

**Division 6. Variances****Section IV-601. Purpose and Applicability**

The Board of Adjustment is hereby authorized to grant such variances from the literal terms of these regulations where there are practical difficulties or unnecessary hardships so that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done.

**Section IV-602. Application Requirements**

In addition to the general application requirements set forth in administrative regulations, an application for a variance shall be accompanied by documentation that establishes how the applicant meets the criteria of Section IV-605.

In those cases where the proposed development of property requires additional development approvals as well as a variance(s) to be granted by the Board of Adjustment, an applicant shall file all the petitions simultaneously. However, in such event, the variance application shall always be acted upon first and shall be conditioned upon final approval of the other applications.

(Ord. No. 03-4471; Sec. 4, 6-16-03)

**Section IV-603. Staff Review and Report**

The Building, Zoning and Code Enforcement Department shall review the application for the variance and may request comments of members of the DRC, and shall prepare a written staff analysis of the issues raised by the application.

**Section IV-604. Board of Adjustment Review**

A. A public hearing shall be held by the Board of Adjustment on an application for a variance.

B. The Board of Adjustment shall make findings that the criteria of these regulations have or have not been satisfied by the applicant for a variance.

C. Action taken by the Board of Adjustment to grant a variance or to grant a variance with conditions or safeguards shall be documented in the form of a resolution containing a legal description of the real property to which the variance applies, together with the terms of the variance, and any additional conditions or safeguards imposed. Such resolutions shall be recorded in the public records of Sarasota County by the City Auditor and Clerk's Office.

D. Action taken by the Board of Adjustment to deny a variance shall be documented in the form of a letter of notification issued by the Director of Building, Zoning & Code Enforcement and shall include the findings of fact to support the denial.

Section IV-605. Special Master Review

**ARTICLE IV: Development Review Procedures**

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A. In the event a petition for a variance is referred to a Special Master for a hearing *de novo*, under the provisions of Section III-303(D), the Special Master assigned to hear the petition shall conduct a public hearing thereon, and make a final administrative decision based upon the standards for review set forth in Section IV-606.

B. The Special Master shall make findings of fact that the criteria of these regulations have or have not been satisfied by the applicant for a variance.

C. Action taken by the Special Master to grant a variance or to grant a variance with conditions or safeguards shall be documented in a final order containing a legal description of the real property to which the variance applies, together with the terms of the variance, and any additional conditions or safeguards imposed. The final order shall be recorded in the public records of Sarasota County by the City Auditor and Clerk's Office.

D. Action taken by the Special Master to deny a variance shall be documented in a final order executed by the Special Master and served upon the Petitioner.

**Section IV-606. Standards for Review [Sec. 2-11.1]**

A. Adult Use Establishment or expansion of a use which is not permitted or conditionally permitted by these regulations shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning classification or district or adjoining zoning classifications or districts.

B. A variance from the terms of these regulations shall not be granted by the Board of Adjustment unless:

1. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.
2. The special conditions and circumstances do not result from the actions of the applicant.
3. Literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these regulations and would cause unnecessary and undue hardship for the applicant.
4. The variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building, or structure.
5. The granting of the variance will be consistent with the general intent and purpose of these regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

[Section 6-23(c)(1)(s)]

C. When a petition for a variance from the provisions of Section VII-1302 pertaining to docks is filed with the Board of Adjustment, the petition for such variance need only demonstrate that the variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building or structure and that the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The petition for such variance shall otherwise be exempted from the requirements of Section IV-605(B). In the discretion of the Board of Adjustment, an environmental impact study prepared by a licensed environmental professional may be required, at the petitioner's expense, for the board's consideration prior to acting upon petition for a variance under this Section.

**D. Relief From Regulations Applicable to Historically Designated Structure**

When a petition for a variance is filed with the Board of Adjustment for an historically designated structure or a structure in a designated district which is a contributing structure or contributing with alterations, or for a designated archaeological site, then the petition for such a variance need only demonstrate that the grant of the variance will be consistent with the general intent and purpose of these regulations and not injurious to the neighborhood or otherwise detrimental to the public welfare. The petition for such a variance shall otherwise be exempted from the requirements of Section IV-605(B).

**E. Relief from Height Regulations Applicable to Single-Family Dwellings**

An application for a variance from the height limitations in Sec. VI-102, U, 1 of this code to single-family dwellings, shall demonstrate the following requirements are met:

1. The property upon which the new construction, substantial improvement or addition to a single-family dwelling is proposed is located between two abutting zoning lots with existing structures nonconforming as to height (i.e. constructed at a greater height than that allowed by Sec. VI-102, U, 1, of this Code).
2. The variance requested by the property owner does not exceed the average height of the two-nonconforming single-family dwellings located upon the two abutting zoning lots.
3. The criteria in Sec. IV-605, B, 1, 2 and 5 have been met.

(Ord. No. 02-4358; Sec. 4, 1-22-02)

**F. Variances - Preservation of Trees**

1. Variances may be granted by the Board of Adjustment from the terms of this Zoning Code for new construction and improvements to existing structures, in order to encourage the preservation of trees protected by Article VII, Division 3.1 of this Code. It is the intent of this section to permit the applicant to receive a variance equal to the decrease in the buildable area caused by the modification

**ARTICLE IV: Development Review Procedures**

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- required to the structure to preserve trees protected by Article VII, Division 3.1 of this Code.
2. An application for a variance filed pursuant to the requirements of subparagraph (F)(1) shall demonstrate all of the following three (3) requirements are met:
    - (a) The variance is for the purpose of preserving a tree or trees protected by Article VII, Division 3.1 of this Code; and,
    - (b) The applicant cannot design and locate the proposed structure or infrastructure improvements to preserve the trees and also comply with all provisions of the Zoning Code, without causing the applicant undue hardship; and,
    - (c) Considering the shape and dimensions of the real property, the location of existing structures and infrastructure improvements, and the size, age, health and species of trees sought to be protected, it is not feasible to transplant the trees to another location on the site.
  3. The application for such a variance shall otherwise be exempted from the requirements of Section IV-606(B) of this Code.
  4. In the discretion of the Board of Adjustment, a certified arborist or a Florida registered landscape architect may be consulted concerning tree preservation issues prior to acting upon an application for a variance under this section. The cost of such a consultation shall be borne by the applicant. The Director of Building, Zoning and Code Enforcement may require payment of an estimated fee for the consultation in advance by the applicant.
  5. Upon considering the criteria in Subparagraph 2 above and the purpose of this section, the Board of Adjustment may attach conditions to the granting of a variance as it deems necessary to further the purposes of Article VII, Division 3.1 of this Code.
  6. If a variance is granted, the Applicant shall still provide mitigation for any tree removed as required by Sec. VII-322 (replacement trees) and Sec. VII-324, B (Replacement Tree Fund).”

(Ord. No. 02-4401; Sec. 4, 8-4-03)

**Section IV-607. Appeal of Decision**

An appeal of a decision of the Board of Adjustment or a Special Master may be made to the Circuit Court for Sarasota County, Florida, by filing a Petition for Writ of Certiorari as provided under the Florida Rules of Appellate Procedure. A decision of the Board of Adjustment in regard to the denial of a variance shall be deemed to have been rendered on the date of a letter prepared by the Secretary to the Board notifying the Petitioner of the

**ARTICLE IV: Development Review Procedures**

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decision of the Board of Adjustment. In the event that the Board of Adjustment grants a variance, a decision shall be deemed to have been rendered on the date of adoption of the resolution granting the variance. A decision of a Special Master shall be deemed to have been rendered upon the date of the execution of the final order.

**Section IV-608. Expiration or Revocation of Approval**

In granting any variance, the Board of Adjustment or a Special Master may prescribe appropriate conditions and safeguards in conformity with these regulations, including, but not limited to, reasonable time limits within which the action for which variance is required shall be begun or completed or both. Where no time limit is set by action of the Board or Special Master, work for which variance is granted must begin within one (1) year.

Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these regulations.

Prior to the end of the year, if work has not begun, the applicant may request one (1) time extension not to exceed one (1) additional year. The Board or Special Master may approve such request upon determining that the request is warranted under the circumstances.

(Ord. No. 03-4430; Sec. 4, 1-21-03)