

ORDINANCE NO. 2011-44

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE V OF THE LAND DEVELOPMENT CODE OF THE TOWN RELATING TO FENCES, WALLS, GATES, ENTRANCEWAYS AND RELATED STRUCTURES; PROVIDING FOR DEFINITIONS, HEIGHT RESTRICTIONS, MAINTENANCE, MATERIALS AND DESIGN; PROVIDING FOR A PERMIT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article V, Section 8 of the Land Development Regulations of the Town provides for the regulations and location of fences and walls in residential districts; and,

WHEREAS, The Town Council recognizes that in some instances the first aesthetic improvement that can be seen on a person's property is the entry gate located across the primary ingress and egress to the property; and

WHEREAS, Providing for regulations concerning fences, walls, gates, entranceways and related structures will benefit property values, property desirability, and security.

NOW THEREFORE BE IT ORDAINED by the Town Council of the Town of Malabar, Brevard County, Florida, that

SECTION 1. ARTICLE V Section 1-5.8 of the Malabar Land Development Code is hereby amended in full to read as follows:

Section 1-5.8. -- Fences and walls.

~~(a) Definitions.~~

~~For purposes of this section, the following terms shall have the following definitions:~~

~~*Abut or abutting property* means a lot or parcel sharing a common boundary with the lot or parcel in question, or a lot or parcel immediately across a public or private right-of-way or street from the lot or parcel in question.~~

~~*Building line* means a line within a lot or parcel established by yard or setback requirements in the land development regulations of the Town, outside of which no principal building or structure may be erected.~~

~~*Commercial district* means any area of the Town having the zoning classification CL or CG in accordance with the land development regulations of the Town.~~

~~*Fence* means a vertical row of nonliving material, exclusive of masonry products, placed close together or abutting each other in such a manner as to form a boundary or barrier between two (2) adjacent parcels of land or portions of parcels of land.~~

~~Height means the distance from existing grade to the top of such fence or wall including post and/or columns measured on the side facing abutting property.~~

~~Industrial district means any area of the Town having the zoning classification IND in accordance with the land development regulations of the Town.~~

~~Institutional district means any area of the town having the zoning classification INS in accordance with the land development regulations of the town.~~

~~Opaque shall mean that objects located on one side of a fence or wall are not visible from the opposite side when the viewer's line of sight to such object is through such fence or wall.~~

~~Residential district means any area of the Town having the zoning classification RR-65, RS-21, RS-15, RS-10, RM-4, RM-6, R-L/C or R-MH, in accordance with the land development regulations of the town.~~

~~Wall means a vertical row of masonry materials placed close together or abutting each other in such a manner as to form a boundary or barrier between two (2) parcels of land or portions of parcels of land.~~

~~Yard means an open, unoccupied space on the same lot or parcel with a building or buildings, other than a court, which is unobstructed from the ground upwards by buildings or structures.~~

~~(1) Required front yard means an open, unoccupied space extending across the full width of the lot, the depth of which is the minimum horizontal distance established by the Land Development Code beyond which no building may be erected. Is determined by the frontage to which the address is assigned to such lot or parcel.~~

~~(2) Required rear yard means an open, unoccupied space extending across the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and the building line.~~

~~(3) Required side yard means an open, unoccupied space between the front and rear building lines and the side lot line and the side building line.~~

~~(b) Permit required for fence or wall. No fence or wall shall be constructed, erected, replaced or altered unless a permit therefore has been obtained from the Town by the owner of the property on which such fence or wall is to be located, or by some other person duly authorized by such owner. The application for such permit shall be on a form provided by the building official and shall be accompanied by drawings showing the proposed location of and the specifications for the type of construction of such fence or wall.~~

~~(c) Permit fee. Permit fees shall be calculated in accordance with Resolution 9-94 and all succeeding fee resolutions. Valuation of such fence or wall for the purpose of establishing the permit fee shall be determined by the building official. No permit shall be issued unless and until all fees associated with said permit are paid.~~

~~(d) Materials and design requirements.~~

~~1. All fences or walls constructed pursuant to the permit issued in accordance with this article shall comply with all applicable provisions of this Code relating to the type of construction, required materials, height and location.~~

~~2. All fences or walls shall be designed, constructed and secured in accordance with the adopted building code to meet the specified wind load.~~

~~3. Posts and stringers required for the support of fences shall not be visible from the side facing any adjacent or abutting property, for which such fence permit was issued. Wood post shall be pressure treated or of a wood type with a natural resistance to decay and termites as listed in the adopted building code.~~

~~4. All walls shall have a painted surface with struck mortar joints or, stucco or other finished surface on the side facing any abutting property for which the permit for such wall was issued.~~

~~5. The following provisions shall be prohibited in any fence or wall:~~

~~a. *Electrified wire strands.* Except in the RR-65 districts when used for the control of animals and only around the control area.~~

~~b. *Barbed wire.* Except in the RR-65 districts when used for the control of animals and only around the control area, and for the top of fences in the commercial, industrial and institutional districts.~~

~~(e) *Height restrictions for fences and walls in residential districts.* Fences or walls located, erected, constructed, reconstructed or altered on any property located in a residential district shall comply with the following height requirements:~~

~~1. Except as provided in this section, no portion of any fence or wall located between the front building line and the front lot line be more than four (4) feet in height.~~

~~2. Any fence or wall located to the rear of the front building line shall be six (6) feet or less in height, except for corner lots.~~

~~3. For any corner lot of which the rear lot line abuts the side lot line of another lot, that portion of such fence or wall located between the side right-of-way line and the side building line adjacent to the side right-of-way shall be not more than four (4) feet in height.~~

~~4. For any lot or parcel not containing a structure, the requirements of subsection (e)1, (2) and (3) shall be applied to required front and corner building lines in the same manner as if a structure had been constructed in accordance with such required yard area or setback as specified within the zoning district requirements.~~

~~5. Any lot or parcel located within a RR-65 District shall be permitted a fence or wall fifty-four (54) inches or less in height within the required front yard. Higher fences and walls, not to exceed six (6) feet in height within the required front yard may be authorized by the Town Council after considering the recommendation of the Planning and Zoning Board. Prior to approving subject structure the Town Council shall render a finding that the structure is safe and visually compatible in the area. Such fence or wall shall be constructed in a manner that provides adequate visibility at any public or private right-of-way, driveway or street providing access to such lot or parcel, and at any abutting intersection.~~

~~(f) *Height restrictions for fences or walls in commercial, industrial and institutional districts.* Fences or walls located, erected, constructed, reconstructed or altered on any property located in a commercial, industrial and institutional district shall comply with the following height requirements:~~

~~1. Commercial district shall be no more than six (6) feet in height. An additional twelve-~~

~~inch section for security with barbed wire attached may be permitted, total height shall not exceed seven (7) feet in height.~~

~~2. Industrial and institutional districts shall be no more than eight (8) feet in height including barbed wire for security.~~

~~(g) Maintenance of fences and walls. All fences or walls in the Town shall be maintained in good repair and in a structurally sound condition. All fences shall be upright and plumb continuous in alignment.~~

~~(h) Restriction of fences or walls on public easements, utility easements and public rights-of-way.~~

~~1. No wall shall be constructed on any public easement, utility easement or public right-of-way.~~

~~2. No fence shall be constructed on any public right-of-way, and except as provided in subsection (3) hereof, no fence shall be constructed on any easement.~~

~~3. A non permanent type fence may be constructed on an easement providing the property owner making application for such fence agrees in writing, at the time of application for permit, that the property owner and/or any successors in interest will bear the expense of removal of such fence if access to said easement is required.~~

~~(i) Perimeter Fencing for Certain Residential Subdivisions/Developments. Any perimeter fencing and/or wall which is placed or located on any portion of the perimeter boundaries of a residential subdivision or development shall comply with the following:~~

~~1. In RS Zoning Districts, no portion of a fence or wall, including gates, support posts, members or decorative features, located on any perimeter property of a residential subdivision or development that is not part of a platted residential lot shall exceed forty-eight (48) inches in height.~~

~~2. In the RR Zoning District, fence or wall, including gates, support posts, members, or decorative features, located on any perimeter property of a residential subdivision or development that is not part of a platted residential lot shall not exceed fifty-four (54) inches. Higher perimeter fences and walls within the RR Zoning Districts, not to exceed six (6) feet in height, may be approved by Town Council after considering the recommendation by the Planning and Zoning Board. Prior to approving any fence or wall in excess of fifty-four (54) inches, the Town Council shall render a finding that the structure is safe and visually compatible in the area. Such fence or wall shall be constructed in a manner that provides adequate visibility at any public or private right-of-way, driveway or street providing access to such lot or parcel, and at an abutting intersection.~~

~~3. In the R-MH Zoning District no portion of a fence or wall, including gates, support posts, members or decorative features, located on any perimeter property of a mobile home residential subdivision or development that is not part of a mobile home site shall exceed forty-eight (48) inches in height.~~

~~4. In RM Zoning Districts, no portion of a fence or wall, including gates, support posts, members or decorative features, located on any perimeter property of a multi family residential subdivision or development that is not part of a residential site shall exceed forty-eight (48) inches in height.~~

Section 1-5.8. Fences, walls and entranceways and related structures.

(a) Definitions.

For purposes of this section, the following terms shall have the following definitions:

Abut or abutting property means a lot or parcel sharing a common boundary with the lot or parcel in question, or a lot or parcel immediately across a public or private right-of-way or street from the lot or parcel in question.

Commercial district means any area of the Town having the zoning classification CL or CG in accordance with the land development regulations of the Town.

Entrance gate means a gate designed for ingress and egress for vehicular traffic to and from a lot or parcel that directly connects to the public roadway. Entrance gates may be opened manually or by automated means and may be guided by hinges, tracks, or other means.

Entranceway means columns, poles, walls, arches or other structures that define a point of entry onto a property. The entranceway may or may not have a gate.

Fence means a vertical row of nonliving material, placed close together or abutting each other in such a manner as to form a boundary or barrier between two (2) adjacent parcels of land. Such amenities as kennels, cages, corals, trellises and related conveniences are not fences for the purposes of this subsection.

Gate means a rigid structure to open and close in order to allow ingress and egress through a fence or wall. Gates may be opened manually or by automated means and may be guided by hinges, tracks, or other means.

Height means the distance from existing grade to the top of such fence or wall including post and/or uprights measured on the side facing abutting property.

Industrial district means any area of the Town having the zoning classification IND in accordance with the land development regulations of the Town.

Institutional district means any area of the town having the zoning classification INS in accordance with the land development regulations of the town.

Opaque shall mean that objects located on one side of a fence or wall are not visible from the opposite side when the viewer's line of sight to such object is through such fence or wall.

Perimeter means outside boundary of a subdivision or multiple adjoining lots.

Residential district means any area of the Town having the zoning classification RR-65, RS-21, RS-15, RS-10, RM-4, RM-6, R-L/C or R-MH, in accordance with the land development regulations of the town.

Wall means a vertical row primarily composed of masonry materials placed close together or abutting each other in such a manner as to form a boundary or barrier between two (2) parcels of land.

Yard means an open, unoccupied space on the same lot or parcel with a building or buildings, other than a court, which is unobstructed from the ground upwards by buildings or structures.

(b) Height restrictions for fences, walls, gates and related structures in Commercial, Industrial or Institutional Districts.

1. Fences, walls, gates, and related structures located, erected, constructed or altered on any property located in a Commercial, Industrial and Institutional District shall be no more than eight (8) feet in height including barbed wire for security.

(c) Height restrictions for fences, walls, gates, entranceways and related structures in Residential Districts shall comply with the following height requirements:

1. Except as provided in this section, no portion of any fence, wall or gate located between the front building line and the front lot line shall be more than five (5) feet in height and if located to the rear of the front building line shall be no more than six (6) feet in height.
2. For any lot or parcel not containing a structure, the requirements of this section (1-5.8) shall be applied in the same manner as if a structure had been constructed in accordance with such required yard area or setback as specified within the zoning district requirements.
3. Any lot or parcel located within a RR-65 District shall be permitted a fence or wall six (6) feet or less in height and gates and/or entrance gates eight (8) feet or less in height
4. Except as provided in this section, no portion of any entranceway shall be more than six (6) feet in height.
- 5 Any lot or parcel located within a RR-65 District shall be permitted an entranceway eighteen (18) feet or less in height. If part of the entranceway structure is erected over the driveway, that part of the structure shall meet minimum DOT height requirements.
- 6 If a gate is installed to provide ingress from a major collector road, the gate must be set back at least fifteen (15) feet from the property line.

(d) Height restrictions for a perimeter fence or wall in residential subdivision/developments. No portion of a fence, wall or related structures shall exceed six (6) feet in height.

(e) Maintenance of fences, walls or related structures. All fences, walls and related structures in the Town shall be maintained in good repair and in a structurally sound condition. All such structures shall be maintained to their original specifications.

(f) Materials and design requirements.

1. Posts and stringers required for the support of opaque fences shall not be visible from the side facing any abutting property, for which such fence permit was issued. Posts shall be a treated wood type or wood or material type with a resistance to decay.
2. All walls shall have a painted surface with struck mortar joints, stucco or other finished surface on the side facing any abutting property for which the permit for such wall was issued.
3. The following provisions shall be prohibited in any fence or wall:
 - a. Electrified wire strands. Except in the RR-65 districts when used for the control of animals and only around the control area.
 - b. Barbed wire. Except in the RR-65 districts when used for the control of animals and only around the control area.

(g) Permit required for fence, wall, entranceway and related structures. No fence, wall, entranceway or related structure shall be constructed, erected, replaced or altered between abutting parcels unless a permit therefore has been obtained from the Town by the owner of the property on which such fence or wall is to be located, or by some other person duly authorized by such owner. The application for such permit shall be on a form provided by the building official and shall be accompanied by drawings showing the proposed location of and the specifications for the type of construction. The Building Official shall deny a permit if he believes the proposed structure creates a threat to health or safety. Unless requested otherwise by the applicant, denial of a permit shall create an automatic appeal to the Town Council after

consideration and recommendation by the Planning & Zoning Board. Permits are not required for periodic repair and maintenance of an existing fence or wall.

(h) Permit fee. Permit fees shall be calculated in accordance with adopted resolutions. No permit shall be issued unless and until all fees associated with said permit are paid.

(i) Restriction of fences, walls or related structures on public easements, utility easements and public rights-of-way.

1. No permanent wall, fence, gate, entranceway, or related structures shall be constructed on any public right-of-way or easement.

2. A non-permanent fence or gate may be constructed on any public right-of-way, easement providing the property owner making application for such fence or gate has submitted written permission from any affected property owners and agrees in writing, at the time of application for permit, that the property owner and/or any successors in interest will bear the expense of removal of such fence when access to said public easement is required.

(j) All fences, walls or entranceways shall be constructed in a manner that provides adequate visibility at any public or private right-of-way, easement, driveway or street providing access to such lot or parcel, and at any abutting intersection.

(k) Town Council may authorize non-compliant design specifications only after considering the recommendation of the Planning and Zoning Board. Prior to approving subject structure the Town Council shall render a finding that the structure is safe and visually compatible within the area.”

SECTION 2. CODIFICATION. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the provisions of Section 1 of this ordinance become part of the Land Development Code of the Town of Malabar. The Town Clerk is hereby authorized and directed to cause the provisions of section 1 of this ordinance to be incorporated into the Town’s Land Development Code.

SECTION 3. SEVERABILITY. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 4. CONFLICT. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 5. EFFECTIVE DATE. The ordinance shall take effect immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member Beatty.

The motion was seconded by Council Member Acquaviva and, upon being put to a vote, the vote was as follows:

Council Member Carl Beatty	Aye
Council Member David White	Aye
Council Member Steve Rivet	Aye
Council Member Jeffrey (Jeff) McKnight	Aye
Council Member Marisa Acquaviva	Aye

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this 1 day of August, 2011.

BY: TOWN OF MALABAR

Thomas M. Eschenberg
Mayor Thomas M. Eschenberg

First Reading: 7/18/11
Second Reading: 8/1/11

ATTEST:

Debby K. Franklin
Debby K. Franklin, C.M.C.
Town Clerk/Treasurer

Approved as to form and
legal sufficiency by:

Karl W. Bohne
Karl W. Bohne, Jr.
Town Attorney