AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA, CONCERNING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS (LDRS); PROVIDING FOR AMENDMENTS TO CHAPTER 902, ADMINISTRATIVE MECHANISMS, PROVIDING FOR AMENDMENTS TO CHAPTER 915, PLANNED DEVELOPMENT (P.D.) PROCESS AND STANDARDS FOR PLANNED DEVELOPMENT; BY AMENDING SECTION 902.05, ROLE OF PLANNING AND ZONING COMMISSION IN PLANNING AND DEVELOPMENT; BY AMENDING SECTION 902.08, ROLE OF BOARD OF ADJUSTMENT; BY AMENDING SECTION 902.09, VARIANCES; BY AMENDING SECTION 915.28, MODIFICATIONS TO PLANNED DEVELOPMENT PLANS; AND BY PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; CODIFICATION; SEVERABILITY; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRS) CHAPTER 902, ADMINISTRATIVE MECHANISMS, AND CHAPTER 915, PLANNED DEVELOPMENT (P.D.) PROCESS AND STANDARDS FOR DEVELOPMENT BE AMENDED AS FOLLOWS:

SECTION #1:

Amend LDR Section 902.05, Role of planning and zoning commission in planning and development, as follows:

(1) The planning and zoning commission shall act as the designated local planning agency.

(2) The planning and zoning commission of Indian River County shall have the power to recommend to the board of county commissioners land development regulations, ordinances, and amendments to land development regulations which are designed to promote orderly development and implement the Indian River County Comprehensive Plan.

(3) The planning and zoning commission shall consider whether or not any proposed amendments to the Indian River County Comprehensive Plan are consistent with the overall growth management goals and objectives of the county, and shall make recommendations regarding all such amendments to the board of county commissioners.

(4) The planning and zoning commission shall consider whether or not any proposed rezoning requests are consistent with the Indian River County Comprehensive Plan and make recommendations regarding all rezonings to the board of county commissioners.

(5) The planning and zoning commission shall consider whether or not specific proposed developments conform to the principles and requirements of the county's land development regulations and the comprehensive plan, shall make decisions on development applications, and shall make recommendations to the board of county commissioners based thereon.

(6) The planning and zoning commission shall keep the board of county commissioners and the general public informed and advised on matters relating to planning and development.

(7) The planning and zoning commission shall conduct such public hearings as may be required to gather such information for the drafting, establishment and maintenance of the various...
components of the comprehensive plan, and such additional public hearings as are specified under the provisions of these land development regulations.

(8) The planning and zoning commission shall review and make decisions regarding applications for preliminary plat and site plan approval.

(9) The planning and zoning commission shall receive petitions for special exception uses; review these petitions pursuant to the applicable special exception use criteria; receive input at an advertised public hearing; and recommend approval, approval with conditions, or denial of the petitions to the board of county commissioners.

(10) The planning and zoning commission shall consider whether proposed administrative permit uses requiring planning and zoning commission review and approval conform to the specific use requirements and make decisions related thereto.

(11) The planning and zoning commission may recommend that the board of county commissioners direct the planning staff to undertake special studies on the location, condition and adequacy of specific facilities. These may include, but are not limited to, studies on housing, commercial and industrial facilities, parks, playgrounds, beaches and other recreational facilities, public buildings, public and private utilities, transportation, parking, and development of regional impact (DRI) applications.

(12) The planning and zoning commission of Indian River County shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these land development regulations. The decision of the planning and zoning commission is final unless appealed to the board of county commissioners.

(13) The planning and zoning commission shall interpret these land development regulations at the request of the community development director.

(14) The planning and zoning commission shall perform any other duties which may be lawfully assigned to it.

(15) The commission shall have and exercise the powers of the airport zoning commission as specified in F.S. § 333.05, under rules consistent with said section and with the Code of Indian River County.

(16) The commission shall have and exercise the powers of the board of adjustment, in accordance with section 902.08 and 902.09.

(Ord. No. 90-16, § 1, 9-11-90; Ord. No. 92-11, § 15, 4-22-92; Ord. No. 95-10, § 15B, 5-31-95)

SECTION #2:

Amend LDR Section 902.08, Role of board of adjustment, as follows:

(1) The board of adjustment shall receive and consider applications for variances from the terms of the county's land development regulations and shall grant such variances as will not be contrary
to the public interest, pursuant to the procedures and requirements of the variance section of the
land development regulations, section 902.09

(2) The board shall have and exercise the powers specified in F.S. § 333.10, relating to airport
zoning regulations, under rules consistent with said section and with the Code of Indian River
County.

(3) **The planning and zoning commission shall act as the board of adjustment.**

(Ord. No. 90-16, § 1. 9-11-90; Ord. No. 92-11, § 16, 4-22-92)

SECTION #3:

**Amend LDR Section 902.09, Variances, as follows:**

(1) **Purpose and intent.** This section is established to provide procedures for reviewing variances
by the board of adjustment. A variance runs with the land and is a departure from the
dimensional or numerical or other technical requirements of the land development regulations
where such variance will not be contrary to the public interest and where owing to conditions
peculiar to the property and not the result of the actions of the applicant or his predecessors in
title, a literal enforcement of the land development regulations would result in an unnecessary
and undue hardship.

(2) **Approving authority.** The board of adjustment is hereby authorized to grant variances in
accordance with the provisions of this section and can attach conditions to variances granted.

(3) **Type of variance to be allowed.** The board of adjustment shall have the authority to grant the
following variances:

(a) A variance from the yard area requirements of any zoning district where there are unusual
and practical difficulties in carrying out these provisions due to an irregular shape of the
lot, topography, or other conditions, provided such variation will not seriously impact any
adjoining property or the general welfare.

(b) Other technical variances that occur when an owner or authorized agent can show that a
strict application of the terms of the land development regulations relating to the use of the
land will impose unusual and unique difficulties, but not loss of monetary value alone.

(c) De-minimus setback variance. A de-minimus setback variance can be granted
automatically at the staff level, under certain circumstances, without board approval. This
applies in the following circumstances where the setback variance:

1. Is for a structure properly permitted where no form-board survey was required;
2. Is for 0.5 feet or less from the setback required at the time the structure was
   constructed or erected on the site; and
3. Is from property line(s) which have not been altered so as to cause or increase the
   nonconformity.

(4) **When variances are not allowed.**

(a) No variance shall be granted which would permit the establishment or expansion of a use
in a zone or district in which such use is not permitted by these land development
regulations, or any use expressly or by implication prohibited by the terms of these land
development regulations for said district.
(b) No variances shall be granted which would permit the establishment or expansion of a special exception use in any zoning district without the approval required in the special exception section, and including specific land use criteria.
(c) No variance shall be granted which would permit the establishment or expansion of a use requiring an administrative permit in any zoning district without the approval required in the administrative permit section, and including specific land use criteria.
(d) No variance shall be granted which relates in any way to a nonconforming use, except as allowed in the nonconformities section.
(e) No variance shall be granted which modifies any definitions contained within these land development regulations.
(f) No variance shall be granted which would in any way result in any increase in density above that permitted in the applicable zoning district regulations.

(5) Procedures.
(a) Any property owner may apply for a variance after a decision by the community development director that an existing property condition or a development proposal of such property owner does not comply with the provisions of these land development regulations.
(b) The applicant must file an application for a variance along with the appropriate fee payable to Indian River County with the planning division. The application shall be in a form approved by the community development director and shall contain the following information:
   1. Identification of the specific provisions of these land development regulations from which a variance is sought.
   2. The nature and extent of the variance sought; an explanation why it is necessary; and the basis for the variance under section 902.09(3)(a) or (b).
   3. The grounds relied upon to justify the proposed variance.
   4. A legal description of the property, a copy of the warranty deed for the property, and a detailed plot plan of the property.
(c) On all proceedings held before the board of adjustment, the staff of the planning division shall review the application and file a recommendation on each item. Such recommendation shall be transmitted to the board of adjustment prior to final action on any item before the board of adjustment, and shall be part of the record of the application.
(d) Notice of the variance, in writing, shall be mailed by the planning division to the owners of all land which abuts the property upon which a variance is sought, at least seven (7) days prior to the hearing. The property appraiser's address for said owners shall be used in sending all such notices. The notice shall contain the name of the applicant for the variance, a description of the land sufficient to identify it, a description of the variance requested, as well as the date, time and place of the hearing.

(6) Review by the board of adjustment.
(a) In order to authorize any variance from the terms of these land development regulations, the board of adjustment shall determine that the application for variance is complete, that the public hearing has been held with the required notice and that the opportunity has been given for the aggrieved parties to appear and be heard in person or be represented by an attorney at law, or other authorized representatives. The board of adjustment shall also find that all of the following facts exist before granting a variance:
1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures, or buildings in the same zoning district.
2. That the special conditions and circumstances do not result from the actions of the applicant or illegal acts of previous property owners.
3. That granting the variance requested will not confer on the applicant any special privilege that is denied by the regulation to other lands, buildings, or structures in the same zoning district.
4. That literal interpretation of the provisions of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the regulations and would constitute an unnecessary and undue hardship upon the applicant.
5. That the variance granted is the minimum necessary in order to make possible the reasonable use of the land, building, or structure.
6. That the granting of the variance will be in harmony with the general purpose and intent of the land development regulations, and the Indian River County Comprehensive Plan.
7. That such variance will not be injurious to the surrounding area or otherwise be detrimental to public welfare.
8. That the property cannot be put to a reasonable use in a manner which fully complies with the requirements of these land development regulations.

(b) The following regulations also apply to the authorization of a variance:
1. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and non-permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance.
2. No application or request may be reheard or reconsidered unless otherwise directed by a court of competent jurisdiction, or unless new circumstances or information can be presented with a new application.

(c) In granting any variance, the board of adjustment may make the authorization of the variance conditional upon such alternate and additional restrictions, stipulations and safeguards as it may deem necessary to ensure compliance with the purpose and intent of this chapter and consistency with the Indian River County Comprehensive Plan. Violation of such conditions, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

Such conditions restrictions, stipulations, and safeguards may include, but are not limited to, time within which the action for which the variance is sought shall be begun or completed or both; the establishment of screening and/or buffering techniques; and provision for extensions or renewals.

(7) Decision. The board of adjustment shall approve, approve with conditions, or deny the application, furnishing the applicant a written statement of the reasons for any denial. A decision of the board of adjustment may be appealed to the board of county commissioners as provided in section 902.07(5).

(Ord. No. 90-16, § 1, 9-11-90)

SECTION #4:

Amend LDR Section 915.28, Modifications to planned development plans.
Planned development plans may be modified as provided herein.

(1) Proposals to increase the overall project density, increase the intensity of use(s), reduce buffers or other measures intended to ensure the compatibility with adjacent properties, reduce preservation/conservation areas, obtain special exception waivers not previously granted, require a change in the development parameters set up in a planned development zoning district, or to reduce, expand or otherwise modify the project area, shall require approval of a revised planned development conceptual plan and any other affected project plan(s).

(A) A revised planned development conceptual plan shall be reviewed and approved in the same manner as the original planned development conceptual plan application, except as provided in sub-section (6) below.

(B) Revisions of other affected plan(s), if any.

(2) Phasing revisions shall require modifications to and the updating of the planned development conceptual plan and all affected preliminary planned development plans. Such modifications shall be reviewed and approved in the same manner as a minor site plan, pursuant to the provisions of Chapter 914.

(3) Preliminary planned development plans may be modified in the same manner as site plans and preliminary plats pursuant to the provisions of Chapter 913 and Chapter 914. Modifications shall generally conform to the approved planned development conceptual plan. A copy of an updated planned development conceptual plan sheet(s) shall accompany each copy of the proposed planned development plan modification.

(4) Land development permits may be modified pursuant to the requirements, review and procedures for modifying land development permits contained in Chapter 913.

(5) Final planned development plats may be modified pursuant to the re-platting procedures contained in Chapter 913 and standard County procedures for such reviews and approvals.

(6) Reductions in setbacks and other dimensional criteria for structures and lots not located on the project perimeter may be approved by the Planning and Zoning Commission at a public hearing subject to the following criteria:

(A) The proposed setback(s) and/or other dimensional criteria shall not be reduced more than 20% from the originally approved setback(s) and/or dimensional criteria standards; and

(B) The applicant shall submit documentation confirming that the proposed setback(s) and/or dimensional criteria are supported by the project property owners association or, where applicable, the project architectural review board.
SECTION #5: SEVERABILITY

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

SECTION #6: REPEAL OF CONFLICTING ORDINANCES

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

SECTION #7: INCLUSION IN THE CODE OF LAWS AND ORDINANCES

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

SECTION #8: EFFECTIVE DATE

This Ordinance shall take effect upon filing with the Department of State.

This ordinance was advertised in the Press-Journal on the 9th day of March, 2015, for a public hearing to be held on the 24th day of March, 2015, at which time it was moved for adoption by Commissioner o'Bryan_________, seconded by Commissioner Zorc________, and adopted by the following vote:

Chairman Wesley S. Davis              Aye
Vice Chairman Bob Solari              Aye
Commissioner Joseph E. Flescher       Absent
Commissioner Tim Zorc                 Aye
Commissioner Peter D. O'Bryan         Aye

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY

The Chairman thereupon declared the ordinance duly passed and adopted this 24th day of March, 2015.

BY: Wesley S. Davis, Chairman

Wesley S. Davis, Chairman
ORDINANCE 2015-004

ATTEST: Jeffrey R. Smith, Clerk of Court and Comptroller

BY: ________________
Deputy Clerk

This ordinance was filed with the Department of State on the following date: ________________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Dylan Reingold, County Attorney

APPROVED AS TO PLANNING MATTERS

Stan Boling, AICP, Community Development Director