

ORDINANCE 2012-01

AN ORDINANCE OF THE TOWN OF MELBOURNE VILLAGE AMENDING CHAPTER 23 – ZONING; ADDING DEFINITIONS; AMENDING AREA AND DISTANCE REQUIREMENTS FOR R-1 AND R-1A ZONES; AMENDING THE SITE PLAN REVIEW REQUIREMENTS AND PROCESS FOR R-1 AND R-1A ZONES; AMENDING THE RESPONSIBLE GROWTH MANAGEMENT PROCESS FOR R-1 AND R-1A ZONES; RENUMBERING SECTIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town of Melbourne Village Local Government Comprehensive Plan (LGCP) includes a provision that the Town shall review the impact of change indicators on housing policy and development regulations; and

WHEREAS, There has been a nationally recognized trend towards “infilling” of established neighborhoods, remodeling or replacing existing housing using design practices that maximize lot coverage and minimize open space; and

WHEREAS, In 2005 The Town Commission of the Town of Melbourne Village observed that this trend was starting to manifest itself in building permit applications being made in Melbourne Village; and

WHEREAS, The Town Commission found that protecting the existing character of the single family neighborhoods of the Town of Melbourne Village is in the public interest and consistent with the provisions of the Town of Melbourne Village LGCP; and

WHEREAS, The Town Commission found that protecting the existing character of neighborhoods includes ensuring that appropriate scale and bulk of structures be maintained; and

WHEREAS, The Town Commission wished to preserve the quality of the residential areas of the Town; and

WHEREAS, The Town Commission appointed a Committee to undertake a study of the issue from a development standpoint and pursue alternatives for reducing the potential impact to single family areas using such planning and zoning principles as development-appropriate architectural and conservation regulations, lot coverage and open space requirements, setback regulations, and other innovative planning tools; and

WHEREAS, the Committee appointed by the Town Commission reported on its findings, and proposed modifications to the Town Zoning Code and other development codes to address the effects of the above recognized change indicators and to preserve the quality of the residential areas of the Town while protecting the individual property owner from the burden of undue regulation; and

WHEREAS, the Committee appointed by the Town Commission based these proposed modifications on the results of a year long process of gathering input from residents and holding workshops and meetings to discuss possible approaches and develop final proposals, during which over 75% of all households in the town participated in some manner and which resulted in substantial evidence that the most important factors in maintaining the quality and character of the residential neighborhoods in the Town were

protecting the wooded appearance and minimizing the impact of buildings on the “green envelope” of the Town, while allowing for diversity of development styles and choices; and

WHEREAS, the Town Commission found that the proposed regulations were desirable and necessary to preserve the quality of the residential areas of the Town while allowing reasonable and responsible growth and development; and

WHEREAS, the Town Commission found that the proposed regulations were desirable and necessary to maintain those features of residential neighborhoods specifically identified by Town residents as core community values, including: preserving, enhancing, and renewing properties’ abundant greenspace and environmental integrity; maintaining the limited structural scale on properties and otherwise mitigating any perceived negative impact of larger or out of scale buildings on the environment, streets, and neighbors; preserving the sense of privacy within the residential neighborhoods and providing options and choices within the process to allow for individual preference; and

WHEREAS, in 2007 the Town Commission adopted the proposed regulations as an amendment to the Town Zoning Code; and

WHEREAS, following the adoption of the code several residents conducted a petition drive to repeal the code and the issue was placed on the ballot in November 2007. In a heavily participated in vote (65% voter turn-out for a single issue ballot) the code was upheld by 66% against to 34% for repeal; and

WHEREAS, the regulations as adopted in Ordinance 2007-01 – Residential Growth Management have been applied to development applications ranging from new homes to small remodeling projects over the past four years; and

WHEREAS, the Town Commission has charged the Town Review Board to review the application of the code over the past four years and determine what amendments, adjustments, and changes they recommend to it in light of the experience to date; and

WHEREAS, the Town Review Board has reviewed the history of the code and recommends various changes, and has provided the Town Commission with the reasons for the proposed changes; and

WHEREAS, the Town Commission has reviewed the proposed changes and finds them necessary to continued sound application of the code;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF MELBOURNE VILLAGE AS FOLLOWS:

SECTION 1. That the recitals and findings contained in the Preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in this Section; and

SECTION 2. That Sections 23-14 through 23-19 of Article III of Chapter 23 of the Town of Melbourne Village Code of Ordinances be deleted in their entirety; and

SECTION 3. That new Sections 23-14 through Section 23-19 of Article III of Chapter 23 of the Town of Melbourne Village Code of Ordinances be created as follows:

SECTION 23-14. Definitions. The following definitions shall apply to the interpretation and application of the provisions of Sections 23-15 through 23-19 of this code:

Lot – a lot consists of a single platted parcel of land, as recorded in the records of Brevard County. If an applicant wishes to meet the provisions of this chapter by combining two or more parcels, they must be recorded as a single parcel prior to consideration for approval of site plan and building permits.

Separating previously combined lots requires approval by the Town Commission.

Separating previously combined lots that have received site plan approval by the Town Review Board requires approval by the Town Review Board and the Town Commission.

Lot Coverage – consists of two elements – structural coverage and other impermeable coverage—each expressed as a number of square feet.

Structural Coverage – the total of the square footage of the footprint of all structures on the lot that are covered by a roof assembly. The measurement is from the outside of the vertical support of the roof assembly and excludes roof overhang of 24” or less. Incidental roofed structures designed to protect standard household equipment such as A/C equipment, water systems, pool equipment, etc, and having a foot print not exceeding 20 sq ft each and a height not exceeding 6 ft measured from ground level are excluded from structural coverage calculations.

Base Structural Coverage Allowance - Each property in R-1 and R-1A zoning is allowed a certain amount of structural coverage based on the size of the lot that can be utilized without obtaining mitigation square footage in accordance with the provisions of Section 23-19. The Town Office can provide this base allowance for each property based on the Brevard County Property Appraisers Website information. The formula for calculating this square footage is as follows: Base Structural Coverage Allowance in square feet = $1770 + ((A - 12632) \times 0.07)$ where A equals the total lot area in square feet.

Incentive Structural Coverage Allowance – an additional structural square footage allowance possible following a mitigation review by the Town Review Board in accordance with the provisions of Section 23-19.

Maximum Incentive Structural Coverage Allowance - an amount equal to 6% of the total square footage of the lot.

Total Structural Coverage Allowance – an amount equal to the total of the Base Structural Coverage Allowance plus any allocated Incentive Structural Coverage Allowance.

Permeable Surfaces – any surface which allows unhindered passage of water.

Impermeable Surfaces – any surface that will not permit the passage of water and for which a permit is required.

Semi permeable Surfaces – any surface that allows for the passage of some water to the ground below.

Other Impermeable Coverage – the total of the square footage of all impermeable and semi permeable surfaces on the lot not covered by a roof assembly such as driveways, walkways, pools, decks, patios, gazebos, etc., for which a permit is required. Incidental slabs or platforms for the placement of standard household equipment such as A/C equipment, water systems, pool equipment, stepping stones, etc., and having a footprint not exceeding 20 sq ft each are excluded from other impermeable coverage calculations.

Base Other Impermeable Coverage Allowance – an amount equal to 6% of the total lot area but not less than 1000 sq ft. Of this, 650 sq ft is reserved for driveway/parking. This reservation is necessary because even if the current owner does not want a hard surface drive/parking area, a future owner may require one for safety reasons. The remainder of the allowance is available for use as the owner desires and as allowed by code.

Incentive Other Impermeable Coverage Allowance – a possible additional square footage allowance allocated following a mitigation review by the Town Review Board in accordance with the provisions of Section 23-19.

Total Other Impermeable Coverage Allowance - an amount equal to the total of the Base Other Impermeable Coverage Allowance plus any allocated Incentive Other Impermeable Coverage Allowance.

Plane of Reference – the highest point of the crown of the road on the frontage side of a structure.

Building Height- the vertical distance measured from the lower of the Plane of Reference or the finished floor to the highest point of the structure including chimneys, but excluding solar panels, and required electrical or plumbing elements.

Habitable Space – any space within a structure for living, sleeping, eating, or cooking.

Non Habitable Space – Bathrooms, toilet compartments, closets, halls, screen enclosures, sunrooms Category I, II, and III as defined in the AAMA/NPEA/NSA 2100, storage or utility space, or similar areas.

Roof Assembly – A system designed to provide weather protection and resistance to design loads. The system consists of structural elements, a roof covering and roof deck or a single component serving as the above.

Main Dwelling Structures – The primary structures containing habitable space, excluding any guesthouses.

Guesthouses – Any subsidiary structure containing habitable space located on a home site with a main dwelling structure.

Accessory Structure – any structure containing only non-habitable space.

Floor Area – an area measurement in square feet taken from the finished interior of the walls.

Footprint – a measurement in square feet of the ground coverage area of structures and/or other impermeables and excludes roof overhang of 24” or less.

Desirable Building Area (DBA) - an area of a lot within the following setbacks:

Front: the greater of 1/4 of the depth of the lot or established minimum setback plus 50% of the total building height measured from the lowest finished floor elevation.

Sides: the established minimum setback plus 50% of the total building height measured from the lowest finished floor elevation.

Rear: The established minimum setback plus 50% of the total building height measured from the lowest finished floor elevation.

In no case shall the DBA be less in area than the Base Structural Coverage Allowance plus the Maximum Incentive Structural Coverage Allowance. In the event that the DBA derived from the above boundaries is less than this in area, the Town Review Board shall adjust the boundaries of the DBA, taking into account the nature and location of adjacent development, to attain the minimum area, but not into the established minimum setbacks.

The Town Review Board may also adjust the boundaries of the DBA to allow for the preservation of desirable trees or other desirable aspects of the property, but not into the established minimum setbacks. Desirable trees are defined in the TMV Tree Code.

Placement of structures within the above defined DBA increases the amount of Incentive Structural Coverage Allowance that may be obtained in Section 23-19.

Legacy Tree - a tree of a desirable hardwood species with a Diameter at Breast Height (DBH) of 12" or more or any other tree of a desirable species over 20" DBH. DBH is measured 4 feet 6 inches above ground level.

Mitigation – the process for obtaining incentive allowances for structural coverage, other impermeable coverage, and special provisions for previously developed home sites.

SECTION 23-15. "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, one to each previously built family dwelling on parcels of land containing not less than 21,000 square feet.
 - (d) Accessory structures, including but not limited to detached garages, detached carports, storage sheds, workshops, greenhouses, and similar structures as allowed by code.
 - (e) Pools and pool decks including swimming, wading, therapeutic, etc.

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

(g) 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.

(h) Advertising signs which are in compliance with the provisions of Chapter 16.5 of this code, and for which a permit is required.

(2) Setback Requirements

(a) For the Main Dwelling Structures - The minimum distance from any part of the structure to any point of the lot line shall be as follows.

1. Front street lot line or any side street line, Thirty (30) feet. Forty (40) feet for structures exceeding a building height of eighteen (18) feet measured from the plane of reference.
2. Side lot line, not facing a side street. The greater of fourteen (14) feet or the building height of the structure within 25 feet of the lot line measured from the plane of reference.
3. Back lot line. The greater of twenty-five (25) feet or the building height of the structure measured from the plane of reference.

(b) For Guest Houses

1. Structure shall be located a minimum distance of twenty eight (28) feet from the main dwelling and ninety (90) feet from the front street lot line and also conform to the other setback requirements of this section.

(c) For Accessory Structures - The minimum distance from any part of the structure to any point of the lot line shall be as follows.

1. Front street lot line or side street line. Forty (40) feet.
2. Side lot line, not facing a street. The greater of fourteen (14) feet or the building height of the structure within twenty five (25) feet of the lot line measured from the plane of reference.
3. Back lot line. The greater of fourteen (14) feet or the building height of the structure within twenty five (25) feet of the lot line measured from the plane of reference.

(d) For pools and pool decks:

1. Front street lot line or side street line. The greater of Forty (40) feet or the setback of any Main Dwelling Structures. The intent is that swimming pools and pool decks cannot be forward of any Main Dwelling Structures along any street frontage.
2. Side lot line, not facing a street. Fourteen (14) feet.
3. Back lot line. Fourteen (14) feet.

(3) Maximum Heights

(a) For Dwelling Structures. Twenty seven (27) feet measured from the plane of reference, subject to setback requirements.

(b) For Accessory Structures. Twenty (20) feet measured from the plane of reference, subject to setback requirements

(4) Minimum Floor Elevations.

(a) For habitable space. Twenty four (24) inches above the plane of reference. Where an addition adjoins an existing floor, the minimum floor elevation may be reduced to match the existing floor elevation. This option requires a notarized statement signed by the property owner acknowledging this election on a form supplied by the Town and does not apply in Special Flood Hazard Areas.

(b) For non habitable space. Twelve (12) inches above the plane of reference. The minimum floor elevation may be reduced for manufactured structures approved by the State of Florida or other structures approved by the Permit and Inspection Committee. This option requires a notarized statement signed by the property owner acknowledging this election on a form supplied by the Town.

(5) Other Impermeable Coverage based on lot size.

(a) 6% of the total lot area, but not less than 1000 sqft,

(b) of this, 650 sqft is reserved for driveway/parking. This reserve is necessary because a future owner may require one for safety reasons.

(c) No more than 30% of the unmitigated Other Impermeable allowance may be used in the front 1/3 of the lot, except that the 650 sqft reserve may be used for that purpose even if this exceeds 30% of the total and shall be counted in the limit for lots where 30% exceeds 650 sqft.

(d) Total Other Impermeable Coverage Allowance may be increased by using the mitigation process in Section 23-19. In addition, the owner may be able to utilize unused Total Structural Coverage Allowance for other impermeable coverage.

(e) For each home site developed as of April 24, 2007 the Total Other Impermeable Coverage Allowance shall be as calculated above, but not less than the existing Other Impermeable Coverage as of April 24, 2007. This special allowance shall cease if the living unit(s) on the lot are demolished – it shall not carry over to redevelopment of the lot.

(6) Maximum Lot Coverage.

(a) Structural Coverage. The Total Structural Coverage on any lot shall not exceed the Total Structural Coverage Allowance.

(b) Lot Coverage. The Total Lot Coverage shall not exceed the Total Structural Coverage Allowance plus the Total Other Impermeable Coverage Allowance.

(7) Other Requirements.

(a) For guest houses 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.

(b) 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. No building or structure shall be erected of more than two (2) stories in height. Two-story houses with no living quarters on the ground floor require a permit approved by the Planning & Zoning Board and the Town Commission.

(c) 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.

(d) The main dwelling structure shall have parking space or facilities including garages and carports, and paved and unpaved space, for three (3) or more automobiles off the public street. Every guesthouse shall have parking facilities nearby for one or more automobiles off the public street.

(e) Both structures and other impermeable surfaces must meet the distance requirements from septic tanks and drain fields as established by the State of Florida Department of Health, Chapter 64E-6, Florida Administrative Code, Standards for Onsite Sewage Treatment and Disposal.

SECTION 23-16. "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
- (c) A guest house, one (1) to each previously built single-family dwelling on parcels 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 including but not limited to detached garages, detached carports, storage sheds, workshops, greenhouses, and similar structures as allowed by code.
- (e) Pools and pool decks including swimming, wading, therapeutic, etc.
- (f) Home crafts or home businesses, provided no person outside the family is employed in such work at that location, except in a clerical capacity or emergencies. Sales of produce from home gardening is permitted.
- (g) 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.
- (h) Advertising signs which are in compliance with the provisions of Chapter 16.5, and for which a permit is required.

(2) Setback Requirements

- (a) For the Main Dwelling Structures - The minimum distance from any part of the structure to any point of the lot line shall be as follows.
 - 1. Front street lot line or any side street line. Thirty (30) feet. Forty (40) feet for structures exceeding a building height of eighteen (18) feet measured from the plane of reference.
 - 2. Side lot line, not facing a side street. The greater of fourteen (14) feet or the building height of the structure within 25 feet of the lot line measured from the plane of reference.
 - 3. Back lot line. The greater of twenty five (25) feet or the building height of the structure measured from the plane of reference.
- (b) For Guest Houses
Structure shall be located a minimum distance of twenty eight (28) feet from the main dwelling and ninety (90) feet from the street lot line and also conform to the other setback requirements of this section.
- (c) For Accessory Structures - The minimum distance from any part of the structure to any point of the lot line shall be as follows.

1. Front street lot line or side street. Forty (40) feet.
2. Side lot line not facing a street. The greater of fourteen (14) feet or the building height of the structure within twenty five (25) feet of the lot line measured from the plane of reference.
1. Back lot line. The greater of fourteen (14) feet or the building height of the structure within twenty five (25) feet of the lot line measured from the plane of reference.

(d) For pools and pool decks:

1. Front street lot line or side street line. The greater of Forty (40) feet or the setback of any Main Dwelling Structures. The intent is that swimming pools and decks cannot be forward of any Main Dwelling Structures along any street frontage.
2. Side lot line, not facing a street. Fourteen (14) feet.
3. Back lot line. Fourteen (14) feet.

(3) Maximum Heights

- (a) For Dwelling Structures. Twenty seven (27) feet measured from the plane of reference.
- (b) For Accessory Structures. Twenty (20) feet measured from the plane of reference.

(4) Minimum Floor Elevations

- (a) For habitable space. Twenty four (24) inches above the plane of reference. Where an addition adjoins an existing floor, the minimum floor elevation may be reduced to match the existing floor elevation. This option requires a notarized statement signed by the property owner acknowledging this election on a form supplied by the Town and does not apply in Special Flood Hazard Areas.
- (b) For non-habitable space. Twelve (12) inches above the plane of reference. The minimum floor elevation may be reduced for manufactured structures approved by the State of Florida or other structures approved by the Permit and Inspection Committee. This option requires a notarized statement signed by the property owner acknowledging this election on a form supplied by the Town.

(5) Other Impermeable Coverage based on lot size.

- (a) 6% of the total lot area, but not less than 1000 sqft,

- (b) of this, 650 sqft is reserved for driveway/parking. This reserve is necessary because even if the current owner does not want a paved driveway/parking area, a future owner may require one for safety reasons
- (c) No more than 30% of the unmitigated Other Impermeable allowance may be used in the front 1/3 of the lot, except that the 650 sqft reserve may be used for that purpose even if this exceeds 30% of the total and shall be counted in the limit for lots where 30% exceeds 650 sqft.
- (d) Other impermeable coverage may be increased by using the mitigation process in Section 23-19. In addition, the owner may be able to utilize unused Total Structural Coverage Allowance for other impermeable coverage.
- (e) For each home site developed as of April 24, 2007 the Total Other Impermeable Coverage Allowance shall be as calculated above, but not less than the existing Other Impermeable Coverage as of April 24, 2007. This special allowance shall cease if the living unit(s) on the lot are demolished – it shall not carry over to redevelopment of the lot.

(6) Maximum Lot Coverage

- (a) Structural Coverage. The Total Structural Coverage on any lot shall not exceed the Total Structural Coverage Allowance.
- (b) Lot Coverage. The Total Lot Coverage shall not exceed the Total Structural Coverage Allowance plus the Total Other Impermeable Coverage Allowance.

(7) Other Requirements

- (a) For guest houses 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.
- (b) 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. . No building or structure shall be erected of more than two (2) stories in height. Two-story houses with no living quarters on the ground floor require a permit approved by the Planning & Zoning Board and the Town Commission.
- (c) 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, 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.

(d) The main dwelling shall have parking space or facilities including garages and carports, and paved and unpaved space, 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.

(e) Both structures and other impermeable surfaces must meet the distance requirements from septic tanks and drain fields as established by the State of Florida Department of Health, Chapter 64E-6, Florida Administrative Code, Standards for Onsite Sewage Treatment and Disposal.

SECTION 23-17. TOWN REVIEW BOARD. There is hereby created a Town Review Board whose function shall be to provide for the review required by the provisions of Section 23-18 and to administer the provisions of the mitigation process provided for by Section 23-19.

- (1) The Town Review Board shall consist of nine members nominated by the Mayor and appointed by the Town Commission. It shall include three members at large, three members from the Planning & Zoning Board (P&Z)/Local Planning Agency (LPA) including the P&Z Chairperson, and three members from the Permit and Inspection (P&I) Committee including the P&I Chairperson. The TRB Chairperson must be selected from the three at large members; the Co-Chairperson may be selected from any of the remaining members excluding the P&Z Chairperson and the P&I Chairperson. At least one member at large, one member of P&Z, and one member of P&I are required at a mitigation meeting.
- (2) Minutes of all actions of the Town Review Board shall be recorded with the Town Office in a timely manner, and all meetings and agenda of the Town Review Board shall be publicly noticed and conducted as required by law.
- (3) The Town Review Board shall be guided by the stated purpose of Section 23-18 and by the following principles in deciding any issues which allow for the discretion of the Board:
- (4) The regulations of Sections 23-18 and 23-19 are designed to maintain those features of residential neighborhoods specifically identified by Town residents and the Town Commission as core community values, including: preserving, enhancing, and renewing properties' abundant greenspace and environmental integrity; maintaining limited structural scale on properties and otherwise mitigating any perceived negative impact of larger or out of scale buildings on the environment, streets, and neighbors; preserving the sense of privacy within the residential neighborhoods; and providing options and choices within the process to allow for individual preference.
- (5) Appeals concerning decisions of the Town Review Board shall be to the Town Board of Adjustments as provided for in Section 23-65 of this Code.

SECTION 23-18. Site Plan Approval for R-1 and R-A.

- (1) *Purpose.* The purpose of these provisions is to permit a desirable living environment for the residents of single-family dwellings and to encourage a harmonious relationship between dwelling and surrounding developments by providing for a review and evaluation by the Town Review Board of all site plans for projects that meet certain thresholds, as detailed below. 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.
- (2) *When site plan approval necessitates TRB action.* No permit for building or building expansion shall be issued on any building site until a site plan has been submitted to and approved by the Town Review Board if any of the following conditions exist:
- a) The permit is for a new house.
 - b) The proposed addition increases the Total Structural Coverage or the Total Lot Coverage by an amount equal to or in excess of 25% of the current coverage.
 - c) The property as currently developed exceeds the Total Structural Coverage Allowance or the Total Other Impermeable Coverage Allowance.
 - d) The proposed addition or remodeling would cause the property to exceed either the Total Structural Coverage Allowance or the Total Other Impermeable Coverage.
 - e) The proposed addition increases the Building Height in excess of eighteen (18) feet.

(3) When site plan does not require TRB action.

When the site plan meets one of the criteria in section (2) above but also meets one of the following criteria a review by the TRB is not required. Town staff shall determine whether an exception applies and submit such decision to the TRB Chairperson or Co-Chairperson for agreement. If agreement is not reached, the site plan shall be submitted to the TRB for a decision as to the application of the code. In the event that TRB action is not required, Town staff and/or other reviewers such as P&I shall ensure compliance with the tree ordinance, setback codes, distance and area codes, and all other applicable zoning and building codes in all cases.

(a) Exception for small houses.

An addition or remodeling that creates an additional coverage of 500 sq. ft. or less does not require a site plan review if the resultant coverage will not exceed the Base Structure Coverage Allowance and/or the Base Other Impermeable Coverage Allowance even if the total increase exceeds 25%

of the existing coverage. Applicants are encouraged to go through the review process for these additions, however, to minimize the impact of the addition on coverage allowances available for future remodeling or additions.

b) Exception for Small additions.

Under the Special Base Allowance Provision for Existing Out-of-Scale Development for each homesite developed as of April 24, 2007 the total structural allowance cannot be less than the existing structural coverage as of April 24, 2007 plus 2% of the lot area. (This special allowance shall cease if the living unit(s) on the lot are demolished – it shall not carry over to redevelopment of the lot.)

If a developed property has not been through a TRB mitigation process resulting in the establishment of the total structural allowance, and has not had a previous application after April 24, 2001 which increased lot coverage, excepted from TRB review, then the minimum additional structural allowance it would be entitled to can be presumed to be equal to at least 2% of the lot size.

Given this presumption, TRB review is not required for projects which increase lot coverage (structural and/or other impermeable) by less than 250 sq ft for a property eligible for the 2% allowance, provided that the increase is for other impermeable surface, or accessory structures, or adding a roof over a porch, patio, or entryway. Applicants are encouraged to go through the review process for these additions, however, to minimize the impact of the addition on coverage allowances available for future remodeling or additions.

Projects which exceed 250 sq ft, but do not exceed the 2%, or which increase the coverage area of the main dwelling structure(s) other than for a roof over a porch, patio, or entryway must still be scheduled for a pre-application review by the TRB, which may waive the formal mitigation review, but shall make recommendations to the owner as to potential means of minimizing the impact of the project.

c) Exception for Some Other Impermeable Coverage Projects.

If the project is for the addition of other impermeable coverage only and the property has unused total structural coverage allowance which can be converted by the owner to impermeable surface allowance, and no other factors of the project trigger a TRB review, no review is required, but applicants are encouraged to go through the review process for these additions to minimize the impact of the addition on coverage allowances available for future

(4) *General considerations and site plan review.* The Town Review Board, shall ascertain that proposed improvement meets the requirements set forth in Section 23-15, Section 23-16, and other applicable ordinances and shall determine to what extent the proposed development meets the provisions of the Growth Management Mitigation Program and shall determine the amount of incentive coverage area allocated. The report of the Town Review Board shall contain in detail the findings of the board.

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

(a) Pre-application conference. It is the intent of the pre-application conference that the applicant become familiar with the mitigation process prior to preparation of engineered drawings, but the applicant should bring to the conference as much detail as available. The applicant and property owner shall meet with the Town Review Board of the Town of Melbourne Village to discuss basic site plan requirements and consider preliminary features of the site and the proposed development so that general approaches and potential problems can be freely explored. The property owner may appoint a legal designate to represent them but in no case shall the legal designate be the General Contractor or any affiliate of the General Contractor. This appointment must be submitted in the form of a Power of Attorney.

(b) For this meeting, the applicant should bring an informal conceptual plan showing proposed site changes in a general way. Sketches, which need not be professionally prepared, should show some, but not all, of the information shown on a Site Plan. Such a plan shall not be designated as a "Site Plan," nor given any approval by the Review Board. Nothing proposed, submitted, or discussed in the preliminary conference is legally binding on the applicant nor, except provisions of code, on the Review Board.

(c) The conceptual plan should include:

- 1) The name and address of the Applicant and his/her representative(s), if any;
- 2) The Owner of the lot(s) and permission from the owner if the Applicant is not the Owner;
- 3) An informal plan showing the location and size of footprint of the existing and proposed structures, paving, legacy trees, septic system, height of proposed structures, and other proposed site changes.

(d) Site plan. Following the pre-application conference, nine (9) copies of a site plan, one sealed original, and one electronic copy in .pdf standard format, prepared by a registered surveyor, civil engineer, landscape architect or architect, showing the proposed layout, 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 Review Board.

For remodeling Site Plans, the Town Review Board will determine at the pre-application conference how detailed the site plan package for a remodeling project needs to be and may waive some of the elements required above depending on the nature and scope of the proposed changes.

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

- a) Name, location, owner and designer of the proposed development.
- b) Location of the site in relation to surrounding properties.
- c) Date, north arrow and graphic scale not less than one inch equals fifty (50) feet.
- d) Location of all property lines, existing streets, easements, utilities as well as proposed drainage structures and culverts (with size and elevation), and proposed driveways and general lot layout.
- e) Proposed and or existing location of all septic tanks and drain fields.
- f) A tree survey in the minimum detail as listed below. Dense areas of trees that will remain undisturbed can be identified as groups or clumps.
 - (1) For new development or redevelopment of a property
 - (a) All trees on property with a 4" or greater DBH (diameter at breast height)
 - (2) For all other projects
 - (a) All trees required to meet the minimum tree requirement as set forth in the Tree Ordinance and,
 - (b) All trees with a 4" or greater DBH to be considered during mitigation (Section 23-19) and,
 - (c) All trees with a 4" or greater DBH within 50 feet of any proposed construction
- f) Front, side, and rear elevation drawings of all proposed structures.
- g) All structures and major features shall be fully dimensioned including coverage areas, distance between structures, driveways, parking areas, other impermeable surfaces and property or lot lines, finished floor elevations, and wall and roof heights.
- h) A landscape plan.

(7) *Site Plan and Mitigation Review.* Applications for site plan approval shall be submitted to the Town Review Board, which shall schedule a meeting with the applicant and the property owner for review of said site plan and to calculate incentive coverage allocation within forty-five days after the receipt of said plans.

- a) At that meeting the Town Review Board will calculate and record on an attachment to the sealed original copy of the site plan the incentive

coverage allowance and total coverage allowances, based on the site plan, and determine whether the plan as presented meets the area and distance requirements of this code.

- b) Any changes to the site plan shall be submitted as detailed above except that, with approval of the Town Review Board, minor changes may be detailed in a signed, notarized document appended to the site plan and noted thereon, which attachment shall become a binding part of the site plan.
 - c) At that meeting the Town Review Board shall also decide the scope of required documents needed for final approval at the conclusion of the project.
- (8) *Following 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 the plans and specifications. If after such approval should the owner and applicant or his successors desire to make any changes to said site plan, such changes shall first be submitted to the Town Review Board. If the Town Review Board deems that there is a substantial change or deviation from that which is shown on the approved site plan, the owner and applicant or his successors shall be required to return to the Town Review Board for approval of changes.
- a) In the event of a change of ownership of the property for which an active site plan exists, or change in contractor/applicant, the new owner and applicant must meet with the Review Board to transfer the site plan. This meeting will be to review the provisions of the plan and the requirements of the mitigation factors involved, if any.
 - b) If, during the process of review of plans for the issuance of building permits, any changes are made which would change the site-plan as approved, the Town Review Board shall review the changes and determine whether the changes require a new site plan review as stated in section (a) above.
 - c) If construction is not commenced within one year after the date of approval of the site plan, and no extension has been granted or authorized by the Town Review Board, 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 Review Board and subsequently approved. Such application shall meet all of the then current requirements and be in accordance with the procedures hereinabove set forth.
 - 1) The Town Review Board may extend site plan approval for phased construction for up to three years at the time of site plan approval, provided that each phase of development is not dependent on subsequent phases to meet codes and mitigation agreements.
 - 2) No approved site plan shall extend more than three years after approval unless all applicable building permits have been issued.

- (9) *As-builts* - Final as-built plans, one sealed and one electronic copy in .pdf format showing the location, size, and elevation including total building height measured from the plane of reference of all buildings and structures, drives, parking areas, other impermeable areas, drainage structures, wells, all utilities, and the septic system, on the Site shall be submitted by the Applicant and approved by the Town Review Board prior to the issuance of an occupancy permit for any structure on the Site. Such plans shall be accompanied by a certification by a Registered Professional Engineer that the Site has been developed in conformance with the approved Site Plan.
- a) If the signed and sealed as-builts are not yet available, the builder may submit a copy of the approved site plan, with any as-built variations redlined, and with a notational statement signed by both the owner and builder that the plans as red-lined match what will appear on the final as-builts. The Town review Board shall accept these for review and approval, subject to their matching the final as-builts. If the Town Building Official finds that the final sealed as-builts do not match those reviewed by the Town Review Board no Certificate of Occupancy shall be issued or valid until the Town Review Board reviews and approves the sealed as-builts.
 - b) For remodeling projects on lots for which the Town already has as-builts or a certified survey of the existing development, the Town Review Board shall determine the scope required of the as-built, which must be submitted by the applicant and approved by the Town Review Board prior to the issuance of a certificate of completion.
- (10) *Recording requirements* - When construction on a site is finished, as signified by application for certificate of occupancy, certificate of completion, or other final order, and the site is one for which the TRB has calculated and recorded with the sealed plans the total coverage allowance for the lot as developed under the site plan, the TRB and the owner shall prepare a summary document for the site. The form of this document may be amended from time to time as needed, but shall include at a minimum:
- 1) The lot number and legal description of the site
 - 2) The name of the owner of the site
 - 3) The date of the document
 - 4) The name of the TRB Chairperson and Co Chairperson.
 - 5) A list of mitigation elements, their extent, and their itemized effect on the maximum coverage allowed.
 - 6) A notation of the coverage as of completion of the construction and the allowance remaining.
 - 7) A notarized statement signed by the TRB Chairperson or Co Chairperson affirming the finding of the TRB that the site has been developed in accordance with the Approved Site Plan, and noting any exceptions and/or adjustments made by the TRB on review of the As-builts.
 - 8) A notarized statement signed by the Owner certifying the owner's understanding that the mitigation elements are a required part of the site plan and construction, to the extent that those mitigation elements provide additional coverage that has been

utilized, and that any negative change in the mitigation elements in excess of unused coverage will result in making the property non-conforming, and subject, under certain circumstances as addressed in Town Code, to requirements to bring the property into compliance.

Upon completion of this form by the above parties it shall be prepared as a Restrictive Covenant on the property and the Owner shall be responsible for filing the original with the Clerk of Courts, paying any fee required by the Clerk of Courts to file it, and returning a marked copy signifying filing to the Town. The Certificate of Occupancy cannot be issued until this is completed.

SECTION 23-19. Growth Management Mitigation Process for R-1 and R-1A.

The provisions of this section shall be applied to calculate the Incentive Structural Coverage Allowance and the Incentive Other Impermeable Coverage Allowance for development, remodeling, and re-development in the R-1 and R1A zone of the Town of Melbourne Village.

(1) Structural Coverage Area Mitigation/Incentive Allowance Calculation – Maximum 100 Pts.

- a. The incentive coverage allowed for a lot is based on points earned by the design of the development for that lot.
- b. Each point is equal to 1% of the Maximum Incentive Structural Coverage Allowance square footage for that lot. For Example – a half-acre lot (21780 sq. ft of lot area) would have a Maximum Incentive Structural Coverage Allowance of 1306 sq. ft. (21780 sq ft times 6%.) In this example each incentive point would be equal to 13.06 sq. ft.
- c. The maximum points available to be allocated to a lot are 100. Eligible points in excess of 100 may be held in reserve for future use. In addition, there is a maximum number of points that can be applied in each category.
- d. Structural Issues – Maximum 70 Pts.
Structural mitigation issues pertain to the design and layout of the structures to be placed on the lot, relating to location, orientation, and height.
 - 1). Location on Site – Up to 50 Pts.
Points earned equals maximum points available (50) times the percentage of the total structural coverage that is located within the DBA (see definition of Desirable Building Area).
For Example – If 70% of the sum of the total structures on the lot fall within the DBA then 50 times 0.70 equals 35 points.
 - 2). Orientation on Site – Up to 20 pts.
Earns 20 pts if maximum width of structures in the front ½ of lot is equal to or less than 30% of width of lot.
Earns 10 pts if maximum width of structures in the front ½ of lot is equal to or less than 45% of width of lot.

This shall be calculated as a total width parallel to the front lot line. For example – a 20 ft wide garage positioned next to a 50 ft wide house would result in a width equal to 70 ft. while a 20 ft wide garage positioned entirely in front of a 50 ft wide house would result in a width equal to 50 ft.

e. Orientation of Garage – Up to 15 Pts.

Earns 15 pts if garage faces 90 degrees or more away from street.
Earns 7.5 pts if garage faces from 45 to 89 degrees away from street.
No points earned if garage faces 44 degrees or less away from street.
On corner lots garage must meet requirement on nearest street, or on both if equal distance from both.

f. Maximum Height – Up to 10 Pts.

1) For all structures:

Based on the Building Height of structures measured from the plane of reference.

Max Height over 24' = 0 pts
Max Height at/less than 24' = 2.5 pts
Max Height at/less than 21' = 5 pts
Max Height at/less than 19' = 7.5 pts
Max Height at/less than 17' = 10 pts

If the applicant cannot definitively establish the Building Height, as measured from the plane of reference at the time of the mitigation meeting no points shall be awarded in this category.

g. Site/Green Issues – Maximum 45 Pts.

Site and Green mitigation issues pertain to minimizing disturbance of elements of the site in the design and development process, including elevation, trees and plants, appearance, and historical interest.

h. Retention of existing grade – 10 Pts.

1) If the structures on the property are constructed at grade or by use of stem wall construction so that the elevation of the lot is not changed beyond 5 feet from the foundation, 10 points are awarded. The purpose of this element is to discourage the “mound construction” approach which increases the appearance of structural bulk and which causes loss of trees and vegetation over an area much larger than the footprint of the structures, and can lead to drainage problems.

2) Changes in elevation caused by installation of required drainage elements (berms) or drain fields shall not count against the development for this element.

3) Where a raised septic/drain field system is planned and is located in such proximity to one side of the structure that it would create a “ditch” effect of 20 feet or less between the stem-wall foundation and the drain field, the stem-wall on that side of the structure may be omitted in favor of connecting the elevation of the drain field to the elevation of the structures foundation.

i. Screening – up to 45 Pts.

1) The purpose of the green screening is to reduce the visual impact of the structures, as well as to preserve, protect, and restore the unique ecosystems within Melbourne Village. Fifty percent of the plantings needed to achieve mitigation points must be of species that are native to Melbourne Village, Brevard County, or the State of Florida. These plants preserve the unique character of Melbourne Village, and provide the residents with the economic advantages of native plants, that is, less need for chemicals and water to have vigorous plants. Reference material on native plants is available in the Town Office.

2) Planting of species that currently or within 5 years will provide visual barrier along front façade on a perpendicular to a height of 1/2 Building Height earns the following credit:

- 75% of front façade screened – 35 pts
- 50% of front façade screened – 26.25 pts
- 30% of front façade screened – 17.5 pts
- 15% of front façade screened – 8.75 pts

3) Planting of species that currently or within 5 years will provide a visual barrier along side façades on a perpendicular to a height of 1/2 Building Height earns the following credit:

- 75% of both side façades screened – 10 pts
- 50% of both side façades screened – 5 pts

4) Plantings to achieve the screening shall be located between the structure and the related lot line. All plant material designated to achieve the above goals shall be identified on the landscaping part of the site plan and shall be viable at 5 years from planting or shall be replaced.

5) Any reduction in screening material after completion of construction shall require a site plan revision, and may require replacement, or may result in reduction of roofed coverage area allowed for future remodeling.

6) Plantings shall be located so as not to cause danger to, or interfere with, existing structures or utilities at the time of their maturity.

j. Historic Preservation – 15 Pts.

Full credit if original structure is retained and its character is not obscured or degraded by additions. Applicants for this credit must receive the recommendation of the Town Historic Preservation Commission. Property must have some historic designation.

k. Retention of natural areas – up to 10 pts

Earn up to 10 pts by leaving areas of the lot with currently existing native Florida vegetation uncultivated or minimally cultivated to benefit native flora and or fauna except for the removal of pest plants and dead plant material. Credit will be given on the basis of 5 points for 5% of the lot plus 1 point for each additional 1% up to 10% of the lot left natural. Areas to be left natural must be protected during construction with barrier material and may not be used for parking or transit of vehicles, or storage of building materials. Any reduction in these natural areas after completion of construction shall require a site plan revision and may result in reduction of coverage area allowed for future remodeling.

These points may be used to apply towards total incentive coverage or may be used to offset points lost due to tree removal.

l. Tree Retention Incentive – Deduction from Pts.

(1) Tree Removal

Removal of desirable species trees reduces maximum incentive area available by the following amounts:

- Soft wood over 10"DBH up to 16"1 Pt. (Includes pines, palms)
- Soft wood over 16"2 Pts.
- Hardwood Tree over 8" DBH up to 12"1 Pt.
- Legacy Tree over 12" up to 18"5 Pts.
- Legacy Tree over 18"10 Pts.

- a. The appearance here of these deductions from the available incentive area does not mean that such trees can be removed. Other codes must be met in order for that to happen. These deductions from incentive area available are separate from and in addition to any replacement requirements.
- b. If a certified arborist opines that, independent of construction plans, a tree in question is dying, diseased, or fatally injured, the board may exclude it from calculations.
- c. If a tree is dead or is an exotic invasive, the removal of which is desirable at any time, no deduction is taken for the removal of it.
- d. If relocation of a tree is approved, no deduction for tree removal is taken for that tree

- e. Up to 10 deduction points for legal tree removal may be offset by credit points for leaving natural areas (instead of applying said credit points to increase incentive coverage limits). Additionally, up to 10 deduction points for legal tree removal may be offset by extra credit points in category 1 and/or 2. If Deduction points remain after offsetting available credit points they will be deducted from the total of points earned from categories 1 and 2 after application of the maximums for those categories

(2) Tree Relocation

- a. If, rather than removal, a tree or trees are relocated on the lot; credit will be given as follows:
- b. 5 pts. Per tree credit for moving a desirable hardwood over 6” DBH For moving other trees – No deduction taken for removal of that tree
- c. This credit (or non-deduction) is only given if the method for moving and establishing in new location is approved by a certified arborist and is followed.
- d. Points given for moving trees will be offset against deduction points for removing trees. If all deduction points have been offset, up to 10 points for moving trees may be added to the total of categories 1 and 2, total not to exceed the maximum of 100 pts.

(2) Other Impermeable Mitigation Calculation

- (a) Other Impermeable Coverage Allowance may be mitigated by using a semi-permeable surface. Each square foot of area covered shall count as three quarters (0.75) square feet. Following are examples of semi-permeable surfaces:
 - 1) Decks that allow passage of water through slats onto bare soil or a permeable base.
 - 2) Certified permeable pavement material installed and maintained per the manufactures requirements.
 - 3) Other methods approved by the TRB.
- (b) When mitigation points are earned for orientation of garage, the amount of pavement for a driveway to the garage will count as the lesser of 650 sqft or the actual amount used.

(3) Additional Provisions for developed homesites

- (a) A home site shall be considered to be developed if there is a living unit existing and to be retained on the site that was constructed prior to, or for which a valid building permit was issued prior to, April 24, 2007. A site on which all living

units have been demolished or are planned for demolition is a re-development and not eligible for the modifiers listed below.

(1) Location on Site

Roofed area existing on site as of April 24, 2007, constructed by permit, and including that under construction under a valid building permit as of that date, need not be counted in calculating area within the DBA. The homeowner shall decide to include the existing structures or exclude them, depending on which approach is most favorable to the proposed development. This is an all or nothing provision – owner cannot count some structures and not others – and once an election is made it runs with the development until the site is redeveloped.

(2) Orientation on Site

Homesites developed prior to April 24, 2007 which do not qualify for the allowance under this category shall receive 50% (10 Pts.) if the addition/remodeling does not increase the width of the structures in the front ½ of the lot.

(3) Orientation of Garage

No modification to above mitigation factors for existing houses

(4) Maximum Height

No modification to above mitigation factors for existing houses

(5) Retention of existing grade

Grade shall be the existing grade as developed as of April 24, 2007.

(6) Screening

The requirement that 50% of required screening plants must be native shall apply only to plants added to achieve the level of screening desired. Existing plants will not be counted in determining the 50%.

(7) Historic Preservation

No modification – applies only to existing houses

(8) Special Base Allowance Provision for Existing Out-of-Scale Development

For each homesite developed as of April 24, 2007 the total structural allowance shall be as calculated above, but not less than the existing structural coverage as of April 24, 2007 plus 2% of the lot area. This special allowance shall cease if the living unit(s) on the lot are demolished – it shall not carry over to redevelopment of the lot.

SECTION 4. In the event that a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected and it shall be presumed that the Town Commission of the Town of Melbourne Village did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town

Commission would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 5. Conflicts. All Sections or parts of Sections of the Town's Codes and Regulations, all Ordinances or parts of Ordinances, and all Resolutions or parts of Resolutions, that are inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 6. This ordinance shall become effective immediately upon adoption.

PASSED AND ADOPTED by the Town Commission of the Town of Melbourne Village on the First Reading this 25th day of October, 2011,

AND on the Second and Final Reading on this 20th day of December, 2011.

Scott McCoy
Mayor

ATTEST: _____
Gail E. Griswold
Town Clerk/Treasurer