

## **Sec. 9.5. - Board of Zoning Adjustment.**

9.5.A. *Powers and duties.* The Board of Zoning Adjustment (BOZA) established pursuant to chapter 23, Code of Laws and Ordinances of Martin County, Florida, and in existence prior to the effective date of article 9, LDR, shall become the BOZA pursuant to the provisions of this article. Nothing contained herein shall affect the validity of any previous action of the BOZA under chapter 23. The powers and duties of the BOZA include, but are not limited to, the following:

1. To grant variances from the dimensional requirements of the following provisions:
  - a. Article 3, Zoning Districts, Table 3.12.1 Development Standards as to minimum lot area, minimum lot width and maximum height; provided however that pursuant to section 4.5.A.2.c. of the Comprehensive Plan, no variance shall be granted authorizing a height in excess of four stories or 40 feet.
  - b. Article 3, Zoning Districts, Table 3.12.2 Structure Setbacks.
  - c. Article 3, Zoning Districts, division 5, Planned Unit Developments, section 3.242., only as to the encroachment of an existing structure into a required setback.
  - d. Article 3, Zoning Districts, division 7, Category "C" Zoning District Standards as to building site area regulations; front, rear and side yard requirements; required lot area and width; and minimum floor area.
  - e. Article 4, division 1, Wetlands and Shoreline Protection, section 4.3.A.9., and section 4.5.B.4. as to compliance with structure setbacks to protect existing view corridors on adjacent waterfront properties.
  - f. Article 4, division 1, Barrier Island and Sea Turtle Protection, section 4.106.D., setback requirements.
2. To adopt rules of procedure not inconsistent with the provisions of the LDR.
3. To approve eminent domain waivers pursuant to sections 8.5. and 8.6., LDR.
4. To approve variances from the provision of chapter 67, article 10, Noise, General Ordinances, Martin County pursuant to section 67.308, General Ordinances, Martin County Code.

9.5.B. *Membership: appointment, qualifications, terms, and removal.*

1. The BOZA shall be composed of seven members appointed by the Board of County Commissioners. Members shall serve without compensation, but may receive actual and necessary expenses incurred in the performance of their official duties.
2. One member of the BOZA shall be appointed from each county commission district. Prior to the appointment, the member shall have been a registered voter in the district for at least one year. The term of office of the member shall coincide with the term of office of the County Commissioner representing the district from which the member was appointed. The member's term of office shall terminate earlier if the member ceases to be a registered voter in the district from which the member was appointed. In addition, the member may be removed from office at the pleasure of the Board of County Commissioners.
3. Two at-large members of the BOZA shall be appointed on a countywide basis. Prior to their appointment, the members shall have been a registered voter in Martin County

for at least one year. One at large member shall be appointed for a term of one year beginning December 1, 2004. The second at-large member shall be appointed for a term of three years beginning December 1, 2004. Thereafter, all at-large appointments shall be for a term of four years terminating on November 30. The member's term of office shall terminate earlier if the member ceases to be a registered voter in Martin County. In addition, the member may be removed from office at the pleasure of the Board of County Commissioners.

9.5.C. *Officers.*

1. The BOZA shall elect a Chairman and Vice Chairman from among its members at the first regular meeting in December each year to serve a term of one year. The officers shall be eligible for reelection.
2. The Chairman shall preside at all meetings and hearings of the BOZA.
3. In the absence of the Chairman, the Vice Chairman shall preside at the meetings and hearings of the BOZA.
4. In the absence of the Chairman and Vice Chairman, the BOZA shall select one of its members to preside over any scheduled meeting or hearing.
5. The County shall provide a Secretary to record the meetings and prepare the minutes of the BOZA.

9.5.D. *Role of the Growth Management Department.* The Growth Management Department shall serve as the staff to the BOZA.

9.5.E. *Attorney.*

1. The Board of County Commissioners shall designate either: 1) the County Attorney or his designee; or 2) a private attorney who is a member of the Florida Bar to serve as the legal advisor to the BOZA.
2. The private attorney shall be entitled to reasonable compensation as determined by the Board of County Commissioners as well as to reimbursement for actual and necessary expenses incurred in the performance of duties. The private attorney shall serve at the pleasure of the Board of County Commissioners.

9.5.F. *Quorum and necessary vote.*

1. No business shall be transacted by the BOZA without a quorum consisting of four members.
2. All actions of the BOZA require the affirmative vote of a majority of the members present.

9.5.G. *Meetings and hearings.*

1. The BOZA shall meet at least once a month unless there are no variance applications pending. The BOZA may meet at such other times as it deems necessary.
2. Special meetings of the BOZA may be called by the Chairman consistent with the notice requirements of section 9.5.K.6.
3. The BOZA may continue a meeting if all business cannot be completed on that day. The date, time and location of the meeting's resumption shall be stated by the Chair at the time of the continuance.

4. In the event that less than a quorum is present at the beginning of a scheduled meeting, the proceeding shall be rescheduled consistent with the notice requirements of section 9.5.K.6.

9.5.H. *Ex parte communications.* Members of the BOZA shall comply with the provisions of section 1.11 of the Code of Laws and Ordinances regarding ex parte communications when a variance is considered during a quasi-judicial proceeding.

9.5.I. *Voting conflicts.* Members of the BOZA shall comply with the provisions of F.S. § 112.3143, regarding voting conflicts.

9.5.J. *Financial disclosure.* Members of the BOZA shall comply with the provisions of F.S. § 112.3145, regarding financial disclosure.

9.5.K. *Variance procedure.*

1. A variance application shall be filed with the Growth Management Director by the owner of the subject property or other person having a power of attorney from the owner to file the application and to act on behalf of the owner in reference to the variance application.
2. A variance application will be received for processing on any working day.
3. The applicant shall provide a copy of the recorded deed for the subject property, and shall certify any subsequent transfers of interest in the property.
4. The variance application shall be submitted in a form approved by the Growth Management Director and made available to the public. At a minimum, the variance application shall include information which demonstrates that:
  - a. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.
  - b. Literal interpretation of the provisions of article 3 or article 4 would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district.
  - c. The special conditions and circumstances do not result from the actions or inactions of the applicant.
  - d. Granting the variance requested will not confer on the applicant any special privilege that is denied to owners of other lands, structures, or buildings in the same district.

[5. Reserved.]

6. The BOZA shall consider the request for a variance at a public hearing advertised pursuant to the requirements of section 10.6.D. and E., Development Review Procedures, except that the distance requirement for notification by the applicant shall be to all owners of real property located within a distance of 300 feet of the boundaries of the affected property. For parcels which lie outside of or border the primary urban service district, the notification distance shall be increased to 600 feet.

The public hearing may be continued by the BOZA to a fixed date, time and place. After the conclusion of the public hearing, the BOZA shall approve, approve with modifications or deny the request for a variance by resolution which shall constitute the final action of the BOZA.

7. A variance shall not be granted unless the BOZA determines that:
  - a. The requirements of subsection 9.5.K.4 have been met by the applicant for the variance.
  - b. The variance is the minimum variance that will make possible the reasonable use of land, building or structure.
  - c. The granting of the variance will be in harmony with the general purpose and intent of the LDR and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
8. In granting any variance, the BOZA may prescribe appropriate conditions. Violation of such conditions shall result in the variance being deemed null and void.

9.5.L. *Administrative variance procedure.*

1. An administrative variance may be requested to address the encroachment of an existing structure into a required setback, including an encroachment of an existing structure into a required setback within a planned unit development. A request for an administrative variance shall be filed with the Growth Management Director by the owner of the subject property or other person having a power of attorney from the owner to file the application and to act on behalf of the owner in reference to the administrative variance request.
2. A request for an administrative variance will be received for processing on any working day.
3. The applicant shall provide a copy of the recorded deed for the subject property, and shall certify any subsequent transfers of interest in the property.
4. The request for an administrative variance shall be submitted in a form approved by the Growth Management Director and made available to the public. At a minimum, the request for an administrative variance shall include information which demonstrates that:
  - a. The requested variance is less than 12 inches.
  - b. The encroachment relates to an existing structure.
  - c. The circumstances do not result from the actions or inactions of the applicant.
  - d. Granting the variance requested will not confer on the applicant any special privilege that is denied to owners of other lands, structures, or buildings in the same district.
- [5. Reserved.]
6. The County Administrator shall consider the request for an administrative variance and upon completion of the review, issue a written determination approving, approving with modifications or denying the request which shall constitute final action of the County Administrator. An applicant aggrieved by a decision of the County Administrator may file a variance application for consideration by the BOZA pursuant to subsection 9.5.K.
7. An administrative variance shall not be granted unless the County Administrator determines that:
  - a. The requirements of section 9.5.K.4 above have been met by the applicant for the variance.

- b. The variance is the minimum variance that will make possible the reasonable use of land, building or structure.
  - c. The granting of the variance will be in harmony with the general purpose and intent of the LDR and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
8. In granting an administrative variance, the County Administrator may prescribe appropriate conditions. Violation of such conditions shall result in the administrative variance being deemed null and void.

(Ord. No. 612, pt. I, 5-14-2002; Ord. No. 644, pt. 1, 8-10-2004; Ord. No. 818, pt. 7, 3-17-2009; Ord. No. 821, pt. 3, 4-7-2009; Ord. No. 859, pt. 1, 3-16-2010; Ord. No. 904, pt. 1, 1-10-2012; Ord. No. 991, pt. 1, 1-26-2016)