

ORDINANCE NO. 2010-30

Pulled from RTCM 6/7/2010 as it involves land use and did not go to P&Z first.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING SECTION 1-5.27 RELATING TO POND PERMITS; AMENDING THE DEFINITION OF POND; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, as follows:

Section 1. Article V, Section 1-5.27.1 is amended to read as follows:

“General Provisions. It shall be a violation of this ordinance for any person to construct, or permit to be constructed, or to fill a pond within the Town of Malabar without first obtaining a Pond Permit from the Town of Malabar.

1. *Pond Permit.* Any person wishing to construct or permit to be constructed a pond ~~of one quarter acre in size or greater~~ or to fill a pond of any size within the Town of Malabar must, as a precondition, obtain a Pond Permit. ~~Ponds one quarter (1/4) acre or less must meet setback requirements.~~ In order to obtain a Pond Permit, an applicant must:
 - A. Pay the designated Pond Permit Application fee prior to the Town accepting any application for a Pond Permit. The Pond Permit Application Fee shall be set by a Resolution of the Town Council;
 - B. If the applicant desires to construct a pond, the applicant shall provide the following documentation to the Town Clerk as part of the Pond Permit Application;
 1. A site plan containing the existing and proposed elevations for the entire project, site, the location of the proposed pond, a survey of the project site, said (survey to contain topographic data), tree locations and a plot plan.
 2. Applicant must provide a written estimate of the quantity of fill which is proposed to be excavated, and a plan for disposal of said fill in accordance with this Section.
 3. Any other documents that shall be required by the Town Engineer for purposes of demonstrating compliance with the

performance standards of Section 1-5.27.5.A-F and completing a conclusive review of the proposed site.

- C. If an applicant desires to fill a pond the applicant shall submit the following:
1. A Pond Permit Application containing, at a minimum the following:
 - a. A site plan of the existing pond including total area of the surface covered by water; depth of pond; and its proximity to structure;
 - b. The estimated amount of fill to be used, as well as, the type of fill to be used;
 - c. Name of contractor performing the fill activity;
 - d. Any and all other information required by the Town Engineer.
- D. The Town Clerk shall not accept an application for a Pond Permit unless the applicant has submitted an original and two (2) copies of all required documents, and paid all required permit fees.
- E. In addition to a Pond Permit fee required herein the applicant must, apply for and obtain a Land Clearing Permit required by the Town's Code of Ordinances.
- F. The Town Engineer, in his/her sole and absolute discretion may waive the requirements for a Pond Permit for the construction of a pond by taking into consideration the size of the pond, its location, its intended use and any other factors the Town Engineer deems appropriate in considering the waiver of a Pond Permit for the construction of a pond.

Section 2. Article V, Section 1-5.27.4.I is amended to read as follows:

"4. *Definitions*

...

- I. Pond – Shall mean any excavation for the purpose of retaining water ~~wherein the surface area is one-quarter acre in size or greater.~~ Notwithstanding this definition of pond, all fill activity which reduces the surface area of an existing water body, regardless of size, may only be accomplished after a permit authorizing such activity is issued by the Town."

Section 3. Repeal

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed and all Ordinances or parts of Ordinances not in conflict herewith are hereby continued in full force and effect.

Section 4. Severability

In the event a court of competent jurisdiction shall hold or determine that any part of the this ordinance is invalid or unconstitutional, the remainder of the is Ordinance shall not be effected and it shall be presumed that the Town Council, Town of Malabar did not intend to enact such invalid or unconstitutional revision. It shall further be assumed that the Town Council would have enacted the remainder of this Ordinance without said invalid and unconstitutional revision, thereby causing said remainder to remain in full force and effect.

Section 5. Incorporation

It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida and it is herby provided that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

Section 6. Effective Date

~~This Ordinance shall become effective immediately upon its adoption.~~

~~The foregoing Ordinance was moved for adoption by Council member _____
_____. The motion was seconded by Council member _____ and, upon
being put to a vote, the vote was as follows:~~

~~Council Member Nancy Borton _____~~

~~Council Member Brian Vail _____~~

~~Council Member Steven (Steve) Rivet _____~~

~~Council Member Jeffrey (Jeff) McKnight _____~~

~~Council Member Marisa Acquaviva _____~~

~~Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida
this ____ day of _____, 2010.~~

Town Of Malabar

By Tom Eschenberg, Chairperson

First Reading: _____

Second Reading: _____

ATTEST:

By _____

Debby Franklin, Town Clerk/Treasurer

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney