

Unified Land Development Code  
Chapter 1 – GENERAL PROVISIONS  
Article III. – BOARDS AND DUTIES

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**SEC. 1-28. - ZONING BOARD OF APPEALS (ZBA).**

- A. Establishment and composition. A Zoning Board of Appeals is hereby reestablished, which shall consist of seven (7) regular members to be appointed by the City Commission. Each member shall serve a three (3) year term. In case of a vacated position, the new appointment would be for the completion of the vacated term. [Amended 11-8-1993 by Ord. No. 93-27; 9-28-1998 by Ord. No. 98-31]
- B. Qualifications of members. No member of the Zoning Board of Appeals shall hold any elective office or be employed by the City. Members of the Board appointed after the effective date of these regulations shall have been residents of the City of North Port for one (1) year and appointed from among persons in a position to represent the public interest, and no person shall be appointed with private or personal interests likely to conflict with the general public interest.
- C. Vacancies. Vacancies in the Zoning Board of Appeals membership shall be filled by appointment of the City Commission for the unexpired term of the member affected. It shall be the duty of the Chair of the Zoning Board of Appeals to notify the City Commission within thirty (30) days after any vacancy occurs among members of the Zoning Board of Appeals.
- D. Removal. Members of the Zoning Board of Appeals may be removed from office for cause by the affirmative votes of three (3) members of the City Commission upon written charges and public hearing, if the member of the Zoning Board of Appeals so affected requests such public hearing.
- E. Compensation. Members of the Zoning Board of Appeals shall receive no salaries or fees for service on the Board but may receive reimbursement of actual and necessary expense incurred in the performance of their duties of office.

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F. Proceedings.

- (1) Officers and voting. The Zoning Board of Appeals shall select a Chair from among its members and may create and fill such other offices as it may determine. It shall provide itself with a Secretary, either by election from its members or by appointment of an employee of the City who is not a member of the Board. All regular members of the Board, but not a Secretary who is not a member of the Board, shall be entitled to vote in matters before the Zoning Board of Appeals.
- (2) Rules and procedure. The Zoning Board of Appeals may adopt rules of procedure necessary to its governance and the conduct of its affairs, in keeping with the applicable provisions of Florida law and these zoning regulations. Such rules of procedures shall be available in a written form to persons appearing before the Zoning Board of Appeals and to the public.
- (3) Meetings. Meetings shall be held at the call of the Chair and at such other times as the Zoning Board of Appeals may determine. Meetings that are not regularly scheduled shall not be held without at least seven (7) days' notice to each member. The Zoning Board of Appeals shall have the power to take testimony under oath and compel the attendance of witnesses.
- (4) Quorum; minutes; public records.
  - (a) The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member (including the Chair), or if absent or failing to vote indicating such fact. The Zoning Board of Appeals shall keep records of its examinations and other official actions, all of which shall be a public record, and filed immediately in the office of the Board located within the department responsible for land development services.
  - (b) A quorum for the transaction of business shall consist of four (4) members.
- (5) Disqualification of members. If any member of the Zoning Board of Appeals, called on to sit in a particular case, shall find that his private or personal interests are involved in the matter coming before the Board, that member shall disqualify himself/herself from all participation in the case or may be disqualified by the votes of a majority of members of the Board, not including the member about whom the question of disqualification has been raised. No member of the Zoning Board of Appeals shall appear before the Board as agent or attorney for any person.

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G. Filing of appeals; hearing; stay of proceeding; assistance.

- (1) Filing of appeals. Appeals to the Zoning Board of Appeals concerning interpretation or administration of these zoning regulations or for variance under these zoning regulations may be taken by any person aggrieved or by any officer, board or department of the City of North Port affected by any decision, determination or requirement of the department responsible for land development services.
  - (a) Such appeals shall be taken within a reasonable time not to exceed fifteen (15) days or such lesser period as may be provided by the rules of the Board, by filing with the Director of the department responsible for land development services and with the Board a notice of appeal specifying the grounds thereof.
  - (b) The Director shall forthwith transmit to the Zoning Board of Appeals all papers constituting the record upon which the action appealed from was taken.
- (2) Withdrawal of appeal.
  - (a) The application may be withdrawn at any time prior to the publication of Notice of Hearing.
  - (b) The withdrawal of an application that has been placed on an agenda for public hearing may be requested to be withdrawn no later than five (5) days prior to any official meeting of the Zoning Board of Appeals. Such request for withdrawal of an application for hearing must be delivered in writing to the Board liaison.
- (3) Continuance.
  - (a) A continuance may be requested by an applicant or staff demonstrating that the continuance is necessary to provide rebuttal testimony or to provide time to review documentary evidence.
    - (i) The applicant may seek a continuance administratively, with consent of the Chair, prior to the distribution of the meeting agenda for petitions that do not require legal advertisement.
    - (ii) A maximum of three (3) applicant initiated continuances may be granted for any one (1) petition whether granted administratively or by the Board.
    - (iii) Any petition that requires publication in a newspaper of general circulation, must be filed in writing twenty-one (21) days prior to the public hearing.
  - (b) The Board may continue the public hearing on its own initiative, upon finding that any testimony, documentary evidence, or other evidence presented at the quasi-judicial hearing justifies allowing time for additional research or review for the benefit of the Board, to assist in an appropriate resolution of the matter being presented.
    - (i) A continuance initiated by the Board will not be charged against the allowable continuances permitted under these regulations.

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- (c) The Board shall order a continuance at any time the Board determines the scheduling or timing of the pending application warrants a continuance to another date or time, but is not obligated to grant a continuance.
- (4) Hearing. The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice of the parties in interest and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.
  - (a) If the applicant does not appear, refuses to proceed, or cannot proceed, the application shall be deemed denied.
    - (i) An applicant may seek relief by sending a third party to request continuance at the published meeting.
      - [1] If the applicant seeks to request relief by a third party, the Applicant shall submit a signed affidavit specifying the person's name, address with a copy of the petition prior to the meeting.
  - (b) If an application is deemed denied, no further application for a variance of any type for the subject property shall be filed within one (1) year of such denial.
  - (c) If an application for an administrative appeal is denied, it shall be deemed denied with prejudice.
- (5) Financial and staff assistance. The Zoning Board of Appeals may be provided by the City Commission with such professional and financial assistance as may be deemed necessary to enable the Zoning Board of Appeals to perform the functions assigned to it by these zoning regulations.
- (6) The cancellation of any meeting of the Zoning Board of Appeals is at the Chair's discretion.

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H. Powers and duties. The Zoning Board of Appeals shall have the following powers and duties:

- (1) Administrative review. To hear and decide appeals where it is alleged there is error in any order, decision or determination of the Director responsible for land development services in the enforcement of these zoning regulations.
- (2) Variances; powers; conditions governing petitions; procedures. To authorize upon appeal in specific cases such variance from the terms of these zoning regulations as will not be contrary to the public interest where, owing to special conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the provisions of these zoning regulations would result in unnecessary and undue hardship on the land. A variance from the terms of these zoning regulations shall not be considered by the Zoning Board of Appeals unless and until:
  - (a) Written petition. A written petition for a variance is submitted by the applicant.
  - (b) Notice of public hearing. Notice of public hearing shall be given at least fifteen (15) days in advance of the public hearing.
    - (i) The owner of the property for which variance is sought, or his agent or attorney designated by him on his petition, shall be notified by mail.
    - (ii) Notice of the public hearing shall be advertised in a newspaper of general circulation in the City at least one (1) time fifteen (15) days prior to the hearing. [Amended 11-24-2003 by Ord. No. 2002-56]
  - (c) Public hearing. The public hearing shall be held by the Zoning Board of Appeals. Any party may appear in person or by agent or attorney.
  - (d) Conditions and safeguards. In granting any variance the Zoning Board of Appeals may prescribe appropriate conditions and safeguards in conformity with these zoning regulations, including but not limited to reasonable time limits within which the action for which variance is required shall be begun or completed, or both. 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 these zoning regulations.
  - (e) Limitations on power to grant variances.
    - (i) Under no circumstances shall the Zoning Board of Appeals grant a variance to permit a use not permitted under the terms of these zoning regulations in the zoning district involved or any use expressly or by implication prohibited by the terms of these regulations in the said zoning district.
    - (ii) A variance is authorized only for height, parking requirements, area and size of structures or size of yards and open spaces.
    - (iii) Establishment or expansion of a use otherwise prohibited or not permitted shall not be allowed by variance.

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- (iv) No nonconforming use of neighboring lands, structures or buildings in the same zoning district and no permitted use of lands, structures or buildings in any other district shall be considered grounds for the granting of a variance.
- (v) No special exception to these zoning regulations shall be granted by the Zoning Board of Appeals.
- (f) Considerations. In reaching this decision, the Board of Appeals shall consider the following criteria, recommendations and testimony:
  - (i) Exceptional or extraordinary conditions or circumstances exist which are inherent in the land, structure or building involved and such exceptional or extraordinary conditions or circumstances create an undue hardship on the property owner's land and are not generally applicable to other lands, structures or buildings;
  - (ii) The exceptional or extraordinary conditions or circumstances do not result from the actions of the applicant;
  - (iii) Without the variance, the provisions of this chapter would deprive the applicant of reasonable use of his property;
  - (iv) The variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building or structure;
  - (v) The variance, if granted, will not be injurious to the neighborhood or otherwise detrimental to the public welfare;
  - (vi) Staff recommendations;
  - (vii) Testimony from the applicant; and
  - (viii) Testimony from the public.
- (g) Findings.
  - (i) Before granting a variance, the Zoning Board of Appeals shall find that all of the following exist:
    - [1] That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning district.
    - [2] That the exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of this chapter. (Any action taken by an applicant pursuant to lawfully adopted regulations preceding this chapter will not be considered self-created.)
    - [3] That such variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
    - [4] That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

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[5] That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make it more reasonable and practical to amend these zoning regulations.

I. Reversal of decision of Department responsible for Land Development Services Directors.

- (1) In exercising the above-mentioned powers, the Zoning Board of Appeals may, so long as such action is in conformity with the terms of these zoning regulations, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as sought to be made, and to that end shall have the powers of the Department responsible for land development services from whom the appeal is taken.
- (2) In matters of review, the concurring votes of a majority of the members of the Zoning Board of Appeals present at a meeting shall be necessary to reverse any order, requirement, decision or determination of the Director responsible for land development services, or to decide in favor of the applicant on any matter upon which it is required to pass under these regulations. The final determination of the Zoning Board of Appeals shall be made in writing and shall be made available to the applicant, the City Attorney and the City Manager.

J. Appeals from decisions of Zoning Board of Appeals. Any person or persons, jointly or severally, including any officer, department, board or commission of the City, aggrieved by any decision of the Zoning Board of Appeals may apply to the Circuit Court having jurisdiction in the City of North Port for judicial relief within thirty (30) days after the rendition of the decision by the Zoning Board of Appeals. The proceedings in the Circuit Court shall be by petition for writ of certiorari, which shall be governed by the Florida Rules of Appellate Procedure.

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**SEC. 1-29. - PLANNING AND ZONING ADVISORY BOARD (PZAB).**

- A. Establishment and composition. [Amended 8-14-1995 by Ord. No. 95-7; 3-10-1997 by Ord. No. 97-5]

A Planning and Zoning Advisory Board is hereby reestablished, which shall consist of seven (7) regular members to be appointed by the City Commission. Terms of appointment are for four (4) years; however, in case of a vacated position, the new appointment would be for the completion of the vacated term.

- B. Qualifications of members. No member of the Planning and Zoning Advisory Board shall hold any elective office of or be employed by the City. Members of the Planning and Zoning Advisory Board appointed after the effective date of these regulations shall have been residents of the City for at least one (1) year prior to the date of appointment. No more than two (2) members of the Board shall be of the same business, trade or profession.

- C. Vacancies. Vacancies in Planning and Zoning Advisory Board membership shall be filled by appointment by the City Commission for the unexpired term of the member affected. It shall be the duty of the Chairman of the Planning Board to notify the City Commission within thirty (30) days after any vacancy shall occur among members of the Planning and Zoning Advisory Board.

- D. Removal. [Amended 3-10-1997 by Ord. No. 97-5]

If a member's absences exceed four (4) consecutive or twenty-five percent (25%) of scheduled/regular Board meetings in a calendar year, excluding special meetings, the Planning and Zoning Advisory Board may recommend to the City Commission that the appointment be terminated. The only exception to this requirement shall be absences due to illness/death in family.

- E. Compensation. Members of the Planning and Zoning Advisory Board shall receive no salaries or fees for service on the Board but may receive reimbursement for actual and necessary expenses incurred in the performance of their duties of office.

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F. Proceedings.

- (1) Officers and voting. The Planning and Zoning Advisory Board shall select from its membership a Chairman and a Vice Chairman annually at the first regularly scheduled meeting in January of each year, (effective January 1998), to serve a term of one (1) year. The Vice Chairman shall serve as Chairman in the latter's absence. All members of the Planning and Zoning Advisory Board shall vote on matters before the Board. [Amended 3-10-1997 by Ord. No. 97-5]
- (2) Rules of procedure. The Planning and Zoning Advisory Board shall use Robert's Rules of Order as its parliamentary guideline in the conduct of all meetings in keeping with the applicable provisions of Florida law and these zoning regulations. Such rules of procedures shall be available in written form to persons appearing before the Board and to the public. [Amended 3-10-1997 by Ord. No. 97-5]
- (3) Meetings. Meetings may be held on the first and third Thursday of each month, at the call of the Chairman and at such other times as the majority of the Planning and Zoning Advisory Board may determine. [Amended 3-10-1997 by Ord. No. 97-5]
- (4) Notice of meetings. An agenda shall be posted by the City Clerk in the designated areas of City Hall at least forty-eight (48) hours prior to a Planning and Zoning Advisory Board meeting. [Amended 3-10-1997 by Ord. No. 97-5]
- (5) Quorum; minutes; public records.
  - (a) The Planning and Zoning Advisory Board shall keep records of its proceedings, showing the vote of each member (including the Chairman or Vice Chairman) or, if absent or failing to vote, indicating such fact. The Board shall keep records of its examinations and other official actions, all of which shall be a public record and be filed immediately in the office of the Planning and Zoning Advisory Board located within the Department responsible for land development services.
  - (b) Persons appearing before the Planning and Zoning Advisory Board shall have no right of challenge to disqualify a member of the Board, provided that this provision shall not prohibit any person appearing before the Board from placing in the record a statement alleging bias and requesting disqualification for bias of any member.
  - (c) A quorum for the transaction of business shall consist of a majority of the membership.
- (6) Disqualification of members. If any member of the Planning and Zoning Advisory Board shall find that private or personal interests are involved in a matter coming before the Board, the member shall disqualify himself/herself from all participation in that matter, or may be disqualified by the vote of a majority of a quorum of members, not including the member about whom the question of disqualification has been raised.
  - (a) No member of the Planning and Zoning Advisory Board shall appear before the Planning Board as agent or attorney for any person.
  - (b) No member of the Planning and Zoning Advisory Board shall appear before the Zoning Board of Appeals or City Commission as agent or attorney for any person.

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- G. Appropriations, fees and other income. The City Commission shall make available to the Planning and Zoning Advisory Board such appropriations as it may see fit for salaries, fees and expenses necessary in the conduct of Planning and Zoning Advisory Board work. No public funds shall be expended or be caused to be expended by the Planning and Zoning Advisory Board without express approval of the City Commission.
- H. Functions, powers and duties.
- (1) The Planning and Zoning Advisory Board serves as the Local Planning Agency as required by the 1985 Florida Growth Management Act as set forth in the Florida Statutes, Chapter 163, and serving as a Planning and Zoning Advisory Board to the City Commission. The function, powers and duties of the Planning and Zoning Advisory Board in general shall be to:
    - (a) Acquire and maintain such information and materials as are necessary to an understanding of past development trends, present development conditions and forces at work to cause changes in these conditions. Such information and material may include maps, any photographs of man-made and natural physical features of the City, statistics of past trends and present conditions with respect to population, property values, economic base, land use and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the City.
    - (b) Prepare and recommend to the City Commission for adoption and from time to time recommend amendments and revisions to the City's Comprehensive Plan for meeting present requirements and such future requirements as may be foreseen.
    - (c) Recommend principles and policies for guiding action affecting development in the City.
    - (d) Prepare and recommend to the City Commission ordinances, regulations and other proposals promoting orderly development along the lines indicated as desirable by the Comprehensive Plan.
    - (e) Determine whether specific proposed developments conform to the principles and requirements of the Comprehensive Plan.
    - (f) Conduct such public hearings as may be required to gather information necessary for the drafting, establishment and maintenance of the Comprehensive Plan and ordinances, codes and regulations related to it, and to establish public committees when deemed necessary for the purpose of collecting and compiling information necessary for the plan or for the purpose of promoting the accomplishment of the plan in whole or in part.
    - (g) Make or cause to be made any necessary special studies of the location, adequacy and condition of specific facilities in the City. These may include but are not limited to studies on housing, commercial and industrial conditions and facilities,

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recreation, public and private utilities, roads and traffic, transportation, parking and the like.

- (h) Keep the City Commission and the public informed and advised on these matters.
  - (i) Perform such other duties as may be lawfully assigned to it or which may have bearing on the preparation or implementation of the Comprehensive Plan.
- (2) All City employees shall, upon request and within a reasonable time, furnish to the Planning and Zoning Advisory Board or its employees or agents such available records or information as may be required in its work. The Planning and Zoning Advisory Board, or its employees or agents, may in the performance of official duties enter upon lands and make examinations or surveys in the same manner as other authorized City agents or employees and shall have such other powers as are required for the performance of official functions in carrying out the purposes of the Planning and Zoning Advisory Board.
- I. Appeals to the Planning and Zoning Advisory Board (PZAB) and City Commission concerning the interpretation or administration of the requirements of a previously adopted "Pattern Book" may be taken by any person aggrieved by any decision, determination or requirement of the Department responsible for land development services.
- (1) Any such appeal shall be taken within thirty (30) days of said decision and shall essentially follow the procedure for appeals set forth in Sec. 1-10, except that it shall be heard by the PZAB and City Commission rather than the Zoning Board of Appeals (ZBA), and the City Commission shall take final action upon the appeal, upon recommendation of the PZAB. [Amended 5-28-2002 by Ord. No. 2002-18]