

AN ORDINANCE OF THE CITY OF TALLAHASSEE, FLORIDA CONCERNING VARIANCES TO THE LAND DEVELOPMENT CODE; AMENDING CHAPTERS 1, 2, 9, AND 10 OF THE LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF TALLAHASSEE, FLORIDA, AS FOLLOWS:

Section 1. Section 1-2 of the Tallahassee Land Development Code is hereby amended to read as follows:

Sec. 1-2. Definitions and rules of construction

~~Deviation. The term "deviation" means a grant of permission which is authorized under chapter 9, article V, of this Code that authorizes an applicant to deviate from specific standards or provisions of this Code.~~

*Variance.* The term "variance" means a relaxation of the terms of the code or chapter involved where such variance will not be contrary to the public interest, and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the code involved would result in an unnecessary or ~~unique~~ undue hardship. No use variances are permitted.

Section 2. Section 2-158 of the Tallahassee Land Development Code is hereby amended to read as follows:

Sec. 2-158. Powers and duties.

The board of adjustment and appeals shall have the following powers and duties under the zoning, housing, building, plumbing, gas, fire prevention, and sign codes (regulatory codes) of the city and the county:

....

(b) *Variances.* To hear and decide requests for variances for single-family and duplex dwelling units and variances to chapter 7, sign code, or as further set forth in this Code. A variance is defined as a relaxation of the strict terms of this Code or regulation ~~in cases involving practical difficulties or hardships and~~ where such variance request meets the following criteria:

- 44 (1) The variance will not be contrary to the public interest and shall not  
45 substantially interfere with or detrimentally affect the health, safety, or  
46 welfare of others;
- 47 ~~(2) The intent of the regulation sought to be varied will be observed and~~  
48 ~~substantial justice done by granting the variance;~~
- 49 (32) Where, owing to conditions peculiar to the property, existing structures or  
50 buildings thereon, and not the result of the actions of the applicant, a strict  
51 and literal enforcement of the Land Development Code regulatory code  
52 ~~involved would deprive the applicant of rights commonly enjoyed by and~~  
53 ~~frequently occurring on other properties in the applicant's same zoning~~  
54 ~~district under the terms of this Code, and would result in undue practical~~  
55 ~~difficulty or hardship not shared by other property owners in the zoning~~  
56 ~~district;~~
- 57 (43) Any variance granted shall be the minimum departure from the regulation  
58 that will allow the reasonable use of the land, building, structure or  
59 signage ~~The owner's predicament feasibly cannot be obviated through any~~  
60 ~~method other than the variance;~~
- 61 (54) The applicant ~~may not have~~ has not created the ~~practical difficulty or~~  
62 ~~hardship;~~
- 63 (65) The applicant will be deprived of alleged practical difficulties or hardships  
64 which would result from failure to grant the variance extend to the  
65 inability to use the land in question for any reasonable legal use of the land  
66 without the variance which is consistent with the surrounding properties  
67 and in conformity with the provisions of this Code and include  
68 substantially more than mere inconvenience and inability to obtain a  
69 higher financial return; or, in the case of signage, the applicant will be  
70 deprived of any reasonable signage without the variance.
- 71 ~~(7) The variance shall not substantially interfere with or detrimentally affect~~  
72 ~~the health, safety, or welfare of others whose property would be affected~~  
73 ~~by allowance of the variance.~~
- 74 (86) The variance shall not adversely affect the delivery of governmental  
75 services;
- 76 (97) The variance shall not be in conflict with the comprehensive plan;
- 77 ~~(10) The variance shall not allow establishment or expansion of a~~  
78 ~~nonconforming use;~~
- 79 (118) A variance shall not be granted because of the presence of  
80 nonconformities in the zoning district or adjoining districts; and
- 81 (129) No use variances are permitted.

82  
83 The board of adjustment and appeals may impose reasonable conditions upon the  
84 granting of any variance to ensure that the public health, safety, and general welfare shall  
85 be protected and substantial justice done. Any violation of such conditions shall be a  
86 violation of this Code.  
87

88           Section 3. Section 9-112 of the Tallahassee Land Development Code is hereby amended  
89 as follows:

90  
91           Sec. 9-112. - Subdivision design standards.

92  
93           . . . .

94  
95           (b) Street design standards. The following design standards shall apply to all streets  
96 proposed in subdivisions:

97  
98           . . . .

99  
100           (3) Continuation of arterials and collectors. Within or adjacent to the proposed  
101 subdivision, arterial and collector streets shall provide for the continuation of arterial or  
102 collector streets from surrounding areas, except where it can be demonstrated, as  
103 specified in subsection (4), that topographic or other conditions make such continuance  
104 unnecessary or impracticable. In cases where the creation of a new local collector would  
105 significantly enhance the internal and external transportation network supporting the new  
106 subdivision, as determined by the public works director or his designee, such local  
107 collector shall be incorporated into the design of the new subdivision. Individual  
108 driveway cuts onto new or existing arterial and collector streets shall not be allowed,  
109 unless approved by the development review committee through the variance ~~deviation~~  
110 process.

111           Section 4. Section 9-132 of the Tallahassee Land Development Code is hereby amended  
112 as follows:

113  
114           Sec. 9-132. - Purpose and intent.

115  
116           . . . .

117  
118  
119           (c) During any period of local economic emergency declared by the commission, the  
120 requirements of this article shall be waived as provided herein.

121  
122           (1) For any capital project to be built by the United States, Florida, Leon County,  
123 Blueprint 2000, the Leon County School Board, or the City of Tallahassee within the  
124 city, all site plan submittal requirements in subsection 9-152(a), section 9-154, section 9-  
125 155, section 9-156, section 9-157, and division 3, design review (sections 9-180—9-187)  
126 are hereby waived.

127  
128           (2) This waiver does not waive the submittal of information needed to ensure that the  
129 capital project meets any development standards. Any information required by this article  
130 that is necessary to determine whether a project meets the development or redevelopment  
131 standards shall be provided in the manner set by the director of the department. All

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132 projects under this program shall comply with all applicable development/redevelopment  
133 standards, unless modified or varied ~~deviated~~ as allowed by this chapter.

134  
135 (3) Applicable approvals must be obtained from other governmental entities for  
136 development, and are not waived by this paragraph.

137  
138 (4) Formal proceedings and appeals, as set forth in subsection 9-154(11)f.; subsection 9-  
139 155(10)l.; subsection 9-156(1)l.; and subsection 9-157(g) of this article are waived.  
140 Affected parties may seek any legal remedy to which they are entitled.

141  
142 (5) The city manager, or her designee, shall approve and implement procedures to  
143 implement this paragraph.

144  
145 (6) No required fees are waived by this paragraph.

146  
147 Section 5. Section 9-154 of the Tallahassee Land Development Code is hereby amended  
148 to read as follows:

149  
150 Sec. 9-154. - Type A review.

151  
152 Except for site plans for the establishment of new public or private schools, which are  
153 subject to section 9-156 (Type C review), Type A review is applied to those types of  
154 developments listed in subsections (1) and (2) of this section. For the purpose of this  
155 section, nonresidential site plans include, but are not limited to, commercial, office,  
156 institutional, and industrial development.

157  
158 (1) All non-residential development greater than 2,500 square feet or multi-family  
159 development, other than a triplex, not requesting a ~~deviation or a~~ variance to a  
160 development standard.

161  
162 (2) ~~Deviations to the front building setback and side corner building setback for areas~~  
163 ~~zoned AC Activity Center, CP Commercial Parkway, and C-2 General Commercial~~  
164 ~~within the Multi-Modal Transportation District shall not elevate a site plan to a Type B~~  
165 ~~site plan review. Within one year of adoption of this exception, city staff shall conduct~~  
166 ~~a sunset review to evaluate continued use of the exception.~~

167  
168 Section 6. Section 9-155 of the Tallahassee Land Development Code is hereby amended  
169 to read as follows:

170  
171 Sec. 9-155. - Type B review.

172  
173 Except for site plans for the establishment of new public or private schools, which are  
174 subject to section 9-156 (Type C review), Type B review shall be applied to the types of  
175 developments listed in subsections (1) through (5) of this section. For the purpose of this

176 section, nonresidential site plans include, but are not limited to commercial, office,  
177 institutional, and industrial development.

178  
179 (1) All non-residential development greater than 2,500 square feet or multi-family  
180 development other than a triplex requesting a ~~deviation or a~~ variance to a development  
181 standard.

182  
183 Section 7. Section 9-181 of the Tallahassee Land Development Code is hereby amended  
184 to read as follows:

185  
186 Sec. 9-181. - Design review procedures.

187  
188 . . . .

189  
190 (c) Process.

191  
192 . . . .

193  
194 (6) The planning department shall review all development proposals submitted to it  
195 pursuant to division III, chapter 9, and may provide comments and  
196 recommendations it deems appropriate to implement the Gaines Street  
197 Revitalization Plan and other applicable plans. The planning department may  
198 recommend approval, approval with conditions, or denial of ~~variances deviation~~  
199 to site-related development and design standards, ~~to the entity with authority to~~  
200 ~~approve the application after considering the criteria for deviation in~~ section 9-  
201 184.

202  
203 (7) The planning department shall forward its recommendation for approval or  
204 denial along with the planning department's comments and recommendation to  
205 the growth management department or other entity with authority to approve the  
206 design review project once the formal application has been submitted. ~~When~~  
207 ~~compliance with the planning department's conditions and recommendation~~  
208 ~~would require approval of a deviation(s) or modification(s) pursuant to~~ chapter 9,  
209 ~~article IV or~~ chapter 2, ~~article III, the deviation(s) or modifications(s) may be~~  
210 ~~granted by the entity with authority to approve the application if the criteria for~~  
211 ~~such a deviation(s) or medications(s) are met.~~

212  
213 Section 8. Section 9-184 of the Tallahassee Land Development Code is hereby deleted as  
214 follows:

215  
216 ~~Sec. 9-184. Deviations relating to design review.~~

217  
218 ~~The planning department may consider deviations of site-related development and design~~  
219 ~~standards as part of the design review process. These deviations are reviewed~~

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220 concurrently as part of design review and are recommended for approval, approval with  
221 conditions, or denial. The recommendation is then forwarded to the entity with authority  
222 to approve, approve with conditions, or deny the deviation request. The planning  
223 department will recommend approval of deviations if it finds that the applicant has shown  
224 that the following criteria are met:

225  
226 ~~(a) Better meets development and design standards. The resulting development will~~  
227 ~~better meet the applicable development and design standards.~~

228 ~~(b) Purpose of the standard. On balance, the proposals will be consistent with the~~  
229 ~~purpose of the standard for which a deviation is requested.~~

230 ~~(c) Consistency with the design review district. The resulting development will~~  
231 ~~demonstrate consistency with the overall purpose and intent of the design review~~  
232 ~~district and intent of the specific zoning district within which the development is~~  
233 ~~proposed.~~

234 ~~(d) Impact on public good and surrounding properties. The resulting development is not~~  
235 ~~detrimental to the public good or to the surrounding properties.~~

236 ~~(e) Comprehensive plan. The resulting development demonstrates consistency with the~~  
237 ~~comprehensive plan.~~

238  
239 ~~The standards in section 9-233, criteria for granting a deviation, do not apply to site plan~~  
240 ~~deviation requests in design review districts.~~

241  
242 Section 9. Chapter 9, Article V, of the Tallahassee Land Development Code is hereby  
243 amended to read as follows:

244  
245 ARTICLE V. DEVIATION TO VARIANCE OF DEVELOPMENT STANDARDS

246  
247 Sec. 9-231. Authority.

248  
249 (a) An applicant may request that the development review committee ~~to~~ grant a variance  
250 deviate from the development standards of chapters 9 or 10. ~~Such deviation~~ A variance  
251 shall be granted only upon demonstration and a finding of consistency with the  
252 comprehensive plan and no adverse impact to the general health, safety, and welfare of  
253 the public. Requests for a variance ~~deviations~~ pursuant to this section shall be processed  
254 concurrently with a development application.

255  
256 (b) During any period of local economic emergency declared by the commission, the  
257 requirements in section 9-232, application process, for variances ~~deviations~~ to  
258 development standards are waived for public entities constructing capital projects, and  
259 any variances ~~deviations~~ to development standards may be approved by the director. This  
260 paragraph does not waive the criteria for granting a variance ~~deviation~~.

261  
262  
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263 Sec. 9-232. Application process.

264

265 An applicant requesting a variance ~~deviations~~ under this article shall file such request in  
266 writing, stating the explicit standard from which a variance ~~deviation~~ is requested and the  
267 proposed standard to be applied to the project. Such request shall contain sufficient  
268 information to demonstrate compliance with the standards for granting a variance  
269 ~~deviation~~ as provided under section 9-233, ~~criteria for granting a deviation; or, for~~  
270 ~~granting deviations under division 3 of article III of this chapter, section 9-184.~~  
271 ~~Applications under section 9-184 must also demonstrate that the requested deviations will~~  
272 ~~better meet development and design review requirements in the design review districts.~~

273

274 Sec. 9-233. Criteria for granting a variance ~~deviation~~.

275

276 Variances ~~Deviations~~ from the development standards in chapter 9 or 10 are not favored  
277 and such requests may only be granted upon a showing that all applicable criteria set  
278 forth in this section, as determined by the development review committee, have been met.  
279 ~~The applicant will not be required to address any of the criteria set forth below that are~~  
280 ~~found inapplicable to the application.~~ The applicant shall have the burden of  
281 demonstrating through a preponderance of the evidence that all applicable conditions  
282 necessary to granting the variance ~~deviation~~ have been met. The development review  
283 committee shall grant a variance ~~deviation~~ under this section only upon demonstration of  
284 the following criteria ~~that~~:

285

286 (1) The variance will not be contrary to the public interest and shall not substantially  
287 interfere with or detrimentally affect the health, safety, or welfare of others ~~The~~  
288 ~~deviation will not be detrimental to the public good or to the surrounding~~  
289 ~~properties;~~

290

291 (2) Where, owing to conditions peculiar to the property, existing structures or  
292 buildings thereon, and not the result of the actions of the applicant, a strict and  
293 literal enforcement of the Land Development Code would result in undue  
294 hardship not shared by other property owners in the zoning district ~~The granting~~  
295 ~~of the deviation is consistent with chapters 9 and 10 of this Code and the~~  
296 ~~comprehensive plan;~~

297

298 (3) Any variance granted shall be ~~The deviation requested is the minimum departure~~  
299 from the regulation ~~deviation that will allow~~ ~~make possible~~ the reasonable use of  
300 the land, building, or structure;

301

302 (4) The applicant has not created the hardship ~~The strict application of the~~  
303 ~~requirements of chapters 9 and 10 will constitute a substantial hardship to the~~  
304 ~~applicant, which hardship is not self-created or self-imposed;~~

305

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- 306 (5) The applicant will be deprived of any reasonable legal use of the land without the  
 307 variance ~~There are exceptional topographic, soil, or other environmental~~  
 308 ~~conditions unique to the property;~~
- 309
- 310 (6) The variance shall not adversely affect the delivery of governmental services; ~~The~~  
 311 ~~deviation requested would provide a creative or innovative design alternative to~~  
 312 ~~substantive standards and criteria; and/or~~
- 313
- 314 (7) The variance shall not be in conflict with the comprehensive plan; ~~The impacts~~  
 315 ~~associated with the deviation requested are adequately mitigated through~~  
 316 ~~alternative measures.~~
- 317
- 318 (8) A variance shall not be granted because of the presence of nonconformities in the  
 319 zoning district or adjoining districts; and
- 320
- 321 (9) No use variances are permitted.

322  
323 ~~The standards in this section do not apply to site plan deviation requests in design review~~  
324 ~~districts pursuant to section 9-184.~~

325  
326 Section 10. Section 9-246 of the Tallahassee Land Development Code is hereby  
327 amended as follows:

328  
329 Sec. 9-246. - Incentives for provision of inclusionary housing.

330  
331 . . . .

332  
333 (d) Variances ~~Deviations~~ to development standards for primary developments  
334 incorporating inclusionary housing. The developer of inclusionary housing seeking  
335 variance(s) ~~deviation(s)~~ to development standards not addressed in subsection (2) above,  
336 shall submit a request for the variance(s) ~~deviation(s)~~, along with the development  
337 application, to the entity with authority to approve the development application. There  
338 shall be no fee charged to the developer of inclusionary housing for requested variances  
339 ~~deviations~~ in conjunction with the development of the inclusionary housing. ~~Deviations~~  
340 ~~requested pursuant to this section shall not be required to comply with requirements of~~  
341 ~~section 9-233 of this chapter for the granting of a deviation. Instead, requests for~~  
342 ~~deviation under this section shall be subject to demonstrate compliance with the~~  
343 ~~following criteria:~~

- 344
- 345 ~~(1) The request for deviation shall specify the standard(s) to be deviated, the extent of~~  
 346 ~~deviation, and where the deviation will apply (requests for deviations to setbacks should~~  
 347 ~~be expressed in terms of linear feet and, requests for deviations to lot sizes should be~~  
 348 ~~expressed in square footage; requests may provided on a graphic plan);~~
- 349 ~~(2) The deviation shall not result in an increase in gross residential density for the~~  
 350 ~~development in excess of the density bonus provided by this section;~~

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351 ~~(3) The deviation shall not result in conditions detrimental to the public's health, safety,~~  
352 ~~or welfare; and,~~

353 ~~(4) The granting of this deviation shall be consistent with the intent and purpose of this~~  
354 ~~section and the Tallahassee Leon County Comprehensive Plan.~~

355  
356 ~~Upon a finding in the affirmative, the entity with authority to approve the application~~  
357 ~~shall grant the requested deviation(s).~~

359 Section 11. Section 10-12 of the Tallahassee Land Development Code is hereby  
360 amended as follows:

361  
362 Sec. 10-12. - Urban design review—Duties and responsibilities of the planning  
363 department.

364  
365 (1) The planning department shall be responsible for:

366  
367 . . . .

368  
369 (e) Rendering a recommendation to the development review committee on variances  
370 ~~deviations~~ to development and design standards for all site plans features noted in  
371 subsection (a) applicable to properties in the design review districts.

372  
373 Section 12. Section 10-85 of the Tallahassee Land Development Code is hereby  
374 amended as follows:

375 Schedule of Nonconformities: Extent of Permissible Activities  
376 (Absent Nonconformity Relief)  
377

Type of Nonconformity	Repair and Maintenance	Remodeling	Discontinuance
Nonconforming Building or Structure	Yes, if manufactured home, SF or 2F; all others, cost not to exceed 50% of structural value; provided if more than 50% must comply with parking.	Yes, if manufactured home, SF or 2F; all others, cost not to exceed 50% of structural value; provided if more than 50% must comply with parking.	Yes, but not to exceed 360 days; if more than 360 days, expenditure more than 50% only by <u>variance deviation</u> , except manufactured home, SF and 2F
Nonconforming Lot (undeveloped)	Not applicable	Not applicable	Not applicable

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Nonconforming Use of a Conforming Building or Structure	Not applicable	Not applicable	Yes, but not to exceed 360 days
Nonconforming Use of Land	Not applicable	Not applicable	Yes, but not to exceed 360 days

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Section 13. Section 10-258 of the Tallahassee Land Development Code is hereby amended as follows:

Sec. 10-258. - CP Commercial Parkway District.

....

7. Access Management Criteria (In case of a conflict with the provisions of other ordinances or regulations, the most strict provisions shall apply):

....

b.) All new commercial development shall construct a vehicular interconnection to adjacent properties that have an existing commercial use. Interconnections shall be required to adjacent vacant properties which are zoned for commercial use. The vehicular interconnections shall be constructed with material consistent with constructed or proposed vehicular use areas. Location of such interconnections shall be approved by the traffic engineer and constructed prior to issuance of a certificate of occupancy. Required interconnections between properties and/or to a private or public roadway shall be placed in a cross access easement acceptable by the city attorney. Exemptions to ~~and deviations~~ from the interconnection requirements of this section shall be approved by the Director.

Section 14. Section 10-266 of the Tallahassee Land Development Code is hereby amended as follows:

Sec. 10-266. - NBO Neighborhood Boundary Office.

....

9. Street Vehicular Access Requirements:

....

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412 d. All new non-residential development shall construct a vehicular and pedestrian  
 413 interconnection to adjoining properties that have an existing commercial use.  
 414 Interconnections shall be required to adjoining vacant properties, which are zoned for  
 415 commercial and/or office use. The vehicular interconnection shall be constructed with  
 416 material consistent with constructed or proposed vehicular use areas. Location of such  
 417 interconnections shall be approved by the traffic engineer or designee and constructed  
 418 prior to issuance of a certificate of occupancy. ~~Required~~ required interconnections  
 419 between properties and/or to a private or public roadway shall be placed in a cross access  
 420 easement acceptable by the city attorney. ~~The~~ the parking standards committee shall  
 421 approve exemptions to ~~and deviations from~~ the interconnection requirements of this  
 422 section.

423  
 424 Section 15. Section 10-272 of the Tallahassee Land Development Code is hereby  
 425 amended as follows:

426  
 427 Sec. 10-272. - NB-1 Neighborhood Boundary District.

428  
 429 . . . .

430  
 431 5. Development Standards in addition to the MMTD

432  
 433 1. Setback and Alternate Non-residential Setback:

434  
 435 . . . .

436  
 437 b. Sites with multiple frontages do not require a front setback ~~variance deviation~~  
 438 additional frontages if the primary frontage meets the required front setback. This  
 439 exemption does not apply to corner lots.

440  
 441 Section 16. Section 10-280.6 of the Tallahassee Land Development Code is  
 442 hereby amended as follows:

443  
 444 Sec. 10-280.6. ~~Deviations and~~ Variances.

445  
 446 (a) The standards and requirements contained herein shall be available for variances  
 447 ~~deviations~~, as provided for in Section 2-158 and Section 9-233.

448  
 449 (b) The standards and requirements of Section 10-281 shall be available for variances, as  
 450 provided for in Section 5-126 regarding the Environmental Variance Board.

451  
 452 Section 17. Section 10-284.1 of the Tallahassee Land Development Code is hereby  
 453 amended as follows:

454  
 455 Sec. 10-284.1. Building disposition.

456

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457 (a) Specific to Zones T3, T4, T5 and Downtown Overlay

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459 . . . .

460

461 (6) Front, side, side-corner, and rear setbacks for principal and accessory structures shall  
462 be as shown in Section 10-285, Tables 10A, 10B, and 10C. Setbacks may be adjusted  
463 by variance ~~deviation~~ with the following exceptions:

464

465 a. Properties within the Canopy Road Protection Zone having no viable alternative  
466 access to a road other than a canopy road shall not be subject to a variance  
467 ~~deviation~~ for the front setback along the canopy road.

468 b. An addition of up to 10 feet to the ~~principal frontage~~ setback along any public  
469 roadway shall be allowed, as necessary, for public safety to accommodate existing  
470 utility lines or for other right-of-way constraints.

471

472 The front ~~frontage~~ setbacks shall apply to the ~~all~~ principal ~~and double~~ frontages.  
473 Side-corner setbacks shall apply to the Secondary Frontage. Rear setbacks shall  
474 apply to the parcel boundary opposite the principal frontage.

475

476 Section 18. Section 10-284.5 of the Tallahassee Land Development Code is hereby  
477 amended as follows:

478

479 Sec. 10-284.5. Parking location standards.

480

481 (a) General to Zones T3, T4, T5, and Downtown Overlay

482

483 . . . .

484

485 (7) Loading docks and service areas shall be permitted on frontages only by variance  
486 ~~deviation~~.

487

488 Section 19. Section 10-386 of the Tallahassee Land Development Code is hereby  
489 amended as follows:

490

491 Sec. 10-386. - Required off-street loading space.

492

493 . . . .

494

495 (d) Uses in the design review district shall direct off-street loading to parking  
496 areas and permit off-street loading on frontages only by variance ~~deviation~~.

497

498 Section 20. Section 10-416 of the Tallahassee Land Development Code is hereby  
499 amended as follows:

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500  
501 Sec. 10-416. - Transportation right-of-way preservation.

502  
503 . . . .

504  
505 (e) Determination of alignment and setbacks.

506  
507 . . . .

508  
509 (2) Where an alignment has not been established by engineering study and/or design, the  
510 applicant may propose, and the city shall establish, an approximate alignment consistent  
511 with the need to avoid development encroachment and provide continuity of the corridor,  
512 as well as to meet conceptual site planning needs of the project. The generalized widths  
513 indicated on the future right-of-way needs table (subsection 10-416(d), above) shall be  
514 used to determine an appropriate alignment, except where the city has designated an  
515 alternative width pursuant to an adopted critical area plan, an analysis of existing  
516 constraints, or community planning objectives. The following techniques shall be  
517 considered for maintaining the continuity of the corridor and protecting the corridor from  
518 encroachment:

519  
520 . . . .

521  
522 c. The approximate alignment shall be the basis for applying normal setbacks as  
523 specified in that zoning district. When the specific alignment is later established through  
524 engineering study and design, the setback may be reduced through the established  
525 variance deviation process, provided that such reduction is necessitated solely by the final  
526 alignment of the right-of-way.

527  
528 (3) Reduction of rear- and side-yard setbacks may be considered to ensure that structures  
529 do not encroach into future transportation corridors. A reduction of the required setback  
530 may be approved through the development review committee (DRC) variance deviation  
531 procedure, provided such reduction is necessitated solely by the proposed alignment of  
532 the corridor. In the event that a site plan application would normally qualify as a type A  
533 site plan, the request of such setback reduction would elevate the request to a type B site  
534 plan review to ensure comprehensive consideration of potential impacts.

535  
536 . . . .

537  
538 (h) Incentives. The incentives below may also be provided to landowners who dedicate  
539 property determined by the city as necessary for corridor protection. A landowner is not  
540 entitled to all of these incentives on any one project. Instead, it is the intent of this  
541 provision that these tools (or a combination thereof) be available to the landowner and  
542 city staff for development of a written agreement in which the landowner is compensated  
543 for the value of land dedicated to the city (or other applicable jurisdiction). Such written

544 agreement shall be completed as a condition of final site plan approval. Incentive (5),  
545 however, shall be granted by right to every applicable application.

546  
547 (1) On-site transfer of development rights. If the right-of-way is dedicated to the city, the  
548 city may approve the on-site transfer of development rights, based on the gross density or  
549 intensity allowable on the site prior to any set-aside for future right-of-way. The transfer  
550 will be from land needed for transportation right-of-way to other portions of the site,  
551 excluding any land required to be dedicated for site-related improvements. Approval of  
552 transfer of development rights may include consideration of variances ~~deviations~~ from  
553 site design standards necessitated by the increased net density or intensity of the portions  
554 of the site receiving the transfer of development rights.

555  
556 (2) Clustering of structures. Clustering of structures may be allowed to preserve the full  
557 development rights of the property while siting structures to avoid encroachment into the  
558 corridor. Clustering of structures under this provision may include variances ~~deviations~~ to  
559 reduce setbacks between buildings within a project site, reduction of buffers within a  
560 project site, or variances ~~deviations~~ from other related site design requirements. This  
561 provision is not intended to reduce perimeter buffers designed to ensure compatibility of  
562 proposed development with adjacent uses.

563  
564 . . . .

565  
566 (5) Variance ~~Deviation~~ fees or elevated review fees. In the event that a government  
567 request for dedication causes the need for specific variance ~~deviation~~ and/or elevation  
568 from type A to type B review, a waiver of the resultant variance ~~deviation~~ fees and/or the  
569 difference between type A and type B site plan fees shall be provided.

570  
571 Section 21. Section 10-425 of the Tallahassee Land Development Code is hereby  
572 amended as follows:

573  
574 Sec. 10-425. - Communication antennas and communication antenna support structures.

575  
576 . . . .

577  
578 (c) *Location.*

579  
580 . . . .

581  
582 (2) *Minimum setbacks from roadways.*

583  
584 . . . .

585  
586 e. Variances. ~~Deviations.~~ Communication antenna support structures may be located in  
587 areas more than 100 feet and less than 250 feet from the right-of-way of designated  
588 gateway routes and designated canopy roads and less than 100 feet from the right-of-

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589 way of all other roadways so long as the Development Review Committee director shall  
590 determine that the proposed antenna support structure meets the criteria for variances  
591 ~~deviations in Sections 9-231 through 9-233. subsection (u) of this section regarding~~  
592 ~~deviations from standards in this section. Such applications for deviations are subject to~~  
593 ~~the review process as set forth in section 9-154 of this Code. The applications shall~~  
594 ~~comply with all other requirements of this section.~~ No variances shall be granted for  
595 the following:

- 596
- 597 a. Height, setbacks, fencing, or buffer requirements for communication antenna
- 598 support structures and antennas where such structures and antennas are located in or
- 599 adjoining any residential preservation future land use category.
- 600 b. Variances to height exceeding 170 feet in the R-1, R-2, and R-3 zoning districts;
- 601 c. Construction of communication antenna support structures within the underlying
- 602 zoning district building setback;
- 603 d. Requirements of subsection (q) of this section regarding co-location; and
- 604 e. Variances that permit communication antenna support structures within a
- 605 canopy road protection zone.

606  
607  
608 . . . .

609  
610 (k) *Fencing.* A minimum six-foot finished masonry wall or a six-foot fence shall be  
611 required around communication antenna support structures. Access to the antenna  
612 support structure shall be through a locked gate. This requirement shall not apply to  
613 camouflaged antenna support structures. ~~Deviations to this requirement may be granted~~  
614 ~~in accordance with subsection (u) of this section regarding deviations from standards in~~  
615 ~~this section, for other antenna support structures provided (in addition to criteria of~~  
616 ~~subsection (u) of this section) the structure is made unclimbable up to a height above 20~~  
617 ~~feet.~~

618  
619 . . . .

620  
621 (m) *Landscaping.* The visual impacts of communication antenna support structures shall  
622 be mitigated through landscaping or other screening materials at the base of the antenna  
623 support structure and ancillary structures as follows:

624  
625 . . . .

626  
627 ~~(6) An applicant may request deviation to the standards in this section in accordance~~  
628 ~~with subsection (u) of this section regarding deviation from standards of this section.~~

629  
630 . . . .

631  
632 ~~(u) *Deviations from standards in this section.*~~

633

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634 ~~(1) — *Intent and purpose.* The intent and purpose of this subsection is to address and~~  
635 ~~balance the concerns about communication antenna support structures that do not meet~~  
636 ~~the requirements of this section and the recognized need of the provider to serve the~~  
637 ~~community.~~

638  
639 ~~(2) — *Prohibitions.* No deviations shall be granted for the following:~~  
640 ~~a. — Height, setbacks, fencing, or buffer requirements for communication antenna~~  
641 ~~support structures and antennas where such structures and antennas are located in or~~  
642 ~~adjoining any residential preservation future land use category.~~  
643 ~~b. — Deviations to height exceeding 170 feet in the R-1, R-2, and R-3 zoning~~  
644 ~~districts;~~  
645 ~~c. — Construction of communication antenna support structures within the underlying~~  
646 ~~zoning district building setback;~~  
647 ~~d. — Requirements of subsection (q) of this section regarding co-location; and~~  
648 ~~e. — Deviations that permit communication antenna support structures within a~~  
649 ~~canopy road protection zone.~~

650  
651 ~~(3) — *Authority.* An applicant may request a deviation from the standards in this~~  
652 ~~section from the entity with authority to approve, approve with conditions, or deny a~~  
653 ~~site plan application under the regulations of this section. Requests for deviations~~  
654 ~~pursuant to this section shall be processed concurrently with an application for site plan~~  
655 ~~review.~~

656  
657 ~~(4) — *Criteria for deviations from the standards in this section for communication*~~  
658 ~~*antenna support structures.* With respect to action upon applications for deviations, the~~  
659 ~~entity with the authority to approve a site plan application for a communication antenna~~  
660 ~~support structure or communication antenna shall grant a deviation only if it finds that~~  
661 ~~the deviation meets the following standards and criteria:~~  
662 ~~a. — The deviation will not be detrimental to the public health, safety, or welfare to~~  
663 ~~the surrounding properties;~~  
664 ~~b. — The deviation provides for greater mitigation of aesthetic impacts to adjoining~~  
665 ~~properties and/or roadways. Aesthetic impact shall take into consideration, but not be~~  
666 ~~limited to, the amount of the antenna support structure that can be viewed from the~~  
667 ~~surrounding land uses in conjunction with the structure's proximity to the surrounding~~  
668 ~~land use, mitigation, landscaping or intervening visual buffers, existing character of the~~  
669 ~~surrounding area, or other visual options;~~  
670 ~~c. — The deviation provides greater compatibility with the nature and character of~~  
671 ~~other land uses and/or with the environment within which the antenna support structure~~  
672 ~~proposes to locate. The antenna support structure may be placed or designed to assist~~  
673 ~~with mitigating the overall aesthetic impact of an antenna support structure;~~  
674 ~~d. — A suitable alternative site is not available. The applicant shall demonstrate that~~  
675 ~~an alternative site does not exist, and this demonstration is not rebutted by competent~~  
676 ~~and substantial evidence;~~  
677 ~~e. — The deviation sought is the minimum necessary to address the need for the~~  
678 ~~deviation, subsequent to exploring all reasonable siting alternatives;~~

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679 ~~f. The location of the communication antenna support structure will not have a~~  
680 ~~significant detrimental impact on abutting property values; and~~

681 ~~g. The granting of the deviation is consistent with the intent and purpose of this~~  
682 ~~section, this chapter, and the comprehensive plan.~~

683  
684 ~~(5) Supplemental information required for applications for deviations from~~  
685 ~~standards in this section. The following information shall be included with all~~  
686 ~~applications for deviations from standards set forth in this section. The applicant may~~  
687 ~~use any combination of site plans, surveys, maps, technical reports or written narratives~~  
688 ~~necessary to convey the following information:~~

689  
690 ~~a. A scaled site plan clearly indicating the communication antenna support~~  
691 ~~structure site, type and height of the proposed antenna support structure, the location of~~  
692 ~~the accessory equipment building, on-site land uses and zoning, abutting land uses and~~  
693 ~~zoning, abutting roadways, proposed means of access, distances from the property~~  
694 ~~lines, elevation drawings of the proposed communication antenna support structure, and~~  
695 ~~any other proposed structures;~~

696 ~~b. A current zoning or tax map or aerial, as maintained by the county property~~  
697 ~~appraiser's office, showing the location of the proposed communication antenna support~~  
698 ~~structure;~~

699 ~~c. A legal description of the parent tract and communication antenna support~~  
700 ~~structure site (if applicable);~~

701 ~~d. If the proposed communication antenna support structure site meets the required~~  
702 ~~minimum distance from residential lot lines, approximate distance between the~~  
703 ~~proposed communication antenna support structure and the nearest residential lot line,~~  
704 ~~platted residential properties, or unplatted residential lot lines and/or nonresidential lot~~  
705 ~~lines. If the proposed communication antenna support structure site does not meet the~~  
706 ~~minimum distance requirements, then exact distances, locations and identifications of~~  
707 ~~such properties shall be shown on a site plan.~~

708 ~~e. A landscape plan showing specific landscape materials;~~

709 ~~f. The method of fencing, finished color and, if applicable, the method of aesthetic~~  
710 ~~mitigation and illumination;~~

711 ~~g. If the applicant is not co-locating (sharing space) on an existing communication~~  
712 ~~antenna support structure of another communications provider, evidence that it has~~  
713 ~~made diligent but unsuccessful efforts to co-locate its antenna and associated equipment~~  
714 ~~on an existing structure within its search ring on commercially reasonable terms;~~

715 ~~h. Evidence that the applicant has made diligent but unsuccessful efforts to locate~~  
716 ~~the proposed communication antenna support structure on suitable government owned~~  
717 ~~property within its search ring;~~

718 ~~i. With respect to deviations only, certification by the applicant that the proposed~~  
719 ~~communication antenna support structure is reasonably necessary to serve an abutting~~  
720 ~~or nearby residential area or areas.~~

721

722           Section 22. Conflicts. All ordinances and parts of ordinances of the City of Tallahassee  
723 Code in conflict with the provisions of this ordinance are hereby repealed to the extent of such  
724 conflict.

725  
726           Section 23. Severability. If any provision or portion of this ordinance is declared by any  
727 court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining  
728 provisions and portions of this ordinance shall remain in full force and effect.

729  
730           Section 24. Effective Date. This ordinance shall become effective \_\_\_\_\_,  
731 2022.  
732

733 INTRODUCED in the City Commission on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

734

735 PASSED by the City Commission on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

736

737

738

CITY OF TALLAHASSEE

739

740

741

By: \_\_\_\_\_

742

John E. Dailey

743

Mayor

744

745

746 ATTEST:

APPROVED AS TO FORM:

747

748

749 By: \_\_\_\_\_

By: \_\_\_\_\_

750

James O. Cooke, IV

Cassandra K. Jackson

751

City Treasurer-Clerk

City Attorney