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### Section 3. Appeals and variances.

A. *Authority of the governing body.* The governing body shall have the following powers and duties:

- (1) The governing body shall hear and decide appeals when it is alleged there is an error in any order, requirement, decision, or determination made by the administrative official in the enforcement of the zoning ordinance. The governing body may, upon appeal and in conformity with provisions of this part, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination made by the administrative official in the enforcement of the zoning ordinance. In making any necessary order, requirement, decision, or determination, the governing body shall have all the powers of the administrative official from whose decision the appeal is taken.
- (2) The governing body may authorize upon appeal a variance from the terms of the ordinance that will not be contrary to the public interest when due to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary and undue hardship. In order to authorize any variance from the terms of the ordinance, the governing body shall consider:
  - (a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;
  - (b) That the special conditions and circumstances do not result from the actions of the applicant;
  - (c) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings, or structures in the same zoning district;
  - (d) That literal interpretation of the provisions of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the ordinance and would work unnecessary and undue hardship on the applicant;
  - (e) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
  - (f) That the granting of the variance will be in harmony with the general intent and purpose of the land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- (3) The governing body may prescribe appropriate conditions and safeguards in conformity with the land development regulations. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the ordinance.
- (4) The governing body may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both.

B. *Authority of the administrative official:* The administrative official shall have the following duties:

- (1) The administrative official shall interpret the zoning ordinance and make determinations of appropriate uses within a zoning district.
- (2) The administrative official shall review and grant or deny variances. to the zoning ordinance.

C. *[Review criteria.]* The administrative official shall review all variances based on the criteria listed below:

- (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district
- (2) The special conditions and circumstances do not result from the actions of the applicant.
- (3) The requested variance will not be detrimental to the development pattern in the neighborhood.

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- (4) The requested variance will enable the petitioner to avoid building in the flood plain.
  - (5) The requested variance will enable the petitioner to protect one or more specimen trees.
  - (6) The requested variance is the result of a development plan proposing a more efficient and safe design through an access management plan approved by the development review committee.
  - (7) The requested variance is for a front yard corner lot and will not have any adverse impact on the established development pattern of the adjacent lots.
  - (8) The requested variance is for an addition for a building with an existing portion already encroaching into the yard and will not extend past a line established by the existing encroachment running parallel to the lot line.
  - (9) The requested variance will further the reconstruction, rehabilitation, or restoration of structures listed in or classified as contributing to a district listed in the National Register of Historic Places, the Local Register of Historic Places, or the State Inventory of Historic Places.

D. *Variances:*

- (1) *Dimensional variance runs with the land:* A dimensional variance applies to the property for which it is granted, and not to the individual who applies for it. A dimensional variance is transferable to any future owner of the land, but it cannot be transferred by the applicant to a different site.
- (2) *Findings maintained by the administrative official:* All findings necessary for the granting of a dimensional variance, along with any imposed conditions or restrictions, shall be maintained by the administrative official. These findings shall be issued in written form to the applicant to constitute proof of the dimensional variance.
- (3) *[Uses not otherwise permitted.]* A variance shall not be granted to allow a use not otherwise permitted in the zoning district.

E. *Variance procedure:*

- (1) The administrative official shall, following the receipt of the completed application for a variance, review the application and, within fifteen (15) days, issue a notice of intent, for either the approval or the denial of the variance.
  - (a) If the notice of intent is to approve the variance, a mailing shall be issued to the property owners within five hundred (500) feet of the property under consideration for the variance. This notice shall indicate that it is the administrative official's intent to approve the requested variance fifteen (15) days after the date of the mailing if no appeal is filed. The notice of intent shall be forwarded to the board of county commissioners.
  - (b) If no appeal is filed within fifteen (15) days objecting to the administrative official's decision to approve the variance, the decision shall stand. If an appeal is filed by 5:00 p.m. on the fifteenth day, the administrative official shall schedule a public hearing for the governing body to hear the application for the variance.
  - (c) If the administrative official's intent is to deny the requested variance, the administrative official shall send notification letters to the applicant and the property owners within two hundred fifty (250) feet of the property under consideration for the variance, indicating the administrative official's intent to deny the variance. The notice of intent shall be forwarded to the board of county commissioners.
  - (d) If no appeal is filed within fifteen (15) days objecting to the administrative official's decision to deny the variance, the decision shall stand. If an appeal is filed by 5:00 p.m. on the fifteenth day,

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the administrative official shall schedule a public hearing for the governing body to hear the application for the variance.

F. *Appeal procedure:*

- (1) *For administrative decisions:* Appeals to the governing body for an administrative decision may be taken by any person aggrieved or by any officer, board, or bureau of the governing body affected by the decision of the administrative official. Such appeal shall be taken within thirty (30) days after rendition of the order, requirement, decision, or determination appealed by filing with the administrative official from whom the appeal is taken and with the governing body an application of appeal specifying the grounds thereof. Upon a hearing, any party may appear in person, by agent, or by attorney.

G. *Application for variance appeal:* The application for the appeal of the administrative official's intent to either approve or deny a variance shall be in the form prescribed by the governing body. Such an application shall be included with the administrative official's letter of intent which is mailed to adjacent property owners. The individual filing an appeal shall include any additional data supporting the appeal at the time of filing.

H. *Required notice for appeals and variances:*

- (1) *Notice in newspaper:* The administrative official shall cause a notice of the time, place, and purpose of such hearing to be published in a newspaper of general circulation in the county at least ten (10) days prior to the hearing.
- (2) *Mail notice:*
  - (a) The administrative official shall mail notices setting forth the time, place and purpose of the hearing to the parties in interest when a specific parcel is involved. The administrative official shall also mail notices to the owner of every parcel of land within a distance of two hundred fifty (250) feet in any direction from the property line of the land in question when the hearing involves a specific parcel of land.
  - (b) Notice shall be mailed to the owner's current address of record maintained by the assessor of taxes of the governing body and shall be postmarked no later than ten (10) days prior to the scheduled hearing date. The administrative official shall present an affidavit or mailing certification certifying compliance with the notice requirement of this section, along with a list of the persons and addresses to which notices were mailed, at the time of the hearing.
- (3) *Sign posting:* The applicant shall, upon the setting of the hearing on a proposed variance, and not less than fifteen (15) days prior to the date set for the public hearing, post sign(s) on the parcel of land for which the variance is proposed.
  - (a) Such sign shall have the size, shape, design and color determined by the administrative official. The following information shall be printed or otherwise made to appear on the sign:

**PUBLIC NOTICE**

VARIANCE HEARING

BOARD OF COUNTY COMMISSIONERS

**HERNANDO COUNTY, FLORIDA**

(insert date, meeting time, and location)

**PROPOSED VARIANCE**

(description of variance)

- (b) The sign(s) furnished by the county shall be posted by the applicant along each front lot line with the bottom of the sign at least three (3) feet above grade on the property being considered for a variance. The sign cards shall be posted at the outer property line along the road or street frontage and shall be clearly visible. If the frontage is in excess of three hundred (300) feet,

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posting of the signs shall be determined by the county. In cases where the property does not have frontage on a road, the sign cards shall be posted at the property corners, and where the access road intersects with the nearest county road.

- (c) After the signs are posted, the petitioner shall prepare an affidavit certifying that the required signs were posted, including a description of the parcel of land on which the signs were placed. This affidavit must be filed with the County Administrator or designee prior to the public hearing. The County shall make affidavit forms available for use by the applicant. It is the responsibility of the petitioner to ensure that the sign(s) are appropriately posted and remain on the property during the public hearing process in a legible condition. If the condition of the sign(s) deteriorate through the process, it shall be the responsibility of the petitioner to repost the property at no cost to the county. Failure to maintain the signs in accordance with this section may result in a delay to the public hearing process. The petitioner shall be responsible for removal of the sign(s) within 10 days of the date the decision on the petitioner's application becomes final or the date of appeal of a commission or governing body decision for judicial determination, whichever comes first. Failure to timely remove any such sign(s) is prohibited.
- (4) *Public inquiry workshop.* Upon determination of need by the administrative official based upon the number of public inquiries or the size, location or complexity of the proposed project, the applicant shall be required to conduct a public inquiry workshop prior to the scheduling of a public hearing on the application at a location convenient to the site in question and appropriate for public assembly in Hernando County as follows:
  - (a) The applicant shall provide sign notice by posting the property a minimum of ten (10) days prior to the scheduled workshop with a public inquiry workshop notice sign as supplied by the zoning department. The sign notice hereunder shall be in addition to all other sign notice requirements under this article.
  - (b) The applicant shall provide mail notice a minimum of ten (10) days prior to the scheduled public inquiry workshop giving the time, place and purpose of the meeting to each property owner within one thousand (1,000) feet of the parcel covered by the application based on the mail list generated by the property appraiser's office. The applicant shall provide the zoning department a copy of the mail list and a notarized affidavit indicating that said notice was mailed. The mail notice hereunder shall be in addition to all other mail notice provisions under this article.
  - (c) The applicant shall provide a citizen sign-in sheet and executive summary explaining what information was provided to the public at the meeting to the administrative official accompanied by a notarized affidavit indicating that the list is an official record of attendance at the meeting. The citizen sign-in sheet and executive summary will become a part of the official application.
- I. *Fees:* The applicant shall pay all costs and expenses in connection with public notice of such hearing and related notices in addition to any other fee required for administration.
- J. *Review by circuit court:* An aggrieved party may appeal a final administrative order of the governing body to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the governing body. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

(Ord. No. 74-8, § 9, 10-15-74; Ord. No. 78-4, § 7, 5-16-78; Ord. No. 86-18, § 2, 8-5-86; Ord. No. 88-8, § 1, 4-6-88; Ord. No. 91-13, § 7, 7-2-91; Ord. No. 96-19, § 18, 9-10-96; Ord. No. 97-3, § 7, 3-4-97; Ord. No. 99-14, § 15, 7-6-99; Ord. No. 2004-11, § 16, 8-3-04; Ord. No. 2005-01, § 4, 2-8-05; Ord. No. 2016-18, §§ I, II, 11-8-16)