

DOCUMENT # 5

**CITY OF BELFAST COUNCIL
SECOND READING & PUBLIC HEARING
ADOPTED AMENDMENTS
CITY CODE OF ORDINANCES
CHAPTER 102, ZONING
ARTICLE IX, PERFORMANCE STANDARDS
DIVISION 7. SUPPLEMENTAL PERFORMANCE STANDARDS FOR A
MULTI-FAMILY HOUSING OR FLEX HOUSING PROJECT
TUESDAY, APRIL 5, 2022 CITY COUNCIL MEETING**

NOTE TO DEPARTMENT STAFF:

This document identifies the final language for the amendments to Chapter 102, Zoning, Article IX, Performance Standards, Div 7, Supplemental Performance Standards for a Multi-Family Housing or Flex Housing Project, that were adopted by the Belfast City Council at its meeting of April 5, 2022.

TEXT OF ADOPTED) AMENDMENTS

CHAPTER 102, ZONING.

ARTICLE IX. PERFORMANCE STANDARDS.

DIVISION 7. Supplemental Performance Standards for a Multi-family Housing or Flex Housing Project.

Sec. 102-1341. Purpose of Standards and Applicability of City Ordinances.

Article IX, Division 7, identifies specific performance standards that apply to the construction or use of a multi-family dwelling structure(s) and structures and units in a flex housing project, and are intended to address specific potential impacts associated with such construction and uses. An applicant/owner who proposes to construct a new multi-family dwelling structure or expand an existing structure in which multi-family dwelling units are located, or to construct one or more structures and dwelling units as a flex housing project, shall comply with these Division 7 requirements, and shall satisfy all applicable requirements identified in Chapter 62, Utilities; Chapter 78, Floods; Chapter 82, Shoreland; Chapter 90, Site Plan; Chapter 98, Technical Standards; and all other applicable requirements in Chapter 102, Zoning. A project that involves the construction of one single family residence and only one detached accessory

dwelling unit shall be subject to the Article IX, Division 6, Supplemental Performance Standards for an Accessory Dwelling Unit in a Detached Structure.

Sec. 102-1342. City process for review of a Multi-family Housing or Flex Housing project.

The process for the review of a multi-family housing or flex housing project is identified in Chapter 90, Site Plan, Article V, Board Review of a Multi-Family Housing or Flex Housing Project. City review of a permit for a multi-family housing or flex housing project shall comply with procedures identified in Chapter 90, Article V.

Sec. 102-1343. Wastewater Pollution and Subsurface Wastewater Disposal.

Consistent with requirements of Chapter 62, Utilities, and applicable standards identified in Chapter 102, Zoning, Article IX, Performance Standards, Divisions 2, 3, 4 and 5, all properties that are used for a multi-family housing or flex housing project must provide adequate wastewater disposal for the uses that occur on the property. The following standards apply to a multi-family housing or flex housing project if said use(s) are permitted in a respective Zoning District.

(a) Public sewer service.

- (1) If public sewer is available to a property, an applicant/owner who proposes to construct a structure that has three or more dwelling units (multi-family housing) or a flex housing project that has three or more dwelling units, shall connect the structure or structures and units to the public sewer service. The availability of public sewer means the public sewer line is located within 100 feet of any of the lot's frontage on a street (if the lot has frontage on a street), or the public sewer is located within 300 feet of the location of the multi-family structure or any structure associated with the flex housing project on the property.
- (2) The following standards shall apply to an existing project that involves an expansion of an existing project that results in three or more dwelling units.
 - a. If an applicant/owner proposes to increase the number of dwelling units in an existing structure, or increase the number of bedrooms in any of the existing dwelling units, and said structure now has or would have three or more dwelling units (multi-family housing) as a result of the proposed development, and said structure is connected to a subsurface system for wastewater disposal, however, public sewer is available to the property, the applicant/owner shall connect the multi-family structure and all existing and new dwelling units to the public sewer service, regardless of the condition of the existing subsurface wastewater disposal system.
 - b. A flex housing project that involves the expansion of a structure that qualifies as multi-family housing shall be subject to the standard identified in a. above. In a flex housing project that does not involve a multi-family structure(s), if an

applicant/owner proposes to increase the number of existing structures and dwelling units on the property so that there are three or more dwelling units in two or more dwelling structures, and said dwelling units and structures are connected to a subsurface system for wastewater disposal, however, public sewer is available to the property, the applicant/owner shall connect all structures and all existing and new dwelling units to the public sewer service, regardless of the condition of the existing subsurface wastewater disposal system.

- (3) The method of connection to public sewer shall comply with requirements identified in Chapter 62, Utilities, and the applicant/owner shall pay all applicable sewer connection fees. Connection to the sewer service shall occur prior to issuance of an occupancy permit for any project identified in (1) or (2) above.

(b) Subsurface wastewater disposal system.

- (1) If public sewer is not available, and the applicable zoning district allows the construction of a new structure that has three or more dwelling units (multi-family housing) in a structure, or the development of a flex housing project, the applicant/owner may use a subsurface wastewater disposal system to provide adequate wastewater disposal, provided the system installed by the applicant/owner satisfies all of the mandatory standards identified in a. below. Notwithstanding this requirement, an applicant/owner may obtain relief from compliance with one or more of the mandatory standards they cannot satisfy by demonstrating compliance with one or more of the optional standards identified in b. below, as such is deemed satisfactory by the City Code Enforcement Officer. This standard does not apply to a single family dwelling unit that involves the construction of a detached accessory structure that has only one dwelling unit.
- (2) An applicant/owner who proposes to expand the number of dwelling units or the number of bedrooms in any dwelling unit in an existing structure that now qualifies or would qualify as a multi-family structure, and if said structure and units are currently served by a subsurface wastewater disposal system, and public sewer is not available to the property, an applicant/owner may use a subsurface system to provide adequate wastewater disposal, provided the system installed by the applicant/owner satisfies all of the mandatory standards identified in a. below. Similarly, an applicant/owner who proposes to increase the number of dwelling units or to increase the number of dwelling structures on a property as is permitted for a flex housing project, and if said structures and units are then served by a subsurface wastewater disposal system, and public sewer is not available to the property, an applicant/owner may use a subsurface system to provide adequate wastewater disposal, provided the system installed by the applicant/owner satisfies all of the mandatory standards identified in a. below. Notwithstanding this requirement, an applicant/owner can obtain relief from compliance with one or more of the mandatory standards they cannot satisfy by demonstrating compliance with one or more of the optional standards identified in b. below, as such is deemed satisfactory by the City Code Enforcement Officer.

- a. Mandatory standards for subsurface system.
 1. The design flow for the subsurface wastewater disposal system designed and installed by the applicant/owner shall be calculated at a ratio of 1.35 times the design flows for dwelling units identified in Section 4, Subsection E, clauses 1 and 2, in 10-144, Chapter 241, Subsurface Wastewater Disposal Rules, State of Maine Department of Health and Human Services, most recent edition.
 2. A multi-family dwelling structure that has three or more dwelling units and that has a design capacity of 1,000 gallons per day or greater, or in the case of a flex housing project, if the dwelling structures and dwelling units collectively have a design capacity of 1,000 gallons per day or greater, and the project uses one or more subsurface systems in excess of 1,000 gallons per day to manage wastewater, the subsurface system(s) that is installed shall require a design pursuant to the standards for an engineered subsurface system identified in Section 10, Miscellaneous Systems, that are identified in 10-144, Chapter 241, Subsurface Wastewater Disposal Rules, State of Maine Department of Health and Human Services, most recent edition. In the case of a flex housing project that collectively has a design capacity in excess of 1,000 gallons per day, however, the applicant/owner uses multiple subsurface systems to address design flow requirements, the individual systems that are installed (provided that no individual system exceeds 1,000 gallons/day) do not need to be designed as an engineered subsurface system.
 3. Structure setback requirements shall comply with the following standards:
 - a. Notwithstanding dimensional standards for multi-family housing identified in Chapter 102, Zoning, Article V, District Regulations, the minimum structure setback for any multi-family housing structure, including a multi-family housing structure located in a flex housing project, from the side and rear property lines shall be no less than 30 feet, and said setback amount shall increase by a minimum of 10 feet if the slope of the property is 12 percent or greater in relation to the adjacent down-gradient property line. The minimum amount of front structure setback shall comply with the standard for the applicable zoning district identified in Chapter 102, Zoning, Article V, District Regulations.
 - b. Notwithstanding dimensional standards for a single family dwelling structure, a two family dwelling structure, a single family dwelling structure with an accessory dwelling unit in a detached structure, or a multi-family dwelling structure, identified in Chapter 102, Zoning, Article V, District regulations, in a flex housing project, the minimum structure setback for any structure shall increase by a minimum of 10 feet if the slope of the property is 12 percent or greater in relation to the adjacent down-gradient property line. The minimum amount of front structure setback for any structure shall

comply with the standard for the applicable zoning district identified in Chapter 102, Zoning, Article V, District Regulations.

4. If the multi-family dwelling structure and units are not served by public water, including a multi-family dwelling structure in a flex housing project, the minimum separation/setback between the subsurface system and any well that provides potable water shall be no less than 125 feet for structures that have dwelling units with a total of 8 or less bedrooms, and no less than 250 feet for structures that have dwelling units with a total of 9 or more bedrooms. Notwithstanding the above requirements, if there is more than one structure on the property that has multi-family dwelling units, any structure that includes a multi-family dwelling unit shall be located a minimum of 150 feet from any well that provides potable water.
5. The property cannot use soils that are classified as D or E soils identified in Table 4E, Soil Condition, in Chapter 241, Subsurface Wastewater Disposal Rules, State of Maine Department of Health and Human Services, most recent edition.
6. The applicant/owner shall properly maintain the subsurface wastewater disposal system, shall pump the subsurface wastewater disposal system tank a minimum of once every three years or more frequently if conditions warrant to maintain the proper functioning and viability of the subsurface system, shall maintain records that identify when the tank was pumped out, and shall regularly provide such maintenance records to the City Code Enforcement Officer. Notwithstanding this requirement, an applicant/owner that installs an engineered subsurface system, shall comply with conditions identified for proper maintenance of the system identified in the maintenance plan prepared by the civil engineer for the engineered system. An applicant/owner who does not comply with the respective applicable standard identified above shall be subject to issuance of a notice of violation from the Code Enforcement Officer pursuant to Chapter 102, Zoning, Article II, Administration, Division 5, Enforcement.

b. Optional Approaches to Satisfy Mandatory Standards for a Subsurface System.

An applicant/owner who cannot satisfy all mandatory standards identified in a. above, may request the Code Enforcement Officer approve their use of one or more of the following optional approaches, either singularly or in combination, to install a method of treating wastewater that the Code Enforcement Officer finds acceptable, provided that none of the standards for installation of an acceptable wastewater treatment system shall be less than the minimal standards identified in 10-144, Chapter 241, Subsurface Wastewater Disposal Rules, State of Maine Department of Health and Human Services, most recent edition. The Code Enforcement Officer may consult with the State Department of Health and Human Services in determining the acceptability of any of the following options.

1. The applicant/owner identifies a reserve area on the site to construct a replacement subsurface system and preserves this area from development by establishing a 'no-development' easement by deed that is enforceable by the City. If a property owner locates a structure within the bounds of the 'no-development' easement or modifies the 'no development' area to render such unsuitable for a subsurface system, the City can prosecute such action as a violation of Chapter 102, Zoning pursuant to the process identified in Article II, Administration, Division 5, Enforcement.
 2. The applicant/owner provides the City a Letter of Credit that is equal to 120 percent of the cost to construct a replacement subsurface system, and regularly renews said Letter per requirements of the lending institution. If the applicant/owner fails to correct identified deficiencies in the subsurface system, the City shall have the authority to invoke terms of the Letter of Credit to obtain funds to enable the City to correct identified deficiencies. The City has the authority to annually reconsider the amount that must be provided in the performance guarantee, and if needed, to require the applicant/owner to increase the amount in the Letter of Credit. The Letter of Credit must remain in effect until the property owner ceases to use the multi-family dwelling units or the dwelling units in a flex housing project or connects the property to public sewer. If an applicant/owner fails to maintain the required Letter of Credit, the City can revoke the occupancy permit for the multi-family dwelling units or any unit in a flex housing project and require the applicant/owner to cease all use of the structure/units.
 3. The applicant/owner uses the services of a soil scientist or civil engineer to design and install a pre-treatment system that the City Code Enforcement Officer determines is a suitable approach to accomplishing the goals of this Section, and which is consistent with standards identified in 10-144, Chapter 241, Subsurface Wastewater Disposal Rules, State of Maine Department of Health and Human Services, most recent edition.
- c. Alternative or Primitive Systems Prohibited for Multi-Family Housing or Flex Housing.

An applicant/owner who proposes to construct a new structure that has three or more dwelling units (multi-family housing), to increase the number of existing dwelling units or the number of bedrooms in any existing dwelling units in an existing multi-family housing structure, or to construct housing that qualifies as a flex housing project, shall be prohibited from installing a new primitive or limited disposal system, or to expand an existing primitive or limited system, as such are described in Section 4, Subsections I, J, and K in 10-144, Chapter 241, Subsurface Wastewater Disposal Rules, State of Maine Department of Health and Human Services, most recent edition, or a grey wastewater system as such is described in Subsection P of 10-144, Chapter 241, as a method of wastewater disposal. If an existing multi-family structure is served by a primitive, limited, or grey wastewater

system, and an applicant/owner proposes to increase the number of dwelling units or the number of bedrooms in any of the existing dwelling units in a multi-family dwelling structure, the applicant/owner shall be required to discontinue use of the primitive, limited, or grey wastewater system, and to install a subsurface wastewater disposal system that has a septic tank and a permitted wastewater disposal field that complies with standards in this Section, or alternatively to connect to public sewer. Similarly, if any existing dwelling unit or structure on a property that is proposed to be developed as a flex housing project is served by a primitive, limited, or grey wastewater system, and the applicant/owner proposes to increase the number of dwelling units or the number of dwelling structures on the property, the applicant/owner shall be required to discontinue use of the primitive, limited, or grey water system for all dwelling units located in any dwelling structure, and to install a subsurface wastewater disposal system that has a septic tank(s) and a permitted wastewater disposal field(s) that comply with standards in this Section, or alternatively, to connect to public water.

Sec. 102-1344. Access to Property.

(a) Number of driveways.

- (1) Notwithstanding access control standards identified in Chapter 98, Technical Standards, Section 98-154(f), a property on which a single or multiple structures are located that are occupied by multi-family dwelling units, or any flex housing project, shall have no more than one two-way driveway or two one-way driveway openings (one for egress and one for ingress) on the property. The exception to this standard is if two or more properly permitted (two-way) driveway openings (curb-cuts) existed on the property at the time that an application is submitted to construct a new multi-family dwelling structure or to expand an existing structure in which multi-family dwelling units are located. The location of the driveway shall be approved by the Planning Board pursuant to the Site Plan review process. A project that involves the construction of one single family residence and only one detached accessory dwelling unit shall be subject to the Article IX, Division 6, Supplemental Performance Standards for an Accessory Dwelling Unit in a Detached Structure.
- (2) If more than one multi-family dwelling structure is located on a property, or a flex housing project includes three or more dwelling structures or two or more structures that qualify as multi-family housing, and the location of the structures creates public safety or access concerns, the Planning Board may consider allowing more than one two-way driveway openings (curb-cuts).
- (3) If a property is subject to Maine Department of Transportation access management requirements, the property owner shall provide evidence to the Planning Board that the State has issued or will issue any driveway or entrance permit that may be required. If a property is subject solely to City rather than State jurisdiction to determine the location of any driveway, the Planning Board shall consult with the City of Belfast

Superintendent of Public Works to ensure that an applicant/owner can obtain any road opening (curb-cut) or driveway entrance permit that may be required.

- (b) Turn-around requirement. If the posted speed limit is 31 mph or greater on the street on which any driveway opening (curb-cut) is located for a multi-family dwelling structure or a flex housing project, the driveway(s) and accompanying parking areas shall include a turn-around area for vehicles on the property so that a vehicle does not need to back-out onto the adjacent street to exit the property. In all areas in which the speed limit is 30 mph or less, the Planning Board shall require the applicant/owner to construct the driveway(s) and accompanying parking areas to include a similar turn-around area for vehicles, unless the Board determines that the lay-out of the property and potential constraints, such as but not limited to the topography of the site, the location of on-site wetlands or floodplains, the geometry of the adjacent street, and the location of structures on the property, makes this approach unworkable.

Sec. 102-1345. Lot Size and Lot Frontage Requirements.

- (a) A property that is used for a multi-family dwelling structure or a flex housing project shall comply with the minimum lot size requirements identified for the respective zoning district identified in Article V, District Regulations, of this Chapter.
- (b) If a property is located in a shoreland zoning district, the property shall comply with all shoreland lot size and shore frontage requirements to allow the construction of three or more dwelling units (multi-family housing) or a flex housing project on the property; reference Chapter 82, Shoreland, for lot size and shore frontage requirements that apply to the respective shoreland zoning district.

Sec. 102-1346. Compliance with City building code.

The construction of any multi-family dwelling units in one or more structures or any structures and dwelling units in a flex housing project shall comply with all applicable building and life safety code requirements identified in Chapter 74, Buildings and Building Regulation.