

CHAPTER EIGHT

VARIATIONS FROM STANDARDS IN THE LDC

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8.00.00 GENERALLY

The purpose of this chapter is to provide mechanisms for obtaining relief from the provisions of this LDC where hardship would otherwise occur. There are several ways that potential relief from hardship is addressed: potential relief through requirements regarding the use of and changes to nonconforming development; potential relief through the grant of a variance from the site development standards of this LDC; potential relief when an administrative decision is appealed; and potential relief when an administrative waiver is granted to modify certain site development standards of this LDC.

8.00.01 Waiver of Standards Pertaining to Metal Buildings

The Local Planning Agency may approve a waiver of standards pertaining to metal building, provided the following standards are met:

- A. The proposed metal building shall be consistent with the character of the neighborhood within 500 feet of the site of the metal building.
- B. The metal building shall be designed to ensure compatibility with development in the zoning district in which it is proposed.
- C. The metal building and the site on which it is proposed are designed to minimize potential detrimental impacts on properties within 500 feet of the development site. The determination that potential detrimental impacts are minimized shall be based on the following:
 1. Proposed architectural design of the metal building;
 2. Proposed placement of the metal building on the site and the relationship to open space on the site;
 3. Proposed fencing and screening; and
 4. Proposed landscaping.

8.01.00 NONCONFORMING SITUATIONS

8.01.01 Generally

A. Purpose

It is the purpose of this section to address the continuation and potential modification of uses, structures, lots, and site features that meet the following conditions:

1. A use, structure, lot, or site feature that was lawfully established and in compliance with regulations applicable to the use, structure, lot, or site feature at the time of establishment of such use, structure, lot, or site feature; and
2. Such use, structure, lot, or site feature does not comply with the regulations set forth in this LDC.

This situation is called a nonconformity.

B. It is the intent of the City to:

1. Establish two (2) types of nonconformities: benign and detrimental;
2. Allow continuation of nonconformities until such nonconformities are abandoned;
3. Allow change of use of specified nonconformities;
4. Allow modifications to specified nonconformities; and
5. Eliminate or reduce detrimental nonconformities.

C. It is further the intent of the City that the casual, intermittent, temporary, or illegal use

of land, water, buildings, structures, characteristics of use, or any such use in combination shall not be sufficient to establish the existence of a nonconforming use to create rights in the continuance of such use.

D. Maintenance

Normal and customary maintenance or repair of nonconforming lots, sites, and structures shall be allowed, provided that such maintenance or repair does not otherwise increase the extent of the nonconformity. Maintenance or repair shall be performed only to ensure safety and to prevent a nuisance.

E. Relocation of nonconforming buildings or structures

A nonconforming structure shall not be moved, in whole or in part, to another location within the City, unless the lot, site, and resulting structure placement conforms in all respects to the standards and requirements of this LDC.

8.01.02 Types of Nonconformities

A. Benign nonconformities

1. A benign nonconformity exists when the degree of nonconformity does not result in a harmful or unsafe condition. A negative impact on public safety or health is not expected to occur due to the continuation or modification of a benign nonconformity.
2. Only the following situations shall be considered benign nonconformities:
 - a. An encroachment into a required setback of less than ten (10) percent.
 - b. A lot area which is less than the minimum required by not more than ten (10) percent.
 - c. A lot width which is less than the minimum required by not more than ten (10) percent.
 - d. A building height which is more than the maximum allowed by not more than ten (10) percent.
 - e. A front yard setback that fails to comply with the standards in this LDC due to road widening.
 - f. Provision of off-street parking that contains up to ten (10) percent fewer spaces than required by this LDC.
 - g. Impervious surface coverage in excess of maximum allowed.

B. Detrimental nonconformities

1. Any use of land or structure that does not comply with the uses permissible in the applicable zoning district, as set forth in Chapter 2, shall be considered to be a detrimental nonconformity.
2. Any nonconformity of a structure or site that is not identified as a benign nonconformity in Section 8.01.02.A shall be considered to be a detrimental nonconformity.

8.01.03 Continuation of Nonconformities

- A.** A benign or detrimental nonconformity shall be allowed to continue except as follows:
1. The nonconformity is declared to be unsafe or unlawful.
 2. The nonconformity is declared to be a public nuisance.
- B.** A detrimental nonconformity which is discontinued for a period of 180 consecutive

days shall be considered abandoned.

1. Such nonconformity shall not thereafter be reinstated.
 2. Any subsequent occupancy of such nonconformity shall be permissible only when such nonconformity has been brought into compliance with the requirements of this LDC.
 3. The removal of buildings, structures, equipment, or other aspects of such nonconforming use; the absence of a water utility service deposit or account; or the absence of a current business tax receipt shall be deemed to be prima facie evidence of the discontinuance of a nonconformity.
 4. If the reason for discontinuance is the documented action by a governmental agency, the time of delay caused by the governmental agency shall not be calculated as part of the period of discontinuance.
- C. A benign nonconformity may be discontinued for any period of time and shall not be considered abandoned.

8.01.04 Change of Use

- A. All rights and obligations associated with a nonconformity shall run with the ownership of the land or water, are not personal to the present owner or tenant of the nonconforming use of land or water, and are not affected by a change in ownership or tenancy, except if abandoned.
- B. Benign nonconformities
A land use carried out in or on a lot, site, or structure that has been identified as a benign nonconformity may be changed to any use permissible in the zoning district in which it is located, subject to the requirements set forth in Section 2.03.04. The nonconformities are not required to be modified for compliance with the standards of this LDC.
- C. Detrimental nonconformities
The use of a lot, site, or structure identified as a detrimental nonconformity may be changed, provided the following standards are met:
1. The new use is less intense than the existing use. Intensity shall be determined by impervious surface coverage and either density for residential uses or the floor area ratio for nonresidential uses; or
 2. The new use complies with the requirements of this LDC.

8.01.05 Damage and Restoration of Nonconforming Buildings or Structures

- A. In the event that any nonconforming building or structure is damaged by any means, including fire, flood, wind, explosion, or other act of God, or act of the public enemy, to an extent of less than fifty (50) percent of the total assessed value of the building or structure, such building or structure shall be permitted to be replaced, restored, or reconstructed according to the development standards in effect at the time of original construction. The assessed value shall be determined by an independent appraisal establishing value on the date of the damage event. Where an independent appraisal is not provided, the assessed value shall be the most recent taxable value shown for the structure as determined by the Okaloosa County Property Appraiser on January 1 of the year in which the damage occurred.
- B. Replacement, restoration, and reconstruction shall be permissible only in compliance

- with building, plumbing, electrical, gas, mechanical, fire, and other construction and life safety regulations in effect at the time of application for a local development permit to allow such replacement, restoration, or reconstruction.
- C. Permits for replacement, restoration, or reconstruction shall not be issued after twenty-four (24) months have elapsed since the damage event.

8.01.06 Expansion or Modification of Benign Nonconformities

- A. A structure which is a benign nonconformity may be modified or expanded, subject to the following standards:
1. Any addition or expansion of the structure shall comply with the standards applicable to the zoning district as set forth in this LDC;
 2. Any addition or expansion of the structure shall not increase the extent of the nonconformity; and
 3. Any addition or expansion of a structure shall comply with all local development permit requirements as set forth in Chapter 9.
- B. A lot or site which is a benign nonconformity may be modified, subject to the following standards:
1. Any additional structures or site features shall comply with the standards set forth in this LDC;
 2. The addition of structures or site features shall not increase the extent of the nonconformity; and
 3. The addition of structures or site features shall comply with all local development permit requirements as set forth in Chapter 9.

8.01.07 Expansion or Modification of Detrimental Nonconformities

- A. A structure which is a detrimental nonconformity shall not be expanded.
- B. A structure which is a detrimental nonconformity may be modified, subject to the following standards:
1. The proposed modification of the structure shall be reviewed by the Local Planning Agency.
 2. Any modification of the structure shall not increase the extent of the nonconformity;
 3. Any modification of the structure shall comply with the standards set forth in this LDC;
 4. A modification shall not be permissible when off-street parking and loading required for the modification cannot be provided;
 5. When a modification is to allow or accommodate a change of use, the use shall be in compliance with the use requirements of the zoning district as set forth in Chapter 2;
 6. The modification of the structure shall maintain or improve compatibility of the structure with the neighborhood in which it is located; and
 7. Approval of modifications to nonconforming structures shall be conditioned upon the addition or improvement of access, driveways, sidewalks, drainage, and landscaping, in compliance with the requirements of this LDC.
- C. A lot or site which is a detrimental nonconformity may be modified, subject to the following standards:

1. The proposed modification of the lot or site shall be reviewed by the Local Planning Agency.
2. Additional or modified structures or other site features shall be permissible only where such additions or modifications improve the degree of conformity or provide for the public safety;
3. The addition or modification of structures or other site features shall not increase the extent of the nonconformity;
4. The addition or modification of structures or other site features shall maintain or improve compatibility of the site with the neighborhood in which it is located;
5. As a condition of approval of applications to add or modify structures or other site features, the applicant may be required to demonstrate that the site is designed in compliance with the requirements of this LDC with regard to access, sidewalks, drainage, and landscaping.

8.01.08 Specific Requirements for Lots of Record

When an individual lot or parcel has an area smaller than the requirements of the zoning district in which it is located, but was a lot or parcel of record on August 28, 1960, the permitted uses of the zoning district shall be allowed on such lot or parcel, provided all requirements, other than minimum lot area, depth, or width, are maintained.

8.02.00 VARIANCES

8.02.01 Generally

A. Purpose

The purpose of a variance is to provide a means to grant permission to depart from the standards of the zoning district where unique characteristics of a parcel together with the imposition of the specific regulations of the zoning district result in a hardship.

B. Variances granted prior to adoption of this LDC

1. Any variance granted before the date of adoption of this LDC shall remain in full force and effect, including any conditions of that variance, except as set forth in Section 8.02.01.B(2) and (3).
2. Property for which a variance was granted prior to the adoption of this LDC may be developed in accordance with the plans previously approved. Where construction or development does not commence prior to the expiration of the variance, the variance shall have no further force and effect and the provisions of this LDC shall apply to development and use of the property.
3. Where a variance does not contain an expiration date, and a building permit application has not been submitted for the development for which the variance was granted, such variance shall expire twelve (12) months after the effective date of the order granting the variance. Upon expiration, the variance shall have no further force and effect and the provisions of this LDC shall apply to development and use of the property.

8.02.02 Required Findings for a Grant of Variance

- A. In order for an application for a variance to be approved or approved with conditions, the Local Planning Agency (LPA) shall make a positive finding, based on the

evidence submitted, for each of the following provisions:

1. The need for the proposed variance is due to the unusual or unique physical shape, configuration, or other physical condition of the development site. These special conditions are not generally applicable to other lands, structures, or buildings in the same zoning district;
 2. The literal interpretation and application of the provisions of this LDC would deprive the property owner of property rights commonly enjoyed by other properties in the same zoning district, resulting in an undue hardship;
 3. The special conditions are not the result of actions of the property owner and are not based solely on a desire to reduce development costs;
 4. Approval of the proposed variance shall not provide to the property any special privilege that is denied to other development sites within the same zoning district;
 5. The proposed variance is the minimum variance that results in reasonable use of the land, building, or structure;
 6. Approval of the proposed variance shall ensure compatibility of the resulting development with the uses of land and character of the adjacent and surrounding neighborhood;
 7. The proposed variance is consistent with the intents and purposes of the requirements of this LDC;
 8. The proposed variance is consistent with the provisions of the Comprehensive Plan; and
 9. The proposed variance is not detrimental to the health, safety, or general welfare of the public.
- B. The LPA shall not consider a nonconforming use of neighboring lands, structures, or buildings in the same zoning district, or a permitted use of lands, structures, or buildings in other zoning districts, when determining whether to grant an application for a variance.

8.02.03 Procedures for Variances

- A. Any person requesting a variance from the provisions of this LDC shall submit an application to the City on forms provided by the City.
1. The application shall include the information required for all applications as set forth in Section 9.02.02.
 2. The application shall include a detailed explanation regarding how the proposed variance complies with each of the requirements of Section 8.02.02.
 3. An application for a variance for development subject to review of a site development plan shall be processed prior to completion of the site plan review process.
 4. The appropriate fee as established by the City shall accompany the application. No portion of the fee shall be refunded whether the application is withdrawn by the applicant or is denied by the City.
- B. The applicant for a variance has the burden of proof of demonstrating that the application for a variance complies with each of the requirements of Section 8.02.02.
- C. The application shall be reviewed by the Development Administrator for compliance with the required findings set forth in Section 8.02.02. A report shall be prepared and provided to the LPA at least seven (7) business days prior to the scheduled hearing

- date.
- D. The LPA shall conduct a quasi-judicial hearing according to the procedures set forth in Section 9.06.00.
 - E. Notice of the hearing shall be provided as set forth in Section 9.04.00.
 - F. The LPA shall approve, approve with conditions, or deny the application for a variance, based upon findings for each of the provisions set forth in Section 8.02.02. The decision of the LPA shall be reduced to a written order, which shall be issued to the applicant and filed with the Okaloosa County Clerk of Court. An order approving or approving with conditions shall expire within one (1) year of the date of such order, unless development subject to the variance is completed. The order may be extended once by the LPA for good cause for a period not to exceed one (1) year.
 - G. Limitations on the grant of a variance
 - 1. A variance shall not be granted which authorizes a use that is not permissible in the zoning district in which the property subject to the variance is located.
 - 2. A variance shall not be granted which authorizes any use or standard that is expressly prohibited by this LDC.

8.02.04 Appeal of Local Planning Agency Decisions

The decision of the LPA shall be final, and there shall be no further review thereof except by resort to a court of competent jurisdiction.

8.02.05 Specific Requirements for Variances Regarding Historic Buildings

Variances may be issued for the reconstruction, rehabilitation, or restoration of buildings listed on the National Register of Historic Places or the Florida Master Site File. Such variance shall comply with the standards set forth in Sections 8.02.01, through 8.02.03, except where compliance would result in the structure losing its historical designation.

8.02.06 Specific Requirements for Variances in Areas of Flood Hazard

- A. An application for a variance in an area of flood hazard identified in Chapter 3 shall comply with the findings and procedures set forth in Sections 8.02.01 through 8.02.03.
- B. In addition to the required findings set forth in Section 8.02.02, the LPA shall make the following findings when a variance is requested in an area of flood hazard:
 - 1. There is no anticipated danger to public safety from materials that may be swept onto other lands thereby causing the injury of others;
 - 2. There is no anticipated danger to life and property resulting from flooding or erosion;
 - 3. The proposed facility and its contents are not susceptible to flood damage and the potential effects of such damage;
 - 4. The proposed facility and services to the public provided by the facility are of such importance to the community that maximum protection from flood waters shall be ensured;
 - 5. The facility requires a waterfront location, and is considered a water-dependent facility;
 - 6. There are no alternative locations for the proposed use that are not subject to flooding or erosion damage;

7. Safe access to the property can be maintained in times of flood for ordinary and emergency vehicles;
 8. The proposed variance is the minimum required to avoid undue hardship and is designed to address the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
 9. The proposed variance shall not result in increased 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; and
 10. The proposed variance shall not result in an adverse effect on the City's Community Rating System rating.
- C. Variances shall not be granted within any designated floodway if any increase in flood levels would occur during the base flood discharge.

8.03.00 APPEALS OF ADMINISTRATIVE DECISIONS

8.03.01 Applicability

Administrative decisions include decisions by the Development Administrator and staff members pertaining to the following matters: zoning determinations, certificates of concurrency, minor plats, administrative waivers, change of use, interpretation of permissible uses within zoning districts, and expedited development orders. A person adversely affected by an administrative decision may appeal such decision to the LPA.

8.03.02 Notice of Intent to File an Appeal of an Administrative Decision

- A. Prior to filing an application for an appeal of an administrative decision, an affected party shall file a Notice of Intent to Appeal within five (5) business days following the administrative decision, determination, or action to be appealed. The City shall provide a form for filing a Notice of Intent to Appeal. No fee shall be required.
- B. When a Notice of Intent to Appeal is filed, all work that is the subject of the appeal on a site shall be stayed for ten (10) business days.

8.03.03 Filing an Appeal of an Administrative Decision

- A. Within ten (10) business days following filing of a Notice of Intent to Appeal, the affected party filing the Notice of Intent may file an application to appeal an administrative decision.
- B. The application shall include a detailed explanation regarding how the applicant is adversely affected by the administrative decision. Where the administrative decision was based on technical standards, the applicant shall provide detailed data and analysis regarding alleged errors in the application of the technical standards.
- C. The appropriate fee as established by the City shall accompany the application. The application shall not be accepted without the filing fee. No portion of the fee shall be refunded.
- D. Upon receipt of an application to appeal an administrative decision, the Development Administrator shall schedule the appeal to be heard by the LPA.
- E. The administrative decision subject to the Notice of Intent shall become final and effective if an application to appeal is not timely filed.

8.03.04 Stay of Work

Filing an appeal of an administrative decision stays all work on the premises and all proceedings in furtherance of the action appealed that is subject to the appeal. When the Development Administrator determines that a stay would cause imminent peril to life or property, the Development Administrator shall notify the LPA of the determination. Only the work necessary to avoid imminent peril to life or property shall be permissible; all other work shall be stayed.

8.03.05 Procedures for Consideration of an Appeal of an Administrative Decision

- A. The consideration of an appeal by the LPA of an administrative decision shall be a *de novo* quasi-judicial hearing.
- B. The Development Administrator shall prepare a report following the procedure for preparation of a compliance report set forth in Section 9.01.05.
- C. Notice of the hearing shall be provided as set forth in Section 9.04.00.
- D. The applicant has the burden of proof to demonstrate that the administrative decision was in error.
- E. The LPA shall determine whether the provisions of this LDC have been properly applied and shall take action as follows:
 1. Affirm the administrative decision that is the subject of the appeal;
 2. Reverse, wholly or in part, the administrative decision that is the subject of the appeal; or
 3. Modify the administrative decision that is the subject of the appeal.
- F. The LPA shall issue a written order containing findings of facts and conclusions of law.

8.03.06 Appeal of Local Planning Agency Decisions

The decision of the LPA shall be final, and there shall be no further review thereof except by resort to a court of competent jurisdiction.

8.04.00 ADMINISTRATIVE WAIVERS**8.04.01 Generally****A. Purpose**

The purpose of an administrative waiver is to provide a means to grant permission for a *de minimis* departure from the standards of the zoning district where unique characteristics of a parcel together with the imposition of the specific regulations of the zoning district result in a potential hardship.

B. Applicability

The Development Administrator is authorized to waive or reduce site development standards as set forth in Section 8.04.02 where the intent of this LDC can be achieved and compatibility can be maintained.

8.04.02 Standards

The Development Administrator may consider a waiver or reduction of one (1) or more of the specified site development standards in the following situations:

- A. After commencement of development activity, a waiver may be granted subject to all of the following conditions:
 - 1. A valid local development permit has been issued;
 - 2. An error in a dimensional standard has been identified during construction by the contractor, surveyor, builder, or property owner;
 - 3. The dimensional standard on the development site does not deviate from the approved dimensional standard by more than ten (10) percent; and
 - 4. Developing according to the incorrect dimensional standard shall not result in an adverse health, safety, or welfare impact on the site or to the public.
- B. Where the lot area standards and / or lot dimension standards for the zoning district in which the development is proposed do not allow the development to achieve the otherwise permissible density, the Development Administrator may waive up to ten (10) percent of the standard.
- C. Where two (2) or more lots are proposed for a unified development with a central stormwater management facility, the Development Administrator may waive the requirement for each lot to provide a separate stormwater management facility.
- D. Where a native tree that is eight (8) inches or more dbh would be removed in order to allow building placement in compliance with all required setbacks, a waiver of up to ten (10) percent of the applicable setback may be granted by the Development Administrator.
- E. Where a native tree that is eight (8) inches or more dbh would prevent compliance with building separation standards, a waiver of up to ten (10) percent of the required separation may be granted by the Development Administrator.
- F. As an alternative to a parking study where a permissible change of use is proposed, the Development Administrator may waive up to ten (10) percent of the required parking spaces.
- G. Where a permissible change of use is proposed, the Development Administrator may waive up to twenty (20) percent of the required landscaping.

8.04.03 Procedures for Administrative Waivers

- A. Any person requesting a waiver to a provision set forth in Section 8.04.02 shall submit an application to the City on forms provided by the City.
 - 1. The application shall include the information required for all applications as set forth in Section 9.02.02.
 - 2. The application shall include detailed information to explain how the proposed waiver conforms to the requirements set forth in Section 8.04.02.
 - 3. An application for a waiver for development subject to review of a site development plan shall be processed as part of the site development plan review.
 - 4. The appropriate fee as established by the City shall accompany the application. No portion of the fee shall be refunded.
- B. The Development Administrator shall approve, approve with conditions, or deny the requested administrative waiver, based on compliance with the requirements of Section 8.04.02 and the following findings:
 - 1. There are special circumstances applicable to the development site consistent with the situations set forth in Section 8.04.02;
 - 2. Approval of the administrative waiver is consistent with the intent of this LDC

- and the purposes of the zoning district in which the development site is located;
3. Approval of the administrative waiver is consistent with the Comprehensive Plan;
 4. The administrative waiver is the minimum necessary to ensure that the proposed development is able to achieve reasonable use;
 5. The administrative waiver shall ensure compatibility of the resulting development with the uses of land and character of the adjacent and surrounding neighborhood; and
 6. The administrative waiver includes conditions to ensure that the administrative waiver does not constitute a grant of special privileges inconsistent with the limitations upon other properties within the same zoning district.
- C. The decision regarding the administrative waiver shall be provided in writing to the applicant and shall be recorded with the approved site development plan. The administrative waiver shall expire when the site development plan approval expires. The expiration date for an administrative waiver shall not be extended except upon extension of the expiration date for the site development plan to which the administrative waiver pertains.
- D. A decision regarding an administrative waiver may be appealed to the LPA in compliance with the requirements set forth in Section 8.03.00.

**CHAPTER 8
TABLE OF HISTORICAL NOTES AND REFERENCES**

LDC Effective 1 May 2012	LDC Effective 9/2008 – 4/2012	State Law References/Other Historical Notes
Authority		Chpt. 166.021 F.S., Chpt. 163.3161 F.S., Chpt 163.3202 F.S., City Charter § 2, Ord. 1861 27 Mar 2012
8.00.00		
8.00.01		Ord. 1877 25 Jun 13
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8.01.05		
8.01.06		
8.01.07		Ord. 1877 25 Jun 13
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8.03.02		
8.03.03		Ord. 1877 25 Jun 13
8.03.04		Ord. 1877 25 Jun 13
8.03.05		Ord. 1877 25 Jun 13
8.03.06		Ord. 1877 25 Jun 13
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8.04.03		Ord. 1877 25 Jun 13