

**ORDINANCE NO. 16-05**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LAKE CLARKE SHORES, FLORIDA, AMENDING ARTICLE III "ZONING BOARD OF ADJUSTMENT", OF CHAPTER 86 "ZONING", TO PROVIDE THAT THE ZONING BOARD OF ADJUSTMENT SHALL BE AN ADVISORY BOARD TO THE TOWN COUNCIL; AND BY ADOPTING A NEW SECTION 86-64 "ZONING BOARD OF ADJUSTMENT TO BE ADVISORY BOARD TO TOWN COUNCIL"; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR AN EFFECTIVE DATE AND OTHER PURPOSES.**

**WHEREAS**, the Town Council of the Town of Lake Clarke Shores finds that it is in the best interest of the residents of the Town to make the Zoning Board of Adjustment an advisory board to the Town Council.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE CLARKE SHORES, FLORIDA**, as follows:

**SECTION 1.** Article III "Zoning Board of Adjustment" of Chapter 86 "Zoning" of the Code of Ordinances of the Town of Lake Clarke Shores is hereby amended to conform it to the adoption of the new Section 86-64 "Zoning Board of Adjustment to be Advisory Board to Town Council", as follows:

**ARTICLE III. - ZONING BOARD OF ADJUSTMENT**

Sec. 86-56. - Established; membership; terms; removal; vacancies.

A zoning board of adjustment has been established. The board shall consist of five members to be appointed by the town council, each for a term of three years. The terms of all members shall be staggered so that no more than three members are appointed in any one year. Members of such appointive board may be removed from office by the town council without cause or pursuant to the provisions of section 2-51. The provisions of section 2-51 shall apply to this board. Vacancies shall be filled by resolution or motion of the town council for the unexpired term of the member affected. ~~Except as to the reappointment of members serving on August 19, 1991,~~ ¶The membership of the zoning board of adjustment shall, whenever possible, include a general or subcontractor, an architect, an engineer, a person from the general public, and a realtor.

Sec. 86-57. - Alternate members; removal; vacancies.

The town council shall appoint five alternate members to the zoning board of adjustment, each for a term of one year. Any of the alternate members may serve in the absence or incapacity of any regular member to the zoning board of adjustment and, while so serving, shall have all of the powers, duties and responsibilities of a regular member of the board. The chairman, or in his absence the vice-chairman shall notify the alternate member when his presence is required at any meeting of the board. Alternate members may be removed from office by the town council for

cause upon written charges and after public hearing. Vacancies shall be filled by resolution or motion of the town council for the unexpired term of the alternate member affected.

Sec. 86-58. - Rules; meetings; oaths; minutes; records; quorum; hearings.

- (a) The zoning board of adjustment shall adopt rules necessary to the conduct of its affairs, and in keeping with the provisions of this chapter. Meetings shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the vice-chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The zoning board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the town clerk.
- (b) The zoning board of adjustment shall be duly called into session to hear all proper applications placed before it with a quorum consisting of a minimum of three members. Applications to be heard by the board shall be either appeals of any order, requirement, decision or determination made by the building official, a special exception when a specific provision is made in a zoning district, or a variance of the requirements of a specific zoning district.
- (c) Public hearing, zoning board of appeals. A public hearing shall be heard by the zoning board of appeals on all applications for administrative review, variance or special exception, by filing with the zoning board of appeals a written application specifying the grounds of the matter to be heard. The application shall be in such form as prescribed by the rules of the zoning board of appeals. After such filing of the application, the Town clerk shall forthwith transmit to the board all materials constituting the record upon which the action was taken. The board shall fix a reasonable time for hearing and give due public notice thereof.
- (d) Public hearing, Town Council. The zoning board of appeals shall transmit its written recommendation to the Town Council within ten (10) days of the hearing with a copy to the applicant, which shall include the date of the final hearing before the Town Council. The Town Council shall hold a final public hearing on all applications for administrative review, variance, or special exception submitted from the zoning board of appeals after a hearing has been held by that board. The Town Council shall consider the recommendations of the zoning board of appeals but shall not be bound thereby. The date for the public hearing before the Town Council shall, whenever feasible, be set at the same time the hearing date is set for the zoning board of appeals, and may be included in the advertisement for the zoning board of appeals hearing, if known. One (1) additional advertisement of the public hearing before the Town Council shall be placed in a local newspaper approximately ten (10) days prior to the final public hearing. The Town Council shall make a final determination of approval, approval with conditions attached, or denial at the final public hearing and a written order shall be issued within ten (10) days of the hearing date.

Sec. 86-59. - Administrative review.

The zoning board of adjustment shall hear and recommend to the town council who shall decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the building official in the enforcement of this zoning chapter. In granting any appeal of any order, requirement, decision or other determination made by the building official, such decision shall not become effective except by a favorable vote of a minimum of three members of the board or council hearing such application for same.

Sec. 86-60. - Appeals.

- (a) Appeals to the zoning board of adjustment may be taken by any person aggrieved or by any officer or department of the town council affected by any decision of the building official. Such appeals shall be taken within a reasonable time, not to exceed 60 days or such lesser period as may be provided by the rules of the board, by filing with the building official and with the zoning board of adjustment a notice of appeal specifying the grounds thereof. The building official shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.
- (b) The zoning board of adjustment and the town council shall fix a reasonable time for the hearings of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearings, any party may appear in person or by agent or attorney.
- (c) An appeal stays all proceedings in furtherance of the action appealed from, unless the building official from whom the appeal is taken certifies to the zoning board of adjustment after the notice of appeal is filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed other than by a restraining order which may be granted by the zoning board of adjustment or by a court of record on application, on notice to the building official from whom the appeal is taken and on due cause shown.

Sec. 86-61. - Special exceptions.

- (a) *Power to decide.* The zoning board of adjustment shall hear and recommend to the town council who shall decide only such special exceptions as the zoning board of adjustment is specifically authorized to pass upon by the terms of this chapter; to decide such questions as are involved in determining whether special exceptions should be granted; and to grant special exceptions with such conditions and safeguards as are appropriate under this chapter; or to deny special exceptions when not in harmony with the purpose, intent, and requirements of this chapter.
- (b) *Defined.* A special exception is hereby defined as a use that would not be appropriate generally or without restriction throughout the zoning division or district but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, prosperity, or general welfare. Such uses are permitted in such zoning districts as special exceptions where specific provision for such exceptions is made in this chapter.
- (c) *Review procedure.* A special exception shall not be granted recommended by the zoning board of adjustment and shall not be granted by the town council unless and until:
  - (1) A written application for a special exception is submitted indicating the section of this chapter under which the special exception is sought and stating the grounds on which it is requested;
  - (2) Notice of public hearings on the special exception shall be given in the manner prescribed in section 86-63
  - (3) The public hearings shall be held. Any party may appear in person, or by agent or attorney;
  - (4) The zoning board of adjustment and town council shall make findings that it is empowered under the section of this chapter described in the application to grant the special exception, and that the granting of the special exception, with any appropriate

conditions and safeguards that the board may deem necessary, will not adversely affect the public interest;

- (5) In addition to the regulation set forth in this section for the review of a special exception, the zoning board of adjustment and town council shall also refer to section 86-86, and shall apply the requirements of such section to the review of a special exception;
- (6) In reaching its conclusion and in making the findings required in subsections (4) and (5) of this section, the zoning board of adjustment and town council shall consider and weigh, among others, the following factors and standards, where applicable, and shall show in its record such factors as were considered and the disposition made thereof. Further, the board shall find in the case of any of these factors and standards, where they may be relevant and applicable, and in the case of other factors which the board may find relevant and applicable, that the purposes and requirements for granting the special exception have been met by the applicant:
  - a. Ingress and egress to the property and the proposed structures thereon, if any, including such considerations as automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
  - b. Off-street parking and loading areas, where required, including consideration of relevant factors in subsection (c)(6)a of this section, and the economic, noise, glare, or odor effects of the locations of such areas on adjacent and nearby properties and properties generally in the district;
  - c. Refuse and service areas, including consideration of relevant factors in subsections (c)(6)a and (c)(6)b of this section;
  - d. Utilities, including such considerations as hook-in locations and availability and compatibility of utilities for the proposed use;
  - e. Screening and buffering, including consideration of such relevant factors as type, dimensions, and character to preserve and improve compatibility and harmony of use and structure between the proposed special exception and the uses and structures of adjacent and nearby properties and properties generally in the district;
  - f. Signs, if any, and proposed exterior lighting, if any, with reference to glare, traffic safety, and economic effects of same on properties in the district, and compatibility and harmony with other properties in the district;
  - g. Required yards and open spaces;
  - h. Height of structure where related to uses and structures on adjacent and nearby properties and properties generally in the district;
  - i. General compatibility, harmony, and appearance of the use and structures under the proposed special exception with the uses and structures on adjacent and nearby properties and properties generally in the district;
  - j. Economic effect on adjacent and nearby properties and properties generally in the district of the grant of the special exception.

In granting any special exception, the zoning board of adjustment may recommend and the town council may prescribe appropriate conditions and safeguards in conformity with the standards herein set out and in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the special exception is granted, shall be deemed a violation of this chapter and punishable as provided by this chapter. In making a grant of a special exception, the zoning board of adjustment shall recommend and the town council shall prescribe a time limit within which the action for which the special exception is granted shall be begun or completed, or both. Failure to begin or complete, or both, such action within the time shall void the special exception. In granting any special exception, such decision shall not

become effective except by a favorable vote of a minimum of three members of the board or council hearing such application for same.

Sec. 86-62. - Variance.

- (a) *Power to decide.* The zoning board of adjustment shall have the power to recommend and the town council shall have the power to authorize, upon appeal from the decision of the building official in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the zoning or building code ordinances would result in unnecessary hardship.
- (b) *Defined.* A variance is hereby defined as a relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property such as, but not limited to, the size of a lot, its topography, the conditions or nature of adjoining areas, which shall include water areas, or the existence of other unusual physical conditions, any of which are not the result of the actions of the applicant, a literal enforcement of this chapter would result in unnecessary and undue hardship. As further defined for the purpose of this chapter, a variance is authorized only for height, area, and size of structure or size of yards and open spaces. As used in this chapter, establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning division or district or adjoining divisions or districts.
- (c) *Application.* A variance from the terms of this chapter shall not be granted unless and until a written application for a variance is submitted demonstrating:
  - (1) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
  - (2) That literal enforcement of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;
  - (3) That the special conditions and circumstances in subsection (c) (3) of this section do not result from the action of the applicant, or could have been prevented by action of the applicant, or were existing at the time of acquisition of the property by the applicant and at that time were known to the applicant or should have been known by the applicant upon reasonable inquiry at the time of the applicant's acquisition of the subject real property;
  - (4) That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district.
- (d) *Grounds not considered.* No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
- (e) *Public hearing.* Notice of public hearings on the variance shall be given in the manner prescribed in section 86-63. The public hearings shall be held. Any party may appear in person, or by agent or attorney. The zoning board of adjustment and the town council shall make findings that the requirements of section 86-63 have been met by the applicant. The zoning board of adjustment and the town council shall make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure. The zoning board of adjustment and the town council shall make a finding that the

grant of the variance will be in harmony with the general intent and purpose of this chapter, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

- (f) *Conditions.* ~~In granting any variance, the zoning board of adjustment, in recommending any variance, and the town council, in granting any variance,~~ may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the interpretation and enforcement shall be first presented to the building official, and that such questions shall be presented to the zoning board of adjustment only on appeal from the decision of the building official, and that recourse from the decisions recommendations of the zoning board of adjustment and the decisions of the town council shall be to the courts as provided by law.
- (g) *Vote required.* In granting any variances, such decision shall not become effective except by a favorable vote of a minimum of three members of the zoning board or town council hearing such application for a variance.

#### Sec. 86-63. - Notice.

Where notice to nearby or contiguous property owners is required, such notice shall be mailed to such property owners by certified mail at least 15 days prior to the date of the hearing. For this purpose, the owner of the property shall be deemed to be the person who, with his address, is so shown on the current property rolls of the town and/or county. Requirements of notice by mail to specific property owners shall be as follows:

- (1) *Appeal from the decision of the building official.* The owner of the property involved and all owners of property directly contiguous to the premises involved in the appeal;
- (2) *Variance.* The owner of the property requesting the variance and all owners of property within 100 feet of the premises for which variance is requested;
- (3) *Special exception.* The owner of the property requesting the special exception and all owners of property within 100 feet of the premises for which special exception is requested.

No petition to the zoning board of adjustment and town council appealing from the decision of the building official or requesting a variance or special exception shall be considered until notice has been given as required in this section and until public notice of such hearing has been posted on the premises involved or on the town hall announcement board for at least 15 days prior to the hearing.

#### Sec. 86-64. Zoning Board of Adjustment to be Advisory Board to Town Council.

Effective July 1, 2016, the zoning board of adjustment shall become an advisory board to the town council. The town council, upon recommendation of the zoning board of adjustment, shall decide all administrative reviews and appeals as provided for in sections 86-59 and 86-60; shall decide all special exceptions as provided for in section 86-61; and shall decide all variances as provided for in section 86-62.

#### Secs. 86-65—86-85. - Reserved.

**SECTION 2.** The provisions of this Ordinance shall be made a part of the Code of Ordinances of the Town of Lake Clarke Shores, Florida. The sections of this Ordinance may be renumbered or lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

**SECTION 3.** If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of the Ordinance.

**SECTION 4.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 5.** This ordinance will take effect immediately upon adoption.

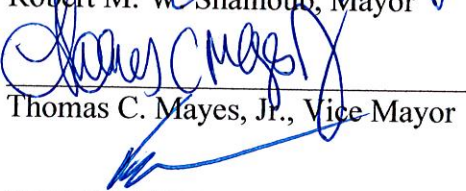
**PASSED AND ADOPTED** the 18<sup>th</sup> day of October, 2016, on first reading.

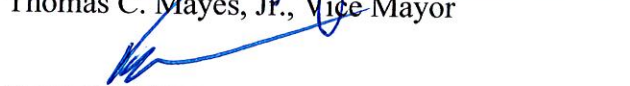
**PUBLISHED** the 27<sup>th</sup> day of October, 2016, in the Lake Worth Herald / Coastal Observer.

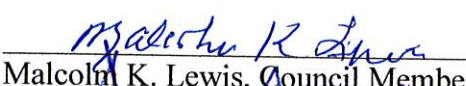
**PASSED AND ADOPTED** this 15<sup>th</sup> day of November, 2016, on second and final reading.

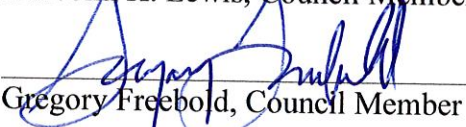
By:

  
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Robert M. W. Shalhoub, Mayor

  
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Thomas C. Mayes, Jr., Vice Mayor

  
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Valentin Rodriguez, Jr., President Pro Tem

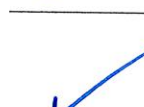
  
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Malcolm K. Lewis, Council Member

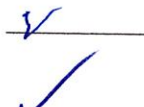
  
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Gregory Freebold, Council Member

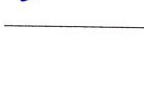
FOR

AGAINST










ATTESTED:

  
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Mary Pinkerman, Town Clerk

Ord. #16-05