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Town of Lee
Little but Proud

ARTICLE TWELVE. SPECIAL EXCEPTIONS, VARIANCES AND INTERPRETATIONS

ARTICLE TWELVE. APPEALS, SPECIAL EXCEPTIONS, VARIANCES AND
INTERPRETATIONS

SECTION 12.1 APPEALS An appeal from any decision of an administrator or board may be taken as follows by any person aggrieved.

12.2.1 Zoning Regulation Appeals Provisions.

1. Board of Adjustment: Appeals: How Taken

- a. Appeals; hearings; notice. Appeals to the Board of Adjustment concerning interpretation or administration of Article 4 of these land development regulations, for special exception or for variance under these land development regulations may be taken by any person aggrieved or by any officer, agency, or bureau of the Town affected by any decision of the Land Development Regulation Administrator. Such appeals shall be taken by filing, within a reasonable time, with the Land Development Regulation Administrator a notice of appeal specifying the grounds thereof. Before rendering a decision upon an appeal, the Board of Adjustment shall hold a public hearing. The Board of Adjustment shall fix a reasonable time for the hearing, give public notice thereof, as well as due notice to the parties involved. In addition, in the case of an appeal for special exception or variance, the Land Development Regulation Administrator shall erect a sign advertising the appeal on a prominent position on the land in question. At the hearing, any party may appear in person or by agent or attorney. Appellants may be required to assume such reasonable costs as the Town Council may determine through action in setting fees to be charged for appeals.
- b. Stay of proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the Land Development Regulation Administrator from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would, in the Land Development Regulation Administrator's opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the

- Board of Adjustment or by a court of record on application, on notice to the Land Development Regulation Administrator from whom the appeal is taken and on due cause shown.
- c. Decisions. The concurring vote of a majority of the members of the Board of Adjustment who are present and voting shall be necessary to reverse any order, requirement, decision, or determination of the Land Development Regulation Administrator or to decide in favor of the appellant in respect to any matter upon which it is required to pass under the terms of Article 4 of these land development regulations or to effect any variance of Article 4 of these land development regulations.
2. Appeals from decisions of Board of Adjustment. Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any officer, department, board, commission, or bureau of the Town affected by any decision of the Board of Adjustment may apply to the circuit court having jurisdiction in the Town for judicial relief within thirty (30) days after the rendition of the decision by the Board of Adjustment. The proceedings in the circuit court shall consist of a trial de novo, which shall be governed by the Florida Rules of Civil Procedure, or by petition for writ of certiorari, which shall be governed by the Florida Appellate Rules. The election of remedies shall lie with the appellant.
3. Appeals from Decisions of Planning and Zoning Board. Wherever in Article 4 of these land development regulations the Planning and Zoning Board is required to make a final decision rather than an advisory recommendation, said decision shall be final provided that any person or persons, jointly or severally aggrieved by said decision of the Planning and Zoning Board, or any officer, department, board, commission, or bureau of the Town aggrieved by said decision may, within thirty (30) days after said decision is rendered, appeal said decision to the Town Council by filing a written notice of appeal specifying the grounds thereof with the Land Development Regulation Administrator.
4. Appeals from Decisions of the Town Council. Any person or persons, jointly or severally, or any officer, department, board, commission, or bureau of the Town aggrieved by any decision of the Town Council may apply to the circuit court having jurisdiction in the Town for judicial relief within thirty (30) days after the rendition of the decision by the Town Council. The proceedings in the circuit court shall consist of a trial de novo, which shall be governed by the Florida Rules of Civil Procedure, or by petition for writ of certiorari, which shall be governed by the Florida Appellate Rules. The election of remedies shall lie with the appellant.

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- 12.1.2 Subdivision Regulation Appeals Provisions. Any person or persons, jointly or severally, aggrieved by any decision of the Town Council, or any officer, department, board, commission, or bureau of the Town may apply to the circuit court having jurisdiction in the Town for judicial relief within thirty (30) days after the rendition of the decision by the Town Council regarding a preliminary or final plat or any variance.
- 12.1.3 Flood Damage Prevention Regulations Appeals Provisions.

1. Appeals Procedure. The Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Land Development Regulation Administrator in the enforcement or administration of Article 9 of these land development regulations.

Any such appeal shall be in written form and filed within thirty (30) days of the decision of the Land Development Regulation Administrator, and filed with the Land Development Regulation Administrator. Such appeal shall state the location of the property, the date of the notice of violations, and the number of such notice. The appellant must state the modification requested, the reasons therefore, and the hardship or conditions upon which the appeal is made.

Standing to appeal shall be limited to those property owners affected by the decision of the Land Development Regulation Administrator.

2. Decision. In passing upon such appeal, the Board of Adjustment shall consider all technical evaluations, all relevant factors, and standards specified in Article 9 of these land development regulations.
 - a. Upon consideration of the factors of Article 9 herein the Board of Adjustment may attach such conditions to the granting of modifications to the Land Development Regulation Administrator's determination as it deems necessary to further the purposes of Article 9 of these land development regulations.

- 12.1.4 Minimum Housing Regulation Appeals Provisions. Any person receiving written notice from the Land Development Regulation Administrator of deficiencies in his or her property under Article 9 of these land development regulations may within thirty (30) days following the date of such notice enter an appeal to the Board of Adjustment, and file the same in writing with the Land Development Regulation Administrator.

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Such appeal shall state the location of the property, the date of the notice of violations, and the number of such notice. The appellant must state the modification requested, the reasons therefore, and the hardship or conditions upon which the appeal is made.

- 12.1.5 Hazardous Building Regulations Appeal Provisions.

1. Form of Appeal. Any person served notice in accordance with the provisions of Article 10 may appeal such action of the Land Development Regulation Administrator under this Article to the Board of Adjustment. Such appeal must be filed in writing with the Land Development Regulation Administrator within thirty (30) days from the date of service and must contain at least the following information:

- a. Identification of the building or structure concerned by street address or legal description.
 - b. A statement identifying the legal interest of each appellant.
 - c. A statement identifying the specific order or section being appealed.
 - d. A statement detailing the issues on which the appellant desires to be heard.
 - e. The legal signatures of all appellants and their official mailing addresses.
2. Upon the filing of an appeal, the Board of Adjustment shall as soon as practicable fix a date, time and location for the hearing of the appeal. Written notice of the time and location of the hearing shall be mailed to each appellant at the address on the appeal by certified mail, postage prepaid and receipt requested.
 3. Failure to Appear. Failure of any person to appear at the hearing set forth in accordance with the provisions of this Article shall constitute a waiver of his or her right to an appeal on the notice.
 4. Scope of Appeal. The appeal public hearing shall offer the appellant reasonable opportunity to be heard on only those specific matters or issues raised by the appellant in their appeal.
The appellant may appear at the hearing in person or through their attorney or other designated representative.

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5. Staying of Notice Under Appeal. Enforcement of any notice issued by the Land Development Regulation Administrator under the provisions of this Article shall be held in abeyance during the course of an appeal to Article 10 herein.

12.1.6 Historic Preservation Regulation Appeal Provisions.

Within fifteen (15) days of the Agency decision any person may appeal to the Town Council any decision of the Agency on an application for a Certificate of Appropriateness. If during that fifteen (15) day period an appeal is made to the Town Council, the decision of the Agency shall automatically be stayed pending the Town Council review. The Town Council shall approve, approve with modifications or disapprove the application.

12.1.7 Appeals General. For appeal procedures for all Articles of these land development regulations not specifically described above the following shall apply:

1. An appeal from any final order or decision of the Land Development Regulation Administrator may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the Land Development Regulation Administrator a written notice of appeal specifying the grounds therefore. A

notice of appeal shall be considered filed with the Land Development Regulation Administrator when delivered to the Office of the Land Development Regulation Administrator. The date and time of filing shall be entered on the notice by Town staff.

2. An appeal must be taken within thirty (30) days after the date of the decision or order appealed from.
3. Whenever an appeal is filed, the Land Development Regulation Administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record relating to the action appealed from.
4. An appeal stays all actions by the Land Development Regulation Administrator seeking enforcement of or compliance with the order or decision appealed from, unless the Land Development Regulation Administrator certifies to the Board of Adjustment that (because of the facts stated in the certificate) a stay would, in the Land Development Regulation Administrator's opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board of Adjustment or a court of record on application, on notice to the Land Development Regulation Administrator from whom the appeal is taken and on due cause shown.

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The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

SECTION 12.2 SPECIAL EXCEPTIONS

12.2.1 Board of Adjustment: Powers and Duties: Special Exceptions.

The Board of Adjustment shall have the power to hear and decide upon appeals in specific cases such special exceptions as the Board of Adjustment is specifically authorized to pass on under the terms of Article 4 of these land development regulations; to decide such questions as are involved in the determination of when special exceptions should be granted; and to grant special exceptions with appropriate conditions and safeguards or to deny special exceptions when not in harmony with the purpose and intent of these land development regulations.

Appropriate conditions and safeguards may include, but are not limited to, reasonable time limits within which the action for which special exception is requested shall be begun or completed, or both. Violation of such conditions and safeguards, when made a part of the terms under which the special exception is granted, shall be deemed a violation of these land development regulations and punishable as provided in these land development regulations.

If the Board of Adjustment shall deny a special exception, it shall state fully in its record its reasons for doing so.

Such reasons shall take into account the factors stated in this Article, or such of them as may be applicable to the action of denial, and the particular regulations relating to the specific special exception requested, if any.

The procedure for taking an appeal for a special exception shall be as set forth in this Article, and in addition, a special exception shall not be granted by the Board of Adjustment unless and until:

1. Written Petition. A written petition for special exception is submitted by the applicant indicating the section of Article 4 of these land development regulations under which the special exception is sought and stating the grounds on which it is requested, with particular reference to the types of findings which the Board of Adjustment must make under this Article below. The petition should include material necessary to demonstrate that the grant of special exception will be in harmony with the general intent and purpose of these lands **12-6** development regulations, will not be injurious to the neighborhood or to adjoining properties, or be otherwise detrimental to the public welfare. Such material shall include, but is not limited to the following:
 - a. site plans at an appropriate scale showing proposed placement of structures on the property; provisions for ingress and egress, off-street parking and off-street loading areas, and refuse and service areas; and required yards and other open spaces;
 - b. plans showing proposed locations for utility hook-up;
 - c. plans for screening and buffering with reference as to type, dimensions, and character; and
 - d. proposed landscaping; and signs and lighting, including type, dimensions, and character.

Where these land development regulations place additional regulations on specific special exceptions, the petition should demonstrate that such requirements are met.

2. Planning and Zoning Board report. It is the intent of these land development regulations that all proposed special exceptions shall be heard in the first instance by the Planning and Zoning Board and that the Planning and Zoning Board's report and recommendations in such matters be advisory only to the Board of Adjustment. Within a reasonable time after a proposed special exception is officially received by the Planning and Zoning Board, the Planning and Zoning Board shall submit its report and recommendations concerning the proposed special exception to the Board of Adjustment. Before making a recommendation concerning the proposed special exception, the Planning and Zoning Board shall hold a public hearing to consider the proposed special exception. The Planning and Zoning Board shall fix a reasonable time for the hearing, give public notice thereof, as well as due notice to the parties involved. At the hearing, any party may appear in person or by agent or attorney. Where the designated members of the Planning and Zoning Board perform the functions of the Board of Adjustment, the provisions of this Section shall not apply.
3. Findings. Before any special exception shall be granted, the Board of Adjustment shall make a specific finding that it is empowered under

Article 4 of these land development regulations to grant the special exception described in the petition, and that the granting of the special exception will not adversely affect the public interest. Before any special exception shall be granted, the Board of Adjustment shall further make a determination that the specific rules governing the individual special exception, if any, have

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been met by the petitioner and that, further, satisfactory provision and arrangement has been made concerning the following matters, where applicable:

- a. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
- b. Off-street parking and loading areas, where required, with particular attention to the items in 1.a above and the economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district.
- c. Refuse and service areas, with particular reference to the items in 1.a and 1.b above.
- d. Utilities, with reference to locations, availability, and compatibility.
- e. Screening and buffering with reference to type, dimensions, and character.
- f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effects, and compatibility and harmony with properties in the district.
- g. Required yards and other open space.
- h. Considerations relating to general compatibility with adjacent properties and other property in the district including but not limited to:
 - (1) Whether the proposed use would be in conformance with the Town's Comprehensive Plan and would have an adverse effect on the Comprehensive Plan.
 - (2) Whether the proposed use is compatible with the established land use pattern.
 - (3) Whether the proposed use would materially alter the population density pattern and thereby increase or overtax the load on public facilities such as schools, utilities, and streets.
 - (4) Whether changed or changing conditions find the proposed use to be advantageous to the community and the neighborhood.

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- (5) Whether the proposed use will adversely influence living conditions in the neighborhood.
- (6) Whether the proposed use will create or excessively increase traffic congestion or otherwise affect public safety.
- (7) Whether the proposed use will create a drainage problem.
- (8) Whether the proposed use will seriously reduce light and air to adjacent areas.
- (9) Whether the proposed use will adversely affect property values in the adjacent area.
- (10) Whether the proposed use will be a deterrent to the improvement or development of adjacent property in accord with existing regulations.
- (11) Whether the proposed use is out of scale with the needs of the neighborhood or the community.

4. Limitations on subsequent written petition for a special exception.

No written petition by an owner, of real property for a special exception for a particular parcel of property, or part thereof, shall be filed with the Land Development Regulation Administrator until the expiration of twelve (12) calendar months from the date of denial of a written petition for a special exception for such property, or part thereof, unless the Board of Adjustment specially waives said waiting period based upon a consideration of the following factors:

- a. The new written petition constitutes a proposed special exception different from the one (1) proposed in the denied written petition.
- b. Failure to waive said twelve (12) month waiting period constitutes a hardship to the applicant resulting from mistake, inadvertence, or newly discovered matters of consideration.

SECTION 12.3 VARIANCES, GENERAL. The specific provisions of this Section apply to the following portions of the these land development regulations. Not all portions of these land development regulations provide for variances to the requirements contained therein. This is due to the inappropriateness of granting variances to such specific regulations, but not limited to; the use of land, hazardous building requirements, historic site designation.

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