

ORDINANCE NO. 811

AN ORDINANCE OF THE CITY OF MEXICO BEACH, FLORIDA AMENDING THE LAND DEVELOPMENT CODE TO MODIFY SECTION 7.04.00 AND CREATE SECTION 7.04.02 TO ESTABLISH A PROCESS AND STANDARDS OF REVIEW FOR GRANTING A VARIANCE; PROVIDING FOR CODIFICATION; PROVIDING FOR A REPEALER, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, as provided in section 2(b), Article VIII of the Constitution of the State of Florida, and section 166.021(1), Florida Statutes, the City of Mexico Beach, Florida, (the "City") enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, Chapters 163 and 166 of the Florida Statutes provide for the City to regulate zoning and development and implement its Comprehensive Plan through land development regulations, and in 1991, the City Council adopted the Mexico Beach Land Development Code, as required pursuant to §163.3202, F.S; and

WHEREAS, the Mexico Beach Planning and Zoning Board, acting as the Local Planning Agency, reviewed this amendment to the Land Development Code on August 7, 2023, during a duly noticed public hearing and recommended that said amendment be approved by the Mexico Beach City Council; and

WHEREAS, pursuant to Florida Statute 166.041(3)(c), the Mexico Beach City Council held public hearings on August 22, 2023, and September 12, 2023, to consider the amendment, and after consideration of the public comments received during the public hearing, voted to approve this Ordinance; and

WHEREAS, in the exercise of its authority, the City Council of Mexico Beach finds it necessary and desirable to adopt and does hereby adopt the amendment to the Land Development Code contained herein in order to encourage the most appropriate use of land, water and resources, consistent with the public interest; and deal effectively with future problems that may result from the use and development of land within the City of Mexico Beach; and

WHEREAS, words with underlined type shall constitute addition and ~~striketrough~~ shall constitute deletions to the original text from the language existing prior to adoption of this Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MEXICO BEACH THAT:

SECTION 1. APPROVAL AND ADOPTION OF AMENDMENT.

The City of Mexico Beach hereby amends the title of Section 7.04.00, as follows:

Section 7.04.00. ~~PROCEDURE FOR APPEALING DECISIONS~~ HARDSHIP RELIEF

The City of Mexico Beach hereby adds Section 7.04.02, as follows:

Section 7.04.02 Variances

The purpose of this section is to provide a method of relief for property owners in a condition where literal application of this Code will inflict practical difficulty or unnecessary hardships to a particular property or site that is uncommon to other properties in Mexico Beach, through no fault of the property owner.

A. Purpose.

A variance is an allowance of land disturbance or development activity when the planned development cannot meet the requirements of this Code and when the action or activity requested is not contrary to the public interest and will not impact the health, safety, or welfare of Mexico Beach residents.

A variance cannot be issued from any Comprehensive Plan Goal, Objective, Policy, or Map, or from any designation of the Zoning Map.

B. Process.

1. The application must be submitted to the City Administrator, or his/her designee, on a form generated by the City, with the applicable fee. The application shall be signed by the property owner or their authorized agent.
2. The application must be accompanied by a site plan with dimensions and setbacks shown to clearly identify the nature, extent, and location of the request.
3. At the discretion of the City Administrator, and dependent upon individual case circumstances, a consistency analysis may be required as part of the application.
4. No application shall be deemed complete and processed for review and subsequently scheduled for hearing until all required documents and fees are received by the City.

5. The burden of proof to demonstrate the hardship for the City to issue the variance is upon the property owner or applicant. If the property owner or applicant presents no evidence that the property cannot be used without the granting of the variance, the City Council shall deny the request.
 6. A variance must be considered in a quasi-judicial proceeding by the City Council. The City Council shall support their decision by competent and substantial evidence and state their findings of fact into the motion to deny or grant the variance.
 7. Any appeal to a variance decision by the City Council shall be made in Circuit Court.
- C. Applicability.
The criteria subject to the issuance of a variance include:
1. An area variance to the bulk regulations of this Code. An area variance is defined as:
Regulatory controls such as lot size, floor area ratio, lot coverage (also known as impervious surface), open space, and building setbacks that deal with the placement of a structure or structures on a site and/or the building envelope. The height of the structure is excluded from a variance request and cannot be granted under this process. In addition, under no instance shall a variance to the requirements of any City regulation be issued within any designated floodway if the result is an increase in flood levels within the floodway.
 2. Those activities which are associated with Section 4.02.08 of this Code.
- D. Standards of Review.
The applicant must submit a variance request that demonstrates the following standards have been met. All standards herein must be found met prior to the granting of a variance.
1. Special conditions or physical circumstances exist which are particular to the land and which are not applicable to other land subject to the same regulations or policies such as the parcel size, shape, or topography of the land. For example, the variance is necessary to protect against wetland infill or protected trees from impact or removal.
 2. The special conditions and circumstances that exist do not result from the actions of the property owner or applicant or are a self-imposed hardship, nor could the condition or circumstances be corrected or avoided by the property owner or applicant. As such, the issuance of the variance shall not confer on the petitioner the grant of a special privilege. For example, a property owner cannot be issued a setback variance on a property that can reasonably contain a house with a smaller footprint.
 3. The relief granted is the minimum degree of relief necessary to make possible the reasonable use of the land in compliance with all other applicable regulations.
 4. Literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties that are subject to the same regulations or policies or would render the enforcement of this Code impractical.
 5. The grant of the relief will not be in derogation of the general intent and purpose of this Code nor the goals, objectives, or policies of the Comprehensive Plan.
 6. The issuance of the variance will not create an inconsistency from the existing character of the area surrounding the site. For the purpose of this measure, "surrounding site" shall mean those parcels which are within a five-hundred-foot radius of the subject parcel, or within the same platted subdivision, as applicable.
- E. Comparative Review
A variance must be reviewed on its own merits, and previously approved variances cannot be the basis of determination for the issuance of a new or separate variance request.
- F. Economic Impact
An economic disadvantage due to a property owner's or applicant's preference as to what they want to do with the property is not sufficient to constitute a hardship for the purpose of granting a variance.

SECTION 2. REPEAL.

Those parts of the Mexico Beach Land Development Code in conflict herewith are hereby repealed and superseded to the extent of such conflict and shall have no further effect whatsoever.

SECTION 3. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or other portion of this Ordinance, or any particular application thereof shall be held invalid or unconstitutional by any court, administrative agency, or other body with appropriate jurisdiction, the remaining sections, subsections, sentences, clauses, or phrases and their application shall not be affected thereby.


SECTION 4. SCRIVENER'S ERRORS.

The City Attorney may correct any scrivener's errors found in this Ordinance by filing a corrected copy of the Ordinance with the Clerk. A scrivener's error may not include an amendment that changes the context or meaning of the Ordinance.

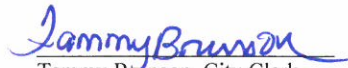
SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect upon passage.

PASSED, APPROVED, AND ADOPTED at a duly noticed public hearing of the Mexico Beach City Council this 12th day of September 2023.


Michele Miller, Mayor 11/29/23

ATTEST:


Tammy Branson, City Clerk