CHAPTER 160 INTRODUCTION AND ZONING DISTRICTS

160.01 INTRODUCTION

(A) **Title.** This chapter shall be known as the Town of Indian River Shores Land Development Code. It may, in subsequent sections, be referred to as the LDC, or the Code.

(B) **Authority.** This Land Development Code is adopted pursuant to Chapter 163, Part II, Florida Statutes.

(C) **Intent.** With regard to this Land Development Code in general, its provisions shall be construed and implemented to achieve the following intentions and purposes of the town:

(1) To establish the regulations, procedures and standards for review and approval of all proposed development in the town.

(2) To foster and preserve public health, safety, comfort and welfare, and to aid in the harmonious, orderly, aesthetically pleasing and socially beneficial development of the town in accordance with the Comprehensive Plan.

(3) To adopt a development review process that is:

(a) Efficient, in terms of time and expense;

(b) Effective, in terms of addressing the natural resource, urban design and public facility implications of proposed development; and

(c) Equitable, in terms of consistency with established regulations and procedures, respect for the rights of property owners, and consideration of the interests of the citizens of the town.

(4) To implement the Comprehensive Plan as required by the "Local Government Comprehensive Planning and Land Development Regulation Act."

(5) To provide specific procedures to ensure that development orders and permits are conditioned on the availability of public facilities and services that meet level of service requirements (concurrency).

160.011 ZONING MAP ESTABLISHED

(A) **Official Zoning Map.** The Town Council hereby adopts a zoning map, a copy of which is attached hereto and made a part hereof by reference, as the official zoning map for the Town

(B) **Location of Official Zoning Map.** An enlarged copy of the zoning map shall be on display at the Town Hall and kept in a place of ready access to the public during normal working hours.

(C) **Rezonings Refer to Official Zoning Map.** Upon adoption of this Ordinance, all rezonings shall refer to and amend the officially adopted zoning map referred to in this Ordinance.

(D) **Repeal of Conflicting or Inconsistent Provisions.** All Ordinances or parts of Ordinances in conflict herewith or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

(E) **Effective Date.** This Ordinance shall become effective immediately upon its passage and adoption by the Town Council of the Town of Indian River Shores, Florida.

(F) **Zoning District Map and Boundaries.**

(1) **Zoning District Boundaries Established.** The boundaries of town zoning districts, shown upon the map marked and designated "Zoning District Map of the Town of Indian River Shores" which is on file with the town clerk, are hereby established as designated on the zoning district map. The map and all notations, references, and other information shown thereon shall be as much a part of this chapter as if the matters and information set forth by the map were all fully set forth and described herein.

(2) **District Boundaries.** Unless shown otherwise, the boundaries of the districts are lot lines, the center lines of streets or those lines extended, and the limits of the town.

(3) **Interpretation of Boundaries.** Where due to the scale, lack of detail, or illegibility of the zoning district map, there is any uncertainty, contradiction, or conflict as to the intended location of any district, boundary lines shall be interpreted upon written application to or upon its own motion by the town council after recommendation by the Planning Commission.

(4) **Zoning of Vacated Streets.** Whenever any street shall be vacated, the street or portion thereof shall automatically be classified in the same zoning district as the property to which it attaches.

160.02 R1A SINGLE-FAMILY RESIDENCE DISTRICTS

(A) **Permitted Uses**

(1) One-family detached dwellings.
(2) Parks and open space.
(3) Accessory uses. See (F) below.

(B) **Conditional Uses in Accordance with Section 168.05.**

(1) **Community Facilities.** Public and private schools offering courses in general education, publicly-owned buildings, churches, community buildings, country clubs and golf courses, upon review of a site plan and subject to the following:

(a) **Act as Buffer or Transitional Area.** The subject property will act as a buffer or transitional area between a residential development and a nonresidential development.

(b) **Location Criteria.** The subject property is located so as not to hinder the natural and presumed residential development of the area.

(c) **Yard Dimensions.** The depth of the front yard and of the rear yard and the width of each side yard shall be not less than fifty (50) feet.

(d) **Maintenance of Residential Character.** The residential character of the area shall be maintained.

(2) **Parking:** Off-street parking lots of two (2) acres or less abutting a C1A district upon review of a site plan and subject to the following:

(a) **LDC Compliance.** All off-street parking design requirements of this code have been complied with.

(b) **Access and Egress.** All vehicular traffic enters and exits the parking lot from the commercial zone.

(c) **Suitability.** The residential zone used for an off-street parking lot is more suitable for that use than residential use in light of the character, dimensions, existing use, and ownership of the subject property and of the property surrounding the subject property.

(d) **Hardship and Nuisance Considerations.** The use of the property for an off-street parking lot does not work a hardship or create a nuisance for abutting property owners.

(e) **Safety, Convenience, and Protection of Residential Property.** The site plan conforms to all applicable provisions of this code, the safety and convenience of the public are provided for, and adequate protection and separation are provided for contiguous residential property.

(3) **Waterfront Gazebos***:* Any gazebo fronting on a waterbody other than the Atlantic Ocean shall meet the following criteria:

(a) **Defined.** A gazebo is defined as an accessory structure to a residence with its roof supported by columns and with no more than twenty (20) percent of its walls or sides enclosed by columns or latticework.

(b) **Site Plan.** A site plan shall be submitted.

(c) **Size Restricted.** The maximum size shall not exceed one hundred fifty (150) square feet.

(d) **Height.** The floor shall be no higher than an elevation of five (5) feet above mean sea level and the roof shall be no higher than an elevation of eighteen (18) feet above mean sea level.

(e) **Location.** The placement of a gazebo on property shall be within the center one-third of the lot or property unless there is a finding of a special hardship due to the configuration of property, such as its unusual shape or other factor. The gazebo may be built within the setback lines prescribed for structures within the zoning district in which it is located.

(f) **Setback from Water.** A gazebo may not be built closer to the water than the mean high water mark or the ordinary high water mark except in the case of the ocean where the special coastal setbacks of Sec. 167.03 apply.

(g) **Notice to Property Owners.** Notice shall be required to adjoining property owners with a letter of no objection being obtained from such adjoining property owners.

(h) **Appearance.** A gazebo shall be harmonious in color and design with other structures on the property and on surrounding property.

(4) **Greenhouse:**

(a) **Size.** Not to exceed three hundred (300) square feet.

(b) **Screening.** To be screened from adjacent residential lots.

(C) **Minimum Lot Area.** The minimum lot area shall be as set forth in Table 1.

(D) **Front, Side and Rear Yards**

(1) **Front Yard.** As specified in Table 1.

(2) **Side Yard.** As specified in Table 1 except in no instance shall any side yard abutting a street be less than twenty-five (25) feet in width.

(3) **Rear Yard.** As specified in Table 1 except where a rear yard on a lot abuts a street (through lot), the minimum depth of the rear yard shall be equal to the minimum front yard requirement.

(E) **Area, Size and Height Regulations.** As specified in Table 1.

(F) **Accessory Uses.** Accessory buildings or uses customarily incidental to any of the permitted uses, including the following:

(1) Garage: Not more than one (1) commercial vehicle shall be stored in such a garage. Boats and domestic trailers shall not be stored anywhere outside of a garage or enclosed building. See also 162.05.

(2) Swimming Pools:

(a) **Setbacks for Pool and Enclosure**. Swimming pools must be located at least ten (10) feet from the side and rear lot lines, including screening around pools; pools are prohibited in front yards. Upon a determination by the Planning, Zoning & Variance Board that a pool enclosure for a zero lot line home will not adversely affect the quality of life of the adjoining property owner, a screen enclosure may be located not less than five (5*) feet from a side property line.

(b) **Height of Screened Enclosures.** Side walls of screened pool enclosures shall not exceed nine (9) feet in height. The maximum height of a screened pool enclosure shall not exceed twelve (12) feet. If the screened pool enclosure is within the single-family residence building setbacks, the screen enclosure can be built to a height of thirty feet (30') or the residence roof line, whichever is less.

(3) **Cabanas:** *A* "cabana" as defined in Chapter 169, is subject to the following:

(a) **Setbacks.** The cabana shall be set back from the property line by the same distance required *for* the main house.

(b) **Maximum Size.** A cabana shall be a maximum of four hundred fifty (450) square feet.

(c) **Maximum Lot Coverage.** The cabana will be considered part of the maximum lot coverage.

(4) **Guest House:** A "guest house" as defined in Chapter 169, is subject to the following:

(a) **Maximum Size.** A lot must be at least thirty thousand (30,000) square feet if a guest house is to be constructed.

(b) **Setback.** The guest house shall be set back from the property line by the same distance required for the main house.

(c) **Maximum Height.** The guest house may not exceed the height of the main house.

(d) **Size**

(i) The maximum size of the guest house on lots between 30,000 square feet and 43,560 square feet (one acre) shall be 15% of the main house.

(ii) The maximum size of the guest house for lots that exceed 43,560 square feet (one acre) shall be 15% of the main house or 1,200 square feet whichever is greater.

(iii) The measurement to determine the maximum size of the guest house shall be based upon the gross area of the main house under roof.

(e) **Maximum Lot Coverage**. The guest house will be considered part of the maximum lot coverage.

(5) **Boathouses***:* Boathouses are not a permitted use for any property in the town.

(6) **Gazebos***:* Gazebos which are not covered under (B)(3) above.

(7) **Tennis Courts***:* See 161.05.

(8) **Greenhouse***s:* See (B) Conditional Uses above.

(9) **Gatehouses.**

(G) **Permitted and Conditional Accessory Uses**

(1) **Permitted Accessory Uses**.

(a) Swimming pool.

(b) Any single accessory use other than a swimming pool as set forth in paragraph (F) Accessory Uses above.

(2) **Conditional Accessory Use**

(a) Location of more than one accessory use (other than a swimming pool) on the same property shall be a conditional accessory use subject to submittal and approval by the Planning, Zoning and Variance Board upon receipt and consideration of the following:

(i) Letter of no objection from adjoining property owners.
(ii) Letter of no objection from any Property Owner's association (if applicable).
(iii) Survey and other site information to show the location of all structures on the site.
(iv) Such other information as the Town Building Official and the Planning, zoning and Variance Board may request.

(b) **Review Considerations.** In considering the request for more than one accessory use, the Planning, Zoning and Variance Board may consider:

(i) The size of the lot, its characteristics and location.
(ii) Affect on view from adjoining property.
(iii) Characteristics of the neighborhood.
(iv) Size and nature of residence.
(v) Lot coverage and green area remaining.
(vi) Other factors that may be brought to the attention of the Planning, Zoning and Variance Board.

160.03 RIB SINGLE-FAMILY, ZERO LOT LINE RESIDENTIAL DISTRICT

(A) **Permitted Uses**

(1) One-family detached dwellings.

(2) Parks and open space.

(3) Accessory uses as provided for in 160.02(F) plus recreational facilities to serve the development.

(B) **Area, Size and Height Regulations.** See Table 1.

(C) **Zero Lot Line Design Standards.** Special requirements for single-family zero lot line structures shall be as follows:

(1) **Placement of Windows.** No windows or doors shall be allowed on any wall which faces a side lot line and which is built closer than three (3) feet to those side lot lines.

(2) **Provision of Right of Access/Egress.** As the nature of zero lot line construction requires the entry upon adjacent property for the purpose of constructing, maintaining, and repairing that portion of a zero lot line structure built on or nearer than three feet to a side yard lot line, a nonexclusive right of ingress and egress over adjacent property within this zoning classification shall exist in favor of any property owner upon which a zero lot line structure is constructed in accordance herewith for the purpose of permitting the construction, the maintenance, and repair of that structure, but for no other purpose.

(3) **Common Livable Area Wall Prohibited.** No common livable area walls between any two (2) zero lot line structures shall be permitted.

(4) **Setbacks.** No structure shall be constructed upon any zero lot line property any nearer than twenty-five (25) feet to any side lot line which abuts or is adjacent to property zoned R1A or a street.

(5) **Maintenance/Repairs between Structures.** The owner of any single-family zero lot line structure shall have the right to make nonstructural repairs (including painting) on any other zero lot line structure adjacent to such owner's lot which is closer than three (3) feet to that owner's side lot lines, as well as the right to landscape any property between the adjacent structure and the owner's side lot lines.

(6) **Other Applicable Provisions.** The accessory use provisions of 160.02(E) shall apply.

(D) **Additional Site Plan Review Criteria.** A site plan shall be submitted in accordance with 168.04; the following additional requirements shall apply:

(1) **Plans for Each Phase.** A design theme or pattern for each phase of the development showing a conceptual drawing or drawings of the type of structure to be utilized within each phase shall be provided. A phase shall be determined at the time of site plan review; and once approved, shall not be modified unless resubmitted for approval to the planning, zoning and variance board. The plan submitted shall show the location of structures indicating setback of structures from all lot lines.

(2) **Design Review Committee Action.** Following site plan approval of a zero lot line development, plans for each zero lot line structure shall be submitted for approval to the design review committee to ensure compliance with the design theme or pattern of the site plan; and no building permit shall be granted unless said building does so comply.

(3) **Layout.** The site plan shall have a layout reflecting a configuration other than long, straight line rows of houses.

(4) **Filing of Restrictions and Covenants.** A copy of the restrictions and covenants applicable to the zero lot line development shall be filed with the application for site plan review for approval and recorded in the public records of the county prior to the sale of units within the development.

160.04 R2A MULTIPLE-FAMILY RESIDENCE DISTRICTS

(A) **Purpose.** The multiple-family residence district is designed to provide sites for multiple-family dwelling structures which will generally serve as zones of transition between commercial districts and the lower density single-family districts. The multiple-family dwelling district is further provided to serve the limited needs for the apartment and condominium units in an otherwise low density, single-family community.

(B) **Additional Site Plan Review Considerations**. A site plan shall be submitted in accordance with 168.04. In addition to the criteria in 168.04, the review criteria shall also include the following:

(1) **Access:** The site plan shows that ingress and egress is provided only to a major thoroughfare or service drive, and that a proper relationship exists between the major thoroughfare and any proposed service roads, driveways and parking areas to encourage pedestrian and vehicular traffic safety.

(2) **Adjacent Housing***:* All the development features including the principal building and any accessory buildings, open spaces, and any service roads, driveways and parking areas are so located and related to minimize the possibility of any adverse effects upon adjacent properties.

(C) **Permitted Uses.** The following uses are permitted in the R2A multiple-family residence districts:

(1) One (1) family detached dwellings in accordance with R1A standards

(2) Zero lot line one (1) family detached dwellings in accordance with RIB standards.

(3) Two (2) family dwellings and one (1) family attached dwelling units or townhouses.

(4) Multiple family dwellings.

(5) Accessory recreational facilities to serve the development.

(6) Community residential home.

(D) **Minimum Room and Floor Area Requirements.** All dwelling units shall have at least one living room and one bedroom. All dwelling units shall have a minimum of one thousand four hundred (1,400) square feet.

(E) **Density**

(1) The maximum density for two (2) family attached and multiple-family dwellings shall be six (6) units per acre. See Table 1.

(2) In determining density for any R2A-zoned lands bordering on the ocean, there shall be excluded from the calculation that area lying between the state coastal construction control line and the mean high water line.

(3) In determining the density for any R2A-zoned lands, there shall be excluded from the calculation all lands being unbuildable because of environmental constraints established by the laws and regulations of the state or of the federal government, as certified by a registered engineer. The engineer shall also certify on the site plan the areas that are buildable.

(F) **Area, Size and Height Regulations.** See Table 1.

(G) **Building Distance Formula.** In all multiple-family residence districts the minimum distance between any two buildings shall be regulated according to the length and height of the buildings. The formula regulating the required minimum distance between two (2) buildings, referred to as building "A" and building "B," is as follows:

(1) **S = Required Minimum Horizontal Distance between any Wall of Building A and any Wall of Building B or the Vertical Prolongation of Either.**

(2) **L_A = Total Length of Building A**. The total length of building A is the length of that portion or portions of a wall or walls of building A from which, when viewed directly from above, lines drawn perpendicular to building A will intersect any wall of building B.

(3) **L_B = Total Length of Building B.** The total length of building B is the length of that portion or portions of a wall or walls of building B from which, when viewed directly from above, lines drawn perpendicular to building B will intersect any wall of building A.

(4) **H_A = Height of Building A.** The height of building A at any given level is the height above natural grade level of any portion or portions of a wall or walls along the length of building A. Natural grade level shall be the mean level of the ground immediately adjoining the portion or portions of the wall or walls along the total length of the building.

(5) **H_B = Height of Building B**. The height of Building B at any given level is the height above natural grade level of any portion or portions of a wall or walls along the length of building B. Natural grade level shall be the mean level of the ground immediately adjoining the portion or portions of the wall or walls along the total length of the building.

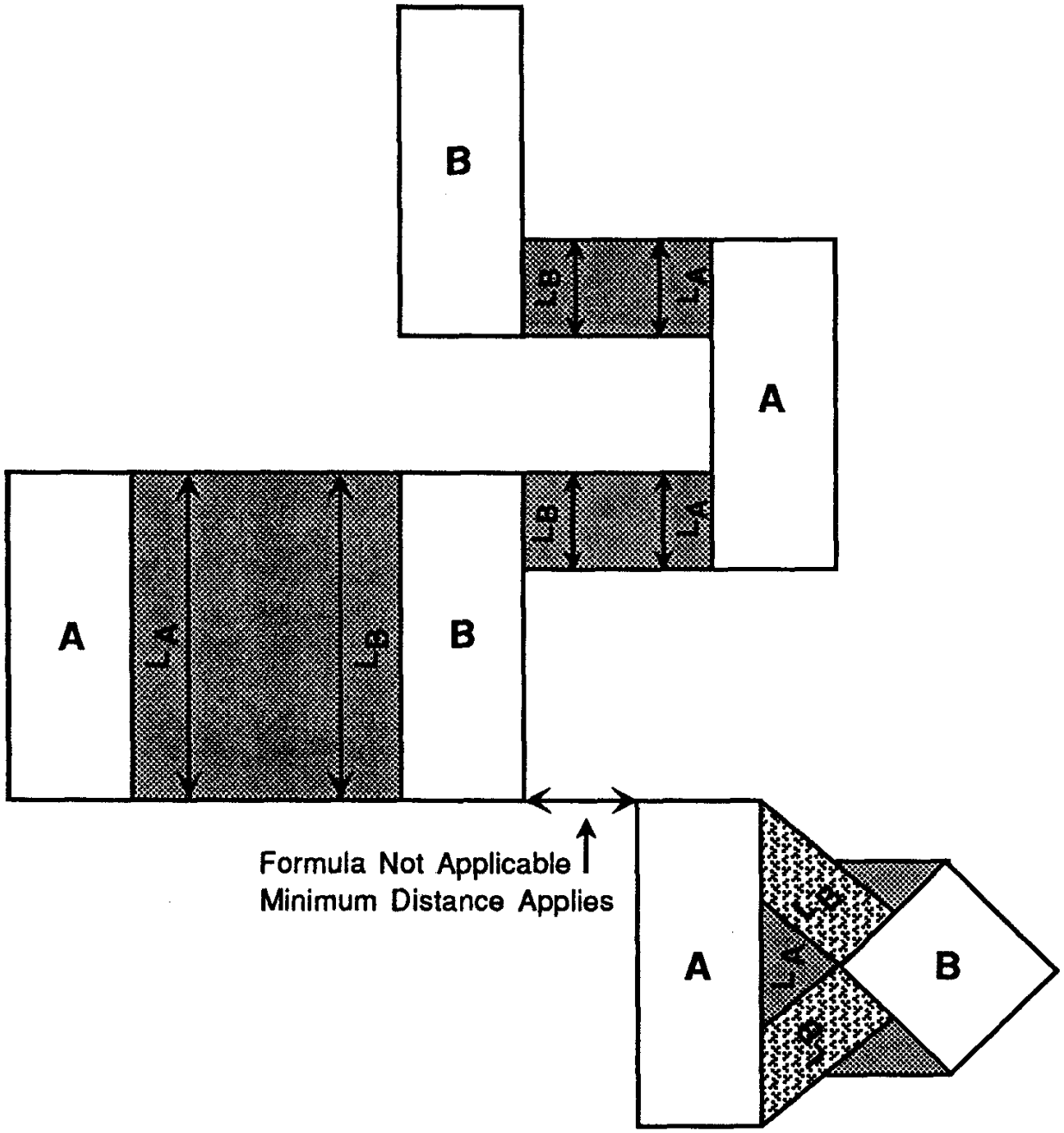

Figure 1 Minimum Distance Between Multiple Family Buildings

Minimum Distance between Buildings = $L_A + L_B + 2\ (H_A + H_B) \div 5$

(H) **Design Requirements for Attached Dwellings.** The site plan application for two (2) family and attached dwellings shall comply with the following:

(1) **Maximum Units per Complex.** An attached dwelling unit complex shall contain no more than six (6) attached dwelling units.

(2) **Common Wall Characteristics.** The common walls of any attached units shall comply with the Southern Standard Building Code and the National Fire Protection Code and shall comprise at least fifty (50) percent of the side wall of each respective attached unit.

(3) **Maximum Utility of Open Space.** Any open area separating attached dwelling unit complexes or portions thereof (excluding privacy fences) shall have a minimum of twenty (20) feet of separation along a line joining the closest extremities of the attached dwelling unit complexes. Open space intended for the private use of each individual attached dwelling unit shall be so located and designed as to maximize its utility to the dwelling unit it serves and maximize its privacy, especially in relationship to adjacent dwelling units.

(4) **Guaranteed Maintenance of Common Areas.** Common open areas shall be protected by legal arrangements sufficient to assure maintenance and preservation. Covenants or other legal arrangements shall specify ownership of common open area; method of maintenance; responsibility for collection of required taxes and insurance; provisions for compulsory membership and assessment; guarantees that any association formed to own and maintain common areas will not be dissolved without the consent of the town council. Copies of the legal documents contemplated by this provision shall be placed on file with the town. The town assumes no responsibility for the sufficiency or legality of these documents.

(5) **Design Requirements for Single Family Zero Lot Line Structures.** The R1B design standards as specified in 160.03(B) shall also apply to zero lot line dwellings in this district.

160.05 C1A LIMITED COMMERCIAL DISTRICT

(A) **Purpose.** The C1A Limited Commercial District is established for purposes of implementing the Comprehensive Plan Land Use Element policy regarding limited commercial development. As stipulated in the comprehensive plan, commercial development within the town shall be allocated to sites having direct access to State Road A1A (SR ALA). In addition, as stated in the Comprehensive Plan, the intent is to restrict the scale and nature of commercial activities to very limited commercial development options due to:

(1) The restricted capacity of SR A1A;

(2) The relatively low level of access to countywide or regional markets; and

(3) The potential for adverse impacts upon the natural coastal environment and infrastructure.

(B) **Permitted Uses**

(1) Commercial activities restricted to small retail stores with limited inventory serving the recurring market demands of the town's residents for household goods, personal services, or customized specialty goods. Limited commercial shall not include activities characteristically serving a transient highway-oriented market or a countywide market area, or uses such as drive-in, carry-out and fast food service, which typically generate relatively high average daily traffic.
(2) Food service, limited.
(3) Medical and business offices.
(4) Schools, governmental uses, community buildings and clubs.

(C) **Area, Size and Height Regulations.** See Table 1.

(D) **Food Service Review Criteria**

(1) **Shopping Center Location***:* The site selected for a limited food service establishment shall be located in a shopping complex containing at least fifteen (15) retail stores, it shall compliment the stores and other commercial establishments within the immediate proximity to the site, and the primary source of business to the limited food service establishment shall be generated by being a part of the retail shopping complex in which it is located.

(2) **Architecture***:* The appearance of the site, structure and sign creates a pleasing and harmonious overall effect with its surroundings. Building materials and colors have a character in harmony with the impacted area and are not gaudy or garish.

(3) **Infrastructure***:* Provision for public services to include solid and sanitary waste disposal, surface water drainage, potable water, and fire protection are adequate.

(4) **Circulation***:* Areas for parking and internal circulation of vehicular and pedestrian traffic are safe and convenient for use.

(5) **Buffers***:* Adequate screening protection and separation are provided for contiguous residential property.

(6) **Floor Area***:* The interior of the premises shall not exceed one thousand (1,000) feet.

(7) **Capacity***:* Maximum inside seating capacity at thirty (30) patrons at one seating and maximum outdoor seating capacity at thirty (30) patrons at one seating.

(8) **Hours of Operation***:* No business activity between the hours of 9:30 p.m. and the following 10:00 a.m. No seating of customers shall take place after 8:00 p.m. There shall be no operation on Sunday.

(9) **Alcoholic Beverages***:* The sale of alcoholic beverages shall be limited to beer and wine and shall be permitted only as an accessory to the primary use of the premises as a limited food service establishment for consumption on premises only. Any area for the dispensing of alcoholic beverages shall not be in the public view, nor provide for the seating of patrons at the dispensing area.

(10) **Odor***:* No emission of smells, odors, or aromas, including cooking odors.

(11) **Storage***:* There shall be no outside storage. Any refuse shall be in containers approved by the town and kept in a secure place, screened from view.

(12) **No Drive-in***:* No curb or drive-in service.

(13) **Attire**: Proper dress of employees and patrons shall be maintained at all times. Swimming attire shall not be allowed.

(14) **Loading***:* All pickup and delivery of items utilized in the business shall be limited to the hours of operation of the limited food service establishments.

(E) **Prohibited Uses.** Prohibited uses shall include, but are not limited to commercial recreation activities, including bowling alleys; gasoline service stations; convenience stores; bars and grills unless operated as an accessory use to an approved private club or private multiple-family residential development, which does not market, advertise, or provide service to the general public; and supermarkets or grocery stores. No other activity which generates similar rates of traffic to those uses cited herein shall be permitted.

160.051 C2A LIMITED COMMERCIAL DISTRICT

(A) **Purpose.** The C2A Limited Service Commercial District is established for purposes of implementing the Comprehensive Plan Land Use Element policy regarding limited commercial development. Like C1A District, this District is intended to meet the Plan criteria of serving only the localized market and protecting adjoining housing but unlike the C1A, this district is intended to include a slightly broader range of uses that are more appropriate at peripheral locations not surrounded by single family detached housing.

(B) **Permitted Uses**

(1) Any uses permitted in the C1A District except food service.

(C) **Conditional Uses**

(1) Food service, limited.

(2) Convenience store with or without gasoline pumps.

(D) **Conditional Use Review Criteria**

(1) **Architecture**: The appearance of the site, structure and sign creates a pleasing and harmonious overall effect with it surroundings. Building materials and colors have a character in harmony with the impacted area and are not gaudy or garish.

(2) **Landscaping and Site Improvements:** Any use must exceed the minimum landscaping requirements of Chapter 163. Said landscaping plus the building facade, parking lot and other premises must be continuously maintained in a satisfactory condition.

(3) **Buffers**: Adequate screening protection and separation are provided for contiguous residential property.

(4) **Floor Area**: The floor area of the principal use shall not exceed 3,000 square feet.

(5) **Hours of Operation**: No business activity between the hours of midnight and 6:00 a.m.

(6) **Alcoholic Beverages**: The sale of alcoholic beverages shall be limited to beer and wine and shall be permitted only as an accessory to the primary use of the premises.

(7) **Odor:** No emission of smells, odors, or aromas, including cooking odors.

(8) **Storage:** There shall be no outside storage. Any refuse shall be in containers approved by the Town and kept in a secure place, screened from view.

(9) **No Drive-in**: No curb or drive-in service.

(10) **Loading:** All pickup and delivery of items utilized in the business shall be limited to the hours of operation.

(E) **Ongoing Obligations Associated with Conditional Use.** In order to maintain the conditional use, there shall be an ongoing obligation of the conditional user to continuously meet the requirements of paragraphs (D) (1), (2) and (3) above. All items contemplated therein shall be continuously maintained in a condition satisfactory to the Town and in conformity with any site plan approved. Failure to comply with ongoing maintenance shall be a violation subject to enforcement by the Code Enforcement Board. All other review criteria set forth in paragraph (D) above shall also be subject to enforcement by the Code Enforcement Board.

(F) **Area, Size and Height Regulations.** The area, size and height set back requirements set forth on Table 1 for C1A shall be applicable to C2A, Limited Commercial District.

160.06 P PUBLIC DISTRICT

(A) **Purpose.** To provide for those governmental and public utility uses located within the town.

(B) **Permitted Uses**

(1) Governmental administration and service uses.

(2) Public parks and open space.

(3) Public utility uses essential to serve the town.

(C) **Development Standards.** All uses shall meet the C-1A lot, setback and bulk standards as shown in Table 1 and shall be subject to the site plan review requirements of 168.04.

160.07 OS OPEN SPACE AND RECREATION DISTRICT

(A) **Intent.** The purpose of this district is to accommodate major public and private open space and recreational uses.

(B) **Permitted Uses**

(1) Public open space and recreational uses.

(2) Private open space and recreational uses that are accessory to a residential development including golf courses, tennis courts and swimming pools.

(C) **Conditional Uses.** Private open space or recreational uses not accessory to a residential development including golf courses, tennis courts and swimming pools.

(D) **Conditional Use Criteria**

(1) **Maximum Trip Generation.** The maximum average weekday vehicle trip generation rate shall be twenty-seven (27) trip ends per acre per day.

(2) **Impact on Residential Areas.** The use shall not adversely impact nearby residential areas.

(E) **Development Standards.** All uses shall meet the ClA lot, setback and bulk standards unless a part of a PRD District.

160.08 RC/ES: RESIDENTIAL CONSERVATION/ENVIRONMENTALLY SENSITIVE LANDS DISTRICT

(A) **Intent.** The purpose of this conservation district is to assure that any development of these environmentally sensitive lands designated RC/ES or ES in the Comprehensive Plan Future Land Use Element is done in an environmentally sensitive manner including preservation where appropriate. These areas are characterized by wetlands, dune systems and coastal high hazard characteristics that require special attention during the development review process.

(B) **Permitted Uses**

(1) Open space and passive recreation.

(2) Stormwater management.

(3) Accessway to an essential public facility or service.

(4) Mosquito control activities.

(5) Accessory uses thereto.

(C) **Conditional Uses**

(1) One (1) family detached dwelling.

(2) One (1) family attached dwelling.

(3) Essential water-dependent public facilities or utilities.

(4) Golf course when a) accessory to a residential development on the main barrier island and b) designed to preserve wetlands.

(D) **Density Maximum**

(1) **Marginal Wetlands***:* One (1) unit per acre.

(2) **Otherwise***:* One (1) unit per five (5) acres.

(3) **Transfer of Development Rights (TDR):** Wetlands may constitute a TDR generating area at a density of one (1) unit per five (5) acres and marginal wetlands at one (1) unit per acre; the TDR receiving area may be developed at not more than one and one half(l 1/2) times the permitted Future Land Use Plan density.

(E) **Development Standards.** All residential uses (including attached dwellings) shall meet the R1A setbacks, minimum floor area and height requirements unless the PRD District is used. The minimum lot size and width, pervious area minimum and coverage percentage shall be determined by site plan/conditional use application review.

(F) **Environmental Regulations.** All development shall also meet the requirements of Chapters 165 (floodplains) and 167 (environmental).

(G) **Site Work.** No residential site work shall be initiated until all necessary Federal, State, Town and other environmental approvals are received.

160.09 RESI RESIDENTIAL-ENVIRONMENTALLY SENSITIVE ISLAND DISTRICT

(A) **Intent.** This district is intended to protect the environmentally sensitive islands (designated RC/ESI in the Comprehensive Plan) from premature development and when development does occur, to assure that it is done in an environmentally sensitive manner.

(B) **Permitted Uses**

(1) Open space and passive recreation.

(2) Stormwater management.

(3) Accessway to an essential public facility or service.

(4) Accessory uses thereto.

(C) **Conditional Uses**

(1) One (1) family detached dwelling.

(2) One (1) family attached dwelling.

(3) Essential water-dependent public facilities or utilities.

(D) **Density Maximum.** One (1) unit per five (5) acres.

(E) **Development Standards.** All residential uses (including attached dwellings) shall meet the R1A setbacks, minimum floor area and height requirements unless the PRD District is used. The minimum lot size and width, pervious area minimum and coverage percentage shall be determined by site plan/conditional use application review.

(F) **Environmental Regulations**. All development shall meet requirements of CH 165 (floodplains) and 167 (environmental).

(G) **Site Work.** No residential site work shall be initiated until all necessary Federal, State, Town and other environmental approvals are received.

(H) **Conditional Use Criteria for Dwellings on Isolated Islands.** No development shall be approved unless a subdivision plat has been submitted which incorporates the following prerequisite conditions prior to issuance of a development permit:

(1) **Vehicular Access.** A plan for vehicular access to the main barrier island shall receive approval from all applicable governmental agencies and the Town of Indian River Shores.

(2) **Requisite Infrastructure.** Plans for the provision of requisite public infrastructure and emergency protective services, i.e. police, fire and ambulance shall be approved by the Town of Indian River Shores.

(3) **Compliance with Applicable Laws.** Proof of compliance with all applicable regulations and permitting procedures of the Federal, State and regional environmental agencies plus CH 165 and 167, LDC, shall be provided.

160.10 RESERVED

160.11 PLANNED RESIDENTIAL (PRD) DISTRICT

(A) Purpose. The primary purpose of the Planned Residential (PRD) District is to permit land under unified control to be planned and developed as a whole (as a single operation or an approved series of operations) with a greater amount of flexibility by removing some of the detailed restrictions of conventional zoning. PRD are recognized as serving the public interest and are encouraged for the following reasons:

(1) To allow diversification of uses, structures, and open spaces when not in conflict with existing and permitted land uses on abutting properties;

(2) To reduce improvement costs through a more efficient use of land and a smaller network of utilities and streets than is possible through application of standards contained in conventional land development regulations and site designs;

(3) To conserve the natural amenities of the land by encouraging the preservation and improvement of scenic and functional space;

(4) To provide maximum opportunity for application of innovative site planning concepts to the creation of aesthetically pleasing environments for living on properties of adequate size, shape, and location;

(5) To ensure that development will occur according to limitations of land use, site design, population density, building coverage, improvement standards, and construction phasing authorized through the approval of a master development plan; and

(6) To ensure that development will be consistent with the intent of the Comprehensive Plan and this code.

(B) **Unified Control.** All land included for the purpose of development within a PRD District shall be under the control of the applicant (an individual, partnership or corporation, or group of individuals, partnerships or corporations). The applicant shall present satisfactory legal documents to constitute evidence of the unified control of the entire area. The applicant shall agree in the application for rezoning to the following:

(1) To proceed with the proposed development according to the provisions of these regulations, and conditions attached to the rezoning of the land to PRD and the approved master development plan;

(2) To provide agreements, contracts, covenants, deed restrictions, and sureties acceptable to the town for completion of the development according to the plans approved at the time of rezoning to PRD and for continuing operation and maintenance of such areas, functions and facilities which are not proposed to be provided, operated, or maintained at public expense;

(3) To bind their successors in title to any commitments made under the above. All agreements and evidence of unified control shall be examined by the planning and zoning board, and no rezoning of land to PRD classification shall be adopted without a certification by the department and the town attorney that such agreements and evidence on unified control meet the requirements of these regulations;

(4) If the developer elects to administer common open space through an association or nonprofit corporation, said organization shall conform to the applicable laws of the State of Florida.

(C) **Permitted Uses**

(1) All residential uses permitted in the R2A Multiple-Family Residential District.
(2) Real estate sales office to serve the development.
(3) Accessory uses as permitted in 160.02(E) plus recreational facilities to serve the development.

(D) **Development Regulations**

(1) **Minimum Tract Size***:* All PRD developments shall contain a minimum of fifty (50) acres of contiguous land unless the planning, zoning and variance board finds that a tract which contains less than fifty (50) acres is suitable as a PRD by virtue of some unusual conditions. This minimum may be waived by the town council upon the recommendation of the planning, zoning and variance board.

(2) **Maximum Density**:

(a) The total number of dwelling units permitted in a PRD shall not exceed the total number of units permitted by the Land Use Element of the Comprehensive Plan for the area to be so developed.

(b) The ordinance adopting the rezoning for a specific PRD shall specify the allowable number of units permitted in that particular PRD.

(3) **Minimum Lot Area, Distance between Structures and Frontage**:

(a) No minimum lot size shall be required within a PRD.

(b) No minimum distance between structures shall be required within a PRD. The appropriate distance between structures shall be evaluated on an individual development basis, after considering the type and character of the current structure types within a development.

(c) Each dwelling unit and other permitted use shall have access to a public street either directly or indirectly via

a private road, pedestrian way, court, or other area dedicated to public or private use of common easement guaranteeing access. Permitted uses are not required to front on a dedicated road. The town shall be allowed access on privately owned roads, easements and common open space to ensure the police and fire protection of the area, to meet emergency needs, to conduct municipal services, and to generally ensure the health and safety of the residents of the PRD.

(4) **Setback***s:* There are no required setbacks or yards except the following:

(a) A setback of not less than twenty-five (25) feet in depth is required abutting all public road rights-of-way, except in the case of Highway A-l-A which shall have setbacks in accordance with Sec. 161.08.

(b) A peripheral setback from boundary lines of the PRD of not less than twenty-five (25) feet in depth is required, except for access ways, no more than ten (10) feet of this peripheral setback may be used for parking or other vehicular use area. The remaining fifteen (15) feet shall consist of a minimum three-foot high landscaped berm containing a minimum of one (1) tree per twenty-five (25) lineal feet.

(5) **Maximum Height of Structures***:* The town council, upon recommendation of the planning, zoning and variance board, shall determine the appropriate height limitations on an individual development basis after considering the character of the surrounding area, the character of the proposed development, and the goals of the Comprehensive Plan. Notwithstanding the above, a maximum height of forty (40) feet.

(6) **Minimum Floor Area Requirements***:* The minimum floor area per dwelling unit shall be the same as the R2A District.

(7) **Building Site Coverage***:* The combined ground area occupied by all principal and accessory buildings shall not exceed thirty (30) percent.

(8) **Off-street Parking and Loading Requirements***:* Shall meet all the requirements of this code.

(9) **Landscaping***:* All landscaping shall meet the requirements of this code.

(10) **Underground Utilities***:* Within the PRD, all utilities including telephone, television cable, and electrical systems shall be installed underground. Primary facilities providing service to the site may be exempted from this requirement. Large transformers shall be placed on the ground and contained within pad mounts, enclosures or vaults. The developer shall provide adequate landscaping with shrubs and plants to screen all utility facilities permitted above-ground.

(11) **Open Space Requirements***:* A PRD shall provide and maintain open space at least equal to thirty-five (35) percent of the PRD gross area, except that lakes, lagoons, or other waterways shall not count for more than twenty-five (25) percent of the open space requirement. In calculating open space, land areas for structures, public and private street rights-of-way, driveways, off-street parking and loading zones, fire protection vehicular access and side yards between single-family residential buildings shall not be included.

(12) **Internal Circulation***:* An internal pedestrian and bicycle circulation system shall be provided within the PRD separate from vehicular circulation systems and at a distance sufficient to ensure safety. Such pedestrian and bicycle ways shall be surfaced with a durable and dustless material. The town may waive this requirement or a portion of this requirement upon a demonstration that pedestrian and/or bicycle paths are infeasible or undesirable in the proposed development.

(13) **Energy Conservation***:* PRD site design shall incorporate passive energy conservation measures. Such measures shall include, but need not be limited to, the directional orientation of buildings, the location of windows, minimization of radiant heat absorption and the inclusion of energy-efficient landscaping.

(14) **Professional Services Required:** Any plans submitted as a part of a petition for a PRD shall certify that the services of competent professionals were utilized in the designing or planning process and shall state their names and businesses and addresses. Plans submitted as part of a petition for a PRD must be prepared by either a planner, who by reason of his education and experience is qualified to become or is a full member of the American Institute of Certified Planners; or an architect or landscape architect licensed by the State of Florida; together with a professional engineer registered by the State of Florida and trained in the field of civil engineering and/or a land surveyor registered by the State of Florida.

(E) **Procedures and Requirements for Rezoning to a Planned Residential Development**

(1) **Required Master Plan.** A master development plan meeting the requirements of this section shall be required of developments requesting rezoning to PRD.

(2) **PRD Approval Procedure.**

(a) The developer shall submit five (5) copies of the proposed master development plan along with the application for rezoning to PRD to the building official.

(b) The development code fee schedule shall specify a fee to be paid by any applicant for rezoning to PRD to cover the cost of processing and review.

(c) The building official shall prepare a report on the application and submit it to the planning, zoning and variance board for placement on the agenda of the next regularly scheduled meeting.

(d) After review by the planning, zoning and variance board, the proposed master development plan and application for rezoning to PRD, the building official report and the recommendations of the planning, zoning and variance board will be submitted to the town council for consideration.

(e) The town council shall consider the ordinance for rezoning to PRD as required by this code.

(3) **Contents of Master Development Plan**:

(a) Delineation of the geographical area covered by the entire development;

(b) General schematic representation of the land uses with densities and intensities;

(c) Approximate delineation of internal circulation, with hierarchical classification of streets;

(d) Points of local street connections to the public road system, including general indication of the necessary improvements to the public roadways to accommodate the local trips generated by the development;

(e) General location and size of any community facility included within the development such as parks, community centers, etc.;

(f) Indication of existing native vegetation and any other natural features within the development together with general plans for the conservation or mitigation thereof;

(g) Schematic depiction of existing and proposed surface water management elements, including wetlands, retention facilities, drainage easements and swales;

(h) Table of computation of land use distribution showing proposed uses, acreage, and number of units and density in the case of residential uses;

(i) Schematic depiction of the water distribution lines, wastewater collection lines and drainage system, including easements.

(F) **Conformance to Approved Master Development Plan**

(1) **Compliance with Master Plan Prior to Permit Issuance.** After rezoning to PRD, no permits shall be issued by the town, and no development shall commence unless in conformance with the approved master development plan, unless a change or deviation is approved by town council.

(2) **Minor Deviations.** The town manager or his designee may approve minor changes and deviations from the approved master plan which are in compliance with the provisions and intent of this division, and which do not depart from the principal concept of the approved master development plan. All other requested changes and deviations shall be referred to the town council.

(3) **Major Deviations.** The town council may at the owner's request, without requiring a new application, authorize changes to approved master development plans pertaining to location, types and configuration of buildings landscaping, and similar changes when the full character and intent of the approved master plan is not violated.

(4) **Rendering of New Application.** The town council may determine that requested changes and deviations to an approved master development plan constitute a substantial alteration to the character of the development and require that such changes be subject to the same procedures as new applications.

(G) **Effective Period of PRD Approval.** Approval of a rezoning to PRD as provided herein shall be effective for a period of twelve (12) months. Unless construction of some phase of the proposed approved project is commenced on or before the last day of the twelfth (12th) month following the approval date, the said approval shall expire. A PRD approval shall remain effective while development on the project continues as defined by permitting and inspection procedures.

TABLE 1: LOT, SETBACK AND BULK REGULATIONS

Zoning District	Minimum Lot area (Sq. Ft.)	Minimum Lot Width (Feet)	Max. Density[(a)] (DU's/Acre)	Front Yard (Feet)**	Side Yard (Both Yds/ One Yard) (Feet)**		Minimum Floor Area (Sq. Ft.)*	Maximum Height (Stories/Feet)	Minimum Landscaped Area (Percent)	Maximum Coverage (Percent)
R1A Single-Family	15,000	120	2.5	30	15/30	30	1,400(j,k) l,800(e) 1story	2/30	50	30
RIB Single-Family Zero Lot Line	7,500	60	2.5	25	(d)	25	1,500	2/30	50	40
R2A Single-Family	12,000	100	3(f)	25	12.5/25	30	l,800(e)	2/30	50	40
R2A Multifamily	25,000	300	6	30	25/30	30	l,400(g)	3/40(c)	50	30
C1A Commercial	20,000	150	NA	25	50	25	NA	2/30	25	NA
C2A Commercial	20,000	150	NA	25	50	25	NA	2/30	25	NA
RC/ES	(i)	(i)	l(h)	30	30	30	1,800	2/30	(i)	(i)
RC/ESI	(i)	(i)	1 per 5 acres	30	30	30	1,800	2/30	(i)	(i)

(a) Density in dwellings per acre is fractional and dependent on lot size.
(b) Covered garages, utility buildings and other buildings are included in computing maximum lot coverage; parking areas are not included.
(c) In R2A Multifamily Residence Districts, heights of four stories shall be allowed; provided, that the entire bottom story or ground story is used for parking and is completely enclosed, conforming to the general aesthetic design of the building, except for ingress and egress to other stories.
(d) The living area of a single-family residence may be built up to the lot line on one side of a lot. On the opposite side of the lot, the living area must be set back a minimum of 15 feet. Structures or portions of structures not containing living area, such as garages, may be built to within three feet of the opposite side lot line.
(e) Ground floor only.
(f) Except 4 when zero lot line houses are placed in R2A zones.
(g) For efficiency; 200 sq. ft. for each additional bedroom.
(h) Except wetlands which is 1 unit per 5 acres
(i) Conditional use review will determine lot size and width minimum, pervious minimum and coverage maximum.
(j) Total ground floor 2,100 ≠; total both floors 3,000 ≠.
(k) The second floor shall be a minimum of 33 1/3% of the ground floor.
* Floor area means livable floor area.
** All structures shall be set back 30 feet from the mean high water mark of inland waters. See Section 161.08 for special setback from AlA.

CHAPTER 161 SUPPLEMENTAL REGULATIONS

161.01 OCEANFRONT DESIGN STANDARDS

(A) **Maximum Grades.** The maximum elevation of a finished floor of living quarters of all oceanfront homes shall be as follows:

(1) On oceanfront lots, the highest habitable occupied floor cannot exceed twenty-seven (27) feet above mean sea level (MSL).

(2) On oceanfront lots, excluding zero lot line homes with no windows or doors on the zero lot line side, finished floors consisting solely of bedrooms and their associated closets and bathrooms shall not be considered living quarters. Finished floor elevation of such floors shall not be limited to twenty-seven (27) feet above MSL.

The Planning. Zoning, and Variance Board may permit one (1) or more windows on zero lot line homes referenced herein, only upon a determination that the privacy of the adjoining property is preserved

(3) On oceanfront lots, two (2) story residences may be constructed with a basement. The garage opening and habitable area entrances shall be exempt from the grade regulations for basements as defined in Chapter 165.

(4) The maximum elevation of a finished floor at the first story of all non-oceanfront homes shall be as follows:

(a) Ten feet (10') above MSL for lots where the natural grade is seven feet (7') or less above MSL.

(b) Three feet (3') above natural grade, defined as the average elevation of ground at the building site at the time of platting, where natural grade is more than seven feet (7') above mean sea level.

(B) **Minimum Elevations.** In all instances, the minimum elevation of finished floor at the first story of living quarters shall be not less than:

(1) Seven feet (7') above mean sea level; or

(2) Twenty inches (20") above the sidewalk or crown of the road.

(C) **Height of Single Family Residences.**

(1) **Height for Non-Oceanfront Residences.** Single family residences may be one (1) or two (2) stories in height, provided that the total height of two-story homes from finished floor of the first story to the midpoint of the top roof shall not exceed 30 feet (30').

(2) **Height for Oceanfront Residences.** On all oceanfront single-family residences, the elevation of the highest part of the house (chimney excepted) shall not exceed 50 feet (50') above mean sea level. On oceanfront lots, two-story residences may be constructed with a basement. The garage opening and habitable areas entrances shall be exempt from the grade regulations for basements as defined in Section 155.002. Definitions: 'Basements'."

161.02 GENERAL DESIGN STANDARDS

(A) **Table of Area, Density and Bulk Standards.** Table 1 shall govern the various districts except as for cul-de-sacs or curved streets as provided in (B) below.

(B) **Lot Width On Curved Streets.** Minimum lot widths as shown on Table 1A shall be measured at the building line. However, the following special regulations shall apply to single-family detached lots with a curved frontage such as on cul-de-sacs:

TABLE 1A: LOT WIDTH ON CURVED STREETS

Zoning District	Minimum Width at Edge of Street Paving	Minimum Width at Building Line	Average Lot Width (Front to Rear)
R1A	30	100	20
R1B	30	45	60
R2A	30	85	100

(C) **Established Grades.** The finished floor elevation for all structures shall be not less than twenty (20) inches above the sidewalk or crown of the road. Special cases where natural topography has an adverse effect upon drainage and where this provision would serve no good purpose must have special approval from the town engineer. This approval shall be conditioned upon a determination by the building official that the proposed grade will not be injurious to the adjacent properties. The minimum floor at the building line shall be at least seven (7) feet above mean sea level. See also Chapter 165, Floodplain Management.

(D) **Unlicensed Motor Vehicles.** No unlicensed motor vehicle shall be kept on any property for a period of more than fifteen (15) days unless entirely within a building.

(E) **Trucks, Boats and Campers.** No trucks, boats, trailers, campers, or similar items shall be permitted in residential areas unless completely garaged.

(F) **Clothes Lines and Trash Cans.** Clothes lines, drying yards, and garbage and trash receptacles shall be located so as not to be visible from the street or adjoining property.

(G) **Care of Premises.** No weeds, underbrush, or other unsightly growths shall be permitted to grow or remain upon any part of the property and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon, including vacant lots. See Chapter 153 for additional housing maintenance regulations.

(H) Limitations on Non-vegetative Decorative Objects in Residential Front Yards.

(1) **Obstructions.** From grade to the sky the front yards of single family residential lots shall not be obstructed except by:

(a) Natural vegetation and plantings;
(b) Fences and other structures explicitly authorized elsewhere in this ordinance;
(c) Retaining walls and similar structures necessary for the maintenance of topographic integrity and for the prevention of runoff;
(d) One flag pole not to exceed eighteen (18) feet in height; and
(e) Up to three (3) non-vegetative decorative objects.

(2) **Height and Size.** Non-vegetative decorative objects permitted by the above subsection shall:

(a) Not exceed twenty-four (24) inches in height above the grade where they are placed. Grade shall be determined by the approximate average grade in the front yard; and
(b) Not be larger than would fit within an imaginary cube of two (2) cubic feet.

(3) **Petitions for Relief from Specifications.** In the event the property owner desires to vary from the specifications for non-vegetative decorative objects stated in this ordinance, the property owner may petition to the Planning, Zoning & Variance Board for approval of any objects that do not strictly comply with such requirements.

(4) **Violations.** In the event the Town Building Official determines that any single family residential property contains non-vegetative decorative objects in violation of this ordinance, the Town Building Official shall bring the violation to the Planning, Zoning and Variance Board to review and determine whether the object or objects are in violation of this ordinance.

(5) **Review Criteria.** In making a determination as to whether a non-vegetative decorative object meets the requirements of this ordinance, the Planning, Zoning & Variance Board may consider among other things:

(a) Whether the object or objects are in harmony with the neighborhood from an architectural and an aesthetic standpoint.

(b) The size and type of object or objects is not garish and would not be offensive to normal sensibilities.

(c) The object or objects would not create a threat of damage to the property on which it is located or surrounding properties in the event of a wind storm.

(d) The object or objects does not affect the view of or from the roadway or in any way cause a traffic hazard.

(e) The Board will review steps taken to shield the object or objects from the view of persons outside the property through either landscaping and/or fencing.

(f) Whether adjoining property owners or others in the immediate area oppose the object or objects. If the Planning, Zoning & Variance Board determines the object or objects to be in compliance, then no further action may be taken regarding such object or objects. If the Planning, Zoning & Variance Board determines the object or objects are not in compliance with this Code, then the property owner will be given ten (10) days to correct the situation and to bring the property into conformity with this Code.

(6) **Enforcement.** In the event the object or objects in violation of this ordinance remain on the property after notification, then the Town Building Official shall present the matter to the Code Enforcement Board under the procedures outlined for matters considered by that Board. Any violation as determined by the Code Enforcement Board shall carry with it the same penalties as provided in the Code Enforcement Board ordinance previously adopted by the Town and as amended from time to time.

(7) **Objects In Place Prior to Ordinance.** Non-vegetative decorative objects located in front yards on the adoption date of this Ordinance shall be permitted to remain if otherwise in conformity with town ordinances on said date. No change or modification to any such previously placed objects shall be permitted unless said object or objects are in conformity with this Ordinance following such change or modification.

161.03 TIME SHARING PROHIBITED. Any real property which may become subject to a time-sharing program of any kind is prohibited as is the conversion of the use of real property to time-sharing projects.

161.04 SATELLITE DISH ANTENNA.

(A) **Intent.** The intent of this section is to improve the appearance of certain setback and yard areas, and to protect and preserve the appearance, character, and value of surrounding properties, and thereby promote the general safety and welfare by restricting the location of satellite dish antennas within residential districts and providing screening requirements. This section shall be considered a minimum standard and shall apply to all land situated in the corporate limits of the town.

(B) **Definition.** For the purpose of this section, "Satellite Dish Antenna" shall be defined as an antenna with a low-noise amplifier, the purpose of which is to receive communication or other signals from orbiting satellites.

(C) **Building Permit Required.** A building permit is required prior to installation of all satellite dish antennas.

(D) **Restrictions.** The following restrictions shall apply to all satellite dish antennas.

(1) All dish antennas shall be an accessory use. Only one such antenna shall exist at any one time on any residentially zoned lot or parcel. The maximum antenna diameter shall be twelve (12) feet.

(2) No dish antennas shall be located in any front yard in any residential zoning district.

(3) All dish antennas shall have setbacks from side and rear lot lines equal to or greater than the height of the proposed dish antenna. In no case shall the required setback be less than twenty (20) feet.

(4) All dishes shall be mounted on the ground.

(E) **Screening Requirements.** All dish antennas shall provide screening in order to shield the antenna from the view of surrounding properties.

(1) **Design Standards***:* The screen shall be comprised of a continuous six (6) foot hedge or completely opaque fence with one (1) tree planted for each thirty (30) lineal feet of screen length, or fraction thereof. The hedge shall be a minimum of six (6) feet in height at the time of planting. Trees planted to meet the requirements of this section shall be a minimum of eight (8) feet in height at the time of planting, and shall be a species which shall grow to a mature height of at least twenty (20) feet.

(2) **Location***:* The screening shall be located along the property line or lines of the lot upon which the antenna is located in a manner which shields the antenna from the view of adjacent residences. The town building official shall approve the location, composition and vegetative species of all screening material. All screening material must be maintained to the minimum specification requirements.

(3) **Modification to Screening Requirements***:* These screening requirements above may be adjusted by the town building official upon the applicant's demonstration that unique features of the site warrant a modified screening requirement. The adjustment shall be rendered by the town building official only after a written determination that the proposed adjustment in the screening requirement fulfills the purpose and intent of this section and does not reduce the protection of adjacent property owners.

161.05 TENNIS COURTS

(A) **Intent.** The intent of this section is to improve the appearance of setback and yard areas and to protect and preserve the appearance, character, and value of surrounding properties, and thereby promote the general welfare by regulating the location, screening, and lighting of tennis courts within residential districts.

(B) **Setback Requirements.** The following setback requirements shall apply to the location of tennis courts within residential zoning districts:

(1) All tennis courts shall be located a minimum of fifteen (15) feet from any property lines which are adjacent to existing single-family dwellings or land zoned R1A.

(2) All tennis courts adjacent to multi-family residential or nonresidential developments shall have a minimum separation often (10) feet between the court area and the subject property line.

(C) **Regulation of Lighting.** The lighting of outdoor tennis courts shall be arranged and designed in a manner which shields or reflects lighting from adjacent properties and roadways while maintaining adequate light for recreational purposes. No lighting of outdoor tennis courts shall be permitted after 10:00 p.m.

(D) **Screening Requirements.** All tennis courts abutting residential property shall provide a continuous six (6) foot hedge along all subject property lines. All hedges shall be a minimum of six (6) feet in height at the time of planting.

161.06 USE OF RESIDENTIAL UNIT AS SALES OFFICE

(A) **Time Limit.** The use of no more than one dwelling unit solely as a sales office for the sale of dwelling units within the same subdivision or condominium development shall be permitted for a period not in excess of one year commencing the date the first certificate of occupancy is issued in the subdivision or condominium.

(B) **Registration.** The use as a sales office of the dwelling unit as a sales office shall be registered as an accessory use with the building official.

(C) **Extension.** The town council may, at its sole discretion, extend the permitted one-year period for use of the dwelling unit upon application made by the developer, owner, or agent not less than thirty (30) days before expiration of the one-year permit. The extension granted shall not exceed an additional one-year period from the date of the original expiration and shall be based upon unique project size, timing or other extenuating circumstances.

161.07 PRESERVATION OF JUNGLE TRAIL

(A) **Definitions.** For the purpose of this subchapter, the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

(1) "Protected Area" shall mean the area sixty feet (60') east of the platted centerline of Jungle Trail.
(2) "Structures" shall mean all buildings and other products of construction.

(B) **Development Abutting Jungle Trail; Protection Plan Required.** Any development abutting Jungle Trail shall, at the time a development request is submitted, it shall include a plan for implementing the intent of this chapter to protect the appearance and character of Jungle Trail. The plan shall set forth, in sufficient detail as determined by the Town Building Official, the area affected and the size and kind of plantings in place and to be put in place under the presented plan. The following concepts shall be included in any plan presented.

(1) **Jungle Trail Heritage.** It is the policy of the Town to protect the natural heritage of the Jungle Trail and to contribute to its historic and scenic appreciation.

(2) **Application.** The plan shall be in sufficient detail as determined by the Town Building Official to review for compliance with this Ordinance. If selective removal of exotic vegetation from the protected area is desired, an application shall be prepared showing in detail:

(a) Existing vegetation, including number or extent within the area and size and type of all vegetation proposed for removal; and

(b) Proposed native plantings, including number or extent within the area, type, size, density and location.

(3) **Restrictions within Buffer Zone.** The following restrictions shall apply to the twenty-foot (20') wide buffer zone immediately abutting the easternmost portion of the roadway for Jungle Trail, as follows:

(a) Development of any type will not be permitted within this area.

(b) No berming or elevation transition will be allowed.

(c) Clear cutting will not be allowed except under circumstances where sight lines are obstructed and contribute to traffic hazards.

(d) All existing native vegetation shall be retained, except that selective removal of exotic species shall be permitted upon approval of the Planning, Zoning & Variance Board.

(e) Any exotic species removed shall be replaced with native vegetation from the Town's native plant list upon approval of the Planning, Zoning & Variance Board. The native plantings shall provide a natural appearance and shall be installed to establish a visual buffer of a minimum of 7 feet in height above Jungle Trail's travel-way grade and 60% opacity, continuous throughout the length of the planted area, within two years of the time of planting.

(4) **Setbacks.** In addition to the other restrictions set forth in this Ordinance, there shall be no structure within the sixty-foot (60') corridor east of the center line of Jungle Trail, except pools and patios may be constructed within the easternmost twenty feet (20').

(5) **Review Criteria for Multi-slip Docks.** Only multi-slip docks shall be permitted on the property adjoining Jungle Trail. Application for such docks shall be presented by the developer, property owners' associations or condominium associations for consideration by the Planning, Zoning and Variance Board. The Planning, Zoning and Variance Board shall consider the following factors in determining whether an application shall be granted:

(a) Provision for protecting the area on both sides of Jungle Trail from pedestrian and vehicular damage.
(b) Landscaping proposed.
(c) Aesthetic design and view from Jungle Trail.
(d) Total number of slips or docks that are to be proposed for a particular property.
(e) Compliance with laws and rules of all government agencies.
(f) Parking and access from the development and adjoining Jungle Trail.

(C) **Rules and Regulations. T**he Town Council may, from time to time, adopt rules and regulations by resolution setting forth specific restrictions for the purpose of preserving Jungle Trail. The resolution shall include, but not be limited to, the restrictions and requirements set forth elsewhere in this Ordinance.

(D) **Guidelines to Be Prepared and Adopted by Resolution.** The Town of Indian River Shores shall prepare guidelines, which will be adopted by resolution of the Town Council relating to Jungle Trail, which shall include the following:

(1) **Clear Cutting Prohibited; Exceptions.** The prohibition on clear cutting of vegetation in the protected area, except under circumstances where sight lines are obstructed and contribute to traffic hazard.

(2) **Exotic Vegetation.** Provide for the cutting of selective exotic vegetation within the protected area upon approval of the Town Building Official or the Planning, Zoning and Variance Board.

(3) **Drainage and Maintenance.** In any development proposal for lands abutting Jungle Trail, provision shall be established to provide adequate drainage from the roadbed and surrounding property and a program of maintenance shall be established to assure the continuing effectiveness of the system.

(4) **Tree Protection and Removal.** In any development plan, provision shall be made for the selective removal of trees and other vegetation from the protected area when such are damaged beyond restoration. In all cases, such activity shall comply with the Town tree protection ordinance.

(E) **Variances.** The Town of Indian River Shores may grant such variances from the terms of this Ordinance as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary and undue hardship. Prior to the approval of any variance from the provisions of this Ordinance or the rules and regulations adopted hereunder, the Planning, Zoning and Variance Board must find that:

(1) Specific conditions and circumstances peculiar to the land, structure or buildings involved exist;

(2) The special conditions and circumstances are not as a result of actions of the applicant;

(3) The literal interpretation of the provisions of the Ordinance would deprive the applicant of rights commonly enjoyed by other property owners abutting the same historic or scenic road under the terms of this Ordinance, and would work unnecessary and undue hardship on the applicant;

(4) No new vehicular access points shall be authorized.

(5) The variance granted is the minimum variance that will make possible the reasonable use of the land.

(6) The granting of the variance will be in harmony with the general intent and purpose of the Ordinance.

161.08 SPECIAL HIGHWAY A1A SETBACK

(A) **Setback Requirement/Service Road.** All site plans and plats of land abutting Highway A-l-A shall be required to provide a sixty (60) foot building setback from the right-of-way for Highway A-l-A and, at the discretion of the town council, may be required to provide within the setback a twenty (20) foot wide service road with limited access to Highway A-l-A.

(B) **Alternative to §A Above.** As an alternative to (A) above, any site plan or plat may provide for the dedication of a fifteen (15) foot strip on each side of Highway A-l-A covered by the site plan or plat. The dedication shall be for the widening of the road and shall be in a form acceptable to the town. All minimum setbacks specified in Table 1 shall then be measured from the outer edge of the dedicated strip.

161.09 OTHER HISTORIC PROPERTIES

Any historic or archaeological properties on the State Master Site File or National Register of Historic Places shall be subject to appropriate historic preservation procedures as outlined in the Coastal Management Element of the Comprehensive Plan.

161.10 WATER AND SEWAGE

All new development shall be served by public water and sanitary sewer lines.

161.11 STRUCTURES IN UTILITY EASEMENTS

Erection of permanent structures on easements for public utilities is prohibited. This shall include a garage or other building which will prevent or interfere with the opportunity to use or make the easement accessible for essential services, but shall not include concrete walks, paving, or similar objects.

161.12 HOME OCCUPATIONS

A home occupation as defined herein shall be permitted within R1A Single-Family Residence Districts, RIB Single-Family, Zero Lot Line Residential District and R2A Multiple-Family Residence Districts, subject to the following provisions:

(A) **Number of Persons Engaged.** Only those persons who reside on the premises shall be engaged in any home occupation.

(B) **Incidental Character and Restrictions.** The use of the dwelling for the home occupation shall be clearly incidental and secondary to its use for dwelling purposes. The occupation shall not change the character of the dwelling or reveal from the exterior that the dwelling is used for a use other than dwelling purposes. There shall be no display of stock for sale or trade located upon the premises, and no article shall be sold or offered for sale except such as may be produced on the premises or is utilized in conjunction with the home occupation. The manufacturing of a product for resale shall not be produced with mechanical or electrical equipment which is not normally found in a dwelling and considered as purely a domestic implement. No sign shall be displayed which would be visible from the street and no vehicle displaying the business name of the home occupation shall be parked so that the sign is visible from a public or private right-of-way or adjacent residential properties. There shall be no outdoor storage of business equipment, materials, or merchandise.

(C) **Usage.** Any use of a dwelling contrary to these provisions or which creates or may create objectionable noises, fumes, odors, dust, electrical interference, or greater than normal residential traffic shall be expressly prohibited.

(D) **Required Certificate/Permit.** Any individual who promotes or solicits a home occupation by displaying, advertising, or using in any fashion his home address; provides or conducts a home occupation as defined herein; or proffers home occupation services as defined herein shall be required to obtain a certificate from the Town permitting said home occupation and to obtain an occupational license therefore. The offering of articles for sale in isolated situations shall not be considered as a home occupation or require permit and license.

(E) **Permit Application.** Application for a home occupation permit shall be made to the Town Clerk, setting forth the address of the subject premises, the type of home occupation desired, and the area of the dwelling to be utilized for same.

161.13 LOCATION AND SCREENING OF SWIMMING POOLS

(A) **No Pools in Minimum Front Yard Setback.** No pools shall be permitted in the minimum building setback portion of the front yard.

(B) **Criteria for Pool Location in Other Portions of Front Yard.** A front yard pool may be permitted, other than in the minimum setback portion of the front yard, upon a finding by the Planning, Zoning and Variance Board that the following criteria are met:

(1) There is a minimum distance of fifty feet (50') from the property line or the street right-of-way (whichever is farthest) to any part of the pool including walkways and other improvements used in connection with the pool.

(2) The pool equipment and related structures are shielded from view from the street and adjoining properties by a combination of walls and landscaping, including hedges and plantings.

(3) The pool and related structures are in harmony with and compatible with other residences in the neighborhood in material, size, structure and design.

(4) The placement of a pool will not have a substantial adverse economic affect on adjoining and surrounding residences.

(C) **Application, Notice, and Site Plan**

(1) **Notice.** Notice of a front yard pool application shall be mailed to adjoining neighbors by the Town Building Department at least twenty (20) days prior to application being heard by the Planning, Zoning and Variance Board.

(2) **Site Plan Requirements.** Any applicant for a front yard pool shall submit a site plan setting forth the above required information, with particular emphasis on shielding the view of the pool, with its associated activities and noise, from the street and from neighboring residences. The Planning, Zoning and Variance Board shall review the site plan and issue approval only if all requirements as set forth herein are met.

161.14 BUILDING AND SETBACK REQUIREMENTS FOR SCREEN ENCLOSURES.

(A) **Definition of Screen Enclosure.** Screened enclosure" shall mean those enclosures utilizing screen on sides and on the entire top. Screened enclosure for purposes of this Ordinance does not include screened areas utilizing material other than screen on top except that material needed for support of the screen.

(B) **Districts where Permitted.** Screened enclosures with or without swimming pools is a permitted accessory use in R1A Single Family; RIB Single Family; Zero Lot Line; R2A Single Family; Multi Family zoning districts and any subsequently adopted residential zoning unless specifically prohibited.

(C) **Side and Rear Setbacks.**

(1) Screened enclosures must be set back a minimum of ten (10') feet from side and rear lot lines.

(2) Swimming pools including walkways, decks, and any structure utilized with the swimming pool without a screened enclosure must be set back a minimum of ten (10') feet from side and rear lot lines.

(3) The height of side walls of screened enclosures shall not exceed nine (9') feet. The maximum height of a screened enclosure shall not exceed twelve (12') feet. If the screened enclosure is within a single-family residential setback, the screened enclosures can be to a height of thirty feet (30') or to the residence roof line, whichever is less.

161.15. SETBACK AND ELEVATION OF SWIMMING POOLS ON RESIDENTIAL LOTS ABUTTING INLAND WATERWAYS

(A) **Applicability.** This Ordinance applies to swimming pools constructed on residential lots abutting inland waterways as defined in Chapter 169, Definitions of the Land Development Code, Town of Indian River Shores. This Ordinance shall only apply to swimming pools constructed after the date of this Ordinance.

(B) **Definition of Swimming Pool.** "Swimming pool" for the purposes of this Ordinance shall include the pool deck, coping and all other construction accessory to the swimming pool.

(C) **Setback for Swimming Pool.** No part of the swimming pool as defined herein may be located within ten (10') feet of the rear lot line or ten (10') feet of the mean high water line, whichever is closest to the residence.

(D) **Elevation of Pool or Related Fence, and Wall.** The maximum elevation of swimming pools shall not exceed the finish floor of the first level of the residence. Any fence or wall to be constructed in connection with the pool, and located within twenty-five (25') feet of the mean high water line, shall not exceed four (4') feet above the deck of the pool.

(E) **Screen Enclosures.** No screen enclosure shall be constructed within thirty (30') feet of the mean high water mark. This provision shall apply prospectively only and shall not prevent repair, reconstruction, or replacement of any pool screened enclosure in existence within thirty (30') feet of the mean high water mark at the time of adoption of this Ordinance.

161.16 REQUIRED HOA/CONDOMINIUM ASSOCIATION BULDING PLAN APPROVAL

(A) **Submittal of Proof of Review**. At the time of application for a single family residence building permit, the applicant must present written proof the plans have been submitted to and approved by the designated architectural review committee for the subdivision or development in which the construction is to occur.

(B) **Required Written Statement where Inapplicable.** If the subdivision or other development has no building review requirements, then the permit applicant shall make a written statement to that effect which may be relied upon by the Town Building Official for issuance of a building permit.

(C) **Town Assumes No Liability.** By adoption of this Ordinance, the Town of Indian River Shores does not undertake any liability for failure of applicant to comply with private building requirements.

161.17 SITINGS OF COMMUNICATION TOWERS AND ANTENNAS

(A) **Definitions.** Camouflaged communication tower shall mean a tower designed to unobtrusively blend into the existing surroundings and be disguised so as to not have the appearance of a communication tower. Such structures shall be considered communication towers and not spires, belfries, cupolas, or other appurtenances usually required to be placed above the roof level for purposes of applying height limitations. Due to their height, such structures must be designed with sensitivity to elements such as building bulk, massing, and architectural treatment of both the tower and surrounding development. Camouflaged towers on developed property must be disguised to appear as either a part of the structure housing the principal use or an accessory structure that is normally associated with the principal use occupying the property. Camouflaged towers developed on unimproved property must be disguised to blend in with existing vegetation.

An example of a camouflaged communication tower is a tower constructed in the form and shape of a tree in order to appear to be part of a forested area, or a tower constructed to appear to be part of the structure such as a gable or chimney.

Communication antenna shall mean an antenna designed to transmit or receive communications as authorized by the Federal Communications Commission.

Communication tower shall mean a tower greater than 35 feet in height (including antenna) that supports communication (transmission or receiving) equipment. The term communication tower shall not include amateur radio operators' equipment, licensed by the Federal Communications Commission (FCC). No tower shall exceed 50' in height (including antenna) when free-standing, or 40% over the building height when placed on top of buildings.

(B) **General Requirements.**

(1) **Compliance with Applicable Federal Regulations.** Communication towers and communication antennas must comply with all applicable Federal Aviation Administration (FAA) and FCC Regulations.

(2) **Landscaping.** The visual impacts of a communication tower shall be mitigated for nearby viewers through landscaping or other screening materials at the base of the tower and ancillary structures. The following landscaping and buffering of communication towers shall be required around the perimeter of the tower and accessory structures. Landscaping shall be installed on the outside of fences. Further, the use of existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute of or in supplement towards meeting landscaping requirements.

(a) A row of trees a minimum of eight (8') feet tall and a maximum of twenty-five (25') feet apart shall be planted around the perimeter of the fence; and,
(b) A continuous hedge at least thirty (30") inches high at planting capable of growing to at least thirty-six (36") inches in height within eighteen (18) months shall be planted in front of the tree line referenced above; and,
(c) All landscaping shall be of the evergreen variety.

(3) **Type of Construction.** Communication towers shall be monopole construction whenever possible. Other forms of camouflaged communication towers may be considered provided however in granting a request for such towers, the Town's Planning, Zoning and Variance Board shall consider:

(a) Compatibility with adjacent properties;
(b) Architectural consistency with adjacent properties;
(c) Visual impact on adjacent properties, including visual access of adjacent properties to sunlight; and,
(d) Design of accessory structures in order to be architecturally consistent with the existing structures on the site. A variance/waiver from the fencing and landscaping requirements of this section may be requested for such accessory structures.

(4) **Development Criteria.** Communication towers/antennas shall comply with the minimum development criteria of the district in which they are located, pertaining to minimum lot size and open space.

(5) **Illumination.** Communication towers/antennas shall not be artificially lighted except to assure human safety or as required by the Federal Aviation Administration.

(6) **Collocation.**

(a) **Monopole Towers.** Monopole communication towers shall be engineered and constructed to accommodate a minimum of one (1) additional communication service provider.

(b) **Camouflaged Towers.** Camouflaged communication towers may be engineered and constructed without accommodating additional communication service providers.

(c) **Within Electrical Substations.** Communication towers located within electrical substations may be engineered and constructed without accommodating additional communication service providers. Such towers shall be monopole construction and shall be subject to all of the requirements of this Section.

(d) **Public Benefits.** If the Town determines that the proposed tower is situated in a location that benefits the Town's telecommunication systems, then the tower shall be engineered and constructed to accommodate the additional telecommunicating equipment beneficial to the public system at no cost to the Town.

(e) **Collocation On-site.** A communication tower which is being rebuilt to accommodate the collocation of an additional communication antenna may be moved onsite within fifty (50') feet of its existing location; however, the antenna shall meet all setback requirements. After the communication tower is rebuilt to accommodate collocation, only one tower may remain on the site.

(f) **Relocation Measurements; Violations.** A relocated onsite communication tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers. The relocation of a tower in accordance with this subsection shall in no way be deemed to cause a violation of any other Section. The onsite relocation of a communication tower which comes within the separation distances to residentially zoned lands or residential uses shall require variance approval.

(7) **Noninterference.** No communication tower or antenna shall interfere with public safety communication. Frequency coordination is required to ensure noninterference with public safety system and/or public safety entities.

(8) **Documentation.** Documentation to demonstrate conformance with the requirements of this Ordinance shall be submitted by the applicant with all requests to construct, locate or modify a communication tower/antenna. A statement by the applicant as to how construction of the communication tower will accommodate collocation of additional antennas for future users shall be included with the documentation.

(9) **Signs and Advertising.** The use of any portion of a tower for sign or advertising purposes including, without limitation, company name, banners, or streamers, is prohibited.

(10) **Abandonment.** In the event the use of any communication tower has been discontinued for a period of 180 consecutive days, the tower shall be deemed to have been abandoned. Upon such abandonment, the owner/operator of the tower shall have an additional 180 days within which to:

(a) Reactivate the use of the tower or transfer the tower to another owner/operator who makes actual use of the tower? or

(b) Dismantle and remove the tower. The Owner of the real property shall be ultimately responsible for all costs of dismantling and removal, and in the event the tower is not removed within 180 days of abandonment, the Town may proceed to do so and assess the costs against the real property. The lien of such assessment shall bear interest, have priority and be collectable, at the same rate and in like manner as provided for special assessments by Florida law. At the earlier of 181 days from the date of abandonment without reactivation or upon completion of dismantling and removal, any special exception, waiver and/or variance approval for the tower shall automatically expire.

(C) **Communication Towers and Communications Antennas in Zoning Districts of Town.**

(1) **Location.** Communication towers and communication antennas must locate on existing tower or buildings wherever feasible.

(a) When located on top of buildings, communication towers shall be set back at least ten (10') feet from the edge of the buildings;

(b) Communication towers and communication antennas shall not exceed greater than forty (40%) percent of the building height; and,

(c) Shall not be subject to the performance and construction standards for free standing towers contained elsewhere in this Ordinance pertaining to separation distances, fencing, landscaping, and collocation.

(2) **Placement on Utility Poles Prohibited.** Utility poles shall not be considered towers or buildings upon which antennas and/or towers are to be located.

(3) **Freestanding Towers.** New freestanding communication towers/communication antennas shall not be allowed unless the applicant:

(a) Secures a Waiver pursuant to the Land Development Code requirements upon an affirmative showing:

(i) That existing towers and buildings do not technologically afford the applicant the ability to provide service to the service area of the applicant or service provider, and
(ii) That the geographical boundaries of the proposed service area cannot technologically be bifurcated to avoid the necessity for a free standing tower/antenna; and,

(b) Secures a conditional use approval, pursuant to the Land Development Code, to place the communication tower and/or communication antenna within one of the following zoning categories:

(i) CIA Limited Commercial,
(ii) P Public District, and
(iii) AG Agricultural.

(D) **New Facilities.** New communication towers shall conform to the following:

(1) **Site Plan Required; Design.** New communication towers shall require full site plan submittal. The engineer shall certify that the tower is designated such that in the event of collapse it will fall within the specified fall radius equal to 110% of the tower height and, if applicable, the facility is properly designed to accommodate antenna collocation.

(a) No existing structure may be located within the fall radius of a tower.

(b) New tower sites may be required to provide one (1) stabilized, sodded parking space.

(c) The perimeter of communication tower base, all ground mounted support equipment, driveways and parking, shall be screened in accordance with the off-street parking requirements of the Town of Indian River Shores Landscape and Tree Protection Ordinance.

(d) Chain link fencing at tower bases and ground mounted support facilities shall be coated with black or green vinyl.

(2) **Height Limitation.** New communications towers and antenna shall be limited to a cumulative height of fifty (50') feet.

(3) **Monopoles Only.** New commercial communications towers shall be only of a monopole design.

(4) **Collocation Considerations.** Applicants for new towers must contact all existing tower owners and prove that collocation is not feasible. The applicant must provide the Town written rejection notices that collocation is not an alternative.

(5) **Restrictions on Non-collocated Towers.** Commercial communication towers not designed for collocation must have a minimum site separation distance of five thousand (5,000') feet. Towers designed for collocation and with at least two (2) providers at the time of site plan approval may have a minimum site separation of one thousand five hundred (1,500') feet.

(E) **Application.** Any application for new communication facilities covered by this Ordinance shall be on a form prescribed by the Town and shall be accompanied by a reasonable charge as established by the Town Building Official for processing such application, including a reasonable charge for technological expertise to assist Town staff in evaluating the request.

(F) **Use of Town Right of Way.** Any prospective user of Town owned right of way for communication facilities as contemplated in the Telecommunications Act of 1996 shall make reasonable payment for use of Town right of way in an amount permitted under the Act. The Town may engage technological expertise and determine a reasonable charge for such use.

(G) **Applicability.**

(1) All new communication towers and communication antennas in the Town shall be subject to these regulations and all other applicable regulations. For purposes of measurement, communication tower setbacks and separation distances as listed in this Ordinance shall be calculated and applied irrespective of municipal and county jurisdictional boundaries.

(2) All communication towers legally existing on the effective date of this Ordinance shall be considered permitted uses, allowed to continue their usage as they presently exist; provided however, anything other than routine maintenance, including without limitation, structural modifications including provisions for additional antennas or additional providers and/or new construction on an existing communication tower, shall comply with the requirements of this Ordinance. Routine maintenance shall be permitted on such existing towers.

(3) All government towers with public safety systems or equipment shall be exempt from this Ordinance.

161.18 ROOF ENCROACHMENTS INTO EASEMENTS AND SETBACKS

(A) **Setback Encroachment.** No building roof overhang may extend into any building setback requirement in excess of three feet (3').

(B) **Easement Encroachment.** No building roof overhang may extend into any utility or other dedicated easement.

161.19 SEA TURTLE PROTECTION

(A) **Definitions.** The following terms shall have the meaning set forth in this section:

Artificial light*:* Any fixed source of light emanating from a manmade device, including, but not limited to, incandescent, mercury-vapor, metal halide, or sodium-vapor lamps, floodlights, spotlights, street lights, parking lot lights, construction or security lights.

Beach*:* Beach means the zone of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves. "Beach" is alternatively termed "shore."

Beach access point: Any path through or over the dune used by the general public; or, with respect to private property, by the owners or with the owner's permission, for the purpose of gaining access to the beach.

Coastal construction*:* The carrying out of any activity within jurisdiction boundaries to modify or improve site conditions including, but not limited to, building, clearing, filling excavation, beach/dune preservation, stabilization or restoration projects, mechanical beach cleaning, grading or planting of vegetation, or the making of any material change in the size or use of any structure or the appearance of site conditions, or the presence of equipment or material upon such sites.

Direct illumination of the beach*:* Light from a point source that is sufficiently strong to cast a detectable shadow on the beach on a dark, moonless night.

DEP*:* Florida Department of Environmental Protection.

FWC*:* Fish and Wildlife Conservation Commission.

Jurisdictional boundary*:* The area between the Atlantic Ocean and the Coastal Construction Control Line as established by the State of Florida, except that the exterior lighting restrictions shall include the area between the Atlantic Ocean to a point 100 feet west of the Coastal Construction Control Line within the corporate limits of the Town of Indian River Shores. A map depicting the area shall be maintained in the office of the Town Clerk. For properties located partially within the Jurisdictional boundary, the requirements of this ordinance shall apply to the entire property.

Light fixture*:* The structural mechanism which, or within which, the point source of light is attached. *Low-profile luminaire:* A light fixture, set on a base, where the point source of light is no higher than forty-eight (48) inches off the

ground and is designed in such a way that light is directed downward from hooded light source.

Motorized vehicle*:* Includes, but is not limited to, any self-propelled, wheeled, tracked or belted conveyance.

Nesting season*:* The period from March 1 through October 31 each year during which sea turtles emerge from the ocean to nest and hatchlings emerge from nests to enter the ocean.

Permit holder*:* Any qualified individual, group, or organization possessing a current and valid permit from FWC to conduct activities related to sea turtle conservation and recovery.

Person: Any individual, firm, association, joint venture, partnership, estate, trust, syndicate, fiduciary, corporation, group, or unit or federal, state, county, or municipal government.

Point source of light*:* The actual exterior light source such as the bulb, fluorescent tube, lamp, etc., from which light emanates.

Pole light*:* Any light fixture set on a base or pole where the point source of light is higher than forty-eight (48) inches off the ground.

Primary dune*:* Dune means a mound or ridge of loose sediments, usually sand-sized, lying landward of the beach, and deposited by natural or artificial means.

(B) **Purpose.** The purpose of this article is to recognize the unique characteristics of the sea turtle nesting cycle and to prevent or minimize the hazards adversely impacting nesting females and their hatchlings from any of all the following: coastal construction activity; beachfront lighting; beach/dune preservation, stabilization and restoration projects; mechanical beach cleaning; and other coastal activities disruptive to the nesting cycle.

(C) **New Development.**

(1) **Minimize Artificial Light.** It is the policy of the Town to minimize artificial beachfront lighting and to minimize impacts to sea turtles and their nesting habitat resulting from coastal construction activities. To meet this intent, all coastal construction within the corporate limits of the Town for which a building permit is issued on or after the effective date of the article shall comply with conditions set forth in this section.

(2) **Lighting Standards.** In the Town's jurisdictional boundaries, the following lighting standards shall apply:

(a) Both public and private balcony and exterior lighting fixtures installed within direct line-of-sight of the beach shall be designed/positioned such that:

(i) The point source of light or any reflective surface of the light fixture is not directly visible from the beach; and
(ii) Areas seaward of the primary dune are not directly or indirectly illuminated.

(b) Outside lighting shall be held to the minimum necessary for safety and security.

(c) Only low-intensity recessed or louvered lighting, or other appropriate low intensity lighting, shall be used on beach access points, dune crossovers, beach walkways, piers, or any other structure designed for pedestrian traffic on or seaward of the primary dune. This lighting shall meet the same criteria for other types of exterior lights as set forth in subsection (2)(a) above.

(d) Facility design and site plans shall incorporate, as appropriate, the use of hedges, native dune vegetation, and/or other physical barriers (e.g., privacy fences, walls, etc.) to shield vehicular lighting from the beach.

(e) Temporary security lights at construction sites shall be mounted no more than 15 feet above the ground. In no case shall such lights directly illuminate any area of the beach.

(3) **General Standards for Coastal Construction.** The following general standards shall apply to all coastal construction within jurisdictional boundaries of the Town:

(a) Coastal construction occurring seaward of the primary dune during any portion of the nesting season shall be conducted during daylight hours except in emergency situations as approved by FWC or other agency having jurisdiction.

(4) **Prior Approved Permanent Exterior Lighting.** Permanent exterior lighting resulting from coastal construction approved by the Town prior to the effective date of this article shall be considered as existing development and standards set forth in §D shall apply.

(5) **Interior Lighting Visible from Beach.** The Town does not intend to regulate the interior lighting of dwellings, but recommends that beachfront residents be mindful of the potentially adverse effects of their interior lighting. Beachside stairwells or lighted common areas of oceanfront units should utilize a cover, shield or window filming to diminish lighting that can be seen from the beach. Should interior lighting be so bright and so positioned as to illuminate the beach, it can create a false beacon for sea turtle hatchlings. Although the light is produced within a dwelling, that light can have consequences outside those confines.

(D) **Existing Development, including Publicly Owned Lighting.**

(1) **Beachfront Lighting Criteria.** Existing development must comply with all beachfront lighting provisions of this section. To meet this intent, the following criteria shall apply to all public and private artificial exterior lights within jurisdictional boundaries of the Town:

(a) No exterior point source of light shall be directly visible from ground level on any area of the beach; and
(b) No point source of light shall directly illuminate any area of the beach seaward of the primary dune.

(2) **Required Timing of Lighting Modifications.** Within six (6) months of the effective date of this article, exterior artificial lighting associated with existing structures that does not comply with criteria set forth in §(D)(1) above shall be modified with one or a combination of the options listed below:

(a) Permanently remove the fixture;
(b) Disconnect the point source of light;
(c) Reposition the fixture so the point source of light is no longer visible from the beach;
(d) Replace fixtures having exposed point sources with fixtures containing recessed point sources;
(e) Replace non-directional fixtures with directional fixtures;
(f) Replace fixtures having transparent or translucent coverings with fixtures having opaque coverings;
(g) Affix a shield covering an arc of at least one hundred eighty (180) degrees and extending an appropriate distance below the bottom edge of the fixture to the ocean side of an existing fixture so the light source is no longer visible from the beach;
(h) Replace pole lamps with low-profile luminaries;
(i) Plant or improve vegetation buffers between the light source and the beach to screen light from the beach;
(j) Construct a structural barrier to shield the light source from view; and/or
(k) Replace high-intensity floodlights or parking lot lights with low-pressure sodium-vapor lights.

(3) **Permanent and Temporary Lighting Modifications.** Permanent modifications to existing lights not conforming to standards set forth in §(D)(1) above are preferred. Temporary modifications used to bring lights into compliance with §(D)(1) must remain in effect throughout the entire nesting season each year.

(E) **Prohibition of Activities Disruptive to Sea Turtles.** To protect sea turtles and their hatchlings, the following activities are prohibited on or seaward of the primary dune during the nesting season (March 1-October 31):

(1) The operation of motorized vehicles, except in cases of emergency or as otherwise approved by FWC or the Town;
(2) Horseback riding; and
(3) Campfires.

(F) **Standards for Beach Access Points.** To increase general public awareness of the need for protecting sea turtles and to alert the public to possible penalties resulting from the molestation of sea turtles or the destruction of their nests and eggs, the following standards shall apply:

(1) **Permanent Sea Turtle Information Signs** Permanent sea turtle information signs shall be posted at all public and

multi-family and single family private beach access points provided with dune crossovers. The signs shall be:

(a) Standardized by the Town;
(b) Supplied by the Town at cost;
(c) Installed and maintained in perpetuity by the property owner such that information printed on the signs remains legible; and
(d) Positioned such that they are conspicuous to persons accessing the beach.

(2) **Compliance with Conditions for Beach Access Points.** Existing beach access points must comply with conditions of this section within six (6) months of the effective date of this article. Beach access points constructed after the effective date of this article must comply with conditions of this section prior to issuance of a certificate of occupancy or final building approval, as applicable.

(G) **Beach/Dune Preservation, Stabilization, or Restoration.** All coastal construction within jurisdictional boundaries associated with beach/dune preservation, stabilization, or restoration projects shall comply with the following conditions:

(1) Coastal construction activities occurring seaward of the primary dune during any portion of the nesting season shall be conducted during daylight hours except in emergency situations as approved by FWC, or the Town.

(2) Restored and stabilized dunes shall be vegetated with authorized native, salt-tolerant plants suited to the beach/dune environment and irrigated by a temporary sprinkler system which does not broadcast water seaward of the toe of the primary dune.

(H) **Standards for Mechanical Beach Cleaning.** A permit is required from the DEP and the Town for all beach cleaning activities to remove debris from the beach through the use of motorized vehicles or other mechanical means. In addition, beach cleaning activities shall comply with the following conditions:

(1) Beach cleaning shall be conducted only during daylight hours;

(2) Any person engaging in mechanical beach cleaning activities during any portion of the nesting season shall satisfy all local, state and federal laws prior to engaging in such activities.

(3) All beach cleaning operations shall be coordinated through the appropriate state agency to ensure that these operations do not interfere with state sanctioned scientific studies of sea turtles nesting activities.

(I) **Compliance Inspections.** Periodic nighttime lighting inspections shall be performed from the beach to determine the extent of compliance with Section 4 of this article. These inspections shall be initially performed during March, 2000 by the Town or a qualified person appointed or contracted by the Town. Thereafter, the inspections shall be conducted at least annually until existing beachfront lighting has been brought into compliance. Inspections shall include both public and private properties within jurisdictional boundaries.

(J) **Enforcement and Penalty.** If any of the provisions of this article are being violated, the property owner or perpetrator of such violations shall be notified by written warning from the Town Manager's office, indicating the nature of the violation and ordering any action necessary to correct it. Enforcement action may result from inspections conducted pursuant to Section9 above or from public complaint. Each person who commits, attempts to commit, conspires to commit, or aids and abets in the commission of any act declared herein to be in violation of this article, whether individually or in connection with one (1) or more persons, or as a principal, agent or accessory, shall be guilty of such offense. Any person found guilty of violating any provisions of this article, after a first written warning from the Town Manager's office, shall be punished in accordance with Section 10.99 of this Code of Ordinances. Each day the violation continues shall be deemed a separate offense. In addition to any other remedies, civil or criminal, violations of this article may at the option of the Town be enforced by the Code Enforcement Board, which may impose administrative fines and liens in accordance with the Town's Code Enforcement Board ordinance.

(K) **Local Approvals Not Exclusive.** Approvals required pursuant to this article shall be in addition to and not in lieu of any federal, state, regional or other local approvals which may be required for the same or similar activities. Similarly, compliance with provisions of this article does not excuse any person from having to comply with other applicable federal, state, regional or local laws.

CHAPTER 162 OFF-STREET PARKING AND LOADING

162.01 GENERAL REQUIREMENTS

Off-street vehicular parking in conjunction with the requirements for all land or building uses shall be provided in accordance with the provisions of this chapter prior to the issuance of a certificate of occupancy.

(A) **Usage of Spaces.** The required off-street parking area shall be for occupants, employees, visitors, and patrons and shall be limited in use to passenger vehicles not exceeding a net weight of three tons and shall be for periods of less than forty-eight (48) hours. The storage of merchandise, motor vehicles for sale, or the repair of vehicles is prohibited in the parking area.

(B) **Building Addition.** Whenever a non-residential building or use requiring off-street parking is increased in floor area or any other determining unit of measure, the minimum number of parking spaces required shall be based upon the entire building or use, including the addition.

(C) **Non-Residential Parking Location.** Required off-street parking for other than a residential use shall be either on the same lot or within one hundred (100) feet of the building or use it is intended to serve, measured without crossing a major thoroughfare, from the nearest point of the building or use to the nearest point of the required off-street parking facility. The principal use shall be permitted to continue only so long as the off-street requirements of this chapter are complied with.

(D) **Residential Parking Location.** Residential off-street parking spaces shall consist of a parking strip, driveway, garage, or combination thereof, and shall be located on the premises they are intended to serve.

(E) **Change of Parking Location.** Any area once designated as required off-street parking shall never be changed to any other use unless equal facilities are provided elsewhere.

(F) **Common Parking Area.** Two (2) or more buildings or uses may collectively provide the required off-street parking, in which case the required number of parking spaces shall not be less than the sum of the requirements for each individual use, computed separately. For building or land containing more than one use, the total parking requirement shall be determined to be the sum of the requirements for each use.

(G) **Shared Parking.** In cases of dual functioning of off-street parking where operating hours do not overlap, the town council may grant a modification of these requirements at site plan approval.

(H) **Lighting.** Where lighting facilities are provided, they shall be so arranged as to reflect the light away from the adjacent residential districts.

(I) **Handicapped Parking.** All parking lots shall meet the requirements of State statute and regulations relative to parking for the handicapped.

162.02 SPACE REQUIREMENTS

In addition to adequate employee parking, the minimum number of off-street parking spaces shall be determined in accordance with the following table:

Use	Required # of Parking Spaces
Banks and offices	**1 space per 200 sq. ft. of gross floor area (gfa).**
Professional offices of doctors and dentists	**1 space per 100 sq. ft. gfa.**
Retail stores	**1 space per 200 sq. ft. gfa.**
Beauty parlor and barber shop	**2 spaces per chair**
Churches	**1 space Per 3 seats or 6 feet of pew.**
Elementary of middle schools	**2 spaces per classroom or per 3 seats in auditorium or assembly area, whichever is greater**
Private clubs	**1 space per 100 ft. gfa.**
Residential	**2 spaces per dwelling unit**
Theatres and auditoriums	**1 space per 3 seats**

162.03 CONSTRUCTION AND MAINTENANCE

Whenever the off-street parking requirements demand the building of an off-street parking facility, or where vehicular parking districts are provided and used for parking purposes, the off-street parking lots shall be designed, constructed, and maintained in accordance with the following standards and regulations:

(A) **Access.** Adequate ingress and egress, not less than ten (10) feet for one way and twenty (20) feet for two-way traffic, to the parking lot by means of clearly limited and defined drives shall be provided for vehicles. All drives and aisles shall be surfaced in a manner equivalent to that which is hereinafter provided for in the parking area. All roads and streets providing ingress and egress, including main entrances and exits to the total land area developed, with the exception of residential areas, shall conform to the provisions of Chapter 50 as to minimize size thereof.

(B) **Side Wall.** A parking lot shall be separated from a residentially zoned side lot line by an unpierced three (3) foot wall or fence.

(C) **Front Wall.** A parking lot shall be separated from the street lot line where the parking lot lies across the street and opposite a residentially zoned district wherein the residential lots front on the street, by a three (3) foot unpierced wall or fence not less than twenty (20) feet from the street lot line.

(D) **Wheel Stops.** Wherever an unpierced wall or fence is required permitted, bumper stops or wheel stops shall be provided to prevent any vehicle from damaging or encroaching upon the wall, fence, or buffer strip.

(E) **Drainage.** The parking lot shall be drained to eliminate the ponding of surface water.

(F) **Surface.** The surface of the parking lot, excepting the buffer strips, shall be constructed of a dustless and durable Portland cement concrete or asphaltic concrete, complying with the state highway specifications and maintained in a useable condition.

(G) **Landscaping.** See 163.06 in the Landscaping Chapter.

162.04 PARKING LOT DESIGN

Plans for the design of a parking lot must designate that the parking requirements can be met showing a total dimension across two tiers of spaces and one aisle (maneuvering lane) of at least the following for the various patterns:

(A) **A 90 Degree Pattern.** Sixty (60) feet for two (2) tiers of spaces and one aisle (maneuvering lane) with the minimum aisle being twenty (20) feet in width. This minimum aisle width shall permit two-way traffic movement.

(B) **A 60 Degree Pattern.** Fifty-nine (59) feet for two (2) tiers of spaces and one aisle (maneuvering lane) with the minimum aisle being fifteen (15) feet in width. This minimum aisle width shall permit one-way traffic movement. Two-way traffic shall require an aisle of not less than twenty (20) feet.

(C) **A 45 Degree Pattern.** Fifty-three (53) feet for two (2) tiers of spaces and one aisle (maneuvering lane) with the minimum aisle being twelve (12) feet in width. This minimum width shall permit one-way traffic movement. Two-way traffic shall require an aisle of not less than twenty (20) feet.

162.05 RESIDENTIAL GARAGES

(A) **Required.** Each individual living unit, including single-family units and units located in apartment complexes, condominium complexes, or multiple-family complexes of any nature or description, shall be required to have a completely enclosed garage which shall conform to the general aesthetic design of the units or complexes.

(B) **Design Standards for Single-Family Unit Garages.** There is hereby established a minimum size for single-car garages for single-family dwellings of twelve (12) feet wide by twenty-two (22) feet long; the maximum width for such a garage shall be sixteen (16) feet. There is hereby established a minimum size for two-car garages for single-family dwellings of twenty-four (24) feet wide by twenty-two (22) feet long. Both of these stated dimensions shall be inside dimensions. No parking garage bays shall face a street.

162.06 OFF-STREET LOADING AND UNLOADING

(A) **In General.** On the same premises with every commercial structure, there shall be provided and maintained on the lot adequate space for standing, loading, and unloading services adjacent to the opening used for loading and unloading in order to avoid undue interference with public use of the streets. All loading and unloading areas, including all access drives, shall be paved and shall be in addition to the required off-street parking area requirements.

(B) **Number of Loading and Unloading Spaces.** The loading and unloading space, unless otherwise adequately provided for, shall be an area ten (10) feet by forty (40) feet with a fourteen (14) foot height clearance, and shall be provided according to the following table:

Gross Floor Area in Square Feet	Number of Spaces
0 to 3,000	None
3,000 to 20,000	1
20,000 to 100,000	1 for each 20,000 sq. ft. or fraction thereof

(C) **Location of Loading and Unloading Spaces.** No loading space may be on any street frontage and provisions for handling all freight shall be on those sides of any building which do not face on any street or proposed street, except where the areas are obscured from the street with a solid masonry wall not less than six (6) feet in height.

CHAPTER 163 LANDSCAPING AND WALLS

163.01 INTENT

The intent of this chapter is to assure that adequate landscaping and buffers are provided in conjunction with all new development and that the landscape plan achieves water conservation.

163.02 OPEN SPACE OR LANDSCAPED AREA

(A) **Landscape Plan.** A landscape plan shall be prepared in conformance with 163.10 as a part of any site plan.

(B) **Percentage** The open space requirement for residential uses shall be forty (40) percent of the site. The open space requirement for nonresidential uses shall be twenty-five (25) percent of the site. Open space shall be only pervious recreational or landscaped area. No part of any open space shall be used as building coverage, driveway, or parking area. All landscaped areas shall be planted and maintained as sodded lawn, or ground cover, shrubs or trees, and shall be designed and located to reinforce the purposes of open space preservation. These purposes include provision of adequate light and air, enhancement of privacy, provision of open space and facilities for recreation, pedestrian circulation, and leisure pursuits, and preservation of environmentally-sensitive areas, major drainage ways, and natural scenic amenities of the site. Bodies of water which are completely landlocked and not part of navigable waterways may comprise no more than thirty (30) percent of the total required open space.

(C) **Tree Requirements.** All pervious or non-vehicular open spaces on any developed site in all zoning districts, except for single-family and two-family dwellings, shall have at least one (1) tree per three thousand (3,000) square feet of such landscaped area. The landscape plan shall be designed to provide a tree canopy over at least fifty (50) percent of the required pervious area when the trees reach maturity. See 163.08(D) for xeriscape tree requirements.

163.03 LANDSCAPING STANDARDS. All landscape required pursuant to this chapter shall comply with the following landscape specifications:

(A) **Definitions.** For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

"Berm." Mounding of soil.

"Dead Space." Space within a parking area that is not used for parking or other vehicle use area.

"Encroachment." Any protrusion of a vehicle outside of a parking space, display area, or accessway into a landscaped area.

"Landscaping." Material such as, but not limited to, grass, ground covers, shrubs, vines, hedges, trees, or palms; and non-living durable material commonly used in landscaping, such as, but not limited to, rocks, pebbles, sand, walls, or fences, but excluding paving.

"Shrubs." Woody, perennial, evergreen plants smaller than a tree and usually branching from or near ground.

"Tree, Existing." Any self-supporting woody perennial plant which normally attains at maturity a trunk diameter of at least three inches measured four and one-half (4 1/2) feet above grade, and having a minimum overall height of fifteen (15) feet.

"Vine." Any plant with a long, slender stem that trails or creeps on the ground or climbs by winding itself about a support or holding fast with tendrils.

(B) **Parking Lots.** Screening and landscape requirements for all off-street parking areas shall be provided pursuant to Chapter 162. As an alternative to required perimeter walls or fences, the planning, zoning and variance board may permit landscape plant materials pursuant to the specifications in this section and 163.04.

(C) **Buffers.** See 163.09 for fence, wall and hedge buffer requirements.

(D) **Screening.** Landscaping and/or walls shall be employed to mask from the public view service areas such as solid waste storage areas, outside equipment, and other accessory structures of an anesthetic character. Screening of air conditioning

units and other mechanical equipment shall be accomplished in a manner that does not interfere with the operation or maintenance of the equipment.

(E) **Maintenance.** The owner, tenant, and their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping which shall be maintained in good condition so as to present a healthy, neat, and orderly appearance, and shall be kept free from refuse and debris. All landscaped areas shall be provided with an irrigation system of sufficient capacity to maintain the plant material. If at any time after issuance of a certificate of occupancy the landscaping of a development to which this chapter is applicable is found to be in nonconformance, the building official shall issue notice to the owner that action is required to comply with this chapter and shall describe what action is required to comply. The owner, tenant, or agent shall have thirty (30) days to restore the landscaping as required. If the landscaping is not restored within the allotted time, the person is in violation of this code.

(F) **Erosion.** The landscape plan shall include plant material selections that will prevent erosion; (E) above shall include maintenance of erosion-free land.

163.04 PLANT MATERIAL STANDARDS

(A) **Quality.** Plant materials used in conformance with the provisions of this chapter shall conform to the standards for Florida No. 1 or better as given in "Grade and Standards for Nursery Plants" Part 1,1973, and Part II, 1975, State of Florida, Department of Agriculture, Tallahassee, or equal thereto. Grass seed shall be delivered to the job site in bags with State Department of Agriculture tags attached indicating the seed growers compliance with the department's quality-control program; sod is preferred. The building official shall maintain a list of recommended tree species. In no case shall plant materials which are known to be intolerant of paving environments, or whose physical characteristics may be injurious to the public, or which produce a quantity or quality of debris so as to present maintenance difficulties, be specified for use under this chapter.

(B) **Trees Size and Characteristics.** Trees shall be species having an average mature spread of crown of greater than twenty (20) feet when growing in the town and eventually having trunks which can be maintained in a clean condition over five feet of clear wood. Trees having an average mature spread of crown less than twenty (20) feet may be substituted by grouping them so as to create the equivalent of a fifteen (15) foot crown spread. Tree species shall be a minimum of eight (8) feet overall height. Palms are considered trees, but the required height shall be eight (8) feet from the ground level to base of palm fronds. Trees of a species whose roots are known to cause damage to public roadways or other public works shall not be planted closer than twelve (12) feet to the public works.

(C) **Palm and Species Mix.** Palm species shall not be used for more than twenty-five (25) percent of the total number of trees required. No one tree species shall account for more than thirty-five (35) percent of the total number of trees.

(D) **Removal of Undesirable Trees.** The following exotic tree species shall be removed from any development site for which a site plan or plat is submitted before issuance of the first building permit. If project is to be phased, the phasing plan for tree removal shall be approved by town council.

(1) Australian Pine (Casuarina equisetifolia) (Casuarina lepidophlia) (Casuarina cumminghamiana)

(2) Chinaberry (Melia azedarch).

(3) Ear Pod (Enterlobium cyclocarpum).

(4) Brazilian Pepper (Schinus terebinthifolius).

(5) Melaleuca (Melaleuca leucadendron).

(E) **Shrubs and Hedges.** Shrubs shall be a minimum of eighteen (18) inches in height when measured immediately after planting. Hedges, where required, shall be planted and maintained so as to form a continuous, unbroken, solid screen within a maximum of one year after the time of planting

(F) **Vines.** Vines shall be a minimum of twenty-four (24) inches in height directly after planting and may be used in conjunction with fences, screens, or walls to meet physical barrier requirements as specified.

(G) **Ground Covers.** Ground covers other than grass shall be planted in such a manner as to present a finished appearance and reasonably complete coverage within three (3) months after planting.

(H) **Lawn Grass.** Grass areas are subject to the limits of 163.08(D). Grass areas shall be planted in species normally grown as permanent lawns in the vicinity of the town. Grass areas may be sodded, plugged, sprigged, or seeded. Solid sod shall be used in swales or other areas subject to erosion. When grass seed is sowed, it shall be a variety of seed which produces complete coverage within ninety (90) days from sowing. In areas where a ground cover other than solid sod or grass seed is used, nursegrass seed shall be sown for immediate effect and protection until coverage is otherwise achieved.

(I) **Synthetic Plants.** Synthetic or artificial material in the form of trees, shrubs, ground covers, or vines shall not be used in lieu of plant requirements in this section.

(J) **Berm.** Berms may be utilized for landscape barrier requirements and shall be used in conjunction with plant material to achieve the required heights.

163.05 EXISTING TREES

(A) **Credits.** Credit for trees preserved on a site shall be granted toward meeting the tree requirements of any landscaping provision of this chapter. Where a tree is of exceptional quality as determined by the building official, a two (2) tree credit for the preserved tree may be granted. Exceptional quality shall be judged on the basis of factors such as extraordinary size of trees, vigorous health, large canopy cover, historic value, rareness and age. No credit will be granted for preserved trees which are classified as undesirable, are extremely poor specimens, or which are declining in health.

(B) **Tree Protection See 167.02.**

163.06 LANDSCAPING FOR PARKING AREAS

(A) **Adjacent to Right-of-Way.** Every off-street parking lot, except where screened visually by a wall in conformance with 163.09 or an intervening structure, from any abutting right-of-way (excluding dedicated alleys), shall be provided with landscaping between the parking area and the right-of-way as follows:

(1) **Landscaped Buffer***:* Such a strip at least ten (10) feet in depth shall be located between the abutting right-of-way and the off-street parking area or other vehicular use area to include one (1) tree for forty (40) lineal feet or fraction thereof. In addition, a hedge, wall, or other durable landscape barrier of at least three and one-half (3 *1/2)* feet in height shall be placed along the inside perimeter of the landscaped strip. If the durable barrier is of non-living material, for each ten (10) feet thereof, one shrub or vine shall be planted along the street side of the barrier unless the shrubs or vines are of sufficient height at the time of planting to be readily visible over the top of the barrier, in which case they may be planted inside the barrier. The remainder of the required landscaped areas shall be landscaped with grass, ground cover, or other landscape treatment excluding paving.

(2) **Other Non-Vehicular Land***:* All property other than the required landscape strip between the right-of-way and the off-street parking area or other vehicular use area shall be landscaped with at least grass or other ground cover.

(3) **Access Drives***:* Necessary accessways from the public right-of-way through all the landscaping shall be permitted to service the parking or other vehicular use areas. The accessways may be subtracted from the lineal dimension used to determine the number of trees required.

(B) **Adjacent to Property Line.** A wall or hedge or other durable landscape barrier not greater than eight feet in height nor less than three and one-half (3 1/2) feet in height shall be installed to form a continuous screen between the off-street parking area or other vehicular use area and the abutting property. The landscaped barrier shall be located between the common lot line and the off-street parking area. This planted strip shall be no less than four feet in width. In addition, one tree shall be provided for each forty (40) lineal feet of the landscape barrier or fractional part thereof. Each tree shall be planted in at least twenty-five (25) square feet of planting area, with a minimum dimension of at least five (5) feet. Each planting area shall be landscaped with grass, ground cover, or other landscape material, excluding paving, in addition to the required tree. These provisions shall not be applicable under the following conditions:

(1) **Alley***:* When a property line abuts a dedicated alley.

(2) **Existing Buffer***:* When a proposed parking area or other vehicular use area abuts existing hedge, wall, or other durable landscape barrier on an abutting property. The existing barrier may be used to satisfy the landscape barrier requirements of this division provided that the existing barrier meets all applicable standards of this chapter.

(C) **Interior Landscaping**

(1) **Landscaped Islands:** An area equal to fifteen (15) percent of the gross parking area will be required for interior landscaping. Each separate landscaped area shall contain a minimum of fifty (50) square feet, shall have a minimum dimension of at least five (5) feet. In addition to trees, the remaining area shall be adequately landscaped with shrubs, ground cover, or other authorized landscaping material not to exceed three feet in height. All dead space within the parking area should be planted at the minimum with grass or ground cover.

(2) **Trees***:* The total number of trees shall not be less than one for each seventy-five (75) square feet (or fraction thereof) of required interior landscaped area. Each island shall include at least one (1) tree having a clear trunk of at least five (5) feet.

(3) **Location***:* These landscaped areas shall be located to most effectively relieve the monotony of large expanses of paving and contribute to the orderly circulation of vehicular and pedestrian traffic. Landscaped areas, wall structures, and walks shall require protection from vehicular encroachment of overhang through appropriate wheel stops or curbs. A minimum of two and one-half (2 1/2) feet shall be provided between the wheel stop and the landscape feature or the same distance of sod between the curb and the wall, walk or landscaping.

(4) **Exception***:* In other vehicular use areas where the stringent application of this section will seriously restrict the area's function, the required landscaping may be situated close to the perimeter of the paved area, including those perimeters which may be adjacent to a building on the site. The required interior landscaping which is relocated as provided herein shall be in addition to the perimeter landscaping requirements.

163.07 INTERSECTION VISIBILITY

(A) **Unobstructed Vision.** When an accessway intersects a public right-of-way or when the subject property abuts the intersection of two or more public rights-of-way, all landscaping within the triangular areas described in (B) below shall provide unobstructed cross-visibility at a level between three feet and six (6) feet. Trees having limbs and foliage trimmed in a manner so that no limbs or foliage extend into the cross-visibility area shall be allowed, provided they are so located so as not to create a traffic hazard. Landscaping, except required grass or ground cover, shall not be located closer than three feet from the edge of any accessway pavement.

(B) **Visibility Triangle.** The triangular areas referred to in division (A) above are as follows:

(1) **Intersection with One Public R/W.** The areas of property on both sides of an accessway formed by the intersection of each side of the accessway and the public right-of-way, with two sides of each triangle being ten (10) feet in length from the point of intersection and the third side being a line connecting the ends of the two other sides.

(2) **Intersection with Two or More Public R/W.** The area of property located at a corner formed by the intersection of two or more public rights-of-way with two sides of the triangular area being thirty (30) feet in length along the abutting public right-of-way lines, measured from their point of intersection, and the third side being a line connecting the ends of the other two sides.

163.08 WATER CONSERVATION

(A) **Purpose.** The purpose of this section is to achieve water conservation within the town with particular emphasis on landscaping and irrigation.

(B) **Site Plan.** Conformance with this section shall be achieved through inclusion of a landscape and irrigation plan with the site plan application.

(C) **Soil Testing.** As a part of the application, results from core testing of the area on which the final grade has been completed shall be made. At a minimum, the coring test shall contain the following:

(1) Cores shall be twenty-four (24) inches in depth.

(2) There shall be four coring locations within each construction site determined as follows:

(a) The construction site shall be divided into four quadrants, identified respectively as northeast (NE), southeast

(SE), southwest (SW), and northwest (NW).

(b) The location of the building shall therein be determined with respect to each quadrant.

(c) An "X" shall be drawn connecting the corners of the lot, with the center of the "X" located at the center point of the quadrant cross.

(d) At the location of the halfway point between the buildings walls and the corner of each quadrant shall be the point of each coring location.

(e) If the above described procedure does not locate the primary landscaped area involved, then the coring location shall be located from the four areas of the building site receiving the most landscaping treatment.

(3) The purpose of the coring is to determine whether the soil needs additives to provide an acceptable level of water retention and internal drainage as contemplated by this chapter. Varying soil structure properties shall be taken into consideration when determining soil modification.

(4) Results of the coring test shall be submitted to the building official and shall reflect the soil as allowing a rate of permeability of .6 to two (2) inches of water per hour. This permeability rate at all coring locations will require no further soil modification except as needed in areas where the soil structure is altered by the introduction of fill soils or grading to create changes in elevation or berms.

(5) A rate of permeability less than .6 inch of water per hour shall require a soil modification using a soil amendment which will increase the permeability rate to an acceptable level. Testing results must show that this permeability rate is within the range stated in section (4) above.

(6) A rate of permeability of more than two inches of water per hour shall require a soil modification using Colloidal Phosphate or Emathlite. Colloidal phosphate shall be applied at a rate of two thousand two hundred (2,200) pounds per one thousand (1,000) square feet of area or Emathlite applied at a rate of one thousand one hundred (1,100) pounds per one thousand (1,000) square feet of area.

(7) The building department shall be notified forty-eight (48) hours prior to the application of the soil amendments. Failure to notify the building department may require that soil testing be performed to confirm the preserve and quantity of material. Testing costs will be assessed to the property owner.

(8) Soil amendments shall be applied uniformly to the tested areas and then shall be thoroughly incorporated into the upper six to eight inches of soil. Areas not irrigated by any means may be exempt from soil testing and amendments if designated on the submitted plans, requested in writing and approved by the building official.

(9) In areas of predominant coarse sand soils, the building official may allow exemption for soil testing.

(10) The building official shall have the right to reject a plan calling for a fill material or soil modification considered inconsistent with the purposes of this chapter.

(D) **Water Retention and Run-Off**

(1) **Single-Family Detached Dwellings***:* The landscape plan submitted prior to certificate of occupancy shall reflect the drainage plan approved in conjunction with the plat approval.

(2) **Site Plans***:* The landscape plan accompanying a site plan shall clearly indicate that the design of the building and landscape has considered water detention, swales and/or run-off via structural drains. Surface water management systems shall be designed and constructed to (a) detain with filtration or retain, as a minimum, run-off from a 25-year frequency, 24-hour design storm and (b) assure that post development run-off from the site shall not exceed pro-development rates, as required in Sections 168.03(A)(4) and 168.04(I)(5).

(3) **Soil Modification Exemption***:* Those areas designated for storm drainage retention may be exempted from the requirements for soil modifications if approved by the building official.

(E) **Sod Limitations and Other Xeriscape Requirements**

(1) **Sod Requirements***:* The grassed area shall not exceed fifty (50) percent of the landscaped area excluding right-of-

way and easements. Grass areas shall be designed to maintain a minimum width of four (4) foot except at the point of termination.

(2) **Xeriscape***:* Ninety (90) percent of all plantings introduced to the site shall consist of drought-tolerant species as recognized by the building official. Other species may be used if authoritative sources are provided to establish that the species are drought-tolerant. The landscape design shall consider and locate plants in zones according to their water needs.

(3) **Tree Placement***:* Trees locations shall provide a minimum of fifty (50) percent shade profile of building structures and hard paved surfaces, excluding approved pool and recreational paved deck areas. These trees shall be placed within twenty-five (25) feet of the structure or hard paved surface to project the maximum shade profile. Shading of outdoor air conditioning units (in a ten (10) foot radius thereof) shall be required.

(4) **Installation***:* All introduced landscape plantings shall be installed by industry accepted horticultural and nursery practices to aid in establishment of the plant.

(F) **Irrigation Systems**

(1) **Zones:** The irrigation system shall have zones designed to calibrate water application within each zone in accordance with the needs of the plantings. Emphasis shall be placed on a system supplying water at an acceptable rate to reduce run-off. Irrigation zoning shall separate the grass areas independent of planting areas. Matched precipitation rates are required within each zone (one hundred (100) percent coverage with ninety (90) percent overlap).

(2) **Special Zones***:* Plantings determined by the building official to be high water usage plants (e.g. azalea and annuals) must be irrigated separately from other areas. Elevated planters must be irrigated separately of all other areas, including enclosed planters with extended sides and/or bottoms. High water usage plants in these elevated or enclosed planters will not require additional separation.

(3) **Timers***:* Irrigation controller units shall sequence turf and planting zones. Where more than one controller unit is installed, one unit shall control grass zones and one unit shall control planting zones.

(4) **Sensors***:* Moisture sensors shall be installed with each irrigation system controller unit This equipment must be approved by the building official. All equipment shall be installed according to the manufacturer's recommendations and maintained in proper working order.

(5) **Overspray***:* Excessive overspray from sprinklers shall not be allowed onto hard surface areas. Final adjustments must be made prior to field inspection by the town representative.

(6) **Backflow***:* To reduce contamination of the water supply approved backflow prevention devices shall be installed on each system according to manufacturer's directions. Above ground connections shall be galvanized or brass.

(7) **Protected Trees***:* Trenching for the installation of sprinkler lines within the protected area of a protected tree is prohibited. Tunneling is acceptable to reduce adverse impact to the tree's roots. Irrigation lines may be surface installed within the protected area.

(G) **Temporary Suspension of Landscaping Requirements**

(1) **Conditions of Temporary Suspension.** Landscaping installation pursuant to the provisions of this section may be temporarily suspended in individual cases by the building official in one of the following cases:

(a) **Freeze***:* After a freeze when required landscape materials are not available; or
(b) **Drought***:* During a period of drought when the use of water is restricted by a governmental authority; or
(c) **Natural disaster***: As* declared by the town manager.

(2) **Surety Bond Required***:* The suspension of planting shall be conditioned upon the provision by the applicant of a bond or similar surety which, in the opinion of the town, is sufficient to guarantee compliance with the minimum planting requirements of this section.

(H) **Final Inspection.** Failure to comply with this section can result in the withholding of the Certificate of Occupancy or prosecution before the Code Enforcement Board. Final approval rests with the building official.

163.09 FENCES, WALLS AND HEDGES

(A) **Residential Districts.** The following provisions apply only between the building setback lines and the property lines.

(1) **Rear Yard***:* Walls, fences or hedges placed in the area from the rear of the dwelling to the rear lot line shall not exceed six (6) feet in height, except on riverfront or oceanfront property, in which case the walls, fences or hedges shall not exceed four (4) feet in height. Walls, fences or hedges may be built up to the side and rear property line.

(2) **Side Yard***:* Walls, fences or hedges placed in the area of the side yard shall not exceed six (6) feet in height. The walls, fences or hedges may be built up to the side yard property line and shall not extend beyond the building line of the single- or multifamily dwelling.

(3) **Front Yard***:* Walls and fences (but not hedges) placed in the area of the front yard shall not exceed four (4) feet in height. The walls or fences may be built up to the side or front property line. Any such wall or fence shall be landscaped on the street side.

(4) **Measuring Height***:* If the elevation of the lot at the time of platting is below the minimum finished floor elevation as required by town ordinance, the wall, fence or hedge height will be measured from the town required minimum finished floor elevation. If the elevation of the lot at the time of platting is above the minimum finished floor elevation as established by town ordinance, the grade from which the height of a wall, fence or hedge is to be measured shall be the elevation of the ground at the time of platting. In no event will more than six (6) feet of wall, fence or hedge be visible from any direction.

(5) **Chain Link Fencing:** Chain link fencing shall be totally planted with landscape material not less than eighteen (18) inches in height so that the fence shall be covered in a reasonable period of time. This restriction of height and landscaping does not apply to tennis, temporary construction or agricultural fencing. Chain link fences abutting a street shall have the required landscape material planted on the street side of the fence.

(6) **Construction and Maintenance***:* Concrete block walls shall be smoothly troweled, stuccoed and painted. All other types of walls and fences shall be finished in accordance with standard building practices. All walls and fences shall be maintained in good repair and kept structurally sound.

(7) **Surface Water Runoff***:* Walls or fences shall be designed so as not to cause water runoff to be diverted on the adjacent property. Surface water drainage shall be provided so as to contain one's own water runoff on one's own property.

(8) **Walls Along A.1A***:* In cases of walls and fences running parallel and adjacent to nonresidential properties or A1A, walls may be a maximum of six (6) feet in height. The planning, zoning and variance board and town council shall approve the design of all such walls as a part of the site plan or subdivision process. Unbroken wall expanses shall not be permitted; off-sets, variety of materials, landscaping, etc. shall be used to avoid this. Hedges running parallel and adjacent to nonresidential properties or A1A shall be unrestricted in height.

(9) **Buffer Between Single-Family and Multifamily Districts***:* Where single-family districts abut multifamily districts, single-family homeowners may construct a buffer fence or wall not to exceed a six (6) foot in height between the single-family and the multifamily properties. Hedges between single-family residences in multifamily districts shall be unrestricted in height.

(10) **Design Review:** All walls and fences shall be designed and constructed so as to present a finished and attractive appearance to the outside or neighboring property. Any new single-family detached house shall have any proposed wall or fence reviewed by the Design Review Committee. Any fence or wall proposed for an existing single-family detached lot shall require site plan approval.

(11) **Utility Easements***:* No wall, fence or hedge shall be erected within town utility easements unless prior approval is obtained from the town council.

(B) **Nonresidential District Buffers**

(1) **Screening Wall**: A six (6) foot unpierced wall or fence shall be provided in nonresidential districts where the boundary line districts are adjacent to or across a street or alley from residential districts. The wall shall screen all parking.

(2) **Buffer Strip Alternative**:

(a) Wherever in this chapter an unpierced wall or fence is required, a buffer strip of not less than ten (10) feet in width may be permitted in lieu of the required unpierced wall or fence upon a finding by the town council during site plan review that the buffer strip would provide equal or greater protection to the residential district from any adverse effects from the use of the nonresidential district.

(b) Whenever in this chapter a buffer strip is permitted, it shall be landscaped within thirty (30) days from the date of issuance of a certificate of occupancy for the use which requires the buffer strip, and shall thereafter be reasonably maintained with permanent plant materials to provide a suitable screen equal in characteristics to a wall.

(C) **Gateposts.** Any gate post or entrance post at any entry or exit to or from residential development shall not exceed eight (8) feet in height. Any wall attached to or made a part of the gate post or entrance post shall not exceed six (6) feet in height with a taper from the gate post or entrance post for a distance not to exceed four feet in the beginning of the wall.

(D) **Traffic Hazard.** Wherever in this chapter an unpierced wall or fence is required, the town council may reduce the required height or may waive the requirement where the wall or fence is required to be erected within forty (40) feet of a street right-of-way if the town council finds that the construction of the wall or fence as required would constitute a traffic hazard.

163.10 LANDSCAPE PLAN REQUIRED.

A landscape plan shall be prepared by the owner, nursery firm, landscape designer, or landscape architect showing the area to be covered by grass and lawn and the area to be covered by plants of any type. This plan shall be a part of the site plan or if a site plan is not required, must be submitted and approved prior to receiving a certificate of occupancy. The following items shall be included:

(A) **Landscape Plan.** A landscape plan with drawings to scale containing the following information:

(1) Building site property lines and adjoining rights-of-way, easements, or common ground areas.

(2) Position of all structures, drives, pools, terraces, and other non-plant improvements on the property.

(3) Identification and position of all existing trees and plantings on the property. The size of the existing tree canopies shall be shown and the introduced tree canopies at maturity shall also be indicated.

(4) Identification and position of all trees and plants to be introduced to the property.

(5) The position and permeability measure of the core samples taken on the subject property if required.

(6) Topography symbols for any changes in elevation that are one foot or more over or under the grade of the main structure on the lots for any location over five hundred (500) square feet in area. Each area with a change in elevation shall be indicated with twelve (12) inch interval contour lines.

(B) **Detailed Specification Sheet.** A detailed specification sheet containing the following:

(1) A list identifying all trees and plants with installed sizes, corresponding to their positions on the plan.

(2) A list of all non-plant items that may have an effect on water conservation by using or saving water, such as hills, barriers, drains, pools, streams, or fountains.

(3) A percentage estimate of how much tree canopy will, at the tree's maturity, be covering the property with existing and introduced trees areas of native plants or palms may be considered part of canopy coverage if requested in writing and approved by the town building official. When accepted, these areas of plants or palms shall then be construed as protected areas or protected trees under the regulations for tree protection described in 163.09 and must follow the requirements set forth therein.

(4) An estimate of the percentage of introduced plant material that is considered native and/or drought-tolerant.

163.11 FINAL INSPECTION

All projects requiring approval under this chapter shall be finally inspected by the building official or representative prior to the granting of a certificate of occupancy.

CHAPTER 164 SIGNS

164.01 INTENT.

It is hereby determined that street graphics are a necessity within the town to generally inform the public as to regulations, hazards, locations, and activities. Signs are also necessary to substitute for house numbering and identification of businesses uncontrolled signs, however, can create hazards, confusion, poor aesthetics, loss of business, loss of tax revenues, clutter, and garishness; adversely affect the stability and value of property; produce degeneration of property with attendant deterioration of conditions affecting the peace, health, and welfare of the town; and destroy the proper relationship between the taxable value of property and the cost of municipal services. It is therefore found that all commercial and development identification signs within the town should be reviewed for their effect upon the town through the planning, zoning and variance board. It is further found that display cases fall within the same character as signs and shall be governed by these regulations.

164.02 ILLUMINATED SIGNS. Signs illuminated from within are prohibited.

164.03 PROJECTING SIGNS. Signs which overhang sidewalks or vehicular areas are prohibited if:

(1) The sign exceeds three square feet in area, regardless of the extent to which it projects over or above any sidewalk, street, alley, lane, or other public place or way.

(2) The sign would extend more than thirty (30) inches into a walkway.

(3) The sign would be less than seven (7) feet at its lowest point above the walkway surface.

164.04 ALARM DEVICE SIGNS. Only one sign shall be allowed for each system installed, and the sign area shall be limited to one hundred forty (140) square inches.

164.05 CONSTRUCTION SIGNS. Whenever a building permit has been issued for the construction, alteration, or repair of a structure, and work is in progress on the site pursuant to the permit, contractors or architects engaged in the work during the time the work is going on may display on the site their sign, provided that:

(1) No individual sign displayed on the building site shall be of an area larger than six (6) square feet.

(2) No individual contractor or architect shall display more than one sign on any building site at any given time.

(3) The total area of construction signs displayed at any one time on the building site, considered together, shall not exceed ten (10) square feet.

164.06 REAL ESTATE SIGNS

(A) **Size and Allowable Copy.** Signs that indicate that the premises are for sale or for rent are limited to one (1) sign for each property frontage involved. No .single sign in a residentially zoned district shall exceed one (1) square foot in area or contain lettering exceeding three (3) inches in height. No single sign in a commercially zoned district shall exceed three (3) square feet in area or contain lettering exceeding three inches (3) in height. These signs shall contain only the following information:

(1) That the property is for sale, lease, or exchange by the owner or his agent.

(2) The owner's or agent's name.

(3) The owner's or agent's address and telephone number.

(4) When appropriate to the occasion, the words open house or inquire within.

(B) **Temporary Real Estate Signs.** Temporary signs may be made of the same material permitted for permanent signs, and in addition, may be made of less durable materials and woods such as pasteboard. In no event shall temporary signs be self-illuminated, luminescent, fluorescent, or have any characteristics which will make them glow or shine. These signs shall be removed upon agreement of sale, exchange, or lease.

164.07 SIGNS IN COMMERCIAL DISTRICTS

(A) **Design Review.** Except for signs authorized in 164.06, all signs and display cases in commercial districts shall be subject to design approval by the planning, zoning and variance board at the time of Site plan review. The following criteria shall be used:

(1) Its compatibility with the architecture of the building and the location on the site.

(2) The extent to which it would create confusion to the public or to police and fire response calls in emergencies, or tend to degrade the character of the town due to the garishness of its design.

(B) **Design Standards.**

(1) A building with forty (40) feet or less frontage on a public way may have one ground sign not exceed ten (10) square feet and ten (10) square feet of wall signs.

(2) A building with frontage greater than forty (40) feet on a public way shall not exceed two and one-half (2 1/2) square feet of sign area for each ten (10) feet of frontage or major fraction thereof. There shall be only one ground sign per lot and it shall not exceed twenty (20) square feet in area. Wall signs shall be limited to one per establishment, not to exceed twenty (20) square feet.

(3) A building with frontage on more than one (1) public way may apply to provisions of (1) and (2) above to each frontage.

(4) In calculating the area of signs, only one (1) face of a double-faced ground sign or projecting wall sign shall be included. Multi-faced signs are prohibited.

(5) No lettering shall exceed ten (10) inches in height.

(6) In no case shall a ground sign exceed six (6) feet in height.

(7) Permanent window signs greater than one hundred sixty (160) square inches are prohibited; temporary window signs shall be limited to seven (7) days.

164.08 SIGNS ON RESIDENTIAL LOTS

(A) **Residential District Signs.** Allowable signs on individual lots in residential districts include the following:

(1) **House Name Signs and Occupants' Name Plates***:* These are signs which, by their nature and wording, identify either the house or its occupant, or both, and which essentially take the place of house numbers. These signs may include pictorial and decorative designs as well as words, and may be in a shape or form, but shall not exceed two (2) square feet in area.

(2) **Real Estate, Alarm and Construction Signs.** Real estate, alarm and construction signs as provided for elsewhere in this chapter.

(3) **Temporary Signs***:* A permit may be granted by the town for a garage sale, rummage sale, or estate sale sign not to exceed three (3) square feet or having letters not exceeding three (3) inches in height. It may be displayed on the site during the hours of the sale.

164.09 IDENTIFICATION SIGNS IN RESIDENTIAL DEVELOPMENTS

(A) **Multifamily Development and Subdivision Signs.** This section provides for signs identifying multifamily developments or subdivisions of single-family residences, both referred to as residential developments.

(B) **Size and Height Restrictions.** The maximum of such signs shall not exceed the following:

(1) Residential developments with up to six hundred (600) feet of frontage on a public way may have one (1) ground sign not exceeding twenty (20) square feet and six (6) feet in height.

(2) Residential developments with over six hundred (600) feet of frontage on a public way shall not exceed two (2) ground signs, neither of which shall exceed twenty (20) square feet, and six (6) feet in height.

(3) Residential developments with frontage on two (2) or more public ways may have one (1) such ground sign on each public way, regardless of the number of front feet.

(4) Any entrance wall name sign at an entry or exit to or from a residential development shall not exceed a maximum of seven (7) feet, six (6) inches in length, or exceed a maximum of fifteen (15) inches in height. Not more than two (2) such wall signs shall be placed at each entrance. These wall signs shall be in lieu of the ground signs permitted in (1)-(3) above. The word "private" on any entrance name sign shall not exceed three (3) inches in height.

(C) **Size Calculations.** In determining the maximum permissible square footage of a sign, the face support area of the sign shall be included for calculation purposes.

164.10 PUBLIC DISTRICTS

Governmental facility identification signs shall not exceed sixty (60) square feet in size.

164.11 MAINTENANCE

All signs shall be maintained in a presentable and safe structural condition, including the replacement of defective parts, repainting, cleaning and other acts required for the maintenance of said sign. Failure to so maintain shall be considered a violation of this code.

164.12 ABANDONED SIGNS

(A) **Timing of Removal.** Signs due to a closing of a business, a change in business name, or for any other reason rendering the sign not applicable to the property involved, shall be removed by the permit holder or the owner of the building or premises within ten (10) days from the date of the action that caused the sign to be considered abandoned.

(B) **Executing Removal.** A condition of approval for all sign permits shall be that the permit holder or owner of the building or premises, at his own expense, removes all abandoned signs. An abandoned sign may be removed by the town after the ten (10) day period and the permit holder or owner may be charged for the cost of removal. New signs for a building or property on which an abandoned sign is located shall not be approved until the abandoned sign is removed. Approval may be given on the condition that the abandoned sign is removed before a new sign is erected.

164.13 TIME LIMIT ON APPROVED APPLICATIONS

Approved applications for signs or display cases shall be considered null and void when any of the conditions below are found to exist.

(a) The sign or display case was not built or placed in accordance with the approval granted.

(b) The sign or display case was not placed on the site within ninety (90) days of approval and no extension of time has been granted by the approving body.

(c) The business license has lapsed or become inactive, or the sign considered abandoned as described in 164.10.

CHAPTER 165 FLOODPLAIN MANAGEMENT AND DAMAGE PREVENTION

165.01 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

(A) **Statutory Authorization**

The Legislature of the State of Florida has in Chapter 163, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Town Council of Indian River Shores, Florida, does ordain as follows:

(B) **Findings Of Fact**

(1) The flood hazard areas of the Town of Indian River Shores are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

(C) **Statement of Purpose**

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which resulting damaging increases in erosion or in flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;

(4) Control filling, grading, dredging and other development which may increase erosion or flood damage; and

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(D) **Objectives**

The objectives of this ordinance are to:

(1) Protect human life and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, street and bridges located in floodplains;

(6) Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas, and;

(7) Insure that potential home buyers are notified that property is in a flood area.

165.02 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

"Addition (to an existing building)" means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.

"Appeal" means a request for a review of the Building Official's interpretation of any provision of this ordinance or a request for a variance.

"Area of shallow flooding" means a designed AO or VO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is - unpredictable and indeterminate, and where velocity flow may be evident.

"Area of special flood hazard" is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

"Basement" means that portion of a building having its floor sub-grade (below ground level) on all sides.

"Breakaway wall" means, a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

"Building" means any structure built for support, shelter, or enclosure for any occupancy or storage.

"Coastal High Hazard Area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

"Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials or equipment.

"Elevated building" means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), shear walls, or breakaway walls.

"Existing Construction" Any structure for which the "start of construction" commenced before (the effective date of the first floodplain management code, ordinance, or standard based upon specific technical base flood elevation data which establishes the area of special flood hazard) or (specific date).

"Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

"Flood Insurance Study" is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Floor" means the top surface of an enclosed area in a building (including basement-), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction.

"Functionally dependent facility" means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

"Highest adjacent grade" means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

(d) Individually listed on a local inventory of history places in communities with historic preservation programs that have been certified either:

1. By an approved state program as determined by the Secretary of the Interior, or
2. Directly by the Secretary of the Interior in states without approved programs.

"Mangrove stand" means an assemblage of mangrove trees which is mostly low trees noted for a copious development of interlacing adventitious roots above the ground and which contain one or more of the following species: black mangrove (Avicenna nitida); red mangrove (Rhizophora mangle); white mangrove (Lonquncular-iaracemosa); and buttonwood (Conocarpus erecta).

"Manufactured home" means a building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

"Mean Sea Level" means the average height of the sea for all stages of the tide and is a reference for measuring various floodplain elevations. In this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD).

"National Geodetic Vertical Datum (NGVD)" as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

"New Construction" Any structure for which the "start of construction" commenced after (the effective date of the first floodplain management code, ordinance, or standard based upon specific technical base flood elevation data which establishes the area of special flood hazard) or (specific date). The term also includes any subsequent improvements to such structure.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

"Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.
"Recreational vehicle" means a vehicle which is:

a. Built on a single chassis;

b. 400 square feet or less when measured at the largest horizontal projection;
c. Designed to be self-propelled or permanently towable by a light duty truck; and
d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Reference feature" is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal high-water line or the seaward line of permanent vegetation if a high-water line cannot be identified.

"Sand dunes" means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"60-year setback" means a distance equal to 60 times the average annual long term recession rate at a site, measured from the reference feature.

"30-year setback" means a distance equal to 30 times the average annual long term recessing rate at a site, measured from the reference feature.

"Start of construction" (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any combination of repairs, reconstruction, alteration, or improvements to a building, taking place over a five (5) year period in which the cumulative cost equals or exceeds 50 percent of the market value of the building. The market value of the building should be (1) the appraised value of the building prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the building prior to the damage occurring. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building.
The term does not, however, include any project for improvement of a building required to comply with the existing health, sanitary, or safety code specifications which have been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions.

"Substantially improved existing manufactured home parks or subdivisions" is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

"Variance" is grant of relief from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

"Zone of imminent collapse" means an area subject to erosion adjacent to the shoreline of an ocean, bay, or lake and within a distance equal to 10 feet plus 5 times the average annual long-term erosion rate for the site, measured from the reference feature.

165.03 GENERAL PROVISIONS

(A) Applicability

This ordinance shall apply to all special flood hazard areas in the Town's jurisdiction.

(B) Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard identified by the Federal Emergency Management Agency in its The Flood Insurance Study for the Town of Indian River Shores, dated May 4, 1989, with accompanying maps and other supporting data, and any revision thereto, are adopted by reference and declared to be a part of this ordinance. See also 1990 Town Comprehensive Plan Maps 1-7, 1-9 and 1-9.

(C) Establishment of Development Permit

A Development Permit shall be required in conformance with the provision of this ordinance prior to the commencement of any development activities.

(D) Compliance

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

(E) Abrogation and Greater Restrictions

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(F) Interpretation

In the interpretation and application of this ordinance all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under state statutes.

(G) Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Indian River Shores or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

(H) Penalties for Violation

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $500.00 or imprisoned for not more than 60 days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Indian River Shores from taking such other lawful actions as is necessary to prevent or remedy any violation.

165.04 ADMINISTRATION

(A) Designation of the Building Official

The Building Official is hereby appointed to administer and implement the provisions of this ordinance.

(B) Permit Procedures

Application for a Development Permit shall be made to the Building Official on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

(1) **Application Stage.**

(a) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all buildings;

(b) Elevation in relation to mean sea level to which any non-residential building will be flood-proofed.

(c) Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the flood-proofing criteria in §165.05, Section B(2);

(d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development, and;

(2) **Construction Stage.**

Provide a floor elevation or flood-proofing certification after the lowest floor is completed, or instances where the building is subject to the regulations applicable to Coastal High Hazard Areas, after placement of the horizontal structural members of the lowest floor. Upon placement of the lowest floor, or flood-proofing by whatever construction means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the Building Official a certification of the elevation of the lowest floor, flood-proofed elevation or the elevation of the lowest portion of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood-proofing is utilized for a particular building, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The Building Official shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

(C) Duties and Responsibilities of Building Official

Duties of the Building Official shall include, but not be limited to:

(1) Review all development permits to assure that the permit requirements of this ordinance have been satisfied;

(2) Advise permittee that additional federal or state permits may be required, and if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the development permit.

(3) Notify adjacent communities and the Florida Department of Community Affairs prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(5) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved buildings, in accordance with §165.04(B)(2).

(6). Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved buildings have been flood-proofed, in accordance with §165.04(B)(2).

(7) In Coastal Hazard Areas, certification shall be obtained from a registered professional engineer or architect that the building is designed and securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.

(8) In Coastal High Hazard Areas, the Building Official shall review plans for adequacy of breakaway walls in accordance with §165.05(B)(6)(h).

(9) When flood-proofing is utilized for a particular building, the Building Official shall obtain certification from a registered professional engineer or architect, in accordance with §165.05(B)(2).

(10) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Building Official shall make the necessary interpretation. The person contesting the location of the boundary shall be given reasonable opportunity to appeal the interpretation as provided in this article.

(11) When base flood elevation data or floodway data have not been provided in accordance with §165.03(B), then the Building Official shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of §165.05.

(12) All records pertaining to the provisions of this ordinance shall be maintained in the office of the Building Official and shall be open for public inspection.

(D) **Variance Procedures**

(1) **Hearings on LDC Requirements.** The Planning, Zoning & Variance Board as established by the Town Council shall hear and decide appeals and requests for variances from the requirements of this ordinance.

(2) **Hearings on Administrative Decisions.** The Planning, Zoning & Variance Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Building Official in the enforcement or administration of this ordinance.

(3) **Appeals.** Any person aggrieved by the decision of the Planning, Zoning and Variance Board or any taxpayer may appeal such decision to the Town Council of the Town of Indian River Shores.

(4) **Repair or Rehabilitation of Historic Structures.** Variances may be issued for the repair or rehabilitation of historic structures (see definition) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continue designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure.

(5) **Criteria for Decisions.** In passing upon such applications, the Planning, Zoning and Variance Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and the following:

(a) Danger that materials may be swept onto other lands to the injury of others;

(b) Danger to life and property due to flooding or erosion damage;

(c) Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(d) Importance of the services provided by the proposed facility to the to the community;

(e) Necessity of the facility to a waterfront location, in the case of a functionally dependent facility;

(f) Availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(g) Compatibility of the proposed use with existing and anticipated development;

(h) Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(i) Safety of access to the property in times of flood for ordinary and emergency vehicles;

(j) Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site, and;

(k) Costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(6) **Establishing Permit Conditions.** Upon consideration of the factors listed above, and the purposes of this ordinance, the Planning, Zoning & Variance Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

(7) **Impact on Flood Levels.** Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(8) **Conditions for Variances**:

(a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of a historical building, a determination that the variance is the minimum necessary so s not to destroy the historic character and design of the building;

(b) Variances shall only be issued upon a:

(i) Showing of good and sufficient cause;
(ii) Determination that failure to grant the variance would result in exceptional hardship; and
(iii) Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(c) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the building is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(d) The Building Official shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

165.05 PROVISIONS FOR FLOOD HAZARD REDUCTION

(A) General Standards

In all areas of special flood hazard the following provisions are required:

(1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;

(2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.

(3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant

to flood damage;

(4) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(5) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

(8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(9) Any alteration, repair, reconstruction or improvements to a building which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.

(10) Any alteration, repair, reconstruction or improvements to a building which is not in compliance with the provisions of this ordinance, shall be undertaken only if said nonconformity is not furthered, extended, or replaced.

(B) **Specific Standards**

In all areas of special flood hazard where base flood elevation data have been provided, as set forth in §165.03(B), or §165.04(C)(11), the following provisions are required:

(1) **Residential Construction.** New construction or substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement elevated no lower than base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of §165.05(B)(3).

(2) **Non-Residential Construction.** New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated no lower than the base flood elevation. Buildings located in all A-zones may be flood-proofed in lieu of being elevated provided that all areas of the building below the required elevation are water tight with walls substantially impermeable to the passage of water, and use structural components have the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in §165.04(C)(9).

(3) **Elevated Buildings.** New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

(a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

(i) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

(ii) The bottom of all openings shall be no higher than one foot above grade; and

(iii) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwater in both direction.

(b) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator); and

(c) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

(4) **Floodways.** Located within areas of special flood hazard established in §165.03(B), are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and has erosion potential, the following provisions shall apply:

(a) Prohibit encroachments, including fill, new construction, substantial improvements and other developments unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge;

(b) If §165.05(B)(5) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of §165.05.

(c) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of §165.05(A)(2), and the elevation standards of §165.05(B)(l) and the encroachment standards of §165.05(B)(4)(a), are met.

(5) **Coastal High Hazard Areas (V Zones).** Located within the areas of special flood hazard established in §165.03(B), are areas designated as Coastal High Hazard areas. These areas have special flood hazards associated with wave wash, therefore, the following provisions shall apply:

(a) All building shall be located landward of the Florida Coastal Construction Control Line as established in 1987 and as subsequently amended, of the mean high tide, unless otherwise approved by the Florida Department of Natural Resources;

(b) All buildings shall be elevated so that the bottom of the lowest supporting horizontal member (excluding pilings or columns) is located no lower than the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water. Open lattice work or decorative screening may be permitted for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with §165.05(B(6)(h);

(c) All buildings or structures shall be securely anchored on pilings or columns;

(d) All pile and column foundations and structures attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. Water loading values shall equal or exceed the base flood. Wind loading values shall be in accordance with Chapter 157 of the Town of Indian River Shores Land Development Regulations.

(e) A registered professional engineer or architect shall certify that the designs-specifications and plans for construction are in compliance with the provisions contained in §165.05(B)(6)(b),(c) and (d) of this ordinance.

(f) There shall be no fill used as structural support. Non-compacted fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided the fill will wash out from storm surge, (thereby rendering the building free of obstruction) prior to generating excessive loading forces, ramping effects, or wave deflection. The Building Official shall approve design plans for landscaping/aesthetic fill only after the applicant has provided an analysis by an engineer, architect, and/or soil scientist, which demonstrates that the following factors have been fully considered:

(i) Particle composition of fill material does not have a tendency for excessive natural compaction;
(ii) Volume and distribution of fill will not cause wave defection to adjacent properties; and
(iii) Slope of fill will not cause wave run-up or ramping.

(g) There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage;

(h) Lattice work or decorative screening shall be allowed below the base flood elevation provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are to be used and provided the following design specifications are met:

(i) No solid walls shall be allowed, and;

(ii) Material shall consist of lattice or mesh screening only.

(i) If aesthetic lattice work or screening is utilized, such enclosed space shall not be designed to be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises.

(j) Prior to construction, plans for any buildings that will have lattice work or decorative screening must be submitted to the Building Official for approval.

(k) Any alteration, repair, reconstruction or improvement to a structure shall not enclose the space below the lowest floor except with lattice work or decorative screening, as provided for in §165.05(B)(6)(h) and (i).

(C) **Standards for Streams without Established Flood Elevation and/or Floodways.**

Located within the areas of special flood hazard established in §165.03(B), where streams exist but where no base flood data has been provided or where base flood data has been provided without floodways, the following provisions apply;

(1) No encroachments, including fill material or structures shall be located within areas of special flood hazard, unless certification by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principals.

(2) New construction or substantial improvements of buildings shall be elevated or flood-proofed to elevations established in accordance with §165.04(C)(11).

(D) **Standards for Subdivision Proposals.**

(1) All subdivision proposals shall be consistent with the need to minimize flood damage;

(2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;

(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and

(4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) which is greater than the lesser of fifty lots or five acres.

(E) **Standards for Areas of Shallow Flooding (AO Zones)**

Located within the areas of special flood hazard established in §165.03(B), are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet (l'-3') where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

(1) All new construction and substantial improvements of residential buildings shall have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated, at least two (2) feet above the highest adjacent grade.

(2) All new construction and substantial improvements of non-residential buildings shall:

(a) Have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement shall be elevated at least two (2) feet above the highest adjacent grade, or;

(b) Together with attendant utility and sanitary facilities be completely flood-proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

165.06 PENALTY

The penalty for violating the provisions of this ordinance shall be as provided in Section 90.99 of the Code of Ordinances of the Town of Indian River Shores.

CHAPTER 166: SUBDIVISIONS

166.01 PURPOSE

(A) It shall be the purpose of this chapter to do the following:

(1) Establish uniform standards for the design of subdivisions and the preparation of plats.

(2) Bring together in coordinated and convenient form all official requirements pertaining to the processing of plats.

(3) Facilitate coordination of plats with the zoning, highway, and public improvement plans of the town.

(4) Assure consistency and equitable treatment for engineers, surveyors, and subdividers in the review of their plats.

166.02 DEFINITIONS (See also Chapter 169.)

"Alley." A public right-of-way, not over thirty (30) feet in width, providing a secondary means of access and service to abutting property.

"Cul-de-sac." A minor street intersecting another street at one end and terminated at the other end by a vehicular turnaround.

"Developer." A person, or his agent, who undertakes the activities covered by this chapter, particularly the preparation of a subdivision plat showing the layout of the land and the public improvements involved therein. Inasmuch as the subdivision/n plat is merely a necessary means to the end of assuring a satisfactory development, the term "developer" is intended to include the term "subdivider," even though the persons involved in successive stages of the project may vary.

"Easement." A right-of-way granted for limited use of private property.

"Final Plat." A complete and exact subdivision plan, proposed for official recording as required by statute, to identify and define property rights and dedication.

"Lot Depth." The mean horizontal distance between the front and rear lines of a lot.

"Lot Width." The horizontal distance between the side lines of a lot at the setback line, or at the front lot line where no front setback is required.

"Official Map." A map established by the town council showing the streets, highways, and parks laid out, adopted, and established by law and any amendments thereto adopted by the town council, or additions thereto resulting from the approval of subdivision plats by the town council and the subsequent filing of the approved plats.

"Permanent Control Points (P.C.P.)." Permanent control points, each of which shall consist of a nail or a disc (disc stamped with surveyor's registration number preferred), iron pipe, brass marker, or iron pin.

"Permanent Reference Monument (P.R.M.)." A permanent reference monument, which consists of a metal rod a minimum of twenty-four (24) inches long or a one and one half (1 1/2) inch minimum diameter metal pipe a minimum of twenty (20) inches long, either of which shall be encased in a solid block of concrete or set in natural bedrock a minimum of six (6) inches in diameter and extending a minimum of eighteen (18) inches below the top of the monument, or a concrete monument four (4) inches by four (4) inches, a minimum of twenty-four (24) inches long, with the point of reference marked thereon. A metal cap marker, with a point of reference mark thereon, shall bear the registration number of the surveyor certifying the plat of record, and the letters "P.R.M's shall be placed in the top of the monument.

"Preliminary Plat." A tentative subdivision plan, in lesser detail than a final plat, showing approximately proposed street and lot layout as a basis for consideration prior to design plans, construction, improvements, or preparation of a final plat.

"Public Improvements." Any of the following: street pavement, with or within curbs and gutters; sidewalks; alley pavement; walkway pavement; water system mains; sanitary sewer system; storm drain system; street name signs; street trees; permanent reference monuments "(PRM)"; permanent control points "(PCP)"; or bicycle paths.

"Right-of-Way." Land reserved, or to be used for a street, alley, walkway, drainage facility, or other public purpose.

"Street." A public right-of-way or thoroughfare fifty (50) feet or more in width, which normally affords the principal means of access to abutting property. Includes avenue, boulevard, parkway, court, highway, lane and roadway.

(1) "Arterial Street." A heavy traffic street of considerable continuity and used primarily as a traffic artery for inter communication among large areas. Width shall conform to the official map.

(2) "Half or Partial Street." A street, generally parallel and adjacent to the boundary line of a tract, having a lesser right-of-way width than required for a full width street of the type involved.

(3) "Marginal Access Street." A minor street which is parallel and adjacent to arterial streets and which provides access to abutting properties and protection from through traffic.

(4) "Collector Street." A heavy traffic road collecting residential or local street traffic and connecting arterial streets.

(5) "Private Street." A privately owned access to abutting property, platted, but not dedicated to the general public, with a minimum right of way width of fifty (50) feet, built to town specifications, not accepted by, improved, or maintained by the town until the time as the town may elect to accept the road as a public street.

(6) "Local Ok Residential Street." A street which is less than a secondary street and which issued primarily for access to abutting property.

"Street Width." The shortest distance between the lines delineating the right-of-way of a street.

"Subdivider." See "Developer."

"Subdivision." The platting of real property into two or more lots, parcels, tracts, tiers, blocks, sites, units, or any other division of land, including establishment of new streets and alleys, additions, and re-subdivisions. When appropriate to the context, "subdivision" relates to the process of subdividing or to the land or area subdivided and filed for record with the clerk of the circuit court of the county.
"Watercourse." Includes channel, creek, ditch, drain, dry run, spring, stream, and canal; but does not include a lake, pond, or pool without outlet.

166.03 COMPLIANCE REQUIRED

No person shall subdivide or develop any tract of land which is located within the town, except by preparing a plat drawn in conformance with the provisions of this chapter and the standard specifications on file in the office of the town clerk. Standard specifications shall be adopted and amended from time to time, if necessary, by resolution of the town council.

166.04 VIOLATIONS

The planning, zoning and variance board, or any aggrieved person, may have recourse to any remedies in law and equity as may be necessary to insure compliance with the provisions of this chapter, including injunctive relief to enjoin and restrain any person violating the provisions of this chapter and any rules and regulations adopted under this chapter. The court shall, on proof of the violation of this chapter, have the duty to forthwith issue any temporary and permanent injunctions as are necessary to prevent the violation of this chapter.

166.05 PRELIMINARY PLAT PROCEDURES

(A) Submission

(1) **Building Official***:* Preliminary plats shall be filed with the building official for review. The building official shall be the building inspector unless otherwise designated by the mayor.

(2) **Timing***:* Provided that plats and any necessary supporting data are filed not less than fourteen (14) calendar days in advance of the planning, zoning and variance board meeting, plats shall be considered by the board at its next regular meeting subsequent to filing.

(B) Processing

(1) **Copies:** A subdivider seeking approval of a subdivision plat shall transmit five (5) copies of the preliminary plat to the building official, indicating compliance with all county, state, and federal regulations.

(2) **Staff Review***:* The building official shall coordinate the staff review of the preliminary plat, including the Town Engineer's review for general engineering and drainage requirements, and shall check plats for conformance to the existing zoning of the area of the preliminary plat.

(3) **Staff Report to Board***:* The building official shall assign correct street names to the preliminary plat and shall coordinate the recommendations of the several agencies mentioned above and report them to the planning, zoning and variance board with an analysis of the conformity of the preliminary plat with this chapter and to the comprehensive plan.

(4) **Board Review***:* The planning, zoning and variance board shall meet, review, and make recommendations as to compliance with this chapter. At the meeting the developer may appear before the board to discuss specific aspects of the plans being considered. Any recommended changes must be resubmitted to the board.

(C) Consideration by Council

(1) **Board Report***:* No preliminary plans shall be considered for action by the council until they have been reviewed and recommendations made by the planning, zoning and variance board. The council will consider the board's recommendations and then act for preliminary approval, postponement, or disapproval. Disapproved plans may be revised and resubmitted to the board.

(2) **Review Criteria***:* The council, in studying the preliminary plat, will take into consideration the requirements of the community and the best use of the land being subdivided. Particular attention will be given to the width, arrangement, and location of streets, lot sizes, and arrangement, as well as requirements for school sites, public building sites, parkways, and highways. Adequate street connections will be required to ensure free access to and circulation for adjoining subdivisions and lands.

(3) **Waivers:** In cases where the proposed subdivision plat is a re-subdivision of portions of an existing subdivision, or a plat in connection, with abandonment of a portion of existing public streets and property, or on nearby property which unduly affects the planning and development of the subject property, the council shall have the right to vary the strict application of this chapter in appropriate cases, in a manner so as to carry out the spirit and purpose of this chapter.

(4) **Public Hearings***:* At a scheduled meeting, the council shall receive reports on the preliminary plat to determine its conformance to this chapter. The subdivider and any other persons directly affected by the proposed subdivision shall have the right to be heard by the council, either in person or by letter.

(5) **Council Action:** The council may approve the preliminary plat if found to be in conformance with this chapter, or may disapprove the plat when not found to be in conformance. Any modifications requested by the council must be made to the preliminary plat before approval thereof. Approval of the preliminary plat shall constitute tentative council approval of the subdivision as to the character and intensity of development, the general layout, and the approximate dimensions of streets, lots, and other proposed features.

(6) **Effect of Approval***:* The following limitations are placed on the preliminary plat approvals given by the council:

(a) The approval of the council shall have full force and effect for a period of twelve (12) months from the date of approval. An extension may be granted by the board.

(b) If no final plat has been filed for the area covered by the preliminary plat before the approval period has elapsed, the approval shall be revoked. If final plats are filed for only a portion of the preliminary plat, the approval on the remaining portions shall be revoked unless an extension of time has been granted by the council.

(c) If a final plat is submitted on which changes have been made from the preliminary approval, the building official shall review the plat to determine the changes and their effect on the area of the plat and the applicable ordinances. The building official shall determine whether any changes are of so great a significance that they would be resubmitted to the planning, zoning and variance board. In any case of doubt, the plan should be resubmitted for approval by the board.

(D) **Contents of Preliminary Plat Application.**

(1) **Scale**: The preliminary plat shall be at a scale of not more than one hundred (100) feet to the inch. However, a scale of two hundred (200) feet to the inch may be used for large areas. In either case, the sheet size shall be twenty-four (24) by thirty-six (36) inches.

(2) **Contents***:* The preliminary plat shall show or be accompanied by the following information:

(a) Proposed subdivision name or identifying title, which shall not duplicate or closely approximate the name of any other subdivision in the county and town.

(b) Location sketch within section.

(c) North arrow, scale, and date.

(d) Name of the owner of the property and his authorized agent.

(e) Name of the registered engineer and surveyor responsible for the plat.

(f) Locations and names of adjacent subdivisions.

(g) Subdivision boundaries with angles and distances. Boundaries must be clearly marked with a heavy line.

(h) All existing watercourses, canals, and bodies of water.

(i) All existing streets and alleys on or adjacent to the tract, including name and right-of-way width.

(j) All existing property lines, easements, and rights-of-way and the purpose for which the easements or rights-of-way have been established, where known to the surveyor.

(k) Proposed water, sewer, electric and any other utility lines, including easements thereof.

(1) Location and widths of all proposed streets, including right-of-way.

(m) Proposed lot lines with dimensions, recreation areas, and parcels of land proposed or reserved for public use.

(n) Coastal construction control line and beach accessways if applicable, including environmentally sensitive roadway drainage plans.

(o) **Stormwater Management Plan and Utilities:** Storm drainage system improvements (see §167.09 "Stormwater Management), including an On-Site Stormwater Management Plan compliant with applicable National Pollutant Discharge Elimination System (NPDES) and all other applicable rules and requirements of the Town and the Saint Johns Water Management District. All supportive engineering calculations and drawings for projected volume of stormwater runoff, system design, detention, and other relevant data shall be included.

(p) **Erosion and Sediment Control Plan:** The plan shall incorporate erosion and sediment control measures in accordance with State Best Management Practices (BMP's). Also see §168.05(B).

(3) **Traffic Impact Study***:* Traffic generation impacts on State roads shall be provided; this shall be done in conjunction with the concurrency requirements of 168.02.

166.06 FINAL PLAT PROCEDURES

(A) **General Requirement**s. The final plat, in the form of a linen or dimensionally stable plastic film tracing, shall be prepared in accordance with F.S.A. Ch. 177 and all amendments thereto. The overall size shall be twenty-four (24) inches by thirty-six (36) inches with proper borders and drawn at a scale no smaller than one (1) inch to one hundred (100) feet.

(B) **Detail Requirements.** The final plat shall show the following information:

(1) Plat title, with all lettering of the same size and type.

(2) Section, township, and range.

(3) North arrow.

(4) Graphic scale.

(5) Description.

(6) Dedication of owner or, if a corporation, two authorized officer's signatures and seal.

(7) Circuit Court Clerk.

(8) Surveyor's certificate and seal.

(9) Mortgage, joiner, and consent.

(10) The initial point in the description shall be tied to the nearest government corner or other recorded and well established corner.

(11) Location, width, and names of all streets, alleys, rights-of-way, and easements.

(12) Adjacent streets and plat names with plat book and page numbers.

(13) Lot and block numbers or designation, property numbered.

(14) Permanent reference marker and location.

(15) Block corner radii.

(16) Lot dimensions to hundredths, except where riparian boundaries are involved, which may be plus or minus.

(17) Curvilinear lots shall show the radii arc distances and the central angle, or radii chord and chord bearing, or both. Radial lines will be so designated.

(18) Sufficient angles, bearings, or dimensions to show the direction of all lines.

(19) The center line of all streets shall be shown with distances, angles, PC's, PT's, arc distance, central angles, tangents, and radii.

(20) PCP's will be shown on the plat by an appropriate designation and will be placed along the centerline of rights-of-way, preferably at centerline intersections, PC's, PT's, and other applicable points as may be directed by the town council. POP'S and PRM's are considered improvements and shall be included in the performance bond and approved by the building official.

(21) Seals as applicable.

(22) Notes or legend.

(23) Recreation areas.

(24) Limits of subdivision shall be clearly defined.

(25) Whenever lands are subdivided along the Atlantic Ocean, or the Indian River or its tributaries, lot dimensions shall be shown to the approximate mean high water, at date of survey and as defined in the shore and sea boundaries.

(26) Certificate of approval by the town council, with seal.

(C) **Submission.** The final plat shall be submitted to the building official for review. The final plat shall be accompanied by any other plans and data as may be required by the building official, including the following where applicable:

(1) Certificate of engineer or survivor of record that all improvements are in accordance with the approved plans and specifications and that no outstanding indebtedness is due for the improvements.

(2) Performance bond for improvements.

(3) Road and grade plans.

(4) Certificate of title.

(5) As-built plans of all improvements with certification as to location by engineer and developer.

(D) **Verify Conformity with Preliminary Plat.** The building official shall check all final plats to verify conformity with the preliminary plat as approved by the council. In case of doubt as to conformance with the council's approval, the building official shall refer a copy of the final plat to the planning, zoning and variance board for a report on conformity with the council's action.

166.07 APPROVAL OF PLAT.

No plat of any subdivision shall have any validity until it shall have been approved in the manner prescribed in this chapter. In the event any unapproved plat is recorded, it shall be considered invalid. No sale of a subdivision lot shall be closed until the plat has been finally approved and officially recorded. The description of any lot by metes and bounds shall not exempt the transaction from the provisions of this chapter. The building official shall not issue any permits for new buildings on a lot in any subdivision which has not been lawfully approved. The town hereby defines its policy to be that the town will withhold all public improvements of whatsoever nature, including the maintenance of streets, from all subdivisions which have not been accepted in the manner provided in this chapter. No changes, erasures, modifications, or revisions shall be made in any final plat after approval thereof, unless the plat is first resubmitted for approval. There shall be no reference to any possible reversion of any property in the dedication of a plat.

166.08 LANDS PLATTED ALONG BODIES OF WATER.

(A) **Oceanfront Property.** All lands platted along the Atlantic Ocean shall show the state coastal construction lines as they exist on the day the plat is approved by the Town Council, as recorded in the Indian River County Records, and references with monuments. They shall be referenced with PRM's set at intervals in order that all setbacks as required in zoning can be made by the lines, these lines being in conformance with applicable state statutes. The platted lands shall be referenced.

(B) **Frontage on Indian River and Waters Thereof.** In every instance in which the property being platted borders on the Indian River or on any finger, bay, or channel therefore, the elevation of the land as it exists, or the elevation of the land as it shall exist in its finished condition, shall be shown on the tentative plat. All elevations shall be from United States Coast and Geodetic Datum, mean sea level, of the waters opposite the lands proposed to be platted.

(C) **Exceptions.** Areas developed to retain natural vegetation and residences or structures designed on approved, raised foundations may be an exception to the above requirements.

(D) **Bulkhead Walls and Revetments.** All bulkhead walls and revetments shall be designed by a registered engineer or qualified contractor, with the plans being approved, in writing, by a registered engineer.

166.09 STREETS DESIGN STANDARDS

(A) **Conformity to Comprehensive Plan.** The location, direction, and width of all streets, roads, and highways shall conform to the comprehensive plan of the town. Specifically, the following right-of-way widths shall be provided:

Roadway Classification	Required Right-of-way
Arterial	135 feet
Collector	60-80 feet
Local	60 feet with swale; 50 feet with curb and gutter

(B) **Relation to Existing Street System.** The arrangement of streets in new subdivisions shall make provisions for the proper extension of existing dedicated streets in existing subdivisions where the extension is appropriate.

(C) **Provision for Platting Adjoining Unplatted Areas.** The arrangement of streets in new subdivisions shall be designed so as to facilitate and coordinate with the desirable future platting of adjoining unplatted property of a similar character, and to provide for local circulation and convenient access to neighborhood facilities.

(D) **Protection From Through Traffic**.

(1) **Residential Street Design.** Residential streets shall be laid out and arranged so as to discourage their use by through traffic. Residential streets shall not connect with industrial areas unless unavoidable.

(2) **Marginal Accessway; Reverse Frontage Screening Adjacent to Arterials.** If a residential subdivision or residential property abuts an existing or proposed arterial street, the planning, zoning and variance board may require marginal access streets, reverse frontage with screen planting contained in a non-access strip along the rear property line, deep lots with or without rear service alleys, or any other treatment as may be necessary for adequate residential property protection and to minimize conflict of through and local traffic.

(E) **Subdivisions Adjacent to Arterial Rights-of-Way.** Where a subdivision borders on or contains a right-of-way for an arterial road, drainage canal, or waterway, the board may require a street approximately parallel to and on each side of the right-of-way at a distance suitable for the appropriate use of the intervening land. Distances shall also be determined with due regard for the requirements of approach grades for future grade separation. Where new or existing crossings are required, the developer, shall be required to pay for them.

(F) **Reserve Strips.** Reserve strips controlling access to streets shall be prohibited, except where their control is definitely placed with the town council under conditions approved by the council.

(G) **Private Streets**. Private streets as a principal means of access to individually owned lots will be permitted: provided, that the council finds that the private streets will not be required as public streets in the overall town plan. There shall be no maintenance or improvements of private streets by the town. However, these streets shall be constructed in accordance with minimum specifications for public streets and shall be approved by the town council. Private streets shall also be considered utility easements, and the town, by formal board action, may accept these streets or easements, or any part thereof; notations to this effect shall be so stated on the face of the final plat.

(H) **Half or Partial Streets.** New half or partial streets shall not be permitted, except where essential to reasonable subdivision of a tract in conformance with this chapter or where satisfactory assurance for dedication of the remaining part of the street is provided. Whenever a tract to be subdivided borders on an existing half or partial street, the other part of the street shall be dedicated within the tract.

(I) **Re-subdivision.** If lots resulting from the original subdivision are large enough to permit or to require re-subdivision, or if a portion of the tract is not subdivided, adequate street right-of-way to permit future subdivision shall be provided.

(J) **Dead-End Streets.** Dead-end streets shall be prohibited, except where appropriate as stubs to permit future street extension into adjoining unsubdivided tracts, or when designed as cul-de-sacs.

(K) **Setback.** All new plats of land abutting Highway A1A shall be required to provide a sixty (60) foot building setback from the right-of-way for Highway A1A subject to the additional provisions of Section 161.08.

(L) **Bicycle and Pedestrian Way Impact Fee.** The amount of two hundred dollars ($200) per residential unit shall be paid at the time of any preliminary plat or site plan approval except those in processing at the time of adoption of this ordinance. See 150.007 for previously approved plats.

166.10 BLOCK DESIGN STANDARDS

(A) **Block Layout.** The length, width, and shape of blocks shall be determined with regard to the following:

(1) Provision of adequate building sites, suitable to the special needs of the type of use contemplated.
(2) Zoning requirements as to lot sizes and dimensions.
(3) Needs for convenient and safe access, circulation, and control of pedestrian and vehicular traffic.
(4) Limitations and opportunities of topographic features.

(B) **Block Length Restricted.** Block lengths shall not exceed one thousand three hundred twenty (1,320) feet. If any block exceeds six hundred sixty (660) feet, cross drainage shall be provided within the block.

(C) **Accessways.** Where found necessary, easements not less than ten (10) feet in width may be required in blocks over one thousand (1,000) feet in length to provide safe and convenient access to schools, playgrounds, shopping centers, transportation, and other community facilities.

166.11 LOT DESIGN STANDARDS

(A) **LDC Compliance.** Lot dimensions and areas shall not be less than specified by applicable zoning provisions in effect.

(B) **Alignment of Side Lot Line at Street Frontage.** Side lot lines shall be substantially at right angles or radial to street lines.

(C) **Double Frontage and Reverse Frontage Lots.** Double frontage and reverse frontage lots for residential use shall be avoided, except where essential to provide separation of residential development from arterial streets to overcome specific handicaps of topography or orientation. A planting screen strip of at least ten (10) feet, and across which there shall be no right of vehicular movement or use, shall be provided along the property line of lots abutting the traffic way or other disadvantageous situation.

(D) **Street Access; Street Frontage.** Every lot shall abut on and have permanent access to a public or approved private street. Residential lots shall have a street frontage of not less than thirty (30) feet. Lot arrangement and design shall be properly related to the character of the surrounding development.

(E) **Record of Plats**. Appendix 1C, page 17, on file in the office of the town clerk, contains provisions for plat dedication, approval, and notations.

166.12 CANALS AND WATERWAYS

Public canals and waterways should be avoided, except when approved and deemed by the planning, zoning and variance board to be unavoidable or necessary, wherein literal enforcement of this chapter would deprive the developer of the reasonable use of his land. In the event of approval, the town will not accept the responsibility of maintenance for canals, shore protection, or waterways.

166.13 PRIVATE RECREATION FACILITIES

In addition to meeting the 168.02 concurrency requirements for public recreation facilities, any subdivision with over one hundred (100) dwellings shall (1) provide appropriate private recreational facilities, or (2) dedicate such facilities to the town (if acceptable to the town council) or (3) donate to the town recreation facility fund. See Chapter 95.

166.14 IMPROVEMENTS. By the presentation of the final plat for approval and recording, the subdivider thereby agrees to maintain in good condition all improvements required to be placed on the land pursuant to this chapter for a period of one year from the date the plat is recorded or the performance bond is released. To maintain in good condition means that at the end of the period mentioned the improvements shall be in a condition so that they meet the requirements of this chapter as it existed at the time of final approval of the plat.

CHAPTER 167 ENVIRONMENTAL REGULATIONS

167.01 WETLANDS

(A) Purpose and Intent

(1) Whereas, pursuant to Chapter 373, Florida Statutes (F.S.), wetlands and surface waters are protected because they often serve as spawning, nursery and feeding habitats for many species such as fish and wildlife; and because they often provide important flood storage, detrital production, nutrient cycling, navigation and recreation and water quality functions.

(2) Whereas, a wide array of biological physical, and chemical factors affect the functions of wetlands and surface water systems such as streams, rivers, and estuaries, the State of Florida has declared the maintenance of water quality standards in wetlands and other surface water systems to be critical in sustaining their many functions.

(3) Whereas, the State of Florida has declared the Indian River Lagoon as a priority water body in need of restoration and special protection, and has established a goal to attain and maintain the water and sediment quality needed to support a macrophyte-based (seagrass) system, endangered and threatened species, fisheries, and recreation in the lagoon;

(4) Whereas, protection of littoral and wetland vegetation along the Indian River Lagoon shoreline prevents soil erosion, reduces turbidity levels detrimental water quality, and protects life and property from potential flood waters;

(5) Whereas, protection and maintenance of wetlands in Indian River Shores supports federal and state goals to achieve no net loss of wetlands as well as to create and restore wetlands to increase the quantity and quality of the wetland resource base;

(6) Therefore, the Town shall work in concert with state and federal regulatory agencies having jurisdiction to implement protection standards that preserve wetlands and associated adjacent uplands; and when a state agency having jurisdiction deems mitigation appropriate for compensating a project impact, the Town shall coordinate with the State agency to assure that the overall mitigation complies with the "no net loss" State policy and that mitigation sites are located within the municipal limits of the Town of Indian River Shores unless no such site is available which complies with State policy governing mitigation sites.

(B) Definitions and Abbreviations

"DEP" means the Florida Department of Environmental Protection.

"Development" means the construction, installation, demolition or removal of a structure, impervious surface or drainage facility; clearing, scraping, grubbing, killing or otherwise removing vegetation; adding, removing, exposing, excavating, leveling, grading, digging, furrowing, dumping, piling, filling, dredging or otherwise significantly disturbing or altering soil, mud, sand or rock; or the modification or redevelopment of a site. Development may include, but is not limited to, carrying out of any building or mining activity, the making of any material change in the use or appearance of any structure or land or the dividing of land into two or more parcels. The following activities shall be construed to involve development:

a. Reconstruction, alteration of the size or material change in the external appearance of a structure.
b. Change in land use intensity, such as an increase in the number of units in a structure or on the land.
c. Alteration of a shore or bank of a seacoast, river, stream, lake, pond or canal.
d. Alteration of the land or vegetation in a floodplain or flood prone area.
e. Dredging, drilling, except to obtain soil samples, mining or excavation on land.
f. Demolition of a structure.
g. Clearing of land.
h. Deposit of refuse, solid or liquid waste or fill on land.

The term "development" includes all other development customarily associated with it, unless otherwise specified. When appropriate to the context, development refers to the act of developing or to the result of development. Reference to particular activities is not intended to limit the generality of the term "development."

“District” means the St. Johns River Water Management District.

“Dredging” is defined as excavation, by any means, in surface waters or wetlands, as delineated in subsection 373.421(1), F.S. Excavation also means the excavation, or creation, of a water body which is, or is to be, connected to surface waters or wetlands, as delineated in subsection 373.421(1), F.S., directly or via an excavated water body or series of water bodies (subsection 373.403(13), F.S.).

“Ecological value” means the value of functions performed by uplands, wetlands and other surface waters to the abundance, diversity, and habitats of fish, wildlife, and listed species. These functions include, but are not limited to, providing cover and refuge; breeding, nesting, denning, and nursery areas; corridors for wildlife movement; food chain support; and natural water storage, natural flow attenuation, and water quality improvement, which enhances fish, wildlife and listed species utilization. (subsection 373.403(18), F.S.)

“Endangered Species” means those animal species which are listed in section 39-27.003, F.A.C., and those plant species which are listed as endangered in 50 Code of Federal Regulations 17.12.

“Enhancement” means improving the ecological value of wetlands, other surface waters, or uplands that have been degraded in comparison to their historic condition. (s) Estuary - A semi-enclosed, naturally existing coastal body of water which has a free connection with the open sea and within which seawater is measurably diluted with fresh water derived from riverine systems (subsection 373.403(15), F.S.).

“Existing nesting or denning” refers to an upland site which is currently being used for nesting or denning, or is expected, based on reasonable scientific judgment, to be used for such purposes based on past nesting or denning at the site.

“FFWCC” means the Florida Fish and Wildlife Conservation Commission

“Filling” means the deposition, by any means, of materials in surface waters or wetlands, as delineated in subsection 373.421(1), F.S. (subsection 373.403(14), F.S.).

“Hydrologically sensitive area” means wetlands and those geographical areas which are specifically designated as hydrologically sensitive areas by the agency having jurisdiction because of the importance of the hydrology and hydraulics of the area in meeting the Legislative policy contained in section 373.016, F.S. (subsection 40C-4.021(15), F.A.C.).

“Hydroperiod” means the period of inundation of a wetland. Communities with long hydroperiods are most viable and wetlands with this characteristic may receive wastes and runoff from urban lands, since they have greater potential for year-round nutrient uptake.

“Impervious” means land surfaces which do not allow, or minimally allow, the penetration of water; included as examples are building roofs, normal concrete and asphalt pavements, and some fine grained soils such as clays.

“Lagoon” means a naturally existing coastal zone depression which is below mean high water and which has permanent or ephemeral communications with the sea, but which is protected from the sea by some type of naturally existing barrier (subsection 373.403(16), F.S.).

“Listed species” means those animal species which are endangered, threatened or of special concern and are listed in sections 39-27.003, 39-27.004, and 39-27.005, F.A.C., and those plant species listed in 50 Code of Federal Regulation 17.12, when such plants are found to be located in a wetland or other surface water (subsection 40C-4.021(19), F.A.C.).

“Mitigation” means an action or series of actions to offset the adverse impacts that would otherwise cause a development to fail to meet the SJRWMD criteria. Mitigation usually consists of restoration, enhancement, creation, preservation, or a combination thereof.

"Preservation" means the protection of wetlands, other surface waters or uplands from adverse impacts by placing a conservation easement or other comparable land use restriction over the property or by donation of fee simple interest in the property.

"SJRWMD" means the St. Johns River Water Management District.

"State agency" for purposes of Section 167.01, means the St. Johns River Water Management District (SJRWMD), Florida Department of Environmental Protection (DEP), or other successor agency of the State of Florida delegated authority to administer, enforce, or implement state environmental regulations, administrative code, or laws.

"Stormwater management system" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system (subsection 373.403(10), F.S.).

"Submerged lands" for purposes of this Section 167.01, means lands beneath tidally-influenced waters associated with the Indian River Lagoon including but not limited to tidal lands, shallow banks, and lands waterward of the mean high water line of the Indian River Lagoon.

"Surface water management system or system" means a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, or any combination thereof. The terms "surface water management system" or "system" include areas of dredging or filling, as those terms are defined in subsections 373.403(13) and 373.403(14), F.S. (subsection 40C-4.021(26), F.A.C.).

"Threatened species" means those animal species listed in section 39-27.004, F.A.C., and those plant species which are listed as threatened in 50 Code of Federal Regulations 17.12.

"Tidal wetlands" means wetlands hydrologically connected to the Indian River Lagoon.

"Uplands" means land that is not "submerged land" and is not a "wetland" as defined herein.

"USFWS" means the US Fish and Wildlife Service.

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto. (subsection 373.019(17), F.S.) The landward extent of wetlands is delineated pursuant to sections 62-340.100 through 62-340.550, F.A.C., as ratified by section 373.4211, F.S., (subsection 40C- 4.021(30), F.A.C.)

"Wetland delineation" means the line demarcating a wetland/upland interface.

"Wetland impact" means any removal, destruction, or alteration of vegetation or the excavation of wetland soils.

C. **Unified Statewide Methodology for Wetland Delineation.** The methodology used to delineate the landward extent of regulated wetlands and surface waters shall follow the unified statewide methodology set forth in the Florida Administrative Code and Florida Statutes. The applicant shall file a wetlands assessment report responsive to the state's unified methodology for wetland delineation, impact assessment, and possible mitigation strategy. The report shall also address the impacts of the proposed development based on criteria identified in sub-sections 167.01(G-I) of this ordinance.

(1) **Wetland Delineation Determination.** At any time in which the Town suspects that wetlands may be present on a site based on soil or vegetation, the applicant must obtain formal wetland delineation or a letter in which the state agency determines that wetlands are not present. An applicant for development potentially impacting wetlands shall submit a site plan and conditional use approval application to the Town and the applicant shall concurrently commence coordination with the St. Johns River Water Management District (SJRWMD) and any other public agency having jurisdiction over the potentially impacted wetlands. The applicant shall ensure that the Town Manager receives a copy of all formal communications with such agencies in an expeditious manner.

Similarly, the applicant shall provide the Town Manager a copy of all reports and information submitted to an agency having jurisdiction, especially the initial correspondence requesting such agency to initiate or conduct a formal review as well as determination and/or recommendations and conditions documented by the agencies having jurisdiction.

(2) **Town Review and Administration.** Development review of any plan potentially impacting wetlands shall direct highest priority to the continued preservation and enhancement of the physical and biological functions of wetlands. The town shall be bound in such wetland preservation actions to preserving reasonable development rights as opposed to highest and best use or the most economically beneficial use of the land. This policy is predicated on the town's adopted comprehensive plan, the state's coastal management legislation (Chapter 163, Part II, Florida Statutes), and state statutes(especially Ch. 373, FS) and administrative rules (especially Ch 62 and 40C, FAC, as may be amended.

(a) **Investigation and Wetland Boundary Determinations**:

(i) The building official shall forward all applications for rezoning and/or development potentially impacting a wetland to the Town Manager. Upon receipt of the applicant's technical data the Town Manager or designee shall review the development pursuant to the Town's Land Development Code, including wetland boundaries and wetland impacts and coordinate the same with the applicant. The applicant shall ensure that SJRWMD communications regarding wetland delineation and impact assessment are delivered to the Town expeditiously in order to facilitate the resolution of issues impacting field investigations, wetland boundary delineations, wetland impacts, including wetland buffers and planned upland improvements. The intent is that the analysis of wetlands by the Town and the SJRWMD occur concurrently and that the Town review the findings of the St. Johns River Water Management District (SJRWMD) and any other agencies having jurisdiction and coordinate issues of mutual concern.

(ii) The Town Manager or designee shall coordinate resolution of wetland issues with other public agencies having jurisdiction in the impacted area in order to resolve issues surrounding disputed boundaries as well as any disputed results of wetland assessments, needed site plan or preliminary plat revisions, and potential mitigation strategies. The Town staff shall incorporate recommendations of the Town and the SJRWMD regarding any such issues into its technical development review and submit the same to the Planning, Zoning and Variance Board. The Town Council shall render final decisions on site plans, including wetland issues, based on recommendation of the Planning, Zoning and Variance Board and consideration of technical findings.

(b) **Wetland Management Determinations and Development Stipulations:**

(i) **Technical Report and Coordination with Agencies Having Jurisdiction.** The Town Manager or designee shall coordinate technical issues concerning wetland development petitions or requests for exceptions based on information provided by the applicant, public agencies having jurisdiction over the wetlands, and findings and recommendations of the Town's consultant as appropriate. Where a proposed land use or development activity is deemed appropriate, the technical report shall stipulate recommended conditions necessary to preserve the function of wetlands. Such stipulated conditions shall be predicated on consideration of the developer's application and supportive technical analysis and shall reflect the consideration of performance standards and criteria cited in this chapter.

(ii) **Conditions and Limitations.** The Town Council may place conditions on any exception or development approval as herein provided, including but not limited to, required mitigation and the dedication of a conservation easement to the Town in order to assure that wetlands are perpetually preserved and

conserved. Wetlands shall be subject to all applicable land development regulations of the federal and state permitting agencies as well as regulations contained in the Town of Indian River Shores Comprehensive Plan and code of ordinances.

(iii) **Disputes, Appeals, and Reconciliation.** The applicant shall submit a copy of the SJRWMD Letter of Determination within ten (10) days of its issuance. Upon the Town's receipt of the State's formal wetland delineation and impact assessment, including any proposed mitigation strategy, the Town Council will accept or appeal the state agency's formal wetland delineation determination, site plan assessment, and mitigation strategy, if any. If the Town Council appeals the state agency's formal determination, the basis for the appeal shall be based on the review and written comment submitted by the Town's environmental expert, who shall be a professional environmental engineer, limnologist, soil scientist, or biologist with demonstrated experience in protecting the physical and biological functions wetlands from potential adverse impacts of development.

Upon the Town Council's decision to appeal a formal wetland delineation, impact assessment, including any proposed mitigation strategy occurring pursuant to Subsection 167.01(I)(3) herein, the Town Manager shall submit a written appeal to the state agency within thirty (30) calendar days from the Town Council hearing date. Review of a development order or permit application for property containing or abutting wetlands shall not commence until conclusion to the appeal process.

(D) **Wetlands Development Restricted and Buffer Required.** Development in or on wetlands is prohibited except for projects compliant with the provisions of Section 167.01, including compliance with permitting requirements of state and federal agencies having jurisdiction which shall be demonstrated by duly issued permits from such agencies. The Town shall require that tidal wetlands be protected by requiring upland buffers with a minimum width of 25 feet. The Town may require an increase in such specifications on a case by case basis if, after considering recommendations of the Town staff and/or biologist, hydrologist, soil scientist, or other similar environmental expert knowledgeable in coastal wetland ecosystems and associated hydrology, the Town Council determines that an increased buffer is required to protect a particular habitat, wetland and/or water resources against potential adverse impacts.

(1) **Wetland Density Transfers.** The Town Comprehensive Plan assigns a density of one (1) unit per five acres to wetlands whose location and extent are determined and confirmed by a State agency. Density may be transferred from a wetland ("sending area") to a contiguous upland under unity of title ("receiving area"). The upland "receiving area" shall not be separated from the wetland "sending area" by submerged land, public land, including rights-of-way, or any other land that is not under unity of title. No density credits shall be assigned to submerged land. The maximum density within the receiving upland shall not exceed 1.5 times the density delineated on the Future Land Use Map. A proposed plan involving any density transfer shall demonstrate compatibility with development with in two hundred feet of the perimeter of the subject site; shall be compliant with all applicable rules and regulations of the federal government, state, and the town, including, but not limited to, site plan review considerations, availability of infrastructure and preservation of adjacent environmentally sensitive areas; and shall require approval as a conditional use, including compliance with conditional use criteria stated herein.

(2) **Character of Wetland Buffer; Conservation Easement.** Buffers shall remain in an undisturbed condition, except for drainage features such as spreader swales and discharge structures, provided the construction or use of these features does not adversely impact wetlands. Existing vegetation within the upland buffer shall be preserved and no turf or ornamental grass species shall be allowed. Within required vegetative buffers any exotic species as specified in Sec. 163.04(D) shall be removed and replaced with native ground and understory species and native trees species approved by the Town Council. A vegetated berm, swale or other approved run-off control device shall be installed on the upland side of the buffer. No impervious surface shall be permitted therein. Prior to issuance of a certificate of occupancy, a conservation easement shall be submitted to the Town and recorded with the Clerk of the Circuit Court for all remaining wetland areas within the subject lot.

(3) **Exemptions.** The following are exempt from the provisions of §167.01:

(a) Any development, construction, or use initiated according to any valid building permit or site plan development order issued or approved by the Town of Indian River Shores prior to the effective date of this ordinance.

(b) Any public works or utilities projects initiated by the Town to provide utility services or access to public property.

(b) Mosquito control conducted by Indian River Shores or the Indian River County Mosquito Control District.

(c) Construction of public nature trails or raised boardwalks on publicly-owned property.

(e) The reestablishment of native vegetation within publicly-owned property.

(f) Maintenance and management of stormwater management facilities and mitigation projects duly permitted by the Town. and state or federal agencies having jurisdiction

(E) **Development Restrictions in Submerged Lands**

(1) **Filling Prohibited**. Placement of fill material in or on submerged lands is prohibited except for the following circumstances:

(a) Filling of submerged lands is necessary to implement a valid development plan or permit approved by the Town Council prior to June 1, 2004

(b) Improvements to existing public roads or rights-of-way.

(c) Shoreline protection infrastructure approved by the Town Council and the U.S. Corps of Engineers.

(d) Spoil islands associated with dredging activities within navigable waters of the Indian River Lagoon, as authorized by the US Corps of Engineers.

(2) **Permitted Structures**. The following structures shall be permitted within or above submerged lands subject to compliance with applicable provisions of the Town's Land Development Code and issuance of permits from applicable state agencies: boat docks, raised boardwalks, or piers.

(F) **Town Review of Development Plans.** As part of the development review process during review of the preliminary plat or site plan as appropriate, the Town shall coordinate its review of development adjacent to the Indian River Lagoon and/or wetlands with state and federal agencies having jurisdiction over development impacts to wetlands, including the submerged land, habitat, and surface waters, including the SJRWMD, DEP, and the FFWCC. The common objective shall be to protect and conserve the beneficial functions of these resources. At the time an applicant submits an application for permit approval by a state or federal agency having jurisdiction over a proposed development impacting wetlands, habitat, surface water management systems, or submerged lands within the Town limits, the applicant shall concurrently file a copy of such application, including all supportive narrative and graphic information with the Town Manager. The applicant shall submit to the Town Manager all subsequent updates and/or revisions to applications as well as documents pertaining to predispositions, conditions and actions of the agencies having jurisdiction.

(G) **Procedure for Evaluating Permit Applications.** The procedure for evaluating development with potential wetland impacts commences with a determination of whether the proposed development yields no net adverse impacts to wetlands, habitat and water quality. Secondly, if the development is found to have adverse wetland impacts a determination shall be made regarding whether the adverse impacts to the wetland system, water quality, unique habitats, and other factors surrounding the public interest can be eliminated or reduced by revisions to the applicant's plans. Thirdly, if any adverse impacts, which remain after practicable design modifications have been made, can the adverse impacts be mitigated.

(H) **Criteria Applied in Determining "No Net Adverse Impacts."** As part of the development review process during review of the preliminary plat or site plan as appropriate, the applicant shall demonstrate to the Town that the development shall comply with the following criteria:

(1) **Impact on Fish, Wildlife and Listed Species.** Provide reasonable assurances that the proposed development will not impact the values of wetland and other surface water functions so as to cause adverse impacts to fish, wildlife and listed species, including their abundance, diversity, and their habitat. Where habitats for listed species are present, the applicant may be required to provide a wildlife survey of listed species, and provide information regarding site characteristics, the range and habitat needs of listed species potentially impacted, and whether the proposed development will adversely impact the listed species, including their habitat. Survey methodologies employed to inventory the site must provide reasonable assurances regarding the presence or absence of the subject

listed species. When assessing the value of functions that any wetland or other surface water provides to fish, wildlife, and listed species, the applicant shall consider the following factors:

(a) **Condition.** Whether the wetland or other surface water is in a high quality state or has been the subject of past alterations in hydrology, water quality, or vegetative composition.

(b) **Hydrologic Connection.** The nature and degree of offsite connection that may benefit off-site water resources through detrital export, base flow maintenance, water quality enhancement or the provision of nursery habitat.

(c) **Location and Uniqueness.** The location and relative rarity of the wetland or other surface water and its floral and faunal components in relation to the surrounding regional landscape.

(d) **Fish and Wildlife Utilization.** Use of the wetland for resting, feeding, breeding, nesting or denning by fish and wildlife, particularly those which are listed species.

(e) **Water Quantity Impacts on Established Hydroperiod.** The applicant must provide reasonable assurance that the development will not change the hydroperiod of a wetland and water resources, so as to adversely affect wetland functions or other surface water functions.

(i) Whenever portions of a system, such as constructed basins, structures, stormwater ponds, canals, and ditches, could have the effect of reducing the depth, duration or frequency of inundation or saturation in a wetland or other surface water, the applicant must perform an analysis of the drawdown in water levels or diversion of water flows resulting from such activities and provide reasonable assurance that these drawdowns or diversions will not adversely impact the functions that wetlands and other surface waters provide to fish and wildlife and listed species.

(ii) Increasing the depth, duration, or frequency of inundation through changing the rate or method of discharge of water to wetlands or other surface waters or by impounding water in wetlands or other surface waters must also be addressed to prevent adverse effects to functions that wetlands and other surface waters provide to fish and wildlife and listed species. Different types of wetlands respond differently to increased depth, duration, or frequency of inundation. Therefore, the applicant must provide reasonable assurance that activities that have the potential to increase discharge or water levels will not adversely affect the functioning of the specific wetland or other surface water subject to the increased discharge or water level.

(iii) Whenever portions of a system could have the effect of altering water levels in wetlands or other surface waters, applicants shall be required to monitor the wetland or other surface waters to demonstrate that such alteration has not resulted in adverse impacts; or calibrate the system to prevent adverse impacts. Monitoring parameters, methods, schedules, and reporting requirements shall be specified in permit conditions.

(2) **Public Interest Considerations**. If the development is anticipated to significantly degrade, the applicant must provide assurances that the activity is clearly in the public interest, by demonstrating that the positive impacts significantly outweigh the negative impacts, including:

(a) Whether the development will adversely affect the public health, safety, or welfare or the property of others.
(b) Whether the development will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats.
(c) Whether the development will adversely affect navigation or flow of water or cause harmful erosion or shoaling.
(d) Whether the development will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity.
(e) Whether the development will be of a temporary or permanent nature.
(f) Whether the development will adversely affect or will enhance significant historical and archaeological resources.
(g) The current condition and relative value of functions being performed by areas affected by the proposed development.

(3) **Evaluate Impacts to Quality of Receiving Waters.** The applicant must provide assurances that the short and long term impacts of the proposed development will not adversely affect the quality of receiving waters and demonstrate compliance with applicable State water quality standards. Reasonable assurances regarding water quality must be provided both for the short term and the long term, addressing the proposed construction, alteration, operation, maintenance, removal and abandonment of the system.

(4) **Assess Secondary Impacts to Water Resources.** The applicant must demonstrate that the proposed development will not cause adverse secondary impacts to the water resources. The Town may require above minimum standard buffers in order to ensure that secondary impacts to the habitat functions of wetlands are protected, especially habitat for listed species.

(5) **Consider Cumulative Impacts.** A development shall not cause unacceptable cumulative impacts upon wetlands and other surface waters. Cumulative impacts are considered unacceptable when the proposed development, considered in conjunction with the past, present, and future development activities are anticipated to result in a violation of state water quality standards as or cause significant adverse impacts to functions of wetlands and water resources.

(I) **Uniform Mitigation Methodology.** If adverse wetland impacts cannot be eliminated by adjustments to the plan, the adverse wetland impacts must be appropriately mitigated. Standards to determine the amount of mitigation needed to offset adverse impacts to wetlands shall follow the uniform mitigation assessment method established in Florida Statutes and Florida Administrative Codes. Applicants are encouraged to consult with SJRWMD staff in pre-application conferences and involve the Town Manager or designee to identify appropriate mitigation options. The Town shall require that any off-site mitigation occurs within the Town's municipal limits unless the applicant in concert with the District demonstrates to the Town's satisfaction that no combination of sites meeting the State mitigation requirements exit within the Town. In the latter case, the Town's preference shall be that the mitigation occur on a site within Indian River County that lies within the Town's regional watershed and that such off-site mitigation would improve and/or protect water quality of the Indian River and meet District mitigation requirements.

(1) **Wetland Mitigation Assessment.** Any property owner, developer, or entity proposing to adversely impact a wetland shall prepare a wetland mitigation assessment report. The report shall be prepared in written and illustrative form and shall comply with the State's uniform mitigation assessment methodology as set forth in Florida Statutes and Florida Administrative Codes. If the proposed mitigation site is not located within the Town, the applicant must provide written documentation demonstrating why a mitigation site located within the Town limits could not be obtained.

(2) **Use of Experts for Wetland Assessment.** Wetland mitigation assessments shall be performed by a professional specializing in biology, hydrology, soil science or related environmental expert knowledgeable in coastal wetland ecosystems and associated hydrology. A development applicant or property owner is responsible for retaining an environmental expert at the applicant's own expense to perform the required wetland mitigation assessment.

(3) **Review of Wetland Mitigation Assessment.** The wetland mitigation assessment report shall be submitted to the Town Manager. The Town shall retain the services of a professional biologist, hydrologist, soil scientist, or other similar environmental expert knowledgeable in coastal wetland ecosystems and associated hydrology. Upon review of the wetland mitigation assessment report for consistency and compliance with the state's uniform mitigation assessment methodology, the Town's environmental expert shall prepare and submit written recommendations to the Town Manager recommending that the Town Council deny, accept, or accept with conditions appropriate wetland mitigation.

(4) **Reconciliation and Consistency with State Agency Wetland Mitigation Requirements.** If the state agency requires a greater amount of mitigation than that required by the Town of Indian River Shores, the amount required by state agency shall apply. If mitigation requirements imposed by the Town for wetland impacts of an activity regulated under this §167.01 cannot be reconciled with mitigation requirements approved under a permit for the same activity issued by the State agency, the State agency mitigation requirements shall be followed.

(5) **Monitoring Requirements for Mitigation Areas.** Applicants shall monitor the progress of mitigation areas until success can be demonstrated. Mitigation success will be measured in terms of whether the objectives of the mitigation can be realized. The success criteria to be included in permit conditions will specify the minimum requirements necessary to attain a determination of success. The mitigation shall be deemed successful when all applicable water quality standards are met, the mitigation area has achieved viable and sustainable ecological and hydrological functions and the specific success criteria contained in the permit are met. If success is not achieved within the time frame specified within the permit, remedial measures shall be required. Monitoring and maintenance requirements shall remain in effect until success is achieved.

(J) **Permitted Uses in Wetlands.** The uses identified below shall be permitted within tidal or non-tidal wetlands denoted on a duly approved site plan; however, all physical improvement must have been included in the approved site plan submitted pursuant to Chapter 168, regardless of the zoning district. In addition, the application shall demonstrate compliance with applicable federal, state and local regulations. Zoning district provisions shall govern permitted uses on converted uplands denoted on a duly approved site plan, including receipt of required permit approvals by other agencies having jurisdiction over wetland issues. These federal, state and local approvals must be granted before any site work begins.

(1) Passive recreation.
(2) Elevated boardwalks (non-covered) used to reach duly approved boat docks within the Indian River Lagoon or its tributaries. Such boardwalks shall not be wider than four (4) feet.
(3) Open space.
(4) Restricted access ways for essential public service.
(5) Bird sanctuary.
(6) Accessory uses to the above

(K) **Conditional Uses.** Any development having a potential impact on wetlands shall require conditional use approval, including compliance with conditional use criteria stated herein. Conditional use review procedures shall be the same as for site plan review. A proposed conditional use must demonstrate compliance with the following conditional use criteria which shall be applied by the Town to determine whether a proposed conditional use is suitable for the site and whether it is appropriately designed to avoid potential land use incompatibility as well as potential adverse impacts. The criteria shall be used to achieve smooth transition in land use, including density, intensity, appearance, size, height, mass, and design amenities.

The intent is to ensure that conditional uses shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity. The use must be compatible with the character of the surrounding area. The specific site shall have sufficient land area to accommodate the proposed type of use, including its scale, mass, density and/or intensity, as well as requisite project amenities, infrastructure, parking and internal vehicular and pedestrian circulation; provides adequate screening and buffering; and avoids or successfully mitigates adverse environmental, conditions, nuisance impacts, and other adverse impacts. A proposed conditional use shall only be considered if a site plan is submitted and is demonstrated to comply with site plan review criteria established in Chapter 168 "Development Review Procedures" as with Chapter 166 "Subdivisions" if subdivision of land is proposed. All conditional uses shall be reviewed based on criteria established herein and within respective zoning districts. The use must be found to comply with the following:

(1) **Traffic Generation and Access.** Traffic generation and access for the proposed use shall not adversely impact adjoining properties and the general public safety and shall meet concurrency management level of service standards.

(2) **Off-Street Parking, Loading and Service Areas.** Off-street parking, loading and service areas shall meet zoning district standards and shall be landscaped and buffered based on standards of the land development code.

(3) **Required Yards, Screening or Buffering, and Landscaping.** Required yards, screening or buffering, and landscaping shall be consistent with the district regulations, and the Town shall reserve the right to require more restrictive buffers and landscaping to mitigate potential adverse impacts. If the Town determines that buffers and landscaping cannot mitigate the potential adverse impacts the conditional use shall be denied.

(4) **Architecture and Signage.** The character of architectural and signage improvements shall have a unified theme, shall incorporate decorative features and harmonious colors and scale;

(5) **Size, Location, or Number of Conditional Uses.** Size, location, or number of conditional uses in an area shall be limited so as to maintain the overall character of the district in which said conditional uses are located.

(6) **Factors Impacting Scale and Intensity of Conditional Uses.** The size and shape of the site, the proposed access and internal circulation, and the urban design enhancements must be determined by the Town to be adequate to accommodate the proposed scale and intensity of conditional use requested. The site shall be of sufficient size to accommodate urban design amenities such as screening, buffers, landscaping, open space, off-street parking, efficient internal traffic circulation, infrastructure, and similar site plan improvements needed to mitigate potential adverse impacts of the proposed use, including its design, mass, height, and scale.

(7) **Avoid Adverse Impacts to Adjacent Land Uses.** The applicant shall demonstrate that the conditional use shall incorporate mitigative techniques needed to prevent adverse impacts to adjacent land uses and public facilities.

(8) **Compatibility.** Development proposed as a conditional use shall be reviewed for land use compatibility based on compliance with zoning district regulations, including size and dimension regulations impacting setbacks, lot coverage, height, building mass, lot and/or building coverage, and open space criteria. Land use compatibility also shall be measured by design attributes such as screening and buffering, lot layout and orientation of structures; architectural feature such as façade elevations, façade landscaping, fenestration, building articulation, pedestrian access and circulation; internal vehicular circulation together with access and egress to the site, and off-street parking; as well as possible required mitigative measures such as additional landscaping, buffering, and other site design amenities deemed necessary by the Town to avoid land use incompatibility or negative impacts.

i. **Outdoor Lighting Spill-over Regulated.** Outdoor lighting shall have no spillover onto adjacent property or rights-of-way beyond the building site property line and the lumens shall not exceed two (2) foot candles at the property line. Buildings over three stories shall submit a lighting plan indicating all outdoor lighting, including lighting for streets, access drives, parking lot, building access points, and additional security lighting. The plan shall indicate fixture heights, type and rating by wattage or lumens. The plan shall include characteristics of all lighting whether freestanding or wall mounted; type of illumination, vendor specifications, method of shielding light and light source, photometric plan, measures of illumination with contours indicating light source at the property lines and ten feet into adjoining properties, including right-of-way. Lighting specifications for all signage shall be submitted and shall be compatible with land uses in the immediate vicinity.

167.02 TREE PROTECTION

(A) Purpose

(1) This section is intended to perpetuate adequate tree numbers and canopy in order to maintain the economic, environmental, and esthetic status of the town.

(2) To this end, it shall be unlawful to cut down, damage, poison, or in any other manner, destroy or cause to be destroyed any tree, mangrove, or other vegetation as covered by the provisions of this chapter except in accordance with the provisions set forth herein. Notwithstanding, in case of emergencies involving natural disasters such as, but not limited to, hurricane, windstorm, flood, freeze, or other natural disasters, these requirements may be waived by the town manager.

(B) Definitions

"Diameter At Breast Height (DBH)." The standard measure of a single-stemmed tree at four and one half (4 1/2) feet above grade adjacent to the tree. When a tree has grown with cluster stems at breast height, "DBH" shall be equal to the sum or aggregate of the individual stems measured at four and one half (4 1/2) feet above grade.

"Drip Line." An artificial line along the ground which conforms to the perimeter of the crown of a tree and projects vertically to the ground.

"Grubbing." The removal or destruction of any living rooted shrubbery; the denuding of a parcel by digging, raking, or dragging; or activities which disturb the roots of the vegetation or the soil in which the roots are located in a manner which is calculated to result, or likely to result, in the death, destruction, or removal of the vegetation.

"Heavy Machinery." Mechanical land clearing, earth-moving, or earth-working equipment with a gross weight in excess of five thousand (5,000) pounds plus all machinery which utilizes steel tracks for traction.

"Historic Tree." A tree which has been found by the town council to be of notable historic interest to the town based on its age, species, size, or historic association with the town.

"Land Clearing." The removal or grubbing, by any means, of any type of vegetation from land not including, however, activities governed by tree removal or mangrove alteration permits.

"Mangrove." Rooted trees and seedlings of the following species, but only when having a coastal or estuarine association:

(1) Red mangrove (Rhizophora mangle)
(2) Black mangrove (Avicenna germinans) White mangrove (Laguncularia racemosa)
(3) Buttonwood or Button mangrove (Conocarpus erecta)

"Mangrove, Juvenile." A single-stem mangrove with a one-inch or less diameter at breast height.

"Protected Area." An area surrounding a protected, historic, or specimen tree within which physical intrusion is prohibited in order to prevent damage to the tree, roots, and soil around the tree base, the dimensions of which shall be established by the tree protection officer and set forth in the tree removal permit.

"Protected Tree." All trees and all significant groupings of trees of the West Indian or tropical origin of any size, and all mangroves regardless of size; excluding, however, the following trees, regardless of size or location.

Australian pine (Casuarina cunninghamiana) Australian pine (Casuarina lepidophlia) Australian pine (Casuarina equisetifolia) Ear-pod tree (Enterolobium cyclocarpum) Chinaberry (Melia azedarach) Brazilian pepper tree (Schinus terebinthifolius) Melaleuca (Melaleuca leucadendron)

Cabbage palms (Sabal palmetto) and citrus trees of all varieties shall not be considered to be protected trees, but these trees shall be included in the tree survey in the event the applicant chooses to make use of the trees as a credit against the trees otherwise required under an applicable landscaping regulation or requirement. If so designated, these palms or citrus trees shall become protected trees under this chapter.

"Protective Barrier." Shall be made of one (1) inch to two (2) inch wide stakes spaced a minimum five (5) feet to eight (8) feet and eighteen (18) inches to twenty-four (24) inches above ground with top two (2) inches to four (4) inches marked by fluorescent orange paint or tape.

"Remove" or "Removal." The actual physical removal or the effective removal through damaging, poisoning, or other direct or indirect action resulting in or likely to result in the death of a tree.

"Specimen Tree." A tree which is determined by the town council, based on the advice of a professional forester, landscape architect, arborist, horticulturist, or other similar professional to be of high value to the community, because of its type, size, age, or other significant tree characteristics.

"Tree." A woody plant having a well defined stem, a more or less well defined crown, and which has attained a height of at least eight (8) feet with a trunk diameter of not less than three (3) inches, or a cluster of main stems having an aggregate diameter of not less than three inches, at a point four and one half (4 1/2) feet above ground.

“Tree of Special Concern.” A Tree of Special Concern is any protected tree with a diameter at breast height (DBH) of thirty-two inches (32”) or greater.

"Tree Protection Officer." The individual employed by the town who is responsible for the administration of the provisions of this chapter and prosecution of any violations thereof. The tree protection officer shall have undertaken an advanced course of study from an accredited university or college in either landscape architecture, horticulture, forestry, botany, or other related study areas, and have at least three years of significant work-related experience in a land development or construction industry, or environmental regulation setting with direct interface with the land development or construction industry.
The tree protection officer may have a bachelor's degree in urban planning from an accredited college or university with at least three years of significant work-related experience in the landscaping, horticulture, forestry, or environmental protection setting, provided the experience involved direct contact or interface with the land development of construction industries

"Tree Survey." Either a physical on-site survey and plot or an aerial survey is acceptable. An aerial photograph taken within one year prior to application must be to a scale no smaller than one inch to fifty (50) feet or greater which shows the location of all trees located on a given parcel of land intended for development or site planning as a contiguous property of the applicant

which is to be included within the actual limits of the area subject to development consideration. An overlay of the proposed development will accompany the tree survey.

(C) **General Prohibitions.** Unless expressly exempted herein, it shall be unlawful and subject to the penalties provided herein for any person directly or indirectly by another on his behalf to:

(1) Remove, relocate, destroy, or damage, any tree on any site or tract without first obtaining a tree removal permit or mangrove alteration permit pursuant to this chapter.

(2) Perform any land clearing or grubbing unless a land clearing permit has been issued pursuant to this chapter.

(3) Encroach onto protected areas established pursuant to this chapter by any of the following acts or omissions:

(a) Trenching, digging, movement or storage of any vehicle within a protected area.
(b) The storage of building materials, debris, fill, soil, or any other matter within a protected area.
(c) The cleaning of material or equipment within a protected area.
(d) The disposal of any liquid or solid waste material such as paints, oil, solvents, asphalt, concrete, mortar, or other materials similarly harmful within a protected area.
(e) The placement of any structure or site improvement within a protected area.

(4) Violate or fail to observe any of the requirements set forth herein pertaining to tree and mangrove protection.

(5) Violate or fail to observe any of the requirements or provisions set forth herein pertaining to the protection of dune and shoreline vegetation.

(D) **Exemptions.** Notwithstanding anything to the contrary, the following activities shall be lawful without application for or issuance of a tree removal or land clearing permit. None of these exemptions shall apply to any mangrove; nor shall they apply to dune vegetation. Burden of proving entitlement to any particular exemption shall lie with the person claiming use of the exemption, in the event the exempted activity ever becomes subject to an enforcement proceeding.

(1) **Limited Pruning (excluding mangroves):** This includes the limited pruning and trimming of any tree or other vegetation as necessary for the clearing of a path not to exceed four (4) feet in width to provide physical access or view necessary to conduct a survey or site examination for the preparation of subdivision plats, site plans, or tree surveys, provided the clearing or removal is conducted under the direction of a state registered surveyor or engineer.

(2) **Restricted Landscape Maintenance:** This includes routine landscape maintenance such as trimming or pruning of vegetation which is not intended to result in the eventual death of a plant, mowing of yards or lawns, or any other landscaping or gardening activity which is commonly recognized as routine maintenance or replacement. This exemption shall be construed to allow routine maintenance of dune vegetation growing seaward of the coastal construction control line, provided the person owning the property, or his agent, first provides sufficient documentation evidencing express permission for such activity from the Bureau of Beaches and Shores of the Department of Environmental Protection of the state.

(3) **Work by Utility Service***:* This includes the removal, trimming, pruning, or alteration of any tree or vegetation in an existing utility easement or right-of-way provided the work is done by or under the control of the operating utility company and the company has received all necessary licenses or permits to provide utility service within the easement.

(4) **Minor Alteration to Preserve Existing Access:** This includes the removal, pruning, trimming, or alteration of any tree or vegetation for the purpose of maintaining an existing access to a property with minimum necessary alteration to natural vegetation.

(5) **Damaged Trees***:* Any tree which has been destroyed or damaged beyond saving by natural causes or causes not covered by other sections of this chapter, or which constitutes an immediate peril to life, property, or other trees, may be removed without a permit.

(E) **Permits.** The following permits with stated limitations shall be available upon proper application to the tree protection officer and compliance with this chapter:

(1) **Tree Removal Permit***:* A tree removal permit shall not authorize the destruction of a mangrove unless the

criteria governing mangrove alteration is satisfied.

(2) **Land Clearing Permit***:* A land clearing permit does not authorize the removal or destruction of protected trees, nor does it authorize any alteration to a mangrove,

(3) **Mangrove Alteration Permit***:* No mangrove shall be altered unless the tree protection officer has issued appropriate permits based on a determination that all criteria governing both tree removal and mangrove alteration permits has been satisfied.

(F) **Criteria for Issuing Permits.** The following criteria shall be satisfied prior to issuance of a tree removal, mangrove alteration, or land clearing permit, respectively:

(1) **Retaining Native Plant Materials***:* In any case, at least twenty-five (25) percent of any native plant community shall be retained on a lot except for new development where fifteen (15) may be retained if another twenty (20) percent of native canopy is planted, and any regionally endangered species is preserved.

(2) **Tree Removal Permit Criteria***:* In determining whether or not a permit required by this chapter should be issued, the tree protection officer shall consider the following criteria:

(a) The condition of the tree with respect to disease, insect attack, danger of falling, proximity to existing or proposed structures, and interference with utilities services.

(b) The necessity of removing a tree to construct proposed improvements in order to allow reasonable economic use of the property.

(c) The topography of the land where the tree is located and the effect removal of the tree would have on erosion, soil moisture retention, increased or decreased flow or diversion in the flow of surface waters, and the impact on overall surface water management.

(d) The number and density of trees existing on-site.

(e) The relative significance or uniqueness of the tree as a historic or specimen tree.

(f) The impact on the natural environment, including ground and surface water stabilization, water quality and aquifer recharge, ecological impacts, noise buffer, air quality, and wildlife habitat.

(g) The ease with which the proposed development or improvement in order to accommodate existing mangrove or trees.

(h) The economic hardship which would be imposed upon the applicant should the permit not be granted.

(i) If, during the review process, the tree protection officer determines any tree to be a Tree of Special Concern as defined in this Chapter, then a permit shall not be issued, if the tree is found to be outside the approved building structures perimeter, or in an area in which a swimming pool, spa, deck, driveway, roadway, detached building, or other approved construction is located or is to be located, referenced as the building area. In the event the Tree of Special Concern is located outside the building area, then the request for the issuance of the tree removal permit shall be submitted to the Planning, Zoning and Variance Board to determine whether the permit should be granted. The Planning, Zoning and Variance Board shall determine whether the location of any improvement can be reasonably made without the necessity of removing the Tree of Special Concern. If a reasonable alternative exists to adjust the building area, then the permit may be denied.

(3) **Mangrove Alteration Permit***:* In determining whether or not to issue a permit to alter a mangrove, the tree protection officer shall consider not only tree removal criteria above, but shall also consider the following criteria and incorporate them as conditions of the permit if issued. A violation of any of these provisions shall be deemed to be unlawful and subject to all penalties provided for herein.

(a) At least fifty (50) percent of the original canopy of any mangrove trees shall be continuously retained.

(b) White mangroves and buttonwood shall not be trimmed at all at a distance less than three feet above the natural ground elevation.

(c) On red mangroves, no prop roots shall be damaged, removed, or buried by fill or other means.

(d) Red mangroves may be hedged down to a minimum height of six (6) feet, providing the limitations in (a) and (g) are not exceeded. Notwithstanding, juvenile red mangroves may be hedged down to a minimum height of three (3) feet, providing the limitations in (g) are not exceeded.

(e) On a black mangrove of ten (10) feet or less in height there shall be no cutting or trimming below the lowest two living lateral limbs, unless a significant canopy area is left at the top of the tree. Further, no pneumatophores shall be damaged or removed nor shall they be buried by fill or other means.

(f) No large mangrove cuttings shall be discarded into any estuary, marsh, river, or adjacent water course.

(g) Pruning, removal, and relocation of mangroves shall be prohibited between December 1 and February 15.

(h) All cuts shall be made cleanly and at the base of the branch or limb cut, except when done with respect to the shaping of a hedge.

(i) A mangrove alteration permit shall not authorize removal of any mangrove unless the applicant replaces or relocates that number of mangroves necessary to revegetate an area approximately equal to the area destroyed, on the same development site. The applicant must provide an affirmative program satisfactory to the tree protection officer to assure survival of the replaced or relocated mangroves and to stabilize the shoreline from which mangroves were removed. The approved program shall be considered an express condition of the permit.

(j) Notwithstanding the above provision, pursuant to FS 403.817(2), no owner of land which is part of an authorized government mosquito control program as referenced in the statute shall experience a property loss or gain because of vegetative changes due to mosquito control activities conducted on his property, provided these activities are or have been undertaken as part of a governmental mosquito control program.

(k) In such cases where mangrove alteration, removal, and/or replacement permits are requested as part of a program to dredge or fill a mosquito impoundment area, the town may mandate partial restoration and/or replacement of mangroves and/or estuarine plants in order to stabilize shorelines in the impacted area. The town shall assure that related dredge and fill activities provide for and/or preserve a continuance in the circulation and flushing action of waters impacting wetlands. To this end, dredge and fill activities surrounding mangrove alteration shall not create isolated wetlands.

(4) **Replanting and Hedging Program***:* Notwithstanding the criteria of (2) above, the property owner/applicant may elect a replanting and hedging program, under the direction and control of the tree protection officer, and under which juvenile mangroves may be hedged several times each year and maintained at a height after periodic hedging of three feet without a permit. Such routine hedging shall be restricted to the new growth on mangrove hedges not exceeding eighteen (18) inches in height. If new growth is allowed to exceed eighteen (18) inches, subsequent trimming shall require a permit. As a mandatory and integral part of any routine hedging of mangroves, hedged material (clippings) shall be left atop the hedged mangroves until leaf drop from the hedge material (clippings) has occurred. The dropped leaves shall then become part of the estuary food chain.

(5) **Land Clearing Permit***:* In determining whether or not to issue a permit to clear or grub land as required by this chapter, the tree protection officer shall consider whether the applicant has or is complying with all tree and land clearing provisions of this chapter and shall base a decision regarding issuance of a permit on the following criteria:

(a) The minimum necessary vegetation removal on the property for purposes of land surveying or land preparation for development or other economic uses.

(b) Whether visual access is necessary to comply with the tree survey requirements herein.

(c) Whether the applicant provided barriers around all protected trees on the site or will use light machinery that does not penetrate or severely compact the soil for clearing protected area understory vegetation

(d) The impact upon natural and manmade systems including erosion and surface water management and other impacts identified in (F)(2).

(e) To this end the applicant shall provide a reasonable written plan for controlling erosion which may be expected

to occur as a result of the proposed clearing or grubbing.

(i) The plan shall incorporate some or all of the following measures necessary to achieve soil stabilization, prevent erosion, and promote efficient surface water management, including: temporary seeding and mulching, sodding, diversion berms, interceptor ditches, sediment barriers, sediment basins, and related appurtenances or devices.

(ii) All provisions of an erosion control plan shall be incorporated as express conditions of the land clearing permit issued and a violation of any of the conditions or provisions of the plan shall be considered a violation of this chapter, and subject to all enforcement provisions.

(G) **Approval or Denial of Permit.**

(1) **LDC Compliance Prior to Issuance of Permit.** The tree protection officer shall only issue a tree removal, mangrove alteration, or land clearing permit upon a finding that all applicable requirements of this chapter have been satisfied. No permit shall be granted if the tree protection officer determines that any one of the following conditions exists:

(a) **Ability to reasonably shift location of proposed improvements:** The applicant can reasonably shift the location of the structure, building, or improvement which he wishes to construct on the site, while maintaining the existence of the subject trees or mangroves and still permitting the construction of the building or improvement on the site.

(b) **Ability to reasonably modify design concept***:* The applicant can reasonably modify the design of a structure, building, or other improvement which he wishes to construct on the site while maintaining the existence of the trees or mangroves proposed to be removed and still permit construction of a substantially similar building on the site.

(c) **Land clearing or removal generates substantial adverse impact***:* The land clearing or the removal of the subject trees or mangroves will have a substantial adverse impact on the urban and natural environment.

(2) **Permit Denial.** If the tree protection officer denies the removal permit he shall set forth with particularity his reasons for the denial in writing.

(3) **Visible Permit Maintained on Site.** A copy of all permits issued pursuant to this chapter shall be maintained on site. Such permits shall be made visible on site for inspection and shall be contained within a protective cover.

(H) **Replacement or Relocation of Trees.** As a condition to granting a permit, the applicant shall be required to relocate or replace a tree being removed at the applicant's expense. The specifications regulating the replacement of trees are cited below:

(1) **Characteristics of Replacement Trees***:* The replacement tree or trees shall have at least equal shade potential, screening properties, or other characteristics comparable to that of the tree or trees requested to be removed.

(2) **Size of Replacement Trees***:* The replacement tree or trees are to be made according to a standard of one inch diameter at breast height (DBH) total replacement for each one inch DBH removed, unless otherwise agreed upon by both the tree protection officer and the applicant. Any number of trees may be utilized to meet the inch-for-inch requirement provided acceptable spacing and design are maintained.

(3) **Tree Species***:* Relocated or replacement trees shall include only species defined as protected trees under this chapter.

(4) **Minimum Standards for Replacement Trees:** All replacements must have a minimum overall planted height of eight (8) feet at the time of planting and a Florida Department of Agriculture Nursery Grade Standard (quality) of No. 1 or better.

(5) **Transplanting and Maintenance Requirements***:* All trees transplanted pursuant to this chapter shall be maintained in a healthy, living condition. Any trees which die shall be replaced by the applicant. The tree protection officer shall retain jurisdiction to insure compliance with this section.

(6) **Waivers of Replacement Tree Specifications**:

(a) The tree protection officer may waive the size or minimum standards specifications if the applicant can demonstrate that the current market conditions are such that replacement tree or trees meeting these specifications are not readily available.

(b) Similarly the number of required replacements may be waived by the tree protection officer if the tree protection officer determines that the remaining numbers of trees to be preserved on-site are of sufficient number and quality to substantially comply with the purpose and intent of this chapter.

(c) Substitute trees allowed under this waiver provision must have the approval of the tree protection officer.

(I) **Information Required for Application.** Application for issuance of any permit required by this section shall be made in writing to the town building official on a form provided by the town. The form shall request all information necessary to evaluate a particular application including, but not limited to, the following:

(1) A statement as to the applicant's interest in the property and reasonable proof of ownership.

(2) A legal description of the property and a boundary survey or accurate scaled drawing thereof.

(3) A tree survey indicating all trees and including those trees that are intended for removal, relocation, or alteration in any way and those which will be left undisturbed. A written explanation shall be included with the tree survey identifying those criteria in (E) through (H) which justify issuance of the requested permit.

(4) If land clearing is intended, an erosion control plan as described in (F), together with reasons for clearing or grubbing of the site.

(5) The application shall be submitted and processed concurrently with site plan or subdivision approval, as the case may be, when the approvals are otherwise required to make use of the property. The site plan or subdivision preliminary plat shall be prepared in a manner to allow ready comparison with the tree survey to assess whether the cited criteria have been met. All items shown shall be properly dimensioned, scaled, and referenced to the property lines, easements, and setback or yard requirements. If known, existing and proposed site elevations and major contours shall be included.

(6) An administrative fee to offset the cost of evaluating the application shall be collected in an amount determined by resolution of the town council. A copy of the State Tree Protection Manual for builders and developers will be issued to each applicant for use as a guide to development.

(J) **Inspection.** The filing of an application shall be deemed to extend permission to the tree protection officer to inspect the subject property if necessary for purposes of evaluating the application.

(K) **Period of Review.**

(1) For those applications which are not being processed concurrently with site plan or subdivision approval, the planning, zoning and variance board shall have fourteen (14) working days following receipt of a completed application within which to make a determination on whether a permit shall be issued as requested.

(2) If the permit is not issued, the board shall state in writing the reasons for denial and advise the applicant of any appeal remedies available.

(3) For good cause, the tree protection officer may request an extension, the period to be determined by the board, in which to make a determination, provided the extension is requested prior to expiration of the initial fourteen (14) day period.

(L) **Permit Expiration**

(1) Any permit issued hereunder shall remain valid for a term of thirty (30) days and may be renewable for a second period of thirty (30) days upon request to the tree protection officer.

(2) The tree protection officer may require reapplication and full review in those renewal cases where site conditions have changed substantially from the date of issuance of the initial permit as a result of natural growth of trees and vegetation, or high winds, hurricane, tornado, flooding, fire, or other act of God.

(3) If a permit required by this chapter has been issued concurrently with site plan or subdivision approval, then the permit shall run concurrently with the site plan or subdivision approval and shall be renewed together therewith.

(M) **Tree Trimming.** The National Arborist Association standards for pruning, guying, fertilizing, lightning protection and spraying for shade and ornamental trees is hereby adopted by reference for the town as fully as if set out at length herein.

(N) **Dune and Shoreline Vegetation Protection**. See division 167.03, Coastal Protection.

(O) **Protected Areas For Trees**

(1) **Determination of Protected Area**

(a) The tree protection officer shall review each application, and may inspect each site, for the purpose of making a determination as to the appropriate protected area to be designated for those protected trees on a given site.

(b) The protected area shall be established based upon consideration of the species, age, size, condition of the tree, or soil condition, topography, means of protective barrier proposed, or other relevant criteria, and shall be established for the purpose of protecting the roots and trunk of a protected tree both during and after construction.

(c) In no event shall the protected area exceed the drip line of the canopy area, nor shall the protected area be less than an area measured five feet radially from the center of the tree at its base.

(2) **Protective Barriers:** A protective barrier shall be placed around all protected trees prior to land preparation or construction activities according to the following:

(a) Protective barriers shall be placed at or greater than a six-foot radius of all species of mangroves.

(b) Protective barriers shall be placed at or greater than the full drip line of all protected native pine trees.

(c) Protective barriers shall be placed at or greater than 2/3 of the drip line of all other protected species.

(d) Protective barriers shall remain in place until all construction activities are terminated.

(e) No equipment, chemicals, soil deposits, or construction materials shall be placed within the protective barriers.

(3) **Use of Machinery***:* Land clearing and landscaping activities conducted prior to the installation of or subsequent to the removal of protective barriers, shall be accomplished with light machinery (weight under 5,000 pounds) or hand labor. This light machinery shall not penetrate or severely compact the soil in clearing understory vegetation within protected areas where protective barriers are not in place.

(4) **Marrings***:* Signs, building permits, wires, or other attachments of any kind shall not be permitted to be attached to any protected tree. Guy wires designed to protect trees are excluded from this prohibition.

(P) **Administration and Enforcement**

(1) **Local Permit Not Exclusive:** It is the intent of this chapter that permits or approvals required hereunder shall be in addition to and not in lieu of any federal, state, regional, or other local approvals which may be required for the same or similar activities. Compliance with provisions of this chapter does not excuse any person for noncompliance with other applicable federal, state, regional, or local laws.

(2) **Variances and Appeals***:* A variance from any of the substantive requirements of this section or an appeal of any administrative determination made by the tree protection officer may be obtained in accordance with the procedures set forth in this code. The planning, zoning, and variance board of the town shall be the board to which all variance requests or appeals are made.

(Q) **Remedy.** Any violation of this section is also subject to prosecution before the Code Enforcement Board in accordance with applicable law and subject to penalties allowable under 30.80 through 30.92. In addition to either of the foregoing remedies, the town or any aggrieved party having a substantial interest in the protections provided by this chapter may apply directly to a court of competent jurisdiction for mandatory or prohibited injunctive relief. In any enforcement

proceeding, the adjudicating body may consider mitigating measures voluntarily undertaken by the alleged violator, such as replacement or relocation of trees or vegetation or other landscape improvements, in fashioning its remedy. The adjudicating body may also require such restorative measures. The violator shall be assessed any costs associated with administering the violation, including but not limited to contracted consultant fees as well as any public costs associated with improvements underlying required replacement and/or relocation of trees, vegetation, or other landscaping improvements. If a landowner and/or other person or entity found in violation of this chapter fails to comply with mandated penalties, the town may deny issuing the subject violator any additional permits provided for in this chapter until the subject violator complies with assessments, penalties, and any other corrective measures imposed pursuant to this chapter.

(R) **Penalty.** A violation of any provision of this section shall be punishable upon conviction by a fine not to exceed five hundred dollars ($500), or by imprisonment in the county jail up to sixty (60) days, or both a fine and imprisonment. The destruction or alteration of each tree or plant under this section shall be considered a separate offense. The destruction of an historic or specimen tree, mangrove, or any dune vegetation, contrary to this chapter shall receive the maximum penalty provided by law.

167.03 COASTAL PROTECTION. See §165.07(E) for construction standards in the Coastal High Hazard Area (V Zone).

(A) **Dune Protection.** In order to protect the natural vegetation and the main dune bluff fronting on the Atlantic Ocean, the following restrictions shall be observed:

(1) **Construction Seaward of Coastal Construction Control Line**:

(a) No structure shall be located seaward of the coastal construction control line established by the Department of Natural Resources pursuant to F.S.A. Ch. 161, as may be amended from time to time, except as provided elsewhere in this chapter.

(b) This provision shall be construed to establish a local setback ordinance within the meaning of Florida Administrative Code Chapters 16B-25 and 16B-33, as may be amended from time to time.

(c) A survey accompanying the building permit shall document conformance herewith.

(d) See §161.01 for maximum building floor elevations and §165.10 for minimum elevation.

(2) **Dune Vegetation**:

(a) Except as provided herein, encroachment or ingress onto or any disturbance of the main dune or natural vegetation seaward of the state coastal construction control line is prohibited, including encroachment or disturbance caused by individuals upon foot or by vehicle of any kind.

(b) At the time of the initial site inspection, the coastal line shall be marked denoting this protected zone.

(3) **Restriction on Structures***:* No structure, other than dune crossover, observation tower constructed in the interest of public safety, single-family detached dwelling or other structure authorized by the Department of Environmental Protection (DEP) may be located seaward of the coastal construction control line. The design of any such allowed structure must be approved in advance by DEP and the planning, zoning and variance board of the town. See (6) below for mandatory dune crossovers and crossover limitations

(4) **Vehicles***:* Except as expressly provided in (5) below, it shall be unlawful for any person to operate, drive, or propel any truck, tractor, bulldozer, grader, crane, automobile, motorcycle, dune buggy, moped, minibike, all-terrain cycle, or any other vehicle seaward of the coastal construction control line; excluding, however, any of the aforementioned vehicles when operated by the state or a political subdivision of the state.

(5) **Dune Leeway Zone***:* Notwithstanding the foregoing provisions, during construction in the vicinity of the main dune, an applicant who has received the express written approval of the Bureau of Beaches and Shores of the Department of Environmental Protection to carry on construction activity seaward of the coastal construction control line may make use of a leeway zone of up to fifteen (15) feet seaward of the control line for those activities related to construction of improvements up to or landward of the control line.

(a) No permanent improvement or structure may be made in the leeway zone and, prior to encroachment therein, a temporary barrier running parallel to the coastal construction control line shall be placed at the most seaward

extent of the leeway zone to identify the limits beyond which no encroachment of any kind may occur. All activities related to construction of an approved dune crossover or elevated bridge shall be governed by the authorization given under (3) above.

(b) All proposed activity within the fifteen (15) foot leeway zone shall be described in writing and submitted to the planning, zoning and variance board for prior approval, in addition to the approval by the Bureau of Beaches and Shores required above.

(c) Approvals required under this section may be obtained concurrently with site plan or subdivision approval, as the case may be, but must be obtained in any event prior to the scheduled activity.

(d) The leeway zone shall be revegetated with natural indigenous dune vegetation upon completion of construction activities and prior to issuing any certificate of occupancy for the subject improvements.

(e) The applicant remains responsible for successful reclamation of the dune vegetation temporarily destroyed under this section.

(6) **Required Dune Crossovers**:

(a) Every multiple-family dwelling structure containing more than three (3) living units and any single-family subdivision development constructed on oceanfront property shall have as a part of its required improvements, one (1) dune crossover to the ocean.

(b) Any of the structures or developments set forth in (a) above having over two hundred (200) feet of oceanfront may construct additional crossovers to the ocean, but in no case shall any crossover be nearer than two hundred (200) feet from another crossover utilized by the same multiple-dwelling structure or subdivision development.

(c) Common dune crossovers between adjacent multiple-family projects are acceptable and encouraged.

(7) **Construction Specifications for Dune Crossovers**:

(a) No dune crossover shall be constructed except in accordance with criteria and specifications that are adopted by a resolution of the town council and are on file with the building official.

(b) Each crossover shall have a ten (10) foot wide marl approach path for emergency vehicles.

(c) Plans and specifications of all dune crossovers shall be submitted to the building official for approval. After determining that the plans conform to town requirements, the building official shall indicate his approval of the plans without the necessity of presentation to the planning, zoning and variance board or the town council.

(d) All dune crossovers shall be approved by the state before a building permit is issued.

(8) **Walkways***:* The owner of any single-family dwelling desiring to build a walkway to the ocean over the dune lines shall comply with the requirements adopted by a resolution of the town council and on file with the building official for use in single-family dwellings.

(9) **Illegal Walkways***:* Any future dune crossover, walkway, or other similar oceanfront structure not complying with the provisions of this subchapter shall be removed at the expense of the landowner; expense shall include the actual cost of removal, court costs and legal fees to collect or force compliance with this chapter.

(B) **Lighting for Sea Turtle Protection.** All lights illuminating buildings or associated grounds for decorative, recreational or security purposes shall be shielded in such a manner that they are not visible from the beach. Lights illuminating dune crosswalks shall also be shielded, if these lights are visible from the beach. Street lights shall be located or modified so their illumination will travel away from the beach and cannot be seen from it.

167.04 ESTUARINE WETLANDS BUFFER REQUIREMENT. Any wetland on the unbridged islands or barrier island that abuts the St. Johns River estuary and is classified as "jurisdictional" by the Florida Department of Environmental Protection shall be protected from development by a buffer which meets the following design standards:

(A) **Width***:* The natural buffer shall average twenty-five (25) feet in width but in no case shall be less than fifteen (15) feet in width or set back from the estuary.

(B) **Access***:* The only exception the vegetative buffer shall be an environmentally sensitive wood accessway to the water for a water-dependent use as defined in Sec. 167.01(B). No impervious surfaces shall be permitted.

(C) **Plant Materials***:* Any exotic species as specified in Sec. 163.04(D) shall be removed and replaced with native hardwood species approved by the town council.

(D) **Upland Berm***:* A vegetated berm, swale or other approved run-off control device shall be installed on the upland side of the buffer. All exotic vegetation shall be removed from this buffer and berm area and replaced by native species. No impervious surface shall be permitted therein.

167.05 OTHER ESTUARINE SHORELINE

(A) **Shoreline Alteration**

(1) **Avoid Adverse Impacts.** Shoreline alteration activities, such as bulkheads, shall not be undertaken in a manner which adversely impacts water quality, the natural habitat or adjacent shore areas.

(2) **Necessity.** Shoreline alteration shall not be permitted unless the proposed activity is necessary for a specific purpose, such as shoreline stabilization efforts, and compatible with the environment and adjacent uses.

(3) **Other Environmental Impacts.** Shoreline alteration activities shall not obstruct water flow, hinder navigation, increase erosion, hinder the natural sand transport system, or unduly restrict public use of the waters below the mean high water line. All shoreline alterations shall be accomplished by use of the least environmentally damaging methods and designs possible.

(4) **Setback from Mean High Water.** No bulkheading shall be permitted waterward of the mean high water line except when it is shown to be in the public interest.

(5) **Shoreline Stabilization Methods and Priorities.** Shoreline stabilization shall be accomplished by installing appropriate native wetland vegetation. Hardening of the shoreline shall be allowed only when erosion is causing a serious threat to life or property. Riprap materials, pervious interlocking brick systems, filter mats, and other similar stabilization methods shall be used in lieu of vertical seawalls whenever feasible.

(B) **Shoreline Use and Access**

(1) **Use:** First priority should be given to water-dependent or water-related uses in conformance with the Comprehensive Plan, and which comply with the activities and exceptions described above for environmentally sensitive resources.

(2) **Access***:* High priority shall be given to acquiring, maintaining and enhancing access, scenic views and recreational use of shoreline areas, especially beaches along the Atlantic Ocean.

(C) **Dock Facilities.** Docks, including multi-slip docks, shall not be approved by the town until the applicant demonstrates compliance with all applicable federal and state laws and administrative rules, including 160.20.04(5), *FAC,* governing Aquatic Preserves as well as applicable policies of regional agencies. Site plans are required for all docks; the environmental assessment accompanying the site plan must demonstrate that the facilities will not adversely impact natural marine resources, including, but not limited to, sea grasses, estuarine waters, manatees and other living marine organisms. The site plans shall indicate:

(1) Location relative to all impacted natural marine resources.
(2) Structural specifications.
(3) Description of all impacted natural marine resources, including their location and physical characteristics.
(4) Multi-slip dock facilities shall be located so as to prevent or minimize dredging and shall not disturb sea grass beds or adjacent wetlands.
(5) Availability and location of sewage pump-out facilities.
(6) Hurricane contingency plans.
(7) Mitigation techniques proposed to compensate for any potential environmental disruption, excepting docks for single-family homes.

167.06 **PUBLIC HAZARDS ON ENVIRONMENTALLY SENSITIVE LANDS.** No activity shall be allowed that results in the alteration, degradation or destruction of any environmentally sensitive resources covered in 167.01, 167.03,

167.04 and 167.05 except when the activity is necessary to prevent or eliminate a public hazard. In order for this exception to apply, it must be determined that:

(1) A hazard or danger exists.
(2) The proposed activity would eliminate or prevent the hazard.
(3) The proposed activity represents the best way to accomplish the desired end with minimal impact on protected resources.

167.07 EROSION AND DUST. The site plan review environmental assessment shall include review of plans to minimize soil erosion and blowing dirt through mulching and spraying techniques. Excavation for the primary purpose of materials sales rather than construction (i.e. mining) shall be prohibited.

167.08 LAKE AND WET DETENTION PONDS: LITTORAL ZONES

(A) **Littoral Zone**

Prior to construction of any new lakes or other body of water, the plat or site plan shall show a vegetated littoral zone of at least ten (10) square feet for each lineal foot of lake shoreline.

(B) **Surface Water Management Plan**

Prior to construction of any phase of a project, the developer shall prepare a surface water design and management plan providing a littoral zone along the perimeter of ponds and lakes of new development. This section applies only to wet detention ponds and other like water bodies designed to be wet over the course of the entire year and used for stormwater management. The plan should:

(1) Include typical cross sections of the surface water management system showing the average water elevation and the -3 foot contour (i.e., below average elevation).

(2) Specify how vegetation is to be established within this zone, including the extent, method, type and timing of any planting to be provided.

(3) Include the removal of all exotic vegetation and the planting of native vegetation within the littoral zone.

(4) Provide a description of any management procedures to be followed in order to assure the continued viability and health of the littoral zone. The littoral zone as established should consist entirely of native vegetation and should be maintained permanently as part of the water management system.

167.09 STORMWATER MANAGEMENT

(A) **Prohibition on Depositing Non-Stormwater Run-off into Storm Conveyance Systems**. It shall be unlawful for any person or persons to deposit non-stormwater materials as specified in the *State of Florida Department of Environmental Protection Generic Permit for Discharge of Stormwater from Phase II Municipal Separator Storm Sewer Systems* (FDEP Document 62-621.300(7)(a) into storm conveyance systems.

(B) **Required Submittal of On-Site Stormwater Management Plan (SMP**). All preliminary plats and site plans shall include an "On Site Stormwater Management Plan. See §166.05 “Preliminary Plat Procedures” and §168.04 “Site Plans.”

(C) **On-Site Stormwater Management Plan Requirements.** All development projects shall be subject to the requirements of this section. The review of stormwater management plans for all development projects shall be based upon the net increase in impervious surface resulting from the development. If a site is to be filled in advance of the issuance of a building permit, the filling and grading (drainage) plan must be approved by the city engineer. Further, if construction does not commence within 90 days of the date of filling, then the site must be vegetated to prevent erosion. The proposed stormwater management plan shall meet all applicable St. Johns River Water Management District and Florida Department of Transportation stormwater criteria.

(1) **Developments of Less than 2,500 Square Feet.** Stormwater management for new single-family residences and all renovations, remodels, additions or other modifications (pools, driveways, etc.) shall include the site being filled and graded to direct all surface water runoff to the right-of-way drainage system or other approved drainage facilities. No surface water runoff may be directed to adjacent properties. Where no approved drainage system exists, the site shall be designed to contain the runoff from the first one inch of rainfall. Prior to the issuance of a building permit, a filling and grading (drainage) plan must be approved by the Town Engineer. This plan must contain the flood zone, actual elevations, proposed site elevations and lowest floor elevations.

(2) **Developments of 2,500 Square Feet or More**. All development that includes 2,500 square feet or more shall provide a stormwater management plan which includes all of the information and calculation requirements as specified in this section prior to receiving a site plan or, if a no site plan is required, prior to receiving a building permit. The applicant/owner shall submit such a plan with the site plan/minor change application. All stormwater management plans shall include the following information:

(a) A soil boring log prepared by an approved geotechnical firm indicating representative soil types and the groundwater table.

(b) Percolation tests pursuant to best management practices.

(c) The size, grade, and elevation of all existing or proposed on-site and/or public drainage facilities located within 200 feet of the proposed development. Elevations shall be based upon National Geodetic Vertical Datum (N.G.V.D.) of 1929.

(d) Description of the existing predevelopment drainage characteristics of the land, including those areas contributing stormwater which passes through the site.

(e) Right-of-way elevations of any street contiguous to the site and the locations of these elevations shall include, but are not limited to, the centerline of roadway, edge of roadway (curb if applicable), swales, and sidewalk at intervals not to exceed 50 feet.

(f) Proposed finished elevation of each building site and first floor level and a proposed grading plan.

(g) Transitional property line grades (elevations) shall be indicated on the grading plan so that stormwater impact upon adjacent sites may be precluded.

(h) Proposed system for the orderly retention and disposal of surface water runoff with the system capabilities of having a minimum ability to accommodate the amounts.

(i) All swales, retention areas, and all other drainage facilities proposed shall be indicated on the grading plan with elevations and guidelines shown as applicable.

(j) Location and method of connection with off-site drainage facilities to accommodate the site's excess surface water overflow, including documents indicating legal access across private property, if applicable.

(k) Proposed method(s) of erosion and sedimentation control consistent with State Best Management Practices.

(l) The Town Engineer may waive any of the requirements set forth above if the Town determines that the waiver does not inhibit proper stormwater management.

All developments with 2,500 or more square feet shall include a stormwater management plan prepared by a registered professional engineer licensed to practice in the State of Florida. This plan shall meet the following criteria:

CRITERIA FOR ON-SITE STORMWATER MANAGEMENT PLAN	
Quantitative Criteria	**Specifications**
Design Storm:	25-year, 24-hour design storm; post-development conditions shall not increase the amount or rate of run-off beyond predevelopment conditions.
Design Rainfall Distribution:	F.D.O.T.--Zone 7 Rainfall Curve.
Inflow Hydrograph Method:	Rational, SCS, Santa Barbara, etc., as chosen by plan designer (Florida Registered Professional Engineer)
Total Volume:	Site must retain at least the volume from a 25-year/24-hour storm. Lesser volumes may be considered if economic hardship is clearly demonstrated.
Maximum Discharge Rate:	Post-development shall not exceed predevelopment.
Percolation Test:	Required
Qualitative Criteria	
Detention/Retention:	Post-development shall not exceed predevelopment.
Wet/Dry:	Either wet or dry retention/detention is acceptable dependent upon site conditions and location.
Time:	Full capacity recovery within 36 hours.
Volume:	25-year, 24-hour design storm.
Percolation:	Disposal on-site via surface or underground exfiltration system(s) or combination thereof.
Types of Discharge Structures	Skimming devices and/or weirs required where applicable and practical with the design subject to review by the Town Engineer.
Drainage Area Design Standards	
Side Slopes:	4:1 or less required; however, upon demonstrated need and adequate justification, the Town Engineer may consider and approve the use of 3:1 maximum side slopes.
Vegetation:	Solid sod
Maximum Depth:	Eighteen inches; any depth greater than 18 inches is subject to review by the Town Engineer with side slopes and site constraints being critical criteria.
Maintenance Plan & Completion Requirements	No changes to approved plan allowed except as modified by site plan review process; all site stormwater management facilities shall be maintained per approved plan. After completion of the stormwater management facilities and prior to the issuance of a certificate of occupancy, the designer of the plan shall submit a certification attesting the facilities have been constructed in accordance with the approved stormwater management plan.
Easements:	Release or dedication of easements as may be required; no stormwater management facilities are to be placed in existing or proposed easements other than approved drainage easements. Any use of such stormwater easements is subject to approval by the Town of Indian River Shores.

(D) **DESIGN CRITERIA**

(1) **Design Frequency.** The required design storm frequency for the overall site development is given in the Quantitative Criteria for the On-Site Stormwater Management Plan and the secondary conveyance design frequencies are shown below in Table 167.09(D)-1.

(2) **Design Flows.** The determination of design flows for a culvert/pipe installation shall be in accordance with acceptable and relevant methods and procedures for determining stormwater flows such as, but not limited to: the Rational Method; HEC-5; Santa Barbara Urban Hydrograph; SCS Unit Hydrograph, etc.

Table 167.09 (D)-1: Stormwater Management System Component Design Storm Frequencies and Freeboard Requirements

Structure Type	Frequency (Yrs.)	Freeboard Requirement
Cross Drain Culverts	25	Highest head (HGL) 12" below edge of pavement
Structures for Primary Conveyance of Off-Site Stormwater Pipe Systems Canals/Ditches	 25 25	Design storm HGL 12" below finished grade
Paving Stormwater Collection Systems (Secondary Conveyances) Public or Private Roadways Public or Private Parking	 10 5	No HGL beyond gutter or edge of pavement (see Note #2)
Stormwater Management Ponds	25	HGL 12" below top of bank
Finished Floor Elevations	100	See Section 165.05 of Code

1. Designs shall be analyzed to verify that potential off-site flood elevations due to the post-development storm events are less than or equal to pre-development flood elevations and flow rates.
2. The computed hydraulic grade line elevation (HGL) at each junction/inlet in a system must be below the edge of pavement elevation, gutter line elevation, top of grate elevation, or top of manhole elevation, whichever is lower, at that junction/inlet.

(3) **Minimum Culvert Size.** Culvers shall comply with design criteria stated in Table 167.09(D)-2 below. Culverts shall be sized as needed to convey the design stormwater runoff. If the culvert size required is less than the criteria specified in the table below, use the criteria in the table as the minimum size to reduce likelihood of clogging and blockage.

Table 167.09(D)-2: Minimum Culvert Size	
Cross Drains	18" or equivalent
Stormwater Collection System	15" or equivalent
Manifold yard piping (on private or public building structures) that tie into stormwater collection systems	8" single commercial structure 6" single structure

(a) **Pipe Size Increment.** Pipe sizes above eighteen (18) inches or equivalent shall be based upon six (6) increment or equivalent increases.

(b) **Pipe Length.** The maximum length of culvert to be used without an access structure is specified in Table 167.09(D)-3

Table 167.09 (D)-3: Maximum Pipe Length Criteria (From FDOT Drainage Manual, 1987)	
Pipe Size (Inches)	**Maximum Length (Feet)**
15" Pipe or Equivalent	100[1]
18" Pipe or Equivalent	300
24" to 36" Pipe or Equivalent	400
42" and Larger Pipe or Equivalent	500
Box Culvert	500

[1] Up to 300-feet maximum length may be used when debris control is provided at any and all inlet locations, and full-flow culvert velocity exceeds 3 feet/second.

(c) **Minimum Physical Slope.** The minimum physical slope for a culvert shall be that which produce a velocity of at least 2.5 feet per second when the culvert is flowing full or half full and the hydraulic gradient is equal to the bottom slope of the culvert. The Manning equation shall be used to calculate the velocity under these conditions.

(d) **Maximum Velocity.** The maximum allowable internal velocity for culverts shall be 10 feet per second providing that the HGL does not over top the structures. The maximum allowable outlet velocity for culverts shall be sufficient to ensure that downstream erosion will not occur. Acceptable energy dissipation and erosion protection measures must be provided.

(e) **Design Tailwater.** All culvert installations shall be designed taking into consideration the tailwater of the receiving facility or body of water (inlet or outlet control). The tailwater elevation must be determined by hydrologic and hydraulic calculations based upon the design criteria and frequencies shown in Table 167.09(D)-1.

(4) **Material Specifications for All Culverts.** Allowable culvert and other stormwater management system pipe materials shall be the same as those culvert and pipe materials allowable by the Florida Department of Transportation (FDOT). Any size, cover, location or any other constraint or limitation placed on the use of a particular material by the FDOT shall also be required by the Town. The required guidance and procedures for selecting alternate culvert and pipe materials for installation shall be found in the FDOT Drainage Manual and in any and all supplemental guidance and procedures officially issued by the FDOT. Any new materials or modifications to constrained or limited materials shall not be allowable in the Town until such time that the FDOT has officially accepted the material for use.

CHAPTER 168 DEVELOPMENT REVIEW PROCEDURES

168.01 DEVELOPMENT PERMITS

(A) Types of Development Permits

In order to develop land in the town, one or more of the following procedures are required depending upon the specifics of the case although any parcel must be platted before a building permit will be issued; all but the comprehensive plan amendment (1) are potentially considered development permit applications by state statute:

(1) Comprehensive plan amendment;
(2) Rezoning: map or land development code text change;
(3) Plat or subdivision approval or amendment;
(4) Site plan approval (including landscape plan);
(5) Conditional use;
(6) Planned residential development district (PRD) approval or amendment;
(7) Development of Regional Impact (DRI);
(8) Variance;
(9) Building or sign permit;

This chapter explains the review procedures and criteria necessary to receive these development permits. See also Sec. 165.12 for flood hazard permit requirements, 167.02 for tree removal permit requirements, and Sec. 167.01 for special wetland review procedures.

(B) Planning, Zoning and Variance Board

See Chapter 30 (Section 30.30-30.34) for specifics on the function of the Planning, Zoning and Variance Board and its Design Review Committee.

168.02 PUBLIC FACILITY CAPACITY OR CONCURRENCY

In addition to the development review procedures contained in this chapter, except for approved DRIs and a one- or two-family house (on a lot in ownership separate from adjacent lots), all development projects must also receive a concurrency review to determine public facility capacity adequacy. Public facilities and services may be determined to be adequate to serve the needs of a proposed development when traffic circulation, recreation, drainage, potable water, solid waste and sanitary sewer public facilities and services will be available to meet established level-of-service standards, consistent with Chapter 163 Florida Statutes and the concurrency management provisions of this chapter.

168.03 CONCURRENCY STANDARDS AND PROCEDURES

(A) **Level of Service Standards.** New development shall not be approved unless there is sufficient available design capacity to sustain the following levels of service as established in the Indian River Shores Comprehensive Plan:

(1) **Streets:** "C" for all roads except "D" during peak tourist season; Average Annual Daily Traffic (AADT) shall be the measure.

(2) **Sanitary Sewers:**

255 gallons per day per dwelling unit. (113 gals. per capita per day)

2500 gallons per day per acre for commercial (i.e. equivalent to 22 gallons per capita per acre per day)

(3) **Solid Waste:** 21.0 pounds per capita per week (or 3.0 lbs. per capita/day).

(4) **Drainage:** 25-year, 24-hour design storm; post-development conditions shall not increase the amount or rate of run-off beyond predevelopment conditions.

(5) **Potable Water:**

Residential - 450 gallons per dwelling unit per day; (200 gallons per capita per day)

Commercial - 2,500 gallons per day per gross acre (i.e. equivalent to 22 gallons per capita per acre per day)

(6) **Recreation:** Provide 2.5 acres of neighborhood park per 1,000 population plus the following facility standards:

TABLE 1: RECREATION FACILITY STANDARDS

Facility	Median Standard
Tennis Courts	1 court per 2,000 pop.
Racquetball/Handball Courts	1 court per 10,000 pop
Basketball Courts	1 court per 5,000 pop.
Softball/Baseball Diamond	1 diamond per 3,000 pop
Swimming Pool	1 pool per 8,700 pop
Golf Course	19-hole per 50,000 pop
Picnic Tables	1 table per 500 pop
Shuffleboard Courts	1 court per 1,500 pop
Bicycle/Jogging Path	0.56 miles per 1,000 pop.

(B) **Development Subject to Adequacy Determination**

(1) **New Development***:* All development permits including site plans, plats, conditional use applications, rezoning and building permits for principal buildings. See (G) for explanation of permitting stages.

(2) **Additional Development or redevelopment:** All redevelopment or additional development of previously improved lands shall be subject to an adequacy determination for the additional capacity needed to serve the difference between the capacity to be consumed by the proposed additional development and the capacity generated or consumed by the existing development.

(3) **Exempt Property:** Exempt property includes:

(a) Development authorized by an approved Development of Regional Impact (DRI) Development Order.

(b) Development found by the town attorney to have vested rights with regard to any effected roadway segments or infrastructure capacity reservations; both State statute and common law shall be considered. See also (G)(2)(a) below.

(c) Development which is one single family or duplex dwelling on a lot in single and separate ownership from adjacent lots.

(d) Any development which clearly causes no increase in public facility usage due to the similarity in use; however, any increase in the amount of required parking shall require concurrency.

(e) Development which is a government facility which the town council finds is essential to the health or safety of the residents.

(C) **Measurement of Level-of-Service**

(1) **Water and Wastewater***:* Measurement of the water capacity will be based on the design capacities of both the lines serving the property and the Vero Beach potable water supply system. Wastewater capacity will be measured in the same manner. Water demand and sewage generation rates will be based upon Tables 2 and 3 which follow this section or an alternative method acceptable to the director of utilities.

(2) **Roadways:** The standard for measuring highway capacities shall be the Florida DOT Table of Generalized Daily Level-of-Service Maximum Volumes. The measurement of capacity may also be determined by engineering studies provided that analysis techniques are technically sound and acceptable to the town engineer. In determining capacity, existing volumes plus "committed" trips from approved site plans and recorded plats shall be included.

Traffic generation shall be based upon the Institute of Transportation Engineers Manual.

The impact shall be presumed to be limited to the collector or arterial serving the local street giving access to the lot, or to the collector or arterial giving direct access to the lot

(3) **Solid Waste:** Table 4 may be used to calculate solid waste generation rates. Capacity is determined by the capacity of the Indian River County landfill.

(4) **Drainage:** Measurement of drainage shall be based on assumed runoff rates (for example, from the St. John's River Water Management District or FDOT tables) subject to approval by the town engineer. Typically, this shall be achieved by a combination of on-site detention and French drains.

(5) **Recreation***:* Measurement shall be based on data in the town comprehensive plan and the latest town population estimate with any necessary interpretation provided by the town manager.

(D) **Available Capacity Determination.** For purposes of these regulations, the capacity availability shall be determined by:

(1) Adding together:

(a) The total design capacity of existing facilities operating at the required level of service; and

(b) The total design capacity of any new facilities that will become available concurrent with the impact of the development. The capacity of new facilities may be counted only if one or more of the following is shown:

For Water, Sewer, Solid Waste and Drainage:

(i) The necessary facilities are in place at the time a site plan or plat approval is issued, or

(ii) Such approval is issued subject to the condition that the necessary facilities will be in place when the impacts of development occur, or

(iii) Construction of the new facilities is under way at the time of site plan or plat approval, or

(iv) The new facilities are guaranteed at a specific time in an enforceable development agreement. An enforceable development agreement may include, but is not limited to, development agreements pursuant to Section 163.3220, Florida Statutes, or an agreement or development order pursuant to Chapter 380, Florida Statutes.

For Recreation:

(i) Paragraphs #i-iii above.

(ii) The new facilities are the subject of a binding executed contract for the construction of facilities to be completed within one year of the time the development permit is issued, or

(iii) A development agreement whereby construction begins within one year.

For Traffic:

(i) The new facilities have been included in a financially feasible five-year capital improvement program and construction is scheduled for the third year or earlier, or

(ii) Paragraphs #i-iii directly above.

(2) Subtracting from that number the sum of:

(a) The design demand for the service created by existing development; and
(b) The new design demand for the service (by phase or otherwise) that will be created concurrent with the impacts of the proposed site plan or plat by the anticipated completion of other presently approved development projects.

(E) **Burden of Showing Compliance on Applicant.** The burden of showing compliance with these levels of service requirements shall be upon the applicant. In order to be approvable, applications for development approval shall provide sufficient and verifiable information showing compliance with these standards.

(F) **Concurrency Monitoring System.** The building official shall be responsible for monitoring development activity to

ensure the development is consistent with the Comprehensive Plan. All existing and committed development and its impact on facilities subject to level-of-service standards shall be recorded. Monitoring shall include:

(1) A quarterly report of all changes in zoning districts.

(2) A quarterly summary of all building permits.

(3) A quarterly summary of all permits issued for demolition of buildings.

(4) A quarterly summary of all certificates of occupancy.

(G) **Concurrency Rights Reservation and Effective Period**

(1) **Timing of Capacity Reservations.** Although preliminary concurrency reviews can occur at any stage in the review process, compliance will be finally calculated and capacity reserved at time of final action of an approved site plan, final plat building permit if no site plan is required or enforceable developer's agreement. Applications for development permits shall be chronologically logged upon approval to determine rights to available capacity.

(2) **Effective Period**:

(a) A building permit application must be submitted within twelve (12) months of site plan approval to preserve the capacity reservation. An extension of one (1) year may be issued by the town council. Only those dwelling units which have received their building permits will have their capacity reserved.

(b) Developer agreements as described in Chapter 163.3220, the "Florida Local Government Development Agreement Act" or other enforceable development agreement shall have a valid concurrency period not to exceed five (5) years or as may be modified.

TABLE 2
POTABLE WATER DESIGN FLOWS

Facility Type	Water Use Gallon Per Day
Residential:	
Single-Family House	375
Duplex, Triplex, Townhouse & Apt. Per Unit	270
Mobile Home	108
Auditorium Per Seat	5
Bar or Cocktail Lounge Per Seat	21
Boarding School (Students & Staff Per Person)	108
Boarding House Per Person	54
Bowling Alleys (Including Bar & Food Services. Per Lane)	215
Churches Per Sanctuary Seat	3
Churches with Kitchen Per Sanctuary Seat	7
Construction Camps (Semi-Permanent Per Person)	54
Country Clubs:	
Per Resident Member Per Room	108
Per Seat (Bar, Dining)	27
Day Schools:	
With Cafeterias, Gyms & Showers Per Pupil	27
Without Cafeterias, Gyms & Showers Per Pupil	16
With Cafeterias but no Gyms & Showers Per Pupil	21
Factories: (No Processing or Industrial)	
With Showers Per Person	37
Without Showers Per Person	21
Hospitals:	
With Laundry Per Bed	270
Without Laundry Per Bed	214
Landscape & Lawn:	
Per square foot of Area	0.35
Laundromats Per Machine	428
Motels & Hotels Per Room	161
Movie Theaters Per Seat	5
Nursing Homes Per Bed	108
Offices Per Person	21
Picnic Parks:	
With Bathhouse Shower & Toilet	11
Toilets Only	5
Public Institutions Per Person	108
Restaurants (Including Toilets):	
24 Hour Per Seat	54
Not 24 Hour Per Seat	39
Drive-in Per Car Space	16
Cocktail Lounge Per Seat	21
Rooming Houses Per Day	39
Service Stations:	
Full Service Stations:	
First Two Bays	810
Each Additional Bay	375
Self Service Stations:	
Per Fuel Pump	108
Shopping Centers:	
(No Food Service or Laundry)	
Per Square Foot of Floor Space	0.10
Stores:	
(No Food Service or Laundry)	
Per Square Foot of Floor Space	0.10
Swimming Pools Per Person	10

TABLE 2 (Continued)
POTABLE WATER DESIGN FLOWS

Facility Type	Water Use Gallon Per Day
Warehouses:	
(No Food Service or Laundry)	
Per Square Foot of Floor Space	0.10

In the case where the type of connection is not listed then the most suitable one is to be used.

The Town retains the authority to require appropriate information to be submitted in accordance with American Water Works Association (AWWA) standards to settle any dispute.

TABLE 3
SANITARY SEWER DESIGN FLOWS

Facility Type	Daily Flow in Gallons Per Day
Residential:	
Single-Family House	315
Duplex, Triplex, Townhouse & Apt. Per Unit	225
Mobile Home	90
Auditorium Per Seat	5
Bar or Cocktail Lounge Per Seat	18
Boarding School (Students & Staff Per Person)	90
Boarding House Per Person	45
Bowling Alleys (Including Bar & Food Services. Per Lane)	180
Churches Per Sanctuary Seat	3
Churches with Kitchen Per Sanctuary Seat	6
Construction Camps (Semi-Permanent Per Person)	45
Country Clubs:	
Per Resident Member Per Room	90
Per Seat (Bar, Dining)	23
Day Schools:	
With Cafeterias, Gyms & Showers Per Pupil	23
Without Cafeterias, Gyms & Showers Per Pupil	14
With Cafeterias but no Gyms & Showers Per Pupil	18
Factories: (No Processing or Industrial)	
With Showers Per Person	31
Without Showers Per Person	18
Hospitals:	
With Laundry Per Bed	225
Without Laundry Per Bed	180
Laundromats Per Machine	360
Motels & Hotels Per Room	135
Movie Theaters Per Seat	5
Nursing Homes Per Bed	90
Offices Per Person	18
Picnic Parks:	
With Bathhouse Shower & Toilet	9
Toilets Only	5
Public Institutions Per Person	90
Restaurants (Including Toilets):	
24 Hour Per Seat	45
Not 24 Hour Per Seat	33
Drive-in Per Car Space	14
Cocktail Lounge Per Seat	18
Rooming Houses Per Day	33
Service Stations:	
Full Service Stations:	
First Two Bays	680
Each Additional Bay	315
Self Service Stations:	
Per Fuel Pump	90
Shopping Centers:	
(No Food Service or Laundry)	
Per Square Foot of Floor Space	0.10
Stores:	
(No Food Service or Laundry)	
Per Square Foot of Floor Space	0.10

TABLE 3 (Continued)
SANITARY SEWER DESIGN FLOWS

Facility Type	Daily Flow in Gallons Per Day
Warehouses:	
(No Food Service or Laundry)	0.10
Per Square Foot of Floor Space	0.10

In the case where the type of connection is not listed then the most suitable one is to be used.

The Town retains the authority to require appropriate information to be submitted in accordance with American Water Works Association (AWWA) standards to settle any dispute.

TABLE 4
SOLID WASTE GENERATION RATES

Facility Type	Generation Per Day
Residential	12.0 lbs. per single-family or two-family unit 7.0 lbs. per multifamily unit
Industrial & Commercial	
Factory/Warehouse	2 lbs. per 100 square feet
Office Buildings	1 lb. per 100 square feet
Department Store	4 lbs. per 100 square feet
Supermarket	9 lbs. per 100 square feet
Restaurant	2 lbs. per meal per day
Drug Store	5 lbs. per 100 square feet
School	
Grade School	10 lbs. per room & ¼ lb. per pupil
High School	8 lbs. per room & ¼ lb. per pupil
Institution	
Hospital	8 lbs. per bed
Nursing Home	3 lbs. per person
Home for Aged	3 lbs. per person
Rest Home	3 lbs. per person

168.04 SITE PLANS

(A) **Site Plan Required.** No structure, other than a single-family detached house on a lot in single and separate ownership from adjacent lots, shall be erected or expanded unless a site plan shall be submitted and approved pursuant to the provisions of this subchapter.

(1) **Preliminary Site Plans.** A preliminary site plan may be submitted for any development project requiring a site plan as defined in the Land Development Code of the Town of Indian River Shores, Section 168.04 "Site Plans."

(2) **Components of a Preliminary Site Plans.** A preliminary site plan shall include the following:

(a) **Existing Natural Features**: This includes but is not limited to soils, topography, water areas, trees and other vegetation.

(b) **Structures:** Proposed structures and any existing structures which are to be retained, including, but not limited to their location, use, height, dimension and setbacks.

(c) **Landscaping**: Proposed trees, plants and other landscape features and any existing trees and vegetation to be retained including but not limited to their location, height, diameter at breast height (DBH), and type.

(d) **Vehicle Use Area:** proposed off-street parking and loading areas, and overall vehicular and pedestrian circulation patterns.

(e) **Stormwater Management Plan and Utilities:** Storm drainage system improvements (see §167.09 "Stormwater Management"), including an On-Site Stormwater Management Plan compliant with applicable National Pollution Discharge Elimination Standards (NPDES) and all other applicable rules and requirements of the Town and the St. John's Water Management District. All supportive engineering calculations and drawings for projected volume of stormwater runoff, system design, detention, and other relevant data shall be included. In addition, the site plan must include plans for required system improvements for potable water distribution, wastewater collection and disposal, fire protection, and provision of other requisite utilities and related easements.

(f) **Tabular Summary.**
(1) Total gross project acreage and net buildable land area;
(2) Total number of proposed residential units (if any), including their characteristics by number of bedrooms and total gross square footage;
(3) Proposed residential densities, including both net and gross acre calculations;
(4) Proposed nonresidential floor area by type of use and total gross square footage;
(5) Percentages of total gross project area proposed for pervious and impervious areas and building coverage;
(6) Number of off-street parking and loading spaces.

(g) **Erosion and Sediment Control Plan:** The plan shall incorporate erosion and sediment control measures in accordance with State Best Management Practices (BMP's). Also see Sec. 168.05(B).

(3) **Review and Approval of Preliminary Site Plans Advisory.** The preliminary site plan shall be reviewed by the Town Staff and shall be submitted to the Planning, Zoning and Variance Board for its consideration. Approval of a preliminary site plan shall be advisory in nature to the developers and shall not excuse in any manner the requirements of 168.04 of the Land Development Code relating to Site Plans.

(B) **Application Information.**

(1) **Filing:** Before a site plan shall be approved, an application for the approval shall be filed with the office of the building official. The application must be submitted at least two (2) weeks before the board meeting at which it is considered.

(2) **Attachments:**

(a) **Disclosure of ownership**: All applications shall include a verified statement showing each individual person having a legal or equitable ownership interest in the subject property described in the site plan application. However, publicly-held corporations whose stock is traded on a nationally-recognized stock exchange shall include the name and address of the corporation and principal executive officers. A person other than the

landowner may serve as applicant provided a written affidavit signed by the landowner and authorizing the person to act as agent for the landowner is submitted with the application.

(b) **Fee**: In accordance with land development code fee schedule.

(3) **Data to be Shown on Plan:**

(a) **Elevations**: The site plan shall show grades, finished ground floor elevations, contours, and shall designate the number of dwelling units, square footage of the site, building coverage, square footage of paved areas, and open area.

(b) **Architectural plans**: A scale drawing of the sides, front, and rear of the building or structure, a generalized floor plan indicating uses and square footage of each proposed use of all buildings or structures, and the building's exterior construction material and color.

(c) **Accessory structures**: The location and character of all outside facilities for waste disposal, storage areas, or display.

(d) **Vehicle use areas**: All curb cuts, driveways, parking areas, loading areas, surface materials, number of employees, and number and type of vehicles owned by the establishment.

(e) **Walkways**: All pedestrian walks, malls, yards, and open spaces, including beach accessways.

(f) **Signs:** The location, size, character, height, or orientation of all signs as required in Chapter 164.

(g) **Landscaping**: The location and general character of landscaped areas based on the criteria contained in Chapter 163, including existing vegetation.

(h) **Adjacent vehicular use areas:** The location and general character of all existing curb cuts, driveways, parking areas, and loading areas within two hundred (200) feet of any proposed curb cuts, driveways, parking areas, or loading areas.

(i) **Walls:** The location, height, and general character of perimeter or ornamental walls, fences, or other screening devices.

(j) **Stormwater Management:** The required "On-Site Stormwater Management Plan" meeting criteria of §167.09 "Stormwater Management," certified by an engineer or architect registered in the State of Florida.

(k) **Easements:** The location of existing easements and rights-of-way.

(l) **Survey:** A land survey with a complete legal description prepared and certified by a registered surveyor.

(m) **Seal**: All site plans must be sealed by a state registered architect or engineer pursuant to F.S. as existing or hereafter amended.

(n) **Plat:** Citation of plat recordation number, if applicable.

(o) **Utilities:** The location of sewer lines, water lines and fire hydrants.

(p) **Lighting:** The location of all lighting fixtures. Lighting for structures within the direct line of sight of the beach shall incorporate the following low-profile and low-intensity lighting in parking lots and such lighting shall be positioned so that the source of light is not visible from the beach; balconies will be shielded from the beach; floodlights on buildings on or adjacent to the beach shall be positioned so that the source of light is not visible from the beach or, if required for safety, positioned in such a manner as to minimize impacts on turtles; and where lights are used, low-profile and low-intensity shielded lights will be used on dune walkovers.

(q) **Erosion and Sediment Control Plan:** The plan shall incorporate erosion and sediment control measures in accordance with State Best Management Practices (BMP's).

(4) **A1A Frontage Requirements***:* As a part of the required site plan documents presented for all developments with direct entry to Highway A1A, the developer shall present approval from the Florida Department of Transportation

(FDOT) for access to Highway A1A. Each developer shall have made a request to FDOT for a determination as to whether left-turn storage lanes and right-turn deceleration lanes are needed or are desirable for the development due to the anticipated motor vehicular traffic activity. If left-turn storage lanes or right-turn deceleration lanes are determined to be needed or desirable By FDOT, the developer shall include FDOT approved plans for the lanes and shall complete the lanes at the developer's expense. A time schedule for completion of the lane construction shall be presented for site plan approval.

(C) **Review by Planning, Zoning and Variance Board**

(1) **Staff Report**: The building official shall prepare a staff report on the application, including any comments of the town engineer.

(2) **Board Action***:* The planning, zoning and variance board shall not approve any site plan unless it finds that it conforms to all applicable provisions of this title, that the safety and convenience of the public are properly provided for; and that adequate protection and separation are provided for contiguous and nearby residential property. The planning, zoning and variance board may attach to its approval of a site plan any reasonable conditions, limitations, or requirements which are found necessary, in its judgment, to effectuate the purpose of this section and carry out the spirit and purpose of this chapter.

(D) **Town Council Review**

(1) **Board Approval***:* If the site plan is approved by the planning, zoning and variance board, the site plan, together with staff evaluation and minutes reflecting the board's action, shall be forwarded to the town council for review at the next regular meeting of the town council. The town council shall review the site plan and consider the recommendations of the building official, and the findings and recommendations of the planning, zoning and variance board. Once final approval has been given to the site plan, no deviations may be made in that plan without approval of the town council. Upon approval of the site plan by the town council, a building permit shall be issued by the building official upon request of the applicant.

(2) **Board Disapproval:** In the event the site plan is not approved by the planning, zoning and variance board, the applicant for site plan approval may, within ten days of the disapproval, appeal to the town council for site plan approval. If the planning, zoning and variance board denies site plan approval, it shall specify the reasons the plan was denied, with specific reference to those sections of the applicable ordinances on which the denial was based. No reasons other than those so stated shall be presented to the town council.

(3) **Site Plan Approval before Building Permit Granted.** No building permit shall be granted by the building official until a site plan is approved by the town council.

(E) **Minor Modification of Approved Site Flan.** Minor changes as listed below require authorization by the mayor, chairman of the planning, zoning and variance board, or a member appointed by him, after review and approval of the building official. If approved as a minor change, the site plan shall not be required to be returned to the planning, zoning and variance board or town council for reapproval. The chairman shall report each change so approved to the planning, zoning and variance board for the record at the next scheduled meeting. Minor changes to the site plan include the following:

(1) **Building Details:** The addition of awnings, canopies, or ornamental structures; and modifications in stairways or elevations of decks, porches, pools, terraces, and fencing.

(2) **Parking Lots***:* Parking lot reconfiguration or the addition of parking spaces not to exceed twenty-five (25) percent, including fractions thereof, of the total number of existing parking spaces or twenty (20) spaces, whichever is the lesser amount.

(3) **Building Additions:** Attached or detached additions to buildings which do not increase the floor area in excess of ten (10) percent of the ground floor area of the principal structure or five hundred (500) square feet, whichever is the lesser amount.

(4) **Infrastructure:** Changes of a technical engineering nature to the water, sewer, drainage or street designs.

(5) **Landscaping:** Any upgrading of the original landscape plan.

(F) **Approval Period**

(1) **Commencement of Construction:** All site plan approvals shall terminate and become null and void automatically without notice if a building permit has not been issued and construction has not commenced within twelve (12) months from the date of approval. For the purposes of this division, construction shall be deemed to have commenced when the developer has built a portion of a structure shown on the plan (for example, the pouring of footers), or has made substantial improvements to the site, other than land clearing, filling, or grading, in accordance with the approved site evidencing a good faith effort to diligently pursue construction to completion.

(2) **Extensions of Site Plan Approval:** Site plan approval may be extended one time only for good cause by the town council for a period not to exceed twelve (12) months. All requests for extensions must be in writing on a form supplied by the town and received by the town prior to expiration of the site plan. Upon receiving an extension, all approved site plans shall comply with applicable town regulations as they exist on the date the extension is granted.

(3) **Abandonment of Construction:**

(a) In cases where construction is abandoned or suspended after commencement, as defined above, the site plan approval shall terminate and become null and void after notice and hearing by the town council. For the purpose of this division, construction shall be considered abandoned or suspended if:

(i) The town council finds, during the hearing, that an active building permit has not been maintained for the construction of a structure in accordance with the approved plan; or

(ii) The town council finds, during the hearing, that construction at a level indicating a good faith effort to proceed with the completion of the project has not occurred for a continuous period of six (6) months immediately preceding the receipt of notice.

(b) However, the town council shall not deem this inactivity to constitute project abandonment or suspension if the inactivity is deliberate and entirely consistent with a town council approved schedule for the phasing of a multi-phase project. This division shall not operate to invalidate any site plan prior to the end of the initial twelve (12) month period or any authorized extension thereof.

(4) **Site Plan Requirement and Schedule of Phasing; Lapses:**

(a) Any planned multi-phased project to be approved by the town council shall include an approved schedule for the phasing of construction. In addition, if a complete site plan for each phase of the proposed project is not initially submitted, a schedule of future site plan submissions for each successive project phase shall be approved by the town council as part of the initial site plan approval.

(b) A person shall be required to request town council approval of an amended schedule of phasing for any planned multi-phase project if the approved schedules for site plan submittal or construction lapses. Upon receiving an approval of an amended schedule of phasing, the site plans for respective future phases shall comply with all applicable town regulations as they exist on the date the amendment is granted.

(5) **Transfer of Site Plan Approval to Run With Land:**

(a) A site plan approval shall run with the land and shall transfer to a successor in interest to the original applicant upon written disclosure of the transfer, including the identity of the successor in ownership. The disclosure shall be submitted to the town manager and shall provide the full legal name of the person or business entity acquiring an interest in the property, the nature of the interest, the address of the principal place of business, the telephone number of the successor in ownership, and the name and address of any registered agent of the owner. If the new owner is a corporation, the enclosure shall include the name, address, and title of officers or agents authorized to transact business with the town, and the name and address of any new design professional for the project.

(b) Upon site plan transfer, the successors in interest shall provide a written acknowledgment and acceptance of all commitments, responsibilities, and obligations of the prior developer, including all special conditions of site plan approval. This written acknowledgement shall be in a form acceptable to the town attorney and shall be approved by the town attorney.

(c) The following provisions shall also apply to transfer of site plan approvals:

(i) **Disclosure of requisite information:** Failure to make the required disclosure and assumption shall suspend all site plan and zoning approvals until such time as proper disclosure and assumption is made.

(ii) **Time limits:** Transfer of site plan approval shall not toll or modify the calculation of time limits set forth with respect to commencement or abandonment of construction. Following any transfer, the time limits shall be calculated as if the transfer had not occurred.

(iii) **Transferability exceptions:** This provision does not relate to any transfer of space, units, buildings, or property to a transferee who intends to occupy the property only after issuance of a certificate of occupancy, unless the transferee is the successor developer, nor to the creation or transfer of a nonpossessory lien or encumbrance.

(G) **Posting of Bonds**

(1) **Improvement or Public Facility Bond:** Upon final site plan approval by the town council, the applicant shall post a bond executed by a surety company authorized to do business in the state in an amount estimated by the mayor or his designate to be equal to the cost of constructing required public facilities. The bond shall be in favor of the town and shall be subject to the condition that all of the improvements will be completed within one year after approval of the site plan. In the event they are not so completed within that time, the town may proceed with the work and hold the applicant and the surety jointly and severally responsible for the cost thereof. As an alternative surety, the applicant may deposit a certified check or cash with the town clerk or any other bond provisions as the town council deems adequate to insure compliance with this provision.

(2) **Site Restoration Bond:** See Section 168.05.

(H) **Violations.**

(1) Failure to comply and continually maintain all approved elements of an approved site plan, including landscape, appearance, and other site development features, shall be a violation of this title, subject to the enforcement and penalty procedure of division (2) below.

(2) In the event of a noncompliance with this subchapter, the Mayor or his designated building official shall have the authority to suspend and revoke any building permit used under this subchapter and to take all actions necessary to halt construction until that time as the provisions herein are complied with. In the event legal action is necessary and costs are incurred by the town in forcing compliance, these expenses shall be borne by the developer or other parties violating the terms of this subchapter.

(I) **Site Plan Review Criteria.** The planning, zoning and variance board and the town council shall use the appropriate foregoing chapters of this title or code plus the following criteria in reviewing site plans:

(1) **Appearance of Site and Structures:** The appearance of the site and structures shall be coordinated for the purpose of creating a pleasing and harmonious overall effect. The choice of building and site improvements shall be commensurate with the objectives of the subject use without generating adverse visual impact on surrounding properties or transportation corridors. Architectural style or design is not restricted. Evaluation of the appearance of a project shall be based on the quality of its design and relationship to the impacted area considering the following factors.

(a) **Urban design:** The exterior of buildings and structures including mass, facade, and materials shall be in harmony with the site and the impacted area and not gaudy or garish. Awnings or ornamental features shall be designed in a manner harmonious with the building design and shall be of appropriate scale, shape, color scheme, and pattern in order to reinforce good design principles. Similarly, awnings or ornamental features shall not use incompatible or extraordinary scale, shapes, color schemes, patterns, or other extraordinary features for purposes of attracting attention.

(b) **Colors:** They shall be harmonious with development in the impacted area and not gaudy or garish, with bright or brilliant colors used only for accent.

(c) **Mechanical equipment***:* This and other utility hardware other than antennas and stacks on roofs shall be harmonious with the building or they shall be located or screened so as not to be visible from any public ways within the impacted area.

(d) **Dumpsters:** Refuse and waste removal areas shall be screened from adjacent properties and public ways by appropriate fences, walls, or hedges. In cases where dumpsters must be located in areas highly visible from any public right-of-way, the planning, zoning and variance board shall be authorized to require an appropriate

vegetative or structural screen to shield an unsightly condition.

(e) **Outdoor uses:** All businesses, services, or other commercial activities shall be conducted within completely enclosed buildings.

(f) **Lighting:** Exterior lighting shall be arranged so as to shield or deflect the light from adjoining properties, beaches and public streets. Chapter 164 shall control signs and their lighting.

(2) **Traffic Impact, Driveways and Parking Areas:**

(a) **Traffic impact:** If not already completed as a part of the subdivision approval, a traffic generation study shall accompany the site plan and be part of the concurrency review (168.02).

(b) **Parking lots:** Driveways and areas for the parking and internal circulation of vehicles shall be located, designed, and controlled so as to provide for safe and convenient circulation within the site, and safe and convenient access from adjoining streets. The requirements of Chapter 162 shall be applied for off-street parking. Among factors to be considered shall be the number and location of access drives from adjacent streets, the location and width of driveways and access aisles to parking spaces, the arrangement of parking areas, and the means of access to buildings for fire fighting apparatus and other emergency vehicles.

(c) **Channelization:** Parking areas and driveways shall be clearly identified and separated from principal pedestrian routes and recreation areas by curbs, pavement markings, planting areas, fences, or similar features designed to promote

(d) **Minor street access:** Vehicular access to adjoining minor residential streets generally shall not be permitted when adequate access is available to collector streets or major thoroughfares and when adequate access for emergency vehicles can otherwise be provided. Similarly, vehicular access points shall be strategically planned and located in order to avoid disrupting traffic flow. Generally, points of access shall be located at least fifty (50) feet from existing intersections. New curb cuts along Highway A1A shall be coordinated with the State Department of Transportation. For any site abutting on Highway A1A, the town may require the submission of plans for a stacking lane, turning lane, or deceleration lane subject to the approval and review by FDOT.

(3) **Landscaping:** The provisions of Chapter 163 shall provide the criteria for landscaping and Chapter 167 for tree preservation.

(4) **Infrastructure:** Appropriate facilities for providing public potable water and sanitary sewerage collection plus solid waste disposal, surface water drainage, and fire protection shall be incorporated in the site plan. These facilities shall be reviewed by appropriate town officials and a consulting engineer if needed. Evaluative staff comments shall be provided to the planning, zoning and variance board to facilitate the board's review, including the results of the concurrency review and environmental sensitivity. Water, sewer, drainage, streets, and walkway facilities shall be designed in accordance with the standard specifications as exist or as hereafter amended and on file with the building official; installation shall minimize impact on the environment, including tree canopy and soil stability.

(5) **On-Site Drainage:**

(a) **Plans:** A concept plan for drainage of surface water run-off supplied by the applicant shall be approved by the town engineer prior to consideration of a site plan by the planning, zoning and variance board. Prior to application for a building permit, a detailed drainage plan prepared by a professional engineer or registered architect, registered in the state, shall be approved by the town engineer. A state registered professional engineer or registered architect shall certify that the drainage plan has been appropriately implemented prior to the issuance of an occupancy permit.

(b) **Detention:** Surface water management systems shall be designed and constructed to detain with filtration or retain, as a minimum the runoff from a 25-year frequency, 24-hour design storm. Post development runoff shall not exceed pre-development runoff.

(6) **Environmental Assessment:** An environmental assessment report shall be prepared which demonstrates compliance with all applicable portions of Chapter 167. It shall also demonstrate appropriate passive energy conservation measures, including building and window orientation, and landscaping.

(7) **Natural Drainage:** A natural vegetative buffer or littoral zone of three (3) feet shall be provided along any natural

drainage way unless the drainage way is a wetland or other vegetated area. See also 167.06.

(8) **Shoreline Use Criteria:** First priority shall be given to shoreline protection uses, second to water-dependent uses and third to water-related uses. See Comprehensive Plan Coastal Management Element for details. Building arrangements shall maximize ocean views. Renourished beaches shall not be impacted.

(9) **Hurricanes:** In addition to meeting the flood management provisions of Chapter 165, any applicable site plan must show conformance to the Indian River County Hurricane Evacuation Plan.

168.05 EROSION AND SEDIMENT CONTROL AND SITE RESTORATION

(A) Bond or Secured Obligation

(1) **Submittal of Required Secured Obligation/Bond.** At least five (5) days prior to the time an application is made for a building permit for any building, the applicant shall deliver to the town a secured obligation satisfactory to the town manager in the sum of two thousand five hundred dollars ($2,500.00), plus two (2) percent of the cost of construction of the entire building as indicated on the application for building permit.

(2) **Exemptions.** No site restoration secured obligation shall be required.

(a) For any project for which the costs of improvements do not exceed seventy-five thousand dollars ($75,000.00);

(b) For the construction of any single-family residence in any zoning district; or

(c) Town-owned government facilities or any governmental facilities to be owned of constructed by the Town of Indian River Shores.

(3) **License Requirement.** If the secured obligation to be delivered is a corporate surety bond, the surety company must be licensed to do business in the State of Florida and be on the United States Treasury Department's list of approved surety companies.

(4) **Performance Guarantee, Abandonment, and Expiration.** The secured obligation shall guarantee that the site will be promptly restored to its original state, so far as is possible, if the construction is abandoned. In default thereof, the amount of the security shall be paid, on demand, to the town for its use in effecting the restoration or retained by it as liquidated damages, if complete restoration is impossible or impracticable or if restoration costs would exceed the amount of the security. Construction shall be deemed to have been abandoned if the applicant or his successors or assigns so notify the building department, in writing, or if work on the premises ceases prior to the completion of the improvement and is not resumed within thirty (30) days of the expiration of the building permit. The secured obligation shall have an expiration date at lest one (1) year after the expected construction completion date as reflected on the building permit application.

(B) Permit Inspections and Documentation

(1) **Erosion Control Requirements\Inspections to Commence Prior to Land Clearing.** Erosion and sedimentary control inspections will be performed by the Town to verify compliance with the approved site Erosion and Sediment Control Plan during the construction process. Inspections will occur at construction commencement, during construction, and upon completion of construction. Erosion and control sediments shall be in place prior to any clearing, grubbing, or grading activities other than that incidental activity necessary to install the perimeter controls. It shall be the responsibility of the Developer/Contractor to notify the Town within 72 hours of expected construction commencement and expected construction completion of all projects within the Town. If sufficient discrepancies are noted during the inspection, the Developer/Contractor shall be notified by the Town within 72 hours of the inspection detailing the discrepancies along with any applicable enforcement action. Applicable enforcement actions include but are not limited to sanctions, fines, and stop work orders as deemed necessary by the Town's Staff depending upon the severity of the discrepancy

(2) **Permit Documentation.** The applicant shall provide all applicable permit documentation from various agencies for the project including but not limited to the St. Johns River Water Management District (SJRWMD), Florida Department of Transportation (FDOT), Florida Department of Environmental Protection (FDEP), and Army Corps of Engineers (ACOE), etc. as part of the plan review process prior to either construction plan approval or prior to the Town releasing Certificate of Occupancy for the project. The applicant shall include all applicable permits that have either been obtained or submitted such as SJRWMD Environmental Resource Permits (ERP's), FDEP National

Pollutant Discharge Elimination System (NPDES), FDOT Drainage and Drive Connection Permits, etc. This list is given as basic guidance and is by no means all-inclusive. Each project under review shall be reviewed on a case-by-case basis.

(3) **Permits for Tree Removal and Land Clearing.** Permits for tree removal, clearing of the land (except debrushing), excavation, grading or installation of utilities shall not be issued nor such work undertaken in areas beyond the limits of the area necessary for the construction of the building for which a building permit has been applied or site plan has been approved. The building department shall determine, in writing, the limits of the area necessary for the satisfactory completion of the permitted work and such determination shall be deemed a condition of the permit. The construction area shall be fenced to avoid damage to other areas where determined necessary by the building department.

(C) **Failure to Restore Site**

(1) In the event the applicant, his successors or assigns fail to restore the site prior to abandonment, the town shall notify the applicant and his surety, guarantor or security agent, as appropriate, by certified mail, addressed to the last address furnished by the parties to the town, demanding performance or the guarantee sum deposit. Not later than ten (10) days after the posting by the town of the demand, the applicant or his surety, guarantor or security agent shall deposit with the building official the sum demanded by the town. This may be either the estimated cost of restoring the site to its original condition as nearly as possible or the full sum of the secured obligation.

(2) In the event there is a surplus in the deposit made on the town's demand after restoration of the site, the town shall refund to the depositor on his order the surplus after costs and expenses. If the amount received by the town is insufficient to restore the site, the applicant shall not be relieved of his obligation to complete the improvement or restore the site; and the applicant shall, upon further demand by the town, deposit the additional amount necessary to restore the site.

(D) **Town Construction of Abandoned Structures.** By accepting the building permit at the time of undertaking construction, the landowner and the builder or builder/developer, as agent for the landowner, represents to the town the intention and ability to complete the construction for which the permit was requested. The landowner further consents to permit the town to undertake certain construction on any building, structure or development having been undertaken and subsequently abandoned. The extent to which the town may complete a structure or project is to make the exterior aesthetically pleasing and give the appearance of a finished structure, so it will blend with structures in the surrounding area. In addition, the town may take such actions as are necessary to protect the health, safety and welfare of the public, including, but not limited to, restoration of the site to its original condition, if practical, under the circumstances of each particular case.

(E) **Project Amenities.** Any developer of a proposed project within the town shall identify, as specifically as possible, the time frame for completion of the amenities. It is the policy of the town to require completion of amenities in compliance with the site plan commitment. In furtherance of this goal, the developer shall be required to explain in writing, the proposed timing of amenities for the development. In addition, a developer may be required to post a reasonable sum or surety to carry out the contemplated expenditures for amenities and common element improvements. In the event the town determines there is a failure to comply on the part of the developer, builder or owner, the town shall notify the developer of such failure of compliance and may stop work on the project. Further, the town may refuse to issue a certificate of occupancy or refuse to issue a building permit for any violation of this section in not completing amenities and common elements or in otherwise failing to comply with the provisions of this subchapter.

(F) **Procedural Steps**

(1) **Notice of Violation and Hearing:** Prior to instituting action to finish, improve or correct any structure or site that has been abandoned, the town shall notify the owner or the owner's agent of the violation of this section and any other ordinance of the town for which compliance is sought. A hearing shall be held before the code enforcement board, subject to the notice and terms and conditions of the code enforcement board as set forth in the town code of ordinances.

(2) **Additional Remedies:**

(a) In addition to utilizing funds and remedies as set forth in this section, the town shall have all rights of enforcement of the town code of ordinances through the use of the code enforcement board under the authority vested in that board.

(b) This provision shall not supersede other remedies, but shall be in addition to the remedies permitted with the code enforcement board.

(c) Nothing in this section or any other related ordinances shall prevent the town form taking legal action in addition to the other remedies herein.

168.06 CONDITIONAL USE. The plan or application requirements and the approval process shall be the same as for a site plan. The review criteria are found in the individual districts and in Chapter 167.

168.07 LAND DEVELOPMENT CODE AMENDMENT

(A) **Zoning Map Amendment**

(1) **Application:** *An* application for a change of zoning map designation must be submitted to the building official, and shall show the name of the owner of the property, his address, a legal description of the property, its present zoning classification, and its proposed zoning classification. In addition, the application must be signed by the owner of the property, or specific written authority from the owner for an agent to sign must be attached to the application.

(2) **Fee:** *A.* fee shall be established by the land development code fee schedule.

(3) **Sketch Plan:** At least two (2) weeks prior to the planning, zoning and variance board meeting the sketch plan shall be submitted to include the following:

(a) Location of proposed buildings.

(b) All roads and easements to be located on the property.

(c) General location of proposed water and sewer lines.

(d) A general description of the project, including density.

(4) **Planning, Zoning and Variance Board Public Hearing:** In the event a planning, zoning and variance board public hearing for rezoning, a notice shall be published at least 14 days prior to the hearing, stating the time and place of the hearing. In addition, all property owners within three hundred (300) feet of the outside boundary of the property to be rezoned shall be notified by certified mail fourteen (14) days prior to the hearing. The building official shall prepare a staff report on the request for the board.

(5) **Town Council Public Hearing:** After a public hearing on rezoning, the board shall recommend to the town council to either accept or deny the rezoning request. The council shall follow the provisions of Chapter 166.041 FS in advertising for their public hearings.

(B) **Text Amendment.** Any amendment to the text of this chapter shall be approved like any other ordinance after the planning, zoning and variance board has made a recommendation to town council.

168.08 COMPREHENSIVE PLAN

References in this code to the Comprehensive Plan and its elements including the Future Land Use Plan, refer to the 1990 Indian River Shores Comprehensive Plan as may be amended from time to time. Such amendments shall be made in accordance with Chapter 163 FAS.

168.09 VARIANCE AND ADMINISTRATIVE APPEAL

(A) **Variance.**

(1) **The Planning, Zoning and Variance Board***:* The board shall have the power to recommend approval or denial of applications from the terms of this chapter as will not be contrary to the public interest where, owing to conditions unique to this site, a literal enforcement of the provisions of this chapter would result in unnecessary hardship. The town council shall make the final decision.

(a) The Town Building Official may grant approval of variances for encroachments by existing structures into building setback: lines or easements of one foot (1') or less. The application procedure and considerations in

granting this variance shall be the same as set forth in Section 154.04.

(b) The Planning, Zoning and Variance Board may, without approval of the Town Council, approve variances for encroachments by existing structures into building setback lines or easements of three feet (3') or less. The application procedure and considerations in granting this variance shall be the same as set forth in Section 154.04.

(2) **Criteria:** The board shall approve a variance only after the applicant has demonstrated justification for the granting of a variance in conformance with the following criteria:

(a) **Special conditions:** That special conditions and circumstances exist affecting the land, structure or building involved preventing the reasonable use of said land, structure or building.

(b) **Unique:** That the circumstances which cause the hardship are peculiar to the property, or to such a small number of properties that they clearly constitute marked exceptions to other properties in the district.

(c) **Hardship:** That the literal interpretation of the provisions of this chapter would deprive the applicant of a substantial property right that is enjoyed by other property owners in the district. (It is of no importance whatever that the denial of the variance might deny to the property owner some opportunity to use the property in a more profitable way, or to sell it at a greater profit than is possible under the terms of this chapter).

(d) **Self created:** That the hardship is not self-created or the result of mere disregard for, or ignorance of, the provisions of this ordinance.

(e) **Minimum variance***:* That the variance is the minimum variance that will make possible the reasonable use of the property.

(f) **Adjacent property:** That granting the variance requested will not be detrimental to adjacent property or adversely affect the public welfare and will be in harmony with the general intent of this chapter.

(g) **Use variance:** Under no circumstances shall the board grant a variance to permit a use not generally permitted in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.

(B) **Administrative Appeal and Re-submittal**

(1) **Appeal:** Appeal from any action taken by the Planning, Zoning and Variance Board must be filed with the Town within sixty (60) days of the action from which the appeal is taken. In the event any provision of the Land Development Regulations provides for a shorter appeal period, then said shorter period shall apply.

(2) **Re-submittals After Denial**

(a) Applicant must wait a period of one (1) year following denial by the Planning, Zoning and Variance Board of any request for variance, when the re-submittal is substantially the same as the denied request.

(b) Any requests, other than a variance request for action by the Planning, Zoning and Variance Board, may be denied if the Board determines the issue has been previously addressed and denied within a one (1) year period of the submittal.

(c) The Board shall also review any appeal o£ an administrative decision made by the Building Official in administering this chapter and make a recommendation to the Council."

168.10 NONCONFORMING USES AND LOTS

(A) **Elimination of Nonconforming Uses.** Any use existing on the effective date of this code which is classified as a nonconforming use in the zoning classification in which it is located shall be terminated by the Year 2000. By July 1,1991, the building official shall issue a special certificate of occupancy to the owner of all nonconforming uses, which shall state the future date of termination of the nonconforming use, and said special certificate of occupancy shall be prominently displayed on said property.

Any owner that perceives the Year 2000 date to constitute a unique hardship may apply to the planning, zoning and

variance board. All applications for extensions must be submitted to the building official by January 1, 1992; said applications must be accompanied by an appraisal, and a statement of what is unique to this use and structure. No extension shall be granted beyond the Year 2010. The board is authorized to hire tax, accounting and/or architectural experts (at the expense of the applicant) to assist in assessing the stated hardship.

(B) **Expansion or Discontinuance of Nonconforming Use.** No nonconforming building containing a nonconforming use shall be structurally changed, altered, enlarged or moved, unless the altered, enlarged, or moved building or use shall conform to the provisions of the district in which it is located. No nonconforming use, if discontinued or changed to a use permitted in the district in which it is located, shall be resumed or changed back to a nonconforming use. A nonconforming use shall be deemed discontinued for the purpose of this section if a nonconforming use is not made of the property for a period of one year.

(C) **Effect of Enactment of Code.** The enactment of this code shall not be deemed to affect, alter, or change any special exception or variance heretofore granted by the appropriate administrative or legislative body of the town or by a court of competent jurisdiction upon review of the action of the administrative or legislative body.

(D) **Restoration of Damaged Buildings.** Nothing in this section shall prevent the restoration of a building damaged by fire, explosion, an act of God, or an act of the public enemy subsequent to the effective date of this chapter or prevent the continuance of the use of the building or part thereof as the use existed at the time of the impairment of the building or part thereof. However, the restoration shall be no greater than fifty (50) percent of the structure's total current replacement value, the restoration shall be made within one (1) year, and that the same use shall be made of the premises. The restoration must be comparable in quality to the remaining structure. In no instance shall a nonconforming use be permitted to be restored when more than fifty (50) percent of its total current replacement value has been destroyed. The provisions of (A) shall still apply.

(E) **Repairs and Maintenance.** Nothing contained in this section shall prevent the strengthening or restoration of any building or wall declared unsafe by the building official.

(F) **Nonconforming Lots.** In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this chapter, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption of this chapter. This provision shall apply even though the lot fails to meet the requirements for area, width, or both area and width that are generally applicable in the district. However, front, side, and rear yard dimensions and other requirements not involving area, width, or both area and width of the lot shall conform to the regulations for the district in which the lot is located.

(G) **Extension of Non-Conforming Sales Office/Administrative Building within John's Island Subdivision**. The sales office/administration building located within the John's Island community shall be permitted to continue as a non-conforming use until December 31, 2009. The condition of this extension is that the ownership and operation of the sales office remain as currently owned and operated by the developer of the John's Island community, unless a change of ownership and operation is approved by the Town, which approval may be withheld for any reason.

(1) No business shall be permitted in the sales/administration building except as follows:
   (a) The sale, rental and purchase of John's Island properties.
   (b) In the event the sales office/administration building is sold to a members' organization for the John's Island community, the building may be utilized for service and administration of matters relating to the John's Island community.

(2) Any breach of the extension terms and conditions shall subject the property forced compliance with the residential designation of the Comprehensive Plan and Land Development Regulations prior to December 31, 2009.

168.11 QUASI-JUDICIAL PROCEDURES

(A) **Quasi-Judicial Hearings on Land Use Matters.** The Town Council and the Planning, Zoning and Variance Board, hereinafter referenced as "Board," as applicable, shall conduct quasi-judicial hearings on land use matters in accordance with the procedures set forth in this Ordinance. Land use matters shall include:

(1) The rezoning of property which is limited to a single parcel or a limited number of property owners.
(2) Subdivision plat approvals.
(3) Site plans.

(4) Variances.
(5) Special use permits.
(6) Conditional use permits.
(7) Building permits.
(8) Any other land use decisions which require quasi-judicial hearings.
(9) Siting of telecommunication towers and antennas.

(B) **Procedures.** The following procedure and rules are adopted for quasi-judicial proceedings on land use matters;

(1) **Rule Relating to Nonparty and Nonparty-Interveners.** Any person who is not a party or party-intervener shall be allowed to testify subject to procedural rules adopted by the Town Council and may be requested to respond to questions from members of the Town Council or from Board members, as applicable. A nonparty or nonparty-intervener need not be sworn as a witness and shall not be required to be subject to cross-examination and need not be an expert witness.

(2) **Rule Relating to Party and Party-Interveners.** A party or party-intervener, upon request by another party or party-intervener, shall be sworn as a witness and shall be subject to cross-examination by other parties or party-interveners, and if appropriate, be qualified as an expert witness.

(3) **Ex Parte Communication Prohibitions.** In a quasi-judicial proceeding on local government land use matters, a person may not be precluded from communicating directly with a member of the Town Council or Board member by application of ex parte communication prohibitions. Disclosure of such communications to a member of Town Council or Board member, as applicable, is not required and such nondisclosure shall not be presumed prejudicial to the decision of the Town Council or the applicable Board.

(4) **Presentations at Quasi-Judicial Hearing.**

(a) The Mayor or Board Chairman shall announce the procedure to be followed identifying the parties and order of presentation.

(b) The party applicant or proponent of a land use matter may make a presentation not to exceed ten minutes, followed by questions from an adverse party or parties.

(c) The party opponent may make a presentation not to exceed ten minutes, followed by questions from an adverse party or parties.

(d) Following presentation by the parties, any nonparty may have up to three minutes for comment.

(e) The party proponent shall have up to five minutes for closing remarks or presentations. Questions may be permitted on any matters that have not previously been discussed.

(f) At the start of the hearing, the Mayor or the Board .Chairman shall announce whether testimony and evidence is to be received from Town staff. The Town staff may be requested by the Mayor or Board Chairman to make .remarks and explanations regarding the pending issue. Each party or party-intervener shall have a reasonable opportunity to question statements and evidence presented by staff.

(g) Following all testimony and evidence as set forth above, the public portion of the hearing shall be closed and deliberation shall take place by the Town Council or the applicable Board. Questions may be asked by any Town Council or Board member during the deliberation process.

(5) **Extension of time.** Any affected party or party-intervener who will be prejudiced by time limitations set in this procedure may request additional time from the Town Council or Board, as appropriate.

(C) **Record Quasi-Judicial Hearing.** A record of quasi-judicial hearings shall consist of the following:

(1) Appropriate Town Ordinances, Comprehensive Plan provisions, and applicable portions of the Land Development Regulations.
(2) The application and any supporting documents.
(3) Staff recommendations.

(4) Any written communication to the Town Council or other Board as appropriate and relevant.
(5) The Meeting shall be recorded by the Town in a manner acceptable to the Town. The recording shall be retained by the Town. Any party requiring a Court Reporter or other method of transcription shall be required to provide same.

(D) **Basis for Decisions.** All decisions of the Town Council or the Board, as applicable, in a quasi-judicial proceeding on land use matters must be supported by substantial competent evidence in the record pertinent to the proceeding, irrespective of any ex parte communications made to a member or members of the Town Council or Board.

CHAPTER 169 DEFINITIONS

169.01 DEFINITIONS

For the purpose of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning:

"Attic." The space between the ceiling beams of the top habitable floor and the roof.

"Basement" That portion of a "building" which is partly or wholly below "grade," but so located that the vertical distance from the average "grade" to the floor is greater than the vertical distance from the average "grade" to the ceiling. A "basement" shall not be counted as a "story."

"Board of Appeals." The planning, zoning and variance board.

"Buffer Strip" A strip of land of definite width and location reserved for planting of shrubs and trees to serve as an obscuring screen.

"Building" Any structure, either temporary or permanent, having a roof and used or built for the shelter or enclosures of persons, animals, chattels, or property of any kind.

(1) "Building. Accessory." A "building" subordinate to the main or "principal building" on the "lot" and used for the purposes customarily incidental to those of the main building.
(2) "Building, Height of." The vertical distance from the established grade at the center of the front of the "building" to the highest point of the roof surface, if a flat roof- to the deck line for mansard roofs; and to the mean height level between eaves and the ridge for gable, hip, and gambrel roofs.
(3) "Building Line." A line parallel to the "front lot line" at the minimum required front setback line.
(4) "Building, Principal." "Building" in which is conducted the primary use of the "lot" on which it situated.

"Cabana." A cabana is a shelter resembling a cabin usually with an open side facing a beach or swimming pool. A lightweight structure with limited living facilities, i.e. may include a bedroom, bathroom and associated closet. It may also include a one-piece kitchenette or a two-burner cook top, microwave and under-counter refrigerator.

"Community Residential Home." A dwelling unit licensed to serve clients of the Department of Children and Family Services, which provides a living environment for seven (7) to fourteen (14) unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional and social needs of residents. The clients are limited to:

(1) Children, the aged, physically disabled, handicapped, developmentally disabled, and mentally ill who do not constitute a direct threat to the health, property and safely of the neighborhood. State statutory requirements must be met, including a municipal review
(2) Process, one thousand two hundred (1,200) minimum spacing between such homes and a location at least five hundred (500) feet from a single-family district.

"Conditional Use." A use permitted when the facts and conditions specified in this chapter, as those upon which the exception is permitted, are found to exist by the appropriate administrative officer or body.

"Court." An open, unoccupied space other than a yard, and bounded on at least two sides by a "building." A court extending to the "front lot line" or "front yard," or the "rear lot line" or "rear yard" is an "OUTER COURT." Any other "court" is an "inner court."

"Development Area." A tract of land of five acres or more which may be subsequently subdivided into parcels of less than five (5) acres. The development area may be owned by or controlled by one or more parties who are acting with the single purpose of developing the contiguous parcels in accordance with the provisions of a single zoning district.

"Display Case." A case, cabinet, other device having a window of glass other transparent material, or other opening, access to which is made from other than within a "structure" or "building."

"District." A portion of the incorporated area of the town within which certain regulations and requirements or various combinations thereof apply under the provisions of this chapter.

"Drive-In." "Carry-Out," And "Fast Food Service." Any establishment providing for the sale of foods, desserts, or beverages generally contained in a ready-to-consume state and whose design, method of operation, or any portion of whose business includes one or more of the following:

(1) The restaurants are self-service, food is generally serviced in disposable containers, and customers generally do the busing and clean-up for themselves; or foods, desserts, or beverages are served directly to the consumer in a motor vehicle.

(2) The consumption of foods, desserts, or beverages within a motor vehicle parked upon the premises or consumption at other facilities on the premises is allowed, encouraged, or permitted.

(3) Customers purchase food, desserts, or beverages prepared on the premises for carry-out.

"Dwelling."

(1) "Complex, Attached Dwelling Unit." A building comprised of two or more "attached dwelling units."
(2) "Dwelling, Multiple-Family." A "building," or portion thereof, designed exclusively for occupancy by two or more families, living independently of each other, and not more than three stories in height. “Multiple-family dwelling" does not include mobile homes, trailers, modular homes, or similar structures.
(3) "Dwelling, One-Family." A "building" designed exclusively for and occupied exclusively by one family. "One-family dwelling" does not include mobile homes, trailers, and similar structures but does include group homes and family day care homes as defined herein.
(4) "Dwelling Unit." A "building," or portion thereof, designed for occupancy by one family for residential purposes and having cooking facilities. "Dwelling unit" does not include mobile homes or trailers but does include manufactured housing that in appearance resembles houses constructed on-site.
(5) "Dwelling Unit, Attached." A one-family dwelling attached to one or more one-family dwellings by common vertical walls.
(6) "Dwelling Unit, Detached." A dwelling which is not attached to any other dwelling by any means. The "detached dwelling" does not have any roof, wall, or floor in common with any other dwelling unit.

"Essential Services." The erection, construction, alteration, or maintenance by public utilities or municipal departments or commissions of underground or overhead gas, electricity, steam or water transmission or distribution systems, collection, communication, supply, or disposal systems, including towers, poles, wires, mains, drains, sewers, conduits, cables, fire-alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith, but not including buildings, reasonably necessary for the furnishing of adequate service by the public utilities or municipal departments or commissions or for the public health, safety, or general welfare.

"Family." One or more persons related by blood, adoption, or marriage living and cooking together as a single housekeeping unit, exclusive of household servants; and not more than two persons living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage.

"Family Day Care Home." An duly state-licensed day care center for five (5) or less children during school hours and ten (10) during non-school hours.

"Floor Area." The sum of the horizontal livable areas of each "story" of the "dwelling unit" measured from the exterior faces of the exterior walls. The "floor area" measurement is exclusive of areas of "basements," unfinished "attics," attached garages, breezeways, common halls, and stairways in multiple-family structures, and enclosed and unenclosed porches.

"Frontage." That portion of any property abutting a "street." A "comer lot" and a "through lot" having frontage on both abutting streets.

"Frontage Block." All land fronting on both sides of a "street" between the nearest "streets" intersecting the "street."

"Garage, Private." A "structure" for the storage principally of private passenger motor vehicles, or for the private use solely of the owner or occupant of the "principal building" on a "lot" or of his "family" or domestic employees, and shall be not more than one "story." No service for profit may be conducted within the "structure."

"Gasoline Service Station." A place for the dispensing, sale, or offering for sale of motor fuels directly to users of motor vehicles, together with the sale of minor accessories and the servicing of and minor repair of motor vehicles.

"Grade." A ground elevation established for the purpose of regulating the number of stories and the height of a "building." The "building grade" shall be the level of the ground adjacent to the walls of the "building" if the finished "grade" is level. If the ground is not entirely level, the "grade" shall be determined by computing the average elevation of the ground for each fact of the "building," and taking the average of the total averages.

"Group Home." A dwelling unit licensed to serve clients of the Florida Department of Children and Family Services which provides a living environment for six (6) or less unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional and social needs of residents. The clients are limited to: children (including foster children), the aged, physically disabled, handicapped, developmentally disabled and mentally ill who do not constitute a direct threat to the health, property and safety of the neighborhood. State statutory requirements must be met, including one thousand (1,000) foot (or more) spacing between such homes.

"Guest House." A guest house is an accessory structure to a main residence for the temporary housing of guests of the main residents or owners. The guest house may have living facilities consistent with the temporary nature of this use.

"Inland Waters." All bodies of water lying west of the Atlantic Ocean within the town limits.

"Loading Space." An off-street space on the same lot with a "building" or group of buildings, for temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

"Lot." A parcel of land on which a "principal building" and its accessories may be placed together with the required open spaces.

(1) "Lot, Corner" A "lot" of which at least two adjacent sides abut a street, provided, that the two (2) sides intersect at an angle of not more than one hundred thirty-five (135) degrees. A "lot" abutting upon a curved street or streets shall be considered a "corner lot" if the tangents to the curve at its points of beginning within the "lot" or at the points of intersection are not more than one hundred thirty-five (135) degrees. In the case of a "corner lot" with a curved street line, the corner shall be considered to be that point of the street and lot lines nearest to the point of intersection of the tangents herein described.

(2) "Lot, Interior." A lot other than a "comer lot."

(3) "Lot Line, Front." In the case of a "lot" abutting upon one street, the "front lot line" is the line separating the "lot" from the "street." In the case of any other "lot" one line shall be elected to be the "front lot line" for the purpose of this chapter provided, that it is so designated by the building plans filed for approval with the building official.

(4) "Lot Line, Rear." That boundary which is opposite and most distant from the "front lot line." In the case of a lot pointed at the rear, the "rear lot line" shall be that assumed line parallel to the "front lot line," not less than thirty (30) feet long, lying farthest from the "front lot line" and wholly within the "lot." In the case of a lot fronting on a cul-de-sac, the "lot line" shall be the line opposite the line fronting the cul-de-sac.

(5) "Lot Line, Side." Any lot boundary lines not a "front lot line" or a "rear lot line." A "side lot line" separating a "lot" from a "street" is a "side street lot line." A "side lot line" separating a lot from another "lot" or "lots" is an "interior lot line."

(6) "Lot Of Record." A parcel of land delineated on a plat recorded with the County Registrar of Deeds.

(7) "Lot, Through." A "lot" having "front and rear lot lines" abutting a "street."

"Major Thoroughfare." Any "street" classified as an arterial in the Town Comprehensive Plan.

"Mean High Water." The average height of the high waters over a nineteen (19) year period. The mean high water line elevation along the shore line of the Indian River throughout the town is 0.75 mean sea level and the mean high water line elevation in the man-made or natural lakes inside the town is 1.00 mean sea level.

"Mean High Water Line." The intersection of the tidal plane of mean high water with the shore.

"Medical Office." A "building" or "buildings" for the specific use by medical personnel in the care and treatment of out-patients.

"Nonconforming Building." A "building" or portion thereof existing at the effective date of this chapter, or amendments thereto, that does not conform to the provision of this chapter or the use regulations of the district in which it is located.

"Nonconforming Use." A use which lawfully occupied a "building" or land at the effective date of this chapter, or amendments thereto, that does not conform to the provisions of this chapter, nor to the use regulations of the district in which it is located.

"Parking Space." The area required for parking an automobile which shall be a minimum often (10) feet wide and twenty (20) feet long, but not including drives and aisles.

"Public Utility." Any person, firm, corporation, municipal department, or board or commission duly authorized to furnish, and furnishing to the public, under governmental regulations, electricity, gas, steam, telephone, telegraph, transportation, water, communication, or sewage disposal.

"Setback." The distance required to obtain the minimum front, side, and rear open space provisions of this chapter.

"Show Window." A window or opening in the walls of a structure or building used for commercial purposes, the area behind the window or opening being accessible only from within the structure or building of which it is a part or attached to.

"Sign." The use of any words, numerals, figures, devices, designs, trademarks by which anything is made known such as to show an individual, firm, profession, business, product, message and which is visible to the general public. "sign" also includes any object, structure, symbol, display, banner, streamer, or other thing, with or without lettering, which is intended to or does identify or attract attention to any privately-owned property or premises, or is intended to inform the public of sales, rentals, leases, or other activities.

(1) "Sign, Abandoned." A "sign" which no longer applies to the business, property, or site, due to the closing of a business, lack of a business license, or a change in business name, or for any other reason rendering the "sign" not applicable to the premises involved.

(2) "Sign, Ground." A "sign" which is located separate from the building and is mounted on the ground but not on a pole.

(3) "Sign, Illuminated." Any "sign" which radiates internal light and which is visible from any public property or right-of-way.

(4) "Sign, Wall." A "sign" which is located on the facade of a "building" or "structure," and is intended to be visible from outside of the property or from any right-of-way open to the public. Such signs may be parallel to the wall, projecting at right angles to the wall or on an awning.

(5) "Sign, Multi-faced." A "sign" which has more than two sign faces.

(6) "Sign, Window." A sign mounted on the window or on the glass portion of the door.

"Story." That portion of a "building," but not including a "basement," between one floor level and the ceiling next above it and which portion meets the requirements of the building code for a habitable room.

"Street." Any thoroughfare or way, private or dedicated to the use of the public, whether designated as a road, avenue, highway, boulevard, drive, lane, circle, place, court, terrace, or any similar designation.

"Structure." Anything constructed or erected, the use of which required location on the ground or attachments to something having location on the ground.

"Usable Floor Area" Measured to the exterior face of the exterior walls on the first "story" and any other "story" which is connected by a fixed stairway or elevator, and which may be made usable for human habitation and includes the "usable floor area" of all "accessory buildings" measured similarly, but excludes the "floor area" of heater rooms, mechanical equipment rooms, "attics," unenclosed porches, light shafts, public corridors, public stairwells, and public toilets.

"Use, Accessory." A use subordinate to the "principal use" and for purposes clearly incidental to those of the "principal use."

"Use, Principal." The primary use to which the premises are devoted and the primary purpose for which the premises are used.

"Used" or "Occupied." Includes intended, designed, or arranged to be "used" or "occupied."

"Yard, Front." An open space extending the full width of a "lot" and of a uniform depth measured horizontally at right angles to the "front lot line," unoccupied from the ground upward.

"Yard, Rear." An open space extending the full width of a "lot" and of a uniform depth measured horizontally at right angles to the "rear lot line," unoccupied from the ground upward, except as specified.

"Yard, Side." An open space extending from the "front yard" to the "rear yard" and of a uniform width measured horizontally at right angles to the "side lot line" and unoccupied from the ground upward, except as specified.

"Zoning Variance." A modification of the literal provisions of this chapter granted when strict enforcement of this chapter would cause practical difficulty or undue hardship owing to the circumstances unique to the individual property on which the variance is granted. The crucial points of a variance are practical difficulty, undue hardship, and unique circumstances applying to the specific property involved. A variance is not justified unless all elements are present in each case.