

ARTICLE V VARIANCES AND APPEALS

SECTION 5.1 VARIANCES

- A. Applicability.** A modification to the terms and development standards of Schedules C, D, E, F, G, H, I, J, K, S and U may be granted where a variance would relieve a practical difficulty or undue hardship caused by a strict application of the regulations after a finding that the proposed variance is consistent with the standards enumerated below. It shall be the burden of the applicant to prove, by substantial competent evidence, compliance with said standards.

Under no circumstance shall the provisions of this section be construed to mean that any provisions, requirements and/or regulations contained within the Land Development Regulations can be waived or reduced which may reasonably be complied with by the applicant.

- B. Standards for Consideration for Variances.** Before any variance may be granted, the Planning and Zoning Commission or Administrative Official shall find that the variance would relieve a practical difficulty or undue hardship caused by a strict application of the regulations provided that the variance is occasioned by:

1. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.
2. The literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the land development regulations.
3. The special conditions and circumstances do not result from the actions of the applicant.
4. Granting the variance will not confer on the applicant any special privilege that is denied by the land development regulations to other lands, structures, or buildings in the same district.
5. The reasons set forth in the application justify granting the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
6. The granting of the variance will be in harmony with the general purpose and intent of the land development regulations and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

- C. Authority to grant a variance.** The following are authorized to grant variances:

1. The Planning and Zoning Commission shall have the authority to grant a variance for multiple-family dwellings, non-residential land uses, and all other land uses except as noted below.
2. The Administrative Authority shall have authority to grant a variance for one-family dwellings and two-family dwellings located in residential zoning districts (SR-1AA, SR-1A, SR-1 and SR-2) after a review and recommendation by the Development Review Team.
3. The Administrative Official shall have the authority to grant a de minimus variance of fifteen percent (15%) or less of any standard or term included in a Schedule referenced above for all land uses including one-family and two-family dwellings.

In granting any variance, the Planning and Zoning Commission or the Administrative Official may prescribe appropriate conditions and safeguards in conformity with these regulations. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of and punishable under these regulations.

The Planning and Zoning Commission or the Administrative Official shall prescribe a time limit, which in no event shall be greater than one (1) year, within which the action for which the variance is required shall be begun and diligently pursued to completion thereafter without cessation of thirty (30) days or greater.

Under no circumstances shall the Planning and Zoning Commission or the Administrative Official grant a variance to allow a use not permissible in the district involved, or any use expressly or by implication prohibited by the terms of these regulations in said district.

D. Procedures for Variance Approval. An owner or his authorized agent seeking a variance as permitted by this Section must make application in accordance with the following procedures:

1. **Application** All applications for variances shall be in the form required and provided by the Administrative Official. Such application shall be submitted to the Administrative Official together with the application fee established in the manner prescribed in the Land Development Regulations. In order to make a determination regarding the application, additional data or information pertaining to the application may be required. A 'complete application' includes the application form, the application fee and all required supplemental data and information.

All applications requesting a reduction in required dimensions shall be accompanied by a survey of the parcel prepared by a surveyor registered in the State of Florida.

2. **De Minimus Variances.** Upon receipt of an application for a variance of fifteen percent (15%) or less, the Administrative Official may approve, approve with conditions or deny the application. The Administrative Official shall prepare a development order pursuant to Section 5.01 D. 4. b. of this Article for those applications that are approved or approved with conditions. The development order shall find that the standards for variances have been satisfied and that the variance being granted is the minimum variance required in order to make possible the reasonable use of the land, structures and other improvements. De minimus variances do not require noticing or a public hearing.

The Administrative Official shall have the discretion to require that an application for a de minimus variance be heard by the Planning and Zoning Commission at a public hearing.

3. **Single-family and Two-family Variances of Greater than 15%.** For single-family and two-family uses, the variance application shall be reviewed by the Development Review Team which shall make a recommendation to the Administrative Authority based on a finding that the proposed variance is consistent or inconsistent with the standards for variances as set for in subsection B of this section. The Administrative Authority shall approve, approve with conditions or deny the variance.

The Administrative Official shall prepare a development order pursuant to Section 5.1 D. 4. e. of this Article for those applications that are approved or approved with conditions. The development order shall find that the standards for variances have been satisfied and that the variance being granted is the minimum variance required in order to make possible the reasonable use of the land, structures and other improvements. The procedures and noticing requirements of Section 3.7, Article III, shall also apply to single-family and two-family variances.

4. **Multifamily and Nonresidential Variances of Greater than 15%..** Upon receipt of an application for a variance of greater than fifteen percent (15%) for multiple-family dwellings and non-residential land uses, the Planning and Zoning Commission shall hold a public hearing upon the application in accordance with the procedures enumerated below and enter its order granting or denying such application. In granting such application the Planning and Zoning Commission must make specific affirmative findings respecting each of the variance standards and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by the Land Development Regulations, which shall become a part of the terms under which a Site Development Permit and Certificate of Completion shall issue.

- a. **Date of Hearing.** Hearings shall be held by the Planning and Zoning Commission at a date and time fixed by the Chairman and shall in no event be less than thirty (30) nor more than sixty (60) days after the filing of a completed application.

b. Notice. Upon notification by the Chairman of the Planning and Zoning Commission of the date fixed for hearing on any matter subject to the provisions of this Section, the Administrative Official, shall cause a notice of such hearing to be published at least once in a newspaper of general circulation in the City of Sanford with such publication to be at least ten (10) days prior to the date of the hearing. The notice shall include:

- Location, date and time of the hearing.
- A description of the location of the parcel proposed for development sufficient to identify the site to the general public.
- A brief description of the proposal being considered.
- Identification of the body conducting the hearing.
- Type of application being considered.

The Administrative Official shall also mail similar notices setting forth the time, place and purpose of the hearing to:

- the applicant;
- the owner of the property described in the application, if other than the applicant; and
- the owners of every parcel of land within a distance of two hundred (200) feet from the property line of the property described in the application. In addition, the Administrative Official shall cause notices of the hearing to be posted in a conspicuous place or places on or about the land described in the application.

Affidavit proof of the required publication, mailing and posting of the notices shall be presented at the hearing.

For purposes of determining the name and address of persons entitled to notice under this Section, the owner of property shall be deemed to be the person who is so identified in the most current tax roll certified for collection and maintained in the office of the Seminole County Tax Collector. Such notice shall be mailed at least ten (10) days prior to the scheduled hearing date.

c. Appearance and Argument. At any hearing upon any matter subject to the provisions of this Section, the applicant seeking action and any other party desiring to be heard upon the application may appear in person, by agent or by attorney. The applicant shall be entitled to make an initial presentation respecting the application and, at the conclusion of presentations or statements by all other parties, shall be entitled to offer a statement in rebuttal to such presentations if the applicant so desires. The Chairman may, at the commencement of the hearing upon each application or at any time during such hearing, require that parties desiring

to make a presentation identify themselves and may specify the time to be allowed each such party within which to make such presentation.

- d. **Decision and Order by the Planning and Zoning Commission.** Action by the Planning and Zoning Commission upon any matter subject to the provisions of this Section shall be announced by the Chairman immediately following the vote determining such action. All actions to approve or to approve with conditions shall thereafter be embodied in a written order prepared by the Administrative Official.
- e. **Development Order Granting a Variance.** The written order shall grant the application, in whole or in part, under such terms and conditions as are determined to be appropriate. All development orders shall be in writing and shall contain the following:
- The name of the property owner and the name of the proposed development.
 - The legal description of the property and, where appropriate, the street address.
 - A precise description of the development activity being approved.
 - Reference to the approved plans or blueprints including name of the preparer and the date of the plans.
 - Any special conditions of the development approval.
 - The expiration date of the development order.

The written development order shall be incorporated into the minutes of the meeting at which such action occurred.

- f. **Effect and Limitation of Approved Order.** An order granting a conditional use or variance, and a Site Development Permit or Certificate of Completion issued pursuant thereto, shall be deemed applicable to the parcel for which it is granted and not to the individual applicant provided that no order or Site Development Permit or Certificate of Completion issue thereto shall be deemed valid with respect to any use of the premises other than that specified in the approved application.
- g. **Recording of the Development Order.** No development order approving, or approving with conditions, a variance or a conditional use shall become effective until said development order is recorded in the official records of Seminole County.
- h. **Time Limit of Development Order.** A development order shall become null and void one (1) year from the effective date unless all or specified portions of the development as defined in the order are commenced. However, the approving body may impose specific time limits other than one (1) year on the approval. The development order shall also become null and void if all construction is not completed within three (3) years

from the effective date of the development order unless otherwise specified in the development order.

- i. **Extension of Development Order.** A development order may be extended by the Administrative Official for a period not to exceed six (6) months if the request for the extension is made before the development order becomes null and void.
- j. **Consecutive Applications.** When the Planning and Zoning Commission has taken action respecting an application for a variance, no application for the same relief shall be accepted by the Administrative Official for consideration by the Planning and Zoning Commission for a period of one (1) year from the date of the original action, provided however, that an applicant may request and the Planning and Zoning Commission may waive this provision for proper cause after a hearing in conformity with the provisions of this section.

SECTION 5.2 ADMINISTRATIVE APPEALS

- A. **Right of Appeal.** Appeals to the City Commission may be taken by any person aggrieved or by any officer, board or agency of the City or by the City Commission in the enforcement of the Land Development Regulations.
- B. **Procedure For Appeal; Time Limitation.** An appeal to the City Commission shall be taken within thirty (30) calendar days after rendition of the order, requirement or determination by the Planning and Zoning Commission, Historic Preservation Board, or the Administrative Official to which the appeal is directed. For purposes of computing the time for filing an appeal, "rendition" of an order, requirement, decision or determination shall be the date at which a written, dated and signed instrument expressing such decision is filed in the records of the Administrative Official. The original and one (1) copy of the Notice of Appeal on a form provided by the Administrative Official shall be filed with the Administrative Official who shall forthwith transmit to the City Commission all the documents, plans, papers or other materials constituting the record upon which the action appealed from was taken and the original Notice of Appeal.
- C. **Hearing.** Except for appeals initiated by a member of the City Commission or appeals of decisions of the Historic Preservation Board, hearings on Appeals to the City Commission shall be held in conformity with the provisions of this section. Appeals initiated by a member of the City Commission or appeals of decisions of the Historic Preservation Board may be directed to the City Commission as a regularly scheduled agenda item at a City Commission meeting.
- D. **Scope of Review of City Commission.** In reviewing orders, requirements, decisions or determinations of the Planning and Zoning Commission, Historic Preservation Board, or the Administrative Official upon appeal thereof in conformity with this section, the City Commission shall review the documents, plans, papers or other materials constituting the record upon which the action was taken and any new material, documents or testimony that may have bearing on the decision. Appeals shall be *de novo*.

The City Commission may, upon appeal, reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination made by the Planning and Zoning Commission, Historic Preservation Board, or the Administrative Official, and may make any necessary further orders, requirements, decisions or determinations respecting the subject of the appeal and, to that end, shall have all the powers of the Planning and Zoning Commission and/or the Administrative Official, respecting such matter. A concurring vote of no less than a majority of the members of the City Commission present at a meeting at which a quorum is present shall be necessary to reverse or modify any order, requirement, decision or determination of the Planning and Zoning Commission, Historic Preservation Board or the Administrative Official.

- E. Effect of Appeal; Stay of Proceedings.** An appeal to the City Commission shall, upon filing, stay all work on the premises and all proceedings in furtherance of the order, requirement, decision of determination appealed from, unless the Administrative Official shall certify to the City Commission that, by reason of facts stated in the certificate, a stay would cause immediate peril to life or property in which case, proceedings or work shall not be stayed except by a restraining order granted by the City Commission for due cause shown after notice to the party filing the appeal and to the Administrative Official or the City Commission.
- F. Rules of Procedure.** The City Commission may adopt such rules, not inconsistent with the provisions of this section to govern proceedings upon appeals from orders, requirements, decisions or determinations of the Planning and Zoning Commission, Historic Preservation Board or the Administrative Official.
- G. Notice And Hearing Procedure For Administrative Appeals.** In considering and acting upon Administrative Appeals, the following procedures shall be observed:
- 1. Date of Hearing for Administrative Appeals.** Hearing shall be held by the City Commission at a date and time fixed by the City Manager and shall in no event be less than thirty (30) nor more than sixty (60) days after the filing of a notice of appeal.
 - 2. Notice.** Upon notification by the City Manager of the date fixed for hearing on any matter subject to the provisions of this Section, the City Clerk shall cause a notice of the time, place and purpose of such hearing to be published at least once in a newspaper of general circulation in the City of Sanford with the first such publication to be at least ten (10) days prior to the date of the hearing. The City Clerk shall also mail similar notices setting forth the time, place and purpose of the hearing to (a) the applicant and (b) the owner of the property described in the application, if other than the applicant.

When the hearing is an appeal of a Planning and Zoning Commission decision, the City Clerk will also mail notices to all nearby property owners as required for the original hearing and shall transmit notice setting forth the time, place and purpose of the hearing to the Administrative Official as well as all Commission members who participated in the decision being appealed.

Upon receipt of such notice from the City Clerk, the Administrative Official shall cause notices setting forth the time, place and purpose of the hearing to be posted in a conspicuous place or places on or about the land described in the application. Affidavit proof of the required publication, mailing and posting of the notices shall be presented at the hearing.

- 3. Appearance and Argument.** At any hearing upon any matter subject to the provisions of this section, the applicant seeking action by the City Commission and any other party desiring to be heard upon the application may appear in person, by agent or by attorney. The applicant shall be entitled to make an initial presentation respecting the application and, at the conclusion of presentations or statements by all other parties, shall be entitled to offer a statement in rebuttal to such presentations if the applicant so desires. The Mayor may, at the commencement of the hearing upon each application or at any time during such hearing, require that parties desiring to make a presentation identify themselves and may specify the time to be allowed each such party within which to make such presentation.
- 4. Decision and Order by the City Commission.** Action by the City Commission upon any matter subject to the provisions of this Section shall be announced by the Mayor immediately following the vote determining such action and shall thereafter be embodied in a written order prepared by the City Clerk, in conjunction with the City Attorney, and executed by the Mayor and the City Clerk. Such written order shall be incorporated into the minutes of the meeting at which such action occurred.

SECTION 5.3 FINALITY OF DECISION

When the City Commission has taken action respecting an Administrative Appeal, no application for the same relief shall be accepted by the Administrative Official for consideration by the City Commission for a period of one (1) year from the date of such action, provided however, that an applicant may request waiver of the time for reapplication, and the City Commission may waive, the provision of this section for proper cause after hearing in conformity with the provisions of this section.

SECTION 5.4 JUDICIAL REVIEW OF DECISIONS

Any person aggrieved by any decision of the City Commission may appeal such decision in the manner provided by law, to the Circuit Court in the Eighteenth Judicial Circuit for judicial relief within thirty (30) days after rendition of the decision.