

ORDINANCE NO. 08-O-15

AN ORDINANCE OF THE CITY OF TALLAHASSEE, FLORIDA, AMENDING THE TALLAHASSEE LAND DEVELOPMENT CODE TO REVISE PROCEDURES FOR THE TALLAHASSEE-LEON COUNTY BOARD OF ADJUSTMENT AND APPEALS ON REQUESTS FOR VARIANCES IN THE CITY; PROVIDING FOR ADDITIONAL NOTICE OF VARIANCE APPLICATIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature, in F.S. Section 163.3215 limits the method of challenging local development orders, including variances, as not consistent with the local comprehensive plan to a petition for writ of certiorari, so long as certain requirements for notice and public participation outlined in F. S. Section 163.3215(4) are provided in the local code; and

WHEREAS, the Tallahassee Land Development Code currently includes quasi-judicial procedures and notice provisions for variance applications that meet most of the requirements in F.S. Section 163.3215(4); and

WHEREAS, this ordinance will amend the Tallahassee Land Development Code to clarify that all of the requirements in F.S. Section 163.3215(4) are included in the Land Development Code for variance applications to the Tallahassee-Leon County Board of Adjustment and Appeals for variances within the City of Tallahassee; and

WHEREAS, under the Tallahassee Land Development Code, as amended herein, any challenge to a decision by the Board of Adjustment and Appeal on a variance request as not consistent with the Tallahassee-Leon County

Comprehensive Plan or with the Tallahassee Land Development Code, must be brought in the Leon County Circuit Court by petition for writ of certiorari.

NOW THEREFORE, BE IT ENACTED by the people of the City of Tallahassee as follows:

Section 1. Section 1-2, Definitions and rules of construction, of Chapter 1 of the Land Development Code is amended as follows:

Board of Adjustment and Appeals Bylaws: The term “board of adjustment and appeals bylaws” means the bylaws for the Tallahassee-Leon County Board of Adjustment and Appeals, as approved by the board of adjustment and appeals and by the City Commission.

Clerk, board of adjustment and appeals: The term “board of adjustment and appeals clerk” means the City’s board administrator to the board of adjustment and appeals, who shall be an employee of the City’s Growth Management Department.

Section 2. The provisions of Article III, Boards, Committees and Commissions in Chapter 2, Administration, of the Land Development Code related to the Board of Adjustment and Appeals are amended as follows:

...

Division 3. Board of Adjustment and Appeals

Sec. 2-156. Establishment.

There is hereby created the board of adjustment and appeals, which shall be composed of three members appointed by the county commission and

three members appointed by the city commission, and a seventh member whose position shall alternately be appointed by the city and the county. All appointees to the board of adjustment and appeals shall be residents of the county.

...

Sec. 2-163. Public notice.

For any matter other than variances properly before the board of adjustment and appeals, notice of the public hearing shall be given at least five calendar days in advance of the hearing by publication in a newspaper of regular and general circulation in the city and county. In cases affecting 30 or less contiguous parcels of land, additional written notice shall be mailed to the current address of each property owner involved, as shown in the records of the property appraiser and to owners of property and registered neighborhood associations within 200 feet of the parcel which is subject of the hearing. For variances, public notice shall be provided as set forth herein below.

Sec. 2-164. Applications for Variance Requests

(a) Applications for variance requests shall meet the following requirements:

- (1) *Completeness.* The Director shall receive all variance applications to go before the board of adjustment and appeals, and shall examine the material submitted therewith to assure completeness and that required

maps, plans, or reports to be submitted by an applicant are in good order and in sufficient number for processing and recording.

(2) *Posting of property required.* An application for a variance shall not be determined complete until the Growth Management Department has verified that the property that is the subject of the variance application has been prominently posted pursuant to the policies and procedures of the Growth Management Department.

(3) *Mailed notice of variance application, right to quasi-judicial hearing.* Within 10 days after a variance application has been determined to be complete, the Board Administrator for the board of adjustment and appeals shall provide notice by regular mail of the pendency of the variance application to all owners of abutting property. The notices shall provide notice of the pending application, and clearly delineate the right of any aggrieved or adversely affected party to request a quasi-judicial hearing before the Board; the time frames for requesting such a hearing; and how to obtain the board of adjustment and appeals bylaws with the written procedures for a quasi-judicial proceeding. This notice may be combined with any other required mailed notice so long as it is mailed within 10 days after a variance application has been determined to be complete.

(b) Following the conclusion of the hearing, the board of adjustment and appeals shall render a written preliminary decision to approve, approve

with conditions, deny the application, or continue consideration to a date and time certain, and shall so notify the applicant in writing.

(1) *Notice of quasi-judicial proceeding.* The preliminary decision shall include a statement that any party may request a quasi-judicial proceeding on the preliminary decision as provided in this section and that failure to pay the filing fee, and/or to file the petition as required is jurisdictional and shall result in a waiver of the right to petition for quasi-judicial proceedings.

(2) *Final decision of the board of adjustment and appeals.* The preliminary decision of the board of adjustment and appeals shall become final 30 calendar days after it is rendered unless a person who qualifies as a party, as defined in Section 1-2 of this Code pays the required fee and files a petition for quasi-judicial proceedings in accordance with this section and the board of adjustment and appeals bylaws.

Sec. 2-165. Quasi-judicial proceedings for variance applications.

(a) Unless waived by all parties, all hearings on variance requests shall be conducted as quasi-judicial proceedings pursuant to this section and board of adjustment and appeals bylaws. Waivers must be approved by the board of adjustment and appeals.

(b) The hearing before the board on a variance application shall be conducted as provided below and in accordance with the board of adjustment and appeals bylaws.

(1) *Appearances.* Any person may appear at a hearing, or be represented by authorized agents or attorneys. Such agents or attorneys shall present competent evidence of the extent of their authorization.

(2) *Sworn testimony.* All witnesses to material facts shall testify under oath.

(3) *Evidence.* The board of adjustment and appeals shall not be bound by strict rules of evidence, nor limited to consideration of such evidence as would be admissible in a court of law. The board of adjustment and appeals may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The Chair shall rule on all questions relating to the admissibility of evidence, but may be overruled by a majority of the board of adjustment and appeals members present.

(4) *Conduct During Hearings; Interrogations.* During the hearing, each side shall proceed without interruption by the other. All arguments and pleadings shall be addressed to the Chair. There shall be no questioning or argument between individuals in the audience or the parties. The Chair or, upon recognition by the Chair, board of adjustment and appeals members, counsel to the board, staff, or counsel for any party,

may direct questions to the applicant, witnesses, or any person speaking from the audience. The board members may make comments pertinent to the case.

(5) *Submittal of Written Materials.* If written materials intended to be evidence are presented to staff or to the board of adjustment and appeals less than five (5) working days prior to the meeting, the Chair may reject the written materials. In lieu of rejecting the materials, the board may continue the item to a subsequent meeting to allow time for review of the written materials.

(6) *Order for Presenting Evidence.*

a. The Chair, or such persons as the Chair may direct, shall describe the nature of the case, and present evidence, including staff reports and recommendations based on the applicant's written application.

b. The applicant shall outline the nature of the request and present supporting evidence and argument.

c. Board members may examine witnesses supporting the application.

d. Persons appearing in opposition to the application may present evidence and argument.

e. Board members may examine witnesses opposed to the application.

g. If all parties agree, any of the above procedures may be, with the board's approval, waived.

(7) No ex parte communication shall be permitted during the pendency of a quasi-judicial matter before the board of adjustment and appeals.

(c) Appeals from the final decisions on variance applications after quasi-judicial proceedings shall be by petition for writ of certiorari filed in Leon County Circuit Court within 30 days after the final decision of the board of adjustment and appeals is rendered.

(d) Any action to challenge the consistency of a decision by the board of adjustment and appeals on a variance application with this Code shall be brought in the same proceeding as a challenge of the consistency of the decision with the comprehensive plan. Any claim of inconsistency with this Code not brought in the same proceeding shall be waived.

Section 3. Conflicts. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflicts, as of the effective date of this ordinance, except to the extent of any conflicts with the Tallahassee-Leon County Comprehensive Plan as amended, which provisions shall prevail over any parts of this ordinance which are inconsistent, either in whole or in part, with the said Comprehensive Plan.

Section 4. Severability. If any word, phrase, clause, section or portion of this ordinance shall be held invalid or unconstitutional by a court of competent jurisdiction, such portion or words shall be deemed as a separate,

distinct and independent provision and such holding shall not affect the validity of the remaining portion of the ordinance.

Section 5. Effective Date. This ordinance shall become effective immediately upon adoption.

INTRODUCED in the City Commission on the 13th day of February, 2008.

PASSED by the City Commission on the 23rd day of April, 2008.

CITY OF TALLAHASSEE

By: _____
John R. Marks, III
Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
Gary Herndon
City Treasurer-Clerk

By: _____
James R. English
City Attorney

1
2 **BYLAWS OF THE**
3 **TALLAHASSEE-LEON COUNTY BOARD OF ADJUSTMENT AND APPEALS**
4 **WITH POLICIES AND PROCEDURES¹**

5 **ARTICLE 1**

6
7 **NAME AND AUTHORIZATION**

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9 A. Name.

10
11 The name of the Board shall be the Tallahassee-Leon County Board of
12 Adjustment and Appeals, hereinafter referred to as the "Board".

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14 B. Authorization.

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16 1. The Board is created pursuant to Sections 2-156 through 2-163,
17 Tallahassee Land Development Code, and Section 10-2.341, Leon County Land
18 Development Code. The Board's actions shall be governed by the following state
19 statutes, ordinances and rules:

20
21 a. State statutes that apply to public boards, members, and officials;

22
23 b. Ordinances, policies, regulations, and rules of the City of
24 Tallahassee and Leon County that affect local boards and officials;

25
26 c. Those provisions of the City of Tallahassee and Leon County Land
27 Development Codes, the City of Tallahassee and Leon County Building,
28 Plumbing, Gas and Fire Prevention Codes, and other applicable land development
29 regulations that specifically grant powers and duties to the Board; and

30
31 d. The bylaws of the Board as set forth herein.

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33 **ARTICLE 2**

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35 **PURPOSE AND FUNCTION**

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37 A. Purpose.

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39 1. Appeals and Variances. The Board shall hear and decide appeals of
40 administrative decisions as provided in the City of Tallahassee and Leon County Land
41 Development Code, and variances to sign, plumbing, zoning, housing, building, gas and
42 fire prevention codes of the City of Tallahassee and Leon County as provided in the City
43 and Leon County Land Development Codes.

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¹ *These Bylaws replace completely the previous Policies and Procedures of the Board of Adjustment and Appeals dated May 13, 1993.*

1 2. Jurisdiction.

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3 a. Appeals. After a hearing on an appeal pursuant to the
4 procedures outlined herein, the Board may affirm or reverse the decision
5 of an administrative officer if it determines that the true intent or meaning
6 of the regulatory code has been misconstrued or wrongly interpreted.
7

8 b. Variances. After a hearing on a variance application
9 pursuant to the procedures outlined herein, the Board may vary the
10 application of any provision of the codes in paragraph 1 above to any
11 particular case where such variance will not be contrary to the public
12 interest and where, owing to conditions peculiar to the property and not
13 the result of the actions of the applicant, a literal enforcement of the
14 regulatory code involved would result in undue hardship.
15

16 3. Other duties. The Board shall perform such additional duties as
17 may be delegated to the Board by ordinance.
18

19 B. Function. The Board shall have the following functions as set forth in the
20 Land Development Codes of the City of Tallahassee and Leon County, as well as
21 additional functions that may be assigned by ordinance to the Board:
22

23 1. City of Tallahassee:

- 24 a. To hear appeals of administrative decisions;
25
26 b. To decide variances for single family and duplex dwelling units;
27
28 c. To hear appeals of the building officials;
29
30 d. To decide variances to the technical requirements of the Florida
31 Building Code;
32
33 e. To decide variances from standards for fences and walls;
34
35 f. To decide variances to the sign code;
36
37 g. To hear appeals of decisions related to connections to public streets;
38
39 h. To hear appeals of decisions related to building permits;
40
41 i. To grant extensions of time for abandonment of nonconforming uses;
42
43 j. To certify previously established land use conformity (*PELUC*);
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- 1 k. To decide variances to height of structures and uses for property
2 governed by the airport/aerospace regulations.
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4
5 2. Leon County:
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7 a. To hear appeals of administrative decisions;
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9 b. To hear requests for variances from the application of any provision of
10 Chapter 10 of the Leon County Code of Laws, unless the consideration of a
11 variance is already contemplated by the provision to be accomplished by other
12 means;
13
14 c. To certify previously established land use conformity (PELUC);
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16 d. To perform such additional duties as may by ordinance be delegated to
17 it, and which pertain to the above assigned powers.
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20 **ARTICLE 3**

21 **MEMBERSHIP**

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25 A. Members.

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27 1. The Board shall consist of seven (7) members: three (3) shall be appointed
28 by the Leon County Commission, and three (3) shall be appointed by the Tallahassee
29 City Commission. The seventh member shall be alternately appointed by the City and
30 the County Commissions.
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32 B. Eligibility.

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34 Each member shall be a resident of Leon County, Florida, and shall be a real
35 property owner and taxpayer.
36

37 C. Appointments.

38
39 1. Appointments shall be for a term of three (3) years. The terms shall extend
40 from July 1st in the year in which the appointment is made. The appropriate Commission
41 may fill vacancies at any time for the un-expired term of a member.
42

43 2. Members shall not serve more than two (2) full consecutive terms on the
44 Board, whether appointed by the City Commission or the County Commission.
45

1 3. It is the responsibility of the City or County Commissions to ensure an
2 appointment will occur within thirty (30) days of notification of a vacancy. If an
3 appointment is not made within thirty (30) days, the Board may request an appointment
4 be agendaed for the next available Commission meeting.

5
6 4. The approval of these bylaws shall not affect the terms of Board members
7 who are serving on the date the bylaws are approved.

8
9 D. Vacancies.

10 1. A member's position shall become vacant when:

11 a. A member no longer meets eligibility requirements, or

12 b. A member's term expires, or

13 c. A member resigns, or

14 d. For a City, appointee, if a member is absent from two (2) of three (3)
15 consecutive meetings of the Board, without approval of the Chair.

16
17 2. All absences will be duly recorded in the meeting minutes. Absences
18 from emergency or special called meetings will not be recorded against a member in
19 counting the absences. Special exceptions on the removal of members for absences may
20 be made by the Chair of the Board when the absences are due to health or time-limited
21 extenuating circumstances and the absences do not affect the ability of the Board to
22 maintain a quorum.

23 3. When a vacancy is determined to exist by the Chair or the Board, the
24 appropriate Commission shall be informed that such vacancy exists.

25 4. Resignation.

26 When a member intends to resign, if reasonably feasible, the member shall
27 provide written notice of such intent to the Chair, allowing a reasonable time for the
28 appointment of a successor.

29 5. Causes for Removal from Board.

30 The appropriate Commission may remove a member of the Board due to
31 malfeasance, misfeasance, or nonfeasance, the failure to disclose a conflict of interest for
32 purposes of disqualification when a member has personal or monetary interest in the
33 matter involved, or will be directly affected by a decision of the Board or as otherwise
34 specified by applicable statutes.

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ARTICLE 4

ORGANIZATION

A. Officers.

At the regular meeting of the Board each June, the Board shall elect from its members a Chair and Vice-Chair. If such regular meeting is cancelled or a quorum is lacking, the election shall be held at the next regular or specially called meeting that a quorum may be obtained. The Chair and Vice-Chair shall serve until successors have been elected and assume office.

B. Duties of the Chair and Vice-Chair.

1. The Chair shall preside at all meetings of the Board.

2. The Chair may delegate specific duties generally to the Vice-Chair.

3. The Chair shall ensure compliance with these bylaws and policies and procedures.

4. The Chair will notify members of removal from the Board.

5. The Chair shall immediately, upon receipt of a resignation, or when advised of a vacancy, notify the City or County Commission to begin the appointment process.

6. In the absence of the Chair, the Vice Chair shall perform the duties of the Chair.

7. The Chair shall report to the Board on all official transactions, which have not otherwise come to the attention of the Board. The Chair shall also make any reports concerning the affairs of the Board required or requested by the City or County Commissions.

C. Removal.

When an officer has been absent or has not performed the duties of that office for three (3) consecutive meetings, the Board, with a majority vote, at a regularly scheduled meeting, may remove that officer from office.

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ARTICLE 5

BOARD OPERATIONS

A. The Board shall have no authority other than as stipulated by the City and County Land Development Codes and approved by the respective Commissions.

B. The Board will meet routinely based upon an adopted meeting schedule, which will be provided to the City Treasurer-Clerk and the County Public Information Officer. The Chair may change the meeting date with notification in advance by mail to Board members and reasonable notice to the public. Special meetings may be called by the Chair or by two Board members and the Chair.

C. All meetings will be open to the public. For advertising purposes, the Board will provide to the City Treasurer Clerk and County Public Information Officer a schedule of meetings and will ensure agendas and minutes are available to the public in accordance with the State of Florida Sunshine Laws.

D. All meetings shall be conducted in accordance with Robert’s Rules of Order and these bylaws. All quasi-judicial proceedings shall be conducted as provided in these bylaws and as may be required by law.

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ARTICLE 6

STAFF SERVICES

A. Appointment of Board Administrators.

The City and Leon County shall each designate a staff person to serve as an administrator to the Board. The City’s Board Administrator shall be an employee of the City’s Growth Management Department. Leon County’s Board Administrator shall be an employee of County’s Growth & Environmental Management Department

B. Duties of the Board Administrators.

Subject to the provisions of the City and County Codes, these bylaws, and the direction of the Board, each administrator or his/her designee shall serve as a liaison between the Board and his/her local government, City or Leon County, and shall have the following duties, limited to the administrator’s local government:

1. Attend to all correspondence of the Board;
2. Publish all required notices, as required by the City and Leon County Codes and these bylaws;

1 3. Ensure that notices of variance applications are prominently posted on
2 properties that are the subject of variance applications pursuant to the policies and
3 procedures of the City and Leon County growth management departments;

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5 4. Prepare orders for the Board under the supervision of the Board’s legal
6 counsel;

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8 5. Attend all meetings and hearings conducted by the Board;

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10 6. Review all matters to assure compliance with the City and County Codes
11 and these bylaws;

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13 7. Ensure that appropriate City or County staff reviews all appeals and
14 applications;

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16 8. Provide a report and recommendation on each application to the Board;
17 preparing the case for docketing; placing the case on the calendar; and ensuring public
18 notice of the case as required by the City or Leon County Code and these bylaws;

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20 9. Ensure that all applications are processed and reviewed in accordance with
21 the City and Leon County Codes and these bylaws and that all Board hearings are
22 conducted in accordance with the procedures outlined in the City and Leon County Codes
23 and these bylaws;

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25 10. Provide a schedule of meetings to the City Treasurer-Clerk and Leon
26 County Public Information Officer and Board members, arrange meeting locations,
27 maintain summary minutes of the meetings, prepare and distribute appropriate
28 information related to the meeting agenda;

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30 11. Inform the Board of events, activities, policies, programs, etc. occurring
31 within the scope of the Board’s functions and informing the Board of all City and County
32 Commission actions affecting the Board’s functions;

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34 12. Ensure the appropriate City and County officials are informed of all Board
35 vacancies, expired terms, changes in officers, or any other changes to the Board and that
36 all requests for review of applicants, and any subsequent recommendations by the Board
37 or staff, are returned in a timely manner to the City and County officials to facilitate the
38 appointment process;

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40 13. Ensure the continuous flow of information to the appropriate City or
41 County Commission including providing reports, actions, and recommendations of the
42 Board and notification of noncompliance by the Board or Chair with the bylaws or
43 Codes;

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45 14. Ensure information provided by the Board for City or County Commission
46 review is appropriately agendaed for the City or County Commission meetings;

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2 15. Schedule a standard orientation program to be provided by Legal Counsel
3 to all new members. The program will address, but not be limited to, the bylaws,
4 conflicts of interest, State of Florida Sunshine Law, ethics violations, and public records
5 law.

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7 16. Keep all records of the Board and a Docket Book and Minute Book, as
8 provided below; and

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10 17. Otherwise perform or supervise all clerical or ministerial work of the
11 Board.

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13 C. Docket Book.

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15 Each administrator shall maintain a docket book or its equivalent, which shall be
16 kept posted to date. The administrator shall enter in the docket book the number of the
17 case, the name of the applicant, the location of the premises by street number and tax
18 parcel identification number or otherwise, the nature of the case, and when completed,
19 the final disposition of the matter. All continuances, postponements, dates of sending
20 notices and other steps taken and acts done shall be noted on the docket. The Docket
21 Book may be kept in an electronic format.

22
23 D. Minute Book: Minutes a Public Record.

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25 Each administrator shall maintain a minute book, which shall be kept posted to
26 date. The minute book shall include a record of the Board's proceedings, showing
27 attendance and all absences, with indications, where appropriate, as to whether absences
28 were excused or unexcused by the Chair, disqualifications of members, the record of the
29 Board's actions, motions, and the vote of each member voting on every motion. The
30 minutes of the Board shall be a public record, and be maintained in the respective growth
31 management offices of the City and County. The Minute Book may be kept in an
32 electronic format.

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34 E. Staff Services.

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36 The City Growth Management Department shall provide staff services to the
37 Board for the City. The Leon County Growth Management Department shall provide
38 staff services to the Board for the County.

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40 F. Duties of Legal Counsel.

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42 Legal Counsel to the Board shall provide advice to the Board as to matters under
43 its jurisdiction and may assist in questioning witnesses. Advice of counsel may be
44 received and entered in the minutes before disposition of any question of law or matter
45 requiring legal interpretation or advice. Legal Counsel shall also provide orientation to

1 all members on legal issues, such as conflicts of interest, the Florida Sunshine Law,
2 ethics violations, and public records law.

3
4 **ARTICLE 7**

5
6 **CONDUCT OF BOARD MEMBERS, STAFF**

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8 A. Representation of Applicants or Appellants.

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10 No member of the Board or its staff or of City or County staff shall represent an
11 applicant or appellant on a matter on which the Board is to make determinations, except
12 where the City or County is the applicant or appellant.

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15 B. Conflicts of Interest

16
17 1. The Board will be governed by the applicable requirements of Section
18 112.3143, Florida Statutes, as may be amended from time to time. A copy of Section
19 112.3143 is attached hereto as Appendix I.

20
21 2. When a member of the Board becomes aware of a potential conflict of
22 interest in a case to come before the Board, the member shall notify the Chair and
23 Board's legal counsel. The affected Board member shall refrain from further
24 involvement in the case and, during the Board's consideration of the case, disclose the
25 conflict on the record, and place in the records of the Board a memorandum which states
26 the facts leading to the member's disqualification from participation in the matter.

27
28 3. Any questions regarding conflicts of interest may be directed to the
29 Board's legal counsel.

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31 C. *Ex Parte* Communications Prohibited.

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33 1. An *ex parte* communication is generally defined as an oral or written
34 contact with a public official by a party or interested person regarding a matter pending
35 before the Board or a matter which may be reasonably foreseen to come before the
36 Board, without giving notice to other interested parties.

37
38 2. No *ex parte* communications will be permitted on any matter coming
39 before the Board.

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41 3. In the event of any *ex parte* communication to a Board member, the
42 substance of the communication and the identity of the person, group, or entity with
43 which the communication took place shall be disclosed and made a part of the record
44 before final action on the matter.

1 4. Nothing herein shall preclude any Board member from individually
2 visiting any site that is the subject of a proceeding.

3
4 5. Disclosures made pursuant to this paragraph must be made before or
5 during the public meeting or hearing at which action is taken on such matters, so that
6 persons who have opinions contrary to those expressed in the *ex parte* communication are
7 given a reasonable opportunity to refute or respond to the communication.

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10 D. Members Not to Vote Unless Present at Hearing.

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12 No Board member shall vote on any matter involving an application or appeal
13 unless the member attended the public hearing on the application or appeal and bases his
14 or her determination on the facts presented at the hearing. In the event of multiple public
15 hearings on an application or appeal, the Board member shall have attended all such
16 hearings or, if not at the public hearings, he/she has reviewed the materials presented to
17 the Board and a written transcript, video recording, or audio recording of the proceedings
18 he/she missed.

19
20 **ARTICLE 8**

21
22 **DELEGATION OF POWERS; FILING APPEALS AND APPLICATIONS;**
23 **TIME LIMITS FOR APPEALS; INFORMATION REQUIRED; EFFECTS**
24 **OF FAILURE TO PROVIDE REQUIRED INFORMATION;**

25
26 A. Powers of the Board; Limitations; Procedures Generally.

27
28 The Board shall have all only such powers as are delegated to it by the City and
29 County Commissions and shall exercise such powers only in the manner, for the
30 purposes, and in accordance with the procedures set forth herein.

31
32 B. Filing Appeals and Applications: Forms.

33
34 All appeals and applications shall be filed on forms approved by the Board. In
35 addition to information required to identify persons and property involved, date and time
36 of filing, and the like, such forms shall indicate the findings and determinations for which
37 information is required, and the nature of the information required to make such findings.

38
39 C. Time Limits on Appeals from Decisions of Administrative Officials.

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41 In the case of appeals from decisions of administrative officials, an appeal shall be
42 filed no later than thirty (30) days from the date of the written decision of such officials
43 and shall specify the alleged error or errors in such decision.

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45 D. Preliminary Determinations on Appeals and Applications Submitted for
46 Filing; Deficiencies in Information Supplied.

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2 All appeals and applications shall be examined by the appropriate City or Leon
3 County growth management staff for completeness and accuracy. If the information
4 submitted is not sufficient so as to allow the staff to appropriately review the appeal or
5 application, and the deficiency cannot be remedied immediately, the applicant or
6 appellant shall be notified of the nature and extent of such deficiency, and the documents
7 shall be retained as an intent to appeal or apply until such deficiency is remedied. No
8 docket number shall be assigned in such cases until required information has been
9 supplied.

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11 E. Continuances.

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13 Cases which have been continued shall be given priority over new cases except
14 where the Chair finds that circumstances of the continued case require a different order of
15 hearing. In such event the Chair shall assign such order in such a manner as to conclude
16 the continued case as soon as is reasonably possible.

17
18 **ARTICLE 9**

19
20 **MEETINGS, HEARINGS, GENERALLY**

21
22 A. Regular Meetings.

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24 Regular meetings of the Board shall be held at 1:00 p.m. on the second Thursday
25 of the month, unless cancelled as permitted by these bylaws, or at such other times as the
26 Board may from time to time decide.

27
28 B. Special Meetings.

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30 Special meetings may be held at the call of the Chair or by two members with the
31 concurrence of the Chair. Any applicant or Board member may request a special meeting.
32 Such requests shall be in writing, and set forth the justification or purpose of such special
33 meeting. The request shall be circulated by staff among all Board members and approved
34 by at least four (4) members in writing. Special meetings may be held concurrently with
35 any regularly scheduled meeting.

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37 C. Continuance or Adjournment.

38
39 Any regular or special meeting may be continued or adjourned from day to day,
40 or to the time of any previously announced regular or special meeting. Any continuance
41 or adjournment to a time and place certain shall not require additional public notice.

42
43 D. Cancellation.

1 If no business is scheduled before the Board or if it is apparent that a quorum will
2 not be available, the Chair may cancel any meeting by notifying all members before the
3 time set for such meetings.

4
5 E. Quorum.

6
7 A quorum of the Board shall consist of four (4) members. The Board shall not
8 pass on any question relating to an appeal from a decision of any administrative official
9 or upon any variance unless there are at least four (4) members present.

10
11 F. Public Meetings of the Board; Notice; Other Activities of the Board;
12 Schedule.

13
14 All meetings of the Board involving hearing of evidence or decisions of the Board
15 on appeals and applications shall be public, with formal notice as required by law.

16
17 G. Agenda; Order of Business.

18
19 Each Board administrator shall prepare an agenda for each Board meeting. The
20 order of business shall be substantially as follows:

- 21
22 1. Call to order and recording of members present and absent.
23
24 2. Continued hearings, with consideration and determination on cases as
25 heard.
26
27 3. New hearings, with consideration and determination on cases as heard.
28
29 4. Action on minutes of previous meetings.
30
31 5. Old business.
32
33 6. New business.
34
35 7. Adjournment.

36
37 H. Application of Robert's Rules of Order.

38
39 Except as otherwise specified by these Bylaws, parliamentary procedures of the
40 Board during meetings shall be in accord with Robert's Rules of Order.

1
2 **ARTICLE 10**

3
4 **QUASI-JUDICIAL PROCEEDINGS**

5
6 Unless waived by all parties, all hearing on variance requests shall be conducted
7 as quasi-judicial proceedings. Such waivers must be approved by the Board.
8

9 A. The City or County Growth Management Department Director, or his/her
10 designee, shall receive all variance applications to go before the Board, and examine the
11 material submitted therewith to assure completeness and that required maps, plans, or
12 reports to be submitted by an applicant or appellant are in good order and in sufficient
13 number for processing and recording. In the City, an application for a variance shall not
14 be determined complete until the Department has verified that the property that is the
15 subject of the variance application has been prominently posted pursuant to the policies
16 and procedures of the Growth Management Department.
17

18 B. Within 10 days after a variance application has been determined to be
19 complete, the City's Board Administrator shall provide notice by regular mail of the
20 pendency of the variance application to all owners of abutting property. The notices shall
21 provide notice of the pending application; and clearly delineate the right of any aggrieved
22 or adversely affected party to request a quasi-judicial hearing before the Board, the time
23 frames for requesting such a hearing, and how to obtain the written procedures for a
24 quasi-judicial proceeding. This notice may be combined with any other required mailed
25 notice so long as it is mailed within 10 days after a variance application has been
26 determined to be complete.
27

28 C. The hearing before the Board shall be conducted as provided herein in
29 Article 11.
30

31 D. Following the conclusion of the hearing, the Board shall render a written
32 preliminary decision to approve, approve with conditions, deny the application, or
33 continue consideration to a date and time certain, and shall so notify the applicant in
34 writing. The preliminary decision shall include a statement that any party may request a
35 quasi-judicial proceeding on the preliminary decision as provided in this section.
36

37 E. The preliminary decision of the Board shall become final 30 calendar days
38 after it is rendered unless a person who qualifies as a party, as defined in Section 1-2 of
39 the City's Land Development Code or Section 10-7.703 of the Leon County Land
40 Development Code pays the required fee and files a petition for quasi-judicial
41 proceedings in accordance with Section 2-131, et seq., Tallahassee Land Development
42 Code or Section 10-7.703 of the Leon County Land Development Code. The preliminary
43 decision shall include a statement that any party may request a quasi-judicial proceeding
44 on the preliminary decision as provided in the Code and these bylaws. Failure to pay the
45 filing fee, and/or to file the petition as required in the Tallahassee or Leon County Land

1 Development Code is jurisdictional and shall result in a waiver of the right to petition for
2 quasi-judicial proceedings.

3
4 F. Quasi-judicial proceedings on timely petitions for variance applications in
5 the City shall be conducted as provided in the City’s Land Development Code. Quasi-
6 judicial proceedings on timely petition for variance applications in Leon County shall be
7 conducted as provided in the Leon County Land Development Code.

8
9 G. Appeals from the final decisions on variance applications after quasi-
10 judicial proceedings shall be by petition for writ of certiorari filed in Leon County Circuit
11 Court within 30 days after the Board’s final decision is rendered.

12
13
14 **ARTICLE 11**

15
16 **PROCEDURES AT APPEAL AND VARIANCE HEARINGS**

17
18 In addition to procedures outlined in the City and County Land Development
19 Codes, the following procedures apply to appeal and variance hearings:

20
21 A. Any Person May Appear or Be Represented: Authorization or Representatives.

22
23 Any person may appear at a hearing, or be represented by authorized agents or
24 attorneys. Such agents or attorneys shall present competent evidence of the extent of their
25 authorization.

26
27 B. Witnesses to Testify Under Oath.

28
29 All witnesses to material facts shall testify under oath.

30
31 C. Evidence.

32
33 The Board shall not be bound by strict rules of evidence, nor limited to
34 consideration of such evidence as would be admissible in a court of law. The Board may
35 exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence.
36 The Chair shall rule on all questions relating to the admissibility of evidence, but may be
37 overruled by a majority of the Board members present.

38
39 D. Conduct During Hearings; Interrogations.

40
41 During the hearing, each side shall proceed without interruption by the other. All
42 arguments and pleadings shall be addressed to the Chair. There shall be no questioning or
43 argument between individuals in the audience or the parties.

44
45 The Chair or, upon recognition by the Chair, Board members, counsel to the
46 Board, or staff, or counsel for any party, may direct questions to the applicant, witnesses,

1 or any person speaking from the audience. The Board members may make comments
2 pertinent to the case.

3
4 E. Submittal of Written Materials.

5
6 If written materials intended to be evidence are presented to staff or to the Board
7 less than five working (5) days prior to the meeting, the Chair may reject the written
8 materials. In lieu of rejecting the materials, the Board may continue the item to a
9 subsequent meeting to allow time for review of the written materials.

10
11 F. Order for Presenting Evidence.

12
13 1. The Chair, or such persons as the chair may direct, shall describe the
14 nature of the case, and present evidence, including staff reports and recommendations
15 based on the applicant's or appellant's written application or appeal.

16
17 2. The applicant or appellant shall outline the nature of the request and
18 present supporting evidence and argument.

19
20 3. Board members shall examine witnesses supporting the application or
21 appeal.

22
23 4. Persons appearing in opposition to the application or appeal shall present
24 evidence and argument.

25
26 5. Board members shall examine witnesses opposed to the application or
27 appeal.

28
29 G. If all parties agree, any of the above procedures may be, with the Board's
30 approval, waived.

31
32
33 **ARTICLE 12**

34
35 **FINDINGS AND DECISIONS, INDIVIDUAL CASES OR CLASSES OR CASES**

36
37 A. Decisions and Evidence.

38
39 1. After conclusion of the hearing on the case the Board shall examine the
40 evidence presented and make its decision. The Board shall, in every case, reach a
41 decision without unreasonable or unnecessary delay. In no case may the Board fail to
42 render a decision on the application within ten (10) working days after the final hearing
43 thereon. Any continuance of a final hearing in which the applicant shall be allowed to
44 submit additional information to the Board shall be by public hearing and with notice to
45 the public as directed by the Board. The Board may waive the applicant's fee for the
46 costs of renotification.

1
2 2. Every decision of the Board shall become final as provided herein; subject
3 to the right of any party to request a quasi-judicial hearing. The Board’s decision shall be
4 in writing and shall indicate the vote. Every decision shall be promptly rendered in the
5 office of the appropriate growth management department, and shall be open to public
6 inspection. A copy shall be sent by mail or otherwise to the appellant or applicant.
7 Appeals of the Board’s final decision shall be by petition for writ of certiorari to the
8 Circuit Court, which must be filed within 30 days of the date the Board’s final order is
9 rendered.

10 B. Appeals from Decisions of an Administrative Official.

11
12 1. The Board may affirm or reverse, in part or in whole, a decision of an
13 administrative official. If at least four (4) members of the Board concur in a finding of
14 error in any decision, order, requirement, or determination of an administrative official
15 appealed from, the decision of the administrative official may be reversed. The Board
16 may specify the decision, order, requirement, or determination, which should have been
17 made, and the decision of the Board shall be binding upon the administrative official and
18 the appellant.
19

20
21 2. If the decision of the Board reverses or modifies a decision, order,
22 requirement or determination of an administrative official, the affected administrative
23 official shall immediately take action in accordance with such decision. A decision of the
24 Board to reverse or modify an order, requirement, decision or determination of an
25 administrative official shall specify in writing in what manner such modification is made,
26 the conditions upon which it is made, including but not limited to safeguards and the
27 factual basis for the decision.

28
29 C. Variances.

30
31 1. After hearing, the Board may vary the application of any provision of the
32 codes to any particular case when, based on the evidence submitted, as a result of special
33 or unique circumstances peculiar to the property, enforcement of the provision would
34 result in an unnecessary hardship to the applicant, and would be contrary to the spirit and
35 purpose of the applicable code or the public interest.
36

37 2. A “variance” is a relaxation of the terms of the code or regulation involved
38 where, as a result of special or unique circumstances peculiar to the property, and not the
39 result of the actions of the applicant, a literal enforcement of the code involved would
40 result in an unnecessary hardship, and such relaxation will not be contrary to the public
41 interest.
42

43 3. A variance may not be granted based solely on economic hardship or based
44 solely on a hardship, which is not peculiar to the property in question.
45

1 4. The establishment or expansion of a use that is otherwise prohibited shall not
2 be allowed by variance nor shall a variance be granted because of the presence of
3 nonconformities in the zoning district or adjoining districts.

4
5 5. A variance may only be authorized for height, area and size of structure, size
6 of yards or open spaces, or parking regulations.

7
8 6. Where a variance is granted, the record shall state in detail the nature of the
9 hardship found to exist by the Board, and shall also detail conditions and safeguards
10 imposed by the Board, if any, with reasons for such imposition. Where a variance is
11 denied, reasons for such denial shall be indicated in detail.

12
13 7. The Board may establish an expiration date for a variance.

14
15 8. In the City, any variance granted shall expire within one year from the date
16 the order is rendered, unless otherwise specified by the Board, unless a permit based upon
17 and incorporating the variance is issued within such period, and construction has begun
18 thereunder. In the County, unless the Board establishes an expiration date for a variance,
19 the variance shall expire within one year from the date of the grant unless a permit based
20 upon and incorporating the variance is issued within the one-year period and substantial
21 construction has begun thereunder. Failure to meet both permitting and construction
22 requirements within the time specified shall cause such variance to become void. As part
23 of such conditions relating to time limits, the Board may require a performance bond or
24 other surety be provided in an amount and form appropriate to the circumstances of the
25 case. Such bond or other surety may also be required to assure continued maintenance of
26 facilities required as conditions or safeguards.

27
28 D. Construction Appeals.

29
30 The owner of a building, structure or service system, or his duly authorized agent,
31 may appeal a decision of the Building Official to the Board if:

32
33 1. The Building Official rejected or refused to approve the mode or manner
34 of construction proposed to be followed or materials to be used in the installation or
35 alteration of a building, structure or service system,

36
37 2. The provisions of the Florida Standard Building Code do not apply to the
38 specific case,

39
40 3. An equally good or more desirable form of installation may be employed
41 in a specific case, or

42
43 4. The true intent and meaning of the Florida Standard Building Code or any
44 of the regulations thereunder have been misconstrued or incorrectly interpreted.

45
46 E. Construction Variances.

1
2 After a hearing as provided in the Land Development Codes and herein, the Board
3 may vary the application of any provision of the Florida Standard Building Code to any
4 particular case when, in its opinion, the enforcement thereof would do manifest injustice
5 and would be contrary to the spirit and purpose of this or the technical codes or public
6 interest, and also finds that:

7
8 1. Special conditions and circumstances exist which are peculiar to the
9 building, structure or service system involved and which are not applicable to others;

10
11 2. The special conditions and circumstances do not result from the action or
12 inaction of the applicant;

13
14 3. Granting the variance requested will not confer on the applicant any
15 special privilege that is denied by this Code to other buildings, structures or service
16 systems;

17
18 4. The variance granted is the minimum variance that will make possible the
19 reasonable use of the building, structure or service system; and

20
21 5. Granting the variance will be in harmony with the general intent and
22 purpose of this Code and will not be detrimental to the public health, safety and general
23 welfare.

24
25 F. Request to Amend Variance Application Prior to Scheduled Publication of
26 Notice.

27
28 An application for a variance may be amended not less than five (5) working days
29 prior to scheduled publication of public notice by delivery of such written amendment to
30 the administrator. If the amendment is timely received, the administrator shall not direct
31 that notice of the hearing on the application be published, nor place the case on the
32 hearing agenda, until the amendment has been received and processed by the appropriate
33 City or County staff.

34
35 G. Other Requests.

36
37 1. Other requests to amend applications shall be made in writing to the
38 administrator after publication of the variance request, prior to the hearing, or to the
39 Board at the hearing, and shall include the amendment and the nature and purpose of the
40 amendment. No amendment shall exceed the scope of the variance request, which has
41 been noticed and published.

42
43 2. If the request to amend is denied, with cause for such denial stated in the
44 motion, hearing and decision on the case shall proceed.

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ARTICLE 15

SEVERABILITY

If any section, subsection, sentence, clause or phrase of these Bylaws is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the Bylaws.

ARTICLE 16

EFFECTIVE DATE

These policies and procedures shall take effect immediately for Leon County upon adoption and approval by the Board. For the City of Tallahassee, these policies and procedures shall take effect immediately upon adoption and approval by the City Commission of the City of Tallahassee.

Approved by the Tallahassee-Leon County Board of Adjustment and Appeals on the 10th day of January, 2008.

Approved by the City of Tallahassee City Commission on the 23rd day of April, 2008.

Note: The Leon County Land Development Code authorizes adoption of Bylaws by the Board; approval by the Board of County Commissioners is not required.

TALLAHASSEE-LEON COUNTY
BOARD OF ADJUSTMENT AND APPEALS

CHAIR

Attest:

SECRETARY

CITY OF TALLAHASSEE

John Marks, Mayor

Attest:

City Treasurer-Clerk

Approved as to form and sufficiency:

BOARD ATTORNEY

Approved as to form:

City Attorney