

**ARTICLE 2  
ADMINISTRATION AND ENFORCEMENT**

**2.01.0        GENERALLY**

**2.01.01        Purpose**

This section sets forth the application and review procedures required for obtaining development orders, and certain types of permits. This Article also specifies the procedures for appealing decisions and seeking legislative action.

**2.01.02        Withdrawal Of Applications**

An application for development review may be withdrawn at any time so long as no notice has been given that the application will be reviewed at a public hearing.

**2.01.03        Definitions**

[Refer to Appendix B](#)

**2.01.04        Authorization By a Development Permit Required Prior to  
Undertaking Any Development Activity**

**A.        Generally**

No development activity may be undertaken unless the activity is authorized by a development permit.

**B.        Prerequisites To Issuance Of Development Permit**

Except as provided in SECTION 2.01.04.C below, a development permit may not be issued unless the proposed development activity:

1.        Is authorized by a Final Development Order issued pursuant to this Code; and
2.        Conforms to the technical Construction Standards manual adopted by reference in Article 1 of this Code.

**C.        Exceptions To Requirement Of A Final Development Order**

A development permit may be issued for the following development activities in the absence of a final development order issued pursuant to this Code. Unless otherwise specifically provided, the development

activity shall conform to this Code and the technical Construction Standards Manual.

1. Development activity necessary to implement a valid site plan/development plan on which the start of construction took place prior to the adoption of this Code and has continued in good faith. Compliance with the development standards in this Code is not required if in conflict with the previously approved plan.
2. The construction or alteration of a one or two family dwelling on a lot in a valid recorded subdivision approved prior to the adoption of this Code. Compliance with the development standards in this Code is not required if in conflict with the previously approved plat.
3. The alteration of an existing building or structure so long as no change is made to its gross floor area, its use, or the amount of impervious surface on the site.
4. The erection of a sign or the removal of protected trees on a previously developed site and independent of any other development activity on the site.
5. The re-surfacing of a vehicle use area that conforms to all requirements of this Code.
6. A Minor Replat granted pursuant to the procedures in PART 2.01.06 of this Article.

**D. Post-Permit Changes**

After a permit has been issued, it shall be unlawful to change, modify, alter, or otherwise deviate from the terms or conditions of the permit without first obtaining a modification of the permit. A modification may be applied for the same manner as the original permit. A written record of the modification shall be entered upon the original permit and maintained in the files of the Department.

**2.01.05 Procedure For Review Of Development Plans**

**A. Pre-Application Conference**

Prior to filing for development plan review, the developer shall meet with the Development Review Board to discuss the development review process and to be informed of which staff members to confer with about the application. No person may rely upon any comment concerning a

proposed development plan, or any expression of any nature about the proposal made by any participant at the pre-application conference as a representation or implication that the proposal will be ultimately approved or rejected in any form.

**B. Designation Of Plans As Minor Or Major Developments**

1. Generally

For purposes of these procedures, all development plans shall be designated by the Director as either Minor Development or Major Development according to the criteria below. Before submitting a development plan for review, the developer shall provide the Director with sufficient information to make this determination. The Director's determination shall be supported by written findings.

2. Major Development

A development plan shall be designated as a Major Development if it satisfies one or more of the following criteria:

- a. The activity involves combined land and water area of which exceeds five (5) acres
- b. The development is a residential project of ten (10) or more dwelling units per acre of land and water area, or of one hundred (100) or more dwelling units.
- c. The development involves more than twenty thousand (20,000) square feet of non-residential floor space.
- d. Any development that the Code Enforcement Officer designates as a Major Development project because:
  - (1) The proposed development is part of a larger parcel for which additional development is anticipated that when aggregated with the project in question exceeds the limits of 1, 2, or 3 above; or
  - (2) The proposed development should be more thoroughly and publicly reviewed because of its complexity, hazardousness, or location; or
  - (3) The proposed development is one which is likely to be controversial despite its small size, and should thus be more thoroughly and publicly reviewed.

3. Minor Development

A development plan shall be designated as a Minor Development if it is neither a Major Development nor a development exempt under SECTION 2.01.4.C of this Article from the requirement of a development plan.

**C. Review Of Concept Plans**

1. All Major Developments must be submitted to Concept Review. Minor Developments need not be submitted to Concept Review, but this review is recommended to Developers for proposals that may be controversial.
2. The developer shall file a completed application and a Concept Plan as a prerequisite to obtaining Concept Review.
3. Within five (5) working days of receipt of an application and Concept Plan, the Department shall:
  - a. Determine that the submittals are incomplete and inform the developer in writing as to the deficiencies. The developer may submit an amended application within thirty (30) working days without payment of a re-application fee, but, if more than thirty (30) working days have elapsed, must thereafter re-initiate the application and pay an additional fee; or,
  - b. Determine that the submittals are complete and proceed with the following procedures.
4. The proposals shall be placed on the agenda of the next meeting of the Development Review Board that allows the giving of required notice.
5. Notice of Concept Review shall be mailed by the Department to the developer and all persons who, according to the most recent tax rolls, own property within four hundred (400) feet of the property proposed for development. The notice shall be mailed at least fifteen (15) days before Concept Review. The expense of this mailing shall be borne by the developer.
6. The Development Review Board shall consider:
  - a. Characteristics of the site and surrounding area, including important natural and man-made features, the size and accessibility of the site, and surrounding land uses.

- b. Whether the concurrency requirements of Section 2.02.00 of this Code could be met if the development were built.
  - c. The nature of the proposed development, including land use types and densities; the placement of proposed buildings and other improvements on the site; the location, type and method of maintenance of open space and public use areas; the preservation of natural features; proposed parking areas; internal traffic circulation system, including trails; the approximate total ground coverage of paved areas and structures; and, types of water and sewage treatment systems.
  - d. Conformity of the proposed development with the Comprehensive Plan, this Code and other applicable regulations.
  - e. Applicable regulations, review procedures, and submission requirements.
  - f. Concerns and desires of surrounding landowners and other affected persons.
  - g. Other applicable factors and criteria prescribed by the Comprehensive Plan, this Code, or other law.
7. The Development Review Board shall issue no order, finding or other indication of approval or disapproval of the proposal, and no person may rely upon any comment concerning the proposal, or any expression of any nature about the proposal, made by any person during the concept review process as a representation or implication that the particular proposal will be ultimately approved or disapproved in any form.

**D. Review Of Preliminary And Final Development Plans For Minor Developments**

- 1. Option
  - a. The Developer of a proposed Minor Development may choose to submit the proposed development to both a preliminary and final review, or to a single final review.

- b. If the developer chooses to submit to both a preliminary and final review, the procedures in 2 and 3 below shall be followed.
- c. If the developer chooses to submit to a single final review, only the procedures of 2 below shall be followed.

## 2. General Procedures

- a. The developer of a proposed Minor Development shall submit a Preliminary Development Plan or a Final Development Plan to the Development Review Board.
- b. Within Thirty (30) working days of receipt of a Plan, the Development Review Board shall:
  - (1) Determine that the Plan is complete and proceed with the procedures below; or
  - (2) Determine that the information is incomplete and inform the developer in writing of the deficiencies. The developer may submit an amended Plan within thirty (30) working days without payment of a reapplication fee, but, if more than thirty (30) days have elapsed, must thereafter re-initiate the review process and pay an additional fee.
- c. Within ten (10) working days of the meeting of the Development Review Board the Department shall:
  - (1) Issue a preliminary Development Order complying with SECTION 2.01.05.G below if it was a preliminary Development Plan that was reviewed.
  - (2) Issue a Final Development Order complying with SECTION 2.01.05.H below if it was a final development plan that was reviewed; or
  - (3) Refuse to issue a Preliminary or Final Development Order based on it being impossible for the proposed development, even with reasonable modifications, to meet the requirements of this Code.

## 3. Approval of Final Development Plans

- a. If the Developer chose to submit a Preliminary Development Plan for review, a final Development Plan shall be submitted within six (6) months of approval of the

Preliminary Plan. If this deadline is not met, the Preliminary Development Order expires.

- b. Within fifteen (15) working days the Planning Review Board shall determine whether the Final Development Plan should be approved or denied based on whether the plan conforms to the approved Preliminary Plan and the conditions, if any, imposed during preliminary review. The Planning Review Board shall:
  - (1) Issue a Final Development Order complying with SECTION 2.01.05.H below; or
  - (2) Refuse to issue a Final Development Order based on the failure of the Development to comply with the conditions imposed by the Preliminary Development Order

**E. Review Of Preliminary And Final Development Plans For Major Developments**

1. Review Of Preliminary Development Plans
  - a. The developer shall, within six (6) months after completion of Concept Review, submit a Preliminary Development Plan to the Development Review Board. If more than six (6) months elapse, the developer must re-submit the plan for Concept Review.
  - b. Within five (5) working days of receipt of a Preliminary Development Plan, the Code Enforcement Officer shall:
    - (1) Determine that the information is incomplete and inform the developer in writing of the deficiencies. The developer must submit an amended plan within thirty (30) working days without payment of an additional fee, but, if more than thirty (30) days have elapsed, must thereafter initiate a new application and pay a new fee; or
    - (2) Determine that the plan is complete and proceed with the following procedures.
  - c. The Code Enforcement Officer shall send a copy of the Preliminary Development Plan to each member of the Development Review Board and shall place the plan on the agenda of the next Board meeting that allows giving, for at least fifteen (15) days, the following notices:

- (1) Mailed notice to the developer; and
    - (2) Posted notice on the development site.
  - d. Each Board member shall submit written comments as to the proposed development's probable effect on the public facilities and services that the member represents. Interested persons shall be given a reasonable opportunity to comment orally or in writing.
  - e. Within ten (10) working days after the Board meets to consider the plan and comments, the Board shall issue a written report setting forth findings and conclusions supporting its recommendation that the Development Review Board:
    - (1) Issue a Preliminary Development Order complying with SECTION 2.01.05.G below; or
    - (2) Refuse to issue a Preliminary Development Order based on it being impossible for the proposed development, even with reasonable modifications, to meet the requirements of this Code.
2. Review Of Final Development Plans
  - a. The developer shall submit a Final Development Plan for review within the time period in which the Preliminary Development Order is valid.
  - b. Within thirty (30) working days the Development Review Board shall determine whether the Final development Plan should be approved or denied based on whether the plan conforms to the Preliminary Development Order.
  - c. The Development Review Board shall:
    - (1) Issue a Final Development Order complying with SECTION 2.01.05.E below; or
    - (2) Refuse to issue a Final Development Order based on the failure of the Development to comply with the conditions imposed by the Preliminary Development Order.

## **F. Project Phasing**

A Master Plan for the entire development site must be approved for a Major Development that is to be developed in phases. The Master Plan shall be submitted simultaneously with an application for review of the Preliminary Development Plan for the first phase of the development and must be approved as a condition of approval of the Preliminary Plan for the first phase. A Preliminary and Final Development Plan must be approved for each phase of the development under the procedures for development review prescribed above. Each phase shall include a proportionate share of the proposed recreational and open space, and other site and building amenities of the entire development, except that more than a proportionate share of the total amenities may be included in the earlier phases with corresponding reductions in the later phases

**G. Required And Optional Contents Of Preliminary Development Orders**

1. Required Contents

A Preliminary Development Order shall contain the following:

- a. An approved Preliminary Development Plan (may be subject to conditions and modifications) with findings and conclusions.
- b. A listing of conditions that must be met, and modifications to the Preliminary Development Plan that must be made, in order for a Final Development Order to be issued. The modifications shall be described in sufficient detail and exactness to permit a developer to amend the proposal accordingly.
- c. A listing of federal, state, and regional permits that must be obtained in order for a Final Development Order to be issued.
- d. With regard to the concurrency management requirements in Section 2.02.00:
  - (1) The initial determination of concurrency.
  - (2) The time period for which the preliminary development order is valid. This initial determination indicates that capacity is expected to be available for the proposed project, provided that a complete application for a final development

order is submitted prior to the expiration date of the preliminary development order.

- (3) Notice that the Preliminary development does not constitute a Final Development Order and that one or more concurrency determinations may subsequently be required. The notice may include a provisional listing of facilities for which commitments may be required prior to the issuance of a Final Development Order.
- (4) Notice that issuance of a Preliminary Development Order is not binding with regard to decisions to approve or deny a Final Development Order, and that it does not constitute a binding commitment for capacity of a facility or service.

## 2. Optional Contents

A Preliminary development Order may include one or more of the following as conditions of approval:

- a. Agreement by the Developer in a recordable written instrument running with the land that no Final Development Order will be requested or approved unless the necessary facilities are programmed for construction within specified time periods.
- b. Commitment by the Developer in a recordable written instrument to contract for provision of the necessary services or facilities to achieve the concurrency requirement.
- c. Schedule of construction phasing of the proposed development consistent with the anticipated availability of one or more services or facilities.
- d. Such other conditions as may be required by the Development Review Board to ensure that concurrency will be met for all applicable facilities and services.

## H. Required And Optional Contents Of Final Development Orders

### 1. Required Contents

A Final Development Order shall contain the following:

- a. A determination that, where one was required, a valid Preliminary Development Order exists for the requested development.
- b. An approved Final Development Plan with findings and conclusions.
- c. A determination that all conditions of the Preliminary Development Order have been met.
- d. If modifications must be made to the development plan before a Final Development Order may be issued, a listing of those modifications and the time limit for submitting a modified plan.
- e. A specific time period during which the development order is valid and during which time development shall commence. A Final Development Order shall remain valid only if development commences and continues in good faith according to the terms and conditions of approval.
- f. A commitment by city/county committing to the following:
  - (1) The necessary facilities shall not be deferred or deleted from the Capital Improvements Element of the adopted one-year capital budget unless the subject final development order expires or is rescinded prior to the issuance of a certificate of occupancy.
  - (2) Contracts shall provide that construction of necessary facilities must proceed to completion with no unreasonable delay or interruption.

## 2. Optional Contents

A Final Development Order may contain:

- a. A schedule of construction phasing consistent with availability of capacity of one or more services and facilities.
- b. A schedule of services or facilities to be provided or contracted for construction by the applicant prior to the

issuance of any certificate of occupancy or within specified time periods

- c. Any alternate service impact mitigation measures to which the applicant has committed in a recordable written instrument.
- d. A bond in the amount of 110% of the cost of services or facilities that the applicant is required to construct, contract for construction, or otherwise provide.
- e. Such other conditions as may be required to ensure compliance with the concurrency requirement.

## **I. Notice**

Unless otherwise provided by law, regulation or decision, addresses for a mailed notice required by this Code shall be obtained from the records of the County Tax Collector. The failure of any person to receive notice shall not invalidate an action if a good faith attempt was made to comply with the notice requirements of this Code.

## **J. Administrative Hearing**

Each administrative hearing shall conform to the following procedures, as supplemented by law, rule or decision.

### **1. Burden And Nature Of Proof**

The applicant for any development permit must prove by a preponderance of the evidence that the proposal satisfies the applicable requirements and standards of this Code.

### **2. Order Of Proceedings**

#### **a. The Development Review Board shall:**

- (1) Determine whether it has jurisdiction over the matter.
- (2) Determine whether any member must abstain or is disqualified.

#### **b. The Board may take official notice of known information related to the issue, including:**

- (1) State law and applicable ordinances, resolutions, rules and official policies of the City.
    - (2) Other public records and facts judicially noticeable by law.
  - c. Matters officially noticed need not be established by evidence and are binding to the extent that they are relevant and material. Requests that official notice be taken shall be made on the record and an opportunity for rebuttal shall be given to opposing parties. The Board may take notice without prompting or suggestion of matters listed in paragraph 2 above and shall state all matters officially noticed for the record.
  - d. Board members may view the site of the proposed development with or without notification to the parties, but after the visit, shall place the time, manner and circumstances of the view in the record.
  - e. Staff, the developer, and interested persons may present information. The Board may approve or deny a request from a person attending the hearing to ask a question. Unless the Board specifies otherwise, if the request to ask a question is approved, the Board will direct the question to the person submitting testimony.
  - f. Before the hearing has concluded, the Board shall restate the issues and comment upon the law and facts pertaining to the decision, and if opportunity for rebuttal is provided, may ask additional questions of any person who had testified or presented information.
3. Findings And Order

Unless the Board and the developer agree to an extension, the Board shall, within ten (10) working days of the hearing, prepare an order including:

- a. A statement of the applicable criteria and standards against which the proposal was tested.
- b. Findings of facts which established compliance or noncompliance with the applicable criteria and standards of this Code.

- c. The reasons for a conclusion to approve, conditionally approve, or deny.
4. Record Of Proceedings
  - a. All proceedings shall be recorded stenographically or electronically and shall be transcribed if required for review or if ordered by the Board.
  - b. The Board shall, when practicable, include in the hearing record each item of physical or documentary evidence presented and shall mark each item to show the identity of the person who presented it. Each exhibit received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, when it may be returned to the person identified thereon, or otherwise disposed of in accordance with Florida law.

## **K. Submittals**

### **1. Application**

Applications for development review shall be available from the Development Review Board of Planning and Development. A completed application shall be signed by all owners, or their agent, or the property subject to the proposal, and notarized. Signatures by other parties will be accepted only with notarized proof of authorization by the owners. In a case of corporate ownership, the authorized signature shall be accompanied by a notation of the signer's office in the corporation, and embossed with the corporate seal.

### **2. General Plan Requirements**

All Preliminary and Final Development Plans submitted pursuant to this Code shall conform to the following standards:

- a. All plans shall be drawn to a scale of one (1) inch equals one hundred (100) feet, unless the Code Enforcement Officer determines that a different scale is sufficient or necessary for proper review of the proposal.
- b. The trim line sheet size shall be twenty-four (24) inches by thirty-six (36) inches. A three-quarter (3/4) inch margin shall be provided on all sides except for the left binding side where a two (2) inch margin shall be provided.

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- c. If multiple sheets are used, the sheet number and total number of sheets must be clearly indicated on each.
  - d. The front coversheet of each plan shall include:
    - (1) A general vicinity or location map drawn to scale (both stated and graphic) showing the position of the proposed development in the section(s), township and range, together with the principal roads, city limits, and/or other pertinent orientation information.
    - (2) A complete legal description of the property.
    - (3) The name, address and telephone number of the owner(s) of the property. Where a corporation or company is the owner of the property, the name and address of the president and secretary of the entity shall be shown.
    - (4) Name, business address, the telephone number of those individuals responsible for the preparation of the drawing(s).
    - (5) Each sheet shall contain a title block with the name of the development, stated and graphic scale, a north arrow, and date.
    - (6) The plan shall show the boundaries of the property with a metes and bounds description reference to section, township and range, tied to a section or quarter-section or subdivision name and lot number(s).
    - (7) The area of the property shown in square feet and acres.
  - e. Ten (10) copies of the submittal shall be required.
  - f. Unless a format is specifically called for below, the information required may be presented textually, graphically, or on a map, plan, aerial photograph, or by other means, whichever most clearly conveys the required information. It is the responsibility of the developer to submit the information in a form that allows ready

determination of whether the requirements of this Code have been met.

### 3. Concept Plan

Each Concept Plan shall show:

#### a. Existing Conditions

(1) The location of existing property or right-of-way lines both for private and public property, streets, railroads, buildings, transmission lines, sewers, bridges, culverts, drain pipes, water mains, fire hydrants, and any public or private easements.

(2) Any land rendered unusable for development purposes by deed restrictions or other legally enforceable limitations.

(3) Contour lines at two (2) foot intervals.

(4) All water courses, water bodies, floodplains, wetlands, important natural features and wildlife areas, soil types and vegetative cover.

(5) The approximate location of Protected Environmentally Sensitive Zones and Restricted Development Zones as established in ARTICLE 4 of this Code.

(6) Existing land use/zoning district of the parcel.

(7) A depiction of the abutting property within four hundred (400) feet of the proposal, not including public right of way in the measurement, showing:

(a) Land uses and locations of principal structures and major landscape features.

(b) Densities of residential use.

(c) Traffic circulation systems.

(8) Location of proposed development in relation to any established urban service area.

#### b. Proposed Development Activities And Design

(1) The approximate location and intensity or density of the proposed development.

- (2) A general parking and circulation plan.
- (3) Points of ingress to and egress from the site vis-a-vis existing or planned public or private road right-of-way, pedestrian ways, or bicycle paths, and proposed access points to existing or planned public transportation facilities.
- (4) Existing and proposed stormwater management systems on the site and proposed linkage, if any, with existing or planned public water management systems.
- (5) Proposed location and sizing of potable water and waste water facilities to serve the proposed development, including required improvements or extensions of existing off-site facilities.
- (6) Proposed open space areas on the development site and types of activities proposed to be permitted on them.
- (7) Lands to be dedicated or transferred to a public or private entity and the purposes for which the lands will be held and used.
- (8) A description of how the plan mitigates or avoids potential conflicts between land uses.
- (9) Preliminary architectural elevations of all buildings sufficient to convey the basic architectural intent of the proposed improvements.

#### 4. Preliminary Development Plan

A Preliminary Development Plan shall include the information required in a Concept Plan plus the following additional or more detailed information:

##### a. Existing Conditions

- (1) A recent (taken not more than three years before the date of application) aerial photograph encompassing the project area and identifying the project area and total land areas. The scale shall be no smaller than one inch equals 800 feet.

- (2) A soils map of the site (existing U.S. Soil Conservation Service maps are acceptable).
- (3) A map of vegetative cover including the location and identity by common name of all protected trees. Groups of protected trees may be designated as “clusters” with the estimated total number noted. This information shall be summarized in tabular form on the plan.
- (4) A topographic map of the site clearly showing the location, identification, and elevation of bench marks, including at least one bench mark for each major water control structure.
- (5) A detailed overall project area map showing existing hydrography and runoff patterns, and the size, location, topography, and land use of any off-site area that drain onto, through, or from the project area.
- (6) Existing surface water bodies, wetlands, streams and canals within the proposed development site, including seasonal high water-table elevations and attendant drainage areas for each.
- (7) A map showing the locations of any soil borings or percolation tests as may be required by this Code. Percolation tests representative of design conditions shall be performed if the stormwater management system will use swales, percolation (retention), or exfiltration (detention with filtration) designs.
- (8) A depiction of the site, and all land within four hundred (400) feet of any property line of the site, showing the locations of Protected Environmentally Sensitive zones and Restricted Development Zones.
- (9) The location of any underground or overhead utilities, culverts and drains on the property and within one hundred (100) feet of the proposed development boundary.
- (10) Location, names and widths of existing and proposed streets, highways, easements, building

lines, alleys, parks, and other public spaces and similar facts regarding adjacent property.

- (11) The 100-year flood elevation, minimum required floor elevation and boundaries of the 100-year floodplain for all parts of the proposed development.
- (12) Drainage basin or watershed boundaries identifying locations of the routes of off-site waters onto, through, or around the project.

b. Proposed Development Activities And Design

(1) Generally

- (a) Area and percentage of total site area to be covered by an impervious surface.
- (b) Grading plans specifically including perimeter grading.
- (c) Construction phase lines.

(2) Building And Other Structures

- (a) Building plan showing the location, dimensions, gross floor area, and proposed use of buildings.
- (b) Front, rear and side architectural elevations of all buildings.
- (c) Building setback distances from property lines, abutting right-of-way center lines, and all adjacent buildings and structures.
- (d) Minimum floor elevations of buildings within any 100-year floodplain.
- (e) The location, dimensions, type, composition, and intended use of all other structures.

(3) Potable Water And Wastewater Systems

- (a) Proposed location and sizing of potable water and waste water facilities to serve the proposed development, including required improvements or extensions of existing off-site facilities.
- (b) The boundaries of proposed utility easements.

- (c) Location of the nearest available public water supply and wastewater disposal system and the proposed tie-in points, or an explanation of alternative systems to be used.
  - (d) Exact locations of onsite and nearby existing and proposed fire hydrants.
- (4) Streets, Parking And Loading
- (a) The layout of all streets and driveways with paving and drainage plans and profiles showing existing and proposed elevations and grades of all public and private paved areas.
  - (b) A parking and loading plan showing the total number and dimension of proposed parking spaces, spaces reserved for handicapped parking, loading areas, proposed ingress and egress (including proposed public street modifications), and projected on site traffic flow.
  - (c) The location of all exterior lighting.
  - (d) The location and specifications of any proposed garbage dumpsters.
  - (e) Cross sections and specifications of all proposed pavement.
  - (f) Typical and special roadway and drainage sections and summary of quantities.
- (5) Tree Removal And Protection
- (a) All protected trees to be removed and a statement of why they are to be removed.
  - (b) Proposed changes in the natural grade and any other development activities directly affecting trees to be retained.
  - (c) A statement of the measures to be taken to protect the trees to be retained.
  - (d) A statement of tree relocations and replacements proposed.
- (6) Landscaping
- (a) Location and dimensions of proposed buffer zones and landscaped areas.

- (b) Description of plant materials existing and to be planted in buffer zones and landscaped areas.
- (7) Stormwater Management
- (a) An erosion and sedimentation control plan that describes the type and location of control measures, the stage of development at which they will be put into place or used, maintenance provisions.
  - (b) A description of the proposed stormwater management system, including:
    - (i) Channel, direction, flow rate, and volume of stormwater that will be conveyed from the site, with a comparison to natural or existing conditions.
    - (ii) Detention and retention areas, including plans for the discharge of contained waters, maintenance plans, and predictions of surface water quality changes.
    - (iii) Areas of the site to be used or reserved for percolation including an assessment of the impact on groundwater quality.
    - (iv) Location of all water bodies to be included in the surface water management system (natural and artificial) with details of hydrography, side slopes, depths, and water-surface elevations or hydrographs.
    - (v) Linkages with existing or planned stormwater management systems.
    - (vi) On- and off-site right-of-ways and easements for the system including locations and a statement of the nature of the reservation of all areas to be reserved as part of the Stormwater Management System.
    - (vii) The entity or agency responsible for the operation and maintenance of the Stormwater Management System.

- (c) The location of off-site water resource facilities such as works, surface water management systems, wells, or well fields, that will be incorporated into or used by the proposed project, showing the names and addresses of the owners of the facilities.
    - (d) Runoff calculations shall be in accord with the stormwater management manual.
  - (8) Environmentally Sensitive Lands
    - (a) The exact sites and specifications for all proposed drainage, filling, grading, dredging, and vegetation removal activities including estimated quantities of excavation or fill materials computed from cross sections, proposed within a Protected Environmentally Sensitive Zone or Restricted Development Zone.
    - (b) Detailed statement or other materials showing the following:
      - (i) The percentage of the land surface of the site that is covered with natural vegetation and the percentage of natural vegetation that will be removed by development.
      - (ii) The distance between development activities and the boundaries of the Protected Environmentally Sensitive Zones.
    - (c) The manner in which habitats of endangered and threatened species are protected.
  - (9) Signs
    - (a) Two blueprints or ink drawings of the plans and specifications of regulated signs, and methods of their construction and attachment to the building or ground, except those plans for standard signs that have been placed on file with the building official by a licensed sign contractor for standard signs.

The plans shall show all pertinent structural details, wind pressure requirements, and display materials in accordance with the requirements of this Code and the building and electrical codes adopted by the City. The plans shall clearly illustrate the type of sign or sign structure as defined in this code; the design of the sign, including dimensions, colors and materials; the aggregate sign area; the dollar value of the sign; maximum and minimum heights of the sign; and sources of illumination.

- (b) For regulated ground signs, a plan, sketch, blueprint, blue line print or similar presentation drawn to scale which indicates clearly:
  - (i) The location of the sign relative to property lines, rights of way, streets, alleys, sidewalks, vehicular access and parking areas and other existing ground signs on the parcel.
  - (ii) All regulated trees that will be damaged or removed for the construction and display of the sign.
  - (iii) The speed limit on adjacent streets.
  
- (c) For regulated building signs, a plan, sketch, blueprint, blue line print or similar presentation drawn to scale which indicates clearly:
  - (i) The location of the sign relative to property lines, rights of way, streets, alleys, sidewalks, vehicular access and parking areas, buildings and structures on the parcel.
  - (ii) The number, size, type, and location of all existing signs on the same parcel, except a single business unit in a multiple occupancy complex shall not be required to delineate the signs of other business units.

- (iii) A building elevation or other documentation indicating the building dimensions.

(10) Subdivision

Proposed number, minimum area and location of lots, if development involves a subdivision of land.

(11) Land Use And Dedications

- (a) Location of all land to be dedicated or reserved for all public and private uses including rights-of-way, easements, special reservations, and the like.
- (b) Amount of area devoted to all existing and proposed land uses, including schools, open space, churches, residential and commercial, as well as the location thereof.
- (c) The total number and type of residential units categorized according to number of bedrooms. The total number of residential units per acre (gross density) shall be given.
- (d) Location of proposed development in relation to any established urban service areas.

(12) Wellfield Protection

Location of onsite wells, and wells within one thousand (1,000) feet of any property line, exceeding 100,000 gallons per day.

(13) Historical And Archaeological Sites

The manner in which historical and archaeological sites on the site, or within one thousand (1,000) feet of any boundary of the site, will be protected.

## 5. Final Development Plan

A Final Development Plan shall include the information required in a Preliminary Development Plan plus the following additional or more detailed information:

- a. A metes and bounds description of lands to be subdivided, from which and without reference to the plat, the starting point and boundary can be determined.
- b. Every development shall be given a name by which it shall be legally known. The name shall not be the same as any other name appearing on any recorded plat except when the proposed development includes a subdivision that is subdivided as an additional unit or section by the same developer or his successors in title. Every subdivision name shall have legible lettering of the same size and type including the words "section", "unit", "replat", "amended", and the like. The name of the development shall be indicated on every page.
- c. All lots shall be numbered either by progressive numbers or, if in blocks, progressively numbered or lettered, except that blocks in numbered additions bearing the same name may be numbered consecutively throughout several additions.
- d. All interior excluded parcels shall be clearly indicated and labeled "Not part of this plat/development."
- e. All contiguous properties shall be identified by development title, plat book, and page, or if the land is unplatted, it shall be so designated. If a subdivision to be platted is a resubdivision of a part or the whole of a previously recorded subdivision, sufficient ties shall shown to controlling lines appearing on the earlier plat to permit an overlay to be made. All abutting existing easements and right-of-way must be indicated. The abutting existing rights-of-way must be indicated to the center line.
- f. Restrictions pertaining to the type and use of existing or proposed improvements, waterways, open spaces, building lines, buffer strips and walls, and other restrictions of similar nature, shall require the establishment of restrictive covenants and such covenants shall be submitted with the final development plan for recordation.

- g. Where the development includes private streets, ownership and maintenance association documents shall be submitted with the final development plan and the dedication contained on the development plan shall clearly indicate the roads and maintenance responsibility to the association without recourse to the City or any other public agency.
- h. All man-made lakes, ponds, and other man-made bodies of water excluding retention/detention areas shown on the final development plan shall be made a part of adjacent private lot(s) as shown on the final plat. The ownership of these bodies of water shall not be dedicated to the public unless approved by the City.

#### 6. Master Plan

A Master Plan is required for a Major Development which is to be developed in phases. A Master Plan shall provide the following information for the entire development:

- a. A Concept Plan for the entire Master Plan area.
- b. A development Plan for the first phase or phases for which approval is sought.
- c. A development phasing schedule including the sequence for each phase; approximate size of the area in each phase; and proposed phasing of construction of public recreation and common open space areas and facilities.
- d. Total acreage in each phase and gross intensity (non-residential) and gross density (residential) of each phase.
- e. Number, height and type of residential units.
- f. Floor area, height and types of office, commercial, industrial and other proposed uses.
- g. Total land area, and approximate location and amount of open space included in each residential, office, commercial, and industrial area.
- h. Approximate location of proposed and existing streets and pedestrian and bicycle routes, including points of ingress and egress.

- i. Approximate location and acreage of any proposed public use such as parks, school sites, and similar public or semi-public uses.
- j. A vicinity map of the area within one (1) mile surrounding the site showing:
  - (1) Land use designations and boundaries.
  - (2) Traffic circulation systems.
  - (3) Major public facilities.
  - (4) Municipal boundary lines.
  - (5) Urban service area boundaries.
- k. Other documentation necessary to permit satisfactory review under the requirements of this Code and other applicable law as required by special circumstances in the determination of the Code Enforcement Officer.

## **L. Platting**

### **1. Generally**

Where proposed Minor or Major development includes the subdivision of land, the final approval of the development plan by the Development Review Board shall be made contingent upon approval by the City Council of a plat conforming to the development plan.

### **2. Filing With Development Review Board**

After receiving plat-contingent final development plan approval, the developer shall submit to the Development Review Board a plat conforming to the development plan and the requirements of Chapter 177, Florida Statutes. Alternatively, the developer may submit a plat at any point in the development review process.

### **3. Review By Development Review Board**

The Development Review Board shall, within thirty (30) working days of receiving the plat, determine whether the plat conforms to the approved development plan and the requirements of Chapter 177, Florida Statutes. If the Development Review Board determines that the plat conforms, it shall place the plat on the next available consent agenda of the City Commission allowing for required notice. If it does not conform, the

Development Review Board shall explain the deficiency in the plat to the developer and inform him that a corrected plat may be resubmitted for approval.

4. Review by City Council

Review of the plat by the City Council shall be strictly limited to whether the plat conforms to the requirements of Chapter 177, Florida Statutes. A conforming plat shall be approved and the Development Review Board shall forthwith issue the development order allowing development to proceed. The City Council shall return nonconforming plats to the developer with an explanation of deficiencies and a notice that a corrected plat may be resubmitted for approval.

**M. Guarantees And Sureties**

1. Applicability

- a. The provisions of this section apply to all proposed developments in the City, including private road subdivisions.
- b. Nothing in this section shall be construed as relieving a developer of any requirement relating to concurrency in Article 4 of this Code.
- c. This section does not modify existing agreements between a developer and the City for subdivisions platted and final development orders granted prior to the effective date of this Code, providing such agreements are current as to all conditions and terms thereof.

2. Improvements Agreements Required

The approval of any development plan shall be subject to the developer providing assurance that all required improvements including, but not limited to storm drainage facilities, streets and highways, water and sewer lines, shall be satisfactorily constructed according to the approved development plan. The following information shall be provided:

- a. Agreement that all improvements, whether required by this Code or constructed at the developer's option, shall be constructed in accordance with the standards and provisions of this Code.

- 
- b. The term of the agreement indicating that all required improvements shall be satisfactorily constructed within the period stipulated. The term shall not exceed five (5) years from the recording of the plat or thirty percent (30%) occupancy of the development, whichever comes first.
  - c. The projected total cost of each improvement. Cost for construction shall be determined by either of the following:
    - (1) Estimate prepared and provided by the applicant's engineer.
    - (2) A copy of the executed construction contract provided.
  - d. Specification of the public improvements to be made and dedicated together with the timetable for making improvements.
  - e. Agreement that upon failure of the applicant to make required improvements (or to cause them to be made) according to the schedule for making those improvements, the City shall utilize the security provided in connection with the agreement.
  - f. Provision of the amount and type of security provided to ensure performance.
  - g. Provision that the amount of the security may be reduced periodically, but not more than two (2) times during each year, subsequent to the completion, inspection and acceptance of improvements by the City.
3. Amount And Type Of Security
- a. The amount of the security listed in the improvement agreement shall be approved as adequate by the Code Enforcement Officer.
  - b. Security requirements may be met by but are not limited to the following:
    - (1) Cashiers check
    - (2) Certified check
    - (3) Developer/Lender/City Agreement
    - (4) Interest Bearing Certificate of Deposit

- (5) Irrevocable Letters of Credit
    - (6) Surety Bond
  - c. The amount of security shall be one hundred and ten (110%) percent of the total construction costs for the required developer-installed improvements. The amount of security may be reduced commiserate with the completion and final acceptance of required improvements. In no case, however, shall the amount of the bond be less than one hundred and ten (110) percent of the cost of completing the remaining required improvements.
  - d. Standard forms are available from the City Attorney's office and approved by the City Council.
- 4. Completion Of Improvements
  - a. When improvements are completed, final inspection shall be conducted and corrections, if any, shall be completed before final acceptance is recommended by the City Engineer. A recommendation for final acceptance shall be made upon receipt of a certification of project completion and one (1) copy of all test results.
  - b. As required improvements are completed and accepted, the developer may apply for release of all or a portion of the bond consistent with the requirements in Section 2.01.04.M.3.c above.
- 5. Maintenance Of Improvements
  - a. A maintenance agreement and security shall be provided to assure the City that all required improvements shall be maintained by the developer according to the following requirements:
    - (1) The period of maintenance shall be a minimum of three (3) years.
    - (2) The maintenance period shall begin with the acceptance by the City of the construction of the improvements.

- (3) The security shall be in the amount of fifteen percent (15%) of the construction cost of the improvements.
  - (4) The original agreement shall be maintained by the Code Enforcement Officer.
- b. Whenever a proposed development provides for the creation of facilities or improvements which are not proposed for dedication to the City a legal entity shall be created to be responsible for the ownership and maintenance of such facilities and/or improvements.
- (1) When the proposed development is to be organized as a condominium under the provisions of Ch. 718, Florida Statutes, common facilities and property shall be conveyed to the condominium's association pursuant to that law.
  - (2) When no condominium is to be organized, an owners' association shall be created, and all common facilities and property shall be conveyed to that association.
  - (3) No development order shall be issued for a development for which an owners' association is required until the documents establishing such association have been reviewed and approved by the City Attorney.
- c. An organization established for the purpose of owning and maintaining common facilities not proposed for dedication to the City shall be created by covenants running with the land. Such covenants shall be included with the final plat. Such organization shall not be dissolved nor shall it dispose of any common facilities or open space by sale or otherwise without first offering to dedicate the same to the City.

## **2.01.06 Procedure For Obtaining A Minor Replat**

### **A. Review By Development Review Board**

#### **1. Generally**

The Development Review Board may approve a Minor Replat that conforms to the requirements of this Part.

## 2. Submittals

The Development Review Board shall consider a proposed Minor Replat upon the submittal of the following materials:

- a. An application form provided by the Development Review Board accompanied;
- b. Ten (10) paper copies of the proposed Minor Replat;
- c. A statement indicating whether water and/or sanitary sewer service is available to the property; and
- d. Land descriptions and acreage or square footage of the original and proposed lots and a scaled drawing showing the intended division shall be prepared by a professional land surveyor registered in the State of Florida. In the event a lot contains any principal or accessory structures, a survey showing the structures on the lot shall accompany the application.

## 3. Review Procedure

- a. The Development Review Board shall transmit a copy of the proposed Minor Replat to the appropriate departments of City for review and comments.
- b. If the proposed Minor Replat meets the conditions of this section and otherwise complies with all applicable laws and ordinances, the Code Enforcement Officer shall approve the Minor Replat by signing the application form.

## 4. Recordation

Upon approval of the Minor Replat, the Development Review Board shall record the replat on the appropriate maps and documents, and shall, at the developer's expense, record the replat in the official county records.

## **B. Standards And Restrictions**

### 1. Standards

All Minor Replats shall conform to the following standards:

- a. Each proposed lot must conform to the requirements of this Code.
- b. Each lot shall abut a public or private street (except as hereinafter provided) for the required minimum lot width for the zoning district/category where the lots are located.
- c. If any lot abuts a street right-of-way that does not conform to the design specifications provided in this Code, the owner may be required to dedicate one-half the right-of-way width necessary to meet the minimum design requirements.

2. Restriction

No further division of an approved Minor Replat is permitted under this section, unless a development plan is prepared and submitted in accordance with this Article.

**2.01.07 Procedure For Obtaining Development Permits**

**A. Application**

Application for a Development Permit shall be made to the Development Review Board of Planning and Development on a form provided by the Department Review Board and may be acted upon by the Development Review Board without public hearing or notice.

**B. Review And Issuance By Development Review Board**

**2.01.08 Procedure For Amending This Code or The Comprehensive Plan**

**A. State Law Controlling**

The procedures in this part shall be followed in amending this Code and the Comprehensive Plan. The part supplements the mandatory requirements of state law, which must be adhered to in all respects.

**B. Application**

Any person, board or agency may apply to the Development Review Board to amend this Code or the Comprehensive Plan in compliance with procedures prescribed by the Development Review Board.

**C. Amending This Code**

The Code Enforcement Officer shall refer applications to amend this Code to the Development Review Board for comment. The Code Enforcement Officer shall set the application for hearing before the Planning Board upon receipt of comments from the Development Review Board, or sixty (60) days from the date the application was referred to the Development Review Board, whichever comes first.

**D. Amending The Comprehensive Plan**

Applications to amend the Comprehensive Plan shall be set for hearing before the Planning Board.

**E. Recommendation Of Planning Board**

The Planning Board shall hold a legislative hearing on each application to amend this Code or the Comprehensive Plan and thereafter submit to the City Council a written recommendation which:

1. Identifies any provisions of the Code, Comprehensive Plan, or other law relating to the proposed change and describes how the proposal relates to them.
2. States factual and policy considerations pertaining to the recommendation.
3. In the case of proposed amendments to this Code, includes the written comments, if any, received from the Development Review board.

**F. Decision By City Council**

The City Council shall hold a legislative hearing on the proposed amendment and may enact or reject the proposal, or enact a modified proposal that is within the scope of matters considered in the hearing.

**G. Legislative Hearing**

Each legislative hearing shall conform to the following requirements:

1. Notice

Notice that complies with the requirements of state law shall be given.

2. Hearing

The public hearing shall be as a minimum:

- a. Comply with the requirements of state law.
- b. Present the Development review Board's analysis of the proposed decision.
- c. Present the Development Review Board's summary of reports by other agencies.
- d. Permit any person to submit written recommendations and comments before or during the hearing.
- e. Permit a reasonable opportunity for interested persons to make oral statements.

#### **2.01.09 Procedure for Appealing Decisions**

##### **A. Appeals From Decisions Of The Code Enforcement Officer**

A developer or any adversely affected person may appeal a final decision of the Code Enforcement Officer on an application for a development permit, development order, or a decision as to whether a development is a Minor Development or a Major Development. Appeals are made to the Development Review Board by filing a notice of appeal with the Development Review Board within thirty (30) working days of the decision.

#### **2.01.10 Judicial Review**

##### **A. Review Of Legislative Decisions**

A final legislative action of the City Council may be reviewed in a court of proper jurisdiction as prescribed by law.

##### **B. Review Of Final Action Of A Hearing Officer**

Final actions may be reviewed in a court of proper jurisdiction as prescribed by law.

#### **2.01.11 Special Provisions Relating to Administrative and Appellate Decision-Makers**

##### **A. Challenges to Impartiality**

A party to an administrative or appellate hearing may challenge the impartiality of any member of the hearing body or of the Hearing Officer. The challenge shall state by affidavit facts relating to a bias, prejudice, personal interest, or other

facts from which the challenger has concluded that the decision-maker cannot participate in an impartial manner. Except for good cause shown, the challenge shall be delivered by personal service to the Code Enforcement Officer no less than forty-eight (48) hours preceding the time set for the hearing. The Code Enforcement Officer shall attempt to notify the person whose qualifications are challenged prior to the hearing. The challenge shall be incorporated into the record of the hearing.

#### **B. Disqualification**

No member of a hearing body and no Hearing Officer shall hear or rule upon a proposal if:

1. Any of the following have a direct or substantial financial interest in the proposal: the decision-maker's the decision-maker's spouse, brother, sister, child, parent, father-in-law, mother-in-law; any business in which the decision-maker is then serving or has served within the previous two years; or any business with which the decision-maker is negotiating for or has an arrangement or understanding concerning prospective partnership or employment; or
2. The decision-maker owns property within the area entitled to receive notice of the hearing; or
3. The decision-maker has a direct private interest in the proposal; or
4. For any other valid reason, the decision-maker has determined that he cannot impartially participate in the hearing and decision.

#### **C. Participation By Interested Officers Or Employees**

No officer or employee of the City who has a financial or other private interest in a proposal shall participate in discussions with or give an official opinion to the hearing body or Hearing Officer on the proposal without first declaring for the record the nature and extend of the interest.

#### **D. Ex Parte Contacts**

Administrative decision-makers shall reveal any pre-hearing or ex parte, i.e. outside the hearing, contacts with regard to any matter at the commencement of the hearing on the matter. Typical pre-application discussions that do not dwell upon the particulars of the proposal are presumed and need not be stated. If the decision-maker's impartiality or ability to vote on the matter has been impaired, the decision-maker shall so state and shall abstain from participation in the decision. Appellate decision-makers shall have no ex parte contacts.

**E. Involuntary Disqualification**

A majority of the members of a hearing body present and voting may for reasons prescribed by the Code or other applicable law vote to disqualify a member who has refused to disqualify himself.

**F. Rights Of Disqualified Member Of The Hearing Body**

1. An abstaining or disqualified member of a hearing body shall not be counted for purposes of forming a quorum.
2. A member who takes a position on the issue based upon personal interest may do so only by abstaining from voting on the proposal, vacating the seat on the hearing body, physically joining the audience, and making full disclosure of his status and position at the time of addressing the hearing body.
3. If the hearing body is reduced to less than a quorum by abstentions of disqualifications, all members present after stating their reasons for abstention or disqualification shall be re-qualified and proceed to resolve the issues.
4. A member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received.

**2.01.12 Enforcement of Development Permits and Orders****A. Definitions****1. Minor Deviations**

A minor deviation is a deviation from a Final development Plan that falls within the following limits and that is necessary in light of technical or engineering consideration first discovered during actual development and not reasonably anticipated during the initial approval process:

- a. Alteration of the location of any road, walkway, landscaping or structure by not more than five (5) feet.
- b. Reduction of the total amount of open space by not more than five (5) percent, or reduction of the yard area or open space associated with any single structure by not more than five (5) percent; provided that such reduction

does not permit the required yard area or open space to be less than that required by this Code.

2. Major Deviations

A major deviation is a deviation other than a Minor Deviation, from a Final Development Plan.

**B. On-Going Inspections**

1. Inspection

The Development Review Board shall implement a procedure for periodic inspection of development work in progress to insure compliance with the Development Permit which authorized the activity.

2. Minor Deviations

If the work is found to have one or more Minor Deviations, the Development Review Board shall amend the Development Order to conform to actual development. The Development Review Board may, however, refer any Minor Deviation that significantly affects the development's compliance with the purposes of this Code to the Development Review Board for treatment as a Major Deviation.

3. Major Deviations

a. If the work is found to have one or more Major Deviations, the Development Review Board shall:

(1) Place the matter on the next agenda of the Development Review Board, allowing for adequate notice, and recommend appropriate action for the Board to take.

(2) Issue a stop work order and/or refuse to allow occupancy of all or part of the development if deemed necessary to protect the public interest. The order shall remain in effect until the Development Review Board determines that work or occupancy may proceed pursuant to the decision of the Development Review Board.

b. The Development Review Board shall hold a public hearing on the matter and shall take one of the following actions:

- (1) Order the developer to bring the development into substantial compliance (i.e. having no or only Minor Deviations) within a reasonable period of time. The Development Order or Permit may be revoked if this order is not complied with.
- (2) Amend the Development Order or Permit to accommodate adjustments to the development made necessary by technical or engineering considerations first discovered during actual development and not reasonably anticipated during the initial approval process. Amendments shall be the minimum necessary to overcome the difficulty, and shall be consistent with the intent and purpose of the development approval given and the requirements of this Code.
- (3) Revoke the relevant Development Order or Permit based on a determination that the development cannot be brought into substantial compliance and that the Development Order or Permit should not be amended to accommodate the deviations.

#### 4. Action Of Developer After Revocation Of Development Order

After a Development Order or Permit has been revoked, development activity shall not proceed on the site until a new Development Order or Permit is granted in accordance with procedures for original approval.

### **C. Application For Certificate Of Occupancy**

Upon completion of work authorized by a Development Permit or Development Order, and before the development is occupied, the developer shall apply to the Development Review Board for a Certificate of Occupancy. The Development Review Board shall inspect the work and issue the Certificate if found to be in conformity with the Permit or Order.

## **2.01.13 Enforcement of Code Provisions**

### **A. Generally**

The Development Review Board shall enforce this Code according to the Procedures set forth below.

**B. Enforcement Procedures**

1. When the Development Review Board has reason to believe that the provisions of this Code are being violated, it shall initiate enforcement proceedings.
2. The Development Review Board shall notify the alleged violator of the nature of the violations and provide a reasonable period of time to eliminate them. If the violations are not eliminated within the time specified, the Development Review Board shall notify the Code Enforcement Board and request a hearing. If a violation presents a serious threat to the public health, safety, and welfare, the Development Review Board shall immediately examine the threat even if the violator has not been notified.
3. Written notice of the Request for Hearing and of the date, time and place of the hearing shall be sent to the alleged violator by certified mail, return receipt requested, or by personal service.
4. After a case is set for hearing, the Secretary to the Development Review Board shall issue subpoenas as requested by the Development Review Board and the alleged violator. Subpoenas may be served by the police/sheriff department of the City. The City shall pay all costs of issuing and serving up to and including four (4) subpoenas requested by any party. Should a party request more than four (4) subpoenas, that party shall pay all costs incurred in issuing and serving those in excess of four.
5. Hearings before the Development Review Board shall be conducted as follows:
  - a. The Secretary shall read the Statement of Violations and Request for Hearing.
  - b. The alleged violator shall be asked if he wishes to contest the charges.
  - c. The City shall present its case and alleged violator shall present his case. The City's case shall be presented by an attorney representing the city or by a member of the administrative staff of the City. The alleged violator's case may be presented by an attorney, or other representative chosen by the alleged violator.

- d. Both parties may call witnesses and all witnesses shall be sworn. All testimony shall be under oath and shall be recorded.
  - e. Formal rules of evidence shall not apply, but fundamental due process shall be observed.
  - f. Both parties may cross-examine witnesses and present rebuttal evidence.
  - g. The Board and its attorney may call or question any witness.
  - h. After all evidence has been submitted, the Chair shall close presentation of evidence.
  - i. The Board shall immediately deliberate and make a decision in open session. If a decision cannot be reached in the initial meeting, the Board shall adjourn and reconsider the matter as soon as possible at a time and date certain.
  - j. A decision of the Board must be approved by at least four (4) members of the Board. The decision shall contain findings of fact and conclusions of law and shall state the affirmative relief granted by the Board.
  - k. The decision shall be announced as an oral order of the Board and shall be reduced to writing within ten (10) days and mailed to all parties.
  - l. The Board may, at any hearing, order the reappearance of a party at a future hearing.
6. The Development Review Board, upon finding a violation, shall issue an Order to Comply setting a date certain for compliance, and a fine to be levied if the deadline for compliance is not met. The fine shall not exceed \$250.00 for each day the violation continues past the specified compliance date.
  7. After an order has been issued by the Development Review Board and a date for compliance has been set, the Code Inspector or other designated City official shall make a re-inspection to determine compliance or noncompliance with the order.
  8. The inspector shall file an affidavit of compliance or noncompliance with the Secretary of the Code Enforcement Board,

and a copy shall be sent to the violator by certified mail return receipt requested.

9. If the inspector files an affidavit of compliance, the Secretary to the Development Review Board shall close the file and so report to the Board.
10. If the inspector files an affidavit of noncompliance with the Secretary to the Development Review Board, the Board may order the violator to pay the fine as specified in the board's order.
11. A copy of the order imposing the fine shall be mailed to the violator by certified mail, return receipt requested, or personally served upon the violator.
12. If a fine remains unpaid for a period of fourteen (14) days, a certified copy of the order imposing the fine shall be recorded in the public records of Walton County, which shall thereafter constitute a lien against the land on which the violation exists, or if the violator does not own the land, upon any other real or personal property owned by the violator, and may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against personal property. If the fine remains unpaid for a period of one (1) year following the date the lien was filed, the Board may authorize the City Attorney to foreclose on the lien.
13. In addition to the penalties prescribed above, the Development Review Board shall:
  - a. Direct the Code Enforcement Officer not to issue any subsequent development orders for the development until the violation has been corrected.
  - b. Inform the violator that no further work under an existing approval may proceed until the violation has been corrected.

## **C. Other Penalties And Remedies**

### **1. Generally**

If the Development Review Board determines that the code enforcement process delineated above would be an inadequate response to a given violation, it may pursue the following penalties and remedies, as provided by law.

## 2. Civil Remedies

If any building or structure is erected, constructed, reconstructed, altered, repaired, or maintained or any building, structure, land, or water is used in violation of this Code, the Code Enforcement Officer, through the City Attorney, may institute any appropriate civil action or proceedings in any court to prevent, correct, or abate the violation.

## 3. Criminal Penalties

Any person who violates any provision of this code shall be deemed guilty of a misdemeanor and shall be subject to fine and imprisonment as provided by law.

## **2.02.00 CONSISTENCY AND CONCURRENCY DETERMINATIONS**

### **2.02.01 Generally**

#### **A. Purpose**

It is the purpose of this Article to describe the requirements and procedures for determination of consistency of proposed development projects with the City of Freeport Comprehensive Plan, including meeting the concurrency requirements of the plan.

#### **B. Definition**

Refer to Appendix B

### **2.02.02 Determination of Consistency**

### **2.02.03 System for the Management of Concurrency**

#### **A. Generally**

The following method of ensuring concurrency shall be known as the System For The Management Of Concurrency (SYMCON). The SYMCON is based upon the City of Freeport Comprehensive Plan, especially the Capital Improvements Element and adopted level of service standards. The system is designed to ensure that the issuance of a Final Development Order will not result in a degradation of the adopted levels of service for specified public facilities and services. The SYMCON also includes a monitoring system for determination of the availability of adequate capacity of public facilities and services to meet the adopted level of service standards.

**B. Adopted Levels of Service Shall Not Be Degraded**

## 1. General Rule

- a. All applications for development orders shall demonstrate that the proposed development does not degrade adopted levels of service in the city/county.
- b. An application for a development permit shall demonstrate that the proposed development does not degrade adopted levels of service if there exists no development order under which the permit is sought, and no development order is required prior to the issuance of the permit, e.g. a resident on a parcel of unplatted land.
- c. The latest point at which concurrency is determined is the final development order. If no development is required, the latest point to determine concurrency is the first development permit on a site.

## 2. Exception

Notwithstanding the foregoing, the prescribed levels of service may be degraded during the actual construction of new facilities, if upon completion of the new facilities the prescribed levels of service will be met.

**C. Determination Of Available Capacity**

For purposes of these regulations the available capacity of a facility shall be determined by:

## 1. Adding Together

- a. The total capacity of existing facilities operating at the required level of service; and
- b. The total capacity of new facilities, if any, that will become available on or before the date of occupancy of the development. The capacity of new facilities may be counted only if one or more of the following is shown:
  - (1) Construction of the new facilities is under way at the time of issuance of the final development order.
  - (2) The new facilities are the subject of a binding executed contract for the construction of the

facilities or the provision of services at the time of issuance of the final development order.

- (3) The new facilities are guaranteed in an enforceable development agreement. An enforceable development agreement may include, but is not limited to development agreements pursuant to Section 163.3220, Florida Statutes, or an agreement or development order pursuant to Chapter 380, Florida Statutes. Such facilities shall be consistent with the capital improvements element of the City Comprehensive Plan. The agreement must guarantee that the necessary facilities and service will be in place when the impacts of the development occur.

2. Subtracting From That Number The Sum Of

- a. The demand for the service or facility created by existing development as documented in the City Comprehensive Plan; and
- b. The demand for the service or facility created by the anticipated completion of other approved developments, redevelopment, or other development activity.

3. Action Upon Failure To Show Available Capacity

Where available capacity cannot be shown, the following methods may be used to maintain adopted level of service:

- a. The project owner or developer may provide the necessary improvements to maintain level of service. In such case the application shall include appropriate plans for improvements, documentation that such improvements are designed to provide the capacity necessary to achieve or maintain the level of service, and recordable instruments guaranteeing the construction, consistent with calculations of capacity above.
- b. The proposed project may be altered such that projected level of service is no less than the adopted level of service.

**D. Burden Of Showing Compliance On Developer**

The burden of showing compliance with these level of service requirements shall be upon the developer. In order to be approvable, applications for development

approval shall provide sufficient information showing compliance with these standards.

### **E. Initial Determination Of Concurrency**

The initial determination of concurrency occurs during the review of the Preliminary Development Plan, and shall include compliance with the level of service standards adopted by the City.

### **F. Annual Report**

#### **1. Contents**

The City of Freeport shall prepare an Annual Report on the SYMCON that includes:

- a. A summary of actual development activity, including a summary of certificates of occupancy, indicating quantity of development represented by type and square footage.
- b. A summary of building permit activity, indicating:
  - (1) those that expired without commencing construction;
  - (2) those that are active at the time of the report;
  - (3) the quantity of development represented by the outstanding building permits;
  - (4) those that result from final development orders issued prior to the adoption of this Code; and
  - (5) those that result from final development orders issued pursuant to the requirements of this Code.
- c. A summary of preliminary development orders issued, indicating:
  - (1) those that expired without subsequent final development orders;
  - (2) those that are valid at the time of the report; and
  - (3) the phases and quantity of development represented by the outstanding preliminary development orders.
- d. A summary of final development orders issued, indicating:
  - (1) those that expired without subsequent building permits;

- (2) those that were completed during the reporting period;
  - (3) those that are valid at the time of the report but do have associated building permits or construction activity; and
  - (4) the phases and quantity of development represented by the outstanding final development orders.
- e. An evaluation of each facility and service indicating:
- (1) the capacity available for each at the beginning of the reporting period and the end of the reporting period;
  - (2) the portion of the available capacity held for valid preliminary and final development orders;
  - (3) a comparison of the actual capacity to calculated capacity resulting from approved preliminary development orders and final development orders;
  - (4) a comparison of actual capacity and levels of service to adopted levels of service from the City Comprehensive Plan;
  - (5) a forecast of the capacity for each based upon the most recently updated schedule of capital improvements in the City Capital Improvements Element.

## 2. Use of the Annual Report

The SYMCON Annual Report shall constitute prima facie evidence of the capacity and levels of service of public facilities for the purpose of issuing development orders during the twelve (12) months following completion of the annual report.

### 2.02.04 Adopted Levels of Service

#### A. Potable Water

Development activity shall not be approved unless there is sufficient available capacity to sustain the following levels of service for potable water as established in the Potable Water Sub-element of the City Comprehensive Plan:

Minimum design flow	100	gpd/p
Storage capacity	24	hour reserve
Pressure	20	psi to user

#### B. Wastewater

Development activities shall not be approved unless there is sufficient available capacity to sustain the following levels of service for wastewater treatment as established in the Sanitary Sewer Sub-element of the City Comprehensive Plan:

LOS

Type of Use	Average Flow	Peak Flow
Residential	80    gpd/p	120    gpd/p
Commercial	80    gpd*	120    gpd*
Industrial	200    gpd*	300    gpd

\* Per 1000 square feet of building

**C.    Transportation System**

1.    Level of Service

Development activities shall not be approved unless there is sufficient available capacity to sustain the following levels of service for transportation systems as established in the Transportation Circulation Element of the City Comprehensive Plan:

<u>Type of facility</u>	<u>Peak Hour Level of Service</u>
Principal Arterials	C
Minor Arterials	C
Major Collectors	C
Minor Collectors	C
Other named roads	C

2.    Determination of Project Impact

The impact of proposed development activity on available capacity shall be determined as follows:

- a.    The area of impact of the development (a traffic shed) shall be determined. The traffic shed shall be that area where the primary impact of traffic to and from the site occurs. If the city/county has designated sectors of the jurisdiction for determining development impacts and planning capital improvements, such sectors or planning areas may be used.
- b.    The projected level of service for roads within the traffic shed shall be calculated based upon estimated trips to be generated by the project. Where the development will have

access to more than one road the calculations shall show the split in generated traffic and state the assumptions used in the assignment of traffic to each facility.

**D. Drainage System**

Development activities shall not be approved unless there is sufficient available capacity to sustain the following levels of service for the drainage system as established in the Drainage Sub-element of the City Comprehensive Plan:

<u>Types of Use</u>	<u>LOS</u>
All Uses	25-Year 24 Hour Design Storm per FDOT Manual

**E. Solid Waste**

Development activities shall not be approved unless there is sufficient available capacity to sustain the following levels of service for the solid waste as established in the Solid Waste Sub-element of the City Comprehensive Plan:

<u>Types of Use</u>	<u>LOS</u>
Residential	4 lbs. per capita per day
Commercial	1 lb per capita per day
Industrial	2 lbs per capita per day
Other users	0.5 lbs per capita per day

**F. Recreation**

Development activities shall not be approved unless there is sufficient available capacity to sustain the following levels of service for the recreational facilities as established in the Recreation and Open Space Element of the City Comprehensive Plan:

<u>Type of Park Facility</u>	<u>Level of Service</u>
Community	1 acre/1,000 population
Neighborhood	6 acres/1,000 population

**2.02.05 Impact Fees**

All major residential and all other development activities shall be assessed an impact fee based upon estimated water and sewer usage in order to amortize existing and planned improvements to the City’s utility systems. These fees shall be based upon a standard Equivalent Residential Unit usage of 300 gallons per day of water usage and 250 gallons per day of sewer usage.

**A. ERU Definition**

The ERU system is a unit of measurement of water and wastewater generated by various uses of land that has been proven over time to be reasonably accurate. The table below provides factors to be applied to various land uses for conversion into ERUs.

1. Water ERU

The total number of ERUs is then multiplied by 300 gallons per day to determine the amount of water used by a proposed development. This system provides more accurate measure of demand a proposed development produces on the water system. It also provides a measurement of flow generated for use in calculating water impact fees, if such fees are desired.

2. Wastewater ERU

The total number of ERUs is then multiplied by 250 gallons per day to determine the amount of wastewater generated by a proposed development. This system provides more accurate measure of demand a proposed development produces on the wastewater system. It also provides a measurement of flow generated for use in calculating wastewater impact fees, if such fees are desired.

**B. Measurement of One ERU**

One (1) equivalent residential unit (ERU) shall have an assigned value of 1.000. One (1) ERU is hereby established and determined to be equal to a flow of three hundred (300) gallons per day (GPD), average annual basis. The “total equivalent residential unit value” for an establishment shall be calculated by multiplying the ERU factor listed below times the number of units.

**EQUIVALENT RESIDENTIAL UNIT DETERMINATION**

<u>Establishment</u>	<u>Unit</u>	<u>Factor</u>
Residential		
Single Family home	Per Unit	1.000
Duplex (1 or 2 bedroom)	Per Unit	0.833
Duplex (3 or more bedrooms)	Per Unit	1.000
Multifamily (2 bedrooms)	Per Unit	0.833
Multifamily (Efficiency less than		

500 sq. ft.)	Per Unit	0.500
Multifamily (3 or more bedrooms)	Per Unit	0.833
Mobile home (1 or 2 bedrooms)	Per Unit	0.667
Mobile home (3 or more bedrooms)	Per Unit	0.833
Commercial:		
Auditorium	Seat	0.017
Barber/beauty shop	Opr. Sta.	0.300
Bowling alley	Lane	0.333
Food Service:		
Restaurant/cafeteria	Seat	0.100
Restaurant (24 hours)	Seat	0.167
Restaurant ('fast food')	Seat	0.050
Bar/cocktail lounge	Seat	0.067
Hotel/Motel (not including food Service, banquet & meeting Rooms, & laundries)		
	Room	0.500
Industrial Building (not including Food service; not including Industrial waste flows):		
Without showers	Employee	0.050
With showers	Employee	0.117
Laundry/Self Service	Per machine	1.333
Motel (see Hotel)		
Office Building (add food Service and retail space)		
	1.000 sq.ft. Gross	1.000
Service Station		
	Per Bay	1.000
Add:	Per Wash Bay	3.200
Add:	Per Toilet Room	1.000
Theater		
	Per Seat	0.010
Theater (Dinner)		
	Per Seat	0.067

Trailer Park (overnight)	Space	0.333
Dentist Office	Per Dentist	0.833
	Per Wet Chair	0.667
Doctor Office	Per Doctor	0.833
Church	Per Seat	0.017
Hospital	Per Bed	0.833
Nursing Home	Per Bed	0.417
Warehouse-Office: Use fixture units for Warehouse area and see Office category for Calculating ERUs in that area (add for food service) (add for retail space if applicable)		
Meeting and/or Banquet Rooms (Total sq. ft./15 sq. ft./persons 0.17 # of seats)	Per Seat	0.017
Automotive Repair & Maintenance Store	Per Bay	0.250
Retail Store/Self Service (add remaining fixture units)	Per Restroom	1.000
Extended Care Facilities	Per Efficiency	0.500
Convenience Store without Gas Pump	Use Fixture units	
Schools, Middle & High	Per student	0.067
Schools, Elementary & Nursery	Per student	0.025

## NOTES:

1. Industrial water and wastewater flows to be determined on fixture unit basis unless the Public Works Director or his designee agrees to alternative flow calculation.
2. For all establishments not listed above, the total equivalent residential unit (ERU) value shall be determined by multiplying the number of fixture units, as published in the Standard Plumbing Code, by twenty-five (25),

and then dividing that numerator by three hundred (300 GPD/ERU) for water usage and two hundred fifty (250 GPD/ERU).

## **2.03.00      BOARDS AND AGENCIES**

### **2.03.01      Generally**

The following boards and agencies are created to administer the provisions of this Code under the authority prescribed by this Code and Florida law.

### **2.03.02      Department of Planning and Development**

#### **A.      Creation**

There is hereby created a Department of Planning and Development under the direction and control of the Mayor. The Department is authorized and shall perform all administrative functions of the City government relating to the administration of this Code.

### **2.03.03      Citizen Boards**

#### **A.      Generally**

All citizen boards created to administer this Code shall be governed by the following provisions.

1.      Board Membership And Officers
  - a.      Each board shall have five (5) members appointed by the City council members with each member appointing one member for each board.
  - b.      Each member shall reside in the City or operate a business within the City.
  - c.      Each member's term shall expire upon the expiration of the term of the appointing City Council member.
  - d.      When a position becomes vacant before the end of the term, the City Council shall appoint a substitute member to fill the vacancy for the duration of the vacated term. A member whose term expires may continue to serve until a successor is appointed and qualified.
  - e.      Members may be removed without notice and without assignment of cause by a majority vote of the City Council.

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- f. The members of each board shall annually elect a chair and vice chair from among the members and may create and fill other offices as the board deems needed.
  - g. Each board shall create whatever subcommittees it deems needed to carry out the purposes of the board
  - h. The chair of the board shall annually appoint the membership of each subcommittee from the members of the board.
  - i. The Director shall appoint a City Council employee to serve as secretary to the board, recorder and custodian of all board records.
  - j. Members shall not be compensated, but may be paid for travel and other expenses incurred on board business under procedures prescribed in advance by the City Council.
  - k. The City Council shall appropriate funds to permit each board to perform its prescribed functions.
  - l. If any member fails to attend three successive meetings the Board shall declare the member's office vacant and notify the City Council.
2. Board Procedures
- a. Each board shall adopt rules of procedure to carry out its purposes. All rules must conform to this Code, other City ordinances, and state law.
  - b. Each board shall meet at least once each calendar month, unless cancelled by the Board or its chair, and more often at the call of the chair or the City Council.
  - c. Each board shall keep minutes of its proceedings, indicating the attendance of each member, and the decision on every question.
  - d. Four (4) members shall constitute a quorum.
  - e. Each decision of a board must be approved by a majority vote of the members present at a meeting in which a quorum is in attendance and voting.

**B. Planning Board**

## 1. Establishment

The Planning Board is hereby created as a citizen board to recommend land use policies to the City Council.

## 2. Membership

Any interested citizen may be appointed to the Board, but those with experience or interest in the field of planning and zoning shall receive special consideration. Whenever possible, the Board should include at least one each of the following:

- a. An architect or landscape architect.
- b. A neighborhood activist.
- c. A farmer (unless the jurisdiction has a minimal amount of farm land).
- d. A person engaged in real estate sales or development.
- e. A natural or environmental scientist.

## 3. General Functions, Powers and Duties

- a. The Board shall obtain and maintain information on population, property values, and land economy, land use and other information necessary to assess the amount, direction and type of development to be expected in the City.
- b. The Planning Division shall serve as staff to the Board under the direction of the Planning administrator. The Board, through the Planning Administrator, may request information from any city department or official. Each department head or official shall supply the requested information or reasonable grounds for unavailability within a reasonable time.
- c. Pursuant to and in accordance with the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, the Board is hereby designated as the Local Planning Agency

for the City and shall perform the functions and duties as prescribed in the Act.

- d. The Board shall, with advice from the Development Review Board, monitor and oversee the operation, effectiveness and status of this Code and recommend amendments to the City Council that are consistent with the comprehensive plan.
- e. The city Council may ask the Board for advice about specific land use issues and policies.
- f. The Board shall keep the City Council and the general public informed and advised on the land use policies of the City.
- g. The Board shall conduct public hearings to gather information necessary for the drafting, establishment, amendment, and maintenance of the various elements of the Comprehensive Plan and provisions of this Code.
- h. The Board may make or obtain special studies on the location, condition and adequacy of specific facilities of the City, including housing, commercial and industrial facilities, parks, playgrounds, beaches and other recreational facilities, schools, public buildings, public and private utilities, transportation and parking.
- i. The Board shall review Redevelopment Plans prepared under Chapter 163, Part III, Florida Statutes.
- j. The Board shall perform other lawfully assigned duties.
- k. Each final action of the Board is advisory to the City Council, and the Board may not in any manner obligate the City.

#### 4. Application Fees

The City Council shall adopt by resolution a schedule of application fees for functions performed by the Planning Board in response to applications submitted by any person, corporation, organization or governmental entity.

### **C. Development Review Board**

1. Establishment

The Development Review Board is hereby created as a citizen board to review and approve or deny development plans submitted under this Code and to monitor Code Enforcement.

2. Membership

Any interested citizen may be appointed to the Board, but those with experience or interest in the field of land use regulation shall receive special consideration. Whenever possible, the Board shall include at least one each of the following:

- a. An architect or landscape architect.
- b. An engineer.
- c. A person engaged in real estate sales or development.
- d. A natural or environmental scientist.

3. Legal Representation

The City Council shall appoint legal counsel to represent the Board.

4. Development Review Functions, Powers and Duties

- a. The Board shall review and act upon applications for development review pursuant to this Code.
- b. The Board shall make recommendations to the Planning Board on code amendments either upon referral of the Planning Board or upon its own initiation.
- c. Pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, the development Review Board is hereby designated to be the Land Development Regulation and shall perform the duties and functions prescribed in the Act except for those duties and functions expressly assigned to the Planning Board by this Code.

5. Code Enforcement Functions, Powers and Duties

- a. Adopt rules for the conduct of its hearings.
- b. Subpoena evidence, witnesses, and alleged violators.

- c. Take testimony under oath.
- d. Issue orders, having the force of law, commanding those actions necessary to bring a violation into compliance.

## **2.04.0 VARIANCES**

### **2.04.01 Generally**

#### **A. Granted By Development Review Board**

The Development Review Board may grant a variance from the strict application of any provision of this Code, except provisions in Articles 3 (Land Use) and 2 (Consistency/Concurrency), if the following procedures are followed and findings made.

#### **B. Variances To Be Considered As Part Of Development Review**

Any person desiring to undertake a development activity not in conformance with this code may apply for a variance in conjunction with the application for development review. A development activity that might otherwise be approved by the Code Enforcement Officer must be approved by the Development Review Board if a variance is sought. The variances shall be granted or denied in conjunction with the application for development review.

### **2.04.02 Limitations On Granting Variances**

#### **A. Initial Determination**

The Development Review Board shall first determine whether the need for the proposed variance arises out of the physical surroundings, shape, topographical condition, or other physical or environmental conditions that are unique to the specific property involved. If so, the Board shall make the following required findings based on the granting of the variance for that site along. If, however, the condition is common to numerous sites so that requests for similar variances are likely to be received, the Board shall make the required findings based on the cumulative effect of granting the variance to all who may apply.

#### **B. Required Findings**

The Development Review Board shall not vary the requirements of any provision of this Code unless it makes a positive finding, based on substantial competent evidence, on each of the following:

1. There are significant practical or economic difficulties in carrying out the strict letter of the regulation.
2. The variance request is not based exclusively upon a desire to reduce the cost of developing the site.
3. The proposed variance will not substantially increase congestion on surrounding public streets, the danger of fire, or other hazard to the public.
4. The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.
5. The effect of the proposed variance is in harmony with the general intent of this Code and the specific intent of the relevant subject area(s) of the Code.

**C. Imposition Of Conditions**

In granting a development approval involving a variance, the Development Review Board may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to allow a positive finding to be made on any of the foregoing factors, or to minimize the injurious effect of the variance.

**2.04.03 Special Provisions Where Variance Is Sought To Requirements To Flood Damage Prevention Regulations**

**FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES**

**A. Designation of Variance and Appeals Boards**

The City Council has the authority to grant such variances as it deems in the best interest of the citizens of Freeport after receiving recommendations from the Planning & Development Review Board acting as the Board of Adjustments as provided for in Article 2.04.03 of the Freeport Land Development Code.

**B. Duties of Variance and Appeals Board**

The Planning & Development Review Board acting as the Board of Adjustments shall hear and make recommendations regarding appeals when it is alleged an error in any requirements, decision, or determination is made by the Floodplain Management Administrator in the enforcement

or administration of these regulations. Any person aggrieved by the decision of the Board may appeal such decision to the Circuit Court.

### **C. Variance Procedures**

In acting upon such applications, the board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger of life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed development and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility or development to the community;
- (5) The necessity to the facility or development of a waterfront location, where applicable;
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

#### **D. Conditions for Variances**

A hardship is exceptional, unusual, and peculiar to the property involved. Economic or financial adversity alone is not considered exceptional. Likewise, inconvenience, aesthetic considerations, physical handicaps, personal preferences, cannot, as a rule, qualify as an exceptional hardship. These issues are to be resolved through other means without the granting a variance, though the alternative may be more expensive, or requires the property owner to build elsewhere or, put the parcel to a different use than originally intended.

- (1) In addition to those items in Article 4.04 of the Land Development Code to be considered by the Planning Board acting as Zoning Board of Adjustments before the granting of a variance, a variance shall only be issued when there is:
  - a) A showing of good and sufficient cause, and at least one of the following;
  - b) A determination that failure to grant the variance would result in exceptional hardship. The city requires that a hardship is exceptional, unusual, and peculiar to the property involved. Economic or financial adversity alone is not considered exceptional. Likewise, inconvenience, aesthetic considerations, physical handicaps or personal preferences cannot, as a rule, qualify as an exceptional hardship. These issues are to be resolved through other means without the granting a variance, though the alternative may be more expensive, or requires the property owner to build elsewhere or, put the parcel to a different use than originally intended; and
  - c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (2) Variances shall only be issued upon a determination that the variance is the minimum necessary deviation from the requirements of this Section and Section 14 of the Land Development Code.
- (3) Variances shall not be granted after-the-fact.

(4) The Floodplain Administrator shall maintain the records of all variance actions, including justification for their issuance or denial, and report such variances in the community's NFIP Biennial Report or upon request to FEMA and the State of Florida, Department of Community Affairs, NFIP Coordinating Office.

**E. Variance notification.**

Any applicant to whom a variance is granted shall be given written notice over the signature of Flood Plain Administrator that:

(1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and

(2) Such construction below the base flood level increases risks to life and property.

A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Clerk of Court and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

**F. Historic structures.**

Variances may be issued for the repair or rehabilitation of "historic" structures- meeting the definition in this ordinance - upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a "historic" structure.

**G. Structures in regulatory floodway.**

Variances shall not be issued within any designated floodway if any impact in flood conditions or increase in flood levels during the base flood discharge would result.

**H. Record Of Variances To Be Maintained**

The Code Enforcement Officer shall maintain a record of all variances including the justification for their issuance and a copy of the notice of the variance. The Code Enforcement Officer shall report all variances in the annual or biennial report to the Administrator.

**I. Historic Properties**

Notwithstanding the foregoing requirements, special variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on, or classified as contributing to a district listed on, the National Register of Historic Places, the local register of historic places, or the State Inventory of Historic Places. The special variance shall be the minimum necessary to protect the historic character and design of the structure. No special variance shall be granted if the proposed construction, rehabilitation, or restoration will cause the structure to lose its historical designation.

## **2.05.00        HARSHIP RELIEF**

### **2.05.01        Purpose**

The purpose of this Article is to provide mechanisms for obtaining relief from the provisions of this Code where hardship would otherwise occur. Three forms of hardship are addressed: (1) Part 2.05.02 addresses hardship that would be caused if nonconforming development were required to immediately come into compliance with this Code; (2) Part 2.04.00 addresses the hardship that may be caused in particular cases by the imposition of the Code's development design standards; and (3) Part 4.05.00 address the hardship that may be caused in particular cases by the Code's resource protection standards.

### **2.05.02        Existing Nonconforming Development**

#### **A.        Defined**

Nonconforming development is development that does not conform to the use regulations in Article 3 and/or the development design and improvement standards in Article 5, and sign provisions in Article 5.

#### **B.        Continuation Of**

Subject to the provisions below for terminating nonconforming development, such development may, if otherwise lawful and in existence on the date of enactment of this Code, remain in use in its nonconforming state.

#### **C.        Termination Of Nonconforming Development**

##### **1.        Generally**

Nonconforming development must be brought into full compliance with the use regulations in Article 3 of this Code, and the development design and improvement standards in Article 5 of this Code and sign provision in Article 5 of this Code, in conjunction with the following activities:

- a. The gross floor area of the development is expanded by more than ten (10) percent, or more than four thousand (4000) square feet, whichever is less. Repeated expansions of a development, constructed over any period of time commencing with the effective date of this Code, shall be combined in determining whether this threshold has been reached.
  - b. Reconstruction of the principal structure after the structure has been substantially destroyed by fire or other calamity. A structure is “substantially destroyed” if the cost of reconstruction is (50) percent or more of the fair market value of the structure before the calamity. If there are multiple principal structures on a site, the cost of reconstruction shall be compared to the combined fair market value of all the structures.
2. Special Provisions For Specific Nonconformities

- a. Nonconformity With The Stormwater Management Requirements Of This Code

In addition to the activities listed in SECTION 2.05.02.C.1, an existing development that does not comply with the stormwater management requirements of this Code must be brought into full compliance when the use of the development is intensified, resulting in an increase in stormwater runoff or added concentration of pollution in the runoff.

- b. Nonconformity With The Parking And Loading Requirements Of This Code

In addition to the activities listed in SECTION 2.05.02.C.2, full compliance with the requirements of this Code shall be required where the seating capacity or other factor controlling the number of parking or loading spaces required by this Code is increased by ten (10) percent or more.

- c. Nonconforming Signs

- (1) Defined

Any sign within the City of Freeport on the effective date of this Code (or a sign existing within any area annexed to the city after the effective date of this Code,) which is prohibited by, or does not conform to the requirements of,

this Code; except that signs that are within ten (10) percent of the height and size limitations of this Code, and that in all other respects conform to the requirements of this Code, shall be deemed to be in conformity with this Code.

(2) Amortization

Alternative A:

- (a) All nonconforming signs with a replacement cost of less than \$100.00, and all signs prohibited by PART 5.06.03 (Prohibited Signs) of this Code, shall be removed or made to conform within sixty (60) days of the enactment of this Code.
- (b) All other nonconforming signs shall be removed or altered to be conforming within seven (7) years of the effective date of this code, unless an earlier removal is required by SECTION 2.05.02.C.1 above or SECTION 2.05.02.C.2.c.(3) below.

Alternative B:

- (a) All nonconforming signs with a replacement cost of less than \$100, and all signs prohibited by PART 5.06.02 (Prohibited Signs) of this Code, shall be removed or made to conform within sixty (60) days of the enactment of this Code.
- (b) Unless an earlier removal is required by SECTION 2.05.02.C.1 above or SECTION 2.05.02.C.2.c.(3) below, all other nonconforming sign may be maintained for the longer of the following periods:
  - (i) Two (2) years from the date upon which the sign became illegal under this Code; or
  - (ii) A period of three (3) to seven (7) years from the installation date or most recent renovation date that preceded the enactment of this Code according to the amortization table below. If the date of the more recent

renovation is chosen as the starting date of the amortization period, the period of amortization shall be calculated according to the cost of the renovation and not according to the original cost of the sign.

Sign Cost or Renovation Cost	Permitted Years From or Renovation Date
\$101 to \$1,000	3 years
\$1,001 to \$3,000	4 years
\$3,001 to \$10,000	5 years
more than \$10,000	7 years

- (iii) Any owner of a sign who requests an amortization period longer than two (2) years shall, within one (1) year from the date of enactment of these regulations, file with the Code Enforcement Officer a statement setting forth the cost of the sign, the date of erection, or the cost and date of most recent renovation, and a written agreement to remove the sign at or before the expiration of the amortization period applicable to the sign.
  
- (iv) The Development Review Board may grant a variance from the terms of the forgoing amortization schedule for up to one additional year where it finds such additional period of time is necessary in order to avoid unnecessary hardship not caused by the petitioner, and such variance is not contrary to the public interest. Multiple one-year extensions may be granted where warranted, but may only be granted one year at a time.

(3) Continuation Of Nonconforming Signs

Subject to the limitation imposed by the amortization schedule above, and subject to the restriction in SECTION 2.05.02.C.1 and SECTION 2.05.02.C.2.c.(3) above, a nonconforming sign may be continued and shall be maintained in good condition as required by this Code, but it shall not be:

- (a) Structurally changed to another nonconforming sign, but its pictorial content may be changed.
  - (b) Structurally altered to prolong the life of the sign, except to meet safety requirements.
  - (c) Altered in any manner that increases the degree of nonconformity.
  - (d) Expanded.
  - (e) Re-established after damage or destruction if the estimated cost of reconstruction exceeds fifty (50) percent of the appraised replacement cost as determined by the Code Enforcement Officer.
  - (f) Continued in use when a conforming sign or sign structure shall be erected on the same parcel or unit.
  - (g) Continued in use when the structure housing the occupancy is demolished or requires renovations the cost of which exceeds fifty (50) percent of the assessed value of the structure.
  - (h) Continued in use after the structure housing the occupancy has been vacant for six (6) months or longer.
- (4) Nonconforming Signs Along Federal Highways

If it is determined that nonconforming signs along a federal interstate or primary aid highway may not be removed pursuant to the above provisions, the City of Freeport shall develop a plan for their expeditious removal in accordance with state and federal law.

d. Nonconforming Vehicles Use Areas

- (1) A vehicle use area is any portion of a development site used for circulation, parking, and/or display of motorized vehicles, except junk or automobile salvage yards.
- (2) In addition to the activities listed in SECTION 2.05.02.C.1 above, an existing vehicle use area that does not comply with the requirements of this Code must be brought into full compliance when twenty-five (25) percent or more of the paving of the vehicle use area is replaced or resurfaced.
- (3) When the square footage of a vehicle use area is increased, compliance with this Code is required as follows:
  - (a) Expansion By Ten (10) Percent Or Less  
When a vehicle use area is expanded by ten (10) percent or less, only the expansion area must be brought into compliance with this Code.
  - (b) Expansion By More Than Ten (10) Percent  
When a vehicle use area is expanded by more than (10) percent, the entire vehicle use area shall be brought into compliance with this Code.
  - (c) Repeated Expansions Repeated expansions, or resurfacing or replacement of paving, of a vehicle use area over a period of time commencing with the effective date of this Code shall be combined in determining whether the above threshold has been reached.
- (4) Any vehicle use area in existence on the date of enactment of this Code which must be brought into conformity with this Code, and which has more

than the number of parking spaces required by this Code, shall be treated as follows:

- (a) The area shall be reconfigured to comply with requirements in this Code.
- (b) If, after the reconfiguration, a paved area or areas that are not needed to comply with the requirements of this Code remain, the developer may do any one or combination of the following:
  - (i) Conform the area(s) to comply with this Code and continue to use them for parking.
  - (ii) Remove the paving and use as grassed overflow parking, as additional landscaped transitional zone, or for any other purpose consistent with the land use plan and approved by the Development Review Board.

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