

**Section 902.07. - Appeals from decisions of the community development director or his designee.**

(1) *Purpose and intent.* This section is established to provide a mechanism for the hearing and resolution of appeals of decisions or actions by the community development director or his designee and for further appeals from decisions and actions from the planning and zoning commission.

(2) *Authorization.*

(a) The planning and zoning commission of Indian River County shall be authorized to:

1. Hear and decide appeals when it is alleged that there is an error in any order, requirement, decision, or determination made by the community development director or his designee in the application and enforcement of the provisions of the land development regulations.
2. Hear and decide appeals when it is alleged that there is an error in the interpretation or application of a provision(s) of these land development regulations in relation to a development application.

Decisions rendered by the planning and zoning commission may be appealed to the board of county commissioners which shall have the power to hear and decide such appeals.

(b) Upon appeal and in conformance with the land development regulations, the planning and zoning commission in exercising its powers may reverse, may affirm wholly or partly, or may modify the order, requirement, decision, interpretation, application or determination of the community development director or his designee.

(c) Any action amending or reversing wholly or partly the community development director's decision shall require four (4) affirmative votes of the planning and zoning commission.

(3) *Appeal procedures.*

(a) The applicant, or any other person(s) whose substantial interests may be affected during the development review process, may initiate an appeal.

(b) Appeals must be filed within twenty-one (21) days from the date of notification letter rendering the decision by the respective official. Appeals may be concurrent with requests for approval of a development application(s).

(c) An appeal must be filed within the specified time limit with the planning division on a form prescribed by the county. All such appeals shall recite the reasons such an appeal is being taken. The appeal shall identify: the error alleged; the ordinance allegedly improperly interpreted, or the decision or order allegedly improperly issued; the land development regulations supporting the applicant's position; and the goals, objectives and/or policies of the comprehensive plan supporting the applicant's position. The appeal shall be accompanied by a fee to be determined by resolution of the board of county commissioners. The community development director shall schedule the appeal at the earliest available meeting of the planning and zoning commission.

(d) Notice of the appeal, in writing, shall be mailed by the planning division to the owners of all land which abuts the property upon which an appeal is sought at least seven (7) days prior to the hearing. The property appraiser's address information for said owners shall be used in sending all such notices. The notice shall contain the name of the applicant for the appeal, a description of the land sufficient to identify it, and a description of the appeal requested, as well as the date, time and place of the hearing.

(e) All appeals shall be heard at a meeting of the planning and zoning commission. At the appeal hearing, all interested parties shall have a right to appear and address specific concerns directly related to the appeal. Any person may appear by agent or attorney. All such hearings shall be conducted as de novo hearings and

in compliance with the rules of procedure for the planning and zoning commission. The time and place scheduled for the hearing shall be provided to the applicant in writing after an appeal application is submitted.

- (f) Prior to the appeal hearing, all relevant information regarding the action from which the appeal is taken shall be compiled and transmitted by staff to the planning and zoning commission.
- (4) *Action by the planning and zoning commission, findings of fact.* At the appeal hearing, the planning and zoning commission, in conformity with the provisions of law and these land development regulations, may uphold, overturn, or overturn and affirm in part the decision being appealed. In reviewing an appeal, the planning and zoning commission shall make findings in the following areas:
- (a) Did the reviewing official fail to follow the appropriate review procedures? If so, what procedural error was made?
- (b) Did the reviewing official fail to properly interpret or apply the applicable zoning district regulations? If so, what error in interpretation or application of zoning district regulations was made?
- (c) Did the reviewing official fail to properly evaluate the application or request with respect to the comprehensive plan and land development regulations of Indian River County? If so, what error was made in evaluating the application or request with respect to the comprehensive plan policy or land development regulations?

The decision of the planning and zoning commission shall be final unless further appealed. Notwithstanding findings (a) through (c) above, the planning and zoning commission may make additional findings of fact.

- (5) *Further appeals from actions by the planning and zoning commission.* At any time within twenty-one (21) days following action by the planning and zoning commission, the applicant, the county administration, any department thereof, or any other person whose substantial interests may be affected by the proceeding may seek review of such decision by the board of county commissioners. The decision of the board of county commissioners shall be final. At the hearing scheduled for the purpose of considering an appeal of the planning and zoning commission's action, the board of county commissions may, in conformity with the provisions of law and these land development regulations, uphold, amend, or reverse wholly or partly the decision by the planning and zoning commission which is being appealed. Appeals of planning and zoning commission decisions to deny rezoning applications are regulated in section 902.12. All other types of appeals to the board of county commissioners shall be conducted in accordance with the provisions of subsection 902.07(3), and the board of county commissioners shall review the appeals with respect to the findings criteria of subsection 902.07(4). Any action by the board of county commissioners reversing a planning and zoning commission decision shall require three (3) affirmative votes.
- (6) *Effect of filing an appeal.* The filing of an appeal shall terminate all proceedings which further the action appealed until the appeal is resolved, except when the halting of such action poses a threat to life or property. The planning and zoning commission shall make this determination. Notwithstanding this provision, proceedings involving review of a development application may proceed when an appeal of an administrative decision has been filed and will be considered concurrent with the development application request.

(Ord. No. 90-16, § 1, 9-11-90; Ord. No. 91-7, § 2, 2-27-91; Ord. No. 93-29, §§ 8A, 8B, 9-7-93; Ord. No. 2002-004, § 1, 2-12-02; Ord. No. 2012-014, § 1, 7-10-12)