

ORDINANCE NO. 2012-60

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING SECTION 1-5.27 RELATING TO PONDS; CREATING STANDARDS FOR DECORATIVE WATER FEATURES AND PONDS; PROVIDING FOR DEFINITIONS; PROVIDING FOR PERMITS FOR DECORATIVE WATER FEATURES AND PONDS; PROVIDING FOR DESIGN CONSIDERATIONS FOR DECORATIVE WATER FEATURES OR PONDS; PROVIDING FOR A REVIEW PROCESS AND PERFORMANCE STANDARDS; PROVIDING FOR THE COMPLETION OF DECORATIVE WATER FEATURES AND PONDS; PROVIDING FOR STANDARDS FOR FILL ACTIVITIES; PROVIDING FOR PENALTIES AND AN APPEAL PROCESS; PROVIDING FOR REPEAL, SEVERABILITY, INCORPORATION INTO THE CODE OF ORDINANCES; AND 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.** Article V, Section 1-5.27 is amended in full to read as follows:

**“Section 1-5.27. Decorative Water Features and Ponds.**

*General provisions.* It shall be a violation of this ordinance for any person to construct, or permit to be constructed, or alter an existing decorative water feature or pond within the Town of Malabar without first obtaining a decorative water feature or pond permit from the Town of Malabar.

**1. Definitions.** As used in this section the following words and phrases shall have the following definition:

- A. *Allowable material.* Shall mean uncontaminated sand, soil or dirt or other items approved by the Town. Construction debris and yard waste shall not be considered allowable material.
- B. *Construction debris.* Shall mean material generally considered not to be water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard and lumber, metal, asphalt paving material, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation or maintenance of a structure.
- C. *Decorative Water Feature (DWF).* Shall mean any excavation for the purpose of retaining water wherein the surface area is 1,000 square feet or smaller in size. For purposes of complying with applicable set-backs a DWF shall be considered a structure.

D. *Depth, Maximum permitted.* The maximum depth allowed for a DWF or a pond is 12 feet. For example per the UF Extension Service ponds should be at least 6 to 8 feet deep. Shallow water should be avoided unless the site is to be used to attract waterfowl.

E. *Excavated Material.* Shall mean the material, not top soil, removed from the project site. All topsoil shall be used on site. Use of other excavated material shall be used on the property where the DWF or pond is constructed.

F. *Freeboard.* Freeboard is the safety feature to be incorporated into the design for all ponds. Freeboard is the added height (berm) of the soil surface over the design water surface elevation.

G. *Impound Area.* The area of the pond or DWF that holds the water.

H. *To fill.* Shall mean the adding of allowable material to alter the existing topography or characteristics of the surface area or depth of an existing decorative water feature or pond.

I. *Littoral zone.* Shall mean that portion of the decorative water feature or pond which is close to the shore and allows sunlight to reach the bottom, typically less than three (3) feet deep.

J. *Pond.* Shall mean any excavation for the purpose of retaining water wherein the surface area is greater than 1,000 square feet in size. Any fill activity which reduces the surface area or depth of an existing pond, regardless of size, may only be accomplished after a permit authorizing such activity has been issued. For purposes of complying with applicable set-backs a Pond shall be considered a structure.

K. *Project site.* Shall mean the area where the decorative water feature or pond shall be located and all other affected areas of the property.

L. *Water Source.* Shall mean the source of the water filling the DWF or pond, included but not limited to ground water table, wells, and springs.

## **2. Permits for Decorative Water Features and Ponds.**

A. *Decorative Water Feature (DWF).* Any person wishing to construct, alter, or to fill a DWF within the Town of Malabar must, as a precondition, apply for a DWF permit. In order to obtain a decorative water feature permit, an applicant must provide the following:

The applicant is required to submit an original and two (2) Detailed Drawings with the following information shown:

1. Boundary of property shown by a heavy line – i.e., a sketch, property survey, aerial survey, plat map; a professional signed and sealed survey is not required.
2. Indicate on sketch the location, size, dimension and depth of DWF to be constructed OR filled
3. Existing structures shown on drawing (including setbacks from all property lines)
4. An identification of trees in DWF project site with a dbh (dimension at breast height) of 8" or greater. This includes both trees to remain and those proposed for removal.
5. Location of well(s) and drain field(s) within 75 feet of project site.
6. Evidence that the DWF project site is not in a wetland. This could be a letter from Florida Department of Environmental Protection.
7. Plan for use of excavated material or written statement on method of disposal. If being used on site, show on sketch where materials will be used or type of material to be used for filling the DWF.
8. When filling in a DWF indicate the type of material to be used and the method of compaction.
9. Stormwater drainage / retainage and overflow plan. Indicate with arrows on sketch how overflow water from DWF will drain.
10. refer to DWF checklist provided.

B. *Ponds.* Any person wishing to construct, alter, or to fill an existing pond within the Town of Malabar must, as a precondition, apply for a pond permit. In order to obtain a pond permit, the applicant is required to submit an original and (2) sign/sealed engineered Site Plans with the following information shown:

1. Boundary of property will be shown by heavy line- i.e. sketch, property survey, aerial survey, plat map and topography.
2. Proposed project site location, dimensions and depth of Pond to be constructed or filled showing setbacks from property lines.
3. Dimensions to show the side slope elevations.
4. Existing structures shown on Site Plan (including setbacks from all property lines)
5. An identification of trees in Pond project site with a dbh (dimension at breast height) of 8" or greater
6. Location of well(s) and drain field(s) within 75 feet of project site.
7. Evidence that the pond project site does not affect wetlands. This could be a letter from Florida Department of Environmental Protection.
8. Site Plan to show use of top soil and estimated volume of excavated material at the project site. Show on site plan where material will be used including engineered estimates of post construction topography. If material is not useable, a letter from a Florida licensed engineer is required to be submitted to the Town stating why the material is not suitable i.e. due to contamination, muck, etc or the amount exceeds what can be put on the site due to layout of property.

9. When filling in a pond, a written explanation on the type of material to be used to fill the pond and the method of compaction.
10. Stormwater drainage / retainage and overflow plan. Indicate with arrows on site plan how overflow water from pond will drain.
11. Refer to Pond checklist provided.

### **3. Design Considerations for Decorative Water Features or Ponds**

- A. *Design Considerations.* Side slopes depend on the stability of the excavated material. For example side slopes shall mean the ratio between the horizontal and vertical distance of excavated ponds as measured from the edge of the water and should be no steeper than natural angle of repose of the material being excavated. For example clay soils have a steeper angle of repose than sandy soils.
- B. *Site Selection.* Site selection and placement of pond are critical to the success of the pond. The water source for the pond may be surface runoff from the pond watershed (the area that drains into the pond) or it may come from subsurface seepage in areas with high water tables. Factors such as soil characteristics and the existence of local springs must be considered in site selection. If the primary use of the pond is fire protection it should be located near the structures to be protected.
- C. Ponds should have a minimum of one foot of freeboard or minimum amount determined by Florida licensed engineer to keep water from washing over the sides of the pond due to wave action or flooding.
- D. A Pond area with high amounts of clay is desirable for retaining water. Sandy clays and loam soils will still impound water. Soils with high levels of sand or gravel may have excessive seepage unless water tables are naturally high. A pond sealer or lining may be necessary in these situations. The decision to install a pond liner shall be that of the applicant.

### **4. Review process for Decorative Water Features or Ponds.**

- A. *Decorative Water Feature (DWF).* The following process for review shall apply to all permit applications presented to the Town of Malabar for consideration.
  1. The application will be forwarded to the Building Official for review. The Building Official may visit the project site to verify information.
  2. If all information is compliant with Town Code, the Building Official will approve the application and a permit will be issued. The permit fee will be consistent with the fee resolution adopted by Council.
  3. If the Building Official approves the permit with conditions, the applicant may appeal the decision as stated in Section 9.

4. If the Building Official denies the permit for non-compliance, the applicant may appeal the decision as stated in Section 9.

B. *Ponds*. The following process for review shall apply to all pond permit applications presented to the Town of Malabar for consideration.

1. The application will be forwarded to the Building Official for review compliance. The Building Official may visit the project site to verify information but it is not mandatory.
2. If all information is compliant with Town Code, the Building Official will forward a copy to the Town Engineer for review. If the Town Engineer determines that the pond, project site, drainage plan are all in compliance, the Town Engineer will approve the permit application and a permit will be issued. The permit fee will be consistent with the fee resolution adopted by Council.
3. If the Building Official or Town Engineer approves the permit with conditions, the applicant may appeal the decision as stated in Section 9.
4. If the Building Official or Town Engineer denies the permit for non-compliance, the applicant may appeal the decision as stated in Section 9.

**5. Performance Standards for the construction of a Decorative Water Features and Ponds.**

- A. Setbacks shall be as stated in Table 1-3.3.A pertaining to structures for the applicable zoning category.
- B. Depth shall in no case exceed 12 feet for either a DWF or pond.
- C. Construction of a DWF or pond or related site grading shall not adversely affect offsite drainage patterns.
- D. Uses of Excavated material. All excavated topsoil shall remain on site. All other excavated material, unless otherwise provided for herein, shall be used on site. Off site disposal of excavated material, except topsoil, shall be permitted under the following conditions:
  1. For any DWF or pond for which a permit is required excavated material may be disposed of offsite if a certification is presented to the Town by a Florida licensed engineer stating that the excavated material, except topsoil, can not be utilized on site. In submitting the certification, the Engineer shall take the following into consideration:
    - a. The size of the site
    - b. Available on site retention
    - c. The impact of onsite uses may have on adjoining properties.
    - d. No excavated material may be sold or offered to sale or trade or bargained for anything of value.
    - e. Excavated material for the purpose of mining is prohibited.

2. Excavated material which is unsuitable for use on the site because of high organic content (muck) may be disposed of off-site if approved by Town Engineer.
- E. Discharge structures shall be designed to limit the maximum discharge rate to the pre-development discharge rate. The discharge velocity shall be controlled so as to not erode or cause scouring of existing or proposed facilities. Discharge structures shall only discharge to a point of legal positive out-falls.

#### **6. Completion of Decorative Water Features and Ponds.**

- A. Decorative water feature or pond permits issued pursuant to this section shall be effective for a period of 180 days from the date of issue.
- B. An extension may only be granted once upon good cause after review and approval by the Town Council. Any request for extension shall be made in writing and filed with the Building Department prior to the expiration of the permit. The request for extension will be put on the next available Town council agenda. The Town council may entertain an extension filed after the existing permit expired for good cause shown; however, no request for extension shall be entertained by the Town Council which is filed 30 days or greater from the expiration of the permit.
- C. Refusal by the Town Building Official to issue a decorative water feature or pond permit extension may be appealed to the board of Adjustment in the same manner set forth in Section 9 below.
- D. The routine maintenance and upkeep of a DWF or Pond will not require a permit.

#### **7. Standards for fill activities.**

- A. No permit for filling in an existing decorative water feature shall be reviewed unless a written statement that the filling will not adversely affect the natural environment of the applicant's property or adjacent properties.
- B. No permit for filling in an existing pond shall be reviewed unless written evidence from the outside jurisdictional agency is attached to the application indicating that the filling will not adversely affect the natural environment of the applicant's property or adjacent properties.

#### **8. Failure to Complete Construction of Decorative Water Features or Ponds**

- A. A fine of up to \$250 per day may be assessed against any applicant who fails to complete a DWF or pond within the six (6) month period. A fine may be levied per Town Code.
- B. Further, the Town, at its discretion, may require the applicant to restore the land to the pre-permit condition if it is not completed within the allotted time.

- C. It shall be the obligation of the applicant to notify the Town of completion. The DWF or pond shall be complete only after the final inspection by the Town.

**9. Appeal process for Decorative Water Features and Ponds.**

If an applicant's permit is approved with conditions or denied, the applicant shall have the right to appeal such conditions or denial to the Board of Adjustment under the following procedure:

- A. An appeal made to Board of Adjustment by the applicant shall be made within ten business days of the applicant receiving notice of the approval with conditions or denial of the permit.
- B. To appeal a decision to the board of Adjustment, the applicant must submit, in writing, a notice to the Board of Adjustment of the intention to appeal the decision of the Town Engineer or Building Official and request the matter to be placed on the Board's agenda. The Notice of Appeal shall contain the basis upon which the appeal is being made.
- C. Upon receipt of a timely notice of appeal, the Town Clerk shall set the matter on the Board of Adjustment's agenda within forty five (45) days of the date of notice of appeal. The Town Clerk shall submit all documentation relating to the application and permit to Board for review.
- D. The Board of Adjustment shall review the issue and determine whether the decision of the Town Engineer or Building Official shall be upheld, modified or reversed. All decisions of the Board of Adjustment are final and there shall be no rehearing entertained. The proceedings before the board of Adjustment shall be quasi-judicial.
- E. Appeals of decisions of the Board of Adjustment may be taken to a court of competent jurisdiction within 30 days of the rendition of the decision by the board of Adjustment."

**Section 2. Repeal.** All Ordinances or parts of Ordinances in conflict herewith are hereby repealed and all Ordinances or parts of Ordinances not in conflict herewith are hereby continued in full force and effect.

**Section 3. Severability.** In the event a court of competent jurisdiction shall hold or determine that any part of the this ordinance is invalid or unconstitutional, the remainder of the is Ordinance shall not be effected and it shall be presumed that the Town Council, Town of Malabar did not intend to enact such invalid or unconstitutional revision. It shall further be assumed that the Town Council would have enacted the remainder of this Ordinance without said invalid and unconstitutional revision, thereby causing said remainder to remain in full force and effect.

**Section 5. Incorporation.** It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida and it is herby 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 6. Effective Date.** This Ordinance shall become effective immediately upon its adoption.

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

- Council Member Jim Milucky Aye
- Council Member Wayne Abare Aye
- Council Chair Steven (Steve) Rivet Aye
- Council Member Jeffrey (Jeff) McKnight Aye
- Council Member Marisa Acquaviva Aye

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 3rd day of December, 2012.

TOWN OF MALABAR  
BY: Carl A. Beatty  
Mayor Carl Beatty

Planning & Zoning: 9/26/2012  
TC First Reading: 11/05/2012  
TC Second Reading: 12/03/2012

ATTEST:  
By Debby K. Franklin  
Debby K. Franklin, C.M.C.  
Town Clerk/Treasurer

(seal)

Approved as to form and content:  
Karl W. Bohne, Jr.  
Karl W. Bohne, Jr., Town Attorney