

ORDINANCE NO. 19-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA, AMENDING ARTICLE III, SECTION 3.1 (GENERAL PROVISIONS), SECTION 3.2 (LAND DEVELOPMENT REGULATION BOARD), AND REMOVING IN ITS ENTIRETY, ARTICLE III, SECTION 3.3 (BOARD OF ADJUSTMENT AND APPEALS), OF THE CITY'S LAND DEVELOPMENT REGULATIONS TO COMBINE BOTH BOARDS AND CREATE A PLANNING AND APPEALS BOARD; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council is empowered to establish, create, define, and eliminate Boards which would serve them in an advisory capacity concerning matters of land development, adjustments, appeals, code enforcement, or other general issues related to the operations and management of local government; and

WHEREAS, the Land Development Regulation Board, (LDRB), serves in an advisory capacity to the South Daytona City Council. It issues recommendations on land use, zoning, land development regulations, general community development policies and such other matters as may be delegated to it by the City Council; and

WHEREAS, the Adjustment and Appeals Board, hears and decides appeals when it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any provision of the Land Development Code; and

WHEREAS, these Boards serve similar functions and have similar memberships, in that each Board has seven member positions that serve for three-year terms and two alternates that serve for one-year terms. Reappointments may be made for both the members and alternates; and

WHEREAS, the Community Development Director, in an effort to improve efficiencies, reduces staff time and overall costs associated with supporting two Boards; has considered amending the Consolidated Land Development Regulations to combine the Land Development Regulation Board and the Adjustment and Appeals Board as one Board, designated as the Planning and Appeals Board, and makes other revisions to assist in the administration of the Board; and

WHEREAS, after due and proper consideration, the City Council finds that amending the Consolidated Land Development Code as herein provided is in the best interests of the residents of the city and is desirable for the welfare of the city's government and affairs.

WHEREAS, words which are underlined (underlined) in black, represent the existing language that has been reorganized for clarity and words that are (underlined) in red are additions to the text and words with strike through (~~strike through~~) the characters are deletions to the text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA:

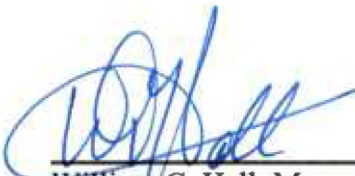
Section 1. The City Council of the City of South Daytona hereby approves the amendments to Article III, Section 3.1, 3.2 and 3.3 of the South Daytona Code of Ordinances, attached hereto marked as **Exhibit "A"**.

Section 2. That all ordinances made in conflict with this Ordinance are hereby repealed.

Section 3. That this Ordinance shall become effective immediately upon its adoption.

PASSED upon first reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the 28 day of may, 2019.

PASSED AND ADOPTED upon second and final reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the 11 day of June, 2019.



William C. Hall, Mayor

ATTEST:



James L. Gillis, Jr
City Manager

EXHIBIT "A"

Sec. 3.1. - General provisions.

These regulations set forth the administrative and enforcement requirements for the staff and the city boards which are delegated review and approval authority as well as the application and review procedures required for obtaining development orders and permits. Also specified are the procedures for appealing decisions, seeking legislative actions, and processing amendments to the Code.

- A. *South Daytona Advisory Boards.* The City Council of South Daytona is empowered to establish, create, define, and eliminate boards which would serve them in an advisory capacity and final decision making authority concerning matters of land development, adjustments, appeals, code enforcement, or other general issues related to the operations and management of local government. The following general provisions related to the normal functioning of any board shall apply. Each board shall adopt rules of procedure governing its meetings.
- B. *Applications.* The city council shall direct the city manager, or designee, to compile and make available to the public such documentation as may be applicable to the conduct, presentation, appearance, cost, and review of matters before the various boards.
- C. *Public hearings.* All meetings of the boards shall be advertised pursuant to the applicable city or state statutes, and shall be open and accessible to the public.

~~Proceedings shall be recorded stenographically or electronically, and shall be transcribed if required for review, or if ordered by the boards, but in all cases written minutes and the tape recording shall be maintained for public review and inspection and attached to the hearing files. Each board shall, where practicable, include in the hearing record each item of physical or documentary evidence presented and shall mark each item to show the identity of the person who presented it. Each exhibit received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, when it may be returned to the person identified thereon, or otherwise disposed of in accordance with Florida Law. The findings and order shall be included in the record.~~

The public hearing shall at a minimum:

1. Comply with requirements of state law.
2. Review the staff's analysis of the proposed decision.
3. Review the summary of reports by other agencies, as applicable.
4. Permit any person to submit written recommendations and comments before or during the hearing, and request the board to specify when and if responses to those comments will be made.
5. Permit reasonable opportunity for interested persons to make oral statements.

Each agenda promulgated by the city shall state: "If a person(s) decide(s) to appeal any decision made by any board of the City of South Daytona, with respect to any matter considered at the public meeting or hearing described in the notice of or undertaken at the public meeting or hearing so described or held, they will need a record of the proceedings, and for such purpose, said person or party may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based."

- D. *Notification.* The city shall notify all property owners whose property adjoins the subject property. This shall include all properties separated from the subject property by a road, canal, easement, right-of-way, or similar barrier. Such notice shall include the date, time and place the public hearing will be held, as well as a clear and concise description of the proposed action and the reasons it is being requested. Such notification shall be made by certified mail.
- E. *Posting of property.* The city shall cause every property subject to a public hearing to be posted with signs notifying the public of the type of action applied for, and the appropriate city department to

contact for further information. Signs shall be placed along all public roads frontages, with a minimum of one sign per 500 feet of frontage.

- F. *Notice of public meeting hearing.* No official action shall be taken by the planning and appeals board ~~land development regulation board or the board of adjustments and appeals~~ until after public notice of the meeting, and hearing. Notice of the public meeting hearing shall be published in a newspaper of general circulation within South Daytona at least ten days prior to the meeting hearing. Notice of the meeting hearing shall also be posted in the lobby of the City Hall ~~as well as in other places of common public assembly at the discretion of the city~~; such posting to be conspicuous and clearly written.
- G. *Application stays all work.* An application for which a hearing is to be scheduled or is pending before any board or the city council stays all work on such project for which the application is to be considered, unless permission is granted in writing by the community development director for circumstances or activities unrelated to the materials for which the application is submitted.

Sec. 3.2. – Planning and Appeals Board ~~Land development regulation board.~~

- A. *Establishment.* There is hereby created a Planning and Appeals Board (PAB) ~~land development regulation board, (LDRB)~~, which shall serve in an advisory capacity to the South Daytona City Council and shall make final determinations for certain issues. It shall issue recommendations on land use, zoning, land development regulations, general community development policies and such other matters as may be delegated to it by the city council. The PAB LDRB shall serve as the city's designated local planning agency as defined in F.S. chapter 163. The PAB shall make final determinations of appeals of orders of administrative officials in the enforcement of any provision of the Land Development Code, variances and Fair Housing Act accommodations requests.
- B. *Membership.* Any individual who has his or her homestead residence within the corporate limits of the City of South Daytona may be appointed to the PAB LDRB, except that one individual who does not own a residence in the city may be appointed as long as said individual meets the requirement of subsection 5. below. To assure a diverse membership on the PAB LDRB, the city council should, when reasonably possible, have a PAB LDRB with at least one member from each of the following areas:
1. An architect, landscape architect, engineer, or city planner.
 2. A person actively involved in community affairs and demonstrating an interest in advancing the quality of life in the city.
 3. A person engaged in real estate sales or development.
 4. A natural or environmental scientist.
 5. A person owning a retail or service business located within the city limits; or an officer in a company of such a nature.
- C. *Appointment and terms.* The PAB LDRB shall consist of seven members and two alternates appointed by the city council to serve at their pleasure and may be removed without cause. No city elected official or city employee shall serve on the PAB LDRB. Members shall be appointed for overlapping three-year terms or thereafter until their successors are appointed. Alternate members shall serve a term of one year. Any vacancy occurring during the unexpired term of office of any member shall be filled by the city council for the remainder of the term.

A member of the PAB LDRB shall immediately forfeit his appointment if (s)he:

1. Lacks at any time during his term of appointment, any qualifications of the appointment as prescribed by Charter or law; or
2. Violates any express prohibition of the Charter or law; or
3. Is convicted, pleads guilty or no contest of a felony, or misdemeanor involving moral turpitude; or

4. Has unexcused absences for two successive meetings; or three unexcused absences within a 12-month period; or requires more than three excused absences within a 12-month period.
- D. *Officers.* The PAB LDRB shall elect a chairman and vice-chairman from among its members. A recording secretary shall be provided by the city. The terms of all officers shall be for one year, each having eligibility for re-election or reappointment. The PAB LDRB shall adopt such other rules of procedure as necessary for the transaction of its business and shall keep a record of its resolutions, transactions, finding, determinations, and recommendations, which record shall be a public record available for review by any citizen upon request. Meetings of the PAB board shall be held as set out in the PAB LDRB's Rules of Procedure.
 - E. *Compensation.* Members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the city council or as otherwise provided by law.
 - F. *Appropriations, fees and other income.* The city council may appropriate such funds as it may see fit for fees and expenses necessary in the conduct of the work of the board. The city council by action taken at any regular or special meeting of the council and recorded in the minutes of the meeting, may establish, and from time to time amend, a schedule of fees to be charged by the board. The board shall have the authority to expend all sums so appropriated and other sums made available for its use from fees and other sources for the purposes and activities for which it is created.
 - G. *Counsel.* The city attorney shall be counsel to the PAB board and shall assist city staff in preparation of cases to be considered by the board, as necessary. In the absence of the city attorney, the city council may appoint another attorney to act in this capacity.
 - H. *Quorum and voting.* Four members present shall constitute a quorum for purposes of conducting a legal meeting. All members may vote, and a majority vote of those present constitutes passage of an item before the PAB board, unless otherwise prescribed by statute, Charter, or law.
 - I. *Powers and duties.* The PAB board shall serve in both an advisory capacity to the City Council and shall make final determinations on certain issues as set forth below: ~~shall review the following and make findings of fact and recommendations as necessary on matters which come before it to the city council. The board shall:~~
 1. PAB, in its advisory capacity, shall:
 - a. Review and make recommendations to the city council regarding comprehensive plan elements and land development regulations required by the Comprehensive Planning Act and provide for continuing planning required by the Act, Chapter 163, and related rules promulgated by the Florida Department of Community Affairs.
 - b. Exercise such planning functions as might be delegated from time-to-time by the city council.
 - c. Perform such duties and responsibilities as may, from time-to-time, be delegated to it by the city council.
 - d. Hear, decide, and make recommendations to the city council on requests for:
 - i. All rezoning, special uses, or special exceptions.
 - ii. All land use map and comprehensive plan amendments.
 - iii. Land development regulations or amendments thereto.
 - iv. Site plans and subdivision plats as herein prescribed.
 - e. Review and make recommendations on items presented to the LDRB by city staff.
 2. PAB, in its capacity as a final decision maker, shall have the final authority to decide the following:

- a. Appeal of administrative orders: To hear and decide appeals when it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any provision of the Land Development Code. Such an appeal shall be made within 30 days after the order, requirement, decision, or determination is issued. The appeal shall be in the form prescribed by the rules of the PAB.

The administrative decision that is appealed shall be presumed correct and the party appealing the decision has the burden of proof to establish by a preponderance of evidence that the decision is not supported by or is inconsistent with the law or facts.

In exercising its powers, the PAB may, upon appeal and in conformity with provisions of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination made by an administrative official in the enforcement of this Code, and may make any necessary order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is made.

An appeal stays all work. An appeal to the PAB stays all work on the premises unless the chief building official certifies that by reason of fact stated in the certificate a stay would cause imminent peril to life or property. In such case, proceedings or work shall not be stayed except as ordered by a court of competent jurisdiction, by a restraining order which may be granted by the city council or by a court of record on application

- b. Variances: To authorize upon appeal such variance from the terms of this Code as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of the Code would result in unnecessary and undue hardship.

In order to authorize any variance from the terms of this Code, the PAB must find that the following criteria are met:

- i. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;
- ii. That the special conditions and circumstances do not result from the actions of the applicant;
- iii. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Code to other lands, buildings, or structures in the same zoning district;
- iv. That literal interpretation of the provisions of the Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Code and would work unnecessary and undue hardship on the applicant;
- v. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
- vi. That the granting of the variance will be in harmony with the general intent and purpose of the Code and that such variance will not be injurious to the area involved or otherwise be detrimental to the public welfare.

In granting a variance, the PAB may prescribe appropriate conditions and safeguards in conformity with this article and any code enacted under its authority. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Code. The PAB may prescribe a reasonable time limit within which the action for which the variance is required shall begin or be completed or both. However, unless otherwise prescribed by the PAB, a variance for which construction has not commenced pursuant thereto within 365 days of

its issuance shall become void unless extended or re-approved by the PAB. Lapse of a variance by the passage of time shall not preclude subsequent application for variance.

Under no circumstances shall the PAB grant a variance to permit a use not generally or by special conditions permitted in the zoning district involved, or any use expressly or by implication prohibited by the terms of this Code in the zoning district. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district, and no permitted use of lands, structures, or buildings in the same zoning district, and no permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance.

c. *Evaluation of request for accommodation under the Fair Housing Act.*

i. A request may be made by the property owner or authorized representative for a request for an accommodation from the city's rules, policy, practices or service to allow a handicapped person or persons to have equal opportunity to use and enjoy a dwelling. The request shall be on an approved form issued by the city and must contain the following:

- (a) Proof of ownership of the property which the request is being made or authorization from the property owner.
- (b) Specifically identify the rules, policies, practices or services from which relief is being requested.
- (c) Identify the nature of the disability of the occupants of the dwelling.
- (d) Outline the minimum relief that is necessary to allow a handicapped person to use and enjoy the dwelling.
- (e) Describe in detail how the requested relief is necessary to allow a person with the above-identified disability to be able to reasonably use and enjoy the dwelling.
- (f) Access must be granted to the necessary city employees to inspect the dwelling.

ii. The PAB shall evaluate all necessary criteria, facts, rules, laws, etc., to make a determination as to whether the requested accommodation is reasonable, including but not limited to:

- (a) The policies and objectives of the city's comprehensive plan including the future land use designation of the property in question.
- (b) The permitted uses, conditional uses and special exceptions allowed for the zoning designation of the property in question.
- (c) The surrounding neighborhood, including zoning and future land use designations of the surrounding area.
- (d) The capacity of existing city utilities and infrastructures to accommodate the requested use.
- (e) Existing traffic patterns and traffic problems in the area that currently exist or may become a problem if the requested relief was granted.
- (f) Potential for noise, dust or other impacts to the neighborhood.
- (g) Ability of the existing dwelling to accommodate the requested variation, including bedrooms, bathrooms, outside parking and existing compliance with current building codes to determine the existence of any life and safety issues.
- (h) The existence of any current code violations.

- d. Review of final decisions of the. Any person affected by any final decision of the PAB, who wishes to appeal that decision may seek judicial review as provided by Florida Statutes. ~~Such appeal must be filed within 30 days from the date of action taken by the BOAA.~~

- J. *Application procedure.* The director of the department of community development (CDD) is hereby designated as the official responsible for administering, enforcing and processing applications required under this part. In all respects, the procedures outlined herein are supplemental to state law requirements.

The city council or any person, board, or agency of the city may apply to the city to amend this Code, or comprehensive plan, or to submit application for development orders for rezonings, ~~site plans~~, special exceptions, special uses, subdivision plats, concurrency determinations, etc., as defined herein.

All applications for ~~site plans~~ and subdivision plats which require PAB ~~LDRB~~ approval shall be first reviewed by the development review committee (DRC) as defined in section 3.4(C). Upon recommendation of the DRC, the CDD shall schedule a public hearing before the board on each application. The PAB board shall thereafter submit to the city council, through the CDD, a written recommendation which:

1. For changes to codes, zoning regulations and the future land use map or the comprehensive plan:
 - a. Identifies any provisions of the Code, Comprehensive Plan or other law relating to the proposed change and describes how the proposal relates to them.
 - b. States factual and policy considerations pertaining to the recommendation.
 - c. Includes the written comments, if any, received from the DRC.
2. For rezonings, special uses, special exceptions, and ~~site plans~~ or subdivision plats:
 - a. Statements of the applicable criteria and standards against which the proposal was tested.
 - b. Findings of fact which established compliance or noncompliance with applicable criteria and standards of this Code.
 - c. Reasons for conclusions to approve, conditionally approve or deny.

- K. *Criteria for review.* The PAB ~~LDRB~~ and city council, in their deliberations on matters of land development orders, shall make findings of fact based upon the following criteria:

1. That the use(s) of property is (are) consistent with the land development regulations and comprehensive plan.
2. That the use(s) is (are) compatible with the adjacent existing or planned uses.
3. That the use provides adequate ingress/egress, parking, open space, and other amenities for the benefit of the users.
4. That the use does not impair rights of other properties to light, air, sunlight, or other natural phenomena.
5. That the project meets or exceeds tests for concurrency management.

The PAB ~~LDRB~~ and city council shall each make verbal and written findings based upon the above criteria, which shall be made a part of the written proceedings from each public hearing or meeting where the development issue was recommended or approved.

- L. *Actions on applications.* Public hearings shall be noticed and conducted as referenced in section 3.1.

1. Advisory action by the PAB ~~land development regulation board~~. The PAB ~~LDRB~~ shall consider and make recommendation to the city council concerning each matter under its purview, and

may approve, approve with conditions (if applicable) or deny the request during hearings open to the public.

2. *Action by city council.* ~~Before taking such action as it may deem advisable,~~ Upon receipt of the PAB's LDRB's written recommendations, the city council shall, at a duly advertised meeting, approve, approve with conditions (as applicable), or disapprove the recommendations of the PAB LDRB. Before taking such action as it may deem advisable, the city council shall consider the PAB's LDRB's recommendations on each proposed action. If no recommendation is received from the PAB LDRB within 45 days after its first **final** public hearing, the proposed amendment shall be deemed to have been approved by the PAB LDRB. In the event of denial of any zoning change by the city council, subsequent application may not be made for similar zoning on the same parcel of property for a period of one year from the date of the denial by the city council, unless specifically authorized by that body.
3. *Final action by by PAB.* The PAB shall take testimony and review all documentation presented during the hearing and shall consider such evidence and render a final decision based on the criteria outlined herein.