

TOWN OF MALABAR

PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY JULY 22, 2009
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 - none
- E. PUBLIC HEARING: none
- F. ACTION:
 - 1. Draft Fence Ordinances 1 & 2
 - Exhibit: Agenda Report No. 1
 - Recommendation: Action
- G. DISCUSSION:
 - 2. Land Use on Malabar Road -Malabar Motor Sports Park Concept- Mr. Ike Heckler
 - Exhibit: Agenda Report No. 2
 - Recommendation: Discussion
- H. PUBLIC:
- I. OLD BUSINESS/NEW BUSINESS:
- J. 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

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: July 22, 2009

Prepared By: Denine Fusco-Scarbro, Planning and Zoning Board Secretary

SUBJECT: Draft Fence Ordinances

BACKGROUND/HISTORY:

From the joint meeting between Council and P&Z, it was realized that the recommendations from P&Z, written by Don Krieger were not included in the document the group was reviewing.

We have included those recommendations and labeled it #2 in this package. We did not include the further recommendations from the joint meeting in this draft.

We have also included recommendations made at the Joint Meeting held on May 27, 2009 and labeled that ordinance #1.

We would ask that you review and discuss the two drafts and give direction to staff.

ATTACHMENTS:

Fence Ord. 2009-20 #1
Fence Ord 2009-20 #2

ORDINANCE NO. 2009-20

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE V OF THE MALABAR LAND DEVELOPMENT CODE; AMENDING THE TITLE OF SECTION 1-5.8 TO ADD GATES AND COLUMNS; AMENDING SECTION 1-5.8 (a) BY ADDING DEFINITIONS FOR THE TERMS *ENTRANCE GATE* and *GATE and COLUMNS*; AMENDING SECTION 1-5.8 (d) RELATING TO MATERIALS; AMENDING SUBSECTION 1 AND ADDING NEW SUBSECTIONS 6 AND 7; AMENDING THE TITLE TO SECTION 1-5.8(e) TO ADD GATES AND COLUMNS; AMENDING SECTION 1-5.8 (e) RELATING TO THE HEIGHT OF GATES AND COLUMNS IN RESIDENTIAL DISTRICTS; ADDING NEW SUBSECTIONS 6 AND 7; PROVIDING FOR AN EXCEPTION TO THE HEIGHT RESTRICTION FOR CERTAIN GATES ATTACHED TO WALLS OR FENCES IN THE RR-65 ZONING DISTRICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article V of the Land development regulations of the Town provides in part for the regulation and location of fences and walls in residential districts; and,

WHEREAS, Currently, the maximum height of a fence or wall in the RR-65 zoning district is limited to four feet which may be increased to six feet with Council approval; and

WHEREAS, The Town Council recognizes the need to provide regulation guidelines to address gates within fences, entrance gates and columns for fences ~~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, The Town Council recognizes the need to require some regulations to provide for emergency access. ~~Allowing a larger entry gate 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. The title for ARTICLE V Section 1-5.8 of the Malabar Land Development Code is hereby amended to read as follows:

"Section 1-5.8 Fences, and Walls, Gates and Columns"

SECTION 2. ARTICLE V Section 1-5.8 (a) of the Malabar Land Development Code is hereby amended by adding a definition for the terms *Entrance Gate* and *Gate and Column* to read as follows:

"Entrance Gate means a gate designed as the main ingress and egress of vehicular traffic to and from property that directly connects to the public roadway. Entrance gates may be constructed of any material approved by the Town Building Official and may be opened manually or by motorized operation and may be guided by hinges or by tracks. Entrance Gates shall not be required to comply with the 1-5.8 (e) 1.

Gate means a rigid structure to open and close in order to allow ingress and egress through a fence or wall. Gates may be constructed of approved materials and may be opened manually or by automated means and may be guided by hinges, tracks or other approved means. Gates shall not be required to comply with the 1-5.8 (e) 1.

Column(s) shall mean that structure used between sections of fence or as a supporting structure for a gate or entrance gate within a fence or as a stand alone structure at the entrance to a driveway. When a column is used within a fence line it shall not exceed two (2) feet above the fence or wall. When a column is used as a stand alone structure it shall not exceed six (6) feet in height. Columns shall not be required to comply with the 1-5.8 (e) 1.

SECTION 3. ARTICLE V Section 1-5.8 (d)1. of the Malabar Land Development Code is hereby amended TO READ AS FOLLOWS:

"Section 1-5.8(d)1. All fences, and walls, entrance gates, gates, and columns constructed pursuant to the permit issued in accordance with this article shall comply with Chapter 6, Building Regulations and all other applicable provisions of this Code relating to the type of construction, required materials, height and location."

SECTION 4. ARTICLE V Section 1-5.8 (d) of the Malabar Land Development Code is hereby amended by adding new subsections 6 and 7 to read as follows:

"6. Entrance gates shall be constructed to comply with all applicable provisions of this Code relating to the type of construction, required materials, height and location. Entrance gates may be opened manually or by motorized operation and may be guided by hinges or by tracks Gates shall be constructed to comply with all applicable provisions of this Code relating to the type of construction, required materials, height and location. Gates may be opened manually or by automated means and may be guided by hinges, tracks or other approved means.

7. Columns shall be constructed to comply with all applicable provisions of this Code relating to the type of construction, required materials, height and location."

SECTION 5. The title sentence for ARTICLE V Section 1-5.8(e) of the Malabar Land Development Code is hereby amended to read as follows:

"Section 1-5.8(e) Height Restrictions for Fences, and Walls, Gates and Columns"

SECTION 6. ARTICLE V Section 1-5.8 (e) of the Malabar Land Development Code is hereby amended by adding new subsections 6 and 7 to read as follows:

"6. Subject to the requirements in this subsection the owner of any lot or parcel located in the RR-65 District may install gates and supporting structures that do not exceed two (2) feet above the fence or wall to which such gate and support structure are attached when openings are greater than four (4) feet wide. Gates intended for human or animal traffic are limited in height to eight (8) feet from ground level and must be four (4) feet or less in width. An entrance gate and its support structures shall not exceed two (2) feet above the fence or wall to which such gate and support structures are attached. An arch or any other stationary decorative feature above the entrance gate may supplement entrance gates as long as the arch or decorating feature meets FDOT minimum height

requirement of 13.6 feet and a maximum of 16 feet in height for the safe passage of emergency vehicles. The entrance gate and support structures must be set back at least 12 feet from the front property line and a minimum of 20 feet in width.

7. Columns shall be constructed to comply with all applicable provisions of this Code relating to the type of construction, required materials, height and location."

SECTION 7. CODIFICATION. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida and it is hereby provided that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar, Florida; that the sections of their Ordinance may be renumbered or re-lettered to accomplish such intention; and the word "Ordinance" may be changed to "Section," "Article" or other appropriate designations.

SECTION 8. 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 9. CONFLICT. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 10. 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 Steven (Steve) Rivet _____
- Council Member Jeffrey (Jeff) McKnight _____
- Council Member Patricia (Pat) Dezman _____

This ordinance was then declared to be duly passed and adopted this ____ day of _____, 2009.

BY: TOWN OF MALABAR

Mayor Thomas M. Eschenberg

First Reading: _____
Second Reading: _____

ATTEST:

Debby Franklin
Town Clerk/Treasurer

Approved as to form and
legal sufficiency by:

Karl W. Bohne, Jr., Town Attorney

ORDINANCE NO. 2009-20

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE V OF THE MALABAR LAND DEVELOPMENT CODE; AMENDING SECTION 1-5.8 (a) BY ADDING DEFINITIONS FOR THE TERMS ***ENTRANCE GATE and GATE***; AMENDING SECTION 1-5.8 (e) RELATING TO THE HEIGHT OF FENCES AND WALLS IN RESIDENTIAL DISTRICTS; ADDING A NEW SUBSECTION 6; PROVIDING FOR AN EXCEPTION TO THE HEIGHT RESTRICTION FOR CERTAIN GATES ATTACHED TO WALLS OR FENCES IN THE RR-65 ZONING DISTRICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article V of the Land development regulations of the Town provides in part for the regulation and location of fences and walls in residential districts; and,

WHEREAS, Currently, the maximum height of a fence or wall in the RR-65 zoning district is limited to four feet which may be increased to six feet with Council approval; 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, Allowing a larger entry gate 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 (a) of the Malabar Land Development Code is hereby amended by adding a definition of the terms *Entrance Gate and Gate* to read as follows:

"Entrance Gate means a gate designed as the main ingress and egress of vehicular traffic to and from property that directly connects to the public roadway. Entrance gates may be constructed of any material approved by the Town Building Official and may be opened manually or by motorized operation and may be guided by hinges or by tracks.

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

SECTION 2. ARTICLE V Section 1-5.8 (e) of the Malabar Land Development Code is hereby amended by adding a new subsection 6 to read as follows:

"6. Subject to the requirements in this subsection the owner of any lot or parcel located in the RR-65 District may install gates and supporting structures that do not exceed two (2) feet above the fence or wall to which such gate and support structure are attached when openings are greater than four (4) feet wide. Gates intended for

human or animal traffic are limited in height to eight (8) feet from ground level and must be four (4) feet or less in width. An entrance gate and its support structures shall not exceed two (2) feet above the fence or wall to which such gate and support structures are attached. An arch or any other stationary decorative feature above the entrance gate may supplement entrance gates as long as the arch or decorating feature meets FDOT minimum height requirement of 13.6 feet and a maximum of 16 feet in height for the safe passage of emergency vehicles. The entrance gate and support structures must be set back at least 12 feet from the front property line and a minimum of 20 feet in width.

SECTION 3. CODIFICATION. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida and it is hereby provided that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar, Florida; that the sections of their Ordinance may be renumbered or re-lettered to accomplish such intention; and the word "Ordinance" may be changed to "Section," "Article" or other appropriate designations.

SECTION 4. 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.

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SECTION 6. 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 Steven (Steve) Rivet _____
- Council Member Jeffrey (Jeff) McKnight _____
- Council Member Patricia (Pat) Dezman _____

This ordinance was then declared to be duly passed and adopted this ____ day of _____, 2009.

BY: TOWN OF MALABAR

Mayor Thomas M. Eschenberg

First Reading: _____

2

Second Reading: _____

ATTEST:

Debby Franklin
Town Clerk/Treasurer

Approved as to form and
legal sufficiency by:

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: July 22, 2009

Prepared By: Denine Fusco-Scarbro, Planning and Zoning Board Secretary

SUBJECT: Review Land Use Along Malabar Road

BACKGROUND/HISTORY:

At the Joint Meeting on July 8, 2009 the group determined the P&Z Board would focus their recommendation on FLUM designations for Malabar Road only. You will discuss and recommend the depth the land use shall cover. I have received a legal opinion from the Attorney. I have also included the portion of the code dealing with non-conformities.

I am working on aerials for the meeting.

ATTACHMENTS:

Town Clerk / Treasurer

From: Karl Bohne [kbohne@fla-lawyers.com]
Sent: Thursday, July 16, 2009 10:18 AM
To: Town Clerk / Treasurer
Subject: RE: Malabar land use question

The Town has the authority to amend its comp plan as it reasonably deems necessary. When the Town does a comp plan change on its own it will affect somebody. However, as long as the change does not deprive a property owner of all beneficial use of the property then there is no legal issue. However, any such land use change should be accomplished by considering what affects it may have on property of the Town's citizens.

The dimensions are up to the Town. I want the Town to be careful not to create a situation where existing property is split by land use and the result is to create an unbuildable lot. That would be a problem and could result in the Town being required to grant a variance.

There is of course less impact on vacant land then there is on land improved with a primary structure. If the Town changes the land use designation for improved property (primary structure) which results in a conflict between the zoning and land use then a non conformity is created. The zoning becomes inconsistent with the land use. In my opinion the existing zoning use, albeit, inconsistent with the land use will be allowed to continue. However, if the land is vacant then before any improvements are allowed I am of the opinion that the zoning must be changed to conform to the land use.

In the case of improved land described above, which is inconsistent with the existing land use designation, the Town has specific rules relating to continuing the non conformity. The nonconformity on the improved land may continue but may not be expanded. See, 1-11.4 and .5. The code does allow changes if there are no structural changes to the building or structure. See, 1-11.6. A non conforming structure can be replaced under certain circumstances, see 1-11.7.B, accessory uses or structures are permitted, see 1-11.7.E. Any non conformity that has been abandoned as defined in 1-11.8 may not be continued.

I recommend that Article XI be amended to make it clear that any change in land use initiated by the Town, although creating a non conformity, shall not affect any existing use of land or primary structure on the land. Of course such an amendment will be in more detail; however, I believe it is necessary to make it clear that property that becomes non conforming due to a Town initiated land use change will fall under the provisions of Article XI.

From: Town Clerk / Treasurer [mailto:townclerk@townofmalabar.org]
Sent: Thursday, July 16, 2009 8:05 AM
To: Karl Bohne
Subject: RE: Malabar land use question

A section is one square mile. The distance is actually 660' which is 1/8th of a section. The lots along Malabar vary in size. The lots on the south side of Malabar Road on the west end of town are 1320 deep (minus 32' dedication for ROW along Malabar Road for a net depth of 1289 feet. The first 660' is designated as OI the remainder is designated RR. This land use designation goes from the west town boundary to Weber Road. They are considering extending that "line" east to Glatter Road. Then they discussed making it 1200 feet in depth so it would include the entire lot depth. The actual depth is actually 1320. To complicate this more, once you move east from Weber Road, the lots are platted as 1.4 parcels, with what would be the "front" facing the road perpendicular to Malabar Road and the "depth of the lots are 330' along Malabar Road. So if you change the land use for a depth of 600 feet, it would affect the first 3 lots. If you change the land use for 660 feet, it would affect the first 4 lots. If you change the land use for 1200 feet, you would affect the first 6 lots.

I need to get this legal opinion on how this will affect current land owners.

I would be happy to talk to you about this.

Article XI

NONCONFORMITIES AND NONCOMPLIANCES

Section 1-11.1. Definitions.

For purposes of this Code the terms "nonconforming use" and "noncomplying building or structure" are defined as follows:

- A. *Nonconforming Use.* A use of a building or structure or a tract of land which does not, on the effective date of this ordinance or amendment thereto, conform to any one of the current permitted uses or [of] the district in which it is located. Herein such nonconforming use may be referred to as a nonconformity.
- B. *Noncomplying Building or Structure.* Any building or other structure which is a lawful use (permitted or nonconforming) but which does not comply with all applicable provisions of this code, including size and dimension regulations, off-street parking requirements, landscape requirements, nuisance abatement standards, or height requirements either on the effective date of this ordinance or as a result of any subsequent amendment. Herein such noncomplying building or structure may be referred to as a noncompliance.

Section 1-11.2. Purpose and intent.

A. This Article is intended to permit the continuation of those lots, structures, uses, characteristics of use, or combinations thereof, which were lawful before the passage of this code, but which would be prohibited, regulated, or restricted under the terms of this code or future amendments thereto. This Article is designed to provide reasonable and equitable standards and guidelines for the control and management of nonconforming uses and non-complying buildings and structures, especially in regulating changes in the use or in the building or structure, including kind of [or] quality, volume or intensity, location, ownership or tenancy, accessory or incidental uses thereto, extension, enlargement, replacement, or any other change in characteristic.

B. This Article is further intended to allow nonconforming uses and noncomplying buildings and structures and combinations thereof to continue subject to specific conditions in order not to interfere with the existing circumstances surrounding property development with [with-in] the Town prior to the effective date of the code more than is necessary for the proper exercise of police powers relating to the general public welfare of the citizens and residents of the Town of Malabar.

Section 1-11.3. Continuance of lawful nonconformities and/or noncompliances.

A. *Continuance of Nonconformance.* A nonconforming use lawfully existing at the time of the enactment of this ordinance may be continued subject to the provisions of this code.

B. *Continuance of Noncompliance.* The lawful use of a noncomplying building or structure may be continued subject to provisions of this code.

C. *Rules for Interpretation.* Nothing in this code shall be interpreted as authorization for, or approval of, continuation of any illegal use of a building, structure, premises of [or] land, in violation of any ordinance in effect at the time of the passage of this ordinance. The casual, intermittent, temporary, or illegal use of land, building or structure shall not be sufficient to establish the existence of a nonconforming use. Any building or structure for which a lawful building permit was issued prior to the enactment of this ordinance, and construction of which is in conformity with approved site plans, if applicable, and building plans shall not be affected by this ordinance if the planned building or structure is built in full compliance with this code as it existed at the time of the issuance of the building permit. However, if such building or structure does not conform to the provisions of this code which cause such planned building, structure or use to be nonconforming or noncomplying, then it shall be nonconforming or noncomplying, or both, as the case may be, by applying this ordinance to the building, structure or use.

Section 1-11.4. Nonconforming lots of record.

Where a lot has an area and/or frontage less than the required minimum for the district in which it is located and was recorded in the Town on the date such lot was zoned and rezoned to its current district classification said lot may be used for any use permitted in the district in which it is located, so long as the remaining provisions are complied with; provided, however, that in any residential district, the only use permitted on such nonconforming lot shall be one single-family dwelling. In all cases, any other zoning variances needed must be obtained from the Board of Adjustment, which may grant only the minimum variance necessary to the reasonable utilization of such lots, excepting lots platted prior to 7/1/76 shall be governed by Section 1-5.3 of this Code.

Section 1-11.5. Increase in nonconformities prohibited.

A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity and [this] shall include without being limited to:

- A. Extension of a nonconforming use to any other building or other structure. Extension of a nonconforming use to any land area other than the specific land area that was actually and directly occupied by such use on the effective date of this ordinance (or on the effective date [of] subsequent amendment thereto that causes such use to become nonconforming).
- B. Extension of a nonconforming use within a building or other structure to any portion of floor area on the same or another floor that was not actually and directly occupied by such use on the effective date of this ordinance (or on the effective date of a subsequent amendment thereto that causes such use to become nonconforming). Notwithstanding, an existing nonconforming use may be extended within its existing structure if the extension does not require additional new floor area and such exten-

sion does not require additional parking spaces and the existing nonconforming use and the proposed extension comply with size and dimension regulations and other provisions of this Code. Landscaping requirements shall be satisfied to the extent that sufficient area is available on site.

- C. Operation of a nonconforming use in such manner as to conflict with any performance standards established for the district in which the use is located.
- D. Nothing contained in this Article shall in any way prohibit a nonconforming use from acquiring additional off-street parking area, subject to applicable landscape requirements.
- E. No additions which increase the area of a building or structure shall be made if the building or structure is occupied, in whole or in part, by a nonconforming use.
- F. No structural alterations shall be made to any building or structure occupied by a nonconforming use except as permitted by this Section.

Section 1-11.6. Change in nonconforming uses without structural alteration.

If no structural alterations are made, a nonconforming use of a building or structure may be changed to another nonconforming use of a similar or higher (more restrictive) classification under the following conditions:

- A. The change in use shall not intensify or enlarge the basic use of the building or premises by increasing the need for more parking facilities; by increasing vehicular or pedestrian traffic; by creating more noise, vibration, fire hazard, smoke, dust or fumes, by increasing hours of operation or number of employees; by increasing ground coverage or adversely impacting drainage; or otherwise result in a more intensive use of the building or premises, or change the basic character of the building or premises [unless to change it to] more nearly conform to the character of the zoning of the district in which the building or structure is located.
- B. When a nonconforming use of all or any part of a building, structure or premises is changed to another nonconforming use of a more restricted character, the new use may not thereafter be changed to any less restricted use.
- C. When a nonconforming use of all or any part of a building, structure or premises has been changed to a conforming use, the conforming use shall not thereafter be changed to any nonconforming use.
- D. No structural alterations shall be made to any building or structure occupied by a nonconforming use except as permitted in this code.
- E. The parking and landscape provisions of Subsection 1-11.7(F) shall be met.

Section 1-11.7. Structural alterations to nonconformities or noncompliances.

Where a lawful structure or use exists at the effective date of adoption or amendment of this Code, and it could not be built or used under the terms of this Code by reason of restric-

tions on area, lot coverage, height, yards, location on the lot, or other site development standards or requirements concerning the structure or use, it may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. *Alteration, Extension, Enlargement or Expansion of Nonconforming Use or Noncomplying Building or Structure.* No such alteration, extension, enlargement or expansion of a nonconforming use or noncomplying building or structure shall be permitted in a way which increases its nonconformance or noncompliance with present site development and use standards of the zoning district in which it is located, but any such structure or use or portion thereof may be altered to decrease its nonconformance or noncompliance with present site development and use standards of the zoning district in which it is located. Nothing in this subsection shall prohibit the Building Official from ordering the compliance with all other provisions of this code and applicable building construction and safety related codes.
- B. *Replacement, Restoration and Reconstruction of Nonconforming Use or Noncomplying Building or Structure.* In the event that any existing nonconforming structure or use, as provided for in this Section, is destroyed by any means, including fire, flood, wind, explosion, act of God, or act of a public enemy such structure or use shall be permitted to be replaced, restored, or reconstructed according to the site development in effect at the time of its original construction except that replacement, restoration and reconstruction can only occur in compliance with those building, plumbing, electrical, gas, fire, and other construction and safety related regulations of the Town of Malabar in effect at the time of application for a permit to allow replacement, restoration or reconstruction. Reasonable effort shall be undertaken to remedy any prior nonconformity or noncompliance. However, in no event shall the destroyed nonconforming structure or use be replaced to a degree or level which increases the prior existing nonconformity or noncompliance.
- C. *Repairs and Maintenance of Nonconforming Use or Noncomplying Building or Structure.* Routine repairs and maintenance of nonconforming structures or uses on fixtures, wiring, or plumbing or on the repair or replacement of walls shall be permitted.
- D. *Change in Location of Nonconforming Use or Noncomplying Building or Structure.* Should any nonconforming structure or use be moved for any reason to any distance whatever from its original permitted location, it shall thereafter conform to the regulations for the zoning district in which it is located after it is moved.
- E. *Accessory or Incidental Structures or Uses.* Structures or uses normally accessory to or incidental to a permitted structure or permitted use in the zoning district in which the nonconforming use or noncomplying building or structure is located may be permitted as accessory structures to the nonconforming or noncomplying building or structure so long as a nonconformance or noncomplying building or structure is not intensified.
- F. *Treatment of Off-Street Parking and Landscape Requirements.* All changes in nonconformities or noncompliances shall satisfy the appropriate parking and landscape

provisions cited below. Any required off-street parking and/or landscape improvements shall be managed through the off-street parking and landscape regulations of this code.

1. If only parking is deficient at the time of the proposed change under the provisions of this code and the change does not require any additional parking space which would increase the then existing parking deficiency, the change is permitted, provided the then existing parking deficiency and its attendant landscaping are corrected to the extent sufficient land was available on the site on the effective date of this ordinance to accommodate some or all of the deficient off-street parking or to the extent land is available on site at the time of the proposed change of use, whichever land area is greater.
2. If only landscaping is deficient at the time of the proposed change under the provisions of this code, and the change does not require additional parking space, the change is permitted, providing the then existing landscaping deficiency is corrected to the extent sufficient land was available on the site on the effective date of this ordinance to accommodate some or all of the then deficient landscaping or to the extent land is available on site at the time of the proposed change of use, whichever land area is greater.
3. If the parking area is deficient at the time of the proposed change under the provisions of this code and the proposed change required any additional parking space over the then existing parking deficiency, the change is prohibited unless the net additional parking area and its attendant landscaping are provided and any deficiencies are corrected under the same criteria of Subsection 1-11.7(F)(1) above.
4. If both parking and landscaping are deficient at the time of the proposed change under the provisions of this code and the change does not require any additional parking or any additional landscaping which would increase the need for parking or landscaping over the then existing deficiencies, the change is permitted provided the deficiencies are corrected to the extent sufficient land was available on the site on the effective date of this ordinance to accommodate some or all of the then deficient parking or landscaping, or to the extent land is available on the site at the time of the proposed change, whichever land area is greater.

If sufficient land was not available on the site on the effective date of this ordinance to allow correction of all of the parking and landscaping deficiencies and sufficient land is not then (at the time of the proposed change) available, priority for correcting the landscaping and parking deficiencies shall be determined on a case-by-case basis by the Building Official, the Town Engineer and the Chairman of the Planning and Zoning Board, if the change is a minor change in site plan or by the Planning and Zoning Board if the change requires full site plan review.

5. If parking and landscaping are in compliance at the time of the proposed change under the provisions of this code and the proposed change does not render either the parking or landscaping deficient, the change is permitted. If the proposed

change would render either the parking or landscaping, or both, to become deficient, and therefore noncomplying, the change is prohibited unless the required additional parking and landscaping are provided.

Section 1-11.8. Abandonment or discontinuance of a nonconforming use.

If a nonconforming use is removed or abandoned, or ceases for a continuous period of not less than ninety (90) days, every future use of the premises shall be in conformity with the use provisions of this Article. All material and equipment associated with the abandoned nonconforming use shall be completely removed from the premises by its owner within one (1) year after the expiration of the ninety (90) day period.

Where the cessation of the use is involuntary, the nonconforming use shall not be declared abandoned after the ninety (90) day period. However, if the use is discontinued voluntarily or involuntarily for a period of one year or more, every future use of the premises shall be in conformance with the use provisions of this Chapter [Code] and all material and equipment associated with the discontinued nonconforming use shall be removed from the premises by the owner.