

**ARTICLE 11  
APPEALS AND VARIATIONS**

**SECTION 11.1 BOARD OF APPEALS**

**11.1-1 Establishment and Membership**

There is hereby established a Board of Appeals whereby said Board shall consist of the same persons as the Plan Commission. The officers of the Plan Commission shall hold the same offices on the Board of Appeals.

**11.1-2 Powers and Duties**

The Board of Appeals shall have the following powers and duties:

1. To hear and decide all matters referred to it or upon which it is required to pass under this ordinance.
2. To hear appeals in the manner prescribed in **Section 11.2** of this Article where it is alleged there is error in any order, requirement, decision, or determination made by the Enforcement Officer in the administration of this ordinance.
3. To vary or modify in the manner prescribed in **Section 11.3** of this Article the application of any of the provisions of this ordinance where there are practical difficulties or unnecessary hardships in the carrying out the strict letter of this ordinance, so that the spirit of this ordinance shall be observed, public safety and welfare secured and substantial justice done.

**11.1-3 Procedures**

1. Meetings:

Meetings shall be held at the call of the Chairman and at such other times as the Board may determine.

2. Hearings and Rules:

- a. All meetings of the Board shall be open to the public.
- b. The Board shall set a date for any required hearings and notice of them shall be given as provided for herein.
- c. No hearing shall be conducted without a quorum of the Board being present. A quorum shall be consist of a majority of all the members.
- d. At the hearing, parties of interest may appear in person or by agent or by attorney.
- e. All testimony at such hearings shall be given under oath. The Chairman, or in his absence, his designee shall administer the oaths and may compel the attendance of witnesses.

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- f. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed within the office of the Board (office of the City Clerk) and shall be a public record.

### **11.1-4 Required Vote**

A concurring vote of four (4) members of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Enforcement Officer, to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, to effect any variation in this ordinance, or to recommend any variation or modification in this ordinance to the City Council.

### **11.1-5 Judicial Review of Decision of Board of Appeals**

Decisions of the Board of Appeals shall not be subject to review, reversal or modification by the City Council, but shall be subject to judicial review pursuant to the provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted thereto.

## **SECTION 11.2 APPEALS**

### **11.2-1 Authorization**

Appeals to the Board of Appeals, concerning the interpretation or administration of this ordinance, may be taken by any aggrieved person, administrative body, officer, agency or commission of Jacksonville affected by any decision of the Enforcement Officer.

### **11.2-2 Filing Appeals**

1. Appeals shall be taken within forty-five (45) days of the action complained of.
2. The aggrieved party shall file his or her appeal, specifying the grounds thereof, with the Enforcement Officer and with the Office of the City Clerk. The Enforcement Officer shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.
3. The appeal shall include, but not be limited to:
  - a. A copy of the order, requirement, decision or determination of the Enforcement Officer which the applicant believes to be in error.
  - b. A clear and accurate, written description of the proposed use, work or action to which the appeal is involved and a statement justifying the applicant's position.
  - c. Where necessary, a plot plan, drawn to scale, showing existing conditions and proposed plans for the area in question.

### **11.2-3 Stay of Proceedings**

An appeal stays all proceedings in furtherance of the action appealed from, unless the Enforcement Officer certifies by letter to the Board of Appeals, after the notice of appeal is filed with him or her, that by reason of specific facts stated in

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the letter, a stay would, in his opinion, cause imminent peril to life and property. Otherwise, proceedings shall not be stayed except by a restraining order which may be granted by the Board of Appeals or by a circuit court on application and on notice to the Enforcement Officer and on due cause shown.

### 11.2-4 Hearing and Decision on Appeals

1. The Board of Appeals shall fix a reasonable time and place for hearing of appeals and shall give notice thereof to the appellant and officer from whom the appeal is taken.
2. The Board of Appeals may affirm or reverse, wholly or partly, or modify the order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all the powers of the Enforcement Officer. The Board shall render a written decision on the appeal without unreasonable delay after the close of the hearing.

## SECTION 11.3 VARIATIONS

### 11.3-1 Authorization

The Board of Appeals may authorize variations where there are practical difficulties or unnecessary hardships in carrying out the strict letter of this ordinance, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done. However, no variation shall be authorized unless the Board of Appeals determines that the standards set forth in **Section 11.3-4** have been complied with.

### 11.3-2 Filing and Submission Requirements

An application for variation shall be filed at least 21 days prior to meeting with the Enforcement Officer, who shall forward the application to the Office of the City Clerk, to be placed on the next available agenda for the meeting of the Board of Appeals. The application shall contain the following information as well as such additional information as the Board of Appeals may prescribe by rules adopted by the Board.

1. The particular requirements of this ordinance which prevent the proposed use or construction;
2. The unique characteristics of the subject property which prevent compliance with the requirements of this ordinance;
3. The practical difficulty or particular hardship which would result if the particular requirements of this ordinance were applied to the subject property; and
4. The reduction or modification of the minimum requirements of this ordinance which would be necessary to permit the proposed use or construction.

The burden of proof shall rest with the applicant to clearly establish that the review considerations and criteria for granting a variation, as established in **Sections 11.3-3 and 11.3-4** of this Article, are satisfied.

### 11.3-3 Review Considerations

In determining whether the evidence presented supports the findings required by **Section 11.3-4**, the Board of Appeals shall consider the extent to which the evidence demonstrates that:

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1. The particular physical surroundings, shape, or topographical condition of the property involved would result in a practical difficulty or unnecessary hardship upon or for the owner, lessee, or occupant, as distinguished from an inconvenience, if the provisions of this ordinance were literally enforced;
2. The request for a variation is not based primarily upon the desire of the owner, lessee, occupant or applicant to secure a greater financial return from the property;
3. The granting of the variation will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the property is located; and
4. The proposed variation will not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

### 11.3-4 Standards for Granting Variations

The Board of Appeals shall not grant a variation unless it shall, in each case, make specific written findings of fact directly based upon the particular evidence presented to it that support the following conclusions:

1. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations of the district in which it is located provided, however, that granting of variations in respect to the classification, regulation and restriction of the location of trades and industries and the location of buildings designed for industrial, business, residential and other uses shall not be permitted, if such industrial, business, residential or other uses are not permitted in the district in question;
2. The plight of the owner is due to unique circumstances;
3. The variation, if granted, will not alter the essential character of the locality; and
4. The granting the variation desired will not violate the general spirit and intent of this ordinance.

### 11.3-5 Authorized Variations

Variations from the regulations of this ordinance shall be granted by the Board of Appeals only when it makes a finding of fact that the standards contained in **Section 11.3-4** have been met. Notwithstanding other variations which may be considered and granted, the following limits on variations shall apply:

1. To permit a front yard, a side yard or a rear yard less than required by this ordinance, but such variation shall not exceed twenty-five (25) percent of the depth of front yard, or the depth of the rear yard or the width of the side yard, as required by this ordinance; provided, however, that in subdivisions platted prior to June 28, 1976, and in unplatted areas within the zoning limits of the City of Jacksonville, which areas have been improved with structures prior to said date, a variation may exceed twenty-five percent (25%) if the petitioner shows by clear and convincing evidence that failure to grant a variation greater than twenty-five percent (25%) will work a substantial hardship on the petitioner in the use of the subject property. In making its decision, the Board of Appeals shall consider objections and written consents received from any adjoining property owners.
2. To permit a building to exceed the height limit by not more than ten (10) percent of the height limit established by this ordinance.
3. To allow any permitted non-dwelling use in a dwelling district to exceed the lot coverage imposed by the applicable regulations, but by not more than twenty-five (25) percent.

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4. To increase by not more than twenty (20) percent the gross area or height of any sign.
5. To increase the allowable height of fences and walls located in the required side or rear yards in dwelling districts.

### 11.3-6 Non-Conforming Situation as a Basis for Variation

The existence of any non-conforming situation anywhere in the City shall not itself be considered grounds for the issuance of a variation to the regulations applicable to other property.

### 11.3-7 Conditions and Restrictions

1. In granting a variation, the Board of Appeals may impose such conditions and restrictions upon the property benefitted by the variation as may be necessary to reduce or minimize any potentially injurious effect of such variation upon other property in the neighborhood, and to carry out the general purpose and intent of this ordinance.
2. A variation may be issued for a specified duration as it applies to the existence of the structure for which the variation was granted.

### 11.3-8 Public Hearing and Decisions on Variation Applications

1. Public Hearing:

The Board of Appeals shall hold a public hearing, with notice thereof being provided in accordance with **Article 14**. This notice shall contain the particular location for which the variation is requested as well as a brief statement of what the proposed variation consists of.

2. Decision:

The Board of Appeals shall render a written decision, including findings of fact on an application for a variation without unreasonable delay. The findings of fact shall specify the reason or reasons for making the variation.

3. Period of Validity:

No variation granted by the Board of Appeals shall be valid for a period longer than six (6) months from the date on which it grants the variation, unless within such period:

- a. A building permit is obtained and the construction, alteration, or moving of the structure is commenced.
- b. If a building permit is not required, the construction of the project for which the variation was required is commenced.

4. Extensions:

The Board of Appeals may grant extensions not exceeding one hundred eighty (180) days each, upon written application, without notice or hearing.

5. Re-submittal of Variation Request:

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In the event that a variation is denied, no request for the same variation shall be accepted by the City for a period of one (1) year from the time the Board denied the original request.

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