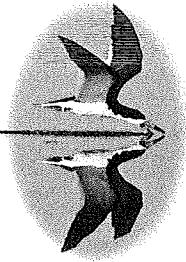


# Town of Indian Shores

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## ***BOARD OF ADJUSTMENT***

### ***WORKSHOP AGENDA - 9 DECEMBER 2014***

**BEGINS 3:00 P.M.**

<b><i>ITEM #</i></b>	<b><i>AGENDA ITEM</i></b>
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<b><i>1.0</i></b>	<b><i>Presentation by Attorney Robert J. Metz relative to the criteria and procedures for deliberation, motions and voting in regard to a Board of Adjustment Public Hearing.</i></b>
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Elaine Jackson.

***Elaine Jackson, MMC  
Town Clerk***

James J. Lawrence  
Mayor

Joan G. Herndon-Parrott  
Vice Mayor

William F. Smith  
Councillor

Patrick C. Soranno  
Councillor

Michael "Mike" Petruccelli  
Councillor

Bonnie Dhonau  
Town Administrator

Terry E. Hughes  
Chief of Police

Walter H. Pierce, III  
Director of Finance  
and Personnel

Elaine N. Jackson, MMC  
Town Clerk

Robert J. Metz, Jr.  
Town Attorney

Malcolm Green  
Building Official

**ARTICLE IV. SUPPLEMENTARY DISTRICT REGULATIONS****DIVISION 1. GENERALLY****Sec. 110-301. Article applicable in all zoning districts.**

Unless otherwise provided, the regulations and criteria in this article are applicable in all zoning districts located within the town's corporate limits.

(Code 1979, § 23-22)

**Secs. 110-302—110-320. Reserved.****DIVISION 2. GENERAL BUILDING AND USE REQUIREMENTS****Sec. 110-321. Maximum density.**

The maximum allowable density in a zoning district is 18 residential units per buildable acre on any given lot, parcel or building site, all portions of which are contiguous and within the same zoning district unless otherwise noted in the zoning district requirements:

- (1) One residential unit of a building may be used as a temporary combination rental/sales office and model unit until all residential units are sold or rented. However, such temporary use may not exceed six months after the final certificate of occupancy for the project has been issued.
- (2) Any residential unit used as a rental/sales office or temporary combination rental/sales office and model unit, as provided in subsection (1) above, may be used only for the rental or sale of units within the permitted development site.
- (3) A permanent rental office, otherwise allowed as a permitted or accessory use elsewhere in this Code, shall be included as a unit for calculating density. A permanent rental office shall be limited to the rental or units within the permitted development site.
- (4) A permanent rental office may be converted to a residential unit only if it meets requirements of this section and the maximum allowable density provided elsewhere in this Code as of the date of the conversion.

(Code 1979, § 23-22(1); Ord. No. 93-3, § 5, 7-13-93; Ord. No. 94-11, § 1, 6-28-94; Ord. No. 98-1, § 1, 3-11-98; Ord. No. 2008-2, § 10, 3-12-08)

**Sec. 110-322. Building height.**

The maximum allowable height for a building in a zoning district is five stories and 50 feet in height, the height shall be measured from the minimum required piling height to the top of the sidewall, except the buildings located in the ~~Indian Shores Town Square Plan~~ area shall be

# Indian Shores, FL

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◀ Indian Shores, Florida - Code of Ordinances  
([https://www.municode.com/library/fl/indian\\_shores/codes/code\\_of\\_ordinances?nodeId=11022](https://www.municode.com/library/fl/indian_shores/codes/code_of_ordinances?nodeId=11022))

◀ Subpart B - LAND DEVELOPMENT REGULATIONS  
([https://www.municode.com/library/fl/indian\\_shores/codes/code\\_of\\_ordinances?nodeId=SPBLADERE](https://www.municode.com/library/fl/indian_shores/codes/code_of_ordinances?nodeId=SPBLADERE))

◀ Chapter 110 - ZONING ([https://www.municode.com/library/fl/indian\\_shores/codes/code\\_of\\_ordinances?nodeId=SPBLADERE\\_CH110ZO](https://www.municode.com/library/fl/indian_shores/codes/code_of_ordinances?nodeId=SPBLADERE_CH110ZO))

◀ ARTICLE II. - ADMINISTRATION  
([https://www.municode.com/library/fl/indian\\_shores/codes/code\\_of\\_ordinances?nodeId=SPBLADERE\\_CH110ZO\\_ARTIIAD](https://www.municode.com/library/fl/indian_shores/codes/code_of_ordinances?nodeId=SPBLADERE_CH110ZO_ARTIIAD))

## 📁 DIVISION 2. - BOARD OF ADJUSTMENT

Sec. 110-56. - Membership.  
([https://www.municode.com/library/fl/indian\\_shores/codes/code\\_of\\_ordinances?nodeId=SPBLADERE\\_CH110ZO\\_ARTIIAD\\_DIV2BOARD\\_S110-56ME](https://www.municode.com/library/fl/indian_shores/codes/code_of_ordinances?nodeId=SPBLADERE_CH110ZO_ARTIIAD_DIV2BOARD_S110-56ME))

Sec. 110-57. - Appointment.  
([https://www.municode.com/library/fl/indian\\_shores/codes/code\\_of\\_ordinances?nodeId=SPBLADERE\\_CH110ZO\\_ARTIIAD\\_DIV2BOARD\\_S110-57AP](https://www.municode.com/library/fl/indian_shores/codes/code_of_ordinances?nodeId=SPBLADERE_CH110ZO_ARTIIAD_DIV2BOARD_S110-57AP))

Sec. 110-58. - Term of office.  
([https://www.municode.com/library/fl/indian\\_shores/codes/code\\_of\\_ordinances?nodeId=SPBLADERE\\_CH110ZO\\_ARTIIAD\\_DIV2BOARD\\_S110-58TEOF](https://www.municode.com/library/fl/indian_shores/codes/code_of_ordinances?nodeId=SPBLADERE_CH110ZO_ARTIIAD_DIV2BOARD_S110-58TEOF))

Sec. 110-59. - Officers and procedures.  
([https://www.municode.com/library/fl/indian\\_shores/codes/code\\_of\\_ordinances?nodeId=SPBLADERE\\_CH110ZO\\_ARTIIAD\\_DIV2BOARD\\_S110-59OPR](https://www.municode.com/library/fl/indian_shores/codes/code_of_ordinances?nodeId=SPBLADERE_CH110ZO_ARTIIAD_DIV2BOARD_S110-59OPR))

Sec. 110-60. - Vacancies.  
([https://www.municode.com/library/fl/indian\\_shores/codes/code\\_of\\_ordinances?nodeId=SPBLADERE\\_CH110ZO\\_ARTIIAD\\_DIV2BOARD\\_S110-60VA](https://www.municode.com/library/fl/indian_shores/codes/code_of_ordinances?nodeId=SPBLADERE_CH110ZO_ARTIIAD_DIV2BOARD_S110-60VA))

Sec. 110-61. - Funding and fees; compensation.  
([https://www.municode.com/library/fl/indian\\_shores/codes/code\\_of\\_ordinances?nodeId=SPBLADERE\\_CH110ZO\\_ARTIIAD\\_DIV2BOARD\\_S110-61FUFECO](https://www.municode.com/library/fl/indian_shores/codes/code_of_ordinances?nodeId=SPBLADERE_CH110ZO_ARTIIAD_DIV2BOARD_S110-61FUFECO))

**Sec. 110-62. - Powers and duties.**

([https://www.municode.com/library/fl/indian\\_shores/codes/code\\_of\\_ordinances?nodeId=SPBLADERE\\_CH110ZO\\_ARTIIAD\\_DIV2BOARD\\_S110-62PODU](https://www.municode.com/library/fl/indian_shores/codes/code_of_ordinances?nodeId=SPBLADERE_CH110ZO_ARTIIAD_DIV2BOARD_S110-62PODU))

**Sec. 110-63. - Administrative review.**

([https://www.municode.com/library/fl/indian\\_shores/codes/code\\_of\\_ordinances?nodeId=SPBLADERE\\_CH110ZO\\_ARTIIAD\\_DIV2BOARD\\_S110-63ADRE](https://www.municode.com/library/fl/indian_shores/codes/code_of_ordinances?nodeId=SPBLADERE_CH110ZO_ARTIIAD_DIV2BOARD_S110-63ADRE))

## **DIVISION 2. - BOARD OF ADJUSTMENT**

### **FOOTNOTE(S):**

--- (3) ---

**Cross reference**— Boards, committees, commissions, § 2-86 et seq.; unsafe building code board of appeals, § 18-254.

**Sec. 110-56. - Membership.**

The board of adjustment shall consist of five regular members and one alternate member, all of whom shall be residents of the town and at least 18 years of age. An alternate member may act in the temporary absence or disability of any regular member or may act when a regular member is otherwise disqualified in a particular case that may be presented to the board. No member or alternate member of the board shall be a paid or elected official or employee of the town.

(Code 1979, § 23-42(1))

**Sec. 110-57. - Appointment.**

Each member of the board of adjustment shall be appointed by the town council. For purposes of identification and appointment, the five regular board positions shall be designated as seats one through five, inclusive. Any appointment as a board member shall be either to a specific seat number for a regular member or as the alternate member.

(Code 1979, § 23-42(2))

**Sec. 110-58. - Term of office.**

All members of the board of adjustment shall be appointed to serve for terms of three years or until their successors are appointed, unless sooner removed for reasons of death, resignation or for cause. Members may be appointed by the town council to serve consecutive terms. The terms of not more than two regular members shall expire in any one year. Any member of the board may be removed from office for cause by the town council upon written charges and after a public hearing.

(Code 1979, § 23-42(3))

**Sec. 110-59. - Officers and procedures.**

The board of adjustment shall elect a chairman and vice-chairman from among its regular members and shall appoint a secretary who may be an officer or employee of the town council. The board may create and fill such other offices as it may determine to be necessary for the conduct of its duties. Terms of all offices of the board shall be for one year, with eligibility for reelection and reappointment.

(Code 1979, § 23-42(4))

**Sec. 110-60. - Vacancies.**

Any vacancy occurring during the unexpired term of office of any member shall be filled by the town council for the remainder of the term. Such vacancy shall be filled within 30 days after the vacancy occurs.

(Code 1979, § 23-42(6))

**Sec. 110-61. - Funding and fees; compensation.**

(a) The town council may appropriate such funds as it sees fit for salaries, fees and expenses necessary in the conduct of the work of the board of adjustment. The board shall have the authority to expend all sums so appropriated and other sums made available for its use from other sources for the purpose and activities authorized by this Code. A fee established by the town council will be charged for each application for a hearing submitted to the board. The application, together with the check for the required fee, payable to the town, will be submitted to the town clerk. No fee shall be required when any town official or employee is applying for a hearing on behalf of the town.

(b) Members and alternate members who are called upon to serve shall receive \$20.00 per meeting attended.

(Code 1979, § 23-42(5))

**Sec. 110-62. - Powers and duties.**

The board of adjustment shall have the following powers and duties:

- (1) *Administrative review.* To hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter or any applicable building ordinance, code or regulation as provided in section 110-63()
- (2) *Variances.* To authorize upon appeal such variance from the terms of this chapter or the applicable building ordinances, codes and regulations as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of this chapter or such ordinances, codes and regulations would result in unnecessary and undue hardship as provided in section 110-84()

(Code 1979, § 23-41(2))

**Sec. 110-63. - Administrative review.**

- (a) Appeals may be taken to the board of adjustment by any person aggrieved or by any office, member or committee of the town council affected by any decision of an administrative official under this chapter. Such appeal shall be taken within 30 days after rendition of the order, requirement, decision or determination appealed from by filing with the office from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The appeal shall be in the form prescribed by the rules of the board. The administrative official from whom the appeal is taken shall, upon notification of the filing of the appeal, forthwith transmit to the board all the documents, plans, papers or other materials constituting the record upon which the action appealed from was taken.
- (b) In exercising its powers, the board may, upon appeal and in conformity with this Code, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination made by an administrative official in the enforcement of any applicable section of this chapter and may make any necessary order, requirement, decision or determination and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of a majority of all the members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass under any such section.

(Code 1979, § 23-44)

The board of adjustment shall consist of five regular members and one alternate member, all of whom shall be residents of the town and at least 18 years of age. An alternate member may act in the temporary absence or disability of any regular member or may act when a regular member is otherwise disqualified in a particular case that may be presented to the board. No member or alternate member of the board shall be a paid or elected official or employee of the town.

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(Code 1979, § 23-42(6))

**Sec. 110-61. - Funding and fees; compensation.**

(a)

## VARIANCE CRITERIA AND PROCEDURE

This document contains important information regarding the criteria and procedures to obtain a variance.

### **A. Variance Criteria. [See §110-84, Town Code]**

A variance may be granted when it will not be contrary to the public interest and when, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal interpretation of the Town's zoning code (Chapter 110 of the Town Code) would result in unnecessary and undue hardship.

A variance may not be granted to establish or expand a use that is not permitted by the zoning code. A variance may not be granted because of the presence of nonconformities in the zoning district or in adjoining zoning districts.

In authorizing a variance, the Board of Adjustment will consider only the following criteria:

1. Special conditions or circumstances exist which are peculiar to the land, structure, building or occupancy involved and which are not generally applicable to other lands, structures, buildings or occupancies in the same zoning district.
2. Such special conditions or circumstances do not result from the actions of the applicant.
3. Granting the variance will not be contrary to the public interest or have a detrimental effect upon adjoining properties or the neighborhood.
4. A literal interpretation and enforcement of the zoning code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district or would result in unnecessary or undue hardship to the applicant.
5. The variance requested or granted by the Board of Adjustment is the minimum necessary to alleviate the hardship.
6. Granting that variance will be in harmony with the general intent and purpose of the zoning code, the comprehensive plan, and land development regulations.

### **B. Burden of proof.**

The Town has the initial burden of proving that what the applicant has done or proposes to do is contrary to the zoning code. If this is proven, the burden then shifts to the applicant to prove that he or she is entitled to a variance according to the criteria set forth above. If the applicant fails to prove this, the variance should be denied. If the applicant does prove this, the variance should be granted.

### **Board of Adjustment Variance Hearing Procedures**

The duty of the Board of Adjustment is to make a quasi-judicial legal decision whether the applicant is entitled to a variance. By law, this decision must be based solely upon variance criteria contained in § 110.84 of the Town Code and the evidence presented at the hearing. If the evidence shows the applicant has met the variance criteria, the Board is required to grant the variance; if the evidence shows that the applicant has not met the variance criteria, the Board is required to deny the variance.

All testimony must be under oath. The Board may only consider evidence that is material and relevant to the issues. The Board has the right to limit testimony and questioning to ensure that they address relevant issues and evidence. The Board may recognize opponents who have an interest in the variance greater than that possessed by the general public.

The following procedures will be followed at the hearing.

1. **Presentation by staff.** The Town staff explains the issues and presents evidence and witnesses. The applicant and any recognized opponents may cross examine staff and witnesses, after which the Board may ask questions.
2. **Presentation by applicant.** The applicant presents evidence and witnesses. Staff and any recognized opponents may cross examine the applicant's witnesses, after which the Board may ask questions.
3. **Presentation by recognized opponents.** Recognized opponents present evidence and witnesses. The applicant and staff may cross examine the opponents' witnesses, after which the Board may ask questions.
4. **Testimony from the public.** Members of the public may testify. Each speaker must give his or her name and address and is limited to four minutes of testimony.
5. **Rebuttal evidence and witnesses.** Staff, the applicant, and recognized opponent may present evidence and witnesses to rebut new evidence introduced after their presentation.
6. **Summing up.** Staff, opponents, and the applicant, in that order, will have a opportunity to briefly summarize the evidence and present argument.
7. **Board of Adjustment deliberation and vote.**

I acknowledge that I have received these rules and procedures at the time of my application for a variance.

\_\_\_\_\_  
Applicant's signature

\_\_\_\_\_  
Date