

1 **Sec. 3-9-6. Board of Zoning Appeals (BZA) Powers and Duties; Procedures**

2 (a) *Creation and Appointment of the Board of Zoning Appeals.*

3 As part of the zoning organization and implementation of the Land Development Regulations, the
4 Board of County Commissioners, also referred to as the BCC, has created a Board of Zoning
5 Appeals, also referred to as the BZA. The BZA shall have five members, appointed by the BCC,
6 one of whom shall be appointed from each of the five County Commission districts. No member
7 of the BZA shall be an elected official of Charlotte County. No less than one, nor more than two,
8 member(s) of the BZA shall also be a member of the Planning and Zoning Board. To provide for
9 BZA continuity of membership through staggered terms, the terms of members appointed from
10 Commission Districts 1, 3, and 5 shall expire on the fourth Tuesday of November, 2016.
11 Members appointed from Commission Districts 2 and 4 shall be deemed to have been appointed
12 to terms expiring on the fourth Tuesday of November, 2014. Thereafter, all terms shall run for a
13 term of four years, and the filling of any vacancy occurring in any office shall be for only the
14 remainder of that term. The manner of appointment, or removal and filling of board vacancies
15 shall be by majority vote of the BCC.

16 (b) *Organization.*

17 The BZA shall elect from its membership a Chair, Vice-Chair, and Secretary, who shall serve a
18 term of one year and shall be eligible to succeed themselves. The BCC has adopted rules of
19 procedure for the transaction of the business of the BZA and the Zoning Official shall maintain a
20 record of all its resolutions, transactions and decisions on all matters. All transactions and
21 decisions shall be a public record and available for public inspection.

22 (c) *Procedures.*

23 The Chair, or in their absence, the Vice-Chair or Secretary, shall chair meetings, and compel the
24 attendance of witnesses. All testimony given shall be under oath. All decisions regarding
25 appeals, the issuance of a special exception or variance by the BZA shall be quasi-judicial in
26 nature. All meetings of the BZA shall be open to the public. The Zoning Official shall keep
27 minutes of BZA meetings, showing the vote of each member on each question, and indicating,
28 also, the absence of any member, or legal abstention from voting. The results of all of the official
29 actions of the BZA shall become a public record in the office of the Zoning Official.

30 (d) *Education and Travel Expenses.*

31 Members of the BZA shall receive no salaries or other compensation for their services as such
32 members. However; if they choose, members of the BZA may be reimbursed for expenses,
33 including but not limited to training, education, and mileage driven, according to County policy.

34 (e) *Expenses and Fees.*

35 (1) The cost and expenses of operation of the BZA shall be budgeted and paid in the same
36 manner as provided for the Planning and Zoning Board and shall be a part of the budget
37 adopted for such board.

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1 (2) The BCC is authorized, empowered, and directed to establish by resolution a schedule of
2 reasonable fees to be charged by the BZA and all such sums received shall be deposited in
3 the general fund of Charlotte County.

4 (f) *Authority.*

5 The BZA is designated by the BCC to hear, and have final authority on, the following applications.

6 (1) Hear and decide Administrative Appeals when it is asserted there is an error in any order,
7 requirement, decision, or determination made by the Zoning Official in the administration,
8 enforcement, or interpretation of this Code.

9 (2) Special Exception uses under this Code, subject to reasonable safeguards, in particular
10 circumstances.

11 (3) Grant time extensions and variances from the dimensional requirements of these Land
12 Development Regulations as shall not be contrary to the public interest where, in specific
13 cases and owing to special circumstances, a literal enforcement of the provisions of the
14 regulations will result in unnecessary and undue hardship.

15 (4) The BZA shall not issue or grant variances or Special Exceptions which will permit a land use
16 in a zone or district in which such use if forbidden by the Land Development Regulations.

17 (g) *Decisions of the BZA.*

18 All decisions of the BZA shall require an affirmative vote of the majority of Board members
19 present and voting on the matter, unless stated otherwise in this Code. Tie votes shall not carry
20 the motion made. As soon as possible after the BZA has made their decision the Zoning Official
21 shall mail a Decision Letter to the applicant documenting the decision of the BZA including their
22 reasons for a denial or any conditions adopted as conditions of approval. The Zoning Official
23 shall also create a Notice of Approval, which shall be recorded in the Office of the Clerk of the
24 Circuit Court and made a part of the Official Records of Charlotte County.

25 (h) *Appeal to Circuit Court or County Commission.*

26 (1) Any person or persons, corporation, or other entity aggrieved by any decision of the BZA
27 may, within 30 calendar days after such decision has been documented by the Zoning Official
28 in a Decision Letter, but not thereafter, apply to the Circuit Court of the County for appropriate
29 relief. There shall be no right to apply to the Circuit Court for relief on account of any order,
30 requirement, decision, determination or action of the Zoning Official unless there shall first
31 have been an appeal to the BZA. It is the intention of the BCC that all administrative steps
32 provided in this Code with regard to appeal and review shall be taken before any application
33 may be made to the courts for relief with respect to matters or things appealable and
34 reviewable hereunder.

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Sec. 3-9-6.1 Administrative Appeals

Sec. 3-9-6.1. Administrative Appeals

(a) *Appeals of Denial by Zoning Official to the BZA.*

The BZA may, upon proper application, public notice and public hearing reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination made by the Zoning Official in the administration, enforcement or interpretation of any of these Land Development Regulations. The BZA may make such order, requirement, decision or determination as shall be proper in the circumstances, and for such purpose shall have all the powers of the officer from whom the appeal was taken.

(b) *Application.*

An appeal to the BZA following a denial from the Zoning Official shall be in writing on forms provided by the Community Development Department, and shall be filed with the Community Development Department within 30 calendar days after the date on the Decision Letter notifying the applicant of the administrative decision or determination by the Zoning Official. The appeal shall be submitted with the applicable fee, accompanied by all documents, plans and other papers constituting the record, and specify the grounds for the appeal.

(c) *Action by County Staff.*

Upon receipt of a written appeal, the Zoning Official shall determine the date, time and place of the public hearing, and shall give published notice as well as written mailed notice by first class mail to all substantially interested parties at least 15 calendar days prior to the date of the public hearing. The Zoning Official shall transmit to the BZA all documents, plans and other papers or other records upon which the decision appealed from is based. At the public hearing of an Administrative Appeal the Zoning Official shall present the facts of the case and explain the decision made, after which any person may appear and be heard under oath. The final action by the BZA shall be documented by the Zoning Official in a Decision Letter to the applicant, copies of which shall be kept on file. The Zoning Official shall also create a Notice of Approval, which shall be recorded in the office of the Clerk of the Circuit Court and made a part of the Official Records of Charlotte County. A copy of the recorded Notice of Approval shall also be mailed to the applicant.

(d) *Action by Applicant.*

The applicant shall appear at the public hearing in person, or by agent or attorney, to testify under oath before the BZA, present their case for the appeal, and answer questions asked of them.

(e) *Considerations for Appeals.*

In reaching its decision, the BZA shall consider the following criteria as well as any other issues which are pertinent and reasonable.

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- (1) Whether or not the appeal is of a nature properly brought to them for a decision, or whether or not there is an established procedure for handling the request other than through the appeal process (i.e., a variance or special exception, etc.).
- (2) The intent of the regulation in question.
- (3) The effect the ruling will have when applied generally to the intent of the Land Development Regulations.
- (4) Staff recommendations, the testimony of the appellant, and testimony of substantially interested parties shall also be considered.

Sec. 3-9-6.2 Special Exceptions

(a) *Intent and Purpose.*

A Special Exception is permission for a use that would not be permissible generally, or without restriction, throughout a zoning district but which, if controlled as to area, location, relation to the neighborhood and other such restrictions, as may be deemed appropriate in each case, would be compatible with surrounding land uses and found to be consistent with the Comprehensive Plan for Charlotte County.

(b) *Applicability.*

Special Exceptions are established to allow for the approval of specific uses in addition to the permitted uses in each zoning district. Uses eligible for a Special Exception shall be limited to:

- (1) The uses listed as Special Exceptions in each zoning district.
- (2) Adaptive re-use of an historic structure.

(c) *Initiation.*

An application for a Special Exception may be initiated by anyone with a legal interest in the property; however, an applicant who is not the owner of subject property, shall be required to present evidence of legal authority from the owner to submit an application.

(d) *Application Requirements.*

Unless waived by the Zoning Official, a pre-application conference must take place with the Zoning Official at least five working days prior to submitting an application. Applications for Special Exceptions shall be submitted on forms obtained from and filed with the Zoning Official. All applications shall be accompanied by additional documentation as specified in this Code or required by the Zoning Official and the applicable fee. The Zoning Official shall review the application for sufficiency, which includes completeness of the application. If additional data is required, the Zoning Official shall, within ten working days after receipt of the application, document in writing to the applicant what specifically is required. Failure of the applicant to submit information required by the Zoning Official and to make the application complete or sufficient within 30 calendar days of the written request shall be considered a withdrawal and the application fee shall be refunded less the administrative fee. Special Exception applications shall include but not be limited to the following, as determined by the Zoning Official.

- (1) A concept plan at an appropriate scale showing the existing and proposed placement of structures on the property, provisions for ingress and egress, off-street parking and loading areas, refuse and service areas and required yards and other spaces.
- (2) Plans showing proposed locations for utilities hookups.
- (3) Plans for screening, landscaping, and buffers, with references to type, dimensions, and character.
- (4) Proposed signs and lighting, including type, dimension and character.
- (5) A legal description of the entire property encompassing the Special Exception.

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- (6) A narrative description of the total project in sufficient detail to provide an understanding of the nature of the development proposal and a statement describing how the requested special exception meets the Approval Criteria for Special Exceptions as set forth in this Code.

(e) *Notice of Public Hearing.*

The County shall provide notice of the public hearing to be held before the BZA in accordance with the following provisions.

(1) *Published Notice.*

The Zoning Official shall review the application for sufficiency, which includes completeness of the application and consistency with the Comprehensive Plan, Code of Ordinances, and the Land Development Regulations. Upon the receipt of a complete and valid application for a Special Exception, the Zoning Official shall establish a date, time and place for the public hearing before the BZA. Published notice shall be given at least 15 calendar days prior to the date of any public hearing by publication in a newspaper of general circulation in the County. The published notice shall contain a description of the proposed use; address and legal description of subject property; the date, time, and place of the public hearing or hearings, whichever is applicable; and shall invite all interested persons to appear and be heard. Failure to comply strictly with published notice requirements shall not invalidate the proceedings.

(2) *Mailed Notice.*

The owners of property located within 200 feet of the subject property shall be mailed written notice of the proposed Special Exception at least 15 calendar days prior to the initial public hearing on the Special Exception before the BZA. The mailed notice shall contain a description of the proposed use; address and legal description of subject property; the date, time and place of the public hearing or hearings, whichever is applicable; a phone number to contact the County for more information; and shall also invite all interested persons to appear and be heard. Notice by mail shall be addressed to the property owner at the address shown on the latest available Charlotte County Property Appraiser Real Property Records. Such notice shall be considered effective when placed in the United States mail, postage paid. Failure to comply strictly with mailed notice requirements shall not invalidate the proceedings.

(3) *Posted Notice.*

A sign shall be posted conspicuously on the subject property, which shall contain a description of the proposed use date, time and place of the public hearing; and a phone number to contact the County for more information. The sign shall be placed on the property at least ten calendar days prior to the initial public hearing on the Special Exception before the BZA. Failure to comply strictly with posted notice requirements shall not invalidate the proceedings.

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(f) *Action by County Staff.*

The Zoning Official shall review the application for sufficiency, which includes completeness of the application and consistency with the Comprehensive Plan, Code of Ordinances, and the Land Development Regulations. Should an application not be complete or sufficient or an error in the application be discovered, the Zoning Official shall have the discretion to require the applicant to reapply or submit revised or additional information. Upon finding the application to be correct and complete, it shall be scheduled for a public hearing before the next available BZA meeting. The Zoning Official may require that site plans associated with Special Exceptions be reviewed and comments provided to staff during the Special Exception process, although no site plan approval shall be implied by this review. The Zoning Official shall investigate the conditions pertaining to a particular request and submit a report to the BZA, providing the facts involved and making a recommendation based on the application submitted, the facts known prior to the public hearing, and this Code. The final action by the BZA shall be documented by the Zoning Official in a Decision Letter to the applicant, copies of which shall be kept on file. The Zoning Official shall also create a Notice of Approval, which shall be recorded in the Office of the Clerk of the Circuit Court and made a part of the official records of Charlotte County. The original recorded Notice of Approval shall be kept on file and a copy mailed to the applicant.

(g) *Action by Applicant.*

The applicant, agent or attorney shall appear at the public hearing or hearings in person, to testify under oath before the BZA members, present their case for the application, and answer questions asked of them. The applicant may also initiate any of the following actions.

(1) *Withdrawal of Application.*

An applicant or legally appointed representative may request that their application be withdrawn at any time. A request to withdraw an application shall be in writing to the Zoning Official unless the applicant makes their request on the record at the scheduled public hearing of the BZA. A written request shall be signed by all persons who signed the application, or by a legally appointed representative. The Zoning Official may authorize a refund of all or part of the application fee if an application is withdrawn more than 15 calendar days prior to the scheduled public hearing. If a request to withdraw an application is made less than 15 calendar days prior to the scheduled public hearing then no part of the application fee shall be refunded.

(2) *Postponement of Scheduled Public Hearing.*

If an applicant desires to postpone a scheduled public hearing they may request that the scheduled public hearing be postponed to any one of the next four available public hearings. A request to postpone the scheduled public hearing must be in writing and must be received by the Zoning Official at least 15 calendar days prior to the scheduled public hearing. The request shall be signed by all persons who signed the application, or by a legally appointed representative. The Zoning Official shall then remove the application from the agenda and mail a notice, at least seven calendar days prior to the scheduled public hearing, to the

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surrounding property owners who were mailed a notice of the original public hearing, notifying them that the application will not be heard at the originally scheduled public hearing but will be heard on the date and time of the requested public hearing. The applicant shall pay the cost of all additional published and mailed notices if such notices are required by the BZA. Failure to receive a mailed notice shall not invalidate the proceedings.

(3) Request for Continuance from the Zoning Official or BZA.

If an applicant desires to continue a public hearing less than 15 calendar days before the scheduled meeting, they must make such a request to the Zoning Official prior to, or the BZA at the public hearing. The Zoning Official may, one time per application, based on extraordinary circumstances, grant a continuance to any one of the next four available public hearings. Other than the one time grant of continuance by the Zoning Official. Extraordinary circumstances shall include, but not be limited to, sudden illness or medical condition, death, or discovery of a late objector with their consent. All requests to continue the public hearing may be granted or denied only by the BZA. The BZA may hold a portion of the public hearing to give those who are present a chance to testify and then continue any action on the matter. If the BZA determines that a continuance is appropriate they may continue action on any application to a date certain at one of their next scheduled public hearings. If directed to do so by the BZA, as soon as practicable thereafter the Zoning Official shall mail a notice to the surrounding property owners notifying them that the application has been continued and will be heard on the date and time of the next scheduled public hearing. The applicant shall pay the cost of all additional published and mailed notices if such notices are required by the BZA. Failure to receive a mailed notice shall not invalidate the proceedings.

(h) *Action by the BZA.*

The BZA shall hold a public hearing to obtain public input on the proposed Special Exception. Following the public hearing, the BZA may approve, approve with conditions, or deny the proposed Special Exception.

- (1) Should the BZA deny a Special Exception, the reasons for denial shall be stated and put in writing for the record. Such reasons shall be based on the Approval Criteria for Special Exceptions stated in this Code as they may be applicable to the denial.
- (2) Should the BZA approve a Special Exception, the BZA may impose reasonable conditions in order to protect the interest of the public health, safety, and general welfare, and prevent or minimize adverse effects on other property in the surrounding neighborhood. Any request for a modification of any BZA condition of approval for a Special Exception shall be processed as if it is a modification of a Special Exception.
- (3) Continuance of BZA Action. If the BZA determines that a continuance is appropriate, they may continue action on any application. If the BZA continues their action on any application to a date certain and directs the Zoning Official to mail notice of the continuance, then as soon thereafter the Zoning Official shall mail a notice to the surrounding property owners notifying them that the application has been continued and will be acted on again at the date and time of the next schedule public hearing and no additional noticing shall be required. If

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the BZA continues their action on any application without setting a date certain then the Zoning Official shall publish, mail, and post a notice for the next meeting at which the application will be acted upon according to the regular noticing requirements of this Code. The applicant shall pay the cost of all additional published and mailed notices if such notices are required by the BZA. Failure to receive a mailed notice shall not invalidate the proceedings.

(i) *Approval Criteria for Special Exceptions.*

In addition to the Standard Approval Criteria for developments and uses permitted by this Code, a Special Exception shall be granted by the BZA only if all of the following Approval Criteria are satisfied.

- (1) The proposed Special Exception is consistent with the Comprehensive Plan
- (2) The proposed Special Exception is compatible with existing and permitted uses surrounding the land on which the proposed Special Exception would exist.
- (3) The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety or general welfare.

(j) *Effect of Special Exception Approval.*

Should the BZA approve a Special Exception the use may be initiated and continued only if all of the development standards of Code and additional conditions imposed by the BZA are maintained and complied with. An approved Special Exception use shall be considered permanent; however, a Special Exception use may expire, be revoked, or no longer be an authorized use if any the following circumstances are found to exist.

- (1) Approval of a Special Exception, with or without conditions, shall be considered permanent to the extent that it may only be revoked following the procedure for a new Special Exception. Only the BZA may direct the Zoning Official to initiate an application to revoke an existing Special Exception.
- (2) An approved Special Exception may have a time limit in the BZA conditions of approval for the Special Exception use. In which case, the Special Exception shall become void and the use shall be terminated and discontinued at the end of the time specified in the BZA condition, unless a time extension is granted by the BZA.
- (3) Any violation of the conditions and safeguards that may be imposed on any Special Exception by the BZA, when made a part of the terms under which the Special Exception is granted, shall be deemed a violation of this Code.

(k) *Modifications.*

Minor alterations or modifications of any approved Special Exception may be approved by the Zoning Official. Any expansion or major alteration or modification of any approved Special Exception must be approved by the BZA as if it is a new application. It shall be the duty of the Zoning Official to determine which modifications are classified as major or minor.

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(l) *Time between Similar Applications.*

Whenever the BZA has denied an application for a Special Exception, the BZA shall not thereafter consider an identical application for a Special Exception concerning all or any part of the same property for a period of six months from the date of such action, except that this requirement may be waived by the positive votes of a majority of the members of the BZA. This section does not apply to applications for a modification of a previously approved Special Exception.

(n) *Use of Historic Structures.*

Owners of structures designated on the National Register of Historic Places, the Florida Master Site File, or the Local Historic Register may petition the BZA for approval of a Special Exception use for any type of use which would serve to perpetuate the viable contemporary utilization and adaptive re-use of the historic structure, regardless of whether such use is permitted by Special Exception in the zoning district in which the historic structure is located.

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Sec. 3-9-6.3. Variances

(a) Intent and Purpose.

The variance process is intended to provide limited relief from the dimensional requirements of the Land Development Regulations in those cases where strict application of those requirements will create a practical difficulty or undue hardship, as distinguished from a mere inconvenience, and prohibiting the use of land in a manner normally allowed under the Land Development Regulations. A variance should provide relief in limited circumstances where the requirements of the Land Development Regulations render the land difficult to use because of some unique, exceptional, or extraordinary physical attribute of the property itself, or some other extraordinary factor of the property for which the variance is requested.

(b) Applicability.

- (1) The following procedures shall be used to apply for a variance from the dimensional standards or requirements of this Code which do not qualify for an Administrative Variance.
- (2) The following procedures shall also be used for an Administrative Variance application only if the Zoning Official has received a valid written objection.

(c) Initiation.

An application for a variance may be initiated by anyone with a legal interest in the property; however, an applicant who is not the owner of subject property, shall be required to present evidence of legal authority from the owner to submit an application.

(d) Application Requirements.

Unless waived by the Zoning Official, a pre-application conference must take place with the Zoning Official at least five working days prior to submitting an application. Applications for a variance shall be submitted on forms obtained from and filed with the Zoning Official. All applications shall state the specific section of the zoning section of these Land Development Regulations for which relief is requested and the grounds for such relief. Applications shall be accompanied by any evidence and additional documentation as specified in this Code or required by the Zoning Official, and the applicable fee, to be established by resolution of the BCC. The Zoning Official shall review the application for sufficiency, which includes completeness of the application. If additional data is required, the Zoning Official shall, within ten working days after receipt of the application, document in writing to the applicant what specifically is needed. Failure of the applicant to submit the required information requested by the Zoning Official and to make the application complete or sufficient within 30 calendar days of the written request by the Zoning Official or such extended time as granted by the Zoning Official shall be considered a withdrawal and the application fee shall be refunded less the administrative fee. Variance applications shall include but not be limited to the following where applicable as determined by the Zoning Official.

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- 1 (1) A concept plan at an appropriate scale showing the related existing and proposed placement
2 of structures on the property, provisions for ingress and egress, off-street parking and off-
3 street loading areas, refuse and service areas and required yards and other spaces.
- 4 (2) A survey including a complete legal description of subject property which shows all existing
5 improvements.
- 6 (3) A narrative description of the project in sufficient detail to provide an understanding of the
7 nature of the variance requested and a statement describing how the requested variance
8 meets the Approval Criteria for Variances as set forth in this Code.
- 9 (4) Any plans, data or other information showing evidence supporting the requested variance,
10 such as, bathometric surveys, floor plans, building elevations, cross sections of buildings,
11 topography, or photographs.

12 (e) *Action by County Staff.*

13 The Zoning Official shall review the application for sufficiency, which includes completeness of
14 the application and consistency with the Comprehensive Plan, Code of Ordinances, and the Land
15 Development Regulations. Upon receipt of a complete and valid application for a variance, the
16 Zoning Official shall establish a date, time and place for the public hearing. Upon finding the
17 application to be correct and complete, it shall be scheduled for a public hearing before the next
18 available BZA meeting. Should an error in the application be discovered, the Zoning Official shall
19 have the discretion to require the applicant to reapply or submit revised or additional information.
20 The Zoning Official may require that site plans associated with variances be reviewed and
21 comments provided to staff during the variance process, although no site plan approval shall be
22 implied by this review. The Zoning Official shall investigate the conditions pertaining to a
23 particular variance and shall submit a report to the BZA at the public hearing giving the facts
24 involved and make a recommendation based on the application submitted, the facts known prior
25 to the public hearing, and this Code. The final action by the BZA shall be documented by the
26 Zoning Official in a Decision Letter to the applicant, copies of which shall be kept on file. The
27 Zoning Official shall also create a Notice of Approval, which shall be recorded in the office of the
28 Clerk of the Circuit Court and made a part of the Official Records of Charlotte County. The
29 original recorded Notice of Approval shall be kept on file and a copy mailed to the applicant.

30 (f) *Notice of Public Hearings.*

31 The County shall provide notice of the public hearing to be held before the BZA in accordance
32 with the following provisions.

33 (1) *Published Notice.*

34 Upon receipt of a complete and valid application for a variance, the Zoning Official shall
35 establish a date, time and place for the public hearing. Published notice shall be given at
36 least 15 calendar days prior to the date of the public hearing by publication in a newspaper of
37 general circulation in the County. The published notice shall contain a description of the
38 requested variance; address and legal description of subject property; the date, time and

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1 place of the public hearing; and shall invite all interested persons to appear and be heard.
2 Failure to comply strictly with published notice requirements shall not invalidate the
3 proceedings.

4 (2) Mailed Notice.

5 The owners of property located within 200 feet of the subject property shall be mailed written
6 notice of the proposed variance at least 15 calendar days prior to the hearing. The mailed
7 notice shall contain a description of the requested variance; address and legal description of
8 subject property; the date, time and place of the public hearing; a phone number to contact
9 the County for more information; and shall invite all interested persons to appear and be
10 heard. Notice by mail shall be addressed to the property owner at the address shown in the
11 latest available Charlotte County Property Appraiser Real Property Records. Such notice
12 shall be considered effective when placed in the United States mail, postage paid. Failure to
13 comply strictly with mailed notice requirements shall not invalidate the proceedings.

14 (3) Posted Notice.

15 A sign shall be posted conspicuously on the subject property. The sign shall contain a
16 description of the requested variance; the date, time and place of the public hearing; and a
17 phone number to contact the County for more information. The sign shall be placed on the
18 subject property at least ten calendar days prior to the public hearing. Failure to comply
19 strictly with posted notice requirements shall not invalidate the proceedings.

20 (g) *Action by Applicant.*

21 The applicant, agent or attorney shall appear at the public hearing in person to testify under oath
22 before the BZA, present their case for the application, and answer questions asked of them. The
23 applicant may also initiate any of the following actions.

24 (1) Withdrawal of Application.

25 An applicant or a legally appointed representative may request that their application be
26 withdrawn at any time. A request to withdraw an application must be in writing to the Zoning
27 Official unless the applicant makes their request on the record at the scheduled public
28 hearing before the BZA. A written statement of withdrawal shall be signed by all persons who
29 signed the application or by a legally appointed representative. The Zoning Official may
30 authorize a refund of all or part of the application fee if an application is withdrawn more than
31 15 calendar days prior to the scheduled public hearing. If a request to withdraw an
32 application is made less than 15 calendar days prior to the scheduled public hearing then no
33 part of the application fee shall be refunded.

34 (2) Postponement of Scheduled Public Hearing.

35 If an applicant desires to postpone a scheduled public hearing they may request that the
36 scheduled public hearing be postponed to any one of the next four available public hearings.
37 A request to postpone the scheduled public hearing must be in writing and must be received
38 by the Zoning Official at least 15 calendar days prior to the scheduled public hearing. The

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1 statement to postpone shall be signed by all persons who signed the application or by a
2 legally appointed representative. The Zoning Official shall then remove the application from
3 the agenda and mail a notice, at least seven calendar days prior to the scheduled public
4 hearing, to the surrounding property owners who were mailed a notice of the original public
5 hearing, notifying them that the application will not be heard at the originally scheduled public
6 hearing but will be heard on the date and time of the requested public hearing. The applicant
7 shall pay the cost of all additional published and mailed notices if such notices are required
8 by the BZA. Failure to receive a mailed notice shall not invalidate the proceedings.

9 (3) Request for Continuance from the Zoning Official or BZA.

10 If an applicant desires to continue a public hearing less than 15 calendar days before the
11 scheduled meeting, they must make such a request to the Zoning Official prior to, or the BZA
12 at the public hearing. The Zoning Official may, one time per application, based on
13 extraordinary circumstances, grant a continuance to any one of the next four available public
14 hearings. Other than the one time grant of continuance by the Zoning Official. Extraordinary
15 circumstances shall include, but not be limited to, sudden illness or medical condition, death,
16 or discovery of a late objector with their consent. All request to continue the scheduled public
17 hearing may be granted or denied only by the BZA. The BZA may hold a portion of the public
18 hearing to give those who are present a chance to testify and then continue any action on the
19 matter. If the BZA determines that a continuance is appropriate they may continue action on
20 any application to a date certain at one of their next scheduled public hearings. If directed to
21 do so by the BZA, as soon as practicable thereafter the Zoning Official shall mail a notice to
22 the surrounding property owners notifying them that the application has been continued and
23 will be heard on the date and time of the next schedule public hearing. The applicant shall
24 pay the cost of all additional published and mailed notices if such notices are required by the
25 BZA. Failure to receive a mailed notice shall not invalidate the proceedings.

26 (h) *Action by the BZA.*

27 The BZA shall hold a public hearing to obtain public input on the proposed variance. Following
28 the public hearing, together with such other reports or testimony as may be relevant, the BZA
29 may approve, approve with conditions, or deny the requested variance.

30 (1) Should the BZA deny a variance, the reasons for denial shall be stated and put in writing for
31 the record. Such reasons shall be based on the Approval Criteria for Variances stated in this
32 Code as they may be applicable to the denial.

33 (2) Should the BZA approve a variance, the BZA may impose such conditions and restrictions
34 upon the premises benefited by the variance as may be necessary to allow the positive
35 finding of fact to be made on any of the foregoing factors Approval Criteria for Variances or to
36 minimize any negative effect of the variance.

37 (3) Continuance of BZA Action. If the BZA determines that a continuance is appropriate, they
38 may continue action on any application. If the BZA continues their action on any application
39 to a date certain and directs the Zoning Official to mail notice of the continuance then as soon

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1 thereafter the Zoning Official shall mail a notice to the surrounding property owners notifying
2 them that the application has been continued and will be acted on again at the date and time
3 of the next schedule public hearing and no additional noticing shall be required. If the BZA
4 continues their action on any application without setting a date certain then the Zoning Official
5 shall publish, mail, and post a notice for the next meeting at which the application will be
6 acted upon according to the regular noticing requirements of this Code. The applicant shall
7 pay the cost of all additional published and mailed notices if required by the BZA. Failure to
8 receive a mailed notice shall not invalidate the proceedings.

9 (i) *Approval Criteria for Variances.*

10 A variance shall be granted by the BZA only if all of the following Approval Criteria for Variances
11 are found to exist:

- 12 (1) Unique or peculiar conditions or circumstances exist, which relate to the location, size, and
13 characteristics of the land or structure involved, and are not generally applicable to other
14 lands or structures.
- 15 (2) The strict and literal enforcement of the zoning section of the Land Development Regulations
16 would create an undue hardship as distinguished from a mere inconvenience on the property
17 owners. Physical handicaps or disability of the applicant and other considerations may be
18 considered where relevant to the request.
- 19 (3) The granting of a variance would not be injurious to or incompatible with contiguous uses, the
20 surrounding neighborhood, or otherwise detrimental to the public welfare.
- 21 (4) The condition giving rise to the requested variance has not been created by any person
22 presently having an interest in the property and the conditions cannot reasonably be
23 corrected or avoided by the applicant.
- 24 (5) The requested variance is the minimum modification of the regulation at issue that will afford
25 relief.

26 (j) *Effect of Variance Approval.*

27 Should the Board of Zoning Appeals approve a variance, with or without conditions, the variance
28 may be initiated and continued only if all of the other development standards of this Code and any
29 conditions imposed by the BZA are maintained and complied with. Any violation of the conditions
30 and safeguards that may be imposed on any variance by the BZA, when made a part of the terms
31 under which the variance is granted, shall be deemed a violation of this Code.

32 (k) *Time between Similar Applications.*

33 Whenever the BZA has denied an application for a variance, the BZA shall not thereafter consider
34 an identical application for a variance concerning all or part of the same property for a period of
35 six months from the date of such action, except that this requirement may be waived by the
36 positive votes of a majority of the members of the BZA when such action is deemed necessary.
37 Should the variance application, which was denied, be modified, the one year waiting period shall
38 not apply.

1 (l) *Administrative Variances.*

2 If the variance requested is for relaxation of the minimum development standards of no more than
3 ten percent of the requirements or one foot, whichever is greater, the owner may request that the
4 Zoning Official grant an administrative variance. If, upon proper investigation, the administrative
5 variance is not found to be harmful to adjoining land uses or adverse to the public interest, the
6 Zoning Official may proceed to grant the administrative variance after the following procedure is
7 completed and no written objection is received from an adjoining property owner within the time
8 period specified. The Zoning Official shall review the application for sufficiency, which includes
9 completeness of the application and consistency with the Comprehensive Plan, Code of
10 Ordinances, and these Land Development Regulations.

11 (1) Mailed Notice.

12 The owners of property immediately adjoining subject property shall be mailed notice of the
13 Zoning Official's intention to grant a proposed administrative variance. This notice shall be
14 mailed prior to, or on the same day, the published notice appears in the newspaper and shall
15 also contain a description of the requested variance; address and legal description of subject
16 property; the existence of the adjoining property owner's right to object in writing and receive
17 a public hearing before the BZA, and a phone number to contact for more information. Notice
18 by mail shall be addressed to the adjoining property owners shown in the latest available
19 Charlotte County Property Appraiser Real Property Records. Such notice shall be
20 considered effective when placed in the United States mail, postage paid. Failure to comply
21 strictly with mailed notice requirements shall not invalidate the proceedings.

22 (2) Published Notice.

23 As soon as practicable after receiving a complete and sufficient application for an
24 administrative variance the Zoning Official shall publish a notice one time in a newspaper of
25 general circulation in the County. The published notice shall include a statement that the
26 Zoning Official intends to grant the requested administrative variance; and also include a
27 description of the requested variance; address and legal description of subject property; and
28 the existence of an adjoining property owner's right to object in writing and receive a public
29 hearing before the BZA. Failure to comply strictly with published notice requirements shall not
30 invalidate the proceedings.

31 (3) Action by Objector.

- 32 a. Any adjoining property owner wishing to object to a proposed administrative variance
33 shall submit a written objection within 15 calendar days of the date the published
34 notice appears in the newspaper. An adjoining property owner shall object in writing
35 to the Zoning Official regarding a proposed administrative variance and request a
36 public hearing of the matter before the BZA. Such objector shall state their name, the
37 nature of their interest, and the nature of their objection to the proposed
38 administrative variance. Any adjoining property owner wishing to object to a

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1 proposed administrative variance shall also attend the scheduled public hearing in
2 person, or by agent or attorney, to testify before the BZA, state the reasons for their
3 objection and answer questions asked of them.

4 b. Any objections from other than the adjoining property owners shall be taken into
5 consideration by the Zoning Official when making a determination on the
6 administrative variance request.

7 (4) Action by Applicant.

8 If there is a valid objector and the administrative variance is required to go before the BZA
9 then the applicant shall appear at the public hearing in person, or by agent or attorney, to
10 testify before the BZA, present their case for the application, and answer questions asked of
11 them. The applicant may also initiate any of the following actions; withdrawal of an
12 application, postponement of a scheduled public hearing, or request a continuance by the
13 BZA according to the same procedures stated elsewhere in this section of the Code.

14 (5) Action by Zoning Official.

15 The Zoning Official shall make a determination to deny or approve the requested
16 administrative variance. The final action by the Zoning Official, or the BZA, shall be
17 documented by the Zoning Official in a Decision Letter to the applicant, copies of which shall
18 be kept on file. The Zoning Official shall also create a Notice of Approval, which shall be
19 recorded in the office of the Clerk of the Circuit Court and made a part of the Official Records
20 of Charlotte County. A copy of the recorded Notice of Approval shall also be mailed to the
21 applicant.

22 a. If the Zoning Official should deny an application for an administrative variance, the
23 Zoning Official shall state fully in writing to the applicant the reasons for denial. Such
24 reasons shall take into account the Comprehensive Plan, Code of Ordinances, and the
25 Land Development Regulations as they may be applicable to the denial.

26 b. Should the Zoning Official determine that the requested administrative variance may be
27 approved, the Zoning Official shall mail and publish the notices required by this Code.

28 c. If the Zoning Official does not receive a written objection within 15 calendar days of the
29 date the published notice appears in the newspaper the Zoning Official may approve the
30 administrative variance requested.

31 d. If the Zoning Official does receive a written objection from an adjoining property owner
32 within 15 calendar days of the date the published notice appears in the newspaper then
33 the Zoning Official shall schedule a public hearing before the BZA regarding the
34 administrative variance requested and notice that public hearing according to
35 requirements for a regular variance in this Code. The applicant shall be responsible for
36 all additional cost incurred by the County for mailing and publishing additional notices.

37 (6) Action by Board of Zoning Appeals.

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1 If the Zoning Official receives a valid written objection from an adjoining property owner, the
2 BZA shall hold a public hearing to obtain public input on the proposed administrative
3 variance. Following the public hearing the BZA may approve, approve with conditions, or
4 deny the proposed administrative variance. The BZA shall state the reasons for their
5 decision, which shall be put in writing for the record, utilizing variance procedures set forth
6 herein.

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