



CHAPTER 9

VARIATIONS FROM ULDC REQUIREMENTS

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9.00.00 PURPOSE AND INTENT

The purpose of this chapter is to provide mechanisms for property owners to obtain relief in the event that the provisions of this ULDC cause undue hardship or to obtain permission to conduct land development activities where the desired activity or use is not consistent with the requirements of the ULDC but is in harmony with the purpose and intent of the ULDC.

9.01.00 NONCONFORMING SITUATIONS

9.01.01 Continuation of Nonconforming Uses and Structures

A. Nonconforming Uses. The lawful use of a building, structure or premises, existing at the time of the adoption of this ULDC, may continue although such use does not conform to the provisions of this ULDC until such use is discontinued for a period of more than one-hundred eighty continuous (180) days. Nonconforming uses shall not be converted to other nonconforming uses even if the proposed use is less non-conforming.

B. Nonconforming Structures. A lawful structure existing at the time of adoption of this ULDC that does not conform with this ULDC can remain until the structure is involuntarily destroyed or voluntarily demolished. Nothing in this chapter shall be construed to prevent the ordinary and routine maintenance and repair of nonconforming structures provided that the costs of repair or replacement are less than fifty percent (50%) of the value of the structure, based on the appraised value as assessed by the County property appraiser.

9.01.02 No Expansion or Modification of Nonconforming Uses or Structures

A. No existing building, structure or premises shall be changed, reconstructed, extended, expanded or structurally altered in any manner or used for any purpose not consistent with the provisions of this ULDC or any other applicable law.

B. A nonconforming use shall not be enlarged, increased, expanded or extended or occupy a greater area of land than at the time of the adoption of this ULDC.

C. If a nonconforming use is discontinued for a continuous period of one-hundred eighty (180) days, every future use of such premises shall be in conformity with the provisions of this ULDC.

D. A nonconforming structure may be repaired when such structure is partially destroyed or damaged, provided that the costs of repair or replacement are less than fifty percent (50%) of the value of the structure, based on the appraised value as assessed by the County property appraiser.

E. A nonconforming building or structure, which is voluntarily demolished or involuntarily destroyed, partially destroyed, or damaged must be brought into full compliance with this ULDC if the cost to repair such damage is greater than fifty percent (50%) of the value of the structure.

9.01.03 Specific Provisions for Nonconforming Residential Lots of Record

The minimum lot area, as specified in this ULDC for any residential land use district, shall not apply to lots upon which buildings existed prior to the adoption of this ULDC. Non-conforming lots which do not have buildings may be combined or joined with other lots to create a buildable lot and may apply for a variance or beneficial use determination.

9.02.00 VARIANCES

9.02.01 Generally

Where there are practical difficulties or unnecessary hardships involved in carrying out the strict adherence to this ULDC, an application for a variance from the ULDC requirements may be made to the Town Council, using the procedure established in Section 9.02.03.

9.02.02 Required Findings for a Grant of Variance

In considering variations from the terms of this ULDC, the Town Council will consider granting a variance based on an affirmative response (i.e., each of the questions raised in the findings can be answered in the affirmative “yes”) for each of the following findings:

- A. The proposed variance does not constitute a change in the land use districts shown on the Future Land Use Map and the proposed variance does not violate the goals, objectives or policies set forth in the Comprehensive Plan
- B. There are substantial practical difficulties and hardships in carrying out the strict letter of the ULDC due to special conditions and circumstances that are peculiar to this particular parcel, lot, land, structure, or building that are not applicable to or found on other lands, structures, or buildings in the same land use district
- C. The special conditions and circumstances do not result from the actions of the applicant
- D. The variance request is not based on the presence of nonconformities in the district or adjoining districts
- E. Strict interpretation of the provisions of the ULDC would deprive the applicant of rights commonly enjoyed by others in the same land use district under the terms of the ULDC and would work unnecessary and undue hardship on the applicant
- F. The variance as requested or the variance as granted (because it is reduced in scope or subjected to additional conditions of approval) is the minimum variance that will make possible the reasonable use of the land, building, or structure for an allowable use in the district
- G. The grant of the variance will be in harmony with the general intent and purpose of this ULDC and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare, and the proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site

- H. The variance request is not based exclusively or solely upon a desire to reduce the cost of (or to increase profits from) developing the site or economic circumstances
- I. That the variance, if granted, is based on competent substantial evidence supporting the findings required by this section

9.02.03 Procedures for Variances

- A. Any person requesting a variance from the terms of this ULDC shall make formal application to the Town Council on forms provided by the Town Administrator.
- B. Any person requesting a variance shall issue payment to the Town of an appropriate fee as established by the Town Administrator. Payment of the fee shall accompany the application. No portion of the fee shall be refunded whether the request is withdrawn by the applicant or denied or granted by the Town.
- C. The Town may reduce or condition approval of a variance requested in size or type to the minimum necessary to prevent a taking of all reasonable use or value of the property as currently zoned.
- D. Any variance that is granted shall be memorialized in writing (either as a Resolution or Final Order granting the variance) and shall set forth the findings and reasons for granting the variance and any conditions of approval.

9.02.04 Specific Requirements for Variances in Areas of Flood Hazard

- A. Generally
 - 1. Variances may be granted for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure.
 - a. Any person aggrieved by the decision of the Local Planning Agency or any taxpayer may appeal such decision to the county circuit court.
- B. Required Findings

Variances shall only be granted upon a determination of the following:

 - 1. The variance is the minimum necessary, considering the flood hazard, to afford relief;
 - 2. In the instance of a historical building, the variance is the minimum necessary so as not to destroy the historic character and design of the building;
 - 3. Failure to grant the variance would result in exceptional hardship;
 - 4. Granting the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense; and
 - 5. Granting the variance will not create a nuisance, cause fraud or victimization of the public, or conflict with existing local laws or ordinances.

C. Factors for Consideration

In reviewing applications for variance, the Local Planning Agency shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ULDC, and the factors listed in Table 9.02.04(B).

Table 9.02.04(B). Factors Specific to Areas of Flood Hazard.

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 damages, 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 effects 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

D. Variances shall not be granted within any designated floodway if any increase in flood levels during the base flood discharge would result.

E. Upon consideration of the factors listed in this section, and the purposes of this ULDC, the Local Planning Agency may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ULDC.

F. Variances shall only be granted upon a showing of good and sufficient cause.

G. 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 building 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.

- H. The Building Official shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

9.03.00 APPEALS OF ADMINISTRATIVE ACTIONS

9.03.01 Applicability

Any person may file an appeal when it is alleged that there is error in any order, requirement or decision made by the Town in the application or interpretation of this ULDC.

9.03.02 Time for Filing an Administrative Appeal

- A. An applicant appealing an administrative decision under the terms of this section shall make formal application to the Town Council and shall pay a fee as established by the Town Administrator. No portion of the appropriate fee shall be refunded whether the request is withdrawn by the applicant or denied or granted by the Town.
- B. An application for consideration of an appeal of an administration decision shall be filed with the Town Administrator within thirty (30) days of the decision that is the subject of the administrative appeal.

9.04.00 ADMINISTRATIVE WAIVERS

9.04.01 Reduction in Required Parking

- A. A reduction of required parking spaces may be allowed by the Town Administrator when the reduction would result in:
 - 1. The preservation of a protected tree with a trunk of twelve (12) inches DBH or greater; or
 - 2. The preservation of native shrubs and/or ground cover in a quantity exceeding the minimum requirements of Section 3.05.00.
- B. The reduction in required parking may be granted only if it will prevent the removal of a protected tree or native vegetation that is located within the area of the site designated as a vehicular use area.
- C. The following reduction schedule shall apply:

Table 9.04.01(C). Reduction in Parking.

Required Parking Spaces (Number)	Reduction of Required Parking Spaces Allowable
1 to 4	0
5 to 8	1
10 to 18	2
20 or above	Ten (10) percent of total number of spaces maximum reduction regardless of number of

	trees or percentage of native vegetation preserved
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9.04.02 Reserved

9.05.00 SUSTAINABILITY WARRANTS

9.05.01 Purpose and Intent

The purpose of this subsection is to provide standards and procedures for the granting of a Sustainability Warrant by the Town Council upon a finding that use of an alternative performance standard that deviates from standards and criteria set forth the ULDC is preferable because it furthers, promotes and is in harmony with the purpose and intent of the ULDC, and offers more protection of environmental and natural resources of the Town and the ability of the ecosystem to maintain ecological processes and functions, biodiversity and ecological productivity into the future.

9.05.02 Pre-application Conference

The applicant shall meet with the Town Administrator to discuss informally the requirements of this sub-section and the nature of the proposed Sustainability Warrant prior to submitting an application for a Sustainability Warrant. The Town Administrator may specifically waive the pre-application conference requirement.

9.05.03 Submittal of the Application

- A. The applicant shall submit to the Town Administrator an application for a Sustainability Warrant on a form provided by the Town Administrator. The Town Administrator shall not accept an incomplete application. The Town Administrator shall establish and strictly adhere to application deadline.
- B. The applicant shall submit the following information along with the application for a Sustainability Warrant to the Town Administrator:
 1. Documents, reports, or other materials published by a generally recognized professional organization or government agency that describe the requested performance standard and support the Sustainability Warrant Application;
 2. If title to the property is not in the applicant's name and the property owner does not sign the application, the applicant shall submit a document signifying the owner's consent or an affidavit by the applicant;
 3. Any documents, plans, or other materials the Zoning Official determines are necessary to supplement the Sustainability Warrant Application.

9.05.04 Review by the Town Council

The Town Council shall approve the Sustainability Warrant Application by super-majority vote based on the application, the requirements of this Part, and the recommendations of the staff.

9.05.05 Effect of Sustainability Warrant Approval

- A. The voluntary removal, abandonment, or failure to exercise a privilege approved by a Sustainability Warrant for a period of six (6) months shall terminate the privilege approved by the Sustainability Warrant. Upon written request of the applicant stating the reasons for the voluntary removal, abandonment or failure to exercise a privilege approved by a Sustainability Warrant, the Town Council may extend the time limits in this paragraph for one period not to exceed six (6) months.
- B. The approval of an application for a Sustainability Warrant shall not constitute a general modification of the requirements of the ULDC for any property or portion of property not specified in the Sustainability Warrant.
- C. The approval of an application for a Sustainability Warrant shall not constitute a condition peculiar to the property that creates an undue construction or development hardship in complying with the strict letter of the ULDC.

9.05.06 Factors for Sustainability Warrant Approval

In determining whether to approve or deny an application for a Sustainability Warrant, the Town Council shall consider the following factors:

- A. The requested performance standard has been published by a generally recognized professional organization or government agency;
- B. Approval of the Sustainability Warrant is in harmony with the purpose and intent of the ULDC;
- C. Approval of the Sustainability Warrant will not injure or unreasonably interfere with the use or enjoyment of the property of another, or otherwise detrimentally affect the public welfare;
- D. The requested performance standard does not mitigate the application or affect of another unrelated performance standard required by the ULDC; and
- E. The requested performance standard does not require the approval of a variance to install or implement.

9.05.07 Prohibited Sustainability Warrants

The Town Council shall not grant a Sustainability Warrant if granting the Sustainability Warrant would permit a use or intensity not generally allowed in the affected land use district, or if granting the Sustainability Warrant would permit any use or density expressly or by implication prohibited in the affected land use district.

9.06.00 RESERVED

9.07.00 VESTED RIGHTS

9.07.01 Purpose and Intent

The purpose of this Section is to provide a method to recognize vested rights and works-in-progress that were authorized prior to the adoption of this ULDC.

9.07.02 Time Period and Applicability

- A. Within one (1) year from the original date of adoption of this ULDC or the date that the Town Council adopts an amendment to this ULDC that affects vested rights or creates a substantial and unreasonable conflict with a development work-in-progress, the affected party may apply for relief.
- B. Any project that constitutes a public nuisance and/or any project presenting a danger to the public health, safety, and welfare of the residents of the Town shall not qualify for consideration for relief.
- C. Vested Rights Determination Standards
 1. A determination of vested rights shall be based upon one or more valid, unexpired permits or approvals issued by the Town prior to the effective date of this Comprehensive Plan and ULDC.
 2. The determination of vested rights shall be limited to the development expressly contemplated by said permits or approvals and to those aspects of development, which meet the standards, and criteria of this Policy.
 3. The applicant for a vested rights determination shall have the burden of proving that:
 - a. The applicant has reasonably relied upon an official act by the Town. For the purposes of a vested rights determination pursuant to this Comprehensive Plan and ULDC, any of the following may constitute an official act:
 - i. One or more valid, unexpired permits or approvals issued by the Town, provided that the mere zoning or land use designation of property shall not be deemed to constitute a permit or approval for the purpose of a determination of vested rights; or
 - ii. A subdivision plat recorded in the official records of the County that fulfills the criteria established in Section 380.05(18), F.S.; or
 - iii. An unexpired determination of vested rights granted by Town; or
 - iv. A valid, unexpired building permit issued prior to the effective date of this Comprehensive Plan or ULDC; and
 - b. The applicant acting in good faith, has made such a substantial change of position or has incurred such extensive obligations and expenses that it would be highly inequitable or unjust to affect such rights by requiring the applicant to now conform to the comprehensive plan and land development regulations.
 - c. Substantial changes of position or expenditures incurred prior to the official Town act upon which the vested rights claim is based shall not be considered in making the vested

- rights determination; and
- d. That the development has commenced and has continued in good faith without substantial interruption
- D. If an applicant can conform to portions of the ULDC and still be in compliance with previous approvals then approval of a vested rights determination can be conditioned upon compliance with those achievable portions of the ULDC:
 - 1. If density was approved without a detailed site plan, and no further building or construction permits were obtained then:
 - a. density may be vested, but
 - b. all roads, site plans and new structures shall comply with the ULDC provisions to the greatest extent possible to the extent that the ULDC provisions do not preclude densities that can still be achieved.
 - 2. If a detailed site plan was approved then the detailed site plan may be vested if it meets the criteria for vesting set forth in this section 9.07.02.

9.07.03 Applications

- A. The affected party shall submit an application that includes evidence demonstrating entitlement to vested rights pursuant to applicable State law. The applicant shall provide following information along with the application:
 - 1. The specific section(s) of the ULDC that affect the development of the property; and
 - 2. The exact dates the specific ordinances or amendments to the ULDC were passed by the Town Council.
- B. All complete applications provided for under this section shall be submitted not later than one (1) year after the date of adoption of this ULDC or the amendment to this ULDC that are the subject of the application for relief.

9.07.04 Procedures

- A. The applicant shall submit complete applications to the Town Administrator.
- B. The Town Council shall make a determination of vested rights at a public hearing, following public notice provided according to the procedures set forth in Section 10.04.00.

9.07.05 Expiration of Approval

Vested rights shall automatically expire one (1) year from the date of approval where no additional development activity is evident or where the applicant has not obtained a building permit, commenced and continued in good faith with construction of the specific use(s) and structure(s) to be vested. Any further work on the site shall require an application for a development plan in full compliance with the standards and procedures of this ULDC.