

**ORDINANCE 2014-11**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, AMENDING THE MUNICIPAL CODE OF ORDINANCES, LAND DEVELOPMENT CODE; AMENDING APPENDIX “G”, AMENDING CHAPTER 14 ENTITLED “ZONING REGULATIONS;” BY CREATING A NEW SECTION ENTITLED “ADMINISTRATIVE VARIANCES;” PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

**WHEREAS**, Section 163.3202, *Florida Statutes*, provides that the City of Daytona Beach Shores shall adopt and enforce land development regulations for the purpose of implementing its comprehensive plan and protecting the public health, safety, and general welfare; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores finds it is in the best interest and welfare of the citizens of the City to enact this ordinance; and

**WHEREAS**, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

**WHEREAS**, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*; and

**WHEREAS**, for purposes of this Ordinance, underlined type shall constitute additions to the original text, \*\*\* shall constitute ellipses to the original text and ~~strikethrough~~ shall constitute deletions to the original text.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:**

**SECTION ONE.** The City Council of the City of Daytona Beach Shores hereby amends the Land Development Code, Chapter 14, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “Zoning Regulations,” to create new provisions as follows:

## Administrative Variance.

In general. Requests for administrative variances from the requirements of this chapter shall generally be considered for those provisions which regulate proposed site development, redevelopment or amendments relative to properties that are physically restricted and or confined by conditions including, but not limited to, the existing built environment, lot size and lot configuration. Requests for administrative variances to permit a use which is not allowed as a permitted use or conditional use or by special exception within the specific zoning district shall not be considered. In addition, requests for administrative variances to permit the nonconforming use of any land or structure, or the continuance of any nonconforming use shall not be considered.

(a) Authority of the Building Official. The Building Official may grant administrative variances from the various zoning dimensional requirements and landscape design standards of this chapter, respectively, when the application is consistent with the provisions herein.

(b) Application for administrative variances. Application for administrative variance from the requirements of this chapter shall be made on the appropriate forms provided by the City for that purpose, and shall be accompanied by the appropriate review fee.

(c) Review criteria. When reviewing any variance request, the Building Official shall consider the following:

(1) The extent of the variance requested. In no case shall an administrative variance be granted when such variance exceeds ten percent of the required dimension. In such case, the applicant shall be required to make application in accordance with the variance procedure established in Section 14-69.2 of this code. Notwithstanding the aforementioned, the Building Official shall not grant administrative variances relative to building height and building setbacks for residential and hotel/motel land uses.

(2) Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are generally not applicable to conforming lands, structures or buildings in the same zoning district.

(3) The special conditions and circumstances are not the result of actions of the applicant.

(4) Literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the development code, and would work unnecessary and undue hardship on the applicant.

(5) The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building or structure.

(6) The variance sought will not authorize or extend any nonconforming use or other nonconformity with respect to the land or structure in question.

(7) Granting of the variance request will not confer on the applicant any special privilege that is denied by the land development code to other lands, buildings or structures in the same zoning district.

(8) The granting of the variance will be in harmony with the general intent and purpose of this code, and will not be injurious to the surrounding properties or detrimental to the public welfare.

The above criteria shall be used to determine the justification for granting of relief from requirements of the land development code. All administrative variance requests shall demonstrate the application of each criterion to the specific case.

(d) *Financial hardship.* Financial disadvantages or inconvenience to the applicant shall not of themselves constitute conclusive evidence of unnecessary and undue hardship and be grounds to justify granting of a variance.

(e) *Physical hardship.* Notwithstanding the foregoing criteria, variances may be granted under the authority of the Americans with Disabilities Act as reasonable accommodations based on the disabilities of any applicant or a member of the applicant's household. For purposes herein, "reasonable accommodation" and "disabilities" shall have the meanings provided under the Americans with Disabilities Act.

(f) *Hardship related to provision of personal wireless communications.* Notwithstanding the foregoing criteria, variances may be granted to any person applying for a permit for personal wireless communications-related development, from any requirement of this code which, as applied to such person, would have the "effect of prohibiting the provision of wireless communication services," as that phrase is used in Section 704 of the Telecommunications Act of 1996.

(g) *Conditions of approval.*

(1) *Conditions and safeguards.* In granting any administrative variance, appropriate conditions and safeguards may be prescribed to ensure compliance with the requirements of this chapter and the land development code in general. Such conditions may include time limits for the initiation of the variance, specific minimum or maximum limits to regular code requirements, or any other conditions reasonably related to the requirements and criteria of this chapter.

(2) *Transfer of variances.* Variances run with the property and the use of a variance may be transferred to another party for use on the same property.

(3) *Expiration of variance approval.* A variance that has not been utilized within two years of being granted shall not be utilized without a new application in accordance with requirements of this chapter.

(h) *Violation of variance terms or conditions.* It is a violation of this code for any person to violate or to refuse to comply with any term or condition of an administrative variance. Violations may be enforced or prosecuted as provided by law for prosecution or enforcement of municipal ordinances.

**SECTION TWO: SAVINGS.** The prior actions of the City of Daytona Beach Shores relating to variances and related matters are hereby ratified and affirmed.

**SECTION THREE: CODIFICATION.** The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and the Sections of this Ordinance may be renumbered

or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections Two, Three, Four, Five and Six shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

**SECTION FOUR: CONFLICTS.** All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**SECTION FIVE: SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION SIX: EFFECTIVE DATE.** This Ordinance shall take effect immediately upon enactment.

**CITY OF DAYTONA BEACH SHORES, FLORIDA**

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**HARRY JENNINGS, MAYOR**

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**MICHAEL T. BOOKER, CITY MANAGER**

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**CHERI SCHWAB, CITY CLERK**

**Approved as to form and legality:**

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**LONNIE GROOT, CITY ATTORNEY**

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Adopted on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2014.