

Land Development Regulations
Chapter 3-9. Zoning
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Section. 3-9-6. Board of Zoning Appeals- (BZA) zoning appeals; Powers and Duties; Procedures.

(a) (a) — ~~Generally~~ Creation and Appointment of the Board of Zoning Appeals.

As part of the zoning organization and implementation of the Land Development Regulations, the ~~board of county commissioners~~ Board of County Commissioners, also referred to as the BCC, has created a board of zoning appeals Board of Zoning Appeals, also referred to as the BZA. The ~~board of zoning appeals~~ BZA shall have five ~~(5)~~ members, appointed by the ~~board of county commissioners~~ BCC, one ~~(1)~~ of whom shall be appointed from each of the five ~~(5)~~ County Commission districts. No member of the ~~board of zoning appeals~~ BZA shall be an elected official of the county Charlotte County. No less than one, One (1) nor more than two, member(s) of the BZA shall also be a member of the planning and zoning board Planning and Zoning Board. To provide for ~~board of zoning appeals~~ BZA continuity of membership through staggered terms, the terms of members appointed from the Commission Districts 1, 3, and 5 shall expire on the fourth Tuesday of November, ~~2016~~ 1988. Their successors shall be appointed for four-year terms. Members appointed from Commission Districts 2 and 4 shall be deemed to have been appointed to ~~five-year~~ terms expiring on the fourth Tuesday of November, ~~2014~~ 1990. Thereafter, all terms shall run for a term of four ~~(4)~~ years, and the filling of any vacancy occurring in any office shall be for only the remainder of that term. The manner of appointment, or and removal, and filling of board vacancies shall be by majority vote of the BCC ~~the same as that provided for members of the planning and zoning board.~~

(b) (b) — Organization.

The ~~board of zoning appeals~~ BZA shall elect from its membership a Chair, Vice-Chair, and Secretary, ~~chairman, vice chairman and secretary~~, who shall serve a term of one ~~(1)~~ year and shall be eligible to succeed themselves. The ~~board of county commissioners~~ BCC shall has adopted rules of procedure for the transaction of the business of the ~~board of zoning appeals~~ BZA and the zoning official Zoning Official shall maintain a record of all its resolutions, transactions and decisions on all matters, ~~and said~~ All transactions and decisions shall be a public record and available for public inspection.

(c) (c) — Procedures generally.

The Chair chairman, or in his or her their absence, the ~~acting chairman or recording secretary~~, ~~may~~ Vice-Chair or Secretary, shall shall chair meetings, ~~administer oaths and compel the attendance of witnesses~~. All testimony given shall be under oath. All decisions regarding appeals, the issuance of a special exception or variance by the ~~board of zoning appeals~~ BZA shall be quasi-judicial in nature. All meetings of the ~~board of zoning appeals~~ BZA shall be open to the public. The ~~board~~ Zoning Official shall keep minutes of its ~~BZA~~ meetings, showing the vote of each member on each question, and indicating, also, the absence of any member, or legal abstention ~~failure from voting of a member to vote~~. The results of all of the official actions of the BZA shall become a public record in the office of the Zoning Official.

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~~Further, any decision of this board of zoning appeals which grants approval of a variance or special exception shall be recorded in the office of the clerk of the circuit court and made a part of the official records for that property. The zoning official shall bear the responsibility for the recording, while the applicant shall be responsible for any fees associated with such recording.~~

~~(d) (d) — Education and Travel expenses Expenses.~~

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

~~(e) Expenses and Fees.~~

- ~~(1) The cost and expenses of operation of the BZA shall be budgeted and paid in the same manner as provided for the Planning and Zoning Board and shall be a part of the budget adopted for such board.~~
- ~~(2) The BCC is authorized, empowered, and directed to establish by resolution a schedule of reasonable fees to be charged by the BZA and all such sums received shall be deposited in the general fund of Charlotte County.~~

~~(e)(f) Functions Generally Authority.~~

~~The board of zoning appeals BZA shall is designated by the BCC to hear, and have final authority on, the following applications, powers and functions:~~

- ~~(1) HTo hear and decide appeals Administrative Appeals when it is asserted there is an error in any order, requirement, decision, or determination made by the zoning official Zoning Official in the administration, enforcement, or interpretation of this chapter, Code, except that the board of zoning appeals shall have the power to hear and decide an appeal of the zoning official's interpretation of a special flood hazard boundary location.~~
- ~~(2) To permit, authorize and grant special exceptions Special Exception uses to under this chapter Code, subject to reasonable safeguards, in particular circumstances.~~
- ~~(3) To authorize, upon petition, such Grant time extensions and variances from the terms of the regulations herein dimensional requirements of these Land Development Regulations as shall not be contrary to the public interest where, in specific cases, and owing to special circumstances, a literal enforcement of the provisions of the regulations will result in unnecessary and undue hardship.~~
- ~~(4) The BZA shall not issue or grant variances or Special Exceptions which will permit a land use in a zone or district in which such use if forbidden by the Land Development Regulation except in the case of an Expanded Use Special Exception.~~

~~(g) Decisions of the BZA Board of Zoning Appeals.~~

~~All decisions of the BZA shall require an affirmative vote of the majority of Board members present and voting on the matter, unless stated otherwise in this Code. Tie votes shall not carry the motion made. As soon as possible after the BZA has made their decision the Zoning Official~~

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1 shall mail a Decision Letter to the applicant documenting the decision of the BZA including their
2 reasons for a denial or any conditions adopted as conditions of approval. The Zoning Official
3 shall also create a Notice of Approval, which shall be recorded in the Office of the Clerk of the
4 Circuit Court and made a part of the Official Records of Charlotte County for that property.

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

6 (1) Any person or persons, corporation, or other entity aggrieved by any decision of the BZA
7 may, within 30 calendar days after such decision has been documented by the Zoning Official
8 in a Decision Letter, but not thereafter, apply to the Circuit Court of the County for appropriate
9 relief. There shall be no right to apply to the Circuit Court for relief on account of any order,
10 requirement, decision, determination or action of any the administrative Zoning Official unless
11 there shall first have been an appeal to the BZA. It is the intention of the BCC the legislature
12 that all administrative steps provided in this Code with regard to appeal and review shall be
13 taken before any application may be made to the courts for relief with respect to matters or
14 things appealable and reviewable hereunder, and that relief through the courts shall be had
15 only from decisions, regulations, restrictions and orders of the BZA.

16 (2) ~~All of the powers, duties and obligations conferred upon the Board of Zoning Appeals in this~~
17 ~~Code may be assumed by the Board of County Commissioners as an ex officio BZA. The~~
18 ~~BCC may constitute itself as such BZA by adopting a resolution to that effect, and when~~
19 ~~acting in such capacity its secretary shall be the Clerk of Circuit Court. At any time after~~
20 ~~electing to be the BZA the BCC may by appropriate resolution invoke the provisions of this~~
21 ~~Code, and shall thereupon appoint a BZA as provided in this Code.~~

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Section Sec. 3-9-6.1. Administrative Appeals.

(a) ~~(f)~~(a) — *Appeals of Denial by ~~from the~~ Decisions of the Zoning Official ~~zoning official to the BZA.~~*

The ~~board of zoning appeals BZA~~ may, upon proper petition, and after the application, public notice and public hearing described below, reverse, or affirm, wholly or partly, or may modify; the order, requirement, decision or determination made by the ~~zoning official~~ Zoning Official in the administration, enforcement or interpretation of any of these ~~zoning regulations~~ Land Development Regulations. ~~—, and~~ 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. Any decision reversing the ruling of the ~~zoning official~~ Zoning Official shall have the concurring vote of three (3) members of the ~~board of zoning appeals BZA.~~

(b) ~~(b)~~ — *Application.*

An appeal to the BZA following a denial from the ~~Administrative Appeal to the board of zoning appeals~~ Zoning Official ~~BZA~~ shall be in writing on forms provided by the Community Development Department ~~zoning department~~, and shall be ~~duly~~ filed with the Community Development Department ~~zoning department~~ within ~~thirty (30)~~ 30 calendar days after the date on the ~~letter~~ Decision Letter notifying the applicant of the administrative decision or determination by the ~~zoning official~~ 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.

The fee for an administrative appeal shall be established by the board of county commissioners through a resolution.

(c) ~~Stay of Proceedings and Work.~~ When an appeal from any decision of an administrative official has been taken and filed with the BZA, all proceedings and all work on the premises concerning which the decision was made shall be stayed unless the official from whom the appeal was taken shall certify to the BZA that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings or work shall not be stayed except by a restraining order, which may be granted by the BZA or by the Circuit Court if the same shall have theretofore been refused by the BZA.

(d) *Action by County Staff.*

Upon receipt of a written appeal, the ~~zoning official~~ 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 ~~fifteen (15)~~ 15 calendar days prior to

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the date of the public hearing. The ~~zoning official~~ Zoning Official shall transmit to the ~~board of zoning appeals~~ BZA all documents, plans and other papers or other records upon which the decision appealed from is based. At the public hearing of an appeal Administrative Appeal the Zoning Official shall present the facts of the case and explain the decision made, after which any substantially interested person may appear and be heard under oath, ~~either in person or by agent or attorney~~ his or her representative. 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.

(ed) 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.

~~(1) Considerations for appeals from the zoning official.~~

(fe) Considerations for Administrative Appeals.

~~a.~~ In reaching its decision, the ~~board of zoning appeals~~ BZA shall consider the following criteria as well as any other issues which are pertinent and reasonable:

- ~~1.~~(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.~~(2) The intent of the regulation in question.
- ~~3.~~(3) The effect the ruling will have when applied generally to the intent of the zoning regulations Land Development Regulations.
- ~~b.~~(4) Staff recommendations, the testimony of the appellant, and testimony of substantially interested parties shall also be considered.

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Section ~~Sec. 3-9-7.3-9-6.2~~ Special exceptions Exceptions.

~~(a)~~ (a) Generally 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)~~ (b) Application 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) Uses allowed by special exception upon a determination by the zoning official Zoning Official to be appropriate in the zoning district by reasonable implication and intent; similar to another permitted or special exception use; and not specifically prohibited in the zoning district.~~

~~(3) Expansion of a lawfully existing conforming use to property which is abutting the existing use. This shall be referred to as an "Expanded Use Special Exception".~~

~~(4) 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; the owner of subject property; however, however, or 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.

~~(e)~~(d) Written petition Application Requirements.

Unless it is waived by the Zoning Official, or his/her designee, A a pre-application conference must take place with the Zoning Official at least five working days prior to submitting an application. Applications for S Special E Exceptions shall be submitted on forms obtained from and filed with the zoning official Zoning Official. and All applications shall be accompanied by additional documentation as specified in this Code or required by the Zoning Official and the applicable fee, to be established by resolution of the board of county commissioners. The zoning official Zoning Official shall review the application for sufficiency, which includes completeness of the application. If additional data is required, the zoning official Zoning Official shall, within ten (10) working days after receipt of the application, advise 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

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~~request shall be considered a withdrawal and the application fee shall be refunded less the administrative fee. 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, ~~where applicable:~~ as determined by the Zoning Official.

(1) ~~A concept plan~~ A site plan of at an appropriate scale showing the existing and proposed placement of structures on the property, provisions for ingress and egress, off-street parking and ~~off-street-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 landscaping.~~

~~(5)~~(4) Proposed signs and lighting, including type, dimension and character.

~~(6)~~(5) A legal description of the entire property encompassing the Special Exception.

~~(7)~~(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 ~~standards for approval~~ Approval Criteria for Special Exceptions as set forth ~~below in this Code.~~

~~(8) A notarized affidavit which lists the names and addresses of property owners within two hundred (200) feet of the subject property (excluding rights-of-way) with corresponding address labels. This information shall be based upon the latest available property records of the property appraiser's office. The applicant shall also provide a map clearly showing the subject property and all of the other properties within two hundred (200) feet.~~

~~(d) *Public hearing.* Following the public hearing, the board of zoning appeals may grant or deny the special exception or may grant approval subject to compliance with certain conditions, restrictions or requirements as the board of zoning appeals may deem necessary to protect the interest of the public health, safety, morals and welfare appropriate to be in accordance with the land development regulations established to implement the comprehensive plan. 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 unless a time limit or ownership condition is provided in the approval of the use, in which case, the approval shall become void and the use shall be terminated at the end of the time specified in the approval. Notwithstanding this provision, any unused or abandoned special exception shall expire pursuant to subsection (h) of the zoning regulations.~~

(e) *Notice of public hearing* Public Hearing.

The County shall provide notice of the public hearing to be held before the BZA, or Planning and Zoning Board if necessary, in accordance with the following provisions.

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(1) ~~(4)~~ 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 an a complete and valid application for a Special Exception, the zoning official Zoning Official shall establish a date, time and place for the public hearing before the board of zoning appeals BZA. ~~or, in the case of an application for an "Expanded Use Special Exception" a special exception for the purpose listed in section 3-9-7(b)(3), the zoning official~~ Zoning Official shall establish dates, times and places for the public hearings before the planning and zoning board Planning and Zoning Board and the board of zoning appeals BZA. Public Published notice shall be given at least ~~fifteen (15)~~ 15 calendar days prior to the date of any public hearing hereunder by publication in a newspaper of general circulation in the ~~county~~ County. The published notice shall contain a description of the ~~request, a brief description of the property involved (subject property), and the time, date and place of the hearing, or the times, dates and places of the hearings, whichever is applicable,~~ 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) ~~(2)~~ Mailed Notice.

~~When a special exception is requested, the~~ The owners of property situated located within ~~two hundred (200)~~ 200 feet of the subject property shall be mailed written notice of the proposed ~~request~~ Special Exception at least ~~fifteen (15)~~ 15 calendar days prior to the initial public hearing on the Special Exception before ~~either the board of zoning appeals~~ BZA ~~or the planning and zoning board~~ Planning and Zoning Board, whichever is applicable. The mailed notice shall contain a description of the proposed use; address and legal description of subject property; the time, date and place of the public hearing, or the times, dates, and places of the public hearings, whichever is applicable, for the request and a brief description of the property involved (subject property) 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 records ~~of the property appraiser~~ Charlotte County Property Appraiser Real Property Records. Such notice shall be considered effective when placed in the United States mail, postage paid. ~~and failure~~ Failure ~~to comply strictly with these the~~ mailed notice requirements shall not invalidate the proceedings. ~~Failure to receive a mailed notice shall not invalidate any appeals proceeding the proceedings.~~

(3) ~~(3)~~ _____ Posted Notice.

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~~In addition, a A sign shall be posted conspicuously on the subject property, which _ . The sign shall contain a description of the proposed use the time, date and place of the public hearing, or the times, dates and places of the public hearings, whichever is applicable, and shall state the action being considered 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 (10) calendar days prior to the initial public hearing on the Sspecial Eexception before the board of zoning appeals BZA or planning and zoning board, whichever is applicable. Failure to comply strictly with these the posted notice requirements shall not invalidate the proceedings. The zoning official shall investigate the conditions pertaining to a particular request and submit a report to the board or boards that is or are hearing the special exception application giving the facts involved. The parties in interest shall appear at the hearing or hearings in person by agent or attorney.~~

(f) (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~~ 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 ~~board of zoning appeals BZA~~ meeting, ~~except in the case of an application for an "Expanded Use Special Exception", a special exception for the purpose listed in subsection (b)(3), which shall be scheduled for public hearings before the next available planning and zoning board Planning and Zoning Board meeting and the next available board of zoning appeals BZA meeting following such planning and zoning board Planning and Zoning Board meeting, in accordance with the process for such "Expanded Use Special Exceptions" special exceptions contained in this Code subsection (m).~~ 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 or the Planning and Zoning Board, whichever is applicable, giving providing the facts involved and make 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) (g) — Denial Action by Applicant.

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~~If the board of zoning appeals should deny an application for a special exception, it shall state fully in its record its reasons for so doing. Such reasons shall take into account the standards for approval stated in this section as they may be applicable to the denial. The applicant, agent or attorney shall appear at the public hearing or hearings in person, or by agent or attorney, 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) ~~(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. TheA written request shall be signed by all persons who signed the application, application, or by a legally appointed representative or in the event of death or incompetence, by the estate's lawful personal 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) ~~(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 in the event of death or incompetence, by the estate's lawful personal 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 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 next scheduled 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) ~~(3)~~ Request for Continuance from the Zoning Official or BZA Board of Zoning Appeals.

~~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~~

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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, -aAs 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) (h) _____ Conditions and safeguards 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 board of zoning appeals-BZA may grant approve, approve with conditions, or deny the proposed Sspecial Eexception. Any violation of the conditions and safeguards that may be imposed on any special exception by the board of zoning appeals when made a part of the terms under which the special exception is granted shall be deemed a violation of this Code. Any special exception granted shall expire three (3) years after the date of approval unless the use allowed by the special exception is in existence and actively occurring on the subject property prior to the date of expiration. Any such special exception which ceases to exist and actively occur on the subject property shall expire three (3) years after the date the activity permitted by the special exception ceased. Further, any previously granted special exception or special approval which has not been utilized shall, unless otherwise provided in said approval, expire three (3) years from the effective date of this regulation unless good faith commencement of the special exception has begun prior to expiration. Prior to expiration, the applicant or property owner may request an extension from the board of zoning appeals. Such extension may be granted to the applicant or owner upon showing of good cause. Any nonconforming special exception shall be subject to requirements of section 3-9-10 of the zoning regulations with regard to nonconforming uses.

(g)(1) _____ Denial. _____ Should the BZA deny an application for a Sspecial Eexception, it shall state fully in its record its reasons for so doing the reasons for denial shall be stated and put in writing for the record. Such reasons shall be based on take into account the standards for approval Additional Approval Criteria for Special Exceptions stated in this section-Code as they may be applicable to the denial.

(2) Should the board of zoning appeals-BZA approve a Sspecial Eexception, the BZA may impose reasonable conditions of use 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. A variance from the requirements for a use permitted by special exception will not be granted. Variances to the conditions of use imposed by the BZA for a special exception shall not be permitted. _____AnyA request for a modification ofte any BZA

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condition of approval for a Special Exception shall be processed as if it is a major modification of a Special Exception.

- (3) Continuance of BZA Action. If the BZA determines that a continuance is appropriate ~~for any public hearing, deliberation, or request for more information,~~ 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 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) ~~Lot and building requirements.~~ Additional Approval Criteria for Special Exceptions.

~~Lots and buildings shall comply with the lot and building requirements of the district in which the special exception is to be located, or shall comply with more stringent requirements as may be imposed by the board of zoning appeals upon approval of the special exception. In addition to the Standard Approval Criteria for developments and uses permitted by this Code, A-a Special Exception shall be granted by the BZA Board of Zoning Appeals only if all of the following requirements Additional Approval Criteria are satisfied:~~

~~(1) The requested proposed special exception use is either explicitly permitted by the regulations in the zoning district for which it is requested, or is permitted by reasonable implication within that district, as determined by the Zoning Official.~~

~~(12) The requested proposed Special Exception is consistent in compliance with the Comprehensive Plan~~

~~(2) The proposed Special Exception and is compatible with existing and permitted planned land uses surrounding immediately adjacent and contiguous to the land on which the requested proposed Special Exception would exist.~~

~~(3) Adequate access shall be provided for ingress and egress to the proposed use in a manner that minimizes hazards and congestion on streets and roads. The establishment of the proposed special exception will not impede the normal and orderly development of the surrounding property.~~

~~(4) Adequate provision has been made for buffers, landscaping, trees, open space, stormwater or other improvements associated with the proposed use. All development on subject property shall comply with the minimum Land Development Regulations and all applicable County Codes.~~

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~~(5) — The requested special exception is consistent with the Charlotte County Comprehensive Plan and Land Development Regulations.~~

~~(6)(235) The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety or general welfare.~~

(j) ~~*Signs permitted*~~ *Effect of Special Exception Approval.*

~~Signs shall comply with the district requirements for the district in which the special exception is located, or such requirements as may be imposed by the Board of Zoning Appeals upon approval of the special exception. Should the BZA Board of Zoning Appeals 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. unless a time limit or ownership condition is provided in the approval of the use, in which case, the approval shall become void and the use shall be terminated at the end of the time specified in the approval. Notwithstanding this provision, any unused or abandoned special exception shall expire pursuant to subsection (h) of the zoning regulations. Only the BZA may direct the Zoning Official to initiate an application to revoke an existing Special Exception.~~

(2) ~~An approved Special Exception, with or without conditions, may have a time limit or ownership condition 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 board of zoning appeals BZA, when made a part of the terms under which the Special Exception is granted, shall be deemed a violation of this Code.~~

~~(4) Any special exception granted shall expire three (3) years after the date of approval unless the use allowed by the special exception is in existence and actively occurring on subject property prior to the date of expiration. Prior to expiration, the applicant or property owner may request an a time extension from the board of zoning appeals BZA of up to one year. Such extension may be granted to the applicant or owner upon showing of good cause.~~

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~~(5) Any such special exception, which is established and later ceases to exist and actively occur on the subject property, shall expire three (3) years one year after the date the activity permitted by the special exception ceased.~~

(k) ~~_____~~ Modifications.

~~Expansion, 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 shall require reapplication for a modification to the original 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.~~

(l) Limitations of applications for special exception- Time between Similar Applications.

Whenever the BZA board of zoning appeals has denied an application for a Special Exception, the board of zoning appeals 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 (6) 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 board of zoning appeals when such action is deemed necessary. This section does not apply to applications for a modification of a previously approved Special Exception.

~~(m) Procedure for expanded use special exception application Expanded Use Special Exception. A special exception application submitted for the purpose of an "Expanded Use Special Exception" listed in section 3-9-7(b)(3) hereof shall be reviewed and considered at a public hearing by the planning and zoning board Planning and Zoning Board prior to being submitted to brought before the board of zoning appeals Board of Zoning Appeals for consideration and disposition at a public hearing and a final decision. The planning and zoning board Planning and Zoning Board shall review and make recommendations to the board of zoning appeals BZA regarding approval, denial, or conditions, restrictions, or requirements, for any special exception application submitted for the purpose of an "Expanded Use Special Exception" listed in section 3-9-7(b)(3). The planning and zoning board Planning and Zoning Board's recommendations shall be advisory only and not binding on the board of zoning appeals BZA. Public hearings before the planning and zoning board Planning and Zoning Board and board of zoning appeals the BZA shall be noticed according, and notices therefor, concerning any special exception application submitted for the purpose listed in section 3-9-7(b)(3) shall be subject to the requirements contained in this Code. section 3-9-7(f), and shall be subject to all other requirements of this section 3-9-7.~~

(n) **Sec. 3-9-78.1. Historical structures.** Use of Historic Structures.

(a) ~~_____~~ Structures which have been designated as being historically significant shall be exempt from the provisions of the zoning code pertaining to nonconforming structures.

(b) ~~_____~~ Owners of historically designated structures designated on the National Register of Historic Places, the Florida Master Site File, or the Local Historic Register may petition the BZA

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~~board of zoning appeals 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. The procedure for issuance of the special exception shall be in accordance with section 3-9-7, and the property owner shall be required to prove that the proposed use will adequately provide for each of the criteria enumerated in the appropriate section of the zoning code, to the extent applicable.~~

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1
2

1 **Section ~~Sec.~~ 3-9-6.4.3. Variances.**

2 (a) ~~(a)~~ *Variance procedures-Intent and Purpose.*

3 ~~Generally the~~The variance process is intended to provide limited relief from the dimensional
4 requirements of the ~~zoning regulations~~ Land Development Regulations in those cases where
5 strict application of those requirements will create a practical difficulty or undue hardship, as
6 distinguished from a mere inconvenience, and prohibiting the use of land in a manner ~~otherwise~~
7 normally allowed under the ~~zoning regulations~~ Land Development Regulations. A variance is
8 ~~intended to~~ should provide relief in limited circumstances where the requirements of the ~~zoning~~
9 ~~regulations~~ Land Development Regulations render the land difficult to use because of some
10 unique, ~~or~~ exceptional, or extraordinary physical attribute of the property itself, or some other
11 extraordinary factor of the property for which the variance is requested. ~~Further specific~~
12 ~~limitations on granting of variances are contained in section 3-9-67, regarding areas of special~~
13 ~~and shallow flood hazard. Any owner, agent, lessee or occupant of land may apply in writing to~~
14 ~~the zoning official for a variance from applicable provisions of the zoning regulations where a~~
15 ~~variance may be requested. Applications shall be submitted through the zoning official, stating the~~
16 ~~specific grounds and the relief requested.~~

17 (b) *Applicability.*

18 (1) The following procedures shall be used to apply for a variance from the dimensional
19 standards or requirements of this Code which do not qualify for an Administrative Variance.

20 (2) The following procedures shall also be used for an Administrative Variance application only if
21 the Zoning Official has received a valid written objection.

22 ~~(3) A variance to the conditions of use imposed by the BZA for a special exception shall not be~~
23 ~~permitted.~~

24 (c) *Initiation.*

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

31 (b)(d) *Written petition-Application Requirements.*

32 Unless waived by the Zoning Official, a pre-application conference must take place with the
33 Zoning Official at least five working days prior to submitting an application. Applications for a
34 variance shall be submitted on forms obtained from and filed with the ~~zoning official~~ Zoning
35 Official. ~~and~~All applications shall state the specific section of the zoning section of these Land
36 Development Regulations ~~Land Development Regulations~~ for which relief is requested and the
37 grounds for such relief. Applications shall be accompanied by any evidence and additional
38 documentation as specified in this Code or required by the Zoning Official, and the applicable fee,

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1 to be established by resolution of the ~~BCC~~board of county commissioners. The ~~zoning official~~
2 Zoning Official shall review the application for sufficiency, which includes completeness of the
3 application. If additional data is required, the ~~zoning official~~Zoning Official shall, within ten (10)
4 working days after receipt of the application, ~~advise document in writing to the applicant what~~
5 specifically is needed. Failure of the applicant to submit the required information requested by
6 the Zoning Official and to make the application complete or sufficient within 30 calendar days of
7 the written request by the Zoning Official or such extended time as granted by the Zoning Official
8 shall be considered a withdrawal and the application fee shall be refunded less the administrative
9 fee. Upon finding the application to be correct and complete, it shall be scheduled for a public
10 hearing before the next available board of zoning appeals meeting. ~~Should an error in the~~
11 ~~application be discovered, the zoning official shall have the discretion to require the applicant to~~
12 ~~reapply or submit revised or additional information~~. Variance applications shall include but not be
13 limited to the following where applicable as determined by the Zoning Official.

- 14 (1) A concept plan Site A site plan of at an appropriate scale showing the related existing and
15 proposed placement of structures on the property, provisions for ingress and egress, off-
16 street parking and off-street loading areas, refuse and service areas and required yards and
17 other spaces.
- 18 (2) A ~~recent~~ survey including a complete legal description of subject property which shows all
19 existing improvements~~the entire property encompassing the variance~~.
- 20 (3) A narrative description of the ~~total~~ project in sufficient detail to provide an understanding of
21 the nature of the variance requested and a statement describing how the requested variance
22 meets the ~~conditions set forth in subsection (d) Additional Approval Criteria for Variances as~~
23 ~~set forth in this Code~~.
- 24 (4) A ~~notarized affidavit which lists the names and addresses of property owners within two~~
25 ~~hundred (200) feet of the subject property (excluding rights-of-way) with corresponding~~
26 ~~address labels. This information shall be based upon the latest available property records of~~
27 ~~the property appraiser's office. The applicant shall also provide a map clearly showing the~~
28 ~~subject property and all of the other properties within two hundred (200) feet. Any plans, data~~
29 ~~or other information showing evidence supporting the requested variance, such as,~~
30 bathometric surveys, floor plans, building elevations, cross sections of buildings, topography,
31 or photographs.

32 ~~(e)~~(e) Action by County Staff.

33 The Zoning Official shall review the application for sufficiency, which includes completeness of
34 the application and consistency with the Comprehensive Plan, Code of Ordinances, and the Land
35 Development Regulations. Upon receipt of a complete and valid application for a variance, the
36 Zoning Official shall establish a date, time and place for the public hearing. Upon finding the
37 application to be correct and complete, it shall be scheduled for a public hearing before the next
38 available BZA meeting. Should an error in the application be discovered, the Zoning Official shall
39 have the discretion to require the applicant to reapply or submit revised or additional information.
40 The Zoning Official may require that site plans associated with variances be reviewed and

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1 comments provided to staff during the variance process, although no site plan approval shall be
2 implied by this review. The Zoning Official shall investigate the conditions pertaining to a
3 particular variance and shall submit a report to the BZA at the public hearing giving the facts
4 involved and make a recommendation based on the application submitted, the facts known prior
5 to the public hearing, and this Code. The final action by the BZA shall be documented by the
6 Zoning Official in a Decision Letter to the applicant, copies of which shall be kept on file. The
7 Zoning Official shall also create a Notice of Approval, which shall be recorded in the office of the
8 Clerk of the Circuit Court and made a part of the Official Records of Charlotte County. The
9 original recorded Notice of Approval shall be kept on file and a copy mailed to the applicant.

10 (f) ~~Notice of public hearing~~ *Public Hearings on variances.*

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

13 (1) ~~(1)~~ *Published Notice.*

14 Upon receipt of ~~an~~ a complete and valid application for a variance, the ~~zoning official~~ Zoning
15 Official shall establish a date, time and place for the public hearing. ~~Public notice~~ Published
16 notice shall be given at least ~~fifteen (15)~~ 15 calendar days prior to the date of the public
17 hearing by publication in a newspaper of general circulation in the ~~county~~ County. The
18 published notice shall contain a description of the request, ~~a brief description of the property~~
19 involved ~~(subject property), and the time, date and place of the hearing,~~ requested variance;
20 address and legal description of subject property; the date, time and place of the public
21 hearing; and shall invite all interested persons to appear and be heard. ~~Failure to comply~~
22 strictly with published notice requirements shall not invalidate the proceedings.

23 (2) ~~(2)~~ *Mailed Notice.*

24 ~~When a variance is requested, the~~ The owners of property situated ~~located~~ within ~~two~~
25 ~~hundred (200)~~ 200 feet of the subject property shall be mailed written notice of the proposed
26 ~~request variance~~ at least ~~fifteen (15)~~ 15 calendar days prior to the hearing. The mailed notice
27 shall contain ~~the time, date and place of the public hearing for the request and a brief~~
28 ~~description of the subject property~~ a description of the requested variance; address and legal
29 description of subject property; the date, time and place of the public hearing; a phone
30 number to contact the County for more information; and shall invite all interested persons to
31 appear and be heard. Notice by mail shall be addressed to the property owner at the
32 address shown in the ~~latest available of the~~ Charlotte County Property ~~Property Appraiser's~~
33 Office ~~Appraiser~~ Real Property Records. Such notice shall be considered effective when
34 placed in the United States mail, postage paid; ~~and failure.~~ Failure to comply strictly with
35 mailed notice requirements shall not invalidate the proceedings. ~~Failure to receive a mailed~~
36 notice shall not invalidate any variance proceeding.

37 (3) ~~(3)~~ *Posted Notice.*

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1 ~~In addition, a~~ A sign shall be posted conspicuously on the subject property. The sign shall
2 contain ~~a description of the time, date and place of the public hearing and shall state the~~
3 ~~action being considered requested variance; the date, time and place of the public hearing;~~
4 ~~and a phone number to contact the County for more information.~~ The sign shall be placed on
5 the subject property at least ten (10) calendar days prior to the public hearing. Failure to
6 comply strictly with these the posted notice requirements shall not invalidate the proceedings.
7 ~~The zoning official shall investigate the conditions pertaining to the particular variance and~~
8 ~~shall submit a report to the Board of Zoning Appeals at the hearing giving the facts involved.~~
9 ~~The parties in interest may appear at the hearing in person or by agent or attorney.~~

10 ~~(f) Action by County Staff.~~

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

31 ~~(g) (g) Administrative variances. Action by Applicant.~~

32 ~~The parties in interest applicant, agent or attorney may shall appear at the public hearing in~~
33 ~~person, or by agent or attorney, to testify under oath before the BZA, present their case for the~~
34 ~~application, and answer questions asked of them. The applicant may also initiate any of the~~
35 ~~following actions.~~

36 ~~(1) Withdrawal of Application.~~

37 ~~An applicant or a legally appointed representative may request that their application be~~
38 ~~withdrawn at any time. A request to withdraw an application must be in writing to the Zoning~~

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1 Official unless the applicant makes their request on the record at the scheduled public
2 hearing before the BZA. ~~The~~A written statement of withdrawal shall be signed by all persons
3 who signed the application or by a legally appointed representative, ~~or in the event of death or~~
4 incompetence, by the estate's lawful personal representative. The Zoning Official may
5 authorize a refund of all or part of the application fee if an application is withdrawn more than
6 15 calendar days prior to the scheduled public hearing. If a request to withdraw an
7 application is made less than 15 calendar days prior to the scheduled public hearing then no
8 part of the application fee shall be refunded.

9 (2) Postponement of Scheduled Public Hearing.

10 If an applicant desires to postpone a scheduled public hearing they may request that the
11 scheduled public hearing be postponed to any one of the next four available public hearings.
12 A request to postpone the scheduled public hearing must be in writing and must be received
13 by the Zoning Official at least 15 calendar days prior to the scheduled public hearing. The
14 statement to postpone shall be signed by all persons who signed the application or by a
15 legally appointed representative, ~~or in the event of death or incompetence, by the estate's~~
16 lawful personal representative. The Zoning Official shall then remove the application from the
17 agenda and mail a notice, at least seven calendar days prior to the scheduled public hearing,
18 to the surrounding property owners who were mailed a notice of the original public hearing,
19 notifying them that the application will not be heard at the originally scheduled public hearing
20 but will be heard on the date and time of the requested public hearing. The applicant shall
21 pay the cost of all additional published and mailed notices if such notices are required by the
22 BZA. Failure to receive a mailed notice shall not invalidate the proceedings. ~~The Zoning~~
23 Official shall then mail a notice, at least seven calendar days prior to the scheduled public
24 hearing, to the surrounding property owners who were mailed a notice of the original public
25 hearing, notifying them that the application will not be heard at the original scheduled public
26 hearing but will be heard on the date and time of the next scheduled public hearing. ~~The~~
27 applicant shall pay the cost of all mailed notices. ~~Failure to receive a mailed notice shall not~~
28 invalidate the proceedings.

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

30 If an applicant desires to continue a public hearing less than 15 calendar days before the
31 scheduled meeting, they must make such a request to the Zoning Official prior to, ~~or the BZA~~
32 at the ~~scheduled~~ public hearing. The Zoning Official may, one time per application, based on
33 extraordinary circumstances, grant a continuance to any one of the next four available public
34 hearings. ~~Other than the one time grant of continuance by the Zoning Official. Extraordinary~~
35 circumstances shall include, but not be limited to, sudden illness or medical condition, death,
36 or discovery of a late objector with their consent. All request to continue the scheduled public
37 hearing may be granted or denied only by the BZA. The BZA may hold a portion of the public
38 hearing to give those who are present a chance to testify and then continue any action on the
39 matter. If the BZA determines that a continuance is appropriate they may continue action on
40 any application to a date certain at one of their next scheduled public hearings. If directed to

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1 ~~do so by the BZA, -As soon as practicable thereafter the Zoning Official shall mail a notice to~~
2 ~~the surrounding property owners notifying them that the application has been continued and~~
3 ~~will be heard on the date and time of the next schedule public hearing. The applicant shall~~
4 ~~pay the cost of all additional published and mailed notices if such notices are required by the~~
5 ~~BZA. Failure to receive a mailed notice shall not invalidate the proceedings. The BZA may~~
6 ~~hold the public hearing to give those who are present a chance to testify and then continue~~
7 ~~the public hearing to a date certain. If the BZA grants a continuance the Zoning Official shall~~
8 ~~then mail a notice to the surrounding property owners notifying them that the application has~~
9 ~~been continued and will be heard on the date and time of the next schedule public hearing.~~
10 ~~The applicant shall pay the cost of all mailed notices. Failure to receive a mailed notice shall~~
11 ~~not invalidate the proceedings.~~

12 ~~(h) *Appeals form board of zoning appeals.* Appeals from decisions of the board of zoning appeals~~
13 ~~may be taken to a court of competent jurisdiction within thirty (30) days after such decision has~~
14 ~~been rendered, but not thereafter. "Rendered" in this context means from the date on the~~
15 ~~decision letter. Persons who decide to appeal any decision made by the board of zoning appeals~~
16 ~~will need a record of the proceedings. Such persons may, at their own expense, ensure that a~~
17 ~~verbatim record of the proceedings is made which includes the evidence upon which the appeal~~
18 ~~is to be based.~~

19
20 (d)(h) *Decision on variance application Action by the BZA.*

21 ~~The BZA shall hold a public hearing to obtain public input on the proposed variance. After~~
22 ~~hearing the application for a variance Following the public hearing, together with such other~~
23 ~~reports or testimony as may be relevant, the board of zoning appeals BZA may approve, approve~~
24 ~~with conditions, or deny the requested variance. or grant such variance from the terms of this~~
25 ~~chapter if the request meets the conditions hereinafter set forth. Action by the board of zoning~~
26 ~~appeals shall require the concurrence of a majority of the members present.~~

27 ~~(1) If the board of zoning appeals Should the BZA deny a variance, it shall state fully in its record~~
28 ~~its reasons for so doing the reasons for denial shall be stated and put in writing for the record.~~
29 ~~Such reasons shall take into account be based on the standards for approval Additional~~
30 ~~Approval Criteria for Variances stated in this section Code as they may be applicable to the~~
31 ~~denial.~~

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

37 ~~(3) Continuation of BZA Action. If the BZA determines that a continuance is appropriate for any~~
38 ~~public hearing, deliberation, or request for more information, they may continue action on any~~
39 ~~application. If the BZA continues their action on any application to a date certain and directs~~

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

10 (i) ~~Additional Approval Criteria for Variances.~~

11 ~~In addition to the Standard Approval Criteria for developments and uses permitted by this Code,~~
12 ~~a~~A variance shall ~~can may~~ be granted by the BZA only if all of the following conditions ~~Additional~~
13 Approval Criteria for Variances are found to exist:-

14 (1) Unique or peculiar conditions or circumstances exist, which relate to the location, size, and
15 characteristics of the land or structure involved, and are not generally applicable to other
16 lands or structures.

17 (2) The strict and literal enforcement of the zoning ~~regulations~~ section of the Land Development
18 Regulations would create an undue hardship as distinguished from a mere inconvenience on
19 the property owners. Physical handicaps or disability of the applicant and other
20 considerations may be considered where relevant to the request. ~~Financial hardship shall not~~
21 ~~be considered.~~

22 ~~(3) The variance requested does not involve any use which is prohibited in the district where the~~
23 ~~property is located.~~

24 ~~(4)~~(3) The granting of a variance would not be injurious to or incompatible with contiguous uses,
25 the surrounding neighborhood, or otherwise detrimental to the public welfare.

26 ~~(5)~~(4) The condition giving rise to the requested variance has not been created by any person
27 presently having an interest in the property and the conditions cannot reasonably be
28 corrected or avoided by the applicant.

29 ~~(6)~~(5) The requested variance is the minimum modification of the regulation at issue that will
30 afford relief.

31 ~~(7) The requested variance is consistent with the Charlotte County Comprehensive Plan.~~

32 (j) Effect of Variance Approval.

33 Should the Board of Zoning Appeals approve a variance, with or without conditions, the variance
34 may be initiated and continued only if all of the other development standards of this Code and any
35 conditions imposed by the BZA are maintained and complied with. ~~The following regulations shall~~
36 ~~govern the use of an approved variance, its expiration, or time extensions.~~

37 ~~(1) If an approved Any variance granted is not used it shall expire three (3) years after the~~
38 ~~date of the BZA decision. An approved variance shall be considered used if the permitted~~

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1 ~~structure exists, or a required permit, based upon and incorporating the variance, is issued prior~~
2 ~~to expiration and the permitted structure is erected prior to expiration of the permit.~~

3 ~~(2) If a permit is obtained prior to expiration of an approved variance then the approved~~
4 ~~variance shall not expire until the permit expires or becomes void and the structure permitted by~~
5 ~~the variance still has not been erected according to all applicable Codes.~~

6 ~~(3) Any violation of the conditions and safeguards that may be imposed on any variance by~~
7 ~~the BZA, when made a part of the terms under which the variance is granted, shall be deemed a~~
8 ~~violation of this Code.~~

9 ~~(4) Prior to expiration of an approved variance, the applicant or property owner may request an~~
10 ~~apply for a time extension from the board of zoning appeals BZA of up to one year. Such~~
11 ~~time extension may be granted to the applicant or owner upon showing of good cause.~~

12 ~~(5) An approved variance may only be used for a structure originally approved and intended for~~
13 ~~and in the manner originally approved and intended for. It may not be expanded beyond~~
14 ~~what it was originally approved and intended for or extended to another structure.~~

15 ~~(6) An approved variance shall expire and be discontinued if the property is redeveloped in a~~
16 ~~manner which exceeds the 50 percent rule.~~

17 ~~(7) If any structure based upon and incorporating a variance is removed or destroyed the~~
18 ~~variance shall expire one year after removal or destruction of the structure, unless, a permit~~
19 ~~based upon and incorporating the original variance is issued prior to this expiration.~~

20 (f)(k) *Limitations of applications for variances- Time between Similar Applications.*

21 Whenever the ~~board of zoning appeals BZA~~ has denied an application for a variance, the ~~board~~
22 ~~of zoning appeals BZA~~ shall not thereafter consider an identical application for a variance
23 concerning all or part of the same property for a period of six ~~(6)~~ months from the date of such
24 action, except that this requirement may be waived by the positive votes of a majority of the
25 members of the ~~board of zoning appeals BZA~~ when such action is deemed necessary. Should
26 the variance application, which was denied, be modified, the ~~six month one year~~ waiting period
27 shall not apply.

28 (g)(l) *Administrative variances-Variances.*

29 If the variance requested is for relaxation of the minimum development standards, ~~for other than~~
30 ~~building height and minimum lot size,~~ of no more than ten ~~(10)~~ percent of the requirements or one
31 ~~(4)~~ foot, whichever is greater, the ~~applicant owner~~ may request that the ~~zoning official-Zoning~~
32 ~~Official,~~ upon proper investigation, ~~grant the request an~~ administrative variance. If, upon proper
33 investigation, ~~grant the request. the~~ administrative variance is not found to be harmful to
34 adjoining land uses or adverse to the public interest, the ~~zoning official-Zoning Official~~ may
35 proceed to grant the administrative variance in accordance with ~~after~~ the following procedure is
36 completed and no written objection is received from an adjoining property owner within the time
37 period specified.- The Zoning Official shall review the application for sufficiency, which includes
38 completeness of the application and consistency with the Comprehensive Plan, Code of
39 Ordinances, and these Land Development Regulations.

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1 (1) Mailed Notice.

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

13 (2) ~~(2)~~ Published Notice.

14 As soon as practicable after receiving a complete and sufficient application for an
15 administrative variance the Zoning Official shall ~~be published~~ publish a notice one ~~(1)~~-time in
16 a newspaper of general circulation, ~~published in the county~~ County. ~~Notice~~ The published
17 notice shall include a statement that the Zoning Official intends ~~of intention~~ to grant the
18 requested ~~administrative~~ variance; ~~stating the description of the property affected, including a~~
19 ~~description by street address, the nature of the variance requested, and the existence of the~~
20 ~~right of appeal~~ and also include a description of the requested variance; address and legal
21 description of subject property; and the existence of an adjoining property owner's right to
22 object in writing and receive a public hearing before the BZA. Failure to comply strictly with
23 published notice requirements shall not invalidate the proceedings.

24 (3) ~~(3)~~ Action by Objector.

- 25 a. Any adjoining property owner wishing to object to a proposed administrative variance
26 shall submit a written objection ~~Within fifteen (15)~~ within 15 calendar days of the ~~date~~
27 ~~the published publication~~ notice appears in the newspaper. An adjoining property
28 owner ~~receiving said notice may apply~~ shall object in writing to the Zoning Official
29 regarding a proposed administrative variance and request ~~for a~~ public hearing of the
30 matter before the ~~board of zoning appeals~~ BZA. Such ~~party~~ objector shall state ~~his or~~
31 ~~her~~ ~~their~~ name, the nature of ~~his or her~~ ~~their~~ interest, and the nature of ~~his or her~~ ~~their~~
32 objection ~~to the proposed administrative variance. Any adjoining property owner~~
33 wishing to object to a proposed administrative variance shall also attend the
34 scheduled public hearing in person, or by agent or attorney, to testify before the BZA,
35 state the reasons for their objection and answer questions asked of them.
- 36 b. Any objections from other than the adjoining property owners shall be taken into
37 consideration by the Zoning Official when making a determination on the
38 administrative variance request.

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1 (4) Action by Applicant.

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

8 (5) Action by Zoning Official.

9 ~~The Zoning Official shall review the application for sufficiency, which includes completeness~~
10 ~~of the application and consistency with the Comprehensive Plan, Code of Ordinances, and~~
11 ~~these Land Development Regulations.~~ The Zoning Official shall make a determination to
12 deny or approve the requested administrative variance. The final action by the Zoning
13 Official, or the BZA, shall be documented by the Zoning Official in a Decision Letter to the
14 applicant, copies of which shall be kept on file. The Zoning Official shall also create a Notice
15 of Approval, which shall be recorded in the office of the Clerk of the Circuit Court and made a
16 part of the eOfficial Rrecords of Charlotte County. A copy of the recorded Notice of Approval
17 shall also be mailed to the applicant.

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

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

24 c. If the Zoning Official does not receive a written objection from an adjoining property
25 owner within 15 calendar days of the date the published notice appears in the newspaper
26 the Zoning Official may approve the administrative variance requested.

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

33 (6) Action by Board of Zoning Appeals.

34 If the Zoning Official receives a valid written objection from an adjoining property owner, the
35 BZA shall hold a public hearing to obtain public input on the proposed administrative
36 variance. Following the public hearing the BZA may approve, approve with conditions, or
37 deny the proposed administrative variance. The BZA shall state the reasons for their

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decision, which shall be put in writing for the record, utilizing variance procedures set forth
herein.