

ORDINANCE NO. 2008-04

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE V, SECTION 1-5.1 OF THE LAND DEVELOPMENT CODE OF THE TOWN; PROVIDING FOR EXCEPTIONS TO HEIGHT LIMITATIONS; DECLARING THAT ELEVATORS ARE INTENDED FOR HUMAN OCCUPANCY AND SHALL NOT BE CONSIDERED FOR AN EXCEPTION TO THE HEIGHT LIMITATIONS; AMENDING SECTION 1-20.2 OF ARTICLE XX OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING THE DEFINITIONS OF STORY AND BUILDING HEIGHT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Town Council has determined that clarification is needed relating to building heights, appurtenance height, exception to heights and directed the code be amended; and

WHEREAS, Planning and Zoning Board has held a public hearing and has made recommendations to the Town Council concerning such clarification.

NOW THEREFORE BE IT ORDAINED by the Town Council of the Town of Malabar, Brevard County, Florida, that

SECTION 1.

Section 1-5.1 of Article V of the Land Development Code of the Town is hereby amended in full to read as follows:

“Section 1-5.1. Height exceptions.

The below cited appurtenances or mechanical devices typically required to be placed above roof level and not intended for human occupancy may exceed height limitations cited within this Code upon approval by the Town Council. The Town Council shall first consider the recommendation of the Planning and Zoning Board. A staff recommendation shall be provided by the Building Official and/or the Town Engineer. The appurtenances or mechanical devices shall include:

- Chimneys.
- Water Towers.
- Ventilators.
- Radio and Television Antennas.
- Other similar duly approved appurtenances or mechanical devices.

In no case shall any permitted heights be in conflict with the height regulations established for the Valkaria Airport by Brevard County and/or the Federal Aviation Administration. An elevator is hereby declared intended for human occupancy and shall not be considered for an exception to the height regulations.”

SECTION 2.

Section 1-20.2 of Article XX of the Land Development Code is hereby amended to provide for a new definition of a "Building Height" which new definition shall read as follows:

"Building Height, The vertical dimension measured from the finished grade at the building line to the highest point of the structure, including any and all decorative and safety structures, unless exempted under 1-5.1 of the Land Development

SECTION 3.

Section 1-20.2 of Article XX of the Land Development Code is hereby amended to provide for a new definition of "Story" which new definition shall read as follows:

"Story. That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there be no floor above it, then the space between such floor and ceiling next above. If any portion of a roof area is intended for human occupancy, except for maintenance purposes, then such roof area shall also be considered a story, notwithstanding that no floor or ceiling is located above it."

SECTION 4. CODIFICATION.

It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the provisions of Sections 1, 2 and 3 of this ordinance become part of the Land Development Code of the Town of Malabar. The Town Clerk is hereby authorized and directed to cause the provisions of sections 1, 2 and 3 of this ordinance to be incorporated into the Town's Land Development Code.

SECTION 5. SEVERABILITY.

In the event 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 Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council 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 6. CONFLICT.

All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 7. EFFECTIVE DATE.

The ordinance shall take effect immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member McClelland. The motion was seconded by Council Member Dezman and, upon being put to a vote, the vote was as follows:

Council Member Nancy Borton	<u>Aye</u>
Council Member Brian Vail	<u>Aye</u>
Council Member Charles (Chuck) McClelland	<u>Aye</u>
Council Member Jeffrey (Jeff) McKnight	<u>Excused</u>
Council Member Patricia (Pat) Dezman	<u>Aye</u>

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this 7th day of April, 2008.

BY: TOWN OF MALABAR

Thomas Eschenberg
Mayor Thomas M. Eschenberg

First Reading: 03-17-08
Second Reading: 04-07-08

ATTEST:

Debby K. Franklin
Debby K. Franklin
Town Clerk/Treasurer

Approved as to form and
legal sufficiency by:

Karl Bohne
Karl W. Bohne, Jr.
Town Attorney