LEE COUNTY ORDINANCE NO. 25-09

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, CHAPTERS 2, 6, 10, 22 AND 34; MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

THE SPECIFIC LDC PROVISIONS THAT WILL BE AMENDED ARE: SEC. 2-460 (APPLICABILITY); SEC. 2-461 (PURPOSE AND INTENT); SEC. 2-462 (FEE WAIVER); SEC. 2-463 (PROCEDURES); SEC. 2-464 (CIP DEVELOPMENT ORDER APPROVAL); SEC. 2-465 (CERTIFICATE OF CONCURRENCY); SEC. 2-466 (ADMINISTRATIVE DEVIATIONS); SEC. 2-467 (CIP CERTIFICATE OF COMPLIANCE); SEC. 2-468 (FILING AND ARCHIVING); SEC. 2-469 (COMPLIANCE WITH THIS CODE); SEC. 2-470 (LIABILITY INSURANCE REQUIREMENT); SEC. 6-479 (DEFINITIONS IN GENERAL); SEC. 6-505 (ACCESSORY STRUCTURES); SEC. 10-1 (DEFINITIONS AND RULES OF CONSTRUCTION); SEC. 10-104 (DEVIATION AND VARIANCES); SEC. 10-291 (REQUIRED STREET ACCESS); SEC. 10-321 (GENERAL PROVISIONS); SEC. 10-329 (EXCAVATIONS); SEC. 10-383 (INTERPRETATION; CONFLICTING PROVISIONS); SEC. 10-418 (SURFACE WATER MANAGEMENT SYSTEMS); SEC. 22-174 (RELIEF FROM ZONING REGULATIONS); SEC. 34-2 (DEFINITIONS); SEC. 34-145 (FUNCTIONS AND AUTHORITY); SEC. 34-1172 (DEFINITIONS); SEC. 34-1176 (SWIMMING POOLS, TENNIS COURTS, PORCHES, DECKS AND SIMILAR RECREATIONAL FACILITIES); SEC. 34-1177 (ACCESSORY APARTMENTS AND ACCESSORY DWELLING UNITS); SEC. 34-1180 (ADDITIONAL DWELLING UNIT ON A LOT IN AGRICULTURAL DISTRICTS); SEC. 34-1491 (APPLICABILITY OF SUBDIVISION); SEC. 34-1492 (DEFINITIONS); SEC. 34-1493 (CALCULATION OF TOTAL PERMISSIBLE HOUSING UNITS); SEC. 34-1494 (DENSITY EQUIVALENTS); SEC. 34-1744 (LOCATION AND HEIGHT OF FENCES AND WALLS OTHER THAN RESIDENTIAL PROJECT FENCES); SEC. 34-1748 (ENTRANCE GATES AND GATEHOUSES); SEC. 34-1802 (PROPERTY DEVELOPMENT REGULATIONS); SEC. 34-2020 (REQUIRED PARKING SPACES); SEC. 34-2194 (SETBACKS FROM BODIES OF WATER); SEC. 34-3272 (LOT OF RECORD; GENERAL DEVELOPMENT STANDARDS); SEC. 34-3273 (CONSTRUCTION OF SINGLE-FAMILY RESIDENCE); SEC. 34-3274 (PLACEMENT OF MOBILE HOME OR RECREATIONAL VEHICLE ON LOT).

WHEREAS, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate, and enforce zoning regulations necessary for the protection of the public; and,

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code which contains regulations applicable to the development of land in Lee County; and,

WHEREAS, the Board of County Commissioners of Lee County, Florida, has adopted a comprehensive Land Development Code (LDC); and,

WHEREAS, Goal 4 of the Lee County Comprehensive Land Use Plan (Lee Plan) states: Pursue or maintain land development regulations which protect the public health, safety and welfare, encourage creative site designs and balance development with service availability and protection of natural resources; and,

WHEREAS, the Land Development Code Advisory Committee (LDCAC) was created by the Board of County Commissioners to explore amendments to the LDC; and,

WHEREAS, the LDCAC has reviewed the proposed amendments to the LDC on May 10, 2024, July 12, 2024, December 13, 2024, and March 14, 2025, and recommended approval of the proposed amendments as modified; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on May 8, 2024, July 10, 2024, December 11, 2024, and March 12, 2025, recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on May 20, 2024, July 22, 2024, December 9, 2024, and March 24, 2025, and found them consistent with the Lee Plan, as indicated.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: AMENDMENT TO LDC CHAPTER TWO

Lee County Land Development Code Chapter Two is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 2 – ADMINISTRATION

ARTICLE X. ~~DEVELOPMENT ORDER APPROVAL PROCESS FOR CAPITAL IMPROVEMENTS PROJECTS~~ RESERVED

~~**Sec. 2-460. Applicability.**~~

~~This article applies only to Board approved Capital Improvement Projects (CIP) falling under the jurisdiction of the County Department of Public Works and located in unincorporated areas of the County.~~

~~Sec. 2-461. Purpose and intent.~~

~~(a) The purpose of this article is to provide an alternative development order approval process for permitting County approved CIP projects. It is the Board's intent to establish a procedure that will:~~

~~(1) Provide greater flexibility in the timing and manner of information submittals.~~

~~(2) Ensure compliance with the requirements of this Code.~~

~~(3) Maintain consistency in the application of County regulations.~~

~~(4) Give the Director of Public Works sole authority and responsibility for issuing development order approval to County CIPs.~~

~~(5) Establish an inspection review system that will ensure County CIPs fully comply with all County regulations.~~

~~(6) Substitute the Director of Public Works as the reviewing authority for County CIPs falling under the purview of Chapter 10.~~

~~(b) Notwithstanding any other provision of this article, it is the Board's purpose and intent to grant the Director of Public Works the same level of authority with respect to County CIPs as the Director of Development Services exercises with respect to development submittals for all other projects. In both instances, the Directors are charged with the responsibility to ensure compliance with Chapter 10.~~

~~Sec. 2-462. Fee waiver.~~

~~The development order application fees customarily charged in accordance with the County Administrative Code are waived for County approved CIPs constructed on County owned land or within public rights of way. The County remains responsible for impact fees that may be applicable in accordance with this Code.~~

~~Sec. 2-463. Procedures.~~

~~The Director of Public Works is responsible for establishing procedures and policies within the Department of Public Works:~~

~~(a) To adopt CIP Development Order forms, covering submittal through development order issuance, that are substantially similar to those used by the Development Services Division;~~

(b) To ensure that all documents necessary for project design and Chapter 10 compliance are prepared and submitted prior to development order issuance. This includes documents necessary to substantiate an appropriate grant of an administrative variance or pursuit of a deviation or variance requiring Hearing Examiner approval;

(c) To address all issues, in accordance with applicable regulations, relating to the project and pertaining to traffic impacts, environmental impacts, zoning, fire safety, surface water management, utility connection and building code compliance in order to obtain the necessary permits from the appropriate authorizing entity;

(d) To conduct appropriate inspections to ensure compliance with the development order, as issued, and other applicable permits; and

(e) To amend approved CIP Development Orders in a manner that is substantially similar to the procedure set forth in Sections 10-118 and 10-120.

Sec. 2-464. CIP Development Order approval.

(a) The Director of Public Works has sole authority to grant development order approval for County approved CIP projects submitted in accordance with this article.

(b) The Director of Public Works will issue a CIP Development Order approval after he reviews all submittals and determines the project complies with all applicable codes and regulations.

(c) Upon CIP Development Order approval, the Director of Public Works will issue a development order approval letter and stamp the approved development order drawings with an appropriate development order stamp.

(d) Copies of the development order approval letter, stamped drawings and backup submittals must then be sent to the Director of Development Services for safekeeping.

(e) The Director of Public Works will record the notice of development order required in accordance with Section 10-114.

(f) The duration of the CIP Development Order is controlled by the provisions set forth in Sections 10-115 and 10-123.

(g) Building permits may not be issued until after the CIP Development Order is issued by the Director of Public Works.

Sec. 2-465. Certificate of Concurrency.

County CIP projects must meet the concurrency standards set forth in Article II of this chapter. The Development Services Director will review the project for compliance with concurrency standards and issue a Certificate of Concurrency to CIP projects meeting County standards.

Sec. 2-466. Administrative deviations.

The Director of Public Works has sole authority and responsibility to grant or deny administrative deviations for County approved CIP projects. Approval must be in accordance with the criteria set forth in Section 10-104. Documents supporting approval must be filed and archived in accordance with Section 2-468.

Sec. 2-467. CIP Certificate of Compliance.

The Director of Public Works, or his designee, will perform a final inspection. If the inspection reveals the development is in substantial compliance with the approved development order, the Director of Public Works will issue a Certificate of Compliance. If the inspection reveals the development is not in substantial compliance with the approved development order, the Director of Public Works will require appropriate approvals, corrections, or amendments before issuing the Certificate of Compliance.

Sec. 2-468. Filing and archiving.

A copy (or originals, when available) of all documents substantiating the issuance of a Development Order must be retained in accordance with State and Federal guidelines. The Development Services Division is the entity responsible for archiving these documents in the County.

Once a CIP Development Order is approved, a copy (or originals, if available) of all documents substantiating the development order issuance, including all documents submitted for review, must be forwarded to the Development Services Division for filing and archiving. Any subsequent documents prepared or submitted relating to the CIP must also be sent to Development Services Division for filing.

The division of public works may keep a duplicate file on the project. However, the official Lee County file will be the one retained by Development Services Division.

Sec. 2-469. Compliance with this Code.

All projects approved under this article must comply with the requirements set forth in this Code, except as otherwise specifically provided by this article. The Clerk of the Circuit Court will audit the CIP approval process and procedure annually to ensure CIPs comply with applicable County regulations.

~~**Sec. 2-470. Liability insurance requirement.**~~

~~As a condition applicable to the issuance of a development order or the County DOT right-of-way permit allowing construction of improvements within County-owned or controlled right-of-way property, the contractor performing the construction services must obtain liability insurance coverage for the benefit of the County. The amount and type of coverage must be in accordance with the County Risk Management standards in effect at the time the insurance is obtained. The insurance coverage must remain in effect until the approved project obtains a development order Certificate of Compliance or the County formally accepts the right-of-way improvements for maintenance. Compliance with this provision may be waived by the Department of Transportation Director only if the insurance coverage is provided as a condition of a bid contract award.~~

Secs. ~~2-471~~2-460—2-480. Reserved.

SECTION TWO: AMENDMENT TO LDC CHAPTER SIX

CHAPTER 6 – BUILDINGS AND BUILDING REGULATIONS

ARTICLE IV – ~~FLOOR~~ FLOOD HAZARD REDUCTION

DIVISION 2 – DEFINITIONS

Sec. 6-479. Definitions in general.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Alteration of a watercourse" through "Start of construction" remain unchanged.

Substantial ~~d~~Damage (SD) means damage of any origin sustained by a ~~building or~~ structure whereby the cost of restoring the ~~building or~~ structure to its before-damaged condition would equal or exceed 50 percent of the market value of the ~~building or~~ structure before the damage occurred. Work on structures that are determined to be substantially damaged is considered to be substantial improvement, regardless of the actual repair work performed.

Substantial ~~i~~Improvement (SI) means any combination of repair, reconstruction, rehabilitation, alteration, addition, or other improvement of a ~~building or~~ structure ~~for all but repetitive loss properties as defined by FEMA,~~ the cost of which equals or exceeds 50 percent of the market value of the ~~building or~~ structure before the ~~improvement or repair is started~~ start of construction of the improvement or repair. ~~If a building or structure is identified as part of a repetitive loss property by FEMA, the costs of any repair, reconstruction, rehabilitation, addition or other~~

~~improvement of a building or structure will be considered cumulatively over the prior 12 month period.~~ If the structure has incurred substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term ~~"substantial damage"~~ substantial improvement does not, however, include either:

(1) Any project for improvement of a ~~building~~ structure required to correct existing health, sanitary, or safety code violations identified by the Building Official and that are the minimum necessary to ensure safe living conditions.

Remainder of section remains unchanged.

DIVISION 3 – FLOOD-RESISTANT DEVELOPMENT

SUBDIVISION VII – OTHER DEVELOPMENT

Sec. 6-505. Accessory structures.

Accessory structures are not required to meet the elevation requirements if they meet all of the following requirements, in addition to those set forth in Section 6-487:

(1) The structure is securely anchored to resist flotation, collapse, and lateral movement;

~~(2) The building is a minimal investment, and the total size of the building does not exceed 1,000 square feet in floor area;~~

(~~3~~2) The structure is used exclusively for uninhabitable parking or storage purposes;

(~~4~~3) All electrical or heating equipment is elevated above the base flood elevation or otherwise protected from intrusion of floodwaters; and

(~~5~~4) For accessory structures located in coastal high-hazard areas (V zones), breakaway walls are used below the lowest floor.

SECTION THREE: AMENDMENT TO LDC CHAPTER TEN

CHAPTER 10 – DEVELOPMENT STANDARDS

ARTICLE I – IN GENERAL

Sec. 10-1. Definitions and rules of construction.

Subsection (a) remains unchanged.

(b) Definitions. Except where specific definitions are used within a specific section of this chapter for the purpose of such sections, the following terms, phrases, words and their derivations will have the meaning given in this subsection when not inconsistent with the context:

"AC" through "Dead-end street" remain unchanged.

Decision of the Development ~~Review Director~~ Services Manager/Public Projects Coordinator means any act of the ~~Director~~ Manager/Coordinator in interpreting or applying this chapter to a particular request for a requirement waiver, limited review processing, or a development order, or any other request or matter relating thereto. In cases where making a decision involves the practice of engineering, as defined in F.S. § 471.005(7), where such decision must be made only by a professional engineer or someone supervised by a professional engineer pursuant to F.A.C. 61g15-26.001, the ~~Director~~ Manager/Coordinator must be a professional engineer, registered in the State, or, if the ~~Director~~ Manager/Coordinator is not a registered professional engineer, the ~~Director~~ Manager/Coordinator must adopt the decision of the County's professional engineer, or the person who is designated to act on behalf of the County's professional engineer and who is supervised by the professional engineer, as the basis for whatever final formal decision is made by the ~~Director~~ Manager/Coordinator. In those cases where the ~~Director~~ Manager/Coordinator is not a state-licensed, professional engineer, the term "decision of the Development ~~Review Director~~ Services Manager/Public Projects Coordinator" means the decision made by the County's professional engineer, or a person supervised by the County's professional engineer, and adopted by the ~~Director~~ Manager/Coordinator.

"Density" through "Private water system" remain unchanged.

Public Projects Coordinator means the County staff person designated to oversee the development review process for Capital Improvement, Municipal Services Taxing/Benefits, Lee County Sheriff's Department, and other projects that have a Board-approved Development Agreement located in unincorporated Lee County. Oversight includes, but is not limited to, the intake of applications, review of plans for compliance with this chapter, and issuance of notifications to applicants. The Public Projects Coordinator will have the same level of authority with respect to applicable public projects that the Development Services Manager exercises with respect to development submittals for all other projects.

Remainder of section remains unchanged.

ARTICLE II – ADMINISTRATION

DIVISION 2 – DEVELOPMENT ORDERS

SUBDIVISION II - PROCEDURES

Sec. 10-104. Deviation and variances.

(a) *Provisions where deviations are authorized.* The Director is hereby authorized to grant deviations from the technical standards in the following sections of this chapter:

Subsections (1) through (3) remain unchanged.

(4) Section 10-291(3) (additional means of ingress/egress);

(5) Section 10-296(b), Table 2 (right-of-way width specifications for streets);

(~~5~~6) Section 10-296(e) (wearing surface, base, subgrade, cross section widths);

(~~6~~7) Section 10-296(d)(4) (drainage);

(~~7~~8) Section 10-296(d)(11), Table 3 (pavement design);

(~~8~~9) Section 10-296(j) (intersection designs);

(~~9~~10) Section 10-296(k) (cul-de-sacs);

(~~10~~11) Section 10-322 (swale sections);

(~~11~~12) Section 10-329(d)(1)a. (setbacks for water retention/detention excavations);

(~~12~~13) Section 10-329(d)(4) (excavation bank slopes and percent hardening), except that development in the Airport Wildlife Hazard Protection Zone is subject to compliance with section 10-418(5);

(~~13~~14) Section 10-352 (public water);

(~~14~~15) Section 10-353 (public sewer);

(~~15~~16) Section 10-384(c) (water mains);

(~~16~~17) Section 10-415(b) (indigenous native vegetation);

(~~17~~18) Section 10-418(3) (percent hardening and compensatory littorals);

(~~18~~19) Section 10-441 (mass transit facilities);

(~~19~~20) Section 10-416(c) (landscaping of parking and vehicle use areas);

(~~20~~21) Section 10-610 (site design standards and guidelines for commercial developments);

(~~21~~22) Section 10-620(d)(4)a. (requiring full parapet coverage for roofs utilizing less than or equal to 2V:12H pitch);

(~~22~~23) Section 10-716 (piping materials in right-of-way);

(~~23~~24) Sections 10-329(f) and 10-418(4) (restoration of existing bank slopes and littoral designs).

Remainder of section remains unchanged.

ARTICLE III – DESIGN STANDARDS AND REQUIREMENTS

DIVISION 2 – TRANSPORTATION, ROADWAYS, STREETS AND BRIDGES

Sec. 10-291. Required street access.

General requirements for access are as follows:

(1) The development must be designed so as not to create remnants and landlocked areas unless those areas are established as common areas.

(2) All development must abut and have access to a public or private street designed, and constructed or improved, to meet the standards in ~~Section~~ section 10-296. Any development order will contain appropriate conditions requiring all streets to which the project proposes access to be constructed or improved to meet the standards in ~~Section~~ section 10-296. Improvements to off-site streets necessary to provide access to the project must extend, at minimum, from the project's access point to the point at which the street connects to a County or privately maintained street meeting the standards in ~~Section~~ section 10-296. Direct access for all types of development to arterial and collector streets must be in accordance with the intersection separation requirements specified in this chapter.

(3) Residential development of more than five acres and commercial or industrial development of more than ten acres must provide more than one means of ingress or egress for the development. Access points designated for emergency use only may not be used to meet this requirement.

(a) A deviation ~~or variance~~ from the access point (ingress/egress) requirements stated in this subsection ~~must~~ may be obtained in accordance with section 10-104, subject to the following:

1. For county-maintained roadways, the Director of Public Safety and Director of Transportation must render an opinion that the proposed alternative standard will not cause injury or detriment to public safety and welfare.

2. For non-county-maintained roadways, the Director of Public Safety and the Development Services Manager must render an opinion that the proposed alternative standard will not cause injury or detriment to public safety and welfare.

3. Decisions pursuant to this section are discretionary and may not be appealed pursuant to section 34-145(a)., ~~through the public hearing process.~~

4. If a ~~variance or~~ deviation from this section is approved, a notice to all future property owners must be recorded by the developer in the public records. ~~prior to the issuance of a local development order allowing construction of the access to the development.~~ The notice must articulate the emergency access plan and provide information as to where a copy of this plan may be obtained from the developer or developer's successor.

Subsection (4) remains unchanged.

DIVISION 3 – SURFACE WATER MANAGEMENT

Sec. 10-321. General provisions.

(a) *Stormwater system required; design to be in accordance with SFWMD requirements.* A stormwater management system must be provided for the adequate control of stormwater runoff that originates within a development or that flows onto or across the development from adjacent lands. All stormwater management systems must be designed in accordance with South Florida Water Management District (SFWMD) requirements and provide for the attenuation/retention of stormwater from the site. Issuance of a SFWMD permit addressing the requirements set forth in this section will be deemed to establish compliance with this ~~chapter~~ section and review of these projects may be limited to external impacts and wet season water table elevation. Projects granted SFWMD exemptions are subject to review by the County and will follow the criteria and requirements of the SFWMD. For the purposes of stormwater management calculations, the assumed water table must be established by the design engineer

in accordance with sound engineering practice. ~~The Director of Development Review will review the~~ The stormwater management system on all development order projects will be reviewed for compliance with this ~~chapter~~ section and may require substantiation of all calculations and assumptions involved in the design of stormwater management system.

Remainder of section remains unchanged.

Sec. 10-329. Excavations.

Subsections (a) through (c) remain unchanged.

(d) *Standards.* All new excavations for water retention and detention are subject to the following standards:

Subsections (d)(1) through (d)(3) remain unchanged.

(4) *Bank slopes.* Excavation bank slopes for new ~~projects~~ development. The design of shorelines for retention and detention areas must be sinuous rather than straight, as described in Division 6 of this article. The banks of excavations permitted under this section must be sloped at a ratio not greater than six horizontal to one vertical from the top of bank to a water depth of two feet below the dry season water table, except that development in the Airport Wildlife Hazard Protection Zone must comply with section 10-418(5). The slopes must be not greater than two horizontal to one vertical thereafter, except where the ~~Director of~~ Development Services Manager determines that geologic conditions would permit a stable slope at steeper than a two to one ratio. Excavation bank slopes must comply with the shoreline configuration, slope requirements and planting requirements for mimicking natural systems specified in ~~Section~~ section 10-418, except that development in the Airport Wildlife Hazard Protection Zone must comply with section 10-418(5). Placement of backfill to create lake bank slopes is prohibited unless, prior to the issuance of a Certificate of Compliance, the applicant provides signed and sealed test reports from a geotechnical engineer certifying that the embankment was placed and compacted to its full thickness to obtain a minimum of 95 percent of the maximum dry density (modified Proctor) for embankments that will support structures, and 90 percent of maximum dry density (modified Proctor) for other embankments in accordance with ASTM D1557.

An administrative deviation may be requested from the required six to one slope requirement to allow a slope no steeper than four to one. The deviation may be granted if the ~~Director~~ Development Services Manager is satisfied that the enhanced slope protection measures proposed by the applicant will prevent erosion and scouring. Acceptable enhanced slope protection measures include, but are not limited to, use of enhanced

herbaceous plantings in combination with an appropriate geosynthetic turf reinforcement mat or similar shoreline stabilization technique that does not include hardened structures such as those identified in ~~Section~~ section 10-418(3). The design technique used will be determined by the project engineer based upon evaluation of site-specific conditions and the proposed development parameters. The deviation request may be processed under ~~Section~~ section 10-104 or in conjunction with a planned development zoning application. Planted littoral shelves for development in the Airport Wildlife Hazard Protection Zone must comply with section 10-418(5).

Remainder of section remains unchanged.

DIVISION 5 – FIRE SAFETY

Sec. 10-383. Interpretation; conflicting provisions.

Subsections (a) through (c) remain unchanged.

(d) The Board of Adjustments and Appeals holds the jurisdiction to grant variances from the provisions of this division, except as otherwise provided herein. The procedure and criteria applicable to the variance proceedings is set forth in ~~Section~~ section 6-71 et seq. The Development Services ~~Director~~ Manager holds the jurisdiction to grant administrative deviations from water main installation per ~~Section 10-104(15)~~ section 10-104(a) and ~~Subsection~~ subsection (c)(6) of this section.

DIVISION 6 – OPEN SPACE, BUFFERING AND LANDSCAPING

Sec. 10-418. Surface water management systems.

Design standards. Techniques to mimic the function of natural systems in surface water management systems are as follows:

Subsection (1) remains unchanged.

(2) *Planted littoral shelf (PLS).* The following features are considered sufficient to mimic the function of natural systems, improve water quality and provide habitat for a variety of aquatic species, including wading birds and other waterfowl. Planted littoral shelves for development in the Airport Wildlife Hazard Protection Zone must comply with section 10-418(5).

Subsections (a.) through (c.) remain unchanged.

d. *Plant selection.*

Subsections (1.) and (2.) remain unchanged.

3. Native wetland trees may be substituted for up to 25 percent of the total number of herbaceous plants required. One tree (minimum ten-foot height; two-inch caliper, with a four-foot spread) may be substituted for 100 herbaceous plants. Trees must meet the minimum standards set forth in Section 10-420. Development located within the Airport Wildlife Hazard Protection Zone must substitute 100 percent of the required number of herbaceous plants to wetland trees.

Subsections (e.) through (f.) remain unchanged.

(3) Bulkheads, geo-textile tubes, riprap revetments or other similar hardened shoreline structures. Bulkheads, geo-textile tubes, riprap revetments or other similar hardened shoreline structures may comprise up to 20 percent of an individual lake shoreline. These structures cannot be used adjacent to single-family residential uses. Except for development located within the Airport Wildlife Hazard Protection Zone (section 10-418(5)), ~~A~~a compensatory littoral zone equal to the linear footage of the shoreline structure must be provided within the same lake meeting the following criteria:

Subsection (a.) remains unchanged.

b. An equivalent littoral shelf design as approved by the ~~Director~~ Development Services Manager.

(4) *Restoration*. Restoration of existing bank slopes that have eroded over time and no longer meet the minimum littoral design criteria applicable at the time the lakes were excavated will be in accordance with ~~Section~~ section 10-329(f).

(5) Development located within the Airport Wildlife Hazard Protection Zone is subject to the following:

a. All lake bank slopes must be sloped at a ratio not greater than four horizontal to one vertical (4:1) from the top of bank to a water depth of two feet below the dry season water table and provide enhanced slope protection measures to stabilize the lake bank slope in accordance with section 10-329(d)(4).

b. Planted littoral shelves must substitute 100 percent of the herbaceous plants with wetland trees in accordance with section 10-418(2)d.3.

c. Quantity of herbaceous plants must be calculated in accordance with section 10-418(2)d.2.

d. Compensatory littorals are not required for hardened shoreline.

SECTION FOUR: AMENDMENT TO LDC CHAPTER TWENTY-TWO

CHAPTER 22 – HISTORIC PRESERVATION

ARTICLE III – DESIGNATION OF HISTORIC DISTRICTS AND RESOURCES

DIVISION 2 - INCENTIVES

Sec. 22-174. Relief from zoning regulations.

The Department of Community Development director may, by written administrative decision, approve any relief request for designated historic resources or contributing properties to a designated historic district, for matters involving setbacks, lot width, depth, area requirements, land development regulations, height limitations, open space requirements, parking requirements, signs, docks, and other similar relief not related to a change in use of the property in question.

(1) Before granting relief, the Director must find that:

Subsections (a.) and (b.) remain unchanged.

c. The proposed work is designed and arranged on the site in a manner that minimizes aural and visual impact on the adjacent properties while affording the owner a reasonable use of ~~his~~ the land.

d. For parking reductions in addition to the reductions permitted in section 34-2020, the minimum number of required parking spaces is reduced by no more than 20 percent when there is existing public parking not dedicated to a specific public use or a commercial parking lot located within a 1,320-foot radius of the site's external sidewalk connection, and continuous pedestrian accommodations exist or will be required between the off-site parking and the primary entrance of the building or property in question.

Remainder of section remains unchanged.

SECTION FIVE: AMENDMENT TO LDC CHAPTER THIRTY-FOUR

CHAPTER 34 – ZONING

ARTICLE I – IN GENERAL

Sec. 34-2. Definitions.

The following words, terms and phrases, when used in this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Abutting property" through "Access, vehicular" remain unchanged.

Accessory apartment means a living unit, without cooking facilities, which is subordinate and attached to a single-family residence with at least one common adjoining interior door and could be made available for rent or lease.

"Accessory building or structure" through "Group quarters" remain unchanged.

~~*Guest house* means an accessory building located on the same premises as the principal building and used exclusively for housing members of the family occupying the principal building, or other nonpaying guests, is not occupied year-round, can have kitchen facilities, and is not rented or used as a separate dwelling. A guest house must not be occupied by more than one family at any time, and only one guest house is permitted for each main dwelling.~~

"Hardship" through *"Right-of-way line" remain unchanged.*

Roofed means any structure or building with a roof which is intended to be impervious to weather. See *building.*

"Rooming unit" through "Roominghouse" remain unchanged.

Screen enclosure means a structure, in whole or in part self-supporting, with walls and a roof of insect screening intended to provide protection from insects not designed to be impervious to weather.

Remainder of section remains unchanged.

ARTICLE II – ADMINISTRATION

DIVISION 4 – HEARING EXAMINER

Sec. 34-145. Functions and authority.

The Hearing Examiner is limited to the authority that is conferred by the following:

Subsections (a) through (c) remain unchanged.

(d) *Zoning matters.*

(1) *Authority.*

Subsections (a.) through (d.) remain unchanged.

e. The Hearing Examiner has the final decision-making authority on the following matters:

Subsections (1.) and (2.) remain unchanged.

3. Applications for amendments to planned developments when the request is limited to:

i. Amendments to the master concept plan, schedule of uses, or property development regulations that do not ~~affect~~ increase the maximum density ~~or intensity permitted~~ or non-residential floor area in the planned development, except as provided in subsection vi below;

Subsections (ii.) through (iii.) remain unchanged.

iv. Requests for an increase in the maximum number of fuel pumps in conjunction with a convenience food and beverage store or automobile service station provided that the use is already approved in the planned development;

Subsection (v.) remains unchanged.

vi. Requests to establish or increase density within the Mixed Use Overlay~~; and~~.

Subsection (4.) remains unchanged.

5. An applicant or agent applying for a conventional rezoning or an amendment to a planned development in which the Hearing Examiner has the final decision-making authority may request a public hearing before the Board of County Commissioners in accordance with ~~Section~~ section 34-83(a)(1).

Such a request must be made prior to the ~~conclusion of the public hearing before~~ issuance of a final decision by the Hearing Examiner.

Remainder of section remains unchanged.

ARTICLE VII – SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 2 – ACCESSORY USES, BUILDINGS AND STRUCTURES

Sec. 34-1172. ~~Definitions.~~ Reserved.

~~The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Open-mesh screen* means meshed wire or cloth fabric to prevent insects from entering the facility, including the structural members framing the screening material.~~

~~*Roofed* means any structure or building with a roof which is intended to be impervious to weather.~~

Sec. 34-1176. Swimming pools, tennis courts, porches, decks and similar recreational facilities.

Subsection (a) remains unchanged.

(b) *Location and setbacks.*

(1) *Personal, private and limited facilities.*

a. ~~*Nonroofed facilities.*~~ All swimming pools, tennis courts, decks and other similar ~~nonroofed~~ accessory facilities ~~shall~~ must comply with the following setback requirements:

1. Street setbacks, as set forth in ~~Sections~~ sections 34-1174 and 34-2192.

2. Waterbody setbacks, as set forth in ~~Section~~ section 34-2194.

3. Rear lot line setback, as set forth in ~~Section~~ section 34-1174(d).

4. Side lot line setbacks, as set forth in ~~Section~~ section 34-1174(d).

b. ~~*Open-mesh screen enclosures.*~~ *Nonroofed facilities.* Swimming pools, patios, decks and other similar recreational facilities may not exceed 3½ feet above grade, as defined in section 34-2171, unless; ~~it complies with minimum required principal structure setbacks. Decks or patios that comply with accessory structure setbacks may be enclosed with open mesh screen. Enclosures with an opaque material above 3½ feet from grade must meet principal structure setbacks.~~

1. The recreational facility complies with minimum required principal structure setbacks where the property is not located in a special flood hazard area; or

2. The recreational facility is located in a special flood hazard area and is designed and constructed at or below the lowest minimum habitable floor elevation for which a building permit may be issued, provided the facility complies with accessory structure setbacks and a minimum rear lot line setback of 10 feet.

~~It is the responsibility of the applicant to increase all required setbacks sufficient to provide maintenance access around the pool whenever the pool is proposed to be enclosed with open mesh screening or fencing. A minimum increase in setbacks of three feet is recommended.~~

~~c. *Roofed open-mesh enclosures.* Open-mesh screen enclosures may be covered by a solid roof (impervious to weather), provided that:~~

~~1. If structurally part of the principal building, the enclosure shall comply with all setback requirements for the principal building.~~

~~2. Except when in compliance with the setback requirements for principal buildings, a solid roof over a screen enclosure shall be constructed as a flat roof with the pitch no greater than the minimum required for rain runoff.~~

c. *Screen enclosures.* Swimming pools, decks or patios may be enclosed with a screen enclosure, subject to the following requirements:

1. Any screen enclosure with an opaque material above 3½ feet from grade must meet principal structure setbacks;

2. *Roofed screen enclosures.* Roofed screen enclosures must:

i. Comply with all setback requirements for the principal building if structurally part of the principal building, except when constructed as a flat roof with a pitch no greater than the minimum required for rain runoff.

ii. Comply with all setback requirements for accessory structures if not structurally part of the principal building.

(2) *Commercial and public facilities.* All pools, tennis courts and other similar recreational facilities owned or operated as a commercial or public establishment ~~shall~~ must comply with the setback regulations for the zoning district in which located.

(c) *Fencing.*

~~(1) *In-ground swimming pools, hot tubs and spas.* Every swimming pool, hot tub, spa or similar facility shall be enclosed by a fence, wall, screen enclosure or other structure, not less than four feet in height, constructed or installed so as to prevent unauthorized access to the pool by persons not residing on the property. For the purposes of this subsection, the height of the structure shall be measured from the ground level outside of the area so enclosed. The enclosure may be permitted to contain gates, provided they are self closing and self latching.~~

~~(2) *Aboveground swimming pools, hot tubs and spas.* Aboveground pools, hot tubs, spas and similar facilities shall fulfill either the enclosure requirements for in ground pools or shall be so constructed that the lowest entry point (other than a ladder or ramp) is a minimum of four feet above ground level. A ladder or ramp providing access shall be constructed or installed so as to prevent unauthorized use.~~

~~(3) *Exception.* A spa, hot tub or other similar facility which has a solid cover (not a floating blanket) which prevents access to the facility when not in use shall be permitted in lieu of fencing or enclosure requirements.~~

(41) *Tennis courts.* Fences used to enclose tennis courts shall not exceed 12 feet in height above the playing surface.

Remainder of section remains unchanged.

Sec. 34-1177. Accessory apartments and accessory dwelling units.

(a) *Density.*

(1) An accessory apartment is not subject to density provisions of the Lee Plan, except accessory apartments on Gasparilla Island are subject to the provisions of ~~Section~~ section 34-2255.

(2) An accessory dwelling unit is subject to density provisions of the Lee Plan. Density may be calculated using the maximum total (bonus) density of the property's future land use category designation. Accessory dwelling units are presumed to be site-built affordable housing units and must pay applicable impact fees pursuant to Chapter 2.

(3) A maximum of one accessory apartment or one accessory dwelling unit is permitted per principal, single-family residence, except as excluded by section 34-1180(b).

(b) *Development standards.*

(1) *Off-street parking.* In addition to the requirements of ~~Section~~ section 34-2020(a), one additional space is required. All required parking must be provided on the site.

(2) *Maximum ~~floor~~ living area.* The maximum ~~floor~~ living area for the accessory apartment or accessory dwelling unit is ~~50~~ 60 percent of the living area of the principal, single-family residence.

~~(3) *Maximum lot coverage.* The maximum lot coverage permitted for the zoning district in which the property is located may not be exceeded.~~

(3) *Nonliving areas.* Nonliving areas are excluded from accessory apartment or accessory dwelling unit computations (see "living area" section 34-2) provided the overall accessory structure is compliant with this Division.

(4) *Minimum lot size.* The property must be a lawfully existing lot of record ~~that conforms~~ as defined in section 34-3272 or conform to the minimum lot area, width, and depth of the zoning district in which it is located.

Sec. 34-1180. Additional dwelling unit on a lot in Agricultural Districts.

(a) *Applicability.* This section provides the minimum regulations to permit development of an additional conventional single-family residence on the same parcel if the parcel has been zoned in an AG District and the parcel is developed in accordance with the density requirements of the applicable land use classification. Development of accessory apartments and accessory dwelling units, as defined, are subject to section 34-1177.

(b) *Standards.*

(1) Minimum lot area must be twice the required lot area for the zoning district, but in no event less than two acres including easements.

(2) Minimum lot width must be twice the required lot width for the zoning district.

(3) The dwelling units and all accessory buildings and structures must be separated by a minimum of twice the required side yard setback for the zoning district.

(4) No more than two ~~living~~ dwelling units constructed as two freestanding conventional single-family residences are permitted on the same parcel. Accessory apartments constructed in accordance with section 34-1177 are permitted in conjunction with each single-family residence developed in accordance with this provision.

(5) Property owners who have already established or plan to establish a caretaker's residence or accessory dwelling unit may not avail themselves of this provision.

(6) Each dwelling unit and all accessory buildings and structures must be located on the parcel in such a manner that the ~~units~~ parcel could be separated into individual lots and still meet the property development regulations for the zoning district as well as the density requirements for the applicable land use category without first creating a new street easement or right-of-way.

(7) Approval of a Type ~~4~~ E Limited Review Development Order (LDO) under the provisions of Section 10-174(4) will be required in order to obtain a lot split only if the land is subdivided. The property owners will be required to participate in a joint application to obtain the lot split approval subject to the provisions of Section 10-174~~(4)g~~(5). This requirement runs with the land regardless of ownership change.

DIVISION 12 – DENSITY

Sec. 34-1491. Applicability ~~of subdivision~~.

(1) The provisions set forth in this ~~sub~~division apply to any proposed or existing residential development. For the purposes of this ~~sub~~division, the term "residential" does not include hotel/motel density calculations (see Division 19 of this article).

(2) Notwithstanding other applicable regulations, no density calculation is required for hospitals, prisons, jails, boot camps, detention centers, or other similar-type facilities.

Sec. 34-1492. Definitions.

The following words, terms and phrases, when used in this division, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Gross residential acres means the total land area of a residential development as follows:

(1) Land areas to be included are as follows:

a. The area of existing and proposed artificial water bodies within the parcel boundaries;

b. Parks, noncommercial recreational facilities and open space;

c. Schools (noncommercial);

d. Police, fire and emergency services;

e. Sewage, water and drainage facilities;

f. Land proposed to be used for street rights of way or street easements;

g. Land proposed to be used for utility rights of way or easements; and

h. Land used for residential buildings and normal residential accessory uses.

(2) Existing open natural bodies of water may not be included in calculating gross residential acres.

(3) In mixed use developments, any existing or proposed street right of way or street easement, and any utility right of way or easement, must be prorated between the residential and the nonresidential uses.

Gross residential density means the ratio of housing units per gross residential acre.

Total land area means the total area of land, expressed in acres or fractions thereof, contained within the boundary lines of a development.

Sec. ~~34-1493~~ 34-1492. Calculation of total permissible housing units.

The Lee Plan establishes a standard and maximum residential density range permissible for each residential land use category. ~~The procedure set forth in this section must be used to determine the standard residential density as well as the total number of housing units which may be permitted within a development.~~ Density for each residential development will be based on the Lee Plan's definition of Density and the Goals, Objectives, and Policies of the Lee Plan.

(1) *Proposed developments.*

a. *Determination of land area.* The applicant must provide the calculations used in determining the following:

1. Total land area of the proposed development.

~~2. Total gross residential acres.~~

~~3. Gross residential acres less any area classified as wetlands.~~

2. Land area of all future land use categories contained within the proposed development.

3. Land area of non-residential uses, including infrastructure needed to support the non-residential uses.

4. Acres of any area classified as freshwater wetlands, with clarification if they are to be preserved or impacted.

~~5. Acres of any other classified as wetlands (if applicable for density calculations).~~

5. Acres of any area classified as saltwater wetlands.

~~b. *Estimation of total permissible housing units.* The number of permissible housing units is calculated as follows:~~

~~1. *Intensive development, central urban and urban community land use districts.*~~

~~i. Multiply the total gross residential acres less wetland area by the standard density range permitted for the land use category in which the property is located.~~

~~ii. Additional units may be transferred from abutting wetland areas at the same underlying density as is permitted for the uplands, so long as the uplands density does not exceed the maximum standard density plus one-half of the difference between the maximum total density and the maximum standard density as set forth in Table 1(a). Summary of Residential Densities in the Lee Plan.~~

~~2. *Suburban, land use districts.*~~

~~i. Multiply the total gross residential acres less wetland area by the standard density range permitted for the land use category in which the property is located.~~

~~ii. Additional units may be transferred from abutting freshwater wetland areas at the same underlying density as is permitted for the uplands, so long as the maximum uplands density does not exceed the maximum standard density of six units per acre plus two for a total of eight units per acre.~~

~~3. *Outlying suburban land use district.*~~

~~i. Multiply the total gross residential acres less wetland area by the standard density range permitted for the land use category in which the property is located.~~

~~ii. Additional units may be transferred from abutting freshwater wetland areas at the same underlying density as is permitted for the uplands, so long as the maximum uplands density does not exceed the maximum standard density of three units per acre, plus one for a total of four units per acre. Outlying suburban land located north of the Caloosahatchee River and east of Interstate 75, north of Pondella Road and south of Pine Island Road (SR 78), and in the Buckingham area (see Goal 20 of the Lee Plan), the maximum upland density shall be two units per acre plus one for a total of three units per acre.~~

~~c~~b. *Development within the Mixed-Use Overlay.* Prior to issuance of a development order for development, redevelopment, or infill development located within the Mixed-Use Overlay which includes the area of nonresidential uses in the density calculations as permitted by the Lee Plan must prepare and record a restrictive

covenant or other instrument that severs the residential development rights from the nonresidential project area.

c. *Planned developments and PUDs.*

1. In planned developments other than Residential Planned Developments (RPDs), for any existing or proposed infrastructure, such as street rights-of-way or street easements, any utility rights-of-way or easements, or water management areas as well as common areas and amenity tracts (including but not limited to golf courses and similar outdoor recreational facilities) shared between residential and non-residential uses, density shall be prorated in a manner proportionate to the respective land areas of the residential and non-residential uses.

2. In Residential Planned Developments (RPDs) or planned developments within the Mixed Use Overlay, density will be based off of total land area.

(2) *Existing developments and lots.* Due to the problems of computing gross density in the same manner as set forth for new developments, the following procedures must be followed:

a. *Single-family structures.* Any lawfully existing lot of record zoned for residential use will be permitted one single-family residence so long as the lot complies with either the property development regulations for the zoning district in which it is located~~,~~ or the owner receives a favorable ~~single-family residence~~ minimum use determination in accordance with ~~Section~~ section 34-3273.

b. *Two-family attached or duplex structures.* If two or more abutting properties have each qualified for the right to construct a single-family residence, and if the lots or parcels are located in a zoning district ~~which~~ that permits duplex or two-family dwellings, the property owner may combine the lots to build a single duplex or two-family building in lieu of constructing two single-family residences.

c. *Townhouse or multiple-family structures.* Except as limited by the Lee Plan, any legally existing lot of record ~~which~~ that is zoned for townhouse or multiple-family development will be permitted dwelling units as follows:

1. *Developments ~~which~~ that are not planned developments or PUDs.* When reviewing a request for a building permit for a townhouse or multiple-family building which is not part of a

PUD or planned development, the maximum number of permitted dwelling units will be determined by the applicable property development regulations ~~set forth for~~ of the zoning district ~~in which located for the particular type of building proposed~~, Future Land Use Category, or State Statutes, provided that:

i. The maximum number of dwelling units permitted will not exceed the standard density range for the land use category ~~in which located~~; and

ii. The parcel area must be calculated as the gross area of the lot in question~~, plus one-half of any abutting right-of-way or easement~~. When a parcel is adjacent to a platted right-of-way that was platted as part of the same subdivision, one-half of the abutting rights-of-way will be added to the parcel area.

2. *Planned developments and PUDs.* ~~Maximum~~ The maximum density will be as set forth in the approving resolution minus the existing units.

Sec. ~~34-1494~~ 34-1493. Density equivalents.

Subsection (a) remains unchanged.

(b) *Equivalency factors.*

(1) Notwithstanding Section 34-1414(c), no density equivalency calculation is required for a bed and breakfast ~~(df) in an owner-occupied conventional single-family residence (df) 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~~ when the lodging includes four (4) or less rentable spaces without kitchens and exterior entrances that are rentable for a limited time and at least one meal included for each guest each day of the stay. Bed and Breakfasts exceeding four rentable spaces without kitchens will be calculated as four rentable spaces equals one dwelling unit.

~~(2) Notwithstanding Section 34-1414(c), no density calculation is required for hospital, prison, jail, boot camp, detention center, or other similar type facility owned or operated by a County, State or federal agency.~~

(~~3~~2) Where dwelling or living units have lock-off accommodations, density will be calculated as follows:

~~a. Hotels/motels. Lock-off units will be counted as separate rental units regardless of size.~~

~~b.~~a. Timeshare units. Lock-off units will be counted as separate dwelling units whether or not they contain cooking facilities, as follows:

i. Studio units will be counted as 0.1 dwelling units;

ii. One-bedroom units will be counted as 0.25 dwelling units;

iii. Two-bedroom units will be counted as 0.5 dwelling units;

iv. Three-bedroom (or more) units will be counted as a full dwelling unit.

(43) Density. Density equivalents for health care, social service, adult living facilities (ALF), continuing care facilities, or other group quarters ~~(df)~~ not meeting the Community Residential Homes allowances in Florida Statutes Chapter 419 are provided in dwelling unit equivalents:

Subsection (a.) through (b.) remain unchanged.

c. Except as may be specifically set forth elsewhere in this chapter, where health care, social service, adult living facilities (ALF), continuing care facilities (CCF), or other group quarters ~~(df)~~ 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 ~~four~~ six people equals one dwelling unit.

A planned development, for which the 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 an administrative amendment that will be deemed to not increase density and may be approved pursuant to ~~Section~~ section 34-380(b) 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.

~~(c) *Determination of permitted density.* The maximum permitted density shall be determined by multiplying the number of dwelling units permitted (see Subsection (a) of this section) by the appropriate equivalency factor.~~

Secs. ~~34-1495~~34-1494—34-1570. Reserved.

DIVISION 17 – FENCES, WALLS, GATES, AND GATEHOUSES

Sec. 34-1744. Location and height of fences and walls other than residential project fences.

Subsection (a) remains unchanged.

(b) *Height.*

(1) *Determination of height.* Except as set forth in ~~Section~~ section 10-416 for required buffers, fence or wall height will be measured from the existing elevation of the abutting property.

In rear and side yards, the building official has the discretion to allow a deviation of up to ~~four~~ 24 inches in height where required to compensate for variations in grade, drainage, or weed maintenance, provided that the ~~length~~ height of the above-ground structural materials for the fence do not exceed the permitted height, and the fence or wall is not built on top of a berm, retaining wall or similar improvement.

(2) *Maximum height.* Except as provided for in ~~Section~~ section 34-1743(b)(1), the maximum permitted height for fences and walls is as follows:

a. *Residential areas.*

i. A fence or wall located between a street right-of-way or easement and the minimum required street setback line may not exceed three feet in height, ~~except fences~~ with the following exceptions:

1. Fences or walls may be a maximum height of four feet so long as the fence is of open mesh screening and does not interfere with vehicle visibility requirements (see ~~Section~~ section 34-3131) at traffic access points.

2. A fence or wall located along any secondary street right-of-way or easement, as defined in section 34-1174(b)(2), may not exceed six feet in height, provided:

i. The fence or wall is set back 5 feet from the street right-of-way or street easement or outside the width of any other easement, whichever is greater.

ii. The fence or wall complies with vehicle visibility requirements (see section 34-3131).

For the purposes of this section only, the term "open mesh screening" may include vertical picket-type fencing, provided that the minimum space between vertical members must be a minimum of 1½ times the width and thickness of the vertical members or bars. i.e., if the vertical members are two and one-quarter inches wide and three-quarter inch thick (total three inches), then the minimum space between them must be 4½ inches (1.5 times 3.0 equals 4.5). In no case may the space between vertical members or bars be less than 3⅞ inches.

ii. A fence or wall located between a side or rear lot line and the minimum required setback line for accessory buildings is limited to a maximum height of six feet. For the purposes of this section, the side yard will be considered that portion of the lot extending from the minimum required street setback line to the rear lot line.

iii. A fence or wall located within 25 feet of a waterway, as defined in section 26-41, or a natural body of water must be open mesh screening above a height of 3½ feet.

~~b. *Commercial and industrial areas.* A commercial or industrial fence may be a maximum height of eight feet around the perimeter of the project upon a finding by the Development Services Director that the fence does not interfere with vehicle visibility requirements (see Section section 34-3131) at traffic access points.~~

~~e~~b. *Walls and fences along limited access or controlled access streets.* A wall or fence may be placed or maintained along any property line abutting a limited access or controlled access street provided it complies with the same regulations as are set forth for residential project fences in ~~Section~~ section 34-1743.

c. *Commercial and industrial areas.* A commercial or industrial fence may be a maximum height of eight feet around the perimeter of the project upon a finding by the Development Services Manager that the fence does not interfere with vehicle visibility requirements (see ~~Section~~ section 34-3131) at traffic access points.

d. *Agricultural fences.* An open mesh or wire fence for bona fide agricultural uses may be a maximum height of eight feet along any property line in an agricultural district, provided that the fence does

not interfere with vehicle visibility requirements (see ~~Section~~ section 34-3131) at traffic access points.

Sec. 34-1748. Entrance gates and gatehouses.

The following regulations apply to entrance gates or gatehouses that control access to three or more dwelling units or recreational vehicles, or any commercial, industrial or recreational facility:

(~~1~~a.) An entrance gate or gatehouse that will control ~~access~~ entry to property 24 hours a day may be permitted, provided that:

~~a.~~(1) It is not located on a publicly dedicated ~~street or~~ street right-of-way or street easement;

~~b.~~(2) Appropriate evidence of consent is submitted from all property owners who have the right to use the subject road or from a property owner's association with sufficient authority;

~~c.~~(3) If it is to be located within a planned development, it is an approved use in the schedule of uses;

~~d.~~(4) The gate or gatehouse is ~~located~~:

~~1.~~a. ~~A~~ Located a minimum of 100 feet ~~back~~ from the existing or planned intersecting street right-of-way or easement.

~~2.~~b. ~~The gate or gatehouse is d~~Designed in such a manner that a minimum of five vehicles or one vehicle per dwelling unit, whichever is less, can pull safely off the intersecting public or private street while waiting to enter.

~~3.~~c. ~~The development provides~~ Designed with accompanying right turn and left turn auxiliary lanes on the intersecting street at the project entrance. The design of the auxiliary lanes must be approved by the Development Services ~~Director~~ Manager.

~~4.~~d. ~~In a manner that~~ Located where it does not impede or interfere with the normal operation and use of individual driveways or access points.

e. Designed with a paved turn-around on the ingress side of the gate or gatehouse with a turning radius sufficient to accommodate a U-turn for a single unit truck (SU) vehicle as specified in the AASHTO Green Book, current edition.

~~5.~~(5) Where, in the opinion of the ~~Director of~~ Development Services Manager, traffic volumes on the intersecting street are so low that interference with through traffic will be practically nonexistent, the ~~Director~~ Manager may waive or modify the ~~locational~~ requirements set forth in ~~this Subsection (1)d of this~~ section (a)(4). If the intersecting street is County-maintained, then the Director of the County Department of Transportation must concur. The decision to waive or to modify the locational requirements is discretionary and may not be appealed.

~~e. The development provides right turn and left turn auxiliary lanes on the intersecting street at the project entrance. The design of the auxiliary lanes must be approved by the Development Services Director.~~

(~~2~~b.) *Access for emergency vehicles* ~~must be provided~~.

a. Any ~~security~~ entrance gate or similar device that is not manned 24 hours per day must be equipped with an override mechanism acceptable to the local emergency services agencies or an override switch installed in a glass-covered box for the use of emergency vehicles.

b. If an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle if applicable, will be the responsibility of the owner or operator of the gate.

(~~3~~c.) *Extension of fences or walls* ~~to an entrance gate or gatehouse~~. A fence or wall may be extended into ~~the~~ a required setback where it abuts an entrance gate or gatehouse, provided vehicle visibility requirements (see Section 34-3131) are met.

(~~4~~d.) Entrance gates that are installed solely for security purposes for nonresidential uses, and that will remain open during normal working hours, are not subject to the location or emergency access requirements set forth in ~~Subsection (1)c of this section and are not required to be equipped with an override mechanism acceptable to the local emergency services agencies or an override switch installed in a glass-covered box for the use of emergency vehicles~~ section (a)(4) and (b). However, if an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle if applicable, will be the responsibility of the owner or operator of the gate.

~~(5) Turn-arounds. A paved turn-around, having a turning radius sufficient to accommodate a U-turn for a single unit truck (SU) vehicle as specified in the AASHTO Green Book, current edition, must be provided on the ingress side of the gate or gatehouse.~~

DIVISION 19 – HOTELS AND MOTELS

Sec. 34-1802. Property development regulations.

Property development regulations for uses subject to this division are as follows:

Subsections (1) through (3) remain unchanged.

(4) *Rental units permitted.*

Subsection (a) remains unchanged.

b. For developments within conventional zoning districts located within Lee Plan future land use map categories that have maximum standard density limits, rental unit density equivalents are:

Three rental units with 425 square feet or less of total floor area per unit equal one dwelling unit.

Two rental units with a total floor area of 426 to 725 square feet per unit equal one dwelling unit.

Each rental unit with a total floor area exceeding 725 square feet equals one dwelling unit.

Where lock-off accommodations ~~(df)~~ are provided, each keyed room will be calculated as a separate rental unit.

Proposed hotel/motel with more than 200 rental units or that exceed the equivalency factors above when divided by the Lee Plan maximum standard density for the property in question will be permitted only as a planned development.

Lock-off units will be counted as separate rental units regardless of size.

Remainder of section remains unchanged.

DIVISION 26 – PARKING

Sec. 34-2020. Required parking spaces.

All uses are required to provide off-street parking based on the single-use development requirement unless the use is located in a development that qualifies as a multiple-use development, in which case, the minimum required spaces for multiple-use

developments may be used. Use of the multiple-use development minimum parking regulations is optional. Parking for uses not specifically mentioned in this section must meet the minimum parking requirement for the use most similar to that being requested.

Subsections (a) through (d) remain unchanged.

(e) *Parking reduction within the Mixed-Use Overlay and the Boca Grande and Matlacha Historic Districts*. The single-use development parking standard will be multiplied by the factors in Table 34-2020(c) to produce the minimum required off-street parking for properties within the Mixed-Use Overlay or Historic Districts within Boca Grande and Matlacha as described in HD90-05-01 and HD90-10-01. Off-street parking may be provided on the lot it serves or with available spaces within a lot described in Section 34-2015(1) within 1,320 feet of the primary entrance of the building it serves.

Table 34-2020(c). Parking Reductions Within the Mixed-Use Overlay and Historic Districts

	Future Land Use Category		
	Intensive	*Central Urban*	*Urban Community*
Residential uses (Section 34-2020(a))	0.40	0.50	0.60
Nonresidential uses (Section 34-2020(b)) Note (1)	0.50	0.55	0.60

Notes:

(1) In Historic Districts where golf cart travel has been approved by Lee County, a maximum of 50 percent of the minimum required off-street parking for a use may be designated as golf cart spaces at a 1:1 parking space ratio by right.

DIVISION 30 – PROPERTY DEVELOPMENT REGULATIONS

SUBDIVISION III - SETBACKS

Sec. 34-2194. Setbacks from bodies of water.

Subsections (a) through (b) remain unchanged.

(c) *Exceptions.*

Subsection (1) remains unchanged.

(2) *Docks, seawalls and other watercraft landing facilities.* See ~~Section~~ section 34-1863.

(3) *Other accessory structures.* Certain accessory buildings and structures may be permitted closer to a body of water as follows:

Subsection (a.) remains unchanged.

b. *Nonroofed structures and screen enclosures*. Swimming pools, tennis courts, patios, decks and other nonroofed accessory structures or facilities which ~~are not enclosed, except by~~ do not exceed 3 ½ feet above grade as defined in section 34-2171, and are fenced~~,~~ or ~~which are~~ enclosed on at least three sides with ~~open mesh screening~~ a screen enclosure from a height of 3½ feet above grade to the top of the enclosure, ~~shall~~ may be permitted up to but not closer than the greater of:

1. Five feet from a seawalled canal or seawalled natural body of water;

2. Ten feet from a nonseawalled artificial body of water; or

3. 25 feet from a nonseawalled natural body of water~~.~~;

~~whichever is greater.~~Enclosures ~~with any two or more sides~~ enclosed by opaque material ~~shall be required to~~ must comply with the setbacks set forth in ~~Subsections~~ subsections (a) and (b) of this section.

c. Swimming pools, tennis courts, patios, decks and other nonroofed accessory structures or facilities which exceed 3½ feet above grade must comply with the setbacks set forth in subsections (a) and (b) of this section, with the following exception:

1. Facilities located in a special flood hazard area which are designed and constructed at or below the lowest minimum habitable floor elevation for which a building permit may be issued may be located a minimum of 10 feet from an artificial body of water or seawalled natural body of water or 25 feet from a nonseawalled natural body of water.

~~c~~d. *Roofed structures.*

1. Accessory structures with roofs intended to be impervious to weather and which are structurally built as part of the principal structure shall be required to comply with the setbacks set forth in ~~Subsections~~ subsections (a) and (b) of this section.

Remainder of section remains unchanged

ARTICLE VIII – NONCONFORMITIES

DIVISION 4 – NONCONFORMING LOTS

Sec. 34-3272. Lot of record; general development standards.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Lot of record means a lot which conformed to the minimum lot size for the use permitted for that lot in its zoning district at such time that the lot was created, but which lot fails to conform to the minimum lot size requirements which are established by this chapter.

Subsections (1) through (2) remain unchanged.

(3) Lots of record may be developed subject to the following provisions:

a. Except as provided in section 34-3272(3)c, ~~All~~ all other regulations of this chapter must be met.

b. No division of any parcel may be permitted which creates a lot with width, depth or area below the minimum requirements stated in this chapter, provided that abutting lots of record may be combined and redivided to create larger dimension lots as long as such recombination includes all parts of all lots, existing allowable density is not increased, and all setback requirements are met.

~~c. For mobile home or recreational vehicle lots of record, the following will also apply:~~

~~1. All mobile homes, or recreational vehicles, including any attachments, must be placed at least five feet from any body of water or waterway.~~

~~2. All mobile homes, or recreational vehicles, must have a minimum separation of ten feet between units (body to body) and appurtenances thereto. Each unit will be permitted to have eaves which encroach not more than one foot into the ten foot separation.~~

~~3. Sites or lots located within a park may not be reconfigured or reduced in dimension so as to increase the density for which the park was originally created.~~

c. Nonconforming lots of record in one- and two-family residential districts may be developed with any dwelling unit type permitted within the property's designated zoning district provided:

i. The development complies with the Lee Plan; and

ii. Development of the property complies with the regulations established in sections 34-3273(a)(2) and 34-3273(b).

Remainder of section remains unchanged

Sec. 34-3273. Construction of single-family residence.

(a) A single-family residence may be constructed on a nonconforming lot of record that:

(1) Does not comply with the density requirements of the Lee Plan, provided the owner receives a favorable ~~single-family residence~~ minimum use determination in accordance with the Lee Plan.

Such nonconforming lots are exempt from the minimum lot area and minimum lot dimension requirements of this chapter, and it will not be necessary to obtain a variance from those requirements.

(2) ~~Does comply~~ Complies with the density requirements of the Lee Plan, as long as the lot:

a. Was lawfully created prior to June 1962 and the following conditions are met:

i. Lots existing in the AG-2 or AG-3 Zoning District require a minimum width of 75 feet, a minimum depth of 100 feet and a lot area not less than 7,500 square feet.

ii. Lots existing in any other zoning district which permits the construction of a single-family residence require a minimum of 40 feet in width and 75 feet in depth, and a lot area not less than 4,000 square feet.

b. Is part of a plat approved by the Board of County Commissioners and lawfully recorded in the public records of the County after June 1962.

~~(b) The use of a nonconforming lot of record for a residential use other than a single-family dwelling unit is prohibited except in compliance with the lot width, lot depth, lot area, and density requirements for the zoning district.~~

~~(c) Neither a guest house nor servants' quarters is permitted on a single lot of record less than 7,500 square feet in area, or which is occupied by a dwelling unit or units other than one single family residence.~~

(~~d~~b) Minimum setbacks for structures permitted under section 34-3272(3) and ~~Subsection~~ subsection (a)(1) or (2) of this section, are as follows:

(1) Street setbacks must be in accordance with Section 34-2192.

(2) Side setbacks must be ten percent of lot width, or five feet, whichever is greater.

(3) Rear setbacks must be one-fourth of the lot depth but do not need to be greater than 20 feet.

Sec. 34-3274. ~~Placement of mobile home or recreational vehicle on lot.~~ Development of mobile home and recreational vehicle lots of record.

A single-family dwelling unit, mobile home, or ~~a~~ recreational vehicle may be constructed or placed on a lot of record~~, which lot is located~~ within a mobile home or recreational vehicle park~~, as applicable;~~ provided~~, however,~~ that:

(a) ~~the~~ The park was properly zoned or approved by special permit for mobile home or recreational vehicle use, or, in the case of single-family dwelling units, the property's zoning district lists single-family dwelling units as a permitted use; and

(b) ~~provided further, that~~ The minimum requirements, as set forth in this section, were met at the time the lot was created. These requirements are as follows:

(1) For lots of record created prior to ~~the effective date of the County's 1962 Zoning Regulations~~ June 28, 1962:

a. The minimum lot area per unit shall be not less than 1,200 square feet; and

b. There shall be a minimum of ten feet between units.

(2) For lots of record created ~~after the effective date of the County's 1962 Zoning Regulations but prior to the effective date of the County's 1968 Zoning Regulations~~ on or after June 28, 1962 and before June 18, 1968:

a. The minimum lot area per unit shall be not less than 2,800 square feet;

b. The minimum lot width shall be 40 feet; and

c. The minimum setbacks from all lot lines shall be five feet~~, and between units or appurtenances thereto they shall be ten feet~~.

(3) For lots of records created ~~after the effective date of the County's 1968 Zoning Regulations but prior to the effective date of the County's 1973 Zoning Regulations~~ on or after June 19, 1968 and before January 16, 1973:

a. Minimum lot areas shall be:

1. For mobile homes or single-family dwelling units on central sewer: 3,750 square feet;

2. For mobile homes or single-family dwelling units on individual septic systems: 7,500 square feet; and

3. For recreational vehicles: 1,200 square feet.

b. Minimum setbacks for both mobile homes and recreational vehicles shall be:

1. From a street right-of-way: Ten feet;

2. From a rear lot line: Ten feet;

3. From side lot lines: Five feet or a minimum of ten feet between units; and

4. From the park perimeter: 15 feet.

(4) For lots of record created ~~after the effective date of the County's 1973 Zoning Regulations but prior to the effective date of the County's 1978 Zoning Regulations~~ on or after January 17, 1973 and before February 3, 1978:

a. Minimum lot areas shall be:

1. For mobile homes or single-family dwelling units on central sewer: 4,000 square feet; and

2. For recreational vehicles on approved septic systems: 1,200 square feet.

b. Minimum setbacks for ~~both~~—mobile homes, single-family dwelling units, and recreational vehicles shall be:

1. From a street right-of-way: Ten feet;

2. From a rear lot line: Ten feet;

3. From side lot lines: Five feet or a minimum of ten feet between units; and

4. From the park perimeter: 15 feet.

(5) For lots of record created on or after ~~the effective date of the County's 1978 Zoning Regulations but prior to the effective date of the ordinance from which this chapter is derived~~ February 4, 1978 and before April 20, 1994:

a. Minimum lot areas shall be:

1. In the MH-1 District: 7,500 square feet;

2. In the MH-2 District: 5,000 square feet;

3. In the MH-3 District: 21,000 square feet;

4. In the MH-4 District: 40,000 square feet; and

5. In the RV-2 and RV-3 Districts: 2,000 square feet.

b. Minimum setbacks shall be as set forth in the 1978 Zoning Regulations.

(c) For mobile home or recreational vehicle lots of record, the following will also apply:

(1) All mobile homes or recreational vehicles, including any attachments, must be placed at least five feet from any body of water or waterway;

(2) All mobile homes or recreational vehicles must have a minimum separation of ten feet between units (body to body) and appurtenances thereto. Each unit will be permitted to have eaves which encroach not more than one foot into the ten-foot separation; and

(3) Sites or lots located within a park may not be reconfigured or reduced in dimension so as to increase the density for which the park was originally created.

SECTION SIX: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION SEVEN: SEVERABILITY

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION EIGHT: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code. Sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article," or other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

SECTION NINE: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION TEN: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the development order application for such project is complete or the zoning request is found sufficient before the effective date.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Commissioner Greenwell made a motion to adopt the foregoing ordinance, seconded by Commissioner Hamman. The vote was as follows:

Kevin Ruane	Absent
Cecil L Pendergrass	Aye
David Mulicka	Aye
Brian Hamman	Aye
Mike Greenwell	Aye

DULY PASSED AND ADOPTED this 15th day of April, 2025.

ATTEST:
KEVIN C. KARNES
CLERK OF CIRCUIT COURT

BY: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Chair/Vice-Chair

Commissioner Cecil L. Pendergrass, Chairman
Lee County Board of County Commissioners
District 2

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of the County Attorney

BOARD OF COUNTY COMMISSIONERS
SEAL
LEE COUNTY, FLORIDA

FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
CODRS CODING FORM

COUNTY: Lee COUNTY ORDINANCE #: 25-09

(e.g.,93-001)

PRIMARY KEYFIELD DESCRIPTOR: Planning

SECONDARY KEYFIELD DESCRIPTOR: Zoning

OTHER KEYFIELD DESCRIPTOR: _____

ORDINANCE DESCRIPTION: Amend Ch 2, 6, 10, 22, 34

(25 Characters Maximum Including Spaces)

ORDINANCES AMENDED: (List below the ordinances that are amended by this legislation. If more than two, list the most recent two.)

AMENDMENT #1: _____ AMENDMENT #2: _____

ORDINANCES REPEALED: (List below the ordinances that are repealed by this legislation.)

REPEAL #1: _____ ; REPEAL #3: _____

REPEAL #2: _____ ; REPEAL #4: _____

(Others Repealed: List All That Apply): _____

(FOR OFFICE USE ONLY): COUNTY CODE NUMBER: _____

KEYFIELD 1 CODE: _____ KEYFIELD 2 CODE: _____

KEYFIELD 3 CODE: _____

Rev. 09/11/02
CODING

FLORIDA DEPARTMENT of STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

April 18, 2025

Kevin Karnes
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Dear Kevin Karnes:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Lee County Ordinance No. 25-09, which was filed in this office on April 17, 2025.

Sincerely,

Alexandra Leijon
Administrative Code and Register Director

AL/dp

RECEIVED
By Latasha Seth at 8:33 am, Apr 21, 2025