



EXECUTIVE SUMMARY

To: Bogdan Vitas, Jr., City Manager

From: Donald Leland Craig, AICP, Planning Director

Meeting Date: October 16, 2013

RE: Administrative Variances Ordinance

Action Statement: **ADOPTION OF AN ORDINANCE AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING SECTION 90-392 AND BY ADDING SECTION 90-398 TO AUTHORIZE THE CITY PLANNER TO ISSUE ADMINISTRATIVE VARIANCES; ESTABLISHING PROCEDURES FOR AN APPLICATION FOR ADMINISTRATIVE VARIANCES; ESTABLISHING A PROCEDURE FOR PROVIDING NOTICE TO ADJOINING PROPERTY OWNERS OF THE CITY PLANNER'S INTENT TO ISSUE AN ADMINISTRATIVE VARIANCE; ESTABLISHING CRITERIA FOR THE ISSUANCE OF ADMINISTRATIVE VARIANCES; ESTABLISHING A PROCEDURE FOR PUBLIC HEARINGS ON APPLICATIONS FOR ADMINISTRATIVE VARIANCES; AMENDING CHAPTER 122 ENTITLED "ZONING" BY AMENDING SECTION 122-28 AND ADDING SECTION 122-32 (G) FOR ESTABLISHING PROCEDURES FOR NONCONFORMITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE**

Request: Approval an Ordinance to amend Chapter 90 of the City's Land Development Regulations (LDRs) to permit the Planning Director to issue administrative variances; and to amend Section 122-28 establishing procedures for replacement or reconstruction of structures, and adding Section 122-32(g) on the enlargement and extension of non-conformities.

Location: City wide

Strategic Plan: The proposed Ordinance is consistent with the Strategic Plan's directive to the City Government to provide excellent, efficient and timely service while reducing the cost of governing, inclusive of the amount of time need to obtain permits from the City.

Background:

In a letter dated July 26, 2011, the City Planner recommends to the City Manager that the Planning Department initiate a new approach to variance applications. In the letter, the City Planner states that the current procedure is cumbersome in execution and administration and often confusing to the public since the majority of variance applications are recommended for denial by Staff, while the Planning Board often approves the requests. The number of variance applications received is up significantly since 2011. A search of the Planning Department variance requests shows for the years 2011 and 2012:

- In 2011, of the twenty-two (22) variance or waiver requests heard by the Planning Board, eleven (11) could have been administrative variances or waivers;
- In 2012, through November, of the thirteen (13) variance or waiver requests heard by the Planning Board, seven (7) could have been administrative variances or waivers.

In order to deal with these issues, the Planning Department proposes an amendment to the Code of Ordinances (the “Code”) that will reduce the number of variances heard by the Planning Board by offering a mechanism that permits the Planning Director to administratively grant certain variances to the Land Development Regulations. The proposed amendment makes it easier for property owners requiring minimal relief to attain approval without going through the long process of a public hearing and Planning Board approval.

The proposed Ordinance, as revised after first reading by City Commission on October 2, 2013, would authorize the City Planner to grant the following types of variances or waivers based on the proposed standards in subsections 90-398 (h) and (i):

1. Reduction of front and rear yard setback requirements by no more than 10 feet; and side yard setbacks by no more than 20%. For example:

HMDR		SF	
Required Setback	Maximum Reduction	Required Setback	Maximum Reduction
Front – 10’	(N/A)	Front – 30’	Front – 10’
Side – 5’	Side – 1’	Side – 5’	Side – 1’
Rear – 15’	Rear – 10’	Rear – 25’	Rear – 10’
Street Side – 7.5’	Street Side – 1.5’	Street Side – 10’	Street Side – 2’

2. Reduction in buffer yard requirements by no more than 10%;
3. Reduction in landscaping required for off-street parking areas by no more than 20%.

Additionally, the Planning Department proposes that Code Section 122-28 be amended concerning the voluntary and involuntary reconstruction or replacement of dwelling units by adding language and deleting the 66% rule; and Code Section 122-32(g) for establishing procedures for nonconformities.

On October 2, 2013, the City Commission passed the proposed Ordinance on first reading with three main changes:

1. The administrative variance for off-street parking requirements was deleted from Section 90-398(b).
2. Language was added to elaborate on the “good and sufficient cause” standard for administrative variance approval in Section 90-398(h)(1).
3. The public notice period was changed from 10 working days to 30 calendar days in Section 90-398(k) and (n).

Additionally, Staff deleted what was Section 90-398(d), which listed application fees for administrative variance applications. It is not necessary to codify application fees because the adopted City Code already provides for these fees to be established by resolution of the City Commission, pursuant to Code Section 90-392(a). This deletion necessitated the relettering of the subsections in Section 90-398.

All of the changes made after first reading are reflected in the proposed Ordinance with double strikethroughs and double underlines. Staff’s analysis below is also revised to reflect these changes.

Previous City Actions:

City Commission	October 2, 2013, Passed on first reading
Planning Board	June 20, 2013, PB Res 2013-32
Planning Board	February 21, 2013, PB Res 2013-07

Planning Staff Analysis:

The Planning Department recommends a formal procedure for the consideration and granting of administrative variances and waivers. The highlights of the proposed procedure are:

- The applicant submits an application on form approved by the city planner;
- The city planner reviews the application and has three weeks from the DRC meeting to render a proposed decision;
- Planning Staff will notice the proposed decision by regular mail to property owners within 300 feet of the subject property;
- Planning Staff shall post notice on the property;
- After 30 calendar days of posting, review of all public responses, and the finding that the proposed variance application has complied, the city planner shall issue a written decision;
- Except for special accessibility setback variances as provided for in Section 90-398(j), an administrative variance shall only be granted if all of the standards in Sections 90-398(h) and (i) are met;
- A public hearing can be requested in writing by the applicant or an adversely affected property owner or resident during the required 30 calendar days of noticing.

The attached Exhibit 1 is a flow chart titled “Administrative Variance,” which shows the timeline of the proposed review procedure.

The criteria for the proposed administrative variance and waiver in Section 90-398(h) are:

- 1) The applicant shall demonstrate a showing of good and sufficient cause, which is defined in the proposed Ordinance;
- 2) Failure to grant the variance would result in exceptional hardship to the applicant;
- 3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
- 4) The property has unique or peculiar circumstances, which apply to this property, but which do not apply to other properties in the same zoning district;
- 5) Granting the variance will not give the applicant any special privilege denied to other properties in the immediate neighborhood in terms of the provisions of the Land Development Regulations or established development patterns;
- 6) Granting the variance is not based on disabilities, handicaps or health of the applicant or members of her/his family; and
- 7) The variance is the minimum necessary to provide relief to the applicant.

Options / Advantages / Disadvantages:

Option 1: Adoption of the proposed Ordinance.

1. **Consistency with the City’s Strategic Plan, Vision, and Mission:** The proposed Ordinance is consistent with the Strategic Plan’s directive to the City Government to provide excellent, efficient and timely service while reducing the cost of governing, inclusive of the amount of time need to obtain permits from the City.
2. **Financial Impact:** No direct cost to the City. Over time the city will see a decline in the costs, staff time and processing fees, because the cost of the administrative variance is less for the applicant.

Option 2: Do not adopt the proposed Ordinance.

1. **Consistency with the City’s Strategic Plan, Vision, and Mission:** Does not allow for the timely processing of applications, and therefore is inconsistent with the strategic plan.
2. **Financial Impact:** No direct impact to the City.

Recommendation:

The Planning Department recommends **adoption** of the proposed Ordinance on second reading.