



CITY OF COCOA BEACH
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APPLICATION FOR VARIANCE, SPECIAL EXCEPTION, APPEAL Petition for Board of Adjustment

Variance (200) Special Exception (300) Appeal (050)

Case# _____ Date _____

Applicant Information: (Please Print or Type)

NOTE: One (1) copy of all transmittals required, unless otherwise indicated.
 "CBC" indicates Cocoa Beach Code. "LDC" indicates Land Development Code.

Applicant/Agent and Address: _____

Business Phone: _____ **Business Fax:** _____

Owner Name, Address, Phone: _____

E-Mail Address: _____ [Recommended]

Project Name: _____

Project Address: _____

Zoning: _____ **Future Land Use:** _____

Please provide: Proof of Ownership _____

Fee: \$ _____ \$300 Variance/Special Exception Application, \$250 Appeal Application
+ \$4/owner w/in 300 ft for first 10 property owners and \$2.00/owner for each additional owner over 10
+ \$60 Published newspaper advertisement for public hearing

NOTICE: An approval of the request made in this application does not entitle the owner to a development permit. All requirements of CBC and LDC, must be met and are applied to any application for, or processing of, a development order or development permit.

This application was prepared and approved with the full knowledge and consent of the undersigned (Owner) _____, and is a full and complete representation of the proposed actions/development of the subject property. The Owner authorizes the agent (Agent) _____ to pursue this request for zoning and/or building/planning review. The Owner further authorizes City Staff, as necessary, reasonable right of entry to the subject premises, for review purposes, based upon this application.

Date _____ **Signature of Owner** _____

Subscribed before me this ____ day of _____, ____ Personally known ____, or produced identification _____

Signature of Notary: _____

APPLICATION CHECKLIST

Is this request the result of Code Violation? YES NO. If YES, provide:

Case Number and Date of Citation: _____

NOTICE: Petitions require an advertised PUBLIC HEARING before the Board of Adjustment, and Applicants will be expected to attend the hearing and invited to address the Board.

PART I – SUBMITTAL DOCUMENTS AND REQUIRED SITE PLAN INFORMATION FOR PLANNING/ZONING

SUBMITTAL DOCUMENTS:

- _____ 1 copy of D-size Site Plan, to scale, indicating all existing and proposed improvements, plus additional information noted below.
- _____ 1 copy reduced Site Plan (8.5" x 14" or 11" x 17")
- _____ 1 copy of Boundary Survey
- _____ 1 copy of Application
- _____ 1 copy of Letter of Intent summarizing the reason for the request. See Part II – Findings of Fact for Letter of Intent
- _____ 1 copy of Floor Plans, if applicable
- _____ 1 Set of photographs of the property, at least 1 each of front and rear.
- _____ Address labels prepared for all property owners within 300 feet of the subject property, measured from each property line. (Call Brevard County GIS, 321.633.2060)
- _____ Notarized statement certifying that address labels have been provided for all property owners within 300 feet of the subject property.

PART II – FINDINGS OF FACT FOR LETTER OF INTENT

FINDINGS OF FACT FOR LETTER OF INTENT:

The Board of Adjustment may only hear and decide petitions, based upon certain criteria as identified in the Land Development Code (LDC).

VARIANCE:

LDC CHAPTER IV, ARTICLE IV, Section 4-39 – Application for Variance from the Board of Adjustment

All variance applications must address the following variance criteria, as identified in the LDC:

1. The Board of Adjustment is empowered, under the Section of the LDC regulations described in the application to grant the variance.
2. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.
3. The literal interpretation and strict application of the LDC regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the LDC regulations.
4. The special conditions and circumstances do not result from the actions of the applicant.
5. Granting the variance will not give the applicant any special privilege that is denied by the LDC regulations to other lands, structures, or buildings in the same district.
6. The reasons set forth in the application justify granting the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
7. The granting of the variance will be in harmony with the general purpose and intent of the LDC regulations and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

SPECIAL EXCEPTION:

LDC CHAPTER IV, ARTICLE V, Section 4-48 – Application for Special Exception

All special exception applications must address the following special exception criteria, as identified in the LDC:

1. The board of adjustment is empowered, under the section of the LDC regulations described in the application to grant the special exception.
2. The request is in harmony with the purpose and intent of the LDC regulations.
3. The request is consistent with the City of Cocoa Beach comprehensive plan.
4. The granting of the special exception will not adversely affect the public interest.

PART III – SPECIAL PETITIONS

OUTDOOR SEATING:

LDC CHAPTER II, ARTICLE III, Section 2-11 – CN General Provisions Applicable to all Commercial Zoning Districts

In addition to the special exception criteria specified in Part II, the board of adjustment may only hear and decide outdoor seating petitions, based upon certain additional special exception criteria, as identified in the LDC.

1. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
2. Whether or not outdoor lighting will create additional nuisance impacts to existing or planned adjacent land uses.
3. Whether or not outdoor entertainment will create additional nuisance impacts, including but not limited to noise impacts, to existing or planned adjacent land uses.
4. Whether or not additional parking must be provided.
5. Whether or not it is necessary to restrict the hours of operation for the outdoor seating.
6. Any other issue that is reasonably related to the nature of the request.

OTHER COMMERCIAL USE:

LDC CHAPTER II, ARTICLE III, Section 2-11 – CN General Provisions Applicable to all Commercial Zoning Districts

In addition to the special exception criteria specified in Part II, the board of adjustment may hear and decide other commercial use petitions, based upon certain additional special exception criteria, as identified in the LDC.

1. The approval, by a preponderance of evidence, is shown to further the interests of the citizens of Cocoa Beach in the establishment of a low-density family oriented residential and resort community with paramount consideration given to the health, comfort, well being, and quality of life for the citizens.

PART III – SPECIAL PETITIONS (continued)

BUILDING RESTRICTION LINE VARIANCE:

LDC CHAPTER III, ARTICLE IX, Section 3-61 – Building Line, Oceanfront Property and Section 3-62 – Permitted Uses of Land between Building Restriction Line and Seawall Line

In addition to the variance criteria specified in Part II, the board of adjustment may hear and decide building restriction line variance petitions, based upon certain additional variance criteria, as identified in the LDC.

1. The board finds that the proposed structure does not have a detrimental effect upon the dune area and are of such a nature that the essential character of the locality will not be altered.
2. When a lawful nonconforming structure exists, east of the building restriction line, as of September 20, 2001, the board of adjustment is empowered to consider variances to allow expansion of or additions to such structure, provided however that no variance may be approved that authorizes additional encroachment eastward of the existing structure foundation.

ROOF SIGNS:

LDC CHAPTER V, ARTICLE IV, Section 5-22 – Criteria for Placement of Signs

The board of adjustment may determine a special hardship based on the following finding of fact:

1. When a ground sign cannot be installed on a parcel because the size and location of the principal structure on the parcel prohibits such installation.

ROOFTOP SIGN EXEMPTION:

LDC CHAPTER V, ARTICLE V, Section 5-31 – Exceptions and Appeals

The board of adjustment may approve an exemption from the provisions of this chapter pertaining to rooftop signs or signs at a height greater than forty-five (45) feet based on the findings of fact:

1. The sign is a preexisting sign;
2. The board of adjustment deems it to be the optimum design for the specific site conditions;
3. The sign does not detract from surrounding businesses; and,
4. The size of the sign does not exceed the sign area permitted for a roof and/or ground sign permitted in the district.

PART III – SPECIAL PETITIONS (continued)

APPEAL OF INTERPRETATION:

LDC CHAPTER I, ARTICLE IX, Section 1-49, Paragraph C Appeals to the Board of Adjustment or Planning Board; Stay of Proceedings

1. **APPEALS TO THE BOARD OF ADJUSTMENT OF LAND DEVELOPMENT CODE REGULATIONS.** An appeal of any decision of the City Manager's decision or interpretation by the Administrator in regards to these LDC regulations may be initiated and filed by any aggrieved party no later than thirty (30) days following the date of rendition of the interpretative opinion by the City Manager.
2. **APPEAL TO THE PLANNING BOARD ON COMPREHENSIVE PLAN PROVISIONS.** An appeal of any decision of the City Manager's decision or interpretation by the Administrator in regards to the Comprehensive Plan may be initiated and filed by any aggrieved party no later than thirty (30) days following the date of rendition of the interpretative opinion by the City Manager.
3. An appeal is initiated by filing with the City Manager and the secretary to the Board of Adjustment OR the Local Planning Agency (Planning Board) a notice of appeal specifying the interpretation appealed from and a description of the reasons why the interpretation is in error. The City Manager shall within fifteen (15) days thereafter, transmit to the appropriate Board all documents constituting the record upon which the action appealed from was taken, including the initial opinion of the Development Services Director or Administrator. A fee may be charged for said appeal, said fee being an amount fixed from time to time by resolution or ordinance of the City Commission. The secretary of the appropriate Board, after receipt of the record, shall fix a time for hearing of the appeal within ninety (90) days of the date of appeal and shall give public notice thereof at least ten (10) days in advance of the public hearing as well as notice to the parties in interest.
4. **PLANNING BOARD OR BOARD OF ADJUSTMENT HEARING.** A public hearing shall be held by the Board of Adjustment or the Planning Board, as applicable, on the appeal. At the hearing, any party may appear in person or by agent or attorney. After rendering its final decision, the Board of Adjustment or the Planning Board, as applicable, shall file its final order with their board secretary, dispatching a copy to the Administrator and the City Manager, and mailing or otherwise delivering a copy by regular first class U.S. mail, postage prepaid to the appellant.

PART III – SPECIAL PETITIONS (continued)

5. **APPEALS TO DECISIONS OR ACTIONS OF THE PLANNING BOARD.** Any person aggrieved by any decision or action of the Planning Board may submit in writing, an appeal to the City Commission specifying the grounds for appeal. Such appeal shall be noted to the City Manager by certified mail within fifteen (15) days after the action complained of is recorded in the minutes of the Planning Board and shall be heard within thirty (30) days after notice to the City Manager at a regularly scheduled meeting of the City Commission. The City Manager shall have due notice of the hearing by certified mail to the appellant and Planning Board. The City Commission may hear testimony and may sustain, alter, or set aside the action of the Planning Board.

6. **STAY OF PROCEEDING.** An appeal stays all proceedings in furtherance of the action appealed from unless the Development Services Director (Administrator) or the City Manager certifies to the board and the City Commission after the notice of appeal is filed, that by reason of facts stated in the appeal, a stay would cause imminent peril to life and property. In such cases proceedings