

PROPOSED
ORDINANCE NO. 13-22

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE AMENDING SECTION 12-11-2 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA, APPEALS, MODIFICATIONS, AND VARIANCES; CREATING SECTION 12-11-2 (f), MODIFICATIONS OF THE COMMUNITY REDEVELOPMENT AREA URBAN DESIGN OVERLAY STANDARDS; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Section 12-11-2 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

Section 12-11-2. Appeals, modifications, and variances.

(a) *Duties and powers of zoning board of adjustment.* The zoning board of adjustment, created pursuant to section 12-12-1, shall have the following duties and powers:

(1) *Appeals.* To hear and decide appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any provision of this title.

a. Appeals to the zoning board of adjustment may be filed by any person aggrieved or by any officer or board of the city affected by any decision of an administrative official under this title. Such appeal shall be filed within 30 days after rendition of the order, requirement, decision, or determination appealed from by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof.

b. The administrative official from whom the appeal is filed shall, upon notification of the filing of the appeal, forthwith transmit to the zoning board of adjustment all the documents, plans, papers, or other materials constituting the record upon which the action appealed from was made.

c. An appeal to the zoning board of adjustment stays all work on the premises and all proceedings in furtherance of the action appealed from, unless the official from whom the appeal was filed shall certify to the board that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceeding or work shall not be stayed except by a restraining order, which may be granted by the board or by a

court of competent jurisdiction on application on notice to the officer from whom the appeal is filed and on due cause shown.

(2) *Variances.*

- a. To authorize upon appeal such variance from the terms of this title as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of this title would result in unnecessary and undue hardship. In order to authorize any variance from the terms of this title, the board must find:
 1. 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;
 2. That the special condition and circumstances do not result from the actions of the applicant;
 3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, buildings, or structures in the same zoning district;
 4. That literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this title and would cause unnecessary and undue hardship on the applicant;
 5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;
 6. That the grant of the variance will be in harmony with general intent and purpose of this title and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;
 7. That the variance will not constitute any change in the districts shown on the zoning map, will not impair an adequate supply of light and air to adjacent property, will not increase the congestion of public streets, or increase the danger of fire, will not diminish or impair established property values within the surrounding area, and will not otherwise impair the public health, safety, and general welfare of the city.
- b. In granting any variance, the board may prescribe appropriate conditions and safeguards in conformity with this title. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the Code.
- c. The board may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both.
- d. Under no circumstances, except as permitted above, shall the board grant a variance to permit a use not generally permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of this title 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 other zoning districts shall be considered grounds for the authorization of a variance.

- (3) *Interpretation for historic and preservation districts.* To hear and decide administrative applications for uses not expressly permitted by district regulations within the Pensacola historic district, North Hill preservation district and Old East Hill preservation district.
- (4) *Nonconforming uses.* To hear and decide requests for time extensions beyond the 18-month time period for the continuation of nonconforming uses that are damaged or destroyed as the result of fire, explosion or other casualty, or act of God, or the public enemy. Such time extensions may be granted by the zoning board of adjustment upon proof by the landowner that the landowner has proceeded with diligence to restore the use and circumstances beyond the landowner's control have made the period of time inadequate.

(b) *Hearing of applications.*

(1) *Application procedure.*

- a. Any appeal or application for variance, interpretation for historic and preservation district or continuation of nonconforming use must be submitted to the planning services department at least 21 days prior to the regularly scheduled meeting of the zoning board of adjustment.
- b. The application shall be scheduled for hearing only upon determination that the application complies with all applicable submission requirements.
- c. Any party may appear in person, by agent, or by attorney.
- d. Any application may be withdrawn prior to action of the zoning board of adjustment at the discretion of the applicant initiating the request upon written notice to the board secretary.

(2) *Application submission requirements.* No application shall be considered complete until all of the following have been submitted:

- a. The application shall be submitted on a form provided by the board secretary.
- b. Each application shall be accompanied by an accurate site plan drawn to scale and such other information as may be reasonably requested to support the application.
- c. The applicant shall be required to pay an application fee according to the current schedule of fees established by the city council for the particular category of application. This fee shall be nonrefundable irrespective of the final disposition of the application.

(3) *Public notice requirements.*

- a. A sign shall be prominently posted on the property to which the application pertains at least ten days prior to the scheduled zoning board of adjustment

meeting. The sign shall state the date, time and place of the zoning board of adjustment meeting.

- b. Notice of the appeal or application for variance, interpretation for historic and preservation district or continuation of nonconforming use shall be published by public notice advertised in a newspaper of general daily circulation published in the county at least ten days prior to the scheduled zoning board of adjustment meeting.
 - c. The city shall notify addresses within a 300-foot radius, as identified by the current county tax roll maps, of the property for which an appeal or application for variance or continuation of nonconforming use is sought with a public notice by postcard, at least ten days prior to the zoning board of adjustment meeting. The public notice shall state the date, time and place of the board meeting.
 - d. The city shall notify addresses within a 500-foot radius, as identified by the current county tax roll maps, of the property for which an interpretation in a historic or preservation district is sought with a public notice by postcard, at least ten days prior to the zoning board of adjustment meeting. The public notice shall also be mailed to the appropriate neighborhood, homeowner, or property owner association at least ten days prior to the zoning board of adjustment meeting. The public notice shall state the date, time and place of the board meeting.
- (c) *Decisions of the zoning board of adjustment.* In exercising its powers, the board may, in conformity with provisions of this section, 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 title, 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 taken. The concurring vote of a majority of all the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass under this section.
- (d) *Judicial review of decision of board of adjustment.* Any person, jointly or severally, aggrieved by any decision of the board, or the city, upon approval by the city council, may apply to the circuit court of the First Judicial Circuit of Florida within 30 days after rendition of the decision by the board. Review in the circuit court shall be by petition for writ of certiorari or such other procedure as may be authorized by law.
- (e) *Administrative variances.* Subject to the criteria in subsection (a)(2) of this section, the planning administrator or their designee may grant administrative variances to the following provisions of this chapter:
- (1) Setback requirements may be varied up to ten percent or two feet, whichever is less.
 - (2) Parking requirements may be varied up to ten percent.

These requests must be submitted in writing and must include a to-scale site plan along with a detailed explanation and justification for the variance. Only one administrative variance per property may be granted. Denial of a request for an administrative variance under the provisions of this section may be appealed to the board of adjustment under the provisions of subsection (a)(1) of this section.

(f) Modifications of Community Redevelopment Area Urban Design Overlay District (CRAUDOD) standards. Subject to the criteria in section 12-3-31(6), the Urban Design Specialist (or the Mayor's designee), the CRA architect advisor(s), and the Chair of the applicable redevelopment board may authorize modifications to the Urban Design Overlay District standards.

(1) The architect advisors for the CRA Urban Design Overlay Standards abbreviated review process are hereby established:

a. Membership. There shall be two architect advisors, a primary and an alternate. The alternate architect advisor shall serve when the primary architect advisor has a conflict of interest. The architect advisors shall be appointed by city council. To qualify for appointment, an applicant shall be licensed as an architect by the State of Florida and licensed to conduct business within the City of Pensacola.

b. Terms of office; vacancies; removal from office. Appointed architect advisor(s), in primary or alternate roles, shall serve for terms of two years or thereafter until their successors are appointed. Any advisor may be removed from their duties in accordance with F.S. § 112.501 or upon determination by the city council that its policies and procedures have been violated by the advisor. 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. Such vacancy shall be filled as soon as is practical.

c. Duties. The advisors shall have power and duty to review modifications in design and development within the Community Redevelopment Area Urban Design Overlay District as defined in Sec. 12-3-31. As such, they are authorized to provide recommendations which achieve the intent of the CRAUDOD.

(2) Review and decision. The Urban Design Specialist (or the Mayor's designee), the CRA architect advisor(s), and the Chair of the applicable redevelopment board shall promptly review plans and shall render its decision.

a. The Urban Design Specialist shall initiate the review, assessing the plans for compliance, determining the extent of the modification, and providing recommendations.

b. The architect advisor shall review the plans and the recommendation of the Urban Design Specialist in making their determination.

c. The applicable redevelopment board Chair shall review the final determination for appropriateness within the applicable redevelopment area.

(3) Notification. Upon final determination by the reviewers, the Urban Design Specialist shall provide the applicant with a copy of the signed application.

(4) Appeal. Any person or entity whose property interests are substantially affected by a decision of the CRAUDOD modification reviewers may within 15 days thereafter, appeal to the zoning board of adjustment.

SECTION II. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION III. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION IV. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided, pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk