

**Administrative Variance for Minor-After-the-Fact Yard Encroachments**  
LDC section 9.04.04  
Chapter 6 D. of the Administrative Code

PETITION NO (PL)  
PROJECT NAME  
DATE PROCESSED

*To be completed by staff*

Minor after-the-fact yard encroachments may be approved administratively by the County Manager or Designee based on the criteria established in LDC section 9.04.04. Each variance type has specific requirements and review criteria; please select variance Type A, B, or C:

- A. For both residential and non-residential structures, the County Manager or designee may administratively approve minor after-the-fact yard **encroachments of up to 5% of the required yard, not to exceed a maximum of 6 inches when:**
1. A building permit has been issued and a certificate of occupancy has not been granted. The encroachment applies to the yard requirement in effect as the date the building permit was issued.

- B. For both residential and non-residential structures, the County Manager or designee may administratively approve minor after-the-fact yard **encroachments of up to 10% of the required yard with a maximum of 2 feet.**
1. A building permit and certificate of occupancy has been granted.

**Exception:** Residential structures shall be deemed compliant with the applicable development standards and **no** variance shall be required when the following additional conditions apply:

- The building permit and certificate of occupancy were approved in compliance with the required setbacks in effect at that time;
- The encroachment does not exceed three inches into the required yard;
- The only portion of the structure encroaching into the required yard is the exterior wall treatment; and
- The required structure to structure separation, as identified in LDC section 4.02.03, is satisfied.

- C. For property supporting a single-family home, two-family home, duplex, mobile home or modular home, the County Manager or designee may administratively approve **encroachments of up to 25% of the required yard as in effect as of the date of the building permit when one of the following conditions exists:**
1. In the presence of mitigating circumstances, where the encroachment does not result from error or action on the part of the property owner and a building permit has been issued.
  2. Where no building permit record can be produced and the following criteria are met:
    - a. An after-the-fact building permit for the structure, or portion of the structure, is issued prior to the approval of the administrative variance. The administrative variance will only be approved once all inspections have been completed. The certificate of occupancy shall be placed on hold until the administrative variance is approved.
    - b. The encroaching structure, or portion of the structure, was constructed prior to the purchase of the subject property by the current owner.
    - c. Evidence is presented showing that the encroaching structure, or portion of the structure, was constructed at least 2 years prior to the date of application for the administrative

- variance. This evidence may be in the form of a survey, property card, or dated aerial photograph clearly showing the encroachment.
- d. The encroaching structure is either an addition of living area to a principal structure, or an accessory structure of at least 200 square feet in area.
  - e. The encroachment presents no safety hazard and has no adverse affect on the public welfare.
3. Where a structure was lawfully permitted within a residential zoning district under a previous code, and where said structure is considered nonconforming under the current Land Development Code, due to changes in the required yards, the County Manager or designee may administratively approve a variance for an amount equal to or less than the existing yard encroachment.
- D. Under no circumstance shall any administrative variance be approved which would allow a reduction of the separation between structures to less than 10 feet.
  - E. Administrative variances approved pursuant to the above do not run with the land in perpetuity and remain subject to the provisions of this section regarding nonconforming structures.

**APPLICANT CONTACT INFORMATION**

Name of Property Owner(s): \_\_\_\_\_

Name of Applicant if different than owner: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Name of Agent: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_ Cell: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**PROPERTY INFORMATION**

Legal Description of Property: \_\_\_\_\_

Section/Township/Range: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ Property I.D. #: \_\_\_\_\_

Subdivision: \_\_\_\_\_ Lot: \_\_\_\_\_ Block: \_\_\_\_\_

Address/ General Location of Subject Property: \_\_\_\_\_

\_\_\_\_\_

### DETAILS OF VARIANCE REQUEST

On a separate sheet attached to the application, please address each of the following details of the requested variance:

- Narrative statement of what is being requested and the reason for said request, and the location of request on the site;
- Location and extent of encroachment, measured in tenths of feet;
- When the encroachment was discovered;
- How the encroachment was discovered; and
- Building permit numbers of the encroaching structures.

### SUBMITTAL REQUIREMENTS

See Chapter 6 D. of the Administrative Code for submittal requirements. The following items are to be submitted with the application packet:

- Completed Application (download current form from County website);
- Disclosure of Ownership;
- Details of Variance request;
- [Affidavit of Authorization](#) signed and notarized;
- A signed and sealed copy of the survey identifying the encroachment; and
- Electronic Copy (CD) of all documents and forms. (Preferred)

**Fee Requirements:**

- Variance (Administrative):** \$1,000.00

As the authorized agent/applicant for this petition, I attest that all of the information indicated on this checklist is included in this submittal package. I understand that failure to include all necessary submittal information may result in the delay of processing this petition.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

*All checks payable to: Board of County Commissioners*

The completed application, all required submittal materials and fees shall be submitted to:

**Growth Management Department  
ATTN: Business Center  
2800 North Horseshoe Drive  
Naples, FL 34104**