

# **Town of Melbourne Beach**

## **MINUTES**

### **PLANNING & ZONING BOARD MEETING TUESDAY, MARCH 7, 2023 @ 6:30 pm COMMUNITY CENTER – 509 OCEAN AVENUE**

#### **Board Members:**

Chairman David Campbell  
Vice-Chairman Kurt Belsten  
Member April Evans  
Member Douglas Hilmes  
Member Daniel Gonzalez  
Alternate Dan Harper  
Alternate Gabor Kishegyi

#### **Staff Members:**

Town Manager Elizabeth Mascaro  
Town Attorney Clifford Repperger  
Building Official Robert Bitgood  
Town Clerk Amber Brown

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**

Chairman David Campbell called the meeting to order at 6:31 p.m.

**2. ROLL CALL**

Town Clerk Amber Brown conducted the roll call

**Present:**

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

**Staff Present:**

Town Manager Elizabeth Mascaro  
Town Attorney Clifford Repperger  
Building Official Robert Bitgood  
Town Clerk Amber Brown

**Absent:**

Member Daniel Gonzalez

**3. APPROVAL OF MINUTES**

A. February 7, 2023 minutes

**Member April Evans made a motion to approve the February 7, 2023 minutes; Vice Chairman Kurt Belsten seconded; Motion carried 5-0.**

**4. NEW BUSINESS**

A. Site plan approval for 401 Atlantic St – garage addition

Alternate Dan Harper asked about this site plan requesting a coastal construction variance as well.

Building Official Robert Bitgood spoke about all coastal construction having to get Board of Adjustment approval prior to going to Planning and Zoning.

Site Civil Engineer Clayton Bennett spoke about the coastal construction line and the 1986 line. The Town and DEP require a variance for any construction seaward of the 1986 line which was approved at the Board of Adjustment meeting last month.

Member April Evans asked to include some type of documentation that the Board of Adjustment approved the variance in future packets.

**Member April Evans moved to approve the site plan for 401 Atlantic St subject to the execution of the variance; Vice Chairman Kurt Belsten seconded; Motion carried 5-0.**

B. Site plan approval for 214 Surf Rd – building addition

**Member April Evans moved to approve the site plan for 214 Surf Rd; Vice Chairman Kurt Belsten seconded; Motion carried 5-0.**

C. Site plan approval for 210 Second Ave – cabana accessory structure

**Member Douglas Hilmes moved to approve the site plan for 210 Second Ave; Member April Evans seconded; Motion carried 5-0.**

D. Site plan approval for 320 Avenue A – garage accessory structure

Alternate Dan Harper asked if the accessory structure can be wider than the main residence.

Building Official Robert Bitgood spoke about the accessory structure can be wider it just cannot be taller or have more square footage than the primary structure and has to meet the setbacks.

Member Douglas Hilmes asked about the rear setback being 16.08, but doesn't it need to be at least 25 feet.

Chairman David Campbell spoke about the setback being 25 feet for the main structure and 15 for accessory structures.

**Member Douglas Hilmes moved to approve the site plan for 320 Avenue A; Member April Evans seconded; Motion carried 5-0.**

## **5. PUBLIC HEARINGS**

A. Second reading of Ordinance 2023-01 – Landscaping and Trees Section 9A

Town Attorney Clifford Repperger read Ordinance 2023-01

**AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, AMENDING; APPENDIX "A" OF THE TOWN CODE OF ORDINANCES OF MELBOURNE BEACH, THE LAND DEVELOPMENT CODE; AMENDING CHAPTER 9A REGARDING LANDSCAPING AND TREES; SPECIFICALLY AMENDING SECTION 9A-4, PERMIT REQUIRED FOR CUTTING DOWN TREE; SPECIFICALLY AMENDING SECTION 9A-5, APPLICATION FOR PERMIT; REVIEW OF APPLICATION; SPECIFICALLY AMENDING SECTION 9A-6, ON-SITE INSPECTION; SPECIFICALLY AMENDING SECTION 9A-7, MINIMUM TREE PLANTINGS; SPECIFICALLY AMENDING SECTION 9A-10, EXCEPTIONS; SPECIFICALLY AMENDING SECTION 9A-12, PENALTY; AMENDING ARTICLE IV, CHAPTER 7A, SUPPLEMENTARY DISTRICT REGULATIONS; SPECIFICALLY AMENDING SECTION 7A-53, FENCES AND WALLS; SPECIFICALLY AMENDING SECTION 7A-58, VISION CLEARANCE AT CORNERS; PROVIDING A SEVERABILITY/INTERPRETATION CLAUSE; PROVIDING FOR**

**CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES AND RESOLUTIONS; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.**

Town Attorney Clifford Repperger spoke about this ordinance having the first reading at the last Planning and Zoning Board meeting and it being tabled until this meeting. Then it went for the first reading to the Town Commission in February where it was passed subject to the recommendation from Planning and Zoning at the second reading. Town Attorney Clifford Repperger spoke about the amendments to the ordinance and the changes after first reading at the Town Commission Meeting

- Amends Section 9A-4 to require permitting, removal standards, and exempt trees posing an unacceptable risk in accordance with Florida Law.
- Amends Section 9A-5 regarding number of tree removal plans required.
- Amends Section 9A-6 to provide for dimensions for replacement trees and justification for removal permits.
- Amends Section 9A-7 to revise minimum tree plantings for new construction and to add maintenance and replacement requirements.
- Amends Section 9A-10 to provide for clarified exemptions in accordance with State Law.
- Amends Section 9A-12 to provide for enhanced penalties for mature tree removal without a permit.
- Amends Section 7A-53 to allow for fences/walls extending beyond the front building line on residential lots abutting A1A and Oak Street south of Ocean Avenue to be erected to a maximum height of six (6) feet with required plantings and corner lot limitations.

Town Attorney Clifford Repperger spoke about the yellow highlighted sections being the modifications from the Town Commission on the first reading.

- 9A-4 modified the language regarding unacceptable risk
- 9A-6 additional language was added to clarify unreasonably restricts
- 9A-7 added section (d) Maintenance of trees and landscaping
- 7A-53 added section (iii) regarding gates not encroaching into any right-of-way

Chairman David Campbell asked if sea grapes are considered a tree and if someone had to take out a lot of them to build their house would they have to replace all of them to the point of not having any room to build.

Building Official Robert Bitgood spoke about sea grapes having offshoots from the main tree that would not be counted. Knowing trees and how to count them is important.

Alternate Dan Harper spoke about some confusion regarding tree density, so he thinks there should be a definition of tree density. Having a replacement of tree for tree puts a tough burden on the resident. Would add oak for oak replacement. Staying with the current guidance would give the building department latitude to

work with the resident. As far as the penalties go the dollar amount should be specified. Safeguard oaks but allow existing homes some flexibility.

Kurt Belsten asked about section 9A-12 which uses the words similar tree, what is a similar tree.

Town Attorney Clifford Repperger spoke about the intent of this section is to allow Code Enforcement to qualify it for enhanced penalties.

Chairman David Campbell spoke about striking the words similar tree. Our code does not specify what trees are allowed and what trees are not, or where to go to find that information.

Alternate Gabor Kishegyi spoke about listing what trees need a permit.

Building Official Robert Bitgood spoke about state statutes defining what trees are good, and if the Town made a list it would be exhaustive.

Vice Chairman Kurt Belsten spoke about just specifying the penalty for mature oak trees and no penalties for other trees.

Chairman David Campbell, Member Douglas Hilmes, Alternate Dan Harper, and Member April Evans were in agreeance to remove penalties for all trees other than mature oak trees.

Town Attorney Clifford Repperger spoke about the enhanced fine is to allow the special magistrate to consider enhanced penalties. This does not mean there will be a \$5,000.00 penalty for removing a tree. It gives the magistrate the authority to levy a penalty up to that amount based on the circumstances that would be presented in a separate hearing process by which the violator would be given due process and notice and opportunity to be heard and a hearing. Then the magistrate would consider first if there is a violation in the first place then if there is a violation then what the penalty should be. The special magistrate is an independent individual that functions like a judge in code enforcement hearings. When staff, the enforcement official, brings a case they have to provide the homeowner a notice of violation and notice of hearing. Then a hearing is held and the Town presents the case and the respondent has the opportunity to address it and provide counter-evidence and be represented by counsel similar to a mini-trial at the end the magistrate would find that there is or is not a violation and what the penalty would be.

Alternate Dan Harper proposed a change to section 9A-7c to remove the sentence "any trees that are removed for new construction shall be replaced by the same or similar species" Recommends defining density as trees per square foot of permeable area and maintaining it before and after construction.

Town Attorney Clifford Repperger spoke about in practice this will be part of the site plan approval.

The Board agreed to recommend the following changes: limit the penalty to mature oaks, define tree density, and remove the first sentence in section 9A-7c.

Member Douglas Hilmes spoke about the fence/wall section 7A-53(2) that allows for a six-foot wall all the way up to the water. He is concerned about a six-foot concrete wall being allowed up to the water line and obstructing the view of neighbors. A lot of other municipalities only allow a four-foot fence within twenty-five feet of the water line and we should have that as well.

Town Attorney Clifford Repperger read 7A-53(9) and spoke about the Town Commission did not have any directive to amend that section, so this is what the current code is.

Member Douglas Hilmes spoke about adding a section specific to fences/walls along the side property lines that within twenty-five feet of the waterway there is a maximum height of four feet.

**Alternate Dan Harper made a motion to change 9A-12 to have a penalty for mature oak trees only, and to modify section 9A-7c to eliminate the first sentence about any trees so it is just applicable to oak trees, add a definition for tree density with the proposed definition of trees per square foot of permeable area, modify 7A-53(2)a to say fences on side property lines for the last 25 feet for properties on any body of water may only be erected for up to four feet; Vice Chairman Kurt Belsten seconded; Motion carried 5-0.**

B. Second reading of Ordinance 2023-02 – Second Kitchens

Town Attorney Clifford Repperger read Ordinance 2023-02

**AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, AMENDING; APPENDIX “A” OF THE TOWN CODE OF ORDINANCES OF MELBOURNE BEACH, THE LAND DEVELOPMENT CODE; AMENDING SECTION 1A-3 TO ADD THE DEFINITION FOR KITCHEN OR KITCHEN FACILITY; AMENDING CHAPTER 7A REGARDING SECOND KITCHENS; SPECIFICALLY AMENDING SECTION 7A-31, SECTION 7A-32, AND SECTION 7A-33 TO PERMIT SECOND KITCHENS IN 1-RS, 2-RS, AND 3-RS ZONING DISTRICTS; CREATING SECTION 7A-72 TO PROVIDE SUPPLEMENTARY DISTRICT REGULATIONS FOR SECOND KITCHENS IN SINGLE FAMILY RESIDENTIAL DISTRICTS; PROVIDING A SEVERABILITY/INTERPRETATION CLAUSE; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES AND RESOLUTIONS; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.**

Town Attorney Clifford Repperger spoke about this ordinance being considered during the February 7, 2023 Planning and Zoning meeting and the Board voted to recommend approval of the proposed ordinance. The ordinance then went to the Town Commission which passed the ordinance on the first reading on February 15, 2023. The ordinance that is in this package is different than what the Board

previously saw. Between the February Planning and Zoning meeting and the Town Commission meeting, we reviewed the original directives from the Town Commission and received feedback from the Commissioners on the version that was presented which needed to be amended to match the Commission's directives. The amended version allows for the second kitchen to be in separate quarters that are connected by a common wall or common roof. Right now you cannot have separate dwelling quarters on any lot, but you can have them as long as it is connected to the principal structure with a common wall or common roof line. He read the revised section 7A-72(1). The question about the allowance of a second kitchen turning a single-family dwelling unit into a multifamily dwelling unit was brought to the Town Commission who requested to have the Town Planner Corey O'Gorman look into that concern.

Town Attorney Clifford Repperger read part of Corey O'Gorman's response "Based on the above, with the 2<sup>nd</sup> kitchen either architecturally integrated into the existing single-family home or connected by a common wall or common roof it is consistent with the definition of the principal structure and would not be an accessory structure. In addition, with the restrictions including service by a single water / electric meter and residency by no more than one family, this is consistent with the definition of a "dwelling unit" constituting a single unit. Consequently, as written the proposed addition of a 2<sup>nd</sup> kitchen would remain a single-family home as defined by the Town Code and would not result in the conversion of single-family homes into multi-family structures."

Alternate Dan Harper spoke about his concern of people turning it into a vacation rental. Who polices the homestead provision.

Town Attorney Clifford Repperger spoke about the Property Appraiser being responsible for homestead exemptions.

Member Douglas Hilmes spoke about his concern with section 7A-72(3) conflicting with State Law.

Town Attorney Clifford Repperger spoke about not being able to prohibit them or regulate the duration due to State Law. The Town adopted a regulatory ordinance that requires registration of vacation rentals. Owner-occupied properties are exempt from the Town's vacation rental ordinance and can do short-term rentals without having to register. This ordinance is allowing for second kitchens on the property, but if you don't meet the requirements you cannot have the second kitchen.

Building Official Robert Bitgood spoke about anyone being able to rent out any space even just a room within the principal structure.

Town Attorney Clifford Repperger spoke about the Town Commissions' directive was always to allow for the second kitchen in the separate living quarters. You can currently have separate living quarters connected to the principal structure you just cannot have a kitchen. This would allow for the second kitchen.

**Vice Chairman Kurt Belsten made a motion to approve Ordinance 2023-02 second kitchens; Member April Evans seconded; Motion carried 3-2 with Alternate Dan Harper and Member Douglas Hilmes dissenting.**

- 6. OLD BUSINESS**
- 7. PUBLIC COMMENT**
- 8. REPORTS: TOWN MANAGER AND TOWN ATTORNEY**
- 9. ITEMS TO BE ADDED TO THE AGENDA FOR FUTURE MEETINGS**
- 10. ADJOURNMENT**

**Member April Evans moved to adjourn; Vice Chairman Kurt Belsten seconded; Motion carried 5-0.**

The meeting adjourned at 8:01 p.m.

**ATTEST:**



**David Campbell, Chairman**



**Amber Brown, Town Clerk**

