

**Summary of Ordinance**

The purpose of this Ordinance is to dissolve the Board of Adjustment and transfer its functions to the Board of County Commissioners. The Ordinance will also update other provisions of the Lake County Code and Land Development Regulations to replace references to the Board of Adjustment.

Changes are shown as follows: ~~Strikethrough~~ for deletions and Underline for additions to existing Code sections. The notation “\* \* \*” shall mean that all preceding or subsequent text remains unchanged (excluding any renumbering or relettering that might be needed).

**ORDINANCE NO. 2026-\_\_**

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, FLORIDA; AMENDING OR REPEALING THE FOLLOWING SECTIONS OF THE LAKE COUNTY CODE, APPENDIX E, LAND DEVELOPMENT REGULATIONS: REPEALING SECTION 13.02.00 ENTITLED *ALTERNATE MEMBERS*; REPEALING SECTION 13.03.00, ENTITLED *BOARD OF ADJUSTMENT*; PROVIDING FOR TRANSFER OF THE DUTIES AND FUNCTIONS OF THE BOARD OF ADJUSTMENT TO THE BOARD OF COUNTY COMMISSIONERS; AMENDING SECTION 13.04.02, ENTITLED *MEMBERSHIP*; AMENDING SECTION 14.15.00, ENTITLED *VARIANCES AND APPEALS*; AMENDING OTHER SECTIONS OF THE LAKE COUNTY CODE AND LAND DEVELOPMENT REGULATIONS TO REPLACE BOARD OF ADJUSTMENT REFERENCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Lake County Board of Adjustment (BOA) was created by the Board of County Commissioners on November 26, 1996, via Ordinance No. 1996-88; and

**WHEREAS**, the purpose of the BOA is to hear and decide appeals, variances and waivers as set forth in Section 14.14.00, Land Development Regulations, and other applicable sections of the County Code; and

**WHEREAS**, there are times where an applicant must present and attend separate public hearings to obtain variances and waivers separate from pursuing applications for comprehensive plan or zoning changes, which can frustrate not only applicants but residents alike with having to attend multiple public hearings to explain requests to different advisory or adjudicatory bodies; and

1           **WHEREAS**, the Board of County Commissioners deems it in the best interests of the  
2 public to dissolve the BOA and transfer its duties and functions.

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4           **NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of  
5 Lake County, Florida as follows:

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7           **Section 1.     Legal Findings of Fact.** The foregoing recitals are hereby adopted as  
8 legislative findings of the Board of County Commissioners and are ratified and confirmed as being  
9 true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

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11           **Section 2.     Repealer.** Section 13.02.00, Lake County Code, Appendix E, Land  
12 Development Regulations, entitled *Alternate Members*, is hereby repealed in its entirety. Section  
13 13.02.00, shall be marked as “Reserved”.

14  
15           **Section 3.     Repealer.** Section 13.03.00, Lake County Code, Appendix E, Land  
16 Development Regulations, entitled *Board of Adjustment*, shall be repealed in its entirety. Section  
17 13.03.00, shall be marked as “Reserved”.

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19           **Section 4.     Amendment.** Section 13.04.02, Lake County Code, Appendix E, Land  
20 Development Regulations, entitled *Membership*, is hereby amended to read as follows:

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22           **13.04.02     Membership.**

23           A.     The Lake County Planning and Zoning Board shall have eight (8) members,  
24 including one (1) from each County Commissioner's district, one (1) member at-  
25 large, one (1) member and one (1) alternate member recommended by the Lake  
26 County School Board, and one (1) ex-officio, nonvoting representative of a military  
27 installations within Lake County. The member recommended by the Lake County  
28 School Board shall be a voting member. The alternate member recommended by  
29 the Lake County School Board shall serve in the absence of the primary appointed  
30 member. The Board of County Commissioners may appoint alternate members as  
31 deemed necessary in order to ensure that quorum requirements are satisfied.

32           B.     Each Lake County Planning and Zoning Board member shall be appointed by the  
33 Lake County Board of County Commissioners for a term of four (4) years. Initially  
34 the terms of the member representing commission districts 1, 3, and 5 shall expire  
35 on January 31, 2005, and the terms of the members representing commission  
36 districts 2 and 4, the at-large category, and the Lake County School Board shall  
37 expire on January 31, 2007. Thereafter, all appointments shall be made for a term  
38 of four (4) years each. Any vacancy occurring during the unexpired term of office  
39 of any member shall be filled by appointment for the remainder of the term. Any  
40 member of the Lake County Planning and Zoning Board may be removed from  
41 office by a majority vote of the Board of County Commissioners.

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43           **Section 5.     Amendment.** Section 14.15.00, Lake County Code, Appendix E, Land  
44 Development Regulations, entitled *VariANCES and Appeals*, is hereby amended to read as follows:  
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1 **14.15.00 Variances and Appeals.**

2 **14.15.01 Purpose of Variances.** Strict application of uniformly applicable Land  
3 Development Regulations can lead to unreasonable, unfair, and unintended results in particular  
4 instances. The Board of County Commissioners finds that it is appropriate in such cases to adopt  
5 a procedure to provide relief to persons and entities subject to the Land Development Regulations.  
6 ~~The Board of Adjustment is authorized to grant~~ Variances to requirements of the Land  
7 Development Regulations and adopted ordinances concerning Planned Unit Development (PUD)  
8 zoning districts consistent with the rules contained in these regulations may be granted by the  
9 Board of County Commissioners. Pursuant to ~~F.S. §~~Section 553.73(5), the ~~Board of Adjustment~~  
10 Board of County Commissioners shall also hear and decide appeals and variances from the strict  
11 application of the flood resistant construction requirements of the Florida Building Code. This  
12 Section does not authorize the ~~Board of Adjustment to grant~~granting of any variances that would:

- 13 A. ~~inconsistent~~ Be inconsistent with the Comprehensive Plan;  
14 B. ~~nor to grant a variance to permit~~ Otherwise allow uses not generally permitted in the  
15 zoning district ~~involved~~ where the property is located; or  
16 C. Otherwise allow any use expressly or by implication prohibited by the terms of the  
17 Land Development Regulations ~~in the zoning district.~~

18 In addition, the existence of nonconforming use of neighboring lands or unpermitted use of  
19 neighboring lands Shall not be considered grounds for authorization of a variance. Nothing herein  
20 shall preclude the Board of County Commissioners from granting variances or waivers under the  
21 provisions of Section 14.03.05.

22 **14.15.02 Generally.** Variances Shall be granted when the ~~person subject to a Land~~  
23 Development Regulation property owner or authorized applicant:

- 24 A. ~~d~~ Demonstrates that the purpose of the Land Development Regulation will be or has  
25 been achieved by other means; ~~;~~ and  
26 B. ~~w~~ When application of a Land Development Regulation would create a substantial  
27 hardship or would violate principles of fairness.

28 For purposes of this Section, "substantial hardship" means a demonstrated economic,  
29 technological, legal, or other type of hardship to the person requesting the variance. For purposes  
30 of this Section, "principles of fairness" are violated when the literal application of a Land  
31 Development Regulation affects a particular person in a manner significantly different from the  
32 way it affects other similarly situated persons who are subject to the Land Development  
33 Regulation. Variances may also be granted to allow for the reconstruction, rehabilitation, or  
34 restoration of structures listed on, or classified as, contributing to a district listed on the National  
35 Register of Historic Places, Florida Master Site File or local surveys of historical resources. In  
36 such instance, the variance Shall be the minimum necessary to protect the historical integrity of  
37 the structure and its site.

38 **14.15.03 Variances to the Floodplain Management Regulations and the Flood Resistant**  
39 **Construction Requirements of the Florida Building Code.**

- 40 A. Limitations on authority to grant variances. The ~~Board of Adjustment~~ Board of County  
41 Commissioners shall base its decisions on variances on technical justifications submitted  
42 by applicants, the considerations for issuance in Section 14.15.03(E), ~~Lake County~~

1 ~~Code below~~, the conditions of issuance set forth in Section 14.15.03(F), ~~Lake County~~  
2 ~~Code below~~, and the comments and recommendations of the Floodplain Administrator  
3 and the Building Official. The ~~Board of Adjustment~~Board of County Commissioners has  
4 the right to attach such conditions as it deems necessary to further the purposes and  
5 objectives of the floodplain regulations.

6 B. Restrictions in floodways. A variance shall not be issued for any proposed development  
7 in a floodway if any increase in base flood elevations would result, as evidenced by the  
8 applicable analyses and certifications required in Section 14.09.01(B)(3)d, Lake County  
9 Code.

10 C. Historic buildings. The ~~Board of Adjustment~~Board of County Commissioners is  
11 authorized to grant a variance for the repair, improvement, or rehabilitation of a historic  
12 building that is determined eligible for the exception to the flood resistant construction  
13 requirements of the *Florida Building Code, Existing Building*, Chapter 12 Historic  
14 Buildings, upon a determination that the proposed repair, improvement, or rehabilitation  
15 will not preclude the building's continued designation as a historic building and the  
16 variance is the minimum necessary to preserve the historic character and design of the  
17 building. If the proposed work precludes the building's continued designation as a  
18 historic building, a variance shall not be granted and the building and any repair,  
19 improvement, and rehabilitation shall be subject to the requirements of the Florida  
20 Building Code.

21 D. Functionally dependent uses. The ~~Board of Adjustment~~Board of County Commissioners  
22 is authorized to grant a variance for the construction or substantial improvement  
23 necessary for the conduct of a functionally dependent use, as defined, provided the  
24 variance meets the requirements of ~~this section~~Section 14.15.03, Lake County Code, is  
25 the minimum necessary considering the flood hazard and all due consideration has been  
26 given to use of methods and materials that minimize flood damage during occurrence of  
27 the base flood.

28 E. Considerations for issuance of variances. In reviewing requests for variances, the ~~Board~~  
29 ~~of Adjustment~~Board of County Commissioners shall consider all technical evaluations,  
30 all relevant factors, all other applicable provisions of the Florida Building Code, the  
31 floodplain regulations, and the following:

- 32 1. The danger that materials and debris may be swept onto other lands  
33 resulting in further injury or damage;
- 34 2. The danger to life and property due to flooding or erosion damage;
- 35 3. The susceptibility of the proposed development, including contents, to flood  
36 damage and the effect of such damage on current and future owners;
- 37 4. The importance of the services provided by the proposed development to  
38 the community;
- 39 5. The availability of alternate locations for the proposed development that are  
40 subject to lower risk of flooding or erosion;
- 41 6. The compatibility of the proposed development with existing and  
42 anticipated development;
- 43 7. The relationship of the proposed development to the comprehensive plan  
44 and floodplain management program for the area;

- 1           8.     The safety of access to the property in times of flooding for ordinary and
- 2                 emergency vehicles;
- 3           9.     The expected heights, velocity, duration, rate of rise and debris and
- 4                 sediment transport of the floodwaters and the effects of wave action, if
- 5                 applicable, expected at the site; and
- 6           10.    The costs of providing governmental services during and after flood
- 7                 conditions including maintenance and repair of public utilities and facilities
- 8                 such as sewer, gas, electrical and water systems, streets and bridges.

9     F.    Conditions for issuance of variances. Variances shall be issued only upon:

- 10           1.     Submission by the applicant, of a showing of good and sufficient cause that
- 11                 the unique characteristics of the size, configuration, or topography of the
- 12                 site limit compliance with any provision of the floodplain regulations or the
- 13                 required elevation standards;
- 14           2.     Determination by the ~~Board of Adjustment~~Board of County Commissioners
- 15                 that:
  - 16                   (a)    Failure to grant the variance would result in exceptional hardship
  - 17                         due to the physical characteristics of the land that render the lot
  - 18                         undevelopable; increased costs to satisfy the requirements or
  - 19                         inconvenience do not constitute hardship;
  - 20                   (b)    The granting of a variance will not result in increased flood heights,
  - 21                         additional threats to public safety, extraordinary public expense, nor
  - 22                         create nuisances, cause fraud on or victimization of the public or
  - 23                         conflict with existing local laws and ordinances; and
  - 24                   (c)    The variance is the minimum necessary, considering the flood
  - 25                         hazard, to afford relief;
- 26           3.     Receipt of a signed statement by the applicant that the variance, if granted,
- 27                 shall be recorded in the Office of the Clerk of the Court in such a manner
- 28                 that it appears in the chain of title of the affected parcel of land; and
- 29           4.     If the request is for a variance to allow construction of the lowest floor of a
- 30                 new building, or substantial improvement of a building, below the required
- 31                 elevation, a copy in the record of a written notice from the Floodplain
- 32                 Administrator to the applicant for the variance, specifying the difference
- 33                 between the base flood elevation and the proposed elevation of the lowest
- 34                 floor, stating that the cost of federal flood insurance will be commensurate
- 35                 with the increased risk resulting from the reduced floor elevation (up to
- 36                 amounts as high as twenty-five dollars (\$25.00) for one hundred dollars
- 37                 (\$100.00) of insurance coverage), and stating that construction below the
- 38                 base flood elevation increases risks to life and property.

39     G.    Approved variance transmitted to Federal Emergency Management Agency (FEMA). If

40     a variance to the floodplain regulations or the Flood Resistant Construction

41     Requirements of the Florida Building Code is approved, the application, minutes and

42     recorded development order must be transmitted to FEMA within thirty (30) days of the

43     meeting.

1 **14.15.04 Variance to the setback requirement from an ordinary high water line, mean high**  
2 **water line, or jurisdictional wetland line.** A variance to the setback requirements from an  
3 ordinary high water line, mean high water line, or jurisdictional wetland line may be granted if:

4 A. The lot is a developable Lot of Record, or the lot was legally created through a  
5 development order prior to March 2, 1993; and

6 B. All other remedies have been exhausted, such as a variance to all other setback  
7 requirements; and

8 ~~C. The maximum developable area shall be limited to 30 feet in width or depth; and~~

9 ~~DC.~~ The first one inch (1") of storm water runoff shall be captured on site; and

10 ~~ED.~~ Development is constructed as far landward on the lot as possible.

11 **14.15.05 Application and Public Hearing.** The applicant Shall file with the County Manager  
12 or designee an application specifying the Land Development Regulation(s) from which a variance  
13 is requested, the type of action requested, the specific facts that would justify a variance, and the  
14 reason why the variance would serve the purposes of the underlying Land Development  
15 Regulation. Upon determination that the application is complete, the request will be presented at  
16 a public hearing in front of the Board of County Commissioners. ~~Shall conduct a public hearing~~  
17 ~~to consider the variance application. The Board Shall consider the staff report and evidence~~  
18 ~~presented at the hearing to make its decision.~~ The ~~Board of Adjustment~~Board of County  
19 Commissioners shall make the final decision on the application which may include approval,  
20 approval with conditions may make the granting of a variance conditional upon such alternate or  
21 additional restrictions, stipulations, and safeguards as it may deem necessary to insure compliance  
22 with the intent of the Land Development Regulations and the Comprehensive Plan and to minimize  
23 any injurious effect of the variance, or may deny the application. Violation of such conditions and  
24 safeguards when made a part of the terms under which a variance is granted Shall be deemed a  
25 violation of these Land Development Regulations.

26 **14.15.06 Appeals.**

27 A. Purpose. The purpose of this Section is to provide for procedures and processes to allow  
28 appeals in cases where persons disagree with the decision or interpretation of the County  
29 Manager or designee with respect to the administration of the Land Development  
30 Regulations.

31 B. Filing Requirements. Any person who disagrees with a decision or interpretation of the  
32 County Manager or designee or alleges there is an error in any requirement, decision or  
33 determination made by the Floodplain Administrator in the administration and  
34 enforcement of the floodplain regulations may appeal to the ~~Board of Adjustment~~Board  
35 of County Commissioners by filing a written notice of appeal within thirty (30) calendar  
36 days after the date of the action or decision complained of. The written notice of appeal  
37 Shall set forth concisely the action or decision appealed as well as the grounds upon  
38 which the appeal is based. Any person aggrieved by the decision of the ~~Board of~~  
39 ~~Adjustment~~Board of County Commissioners may appeal such decision to the Circuit  
40 Court, as provided by law.

41 C. Stop Work Order. In order to preserve the status quo while the parties' rights are being  
42 determined, the County Manager or designee Shall have the authority to issue a stop

1 work order if the appealed action or decision permits construction to commence or  
2 continue.

3 D. Hearing. ~~The appeal shall be set for hearing at the next regularly scheduled Appeals~~  
4 ~~shall be presented to the Board of County Commissioners for a final decision. Board of~~  
5 ~~Adjustment Meeting for which adequate notice can be provided.~~ The ~~Board of~~  
6 ~~Adjustment~~Board of County Commissioners shall hear and consider all facts material  
7 to the appeal and render a decision. The ~~Board of Adjustment~~Board of County  
8 ~~Commissioners~~ may affirm, reverse, or modify the action or decision appealed from,  
9 provided that the ~~Board of Adjustment~~Board of County Commissioners shall not take  
10 any action which conflicts with or nullifies any of the provisions of the Land  
11 Development Regulations or the Comprehensive Plan.

12 E. Order on Appeal. After the hearing, the ~~Board of Adjustment~~Board of County  
13 ~~Commissioners~~ shall consider all of the evidence offered and shall render a ~~verbal~~  
14 ~~decision based upon such evidence. The verbal decision of the Board of Adjustment~~  
15 ~~shall be reduced to writing~~written decision. The decision of the ~~Board of Adjustment~~  
16 ~~Board of County Commissioners~~ shall constitute final administrative review.

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18 **Section 6. Amendment.** All other references to the Board of Adjustment contained  
19 within either the Lake County Code, or within Appendix E, Land Development Regulations  
20 (LDR), shall be changed to the Board of County Commissioners, including, but not limited to the  
21 following:  
22

- 23 • Chapter II, LDR (definition of “Development Order”)
- 24 • 5.09.00, LDR
- 25 • 6.06.02.B, LDR
- 26 • 6.10.01, LDR
- 27 • 9.02.10.F, LDR
- 28 • 9.07.07, LDR
- 29 • 14.00.09, LDR
- 30 • 14.15.00, LDR
- 31 • 15.02.04.I, LDR
- 32 • Sec 6-9, Lake County Code
- 33 • Sec. 6-45, Lake County Code
- 34 • Sec. 13-148, Lake County Code

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36 **Section 7. Severability.** If any section, sentence, clause, or phrase or word of this  
37 Ordinance is for any reason held or declared to be invalid, unconstitutional, inoperative or void by  
38 any court of competent jurisdiction, then said holding shall in no way affect the validity of the  
39 remaining portion of this Ordinance; and it shall be construed to have been the Commissioners’  
40 intent to pass this Ordinance without such unconstitutional, invalid or inoperative part therein; and  
41 the remainder of this Ordinance, after the exclusion of such part or parts shall be deemed and held  
42 to be valid, as if such parts had not been included herein; or if this Ordinance or any provisions  
43 thereof shall be held inapplicable to any person, groups of persons, property, kind of property,  
44 circumstances or set of circumstances, such holding shall not affect the applicability thereof to any  
45 other person, property or circumstances.

