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MEMORANDUM

DATE: March 29, 2022

TO: Mayor Michael Wilkinson
Deputy Mayor Tom Kurey
Commissioner Tom Shelly
Commissioner Coleen Chaney
Commissioner Thomas Nessler

FROM: Jay Daigneault, Esq., Town Attorney

CC: JP Murphy, Town Manager

RE: Ordinances 544 and 545

Dear Mayor, Deputy Mayor, & Commissioners:

Presented for your consideration on first reading, please find Ordinances 544 and 545 pursuant to our recent discussions concerning variances.

Ordinance 544 is straightforward—it simply repeals the sections of the Land Development Code creating the board of adjustment and describing its duties and operations. Section 5.05 of the Charter permits the Town to create such a board but does not compel it. In practice, the board of adjustment was disbanded many years ago, so the ordinance repealing it merely formalizes that action.

Ordinance 545 amends § 66-253 of the Land Development Code to create alignment with § 5.03 of the Charter concerning variances. It creates a special magistrate with authority to hear variances consistent with the charter provision addressing them. Like the code enforcement magistrate authorized by § 66-112 of the LDC, the special magistrate for variances is contemplated to be appointed and subject to removal by the town manager and compensated at a rate established by the town manager. The ordinance provides for parallel authority for the commission or the special magistrate for the variance applications under their respective authority.

I have made three substantive changes to the ordinance beyond the special magistrate: (1) subsection (b) (1) d is proposed in order to constrain the submission and consideration of the opinions of neighbors, etc. that do not relate to or bear upon the variance criteria because such

opinions cannot be considered competent substantial evidence; (2) subsection (b) (1) e is proposed to prohibit consideration of previous similar variances because the granting or denial or similar variance requests is not a proper consideration when deciding whether or not to grant a variance; see City of Jacksonville v. Taylor, 721 So.2d 1212, 1213 (Fla. 1st DCA 1998); and (3) I have added a subsection (c) to provide for finality of decisions made by the commission and magistrate and provided for judicial review as prescribed by law—though such review is implied in law in land use decisions, clear codification will avoid confusion in the event of an appeal.

As always, please do not hesitate to contact me directly should you wish to discuss these issues or any other, and please do not discuss these ordinances with your fellow commission members outside of a properly noticed public meeting.

Respectfully,

TRASK DAIGNEAULT, LLP.

A handwritten signature in blue ink, appearing to be 'JD' or similar initials, followed by a long horizontal stroke.

/s/ Jay Daigneault, Esq.
Town Attorney