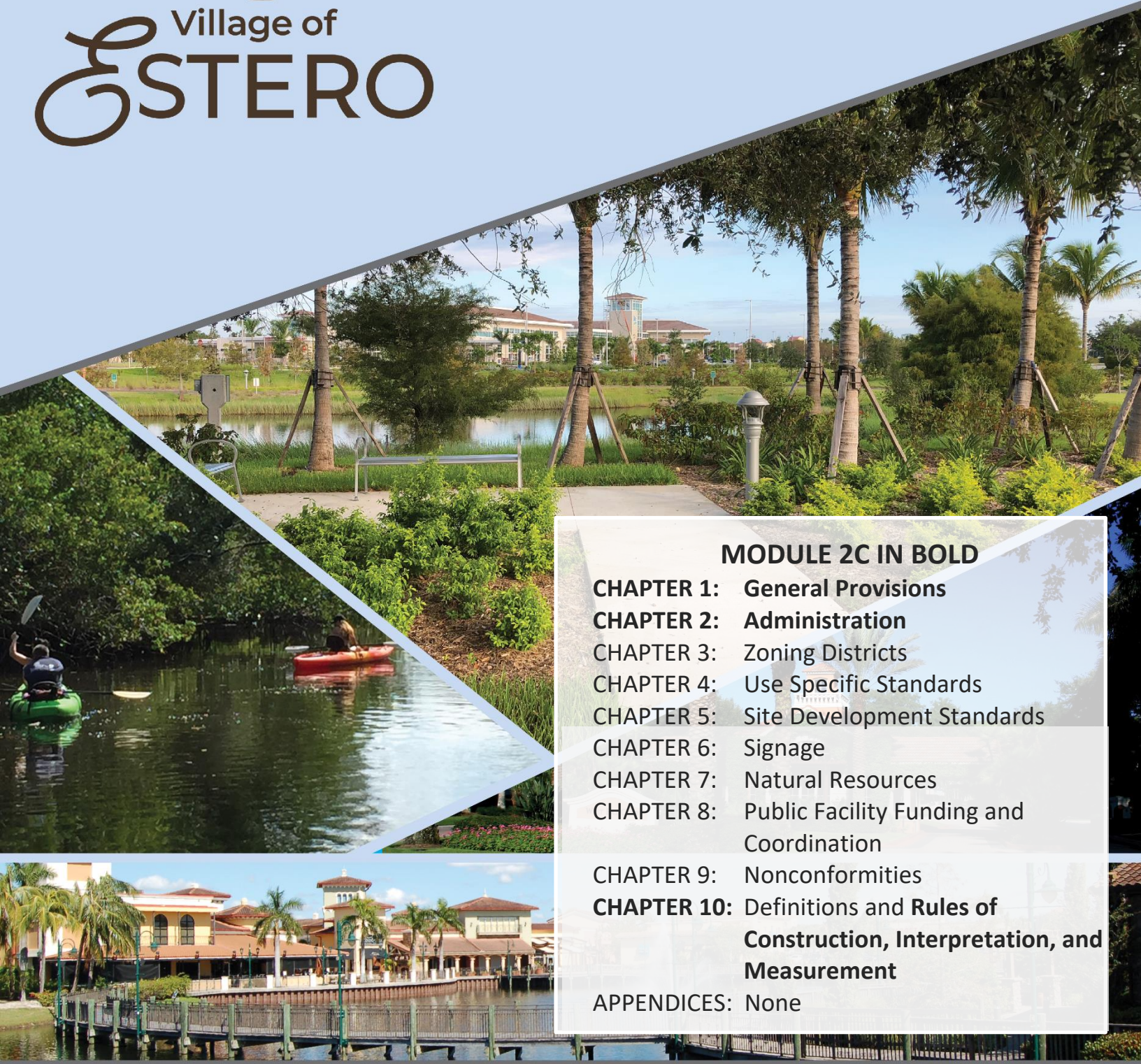




# Land Development Code

REVIEW DRAFT –NOVEMBER 19, 2020



## MODULE 2C IN BOLD

- CHAPTER 1: **General Provisions**
- CHAPTER 2: **Administration**
- CHAPTER 3: Zoning Districts
- CHAPTER 4: Use Specific Standards
- CHAPTER 5: Site Development Standards
- CHAPTER 6: Signage
- CHAPTER 7: Natural Resources
- CHAPTER 8: Public Facility Funding and Coordination
- CHAPTER 9: Nonconformities
- CHAPTER 10: Definitions and **Rules of Construction, Interpretation, and Measurement**
- APPENDICES: None

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# LAND DEVELOPMENT CODE<sup>1</sup>

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# CHAPTER 1

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## GENERAL PROVISIONS

### COMMENTARY

**Chapter 1: General Provisions**, contains general provisions that are relevant to the entire Land Development Code (LDC). Specifically, the article includes sections that:

- Establish the title, or official name of the document;
- Identify the statutory authority of the Village to adopt the LDC;
- Provide the general purpose and intent of the Village Council in adopting the LDC;
- Set out what development is subject to the LDC;
- Include a provision that recognizes the LDC is consistent with the Village's adopted comprehensive plan;
- Clarify that the stricter provision applies if LDC provisions conflict with each other or other regulations;
- Formally adopt and incorporate by reference the Official Zoning Map, and provide rules for interpreting zoning district boundaries;
- Establish the date upon which the LDC becomes effective and repeal the transitional LDC that is being replaced by this LDC;
- Establish rules governing the rights of development approved under previous regulations and pending development applications submitted before the effective date of this LDC; and
- Provide a severability provision.

**Note: This commentary is provided for reference purposes. It will be deleted in the adopted LDC.**

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# CHAPTER 1. GENERAL PROVISIONS

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## SECTION 1-1. TITLE<sup>2</sup>

This code shall be officially entitled the “Land Development Code (LDC) of the Village of Estero, Florida,” and may be referred to as the “Estero Land Development Code,” the “Land Development Code,” “the LDC,” or “this LDC.”

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## SECTION 1-2. AUTHORITY<sup>3</sup>

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### 1-201. GENERAL

The Estero Village Council is authorized to adopt this LDC in accordance with Article VIII, Section 2(b) of the Florida Constitution, the charter of the Village of Estero, Chapter 166 of the Florida Statutes (the Municipal Home Rules Powers Act), Section 163.3202, Fla. Stat., and all other relevant laws of the State of Florida.

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### 1-202. REFERENCES TO STATE AND FEDERAL LAW

Whenever any provision of this LDC refers to or cites a section of the Florida Statutes (Fla. Stat.) or Florida Administrative Code (FAC), or any federal law, and that section is later amended or superseded, this LDC shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

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## SECTION 1-3. GENERAL PURPOSE AND INTENT<sup>4</sup>

The general purpose of this LDC is to promote the public health, safety, and general welfare, and to implement the goals, objectives, and policies of the Village’s comprehensive plan and other adopted plans. More specifically, this LDC is intended to do the following, consistent with the goals, objectives, and policies of the comprehensive plan and other adopted plans:

- 1-301. Establish comprehensive, consistent, effective, efficient, and equitable standards and procedures for the review and approval of development that implements the comprehensive plan and other adopted plans.
  - 1-302. Respect the rights of landowners while considering the interests and goals of the Village’s citizens.
  - 1-303. Ensure that land uses and development are configured and located in a rational and efficient manner.
  - 1-304. Support development that is attractive, pedestrian-friendly, well-connected, and encourages multiple modes of mobility.
  - 1-305. Support and encourage vibrant, pedestrian-friendly, and higher density mixed-use development with placemaking elements in the Village Center and other appropriate areas in the Village.
  - 1-306. Support and encourage high quality redevelopment along the US 41 corridor that is consistent with its context.
  - 1-307. Maintain a high quality of architectural design, development form, and quality of life.
  - 1-308. Provide a diversity of housing opportunities.
- 

<sup>2</sup> This section establishes the name or title of the new Land Development Code (LDC), as well as abbreviated titles. It builds on Sec 1-1 of the transitional LDC.

<sup>3</sup> This section references those sections of the Florida Constitution and the Florida statutes that authorize general municipal powers and municipal regulation of land development, and the Village’s charter. To cover any existing or future laws related to development regulation, the section adds references to any other relevant state laws and recognizes the possibility of reference-changing statutory amendments.

<sup>4</sup> This section conforms the general purpose and intent statements in the LDC to the purpose and intent of the LDC directed in the comprehensive plan.

- 1-309.** Protect the character of existing and new residential neighborhoods from incompatible development.
- 1-310.** Support economic development and new employment opportunities in ways that are consistent with the Village's desire to maintain a high quality of development and pedestrian-friendliness.
- 1-311.** Support a rational and effective stormwater management program and regulations.
- 1-312.** Ensure standards are established that protect the Village's natural resources, including natural lands, habitats, wetlands, floodplains, and other waterways in the Village.
- 1-313.** Support and encourage green building practices.
- 1-314.** Protect unique historical and cultural structures in the Village.
- 1-315.** Provide specific procedures to ensure that development is conditioned on the availability of certain public facilities and services to adequately accommodate that development (concurrency).
- 1-316.** Ensure new development pays its proportionate share for the road, park, and public safety capital facilities needed by the Village and facility providers to adequately accommodate it.

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## **SECTION 1-4. APPLICABILITY<sup>5</sup>**

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### **1-401. GENERAL APPLICABILITY<sup>6</sup>**

- A.** The provisions of this LDC shall apply to the development of all land within the corporate limits of the Village of Estero, unless expressly exempted by another specific section, subsection, or paragraph of this LDC.<sup>7</sup>
- B.** Except as provided in subsection C below, all development, including the subdivision of land, is required to obtain a development order in accordance with this LDC prior to commencing any land development activities or receiving any development permit, including a building permit.
- C.** The following development is permitted without obtaining a development order, provided the development otherwise complies with the standards of this LDC:
  - 1.** Construction of a single-family dwelling or a two-family attached dwelling on an individual lot, including any customary accessory structures;
  - 2.** Development of agricultural uses, except a development order is required for excavations in accordance with Sec. 7-206.G, Excavations;
  - 3.** Signs which are regulated by Chapter 6: Signage; and
  - 4.** The replacement of existing utility lines.

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### **1-402. APPLICATION TO GOVERNMENTAL UNITS**

- A.** The provisions of this LDC apply to development by the Village or its departments, and to land owned by the Village.
- B.** To the extent allowed by law, the provisions of this LDC also apply to development by any county, the State of Florida or its agencies, and the federal government or its agencies or departments.

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### **1-403. COMPLIANCE REQUIRED**

- A.** No land in the Village shall be developed without compliance with the requirements of this LDC, and all other applicable Village, Lee County, state, and federal laws and regulations.

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<sup>5</sup> This section reflects the transitional LDC's general requirement for compliance with its provisions (see Sec. 10-3 of the transitional LDC), stating that the LDC applies to the development of land in the Village, and to other governments to the extent allowed by law. It also provides an exemption for emergencies, when authorized by the Village Council (see Sec. 1-404).

<sup>6</sup> This section builds on Sec. 10-101(a) of the transitional LDC, including subsections (1), (2), (4), and (9).

<sup>7</sup> This section builds on Sec. 10-7 of the transitional LDC.



- B. Except as otherwise provided for in this LDC, permits for development, including building permits, will only be issued after the issuance of, and in compliance with, a development order. No rezoning, development order, limited development order, or permit may be issued relating to any land that is the subject of code enforcement action (see Sec. 1-801, Violations Continue) or that otherwise violates this LDC regardless of whether the applicant or the landowner owned the property at the time the violation occurred. However, this subsection will not prevent issuance of a permit for the specific purpose of resolving or abating the violation.<sup>8</sup>
- C. Improvements constructed in accordance with an approved development order or limited development order may not be placed into service or otherwise used until the required certificate of compliance is issued for the development order/limited development order.<sup>9</sup>
- D. All development shall remain in compliance with the terms and conditions of all development approvals and permits even after issuance of a certificate of completion.<sup>10</sup>

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#### **1-404. EMERGENCY EXEMPTION**

Consistent with state law,<sup>11</sup> the Village Council may, by resolution and without any otherwise required prior notice or public hearing, authorize Village agencies or departments to deviate from the provisions of this LDC during an emergency when the need to act quickly to secure the public health, safety, or welfare makes it impossible to submit to the normal procedures and requirements of this LDC.

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#### **1-405. MINIMUM REQUIREMENTS<sup>12</sup>**

The standards and requirements of this LDC shall be construed to be the minimum requirements necessary for meeting the general and specific requirements of this LDC. Development shall also comply with local, state, and federal air, water, and noise pollution standards.

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#### **1-406. ENGINEERS AND DESIGN CONSULTANTS<sup>13</sup>**

All required improvements such as streets, drainage structures, drainage systems, bridges, bulkheads, water and sewage facilities shall be designed by licensed engineers registered in this state. All plans, drawings, reports and calculations shall be prepared, signed, and sealed by the appropriate licensed professional, such as engineers, architects, landscape architects, land surveyors, and attorneys, registered in the state. Other specialized consultants, such as environmental consultants or archaeologists may be required to assist in the preparation of the plans, drawings, reports, and other documents required to be prepared by this LDC.

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#### **1-407. NOTICE OF COMMENCEMENT OF CONSTRUCTION**

72 hours before commencing construction, the Director shall be notified by the constructing entity. Notice shall include the location of construction by address and project name, and shall include the general contractor's contact information.

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#### **1-408. DEVELOPMENT AND CONSTRUCTION ACTIVITIES**

- A. During development and construction activities, the developer shall take every reasonable precaution to avoid:
  - 1. Dust and debris from blowing onto adjacent properties. If the Director determines conditions are such that dust or debris is adversely affecting adjacent properties, a stop work order may be issued until the conditions are mitigated. The proposed method of mitigation may include (but is

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<sup>8</sup> This subsection builds on Sec. 10-7(c) of the transitional LDC.

<sup>9</sup> This subsection carries forward Sec. 10-7(g) of the transitional LDC.

<sup>10</sup> This subsection carries forward Sec. 10-7(f) of the transitional LDC.

<sup>11</sup> This is a new provision that recognizes the authority of the Village Council to take action quickly during emergency conditions. See Sec. 166.041(3)(b), Fla. Stat.

<sup>12</sup> This subsection builds on Secs. 10-3, 10-7(a), and 34-5(b) of the transitional LDC.

<sup>13</sup> This subsection carries forward Sec. 10-102 of the transitional LDC.

- not limited to) temporary silt fencing, sprinkling the area with water, seeding or sodding, or other similar measures approved by the Director.<sup>14</sup>
2. If the Director determines construction activities could be, or are, generating noise, nuisance, or other adverse impacts that may unreasonably affect adjacent properties, the Director may establish reasonable working hours or other conditions for construction activities as a condition of the development order/limited development order. If the stipulated working hours or conditions are violated, a stop work order may be issued until the conditions are mitigated.<sup>15</sup>
- B. Prior to approval of a development order or limited development order, an applicant shall prepare and have a Construction Activity Management Plan approved by the Director, which shall ensure construction on the site will not have an adverse impact on surrounding properties or the site itself. The Construction Activity Management Plan shall comply with all Maintenance of Traffic procedures adopted by the Village, unless the Director determines the procedures are not needed.

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## **SECTION 1-5. CONSISTENCY WITH COMPREHENSIVE PLAN<sup>16</sup>**

- 1-501.** This LDC is intended to ensure that all development within the Village is consistent with the goals, objectives, and policies, and Future Land Use Map (FLUM) of the comprehensive plan. Where there are clear conflicts between the comprehensive plan and this LDC, the comprehensive plan shall control.<sup>17</sup>
- 1-502.** All development permits as defined in state law,<sup>18</sup> including but not limited to Developments of Regional Impact (DRIs), amendments to the zoning district map (rezonings), planned developments, special exceptions, development orders, limited development orders, plat approvals, zoning variances, flood hazard variances, administrative deviations, any other deviations, a certificate of concurrency compliance, , right-of-way permits, driveway/right-of-way permits, sign permits, temporary use permits, and tree removal permits, shall be consistent with the comprehensive plan.<sup>19</sup>

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## **SECTION 1-6. RELATIONSHIP WITH OTHER LAWS, COVENANTS, OR DEEDS<sup>20</sup>**

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### **1-601. CONFLICTS WITH OTHER VILLAGE REGULATIONS<sup>21</sup>**

- A. If a provision of this LDC is inconsistent with another provision of this LDC, or with a provision found in other codes or ordinances of the Village, the more restrictive provision shall control unless the terms of the more restrictive provision specify otherwise. The more restrictive provision is the one that imposes greater restrictions or burdens, or more stringent controls.
- B. The definitions contained in this LDC will be controlling for all provisions of this LDC, and definitions contained in other Village ordinances and regulations of the County shall not apply. In the absence of a definition, the definitions of terms in other ordinances and regulations shall be persuasive only if specifically referenced in this LDC.

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<sup>14</sup> This subsection carries forward Sec. 10-7(e) of the transitional LDC.

<sup>15</sup> This subsection carries forward Sec. 10-7(h) of the transitional LDC.

<sup>16</sup> This section reflects the plan consistency requirement in state law, and references provisions in the transitional LDC that the LDC be consistent with the adopted comprehensive plan.

<sup>17</sup> This section builds on Sec. 1-11 of the transitional LDC.

<sup>18</sup> Sec. 163.3164(16), Fla. Stat. "Development permit includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land."

<sup>19</sup> This carries forwards and refines Sec. 2-3 of the transitional LDC, based on the changes made to the procedures in this LDC (see Chapter 2: Administration).

<sup>20</sup> This section adds provisions addressing the relationship of the LDC to other Village laws and state and federal laws. It also provides that the LDC does not affect covenants or other agreements between private parties, and that the Village is not obligated to enforce private agreements.

<sup>21</sup> This subsection builds on Secs. 10-3, 10-4, and 34-5(b) of the transitional LDC.

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**1-602. CONFLICTS WITH STATE OR FEDERAL LAW**

If a provision of this LDC is inconsistent with a provision found in the laws or regulations of the state or federal government, the more restrictive provision shall control, to the extent permitted by law.

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**1-603. RELATIONSHIP TO PRIVATE AGREEMENTS/ CONFLICTS WITH PRIVATE AGREEMENTS**

Nothing in this LDC is intended to supersede, annul, or interfere with any deed restriction, covenant, easement, or other agreement between private parties, but such deed restrictions, covenants, easements, and other private agreements shall not excuse any failure to comply with this LDC. The Village is not responsible for monitoring or enforcing any such private agreements.<sup>22</sup>

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**1-604. EXISTING VESTED RIGHTS**

Nothing in this LDC is intended to repeal, supersede, annul, impair, or interfere with any vested rights under applicable law, provided such rights are lawfully established and remain in effect.

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**SECTION 1-7. OFFICIAL ZONING MAP<sup>23</sup>**

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**1-701. ESTABLISHMENT AND MAINTENANCE**

The Official Zoning Map is established by this LDC. It designates the location and boundaries of the various conventional zoning districts, planned development districts, and overlay zoning districts under the LDC.

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**1-702. INCORPORATED BY REFERENCE**

The Official Zoning Map, including its entire notation, is incorporated into this LDC by reference and is on file in the office of the Director and available to the public during normal business hours. The Village may maintain the Official Zoning Map as an electronic map layer in the Village's Geographic Information System (GIS) database. The official copy of the electronic version of an Official Zoning Map shall be recorded onto permanent media to ensure all the electronic information is protected.

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**1-703. CHANGES TO OFFICIAL ZONING MAP**

- A. Changes made in zoning district boundaries on the Official District Map shall be considered an amendment to this LDC and shall be made in accordance with Sec. 2-501.C, Rezoning (Zoning Map Amendment), or Sec. 2-501.D, Planned Development, as appropriate
- B. The Director shall enter changes on the Official Zoning Map within a reasonable period of time after the amendment is approved by Village Council. Where the ordinance enacting a zoning district boundary change contains wording explaining or clarifying the location of the new boundary, the Director may enter notations reflecting the ordinance wording on the Official Zoning Map.

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**1-704. ZONING DISTRICT BOUNDARIES**

- A. The Director is authorized to determine in accordance with Sec. 2-507, Administrative Interpretation:
  - 1. The location of zoning district boundaries as shown on the Official Zoning Map. When determining the location of zoning district boundaries, the Director shall use the general rules established in Sec. 10-201, Interpretation of District Boundaries.<sup>24</sup>

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<sup>22</sup> This subsection builds on Sec. 34-4(b) of the transitional LDC.

<sup>23</sup> This section builds on the transitional LDC's provisions establishing the Official Zoning District Map (Secs. 34-611, 34-613, 34-614). These provisions identify the Official Zoning District Map as the final authority concerning zoning classifications, assign responsibility for making changes to the Official Zoning District Map, authorize explanatory notations on the map, and state where the Official Zoning District Map is to be maintained. It relocates rules for interpreting zoning district boundaries to Chapter 10: Definitions and Rules for Construction, Interpretation, and Measurement.

<sup>24</sup> This referenced section carries forward Sec. 34-616 of the transitional LDC.

2. Whether a particular principal use or accessory use or structure not expressly listed in the Principal Use Tables as allowable in a particular zoning district is permitted or allowed as a principal use or special exception use.<sup>25</sup> When making such an interpretation, the Director shall use the general rules in Sec. 10-202.B, Standards for Interpreting Unlisted Principal Uses, or Sec. 10-202.C, Effect of Allowing Unlisted Uses as Permitted Use or Special Exception Use, as appropriate.
- B. Appeals from the Director's determinations may be made to the Village Council (see Sec. 2-506.D, Appeal of Administrative Official Decision).
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## **SECTION 1-8. TRANSITIONAL PROVISIONS<sup>27</sup>**

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### **1-801. VIOLATIONS CONTINUE**

Any violation of the transitional LDC shall continue to be a violation under this LDC, and subject to the penalties set forth in Sec. 2, Code Enforcement, of Ord. 2015-14, unless the development complies with the express terms of this LDC.<sup>28</sup>

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### **1-802. NONCONFORMITIES**

If any use, structure, lot of record, or sign was legally established on the date of its development, but does not fully comply with the standards of this LDC including standards relevant to site configuration, then that use, structure, lot of record, or sign shall be considered nonconforming and subject to the provisions of Chapter 9: Nonconformities.

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### **1-803. ISSUANCE OF DEVELOPMENT PERMITS<sup>29</sup>**

No development permit<sup>30</sup> shall be approved when a subsequent amendment to this LDC adopted on \_\_\_\_ [Insert effective date] is pending before the Planning Zoning and Design Board or Village Council, which amendment, if adopted, would render the proposed development nonconforming.

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### **1-804. APPLICATIONS FOR WHICH NO FINAL ACTION TAKEN<sup>31</sup>**

- A. Any development application submitted and accepted as complete before [redacted] [insert effective date of this LDC], but that is still pending final action as of that date, shall be reviewed and decided in accordance with the regulations in effect when the application was accepted.
  - B. Completed applications shall be processed in good faith and shall comply with any time frames for review, approval, and completion as established in the regulations in effect at the time of application acceptance. If the application fails to comply with the required time frames, it shall expire and be vacated, and future development shall be subject to the requirements of this LDC.
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<sup>25</sup> This builds on Sec. 34-620 of the transitional LDC.

<sup>27</sup> This new section establishes rules governing the transition from the transitional LDC to the new LDC. It clarifies the status of violations under the transitional LDC and new LDC, pending applications, and approved development that is ongoing. It also establishes the effective date of the new LDC.

<sup>28</sup> This builds on Sec 1-9 of the transitional LDC and updates with the Village's code enforcement provision.

<sup>29</sup> This is a new provision that clarifies that a pending application for a development permit cannot be approved when an amendment to the LDC is pending that would render the proposed development nonconforming.

<sup>30</sup> Development permit shall have the meaning in Sec. 163.3164 (16), Fla. Stat.: "Development permit includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land." For the purposes of this LDC it includes but is not limited to: Developments of Regional Impact (DRIs), amendments to the zoning district map (rezonings), planned developments, special exceptions, development orders, limited development orders, zoning variances, flood hazard variances, administrative deviations, any other deviations, right-of-way permits, commercial building repainting permits, driveway/right-of-way permits, sign permits, temporary use permits, and tree removal permits. See Section 1.5.2 above.

<sup>31</sup> This subsection establishes the rule that applications that are already in the development approval pipeline at the time of the adoption of the new LDC and are determined "complete" may be processed under the provisions of the transitional LDC. If an applicant seeks to proceed under the standards in the new LDC (instead of the regulations of the transitional LDC), the applicant may do so, but will need to withdraw the application and resubmit it.

- C. An applicant with a pending application accepted before [redacted] [insert effective date of this LDC] may opt to have the proposed development reviewed and decided under the standards of this LDC by withdrawing the pending application and submitting a new application in accordance with the standards of this LDC.
- D. To the extent a pending application approved under this subsection 1.8.4 proposes development that does not comply with this LDC, the development, although permitted, shall be nonconforming and subject to the provisions of Chapter 9: Nonconformities.
- E. By notifying the Director in writing, an applicant who has received approval of a master concept plan in accordance with the transitional LDC in effect before [redacted] [insert effective date of this LDC] may opt to have the proposed development reviewed and decided in accordance with the regulations in effect at the time the master concept plan was approved. Notification by the applicant shall be made within 90 days of [redacted] [insert effective date of this LDC] and shall be irrevocable.<sup>33</sup>

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**1-805. DEVELOPMENT APPROVALS AND PERMITS UNDER PRIOR LAND DEVELOPMENT CODES**

- A. All development approvals or permits approved before [redacted] [insert effective date of this LDC], either by the Village or by Lee County (prior to the incorporation of the Village), remain valid until their expiration date, and may be carried out in accordance with the terms and conditions of their approval, and the development standards in effect at the time of approval, as long as they remain valid and have not expired or been revoked or substantially modified. If the approval or permit expires or is revoked (e.g., for failure to comply with the terms and conditions of approval) or substantially modified, all subsequent development of the site shall comply with the procedures and standards of this LDC.
- B. Approval of a building permit prior to [redacted] [insert effective date of this LDC] means all plans and approvals for the development subject to the building permit are valid.
- C. Any re-application for an expired development approval or permit shall comply with the standards in effect at the time of re-application.

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**SECTION 1-9. BUILDINGS AND BUILDING REGULATIONS**

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**1-901. CONFLICTING BUILDING ORDINANCE PROVISIONS<sup>34</sup>**

Any conflict between the applicable minimum Building Code and the applicable Fire Safety Code will be resolved by agreement between the Building Official and the Fire Official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternative which would provide an equivalent degree of lifesafety and an equivalent method of construction.

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**1-902. STATEWIDE EFFECTIVENESS OF FLORIDA BUILDING CODE<sup>35</sup>**

The statewide effectiveness of the Florida Building Code (FBC) is codified in h. 553, Fla. Stat. The FBC is hereby adopted by reference and made a part of this chapter and supplemented with the addition of the following: Fees for renewal, reissuance or extension of a building permit may also require the payment of new or increased impact fees that have become effective since the first issuance of the permit.

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**1-903. WIND BORNE DEBRIS REGION AND BASIC WIND SPEED MAP<sup>36</sup>**

The Lee County Wind Borne Debris Region and Basic Wind Speed Map, as depicted in Appendix M of the Lee County LDC establishes the geographical boundaries of the wind speed zones and the wind borne debris region in Lee County. The wind speed lines and wind borne debris region coincide with Figures 1609A (Ultimate Design Wind Speeds – Risk Category II Buildings, 1609B ( Ultimate Design

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<sup>33</sup> This builds on Sec. 10-5(b)(1) of the transitional LDC.

<sup>34</sup> Carries forward Sec. 6-43 of the transitional LDC.

<sup>35</sup> Carried forward from Sec. 6-111 of the transitional LDC.

<sup>36</sup> Carries forward Sec. 6-112 of the transitional LDC.

Wind Speeds – Risk Category III & IV Buildings), and 1609C (Ultimate Design Wind Speeds – Risk Category I Buildings), of the FBC.

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#### **1-904. MANAGEMENT AND REMOVAL OF CONSTRUCTION SITE TRASH AND DEBRIS<sup>37</sup>**

##### **A. Unlawful to Bury**

It is unlawful to bury construction site trash or debris on the construction site or on any other public or private property not specifically approved for such use.

##### **B. Trash Containers and Collection Service**

A suitable trash container and adequate collection service must be provided for each construction site. For purposes of this requirement, a “suitable container” means a structure, device, receptacle, or other container approved by the County, which holds and contains construction debris on the construction site in a central location long enough for it to be removed from the site by means of whatever collection service the contractor chooses to use or may be required to use pursuant to other applicable laws, before such debris is:

1. Washed or blown off-site;
2. Contaminates subsurface elements;
3. Becomes volatile or malodorous;
4. Makes an attractive nuisance; or
5. Otherwise becomes a threat to the public health, safety and welfare.

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#### **1-905. MAINTENANCE**

##### **A. Maintenance Required<sup>38</sup>**

###### **1. General Maintenance**

Buildings, structures, pools, electrical, gas, mechanical and plumbing systems, both existing and new, and all parts thereof, must be maintained in a safe and sanitary condition. Devices and safeguards that are required by the technical codes when constructed, altered or repaired, must be maintained in good working order. The owner, or his designated agent, will be responsible for the maintenance of buildings, structures, pools, electrical, gas, mechanical and plumbing systems.

###### **2. Exterior Surfaces of Buildings, Including Roofs**

###### **A. Building walls and roofs must be maintained as follows:**

1. Building walls and roofs must be maintained in a secure and attractive manner.
2. Deteriorated or damaged structural and decorative elements of any building wall or roof must be repaired or replaced in a workman-like manner to match as closely as possible the materials and construction of the building.
3. Roofs must be maintained in a secure and waterproof condition.

###### **B. Doors, windows and screens must be maintained as follows:**

1. Doors and windows must be secure in a tight fitting and weatherproof condition.
2. Sashes/sills with rotten wood must be repaired or replaced.
3. Torn or damaged screens must be promptly repaired.

###### **C. Awnings or canopies must be maintained in good condition. Torn or loose awnings must be promptly repaired or replaced.**

###### **D. Screen rooms, pool cages and screen enclosures must be maintained in a secure and attractive manner. Deteriorated or damaged structural and decorative elements of any screen rooms, pool cages and screen enclosures must be repaired or replaced in a workmanlike manner to match as closely as possible the materials and construction of the building.**

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<sup>37</sup> Carries forward Sec. 6-114 of the transitional LDC.

<sup>38</sup> Carries forward Sec. 6-115© of the transitional LDC.

E. Soffit and fascia must be maintained in good condition. All damaged or missing soffit or fascia must be repaired or replaced in a workmanlike manner to match as closely as possible the material and construction of the existing soffit and fascia.

**3. Fences**

Fences and non-roofed walls must be maintained in a secure and attractive manner. Deteriorated or damaged structural and decorative elements of any fence or non-roofed wall must be repaired or replaced in a workmanlike manner to match as closely as possible the materials and construction of the fence or non-roofed wall. Fences and non-roofed walls must be maintained as to appear vertical to the unassisted eye.

**4. Docks and Seawalls**

Docks and seawalls must be maintained in a secure and attractive manner. Deteriorated or damaged structural and decorative elements of docks or seawalls must be repaired or replaced in a workmanlike manner to match as closely as possible the materials and construction of the dock or seawall. Docks and seawalls must be maintained as to appear vertical to the unassisted eye.

**5. Signs**

Signs must be maintained in a secure and attractive manner. Deteriorated or damaged structural and decorative elements of a sign must be repaired or replaced in a workmanlike manner to match as closely as possible the materials and construction of the sign.

**6. Permits and Development Orders**

The characterization of construction activity as either a repair or maintenance does not relieve the property owner from the responsibility of obtaining all permits or development orders necessary to comply with the foregoing provisions of this section.

**B. Nuisances<sup>39</sup>**

1. No person owning, leasing, operating or having control of premises may maintain, keep or permit any nuisance as described in this section.
2. The existence of any of the following conditions or conduct is hereby declared to be a public nuisance:
  - A. Buildings that are abandoned.
  - B. Buildings that are boarded up, except when placed for temporary hurricane protection and removed within 30 days.
  - C. Buildings that are partially destroyed and not rebuilt or repaired within a reasonable temporary period.
  - D. Partially constructed buildings or structures for which building permits have expired.
  - E. Attractive nuisances dangerous to children such as untended or unfenced excavations, untended or unenclosed swimming pools, or abandoned or broken equipment or machinery.
  - F. Blocking of drainage swales or pipes so as to cause flooding or adversely affect surrounding property.
  - G. Outdoor storage on private property of boats and motor vehicles and trailers that are not affixed with a current registration decal.

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**1-906. IMPROVEMENTS OR REPAIRS NOT REQUIRING A PERMIT**

- A. Improvements or repairs to 100 square feet or less of drywall where no fire separation is involved, within any 12-month period.<sup>40</sup>
- B. Improvements or repairs to a garden or yard trellis less than 200 square feet in area and less than 12 feet in height.<sup>41</sup>

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<sup>39</sup> Carries forward Sec. 6-115(d) of the transitional LDC.

<sup>40</sup> Carries forward Sec. 6-117(f) of the transitional LDC.

<sup>41</sup> Carries forward Sec. 6-117(g)(2) of the transitional LDC.

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### **SECTION 1-10. SEVERABILITY**

It is also the legislative intent of the Village Council that if any section, subsection, sentence, clause, or phrase of this LDC is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity and continued enforcement of any other provision of this LDC. The Village Council hereby declares that it would have adopted this LDC and any section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases of the LDC is declared invalid by a court of competent jurisdiction.

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### **SECTION 1-11. EFFECTIVE DATE**

This LDC shall become effective on [redacted] [*insert the effective date of the LDC*], and repeals and replaces in its entirety the transitional Land Development Code as originally adopted on \_\_\_\_\_,<sup>42</sup> and subsequently amended.

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<sup>42</sup> **NOTE TO STAFF:** Please provide date for original adoption of transitional LDC.



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# CHAPTER 2

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## ADMINISTRATION

### COMMENTARY

**Chapter 2: Administration**, consolidates and streamlines all matters related to the procedural review of development. This chapter is intended to improve the efficiency and transparency of the Village's development review processes by consolidating and standardizing generally applicable procedures and requirements.

- **Section 2-1, Purpose**, provides an overview of the organization of the chapter.
- **Section 2-2, Summary Table of Applications**, consists of a summary table of development review procedures that provides an overview of the development approvals and permits under the LDC, and the staff and advising and decision-making bodies responsible for review and decision-making on each application.
- **Section 2-3, Decision-Making and Advisory Bodies and Persons**, identifies and clarifies the roles of the different bodies and staff responsible for review, advice, and decision-making on applications. The section identifies what responsibilities staff and each of the decision-making and advisory bodies has in the development review process.
- **Section 2-4, General Procedures**, establishes a standard set of review procedures that are generally applicable to the review of development applications. It provides the framework under which the Village's basic development review procedures for applications are made uniform to the greatest degree.
- **Section 2-5, Application-Specific Review Procedures and Decision Standards**, supplements the general review procedures. For each type of application, it identifies the purpose of the application and/or review process; in what situations application approval is necessary; the general review procedures that are required, together with any applicable modifications of or additions to the general procedures; and the standards for making a decision on the application.

**Note: This commentary is provided for reference purposes. It will be deleted in the adopted LDC.**

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## CHAPTER 2. ADMINISTRATION

### SECTION 2-1. PURPOSE

This chapter sets forth the review and approval procedures and standards for all development applications under this LDC.

### SECTION 2-2. SUMMARY TABLE OF APPLICATIONS

#### 2-201. SUMMARY TABLE

Table 2-201: Summary Table of Development Applications, identifies the various development approvals authorized by this LDC and the roles the Village Council, boards, and staff have in making recommendations or decisions on applications for each type of development approval. It also identifies those applications that require a public hearing, and notes whether a public information meeting or pre-application conference is required. Where there might be a conflict between the table and the text of this LDC, the text shall control.

<b>TABLE 2-201: SUMMARY TABLE OF DEVELOPMENT APPLICATIONS</b> <b>A-Appeal D-Decision R-Recommendation S-Staff Review</b> <b>W-Public Information Meeting Required</b> <b>#-Mandatory Pre-application Conference &lt; &gt;-Public Hearing Required</b>				
Review Procedure	Village Council	Planning Zoning and Design Board	Community Development Director	Public Information Meeting <sup>1</sup>
<b>Discretionary Approval</b>				
Comprehensive Plan Amendment	<D>	<R>	S	W
LDC Text Amendment	<D>	<R>	S	
Rezoning (Zoning Map Amendment) <sup>2</sup>	<D> <sup>3</sup>	<R>	S	W
Planned Development	<D>	<R>	S	W
Planned Development Minor Amendment	<A>	<D>	S	
Planned Development Administrative Amendment		<A>	D	
Special Exception	<A> / <D> <sup>4</sup>	<D>	S	W
Bar Special Permit	<D>			
<b>Site Development</b>				
Development Order				
Development Order <sup>5</sup>	<A>	<D> <sup>6</sup>	S	W
Minor Change		<A>	D	
Limited Development Order		<A>	D	
Final Plan	<D>	R	S	
Material Alteration of Commercial or Multifamily Building Exterior	<A>	<D> <sup>7</sup>	S	
Plat Review	D		S	
Vacation of Easement or Right-of-Way	<D>	<R> <sup>8</sup>	S	
<b>Concurrency</b>				
Certificate of Concurrency			D	

<b>TABLE 2-201: SUMMARY TABLE OF DEVELOPMENT APPLICATIONS</b> <b>A-Appeal D-Decision R-Recommendation S-Staff Review</b> <b>W-Public Information Meeting Required</b> <b>#-Mandatory Pre-application Conference &lt; &gt;-Public Hearing Required</b>				
Review Procedure	Village Council	Planning Zoning and Design Board	Community Development Director	Public Information Meeting <sup>1</sup>
<b>Historic Preservation</b>				
Certificate of Appropriateness	<A>	D <sup>9</sup>	S	
<b>Permits</b>				
Monument Sign Permit	<A>	<D>	D/S	
Temporary Use Permit		<A>	D	
Tree Removal/Vegetation Permit		<A>	D	
Other Administrative Permit			D	
Building Permit <sup>11</sup>				
<b>Relief</b>				
Zoning Variance	<A> / <D> <sup>12</sup>	<D>	S	W
Flood Variance	<D>	<R>		
Deviation				
Deviation with rezoning or PD <sup>13</sup>	<D>	<R>	S	
Administrative Deviation	<A>		D	
Appeals of Administrative Official <sup>14</sup>	<A>	<A>	S	
Vested Rights	<D>		S	
<b>Interpretation</b>				
Administrative Interpretation	<A>		D	
<b>NOTES:</b>				
1. Public Information Meetings are conducted by the body with decision authority; however, at the discretion of the Village Manager, a Public Information Meeting for any type of development application may be required and conducted by the Planning Zoning and Design Board . 2. This is a quasi-judicial process for a site-specific rezoning (zoning map amendment). 3. For a rezoning (zoning map amendment) of ten acres or more, initiated by the Village, the Village Council is required to conduct two public hearings. 4. A special exception as a part of a rezoning (zoning map amendment) is decided by the Village Council in conjunction with the rezoning. 5. Development orders are decided by the Planning Zoning and Design Board (PZDB); limited development orders are decided by the Community Development Director. Staff review of a plat includes input from the Village Professional Surveyor and Mapper and the Village Attorney. 6. The PZDB makes a recommendation if concurrent with an application for zoning amendment. 7. The PZDB decides if requested by the Director. 8. The PZDB makes a recommendation if application is concurrent with a rezoning (zoning map amendment). 9. The PZDB acts as the Historic Preservation Board for purposes of certificates of appropriateness only. 11. A building permit is decided by the Building Official. 12. A variance as a part of a rezoning (zoning map amendment) is decided by the Village Council in conjunction with the rezoning. 13. Deviations as part of a zoning amendment or Planned Development Approval are decided by the Village Council with a recommendation by the PZDB.				

<b>TABLE 2-201: SUMMARY TABLE OF DEVELOPMENT APPLICATIONS</b> <b>A-Appeal D-Decision R-Recommendation S-Staff Review</b> <b>W-Public Information Meeting Required</b> <b>#-Mandatory Pre-application Conference &lt; &gt;-Public Hearing Required</b>				
Review Procedure	Village Council	Planning Zoning and Design Board	Community Development Director	Public Information Meeting <sup>1</sup>
14. Appellate body for appeal of an administrative decision will vary according to the decision. See Sec. 2-409.				

## SECTION 2-3. DECISION-MAKING AND ADVISORY BODIES AND PERSONS

### 2-301. VILLAGE COUNCIL

#### A. Powers and Duties

In addition to other authority granted to the Village Council by the Florida Constitution and state law, the Village Council has the following powers and duties under this LDC:

1. To review and decide the following:
  - A. Comprehensive plan amendments (Sec. 2-501.A, Comprehensive Plan Amendments);
  - B. LDC text amendments (Sec. 2-501.B, LDC Text Amendments);
  - C. Rezoning (Zoning map amendments) (Sec. 2-501.C, Rezoning (Zoning Map Amendment));
  - D. Planned developments and Amendments thereto (Sec. 2-501.D, Planned Development);
  - E. Special exceptions (as part of a rezoning) (Sec. 2-501.E, Special Exception);
  - F. Zoning variances (as part of a rezoning) (Sec. 2-506.A, Zoning Variance);
  - G. Flood variances (Sec. 2-506.B; Flood Variance);
  - H. Plats (Sec. 2-502.C, Plat Review);
  - I. Vacation of easements, rights-of-way, or plats (Sec. 2-502.D, Vacation of Easement, Right-of-Way, or Plat);
  - J. Vested rights (Sec. 2-506.E, Vested Rights);
  - K. Final plan approval (Sec. 2-501.F, Final Plan Approval);
  - L. Development agreements; and
  - M. Bar special permit (Sec. 2-501.G, Bar Special Permit)
2. To hear and decide appeals for the following:
  - A. Special exceptions (not part of a rezoning) (Sec. 2-501.E, Special Exception);
  - B. Development orders (Sec. 2-502.A, Development Order);
  - C. Planned development minor amendments (Sec. 2-501.D, Planned Development).
  - D. Zoning variances (Sec 2-506.A, Zoning Variance);
  - E. Appeals of administrative official (Sec. 2-506.D, Appeal of Administrative Official);
  - F. Administrative Interpretations (Sec 2-507, Administrative Interpretation);
  - G. Historic Preservation Certificates of Appropriateness (Sec. 2-504, Historic Preservation Certificate of Appropriateness); and
  - H. Any Planning Zoning and Design Board decision on a permit to materially alter an existing commercial or multifamily building or structure exterior (Sec. 2-505.A, Material Alteration of Commercial or Multifamily Building or Structure Exterior Permit).
3. To establish a schedule of fees for the applications for development approval reviewed under this LDC. The schedule of fees may be placed in an Administrative Manual.
4. To appoint and remove members of the Planning Zoning and Design Board.

5. To take any other action authorized by law.

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## **2-302. PLANNING ZONING AND DESIGN BOARD**

### **A. Generally**

1. The Planning Zoning and Design Board (PZDB) is hereby established.
2. Each member of the PZDB shall be appointed by the Village Council to a 3-year term except for the initial terms of the Board upon its creation. The terms shall be staggered such that not fewer than 2 nor more than 3 terms shall expire each year. The terms of Board Members shall commence on May 1 and shall expire on April 30. Each member of the PZDB shall serve until the expiration of his or her term. Any member may be reappointed by the Village Council from term to term. The term of the PZDB School Board member shall be for the term specified by the School Board or, if no term is specified, for the duration of the tenure or employment of the member with the School Board, or until removed by the School Board.
3. Vacancies on the Board shall be filled by the Village Council upon the affirmative vote of a majority of the full Village Council membership. The Village Council may remove, with or without cause, any member of the PZDB from office at a public hearing upon the affirmative vote of a majority of the full Village Council membership.
4. The chairperson of the board shall be appointed by the Village Council. Members of the PZDB shall annually elect, during the first regularly scheduled meeting of each calendar year, a vice-chairperson from among its members, and may create and fill other officers as the board deems needed.
5. The PZDB may create whatever subcommittees it deems needed to carry out the purposes of the PZDB. The chairperson of the PZDB may appoint, as needed, the membership of each subcommittee from the members of the board.
6. Members of the PZDB shall not be compensated.
7. No PZDB member shall hold any other public office, appointive or elective.
8. The PZDB shall keep minutes of its proceedings, indicating the attendance of each member, and the decision on every question. The village clerk shall maintain all records of the PZDB. All meetings of the PZDB shall be open and available to the public in accordance with state law.
9. The Director shall advise and assist the PZDB in all of its deliberations. The village manager shall provide such other staff and clerical assistance as the PZDB may require in the performance of its duties, subject to the availability of such staff and clerical assistance as approved by the Village Council. The Village Manager, or a designee, shall make a written recommendation to the PZDB of the action to be taken. The PZDB may call upon any department or other agency of the Village for information or advice in the performance of its work. The PZDB, upon the approval of the Village Council, may accept grants or other monetary or physical assistance to aid in its work.
10. The board may adopt rules of procedure not inconsistent with those adopted by the Village Council, for the conduct of meetings and public hearings and the review of matters before the board.
11. Final action taken by the PZDB on applications shall be reduced to writing, filed with the Director, and a copy thereof made available to the applicant upon request.

### **B. Powers and Duties**

The PZDB shall have the following powers and duties under this LDC.

1. To make decisions on the following:
  - A. Planned development minor amendment (Sec. 2-501.D, Planned Development)
  - B. Special exceptions (not part of a rezoning) (Sec. 2-501.E, Special Exception);
  - C. Zoning variances (not as part of a Zoning Map amendment) (Sec. 2-506.A, Zoning Variance);
  - D. Certificates of appropriateness (Sec. 2-504, Historic Preservation Certificate of Appropriateness)
  - E. Development orders and amendments (Sec. 2-502.A, Development Order);
  - F. Monument sign permits (Sec. 2-505.B, Monument Sign Permit); and

- G. Permits to materially alter the exterior of commercial and multifamily buildings and structures (Sec. 2-505.A, Material Alteration of Commercial or Multifamily Building or Structure Exterior Permit).
- 2. To review and make recommendations to the Village Council on the following.
  - A. Comprehensive plan amendments (Sec. 2-501.A, Comprehensive Plan Amendments);
  - B. LDC Text amendments (Sec. 2-501.B, LDC Text Amendments);
  - C. Rezoning (Zoning map amendments) (Sec. 2-501.C, Rezoning (Zoning Map Amendment));
  - D. Planned developments and amendments (Sec. 2-501.D, Planned Development);
  - E. Vacations of easements and right of ways when associated with a rezoning (Sec. 2-502.D, Vacation of Easement, Right-of-Way, or Plat);
  - F. Deviations to be heard by the Village Council (Sec. 2-506.C.1, Deviation); and
  - G. Flood variances (Sec. 2-506.B, Flood Variance).

**3. Other Powers and Duties**

In addition, the PZDB shall have the following powers and duties.

- A. To act as the Local Planning Agency for the Village for the purposes of the Community Planning Act, Sec. 163.3174, Fla. Stat., *et seq.* All of the functions, duties, powers and responsibilities of a local planning agency as per such statutory provisions are hereby delegated to the PZDB.
- B. In addition to any other public hearings required by law, with respect to all applications for development permits that require comprehensive plan amendments, planned development zoning actions, rezonings, variances, and special exceptions, or other development applications as determined by the Village Manager should be subject to public information meetings, the PZDB shall conduct a public information meeting as provided under Sec. 2-401, Public Information Meeting.
- C. Respond to requests from the Village Manager on matters pertaining to planning and zoning.
- D. Perform such other duties as may be assigned by the Village Council or required by ordinance.

**C. Membership**

- 1. The PZDB shall have seven members appointed by the Village Council by affirmative vote of a majority of the full Village Council membership. An additional non-voting, ex officio representative of the Lee County School Board may also serve on the Board in accordance with state law. The School Board shall notify the Village Clerk in writing within 10 days of the appointment or removal of any member.
- 2. At least four members of the PZDB appointed by the Village Council shall be residents of the Village. All other members shall either (i) own a business in the Village, (ii) own property in the Village, or (iii) work in the Village. The members of the Board shall have diverse backgrounds, and, wherever possible, prior experience in land use, planning, zoning, legal matters, environmental matters, engineering, architecture, landscape architecture, or building and development. Each member shall be sympathetic to municipal development consonant with the comprehensive plan and with the health, safety, and welfare of its residents. No Board member shall hold any other public office, appointive or elective.

**D. Meetings**

- 1. The PZDB shall meet at least once each calendar month, unless canceled by the Board or its chairperson. Special meetings may be called by the chairperson or by any 3 regular members of the board. At least seven days' notice shall be provided for any meeting, and an agenda for the meeting shall be available to the public at least seven days prior to the meeting. The Board may meet more often at the call of the chairperson or the Village Council.
- 2. Four members in attendance at a meeting shall constitute a quorum.
- 3. Each decision of the PZDB shall be approved by a majority vote of the members, unless expressly stated otherwise in this LDC.

## **2-303. COMMUNITY DEVELOPMENT DIRECTOR (DIRECTOR)**

### **A. General**

The Village Council has established the Community Development Department as the Village department responsible for the planning functions of the Village, and for administering this LDC. The Community Development Director (Director) serves as the head of the Community Development Department and serves at the direction of the Village Manager.

### **B. Powers and Duties Under LDC**

The Community Development Department, through the Director, has the following general powers and duties under this LDC:

1. To make decisions on the following:
  - A. Limited development orders and amendments (Sec. 2-502.B, Limited Development Order);
  - B. Minor changes to development orders (Sec. 2-502.A, Development Order);
  - C. Certificates of concurrency (Sec. 2-503, Certificate of Concurrency);
  - D. Sign permits (except for monument signs) (Sec. 2-505.B, Monument Sign Permit);
  - E. Temporary use permits (Sec. 2-505.C, Temporary Use Permit);
  - F. Tree removal/vegetation permits (Sec. 2-505.D, Tree Removal/Vegetation Permit);
  - G. Administrative deviations (Sec. 2-506.C.2, Administrative Deviation); and
  - H. Administrative interpretations (Sec. 2-507, Administrative Interpretation).
  - I. Other administrative permits (Sec. 2-508, Other Administrative Permits).
2. To compile and maintain an Administrative Manual;
3. To conduct pre-application conferences in accordance with Sec. 2-402, Pre-application Conference.
4. To conduct public information meetings (Sec. 2-401, Public Information Meeting);
5. To prepare a staff report to the Village Council or PZDB, as applicable, for the following applications for development permit:
  - A. Comprehensive plan amendments (Sec. 2-501.A, Comprehensive Plan Amendments);
  - B. LDC Text amendments (Sec. 2-501.B, LDC Text Amendments);
  - C. Rezoning (Zoning map amendments) (Sec. 2-501.C, Rezoning (Zoning Map Amendment));
  - D. Planned developments and amendments (Sec. 2-501.D, Planned Development);
  - E. Special exceptions (as part of a map amendment) (Sec. 2-501.E, Special Exception);
  - F. Plats (Sec. 2-502.C, Plat Review);
  - G. Vacation of easements, rights-of-way, or plats (Sec. 2-502.D, Vacation of Easement, Right-of-Way, or Plat);
  - H. Vested rights (Sec. 2-506.E, Vested Rights);
  - I. Final plan approval (Sec. 2-501.F, Final Plan Approval);
  - J. Bar special permits (Sec. 2-501.G, Bar Special Permit);
  - K. Development orders (Sec. 2-502.A, Development Order);
  - L. Certificates of appropriateness (Sec. 2-504, Historic Preservation Certificate of Appropriateness);
  - M. Floodplain variances (Sec. 2-506.B, Flood Variance);
  - N. Zoning variances (Sec. 2-506.A, Zoning Variance);
  - O. Deviations (Sec. 2-506.C.1, Deviation);
6. To serve as professional staff liaison to the Village Council, the Planning Zoning and Design Board, and to provide technical assistance, as needed;
7. To enforce this LDC in accordance with adopted code enforcement procedures (Ordinance 2015-14); and.
8. To provide such assistance in the conduct of the Village land development regulations and planning programs as directed by the Village Manager.



## **SECTION 2-4. GENERAL PROCEDURES**

This section sets forth the general procedures that generally apply to the review of applications for development permit under this LDC. Each subsection in Section 2-5, Application-Specific Review Procedures And Decision Standards, further identifies for each specific type of application which general procedures are required, including any additions or modifications that apply.

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### **2-401. PUBLIC INFORMATION MEETING**

#### **A. Purpose**

The purpose of a public information meeting is to educate owners and residents of nearby lands and the Village about an application that is reviewed under this LDC, and to provide the applicant an opportunity to hear comments and concerns about the proposal, and resolve conflicts and outstanding issues where possible. The public information meeting should be held as early in the process as possible, preferably before formally submitting an application. A public information meeting serves as an opportunity for informal communication between the applicant and owners and residents of nearby land, other residents affected by a development proposal, and the review board.

#### **B. Applicability**

A public information meeting is required prior to a completeness determination for any development application under this LDC that is heard by the PZDB.

#### **C. Public Information Meeting Procedure**

A public information meeting shall comply with the following requirements:

##### **1. Meeting Location and Time**

The public information meeting shall be conducted at a meeting of the PZDB. The Director shall determine the date and time of the public information meeting, in coordination with the applicant.

##### **2. Notification**

###### **A. Village Notice**

The Village shall post notice of the meeting on the Village website and the village announcement board a minimum of 7 days in advance of the meeting

###### **B. Posted Notice**

1. The applicant shall post notice of the public information meeting on the land subject to the proposal at least 14 days before the date of the meeting, in a form established by the Director.
2. The notice shall state the time and place of the meeting and the purpose of the meeting; include a basic map identifying the land associated with the proposed development; and summarize the general nature of the development proposal, and the type of development permit sought.

##### **3. Conduct of Public Information Meeting**

The public information meeting shall be open to the public. At the meeting the applicant shall explain the development proposal, including a detailed overview of the project; discuss the application review process; respond to questions and concerns from the Village staff, PZDB members, and other attendees; and discuss ways to resolve concerns. Questions or comments by PZDB members shall not bind the Board or any member of the Board to approve or disapprove the application when it is reviewed by the Board. The applicant shall make presentation materials available in a digital format that can be electronically displayed at the meeting.

##### **4. Written Summary of Public Information Meeting**

After the conclusion of the public information meeting, the applicant shall prepare a written summary of the meeting that includes a list of meeting attendees, a summary of attendee comments and issues raised at the meeting related to the development proposal, and any other information the applicant deems appropriate. The summary shall describe how the applicant will

respond to any issues that were raised at the meeting. The meeting summary shall be included with the application materials and be made available to the public for inspection.

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## **2-402. PRE-APPLICATION CONFERENCE**

### **A. Purpose**

The purpose of a pre-application conference is to provide an opportunity for:

1. The applicant to determine the submittal requirements and the procedures and standards applicable to an anticipated application for a development permit; and
2. The Director and Village staff to become familiar with, and offer the applicant preliminary comments about the scope, features, and impacts of the proposed development, as it relates to LDC requirements.

### **B. Applicability**

#### *1. Required Pre-application Conference*

A pre-application conference between the applicant and the Director and other relevant Village staff shall be held at a time agreed to by the applicant and Director, and before any public information meeting and before submittal of the following applications:

- A. Comprehensive plan amendment (Sec. 2-501.A, Comprehensive Plan Amendments);
- B. Rezoning (zoning map amendment) (Sec. 2-501.C, Rezoning (Zoning Map Amendment));
- C. Planned developments and major amendments (Sec. 2-501.D, Planned Development); and
- D. Development orders and amendments (Sec. 2-502.A, Development Order).

#### *2. Optional Pre-application Conference*

A pre-application conference for any other type of application may be requested, in writing, at the option of the applicant, but shall be held before any public information meeting.

### **C. Pre-application Conference Procedure**

#### *1. Submission of Materials Prior to Conference*

At least seven business days before a pre-application conference is held, the applicant shall submit to the Director a narrative describing the general nature and scope of the development proposed, a conceptual plan of the proposed development (if appropriate), and any other information requested by the Director.

#### *2. Conference Proceedings*

The Director and Village staff, as requested by the Director, shall review the materials submitted by the applicant and at the time of the conference, the Director and appropriate Village staff shall seek any needed clarification from the applicant regarding the proposed application, and identify any concerns, problems, or other factors the applicant should consider regarding the proposed application. Matters discussed at the pre-application conference are a courtesy, for clarification purposes and sharing information, and shall not bind the Director or Village staff to any recommendation.

#### *3. Effect of Conference*

- A. The pre-application conference is intended to facilitate the application review process. Discussions at the conference are not binding on the Village, and consequently no final or binding decision is made at a pre-application conference.
- B. A pre-application conference request does not constitute the filing of an application. Processing times for application review do not begin until an application is submitted and determined to be complete in accordance with Sec. 2-403.F, Completeness Determination.

#### *4. Pre-application Conference Waiver*

The requirement for a pre-application conference may be waived by the Director if the Director determines there would be no benefits to the applicant or the staff from conducting the pre-application conference.

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## **2-403. DEVELOPMENT APPLICATION SUBMISSION**

### **A. Applications Submitted to Director**

All development applications shall be submitted to the Community Development Department.

### **B. Authority to Submit Applications**

#### **1. General**

- A. Except where a zoning text amendment or zoning map amendment is initiated by the Village, all development applications shall be submitted by all legal and equitable owner(s) of the land upon which the development is proposed, or the applicant(s)' authorized agent.
- B. All lands within a single application shall be abutting. The Director shall have discretion to allow a single application to cover non-abutting lands where it is in the public interest due to the size or scope and nature of the request, and where there is a rational continuity to the properties.
- C. All development applications for land governed by a homeowners' association or a condominium association shall demonstrate proper authorization from the association for the application.

#### **2. LDC Text Amendments**

Amendments to the text of the LDC may only be initiated by the Village Council, PZDB; or Village Manager

#### **3. Rezoning (Zoning Map Amendments)**

Amendments to the Zoning Map may be initiated by the Village Council, Village Manager; or owner(s) of the land upon which the development is proposed, or their authorized agent as provided in subsection 1 above.

### **C. Required Application Contents and Form**

The application contents and form shall be in accordance with requirements established by the Director for the specific type of application, and shall be included in the Administrative Manual. The application shall include, but not be limited to, an affidavit disclosing all equitable and beneficial interests in the property.

### **D. Required Application Fees**

Required application fees shall be those established for the specific development application by the Village Council. Application fees may be published in the Administrative Manual. Cost recovery fees may apply, as established by the Village Council. The notice for the required public hearing shall not be published or mailed until all fees are paid. Applications initiated by the Village are not subject to application fees.

### **E. Tax and Assessment Payments**

No development orders or plats shall be approved if the ad valorem taxes or assessments against the property are delinquent or if there are outstanding tax certificates issued for the property.

### **F. Completeness Determination**

#### **1. General**

Upon receipt of an application, the Director shall distribute the application to all appropriate Village staff and departments, and other review agencies for review and comment regarding completeness. The Director shall determine if the application is complete for review. The applicant shall ensure that an application is accurate and complete. Any additional expenses necessitated because of inaccurate or incomplete information shall be borne by the applicant. A complete application is one that:

- A. Contains all contents required for the particular type of application in accordance with Sec. 2-403.C, Required Application Contents and Form.
- B. Is in the form required for the particular type of application in accordance with Sec. 2-403.C, Required Application Contents and Form.

- C. Includes information in sufficient detail to allow an evaluation of the application to determine whether it complies with the appropriate review standards of this LDC.
- D. Is accompanied by the fee established for the particular type of application in accordance with Sec. 2-403.D, Required Application Fees.

**2. *Application Incomplete***

If the Director determines that the application is incomplete, the Director shall send written notice to the applicant of the application's deficiencies, electronically or by mail, within 30 days of receipt of the application, and review of the application shall not proceed. The applicant, within 30 days, may correct the deficiencies and resubmit the application for completeness determination. If the applicant fails to correct the deficiencies within 30 days, the application will be deemed to be withdrawn, unless prior to the 30 days the applicant requests an extension and the Director subsequently agrees to an extension.

**3. *Application Complete***

If the application is determined to be complete, it shall be reviewed in accordance with the applicable procedures and standards in this LDC. Any established time frame for review of the application shall start on the date the application is determined to be complete. The applicant and the Director may agree to an extension of time if requested prior to the expiration of any time frame.

**G. Simultaneous Processing of Applications**

Whenever two or more forms of review and approval are required under the LDC, the applications for those development approvals or permits may, at the discretion of the Director, be processed simultaneously, so long as all applicable Village requirements are satisfied. Simultaneous processing of applications may result in additional fees to the applicant. The Director's decision regarding simultaneous processing is not appealable.

**H. Code Violation**

An application for development permit for a land that is subject to a code violation notice shall not be processed until the code violation has been resolved, except for an application to resolve the code violation.

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**2-404. STAFF REVIEW AND ACTION**

**A. Applicability**

This subsection applies to any review of, recommendation on, or decision on an application by the Director after the application is determined to be complete.

**B. Staff Review and Opportunity to Revise Application**

1. Upon receipt, the Director shall distribute the application to all appropriate Village staff and departments, and other review agencies for review and comment.
2. The Village staff authorized to decide or provide staff review on the application in accordance with Table 2-201: Summary Table of Development Applications, shall review the application, any relevant support material, and any comments or recommendations from the appropriate Village staff and departments, and other review agencies. If deficiencies in complying with the applicable standards of the LDC are identified, the authorized decision-maker shall notify the applicant of such deficiencies in accordance with Sec. 2-403, Development Application Submission.
3. When reviewing an application for a development permit that is certified by a professional listed in Sec. 403.0877, Fla. Stat., the Village may not request additional information from the applicant more than three times, except as in accordance with Sec. 166.033, Fla. Stat.

**C. Application Subject to Review or Recommendation by Staff**

1. If an application is subject to staff review or recommendation by the Director in accordance with Table 2-201: Summary Table of Development Applications, the Director shall, following completion of staff review, prepare a summary of staff review comments that addresses the application's compliance with applicable review standards and recommends action on the application, including any recommended conditions of approval.

2. After completion of the staff review comments, the Director shall transmit the application and staff report to the appropriate advisory or decision-making body in accordance with Table 2-201: Summary Table of Development Applications, and provide the applicant a copy of the staff report.

**D. Application Subject to Decision by Staff**

If an application is subject to a final decision by the Village staff, following completion of authorized staff review, the decision-maker shall provide written notice of the decision to the applicant. The decision shall be made within 120 days of the determination that the application is complete, unless the applicant and the decision-maker agree to extend the timeframe beyond 120 days. An approval, approval with conditions, or denial of the application shall include written findings supporting the decision.

**2-405. SCHEDULING OF PUBLIC HEARING AND PUBLIC NOTIFICATION**

**A. Public Hearing Scheduling**

1. Table 2-405.A: Required Public Hearings, identifies the types of applications that require public hearing(s) under the LDC, the review bodies responsible for conducting those public hearing(s), and the type of required public hearing (standard or quasi-judicial). An appeal of a decision made at a quasi-judicial hearing shall be conducted as a *de novo* quasi-judicial hearing. Public hearings for all amendments to approved applications, except for those reviewed and approved administratively, are conducted as the same type of hearing as for the original approved application.

<b>TABLE 2-405.A: REQUIRED PUBLIC HEARINGS</b>		
<b>S: STANDARD PUBLIC HEARING Q: QUASI-JUDICIAL PUBLIC HEARING</b>		
<b>QA: QUASI-JUDICIAL APPEAL SA: STANDARD APPEAL</b>		
<b>Procedure</b>	<b>Board Conducting Public Hearing</b>	
	<b>Village Council</b>	<b>Planning Zoning and Design Board (PZDB)</b>
<b>Discretionary Approvals</b>		
Comprehensive Plan Amendment	S	S
LDC Text Amendment	S	S
Rezoning (Zoning Map Amendment)	Q	Q
Planned Development	Q	Q
Planned Development Minor Amendment	QA	Q
Special Exception	QA, Q <sup>1</sup>	Q
Bar Special Permit	Q	
<b>Site Development and Platting</b>		
Development Order		
Development Order	QA	Q
Amendment	QA	Q
Limited Development Order		QA
Final Plan	Q	
Material alteration of commercial or multifamily building exterior		Q
Plat Review	S	
Vacation of Easement, Right-of-Way, or Plat	S	
<b>Historic Preservation</b>		
Certificate of Appropriateness	QA	Q
<b>Permits</b>		
Monument Sign Permit	QA	Q <sup>2</sup>
<b>Relief</b>		
Variance		
Zoning Variance	Q <sup>3</sup>	Q

<b>TABLE 2-405.A: REQUIRED PUBLIC HEARINGS</b>		
<b>S: STANDARD PUBLIC HEARING Q: QUASI-JUDICIAL PUBLIC HEARING QA: QUASI-JUDICIAL APPEAL SA: STANDARD APPEAL</b>		
<b>Procedure</b>	<b>Board Conducting Public Hearing</b>	
	<b>Village Council</b>	<b>Planning Zoning and Design Board (PZDB)</b>
Flood Variance	Q	Q
Deviation	QA, Q <sup>4</sup>	Q
Appeal of Administrative Official <sup>5</sup>	QA	QA
Vested Rights	Q	
Administrative Interpretation	SA	

**NOTES**

1. A special exception as a part of a zoning map amendment (rezoning) is decided by the Village Council in conjunction with the rezoning.
2. PZDB authority is for a monument sign only.
3. A variance requested as a part of a rezoning is decided by the Village Council in conjunction with the rezoning.
4. A deviation requested as a part of a rezoning is decided by the Village Council in conjunction with the rezoning.
5. Appeals of administrative official decisions may be to the Village Council or to the PZDB as set out in Sec. 2-409, Post Decision-Making Actions.

2. The Director shall ensure that the required public hearing on the application is scheduled for a regularly scheduled meeting of the body conducting the hearing or a meeting specially called for that purpose by such body.
3. The public hearing on the application shall be scheduled so there is sufficient time for any required staff report to be prepared and distributed in accordance with Sec. 2-404.C, Application Subject to Review or Recommendation by Staff, for public notification in accordance with this subsection, and to meet statutory requirements.

**B. Public Notification**

Notification of a public hearing on an application shall be as required by the Florida Statutes, and as when the Village is more restrictive and as shown in Table 2-405.B: Summary of Public Notification Requirements, below. All applications that are subject to public hearings, whether or not listed in Table 2-405.B shall be noticed by posting the agenda of the meeting at which the public hearing will take place on the Village notice board and the Village website, noting the item to be heard. Computation of the required time periods shall be in accordance with Sec. 10-104, Computation of Time. Failure to provide the notification required below shall not affect any actions or proceedings under this LDC unless such notice is required by state statute.

<b>TABLE 2-405.B: SUMMARY OF PUBLIC NOTIFICATION REQUIREMENTS</b>			
<b>Application Type</b>	<b>Notice Required</b>		
	<b>Published</b>	<b>Mailed</b>	<b>Posted</b>
<b>Discretionary Approvals</b>			
<b>Comprehensive Plan Amendment</b>	<p>Publish notice of PZDB public hearing in a newspaper of general circulation at least ten calendar days before the hearing.</p> <p>Publish notice of first Village Council hearing in a newspaper of general circulation at least seven calendar days before first hearing.</p> <p>Publish notice of second Village Council public hearing in a newspaper of general circulation at least five days before hearing.</p>	<p>For Plan map amendment, mail notice of public hearing at least 14 calendar days before PZDB hearing and Village Council first hearing.</p>	<p>For Plan map amendment, post notice of public hearing at least 14 calendar days before first hearing of PZDB.</p>
<b>Land Development Code Text Amendment (General)</b>	<p>Publish notice of public hearing in a newspaper of general circulation at least ten calendar days before hearings of Village Council.</p>	<p>None</p>	<p>None</p>
<b>Village initiated Site-Specific Rezoning (Zoning Map Amendments), (including Planned Development) involving less than 10 contiguous acres</b>	<p>Publish notice of public hearing in a newspaper of general circulation at least 10 calendar days before Village Council hearing.<sup>44</sup></p>	<p>Mail notice of public hearing at least 30 calendar days before first Village Council hearing to all property owners whose property will be rezoned.</p>	<p>Post notice of public hearing on site or adjacent thereto at least 14 calendar days before first hearing of PZDB.</p>
<b>Village initiated General Amendment and Site-Specific Rezoning (Zoning Map Amendment, including Planned Development) involving 10 contiguous acres or more, and Zoning Text Amendment to revise listed uses</b>	<p>Publish notice of PZDB public hearing in a newspaper of general circulation at least ten calendar days before the hearing.</p> <p>Publish notice of first Village Council hearing in a newspaper of general circulation at least seven calendar days before first hearing.</p> <p>Publish notice of second Village Council public hearing in a newspaper of general circulation at least five calendar days before hearing.</p>	<p>Mail notice of public hearing at least 14 calendar days before PZDB hearing and Village Council first hearing.</p>	<p>Post notice of public hearing on site at least 14 calendar days before PZDB hearing.</p>

<sup>44</sup> Special format of notice applies in accordance with Sec. 166.041(3)(c)2, Fla. Stat. Only one Council hearing is required by statute.

<b>TABLE 2-405.B: SUMMARY OF PUBLIC NOTIFICATION REQUIREMENTS</b>			
<b>Application Type</b>	<b>Notice Required</b>		
	<b>Published</b>	<b>Mailed</b>	<b>Posted</b>
<b>General, Site-Specific Rezoning (Zoning Map Amendment including Planned Development) initiated by any person other than the Village</b>	Publish notice of public hearing in a newspaper of general circulation at least ten calendar days before Village Council adoption hearing.	Applicant mails notice of public hearing at least 14 calendar days before PZDB and Village Council hearings.	Applicant posts notice of public hearing on site at least 14 calendar days before PZDB hearing.
<b>Special Exception</b>		Applicant mails notice of public hearing at least 14 calendar days before PZDB hearing.	Applicant posts notice of public hearing on site at least 14 calendar days before PZDB hearing.
<b>Development Order</b>		Applicant mails notice of public hearing at least 14 calendar days before PZDB hearing.	Applicant posts notice of public hearing at least 14 calendar days before PZDB hearing.
<b>Certificate of Appropriateness</b>		Applicant mails notice of public hearing at least 14 calendar days before PZDB hearing.	Applicant posts notice of public hearing at least 14 calendar days before PZDB hearing.
<b>Vacation of Right-of-Way</b>	Comply with the timing and content requirements of Sec. 177.101, Fla. Stat. as may be amended from time to time		
<b>Relief</b>			
<b>Zoning Variance</b>		Applicant mails notice of public hearing at least 14 calendar days before PZDB hearing.	Applicant posts notice of public hearing on site at least 14 calendar days before PZDB hearing.
<b>Flood Variance</b>		Applicant mails notice of public hearing at least 14 calendar days before PZDB hearing and Village Council hearing.	Applicant posts notice of public hearing on site at least 14 calendar days before PZDB hearing.
<b>Appeal of PZDB or PZDB decision<sup>2</sup></b>		Appellant mails notice of public hearing at least 14 calendar days before Village Council hearing.	Appellant posts notice of public hearing on site at least 14 calendar days before Village Council hearing.
<b>Note:</b>			
1. If Council takes jurisdiction, it is responsible for notice.			



**C. Public Notice Requirements**

**1. Published Notice Requirements**

- A. The applicant shall cause a required published notice of a public hearing on an application to be prepared and published in a newspaper having general circulation in the Village. In the case of Village initiated applications, the Village shall be responsible for published notice.
- B. Where a published notice is required in accordance with Ch. 166, Fla. Stat., the size and format of the notice shall comply with the requirements of the statute.
- C. The applicant shall provide proof of publication prior to the public hearing. Failure to timely provide such proof of notice may, at the discretion of the Director, result in continuance of the hearing and the need to re-notice the continued hearing.

**2. Mailed Notice Requirements**

- A. The applicant shall mail required notice of a public hearing on an application by first class mail, return receipt requested, to the following:
  - 1. Owner(s) of land subject to the application (if other than the applicant);
  - 2. Owners of real property within 750 feet of the property boundary of the land subject to an application, except for Development Orders which require mailed notice to owners within 500 feet; and
  - 3. Organizations and persons who have registered to receive notification of development applications subject to public hearings in accordance with Sec. 2-405.C.8, Registration to Receive Notice by Mail.
- B. The owner names and addresses used to mail required notice to owners of neighboring property shall be those shown on the current ad valorem tax rolls of Lee County.

**3. Posted Notice Requirements**

- A. The applicant shall place a required posted notice on the land subject to the application, at a location adjacent to each abutting street that is clearly visible to traffic along the street. If no part of the subject land abuts a street, then the notice shall be posted in the right-of-way of the nearest street, and in a manner consistent with the intent of the provisions of the LDC.
- B. Posted notice shall be in a manner established by the Director:
  - 1. The applicant shall ensure that posted notice is maintained in place until after a final decision on the subject application is rendered by the decision-making body.
  - 2. The posted notice shall be removed by the applicant within 14 days after a final decision on the application is rendered by the decision-making body.

**4. Notice Content**

Required public notice shall, at a minimum:

- A. Identify the application;
- B. Describe the nature and scope of the proposed development or action;
- C. Identify the location of land subject to the application (not applicable to notices posted on the subject property);
- D. Identify the date, time, and location of the public hearing(s) being noticed;
- E. Indicate how and where written comments on the application may be submitted before the hearing;
- F. Indicate how and where additional information about the application and review process may be obtained;
- G. If a comprehensive plan amendment or a LDC text amendment, describe the location and content of the language to be amended, without the necessity of providing the exact language of the amendment; and
- H. Comply with any other notice content requirements established by state law.

**5. Affidavit of Notice**

The applicant shall sign an affidavit affirming that any required published, mailed, or posted notices of a public hearing for which they are responsible for providing were provided in

accordance with the requirements of this subsection and state law. The affidavit, along with any documentation proving compliance with notice requirements, shall be submitted to the Director no later than 10 days before the hearing date. The affidavit shall be in a form established by the Director and may be contained in the Administrative Manual. An application that does not comply with this subsection will not be placed on the agenda or heard at the requested hearing.

**6. Availability of Hearing Notice for Public Inspection**

The Director shall keep a copy of the required published and mailed notices of a public hearing and make them available for inspection by the public during normal business hours.

**7. Responsibility for Cost of Notice**

The applicant shall be responsible for all costs of providing required notices.

**8. Registration to Receive Notice by Mail**

Any person in the Village may register with the Village Clerk to receive mailed written notice of all applications subject to public hearings in accordance with Sec. 2-405.C.2, Mailed Notice Requirements. To be eligible for registration, the person shall provide the Clerk information in a form established by the Clerk, along with a fee to defray registration and mailing costs. To continue to receive such notice, a person shall reregister the earlier of two years (biennially), or when the mailing address has changed.

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**2-406. DEFERRAL OF PUBLIC HEARING**

**A. Before Public Hearing Notice**

If an application is subject to a public hearing and required notice of the hearing has not yet been provided, the applicant may submit a written request to the Director to defer the public hearing. The Director may grant the request to defer consideration of the application, for good cause.

**B. After Public Hearing Notice**

If an application is subject to a public hearing and required notice of the hearing has already been provided, the applicant may request that the hearing be deferred by submitting a written request for deferral to the Director. The body scheduled to hold the hearing may grant the request for good cause, or if finding no good cause for deferral, may proceed to hold the hearing. If the body grants the request for deferral, it shall concurrently set a new hearing date for the application. If a deferral is granted, the application may be subject to additional application fees to defray the additional costs of processing the application.

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**2-407. PUBLIC HEARING PROCEDURES**

If the application is subject to a public hearing by an advisory or decision-making body (see Table 2-405.A: Required Public Hearings), the advisory or decision-making body shall hold the public hearing in accordance with procedures established by the Village Council Rules of Procedure or the Board's Rules of Procedure. Standard public hearing procedures are those applicable in those cases that are not required by law to be held in accordance with quasi-judicial procedures.

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**2-408. DECISION-MAKING BODY REVIEW AND DECISION**

**A. Review and Decision<sup>45</sup>**

All development applications requiring public hearing shall be decided within 180 days from determination that the application is complete, unless the time is extended by agreement between the applicant and the Village. All other applications shall be decided within 120 days from determination that the application is complete, unless the time is extended by agreement between the applicant and the Village. A decision shall take the form of an approval, approval with conditions, or denial, and shall include written findings supporting the decision. Any decision of denial is with prejudice unless otherwise specified by the decision-making body.

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<sup>45</sup> Timing in accordance with HB 7103.

**B. Written Notice**

After a final decision on an application, the Director shall provide the applicant written notice of the decision and make a copy of the decision available to the public. If the decision is a denial, the Village shall include a citation to the applicable portions of this LDC, an ordinance, rule, statute, or other legal authority for the denial of the permit.

**C. Effect of Approval**

Approval of an application in accordance with the LDC authorizes only the particular use, plan, or other specific activity approved, and not any other development requiring separate application and approval. In the event that one development approval is a prerequisite to another development approval (e.g., variance approval prior to a site plan approval), development may not take place until all required approvals or permits are obtained. Approval of one development application does not guarantee approval of any subsequent development application. A development approval automatically revokes existing development approvals of the same type for the property, unless otherwise indicated in the development approval.

**D. Lapse of Development Approval**

1. Development approval granted after the effective date of this LDC shall expire as provided in Section 2-5, Application-Specific Review Procedures And Decision Standards, for each type of application, except rezonings, variances, and comprehensive plan approvals shall not expire. If no expiration period is provided for the specific type of development approval, and if no expiration period is imposed as part of the approval by the decision-making body, the development approval shall expire if an approved permit authorizing the approved development is not obtained within two years.
2. Unless otherwise provided by this LDC, a one-year extension of the expiration time period for a specific development approval may be granted by the decision-making body that granted the development approval upon the applicant's submission of a written request for extension to the Director before the expiration date, and a showing of good cause.

**E. Modification of Development Approval**

Except as otherwise provided in Section 2-5, Application-Specific Review Procedures And Decision Standards, for the particular type of application, any modifications of a development approval shall require a new application for a modification to the development approval. Modifications shall be submitted and reviewed in accordance with the procedures for its original approval, unless otherwise allowed by this LDC. The standards for approval in the LDC at the time the modification decision is made shall apply.

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**2-409. POST DECISION-MAKING ACTIONS**

**A. Appeal**

**1. *Appeal of Planning Zoning and Design Board Decision***

Any party aggrieved by a decision of the PZDB shall, prior to seeking judicial review, file with the Village Clerk within 30 days from the vote of the Board, an application for appeal to the Village Council in a form as may be provided in the Administrative Manual, and pay an appeal fee. Additionally, the Village Manager or a designee may file an application for appeal with the Village Clerk within 30 days from the Board's decision. Further, the Village Council may, within 30 days from the Board's decision, decide to take jurisdiction of the decision and rehear the application. Neither the Village Manager nor the Village Council shall be required to pay an appeal fee. Upon the filing of a notice of appeal or upon the Village Council taking jurisdiction, the Village Council shall, as soon as is reasonably practicable, hold a public hearing upon the matter and shall affirm, reverse, or affirm with modifications the decision of the Board. The hearing shall be conducted as a *de novo* hearing. Any person may speak at the appeal hearing, without the need of having appeared in the proceedings below.

**2. *Appeal of Director Decision***

Any applicant aggrieved by a decision of the Director in regard to an administrative interpretation shall, prior to seeking judicial review and within 30 days from the written decision, file an application for appeal to the Village Council in a form as may be provided in the Administrative

Manual with the appeal fee. Upon the filing of an application for appeal, the Village Council shall, as soon as is reasonably practicable, hold a public hearing upon the matter and shall affirm, reverse, or affirm with modifications the decision of the staff. The hearing shall be conducted as a *de novo* hearing. An appeal of a decision by the Director on a limited development order, minor change to a development order, administrative amendment to a planned development, tree removal/vegetation permit or sign permit shall be made within 30 days of the written decision to the PZDB, by filing an application for appeal in a form as may be provided in the Administrative Manual and with the appeal fee. The PZDB, as soon as practicable, shall hear the appeal in a *de novo* hearing, and shall affirm, reverse, or affirm with modifications the Director's decision.

**3. *Appeal of Village Council Decision***

A party aggrieved or adversely affected by any Village Council decision for which no further administrative review procedure is provided by the LDC may seek review of the decision in the courts in accordance with applicable state law.

**B. Limit on Subsequent Similar Applications**

**1. *Prior Application Denial***

- A. If an application requiring a public hearing is denied, no application proposing the same or similar development on all or part of the same land shall be submitted within one year after the date of denial unless the decision-making body waives this time limit in accordance with subsection B.1 below.
- B. The owner of land subject to the time limit provided in subsection A above, or the owner's authorized agent, may submit a written request for waiver of the time limit to the Director, who may grant a waiver if the owner or agent has demonstrated that:
  1. There is a substantial change in circumstances relevant to the issues or facts considered during review of the prior application that might reasonably affect the decision-making body's application of the relevant review standards to the development proposed in the new application; or
  2. New or additional information is available that was not available at the time of review of the prior application and that might reasonably affect the decision-making body's application of the relevant review standards to the development proposed in the new application; or
  3. The new application proposed to be submitted is materially different from the prior application; or
  4. The final decision on the prior application was based on a material mistake of fact.

**2. *Prior Application Withdrawal***

If an application requiring a public hearing is withdrawn after required notice of the public hearing is provided, no application proposing the same or similar development on all or part of the same land shall be submitted earlier than six months after the date of withdrawal.

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**SECTION 2-5. APPLICATION-SPECIFIC REVIEW PROCEDURES AND DECISION STANDARDS**

This section establishes, for each type of application under the LDC, the specific review procedure and decision standards that apply, in accordance with Table 2-201: Summary Table of Development Applications. The following sections identify, for each type of development application, in what situations application approval is necessary; applicable modifications of or additions to the standard procedures in Section 2-4, General Procedures, that are required; and the standards for making a decision on the application.

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**2-501. DISCRETIONARY APPROVALS**

**A. Comprehensive Plan Amendments**

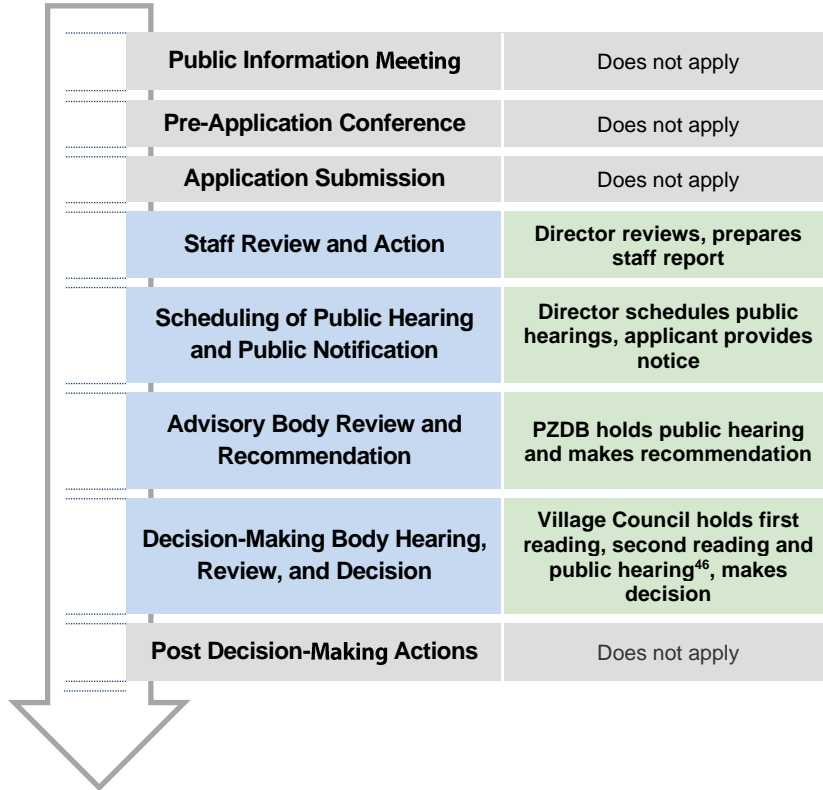
Comprehensive Plan Amendments shall follow the procedures and standards as set out in Sec. 166.3164, *et seq.*, Fla. Stat., the Community Planning Act.

**B. LDC Text Amendments**

**1. LDC Text Amendment Procedure**

Figure 2-501.B.1 identifies key steps in the text amendment procedure. This section identifies additions or modifications to the general review procedures in Section 2-4, General Procedures, that applies to LDC text amendments.

**Figure 2-501.B.1: LDC Text Amendment Procedure Flowchart**



**2. LDC Text Amendment Review Standards**

The advisability of amending the text of the LDC is a matter committed to the legislative discretion of the Village Council and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the Village Council shall weigh the relevance of and consider whether and the extent to which the proposed amendment:

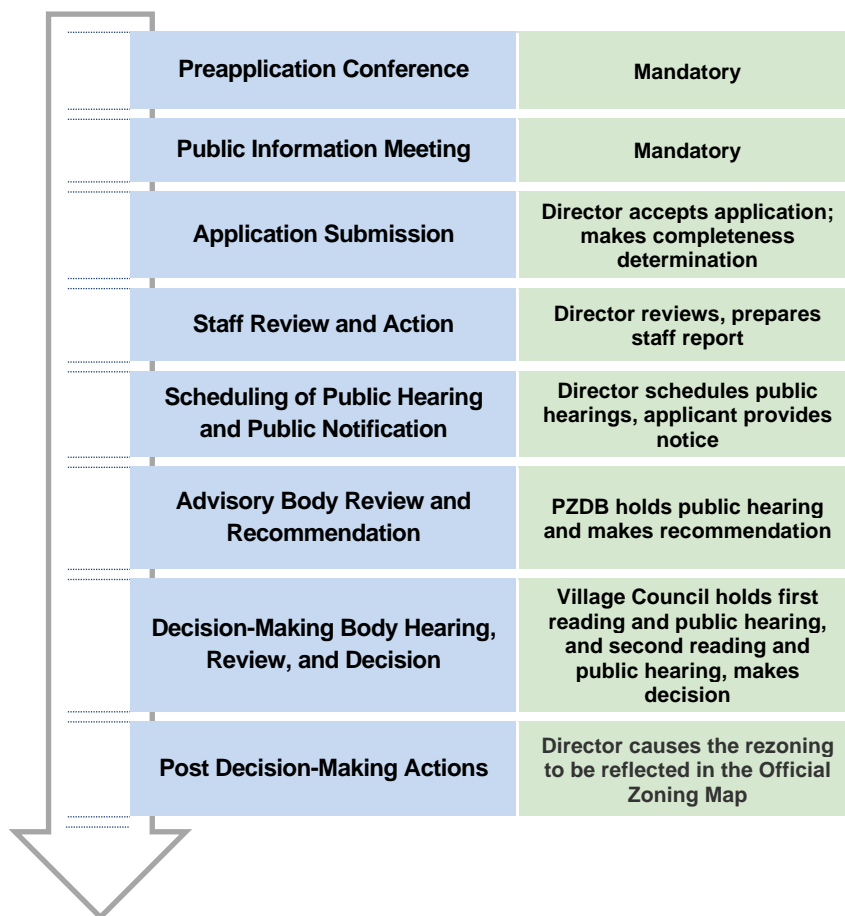
- A. Is consistent with the comprehensive plan;
- B. Is required by state or federal law;
- C. Is in conflict with any provision of this LDC and the Village’s Code of Ordinances;
- D. Is required by changed conditions;
- E. Addresses a demonstrated community need;
- F. Is consistent with the purpose and intent of the zoning districts, or would improve compatibility among uses;
- G. Would result in a logical and orderly development pattern;
- H. Would result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, storm water management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
- I. Would adversely impact the availability of public facilities to accommodate new growth and development.

### C. Rezoning (Zoning Map Amendment)

#### 1. Rezoning (Zoning Map Amendment) Procedure

Figure 2-501.C.1 identifies key steps in the rezoning procedure for applications not initiated by the Village.

**Figure 2-501.C.1: Rezoning (Zoning Map Amendment) Procedure Flowchart**



#### 2. Rezoning (Zoning Map Amendment) Review Standards

Amendments to the Official Zoning Map are subject to quasi-judicial review by the Village Council and constitute the implementation of the general land use policies established in this LDC and the comprehensive plan. In determining whether to adopt or deny a proposed rezoning (zoning map amendment), the Village Council shall consider:

- A. Whether the applicant has provided, as part of the record of the public hearing(s) on the application, competent substantial evidence that the proposed amendment:
  1. Is consistent with and furthers the goals, objectives, and policies of the comprehensive plan and all other applicable Village-adopted plans;
  2. Is not in conflict with any portion of the LDC;<sup>47</sup>
  3. Addresses a demonstrated community need;
  4. Is compatible with existing and proposed uses surrounding the subject land, and is the appropriate zoning district for the land;
  5. Would result in a logical and orderly development pattern;
  6. Would not adversely affect the property values in the area;

<sup>47</sup> Carried forward with modifications from Sec. 34-145(d)(3) of the transitional LDC.

7. Would result in development that is adequately served by public facilities (roads, potable water, wastewater, solid waste, storm water, schools, parks, police, and fire and emergency medical facilities);<sup>48</sup>
  8. Would not result in significantly adverse impacts on the natural environment—including, but not limited to, water, air, noise, storm water management, wildlife, vegetation, wetlands, environmentally critical areas, and the natural functioning of the environment;<sup>49</sup>
  9. Is compatible with existing or planned uses in the surrounding area<sup>50</sup>
- B. If the applicant demonstrates that the proposed amendment meets the criteria in subsection a. above, whether the current zoning district designation accomplishes a legitimate public purpose.

#### **D. Planned Development**

##### **1. Generally**

- A. Planned developments are amendments to the Official Zoning Map that are planned and developed under unified ownership or control and that allow for flexible standards and procedures that are conducive to creating more mixed-use, pedestrian-oriented, and otherwise higher quality development, as well as community benefits and amenities, than could be achieved through base zoning district regulations.
- B. A planned development is established by amendment of the Official Zoning Map to rezone land to a planned development zoning district that is further defined by an incorporated PD Master Concept Plan. Subsequent development within the PD district occurs through the approval of a development order, and other appropriate or necessary approvals such as a limited development order, and plat review, which shall be in compliance with the PD Master Concept Plan.

##### **2. Planned Development Procedure**

- A. Figure 2-501.D.2 identifies key steps in the planned development procedure. Further application requirements are detailed in the Administrative Manual.

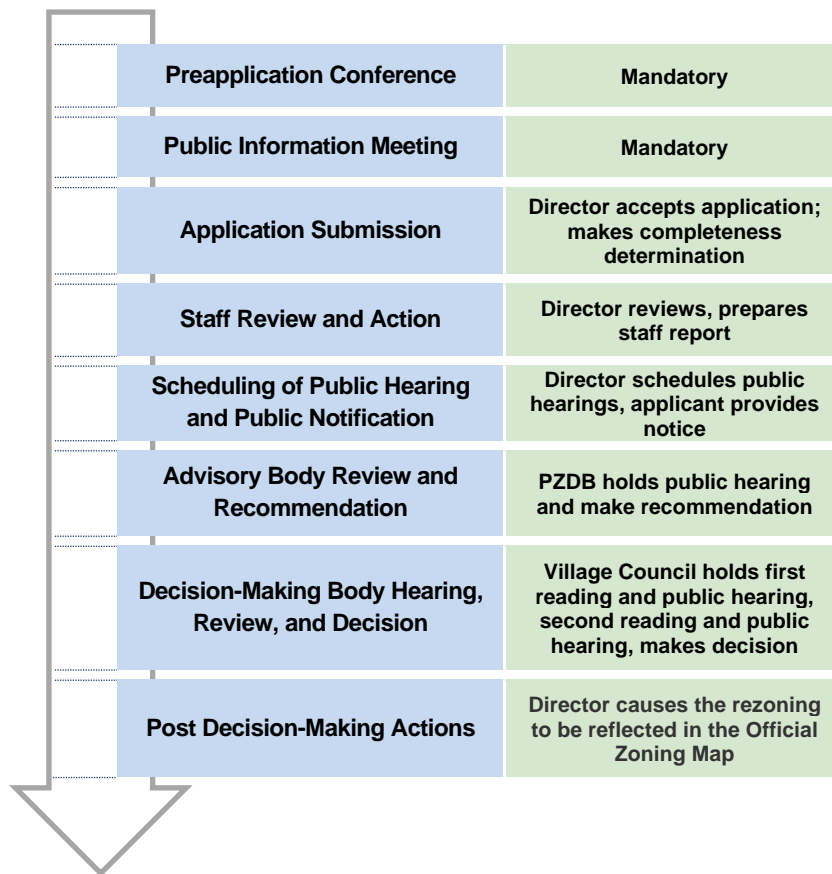
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<sup>48</sup> Carried forward with modifications to serve more general conditions from Sec. 34-145(d)(3) of the transitional LDC.

<sup>49</sup> Carried forward with modifications from Sec. 34-145(d)(3) of the transitional LDC.

<sup>50</sup> Carried forward with modifications from Sec. 34-145(d)(3) of the transitional LDC.

**Figure 2-501.D.2: Planned Development Rezoning Procedure Flowchart**



- B. After approval of a PD, the Director shall cause the rezoning to be reflected in the Official Zoning Map, and the applicant shall record a notice of the Master Concept approval in the official records of Lee County.<sup>51</sup>
- C. Lands rezoned to a PD zoning district shall be subject to the approved PD Master Concept Plan and any conditions of approval. No variances may be granted in a PD. The PD Master Concept Plan is binding on the land as an amendment to the Official Zoning Map. The PD Master Concept Plan shall be binding on the landowners and their successors and assigns, and shall constitute the development regulations for the land. Development of the land shall be limited to the uses, intensity and density, configuration, and all other elements and conditions set forth in the PD Master Concept Plan, and any conditions of approval. The applicant may apply for and obtain subsequent development approvals necessary to implement the PD Master Concept Plan in accordance with the appropriate procedures and standards set forth in the LDC. Any subsequent development approvals shall be in substantial compliance with the PD Master Concept Plan.
- D. Approval of the rezoning of land to a PD zoning district does not expire, except approval of the PD Master Concept Plan shall automatically expire if no application for a development order, limited development order, or plat for at least 50 percent of the development described by the approved PD Master Concept Plan is approved within five years after approval of the PD district. If a PD Master Concept Plan lapses, the owner of the PD-zoned land may apply to the Village to reinstate the Master Concept Plan one time for no longer than two years, to approve a new PD with a new Master Concept Plan, or to reclassify the site to another base district.

<sup>51</sup> Carried forward from Sec. 34-378(c) of the transitional LDC, but transfers the responsibility to record from the Director to the applicant.



- E. Subsequent applications for a development approval or permit within an approved PD district may include minor amendments to the PD Master Concept Plan without the need for Village Council review and approval. The PZDB is authorized to review and decide whether to approve, approve with conditions, or deny minor amendments. The minor amendments shall include only the changes that do not increase height or density, do not change uses, and do not change the conditions of approval.
- F. Subsequent applications for a development approval or permit within an approved PD district may include administrative amendments to the PD Master Concept Plan, without the need to amend the PD Master Concept Plan, provided such deviations do not include changes to height, density, or intensity, and are limited to changes that the Director determines:<sup>52</sup>
  - 1. Address technical considerations that could not reasonably be anticipated during the planned development approval process; and
  - 2. Have no material effect on the character of the approved PD district, and the basic concept and terms of the PD Master Concept Plan. These may include, but are not limited to, the following:
    - (a) Structural alterations that do not significantly affect the basic size, form, style, and appearance of principal structures;
    - (b) Minor changes in the location and configuration of streets and driveways that do not adversely affect vehicular access and circulation on or off the site of the change;
    - (c) Minor changes in the location or configuration of buildings, parking areas, landscaping, or other site features;
    - (d) Minor changes in the location and configuration of public infrastructure facilities that do not have a significant impact on the Village's utility and storm water management systems;
    - (e) Increases of five percent or less in the total number of parking spaces;
    - (f) Do not reduce total open space or indigenous native vegetation required by the LDC;<sup>53</sup>
    - (g) Do not reduce the total area or quality of vegetative buffers or landscaping;<sup>54</sup> and
    - (h) Do not adversely impact surrounding land uses.<sup>55</sup>
- G. If a proposed amendment is neither a minor amendment nor an administrative amendment, a development approval for a PD district and PD Master Concept Plan may be amended only in accordance with the procedures and standards for its original approval.

## E. Special Exception

### 1. Generally

A use designated as a special exception in a Principal Use Table for a particular zoning district is a use that may be appropriate in the district, but because of its nature, extent, and external effects, requires special consideration of its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings.

### 2. Special Exception Procedure

Figure 2-501.E.2 identifies key steps in the special exception procedure, with noted modification from the general procedures.

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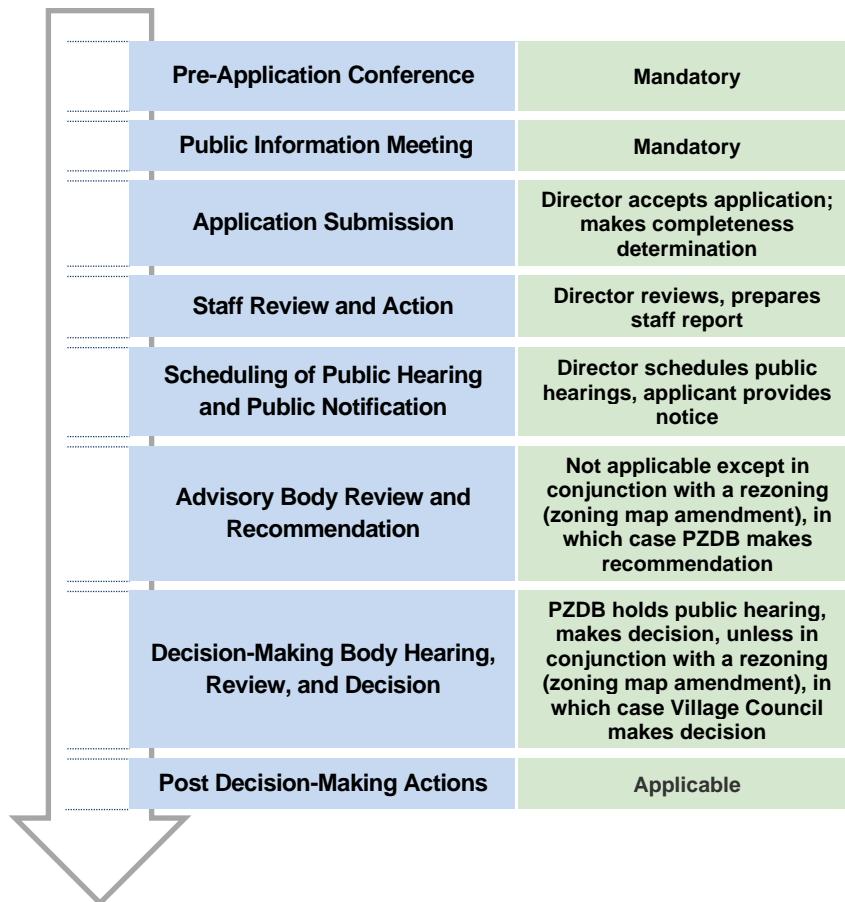
<sup>52</sup> Exception for height, density, or intensity carried forward from Sec. 34-380(b) of the transitional LDC.

<sup>54</sup> Carried forward from Sec. 34-380(b) of the transitional LDC.

<sup>54</sup> Carried forward from Sec. 34-380(b) of the transitional LDC.

<sup>55</sup> Carried forward from Sec. 34-380(b) of the transitional LDC.

**Figure 2-501.E.2: Special Exception Procedure Flowchart**



**A. Decision-Making Body Hearing, Review and Recommendation**

Except when an application for a special exception is being considered in conjunction with a zoning map amendment, the PZDB reviews the application at a quasi-judicial hearing and makes a decision based on the review standards in Sec. 2-501.E.3, Special Exception Review Standards. When an application for a special exception is being considered in conjunction with a zoning map amendment, the PZDB shall review and make a recommendation to the Village Council at a quasi-judicial hearing. The amendment and special exception then shall be decided by the Village Council at a quasi-judicial hearing. The decision-making body shall make a decision based on the review standards in Sec. 2-501.E.3, Special Exception Review Standards.

**B. Post Decision-Making Action**

1. An approval of a special exception authorizes the submittal of any other applications that may be required before the development authorized by the special exception permit is constructed or established.
2. An approval of a special exception shall automatically expire if the use authorized by the special exception is not established or substantially commenced within two years after the date of the special exception approval, unless an extension of this time period is authorized in accordance with Sec. 2-408.D, Lapse of Development Approval.
3. A special exception approval shall automatically expire if the use is discontinued and not resumed for a period of one year.
4. All other modifications of special exception approval may be amended only in accordance with the procedures and standards for its original approval.

**3. *Special Exception Review Standards***<sup>56</sup>

A special exception shall be approved only on a finding there is competent substantial evidence in the record that the proposed special exception use:

- A. Will be consistent with the goals, objectives, and policies of the comprehensive plan;
- B. Will comply with all applicable zoning district standards;
- C. Will comply with all standards in Chapter 4: Use Specific Standards;
- D. Will be appropriate for its location and is compatible with the general character of surrounding lands and the uses permitted in the zoning district;
- E. Will adequately screen, buffer, or otherwise minimize adverse visual impacts on adjacent lands;
- F. Will ensure that no site lighting source shall negatively impact adjacent properties and rights-of-way;
- G. Will maintain safe and convenient ingress and egress and traffic flow onto and through the site by vehicles and pedestrians, and safe road conditions around the site;
- H. Will avoid significant adverse odor, noise, glare, and vibration impacts on surrounding lands regarding refuse collection, service delivery, parking and loading, signs, lighting, and other site elements;
- I. Will not have an adverse impact on land values and the ability of neighboring lands to develop uses permitted in the zoning district;
- J. Will avoid significant deterioration of water and air resources, scenic resources, and other natural resources;
- K. Will not overburden existing public facilities and services, including, but not limited to, streets and other transportation facilities, schools, potable water facilities, sewage disposal, storm water management, and police and fire protection facilities; and
- L. Will comply with all other relevant Village, state, and federal laws and regulations.

**F. Final Plan Approval**

**1. *Generally***

Final Plan Approval shall be obtained when required by a County zoning resolution.

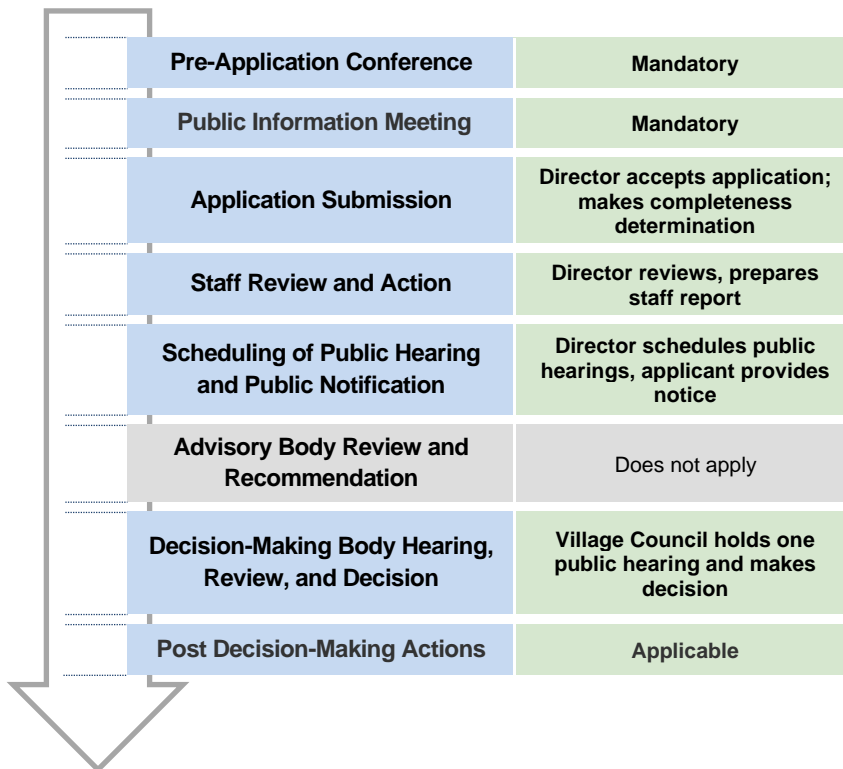
**2. *Final Plan Approval Procedure***

Figure 2-501.F.2 identifies the key steps in the Final Plan Approval procedure, with noted modifications from the general procedures.

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<sup>56</sup> Subsections A through D carried forward from Sec. 34-145(c); subsections E through L are new standards.

**Figure 2-501.F.2: Final Plan Approval Procedure Flowchart**



**A. Decision-Making Body Hearing, Review and Recommendation**

The Final Plan Approval shall be decided by the Village Council at a quasi-judicial hearing. The decision-making body shall make a decision based on the review standards in paragraph 3 below.

**B. Post Decision-Making Action**

1. The Final Plan Approval shall automatically expire if the use(s) authorized by the Final Plan Approval is not established or substantially commenced within two years after the date of the Final Plan Approval, unless an extension of this time period is authorized in accordance with Sec. 2-408.D, Lapse of Development Approval.
2. All other modifications of a Final Plan Approval may be amended only in accordance with the procedures and standards for its original approval. Any property or portion thereof which has completed development according to a duly approved Final Plan Approval and development order shall be modified pursuant to the processes established for Planned Development modifications in Sec. 2-501.D Planned Development

**3. Final Plan Approval Review Standards**

Final Plan Approval shall be granted only on a finding there is competent substantial evidence in the record that the proposed uses:

- A. Will be consistent with the goals, objectives, and policies of the comprehensive plan;
- B. Will comply with the zoning resolution and all applicable zoning district standards;
- C. Will comply with all standards in Chapter 4: Use Specific Standards;
- D. Will be appropriate for its location and is compatible with the general character of surrounding lands and the uses permitted in the zoning district;
- E. Will adequately screen, buffer, or otherwise minimize adverse visual impacts on adjacent lands;
- F. Will ensure that no site lighting source shall negatively impact adjacent properties and rights-of-way;
- G. Will maintain safe and convenient ingress and egress and traffic flow onto and through the site by vehicles and pedestrians, and safe road conditions around the site;

- H. Will avoid significant adverse odor, noise, glare, and vibration impacts on surrounding lands regarding refuse collection, service delivery, parking and loading, signs, lighting, and other site elements;
- I. Will not have an adverse impact on land values and the ability of neighboring lands to develop uses permitted in the zoning district;
- J. Will avoid significant deterioration of water and air resources, scenic resources, and other natural resources;
- K. Will not overburden existing public facilities and services, including but not limited to, streets and other transportation facilities, schools, potable water facilities, sewage disposal, storm water management, and police and fire protection facilities; and
- L. Will comply with all other relevant Village, state, and federal laws and regulations.

**G. Bar Special Permit**

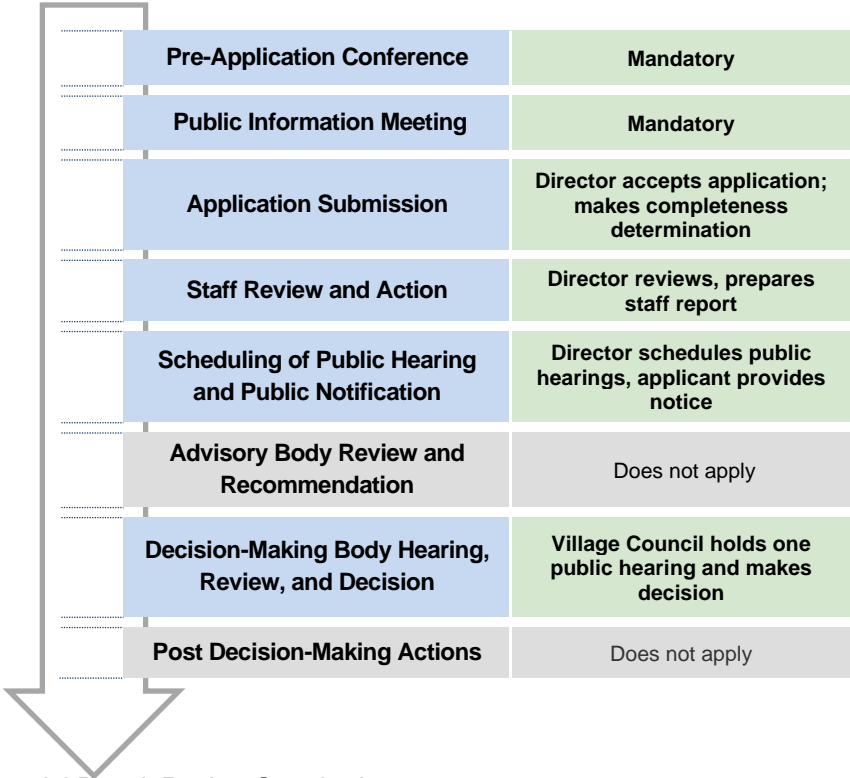
**1. Generally**

A permit to locate any establishment, including a bar, devoted primarily to the retailing and on-premises drinking of malt, vinous or other alcoholic beverages shall obtain an approval from the Village Council. A bar special permit is not required for provision of alcoholic beverages for members and guests of a private club or recreation center not available to the general public, or for hotels/motels, which approvals may be granted administratively.

**2. Bar Special Permit Procedure**

Figure 2.5.1(G)2 identifies the key steps in the Bar Special Permit procedure.

**Figure 2-501.E.2: Bar Special Permit Procedure Flowchart**



**3. Bar Special Permit Review Standards**

The criteria for a special exception approval, Sec. 2-501.E, shall apply to bar special permit approval. See also Chapter 4: Use Specific Standards.

## 2-502. SITE DEVELOPMENT

### A. Development Order

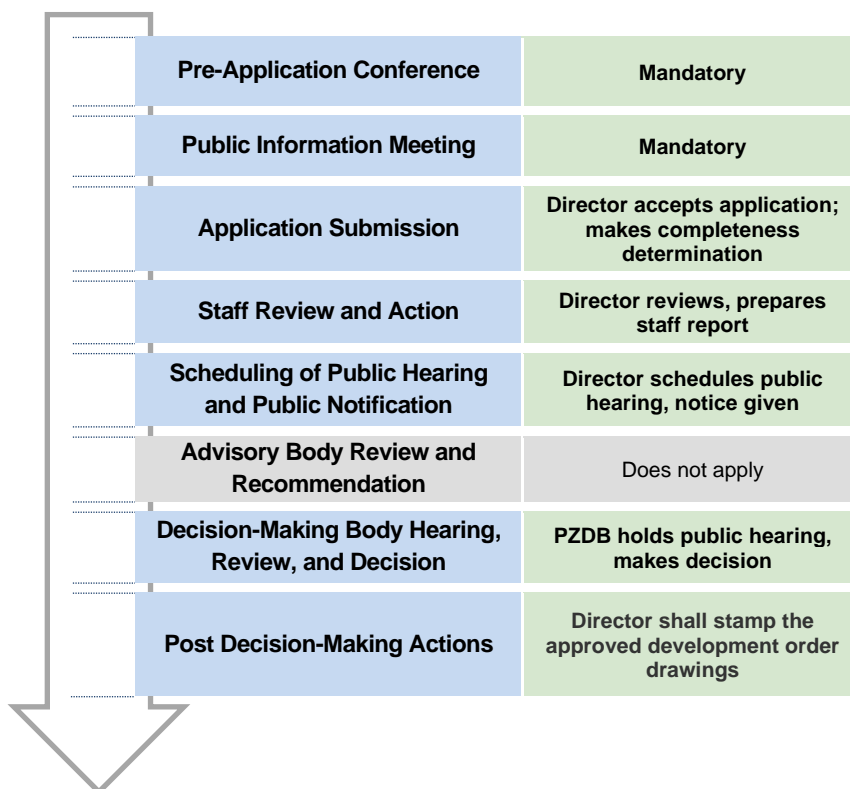
#### 1. Development Order

The procedures and standards in this section apply to the review of and decision on development applications for a development order. Approval of a development order is required prior to the approval of a plat, and the issuance of a building permit, unless this LDC requires only a limited development order, as provided in subsection 2-502.B below. Application may be made simultaneously for plat review and development order review.

#### 2. Development Order Procedure

- A. Figure 2-502.A.2 identifies key steps in the development order procedure, with noted modifications from the general procedures.

**Figure 2-502.A.2: Development Order Procedure Flowchart**



- B. For developments that require rezoning, the applicant may make application for a development order and the rezoning simultaneously. The development order will be reviewed for compliance with the requirements of the LDC for the proposed rezoning of the property. No development order application shall be determined to be complete until and unless the rezoning is approved. No approval of the development order shall be granted until the proposed rezoning is approved and an ordinance is signed by the Village Mayor.<sup>58</sup>

#### 3. Post Decision-Making Action

- A. The Director shall issue a development order approval letter and will stamp the approved development order drawings with an appropriate development order approval stamp.
- B. A development order shall automatically expire if the development authorized by the development order is not constructed or substantially commenced within five years after the date of the approval, or for the life of the surety or performance bond if the bond is for a period of less than five years, or unless an extension of this time period is authorized by the PZDB. Two two-year extensions may be granted provided the extension is requested prior to

<sup>58</sup> Carried forward from Sec. 10-103(c) of the transitional LDC.

- the expiration of the development order and complies with other application requirements in the Administrative Manual.
- C. In order for a development order to remain valid and active, significant construction activity shall commence within the duration of the development order and the construction of the project to build-out shall be actively pursued. Active pursuit of construction of a project to build-out is defined as continuous construction of the required infrastructure improvements shown and specified in the development order or buildings comprising the project. Actions to secure a permit, land clearing activity and construction of facilities deemed ancillary to the project by the Director will not be considered sufficient to satisfy the "active pursuit" criteria set forth in this section. If a project, including a phased project, is under construction and has not completed at least 50 percent of the permitted development (measured by lots, dwelling units, square feet or other applicable measurements of intensity as applicable) when the development order duration period has elapsed, the developer shall obtain a development order extension. For development order projects where there has been a foreclosure action, a deed given in-lieu of foreclosure, or title has been transferred pursuant to court ordered sale, and where there is a question of active pursuit of the construction under the development order, the new owner shall resume construction of the project within 24 months from the date when the title to the property changes pursuant to the foreclosure, deed in-lieu of foreclosure or court sale. Once restarted, construction shall continue to build-out without any periods of construction inactivity which exceed 18 months.<sup>59</sup>
- D. A development order's concurrency certificate is only effective for three years from the approval.
- E. If all applicable state and federal permits and approvals have been obtained, the issuance of a development order shall be authorization for the applicant to begin those site development activities specifically approved in the development order. Site development activities shall not occur before all applicable state and federal permits have been obtained.
- F. A development order may be modified as follows:
1. *Amendments*  
An application for an amendment to a development order is one that does not qualify as a minor (administrative) change and that does not substantially modify the schedule of development as originally approved under an approved development order or, in the case of a planned development, is in substantial compliance with the approved Master Concept Plan. The PZDB, at a quasi-judicial public hearing, shall review and approve, deny, or approve with conditions any minor amendment.
  2. *Minor (Administrative) Changes*  
The Director shall review and decide on minor (administrative) changes, limited to changes that the Director finds:
    - (a) Address technical considerations that could not reasonably be anticipated during the development order approval process; or
    - (b) Would not:
      - i. Materially alter the drainage, streets, or other engineering design;
      - ii. Adversely impact the management of storm water quality or storm water quantity;
      - iii. Substantially affect the terms of the original approval; or
      - iv. Result in significant adverse impacts on the surrounding lands or the Village at large; and
    - (c) Are not the result of a violation revealed during final inspection.
- G. All other modifications of development order approval may be made only in accordance with the procedures and standards for its original approval.

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<sup>59</sup> Carried forward from Sec. 10-115(d) of the transitional LDC.

- H. A development order runs with the land and is transferable to the subsequent owner of the property covered by the development order. Within 30 days after the transfer, a new owner shall submit to the Village proof of ownership of the property, a list of all owners, and a signed affidavit that the new owner has full authority to secure subsequent approvals and to impose covenants and restriction required by the development order.

**4. *Development Order Review Standards***<sup>60</sup>

A development order shall only be approved upon a finding that the applicant demonstrates there is competent substantial evidence in the record that all of the following standards are met:

- A. The proposed development and uses in the development plan comply with Chapter 3: Zoning Districts, and Chapter 4: Use Specific Standards;
- B. The development proposed in the development plan and its general layout and design comply with all the standards in Chapter 5: Site Development Standards, Chapter 6: Signage, and Chapter 7: Natural Resources;
- C. The development proposed complies with all conditions of approval in any development approval to which the plan is subject;
- D. If any part of the development order requires a plat, the plat is approved in accordance with Sec. 2-502.C, Plat Review, and is in substantial conformance with the development order;
- E. The plan for the proposed development, structure, or project is in conformity with good taste, good design, and in general contributes to the image of the Village as a place of beauty, spaciousness, harmony, taste, fitness, and high quality;<sup>61</sup>
- F. The proposed development, structure or project is not, in its exterior design and appearance, of inferior quality such as to cause the nature of the local environment or evolving environment to materially depreciate in appearance and value;
- G. The proposed structure or project is in harmony with the proposed developments in the general area;
- H. The proposed plan is fully consistent with the comprehensive plan for the Village;
- I. For legal nonconformities, any nonconforming elements of the site except for use are corrected by the proposed plan; and
- J. The development proposed complies with all other applicable standards in the LDC and all other Village ordinances and regulations.

**B. Limited Development Order**

**1. *Limited Development Order***

The procedures and standards in this section apply to the review of and decision on applications for a limited development order. Approval of a limited development order is required prior to the issuance of a building permit. A limited development order approval shall be required for the following.<sup>62</sup>

**A. *Type A***

Any improvements to the land determined by the Director to have no adverse impacts on public facilities in accordance with applicable standards of measurement in this LDC (vehicular trips, amount of impervious surface, gallons per day, etc.), including up to 100 square feet of additional impervious surface and any Notice of Intent to Commence Water Retention Excavation for an agricultural use or as an amenity to a single-family residence where blasting activities will not be conducted and where no more than 1,000 cubic yards of spoil will be removed offsite.

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<sup>61</sup> F – I are carried forward from Ord. 15-01 DRB criteria, except do not include the landscape water conservation criterion.

<sup>62</sup> Carried forward from Sec. 10-174 of the transitional LDC.



B. *Type B*

A cumulative addition or enlargement of an existing impervious area, provided that the addition or enlargement does not increase the total impervious cover area by more than 2,500 square feet and there is no increase in the rate of runoff from the project site.

C. *Type C*

Any out-of-door type recreational facilities, such as swimming pools, tennis courts, tot lots, and other similar facilities, provided the total cumulative additional impervious area does not exceed 5,000 square feet, including any Village or county-initiated improvements for public water access purposes in Village or county-owned or maintained rights-of-way.

D. *Type D*

1. Any other improvement to land determined by the Director to have insignificant impacts on public facilities in accordance with applicable standards of measurement in this LDC (vehicular trips, amount of impervious surface, gallons per day, etc.).
2. The installation of new utility lines in existing right-of-way or easements.
3. Improvements to a Village or county maintained road right-of-way.

E. *Type E*

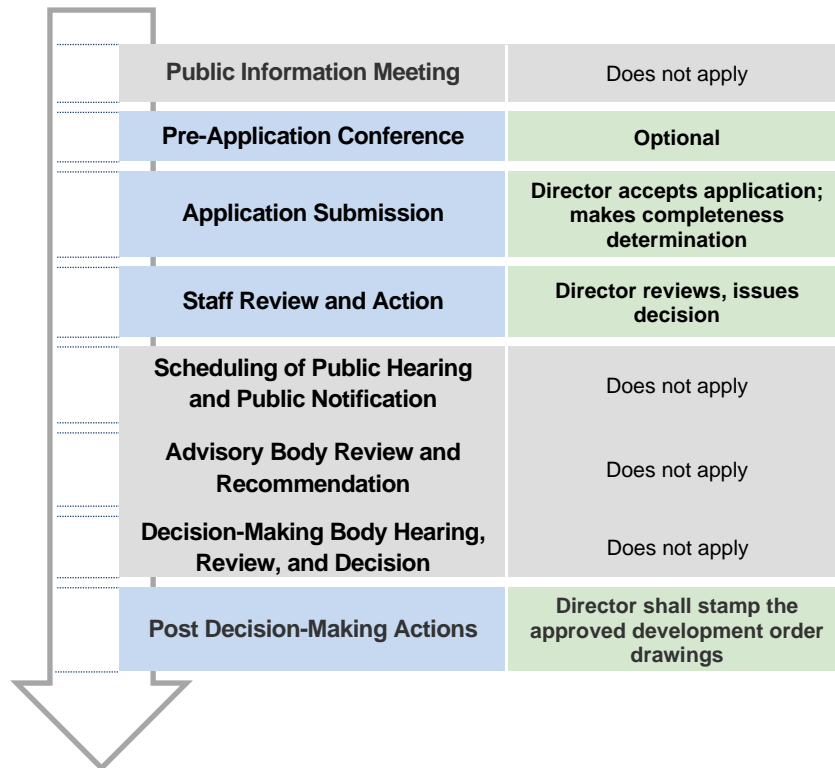
Any subdivision of land into two residential lots where the zoning district regulations permit such subdivision; provided, however, that:

1. Each lot shall meet or exceed all requirements of the zoning district in which it is located, or the subdivision is approved by the Director under the provisions of this LDC, and the overall development complies with all other requirements of this LDC;
2. No more than two lots may be created from an original parent parcel as it existed on January 28, 1983;
3. Except single-family detached dwelling units, two-family attached dwelling units or bona fide agricultural uses, no development may occur on either of the lots without first obtaining a development order;
4. If the parent parcel is 10 acres or greater, a protected species survey may be required as specified in this LDC;
5. Each lot shall abut and have access to a road that meets the minimum construction standards set forth in this LDC and is consistent with the maximum density requirements of this LDC;
6. No significant alteration of existing utility installations is involved;
7. No change in drainage will occur that adversely impacts the surrounding properties;
8. Creation of new road rights-of-way or road easements, and the construction of new roadways or upgrading of existing roadways to meet the minimum standards contained in this LDC will require development order approval; and
9. Reasonable conditions may be attached to the approval so that any development on the lots will comply with all Village LDC requirements.
10. An application for a lot split shall include all parcels under common ownership, including any abutting residual parcels, if under common ownership with the property subject to the lot split and are part of the original parent parcel as the parent parcel existed on January 28, 1983. If all lots are not under common ownership, the applicant shall provide proof that the applicant made a bona fide, good faith effort to request by certified mail, return receipt requested, all other property owners to join in the lot split application. Proof of the current property owner's refusal to consent to the lot split or the failure of the current property owner to respond to the applicant's request, after a reasonable time for a response, will obviate the need to include that parcel. Further development on any lots that do not join in the lot split application may not occur until the lot has been legally created in accordance with the provisions of this LDC. A lot split may only be approved once.
11. All parcels, including residual parcels, shall conform to the minimum property development regulations for the zoning district in which they are located.

**2. Limited Development Order Procedure**

Figure 2-502.B.2 identifies key steps in the limited development order procedure, with noted modifications from the general procedures.

**Figure 2-502.B.2: Limited Development Order Procedure Flowchart**



**3. Post Decision-Making Action**

- A. The Director shall issue a limited development order approval letter and will stamp the approved development order drawings with an appropriate development order approval stamp.
- B. A limited development order shall automatically expire if the development authorized by the limited development order is not constructed or substantially commenced within 3 years after the date of the approval.
- C. A limited development order approval shall automatically expire if the development authorized by the limited development order is discontinued and not resumed for a period of 1 year.
- D. A limited development order may be modified in accordance with the procedures and standards for its original approval.

**4. Limited Development Order Review Standards<sup>63</sup>**

A limited development order shall only be approved upon a finding that the applicant demonstrates there is competent substantial evidence in the record all of the following standards are met:

- A. The proposed development and uses in the development plan comply with all applicable requirements of the LDC and is consistent with the Village comprehensive plan;
- B. For legal nonconformities, any nonconforming elements of the site except for use are corrected by the proposed plan;
- C. The development proposed in the development plan has no significant adverse effect upon surrounding land uses;

<sup>63</sup> A through D carried forward from Sec. 10-173 of the transitional LDC

- D. The development proposed in the development plan has no significant adverse effect upon public facilities in the area;
- E. The development proposed in the development plan does not adversely affect the environmental quality of the area;
- F. The development proposed complies with all conditions of approval in any development approval to which the plan is subject; and
- G. If any part of the limited development order requires a plat, the plat is approved in accordance with Sec. 2-502.C, Plat Review, and is in substantial conformance with the development order.

### **C. Plat Review**

#### **1. Generally**

This subsection supplements the procedural requirements of Ch. 177, Fla. Stat. for review and decisions regarding plats and replats. It applies to all subdivision of land, except the following:<sup>64</sup>

- A. A development platted or approved by Lee County prior to January 28, 1983, provided that all required improvements have been made or that a security for the performance of the improvements has been posted and is current.
- B. The division of land for the conveyance of land to a federal, state, County or municipal government entity, or a public utility.
- C. The division of land by judicial decree.
- D. A division of land of two or fewer lots approved as a limited development order (Sec. 2-502.B.2, Limited Development Order Procedure)
- E. A single family residential lot created between January 28, 1983, and December 21, 1984, that has obtained a favorable minimum use determination in accordance with the Lee Plan.<sup>65</sup>

#### **2. Plat Procedure**

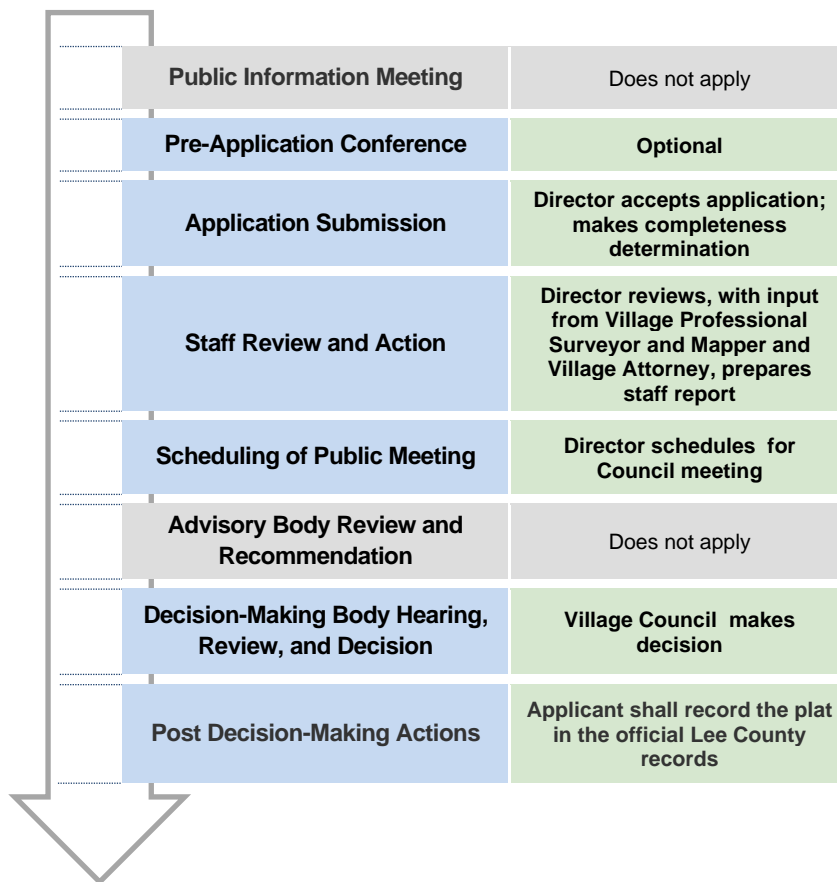
- A. Figure 2-502.C.2 identifies key steps in the plat and replat procedure, with noted modifications from the general procedures.

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<sup>64</sup> Carried forward from Sec. 10-215 of the transitional LDC.

<sup>65</sup> Carried forward from Sec. 10-215 of the transitional LDC.

**Figure 2-502.C.2: Plat Procedure Flowchart**



- B. Plats shall be prepared in compliance with Ch. 177, Fla. Stat. and shall contain all of the elements specified in the statute, this LDC (including Section 5-9, Plat Standards), and the Administrative Manual.
- C. The Director may permit the combination or recombination of platted lots of record created through a plat recorded in the Official Records of Lee County, in accordance with Sec. 5-903, Lot Recombination, provided the density established through the original plat is not increased and the resulting lots comply with all other applicable requirements of this LDC.<sup>66</sup>
- D. A development order for the subject property shall be approved prior to approval of a plat.

**3. Post Decision-Making Actions**

All plats and replats shall be recorded by the applicant in the Official Records of Lee County.

**4. Plat Standards.**

The Village Council acts in its ministerial capacity when reviewing and deciding plats and replats. Approval shall be granted if the plat meets the platting requirements of this LDC (see, Section 5-9, Plat Standards, and any technical requirements provided in the Administrative Manual, statutory plat requirements, and other applicable LDC requirements).

**D. Vacation of Easement, Right-of-Way, or Plat**

**1. Generally**

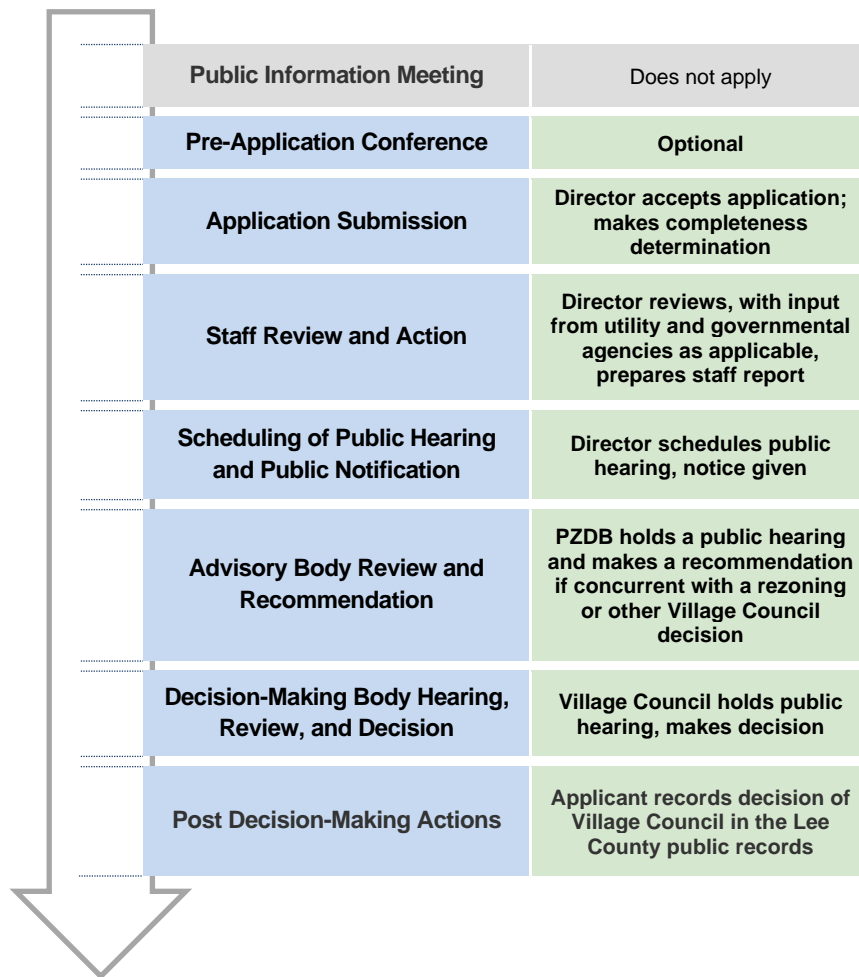
Applications for the vacation of easements, rights-of-way, or plat shall follow the standards established in Section 5-9, Plat Standards, in addition to the procedures set out herein.

<sup>66</sup> Carried over from Sec. 10-217 of the transitional LDC.

2. *Vacation Procedures*

- A. Figure 2-502.D.2 identifies key steps in the vacation procedure, with noted modifications from the general procedures.

**Figure 2-502.D.2: Vacation of Easement, Right-of-way or Plat Procedure Flowchart**



- B. If the vacation is of an easement, right-of-way, or plat required as a condition of rezoning or other Village Council decision, the PZDB shall hold a hearing and provide a recommendation to the Village Council regarding the vacation. A development order conditioned on such vacation shall not become effective unless and until the Village Council approves the vacation.

3. *Post Decision-making Actions*

All vacations of easements, rights-of-way, and plats shall be recorded by the applicant in the Official Records of Lee County. The recordation shall include a survey in accordance with the standards of the FAC, this LDC, and any conditions of approval.

4. *Review Standards*

The Village Council shall, after public hearing and due consideration, either grant or deny the application in accordance with the est interests of the public welfare. A vacation of an easement, right-of-way, or plat is subject to the legislative discretion of the Village Council. The Village Council may consider as applicable, whether:

- A. The easement or right-of-way is now, or in the foreseeable future, needed for a public purpose for the Village or its residents;
- B. For a plat vacation which has dedicated rights-of-way to public use or dedicated rights-of-way or easements for any public utility, storm drainage course, floodplain, public access roadway, or dedicated public facility:

1. Consents have been provided by the public users of the easements;
  2. Each public utility, which is franchised to provide services within the area of the plat, is notified in writing of the proposed vacation, and has 30 calendar days to comment;
  3. Conditions of consent from any public agencies or utilities having rights in any land proposed to be vacated have the conditions incorporated into the vacation; and
  4. If any agency or utility having rights in any land proposed to be vacated objects, a finding is made that a specific public benefit will not be annulled if the vacation is granted.
- C. New plats assigned concurrently with a plat vacation may take into account previous dedications.

## 2-503. CERTIFICATE OF CONCURRENCY

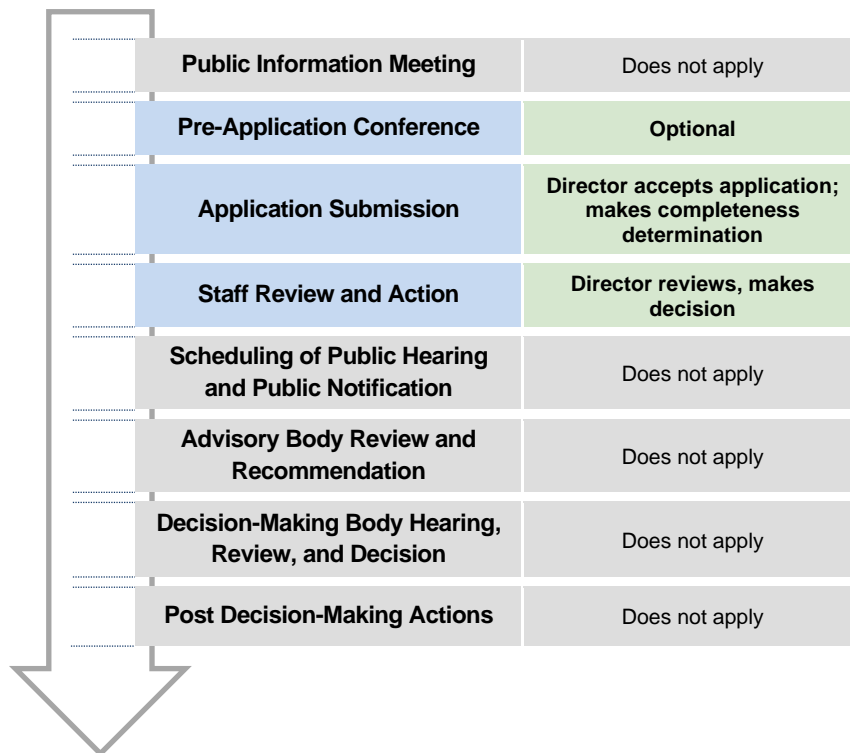
### A. Generally

All applications for development orders and building permits shall be reviewed by the Director for compliance with the level of service requirements set forth in the comprehensive plan and this LDC, unless exempted by this LDC.

### B. Procedures

1. Figure 2-503.B.1 identifies key steps in the certificate of concurrency procedure, with noted modifications from the general procedures.

**Figure 2-503.B.1: Certificate of Concurrency Procedure Flowchart**



2. As a part of its application for development approval, the applicant shall provide letters of concurrency compliance from the providers of the following services: potable water, sanitary sewer, solid waste, surface water management (drainage), and schools.
3. In its review of the application, the Director may rely upon studies, measurements or calculations prepared by qualified professionals, or upon generally accepted guidelines, rules, formulas, studies or other theories developed by professional experts working or publishing in this field of inquiry, or upon relevant historical trends or experiences, or upon related rules and standards adopted by other governmental agencies, or upon any combination of these sources.

**C. Certificate of Concurrency Standards**

A written determination of concurrency compliance (“certificate of concurrency”) shall be issued in conjunction with a development order if the Director determines that there will be sufficient capacity for the enumerated facilities to serve the proposed development at the time the impacts of development will occur, without causing those facilities to function at a level of service below the minimum regulatory levels established in the comprehensive plan. The Director may condition the certificate of concurrency on mitigation to be provided by the applicant as a condition of a development approval.

**2-504. HISTORIC PRESERVATION CERTIFICATE OF APPROPRIATENESS**

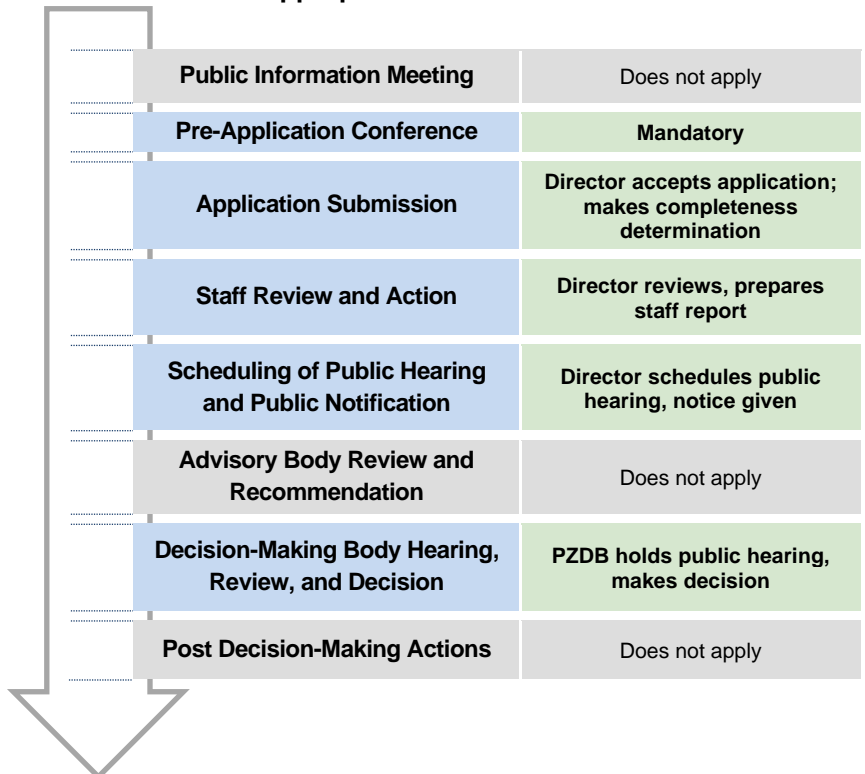
**A. Generally**

1. The PZDB shall review and decide on modifications to structures designated by the Village, or by Lee County prior to Village incorporation, as historically significant, to assist in the continued preservation of the structure and the appropriate, compatible and sensitive development of new construction and additions to the structure. In conducting these duties, the PZDB shall seek the advice of persons knowledgeable in historic preservation.
2. A certificate of appropriateness is a written approval issued by the PZDB allowing specified alterations to, new construction of, relocation of, or other changes to a designated historic structure.

**B. Certificate of Appropriateness Procedure**

Figure 2-504.B identifies key steps in certificate of appropriateness procedure, with noted modifications from the general procedures.

**Figure 2-504.B: Certificate of Appropriateness Procedure Flowchart**



**C. Standards for Certificate of Appropriateness**

A certificate of appropriateness shall be reviewed and approved or denied based upon the criteria listed in the U.S. Secretary of the Interior’s Standards for Rehabilitation, 36 CFR 67 (1983), as such standards may be amended, renumbered, or replaced from time to time.

**2-505. PERMITS**

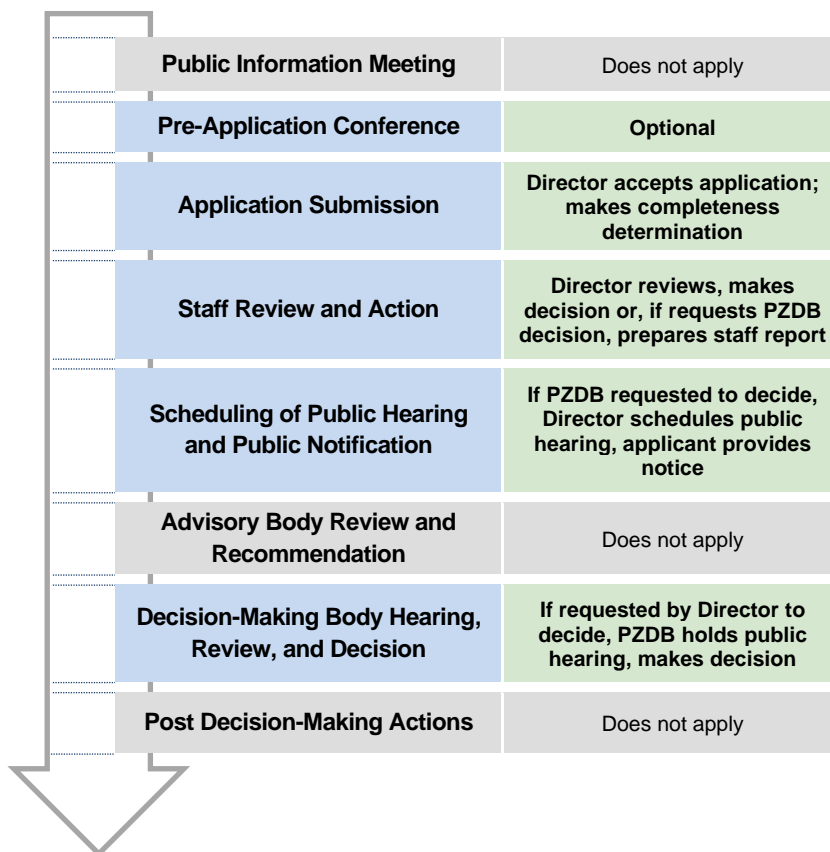
**A. Material Alteration of Commercial or Multifamily Building or Structure Exterior Permit**

The Director shall review all applications for material alterations of building or structure exteriors for commercial buildings, places of assembly, and multifamily buildings, and make a decision, unless, in the Director’s discretion, the Director requests that the PZDB makes the decision.

**1. Material Alteration of Commercial or Multifamily Building or Structure Exterior Permit Procedures**

Figure 2-505.A.1 identifies key steps in the material alteration of building or structure exteriors permit procedure, with noted modifications from the general procedures.

**Figure 2-505.A.1: Material Alteration of Commercial or Multifamily Building or Structure Exterior Permit Procedure Flowchart**



**2. Material Alteration of Building or Structure Standards<sup>69</sup>**

If the Director determines that the proposed material alteration conforms to an applicable pattern book, condition of approval or LDC, the Director may issue an approval. Furthermore, if the Director determines that the project does not conform, the PZDB shall review the application to determine whether the following criteria are met:

- A. The proposed alteration is in conformity with good taste, good design, and in general contributes to the image of the Village as a place of beauty, spaciousness, harmony, taste, fitness, and high quality;
- B. The proposed alteration is not, in its exterior design and appearance, of inferior quality such as to cause the nature of the local environment or evolving environment to materially depreciate in appearance and value;

<sup>69</sup> Carried forward from the existing Ordinance 15-01.



- C. The proposed alteration is in conformity with the standards of this LDC and other applicable ordinances insofar as the location and appearance of the structure is involved;
- D. The proposed alteration is in harmony with the proposed developments in the general area, and fully consistent with the comprehensive plan for the Village; and
- E. If a repainting project, the proposed repainting conforms to the colors permitted in this LDC.

**B. Monument Sign Permit**

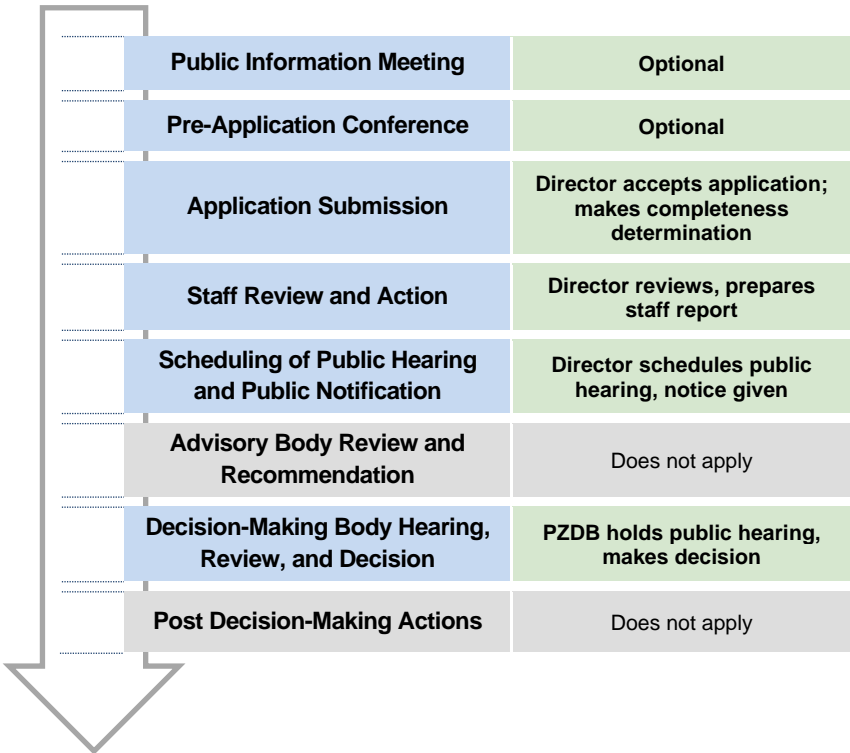
**1. Generally**

The PZDB shall review all applications for monument signs; all other sign permit applications shall be reviewed and decided by the Director.

**2. Monument Sign Permit Procedure**

Figure 2-505.B.2 identifies key steps in the monument sign permit procedure, with noted modifications from the general procedures.

**Figure 2-505.B.2: Monument Sign Permit Procedure Flowchart**



**3. Monument Sign Standards**

The PZDB shall review monument sign applications to determine, based on substantial competent evidence, whether the following monument sign criteria are met. The PZDB in its sign review does not review for compliance with zoning standards.

- A. The proposed structure is in conformity with good taste, good design, and in general contributes to the image of the Village as a place of beauty, spaciousness, harmony, taste, fitness, and high quality.
- B. The proposed structure is not, in its exterior design and appearance, of inferior quality such as to cause the nature of the local environment or evolving environment to materially depreciate in appearance and value.
- C. The proposed structure is in conformity with the standards of this LDC (including but not limited to Chapter 6: Signage) and other applicable ordinances insofar as the location and appearance of the structure is involved.
- D. The proposed structure is in harmony with the proposed developments in the general area, and fully consistent with the comprehensive plan.

### C. Temporary Use Permit

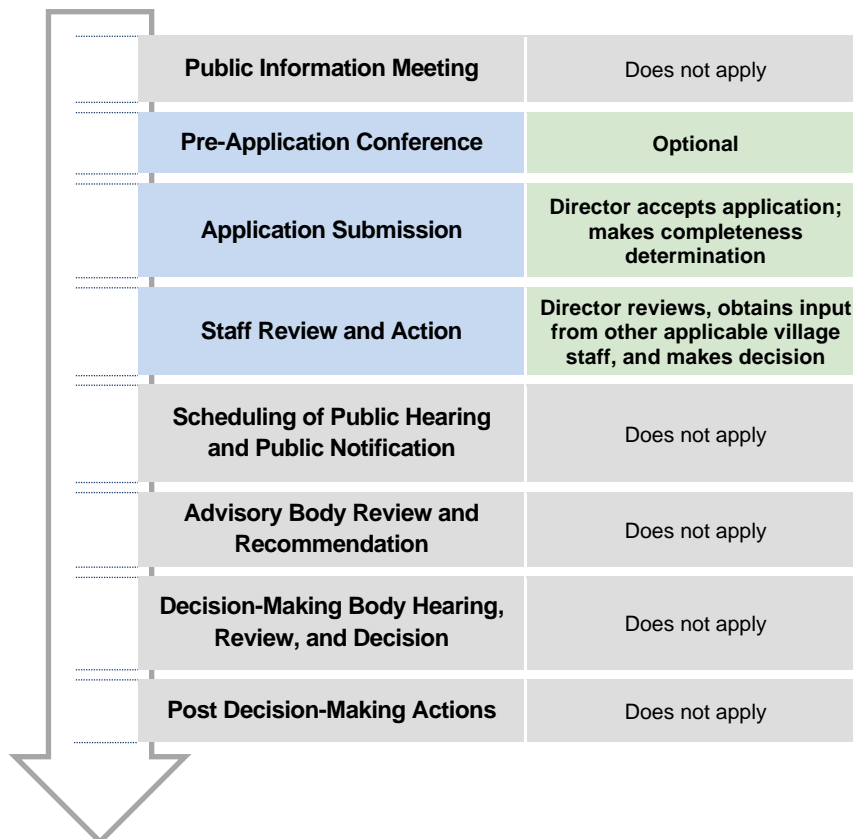
#### 1. Generally

Temporary use permits are available for certain uses identified in this LDC, for identified periods of time. Special event temporary uses will be approved by the Director.

#### 2. Temporary Use Permit Procedure

Figure 2-505.C.2 identifies key steps in the Temporary Use Permit procedure, with noted modifications from the general procedures.

**Figure 2-505.C.2: Temporary Use Permit Procedure Flowchart**



### D. Tree Removal/Vegetation Permit

#### 1. Generally

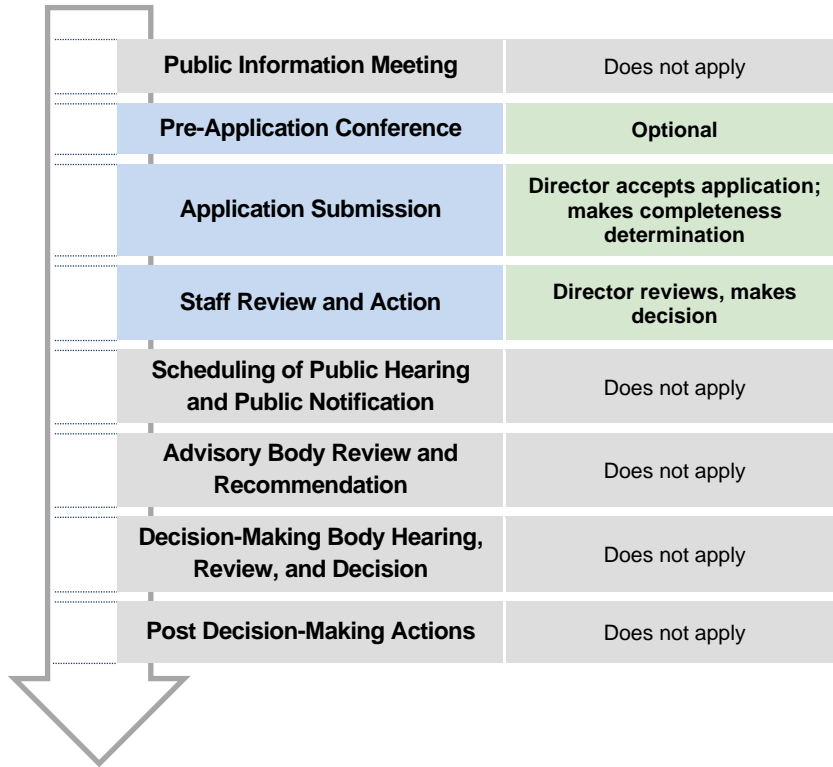
No person, organization, society, association, corporation, or any agent or representative thereof, shall deliberately cut down, destroy, remove, relocate, defoliate through the use of chemicals or other methods, or otherwise damage any tree or vegetation that is protected by this LDC, without first obtaining a development approval as provided in this LDC (see Sec. 5-404, Tree Preservation).

No clearcutting of vegetation is permitted until a development permit for vertical construction has been issued.

#### 2. Tree Removal/Vegetation Permit Procedure

Figure 2-505.D.2 identifies key steps in the Tree Removal/Vegetation Permit procedure for removal of fewer than 10 trees, with noted modifications from the general procedures. For removal of 10 or more trees, the applicant shall obtain a Limited Development Order approval.

**Figure 2-505.D.2: Tree Removal/Vegetation Permit Procedure Flowchart**



**3. Tree Removal Standards**

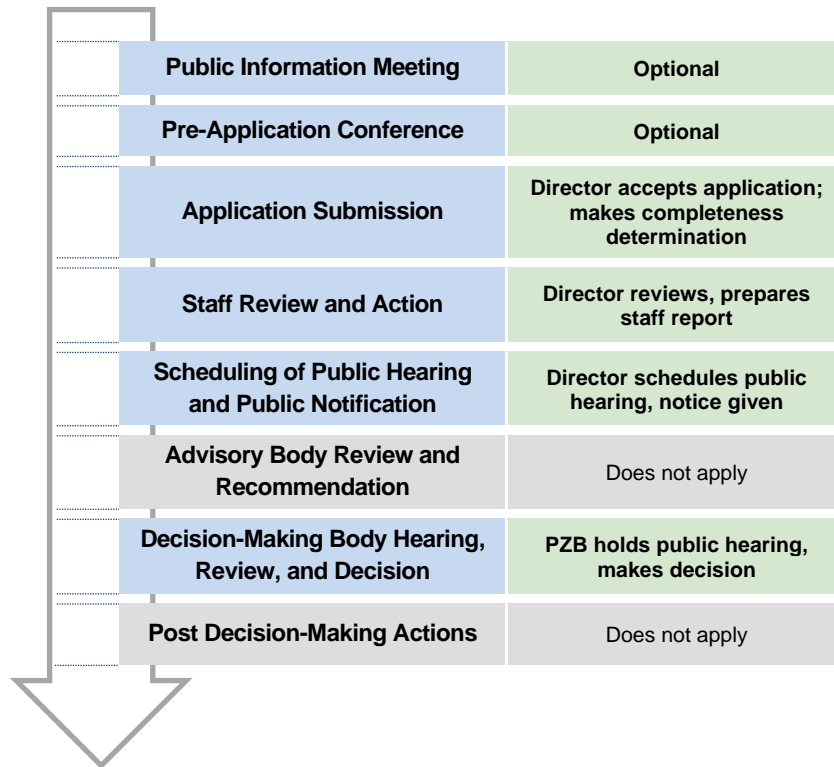
- A. The Director shall approve a permit for issuance for the removal of any protected tree upon a finding that one or more of the following conditions is present:
  - 1. Trees which pose a safety hazard to pedestrian or vehicular traffic or threaten to cause disruption to public utility services.
  - 2. Trees which pose a safety hazard to existing buildings or structures.
  - 3. Trees which prevent reasonable access to a lot or parcel so long as the proposed access point complies with all other county regulations.
  - 4. Diseased trees which are a hazard to people, buildings or other improvements on a lot or parcel or to other trees.
  - 5. Trees so weakened by age, storm, fire or other injury as to, in the opinion of the Director, jeopardize the life and limb of persons or cause a hazard to property.
  - 6. Trees which prevent the lawful development of a lot or parcel or the physical use thereof.
  - 7. Any tree if properly documented to be a danger to property by an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect.
- B. The Director may require that a tree protected by this LDC be relocated on the same lot or parcel in-lieu of removal.

**E. Cultivated Tree Removal/Renovation**

**1. Cultivated Tree Removal/Renovation Procedure**

Figure 2-505.E.1 identifies key steps in the Cultivated Tree Removal/Renovation procedure for properties with an approved Landscape Plan and subject to a Development Order or a Limited Development Order when proposing an amendment to remove 10 or more cultivated trees, with noted modifications from the general procedures.

**Figure 2-505.E.1: Cultivated Tree Removal/Renovation Procedure Flowchart**



## 2. *Cultivated Tree Removal/Renovation Standards*

The PZDB shall review requests for Cultivated Tree Removal/Renovation to determine, based on substantial competent evidence, whether the following criteria are met.

- A. Compliance with Sec. 5-411.I, Cultivated Tree Removal / Renovation of this code.
- B. The proposed amendment to the Landscape Plan is in conformity with good taste, good design, and in general contributes to the image of the Village as a place of beauty, spaciousness, harmony, taste, fitness, and high quality.
- C. The proposed amendment to the Landscape Plan is in harmony with the proposed developments in the general area.
- D. The proposed amendment to the Landscape Plan promotes water conservation.

## F. **Other Administrative Permits and Approvals**

### 1. *Generally*

This LDC includes requirements for the issuance of various permits and approvals that are issued administratively by the Director. The administrative permits and approvals shall be reviewed pursuant to the general procedures in Sec. 2-403, Development Application Submission, and Sec. 2-404, Staff Review And Action, of this LDC, unless otherwise specified elsewhere in this LDC. These administrative permits and approvals include, but are not limited to, the following.

### 2. *Use Permit*

A use permit, authorizing a use in accordance with this LDC, is required prior to occupancy or a change of occupancy of commercial or industrial zoned property, or for the change of use from a model home that is converted to a standard residence. A use permit is a prerequisite to any county or state permitting or business license receipt. The Director shall review and issue a use permit prior to the issuance of a building permit, based on the determination that the use meets the standards in this LDC.

### 3. *Sign Permit*

Sign permits, except for monument signs, shall be reviewed by the Director for compliance with the standards in this LDC. A building permit for a sign shall not be issued until authorized by the Director. Appeals of a sign permit decision shall be made to the PZDB in accordance with the appeal procedures of Sec. 2-404, Staff Review And Action.

### 4. *Dogs in Outdoor Seating Areas of Restaurants*

#### A. *Generally*

Pursuant to Sec. 509.233, Fla. Stat., patrons' dogs (*canis lupus familiaris*) may be permitted within outdoor seating areas of restaurants subject to the approval of an outdoor dog dining permit. Service animals, as defined under Ch. 413, Fla. Stat., are exempt from the provisions of this section.

#### B. *Permit Required*

A permit must be obtained from the Department prior to allowing patrons' dogs in outdoor seating areas:

##### 1. *Application*

An applicant for an outdoor dog dining permit must submit the following information on the form provided by the Village:

- (a) The name, location, and mailing address of the restaurant.
- (b) The name, mailing address, and telephone contact information of the permit applicant.
- (c) The Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation issued license number of the restaurant.
- (d) A copy of a site plan, to scale, that will be designated as available to patrons' dogs, including: dimensions of the designated area; a depiction of the number and placement of tables, chairs, and restaurant equipment, if any; the entryways and exits to the designated outdoor area; the boundaries of the designated area and of other areas of outdoor dining not available for patrons' dogs; any fences or other barriers; surrounding property lines and public rights-of-way, including sidewalks and common pathways; and such other information reasonably required by the permitting authority.
- (e) A description of the days of the week and hours of operation that dogs will be permitted in the designated outdoor area.

##### 2. *Review and Approval*

- (a) Prior to permit approval, the Director must find that all required materials have been received and that the requested permit will not hinder the general health, safety and welfare of the public.
- (b) The Director may impose additional conditions as necessary in order to protect the health, safety and welfare of the community.
- (c) The Director will provide the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation with a copy of all approved applications and permits issued.

##### 3. *Transfer*

A permit issued under this section is not transferable to a subsequent owner or tenant upon the sale of a public food service establishment, but will automatically expire upon the sale of the establishment. The subsequent owner or tenant is required to reapply for a new permit pursuant to this section if the subsequent owner or tenant wishes to continue to accommodate patrons' dogs. A change in occupancy will also require the issuance of a new permit under this section.

4. *Revocation*

- (a) A permit may be revoked by the Village if, after notice and reasonable time in which the grounds for revocation may be corrected, the restaurant fails to comply the conditions of approval, including the standards set forth in Sec. 4-132, Restaurant
- (b) If revoked, a permit for dogs in outdoor seating areas will not be issued to the same owner or tenant for a period of 12 months from the date of revocation.

5. *Legacy Mobile Home Parks*<sup>71</sup>

- A. Any mobile home park which was lawfully established prior to the effective date of the Lee County's 1962 zoning regulations will be governed by the requirements of section 9-504, Placement of Mobile Home or Recreational Vehicle on Lot, as long as the park satisfies the remaining minimum documentary requirements and the Village Council approval set forth in this provision. Any park previously approved by the Lee County Board of Commissioners under Lee County Ordinance 86-36 may request to amend the approved site plan by the combination of lots creating larger lots provided the approved density is not increased. The park must obtain an administrative approval. For purposes of this subsection, the term "site plan" means any one or more of the following, whichever is applicable:
  - 1. A sealed and signed survey showing individual lots by both course and distance;
  - 2. An unrecorded subdivision plat prepared and certified by a professional engineer or surveyor;
  - 3. A condominium plot plan prepared and recorded pursuant to Ch. 718, Fla. Stat.;
  - 4. A park plan prepared and submitted with a prospectus pursuant to Ch. 723, Fla. Stat., provided that the prospectus has been approved by the State Department of Business Regulation and is of sufficient accuracy, size and legibility to enable the Director to administer this chapter;
  - 5. A site plan approved in accordance with Lee County Administrative Code Policy F-0015;
  - 6. A site plan approved pursuant to a preliminary or final development order;
  - 7. A rectified aerial with a minimum scale of one inch equals 100 feet and which has each site delineated and identified by its number and shows individual lot measurements with a reasonable degree of accuracy; or
  - 8. Any other document which shows lot lines with enough specificity to enable the Director to apply the provisions of this chapter with respect to minimum lot size, lot widths and setback requirements.
- B. Any of the above documents that have not been formally approved by the Village Council or the Lee County Board of County Commissioners before Village incorporation will not be sufficient to satisfy the provisions of this subsection. The burden of proof that a document has received Lee County Board of County Commissioners approval or Village Council approval is that of the owner

**G. Zoning verification letter ("ZVL").**

1. *Generally*

A zoning verification letter may be requested from the Director by an individual who is seeking verification of the zoning status of a specific parcel of land. A zoning verification letter issued by the Director is informational only, will not be the basis for an estoppel against the Village, and does not authorize development activity.

2. *Procedures*

The request must provide sufficient information to identify the property and the information the requestor seeks to verify. The request must be submitted in writing and be accompanied by the required administrative fee. If the request covers multiple parcels, the Director may treat each

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<sup>71</sup> Carried forward from Sec. 34-3272 of the transitional LDC.

parcel as a separate request and may result in additional fees. The requestor is solely responsible for the accuracy of the information provided to the Village within the request. The procedures established under this paragraph will also apply to any request for zoning review or verification provided to facilitate licensure or approval through a Federal or State Agency.

**3. *Duration***

There is no specific expiration date for a ZVL. However, Village zoning regulations are continually under review and may change at any time, and conclusions provided in a ZVL may be superseded if not in conformance with the current regulations at the time of permit application.

**4. *Content***

A ZVL provided by the Village may contain the following information:

- A. The future land use designation of the property
- B. The zoning district of the property.
- C. Verification that a particular use is permitted within the property's zoning district.
- D. A list of permitted uses in the zoning district.
- E. Identification of current zoning resolutions, special exceptions, variances, and deviations that apply to the property.
- F. The development regulations applicable to the property.
- G. Zoning action needed to permit a particular use.
- H. Identification of any current Notice of Violations issued for code enforcement violations on the subject property.

**5. *Appeal***

The conclusions made within a ZVL are not subject to appeal.

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**2-506. RELIEF**

**A. Zoning Variance**

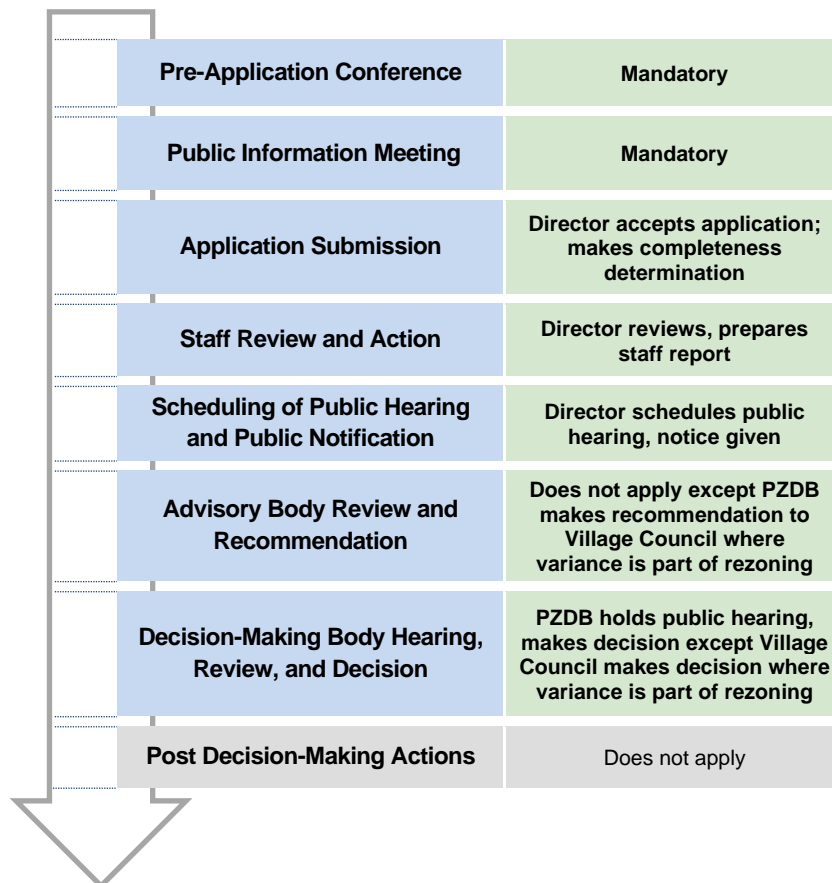
**1. *Generally***

The PZDB shall hear and decide all requests for variances from the terms of the regulations or restrictions of the LDC, except in the event that the variance request is part of a rezoning application, in which case the Village Council will decide the variance, and except for a variance request from Section 7-3, Flood Hazard Reduction Standards. No use variance may be heard or considered.

**2. *Zoning Variance Procedure***

Figure 2-506.A.2 identifies key steps in the zoning variance procedure, with noted modifications from the general procedures.

**Figure 2-506.A.2: Zoning Variance Procedure Flowchart**



### 3. Zoning Variance Standards

Before granting a zoning variance, the PZDB, or the Village Council, as applicable, shall find that all of the following are satisfied:

- A. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and whether those exceptional or extraordinary conditions or circumstances create a hardship (as defined in this LDC) on the property owner.
- B. The exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of the ordinance (any action taken by an applicant pursuant to lawfully adopted regulations preceding the adoption of the ordinance from which this LDC is derived will not be considered self-created).
- C. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to the applicant's property.
- D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought, is not of a general or recurrent nature so as to make it more reasonable and practical to amend the LDC.

## B. Flood Variance

### 1. Generally

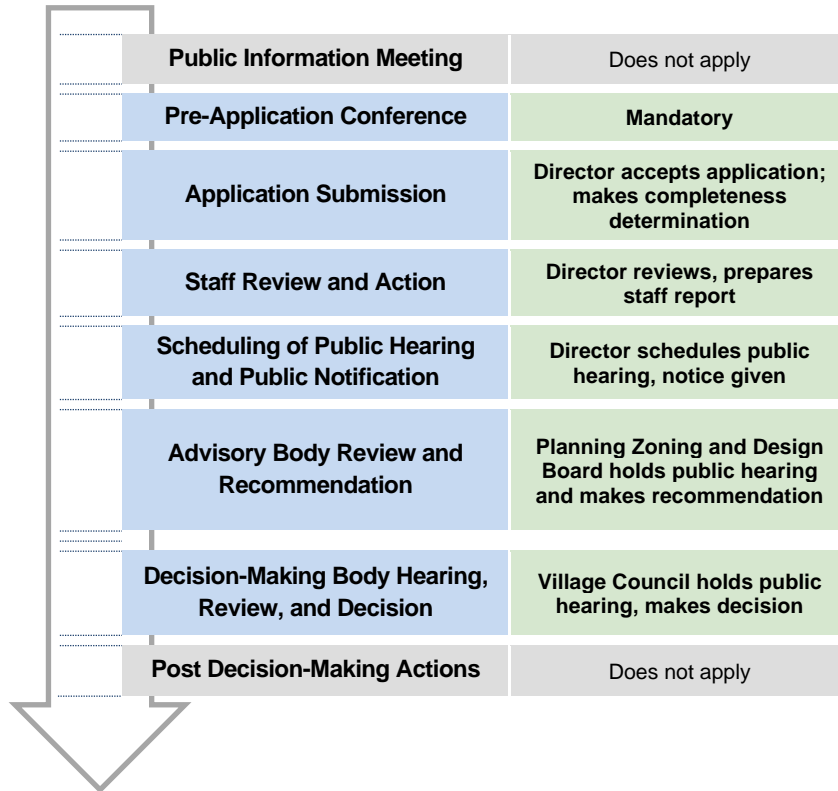
Any applicant for development approval for any building, structure, and facility which is wholly within or partially within any flood hazard area shall first obtain the required approval pursuant to Flood Hazard Reduction requirements of this LDC (Section 7-3, Flood Hazard Reduction Standards). The Village Council shall hear and decide on requests for variances from the strict application of the Flood Hazard Reduction requirements of this LDC.



2. *Flood Variance Procedure*

Figure 2-506.B.2 identifies key steps in the Flood Variance procedure, with noted modifications from the general procedures.

**Figure 2-506.B.2: Flood Variance Procedure Flowchart**



3. *Flood Hazard Reduction Variance Review Standards*

- A. In reviewing requests for a flood hazard reduction variance, the Village Council will consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, the requirements of Section 7-3, Flood Hazard Reduction Standards, and the following:
1. The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
  2. The danger to life and property due to flooding or erosion damage;
  3. The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
  4. The importance of the services provided by the proposed development to the community;
  5. The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
  6. The compatibility of the proposed development with existing and anticipated development;
  7. The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
  8. The safety of access to the property in times of flooding for ordinary and emergency vehicles;
  9. The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  10. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets, and bridges.
- B. Variances may only be issued upon the Village Council determination that:

1. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
2. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and articles; and
3. The variance is the minimum necessary, considering the flood hazard, to afford relief.

### C. Deviation

#### 1. Deviation

##### A. Generally

The Village Council shall approve deviations that are part of a planned development or rezoning approval, after recommendation by the PZDB.

##### B. Deviation Standards for Village Council Decision<sup>74</sup>

In reaching a decision, the Village Council shall consider whether the proposed deviation will or will not:

1. Improve the quality of the proposed development under review;
2. Preserve and promote the general intent of the LDC to protect the public, health, safety and welfare;
3. Be compatible with uses on surrounding property; and
4. Create an undue burden on essential public facilities.

#### 2. Administrative Deviation

##### A. Generally<sup>75</sup>

The Director is authorized to grant administrative deviations from the technical standards in the following sections of this LDC, subject to the review standards in subsection 3 below.

1. Certain development standards in the EPD District.
2. Right-of-Way width specifications for Village-maintained roads.
3. Right-of-Way width specifications for privately-maintained roads.
4. Intersection design.
5. Edge of pavement radius at intersecting roads.
6. Horizontal curves.
7. Cul-de-sacs.
8. Wearing surface on Village-maintained roads.
9. Wearing surface on privately-maintained roads.
10. Composition of the base on Village-maintained roads.
11. Composition of the base on privately-maintained roads.
12. Roadway swale slope and run-off requirements.
13. Edge of pavement radius at driveways.
14. Water main line sizing, dead end and intersecting criteria.
15. Wellfield prohibition and monitoring requirements.
16. Mangrove replanting ratio requirements.
17. Surface water management roadside swale standards.
18. Surface water management setbacks for water retention or detention activities.
19. Setbacks required for docks and boat ramps.

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<sup>74</sup> Standards calibrated from combination of PD deviation and administrative variance standards.

<sup>75</sup> Carried forward from Sec. 10-104 of the transitional LDC and references updated.

20. Public transit facilities.
21. Piping materials in rights-of-way
22. Potable water systems.
23. Sanitary sewer systems.
24. Deviation of up to 5 percent of the standards for off-street parking, landscaping, and dimensions of this LDC, subject to the review standards in subsection 3.B below.
25. Any other technical provision of the LDC which provides for the Director to grant administrative deviation..

**B. Administrative Deviation Prior to Development Order Consideration**

The applicant may pursue approval of administrative deviations concurrently with an application for a development order. The development order will be reviewed but cannot be approved until all of the necessary deviations have also been approved. After a deviation request has been heard and has been approved or denied, the applicant may proceed with the preparation of all the documents necessary for the approval of the development order.

**3. Review Standards**

Administrative deviations may be granted only where the Director, with the assistance of appropriate Village staff and affected jurisdictions, finds that the following criteria have been met:

**A. For deviations from listed technical standards:<sup>77</sup>**

1. The alternative proposed to the standards of the LDC is based on sound engineering practices (not applicable to Sec. 5-307, Transit Access and Circulation; Sec. 5-1002, Potable Water Systems; or Sec. 5-1003, Sewer Systems);
2. The alternative is no less consistent with the health, safety and welfare of abutting landowners and the general public than the standard from which the deviation is being requested;
3. The granting of the deviation is not inconsistent with any specific policy directive of the Village Council or Village comprehensive plan;
4. For Sec. 5-307, Transit Access and Circulation, the required facility would unnecessarily duplicate existing facilities; and
5. For Sec. 5-1002, Potable Water Systems; or Sec. 5-1003, Sewer Systems, the utility that would otherwise serve the development cannot provide the service at the adopted level of service standard due to an inadequate central facility.

**B. For deviations from the standards for off-street parking (Sec. 5-205, Off-Street Parking Standards, landscaping (Section 5-4, Landscape Standards), and dimensional standards (see Chapter 3: Zoning Districts), whether or not the deviation will:**

1. Improve the design of the proposed development under review;
2. Preserve and promote the general intent of the LDC to protect the public, health, safety and welfare;
3. Threaten the health, safety or welfare of abutting property owners; and
4. Create an undue burden on essential public facilities.

**D. Appeal of Administrative Official Decision**

**1. Generally**

An applicant may appeal the final decision of the Community Development Director for the following:

- A. A limited development order and amendment thereto;
- B. A minor change to development order;
- C. An administrative amendment to a PD;

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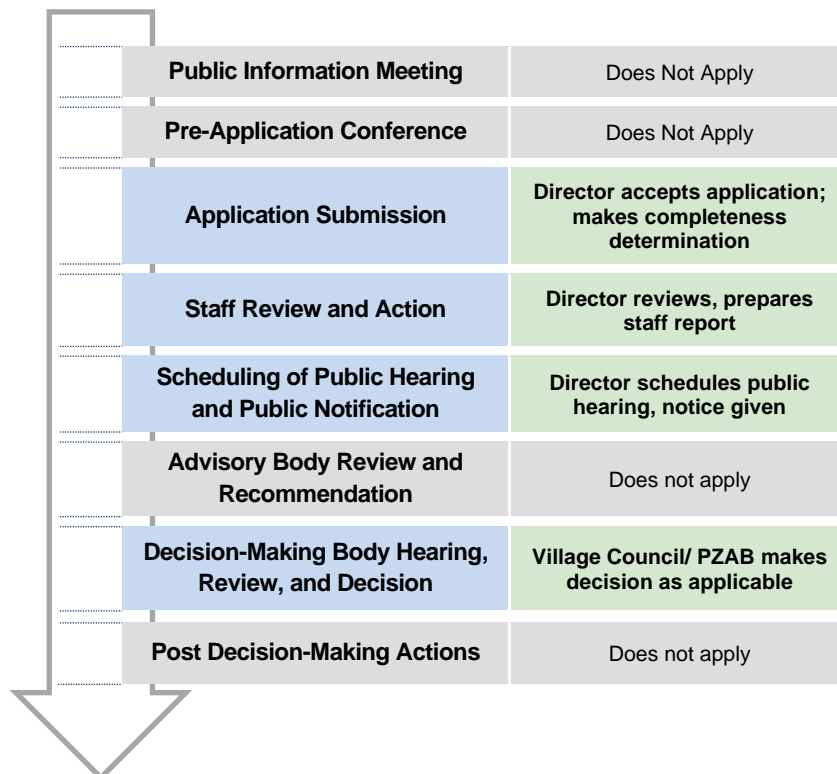
<sup>77</sup> This incorporates updated references.

- D. A tree removal/vegetation permit; or
- E. An administrative deviation.

2. *Procedure for Appeal of Administrative Official*

Figure 2-506.D.2 identifies key steps in the Appeal of Administrative Official procedure, with noted modifications from the general procedures.

**Figure 2-506.D.2: Appeal of Administrative Official Procedure Flowchart**



3. *Appeal Review Standards*<sup>81</sup>

In reaching a decision, the Village Council or the PZDB, as applicable, shall consider the competent substantial evidence presented at the hearing and the plain and ordinary meaning of all applicable LDC provisions, unless the language is ambiguous, in which case the intent of the LDC provision applied or interpreted may be considered. The Village Council or the PZDB, as applicable, may reverse, affirm, or modify the administrative decision.

**E. Vested Rights**

1. *Generally*

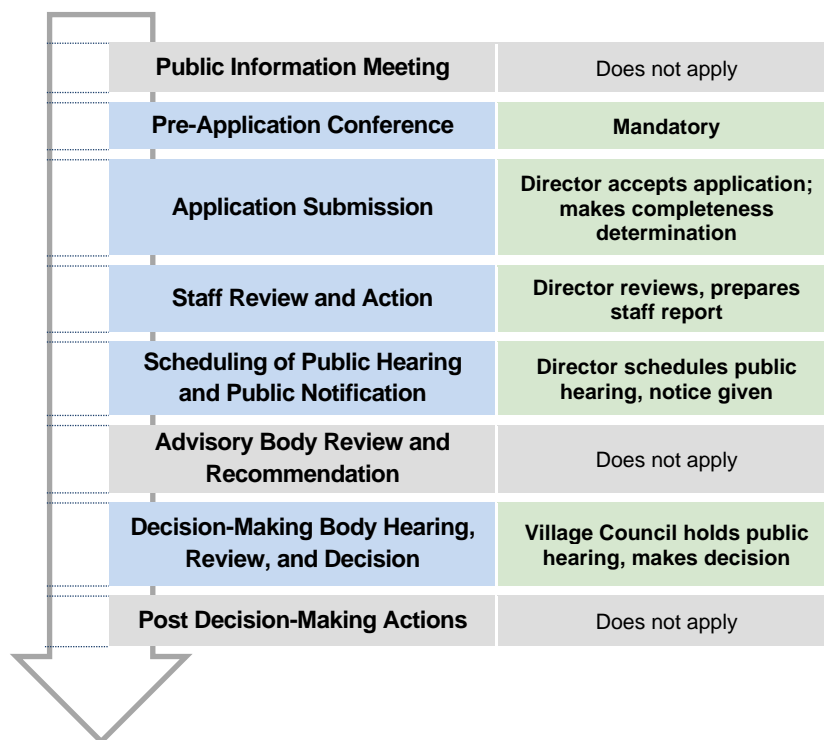
A property owner may apply for a determination that it has vested rights under Florida judicial standards or Florida statutes for development of its property based on a prior approval such that it is not required to comply with a particular requirement of this LDC.

2. *Vested Rights Procedure*

Figure 2-506.E.2 identifies key steps in the Vested Rights procedure, with noted modifications from the general procedures.

<sup>81</sup> Carried forward from Sec. 34-145 of the transitional LDC.

**Figure 2-506.E.2: Vested Rights Procedure Flowchart**



**3. Vested Rights Approval Standards**

The Village Council shall apply judicially defined principles of equitable estoppel to all claims of vested rights to a particular development not otherwise made on the basis that the vested rights are granted by state statute. In the case of statutory vested rights, the Village Council shall use the statutory standards to determine if the applicant is entitled to vested rights for a particular development. Village Council approval shall be based on substantial competent evidence that all of the following criteria, as applied under Florida law, are met:

- A. The applicant in good faith has relied on an affirmative governmental act on which the applicant had a right to rely;
- B. The applicant made substantial expenditures to the applicant's detriment in reliance on the governmental approval; and
- C. Balancing the actions of the applicant and the interest of the governmental regulation, it would be inequitable to prevent the landowner from proceeding according to the governmental act on which the applicant relied.

**2-507. ADMINISTRATIVE INTERPRETATION**

**A. Generally<sup>84</sup>**

Where a question arises as to the meaning or intent of a section or subsection of this LDC, the Director may render written decisions of an administrative nature concerning items such as, but not limited to:

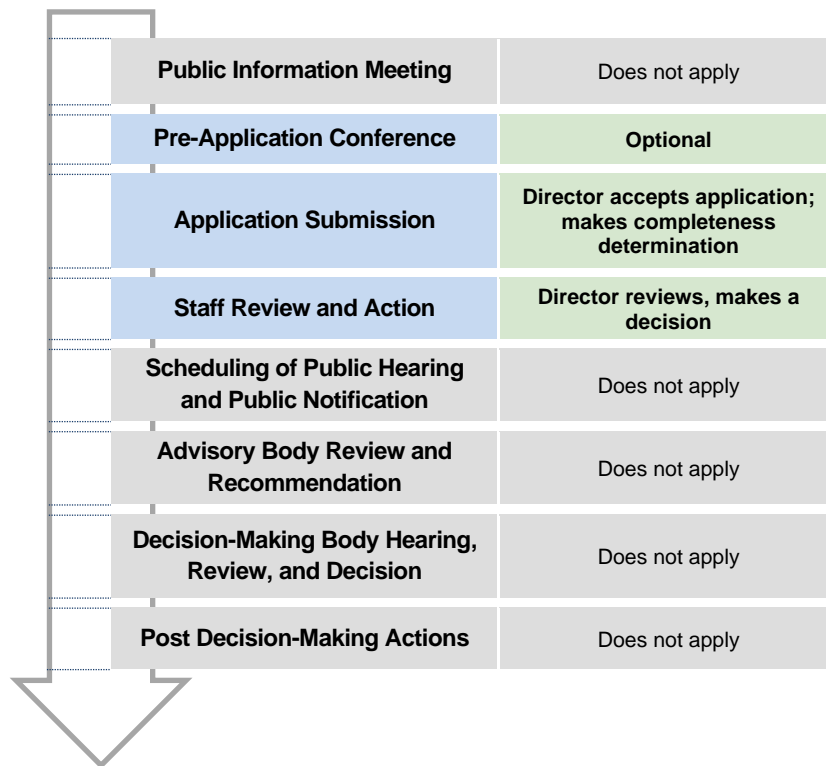
- 1. The proper zoning classification for a use not specifically addressed;
- 2. The manner in which the particular LDC provision is to be applied; and
- 3. The procedure to be followed in unusual circumstances.

<sup>84</sup> Carried forward from Sec. 2-1 of the transitional LDC.

**B. Administrative Interpretation Procedure**

Figure 2-507.B identifies key steps in the Administrative Interpretation procedure, with noted modifications from the general procedures.

**Figure 2-507.B: Administrative Interpretation Procedure Flowchart**



**C. Standards for Administrative Interpretation**

The Director shall interpret the LDC based on its plain meaning, or if the Director determines that there is ambiguity regarding the LDC provision, then the history and intent of the Village Council in enacting the provision shall be considered. If the LDC provision refers to or is based on text that requires reference to technical standards or words of art used by a particular profession, then the Director shall consult with those knowledgeable in the applicable profession.

**D. Standards for Administrative Interpretation**

The Director shall interpret the LDC based on its plain meaning, or if the Director determines that there is ambiguity regarding the LDC provision, then the history and intent of the Village Council in enacting the provision shall be considered. If the LDC provision refers to or is based on text that requires reference to technical standards or words of art used by a particular profession, then the Director shall consult with those knowledgeable in the applicable profession.

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# CHAPTER 10

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## DEFINITIONS AND RULES FOR CONSTRUCTION, INTERPRETATION, AND MEASUREMENT

### COMMENTARY

**Chapter 10: Definitions and Rules for Construction, Interpretation, and Measurement**, contains the rules governing construction and interpretations, rules of measurement, and the definitions used in the LDC.

- **Section 10-1, General Rules for Construction**, addresses the meanings and intent of words and commonly used phrases, clarifies that the text is the controlling factor when a diagram, table, or chart differs from the text, discusses how time is to be calculated, and includes provisions authorizing the delegation of authority from the Director.
- **Section 10-2, General Rules for Interpretation**, sets out the rules governing the interpretation of zoning district boundaries and the rules governing the Director's determination and interpretation of unlisted uses.
- **Section 10-3 Rules of Measurement**, establishes rules for measuring bulk and dimensional requirements like height, width, setbacks, lot area, and other measurements that are required to interpret standards.
- **Section 10-4, Definitions**, includes the definitions used in the LDC.

**Note: This commentary is provided for reference purposes. It will be deleted in the adopted LDC.**





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## **CHAPTER 10. DEFINITIONS AND RULES FOR CONSTRUCTION, INTERPRETATION, AND MEASUREMENT**

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### **SECTION 10-1. GENERAL RULES FOR CONSTRUCTION<sup>863</sup>**

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The rules in this section shall apply for construing or interpreting the terms and provisions of this LDC.

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#### **10-101. MEANINGS AND INTENT**

All provisions, terms, phrases, and expressions contained in this LDC shall be interpreted in accordance with the general purposes set forth in Section 1-3, General Purpose and Intent, and the specific purpose statements set forth throughout the LDC. When a specific section of the LDC gives a different meaning than the general definition provided in this chapter, the specific section's meaning and application of the term shall control.

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#### **10-102. HEADINGS, ILLUSTRATIONS, AND TEXT**

In the event of a conflict or inconsistency between the text of this LDC and any heading, caption, figure, illustration, table, or map, the text shall control. Graphics and other illustrations are provided for informational purposes only and should not be relied upon as a complete and accurate description of all applicable regulations or requirements.

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#### **10-103. LISTS AND EXAMPLES**

Unless otherwise specifically indicated, lists of items or examples that use terms like "for example," "including," and "such as," or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

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#### **10-104. COMPUTATION OF TIME**

In computing any period of time prescribed or allowed, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

- A. The term "day" means a calendar day, unless a business day is indicated.
  - B. The term "week" means seven calendar days.
  - C. The term "month" means a calendar month.
  - D. The term "year" means a calendar year unless otherwise indicated.
  - E. Whenever a person has the right or is required to do some act within a prescribed period of time following the service of a notice or other document through mailed delivery, three days shall be added to the prescribed period.
- 

#### **10-105. REFERENCES TO OTHER REGULATIONS/PUBLICATIONS**

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall mean a reference to the most recent edition of such regulation, resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.

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#### **10-106. DELEGATION OF AUTHORITY**

Any act authorized by this LDC to be carried out by the Director may be delegated by the Director to a professional-level Village employee under the Director's authority or control.

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<sup>863</sup> This section builds on Sec. 1-2 of the transitional LDC.

### **10-107. PUBLIC OFFICIALS AND AGENCIES**

All public officials, bodies, and agencies to which references are made are those of the Village of Estero, Florida, unless otherwise indicated.

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### **10-108. MANDATORY AND DISCRETIONARY TERMS**

The words “shall,” “must,” and “will” are mandatory, establishing an obligation or duty to comply with the particular provision. The words “may” and “should” are permissive.

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### **10-109. CONJUNCTIONS**

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

- A. “And” indicates that all connected items, conditions, provisions or events apply; and
  - B. “Or” indicates that one or more of the connected items, conditions, provisions, or events apply.
- 

### **10-110. TENANT OR OCCUPANT**

Tenant or occupant. The terms “tenant” and “occupant,” as applied to a building or land, include any person holding a written or oral lease of or who occupies the whole or part of such building or land, either alone or with others.

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### **10-111. USED FOR**

Used for. The term “used for” includes the term “arranged for,” “designed for,” “maintained for” or “occupied for.”

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### **10-112. TENSES AND PLURALS**

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

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### **10-113. TERM NOT DEFINED**

If a term used in this LDC is not defined in this LDC, the Director is authorized to interpret its meaning in accordance with Sec. 2-507, Administrative Interpretation. Such interpreted meaning shall be based upon the definitions used in accepted sources—including, but not limited to, A Planners Dictionary, A Glossary of Zoning, Development, and Planning Terms, and A Survey of Zoning Definitions (all published by the American Planning Association), as well as general dictionaries such as Merriam-Webster, American Heritage, Webster's New World, and New Oxford American dictionaries.

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## **SECTION 10-2. GENERAL RULES FOR INTERPRETATION**

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### **10-201. INTERPRETATION OF DISTRICT BOUNDARIES<sup>864</sup>**

#### **A. Uncertain Boundaries**

When boundaries of districts of the Official Zoning Map are uncertain and require interpretation in accordance with Sec. 2-507, Administrative Interpretation, the following rules apply:

1. *Boundaries Following Centerlines*

Boundaries indicated as approximately following the centerlines of roads, highways, or alleys will be construed to follow such centerlines.

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<sup>864</sup> This section carries forward Sec. 34-616 of the transitional LDC.

**2. *Boundaries Following Lot, Section or Tract Lines***

Boundaries indicated as approximately following lot lines, section lines, or tract lines will be construed as following such lot lines.

**3. *Boundaries Following Municipal Boundaries***

Boundaries indicated as approximately following Village boundaries will be construed as following such Village boundaries.

**4. *Boundaries Following Railroad Lines***

Boundaries indicated as approximately following railroad lines will be construed to be the centerline of the railroad right-of-way.

**5. *Boundaries Following Waterways and Shorelines***

Boundaries indicated as approximately following the centerlines of streams, rivers, or canals will be construed to follow such centerlines.

**6. *Parallel Lines***

Boundaries that are approximately parallel to the center-lines or road lines of roads, the centerlines or alley lines of alleys, or the centerline or right-of-way lines of highways, will be construed as being parallel thereto and at such distance therefrom as indicated on the Official Zoning Map. If no distance is given, such dimension will be determined by the use of the scale shown on the Official Zoning Map.

**7. *Vacated Lands***

Where a public road, street, alley, or other form of right-of-way is officially vacated, the regulations applicable to the property to which the vacated lands attach will also apply to such vacated lands.

**8. *Uncertainties***

Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in case any other uncertainty exists as to the proper location of district boundaries, the Director shall interpret the intent of the Official Zoning Map as to the proper location of the district boundaries.

**B. *Split Lots***

When a lot is split by two or more zoning districts, the property development regulations for the largest proportional district prevails. However, permitted uses and accessory uses are restricted to the uses permitted in the respective districts.

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**10-202. INTERPRETATION OF UNLISTED USES<sup>865</sup>**

**A. *Procedure for Interpreting Unlisted Uses***

The Director shall interpret in accordance with the procedures in Sec. 2-507, Administrative Interpretation, a particular principal use or accessory use or structure not expressly listed in a principal use table in the zoning districts (Chapter 3: Zoning Districts), as allowable in a particular zoning district based on the standards in Sec. 10-202.B, Standards for Interpreting Unlisted Principal Uses, or Sec. 10-202.C, Effect of Allowing Unlisted Uses as Permitted Use or Special Exception Use, as appropriate.

**B. *Standards for Interpreting Unlisted Principal Uses***

The Director shall interpret an unlisted principal use as a permitted use or special exception use in a particular zoning district only after finding that the nature, function, and duration of the use and the impact of allowing it in the zoning district are so similar to those of a use that is allowed in the zoning district that the unlisted use should be deemed allowed in the same manner (i.e., as a permitted use or a special exception use) as the similar use, and subject to the same use-specific standards. In making such interpretation, the Director shall consider the relevant characteristics of the unlisted use relevant to those of listed and defined uses described in this section, the purpose and intent

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<sup>865</sup> This is a new section.

statements in this LDC concerning the zoning district (see Chapter 3: Zoning Districts), and the character of uses allowable in the zoning district. The relevant characteristics of the unlisted use that should be considered in making this interpretation include, but are not limited to, the following:

1. Actual or projected characteristics of each activity likely to occur as part of the unlisted use;
2. The type, size, orientation, and nature of buildings, and structures devoted to each activity;
3. The number and density of employees and customers per unit area of site in relation to business hours and employment shifts;
4. Vehicles used and their parking requirements, including the ratio of the number of spaces required per unit area or activity;
5. Transportation demands, including the volume and frequency of trips generated to and from the site, the split of traffic volume among various means of transportation, and other characteristics of trips and traffic;
6. Relative amounts of sales from each activity;
7. The nature and location of storage and outdoor display of merchandise, whether enclosed, open, inside or outside the principal building, and the predominant types of items stored;
8. Customer type for each activity;
9. How the use is advertised, including signage;
10. The amount and nature of any nuisances generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation, and fumes;
11. Any special public utility requirements for serving the use, including but not limited to water supply, wastewater output, pre-treatment of wastes and emissions required or recommended, and any significant power structures and communications towers or facilities; and
12. The impact on adjacent lands created by the use, which should not be greater than that of other uses allowed in the zoning district.

**C. Effect of Allowing Unlisted Uses as Permitted Use or Special Exception Use**

On interpreting an unlisted use as allowed in a zoning district, and finding that the use or structure is likely to be common or would lead to confusion if it remains unlisted, the Director may initiate an application for a text amendment to this LDC in accordance with Sec. 2.3.1(D), Text Amendment, to list the use or structure in the use tables in Chapter 3: Zoning Districts, as a permitted or special exception use, as appropriate. Until final action is taken on the text amendment application, the interpretation of the Director shall be binding and shall be maintained in the record of interpretations required by Sec. 2-507, Administrative Interpretation.<sup>866</sup>

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## **SECTION 10-3. RULES OF MEASUREMENT**

Intensity and dimensional standards shall be measured in accordance with this section.

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### **10-301. BUILDINGS**

#### **A. Building Footprint<sup>867</sup>**

The total area of land covered or occupied by an individual building, including all roofed areas and outdoor sales area. Walkways and public spaces are excluded from the calculation.

#### **B. Building Frontage<sup>868</sup>**

The length of the outside building wall facing a public right-of-way.

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<sup>866</sup> A more specific cross reference to "Tracking Interpretations" may be appropriate once the Interpretation regulations have been written.

<sup>867</sup> This definition is carried forward from Sec. 33-56 of the transitional LDC.

<sup>868</sup> This is a new definition

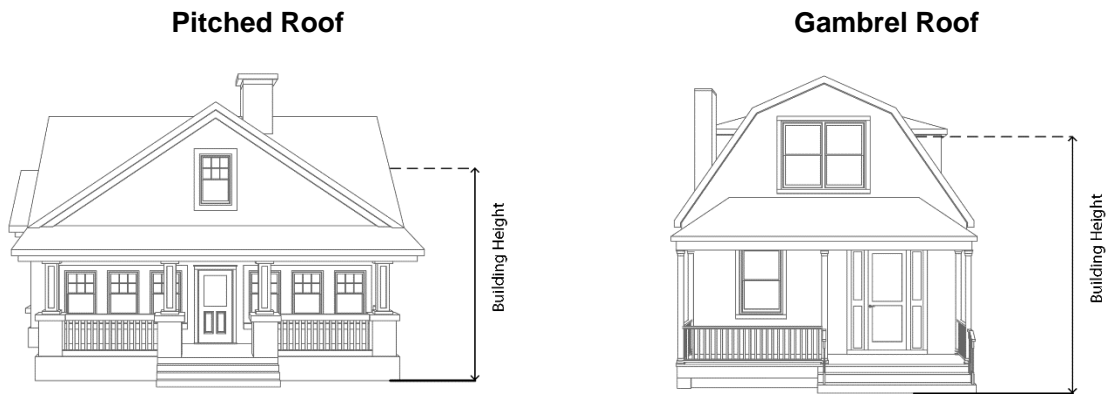
**C. Building Height<sup>869</sup>**

The vertical distance from the grade to the highest point of a flat roof or a mansard roof (see Figure 10-301.C-1: Flat and Mansard Roof Building Height Measurement) or to the mean height level between the eaves and ridge for gable, hip, and gambrel roofs (see Figure 10-301.C-2: Gable, Hip, and Gambrel Roof Building Height Measurement).

**Figure 10-301.C-1: Flat and Mansard Roof Building Height Measurement**



**Figure 10-301.C-2: Gable, Hip, and Gambrel Roof Building Height Measurement**



**D. Building Line<sup>870</sup>**

The line beyond which a building shall not extend, except as specifically provided by law, and which is determined from the extreme support of the roof of the main structure or appurtenance thereto.

**E. Highest Adjacent Grade<sup>871</sup>**

See Sec. 7-303, Definitions.

**F. Lowest Floor<sup>872</sup>**

See Sec. 7-303, Definitions.

<sup>869</sup> This carries forward the rule from Sec. 34-2171 of the transitional LDC with minor modifications for simplicity of measurement.

<sup>870</sup> This is a new definition

<sup>871</sup> This directs to the definition in the flood hazard section.

<sup>872</sup> This directs to the definition in the flood hazard section.

## **10-302. DENSITY AND AREA**

### **A. Density<sup>873</sup>**

The number of dwellings or housing units calculated per gross residential acreage (du/acre), except that for all vertical mixed use developments and developments in areas designated Village Center Tiers 2, 3 and 4, density shall be calculated per gross acre including non-residential land contained within the boundary of the development unless otherwise specified in this LDC.

### **B. Density Equivalents<sup>874</sup>**

#### **1. Applicability**

The density equivalents set forth in this subsection will be used in situations where it is necessary to convert permissible uses to residential dwelling unit equivalents. When permitted by the use regulations in a zoning district that permits dwelling units, the permissible density equivalents may not exceed the density limitations set forth in the zoning district or land use category (whichever is less) in which the property is located.<sup>875</sup>

#### **2. Equivalency Factors**

- A. Where health care, social service, adult living facilities (ALF), continuing care facilities, or other “group quarters” are provided in dwelling units, wherein each unit has its own cooking facilities, density equivalents will be calculated on a 1:1 ratio.
- B. Except as may be specifically set forth elsewhere in this section, where health care, social service, adult living facilities (ALF), continuing care facilities (CCF), or other “group quarters” are provided in dwelling units or other facilities wherein each unit does not have individual cooking facilities and where meals are served at a central dining facility or are brought to the occupants from a central kitchen, density equivalents will be calculated at the ratio of two beds<sup>876</sup> equals one dwelling unit.
- C. A planned development, for which the Planned Development Master Concept Plan states the number of persons that may occupy an approved adult living facility (ALF) or continuing care facility (CCF), may request an amendment to the approved Master Concept Plan to reflect the increased number of occupants based upon the equivalency factor set forth in this section (if applicable). Such amendment will be considered a minor amendment that will be deemed to not increase density and may be approved pursuant to Secs. 2-501.D.2.E and F as long as existing floor space is not increased to accommodate the increased number of occupants. If increased floor space is required, then a public hearing will be required.
- D. Notwithstanding subsection B above, no density equivalency calculation is required for a bed and breakfast in an owner-occupied single-family dwelling accommodating four or less lodgers. If the bed and breakfast will accommodate more than four lodgers, then the equivalency will be calculated as four lodgers equals one dwelling unit.
- E. Notwithstanding subsection B above, no density calculation is required for a hospital, prison, jail, boot camp, detention center, or other similar type facility owned or operated by a county, state or federal agency.
- F. Where dwelling or living units have “lock-off accommodations,” density will be calculated as follows:<sup>877</sup>
  1. Hotels or motels: “Lock-off units” will be counted as separate rental units regardless of size.
  2. Determination of permitted density. The maximum permitted density shall be determined by multiplying the number of dwelling units permitted (see subsection 1 above) by the appropriate equivalency factor.

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<sup>873</sup> This definition reflects the calculation of density in the comprehensive plan.

<sup>874</sup> This carries forward Sec. 34-1494 and incorporates Sec. 34-1411 and 34-1414 of the transitional LDC.

<sup>875</sup> Removed general default maximum of 10 residential dwelling units per acre.

<sup>876</sup> “Two beds” replaces “four people” for consistency with Sec. 34-1411 and Sec. 34-1414 of the transitional LDC.

<sup>877</sup> Removed timeshare units.



**C. Floor Area<sup>878</sup>**

The total area of each story of a building, or portion thereof, within the exterior walls of the building or structure.

**D. Floor Area Ratio<sup>879</sup>**

A measure of intensity expressing the maximum allowable floor area permitted on a lot. The FAR is equivalent to the total floor area of a nonresidential building divided by the total area of the lot (less wetlands), expressed in square feet. The FAR represents the relationship of the developed square footage of the lot to the square footage of the site.

**E. Gross Residential Acreage<sup>880</sup>**

Acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made waterbodies contained within the residential development.

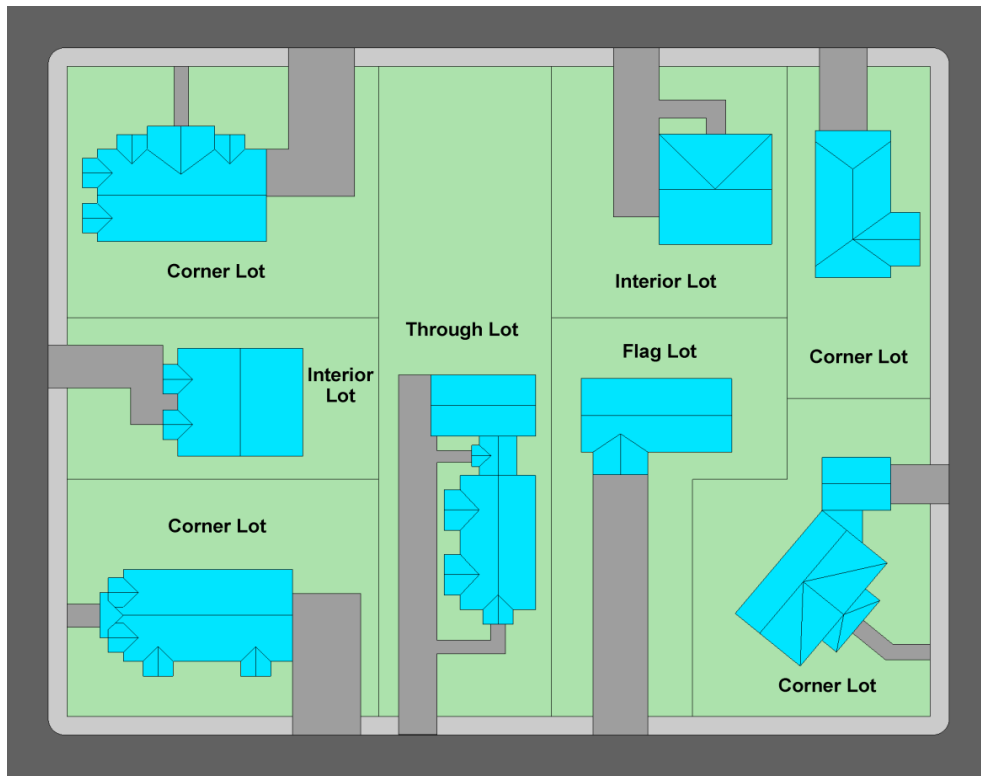
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**10-303. LOTS AND YARDS**

**A. Lot<sup>881</sup>**

A parcel of land considered as a unit.

**1. Example Diagram of Lot Types**



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<sup>878</sup> This is carried forward from Sec. 34-2 of the transitional LDC.

<sup>879</sup> This is a definition from the comprehensive plan

<sup>880</sup> This definition reflects a calculation of density from the comprehensive plan.

<sup>881</sup> This definition is carried forward from Sec. 10-1 in the transitional LDC.

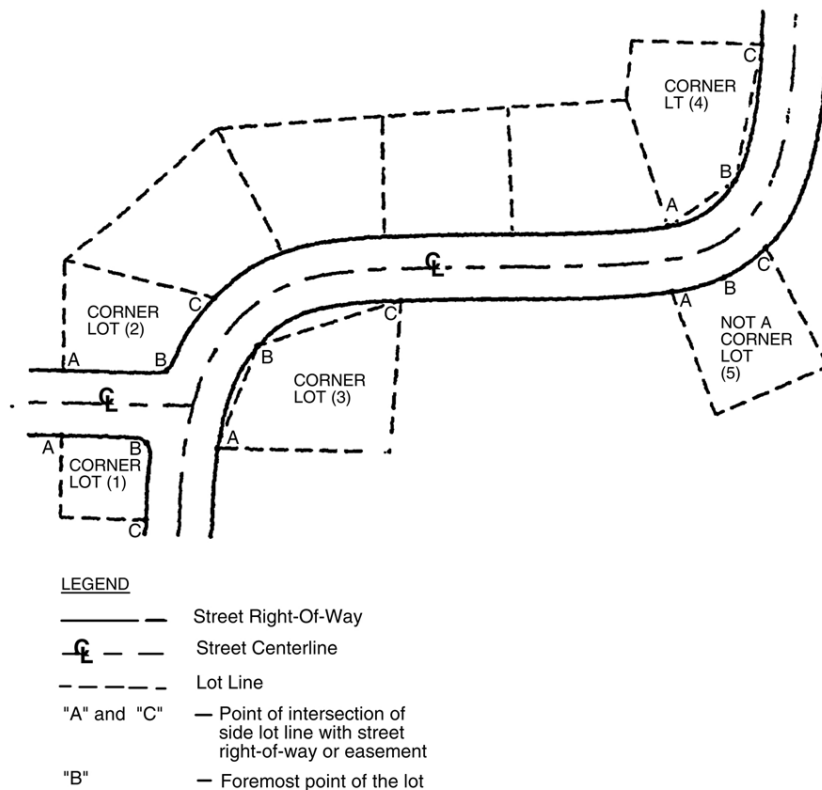
**B. Lot Area<sup>882</sup>**

The total horizontal area within a lot's lines.

**C. Lot, Corner<sup>883</sup>**

1. A lot located at the intersection of two or more streets where the corner interior angle formed by the intersection of the two streets is 135 degrees or less.
2. A lot abutting a curved street if straight lines drawn between the intersections of the side lot lines and the street right-of-way or easement to the foremost point of the lot form an interior angle of less than 135 degrees.

3. *Example Diagram of Corner Lots*



**D. Lot Coverage<sup>884</sup>**

That portion of a lot area, expressed as a percentage, occupied by all impervious surfaces.

**E. Lot Depth<sup>885</sup>**

The distance between the midpoints of the front lot line and the rear lot line. The midpoint of a curved front or rear lot line shall be considered to be the midpoint of a straight line connecting the points of intersection with the side lot lines.

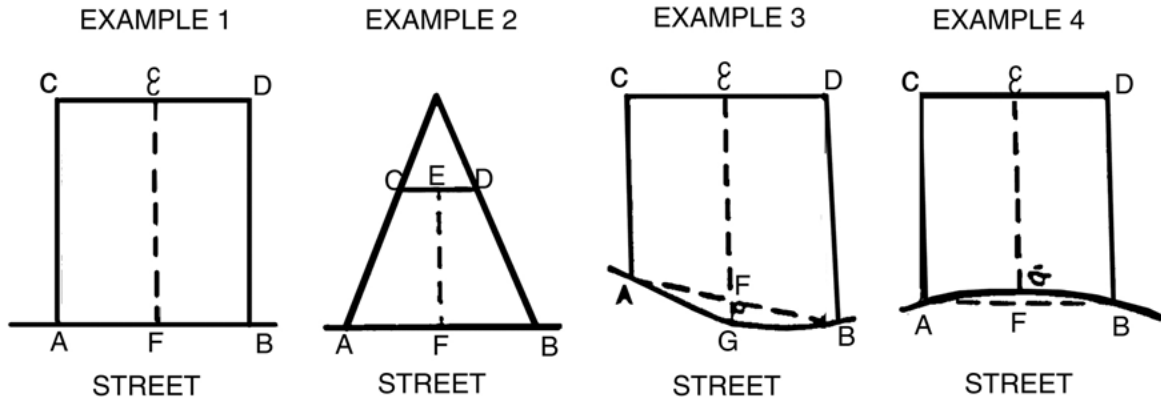
<sup>882</sup> This definition is carried forward from Sec. 10-1 in the transitional LDC.

<sup>883</sup> This definition is carried forward from Sec. 10-1 in the transitional LDC.

<sup>884</sup> This definition is carried forward from Sec. 10-1 in the transitional LDC.

<sup>885</sup> This definition is carried forward from Sec. 10-1 in the transitional LDC.

1. *Example Diagram of Lot Depth*



**F. Lot, Double-Frontage<sup>886</sup>**

Any lot, not a corner lot or through lot, having two or more property lines abutting a street right-of-way or easement.

**G. Lot, Flag<sup>887</sup>**

A lot not fronting on or abutting a street, and where access to the street is by a narrow private easement; or an L-shaped lot or other irregularly shaped lot which abuts and has access to a street but does not comply with the minimum frontage requirements of the LDC.

**H. Lot Frontage<sup>888</sup>**

The distance measured along a straight line of the street right-of-way or easement.

**I. Lot, Interior<sup>889</sup>**

A lot not defined as a corner, double-frontage or through lot.

**J. Lot Line<sup>890</sup>**

A line which delineates the boundary of a lot.

**K. Lot Line, Front<sup>891</sup>**

The lot line which divides the lot from a street right-of-way or easement.

**L. Lot Line, Rear<sup>892</sup>**

The lot line which is parallel to or concentric with and most distant from the front lot line of the lot. In the case of an irregular or triangular lot, a line 20 feet in length, entirely within the lot, parallel to or concentric with and at the maximum possible distance from the front lot line shall be considered to be the rear lot line. In the case of a through lot, there shall be no rear lot line. In the case of a through frontage lot, the line directly opposite from the front line shall be designated as either a rear line or a side line depending upon the designation of the adjacent property. In the case of corner lots, the rear lot line shall be the line most nearly parallel to or concentric with and most distant from the front line most prevalent along the block.

**M. Lot line, Side<sup>893</sup>**

A lot line other than a front or rear lot line.

<sup>886</sup> This definition is carried forward from Sec. 10-1 in the transitional LDC.  
<sup>887</sup> This definition is carried forward from Sec. 10-1 in the transitional LDC.  
<sup>888</sup> This definition is carried forward from Sec. 10-1 in the transitional LDC.  
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<sup>893</sup> This definition is carried forward from Sec. 10-1 in the transitional LDC.

**N. Lot, L-Shape<sup>894</sup>**

An irregular lot shape, such as one in the shape of an “L” or “T,” which meets the minimum frontage requirements of this LDC.

**O. Lot, Through<sup>895</sup>**

Any lot having two opposite lot lines abutting a street right-of-way or easement.

**P. Lot Width<sup>896</sup>**

The distance measured along the street right of way or easement.

**Q. Setback<sup>897</sup>**

The minimum horizontal distance required between a specified line and the nearest point of a building or structure.

**1. Street setback<sup>898</sup>**

The setback extending across the front of a lot measured from the edge of an existing or proposed street right-of-way or street easement. When this LDC refers to street setback it means existing or proposed street right-of-way or street easement, whichever is greater.

**2. Side Setback<sup>899</sup>**

A setback that extends from the street setback to the rear setback, the required depth of which is measured from at a right angle from the side lot line.

**3. Rear Setback<sup>900</sup>**

A setback that extends across the full width of the rear of a lot, the required depth of which is measured from the rear lot line.

**4. Waterbody Setback<sup>901</sup>**

The setback measured from the mean high water line (MHWL), or the control elevation line, if applicable, of a water body.

**R. Setback Line<sup>902</sup>**

Line drawn parallel to or concentric with the street right-of-way or lot line at a distance from street right-of-way or lot line equal to the setback required by this LDC. If the line is curved, the setback line will be a curved line drawn an equal distance back from lot lines or street right-of-way line, as applicable, and with the required setback measured at the point or points where the development is closest to the street right-of-way or lot line.

**S. Sight Triangle<sup>903</sup>**

Sight triangles are used to avoid obstruction of vision at intersections. No walls, fences signs or landscaping shall be permitted on local road corner lots within a setback of 25 feet of intersecting street rights-of-way, and lots on collector and arterial roads within a setback of 50 feet of intersecting street rights-of-way if such a wall, fence, sign, or landscaping may obstruct traffic visibility. Combination of the various rights-of-way may be combined (See sample figure). The Village Engineer may review any clear site triangle for changes to the setback distances depending on sight conditions.

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<sup>894</sup> This definition is carried forward from Sec. 10-1 in the transitional LDC.

<sup>895</sup> This definition is carried forward from Sec. 10-1 in the transitional LDC.

<sup>896</sup> This definition is carried forward from Sec. 10-1 in the transitional LDC.

<sup>897</sup> This definition is carried forward from Sec. 34-2 of the transitional LDC.

<sup>898</sup> This definition is carried forward from Sec. 34-2 of the transitional LDC.

<sup>899</sup> This is a new definition, replacing the definition from Sec. 34-2 of the transitional LDC for clarity.

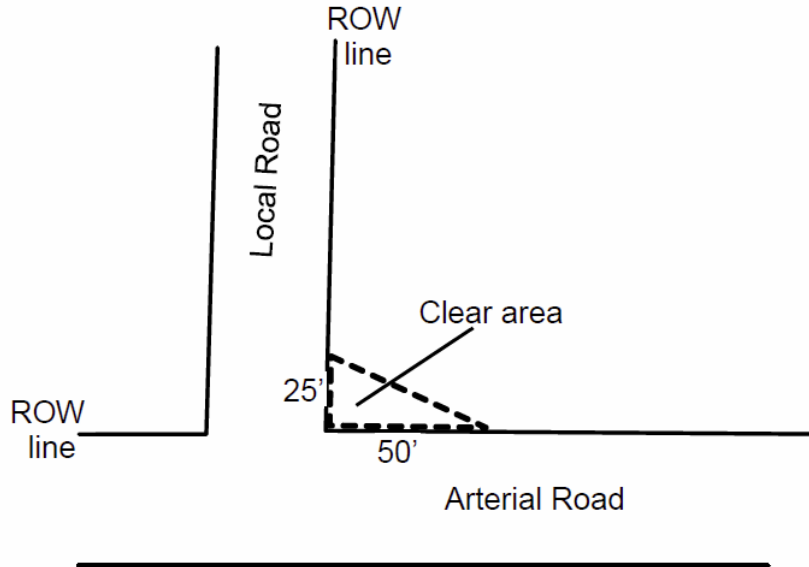
<sup>900</sup> This is a new definition, replacing the definition from Sec. 34-2 of the transitional LDC for clarity.

<sup>901</sup> This definition is carried forward from Sec. 34-2 of the transitional LDC.

<sup>902</sup> This definition is carried forward from Sec. 10-1 of the transitional LDC with modifications for clarity.

<sup>903</sup> This is a new definition.

1. *Example Diagram of Sight Triangle*



T. **Zero Lot Line**<sup>904</sup>

The location of a building on a lot in such a manner that one or more of the building's sides rest directly on a property line.

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**10-304. EXCEPTIONS AND VARIATIONS**

**A. Exceptions to Maximum Structure Height**<sup>905</sup>

1. The following structural appurtenances may exceed the height limitations established in the applicable zoning districts up to an additional 10 feet, without deviation or variance:
  - A. Purely ornamental structural appurtenances such as church spires, belfries, cupolas, domes, ornamental towers, flagpoles, or monuments.
  - B. Appurtenances necessary to mechanical and structural functions such as chimneys, water tanks, elevators and stairwell enclosures, ventilators, and bulkheads; AM and FM radio and television masts, aerials, and antennas; fire and hose towers or navigation aids, forest fire observation towers; and barns, silos, windmills, or other farm structures when located on farms.
2. The portion of the building or structure permitted as an exception to a height limitation may not be used for human occupancy or commercial purposes.
3. Structural exceptions to height limitations shall only be erected to the minimum height necessary to accomplish the purpose it is intended to serve, and no higher.
4. The roof area of the structural elements permitted to exceed the height limitations shall not exceed 20 percent of the total roof area.

**B. Allowable Modifications of Required Setbacks**

1. Every part of every required setback shall remain open and unobstructed from the ground to the sky except as otherwise allowed in Table 10-304.B: Modified Setbacks, or allowed or limited elsewhere in this LDC.
2. No modification that would encroach on utility or drainage easements is allowed.

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<sup>904</sup> This is a new definition.

<sup>905</sup> This is carried forward from Sec. 34-2173 of the transitional LDC.

3. Encroachments shall be set back a minimum of five feet from the lot line, unless a different distance is required by the building code or the table below.

<b>TABLE: 10-304.B: MODIFIED SETBACKS<sup>906</sup></b>	
<b>Feature</b>	<b>Extent and Limitations of Modification</b>
1. Wing walls	A wing wall as a part of a building, may be permitted to encroach into a side or rear setback, provided it is no higher than would be permitted for a fence or wall.
2. Overhangs	An overhang as a part of the building and not permitting a balcony may extend up to three feet into required setbacks described in the zoning district.
3. Shutters	Shutters attached to buildings may extend up to one foot into the required setback described in the zoning district.
4. Awnings and canopies	Awnings and canopies which are attached to a building may extend up to three feet into required setback described in the zoning district. An awning or canopy which complies with this standard on a nonconforming structure will not be considered an increase in the nonconformity. No awning or canopy may be placed over public right-of-way.
5. Mailbox, freestanding	May be located as permitted by U.S. Postal Service regulations, so long as support for the mailbox is a breakaway or yielding design..
6. Bus shelters, Bus stop benches, and bicycle racks	May be located with any setback approved by the Department of Transportation.
7. Bay windows	May extend up to three feet into any required minimum setback if no more than nine feet wide, but not beyond the overhang of the building
8. Chimneys or fireplaces	May extend up to one foot into any required minimum setback, not beyond the overhang of the building.
9. Windowsills or entablatures	May extend up to 18 inches into any required minimum setback.
10. Patios or terraces, or walkways	May extend into or be located in any required minimum setback if less than 2 inches high.
11. Driveways	May be located in any minimum required setback unless restricted by other provisions in this LDC.
12. Lighting fixtures, projecting or free-standing (including lampposts)	May be located in any required minimum setback.
13. Accessory structures other than those listed above	Accessory structures other than those listed above shall comply with the required setback for accessory uses described in the zoning district.

**C. Additional Buffer from the Estero River<sup>907</sup>**

1. Where the full width of the regulatory floodway designated on the official flood maps adopted into Section 7-3, Flood Hazard Reduction Standards, is wider than the foregoing minimum separation area (or “buffer”), all buildings and structures proposed to be located in the area within such regulatory floodway extending from the minimum separation area to the edge of the regulatory

<sup>906</sup> Features 1 through 6 carry forward standards from Sec. 34-2191 of the transitional LDC. Features 7 through 13 are new.

<sup>907</sup> This provision was noted in earlier drafts in the density and dimensional standards portion of each zoning district. It has been placed here for simplicity and is referenced in the zoning district table notes.

floodway may only be located in such area, if and to the extent otherwise allowed by applicable law.

2. Indigenous plant communities may not be cleared within the minimum separation area except for the minimal removal necessary to allow the placement of recreational structures such as docks, boat launches, benches, trails, and pedestrian bridges, or for the minimal removal necessary to construct a required connecting street.