

**WHEREAS**, It has come to the attention of the Board of County Commissioners (the “Board”) that current County staff has denied Certificates of Zoning Compliance (which must be obtained before applying for a building permit) because the proposed use does not meet the requirements set forth in Sec. 50-772 of the County Land Development Code; and

**WHEREAS**, It has come to the attention of the Board that certain property owners who have been denied a Certificate of Zoning Compliance have, in their possession, a written zoning determination from a prior County employee that confirmed the use that is now being denied;

**WHEREAS**, the Board believes that fundamental fairness requires that a property owner who “did the right thing” by obtaining a written zoning determination from an authorized County employee and who then took action based on receipt of that written determination should be allowed to rely on that determination and obtain a building permit, provided there have been no subsequent changes in the law and provided the property owner makes effort towards compliance, if possible; and

**WHEREAS**, the Board finds there is a public purpose served by avoiding litigation, fostering confidence in County government, and facilitating present improvement and productive use of property in the County; and

**WHEREAS**, to those ends, the Board adopts this ordinance establishing a process (following the judicial principals of equitable estoppel) by which the County will recognize prior written zoning determinations, will voluntarily estop itself from enforcing the County’s Comprehensive Plan and/or Land Development Code requirements in the very limited circumstances described in this ordinance, and will allow an Equitable Estoppel Certificate to be issued as an alternative to a Certificate of Zoning Compliance in order for a property owner to make application for a building permit; and

**WHEREAS**, County staff has also made the Board aware that it would be helpful to recognize reconfigured parent parcels in order to allow property owners to improve the size and/or shape of a parent parcel and get closer to meeting density and other zoning requirements, such as lot width and setbacks; and

**WHEREAS**, it is expressly recognized that the County is not obligated to enact the equitable estoppel certificate provisions and is not recognizing or creating any vested rights through this process. This process is one of equity and is not intended to create a right of appeal or any legal cause of action, nor is it intended to take away or replace any cause of action that exists independent of this ordinance.

**Sec. 50-772. Certificate of zoning compliance; equitable estoppel certificate; certificate of concurrency.**

(a) It shall be duty of the zoning official to issue a certificate of zoning compliance, provided ~~he is~~ they are satisfied that the proposed use conforms with all requirements of the zoning district within which the proposed use will be located, and will meet all other requirements of this article. This certificate shall be obtained before application is made for a building permit. ~~The zoning official may issue a special use permit for any temporary use in any district not otherwise provided for in schedule 2 of this article. No temporary use permit may be issued for more than 30 days.~~

~~(b) Should the zoning official have difficulty assigning a land use to that specific zoning classification, then that use shall be considered by the zoning board at their earliest regular meeting. With a recommendation to the board of county commissioners who will then determine if and how the schedule will be revised, as provided in subdivision III of this division.~~

(b) In the event the zoning official cannot issue a certificate of zoning compliance because the property fails to meet the requirements in (a) above, the property owner may request an equitable estoppel certificate (as an alternative to a certificate of zoning compliance) if they meet all requirements of this subsection (b).

(1) Definitions

Authorized county official means an employee of the county who was acting on behalf of the county in making good faith determinations regarding zoning matters.

Complete application means filling out all the information required in the form provided by the County, attaching all relevant and necessary documentation and paying the fee for an equitable estoppel certificate set forth in appendix B of this code.

Equitable estoppel certificate means the written document issued by the county zoning official after they determine the requirements of this subsection have been met.

Good faith reliance means the property owner did not have actual knowledge of the county comprehensive plan and/or land development code requirements and did not create a violation of those requirements.

Property owner means the person(s) who obtained the zoning determination and such person(s) must also be the current fee simple owner(s) of the property.

Significant action means the property owner expended significant time, effort or money in reliance on the zoning determination. Examples include closing on the purchase of the property or obtaining a permit and constructing improvements.

Zoning determination means a prior written document issued by an authorized county official who made a determination regarding a specific zoning matter on a specific property. It does not include generalized inquiries.

(2) Process

- a. To request an equitable estoppel certificate, a property owner must submit a complete application to the county planning and zoning department.
- b. Upon receipt of an application, county staff will conduct an initial review of the application. In the event the application is incomplete, the county will notify the property owner and the application will not be processed further by the county. The property owner will be given 30 days to complete their application, after which it will be deemed denied and no fee refund will be issued.
- c. Upon reviewing a complete application, the county zoning officer will issue a written approval or denial. In the event the county requires further information from the property owner or requires time to conduct independent research or verification, county staff will notify the property owner and request further information, if applicable.

(3) Requirements for approval. In order to approve an equitable estoppel certificate, the county zoning officer must find that:

(a) The property owner has met their burden of proving the elements of equitable estoppel, which include, at a minimum:

(i) The original or a copy of the zoning determination;

(ii) A written description of, together with written documentation (not verbal or hearsay/indirect communication) as evidence of, the significant action that the property owner took in good faith reliance on the zoning determination; and

(iii) A written explanation of why it would be unjust for the county to refuse to recognize the zoning determination at this time.

(b) There have been no changes in federal, state and local law (including the county comprehensive plan and code of ordinances) that have occurred after the date of the zoning determination that would render it null and void, in whole or in part.

(c) The property owner has made efforts towards compliance, such as executing an irrevocable unity of title for adjoining parcels to come nearer to meeting density requirements.

(4) Limitations; Effect of an equitable estoppel certificate. The county will accept an application for an equitable estoppel certificate only in the limited circumstances described in this subsection. Any evidence of fraud in application or documentation is grounds for immediate denial. An equitable estoppel certificate serves as an alternative to a certificate of zoning compliance and is issued for the limited purpose of allowing the property owner to make timely application for a building permit in order to make present (not future or speculative) use of their property.

(c) A certificate of concurrency is also required prior to issuance of building permits, pursuant to article VII of this chapter.

The Fee for an Equitable Estoppel Certificate is created and added to Appendix B of the Code as follows:

**APPENDIX B – SCHEDULE OF FEES, RATES AND CHARGES  
PLANNING AND ZONING DEPARTMENT**

Note regarding refunds: Once an application is filed with the County and the associated fees, rates or charges are paid to the County, no refunds will be issued to the applicant, unless a refund is specifically provided for in this Appendix or unless the permit was issued in error by the County.

Note regarding additional costs: The fees do not include additional costs to be paid by applicant for the services of engineers, legal counsel, or other professional consultants that are retained by the County in connection with review of any application or permit.

<b>13. Zoning compliance review</b>	
a) Single-Family Residential	\$100.00
b) Additions to Single-Family Residence	\$100.00
c) Residential Accessory Building	\$25.00
d) Multi-Family Residential Developments	\$100.00, plus \$5.00 per acre and \$5.00 per unit
e) Commercial	\$100.00 plus \$5.00 per acre
f) Additions to Commercial Structures	\$50.00
g) Commercial Accessory Structure	\$50.00

h) Towers, communication or broadcast 350' or greater above ground level	\$250.00
i) Temporary Asphalt Plants (per 6 months of operation)	\$25.00
j) New or Transfer of Alcohol Package Sales License	\$25.00
k) <u>Equitable Estoppel Certificate</u>	<u>\$300.00</u>

**Sec. 50-498. Reconfiguring a parent parcel or parcel of record that is not located within a recorded subdivision.**

Parent parcels or parcels of record that are described by metes and bounds legal description and are not located within a recorded subdivision may be re-configured in size and shape; provided, however, that the reconfiguration:

- (1) Either adds acreage to the parent parcel to come closer to meeting density or maintains the existing acreage and better configures the shape of the parent parcel to meet or come closer to meeting other zoning requirements, such as lot width or setbacks.
- (2) Does not create additional parcels;
- (3) Does not cut off or alter rights-of-way or other areas dedicated for public use; and
- (4) Does not leave any residual land that does not meet density or other zoning requirements.

Parent parcels that are reconfigured under this section result in a new parent parcel designation that is irrevocable and will be reflected in the records of the county planning and zoning department.