

writing on the records of the planning and zoning board, and a statement in writing of such grounds of disapproval shall be furnished to the applicant or his agent. If approved subject to modifications or conditions, the nature of the required modifications or conditions shall also be indicated in writing on the records of the planning and zoning board and furnished to the applicant or his agent. (Code 1988, § 24-191; Ord. No. 97-01, § I, 3-13-97)

Sec. 118-101. Required notice.

Under this division, the director of planning shall fix the date for the hearing of a special exception use permit application and shall cause a notice of the time, place and purpose of such hearing to be published at least one time in a newspaper of general circulation in the area at least five days prior to the hearing. In addition, the director of planning shall mail similar notices setting forth the time, place and purposes of the

hearing to the parties in interest. The director of planning shall also mail such notices to the owners of every parcel of land within a distance of 300 feet in any direction from the property line of the land in question. Such notices shall be mailed to the owner's current address of record maintained by the assessor of taxes for the city commission and shall be postmarked no later than five days prior to the scheduled hearing date. The director of planning shall present an affidavit certifying that he has complied with the notice requirements of this section, along with a list of the persons and addresses to which notices were mailed, at the time of the hearing of the special exception use permit application. The applicant for a special exception use permit shall pay all costs and expenses in connection with public notice of such hearings and related notices in accordance with this chapter, in addition to the fees required for planning and zoning board review and administration.
(Code 1988, § 24-192; Ord. No. 97-01, § I, 3-13-97)

Sec. 118-102. Time limit.

Any special exception granted by the planning and zoning board under this division shall expire 365 days after the effective date of such action unless the provisions of the special exception are adhered to within such 365-day period. However, upon application, the planning and zoning board may renew such special exception for one additional period of 365 days, provided good cause is shown, and the application for extension shall be filed with the planning and zoning board at least two weeks prior to the expiration of the 365-day period.

(Code 1988, § 24-193; Ord. No. 97-01, § I, 3-13-97; Ord. No. 05-45, § 3, 10-13-05)

Secs. 118-103—118-125. Reserved.

DIVISION 4. VARIANCES

Sec. 118-126. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City staff means the city manager, city planning and zoning director, city public works direc-

tor, city finance director, chief of police, fire chief, utilities director, city clerk, parks and recreation director and their designees.

Development has the meaning given it in F.S. § 380.04.

Land development regulations means resolutions, ordinances and matters approved by the city commission and provisions in this Code that regulate any aspect of development, including but not limited to zoning, rezoning, subdivision, building construction, sign regulations and other provisions controlling the development of land.

Practical difficulty means use of all or a portion of the property at issue cannot occur with reasonable physical accommodation that is economically reasonable.

Unnecessary hardship means a practical difficulty which exists due to an unintended effect of the land development regulation.

Use variance means an exception to the uses permitted in a particular zoning district by right, special exception or conditional use.

(Code 1988, § 24-194; Ord. No. 97-27, § I, 7-24-97)

Cross reference—Definitions generally, § 1-2.

Sec. 118-127. Applicability.

Under this division, the planning and zoning board shall have the authority to consider, deny, grant, and grant with conditions variances for all land development regulations that do not expressly prohibit variances.

(Code 1988, § 24-194; Ord. No. 97-27, § I, 7-24-97)

Sec. 118-128. Purpose and general provisions.

(a) The purpose of this division is to provide relief from certain requirements of the land development regulations when the strict administration of such regulations thwart an important need and the reasonable use of the property for which a variance is sought.

(b) Use variances are not permitted.

(c) All variance requests from the requirements in article II of chapter 90, pertaining to flood protection, must follow the variance procedures established in article II of chapter 90.

(d) All variances run with the land.

(e) All variance requests to the requirements of the Florida Americans with Disabilities Accessibility Implementation Act must be proceeded through the procedures required under such act. (Code 1988, § 24-194; Ord. No. 97-27, § I, 7-24-97)

Sec. 118-129. Required.

Variances are required if development of property inconsistent with the land development regulations is to occur. (Code 1988, § 24-194; Ord. No. 97-27, § I, 7-24-97)

Sec. 118-130. Submittal requirements.

Under this division, the following shall be submitted for a variance:

- (1) Completion of the appropriate forms;
- (2) Site plan;
- (3) Reasons identifying why a variance is warranted (Note: The burden of proof is the obligation of the applicant. Justification for compliance with the criteria for a variance must be fully documented and proven by the applicant. Each variance must stand on its own merits. Past variance approvals will not be grounds for approval of future variances.); and

(4) Payment of the application fee. (Code 1988, § 24-194; Ord. No. 97-27, § I, 7-24-97)

Sec. 118-131. Review criteria.

A variance may be granted from land development regulations by the planning and zoning board if the planning and zoning board concludes that literal enforcement of the provisions of land development regulations would result in either practical difficulties (for setback and parking provisions) or unnecessary hardships (for all other land development regulations) for the property at issue. In order for a variance to be granted, the planning and zoning board must also find that, by granting the variance, the remaining regulations

will protect the public safety and welfare of the city. The planning and zoning board may reach these conclusions if it finds that:

- (1) Granting the variance will not cause or allow interference with the reasonable enjoyment of adjacent or nearby property owners or negatively impact the standard of living of the citizens of the city;
- (2) The variance will allow a reasonable use of the property, which use is not out of character with other properties in the same zoning category;
- (3) In the context presented, strict compliance with the land development regulation will not further any legitimate city objective or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under this criteria if the variance were denied;
- (4) The granting of the variance is consistent with the city's comprehensive plan; and
- (5) The variance requested is the minimum variance that will make reasonable use of the land, building, or structure or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under this criteria if the variance were denied. (Code 1988, § 24-194; Ord. No. 97-27, § I, 7-24-97)

Sec. 118-132. Review procedure.

Under this division, variances shall be:

- (1) Reviewed by city staff; and
- (2) Approved, denied, or approved with conditions by the planning and zoning board after one public hearing. (Code 1988, § 24-194; Ord. No. 97-27, § I, 7-24-97)

Sec. 118-133. Advertising and public hearing requirements.

(a) *Mailed notices.* For the purpose of this division, the director of planning and zoning shall notify all property owners within 300 feet of the variance site via regular mail. These notices must:

- (1) Identify the time and place of all public hearings on the petition;

- (2) Identify the general location and purpose of the variance site and land development regulation for which a variance is sought;
- (3) Identify the time and place of all public hearings pertaining to the variance; and
- (4) Be postmarked at least five days prior to the planning and zoning board public hearing.

(b) *Newspaper advertising.* A newspaper advertisement will be placed in a local paper by the director of planning and zoning. This advertisement must:

- (1) Appear once at least five days prior to the planning and zoning board public hearing, noticing the time and place of the public hearing; and
- (2) Identify the general location of the variance site and include the purpose of the variance and the land development regulation for which the variance is sought.

(c) *Sign cards.* One on-site sign card shall be posted by the director of planning and zoning. This sign card must:

- (1) Notice the time and place of the required public hearings;
- (2) Identify the purpose of the variance and the land development regulation for which the variance is sought; and
- (3) Be posted at least five days prior to the planning and zoning board public hearing.

(Code 1988, § 24-194; Ord. No. 97-27, § I, 7-24-97)

Sec. 118-134. Expiration period.

All variances approved by the planning and zoning board pursuant to this division shall expire and become null and void if the building or improvement or other matters authorized by the variance are not commenced within 365 days from the date of the planning and zoning board's approval. One 365-day extension of the variance may be granted by the planning and zoning board prior to the expiration of the first 365 days.
(Code 1988, § 24-194; Ord. No. 97-27, § I, 7-24-97; Ord. No. 50-45, § 2, 10-13-05)

Sec. 118-135. Review fees.

Under this division, review fees shall be \$75.00 for a variance for a single-family residential development, and \$150.00 for all other variance requests.
(Code 1988, § 24-194; Ord. No. 97-27, § I, 7-24-97)

Secs. 118-136—118-160. Reserved.

DIVISION 5. APPEALS

Sec. 118-161. Exercise of power.

In exercising its powers, the planning and zoning board may, upon appeal and in conformity with this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination made by the administrative official in the enforcement of this chapter and may make any necessary order, requirement, decision or determination, and to that end shall have all the powers of the administrative official from whom the appeal is taken. The concurring vote of at least three members of the planning and zoning board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or to decide in favor of the applicant on any matter upon which the planning and zoning board is required to pass under this chapter.
(Code 1988, § 24-195)

Sec. 118-162. Planning and zoning board—Appeal procedure.

Under this chapter, appeals to the planning and zoning board may be taken by any person aggrieved or by any officer, bureau, department or agency of the governing body affected by any decision of the administrative official under this chapter. Such appeal shall be taken within 30 days after rendition of the order, requirement, decision or determination appealed from by filing with the administrative official from whom the appeal is taken and with the planning and zoning board a notice of appeal specifying the grounds thereof. The appeal shall be in such form as prescribed by the rules of the planning and zoning board. The administrative official from whom the appeal is taken shall, upon notification of the

filing of the appeal, forthwith transmit to the planning and zoning board all the documents, plats, papers or other materials constituting the record upon which the action appealed from was taken. An appeal to the planning and zoning board stays all work on the premises and all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken shall certify to the planning and zoning board that, because of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings or work shall not be stayed except by a restraining order, which may be granted by the planning and zoning board or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown. The planning and zoning board shall charge a fee of \$25.00 for reviewing all appeals for dimensional variances except when such fee is specifically exempted by this chapter. (Code 1988, § 24-196(1))

Sec. 118-163. Same—Hearing of appeal.

Under this division, the director of planning shall fix a reasonable time for the hearing of the appeal and shall give public notice thereof, as well as due notice to the parties in interest. The planning and zoning board shall decide the appeal within a reasonable time. During the hearing any party may appear in person or by agent or by attorney. (Code 1988, § 24-196(2); Ord. No. 97-01, § I, 3-13-97)

Sec. 118-164. Required notice.

Under this division, the director of planning shall fix the date for the hearing of an appeal and shall cause a notice of the time, place and purpose of such hearing to be published at least one time in a newspaper of general circulation in the area at least five days prior to the hearing. In addition, the director of planning shall mail similar notices setting forth the time, place and purpose of the hearing to the parties in interest. If the hearing involves an appeal based on a specific parcel of land, the director of planning shall also mail such notices to the owners of every parcel of land within a distance of 300 feet in any direction from

the property line of the land in question. Such notices shall be mailed to the owner's current address of record maintained by the assessor of taxes for the city commission and shall be post-marked no later than five days prior to the scheduled hearing date. The director of planning shall present an affidavit certifying that he has complied with the notice requirements of this division, along with a list of the persons and addresses to which notices were mailed, at the time of the hearing of the appeal. (Code 1988, § 24-196(3); Ord. No. 97-01, § I, 3-13-97)

Sec. 118-165. Public notice cost of special exception use permit or appeal borne by applicant.

When an applicant shall file an application requesting a special exception use permit, including planned development projects, or an appeal for a dimensional variance or administrative interpretation or decision of this chapter, he shall pay all costs and expenses in connection with public notice of such hearings and related notices as required by this chapter in addition to the fees required for planning and zoning board review and administration. An estimate of the cost of the publication of public notice of such hearings and related notices as required by this chapter shall be made by the administrative official, and the applicant shall deposit with the administrative official the estimated amount of cost before the application will be filed. A receipt showing payment to the city commission in the amount of the estimated cost shall be attached to the application. If the actual cost of the items shall be less than the deposit, the remaining balance shall be refunded to the applicant. The requirements of this section shall not be deemed or construed as applying to any hearing held by the planning and zoning board on its own motion or volition in connection with this chapter. (Code 1988, § 24-197)

Sec. 118-166. Appeals from planning and zoning board's decisions.

Under this division, appeals from the planning and zoning board's decisions shall be in accordance with section 98-31. (Code 1988, § 24-198)

Secs. 118-167—118-195. Reserved.

ARTICLE III. NONCONFORMING USES AND CHARACTERISTICS OF USE*

Sec. 118-196. Purpose and intent.

The purpose of this article is to regulate and limit the development and existence of nonconforming uses, buildings, accessory structures and parcels which:

- (1) Were legally established prior to the effective date of this chapter;
- (2) Were legally established prior to the effective date of an amendment to this chapter;
- (3) Have been rendered nonconforming due to circumstances which were not self-created;
- (4) Were not legally established prior to the effective date of this chapter;
- (5) Were not legally established prior to the effective date of an amendment to this chapter; or
- (6) Have been rendered nonconforming due to circumstances which were self-created.

It is the intent of these regulations to specify those circumstances and conditions under which such nonconformities shall be permitted to continue, if at all, until they are removed or brought into conformity with this chapter, but not to encourage their survival nor to permit such nonconformities to be enlarged upon, expanded or extended or be used as grounds for adding other buildings, accessory structures or uses prohibited elsewhere in the same district.

It is consistent with the purposes of this article that:

- (1) Those nonconformities which adversely affect orderly development, public health,

***Editor's note**—Ordinance No. 03-17, § 2, adopted July 10, 2003, amended and restated article III in its entirety. Formerly, such article pertained to nonconforming uses and derived from § 24-166—24-168 of the 1988 Code.

public safety, general welfare, or the value of nearby property should not be permitted to continue.

- (2) Subject to subparagraph (1) above, certain existing lawful nonconformities may continue provided the provisions of this article are complied with in order to curtail substantial investment in said nonconformities and to bring about their eventual improvement to a conforming status, their elimination or a lessening of their impact upon surrounding conforming uses in order to preserve the integrity of the area in which such nonconformities are located, the desired character of the city and the intent of this article.
- (3) Subject to subparagraph (1) above, certain existing lawful nonconformities may be permitted to be improved or developed when it can be shown that such action will not be harmful and will be beneficial to and compatible with the surrounding properties, the neighborhood and the community, and that the goals of the city's comprehensive plan will not be impeded by the continuation, improvement or development of the lawful nonconformity.
- (4) Subject to subparagraph (1) above, certain existing lawful nonconformities may be permitted to continue for a certain period of time through an amortization program where such is desirable as set forth herein and where said nonconformity is determined not to have an adverse or detrimental effect to orderly development, public health, public safety, general welfare, the value of nearby property, the goals and objectives of the city's comprehensive plan, or the desired character of the city.

(Ord. No. 03-17, § 2, 7-10-03)

Sec. 118-197. Applicability.

The standards and regulations set forth in this article shall apply to those uses, characteristics of uses, buildings, accessory structures, parcels and development inconsistent or nonconforming with the standards and regulations set forth in this

chapter, as such may be amended from time to time. Except as otherwise provided herein, this article shall not be applicable to standards and regulations outside the scope of this chapter, including, but not limited to, building codes or fire safety codes. Further, the following existing buildings and uses are exempt from the amortization provisions, as provided in section 118-204 of this article:

- (1) An existing lawful nonconforming building which was designed for religious or public educational purposes, as determined pursuant to the Internal Revenue Code, and which is currently used as a religious or educational institution as of the effective date of this article.
- (2) An existing lawful nonconforming religious or public educational use, as determined pursuant to the Internal Revenue Code, as of the effective date of this article, regardless of the design of the building use.

(Ord. No. 03-17, § 2, 7-10-03)

Sec. 118-198. Definitions.

The following words, terms, phrases, when used in this article, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

Accessory structure. "Accessory structure" means any construction, or any production or piece of work artificially built up or composed of parts joined together in some definite manner, whether installed or constructed on, above, or below a parcel of land, which is used for the benefit of a principal or main building or is otherwise dependent on or pertains to a principal or main building. By way of example, not limitation, an accessory structure includes sheds, barns, accessory buildings, signs, fences, pools, pool cages, boat docks, carports, detached garages and parking facilities. Covered porches and attached garages of principal buildings are considered to be part of the principal building and not an accessory structure.

Building. "Building" when used without any modifiers shall include commercial, industrial, or multi-family buildings and single-family dwellings.

Commercial, industrial, or multi-family building. "Commercial, industrial, or multi-family building" means any building which is not used as a single-family dwelling. Said definition includes, but is not limited to, multi-family (e.g., duplexes, triplexes and apartments), retail, office, commercial and industrial buildings.

Lawful nonconforming building or accessory structure. A "lawful nonconforming building or accessory structure" or "legally nonconforming building or accessory structure" means a building or an accessory structure, the size, dimensions, physical characteristics, or location of which were, prior to the adoption, revision, or amendment of this chapter, legally established and in compliance (i.e., conformed) with the requirements of this chapter as it existed prior to such adoption, revision, or amendment and which, by virtue of such adoption, revision, or amendment thereafter fails to conform with this chapter after such adoption, revision, or amendment and which has lawfully operated as such continuously since said adoption, revision, or amendment. The size, dimensions, physical characteristics, or location of a particular building or accessory structure, for purposes of determining its conformity to the applicable zoning district requirements, may be established by reference to Orange County Property Appraiser records or tax maps, building permits, site permits or historical photographs.

Lawful nonconforming commercial, industrial, or multi-family parcel. A "lawful nonconforming commercial, industrial, or multi-family parcel" or "legally nonconforming commercial, industrial, or multi-family parcel" means a commercially, industrially, or multi-family zoned parcel or lot, the area or dimensions of which were, prior to the adoption, revision, or amendment of this chapter, legally established and in compliance (i.e., conformed) with the requirements of this chapter as it existed prior to such adoption, revision, or amendment and which, by virtue of such adoption, revision, or amendment thereafter fails to conform with this chapter after such adoption,