



**PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY, FEBRUARY 27, 2008
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA**

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**
- D. CONSENT AGENDA**
 - 1. Approval of Minutes**
Regular Planning and Zoning Meeting – 2/13/07
Exhibit: Agenda Report No. 1
Recommendation: Motion to approve
- E. PUBLIC HEARING:**
- F. ACTION:**
 - 2. Appurtenance Heights proposed ordinance**
- G. DISCUSSION ITEMS - General Items**
 - 3. Fencing for Subdivision Projects proposed ordinance**
- H. OLD BUSINESS/NEW BUSINESS:**
Malabar Vernacular Ordinance
- I. ADJOURN:**

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service.

In compliance with the Americans With Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

TOWN OF MALABAR
PLANNING AND ZONING
AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: FEBRUARY 27, 2008

Prepared By: Debby Franklin, Town Clerk/Treasurer, Secretary to P&Z

SUBJECT: Approval P&Z Minutes

BACKGROUND/HISTORY:

ATTACHMENTS:

- Minutes from Planning and Zoning regular meeting February 13, 2007

ACTION OPTIONS:

Motion to Approve

TOWN OF MALABAR – PLANNING & ZONING ADVISORY BOARD

2/27/08 MEETING MINUTES

A. CALL TO ORDER, PRAYER AND PLEDGE

Meeting called to order at 7:32 pm. Prayer and Pledge led by Chair Bob Wilbur.

B. ROLL CALL

ROLLCALL:

Bob Wilbur, Chair

Michele Kelly, Secretary

Patrick Reilly, V-Chair

Richard Cameron

Don Krieger

Bud Ryan

Cindy Zindel, Alt. #2 – non-voting

Also present were Mayor Eschenberg and Clerk Debby Franklin.

C. ADDITIONS/DELETIONS/CHANGES - None

D. CONSENT AGENDA

1. Approval of Minutes

Regular Planning and Zoning Meeting – 2/13/07

Exhibit: Agenda Report No. 1

Recommendation: Motion to approve

Motion: Reilly / Ryan to approve the minutes of 2/13/08.

Changes suggested by Krieger were as follows:

Pg 3, last paragraph: add to town hall and change not to no

Pg 3, last sentence: "Krieger said EELs representatives indicated at their trailhead Malabar Park public meeting that moving the fence on Marie Street back east and asking for ROW property owners to consider 99-year conservation leases were options. Go from asphalt pavement to boardwalks over sensitive wetland areas. They are planning board and nothing has come before this board. He would recommend to council to let this property-financing die. The property value has been artificially increased." "Then back to sentence beginning with 'Does' on fourth line page 4..."

Krieger believes this addition makes minutes clearer. Minutes reflect what was said and should not be modified just to make the thoughts clearer. This can only be handled by including verbatim if they believe that by summarizing that part makes it confusing. Debby is preparing a memo to the Board so that they will understand how changes to minutes are to be made. You cannot just accept lengthy changes.

Pg 4, first paragraph starting with "Does..." everything is the same again.

Pg 4, third paragraph change to "Krieger said in his view this purchase resolution was rushed through"

Motion: Reilly/Ryan restated motion to approve minutes based on Krieger's corrections.
Vote: All Ayes.

E. PUBLIC HEARING: None

F. ACTION:
2. Appurtenance Heights proposed ordinance

Motion: Reilly/Krieger. Motion to recommend Council approve Ordinance 2008-99.

Discussion was held regarding not deleting belfries, steeples, spires, & cupolas, as the problem was with water towers. Wilbur would like to see these items not crossed out. It was determined that these would be brought to the Board on an individual basis. Reference made to Attorney Bohne's statement that this will require a Public Hearing before P&Z before it can go to Council and Franklin will get the hearings advertised.

Wilbur pointed out that the items being deleted do not preclude them from being built, but the individual must go through P&Z. Krieger questioned the deletion of cupolas. Franklin explained that the items deleted could be viewed as decorative and that is why they are removed from height consideration, and she explained the example used by the Town Attorney that because of the freedom of religion act, some churches operate out of houses therefore a house/church could have a spiral or steeple. Franklin explained that they are considered decorative. They could be an exception to height stipulations that reads in the Code as 35 feet tall. Also belfry terminology is somewhat dated. Franklin clarified the difference between a public meeting and a public hearing.

Further discussion was held on Section 3 regarding stories. Discussion was held as to whether parking underneath the building would be consider a story. Examples were used of properties in Grant. Clarification was given by Wilbur that buildings located on a hills could excavate under the grade level. It was determined that the Ordinance was inferring that a garage would be a considered a story. There was extensive discussion over how the vertical height should be calculated with various examples used.

Discussion was held if the Ordinance should be clearer on this matter and it was pointed out that the Building Official has the authority when issuing the permit. The Applicant has the ability to go for a variance before the variance board. Zindel asked for clarification on the verbiage 'notwithstanding that no floor or ceiling is located above it.' Krieger explained that people can be running around on it even though there is no ceiling above it. It addresses the activities on the roof, and will now state in the Code that outside activities on the roof makes it another story.

Vote: All Ayes

G. DISCUSSION ITEMS - General Items
3. Fencing for Subdivision Projects proposed ordinance

Discussion was held on the proposed ordinance to add to Article 17, Section 1-17.2, it is the perimeter fencing for subdivisions. Basically, it states that the subdivision has to follow the

same rules as the people that live here do. They cannot have 10 ft columns. The Mayor brought up entrance ways and it was determined it would be discussed at another time. It was pointed out the the Code is silent regarding grand entrance ways.

The question was asked regarding the process and it was explained that P&Z has to make a recommendation and then it goes forward to Council. Question was raised concerning the entrance ways with decorative tops. It was agreed that there should be some leeway to allow creativity in the design of entrance ways. Discussion was held on the Town Attorney's comment that subdivisions do not have to follow the same rules as homeowners because they did not have lots. A subdivision is a collection of lots; it was pointed out that the ordinance was set for individual lots not subdivisions so subdivisions should be included in the Code. Ms. Zindel questioned if a 48-inch fence in the front yard is acceptable in RS zoning. V-Chair Reilly stated that is part of this ordinance. It was clarified that in RR zoning the fence height limit is 54-inches with the ability to go to P&Z for up to a 60-inch height. Further discussion was held regarding changing the Code to allow fencing height in all zones to be 54 inches. It was pointed out that the 4-foot height was for sight visibility.

V-Chair Reilly stated that: Pg 260.2, height restrictions for fences and walls should say the "...residential zoning districts..."

Motion: Reilly/Ryan made a recommendation to give this ordinance to Town Council with the change.

Vote: All Ayes

V-Chair Reilly presented a memorandum titled "Green Local Governments". Reilly explained that the Town of Malabar was being requested to adopt an ordinance to be included in the Land Development Code and include in the E.A.R. updates. Discussion was held that this was to mean the Town should be as green as possible. It was explained that the purpose was to make it official and include it in the Comp Plan in the changes that are coming up.

Motion: Krieger/Ryan to refrain from making a recommendation to Council for this resolution.

Discussion was held and Wilbur stated that he would like to see the Town go green and to see environmental measures enacted. He felt the Town could save money with alternatives. Clarification was asked if this should be required or recommends. Zindel stated it should be recommends as the Town of Malabar is already doing a great deal towards being green with the requirement of an acre and a half for slow growth. Krieger stated that approving it would only add terminology and procedures. The question was asked about how this request ended up in Malabar and V-Chair advised that this was sent to the Town Clerk/Treasure via e-mail. Motion was restated and a roll call vote was taken.

Roll call Vote: Krieger: Aye; Reilly: Aye; Wilbur: Aye; Cameron: Aye; Ryan: Aye.

H. OLD BUSINESS/NEW BUSINESS: Malabar Vernacular Ordinance

Ryan questioned if the two addresses on Eva Lane with the non-conforming pillars and/or walls got a Building Permit to build? Franklin was asked to speak on the issue. She advised one owner was notified of the options and told to apply for a variance, however, the

Town Attorney opined that they were not entitled to apply for a variance. Their application fee is being refunded with a letter of options. The Council gave themselves authority to grant exception in regard to fence heights. This is unique to the Town of Malabar Code because anything else can go the Board of Adjustment. This specific issue the Council exercised authority based on recommendation of P&Z. This pre-exempts the homeowners from asking for a variance because in this case the Board of Adjustments does not have the authority. The owners created the hardship themselves as it was built without a permit and it was built too high. Options are to tear it down or submit plans showing it will only go to six (6) feet and then come back before the P&Z board.

Franklin advised that it will most likely go before the Special Master. Currently, the Town is cutting the check to refund their application fee. They will have to take the fence down to an acceptable height and apply for a permit.

Krieger questioned how the rezoning of the five (5) acres on Babcock, in which they wanted to change the zoning to CG, got put into an Ordinance for the Town Council to consider at the last RTCM when it was not recommended by the P&Z Board. He also wanted to know why the Town Council is considering the Ordinance on Monday. Krieger also stated that P&Z denied it. Krieger asked what the response to the question by the gentleman to the board of why he was charged if they were going to be denied anyway?

Franklin explained that the same rezoning and/or rezoning and land use change which has occurred in other cases. P&Z recommended denial of both. In each case they had to be put into Ordinance form because P&Z is an advisory board. It would go before Council for the first reading, with no additional expenses because there is no legal advertising. At second reading, which is a public hearing expenses incur. Franklin clarified that denial was based on the Planners professional opinion that it does not comply with the Town's Comprehensive Plan. The major point was that the developer/realtor asked for a rezoning without asking for a land use change. It was felt this error may have occurred because it was missed by staff. Franklin explained that it is illegal to rezone against your land use plan. Zindel asked for an explanation why there has to be an OI between residential and commercial. Franklin explained that it is in the Comprehensive Plan. The OI is intended to be a buffer between more dense commercial use and less dense residential use. She further explained that staff does not have the authority to tell people they can't request something.

Cameron suggested that there should be a policy that takes this through the different channels. Franklin explained that there has been an in-house change in procedures; when these applications come in, especially for re-zoning, it is sent immediately to the Planner and he is asked for his initial comments within 5 days. So if the application packet is missing something we can get back in contact with the applicant and they can either decide to supply it or pull the application and at that point the Town can consider refunding the application fee.

Chair Wilbur inquired how long the Planner had had the application prior to the P&Z meeting. Franklin explained the application was received in December 2007. We received in comments just before we put the P&Z packets together. It was recommended that the Planner be given a requirement of response time and Franklin stated this was implemented.

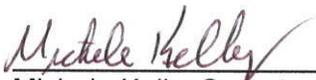
Zindel inquired if someone could asked for a zoning change or anything like that at a P&Z meeting and raise the question. Franklin explained that the suggestion has been made at other times. However, the Board state they need to be careful when offering advice.

Wilbur questioned Franklin regarding the statement in the memo (08-TC-012, para 1), regarding the E.A.R. review completed by DCA. Wilbur asked about the next step in putting an amendment into place and wanted to know if we are going to use the same Planners? Franklin stated that we are hoping we will not have to re-bid.

Chair Wilbur asked Mayor Eschenberg as to why the Council deliberately separated the E.A.R. from the amendments and Mayor stated he was not sure. Further discussion was held regarding the timeline and the costs.

I. ADJOURN:

Motion: Reilly / Krieger to adjourn. **Vote: All Ayes.** Meeting adjourned at 9:30PM



Michele Kelly, Secretary



Bob Wilbur, Chairman



Date approved

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 2

Meeting Date: February 27, 2008

Prepared By: Debby K. Franklin, Town Clerk/Treasurer

SUBJECT: Amend LDC for Appurtenance Height (Proposed Ord No. 2008-99)

BACKGROUND/HISTORY:

This is the Agenda Report form that was reviewed by Council on Monday 2/25/08.

At the RTCM held on 02/04/08, Council directed the Mayor's proposed changes to the Code be sent back to P&Z for their discussion and recommendation. At the January 23rd P&Z Meeting they asked for the legal opinion regarding decorative attachments. At the February 13th P&Z Meeting they recommended all three of the Mayor's recommended changes to be incorporated into a change to our Land Development Code and sent to Council for adoption. A motion was made and a vote taken and the vote was 5-0 in support of this.

The changes were drafted into an ordinance and sent to the Town Attorney for review. The Attorney reviewed the draft ordinance and made further changes for clarification and consistency with the Code. He also advised that this would require a public hearing at P&Z. These proposed changes will be reviewed by P&Z at their next meeting on 2-27-08.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

- Proposed Ordinance 2008-99
- Portion of DRAFT minutes from P&Z meeting of 2-13-08
- Portion of minutes from P&Z meeting 1-23-08
- Agenda Item Report from P&Z meeting of 2-13-08

ACTION OPTIONS:

Staff seeks discussion and direction concerning this matter.

ORDINANCE NO. 2008-99

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE V, SECTION 1-5.1 OF THE LAND DEVELOPMENT CODE OF THE TOWN; PROVIDING FOR EXCEPTIONS TO HEIGHT LIMITATIONS; DECLARING THAT ELEVATORS ARE INTENDED FOR HUMAN OCCUPANCY AND SHALL NOT BE CONSIDERED FOR AN EXCEPTION TO THE HEIGHT LIMITATIONS; AMENDING SECTION 1-20.2 OF ARTICLE XX OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING THE DEFINITIONS OF STORY AND BUILDING HEIGHT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Town Council has determined that clarification is needed relating to building heights, appurtenance height, exception to heights and directed the code be amended; and

WHEREAS, Planning and Zoning Board has held a public hearing and has made recommendations to the Town Council concerning such clarification.

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

SECTION 1. Section 1-5.1 of Article V of the Land Development Code of the Town is hereby amended in full to read as follows:

“Section 1-5.1. Height exceptions.

The below cited appurtenances or mechanical devices typically required to be placed above roof level and not intended for human occupancy may exceed height limitations cited within this Code upon approval by the Town Council. The Town Council shall first consider the recommendation of the Planning and Zoning Board. A staff recommendation shall be provided by the Building Official and/or the Town Engineer. The appurtenances or mechanical devices shall include:

- Chimneys.
- Belfries.
- Water Towers.
- Ventilators.
- Steeples and Spires.
- Cupolas.
- Radio and Television Antennas.
- Other similar duly approved appurtenances or mechanical devices.

In no case shall any permitted heights be in conflict with the height regulations established for the Valkaria Airport by Brevard County and/or the Federal Aviation Administration. An elevator is hereby declared intended for human occupancy and shall not be considered for an exception to the height regulations.”

SECTION 2. Section 1-20.2 of Article XX of the Land Development Code is hereby amended to provide for a new definition of a "Building Height" which new definition shall read as follows:

"Building Height, The vertical dimension measured from the finished grade at the building line to the highest point of the structure including any and all decorative and safety structures, unless exempted under 1-5.1 of the Land Development Code, excluding appurtenances usually required to be placed above the roof line and not intended for human occupancy."

SECTION 3. Section 1-20.2 of Article XX of the Land Development Code is hereby amended to provide for a new definition of "Story" which new definition shall read as follows:

"Story. That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there be no floor above it, ~~thence~~ then the space between such floor and ceiling next above. If any portion of a roof area is intended for human occupancy then such roof area shall also be considered a story, notwithstanding that no floor or ceiling is located above it."

SECTION 4. CODIFICATION. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the provisions of Sections 1, 2 and 3 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 sections 1, 2 and 3 of this ordinance to be incorporated into the Town's Land Development Code.

SECTION 5. 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 6. CONFLICT. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 7. EFFECTIVE DATE. The ordinance shall take effect immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member _____. The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Council Member Nancy Borton _____
Council Member Brian Vail _____
Council Member Charles (Chuck) McClelland _____
Council Member Jeffrey (Jeff) McKnight _____

Council Member Patricia (Pat) Dezman _____

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County,
Florida this day of _____, 2008.

BY: TOWN OF MALABAR

Mayor Thomas M. Eschenberg

First Reading: 03-03-08
Second Reading: 0

ATTEST:

Debby K. Franklin
Town Clerk/Treasurer

Approved as to form and
legal sufficiency by:

Karl W. Bohne, Jr.
Town Attorney

EXERPT OF DRAFT P&P MINUTES OF 2-13-08

F. ACTION:

2. Appurtenance Heights purposed for ordinance

Wilbur asked Building Official to address Board. Cloutier said the package is self explanatory. He discussed the definition of height. The next page list exceptions and it did not include elevators. The elevator cabin is for human occupancy and so could not exceed 35 feet. Habitable space is then defined. Occupancy is not defined. A Jacuzzi on the roof would then permit occupancy. They discussed a three story building that allowed use of the roof.

Board asked Mayor to speak. Mayor Eschenberg explained P&Z recommendation was discussed at Council and he volunteered to research it and make recommendations to change the codes. The Council directed that it come back to P&Z to review the research. Council is going to look for your recommendation on those proposed changes.

Reilly read the changes proposed by Mayor:

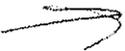
- Building Height – including any and all decorative and safety structures and excluding appurtenances
- Story – added if intended for human occupancy
- Article V, section 1-5.1 height exceptions –added – an elevator is intended for human occupancy and shall not be allowed to exceed the 35' height.

Cloutier said that each city has their own way of measuring height. We measure to the peak and Palm Bay only uses a third of the roof.

Wilbur asked Cloutier if these changes would be enforceable. Yes, we can be stricter than statute. Krieger said first the applicant would have to go to P&Z and then Town Council if he wanted an exception. He thinks these additions help explain to the outsider that we are serious about height limitations.

Reilly thinks the changes should be incorporated. Ryan said under height exceptions there should be limits, but the fail safe is they still have to come before this board.

Krieger stated the consensus is that elevators are considered occupiable. Wilbur asked Cloutier about commercial elevators. Cloutier explained that most have pulleys on the side or pistons underneath. There are very few that use overhead pulleys. Ryan stated that the Double Tree on beach is five stories and the elevator does not go higher than the roof. It is not necessary for the elevator to go beyond the roof unless you want the elevator to open on the roof.

 **MOTION:** Krieger / Ryan recommend these three changes be presented for adoption by council. **Vote: All Ayes.**

3. Exceptions to Height Regulation - Appurtenances

Qualify the definition of appurtenances. Other cities show water towers, TV antennas, cell phone tower. Wilbur feels more regulation is necessary. Water Tower for fire protection could be a sizable tank. Wilbur said they may want to put water towers on roofs. Specify what towers are allowed. Elevators are specifically mentioned in Palm Bay's ordinance. Krieger asked if it is a problem with the height. Cameron suggested the Council approve anything not specified. Zindel asked what Board is looking for. Council can approve and will consider recommendation of P&Z. Anything over 35' would have to come to P&Z. Zindel mentioned the height exceptions coming to P&Z. Each will be looked at separately. Board discussed occupied space on roof top. Krieger stated that they need to stay on general terms. Project Engineers on previous projects stated that this was appropriate. Krieger doesn't think it needs to be changed. Be more careful with review. Krieger wants more time to review plans. Krieger stated mansards are not included. Cameron stated then code should change nothing over 35' without approved exceptions. Board discussed antenna height. Wilbur preserving the skyline from degradation. Krieger stated we should be consistent. Building height is 35' and anything higher should be an exception. Ryan brought up the visibility option. US 1 is designated as a scenic highway.

Secretary offered an explanation from Council directive. Krieger suggested adding mansard to this list. Leave it alone and we will look at all exceptions. Consensus is to leave it alone. Reilly referred to page 1176 of LDC, definition of building heights. It does say highest peak. Mansard is a major component and how can you not consider it? Use the highest structural component instead? Wilbur would like to clarify human occupancy. Krieger suggested leaving it alone. What is the problem. It is going to be done on a case by case basis. Wilbur said if they couldn't use the rooftop then you wouldn't need a elevator shaft to get to the roof. Much discussion on roof uses.

 **MOTION:** Krieger / Ryan to recommend Council have attorney review the addition of any and all decorative and/or architectural components to the code are to be within the 35 foot maximum building height definition.

Speakers Card: Juliana Hirsch, 1035 Malabar Road, Developers need to know that Malabar only allows 35 feet. It is almost impossible to build a three story and keep it at 35 feet and that is why they are pushing the limit. There should be no exceptions. Buildings need to be 2.5 stories in order to keep to the 35 feet. Or change the ordinance. Wilbur asked how high would a 3 story require? With 10 ceilings maybe 40 feet. Stick with the code.

Wilbur is inclined to recommend changing to 40 feet to allow for a quality project. Krieger said not all members voted to change to 3 stories. He is not concerned about making developers more money. He would like to lower the height and keeping the rural community. Cameron agreed with Krieger. Cameron referred to Cornerstone development and his issues. Wants to keep the green. Ready for vote.

Vote: All Ayes.

4. Resolution 09-2008 Malabar Owned Land Inventory

Motion : Reilly/ Cameron to approve the report. Cameron said this is political move to allow the state to add low rent housing to small communities. Ryan agreed with report. The land is either set aside or being used by the town. There is no debate. Ryan said if you are

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 3

Meeting Date: February 13, 2008

Prepared By: Debby Franklin, Town Clerk/Treasurer, Secretary to P&Z Board

SUBJECT: Appurtenances to the Buildings

BACKGROUND/HISTORY:

 P&Z sent a recommendation to Council to consider getting legal opinion on changes to the Town Code regarding exceptions to height listed in Article V.

At the RTCM held on 01/28/08, discussion was held concerning changing the Town Code in include decorative and structural components into the maximum height of buildings. Mayor Eschenberg volunteered to research the Town Code and make suggestions to Council. Attorney Bohne was requested to obtain a definition of the term "human occupancy. That information was discussed at the RTCM of 2/4/08 and those minutes are attached. Council reviewed the research done by the Mayor. They also reviewed the three suggested changes the Mayor offered. Council directed P&Z review and recommend if any or all of the Mayor's suggestions be incorporated into an ordinance.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Definitions of Habitable Space and Appurtenance from ICC and NFPA
Reference Material from Other Sources by Mayor Eschenberg
RTCM 2-4-08
Article V, Section 1-5.1
Article II, Section 1-2.7
Article XX, Definition of Building Height

ACTION OPTIONS:

Staff seeks recommendation to Council in the form of a motion.

Article V

GENERAL PROVISIONS

Section 1-5.1. Height exceptions.

The below cited appurtenances or mechanical devices typically required to be placed above roof level and not intended for human occupancy may exceed height limitations cited within this Code upon approval by the Town Council. The Town Council shall first consider the recommendation of the Planning and Zoning Board. A staff recommendation shall be provided by the Building Official and/or the Town Engineer. The appurtenances or mechanical devices shall include:

- Chimneys.
- Belfries.
- Water Towers.
- Ventilators.
- Steeples and Spires.
- Cupolas.
- Radio and Television Antennas.
- Other similar duly approved appurtenances or mechanical devices.

In no case shall any permitted heights be in conflict with the height regulations established for the Valkaria Airport by Brevard County and/or the Federal Aviation Administration.

Section 1-5.2. Encroachments into required yards.

Every part of a required yard shall be open and unobstructed by any structure or portion of a structure from thirty (30) inches above the general ground level of the graded lot upward, except as hereinafter provided or as otherwise permitted in this chapter [Code]:

1. Fixed or movable awnings may project not over eighteen (18) inches into a required yard.
2. Chimneys, fireplace or pilaster may project not over three (3) feet into a required yard.
3. Fire escapes, stairways and balconies which are unroofed and not enclosed may project not over five (5) feet into a required rear yard, or not over three and one-half (3½) feet into a required side yard in any residential district.
4. Overhangs, hoods, canopies or marquees may project not over three (3) feet into a required yard. Notwithstanding, residential roof overhangs may extend four (4) feet into a required yard.

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 3

Meeting Date: February 27, 2008

Prepared By: Debby K. Franklin, Town Clerk/Treasurer

SUBJECT: Amend LDC for Fences/Walls for S/D Developments (Proposed Ord No. 2008-99)

BACKGROUND/HISTORY:

This is a draft only for your review and comment. It has not been reviewed by the attorney at this point. It is old business that staff is trying to clear up. P&Z had directed staff to draft such an amendment for their review. The two subdivisions recently completed that had both exceeded the height requirement within the RR-65 zoning had prompted this action. It was determined that such an amendment is needed to clarify that the intent of Article V, Section 1-5.8 is for all fences and walls and not just for single properties.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

- Proposed Ordinance 2008-99

ACTION OPTIONS:

Staff seeks discussion and direction concerning this matter.

ORDINANCE NO. 2008-99

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XVII OF THE LAND DEVELOPMENT CODE OF THE TOWN; PROVIDING FOR SUBDIVISION PERIMETER FENCING; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Town Council has determined that further direction is needed relating to fencing associated with subdivision developments and directed the code be amended.

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

SECTION 1. Article XVII, Section 1-17.2 of the Land Development Code of the Town is hereby amended by adding the following sub-section:

"X. Perimeter Fencing of Subdivisions/Developments

Any fencing and/or wall associated with a subdivision or commercial development located within residential zoning district shall be consistent with the requirements set forth in Article V for the appropriate zoning. In RS Zoning Districts, the wall/fencing within the required front yard shall be permitted to 48 inches in height. In the RR Zoning District, wall/fencing within the required front yard shall be permitted to 54 inches. Higher fences and walls within the RR Zoning Districts within the required front yard, not to exceed six (6) feet, may be approved by council after considering the recommendation by Planning and Zoning. 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 an abutting intersection. "

SECTION 2. CODIFICATION. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the provisions of Sections 1, 2 and 3 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 sections 1, 2 and 3 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 _____. The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Council Member Nancy Borton	_____
Council Member Brian Vail	_____
Council Member Charles (Chuck) McClelland	_____
Council Member Jeffrey (Jeff) McKnight	_____
Council Member Patricia (Pat) Dezman	_____

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this day of _____, 2008.

BY: TOWN OF MALABAR

Mayor Thomas M. Eschenberg

First Reading: 0 _____
Second Reading: 0 _____

ATTEST:

Debby K. Franklin
Town Clerk/Treasurer

Approved as to form and
legal sufficiency by:

Karl W. Bohne, Jr.
Town Attorney



**PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY, FEBRUARY 13, 2007
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA**

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**
- D. CONSENT AGENDA**
 - 1. Approval of Minutes**
Regular Planning and Zoning Meeting – 1/28/07
Exhibit: Agenda Report No. 1
Recommendation: Motion to approve
- E. PUBLIC HEARING:**
 - 2. Rezoning Request – OI to CG – Section 10, Township 29, Range 37, Lots 266, 278 and 299 – Applicant Stan Wing and Rusty Melle**
- F. ACTION:**
 - 2. Appurtenance Heights purposed for ordinance**
- G. DISCUSSION ITEMS - General Items**
- H. OLD BUSINESS/NEW BUSINESS:**
 - Malabar Vernacular Ordinance**
 - Fencing for Subdivision Projects**
- I. ADJOURN:**

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service.

In compliance with the Americans With Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: FEBRUARY 13, 2008

Prepared By: Debby Franklin, Town Clerk/Treasurer, Secretary to P&Z

SUBJECT: Approval P&Z Minutes

BACKGROUND/HISTORY:

ATTACHMENTS:

- Minutes from Planning and Zoning regular meeting January 23, 2007

ACTION OPTIONS:

Motion to Approve