

ORDINANCE 2021-20

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V IN THE LAND DEVELOPMENT CODE TO ADD NEW SECTIONS DEALING WITH APPLICATION, PERMITTING AND OPERATIONAL REGULATIONS FOR BRINGING ADDITIONAL FILL ON RESIDENTIAL PROPERTIES AND REQUIRING PROPER EROSION CONTROLS MEASURES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council desires to update the Code of Ordinances relating to a standards for fill permitting and erosion control requirements.

WHEREAS, the Town Council desires to locate these regulations within the Article dealing with General Provision in the Land Development Code with references to the Building Code in Chapter 6 and Site Plan regulations in Article VII.

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

SECTION 1. Article V, General Provisions, in the Land Development Code Section 1-5.22 is amended to read as follows:

“Sec. 1-5.22. Standards for Land Excavation or Fill and Erosion Control.

Any site work adding more than 30 yards of material or disturbing more than 1,000 square feet of land shall not be undertaken without prior application, approval, and issuance of a permit by the Town in order to assure no adverse impacts will occur on adjacent lands and to assure appropriate erosion control measures are followed. See Article VII, Site Plan Design and Article VIII, Surface Water Management.

A. Purpose and intent.

The intent of this article is to promote consistent regulations related to land-disturbing and fill activities on any land area greater than 1,000 square feet within the Town to ensure the protection of natural resources, water quality, flood prevention and erosion control measures are followed.

For the purpose of this article, the following terms, phrases, words and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present term include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Terms listed in Article VII and Article VIII may also apply to this article.

Erosion and sedimentation control permit. A permit issued by the Town based on an approved erosion and sedimentation control (ESC) plan in conjunction with development permit or redevelopment approval.

Filling (fill). The placement of any soil or other solid material either organic or inorganic on a natural ground surface or an excavation in an effort to change the existing grade or recompose the soil.

Finished grade. The final grade or elevation of the ground surface forming the proposed design.

Land-disturbing activity. Any land change which may result in soil erosion from water or wind; including, but not limited to, clearing, dredging, grading, excavating, transporting and filling of land and for which a ESC permit is required.

Sediment. Solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, ice or gravity as a product of erosion.

Slope. Degree of deviation of a surface from the horizontal usually expressed in ratio of horizontal to vertical dimension.

Stabilization. The process of establishing an enduring soil cover of vegetation and/or mulch or other ground cover and/or a combination when installing temporary or permanent structures for the purpose of reducing to a minimum the transport of sediment by wind, water or gravity.

Structural practices. Soil and water conservation measures other than vegetation, utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating, or disposing of runoff to prevent excessive sediment loss; including, but not limited to open sediment basins, dikes, level spreaders, waterways or outlet diversions, grade stabilization structures, sediment traps, land grading, etc.

Unacceptable filling (fill). Any material from another site other than excavated earth. Any material prohibited as fill material by state or county regulations.

Watercourses. Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows either continuously or intermittently and which has a defined channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow of flood water.

Sec. 1-5.23. - Scope and exclusions.

(a) Scope and exclusions. This section shall apply to any land-disturbing activity involving 1,000 square feet of land, undertaken by any person on any lands, except for the following:

(1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, maintenance work, or other related activities which result in minor soil erosion, except those affecting drainage easements.

(b) Procedure for permitting land-disturbing activity.

(1) No person shall perform any land-disturbing activity without first obtaining a permit from the Building Department after certification by Town personnel that the proposed activity is consistent with these regulations. Such permit shall be in addition to any other permits or approvals required for the project by any other ordinances, rules and regulations in effect.

(2) Application for a land disturbing activity must be made to the Town on an application form provided by the Town and must be accompanied by an erosion and sedimentation control plan. The applicant's erosion and sedimentation control plan shall include, as a minimum, the following information for the entire tract of land to be disturbed regardless of whether the tract will be developed in stages:

a. A narrative description of the overall project. This narrative shall include:

1. Anticipated starting and completion dates for each sequence and stage of land disturbing activities and the expected date the final stabilization will be completed.

2. A description of the sediment control program and sediment control practices.

3. An adequate description of general topographical and soil conditions of the tract.

4. A description of the zoning classification and uses of adjacent property and a general description of existing structures, building and other fixed

improvements located within a perimeter of 200 feet of the boundary line of applicant's property.

5. A description of the maintenance program for sediment control facilities including inspection programs, revegetation of exposed soils, method and frequency of removal and disposal of solid waste material removed from control facilities and disposition of temporary structural measures.

6. The type of soil or material to be used for filling, if applicable.

b. Maps, drawings and supportive computations bearing the signature and seal of a licensed engineer and containing:

1. A site location drawing of the proposed project indicating the location of the proposed project in relation to jurisdictional boundaries of roadways and watercourses.

2. A boundary line survey of the site on which the work is to be performed.

3. A plan for temporary and permanent vegetative and structural erosion and sediment control measures.

(3) Approval of application and issuance of permits.

a. The Town Building Official or designee shall certify the erosion and sedimentation control plan upon finding that the requirements of this section have been met.

b. If the tract is to be developed in phases, then the Building Department may issue a separate permit for a master plan or for each phase.

c. The permit may be suspended or modified by the Town upon a finding that the holder is not in compliance with this section or has violated any of the provisions or conditions of the permit.

d. No building permit shall be issued until a required land disturbing ESC permit certifying approval of the erosion and sedimentation control plan is obtained in accordance with this section.

(c) Principles and standards.

(1) Implementation. Soil erosion and sediment control measures shall conform to the standards and specifications of this chapter. The application of measures shall apply to all features of the site, including street and utility installations, drainage facilities, watercourses, and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion and sediment pollution during all stages of any land-disturbing activity.

(2) General design principles. Practical combinations of the following principles shall be utilized as a minimum, in planning measures to be installed for any land-disturbing activity:

a. The land-disturbing activity shall conform to existing topography and soil type so as to create the lowest practical erosion potential.

b. Land-disturbing activities shall be conducted in a manner minimizing erosion.

c. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum.

- d. Erosion control must be strictly maintained during cut and fill operations.
- e. Disturbed soil shall be stabilized as quickly as practicable or as directed.
- f. Whenever feasible, natural vegetation shall be retained, protected and supplemented.
- g. Temporary vegetation or mulching shall be employed to protect exposed critical areas during development.
- h. Permanent vegetation and structural erosion control measures shall be installed as soon as practicable.
- i. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping surface of fills.
- j. To the extent necessary, sediment in runoff water must be trapped by the use of debris basins, sediment basins, silt traps or similar measures until the disturbed area is stabilized.
- k. Cuts and fills must be constructed in such a manner that erosion and runoff from the site does not endanger adjoining property.
- l. Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners without adequate provisions for an equivalent alternate system with a positive outfall.
- m. Rights-of-way, including streets and sidewalks or pedways, and drainage ways, or watercourses shall be kept clear of all debris/dirt, etc.
- n. Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible and provided in any case, that such crossings are kept to a minimum, and sedimentation control devices are provided.

(d) Maintenance. Maintenance of all soil erosion and sedimentation control practices whether temporary or permanent, shall be at all times the responsibility of the owner.

SECTION 2. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 4. Conflicting Provisions. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or town law, rule, code, or regulations, the more restrictive shall apply.

SECTION 5. Inclusion in Code. It is intention of the Town Council 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 take effect immediately upon passage and adoption.

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

Council Member Marisa Acquaviva
Council Member Brian Vail
Council Member Steve Rivet
Council Member David Scardino
Council Member Danny White

Aye
Aye
Aye
Aye
Aye

This ordinance was then declared duly passed and adopted this 27th day of September 2021.

TOWN OF MALABAR

By: Patrick T. Reilly
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin

Debby K. Franklin, C.M.C., Town Clerk/Treasurer



Approved for Legal Sufficiency:

Karl W. Bohne, Jr.

Karl Bohne, Jr, Town Attorney

P&Z Board: 09/08/2021

First Reading: 09/14/2021 Vote 5 to 0.

Second Reading: 9/27/2021