

ARTICLE IV
Board of Zoning Appeals

§ 155-18. Membership; terms; removal from office; vacancies; compensation.

- A. The Board. The Board shall consist of five members appointed by the County Commissioners for staggered three-year terms or until a successor takes office. Each member shall be appointed to represent one of the five County Commissioner districts. Members may, after a public hearing, be removed from office by the County Commissioners for inefficiency, neglect of duty or malfeasance in office. The County Commissioners shall file a written statement of the reasons for such removal. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term by the County Commissioners. Members may serve with such compensation as the County Commissioners deem appropriate.
- B. Alternate member. The County Commissioners shall designate an alternate member to the Board of Appeals. Such member shall not be a member of the Planning Commission. The alternate member shall be empowered to sit on the Board in the absence of any member of the Board.

§ 155-19. Organization; quorum; adoption of rules and regulations; maintenance of records.

The Board shall elect a Chairman from its membership. The Chairman's term shall be one year, with eligibility for reelection. The Board shall have three members present and voting to conduct business. The Board shall adopt rules for the transaction of business, which shall be posted in the office of the Director of Planning and available to the public in written form, and shall keep a public record of its resolutions, transactions, testimony, findings and determinations. The Board shall be responsible for securing and releasing legal counsel within the limits of the budget approved by the County Commissioners.

§ 155-20. Powers and duties.

With respect to zoning matters, the Board of Appeals shall have the following powers and functions:

- A. Administrative review. To hear and decide appeals where it is alleged there is any error in any order, requirement, decision or determination in the administration of this chapter.
- B. Interpretation. Interpretation of district boundaries on official zoning maps. To determine, consistent with the provisions of § 155-31 of this chapter, the boundaries of districts.
- C. Special exceptions. To hear and decide only such special exceptions as the Board of Appeals is specifically authorized to pass on, according to the provisions of this chapter, and to decide such questions as are involved in determining whether special exceptions should be granted.
- (1) Findings. A special exception may be granted only when the Board of Appeals finds from a preponderance of the evidence of the record that the proposed use or structure:
- (a) Will be consistent with the County Comprehensive Plan;

- (b) Will be in harmony with the general character of the neighborhood, considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses;
 - (c) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or surrounding neighborhoods;
 - (d) Will cause no objectional noise, vibration, fumes, odors, dust, glare or physical activity;
 - (e) Will have no detrimental effect on vehicular or pedestrian traffic;
 - (f) Will not adversely affect the health, safety, security or general welfare of residents, workers or visitors in the area;
 - (g) Will not, in conjunction with existing development in the area and development permitted under existing zoning, overburden existing public services and facilities, including schools, police and fire protection, medical facilities, water, sanitary sewer, public roads, storm sewers, drainage and other public improvements; and
 - (h) Meets the definitions and specific standards set forth elsewhere in this chapter for such use.
- (2) Burden of proof. The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.
- (3) Conditions of approval. In granting a special exception, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this chapter.
- (4) Duration of approval; extension.
- (a) A decision of the Board granting a special exception shall be void two years from the date of approval unless the use is established or there is start of construction in accordance with the terms of the decision.
 - (b) The Board may extend the two-year time limit according to the following procedures:
 - [1] The applicant shall request the extension, in writing, prior to the expiration of the special exception and explaining in detail the steps that have been taken to obtain a building permit or establish the use.
 - [2] The applicant shall certify that a copy of the request for extension has been sent to all adjoining property owners and to the addresses given in the official record of the Board of Appeals case for persons who testified on the original application.
 - [3] The Board shall provide opportunity for oral argument if requested by any person receiving notice of the request.
 - [4] The Board may deny the request if it finds that changes have taken place in

the circumstances that led to the original decision to grant the special exception.

- (5) Transferability. Unless otherwise stipulated by the Board, a special exception transfers without formal or written confirmation to subsequent owners of a property, provided that the use is maintained in conformance with the conditions imposed by the Board when it granted the special exception.
 - (6) Reconstruction/replacement without Board action. Should a special exception granted by the Board of Appeals or approved upon the adoption of this chapter under § 155-70 of this chapter be destroyed or damaged by fire or other casualty, such use may be reconstructed, restored or replaced to the same degree that existed prior to the fire or the other casualty without further action of the Board.
 - (7) Modification or extension. Any modification, enlargement or extension of a special exception shall be undertaken only if approved by the Board in the same manner as for an original application.
 - (8) Revocation. If a special exception site is used, developed or maintained in violation of these regulations, the Director of Planning may initiate action to revoke the special exception as set forth below, in addition to other enforcement procedures authorized by this chapter.
 - (a) If a violation is not corrected within 30 days of the issuance of a violation notice, the Director of Planning may forward a copy of the violation notice to the Board of Appeals and request a revocation hearing.
 - (b) The Board of Appeals shall schedule a public hearing to consider revoking the special exception. The hearing shall be advertised. In addition, at least 15 days' written notice of the hearing shall be issued by registered mail to the property owner and the special exception holder.
 - (c) The public hearing shall be limited to consideration of issues relating to the alleged violations.
 - (d) After holding a public hearing, the Board of Appeals shall issue a written decision revoking or reaffirming the special exception. If the special exception is reaffirmed, the Board may amend, add to or delete any of the existing conditions of approval. The Board may also reaffirm the special exception subject to a schedule for abatement of specified violations, with provisions for automatic revocation if the abatement schedule is not met.
- D. Variances. To authorize, upon appeal, in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship or practical difficulty. The granting or denial of a variance is at the discretion of the Board of Appeals.
- (1) Findings. A variance from the terms of this chapter may be granted, provided that all four of the following criteria have been met and the variance is not contrary to public

interest:

- (a) Special conditions and circumstances exist which are peculiar to the land, structure or building involved.
 - (b) Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter.
 - (c) The special conditions or circumstances did not result from actions of the applicant.
 - (d) Granting the variance requested will not confer upon the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same district.
- (2) Conditions of approval. In granting a variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this chapter.
 - (3) Transferability. Unless otherwise stipulated by the Board a variance transfers, without formal or written confirmation, to subsequent owners of a property, provided that the use is maintained in conformance with the conditions imposed by the Board when it granted the variance.
 - (4) Variances to lot size and/or density regulations. To authorize, upon appeal, the Board to hear and decide a variance as to lot size/density of lots in any zoning district upon determination that the hereinafter set forth criteria have been met and may impose restrictions and limitations upon such variance as it may deem appropriate: **[Added 5-25-1999 by Ord. No. 263]**
 - (a) At least 10 lots have been subdivided from the tract or parcel of land before or during the moratorium on subdivision imposed on April 1, 1995.
 - (b) Applicant must demonstrate that the previously subdivided lots were designed to accommodate future subdivision of the residue of the tract.
 - (c) Applicant must demonstrate that the granting of the variance for increased density would not adversely affect the character of the neighborhood.
 - (d) The proposed lots can only be subdivided from the same tract or parcel of land as the premoratorium or moratorium lots.
 - (e) The number of additional lots of the same size or density of the lots previously subdivided shall not exceed the number of lots approved prior to or during the county's subdivision moratorium.
 - (f) The proposed lots shall not be located within the Resource Conservation Area portion of the Critical Area.
 - (g) The applicant must submit a preliminary subdivision plat to the Planning Commission no later than June 30, 2001.

- (h) All other criteria required for obtaining a variance under this chapter must be satisfied.
- E. Power of Director of Planning. In exercising the above-mentioned powers, the Board of Appeals may, so long as such action is in conformity with the terms of this chapter, reverse, affirm, wholly or partly, or may modify the order and render the decision as ought to be made, the actions of the Director of Planning, and to that end shall have the powers of the Director of Planning.
- F. Expansion of nonconforming structures. To grant replacement, expansion or modification of nonconforming uses or structures in accordance with the provisions of Article XIII of this chapter.
- G. Limitations to the Board of Appeals' authority. The authority of the Board of Appeals shall be limited as follows:
- (1) Variances. Unless otherwise specifically provided for in these regulations, variances may be granted only to the following numerical requirements of this chapter: **[Amended 9-24-2002 by Ord. No. 311]**
 - (a) Yard, area, or setback requirements within districts.
 - (b) Size, height or setback of signs.
 - (c) Height, area or bulk of structures.
 - (d) Number of required parking spaces.
 - (2) Use of land. Variances may not be granted that would change the permitted use of land, including the following:
 - (a) To allow a use not compatible with permitted uses in the district; or
 - (b) Allow a use not specifically designated in the district but which is specifically designated in another zoning district.
 - (3) Qualitative policy requirements. A variance from the qualitative policy requirements of this chapter may not be authorized, including variances to the minimum performance standards for site plans or special exceptions, unless specifically provided for therein.
 - (4) Reversal or modification of decisions. Nothing contained in Articles IV and V of this chapter shall be deemed to authorize the Board to reverse or modify any refusal of a permit or any other order, requirement, decision or determination which conforms to the provisions of this chapter and which is therefore not erroneous; nor to authorize the Board to validate, ratify or legalize any violation of law or of the provisions of this chapter.
 - (5) Changes to chapter or zoning maps. The Board shall not amend any provisions or cause changes to this chapter, including the Official Zoning Maps; nor shall such authority be vested in the Board.