

ORDINANCE 2023-27

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE COUNTY OF VOLUSIA, BY AMENDING CHAPTER 72, ARTICLE I, SECTION 72-2 DEFINITIONS BY ADDING A DEFINITION FOR ADMINISTRATIVE VARIANCE AND SECOND FRONT YARD; AMENDING CHAPTER 72, ARTICLE II, DIVISION 10, SECTION 72-379 VARIANCES BY AMENDING SUBSECTION 5 AND PROVIDING STANDARDS AND CRITERIA FOR ADMINISTRATIVE VARIANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AUTHORIZING INCLUSION IN CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 72-379 of the Code of Ordinances, County of Volusia, provides a process that allows the Planning and Land Development Regulation Commission (PLDRC) to grant variances from certain provisions of the zoning code at a duly noticed public hearing; and

WHEREAS, administrative adjustments can be made for minor encroachments to dimensional standards; and

WHEREAS, the PLDRC requested staff to explore options for allowing six-foot fences on corner lots, through lots, and unopened rights-of-ways without the need for a public hearing; and

WHEREAS, Volusia County determines that an administrative process for these two distinct situations is warranted, subject to determination based on clear and nondiscretionary criteria; and

WHEREAS, an administrative process will provide an expedited review and financial relief for property owners.

BE IT ORDAINED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AS FOLLOWS:

(Words in ~~strike-through~~ are deletions; words in double underscore type are additions.)

SECTION I. Chapter 72, Article I, Section 72-2 of the Code of Ordinances of the County of Volusia is hereby amended to add the following definition:

AASHTO: The American Association of State Highway and Transportation Officials.

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Administrative Variance. An administrative process to allow for a single minor deviation from dimensional standards applicable to single-family residential structures and their associated accessory structures.

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Second front yard. The front yard of a corner lot, through lot, or unopened, platted right-of-way that acts as a side or rear yard.

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SECTION II. Chapter 72, Article II, Section 72-379, Subsection 5 of the Code of Ordinances of the County of Volusia is hereby amended as follows:

Sec. 72-379. - Variances.

The commission may, except as otherwise provided in subsection (5) of this section, authorize, after due public notice upon application on a form prescribed by the zoning enforcement official, such variance or variances from the terms of articles II or IV as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provision of articles II or IV would result in unnecessary and undue hardship. Said variance application shall be heard only if it is presented by the person owning 51 percent or more of the specific area of land involved or upon an administrative application by the county council.

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(5) Administrative Variances determination. [Repealed.]

- A. Purpose and Intent. The administrative variance process applies to single-family parcels where the principal or accessory structures do not comply with the dimensional requirements and to the maximum fence height on corner lots, through lots, and unopened, platted rights-of-way. The administrative variance allows for the continued use or minor encroachment of an existing principal structure or its proposed or existing accessory structures with minimum deviation from specific dimensional standards subject to the restrictions in this subsection. The administrative variance shall be authorized in situations not to exceed ten (10) percent of the dimensional requirements of a residential zoning district. The purpose and intent of this subsection is to create a ministerial process to account for minor deviations without the need for a public hearing or advertising costs. Requested deviations that exceed the threshold or do not meet all the criteria outlined in this subsection will require a PLDRC public hearing.
- B. Applicability. Administrative variances shall apply only to:
1. Reduce the minimum yard requirement or exceed maximum lot coverage pursuant to Section 72-241 for existing single-family residences and their

existing or proposed accessory structures within zoning classifications where single-family dwelling units are allowed as a permitted principal use; or

2. Allow an increase up to two feet from the maximum fence height on corner lots, through lots, and unopened, platted rights-of-ways for single-family residences if the applicant can demonstrate that the second front yard is being used as a side or rear yard and there is no ingress/egress for the second front yard.
- C. Administrative variances shall not apply to waive, alter, or reduce any other provision of this Code. The Director of Planning and Development Services, or his/her designee, shall approve administrative variances subject to the determination that the application complies with the criteria in this section. The Planning and Development Services Director or designee has the sole discretion to require a public hearing by the PLDRC for any variance application. The approval of an administrative variance does not waive the requirements of a development permit, development order, or building permit required by this Code or by state or federal law.
- D. Administrative variances to dimensional requirements.

The following criteria must be met for approval of an administrative variance to the minimum yard requirement or exceeding maximum lot coverage in Section 72-241:

1. The lot must be in a zoning classification where single-family dwelling units are allowed as a permitted principal use.
2. An existing single-family residence must be located on the parcel.
3. Lot width must be equal to or greater than 50 feet in width.
4. Lot size must be equal to or greater than 5,000 square feet.
5. The reduction of a yard or increase above the maximum lot coverage cannot exceed 10 percent of the minimum required dimensional standard of the applicable zoning classification.
6. Any requests to reduce the minimum yard requirement to less than five feet must be heard by the PLDRC.
7. Administrative variances may not be granted to waterfront yards.
8. The administrative variance process cannot be used if there are impacts to wetlands, wetland buffers, or proposed deviations to any environmental regulations.
9. The administrative variance will only be applicable to one side of a principal or accessory structure. If more than one variance is requested, the request will be subject to a public hearing by the PLDRC.

E. Administrative variances to maximum fence height.

The following criteria must be met for approval of an administrative variance to allow the maximum fence height in a front yard pursuant to Section 72-282(2):

1. An existing single-family residence must be located on the parcel.
2. The variance is limited to an increase in the maximum fence height of fences by no more than two feet, up to a maximum of six feet, including gates and decorative features on fence posts.
3. The lot is a corner lot, through lot, or unopened, platted right-of-way.
4. The construction of the fence must not cause obstruction to visibility as outlined in Section 72-277(a)(8).
5. The applicant must demonstrate how the second front yard is being used as a side or rear yard. No ingress/egress will be allowed for the second front yard.
6. The fence in the second front yard must be reduced to a maximum of four feet in height where it meets the principal front yard in order to avoid line-of-sight concerns.

F. Application. An application for an administrative variance shall be submitted to the Planning and Development Services Division, together with all applicable fees. To be considered for review, the application must include the following:

1. Current survey of the property prepared by a registered land surveyor licensed to practice in the State of Florida. The survey shall accurately reflect the status of the parcel and shall have been completed within the past two years, or in lieu thereof, a notarized statement from a title insurance company or attorney that a survey more than two years old continues to accurately reflect the current boundaries of the parcel.
2. Legal description of the property.
3. A site plan with dimensions and of sufficient detail to illustrate the requested variance.
4. A written description of and justification for the variance request.

A preapplication meeting with a planner is required prior to submittal of an administrative variance application. Planning and Development Services shall review the application upon submittal. If the application is found to be lacking any of the requested information or if the data and exhibits are inaccurate, the application will not be considered "filed" for the purpose of processing. If the application is deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information, pursuant to Florida Statute 125.022(1). If the application is not completed by the 30 days, the application shall be considered abandoned, and no reimbursement of fees shall be due. If the application does not meet the criteria for an administrative variance, the application will be returned to the applicant to resubmit as a full variance application.

G. Expiration. Expiration of approved administrative variances shall be in accordance with section 72-379(4).

H. Administrative denial. If the Director of Planning and Development Services, or designee, determines that a request does not meet the requirements for an administrative variance, the applicant may apply for a variance through the PLDRC public hearing process pursuant to Section 72-379 of the Zoning Ordinance. The applicant will be responsible for the full variance application fee, due public notice, and advertising fees.

SECTION III. SEVERABILITY. Should any word, phrase, sentence, subsection or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection or section so held shall be severed from this ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

SECTION IV. CONFLICTING ORDINANCES. All ordinances, or part thereof, in conflict herewith are, to the extent of such conflict, repealed.

SECTION V. AUTHORIZING INCLUSION IN CODE. The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the County of Volusia, as additions or amendments thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

SECTION VI. EFFECTIVE DATE. This ordinance shall take effect upon electronic filing of a certified copy with the Department of State.

ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE COUNTY COUNCIL CHAMBERS AT THE THOMAS C. KELLY ADMINISTRATION CENTER, 123 WEST INDIANA AVENUE, DELAND, FLORIDA, THIS 1ST DAY OF AUGUST, 2023.

ATTEST:



George Recktenwald
County Manager

COUNTY COUNCIL
VOLUSIA COUNTY, FLORIDA



Jeffrey S. Brower
County Chair

