## Section 8

## WAIVERS AND VARIANCES

This section contains information and applications related to filing a petition for a waiver or variance in conjunction with a site plan or development plan application. Refer also to the *Land Development Code*.

# City of Altamonte Springs Developer's Guide

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**FORMS AND CHECKLISTS**


1. Public Hearing Request for Variance or Waiver >15%.
2. Application for Variance or Waiver Request < or =15%.
3. Development Waiver Questionnaire.
4. Variance Questionnaire.
5. Seminole County Property Appraiser - Variance Ownership Request Form.

# SECTION 8. WAIVERS AND VARIANCES.

***For additional info on this subject, contact:***
***Growth Management/Development Services (407.571.8150 x8612)***

## 8.1 DEVELOPMENT WAIVERS.

**Defined**: As used in connection with the provisions dealing with land development, a waiver is a modification of the terms of the land development regulation where such waiver will not be contrary to the public interest and where, owing to the conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the regulation would not be necessary or where such waiver will allow for the construction of improvements in conformity with the intent of the land development regulations and consistent with the comprehensive plan, while providing improved design standards.

> **Example:** A waiver may be requested to eliminate 10% of the required parking, vary distances of access driveways from intersecting streets, reduce sidewalks, etc.

The Planning Board, or the Development Review Committee (DRC), with concurrence of the appropriate City department, has the ability to make decisions for new construction waiver requests of fifteen percent (15%) or less as part of the preliminary site plan review as a non-public hearing item. A public hearing is required before the Planning Board for new construction waivers greater than fifteen percent (15%) [Refer to LDC Article III, Section 3.4.12.], unless the specific code section involved vests a greater level of waiver authority with staff. The preliminary plan and combined preliminary/final plan application fees cover new construction waiver requests less than fifteen percent (15%) that are disclosed on the plans submitted for preliminary sufficiency review. Additional fees are collected for waiver requests which are not disclosed on the plans submitted for preliminary sufficiency review and/or waiver requests over fifteen percent (15%). The City prepares the notice to the newspaper. The applicant prepares the notice to surrounding property owners (within 300 feet) and posts notice on the subject property. Refer to the Variance/Waiver Table later in this section.

All development waivers should be identified and discussed at the pre-application meeting. A waiver application must be filled out and submitted with the preliminary site plan application. All waivers must be identified and noted on the preliminary and final site plans.

DRC will review the merits of the development waiver during the review cycle for the preliminary site plan. At the DRC meeting for the preliminary site plan with the customer, the DRC will provide preliminary comments on the waiver request.

If the waiver request is not identified and disclosed prior to the presentation of the preliminary site plan to the Planning Board, a separate public hearing before the Planning Board will be required. The separate public hearing requirement will add time and costs to the standard project approval process.

[Refer to LDC Article III, Section 3.4.4.1 and 3.4.12.]

## 8.2 VARIANCES.

**Defined:** As used in connection with the provisions dealing with zoning, a variance is a modification of the terms of the zoning ordinance where such variances 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 ordinance would result in unnecessary and undue hardship. As used in the *Land Development Code*, **zoning variances are authorized only for height, lot size and minimum dwelling setbacks, buffer yards, parking reduction of more than fifteen (15) percent, walls, fences, signs and residential lot coverage**. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or classification or adjoining zoning districts or classifications.

> **Example:** Reduction of a landscape buffer yard or a building setback requirement.

The Planning Board, or the Development Review Committee (DRC) with the concurrence of the Growth Management Director, has the ability to make decisions for new construction variance requests of fifteen percent (15%) or less as part of the preliminary site plan review as a non-public hearing item. A public hearing is required before the Planning Board for new construction variances greater than fifteen percent (15%). The City prepares the notice to the newspaper. The applicant prepares the notice to surrounding property owners (within 300 feet) and posts notice on the subject property. Refer to the Variance/Waiver Table that follow later in this section.

All variances should be identified and discussed at the pre-application meeting. A variance application must be filled out and submitted with the preliminary site plan application. All variances must be identified and noted on the preliminary and final site plans. The preliminary plan and combined preliminary/final plan application fees cover new construction variance requests less than fifteen percent (15%) that are disclosed on

the plans submitted for preliminary plan sufficiency review. Additional fees are collection for variance requests which are not disclosed on the plans submitted for preliminary sufficiency review and/or variance requests over fifteen percent (15%).

The DRC will review the merits of the variance during the review cycle for preliminary site plan review. At the development review meeting for the preliminary site plan with the customer, DRC members will provide preliminary comments on the variance request.

If the variance request is not identified and disclosed prior to the presentation of the preliminary site plan to the Planning Board, a separate public hearing before the Planning Board will be required. The separate public hearing requirement will add time and cost to the standard project approval process.

[Refer to LDC Article III, Section 3.4.4.1 and 3.4.3.5.]

| **Variance/Waiver Table** | | | |
|---|---|---|---|
| **Relief Sought** | **Type of Request** | **Reviewing Body** | **Public Hearing Requirement** |
| Height, lot size, minimum setbacks, buffer yards, reduction of parking of more than 15%, fences, residential lot coverage [Ref. Section 1.2.1, Definition of Variance] | Variance | DRC if < 15% | No |
| | | Planning Board if > or = 15% | Yes |
| | | BZA for requests > or = 15% for developed property | Yes |
| Any requirement not noted above or other wise specified in the Land Development Code. | Waiver | DRC if < 15% | No |
| | | Planning Board if > or =15%, unless code provision vests authority in staff | Yes |
| Signs | Variance | BZA for all requests | Yes, for all requests |
| 1. Planning Board approves Master Sign Plans; BZA approves sign variances.<br>2. Variances and waivers can be considered on the same Planning Board agenda with site plans where identified on plans and applications. | | | |

## 8.3 SEMINOLE COUNTY PROPERTY APPRAISER LIST.

The Seminole County Property Appraiser's Office provides the list of surrounding property owners within 300 feet for applications requiring public hearings. It takes ten (10) working days to complete a request for a list of adjacent property owners. Contact the Property Appraiser's Office directly at the following location for additional information:

Seminole County Property Appraiser Services
1101 East First Street, Sanford, Florida 32771

Tel: (407) 665-1130, ext. 7506
Fax: (407) 665-7924

In the Forms and Checklists portion of this section is the Property Appraiser's variance ownership request form, which is to be used to request your list.

## 8.4 PUBLIC HEARING INFORMATION.

**APPLICATION FEE.** Refer to the application fee schedule in Developer's Guide Section 4 or the Code of Ordinances Chapter 2, Section 2-106, for appropriate application fee. The application fee is non-refundable. For Planning Board/DRC applications, additional fees apply when a variance or waiver request is not submitted with the preliminary plan or when submitted with a site plan revision.

**WRITTEN PETITION.** All proposals shall be submitted to the City of Altamonte Springs Growth Management Department, and must be accompanied by the submission of all companion plans, plats, and documents.

**NEWSPAPER ADVERTISEMENT.** The City shall publish a Notice of Public Hearing for the request in *The Orlando Sentinel* at least fifteen (15) calendar days prior to the scheduled public hearing date.

**NOTICE POSTER ON SUBJECT PROPERTY.** The applicant shall post a "Notice of Public Hearing" poster on the subject property at least fifteen (15) days prior to the scheduled public hearing date. The City will prepare the Notice poster, which the applicant/owner may obtain from the Growth Management Department approximately twenty (20) calendar days prior to the hearing date.

**NOTICE TO SURROUNDING PROPERTY OWNERS.** The owner/applicant is responsible to send the Notice of Public Hearing for the request at least fifteen (15) calendar days in advance of the hearing, by Certified Mail, to all owners of property within three hundred (300) feet of the property lines of the land for which the modification is sought. The 300-foot requirement shall be measured from the boundaries of all of the petitioner's ownership, including the land not covered by the application. It is the responsibility of the applicant/owner to obtain the names and addresses of all affected property owners from those appearing on the latest tax rolls of Seminole County prior to submitting the variance/waiver application to the City. Currently, it takes approximately ten (10) business days to receive the tax roll printout from Seminole County. The list must be obtained from the County Property Appraiser's Office.

**PROOF OF NOTIFICATION.** Proof of Notification must be filed with the City at least seven (7) calendar days prior to the public hearing and must include the following:

a) The Certified Mail labels (the white tear-off form) postmarked by the Post Office.
b) The return receipt signature cards (green cards), or copies.
c) Any undeliverable Certified Mail returned from the Post Office.
d) A copy of any additional documents you may have included in the mailout to the property owners.
e) A list of any additional parties noticed who were not on the original mailing list.
f) An affidavit from the applicant/owner (form provided by the City) certifying that the notification of the property owners within 300 feet were properly mailed and the property was properly posted.

## 8.5 JUDICIAL REVIEW OF VARIANCE DECISIONS BY THE PLANNING BOARD.

Any person aggrieved by the decision of the Planning Board regarding a variance application may seek judicial review of such decision by filing a petition for writ of common law certiorari, in the form prescribed by the Florida Appellate Rules, in circuit court, within 30 days of the decision sought to be reviewed. The decision of the Planning Board shall be considered the final administrative action and shall be subject to review based upon the record established at the hearing before the board [Reference Land Development Code Section 3.4.2.3[b]).