TOWN OF BELLEAIR
ORDINANCE NO. 545

AN ORDINANCE OF THE TOWN OF BELLEAIR, FLORIDA, AMENDING CHAPTER 66 – ADMINISTRATION AND GENERAL PROVISIONS, ARTICLE V – VARIANCES, NONCONFORMITIES AND HARDSHIP RELIEF, DIVISION 2 – HARDSHIP RELIEF, SECTION 66-253 – VARIANCES, OF THE LAND DEVELOPMENT CODE, TOWN OF BELLEAIR, FLORIDA TO PROVIDE AUTHORITY FOR SPECIAL MAGISTRATE CONSIDERATION OF VARIANCE APPLICATIONS CONSISTENT WITH THE TOWN CHARTER, TO ADD PROVISIONS GOVERNING THE REVIEW OF VARIANCE APPLICATIONS AND JUDICIAL REVIEW CONSISTENT WITH FLORIDA LAW; MAKING RELATED FINDINGS; AND PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, Section 5.03 (c) of the Town Charter provides the Town Commission with authority to hear and decide on variances as set forth therein except for those related to existing single-family lots or structures or improvements thereon; and

WHEREAS, the Town Commission has considered various procedural methods for the variance review process for those variances excepted from its review by Section 5.03 (c) of the Town Charter; and

WHEREAS, the Town Commission has concluded that these variances would be most efficiently and expeditiously reviewed by special magistrates retained by the Town; and

WHEREAS, the Town Commission has further concluded that the standards to be applied in reviewing variance applications and judicial review of variances as expressed in its Land Development Code do not fully express the law applicable to variances; and

WHEREAS, the Town Commission therefore finds that it is in the best interests of the Town, its citizens, its property owners, and its businesses to adopt this Ordinance amending Chapter 66, Article V, Division 2, § 66-253 of the Land Development Code.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF BELLEAIR, THAT:

Section 1. Chapter 66 – Administration and General Provisions, Article V – Variances, Nonconformities and Hardship Relief, Division 2 – Hardship Relief, § 66-253 is hereby amended to read as follows:

Sec. 66-253. - Variances.

(a) *Generally.*

(1) *Authority~~ of town commission~~.* Where there are practical difficulties or unnecessary hardships incurred in the literal enforcement of the provisions of this land development code, the town commission or special magistrate shall have the power in specific and appropriate cases as set forth in section 5.03 of the Town Charter, and after due notice and a public hearing, to grant upon petition such variance from or exception to the terms of this Code as may not be contrary to the public interest and in order that substantial justice may be done; except that the town commission or special magistrate shall not grant variances from land use classification provisions in chapter 74, article II, and consistency and concurrency provisions of chapter 70.

(2) *Special Magistrate*. There is hereby established a special magistrate vested with the authority to carry out the variance authority not reserved to the town commission in section 5.03 (c) of the Town Charter. The special magistrate shall be a person licensed to practice law in the state of Florida and shall be appointed by the town manager on the basis of experience in land use law and quasi-judicial proceedings. The town manager shall appoint as many special magistrates as are deemed necessary and shall have the authority to remove a special magistrate with or without cause. A special magistrate shall not be a town employee but shall be compensated at a rate to be determined by the town manager.

(~~2~~3) *Notice of public hearing.* At least 20 days' notice of the time and place of such public hearing shall be given in a newspaper of general circulation within the town, by posting such notice at the town hall, and by verified notification to owners of adjacent and opposite lots extending laterally a distance of 500 feet on each side of the property for which the variance petition is being made. For multiple-owned structures such as condominiums, cooperative ownerships, etc., the mailing shall be to the property owners' association only.

(~~3~~4) *Variances to be considered as part of development review.* A person desiring to undertake a development activity not in conformance with this land development code may apply for a variance in conjunction with the application for development review as specified in section 66-164. A development activity that might otherwise be approved by the town manager must be approved by the town commission or special magistrate if a variance is sought. The variance shall be granted or denied in conjunction with the application for development review.

(b) *Criteria for granting; conditional approval; expiration of approval.*

(1) *Initial determination.*

a. Before granting any variance, the town commission or special magistrate shall determine that:

1. Special conditions and circumstances exist which are peculiar to the land, structure or buildings involved.

2. The special conditions and circumstances do not result from actions of the applicant.

3. Literal interpretation of the provisions of this Code would work unnecessary and undue hardship on the applicant.

4. The variance, if granted, is the minimum variance that will make possible the reasonable use of the land, structure or building.

5. A grant of variance will be in harmony with the general intent and purpose of this Code, and that such variance will not be injurious to the zoning district involved or otherwise detrimental to the public interest.

6. A grant of variance will not result in any land use not specifically provided for in the schedule of district regulations (section 74-82 of this Code) for the zoning district in which the property is located.

b. In granting a variance, the town commission or special magistrate may prescribe any terms, conditions, and safeguards which it may in its judgment deem fitting and proper to preserve the safety, health, and welfare of the community.

c. Neither nonconforming use of neighboring properties, structures, or buildings, nor permitted use of properties, structures, or buildings in other zoning districts, shall be considered a substantive basis for granting a variance, nor will financial hardship or gain be a justification for granting a variance.

d. The opinions of neighboring property owners or other citizens may be considered by the town commission or special magistrate when considering a variance application, but only to the extent such opinions address one or more of the factors set forth in subsection (1) of this subsection.

e. Whether similar variances have been granted or denied may not be considered by the town commission or special magistrate when considering a variance application.

(2) *Imposition of conditions.* In granting a development approval involving a variance, the town commission or special magistrate may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to allow a positive finding to be made on any of the factors listed in subsection (1) of this subsection, or to minimize the injurious effect of the variance.

(3) *Expiration of approval.* If the granting of any variance pursuant to this section is for the purpose of allowing additional, new improvements to be constructed, then such variance, if granted, shall automatically expire 12 months after such variance is approved by the town commission or special magistrate, unless a building permit is procured from the town with respect to the improvements contemplated by the application for variance within the 12-month period, and unless the construction of the improvements is promptly commenced pursuant to the building permit and diligently pursued to completion thereafter. Upon application pursuant to section 66-231, the commission may extend the expiration date for up to one year.

(c) ~~*Reserved*~~*Finality of action; judicial review.* When the town commission or special magistrate approves or denies a variance in accordance with this section, such action shall be the final action of the town and shall not be subject to further review by the town. A final action of the town commission or

special magistrate concerning a variance may be reviewed by a court of competent jurisdiction as prescribed by law. An appeal shall be filed within thirty (30) days of the date of the order sought to be appealed.

(d) *Status of denial of variance request.* When the town commission or special magistrate has denied an application for variance or hardship relief, no applicant shall submit an application for a similar variance or hardship relief for any part or all of the same property for a period of 12 months from the date of final denial.

Section 2. For purposes of codification of any existing section of the Land Development Code, Town of Belleair, Florida, words **underlined** represent new text or additions to original text, words ~~**stricken**~~ are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision, or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand and survive any severed provision, as the Town Commission would have adopted the Ordinance even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Land Development Code, Town of Belleair, Florida contained in Section 1of this Ordinance as provided for therein and shall not codify the exordial clauses or any other sections not designated for codification.

Section 5. Pursuant to § 166.041 (4), Fla. Stat., this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING by the Town Commission of the Town of Belleair, Florida, at the meeting held on the 5th day of APRIL, 2022.

PUBLISHED THE ## day of [MONTH], 2022.

PASSED AND ADOPTED ON SECOND READING AND PUBLIC HEARING this ## day of [MONTH], 2022.

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Michael Wilkinson, Mayor

ATTEST:

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Christine Nicole, CPM, CMC, Town Clerk