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ORDINANCE 2003 - 62

AN ORDINANCE AMENDING ORDINANCE 97-19, AS AMENDED, KNOWN AS THE "NASSAU COUNTY ZONING CODE"; SPECIFICALLY AMENDING SECTION 3.04, PLANNING AND ZONING BOARD; ADDING SECTION 3.05, CONDITIONAL USE AND VARIANCE BOARD; AMENDING SECTION 5.03, CONDITIONAL USES; AMENDING SECTION 5.04, CONDITIONAL USE REVIEW CRITERIA; AMENDING SECTION 5.05, VARIANCE; AMENDING SECTION 5.06, PROCEDURE FOR APPEALING DECISIONS OF THE PLANNING AND ZONING BOARD OR THE CONDITIONAL USE AND VARIANCE BOARD; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners had found it in the best interest of the citizens of Nassau County to further amend Ordinance 97-19, as amended.

NOW, THEREFORE, BE IT ORDAINED this 24th day of November, 2003, by the Board of County Commissioners of Nassau County, Florida, that Ordinance 97-19, as amended, shall be further amended as follows:

1. **Section 3.04 - Planning and Zoning Board:** The Planning and Zoning Board shall act as the Local Planning Agency (LPA) which serve as an advisory body to the Board of County Commissioners on all planning and zoning related matters, except for matters involving variances and conditional uses.

A. Establishment of the Planning and Zoning Board: The Board of County Commissioners shall appoint the members of the Planning and Zoning Board. The Planning and Zoning Board shall be composed of nine (9) members. Each

member shall serve a three (3) year staggered term whereby, the terms of four (4) members shall expire one (1) year, and the terms of four (4) members shall expire the following year and the term of one (1) member shall expire the next year.

B. Powers and Duties:

1. Review all requests for rezoning of property, zoning amendments, ~~and district boundary changes~~ Comprehensive Plan text amendments, Land Use Map amendments, and amendments to ordinances that affect land use, and make approval/non-approval recommendations to the Board of County Commissioners for their final determination.

~~2. Review and make approval determinations regarding requests for conditional uses.~~

~~3. Review and make approval determinations regarding requests for variances from the terms of this Ordinance which will not be contrary to the public interest when, due to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary and undue hardship upon the owner of the subject property or structure or the applicant for the variance. In order to authorize any variance from the terms of this Ordinance,~~

~~the Planning and Zoning Board must find evidence of the following:~~

~~a. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district.~~

~~b. The special conditions and circumstances do not result from actions of the applicant.~~

~~c. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district.~~

~~d. Literal interpretations of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would place unnecessary and undue hardship on the applicant.~~

~~e. The variance granted in the minimum variance that will make possible the reasonable use of the land, building, or structure.~~

~~f. The granting of the variance will be in harmony with the general intent and purpose of this Ordinance and such variance will not be injurious to the~~

~~area involved or otherwise detrimental to the public welfare; and~~

~~g. The granting of the variance will not exceed the density or intensity of land use as designated on the Future Land Use Map 2005 or the underlying land use.~~

~~4. In granting any variance, the Planning and Zoning Board may attach appropriate conditions and safeguards. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the zoning ordinance.~~

~~5. The Planning and Zoning Board may establish a reasonable time limit within which the action for which the variance is required shall be started and completed.~~

~~6. Under no circumstances, except as permitted above, shall the Planning and Zoning Board grant a variance to permit a use not generally or conditionally permitted in the zoning districts involved or any use expressly or by implication prohibited by the terms of this Ordinance in the zoning district. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance.~~

7.2. Review all site plans, with the exception of those approved by the ~~Senior Planner~~ Planning and Zoning Department as stated in Article 28, Section 28.16(B)(4), and make ~~determinations of approval for all proposed development and redevelopment in Nassau County~~ recommendations to the Board of County Commissioners.

8.3. Submit written recommendations to the Board of County Commissioners relative to the various requests where applicable that fall within the purview of the Board of County Commissioners to approve/deny.

9.4. Elect a chairman and vice-chairman of the Planning and Zoning Board members. A new chairman and vice-chairman from Planning and Zoning Board members. A new chairman and vice-chairman shall be selected each year by the members of the Planning and Zoning Board. No person shall serve two (2) consecutive terms as chairman.

5. Establish the time, place and date of the monthly Planning and Zoning Board regular meeting plus workshops.

6. ~~10.~~ ~~Based upon an accepted reference,~~  
Develop rules and procedures for the conduct of hearings,  
both quasi-judicial and legislative, which, at a minimum,  
when appropriate, includes the right of the party to  
related to the rezoning request, the granting of zoning

~~conditional use, zoning variances, Comprehensive Plan amendments, and appeals which shall include the right of any party to:~~

a. Present his/her case by oral and documentary evidence;

b. Submit rebuttal evidence, and conduct such cross-examination as may be required for a full and true disclosure of the facts;

c. Be accompanied, represented and advised by counsel or represent himself/herself;

d. Be promptly notified of any action taken ~~on any zoning conditional use, request a variance, or appeal or any action of~~ by the Planning and Zoning Board affecting substantive or procedural rights taken in connection with any proceedings.

e. The Planning and Zoning Board shall receive into evidence that which could be admissible in civil proceedings in the courts of this State, but in receiving evidence, due regard shall be given to the technical and highly complicated subject matter which must be handled and the exclusionary rules of evidence shall not be used to prevent the receipt of evidence having substantial probative effect. Otherwise, however, effect shall be

given to rules of evidence recognized by the laws of Florida.

~~f. The Planning and Zoning Board shall promulgate appropriate rules and regulations provided for the establishment and maintenance of a record of all requests for zoning conditional uses, zoning variances, and appeals considered by it.~~

~~g. A final order on each request for a zoning conditional use or zoning variance and each appeal shall be made within thirty (30) calendar days of the last hearing at which such request or appeal was considered. Each final order shall contain findings upon which the Planning and Zoning Board's order is based, and may include such conditions and safeguards as prescribed by the Planning and Zoning Board as are appropriate in the matter including reasonable time limits within which action pursuant to such order shall be begun or completed or both. One copy of the final order shall be furnished to the applicant.~~

~~h.f.~~ Majority of the Planning and Zoning Board shall constitute a quorum for the purpose of meetings and transacting business. Failure to receive a majority vote shall constitute denial.

~~i. Hear and decide appeals where it is alleged there is error in any Order, requirement, decision~~

~~or determination by an administrative official in the enforcement of this Zoning Code. Provided such appeal is filed with the Planning and Zoning Board within thirty (30) days of the date of the action which is the subject of the appeal.~~

7. Hear and decide appeals where it is alleged there is an error in any decision made by the Planning Director or staff as it relates to the Zoning Code or Comprehensive Plan.

2. Section 3.05 - Conditional Use and Variance

**Board:** The Conditional Use and Variance Board shall serve as the body that reviews and makes approval determinations on requests for conditional uses and variances from the terms of this Ordinance for the Board of County Commissioners.

A. Establishment of the Conditional Use and Variance Board: The Board of County Commissioners shall appoint the members of the Conditional Use and Variance Board. The Conditional Use and Variance Board shall be composed of seven (7) members. Each member shall serve a three (3) year staggered term whereby, the terms of three (3) members shall expire one (1) year, and the terms of three (3) members shall expire the following year and the term of one

(1) member shall expire the next year. One member each from the five (5) County Commission districts and two (2) at-large members.

B. Powers and Duties:

1. Review and make approval determinations regarding requests for conditional uses.

2. Review and make approval determinations regarding requests for variances from the terms of this Ordinance which will not be contrary to the public interest when, due to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary and undue hardship upon the owner of the subject property or structure or the applicant for the variance. In order to authorize any variance from the terms of this Ordinance, the Conditional Use and Variance Board must find evidence of the following:

a. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district.

b. The special conditions and circumstances do not result from actions of the applicant.

c. Granting the variance requested will not confer on the applicant any special privilege that is

denied by this Ordinance to other lands, buildings, or structures in the same zoning district.

d. Literal interpretations of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would place unnecessary and undue hardship on the applicant.

e. The variance granted in the minimum variance that will make possible the reasonable use of the land, building, or structure.

f. The granting of the variance will be in harmony with the general intent and purpose of this Ordinance and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

g. The granting of the variance will not exceed the density or intensity of land use as designated on the Future Land Use Map 2010 or the underlying land use.

3. In granting any variance, the Conditional Use and Variance Board may attach appropriate conditions and safeguards. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the zoning ordinance. The Conditional Use and Variance Board

may establish a reasonable time limit within which the action for which the variance is required shall be started and completed.

Under no circumstances, except as permitted above, shall the Conditional Use and Variance Board grant a variance to permit a use not generally or conditionally permitted in the zoning districts involved or any use expressly or by implication prohibited by the terms of this Ordinance in the zoning district. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance.

4. Elect a chairman and vice-chairman of the Conditional Use and Variance Board. A new chairman and vice-chairman shall be selected each year by the members of the Conditional Use and Variance Board. No person shall serve two (2) consecutive terms as chairman.

5. Establish the time, place and date of the monthly Conditional Use and Variance Board regular meeting plus workshops.

6. Develop rules and procedures for the conduct of hearings, both quasi-judicial and legislative, which, at a

minimum, when appropriate, includes the right of any party to:

a. Present his/her case by oral and documentary evidence;

b. Submit rebuttal evidence, and conduct such cross-examination as may be required for a full and true disclosure of the facts;

c. Be accompanied, represented and advised by counsel or represent himself;

d. Be promptly notified of any action taken on any zoning conditional use, request a variance, or appeal or any action of the Planning and Zoning Board affecting substantive or procedural rights taken in connection with any proceedings.

e. The Conditional Use and Variance Board shall receive into evidence that which could be admissible in civil proceedings in the courts of this State, but in receiving evidence, due regard shall be given to the technical and highly complicated subject matter which must be handled and the exclusionary rules of evidence shall not be used to prevent the receipt of evidence having substantial probative effect. Otherwise, however, effect shall be given to rules of evidence recognized by the laws of Florida.

f. A final order on each request for a zoning conditional use or zoning variance shall be made within thirty (30) calendar days of the last hearing at which such request or appeal was considered. Each final order shall contain findings upon which the Board of Adjustment's order is based, and may include such conditions and safeguards as prescribed by the Conditional Use and Variance Board as are appropriate in the matter including reasonable time limits within which action pursuant to such order shall be begun or completed or both. One copy of the final order shall be furnished to the applicant.

g. A majority of the Conditional Use and Variance Board shall constitute a quorum for the purpose of meetings and transacting business. Failure to receive a majority vote shall constitute denial.

3. **Section 5.03 - Conditional Uses:** The following procedure shall be followed when requesting a conditional use:

A. An applicant requesting a conditional use must submit an application to the ~~Senior Planning~~ Planning and Zoning Department. The applicant shall provide the following information as part of the conditional use application.

1. The legal description of the property for which the conditional use is requested;

2. Description of the property according to street;

3. The names and addresses of the owners of the property;

4. A detailed description of the conditional use requested;

5. Current zoning classification of the property;

6. Reason for requesting the conditional use;

7. Any other data which the Planning and Zoning Conditional Use and Variance Board may deem necessary such as architectural drawings or sketches of all buildings showing front, side, rear elevations, and setbacks, etc.

8. The signature of the applicant or his authorized agent.

9. A complete list of all property owners, mailing addresses and legal descriptions of all property within three hundred (300) feet of the parcel for which the conditional use is requested. This information must be taken from the latest Nassau County tax rolls.

10. The Future Land Use Map ~~2005~~ 2010 designation contained in the adopted Comprehensive Plan.

B. Upon completion and receipt of the application, the ~~Senior Planner~~ Planning and Zoning Department shall review the application and provide written recommendation based upon the Goals, Objectives and Policies of the Comprehensive Plan and existing land use regulations. The ~~Senior Planner~~ Planning and Zoning Department shall place the application for Conditional Use as well as ~~his~~ a written recommendation on the agenda of the next ~~Planning and Zoning~~ Conditional Use and Variance Board meeting. The ~~Planning and Zoning~~ Conditional Use and Variance Board shall hold a public hearing to review conditional use requests and ~~shall~~ may make a decision within sixty (60) days from the date the request was received.

C. The applicant or his representative shall appear before the ~~Planning and Zoning~~ Conditional Use and Variance Board to provide evidence concerning the proposed conditional use.

D. The ~~Senior Planner~~ Planning and Zoning Department shall be responsible for giving due public notice of public hearing held by the ~~Planning and Zoning~~ Conditional Use and Variance Board.

E. The ~~Planning and Zoning~~ Conditional Use and Variance Board has the power to deny, approve, or disapprove with conditions, any conditional use requested.

When a conditional use has been approved with conditions, the ~~Planning and Zoning~~ Conditional Use and Variance Board may, as it deems necessary ~~of~~ for the protection of public health, safety and general welfare, impose certain conditions, limitations, or restrictions on the use requested and its premises. Conditional uses along with all conditions and safeguarded attached thereto shall be non-transferable and granted to the applicant only.

F. Any conditional use permit granted by the ~~Planning and Zoning~~ Conditional Use and Variance Board shall allow only those use or uses specifically described in the application and is subject to the terms or conditions expressed therein. The expansion or extension of the conditional use beyond the scope or terms of the conditional use permit shall be unlawful and is in violation of this ordinance.

G. If the ~~Planning and Zoning~~ Conditional Use and Variance Board denies a petition for a conditional use permit, the denied petition cannot be resubmitted nor can any action be taken on a new petition for basically the same conditional use on the same premises, within twelve (12) months after the date the last petition was denied.

4. **Section 5.04 - Conditional Use Review Criteria:**  
When considering conditional use requests, the ~~Planning and~~

~~Zoning~~ Conditional Use and Variance Board shall make a written finding that the conditional use satisfied the following criteria:

A. The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare and is not contrary to established standards, regulations, or ordinances of other governmental agencies. The applicant requesting a conditional use shall provide proof of adequate access to the site and proof that the necessary access connection permits have been approved or will be approved.

B. Each structure or improvement will be in accordance with Ordinance ~~83-9~~ 2000-26 and will be so designed and constructed that it is not unsightly, undesirable, or obnoxious in appearance to the extent that it will hinder the orderly and harmonious development of Nassau County and the zoning district in which it is proposed.

C. The conditional use will not adversely impact the permitted uses in the zoning district nor unduly restrict the enjoyment of other property in the immediate vicinity nor substantially diminish or impair the values within the area.

D. The establishment of the conditional use will not impede the orderly development and improvement of the surrounding property for uses permitted in the zoning district.

E. Adequate water supply and sewage disposal facilities will be provided in accordance with state and county health requirements.

F. Adequate access roads, on-site parking, on-site loading and unloading berths, and drainage have been or will be provided where required.

G. Adequate measures have been taken to provide ingress and egress to the property which is designed in a manner to minimize traffic congestion on local streets.

H. Adequate screening and buffering of the conditional use will be provided, if needed.

I. The conditional use will not require signs or exterior lighting which will cause glare, adversely impact area traffic safety or have a negative economic effect on the area. Any signs or exterior lighting required by conditional use shall be compatible with development in the zoning district.

J. The conditional use will conform to all applicable regulations of the zoning district in which it is proposed.

K. The conditional use will conform to all applicable regulations listed in the adopted Comprehensive Plan.

5. **Section 5.05 - Variance:** A variance from the provisions of this ordinance is granted when practical difficulties or unnecessary hardships that are not caused through actins of the applicant, will result from carrying out the strict letter of this zoning ordinance. The following must be completed when requesting a variance:

A. File an application with the ~~Senior-Planner~~ Planning and Zoning Department. The necessary forms and instructions can be obtained from the ~~Senior-Planner's~~ Planning and Zoning Office.

B. The application for a variance shall include, but not limited to, the following information which shall be provided by the applicant:

1. If the applicant is other than the owner(s) of the property, the signed written consent of the property owner(s) must be attached.

2. A complete legal description of the property for which the variance is requested, along with a scaled diagram showing the setbacks and the location of the proposed construction.

3. The location and current zoning classification of the property being considered for the variance.

4. Describe the variance requested. A variance may be authorized only for the reduction of minimum street frontage, lot area and required yards (front, side, rear) or for the increase of height of structures and site coverage only when such increases are not in conflict with the adopted Comprehensive Plan and ~~Standard~~ Florida Building Code. A modification to lot requirements shall not be granted a variance when such modification will result in an increase of density/intensity of use beyond that permitted by the Future Land Use Map ~~2005~~ 2010 for the underlying land use of the area. A variance shall not change the functional classification permitted or permissible by the Comprehensive Plan and Future Land Use Map, as currently adopted.

5. A complete list of all property owners, mailing addresses and legal description of all property within three hundred (300) feet of the parcel for which the variance is requested. This information must be taken from the latest Nassau County tax rolls.

C. Upon receipt of the completed application and the required zoning fee, the ~~Senior Planner~~ Planning and Zoning

Department will review the application and prepare a written report regarding the consistency of the "Request for Variance" with the adopted Comprehensive Plan and current land use regulations. The ~~Senior Planner~~ Planning and Zoning Department will submit his report and the application to the ~~Planning and Zoning~~ Conditional Use and Variance Board for action.

D. The ~~Senior Planner~~ Planning and Zoning Department shall establish a date and time to hear the variance request and shall advertise the public hearing in a manner prescribed by law.

E. Before making a final decision on a variance request, the ~~Planning and Zoning~~ Conditional Use and Variance Board shall consider the criteria established in Section ~~3.04(B)(3)(a)(b)(c)(d)(e)(f) and (g)~~ 3.05(B)(3) of this ordinance. The ~~Planning and Zoning~~ Conditional Use and Variance Board has sixty (60) days for the date the application is received to make a final decision. Variances along with all conditions and safeguards attached thereto shall be granted to the property and is non-transferable.

F. If the ~~Planning and Zoning~~ Conditional Use and Variance Board denies a variance application, the denied application cannot be resubmitted, nor can any action be

taken on a new application for basically the same variance on the same property, until twelve (12) months after the date the last petition was denied.

6. **Section 5.06 - Procedure for Appealing Decisions of the Planning and Zoning Board or the Conditional Use and Variance Board:** Any person or agency aggrieved by any decision of the Planning and Zoning Board or the Conditional Use and Variance Board may file an appeal with the Board of County Commissioners. The appeals procedure shall include the following actions:

A. **Filing of Appeal:** The notice of appeal, stating the grounds for the appeal, must be filed with the County eClerk within thirty (30) days of the date the action being appealed was rendered. The notice of appeal shall be filed on forms established and provided by the County Clerk and shall include all pertinent information required thereon, including appropriate filing fees. The ~~Senior Planner~~ Planning and Zoning Department, upon notification of the filing of the appeal by the County Clerk, shall transmit upon request to the County Clerk all materials constituting the record upon which the action appealed was taken.

B. **Stay of Work:** An appeal to the Board of County Commissioners stays all work on the project and all proceedings in furtherance of the action being appealed

until final determination has been made by the Board of County Commissioners.

C. Hearing of Appeals: The Board of County Commissioners, within fifteen (15) days after receipt of the notice of appeal, shall set a reasonable date for hearing the appeal and give due public notice. Published notice of the hearing shall be in a form prescribed by the Board of County Commissioners and placed in the designated newspaper at the applicant's expense. The applicant shall file proof of publication with the Clerk of the Court prior to the hearing. The applicant must be given due notice of the hearing and applicant and petitioner may appear in person at the hearing or be represented by his agent or attorney.

D. Decision: In exercising the powers granted by this Ordinance, the Board of County Commissioners, by majority vote of its members, may reverse, affirm, or modify the order, requirement, decision or determination being appealed, and to that end shall have the powers of the Planning and Zoning Board, the Conditional Use and Variance Board, or ~~senior Planner~~ Planning and Zoning Department and may issue the necessary permit. Rulings and decisions to the Board of County Commissioners shall become effective thirty (30) days after the date of such ruling or

decision. This will allow either party ample time to file an appeal with the Circuit Court.

E. Appeal of Board of County Commissioners Decisions: Any person or persons jointly or severally aggrieved by a decision of the Board of County Commissioners may appeal in the Circuit Court which serves the jurisdiction in which the Board of County Commissioners is located. This appeal must be filed within thirty (30) days after the Board of County Commissioners has rendered its decision.

7. Effective Date: This Ordinance shall become effective on February 1, 2004.

BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA

  
\_\_\_\_\_  
VICKIE SAMUS  
Its: Chairman

ATTEST:

  
\_\_\_\_\_  
J. M. "CHIP" OXLEY, JR.  
Its: Ex-Officio Clerk

Approved as to form by the  
Nassau County Attorney



MICHAEL S. MULLIN

h/anne/ords/zoning-code-amd-adjustment-board