

## Article 13. - Appeals

### Sec. 1301 - Purpose of Article 13.

This Article describes the process for addressing unusual situations or unique problems that may arise from the strict interpretation or enforcement of this Development Code, including appeals from an administrative decision, for a special exception, and for unique hardships restricting reasonable use of a property.

### **Sec. 1302 - Types of appeals.**

Persons may appeal for relief under the following circumstances:

- (1) When an exception is desired for a particular property from certain requirements of this Development Code, as specified in this Article.
- (2) When compliance with the requirements of this Development Code would create a particular and unique hardship.
- (3) When the requirements for flood damage prevention would create an exceptional hardship or adversely affect an historic structure.
- (4) When aggrieved by an action or an interpretation of the Development Services Director or any other administrative official of the County made under this Development Code. An administrative official is defined as the head of any department subject to these regulations.

### **Sec. 1303 - Special exception variances.**

#### **1303 (a) Appellant.**

A request for a special exception variance to mitigate practical difficulties on a property shall be brought by the property owner or, with the owner's permission, the holder of or applicant for a permit for development or construction on the property.

#### **1303 (b) General limitations on relief.**

Special Exception Variances shall be limited to relief from the following requirements of this Development Code so that the spirit of this Development Code shall be observed, public safety and welfare secured, and substantial justice done:

- (1) Minimum setbacks for principal and accessory structures.
- (2) Maximum height for principal and accessory structures.
- (3) Minimum residential floor area (nonprofit organizations or manufactured homes).
- (4) Maximum Floor Area Ratio
- (5) Maximum structure footprint
- (6) Minimum lot area when due to right-of-way acquisition by Federal, State or County government action
- (7) Minimum lot width.
- (8) Minimum separation between incompatible uses.

- (9) Public Street frontage.
- (10) Minimum or maximum parking requirements (including numerical requirements and the basis for their calculation-such as square-footage basis versus number of employees basis, geometry/layout of the areas used for parking and circulation).
- (11) Location of automobile or truck parking areas.
- (12) Inter-parcel access requirements between parking lots.
- (13) Zoning buffers and screening.
- (14) Minimum tree density units required for tree conservation.
- (15) Restrictions under the O-LF Landfill Overlay district.
- (16) Restrictions upon sign area, height or location upon the property.

**1303 (c) Standards for special exception variance approval.**

A special exception variance may be granted upon a finding that the relief from practical difficulty, if granted:

- (1) Would not cause substantial detriment to the public good; and
- (2) Would not be injurious to the use and enjoyment of the environment or of other property in the immediate vicinity; and
- (3) Would not diminish and impair property values within the surrounding neighborhood; and
- (4) Would not impair the purpose and intent of the Development Code.

**1303 (d) Administrative approval.**

- (1) Special exception variances shall be considered by the Planning & Zoning Board unless the variance is approved administratively. Only those variances listed in this Subsection, below, and within the parameters stated, may be considered for administrative approval.
- (2) The Director of Development Services, upon a finding that a special exception variance meets the standards for approval contained in this Section, may administratively approve such special exception variance within and not exceeding the following parameters:
  - a. Minimum building setbacks for principal and accessory structures.  
Not to exceed a reduction in the minimum setback required by 15%, except the front setback may be reduced or waived if the parking is located in the side or rear yards.
  - b. Maximum building height for principal and accessory structures and fences/walls.  
Not to exceed an additional 4 feet above the maximum allowed.
  - c. Minimum building floor area.  
For a single family detached residence to be constructed by a nonprofit organization, floor area reductions to no less than 1,300 square feet. For all other residential types, a reduction not to exceed 10% of the minimum district standards. For residences in the Manufactured Home Parks all requests under the minimum requirement of 900 square feet require administrative approval.

d. Parking requirements

Not to exceed a reduction from the minimum required by 15%, nor an increase in the maximum allowed by 15%. To allow for the basis of calculation for spaces needed to utilize the maximum main shift employee counts or the table of square footage-based requirements expressed in this Article to provide flexibility in tailoring parking space needs to specific use requests.

e. Automobile or truck parking areas.

The location of automobile or truck parking areas as appropriate to the site.

f. Inter-parcel access.

Modification or waiver of inter-parcel access requirements except that no parcel shall be created that lacks access to a public right of way.

g. Tree density units.

A reduction in the minimum required tree density standard for a project of no more than 10%, upon recommendation of the County Arborist.

h. Sign area, height or location upon the property not to exceed a 15% deviation from the requirements.

h. O-LF Landfill Overlay district restrictions.

Waiver or reduction of the restrictions imposed by the O-LF Landfill Overlay district, provided that:

1. The approval of the landfill operator has been obtained by the appellee; and
2. There shall remain no less than 500 feet between an existing or future landfilling area and a residence and its attendant potable water well.

i. Watershed protection overlays.

Up to 25% variance of the dimensional restriction of the Watershed Protection Overlay is allowed based on hardship and or practical difficulties from the physical attributes of the property upon the recommendation of the Planning & Zoning Director and the Assistant County Engineer. State mandated buffers are not included.

j. Building footprint.

Maximum building footprint not to exceed and increase of 15%.

k. Floor Area Ratio.

Maximum floor area ratio not to exceed 15%.

(3) Residential Infill Developments - The Director of Development Services, upon a finding that a special exception variance for development of residences constructed on vacant lots that are interspersed among other residential structures in established developments or neighborhoods which meet the standards for approval contained in this Section, may

administratively approve such special exception variance within and not exceeding the following parameters:

a. Architecture.

Be of similar architectural style and finish to structures currently existing in the immediate vicinity along the street frontage of the proposed structure.

b. Setback.

The front yard setback within residential zoning districts shall not apply where the average existing building setback line is less than the minimum required in a substantially developed area on lots located within 200 feet on each side of such lot within the same zoning district and fronting the same side of the street. In such case, the setback on such vacant lot may be less than the required setback, but not less than the average of the existing setback for the two adjoining residences on either side of the lot in question.

c. Maximum building height.

Not to exceed an additional 4 feet above the average of the two adjacent structures on the same side of the street frontage of the proposed structure.

**1303 (e) Restriction on refiling a special exception variance if denied.**

If denied, an appeal for a special exception variance affecting the same property shall not be reconsidered for a period of 6 months from the date of denial; provided, however, that the Planning & Zoning Board may reduce the waiting period under extenuating circumstances or on its own motion.

**1303 (f) Limitations on special exception variance approval.**

In no case shall a special exception variance be granted from the conditions of approval imposed on a property through a zoning change granted by the Board of Commissioners.

**Sec. 1304 - Hardship variances.**

**1304 (a) Appellant.**

A request for a hardship variance on a property shall be brought by the property owner or, with the owner's permission, the holder of or applicant for a permit for development or construction on the property.

**1304 (b) Hardship variances; general.**

- (1) The Planning & Zoning Board may authorize upon appeal in specific cases such variances from the terms of this Development Code as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the zoning standards or the subdivision standards will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of this Development Code shall be observed, public safety and welfare secured and substantial justice done. (The existence of nonconforming use of

neighboring land, buildings or structures in the same district or of permitted or nonconforming uses in other districts shall not constitute a reason for the requested variance.)

- (2) Such relief may be granted only to the extent necessary to alleviate such unnecessary hardship and neither as a convenience to the applicant nor to gain any advantage or interest over similarly zoned properties.

**1304 (c) Standards for hardship variance approval.**

Such variances may be granted in such individual case of unnecessary hardship upon a finding by the Planning & Zoning Board that all of the following conditions exist:

- (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.
- (2) The application of the zoning or subdivision ordinance to this particular piece of property would create an unnecessary hardship.
- (3) Such conditions are peculiar to the particular piece of property involved.
- (4) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this ordinance.

**1304 (d) Limitations on hardship variance approval.**

- (1) An appeal may not be taken from the Planning & Zoning Commission or from the Board of Commissioners to the Planning & Zoning Board.
- (2) In no case shall a hardship variance be granted for any of the following:
  - a. A condition created by the applicant, including the result of an unwise investment decision or real estate transaction.
  - b. A change in the conditions of approval imposed through a rezoning granted by the Board of Commissioners.
  - c. Reduction of a minimum lot size required by a zoning district.
  - d. A use of land or buildings or structures that is not permitted by the zoning district that is applicable to the property.
  - e. Any increase in the number of dwelling units or nonresidential building floor area otherwise permitted by the zoning district that is applicable to the property.
  - f. Any request that would increase the maximum height, floor area ratio, lot coverage, or other dimensional requirement, the maximum number of parking spaces, stories, seats, occupants, clients, students, or other requirement by more than 25 percent above the maximum specified by this Development Code.

**1304 (e) Restriction on refiling a hardship variance if denied.**

If denied, an appeal for a hardship variance affecting the same property shall not be reconsidered for a period of 6 months from the date of denial; provided, however, that the Planning & Zoning Board may reduce the waiting period under extenuating circumstances or on its own motion.

**Sec. 1305 - Floodplain management variances.**

Floodplain management variances are filed with the Floodplain Variance Board through the WSA. See Article 11 for procedures and details.

**Sec. 1306 - Appeals of an administrative decision.**

**1306 (a) Appellant.**

Any person aggrieved by an administrative action or interpretation of an administrative official may initiate an appeal to the Planning & Zoning Board.

**1306 (b) Initiation of administrative appeal.**

- (1) An administrative appeal shall be taken within 30 days of the action or interpretation appealed from, by filing the appeal in writing with the Development Services Director. The Development Services Director shall transmit a notice of said appeal to the Planning & Zoning Board specifying the grounds thereof or to the Board of Commissioners as appropriate.
- (2) It is the intention of this Code that all questions arising in connection with the enforcement of this code shall be presented first to the Development Services Director and that such question shall be presented to the Planning & Zoning Board or Board of Commissioners only on appeal from the decision of the Development Services Director.
- (3) The holder of or applicant for a development permit or a building permit may appeal any action taken by an administrative official, including the following:
  - a. The suspension, revocation, modification or approval with conditions of a development permit by the Development Services Director upon finding that the holder is not in compliance with the approved erosion and sedimentation control plan or other approved plans.
  - b. The determination that the holder is in violation of development permit or building permit conditions.
  - c. The determination that the holder is in violation of any other provision of this Development Code or any provisions of a condition of approval within any zoning action ordinance as approved by the County Commissioners.

**1306 (c) Temporary suspension of legal proceedings.**

An appeal of an administrative decision stays all legal proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is made certifies to the Planning & Zoning Board, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate a stay would, in such administrator's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Planning & Zoning Board or by a court of record on application, on notice of the Development Services Director and on due cause shown.

**1306 (d) Action by the Planning & Zoning Board or Board of Commissioners.**

- (1) The Planning & Zoning Board or Board of Commissioners, upon an administrative appeal by an aggrieved party or at the request of the Development Services Director, shall:

- a. Decide appeals from any order, determination, decision or other interpretation by any person acting under authority of this Development Code, where a misinterpretation or misapplication of the requirements or other provisions of this Development Code is alleged.
- b. Interpret the use of words or phrases within the context of the intent of this Development Code.
- c. Determine the boundaries of the various zoning districts where uncertainty exists.
- d. Interpret such other provisions of this Development Code as may require clarification or extension in specific or general cases.

(2) Decisions of the Planning & Zoning Board or Board of Commissioners.

- a. In exercising its powers on administrative appeals, the Planning & Zoning Board or Board of Commissioners may, in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination and to that end shall have all the powers of the official from whom the appeal is taken and may issue or direct the issuance of a permit.
- b. The concurring vote of a majority of the members of the board that are present shall be necessary to reverse any order, requirement, decision or determination of the official, or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any variation of this ordinance.

**Sec. 1307 - Process for granting an appeal.**

**1307 (a) Application and initial actions.**

- (1) Upon receiving a notice of an appeal, the Development Services Director shall assemble such memos, papers, plans, or other documents as may constitute the record for the appeal or as may provide an understanding of the issues involved.
- (2) An application for an appeal shall include such descriptions, maps or drawings as needed to clearly illustrate or explain the action requested. The Development Services Director may request such additional information from the appellant as necessary to provide a full understanding of the appellant's request.
- (3) Once the record has been assembled, the Development Services Director shall:
  - a. Review appeals from an administrative decision and special exception variances eligible for administrative approval for possible resolution or approval, respectively;
  - b. Schedule unresolved appeals for consideration at the next meeting of the Planning & Zoning Board or Board of Commissioners for which adequate public notice can be given; and
  - c. Send a letter by first class mail to the applicant or his attorney notifying the appellate of either 1) administrative resolution of the matter or 2) the date, time and place of the public hearing.

**1307 (b) Public notice.**

- (1) At least 15 or 30 days prior to the public hearing, whichever is appropriate for the type of zoning decision being heard, notice shall be published in a newspaper of general circulation within the county. The notice shall state the time, place and purpose of the hearing.

(2) A request for an unresolved special exception variance, a hardship variance or a flood damage prevention variance shall be heard at a public hearing only upon:

- a. The published notice, in addition to the requirements above, shall include the location of the property, the present zoning classification of the property, and the nature of the requested action; and
- b. At least 15 days prior to the public hearing, the applicant shall post a sign or signs provided by the Development Services Department stating the date, time and place for the public hearing, the present zoning classification and the nature of the requested action. One such sign shall be placed in a conspicuous location every 300 feet along each street frontage of the subject property. If the property has no street frontage, the sign shall be placed on each street at the location from which access will be gained to the property.

**1307 (c) Vesting of variance**

After an approval has been granted by the Planning & Zoning Board for a variance, the applicant, agent or property owner has 24 months to vest the variance approval. To vest a variance approval and forego its expiration, the applicant must lawfully initiate the variance. If the applicant, agent or property owner fails to vest the variance, it will expire.

**1307 (d) Withdrawal.**

Any appellant wishing to withdraw an appeal prior to the meeting of the Planning & Zoning Board shall file a written request for such withdrawal with the Development Services Director. The appeal shall thereupon be removed from the Board's agenda and the request shall have no further effect.

**1307 (e) Attendance requirements.**

The appellant or representative of the appellant shall be required to attend all public hearings on the appeal. The failure to attend may result in dismissal with prejudice, rejection of the appeal, or continuance of the hearing at the board's sole discretion. Failure of the appellant or appellant's representative to appear at the next regularly scheduled hearing shall result in automatic dismissal with prejudice.

**1307 (f) Planning & Zoning Board public hearing.**

- (1) The Chair or the Vice Chair or their designee, who shall act as the Presiding Official, shall convene the public hearing at the scheduled time and place.
- (2) The Presiding Official may administer oaths and compel the attendance of witnesses by subpoena.
- (3) The Development Services Director shall submit the assembled record of the appeal to the Planning & Zoning Board or Board of Commissioners. The Development Services Director, or other appropriate party if the appeal was taken from an administrative action or interpretation, shall provide such information or explanation as appropriate to the circumstances of the appeal.
- (4) At the public hearing, the appellant may appear in person or may be represented by counsel. The following rules shall apply in the conduct of the public hearing:
  - a. The presiding official shall conduct the public hearing as a quasi-judicial proceeding.

- b. For each quasi-judicial zoning decision as referenced in Section 1202(b), the appellant and shall have no less than 10 minutes for the presentation of data, opinions and evidence at the public hearing, and opponents of the application shall likewise have a minimum of 10 minutes for presentation.
- c. The appellant shall first present evidence to the Board. After the appellant has completed the presentation of evidence, opponents shall present such relevant evidence as they think appropriate after being recognized by the presiding official.
- d. All parties participating in the public hearing shall introduce only relevant evidence.
- e. All parties participating shall have the right to present witnesses and to cross-examine witnesses.
- f. The appellant shall have an opportunity to present rebuttal evidence, but such evidence shall be limited to points or issues raised by the opponents.
- g. The public hearing shall be tape recorded, either by videotape or by audiotape, in order to provide a verbatim record of the hearing.

(5) Following the public hearing, the Planning & Zoning Board or Board of Commissioners shall make a decision and adopt reasons supporting the decision. Such decision shall reflect the vote of the Board, as follows:

- a. A motion to approve or deny an appeal must be approved by an affirmative vote of at least a majority of the members present in order for the motion to be approved.
- b. If a motion to approve an appeal fails, the appeal is automatically denied. If a motion to deny an appeal fails, another motion would be in order.
- c. A tie vote on a motion for approval of an appeal shall be deemed a denial of the appeal. A tie vote on any other motion shall be deemed to be no action, and another motion would be in order.

(6) In taking action on an appeal, the Planning & Zoning Board or Board of Commissioners may:

- a. Approve, approve with changes, or deny the request; or,
- b. Table the appeal for consideration at its next scheduled meeting; or,
- c. Allow withdrawal of the appeal at the request of the appellant.

**Sec. 1308 - Decisions by the Planning & Zoning Board.**

**1308 (a) Written decision.**

On all appeals, applications and other matters brought before the Planning & Zoning Board or Board of Commissioners, said board shall inform in writing all the parties involved of its decisions and the reasons therefore within 10 days of the date of the decision.

**1308 (b) Decision final.**

A decision of the Planning & Zoning Board or Board of Commissioners shall be final and may be appealed only to a court of competent jurisdiction. Such appeal must be taken within 30 days of the decision of the Planning & Zoning Board.

**Sec. 1309 - Temporary suspension of permitting.**

Upon submission of a valid application for the granting of an appeal on a property, no permits shall be issued nor shall any actions be undertaken on the property that may be affected by the outcome of such application.