

ORDINANCE NO. 2010-\_\_\_\_\_

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3 AN ORDINANCE OF THE BOARD OF COUNTY  
4 COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING  
5 CHAPTER 10, LAND DEVELOPMENT CODE, OF THE CODE  
6 OF LAWS OF LEON COUNTY, FLORIDA; AMENDING  
7 ARTICLE II, ADMINISTRATION, DIVISION I, SUBDIVISION 3,  
8 BOARD OF ADJUSTMENT AND APPEALS; AMENDING  
9 SECTION 10-2.341, APPOINTMENT, TO PROVIDE FOR AN  
10 ATTENDANCE REQUIREMENT FOR MEMBERS OF THE  
11 BOARD OF ADJUSTMENT AND APPEALS; AMENDING  
12 SECTION 10-2.347, VARIATIONS AND MODIFICATIONS, TO  
13 CLARIFY CRITERIA FOR GRANTING VARIANCES;  
14 PROVIDING FOR CONFLICTS; PROVIDING FOR  
15 SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.  
16

17 WHEREAS, the Tallahassee-Leon County Board of Adjustment and Appeals is  
18 currently a seven-member board made up of volunteer citizens appointed by both the City of  
19 Tallahassee and Leon County; and

20 WHEREAS, the work of the Board is necessary to provide flexibility in implementation  
21 of certain specified land development regulations in the City; and

22 WHEREAS, the Board meets routinely once a month to consider variances and other  
23 matters within the City as provided in the Land Development Code; and

24 WHEREAS, to assist the Board in meeting the required quorum requirements, the City  
25 and Leon County are willing to provide for two alternate members to attend meetings when  
26 necessary to make up a Board quorum.

27 BE IT ORDAINED by the Board of County Commissioners of the County of Leon,  
28 Florida, as follows, that:

29 Section 1. Section 10-2.341 of Chapter 10, Land Development Code of the Code of Laws of  
30 Leon County, Florida, is hereby amended to read as follows:  
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1 **Sec. 10-2.341. Appointment.**  
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3 (a) There is hereby created the Tallahassee-Leon County Board of Adjustment and  
4 Appeals which shall consist of three members appointed by the Board of County  
5 Commissioners and three members appointed by the city commission and a seventh  
6 member whose position shall alternately be appointed by the city and the county. The  
7 City Commission and the Board of County Commissioners may each appoint an alternate  
8 board member who shall serve at Board of Adjustment and Appeals meetings in the  
9 event that their presence is needed to constitute a quorum.  
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11 (b) The terms of members of the board of adjustment and appeals including alternate  
12 members shall be three years. The terms shall extend from July 1 in the year in which the  
13 appointment is made. Vacancies may be filled at any time for the unexpired term of a  
14 member by the appropriate governmental unit. ~~Absence of any member from three~~  
15 ~~consecutive meetings of the board, unless approved by the chairman shall, at the~~  
16 ~~discretion of the governmental unit making the appointment, render any such member~~  
17 ~~liable for immediate removal from office by the governmental unit having made the~~  
18 ~~appointment.~~  
19

20 (c) The position of a member appointed by the County Commission shall become  
21 vacant under the following circumstances:

22 (1)When a member is absent from three (3) consecutive meetings of the Board  
23 without approval of the Chair. Absences from emergency or special called meetings will  
24 not be recorded against a member in counting the absences. Special exceptions on the

1 removal of members for absences may be made by the Chair when the absences are due  
2 to health or time-limited extenuated circumstances and the absences do not affect the  
3 ability of the Board of maintain a quorum; or,

4 (2)When a member is absent from 33% of the regularly scheduled meetings in a  
5 given calendar year, regardless of whether such absence is excused or unexcused.

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7 **Section 2.** Section 10-2.347 of Chapter 10, Land Development Code of the Code of Laws of  
8 Leon County, Florida, is hereby amended to read as follows:

9 **Sec. 10-2.347. Variations and modifications.**

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11 (a) The board of adjustment and appeals, when appealed to and after a hearing, may  
12 vary the application of any provision of the codes as set out identified in this chapter,  
13 ~~unless otherwise provided, to any particular case when, in its opinion, the variance, if~~  
14 ~~granted, would not be inconsistent with the provision of the Comprehensive Plan, the~~  
15 ~~enforcement of such provision thereof would do manifest injustice, owing to special or~~  
16 ~~unique circumstances peculiar to the property and would be contrary to the spirit and~~  
17 ~~purpose of the code or to the public interest.~~

18  
19 (b) A variance is hereby defined as a relaxation of the strict terms of the this code or  
20 ordinance involved in cases involving practical difficulties or hardships and where such  
21 variance request meets the following criteria:

22 (1) The variance will not be contrary to the public interest;

1. (2) The intent of the regulation sought to be varied will be observed and  
2 substantial justice done by granting the variance;

3 (3), and, w Where owing to conditions peculiar to the property, existing structure  
4 or building thereon, and not the result of the actions of the applicant, a strict and  
5 literal enforcement of the code involved would deprive the applicant of rights  
6 commonly enjoyed by and frequently occurring on other properties in the same  
7 zoning district under the terms of this Code, and would result in an unnecessary  
8 or unique hardship undue practical difficulty or hardship not shared by other  
9 property owners in the zoning district;

10 (4) The owner's predicament feasibly cannot be obviated through any method  
11 other than the variance;

12 (5) The applicant may not have created the hardship or practical difficulty;

13 (6) The alleged hardship or practical difficulties which would result from  
14 failure to grant the variance extend to the inability to use the land in question for  
15 any reasonable legal use which is consistent with the surrounding properties and  
16 in conformity with the provisions of this Code and include substantially more  
17 than mere inconvenience and inability to obtain a higher financial return;

18 (7) The variance shall not substantially interfere with or detrimentally affect  
19 the health, safety, or welfare of others whose property would be affected by  
20 allowance of the variance;

21 (8) The variance shall not adversely affect the delivery of government  
22 services;

23 (9) The variance shall not be in conflict with the Comprehensive Plan;

1           (10) The variance shall not allow establishment or expansion of a  
2           nonconforming use;

3           (11) A variance shall not be granted because of the presence of  
4           nonconformities in the zoning district or adjoining districts; and

5           (12) No use variances are permitted.

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7           ~~As used in the zoning code, establishment or expansion of a use otherwise~~  
8           ~~prohibited shall not be allowed by variance nor shall a variance be granted~~  
9           ~~because of the presence of nonconformities in the zoning district or~~  
10           ~~adjoining districts. As further defined~~

11           (13) f For the purpose of the zoning code a variance is authorized only for the  
12           area and size of structure or size of yards or open spaces, or parking  
13           regulations;

14           (14) In granting a variance of a provision of the environmental management  
15           article, the board of adjustment and appeals must also determine that the  
16           criteria in section 10-4.503 has been met.

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18           (c) The board of adjustment and appeals may consider a variance upon filing of a  
19           written request with the Department of Growth and Environmental Managment  
20           Leon County Community Development by the property owner for whose land the  
21           variance is sought, and payment of a fee for same.

1 (d) A decision of the board of adjustment and appeals to vary the application of any  
2 provision of the codes or to reverse or modify an order, requirement, decision or  
3 determination of an administrative official shall specify in writing in what manner  
4 such variation or modification is made, the conditions upon which it is made,  
5 including, but not limited to safeguards and the reasons for the variance. The board  
6 of adjustment and appeals may impose reasonable conditions upon the granting of  
7 any variance to ensure that the public health, safety, and general welfare shall be  
8 protected. When all criteria for a variance have been met, based on the evidence  
9 presented, only the minimum variance necessary shall be granted.

10 ~~(d)~~(e) Any variance granted shall be deemed to be applicable to the affected land in  
11 perpetuity, except as provided in section 10-2.349, regardless of ownership.

12  
13 **Section 3. Conflicts.**

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15 All ordinances or parts of ordinances in conflict with the provisions of this ordinance are  
16 hereby repealed to the extent of such conflict, except to the extent of any conflicts with the  
17 Tallahassee-Leon County Comprehensive Plan as amended, which provisions shall prevail over  
18 any parts of this ordinance which are inconsistent, either in whole or in part, with the said  
19 Comprehensive Plan.

20 **Section 4. Severability.**

21 If any provisions or portion of this Ordinance is declared by any court of competent  
22 jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and  
23 portions of this Ordinance shall remain in full force and effect.

24 **Section 5. Effective Date.**

25 This ordinance shall have effect upon becoming law.

1           DONE, ADOPTED AND PASSED by the Board of County Commissioners of Leon  
2 County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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LEON COUNTY, FLORIDA

By: \_\_\_\_\_  
Bob Rackleff, Chairman  
Board of County Commissioners

10 ATTESTED BY:  
11 BOB INZER, CLERK OF THE COURT  
12 LEON COUNTY, FLORIDA

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By: \_\_\_\_\_  
Clerk

19 APPROVED AS TO FORM:  
20 COUNTY ATTORNEY'S OFFICE  
21 LEON COUNTY, FLORIDA

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By: \_\_\_\_\_  
Herbert W. A. Thiele, Esq.  
County Attorney