



APPLICATION FORM FOR APPEALS

APPEALS FROM:

- Decisions of the Community Development Director or His Designee; AND
- Actions/Decisions of the Planning and Zoning Commission (P&ZC)

FEES:

- I. Site Plan Projects:
  - Appeal by project applicant: \$400.00
  - Appeal by affected party: \$800.00
- II. Appeal of Staff Determination: \$800.00

Is this an appeal by a project applicant? YES

If so, please list the project name OCEAN CONCRETE, INC.

Property Owner(s): GEORGE MAIB

Address: 4234 SKYLINE DRIVE, JENSEN BEACH, FL. 34957

Phone Number: 772-260-5727

Signature: [Handwritten Signature] (or letter of authorization attached)

Applicant Name: SAME AS OWNER

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: [Handwritten Signature]

Site Address (If Applicable): \_\_\_\_\_

1. What is being appealed? PLANNING AND ZONING COMMISSION DENIAL OF APPEAL OF DECISION BY THE COMMUNITY DEVELOPMENT DIRECTOR DENYING 1 YEAR SITE PLAN APPLICATION EXTENSION

2. Reason(s) for the appeal FAILURE TO GRANT A ROUTINE REQUEST FOR EXTENSION. P&Z SHOULD HAVE OVERTURNED COMMUNITY DEVELOPMENT DIRECTOR AS MORE FULLY DISCUSSED ON ATTACHMENT A.

3. What staff (or P&ZC) error(s) is alleged? FAILURE TO OVERTURN THE DECISION TO DENY A SITE PLAN APPLICATION EXTENSION WHERE GOOD CAUSE FOR EXTENSION EXISTS AND FAILURE TO EXTEND CONSTITUTES A DENIAL ON THE MERITS.

11085 Old Dixie Hwy 2004110124

4. What land development regulation (LDR) provision(s) have allegedly been improperly interpreted or applied 914.06(5)(f)

---

5. What LDRs and/or Comprehensive Plan goals, objectives, policies support your position? 914.06(1)(a)(4)(b), 914.06(5)(5) See attached Exhibit A.

---

NOTE: Supplemental or additional information may be attached. If such information is being attached, please list here what is being attached:

1. Denial letter from Indian River Community Development Department dated January 17, 2008
2. Transcript of January 10, 2008 P&Z Hearing – to be provided
3. All submittals to P&Z for January 10, 2008 Hearing – to be provided

OFFICE USE ONLY:

FEE PAID: \_\_\_\_\_

DATE ACCEPTED: \_\_\_\_\_

DATE RECEIVED: \_\_\_\_\_

## Attachment A

Ocean Concrete hereby incorporates by reference the evidence, arguments, testimony and legal analysis presented to the Planning and Zoning Commission at its January 10, 2008 meeting, including but not limited to Ocean Concrete's appeal to the P&Z and all attachments thereto, and all information presented at the January 10, 2008 as reflected in the transcript of proceedings.

Ocean Concrete asserts that the P&Z Commission erred by denying the appeal. Ocean Concrete had sought a simple 1 year extension of its pending site plan application. This request was denied solely on the basis that there had been a change in LDRs for the Light Industrial zoning category. In essence, the extension request was a determination on the merits that the project could not conform to current zoning requirements.

The Community Development director candidly admitted at the P&Z meeting that: 1) very few requests for site plan extension are ever denied, and; 2) the request by Ocean Concrete would not have been denied but for the change in the IL zoning classification.

During the P&Z meeting, the Community Development Director claimed that it was processing the application pursuant to the IL zoning that was in effect prior to the amendment to prohibit concrete batch plants. If this is the case, then clearly the county staff felt that more time was necessary to reach a decision on the merits, and thus good cause existed for an extension of the site plan application. As the Community Development Director acknowledged, such extensions are routinely granted, and an extension would have been granted in this case, if the County was truly evaluating the application under the IL zoning in effect prior to the amendment. Thus the County staff is on the horns of a dilemma---if it was evaluating the application in good faith under the pre-existing LDRs prior to the amendment, then an application extension should have been granted. If, on the other hand, the County staff was evaluating the application under the LDRs after the amendment to prohibit concrete batch plants, then its action in denying an extension was tantamount to a decision on the merits of the application. The County Staff cannot have it both ways.

The request for extension was made under Section 914.06(4)(d) of the County Code, which allows for a one year extension of time of a pending site plan application. The request for extension was filed on November 21, 2007 prior to the scheduled expiration date of the application, and was made simultaneously with detailed and complete responses to the Technical Review Committee's comments on the site plan application. The only reason offered for the denial of the extension request is that ***"the subject site plan application does not conform to the existing IL (Light Industrial) zoning district regulations."*** Thus the denial of the extension of the site plan application erroneously makes a determination on the merits of whether the site plan application should be approved under existing County Code and the recent changes in LDR requirements, rather than simply addressing the issue of whether more time is needed to complete the site plan review process.

In his denial letter, the Community Development Director relies upon Section 914.08(2) as justification for reviewing and applying the affect of recently changed LDRs. However, by its own terms, Section 914.08(2) applies only to requests for extensions of final approved site plans in order to allow more time to commence construction of an approved project. The cited Section does not, by its express terms, apply to requests for approval of pending applications for site plan approval. Thus the Community Development Director relies upon a clearly inapplicable Code provision as the basis for his decision.

The proper question to be addressed under the applicable Section 914.06(4)(d) is whether there is "good cause" for the requested extension of a pending site plan application. Such good cause for an extension is clearly demonstrated in this matter by the County staff's own actions in reviewing the Applicant's Response to the TRC comments submitted on November 21, 2007. Contrary and completely inconsistent with the Community Development Director's denial of the extension request, the TRC and County staff did not deny the site plan application based upon the changed LDR for Light Industrial zoning. Instead, the TRC failed to complete its review, and offered additional comments, and requested additional information from the applicant. (See attached letter from County) Thus the TRC by its own actions, failed to complete the review, and specifically recognized that further review of the project and proposed site plan was needed. If the TRC and Community Development Director honestly believed that the pending site plan cannot be approved under any circumstances due to the changed LDRs, then the appropriate action would have been to deny the site plan application on the merits, and allow the Applicant to file a proper administrative appeal of such denial. It should be noted that Ocean Concrete has filed a separate appeal, challenging the decision of the Community Development Director on the merits of the site plan application.

The issues raised by the TRC in its comment letter of December 4, 2007 were also promptly and completely addressed by the Applicant prior to the permit expiration date. Thus good cause is demonstrated for an extension, as additional time is clearly needed to allow the TRC to complete its review on the merits of the application. The TRC and Community Development Director cannot be permitted to fail to complete their review and request additional information on the one hand, and then deny a request for extension to allow staff to complete its review on the other. Such actions would clearly constitute bad faith in the site plan review process.

In sum, the actions of the Community Development Director are clearly arbitrary and capricious and are nothing more than a transparent and bad faith bureaucratic maneuver with the specific intent to deny the Applicant's property development rights.

**To the extent the P&Z denial of the appeal on the extension request is upheld, it constitutes a de facto denial on the merits of the site plan application, and the Applicant hereby appeals that decision on the grounds listed below in detail.**

The Community Development Director's denial of the site plan extension request is tantamount to a de facto denial of the site plan application, and constitutes a deliberate and bad faith maneuver to arbitrarily allow the expiration of the site plan application. Accordingly, the Applicant hereby, through this appeal, also appeals, pursuant to Section 914.13 and 902.07 of the County Code, the decision to deny the site plan application. Pursuant to Section 902.07(3)(c) of the County Code, the reasons for this appeal, the errors alleged, and related matters include the following:

- 1) The site plan application fully and completely met all requirements for issuance of site plan approval prior to the expiration date.
- 2) The Community Development Director has inappropriately applied LDRs that were changed after the site plan was submitted, and after the Applicant had expended substantial sums in reasonable reliance of the existing LDRs. The County's actions in changing the LDRs were taken in bad faith, in a concerted effort to deliberately deprive the Applicant of his legitimate property rights.
- 3) The Community Development Director and the P&Z failed to properly consider the vested rights and equitable estoppel issues raised by Ocean Concrete. The County's various actions including changing the LDRs are also the subject of a pending lawsuit filed in Circuit Court for the Nineteenth Judicial Circuit in and for Indian River County, Florida, styled Ocean Concrete, Inc. and George Maib v. Indian River County, Board of County Commissioners, Case No. 20071589-CA-17.
- 4) The Ordinances allegedly improperly applied include Section 911.11 which establishes the zoning requirements for Light Industrial districts. The Community Development Director improperly applied the Ordinance amendments that were adopted via Ordinance # 2007-027 on July 24, 2007, well after the date of the application, and after substantial investments of time, funds, and effort by the Applicant made in good faith reliance on published rules and regulations.
- 5) The LDRs supporting the Applicant's position include Section 911.11 as it existed prior to the adoption of the changed LDR for Light Industrial districts.
- 6) The goals, objectives, and policies of the Comprehensive Plan supporting the Applicant's position are contained in the elements of the Comprehensive Plan pertaining to provision of sufficient available land to meet the industrial development needs of Indian River County, including the need for location of certain types of such facilities along the FEC Rail Line, as a major materials delivery artery in the County.

For the foregoing reasons, the Applicant appeals the decision of the Planning and Zoning Commission dated January 10, 2008 and respectfully requests:

1. That the decision to deny the Site Plan Application Extension Request be reversed.
2. That the matter be returned to the Community Development Director and TRC to complete their evaluation on the merits of the site plan, and to enter their final decision. To the extent such decision is to deny the site plan based upon the change in LDRs, then the Community Development Director should make a determination of whether or not vested rights exist based upon principles of equitable estoppel, and the amount of time, energy, and financial resources invested by the applicant prior to the change in LDRs. The Applicant and affected parties should be provided their due process rights to appeal any decision by the Community Development Director on the merits of the site plan application under the County Code.
3. Alternatively, consider the denial of the application extension as a de facto denial of the site plan application, and reverse such decision for the reasons specified herein.