

Ordinance No. 21-O-\_\_

AN ORDINANCE OF THE CITY OF TALLAHASSEE, FLORIDA CONCERNING VARIANCES TO THE LAND DEVELOPMENT CODE; AMENDING CHAPTERS 2 AND 9 OF THE LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF TALLAHASSEE, FLORIDA, AS FOLLOWS:

Section 1. Section 2-158 of the Tallahassee Land Development Code is hereby amended to read as follows:

Sec. 2-158. Powers and duties.

The board of adjustment and appeals shall have the following powers and duties under the zoning, housing, building, plumbing, gas, fire prevention, and sign codes (regulatory codes) of the city and the county:

....

(b) Variances. To hear and decide requests for variances for single-family and duplex dwelling units and variances to chapter 7, sign code, or as further set forth in this Code. A variance is defined as a relaxation of the strict terms of this Code or regulation ~~in cases involving practical difficulties or hardships~~ and where such variance request meets the following criteria:

(1) The variance will not be contrary to the public interest and shall not substantially interfere with or detrimentally affect the health, safety, or welfare of others;

(2) ~~The intent of the regulation sought to be varied will be observed and substantial justice done by granting the variance;~~

(3) Where, owing to conditions peculiar to the property, existing structures or buildings thereon, and not the result of the actions of the applicant, a strict and literal enforcement of the Land Development Code ~~regulatory code involved would deprive the applicant of rights commonly enjoyed by and frequently occurring on other properties in the applicant's same zoning district under the terms of this Code,~~ and would result in undue ~~practical difficulty or hardship~~ not shared by other property owners in the zoning district;

(4) ~~The owner's predicament feasibly cannot be obviated through any method other than the variance;~~ Any variance granted shall be the minimum departure from the regulation that will allow reasonable use of the land, building, structure or signage;

(5) The applicant ~~may not have~~ has not created the ~~practical difficulty or hardship;~~

(6) ~~The applicant will be deprived of alleged practical difficulties or hardships which would result from failure to grant the variance extend to the inability to use the land in question for any reasonable legal use of the land without the variance which is consistent with the surrounding properties and in conformity with the provisions of this Code and include substantially more than mere inconvenience and inability to obtain a higher financial return; or, in the case of signage, the applicant will be deprived of any reasonable signage without the variance.~~

(7) ~~The variance shall not substantially interfere with or detrimentally affect the health, safety, or welfare of others whose property would be affected by allowance of the variance;~~

(8) The variance shall not adversely affect the delivery of governmental services;

(9) The variance shall not be in conflict with the comprehensive plan; and

(10) ~~The variance shall not allow establishment or expansion of a nonconforming use;~~

(11) ~~A variance shall not be granted because of the presence of nonconformities in the zoning district or adjoining districts; and~~

(12) No use variances are permitted.

The board of adjustment and appeals may impose reasonable conditions upon the granting of any variance to ensure that the public health, safety, and general welfare shall be protected and substantial justice done. Any violation of such conditions shall be a violation of this Code.

Section 2. Chapter 9, Article V, of the Tallahassee Land Development Code is hereby amended to read as follows:

#### ARTICLE V. ~~DEVIATION TO~~ VARIANCE OF DEVELOPMENT STANDARDS

Sec. 9-231. Authority.

(a) An applicant may request that the development review committee ~~to grant a variance deviate~~ from the development standards of chapters 9 or 10. ~~Such deviation~~ A variance shall be granted only upon demonstration and a finding of consistency with the comprehensive plan and no adverse impact to the general health, safety, and welfare of the public. Requests for a variance ~~deviations~~ pursuant to this section shall be processed concurrently with a development application.

~~(b) During any period of local economic emergency declared by the commission, the requirements in section 9-232, application process, for deviations to development standards are waived for public entities constructing capital projects, and any deviations~~

~~to development standards may be approved by the director. This paragraph does not waive the criteria for granting a deviation.~~

Sec. 9-232. Application process.

An applicant requesting a variance ~~deviations~~ under this article shall file such request in writing, stating the explicit standard from which a variance ~~deviation~~ is requested and the proposed standard to be applied to the project. Such request shall contain sufficient information to demonstrate compliance with the standards for granting a variance ~~deviation~~ as provided under section 9-233, ~~criteria for granting a deviation; or, for granting deviations under division 3 of article III of this chapter, section 9-184.~~ Applications under section 9-184 must also demonstrate that the requested deviations will better meet development and design review requirements in the design review districts.

Sec. 9-233. Criteria for granting a variance ~~deviation~~.

~~Deviations~~ Variances from the development standards in chapter 9 or 10 are not favored and such requests may only be granted upon a showing that all applicable criteria set forth in this section, as determined by the development review committee, have been met. ~~The applicant will not be required to address any of the criteria set forth below that are found inapplicable to the application.~~ The applicant shall have the burden of demonstrating through a preponderance of the evidence that all applicable conditions necessary to granting the variance ~~deviation~~ have been met. The development review committee shall grant a variance ~~deviation~~ under this section only upon demonstration of the following criteria ~~that~~:

- (1) The variance will not be contrary to the public interest and shall not substantially interfere with or detrimentally affect the health, safety, or welfare of others;
- (2) Where, owing to conditions peculiar to the property, existing structures or buildings thereon, and not the result of the actions of the applicant, a strict and literal enforcement of the Land Development Code would result in undue hardship not shared by other property owners in the zoning district;
- (3) Any variance granted shall be the minimum departure from the regulation that will allow reasonable use of the land, building, or structure;
- (4) The applicant has not created the hardship;
- (5) The applicant will be deprived of any reasonable legal use of the land without the variance.
- (6) The variance shall not adversely affect the delivery of governmental services;
- (7) The variance shall not be in conflict with the comprehensive plan; and

(8) No use variances are permitted.

~~(1) — The deviation will not be detrimental to the public good or to the surrounding properties;~~

~~(2) — The granting of the deviation is consistent with chapters 9 and 10 of this Code and the comprehensive plan;~~

~~(3) — The deviation requested is the minimum deviation that will make possible the reasonable use of the land, building, or structure;~~

~~(4) — The strict application of the requirements of chapters 9 and 10 will constitute a substantial hardship to the applicant, which hardship is not self-created or self-imposed;~~

~~(5) — There are exceptional topographic, soil, or other environmental conditions unique to the property;~~

~~(6) — The deviation requested would provide a creative or innovative design alternative to substantive standards and criteria; and/or~~

~~(7) — The impacts associated with the deviation requested are adequately mitigated through alternative measures.~~

~~The standards in this section do not apply to site plan deviation requests in design review districts pursuant to section 9-184.~~

Section 3. Conflicts. All ordinances and parts of ordinances of the City of Tallahassee Code in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4. Severability. If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full force and effect.

Section 5. Effective Date. This ordinance shall become effective \_\_\_\_\_, 2022.

INTRODUCED in the City Commission on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

PASSED by the City Commission on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

CITY OF TALLAHASSEE

By: \_\_\_\_\_  
John E. Dailey  
Mayor

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
James O. Cooke, IV  
City Treasurer-Clerk

By: \_\_\_\_\_  
Cassandra K. Jackson  
City Attorney