

ARTICLE X. - HISTORIC PRESERVATION<sup>[8]</sup>

Footnotes:

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**Editor's note**— Ord. No. 2002-060, § 1, adopted Nov. 12, 2002, repealed Art. X, §§ 3-5-246—3-5-251, which pertained to historic preservation, derived from Ord. No. 89-28, §§ 5—10, adopted May 8, 1989, and enacted in lieu thereof a new Art. X, §§ 3-5-246—3-5-254, which pertained to the same subject matter.

Sec. 3-5-246. - Short title, applicability, intent and purpose.

- (a) *Short title.* This article shall be known as the "Charlotte County Historic Preservation Ordinance".
- (b) *Applicability.* This article shall apply to the unincorporated areas of Charlotte County.
- (c) *Intent and purpose.* The purpose of this article is to protect and enhance properties of historic, cultural, archaeological, and architectural value in the interests of the health, prosperity and welfare of the citizens of the county. This article is intended to:
  - (1) Protect, preserve and enhance the historic, architectural, and archaeological heritage of the county.
  - (2) Provide where possible, programs which will assist in the perpetuation, rehabilitation and adaptive use and reuse of historically and architecturally significant structures, sites, districts and archaeological resources.
  - (3) Protect and enhance the county's attractiveness to residents and to visitors and thereby provide stimulus to the county's economy.
  - (4) Foster civic pride and community education about the accomplishments and activities of past inhabitants of the county.

(Ord. No. 2002-060, § 1, 11-12-02)

Sec. 3-5-247. - Definitions.

Unless specifically defined herein, words or phrases used in this section shall be interpreted so as to give them the meaning they have in common usage and to give this section its most reasonable application.

*Building:* A structure created to shelter any form of human activity, such as an office, house, church, hotel or similar structure. Buildings may refer to a historically related complex, such as a courthouse and jail.

*Calendar days:* The consecutive days of the week, including weekends and holidays.

*Contributing property:* Any property, whether improved or unimproved, which contains characteristics supportive of a historic designation enacted by the board of county commissioners.

*Demolition:* The complete removal of a building, structure or any substantial part thereof from a site.

*Demolition by neglect:* The willful abandonment or neglect of a building or structure by the owner(s) resulting in such a state of deterioration that its self-destruction is inevitable or where demolition of the building or structure to remove a health or safety hazard is a likely result.

*Development or development activity:*

- (1) Clearing, scraping or removing the vegetation from a site; or
- (2) Adding, removing, exposing, excavation, leveling, grading, digging, borrowing, dumping, piling, dredging, or otherwise significantly disturbing the soils of a site; provided, however,
- (3) This definition shall not apply to the routine trimming or maintenance of vegetation.

*Designation report:* A written document indicating the basis for the recommendation of the historic preservation board to the board of county commissioners on the proposed historic or archaeological designation pursuant to this article.

*Florida Master Site File:* The list or catalogue of all recorded historical and archaeological sites and properties in Florida maintained by the State of Florida Department of State, Division of Historical Resources.

*Historic district:* Any location within the unincorporated area of the county designated by the board of county commissioners through resolution, ordinance, or other official action as being of historic significance to the county.

*Historic preservation board representative:* That person or persons designated by the historic preservation board to review proposed development activities and provide comments and recommendations to county staff. The chairman of the historic preservation board may serve as representative.

*Historic preservation board staff liaison or liaison:* The designated representative of the county development director.

*Historic resource buffer zone:* The area located within a three hundred (300) foot perimeter around a historic resource or historic property.

*Historic resource or historic property:* Any prehistoric, historic, or archaeological district, site, building, structure, or object included in the National Register of Public Places, Florida Master Site File or Local Register. Such term includes mounds, artifacts, records, and remains which are related to such a district, site, building, structure, object, or culture.

*Involuntary demolition:* Destruction of a building, structure, or other improvement on a property upon order of the county.

*Local register:* A listing of buildings, structures, objects, sites and districts which have been designated as historically significant in the county.

*National Register or National Register of Historic Places:* The official listing of sites and properties throughout the United States maintained by the keeper of the National Register, National Park Service.

*Ordinary maintenance:* Work not requiring a building permit, done to prevent deterioration of a building or structure for decay of or damage to a building or a structure or any part thereof by restoring the building or structure as nearly as practicable to its condition prior to such deterioration, decay or damage.

*Owner or owners:* Those individuals, partnerships, corporations, public agencies, or other legal entities holding fee simple title to real property. "Owner or owners" do not include individuals, partnerships, corporations, public agencies, or other legal entities holding easements or less than fee interest (including leaseholds) of any nature.

*Survey, reconnaissance or intensive:* Background documentary research into a community's history, archaeology and architecture and site field work as set forth in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.

*Working days:* Also commonly referred to as business days, Monday through Friday, not including legal holidays ("dates of observance") authorized by the board of county commissioners during which the county's offices are not open.

(Ord. No. 2002-060, § 1, 11-12-02)

Sec. 3-5-248. - Historic preservation board.

- (a) The board of county commissioners is authorized to establish the historic preservation board which shall consist of five (5) members to be appointed by the board of county commissioners. Vacancies on the historic preservation board shall be filled through appointment by the board of county commissioners within sixty (60) days after a vacancy occurs.
- (b) Members of the historic preservation board shall have demonstrated an interest in historic and/or archaeological preservation.

(Ord. No. 2002-060, § 1, 11-12-02)

Sec. 3-5-249. - Authority of the historic preservation board.

The historic preservation board shall have the responsibility to perform the following functions:

- (1) To identify for the board of county commissioners historically significant structures and sites that should be considered for designation and placement on the local register or be nominated for listing in the Florida Master Site File or the National Register of Historic Places.
- (2) To recommend to the board of county commissioners historically significant structures and sites for protection and/or potential purchase by the county.
- (3) To promote public awareness of historic and archaeological preservation and its community benefits.
- (4) To meet with and assist, where appropriate, the owner(s) of a historic resource or a potential historic resource.
- (5) To advise county staff regarding the potential effects of development activities on historic resources in accordance with this article.

(Ord. No. 2002-060, § 1, 11-12-02)

Sec. 3-5-250. - Designation.

The board of county commissioners may designate and place on the local register any prehistoric or historic district, site, building, structure or object of historical, architectural or archaeological value in and related to the county, and may recommend or nominate a site for inclusion in the Florida Master Site File or the National Register of Historic Places. To ensure a consistent data base, a Florida Master Site File form shall be completed for each local register site.

(Ord. No. 2002-060, § 1, 11-12-02)

Sec. 3-5-250.1. - Maintenance of historic resource GIS database.

The location of each historic resource buffer zone shall be placed as an overlay within the county's geographic information systems database where it shall be utilized in the county's review of development activities to ensure compliance with the requirements contained herein. The overlay shall be updated as needed to ensure that the county's review is based on current, best available information.

(Ord. No. 2002-060, § 1, 11-12-02)

Sec. 3-5-250.2. - Conservation of historic resources during development activities.

- (a) The county shall review all proposed development, including Group II and Group III excavations, for potential impacts to historic resources according to the existing review processes in place for the specific type of development. If a proposed development activity is within a historic resource buffer zone or otherwise has the potential to impact historic resources, the county department undertaking the review shall notify the historic preservation board staff liaison (or "liaison") who shall forward the application to the historic preservation board representative ("HPBR") for review and comment as provided below. The liaison shall also notify applicants that the application has been forwarded to the HPBR.
- (b) The HPBR shall review all applications forwarded to his or her attention and provide comments to the liaison within ten (10) working days from the date of notification. The review of the HPBR shall be conducted concurrently with other reviews. If the HPBR fails to respond within ten (10) working days, the county may approve or deny the subject application without historic preservation board input. If the HPBR determines that a development activity may adversely impact historic resources, the applicant shall provide a survey performed by a professional archaeologist licensed in the State of Florida which describes the historic resources found on site accompanied by a report which makes recommendations for the appropriate treatment of such resources. The survey and report shall be provided to the liaison who shall immediately forward it to the HPBR for review and comment. The HPBR shall have ten (10) working days from the date of receipt of the survey and report to conduct his or her review and provide comments to the liaison. Nothing herein shall be construed to limit the ability of the property owner to propose measures to ensure the conservation and recordation of historic resources or to limit the time allocated to the property owner for the completion of surveys or conservation work. Nothing herein shall be construed to prevent the county from continuing its internal review of applications concurrently with the preparation of professional surveys and reports, as well as review by the HPBR, as required by this section.
- (c) The county shall not grant approval for any development activity which adversely affects historic resources until such time as it is demonstrated to the satisfaction of the community development director that every reasonable effort has been made to preserve the historic resources on site, or that adequate measures will be taken to offset the effects of development on the historic resources. For development applications for which professional surveys and reports have been prepared in conformance with this section, the community development director shall not grant approval unless it is demonstrated that every reasonable effort has been made to accomplish the recommendations of the report. Adequate measures may include but shall not be limited to on-site relocation, off-site relocation, inventory and analysis conducted by a professional archeologist (including photographic or other documentation), utilization of the Secretary of the Interior's Standards for Rehabilitation, or other actions whereby the historic significance of the historic resources may be properly documented and recorded for the benefit and enjoyment of present and future generations. If historic resources are to be left in an undisturbed state or relocated and preserved off-site, then that portion of the property on which the resources exist shall be placed under a perpetual conservation easement granted to the board of county commissioners, the Florida Department of State Division of Historic Resources, or any other entity mutually agreeable to the county and the applicant. Establishment of a conservation easement shall not preclude compatible uses of the resources in accordance with federal, state, or local laws. Nothing herein shall be construed to mandate or preclude, at the property owner's sole discretion, public access to areas placed under a conservation easement.
- (d) If previously unknown matters which, in the judgement of the community development director would qualify as historic resources, are discovered on a property on which development activities have been approved, or if there is a change in the design, location, or scope of the activity which may be reasonably construed to pose a threat to historic resources, the county may reconsider or suspend its approval of said activities until such time as the potential impacts to the resources may be quantified and addressed as provided above. The county's suspension of development activities shall be limited to those portions of a development activity which may adversely impact the resources.

(Ord. No. 2002-060, § 1, 11-12-02)

Sec. 3-5-251. - Rehabilitation, moving, maintenance, repair, use and demolition of historic structures.

- (a) *Rehabilitation and moving.* In conformance with the Standard Building Code as amended and as adopted by the county, the repairs, alterations and additions, or moving of a structure necessary for the preservation, restoration, rehabilitation or continued use of a building or structure may be made without conformance to the technical codes when the building official judges such to be safe and in the public interest.
- (b) *Maintenance and repair.* Nothing in this article shall be construed to prevent ordinary maintenance or repair of any exterior elements of any building or structure which does not involve a change of design, appearance or material, and which does not require a building permit.
- (c) *Use.*
  - (1) Structures which have been designated as historic properties shall be exempt from the provisions of the zoning code pertaining to nonconforming structures.
  - (2) Owners of historic properties may petition the board of county commissioners to allow any type of use which would serve to perpetuate the viable contemporary utilization of the historic property, regardless of whether such use is permitted in the zoning district in which the historic property is located. The board of county commissioners' approval shall be granted through entering into a developer's agreement with the owners of the historic property which agreement shall be binding upon subsequent owners and assigns.
- (d) *Voluntary demolition.* Approval of a voluntary application for demolition of a designated historic resource or a contributing property within a designated historic district may be delayed by the liaison for up to thirty (30) calendar days to allow the historic preservation board to seek possible alternatives to demolition. The board of county commissioners must approve a delay of over thirty (30) calendar days. The applicant may petition the board of county commissioners at that time to limit the delay on the basis that retention of the historic resource or contributing property would deny the owner of all economically viable use of the historic resource or contributing property, thus creating an undue economic hardship.
- (e) *Involuntary demolition.* The building official shall immediately notify the liaison of cases where there are emergency conditions dangerous to life, health or property affecting a historic resource and the liaison shall notify the HPBR. Prior to ordering the demolition of a historic resource, the building official shall consult with the HPBR to determine whether there are alternatives to demolition available that ameliorate the threat to the public health, safety, and welfare without necessitating destruction of the historic resource.
- (f) *Demolition by neglect.* In the event the historic preservation board determines that a property within a designated historic district or a designated historic resource is being so poorly maintained as to endanger its historic integrity, the historic preservation board shall have the authority to request that the owner of the historic resource attend a meeting to discuss the condition of the building and a possible course of action to prevent further deterioration. If the owner fails to attend the meeting or take action to prevent further deterioration, the historic preservation board may request the building official to institute code enforcement proceedings to remedy the problem.

(Ord. No. 2002-060, § 1, 11-12-02)

Sec. 3-5-251.2. - Stop work orders.

- (a) Any work conducted contrary to the provisions of this article shall be immediately stopped upon written notice from the county that the work does not conform to the terms of this article.

- (b) When an unmarked human burial is discovered, all activity that may disturb the unmarked human burial shall immediately cease and the local law enforcement agency and/or the district medical examiner shall immediately be notified in accordance with applicable Florida Statutes.

(Ord. No. 2002-060, § 1, 11-12-02)

Sec. 3-5-251.3. - Violations and penalties.

- (a) Disturbance or destruction of any historic resources in violation of this article, or violation of the provisions of any approval issued hereunder, resulting from willful acts or gross negligence, shall be punishable by a fine of not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed sixty (60) days or by both such fine and imprisonment, except that, as provided in F.S. section 162.09(2), as may be amended, if a code enforcement board finds a violation to be irreparable or irreversible in nature, it may impose a fine not to exceed five thousand dollars (\$5,000.00) per violation.
- (b) The provisions of this article, or of any approval issued hereunder, may be enforced by any other means available at law or in equity, including injunctive proceedings or code enforcement proceedings.
- (c) Any development approval obtained in violation of this article, or based on the submission of false, misleading, or incomplete information, shall be voidable at the discretion of the community development director.

(Ord. No. 2002-060, § 1, 11-12-02)

Sec. 3-5-252. - Variance.

Variances to the terms and provisions of this article will be in accordance with the provisions of section 3-5-6.1 except that, in addition to the criteria enumerated in section 3-5-6.1(d), the board of zoning appeals will also consider the intent of this article in context with the zoning code, development regulations, and the county's comprehensive plan.

(Ord. No. 2002-060, § 1, 11-12-02)

Sec. 3-5-253. - Appeal.

Any aggrieved party may appeal any determination of the community development director pursuant to this article by filing with the community development director a petition stating the nature of the determination and the allegation of factual or interpretive error. Upon review of the petition and all relevant information, the community development director shall place the appeal on the agenda of the board of county commissioners during one of its regular meetings in the form of a public hearing with notice to the petitioner and after advertising in the county's newspaper of record no later than two (2) weeks (fourteen (14) calendar days) prior to the hearing. Following the close of the hearing, the board of county commissioners may uphold or deny the petition, or may amend the subject determination based on the facts as provided in the hearing. If the board of county commissioners determines that additional information is necessary, it may also set a date certain at which the petition will be re-discussed. Decisions of the board of county commissioners may be reviewed by the circuit court. Nothing herein shall be construed to limit the board of county commissioners' authority to delegate the appellate duties of this section to the board of zoning appeals, a hearing officer or special master proceeding, or any other lawful procedure selected by the board of county commissioners.

(Ord. No. 2002-060, § 1, 11-12-02)

Sec. 3-5-254. - Severability.

In the event this article conflicts with any other provision of the Charlotte County Code of Laws and Ordinances or other applicable law, the more restrictive shall apply. If any subsection, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remainder of this article.

(Ord. No. 2002-060, § 1, 11-12-02)

Secs. 3-5-255—3-5-265. - Reserved.