

ORDINANCE NO. 2015-053

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AMENDING THE CITY'S CODE OF ORDINANCES, BY AMENDING CHAPTER 13, "LAND DEVELOPMENT CODE," ARTICLE I, "ADMINISTRATION, REGULATION AND PROCEDURES," DIVISION 3, "IMPLEMENTATION PROCEDURES," BY REPEALING SECTION 13-34, "ADMINISTRATIVE APPEALS," AND ENACTING A NEW SECTION 13-34, "APPEALS," IN ITS PLACE IN ORDER TO PROVIDE GENERAL PROCEDURES FOR HANDLING APPEALS FROM DECISIONS MADE PURSUANT TO THE CITY'S LAND DEVELOPMENT CODE; AMENDING DIVISION 2, "ADMINISTRATION," BY AMENDING SECTION 13-19, "DEVELOPMENT REVIEW COMMITTEE" TO OMIT AN APPEAL REFERENCE; AMENDING DIVISION 3, "IMPLEMENTATION PROCEDURES," BY AMENDING SECTION 13-33, "VARIANCES" TO REFERENCE THE APPEAL PROCESS; AMENDING DIVISION 4, "FEE SCHEDULES," BY AMENDING SECTIONS 13-80, "APPLICATION; RIGHT TO ASSESS ADDITIONAL EXPENSES; PAYMENT OF FEES" AND 13-81, "DEVELOPMENT APPLICATION FEES" TO PROVIDE FOR APPEAL PROCESSING FEES; AMENDING DIVISION 5, "IMPACT FEES," BY AMENDING SECTION 13-115, "EXEMPTIONS" TO REFERENCE THE APPEAL PROCESS; AND AMENDING ARTICLE III, "ZONING REGULATIONS," DIVISION 4, "ACCESSORY USES AND STRUCTURES," SUBDIVISION 5.9, "PROCEDURES AND ADMINISTRATION," BY AMENDING SECTION 13-471,

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“SIGN REVIEW PROCEDURES” TO REFERENCE THE APPEAL PROCESS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to the City’s Land Development Code, Section 13-16(a), the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on September 9, 2015, and voted to recommend that the changes be approved; and

WHEREAS, the purpose of this Ordinance is to establish an appeal process for decisions made pursuant to the City of Coconut Creek’s Code of Ordinances, Land Development Code; and

WHEREAS, the City’s Land Development Code currently only provides guidelines for an appeal process pertaining to the review of an *Administrative Official’s interpretation* of the Land Development Code to the Planning and Zoning Board with secondary appellate review reserved for the City Commission; and

WHEREAS, the Land Development Code is silent as to the process by which an aggrieved party may appeal or challenge a decision of the Planning and Zoning Board pertaining to a development application; and

WHEREAS, this newly enacted Ordinance creates a process to appeal all actions under the City’s Land Development Code, an Administrative Official’s interpretation of the Land Development Code and Planning and Zoning Board’s decision pertaining to development applications, wherein the City Commission shall be the reviewing body and shall decide appeals originating out of the Planning and Zoning Board’s decisions, which if not appealed would be final; and

WHEREAS, this newly enacted Ordinance sets forth who may qualify as an aggrieved party, the manner in which an aggrieved party may initiate an appeal, and the time-frame for filing an appeal.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AS FOLLOWS:

Section 1: That the City's Code of Ordinances shall be amended by amending Chapter 13, "Land Development Code," Article I, "Administration, Regulations and Procedures," Division 3, "Implementation Procedures," by repealing Section 13-34, "Administrative Appeals," in its entirety, and enacting a new Section 13-34, "Appeals," to read as follows:

Sec. 13-34. -- Administrative appeals.

- ~~(a) *Review by the planning and zoning board.* The planning and zoning board shall review and decide appeals from any person who has been adversely affected by a decision of an administrative official in the interpretation or application of the Land Development Code. The planning and zoning board may modify, reverse or affirm the administrative official's decision interpreting or applying the provisions of the Land Development Code.~~
- ~~(b) *Filing.* Administrative appeals shall be filed by written application using the form provided by the department of community development. All applications shall be accompanied by the processing fee and other supporting evidence pertaining to the appeal.~~
- ~~(c) *Processing.*~~
 - ~~(1) All applications for administrative appeals shall be scheduled for a hearing before the planning and zoning board by the department of development services.~~
 - ~~(2) The applicant shall present the appeal at a public hearing before the planning and zoning board.~~
 - ~~(3) The administrator subject to the appeal may present reasons and documentation supporting the initial decision.~~
 - ~~(4) The concurring vote of four (4) of the five (5) board members shall be necessary to reverse any order, requirement, or decision of the city administrative staff.~~
 - ~~(5) Upon a decision, the planning and zoning board shall issue a written order to be forwarded to the city clerk that shall be sent to the applicant and become a part of the public records.~~

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~~(6) Any decision by the planning and zoning board may be appealed to the city commission by the applicant or the city administrative staff.~~

Sec. 13-34. - Appeals: An appeal is a process for review and modification of any action, which, if not appealed, would be final. An appeal shall be conducted as a new evidentiary hearing via *de novo* review in accordance with the City's quasi-judicial procedures and shall not be limited to the record below.

(1) **Rule:** An appeal may be made of an administrative interpretation; or of any finding made by an approving body; or, of a decision made by an approving body. The appeal of an Administrative Official's interpretation or application of the Land Development Code shall first be presented to the Planning and Zoning Board and may subsequently be appealed to the City Commission; an appeal of the Planning and Zoning Board's action or decision on a development application shall be made to the City Commission. All such actions or decisions are appealable unless an appeal is expressly prohibited. An appeal may be made by an aggrieved party. For purposes of this Section, an aggrieved party is defined as any owner or tenant of land situated within five hundred (500) feet of land subject to the proposed action under the City's Land Development Code that has been or will be adversely affected by the decision under the City's Land Development Code; or any person who can show that they have a substantial interest in property that has been or will be adversely affected by a decision on the proposed action.

(2) **Required Information:** An appeal by an aggrieved party must be made in writing, directed to the City Clerk, and must provide the following information including the appropriate processing fee as specified in Section 13-81:

1. Identification of the action which is being appealed;

2. Identification of who or what board took the action and the date it was made;

3. The basis of the appeal;

4. The relief being sought; and,

5. The name of the aggrieved party, the aggrieved party's substantial interest in the matter and how the decision has adversely affected the aggrieved party.

(3) Procedure: The following procedures shall be adhered to in the processing of any appeal:

(a) The City Clerk or designee must receive the letter of appeal with the required information set forth above from the aggrieved party within ten (10) working days of the date of the action being appealed.

(b) Upon receipt of a timely filed and sufficient letter of appeal, the City Clerk or designee shall place the appeal on the agenda for consideration of the appeal at the next regular meeting of the body who is to act upon it, provided that the appeal was received in time for proper placement on that agenda. In any event, a properly filed letter of appeal shall be scheduled for hearing no later than ninety (90) working days from the date it was received by the City Clerk.

(c) The City shall ensure compliance with any necessary public notification procedures required under the original action or application. Costs for such public notification will be assessed to the aggrieved party in the same manner as the applicant under the original action or application.

(d) The aggrieved party shall present the appeal at the public hearing for which the appeal hearing is scheduled. The appellee may present reasons or documentation in support of the initial decision.

(e) The reviewing body must consider the appeal at which time the appeal may be granted, denied, or set for further consideration upon a majority vote.

(4) Conditions:

(a) The granting of an appeal pertaining to an Administrative Official's interpretation or application of the City's Land Development Code is not subject to conditions.

(b) The granting of an appeal pertaining to a decision on a development application may be conditioned in the same manner as the development application may have originally been conditioned.

(5) Findings:

(a) The granting of an appeal pertaining to an Administrative Official's interpretation or application of the City's Land Development Code requires only a finding that the Administrative Officer was incorrect in the application of the regulation.

(b) The granting of an appeal pertaining to a decision on a development application must consider those items upon which a finding is required and the reviewing body must make findings on those items.

(6) Stay of Previous Action:

(a) **General:** Whenever an appeal is pending, the action being appealed shall be stayed, i.e. the development application or appealed part thereof shall be considered neither approved nor denied.

(b) **Proceeding at Risk:** If an appeal is initiated for an action that is precedent for another action (e.g. site plan approval preceding plat approval), the applicant may proceed with the submittal and processing of further development applications but only at his or her own risk.

(7) **Decision:** A reviewing body, sitting in its appellate capacity, hearing an appeal shall file its written findings and decision with the City Clerk or designee within thirty (30) days of the appellate hearing. An appeal from a decision made by a reviewing body of last resort shall be handled exclusively by judicial review in the Seventeenth Judicial Circuit Court, in and for Broward County, Florida, and shall be filed within thirty (30) days from the date of the filing of the final reviewing body's written order with the City Clerk or designee.

Section 2: That the City's Code of Ordinances shall be amended by amending Chapter 13, "Land Development Code," Article I, "Administration, Regulations and

Procedures,” Division 2, “Administration,” by amending Section 13-19, “Development review committee,” to read as follows:

Sec. 13-19. – Development review committee.

~~(8)~~ Appeals;

~~(9)~~(8) Vacation and abandonment of streets and easements.

Section 3: That the City’s Code of Ordinances shall be amended by amending Chapter 13, “Land Development Code,” Article I, “Administration, Regulations and Procedures,” Division 3, “Implementation Procedures,” by amending Section 13-33, “Variances,” to read as follows:

Sec. 13-33. – Variances.

(e) Processing application.

(7) The decision of the planning and zoning board may be appealed to the City Commission pursuant to the procedures set forth in Section 13-34.

Section 4: That the City’s Code of Ordinances shall be amended by amending Chapter 13, “Land Development Code,” Article I, “Administration, Regulations and Procedures,” Division 4, “Fee Schedules,” by amending Section 13-80, “Application; right to assess additional expenses; payment of fees,” to read as follows:

Sec. 13-80. – Application; right to assess additional expenses; payment of fees.

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(b) ~~The development services d~~Director of Sustainable Development reserves the right to assess any applicant additional expenses reasonably incurred for the cost of processing and/or reviewing of plans submitted by the applicant. For example, consultant costs may include but are not limited to traffic review, green building design, housing studies, and undergrounding utilities. An applicant may appeal pursuant to the procedures set forth in Section 13-34~~to the city commission~~ if they feel the expenses are unreasonable.

Section 5: That the City’s Code of Ordinances shall be amended by amending Chapter 13, “Land Development Code,” Article I, “Administration, Regulations and Procedures,” Division 4, “Fee Schedules,” by amending Section 13-81, “Development application fees,” to read as follows:

Sec. 13-81. – Development application fees.

(10) ~~Appeals. Administrative a~~Appeals shall be heard by the planning and zoning board in their regular review and meeting schedule pursuant to the procedure set forth in Section 13-34. The ~~d~~Director of development services Sustainable Development or designee will determine the mailing cost and additional expenses reasonably incurred for the cost of processing the appeal and assess the applicant for such costs in addition to the processing fees set forth below.

- a. Residential uses, per appeal500.00
- b. Nonresidential uses, per appeal1,000.00

Section 6: That the City’s Code of Ordinances shall be amended by amending Chapter 13, “Land Development Code,” Article I, “Administration, Regulations and Procedures,” Division 5, “Impact Fees,” by amending Section 13-115, “Exemptions,” to read as follows:

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Sec. 13-115. – Exemptions.

- (2) Interpretations or doubts as to the applicability of these exemptions shall be decided by the ~~the~~ Director of Sustainable Development. ~~services.~~ An appeal may be filed pursuant to the procedures set forth in Section 13-34. ~~Affected parties may appeal any such decision to the city commission.~~

Section 7: That the City’s Code of Ordinances shall be amended by amending Chapter 13, “Land Development Code,” Article III, “Zoning Regulations,” Division 4, “Accessory Uses and Structures,” Subdivision 5.9, “Procedures and Administration,” by amending Section 13-471, “Sign Review Procedures,” to read as follows:

Sec. 13-471. – Sign review procedures.

- (e) *Appeal.* An appeal may be filed pursuant to the procedures set forth in Section 13-34. ~~Any person who has been adversely affected by an administrative decision under this section, including by the revocation of a development review approval may appeal the decision by filing a written notice of appeal to the planning and zoning board, to be submitted in duplicate to the city clerk within thirty (30) days after the date of receipt of the decision or revocation. The board shall hear and decide the appeal, pursuant to section 13-34, at the next available board meeting that is at least thirty (30) days after the date of receiving the written notice of appeal. The decision of the planning and zoning board may be appealed to the city commission.~~

Section 8: Conflicts. All ordinances or parts of ordinances, all City Code sections or parts of City Code sections, and all resolutions or parts of resolutions in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 9: Severability. Should any provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part hereof other than the part declared invalid.

Section 10: Codification. That the provisions of this Ordinance shall be codified within the Code of Ordinances of the City of Coconut Creek, Florida, and any paragraph or section may be renumbered to conform with the Code of Ordinances.

Section 11: Effective Date. That this Ordinance shall become effective immediately upon its passage on second and final reading.

PASSED FIRST READING THIS 24th DAY OF September, 2015.

PASSED SECOND READING THIS _____ DAY OF _____, 2015.

Rebecca A. Tooley, Mayor

Attest:

Leslie Wallace May, MMC, City Clerk

	<u>1st</u>	<u>2nd</u>
Tooley	<u>Aye</u>	_____
Belvedere	<u>Aye</u>	_____
Sarbone	<u>Aye</u>	_____
Welch	<u>Aye</u>	_____
Rydell	<u>Absent</u>	_____

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