

ORDINANCE NO. 19-044

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF FORT PIERCE, FLORIDA CHAPTER 5, ARTICLE IX, SECTION 5-303, TO CORRECT THE NAME OF **THE BOARD OF ADJUSTMENT** IN REFERENCE TO SETBACK VARIANCES FOR THE CONSTRUCTION OF FALLOUT SHELTERS; CHAPTER 11.5, ARTICLE I, SECTION 11.5-33, ADDING THE CITY COMMISSION AS AN ENTITY WHICH MAY NOT VARY DISTANCE RESTRICTIONS FOR ADULT ENTERTAINMENT USES; CHAPTER 22, ARTICLE IV, SECTION 22-59(D)(2)(IV), REMOVING A SUPERFLUOUS REFERENCE TO THE BOARD OF ADJUSTMENT; CHAPTER 22, ARTICLE VII, SECTION 22-102.1, PERMITTING CITY COMMISSION THE ABILITY TO GRANT SPECIAL EXCEPTIONS FOR NONCONFORMING STRUCTURES AND ALLOWING FOR A MAJORITY VOTE OF EITHER THE BOARD OF ADJUSTMENT OR CITY COMMISSION TO APPROVE OR DISAPPROVE AN ENLARGEMENT OR ALTERATION OF A NONCONFORMING STRUCTURE AS A SPECIAL EXCEPTION; CHAPTER 22, ARTICLE VII, SECTION 22-105.1, PERMITTING CITY COMMISSION THE ABILITY TO ALLOW FOR THE USE OF A LOT FOR A DUPLEX AS A SPECIAL EXCEPTION; CHAPTER 22, ARTICLE VIII, SECTION 22-107, AUTHORIZING CITY COMMISSION TO GRANT OR DISAPPROVE VARIANCES, DELINEATING WHAT ACTIONS MAY BE TAKEN BY THE BOARD OF ADJUSTMENT AND CITY COMMISSION IN RELATION TO VARIANCES, NONCONFORMITIES OF USES AND/OR STRUCTURES, AND REVERSING DECISIONS OF THE PLANNING DIRECTOR, AND ALLOWING FOR A MAJORITY VOTE OF THE BOARD OF ADJUSTMENT OR CITY COMMISSION IN THEIR DECISIONS; CHAPTER 22, ARTICLE VIII, SECTION 109, SECTION 22-109(2), & SECTION 22-109(3), PERMITTING CITY COMMISSION TO GRANT VARIANCES FOR FLOOD HAZARD ZONE PROVISIONS, IDENTIFYING CONSIDERATIONS THE COMMISSION MAY UNDERTAKE IN SUCH DECISIONS, AND ALLOWING THE COMMISSION TO ATTACH CONDITIONS AS NECESSARY; CHAPTER 22, ARTICLE VIII, SECTION 22-110, PERMITTING CITY COMMISSION TO REQUEST ADDITIONAL INFORMATION OR PLANS WHEN DELIBERATING A VARIANCE REQUEST; CHAPTER 22, ARTICLE VIII, SECTION 22-111, REMOVING A REFERENCE TO A COURT OF RECORD ON APPLICATION FOR A STAY OF PROCEEDINGS ONCE A VARIANCE IS SOUGHT; CHAPTER 22, ARTICLE VIII, SECTION 22-112(C), CLARIFYING WHAT ACTIONS ON AN APPLICATION MAY BE TAKEN BY THE BOARD OF ADJUSTMENT; CHAPTER 22, ARTICLE VIII, SECTION 22-115, USING THE VERBIAGE OF "DISAPPROVED" VS. "DENIED" AND "FINAL" VS. "EARLIER" IN REFERENCE TO THE LIMITATIONS OF REFILE AN APPLICATION; CHAPTER 22, ARTICLE VIII, SECTION 22-118, ADDING A NEW SECTION WHICH WOULD ALLOW FOR DECISIONS OF THE BOARD OF ADJUSTMENT TO BE APPEALED TO THE CITY COMMISSION AND DELINEATING THE PROCEDURES, DEADLINES, DATES, AND COSTS ASSOCIATED WITH SUCH APPEALS; CHAPTER 22, ARTICLE VIII, RENUMBERING RESERVED SECTIONS 22-118 THROUGH SECTION 22-124 TO SECTION 22-119 THROUGH SECTION 22-124; CHAPTER 22, ARTICLE X, SECTION 22-140, ALLOWING FOR APPEALS FROM RULINGS OF ONLY THE PLANNING DIRECTOR RATHER THAN FROM ADMINISTRATIVE OFFICERS, USING THE VERBIAGE OF "DISAPPROVE" VS. "DENY," AND ALLOWING FOR A MAJORITY VOTE OF THE BOARD OF ADJUSTMENT TO DECIDE SUCH APPEALS; CHAPTER 22, ARTICLE X, SECTION 22-147, RESTRUCTURING THE BOARD OF ADJUSTMENT TO ALLOW

FOR FIVE MEMBERS TO BE APPOINTED SINGULARLY BY EACH OF THE CITY COMMISSIONERS AND THE MAYOR, ELIMINATING THE TWO ALTERNATE POSITIONS ON THE BOARD, COORDINATING THE TERMS OF THE BOARD MEMBERS WITH THE TERMS OF THEIR RESPECTIVE APPOINTEES, AND ALLOWING FOR THE EXCUSING OF THREE CONSECUTIVE ABSENCES FROM REGULAR BOARD MEETINGS TO BE MADE WITHOUT A RESOLUTION; CHAPTER 22, ARTICLE XII, SECTION 22-182, REMOVING A SUPERFLUOUS REFERENCE TO THE BOARD OF ADJUSTMENT AND CLARIFYING THAT APPEALS OF DETERMINATIONS MADE BY THE PLANNING DIRECTOR SHALL BE SUBMITTED TO THE PLANNING DEPARTMENT; CHAPTER 22, ARTICLE XIV, SECTION 22-218, USING THE VERBIAGE OF "DISAPPROVE" VS. "DENY," REMOVING A REFERENCE TO CITY COMMISSION ESTABLISHING A FEE FOR APPEALS RELATING TO CONCURRENCY ASSESSMENTS, AND CLARIFYING THE ROLE OF THE CITY, BOARD OF ADJUSTMENT, AND CITY COMMISSION PERTAINING TO APPEALS OF CONCURRENCY ASSESSMENTS; CHAPTER 22, ARTICLE XV, SECTION 22-310, USING THE VERBIAGE OF "DISAPPROVE" VS. "DENY," CORRECTING THE NAME OF THE BOARD OF ADJUSTMENT, AND ALLOWING CITY COMMISSION TO DECIDE UPON VARIANCES RELATING TO SIDEWALK CAFES AND OTHER SUPPLEMENTARY SIDEWALK REGULATIONS; PROVIDING FOR A SEVERABILITY CLAUSE; REPEALING ALL ORDINANCES OR PARTS THEREOF IN CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Fort Pierce in 1960 created the original Code of Ordinances; and

WHEREAS, the City Commission of the City of Fort Pierce on April 20, 1998, approved Ordinance J-420 that created Section 11.5-33, Variances Prohibited; and

WHEREAS, the City Commission of the City of Fort Pierce on July 16, 2007, approved Ordinance K-497 that created Section 22-59, Design Review; and

WHEREAS, the City Commission of the City of Fort Pierce on December 20, 1982, approved Ordinance H-244 that created Section 22-102.1, Nonconforming Structure As Special Exception and later amended Section 22-102.1, Nonconforming Structure As Special Exception by approving Ordinance I-98 on January 7, 1985; and

WHEREAS, the City Commission of the City of Fort Pierce on December 20, 1982, approved Ordinance H-244 that created Section 22-105.1, Duplex As Special Exception and later amended Section 22-105.1, Duplex As Special Exception by approving Ordinance I-98 on January 7, 1985; and

WHEREAS, the City Commission of the City of Fort Pierce on June 15, 1981, approved Ordinance H-186 that created Section 22-107, Authorization To Grant Or Deny Variances; and

WHEREAS, the City Commission of the City of Fort Pierce on March 2, 1987, approved Ordinance I-208 that created Section 22-109, Variances for FH Zone Provisions; and

WHEREAS, the City Commission of the City of Fort Pierce on June 15, 1981, approved Ordinance H-186 that created Section 22-110, Application For A Variance; and

WHEREAS, the City Commission of the City of Fort Pierce on June 15, 1981, approved Ordinance H-186 that created Section 22-111, Stay of Proceedings; and

WHEREAS, the City Commission of the City of Fort Pierce on June 15, 1981, approved Ordinance H-186 that created Section 22-112, Variance Procedure and later

amended Section 22-112, Variance Procedure by approving Ordinance I-98 on January 7, 1985; and

WHEREAS, the City Commission of the City of Fort Pierce on June 15, 1981, approved Ordinance H-186 that created Section 22-115, Limitations Of Refiling Of Application; and

WHEREAS, the City Commission of the City of Fort Pierce on June 15, 1981, approved Ordinance H-186 that created Section 22-140, Appeals From Rulings Of Administrative Officer and later amended Section 22-140, Appeals From Rulings Of Administrative Officer by approving Ordinance I-98 on January 7, 1985; and

WHEREAS, the City Commission of the City of Fort Pierce on June 15, 1981, approved Ordinance H-186 that created Section 22-147, Board Of Adjustment and last amended Section 22-147, Board Of Adjustment by approving Ordinance 17-016 on April 7, 2017; and

WHEREAS, the City Commission of the City of Fort Pierce on January 22, 2002, approved Ordinance K-126 that created Section 22-182, Variances And Administrative Appeals; and

WHEREAS, the City Commission of the City of Fort Pierce on January 2, 2007, approved Ordinance K-465 that created Section 22-218, Concurrency Assessment; and

WHEREAS, the Code of Ordinances has been amended from time to time since it was first formally adopted in 1960; and

WHEREAS, the City of Fort Pierce has consistently referenced the Planning Department and the Planning Director by these titles; and

WHEREAS, the City of Fort Pierce Planning Board held a public meeting on September 17, 2019, to consider the land development code amendment and recommended approval of the amendment, with one modification, by a vote of 6 to 0; and

NOW, THEREFORE BE IT ORDAINED by the City Commission of the City of Fort Pierce, Florida as follows:

SECTION 1. Article IX Section 5-303 is hereby amended so that the same shall read as follows:

ARTICLE IX. - FALLOUT SHELTERS

Sec. 5-303. - Setback variances.

In the event a variance in the existing setback regulations is necessary for the construction of a fallout shelter, the planning director may grant such variance and make a special exception without the necessity of advertising and holding a public hearing before the board of adjustments ~~and appeals~~, provided however, that no fallout shelter shall be constructed unless there is a minimum distance of three (3) feet between the shelter and the property line.

SECTION 2. Article I, Section 11.5-33 is hereby amended so that the same shall read as follows:

ARTICLE I. – IN GENERAL

Sec. 11.5-33. - Variances prohibited.

Neither ~~the~~ board of adjustment nor city commission may ~~not~~ vary those distance restrictions imposed by section 11.5-30

SECTION 3. Article IV, Section 22-59(d)(2) is hereby amended so that the same shall read as follows:

ARTICLE IV. - SUPPLEMENTARY REGULATIONS

Sec. 22-59. - Design review.

(d) Procedure for approval. When site plan approval is required pursuant to section 22-58, the following procedure relating to design review shall take place at the same time:

(2) The design review board shall review the application and make a recommendation to the commission for approval or disapproval. If the board recommends disapproval, the reasons shall be stated. The board shall consider the following standards:

- (i) The design, including landscape features, is architecturally compatible with surrounding structures so as to be reasonably harmonious in landscaping, style, and color;
- (ii) If the property is located within a historic preservation district, the design features are reasonably consistent with the historic character of the predominant architectural style within the district;
- (iii) The design features will enhance or preserve the quality of the surrounding area so as not to detract from existing property values or impact adversely on existing scenic, natural, or historic beauty;
- (iv) The design avoids undue monotony in structural design features.

The board may condition recommendation for approval upon an applicant obtaining of a suitable variance pursuant to article VIII ~~from the board of adjustment.~~

SECTION 4. Article VII, Section 22-102.1 is hereby amended so that the same shall read as follows:

ARTICLE VII. - NONCONFORMING LOTS, USES, STRUCTURES AND CHARACTERISTICS OF USES

Section 22-102.1. - Nonconforming structure as special exception.

(a) The board of adjustment and city commission ~~is~~ are authorized to permit the enlargement or alteration of a nonconforming structure, except any sign, as a special exception upon application, notice and hearing as provided in sections 22-141(a), 22-142(11), and 22-143, and upon finding and determining the following:

- (1) The granting of the special exception will not adversely affect the public interests;
- (2) Such enlargement or alteration is in harmony with the purpose and intent of this chapter and all amendments thereof;
- (3) The enlargement or alteration, if allowed, will not violate any height, yard, setback, area or density limitations imposed by the zoning district in which the property is located, or if the enlargement or alteration would increase such violation, such enlargement or alteration would not adversely affect traffic flow, safety and control, pedestrian safety and convenience or visibility at any street intersections, drives, rights-of-way, curbcuts or crosswalks;
- (4) Such enlargements or alteration shall be compatible with adjacent

properties and other properties within that zoning district;

- (5) If in a commercial, business or industrial zone, that adequate buffers are provided between such structures and adjacent residential areas;
- (6) That adequate off-street parking shall be provided for any multifamily, commercial, industrial or business use upon the property;
- (7) The enlargement or alteration will not increase gross floor area of the principal structure by more than fifty (50) per cent;
- (8) The use of the structure prior to, and subsequent to, the granting of the request for the special exception shall be a semi-restricted use or permitted conditional use within the district in which the property is located;
- (9) There will be adequate availability and access to, and for, public utilities as may be required.

~~(b) The board of adjustment shall confer with the city planning board on all applications for such special exception.~~

(be) In granting a special exception hereunder, the board of adjustment and city commission may require certain conditions and safeguards for the public health, safety and welfare, concerning the following:

- (1) Public off-street parking;
- (2) Adequate ingress and egress with particular emphasis upon traffic and pedestrian safety
- (3) Adequacy of and access for fire and other emergency vehicles;
- (4) Any signs and/or exterior lighting with reference to effect upon and harmony with surrounding properties;
- (5) Any required landscaping, greenbelts, buffers or fencing in any residential, commercial or business districts, with reference to compliance with provisions of this Code, harmony and effect upon surrounding properties, lines of vision.

~~(dc)~~ In granting any special exception, the board of adjustment and city commission may prescribe a reasonable time limit within which the enlargement or alteration for which the special exception is requested shall be begun and/or completed.

(ed) The procedure by which an application shall be made to the board of adjustment under this section shall be as provided in section 22-110 and section 22-112.

(fe) The approval or disapproval of any enlargement or alteration of a nonconforming structure as a special exception under this section shall require the conforming vote of four ~~(4) members of the board of adjustments~~ a majority of the board of adjustment or city commission.

SECTION 5. Article VII, Section 22-105.1 is hereby amended so that the same shall read as follows:

ARTICLE VII. - NONCONFORMING LOTS, USES, STRUCTURES AND CHARACTERISTICS OF USES

Sec. 22-105.1. - Duplex as special exception.

If a lot of record exists which could have been used for multifamily purposes involving a triplex structure or more before January 1, 1985, and the lot is no longer permissible for any use other than as a single-family dwelling then, in that event, the board of adjustment and city commission are ~~is~~ authorized to allow use of the lot for a duplex upon application, notice and hearing as provided in sections 22-141(a), 22-142(11), and 22-143, and upon finding and determining the following.

- (1) The granting of the special exception will not adversely affect the public interest;
- (2) Such duplex use would be in harmony with the purpose and intent of this chapter and all amendments thereof;
- (3) The duplex use, if allowed, will not violate any height, yard or setback area limitations imposed by the zoning district in which the property is located;
- (4) Such use shall be compatible with properties which are in the vicinity within the zoning district;
- (5) The use meets the landscaping requirements of section 22-68(c) as applied to triplex developments;
- (6) The size of the lot on which the duplex use is to be located has not decreased since the lot became nonconforming for anything other than a single-family dwelling by the action of the owner.

SECTION 6. Article VIII, Section 22-107 is hereby amended so that the same shall read as follows:

ARTICLE VIII. - VARIANCES

Sec. 22-107. - Authorization to grant or ~~deny~~ disapprove variances.

The board of adjustment and city commission may authorize a variance from the regulations governing the height, area and size of structures and size of yards and open spaces only when consistent with the purpose of this article, this section and the criteria in sections 22-108 and 22-109. In granting a variance, the board of adjustment and city commission may prescribe appropriate conditions and safeguards which it finds necessary to protect the best interests of the surrounding property or vicinity and otherwise achieve the purpose of this chapter. Guarantees and evidence may be required that such conditions will be and are being complied with. ~~No variance shall be granted without~~ The concurring vote of (4) members a majority of the board of adjustment or city commission ~~or~~ is required:

- (1) To grant or disapprove a variance;
- ~~(2)~~ To allow the establishment or expansion of a use of property for a purpose not authorized within the zone in which the property is located;
- ~~(3)~~ Due to nonconformities in any district or to a permitted use of lands, structures or buildings in an adjoining zoning district;
- ~~(4)~~ When a previous request for a variance has been denied by the board of adjustment or city commission and there has been no material change of circumstances since the previous application; or
- (5) To reverse any decision of the planning director.

SECTION 7. Article VIII, Section 22-109 is hereby amended so that the same shall read as follows:

ARTICLE VIII. - VARIANCES

Sec. 22-109. - Variances for FH zone provisions.

The board of adjustment and city commission may grant variance requests for FH zone provisions subject to the following provisions:

(1) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedure set forth in the remainder of this section, except for subsection 22-109(5) a. and d., and provided the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historical designation.

(2) In passing upon variance applications, the board of adjustment and city commission shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

- a. The danger that materials may be swept onto other lands to the injury of others.
- b. The danger to life and property due to flooding or erosion damage;
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d. The importance of the services provided by the proposed facility to the community;
- e. The necessity of the facility to a waterfront location in the case of a functionally dependent facility;
- f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- g. The compatibility of the proposed use with existing and anticipated development;
- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- j. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the affects of wave action, if applicable, expected at the site; and
- k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.

(3) Upon consideration of the factors listed above and the purposes of this chapter, the board of adjustment and city commission may attach such conditions to the granting of variances as it deems necessary to further the purpose of this chapter.

(4) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(5) Conditions for variances:

- a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of a historical building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the buildings;
- b. Variances shall only be issued upon (i) a showing of good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship; and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public or conflict with existing local laws or ordinances;
- c. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation;
- d. The planning director ~~of development~~ shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

SECTION 8. Article VIII, Section 22-110 is hereby amended so that the same shall read as follows:

ARTICLE VIII. - VARIANCES

Sec. 22-110. - Application for a variance.

~~Appeals to the board of adjustment~~ An application for a variance may be made by the property owner of the area involved or their designated representative by filing an application with the planning department ~~of development and the board of adjustment~~. The application will specify the nature of the variance and the reasons for the variance. It will be in the form prescribed by the rules of ~~the board of adjustment~~ this chapter. The application will also be accompanied by plans, containing information specified in section 22-141. The planning director, board of adjustment, and city commission may request other drawings or information necessary for an understanding of the request.

SECTION 9. Article VIII, Section 22-111 is hereby amended so that the same shall read as follows:

ARTICLE VIII. - VARIANCES

Sec. 22-111. - Stay of proceedings.

An appeal for a variance stays all proceedings in furtherance of the action appealed from, unless the planning director certifies to the board of adjustment after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, a stay would, in the director's opinion, cause imminent peril to life and property. In such a case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment ~~or by a court of record on application~~, on notice to the planning director, and on due cause shown.

SECTION 10. Article VIII, Section 22-112 is hereby amended so that the same shall read as follows:

ARTICLE VIII. - VARIANCES

Sec. 22-112. - Variance procedure.

- (a) The planning department will prepare a staff report which presents any inconsistencies found between the requested variance and zoning ordinance requirements and will submit it to the board of adjustment.
- (b) Before the board of adjustment may act on an application for a variance or a special exception or an appeal from the decision of the planning director, it will hold a public hearing within thirty (30) days of the filing of the application and in accordance with the provisions of section 22-143. The board of adjustment will review the request and staff report at the public hearing.
- (c) Within thirty-five (35) days of the public hearing, except the board of adjustment with good cause demonstrated may allow an extension of time, the board of adjustment will determine whether the evidence supports a finding that the requirements of the zoning ordinance and other city laws have been met. It will approve, approve with conditions or ~~deny~~ disapprove the application accordingly.
- (d) The board of adjustment's decision will be sent by mail to the applicant within five (5) working days of the action.

SECTION 11. Article VIII, Section 22-115 is hereby amended so that the same shall read as follows:

ARTICLE VIII. - VARIANCES

Sec. 22-115. - Limitations of refiling of application.

Applications for which a substantially similar application has been ~~denied~~ disapproved will be heard by the board of adjustment only after a period of six (6) months has elapsed from the date of the ~~earlier~~ final decision.

SECTION 12. Article VIII, Section 22-118 is hereby added so that the same shall read as follows:

ARTICLE VIII. - VARIANCES

Sec. 22-118. - Appeals.

Within twenty (20) days of the written decision of the board, an aggrieved party may appeal the decision by filing a written notice of appeal and an appeal fee of twenty-five dollars (\$25.00) with the city clerk. The notice of appeal shall state the decision which is being appealed, the grounds for the appeal, and a brief summary of the relief which is sought. Within sixty (60) days of the filing of the appeal or the first regular city commission meeting which is scheduled, whichever is later in time,

the city commission shall conduct a public hearing at which time they may affirm, modify, or reverse the board's decision. The decision of the city commission shall constitute final administrative review, and no petition for rehearing or reconsideration shall be considered by the city. Nothing contained herein shall preclude the city commission from seeking additional information prior to rendering a final decision. The decision of the city commission shall be in writing and a copy of the decision shall be forwarded to the board and the appealing party.

SECTION 13. Article III VARIANCES, Section 22-118 – Section 22-124. – Reserved. is hereby renumbered to read as follows:

Section 22-118~~9~~ – Section 22-124. - Reserved.

SECTION 14. Article X, Section 22-140 is hereby amended so that the same shall read as follows:

ARTICLE X. – ADMINISTRATIVE PROVISIONS

Sec. 22-140. - Appeals from rulings of ~~administrative officer~~ the planning director.

- (a) General. An appeal to the board of adjustment may be made by any person aggrieved or by any officer or ~~bureau~~ of the city affected by any decision of the ~~building inspector or any other administrative officer of the city~~ planning director regarding a provision of this chapter. Such appeal shall be made within a reasonable time, as provided by the rules of ~~the board~~ this section, by filing ~~with the officer from whom the appeal is made and with the board of adjustment~~ a notice of appeal specifying the grounds thereof through the planning department. The ~~officer from whom the appeal is taken~~ planning department shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was made.
- (b) Authorization to grant or ~~deny~~ disapprove appeals. The board of adjustment, in conformity with the provision of this section, may reverse or affirm, wholly or partly, or may modify the decision appealed from and may make such decision as ought to be made, and to that end shall have all the power, concerning this chapter, of the ~~officer from whom the appeal is made~~ planning director. The concurring vote of ~~four (4) members~~ a majority of the board shall be necessary to reverse any decision of ~~any such administrative official~~ the planning director.
- (c) Stay of proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the ~~officer from whom the appeal is made~~ planning director certifies to the board of adjustment after the notice of appeal shall have been filed ~~with him~~, that by reason of facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life and property. In such a case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment ~~or by a court of record on application~~, on notice to the ~~officer from whom the appeal is made~~ planning director and on due cause shown.
- (d) Appeals procedure.
- (1) Before the board of adjustment may act on an appeal from a ruling of an ~~administrative officer~~ the planning director pursuant to this section, it will hold a public hearing in accordance with the provisions of section 22-143.
- (2) Within thirty-five (35) days of the public hearing, except the board of adjustment with good cause demonstrated may allow an extension of time, the board of adjustment will make its decision on the appeal.
- (3) The board of adjustment decision will be sent by mail to the applicant within five (5) working days of its decision.

SECTION 15. Article X, Section 22-147(a) is hereby amended so that the same shall read as follows:

ARTICLE X. – ADMINISTRATIVE PROVISIONS

Sec. 22-147(a). - *Membership.*

(1) Regular. The board of adjustment shall consist of five (5) members, with one (1) appointed by each commissioner and one (1) appointed by the mayor. ~~and be removable~~ Any member may be removed for with or without cause by the city commission ~~upon written charges and after a public hearing held in accordance with section 22-143.~~ The terms of office of the members of the board shall be ~~three (3) years concurrent with the mayor's and appointing city commissioner's terms.~~ except that the five (5) members who shall be sitting upon the board of adjustment as of the effective date hereof shall continue as members of the board serving out the terms for which they were originally appointed. Thereafter, as each term expires, the appointment shall be for three (3) years.

~~(2) Alternate. The city commission shall also appoint two (2) alternate members. The terms of office of alternate members shall be three (3) years, except that the first two (2) shall serve respectively for terms of: One for two (2) years and one for three (3) years. Thereafter, as any term expires, the appointment shall be for three (3) years. An alternate member shall sit on the board when a regular member is not in attendance, whether such an absence is excused or not. If an alternate shall on two (2) successive occasions be unable to sit for a meeting as a member of the board when asked to do so, he shall be deemed to have resigned his position as an alternate member of the board.~~

~~(3) Other boards. At least one, but not more than two (2) members of the board of adjustment may also be members of the city planning board.~~

(24) Absences. Absence from three (3) consecutive regular meetings shall operate to vacate the seat of a regular member unless such absence is excused by the board by resolution.

SECTION 16. Article X, Section 22-182 is hereby amended so that the same shall read as follows:

ARTICLE X. – ADMINISTRATIVE PROVISIONS

Sec. 22-182. - Variances and administrative appeals.

A variance from any of these substantive requirements of this section or an appeal of any administrative determination made by the ~~department~~ planning director may be made in accordance with the procedures set forth for such relief under the current zoning code of the city. ~~The board of adjustments of the city shall be the board to which all variance requests or appeals under this article are made.~~ Any appeal should be initiated by a written notice filed with the planning department ~~city clerk~~ within thirty (30) days of the date of the administrative determination which is the subject of such appeal.

SECTION 17. Article XIV, Section 22-218 is hereby amended so that the same shall read as follows:

ARTICLE XIV. – CONCURRENCY MANAGEMENT

Sec. 22-218. – Concurrency assessment.

(c) Certificate of concurrency. A valid, unexpired certificate of concurrency shall be obtained prior to site plan or temporary plat approval.

(1) Review prior to application for development approval. At the applicant's request, the city shall review and approve, approve with conditions or ~~deny~~ disapprove an application for a certificate of concurrency prior to consideration of a development approval application.

- a. Application. An application for a certificate of concurrency determination shall be submitted to the planning director at the time of filing an application for site plan or temporary plat approval. An application processing fee established by the city commission shall be part of the application. Applications for projects containing over ten (10) dwelling units or five hundred (500) gross square feet of nonresidential floor area shall also be required to bear the cost of preparing any necessary supplemental demand analyses at the time of application.
- b. Determination of completeness. After receipt of an application for a certificate of concurrency, the planning director shall determine whether it is complete within ten (10) business days. If it is determined to be incomplete, written notice shall be served on the applicant specifying the deficiencies. No further action on the application shall be taken by the city unless the deficiencies are remedied. Within twenty (20) business days after the application is determined complete, the planning director shall review and grant, grant with conditions, or ~~deny~~ disapprove each public facility component in the application pursuant to the standards in section 1.5-6(f).
- c. Appeals. Within thirty (30) business days after issuance of the determination of the planning director on the application for a certificate of concurrency, an applicant may appeal to the board of adjustment. ~~An application fee for processing appeals shall be established by the city commission. The committee~~ city shall hold a hearing on the appeal to consider the determination of the planning director and public testimony. The ~~city commission board~~ board shall adopt, reject or modify the planning director's determination on the application for a certificate of concurrency determination. Neither ~~the~~ board of adjustment nor the city commission shall ~~not~~ modify or reject the planning director's determination unless it finds that such determination is not supported by substantial competent evidence and is contrary to the criteria established in article XIV of chapter 22 of this code of ordinances and the intent of the comprehensive plan. ~~Committee~~ Decisions shall include findings of fact for each criteria.

SECTION 18. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause, or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 19. All ordinances or parts thereof that may be determined to be in conflict herewith are hereby repealed.

SECTION 20. This Ordinance shall become effective on December 6, 2019.

APPROVED AS TO FORM & CORRECTNESS:

Peter J. Sweeney
City Attorney

STATE OF FLORIDA
COUNTY OF ST. LUCIE

WE, THE UNDERSIGNED, Mayor Commissioner and the City Clerk of the City of Fort Pierce, Florida, do hereby certify that the foregoing and above Ordinance No. 19-044 was duly advertised by title only in the St. Lucie News Tribune on Sunday, October 6, 2019, and Sunday, October 20, 2019; copy of said Ordinance was made available at the office of the City Clerk to the public upon request; said Ordinance was duly introduced, read by title only, and passed on first reading by the City Commission of the City of Fort Pierce, Florida, on October 21, 2019; and was duly introduced, read by title only, and passed on second and final reading November 4, 2019, by the City Commission of the City of Fort Pierce, Florida.

IN WITNESS HERewith, we hereunto set our hands and affix the Official Seal of the City of Fort Pierce, Florida, this 4th day of November, 2019.

Linda Hudson
MAYOR COMMISSIONER

ATTEST

Linda W. Cox
CITY CLERK

(CITY SEAL)