

ADMINISTRATIVE DETERMINATION

1.1. PURPOSE

The purpose of this procedure is to provide a method or process whereby a property owner may obtain an administrative determination concerning their property and the applicability of the LDC and other rules, regulations, and ordinances administered by the PCD.

1.2. BACKGROUND

Often a property owner desires a written statement concerning the application of the LDC or other rules, regulations, and ordinances to their property. As a service to property owners, the PCD may, upon a written request by a property owner, prepare a written statement concerning the zoning and other land use and regulatory restrictions affecting a property. The PCD may only state the restrictions imposed by the LDC and other County rules, regulations, and ordinances that the PCD is responsible for administering; or the provisions of any development agreement, condition, plat, or PUD that may impact the property. An administrative determination is similar to a code interpretation except that it involves the application of the rules, regulations, code, and ordinances to a specific piece of property. A request for a general interpretation of the code without respect to a property shall be handled as a code interpretation. An administrative interpretation is also similar to a zoning compliance letter except that an administrative determination makes no specific statement concerning the conformity of the activities or buildings on the property with the requirements of the LDC and other County rules, regulations, and ordinances the PCD is responsible for administering; or the provisions of any development agreement, condition, plat, or PUD that may impact the property.

A request for an administrative determination shall relate to a specific site, zoning district, use, or application. An administrative determination generally requires analysis and comparison of various LDC provisions to arrive at a decision as opposed to a nondiscretionary review where compliance can be determined based on objective standards.

Three forms of special administrative determinations have been recognized and are processed as special applications. The three forms of administrative determination include: Home Occupation Permits; Group Home, Family Care Homes, and Child Care Permits; and Agricultural Structure Review. In each case, the applicant is informed of the rules governing the use and is required to provide evidence of any required State permitting and/or a letter confirming the operation of their proposed use and intent to comply with the required standards, and the PCD approves the development permit if the property is zoned to allow such use.

1.3. APPLICABLE STATUTES AND REGULATIONS

Section 1.6 of the LDC establishes the rules by which the LDC shall be interpreted.

Section 1.6.7 of the LDC provides that the listing of any use as being permitted in a particular zoning district shall be deemed to be an exclusion of the use from any other zoning district in which the use is not listed. For uses not listed in any zoning district, an administrative determination concerning whether the use is allowed within the zoning district may be requested.

Section 5.1.6 of the LDC provides that when a use is expressly defined in the LDC, or when a use is categorized by an administrative determination, similar uses which are not listed or defined shall fall within the same category of use by character, descriptor, and intensity as determined by the PCD Director.

Section 2.2.4 of the LDC defines Administrative Determination as the process used by the PCD Director to decide a written request to interpret the provisions of this Code or in issuing any other written interpretation of this Code. An administrative determination of the provisions of this Code clarifies conflicting or ambiguous wording, or the scope or intent of the provisions of this Code. A request for an administrative determination shall relate to a specific site, zoning district, use or application. An administrative determination of this Code issued by the PCD Director shall have the same effect as any provision of this Code. An administrative determination of this Code remains in effect until rescinded in writing by the PCD Director, until such time as the administrative determination is overturned on appeal, or until such time as an amendment to the Code results in a change affecting the administrative determination. An administrative determination generally requires analysis and comparison of various code provisions to arrive at a decision as opposed to a nondiscretionary review where compliance can be determined based on objective standards.

Section 2.1.4 of the LDC provides the authority for the PCD Director to establish standards for processing development applications.

Section 2.1.4 of the LDC establishes the authorities of the PCD Director including the authority to interpret the LDC.

Section 2.2.1(H) of the LDC allows the Board of County Commissioners to hear appeals and interpret the LDC on appeal.

Section 5.1.6 allows the PCD Director to classify any unlisted use based on similar uses. If no similar use can be identified by the PCD Director, the PCD Director may initiate an amendment to the text of the LDC to clarify where the unlisted use is allowed, or the applicant for an unlisted use may file an application to amend the LDC following the prescribed procedures.

Section 5.1.3 and 5.1.4 and the associated Table 5-1 and 5-2 establish the general uses allowed by right, as special uses, as temporary uses, and as accessory uses.

1.4. RESOURCES

Not applicable

1.5. GENERAL SUBMITTAL LIST

The applicant shall submit the following:

- Letter specifying the nature and request of the administrative determination.
- Any other additional items as required by the PCD Director deemed necessary to ensure compliance with the requirements of the LDC.

1.6. STEP BY STEP REVIEW PROCEDURE

1.6.1. Summary of Steps

(A) Step 1 Early Assistance Meeting

Not Applicable

(B) Step 2 Neighborhood Meeting

Not Applicable

(C) Step 3 Application Submitted

(D) Step 4 Determination of Completeness

(E) Step 5 Resubmission of Application (if required)

(F) Step 6 Application Referral

(G) Step 7 Consolidation of Comments and Request to Applicant

The PCD planner researches the provisions of the LDC; other County rules, regulations, and ordinances the PCD is responsible for administering; or the provisions of any development agreement, condition, plat, or PUD in relationship to the applicant's specific request. The PCD planner may conduct a site visit to assist in their review.

If based on the research conducted and any site visit, the PCD planner determines that more information is needed from the applicant in order to prepare the determination, a request is made via EDARP to the applicant concerning the specific information needed. If no additional information is required, Step 9 is initiated.

(H) Step 8 Applicant Submits Information Requested

(I) Step 9 Staff Report and Recommended Action

The PCD planner prepares a written administrative determination addressing the applicant's request.

(J) Step 10 Hearing Scheduled

Not applicable

(K) Step 11 Notice of Hearing

Not applicable

(L) Step 12 Hearing Held

Not applicable

(M) Step 13 Decision Concerning Development Permit

The letter is reviewed and signed by the PCD Director. A copy of the administrative determination is uploaded to EDARP and provided to the applicant by the PCD planner.

(N) Step 14 Development Permit Closeout

The PCD planner closes the file via EDARP.

1.6.2. Criteria for Consideration

An administrative determination may be requested by any property owner, tenant of a property, or a mortgage company or lending institution with an interest in a property.

1.6.3. Criteria for Approval

(A) Administrative Use Determination

A use not specifically identified as an allowed use, special use, temporary use, or accessory use shall not be allowed unless the PCD Director determines the use is similar to an expressly allowed use, special use, temporary use, or accessory use. The uses allowed in each zoning district or overlay zoning district are identified in Chapter 5 of the LDC.

No determination shall authorize any use in a zoning district or overlay zoning district unless the PCD Director determines the use is substantially similar to an allowed use, special use, temporary use, or accessory use in the zoning district or overlay zoning district. The PCD Director may only make a determination of a similar use if it meets the following criteria:

- The function, performance characteristics, and/or location requirements of the unlisted use shall be consistent with the purpose and description of the zoning district where it is proposed;
- The unlisted use is compatible with the uses specifically allowed in the district, and similar or less in impacts and characteristics such as traffic and parking generation, noise, glare, vibration, and dust.

No determination by the PCD Director shall have the effect of circumventing, amending, abrogating, or waiving any other standard or requirement established by the LDC.

1.7. REVIEW PERIOD

An administrative determination is classified as a Type C Development Application. The timeline for reviewing a Type C Development Application is dependent upon several factors, including, but not limited to, staffing, workload, project size and/or complexity, and quality and completeness of submittal materials.

1.8. NOTICE

Not Applicable

1.9. FORM OF ACTION

An administrative determination shall be considered complete and in effect as of the date the determination is uploaded to EDARP.

1.10. EXPIRATION (IF APPLICABLE)

An administrative determination of the LDC remains in effect until rescinded in writing by the PCD Director, until such time as the administrative determination is overturned on appeal, or until such time as an amendment to the LDC results in a change affecting the administrative determination.

1.11. SIMILAR PROCEDURES

Not applicable

1.12. TECHNICAL GUIDANCE

An administrative determination shall be prepared in association with a specific property.