

ORDINANCE NO. 2008-07

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING SECTION 13-38(c) RELATING TO VARIANCES AUTHORIZED BY THE BOARD OF ADJUSTMENT; ESTABLISHING GROUNDS FOR A VARIANCE; PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICTS; PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, as follows:

Section 1. Section 13-38(c) of the Code of Ordinances of the Town of Malabar is hereby amended in full to read as follows:

“(c) The Board of Adjustment may only grant a variance to the requirements of subsection (b) (1) and (2). Notwithstanding the authority granted to the Board of Adjustment in Section 1-12 of the Town of Malabar Land Development code the below stated procedures shall in all respects be utilized for a variance to subsection (b)(1) and (2). In order to authorize a variance under this section the Board of Adjustment must find the following:

1. That special conditions and circumstances exist and that the presence of which would make complying with section 13-38 (b) (1) or (2) unreasonable. Financial or economic reasons, conditions or circumstances shall not be grounds for a variance under this section;
2. The special conditions and circumstances are not caused in any way by the owner or applicant;
3. That such variances will not be injurious or detrimental to the public welfare;
4. That the variance granted is the minimum variance that will make possible the reasonable use of the land;
5. As a condition to the issuance of a variance the owner of the property shall dedicate the right of way required by section 13-39 of the code through the furthest boundary of the lot of record on which a principal structure or accessory structure is to be constructed. The owner shall also execute an agreement in recordable form with the Town that binds the owner and his/her successors in interest to pay for the proportionate share of completion of the road through the furthest boundary of the lot of record on which a principal structure or accessory structure is constructed in the event the road is completed by another. The board of adjustment may impose additional reasonable conditions and safeguards that it deems appropriate;
6. The board of adjustment may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both.”

Section 2. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida and it is hereby provided that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

Section 3. Should any Section, Clause, or Provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the remaining provisions or parts of this Ordinance.

Section 4. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

Section 5. This Ordinance shall become effective immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council member Vail. The motion was seconded by Council member McKnight 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>Excused</u>
Council Member Jeffrey (Jeff) McKnight	<u>Aye</u>
Council Member Patricia (Pat) Dezman	<u>Aye</u>

This ordinance was then declared to be duly passed and adopted this 16 day of June, 2008.

TOWN OF MALABAR

Thomas M. Eschenberg

By Thomas M. Eschenberg, Chair

First Reading 06/02/2008

Second Reading 06/16/2008

Approved as to form and legal sufficiency by:

Karl Bohne

Karl W. Bohne, Jr.
Town Attorney

ATTEST:

Debby Franklin

Debby K. Franklin, Town Clerk