

ARTICLE 9
VESTING DETERMINATIONS, NONCONFORMITIES AND VARIANCES

Table of Contents

SECTION 9.01	PURPOSE	9-2
SECTION 9.02	VESTED RIGHTS REVIEW	9-2
9.02.01	-- Statement of Intent.....	9-2
9.02.02	-- Vesting Determination Criteria.....	9-2
9.02.03	-- Vesting Application Procedure and Administrative Review	9-8
9.02.04	-- Vesting Determination Hearing Process and Review Criteria.....	9-10
9.02.05	-- Exemptions from the Vesting Determination Requirements	9-12
9.02.06	-- Effect of a Determination of Vested Rights.....	9-12
SECTION 9.03	NONCONFORMING STRUCTURES, USES, LOTS AND SITE IMPROVEMENTS	9-13
9.03.01	-- Intent	9-13
9.03.02	-- Nonconforming Structures.....	9-13
9.03.03	-- Nonconforming Uses	9-15
9.03.04	-- Discontinued Non-Conforming Uses.....	9-20
9.03.05	-- Nonconforming Lots or Parcels	9-21
9.03.06	-- Nonconforming Site Improvements.....	9-22
9.03.07	-- Findings of Fact Required for Permitting Nonconforming Uses, Structures and Lots.....	9-23
SECTION 9.04	VARIANCES.....	9-23
9.04.01	-- Variances in General.....	9-23
9.04.02	-- Application and Issuance	9-24
9.04.03	-- Issuance Criteria.....	9-26
9.04.04	-- Historical Buildings	9-27
9.04.05	-- Conditions And Limitations On Granting Variances.....	9-27
9.04.06	-- Administrative Variance for the Reduction of Required Setbacks.....	9-27

ARTICLE 9
VESTING DETERMINATIONS, NONCONFORMITIES AND VARIANCES

SECTION 9.01 PURPOSE

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

SECTION 9.02 VESTED RIGHTS REVIEW

9.02.01 -- Statement of Intent. This Section establishes the sole administrative procedures and standards by which a property owner may demonstrate that private property rights have vested against the requirements of the Putnam County Comprehensive Plan and the land use regulations of this Code. A vesting determination is an administrative process whereby the Planning, Zoning and Building Department (“Department”), with the input and assistance of other branches of the County government uses the appropriate criteria, depending on the type of development involved, to determine whether a development has vested to certain property rights that predate the Comprehensive Plan and this Code. When a property owner is able to demonstrate that his proposed development is vested pursuant to these criteria, then the development may be allowed to continue, even though it does not conform to the consistency, concurrency or density requirements of the Comprehensive Plan and this Code.

9.02.02 -- Vesting Determination Criteria. Below are vesting determination criteria for the following development categories: recorded subdivisions, unrecorded subdivisions, Planned Unit Developments, and other development. Unless otherwise expressly limited, whether the development is vested for purposes of concurrency, consistency or simply density shall depend on the factual circumstances of the development and the determination made by the Department or the Board of County Commissioners.

- a. Recorded Subdivisions. The Department shall determine whether recorded subdivisions may be vested for consistency and/or concurrency pursuant to the following:
 1. Recorded subdivisions that were recorded according to the requirements of County Ordinance 83-9 between September 27, 1983 and December 19, 1991, shall be vested to the consistency and concurrency requirements of the Comprehensive Plan, if the street and drainage improvements have been completed in accordance the plans and the time frames approved by the Board of County Commissioners.

2. Recorded Subdivisions existing prior to September 27, 1983, shall be vested to the consistency and concurrency requirements of the Comprehensive Plan, if the following criteria are met:

- (a) Legal access must be provided to each lot. If access is provided by a continuous easement which will serve more than 5 residences, then a special exception must be in place prior to vesting that allows development of more than 5 residences accessed from a single, continuous easement. However, developed lots that existed prior to October 1, 1975, are exempt from the requirements of this subparagraph, and shall be reviewed pursuant to subparagraph (c) below.
- (b) The development has complied or is in the process of complying with the applicable drainage regulations, or else meets the requirements of subparagraph (c) below.
- (c) The sum of the following percentages totals 105 or more:
 - Percentage of lots developed;
 - Percentage of lots in separate ownership; and
 - The percentage of street system meeting standards acceptable to Public Works.

For example, if 20% of the lots are developed, 35% of the lots are in separate ownership, and 50% of the streets meet Public Works standards, then the total is 105. "Lots in Separate Ownership" refers to each buildable lot being owned by a different person or non-contiguous buildable lots owned by the same person. Streets in County maintenance, or in a street improvement or maintenance MSBU or MSTU are assumed to meet Public Works standards. If the total for the subdivision is less than 105, a single lot may still be vested under subparagraph (e).

- (d) If the subdivision violates the density requirements of the future land use designation, then, in addition to the analysis required in paragraph (c), the Department staff must find that either twenty percent (20%) of the individual lots have already been developed, or thirty-five percent (35%) of the lots have been sold into separate ownership. Otherwise, the subdivision shall not be vested. These percentages shall be calculated as follows:
 - (1) The number of lots which have been individually developed with one or more main use structures divided by the total number of lots equals 20% (for example, 8 individual lots have been developed with one or more main use structures within a development plan of 40 lots); or
 - (2) The number of lot owners divided by the total number of lots equals 35%. Owners of more than one contiguous lot shall be counted only once. For example, if there are 14 separate owners, each owning one or more noncontiguous lots within a development plan of 40 lots, then the subdivision may be vested against the future land use density requirements.

(e) A single lot in a recorded subdivision existing prior to September 27, 1983 that cannot obtain a score in excess of 105 under paragraph (c), above, may still be vested if road and drainage improvements have been provided for the lot in compliance with the following:

(1) The street standards are met if a lot has frontage on a street in the County maintenance system; or is being assessed for maintenance through an MSBU or MSTU; or has frontage on a street which was previously approved by Public Works for compliance with construction standards; or has frontage on a street which Public Works determines to be in adequate condition for use by a two-wheel drive automobile in all weather conditions.

(2) The drainage standards are met if a lot is served by a drainage system approved under any previous County drainage regulations; or individually or as part of a subdivision was granted a waiver from the drainage requirement; or Public Works determines drainage problems do not exist in the subdivision.

3. If the subdivision in question violates applicable County land development regulations, then the applicant shall be advised that the subdivision cannot be reviewed for vesting to the Comprehensive Plan.

b. Unrecorded Subdivisions. The Department shall use the following criteria in order to determine whether an unrecorded subdivision can be vested for consistency or concurrency:

1. If the unrecorded subdivision in question violates applicable County land development regulations, then the applicant shall be advised that the subdivision cannot be reviewed for vesting to the Comprehensive Plan .

2. An unrecorded division of a parcel into 4 lots or less that was divided between September 27, 1983 and the effective date of this Code, which were not required to meet the platting and recording requirements of County Ordinance 83-9, shall be vested, if **each** of the following criteria are met:

(a) The lot(s) have been developed or sold as of the effective date of this Code.

(b) Lot or home site dimensions met the existing zoning, Health Department and any other applicable land development regulations in effect at the time the lot or home site was established regarding lot area, width, depth, frontage or setbacks

(c) Legal access has been provided to each lot. If access is provided by a continuous easement that will serve more than 5 residences, then a special exception must be in place prior to the vesting determination that allows development of more than 5 residences to be accessed from a single, continuous easement.

3. A division of a tract of land splitting 40 or more acres into five or more parcels, with no more than four (4) parcels having a size of 9.99 acres or less, between September 27, 1983 and the effective date of this Code, which were not required to meet the platting and recording requirements of Ordinance 83-9, shall be vested, if the following criteria are met:

- (a) A signed sealed survey depicting lot locations was completed, or the County issued a number of construction permits based on complete and accurate information provided by the developer which would establish multiple, legally created home sites.
 - (b) A development plan showing the proposed division of a tract of land containing 40 or more acres was approved by the Board of County Commissioners.
 - (c) Lot or home site dimensions met the existing zoning, Health Department and any other applicable land development regulations in effect at the time the lot or home site was established regarding lot area, width, depth, frontage or setbacks.
 - (d) Legal access has been provided to each lot. If access is provided by a continuous easement that will serve more than 5 residences, then a special exception must be in place prior to the vesting determination that allows development of more than 5 residences to be accessed from a single, continuous easement.
 - (e) Lot(s) have been sold or offered for sale in advertisements or real estate listings, and/or lot(s) have been developed.
 - (f) If no development has occurred and the lots have not been sold or offered for sale, but (1) and (2) below are met, the development plan shall be vested.
 - (1) A signed sealed survey depicting lot locations was completed between February 15, 1988, the effective date of Zoning Ordinance 88-1, and December 19, 1991, at 5:00 p.m., the effective date and time of the Comprehensive Plan.
 - (2) Sections (b), (c) and (d) above are met.
4. Unrecorded subdivisions that existed prior to September 27, 1983, may be vested if, unless otherwise noted, **each** of the following criteria is met:
- (a) 60% of the lots have been developed and 70% of the lots are in separate ownership as of the effective date of this Code.
 - (b) The subdivision is not in violation of any other sections of this Code and met the applicable regulations on the date that the lots or parcels were sold or developed.
 - (c) The subdivision did not require platting and recording according to prior County subdivision regulations.
 - (d) A signed sealed survey or engineered drawing depicting lot locations was completed, or the County issued a number of construction permits based on complete and accurate information provided by the lot developer which would establish multiple, legally created home sites.

- (e) Lot or home site dimensions met existing zoning, Health Department and any other applicable land development regulations in effect at the time the lot or home site was established regarding lot area, width, depth, frontage or setbacks.
 - (f) Legal access has been provided to each lot. If access is provided by a continuous easement that will serve more than 5 residences, then a special exception must be in place prior to the vesting determination that allows development of more than 5 residences to be accessed from a single, continuous easement. This subparagraph does not apply to the following:
 - (1) Unrecorded subdivisions existing prior to October 1, 1975, the effective date of the 1975 Zoning Ordinance.
 - (2) Unrecorded subdivisions established between the effective dates of the 1975 Zoning Ordinance (Oct. 1, 1975) and the 1983 Subdivision Ordinance (Sept. 27, 1983) will be deemed to have access by private streets rather than an unimproved easement, if the subdivision has improved streets which the Public Works Department can confirm are adequate for use by a two-wheel drive automobile in any kind of weather.
 - (g) The development has complied or is in the process of complying with the applicable drainage regulations.
 - (h) Streets are improved to adequate standards. The following are considered adequate standards: a street is in the County maintenance system; or a street is being maintained through an MSBU or MSTU; or a street was previously approved by Public Works for compliance with construction standards; or Public Works determines a street to be in adequate condition for use by a two-wheel drive automobile in all weather conditions.
5. Unrecorded Replats. Unrecorded replats of subdivisions in which property owners have further divided or reconfigured established lots are prohibited, unless it is done in compliance with the requirements of this Code. However, some replats done prior to this Code and in violation of the prior County Ordinance were issued building permits by the County or sold into separate ownership. Thus, the Department may vest residential lots divided or reconfigured on or before March 26, 1996, provided the lots comply with applicable land development regulations at the time they were replatted, such as zoning requirements and Department of Health septic regulations regarding lot size, and provided that they are not re-subdivisions done after the effective date of the 83-9 Subdivision Regulations which result in the creation of 5 or more new lots.
- c. Planned Unit Developments. The Department shall use the following criteria in order to determine whether a Planned Unit Development (PUD) may be vested for consistency or concurrency:
- 1. PUDs with established expiration dates are vested if the development has been initiated and is proceeding in good faith, or the expiration date has not been reached.

2. PUDs without expiration dates. Any PUD approved without an expiration date, may be vested if development was initiated on or before the effective date of this Code. If development was not initiated by this date, the County may take action to process a rezoning on the property to an appropriate category.
- d. Other Development. For other development, not specifically listed above, the following determination criteria may be applied:
1. An ongoing development of regional impact (DRI) or other development may be vested to the type, density and intensity provisions of the Comprehensive Plan if the development is consistent with either (a) or (b) below.
 - (a) The development was authorized under Chapter 380, Florida Statutes, or has been issued a final local development, and the development has proceeded in good faith; or
 - (b) Development rights should be vested based on the principals of common law equitable estoppel, which involves a four-part test:
 - (1) There was an act or omission by the County; and
 - (2) The property owner relied on that act or omission in good faith; and
 - (3) The property owner has made a substantial change in position based on such good faith reliance so that it would be inequitable and unjust not to vest the development; and
 - (4) The development has commenced and continues in good faith.
 2. An unexpired site plan approval with a rezoning, special exception, or variance for all phases indicated on the site plan may be vested.
 3. A structure which has been completed and the certificate of occupancy has been issued or other required final inspection has been completed may be vested.
 4. All active and valid building permits issued and technically complete applications received for processing prior to 5:00 p.m. on December 19, 1991, the effective date and time of the Comprehensive Plan. Where an extension of such a permit is sought after the effective date of this Code, the Department may require the property owner submit a formal application for a vesting determination, which shall be subject to all applicable review criteria set forth in paragraphs a through d.3, above.
 5. A development that has commenced and continues in good faith in accordance with the terms of a development agreement or final development order issued and agreed to by the County may be considered vested.
 6. Construction of public transportation, potable water, sanitary sewer, solid waste, drainage, roads, and/or recreational facilities which serve the general public or any development determined by the Board of County Commissioners as providing for

public health, safety or welfare may be vested to the concurrency requirements of the Comprehensive Plan.

7. Accessory structures to established principal land uses, provided the principal land use is in place and functional, may be vested to the concurrency requirements of the Comprehensive Plan.

9.02.03 -- Vesting Application Procedure and Administrative Review: A person may apply for a determination of the existence of vested private property rights pursuant to the following process:

- a. **Application Requirements:** All development not exempt from the application requirement as provided in paragraph 9.02.05, below, and for which a vesting determination is desired, shall comply with the following application requirements:
 1. Any person that seeks a vesting determination must first submit a completed application to the Department and pay the application fee as established by resolution of the Board of County Commissioners.
 2. The application form shall be available upon request from the Department. In order for the Department to commence an administrative review of a request for vesting, the application shall be complete, setting forth the following information:
 - (a) The name, address and **notarized** signature of each owner of the property;
 - (b) If applicable, the name and address of each individual who shall be an agent authorized by affidavit to apply on behalf of the owner(s) (original affidavits must be provided; copies are unacceptable);
 - (c) In addition to the required information in paragraphs (a) and (b), the County Planner may require the following:
 - (1) A legal description and survey of the property that is the subject of the application;
 - (2) A copy of approved and unexpired final development orders, which may include a final site plan, final subdivision plat, or building plan;
 - (3) Identification by specific reference to any ordinance, resolution, or other action of the County, or failure by the County to act, upon which the applicant relied and which the applicant believes to support the owner's vested rights claim.
 - (4) A statement of facts which the applicant intends to prove in support of the application; and
 - (5) Such other relevant information that the County Planner may request.
- b. **Administrative Review.** Administrative review is a two-stage process. First, the application is reviewed to determine whether all required information has been submitted. Second,

upon receipt of a complete application, the matter is reviewed to determine whether the property or development is vested.

1. **Completeness Review:** The County Planner shall make a determination as to whether or not the application is complete. If not complete, the application shall be returned to the applicant with a written notification of the items that are absent or insufficient. If the applicant fails to resubmit his application within thirty (30) days, the application fee shall be returned to the applicant and the file closed. An applicant shall be required to submit a new application and fee payment once the thirty-day deadline for re-submittal has passed.
2. **Administrative Vesting Review:** Using the criteria set forth in subsection 9.02.02, within forty-five (45) days of the County Planner's determination that an application is complete, Planning, Zoning and Building staff shall provide the applicant with a written report setting forth the decision of approval, approval with conditions or denial, which shall include any findings and analysis used to come to the decision and any conditions of approval.
 - (a) **Approval without Conditions.** An unconditional administrative determination to grant vested status shall be final and not subject to appeal to the Zoning Board of Adjustment or the Board of County Commissioner, nor can it be revoked or modified, unless such approval was based on erroneous or false facts or information provided by the applicant or his representatives.
 - (b) **Approval with Conditions.** An applicant may choose to accept a conditional approval, in which case the decision shall not be final in accordance with paragraph (a) above; or the applicant may choose to participate in the hearing process set forth subsection 9.02.04. The written determination shall advise of the opportunity to a formal hearing. Notice of the determination must be provided to all property owners in the development subject to the determination. Should the applicant or any property owner choose to participate in the hearing process, both the administrative approval and the conditions shall be subject to review. The applicant or other property owner shall notify the Department in writing within 30 days from the date of the conditional approval of their intent to seek a hearing.
 - (c) **Denial.** If the application is denied, in addition to the basis for the denial, the report will include information advising the applicant of some of the potential development options that meet current regulations and the opportunity to request a formal hearing. An applicant may choose to develop the property in accordance with current regulations, or elect to participate in the hearing process described in subsection 9.02.04, below. Notice of the determination must be provided to all property owners in the development subject to the determination. If the applicant or other property owner chooses to participate in the hearing process, the applicant shall notify the Department in writing within 30 days from the date of the written denial.
3. The administrative determination is subject to the limitations and effects described in subsection 9.02.06.

9.02.04 -- Vesting Determination Hearing Process and Review Criteria.

- a. The Hearing Process. If the application for a vesting determination is denied or approved with conditions after an administrative review under 9.02.03.b, then the property owner, owner's representative, someone with interest in the property, or the County Planner may seek a hearing before the Board of County Commissioners at a regularly scheduled Board meeting in order to have the Board determine whether the property at issue may be vested with or without conditions. The request for a hearing shall be made in writing within thirty (30) days from the date of the administrative denial or conditional approval, and the hearing shall move forward pursuant to the procedure established in subparagraphs 1 through 3 below. Failure to submit a timely request for a hearing shall be treated as acceptance of the administrative determination, and future development of the property affected shall be treated accordingly.
1. Within sixty (60) days from the date of receipt of the request for a hearing under 9.02.04.a, the County Planner shall schedule a pre-hearing reviews, first, with the Development Review Committee, which shall make a recommendation as required by section 11.02.03, and second, with the Planning Commission, which shall make its recommendation as required by section 11.04.02.i.
 2. The pre-hearing reviews shall be conducted during the regularly scheduled meetings of the Development Review Committee and the Planning Commission.
 3. The final determination shall be made by the Board of County Commissioners at the next regularly scheduled meeting date that follows the Planning Commission pre-hearing review.
- b. Review Criteria. At the hearing before the Board of County Commissioners shall consider, at a minimum, the following documentation:
- The staff report developed as a result of the administrative determination under section 9.02.03.
 - The Development Review Committee report which shall be issued in a pre-hearing review process required in paragraph a, above; and
 - The Planning Commission report which shall also be issued in a pre-hearing review process required in paragraph a, above.

Vesting recommendations and determinations under this hearing process shall be guided by the Comprehensive Plan, this Code (including the applicable review criteria in subsection 9.02.02), established case law and state statutes, as well as the following review criteria:

1. Whether there is any evidence of public investment in street and drainage improvements, investment in utility lines, County expenditures for maintenance of the streets and drainage systems, property owner assessments for infrastructure improvements through MSTUs and MSBUs, developer investment in the planning and provision of basic infrastructure, and individuals' investment in lot purchase and development.

2. For developments of regional impact (DRIs) approved under Chapter 380, Florida Statutes, pursuant to Section 163.3167(8), Florida Statutes, or other development projects, which have not been abandoned, the Board shall consider the following:
 - (a) Whether the development has been authorized as a development of regional impact pursuant to Chapter 380, Florida Statutes, or has been issued a final local development order and development has commenced and is continuing in good faith; and
 - (b) Whether the applicant demonstrates each of the following by a preponderance of evidence:
 - (1) Property owner's reliance upon some act or omission of the County;
 - (2) The property owner reliance is in good faith;
 - (3) The property owner has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights acquired; and
 - (4) The development has commenced and is continuing in good faith.
- c. The Board of County Commissioners determination shall be final for purposes of appeal, and any approval of vested rights pursuant to this hearing process shall be subject to the applicable limitations and effects described in subsection 9.02.06, below.
- d. A Board of County Commissioner's determination to deny the requested vesting may be appealed to the Circuit Court. If the applicant files a timely and appropriate appeal, either the appellant or the appellee may seek to resolve the matter through a non-binding mediation in accordance with procedures for court-ordered mediation under section 44.102, Florida Statutes. The costs of the mediation shall be borne equally by the parties. However, any mediated settlement is subject to express approval by all property owners affected by the original determination.

9.02.05 -- Exemptions from the Vesting Determination Requirements: This subsection recognizes certain vested rights that shall be exempt from the general requirement that petitioners file an application for a vesting determination.

- a. The following may be vested for the purposes of consistency and concurrency as specified in the Comprehensive Plan without additional review:
 1. All lots within subdivisions placed on the list of vested subdivisions maintained by the County Planner. This list includes subdivisions found vested by the Board of County Commissioners beginning in 1992, either by their action or by administrative staff applying the Board's approved criteria for vesting determinations. All conditions of previous vesting remain in effect. Subdivisions found vested under this Code will be added to the list.

2. Any structure on which construction has been completed and a certificate of occupancy issued, if a certificate of occupancy was required at time of permitting.
- b. A legally created parcel of land existing on December 19, 1991 at 5:00 p.m., the date and time of Plan adoption, **that is not part of a subdivision plan** subject to a vesting determination and does not meet the minimum lot area requirement of the applicable land use designation, may be developed with a maximum of one residential dwelling unit. Such a parcel is exempt from the density provisions of the plan only, and all other provisions of the plan apply. The term "legally created parcels" as used herein means parcels that complied with applicable zoning requirements, if any, in effect when the parcel was created.

9.02.06 -- Effect of a Determination of Vested Rights

- a. If vested rights were determined based on the possession of a final development order or other unexpired County action, vested rights will expire with expiration of that final development order or action.
- b. Any vested rights determination shall not create vested rights for additional phases or additional development not expressly authorized by a final development order.
- c. All development subject to a vested rights determination shall not deviate from the terms or conditions of the development orders or actions upon which the approval of the vested rights was based. Vested status may be revoked if the Department determines there has been a substantial deviation.
- d. A decision to grant or deny vested status shall run with the land and is therefore transferable from owner to owner of the land.
- e. Where vested with limitations or conditions, the Department shall advise the applicant of the limitations or conditions and cause them to be placed in the public records in such a manner that all impacted property owners and prospective purchasers are aware that the affected property is vested with limitations or conditions.
- f. A decision to grant vested status is limited to type of use, intensity of use, density of use, concurrency or whatever the case may be, and the development is still subject to any other applicable local, state, or federal regulations.
- g. Upon a final decision to deny vested status, the Department shall advise the applicant of the denial and cause such denial to be placed in the public records in such a manner that all impacted property owners and prospective purchasers are aware that the affected property is not vested.

SECTION 9.03 NONCONFORMING STRUCTURES, USES, LOTS AND SITE IMPROVEMENTS

9.03.01 -- Intent. The main problems encountered by the County in dealing with nonconformities have been ending undesirable activities, and delays in the renovations, expansions or modifications of nonconforming uses and structures which are, or can be made, compatible with the surrounding area. Thus, it is the intent of this Section to evaluate the

nonconformities on the basis of their overall impact on surrounding land uses and regulate them accordingly. The nonconformities fall into four broad categories: (1) nonconforming structures, (2) nonconforming uses, (3) nonconforming lots and parcels, and (4) nonconforming site improvements. Each such nonconformity shall be reviewed to determine whether damage, destruction, proposed alterations or the discontinued use of land, a structure, or land and structure in combination requires that the nonconformity be eliminated or improved in accordance with the intent, criteria and procedures of this Section.

9.03.02 -- Nonconforming Structures.

- a. **Applicability:** The nonconforming structures regulated by this subsection are allowed by the zoning in which they are located and are used for an activity allowed by the zoning in which they are located. Nonconforming structures that are not allowed by the zoning in which they are located, or that are used in conjunction with an activity that is not allowed by the zoning in which the structures are located, are considered nonconforming uses and are regulated in Section 9.03.03. This subsection deals specifically with structures that do not conform to the following:
 1. Dimensional requirements of zoning such as setbacks, height, floor area ratio, or impervious surface area ratio; or
 2. Construction standards applying to the use of the structure, or to the area in which the structure is located such as a flood hazard area.
- b. **Defined.** A nonconforming structure is any structure which was lawfully erected and maintained within Putnam County prior to the effective date of this Code and any amendments thereto, but which is now prohibited by or does not conform to the requirements of this Code.
- c. **Improvements to Nonconforming Structures.** Subject to the findings of fact required under subsection 9.03.07, the applicable building codes and permitting requirements, and other pertinent requirements of this Code, improvements to an existing nonconforming structure are regulated as follows:
 1. **Add area to the structure -** Improvements which add area to an existing non-conforming structure, are allowed provided such improvement does not extend further into a required setback than the existing structure, and does not violate maximum height standards, the impervious surface area, or floor area ratio requirements of the zoning on the property.
 2. **Enclosures.** Enclosure of a previously unenclosed space (patio, deck, porch, carport) attached to an existing non-conforming structure, is allowed provided such enclosure does not extend further into a required setback than the existing structure, and does not violate height standards, impervious surface area, or floor area ratio requirements of the zoning on the property.
 3. **Maintenance, Repair or Renovation.** Structures may be maintained, renovated, and repaired with only the following limitation:

Nonconforming structures shall be made to comply with this Code when damage or deterioration of a structure exceeds fifty (50) percent of the value of the structure immediately prior to the time of damage or deterioration. The value of the structure and whether the damage or deterioration exceeds fifty (50) percent shall be determined by the County Planner based on substantial competent evidence, which may include, but not necessarily be limited to the Property Appraiser's assessment of the structure.

4. New accessory uses and structures that serve a nonconforming structure may be allowed if they are otherwise in conformance with the Code, unless the accessory use or structure creates additional impervious surface or floor area on a site where these standards are already exceeded.
 5. Construction Standards. A structure, which is nonconforming due to not meeting the construction standards required for the structure, or use in conjunction with the structure, may be renovated, repaired, expanded or altered in compliance with this code, but is subject to a determination by the Building Official as to the applicable building code standards.
 6. Signs. Nonconforming signs are regulated in County's sign regulations.
 7. Article 6 of this Code regulates improvement or expansion of structures in a flood hazard area.
- d. Historical Structures. If necessary to preserve the historic nature of a structure listed on the Local Register (or identified as contributing to a listed district) or prevent demolition of the historic structure, the Zoning Board of Adjustment may allow repairs, maintenance, remodeling or alterations beyond the limitations of paragraph c, subject only to applicable building codes and health, safety and welfare concerns, in order to permit nonconforming use of the historic structure or the rehabilitation of an otherwise non-conforming historic structure.

9.03.03 -- Nonconforming Uses.

- a. Defined. Nonconforming use means a use of land, a structure, or a combination of land and structure that was lawful prior to the adoption of this Code or amendments thereto, but which fails to fall within the list of allowed uses in the applicable zoning district or overlay zoning under this Code. Due to the wide variety of these nonconformities, this Code has created the following two classes of nonconforming uses:
 1. Class I nonconformity: A Class I nonconformity is a use or structure that is not specifically incompatible with surrounding uses. A Class I nonconforming use or structure is typically allowed in the district in which it is located by special exception, but does not have one. A Class I nonconformity may also be a use or structure that is not specifically allowed in the district in which it is located, but by its nature is not incompatible with the surrounding land uses. A Class I nonconformity does not generate significant amounts of additional traffic, noise, odor, fumes or in any other way adversely impact public health and safety over what is generally allowed in the zoning district.

2. Class II nonconformity: By their nature, Class II nonconformities are incompatible with the surrounding land uses through impacts which include, but are not limited to, the generation of significant increased traffic, noise, odor, fumes, or adverse impacts to public health and safety.
- b. Nonconforming Use Determination. For purposes of this Section, all nonconforming uses shall be presumed to be Class II, unless the County Planner or Zoning Board of Adjustment determines, based on competent substantial evidence that a Class I designation is more appropriate. A property owner may attempt to overcome the Class II presumption by requesting a determination from the County Planner or Zoning Board of Adjustment, that a nonconforming use is a Class I nonconformity. The request will be processed as follows:
1. The property owner must submit his request for a nonconforming use determination in writing and pay a fee in the amount established by resolution of the Board of County Commissioners. In requesting a Class I designation, the property owner may submit any documentary evidence or written explanation that supports a Class I designation.
 2. Any use that is not permitted by special exception in the zoning district in which it is located shall be sent by the County Planner to the Zoning Board of Adjustment. The County Planner may determine that a use allowed by Special Exception in the district in which the use is located should also be heard by the Zoning Board of Adjustment due to its incompatibility with surrounding uses.
 3. The County Planner will notify adjacent property owners on determinations to be made by staff. Notification will be provided at least ten (10) days prior to any determination. All determinations that go to the Zoning Board of Adjustment will follow the normal public hearing process, outlined in Article II, Zoning Ordinance 88-1, as amended.
 4. The County Planner shall review the request, analyze any relevant factual evidence submitted, and issue a written determination indicating whether the requested Class I designation has been granted. The written determination shall include findings of fact that support the County Planner's . The decision only determines whether the conformity is to be treated as a Class I or II, and not whether any proposed action is appropriate. A determination of the County Planner may be appealed to the Zoning Board of Adjustment, which shall follow the procedures for appeals of administrative decisions provided in Zoning Ordinance 88-1, as amended.
- c. Class I Nonconformities: Subject to the findings of fact required under s. 9.03.07, changes and improvements to Class I nonconformities must comply with the following:
1. All determinations that go to the Zoning Board of Adjustment will follow the normal public hearing process outlined in Zoning Ordinance 88-1, as amended and shall apply the following criteria in determining whether to authorize the proposed activity:
 - (a) The overall negative impact of the nonconformity on the surrounding properties is reduced as a result of the proposed activity; and
 - (b) The proposed activity will not have an impact which is harmful to the health, safety or welfare of adjacent residential uses; and

- (c) The proposed activity will not have an adverse health, safety, welfare, or economic impact on the surrounding neighborhood, other land uses, or the general public.
- 2. Subject to the criteria in paragraph 1 above, the Zoning Board of Adjustment may allow an applicant to: expand a nonconforming use of land; add accessory uses or structures; add area to a structure associated with a nonconforming use; or allow a change in use to another nonconforming use.
- 3. Subject to paragraph 4 below, repair, maintenance and renovation are allowed as follows:
 - (a) Except for historical structures or structures within an historical district that are governed by section 4.04 of this Code, general repair, maintenance and renovation of items that do not require a permit are allowed without restriction, including the following items: painting, replacing windows and doors, replacing carpet or other flooring, repairing stair railings, guardrails, replacing shingles or other roof surfaces, repairing interior non load bearing walls or repairing siding.
 - (b) Repair, maintenance, and renovation of a structure requiring permits (building, plumbing, electrical, or mechanical): No more than 15% of the assessed value of the structure may be done in any calendar year.
- 4. When damage or deterioration of a Class I nonconforming structure exceeds 50% of the value of the structure immediately prior to the time of damage or deterioration, the nonconforming use associated with the structure shall be eliminated. The value of the structure and whether the damage or deterioration exceeds 50% shall be determined by the County Planner based on substantial competent evidence, which may include, but not necessarily limited to the Property Appraiser's assessment.
- 5. There may be a change of tenant, ownership or management of a nonconforming use provided there is no unauthorized change in the nature or character of such nonconforming use.
- 6. The installation of new signs, or the replacement of existing, signs on parcels with a nonconforming use, is allowed regardless of which zoning district within which it is located, provided the following requirements are met:
 - (a) All new or replacement signs must conform to the requirements of the County's sign regulations applicable to the least intensive zoning district that would normally allow the nonconforming use; and
 - (b) All existing nonconforming signs are removed.
- 7. Discontinuance of a nonconforming use is provided for in s. 9.03.04.
- d. Class II Nonconformities: Subject to the findings of fact required under s. 9.03.07, changes and improvements to Class II nonconformities must comply with the following:

1. Expansion of a nonconforming use of land, addition of accessory uses or structures, or addition of area to a structure associated with a nonconforming use is not allowed. For the purposes of this determination, an increase in intensity will be considered an expansion of use.
2. Change in nonconforming use. The Zoning Board of Adjustment may allow a change in use to another nonconforming use pursuant to the procedures and criteria in paragraph 3 below.
3. The Zoning Board of Adjustment shall follow the normal public hearing process outlined in Zoning Ordinance 88-1, and shall apply the following criteria in determining whether to authorize the activity:
 - (a) The overall negative impact of the nonconformity on the surrounding properties is reduced as a result of the proposed activity; and
 - (b) The proposed activity will not have an impact which is harmful to the health, safety or welfare of adjacent residential uses; and
 - (c) The proposed activity will not have an adverse health, safety, welfare, or economic impact on the surrounding neighborhood, other land uses, or the general public.
4. Subject to paragraph 5 below, repair, maintenance and renovation are allowed as follows:
 - (a) Except for historical structures or structures within an historical district that are governed by section 4.04 of this Code, general repair, maintenance and renovation of items that do not require permits are allowed without restriction, including the following items: painting, replacing windows and doors, replacing carpet or other flooring, repairing stair railings, guardrails, replacing shingles or other roof surfaces, repairing interior non load bearing walls or repairing siding.
 - (b) Repair, maintenance, and renovation of a structure requiring permits (building, plumbing, electrical, or mechanical): No more than 10% of the value of the structure may be done in any calendar year, and not more than 25% in a ten year period. The ten-year period will run from the date of the first building permit. New ten-year periods will run consecutively. If a permit is taken out in a subsequent year, but is either directly related to another recent permit or an active permit, these shall be considered one for the purposes of this ordinance. The value to be used will be the value of the structure at the time of the first permit. The value of the structure and the repairs shall be determined by the County Planner based on substantial competent evidence, which may include, but not necessarily limited to the Property Appraiser's assessment.
5. When damage or deterioration of a Class II nonconformity exceeds 35% of the value of the structure immediately prior to the time of damage or deterioration, the nonconforming use associated with the structure shall be eliminated. The value of the structure and whether the damage or deterioration exceeds 35% shall be determined by

the County Planner based on substantial competent evidence, which may include, but not necessarily be limited to the Property Appraiser's assessment.

6. There may be a change of tenant, ownership or management of a nonconforming use provided there is no unauthorized change in the nature or character of such nonconforming use.
7. The installation of new signs, or the replacement of existing signs on parcels with a nonconforming use is allowed, regardless of which zoning district within which it is located, provided the following requirements are met:
 - (a) All new or replacement signs must conform to the requirements of the County's sign regulations applicable to the least intensive zoning district which would normally allow the nonconforming use; and
 - (b) All existing nonconforming signs are removed.
6. Discontinuance of a nonconforming use is provided for in s. 9.03.04.
- e. Mobile Home Parks. In addition to the requirements pertaining to Class I and Class II nonconformities the following shall apply:
 1. In mobile home parks that were rezoned to RMH by the Board of County Commissioners, without meeting the site development requirements for RMH zoning, and where the rezoning included a site plan showing the number and location of lots, move-on permits may be issued for existing lots, subject to the setback requirements listed below. However, if such a mobile home park has or intends to increase the number of lots or the location and size of approved lots are substantially altered, then the park shall be required to meet all the requirements of the RMH zoning before any additional move-on permits shall be issued .
 - (a) Side setbacks shall be a minimum of ten (10) percent of the width of the lot.
 - (b) On a corner lot, the side setback adjoining the street shall not be less than eight (8) feet.
 - (c) The front setback shall be fifteen (15) feet.
 - (d) The rear setback shall be ten (10) feet.
 2. For the mobile home parks that did not include a site plan showing the number and location of lots when rezoned to RMH by the Board of County Commissioners, permits may only be issued for the replacement homes that were in existence at the time of the rezoning on those lots meeting the yard requirements provided in paragraphs 1(a) through (d) above. The number of existing lots will be determined by researching County records. However, if such a mobile home park has or intends to increase the number of lots or the location and size of approved lots are substantially altered, then the park shall be required to meet all the requirements of the RMH zoning before any move-on may be permitted.

3. Any mobile home park located in a zoning district other than RMH that is a nonconforming use shall be treated as a Class II nonconformity, and move-ons, including move-ons of new or replacement mobile homes, shall not be permitted and use of the applicable lot for a mobile home site shall be eliminated.
- f. Fish Camps and Marinas. The provisions in this paragraph apply in addition to the requirements pertaining to Class I and Class II nonconformities. When application is made to renovate, repair or expand any structure beyond the general limits allowed for Class II nonconformity, or to replace or add a mobile home, the property owner shall be required to either bring the use into compliance with this Code or apply for and obtain a rezoning to PUD. Approval of a PUD may be conditioned upon the property owner making improvements to the development to bring it as close to conformity with this Code as is possible or to protect the health, safety and welfare of the public that uses the fish camp or marina and the adjacent water body.
- g. Mines. The provisions in this paragraph apply in addition to the requirements pertaining to Class I and Class II nonconformities. There are active mines which began operation prior to County regulations requiring Mining zoning, and which do not comply with the requirements of this Code. An owner of property with this type of mine must comply with this Code before the mine is extended to property not owned when the mine was initiated, or the mine exceeds the area in the mining plan filed with the County or State prior to the County requiring Mining zoning, whichever comes first.
- h. Borrow Areas. The provisions in this paragraph apply in addition to the requirements pertaining to Class I and Class II nonconformities. There are active borrow areas, which began operation prior to County regulations requiring Agriculture (A) zoning, a permit, and a special exception for operations greater than 5 acres, and which do not comply with the requirements of this Code. An owner of property with this type of borrow area must comply with this Code before the area is extended to property not owned when the area was initiated, or the area reaches 5 acres in size, whichever comes first.
- i. Salvage Yards. The provisions of this paragraph apply in addition to the requirements pertaining to Class I and Class II nonconformities. There are salvage yards that began operation prior to the County regulations limiting such uses to industrial zoning districts and requiring all such salvage yards to be screened and buffered. An owner of this type of use shall not be allowed to expand the area in which such materials are stored either horizontally (i.e. increasing square footage of storage area) or vertically (i.e. by stacking materials), and all such uses shall be required to come into compliance with the screening and buffering requirements of this Code.

9.03.04 -- Discontinued Non-Conforming Uses.

- a. Class I Nonconformities. The following shall apply to determinations regarding discontinuance of nonconforming uses.
 1. If the nonconforming use is of land only without a structure and the use is removed, discontinued or abandoned, the use cannot be re-established.

2. If the nonconforming use involves the use of a structure, or land and structure in combination and the use is discontinued or the structure is left vacant, abandoned, or not used for two hundred and forty (240) consecutive days, the nonconforming use shall be prohibited and the structure, or the structure and land in combination, shall not thereafter be used except in conformance with the regulations of the zoning district, or as allowed by action of the Zoning Board of Adjustment described in paragraph 3 below.
 3. The Zoning Board of Adjustment may permit the re-establishment of the nonconforming use where it is determined by the Zoning Board that the design, construction and character of the structure is not suitable for uses allowed under the applicable land use designation. The Zoning Board shall hold a public hearing on each case in accordance with the procedures set forth in Zoning Ordinance 88-1, as amended. In no event shall the Zoning Board permit a change to another nonconforming use unless it is less intense, nor shall the Zoning Board allow any structure to be enlarged, extended, constructed, reconstructed, remodeled, moved, or structurally altered for any purpose except as may be allowed under subsection 9.03.03.
- b. Class II Nonconformities. The following shall apply to determinations regarding discontinuance of nonconforming uses.
1. If the nonconforming use is of land only without a structure and the use is removed, discontinued or abandoned, the use cannot be re-established.
 2. If the nonconforming use involves the use of a structure, or structure and land in combination, and the use is discontinued, or the structure is left vacant, abandoned, or not used for one hundred eighty (180) consecutive days, the nonconforming use shall be prohibited and the structure, or structure and land in combination, shall not thereafter be used except in conformance with the regulations of the zoning district, or as allowed by action of the Zoning Board of Adjustment described in paragraph 3 below.
 3. The Zoning Board of Adjustment may permit the establishment of a less intense nonconforming use where it is determined by the Zoning Board after public hearing that the design, construction and character of the structure is not suitable for uses permitted in the district in which such nonconforming use is situated. The Zoning Board shall hold a public hearing on each case in accordance with the procedures set forth Zoning Ordinance 88-1, as amended . In no event shall the Zoning Board permit a change to another nonconforming use unless it is a less intense use; nor shall it permit any structure to be enlarged, extended, constructed, reconstructed, remodeled, moved, or structurally altered for any purpose except as may be allowed under subsection 9.03.03.

9.03.05 -- Nonconforming Lots or Parcels.

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

- b. Development on Nonconforming Parcels and Lots. Pursuant to the administrative variance procedure provided under Section 9.04.07, structures on nonconforming parcels and lots may be permitted the following setbacks: side setback equal to 10% of the parcel or lot width; rear setback equal to 10% of the parcel or lot depth; and front setback equal to 20% of the parcel or lot depth; so long as there remains at least five feet of setback, the use does not exceed allowed floor area ratios (FAR) or impervious surface area ratios, and the County Planner finds that the encroachment does not present a health or safety risk to adjacent parcels or the general public. A lot or parcel that will use on-site sewage disposal must also be of sufficient size to meet Department of Health requirements. The property owner must seek a variance through the formal hearing process in Section 9.04 in order to further encroach within a setback or develop a parcel with insufficient frontage.

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

- a. Vehicle Use Areas. These are areas used for parking, loading, and traffic circulation.
 - 1. Improvements to vehicle use areas associated with legal nonconforming uses relating to size, location, design, landscaping, drainage, lighting, buffering, or screening to protect neighboring land uses may be allowed. . If a request is made to move a vehicle use area, the applicant must additionally show that the relocation is needed to meet dimensional, landscaping, drainage or buffering requirements.
 - 2. Where the vehicle use area itself does not conform to design standards, including required number of parking spaces, size, location, surfacing, landscaping, drainage, lighting, buffering or screening, the following shall apply:
 - (a) When any change in use, addition of structures, or additions to structures results in additional parking space requirements, all components of existing vehicle use areas must be improved to the standards required under this Code for new development to the maximum extent possible within existing site constraints.
 - (b) When any change in use, addition of structures, or additions to structures results in no additional parking space requirements, only the handicapped parking requirements must be met.
- b. Landscaping, Drainage, Screens, Lighting or Fences. For site improvements such as landscaping, drainage, lighting, fences, or screens, the following shall apply:
 - 1. Where there is no increase in the intensity or density of use due to a change in use, addition of structures, or additions to structures, all site improvement standards of roadway corridor overlay provisions in Article 6 of this Code must be met to the maximum extent possible on commercially developed property located inside the overlay, within existing site constraints, on or before January 1, 2007, or be subject to code enforcement proceedings thereafter. In order to ensure compliance with this section, the property owner must submit a remediation plan to the County Planner by January 1, 2006, specifying what improvements will be done to comply with this

requirement. The County Planner will coordinate the review and make a determination regarding compliance with this section. The County will not charge the owner for review of the remediation plan, but the owner is responsible for the cost of any permits required to complete the necessary improvements.

2. When there is any increase in the intensity or density of use due to a change in use, addition of structures, or additions to structures, all site improvement and design standards of this Code must be met to the maximum extent possible, within existing site constraints.
- c. Where a property owner asserts that it is not feasible to meet the requirements of this section, the owner may seek a variance under section 9.04 at any time.

9.03.07 -- Findings of Fact Required for Permitting Nonconforming Uses, Structures and Lots. Any other provision of this Section or other provisions of this Code notwithstanding, the County Planner or Zoning Board of Adjustment must make the following additional findings of fact before authorizing any proposed improvements to nonconformities under this Section:

The applicant has demonstrated with competent substantial evidence the legality of the nonconforming use of the land, the structure or land and the structure in combination addressed in the application. Proof of the legality of the nonconformity must include competent substantial evidence that the nonconformity was lawfully established and continued under prior County codes or ordinances. Competent substantial evidence may include, but is not limited to, historic aerial photographs, use and property records maintained by the County's Tax Collector for occupational licensing, Department records, records maintained by the County Property Appraiser's office, business records, and photographs that can be certified as to their date and authenticity.

SECTION 9.04 VARIANCES

9.04.01 -- Variances in General

- a. Variances to be Considered Part of Development Review. Any person desiring to undertake a development activity not in conformance with this Code may apply for a variance in conjunction with the application for development review. If a variance is sought, a development activity that might otherwise be administratively approved by the Planning, Zoning and Building Department must be approved by the Zoning Board of Adjustment, except for variances under specific sections of this Code that allow for administrative approval. The variance shall be granted or denied in conjunction with the application for development review.
- b. The Zoning Board of Adjustment may grant a variance from the strict application of any provision of this Code, except provisions in Articles 2 (Permitted Uses), and 5 (Facilities and Services), if the procedures of this Section are followed and findings are made. Establishment or expansion of a use otherwise prohibited shall not be allowed by a variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or in adjoining districts.

- c. Except as otherwise provided, under no circumstances shall the Zoning Board of Adjustment grant a variance to allow a use not generally permitted or permissible by special exception in the applicable land use category, nor shall the Zoning Board of Adjustment grant a variance to allow a use expressly or implicitly prohibited by the terms of this Code. Nonconforming use of neighboring lands, structures or buildings in the same zoning district and permitted use of lands, structures or buildings in other zoning districts shall not be considered or used as grounds for the authorization of a variance.

9.04.02 -- Application and Issuance

- a. To obtain a variance a person must file an application with the Planning, Zoning and Building Department; and the necessary forms and instructions can be obtained from the Department. The application for a variance shall include, at a minimum, the following information:
 1. A notarized signature of the property owner.
 2. A recorded legal document demonstrating conveyance of ownership in real property to the applicant and a complete legal description of the area for which the variance is requested.
 3. The location and current zoning classification of the property being considered for the variance.
 4. A description of the variance requested.
 5. A quarter section of a parcel map indicating the general location of the site surrounding property and abutting streets.
 6. A site plan that includes, as a minimum, the information listed below for both existing and proposed uses. No site plan will be accepted for review if it does not contain all of the following information:
 - (a) Location of the site in relation to surrounding properties, including the means of ingress and egress to such properties and any screening or buffers on such properties.
 - (b) Date, north arrow and graphic scale.
 - (c) Location, dimension and number of all proposed parking spaces and loading areas.
 - (d) Location, size and design of landscaped areas and structure screens or architectural enclosures.
 - (e) The location of all structures and major features and complete dimensions of same.
 - (f) All setbacks, distances between structures, floor areas, width of driveways, location and size, parking spaces, property or lot lines and the percentage of the property covered by structures.

- (g) Location and acreage of open space, recreational, recharge and landscaped areas.
 - (h) Location of existing and proposed utilities, including well and septic systems.
7. If the development will use on-site sewage systems, provide written confirmation from the Department of Health that the variance will not result in a violation of the Department of Health regulations concerning sewage treatment and disposal systems. Where such lot or parcel is located within 500 feet of a water body, any proposed variance shall be subject to State law and the requirements of Article 6 for placement and discharge of sewage treatment facilities within 500 feet of a water body.
 8. Payment of the application fee in accordance with the fee schedule established by resolution of the Board of County Commissioners.
- b. **Completeness Review:** The County Planner shall first decide whether or not the application is technically complete. If not technically complete, the application shall be returned to the applicant with a written notification of the items that are absent or insufficient. If the applicant does not resubmit his application within thirty (30) calendar days, the fee shall be returned to the applicant and the applicant will be required to submit a new application and fee, if a variance is still sought.
 - c. Upon receipt of the completed application and the required fee, the Department will submit the application to the Zoning Board of Adjustment for action. All applications must be filed by the deadline filing date established by the County Planner in order to meet required public notice deadlines, allow time for analysis of the request by the Department and be eligible for the next regularly scheduled meeting of the Zoning Board of Adjustment.
 - d. Absent agreement between the applicant and the County to extend the deadline beyond sixty (60) days, the Zoning Board of Adjustment shall establish a date and time to hear the variance request no later than sixty (60) days from the date that a complete application is submitted.
 - e. Requirements for hearing notices are provided in Article II, Zoning Ordinance 88-1.
 - f. If the Zoning Board of Adjustment denies a variance application, the denied application may not be resubmitted, nor may any action be taken on a new application for the same or a substantially similar variance on the same property, until twelve (12) months after the date an application was denied.
 - g. If the variance is approved, any activity shall be carried out in accordance with the site plan approved with the variance and in accordance with all applicable permits and approved plans and specifications. Deviations from the site plan or changes to the site plan shall not be made without the approval of the County Planner. If the County Planner determines that there is a substantial change or deviation from the approved site plan, the owner or applicant and their successors may be required to file another application with the Zoning Board of Adjustment. Upon written notice from the County Planner, any such ongoing activity shall cease until such time as another public hearing is conducted by the Zoning Board of Adjustment.

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

- a. Each of the following must be met, unless a provision referenced in subsection b. below states otherwise:
 1. Special conditions and circumstances exist which are peculiar to the land, structure or building involved, or the proposed development design utilizes innovative planning and design which will result in a better development and will be an asset to the community.
 2. The special conditions and circumstances described in paragraph a, above, do not result from a failure on the applicant's part to follow applicable County, state or federal land use regulations and building codes.
 3. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Code to other lands, buildings or structures in the same zoning district.
 4. Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Code and would place unnecessary and undue hardship on the applicant.
 5. Granting the variance will be in harmony with the general intent and purpose of this ordinance and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare or public interest.
 6. The variance granted is the minimum necessary to meet the criteria 1 through 5 above.
- b. The following special criteria must be met where it is applicable. Unless the section providing the special criteria states otherwise, the applicable criteria listed below must be met in conjunction with the criteria listed in subsection a. above.
 1. Variances to airport overlay regulations must meet the pertinent variance criteria outlined in s 4.03
 2. Variances to the historical district overlay regulations must meet criteria in s. 4.04 or s. 9.04.04.
 3. Variances for historical structures involving nonconformities must meet the criteria provided in section 4.04 and s. 9.04.04.
 4. Variances to the sign regulations must meet criteria in Putnam County's sign regulations.
 5. Variances to flood hazard management regulations must meet the criteria in s. 6.05.11.

6. Wetland and water body protection shall be considered when the County evaluates variance requests for setback modifications that would move development away from wetlands and water bodies.

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

9.04.05 -- Conditions And Limitations On Granting Variances

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

9.04.06 -- Administrative Variance for the Reduction of Required Setbacks: The County Planner shall be authorized to reduce required setbacks in the residential zoning districts and agricultural zoning districts subject to the requirements listed below.

- a. The owners of any land adjacent to the area proposed for reduction shall be notified in writing by the U.S. Mail of the proposed reduction at least fifteen (15) days prior to making a final determination on the proposed reduction. The notice shall advise the adjacent landowner of the date of determination and that objections or concerns with the proposed reduction must be submitted in writing prior the determination date. The applicant shall provide to the County Planner the name and contact information (i.e. address and phone number) for all adjacent property owners or residents that will be impacted by the variance.

- b. The proposed reduction is not found to be contrary to the public interest and where, owing to conditions peculiar to the property, a literal enforcement of this Code will result in unnecessary and undue hardship on the landowner.
- c. Required setbacks shall not be reduced by more than the following maximums unless the lot is a nonconforming lot subject to the variance allowed under s. 9.03.05:
 - 1. Front yard by up to ten (10) feet.
 - 2. Side yard setbacks may be reduced by up to five (5) feet (down to a minimum of five (5) feet from a lot line).
 - 3. Rear yard setbacks may be reduced by up to five (5) feet (down to a minimum of five (5) feet from a lot line when there is no water body).
 - 4. Waterfront setbacks may be reduced by up to five (5) feet subject to the requirements of s. 6.03 of this Code.