

Town of Melbourne Beach

PUBLIC NOTICE

AGENDA

PLANNING & ZONING BOARD MEETING Tuesday, April 2, 2024 @ 6:30 pm COMMUNITY CENTER – 509 OCEAN AVENUE

Board Members:

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

Alternate Board Members

Alternate Todd Albert
Alternate Jason Judge

Staff Members:

Town Manager Elizabeth Mascaro
Town Clerk Amber Brown
Building Official Robert Bitgood

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**
2. **Roll Call**
3. **Approval of Minutes**
 - A. March 5, 2024 minutes
4. **NEW BUSINESS**
 - A. Consideration of language for the second kitchen repeal ordinance
5. **PUBLIC HEARINGS**
6. **OLD BUSINESS**
 - A. Discussion on documentation to support the Planning and Zoning Board's position regarding the shed ordinance
7. **PUBLIC COMMENT**

Please limit comments to items that are not on the agenda
8. **REPORTS: TOWN MANAGER AND TOWN ATTORNEY**
9. **ITEMS TO BE ADDED TO THE AGENDA FOR FUTURE MEETINGS**
10. **ADJOURNMENT**

Town of Melbourne Beach

MINUTES

PLANNING & ZONING BOARD MEETING

TUESDAY, MARCH 5, 2024 @ 6:30 pm

COMMUNITY CENTER – 509 OCEAN AVENUE

Board Members:

Chairman David Campbell
 Vice-Chairman Kurt Belsten
 Member April Evans
 Member Dan Harper
 Member Gabor Kishegyi
 Alternate Todd Albert
 Alternate Jason Judge

Staff Members:

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1. CALL TO ORDER

Chairman David Campbell called the meeting to order at 6:30 p.m.

2. ROLL CALL

Town Clerk Amber Brown conducted the roll call

Present:

Chairman David Campbell
 Member Dan Harper
 Member Gabor Kishegyi
 Alternate Todd Albert
 Alternate Jason Judge

Staff Present:

Town Manager Elizabeth Mascaro
 Building Official Robert Bitgood
 Town Clerk Amber Brown

Absent:

Vice-Chairman Kurt Belsten
 Member April Evans

3. APPROVAL OF MINUTES

A. February 5, 2024 minutes

Alternate Todd Albert motioned to approve; Alternate Jason Judge seconded; Motion carried 5-0.

4. NEW BUSINESS

A. Site plan approval for 526 Sunset Blvd – new home

Member Dan Harper asked questions about the tree permit process and spoke about how the Board should see what the residents plan to do related to trees.

Building Official Robert Bitgood spoke about the tree permit being issued as part of the demo permit process and the Building Official handles it by walking the property with the landscape architect or contractor.

Alternate Jason Judge spoke about wanting the Board to look at the landscape plans.

Building Official Robert Bitgood spoke about that is something that can be done if the Board decides on that. Keep in mind the State has timeline requirements for issuing building permits and they do not look at landscape as a building permit, so if something gets held up due to the landscape the Building Department can be fined for violating the permit requirements.

Alternate Todd Albert spoke about agreeing with having the tree mitigation listed as part of the plans.

Town Manager Elizabeth Mascaro spoke about reading the tree ordinance and it does not require it to go in front of the Board. Will review what the Commission discussed regarding the tree ordinance.

Chairman David Campbell spoke about getting more details on the stuff that is already provided. They receive what is currently on the property, so if they could provide more details then the Board could review it.

Member Dan Harper spoke about wanting the homeowner to list the trees they have and which ones they are going to pull out and which ones they are going to replace.

Member Dan Harper made a motion to accept the site plans; Member Gabor Kishegyi seconded; Motion carried 5-0.

Tim Reed - 302 Fourth Ave

Tim Reed spoke about being opposed to the approval due to the auxiliary structure because it seems like it will be a vacation rental. The amount of fertilizer is extremely

excessive. The plans say 20 pounds per 1000 square feet. Guidance from the University of Florida is 2-3 pounds per 1000 square feet. The impervious and pervious calculations do not add up. Town Code 45-8 says a fire inspector has to approve the plans and he does not see that in the paperwork. Spoke about the application mentioning a pool, and sections of the application were left blank. Spoke about checking the property when it is occupied to make sure it is not operating as a vacation rental.

Building Official Robert Bitgood spoke about the numbers coming from the civil engineer's calculations, and if they are wrong it is still well within the Code. He has to accept what the design professional labels a room as, and he cannot go back on a property to inspect what a homeowner does after the permit has been finalized. State Statute only requires a fire inspector to approve commercial plans. The application might mention a pool, but they did not submit plans for a pool.

Alternate Jason Judge spoke about them being property owners and being within their rights to build it.

Roger Newell – 506 Colony

Roger Newell spoke about taking exception to that. Don't say they can do whatever they want because they cannot.

B. Consideration of updates to the code related to sheds

Building Official Robert Bitgood spoke about taking what the Planning and Zoning Board recommended to the Commission who chose to approve the language as written.

Member Dan Harper provided a drawing and spoke about there not being a reason to allow a shed essentially in the front yard of the adjoining lot. Corner lots have plenty of room to keep a shed behind the building. There is no need to allow it

Alternate Jason Judge spoke about sheds tend to look terrible over time and would not look good. Boats and RVs generally move.

Alternate Todd Albert spoke about agreeing with Member Dan Harper.

Member Gabor Kishegyi spoke about keeping the language about the location as is, increase the size to maybe 140 square feet, and decreasing the setback to 2 feet.

Town Manager Elizabeth Mascaro spoke about the Commission wanting the language to be consistent with the boats and RVs language.

Roger Newell – 506 Colony

Roger Newell asked if any of this would interfere with the sight lines at intersections. Several people spoke about it would not interfere with that.

Member Gabor Kishegyi made a motion to adopt D as is written with the following changes: 160 square feet to 140 square feet, adding in what was stricken “on any corner lot, the shed must be both behind the rear of the front line of the principal structure and behind the building line of the side of any structure abutting any street,” and instead of 5 feet off the property line 2 feet off the property line; Member Dan Harper seconded; Motion carried 5-0.

5. PUBLIC HEARINGS
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 Gabor Kishegyi motioned to adjourn; Alternate Jason Judge seconded; Motion carried 5-0.

The meeting adjourned at 7:23 p.m.

ATTEST:

David Campbell, Chairman

Amber Brown, Town Clerk

Town Commission Meeting

Section: Old Business
Meeting Date: March 20, 2024
From: Town Attorney, Ryan Knight
Re: Repeal of Ordinance 2023-02 Second Kitchens

Background Information:

During the Town Commission meeting of February 21, 2024 a decision to repeal Town of Melbourne Beach Ordinance 2023-02, Second Kitchens, was approved by the Town Commission. The Commission instructed the Town Attorney to draft a new Ordinance repealing the original 2023-02 Ordinance.

Recommendation:

Review the Repeal Ordinance for language.

Attachments:

Repeal Ordinance
Ordinance 2023-02

ORDINANCE NO. 2024-__

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, REPEALING ORDINANCE 2023-02 IN ITS ENTIRETY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on March 15, 2023, the Town Commission of the Town of Melbourne Beach enacted Ordinance No. 2023-02 amending the Land Development Code of the Town of Melbourne Beach regarding second kitchens in residential zoning districts in the Town of Melbourne Beach; and

WHEREAS, the Town Commission of the Town of Melbourne Beach, after duly noticed public hearings, has determined that the repeal of Ordinance No. 2023-02 in its entirety is in the best interests of the citizens of the Town of Melbourne Beach, and promotes the general health, safety, and welfare of the residents of the Town of Melbourne Beach; and

WHEREAS, on April 2, 2024, the Planning and Zoning Board at a duly noticed public hearing, reviewed and considered the repeal of Ordinance No. 2023-02 in its entirety and took public comment regarding the same; and

WHEREAS, the Planning and Zoning Board has determined that the repeal of Ordinance No. 2023-02 in its entirety is in the best interest of the Town of Melbourne Beach and has recommended that the Town Commission approve of the same; and

WHEREAS, the Town Commission of the Town of Melbourne Beach and the Planning and Zoning Board have determined that the repeal of Ordinance No. 2023-02 in its entirety is in the best interest of the Town of Melbourne Beach.

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

NOTE: Underlined words constitute additions to the Town of Melbourne Beach Code of Ordinances, ~~strikethrough~~ constitutes deletions from the original Code of Ordinances, and asterisks (***) indicate an omission from the existing text which is intended to remain unchanged.

Section 1. The definition of “Kitchen or Kitchen Facility” in Article I, Chapter IA, Section 1A-3, of Appendix “A,” of the Town of Melbourne Beach Code of Ordinances is hereby repealed as follows:

§1A-3. DEFINITIONS.

~~**KITCHEN** or **KITCHEN FACILITY.** A room of area within a room whose primary purposes is to store, prepare and cook food. A kitchen will have a refrigerator to store food, counter space and a sink to prepare food, and a stove and/or range to cook food. An outdoor or external barbeque area with no stove or range shall not constitute a kitchen or kitchen facility.~~

Section 2. Section 7A-31(g) of Appendix “A,” of the Town of Melbourne Beach Code of Ordinances is hereby repealed as follows:

§7A-31. 1-RS SINGLE FAMILY RESIDENTIAL DISTRICT.

~~(g) Supplementary regulations: As provided in §§ 7A-50 through 7A-72, and Chapter 9A.~~

Section 3. Section 7A-32(g) of Appendix “A,” of the Town of Melbourne Beach Code of Ordinances is hereby repealed as follows:

§7A-32. 2-RS SINGLE FAMILY RESIDENTIAL DISTRICT.

~~(g) Supplementary regulations: As provided in §§ 7A-50 through 7A-72, and Chapter 9A.~~

Section 4. Section 7A-33(g) of Appendix “A,” of the Town of Melbourne Beach Code of Ordinances is hereby repealed as follows:

§7A-33. 3-RS SINGLE FAMILY RESIDENTIAL DISTRICT.

~~(g) Supplementary regulations: As provided in §§ 7A-50 through 7A-72, and Chapter 9A.~~

Section 5. Article IV, Chapter 7A, Section 7A-72, of Appendix “A,” of the Town of Melbourne Beach Code of Ordinances is hereby repealed as follows:

§7A-72. SINGLE FAMILY RESIDENTIAL SECOND KITCHEN FACILITY.

~~———— A second kitchen facility may be incorporated into a single family residence located in the 1-RS, 2-RS, and 3-RS zoning districts, provided the second kitchen facility meets the following conditions:~~

~~(1) — The second kitchen facility and the area or quarters it serves shall be integrated architecturally into the principal single family dwelling unit or may be located within separate quarters connected to the principal single family dwelling unit by a common wall or common roof. For purposes of this Section, a breezeway connection between the principal single family dwelling unit structure and the separate quarters served by the second kitchen may constitute a common roof. Access to the second kitchen shall be as required by the Florida Building Code.~~

~~(2) — A permit for construction must be obtained, and a floor plan of the entire single-family residence, including the additional kitchen facility, demonstrating compliance with the conditions set forth in this section, shall be submitted to the Building Official for plan review and approval prior to construction of any second kitchen. The approved floor plan shall be binding upon all future construction plans in regard to the single family residence and the second kitchen facility.~~

~~(3) — No portion of the single family dwelling unit shall be utilized for rental purposes, and the single family dwelling unit shall be served by only one electrical and water meter.~~

~~(4) — The single family dwelling unit shall continue to be utilized by no more than one family.~~

~~(5) — The property upon which the second kitchen is planned to be installed must have a valid Brevard County property tax homestead exemption at the time of permit application. A second kitchen facility must be removed within one year of the loss or removal of the homestead exemption maintained on the property.~~

Section 6. If any section, sentence, phrase, word or portion of this ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

Section 7. This Ordinance shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED this ____ day of _____, 2024, by the Town Commission of the Town of Melbourne Beach, Florida.

PASSED ON FIRST READING: _____

PASSED ON SECOND READING: _____

TOWN OF MELBOURNE BEACH, FLORIDA

By: _____
ALISON DENNINGTON, Mayor

ATTEST:

(TOWN SEAL)

Amber Brown, Town Clerk

ORDINANCE NO. 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.

WHEREAS, the Town of Melbourne Beach desires to amend the Land Development Code of the Town of Melbourne Beach regarding second kitchens in residential zoning districts in the Town of Melbourne Beach within the Town of Melbourne Beach; and

WHEREAS, the Town Commission of the Town of Melbourne Beach, after duly noticed public hearings, has determined that amendments to Sections 7A-31, Section 7A-32, and Section 7A-33 of the Land Development Code to permit second kitchens in 1-RS, 2-RS, and 3-RS zoning districts and creation of standards for second kitchens in a new Section 7A-72 of the Land Development Code are consistent with the Comprehensive Plan, are in the best interests of its citizens of the Town of Melbourne Beach, and promote the general health, safety, and welfare of the residents of the Town of Melbourne Beach; and

WHEREAS, on February 7, 2023 and March 7, 2023 the Planning and Zoning Board/Local Planning Agency (collectively the “LPA”) at a duly noticed public hearing, reviewed and considered the proposed amendments to Sections 7A-31, Section 7A-32, and Section 7A-33 of the Land Development Code to permit second kitchens in 1-RS, 2-RS, and 3-RS zoning districts and the creation of standards for second kitchens in a new Section 7A-72 of the Land Development Code and took public comment regarding the same; and

WHEREAS, the LPA has determined that the proposed amendments to Sections 7A-31, Section 7A-32, and Section 7A-33 of the Land Development Code to permit second kitchens in 1-RS, 2-RS, and 3-RS zoning districts and the creation of standards for second kitchens in a new Section 7A-72 of the Land Development Code are consistent with the Town’s Comprehensive

Plan and are in the best interest of the Town of Melbourne and has recommended that the Town Commission approve of the same.

WHEREAS, the Town Commission and LPA have determined that an amendment to Section 1A-3 of the Land Development Code to add the definition of the terms “kitchen” or “kitchen facility” is necessary to allow for the desired regulatory changes and that such definition shall specifically exclude outdoor barbeque areas without a stove or range.

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

SECTION 1. That Article I, Chapter 1A, Section 1A-3, of Appendix “A,” of the Town Code of the Town of Melbourne Beach, Florida, Land Development Code, is hereby created to read as follows:

§1A-3. DEFINITIONS.

* * *

KITCHEN OR KITCHEN FACILITY. A room or area within a room whose primary purpose is to store, prepare and cook food. A kitchen will have a refrigerator to store food, counter space and a sink to prepare food, and a stove and/or range to cook food. An outdoor or external barbeque area with no stove or range shall not constitute a kitchen or kitchen facility.

* * *

SECTION 2. That Section 7A-31 of Appendix “A,” of the Town Code of the Town of Melbourne Beach, Florida, Land Development Code, is hereby amended to read as follows:

§7A-31. 1-RS SINGLE FAMILY RESIDENTIAL DISTRICT.

* * *

(g) Supplementary regulations: As provided in §§ 7A-50 through 7A-6972, and Chapter 9A.

SECTION 3. That Section 7A-32 of Appendix “A,” of the Town Code of the Town of Melbourne Beach, Florida, Land Development Code, is hereby amended to read as follows:

§7A-32. 2-RS SINGLE FAMILY RESIDENTIAL DISTRICT.

* * *

(g) Supplementary regulations: As provided in §§ 7A-50 through 7A-6972, and Chapter 9A.

SECTION 4. That Section 7A-33 of Appendix “A,” of the Town Code of the Town of Melbourne Beach, Florida, Land Development Code, is hereby amended to read as follows:

§7A-33. 3-RS SINGLE FAMILY RESIDENTIAL DISTRICT.

* * *

(g) Supplementary regulations: As provided in §§ 7A-50 through 7A-6972, and Chapter 9A.

SECTION 5. That Article IV, Chapter 7A, Section 7A-72, of Appendix “A,” of the Town Code of the Town of Melbourne Beach, Florida, Land Development Code, is hereby created to read as follows:

§7A-72. SINGLE-FAMILY RESIDENTIAL SECOND KITCHEN FACILITY.

A second kitchen facility may be incorporated into a single-family residence located in the 1-RS, 2-RS, and 3-RS zoning districts, provided the second kitchen facility meets the following conditions:

(1) The second kitchen facility and the area or quarters it serves shall be integrated architecturally into the principal single-family dwelling unit or may be located within separate quarters connected to the principal single-family dwelling unit by a common wall or common roof. For purposes of this Section, a breezeway connection between the principal single-family dwelling unit structure and the separate quarters served by the second kitchen may constitute a common roof. Access to the second kitchen shall be as required by the Florida Building Code.

(2) A permit for construction must be obtained, and a floor plan of the entire single-family residence, including the additional kitchen facility, demonstrating compliance with the conditions set forth in this section, shall be submitted to the Building Official for plan review and approval prior to construction of any second kitchen. The approved floor plan shall be binding upon all future construction plans in regard to the single-family residence and the second kitchen facility.

(3) No portion of the single-family dwelling unit shall be utilized for rental purposes, and the single-family dwelling unit shall be served by only one electrical and water meter.

(4) The single-family dwelling unit shall continue to be utilized by no more than one family.

(5) The property upon which the second kitchen is planned to be installed must have a valid Brevard County property tax homestead exemption at the time of permit application. A second kitchen facility must be removed within one year of the loss or removal of the homestead exemption maintained on the property.

SECTION 6. 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 7. Codification. The provisions of this Ordinance shall be codified as, and become and be made a part of, the Town of Melbourne Beach Code of Ordinances. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention.

SECTION 8. Ordinances and Resolutions in Conflict. All ordinances or resolutions or parts thereof that may be determined to be in conflict herewith are hereby repealed.

SECTION 9. Effective Date. This Ordinance shall become effective upon adoption.

SECTION 10. Adoption Schedule.

PASSED by the Town Commission of the Town of Melbourne Beach on first reading on

the 15th day of February, 2023, and ADOPTED by the Town Commission of the Town of Melbourne Beach, Florida, on final reading on the 15th day of March, 2023.

TOWN OF MELBOURNE BEACH, FLORIDA

By: Joyce D. Barton
JOYCE D. BARTON, Vice Mayor

(TOWN SEAL)

ATTEST:

Amber Brown
Amber Brown,
Town Clerk

