

ORDINANCE
2008-01

AN ORDINANCE AMENDING CHAPTERS EIGHT, NINE, AND THIRTEEN OF THE WALTON COUNTY LAND DEVELOPMENT CODE; DESIGNATING THE ZONING BOARD OF ADJUSTMENTS TO HEAR APPEALS FROM THE DENIAL OF A DEVIATION FROM THE SCENIC CORRIDOR REQUIREMENTS; PROVIDING CRITERIA FOR VARIANCES FROM THE SCENIC CORRIDOR PROVISIONS; PROVIDING FOR CONFLICT, PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida has, in Chapter 125, F.S., delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizens; and

WHEREAS, Sections 163.3201 and 163.3202, Florida Statutes, require local governments to implement the provisions of their comprehensive plans through the adoption of land development regulations; and

WHEREAS, Walton County has adopted a Land Development Code in accordance with these statutes to ensure the County's orderly growth and development; and

WHEREAS, Walton County, to ensure the County's continued orderly growth and development, finds it prudent to amend its Land Development Code to respond to the changing needs and conditions within said county;

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF WALTON COUNTY that Walton County Land Development Code be amended, as follows:

Section 1. Section 8.02.00 "Variances" is hereby amended as follows:

8.02.01. Generally.

- A. *Purpose.* The purpose of this Section is to empower the Zoning Board of Adjustment to vary or adapt the strict application of any of the requirements of this Code in any district. A variance may be appropriate where, by reason of exceptional narrowness, shallowness, or shape or by reason of other exceptional topographic conditions or other extraordinary and exceptional situations or conditions on a piece of property, the strict application of any regulation enacted under this Code would result in peculiar, exceptional, and undue hardship on the owner of such property. Where the requested deviation is from a provision of the scenic corridor guidelines set forth in Chapter 13, the Design Review Board shall make the initial determination whether a

deviation should or should not be granted, based on the findings required in §13.02.01(G). If the Design Review Board determines that the deviation should not be granted, the applicant may appeal that determination to the Board of Adjustments. The Board of Adjustments shall make a determination, based on the evidence presented to the Design Review Board, whether the applicant provided competent, substantial evidence that they met the criteria for a deviation from the scenic corridor provisions.

- B. *Variances to be Considered as Part of Development Review.* Any person desiring to undertake a development activity not in conformance with this code may apply for a variance in accordance with the Section 8.02.02. A development activity that might otherwise be approved by the Director must be approved by the Board of Adjustment if a variance is sought. The variance shall be granted or denied in conjunction with, but prior to, any action to be taken on the application for development review.

8.02.02. Standards and Procedures.

- A. *Petition.* The applicant for a variance must submit a written petition to the Board of Adjustment demonstrating that the application conforms to the required findings in Sections (C) and (D) below.
- B. *Public Hearing.* The Board of Adjustment shall hold a public hearing on the application for the variance. Notice of the public hearing shall be given in accordance with Section 10.03.02.
- C. *Initial Determination.* The Board of Adjustment shall first determine whether the need for the proposed variance arises out of the physical surroundings, shape, topographical condition, or other physical or environmental conditions that are unique to the specific property involved. If so, the Board shall make the following required findings based on the granting of the variance for that site alone. If, however, the condition is common to numerous sites so that requests for similar variances are likely to be received, the Board shall make the required findings based on the cumulative effect of granting the variance to all who may apply.
- D. *Required Findings.* The Board of Adjustment shall not vary the requirements of any provision of this Code unless it makes a positive finding, based on substantial competent evidence, on each of the following:
1. The granting of the variance shall be in harmony with the general purpose and intent of the regulations imposed by this Code or the land use district in which it is located and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 2. The granting of the variance will not permit the establishment of any use that is not permitted in the land use district.
 3. There must be proof of unique circumstances: there must exist special circumstances or conditions, fully described in the findings, applicable to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or

buildings in the district, and which circumstances or conditions are such that the strict application of the provisions of this Code would deprive the applicant of the reasonable use of such land or building.

4. There must be proof of unnecessary hardship. It is not sufficient proof of unnecessary hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship cannot be self-created; nor can it be established on this basis by one who purchases with or without knowledge of the restrictions; it must result from the application of this code; it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered.
5. That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the board is the minimum variance that will accomplish that purpose.
6. That the proposed variation will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger public safety, or substantially diminish or impair property values within the adjacent neighborhood.
7. That the granting of the variance requested will not confer on the applicant any special privilege that is denied by this Code to other lands, structures, or buildings in the same district.

E. *Imposition of Conditions.* In granting a development approval involving a variance, the Board of Adjustment may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to allow a positive finding to be made on any of the foregoing factors, or to minimize the injurious effect of the variance.

F. *Documentation by Resolution.* Action taken by the Board of Adjustment to grant a variance or to grant a variance with conditions or safeguards shall be documented in the form of a resolution containing a legal description of the real property to which the variance applies, together with the terms of the variance and any additional conditions or safeguards to be imposed.

G. *Historic Properties.* Notwithstanding the foregoing requirements, special variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on, or classified as contributing to a district or site listed on, the National Register of Historic Places or the Florida Master Site File. The special variance shall be the minimum necessary to protect the historic character and design of the structure. No special variance shall be granted if the proposed construction, rehabilitation, or restoration will cause the structure to lose its historical integrity as determined by conformance with the U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.
(Ord. No. 2003-12, § 3, 8-5-03)

Section 2. Section 9.06.00 “Design Review Board” is hereby amended as follows:

9.06.01. Establishment.

There is hereby established a Design Review Board of Walton County.
(Ord. No. 00-9, § 2, 3-28-00)

9.06.02. Membership.

Generally. The Design Review Board shall consist of seven members, appointed by the Commissioners of Walton County for overlapping terms of three years. Not more than the term of three such members shall expire in any one year. A member whose term expires may continue to serve until a successor is appointed and qualifies. Members shall serve at the pleasure of the Board of County Commissioners and shall relinquish their seat upon notice of replacement. All members of the board shall be residents of Walton County. No member shall be a paid or elected official or employee of the County.

Membership Categories. Two members of the Design Review Board shall be design professionals, three members shall be affected property owners within the corridor, one member shall be a real estate or development professional and one member shall be a general citizen of south Walton County. The design professionals shall include architects, engineers, planners and landscape architects. The Chairperson of the Planning Commission or a designee shall be an ex officio member of the Design Review Board.

Vacancies. Any vacancy in membership shall be filled by the commissioners for the remainder of the unexpired term in the same manner as the initial appointment is made. Such vacancy shall be filled within 30 days after the vacancy occurs.
(Ord. No. 00-9, § 2, 3-28-00)

9.06.03. Organization.

The Design Review Board shall elect a chairperson and a vice-chairperson from among its members. Support staff, including a designated secretary for the Board, shall be furnished by the County through its administrative supervisor. The Board may create and fill such other offices as it may determine to be necessary for the proper conduct of its duties. Terms of all such offices of the Board shall be for one year, with eligibility for reelection.
(Ord. No. 00-9, § 2, 3-28-00)

9.06.04. Technical Assistance and Advisors.

The Director of the Department of Planning and Zoning and a designated Scenic Corridor Review Specialist shall serve as advisors to the Board. In addition, the Board shall be authorized to call upon any branch of the County government at any time for information and advice which in the opinion of the Board will ensure efficiency of its work.
(Ord. No. 00-9, § 2, 3-28-00)

9.06.05. Powers and Duties.

The Design Review Board shall consider all development applications for design review as required by the Land Development Code, Chapter XIII. This duty shall include, but is not

limited to, the review of all design review applications as recommended by the Planning Director and Scenic Corridor Review Specialist.

In addition, the Design Review Board shall ~~To~~ consider and act upon applications for ~~variances~~ ~~deviations~~ from the requirements of the scenic corridor standards in Chapter XIII. The determination of whether a deviation should be granted shall be based upon the criteria established by ~13.02.01(G). If the Design Review Board determines that the requested deviation does not meet one or more of these conditions and denies the requested deviation, the applicant may appeal that determination to the Board of Adjustments.

~~and to review and grant approval for alternative building technologies and/or new building materials.~~

The Design Review Board shall also review and grant approval for alternative building technologies and/or new building materials, and shall periodically review the design review process and make recommendations to the County Commission regarding appropriate amendments that may be necessary to further the design review program and/or improve the efficiency of the program.

Rules of Procedure, Meetings and Records. The Board shall make its own rules of procedure and determine its schedule of, and dates and times for, regular meetings, provided that its rules of procedure and schedule of meetings shall be in accordance with applicable law and shall be provided to the Board of County Commissioners. Special meetings of the Board may be called at such times as the majority of the membership shall determine, at the call of the chairperson of the Board, or upon the request of the Board of County Commissioners or its designee for consideration of business before the Design Review Board. All meetings of the Board shall be open to the public. A written record of the proceedings of the Board shall be kept showing its actions on each question considered, and shall be filed in the office of the secretary of the Board. All records of the Board shall be public records. Any matter referred to the Board shall be acted upon by the Board within 45 days of the date of referral, unless a longer or shorter period is specified in the referral itself.

(Ord. No. 00-9, § 2, 3-28-00)

9.06.06. Vote Required.

The concurring vote of at least four members of the Board shall be necessary to approve any application or action brought before the Board or motion initiated by the Board. A quorum shall require four members to be present, one of which must be a design professional. ~~The decision of the Board on a Variance Application shall constitute final action of the County government, and may thereafter be appealed to the Circuit Court in accordance with Florida law.~~ Any decision or determination of the Board which is contested by an applicant with regard to application or interpretation of the standards shall be referred to the Board of Adjustment for appeal hearing. Since a Scenic Corridor application fee has been paid by the applicant for review of the project, the appeal fee normally charged for hearing by the Board of Adjustment shall be waived.

(Ord. No. 00-9, § 2, 3-28-00)

9.06.07. Legal Counsel.

Revised draft for 1.8-08 BCC public hearing, with changes suggested by the Scenic Corridor Association

The Commissioners of Walton County may appoint the County Attorney, or another attorney of their choice, to serve as counsel for the Board.

(Ord. No. 00-9, § 2, 3-28-00)

Section 3. Section 13.02.01(G) is hereby amended as follows:

G. ~~*Variances.* Request for variance from these standards shall be heard by the Design Review Board and shall be governed by the provisions of Section 8.02.02 of this Code.~~ *Deviations.* The Design Review Board may permit a deviation from the scenic corridor standards provided the following terms and conditions are met:

- a. The applicant submits the deviation request in writing explaining the deviation and the specific reason why it is being requested; and
- b. The requested deviation:
 - (i) is the minimum necessary to achieve the applicant's desired result with the proposed project otherwise meeting all other requirements of Chapter 13 of the Walton County Land Development Code;
 - (ii) does not undermine the visual appearance, continuity, and character of the scenic corridor;
 - (iii) contributes to the enjoyment and enrichment of the citizens and visitors of Walton County;
 - (iv) protects and promotes economic values of the affected properties;
 - (v) exhibits harmonious relationships with the structure itself, and the scenic corridor as a whole, by using the principles of skillful design; and
 - (vi) otherwise results in a high quality of development that achieves the intent and purpose of Chapter 13 of the Walton County Land Development Code.
- c. In addition, the Design Review Board may require that any or all of the following techniques be used to wholly or partially mitigate adverse impacts to the scenic corridor from the proposed deviation:
 - (i) variable buffers, combining land and landscaping;
 - (ii) variable setbacks;
 - (iii) placement and effective screening or shielding of site features; or
 - (iv) other innovative site design features that effectively mitigate potential negative impacts.

Because each deviation will reflect the unique circumstances of an individual site and an individual proposed development, a deviation granted to an applicant in one case shall not be construed as establishing precedent for other such requests. Requests for deviations shall be considered on a case-by-case basis.

Section 4. Conflict.

All ordinances or parts of ordinances that are not consistent or that conflict with the provisions of this ordinance are hereby repealed; provided that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Revised draft for 1-8-08 BCC public hearing, with changes suggested by the Scenic Corridor Association

Section 5. Severability.

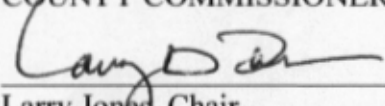
Should any word, phrase, sentence, or section of this ordinance be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional then such shall be severed from this ordinance and the remainder of the ordinance shall remain in full force and effect.

Section 6. Effective Date.

This ordinance shall take effect as provided by law.

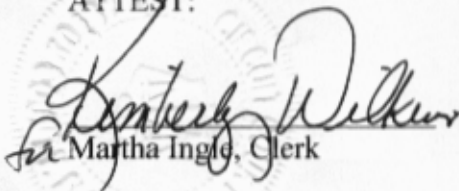
ADOPTED in an advertised public hearing of the Board of County
Commissioners this 8th day of January, 2007

WALTON COUNTY BOARD OF
COUNTY COMMISSIONERS



Larry Jones, Chair

ATTEST:


for Martha Ingle, Clerk