

## ORDINANCE 2021-21

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VII IN THE LAND DEVELOPMENT CODE TO UPDATE APPLICABILITY AND FILING PROCEDURES FOR SITE PLANS, BOTH RESIDENTIAL AND COMMERCIAL; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

**WHEREAS**, the Town Council desires to update the Code of Ordinances relating to a standard for Site Development Procedures for both residential and commercial developments.

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

**SECTION 1.** Article VII, Section 1-7.1. Site Plan Procedures in the Land Development Code Section 1-5.22 is amended to read as follows:

**“Sec. 1-7.1. Applicability and filing procedures.**

Site plan approval, as provided for herein shall be required for each of the following:

1. All permitted uses and structures shall comply with surface water management criteria of Article VIII and Fill and Erosion Control criteria in Article V.
2. All conditional uses.
3. Any use or change in use resulting in the land disturbance of one thousand (1,000) square feet of the entire site.
4. The provisions of Article VIII: Surface Water Management shall apply to all site plans as if the same were incorporated in this Article.
5. Any development including single family residences which will involve any clearing, fill, grading or other form of disturbing the land by the movement of earth shall comply with the provisions of Article V as if the same were incorporated in this Article.

(f) Whenever any amount of excavation or fill is proposed within one hundred (100) feet of a stream, stream channel or body of water a soil erosion and sedimentation control plan shall be provided. See Article V, Section

A. *General Site Plan Review Procedure.* In all cases requiring site plan review, no structure or parking area, or part thereof, shall be erected or used, or land or water used, or any change of use consummated, nor shall any building permit be issued therefor, unless a site plan for such structure or use shall have been reviewed by the Town Staff and Planning and Zoning Board and received approval by Town Council.

1. *Filing.* Before such site plan shall be approved, an application for such approval shall be filed with the Town Clerk.

2. *Application, Fee and Disclosure of Ownership.* Such application shall be in a form substantially in accordance with the form prescribed by the Town Clerk, copies of which may be obtained from the Town Clerk's office. A written power of attorney authorizing a person other than the owner(s) to sign such application must be attached to said application.

All applications 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 site plan approval is sought, except publicly held corporations, in which case the name and address of the corporation and principal executive officers will be sufficient.

The fee schedule for site plan review shall be as determined by resolution of the Town Council.

3. *Review by Town Staff and Planning and Zoning Board.* The application shall be forwarded to the Building Department for Town Staff review for their recommendation to the Planning and Zoning Board. Town Engineer is defined as that Town employee, or outside Florida registered engineer contracted by the Town, responsible for performing the duties specified herein as the Town Engineer.

The site plan review process shall be carried out in accordance with procedures established by the Planning and Zoning Board, to prevent inconvenience and delay to the project.

After reviewing a site plan and staff recommendations, the Planning and Zoning Board shall recommend approval or disapproval. The Planning and Zoning Board shall provide written comments documenting any conditions of approval. If site plan is recommended for disapproval, the Planning and Zoning Board shall specify in writing the reasons for recommending denial. All recommendations of the Planning Board together with the written record shall be forwarded to the Town Council for final action.

3. *Action by the Town Council.* The Town Council shall consider the recommendations of staff and the Planning and Zoning Board and approve with or without conditions or disapprove the site plan. The Town Council may attach to its approval of a site plan any reasonable conditions, limitations or requirements which are found necessary, in its judgement, to effectuate the purpose of this Section and carry out the spirit and purpose of the Zoning Ordinance.

Any condition shall be made a written record and affixed to the site plan as approved. If the Town Council disapproves a site plan, the reasons shall be stated in writing and the appeal shall be to the Court of appropriate jurisdiction.

#### B. *Review of Minor Site Plans.*

1. *Applicability.* For the purposes of this section, minor site plans shall include the following:

a. Residential projects comprised of a single building, having less than five (5) dwelling units, or:

b. Projects containing less than one thousand (1,000) square feet of new impervious surface area.

c. Single family homes and accessory buildings or ponds which require site plan approval pursuant to section 1-7.1.5.

2. *Submission Requirements for Minor Site Plans.* Minor site plans shall only include that information required in Sections 1-7.2, 1-7.3, which is determined to be applicable to the proposed minor site plan by the Building Department-Official and Town Engineer.

3. *Minor Site Plan Review Procedures.* All minor site plan applications shall be reviewed by the Building Official and Town Staff and approved by the Building Official. However, single family homes, accessory buildings or ponds may be approved by the Building Official. Appeals of such decisions shall be conducted pursuant to Section 1-7.4

4. Aside from minor modifications to site plans as herein defined, any change in use of buildings, structures, land or water, or institutions of new uses, or alteration or major improvements to existing structures, or erection of new buildings or structures shall require a new site plan submittal in accordance with all procedures and provisions of this Code.

Such changes to approved site plans shall be reviewed by the Building Official and or other designated Town consultants/Staff.

5. *Conformance with Zoning Regulations Required.* Any such building, structure or use shall be erected, altered, installed, and maintained in full conformity with the provisions of the zoning ordinance and the approved site plan.

**SECTION 2. Remainder of Article.** It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida that the remainder of the Article remain the same.

**SECTION 3. 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 Rivet. The motion was seconded by Council Member Vail and, upon being put to a vote, the vote was as follows:

Council Member Marisa Acquaviva	<u>Aye</u>
Council Member Brian Vail	<u>Aye</u>
Council Member Steve Rivet	<u>Aye</u>
Council Member David Scardino	<u>Aye</u>
Council Member Danny White	<u>Aye</u>

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