

Section 911.17. - Airport zoning.

(1)

Title. This section shall be known as the Indian River County Airport Zoning Ordinance.

(2)

Purpose and intent. The purpose of this airport zoning ordinance is to provide both airspace protection and land use compatibility with airport operations in Indian River County. This section, through establishment of airport overlay zones and corresponding regulations, provides for independent review of development proposals in order to promote the public interest in safety, health, and general welfare in Indian River County as well as to ensure that all publicly licensed airports in Indian River County can effectively function. Therefore, the Indian River County Board of County Commissioners deems it necessary to regulate uses of land located within or near the traffic patterns of airports through regulation of height of structures and objects of natural growth, and through regulation of land uses within noise impacted areas and runway clear zone areas.

There is hereby adopted and established the official airport zoning regulations pursuant to the authority conferred on the Board of County Commissioners of Indian River County, Florida, consistent with Chapters 163 and 333, Florida Statutes.

(3)

Definitions. All terms defined in the Indian River County Land Development Regulations, Chapter 901, are applicable in this section.

(4)

Airport zones of influence. Indian River County hereby adopts three (3) airport overlay zones which are shown on the county's official zoning atlas. These zones are established to regulate development in proximity to the following licensed public use airports located within Indian River County: Vero Beach Municipal Airport, Sebastian Municipal Airport, and New Hibiscus Airport. The location of these zones of influence is hereby established by this section. Boundaries of these zones of influence may be changed only by way of an amendment of the official zoning atlas, pursuant to section 902.12 of the land development regulations. All development applications for land within these zones of influence shall comply with the airport zoning regulations of section 911.17. In addition, development within these airport overlay zones shall also comply with applicable underlying zoning district requirements as referenced in Chapter 911, Zoning, of the county's land development regulations. Following are the three airport overlay zones:

- Airport Height Notification Zone (Subzone A and Subzone B);
- Airport Runway Clear Zone; and
- Airport Noise Impact Zone.

Where a zone of influence overlays a portion of a property, only that portion within the zone shall be affected by the zone regulations. Furthermore, in relation to applying runway clear zone and noise impact zone requirements, use regulations shall apply to the structure or facilities constituting the use and shall not generally apply to accessory open space, landscape and buffering, stormwater management, or driveway and parking uses.

(a)

Airport height notification zone and regulations.

1.

Establishment of zone. The airport height notification zone is hereby established as an overlay zone on the adopted county zoning atlas. This zone is established to regulate the height of structures and natural vegetation for areas in proximity to the licensed public use airports located within Indian River County. The airport height notification zones, consists of two subzones, defined as follows:

Subzone A. The area surrounding each licensed public use airport extending outward twenty thousand (20,000) feet from the ends and each side of all active runways.

Subzone B. That area within the unincorporated area of the county not within airport height notification Subzone A.

2.

Height notification regulations. All development proposals for land within the height notification zone shall be forwarded to the Federal Aviation Administration (FAA) to be reviewed for conformance with the obstructions standards detailed in Title 14, Code of Federal Regulations, Part 77 Subpart C. (14 CFR Part 77).

a.

A proposed development shall be determined to be a "potential airport obstruction" if the proposed development would result in a structure or natural vegetation having a height greater than an imaginary surface extending outward and upward from the ends and sides of a publicly licensed airport active runway at a slope of one (1) foot vertical to one hundred (100) feet horizontal outward to twenty thousand (20,000) feet for Subzone A or two hundred (200) feet above ground level for Subzone B. Applicants of any development proposal determined by the county to result in a structure(s) that constitutes a "potential airport obstruction" shall be issued a notice of potential airport obstruction during the development proposal review process by the community development director or his designee.

i.

No proposal for development will be approved for construction and no permit for construction will be issued for any proposal to construct any structure which is determined by the county to be a "potential airport obstruction" unless a county airport construction permit is granted or unless a county airport obstruction variance is granted.

b.

Any proposed development which is not determined to be a "potential airport obstruction" is exempt from any airport height notification zone permitting regulations contained herein.

3.

Airport construction permit procedures and criteria for approval. Any applicant affected by a notice of potential obstruction may apply to the community development director for an airport construction permit.

a.

Procedures for obtaining an airport construction permit.

i.

Applicants shall submit to the planning division a completed airport construction permit application form (as provided by the county) and a copy of the notice of proposed construction form submitted to the FAA for the project. Permit requests may be considered by the community development director concurrent with development plan approval consideration.

ii.

Prior to permit requests being considered for approval, applicants shall submit to the planning division the final determination issued by the FAA based on its review of the applicant's notice of proposed construction submitted in accordance with 14 CFR Part 77.

b.

Criteria for granting an airport construction permit.

i.

Where the FAA has reviewed the proposed development and determined its construction would not exceed an obstruction standard of 14 CFR Part 77, the community development director shall grant a airport construction permit for the proposed development provided that a condition is attached to the permit approval to ensure that the approved structure(s) is marked and lighted prior to the issuance of a certificate of occupancy (C.O.) if so required by Chapter 14-60, in accordance with the standards of Rules of the Department of Transportation and Federal Aviation Administration Advisory Circular 70/7460-1, as amended.

ii.

Where the FAA has reviewed a proposed development and determined that the proposed development exceeds the obstruction standards of 14 CFR Part 77, no airport construction permit may be approved, and a county airport obstruction variance (see regulations below) must be obtained by the applicant for the proposed development to proceed.

c.

Appeals. Actions of the community development director relating to granting or denying an airport construction permit may be appealed within fifteen (15) days of the decision rendered. Appeals shall be heard by the board of adjustment and may be filed by the applicant, staff, or any person aggrieved or taxpayer affected or governing body of a political subdivision or FDOT. All appeals shall be filed, reviewed, and heard in a manner consistent with F.S. §§ 333.08 and 333.10.

4.

Airport obstruction variance procedures and criteria.

a.

Procedures for obtaining an airport obstruction variance.

i.

Applicants shall submit to the planning division a completed airport construction variance application form, as provided by the county. Variance requests shall be considered by the board of adjustment. The request may be approved, approved with conditions, or denied.

ii.

Prior to variance requests being scheduled for consideration by the board of adjustment, the applicant shall submit to the planning division the following:

- A copy of the notice of proposed construction form submitted to the FAA;
- A final determination issued by the FAA based on its review of the applicant's notice of proposed construction submitted in accordance with 14 CFR Part 77;
- A valid aeronautical evaluation (may consist of the evaluation performed by the FAA);
- Comments from the FDOT or evidence that the FDOT has made no comments during its required forty-five (45) day comment timeframe. Said evidence shall include a return receipt showing that the FDOT comment time frame has been exceeded.

b.

Criteria for granting an airport obstruction variance. Where the FAA has reviewed the proposed development and determined its construction would exceed an obstruction standard of 14 CFR Part 77, the board of adjustment may grant an airport obstruction variance for a proposed development. Such a variance may be granted if the board determines that a literal enforcement of the regulations would result in practical difficulty or unnecessary hardship and where the relief granted would not be contrary to the public interest (i.e. the development can be accommodated in navigable airspace without adverse impact to the county's public use airports or aviation operations) but would do substantial justice and be in accordance with the spirit of F.S. Ch. 333, and provided that:

i.

A condition is attached to the variance approval to require that the approved structure(s) is marked and lighted to indicate to aircraft pilots the presence of an obstruction in accordance with the standards of FAA Advisory Circular Number 70/7460-1G., as it may be amended. Where such marking or lighting is required, such requirement shall be satisfied prior to the issuance of a Certificate of Occupancy (C.O.) for the affected structure.

ii.

FAA determines the aeronautical evaluations submitted are valid.

iii.

Consideration is given to:

1.

The nature of the terrain and height of existing structures.

2.

Public and private interests and investments.

3.

The character of flying operations and planned development of airports.

4.

FAA designated federal airways.

5.

Whether construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport.

6.

Technological advances.

7.

The safety of persons on the ground and in the air.

8.

Land use density.

9.

The safe and efficient use of navigable airspace.

10.

The cumulative effects on navigable airspace of all existing structures, proposed structures identified in the applicable jurisdictions' comprehensive plans, and all other known proposed structures in the area.

11.

FAA determinations and results of aeronautical studies conducted by or for the FAA.

12.

FDOT comments and recommendations, including FDOT findings relating to F.S. 333.025(1) standards and guidelines.

13.

Comments and recommendations from local airport authorities.

14.

Other testimony and findings of aviation operations and safety experts.

Chapter 902 variance criteria shall not be applicable to airport obstruction variance requests.

(b)

Airport runway clear zone and regulations.

1.

Zone establishment. There is hereby created and established as an overlay zone on the adopted county zoning atlas a runway clear zone for areas at each end of every active runway at all publicly licensed airports. Within a runway clear zone, certain uses are restricted or prohibited to reduce incompatibilities with normal airport operations and danger to public health.

2.

Runway clear zone regulations.

a.

The following types of uses shall be prohibited within the runway clear zone:

i.

Educational centers (including all types of primary and secondary schools, pre-schools, child care facilities).

ii.

Hospitals, medical inpatient treatment facilities, nursing/convalescent home facilities.

iii.

Places of worship.

b.

Allowable uses. Any use which is not prohibited in a runway clear zone as determined in a. above, is allowable within the runway clear zone, subject to compliance with applicable noise impact zone and zoning district regulations.

c.

Appeals. Determinations by the community development director, relating to use interpretations involving section "a." above, may be appealed to the planning and zoning commission sitting as the airport zoning commission, in the manner prescribed by section 902.07(1) through (4) of the Code. Further appeal may be made to the board of adjustment by an applicant or any person aggrieved or taxpayer affected or governing body of a political subdivision or FDOT. All such appeals to the board of adjustment shall be filed, reviewed, and heard in a manner consistent with F.S. §§ 333.08 and 333.10.

(c)

Airport noise impact zone and regulations.

1.

Zone establishment. There is hereby created and established as an overlay zone on the adopted county zoning atlas an airport noise impact zone for areas surrounding all publicly licensed airports. The noise zone is an area in which uses are restricted and special construction standards are to be used to minimize the impact of airport generated noise routinely produced by continuation of normal airport operations. The airport noise impact zone is defined as follows:

An area contiguous to a publicly licensed airport measuring one-half (½) the length of the longest active runway on either side of and at the end of each active runway centerline. For land use control purposes, this boundary shall be considered to be consistent with the sixty-five (65) to seventy (70) Idn zone determined by an official Part 150 Noise Study.

Notwithstanding other provisions of this section, should any publicly licensed airport conduct an official 14 CFR Part 150 study the boundaries of that airport's noise impact zone shall be modified to comply with the official noise study, subject to amendment of the official zoning atlas as addressed in section 911.17(4) of these regulations.

2.

Noise impact zone land use regulations. Provisions of this section shall apply to construction, alteration, moving, repair and use of any building or structure within the noise impact zone.

a.

Permitted uses. The following uses shall be permitted within the established noise overlay zone, unless prohibited by overflight zone or zoning district regulations:

i.

Governmental services.

ii.

Transportation.

iii.

Off-street parking.

iv.

Offices, business and professional.

v.

Wholesale and retail building materials, hardware and farm equipment.

vi.

Retail trade—general.

vii.

Utilities, heavy or limited.

viii.

Communications.

ix.

Manufacturing—general.

x.

Photographic and optical services.

xi.

Mining and fishing, resource production and extraction.

xii.

Nature exhibits and zoos.

xiii.

Amusement parks, resorts and camps.

xiv.

Golf courses, riding stables and water recreation.

xv.

Agricultural operations.

xvi.

Similar uses.

b.

Restricted uses and criteria. The following uses shall be permitted within the established noise overlay zone, (unless prohibited by overflight zone or zoning district regulations) only if the proposed development complies with the applicable criteria described below:

i.

Child care, transient lodgings, educational centers, residential (other than mobile homes), and similar uses. Developers of proposed child care facilities, transient lodgings, educational centers and residential uses (other than mobile homes) shall verify to the county in writing that proposed buildings are designed to achieve an outdoor to indoor noise level reduction (NLR) of at least twenty-five (25) decibels. (Normal residential construction can be expected to provide an NLR of twenty (20) to twenty-five (25) decibels).

ii.

Hospitals, homes for the aged, places of worship, auditoriums, concert halls and similar uses. Hospitals, homes for the aged, places of worship, auditoriums and concert halls shall verify to the county in writing that proposed buildings are designed to achieve an outdoor to indoor noise level reduction (NLR) of at least twenty-five (25) decibels.

iii.

Outdoor sports arenas, spectator sports and similar uses. Outdoor sports arenas and spectator sports facilities must be constructed with special sound reinforcement systems consistent with building code regulations.

In lieu of providing written verification that a proposed building is designed for an NLR of twenty-five (25) decibels (as stated in i., ii., and iii. above), a developer may execute and record an aviation easement as provided in 911.17(4)(c)2.e. below.

c.

Prohibited uses. Uses which are not specified in section 911.17(4)(c)2.a. and b. as permitted or restricted are prohibited within the noise overlay zone

d.

Appeals. Determinations by the community development director, relating to use interpretations involving sections "a." or "b." or "c." above, may be appealed to the planning and zoning commission, sitting as the airport zoning commission, in the manner prescribed by section 902.07(1) through (4) of the Code. Further appeal may be made to the board of adjustment by an applicant any aggrieved person, taxpayer affected, governing body of a political subdivision, or FDOT. All such appeals to the board of adjustment shall be filed, reviewed, and heard in a manner consistent with F.S. §§ 333.08 and 333.10.

e.

Aviation easements. An aviation easement is a legal document that grants to the owner/operator of a nearby airport a right to continue to operate the airport in a manner similar to current operations, despite potential nuisance effects upon uses that are being established in close proximity to the airport. Applicants choosing to provide an aviation easement shall execute said easement to the appropriate airport authority. The easement shall be in a form acceptable to the county attorney's office and shall be executed in a recordable form by the property owner:

- Prior to release of a development site plan,
- Prior to or via recording of a final plat, or
- Prior to issuance of a building permit, as applicable.

The property owner shall record the easement and provide a copy of same to the county.

(d)

Special requirements applicable throughout the unincorporated area of the county. Notwithstanding any other provision of this section (911.17), no use may be made of land or water within the unincorporated area of the county in such a manner as to interfere with operation of an airborne aircraft using a publicly licensed airport. The following special requirements shall apply to proposed developments:

1.

Solid waste disposal sites shall be reviewed in accordance with the State of Florida Department of Environmental Regulation (DER) Rule Chapter 17-701, which requires the following:

a.

No solid waste disposal sites shall be permitted to be located as follows:

i.

Within ten thousand (10,000) feet of any publicly licensed airport active runway used or planned to be used by turbine powered aircraft, or

ii.

Within five thousand (5,000) feet of any publicly licensed airport active runway used only by piston type aircraft, or

iii.

So that it places the active runways and/or approach and departure patterns of an airport between the solid waste disposal site and bird feeding, water or roosting areas, or

iv.

Locations outside the above locations but still within the limits of any airport overlay zone(s) if determined by the FAA to pose a hazard.

2.

Proposed developments which produce lights or illumination, smoke, glare or other visual hazards, or produce electronic interference with airport/ airplane navigation signals are subject to the standards specified in the FAA Procedures Manual 7400-2C, consistent with F.S. Ch. 333.03(3), Florida Statutes, as may be applied and enforced by the state and/or federal governments.

(e)

Nonconforming uses. The regulations prescribed herein shall not be construed to require the removal, lowering, or other change to or alteration of any structure or natural vegetation not conforming to the regulations as of the effective date of this section, or to otherwise interfere with continuance of any nonconforming use except as provided in 333.07(1) and (3). However, no pre-existing nonconforming structure, natural vegetation, or use shall be replaced, rebuilt, altered, or allowed to grow higher, or to be replanted, so as to constitute an increase in the degree of nonconformity with these regulations (911.17). Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, where the construction or alteration was begun prior to the effective date of this section and is completed within one (1) year thereafter.

The provisions of Chapter 904 of the land development regulations also apply to nonconformities.

(Ord. No. 93-7, § 1, 3-18-93)