

Indian Springs Village (ISV), Alabama
RULES AND PROCEDURES
ZONING BOARD OF ADJUSTMENT (ZBA)
Adopted 06/27/2017

The following rules and procedures (“Rules”) are adopted by the ZBA, in accordance with: 1) Article IV, Section 13.2 of the Zoning Ordinance (See Rules Section 1.1 below) and 2) Title 11, Chapter 12, Section 80, Paragraph b, of the Code of Alabama (See Rules Section 1.3 below). These Rules supersede or repeal any previous documents or unwritten understandings regarding this subject. The Rules, other than those restated from State statutes, or from ISV ordinances, may be waived during any official ZBA meeting by a unanimous vote.

Section 1: References.

- 1.1. Zoning Ordinance 2015-002 For The Town of Indian Springs Village, July 21, 2015, referred to as the “Zoning Ordinance” in this document. Specific citations are abbreviated as “ZONORD[Article-Section]”.
- 1.2. Alabama Open Meetings Act, Title 36, Chapter 25A of the Code of Alabama, as amended by Act 2015-340, referred to as the “Open Meetings Act” in this document.
- 1.3. Title 11, Chapter 52, Section 80 of the Code of Alabama 1975, referred to as the “State Code -- ZBA” in this document.
- 1.4. Title 36, Chapter 12, Sections 1-5 of the Code of Alabama 1975, referred as the “State Code – Public Records” in this document.
- 1.5. Indian Springs Village Zoning Map. Current version issued November 2012..
- 1.6. Ordinance No. 2016-013, referred to as the “Schedule of Fees”

Section 2: ZBA Purpose, Powers, Organization

2.1. Purpose. The Zoning Ordinance is administered and enforced by one or more “Zoning Enforcement Officers”, as described in ZONORD[IV-1]. The ZBA is a quasi-judicial body, with a purpose of providing “checks and balances” to zoning law enforcement at the municipal government level. The ZBA conducts public hearings, referred to as “Hearings” in this document, regarding Zoning Ordinance enforcement as described therein.

Based on the findings derived from these Hearings, the ZBA may

“reverse, affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and, to that end shall have all the powers of the officer from whom the appeal is taken” (Code of Alabama -- ZBA).

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There are three (3) different “Types” of ZBA Hearings defined in the Zoning Ordinance:

- A. Administrative Review
- B. Special Exception Use
- C. Zoning Ordinance Variance

Rules Section 3 provides an explanation of each of these three types. The Zoning Ordinance also cites other specific instances where a ZBA action may be initiated. Rules Section 3.4 assigns a hearing “Type” to each of these other specific instances for administrative purposes.

All three types of ZBA Hearings are initiated by the requesting party (“Applicant”) filing an application with the ISV Town Clerk. Rules Section 5 explains the filing procedures for each Hearing type. Rules Section 6 describes the Hearing procedure and the Hearing minutes.

2.2. ZBA Board Members, Office of the Board. The five (5) board members and two (2) supernumeraries are appointed by the ISV Town Council for overlapping 3-year terms.

The ZBA is not separately incorporated from ISV. The “office of the board” referred to in ZONORD[IV-13.3] and in State Code – ZBA, Paragraph (b), is the same as the ISV Office of the Mayor and Town Clerk.

2.3. ZBA Meeting Prerequisites. All meetings and Hearings of the ZBA are subject to the provisions of the Open Meetings Act and the Zoning Ordinance. Hence, the following conditions are required for an official ZBA meeting to be convened, regardless of whether or not a Hearing is included in the meeting agenda:

- The meeting is convened by an authorized person (See Rules Sections 2.5,2.6)
- Meeting (or Hearing) notices were posted at least seven (7) days prior to the meeting in four (4) conspicuous places within Town limits, one of which was the Town Hall.
- Meeting (or Hearing) notices were posted at least seven (7) days prior to the meeting on the town web site, provided the web site was in service and was capable of such posting at that time.
- Meeting (or meeting/Hearing) notices were emailed (via “E-Blast”) at least seven (7) days prior to the meeting to all registered ISV email addresses, provided the capability to perform this posting was present at that time.
- The Mayor, Chairman Pro Tem of the Council and Chairman of the Planning and Zoning Commission were notified, either by telephone or email, at least seven (7) days prior to the meeting.
- Five of the seven appointees (board members plus supernumeraries) are present.

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2.4. ZBA Hearing Prerequisites. In addition to the conditions specified in Rules Section 2.3 above, the following conditions must also be true in order for the ZBA to conduct a Hearing at a meeting:

- The Hearing was scheduled by the ZBA Chairman or Acting Chairman, after the Hearing application process has been satisfactorily completed.
- The Hearing Applicant, or an authorized representative/agent, is present.
- Persons with an interest in the Hearing were notified of the Hearing by prepaid, first class, U.S Mail, and all such notifications were deposited into the mail at least seven(7) days prior to the Hearing. For Type B (See Rules Section 3.2) and C (See Rules Section 3.3) Hearings, the owners of adjoining parcels are the “persons with an interest”. For Type A (See Rules Section 3.1) Hearings, the ZBA Chairman or Acting Chairman will determine the applicable persons.

2.5. ZBA Chairman, Acting Chairman, Authority to Convene Meetings and Hearings, and to Preside. Any one of the 5 Board Members, may be elected ZBA Chairman by the Board Members at any officially convened meeting. He/She serves until his/her term expiration, or until another Chairman is elected by the Board Members at any official meeting. If the Chairman is temporarily unable to perform the duties stated in the Zoning Ordinance, he/she will designate another Board Member as the Acting Chairman, until such time as the elected Chairman is able to resume those duties. The Chairman and/or the Acting Chairman have the authority to convene ZBA meetings and Hearings, as well to preside at those events.

2.6. Mayor/Town Clerk. Either the ISV Mayor or Town Clerk has the authority to post notice (See Rules Section 2.3) and convene a ZBA meeting if: 1) an application for a Hearing has been received, and the Chairman or Acting Chairman has not acted within a reasonable time, or 2) the elected Chairman has completed his/her term of office, or 3) the elected Chairman has vacated the office for any reason. If the convened meeting satisfies the conditions of Rules Section 2.3, then a new ZBA Chairman will be elected as the first order of business.

The Town Clerk will serve as the custodian of all official public records associated with ZBA meetings and Hearings, implementing the public records procedures described in Rules Section 4.

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2.7. ZBA Recorder, Acting Recorder. Any one of the 5 Board Members, may be elected ZBA Recorder by the Board Members at any Official Meeting. The ZBA Recorder performs the record keeping (i.e. minutes) duties during a meeting or Hearing, as described in the Zoning Ordinance and in Rules Section 8. He/She serves until his/her term expiration, or until another Recorder is elected by the Board Members at any officially convened meeting. If the Recorder is temporarily unable to perform the recording duties, the Chairman or Acting Chairman will designate another Board Member as the Acting Recorder, until such time as the elected Recorder is able to resume those duties.

Section 3: Types of ZBA Hearings

Three general types of ZBA Appeal Hearings are defined in ZONORD[IV-13.3].

3.1. Type A. Administrative Review of an alleged error in an order, requirement, decision, or determination made by an Enforcement Officer..

3.2. Type B. Granting, Denial, or Granting With Conditions and Safeguards -- “Special Exception Use” of a land parcel, as specifically defined throughout Article VI of the Zoning Ordinance. Article VIII of the Zoning Ordinance applies “a special set of standards” to three particular Special Exception Uses.

3.3. Type C. Granting, Denial, or Granting With Conditions and Safeguards – a Variance to the terms of the Zoning Ordinance.

3.4. Other Specified Instances of ZBA Judicial Actions are included in the Zoning Ordinance, but are not specifically linked to one of the three types of general ZBA judicial actions described in Rules Sections 3.1-3.3 above. To simplify the applicability of these Rules, a “Type” is assigned to each of these other specified actions, as follows:

3.4.1. ZONORD[III-2.1] Non-Conforming Lots of Record. A land parcel defined as such may be used as a building site, regardless of its area and width. However, all other general use regulations (See ZONORD[III-1.1]) shall be required, unless the ZBA acts to grant a specific exception. This will be considered an instance of a Type C Appeal Hearing (See Rules Section 3.3).

3.4.2. ZONORD[III-2.11] Reduction in Lot Area Prohibited. A Non-Conforming Lot of Record used as a building site is required to meet yard and open space minimums in the Zoning Ordinance, provided sufficient land is available. If sufficient land is not available, the ZBA may act to reduce open space requirements. In the ZBA’s opinion the

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reduced open space requirement will conform “as closely as possible” to the ordinance requirements. In no case will the parcel “have less than 24 feet of lot width to build upon, after required side yards are deducted”. This will be considered an instance of a Type C Appeal Hearing (See Rules Section 3.3).

3.4.3. ZONORD[III-2.13] Abatement of Noise, Smoke, Gas, Vibration, Fumes, Dust, Fire and Explosion, Hazard or Nuisance. The ZBA may act to require the “conduct of any use” of a land parcel within ISV to be changed “to abate such hazard to health, comfort and convenience”. ZBA Appeal Hearing is dependent on several factors, as explained in ZONORD[III-12]. This will be considered an instance of a Type A Appeal Hearing (See Rules Section 3.1).

3.4.4. ZONORD[III-4.0] Denial of Building Permit Applications. The ZBA may act to overrule a denial of a building permit, provided the denial resulted from an alleged error by an ISV official. This will be considered an instance of a Type A Appeal Hearing (See Rules Section 3.1).

3.4.5. ZONORD[III-5.0] Denial of Certificate of Occupancy. The ZBA may act to overrule a denial of a certificate, provided the denial resulted from an alleged error by an ISV official. This will be considered an instance of a Type A Appeal Hearing (See Rules Section 3.1).

3.4.6. ZONORD[III-6.0] Interpretation of the Zoning District Boundaries, as described in Section 6.0 of the ZONING ORDINANCE. In the ZBA’s opinion, any zoning ordinance enforcement officer (See ZONORD[IV-1]) is authorized to interpret zoning district boundaries from the Indian Springs Village Zoning Map. If an interpretation error is alleged, the aggrieved party may file for a Type A ZBA Appeal Hearing (See Rules Section 3.1).

3.4.7. ZONORD[III-7.0] Sustain or Re-Classify Town Engineer’s Classification of an Intended Land Parcel Use. This will be considered an instance of a Type A Action (See Rules Section 3.1).

3.4.8. ZONORD[III-8.0] Resolve Unclassified Intended Land Parcel Use, This will be considered an instance of a Type C Action (See Rules Section 3.3).

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Section 4: Public Records Requirements

- 4.1.** All documents filed pursuant to all types of ZBA actions have been deemed “Public Records”. The ISV Town Clerk becomes the custodian of the “Official Copy” of all ZBA documents immediately upon filing.
- 4.2.** The Town Clerk will mark as received and date stamp the cover sheet or first page of 1) the Official Copy, and 2) all required duplicate copies, of all documents filed.
- 4.3.** The ZBA shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and of other official actions, all of which shall be filed in the ISV Town Office and shall be a public record. Further comments on the content of the Hearing minutes are included in Rules Sections 6.1 and 6.12..
- 4.4.** The ZBA shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called on by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

Section 5: Filing Requirements for a ZBA Hearing

ZBA Hearings will be scheduled only after a written application is filed with the Town Clerk and the required filing fee (See Rules Section 1.6) is paid. Three copies of the written application will be furnished to the Town Clerk by the Applicant. One copy of the application will be retained by the Town Clerk as the Official Copy. The second and third copies will be distributed as described in Rules Sections 5.1, 5.2, or 5.3 below, as appropriate. The content requirements for the written application varies somewhat, depending upon the “Type” of Hearing (See Rules Section 3).

5.1. Type A. Written Application Requirements for an Administrative Review. The written application requirements are stated in ZONORD[IV-13.6]. The Applicant may be either the person(s) aggrieved, or any ISV official affected by the Zoning Enforcement Officer’s decision. The Applicant will prepare a “Written Statement”, specifying the grounds for the alleged error by a Zoning Enforcement Officer. Specific sections of the Zoning Ordinance should be cited. The Written Statement will be page numbered, with last page signed/dated by the applicant.

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The second copy of the Written Statement will be forwarded by the Town Clerk to the Zoning Enforcement Officer, who made the alleged error. The Zoning Enforcement Officer will, as soon as practical, mail or hand carry all documents and/or working papers related to the appeal to the Chairman or Acting Chairman of the ZBA.

The third copy of the Written Statement will be forwarded by the Town Clerk to the Chairman or Acting Chairman of the ZBA.

5.2. Type B. Written Application Requirements for a “Special Exception Use”. The written application requirements are described in ZONORD[IV-13.3B] . ZONORD[IV-13.3B.i.e.] cites “supplemental information” required to be submitted with the application. Article VIII refers to a “Site Development Plan”.(ZONORD[VIII-2.1]). The ZBA will interpret the Site Development Plan submittal to be a substitute for this “supplemental information” whenever the Special Exception Use is included in Article VIII.

The Applicant must be either the property Owner or an authorized agent for the Owner.

The second copy of the written application (including supplemental information or Site Development Plan) will be forwarded by the Town Clerk to the Town Engineer.

The third copy of the written application will be forwarded by the Town Clerk to the Chairman or Acting Chairman of the ZBA.

5.3. Type C. Written Application Requirements for a Variance The written application requirements are described in ZONORD[IV-13.3C]. ZONORD[IV-13.3Ci] cites a written “justification” covering five (5) specific topics. This Justification will be page numbered, with last page signed/dated.

The Applicant must be either the property Owner or an authorized agent for the Owner.

The second copy of written application (including the 5-paragraph Justification) will be forwarded by the Town Clerk to the Town Engineer.

The third copy of the written application will be forwarded by the Town Clerk to the Chairman or Acting Chairman of the ZBA.

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Section 6: Hearing Procedures

6.1. Convening the Hearing. The ZBA Chairman, or Acting Chairman, will be responsible for convening the appeal Hearing at the scheduled date, time, and place. The first item on the agenda will be the Chairman's verification statement that all Hearing prerequisites listed in Rules Sections 2.3 and 2.4 have either: 1) all been met with no exceptions, or 2) met with exceptions noted in the minutes. In addition to the Chairman's prerequisite verification statement, the following details will also be included in the minutes:

- Copy of Hearing Notice as Posted, Four (4) Places Posted, Date Posted.
- Names of Board Members and/or Supernumeraries in Attendance (Referred to as simply "Board Members" within Rules Section 6 Hearing Procedures).
- Town Engineer, or Duly Appointed Substitute in Attendance
- Name(s) of Applicant and/or Applicant's Agent in Attendance
- Name of Zoning Enforcement Officer, Alleged to Have Acted in Error in Attendance (Applicable to Type A Hearing Only)
- Names and Addresses of Parties of Interest (Adjoining Lot Owners of Record, if Type B or C Hearing) to Which Hearing Notices Were Mailed, Date Hearing Notices Were Mailed, Indication of Those in Attendance.
- List of Expedited Home Occupation Special Exception Provisional Approvals that require review (if any), as described in ZONORD[VIII-5.3]. See Rules Section 6.12.

6.2. Sign-up Sheet for Others in Attendance. Anyone in attendance, not listed in Rules Section 6.1 above, desiring to speak, comment, or ask questions, will provide their name and address to the ZBA Recorder prior to such participation. The Sign-up Sheet will be included in the Hearing minutes.

6.3. Reference Copies of Filed Applications Available. If not previously furnished, the ZBA Chairman will provide copies of any filed applications, with supporting information, to the Board Members.

6.4. Applicant's Presentation. The ZBA Chairman will then allow the Applicant to make his/her presentation for the ZBA's consideration.

6.5. Responses to Applicant's Presentation. At the conclusion of the applicants presentation the Board will allow the Town Engineer, or other town officials or witnesses to respond to the application.

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6.6. ZBA Questions. The ZBA Chairman will then allow the Board Members to ask questions of the applicant, Engineer, officials or other witnesses.

6.7. Close of Testimony. After the Applicant has presented his/her case, any Board Member may move to close testimony immediately and proceed to deliberation. A second to the motion and four (4) votes in favor of the motion are required to close testimony. The motion and vote will be recorded in the minutes.

6.8. Deliberation. Upon the request of any Board Member, the ZBA may deliberate in executive session, as authorized by The Open Meetings Act, Section 36-25A-7(9). To deliberate and discuss evidence or testimony presented during a public or contested case Hearing and vote upon the outcome of the proceeding or Hearing if the governmental body is acting in the capacity of a quasi-judicial body, and either votes upon its decision in an open meeting or issues a written decision which may be appealed to a hearing officer, an administrative board, court, or other body which has the authority to conduct a hearing or appeal of the matter which is open to the public.

Deliberations will continue until a motion or call for the question, whereby a vote will be taken.

6.9. Requirement for ZBA Approval Action. A minimum of Four (4) of the attending Board Members must vote in favor of a motion in order for the motion to become a ZBA ruling. Upon: 1) the failure of the application to receive any seconded approval motions, or 2) the failure of any said seconded motion to receive four (4) or more approval votes, then the ZBA action sought by the Applicant is not granted. The Chairman will have said failure noted in the minutes.

6.10. ZBA Voting and Ruling. Any motion for ZBA approval will contain any limits, restrictions, or conditions that will attach to the said motion. The motion will be recorded in the minutes verbatim, with wording concurred upon by both the Board Members making and seconding the motion.

The Hearing minutes will also include the In Favor, Against, or Abstain vote of each Board Member, regardless of whether or not the vote occurred in executive or open session.

If there are no Expedited Home Occupation Special Exception Provisional Approvals, the Hearing will then be adjourned by the ZBA Chairman, or Acting ZBA Chairman. Otherwise, these Provisional Approvals will be reviewed after a brief recess.

6.11. Expedited Home Occupation Special Exception Provisional Approvals. The ZBA Chairman will state if the Town Clerk has notified the ZBA Chairman of any Expedited Home

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Occupation Special Exception Provisional Approvals that require review, as described in ZONORD[VIII-5.3].

The Zoning Board of Adjustment will review all Expedited Home Occupation Special Exception applications at their next called meeting and reserve the right upon review to (1) require any applicant to attend a full hearing on their application for a Special Exception and to pay the standard Special Exception fee, (2) revoke any Expedited Home Special Exceptions.

The review will proceed sequentially through the list provided by the Town Clerk. After all Board Members have been given the opportunity to comment on each Provisional Approval, any Board Member may call for the question (on that Provisional Approval). The question is called with a second and four (4) votes in favor of the question motion. After the question is called, a roll call vote between either: sustaining, rejecting, or abstaining on Provisional Approval is taken. Provisional Approval is sustained if four (4) or five (5) Board Members vote in to sustain. Otherwise, Provisional Approval is revoked. The Hearing minutes will include the In Favor, Against, or Abstain vote of each Board Member.

6.12. Filing of Ruling(s). The ZBA Chairman, or Acting ZBA Chairman, and the ZBA Recorder will assemble and review the Hearing minutes. They will number all pages, both sign and date the last page, and both initial each page. The minutes will then be distributed to the ZBA and filed with the Town Clerk as soon as practical. Because of the indeterminate delay until the next ZBA meeting, minutes will not be approved by a vote of the Board Members attending the Hearing. However, any Board Member participating in the Hearing may file comments referring to the minutes with the Town Clerk. Those comments will be attached to the official copy of the minutes in the ISV records.