

**TOWN OF MALABAR  
2725 Malabar Road  
Malabar, FL 32950  
Tel. 321-727-7764 x 14**

**RIGHT OF WAY (ROW)  
ROAD IMPROVEMENT WAIVER APPLICATION**

**This application is separate and in addition to the Road Improvement Application that must be completed, with required attachments, and returned to the Town Clerk's office.**

Name of Applicant(s) \_\_\_\_\_ Tel: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Email: \_\_\_\_\_

Name of Owner if other than Applicant: \_\_\_\_\_ Tel: \_\_\_\_\_

Legal description of property covered by application:

Township\_\_\_\_, Range\_\_\_\_, Section\_\_\_\_, Parcel \_\_\_\_\_, Road ROW Name \_\_\_\_\_

Property Address: \_\_\_\_\_ Zoning classification \_\_\_\_\_

Existing Special Conditions or Conditional Uses Previously Granted: \_\_\_\_\_

Required ROW dedicated \_\_\_\_ / will be dedicated \_\_\_\_ prior to hearing per Section 13-39 of Road Improvement Code in Chapter 13 of Malabar Code of Ordinances.

Reason for waiver request (state specific hardship or attach correspondence, drawings, etc.).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Required attachments:

- Hearing fee of \$300.00 for Residential and \$1,500.00 for Commercial, which includes advertising, administrative time, legal noticing and mailing.
- Proof of ownership of abutting parcel
- Survey to include Site layout depicting the right-of-way (ROW), roadway width and length subject to waiver request and parcel owned by applicant
- List of property owners (with tax parcel numbers) abutting the road right-of-way involved in the waiver request as shown in the records of the County Property Appraiser. This "Radius" package is available from the Brevard County Planning and Zoning GIS Section located at the Viera government center, in Building A, Room 114, phone 321-633-2060. There is a fee for this package.

\_\_\_\_\_  
Applicant(s) Date

**Chapter 13, Malabar Code of Ordinances, Section 13-38(c) provides as follows for waivers:**

“(c) Waiver. The Town Council may grant a waiver to the provisions of Section 13-38 (b) (1) and (2).

1. The below stated procedures shall in all respects be utilized for consideration of a waiver to subsection (b)(1) and (2). In order to authorize a waiver under this section the Town Council must find the following:

i. That special conditions and circumstances exist and that the presence of which would make complying with section 13-38 (b) (1) or (2) unreasonable. Financial or economic reasons, conditions or circumstances shall not be grounds for a waiver under this section;

ii. The special conditions and circumstances are not caused in any way by the owner or applicant;

iii. That such waiver will not be injurious or detrimental to the public welfare;

iv. That the waiver granted is the minimum waiver that will make possible the reasonable use of the land;

v. As a condition to the issuance of a waiver the owner of the property for which such waiver is granted shall dedicate the right of way required by section 13-39 of the code, if no such public right of way exists at the time of the granting of a waiver authorized herein, through the furthest boundary of the lot of record on which a principal structure or accessory structure is to be constructed.

2. The owner of the property for which such waiver is granted shall also execute an agreement in recordable form with the Town that binds the owner and his/her successors in interest of the property for which such waiver is granted to pay for the completion of the entire width of the right of way as it existed on the date the waiver is granted by the Town Council through the furthest boundary of the lot of record on which a principal structure or accessory structure is constructed in the event the road is completed by another. The Agreement shall provide, in part, that should the owner of the property for which the waiver was granted fail to pay for the completion of the entire width of the right of way through the furthest boundary of the lot of record when it is constructed by another then the Town may reimburse the person who completed the road portion through the furthest boundary of the lot of record of the owner who was granted the waiver and the Town shall be entitled to record a lien against the property for which such a waiver was granted for the cost of the reimbursement and/or the Town may withhold the issuance of any future building permit, development order or development permit, for the property for which such waiver is granted.

3. By way of example, and not by way of limitation, “special circumstances” may include:

i. Environmental conditions, and restrictions exist which prohibit any disturbance of such area and make it impossible to complete the road to the furthest extent of the property; [for example where mitigation is not possible]; or

ii. There exists no dedicated public right of way immediately abutting and beyond the furthest boundary of the lot of record for which the waiver applies; or

iii. The property immediately abutting and beyond furthest boundary of the lot of record for which the waiver applies is owned by a governmental agency and is designated as conservation or environmentally sensitive land; or

iv. The property immediately abutting and beyond the furthest boundary of the lot of record for which the waiver applies already has existing accepted access through the use of another public or private right of way

4. Town Council may impose additional reasonable conditions and safeguards that it deems appropriate;

5. The Town Council may prescribe a reasonable time limit within which the action for which the waiver is required shall be begun or completed or both.

6. The decision of the Town Council regarding a request for a waiver is final and no reconsideration, rehearing or further appeal to the Town is available.

7. Application Process: Any person owning an interest in any real property may apply to the Town Council for a waiver hereunder. The application shall be accompanied by a fee established from time to time by the Town Council. The application shall be in such form as provided by the Town, and shall contain the following information:

- i The name of the owner of the particular real property shall be included.
- ii If the applicant is other than all the owners of the particular property, written consent signed by all owners of the particular real property shall be attached.
- iii The application shall contain the legal description of the particular real property, accompanied by a certified survey of that portion of the map maintained by the property appraiser reflecting the boundaries of the particular real property.
- iv The application shall contain the current zoning classification, and any specified conditions or conditional use designation as recorded on the official zoning maps.

8. Public Hearing; Notice Upon receipt of an executed application pursuant to this section, the Town Clerk forthwith shall schedule a hearing on the application before the Town Council. Notice of the time and place of the public hearing shall be given to the applicant at least 15 days prior to the public hearing. Notice of the time and place of the public hearing on the application shall be mailed, at least 15 days prior to the public hearing, to all property owners abutting the road right of way in question. Such notice shall contain the name of the applicant, the legal description of the affected property, and that the owner of the affected property desires a waiver to section 13-38(b)(1) or (2). In addition, a notice containing such information shall be posted at Town Hall and on the Town's website.

