

# Town of Melbourne Beach

## PUBLIC NOTICE

### AGENDA

## PLANNING & ZONING BOARD MEETING **TUESDAY, NOVEMBER 12, 2024 @ 7:00 PM** COMMUNITY CENTER – 509 OCEAN AVENUE

#### Board Members:

Chairman David Campbell  
 Vice-Chairman Kurt Belsten  
 Member April Evans  
 Member Dan Harper  
 Member Gabor Kishegyi

#### Alternate Board Members

Alternate Todd Albert  
 Alternate Jason Judge

#### Staff Members:

Town Manager Elizabeth Mascaro  
 Town Clerk Amber Brown  
 Building Official Robert Bitgood

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, THE TOWN HEREBY ADVISES THE PUBLIC THAT: In order to appeal any decision made at this meeting, you will need a verbatim transcript of the proceedings. It will be your responsibility to ensure such a record is made. Such person must provide a method for recording the proceedings verbatim as the Town does not do so. In accordance with the Americans with Disability Act and Section 286.26, Florida Statutes, persons needing special accommodations for this meeting shall, at least 5 days prior to the meeting, contact the Office of the Town Clerk at (321) 724-5860 or Florida Relay System at 711.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF MINUTES**
  - A. September 3, 2024 minutes
4. **NEW BUSINESS**
  - A. Discussion on Town codes related to fill and building height
5. **PUBLIC HEARINGS**
6. **OLD BUSINESS**
  - A. Discussion on accessory structure requirements
  - B. Discussion on code revisions to 9A Landscaping and Trees
7. **PUBLIC COMMENT**

Please limit comments to items that are not on the agenda
8. **REPORTS: TOWN MANAGER AND TOWN ATTORNEY**
9. **ITEMS TO BE ADDED TO THE AGENDA FOR FUTURE MEETINGS**
10. **ADJOURNMENT**

# Town of Melbourne Beach

## MINUTES

### PLANNING & ZONING BOARD MEETING TUESDAY, SEPTEMBER 3, 2024 @ 6:30 PM COMMUNITY CENTER – 509 OCEAN AVENUE

**Board Members:**

Chairman David Campbell  
Vice-Chairman Kurt Belsten  
Member April Evans  
Member Dan Harper  
Member Gabor Kishegyi

**Alternate Board Members**

Alternate Todd Albert  
Alternate Jason Judge

**Staff Members:**

Town Manager Elizabeth Mascaro  
Town Clerk Amber Brown  
Building Official Robert Bitgood

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In accordance with the Americans with Disability Act and Section 286.26, Florida Statutes, persons needing special accommodations for this meeting shall, at least 5 days prior to the meeting, contact the Office of the Town Clerk at (321) 724-5860 or Florida Relay System at 711.

#### 1. CALL TO ORDER

Vice Chairman Kurt Belsten called the meeting to order at 6:30 p.m.

#### 2. ROLL CALL

Town Clerk Amber Brown conducted the roll call.

**Present:**

Vice-Chairman Kurt Belsten  
Member April Evans  
Member Dan Harper  
Member Gabor Kishegyi  
Alternate Todd Albert

**Staff Present:**

Town Manager Elizabeth Mascaro  
Building Official Robert Bitgood  
Town Clerk Amber Brown

**Absent:**

Chairman David Campbell  
Alternate Jason Judge

### 3. APPROVAL OF MINUTES

- A. July 16, 2024 minutes

**Member April Evans made a motion to approve; Alternate Todd Albert seconded; Motion carried 5-0.**

### 4. NEW BUSINESS

- A. Site plan approval for 1609 Atlantic St – new home

**Member April Evans made a motion to approve; Member Gabor Kishegyi seconded; Motion carried 5-0.**

- B. Discussion on accessory structure requirements

Member April Evans spoke about putting this item on the agenda to discuss requirements for bigger structures not pergolas or gazebos. She has an issue with fully enclosed air-conditioned accessory structures that are larger than a single-car garage roughly 18 by 22 or 24. Something along those lines. Has concerns when we start getting into in excess of 500 square feet and they are putting in bathrooms and it is not a pool cabana. Have them apply for a variance if need be.

Alternate Todd Albert spoke about agreeing with Member April Evans to at least have something for them to think about. However, if there is a 3000 square foot single story home he would be okay with a 1000 square foot single story accessory structure.

Member Dan Harper spoke about some other municipalities limit the size to fifty percent of the main structure, or you could add area constraints to control the size. Such as language stating it must be behind the main building.

Vice Chairman Kurt Belsten spoke about another way to restrict the size would be to increase the minimum pervious.

Building Official Robert Bitgood spoke about how he has seen other municipalities have a percentage of the square footage, or a percentage with a maximum size.

Member April Evans spoke about not being in favor of doing a percentage of the main structure because it would limit people in a 1000 square foot home versus someone with a 3000 square foot. The concern is that the use will become an auxiliary dwelling. If the plans do not label the accessory structure as a living area then the Board cannot deny it, even if everything about the plans looks like the structure will become a living dwelling.

Member Dan Harper asked if there is evidence of this happening. Is there any short-term rentals in Melbourne Beach that are in an accessory structure. He would like to see the data.

Building Official Robert Bitgood spoke about when he does plan review he can only review what the architect or draft person labels the room. It could become an issue if the plans label it a game room, and after it is finished they turn it into a living area.

***Bruce Larson – 1507 Pine St – Spoke about 702 Oak St is a short-term rental that states it is owner-occupied and you can rent out the main house, and there is a detached structure.***

Member April Evans spoke about another property in the area of Avenue A, Avenue B, or Sunset and they are not self-reporting.

Member Dan Harper spoke about wanting to monitor and collect data to know if it is a problem before making any decisions. However, he is not against the idea.

Building Official Robert Bitgood spoke about the requirements right now is no taller or larger than the primary structure.

Vice Chairman Kurt Belsten spoke about reviewing the pervious vs impervious, maximum size, and a percentage of the primary structure.

Member April Evans spoke about not wanting to wait until it is too late.

Building Official Robert Bitgood spoke about he has resigned as the Building Official, so there might be the opportunity going forward for the Board to see those types of permits.

Vice Chairman Kurt Belsten spoke about having the Board review the percentage of pervious, overall size limitation, the ratio of the existing structure and accessory structure, and a possible combination of all.

**Member April Evans made a motion for Dan Harper to approach the Commission to share the Boards ideas and statements made during this meeting; Alternate Todd Albert seconded; Motion carried 5-0.**

C. Discussion on code revisions to 9A Landscaping and Trees

Member Dan harper spoke about it not always being practical to replace tree for tree. Eliminate the tree for tree replacement requirement. Retain the tree density before and after provisions, and keep the oak tree requirement.

Member April Evans spoke about agreeing with Member Dan Harper. If a new home is bigger than the old one then of course you cannot fit the same amount of trees.

Town Manager Elizabeth Mascaro spoke about including clarification on palm trees.

Building Official Robert Bitgood spoke about it might be easier to list what types of trees need to be replanted versus what ones count or not.

**Member April Evans made a motion for Dan Harper to inform the Commission that the Board agrees that the part of the Code saying you have to replace tree for tree should be eliminated based on square footage available; Alternate Todd Albert seconded; Motion carried 5-0.**

***Bruce Larson – 1507 Pine St** – Asked if there was a resolution about how to measure building height.*

Building Official Robert Bitgood spoke about the Town Code does not specify because it says to follow FEMA’s recommendations which does not have a maximum. Can look into having a maximum, but it could affect the 5-year Community Rating System (CRS) which might significantly affect insurance rates.

***Tim Reed – 302 Fourth Ave** – Spoke about having the Board get data to see what other municipalities are doing related to accessory structures. How does tree density get calculated and what records are there on it.*

***Bruce Larson – 1507 Pine St** – Spoke about accessory structures and if that includes gazebos and the like, clean up the language related to oak trees to make it consistent. Nuisance trees should not be counted towards the density calculation. There are 6-7 things in the Code that the Board cannot enforce, but that the Board should mandate are being done. There are a lot of open holes in the code.*

Member April Evans spoke about it would only include enclosed structures. Spoke about the Planning and Zoning Board does not do enforcement, and the trees on public land would be outside of the Boards scope.

Building Official Robert Bitgood spoke about and provided a copy of email communications regarding the 1609 Atlantic St home being exempt from needing a DEP permit because they are keeping the same footprint.

5. PUBLIC HEARINGS
6. OLD BUSINESS
7. PUBLIC COMMENT
8. REPORTS: TOWN MANAGER AND TOWN ATTORNEY

Town Manager Elizabeth Mascaro spoke about the desire of the Commission is for the Board to meet monthly whether there is anything on the agenda or not.

Member Dan Harper spoke about it being ridiculous to expect the Board to go through the entire Code without a clear direction.

Member April Evans spoke about the last time this was done took 3 years to complete.

Town Manager Elizabeth Mascaro spoke about the Board can start with the two current items and proceed from there.

Alternate Todd Albert spoke about asking the Commission if there are specific items within the Code that they would like reviewed.

Member April Evans asked if the Board has permission to engage the Town Attorney and Town Planner.

Town Manager Elizabeth Mascaro spoke about the Board having permission to engage the Town Attorney and Town Planner.

Alternate Todd Albert asked if there are specific items that the Building Official thinks needs to be looked at.

Building Official Robert Bitgood spoke about clarifying the height of buildings. Also, a private provider will most likely be coming in, so he is concerned about having someone closely looking at the small details.

#### **9. ITEMS TO BE ADDED TO THE AGENDA FOR FUTURE MEETINGS**

Vegetation ordinance and accessory structures.

#### **10. ADJOURNMENT**

**Member April Evans motioned to adjourn; Member Dan Harper seconded; Motion carried 5-0.**

The meeting adjourned at 7:34 p.m.

**ATTEST:**

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**David Campbell, Chairman**

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**Amber Brown, Town Clerk**

**§ 7A-55. BUILDING CONSTRUCTION.**

(a) All buildings shall be constructed with the lowest floor level at least 18 inches above the crown of the highest street perpendicular to the foundation to which the property abuts. When an applicant for a building permit submits plans for review by the Town of the proposed construction, the building plans of the principal structure shall be fully dimensioned sealed to-scale drawings, clearly showing street elevation, existing property elevation, proposed finished floor elevation, FEMA flood zones and elevation, and maximum height.

(b) All buildings shall be elevated as required by federal, state and local minimum elevations. The greatest of the minimum elevations stipulated by any of the governmental agencies with jurisdiction shall be required. Any elevation of a building above the required elevation will be included in the measurement of building height. In the absence of higher federal or state elevations, the Town of Melbourne Beach requires minimum building elevations to be measured from a point 18 inches above the crown of the street on which the property abuts. In the event the existing grade of a property is higher than 18 inches above the crown of the road or higher than federal or state requirements then the building height shall be measured from the existing grade.

(`75 Code, Appendix A, Art. VII, § 7) (Ord. passed 9-26-72; Am. Ord. 2004-01, adopted 9-15-04; Am. Ord. 2006-08, adopted 8-30-06; Am. Ord. 2017-05, adopted 12-20-17)

## § 7A-59. EXCEPTIONS TO HEIGHT REGULATIONS.

(a) Amateur radio antennas. Except as otherwise provided by Federal or state law or determinations of that law, an amateur radio station antenna structure, such as but not limited to a HAM radio station, may be erected at heights and dimensions sufficient to accommodate amateur service communications upon the showing of a need for a reasonable accommodation with regard to the Town's height regulations for reception or transmission purposes by the applicant. Consistent with Federal administrative determinations, Town code provisions relating to height are not intended to preclude amateur service communications.

(b) Waiver from height regulations.

(1) Chimneys, cupolas, spires, and television antennae. For the purpose of permitting the placement of non-structural and/or non-functional decorative type structures on the roof of residential buildings that would exceed the maximum height permitted in a zoning district, such structures shall not be included in the measurement of height provided all of the following conditions are met:

- a. The structure is decorative or, in the placement of a chimney or television antenna only, may be functional.
- b. The structure is neither habitable, air conditioned, finished, nor occupiable space.
- c. The structure conforms to the specific definitions and conditions listed below.
- d. The part of the chimney that rises above the roof line shall comply with but not exceed the minimum height in the Florida Building and Safety Codes.
- e. Cupolas exceeding the maximum building height shall be limited as follows:
  1. Maximum dimensions shall be 36 inches by 36 inches by 36 inches.
  2. A maximum of four cupolas exceeding the allowed building height are permitted per structure.
- f. Spires that exceed the maximum building height shall have a maximum base of 24 inches by 24 inches and a maximum height of 42 inches.
- g. Television antennas shall be permitted to exceed the maximum allowed height of a structure by 56 inches.
- h. Elevator towers and equipment rooms shall be allowed to exceed the maximum building height by a maximum of ten feet. Any elevator tower and equipment room shall be the minimum size and height necessary to accommodate the elevator utilized. Documentation of the necessary height and size of the elevator tower and equipment room shall be provided by a licensed elevator contractor.

(`75 Code, Appendix A, Art. VII, § 11) (Ord. passed 9-26-72; Am. Ord. 2004-01, adopted 9-15-04; Am. Ord. 2006-08, adopted 8-30-06; Am. Ord. 2017-05, adopted 12-20-17)



## § 7A-30. DISTRICT REGULATIONS ESTABLISHED.

District regulations shall be set forth in the following sections, and as set forth in §§ 7A-50 through 7A-69.  
(75 Code, Appendix A, Art. VI) (Ord. passed 9-26-72)

This following table is to provide general information regarding zoning criteria, specific language included in each section of the Zoning Ordinance takes precedence over this table.

### 1-RS, 2-RS, AND 3-RS SINGLE FAMILY RESIDENTIAL DEVELOPMENT ZONING CRITERIA

CRITERIA (1)	Lot Area (min sq ft)	Lot Width (min ft at building line)	Lot Depth (min ft)	Lot Coverage (max % by principal structure only)	Minimum Pervious Area % per Lot	Living Area (min sq ft excluding garage and porch)	Height (maximum)	Minimum Yards (feet)			
								Front	Side Interior	Side Corner	Rear
1-RS	12,000	100	120	30	30	1,800	28	25	15	25	25
2-RS	11,250	90	100	30	30	1,600	28	25	15	25	25
3-RS	10,000	90	100	30	30	1,400 <sup>(2)</sup>	28	25	15	25	25

(1) Compliance with applicable supplementary regulations provided in §§ 7A-50 through 7A-69, and Chapter 9A is required.

(2) One half of the garage area, not to exceed 200 square feet, excluding porches may be used to meet minimum square footage requirements.

(Am. Ord. 2017-05, adopted 12-20-17; Am. Ord. 2019-04, adopted 9-18-19)

### § 7A-34. 4-RM MULTI-FAMILY RESIDENTIAL DISTRICT.

(a) Intent. The provisions of this district are intended to apply to an area of medium-density residential development with a variety of housing types. Lot sizes and other restrictions are intended to promote and protect medium-density residential development while preserving adequate open space and ensuring compatibility with other residential areas of the community.

(b) Principal uses and structures:

(1) Multi-family residences.

(2) Single-family residences (provided such residences meet the following 1-RS Single-Family Residential District requirements).

CRITERIA (*)	Lot Area (min sq ft)	Lot Width (min ft at building line)	Lot Depth (min ft)	Lot Coverage (max % by principal structure)	Living Area (min sq ft excluding garage and porch)	Height (maximum)	Minimum Yards (feet)			
							Front	Side Interior	Side Corner	Rear
DISTRICT										
1-RS	12,000	100	120	30	1,800	28	25	15	25	25

(\*) Compliance with applicable supplementary regulations provided in §§ 7A-50 through 7A-69, and Chapter 9A is required.

(3) Townhouses (See § 7A-63).

(4) Home occupations (See § 7A-62).

(c) Accessory uses and structures: Customary accessory uses clearly incidental and subordinate to the principal use and in keeping with the intent and purpose of the district.

(d) Special exceptions: Public recreation areas.

(e) Prohibited uses:

(1) Facility or base for mobile marijuana dispensary.

(2) Grow house.

(3) Marijuana dispensary.

(4) Rental units rented for periods of less than one month.

(5) All other uses not specifically or provisionally permitted herein.

(f) Lot and principal structures, sizes, and setbacks:

(1) Minimum lot area, 12,000 square feet.

(2) Maximum density, six dwelling units per acre.

(3) Minimum lot width, 100 feet.

(4) Minimum lot depth, 120 feet.

(5) Maximum lot coverage, 40%.

(6) Minimum living area, 1,300 square feet per dwelling unit.

(7) Maximum height of building. Maximum height, 28 feet.

(8) No structure shall have more than two stories.

(9) Minimum yard requirements:

- a. Front setback, 25 feet from lot line.
- b. Side interior setback, 15 feet from lot line.
- c. Side corner setback, 25 feet from lot line.
- d. Rear setback, 25 feet from lot line.

(10) Minimum distance between structures, 15 feet.

(g) Landscaping regulations: Front and side yard setbacks, excluding parking areas and driveways, shall be landscaped with ground cover, trees, and shrubs; other decorative arrangements may be acceptable. Uncovered parking areas shall be landscaped with trees and shrubs. Except for driveways, the areas abutting the street right-of-way from the curb to the property line shall be landscaped and maintained by the owner. However, in no case shall the area landscaped be less than 33% of the total lot area, not including the rights-of-way.

(h) Supplementary regulations: As provided in §§ 7A-50 through 7A-69, and Chapter 9A.

(i) Where a lot is developed and the rear or side yard abuts a lot developed as a single-family, detached residential dwelling, or abuts a developed or undeveloped lot within the 1-RS, 2-RS, or 3-RS single-family residential zoning district, a nonsolid wall, or fence six (6) feet in height, shall be constructed on or parallel to that rear or side lot line. Not less than 25% of the total surface area of the wall shall allow the free-flowing passage of air while still serving as a visual barrier. The wall shall be erected by the owner of the 4-RM zoned property. The fence or wall shall be constructed as follows:

(1) Materials. Fences and walls shall be constructed of long-lasting, durable materials, such as precast or poured concrete, concrete block, composite hardboard (Hardi-board or Hardi Plank), or recycled plastics. Fences or walls of sheet, link or corrugated iron, steel, or concertina wire, PVC, pressure treated woods, non-treated woods, and aluminum are prohibited. Barbed wire shall not be constructed or placed on top of a fence.

a. Where concrete materials are used, dyes, tints, patterns or textures may be added to mitigate any "plain concrete" appearance.

b. To change the appearance of an "unbroken, monotonous blank wall", it is encouraged that walls or fences be divided into discrete sections no more than 10 feet in length, by columns, pilings, posts, architectural detail, or a change in orientation, texture, pattern, materials or color.

(2) The six (6) foot wall or fence shall extend the full length of the adjoining residential property; however, forward of the front building line of an adjoining residential lot, the fence or wall shall be no higher than four (4) feet.

(3) The wall or fence shall comply with all Town Code requirements for vision clearance at corners and curb lots.

(4) Maintenance. Fences and walls shall be continuously maintained by the owner of the 4-RM property in an orderly and good condition, at no more than their maximum allowed height.

(5) With regard to lots that are developed on or before May 1, 2012, the wall or fence will be constructed by the property owner when the use of the property is changed or the existing use is substantially redeveloped. For the purposes of this section, the following definitions apply:

a. Change of use shall mean a change from the use existing to any other use.

b. Substantially redeveloped shall mean any increase in size, square footage, height, coverage or intensity of the use or any structure associated with the use, or the replacement or renovation the cost of which represents greater than 30% of the assessed value of the structures on the property as recorded in the most recent records of the property appraiser.

## § 7A-35. 5-RMO OCEANFRONT MULTI-FAMILY DISTRICT.

(a) Intent. The provisions of this district are intended to apply to certain areas adjacent to the ocean (between Atlantic Street and the ocean). Restrictions herein are intended to ensure the preservation of the natural features of the area. Lot sizes and other restrictions provide for medium- density, multi-family residential development compatible with the preservation of amenities associated with oceanfront property.

(b) Principal uses and structures:

(1) Multi-family residences.

(2) Single-family residences (provided such residences meet the following 1-RS Single-Family Residential District requirements).

CRITERIA (*)	Lot Area (min sq ft)	Lot Width (min ft at building line)	Lot Depth (min ft)	Lot Coverage (max % by principal structure)	Living Area (min sq ft excluding garage and porch)	Height (maximum)	Minimum Yards (feet)			
							Front	Side Interior	Side Corner	Rear
DISTRICT										
1-RS	12,000	100	120	30	1,800	28	25	15	25	25

(\*) Compliance with applicable supplementary regulations provided in §§ 7A-50 through 7A-69, and Chapter 9A is required.

(3) Townhouses (See § 7A-63).

(4) Government-operated parks and beaches.

(5) Electric Utility Substations.

(6) K-12 Schools.

(7) Home occupations (See § 7A-62).

(c) Accessory uses and structures: Customary accessory uses clearly incidental and subordinate to the principal use and in keeping with the intent and purpose of the district.

(d) Special exceptions: Public recreation areas.

(e) Prohibited uses:

(1) Facility or base for mobile marijuana dispensary.

(2) Grow house.

(3) Marijuana dispensary.

(4) Rental units rented for periods of less than one month.

(5) All other uses not specifically or provisionally permitted herein.

(f) Lot and principal structures, sizes, and setbacks: Gross lot area shall be determined by using the bluff line as the easterly boundary line.

(1) Minimum lot area, 12,000 square feet.

(2) Maximum density, six dwelling units per acre.

(3) Minimum lot width, 100 feet.

(4) Minimum lot depth, 120 feet (from front lot line to ocean bluff line).

- (5) Maximum lot coverage, 40%.
- (6) Maximum building length, 150 feet.
- (7) Minimum living area, 1,300 square feet per dwelling unit.
- (8) Maximum height of the building. Maximum height, 28 feet and no more than 2 stories.

(9) Structures built within the 5-RMO zoning district that exceed 28 feet in height and are three stories may be reconstructed in the event of any involuntary catastrophic destruction subject to the following:

- a. No building or structure shall exceed 36 feet regardless of the originally approved or constructed height.
- b. No structure shall exceed the originally approved height as demonstrated by an approved building permit or other substantial evidence provided by the property owner.
- c. Upon reconstruction that results in a building height lower than originally approved, any future reconstruction that becomes necessary, for any reason, shall not exceed the height of the most recent reconstruction or 28 feet, whichever is greater.
- d. If a building permit or other substantial evidence documenting that the destroyed building exceeded 28 feet in height is not provided, then the maximum height of any reconstructed building shall be 28 feet.
- e. Notwithstanding § 7A-35(f)(8) above, if the originally approved building permit or other substantial evidence provided documents that the building included three stories then the reconstructed building shall be allowed to have three stories.

(10) Minimum yard requirement

- a. Front setback, 25 feet from the lot line.
- b. Side setback, 25% of frontage shall be kept clear as a breezeway from the ocean. In no case shall any side setback be less than 12½ feet.
- c. Ocean setback. No building or structure shall be constructed on oceanfront property within the Town boundaries seaward of the coastal setback line established pursuant to Chapter 5A. In addition to the structures permitted in Chapter 5A, beach access shall be permitted by an elevated boardwalk supported on pilings with appropriate steps.

(11) Minimum distance between structures, 15 feet.

(g) Landscaping regulations: Front and side yard setbacks (excluding parking areas and driveways) shall be landscaped with ground cover, trees, and shrubs; other decorative arrangements such as rock gardens, walkways, dwarf trees, cobble, brick, and substantially similar arrangements may be acceptable. Uncovered parking areas shall be landscaped with trees and shrubs. Except for driveways the areas abutting the street rights-of-way shall be landscaped to a depth of seven feet; the rights-of-way from the curb to the property line may be landscaped and maintained at the owner's option. However, in no case shall the area landscaped be less than 33% of the total lot area, not including rights-of-way.

(h) Supplementary regulations: As provided in §§ 7A-50 through 7A-69, and Chapter 9A.

(i) Where a lot is developed and the rear or side yard abuts a lot developed as a single-family, detached residential dwelling or abuts a developed or undeveloped lot within the 1-RS, 2-RS, or 3-RS single-family residential zoning district, a nonsolid wall, or fence six (6) feet in height, shall be constructed on or parallel to that rear or side lot line. Not less than 25% of the total surface area of the wall shall allow the free-flowing passage of air while still serving as a visual barrier. The wall shall be erected by the owner of the 5-RMO zoned property. The fence or wall shall be constructed as follows:

(1) Materials. Fences and walls shall be constructed of long-lasting, durable materials, such as precast or poured concrete, concrete block, composite hardboard (Hardi-board or Hardi Plank), or recycled plastics. Fences or walls of sheet, link or corrugated iron, steel, or concertina wire, PVC, pressure treated woods, non-treated woods, and aluminum are prohibited. Barbed wire shall not be constructed or placed on top of a fence.

a. Where concrete materials are used, dyes, tints, patterns or textures may be added to mitigate any "plain concrete" appearance.

b. To change the appearance of an "unbroken, monotonous blank wall", it is encouraged that walls or fences be divided into discrete sections no more than 10 feet in length, by columns, pilings, posts, architectural detail, or a change in orientation, texture, pattern, materials or color.

(2) The six (6) foot wall or fence shall extend the full length of the adjoining residential property; however, forward of the front building line of an adjoining residential lot, the fence or wall shall be no higher than four (4) feet.

(3) The wall or fence shall comply with all Town Code requirements for vision clearance at corners and curb lots.

(4) Maintenance. Fences and walls shall be continuously maintained by the owner of the 5-RMO property in an orderly and good condition, at no more than their maximum allowed height.

(5) With regard to lots that are developed on or before May 1, 2012, the wall or fence will be constructed by the property owner when the use of the property is changed or the existing use is substantially redeveloped. For the purposes of this section, the following definitions apply:

a. Change of use shall mean a change from the use existing to any other use.

b. Substantially redeveloped shall mean any increase in size, square footage, height, coverage or intensity of the use or any structure associated with the use, or the replacement or renovation the cost of which represents greater than 30% of the assessed value of the structures on the property as recorded in the most recent records of the property appraiser.

(`75 Code, Appendix A, Art. VI, § 5) (Ord. passed 9-26-72; Am. Ord. 78-4, passed 3-14-78; Am. Ord. 85-7, passed 11-12-85; Am. Ord. 87-02, passed 5-12-87; Am. Ord. 90-04, passed 4-25-90; Am. Ord. 2004-01, adopted 9-15-04; Am. Ord. 2006-08, adopted 8-30-06; Am. Ord. 2006-12, adopted 8-14-07; Am. Ord. 2014-08, passed 10-29-14; Am. Ord. 2017-05, adopted 12-20-17) Penalty, see § 7A-173

## **§ 7A-36. 6-B DOWNTOWN BUSINESS DISTRICT.**

(a) Intent. The provisions of this district are intended to apply on centrally located areas adjacent to major arterial streets and convenient to major residential areas. The types of uses permitted are intended to provide limited business activities serving the needs of residential neighborhoods. Uses should reflect an atmosphere of providing basic consumer needs of the residential community.

(b) Principal uses and structures. The following uses and structures are permitted for any use or group of uses that are developed, either separately or as a unit with certain site improvements shared in common:

(1) Retail stores, sales and display rooms, including places where goods are produced and sold at retail on the premises.

(2) Personal service establishments such as barber and beauty shops, laundry, and dry- cleaning pickup stations, and tailor shops.

(3) Professional offices, studios, clinics, general offices, and business schools.

(4) Banks and financial institutions.

(5) Educational and cultural institutions.

(6) Public and private parking lots.

(7) Governmental and municipal buildings and public recreation areas.

(c) Accessory uses and structures: Customary accessory uses of one or more of the principal uses clearly incidental and subordinate to the principal use and in keeping with the low-density commercial character of the District.

(d) Special exceptions:

(1) Bar/lounge.

(2) Houses of worship. A house of worship must have a maximum of 150 seats in the main assembly area. The main assembly area must include side rooms and areas that can convert into part of main assembly room.

(3) Bed and breakfast inns. To be permitted, a bed and breakfast inn must meet the provisions of § 7A-152(c)(2) and (3) of this code and the following requirement: If the facility proposed to be a bed and breakfast inn is an existing structure(s), the architectural features must be preserved. A rendering of the elevation must be submitted by the applicant and shall be attached to the special exception approval to assure future preservation of the architectural features.

(4) Restaurant, subject to the following conditions:

a. At least 51% of the total gross revenues must come on a bi-monthly basis from the retail sale on the premises of food and non-alcoholic beverages. Proceeds of catering sales are not to be included in the calculation of the total gross revenues. "Catering sales" include food or non-alcoholic beverage sales prepared by the restaurant owner/operator on the premises for service by the owner/operator outside the restaurant premises.

b. For restaurants that serve any alcoholic beverages, the restaurant owner/operator is required upon request by the Town Manager, a Town code enforcement officer, or any Town law enforcement officer to "open the restaurant's records" to substantiate that 51% or more of the total gross revenues reported on a bi-monthly basis is derived from the sale of food and non-alcoholic beverages, exclusive of revenues derived from catering. The restaurant owner/operator has the burden of proof of compliance with the requirements that 51% or more of the total gross revenues reported on a bi-monthly basis is derived from the sale of food and non-alcoholic beverages, exclusive of revenues derived from catering. Failure to substantiate or prove compliance with this requirement results in the rebuttable presumption that the restaurant is in actuality a bar or lounge.

1. For restaurants that serve any alcoholic beverages to qualify as a restaurant pursuant to this code, the restaurant must maintain separate records of all purchases and gross retail sales of food and non-alcoholic beverages and all purchases and gross retail sales of alcoholic beverages. The records required in this subparagraph must be maintained on the premises of the restaurant, or such other designated place approved in writing by the Town Manager for a period of three years after the month of sale. The Town Manager will approve written requests to maintain the aforementioned records off the premises when the place to be designated is the restaurant's business office, open eight hours per work day, of a corporate officer, attorney, or accountant; the place to be designated is located in Brevard County; and the place to be designated is precisely identified by complete mailing address not using a post office box. A failure to keep the foregoing sale records creates a presumption that the restaurant is operating as a bar/lounge.

2. Since the burden is on the holder of the "restaurant" zoning designation to demonstrate compliance with the foregoing requirements of the designation as restaurant, the records required to be kept must be legible, clear, and in the English language, and must be made available within 14 days upon demand by the Town Manager, a code enforcement officer of the Town or Town law enforcement.

c. The required percentage must be computed by adding all gross sales of food, non-alcoholic beverages, and alcoholic beverages and thereafter dividing that sum into the total of the gross sales of food plus non-alcoholic beverages.

(e) Prohibited uses:

(1) Drive-in, drive-up, drive through, or any other similar feature that provides for receipt of goods, services, food, money or information by a consumer while seated in a motor vehicle.

(2) Facility or base for mobile marijuana dispensary.

(3) Grow house.

(4) Marijuana dispensary.

(5) All other uses not specifically or provisionally permitted herein.

(f) Lot and principal structures, sizes, and setbacks:

(1) Minimum lot area, 9,000 square feet.

(2) Minimum lot width, 60 feet (at front building line).

(3) Minimum lot depth, 150 feet.

(4) Maximum lot coverage, 50%.

(5) Minimum floor area, 300 square feet.

(6) Maximum height, 35 feet.

(7) Minimum yard requirements:

a. Front setback, 25 feet from lot line.

b. Side interior lot setback, none; provided a public access is available to the rear of the lot for trash removal and fire protection. Otherwise, a minimum side setback of 15 feet on one side of the structure is required.

c. Side corner lot setback, 20 feet from lot line.

d. Rear setback, 20 feet from lot line, except 25 feet when abutting a residential area, and 15 feet when abutting an alley.

e. Ocean setback. No building or structure shall be constructed on oceanfront property within the Town boundaries seaward of the coastal setback line established pursuant to Chapter 5A. In addition to the structures permitted in Chapter 5A, beach access shall be permitted by an elevated boardwalk supported on pilings with appropriate steps.



(g) Sidewalk and parking lots: Sidewalks and parking lots shall be constructed and maintained by the owner along the public streets or highways abutting any developments in this District.

(h) Supplementary regulations: As provided in § 7A-50 through 7A-69, and Chapter 9A.

(i) Where a lot is developed for commercial use and the rear or side yard abuts a lot developed as a single-family, detached residential dwelling, or abuts a developed or undeveloped lot within the 1-RS, 2-RS, or 3-RS single-family residential zoning district, a masonry wall six (6) feet in height must be constructed on or parallel to that rear or side lot line. Not less than 25% of the total surface area of the wall shall allow the free-flowing passage of air while still serving as a visual barrier. The wall must be erected and maintained by and at the expense of the owner of the 6-B zoned property. The wall must be constructed as follows:

(1) Materials. Walls must be constructed of long-lasting, durable masonry materials, such as precast or poured concrete or concrete block. Walls of sheet, link or corrugated, iron, steel, or concertina wire, PVC, pressure treated woods, non-treated woods, and aluminum are prohibited. Barbed wire must not be constructed or placed on top of a wall or used as part of a wall.

(A) Dyes, tints, patterns or textures may be added to mitigate any "plain concrete" appearance. Plain concrete walls are not permitted.

(B) To change the appearance of an "unbroken, monotonous blank wall", it is encouraged that walls be divided into discrete sections no more than 10 feet in length, by columns, pilings, posts, architectural detail, or a change in orientation, texture, pattern, materials or color.

(2) The six (6) foot wall must extend the full length of the adjoining residential property; however, forward of the front building line of an adjoining residential lot, the wall must be no higher than four (4) feet.

(3) The wall must comply with all Town code requirements for vision clearance at corners and curb lots.

(4) Maintenance. Walls must be continuously maintained on both sides of the wall at no more than their maximum allowed height at the expense of and by the owner and occupant of the property within the 6-B zoning district in an orderly, non-deteriorating, and good condition free of graffiti, peeling or blistering paint or materials, broken or missing sections or posts, broken concrete block masonry, and the like.

(5) With regard to lots that were granted a special exception for an eating and drinking establishment, on or before April 1, 2013, a masonry wall meeting the foregoing requirements must be constructed by and at the expense of the property owner of the 6-B zoned property when the use of the property is changed to a restaurant or the pre-existing eating and drinking establishment use is substantially redeveloped. For the purposes of this sub-paragraph, the following definitions apply:

(A) "Change of use" means a change from the use existing to any other use.

(B) "Substantially redeveloped" means any increase in size, square footage, height, coverage or intensity of the use or any structure associated with the use, or the replacement or renovation the cost of which represents greater than 30% of the assessed value of the structures on the property as recorded in the most recent records of the property appraiser.

(`75 Code, Appendix A, Art. VI, § 6) (Ord. passed 9-26-72; Am. Ord. 74-3, passed 9-24-74; Am. Ord. 85-7, passed 11-12-85; Am. Ord. 2003-04, adopted 12-17-03; Am. Ord. 2-2005, adopted 7-20-05; Am. Ord. 2006-12, adopted 8-14-07; Am. Ord. 2008-08, adopted 9-3-08; Am. Ord. 2009-03, adopted 4-15-09; Am. Ord. 2013-02, adopted 5-15-13; Am. Ord. 2014-08, passed 10-29-14; Am. Ord. 2017-05, adopted 12-20-17; Am. Ord. 2018-03, adopted 8-15-18)

## § 7A-38. 8-B RESIDENTIAL-BUSINESS ZONE.

(a) Intent. The provisions of this district are intended to apply to the historical area of the Town along Ocean Avenue. Lot sizes and other restrictions are intended to promote and protect medium-density residential and business development while preserving adequate open space and the historical nature of the area and ensuring compatibility with other areas of the community.

(b) Principal uses and structures:

(1) Multi-family residences.

(2) Single-family residences (provided such residences meet the following 3-RS Single-Family Residential District requirements).

CRITERIA <sup>(1)</sup>	Lot Area (min sq ft)	Lot Width (min ft at building line)	Lot Depth (min ft)	Lot Coverage (max % by principal structure)	Living Area (min sq ft excluding garage and porch)	Height (maximum)	Minimum Yards (feet)			
							Front	Side Interior	Side Corner	Rear
DISTRICT										
3-RS	10,000	90 <sup>(2)</sup>	100	30	1,400 <sup>(2)</sup>	28	25	15	25	25

(1) Compliance with applicable supplementary regulations provided in §§ 7A-50 through 7A-69, and Chapter 9A is required.

(2) One half of the garage area, not to exceed 200 square feet, excluding porches may be used to meet minimum square footage requirements.

(3) Duplexes.

(4) Houses of worship. A house of worship must have a maximum of 150 seats in the main assembly area. The main assembly area must include side rooms and areas that can convert into part of the main assembly room.

(c) Accessory uses and structures: Customary accessory uses of one or more of the principal uses clearly incidental and subordinate to the principal use and in keeping with the intent and purpose of the District.

(d) Special exceptions:

(1) Personal service establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel. These include barbershop, beauty shop, clothes cleaning and repair, dry cleaning drop-off/pickup stations, nail care, reducing salons and health clubs, shoe repair, tailor, and similar uses not primarily offering a product for sale.

(2) Professional offices, clinics, general offices, business schools and similar uses.

(3) Educational and cultural institutions.

(4) Governmental and municipal buildings and public recreation areas.

(5) Bed and breakfast inns.

(e) Prohibited uses:

(1) Drive-in, drive-up, drive through, or any other similar feature that provides for receipt of goods, services, food, money or information by a consumer while seated in a motor vehicle.

(2) Facility or base for mobile marijuana dispensary.

(3) Grow house.

- (4) Marijuana dispensary.
- (5) All other uses not specifically or provisionally permitted herein.
- (f) Lot and principal structures, sizes, and setbacks, all uses except single-family residences:
  - (1) Minimum lot area, 9,000 square feet.
  - (2) Minimum lot width, 60 feet (at building setback line).
  - (3) Minimum lot depth, 150 feet.
  - (4) Maximum lot coverage, 40%.
  - (5) Minimum floor area.
    - a. Single-family structures, 1,400 square feet including one-half of the garage area not to exceed 200 square feet, excluding porches.
    - b. Multifamily structures:
      - 1. One-bedroom apartment, 800 square feet minimum.
      - 2. Two-bedroom apartment, 1,000 square feet minimum. Additional bedrooms require an increase of 150 square feet for each additional bedroom.
      - 3. Duplex, 2,000 square feet (1,000 square feet for each dwelling unit).
      - 4. Businesses, 300 square feet minimum.
    - (6) Maximum density, 15 dwelling units per acre.
    - (7) Maximum height, 28 feet.
    - (8) Minimum yard requirements:
      - a. Front setback, 25 feet from lot line.
      - b. Side interior lot setback, none; provided a public access is available to the rear of the lot for trash removal and fire protection. Otherwise, a minimum side setback of 15 feet on one side of the structure is required.
      - c. Side corner lot setback, 20 feet from lot line.
      - d. Rear setback, 20 feet from lot line; except 25 feet when abutting a residential area, and 15 feet when abutting an alley.
    - (9) Minimum distance between structures on the same lot, 15 feet.
  - (g) Sidewalk and parking lots. Sidewalks and parking lots shall be constructed and maintained by the owner along the public streets or highways abutting any developments in this district.
  - (h) Supplementary regulations: As provided in §§ 7A-50 through 7A-69, and Chapter 9A.
  - (i) Where a rear or side line of a developed lot abuts residentially zoned property (1-RS, 2-RS, or 3-RS single-family residential zoning districts), and the 8-B property has been granted a special exception use permit, a nonsolid wall or fence six (6) feet in height, shall be constructed on or parallel to that rear or side lot line. Not less than 25% of the total surface area of the wall shall allow the free-flowing passage of air while still serving as a visual barrier. The wall shall be erected by the owner of the 8-B zoned property. The fence or wall shall be constructed as follows:
    - (1) Materials. Fences and walls shall be constructed of long-lasting, durable materials, such as precast or poured concrete, concrete block, composite hardboard (Hardi-board or Hardi Plank), or recycled plastics. Fences or walls of sheet, link or corrugated, iron, steel, or concertina wire, PVC, pressure treated woods, non-treated woods, and aluminum are prohibited. Barbed wire shall not be constructed or placed on top of a fence.

a. Where concrete materials are used, dyes, tints, patterns or textures may be added to mitigate any "plain concrete" appearance.

b. To change the appearance of an "unbroken, monotonous blank wall", it is encouraged that walls or fences be divided into discrete sections no more than 10 feet in length, by columns, pilings, posts, architectural detail, or a change in orientation, texture, pattern, materials or color.

(2) The six (6) foot wall or fence shall extend the full length of the adjoining residential property; however, forward of the front building line of an adjoining residential lot, the fence or wall shall be no higher than four (4) feet.

(3) The wall or fence shall comply with all Town Code requirements for vision clearance at corners and curb lots.

(4) Maintenance. Fences and walls shall be continuously maintained by the owner of the 8-B property in an orderly and good condition, at no more than their maximum allowed height.

(j) Where the rear or side lot of a developed lot abuts residentially zoned property (1-RS, 2-RS or 3 RS single-family residential zoning districts) and the 8-B property is used for multi-family residential purposes, a fence, six feet in height, shall be constructed parallel to that rear or side lot line. The fence shall be erected by the owner of the 8-B zoned property. The fence shall extend the full length of the adjoining residential property located in the 1-RS, but shall be no higher than four feet, forward of the front building line of the adjoining residential lot. Further, the fence shall comply with code requirements for vision clearance at corners and curb lots. Fences shall be maintained in good condition by the owner of the 8-B zoned property.

(k) Vested rights for properties granted special exception uses prior to September 17, 2008. Provided that all the conditions set forth in § 7A-38(l) are met, all properties having been granted development approval, and which were developed on or before September 17, 2008, for any or all of the following special exception uses, shall be permitted to maintain those uses on the property, in the same manner and to substantially the same extent that the uses were approved, subject to the same conditions and limitations placed upon any prior established use:

(1) Retail stores, sales and display rooms, including places where goods are produced and sold at retail on the premises.

(2) Personal service establishments such as laundry and dry cleaning pickup stations, and similar uses.

(3) Professional studies, business schools and similar uses.

(4) Vocational and trade schools not involving operations of an industrial nature.

(5) Banks and financial institutions.

(6) Public and private parking lots.

(7) Public recreation areas.

Additionally, the provisions of § 7A-38(e)(5) shall not apply to those properties granted, and developed with, any or all of the special exceptions listed in this § 7A-38(k) as of September 17, 2008. In applying this subsection (k), no pre-existing use to which vested rights applies shall be expanded, either in size or scope, beyond the use as approved, developed, and in existence on or before September 17, 2008.

(l) Conditions, applicable uses and structures associated with § 7A-38(k).

The establishment of any use under the provisions of § 7A-38(k) shall be subject to the following conditions:

(1) The number of off-street parking spaces provided on the site are consistent with special exception approval granted prior to September 17, 2008. The degree of parking nonconformity shall not be increased by any extent.

(2) A structural feature or structure which is integrally associated with the use, but which is now prohibited under § 7A-38(e)(1), shall be considered part of the approved special exception use and may be reestablished in the event of its destruction. However, if the structure or structural feature is nonconforming

with respect to any provision of § 7A-38(f), the provisions of § 7A-83 shall apply to the nonconforming structure.

(3) Signs that do not meet the current provisions of § 7A-52(d) shall be considered nonconforming signs and subject to the provisions of § 7A-52(f).

('75 Code, Appendix A, Art. VI, § 8) (Ord. passed 9-26-72; Am. Ord. 85-7, passed 11-12-85; Am. Ord. 87-02, passed 5-12-87; Am. Ord. 2006-12, adopted 8-14-07; Am. Ord. 2007-08, adopted 11-14-07; Am. Ord. 2008-08, adopted 9-3-08; Am. Ord. 2008-09, adopted 11-19-08; Am. Ord. 2009-03, adopted 4-15-09; Am. Ord. 2014-08, passed 10-29-14; Am. Ord. 2016-01, adopted 10-19-16; Am. Ord. 2017-05, adopted 12-20-17)

Memo to: P&Z

From: Dan Harper

Re: Accessory structure size discussion

Issue: Member April Evans has requested a review of accessory structures to determine if the ordinance needs to be revised to include some size limitations.

Definition: “A permanent building or structure, subordinate to and located on the same lot with a principal building, the use which is clearly incidental to that of the principal building and which is not attached by any part of a common wall or common roof to the principal building”.

Examples: Gazebo, Pergola, Guest Room, Pool House, Detached Garage, Shop.

Recent Observations: I went back to May 2022, the furthest back for which on-line new house plans were available, to review what accessory structures had been constructed. Seven such structures were constructed (**Exhibit 1**). Of these seven only one stands out as possibly excessive. 526 Sunset built an enclosed second living space of 1,087 SF. I believe this was planned for during the short period that an accessory dwelling unit (second kitchen) was permitted.

### Review of other towns:

- Brevard County- 600sf or 50% of living area in principal residence.
- Palm Bay- not greater than living area of principal residence.
- Vero Beach-no more than 30% of rear yard.
- Volusia County- can't exceed maximum allowed lot coverage.

### Size Constraint Options-

- Limit allowed square feet
- Limit buildable area on lot, see example (**Exhibit 2**).

Summary thoughts—from the data I was able to assemble over the last couple of years there does not appear to be a current problem of excessive size in Melbourne Beach. Other communities reviewed do not appear to have much in the way of restricted size constraints on their accessory structures. I would caution any policy making on this issue without a more robust set of actual Melbourne Beach accessory structure build out data. I would suggest that we start to maintain a data set of accessory structure builds going forward and monitor for excessive size. This data table should include all accessory structures built along with a new house and those added to existing houses. Looking forward to thoughts of other members.

**Exhibit 1** (Two year look-back)

May 2022: 405 Riverview, gazebo 13x24= 312sf

Dec 2022: 513 Magnolia, guest bedroom 18x13= 234sf

Jan 2023: 517 Ave. B, cabana 16x17= 272sf

March 2023: 210 Second Ave., pool house 18x24= 432sf

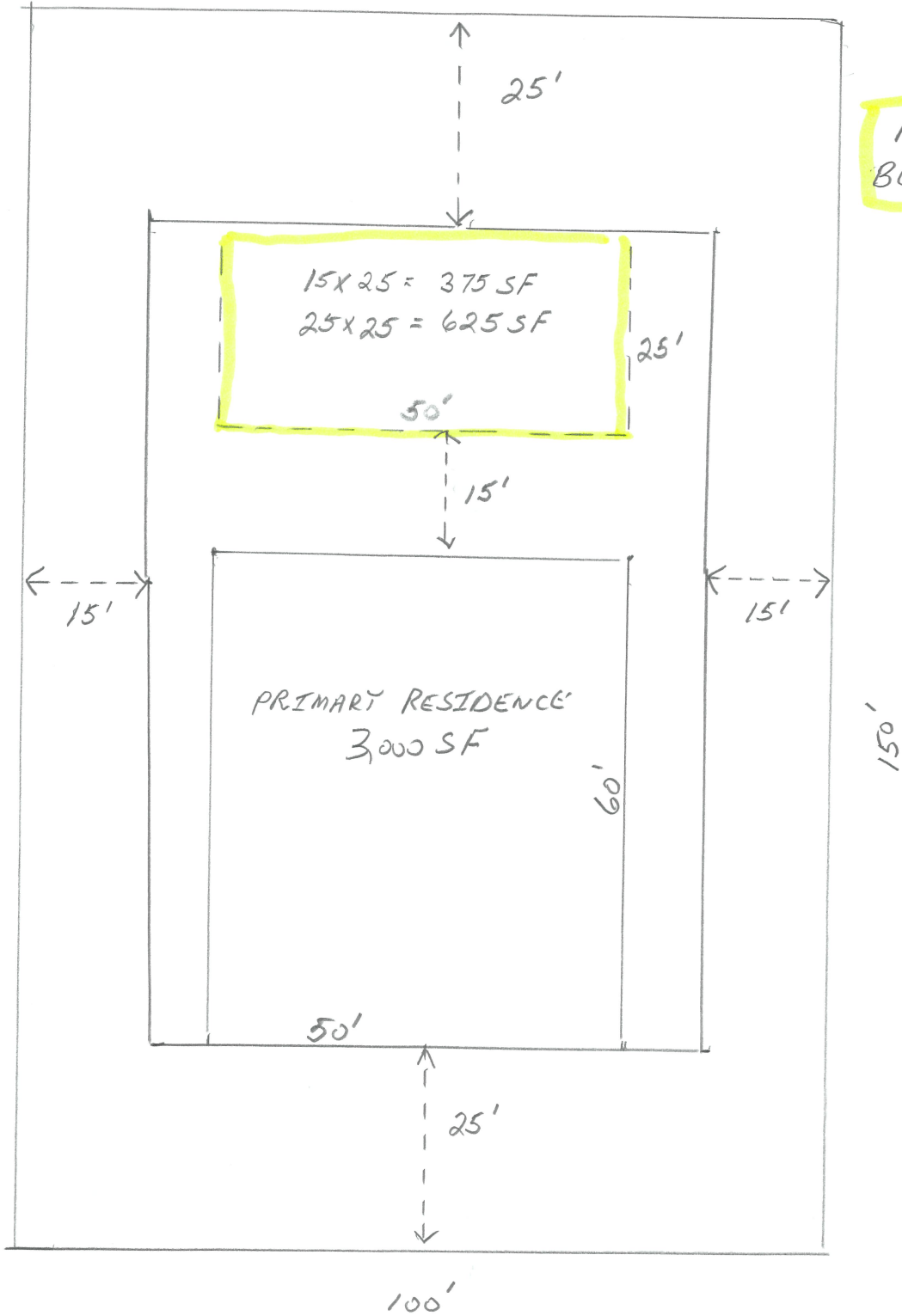
May 2023: 415 6<sup>th</sup>, pool house 10x10= 100sf

June 2023: 504 4<sup>th</sup>, 3 car detached garage on large lot. 1,410sf

March 2024: 526 Sunset, large structure 24x45=1,087sf



# EXHIBIT 2 - BUILDABLE AREA CONSTRAINT



ACCESSORY STRUCTURE  
BUILDABLE AREA

$15 \times 25 = 375 \text{ SF}$   
 $25 \times 25 = 625 \text{ SF}$

PRIMARY RESIDENCE  
3,000 SF

Memo to: Planning & Zoning Board

Subject: Tree cutting & replacement ordinance

From: Member Dan Harper

Issue—current ordinance calls for a tree for tree replacement on the house tear-down and rebuild lots (Sec. 9A-7(c). This has proven to be impractical given the substantial increase in footprint of the new home.

History—Chapter 9A: Landscape and Trees was modified in March of 2023 as it relates to tree retention. The before and after of this modification is as follows.

Before; (1) minimum of three trees must exist (9A-7 (a)).

(2) tree density after construction must be equal or greater than pre-construction (9A-6 (b)(2)).

After; (1) minimum of three trees was deleted.

(2) any tree removed must be replaced, tree for tree requirement (9A-7 (c)).

Community Survey--A drive by of new homes built on tear down lots prior to the March modifications demonstrated no lack of tree retention. The post construction landscapes' all have tree densities consistent with their neighboring homes and added to the goal of preserving and enhancing property values. See list below with tree estimates:

	<u>Number of Trees</u>
• 401 A1A	6+
• 404 Atlantic	8+

- 400 Banyan 10+
- 422 Sunset 12+
- 527 Sunset 13+
- 507 Sunset 13+
- 520 Sunset 7+
- 524 Sunset 15+
- 303 Riverside 10+
- 901 Riverside 9+
- 509 Third 16+
- 419 Ave B 16+
- 418 Ave B 25+
- 404 Ave B 17+
- 307 Ave B 16+
- 401 Ave A 10+
- 522 Ave A 14+
- 225 Fourth 14+
- 208 Second 5+
- 202 Second 12+
- 304 First 8+

*Neighboring/similar communities tree removal ordinances:*

- City of Melbourne (Sec 9.272 (b) (17), all trees located on properties with existing single dwellings are exempted from tree removal provisions.
- Winter Park (Sec 58-284 (a), palm trees are exempted from tree removal provisions.

- Satellite Beach (Sec. 30-702 (c) (1), permit required for removal of “protected tree”, may require relocation of tree. Protected tree not defined.
- Orange County (Sec 15-279) (8), trees located on single family lots are exempted from tree removal provisions.
- Indian Harbor (Sec 107.36) Definitions-- excludes palms from “protected tree”.
- Brevard County (Sec. 62-4334 (2), single family lots that are 1.25 acres or less are exempt.

Citizen input--Many citizens have spoken at Town Commission meetings about the need/desire to retain oak trees (Town Commission minutes). Other municipalities and counties reviewed reflected a desire to retain oak and other canopy trees where possible. Citizens have also voiced their desire to retain as many trees as possible (Town Commission minutes).

Melbourne Beach Comprehensive Plan-- “Periodically review, analyze, and amend, as determined necessary, the tree preservation and landscape ordinances to ensure that minimum standards are consistent with the desires of the community, are easily understood and enforceable” (Policy 14.1).

### Summary of findings

- The tree for tree replacement requirement in many instances has proven to not be practical.
- The tree density provision was adequately working prior to the March 2023 ordinance modification.
- Sampled other communities did not have tree for tree requirements.
- Melbourne Beach citizens strongly desired the replanting of all Oak trees removed.
- Maintaining tree density requirements is consistent with the Melbourne Beach comprehensive plan.

### Recommendation

Make the following change to the Chapter 9A: Landscape and Trees.

- Section 9A-7(C), delete the second sentence, “Any trees that are removed for new construction shall be replaced by the same or similar species”.

Submitted by Dan Harper, Member P&Z, 11-01-2024

Chapter 1A Land Development Code

Section 1A-3 Definitions

**Tree Density**-The pervious square ft. of a lot divided by the number of trees on the lot.

Recommendation to added the above definition of Tree Density to the Land Development Code (Sec 1A-3)

**Planning and Zoning Meeting**  
**Submittal from Environmental Advisory Board**  
**November 6, 2024**

**Sections:** 9A-2; 9A-6; 9A-7; 9A-8; 9A-10; 9A-12; 11A-2; 7A-31

**Meeting Date:** 11/12/24

**From:** Environmental Advisory Board

**RE:** Cutting down of mature native trees

**Background Information:**

We have observed many mature native trees being taken down, seemingly unnecessarily. Town residence have approached us to find out what is going on.

- Many clear-cut/nearly clear-cut lots around town.
- Two very old scrub oaks taken down at 322 Fourth Ave, on Oak St, taken down where a new fence was installed, though likely at least one of these extremely slow-growing native trees could have remained in part.
- Two very large oak trees removed at 314 Third Ave. (Owner stated this was for insurance reasons.)
- Several large oaks/gumbo limbos at ~506 Third Ave.
- Several mangroves have been removed north and south of the Third Avenue river access.

**Recommendations:**

9A-2

The intent of this article is to preserve trees whenever and wherever they exist and to provide trees wherever they are sparse or do not exist, thus enhancing the health, welfare and beautification of the Town.

- **More specifics on the benefits of trees like flood control, filters the air, reduce stormwater runoff etc.**
- **“intent to include encouragement of... ‘Florida Friendly Landscaping’ and ‘Florida Native Landscaping’ ”- Weak to have only the intuition written here and should be specified within specific sections.**

9A-6 (b) (1) a

The tree is located in a buildable area or yard where a structure or improvements may be placed where inability to remove the tree would unreasonably restrict the permitted

use of the property and the tree removal has been authorized by the Town as part of a site plan review

- **“where...improvements may be placed...” Is building a perimeter fence an acceptable reason for removal? Personal observation of two very, very old scrub oaks being taken down for a fence at 322 Fourth Avenue. Fence should be required to work around such growth that can not be replaced in many generations.**

#### 9A-6 (b) (2)

Relocation or replacement. As a condition to the granting of a permit, the applicant may be required, where practical, to relocate the tree being removed or be required to replace the tree being removed with a tree somewhere within the site of the type that will attain an overall height of at least twelve feet (12') and have a trunk caliper of at two inches (2") at planting, measured four and one-half feet (4.5') above grade. The green areas left after all building and parking lot requirements have been met shall contain a tree density equal to or greater than that existing on the overall site before the beginning of construction.

- **2" caliper is weak and should be larger.**
- **Specify native trees where native or Florida friendly trees.**
- **Provide motivation for native trees (maybe with lesser size requirements).**

#### 9A-7 (b) (7)

Replacement of landscaping material shall occur within 60 days, unless said time is extended by the Town Manager for good cause shown.

- **Short-term and long-term (year-out?) follow up with fines for not establishing and assuring replacement trees as code requires**

#### 9A-7 (b) (10)

Clusters of three palms shall be an acceptable substitute for up to 50% of the required canopy trees and 50% of the required ornamental trees.

- **Too much emphasis on palms. Exclude palms as meeting tree requirements.**
- **Focus on oak or similar native replacements, which support a great amount of wildlife.**

#### 9A-8 (a) (1)

Only land-clearing is permitted within the drip line of the tree to be protected. Tree survival. Trees must survive on-site in a viable condition. Trees failing to meet this



survival requirement must be replaced within 45 days after a written notification is received by the property owner from the town.

- **Who is checking to make sure the drip line is being protected during clearing?**

9A-10 (d)

The types of trees included on the current Florida Noxious Weed List and Florida Exotic Pest Council's List of Invasive Plant Species shall be exempt from the terms and provisions of this article and shall not be used to meet any replacement or planting requirements.

- **Is code enforcement very familiar with the lists above and can visually spot invasive or noxious weeds or have a reliable source in Town that they can consult?**

9A-12

The improper removal of each tree shall constitute a separate offense under this chapter. Violation of this chapter and imposition of the penalty shall be determined and imposed by the Code Enforcement Special Magistrate or by a court of proper jurisdiction.

- **Spell out the general fines as a deterrent. This is too vague and doesn't sound serious.**
- **Make violation fine amount significant enough such that they are not ignored.**

11A-2 (a)

During the review of a site plan or any other plan for development, the Town Manager shall use the Natural Wetlands Inventory maps, the Brevard County Soil Survey, the Town Comprehensive Plan, aerial photography or other applicable data in order to determine the potential existence of wetlands on or adjacent to the site.

11A-2 (b)

If a review of the above documents indicates that wetlands may exist on or adjacent to the site, an inspection will be performed by the Town Manager.

- **Is the Town Manager an expert in Wetlands evaluation?**

7A-31 through 35

- **Disallow zero-lot-line construction**

**Additional suggestions:**

- **Create a tree bank, where the money collected from fines for cutting mature native trees would be used toward new growth**
- **Require a 2 for 1 hard wood replacement requirement, given typical slow growth rate**
- **Provide special considerations (steeper fines?) for the removal of very old native species (e.g. scrub oak; native species great than specified size) which will be impossible to replace for many generations**
- **Increase the fines to a much larger amount to ensure native mature trees are properly protected.**
- **Allow the homeowner a scorecard – you can do some of this and some of that – to give some flexibility to get to the end goal**
- **Require the Town to have a tree survey completed every five years. This could be accomplished by aerial observation.**
- **Require the Town to have a certified arborist on staff or on contract to assist on decision making and to answer questions.**
- **Require a set percentage of plantings of trees and scrubs to be native to our area.**
- **Add landscape plan review before “clearing” and after, with, oversight, requiring the landscape beyond just the trees to be 50% native. Utilize and provide local resources for trees, plants, landscaping.**