



CHAPTER 10
VARIATIONS FROM CODE REQUIREMENTS

	Page
10.00.00 GENERALLY	10-2
10.01.00 NONCONFORMING SITUATIONS	10-2
10.01.01 Continuation of Nonconforming Uses and Structures	10-2
10.01.02 Expansion or Modification of Nonconforming Uses or Structures	10-2
10.01.03 Exceptions for Affordable Housing and Historic Homes	10-3
10.02.00 VARIANCES	10-3
10.02.01 Generally	10-3
10.02.02 Required Findings for a Grant of a Variance	10-4
10.02.03 Additional Criteria for Findings of a Variance in the HDC or CRA	10-5
10.02.04 Procedures for Variances	10-6
10.03.00 ADMINISTRATIVE WAIVERS	10-6
10.03.01 Authority and Limitations	10-6
10.03.02 Procedure	10-7
10.03.03 Annual Report Required	10-7

10.00.00 **GENERALLY**

The purpose of this chapter is to provide mechanisms for obtaining relief from the provisions of this LDC where hardship would otherwise occur. There are several ways that potential relief from hardship is addressed: relief through requirements regarding nonconforming development; relief through the grant of a variance from the design standards of this LDC; relief through the grant of an administrative waiver in specific situations; and relief through recognition of vested rights regarding use and/or design.

10.01.00 **NONCONFORMING SITUATIONS**

10.01.01 **Continuation of Nonconforming Uses and Structures**

- A. Subject to the provisions in Section 10.01.00, the lawful use of land or buildings existing on the date of enactment of this LDC shall be allowed to continue.
- B. Nothing in this chapter shall be construed to prevent the ordinary and routine maintenance and repair of nonconforming structures.
- C. Nothing in this section shall require any change in plans, construction, or designated use of a building or structure for which a building permit has been issued and the construction of which shall have been commenced within six (6) months of the date of that permit.
- D. Dwelling units made available for resort rental housing uses in the R-1 and R-2 districts as of the effective date of Ordinance No. 2000-28 (October 3, 2000), shall be permitted to continue to be used as such, provided that the resort rental permit has not expired.
- E. If a structure located within the city receives storm damage or other structural damage in excess of fifty (50%) of the appraised value of the structure, such structure may be replaced in compliance with current laws and ordinances, including those enacted since the construction of the subject structure. If the structure was non-conforming based on density or zoning, it may be re-constructed at no greater non-conformity than prior to when it was damaged. In no instance may any non-conformity be expanded.

10.01.02 **Expansion or Modification of Nonconforming Uses or Structures**

- A. Nonconforming structures shall not be expanded except in compliance with this section.
- B. An expansion in square footage shall be permitted where such expansion meets all requirements of this LDC.
- C. Nonconforming Historic Structures. Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a nonconforming historic structure may be permissible when authorized by the HDC in the form of a Certificate of Appropriateness, provided:
 - 1. The structure lies within the Historic District Overlay;
 - 2. Any unsafe conditions are corrected;
 - 3. The use(s) therein shall be in conformance with all applicable provisions of this chapter.
- D. An expansion of a nonconforming structure is permissible that is otherwise required by law or ordered by the City Manager to secure the safety of the building.
- E. A non-conforming structure which was lawfully erected on a lot of record may be reconstructed if it is substantially damaged or destroyed, provided that:
 - 1. The reconstruction does not result in an increase in the nonconformity of the lot area, yards, setbacks or density;

2. The number of dwelling units in such reconstructed structure does not exceed the number of units in existence at the time of damage or destruction;
 3. The repair or reconstruction is substantially completed within twenty-four months of the date of such damage.
- F. An expansion may be permitted where such expansion is solely to extend an existing use throughout the building in which the use occurs on the date of enactment of this LDC. Such expansion shall not be extended to occupy any land outside the building, including parking and other impervious surfaces.
- G. Any non-conforming use shall be brought into full compliance with all provisions of this Code if any of the following activities occur:
1. When the non-conforming use has been discontinued for a period of 180 days;
 2. If a non-conforming structure or portion of any structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance and is declared by any duly authorized official of the city to be an unsafe building, it shall not thereafter be repaired or rebuilt except in conformity with this land development code.

10.01.03 Exceptions for Affordable Housing and Historic Homes

In accordance with, and in furtherance of the comprehensive plan, certain lots are exempt from the provision of Section 10.01.00 regarding nonconforming buildings.

- A. Development may be permissible when a lot meets the following conditions:
1. The lot complies with the standards set forth in the LDC except that the lot width is less than the standard required for the zoning district in which the lot is located;
 2. The lot is located west of Egans Creek; and
 3. Evidence is provided that development will provide affordable housing for very-low, low, or moderate-income persons or families, as the same are defined in Section 420.602, *F.S.*
- B. Development is permissible where development is necessary for the preservation of historically significant housing, in compliance with the provisions of the comprehensive plan.

10.02.00 VARIANCES

10.02.01 Generally

- A. Within the Historic District Overlays and the CRA Overlay, the HDC may authorize a variance from the design and improvement standards of the LDC and may issue exceptions from the CRA design guidelines where the required findings of Section 10.02.00 are met.
- B. The BOA may authorize a variance from the design and improvement standards of the LDC, except for areas within the Historic District Overlay, the CRA Overlay, or as limited by Section 10.02.01(D), where the requirements of Section 10.02.00 are met.
- C. The City Commission may take action to authorize a variance request from LDC Section 4.02.02 for properties which are contained within the Comprehensive Plan defined "Job Opportunity Areas," but only for properties located on the west side of North or South Fletcher Avenues in the "Job Opportunity Areas." The City Commission shall hear such variance requests in accordance with provisions for variances as set forth in Chapter 10.
- D. Limitations on the granting of a variance

1. A variance shall not be granted which authorizes a use that is not permissible in the zoning district in which the property subject to the variance is located.
2. A variance shall not be granted which authorizes any use or standard that is prohibited by the City's Comprehensive Plan.
3. No nonconforming use of adjacent lands, structures, or buildings in the same zoning district, and no permitted use of land, structures, or buildings in other zoning districts, shall be considered grounds for the authorization of a variance.
4. A variance shall not change the requirements for concurrency.
5. A variance shall not be granted to permit the use of a single media peonia for the construction of a dwelling unit.
6. A variance shall not be granted if the evidence submitted by an applicant is solely a demonstration of financial hardship or economic considerations.
7. A variance shall not be granted for procedure or process components of this Land Development Code.
8. A variance shall not be granted to deviate from LDC section 4.02.02 to combine two (2) or more lots which would result in a lot width greater than 100 feet for lots or parcels that abut Ocean Avenue, North Fletcher Avenue, or South Fletcher Avenue except as may be provided in LDC Section 10.02.01 (C) above.
9. A variance shall not be granted which authorizes the filling of wetlands prohibited by LDC Section 3.03.03 (A).
10. No variance shall be granted to exceed the maximum building height of 35 feet for a building on any lot within 800 feet of the mean high-water line of the Atlantic Ocean under LDC Section 4.02.03(D), Table 4.02.03(E), specifically Note 1.
11. A variance shall not be granted for any residential or residential mixed-use structure to exceed the maximum building height requirements contained in Table 4.02.03(E).
12. A variance shall not be granted to reduce the minimum side yard setbacks for buildings within 1,000 feet of the Coastal Construction Control Line (CCCL).

10.02.02 Required Findings for a Grant of a Variance

- A. In order for an application for a variance to be approved or approved with conditions, the BOA or the HDC shall find that all of the following criteria apply:
1. Special Conditions: 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 zoning district. Special conditions or circumstances do not result from actions of the applicant and are not based on a desire to reduce development costs.
 2. Special Privilege: Granting the variance does not confer upon the applicant a special privilege that is denied by the Land Development Code to other lands, structures, or buildings in the same zoning district.
 3. Literal Interpretation: Literal interpretation of the provisions of the Land Development Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district.
 4. Minimum Variance: The variance requested is the minimum variance needed that will make possible the reasonable use of the land, structure, or building.
 5. General Harmony: Granting the variance will be in harmony with the general intent and purpose of the Land Development Code and Comprehensive Plan.
 6. Public Interest: Granting the variance is compatible with surrounding properties, will not cause injury to the area involved, or otherwise be detrimental to the public health, safety, welfare or environment.

- B. The applicant for a variance has the burden of proof of demonstrating that the application for a variance complies with each of the requirements of Section 10.02.02(A).

10.02.03 Additional Criteria for Findings for a Grant of a Variance in the Historic Districts or Community Redevelopment Area

In acting on variance requests in the Historic District Overlays or the Community Redevelopment Area Overlay, the Historic District Council may be guided by the following in addition to the criteria in Section 10.02.02(A):

- A. That a variance is necessary to maintain the historic character of property through demonstrating that:
 - 1. A variance would not be contrary to the public interest, safety, or welfare.
 - 2. Special conditions and circumstances exist, because of the historic setting, location, nature, or character of the land, structure, appurtenance, sign, or building involved, which are not applicable to other lands, structures, appurtenances, signs, or buildings in the same zoning district, which have not been designated as historic sites or a historic district nor listed on the Local Register of Historic Places.
 - 3. Literal interpretation of the provisions of existing ordinances would alter the historic character of the historic district, or historic site to such an extent that it would not be feasible to preserve the historic character, of the historic district or historic site.
 - 4. The variance requested is the minimum necessary to preserve the historic character of a historic site or of a historic district.
 - 5. In the case of the alteration of an existing building, the proposed design would incorporate materials, details, or other elements not permitted by the Land Development Code but which can be documented by photographs, architectural or archaeological research or other suitable evidence to have been used on other buildings of a similar vintage and style in the Historic District in which the building is located, provided that the project will not destroy significant architectural features on the building.
 - 6. In the case of new construction, the proposed design incorporates materials, details, setbacks, massing or other elements that are not permitted by the Land Development Code but which would enhance the quality of the design for the new building or structure, provided that said new building or structure otherwise complies with the criteria for new construction in the Historic District in which the building or structure is proposed to be located and provided further that it would also have a beneficial effect on the historic character of the visually related area.
- B. Or, as an alternative to subsection (A), that a variance is necessary to accommodate an appropriate adaptive reuse of a structure within a Historic District or upon a Historic Site through demonstrating that:
 - 1. A variance would not be contrary to the public interest, safety, or welfare.
 - 2. The variance would not significantly diminish the historic character of the Historic District or Site.
 - 3. That the variance requested is the minimum necessary to affect the adaptive reuse of an existing structure or site.
 - 4. The proposed design would incorporate materials, details, or other elements not permitted by the Land Development Code but which can be documented by photographs, architectural or archaeological research or other suitable evidence to have been used on other buildings of a similar vintage and style in the Historic

District in which the building is located, provided that the project will not destroy significant architectural features on the building.

10.02.04 Procedures for Variances

A. Applications

1. An application for a variance shall include the information required for all applications, as set forth in Section 11.01.03 and City established policies, as amended from time to time.
2. An application for a variance shall include a statement explaining how the variance request conforms to all requirements listed in Section 10.02.02 (A).
3. An application for a variance for development subject to site plan review and approval shall be decided by the BOA or HDC prior to completion of the site plan review process.

B. Review of applications

1. An application for a variance shall be reviewed by the City Manager for compliance with the requirements set forth in Section 10.02.02(A). The City Manager shall prepare a compliance report to the BOA or HDC.
2. A public hearing shall be scheduled before the BOA or the HDC.
3. Notice shall be provided pursuant to the requirements of Section 11.02.00.
4. The BOA or HDC shall conduct the public hearing in accordance with the procedures set forth in Section 11.04.00.
5. The BOA or HDC shall approve, deny, or approve with conditions the application for variance, based upon findings regarding conditions set forth in Section 10.02.02(A).
6. The City Manager shall issue a written order to the applicant when final action is taken by the BOA or HDC.

C. Expiration of variance approval

Any variance authorized by the BOA or HDC, for which action has not commenced within one (1) year from the date on which the decision of the BOA or HDC is reduced to a written order, or if appealed, the date on which the order becomes final, shall be deemed abandoned and be void and of no further force and effect. See LDC Section 11.00.04(D) for extension allowances.

D. Appeals on a Variance.

1. Any person aggrieved by any decision of the BOA or HDC regarding a variance may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within 30 days after the filing of the decision at the office of the board; otherwise the decision of the board will be final.

10.03.00 ADMINISTRATIVE WAIVERS

10.03.01 Authority and Limitations

The City Manager is authorized to reduce specific site design and development standards of this LDC where the intent of the LDC can be achieved and equal performance obtained by granting a waiver. The authority to grant a waiver must be limited to the following:

- A. A reduction in the parking requirement, provided the following standards are met:
 1. The reduction is necessary in order to implement tree protection standards of this LDC;

2. The reduction is limited to either one (1) space or two (2) percent of the parking requirement, whichever is more; and
 3. The reduction does not limit the availability or location of required handicapped parking.
- B. A reduction in a dimensional standard, other than a setback as set forth in Section (A) above, provided that all of the following conditions are met:
1. A property owner inadvertently fails to comply with the dimensional requirements and such failure is identified after the start of construction;
 2. The difference between the required dimensional standard set forth in this LDC and the actual measurement is not more than three (3) inches; and
 3. Failure to comply with the required dimensional standard must not result in an adverse health, safety, or welfare impact.
- C. A reduction in the minimum front, side, or rear yard setbacks for a single residential lot for the exclusive purpose of protecting mature, healthy shade trees on a property provided the following standards are met:
1. The reduction is necessary to protect a healthy native shade tree measuring at least 25 inches DBH; and
 2. The reduction does not result a structure placed less than five (5) feet from the front, side, or rear property lines; and
 3. The protected tree will not require pruning cuts any greater than 20% as recommended by ISA best management practices during construction or within 2 years following construction activities; and
 4. Where the applicant has provided a certified arborist statement attesting to the health of the tree and its worthiness for deviation from typical setback standards, a detailed protection schematic to secure and inspect the tree during construction activities, consideration of designation as heritage tree to extend protection requirements, and recommendations for post development inspections and treatments; and
 5. A recorded agreement between the property owner and the City which binds future owners to tree replacement requirements should the preserved tree fail in the future.

10.03.02 Procedure

- A. An application for an administrative waiver shall meet the requirements set forth in Section 11.01.03 and City established policies, as amended from time to time.
- B. An application for an administrative waiver shall include a statement explaining how the request conforms to all requirements listed in Section 10.03.02(A), (B), or (C).
- C. The City Manager shall evaluate the application for administrative waiver for compliance with the requirements set forth in Section 10.03.02(A), (B), or (C), and shall issue a notice of intent to approve or deny the application. The notice shall meet the requirements of Section 11.02.00.
- D. When an application is approved, the City Manager shall issue a written order following the notice period. When the application is denied, the City Manager shall notify the applicant in writing.

10.03.03 Annual Report Required

An annual report shall be prepared to summarize the number and type of administrative waivers granted in the previous year. Such reports shall be prepared in January of each year for the previous calendar year. Annual reports shall be presented to the Planning Commission for review and comment. Annual reports, together with recommendations from the Planning Commission, if any, shall be forwarded to the City Commission.