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**Chapter X
Hardship Relief**

Revised Draft – October 2007

**Based on
Planning and Zoning Commission Review**

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1 | **CHAPTER X**
2 | **HARDSHIP RELIEF**

3 | **10.00.00 NONCONFORMITIES¹**

4 | **10.00.01 PURPOSE**

5 | The purpose of this Section is to regulate and limit the continued existence of uses, lots, signs, and
6 | structures established prior to the effective date of this Code that do not conform to the provisions of this
7 | Code. Nonconformities may continue, but the provisions of this Section are intended to curtail substantial
8 | investment in nonconformities and to bring about their eventual elimination, when appropriate, in order to
9 | preserve the integrity of the zoning district.

10 | **10.00.02 NONCONFORMING USES**

11 | A. AUTHORITY TO CONTINUE

12 | Nonconforming uses of land and nonconforming uses of structures may continue in accordance
13 | with the provisions of this Section.

14 | B. ORDINARY REPAIR AND MAINTENANCE

15 | Normal maintenance and repair of nonconforming uses may be performed.

16 | C. EXPANSIONS

17 | Nonconforming uses shall not be expanded. This prohibition shall be construed so as to prevent
18 | the:

- 19 | 1. Enlargement of nonconforming uses by additions to the structure in which such
20 | nonconforming uses are located, including enlargement of a conforming structure in
21 | which a nonconforming use is located, or
- 22 | 2. Occupancy of additional land, unless the provisions of this Code are met.

23 | D. RELOCATION

24 | The structure housing a nonconforming use may not be moved unless the use shall thereafter
25 | conform to the limitations of the zoning district into which it is moved.

26 | E. CHANGE IN USE

27 | A nonconforming use shall not be changed to any other use unless such use conforms to the
28 | provisions of this Code, except in accordance with the procedure set forth in this paragraph. A
29 | change to another nonconforming use shall be permitted if and only if the proposed
30 | nonconforming use would not result in a requirement for additional parking over that required for
31 | the existing nonconforming use, and in addition, the Board of County Commissioners:

1 | ¹ NOTE: This section carries forward the current Section 10.00.00 with no changes.

- 1 1. Determines that the proposed nonconforming use is equally or more appropriate to the
2 district and the specific property involved than the existing nonconforming use;
- 3 2. Determines that any adverse effect of the proposed nonconforming use upon neighboring
4 properties and residents will not be greater than that created by the existing
5 nonconforming use; and
- 6 3. Requires that the applicant meet appropriate conditions, limitations, and requirements as
7 are necessary to prevent or minimize adverse effects on neighboring properties and
8 residents.

9 F. TERMINATION

10 1. Abandonment or Discontinuance

11 | When a nonconforming use is discontinued or abandoned for twelve (12) months, then
12 the nonconforming use may not be restored, unless the nonuse is due to circumstances
13 beyond the property owners' control.

14 2. Damage or Destruction

15 | If a structure housing a nonconforming use is damaged or destroyed by fifty (50) percent
16 or more of the assessed value of the structure, then the nonconforming use of the
17 structure may not be restored.

18 G. EXISTING CONDITIONAL USES²

19 | 1. A legally conforming use that exists on ____ (*insert effective date of this Code*) that is
20 allowed as a conditional use in a zoning district (see Section 3.01.031) shall not be
21 deemed a nonconforming use in that district, but shall without further action be
22 considered a conforming use.

23 | 2. A use existing prior to its present classification by this Code as a conditional use in a
24 zoning district (see Section 3.01.0301) may change or modify the lot area or the structure
25 in which it is located only if the change or modification conforms with the requirements of
26 Section 3.01.03-01 for conditional uses.

27 **10.00.03 NONCONFORMING STRUCTURES**

28 A. AUTHORITY TO CONTINUE

29 A nonconforming structure devoted to a use permitted in the zoning district in which it is located
30 may be continued in accordance with the provisions of this Code.

31 B. ORDINARY REPAIR AND MAINTENANCE

32 Normal maintenance and repair of nonconforming structures may be performed.

| ² NOTE: This provision has been relocated from the conditional use section in the current Code.

1 C. EXPANSIONS

2 Any expansion of a nonconforming structure shall be in conformance with the provisions of this
3 Code. This shall not prevent expansion as long as the nonconformity is not increased. In the
4 event that a structure is nonconforming due to the fact that there is encroachment into a required
5 minimum yard, as defined in Section 7.04.00, expansion of the structure shall be allowed into that
6 minimum yard. However, no such expansion shall be allowed if it results in a greater dimensional
7 nonconformity than that which previously existed.

8 D. RELOCATION

9 A nonconforming structure that is moved shall thereafter conform to the regulations of the zoning
10 district in which it is located after such move.

11 E. TERMINATION UPON DAMAGE OR DESTRUCTION

12 1. Any part of a nonconforming structure that is damaged or destroyed to the extent of fifty
13 (50) percent or more of the assessed value of said structure shall not be restored unless
14 that part conforms to the provisions of this Code.

15 2. If St. Lucie County or a portion thereof is declared a disaster area by the Governor of the
16 State of Florida or the President of the United States, as a result of a hurricane, tornado,
17 flood, or other similar act of God, then the provisions of Section 10.00.03 shall be hereby
18 modified to allow within the declared disaster area the replacement or reconstruction of
19 structures on or in the location of the original foundation, except that that any
20 replacement construction must comply with the applicable provisions of Section 6.05.00
21 and Section 13.00.00 of this Code, provided, this modification to county regulations to
22 allow the replacement or reconstruction of nonconforming structures shall not effect the
23 application and enforcement of state or federal laws and agency regulations regarding
24 replacement or reconstruction of nonconforming structures.

25 **10.00.04 NONCONFORMING LOTS OF RECORD**

26 A. LOTS OF RECORD CREATED PRIOR TO JULY 1, 1984

27 1. In any district, principal permitted structures and customary accessory buildings may be
28 erected on any single lot of record existing before July 1, 1984, notwithstanding
29 limitations imposed by other provisions of this Code. Such lot must be in separate
30 ownership and not contiguous to other lots in the same ownership. This provision shall
31 apply even though such lot fails to meet the requirements for area, or width, or frontage
32 or any combination of the three (3) that are generally applicable in the district, provided
33 that yard dimensions and requirements other than those applying to area, or width, or
34 frontage of the lot shall conform to the regulations for the district in which such lot is
35 located. Variance of yard dimensions and requirements other than those applying to
36 area, width, and frontage shall be obtained only through action of the Board of
37 Adjustment. If however, the lot has no frontage as defined in Chapter II, then proof of
38 recorded legal ingress and egress acceptable to the County Attorney must be furnished
39 before a building permit will be issued except for nonresidential accessory structures in
40 the AR-1, AG-1, AG-2.5 and AG-5 zoning districts.

41 2. If two (2) or more lots or combinations of lots and portions of lots which are contiguous to
42 other lots were of single ownership and were of record on July 1, 1984, and if all or part
43 of the lots do not meet the requirements established for lot width and area or frontage,

1 the lands involved shall be considered to be an undivided parcel for the purposes of this
2 Code provided however, that lots separated by an ingress/egress, access or roadway
3 easement that was of record on July 1, 1984, but specifically excluding any easement
4 limited to utilities, drainage or other non-access purpose, shall not be considered an
5 undivided parcel for the purpose of this Section.

6 B. LOTS OF RECORD CREATED BETWEEN JULY 1, 1984, AND JANUARY 9, 1990

7 In any district, principal permitted structures and customary accessory buildings may be erected
8 on any single lot of record created in accordance with the requirements of the St. Lucie County
9 Zoning Ordinance between July 1, 1984, and January 9, 1990, notwithstanding limitations
10 imposed by other provisions of this Code.

11 **10.01.00 VARIANCES³**

12 **10.01.01 VARIANCE PERMIT**

13 A. AUTHORITY

14 Unless otherwise provided for in this Code, the Board of Adjustment shall have authority to grant
15 Variance Permits from the dimensional requirements of this Code,⁴ or to erect or increase the
16 height of any structure pursuant to Section 4.00.00, *Airport Overlay Zones*,⁵ in accordance with
17 the standards and procedures set forth in this Section.

18 B. PURPOSE

19 The purpose of a variance is to provide a mechanism when, owing to special conditions, the
20 literal enforcement of the provisions of this Code would impose upon a landowner unnecessary
21 hardship that can be mitigated without conferring on the applicant any special privilege.

22 C. PROCEDURES

23 1. Submission and Review of Application

24 The procedures and requirements for submission and review of an application for a
25 Variance Permit pursuant to this Section are established in Sections 11.01.00, *Common*
26 *Procedures*. An application shall be submitted to the Director for review.

27 2. Review by Director

28 Within a reasonable time after an application for a Variance Permit is determined
29 complete, the Director shall review the application and support materials and prepare a

³ NOTE: Add DEFINITIONS OF VARIANCE AND ADMINISTRATIVE VARIANCE.

⁴ NOTE: This language from the current Code restricts the application of variances to dimensional requirements only. Is this still current County policy? While it is not uncommon to restrict the types of standards that are eligible for variances, many communities do allow variances from standards that are not dimensional in nature (e.g., landscaping or sign requirements).

⁵ NOTE: The variance in the Airport Zone is integrated here with the general variance provisions. When the Director reviews the application, the Director can furnish a copy of the application to the St. Lucie County Airport Director and to the Florida Department of Transportation Aviation Office as part of the review.

1 Staff Report recommending whether the application complies with the standards in
2 subsection (D) below, *Variance Permit Standards*.

3 3. Action by Board of Adjustment

4 a. After receipt of the Staff Report from the Director, the scheduling of a public
5 hearing and public notification, the Board of Adjustment shall conduct a public
6 hearing on the application pursuant to Section 11.02.01, *Quasi-Judicial Hearings*.
7 At the public hearing, the Board of Adjustment shall consider the application, the
8 relevant support materials, the Staff Report, and any evidence and statements
9 offered by the applicant, County staff, aggrieved or affected persons, and the
10 public on the application. Within a reasonable period of time after the close of
11 the hearing, the Board of Adjustment shall approve, approve with conditions, or
12 deny the application for Variance Permit based on the standards in subsection
13 (D) below, *Variance Permit Standards*.

14 b. The decision of the Board of Adjustment shall be mailed to the applicant and filed
15 with the Office of the Director in accordance with Section 11.01.15, *Notification of*
16 *Decision*.

17 D. VARIANCE PERMIT STANDARDS

18 A Variance Permit shall not be granted, unless it is demonstrated by competent substantial
19 evidence in each case, that the proposed variance meets all the following standards:

20 1. Unnecessary Hardship

21 It arises from a condition that is unique and peculiar to the land, structures or buildings
22 involved; that the particular physical surroundings, the shape, or topographical condition
23 of the specific property involved, would result in unnecessary hardship for the owner,
24 lessee, or occupant, as distinguished from a mere inconvenience, if the provisions of this
25 Code are literally enforced.

26 2. Condition Not Self-Created

27 The condition is not ordinarily found in the same zoning district, and the condition is
28 created by the regulations of this Code, and not by an action or actions of the land owner
29 or the applicant.

30 3. Not Adversely Affect Surrounding Lands in Neighborhood

31 It will not adversely affect surrounding lands or injure other property or improvements in
32 the neighborhood in which the subject property is located, nor impair an adequate supply
33 of light or air to adjacent property, increase the danger of fire, create a hazard to air
34 navigation, endanger the public safety, or substantially diminish or impair property values
35 within the neighborhood.

36 4. No Significant Congestion on Streets

37 It does not substantially increase the congestion on the public streets.

38 5. Minimum Variance

1 The variance granted is the minimum variance that will make possible the reasonable use
2 of the land, building or structures.

3 6. It conforms with the intent and purposes of this Code.

4 The variance conforms with the general intent and purposes of this Code.

5 7. Consistent with Comprehensive Plan

6 It is consistent with the St. Lucie County Comprehensive Plan.

7 E. LIMITATIONS ON GRANTING VARIANCES

8 In addition, a Variance Permit shall not be granted that will:

9 1. Height

10 Permit a building or structure to have a height in excess of one hundred twenty (120)
11 percent of that permitted by Table 1 in Section 7.04.00; *Area, Yard, Height, and Open*
12 *Space Requirements*, or permit a lot width or road frontage less than eighty (80) percent
13 of that permitted by said Table, except:

14 a. In the case of nonconforming lots of record, a variance to construct a permitted
15 or authorized accessory structure on the lot shall be governed by the provisions
16 of Section 10.00.04, *Nonconforming Lots of Record*; and

17 b. In the AG-1, AG-2.5, and AG-5 Agricultural Districts, road frontage of less than
18 sixty (60) feet may be permitted on parcels of ten (10) acres or more in total area.

19 2. Not Contrary to Zone District Regulations

20 Permit the use of land or a structure contrary to the use provisions of Section 3.01.00.03,
21 *Zoning Districts*.

22 3. Hutchinson Island—Building Height Overlay Zone

23 Permit a variance from the provisions of Section 4.01.00, *Hutchinson Island—Building*
24 *Height Overlay Zone*, that would authorize any building to have a height in excess of one
25 hundred twenty (120) percent of the maximum permitted by the particular zone in which it
26 is located or to be in excess of one hundred twenty-five (125) feet, whichever is less.

27 4. Planned Unit Development Open Space

28 Permit a reduction in the amount of open space required in a Planned Unit Development.

29 F. CONDITIONS

30 The Board of Adjustment may impose conditions, limitations, and requirements on a Variance
31 Permit that are necessary to: carry out the purposes of this Section and the purposes of this Code
32 and the goals, objectives and policies of the St. Lucie County Comprehensive Plan and prevent
33 or minimize adverse effects on other property in the neighborhood, consistent with the
34 requirements of Section 11.01.14, *Conditions of Approval*.

1 G. EXPIRATION AND EXTENSIONS

2 1. Valid for One (1) Year

3 No Variance Permit from the dimensional requirements of this Code, other than variances
4 granted for or in conjunction with a Final Development Order as described under Section
5 11.00.03, *Authorization Required Prior to Undertaking Any Development Permit*, shall be
6 valid for a period longer than twelve (12) months unless a Building Permit is issued. A
7 Variance Permit issued for, or in conjunction with a Final Development Order as
8 described under Section 11.00.03, *Authorization Required Prior to Undertaking Any*
9 *Development Permit*, shall expire upon the termination of that Final Development Order
10 unless the Final Development Order is extended or otherwise determined to comply with
11 the provisions of this Code.

12 2. Extension

13 The time limitations imposed on any Variance Permit by subsection (A) above may be
14 extended by the Board of Adjustment not more than one (1) time, and for not more than
15 twelve (12) months, upon application by the applicant to the Director a minimum of thirty
16 (30) days prior to expiration and after a public hearing held in accordance with the same
17 procedures established for the original approval of the Variance Permit.

18 H. AMENDMENT

19 A Variance Permit may be amended, extended, or modified only in accordance with the
20 procedures established for its original approval.

21 I. APPEAL

22 Any person aggrieved by a decision of the Board of Adjustment may, within thirty (30) days after
23 the rendition of the decision, appeal to the Circuit Court in the Nineteenth Judicial Circuit in and
24 for St. Lucie County, Florida, in accordance with state law.

25 **10.01.02 VARIANCE PERMIT FROM FLOOD DAMAGE PREVENTION REGULATIONS⁶**

26 A. APPLICABILITY

27 1. The Board of Adjustment shall hear and decide applications for Variance Permits from
28 the requirements of Section 6.05.00, *Flood Damage Prevention*.

29 2. Variance Permits from the flood damage prevention regulations may be issued for the
30 repair or rehabilitation of historic structures upon a determination the proposed repair or
31 rehabilitation will not preclude the structure's continued designation as an historic
32 structure and the variance is the minimum to preserve the historic character and design
33 of the structure.

34 B. PROCEDURES

35 1. Submission and Review of Application

⁶ NOTE: This section has been kept separate from the general variance section because it is handled by the Public Works Director (as opposed to the Growth Management ~~Development~~ Director).

1 The procedures and requirements for submission and review of an application for a
2 Variance Permit from flood damage prevention regulations pursuant to this Section are
3 established in Sections 11.01.00, *Common Procedures*. An application shall be submitted
4 to the Public Works Director for review.

5 2. Review by Public Works Director

6 Within thirty (30) working days after an application is determined complete, the Public
7 Works Director shall review the application and support materials and prepare a Staff
8 Report recommending whether the application complies with the standards in subsection
9 (C) below, *Standards for Variance Permit from Flood Damage Prevention Regulations*.

10 3. Action by Board of Adjustment

11 a. After receipt of the Staff Report from the Public Works Director, the scheduling of
12 a public hearing and public notification, the Board of Adjustment shall conduct a
13 public hearing on the application pursuant to Section 11.02.01, *Quasi-Judicial*
14 *Hearings*. At the public hearing, the Board of Adjustment shall consider the
15 application, the relevant support materials, the Staff Report, and any evidence
16 and statements offered by the applicant, County staff, aggrieved or affected
17 persons, and the public on the application. Within a reasonable period of time
18 after the close of the hearing, the Board of Adjustment shall approve, approve
19 with conditions, or disapprove the application for Variance Permit from Flood
20 Damage Prevention Regulations based on the standards in subsection (C)
21 below, *Standards for Variance Permit from Flood Damage Prevention*
22 *Regulations*.

23 b. The decision of the Board of Adjustment shall be mailed to the applicant and filed
24 with the Office of the Public Works Director in accordance with Section 11.01.15,
25 *Notification of Decision*. In the notification, the Public Works Director shall specify
26 the difference between the base flood elevation and the elevation to which the
27 structure is to be built, and shall provide a statement that the cost of flood
28 insurance will be commensurate with the increased risk resulting from the
29 reduced lowest floor elevation.

30 c. The Public Works Director shall maintain the records of all appeal actions and
31 report the approval of any Variance Permits from the Flood Damage Prevention
32 Regulations to the Federal Emergency Management Agency upon request.

33 C. STANDARDS FOR VARIANCE PERMIT FROM FLOOD DAMAGE PREVENTION
34 REGULATIONS

35 A Variance Permit from Flood Damage Prevention Regulations shall not be granted unless it is
36 demonstrated by competent substantial evidence that the proposed variance meets all the
37 following standards:

38 1. Minimum Necessary

39 It is the minimum necessary, considering the flood hazard, to afford relief. In the instance
40 of an historical building, it is the minimum necessary so as not to destroy the historic
41 character and design of the building.

- 1 2. Exceptional Hardship
- 2 Failure to grant the variance would result in exceptional hardship.
- 3 3. No Increased Flood Heights, Additional Threat to Public Safety, Extraordinary Public
4 Expense, or Nuisance
- 5 Granting of the variance will not result in increased flood heights, additional threats to
6 public safety, extraordinary public expense, create a nuisance, cause fraud on or
7 victimization of the public, or conflict with existing local laws or ordinances.
- 8 4. Complies with Flood Damage Prevention Regulations
- 9 It complies with the standards of Section 6.05.00, *Flood Damage Prevention*.
- 10 5. Considers Other Relevant Technical factors
- 11 It considers all other technical and health and safety factors:
- 12 a. The danger that materials may be swept onto other lands to the injury of others;
- 13 b. The danger to life and property due to flooding or erosion damage;
- 14 c. The susceptibility of the proposed facility and its contents to flood damage and
15 the effect of such damage on the individual owner;
- 16 d. The importance of the services provided by the proposed facility to the
17 community;
- 18 e. The necessity to the facility of a waterfront location, in the case of a functionally
19 dependent facility;
- 20 f. The availability of alternative locations, not subject to flooding or erosion
21 damage, for the proposed use;
- 22 g. The compatibility of the proposed use with existing and anticipated development;
- 23 h. The relationship of the proposed use to the St. Lucie County Comprehensive
24 Plan and floodplain management program for that area;
- 25 i. The safety of access to the property in times of flood for ordinary and emergency
26 vehicles;
- 27 j. The expected heights, velocity, duration, rate of rise and sediment transport of
28 the floodwaters and the effects of wave action, if applicable, expected at the site;
29 and
- 30 k. The costs of providing governmental services during and after flood conditions
31 including maintenance and repair of public utilities and facilities such as sewer,
32 gas, electrical, and water systems, and streets and bridges.

1 6. No Increase in Flood Levels During Base Flood Discharge
2 If issued for development in any designated floodway, it does not increase flood levels
3 during the base flood discharge.

4 D. CONDITIONS

5 The Board of Adjustment may impose conditions, limitations, and requirements on a Variance
6 Permit from the Flood Damage Prevention Regulations that are necessary to carry out the
7 purposes of this Section and the purposes of this Code and the goals, objectives and policies of
8 the St. Lucie County Comprehensive Plan, and prevent or minimize adverse effects on other
9 property in the neighborhood, consistent with the requirements of Section 11.01.14, *Conditions of*
10 *Approval*.

11 E. EXPIRATION AND EXTENSIONS

12 1. Valid for One (1) Year

13 No Variance Permit from the Flood Damage Prevention Regulations shall be valid for a
14 period longer than twelve (12) months unless a Building Permit is issued.

15 2. Extension

16 The time limitation imposed on any Variance Permit by subsection (1) above may be
17 extended by the Board of Adjustment not more than one (1) time, and for not more than
18 twelve (12) months, upon application by the applicant to the Director a minimum of thirty
19 (30) days prior to expiration and after a public hearing held in accordance with the same
20 procedures established for the original approval of the Variance Permit.

21 F. AMENDMENT

22 A Variance Permit from the Flood Damage Prevention Regulations may be amended, extended,
23 or modified only in accordance with the procedures established for its original approval.

24 G. APPEAL

25 Any person aggrieved by a decision of the Board of Adjustment may, within thirty (30) days after
26 the rendition of the decision, appeal to the Circuit Court in the Nineteenth Judicial Circuit in and
27 for St. Lucie County, Florida, in accordance with state law.

1 **10.01.03 VARIANCE PERMIT FROM RIVERINE SHORELINE PROTECTION REGULATIONS⁷**

2 A. VARIANCE OF TEN (10) FEET OR LESS

3 1. General

4 The Director may approve a Variance Permit of ten (10) feet or less from:

5 a. Section 6.02.02, *Shoreline Protection*, along the Indian River Lagoon or other
6 river or creek, excluding the St. Lucie River and its tributaries, provided no such
7 variance shall permit a vegetation buffer of less than forty (40) feet.

8 b. The boundaries of Zones A and B along the St. Lucie River and its tributaries, as
9 required in Section 6.02.02(B), *St. Lucie River Shoreline*.

10 2. Procedures

11 a. The procedures and requirements for submission and review of an application for
12 a Variance Permit from Riverine Protection Regulations pursuant to this Section
13 are established in Sections 11.01.01-11.01.04 and 11.01.07, *Common*
14 *Procedures*. An application shall be submitted to the Director for review.

15 b. Within a reasonable period of time of the date the application is determined
16 complete, the Director shall review the application and approve, approve with
17 conditions, or disapprove the application based on the standards of subsection C
18 below, *Standards for Variance Permit from Riverine Protection Regulations*.

19 B. VARIANCE IN EXCESS OF TEN (10) FEET

20 1. General

21 A Variance Permit of greater than ten (10) feet) from (1) Section 6.02.02, *Shoreline*
22 *Protection*, along the Indian River Lagoon or other river or creek, excluding the St. Lucie
23 River and its tributaries or (2) in the boundaries of Zones A and B along the St. Lucie
24 River and its tributaries, as required in Section 6.02.02(B), *St. Lucie River Shoreline*, shall
25 be reviewed by the Board of County Commissioners pursuant to this subsection.

26 2. Procedures

27 a. The procedures and requirements for submission and review of an application for
28 a Variance Permit from Riverine Shoreline Protection Regulations pursuant to
29 this subsection are established in Section 11.01.00, *Common Procedures*. An
30 application shall be submitted to the Director for review.

31 b. Within a reasonable time after an application is determined complete, the
32 Director shall review the application and support materials and prepare a Staff
33 Report recommending whether the application complies with the standards in
34 subsection (C) below, *Standards for Variance Permit from Riverine Protection*
35 *Regulations*.

⁷ NOTE: This section is separated from the general variance section because it is a hybrid between the administrative variance and the general variance.

1 c. After receipt of the Staff Report from the Director, the scheduling of a public
2 hearing and public notification, the Board of County Commissioners shall conduct
3 a public hearing on the application pursuant to Section 11.02.01, *Quasi-Judicial*
4 *Hearings*. At the public hearing, the Board of County Commissioners shall
5 consider the application, the relevant support materials, the Staff Report, and any
6 evidence and statements offered by the applicant, County staff, adversely
7 affected parties, and the public on the application. Within a reasonable period of
8 time after the close of the hearing, the Board of County Commissioners shall
9 approve, approve with conditions, or disapprove the application for Variance
10 Permit based on the standards in subsection (C) below, *Standards for Variance*
11 *Permit from Riverine Protection Regulations*.

12 C. STANDARDS FOR VARIANCE PERMIT FROM RIVERINE PROTECTION REGULATIONS

13 A Variance Permit from the Riverine Shoreline Protection Regulations shall not be granted unless
14 it is demonstrated by competent substantial evidence that the proposed variance meets all the
15 following standards:

16 1. Unnecessary Hardship

17 It arises from a condition that the particular physical surroundings, the shape, or
18 topographical condition of the specific parcel of land involved, would result in
19 unnecessary hardship for the owner or developer, as distinguished from a mere
20 inconvenience, if the provisions of this Section are literally enforced.

21 2. Condition Created by Regulations, not Action of Owner/Developer

22 The condition is created by the regulations of this Code, and not by an action or actions
23 of the owner, developer or applicant.

24 3. Not Adversely Affect Surrounding Lands in Neighborhood

25 It will not adversely affect surrounding lands or injure other property or improvements in
26 the neighborhood in which the subject parcel of land is located;

27 4. Minimum Variance

28 The variance granted is the minimum variance that will make possible the reasonable use
29 of the land, building or structures;

30 5. Conforms to General Intent and Purposes of Code

31 It conforms with the general intent and purposes of this Code.

32 6. Consistent with Comprehensive Plan

33 It is consistent with the St. Lucie County Comprehensive Plan.

34 7. Structures within Required Yards

35 It does not allow a structure within a required yard, unless a Variance Permit is approved
36 by the Board of Adjustment pursuant to Section 10.01.00, *Variance Permit*.

1 8. Variance Along St. Lucie River or Tributaries
2 If along the St. Lucie River or its tributaries, granting of the variance will prevent erosion
3 and siltation to a greater extent than not granting the variance.

4 D. CONDITIONS

5 The Board of County Commissioners or Director (whichever is appropriate) may impose
6 conditions, limitations, and requirements on a Variance Permit from the Riverine Shoreline
7 Protection Regulations as are necessary to carry out the purposes of this Section and the
8 purposes of this Code and the goals, objectives and policies of the ~~Saint~~St. Lucie County
9 Comprehensive Plan; and prevent or minimize adverse effects on other property, consistent with
10 the requirements of Section 11.01.14, *Conditions of Approval*.

11 E. EXPIRATION AND EXTENSION

12 1. Valid for One (1) Year
13 No Variance Permit from the Riverine Shoreline Protection Regulations shall be valid for
14 a period longer than twelve (12) months unless a Building Permit is issued.

15 2. Extension
16 The time limitation imposed on any Variance Permit from the Riverine Shoreline
17 Protection Regulations by subsection (1) above may be extended by the Board of County
18 Commissioners or Director (whichever is appropriate) not more than one (1) time, and for
19 not more than twelve (12) months, upon application by the applicant to the Director a
20 minimum of thirty (30) days prior to expiration.

21 F. AMENDMENT

22 A Variance Permit from Riverine Shoreline Protection Regulations may be amended, extended,
23 or modified only in accordance with the procedures established for its original approval.

24 **10.02.00 ADMINISTRATIVE VARIANCE PERMIT**

25 **10.02.01 APPLICABILITY**

26 This Section sets out the procedures and standards for Administrative Variances under this Code.
27 ~~Four (4) i~~~~ve (5)~~ different types of Administrative Variance Permits are provided. They are
28 identified below.

29 ~~A. DIMENSIONAL STANDARDS~~

30 ~~The Director shall review and decide applications for the following types of Administrative~~
31 ~~Variance Permits to the dimensional standards of this Code:~~

32 ~~1. Fifteen (15) Percent of Minimum Dimensional Standard~~

33 ~~A variation by up to fifteen (15) percent of any minimum dimensional standard of this~~
34 ~~Code not otherwise called out in this Section 10.02.01.~~

2.Height in Airport Overlay Zone

~~A variation from the height requirements of Section 4.01.00, Airport Overlay Zones, up to 120 percent of the maximum allowed.~~

~~B.A.~~ ACCESSORY AGRICULTURAL STRUCTURES

The Public Works Director shall review and decide applications for an Administrative Variance Permit to construct an accessory agricultural structure on a parcel lacking frontage.

~~C.B.~~ MINIMUM YARD SETBACKS FOR RV PARKS

The Public Works Director shall review and decide applications for an Administrative Variance Permit to decrease the minimum yard setback by no more than fifty (50) percent in any existing Recreational Vehicle Park established prior to the effective date of Ordinance 94-007.

~~D.C.~~ STORMWATER MANAGEMENT

The County Engineer shall review and decide applications for an Administrative Variance Permit from Section 7.07.00, *Stormwater Management Standards*, for a variation from the minimum standards no greater than ~~ten (10) fifteen (15)~~ percent.⁸

~~E.D.~~ DRIVEWAY REGULATIONS

The County Engineer shall review and decide applications for an Administrative Variance Permit from Section 7.05.06, *Driveways*:

- a. For a variation from the minimum standards no greater than ~~twenty (20) ten (10)~~ percent; or
- b. For a variation from the minimum standards that will allow one (1) driveway on a lot of record when it is demonstrated no other road frontage or road access exists.

10.02.02 PROCEDURES

A. SUBMISSION AND REVIEW OF APPLICATION

The procedures and requirements for submission and review of an application for an Administrative Variance Permit pursuant to this Section are established in Sections 11.01.01-11.01.04 and 11.01.07, *Common Procedures*. An application shall be submitted to the County official identified in Section 10.02.01, *Applicability*, for being responsible for reviewing and deciding the application.

B. ACTION BY APPROPRIATE COUNTY OFFICIAL

Within thirty (30) working days after the application is determined complete, the County official responsible for review, shall review and approve, approve with conditions, or disapprove the

⁸ NOTE: ~~There is no limitation in the current Code; the 15% maximum is suggested as a limitation on this type of administrative variance.~~The PZC recommends adding commentary acknowledging that the County's existing emergency powers would authorize a greater deviation from this standard in extreme situations.

1 application based on the standards of Section 10.02.03, *Administrative Variance Permit*
2 *Standards*.

3 **10.02.03 ADMINISTRATIVE VARIANCE PERMIT STANDARDS**

4 ~~A.DIMENSIONAL STANDARDS~~

5 ~~1.Fifteen (15) Percent of Minimum~~

6 ~~An Administrative Variance Permit for a variation of up to fifteen (15) percent of a~~
7 ~~minimum dimensional standard established this Code and not otherwise called out in this~~
8 ~~Section 10.02.03 shall not be granted unless it is demonstrated by competent substantial~~
9 ~~evidence that the following standards are met:~~

10 ~~a.The Administrative Variance is of a technical nature and is required to compensate for~~
11 ~~some unusual aspect of the site or the proposed development that is not shared~~
12 ~~by landowners in general;~~

13 ~~b.The Administrative Variance is consistent with the purpose and intent expressed for the~~
14 ~~zoning district in which it is located;~~

15 ~~c.The Administrative Variance is consistent with the purposes of other relevant provisions~~
16 ~~of this Code;~~

17 ~~d.The Administrative Variance eliminates an unnecessary inconvenience to the applicant,~~
18 ~~is not inconsistent with the character of development in the surrounding area,~~
19 ~~and will not result in incompatible land uses; and~~

20 ~~e.Any adverse impacts from the Administrative Variance will be mitigated, to the~~
21 ~~maximum extent feasible.~~

22 ~~2.Height in Airport Overlay Zone~~

23 ~~An Administrative Variance Permit for a variation from the height requirements of Section~~
24 ~~4.01.00, *Airport Overlay Zones*, of up to 120 percent of the maximum allowed, shall not~~
25 ~~be granted, unless it is demonstrated by competent substantial evidence that the~~
26 ~~following standards are met:~~

27 ~~a.The Administrative Variance is required to compensate for some unusual aspect of the~~
28 ~~site or the proposed development that is not shared by landowners in general;~~

29 ~~b.The Administrative Variance is consistent with the purpose and intent expressed for the~~
30 ~~zoning district in which it is located;~~

31 ~~c.The Administrative Variance is consistent with the purposes of other relevant provisions~~
32 ~~of this Code;~~

33 ~~d.The Administrative Variance eliminates an unnecessary inconvenience to the applicant,~~
34 ~~is not inconsistent with the character of development in the surrounding area,~~
35 ~~and will not result in incompatible land uses; and~~

36 ~~e.Any adverse impacts from the Administrative Variance will be mitigated, to the~~
37 ~~maximum extent feasible.~~

1 B.A. ACCESSORY AGRICULTURAL STRUCTURES

2 An Administrative Variance Permit for an accessory agriculture structure shall be approved if it is
3 demonstrated by competent substantial evidence that the following standards are met:

4 1. Parcel Classified Agricultural Land

5 The parcel is classified as agricultural land for purposes of ad valorem tax assessment.

6 2. Proposed Structure Part of Existing Productive Agricultural Operation

7 The proposed structure will be constructed as a part of an existing productive agricultural
8 operation.

9 3. Use is Accessory

10 The proposed structure and use will be accessory to the already existing agricultural
11 structures and uses.

12 C.B. MINIMUM YARD SETBACKS FOR RV PARKS

13 An Administrative Variance Permit to decrease the minimum yard setback in any existing
14 Recreational Vehicle Park established prior to the effective date of Ordinance 94-007 by no more
15 than fifty (50) percent of the minimum yard setback shall be approved if it is demonstrated by
16 competent substantial evidence that the following standards are met:

17 1. In Existence on Appropriate Date

18 The Recreational Vehicle Park was in existence on the effective date of Ordinance 94-
19 007.

20 2. Adjacent Structures Legal

21 The existing structure(s) on the adjacent properties have been constructed without, or in
22 violation of, prior permit approvals, and these violations have been granted conforming
23 status consistent with Section 7.10.16(Q)(2).

24 3. Placement of Structures Complies with Separation Standards

25 The placement of the proposed structure will meet the intent of all separation standards
26 as required for all Recreational Vehicle Parks, Mobile Home Parks, any other applicable
27 provision of this Code, or the Standard Building Code.

28 4. Undue Hardship

29 The literal application of the provisions of Section 7.10.16(Q) will result in an undue
30 hardship on the property owners and would otherwise prohibit the use of the property as
31 others are used in the surrounding neighborhood.

32 5. Minimum Variance

33 The requested Administrative Variance is the minimum necessary to locate the proposed
34 ~~dwelling-recreational vehicle unit~~ on the property.

- 1 6. Encroachment into Accessibility Easement or Common Area
- 2 The requested Administrative Variance will not result in any encroachment into any
- 3 access/utility easement or other common area.
- 4 7. Encroachment into Yard Setback
- 5 The requested Administrative Variance does not result in an encroachment of any more
- 6 than fifty (50) percent into any required yard setback area.
- 7 8. Not Conflict with Code
- 8 The requested Administrative Variance will not conflict with any other provisions of this
- 9 Code.

10 | D-C. STORMWATER MANAGEMENT

11 An Administrative Variance Permit from Section 7.07,00, *Stormwater Management Standards*, of

12 | no more than ~~ten (10) fifteen (15)~~ percent of the minimum standards shall be approved if it is

13 demonstrated by competent substantial evidence that the following standards are met:

- 14 1. Unnecessary Hardship
- 15 The requested Administrative Variance arises from a condition that is unique and peculiar
- 16 to the land, structures, and buildings involved; that the particular physical surroundings,
- 17 and the shape or topographical condition of the specific property involved would result in
- 18 unnecessary hardship for the owner, lessee, or occupant, as distinguished from a mere
- 19 inconvenience, if the provisions of this Code are literally enforced.
- 20 2. Condition Not Self-Created
- 21 The condition is created by the regulations of this Code, and not by an action or actions
- 22 of the property owner or the applicant.
- 23 3. Not Adversely Impact Surrounding Properties
- 24 The granting of the requested Administrative Variance will not adversely impact other
- 25 property or improvements in the neighborhood in which the subject property is located.
- 26 4. Not Endanger Public Safety
- 27 The granting of the Administrative Variance will not endanger the public safety.
- 28 5. Minimum Variance
- 29 The Administrative Variance is the minimum variance that will make possible the
- 30 reasonable use of the land, buildings, or structures.
- 31 6. Not Contrary to Code
- 32 The Administrative Variance will not be contrary to the general spirit and intent of this
- 33 Code.

1 7. Consistent with Comprehensive Plan

2 The Administrative Variance is consistent with the ~~Saint~~St. Lucie County Comprehensive
3 Plan.

4 ~~E.D.~~ DRIVEWAY REGULATIONS

5 1. Variation From Section 7.05.06

6 An Administrative Variance Permit from Section 7.05.06, *Driveways*, for a variation from
7 the minimum standards of no greater than ~~ten (10) twenty (20) percent~~ shall be approved
8 if it is demonstrated by competent substantial evidence that the following standards are
9 met:

10 a. The Administrative Variance arises from a condition that is unique and peculiar to
11 the land involved and that is created by this Code and not by the actions of the
12 property owner;

13 b. A literal interpretation of the provisions of Section 7.05.06, *Driveways*, would
14 deprive the applicant of rights commonly enjoyed by similar properties;

15 c. The granting of the Administrative Variance will not adversely impact or be
16 injurious to surrounding properties;

17 d. The Administrative Variance will not substantially increase traffic congestion and
18 will not endanger the public safety;

19 e. The Administrative Variance is the minimum variance that will make possible the
20 reasonable use of the land, building, and structures; and

21 f. The Administrative Variance is consistent with the ~~Saint~~St. Lucie County
22 Comprehensive Plan.

23 2. One(1) Driveway for Lot of Record

24 An Administrative Variance Permit from Section 7.05.06, *Driveways*, for a variation from
25 the minimum standards that will allow one (1) driveway on a lot of record shall be
26 approved when it is demonstrated by competent substantial evidence that no other road
27 frontage or road access exists for the lot.

28 **10.02.04 CONDITIONS**

29 ~~A.GENERAL~~

30 The County official reviewing the Administrative Variance may impose conditions, limitations, and
31 requirements on an Administrative Variance Permit as is necessary to carry out the purposes of
32 this Section and the purposes of this Code and the goals, objectives, and policies of the St. Lucie
33 County Comprehensive Plan, and prevent or minimize adverse effects on other property,
34 consistent with the requirements of Section 11.01.14, *Conditions of Approval*.

1 ~~B. AIRPORT OVERLAY ZONE ONLY~~

2 ~~An Administrative Variance from Section 4.00.00, Airport Overlay Zone, should also be~~
3 ~~conditioned to ensure markings and lights as required by Section 333.07(3), Florida Statutes, and~~
4 ~~that the markings and lights comply with the standards published in Chapter 14-60, FAC, and are~~
5 ~~installed, operated, and maintained on the structure or tree subject to the Administrative Variance~~
6 ~~Permit.~~

7 **10.02.05 NOTIFICATION**

8 The decision of the County official shall be mailed to the applicant and filed in the Office of the County
9 official making the decision pursuant to Section 11.01.15, *Notification of Decision*.

10 **10.02.06 EXPIRATION AND EXTENSION**

11 An Administrative Variance Permit shall be valid for twelve (12) months. The time limitations imposed on
12 any Administrative Variance Permit may be extended by the County official approving the Administrative
13 Variance Permit not more than one (1) time, and for not more than twelve (12) months, upon application
14 by the applicant to the County official who approved the permit a minimum of thirty (30) days prior to
15 expiration.

16 **10.02.07 APPEAL**

17 Any final action by the County official in accordance with this Section may, within thirty (30) days after the
18 rendition of such decision, be appealed to the Board of Adjustment in accordance with the provisions of
19 Section 11.03.05(B), *Appeals of Decision of Administrative Official*.

20 **10.03.00 MINOR ADJUSTMENTS**

21 **10.03.01 MINOR ADJUSTMENT TO MINOR SITE PLANS**

22 The Director may authorize minor adjustments to an approved Minor Site Plan. Such minor adjustments
23 shall be consistent with the intent and purpose of the St. Lucie County Comprehensive Plan, the
24 standards and requirements of this Code, and the development as approved, and shall be the minimum
25 necessary to overcome the particular difficulty. Such minor adjustments shall be limited to the following:

- 26 A. Increasing any dimension of any one (1) structure by not more than twenty-five (25) percent; or
27 B. Altering the location of any one (1) primary structure or group of primary structures by not more
28 than fifty (50) feet; or
29 C. Altering the net density of any one (1) stage or phase by not more than ten (10) percent, so long
30 as the approved gross density of the project does not increase; or
31 D. Altering the location of any circulation element by not more than fifty (50) feet. The relocation of
32 any circulation element by more than fifty (50) feet will be considered a major adjustment unless
33 the relocation results in a reduction of impervious surface area; or
34 E. Altering the location of any open space by not more than fifty (50) feet; or
35 F. Reducing the total amount of open space by not more than five (5) percent or reducing the yard
36 area or open space associated with any single structure by not more than five (5) percent; or

- 1 G. Altering the location, type, or quality of landscaping elements.
- 2 H. The addition or relocation of any accessory structure or use so long as the proposed addition or
- 3 relocation does not conflict with any portion of any required open space, building separation
- 4 requirements or other provisions of this Code.

5 **10.03.02 MINOR ADJUSTMENT TO MAJOR SITE PLANS OR CONDITIONAL USE PERMIT**

6 The Director may authorize minor adjustments to an approved Major Site Plan. Such minor adjustments
7 shall be consistent with the intent and purpose of the St. Lucie County Comprehensive Plan, the
8 standards and requirements of this Code, and the development as approved, and shall be the minimum
9 necessary to overcome the particular difficulty. Notice of the authorization of such minor adjustments
10 shall be provided to the Board of County Commissioners. Such minor adjustments shall be limited to the
11 following:

- 12 A. Increasing any dimension of any one (1) structure by not more than twenty-five (25) percent; or,
- 13 B. Altering the location of any one (1) structure or group of structures by not more than 100 feet; or,
- 14 C. Altering the net density of any one (1) stage or phase by not more than ten (10) percent; or,
- 15 D. Altering the location of any circulation element by not more than fifty (50) feet. Relocation of any
- 16 circulation element by more than fifty (50) feet will be considered a major adjustment unless the
- 17 relocation results in a reduction in impervious surface area; or,
- 18 E. Altering the location of any open space by not more than fifty (50) feet; or,
- 19 F. Reducing the total amount of open space by not more than five (5) percent or reducing the yard
- 20 area or open space associated with any single structure by not more than five (5) percent; or,
- 21 G. Altering the location, type, or quality of landscaping elements.
- 22 H. The addition or relocation of any accessory structure or use so long as the proposed addition or
- 23 relocation does not conflict with any portion of any required open space, building separation
- 24 requirements or other provisions of this Code.

25 **10.04.00 TRANSFERABLE DEVELOPMENT RIGHTS (RESERVED)**