

ARTICLE 9

VESTING DETERMINATIONS, NONCONFORMITIES, AND VARIANCES

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Article History								
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9	Determination of Damage to Nonconforming Use Structures, Procedure for consideration of expansion, Site improvements, Taking of right-of-way, Administrative Variances		9.03 9.04	7/25/2017				2017-17

**ARTICLE 9
VESTING DETERMINATIONS, NONCONFORMITIES AND VARIANCES**

SECTION 9.01 PURPOSE

The purpose of this Article is to provide mechanisms for obtaining relief from the provisions of the Putnam County Comprehensive Plan and this Code, where the Comprehensive Plan allows for such relief and the property owner either has a vested right to proceed or would incur a hardship. Section 9.02 provides standards and procedures for determining whether a person has a vested right to undertake development activities, notwithstanding the fact that all or part of the development is inconsistent with the requirements of the Comprehensive Plan and/or this Code. Sections 9.03 and 9.04 provide standards and procedures for addressing two particular forms of hardship. Section 9.03 addresses hardships caused when a nonconforming development is immediately required to come into compliance with this Code. Section 9.04 addresses individual hardships caused by the imposition of the Code's development design standards. This Article does not affect requirements of federal, state and local governmental agencies with jurisdiction over development occurring within unincorporated areas of the County.

**SECTION 9.02 LOT OF RECORD AND VESTING DETERMINATIONS FOR
NONCONFORMING DEVELOPMENTS OR DEVELOPMENT PLANS**

9.02.01 Statement of Intent.

- a. The Putnam County Comprehensive Plan provides that certain development may proceed notwithstanding the fact that it may be inconsistent with the Comprehensive Plan. This Section establishes the procedures and standards by which the County may determine whether a nonconforming development (as defined in Section 12.01 of this Code) or development plan will be allowed to continue, or by which a property owner may demonstrate that certain development or land use rights have vested against the requirements of the Putnam County's Comprehensive Plan, subdivision regulations or other applicable land use regulations. The three basic situations under which such development that may proceed are as follows:
 1. Where the development was previously approved by the County and has continued in good faith.
 2. Under limited circumstances, where a parcel of property was created prior to the adoption of the Putnam County Comprehensive Plan in 1991.
 3. Where the right to develop is established by application of the common law principle of equitable estoppel.
- b. The Section establishes both an administrative and formal hearing process for determining whether certain types of development or land uses will be allowed to proceed or continue on a given lot or parcel, or a set of lots or parcels, even though development or land use may be inconsistent with the Comprehensive Plan.

- c. Notwithstanding anything to the contrary in this Section of the Code, if there is a lawfully existing residence on the lot or parcel in question, then the lot or parcel will be treated as a lot of record and the residence will be allowed to be replaced or repaired provided the lot meets the minimum lot size of the applicable zoning district and, where on-site septic is used, the Health Department approves the septic system. Where such a lot does not meet the requirements of the zoning district, the matter shall be reviewed under Section 9.03, the nonconforming use, lot and structure provisions of this Code.

9.02.02 Previously Approved Development

- a. The Putnam County Comprehensive Plan provides that development that has been issued a final local development order and has commenced and is continuing in good faith may be completed notwithstanding inconsistency with the comprehensive plan. The residential developments described in paragraphs “b”, “c” and “d” below are hereby deemed to have been approved by a final development order and to have commenced and continued in good faith.
- b. Recorded Subdivision. Lots in a recorded subdivision within which all required improvements (e.g. roads and drainage) have been installed by the deadline established by the plat approval or, if no deadline was established, by February 1, 2003, or ten years after the preliminary plat approval, whichever is latest, shall be eligible for permits if the following criteria are met:
 - 1. Improvements Installed Pursuant to Applicable Design Standards. If the plat does not set forth what improvements are required, and no standards for such improvements had been adopted by Putnam County at the time of plat approval, then the minimum roadway and drainage standards in Appendix IX shall apply.
 - 2. Lots Meet the Minimum Size Requirements. Unless served by an off-site, centralized water or sewer disposal system, each individual lot within such a subdivision must be a minimum of 0.5 acres in size, or meet the lot size of the applicable zoning district, whichever is greater. Platted lots may be combined to meet this lot size requirement. Where a centralized water or sewer system is available, the lot size for the applicable zoning district shall be met.
 - 3. Other Applicable Land Use Regulations Are Followed. Each eligible lot shall otherwise be developed in accord with applicable land development regulations, including but not limited to the dimensional requirements of the applicable zoning district and the limitations on waterfront development and development in an area of special flood hazard.
- c. Unrecorded Subdivisions. Lots in an unrecorded subdivision plan depicted on a signed, sealed and dated survey or engineered drawing created prior to September 27, 1983 and in the records of the Property Appraiser, the Clerk of Courts or Planning & Development Services, shall be eligible for permits if the following criteria are met:
 - 1. Improvements Installed Pursuant to Applicable Design Standards. The roads and drainage improvements must be installed as of February 1, 2003, in

accordance with the minimum roadway and drainage standards in Appendix IX of this Code. Where a minimum roadway and drainage standard was not established pursuant to a formal County approval of a subdivision plat and when minimum standards for such improvements were not established by ordinance at the time the subdivision was created, roadway and drainage shall be in accord with Illustration 9.1. The Director of Public Works may, after a field inspection of the applicable rights-of-way, adjust any of the dimensional requirements shown in Illustration 9.1, in accordance with the best possible engineering under the conditions of a given roadway, but in no case, will the Director of Public Works be able to approve a right-of-way that is less than 35-feet in width, unless the development served by that right-of-way is specifically vested by the Board of County Commissioners under Section 9.02.06 of this Code.

2. Lots Meet the Minimum Size Requirements. Unless served by an off-site, centralized water or sewer disposal system, each individual lot within such a subdivision must be a minimum of 0.5 acres in size, or meet the lot size of the applicable zoning district, whichever is greater.
- d. Prior Vested Subdivisions. Lots in a recorded or unrecorded subdivision that the County has previously vested under the policies and regulations in place prior to the effective date of this Section may be issued building permits in accord with any conditions placed on the vesting determination, provided that the vesting determination has not lapsed pursuant to subsection 9.02.07.h.

9.02.03 Lots of Record

- a. The Putnam County Comprehensive Plan provides that a legally created parcel of land existing on the date and time of Plan adoption, and that would exceed the maximum density allowed by the Future Land Use Category in which it is located, may be developed with a maximum of one residential dwelling unit so long as it is otherwise consistent with the remaining applicable policies within the comprehensive plan. The parcel must be described on a deed or other legal document of record, recorded prior to 5 p.m. on December 19, 1991, establishing its existence prior to that date.
- b. Pursuant to paragraph “a.” above, such legally created parcels are eligible for the issuance of a building permit to construct a single dwelling unit thereon upon a finding by the Director that all of the following conditions are met:
 1. The parcel was legally created. To have been legally created, the parcel must not have been created in violation of any applicable Putnam County regulation including, but not necessarily limited to, the following:
 - a. The Putnam County subdivision regulations which first went into effect on September 27, 1983, and have thereafter remained in effect as amended from time to time.
 - b. The applicable Putnam County zoning laws in place at the time of creation, including minimum lot sizes, which first went into effect in 1975, and

thereafter have remained in effect as amended or revised from time to time.

- c. The applicable Health Department regulations in place as of the date the lot or parcel was created regarding a minimum lot size and setbacks for on-site well and septic.
2. The parcel must have legal access and physical access by a County-owned and maintained road or other access approved by the Public Works Director.
 3. The parcel and access must have adequate drainage approved by the Public Works Director.
 4. Any development of the parcel can meet the setback requirements of the applicable zoning district or, if applicable, section 9.03.05.b of this Code.
 5. Permits for well and septic system, if applicable, can be obtained from the Florida Department of Health.
 6. The proposed development is otherwise consistent with the Comprehensive Plan and Land Development Code.
- c. An adverse determination under paragraph “b.” above does not preclude the applicant from seeking a vesting determination from the Board of County Commissioners under section 9.02.06.

9.02.04 Previously Approved Development and Lot of Record Determinations: Findings

- a. A Lot of Record Determination is an administrative review that shall be decided by the Director of Planning & Development Services.
- b. When required, the County Engineer shall provide a written report analyzing the condition of the roads and drainage for compliance with the applicable design standards and their ability to handle the resulting traffic loads from the proposed development.
- c. A finding by the Director that the lot(s) in question is not a Lot of Record does not preclude the applicant from seeking a vesting determination from the Board of County Commissioners under section 9.02.06, but shall be condition precedent to seeking such a Vesting Determination.

9.02.05 Planned Unit Developments

Development within a PUD zoning district is typically subject to specific start and completion dates established at the time of approval of the PUD. Additionally, certain PUD zoning districts were approved prior to the adoption of the Comprehensive Plan or certain changes in the land development regulations, and may now be nonconforming to the Comprehensive Plan or the most current land development regulations. The following criteria will be used in order to determine whether a Planned Unit Development (PUD) may be eligible for development permits:

- a. PUDs with established expiration dates. PUDs with stated expiration dates may be developed if the development has been initiated prior to the expiration date(s) and is proceeding in good faith, or the expiration date has not been reached. PUDs or Phases of PUDs that have not been developed or are not proceeding in good faith as of their established expiration dates shall be deemed expired and shall not be renewed or approved for development except in compliance with the consistency, concurrency or density requirements of the Comprehensive Plan and the design and development standards of this Code or any other relevant local land development codes and ordinances.
- b. PUDs without expiration dates. A PUD or phase of a PUD approved without an expiration date may be developed if it was approved after December 19, 1991, and the development has been initiated and is proceeding in good faith on or before the effective date of this Code. Otherwise, any and all PUDs or Phases of PUDs approved without expiration dates that have not been developed or are not proceeding in good faith within ten (10) years of the date of adoption of the PUD shall be deemed expired and shall not be approved for development except in compliance with the consistency, concurrency or density requirements of the Comprehensive Plan and the design and development standards of this Code or any other relevant local land development codes and ordinances in place at the time permits are sought.
- c. The Director shall determine whether a PUD has expired and advise the property owner in writing when such a determination is made. If the PUD is determined to be expired, the property owner may seek a vesting determination from Board of County Commissioners under section 9.02.06 or apply to renew the PUD. An application to renew the PUD shall be treated as a request for a rezoning, subject to the same notice, submittal requirements and review under sections 12.06, 12.07 and 12.11 of this Code, and the goals, objectives and policies of the Comprehensive Plan. If the County determines that a PUD designation has expired and the PUD is neither vested nor renewed, any development agreement that accompanied the PUD shall be considered void and the County shall take action to process a rezoning that reverts the property to an appropriate zoning category that is consistent with the Comprehensive Plan and compatible with the existing land uses abutting the subject property.

9.02.06 Vesting

- a. The Putnam County Comprehensive Plan provides that a vested right to develop any parcel may be created in situations where the principles of equitable estoppel apply.
- b. The owner of a parcel may have vested rights to certain development of the parcel if the following criteria for application of equitable estoppel are met:
 - 1. There was some act or omission by the County indicating that certain development of the parcel would be allowed.
 - 2. The property owner relied in good faith on this act or omission by the County.

3. That as a result of the reliance, the property owner made a substantial change in position or has incurred such extensive obligations and/or expenses that it would be highly inequitable and unjust to deny the owner to develop in a manner consistent with the act or omission of the County.
- c. In determining whether these conditions have been met, the County shall apply principles established by Florida case law, including, but not limited to, the following:
 1. The proposed development of the parcel must have been legal at the time of the County's act or omission. The County cannot be estopped from prohibiting development of a parcel where such development was illegal at the time of the County's act or omission.
 2. Mere purchase of a parcel in reliance on then-existing rules and regulations is not detrimental reliance giving rise to a claim for equitable estoppel.
 - d. Where the applicant has an opportunity to seek an administrative remedy, including but not limited to a Buildable Lot Determination, a Nonconforming Use Determination, or a Variance, the applicant shall first exhaust such administrative remedies before seeking a vesting determination.
 - e. Application Requirements: All development for which a vesting determination is desired, shall comply with the following application requirements:
 1. Any person that seeks a vesting determination must first submit a completed application to the Department and pay the application fee as established by resolution of the Board of County Commissioners.
 2. The application form shall be available upon request from the Department. In order for the Department to commence an administrative review of a request for vesting, the application shall be complete, setting forth the following information:
 - (a) The name, address and notarized signature of each owner of the property;
 - (b) If applicable, the names and addresses of each individual who shall be an agent authorized by affidavit to apply on behalf of the owner(s) (original affidavits must be provided; copies are unacceptable);
 - (c) In addition to the required information in paragraphs (a) and (b), the Director may require the following:
 - (1) A legal description and survey of the property that is the subject of the application;
 - (2) A copy of approved and unexpired final development orders, which may include a final site plan, final subdivision plat, or building plan;
 - (3) Identification by specific reference to any ordinance, resolution, or other action of the County, or failure by the County to act, upon which the

applicant relied and which the applicant believes to support the owner's vested rights claim.

(4) A statement of facts which the applicant intends to prove in support of the application; and

(5) Such other relevant information that the Director may request.

- f. **Sufficiency Review:** The Director shall make a determination as to whether or not the application submittals are complete and sufficient. If not complete, the application shall be returned to the applicant with a written notification of the items that are absent or incomplete. If the applicant fails to resubmit his application within thirty (30) days, the application fee shall be returned to the applicant and the file closed. An applicant shall be required to submit a new application and fee payment once the thirty-day deadline for re-submittal has passed.
- g. **The Hearing Process.** The Board of County Commissioners shall hear the vesting application. Notice shall be in accordance with section 12.06 of this Code and the hearing shall be conducted as a quasi-judicial proceeding. The Board shall make specific findings pursuant to the criteria outlined in paragraph "b", above.

9.02.07 Effect of a Determination of Vested Rights

- a. If vested rights were determined based on the possession of a final development order or other unexpired County action, vested rights will expire with expiration of that final development order or action.
- b. Any vested rights determination shall not create vested rights for additional phases or additional development not expressly authorized by a final development order.
- c. All development subject to a vested rights determination shall not deviate from the terms or conditions of the development orders or actions upon which the approval of the vested rights was based. The Department may schedule a public hearing before the Board of County Commissioners to consider revocation of vesting status if the terms and conditions of the vesting have been violated.
- d. A decision to grant or deny vested status shall run with the land and is therefore transferable from owner to owner of the land.
- e. Where vested with limitations or conditions, the Department shall advise the applicant of the limitations or conditions in writing.
- f. A decision to grant vested status is limited to type of use, intensity of use, density of use, concurrency, etc., that does not conform to the County Comprehensive Plan or Land Development Code. The development is still subject to any other applicable local, state, or federal regulations.
- g. Where the vesting is subject to one or more conditions requiring that road, drainage or other improvements must be made, or an MSBU for roads and/or drainage to be put in place, there must be full compliance with such conditions within five years of

the final vested rights determination. If full compliance is not achieved within the five-year period, such vested rights determination shall expire. Upon such expiration, the Director shall take such action as is necessary to indicate the expiration including, but not necessarily limited to, removal of the subdivision from the list of vested development.

- h. Subsection g above shall apply to all vested rights determinations issued prior to March 25, 2002. The Department shall provide notification of this deadline to all holders of vested rights determinations that have not complied with conditions requiring that road, drainage or other improvements be made. Such notification shall be by U.S. mail to the owners of record. In cases where the five-year deadline would allow for less than one year to complete the required improvements, the deadline shall be extended to allow for one year from the date of notification to complete the required improvements.

SECTION 9.03 NONCONFORMING STRUCTURES, USES, LOTS AND SITE IMPROVEMENTS

9.03.01 Intent

The main problems encountered by the County in dealing with nonconformities have been ending undesirable activities, and delays in the renovations, expansions or modifications of nonconforming uses and structures which are, or can be made, compatible with the surrounding area. Thus, it is the intent of this Section to evaluate the nonconformities on the basis of their overall impact on surrounding land uses and regulate them accordingly. The nonconformities fall into four broad categories: (1) nonconforming structures, (2) nonconforming uses, (3) nonconforming lots, and (4) nonconforming site improvements. Each such nonconformity shall be reviewed to determine whether damage, destruction, proposed alterations or the discontinued use of land, a structure, or land and structure in combination requires that the nonconformity be eliminated or improved in accordance with the intent, criteria and procedures of this Section.

9.03.02 Nonconforming Structures

- a. Applicability: The nonconforming structures regulated by this subsection are those allowed by the zoning in which they are located and are used for an activity allowed by the zoning in which they are located. Nonconforming structures that are not allowed by the zoning in which they are located, or that are used in conjunction with an activity that is not allowed by the zoning in which the structures are located, are considered nonconforming uses and are regulated in Section 9.03.03. This subsection deals specifically with structures that do not conform to the following:
 - 1. Dimensional requirements of zoning such as setbacks, height, floor area ratio, or impervious surface area ratio, etc.; or
 - 2. Construction standards applying to the use of the structure, or to the area in which the structure is located such as a flood hazard area.

- b. Defined. A nonconforming structure is any structure which was lawfully erected and maintained within Putnam County prior to the effective date of this Code and any amendments thereto, but which is now prohibited by or does not conform to the requirements of this Code.
- c. Improvements to Nonconforming Structures. Subject to the findings of fact required under subsection 9.03.07, the applicable building codes and permitting requirements, and other pertinent requirements of this Code, improvements to an existing nonconforming structure are regulated as follows:
 - 1. Add area to the structure - Improvements which add area to an existing non-conforming structure, are allowed provided such improvement does not extend further into a required setback than the existing structure, and does not violate maximum height standards, the impervious surface area, or floor area ratio requirements of the zoning on the property.
 - 2. Enclosures. Enclosure of a previously unenclosed space (patio, deck, porch, carport) attached to an existing non-conforming structure, is allowed provided such enclosure does not extend further into a required setback than the existing structure, and does not violate height standards, impervious surface area, or floor area ratio requirements of the zoning on the property.
 - 3. Maintenance, Repair or Renovation. Structures may be maintained, renovated, and repaired with only the following limitation:

Nonconforming structures shall be made to comply with this Code when damage or deterioration of a structure exceeds fifty (50) percent of the value of the structure immediately prior to the time of damage or deterioration. The value of the structure and whether the damage or deterioration exceeds fifty (50) percent shall be determined by the Director based on substantial competent evidence, which may include, but not necessarily be limited to the Property Appraiser's assessment of the structure.
 - 4. New accessory uses and structures that serve a nonconforming structure may be allowed if they are otherwise in conformance with the Code, unless the accessory use or structure creates additional impervious surface or floor area on a site where these standards are already exceeded.
 - 5. Construction Standards. A structure, which is nonconforming under the Florida Building Code may be renovated, repaired, expanded or altered in compliance with this code, but is subject to a determination by the Building Official as to the applicable building code standards.
 - 6. Signs. Nonconforming signs are regulated in County's sign regulations.
 - 7. Article 6 of this Code regulates improvement or expansion of structures in a flood hazard area.
- d. Historical Structures. If necessary to preserve the historic nature of a structure listed on the Local Register, identified as contributing to a listed district or prevent

demolition of the historic structure, the Zoning Board of Adjustment may allow repairs, maintenance, remodeling or alterations beyond the limitations of paragraph c, subject only to applicable building codes and health, safety and welfare concerns, in order to permit nonconforming use of the historic structure or the rehabilitation of an otherwise non-conforming historic structure.

9.03.03 Nonconforming Uses

- a. Defined. Nonconforming use means a use of land, a structure, or a combination of land and structure that was lawful prior to the adoption of this Code or amendments thereto, but which fails to fall within the list of allowed uses in the applicable zoning district or overlay zoning under this Code. Due to the wide variety of these nonconformities, this Code has created the following two classes of nonconforming uses:
 1. Class I nonconformity: A Class I nonconformity is a use or structure that is not specifically incompatible with surrounding uses. A Class I nonconforming use or structure is typically allowed in the district in which it is located by special exception, but does not have one. A Class I nonconformity may also be a use or structure that is not specifically allowed in the district in which it is located, but by its nature is not incompatible with the surrounding land uses. A Class I nonconformity does not generate significant amounts of additional traffic, noise, odor, fumes or in any other way adversely impact public health and safety over what is generally allowed in the zoning district.
 2. Class II nonconformity: By their nature, Class II nonconformities are incompatible with the surrounding land uses through impacts which include, but are not limited to, the generation of significant increased traffic, noise, odor, fumes, or adverse impacts to public health and safety.
- b. Nonconforming Use Determination. For purposes of this Section, all nonconforming uses shall be presumed to be Class II, unless the Director or Zoning Board of Adjustment determines, based on competent substantial evidence that a Class I designation is more appropriate. A property owner may attempt to overcome the Class II presumption by requesting a determination from the Director or Zoning Board of Adjustment, that a nonconforming use is a Class I nonconformity. The request will be processed as follows:
 1. The property owner must submit his request for a nonconforming use determination in writing and pay a fee in the amount established by resolution of the Board of County Commissioners. In requesting a Class I designation, the property owner may submit any documentary evidence or written explanation that supports a Class I designation.
 2. Director Any use that is not permitted by special use permit in the zoning district in which it is located shall be sent by the Director to the Zoning Board of Adjustment. The Director may determine that a use allowed by special use permit in the district in which the use is located should also be heard by the Zoning Board of Adjustment due to its incompatibility with surrounding uses.

3. The Director will notify adjacent property owners on determinations to be made by staff. Notification will be provided at least ten (10) days prior to any determination. All determinations that go to the Zoning Board of Adjustment will follow the normal public hearing process outlined in this Code.
 4. The Director shall review the request, analyze any relevant factual evidence submitted, and issue a written determination indicating whether the requested Class I designation has been granted. The written determination shall include findings of fact that support the Director's. The decision only determines whether the conformity is to be treated as a Class I or II, and not whether any proposed action is appropriate. A determination of the Director may be appealed to the Zoning Board of Adjustment, which shall follow the procedures for appeals of administrative decisions provided in this Code.
- c. Class I Nonconformities: Subject to the findings of fact required under s. 9.03.07, changes and improvements to Class I nonconformities must comply with the following:
1. All determinations that go to the Zoning Board of Adjustment will follow the normal public hearing process outlined in this Code, and the following criteria in determining whether to authorize the proposed activity:
 - (a) The overall negative impact of the nonconformity on the surrounding properties is reduced as a result of the proposed activity; and
 - (b) The proposed activity will not have an adverse health, safety, welfare, or economic impact on the surrounding neighborhood, other land uses, or the general public.
 2. Subject to the criteria in paragraph 1 above, the Zoning Board of Adjustment may allow an applicant to:
 - (a) expand a nonconforming use of land;
 - (b) add accessory uses or structures;
 - (c) add area to a structure associated with a nonconforming use.
 3. Subject to paragraph 4 below, repair, maintenance and renovation are allowed except for historical structures or structures within an historical district that are governed by section 4.04 of this Code. General repair, maintenance and renovation of items that do not require a permit are allowed without restriction.
 4. When damage or deterioration of a Class I nonconforming structure exceeds 50% of the value of the structure immediately prior to the time of damage or deterioration, the nonconforming use associated with the structure shall be eliminated. The value of the structure and whether the damage or deterioration exceeds 50% shall be determined by the Director based on substantial

competent evidence, which may include, but not necessarily limited to the Property Appraiser's assessment.

5. There may be a change of tenant, ownership or management of a nonconforming use provided there is no unauthorized change in the nature or character of such nonconforming use.
6. The installation or the replacement of signs on parcels with a nonconforming use is allowed regardless of which zoning district within which it is located, provided the following requirements are met:
 - (a) All new or replacement signs must conform to the requirements of the County's sign regulations applicable to the least intensive zoning district that would normally allow the nonconforming use; and
 - (b) All existing nonconforming signs are removed.
- d. Class II Nonconformities: Subject to the findings of fact required under s. 9.03.07, changes and improvements to Class II nonconformities must comply with the following:
 1. Expansion of a nonconforming use of land, addition of accessory uses or structures, or addition of area to a structure associated with a nonconforming use is not allowed. For the purposes of this determination, an increase in intensity will be considered an expansion of use.
 2. Any change of use must conform to the zoning district and all applicable requirements of this Code.
 3. Subject to paragraph b below, repair, maintenance and renovation are allowed as follows:
 - (a) Except for historical structures or structures within an historical district that are governed by section 4.04 of this Code, general repair, maintenance and renovation of items that do not require permits are allowed without restriction.
 - (b) When damage or deterioration of a Class II nonconformity exceeds 50% of the value of the structure immediately prior to the time of damage or deterioration, the nonconforming use associated with the structure shall be eliminated. The value of the structure and whether the damage or deterioration exceeds 50% shall be determined by the Director based on substantial competent evidence, which may include, but not necessarily be limited to the Property Appraiser's assessment.
 4. There may be a change of tenant, ownership or management of a nonconforming use provided there is no unauthorized change in the nature or character of such nonconforming use.

5. The installation of new signs, or the replacement of existing signs on parcels with a nonconforming use is allowed, regardless of which zoning district within which it is located, provided the following requirements are met:
 - (a) All new or replacement signs must conform to the requirements of the County's sign regulations applicable to the least intensive zoning district which would normally allow the nonconforming use; and
 - (b) All existing nonconforming signs are removed.
- e. Mobile Home Parks. In addition to the requirements pertaining to Class I and Class II nonconformities the following shall apply:
 1. Nonconforming mobile home parks that were rezoned to RMH by the Board of County Commissioners, without meeting the site development requirements for RMH zoning, and where the rezoning included a site plan showing the number and location of lots and where the number and location of lots or units has not been substantially altered from the submitted site plan, move-on permits may be issued for existing lots, subject to the setback requirements of the zoning district. However, if such a mobile home park has or intends to increase the number of lots or the location and size of approved lots are substantially altered, then the park shall be required to meet all the requirements of the RMH zoning before any additional move-on permits shall be issued.
 2. Nonconforming mobile home parks that did not include a site plan showing the number and location of lots when rezoned to RMH by the Board of County Commissioners, permits may only be issued for the replacement homes that were in existence at the time of the rezoning on those lots meeting the yard requirements provided in paragraph 1. The number of existing lots will be determined by researching County records. However, if such a mobile home park has or intends to increase the number of lots or the location and size of approved lots are substantially altered, then the park shall be required to meet all the requirements of the RMH zoning before any move-on may be permitted.
 3. Any mobile home park located in a zoning district other than RMH is a nonconforming use and shall be treated as a Class II nonconformity, and shall not be permitted to place new or replacement mobile homes unless the use and structures are made to conform with current Code.
- f. Fish Camps and Marinas. The provisions in this paragraph apply in addition to the requirements pertaining to Class I and Class II nonconformities. When application is made to renovate, repair or expand any structure beyond the general limits allowed for Class II nonconformity, or to replace or add a mobile home, the property owner shall be required to either bring the use into compliance with this Code or apply for and obtain a rezoning to PUD. Approval of a PUD may be conditioned upon the property owner making improvements to the development to bring it as close to conformity with this Code as is possible or to protect the health, safety and welfare of the public that uses the fish camp or marina and the adjacent water body.

- g. Mines. The provisions in this paragraph apply in addition to the requirements pertaining to Class I and Class II nonconformities. There are active mines which began operation prior to County regulations requiring Mining zoning, and which do not comply with the requirements of this Code. An owner of property with this type of mine must comply with this Code before the mine is extended to property not owned when the mine was initiated, or the mine exceeds the area in the mining plan filed with the County or State prior to the County requiring Mining zoning, whichever comes first.
- h. Borrow Areas. Any active borrow area must immediately comply with the requirements of Article 3.02.09 of this Code.
- i. Salvage Yards. The provisions of this paragraph apply in addition to the requirements pertaining to Class I and Class II nonconformities. There are salvage yards that began operation prior to the County regulations limiting such uses to industrial zoning districts and requiring all such salvage yards to be screened and buffered. An owner of this type of use shall not be allowed to expand the area in which such materials are stored either horizontally (i.e. increasing square footage of storage area) or vertically (i.e. by stacking materials), unless in compliance with current Code.

9.03.04 Discontinued Non-Conforming Uses

- a. Class I and Class II Nonconformities. The following shall apply to determinations regarding discontinuance of nonconforming uses.
 - a. If the nonconforming use is of land only without a structure and the use is removed, discontinued or abandoned, the use cannot be re-established.
 - b. If the nonconforming use involves the use of a structure, or land and structure in combination and the use is discontinued or the structure is left vacant, abandoned, or not used for two hundred and forty (240) consecutive days, the nonconforming use shall be prohibited and the structure, or the structure and land in combination, shall not thereafter be used except in conformance with the regulations of the zoning district, or as allowed by action of the Zoning Board of Adjustment.
 - c. The Zoning Board of Adjustment may permit the re-establishment of the nonconforming use where it is determined by the Zoning Board that the design, construction and character of the structure is not suitable for uses allowed under the applicable land use designation. Such requests shall follow the procedure for application and processing of Special Use Permits.

9.03.05 Nonconforming Lots or Parcels

- a. Defined. A nonconforming lot or parcel is a lot or parcel that fails to meet the dimension requirements (i.e. area, width, depth and frontage) of this Code, but was lawfully created prior to the effective date of this Code or any amendments thereto and has been determined to be vested to the Comprehensive Plan and this Code pursuant to Section 9.02 of this Code.

- b. Development on Nonconforming Parcels and Lots. Pursuant to the administrative variance procedure provided under Section 9.04.06, structures on nonconforming parcels and lots may be permitted the following setbacks: side setback equal to 10% of the parcel or lot width; rear setback equal to 10% of the parcel or lot depth; and front setback equal to 20% of the parcel or lot depth; so long as there remains at least five feet of setback, the use does not exceed allowed floor area ratios (FAR) or impervious surface area ratios, and the County Planner finds that the encroachment does not present a health or safety risk to adjacent parcels or the general public. A lot or parcel that will use on-site sewage disposal must also be of sufficient size to meet Department of Health requirements. The property owner must seek a variance through the formal hearing process in Section 9.04 in order to further encroach within a setback or develop a parcel with insufficient frontage.

9.03.06 Nonconforming Site Improvements

Where the Director or the Zoning Board of Adjustment find that the use(s) and structure(s), if any, are otherwise lawful under this Code, but certain site improvements (i.e. parking, fences, screening, landscaping, and drainage) are determined to be nonconforming, the following shall apply:

- a. Vehicle Use Areas. These are areas used for parking, loading, and traffic circulation.
 - 1. When any change in use, addition of structures, or additions to structures results in additional parking space requirements, all components of vehicle use areas must be improved to the standards required under this Code for new development unless a variance(s) from a particular dimensional requirement is otherwise approved.
 - 2. When any change in use, addition of structures, or additions to structures results in no additional parking space requirements, only the handicapped parking requirements must be met.
- b. Landscaping, Drainage, Screens, Lighting or Fences. When a change of use results in an increase in the density or intensity of use, including a change of use, addition of structures and/or addition to structures, all site improvement and design standards of this Code must be met unless a variance(s) is otherwise approved.

9.03.07 Findings of Fact Required for Permitting Nonconforming Uses, Structures and Lots

Any other provision of this Section or other provisions of this Code notwithstanding, the Director or Zoning Board of Adjustment must make the following additional findings of fact before authorizing any proposed improvements to nonconformities under this Section:

The applicant has demonstrated with competent substantial evidence the legality of the nonconforming use of the land, the structure or land and the structure in combination

addressed in the application. Proof of the legality of the nonconformity must include competent substantial evidence that the nonconformity was lawfully established and continued under prior County codes or ordinances. Competent substantial evidence may include, but is not limited to, historic aerial photographs, use and property records maintained by the County's Tax Collector for business tax receipts, if any, Planning and Development Services Department records, Public Works Department records, records maintained by the County Property Appraiser's office, business records, and photographs that can be certified as to their date and authenticity.

9.03.08 Nonconforming Structures or Lots Resulting From Condemnation or Acquisition of Land by Local, State, or Federal Government Right-of-Way

Any structure or parcel of land that is made nonconforming by the acquisition of land for a public right-of-way shall be legally nonconforming under this Code. Any subsequent development shall conform to current Code. If the property owner seeks one or more variances to allow development, redevelopment or improvement, the circumstances of the condemnation/acquisition shall be considered justification of hardship to the property owner.

SECTION 9.04 VARIANCES

9.04.01 Variances in General

- a. Variances to be Considered Part of Development Review. Any person desiring to undertake a development activity not in conformance with this Code may apply for a variance in conjunction with the application for development review. If a variance is sought, a development activity that might otherwise be administratively approved by the Planning, and Development Services Department must be approved by the Zoning Board of Adjustment, except for variances under specific sections of this Code that allow for administrative approval. The variance shall be granted or denied in conjunction with the application for development review.
- b. The Zoning Board of Adjustment may grant a variance from the strict application of any provision of this Code, except provisions in Sections 2.02 and 2.03 regulating uses allowed within zoning districts, and the provisions in Article 5 (Facilities and Services), if the procedures of this Section are followed and findings are made. Establishment or expansion of a use otherwise prohibited shall not be allowed by a variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or in adjoining districts.
- c. Except as otherwise provided, under no circumstances shall the Zoning Board of Adjustment grant a variance to allow a use not generally permitted or permissible by special exception in the applicable land use category, nor shall the Zoning Board of Adjustment grant a variance to allow a use expressly or implicitly prohibited by the terms of this Code. Nonconforming use of neighboring lands, structures or buildings in the same zoning district and permitted use of lands, structures or buildings in other zoning districts shall not be considered or used as grounds for the authorization of a variance.

9.04.02 Application and Issuance

- a. To obtain a variance a person must file an application with the Planning and Development Services Department; and the necessary forms and instructions can be obtained from the Department. The application for a variance shall include, at a minimum, the following information:
 1. A notarized signature of the property owner.
 2. A recorded legal document demonstrating conveyance of ownership in real property to the applicant and a complete legal description of the property for which the variance is requested.
 3. The location and current zoning classification of the property being considered for the variance.
 4. A description of the variance requested.
 5. A section or a parcel map indicating the general location of the site surrounding property and abutting streets.
 6. A site plan that includes, as a minimum, the information listed below for both existing and proposed uses.
 - (a) Location of the site in relation to surrounding properties, including the means of ingress and egress to such properties and any screening or buffers on such properties.
 - (b) Date, north arrow and graphic scale.
 - (c) Location, dimension and number of all proposed parking spaces and loading areas.
 - (d) Location, size and design of landscaped areas and structure screens or architectural enclosures.
 - (e) The location of all structures and major features and complete dimensions of same.
 - (f) All setbacks, distances between structures, floor areas, width of driveways, location and size, parking spaces, property or lot lines and the percentage of the property covered by structures.
 - (g) Location and acreage of open space, recreational, recharge and landscaped areas.
 - (h) Location of existing and proposed utilities, including well and septic systems.

7. If the development will use on-site sewage systems, provide written confirmation from the Department of Health that the variance will not result in a violation of the Department of Health regulations concerning sewage treatment and disposal systems. Where such lot or parcel is located within 500 feet of a water body, any proposed variance shall be subject to State law and the requirements of Article 6 for placement and discharge of sewage treatment facilities within 500 feet of a water body.
 8. Payment of the application fee in accordance with the fee schedule established by resolution of the Board of County Commissioners.
- b. **Completeness Review:** The Department shall first decide whether or not the application is technically complete. If not technically complete, the application shall be returned to the applicant with a written notification of the items that are absent or insufficient. If the applicant does not resubmit his application within thirty (30) calendar days, the fee shall be returned to the applicant and the applicant will be required to submit a new application and fee, if a variance is still sought.
 - c. Upon receipt of the completed application and the required fee, the Department will submit the application to the Zoning Board of Adjustment for action. All applications must be filed by the deadline filing date established by the Department in order to meet required public notice deadlines, allow time for analysis of the request by the Department and be eligible for the next regularly scheduled meeting of the Zoning Board of Adjustment.
 - d. Requirements for hearing notices are provided in Article 12 of this Code.
 - e. If the Zoning Board of Adjustment denies a variance application, the denied application may not be resubmitted, nor may any action be taken on a new application for the same or a substantially similar variance on the same property, until twelve (12) months after the date an application was denied. Decisions of the Zoning Board of Adjustment may be appealed to the Circuit Court within 30 days of the decision.
 - f. If the variance is approved, any activity shall be carried out in accordance with the site plan approved with the variance and in accordance with all applicable permits and approved plans and specifications. Deviations from the site plan or changes to the site plan shall not be made without the approval of the Director. If the Director determines that there is a substantial change or deviation from the approved site plan, the owner or applicant and their successors may be required to file another application with the Zoning Board of Adjustment. Upon written notice from the Department, any such ongoing activity shall cease until such time as another public hearing is conducted by the Zoning Board of Adjustment.

9.04.03 Issuance Criteria

Subject to the general conditions in subsection 9.04.01, the Zoning Board of Adjustment may authorize a variance, based on substantial competent evidence that the criteria listed in a. and b. below are met.

- a. Each of the following must be met, unless a provision referenced in subsection b. below states otherwise:
 1. Special conditions and circumstances exist which are peculiar to the land, structure or building involved, or the proposed development design utilizes innovative planning and design which will result in a better development and will be an asset to the community.
 2. The special conditions and circumstances described in paragraph a, above, do not result from a failure on the applicant's part to follow applicable County, state or federal land use regulations and building codes.
 3. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Code to other lands, buildings or structures in the same zoning district.
 4. Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Code and would place unnecessary and undue hardship on the applicant.
 5. Granting the variance will be in harmony with the general intent and purpose of this ordinance and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare or public interest.
 6. The variance granted is the minimum necessary to meet the criteria 1 through 5 above. Variance that will make possible the reasonable use of the land, building or structure
 7. Granting of the variance will be in harmony with the general intent and purpose of this ordinance and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare or public interest.
- b. The following special criteria must be met where it is applicable. Unless the section providing the special criteria states otherwise, the applicable criteria listed below must be met in conjunction with the criteria listed in subsection a. above.
 1. Variances to airport overlay regulations must meet the pertinent variance criteria outlined in Section 4.03
 2. Variances to the historical district overlay regulations must meet criteria in Section 4.04 or Section 9.04.04.
 3. Variances for historical structures involving nonconformities must meet the criteria provided in Section 4.04 and Section 9.04.04.
 4. Variances to the sign regulations must meet criteria in Putnam County's sign regulations.

5. Variances to flood hazard management regulations must meet the applicable criteria in Section 6.05.12.

9.04.04 Historical Buildings

Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continuing designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure. Variances designed to maintain the historical significance of the historic structure shall not have to meet the criteria in Subsection 9.04.03.a.

9.04.05 Conditions and Limitations On Granting Variances

- a. Imposition of Conditions: In granting a development approval involving a variance, the Zoning Board of Adjustment may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to allow a positive finding to be made on any of the foregoing factors, or to minimize the injurious effect of the variance. When granting a variance, the Zoning Board of Adjustment may also attach appropriate conditions and safeguards, as deemed necessary, in order to protect the public health, safety and general welfare of County residents. Violation of any terms or conditions of the variance constitutes a violation of this ordinance and the Zoning Board may initiate proceedings to revoke a variance not meeting the terms and conditions of approval.
- b. The Zoning Board of Adjustment may establish a reasonable time limit within which the activity necessary to initiate the variance shall be started and completed. Failure to meet these time limits shall render the variance null and void. If the Zoning Board of Adjustment, during the granting of the variance, does not designate a time limit, and the applicant has not begun the granted use within twelve (12) months of the date of approval of the variance, the variance becomes null and void.
- c. Transfer: If the activity for which the variance was granted continues at the time of sale of the subject property, the variance may be transferred with the land. If a structure for which the variance is granted ceases to exist by act of God or the acts of a disinterested or unrelated third party, the variance still exists providing a like structure is built.

9.04.06 Administrative Variance

The Director shall be authorized to grant administrative variances as allowed by this code subject to the requirements listed below.

- a. The owners of any land abutting the subject property shall be notified in writing by certified U.S. Mail of the proposed administrative variance at least thirty (30) days prior to making a final determination on the proposed reduction. The notice shall advise the abutting landowner(s) of the date of determination and that objections or concerns with the proposed administrative variance must be submitted in writing prior the determination date. The applicant shall provide to the Department the name and contact information (i.e. address and phone number) for all abutting property owners that will be impacted by the variance. Additionally, notice shall be posted on the subject property at least 15 days prior to the final determination on the administrative variance.
- b. The Director may authorize an administrative variance when:
 1. The criteria listed in Section 9.04.03 are determined by the Director to have been met; and
 2. There are no valid objections received from the abutting property owners who received notice.

For purposes of this section, valid objections shall be those that factually indicate that the criteria for granting of a variance in Section 9.04.03 have not been met.

- c. Administrative variances to required setbacks shall reduce the required setback by more than the following maximums unless the lot is a nonconforming lot subject to the variance allowed under s. 9.03.05:
 1. Front yard by up to ten (10) feet.
 2. Side yard setbacks may be reduced by up to five (5) feet (down to a minimum of five (5) feet from a lot line).
 3. Rear yard setbacks may be reduced by up to five (5) feet (down to a minimum of five (5) feet from a lot line when there is no water body).
 4. Waterfront setbacks may be reduced by up to five (5) feet subject to the requirements of s. 6.03 of this Code.
- d. If valid, written objections are received from the abutting property owners who received notice within thirty (30) days, the Director shall deny the administrative variance request. The applicant shall be notified of the denial and shall have the right to have the variance request heard by the Zoning Board of Adjustment upon paying the difference between the fee for administrative variance and the applicable fee for a variance heard by the Zoning Board of Adjustment.

APPENDIX IX

Where a minimum roadway and drainage standard was not established pursuant to a formal County approval of a subdivision plat and when minimum standards for such improvements were not established by ordinance at the time the subdivision was created, roadway and drainage shall be in accord with Illustration 9.1 below. The Director of Public Works may, after a field inspection of the applicable rights-of-way, adjust any of the dimensional requirements shown in Illustration 9.1, in accordance with the best possible engineering under the conditions of a given roadway, but in no case, will the Director of Public Works be able to approve a right-of-way that is less than 35-foot in width, unless the development served by that right-of-way is specifically vested by the Board of County Commissioners under Section 9.02.06 of this Code.

Illustration 9.1 – Standard Graded Roadway and Drainage Section

