

*Potential ‘Ingredients’ for Neighborhood
Preservation and Development – Overlay
Zoning Districts*

John Travis Marshall

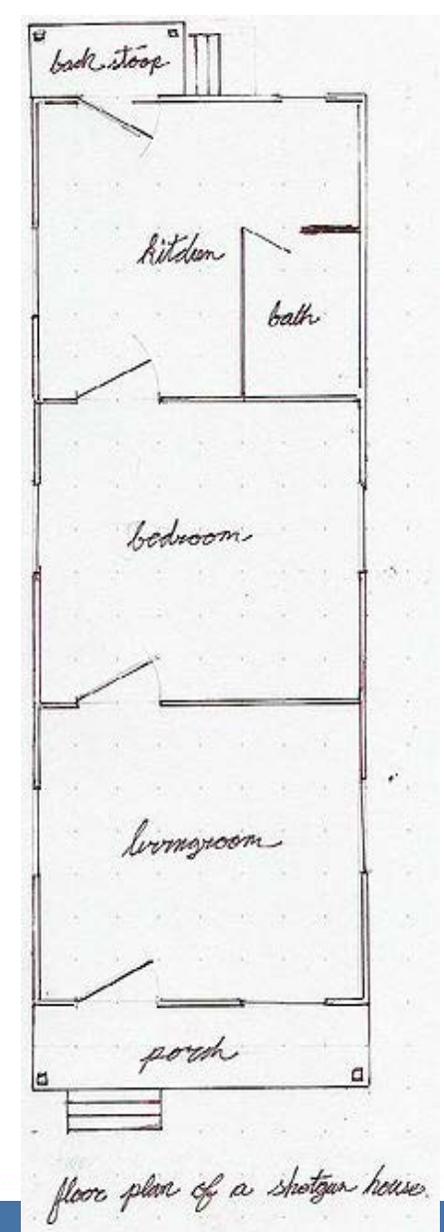
Georgia State University

College of Law

April 14, 2018

The April 2017 PEARLS symposium yielded at least five critical feedback points concerning the city's shotgun homes:

1. the generational attachment of families to neighborhoods;
2. the concern that shotguns are too small; they're not the best place to raise a family;
3. the alternative view that shotguns are Apalachicola's historical example of affordable housing and that Apalachicola is in need of housing options affordable to a broad range of incomes; and
4. an overlay district would be preferable to a floating zone because of the concern that an overlay may be less subject to manipulation; and
5. the foundational integrity of Apalachicola's 1835 city plan



Building a Strong Foundation for Community Development – the Infrastructure

Government & Quasi-gov't institutions

- Land Bank (*actively acquiring & transferring*)
- Community Land Trust (*actively developing*)
- Data (*police, fire, appraiser, tax collector*)

Local laws & programs

- Local housing plan
- Housing trust fund
- Land “swap” authority
- Code lien enforcement powers
- Variance requirements enforced

State laws & programs

- Flexible eminent domain power
- Priority of code enforcement liens
- “Heir” property
- Donation of public property
- Resilient building standards

The Next Several Minutes – Our Stops Along the Way

1. Recapping the zoning challenge
.....
2. What Is an Overlay and How Does It Work?
3. Overlays Are Broadly Used by Florida Local Governments.
4. Steps a city might take to create an overlay.
5. Does Apalachicola have to start from scratch?

PORT ST JOE ROUTE

APALACHICOLA NORTHERN RAILROAD COMPANY
PORT ST. JOE DOCK AND TERMINAL RAILWAY COMPANY

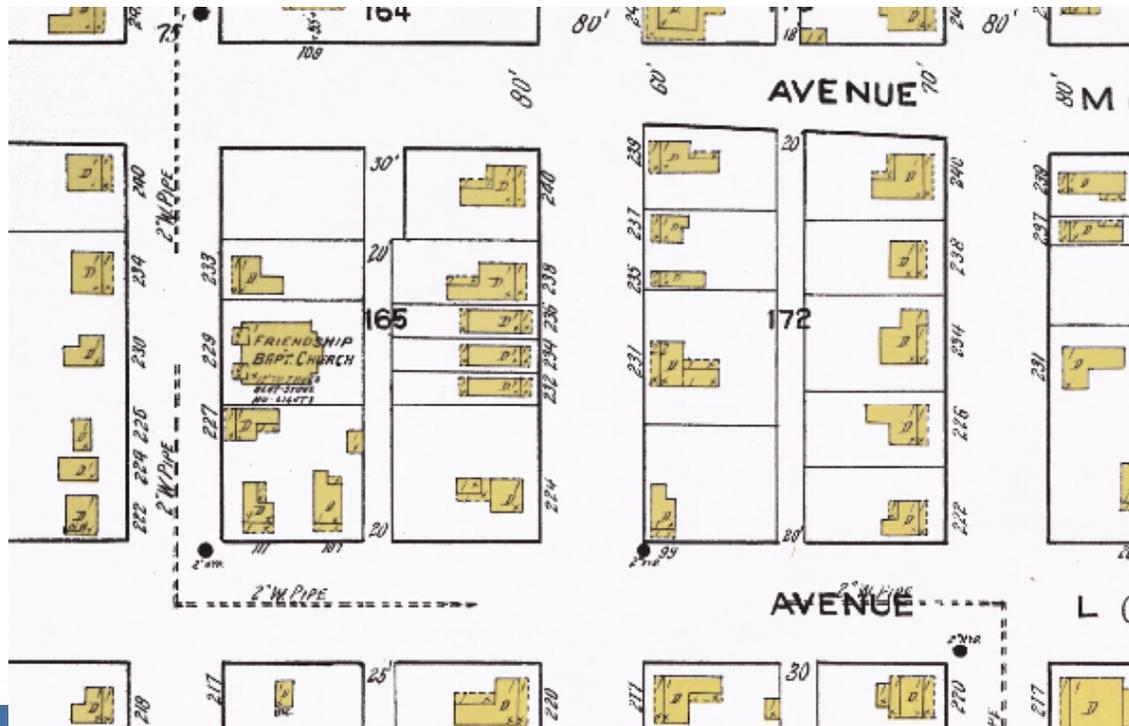
A. T. PERKINS, President, St. Louis, Mo.
 B. W. BELLS, Vice-President and Gen. Manager, Port St. Joe, Fla.
 R. J. LOCKWOOD, Vice-President, St. Louis, Mo.
 R. R. TOMPKINS, Asst. to Pres't, Secretary and Treasurer, " "
 H. A. DRAKE, Auditor, Asst. Sec'y and Treas., Port St. Joe, Fla.
 W. J. OVEN, General Attorney, Tallahassee, Fla.
 H. E. GOODWIN, Gen. Fht. and Pas. Agt. and Fht. Claim Agt., Port St. Joe, Fla.
 J. L. SHARIT, Superintendent, " "
 D. H. BYNUM, Master Mechanic, " "
 M. B. SMITH, Supervisor of Bridges and Buildings, " "
 Captain N. COMFORTER, Wharf Master, " "

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Connections. ¹ With A. C. L. R. R., S. A. L. R. Y. and L. & N. R. R. ² With P. St. A. & G. S. S. Co., Apalachicola and Chattahoochee River steamers and with steamer for Carrabelle. ³ With steamers to and from New Orleans, Mobile and Pensacola and with Trans-Atlantic steamers.

1. Quick Recap -- One Example of the Challenge: 8th St. between Ave L & M

Sandborn Fire Ins. Map (1922)



Franklin Cty. Property Appraiser (2017)



Quick Recap. -- the Challenge

For The Local Government . . .

- **Fla. Stat. Sec. 163.3194** (requires consistency with City's comp. plan)
- **City Comprehensive Plan, Future Land Use Map** (sets density limits)
- **City Land Dev. Code:**
 - E.g., R-1 zoning (forbids accessory structure for residential use; requires 9000 s.f. lot for two-family home)
 - E.g., variance (cannot “increase the density upon a parcel of land”)

For the Scattered Site Affordable Housing Developer . . .

- Serving market segments not generally served by for-profit market players
- keeping rehabbed homes affordable:
 - Property tax abatements
 - Philanthropic grant funds
 - Gov't grant funds
 - Tax credits
 - Proactive credit counseling
 - Predictable permitting environment
 - *Unit size & owner-occupied rental (lot)*

Framing the Challenge

Historic Rehab Goal:

- subdivide a single lot of record (the target parcel), which supports rehab 4 shotgun homes, into two lots of record, each with 2 shotgun homes – one home in homeownership and the other for rental.

The target parcel is located in the R-1 zoning district.

- R-1 allows one unit per lot 'as of right' with a minimum lot size of 6000 s.f.
- By "special exception," R-1 allows a two family structure if the lot is at least 9,000 s.f.
 - But two-family structures (i.e., duplexes) does **not** mean two detached homes. See LDC at § II, para 76 (definition for "Two-family").

Applicant sought a variance to allow subdivision of target parcel into two lots, neither of which would satisfy the minimum R-1 lot size.

In December 2015, board of adjustment (BOA) determined the city could **not** grant a variance to re-subdivide the existing lot of record into two lots.

Framing the Challenge

The BOA's decision was well-grounded:

- BOA cannot waive minimum lot requirements based on a project applicant's request to create nonconforming lots (e.g., variance not appropriate where applicant's affirmative action creates the "hardship" necessitating the variance).
- Arguably, BOA could **also** have denied the variance because it would:
 - Allow a type of multiple family use not allowed the R-1 district. See § III.A.3.b.9 ("Under no circumstances shall the Board issue a variance to permit a use not generally or provisionally permitted in the district involved in the request").
 - Arguably bless a future land use density that exceeds the density currently permitted by the City's future land use map. See Fla. Stat. § 163.3194

Framing the Challenge

In summary, this case highlighted [at least] three obstacles:

- Zoning district's minimum lot size requirements
- Zoning district's allowable [and special] uses
- Comp. Plan future land use map densities

Quick Recap: An Initial Solution – Recent LDC Amendments

Recent changes to LDC terms and provisions:

- To provide better guidance to city officials and owners of nonconforming structures, by resolve the existing LDC's perceived omissions and ambiguities:
 - This means removing definitions that could cause confusion regarding rights and responsibilities;
 - Adding and amending definitions that help clarify rights and responsibilities; and
 - Revisiting how the city treats the continuation, cessation and expansion of nonconforming uses and structures.
- To provide better guidance for city boards regarding their duties concerning review of:
 - Applications for development approval relating to historic structures destroyed by flood; and
 - Applications for variance

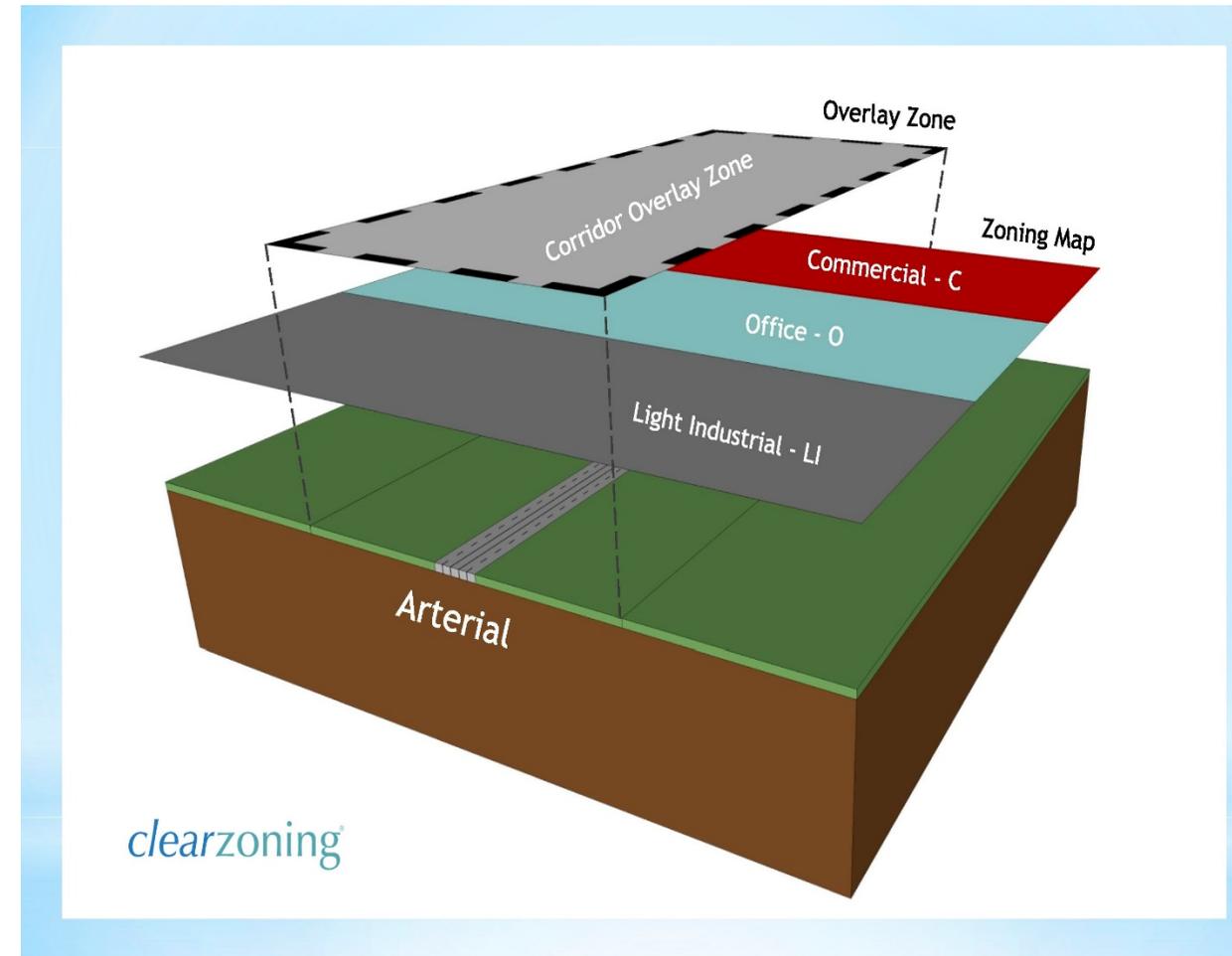
2. What Is an Overlay & How Does It Work?

Overlay Zone: zoning “tool” that add flexibility to relatively rigid zoning districts (e.g., R-1).

- ‘standard’ zoning generally divides cities & towns by prevailing uses
 - zoning districts help ensure that the various uses are generally compatible;
- an **overlay** recognizes:
 - that there are local resources or common interests — often at the neighborhood level — that cut across the use districts created by zoning;
 - To protect the shared resource or to address the shared challenge, the overlay is designed to create an additional set of standards or protections
 - These protections help a neighborhood or section of a city meet the community’s goals, including:
 - historic resources,
 - environmental or wildlife resources, e.g., habitat protection,
 - commercial corridors, e.g., pedestrian amenities, or
 - high hazard areas, e.g., landslide risk

An Overlay Zone

- A property is simultaneously situated in 2 zones
 - Underlying **zoning district** reflects city's concern for compatibility of use in various areas of the city
 - **Overlay zone** reflects city's concern for protecting particular resource running across one or more districts
- Overlay regs supersede underlying zoning



3. Overlays Are Broadly Used by Florida Local Governments

- Roughly 200 Florida local gov'ts use zoning overlays
- About one-fifth of these local gov'ts use overlays to support conservation and development of historic resources.
- Apalachicola's historic district already acts as a kind of overlay.
 - Although Apalachicola's historic district doesn't modify underlying zoning restrictions, see Apalachicola LDC Sec. VI.B.2, the historic district does add an extra layer of local approval for proposed new construction and renovations, see e.g., Sec. VI.B.5.

4. What Steps Should a City Take to Consider an Overlay?

There are at least 4 steps any other local government should take:

1. Determine purpose served by the overlay
2. Ensure compatibility with comprehensive plan (next slide)
3. Define the overlay's geographic reach
4. Set out the overlay's mechanics

4. What Steps Should a City Take to Consider an Overlay?

Apalachicola Comprehensive Plan's Historic and Housing Elements support thoughtful amendment to zoning code to promote historic rehab:

- “Future land use and zoning regulations should encourage the rehabilitation of historic structures” (Comp. Plan, Historic Element at § III).
- “Review the current zoning ordinance and amend it to include density bonuses to those developers who construct housing for low to moderate income persons” (Comp. Plan, Housing Element at § IV, Policy 1A).
- “Increase supply of safe, affordable, and sanitary housing by recycling older houses” (Id. at Policy 1B).
- “Preserve, restore, and enhance historic house[s] and buildings . . . so tha[t] no historic structures that are salvageable are lost.” (Id. at Objective 7)

5. Would Apalachicola Have to Start from Scratch?

Similar to the difference between “store bought” and “homemade”

In a pinch, you can pick something ‘off the shelf’ but you won’t necessarily be getting what you want or need

Yes, there are Florida local gov’ts that furnish possible templates.

Two local gov’ts have historic districts — a type of overlay — that try to address a challenge we see with overlays.

- That challenge concerns underlying zoning standards that may be in conflict with certain aspects of historic development patterns.

Tarpon Springs Historic District

Tarpon Springs' historic district acts as an overlay district.

Generally speaking, historic structures are entitled to the following incentives for preservation, provided that any rehabilitation or restoration is awarded a Certificate of Approval:

(1) Such structures shall be exempt from the Floor Area Ratio requirements of this Code.

(2) Such structures shall be exempt from the nonconforming provisions of this Code;

.....

(4) Such structures shall be exempt from the [storm water management requirements of Tarpon Springs].

(5) Such structures shall be entitled to qualify for the exemption accorded special historic buildings under the appropriate sections of the city's Standard Building Code as administered by the Building Official.

.....

(7) Fines levied pursuant to code violations may be forgiven by the Board of Commissioners, provided the owner remediates the violation through restoration and renovation of the historic or cultural property.

Tarpon Springs Historic District

A few specific pieces of information might be important to include if the preceding language were applied to the shotgun overlay:

1. the code provisions only apply to shotgun homes;
 2. The code provisions that cause the most difficulty for shotgun homes under Apalachicola's LDC; e.g., the following information could be included:
 - *To achieve the joint goal of preserving the city's historic development patterns and the city's historic shotgun architectural form, such shotgun structures shall be exempt from the R-1 zoning district requirement that allows one unit per lot 'as of right' with a minimum lot size of 6,000 square feet, allowing up to two discrete shotgun units on each lot that is at least 4,000 square feet.*
- Adding such a provision would help make clear both the purposes and the effects of the preceding provisions, with an eye towards addressing the specific issues most often faced by shotgun home owners under the current Land Development Code.

City of Titusville

Titusville's overlay also contains a subsection regarding the effects of being listed on the register. These effects sections are also relatively common, but this relevant section is included in Titusville's:

(2) Modification of existing zoning requirements. The listing of a building, structure, object, site or district on the Local Register of Historic Places shall modify the regulations and procedures set forth in Volume II (Land Development Regulations) of the Titusville Code of Ordinances, to the extent stated in this ordinance. The remainder of the requirements, regulations, and procedures set forth in Volume II (Land Development Regulations) shall remain applicable.

This section provides a clear, relatively straightforward way to address the need to modify the current zoning requirements, as well as building code requirements.

City of Titusville

Titusville's code attempts to give historic structures some type of relief from zoning (and building) code requirements:

- *Modification of existing zoning requirements.*
 - *The listing of a building, structure, object, site or district on the Local Register of Historic Places shall modify the regulations and procedures set forth in Volume II (Land Development Regulations) of the Titusville Code of Ordinances, to the extent stated in this ordinance.*
 - *The remainder of the requirements, regulations, and procedures set forth in Volume II (Land Development Regulations) shall remain applicable.*

Thank you!!

Questions??