

CHAPTER 400. PERMIT TYPES AND APPLICATIONS

SECTION 407. RELIEF APPLICATIONS

407.4. Alternative Relief

- A. The intent of alternative relief is to provide limited relief from the Comprehensive Plan or this Code in those cases where a strict application of these requirements will result in at least one of the following:
1. The prohibition or prevention of compliance with State or Federal law where the Comprehensive Plan or this Code is preempted by such State or Federal law.
 2. The property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property as a whole.
 3. The property owner is permanently unable to attain a vested right to a specific use of the real property with respect to the real property as a whole.
 4. The property owner is left with existing or vested uses that are unreasonable such that the property owner permanently will bear a disproportionate share of the burden imposed for the good of the public, which in fairness should be borne by the public at large.
 5. The property owner's use of the real property is unreasonably or unfairly burdened.
 6. The proposed exaction does not bear a rational nexus to the impacts of the proposed development and/or is not roughly proportional to the impacts of the proposed development.
 7. The equal protection or substantive due process rights of a property owner will be violated.
 8. The First Amendment rights under the United States and State of Florida Constitutions of the applicant will be violated.
 9. The strict application of the Comprehensive Plan or this Code to the property owner will result in a violation of another State or Federal law not referenced above; e.g., the Telecommunications Act, RLUIPA (Religious Land Use and Institutionalized Persons Act of 2000), etc.

B. Application

Requests for alternative relief shall relate to a development or permit application that has been submitted to the County. The application for alternative relief shall be filed with the County Attorney's Office. An application for alternative relief may not be filed after the statute of limitations has lapsed for the filing of the underlying claim in State or Federal court, and the filing of an application for alternative relief pursuant to this section will not restart the statute of limitations for any claim. An alternative relief application that is not complete may be denied for incompleteness if, upon written notice, the applicant does not provide the requested information within thirty (30) days of the written notice. Unless otherwise approved by the County Attorney or the Planning Commission (PC), an alternative relief application shall be deemed complete when it contains all of the following information:

1. The applicant shall identify all evidence the applicant believes will provide competent substantial evidence supporting the request and demonstrating the loss in substantial fair market value to the real property and/or specifically identify, with supporting facts and analysis, the State or Federal law that is violated by the strict application of the specific Code requirements.
2. A legal description and sketch of the property for which the applicant is seeking alternative relief. If the property is part of a larger project, a legal description and sketch of the larger project shall also be provided.
3. Deeds, contracts, or other documents demonstrating that the applicant is the legal or equitable owner of the property for which the applicant is seeking alternative relief.
4. A description of the existing use of the property.
5. Copies of all development orders, permits, and approvals that are relevant to the alternative relief application.
6. A list of all the witnesses that will present testimony to the PC, including a short summary of the testimony that will be provided by each witness.
7. The legal basis for the alternative relief and copies of all statutory, constitutional, and case law authority, to the extent that the applicant is relying upon such authority to support the alternative relief application.
8. Names, addresses, telephone numbers, fax numbers, and e-mail addresses of the applicant(s) and, if applicable, the applicant's authorized agent.

9. Upon request by the PC or the County Attorney's Office, a proposed order of the PC.
10. Any additional information required by the alternative relief application form prepared by the County Attorney.
11. An alternative relief application fee as set by resolution of the Board of County Commissioners (BCC).

C. Review Process

1. Notice of the public hearing shall be provided in accordance with this Code, Section 306. The PC is authorized to approve, with or without conditions, the alternative relief requested.
2. The County Attorney or designee shall make a recommendation on all alternative relief applications, which shall be based on the alternative relief application materials, other relevant facts, and applicable law. If the County Attorney's recommendation is based on facts, witnesses, or law not provided by the applicant pursuant to this Section, the County Attorney's recommendation shall identify such facts, witnesses, or law. The alternative relief application and recommendation shall be considered by the PC at a *de novo* public hearing. The PC shall consider the evidence and testimony presented at the public hearing, and the recommendation of the County Attorney in evaluating the alternative relief application. The PC action on the alternative relief application, which may include conducting the public hearing, or continuance of the application shall occur within ninety (90) days of the acceptance of the complete application, unless the applicant requests an extension of such time period and such request is granted by the PC.

D. Appeals and Exhaustion of Administrative Remedies

A denial by the PC of the request for alternative relief shall be in writing and may be appealed in accordance with this Code to the BCC. The appeal shall be held at a public hearing and shall be limited to the record. The BCC's determination of the appeal shall be concluded within four (4) months of the rendering of the PC decision. The exercise of the alternative relief and a subsequent appeal of a PC denial to the BCC as contemplated within this subsection shall be exhausted prior to the County's action being considered final for the purposes of State and Federal claims. The exercise of the alternative relief and a subsequent appeal of a PC denial to the BCC contemplated within this subsection also serves as a required nonjudicial local government administrative appeal contemplated in Section 70.51(10)(a), Florida Statutes. Further, the exhaustion of the alternative relief procedure and a subsequent appeal of the PC denial to the BCC is a lawfully available form of alternative dispute resolution pursuant to Sections 70.001(8) and (11), Florida Statutes.