



**GROWTH AND RESOURCE MANAGEMENT DEPARTMENT
PLANNING AND DEVELOPMENT SERVICES DIVISION**

123 West Indiana Avenue, DeLand, Florida 32720
(386) 736-5959

TO: Planning and Land Development Regulation Commission

DATE: June 17, 2021

SUBJECT: Discussion of Variance Criteria

Pursuant to Section 72-379, the PLDRC may authorize variances to Articles II and IV of the Zoning Code, subject to meeting five specific criteria. Subsection (3) specifies that a variance may be granted only if all five criteria are met. The Commission considers the staff findings and recommendations provided in a staff report. However, staff is rarely able to make a recommendation of approval due to the difficulty in finding that a variance request meets all five criteria. As a result, a greater burden is placed on the Commission to find that the applicant has provided competent and substantial evidence to support approval of the requested variance. Therefore, this discussion item is presented to consider the merits of changing the requirement to meeting the majority of the criteria rather than all five criteria. Section 72-379 is attached for reference.

Sec. 72-379. - Variances.

The commission may, except as otherwise provided in subsection (5) of this section, authorize, after due public notice upon application on a form prescribed by the zoning enforcement official, such variance or variances from the terms of articles II or IV as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provision of articles II or IV would result in unnecessary and undue hardship. Said variance application shall be heard only if it is presented by the person owning 51 percent or more of the specific area of land involved or upon an administrative application by the county council.

(1) Application.

- a. An application for a variance shall be submitted to the department, together with all applicable fees. The application shall include the following:
 1. Current survey of property prepared by a registered land surveyor licensed to practice in the State of Florida. The survey shall accurately reflect the current status of the parcel and shall have been completed within the past two years or in lieu thereof, a notarized statement from a title insurance company or attorney that a survey more than two years old continues to accurately reflect the current boundaries of the parcel.
 2. Legal description of property.
 3. A plan to scale of sufficient detail to illustrate the variance.
 4. A written petition demonstrating:
 - i. Special conditions and circumstances exist which are peculiar to the land, structure, sign or building involved and which are not applicable to other lands, structures, signs or buildings in the same zoning classification.
 - ii. The special conditions and circumstances do not result from the actions of the applicant.
 - iii. Literal interpretation of the provisions of this article would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classifications, under the terms of the ordinance, and would work an unnecessary and undue hardship on the applicant.
 - iv. The variance granted is the minimum variance that will make possible the reasonable use of the land, building, structure or sign.

- v. The grant of the variance will be in harmony with the general intent and purpose of this article and the Volusia County Comprehensive Plan, Ordinance No. 90-10, as amended, and that such variance will not be injurious to the area involved.
- vi. For variances to subsection [72-290\(1\)a.](#) of this article, the petition should demonstrate:
 - A. That the proposed use will not be contrary to the public interest and that the spirit and intent of this article will be observed;
 - B. That the proposed use will not enlarge or encourage the development or further development of a blighted area; and
 - C. That the establishment of an additional such regulated use in the area will not be contrary to any program of neighborhood conservation, or will interfere with any program of urban or rural revitalization.
- b. The department shall review the application. The department has three working days from the date the applicant submits the application to determine if it is complete and correct. If the application is found to be lacking any of the requested information or if the data and exhibits are inaccurate, it will not be considered "filed" for the purpose of processing nor placed on the commission's agenda unless a sufficient application is submitted within three working days after the filing deadline date.
- c. The department shall submit a written report containing its recommendations on each application to the applicant and to the commission at least one week prior to the meeting of the commission before which the application is to be heard, unless an extension is granted by the commission.

(2) *Conditions and safeguards.* The commission may impose on the grant of any variance any conditions or safeguards not otherwise required if deemed necessary or desirable in furthering the purposes of this article. Violation of any such conditions or safeguards may result in a revocation of any variance permit, in addition to any other remedy for such violation provided in this article or by law.

(3) *Limitation of power to grant variances.* A variance may be granted only to modify the height, area, yard size, parking, residential lot coverage, open space, or distance separation requirements of articles II or IV, to separate lots required to be combined under subsection [72-206](#)(1) of this article, or to construct on substandard lots as defined in this article. Under no circumstances shall the commission grant a variance to permit or expand a use not generally or by special exception permitted in its zoning classification, nor grant a variance for the number of signs or change in permitted signs on a premises. Further, no variance shall be granted which is not consistent with the Volusia County Comprehensive Plan, Ordinance No. 90-10, as amended. **A variance may be granted only if the applicant meets all of the conditions listed in subsection (1) of this section.** No nonconforming use of neighboring land, structures, signs or buildings in the same zoning classification; and no permitted use of land, structures, signs or buildings in other zoning classifications shall be considered grounds for the authorization of a variance.

(4) *Expiration of variance.* If a variance does not begin to serve the purpose for which it was granted within 12 months from the date of rendition, or if its use is abandoned for 12 consecutive months from the date of rendition, it shall expire. A shorter or longer period of time may be set by the commission. Provided, however, that the zoning enforcement official may extend the variance for up to an additional 12-month period of time if the applicant can demonstrate that a good-faith reliance has been ongoing to accomplish the approved variance. Good-faith reliance may include, but is not limited to, the securing of any required permits from other governmental agencies/jurisdictions or the expenditure of substantial funds upon reliance of the approved variance.

(5) *Administrative determination.* [Repealed.]