

**CITY OF PUNTA GORDA, FLORIDA
BOARD OF ZONING APPEALS
BYLAWS**

1. CREATION; TERMS OF MEMBERS; CONDITIONS

The City Council shall have a Board of Zoning Appeals consisting of seven (7) members and two (2) alternate members to serve in the absence of a board member (or two (2) members) at a meeting. All members of the Board shall be residents of Punta Gorda and shall serve without compensation but may be reimbursed for such travel, mileage and per diem as may be authorized by the City Council. Appointment shall be made by the City Council on the basis of experience or interest in the fields of land use and zoning and a stated availability to serve on the date(s) required. All appointments after the initial appointments shall be made for a term of three (3) years during which appointees shall serve at the pleasure of the City Council, appointees to be eligible for two (2) additional terms. Appointments to fill vacancies shall be for the remainder of the unexpired terms of office, such members to also be eligible for appointment for two (2) additional terms.

Members who fail to attend three (3) meetings in a twelve month period shall automatically forfeit appointment, and the City Council shall promptly fill each vacancy. Any member with extenuating circumstances shall present same to the City Clerk for consideration by City Council. Members are required to notify the City Clerk's Office in advance of the meeting of any absence. Chairmen shall also be subject to the same rule and shall notify the City Clerk's Office of intended absences from scheduled meetings.

2. OFFICERS

- A. Officers of the Board of Zoning Appeals shall be Chairman and Vice Chairman to be elected from the membership thereof. Officers shall be elected by the Board at their first regularly scheduled meeting in the month of February by a majority vote of those in attendance and shall serve for one (1) year, may be reelected for not more than three (3) consecutive terms or may be replaced by election.
- B. The Board shall have a Recording Secretary, who shall be provided by the City of Punta Gorda, and who shall not be an appointed member of the Board of Zoning Appeals.

3. FUNCTIONS AND DUTIES OF OFFICERS

- A. Chairman: The Chairman shall be the presiding officer at all meetings of the Board of Zoning Appeals. He/she may call special meetings at his/her discretion, sign all documents of the Board and may relinquish the Chair to the Vice Chairman or other specific member at his/her discretion. The Chairman may not make or second motions but shall vote on any and all motions to come before the Board. The Chairman or designee shall also present all recommendations to the City Council.

- B. Vice Chairman: The Vice Chairman shall serve in the absence of the Chairman and, while so serving, shall have all the authority held by the Chairman.
- C. Recording Secretary: A Recording Secretary shall attend all meetings of the Board of Zoning Appeals and shall keep an accurate record of the spirit and intent of statements made. All motions shall be recorded, and an accurate record of all reasons for motions or votes by members of the Board shall be made. The minutes of each such meeting shall be printed and distributed to members of the Board, the City Council and other appropriate persons at an early date. The original of the minutes shall be placed in a binder comprising an accumulating permanent record, such binder to be a part of the official records of the City of Punta Gorda.

4. MEETINGS

Regular meetings of the Board of Zoning Appeals shall be held in the City Council Chambers, 326 West Marion Avenue, Punta Gorda, Florida, at 4:00 p.m., the fourth Tuesday of each month. Special meetings and/or workshops may be held at the call of the Chairman or, in his/her absence, the Vice Chairman. All meetings shall be open to the public. In the event a quorum of the members is not present for a scheduled meeting, such meeting will be rescheduled as soon as possible consistent with notice requirements.

5. DUTIES

The Board of Zoning Appeals shall:

- A. Hear and recommend approval or denial of appeals where any person or persons claim to be aggrieved by any order, requirement, decision, determination or action of the zoning official or his/her designee in the administration, enforcement or interpretation of the zoning regulations.
- B. Recommend to the City Council, upon proper petition, approval or denial of variances from the terms of the zoning regulations as shall not be contrary to the public interest where, in specific cases, owing to special circumstances, a literal enforcement of the zoning regulations would result in unnecessary and undue hardship.

6. APPEALS FROM ADMINISTRATIVE RULINGS

- A. Any person or persons claiming to be aggrieved on account of any ruling by an official charged with enforcing zoning regulations may appeal to the official involved and to the Chairman of the Board of Zoning Appeals. Any such appeal must be filed in writing within thirty (30) days after the act or decision upon which any appeal is made and must specify the grounds thereof.

- B. An appeal from the zoning official's ruling shall stay all proceedings and all work on the premises involved unless such stay shall be deemed to imperil life or property. In such cases, proceedings or work shall not be stayed except by an injunction, which may be granted by the City Council or by the Circuit Court if the same shall theretofore have been refused by the City Council.
- C. Upon receipt of a written appeal, the zoning official shall determine the date, time and place of the hearing thereof and shall give public notice as well as written notice to all parties concerned. The official shall forthwith transmit to the Board of Zoning Appeals all papers or other records upon which the action or decision appealed from was taken. Upon the hearing of an appeal, any party of interest may appear in person, by agent or by attorney. Thereafter, the Board shall determine whether the relief should or should not be granted and an appropriate recommendation shall be made to the City Council.

Upon receipt of the recommendation from the Board of Zoning Appeals, the zoning official shall determine the date, time and place of the final hearing thereof and give public notice as well as written notice to all parties concerned. Again, upon hearing the appeal, any party of interest may appear in person, by agent or by attorney. Thereafter, the City Council may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination made by the City official in the enforcement of any adopted zoning regulation or may make such decision or take such activities as the code compliance official should have made or taken. To that end, the City Council shall have powers of the official from whose decision the appeal is taken.

- (1) Considerations for appeals from the Zoning Official.
 - a. In reaching its decision, the Board of Zoning Appeals shall consider the following criteria as well as any other issues which are pertinent and reasonable:
 - 1. Whether or not the appeal is of a nature properly brought to them for decision, or whether or not there is an established procedure for handling the request other than through the appeal process (i.e. a variance, special exception, etc.).
 - 2. The intent of the regulation in question.
 - 3. The effect the ruling will have when applied generally to the zoning regulations.
 - b. Staff recommendation, the testimony of the appellant, and the testimony of substantially interested parties shall also be considered.

7. VARIANCES FROM TERMS OF THE ZONING REGULATION

- A. Application. Owners of lands or structures or their designated agents may appeal in writing to the Board of Zoning Appeals for variances from the requirements or restrictions of the zoning regulations, except that no appeal for use variance may be considered. Appeals should be submitted through the zoning official, stating specific variances requested. Applications received by the Urban Design Division less than thirty (30) days prior to the meeting date will be set over to the next meeting.
- B. Limitations on Power to Grant Variances:
- (1) Under no circumstances shall the Board of Zoning Appeals recommend, or the City Council grant a variance to permit, a use not generally or by special exception permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of the ordinance in the zoning district. No nonconforming use of neighboring lands, structures or buildings in the same zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance.
 - (2) A variance is authorized only for height, area and size of structures or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited or not permitted shall not be allowed by variance.
 - (3) No special exception to the zoning regulation shall be granted by variance.
- C. Public hearings by Board of Zoning Appeals
Upon receipt of an application for variance, the zoning official shall fix a date, time and place for the hearing thereof and publish notice in a newspaper of general circulation in the City of Punta Gorda, Florida, by one publication at least fifteen (15) days prior to the time set for said hearing. On behalf of the Board of Zoning Appeals, the City Clerk shall prepare and mail notice of such hearing by First Class mail to all owners of record, as determined from the records of the Charlotte County Property Appraiser's Office, of all parcels within 200 feet of the boundary of the property for which the variance is requested at least ten (10) days prior to the date of said hearing. Such notice shall be considered effective when placed in the United States mail, postage prepaid, and failure to receive notice shall not invalidate any variance proceedings. The zoning official shall investigate the conditions pertaining to the particular variance requested and shall submit a written report at the hearing giving the facts involved. The parties of interest may appear at the hearing or by agent or by attorney.
- D. Action by the Board of Zoning Appeals
After hearing the application for variance, together with such other reports of testimony deemed pertinent, the Board of Zoning Appeals may

recommend denial of the appeal or recommend such variance from the terms of the zoning regulations as may meet the conditions hereinafter set forth. Action by the Board of Zoning Appeals shall require the concurring vote of a majority of its members and a recommendation for variance can be made only if all of the following conditions are found to exist:

- (1) That special conditions or circumstances exist which are particular to the size and characteristics of the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district;
- (2) The strict and literal enforcement of the zoning regulations would create an undue hardship as distinguished from a mere inconvenience on the property owners. Physical handicaps or disability of the applicant and other considerations may be considered where relevant to the request.
- (3) That such hardship is not shared generally by other properties in the same zoning district and in the same vicinity.
- (4) The granting of the variance would not be injurious to or incompatible with contiguous uses, the surrounding neighborhood or otherwise detrimental to the public welfare.
- (5) That the variance requested is the minimum modification of the regulation at issue that will afford relief and
- (6) The condition giving rise to the requested variance has not been created by any person presently having an interest in the property and/or the conditions cannot reasonably be corrected or avoided by the applicant.
- (7) The variance requested does not involve any use which is prohibited in the district where the property is located.
- (8) The requested variance is consistent with the City of Punta Gorda Comprehensive Plan.

8. AGENDA

The agenda shall be prepared at least one week prior to the date of the meeting. The order of items on the agenda shall be at the discretion of the Zoning Official, due consideration being given to early consideration of items likely to attract large attendance at the meeting. The Chairman may, for reason(s) stated to all in attendance, vary from the order of the agenda. An item may be added to the agenda only by affirmative vote of a majority of the members present. An agenda item may be removed from the agenda only by a motion to recommend approval or denial. Other items may be removed by majority vote of those present and reasons therefore stated in the record.

9. MEETING PROCEDURE

The Chairman shall call each agenda item and briefly describe, or ask a member of the staff to briefly describe, the proposition before the Board. The proponent or his/her agent will then be asked to present his/her case. The name and address of the proponent or his/her agent shall be entered in the record, as well as a summary of his/her presentation. At the conclusion of the proponent's presentation, the members of the Board and staff shall have the opportunity to question the proponent. Any other supporting testimony will then be called for. Opposition may then be heard with the members of the Board and staff having an opportunity to question any speaker. The proponents will then be given a short summary opportunity. All statements shall be directed to the Board, and cross conversation among those in attendance is prohibited. Questions between opposing parties shall be directed first to the Chairman, who may then ask the proper person to answer, such answer being directed to the Board. At such time that the Board feels that testimony has been sufficiently heard, a motion may be passed by simple majority to terminate testimony, after which the public in attendance may address the Board only with the permission of the Chairman and only to answer a question by a member of the Board. All persons who wish to speak shall first give their names and addresses for the record.

10. MOTIONS

Following closing of testimony, a motion may be made to recommend approval or denial of the proposition to the governing body. A brief statement of reason for the motion should precede the making of the motion. Any stipulations should be listed following the motion to approve. Upon receiving the second, the motion may be discussed and brought to a vote. The Chairman shall not make nor second motions, but he/she has full voice and vote on all issues before the Board for decision.

Vote shall be by voice, by the raising of hands or by roll call, at the discretion of the Chairman. Any member may call for a roll call vote on any issue. Any motion may be tabled or amended. If the Board feels that delaying an action would be in the best interests of the parties involved, the hearing may be continued to a date certain. Such a motion for continuance shall include a reason for the action and shall require a majority vote of those present. The Board may continue a proposition for a period not to exceed two months from the date of first hearing, and one of three actions shall be taken within that period:

- (i) The proposal may be approved,
- (ii) The proposal may be denied or
- (iii) The applicant may be permitted to withdraw the proposal.

In the latter case, the proposal may come before the Board again only by reapplication, publication, etc., as required by ordinance for all such applications.

11. CONTINUANCE BY AN APPLICANT

- A. An applicant may continue his/her own proposal to a date certain for a period not to exceed two months, but for not less than one month, by notifying the applicable department secretary not less than eight days prior

to the date of the hearing, whereupon that item will not be placed upon the agenda.

- B. Any proposal not withdrawn prior to preparation of the agenda (eight days prior to the meeting) may be continued at the applicant's request only by affirmative vote of a majority of the members present at the meeting. In consideration of such a motion to allow continuance, the Board may question the audience as to the number who have been inconvenienced or incurred expense on the presumption that the item would be heard, and the Board may refuse to continue the proposal, may proceed with the hearing and take appropriate action thereon. In any case of continuance, it shall be to a date certain, only one continuance shall be permitted.

12. APPLICANT NOT IN ATTENDANCE

In case an applicant or his/her agent is not in attendance when his/her item is called, that item shall be set over to the end of the agenda. At the time the item is again called, if the applicant is still not represented, the Board may continue his/her case under procedure of Section 11-B or may approve or deny the proposition as it sees fit.

13. QUORUM

A majority of the appointed members shall constitute a quorum for the transaction of business and the conducting of hearings.

14. VOTING REQUIREMENTS; CONFLICT OF INTEREST

No member of the Board of Zoning Appeals who is present at any meeting of the same at which an official decision, ruling or other official act is to be taken or adopted may abstain from voting in regard to any decision, ruling or act, and a vote shall be recorded or counted for each member present except when, with respect to any such member, there is or appears to be a possible conflict of interest. Conflict of interest is defined as any action by the Board that would inure to the member's special private gain or loss or which the member knows would inure to the special private gain or loss of a relative or business associate of the member.

When there is or there appears to be a conflict of interest, the member shall so state for the record shall not vote on the issue. Further, the member shall within 15 days after the vote occurs, disclose the nature of his/her interest as a public record in a memorandum filed with the Recording Secretary, who shall incorporate the memorandum in the minutes.

CITY OF PUNTA GORDA, FLORIDA

By _____
Mayor