



## City of North Port

### ORDINANCE NO. 2014-29

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, ADOPTING SECTION 1-32 ZONING HEARING OFFICER, OF THE UNIFIED LAND DEVELOPMENT CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA:

#### SECTION 1 - ADOPTION

1.01 - The City Commission of the City of North Port hereby adopts Section 1-32 Zoning Hearing Officer, of the Unified Land Development Code, as follows:

##### Sec. 1-32. Zoning Hearing Officer

###### A. Creation.

- (1) There is hereby established the position of Zoning Hearing Officer (Hearing Officer). One or more Hearing Officers shall be appointed by the city commission as its hearing officer for zoning appeals and variance matters. Should more than one Hearing Officer be appointed the terms of office shall be appropriately staggered and applications shall be equally assigned to Hearing Officers by a rotation system.
- (2) To be eligible for service as a Hearing Officer, a person must:
  - (a) Be a member in good standing with the Florida Bar for a minimum of five years.
  - (b) Be engaged in the practice of law in Sarasota County or be a resident of the city.
  - (c) Have a minimum of two years experience in land use, zoning, or other land use regulatory experience.
  - (d) May not be a city employee, officer, or board or committee member.
- (3) Hearing Officers shall be appointed by the city commission for a definite term not to exceed four years.

- (4) The Hearing Officer(s) shall serve at the pleasure of the city commission and may be removed from service at any time, with or without cause, by a majority of the city commission.
- (5) Hearing Officers shall be compensated at a rate to be determined by the city commission.
- (6) Each Hearing Officer shall comply with the requirements of Ch. 112, Florida Statutes, and shall file a financial disclosure as required for local officers.

B. Jurisdiction.

In the absence of there being sufficient appointed members of the Zoning Board of Appeals to constitute a quorum, the Hearing Officer shall have the same jurisdiction and authority as the ZBA and shall exercise all powers of the ZBA. Except where the context does not permit, and Section 1-28, references in this ULDC to the ZBA shall also include the Hearing Officer.

C. Proceedings.

- (1) Rules and procedure. The Hearing Officer may adopt rules of procedure necessary for the governance and the conduct of hearings and proceedings, in keeping with the applicable provisions of Florida law and these zoning regulations. Such rules of procedures shall be available in a written form to persons appearing before the Hearing Officer and to the public.
- (2) Meetings. Meetings shall be held as necessary and at such times as the Hearing Officer may determine. The Hearing Officer shall have the power to take testimony under oath and compel the attendance of witnesses.
- (3) Records. The city clerk or designee shall keep minutes of all proceedings and shall keep records of all examinations and other official actions, which shall be filed in the office of Neighborhood Development Services.
- (4) Disqualification. If any Hearing Officer, called on to sit in a particular case, shall find that his/her private or personal interests are involved in the matter coming before him/her, the Hearing Officer shall disqualify himself/herself from all participation in the case, and an alternate Hearing Officer shall hear the case. The City Manager is authorized to provide an attorney otherwise qualified to sit as a Hearing Officer for an individual case where all Hearing Officers disqualify themselves. No Hearing Officer shall appear before the Zoning Board of Appeals, another Hearing Officer or the city commission as agent or attorney for any person during his/her appointment as Hearing Officer.
- (5) Freedom from Improper Influence.
  - (a) No person who is or may become a party of record before the Hearing Officer nor anyone appearing on behalf of a party of record before the Hearing Officer shall communicate ex parte

with any Hearing Officer about an application currently before him or her.

- (b) No member of the city commission shall communicate ex parte with any Hearing Officer about an application currently before him or her. Communication between the Hearing Officer and the city commission acting as a collegial body shall be undertaken in accordance with the terms of this Code.
- (c) In order to assure that the Hearing Officers are free from improper influence, a Hearing Officer shall neither initiate nor consider ex parte communications concerning a pending or impending application. A Hearing Officer, however, may obtain the advice of a disinterested expert other than another Hearing Officer on law, planning, or zoning applicable to a proceeding before him, if he gives notice to the parties of record of the person consulted and the substance of the advice, and affords the parties of record reasonable opportunity to respond.
- (d) Ex parte communications as contemplated herein shall not include the required transmission of official documents by staff pursuant to the terms of this Code nor shall it include discussion with representatives of the City Attorney's Office, regarding discussions not related to a specific land use case to be heard before him or her.

D. Filing of appeals; hearing; stay of proceeding; assistance.

- (1) Filing of appeals. Appeals to the Hearing Officer concerning interpretation or administration of these zoning regulations or for variance under these zoning regulations may be taken by any person aggrieved, or by any officer, board or department of the City of North Port affected by any decision, determination or requirement of the department responsible for land development services.
  - (a) Such appeals shall be taken within a reasonable time not to exceed fifteen (15) days or such lesser period as may be provided by the rules of the Hearing Officer, by filing with the Director of the department responsible for land development services and with the Hearing Officer a notice of appeal specifying the grounds thereof.
  - (b) The Director shall forthwith transmit to the Hearing Officer all papers constituting the record upon which the action appealed from was taken.
- (2) Withdrawal of appeal.
  - (a) The application may be withdrawn at any time prior to the publication of Notice of Hearing.
  - (b) The withdrawal of an application that has been placed on an agenda for public hearing may be requested to be withdrawn

no later than five (5) days prior to any official meeting of the Hearing Officer. Such request for withdrawal of an application for hearing must be delivered in writing to the Hearing Officer liaison.

- (3) Continuance.
  - (a) A continuance may be requested by an applicant or staff demonstrating that the continuance is necessary to provide rebuttal testimony or to provide time to review documentary evidence.
    - (i) The applicant may seek a continuance administratively, with consent of the Hearing Officer, prior to the distribution of the meeting agenda for petitions that do not require legal advertisement.
    - (ii) A maximum of three (3) applicant initiated continuances may be granted for any one (1) petition.
    - (iii) Any petition that requires publication in a newspaper of general circulation, must be filed in writing twenty-one (21) days prior to the public hearing.
  - (b) The Hearing Officer may continue the public hearing on his/her own initiative, upon finding that any testimony, documentary evidence, or other evidence presented at the quasi-judicial hearing justifies allowing time for additional research or review for the benefit of the Hearing Officer, to assist in an appropriate resolution of the matter being presented. A continuance initiated by the Hearing Officer will not be charged against the allowable continuances permitted under these regulations.
  - (c) The Hearing Officer shall order a continuance at any time the Hearing Officer determines the scheduling or timing of the pending application warrants a continuance to another date or time, but is not obligated to grant a continuance.
- (4) Hearing. The Hearing Officer shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice of the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.
  - (a) If the applicant does not appear, refuses to proceed, or cannot proceed, the application shall be deemed denied. An applicant may seek relief by sending a third party to request continuance at the published meeting. If the applicant seeks to request relief by a third party, the applicant shall submit a signed affidavit specifying the person's name, address with a copy of the petition prior to the meeting.
  - (b) If an application is deemed denied, no further application for a variance of any type for the subject property shall be filed

within one (1) year of such denial.

- (c) If an application for an administrative appeal is denied, it shall be deemed denied with prejudice.
  - (5) Financial and staff assistance. The Hearing Officer may be provided by the City Commission with such professional and financial assistance as may be deemed necessary to enable the Hearing Officer to perform the functions assigned to it by these zoning regulations.
  - (6) The cancellation of any meeting of the Hearing Officer is at the officer's discretion.
- E. Powers and duties. The Hearing Officer shall have the following powers and duties:
- (1) Administrative review. To hear and decide appeals where it is alleged there is error in any order, decision or determination of the Director responsible for land development services in the enforcement of these zoning regulations.
  - (2) Variances; powers; conditions governing petitions; procedures. To authorize upon appeal in specific cases such variance from the terms of these zoning regulations as will not be contrary to the public interest where, owing to special conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the provisions of these zoning regulations would result in unnecessary and undue hardship on the land. A variance from the terms of these zoning regulations shall not be considered by the Hearing Officer unless and until:
    - (a) Written petition. A written petition for a variance is submitted by the applicant.
    - (b) Notice of public hearing. Notice of public hearing shall be given at least fifteen (15) days in advance of the public hearing.
      - (i) The owner of the property for which variance is sought, or his agent or attorney designated by him on his petition, shall be notified by mail.
      - (ii) Notice of the public hearing shall be advertised in a newspaper of general circulation in the City at least one (1) time fifteen (15) days prior to the hearing.
    - (c) Public hearing. The public hearing shall be held by the Hearing Officer. Any party may appear in person or by agent or attorney.
    - (d) Conditions and safeguards. In granting any variance the Hearing Officer may prescribe appropriate conditions and safeguards in conformity with these zoning regulations, including but not limited to reasonable time limits within which the action for which variance is required shall be begun or completed, or both. 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 these zoning regulations.

- (e) Limitations on power to grant variances.
  - (i) Under no circumstances shall the Hearing Officer grant a variance to permit a use not permitted under the terms of these zoning regulations in the zoning district involved or any use expressly or by implication prohibited by the terms of these regulations in the said zoning district.
  - (ii) A variance is authorized only for height, parking requirements, area and size of structures, minimum setbacks, or size of yards and open spaces.
  - (iii) Establishment or expansion of a use otherwise prohibited or not permitted shall not be allowed by variance.
  - (iv) No nonconforming use of neighboring lands, structures or buildings in the same zoning district and no permitted use of lands, structures or buildings in any other district shall be considered grounds for the granting of a variance.
  - (v) No special exception to these zoning regulations shall be granted by the Hearing Officer.
- (f) Considerations. In reaching this decision, the Hearing Officer shall consider the following criteria, recommendations and testimony:
  - (i) Exceptional or extraordinary conditions or circumstances exist which are inherent in the land, structure or building involved and such exceptional or extraordinary conditions or circumstances create an undue hardship on the property owner's land and are not generally applicable to other lands, structures or buildings;
  - (ii) The exceptional or extraordinary conditions or circumstances do not result from the actions of the applicant;
  - (iii) Without the variance, the provisions of this chapter would deprive the applicant of reasonable use of his property;
  - (iv) The variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building or structure;

- (v) The variance, if granted, will not be injurious to the neighborhood or otherwise detrimental to the public welfare;
  - (vi) Staff recommendations;
  - (vii) Testimony from the applicant; and
  - (viii) Testimony from the public.
- (g) Findings.
- (i) Before granting a variance, the Hearing Officer shall find that all of the following exist:
    - [1] That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning district.
    - [2] That the exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of this chapter. (Any action taken by an applicant pursuant to lawfully adopted regulations preceding this chapter will not be considered self-created.)
    - [3] That such variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
    - [4] That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
    - [5] That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make it more reasonable and practical to amend these zoning regulations.

F. Reversal of decision of Department responsible for Land Development Services Director.

- (1) In exercising the above-mentioned powers, the Hearing Officer may, so long as such action is in conformity with the terms of these zoning regulations, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as sought to be made, and to that end shall have the powers of the Department responsible for land development services from whom the appeal is

taken.

(2) The final determination of the Hearing Officer shall be made in writing and shall be made available to the applicant, the City Attorney and the City Manager.

G. Appeals from decisions of Hearing Officer. Any person or persons, jointly or severally, including any officer, department, board or commission of the City, aggrieved by any decision of the Hearing Officer may apply to the Circuit Court having jurisdiction in the City of North Port for judicial relief within thirty (30) days after the rendition of the decision by the Hearing Officer. The proceedings in the Circuit Court shall be by petition for writ of certiorari, which shall be governed by the Florida Rules of Appellate Procedure.

**SECTION 2 - SEVERABILITY.**

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

**SECTION 3 - CONFLICTS**

3.01- In the event of any conflict between the provisions of this Ordinance and any other ordinance or portions thereof, the provisions of this Ordinance shall prevail to the extent of such conflict.

**SECTION 4 - EFFECTIVE DATE.**

4.01- This Ordinance shall take effect immediately upon its adoption.

READ BY TITLE ONLY in public session this 14 day of July, 2014.

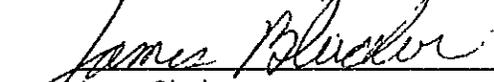
PASSED AND DULY ADOPTED by the City Commission this 28 day of July, 2014.

CITY OF NORTH PORT, FLORIDA

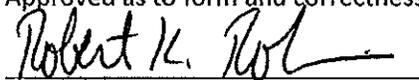
ATTEST:



Helen M. Raimbeau, MMC  
City Clerk

  
James Blucher  
Mayor

Approved as to form and correctness:



Robert K. Robinson  
City Attorney