

**BYLAWS OF THE  
TALLAHASSEE-LEON COUNTY BOARD OF ADJUSTMENT AND APPEALS  
WITH POLICIES AND PROCEDURES**

**ARTICLE 1**

**NAME AND AUTHORIZATION**

A. Name.

The name of the Board shall be the Tallahassee-Leon County Board of Adjustment and Appeals, hereinafter referred to as the "Board."

B. Authorization.

1. The Board is created pursuant to Sections 2-156 through 2-163, Tallahassee Land Development Code, and Section 10-2.341, Leon County Land Development Code. The Board's actions shall be governed by the following state statutes, ordinances and rules:

- a. State statutes that apply to public boards, members, and officials;
- b. Ordinances, policies, regulations, and rules of the City of Tallahassee and Leon County that affect local boards and officials;
- c. Those provisions of the City of Tallahassee and Leon County Land Development Codes, the City of Tallahassee and Leon County Building, Plumbing, Gas and Fire Prevention Codes, and other applicable land development regulations that specifically grant powers and duties to the Board; and
- d. The Bylaws of the Board as set forth herein.

**ARTICLE 2**

**PURPOSE AND FUNCTION**

A. Purpose.

1. Appeals and Variances. The Board shall hear and decide appeals of administrative decisions as provided in the City of Tallahassee and Leon County Land Development Code, and variances to sign, plumbing, zoning, housing, building, gas and fire prevention codes of the City of Tallahassee and Leon County as provided in the City and Leon County Land Development Codes.

2. Jurisdiction.

- a. Appeals. After a hearing on an appeal pursuant to the procedures outlined herein, the Board may affirm or reverse the decision of an administrative

officer if it determines that the true intent or meaning of the regulatory code has been misconstrued or wrongly interpreted.

- b. Variances. After a hearing on a variance application pursuant to the procedures outlined herein, the Board may vary the application of any provision of the codes in paragraph 1 above to any particular case where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the regulatory code involved would result in undue hardship.

3. Other duties. The Board shall perform such additional duties as may be delegated to the Board by ordinance.

B. Function. The Board shall have the following functions as set forth in the Land Development Codes of the City of Tallahassee and Leon County, as well as additional functions that may be assigned by ordinance to the Board:

1. City of Tallahassee:

- a. To hear appeals of administrative decisions;
- b. To decide variances for single family and duplex dwelling units;
- c. To hear appeals of the building officials;
- d. To decide variances to the technical requirements of the Florida Building Code;
- e. To decide variances from standards for fences and walls;
- f. To decide variances to the sign code;
- g. To hear appeals of decisions related to connections to public streets;
- h. To hear appeals of decisions related to building permits;
- i. To grant extensions of time for abandonment of nonconforming uses;
- j. To certify previously established land use conformity (PELUC); and
- k. To decide variances to height of structures and uses for property governed by the airport/aerospace regulations.

2. Leon County:

- a. To hear appeals of administrative decisions;

- b. To hear requests for variances from the application of any provision of Chapter 10 of the Leon County Code of Laws, unless the consideration of a variance is already contemplated by the provision to be accomplished by other means;
- c. To certify previously established land use conformity (PELUC); and
- d. To perform such additional duties as may by ordinance be delegated to it, and which pertain to the above assigned powers.

### **ARTICLE 3**

#### **MEMBERSHIP**

**A. Members.**

1. The Board shall consist of seven (7) members: three (3) shall be appointed by the Leon County Commission, and three (3) shall be appointed by the Tallahassee City Commission. The seventh member shall be alternately appointed by the City and the County Commissions.

**B. Eligibility.**

Each member shall be a resident of Leon County, Florida, and shall be a real property owner and taxpayer.

**C. Appointments.**

1. Appointments shall be for a term of three (3) years. The terms shall extend from July 1<sup>st</sup> in the year in which the appointment is made. The appropriate Commission may fill vacancies at any time for the un-expired term of a member.

2. Members shall not serve more than two (2) full consecutive terms on the Board, whether appointed by the City Commission or the County Commission.

3. It is the responsibility of the City or County Commissions to ensure an appointment will occur within thirty (30) days of notification of a vacancy. If an appointment is not made within thirty (30) days, the Board may request an appointment be agendaed for the next available Commission meeting.

4. The approval of these Bylaws shall not affect the terms of Board members who are serving on the date the Bylaws are approved.

**D. Vacancies.**

1. A member's position shall become vacant when:

- a. A member no longer meets eligibility requirements, or
- b. A member's term expires or

- c. A member resigns, or
- d. For a City appointee, if a member is absent from two (2) of three (3) consecutive meetings of the Board.

2. All absences will be duly recorded in the meeting minutes. Absences from emergency or special called meetings will not be recorded against a member in counting the absences. Special exceptions on the removal of members for absences may be made by the Chair of the Board when the absences are due to health or time-limited extenuating circumstances and the absences do not affect the ability of the Board to maintain a quorum.

3. When a vacancy is determined to exist by the Chair or the Board, the appropriate Commission shall be informed that such vacancy exists.

4. Resignation.

When a member intends to resign, if reasonably feasible, the member shall provide written notice of such intent to the Chair and the appointing authority, allowing a reasonable time for the appointment of a successor.

5. Causes for Removal from Board.

The appropriate Commission may remove a member of the Board due to malfeasance, misfeasance, or nonfeasance, the failure to disclose a conflict of interest for purposes of disqualification when a member has personal or monetary interest in the matter involved, or will be directly affected by a decision of the Board or as otherwise specified by applicable statutes.

## **ARTICLE 4**

### **ORGANIZATION**

A. Officers.

At the regular meeting of the Board each June, the Board shall elect from its members a Chair and Vice-Chair. If such regular meeting is cancelled or a quorum is lacking, the election shall be held at the next regular or specially called meeting that a quorum may be obtained. The Chair and Vice-Chair shall serve until successors have been elected and assume office.

B. Duties of the Chair and Vice-Chair.

- 1. The Chair shall preside at all meetings of the Board.
- 2. The Chair may delegate specific duties generally to the Vice-Chair.
- 3. The Chair shall ensure compliance with these Bylaws and policies and procedures.
- 4. The Chair will notify members of removal from the Board.

5. The Chair shall immediately, upon receipt of a resignation, or when advised of a vacancy, notify the City or County Commission to begin the appointment process.

6. In the absence of the Chair, the Vice Chair shall perform the duties of the Chair.

7. The Chair shall report to the Board on all official transactions, which have not otherwise come to the attention of the Board. The Chair shall also make any reports concerning the affairs of the Board required or requested. by the City or County Commissions.

C. Removal.

When an officer has been absent or has not performed the duties of that office for three (3) consecutive meetings, the Board, with a majority vote, at a regularly scheduled meeting, may remove that officer from office.

## **ARTICLE 5**

### **BOARD OPERATIONS**

A. The Board shall have no authority other than as stipulated by the City and County Land Development Codes and approved by the respective Commissions.

B. The Board will meet routinely based upon an adopted meeting schedule, which will be provided to the City Treasurer-Clerk and the County Public Information Officer. The Chair may change the meeting date with notification in advance by mail to Board members and reasonable notice to the public. Special meetings may be called by the Chair or by two Board members and the Chair.

C. All meetings will be open to the public. For advertising purposes, the Board will provide to the City Treasurer Clerk and County Public Information Officer a schedule of meetings and will ensure agendas and minutes are available to the public in accordance with the State of Florida Sunshine Laws.

D. All meetings shall be conducted in accordance with Robert's Rules of Order, as may be revised from time to time, and these Bylaws. All quasi-judicial proceedings shall be conducted as provided in these Bylaws and as may be required by law.

## **ARTICLE 6**

### **STAFF SERVICES**

A. Appointment of Administrators.

The City and Leon County shall each designate a staff person to serve as an administrator to the Board. The City's administrator shall be an employee of the City's Growth Management Department. Leon County's administrator shall be an employee of County's Growth & Environmental Management Department.

B. Duties of the Administrators.

Subject to the provisions of the City and County Codes, these Bylaws, and the direction of the Board, each administrator or his/her designee shall serve as a liaison between the Board and his/her local government, City or Leon County, and shall have the following duties, limited to the administrator's local government:

1. Attend to all correspondence of the Board;
2. Publish all required notices, as required by the City and Leon County Codes and these Bylaws;
3. Ensure that notices of variance applications are prominently posted on properties that are the subject of variance applications pursuant to the policies and procedures of the City and Leon County growth management departments;
4. Prepare orders for the Board under the supervision of the Board's legal counsel;
5. Attend all meetings and hearings conducted by the Board;
6. Review all matters to assure compliance with the City and County Codes and these Bylaws;
7. Ensure that appropriate City or County staff reviews all appeals and applications;
8. Provide a report and recommendation on each application to the Board; preparing the case for docketing; placing the case on the calendar; and ensuring public notice of the case as required by the City or Leon County Code and these Bylaws;
9. Ensure that all applications are processed and reviewed in accordance with the City and Leon County Codes and these Bylaws and that all Board hearings are conducted in accordance with the procedures outlined in the City and Leon County Codes and these Bylaws;
10. Provide a schedule of meetings to the City Treasurer-Clerk and Leon County Public Information Officer and Board members, arrange meeting locations, maintain summary minutes of the meetings, prepare and distribute appropriate information related to the meeting agenda;
11. Inform the Board of events, activities, policies, programs, etc. occurring within the scope of the Board's functions and informing the Board of all City and County Commission actions affecting the Board's functions;
12. Ensure the appropriate City and County officials are informed of all Board vacancies, expired terms, changes in officers, or any other changes to the Board and that all requests for review of applicants, and any subsequent recommendations by the Board or staff, are returned in a timely manner to the City and County officials to facilitate the appointment process;

13. Ensure the continuous flow of information to the appropriate City or County Commission including providing reports, actions, and recommendations of the Board and notification of noncompliance by the Board or Chair with the Bylaws or Codes;

14. Ensure information provided by the Board for City or County Commission review is appropriately agendaed for the City or County Commission meetings;

15. Schedule a standard orientation program to be provided by Legal Counsel to all new members. The program will address, but not be limited to, the Bylaws, conflicts of interest, State of Florida Sunshine Law, ethics violations, and public records law.

16. Keep all records of the Board and a Docket Book and Minute Book, as provided below; and

17. Otherwise perform or supervise all clerical or ministerial work of the Board.

C. Docket Book.

Each administrator shall maintain a docket book or its equivalent, which shall be kept posted to date. The administrator shall enter in the docket book the number of the case, the name of the applicant, the location of the premises by street number and tax parcel identification number or otherwise, the nature of the case, and when completed, the final disposition of the matter. All continuances, postponements, dates of sending notices and other steps taken and acts done shall be noted on the docket. The Docket Book may be kept in an electronic format.

D. Minute Book: Minutes a Public Record.

Each administrator shall maintain a minute book, which shall be kept posted to date. The minute book shall include a record of the Board's proceedings, showing attendance and all absences, with indications, where appropriate, as to whether absences were excused or unexcused by the Chair, disqualifications of members, the record of the Board's actions, motions, and the vote of each member voting on every motion. The minutes of the Board shall be a public record, and be maintained in the respective growth management offices of the City and County. The Minute Book may be kept in an electronic format.

E. Staff Services.

The City Growth Management Department shall provide staff services to the Board for the City. The Leon County Growth Management Department shall provide staff services to the Board for the County.

F. Duties of Legal Counsel.

Legal Counsel to the Board shall provide advice to the Board as to matters under its jurisdiction and may assist in questioning witnesses. Advice of counsel may be received and entered in the minutes before disposition of any question of law or matter requiring legal interpretation or advice. Legal Counsel shall also provide orientation to all members on legal

issues, such as conflicts of interest, the Florida Sunshine Law, ethics violations, and public records law.

## ARTICLE 7

### CONDUCT OF BOARD MEMBERS, STAFF

#### A. Representation of Applicants or Appellants.

No member of the Board or its staff or of City or County staff shall represent an applicant or appellant on a matter on which the Board is to make determinations, except where the City or County is the applicant or appellant.

#### B. Conflicts of Interest

1. The Board will be governed by the applicable requirements of Section 112.3143, Florida Statutes, as may be amended from time to time. A copy of Section 112.3143 is attached hereto as Appendix I.

2. When a member of the Board becomes aware of a potential conflict of interest in a case to come before the Board, the member shall notify the administrator and Board's legal counsel. The affected Board member shall refrain from further involvement in the case and, during the Board's consideration of the case, disclose the conflict on the record, and place in the records of the Board a memorandum which states the facts leading to the member's disqualification from participation in the matter.

3. Any questions regarding conflicts of interest may be directed to the Board's legal counsel.

#### C. *Ex Parte* Communications Prohibited.

1. An *ex parte* communication is generally defined as an oral or written contact with a public official by a party or interested person regarding a matter pending before the Board or a matter which may be reasonably foreseen to come before the Board, without giving notice to other interested parties.

2. No *ex parte* communications will be permitted on any matter coming before the Board.

3. In the event of any *ex parte* communication to a Board member, the substance of the communication and the identity of the person, group, or entity with which the communication took place shall be disclosed and made a part of the record before final action on the matter.

4. Nothing herein shall preclude any Board member from individually visiting any site that is the subject of a proceeding.

5. Disclosures made pursuant to this paragraph must be made before or during the public meeting or hearing at which action is taken on such matters, so that persons who have

opinions contrary to those expressed in the *ex parte* communication are given a reasonable opportunity to refute or respond to the communication.

D. Members Not to Vote Unless Present at Hearing.

No Board member shall vote on any matter involving an application or appeal unless the member attended the public hearing on the application or appeal and bases his or her determination on the facts presented at the hearing. In the event of multiple public hearings on an application or appeal, the Board member shall have attended all such hearings or, if not at the public hearings, he/she has reviewed the materials presented to the Board and a written transcript, video recording, or audio recording. of the proceedings he/she missed.

**ARTICLE 8**

**DELEGATION OF POWERS; FILING APPEALS AND APPLICATIONS; TIME LIMITS FOR APPEALS; INFORMATION REQUIRED; EFFECTS OF FAILURE TO PROVIDE REQUIRED INFORMATION**

A. Powers of the Board; Limitations; Procedures Generally.

The Board shall have all only such powers as are delegated to it by the City and County Commissions and shall exercise such powers only in the manner, for the purposes, and in accordance with the procedures set forth herein.

B. Filing Appeals and Applications: Forms.

All appeals and applications shall be filed on forms approved by the Board. In addition to information required to identify persons and property involved, date and time of filing, and the like, such forms shall indicate the findings and determinations for which information is required, and the nature of the information required to make such findings.

C. Time Limits on Appeals from Decisions of Administrative Officials.

In the case of appeals from decisions of administrative officials, an appeal shall be filed no later than thirty (30) days from the date of the written decision of such officials and shall specify the alleged error or errors in such decision.

D. Preliminary Determinations on Appeals and Applications Submitted for Filing; Deficiencies in Information Supplied.

All appeals and applications shall be examined by the appropriate City or Leon County growth management staff for completeness and accuracy. If the information submitted is not sufficient so as to allow the staff to appropriately review the appeal or application, and the deficiency cannot be remedied immediately, the applicant or appellant shall be notified of the nature and extent of such deficiency, and the documents shall be retained as an intent to appeal or apply until such deficiency is remedied. No docket number shall be assigned in such cases until required information has been supplied.

E. Continuances.

Cases which have been continued shall be given priority over new cases except where the Chair finds that circumstances of the continued case require a different order of hearing. In such event the Chair shall assign such order in such a manner as to conclude the continued case as soon as is reasonably possible.

## ARTICLE 9

### MEETINGS, HEARINGS, GENERALLY

A. Regular Meetings.

Regular meetings of the Board shall be held at 1:00 p.m. on the second Thursday of the month, unless cancelled as permitted by these Bylaws, or at such other times as the Board may from time to time decide.

B. Special Meetings.

Special meetings may be held at the call of the Chair or by two members with the concurrence of the Chair. Any applicant or Board member may request a special meeting. Such requests shall be in writing, and set forth the justification or purpose of such special meeting. The request shall be circulated by staff among all Board members and approved by at least four (4) members in writing. Special meetings may be held concurrently with any regularly scheduled meeting.

C. Continuance or Adjournment.

Any regular or special meeting may be continued or adjourned from day to day, or to the time of any previously announced regular or special meeting. Any continuance or adjournment to a time and place certain shall not require additional public notice.

D. Cancellation.

If no business is scheduled before the Board or if it is apparent that a quorum will not be available, the Chair may cancel any meeting by notifying all members before the time set for such meetings.

E. Quorum.

A quorum of the Board shall consist of four (4) members. The Board shall not pass on any question relating to an appeal from a decision of any administrative official or upon any variance unless there are at least four (4) members physically present. Upon the determination of a majority of the members present in the meeting room and voting, that extraordinary circumstances exist to justify the physical absence of a member or members from said meeting, and assuming a quorum of the Board is otherwise physically present as provided in this Article 9.E., the Board may, by motion made and approved, allow the participation of the physically absent member or members by communications media technology that includes both video and audio communication (Zoom,

or other comparable electronic medium). In such case, the communications media technology must be configured so that interactive access by members of the public is available to see and hear the physically absent member or members. The decision of the Board shall either be made at the immediately preceding meeting of the Board or at the beginning of the meeting where participation by electronic media technology is anticipated to be used and shall be based upon the facts and circumstances of each request. The physically absent member or members may not vote on any motion authorizing such participation. A physically absent member must take all steps necessary to provide the interactive communication between the meeting location and his or her location.

F. Public Meetings of the Board; Notice; Other Activities of the Board; Schedule.

All meetings of the Board involving hearing of evidence or decisions of the Board on appeals and applications shall be public, with formal notice as required by law.

G. Agenda; Order of Business.

Each administrator shall prepare an agenda for each Board meeting. The order of business shall be substantially as follows:

1. Call to order and recording of members present and absent.
2. Continued hearings, with consideration and determination on cases as heard.
3. New hearings, with consideration and determination on cases as heard.
4. Action on minutes of previous meetings.
5. Old business.
6. New business.
7. Adjournment.

H. Application of Robert's Rules of Order.

Except as otherwise specified by these Bylaws, parliamentary procedures of the Board during meetings shall be in accord with Robert's Rules of Order, as may be revised from time to time. The Chair may make motions and may second another member's motion.

I. Participation by Parties and the Public by Communications Media Technology

Members of the general public and parties to the proceedings before the Board may participate by communications media technology as provided herein:

1. When providing notice as required by law, the general public and parties to the proceedings must be advised that they may opt to appear at the public hearing either in person or by communications media technology that includes video and audio communication (Zoom, or other comparable electronic medium).

2. To appear by communications media technology, any individuals seeking to so appear must ensure that their video and audio capabilities are adequate to be clearly heard and seen by the Board. Any party or member of the general public who requests participation by communications media technology no less than 5 days before the public hearing will be emailed a link. If a party's communications media technology does not function during the public hearing so as to permit the party to be seen and heard, the party's item will be continued to the next Board meeting and the party will need to attend in person to be heard. Continuances will not be afforded to members of the general public whose communications media technology fails.

## ARTICLE 10

### QUASI-JUDICIAL PROCEEDINGS

Unless waived by all parties, all hearing on variance requests shall be conducted as quasi-judicial proceedings. Such waivers must be approved by the Board.

A. The City or County Growth Management Department Director, or his/her designee, shall receive all variance applications to go before the Board, and examine the material submitted therewith to assure completeness and that required maps, plans, or reports to be submitted by an applicant or appellant are in good order and in sufficient number for processing and recording. In the City, an application for a variance shall not be determined complete until the Department has verified that the property that is the subject of the variance application has been prominently posted pursuant to the policies and procedures of the Growth Management Department.

B. Within 10 days after a variance application has been determined to be complete, the City's administrator shall provide notice by regular mail of the pendency of the variance application to all owners of abutting property. The notices shall provide notice of the pending application; and clearly delineate the right of any aggrieved or adversely affected party to request a quasi-judicial hearing before the Board, the time frames for requesting such a hearing, and how to obtain the written procedures for a quasi-judicial proceeding. This notice may be combined with any other required mailed notice so long as it is mailed within 10 days after a variance application has been determined to be complete.

C. The hearing before the Board shall be conducted as provided herein in Article 11.

D. Following the conclusion of the hearing, the Board shall render a written preliminary decision to approve, approve with conditions, deny the application, or continue consideration to a date and time certain, and shall so notify the applicant in writing. The preliminary decision shall include a statement that any party may request a quasi-judicial proceeding on the preliminary decision as provided in this section.

E. The preliminary decision of the Board shall become final 30 calendar days after it is rendered unless a person who qualifies as a party, as defined in Section 1-2 of the City's Land Development Code or Section 10-7.703 of the Leon County Land Development Code pays the required fee and files a petition for quasi-judicial proceedings in accordance with Section 2-131, et seq., Tallahassee Land Development Code or Section 10-7.703 of the Leon County Land Development Code. The preliminary decision shall include a statement that any party may request

a quasi-judicial proceeding on the preliminary decision as provided in the Code and these Bylaws. Failure to pay the filing fee, and/or to file the petition as required in the Tallahassee or Leon County Land Development Code is jurisdictional and shall result in a waiver of the right to petition for quasi-judicial proceedings.

F. Quasi-judicial proceedings on timely petitions for variance applications in the City shall be conducted as provided in the City's Land Development Code. Quasi-judicial proceedings on timely petition for variance applications in Leon County shall be conducted as provided in the Leon County Land Development Code.

G. Appeals from the final decisions on variance applications after quasi-judicial proceedings shall be by petition for writ of certiorari filed in Leon County Circuit Court within 30 days after the Board's final decision is rendered.

## **ARTICLE 11**

### **PROCEDURES AT APPEAL AND VARIANCE HEARINGS**

In addition to procedures outlined in the City and County Land Development Codes, the following procedures apply to appeal and variance hearings:

A. Any Person May Appear or Be Represented: Authorization or Representatives.

Any person may appear at a hearing, or be represented by authorized agents or attorneys. Such agents or attorneys shall present competent evidence of the extent of their authorization.

B. Witnesses to Testify Under Oath.

All witnesses to material facts shall testify under oath.

C. Evidence.

The Board shall not be bound by strict rules of evidence, nor limited to consideration of such evidence as would be admissible in a court of law. The Board may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The Chair shall rule on all questions relating to the admissibility of evidence, but may be overruled by a majority of the Board members present.

D. Conduct During Hearings; Interrogations.

During the hearing, each side shall proceed without interruption by the other. All arguments and pleadings shall be addressed to the Chair. There shall be no questioning or argument between individuals in the audience or the parties.

The Chair or, upon recognition by the Chair, Board members, counsel to the Board, or staff, or counsel for any party, may direct questions to the applicant, witnesses, or any person speaking from the audience. The Board members may make comments pertinent to the case.

E. Submittal of Written Materials.

If written materials intended to be evidence are presented to staff or to the Board less than five working (5) days prior to the meeting, the Chair may reject the written materials. In lieu of rejecting the materials, the Board may continue the item to a subsequent meeting to allow time for review of the written materials.

F. Order for Presenting Evidence.

1. The Chair, or such persons as the chair may direct, shall describe the nature of the case, and present evidence, including staff reports and recommendations based on the applicant's or appellant's written application or appeal.

2. The applicant or appellant shall outline the nature of the request and present supporting evidence and argument.

3. Board members shall examine witnesses supporting the application or appeal.

4. Persons appearing in opposition to the application or appeal shall present evidence and argument.

5. Board members shall examine witnesses opposed to the application or appeal.

G. If all parties agree, any of the above procedures may be, with the Board's approval, waived.

## ARTICLE 12

### FINDINGS AND DECISIONS, INDIVIDUAL CASES OR CLASSES OR CASES

A. Decisions and Evidence.

1. After conclusion of the hearing on the case the Board shall examine the evidence presented and make its decision. The Board shall, in every case, reach a decision without unreasonable or unnecessary delay. In no case, may the Board fail to render a decision on the application within ten (10) working days after the final hearing thereon. Any continuance of a final hearing in which the applicant shall be allowed to submit additional information to the Board shall be by public hearing and with notice to the public as directed by the Board. The Board may waive the applicant's fee for the costs of renotification.

2. Every decision of the Board shall become final as provided herein; subject to the right of any party to request a quasi-judicial hearing. The Board's decision shall be in writing and shall indicate the vote. Every decision shall be promptly rendered in the office of the appropriate growth management department, and shall be open to public inspection. A copy shall be sent by mail or otherwise to the appellant or applicant. Appeals of the Board's final decision shall be by petition for writ of certiorari to the Circuit Court, which must be filed within 30 days of the date the Board's final order is rendered.

B. Appeals from Decisions of an Administrative Official.

1. The Board may affirm or reverse, in part or in whole, a decision of an administrative official. If at least four (4) members of the Board concur in a finding of error in any decision, order, requirement, or determination of an administrative official appealed from, the decision of the administrative official may be reversed. The Board may specify the decision, order, requirement, or determination, which should have been made, and the decision of the Board shall be binding upon the administrative official and the appellant.

2. If the decision of the Board reverses or modifies a decision, order, requirement or determination of an administrative official, the affected administrative official shall immediately take action in accordance with such decision. A decision of the Board to reverse or modify an order, requirement, decision or determination of an administrative official shall specify in writing in what manner such modification is made, the conditions upon which it is made, including but not limited to safeguards and the factual basis for the decision.

C. Variances.

1. After hearing, the Board may vary the application of any provision of the codes to any particular case when, based on the evidence submitted, as a result of special or unique circumstances peculiar to the property, enforcement of the provision would result in an unnecessary hardship to the applicant, and would be contrary to the spirit and purpose of the applicable code or the public interest.

2. A "variance" is a relaxation of the terms of the code or regulation involved where, as a result of special or unique circumstances peculiar to the property, and not the result of the actions of the applicant, a literal enforcement of the code involved would result in an unnecessary hardship, and such relaxation will not be contrary to the public interest.

3. A variance may not be granted based solely on economic hardship or based solely on a hardship, which is not peculiar to the property in question.

4. The establishment or expansion of a use that is otherwise prohibited shall not be allowed by variance nor shall a variance be granted because of the presence of nonconformities in the zoning district or adjoining districts.

5. A variance may only be authorized for height, area and size of structure, size of yards or open spaces, or parking regulations.

6. Where a variance is granted, the record shall state in detail the nature of the hardship found to exist by the Board, and shall also detail conditions and safeguards imposed by the Board, if any, with reasons for such imposition. Where a variance is denied, reasons for such denial shall be indicated in detail.

7. The Board may establish an expiration date for a variance.

8. In the City, any variance granted shall expire within one year from the date the order is rendered, unless otherwise specified by the Board, unless a permit based upon and

incorporating the variance is issued within such period, and construction has begun thereunder. In the County, unless the Board establishes an expiration date for a variance, the variance shall expire within one year from the date of the grant unless a permit based upon and incorporating the variance is issued within the one-year period and substantial construction has begun thereunder. Failure to meet both permitting and construction requirements within the time specified shall cause such variance to become void. As part of such conditions relating to time limits, the Board may require a performance bond or other surety be provided in an amount and form appropriate to the circumstances of the case. Such bond or other surety may also be required to assure continued maintenance of facilities required as conditions or safeguards.

D. Construction Appeals.

The owner of a building, structure or service system, or his duly authorized agent, may appeal a decision of the Building Official to the Board if:

1. The Building Official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system,
2. The provisions of the Florida Standard Building Code do not apply to the specific case,
3. An equally good or more desirable form of installation may be employed in a specific case, or
4. The true intent and meaning of the Florida Standard Building Code or any of the regulations thereunder have been misconstrued or incorrectly interpreted.

E. Construction Variances.

After a hearing as provided in the Land Development Codes and herein, the Board may vary the application of any provision of the Florida Standard Building Code to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this or the technical codes or public interest, and also finds that:

1. Special conditions and circumstances exist which are peculiar to the building, structure or service system involved and which are not applicable to others;
2. The special conditions and circumstances do not result from the action or inaction of the applicant;
3. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Code to other buildings, structures or service systems;
4. The variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system; and

5. Granting the variance will be in harmony with the general intent and purpose of this Code and will not be detrimental to the public health, safety and general welfare.

F. Request to Amend Variance Application Prior to Scheduled Publication of Notice.

An application for a variance may be amended not less than five (5) working days prior to scheduled publication of public notice by delivery of such written amendment to the administrator. If the amendment is timely received, the administrator shall not direct that notice of the hearing on the application be published, nor place the case on the hearing agenda, until the amendment has been received and processed by the appropriate City or County staff.

G. Other Requests.

1. Other requests to amend applications shall be made in writing to the administrator after publication of the variance request, prior to the hearing, or to the Board at the hearing, and shall include the amendment and the nature and purpose of the amendment. No amendment shall exceed the scope of the variance request, which has been noticed and published.

2. If the request to amend is denied, with cause for such denial stated in the motion, hearing and decision on the case shall proceed.

3. If the amendment is granted, the Board shall make a finding as to whether there is substantial difference between the case as it has been described in public notice and the case as amended. If substantial difference is found, new public notice shall be required, with fees paid by the applicant, before the hearing of the case may proceed.

H. Deferrals and Continuances.

On its own motion, or on approval of requests by applicants or appellants, the Board may defer the hearing of cases or provide for the continuance of cases on which hearings have begun. Deferrals or continuances shall be permitted only for good cause, stated in the motion, and unless time and place are stated, shall require new public notice. If the applicant or appellant requests the deferral or continuance, or if the deferral or continuance is the result of the action of the applicant or appellant, the applicant or appellant shall be responsible for the payment of any required fees.

## **ARTICLE 13**

### **APPEALS**

Decisions of the Board may be challenged by petition for writ of certiorari in the Circuit Court. In no event shall an appeal of the Board be appealable to either the Tallahassee City Commission or the Leon County Commission.

## **ARTICLE 14**

### **AMENDING, WAIVING OR SUSPENDING BOARD BYLAWS OR PROCEDURES**

#### **A. Amending Bylaws.**

These Bylaws may be amended by a majority of the Board except where such amendment would be contrary to requirements or limitations set by statutes or applicable codes. An amendment may be proposed at any regular meeting of the Board, and shall not be acted upon until the following regular meeting. Not less than seven (7) days prior to the meeting at which the amendment is to be voted upon, members shall be sent a copy of such proposed change. As to the City, amendments shall not be effective until approved by the City Commission.

#### **B. Waiving or Suspending Bylaws.**

A rule of procedure may be suspended or waived at any meeting by unanimous vote of Board members present, with agreement of the parties, unless such rule is established by statute or applicable code.

## **ARTICLE 15**

### **SEVERABILITY**

If any section, subsection, sentence, clause or phrase of these Bylaws is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the Bylaws.

## **ARTICLE 16**

### **EFFECTIVE DATE**

These policies and procedures, and any amendment thereto, shall take effect immediately for Leon County upon adoption by the Board. For the City of Tallahassee, these policies and procedures, and any amendment thereto, shall take effect immediately upon approval by the City Commission of the City of Tallahassee.

Adopted by the Tallahassee- Leon County Board of Adjustment and Appeals on the 14<sup>th</sup> day of January, 2021.

Approved by the City of Tallahassee City Commission on the 24th day of February, 2021.

Note: The Leon County Land Development Code authorizes adoption of Bylaws by the Board; approval by the Board of County Commissioners is not required.

TALLAHASSEE-LEON COUNTY  
BOARD OF ADJUSTMENT AND APPEALS

Carol "Yvonne" Phillips  
Chair

Attest:

Approved as to form and sufficiency:

John Reddick  
Clerk

[Signature]  
Board Attorney

CITY OF TALLAHASSEE

By: [Signature]  
John E. Dailey  
Mayor

ATTEST:

Approved as to form:

By: [Signature]  
James O. Cooke, IV  
City Treasurer-Clerk

By: [Signature]  
Cassandra K. Jackson  
City Attorney



LEON COUNTY, FLORIDA

By: Vincent S. Long  
Vincent S. Long, County Administrator

Date: 3/2/21

APPROVED AS TO LEGAL  
SUFFICIENCY:  
Chasity H. O'Steen, County Attorney  
Leon County Attorney's Office

By: Emily R. Pepin  
Emily R. Pepin  
Assistant County Attorney