

## Article 2 ADMINISTRATION

### Article 2 ADMINISTRATION\*

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\*Cross references: Administration, pt. I, ch. 2.

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2.00.00. Reserved.

2.01.00. Purpose.

2.02.00. Permits required.

2.03.00. Board of adjustment.

2.04.00. Appeal of administrative decisions.

2.05.00. Variances, conditional uses, extension of a development order for site plan approval, and temporary use of a mobile home as a guest residence due to medical hardship.

2.06.00. Enforcement, violations and penalties.

2.07.00. Interpretation, purpose and conflict.

2.08.00. Rezoning, amendments to the zoning map, and text amendments to this Code.

2.09.00. Comprehensive plan amendments.

2.10.00. Modifications and adjustments of district regulations.

2.11.00. Vested rights for land use.

2.12.00. Planning board.

2.13.00. Development review.

#### **2.00.00. Reserved.**

#### **2.01.00. Purpose.**

This article sets forth application and permit requirements for obtaining development orders, development permits, amendments to the text of these regulations and to the zoning district maps, variances and conditional use permits, subdivision approval, building permits or any other official action of the county having the effect of permitting the development of land. Procedures for appealing interpretations or decisions made while administering this Code and for initiating Comprehensive Plan amendments are provided. Provisions for modifications and adjustments to zoning district regulations also are provided.

*2.01.01. Administrators assigned.* This Code shall be administered by the county administrator, or his designee, or as otherwise provided herein.

## Article 2 ADMINISTRATION

### 2.02.00. Permits required.

Notwithstanding the issuance of a development order, no development may commence without a valid Escambia County permit, including but not limited to, building permits, land and tree management permits, utility permits whenever crossing under (cutting, boring or tubing of a road or street by any means) county dedicated roads or streets, land use certificates, construction in right-of-way permits, etc., that are issued by the various departments of the public works and land management agency (also, see sections 4.01.02 and 4.06.02).

- A. Land use certificate. No building permit may be issued (see section 4.03.06) without a development order having been issued by the development review committee (DRC) or a land use certificate having been issued by the director of planning and zoning or his designee.
- B. This land use certificate shall be obtained from either the development services division "one stop development desk" or through the development review committee process. See, section 12.16.01 relative to the assessment of environmentally sensitive lands.
- C. In the case of projects on Pensacola Beach, any such permit request must first be approved by the general manager (or designee thereof) of the Santa Rosa Island Authority.

In addition, the department shall regularly maintain information regarding the level of development activity by FLUM category so as to monitor the progress in achieving the provisions of Comprehensive Plan policy 7.A.4.9. Note: No permit will be issued if such permit would cause any threshold or requirement established by policy 7.A.4.9 to be exceeded or violated.

*2.02.01. Application for permits.* Every person who proposes to commence any development regulated by this Code shall first obtain all applicable permit applications therefor. Such applications shall be provided each applicant, upon request, by the department. In addition, checklists, guidance and other assistance shall be provided any applicant by the department. Applications for permits shall be available for public use and regularly maintained by the director of planning and zoning or his designee (also, see sections 4.03.06 and 4.03.07).

*2.02.02. Issuance of permits.* The county administrator, or his designee, is hereby authorized to issue permits for development when such development conforms to the requirements of this Code. However, anytime this Code or other duly adopted regulations require approvals by local boards, agencies, or organizations prior to county approval, including but not limited to the Santa Rosa Island Authority, the LPA, the BOA or the BCC, such approvals shall be evidenced to the county in advance of the issuance of the requested permit. This section shall not be interpreted as prohibiting conditional approvals of preliminary subdivision plats, site plans, master plans or other similar plans or proposals requiring state or federal permits. However, no development activity may commence in areas regulated by state and federal agencies unless all required state and federal permits have been obtained and copies provided to the county administrator or his/her designee. At the applicant's risk, when permits are acquired by default, they are considered to be obtained. However, nothing in this section shall relieve the developer of the obligation to present the county with a copy of the final state and federal permits when they are eventually received or required.

*2.02.03. Other agency approvals may be required.* The applicant for any development order or permit is hereby notified that other agencies or entities may regulate, govern or impact a proposed development or application therefor. It is the applicant's responsibility to determine whether such other entity or agency has jurisdiction or

## Article 2 ADMINISTRATION

responsibility over the property or use or activity proposed by the applicant. Applicants are advised to communicate with responsible parties associated with such entities or agencies. The county shall direct the applicant to the appropriate entities or agencies, including but not limited to:

- A. The Santa Rosa Island Authority (SRIA) - for development activities proposed at Pensacola Beach.
- B. Department of Environmental Protection (DEP) - for stormwater management issues, jurisdictional determinations, CCCL permits, etc.
- C. Utility providers (ECUA, People's Water, etc.) - for utility capacities, facilities, improvements, etc.
- D. Florida Department of State - for assistance with historic preservation.
- E. Northwest Florida Water Management District (NFWFMD) - for establishing potable water wells, surface water management, etc.
- F. Florida Department of Transportation (FDOT) - for road improvements, connections, accesses, etc.
- G. Florida Department of Health and Rehabilitative Services (HRS) - for standards for individual sewage disposal facilities.
- H. U.S. Army Corps of Engineers - for issues impacting federal waters, navigable waterways, jurisdictional determinations, etc.
- I. Federal Aviation Administration (FAA) - for tall structures permits, etc.
- J. Other public agencies or entities which have jurisdiction over all or a portion of any particular application including, but not limited to, any local governments or applications impacted by interlocal agreements authorized and executed by the Escambia County Board of County Commissioners.

Other nonpublic entities may exert jurisdiction over development or applications therefor. Such entities may include homeowners associations, condominium associations, merchants associations, neighborhood improvement groups, etc. It is the responsibility of the applicant to determine whether such entity has any jurisdiction over his proposal and the county shall not assume any responsibility or be liable in any way for failure to adhere to any private entity restrictions or jurisdiction including those enumerated herein or any others which may hereafter be created.

*2.02.04. Appeals, variances and conditional uses.* No permit or development order may be issued by the county administrator, or his/her designee, for any development if such development would violate the terms and conditions of this Code. If an application for a conditional use, variance or administrative appeal, as defined and regulated by this Code, has been submitted, no permit or development order, with or without conditions, will be issued until the matter has been resolved pursuant to the provisions of this article.

(Ord. No. 97-51, § 1, 10-2-1997; Ord. No. 2002-45, §§ 1, 2, 10-17-2002; Ord. No. 2005-45, § 1, 10-6-2005; Ord. No. 2006-62, § 1, 8-3-2006)

## Article 2 ADMINISTRATION

### 2.03.00. Board of adjustment.

The board of county commissioners (BCC) established the board of adjustment (BOA) by County Ordinance 88-16, enacted on December 1, 1988.

*203.01 Authority and duties.* The BCC hereby endows the BOA with the power to conduct any required quasi-judicial public hearings to grant, grant with conditions, or deny applications for variances, conditional uses, requests for final extension of development orders for site plan approval, requests for the temporary use of a mobile home as a guest residence due to medical hardship, and appeals of administrative decisions filed by those persons aggrieved by interpretations or administration of these regulations.

*2.03.02. Membership.* The BOA shall consist of seven members, all of whom must reside within Escambia County. Each of the five commissioners shall appoint one BOA member, preferably from among constituents residing in his or her respective district, and the BCC as a whole shall nominate two "at large" members. All seven members must be approved by a majority vote of the BCC. Each BOA member shall furnish a resume or curriculum vitae to the county administrator and all commissioners. No member of the BOA shall be a paid or elected employee of the county.

*2.03.03. Term of office; removal from office and vacancies.*

A. Each member of the BOA shall be appointed to serve for a period of four years, concurrent with the term of office of their appointing county commissioner, or thereafter until his or her successor is appointed, and each appointment shall be made to ensure staggered terms, except in the case of the two "at large" members who shall serve two-year staggered terms.

B. Any member of the BOA may be removed from office during his or her term by the appointing BCC member. In the case of the two "at large" members, any member may be removed by a majority vote of the BCC. The BOA chair shall notify the BCC in writing whenever a BOA member has missed four meetings within a 12-month period and outline the reasons for the absences. The BCC shall then remove and replace said member if the absences were not beyond the control of the appointee. Any vacancy occurring during the unexpired term of office of any member shall be filled as set forth in section 2.03.02 for the balance of the term.

*2.03.04. Officers; staff technical assistance.*

A. The BOA shall elect a chair and vice-chair from among its members. Terms of these offices shall be for two years, with eligibility for re-election.

B. Designated staff of the planning and zoning department shall prepare agendas, publish notices, arrange meetings and distribute minutes of the proceedings as necessary to assist the BOA. The BOA shall be authorized to call upon any department of the county at any time for information and advice that, in the board's opinion, will aid in the efficiency of its work. Upon approval of such request by the county administrator, it shall be the duty of each department of the county to furnish such information and advice promptly. The county attorney, or his/her designee, shall act as legal advisor to the BOA.

## **Article 2 ADMINISTRATION**

### *2.03.05. Procedures and meetings; records.*

A. The BOA shall adopt procedural rules in accordance with the provisions of this Code. The BOA shall hold regular meetings. Special meetings may be heard at the call of the chair at such times as the BOA may determine appropriate. All regular and special meetings of the BOA shall be open to the public.

B. The BOA shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed with the recording secretary of the BOA.

*2.03.06. Quorum and vote required.* Four of the seven members of the BOA shall constitute a quorum, and the vote of a majority of the quorum shall be necessary for any action thereof.

(Ord. No. 97-13, § 1, 4-3-1997; Ord. No. 97-51, § 1, 10-2-1997; Ord. No. 2001-35, §§ 1, 2, 7-5-2001; Ord. No. 2002-46, § 1, 10-17-2002; Ord. No. 2004-9, § 1, 2-5-2004; Ord. No. 2005-45, § 1, 10-6-2005)

### **2.04.00. Appeal of administrative decisions.**

When it is alleged that there is an error in any order, requirement, decision or determination regarding issuance or denial of a development order, land use certificate or permit made by an administrative official in the administration of this chapter, the issue in dispute shall be taken before the board of adjustment. For cases on Pensacola Beach, the appeal shall first be reviewed by the Santa Rosa Island Authority Board, which shall then forward a recommendation to the BOA. An action sufficient to confer standing on a person aggrieved by an administrative decision, or administration of the Land Development Code would be an official action granting, denying or granting with conditions an application for a development order, permit or land use certificate. This section shall not apply to citations issued by code enforcement officers.

*2.04.01. Procedures for the appeal of administrative decisions.* To initiate the appeals process, the person appealing the administrative decision must make written application for such appeal on a form(s) provided by the department of planning and zoning department within 15 days of the administrative decision. Said application shall be accompanied by sufficient and adequate information to define and describe the alleged error, the proposed remedies, and any other pertinent information the applicant wishes to have considered during the appeals process.

A. The BOA is authorized to hear and to rule upon any appeal made by those persons aggrieved by administration of this Code. An administrative decision, or staff interpretation, shall not be reversed, altered, or modified by the BOA unless it finds that:

1. A written application for the appeal was submitted within 15 days of the administrative decision or action indicating the section of this Code under which said appeal applies together with a statement of the grounds on which the appeal is based; and
2. That the person filing said appeal has established that the decision or action of the administrative official was arbitrary and capricious; or
3. An aggrieved party who files an appeal of a decision of the DRC approving or approving with conditions a development plan application, must show, by competent substantial evidence that:

## Article 2 ADMINISTRATION

- (i) The decision of the DRC is not in compliance with the Comprehensive Plan or the Land Development Code;
- (ii) Their property will suffer an adverse impact as a result of the development approval decision;
- (iii) The adverse impact must be to a specific interest protected or furthered by the Comprehensive Plan or the Land Development Code; and
- (iv) It must be greater in degree than any adverse impact shared by the community at large.

4. In the event the owner, developer, or applicant is aggrieved or adversely affected by a denial of a development plan application or the imposition of conditions, the owner, developer or applicant filing the appeal must show, by competent substantial evidence, that the denial of the development plan or the imposition of conditions is neither required nor supported by the Comprehensive Plan or the Land Development Code or the application of technical design standards and specifications adopted by reference in the Code, or Concurrency Management Procedures and is, therefore, arbitrary and capricious.

B. *Hearing of appeal; notice required.* The BOA shall schedule the hearing for the appeal to occur within 30 working days after the filing of the notice of appeal, give due notice to the parties in interest, and decide the same within a reasonable time. Any party may appear at the hearing in person or by agent or attorney. The BOA hearing may be continued or postponed by vote of the BOA or by the property owner, or his [or her] agent or attorney, upon his or her written request.

C. *Decision of the BOA.* In applying the provisions of this Code, said provisions shall be held to be minimum provisions. The BOA may reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed, but may so modify only to the extent supported by the competent substantial evidence presented, and as necessary to maintain compliance with the requirements of the Code and Comprehensive Plan. To that end only, the BOA shall have the powers of the administrative official(s) to whom the appeal is directed. The BOA shall have no authority to reverse, diminish, or otherwise modify the application of technical design standards and specifications adopted by reference in the Code, or concurrency management procedures therein, or to exempt development from required review and approval. The concurring vote of a majority of the members of the BOA present and voting shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to vote. Any party aggrieved by the decision of the BOA on an administrative appeal shall have 30 days to petition the circuit court for judicial review of such order.

2.04.02. *Impacts on permitting and owners of property subject to review.* Because decisions of the BOA relating to variances, conditional uses, temporary use of a mobile home as a guest residence due to medical hardship, and extension of development order for site plan approval are final, unless overturned by a court of competent jurisdiction, the county may issue development orders and permits for properties in accordance with the decisions of the BOA. However, if a property owner or applicant requests the issuance of any such order or permit and such order or permit is issued, the permittee, and not the county, shall bear any risk that such decision may be set aside,

## **Article 2 ADMINISTRATION**

the permit or development order may be revoked, or the development may be otherwise enjoined by the reviewing court.

### *2.04.03. Reserved.*

(Ord. No. 97-51, § 1, 10-2-1997; Ord. No. 99-25, § 1, 5-6-1999; Ord. No. 2001-35, §§ 3--5, 7-5-2001; Ord. No. 2002-45, § 3, 10-17-2002; Ord. No. 2004-9, § 3, 2-5-2004; Ord. No. 2004-21, § 1, 5-6-2004; Ord. No. 2005-45, § 1, 10-6-2005; Ord. No. 2007-15, § 1, 3-5-2007)

### **2.05.00. Variances, conditional uses, extension of a development order for site plan approval, and temporary use of a mobile home as a guest residence due to medical hardship.**

The BOA shall hear and decide requests for variances, conditional uses, requests for an extension of a development order for site plan approval, or temporary use of a mobile home as a guest residence due to medical hardship, as hereinafter provided. Pursuant to the provisions of section 2.05.02 of this Code, the director of planning and zoning, or his/her designee, may grant administrative variances. The SRIA board shall act on variance applications on Pensacola Beach in conformance with article 13 prior to the quasi-judicial hearing by the BOA.

#### *2.05.01. Procedure for filing applications and notice requirements.*

A. All applications to the BOA for granting of variances, conditional uses, any extension of a development order for site plan approval, or temporary use of a mobile home as a guest residence due to medical hardship shall be filed with the planning and zoning department, at least 30 working days prior to the next scheduled meeting and thereupon the board shall consider such application. At the time of filing such applications, the applicant shall deposit with the department a fee in an amount as prescribed by the board of county commissioners, along with all required forms and attachments. All applications to the director of planning and zoning for administrative variances shall be filed with the planning and zoning department in the form of a letter of request, which outlines in detail the nature of the request, along with a fee in an amount as prescribed by the board of county commissioners. The planning chief may require the submission of additional documents, plans, and/or information deemed necessary in making a final determination on the request.

B. For appeals, conditional uses, and/or temporary use of a mobile home as a guest residence due to medical hardship, notices explaining the purpose, time, date, and location of the meeting to be held to consider the matter(s) shall be sent to all owners of property within 500 feet of the subject property. In the case of variances, such notices shall go to all directly abutting owners of property (excluding properties across the street). In the case of conditional uses related to the prohibition of alcohol sales within 1,000 feet of a place of worship, such notices shall be sent to all owners of directly abutting property (excluding properties across the street) and additionally letters shall be sent to any places of worship within 1,000 feet. No such mailings shall be required in the case of an administrative variance. Notices shall be sent by the planning staff no later than 15 days prior to said meeting.

C. For appeals, variances, conditional uses, extension of a development order for site plan approval, and/or temporary use of a mobile home as a guest residence due to medical hardship, a sign, no smaller than 20 inches by 30 inches, shall be posted on said property clearly readable from the nearest road and stating the

## Article 2 ADMINISTRATION

same information as the letters. The sign must be completed and erected 15 days prior to said meeting. No such posting shall be required in the case of an administrative variance.

D. Determinations made by the BOA regarding variances, or by the director of planning and zoning regarding administrative variances shall be valid for a period not to exceed two years. If an applicant does not apply for development approval (DRC process) or a building permit within said two-year period, the variance approval will expire. For conditional uses, the applicant must apply for development approval (DRC process) or building permit within four years following the determination made by the BOA. Once an applicant obtains a development order or building permit, the variance or conditional use will continue with the property.

E. Legal advertisements shall be published at least ten calendar days prior to the public hearing for conditional uses and administrative appeals. No such advertisement shall be required in the case of an administrative variance.

### 2.05.02. Variances.

A. The BOA may grant a variance(s) to the height, bulk, yard, parking, or open space zoning requirement(s) of this Code and a variance to any of the standards contained in articles 4 and 7 through 12 in specific cases when such variance(s) will not be contrary to the public interests. However, the BOA shall not grant a variance to any density requirement(s) or any provision in section 12.01.01 of the Land Development Code, except as provided for in section 12.01.01.A.3.

B. The planning chief, or designee thereof, may likewise grant an administrative variance of up to ten percent to the height, bulk, yard, parking, or open space zoning requirements, except for density requirements, where such requests are deemed to be de minimis. For the purpose of this section, de minimis shall mean minor infractions of the physical dimensional requirements of the LDC, where:

1. The specific instance is the result of a measurement error in the field;
2. The specific instance was not intentional or created by design; and
3. Where the variance will not adversely affect any adjoining properties. Otherwise, where owing to special conditions, a literal enforcement of the provisions of this Code will result in unnecessary hardship, a variance may be granted so that the spirit and intent of this Code is observed and substantial justice done. Such special conditions shall be limited to unusual physical characteristics inherent in the specific piece of property and not common to properties similarly situated. Such physical characteristics include, but are not limited to, exceptional narrowness, shallowness, shape, topographic conditions, or the presence of sensitive environmental resources, any or all of which will result in peculiar or practical difficulties in the quiet enjoyment and use of the property. No variances shall be authorized under this provision unless the BOA, or in the case of an administrative variance, the planning chief, or designee thereof, finds that all of the following criteria are met:
  - a. The special circumstances or conditions applying to the building or land in question are peculiar to such property and do not apply generally to other land or buildings in the vicinity.

## Article 2 ADMINISTRATION

- b. The variance is necessary for the preservation and enjoyment of a substantial property right as defined herein and not only to serve as a convenience to the applicant.
- c. The authorization of the variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, the danger of fire, imperil the public safety, unreasonably diminish or impair established property values within the surrounding area or in any other respect impair the health, safety, comfort, or general welfare of the inhabitants of Escambia County.
- d. The variance will not, in any manner alter other provisions of this Code or the Comprehensive Plan, except this Code and the plan may be amended in the manner prescribed by law.
- e. The variance is the minimum necessary to make possible the use of the land, building or other improvements as approved by the BOA, or by the planning chief, or designee thereof, in the case of an administrative variance.
- f. The findings of fact, which shall be issued by the BOA after its deliberations, as a minimum shall include those determinations made by the BOA pursuant to paragraphs a. through e., above, or by the planning chief, or designee thereof, in the case of an administrative variance.

*2.05.03. Conditional uses.* The BOA is authorized to conduct a quasi-judicial public hearing to hear and decide conditional uses to the terms of this Code. The BOA is authorized to grant conditional uses in appropriate cases and with appropriate safeguards but only as specifically authorized by this Code and which results in the use of a premises for a purpose not otherwise permitted within the zoning district in which said premises is located, as set forth in section 7.14.01.E. During its deliberations, the BOA may interpret specific provisions of this Code whenever it finds sufficient facts to demonstrate to its satisfaction that such conditional use, if granted, would be substantially in harmony with the general purpose and intent of this Code. No conditional uses shall be authorized under this provision unless the BOA finds that all of the following criteria are met:

- A. *Application required.* Prior to fixing a public hearing to consider any conditional use, a complete written application must be submitted to the planning and zoning department on forms provided by the department. The application must indicate the section of this Code under which the conditional use is sought and state the grounds on which it is requested.
- B. *Public hearing.* A quasi-judicial public hearing shall be held by the BOA on all applications requesting a conditional use. The public notice requirements described herein shall apply.
- C. *Findings required.* Before any conditional use is approved or approved with conditions, the BOA shall make written findings, based on competent substantial evidence, certifying compliance with specific rules governing such individual conditional uses, and that satisfactory provisions and/or arrangements have been made concerning the following, where applicable:
  - 1. *On-site circulation.* Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, on-site parking and loading, and access in case of fire or catastrophe.

## Article 2 ADMINISTRATION

2. *Nuisance.* Any adverse impact such as noise, glare, smoke, odor or other harmful effects (electrical interference, hazardous materials, etc.) of the conditional use on adjoining properties and properties generally in the district.
3. *Solid waste.* Refuse and service areas with particular reference to concurrency requirements and items 1 and 2 above.
4. *Utilities.* Utilities with reference to concurrency requirements, location, availability and compatibility with surrounding land uses.
5. *Buffers.* The buffer may be a landscaped natural barrier, a natural barrier or a landscaped or natural barrier supplemented with fencing or other manmade barriers, so long as the function of the buffer and the intent of policy 7.A.3.7 of the Comprehensive Plan are fulfilled.
6. *Signs.* Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.
7. *Environmental impact.* Impacts to protected trees, wetlands, waterbodies, stormwater management or other natural features of the subject parcel.
8. *Neighborhood impact.* General compatibility with adjacent properties and other property in the immediate area.
9. *Other requirements of code.* The proposed conditional use is consistent with all other relevant provisions of this Code.

D. *Conditional use limitations.* The authority to decide conditional uses is limited to the following cases, or as set forth in section 7.14.01.E.

1. To grant or deny uses listed as conditional uses by zoning district as such are found in article 6 of this Code.
2. To permit the reduction of parking or loading requirements whenever the character or use of a building is such as to render unnecessary the full provision of parking or loading facilities as specified herein or whenever the strict enforcement of such provision would impose an unreasonable hardship as contrasted with merely an advantage or convenience.
3. To permit the construction, extension, structural alteration, operation or establishment of uses, which are otherwise prohibited or restricted from certain districts and referenced in the zoning district regulations of this Code, upon finding by the BOA that proper safeguards and conditions have been provided to lessen congestion in the streets, to secure safety from fire, panic or other dangers, to promote health and general welfare, to provide adequate light and air and to prevent overcrowding of land. The BOA may suggest and/or permit, and the applicant may agree to such additional reasonable conditions and safeguards as it shall deem appropriate to promote the general purposes of this section.

## Article 2 ADMINISTRATION

2.05.04. *Additional considerations and requirements in review of coastal setback variance request (protective shoreline structures).*

A. *Explanation of need.* Protective shoreline structures waterward of the setback line shall not receive a variance unless the applicant demonstrates by competent, substantial evidence that the subject property is critically imperiled due to the imminent probability of the projected wave uprush predicted in the study by the University of Florida Coastal and Oceanographic Engineering Department, endorsed by the Florida Department of Environmental Protection (DEP) pursuant to F.S. § 161.053, or as amended. The applicant shall present a description of the exceptional physical conditions of the property and other special conditions that render compliance with the construction setback line a demonstratable hardship. The applicant shall submit scaled drawings showing the location of upland and adjacent structures, mean high water line, and the construction setback line referenced to DEP monuments if applicable.

B. *Impact on shoreline preservation and stability of adjacent property.* Prior to or concurrent with an application for a department of environmental protection (DEP) permit, the applicant shall prove by competent, substantial evidence that the location, alignment and general design of the structure shall not unreasonably impair shoreline stability and shall minimize the erosive tendency of hardened shoreline structures. The applicant shall provide a design concept prepared by an engineer registered in the State of Florida. The said engineer shall certify that the location, alignment and design of the structure shall minimize adverse impacts to the shoreline system and adjacent properties; and that the location and alignment of the structure shall be as far landward as possible to provide maximum opportunity for natural dissipation of energy arising from wave uprush. An approved DEP permit for the shoreline protective feature shall be accepted by the BOA as conclusive proof of compliance with all of the requirements of this section.

C. *Subgrade revetments; sand and vegetative cover; and sand replenishment.* The board shall require where reasonable and practical the use of subgraded revetments, sand cover and vegetative cover over all shoreline structures together with a sand replenishment program to maximize natural dissipation of energy from wave uprush, decrease scour and generally minimize erosive tendencies of hardened structures.

2.05.05. *Extension of a development order for site plan approval.* The BOA may grant one extension for a maximum of 12 months to the original effective period of 18 months for a development order for a site plan and its accompanying certificate of occupancy. A written request from the applicant must be provided prior to the expiration date of the development order. The BOA shall grant an extension to a development order and its accompanying certificate of concurrency only if the extension request complies with the following requirements:

- A. No building permit or land disturbing permit has been issued for the site plan parcel;
- B. Written application for the extension was submitted prior to the expiration of the development order; and
- C. The applicant demonstrates that obtaining county permits for the approved development was delayed by conditions not under the control of the applicant; including but not limited to:
  - 1. An act of God, natural disaster or fire.
  - 2. Required state or federal permits delayed by issuing agencies.

## Article 2 ADMINISTRATION

3. Labor strike or civil unrest.
4. Lawsuit or other legal actions.
5. Extended illness or death of an individual essential to the development or construction process.

*2.05.06. Temporary use of a mobile home as a guest residence due to medical hardship.* The BOA is authorized to hear and approve requests for the temporary use of a mobile home as a guest residence due to medical hardship, in certain zoning districts as set forth in section 6.04.10.A. of this Code, due to medical hardship, as specifically authorized in this Code, following notice and a public hearing. After reviewing evidence provided by the applicant and testimony from the applicant, staff, and other parties with an interest in real property located within a 500-foot radius from the subject property, the BOA shall make written findings, based on competent substantial evidence, certifying compliance with the following specific requirements governing this use:

- A. The need for medical care must be certified in writing by a physician licensed in the State of Florida stating the medical hardship and specifying the extent of the need for in-house medical care and approximate length of time for the in-house medical need.
- B. A mobile home for temporary use shall not exceed 1,280 square feet in size.
- C. Both the primary residence and the mobile home must be located on a parcel with the same property identification number.
- D. Either the caregiver and their immediate family, or the person in need of medical care may occupy the mobile home.
- E. To avoid overcrowding on a parcel, the minimum lot size for the primary dwelling and mobile home shall be one-quarter acre in all zoning districts for those parcels utilizing public sewer, as long as lot coverage and setback requirements of the relevant zoning district are met. For those parcels utilizing septic tanks, the minimum lot size shall be one-half acre, as long as lot coverage and setback requirements of the relevant zoning district are met.
- F. The mobile home must have available adequate water, sewer (septic tank), solid waste removal, and electric service. The building inspections department shall inspect the utility connections and shall verify that the mobile home complies with hurricane safety requirements.
- G. A survey or site plan is required and must be drawn to scale and show the location of all existing structures, the proposed location of the mobile home, and all required setback distances.
- H. Once the mobile home is placed upon the property, the wheels and axles shall not be removed, and no building permit shall be approved for additions to the mobile home, except for handicapped access ramps.
- I. The BOA shall determine that the temporary use is the minimum necessary to afford relief due to a medical hardship as defined in article 3.
- J. The BOA shall make a compatibility finding that the temporary use will not have an adverse impact on the use of surrounding properties.

## **Article 2 ADMINISTRATION**

K. The temporary use of a mobile home as a guest residence due to medical hardship may be initially granted for a period of up to two years. One additional extension of up to two years may be granted by the BOA based on a physician's confirmation of the continuation of the hardship, and a finding of no changed circumstances, which would alter prior findings made by the BOA, filed prior to the two-year expiration date. The fee for notice, signage, and legal advertisement requirements shall apply to such extensions.

L. When the medical hardship ends, or an extension is denied, or upon expiration of the initial approval, or upon expiration of the additional two-year extension, the mobile home must be removed from the site within 60 days. Thereafter, code enforcement procedures will be instituted against the property owner to remove the mobile home. Only the BOA, based on competent and substantial evidence or just cause, may extend the 60-day period.

M. Prior to the placement of the mobile home on the property, the owner of the parcel shall execute a "hold harmless agreement" acknowledging the county's right to remove the mobile home at the owner's expense if the owner, or his or her heirs and assigns, fail to remove the mobile home within the specified 60-day time period or extended period.

### *2.05.07. Judicial review.*

A. Any applicant for relief from a decision of BOA for a variance, conditional use, extension of a development order for site plan approval, request for temporary use of a mobile home as a guest residence due to medical hardship, or any aggrieved party as defined by state law, may seek review of such decision by filing an appropriate pleading in a court of competent jurisdiction within 30 days of the BOA decision. The date of the BOA decision shall be considered to be the date the BOA voted at the conclusion of the hearing. Note: Decisions of the BOA regarding conditional uses to the prohibition of alcohol sales within 1,000 feet of a place of worship may be appealed to the BCC, as described in section 7.14.01.F.

B. Whenever an application for a variance, conditional use, extension of a development order for site plans, or request for temporary use of a mobile home as a guest residence due to medical hardship shall be denied by the BOA, no new application for identical action of the same parcel shall be accepted for consideration within a period of 180 days of the decision of denial.

(Ord. No. 97-51, § 1, 10-2-1997; Ord. No. 99-2, § 1, 1-7-1999; Ord. No. 2000-44, § 1, 10-5-2000; Ord. No. 2002-46, § 2, 10-17-2002; Ord. No. 2003-54, § 1, 11-6-2003; Ord. No. 2004-9, §§ 4--6, 2-5-2004; Ord. No. 2005-13, § 1, 5-5-2005; Ord. No. 2005-45, § 1, 10-6-2005; Ord. No. 2005-56, § 1, 11-17-2005; Ord. No. 2006-86, § 1, 11-2-2006; Ord. No. 2007-14, § 1, 3-5-2007; Ord. No. 2007-69, § 1, 11-1-2007; Ord. No. 2009-35, § 1, 10-1-2009)

### **2.06.00. Enforcement, violations and penalties.**

The county administrative staff is hereby directed to enforce this ordinance. Enforcement shall be compelled by the county administrator, or by civil action brought by an aggrieved party in a court of competent jurisdiction. Also, Escambia County can cause prosecution of violations in the name of the State of Florida pursuant to the authority granted by F.S. § 125.69.

### *2.06.01. Penalties.*

## Article 2 ADMINISTRATION

A. *Civil remedies.* The Escambia County BCC or any aggrieved party as defined by state law may apply to the circuit court of Escambia County, Florida, to enjoin and restrain any person or other entity violating the provisions of this Code, and the court shall, upon proof of the violation of same, have the duty to forthwith issue such temporary and/or permanent injunctions as are necessary to prevent the violation(s).

B. *Criminal remedies.* Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resist the enforcement of any of the provisions of this ordinance shall be punishable as a misdemeanor and fined accordingly (upon conviction, be fined up to \$500.00 or imprisoned for not more than 60 days, or both, and in addition shall pay all costs and expenses involved in the case). Each day a violation exists shall constitute a separate offense. Nothing herein contained shall prevent Escambia County from taking such other lawful action as is necessary to prevent or remedy any violation.

C. *Enforcement.* The provisions of this Code shall be enforced by any means provided, authorized, or allowed by law or ordinance including, but not limited to F.S. § 125.69 and as thereafter amended, F.S. ch. 162, and as thereafter amended, and chapter 1-8.5 [chapter 30] of the Escambia County Code of Ordinances.

(Ord. No. 97-51, § 1, 10-2-1997)

### 2.07.00. Interpretation, purpose and conflict.

In interpreting and applying the provisions of this Code, they shall be held to be the minimum standards for the promotion of the public health, safety, and general welfare of the community. It is not the intent of this Code to interfere with or abrogate or annul any existing easements, covenants, lease agreements or other agreements between parties; provided, however, that where this Code imposes a greater restriction upon the use of buildings or premises, or upon the height of buildings, or required larger open spaces than are imposed or required by other ordinances, rules, regulation or by easements, covenants or agreements, the provisions of this Code shall control. Note: Nothing herein shall be construed to allow, encourage or require any change to the standards within this Code except through the formal amendment process established within this Code and Florida Statutes.

*2.07.01. Planning board (LPA) interpretations.* The planning board, sitting as the local planning agency (LPA), shall review and interpret any provisions of this Code for the purposes of clarification or determination of meaning and intent if questions should arise regarding the meaning, intent or interpretation of any provision or section. Such interpretation request shall be presented at the next regular planning board meeting if the request is received by the department of planning and zoning staff at least 20 calendar days in advance of said meeting.

Development review applications submitted for approval shall be subject to and reviewed in accordance with the Land Development Code provisions, including planning board interpretations and determinations, in effect at the time of the submittal to and acceptance by the department of planning and zoning of such plans in accordance with section 4.02.00. If a planning board interpretation or determination of this Code is desired by the applicant, the application shall be withdrawn from the development review process. after such interpretation or determination has been rendered by the planning board, if the applicant chooses to proceed with the development, a new application, with review fees, must be submitted subject to the then existing regulations and interpretations.

## **Article 2 ADMINISTRATION**

Interpretations, determinations or conditions rendered by an administrative official or designee shall not be under the jurisdiction of the planning board, but shall be subject to review by the board of adjustment as an administrative appeal per section 2.04.00.

*2.07.02. Administrative interpretations.* This section implements section 7.09 of chapter 7 of the Escambia County Comprehensive Plan, which contains rules for interpreting land use categories on the future land use map.

- A. The director of the department of planning and zoning may interpret the land use categories on the future land use map (FLUM) in the following limited circumstances:
  - 1. When questions arise as to the future land use category of a particular parcel, which is located at or near the boundary of two or more future land use categories, the director may determine the future land use category to apply to the property that is consistent with contiguous conforming uses that surround the subject parcel, within 500 feet.
  - 2. When questions arise as to the future land use category of a particular parcel, when boundary lines do not follow property lines, section lines, manmade improvements or other readily identifiable physical features, the director may consider that boundary to coincide with the natural or manmade feature or boundary located proximate to the boundary shown on the future land use map. Such boundaries may include, but are not limited to, rivers, streams, property boundaries, zoning lines, section lines, roads, and railroads.
- B. Any and all available planning techniques and tools may be used to determine the distance in 1., above, and the boundary in 2., above. These include, but are not limited to, use of architectural and engineering measuring scales, aerial photo maps, soil maps, zoning maps, existing land uses, and compatibility with surrounding land uses.
- C. The interpretation (area of expansion) shall apply to areas no greater than ten acres in size and shall be a one time occurrence.
- D. The uses allowed shall be compatible with those surrounding uses and shall be those which are allowed by the zoning district.
- E. This section is not intended to amend the FLUM without compliance with the applicable state law and county ordinance. Any change in the designation of a FLUM category shall require a Comprehensive Plan amendment.

(Ord. No. 97-51, § 1, 10-2-1997; Ord. No. 2000-38, § 1, 9-7-2000; Ord. No. 2002-45, § 4, 10-17-2002; Ord. No. 2005-45, § 1, 10-6-2005)

### **2.08.00. Rezoning, amendments to the zoning map, and text amendments to this Code.**

The board of county commissioners may amend, supplement, change, modify, or repeal by ordinance the boundaries, districts, regulations or restrictions herein established after public hearing, in accordance with Florida law; provided, however, that such amendments, supplement, change, or modification be consistent with the adopted Comprehensive Plan. All rezonings, applications and proposals requiring a quasi-judicial hearing shall be

## **Article 2 ADMINISTRATION**

reviewed and acted upon in accordance with the procedures set forth herein. All text amendments to the code shall be reviewed and acted upon by the LPA prior to final action by the BCC. And, if any such amendments affect any regulation, standard or criteria governing activities at Pensacola Beach (the MU-5 area), such amendment shall be reviewed and acted upon by the SRIA board prior to consideration by the LPA and prior to final action by the BCC.

*2.08.01. Reserved.*

*2.08.02. Quasi-judicial rezonings.*

*A. Planning Board (LPA); functions regarding quasi-judicial rezonings.*

1. The Planning Board (LPA), as established in this Code, shall have the powers and authority set forth in this article.
2. Any code or ordinance to the contrary notwithstanding, applications for rezonings requiring a quasi-judicial hearing shall be heard by the planning board, as provided herein, which shall make recommendations to the board of county commissioners whose decisions shall be final.
3. The planning staff shall provide administrative support to the planning board and shall appoint one of its employees to serve as records custodian.

*B. Conduct of meetings; reports and records.*

1. The board of county commissioners shall adopt rules for transaction of rezoning business and the planning board shall conduct meetings pursuant to the provisions of the applicable codes, ordinances and resolutions.
2. The planning staff shall provide for a court reporter at all quasi-judicial proceedings. All hearings shall be transcribed. Additional transcripts shall be provided by the court reporter at the request of interested parties who shall bear the costs thereof.
3. The planning staff shall keep indexed records of all hearings.

*C. Applications for rezoning.* Any person requesting a rezoning of a given parcel of real property shall make an application for such change with the planning staff on forms provided by the County. The application forms shall be accompanied by a copy of this ordinance and those resolutions that establish procedures for quasi-judicial hearings and procedures for the disclosure of ex parte communications.

1. When such application is initiated by the owner of the property in question or the authorized agent(s) of such owner, the application shall indicate by legal description and by street address, where possible, the property to be affected by the proposed change, setting forth the present zoning applicable thereto and specifying the zoning district, requested by the applicant. Such application shall be in a form substantially in accordance with the form prescribed by the county.
2. All such applications by owners or duly authorized agents or individuals shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for rezoning is sought, except limited partnerships and corporations in which case the name and address of the partnership or corporation

## Article 2 ADMINISTRATION

will be sufficient. When the property is in fee simple ownership, a copy of the deed shall be sufficient to comply with the terms of this part.

3. Upon submitting an application, there shall be paid to the planning staff a sum for each requested change; provided, however, that as many contiguous lots or parcels of property as the applicant owns may be included in any single petition. The sum to be paid for said rezoning shall be prescribed by the board of county commissioners.

4. Not later than 60 days after submission, the planning staff shall schedule a hearing and forward completed applications to the planning board who shall conduct a public hearing and make a recommendation to the board of county commissioners.

### D. *Notice and public hearing.*

1. The planning staff shall notify the current property owners within a 500-foot radius of the property proposed to be rezoned, as well as the owner(s) of the property under consideration for change, or agent(s) for the owner(s), of the quasi-judicial public hearing by mail, at least 15 days prior to the first scheduled quasi-judicial public hearing. The notice shall state the date, time and place of the quasi-judicial public hearing and in addition shall advise the recipient(s) that only those present and giving testimony at the quasi-judicial hearing(s) may subsequently address the recommendation of the planning board when it is considered by the board of county commissioners.

a. Notification of such subsequent hearing before the planning board must occur at least ten days prior to the hearing. Distribution of notices is to be timed in a manner that would reasonably result in actual receipt of said notices within the specified time frame.

b. Each notice shall state the case number, current zoning, proposed zoning, physical address, date, time, and place of the quasi-judicial public hearing. See section 11.00.01.C. relative to notification within Navy Air Field areas of impact.

2. The planning staff shall place a 20" x 30" sign on the property to be rezoned announcing the case number, current zoning, proposed zoning, date, time and location of the quasi-judicial public hearing(s) at least 15 days prior to the first hearing. The sign shall remain posted on the property until a final decision by the board of county commissioners.

3. The planning staff shall publish in a newspaper of general circulation in Escambia County, at least 15 days prior to the public hearing, a notice stating the case number, current zoning, proposed zoning, physical address, date, time and place of the public hearing. The applicant shall deposit with the board of county commissioners an amount established by resolution of the board of county commissioners to cover the cost of hearing, publication, and distribution of notice.

4. Any reports, analyses or recommendations prepared by the planning staff for the planning board shall be copied to the applicant and made available to any interested party, as provided by law, at least ten days prior to the hearing. All such reports, analyses, and recommendations shall include

## Article 2 ADMINISTRATION

information giving examples of the most intensive uses permitted within the requested zoning district in accordance with the Land Development Code.

5. Once the applicant has submitted his or her application for rezoning, the request may not be changed to a more intensive use. The applicant may amend the application to a less intensive zoning district provided the notice provisions set forth in section 2.08.02.D. have been complied with.

6. The planning board shall consider each application at a public hearing and, within 15 days of such hearing, make a written recommendation to the board of county commissioners setting forth findings of fact and conclusions of law. In order to ensure compliance with the Sunshine law, the planning board, by a majority vote, shall direct planning staff during the scheduled hearing as to the content of the findings of fact and conclusions of law that will be included in its recommendation to the board of county commissioners. Such recommendation shall be for approval, approval with modification, or denial including reasons for any modifications or denial; and shall include consideration of the following:

- a. *Consistency with the Comprehensive Plan.* Whether the proposed amendment is consistent with the Comprehensive Plan;
- b. *Consistency with this Code.* Whether the proposed amendment is in conflict with any portion of the Land Development Code, and is consistent with the stated purpose and intent of the Land Development Code;
- c. *Compatibility with surrounding uses.* Whether and the extent to which the proposed amendment is compatible with existing and proposed uses in the area of the subject property(s);
- d. *Changed conditions.* Whether and the extent to which there are any changed conditions that impact the amendment or property(s);
- e. *Effect on natural environment.* Whether and the extent to which the proposed amendment would result in significant adverse impacts on the natural environment;
- f. *Development patterns.* Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

7. An applicant for a proposed rezoning has the burden of proving by substantial, competent evidence that the proposed rezoning: is consistent with the Comprehensive Plan; furthers the goals, objectives and policies of the Comprehensive Plan and is not in conflict with any portion of the county's Land Development Code.

Upon the applicant proving the proposed rezoning complies with these criteria, the planning board shall recommend approval of the rezoning request to the board of county commissioners unless the planning board determines that there is substantial, competent evidence that maintaining the current zoning designation accomplishes a legitimate public purpose. For purposes of this section, a legitimate public purpose shall include but not be limited to preventing the following or as may be determined by law from time to time:

## Article 2 ADMINISTRATION

- a. The proposed rezoning and the development permitted there-under is premature or otherwise creates or contributes to an urban sprawl pattern of development;
- b. The proposed rezoning will constitute "spot zoning," that is an isolated zoning district unrelated to adjacent and nearby districts;
- c. The proposed rezoning will create an intrusion of commercial or industrial uses into an established residential area, such as a platted residential subdivision;
- d. The proposed rezoning and the development permitted there-under will result in significant adverse impacts upon property values of adjacent or nearby properties or in the immediate area more than the types of uses currently permitted;
- e. The proposed rezoning and the development permitted there-under will detract from the character and quality of life in the general area or neighborhood by creating excessive traffic, noise, lights, vibration, fumes, odors, dust, physical activities or other detrimental effects or nuisances.

8. Within ten days of receipt of planning board's recommended order, the planning staff shall forward a copy of the recommended order to the applicant and to those interested parties who appeared at the quasi-judicial hearing. The applicant and such interested parties shall be advised as to the case number, current zoning, proposed zoning, physical address, date, time and place of the hearing at which the board of county commissioners shall consider the recommended order.

### E. *Board of county commissioners; review and action on rezonings.*

1. The board of county commissioners shall review the record and the recommendation of the planning board and either adopt the recommended order, modify the recommendation order as set forth herein, reject the recommended order, or remand the matter back to the planning board for additional facts or clarification. Findings of fact or findings regarding legitimate public purpose may not be rejected or modified unless they are clearly erroneous or unsupported by the record. When rejecting or modifying conclusions of law, the board of county commissioners must state with particularity its reasons for rejecting or modifying the recommended conclusion of law and must make a finding that its substituted conclusion of law is as or more reasonable than the conclusion that was rejected or modified. However, the board of county commissioners may not modify the recommendation to a more intensive use than recommended by the planning board; rather the matter shall be remanded with instructions. The review shall be limited to the record below. Only a party of record to the proceedings before the planning board or representative shall be afforded the right to address the board of county commissioners and only as to the correctness of the findings of fact or conclusions of law as based on the record. The board of county commissioners shall not hear testimony.

2. In the event the matter is remanded to the planning board, an additional quasi-judicial hearing for the purpose of hearing testimony and receiving evidence relevant to additional facts and clarification requested by the board of county commissioners, will be conducted by the planning board. Within 15 days of the hearing on remand, the planning board shall submit a supplemental

## Article 2 ADMINISTRATION

recommendation to the board of county commissioners for review in accordance with 1. above. When the supplemental recommendation is considered by the board of county commissioners, the entire record relating to the initial hearing and all supplemental hearings shall be presented to the board of county commissioners. Note: Re-notification to property owners within the 500-foot radius as well as the owner(s) of the property under consideration for change and those persons who testified or gave evidence at the initial hearing is required at least ten days prior to the hearing in accordance with section 2.08.02.D.1.b. for all remanded cases. Additionally, all persons who were furnished a copy of the original recommended order shall be furnished a copy of the supplemental order.

3. The planning staff shall provide the planning board with the resumes of all final action taken by the board of county commissioners on rezoning requests.

4. Exemption from Administrative Procedures Act. Escambia County is not an agency for the purposes of F.S. ch. 120. Therefore, the Administrative Procedures Act is not applicable to these proceedings.

### F. *Decisions by the board of county commissioners shall be final; subsequent application.*

1. *Final decisions.* Actions by the board of county commissioners adopting or rejecting the recommended order of the planning board for rezoning of particular parcels shall be final. Thereafter, if a rezoning is approved, the board of county commissioners shall amend the zoning map to reflect its final decision in accordance with the ordinance enactment procedures set forth in section 2.08.03. Any party who wishes to seek judicial review of the decision of the board of county commissioners must do so within 30 days of the date the board of county commissioners approves or rejects the recommended order of the hearing officer. Written notice of the filing of any such petition for judicial review shall promptly be provided by the planning staff to all property owners with 500 feet of the property for which the rezoning was sought.

2. *Limitation on subsequent application.* Whenever an application for rezoning shall be denied by the board of county commissioners, no new application for identical action on the same parcel shall be accepted for consideration within a period of 180 days of the decision of denial.

### 2.08.03. *Actual zoning map amendments.*

A. *Applicant-initiated zoning map amendments.* Without regard to whether the underlying rezoning decision requires a quasi-judicial hearing, amendments to the actual zoning map initiated by persons other than the county shall be enacted according to the procedures established by F.S. § 125.66(2) and as amended.

B. *County-initiated zoning map amendments involving less than ten contiguous acres.* Without regard to whether the underlying rezoning decision requires a quasi-judicial hearing, amendments to the actual zoning map initiated by the county and involving less than ten contiguous acres of land shall be enacted according to the procedures established by F.S. § 125.66(4)(a) and as amended.

## **Article 2 ADMINISTRATION**

C. *County-initiated zoning map amendments involving ten contiguous acres or more.* Without regard to whether the underlying rezoning decision requires a quasi-judicial hearing, actual zoning map amendments initiated by the county and involving ten or more contiguous acres of land shall be enacted according to the requirements of F.S. § 125.66(4)(b) and as amended.

### *2.08.04. Text amendments to this Code other than changes to the zoning map.*

A. Any ordinance amending the provisions of this Land Development Code that does not change the actual list of permitted, conditional, or prohibited uses within a zoning category shall be enacted according to the procedures of F.S. § 125.66(2) and as amended and according to the applicable procedural requirements set forth in chapters 2 and 4 of the Escambia County Comprehensive Plan.

B. Any ordinance or resolution that changes the actual list of permitted, conditional, or prohibited uses within a zoning category shall be enacted according to the procedures of F.S. § 125.66(4)(b) and as amended and according to the applicable procedural requirements set forth in chapters 2 and 4 of the Escambia County Comprehensive Plan.

(Ord. No. 96-42, § 1, 10-24-1996; Ord. No. 97-51, § 1, 10-2-1997; Ord. No. 98-53, § 1, 12-3-1998; Ord. No. 2000-6, § 1, 2-10-2000; Ord. No. 2005-45, § 1, 10-6-2005; Ord. No. 2007-5, § 1, 2-1-2007; Ord. No. 2007-37, § 1, 7-19-2007)

### **2.09.00. Comprehensive plan amendments.**

Pursuant to Florida law, the Escambia County Comprehensive Plan may be amended only two times per calendar year. However, several amendments may be accomplished during each of the twice yearly opportunities.

*2.09.01. Timing of amendments.* The BCC will establish dates for consideration of proposed plan amendments and such dates shall be determined based upon the needs of Escambia County, applicants for development approval and requirements of law.

*2.09.02. Procedures.* Applications for Comprehensive Plan amendments shall be made on forms provided by the department of planning and zoning. Applications must be submitted at least 30 days in advance of the first scheduled public hearing to consider Comprehensive Plan amendments.

A. *Local planning agency consideration.* The Escambia County Planning Board serves as the local planning agency. Prior to any plan amendment being proposed or adopted by the BCC, the LPA shall conduct a public hearing and promulgate recommendations on each plan amendment so considered.

B. *Board of county commissioners action.* Upon receipt of the LPA recommendation, the BCC may propose Comprehensive Plan amendments and develop such amendments with the requisite data and analysis pursuant to F.S. § 163.3184 and pursuant to relevant Florida Administrative Code provisions (i.e., F.A.C. ch. 9J-11).

C. *Department of community affairs review.* Pursuant to Florida Statutes, the BCC will transmit proposed plan amendments to the Florida Department of Community Affairs (DCA) to allow opportunity for review and comment prior to adopting said amendments. Upon receipt of DCA comments, if any, on proposed amendments, the BCC may proceed with the adoption process as defined in F.S. § 163.3184.

## **Article 2 ADMINISTRATION**

*2.09.03. Public participation.* The public participation procedures defined and described in chapter 4 of the adopted Escambia County Comprehensive Plan (Ordinance No. 93-20) shall be followed.

*2.09.04. Exceptions to twice-per-calendar-year limitation.* Pursuant to F.S. § 163.3184 and the administrative rules implementing said statute (i.e., F.A.C. ch. 9J-11), small scale amendments can be proposed and adopted without regard to the twice-per-calendar-year limitation on the adoption of Comprehensive Plan amendments. The rule and statute provisions shall be followed if the LPA and BCC agree to propose and/or adopt a small scale amendment.

A. *Application required.* Application for consideration for a small scale amendment shall be submitted pursuant to section 2.09.02 above.

B. *Procedural considerations.* The state laws and rules governing small scale amendments provide several methods for processing such amendments by local and state agencies. The decision as to which process, if any, to be used with any particular small scale amendment rests with the BCC. The LPA will recommend the most appropriate process and procedural path for each small scale amendment and such recommendation will be based upon input received from the applicant, county staff, reviewing agency personnel, or combination thereof.

*2.09.05. Responsibility for costs and expenses.* The applicant shall be responsible for any and all costs associated with the preparation of any plan amendment request. However, ultimate control of the request, including form and format, will be at the direction of the county government. The plan amendment requests must include the necessary data and analysis, supporting information, graphics products, narratives, reproduction and sufficient copies of reports, consistency analysis and the like. In addition, the applicant or his agent will be responsible for the preparation of any remedial reports or analyses which may be required by the county or the DCA. Advertising the required public hearings is included as an expense to the applicant, but meeting space, utilities, staff attendance and routine overhead are not the responsibility of the applicant.

(Ord. No. 2005-45, § 1, 10-6-2005)

### **2.10.00. Modifications and adjustments of district regulations.**

The regulations set forth in this section modify, adjust or supplement the district regulations appearing in article 6 of this Code.

#### *2.10.01. General modifications.*

A. *Yard encroachment including roof overhang.* Every part of a required yard shall be open from its lowest point to the sky unobstructed, except for the ordinary projection of sills, belt courses, cornices, buttresses, awnings, eaves and similar features approved by the county BOA. None of the above projections shall project into any yard more than 24 inches, except roof overhangs and awnings which may extend 48 inches into any yard provided the respective yard is at least ten feet in depth. In no case shall a structure project into a public right-of-way without prior approval by the BCC.

B. *Projecting fire escapes, stairways, balconies, chimneys or flues.* Open or enclosed fire escapes, outside stairways and balconies projecting into a minimum yard not more than 3 1/2 feet and the ordinary

## Article 2 ADMINISTRATION

projections of chimneys and flues may be permitted by the building official where the same do not obstruct light and ventilation.

C. *Distance between buildings on same lot.* As specified in the zoning district regulations, more than one dwelling may be located upon a lot provided that the horizontal open space between such buildings measured at the closest point shall not be less than twice the side yard required in the district in which such uses are located.

D. *Use of lots less than required size.* Any lot of record as of February 8, 1996, that contains less land area depth or width than is required in the district in which such lot is located, may be used for the uses permitted in such district.

E. *Sanitary waste disposal.* Whenever a lot is not served by an approved sewer, there must be provided such open space as required by F.A.C. ch. 10-D(6) (septic tank regulations) of the Florida Administrative Code and as administered by the Escambia County Health Unit for septic tanks with flows of up to 5,000 gallons per day and drainage field to serve the uses erected on such lot. Such sanitary installation may be located in a front, side or rear yard but not closer than five feet to any lot line.

F. *Density rounding.* When the calculated density for a parcel of land results in a fraction greater than or equal to 0.5, rounding to the next whole number shall be allowed up to a maximum of one additional dwelling unit per parcel.

### 2.10.02. Structure height modifications.

A. *Agricultural structures.* Structures associated with agricultural uses, such as cotton gins, granaries, silos, windmills, and the like, may exceed the height limits of the respective zones, provided they are not in conflict with any height regulations established by article 11, airport environs, including flight angles of any airport.

B. *Other structures.* All other structures exceeding zoning district established height regulations are considered conditional uses, regardless of the land use category or zoning district wherein the proposed use will be located. This includes water towers, fire towers, commercial communication towers, etc. Public communication towers are exempt. See section 7.18.00 for performance standards governing commercial communication towers.

C. *Appurtenant structures.* The height regulations as prescribed in this section shall not apply to belfries, chimneys, church spires, cooling towers, elevator bulkheads, flag poles, television reception antennae, roof-mounted tanks, mechanical equipment rooms or similar appurtenances that (a) do not separately or in combination with other rooftop structures exceed ten percent of the horizontal roof area and (b) do not exceed otherwise applicable height limitations, subject to article 11, Height Restrictions, by more than 15 feet or ten percent of actual building height, whichever is greater.

### 2.10.03. Front yard modifications.

A. *Lots with double frontage.* Every such lot, including a corner lot, shall have a front yard, so designated by the owner.

## Article 2 ADMINISTRATION

B. *Corner lots.* There shall be a front yard on one street side of a corner lot; provided however, that the buildable width of such lot shall not be reduced to less than 30 feet; provided further that no accessory building on a corner lot shall project beyond the normal front yard setback line on any street, regardless of which of the two yards has been designated the front yard.

C. *Encroachment of porch or terrace.* An open, unenclosed and uncovered paved terrace or a covered porch may project into the required front yard for a distance of not more than ten feet.

D. *Encroachment by gas pumps and pump islands.* Filling station pumps and pump islands may be located within a front yard provided they are not less than 20 feet from any street line.

### 2.10.04. Rear yard modifications.

A. *Lots abutting an alley.* When a lot abuts upon an alley, one-half of the alley may be considered as part of the required rear yard.

B. *Corner lots.* For the purpose of applying rear yard modifications as set forth in this section, the rear yard shall be the area of the parcel opposite the front on lots with four sides. The bureau chief, development services, or designee thereof, shall determine the rear yard for all other lots.

### 2.10.05. Side yard modifications.

A

2.10.06. *Setback distance regulations.* Except as provided elsewhere in this Code, no structure shall be erected, reconstructed or expanded within the setback (required yard) area. The following standards shall apply:

A. *Setbacks in subdivisions.* Approved subdivision plats shall indicate the required setbacks per article 6.

B. *Setbacks in deed covenants or deed restrictions.* Setback distances recorded in deed covenants or deed restrictions are not enforceable under this section. Since they are not considered public policy, they are regarded as private limitations enforceable only through civil action by the original subdivider of the land, any grantee against any other grantee, and/or a homeowner's association.

2.10.07. *Accessory buildings and structures.* Accessory buildings or structures must observe the following conditions:

A. *Interior lot line setback.* Any accessory structure may be constructed no closer than five feet from the interior side or rear lot line.

B. *Guest residence setback.* Except as provided below in paragraph F. or section 6.03.01.E., no accessory building used for living quarters shall be located in any front yard, or any required side or required rear yard and shall not be within 60 feet of a front property line.

C. *Corner lot line setback.* Whenever a side or rear lot line is also a street line (typically, a corner lot), the required yard for accessory buildings shall be the same as for main buildings.

## **Article 2 ADMINISTRATION**

D. *Enclosures for swimming pools.* Screened enclosures for swimming pools may be erected no closer than five feet from the rear or side property line. No pool enclosure shall be allowed on any easement unless authorized by the holder(s) of such easement through an encroachment agreement.

E. *Accessory structure distance from house.* This distance is specified in the building code.

F. *Large lot.* Accessory buildings or a guest residence on lots ten acres or greater in size, may be located in a front yard or any nonrequired yard of the principal dwelling but shall not be within 60 feet of a front property line. No more than one guest residence is allowed per lot.

G. *Accessory buildings or structures.* Accessory buildings or structures may only be located in any side or rear yard.

(Ord. No. 97-51, § 1, 10-2-1997; Ord. No. 98-53, § 1, 12-3-1998; Ord. No. 2000-28, § 1, 7-6-2000; Ord. No. 2000-44, § 2, 10-5-2000; Ord. No. 2004-9, § 7, 2-5-2004; Ord. No. 2004-13, § 1, 3-4-2004; Ord. No. 2005-45, § 1, 10-6-2005; Ord. No. 2006-22, § 1, 3-2-2006; Ord. No. 2007-44, § 1, 8-16-2007; Ord. No. 2008-46, § 1, 8-7-2008)

### **2.11.00. Vested rights for land use.**

*2.11.01. Intent.* It is the intent of this section to provide a mechanism for a determination of vested rights for land use to those property owners who feel that they may have acquired vested rights for land use through official county action.

*2.11.02. Application.* An application for determination of vested rights for land use shall be submitted to the director of planning and zoning 1) no later than 12 months following any act or omission on the part of the county which the owner discovers and forms the basis for vested rights for land use, or 2) no later than 12 months following written notification to the owner of the need to apply for a determination of vested rights for land use, whichever occurs sooner.

An administrative fee as established by the board of county commissioners' resolution shall be charged for each application submitted. A portion of the administrative fee shall be used by the county engineer to review whether the development in question meets current stormwater and traffic concurrency standards in accordance with article 5 of the Land Development Code. The director shall within five working days determine whether the application for determination of vested rights for land use is facially complete and timely. If the application is facially complete and timely, the director shall refer the matter to the vested rights committee. The vested rights committee shall be composed of the county engineer, the director of planning and zoning and an attorney from the office of the county attorney, other than the attorney representing the board of county commissioners. If the application is facially incomplete or untimely, the director of planning and zoning shall notify the owner in writing of the deficiencies. The director of planning and zoning shall take no further steps to process the application until the deficiencies have been remedied.

*2.11.03. Recommendation of the vested rights committee.* The vested rights committee shall publish notice of its meetings and post a sign on the subject property in advance of its meeting. The vested rights committee shall review owner's requests and make recommendations of approval, denial or approval with conditions, of the applications to the board of county commissioners. Based on the review and evaluation of the application and other information

## **Article 2 ADMINISTRATION**

available, the committee shall prepare a written report, which shall include findings of fact with respect to each relevant criteria identified in section 2.11.06, any conditions that may be attached, and any legal issues that will need to be resolved. The vested rights committee's recommendations shall be in writing and shall be signed by the chair of the committee, which shall be the director of planning and zoning. The committee may prepare procedural rules to govern its proceedings.

*2.11.04. Review of vested rights determination by the board of county commissioners.* The vested rights committee shall forward its recommendation to the board of county commissioners for review within 30 days. The procedural rules relating to quasi-judicial hearings, as set forth in resolutions 96-34 and 97-189 and Florida law as applicable, shall apply to vested rights proceedings before the board of county commissioners. Notice of this meeting shall be posted on the property and mailed to residents residing within 500 feet of the property. The owner shall be responsible for postage and research fees to identify such residents.

*2.11.05. Issuance of a certificate of vested rights for land use.* The final decision of the board of county commissioners shall be in writing and shall include findings of fact, conclusions of law and a determination denying, approving or approving with conditions, the application for vested rights. If the board of county commissioners approves or approves with conditions, the application for vested rights, its decision shall be titled a certificate of vested rights for land use and recorded by the owner in the public records of Escambia County, Florida.

*2.11.06. Criteria for vested rights determination.*

A. An owner shall be entitled to a determination of vested rights only if through substantial competent evidence it can be established that the proposed use of the property meets the concurrency provisions of article 5 and in addition one of the following criteria has been met:

1. The proposed use was authorized pursuant to a county development order, or equivalent, issued on or before the effective date of this Code, or a pertinent amendment thereto, and the development has commenced and is continuing in good faith. In a claim based upon this criterion, the owner must produce evidence of actions and accomplishments that substantiate timely and lawful progression towards the completion of the intentions and plans documented in the original order, or equivalent. In a claim based upon this criterion, the right to which the owner may be vested is a continuation of the original order, or equivalent.
2. The owner is determined to have acquired rights due to good faith reliance on an act of commission or omission of the county which has caused the owner to make such a substantial change in position or to incur such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights acquired. In a claim based upon this criterion, the owner must document, and the county must verify, the obligations and expenses that are in jeopardy. The owner must produce evidence of actions and accomplishments that substantiate timely and lawful progression towards the completion of the intentions and plans that have been jeopardized. Evidence including, but not limited to, that which demonstrates that such activity has not progressed in such a manner may be sufficient to negate a finding of good faith on the part of the owner and therefore invalidate the claim to vested rights.

## **Article 2 ADMINISTRATION**

B. If a vested right for land use involving an unrecorded subdivision is found to exist, a deed for the individual lot involved shall be recorded by the owner prior to the issuance of a permit or other development approval.

C. Where an individual owner of a lot in an unrecorded subdivision on file with Escambia County, other than the developer, cannot obtain a building permit because the lot size is not sufficient under the current Land Development Code regulations, the director of planning and zoning is hereby authorized to grant an administrative variance to allow for the placement of a residential dwelling unit on said lot if the individual owner presents evidence he or she was unaware at the time of purchase that lot size or road drainage access was not sufficient. Denial of such requests may be appealed to the board of adjustment. The administrative fee set forth in section 2.11.02, above is hereby waived for such individual lot owners.

*2.11.07. Limitation on vested rights.* A determination of vested rights shall expire and be null and void unless construction of improvements in a subdivision, if any, are commenced pursuant to a development order within 18 months after the issuance of the determination of vested rights for land use by the board of county commissioners. The 18-month time limitation on the validity of vested rights shall be extended by staff for six months based on evidence of the owner's intent to commence development within that time period. Otherwise, the owner shall be required to seek a variance or comply with current code requirements. Notwithstanding the foregoing, the 18-month time limitation on the determination of vested rights for land use may be temporarily suspended or halted for any time and during any period within which development is delayed solely by acts of the county, state or federal governments, natural disasters, war and the like as it pertains to levels of service issued, upon written notice to the director of planning and zoning. This 18-month limitation on vested rights shall not, or is not intended to, prohibit the issuance of a building permit for a single-family residence in an unrecorded subdivision that has received vested rights determination just because construction of the single-family residence has not begun within 18 months.

*2.11.08.* Any party aggrieved by the vested rights determination made by the board of county commissioners may appeal such decision by filing a petition for certiorari in the circuit court in accordance with the Florida Rules of Appellate Procedure for the review of quasi-judicial decisions of a local government or other available legal remedies. Notwithstanding the foregoing, nothing herein shall prevent the owner from pursuing other available administrative remedies.

(Ord. No. 99-44, § 1, 9-16-1999; Ord. No. 2000-51, § 1, 11-2-2000; Ord. No. 2005-45, § 1, 10-6-2005)

### **2.12.00. Planning board.**

This section is enacted pursuant to, and in accordance with, the provisions of F.S. § 163.3161 et seq., Local Government Comprehensive Planning and Land Development Regulation Act.

*2.12.01. Authority.* Pursuant to, and in accordance with, F.S. § 163.3174 et seq. and section 2.01 of the Escambia County Comprehensive Plan, the planning board is hereby established and designated as the "local planning agency" (LPA) for the total unincorporated area under the jurisdiction of the board of county commissioners (BCC).

*2.12.02. Membership.* The planning board shall consist of seven voting members appointed by the BCC, all of whom must reside within Escambia County and two ex officio, nonvoting members. The planning board shall also include

## **Article 2 ADMINISTRATION**

one ex officio member appointed by the school board and one appointed by the commanding officers of NAS Pensacola and NAS Whiting Field pursuant to F.S. § 163.3175(5) to act on behalf of all military installations within Escambia County. Each of the five commissioners shall appoint one planning board member, preferably from among constituents residing in his or her respective district, and the BCC as a whole shall nominate two "at large" members. All seven voting members must be approved by a majority vote of the BCC. Each planning board member shall furnish a resume or curriculum vitae to the county administrator and all the commissioners. No voting member of the planning board shall be a paid or elected employee of the county.

### *2.12.03. Term of office; removal from office and vacancies.*

A. Each member of the planning board shall be appointed to serve for a period of four years, concurrent with the term of office of their appointing county commissioner, or thereafter until his or her successor is appointed, and each appointment shall be made to ensure staggered terms, except in the case of the two "at large" members who shall serve two-year staggered terms. The nonvoting school board member shall serve until he or she resigns or is removed by the district school board. The nonvoting military member shall serve until replaced by agreement of the commanding officers of NAS Pensacola and NAS Whiting Field (see Comprehensive Plan Policy 7.A.9.8).

B. Any member of the planning board may be removed from office during his/her term by the appointing BCC member. In the case of the two "at large" members, any member may be removed by a majority vote of the BCC. The planning board chair shall notify the BCC in writing whenever a planning board member has missed four meetings within a 12-month period and outline the reasons for the absences. The BCC shall then remove and replace said member if the absences were not beyond the control of the appointee. The school board may remove for any reason or at any time the nonvoting member appointed by the school board. Any vacancy occurring during the unexpired term of office of any voting member, or a vacancy of the nonvoting member, shall be filled as set forth in section 2.12.02 for the balance of the term.

### *2.12.04. Officers; staff technical assistance.*

A. The planning board shall elect a chair and vice-chair from among its members. Terms of these offices shall be for two years, with eligibility for reelection.

B. Designated staff of the planning and zoning department shall prepare agendas, publish notices, arrange meetings and distribute minutes of the proceedings as necessary to assist the planning board. The planning board shall be authorized to call upon any department of the county at any time for information and advice that, in the board's opinion, will aid in the efficiency of its work. Upon approval of such request by the county administrator, it shall be the duty of each department of the county to furnish such information and advice promptly. A reasonable amount of expenses such as professional services, purchase of maps and legal advertisements, and so forth shall be paid by the county upon the approval of the county administrator. However, no services may be contracted for without prior approval of the board of county commissioners. The county attorney, or his/her designee, shall act as legal advisor to the planning board.

### *2.12.05. Rules of procedure and meetings; records.*

A. The planning board shall adopt rules of procedure for the transaction of its business. The planning board shall hold regular meetings. Special meetings may be heard at such times as the planning board may

## Article 2 ADMINISTRATION

determine, or at the call of the chair thereof, or the director of the planning and zoning department, for the consideration of business before the planning board. All regular and special meetings of the planning board shall be open to the public.

B. The planning board shall keep minutes of its proceedings, showing the vote of each member upon each question considered, or, if absent or failing to vote, indicating such fact, and shall keep records of its examination and other official actions, all of which shall be filed in the office of the clerk to the planning board.

*2.12.06. Quorum and vote required.* Four of the seven voting members of the planning board shall constitute a quorum, and the vote of a majority of the quorum shall be necessary for any action thereof.

*2.12.07. Duties.* It shall be the continuing duty of the planning board to be currently informed and knowledgeable of the conditions and development of the county and to make studies and recommendations relating to county growth management, either initiated by the planning board, the county administrator, or the BCC. The planning board shall hear, give consideration to, and make recommendations to the BCC on the following matters in accordance with the requirements of the applicable county ordinance or state regulation:

A. The comprehensive planning program, including preparation of the Comprehensive Plan or elements or positions thereof for the county.

1. Coordination of such Comprehensive Plan or elements or portions thereof with the comprehensive plans of other appropriate city/town governments and the state.
2. The monitoring of the effectiveness and status of the Comprehensive Plan adopted by the BCC.
3. Changes in the Comprehensive Plan as may be required from time to time.
4. Text change to county ordinances designed to promote orderly development as set forth in the Comprehensive Plan.
5. Rezoning, both legislative and quasi-judicial.

B. An application by any person, including the county, proposing the enactment, amendment, or repeal of a land development regulation shall be made to the director of the planning and zoning department on forms provided by the department. Completed applications will be forwarded to the planning board for consideration at a public meeting, and the board shall make a recommendation to the BCC. The meaning of land development regulation, as stated in this subsection, does not include a quasi-judicial action on a rezoning request.

C. Applications on the following land use matters:

1. Proposed county-initiated legislative rezoning of an area of specifically designated properties that does not require a quasi-judicial hearing.
2. Proposed quasi-judicial rezoning, regardless of initiating party.
3. Proposed amendments to the overall zoning ordinance (LDC).

## Article 2 ADMINISTRATION

4. Interpret provisions of the LDC for clarification or determination of meaning and intent if questions should arise regarding the meaning (see section 2.07.01).
5. Planned unit developments (PUD).

(Ord. No. 2004-9, § 8, 2-5-2004; Ord. No. 2005-17, § 1, 6-2-2005; Ord. No. 2005-45, § 1, 10-6-2005)

### 2.13.00. Development review.

#### 2.13.01. Development review committee (DRC).

A. *Authority and duties.* The development review committee is herein established to consider development matters properly before it as prescribed by the provisions of the Code. The DRC is authorized to review, consider, and determine the sufficiency of applications for master plan, site plan, preliminary plat, final plat, planned unit development, and other development plan approval to demonstrate compliance with the requirements of the Code and Comprehensive Plan. The DRC is further authorized to make final determinations on specific plan types, and recommendations to administrative authorities making final determinations on other plan types, to approve, approve with conditions, or deny applications for such plans. The DRC may request other county officials and other agencies to comment on applications and participate in the review process, as it deems appropriate.

B. *Committee members.*

1. *Designation.* The DRC shall consist of the director of the planning and zoning department or his or her designee as well as those relevant ex officio members or special subject matter members as designated elsewhere in this Code (see section 11.01.02.C). Technical plan reviewers will act as staff to the DRC. Additionally, the county administrator or his designee shall approve any designees.
2. *Ex officio members.* The DRC may select advisory-only ex officio members from other county departments and/or noncounty agencies deemed relevant to specific development applications to be consulted on an as-needed basis.

C. *Staff and resources.* The planning and zoning department shall be the staff for the DRC and shall prepare agendas and coordinate the development review process as necessary to assist the DRC. The DRC shall call upon the technical review staff of the various departments and agencies for information and recommendations that will aid in the effectiveness of its work. The county attorney's office shall provide interpretations on legal issues for the DRC.

D. *Meetings.* Meetings of the DRC shall be consistent with Florida Statutes; specifically, that the meetings be open and readily accessible to the public, that reasonable notice of the meetings be given, and that minutes of the meetings be taken.

1. *Schedule and agenda.* Meetings of the DRC shall be held as scheduled by the DRC coordinator to address matters properly before the committee. A meeting agenda shall be prepared in advance of each meeting and shall set a meeting location and time certain with due public notice.

## Article 2 ADMINISTRATION

2. *Procedures.* The DRC shall adopt written procedures for the transaction of its business consistent with the development plan review provisions herein and any other applicable county or state requirements.

3. *Continuance.* The DRC shall have authority to postpone consideration of a development plan application, as it deems necessary, unless the applicant has requested in writing that there be no continuance. However, if the DRC postpones consideration of any matter, it shall announce a time certain at which it shall be reconsidered. If an applicant requests consideration of his application to be postponed, the applicant shall be responsible for rescheduling action by the DRC within the remaining effective period of the application.

4. *Public record.* Minutes of DRC meetings need not be verbatim, but at a minimum shall provide a written record of the meeting time, date, and location, confirmation of public notification, participants, and official actions taken by the committee. Meeting minutes, development plan applications, and all other records of the DRC shall be maintained through the planning and zoning department and shall be made available for inspection by the public, upon a public records request, during normal business hours.

2.13.02. *Development plan review.* For all development plans requiring review and approval through the development review committee as prescribed in article 4, the procedures and requirements of this subsection shall be followed. The level of final approving authority and extent of required public notice may vary among development plan types according to plan complexity, impact upon adjoining property or public systems, or other factors affecting sufficiency of review or public participation. Where the procedures of this subsection may differ with provisions of article 4, these procedures shall govern.

A. *Application.* All requests for review and approval of development plans through the DRC shall be submitted in application, together with the prescribed application forms, documents, and fees, to the planning and zoning department (the department) according to its established submittal checklists, procedures, and schedules. If the department determines through an initial completeness review that the application submittal does not contain the prescribed items, or review fees are not paid, the application shall not be accepted. Accepted submittals shall be distributed to reviewing departments for subsequent staff evaluation, and the department shall establish an application submittal deadline as the basis for timely completion of such evaluation.

1. *Plan requirements.* Clarity of presentation and documentation of compliance with the requirements of the Code and Comprehensive Plan shall be the principal requirement of development plans.

a. *Content and format.* A development plan shall accurately and legibly provide the information required by the provisions of the Code as applicable to the plan type, and according to the formats established by the reviewing departments for such plans.

b. *Certification.* All required engineering designs shall be prepared by a professional engineer licensed in the State of Florida pursuant to F.S. chs. 471 and 472, as amended. Additionally, such designs shall require an appropriate seal and signature on the subject plans.

## Article 2 ADMINISTRATION

2. *Application forms and authorizations.* Development plan review application submittals shall utilize the forms prescribed by the department and include proof of current site ownership. A developer other than the current owner shall provide proof of owner authorization through an executed sales agreement or similar documentation. Additionally, if a person other than the developer executes the plan review application, a written power of attorney or agent's affidavit authorizing that person to sign the application shall be attached. Copies of plan application forms and application submittal checklists shall be available directly from the department or via the Internet through links at the Escambia County home page.

3. *Application fees.* Fees in amounts specified by the board of county commissioners shall be required for development plan review and shall be provided by the applicant at the time of application submittal. A schedule of such fees shall be maintained in the department.

4. *Effective period of application.* A development plan application shall be valid for a period of one year from the initial date of submittal to the county. An application shall automatically expire and become null and void if, within the effective period, the applicant has not submitted to the department a final plan resolving any remaining review issues, or a written request for a final determination on the application. However, upon written request and documentation by an applicant that resolution of identified review issues is continuing in good faith, the department may, in writing, grant one 6-month extension to an application's effective period. These provisions shall apply to all pending applications, regardless of the date of submittal.

5. *Reapplication.* If the final determination of a development plan application submittal is denial, or the application has expired, and if the applicant chooses to proceed with development review, a new application shall be submitted for review and approval subject to the Code and Comprehensive Plan provisions, fees, and schedules in effect at the time of the new application.

B. *Public notification.* Specific public notification requirements may vary by development plan type as prescribed in article 4, but meetings of the DRC shall be noticed in advance through legal advertisements published in a local newspaper of general circulation. Meeting agendas shall be available from the department and through the Internet on the Escambia County home page at least two days prior to the meetings. Development plans requiring a subsequent review and final determination by the planning board and/or the BCC shall provide public notification consistent with the established procedures for such review.

C. *Plan review criteria.* The principle issues considered during development plan review and approval are outlined herein. However, applicability varies among plan types, and to avoid potential plan resubmittal and additional review fees, applicants shall refer to the specific requirements and standards within the Code and Comprehensive Plan and substantially resolve issues identified therein before plan application is made. If uncertainty exists, the applicant shall seek clarification from appropriate county staff through individual contact or a scheduled preapplication conference with technical plan reviewers. In applying the provisions of the Code, said provisions shall be considered minimum provisions.

1. *Location and land use.* The provisions of the established zoning districts, future land use categories, and special overlays or zones shall collectively be the principal guide in determining the conformance of a proposed use within a specific site. These provisions include, but are not limited

## Article 2 ADMINISTRATION

to, intent and purpose of a district, category, overlay and/or zone; residential density and/or intensity of nonresidential development; permitted, prohibited, and conditional uses; and minimum lot area and/or width, minimum yards, maximum impervious cover, and other site and building requirements. Primary references include articles 6, 7, 11, 12, and 13 of the Code and chapter 7 of the Comprehensive Plan.

2. *Concurrency and provision of adequate public services.* Stormwater drainage, sanitary sewer, potable water, mass transit, solid waste, recreation and open space, and traffic have established level of service (LOS) standards that shall be maintained concurrently with a development's impacts on those systems, facilities, and services. In addition to improvements necessary to maintain LOS standards, fire protection and other infrastructure needs shall be addressed. Primary references include articles 5 and 7 of the Code.

3. *Streets, access, internal circulation, and parking.* Streets, driveways, and areas for the internal circulation and parking of vehicles shall be located, designed, and controlled so as to provide for safe and convenient access from adjoining streets and accommodation of on site needs. Among factors to be considered are the character and location of existing and proposed streets, driveways, and drive aisles; the number, size, arrangement, and accessibility of parking stalls, loading areas, and pedestrian accesses; and the means of access to buildings for fire-fighting apparatus and other emergency vehicles. Primary references include articles 4 and 7 of the Code.

4. *Stormwater management.* On-site facilities shall be provided to limit stormwater run-off volumes, rates, and timing from proposed development to that which would have been expected from the development site under natural or predeveloped conditions for critical duration design storms. The site drainage plan shall include practical means of reducing the amount of pollution generated by the project to a level compatible with current Florida water quality standards. The plan shall also document maintenance of drainage facilities. All stormwater management plans shall be designed, signed, and sealed by a Florida licensed professional engineer and approved by the county engineer. Additionally, construction in flood prone areas shall comply with county flood hazard prevention regulations. Primary references include articles 7 and 10 of the Code.

5. *Landscaping, open space, off-site impacts, and signs.* Landscaping shall be addressed as applicable so as to utilize existing trees and other vegetation, limit stormwater run-off, prevent erosion, buffer between certain adjoining uses, and for other purposes established by the Code. Open space shall be provided so as to allow adequate light and air, facilitate surface water drainage and aquifer recharge, provide sufficient separation between buildings, uses, and site boundaries, and for other purposes established by the Code. In addition to landscaping and open space, structural screening or enclosure of materials and/or activities may be required to limit off-site impacts. Typical sign limitations include height, area, location, and quantity. Primary references include articles 7 and 8 of the Code.

6. *Wetland, aquifer, and other environmental impacts.* Adverse impacts to wetlands and other environmentally sensitive lands shall be avoided or otherwise minimized, and shall be mitigated when avoidance cannot be achieved through development modifications. The presence on site of facilities or materials that may endanger the sand and gravel aquifer or impair public potable water

## Article 2 ADMINISTRATION

supply wells are limited or prohibited, and shall be addressed as applicable. For sites on Santa Rosa Island or Perdido Key, the prohibition of importation, transfer, and use of materials discoloring to barrier island white sands shall be addressed. Primary references include articles 7 and 12 of the Code and chapter 11 of the Comprehensive Plan.

7. *Other reviews, approvals and determinations.* Various uses, conditions, or characteristics of proposed development may require documentation of other approvals or determinations. As prescribed in article 4, a development plan may require a preapplication conference with technical review staff and/or master plan review and approval through the DRC. Additional nonDRC county administrative approvals, as described within this article, may also be required; including, but not limited to, variance, conditional use, rezoning, and Comprehensive Plan amendment. Other noncounty approvals may include, but are not limited to, stormwater discharge, wetland fill, and access to state rights-of-way.

D. *Staff evaluation.* Within ten workdays after the department's established development plan application submittal deadline, technical plan reviewers, as staff to the DRC, shall evaluate the plan application and issue written comments addressing any deficiencies or changes needed to bring the plans into conformance with applicable development requirements. The review comments shall document evaluation of the plan application and provide the basis of staff recommendations to the DRC in any subsequent action on the application, but they shall not constitute final approval or denial of the proposed development. Additionally, as recommendations only, completeness review and technical review comments shall not be subject to appeal as administrative decisions unless and until they are included in a development plan final determination as described herein below. Review comments shall remain valid for the effective period of the application as prescribed herein, but no longer.

1. *Incomplete application.* If a reviewing department determines that a plan application submittal is incomplete with regard to information necessary to determine plan compliance with the requirements of the Code and Comprehensive Plan, the applicant shall be informed in writing of the deficiencies and required to address them through resubmittal prior to any further review.

2. *Complete application.* Upon determination by the reviewing departments that a plan application submittal is complete, the departments shall proceed with technical review of the plan.

E. *Applicant response.* Following the issuance of development plan application review comments, and within the effective period of the application, the applicant shall be responsible for obtaining the comments and determining any subsequent action on the application. To obtain a final determination on the development plan the applicant shall, in writing, either request that the unrevised plan and staff review comments be forwarded to the DRC for action, or request that no action be taken by the DRC until the applicant resolves any issues identified by reviewing staff and submits a revised final plan. Both options result in a determination for plan approval, approval with conditions, or denial by the DRC as described herein. The applicant may also decline a final determination by formally withdrawing the application or allowing its effective period, and thus the review comments, to expire.

F. *Final determination.*

## Article 2 ADMINISTRATION

1. *DRC review.* An application requesting development plan approval may only be considered by the DRC during a public meeting scheduled for such actions and for which sufficient public notification has been provided. Upon submittal and staff evaluation of a final plan, or other documented request for a final determination on a pending development plan application, the DRC shall conduct a timely review of the application according to its established procedures and schedules. During such review, the DRC shall evaluate the plan's compliance with the requirements of the Code and Comprehensive Plan. Based upon that evaluation, the committee shall make a final determination of plan approval, approval with conditions, or denial. However, for a plan requiring a subsequent review and final determination by the planning board and/or the BCC, the DRC shall make a recommendation to those boards for approval, approval with conditions, or denial of the plan.

A development plan requiring subsequent review may proceed to that review regardless of the DRC recommendation, but for a plan requiring a final determination by the DRC, the plan is denied by the committee if any member denies it. However, a DRC member may only withhold a recommendation or determination for approval, or approval with conditions, when a proposed development plan fails to meet a Code or Comprehensive Plan provision that the member is charged to administer. In matters regarding administration of Comprehensive Plan provisions, the chairman shall resolve any conflicts.

2. *Additional administrative review.* As prescribed in article 4 of the Code, certain development plans require planning board and/or BCC review and approval in addition to DRC review. For such a plan, upon recommendation by the DRC, and unless a written request is submitted by the applicant to delay or withhold further action on the application, the additional review shall be scheduled according to the established procedures and schedules of the boards.

3. *Approval.* For any development plan application approved, or approved with conditions, in a final determination by the approving authority, there shall be a continuing obligation to comply with the specifications of that plan and the terms and conditions of that approval.

a. *Development order issued.* Final development plan approval shall be documented on the approved plan and, with the exception of subdivision final plats, through the issuance of a written development order with applicable concurrency certification. At a minimum, a development order shall identify the development approved, the effective period of approval, and any conditions of the approval. Development orders shall be effective for periods as specified by plan type in article 4. An executed development order shall authorize the applicant, subject to the project description and conditions therein, to obtain the necessary permits to commence development activity or, for master plans and preliminary plats, make subsequent required plan submittals further detailing proposed improvements. Use other than that described, or conditions not satisfied, constitute a violation of the development order and render it void. Further, the development order does not constitute approval by any other authority.

b. *Approval termination and extension.* Development plan approval shall expire and become null and void if permitting or other prescribed action for the approved development

## Article 2 ADMINISTRATION

has not occurred within the effective period of the development order and no available extension has been applied for. If a development order expires or is terminated, any allocated concurrency is withdrawn, and if the applicant chooses to proceed with development of the project site, a new application shall be submitted for review and approval subject to the Code and Comprehensive Plan provisions at the time of the new application.

Any applicant issued a development order by final determination of the DRC may request an extension of the effective period from the board of adjustment consistent with the established procedures of the board and within the allowable time as prescribed in article 2. However, if the development order was issued through a quasi-judicial procedure, an extension may only be granted through a quasi-judicial procedure by the same approving authority according to the established procedures for such approval.

c. *Special approval conditions.* In addition to the standard conditions of development plan approval established in the Code, the approving authority may attach any reasonable conditions, limitations, or requirements deemed necessary by the reviewing departments, boards, or officials to address the impacts of the proposed development and carry out the requirements and purposes of the Code and the Comprehensive Plan. Such conditions may be documented directly on the development plans, within the development order, or as otherwise deemed appropriate by the approving authority.

d. *Approval subject to appeal.* Although development permits may be issued subsequent to the issuance of a development order, an approved development plan remains subject to challenge by appeal of any aggrieved party as described herein below. If such permits are issued, the permittee, not the county, shall bear any risk that the development plan approval may be reversed or modified, wholly or partly, upon appeal, and that the issued permits may be modified or revoked.

e. *Permits required.* The issuance of a development order alone does not authorize site development to commence. No site development activity may commence without the necessary permits as prescribed in article 4.

f. *Approval documents on site.* A copy of the development order and approved site development plans shall be maintained and readily available on site once any development activity has begun, including clearing and grading. The approved construction plans shall also be available on site once any construction has begun. Permits shall be posted as required by the issuing authorities.

g. *Plan modifications.* After a development order has been issued, it shall be unlawful to modify, amend, or otherwise deviate from its terms and conditions without first obtaining written authorization through the DRC departments. Approval of such modifications shall be requested in writing. Requests for modifications to engineering designs shall only be accepted from the engineer of record. The applicable review process for proposed modifications shall be determined based upon the provisions of article 4. Plan modifications

## Article 2 ADMINISTRATION

constructed without prior written approval shall be subject to the penalties and/or increased fees specified by the BCC. No certificate of occupancy or other final construction approval by the county shall be issued for unauthorized development plan modifications.

h. *Plan transferability.* In the event that ownership of the property receiving development plan approval is transferred, the development order and any extensions to its effective period shall be transferable, provided the new owner agrees in writing to be bound by all plan approval terms and conditions.

i. *Violations.* Failure to comply with the specifications, terms, and conditions of an approved development plan, including maintenance of all approved elements, shall be a violation of the Code and subject to enforcement and penalties as provided herein.

4. *Denial.* For each development plan application denied by the DRC in a final determination, the denying department(s) shall inform the applicant in writing of the basis of such determination. Denial by the planning board or the BCC shall be according to their findings as documented in the records of those boards.

5. *Appeal.* An aggrieved party may request a quasi-judicial hearing with the board of adjustment to appeal the approval, conditions, or denial of a development plan application. Such request shall be filed in application consistent with the established procedures of the BOA, following the final determination, and within the allowable appeal time as prescribed in article 2. Appeal of determinations made by the BOA or other administrative boards or officials shall be made according to the established procedures for such appeals. Not all approving authorities are required to make verbatim records of their meetings, and any person choosing to appeal any matter considered at such meetings shall independently ensure that a verbatim record of the proceeding is made should they wish to rely on such record.

6. *Impact and other fees.* Impact, site inspection, tree removal, site-specific survey, and other fees in amounts specified by the BCC shall be required as applicable to the proposed development and shall be provided by the applicant upon issuance of a development order. However, fees for any services rendered are due prior to and regardless of final plan approval or denial. A schedule of development fees shall be maintained in all departments where they are assessed.

(Ord. No. 2004-21, § 2, 5-6-2004; Ord. No. 2005-45, § 1, 10-6-2005; Ord. No. 2007-60, § 1, 10-4-2007)