

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, RELATING TO LAND DEVELOPMENT; MAKING FINDINGS; AMENDING SECTION 7A-81, LAND DEVELOPMENT CODE, APPENDIX A, TOWN CODE OF MELBOURNE BEACH, FLORIDA; PROVIDING FOR DEVELOPMENT ON LOTS OF RECORD ON OR BEFORE SEPTEMBER 26, 1972, EVEN IF SAID LOTS FAIL TO MEET CERTAIN ZONING REQUIREMENTS; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING FOR THE REPEAL OF INCONSISTENT RESOLUTIONS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board has determined that provisions in Section 7A-81, Appendix A, Code of Ordinances of Melbourne Beach, Florida, relating to the use of nonconforming lots of records are incomplete and inconsistent with applicable case law;

WHEREAS, this Ordinance and the provisions hereof are intended to make Section 7A-81 consistent with case law in the 18<sup>th</sup> Judicial Circuit of Florida (Brevard County) as set forth in the case of Suplee v. Town of Indialantic, Case No. 98-05286-CA-X (Fla. 18<sup>th</sup> Cir. Ct. order granting final summary judgment rendered Nov. 5, 1998) recorded in Official Records Book 3923, Page 1519, Public Records of Brevard County, Florida;

WHEREAS, Future Land Use Element Objective 1.0 of the Comprehensive Plan requires that the Town shall "[i]nsure that new construction, expansion and/or redevelopment within existing

neighborhoods maintains the scale and character of existing structures", and the Planning and Zoning Board finds that this Ordinance will promote and is consistent with this Objective, because construction permitted by this Ordinance will not alter the scale or character of existing structures;

WHEREAS, Future Land Use Element Policy 2.1 of the Comprehensive Plan requires that the Town shall "[i]nsure that zoning and/or other land use decisions are consistent with the uses envisioned on the Future Land Use Map (Map 12)", and the Planning and Zoning Board finds that this Ordinance will not alter the consistency of land use decisions with the uses envisioned by the Future Land Use Map;

WHEREAS, Future Land Use Element Policy 2.2 of the Comprehensive Plan requires that the Town shall "[r]eview criteria within development regulations which provide for a review of development proposals with consideration to the size, bulk and architecture of adjoining properties", and the Planning and Zoning Board finds that this Ordinance is based upon a review of development criteria to be consistent with applicable case law and that said review has considered the size, bulk and architecture applicable to properties affected by this Ordinance. This Ordinance is consistent with Future Land Use Element Policy 2.2 of the Comprehensive Plan;

WHEREAS, Future Land Use Element Policy 6.1 of the Comprehensive Plan requires that the Town shall “[p]eriodically review existing development regulations to insure that they are consistent with changes in the community and that they reflect, to the extent possible, improvements in methods and practices in the regulation of land-uses”;

WHEREAS, the Planning and Zoning Board finds that this Ordinance is consistent with Future Land Use Element Policy 6.1 of the Comprehensive Plan, because this Ordinance is based upon a review of existing development regulations, and this Land Development Regulation amendments embodied in this Ordinance implement case law changes in the Code. As such, this Ordinance reflects, “to the extent possible, improvements in methods and practices in the regulation of land-uses”;

WHEREAS, Future Land Use Element Policy 10.1 of the Comprehensive Plan requires that the Town shall “[i]nsure that the zoning map conforms with the Future Land Use Map”, and the Planning and Zoning Board finds that while this Ordinance changes certain zoning-related development criteria, this Ordinance is consistent with Future Land Use Element Policy 10.1 of the Comprehensive Plan. Despite the changes in this Ordinance to certain zoning-related development criteria, the

zoning map is not changed by this Ordinance and continues to be in conformance with the Future Land Use Map;

WHEREAS, the Planning and Zoning Board, sitting as both the Planning and Zoning Board and the Local Planning Agency (collectively, the "LPA"), finds that this Ordinance is consistent with the Town's Comprehensive Plan;

WHEREAS, the LPA has recommended adoption of this Ordinance as being in promotion of the public safety, aesthetics, and welfare as a means of protecting the community from blight and development inconsistent with zoning regulations of the Town.

**BE IT ENACTED BY THE TOWN OF MELBOURNE BEACH, FLORIDA:**

SECTION 1. That Section 7A-81, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

**§ 7A-81. LOTS OF RECORD.**

\* \* \*

(c) In any district where non-residential buildings and uses are permitted, or permitted by special exception, said buildings and uses may be erected and conducted on a platted lot or lots that were of record on or before September 26, 1972, the original date of adoption of the Town's zoning requirements now codified as Chapter 7A, Appendix A of the Town Code of Ordinances. This provision shall apply even though such lot or

lots fail to meet the requirement for area, width, or depth, or any combination thereof, that are generally applicable to the district provided that yard setbacks of the lot shall conform to the regulations for the district in which such lot is located.

SECTION 2. Severability/Interpretation Clause.

(a) In the event that any term, provision, clause, sentence or section of this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

(b) In interpreting the provisions of this Ordinance, the following rules and symbols shall apply:

(1) Words underlined are additions to existing text.

(2) Words ~~stricken through~~ are deletions from existing text.

(3) Asterisks (\* \* \*) indicates a deletion from the Ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinance denoted by the

asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

SECTION 3. Ordinances and Resolutions in Conflict. All ordinances or resolutions or parts thereof that may be determined to be in conflict herewith, except portions of the Comprehensive Plan, are hereby repealed.

SECTION 4. Effective Date. This Ordinance shall become effective upon adoption.

PASSED by the Town Commission of the Town of Melbourne Beach on first reading on the \_\_\_\_ day of \_\_\_\_\_, 2010, and ADOPTED by the Town Commission of the Town of Melbourne Beach, Florida, on final reading on the \_\_\_ day of \_\_\_\_\_, 2010.

TOWN OF MELBOURNE  
BEACH, FLORIDA

By: \_\_\_\_\_  
Rita Karpie, Mayor

ATTEST:

\_\_\_\_\_  
Christina Hoffkins, CMC  
Town Clerk

(TOWN SEAL)