

ORDINANCE 2019-01

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO SECTIONS 1-12.5 OF ARTICLE XII, ENTITLED “PROCEDURES FOR ADOPTING, SUPPLEMENTING OR AMENDING THE LAND DEVELOPMENT CODE” OF THE LAND DEVELOPMENT CODE OF THE TOWN; REMOVING THAT PORTION OF SECTION 1-12.5 OF THE LAND DEVELOPMENT CODE OF THE TOWN RELATING TO THE DECISION MAKING AUTHORITY OF THE PLANNING AND ZONING BOARD WHICH ARE IN CONFLICT WITH THE TOWN CHARTER; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 3.05 of the Town Charter provides for the specific authority on the part of the Town Council to create advisory boards; and,

WHEREAS, Section 3.01 (5) of the Town Charter generally provides that the Town Council shall have and is required to “Perform such other duties as may be prescribed in ordinances *consistent with the Charter*”; and,

WHEREAS, Section 2-250 of the Town’s Code of Ordinances created the Town Planning and Zoning Board which “is advisory in nature”; and,

WHEREAS, the Town attorney has opined that the sub-section C of Section 1-12.5 which reads: “If the Planning and Zoning Board denies the requested zone change or amendment, this action shall be deemed final unless such action is appealed to the Town Council pursuant to Section 1-12.3(C)(4)” conflicts with the Section 3.05 of the Town Charter which provides for the creation of advisory boards; and,

WHEREAS, sub-section C of Section 1-12.5 improperly granted the Planning and Zoning Board apparent final decision making which is in conflict with the Town Charter and Section 2-250 concerning the powers of advisory boards and improperly grants the Town Planning and Zoning Board final decision-making authority concerning zoning matters which is a power reserved unto the Town Council; and,

WHEREAS, where a conflict exists between the Charter and the Code, the Charter prevails.

NOW THEREFORE BE IT ORDAINED, by the Town Council of the Town of Malabar, Brevard County, Florida, that:

SECTION 1. Section 1-12.5 of Article XII of the Town Land Development Code, is hereby amended in full as follows:

“Section 1-12.5. - Procedures for adopting, supplementing or amending the land development code.

A. Initiating Amendments to the Land Development Code. Amendments to the Land Development Code may be initiated by:

1. *Town Council.* The Town Council may initiate an amendment to the land development code by approving a written statement expressing its intent to amend this code

and shall submit such written statement and any relevant supportive material to the Town Planning and Zoning Board for review and action pursuant to Section 1-12.5. C., 1-12.6(C) [1-12.5(C)] of this Chapter [Code].

2. *Planning and Zoning Board.* The Town Planning and Zoning Board may initiate a land development code amendment.

3. *Property Owner(s).* An amendment to the land development code may be initiated by a petition signed by a property owner, or the property owner's authorized agent. Such petition shall be submitted to the office of the Town Clerk together with a fee as shall be determined by resolution of the Town Council. As many lots or parcels of property as the applicant may desire may be included in any single petition if they constitute one contiguous. The petition shall be submitted on an application form prescribed by the Town Clerk. The application shall include, but not be limited to, the following:

(a) *Property Description.* The application shall describe by legal description and by street address, where possible, the property to be affected by the proposed change

(b) *Current and Proposed Comprehensive Plan Land Use Map Designation.* The current and proposed Comprehensive Plan Land Use Map designation for the subject property shall be identified.

(c) *Current and Proposed Zoning.* The current and proposed zoning for the subject property shall be identified.

(d) *Existing and Proposed Use.* The existing and proposed use of the subject property shall be stated.

(e) *Disclosure of Ownership.* The application shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for rezoning is sought, except publicly held corporations, in which case the names and addresses of the corporate officers shall be sufficient.

B. *Administrative Review.* The Town Clerk shall forward zoning change petitions, for which appropriate fees have been submitted, to all appropriate administrative staff for their review and comment. The application shall be reviewed for conformance with the requirements of this Chapter [Code].

C. *Planning and Zoning Board Review.* The Planning and Zoning Board, regardless of the source of the proposed zone change petition, shall hold a public hearing(s) thereon, with due public notice. The Town Planning and Zoning Board shall submit a written report and recommendation concerning the proposed changes of zoning to the Town Council for official action. ~~If the Planning and Zoning Board denies the requested zone change or amendment, this action shall be deemed final unless such action is appealed to the Town Council pursuant to Section 1-12.3(C)(4).~~ In its deliberations the Planning and Zoning Board shall consider the following criteria:

1. *Consistency with Plan.* Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service (LOS) standards and the concurrency management program. Any inconsistencies shall be identified by the Planning and Zoning Board.

2. *Conformance with Ordinances.* Whether the proposal is in conformance with all applicable requirements of the Town of Malabar Code of Ordinances.

3. *Changed Conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations involved which are relevant to the amendment.

4. *Land Use Compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

5. *Adequate Public Facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

6. *Natural Environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, vegetative commodities, and wellfield protection.

7. *Economic Effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area, or the general welfare.

8. *Orderly Development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

9. *Public Interest; Enabling Act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of this ordinance and its enabling legislation.

10. *Other Matters.* Other matters which the Planning and Zoning Board may deem appropriate.

~~D. *Action Following Reviews By Town Planning and Zoning Board.* If an appeal to a decision of the Planning and Zoning Board is filed, the Town Clerk shall transmit copies of the petition, the comments and the minutes of the Planning and Zoning Board meeting to each member of the Town Council at least seven (7) days before the Council shall consider the appeal. The Town Clerk shall notify the applicant of the time and place of the meeting at which the Council will hear the appeal. Should the Council tentatively approve the petition, the Town Council will proceed to hold a public hearing(s) on the petition.~~

~~Should the Town Planning and Zoning Board approve the petition, the Town Clerk shall transmit copies of the petition, [and] all comments and the minutes of the Planning and Zoning Board meeting to each member of the Council at least seven (7) days before the Council shall consider the petition. Should the Council tentatively approve the petition, public hearing(s) shall be held on the petition.~~

ED. *Town Council Review.* The Town Council shall hold a public hearing on the requested zone change petition or amendment, with due public notice, if any change is to be considered and shall then act on the proposed change. An affirmative vote of three (3) members of the Town Council is required for favorable action on a zone change petition or amendment for which the Town Planning and Zoning Board has recommended denial. In its deliberations the Town Council shall consider the criteria identified in Section 1-12.5(C) above together with the findings and recommendations of the Planning and Zoning Board. Any modifications or revisions to the Town Planning and Zoning Board recommendation which involve a greater area of land to be rezoned or a more intensive zoning classification shall be the subject of an additional public hearing before the Town Council with due notice prior to action by the Town Council.

SECTION 2. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule code or regulation, the more restrictive shall apply.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4. Inclusion in Code. It is the intention of the Town Council of Malabar that the provisions of this ordinance shall become and be made a part of the Town Code, and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. Effective Date. This ordinance shall take effect upon adoption.

This ordinance was moved for adoption by Council Member White. The motion was seconded by Council Member Ball and, upon being put to a vote, the vote was as follows:

Council Member Grant Ball	Aye
Council Member Brian Vail	Aye
Council Member Steve Rivet	Excused
Council Member Dick Korn	Aye
Council Member Danny White	Aye

This Ordinance will be declared to be duly adopted seven days after the regular meeting of the Malabar Town Council, on this 4th day of March 2019.

TOWN OF MALABAR

1st Reading: 2/4/19 5 to 0
2nd Reading: 3/4/19

By: _____
original signed
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin, CMC
Town Clerk/Treasurer

(seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney