

# CITY OF DELRAY BEACH



1993  
2001

100 N.W. 1st AVENUE • DELRAY BEACH, FLORIDA 33444 • 561/243-7000

## INSTRUCTIONS FOR BOARD OF ADJUSTMENT REQUEST

1. Legal survey of the property (not more than 2 years old)
2. Plot plan of proposed changes. All drawings shall be made to scale and are subject to the approval of the Chief Building Official or his designated staff.
3. Letter of justification addressed to the Board of Adjustment which should include information pertaining to a hardship concerning the property.
4. The application fee is \$500. Check should be made payable to the City of Delray Beach. This fee includes the cost to mail out a public notice regarding the request for a variance. *(The filing with the Appeal or the submission at the public hearing of photographs, surveys, or other drawings is favored.)*
5. Provide a list of property owners within a 500' radius of the subject taken from the latest official County tax roll. In addition, a tax map showing all property lying within 500' of the subject property must be provided. **NOTE:** The applicant shall provide standard white (number 10) pre-addressed envelopes with the required postage for mailed notices. The mailing labels must be typed and shall state the property owner's name, mailing address and property control number (PCN#). Please note:

The list of property owners, tax map and mailing labels can be obtained at: Palm Beach County Mapping Dept, 501 S. Congress Ave, Delray Beach, FL 33445 Ph: (561)276-1250.

6. The Board of Adjustment meets when necessary on the first and third Thursdays of the month at 5:30 pm in the Commission Chambers at City Hall.
7. *Applications must be received 21 days prior to the meeting date since our code requires all public notices be mailed 10 days prior to the hearing.*
8. Contact Person: Donna Quinlan, Community Improvement - 561/243-7203. Please call if you have any questions regarding the attached application or procedure.

Revised 10/2007

**BOARD OF ADJUSTMENT  
CITY OF DELRAY BEACH, FLORIDA**

**PETITION # \_\_\_\_\_**

The undersigned petitions the Board of Adjustment of the City of Delray Beach, Florida to consider the granting of a variance for the parcel(s) of land described in this application.

NAME OF APPLICANT: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

ADDRESS OF APPLICANT: \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_  
\_\_\_\_\_

PROPERTY INTEREST OF APPLICANT: \_\_\_\_\_

NAME AND ADDRESS OF PROPERTY OWNER: \_\_\_\_\_

SUBJECT PROPERTY:

ADDRESS: \_\_\_\_\_

LEGAL DESCRIPTION: \_\_\_\_\_

FOLIO # \_\_\_\_\_

PRESENT ZONING: \_\_\_\_\_ LOT SIZE/AREA: \_\_\_\_\_

PRESENT USE OF PROPERTY: \_\_\_\_\_

PROPOSED USE OF PROPERTY: \_\_\_\_\_

DESCRIPTION OF VARIANCE(S): (LIST THE LAND DEVELOPMENT OR CODE OF ORDINANCE SECTION YOU WOULD LIKE THE VARIANCE FROM AND WHAT IS PROPOSED - PLEASE CONTACT THE COMMUNITY IMPROVEMENT DEPARTMENT IF YOU HAVE ANY QUESTIONS:

LIST THE NAME(S), ADDRESS(ES) AND PHONE NUMBER(S) OF ANY CONSULTANT(S), IF ANY (i.e. - ARCHITECT, ENGINEER, ATTORNEY, ETC.) WHO MAY SPEAK ON YOUR BEHALF AT THE BOARD MEETING:

**PLEASE COMPLETE THIS PORTION OF THE APPLICATION CAREFULLY. EACH REQUEST FOR A VARIANCE MUST STAND ON ITS OWN MERITS WITHOUT REGARD TO ANY OTHER PROPERTY.**

The following questions pertain to the criteria upon which the Board of Adjustment will consider this application.

1. Describe which 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:

\_\_\_\_\_  
\_\_\_\_\_

2. Describe which literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning:

\_\_\_\_\_  
\_\_\_\_\_

3. Explain how special conditions and circumstances have not resulted from actions of the applicant:

\_\_\_\_\_  
\_\_\_\_\_

4. Explain how granting the variance will not confer onto the applicant any special privilege that is denied to other lands, structures, and buildings under the same zoning. Neither the permitted, nor nonconforming use, of neighborhood lands, structures, or buildings under the same zoning shall be considered grounds for the issuance of a variance.

\_\_\_\_\_  
\_\_\_\_\_

5. Describe how the reasons set forth in the variance petition justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure:

\_\_\_\_\_  
\_\_\_\_\_

6. Explain how the granting of the variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare:

\_\_\_\_\_  
\_\_\_\_\_

7. Please add any other comments which may assist the Board of Adjustment in reviewing this request:

\_\_\_\_\_  
\_\_\_\_\_

**Please attach 10 copies of property survey, site plan, or other documents with this application and \$500.**

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This is to certify that I am the owner of the subject land(s) described above in the petition for variance. *(Complete only if applicable)* I have *also* authorized \_\_\_\_\_ to make and file this application for variance. If my appeal is denied, I understand that I may appeal, within 30 days, to the Circuit Court of Palm Beach County.

\_\_\_\_\_  
Signature of Petitioner  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Signature of Property Owner  
Print Name: \_\_\_\_\_

**STATE OF** \_\_\_\_\_  
**COUNTY OF** \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ (name of person acknowledging).

\_\_\_\_\_  
Signature of Notary Public - State of Florida

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced: \_\_\_\_\_

**Section 2.4.7 Procedures for Obtaining Relief From Compliance With Portions of the Land Development Regulations:**

(A) **Variances:** A variance is a relaxation of the terms of these land development regulations where such variance 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 landowner, a literal enforcement of the regulations would result in unnecessary and undue hardship.

(1) **Rule:** A variance shall be granted only by the Board of Adjustment, or the Historic Preservation Board, and only for relief from regulations established in Section 2.2.4(D), Powers of the Board of Adjustment.

(2) **Required Information:** The following information including the appropriate processing fee must be provided for consideration of a variance:

- \* Standard Application Items pursuant to 2:4.3(A);
- \* A petition setting forth the requirements, with reference to code section, for which the variance is sought along with the basis for the associated hardship (a standard form petition as issued by the Chief Building Official shall be used).

(3) **Process:** A request for a variance shall be processed in the following manner:

- \* Receipt and certification as complete;
- \* Consideration at a public hearing before the Board of Adjustment;
- \* The action of the Board of Adjustment is final.

(4) **Conditions:** The Board may prescribe appropriate conditions and safeguards, in conformity with existing regulations, to provide mitigation of any adverse impacts associated with a required finding. Violations of such conditions or safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of existing ordinances and punishable under Section 1.4.4.

(5) **Findings:** The Board of Adjustment must make the following findings prior to approval of a variance:

- (a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings subject to the same

## SECTION 2.4.7 (A) (5) (a)

zoning (The matter of economic hardship shall not constitute a basis for the granting of a variance);

- (b) That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning;
- (c) That the special conditions and circumstances have not resulted from actions of the applicant;
- (d) That granting the variance will not confer onto the applicant any special privilege that is denied to other lands, structures, and buildings under the same zoning. Neither the permitted, nor nonconforming use, of neighborhood lands, structures, or buildings under the same zoning shall be considered grounds for the issuance of a variance;
- (e) That the reasons set forth in the variance petition justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; and,
- (f) That the granting of the variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

(B) **Waivers:** A waiver involves the granting of partial or total relief from a specific development regulation.

(1) **Rule:**

- (a) **General:** A waiver may be granted to the procedural and substantive provisions of these regulations. A waiver may be granted only for those substantive items within these regulations for which such provision is made. A waiver to substantive provisions may be granted only by the Board or body which has the authority to approve or deny the related development application.
- (b) **Special Power to the City Commission:** Notwithstanding, the City Commission may grant a waiver to any provision of these regulations when there is no other avenue for relief available in these regulations. However, waivers shall not be considered with respect to:
  - (i) Matters which pertain to the use of land or structures;

## SECTION 2.4.7 (B) (1) (b) (ii)

- (ii) A requirement for a public hearing or providing notice that an item will be considered by a development board;
- (iii) A regulation for which it is stated that there shall be no waiver and/or variance provided.

(2) **Required Information:** The following information including the appropriate processing fee must be provided in order for a waiver to be considered: [Amd. Ord. 50-97 11/18/97]

- \* A formal letter of request within which the regulation which is to be waived, with reference to section number, is described along with justification for granting the waiver.

(3) **Procedure:** A request for waiver may be considered concurrently with the development application with which it is associated. If a waiver request is made after review by an advisory body has been completed, the waiver request must first be reviewed by that body prior to action by the approving body.

(4) **Conditions:** Conditions may be imposed upon the granting of a waiver to the extent that they are directly related to mitigating any adverse effect which may be created by the waiver of a specific development regulation.

(5) **Findings:** Prior to granting a waiver, the granting body shall make findings that the granting of the waiver:

- (a) Shall not adversely affect the neighboring area;
- (b) Shall not significantly diminish the provision of public facilities;
- (c) Shall not create an unsafe situation; and,
- (d) Does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

(C) **Internal Adjustments:** An adjustment involves the lessening, or a total waiver, of those development standards which affect the spatial relationship among improvements on the land.

(1) **Rule:** An adjustment shall only be considered during the site and development plan review process and shall be only for requirements which do not pertain to, or affect, standards that apply to the perimeter of an overall development proposal (plan). An adjustment may be granted by the body or board which is empowered to approve or deny the site and development plan.

**RULES OF THE CITY OF DELRAY BEACH**  
**BOARD OF ADJUSTMENT**

**ARTICLE I: GENERAL GOVERNING RULES:**

The Board of Adjustment (hereinafter referred to as the Board) shall be governed by Sections 2.2.1 and 2.2.4 of Article 2.2 and Section 2.4.7 of Article 2.4 of the Land Development Regulations of the City of Delray Beach, as amended, and the Rules of Procedure set forth herein, as adopted by the Board and approved by the City Commission.

**ARTICLE II: OFFICERS, COMMITTEES:**

1. The Board shall elect a Chairperson, Vice Chairperson and Second Vice Chairperson annually in the month of September.
2. The Chairperson (or in his absence the Vice Chairperson) shall preside at all meetings and hearings of the Board, decide all points of order and procedure and sign any orders or other official correspondence of the Board. The Chairperson shall appoint any committees which may be found necessary.
3. The Second Vice Chairperson shall act as Chairperson when the Chairperson and Vice-Chairperson are both absent.
4. A recording secretary (who need not be a member of the Board) shall be designated by the Board. The recording secretary shall take and transcribe the minutes of each meeting of the Board and carry out such other duties as may be assigned by the Board, including but not limited to, preparing all correspondence and records of examinations and hearings and other official actions of the Board; keep a minute book recording attendance, the vote of each member upon each question, or if absent or failing to vote, indicating such fact.

### ARTICLE III:

1. The Board shall meet every first and third Thursday of each month at 5:30 p.m., unless there is no cause to hold such a meeting or it falls on a holiday as designated by the City of Delray Beach. The Recording Secretary of the Board shall notify each Board member not less than one (1) day prior to any regularly scheduled meeting of any meeting. If the Clerk's office cannot reach a member or obtain confirmation and attendance by noon the day preceding the meeting, the Secretary shall call on an alternate, who shall participate in the meeting in place of a designated regular member.

2. **SPECIAL MEETINGS:** A special meeting may be called by the Chairperson subject to compliance with statutory notice provisions.

3. **QUORUM:** A quorum of the Board consists of four (4) members. The concurring vote of four (4) members shall be necessary to decide in favor of an applicant with respect to reversing a decision of the Chief Building Official or the granting of a variance.

4. **REPRESENTATION, PERSONAL INTEREST:** No member of the Board shall hear or vote upon an appeal or motion for re-hearing in which she or he is directly or indirectly affected in a financial way or in any matter where the Board member may be appearing before the board as a representative of an applicant or a witness. Whenever a member or alternate member of the Board has a personal, private or professional interest in any matter which comes before the Board, that member or alternate member shall disclose said conflict before discussion and vote and shall, within fifteen (15) days after the vote occurs, file the proper form with the Board Secretary pursuant to the provisions of Chapter 112, Florida Statutes. If a Board Member determines there will be a conflict of interest on a scheduled item, and said member does not wish

to participate, the member may request that an alternate be substituted for that particular agenda item.

5. **CONDUCT OF MEETINGS:** All meetings shall be open to the public. The Chairperson, or in his absence the Vice-Chairperson, or Second Vice Chairperson shall administer oaths and may upon the request of any Board Member require the attendance of witnesses. The order of business at meetings shall be as follows: (a) roll call; (b) reading the minutes of previous meetings; (c) reports of committees; (d) unfinished business; (e) swearing in of witnesses (f) hearings of cases; (g) new business. The Chairperson may, in his or her discretion, change the order of business at any meeting.

6. **ADJOURNED MEETINGS:** The Board may adjourn a regular meeting if all business cannot be disposed of on the day set, and no further public notice shall be necessary for such a meeting if the time and place of its resumption are stated at the time of adjournment and are not charged to its resumption.

#### **ARTICLE IV: ABSENCES:**

A Board member's absence at three (3) consecutive regular meetings or more than fifty-percent of all regular Meetings within any six (6) month period shall constitute an automatic resignation from the Board by such member, unless said absence is due to illness or other extraordinary circumstances. Each Board member shall be responsible for notifying the City Clerk's Office as promptly as possible of any anticipated absence from a Board meeting. Except for automatic resignation from the Board, a Board Member may resign by filing a written statement of resignation with the Clerk of the City of Delray Beach, Florida. Vacancies on the Board shall be filled pursuant to Article 2.2.1(F) of the Land Development Regulations of the City of Delray Beach, as amended.

**ARTICLE V: APPEALS AND NOTICE:**

1. ADMINISTRATIVE REVIEW (SECTION 2.2.4(D) OF THE LAND DEVELOPMENT REGULATIONS CITY OF DELRAY BEACH - Appeals to the Board of Adjustment concerning interpretation or administration of existing ordinances may be taken by any person aggrieved or by any officer or bureau of the governing body of the city affected by any decision of the Chief Building Official. The appeal shall be filed with the Chief Building Official on a form provided by the Board of Adjustment within ten (10) days after a written order, requirement, decision, determination, or violation notice issued and signed by the Chief Building Official, Fire Chief or designees is served upon the aggrieved person by regular or certified mail, return receipt requested or upon hand-delivery. Service shall be deemed complete upon mailing or upon hand-delivery.

2. VARIANCES (SECTIONS 2.2.4(D) AND 2.4.7(A) OF THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH- An appeal requesting a variance from the terms of existing ordinances may be filed at any time. The appeal shall be filed with the Chief Building Official on a form provided by the Board of Adjustment.

3. An appeal shall not be deemed filed unless and until payment of an appeal fee as set forth in the Zoning Code of the City of Delray Beach, as amended, has been paid. Filing fees may be paid by check or money order.

4. PUBLIC NOTICE - Notice of the public hearing of the appeal shall be given in accordance with the City of Delray Beach Code of Ordinances and Florida Statutes.

5. AMENDMENT - An appeal may be amended at any time or from time to time prior to or during the public hearing of the appeal, provided that the amendment does not materially alter the appeal as published in the public notice so as to make the public notice of the

appeal misleading, or that the amendment does not request a greater variance from the terms of existing ordinances than that requested by the appeal. In the event the amendment makes the appeal misleading or requests a greater variance, as determined by the Chairperson of the Board of Adjustment, an amended public notice shall be given. The applicant shall pay an additional fee in a sum equal to the cost of publishing an amended public notice.

6. **DISMISSAL** - An applicant may voluntarily dismiss his or her appeal at any time prior to the commencement of a roll call vote to decide such appeal, and such dismissal shall be without prejudice except that a voluntary dismissal operates as an adjudication on the merits of the appeal when served by an applicant who has once previously dismissed an appeal board on the same facts or circumstances. A voluntary dismissal shall be in writing and filed with the City Clerk, unless announced at a public hearing.

#### **ARTICLE VI: HEARING AND RE-HEARING:**

1. An appeal shall be heard within forty (40) days from the time of filing the appeal with the Chief Building Official. Appeals shall be heard in order of their filing; amended appeals shall have priority according to the date of the amendment if an amended public notice is required.

2. At the public hearing, the applicant or any other party may appear on his own behalf or be represented by an agent or an attorney. If the applicant does not appear on his own behalf at the public hearing, he shall file with the Secretary of the Board prior to the public hearing a statement, made under oath, authorizing such other person to represent him at the public hearing.

3. The order of the hearing shall be:

a. Statement of case by Chairperson.

- b. Supporting argument by applicant or his agent or attorney.
- c. Supporting arguments by others at the hearing.
- d. Opposing arguments by persons at the hearing.
- e. Rebuttal by those supporting appeal (other than applicant).
- f. Rebuttal by those opposed to appeal.
- g. Final rebuttal by applicant.

Witnesses may be called and cross examined and factual evidence and exhibits may be submitted.

The Chairperson may establish appropriate time limits for arguments, but such time limits shall be equal for both sides. The Roberts Rules of Order, newly revised edition, shall be the final authority on all questions of parliamentary procedure.

4. DECISIONS - A decision on any appeal shall be made at the public hearing. Voting shall be a roll call vote. Roll call shall be in random order. All Board Members present shall vote. The Chairperson shall vote last. The voting of each member shall be "yes" (in favor of the motion) or "no" (opposed to the motion). A concurring vote of four (4) members of the Board shall be necessary to reverse any decision, determination, order, or requirement of the Chief Building Official or Fire Chief or designee, or to decide in favor of the applicant on any matter upon which it is required to pass under existing ordinances, or to effect any variation in the application of existing ordinances.

The decision of the Board, including any findings of fact and any conditions imposed, shall be written on the original appeal form. The original appeal form shall be filed with the Board of Adjustment, and a copy of the appeal form shall be served upon the Chief Building Official and/or Fire Chief and the applicant.

5. A decision is not final until the time within which an applicant may file a motion for rehearing expires, or, if a motion for rehearing is filed, when it is denied, or if it is granted, at the time the decision by the Board is rendered at the rehearing.

6. REHEARING - The City or applicant may file a written motion for rehearing of the decision rendered by the Board on the appeal. The motion shall be filed with the Chief Building Official within ten (10) days of the date the decision is rendered. No filing fee shall be required. The concurring vote of four (4) members of the Board shall be necessary to grant a motion for rehearing. The motion for rehearing may be based upon the following grounds: (1) newly discovered evidence which by due diligence could not have been discovered in time to present at the public hearing; (2) fraud, misrepresentation or other misconduct of any person who submitted evidence to the Board; (3) mistake, inadvertence, surprise or excusable neglect; or (4) the Board has overlooked or misapprehended any material points of law or fact. If the Board grants a motion for rehearing, public notice of rehearing shall be given at the cost of the applicant.

7. REFILING OF APPEAL AFTER FINAL DECISION RENDERED- Notwithstanding, the rendering of a final decision by the Board with respect to an appeal requesting a variance from the terms of existing ordinances, an applicant may refile such appeal at any time if there has been a substantial change in facts, circumstances or conditions. The refiled appeal shall proceed in the same manner as an initial appeal.

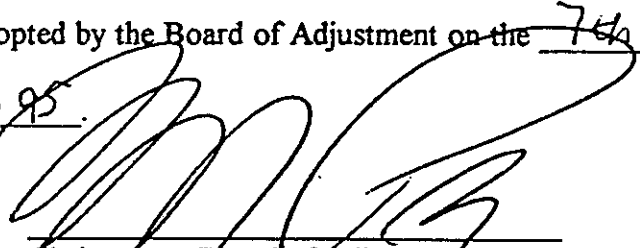
#### **ARTICLE VII: AMENDMENTS; EFFECTIVE DATE:**

1. These rules of procedure may be amended by a concurring vote of four (4) members of the Board, provided that the proposed amendment has been presented to the Board at least one week prior to its adoption.

2. These rules of procedure shall be reviewed by the Board not less than every two (2) years. Recommendations for proposed amendments shall be made in writing.

3. These rules shall become effective following their approval by City Commission.

These Rules of Procedure were adopted by the Board of Adjustment on the 7<sup>th</sup> day of September, 19 95.



Chairperson, Board of Adjustment

Approved by City Commission on the 19<sup>th</sup> day of September, 19 95.



Mayor, City of Delray Beach

Alison MacHugon Hardy  
Attest  
City Clerk