

# CHAPTER 23



## ZONING

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### ARTICLE I. IN GENERAL

**SECTION 23-1. SHORT TITLE.** The provisions contained in this chapter shall be known as the Zoning Code, and may be so cited.

**SECTION 23-2. DEFINITIONS.** As used in this chapter, the following words and phrases shall have the meanings indicated:

- (1) *Accessory structure.* "Accessory structure" shall mean any subordinate structure or building, of whatever kind or character, either above or below the surface of the ground.
- (2) *Advertising sign.* "Advertising sign" shall mean any device displayed to public view for advertising purposes, whether painted thereon or not, or made of wood, metal, glass, plastic, ceramic or other substance and whether energized for lighting or moving effects or not.
- (3) *Alteration.* "Alteration" shall mean any change in the physical arrangement of a building or in the structure thereof, or any changes in wiring, plumbing, sanitary or heating systems.
- (4) *Apartment house.* See: Dwelling, multiple family.
- (5) *Avenue.* See: Street.
- (6) *Bar, saloon.* "Bar" or "saloon" shall mean any place primarily selling or dispensing alcoholic beverages which are consumed on the premises.
- (7) *Boardinghouse.* "Boardinghouse" shall mean a residential building in which lodging and meals are provided for from three (3) to nine (9) persons for compensation or remuneration, exclusive of the managing family (not including hotels and motels).

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(8) *Boulevard*. See: Street.

(9) *Boundary of zone*. "Boundary of zone" shall mean the centerline of a street or right-of-way or the rear or side property lines of all lots or parcels of land bordering on any zone limits, or any zone boundary shown on the official map of the town.

(10) *Building*. "Building" shall mean any structure having a roof, entirely separated from any other structure, and erected for the purpose of providing shelter or support for persons, animals or property of any kind.

(11) *Business*. "Business" shall mean transactions entered into primarily to earn an income or make a profit.

(12) *Carport*. See: Garage, private.

(13) *Clinic*. "Clinic" shall mean offices of groups of physicians or dentists where patients are not provided with bed facilities for overnight care; including public health clinics.

(14) *Commercial zone*. "Commercial zone" shall mean an area where the buying and selling of merchandise is carried on, as distinguished from the manufacture, processing, or warehousing of same, as in industry.

(15) *Court*. "Court" shall mean an area of a street or right-of-way which gives access to a lot or parcel of land. (See also: Street)

(16) *Depth of lot*. "Depth of lot" shall mean the lineal feet of a lot or parcel of land between its mean front street line and its mean rear line.

(17) *Directional signs*. See: Advertising signs.

(18) *Duplex*. See: Dwelling. Two family.

(19) *Dwelling, single family*. "Single family dwelling" shall mean a private residential building used or intended to be used as a home or residence in which all living rooms are accessible to each other within the building and in which the use and management of all facilities contained therein are for the use of one family only; but not including mobile homes or house trailers.

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(20) *Dwelling, two family.* "Two family dwelling" shall mean a residential building designed for or used as the homes or residences of two (2) separate and distinct families.

(21) *Dwelling, multiple-family.* "Multiple-family dwelling" shall mean a residential building which is used or intended to be used for more than two (2) families living in separate quarters.

(21.1) *Dwelling unit or living unit.* One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, sleeping and sanitary facilities.

(22) *Efficiency apartment.* "Efficiency apartment" shall mean an independent unit within a dwelling, limited to two (2) rooms, which include cooking and bathroom facilities.

(23) *Family.* Family is a single individual, doing his own cooking, and living upon the premises as a separate housekeeping unit, or a collective body of persons doing their own cooking and living together upon the premises as a separate housekeeping unit in a domestic relationship based upon birth, marriage, or other domestic bond, as distinguished from a group occupying a boardinghouse, lodging house, club, fraternity or hotel.

(24) *Fence.* "Fence" shall mean any unroofed wall or barrier, hedge, row of plants or trees, flowers, screens and similar obstructions which extend twelve (12) inches or more above the adjacent ground occupying more than twenty-five per cent (25%) of the linear line of sight and of such density that passage by an adult person is more difficult than if the fence were not there.

(25) *Fence, height of.* See: Height of fence.

(26) *Filling station.* See: Gas station.

(27) *Garage, community.* "Community garage" shall mean a structure or building under one roof and under one or common ownership, used for the storage of motor vehicles by three (3) or more owners or occupants of property in the vicinity, provided the structure has no public repair shop or mechanical garage services.

(28) *Garage, mechanical.* "Mechanical garage" shall mean any premises where automotive vehicles are mechanically repaired, rebuilt, reconstructed or painted for compensation. It may or may not include the storage of automotive vehicles.

(29) *Garage, private.* "Private garage" shall mean a structure or building customarily used by the occupants of the main building or guest house for the storing of automotive vehicles.

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(30) *Gas station, filling station.* "Gas station" or "filling station" shall mean a structure or building including accessories for the retail sale and supply of fuels, lubricants, air, water and other commodities for motor vehicles, including facilities for the installation of such commodities and not including space or facilities for the storage of motor vehicles or their sale, extensive repairs, painting or other mechanical servicing.

(31) *Grade.* The established "grade" of vacant or improved land shall mean the highest elevation of the sidewalk or crown of road abutting the property line, or as fixed by the town superintendent.

(31.1) *Gross acreage.* Gross acreage of a platted lot shall be the area of that lot as computed by the dimensions shown on the recorded plat without reduction for utility easements. Gross acreage of an unplatted parcel shall be the area indicated by its metes and bounds description reduced by the area of that part of the parcel subject to public highway easements but not reduced by utility easements.

(32) *Guest house.* "Guest house" shall mean a residential building subordinate to the main building or dwelling and located on the same parcel of land.

(33) *Hazard.* "Hazard" shall mean exposure to the chance of injury, or peril to life or property.

(34) *Height of fence.* "Height" as applied to a fence, shall mean that distance measured from the lowest grade level within three (3) feet of either side of the fence.

(35) *Highway sign.* See: Advertising signs.

(36) *Home craft, home business.* "Home craft" or "home business" shall mean any vocation, trade or profession carried on by the occupants of residential premises, and where no merchandise or articles are displayed for advertising purposes.

(37) *Hotel.* "Hotel" shall mean a residential building occupied as the more or less temporary residence of persons who are lodged with or without meals and in which there are sleeping accommodations for ten (10) or more persons and where no provisions are made for cooking in the individual room or apartment; usually with a single entrance and common lobby.

(38) *House trailer.* See: Mobile home.

(39) *Industry.* "Industry" shall mean a continuous activity in a trade or business consisting of the manufacturing, warehousing or processing or treatment of materials or merchandise for sale

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or distribution, where three (3) or more persons are employed for such purposes, and not clearly incidental to the conduct of a retail business on the same premises.

(40) *Junk*. "Junk" shall mean scrap automobiles, trucks, tractors, and other vehicles and parts, building materials, contractors' materials, tanks, casks, barrels, boxes, drums, piping, bottles, glass, metals, machinery, rags, paper, excelsior, hair, mattresses, beds, bedding, or any other kind of scrap or waste material which is stored, kept or displayed within the town.

(41) *Land use*. "Land use" shall mean the purpose for which land is utilized.

(42) *Lane*. See: Street.

(43) *Lot*. "Lot" shall mean a parcel of land or part of a parcel of land shown on a recorded plat, or a parcel of land described by legally recorded deeds.

(44) *Main building*. See: Principal building.

(45) *Mobile home*. "Mobile home" shall mean a residence on wheels, rollers or skids not structurally anchored to a foundation and which may be either self-propelled or propelled by an attached vehicle or other propelling device, whether the wheels or rollers are removed or not.

(46) *Motel, motor hotel*. "Motel" or "motor hotel" shall mean a residential building or group of two (2) or more residential buildings which provide sleeping accommodations for automobile tourists or overnight guests and having adjacent parking facilities, but no common entrance or lobby.

(47) *Nonconforming use*. "Nonconforming use" shall mean the use of any property, premises or parcel of land in any manner which does not comply with the regulations prescribed for the zone in which such property, premises or parcel of land is situated.

(48) *Nuisance*. "Nuisance" shall mean a person, animal, act or thing that is annoying, troublesome or otherwise obnoxious.

(49) *Nursing home, private*. "Private nursing home" shall mean an institution licensed by the State of Florida for the nursing care of invalids.

(50) *Parcel of land*. "Parcel of land" shall mean a single plot of land owned by one (1) individual or several jointly, consisting of one (1) or more abutting lots as shown in the recorded plats of the town as indicated in the owners' deed or deeds.

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(51) *Park land*. "Park land" shall mean all land within the town platted as "park," "parking," or "path" on the recorded plats of the town or the official map of the town, including the Crane Creek District rights-of-way.

(52) *Parkway*. See: Street.

(53) *Place of business*. "Place of business" shall mean any vehicle, building, structure, yard, area, lot, premises, parcel of land or part thereof in which one (1) or more persons engage in business for profit.

(54) *Principal building, main building*. "Principal building" or "main building" shall mean the major building or structure situated or to be situated or to be placed nearer the front property line than any other structure.

(55) *Public school*. "Public school" shall mean a school operated by Brevard County, Florida.

(55.1) *Rear yard*. "Rear yard" shall be that portion of the yard extending across the entire width of the lot between the rear lot line and the nearest part of the principal building. (Ord. No. 72, S. 1 3-27-73)

(56) *Repairs*. "Repairs" shall mean restoration of portions of a building or structure to its condition before decay, wear or damage, but not including alteration of the shape or size of any portion of the building or structure.

(57) *Road*. See: Street.

(58) *Rooming house*. "Rooming house" shall mean a residential building used or intended to be used as a place where sleeping accommodations are provided for more than two (2) and less than ten (10) paying guests or tenants but where meal service is not provided.

(59) *Saloon*. See: Bar.

(60) *Signs*. See: Advertising signs.

(61) *Site*. "Site" shall mean an area of the premises or parcel of land to be covered by a building or structure.

(62) *Store*. "Store" shall mean a building or structure in which commodities are sold at retail or wholesale.

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(63) *Story*. "Story" shall mean any portion of a building included between the finished ceiling next above it, or the finished under-surface of the roof directly over that particular floor, and the floor itself.

(64) *Street, etc.* "Street" shall mean any public thoroughfare wider than twenty-five (25) feet which affords primary access to abutting property and any thoroughfare of same or less width which is not classified as an alley, path, easement or ditch area.

(65) *Street signs*. See: Advertising signs

(66) *Structural alteration*. "Structural alteration" shall mean any change in the supporting members of a building or structure, such as bearing walls, columns, beams or girders.

(67) *Structure*. Anything constructed, except pavement, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, By way of illustration this shall include, but not necessarily be limited to, houses, apartment buildings, screened patios, attached and detached garages and carports. (Ord. No. 76, S.3, 10-22-74; Ord. No. 93, S.4, 6-28-77)

(68) *Subdivision*. "Subdivision" shall mean a division of a lot, tract or parcel of land into two or more lots, plots, plats, or parcels of land for the purpose, whether immediate or future, of sale, rent, lease, building or other land use.

(69) *Tavern*. See: Bar.

(70) *Tourist cabin*. See: Motel.

(71) *Trailer, mobile-home park, camp*. "Trailer park", "trailer camp", "mobile-home park" and "mobile home cap" shall mean a lot, plot or parcel of land used or intended to be used for the temporary or permanent location of house trailers or mobile-homes as living, sleeping or business quarters.

(72) *Variance*. "Variance" shall mean a permit of land use which would otherwise be non-conforming under the provisions of this chapter. A variance is not purposeful of violating the intent of this chapter and is issued for each individual case when ruled justified by the Board of Adjustment according to regulations prescribed in Article VII of this chapter. (Ord. No. 86-1, S 1)

(73) *Vehicle*. "Vehicle" shall mean a conveyance for persons or materials.

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(74) *Warehouse*. "Warehouse" shall mean an industrial building or structure used to store goods and commodities, either for rental compensation or business use, such as furniture and cold storage, or for goods and materials for the building trades, or for stock purposes. (Ord. No. 13, S.2; Ord. No. 25, S.1; Ord. No. 34, S.1)

## **SECTION 23-3.---23-7. RESERVED.**

### **ARTICLE II. ADMINISTRATION AND ENFORCEMENT**

#### **SECTION 23-8. IN GENERAL; VIOLATIONS; AMENDMENTS.**

- (1) The provisions contained in this Chapter are statements of policy, a declaration to those who live under this Chapter, those who administer and enforce it, and the courts which may interpret it, that the provisions of this Chapter are binding requirements and will be enforced.
- (2) The town commission may adopt regulations to clarify or make provisions of this Chapter more specific; the town planning board shall prepare regulations for approval of the town commission.
- (3) Repealed. (Ord. No. 86-1, S.2)
- (4) If the town commission shall find that any of the provisions of this Chapter are being violated, it shall notify the person responsible for such violation, in writing, indicating the nature of the violation, and ordering the necessary action to correct it. It shall take the necessary steps, including court action, to insure the discontinuance of any illegal work being done or shall take any other action authorized to insure compliance with or prevent violation of the provisions of this Chapter.
- (5) Whenever a violation of this Chapter occurs, or is alleged to have occurred, any person may file a written complaint with the town commission stating fully the causes and basis thereof. The commission shall record such complaint, immediately investigate, and take action thereon as provided by this Chapter.
- (6) The regulations, restrictions and boundaries set forth in this Chapter may from time to time be amended, supplemented, changed or repealed. No such action shall be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be



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published. In case of a protest against such change signed by the owners of twenty per cent or more either in the area of the parcels of land included in the proposed change, or of those immediately adjacent thereto extending five hundred feet therefrom, such amendments shall not become effective except by favorable vote of two-thirds of the town commission. (Ord. No. 13, S.7)

### **SECTION 23-9. VIOLATIONS; REMEDIES.**

(1) Any violation of the provisions of this Chapter or failure to comply with any of its requirements shall constitute a misdemeanor, punishable as provided in Section 1-9, and the violator shall, in addition, pay all costs and expenses involved in the case.

(2) The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in or maintains any violation may be found guilty of a separate offense.

(3) The town may take, in addition, such other lawful action as is necessary to prevent or remedy any violation.

(4) Enforcement of these provisions shall be through refusal to issue relative permits, injunctions, arrest for misdemeanor or other legal process approved by the town commission in accordance with the provisions of the state law. (Ord. No. 13, S 8)

### **SECTION 23-10.---23-14. RESERVED.**

## **ARTICLE III. DISTRICTS**

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**SECTION 23-15. DIVISION OF TOWN INTO DISTRICTS.** In the interest of public health, safety, morals and general welfare, the town is divided into six (6) land use districts, as follows:

(1) R-1 (Residential)

(2) R-1A (Residential)

(3) R-2 (Residential)

(4) C (Commercial)

(5) P (Park)

(Ord. No. 13, S.1; Ord. No. 18, S1.2; Ord. No. 60, S.1, 1-6-70; Ord. No. 87, S.3, 10-25-77)

**SECTION 23-16. USES GENERALLY.** The land uses permitted in this Chapter shall include the normal use of land for trees, bushes, vegetable and flower gardens, lawns, pools, parking, patios and drainage facilities, and other normal uses. (Ord. No. 13, S.4)

**SECTION 23-17. DISTRICT REGULATIONS GENERALLY.** The following regulations shall apply to premises in all zone classifications:

(1) No land uses shall be permitted in any district except as specifically listed and authorized in this chapter.

(2) All buildings or structures erected or structurally altered after the enactment of this Chapter shall conform to the requirements for the particular district in which it is located or to be located.

(3)(a) Nothing shall be allowable on premises in any district which would in any way be offensive or obnoxious by reason of the emission of odors, gases, liquids, dust, dirt, smoke, vibration or noise; nor shall anything be placed, constructed or maintained that would in any way constitute an eyesore or nuisance to adjacent property owners, residents or the community.

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(3)(b) Satellite Receive Only Antenna. For the purpose of this ordinance a Satellite Receive Only (SRO), or "Dish" antenna is classed as an accessory structure, subject to the following regulations:

(1) In R1, R1A and R2 zones, a SRO antenna shall not be located in a front yard, but shall be located back of a theoretical line representing the rear of the primary building which faces a public street, in addition to conforming with such other "distance" requirements prescribed in this chapter;

(2) In R1, R1A and R2 zones, no SRO antenna exceeding 48 inches diameter shall be mounted on top or side of any building;

(3) Antenna and electrical lines linking the SRO antenna and the primary building shall be placed underground;

(4) In C zones, a SRO antenna shall be located back of a theoretical line representing the rear of the primary building which faces a public street, in addition to conforming with such other distance requirements prescribed in this chapter. A SRO antenna may be located on the roof of the primary building in the C zone provided a competent engineer provides written certification that the design of the primary building and the installation meets applicable building codes and installation requirements;

(5) The SRO antenna shall be securely mounted and anchored in compliance with requirements of the manufacturer and applicable building codes.

(6) A permit shall be obtained for the installation of a SRO antenna. (Ord. No. 86-1, S 3)

(4) No structure shall be erected, altered, structurally altered or moved except by methods and on locations as approved by permits, which have been approved by the permit and inspection committee and the town superintendent. (Ord. No. 86-1, S 4)

(5) No building intended for residential purposes shall be moved into or constructed on land subject to periodic or frequent flooding, nor shall any existing building so located be enlarged or altered.

(6) No permit shall be issued for a building or use on a lot, plot, or parcel of land in any district which does not abut on a public street or court or upon a public easement not less than twenty feet wide to such public street.

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(7) All buildings hereafter constructed shall be of an architectural style which will not be incompatible with the premises and with other buildings on both sides of the same block and within five hundred feet in all directions in the same neighborhood. All questions raised on this subject shall be referred to the planning board for recommendation.

(8) No sign shall be located so as to constitute a hazard.

(9) In case of conflict between the provisions of this chapter and deed restrictions, the more restrictive requirements shall prevail.

(10) All buildings and structures shall conform to standards prescribed in the various town building, construction, and related regulations cited in the town code. (Ord. No. 86-1; S-5)

(11) Unless the plumbing system of the residential or business building is connected to a sanitary sewer other than a septic tank with drain fields, sufficient lot area to care for a septic tank and drain field shall not be occupied by an accessory building or other structure. A minimum of fifty feet is required between:

(a) Any septic tank or drain field and

(b) Any water well on the same or adjacent parcel of land.

(12) Any septic tank and any parts of a drain field shall be

(a) at least five (5) feet from lot lines, (Ord. No. 87-1, 1-13-87)

(b) or from the perimeter of adjacent park lands which contain areas suitable for possible future division into appropriate lot sizes for the zone involved;

(c) for septic tank and drain field locations or lots adjacent to other park areas, the following shall apply. If the width of the park area is thirty feet or more, the setback from the park perimeter shall be ten feet; if the park area is less than thirty feet in width the setback shall be fifty feet minus the width of the park area divided by two.

(d) From the perimeter of dedicated ditch areas and drainage canal rights-of-way, the setback shall be ten feet (10'), if the width of the ditch area or the width of the canal is thirty feet (30') or more. If the width of the ditch area or canal right-of-way is less than thirty feet (30'), the setback shall be fifty feet minus the width of ditch or canal right-of-way divided by two.

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(e) From a street right-of-way, the setback distance shall be fourteen feet.

(13) Hotels, motels, apartment houses, apartment hotels, boardinghouses and rooming houses shall conform with the requirements of the Florida Hotel Commission. This includes plan approval by the state architect, permit from the Florida Hotel Commission, occupancy permit from the Brevard County tax collector and building permit from the town.

(14) No building or structure shall be erected of more than two stories in height in residential zones, or more than three (3) stories in height in commercial zones. (Ord. 85-7, S,1) (Ord. 93-2, S 2, 15 Dec. 1992)

(15) No obstruction to vision, such as a sign, fence, wall, hedge, shrub, tree or structure which exceeds three feet in height shall be permitted within twenty feet of the lot line bordering any street intersection, or bordering any street where it enters any other street.

(16) Highway, street and directional signs are permitted in all districts.

(17) Trailer parks and trailer camps are not permitted in any district. (Ord. No. 13, S 3; Ord.No. 18, S 3---5; Ord. No. 24, S 1; Ord. No. 56, S 1, 2-9-69)

(18) In R1, R1A and R2 Residential Districts no vehicle that is unlicensed, disabled, disassembled, dismantled or otherwise inoperable shall be stored or parked outside a garage or carport for more than fourteen (14) consecutive days. (Ord. 84-5, S-1)

(19) No person shall erect or install, or cause to be erected or installed any exterior light or lighting device in any manner or location such as would illuminate any portion of any public street, right-of-way, or park, or any portion of any adjacent private property without first obtaining a permit from the Town Commission.

(a) Application for a permit much be accompanied by a site plan showing the location(s) of the light(s) and the areas to be illuminated. The plan shall indicate the ownership (by name, street number, or lot number) of all such areas.

(b) Application shall also be accompanied by a fee sufficient to cover the cost of notifying all such owners, except the town, by registered mail of the application.

(c) The town office shall notify each affected owner of the application and the location, date and the time of the meeting at which it will be considered by registered mail or

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other official means. Presence of any such owner at the meeting may be accepted by the Commission as evidence of notification.

(d) The Town Commission shall not unreasonably restrict the use of lighting by any property owner to provide for safety and security. It may, however, require that such lights be located and/or shielded so as not to illuminate any adjacent private or public property.

(e) The restrictions of this section shall not apply to any light which is located entirely within any house, porch, garage, or other structure. (Ord. 88-1, Jan. 26, 1988)

**SECTION 23-18. "R-1" RESIDENTIAL DISTRICTS.** Within "R-1" districts the following regulations shall apply:

(1) **Permitted uses.** The following uses only are permitted.

(a) A single-family dwelling, but not boardinghouses or rooming houses.

(b) An efficiency apartment in a single-family dwelling, or

(c) A guest house, on to each previously built family dwelling on parcels of land containing not less than 21,000 square feet.

(d) Accessory structures, as approved by the permit committee, including individual garages, carports, aeration tanks, swimming pools and the fenced-in area around them, tool sheds and permanent compost boxes.

(e) Home crafts or home businesses, provided no person outside the family is employed in such work, except in a clerical capacity or in emergencies. Sales of produce from home gardening is permitted.

(f) The rental of rooms, limited to two (2) roomers in any one (1) single-family dwelling, unless all roomers are members of a single family.

(g) Repealed. (Ord. No. 86-1, S 6)

(h) Advertising signs which are in compliance with the provisions of Chapter 16.5 of this code, and for which is required. (Ord. No. 86-1; S-7)

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(2) **Area and distance requirements.** The following minimum distances and shall apply:

(a) Minimum distance from the nearest part of any building or other structure to:

1. Front line or any side street line, thirty (30) feet, except that for accessory structures a minimum of forty (40) feet.
2. Side lot line, not facing a side street, fourteen (14) feet.
3. Back lot line abutting another lot, ditch or park lands, twenty-five (25) feet; accessory structures, fourteen (14) feet.

(b) Minimum ceiling height for living quarters, eight (8) feet.

(c) For habitable space, the minimum elevation of finished floor above crown of road in front of building, two (2) feet. For non-habitable space, the minimum elevation of finished floor above crown of road in front of building, one (1) foot. In individual situations where the builder considers a variance from this minimum distance is appropriate or desired, a request for a variance may be made to the Board of Adjustment as specified in Article VII of this chapter. (Ord. No. 86-1; S-8) (Ord. 93-1, S 1, 15 Dec. 1992)

(d) Guest houses shall be located in a minimum distance of twenty-eight (28) feet from the main building and ninety (90) feet from the street lot line and also conform to all other requirements of this section, except that the minimum floor area shall be four hundred (400) square feet and the maximum floor area shall be no larger than the main building to a maximum of one thousand (1000) square feet, both inclusive of garages or carports. (Ord. 95-4, S 1, 28 Mar. 1995)

**Editor's note**-----Ord. No. 76, S 4, adopted Oct. 22, 1974, provided as follows: "Any guest house existing at the time of the adoption of this ordinance shall constitute a nonconforming use. In the event that such existing guest house should be damaged or destroyed in whole or in part by circumstances beyond the control of the owner thereof, it may be restored and/or rebuilt in accordance with the original construction specifications for such existing guest house; provided, however, that such restoration and/or reconstruction shall be in compliance with the construction codes then in effect at the time of such restoration or reconstruction."

(e) Single-family dwellings are limited to two (2) stories, and shall have a minimum first (ground) floor area of one thousand (1,000) square feet exclusive of open porches,

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garages or carports or attached utility rooms. The total minimum combined floor areas, first floor plus second floor, shall be sixteen hundred (1,600) square feet. The wall height of two-story houses shall not exceed twenty (20) feet, and the total height to roof top shall not exceed twenty-five (25) feet above ground level. No building or structure shall be erected of more than two (2) stories in height. (Ord. 93-2 S 2, 15 Dec. 1992)

(f) Two-story houses with no living quarters on the ground floor require a permit approved by the planning board and the town commission.

(g) No house shall be constructed on any parcel of land having less than fifteen thousand (15,000) square feet in total area and a street frontage of less than one hundred (100) feet, except that this prohibition shall be waived;

1. For a parcel of land facing a court, provided the average width of the parcel of land is one hundred (100) feet or more, and

2. For any parcel of land which consists of an entire lot as appearing in the original plats or replats of the town up to the date of adoption of this Chapter.

**Editor's note**---Ord. No. 18, from which subsection (2) (g) 1 was derived, was enacted on July 26, 1970.

(h) Minimum floor area of single-family dwellings shall be one thousand (1,000) square feet exclusive of open porches, garages or carports or attached utility rooms.

(i) Every main building shall have parking facilities including garages and carports, for three (3) or more automobiles off the public street. (Ord. No. 13, S 4, 5; Ord. No. 18, S 6---12; Ord. No. 31, S 1---4; Ord. No. 32, S 1; Ord. No. 34, S 2; Ord. No. 37, S 1; Ord. No 56, S 2, 2-9-69; Ord. No. 76, S 1, 1-22-74)

**SECTION 23-19. "R-1A" RESIDENTIAL DISTRICTS.** Within "R-1A" districts the following regulations shall apply:

(1) **Permitted uses.** The following uses only are permitted:

(a) A single-family dwelling, but not boardinghouses or rooming houses.

(b) An efficiency apartment in a single-family dwelling, or



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(c) A guest house, one (1) to each previously built single-family dwelling on parcel of land of not less than forty-four thousand (44,000) square feet in area and provided the single-family dwelling does not contain an efficiency apartment, any parcel of land which consists of an entire lot as appearing in the July, 1951, plat of the Fifth Section of Melbourne Village shall be excepted from these minimum area requirements.

(d) Accessory structures as approved by the permit committee, including individual garages, carports, aeration tanks, swimming pools, and fenced-in areas around them, tool sheds, SRO and permanent compost boxes. (Ord. No. 86-1; S-9)

(e) Home crafts or home businesses, provided no person outside the family is employed in such work, except in a clerical capacity or emergencies. Sales of produce from home gardening is permitted.

(f) The rental of rooms, limited to two (2) roomers in any one (1) single-family dwelling, unless all roomers are members of a single family.

(g) Repealed. (Ord. 86-1, S 10)

(h) Advertising signs which are in compliance with the provisions of Chapter 16.5, and for which a permit is required. (Ord. 86-1: S-11)

(2) **Area and distance requirements.** The following minimum distances and areas shall apply:

(a) Minimum distances from the nearest part of any building or other structure to:

1. Front line or any side street line, thirty (30) feet, except that for accessory structures a minimum of forty (40) feet.
2. Side lot line, not facing a side street, fourteen (14) feet.
3. Back lot line abutting another lot, ditch or park lands, twenty-five (25) feet; accessory structures, fourteen (14) feet.

(b) Minimum floor area of single-family dwellings shall be one thousand (1,000) square feet exclusive of open porches, garages or carports or attached utility rooms.

(c) Minimum ceiling height for living quarters, eight (8) feet.

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(d) For habitable space, the minimum elevation of finished floor above crown of road in front of building, two (2) feet. For non-habitable space, the minimum elevation of finished floor above crown of road in front of building, one (1) foot. In individual situations where the builder considers a variance from this minimum elevation is appropriate or desired, a request for a variance may be made to the Board of Adjustment as specified in Article VII of this Chapter. (Ord. 86-1; S-12) (Ord. 93-2, S 1, 15 Dec. 1992)

(e) Guest houses shall be located a minimum distance of twenty-eight (28) feet from the main building and ninety (90) feet from the street lot line, and also conform to all other requirements of this section, except that the minimum floor area shall be four hundred (400) square feet and the maximum floor area shall be no larger than the main building to a maximum of one thousand (1000) square feet, both inclusive of garages or carports. (Ord. 95-4, S 1, 28 Mar 1995)

**Editor's note** - Ord. No. 76, S 4, adopted Oct. 22, 1974, provided as follows:

"Any guest house existing at the time of the adoption of this ordinance shall constitute a nonconforming use. In the event that such existing guest house should be damaged or destroyed in whole or part by circumstances beyond the control of the owner thereof, it may be restored and/or rebuilt in accordance with the original construction specifications for such existing guest house; provided, however, that such restoration and/or reconstruction shall be in compliance with the construction codes then in effect at the time of such restoration or reconstruction."

(f) Single-family dwellings are limited to two (2) stories, and shall have a minimum first (ground) floor area of one thousand (1,000) square feet exclusive of open porches, garages or carports or attached utility rooms. The total minimum combined floor areas, first floor plus second floor, shall be sixteen hundred (1,600) square feet. The wall height of two-story houses shall not exceed twenty-five (25) feet above ground level. No building or structure shall be erected of more than two (2) stories in height. (Ord. 93-2, S2, 15 Dec. 1992)

(g) Two-story houses with no living quarters on the ground floor require a permit approved by the planning board and the town commission.

(h) No house shall be constructed on any parcel of land having less than thirty thousand (30,000) square feet in total area. No house shall be constructed on any parcel of land having a street frontage of less than one hundred (100) feet measured on a street,

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avenue, circle or court appearing on the July, 1951, plat of the fifth section of Melbourne Village. However, any parcel of land which consists of an entire plat of the fifth section of Melbourne Village shall be excepted from the above area and street frontage requirements.

(i) Every main building shall have parking facilities, including garages and carports, for three (3) or more automobiles off the public street. Every guest house shall have parking facilities nearby for one or more automobiles off the public street. (Ord. No. 13, S 4, 5; Ord. No. 18, S 6--12; Ord. No. 31, S 1--4; Ord. No. 32, S 1; Ord. No. 34, S 2; Ord. No. 37, S 1; Ord. No. 50, S 34--37; Ord. No. 76, S 2, 10-22-74)

**SECTION 23-20. "R-2" RESIDENTIAL DISTRICTS.** Within "R-2" districts the following regulations shall apply:

(1) *Permitted uses.* The following uses only are permitted:

- (a) Any uses permitted in R-1 districts.
- (b) Two family dwellings.
- (c) Multiple-family dwellings.
- (d) Boardinghouses and lodging houses.
- (e) Hotels and motels.
- (f) Professional offices contained in a dwelling.
- (g) Private nursing homes, preschool establishments and homes for elderly persons.
- (h) Community garages, parking decks and carports for the use of persons residing in the area and for use of persons employed at or having lawful business at adjacent commercial business establishments, provided that such comply with the provisions of Section 23-20 (3) (n) below. (Ord. 87-4, Apr. 28, 1987; S-1)
- (i) Advertising signs which are in compliance with the provisions of Chapter 16.5, and for which a permit is required. (Ord. 86-1: S-13)

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## **(2) Prohibited uses. The following uses are prohibited:**

- (a) House trailers and mobile homes.
- (b) Trailer parks and trailer camps.

## **(3) Area and distance requirements. The following minimum distances and areas shall apply:**

- (a) All buildings and structures shall be a minimum of fifty (50) feet from the Dayton Boulevard lot line, twenty (20) feet from any other public street lot line and fourteen (14) feet from any side or back lot line. Distance between buildings shall be subject to approval by the town commission.
- (b) There shall be a minimum floor area of six hundred (600) square feet living area, exclusive of open porches, garages and carports, in any family unit.
- (c) There shall be a minimum ceiling height of eight (8) feet in any rooms used for living purposes.
- (d) The requirements for distance above grade or crown of road shall be the same as specified for R-1 districts.
- (e) Where a parcel of land is occupied by a multiple-family dwelling, motel or hotel, accessible parking space shall be provided and maintained for automobiles, either garages, carports or open area, or a combination thereof adequate to accommodate two (2) automobiles for each dwelling in an apartment building, and one automobile to each guest room in a hotel or motel. Parking space for each car shall be a minimum of two hundred (200) square feet. Adequate parking areas shall also be provided for boardinghouses and nursing homes.
- (f) Plans for any hotel, motel or multiple dwelling shall not only conform to the requirements of the Florida Hotel Commission and other specific requirements detailed in other sections of this chapter, but shall also be approved by the planning board to assure a coordinated and attractive appearance.

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(g) Roads shall have a right-of-way width of forty (40) feet, of which twenty (20) feet shall be a paved road, including concrete curbing, together with ten (10) feet for utilities and equipment, and an additional ten-foot side strip, shaped and sodded, for drainage. The pavement shall consist of a mix-in-place bituminous mix using four gallons per square yard cut in six (6) inches deep with a one inch plant mix topping (finished thickness). This pavement shall abut a raveling strip set along the shoulders of the pavement. The raveling strip shall be of concrete six (6) inches wide and nine (9) inches deep and set flush with the pavement. The pavement shall be crowned at the rate of one-quarter inch per foot.

(h) Underground storm sewers shall be required, and utilities shall be placed underground.

(i) If any lots now zoned R-2 (residential) are subdivided in the future, the new lots shall be a minimum size of one hundred (100) feet by eighty-five (85) feet. Not more than twenty per cent (20%) of each lot shall be used for structures containing living area, including porches.

(j) The architectural design of each building shall be substantially different and all plans therefor shall be first submitted to the planning board for approval before a building permit may be issued.

(k) Single-family dwellings are limited to two (2) stories, and shall have a minimum first (ground) floor area of one thousand (1,000) square feet exclusive of open porches, garages or carports or attached utility rooms. The total minimum combined floor areas, first floor plus second floor, shall be sixteen hundred (1,600) square feet. The wall height of two-story houses shall not exceed twenty (20) feet, and the total height to roof top shall not exceed twenty-five (25) feet above ground level. No building or structure shall be erected of more than two stories in height. (Ord. 93-2, S 2, 15 Dec. 1992)

(l) Two-story houses with no living quarters on the ground floor require a permit approved by the planning board and the town commission.

(m) Multifamily units shall have a density not to exceed six (6) units per gross acre.

(n) Maximum lot coverage and heights. The maximum lot coverage of any structure shall be twenty-five per cent (25%) including living areas, porches, garages and/or carports. Maximum lot coverage for pavement shall not exceed fifteen per cent (15%) of a gross acre. The maximum height shall not exceed twenty-five (25) feet.

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## **(4) Site plan approval for multiple-family dwelling districts.**

(a) *Purpose.* The purpose of these provisions is to permit a desirable living environment for the residents of multiple-family dwellings and to encourage a harmonious relationship between dwelling and surrounding developments by providing for a review and evaluation by the town planning board and the town commission of all site plans for projects of three (3) units or more. It is intended that such review will permit maximum flexibility in evaluating each plan on its merits and encourage variety and innovation within the intent and purpose of this chapter.

(b) *Site plan approval required.* No permit for building or building expansion shall be issued on any building site on which there is to be located three (3) or more living units until a reproducible scale and dimension site plan, drawn to the scale of fifty (50) feet to one inch, prepared by a registered engineer, land surveyor, landscape architect or architect, has been submitted to and approved by the town planning board and the town commission.

(c) *General considerations and site plan review.* The town planning board, and the town superintendent if so directed by said board, shall ascertain that proposed lot sizes, lot coverage, building heights, yard requirements, off-street parking provisions and other provisions are adequate to meet the requirements of this chapter and other applicable ordinances and that such uses are harmonious to the adjacent uses and to the area. The recommendations of the town planning board shall contain in detail the preceding findings and where justified may contain a recommendation that a modification of the strict application of the open space requirements be authorized by the town commission upon the finding that such modification would not be contrary to the intent and purpose of this chapter. The recommendations of the town planning board shall contain in detail their findings and shall be forwarded to the town commission for action. The town planning board and/or town commission may hold a public hearing on a site plan where it is determined by either body that public interest warrants same.

In addition to the above general considerations, the town planning board and the town commission in the exercise of their authority, shall also consider the following specific standards and factors and shall show in the record that each factor was considered:

- (1) Ingress and egress to property and proposed structures, with reference to automotive and pedestrian safety, traffic flow and control, provision of services, and access in case of fire or catastrophe.

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(2) Manner of drainage to the property.

(3) Utilities, with reference to hook-in locations and availability and capability for the use projected.

(4) Off-street parking areas, with attention to automotive and pedestrian safety, traffic flow and control, access in case of fire or catastrophe, convenience to the units it is designed to serve, landscaping for the buffering of abutting property where applicable.

(5) Recreation and open spaces, with attention to the location, size and development of the areas in regard to their adequacy, their effect on privacy of adjacent living areas, and their relationship to community wide open spaces and recreation facilities.

(6) Density of development, within the framework of the permitted density.

(7) General character and compatibility with reference to insuring the proposed development will be designed so as not to cause substantial depreciation of property values or reduce the safety, light and general convenience of neighboring developments.

*(d) Procedure for obtaining site plan approval.*

(1) Preapplication conference. The applicant shall meet with the town superintendent and town planning board of the Town of Melbourne Village to discuss basic site plan requirements and consider preliminary features of the site and the proposed development.

(2) Preliminary site plan. Following the preapplication conference, five (5) copies of a preliminary site plan, prepared by a registered surveyor, civil engineer, landscape architect or architect, showing the proposed general layout, a vicinity map showing the location of abutting streets, existing and proposed utilities and storm drainage system in accordance with the site plan requirements shall be submitted to the town superintendent, the police department and fire department for their recommendations.

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(3) General statement. A statement describing the general character of the intended development and the proposed method of preserving and maintaining open space shall accompany the five (5) copies of the preliminary site plan.

(4) Review and recommendations. Applications for site plan approval shall be submitted to the town planning board who shall review said site plan and submit their written recommendations to the town commission within forty-five days after the receipt of said plans and in no event later than one week from the date of a public hearing on said site plan should a public hearing be held as hereinabove provided. The town commission shall then review the recommendations of the town planning board and either approve or disapprove the plan or portions of the plan submitted not later than the second regular commission meeting following the receipt of the written recommendations from the town planning board.

(e) *Site plan requirements.* Site plans shall include:

(1) Name, location, owner and designer of the proposed development.

(2) Location of the site in relation to surrounding properties, including the means of ingress and egress to such properties and any screening or buffers on such properties.

(3) Date, north arrow and graphic scale not less than one inch equals fifty (50) feet.

(4) Location of all property lines, existing streets, easements, utilities as well as proposed drainage structures and culverts, and proposed streets, driveways and general lot layout.

(5) Location of all trash receptacles.

(6) All structures and major features shall be fully dimensioned including distance between structures, distance between driveways, parking areas and property or lot lines.

(7) Proposed location of all septic tanks and drain fields.

(f) *Final approval.* Upon the site plan being approved and a building permit being issued, the development shall be built substantially in accordance with the site plan and



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the plans and specifications. If after such approval should the owner/applicant or his successors desire to make any changes to said site plan, such changes shall first be submitted to the town planning board. If the town planning board deems that there is a substantial change or deviation from that which is shown on the approved site plan, the owner/applicant or his successors shall be required to return to the town planning board and the town commission. A further public hearing may be conducted by the town planning board and/or the town commission where it is determined that the public interest warrants same.

(g) *Effect of failure to commence construction.* If construction is not commenced within one year after the date of approval of the site plan by the town commission, and no extension has been granted or authorized by town commission action, then such site plan shall immediately become null and void and no construction shall be permitted until a new application has been submitted to the town planning board and subsequently approved by the town commission. Such application shall meet all of the current requirements and be in accordance with the procedures hereinabove set forth. (Ord. No. 13, S 5; Ord. No. 18, S 6---12; Ord. No. 31, S 1--4; Ord. No. 32, S-1; Ord. No. 34, S-2; Ord. No. 37, S 1; Ord. No. 93, S 1,5,7,8, 6-28-77)

Editor's Note--Ordinance Number 88-5 adopted July 26, 1988 repealed Section 23-21, "C" Commercial Districts in it's entirety and replaced it with new 21-23 which brings the Commercial Code into compliance with the Comprehensive Plan and meets the Concurrency requirements.

The numbering sequence from Ordinance Number 88-5 to the Code was changed slightly for clarification purposes.

**SECTION 23-21. "C" COMMERCIAL DISTRICT.** There shall be established on the zoning map of the Town a commercial district designated as "C". Within "C" commercial district the following regulations shall apply:

**(1) PERMITTED USES.** The following uses only are permitted:

- (a) Air conditioning equipment. (sales only).
- (b) Aquariums and supplies.

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- (c) Architects.
- (d) Arts and crafts.
- (e) Attorneys.
- (f) Bakeries. (retail only).
- (g) Banks, trust companies, savings institutions, finance companies and similar financial institutions.
- (h) Barber shops.
- (i) Beauty salons.
- (j) Brokers. (securities).
- (k) Bridal service and gifts.
- (l) Candy shops.
- (m) Carpeting and floor coverings. (sales only).
- (n) China and crystal stores.
- (o) Chiropractors.
- (p) Clothing stores.
- (q) Decorators.
- (r) Dentists.
- (s) Department stores.
- (t) Doctors.
- (u) Drug stores.
- (v) Dry cleaners. (Class IV.)

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- (w) Dry goods stores.
- (x) Electric appliances.
- (y) Electronic sales and service.
- (z) Fabric shops.
- (aa) Florists.
- (bb) Furniture stores.
- (cc) Gift shops. (personal and household).
- (dd) Glassware.
- (ee) Greeting cards.
- (ff) Hardware stores.
- (gg) Hearing aids and service.
- (hh) Heating equipment. (sales only).
- (ii) Hobby shops.
- (jj) Hosiery and lingerie.
- (kk) House-wares.
- (ll) Insurance offices.
- (mm) Jewelry stores.
- (nn) Laundries. (pickup only).
- (oo) Maternity wear.
- (pp) Music stores.

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(qq) Office supplies.

(rr) Opticians.

(ss) Optometrists.

(tt) Photo finishing and supplies. (retail only).

(uu) Private clubs and lodges.

(vv) Theaters.

(ww) Real estate.

(xx) Restaurants. (not including drive-ins, open air barbecue or similar establishments).

(yy) Schools, private daycare, elementary and secondary.

(zz) Shoe stores and shoe repair.

(aaa) Signs, advertising.

(bbb) Sportswear and sporting goods.

(ccc) Stereo centers.

(ddd) Swimming pool equipment.

(eee) Tackle, fishing and marina supplies stores.

(fff) Television sales and service.

(ggg) Travel agencies.

(hhh) Similar enterprises which conform to the standards governing permitted uses contained in this section, and which are no more detrimental, objectionable or annoying to the welfare of the community, than the enterprises enumerated in this subsection.

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**(2) STANDARDS GOVERNING PERMITTED USES.** The following standards shall govern new uses and changes of existing uses:

- (a) No odor, dust, fumes, gas, smoke or other atmospheric pollutants shall be disseminated beyond the boundaries of the immediate site of the building in which the use is conducted.
- (b) Noise level from operations shall be negligible. No noise or vibration resulting from or in connection with the use shall be perceptible from any part of any residence district.
- (c) There shall be no glare resulting from or in connection with the use that is observable from outside the boundaries of the "C" Commercial District.
- (d) The vehicular traffic resulting from or in connection with the use shall not add materially to the traffic on streets that primarily serve residence districts.
- (e) Every use customarily conducted within a building shall be conducted in a building enclosed on all sides with permanent walls, it being the intention of this provision to prohibit open front buildings for any use except as an accessory garden structure.
- (f) The use shall not be otherwise detrimental, objectionable, or annoying to the owners or occupants of nearby property.

**(3) PROHIBITED USES.** The following uses are prohibited:

- (a) Abattoirs and slaughterhouses.
- (b) Automobile seat covers.
- (c) Automobile dealers.
- (d) Automobile parts and service.
- (e) Automotive repair shops.
- (f) Awnings, screened enclosures and cabanas

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- (g) Billiard parlors, poolrooms and similar places of amusement.
- (h) Boat sales, repairs and service.
- (i) Bus terminals.
- (j) Bowling alleys.
- (k) Car wash.
- (l) Cemeteries.
- (m) Ceramic tile sales and service.
- (n) Circuses and carnivals.
- (o) Cocktail lounges or bars.
- (p) Commercial garages.
- (q) Commercial swimming pools.
- (r) Dance halls.
- (s) Drive-ins and drive-through convenience stores, restaurants, diners, barbecue stands, open-air restaurants and similar establishments. (Ord. 90-1 S 1)
- (t) Dwellings.
- (u) Farm supplies, feed and fertilizer.
- (v) Feed distributors.
- (w) Fortune-tellers, clairvoyants and similar activities.
- (x) Heating equipment, installation and maintenance.
- (y) Hospital (Veterinary)
- (z) Landscaping. (nurseries).

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- (aa) Laundromats.
- (bb) Liquor stores.
- (cc) Loans. (short term).
- (dd) Lumber companies.
- (ee) Marine repairs.
- (ff) Mobile homes sales and service.
- (gg) Nurseries. (landscaping).
- (hh) Outboard motor service.
- (ii) Outdoor amusement devices.
- (jj) Outdoor business activities.
- (kk) Pawnbrokers.
- (ll) Pest control.
- (mm) Print shop.
- (nn) Septic tank supplies and service.
- (oo) Service gasoline stations.
- (pp) Sheet metal.
- (qq) Steam laundries.
- (rr) Storage or disposal of junk, rags or other waste material.
- (ss) Storage warehouses.
- (tt) Supermarkets.

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(uu) Tire recapping.

(vv) Trailer supplies.

(ww) Undertaking establishments.

(xx) Used car lots.

(yy) Well drilling equipment.

(zz) Yards for contractors or other construction materials or equipment.

(aaa) Similar objectionable enterprises.

(bbb) Any enterprise which is deemed deleterious or harmful to the public health, safety, welfare or morals of this primarily residential Town and its adult citizens and children, which is not in accordance with prevailing contemporary community standards, taking into account federal and state statutes, constitutional decisions, as well as the respective constitutions themselves; including but not limited to, by way of example only, "adult" book stores, "massage" parlors and "nudie" shows, and "adult only" movie theaters.

**(4) LOT AREA.** The minimum area of any lot shall be five thousand (5000) square feet.

**(5) SIDE YARDS.** No side yards are required between adjoining commercial properties.

## **(6) SETBACKS.**

(a) All commercial buildings on U.S. 192 shall be a minimum of seventy-five (75) feet from the present abutting lot line, and for buildings greater than twenty-five (25) feet in height the front set back shall be one hundred (100) feet, building height not to exceed thirty (30) feet. (Ord. 92-5, S 1, 25 Feb. 1992)

(b) All commercial buildings on Dayton Boulevard, the set back shall be a minimum of fifty (50) feet from the present abutting lot line. Building height not to exceed thirty (30) feet. (Ord. 91-1 S 1, 20 Nov. 1990)



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(c) All buildings on lots facing or adjacent to residential districts shall be set back twenty-five (25) feet from the nearest point of the residential district. In a situation where a property owner owns both the commercial parcel and the adjoining residential parcel and the two parcels are being developed under one site plan application, the Commission has the option to approve a zero set back, and require the recording of a deed indenture prohibiting future sub-division of said commercial and residential parcels where the residential property would be separated from the primary commercial parcel. This deed indenture must be recorded prior to issuance of building permits for said site. (Ord. 91-1 S 2, 20 Nov. 1990)

**(7) BUILDING OR STRUCTURE HEIGHT.** No building or structure shall be erected in commercial districts that exceeds thirty (30) feet in height. (Ord. 92-5, S 2, 25 Feb. 1992)

**(8) BUFFER STRIP.** Where "C" Commercial property abuts any other non-commercial zoned property, whether within the Town of Melbourne Village or a neighboring city or country, a landscaped buffer strip of not less than five (5) feet in width, and a solid wall, minimum of six (6) feet, maximum of eight (8) feet high, sufficient to obstruct the view of such abutting property, shall be provided. The wall shall be located not more than 12 inches inside the property line. The five (5) feet of landscaping is to be located inside the wall. Appropriate plantings may be required on the outside of the wall for aesthetic effect. Construction of the solid wall shall be of brick, mortar or similar building materials. Construction other than brick shall be finished with stucco and pigmented to comply with the Official Town color code. A wooden fence is strictly prohibited. The Town Commission may authorize or require alternative buffers using dense evergreen foliage at least four (4) feet high and maintained, after growth, at least ten (10) feet high.

**(9) ACCESS CONTROL.**

(a) A point or points of driveways or other openings for vehicles onto a public street, shall be acted upon in each case by the Planning and Zoning Board and approved by the Commission. Access from State Route 500, U.S. 192, requires F.D.O.T. approval and permit.

(b) No point of access shall be constructed on Dayton Boulevard within a minimum of three hundred (300) feet of the right-of-way line of U.S. 192 and Dayton Boulevard intersection.

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(c) No curbs on town streets or rights-of-way shall be cut or altered without approval of the Planning and Zoning Board and the Town Commission, and a permit issued by the town building official.

(d) Parking areas located entirely upon private property shall have a curb not less than six (6) inches high nor less than six (6) inches wide, or a curb stop separating such parking area, located to prevent encroachment upon the adjacent sidewalk or roadway.

## **(10) OFF-STREET PARKING.**

(a) A minimum of two (2) off street parking places shall be provided for the first three hundred (300) square feet of floor space per tenant in a commercial building, plus one (1) parking space for each additional three hundred (300) square feet of floor space, except that a minimum of one (1) off street parking place shall be provided for each nine hundred (900) square feet of dedicated warehouse and/or workshop floor space, provided that such space is not designated for public admittance for any purpose, including "warehouse sales". If such space is remodeled to permit public use (retail display, etc.) and if such remodeling requires any building permits, the permitting process shall require any additional parking places needed to bring total to number required for non-warehouse/workshop space, regardless of percentage of total development effected by such remodeling. Restaurants, bars, lounges, private clubs and lodges shall have at least one (1) space for each three (3) seats. Hotels and motels, one (1) space per unit. The minimum size parking space shall be nine (9) feet by eighteen (18) feet. However, parking spaces utilized by customers, located in front of a business, shall be a minimum of nine and one half (9-1/2) feet wide. Lane widths adjacent to eighteen (18) foot long parking spaces shall be a minimum of twenty eight (28) feet wide. If there is no adjacent parking areas or if parking is adjacent to one side of the lane only, the minimum lane width shall be fifteen (15) feet. Handicapped parking shall be in accordance with State Statute 316.1955 and 316.1956. (Ord. 90-1 S 1) (91-1 S 3)

(b) Off-street parking may be provided within required setbacks and yard areas.

(c) The surface of the off-street parking areas shall be covered with a dust-free all-weather coating such as asphalt or concrete.

(d) Parking areas shall be clearly marked to indicate driving lanes, parking spaces and direction of traffic flow.

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(e) Floodlights illuminating parking areas shall be shielded to prevent glare from, or direct illumination of surrounding residence areas.

### **(11) ARCHITECTURAL DESIGN.**

(a) All new construction shall follow a distinctive and tasteful architectural period theme. (For example, Early American, Colonial, Mediterranean, Old English, Contemporary, etc.) The theme and colors must be harmonious with existing community architecture.

(b) Architectural treatment compatible with period theme must be given to all store front windows. Exposed un-treated masonry or stucco walls are prohibited.

(c) Design of signs shall also be compatible with the period theme.

(d) A minimum of thirty (30) percent of the gross square footage of the site shall be permeable surface with the appropriate landscaping.

(e) A site plan shall be submitted to and approved by the Planning and Zoning Board and the Town Commission, prior to the issuance of any tree removal, site clearing or construction permits.

**(12) BUILDING GRADE.** The elevation of the finished grade of buildings in the Commercial zone shall be no less than twenty-four (24) inches above the crown of the street as designated by the Town.

**(13) PRE-FABRICATED BUILDINGS.** No pre-fabricated building shall be erected within the Town without prior approval by the Planning and Zoning Board and the Town Commission.

### **(14) RETENTION AND DETENTION OF SURFACEWATER.**

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(a) DEFINITIONS. For the purpose of this section the following words and phrases shall have the meaning indicated. The word "shall" is always mandatory.

(1) AGRICULTURAL LANDS shall mean those lands in any agricultural use including forestry for which an agricultural tax exemption has been granted.

(2) APPLICANT shall mean any person applying for or who has been granted a permit to proceed with a project.

(3) AQUIFER shall mean an underground formation, group of formations, or a part of a formation, that is permeable enough to transmit, store or yield usable quantities of water.

(4) CONSULTING ENGINEER shall include the terms "professional engineer" and "registered engineer" and shall mean a person with specialized knowledge obtained after long and intensive academic preparation who is registered to engage in the practice of engineering under Florida Statute 471.001-471.039. Such engineer may be an employee of another governmental agency.

(5) DETENTION OR TO DETAIN shall mean the collection and temporary storage of storm water in such a manner as to provide for treatment through physical, chemical or biological processes with subsequent gradual release of the surfacewater.

(6) DESIGN shall mean the plan shown on the site plan by means of contour lines or other symbols indicating the direction of grades of the land so as to retain or detain the surface water.

(7) DRAINAGE SYSTEM, NATURAL DRAINAGE SYSTEM shall mean the system through which water flows; it includes all water courses, water bodies and wetlands.

(8) ENGINEER, see consulting engineer.

(9) EVENT shall mean the specific storm which is or is to be considered in the design.

(10) FLOODPLAIN shall mean the one-hundred-year floodplain as defined by the Federal Management Agency.

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(11) **GROUNDWATER** shall mean water below the surface of the ground whether or not flowing through known and defined channels.

(12) **HYDROGRAPH** shall mean a graph of discharge versus time for a selected outfall point.

(13) **HYDROLOGY** shall mean a science dealing with the properties, distribution and circulation of water on the surface of the land, in the soil and underlying rocks and in the atmosphere.

(14) **IMPERVIOUS SURFACE** shall mean a surface which has been compacted or covered with a layer of material such that it will not permit the passage of water. It includes surfaces such as compacted clay, as well as most conventionally surfaced streets, driveways, roofs, sidewalks, parking lots and other similar surfaces.

(15) **PERSON** shall mean an individual, partnership, corporation, governmental agency, business trust, estate, trust association, two (2) or more persons having a joint or common interest, or any other legal entity.

(16) **RETENTION OR TO RETAIN** shall mean the prevention of, or to prevent the discharge of a given volume of surface water runoff by complete on-site storage where the capacity to store the given volume must be provided by a decrease of stored water caused only by percolation through soil, evaporation, or evapotranspiration.

(17) **SEDIMENT** shall mean solid material, whether mineral or organic, that is in suspension, is being transported, or has moved from its site of origin by air, water or gravity.

(18) **SEDIMENTATION FACILITY** shall mean any structure or area which is designed to hold runoff water until suspended sediments have been settled.

(19) **SITE** shall mean any tract, lot or parcel of land which is in one ownership, or contiguous and in diverse ownership, where development is to be performed as part of a unit, subdivision or project.

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(20) SITE PLAN shall mean the plan required to acquire a development, construction, building or surfacewater permit which will show the means by which the developer will conform with applicable ordinances.

(21) SURFACEWATER DRAINAGE PLAN shall refer to the detailed analysis required by subsection (5) herein for each activity described in subsection (7) herein.

(22) SURFACEWATER MANAGEMENT SYSTEM shall refer to the designed features of the property which collect, channel, hold, inhibit, or divert the movement of surfacewater.

(23) SURFACEWATER OR RUNOFF shall refer to the flow of water which results from and which occurs during and immediately following a rainfall event, the breaking or flushing of a hydrant or water main, the breaking or misdirection of a lawn sprinkler head or any other source of nonsalt water which is an over-supply of nonsalt water that is not immediately percolated through the soil.

(24) SWALE shall mean a natural or manmade drainage pathway which if manmade has a top width to depth ratio of the cross section equal to or greater than six (6) to one (1) or side slopes equal to or greater than three (3) feet horizontal to one (1) foot vertical and has a grade as flat as the topography and design conditions will allow; and only contains contiguous areas of standing or flowing water following the occurrence of rainfall or flooding; and is planted with vegetation suitable for soil stabilization, surfacewater treatment and nutrient uptake.

(25) TOWN BUILDING OFFICIAL OR INSPECTOR shall mean that individual designated by the Town to receive and review applications for land use permits, recommend same for approval or disapproval by the appropriate Town authorities, issue permits therefore, and/or make necessary inspections to see that the provisions of the law are fully observed.

(26) WATER BODY shall mean any natural or artificial pond, lake, reservoir or other area which ordinarily intermittently contains water and which has a discernable shoreline.

(27) WATERCOURSE shall mean any natural or artificial stream, creek, channel, ditch, canal, waterway, gully, ravine or wash in which water flows in a

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definite direction, either continuous or intermittently and which as a definite channel, bed or banks.

(28) WATER RETENTION STRUCTURE, WATER MANAGEMENT STRUCTURE shall mean a facility which provides for surfacewater runoff and the controlled release of such runoff during and after a flood or storm.

(29) WATER RETENTION STRUCTURE shall mean a facility which provides for storage of surfacewater runoff.

(b) APPLICABILITY. This section shall apply to the "C" Commercial Districts in the incorporated areas of the Town and to all areas not presently within these corporate limits but which are annexed into the limits whether by future Commission or Legislative action.

(c) PROHIBITIONS.

(1) No person may sub-divide or make any changes in the use of land or construct any system or structure, or change the size of a structure, or change the size of a structure except as exempted in subsection (d) without first obtaining approval from the Permit and Inspection Committee and a permit from the town building official, as provided herein.

(2) For the purpose of this section the following activities may alter or disrupt surfacewater runoff patterns, and will, therefore, unless exempt in accordance with subsection (d), require a permit prior to the initiation of any project:

(a) Clearing and/or construction of ditches or swales for drainage of land.

(b) Subdividing of land.

(c) Re-platting recorded subdivisions and the development of recorded and un-recorded subdivisions.

(d) Changing the use of land and/or the construction of a structure or a change in size of one or more structures.

(e) Altering shorelines or banks of bodies of water.

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(f) Increasing the impervious area of any tract, lot, or parcel of land.

(d) EXEMPTIONS For the purpose of this section, the following activities shall be exempt from further consideration under the provisions set forth herein.

(1) Properties where such land is part of, and the surfacewater management plan is included in the overall subdivision site plan or construction plan approval.

(2) Bona fide agricultural pursuits where no artificial drainage system will be used to increase the flow of water from the land.

(3) Maintenance work performed for the purpose of public health and welfare.

(4) Any maintenance, alteration, renewal, use or improvement to an existing structure or systems not materially changing or affecting the rate of volume of surfacewater runoff.

(5) Construction of tracts, lots or parcels where the surfacewater drainage plan has already been approved.

(e) EMERGENCY EXEMPTION.

(1) This article shall not be construed to prevent the doing of any act necessary to prevent material harm to or the destruction of life or real personal property as the result of a present emergency, including but not limited to fire, infestation by pests or hazards resulting from violent storms or hurricanes or when the property is in imminent peril and the necessity of obtaining a permit is impractical and would cause unique hardship in the protection of life and property.

(2) A report of such emergency action shall be made to the town building official by the owner or the person in control of the property upon which the emergency action was taken as soon as practicable, but no more than ten (10) days following such action. Remedial action may be required by the town building official subject to appeal to the Town Commission in the event of dispute.

(f) GENERAL REQUIREMENTS.



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(1) **MANAGEMENT PLAN.** Surface water and ground water and all other fresh water resources including rainwater, requires a surfacewater management plan. A surfacewater management plan shall be submitted for all projects unless relief from the requirement is obtained under one of the following:

(a) The town building official or consulting engineer determines that the proposed project is exempt under the provisions of subsection (d) herein, or

(b) The Board of Adjustment, after considering the recommendations of the town building official grants a variance to specific provisions of this article.

(2) **PROVISIONS.** The provisions of the plan shall meet the following requirements:

(a) All proposed surfacewater management systems shall be designed to prevent floods and/or safety or health hazards.

(b) All surfacewater, ground water and all other fresh water resources including rainwater, the management system shall be designed to enhance groundwater recharge while reducing pollution. However, in an area designated as a groundwater recharge area, the developer shall limit runoff from the proposed site to the greatest extent possible. In addition, the town building official while enforcing standards set for pollution and sedimentation control may encourage or request innovative approaches to achieve the desired purpose.

(c) Concurrent control of erosion, sedimentation, water pollution and flooding shall be mandatory.

(3) **DESIGN REQUIREMENTS.** System design requirements. In determining the rate and volume of runoff from the project sites the following computational methods shall be employed to develop hydrological data:

(a) For the pre-development stage runoff rates, volumes, and timing shall be developed by the methods published by the U.S. Department of Agriculture, Soil Conservation Service (SCS) in Technical Release No. 55. "Urban Hydrology for Small Watersheds", and/or SCS National

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Engineering Handbook, Section 4, entitled "Hydrology". Alternative methods may be used if in the opinion of the town building official the method produces similar results.

(b) For the post-development stage the Santa Barbara Urban Hydrograph method as published in "Proceedings, National Symposium of Hydrology and Sediment Control", College of Engineering, University of Kentucky 1975, is preferred for developed area with high percentages of impervious surfaces. The Soil Conservation Service methods may be used where comparable results can be demonstrated.

(c) The design of water retention or detention structures and flow attenuation devices shall be subject to the approval of the town building official pursuant to the requirements of this section.

(d) Runoff computations shall be based on the most critical situation (rainfall duration, distribution and antecedent soil moisture condition) and conform to acceptable engineering practices using rainfall data and other local information applicable to the affected area.

(e) The management facilities shall be designed for a minimum of twenty (20) year life and shall have a low maintenance cost and easy legal access for periodic maintenance.

(f) No site alteration shall allow water to become a health hazard or contribute to the breeding of mosquitoes.

(g) In those cases in which the site under consideration is a part of the natural watershed, provision shall be made for waters entering from beyond proposed site limits.

(h) The use of swaled greenways; flow control structures; distilling basins, grease, oil, sediment traps and similar devices shall be used to minimize the adverse effects of surfacewater runoff on both surface and ground waters.

(i) In all cases involving retention ponds or detention basins, the side slopes shall conform to the following maximums or else the pond or

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basin shall be fenced in accordance with existing requirements for swimming pools.

(1) In ponds or detention basins where water is expected to stand as a consideration of design, the maximum side slopes shall be five (5) horizontal to one (1) vertical.

(2) In ponds or detention basins that are designed to be dry as the normal condition, the maximum side slopes shall be three (3) horizontal to one (1) vertical.

(g) PERFORMANCE STANDARDS. Surfacewater and ground water and all other fresh water resources including rainwater, management plans shall be approved by the town building official when it can be demonstrated by the applicant, at the applicant's expense, that the proposed development activity has been planned, designed and will be constructed and maintained to meet each of the following performance standards:

(1) The hydrograph for the developed or re-developed site shall not exceed the rate of flow, volume and timing of runoff produced by conditions existing before development of re-development for the ten year, twenty-four-hour storm. In addition, the cumulative impact of the outflow hydrograph on downstream flow shall be considered. Runoff rates and volumes resulting from the project, in excess of existing rates and volumes, shall be accommodated on-site.

(2) Primary surface water and ground water and all other fresh water resources including rain water, management facilities shall be designed for the twenty-five-year, twenty-four-hour storm. Other facilities shall be designed for the ten-year, twenty-four-hour storm.

(3) Surface water runoff shall be subjected to best management practices prior to discharge into natural or artificial drainage systems. Best management practice shall mean a practice or combination of practices determined by the town building official to be the most effective, practical means of preventing or reducing the amount of pollution generated by the project to a level compatible with acceptable standards of Florida water quality.

(4) On-site retention must be provided for the first inch of runoff from impervious surfaces, plus the runoff from the first inch of rain fall over the pervious surfaces.

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(5) Channeling runoff directly into water bodies shall be prohibited. Instead, runoff shall be routed through swales and other systems designed to increase time of concentration, decrease velocity, increase filtration, allow suspended articles to settle and remove pollutants.

(6) Runoff from parking lots shall be appropriately treated to remove oil and sediment before it enters receiving waters.

(7) Vegetated buffer strips shall be created or where practical, retained in their natural state along the banks of all watercourses, water bodies or wetlands. The width of the buffer shall be sufficient to prevent erosion, trap the sediment on overland runoff, provide access to the water body and allow periodic flooding without damage to structures.

(8) No grading, cutting or filling shall be commenced until erosion and sedimentation control devices have been installed between the disturbed area and the water bodies, watercourses and wetlands.

(9) Land which has been cleared for development and on which construction has not begun for thirty (30) days shall be protected from erosion and sedimentation by appropriate techniques.

(10) Sediment shall be retained on the site of development.

(11) Wetlands and other water bodies shall not be used as sediment traps during development.

(12) Development, including grading and contouring, shall take place in a manner that protects the roots and viability of the trees as described in the Florida Division of Forestry Tree Protection Manual for Builders and Developers.

(h) MAINTENANCE. The installed system required by this article shall be maintained by the owner. In certain instances involving critical areas and/or structures the Town Commission may determine that maintenance be performed by the town. In such circumstances all areas and/or other structures to be maintained by the town must be dedicated to the town by plat or separate instrument and accepted by the Town Commission. The system to be maintained by the owner shall have adequate

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easements to permit the town to inspect and if necessary to take corrective action should the owner fail to maintain the system properly. If inspection reveals that the owner is not properly maintaining his system the town building official shall give the owner, in writing, notice of the corrective action to be taken. Should the owner fail within thirty (30) days of the notice to begin corrective action, the town may enter upon the property, take the necessary corrective action and place a lien on the property of the owner for the costs thereof. For the purpose of this section, the owner shall execute and record a document acceptable to the town attorney, the document to define the specific person/agency responsible for maintenance of the surface water and ground water, and all other fresh water resources including rain water, management system, how this maintenance is to be performed and the legal mechanism assuring the perpetuation of the maintenance.

### **(i) PERMITTING.**

(1) A permit is required for those projects/developments, land clearing and all other activities which must be considered under the provisions of this section, unless exempted by the town building official in accordance with sub-section (d) herein. The requirements of this surface water management article will be implemented and must be satisfied completely prior to final or site plan approval.

(2) No person, firm, corporation or governmental entity shall develop, improve or otherwise alter the state of property adjacent to or containing within its boundaries any drainage facility owned by Brevard County, where such development, improvement or alteration may result in additional discharge into such facility without first obtaining a permit from the County Engineer's office. The County permit requirements must be satisfied completely prior to the town's final or site plan approval.

### **(j) PERMIT FEES.** A fee schedule may be obtained from the Town office.

**(k) REVIEW BY THE TOWN BUILDING OFFICIAL.** The town building official with five (5) days of submittal will determine the completeness of the application. Within forty-five (45) days after submission of the completed permit application package, the town building official shall approve, with or without specified conditions or modifications, or reject the proposed plan and shall notify the applicant accordingly. If the town building official has not rendered a decision within forty-five (45) days after plan submission, he must inform the applicant of the status of the review process

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and the anticipated completion date. If the plan is rejected or modified the town building official shall state his reasons for rejection or modification. If the applicant feels aggrieved due to rejection, modification or delay, he may request a hearing before the Town Board of Adjustment.

(1) **INSPECTIONS.** Subsequent to the applicant's satisfying the requirements of this section and other applicable ordinances and the issuance of the appropriate permit, the applicant shall during construction arrange for and schedule the following inspections by the town building official.

(1) During clearing operations and excavation to ensure that effective control practices relative to erosion and sedimentation are being followed.

(2) All underground conveyance and control structures, prior to backfilling.

(3) Final inspection when all systems required by the applicant's approved surfacewater management plan have been installed.

(m) **ENFORCEMENT.** If the town building official determines that the project is not being carried out in accordance with the approved plan or if any project subject to this section is being carried out without a permit, he is authorized to:

(1) Issue written notice to the applicant specifying the nature and location of the alleged non-compliance with a description of the remedial action(s) necessary to bring the project into compliance within three (3) working days.

(2) Issue a stop-work order directing the applicant or persons in possession to cease and desist all or any portion of the work which violates the provisions of this section, if the remedial work is not completed within the specified time. The applicant shall then bring the project into compliance.

(n) **PENALTIES.** Any person who violates or causes to be violated any provisions of this article or permits any such violation or fails to comply with any of the requirements hereof shall be subject to enforcement action of the Town Commission or Code Enforcement Officer/Code Enforcement Board pursuant to Florida Statutes. A separate offense shall be deemed committed on each day during or on which a violation of failure to comply occurs or continues.

### **(15) LANDSCAPING.**

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### **(a) GENERALLY.**

(1) The provisions of this section shall be minimum requirements to promote the public health, safety and welfare by providing for installation and maintenance of certain landscaped areas to protect the character and stability of the residential and business areas and to conserve the value of land and buildings on surrounding properties and neighborhoods.

(2) Permits and applications for tree removal in conjunction with commercial development is required in accordance with Chapter 21, Town of Melbourne Village Code.

(3) Any person, firm, association or corporation proposing any development or construction in the commercial zone shall submit as an attachment to the required site plan or building permit application five (5) copies of a legible reproducible plan drawn to scale and indicating the following information for the entire site:

(a) Location, shape and spatial arrangements of all existing and proposed buildings, walls, improvements and structures.

(b) Identification of uses on adjacent properties.

(c) Location, shape and spatial arrangement of all parking areas and access roads.

(d) Existing and proposed utility services.

(e) Location of fire hydrants.

(f) Existing and proposed elevations.

(g) Setbacks, yard requirements and easements.

(h) Existing and proposed wells.

(i) All sink holes, rock outcroppings and historical sites.

(j) Location of endangered or threatened species.

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(k) A certified tree survey overlaid directly upon the site plan and indicating the location, referenced structures, of all trees as defined in this ordinance. The survey shall identify existing trees which are proposed to be destroyed, re-located, replaced or preserved at their present location. And, new trees to be introduced into the development from an off-site source. All trees shall be identified by scientific name, trunk diameter and height. Groups of trees less than three (3) feet apart may be designated as clumps, provided that any tree with a trunk diameter of four (4) or more inches measured three (3) feet above ground level shall be specifically designated.

For sites on which development or tree removal activity is to occur on less than the entirety of the site, the reviewing department may provide that the tree survey exclude those portions of the site which it determines will not be affected by the development activity. **The tree survey shall be presented as a transparency over-laying the site plan.**

## (b) DEFINITIONS.

(1) ENDANGERED, THREATENED OR RARE SPECIES. Flora and fauna as listed by Florida Statutes; the U.S. Fish and Wildlife Service; Rare and Endangered Biota of Florida, University Press of Florida; Florida Natural Areas Inventory.

(2) ENCROACHMENT. Encroachment is defined as any protrusion of a vehicle outside a parking space, display area or access-way into a landscaped area.

(3) LAND CLEARING. The removal of vegetation from site, parcel or lot; provided, however, that it does not include mowing, trimming or pruning so as to maintain vegetation in a healthy viable state.

(4) LANDSCAPING. Landscaping shall consist of any of the following or combination thereof; Material such as but not limited to, grass, ground covers, shrubs, vines, hedges, trees or palms and non-living durable material commonly used in landscaping, such as, but not limited to rocks, pebbles, sand, walls or fences, but excluding paving.

(5) NATIVE VEGETATION. Native vegetation shall mean plant species indigenous to Brevard County that are not known to have been introduced by man.



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(6) **SHRUBS AND HEDGES.** A self supporting non-deciduous species of small woody plants, usually with several stems, capable of growing in the Town of Melbourne Village.

(7) **TREES.** Any self-supporting perennial plant, both woody and fibrous, which has an upright trunk diameter of at least four (4) inches measured three (3) feet above grade at the base of the tree and normally grows to a minimum height of fifteen (15) feet in the central coastal area of Florida.

The diameter of multiple trunk trees shall be the sum of the diameter of all the trunks measured three (3) feet above grade at the base of the tree.

(c) **TREE SPECIES CLASSIFICATION.** Trees shall be classified as follows.

(1) **LARGE TREE.** Average mature height over sixty (60) feet.

(2) **MEDIUM TREE.** Average mature height of at least twenty (20) feet and no greater than sixty (60) feet.

(3) **SMALL TREE.** Average mature height of at least ten (10) feet and less than twenty (20) feet.

(d) **UNDESIRABLE TREE SPECIES.** Exotic tree species that are invasive weeds or hazardous to public safety. They are as follows:

(1) *Schinus terebinthifolius* (Brazilian Pepper).

(2) *Melaleuca quinquenervia* (Cajeput Tree).

(3) *Enterolobium contortisiliquum* (Ear Tree).

(4) *Eucalyptus* spp. (Eucalyptus).

(5) *Casaurina* spp. (Australian Pine).

(6) *Grevillea robusta* (Silk Oak).

(7) *Metopium toxiferum* (Poison Wood).

(e) **LAND CLEARING.**

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(1) No land clearing shall be permitted until an approved building permit has been issued.

(2) This provision shall not prohibit the limited removal of understory material for purposes performing routine field survey work and the removal of un-desirable, dead or diseased vegetation. The survey lines shall be no wider than four (4) feet.

(f) **LANDSCAPING OF OFF-STREET PARKING.** Landscaping of off-street parking and other vehicular use areas shall conform to the minimum requirements hereinafter provided.

(1) **INSTALLATION.** The owner, tenant and/or agent if any, shall be jointly and severally responsible for installing landscaping according to accepted commercial planting procedures with the quality of plant materials as hereinafter described.

All elements of landscaping shall be installed as to meet all other applicable ordinances and code requirements of the Town of Melbourne Village. Landscaped areas shall require protection from vehicular encroachments. The designated building official of the town shall inspect all landscaping and no certificates of occupancy or similar authorization shall be issued prior to landscaping conforming to the requirements herein provided.

(2) **MAINTENANCE.** The owner, tenant and/or agent, if any, shall be jointly and severally responsible for maintaining such landscaping in a healthy, neat and orderly condition. The owner shall provide each landscaped area with a readily available water supply with a minimum of one (1) outlet within one hundred and fifty (150) feet of all plant material to be maintained.

(3) **VIABILITY.** All required landscape materials on the site, whether preserved or newly planted, shall demonstrate health and viability two (2) years after the certificate of occupancy has been issued. If the required landscape vegetation dies within that time period, the property owner shall be responsible for replacing that dead vegetation with equivalent landscape material. Failure to do so within thirty (30) days of notification by the Town, shall constitute a violation of this ordinance.

(g) **PLANT MATERIAL.**

(1) **QUALITY.** Quality plant materials used in conformance with provisions of this section shall equal or exceed the standards for Florida No. 1 as given in "Grades and Standards for Nursery Plants", Part I, 1973 and Part II, 1975, State of Florida,

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Department of Agriculture, Tallahassee, and any amendments thereto. Grass sod shall be clean and reasonably free of weeds and noxious pests or diseases. Grass seed shall be delivered to the job site in containers with Florida Department of Agriculture tags attached indicating the seed grower's compliance with the Department's quality control program.

(2) TREES. Trees shall be species of an average mature spread or crown greater than fifteen (15) feet and trunk(s) which can be maintained in a clean condition with over seven (7) feet of clear wood. Trees having an average mature spread or crown less than fifteen (15) feet may be substituted by grouping the same as to create the minimum fifteen (15) foot crown spread. Trees shall be a minimum of eight (8) feet in overall height immediately upon planting. Trees of species providing roots known to cause damage to public roadways or other public works shall not be planted closer than twelve (12) feet to such public works, unless the tree root system is completely encased with a container for which the minimum interior dimensions shall be five (5) feet square and five (5) feet deep.

(3) NATIVE TREES. Fifty (50) percent of all trees used to satisfy the landscaping requirements shall be native species suitable to the soil conditions of the site. Native palm trees may be used in a ratio of three (3) palm trees to replace one (1) hardwood or conifer tree.

(4) SHRUBS AND HEDGES. Shrubs shall be a minimum of two (2) feet six (6) inches in height immediately upon planting. Hedges shall be of non-deciduous species and planted and maintained so as to form a continuous, un-broken, solid visual screen within a maximum of one (1) year after planting.

(5) VINES. Vines shall be a minimum of twelve (12) inches in height immediately upon planting and may be used in conjunction with fences, screens or walls to meet physical barrier requirements as specified.

(6) GROUND COVERS. Ground covers in lieu of grass shall be planted in such manner as to present a finished appearance and reasonable complete coverage within six (6) months after planting.

(7) LAWN GRASS. Grass shall be species normally grown as permanent lawns in the Town of Melbourne Village.

(8) SYNTHETIC PLANTS. In no event shall synthetic plants such as; manmade plastic, rubber or silk be used to satisfy any of the landscaping requirements.

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(h) REMOVAL OF UN-DESIRABLE SPECIES. All un-desirable species as sited in section (15) (d) shall be removed prior to landscaping.

(i) LANDSCAPING ADJACENT TO PUBLIC RIGHTS-OF-WAY. Landscaping adjacent to public rights-of-way, including streets and walks: The owner, tenant and/or agent of an off-street parking or other vehicular use area shall landscape between such areas and any adjacent public street, walk or right-of-way as provided below, Prior to issuance of a certificate of occupancy by the building official, this landscaping shall be installed as follows:

(1) A landscaped strip at least ten (10) feet wide.

(2) One (1) large tree is required for each thirty (30) linear feet of fraction thereof in a planting area of at least fifty (50) square feet, with the minimum of at least ten (10) feet wide. The required trees may be placed within the landscaped buffer area in any configuration, (i.e. clustered or equidistant). The location of the trees does not reduce the total square footage of associated area required for each tree.

(3) A hedge, wall or other durable landscape screen at least two (2) feet six (6) inches in height except as provided in paragraph (j) (1) of this section.

(4) If the durable screen is of non-living material one (1) shrub or vine shall be planted abutting the screen for each ten (10) feet apart. Such shrubs or vines shall be planted along the street side of the screen or of sufficient height at the time of planting to be readily visible over the top of the screen.

(5) The remainder of the required landscaped areas shall be landscaped with grass, ground cover or other landscape material.

(6) All ground between the right-of-way and off-street parking or other vehicular use area shall be landscaped.

(j) PERIMETER LANDSCAPING. Perimeter landscaping adjacent to abutting properties. The owner, his tenant and/or agent of an off-street parking or other vehicular use area shall landscape between such area and the abutting property as provided below. Prior to issuance of a certificate of occupancy by the building official this landscaping shall be installed as follows:

(1) A wall hedge or other durable landscape screen at least six (6) feet in height between the common lot line and the off-street parking or other vehicular use area.

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(2) Live screening materials shall be planted in a strip not less than ten (10) feet in width.

(3) Perimeter landscaped areas shall be protected from vehicular encroachment by the use of curbing or wheel stops.

(4) A minimum of one (1) large tree is required for each thirty (30) linear feet or fraction thereof and in an area of at least forty-nine (49) square feet with a minimum dimension of at least seven (7) feet in width. The required trees may be placed within the landscaped buffer area in any configuration, (i.e. grouped, clustered or equidistant). The location of the trees does not reduce the total square footage of associated area required for each tree.

(5) The strip shall be landscaped with grass, ground cover or other landscape material.

(k) **LANDSCAPING INTERIOR OFF-STREET PARKING.** Landscaping of off-street parking and vehicular use areas: The owner, tenant and/or agent of an off-street or other vehicular use area shall landscape the interior of these areas to define aisles and other vehicular use areas and to provide relief from the expanse of paving. Prior to issuance of a certificate of occupancy by the building official, this landscaping shall be installed as follows:

(1) Off-street parking areas. At least ten (10) square feet of interior landscaping for each parking space, excluding those spaces abutting a perimeter for which landscaping is required and excluding all parking spaces which are directly served by an aisle abutting and running parallel to this perimeter.

(2) Other vehicular use areas. At least one (1) square foot of landscaping for each one hundred (100) square feet of paving over five thousand (5000) square feet. At least one (1) square foot of landscaping shall be provided for each two hundred (200) square feet of paved area over fifty thousand (50,000) square feet.

(3) If the property contains both parking and other vehicular use areas, the two areas may be separated to determine the landscaping required by this sub-section for the other vehicular use area by multiplying the total number of parking spaces by 400, and subtracting the resulting figure from the total square footage of the paved area.

(4) Each separate landscaped area shall be a minimum of fifty (50) square feet with a minimum dimension of five (5) feet and shall include at least one (1) large tree. The remaining area shall be adequately landscaped with shrubs, ground cover or other authorized landscaping material.

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(5) There shall be not less than one (1) tree for each one hundred (100) square feet of the interior landscape area or fraction thereof.

(6) All planting areas except those abutting the perimeter of a parking lot or area shall be raised and curbed. Exception: If the application of this sub-section will seriously limit the function of the area, the interior landscaping may be re-located near the perimeter of the paved area including the perimeter adjacent to a building on the site. Such required interior landscaping which is re-located shall be in addition to the perimeter landscaping required.

(7) Encroachment. There shall be no encroachment over or into required landscaping areas. Wheel stops and/or curbs a minimum of six (6) inches in height and width shall be placed at least two (2) feet from the edge of the required landscaped area. Where a wheel stop or curb is utilized, paved area between the curb and the end of the parking space may be omitted, providing it is landscaped in addition to the required landscaping as provided for herein.

(l) **SIGHT DISTANCE.** Sight distance for landscaping adjacent to public right-of-way and points of access: No landscaping, tree, fence, wall or similar item shall be maintained in the vicinity of any corner, street, intersection or accessway intersecting a public right-of-way that the building official of the town determines is an obstruction to visibility, extends into sight lines or is a traffic hazard.

Existing plant material: The building official may adjust the application of the above standards, in part or in whole, to allow credit for healthy plant material on a site prior to its development if, in his opinion, such an adjustment is consistent with the intent of this section.

(m) **RETENTION/DETENTION PONDS.** All retention/detention ponds shall be landscaped with appropriate vegetation which can withstand periodic flooding while still presenting an aesthetically pleasing appearance.

(n) **TREE PROTECTION.**

(1) During construction all reasonable steps necessary to prevent the destruction of trees shall be taken. Trees destroyed or receiving major damage must be replaced by trees of equal or higher environmental value as specified by the enforcement agency before occupancy unless approval for their removal has been granted under permit.

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(2) During construction tree preservation practices established by the Florida Department of Agriculture and Consumers Services Division of Forestry, "Manual for Builders and Developers, October 1980", shall be followed.

(3) During construction permanent wooden barriers shall be installed around vegetation to be preserved on site.

(4) During construction, unless otherwise authorized by the tree removal permit, no excess soil, additional fill, equipment, liquids or construction debris shall be placed within the drip line of any tree that is required to be preserved in its present location unless the addition of excess soil or fill is required in order to comply with existing building ordinances.

(5) No attachments or wires or other than those of a protective or non-damaging nature shall be attached to any tree(s) during construction.

(6) Unless otherwise authorized by the tree removal permit, no soil is to be removed from within the drip line of any tree that is to remain at its original location.

(o) **MAINTENANCE WARRANTY BOND REQUIRED.** A maintenance Warranty Bond for landscaping shall be executed by the developer prior to issuance of certificate of occupancy. Such bond shall be for a period of five (5) years and shall cover all required landscaping elements.

The Maintenance Warranty Bond shall be from a company licensed as a surety in the State of Florida, listed by the U.S. Treasury Department, and rated excellent or better (or the equivalent rating system currently in use) in the current Best's Key Rating Guide or Best's Rating Monitor. (Ord. 91-1 S 5, 5 Nov. 1990) (Ord. 92-1, S1, 26 Nov. 1991)

### **(16) SIGNS.**

(a) **GENERALLY.** This section shall be known as the Town of Melbourne Village Commercial District Sign Ordinance (or the "ordinance", and may be cited as "the sign code"). Its intent is to make it possible to erect adequate, yet decorous, identifying signs. This section accomplishes that goal. The section is enforceable under the general penalty, Code of Ordinances. Violators will receive written notification from the building official or the code enforcement officer, requesting compliance within a specified time. Non-compliance by that time will result in the issuance of a written notice of hearing before the Town Commission or

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the Code Enforcement Board. The Code Enforcement Board has the authority to levy substantial daily penalties.

(b) **PURPOSE.** It is the intent of this ordinance to promote and protect the public health, safety, general welfare and aesthetics of the Town of Melbourne Village, Florida, by regulating the existing and proposed posting, display, erection, use and maintenance of signs and advertising structures within the Commercial District.

Signs placed on land or buildings for identification or advertising shall be deemed to be accessory and incidental to subject land, buildings or use.

It is hereby recognized that regulation of location, size, placement and certain features of signs is necessary to enable the public to locate goods, services and facilities, without difficulty and confusion, and to prevent wasteful use of natural resources in competition among businesses for attention. It is specifically intended to avoid excessive proliferation and clutter among such signs.

It is further intended to prevent hazards to life and property and to assure continued attractiveness of the community, to protect property values, to create a more attractive economic and business climate, to enhance, protect and preserve the scenic natural beauty of the Town of Melbourne Village.

It is further determined that signs which may lawfully be erected and maintained under the provisions of the ordinance are consistent with customary usage. Signs which may not lawfully be erected or maintained under the provisions hereof are not consistent with customary usage and are an un-warranted invasion of the right of legitimate business interests and of the public.

(c) **DEFINITIONS.** For the purpose of this section the following words and phrases shall have the meaning herewith assigned to them unless the context requires a different definition which, in that case, shall appear at that point in the context:

(1) **ATTACHED SIGN.** A removable sign attached to the building to which it is related.

(2) **AWNING.** A rooflike cover, securely fastened on one side or end to a building, and the balance of which extends over or before a place (as over walkway or before a window) as a shelter whose bottom edge is at least seven (7) feet above the highest grade level beneath it.



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(3) **AWNING SIGN.** A sign which is suspended from, attached to, applied to, or forms any part of any awning or canopy and which does not extend beyond the limits of the awning either horizontally or vertically.

(4) **BANNER.** Any advertising device composed primarily of paper, fabric or other material, supported by wire, rope or similar means including decorative streamers with or without lettering thereon.

(5) **BUILDING.** Any structure constructed or used for residence, business, industry or other public or private purpose, or accessory thereto and including tents, lunch wagons, dining cars, trailers, sheds, garages, accessory buildings, carports and similar structures whether stationary or movable.

(6) **BUSINESS AREA.** A defined area consisting of at least two hundred and forty (240) square feet, either on a plot of land or in a building such as a store or office which is owned or rented by an occupant and used for other than residential purposes.

(7) **CANOPY.** A covering over a walkway extending from a building wall.

(8) **CHANGEABLE COPY SIGN.** A sign which the message may be changed.

(9) **CONSTRUCTION SIGN.** A temporary sign placed on the property of a construction project, listing names of the people or firms engaged in the project.

(10) **CONVENIENCE STORE.** A retail establishment that stocks limited quantities of popular items such as milk, bread, etc. and usually is open for business earlier and later than other stores.

(11) **DETACHED SIGN.** A sign which is attached and supported by mountings other than the structure itself to which it is related.

(12) **DIRECTIONAL SIGN.** A sign consisting of three (3) or less words which may have an arrow, placed beside a roadway to point the direction to a place or building, or an off-premise sign of a temporary nature to direct the public to a special event or function.

(13) **FLASHING LIGHT.** Illumination produced by any type of source which turns on and off at a rate other than that rate used by street light.

(14) **ILLUMINATED SIGN.**

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(a) **EXTERNALLY ILLUMINATED.** Any sign which reflects light from a source that is intentionally directed upon the sign.

(b) **INTERNALLY ILLUMINATED.** Any sign designed to provide artificial light through translucent material from a light source within the sign concealed from exterior view.

(15) **LIGHT SOURCE** Any man-made product which produces illumination.

(16) **MARQUEE SIGN.** An identification placard mounted on a permanent roof-life projection over the entry to a building.

(17) **MOBILE OR PORTABLE SIGN.** Any visual advertising, identification or informational device or placard which is readily movable.

(18) **NON-CONFORMING SIGN.** A sign or sign structure which does not conform to the requirements of this ordinance.

(19) **OCCUPANT.** One who is in possession of a premise under title, lease or other rental plan.

(20) **PAINTED WALL SIGN.** Any sign painted directly on any exterior building wall or door surface.

(21) **PERMANENT WINDOW SIGN.** Any sign which is painted with "permanent" paint as opposed to "wash-off" paint on the interior or exterior surface of windows or doors, or any sign which is three-dimensional in character and is "permanently" affixed with screws, bolts, nails, etc., to the interior surface of the window or door.

(22) **PERPENDICULAR.** Being at right angles to and projecting outward from the exterior wall of a building or structure.

(23) **PLACARD.** A notice posted in a public place.

(24) **POLITICAL SIGN.** A sign concerning candidacy for public office or urging action on any ballot issue in a forth-coming election.

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(25) REAL ESTATE SIGN. A temporary sign erected by the owner or agent advertising the real property upon which the sign is located for rent, for lease, for sale or open house.

(26) RIDER SIGN. A small sign bearing a word or short phrase to be attached above or below a real estate sign.

(27) ROOF OVERHANG OR UNDERHANG SIGNS. Signs which project from the roof line that abut or nearly abut a building, to identify the various businesses in the building.

(28) ROOF SIGN. A sign erected over or on and wholly or partially dependent upon the roof of any building for support, or attached to the roof above the eave line in any way.

(29) SIGN. A publicly displayed notice consisting of printed words, symbols, pictures, drawings or three-dimensional figures, placed on or near or relating to, a building, store, office, etc., which calls attention to and identifies the business, service or activity being conducted therein.

(30) STRUCTURE. Anything constructed or erected which requires location on the ground or attached to something having location on the ground, including signs and billboards, but not including fences or walls used as fences.

(31) TEMPORARY SIGN. A sign whose use is limited to political, real estate, church vents, bake sales, construction, garage sales and directional purposes.

(32) TRANSIENT SIGN. A sign made of paper, cardboard or particle board placed on the inside of windows and doors.

(33) WINDOW SIGN. Any sign which is painted on, attached to or projected upon or within the interior or exterior of a window area, including doors.

(d) BUILDING IDENTIFICATION. Letters or numbers, or both, placed on a building to designate the name of the building are permitted, or when a building has a name or designation not related to the name of any occupying business. This identification will not be considered an occupant's sign. Said name and numbers are not to exceed nine (9) square feet.

(e) PERMITS.

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(1) **PERMIT REQUIRED.** Any person or firm intending to construct, erect, alter, change colors, install, replace or relocate any sign on any building, structure, awning, lot or right-of-way within the commercial district shall first obtain a sign permit from the building official. A fee schedule may be obtained from the Town office. All sign permits are renewable annually at the fee rate in effect at the time of renewal.

(2) **PERMIT WAIVED.** Except for stationary political signs erected in accordance with this code, permits are not required for those temporary and transient signs that are specifically authorized. Temporary signs are limited in the number that may be used and will be supervised by the building official or the code enforcement officer and the police department. They are:

Construction signs, real estate signs, garage sale signs, grand opening signs, directional signs, political campaign signs; and transient signs which are used for short-term notification of "sales", "specials", etc., and which are to be placed only on the inside of windows and doors in accordance with section (16) (c) (9).

(3) **PERMIT FEES.** Application, initial inspection and square footage fees are required for all signs, with the exception of sub-paragraph (5) below. A fee schedule may be obtained at the Town Office.

(4) **PENALTY FEE.** Double the usual fees may be assessed for signs that are or have been erected prior to receiving an official sign permit from the town.

(5) **FEES WAIVED.** Sign permits or fees are not required for the replacement signs (except for non-conforming signs) which are the exact duplicates of signs damaged during a Town Commission declared "natural disaster". Application, inspection and square footage fees are not required in cases of minor alterations, such as changes in color, which must comply with the official town color code, provided a permit is obtained from the building official.

### **(f) SIGN PLAN AND CONSTRUCTION STANDARDS.**

(1) **PLAN REQUIRED.** Applications for permits shall be accompanied by a dimensioned plan, sketch or scale drawing clearly showing the proposed sign with lettering superimposed thereon in correct proportion and type style and with notation of the type of materials and lettering. A dimensioned plan, sketch or scale drawing shall be furnished clearly showing the proposed location of the sign, either on an elevation drawing of the building for an attached or painted sign. Locations and types of lighting shall be given.

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All detached signs, roof signs and projecting sign plans shall be prepared and signed by a registered engineer, except that plans for a change in an existing sign having a permit, when such change does not involve a structural change, may be exempted from this requirement at the discretion of the Planning and Zoning Board.

All sign permit applications shall have a map showing the location of the proposed sign and all trees having a diameter of four (4) inches at a height of three (3) feet above ground that will be removed for the construction and display of said sign. Said removal of trees shall be accomplished in accordance with the Town's Tree Code.

(2) **CONSTRUCTION STANDARDS.** All signs must be aesthetically pleasing, artistically created and of professional quality. All signs must be constructed to conform to section in entirety, of the Standard Building Code, unless otherwise modified herein. All signs shall be able to withstand the force of one hundred and twenty (120) miles per hour wind. The top of all poles, on which signs are mounted, shall not be above the top horizontal edge of the sign unless the poles are part of the design of the sign. If a sign of more than thirty-two (32) square feet in area is allowed by variance, then the construction plans shall be approved by, and bear the seal of the Florida Structural Engineers Society.

(3) **LIGHTING.** The source of light of illuminated signs or illumination in shop windows, display windows and displays, in or upon any land or ground, building or structure, shall be concealed from exterior view, except as specifically permitted. Intensities of illumination shall not exceed those stipulated in the Standard Building Code. All electric lights on all types of signs (wood, plastic, metal, etc.) shall be grounded in accordance with the National Electrical Code.

(4) **NEON SIGNS.** Non-flashing, non-moving neon signs, not to exceed in area ten percent (10%) of each window's total area or three (3) square feet in area, whichever is smaller, may be mounted on or near the inside surface of store windows. A non-flashing, non-moving neon sign bearing the word "open" may occupy all of the glass area of a transom over the doorway to the street.

(5) **WARNING SIGNS.** Signs with words or symbols denoting "Danger" are permitted only on buildings, equipment, fences or other locations, provided that actual danger to life and limb could result from trespassing or ignorance of proper precautions.

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(6) CONTENT. All signs shall be limited to identifying the occupant, the street number and the street name' and the type of products or merchandise or services sold, handled or conducted on the premises on which the sign is located. If desired, the sign may include a picture of, or a miniature of, or a full-size sample of, one of the wares available on the premises, provided that all of the information, including the ware is contained within the size limitations of the sign.

(7) PERMIT NUMBER. Each sign shall include in a unobtrusive area its sign permit number, directly following or directly underneath the words "Permit No." and such words and numbers shall be legible for inspection from ground level.

(g) PROHIBITED SIGNS. The following types of signs are specifically prohibited:

(1) Obsolete signs. Any sign displayed which no longer identifies a bonafide business or service organization conducted upon the premises (or identifies a service no longer conducted on the premises) shall be removed, taken down, or completely obliterated within ten (10) days after written notice by the building official or the code enforcement officer.

(2) Other prohibited signs:

(a) Mobile, portable, billboard or banner (except as specifically authorized by the Town Commission) excluding the official flags of the State of Florida or the United States of America. Each business entity shall be limited to one (1) each State of Florida flag and United States of America flag not to exceed six (6) feet by eight (8) feet in size.

(b) Signs which will constitute a hazard or a potential menace to life or limb or which will endanger public safety in any manner. The building official or the code enforcement officer may require the removal of any sign which is not properly maintained or which otherwise shows evidence of neglect or which, in his opinion, will become unsafe and constitute a hazard to life, limb or property or in any other manner endanger public health and safety. Should such a sign not be removed after the expiration of a twenty-four (24) hour written notification from the building official or code enforcement officer, properly receipted by the owner or tenant, regarding the inherent danger of said signs, then the Town of Melbourne Village employees shall have the power to remove said sign and the building official or the code enforcement officer shall send to the owner of said sign a written notice of hearing before the Town Commission or the Code Enforcement Board.

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- (c) Real estate "sold" signs.
- (d) Signs which purport to be, or are an imitation of, or resemble an official traffic sign or signal, or which bear the words "Stop", "Go Slow", "Caution", "Danger", "Warning", or similar words, or which imply the need of a requirement of stopping or the existence of danger, unless such sign has been installed by an authorized governmental agency.
- (e) Any sign that would or does obstruct the view of the operator of a vehicle approaching corners, or obstruct any direction of the operator's vision needed to safely pilot the vehicle.
- (f) A sign or any portion of a sign that overhangs or is installed in any street right-of-way except permitted temporary real estate and garage sale signs and related directional signs.
- (g) Any sign that is suspended across any public street, avenue, alley or other public road, except those signs established by town, country, state and federal governments.
- (h) A sign that is painted, printed, posted, nailed, placed or otherwise affixed to any curb, sidewalk, tree, light standard, utility pole, hydrant, bridge or structure within the right-of-way of any street, avenue, alley or other public thoroughfare within the town limits, except those signs established by town, county, state or federal governments, or temporary signs giving direction to events, garage sales, open houses, etc., when such signs are otherwise permitted and approved.
- (i) A sign that is placed in such a manner as to obstruct physical egress through any door, window or fire escape of any building.
- (j) Pennants, streamers, balloons, blinking light, flashing lights and devices using or having fluttering spinners, rotating or similar type attention attracting parts or components.
- (k) Signs of a miscellaneous character, visible from a public way, located on the walls of buildings, barns, sheds, on trees, posts, fences, or similar structures.
- (l) Rotating signs.

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(m) Any vehicle or trailer parked or left un-attended on a public right-of-way or public property or private property so as to be visible from a public right-of-way, which has attached thereto or located thereon any sign or advertising device which names, describes or advertises any business or commercial enterprise on the same or nearby property or any other premises. This paragraph shall not apply to a sign painted on or mounted upon a motor vehicle or trailer when such sign has a total area of six (6) square feet or less, provided, however, that this exclusion shall apply only to those motor vehicles and trailers having no more than one (1) such sign on each side of the trailer or vehicle.

(n) Swinging signs or signs suspended by chains or other devices which allow the sign to swing due to wind action.

(o) "A-frame" or sandwich board sidewalk or curb signs.

(p) Signs which bear or contain statements, words or pictures of obscene or pornographic character, or which contain advertising matter which is obviously un-truthful.

(q) Signs painted on or attached to any fence or wall which is not structurally part of a building, except those signs which identify a residence or residence structure by means of posting the name or street address of the occupant or structure, or warning signs which shall not exceed one (1) square foot.

(r) Signs which emit audible sound, odor or visible matter.

(s) Signs which by reason of their size, location, movement, content, coloring or manner of illumination may be confused with, or construed as a traffic control sign, signal or device, or the light of an emergency road equipment vehicle, or which may hide from view any traffic, or street sign, or signal, or device.

(t) Signs erected upon, against or directly above a roof or on top of, or above the parapet of a building.

(u) Signs of any portion of which exceeds twenty-five (25) feet in height from the ground.

(v) Off-site signs.



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(h) **DISPOSITION OF REMOVED SIGNS.** Signs removed by town employees will be stored on town property for a period of thirty (30) days. After that time all un-claimed signs will, at the option of the town building official, be destroyed.

(i) **PERMITTED TEMPORARY SIGNS.** Real estate signs. The following regulations govern the use and placement of temporary real estate signs. These are small signs advising that the property upon which they are placed is "For Sale", "For Rent", or "For Lease". They shall be removed within forty-eight (48) hours after the property has been sold, rented, or leased.

(1) The permitted wording on and the size of the real estate signs shall consist of only the following:

(a) The owner's or the realtor's name, address, telephone number and the insignia of his organization.

(b) The words "For Sale", "For Rent", or "For Lease".

(c) The above signs shall not exceed twenty (20) inches by twenty-four (24) inches in overall dimension.

(d) If desired, not more than two (2) "rider" signs, not more than six (6) inches in height and twenty (20) inches in length, each of which may bear word(s) such as "Pool", or "By Appointment Only" or "Owner Financed", etc., may be attached to the twenty (20) by twenty-four (24) inch sign.

(2) The sign shall not be located closer than fifteen (15) feet from any edge of the pavement of any street.

(3) There shall not be more than one (1) sign showing the owner or principal broker.

(4) In addition, one (1) sign not exceeding overall dimensions of twenty (20) inches by twenty-four (24) inches, with the words "Open House", to indicate that a building is open for inspection may be displayed at all times.

(5) The signs permitted may not be illuminated, flashing, rotating or moving types. No other flags, banners or other displays may be used. All signs shall be removed from the

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property within forty-eight (48) hours from the time a contract has been executed between the seller and the buyer of the property for the sale of the property.

(6) Any real estate sign that has been erected for more than twelve (12) consecutive months shall be and is hereby deemed to be non-temporary and shall require a permit to remain erected, with the applicant demonstrating good cause why same should not be removed.

(j) **CONSTRUCTION SIGNS.** One (1) temporary construction sign may be displayed on a lot or plot, on which construction work is in progress, in accordance with the following provisions.

(1) The sign shall be located inside the property lines and no closer than fifteen (15) feet from any edge of the pavement on any street.

(2) The sign shall not exceed thirty-two (32) square feet and display nothing more than: the names of the owner, financial institution, architect, contractor or builder and sub-contractors; the use of the structure; the words "Now Leasing", or "Now Available"; and telephone number(s). A picture or drawing may be included on the sign. No other wording, numbers or other information is permitted.

(3) Those signs required by law such as building permits, shall be posted without a permit.

(4) The sign shall not be illuminated.

(5) The sign is to be removed within forty-eight (48) hours after issuance of the final un-conditional certificate of occupancy.

(k) **AUTHORIZED SIGNS.** Only those types of signs that are listed below are permitted in the "C", Commercial District.

(1) **General Provisions:**

(a) The height of attached signs shall not exceed the eave line of the building.

(b) The height of detached signs shall not exceed the top of the roof or fourteen (14) feet above the ground level at the front of the building, whichever is the lesser.

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(c) There shall be at least seven (7) feet clearance below the bottom of the sign, unless the top of the sign is not higher than six (6) feet above the ground level at the front of the building.

(2) Temporary signs, except garage sale and directional garage sale, are permitted, except that grand opening signs are permitted only once for each occupant or change of ownership of the property, or only once after each extensive remodeling of the premises, which must cost at least fifteen percent (15%) of the assessed valuation of the building. Grand opening signs shall not be more than eighteen (18) inches by forty-eight (48) inches in size and shall not be displayed more than seven (7) days.

(3) Attached and painted (on the building surface) signs. The following conditions regulate signs attached or painted upon any front, rear or side surface of the occupant's building, provided the signs comply with all other requirements of this section:

(a) Only one (1) wall of the building may have attached sign(s), except in the case of buildings with rear entrances and buildings on corner lots. The signs on this wall shall be subject to the following restrictions:

(1) There shall not be more than one (1) sign per occupant.

(2) No sign shall exceed thirty-two (32) square feet in area.

(3) The area of the sign, or combined area of the sign, shall not exceed ten percent (10%) of the surface area of the wall. Calculation of the surface area shall not include doors and windows.

(b) In the case of rear entrances each such entrance may have one (1) sign not to exceed twelve (12) square feet in area over or beside the rear entrance.

(c) In the case of buildings located on corner lots a sign not to exceed thirty-two (32) square feet is permitted on the wall which is closest to the side street.

(d) The Town Commission has the authority, upon application, to permit an attached sign on any one (1) face (and on the side street face of corner lot buildings) to encompass an area up to five percent (5%) of the total exposed face of the building. This provision is applicable to large buildings whereon such sized signs will be proportional to those permitted for smaller buildings. The Town Commission will evaluate such proposed signs in relation to the size

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of the building, its general appearance and its architectural similarity to neighboring buildings.

(e) The sign may be constructed of multiple parts and its content shall be limited to permanent letters, numerals, insignia and a picture of, or a miniature of, or a full size sample of one of the wares available on the premises, provided that all of the information, including the ware, is contained within the size limitations of the sign. No portion of an attached sign shall protrude more than one (1) foot beyond the wall on which it is attached.

(4) Permanent door and window signs. (See definition). Permanent signs maybe attached to or painted upon doors and windows provided that:

(a) No more than twenty-five percent (25%) of the total door and window area shall be covered, but in no event shall the coverage exceed eight (8) square feet.

(b) All window areas between three (3) feet and four (4) feet above the crown of the building's street shall be free from any type of sign or any other obstruction.

(c) All areas in glass doors, or in windows in other types of doors, shall be kept free of any type of sign or any other obstruction which prevents clear sight for ingress and egress, except signs warning of hazards to health and safety.

(d) The construction of the permanent sign shall be limited to long-lasting letters, numbers and insignia. An interior message composed of re-placeable letters and numerals may be changed without obtaining a sign permit.

(5) Detached signs. (See definition). Exactly the same information may appear on both sides of any sign. The following provisions shall apply:

(a) Each building may have one (1) thirty-two (32) square feet sign which may be shared by all business areas within the building.

(b) Or, the signs can be placed at least twenty (20) feet apart, each business area may have a separate detached sign not to exceed nine (9) square feet in area.

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(c) Or, if there are more than four (4) business areas located in one building, the building may have two (2) detached signs, each having a maximum of twenty-four (24) square feet, provided the signs are at least fifty (50) feet apart.

(d) A detached sign may not be placed within twenty (20) feet of any other detached sign.

(e) Where the building is accessible from the rear a second detached sign, not to exceed nine (9) square feet, permanently anchored in the ground is permitted in the rear of each business. However, if several businesses are served by one common driveway, such sign shall be permanently affixed to the same common mounting, anchored in the ground.

(f) Detached signs may be illuminated in accordance with section (6) (3).

(6) Transient signs. (See definition). Transient signs may be affixed to the inside of doors and windows provided that:

(a) No more than twenty-five percent (25%) or eight (8) square feet, whichever is the lesser, of the total door and window area is covered.

(b) All window areas, between three (3) feet and four (4) feet above the crown of the building's street level, shall be free from any type of sign or any other obstruction.

(c) All areas in glass doors, or in windows, in other types of doors shall be kept free of any type of sign or any other obstruction which prevents clear sight for ingress and egress, except signs warning of hazards to health and safety.

(d) The message on a sign containing movable letters and numerals may be changed without obtaining a sign permit.

(7) Disabled persons' parking. Signs for disabled persons' parking spaces (shall be) as provided in Chapter 316.1955 Florida statutes, as amended from time to time. Signs shall not exceed nine (9) square feet.

(8) Non-conforming signs. A non-conforming sign or sign structure existing within the town limits on or after the effective date of this ordinance shall be subject to removal. Removal of such signs, signs that were or are erected without a permit,

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"grandfathered" non-conforming signs, abandoned signs, damaged signs or other non-conforming signs shall be achieved as follows:

(a) At the time of owner or occupant change. All non-conforming signs in existence, at the time a property is sold or rented as a new and separate business area shall be made to conform or shall be replaced after thirty (30) days notice by the code enforcement officer or building official.

(b) All others. All other owners of non-conforming signs shall be granted a reasonable period as set forth below, in which to amortize the cost of such signs. In return for such amortization period, all non-conforming signs must be maintained in good condition by their owners. At the conclusion of the time periods herein set forth, all such non-conforming signs shall be removed in accordance with section (8) (g) below.

(c) Non-conforming signs consisting of materials that have a monetary value of less than five hundred dollars (\$500.00) shall be removed within five (5) years from the effective date of this ordinance. The monetary value shall be determined by the building official, whose opinion may be appealed to the Board of Adjustment.

(d) Non-conforming signs consisting of materials that have a monetary value of at least five hundred dollars (\$500.00), but less than one thousand dollars (\$1,000.00) shall be removed with ten (10) years from the effective date of this ordinance. The monetary value shall be determined by the building official, whose opinion may be appealed to the Board of Adjustment.

(e) Non-conforming signs consisting of materials that have a monetary value of at least one thousand dollars (\$1,000.00) shall be removed within fifteen (15) years from the effective date of this ordinance.

(9) Fee waived. At the time a non-conforming sign is replaced, a permit for a conforming sign shall be issued with no fee attached, except for annual renewal fee.

(10) Abandoned signs. A landowner shall not permit any sign which has been erected upon his land to be abandoned upon such land. Thirty (30) days after the cessation of business at such location, it shall be presumed that an on-premise sign has been abandoned. On-premise signs whose words, numbers or other symbols are completely obliterated by paint or other neutralizing agent are not deemed abandoned by this section.

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(11) Occupancy change. Any change in the type of occupancy or property on which any non-conforming sign is located, shall cause the removal of all non-conforming signs within thirty (30) days.

(12) Mixture of conforming with non-conforming signs prohibited. No conforming sign or sign structure shall be erected on the same premises with an existing non-conforming until the non-conforming sign has been removed or made conforming. However, the fact that one particular business or activity has a non-conforming sign or sign structure will not prevent another business or activity on the same premises from erecting a conforming sign or sign structure.

(13) Removal of non-conforming signs. Non-conforming or abandoned signs erected in the town shall be removed in accordance with the procedures established by the Town Commission.

### **(17) OFFICIAL TOWN COLOR CODE.**

(a) **GENERALLY.** It is the intention of this section to prohibit such other uses as would impair property values or disturb the sense of community character that is an inseparable part of the enjoyment of ownership of property. The use of a uniform group of colors when pigmenting or re-pigmenting the exteriors of structures located in the commercial district will assist in maintaining the primarily residential character of the Town.

(b) **STANDARD.** The official Town Color Code as adopted by motion by the Town Commission shall consist of a selection of approximately two hundred and fifty (250) color samples from the approximately three hundred (300) numbered color samples that are contained in the Sherwin-Williams (Paint) Company's, Beau-Monde II Exterior Colors Sample Chart, and selected color samples from both the Sherwin-Williams, Semi-Transparent Wood Preservation Stain Color Chart; and the Sherwin-Williams, Solid Color Stain Chart. Color samples, and the paint, from any other paint manufacturing company which match the above color samples may be used according to the regulations set forth herewith. The Official Town Color Code shall be kept at the Town of Melbourne Village Hall.

(c) **APPLICABILITY.** Only a color or colors selected from the Official Melbourne Village Town Color Code shall be used to pigment or re-pigment the exteriors of structures including buildings and/or signs, located in the Commercial District. A Town Painting Permit, to be issued without cost, shall be required before commencing to pigment or re-pigment any structure within the designated district.

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(d) **PAINTING PERMIT PROCEDURE.** Before pigmenting or re-pigmenting the exterior of a building or structure subject to this Article, a Painting Permit must be obtained from the building official. To apply for a Painting Permit the applicant(s) shall bring two (2) copies of a color selection chart from any paint company of their choice. They may match any color they select on their color selection charts with a similar corresponding color on the Town's Official Color Code at the Town Hall. The applicant(s) shall attach the second copy of the color selection chart to the application for the painting permit. When the application is approved by the building official a Painting Permit to paint the structure such color shall be issued without cost to the applicant.

(e) **UP-DATING THE OFFICIAL COLOR CODE.** The Town Commission shall, in its sole discretion from time to time, appoint an ad hoc committee with an un-even number of not less than five (5) nor more than nine (9) members to review currently available colors and thereby to revise the Official Color Code. Approval of the Official Color Code shall be accomplished by the Commission via an approved motion.

(f) **PENALTIES.** Any person who violates, or causes to be violated, any provision of this article or permits any such violation or fails to comply with any of the requirements thereof shall be subject to the enforcement action of the Melbourne Village Code Enforcement Board pursuant to Florida Statutes Chapter 162. A separate offense shall be deemed committed on each day during or which a violation or failure to comply occurs or continues.

**(18) UTILITIES.** Generally. All utilities serving any new structure or building approved after the affectivity of this ordinance, shall be located underground.

**(19) ALCOHOLIC BEVERAGES.** Hours of operation for consumption of alcoholic beverages in private clubs and lodges:

(a) Monday through Thursday, beginning at 12:00 noon and ending at 12:00 midnight of the same day.

(b) Friday and Saturday, beginning at 12:00 noon and ending at 2:00 A.M. on the following day.

(c) Sunday, beginning at 12:00 noon and ending at (:00 P.M. on the same day.

(d) No alcoholic beverages to be carried or consumed out of doors.



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(e) Extended hours for special occasions and holidays, beginning at 7:00 A.M. and ending at 2:00 A.M. on the following day, unless such holidays occur on Sunday, in which case the legal hours of sale shall begin at 1:00 P.M. and end at 2:00 A.M. on the following day.

(f) Special permit to be approved and issued by the Town Commission for extended hours.

**(20) ALCOHOL CONSUMPTION, RESTAURANTS.** Hours of operation for consumption of alcoholic beverages in restaurants.

(a) Monday through Sunday, beginning at 8:00 A.M. and ending at 12:00 midnight of the same day.

(b) Special permit to be approved and issued by the Town Commission for extended hours.

### **(21) SITE PLAN APPROVAL.**

(a) No building permit(s) shall be issued until a site plan has been approved by the Planning and Zoning Board and the Town Commission.

(1) In reviewing such site plan the reviewing bodies shall consider the location, size height, spacing, appearance, character and utilization of any building, structure or use and their appurtenances, access and circulation of vehicles and pedestrians, streets, parking area, yards and open spaces, landscaping, and relationship to adjacent property.

(2) The reviewing bodies 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 and the Town of Melbourne Village.

(b) A site plan, for purposes of this section, shall include, but not necessarily be limited to the following:

(1) Site plan with grades or contours.

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- (2) Foot print of all buildings and structures.
- (3) Elevations, floor plans and uses of all buildings and structures.
- (4) Location and character of all outside utilities.
- (5) All curb cuts, driveways, parking areas, loading areas and surfacing materials of same.
- (6) All pedestrian walks, malls, yards and open spaces.
- (7) Location, site, character, height and orientation of all signs.
- (8) Location, height and general character of walls and fences.
- (9) Location and general character of landscaped areas and common and botanical name of all trees, shrubs and plants, with the number and size of each category or individual item, and the proposed watering and continued care in order to maintain the landscaping in accordance with approved site plan.
- (10) All buildings constructed in those areas designated as specified hazard areas on the current flood hazard boundary maps published by the Department of Housing and Urban Development, Federal Insurance Administration, shall have all finished floor elevations related to Coast and Geodetic Survey mean sea level datum.
- (11) Surface water retention and detention.

(c) The reviewing bodies shall not approve such plan unless it finds that such plan conforms to all applicable provisions of the Town Code if Ordinances, that adequate off-street parking and loading facilities are provided for owners, tenants, visitors and employees, and that adequate protection and separation are provided for contiguous and nearby residential property.

(d) Modification of site plan. Any change in use of buildings, structures, land or water, or institution of new uses, or alteration of, or addition to buildings or structures shall be in accordance with a new or modified site plan conforming and approved pursuant to this section.

ORD. 90-1, S 2, Repealed (e)

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## **(22) SITE PLAN REVIEW AND APPROVAL PROCEDURES.**

(a) GENERAL REQUIREMENTS: Site plans shall be submitted for approval pursuant to this section for the following:

(1) Commercial uses and developments.

(b) PRE-APPLICATION CONFERENCE: Any applicant who is required to submit a site plan pursuant to the preceding subsection shall meet with the town building official to discuss the basic concepts and site plan requirements and to consider preliminary features of the proposed development and the specific site in question.

(c) SITE PLAN REQUIREMENTS:

(1) An application for site plan review will be filed with the town building official at least fourteen (14) days prior to the scheduled meeting of the Planning and Zoning Board at which such plan is to be considered.

(2) A fee of three hundred dollars (\$300.00) for the first acre or portion thereof, plus fifty dollars (\$50.00) for every additional one-half acre or portion thereof, shall accompany each application for site plan review or amended site plans.

(3) Five (5) copies of all site plans shall be submitted to the building official at the time of application. Five (5) copies of all amended site plans shall be submitted to the building official at each required time period. All site plans shall be prepared by a civil engineer or architect registered in the State of Florida and shall bear the seal of such civil engineer or architect on each page of the site plan.

(4) The site plan shall include the following information:

(a) A vicinity map showing contiguous areas and streets, including the means of ingress and egress to such areas and streets in such areas and streets are located within fifty (50) feet of the boundaries of the proposed site.

(b) A legend including the following information.

(1) Gross acreage and the square footage of the site.

(2) Density (units per acre).

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- (3) The number of proposed units or the number of buildings/structures in the development.
  - (4) Floor area of each structure proposed.
  - (5) Percent of site covered by structures.
  - (6) Percent of site covered by impervious surfaces.
  - (7) Number of parking spaces required and provided.
  - (8) Setbacks required and provided.
  - (9) The zoning classification of the parcel.
  - (10) The name, address and telephone number of owner(s) of the site.
- (c) Date, north arrow and scale (to be one (1) inch equals not more than fifty (50) feet), and actual dimensions.
- (d) A legal description of the site, bearings and distances of all property lines, location of all distances of all property lines, location of all existing streets, easements and utilities, including location of the nearest fire hydrant.
- (e) Location and elevation of proposed drainage structures and culverts, proposed streets (whether or not dedicated), driveways, sidewalks and general lot layout.
- (f) Location of all trash receptacles.
- (g) Full dimensions of all structures, including distance between driveways, parking areas and property or lot lines.
- (h) Proposed landscape plan pursuant to the landscaping section, including the certified tree survey required by the Code.
- (i) A drainage plan showing the following:
- (1) One-foot interval contours based upon coast and geodetic data.

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- (2) All existing and proposed drainage facilities with size and grades.
  - (3) Center line elevations of all streets, existing and proposed, within the area to be encompassed by the site plan.
  - (4) Proposed finished elevation or each building site and first floor level.
  - (5) Proposed orderly disposal of surface water runoff.
  - (6) Side lot drainage.
  - (7) Stormwater water retention/detention facilities and calculations.
- (j) Provisions for handicapped parking.
  - (k) Provisions for exterior lighting.
  - (l) Location of any planned signs, indicating compliance with the Town Sign Code section.
  - (m) An affidavit from the owner of the subject property or the person making application for the site plan approval, that he is the owner of the land which is subject of the application or his agent, and that all land shown on the site plan will be committed and dedicated to the use of the structure(s) for which the site plan application is being made. Said affidavit shall be witnessed by two (2) persons and acknowledged by a notary public so as to be recordable with the Clerk of the County Court of Brevard County, Florida.
  - (n) A certified survey by a registered land surveyor of the parcel of property which is the subject of the site plan application.
- (d) **ADMINISTRATIVE REVIEW:** The building official shall provide for administrative review of each proposed site plan by such administrative personnel as he may deem appropriate, or as may be required by administrative regulations of the town. At a minimum, each site plan application and drainage plan shall be reviewed and commented upon by the city engineer, police chief and code enforcement officer prior to review of the Planning and Zoning Board. Each member of the town's administrative staff assigned to review a site plan shall provide to the building official written recommendations concerning the site plan. Said written

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recommendations shall be submitted to both the Planning and Zoning board and the Town Commission as part of the review procedure set forth herein below.

(e) **REVIEW AT A JOINT SPECIAL MEETING OR WORKSHOP AND REVIEW BY THE PLANNING AND ZONING BOARD.** Upon completion of the administrative review set forth in the preceding subsection, the site plan shall be reviewed at a joint special meeting or workshop of the Planning and Zoning Board and the Town Commission.

Whenever the review provided at the joint special meeting or workshop indicates the developer has failed to address on the site plan all the requirements of the code, the site plan may be denied.

Whenever the review provided at the joint special meeting or workshop provides for corrections to the site plan submitted, five(5) copies of the revised site plan with all corrections, shall be filed with the building official not less than nine (9) days prior to the public hearing meeting of the Planning and Zoning Board provided herein below. Failure to timely submit such revised site plans shall result in disapproval of the application by the Planning and Zoning Board at the public hearing meeting.

Upon completion of the review at the joint special meeting or workshop, the site plan shall be reviewed by the Planning and Zoning Board as part of the said review. The Planning and Zoning Board shall hold a public hearing at which comments of the applicant and the public at large shall be considered. A minimum of fourteen (14) days notice of this said public hearing shall be given to the applicant and public notice of the said hearing shall be published in a newspaper of general circulation in Brevard County, Florida, not less than seven (7) days prior to the date of the public hearing.

Whenever review at the Planning and Zoning Board public hearing provides for corrections to the site plan, five (5) copies of the revised site plan with all corrections, shall be filed with the building official, not less than nine (9) days prior to the public hearing meeting of the Town Commission. Such changes shall be reviewed by the Planning and Zoning Board prior to the Commission review. Failure to timely submit such revised site plans shall result in disapproval of the site plan application by the Town Commission.

(f) **REVIEW BY THE TOWN COMMISSION:** Upon completion off the review process by the Planning and Zoning Board as set forth in the preceding subsection, the site plan shall be reviewed by the Town Commission. As part of the said review, the Town Commission shall hold a public hearing at which comments of the applicant and public at large shall be considered. A minimum of fourteen (14) days' written notice of the said public hearing before the Town Commission shall be given to the applicant and public notice of the said hearing shall

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be published in a newspaper of general circulation in Brevard County, Florida, not less than seven (7) days prior to the date of such hearing.

The Town Commission, as part of its review, shall ascertain that the proposed lot sizes, lot coverage, building heights, yard requirements, off-street parking requirements and other provisions of this ordinance have been met by the proposed site plan. In addition, the Town Commission shall also consider those specific standards and factors set forth for review by the Planning and Zoning Board in the preceding subsection of this ordinance.

Following such public hearing and consideration, the Town Commission shall vote to approve or disapprove the proposed site plan. Conditional approval of a site plan by the Town Commission shall not be permitted.

(g) **CONSTRUCTION TO CONFORM TO APPROVED SITE PLAN:** After the site plan has been approved by the Town Commission and required permits issued by the building official, the proposed development shall be built in accordance with the approved site plan and specifications. If, after such approval the owner or his successors should desire to make changes to the approved site plan, such changes shall be approved by the town administrative staff, the Planning and Zoning Board and the Town Commission using the review procedures set forth herein above for original approval of the site plan. No certificate of occupancy shall be issued until the building official has received and reviewed with the Mayor (town administrator), town attorney and the town engineer the following required exhibits:

- (1) Five (5) copies of "as built" drawings prepared and sealed by a registered civil engineer and/or certified land surveyor with a graphic scale of not less than one (1) inch equals fifty (50) feet and shall include the following information:
  - (a) A vicinity map showing contiguous areas and streets, including the ingress and egress to such areas and streets.
  - (b) Finished floor elevations of each building on the site.
  - (c) Number of parking spaces provided including handicapped parking.
  - (d) Setbacks provided on the parcel.
  - (e) The zoning classification of the parcel.
  - (f) The name, address and telephone number of the owner(s) of the site.

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(g) Date, north arrow and scale (to be one (1) inch equals not more than fifty (50) feet), actual dimensions.

(h) A legal description of the site, bearing and distances of all property lines, location of all existing streets, easements and utilities including location of nearest fire hydrant(s).

(i) Location and elevation of all streets (whether or not dedicated), driveways, sidewalks and general lot layout.

(j) Location of all trash receptacles.

(k) Full dimensions of all structures, including distance between structures, distance between driveways, parking areas and property or lot lines.

(l) Layout of all water distribution, sanitary sewer, storm drainage and retention systems with "as built" grades and sizes.

(m) The drainage plan showing the following:

(1) One-foot interval contours based on coast and geodetic data.

(2) All existing drainage facilities with size and grades.

(3) Centerline elevations of all streets within the area encompassed by the site plan.

(4) Method and grades of disposal of surface water runoff.

(5) Side lot drainage to ensure no drainage on abutting properties.

(6) Storm water retention/detention facilities and calculations.

(n) Exterior lighting installed.

(o) Location of any signs installed.

(2) Dedication of all right-of-way, easements and other public lands as shown on the approved site plan and a bill of sale conveying to the town such personal property



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required to be installed and accepted by the Town and being properly installed within dedicated public right-of-way or easements.

(3) A maintenance warranty bond in the amount of twenty (20) percent of the actual construction costs as approved by the town for all public roadways, drainage, water and sewer lines, mains and lift stations installed by the developer. Such bond shall be for a period of two (2) years and shall cover all aforementioned improvements.

The Maintenance Warranty bond shall be from a company licensed as a surety in the State of Florida, listed by the U.S. Treasury Department, and rated excellent or better (or the equivalent rating under the rating system currently in use) in the current Best's Key Rating Monitor. (Ord. 92-1, S1, 22 Oct. 1991)

Failure to submit any required exhibits referenced above or if any "as built" document indicates a deviation from an approved site plan, shall be grounds for a denial of a certificate of occupancy by the building official.

(4) A Construction Performance Bond for the entire development is required prior to issuance of any building permits. The amount of the estimated cost which would cover all construction cost through the completion of the project must receive approval of the Town Commission. Such bond shall be for the period of construction through completion and issuance of the Certificate of Occupancy.

The Construction Performance Bond shall be from a company licensed as a surety in the State of Florida, listed by the U.S. Treasury Department and rated excellent or better (or the equivalent rating under the rating system currently in use) in the Best's Rating Monitor. (Ord. 92-1, S 1, 22 Oct. 1991)

Failure to submit any required exhibits referenced above or if any "as built" document indicates a deviation from an approved site plan or building permits, shall be grounds for denial of a Certificate of Occupancy by the building official. (Ord. 91-1 S 4)

(h) **TIME LIMITATION ON APPROVAL.** If construction is not commenced within one (1) year after the date of site plan approval by the Town Commission, and if no extension has been granted by the Commission, then such site plan shall become null and void. In addition, if work is suspended or abandoned for a period of six (6) months, then site plan approval shall become null and void unless an extension has been granted by the Commission. No construction shall be permitted, and no building permit shall be issued when approval of a site plan has so expired, until a new application for site plan review has been submitted to the town and reviewed and approved by the town administrative staff, the Planning and Zoning Board and

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the Town Commission using the procedure set forth herein above, for approval of the original site plan. (ORD 90-1, S 2)

(i) **SITE PLAN APPROVAL ON SUCCESSORS AND INTERESTS OF THE APPLICANT:** Any transferees, assigns, heirs, beneficiaries or other successors in interest of an applicant securing approval of a site plan shall be bound by such approval. Any construction or development done by such successors and interests, and any changes to the site plan initiated by such successors in interest shall be subject to the requirements of subsection (g) above.

**SECTION 23-22. "P" PARK DISTRICTS.** Within "p" districts the following regulations shall apply:

(1) ***Permitted uses.*** The following uses only are permitted:

- (a) Community buildings, halls, auditoriums as built by the American Homesteading Foundation or under its approval.
- (b) Public schools, nonprofit theaters or similar structures, and other buildings for community use as approved by the American Homesteading Foundation.
- (c) Offices for the administration of the affairs of the town, including those of the American Homesteading Foundation and the town, and tool sheds, garages, storage buildings and other structures required by same.
- (d) Swimming pools, wading pools, sand accessory structures.
- (e) Lakes and ponds.
- (f) Canals and ditches required for proper drainage.
- (g) Playgrounds with playground equipment (but not commercial amusement parks, circuses or other forms of amusements for which a profit is expected).
- (h) Fields and areas for baseball, football, tennis, croquet, shuffle board and similar sports.

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(i) Pedestrian paths and bridle paths.

**(2) *Area and distance requirements.***

(a) All buildings or other structures, and all structural alterations thereto or remodeling thereof, shall be subject to approval of the planning board to assure a coordinated and attractive appearance.

(b) Adequate parking area shall be provided adjacent to the building or structure, as approved by the planning board.

(c) Side and rear lot line setbacks shall be subject to approval of the planning board to assure that requirements are met as to services, parking, construction and sanitary facilities. (Ord. No. 13, SS 4, d; Ord. No. 18, SS 6---12; Ord. No. 31, SS 1---4; Ord. No. 32, S 1; Ord. No. 34, S 2; Ord. No. 37, S 1)

**SECTION 23-23. RESERVED.**

**Editor's note** - Ord. No. 87, S 1, passed 10-25-77, specifically repealed former S 23-23 which was derived from Ord. No. 60, SS 2, 3, 1-6-70; Ord. No. 61, SS 2, 3, 5-26-70;; Ord. No. 67, 6-27-72. Said former section established "M-L" Manufacturing Light Districts.

**SECTION 23-24. LAND INCLUDED WITHIN DISTRICTS.** The following land shall be included in the designated zoning districts:

(1) R-1 (residential). R-1 (residential) shall consist of all of the land in the town not placed in any other district.

(2) R-1A (residential). R-1A (residential) shall consist of all land (except park lands) in the Fifth Section of Melbourne Village, namely a subdivision of S.W. 1/4 of N.E. 1/4, Sec. 81, Township 27 South, Range 37 East.

(3) R-2 (residential). R-2 (residential) shall consist of all of the two strips of land remaining in Lot #22 and Lot #23. Florida Indian River Land Company's subdivision of Section 6, Township 28 South, Range 37 East within the town limits and excluded from the C District.

(4) C (commercial) C (commercial) shall consist of a portion of Lot #22 of the Florida Indian River Land Company's subdivision of Section 6, Township 28 South, Range 37 East, lying

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within the town, namely, a strip of land 383.4 feet wide north from the center line of State Road #192 to the east and west boundaries of Lot #22; also that portion of Lot #23 of said company's subdivision lying within the town, namely a strip of land 383.4 feet wide north from the center line of State Road #192 extending to the east boundary of Lot #23 and westerly to the town limits. The north 116.08 ft. of the south 497.32 ft. and the north 116.08 ft. of the south 613.08 ft. of the south 497.32 ft. and the north 116.08 ft. of the south 613.40 ft of the east 1.2 of Lot 23, section 6, Township 28 South, Range 37 East, Florida Indian River Land Company Subdivision, as recorded in Plat Book 1, Page 164, Public Records of Brevard County, Florida, less road right-of-way.

(5) P (park). P (park) shall consist of all park lands within the town (except as otherwise specified in this section), including those park lands on which community buildings, swimming pools, recreation facilities and other similar structures have been or shall be built. (Ord. No. 60, S 4, 1-6-70; Ord. No. 87, SS 2, 5, 10-25-77)

## **SECTIONS 23-25,--23-27. RESERVED.**

### **ARTICLE IV. NONCONFORMING USES**

**SECTION 23-28. INTENT OF PROVISIONS.** Enlarging nonconforming use; destruction of building.

(1) Within the land use districts established by this chapter or amendments that may later be adopted there exists:

(a) Parcels of land, buildings, structures; and

(b) Uses of land, buildings, and structures which were lawful before this chapter was enacted or amended, but which would be prohibited under the terms of this chapter or future amendment. It is the intent of this chapter to permit these nonconformities to continue, subject to provisions of this chapter, but not to encourage their survival. Such uses are declared by this chapter to be incompatible with permitted uses in the districts involved. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibitive elsewhere in the same district.

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(2) To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was begun prior to the effective date of adoption or amendment of this chapter and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include placing of construction materials in permanent position and fastened in a permanent manner, and demolition, elimination, and removal of an existing structure in connection with such construction, provided that the actual construction work shall be diligently carried on until the completion of the building involved.

(3) Where the lawful structure exists at the effective date of adoption or amendment of this chapter that could be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, setbacks, or other characteristics of the building or structure may be continued providing it remains otherwise lawful and subject to the provisions of this chapter or amendment thereof.

(4) No building or structure may be enlarged or altered in a way which increases the degree or enlarges the area of nonconformity. However, a building or structure may be enlarged or altered to conform with the provisions of this chapter so as to no longer be considered nonconforming.

(5) Should any nonconforming building or structure be destroyed by any means to an extent of more than seventy-five per cent (75%) of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.

(6) Should any building or structure be moved for any reason for any distance whatever, it shall hereafter conform to the provisions of this chapter and permitted uses for the district in which it is located after it is moved. (Ord. No. 13, S 6; 5-26-59)

### **SECTION 23-29. USES.**

(1) The lawful use of a building or structure existing in any district at the time of enactment of this chapter may be continued although such use does not conform to the provisions of this chapter. However, no business which constitutes a nonconforming use may increase the number of its employees or otherwise expand by installing more equipment or facilities.

(2) If any nonconforming use of land, building or structure ceases for any reason for a period of more than one hundred eighty (180) days, any subsequent use of such land, building or structure shall conform to the provisions of this Chapter and the permitted uses for the district in which such land, building or structure is located.

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(3) Any building or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the provisions of this Chapter and the permitted uses for the district involved.

(4) Any nonconforming use of a building, structure or premises, may be changed to another nonconforming use provided no structural alterations are made, and that the town shall find the proposed use more appropriate to the district than the existing nonconforming use. In permitting such change, the town may require appropriate conditions, performance standards and safeguards in accord with the intent and provisions of this Chapter. (Ord. No. 13, S 6, 5-26-59)

### **SECTION 23-30. RESERVED.**

**Editor's note**--Section 1 of Ord. No. 97, adopted May 23, 1978, repealed former S 23-30 which pertained to variances and was derived from Ord. No. 13, S 6.

### **SECTIONS 23-31,---23-35. RESERVED.**

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## **ARTICLE V. FENCES**

Ordinance No. 96-5, adopted 09/24/96, amended Sections 23-36 through 23-41 in its entirety.

### **SECTION 23-36. PERMIT.**

(a) **PERMIT REQUIRED.** It shall be unlawful for any person, association, corporation or other entity to install, erect, alter, or locate a fence or wall within the town without first obtaining a fence permit for such activity. Notwithstanding the foregoing, a fence permit shall not be required for the replacement or repair of an existing fence or wall unless the replacement or repair cost exceeds fifty (50) percent or more of the value of the fence or wall before its repair or replacement. Any fence repaired or replaced beyond the fifty (50) percent shall meet all requirements of this article.

(b) **APPLICATION PROCEDURES.** Application for a fence permit under this section shall be made to the Building Official and shall include the following:

- (1) A survey prepared by a licensed surveyor of the State of Florida;
- (2) The location, length and height of the proposed fence or wall; and
- (3) A description of the materials contained in the proposed fence or wall.

(c) **ISSUANCE OF PERMITS.** The Building Official shall issue a fence permit to an applicant under this section upon finding that the proposed fence or wall is in compliance with the provisions of this article and upon payment of the appropriate fees.

(d) **CONSTRUCTION TO WITHSTAND FORCES OF NATURE.** All fences and walls shall be constructed to withstand the force of wind and to allow, and not inhibit, divert or alter, the free flow of surface water from the natural course it followed prior to installation of the fence or wall.

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**SECTION 23-37. TYPES OF FENCES AND WALLS PERMITTED.** Fences and walls shall be constructed and/or composed of a least one (1) of the following groups of materials:

- (a) Termite-resistant species of wood or wood which has been treated to resist rot and termites;
- (b) Steel posts and wire fabric of a minimum of 11 gauge galvanized or other noncorrosive metal;
- (c) Ornamental iron;
- (d) Concrete or masonry. Within any residential district, installation shall have at least twenty-five (25) percent of the wall ventilated; and
- (e) Rigid synthetic material.

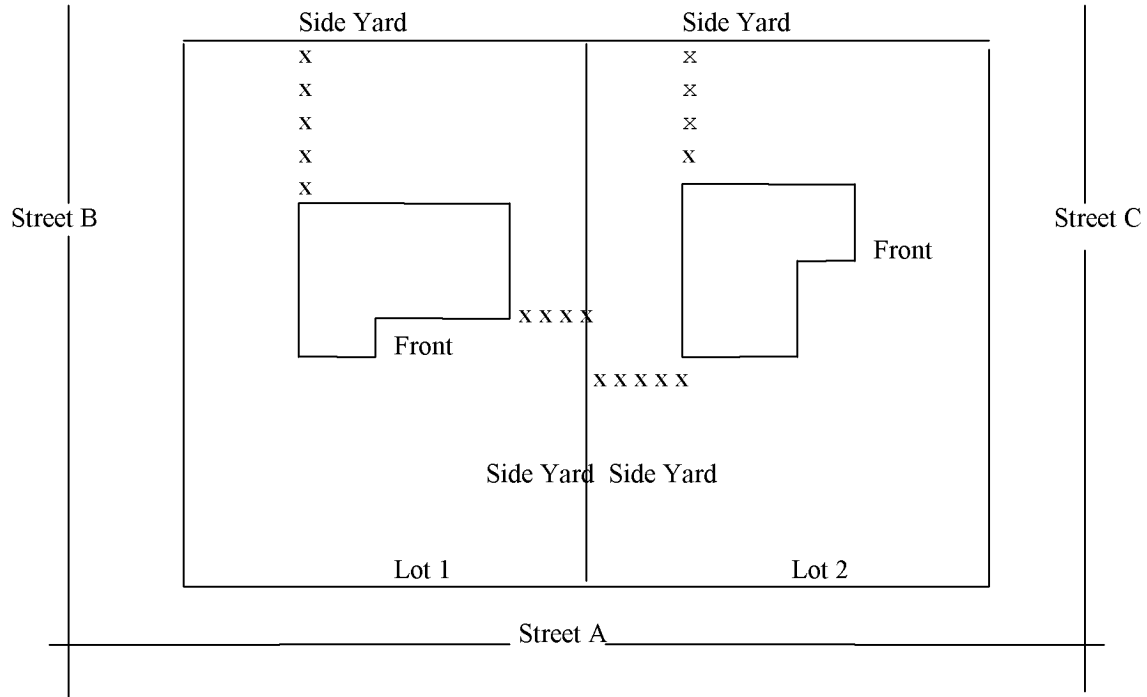
EXEMPTIONS: Natural barriers consisting of vegetation, trees, flowers or hedges are exempt from this Article and shall not be construed as a fence or wall.

**SECTION 23-38. RESIDENTIAL LIMITATIONS AND RESTRICTIONS WITHIN THE ,R-1, R1-A AND R-2 DISTRICTS.**

- (a) All fences shall not exceed six (6) feet in height and shall be located only within the rear yard.
- (b) For the purpose of this section, rear yard shall be the yard extending from both the rear corners of the main structure (residence) to the adjacent side property lines. No fence or wall shall extend forward of the rear corners of the main structure. In case of an irregular shape lot or house, the Building Official shall determine the proper placement based on the intent of this section.
- (c) For the purpose of this section, corner lots shall have two front yards and two side yards. Side yards shall be opposite of front yards. A fence or wall may extend from each rear corner of the main structure to the side yard but, in no case, shall a fence or wall extend forward of the main structure towards the street. Please refer to illustration below:



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## **SECTION 23-39. COMMERCIAL FENCES WITHIN THE COMMERCIAL DISTRICT AND COMMERCIAL APPLICATIONS WITHIN THE R-1 DISTRICT.**

(a) All fences for any commercial application shall be reviewed and approved by the Planning and Zoning Board and the Town Commission.

(b) No fence or wall shall exceed eight (8) feet in height and if used as a required buffer, the wall must comply with Section 23-21 (8).

## **SECTION 23-40. PROHIBITED FENCES OR WALLS.**

(a) Barbed wire, razor type, electric, fences with broken glass, spikes or other sharp points that may cause injury are prohibited.

**SECTION 23-41. MAINTENANCE.** All fences and walls shall be maintained in good repair, in a nonhazardous condition, and shall not be allowed to become dilapidated.

## **SECTION 23-42,---23-44. RESERVED.**

## **SECTION 23-45,---23-53. PROVISIONS AMENDED, RENUMBERED AND TRANSFERRED TO CHAPTER 21.** (Ord. No. 85-6, S 13)

Article VI and title, Tree Protection and Removal, deleted from this chapter. (Ord. No. 85-6, S 13)

## **SECTIONS 23-54,---23-60. RESERVED.**

# CHAPTER 23

## ARTICLE VII. BOARD OF ADJUSTMENT

Editor's note: Provisions of Ord. No. 97, adopted May 23, 1978, enacting provisions designated as Art. 7, ch. 23 and codified as SS. 23-61---23-64, have been amended by Ord. No. 80-4, adopted June 24, 1980, and codified as SS 23-61 through 23-67.

**SECTION 23-61. COMPOSITION; APPOINTMENT; TERM; VACANCY.** The board of adjustment is hereby established and shall consist of five (5) members, each to be appointed by the Town Commission for a term of three (3) years, without compensation. Initially terms of members shall be staggered so that not more than a minority of the terms shall expire in any one year. In addition the commission may appoint two (2) alternate members, designating them as such, who may act in the temporary absence or disability of any regular member, or may act when a regular member is otherwise disqualified in a particular case. No member or alternate member of the board shall be a paid or elected official or employee of the Town. (Ord. No. 97, S 2, 5-23-78; Ord. No. 80-4, S 2, 6-24-80)

**SECTION 23-62. OFFICERS; REMOVAL; VACANCY.** The board shall elect a chairman and a vice chairman from among its members for terms of one (1) year, with eligibility for reelection. Any member of the board may be removed from office for cause by the Town Commission upon written charges and after a public hearing. Any vacancy occurring during the unexpired term of office of any member shall be filled by the Commission for the remainder of the term within thirty (30) days after the vacancy occurs. (Ord. No. 97, S 2, 5-23-78; Ord. No. 80-4, S 3, 6-24-80)

**SECTION 23-63. FEES.** The Town Commission shall establish a schedule of fees to be charged to applicants for filing appeals. (Ord. 80-4, S 4, 6-24-80)

**SECTION 23-64. RULES; MEETINGS.** The board of adjustment shall comply with the rules of procedure prescribed in this ordinance necessary to the conduct of its affairs and in keeping with the provisions of this article. Meetings shall be held at the call of the chairman and at such other times as a majority of the board of adjustment may determine. The chairman, or in his absence the vice chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public, and public announcement of such meetings shall be posted on the Town bulletin board not less than three (3) days prior to the day of each meeting. (Ord. No. 97, S 3, 5-23-78; Ord. No. 80-4, S 5, 6-24-80)

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**SECTION 23-65. POWERS AND DUTIES.** The board of adjustment shall have the following powers and duties:

(a) Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination by an administrative official in the enforcement of this chapter.

(1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer or agency of the governing body of the Town affected by any decision of the Town Superintendent or any other regulatory body in the interpretation of any portion of these regulations. Such appeal shall be taken within thirty (30) days after rendition of the order, decision, requirement or determination appealed from by filing with the Town superintendent and the board of adjustment a notice of appeal specifying the grounds thereof. The Town superintendent or any other regulatory agency shall forthwith transmit to the board of adjustment all papers constituting the record upon which the action appealed from was taken. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof at least fifteen (15) days in advance of the public hearing, as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person or be represented by agent or attorney.

(2) In exercising its powers, the board of adjustment may, upon appeal, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination made by an administrative official in the enforcement of any part of this chapter, and may make any necessary order, requirement, decision or determination and, to that end, shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which the board of adjustment is required to pass under any such ordinance.

(3) An appeal stays all proceeding in the furtherance of the action appealed from, unless the Town superintendent, or any other regulatory agency from whom the appeal is taken, certifies to the board of adjustment after the notice is filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the board of adjustment or by a court of record on application, on notice to the Town superintendent or any other regulatory agency from whom the appeal is taken and on due cause shown.

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(b) Authorize upon appeal such variance from the terms of this chapter as will not be contrary to the public interest and when, owing to conditions peculiar to the property and not the result of actions of the applicant, a literal enforcement of the provisions of this chapter would result in unnecessary hardship. A variance shall be authorized only for height, area and size of structure or size of yards and open spaces.

(1) A variance from the terms of this chapter shall not be granted by the board of adjustment unless and until a written application for variance is submitted and the board of adjustment finds that all of the following requirements have been met:

a. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

b. That the special conditions and circumstances do not result from the actions of the applicant;

c. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district;

d. That literal interpretation of the provisions of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the ordinance and would work unnecessary and undue hardship on the applicant;

e. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

f. That the grant of the variance will be in harmony with the general intent and purpose of the ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

(2) Notice of public hearing shall be given at least fifteen (15) days in advance of public hearing and shall be posted upon the property for which the variance is sought and at the Town Hall, and shall be published once in a newspaper of general circulation within the Town of Melbourne Village.

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(3) In every case where a variance from the terms of this chapter is requested, the board of adjustment shall define limits of the specified area, if any, which may be adversely affected by the proposed variance and may provide that individual notice of the consideration thereof be given to the owners of all property in such affected area in person or by mail as the board of adjustment shall prescribe; provided, however, that in case of notice by mail, such notice shall be mailed not less than five (5) days before the date of hearing, and provided further that failure to mail or receive such courtesy notice shall not affect any of the action or proceedings taken hereunder.

(4) Any party may appear in person or be represented by an agent or attorney at the public hearing.

(5) All hearings for variances before the board of adjustment shall be initiated by the owners of at least seventy-five (75) percent of the property described in the application; tenant or tenants with owner's sworn consent; duly authorized agents evidenced by a written power of attorney; Town commission; the planning board; or any department or agency of the Town.

(6) In granting any variance the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violations of such conditions and safeguards when made a part of the terms under which the variance is granted shall be deemed a violation of the chapter and punishable as provided by this chapter.

(7) Under no circumstances except as permitted above shall the board of adjustment grant a variance to permit a use not generally or by special exception permitted in the zoning district involved or in any use expressly or by implication prohibited by the terms of the ordinance in the zoning district. No nonconforming use of neighboring lands, structures or buildings in the same zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be grounds for the authorization of a variance.

(c) Hear and decide applications for such special exceptions as the board of adjustment is specifically authorized to pass on under the terms of the zoning ordinance; special exceptions as used in connection with zoning being a use that would not be appropriate generally or without restriction throughout the particular zoning district, but which, if controlled as to number, area, location or relation to the neighborhood would not adversely affect the public safety, comfort, good order, appearance, convenience, morals and the general welfare. Such uses may be permitted as special exceptions only if specific provisions and standards for such special exceptions are made in the zoning ordinance.

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(1) A written application for special exception will be filed with the board of adjustment wherein the applicant shall fully describe the nature of the special exception requested and show that the granting of the application would not be in conflict with the provisions of the above described use.

(2) For procedural purposes an application for a special exception shall be handled by the board of adjustment as for appeals, described in Sec. 23-65 (b) (2) through 23-65 (b) (7) above.

(3) The board of adjustment shall confer with the planning board in all cases involving requests for special exceptions. (Ord. No. 97, SS 4----8, 5-23-78; Ord. No. 80-4, S 6, 6-24-80)

**SECTION 23-66. PROCEDURE.** The board of adjustment shall employ the following rules of procedure in the conduct of its affairs:

(a) A case file shall be created on each appeal or application brought before the board of adjustment. The case file shall include, as a minimum:

(1) The written application or appeal submitted to the board;

(2) Minutes of all proceedings, showing the vote of each member on each question of note, or if absent or failing to vote, indicating such fact;

(3) Recommendation of the planning board concerning matters referred for opinion, as applicable;

(4) Copies of all papers constituting the record upon which an action appealed from was taken;

(5) Records of examinations conducted, evidence received, and findings made to support the action by the board of adjustment.

(b) The complete case file shall be filed immediately after a final decision is rendered in the office of the Town Clerk.

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(c) A report to the Town Commission, summarizing the case and decision of the board of adjustment shall be filed in the office of the Town Clerk immediately after the decision is rendered to facilitate persons meeting the thirty (30) day time limit available for seeking judicial relief from the decision should such option be exercised.

**SECTION 23-67. JUDICIAL REVIEW OF DECISIONS OF THE BOARD OF ADJUSTMENT.** Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any officer, department, board, commission or agency of the Town, may apply to the circuit court in the judicial circuit where the board of adjustment is located for judicial relief within thirty (30) days after rendition of the decision of the board of adjustment. Reviews in the circuit court shall be either by a trial de novo, which shall be governed by the Florida Rules of Civil Procedure, or by a writ of certiorari, which shall be governed by the Florida Appellate Rules. The election of remedies shall lie with the appellant. (Ord. No. 97, S 9, 5-23-78; Ord. No. 80-4, S 8, 6-24-80)