16,868 square feet of the required minimum 33,500 square feet, where public sewer is not available, is permanently covered by water. This is in effect, clustering when clustering is not permitted and is a violation of the intent and purpose of the R-1 District. Furthermore, with less than the required 20,000 square feet of lot area for safe waste water disposal, this would be a clear violation of the intent of Article V Section 5 E of the Lafayette County Land Development Standards and Regulations

Considering the intent of the minimum lot area requirements in the R-1 District and the provisions of Article V Section 5 E of the Lafayette County Land Development Standards and Regulations, undevelopable property such as lakes, wetlands, and the likes shall NOT be included in the calculation of minimum lot area. Therefore, the maximum number of units permitted on the subject property shall be limited to three (3).

In accordance with Section 2109.01 of the Lafayette County Zoning Ordinance, any party aggrieved with the administrative interpretation of the Zoning Administrator shall have the right to appeal such interpretation. Such appeals may be made directly to the Board of Supervisors. If an appeal is made to the Board of Supervisors, the party aggrieved shall submit a written request to the Chancery Clerk one week preceding any regularly scheduled meeting of the Board of Supervisors at which the aggrieved party desires to be heard.



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All appeals shall be in writing and shall include a copy of the original application together with a statement of the reason for the appeal.

If you have any questions please contact me.

Thank you,

Joel Hollowell

Zoning Administrator