

**TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY MARCH 10, 2010
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:**
- G. DISCUSSION:**
 - 1. Permitted Land Uses Within R/LC and CL Zoning**
 - Exhibit:** Agenda Reports No. 1
 - Recommendation:** Discussion
 - 2. Amendments to Fence Ordinance, Article V**
 - Exhibit:** Agenda Reports No. 2
 - Recommendation:** Discussion
- H. PUBLIC:**
- I. OLD BUSINESS/NEW BUSINESS:**
- J. ADJOURN**

NOTE: THERE MAY BE ONE OR MORE MALABAR ELECTED OFFICIALS ATTENDING THIS MEETING.

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: March 10, 2010

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Permitted Land Uses Within R/LC and CL Zoning

BACKGROUND/HISTORY:

Continue work on Land Use Map. Discussion of Land uses and Zoning classifications within R/LC and CL.

ATTACHMENTS:

- Future Land Use Element – Goals – Objectives and Policies from adopted EAR Amendments.

FUTURE LAND USE ELEMENT GOAL, OBJECTIVES, AND POLICIES

§1-1 Future land use goals, objectives and policies. This section stipulates goals, objectives, and implementing policies for the Land Use Element pursuant to §163.3177(6)(3), F.S., and §9J-5.006(3), F.A.C.

Goal 1-1

Land Use. Insure that the character and location of land uses reflect best management practices and principles of resource conservation, promote orderly land use transition, and minimize threats to health, safety, and welfare which may be engendered by incompatible land uses, environmental degradation, hazards, and nuisances.

1-1.1 Objective:

Plan and design for residential quality. Sufficient space shall be provided for residential development and require community facilities to adequately meet the housing needs of the present and expected future population of the Town. Residential development shall be planned and designed to create and perpetuate stable living areas and protect land and land improvements.

1-1.1.1 Policy:

Provide access to goods and services and protect residential areas from adverse impacts of transition in land use. Stable residential areas and projected future residential areas as delineated on the Land Use Map shall be protected from encroachment by incompatible nonresidential development. This objective does not preclude necessary community facilities from locating within residential areas when such activities satisfy established criteria of this plan and the Town's Code of Ordinances.

Any potential adverse impacts caused by different land uses located adjacent to each other shall be minimized by landscaping, screening, and buffering of all nonresidential activities located adjacent to residential activities. In addition, other reasonable design principles shall be included in the zoning code in order to alleviate any potential adverse impacts of potentially incompatible land uses.

1-1.1.2 Policy:

Promote orderly land use transition. Where it is infeasible to separate residential from nonresidential land uses, buffering shall be required to promote a smooth and gradual land use transition. Buffering may take the form of 1) physical barriers, such as berms, hedges or other landscape cover; walls or fences aesthetically designed for screening purposes; or open space systems with dense native vegetation; or 2) the development of a transitional use between the incompatible uses (such as low intensity office development between general retail commercial centers and residential areas).

1-1.1.3 Policy:

Promote orderly transition in residential densities. Highest residential densities shall continue to be allocated to sites highly accessible to major thoroughfares or collector streets and adjacent to existing development with the same or higher density or less restrictive zoning districts. Residential densities shall be allocated in a manner compatible with available public services, natural features of land as well as existing and anticipated future development.

1-1.1.4 Policy:

Reinforce and enhance appearance of residential areas and provide amenities. Scenic vistas, especially along the Indian River, Turkey Creek, Goat Creek, and their tributaries as well as vistas adjacent to transportation corridors should be enhanced by preservation of open space, by installation and maintenance of landscape and by application of community appearance criteria which reinforces good principles of design.

1-1.1.5 Policy:

Encourage separation of urban and rural land uses. Within one (1) year of the adoption of this plan, Article VII, Site Plan Review, of the Land Development Code shall be amended to incorporate performance standards, urban service availability standards, and other similar incentives and disincentives which encourage a separation of urban and rural land uses. Performance standards may include emission of noise, air pollutants, odor, vibration, fire or explosive hazard, and glare. Urban service standards may include transportation system, off street parking and loading, utilities and waste management, storm water management, tree protection, landscaping, and signage.

1-1.2 Objective:

Allocating commercial development. Commercial development shall be comprised of a wide range of business uses. The allocation of land resources shall consider the location and space requirements of commercial activities and potential fiscal and environmental impacts on the Town of Malabar.

1-1.2.1 Policy:

General considerations in locating commercial development. The location and distribution of specific types of commercial activities shall be determined based on the following considerations:

- a. Trip generation characteristics, impact on existing and planned transportation facilities and ability to achieve a functional internal circulation and landscaped off-street parking system;
- b. Location and site requirements based on specific needs of respective commercial activities, their market area, anticipated employment generation and floor area requirements;
- c. Compatibility with and impact on other surrounding commercial activities;
- d. Relationship to surrounding land uses and natural systems;
- e. Impact on existing and planned community services and utilities.

1-1.2.2 Policy:

General pattern of commercial land use. In order to promote efficient flow of traffic along thoroughfares, achieve orderly development and minimize adverse impact on residential quality, commercial development shall be concentrated in strategically located areas having location characteristics which best accommodate specific land, site, public facilities and market location requirements of respective commercial uses.

1-1.2.3 Policy:

Provide appropriate locations for commercial office development. Office development shall be encouraged to locate on accessible sites near major thoroughfares and may serve as transitional uses separating more intensive commercial uses from residential development. In addition, office complexes may be compatible with multiple family units and/or institutional uses situated on strategically located sites along major thoroughfares where the sites are of sufficient size to accommodate land requirements for controlled access, effective internal circulation and off-street parking, and appropriate landscape, screening and buffering to assure stability and protection of established or anticipated future residential areas.

The Office-Institutional (OI), Multiple-Family Residential or Office (MRO), and Residential and Limited Commercial (R/LC) land use designations, as described in herein, are designed to carry out the intent of this objective. Land Development Code performance standards shall require significant landscaping, screening, urban design controls.

1-1.3 Objective:

Planning for industrial development. Sufficient land shall be allocated to accommodate industrial development.

1-1.3.1 Policy:

General considerations in locating industrial development. The allocation of land resources for industrial development shall reflect the location and space requirements of industrial activities and potential fiscal and environmental impacts on the Town of Malabar. The location and distribution of specific types of industrial activities shall be determined based on the following considerations:

- a. Trip generation characteristics, impact on existing and planned transportation systems, including dependency on rail, air, or trucking for distribution of material and goods;
- b. Anticipated employment generation, floor area requirements, and market area;
- c. Ability to meet established performance standards for preventing or minimizing nuisance impacts, such as emission of air pollutants, glare, noise or order, generation of hazardous by-products;
- d. Impact on established and planned development and natural systems; and impact on existing and planned public services, utilities, water resources, and energy resources.
- e. Impact on existing and planned community services and utilities.

1-1.3.2 Policy:

Review of proposed Future Land Use Map amendments for industrial development. A high priority shall be directed toward encouraging development of existing lands designed for industrial development. These lands contain rail access and are highly accessible to the U.S. 1 highway corridor. These transportation facilities provide convenient access to regional markets. Furthermore, the existing designated acreage is compatible with adjacent land uses and furthers goals, objectives, and policies of the Comprehensive Plan.

The Town shall not amend the Future Land Use Map in a manner which would promote the encroachment of industrial activities into residential areas or in a manner which would adversely impact the integrity of established development. No such Future Land Use Map amendment shall be approved unless the applicant presents requisite information needed to affirmatively address policy considerations identified in Policy 1-1.3.1 above.

Any additional industrial designation of lands on the Future Land Use Map shall generally be concentrated near the existing industrial node and shall incorporate those amenities required by respective industrial uses.

1-1.54 Objective:

Promote community appearance, natural amenities and urban design principles. The community appearance shall be reinforced and enhanced through application of the site plan review process.

1-1.54.1 Policy:

Reinforce and enhance the Town's community appearance. Major attributes shall be preserved through application of design review standards and management of signs, landscape, and tree removal or relocation. Special emphasis shall be placed on preserving and/or improving the character of major natural and man-made corridors, including the intracoastal shoreline, the scenic estuary system, and major transportation corridors which serve as a focal point for the motoring public and an inviting gateway to the visiting tourist.

1-1.54.2 Policy:

Continue to maintain Malabar Vernacular Architecture Style. The Town shall maintain Land Development Code regulations that require the use of the Malabar Vernacular Architectural Style in non-residential and Residential/Limited Commercial developments located along arterial roadways.

§1-2 Managing Future Land Use.

Goal 1-2

Future Land Use Map. Continue to maintain and manage a Future Land Use Map.

The Future Land Use Map reflects the Town policy for managing the allocation of future land use. Land use designations on the Future Land Use Map have been allocated pursuant to the goals, objectives and policies stipulated in the Comprehensive Plan; an analysis of population, housing and land resources; the need to conserve natural resources including

wetlands, estuaries, floodways, flood plains, water recharge areas, fish and wildlife; consideration of capital improvement needs; conservation of fiscal resources; discouragement of urban sprawl; energy-efficient land use patterns accounting for existing and future electric power generation and transmission systems; and greenhouse gas reduction strategies.

The Future Land Use Map shall designate areas for the following uses: Rural Residential; Low Density Residential; Medium Density Residential; High Density Residential; Multiple-Family Residential or Offices; Residential and Limited Commercial; Limited Commercial; General Commercial; Industrial; Institutional; Conservation; and Open Space and Recreation land uses. This section of the Future Land Use Element shall define the nature, density and intensity of the allowable uses for each of the designations represented on the Future Land Use map. Nothing in this section shall preclude necessary community facilities from locating within any future land use designation when such activity satisfies established criteria of this plan and the Town's Code of Ordinances.

1-2.1 Objective:

Allocating residential development. The Future Land Use Map shall allocate residential density based on the following considerations: past and projected future population and housing trends and characteristics; provision and maintenance of quality residential environments; protection of environmentally fragile natural systems; the need to plan for smooth transition in residential densities; and provision and maintenance of traffic circulation and multiple-family improvements.

1-2.1.1 Policy:

Density defined. All residential densities denoted on the Future Land Use Map reflect the maximum gross density permitted on the land. Maximum gross residential density will be determined by dividing the "maximum allowable units" by the "gross land area". Gross land area shall be defined as those contiguous land areas under common ownership subject to the following provisions and exceptions:

- a. In cases where land abuts the tidal waters of the Indian River and all tributaries and manmade canals thereof, the boundary of the land shall be delineated as established by State statutes (Chapter 177, Part II, Coastal Mapping), or as may be amended.
- b. No submerged land or aquatic areas waterward of the boundary above described shall be included as gross land area under this definition.
- c. No land areas proposed to be allocated to nonresidential uses shall be included under this definition, excepting contiguous areas proposed for:
 - Public or private rights-of-way;
 - Utilities under common ownership and principally supporting the residential use;
 - Recreational facilities for the primary use of on-site residents; and
 - Dedications to the Town or other Town approved agencies or Town approved not-for-profit corporations.

Density is expressed in terms of a range up to a specified maximum. Where so stated as a range, the maximum density is not guaranteed by right. Subdivision, zoning and site plan review criteria and procedures shall assure

that specific density assigned to new development is compatible and consistent with established residential development patterns and provides equitable use of the land. Criteria to be considered in allocating density shall include the following:

- a. Protect the integrity and stability of established residential areas;
- b. Assure smooth transition in residential densities;
- c. Require application of sound landscaping and urban design principles and practices;
- d. Protect environmentally sensitive areas;
- e. Minimize the impact of hurricane and flood hazards;
- f. Coordinate with Brevard County; and
- g. Provide equitable rights to the use of the land.

1-2.1.2 Policy:

Rural Residential Development (RR). Areas delineated on the Future Land Use Map for rural residential development shall be developed and maintained as rural residential areas with a density of one and one-half (1.5) acres per dwelling unit. This designation is intended to protect and preserve existing agricultural and rural residential lands. These lands are generally developed for agricultural uses or for large lots for rural residential homesites. The areas contain few urban services and the street system is generally incapable of carrying traffic generated by urban densities. This land use policy provides land area for accommodating a unique lifestyle which cannot be accommodated in more dense residential areas. Zoning regulations shall provide standards for these areas which are designed to permit development compatible with the need for preserving a rural character and large open space systems.

1-2.1.3 Policy:

Low Density Residential Development (LDR). Areas delineated on the Future Land Use Map for low density residential development shall be developed and/or maintained as residential areas with a maximum density of up to two (2) dwelling units per acre. Specific densities will be determined by such factors as natural features of the land, character of undeveloped land and surrounding development, level of accessibility, housing supply and demand, and adequacy of public facilities. Supportive community facilities and accessory land uses may be located within areas designated LDR. The Town land development regulations shall provide regulatory procedures for considering such uses.

The low density designation is established to protect the quality and character of existing stable low density single family neighborhoods, preserve open space, and encourage densities which are compatible with existing developments, natural features of the land, as well as existing and projected public services and facilities for the area.

1-2.1.4 Policy:

Medium Density Residential Development (MDR). Areas delineated on the Future Land Use Map for medium density residential development shall be developed and/or maintained as residential neighborhoods. This designation allows for multi-family and single family structure types and maximum density of up to four (4) dwelling units per acre. The medium density designation is intended to ensure sufficient land area for developments of medium density and the adequacy of existing and/or projected public facilities for the area. Supportive community facilities and accessory land uses may be located within areas designated MDR. The Town land development regulations shall provide regulatory procedures for considering such uses.

Review of specific densities of developments shall be directed toward preserving stability of established residential areas. Sites for medium density residential developments should be located so that they provide a smooth transition between lower density residential areas and areas developed and/or designated for other more intense uses.

1-2.1.5 Policy:

High Density Residential Development (HDR). High density residential development ranges up to a maximum of six (6) units per acre. The high density policy designation is intended to primarily provide for multiple family residential development at higher densities which shall be adequately supported by public services and facilities, and maintain compatibility with the surrounding area. The specific designated for high density development shall be accessible to existing or anticipated future major thoroughfares and requisite utilities. In addition, these areas generally shall be highly accessible to commercial services. Specific density of future development proposals within these areas shall provide for smooth transition in residential density, preserve stability of established residential areas, and shall include sufficient open space, parking and landscaping to reinforce goals and objectives for quality living areas.

1-2.2 Objective:

Allocating commercial development. The Future Land Use Map shall identify the allocation of commercial land for: 1) multiple-family residential or office development; 2) limited commercial development; and 3) general commercial activities. The allocation of land for commercial development is compatible with goals and objectives identified in the Comprehensive Plan and consistent with supportive research and analysis. The policies stated below provide an explanation of the purpose, intent and character of the commercial land use designations.

1-2.2.1 Policy:

Multiple-Family Residential or Office Development (MRO). The MRO policy designation is a land use classification designed to accommodate residential development, offices, and institutional uses. This policy designation is intended for sites which shall:

- Have good accessibility;
- Have potential to be services by a full complement of urban services;

- Contain sufficient land area to accommodate good principles of urban design, including sufficient land area to provide adequate landscaping and buffers to separate existing as well as potential future adjacent land uses of differing intensity;
- Accommodate only freestanding multiple-family residential structures or office buildings and shall expressly exclude general retail sales and services, warehousing, and outside storage; and
- Generally serve as a transition area which buffers residential uses located in one area from a nearby area which accommodates uses of a higher density or intensity.

The density of residential development within MRO designated lands shall not exceed six (6) units per acre.

1-2.2.2 Policy:

Office-Institutional Development (OI). The OI policy designation is a land use designation designed to accommodate business and professional offices and institutional land uses. This policy designation is intended for sites which:

- Have accessibility to major thoroughfares;
- Have potential to be served by a full complement of urban services;
- Contain sufficient land area to accommodate good principles of urban design, including sufficient land area to provide adequate landscaping and buffers to separate existing as well as potential future adjacent land uses of differing intensity;
- Accommodate only office buildings and institutional land uses and shall expressly exclude general retail sales and services, warehousing, and outside storage; and
- Frequently serve as a transition area which buffers residential uses located in one area from a nearby area which accommodates uses of a higher intensity.

1-2.2.3 Policy:

Limited Commercial Development (CL). Limited commercial development is allocated to commercial sites accessible to major thoroughfares near residential neighborhoods. Such development is intended to provide essential household services in locations highly accessible to residential areas. For instance, sites within this designation are intended to accommodate neighborhood shops with limited inventory or goods. Such shops generally cater to the following markets: 1) neighborhood residential markets within the immediate vicinity as opposed to city-wide or regional markets; or 2) a specialized market with customized demands. Commercial development within the limited commercial designation shall generally be restricted to any of the following uses: neighborhood convenience stores; small limited item shops and stores restricted to retail sales of convenience items and services including barber, beauty care, and other personal services; small scale drugstores, laundry and dry cleaning pick-up stations; specialty shops; small scale activities associated with a specialized facility.

Areas designated for limited commercial development are not intended to accommodate large scale retail sales, service, and trade activities, generally serving a city-wide or regional market. Such stores would usually differ from limited commercial shops since the former would usually require a larger floor area, carry a relatively larger inventory and require a substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large scale discount stores; health spas, supermarkets; department stores; large scale wholesaling and warehousing activities; general sales, service or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; fast food establishments primarily serving in disposable containers and/or providing drive-in facilities, and other similar services to be expressly defined in the zoning ordinance.

No residential uses shall be located in a CL designated area.

1-2.2.4 Policy:

General Commercial Development (CG). The general commercial areas are designated on the Future Land Use Maps for purposes of accommodating general retail sales and services. These areas are located in highly accessible areas adjacent to major thoroughfares which possess necessary location, site, and market requirements. Zoning policy shall stipulate provisions regulating specific land uses.

The areas designated for general commercial development are specifically not adaptive to permanent residential housing and such uses shall be located in other areas designated for residential development.

1-2.2.5 Policy:

Residential and Limited Commercial Development (R/LC). The R/LC Future Land Use Map designation is intended to accommodate and shall accommodate a mixture of land uses expressly restricted to uses allowed in the "limited commercial" designation together with uses allowed on lands designated for high density residential activities with a density no greater than six (6) units per acre. Such residential uses may be located either within a free standing structure or within a structure housing both Residential and Limited Commercial activities. The "R/LC" FLUM designation is intended and shall be interpreted to be a "commercial" district with respect to required setbacks and other size and dimension provisions referenced by zoning district in the Town's Land Development Code. The "R/LC" Future Land Use Map (FLUM) designation is intended to apply to and shall only be applied to strategically located sites situated on the Westside of the US 1 corridor. The "R/LC" FLUM designation shall apply only to the following specific areas:

- a. Land south of the south property line of parcel 252 and 251 located 400+/- feet south of Riverview Home S/D; east of the FEC R/W; north of an irregular line formed by the south property line of lots 15-21 which front on the south side of Malabar Road, the east property line of lot 21 fronting on the south side of Malabar Road; and west of an

irregular line formed by the US 1 R/W and the west property line of lot 22 which fronts on the south side of Malabar Road.

- b. Land south of Orange Avenue R/W and north of Township Road within the Drake S/D, lots 41, A, B, C, D, E, F, G, and West of US 1; and the land east of Crescent Road, north of Oak Street R/W, and west of the US 1 R/W.
- c. Land south of the north property line formed by parcel 7.1, approximately 860 feet south of Oak Street and on the Westside of US 1 Highway; and the west and south property lines of parcel 7.1 and east of the west property lines of the following lots all of which abut US 1 R/W and are located in the Sunnybank on the Dixie S/D; lots 1-10 in block C, lots 1-12 in block B, and lots 1-4 in block A; north of the south property line of lot 1, block A, Sunnybank on the Dixie S/D; and west of the US 1 R/W.

These sites currently are characterized by a mixture of generally small scale commercial businesses together with predominantly single family residential land uses. Acres designated "R/LC" are not suitable for and shall not be developed for large scale general retail activities or other commercial activities more intense than land uses expressly provided for in the "limited commercial" Future Land Use Map designation (Reference Policy 1-2.2.3) since such development would incompatible with existing and anticipated future residential development within or in the vicinity of areas designated "R/LC" on the Future Land Use Map.

1-2.2.6 Policy:

Criteria for the Residential and Limited Commercial Development R/LC Designation. The following criteria for development within the R/LC FLUM designation shall be incorporated into the Town of Malabar Land Development Regulations:

- a. *Percent of Site for Mixed Use Development.* Within the R/LC designation where Residential and Limited Commercial activities are proposed to occupy the same site and/or the same building the following minimum and maximum percentages shall apply:

| | Minimum | Maximum |
|--------------------|---------|---------|
| Limited Commercial | 20% | 90% |
| Residential | 10% | 80% |

- b. *Limited Commercial Uses.* Limited Commercial uses within the R/LC FLUM designation shall have a minimum floor area of nine hundred (900) square feet and a maximum of four thousand (4,000) square feet.
- c. *Residential Uses.* Single family units shall have a maximum density of four (4) units per acre. Multiple family uses shall have a density no greater than six (6) units per acre. However, any residential site located with a high surficial aquifer area on the Atlantic Coastal Ridge and not served by central water and wastewater shall have a density no greater than two (2) units per acre.

- d. *Minimum Lot Requirements.* Lots within the R/LC FLUM designation shall have a minimum lot size of 20,000 square feet, a minimum width of 100' and a minimum depth of 150'.
- e. *Setbacks Requirements.* Single family units shall have setbacks of 25' in the front, 10' on the interior and street sides, and 20' in the rear. Multiple family units shall have setbacks of 50' in the front, 10' on the interior side, 20' on the street side, and 25' in the rear.
- f. *Building Height Requirements.* Any building within the R/LC FLUM designation shall have a maximum height of thirty-five (35) feet or three (3) stories.
- g. *Coverage Requirements.* Single family residential uses shall have an impervious surface ratio of 50% with a minimum open space requirement of 50%. Multiple family residential uses shall have an impervious surface ratio of 65% with a minimum open space requirement of 35%. Limited commercial uses shall have a maximum floor to area ratio (FAR) of 0.20.
- h. *Buffering.* The R/LC district is intended and shall be interpreted to be a "commercial" district with respect to required buffering and other provisions referenced by zoning district in the Land Development Code.

1-2.7 Objective:

Allocating Industrial Development (IND). The Future Land Use Map shall allocate land resources for existing and anticipated future industrial needs and requisite support services.

1-2.7.1 Policy:

Industrial Land Use Designation. The allocation of industrial land use designations should provide a high priority to industry's frequent need for strategically located lands which are accessible to rail and terminal facilities, major arterials or interchanges, labor markets and necessary urban services.

Industrially designated areas are not generally adaptive to residential use and as such industrial activities shall not be located in areas designated for residential development. This provisions shall not prohibit residences for night watchmen or custodians whose presence on industrial sites is necessary for security purposes. Such a use may be permitted as an accessory use through appropriate zoning procedures.

The industrial land use designation is allocated to industrial sites accessible to major thoroughfares and buffered from residential neighborhoods. Light industrial uses include: light manufacturing and assembling activities; kennels; truck or bus terminal facilities; warehousing and storage activities; and other similar land uses which might be permitted through appropriate zoning procedures excluding heavy metal fabrication, chemical or petroleum manufacturing or refining, rubber or plastics manufacturing, or other uses generating potentially harmful nuisance impacts.

1-2.8 Objective:

Allocating Institutional Services (INS). The Town shall set aside land sufficient to accommodate institutional land uses. For instance, approximately 25 acres of institutional land area is anticipated to be required by 2010. The Town shall monitor the need for such increased land area for institutional uses and shall assure that the institutional land use designation on the Future Land Use Map is expanded to accommodate the development of public and semi-public facilities such as government administrative buildings; fire, police and rescue services; health care delivery services; and educational institutions. Land uses such as places of worship, cultural or civic centers, and other similar public or private not-for-profit uses may be included within this land use designation.

1-2.8.1 Policy:

Institutional Land Use Designation. Lands designated for institutional services shall contain sufficient acreage and open space and be properly screened and buffered in order to minimize potential adverse impacts on adjacent land uses.

1-2.9 Objective:

Allocating Open Space and Recreation (OSR). The open space and recreation designation has been established to direct the preservation of open spaces and recreation areas, both publicly owned and privately owned, including golf courses, parks, recreation areas and similar facilities.

1-2.9.1 Policy:

Open Space and Recreation Land Use Designation. Lands designated for open space and recreation shall be consistent with the Recreation and Open Space Element and shall reflect actions taken to implement the goals, objectives and policies of the Recreation and Open Space Element.

1-2.10 Objective:

Allocating Conservation (CON). The conservation designation has been established to direct the preservation of publicly-owned major natural resources and environmentally sensitive corridors. The purpose of preservation is for the conservation and protection of natural resources or environmental quality. These areas may be used for wildlife management, passive recreation, and environmental restoration/preservation. These natural areas may include site improvements to support uses which are deemed appropriate and consistent with the function of the designated area.

1-2.10.1 Policy:

Conservation Designation. The Town shall designate lands which are deemed appropriate to conserve in order to implement natural resource conservation goals, objectives, and policies stipulated in the Comprehensive Plan. Where such designations are enacted, the Town Council shall adopted appropriate programs, policies, and/or ordinances for managing implementation of the respective conservation Future Land Use Plan designations.

1-2.10.2 Policy:

Conservation Designation consistent with Conservation Element. Lands designated for conservation shall be consistent with the Conservation Element and shall reflect actions taken to implement the goals, objectives and policies of the Conservation Element.

1-2.10.3 Policy:

Designate Lands as Conservation on the Future Land Use Map. Within two (2) years of the adoption of this plan, publicly owned lands that the Town deems appropriate for conservation shall be allocated as Conservation on the Future Land Use Map.

1-2.10.4 Policy:

Designate Environmentally Endangered Lands as Conservation on the Future Land Use Map. Within two (2) years of the adoption of this plan, lands that are managed by the Brevard County Environmentally Endangered Lands (EEL) program shall be allocated as Conservation on the Future Land Use Map.

1-2.10.5 Policy:

Amend Land Development Code to create a Recreation/Open Space (RS) district. Within ~~two~~ one years of the adoption of this plan, the Land Development Code shall be amended to create a Recreation/Open Space (RS) District. The RS District is intended to implement the open space and recreation land use and conservation land use of the Town's Comprehensive Plan by providing areas for the development of active or passive recreational facilities and the preservation of open space.

1-2.10.6 Policy:

Implement Land Development Regulations to protect Conservation Areas. Within ~~two~~ one years of the adoption of this element the Town shall adopt Land Development Code regulations that protect and preserve conservation space. Regulations shall include specific open space definitions and standards addressing protection of open space, natural vegetation, landscape, and signage.

1-2.10.7 Policy:

Implement Land Development Regulations to protect lands east of US-1. Within ~~two~~ one years of the adoption of this plan the Town shall amend the Land Development Code to further regulate the Coastal Preserve Zoning District. Land development regulations shall contain performance standards which may include setbacks, buffers, control of exotic species, stormwater management and runoff, signage, public access, and preservation of Indian River Lagoon, seagrass beds, and other estuarine resources.

1-2.11 Objective:

Planned Unit Development. The Town shall promote innovative development concepts including mixed use development, and shall institute development concepts including mixed use development, and shall institute procedures for resolving conflict through use of the planned unit development.

1-2.11.1 Policy:

Planned Unit Development overlay designation. The Town hereby establishes a planned unit development overlay designation in order to provide a voluntary management framework for coordinating objectives of developers which may require departures from established public policy.

The planned unit development overlay designation shall provide a management strategy for negotiating innovative development concepts, design amenities, and measures for protecting natural features of the land. The management process shall promote public and private coordination and cooperation. The detailed regulations, standards, and procedures for implementing the planned unit development overlay designation shall be incorporated in the land development code. Planned Unit Developments must be designed to fit into the rural residential nature of the Town.

The planned unit development overlay designation shall be available as a voluntary approach for managing specific development characteristics and project amenities to be incorporated in residential, commercial, industrial or mixed use development options. The basic development options, including principles for locating alternative land use activities shall be governed by the underlying land use designated for the site. Developers who voluntarily participate in the process shall bind themselves as well as those who may be their successors in title to the affected land.

1-2.11.2 Policy:

Reinforce and enhance the Town's rural residential atmosphere. Within one (1) year of the adoption of this plan, the Land Development Code shall be amended to incorporate Planned Unit Development District (PUD) standards and specifications that maintain and enhance the profile and rural atmosphere of the Town. Standard and Specifications may include Malabar Vernacular architectural styles and detailing, garage and facades, signage, parking, landscaping, street access and circulation, and open space.

1-2.12 Objective:

School Siting. The Future Land Use Map shall accommodate schools within all land use designations at locations that minimize impacts to adjacent residential land use, that provide safe and efficient access to school sites, that create compatibility with adjacent residential land uses, that comply with all provisions of the Comprehensive Plan and Land Development Code, and shall be implemented through the following policies.

1-2.12.1 Policy:

School Site Locations: Site Compatibility. School sites shall be located and developed pursuant to plans that preserve land use compatibility. Compatibility determinations shall be undertaken to ensure that school sites are compatible with present and projected uses of adjacent property and that site plans reinforce long term compatibility. Land use compatibility shall require avoidance or successful mitigation of adverse impacts of noise and any spill over of outdoor lighting onto residential property in excess of best management principles and industry standards; shall accommodate safe and convenient internal circulation

and queuing of vehicles, as well as off-street parking area design that avoids headlight illumination into adjacent residential properties, and shall require successful mitigation of the adverse impacts generated by outside unenclosed activity areas such as playgrounds and field sports areas.

1-2.12.2 Policy:

School Site Locations: School Site Size. The sites shall be consistent with recommended State standards for public schools.

1-2.12.3 Policy:

School Site Locations: Compliance with Town of Malabar Comprehensive Plan and Concurrency Requirements. All school sites shall be served by adequate public facilities and services required to support elementary, middle, junior high, and senior high schools, including but not limited to, public potable water and sanitary sewer systems, stormwater management facilities, and fire, police, and medical services as well as sidewalks and paved roads with convenient and safe access that create direct linkage to a major collector or arterial street. The developed school site shall meet all concurrency management level of service requirements of the Town. The site plans shall comply with applicable public school facility elements and school facility concurrency requirements as mandated by State law.

- a. Elementary School. A minimum of four (4) acres for the first two hundred (200) student capacity plus one (1) acre for each additional one hundred (100) students.
- b. Middle or Junior High School. A minimum of six (6) acres for the first three hundred (300) student capacity plus one (1) acre for each additional one hundred (100) students.
- c. Senior High School. A minimum of seven (7) acres for the first three hundred (300) student capacity plus one (1) acre for each additional fifty (50) students up to one thousand (1,000) students, plus one (1) acre for each additional one hundred (100) students thereafter.
- d. Minimum site size may be adjusted for sites on which co-location of facilities are proposed or on sites characterized by development of multi-story facilities designed to achieve advantages of cluster design techniques consistent with best management principles and practices.

1-2.12.4 Policy:

School Site Locations: Future Land Use Map Designations for Schools. School sites should be located on sites that can be focal points for community activities and should incorporate innovative urban design, including opportunities for shared use and co-location with other community facilities. All school facility applications for site plan approval or other required land use approvals must comply with the Town of Malabar Comprehensive Plan and Land Development Regulations.

- a. Elementary schools should be within walking distance of residential neighborhoods served and the elementary school sites shall provide safe and convenient direct or indirect access to major collector or arterial roads and such sites may be selected within any future land use designations delineated on the Future Land Use Map.
- b. Middle, Junior High and Senior High Schools shall be located on the periphery of residential neighborhoods and the school sites shall have direct access to major collector or arterial streets and such sites may be selected within any future land use designations delineated on the Future Land Use Map.

1-2.12.5 Policy:

School Site Locations: Protect Natural Resources and Avoid Encroachment into Environmentally Fragile Systems. School facilities shall not be located within wetlands, the 100-year floodplain, or threatened or endangered flora or fauna habitats. School facilities shall be planned and developed in a manner approved by all federal, state, and local agencies having jurisdiction over such natural resources, including applicable buffer standards. School sites shall be well drained and the soils shall not impose severe constraints to intensive development.

1-2.12.6 Policy:

School Site Locations: Protect Archaeologically and Historically Significant Sites. School sites shall not adversely impact an archaeologically or historically significant site listed in the National Register of Historic Places or the State list of historically or archaeologically significant sites, or listed by the Town of Malabar as an historically or archaeologically significant site and which would be adversely impacted by development of a school facility.

1-2.12.7 Policy:

School Site Locations: Locate Outside of Airport Approach Zones and High Impact Noise Contours. School site locations shall be compliant with Section 333.03, F.S., which addresses in part the construction of educational facilities in the vicinity of an airport approach zone or high impact noise contour.

1-2.12.8 Policy:

School Site Locations: Encourage Co-Location of Public Facilities with Complementary Functions. School site selection shall encourage co-location of public facilities with complementary functions. Site selection should be coordinated with the Town of Malabar and Brevard County in order to enhance opportunities for such co-location and to ensure that the site selection process considers the spatial needs of not only the school plant but also the spatial needs of other potential joint users of the site. To maximize use of public facilities in the Town of Malabar, the Town shall encourage co-location of public schools with public facilities, having complementary functions such as parks, libraries, and appropriate children's service facilities where feasible, practical, safe and beneficial to the Town and the School Board.

1-2.12.9 Policy:

Siting of Private School Sites. The intent and purpose of public and private schools is to provide an organized system of education to a student population. Although the age of the student population served and the program orientation of educational facilities may differ widely, both public and private school facilities generate potential land use compatibility issues previously identified in Policies 1-2.712.1 through 1-2.712.8 School siting criteria is required by State law for public schools. However, the land use compatibility issues documented herein shall be implemented in the site plan review process for both public and private schools. Private schools shall be accommodated within all land use designations. Minimum site size for any private school facility shall be determined on a case by case basis based on best management principles and practices. The minimum size shall be directly related to land and facility spatial requirements for the educational activity, size of near and long-term clientele, character and intensity of activity areas, nature of outdoor activities and facilities, and other characteristics of the proposed private facility.”

1-2.12.10 Policy:

Amend the Land Development Code to Implement the School Siting Policies. The Town shall amend Table 1-3.2 within §1-3.2, Town of Malabar Land Development Code, which currently only allows educational institutions as a conditional use within the Office/Institutional (OI) or Institutional (INS) zoning districts. The amendment shall implement the recommended school siting policies stated in Policies 1-2.712.1 through 1-2.712.8.

1-2.13 Objective:

Malabar Road as a local corridor. The Town shall evaluate the development of Malabar Road as a local corridor.

1-2.13.1 Policy:

Malabar Road Corridor Plan. The Town shall pursue a corridor plan for Malabar that incorporates the following objectives: incorporates low density office and commercial uses; promotes economic development; provides additional services to the Town; remains true to the spirit and rural atmosphere of the town; and enhances and improves traffic operations and mobility along Malabar Road.

1-2.13.2 Policy:

Access Management. The “Malabar Road Corridor Plan” shall include an Access Management Plan to address right of way limitations.

1-2.13.3 Policy:

Overlay Zoning District. The Land Development Code shall be amended to incorporate overlay zoning district regulatory provisions and performance standards. The provisions may include permitted land uses, densities, design standards, signage, and required improvements along the corridor.

§1-3 Land Use Element Implementation.

Goal 1-3

Implementing Land Use Goals and Objectives. Continue to monitor and evaluate development and resource conservation within the Town pursuant to goals and objectives of the comprehensive plan Land Use Element and carry an effective implementation program as herein established.

1-3.1 Objective:

Manage and coordinate future land use decisions. Management of land and physical improvements identified on the Future Land Use Map will be coordinated with natural systems, including topography, soils conditions, vegetation, natural habitat, potable water wellfields, and other environmentally sensitive land and water resources. Land use shall also be predicated on availability of man-made infrastructure and service systems required to support land use activities.

1-3.1.1 Policy:

Future Land Use Map and related policies. The Future Land Use Map and related policies identified in the next section (§111-5) entitled "Future Land Use Map", provide definitions of land use designations and qualitative standards which shall be applied in allocating future land uses.

1-3.1.2 Policy:

Resolving public service concurrency issues surrounding new development. Pursuant to Chapter 163, F.S., and §9J-5, F.A.C., the Town of Malabar shall issue no development order for new development which would result in an increase in demand on deficient facilities prior to completion of improvements needed to bring the respective facility up to standard. Pursuant to 9J-5.006(3)(c)3] the Town shall encourage and direct development to areas where public facilities and services are available or are projected to be.

1-3.1.3 Policy:

In order to implement concurrency management for proposed new residential or nonresidential development, any required improvements to meet concurrency, as determined by Town Staff, shall include a detailed schedule for construction and completion. Should development or facility improvements fail to begin or be completed in accordance with the development order or permit, then all outstanding approvals of the development shall expire. Amendments or changes to time schedules shall be permitted but must be approved by the body granting the original approval.

1-3.1.4 Policy:

In order to implement concurrency management the Town shall require that all proposed non-residential developments and/or proposed residential developments that require a comprehensive plan amendment and/or zoning code amendment, whichever occurs first, shall at the time the subject application for amendment is filed, submit information which demonstrates that all urban services needed by the proposed development can and will be provided concurrent with the new development.

In order to establish an orderly review process, the Town shall refine the Land Development Code by stipulating specific narrative and/or graphic data and information required at the time a comprehensive plan amendment or

zoning code amendment is filed with the Town. As a minimum, the information shall include the following:

- The specific land use(s) and the proposed density and/or intensity of the use(s);
- Estimated trips per day generated by the proposed land use(s) together with anticipated on- and off-site improvements necessitated to accommodate the traffic impacts generated by the development including, additional R/W, roadway improvements, additional paved laneage, traffic signalization, and other similar improvements;
- Anticipated wastewater generation together with anticipated improvements for collecting and treating the same;
- Potable water demands together with proposed improvements for providing the potable water;
- Conceptual plan for accommodating stormwater run-off and demonstrated evidence proposed drainage improvements shall accommodate stormwater run-off without adversely impacting actual systems;
- In cases where residential development is proposed, information shall be submitted describing plans for accommodating recreational demands generated by the development, including demonstrated evidence that the Town's adopted level of service for recreation shall not be adversely impacted;
- Projected demand generated by the development on the solid waste disposal system and assurances that the Town's adopted level of service for solid waste disposal shall not be adversely impacted;
- Potential to increase the prevention of urban sprawl as defined by 9J-5.006(5)(g), Florida Administrative Code (F.A.C.);
- Other information which the Town determines is necessary to assure that the concurrency requirement shall be satisfied without adversely impacting existing levels of service or the Town's ability to adequately service participated development which is consistent with the adopted plans and policies of the Town.

All such information submitted pursuant to this subsection shall incorporate proposed funding sources, including any identification of improvements which the applicant anticipates shall be funded by the Town or other public entity.

1-3.1.5 Policy:

The Town will discourage and assess potential for urban sprawl in formal review of development proposals utilizing criteria in Rule 9J- 5.006(5)(g). F.A.C.

1-3.1.6 Policy:

Land development regulations. Existing regulations governing zoning; subdivision; signage; landscaping and tree protection; flood plain management; surface water management; water conservation; sewers and sewage disposal; streets and sidewalks; parks, playgrounds and recreation;

health and sanitation; fire prevention and protection; building and electrical codes; excavation and erosion; and other land and water management regulations shall be revised and/or updated as needed in order to: 1) effectively regulate future land use activities and resources identified on the Future Land Use Map; and 2) implement the goals, objectives, and policies stipulated in the Comprehensive Plan. These ordinances shall be incorporated into a land development code pursuant to Chapter 163.3202, F.S., and shall contain specific detailed provisions which as a minimum:

- a. Regulate the subdivision of land;
- b. Regulate the use of land and water consistent with this Element, ensure the compatibility of adjacent land uses, and provide for open space;
- c. Protect the environmentally sensitive lands designated in the Comprehensive Plan;
- d. Regulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- e. Protect potable water wellfields and aquifer recharge areas;
- f. Regulate signage;
- g. Ensure safe and convenient onsite traffic flow and vehicle parking needs; and
- h. Provide that development orders and permits shall not be issued which result in a reduction of the level of services for the impacted public facilities below the level of service standards which shall be adopted by the Town Council.

1-3.1.7 Policy:

Standards for residential density. Land development regulations adopted to implement this Comprehensive Plan shall be based on and be consistent with the following standards for residential densities as indicated below and as elaborated in §4-2; Policy 1.1 (1-5), herein:

- a. Rural residential density – a maximum density of up to one and one-half (1.5) gross acres per residential unit.
- b. Low density residential – a maximum density of up to two (2) residential units per gross acre.
- c. Medium density residential – a maximum density of up to four (4) residential units per gross acre.
- d. High density residential – a maximum density of up to six (6) residential units per gross acre.

1-3.1.8 Policy:

Non-residential development standards. Land development regulations shall be adopted which address the location and extent of non-residential land uses in accordance with the Future Land Use Map and the policies and descriptions of types, sizes, and intensities of land uses contained in this Element.

1-3.1.9 Policy:

The Town shall regulate intensity of non-residential land uses as noted in the below Table.

| Land Use Category | Intensity Standards | |
|--|---------------------|-------------------|
| | Height | Building Coverage |
| Multiple-Family Residential or Office Development (MRO). | 35 feet | 20% |
| Office-Institutional Development (OI). | 35 feet | 20% |
| Limited Commercial Development (CL). | 35 feet | 20% |
| General Commercial Development (CG). | 35 feet | 20% |
| Industrial Development (IND). | 35 feet | 42% |
| Institutional Services (INS). | 35 feet | 20% |
| Open Space and Recreation (OSR) | 35 feet | 10% |
| Conservation (CON) | 35 feet | 5% |

1-3.1.10 Policy:

Performance standards. Land development regulations shall contain performance standards which:

- a. Provide criteria for protecting wetlands;
- b. Establish buffering and open space requirements;
- c. Provide criteria for protection of potable water wellfields;
- d. Provide criteria for drainage and stormwater management;
- e. Incorporate criteria for requiring off-street parking and managing internal traffic circulation as well as access to and egress from the street system;
- f. Mandate availability of requisite service and infrastructure;
- g. Stipulate criteria for screening and buffering land uses and facilities which may otherwise adversely impact development of adjacent land use;
- h. Establish standards for erosion control;
- i. Address historically significant properties meriting protection.

1-3.2 Objective:

Encourage redevelopment and renewal: Manage future redevelopment of declining areas. Although the Town currently has no blighted or declining areas, the Town has designated Malabar Road and US 1 as target areas for redevelopment. The Town shall coordinate public and private resources necessary to initiate needed improvements and/or redevelopment within currently defined redevelopment areas as well as areas that may in the future exhibit indications of blight or decline.

1-3.2.1 Policy:

Code enforcement activities. Code enforcement activities shall be continued as an integral part of the Town's regulation programs. The code enforcement program shall preserve and protect structurally sound land improvements and land uses consistent with the Comprehensive Plan.

1-3.2.2 Policy:

Nuisance abatement. In order to discourage blight, the Town shall increase emphasis on nuisance abatement to improve neighborhood quality of life. The Town shall routinely review and update existing nuisance abatement codes.

1-3.2.3 Policy:

Public and private sector partnerships. If redevelopment issues materialize, the Town shall coordinate with the private sector in promoting mobilization of public and private resource necessary to effectively carryout redevelopment efforts.

1-3.2.4 Policy:

Malabar Road Corridor Plan. The Town shall pursue a corridor plan that promotes economic development, pedestrian connectivity, and good urban design along Malabar Road.

1-3.3 Objective:

Prevent land use inconsistent with Town's character. Future land uses shall be consistent with the Town's character, the Future Land Use Map, and other applicable laws, ordinances, and administrative rules impacting land and water resources. Similarly, if improvements are proposed to an existing structure which does not comply with such provisions governing setbacks, size dimensions, height, density, or other location criteria, then: 1) in no case shall any existing non-compliance be increased; and 2) the existing non-compliance shall be eliminated or reduced to the greatest reasonable and practical extent.

1-3.3.1 Policy:

Managing future land use. The Future Land Use Map and related policies together with the Land Development Code shall be applied as a planning and management device in order to prevent development of land uses which do not conform to the Town's character as reflected in the Town's adopted Future Land Use Map, Zoning Map, and other applicable laws, ordinances, and administrative rules.

1-3.3.2 Policy:

Managing improvements to existing non-complying structures. The Land Development Code shall provide standards regulating improvements to existing non-complying structures and such standards shall require compliance and/or mitigation to the greatest reasonable and practical extent.

1-3.4 Objective:

Protection of archaeological and historic resources. Land development and conservation activities shall insure protection of archaeological and/or historic resources.

1-3.4.1 Policy:

Programming for archaeological and historic sites. The Town shall coordinate with the State in developing appropriate programs for implementing Town and State policies for identifying, preserving, and enhancing sites of historical and archaeological significance. Programs for identification, evaluation of relative significance, protection, preservation, and

enhancement shall be promoted utilizing available public resources at the local, State, and Federal level as well as available private sector resources.

1-3.4.2 Policy:

Preventing adverse impact of development on historic or archaeological sites. Development activities shall include precautions necessary to prevent the following adverse impacts to historic or archaeological sites of significance: 1) destruction or alteration of all or part of such site; 2) isolation from or significant alteration to its surrounding; 3) introduction of visible, audible, or atmospheric elements that are out of character with the property or significantly alter its setting; 4) transfer or sale of a site of significance without adequate conditions or restrictions regarding preservation, maintenance, or use; and 5) other forms of neglect resulting in its deterioration .

1-3.4.3 Policy:

Amend Land Development Code. Within ~~two~~ one years of the adoption of this plan, the Town shall amend the Land Development Code regulations that preserve and conserve historic or archaeological sites of significance; Protect and encourage the revitalization of historic or archaeological sites of significance; Protect such archaeological and historic sites to combat urban blight, promote tourism, foster civic pride, and maintain physical evidence of the city's heritage; and Encourage and promote restoration, preservation, rehabilitation and reuse of archaeological and historic sites by providing technical assistance, investment incentives, and facilitating the development review process.

1-3.5 Objective:

Protection of natural resources. Development and conservation activities shall assure the protection of natural resources.

1-3.5.1 Policy:

Future land use policies for managing environmentally sensitive lands. Policies in Chapter 5 and 6 for managing environmentally sensitive estuarine and upland areas shall be applied in protecting natural systems.

1-3.5.2 Policy:

Incorporate land development regulations for environmentally sensitive estuarine and upland areas. The Town shall amend the Land Development Code to further regulate the Coastal Preserve Zoning District. Land development regulations shall preserve and protect the Indian River Lagoon, sea grassbeds and other estuarine resources, natural drainage and recharge areas, and native vegetation from potentially adverse impacts of development. The Code shall contain performance standards which may include setbacks, buffers, control of exotic species, stormwater management and runoff, signage, public access, and preservation of Indian River Lagoon, seagrass beds, and other estuarine resources.

1-3.5.3 Policy:

Intergovernmental coordination and natural resource management. The Town shall coordinate with the State, the St. John's River Water Management District, the East Central Florida Regional Planning Council, the

Marine Resources Council of East Central Florida, Brevard County, and other agencies concerned with managing the Indian River Lagoon as well as environmentally sensitive coastal uplands. Such intergovernmental coordinating activities shall be directed toward protecting the values and functions of the coastal marsh and submerged lands.

1-3.5. Policy:

Protecting flora and fauna having special status. The habitat of rare and endangered species of flora and fauna and others having special status as identified in the Conservation Element shall be protected.

1-3.5.5 Policy:

Managing stormwater run-off. The developer/owner of any site shall be responsible for managing on-site run-off.

1-3.5.6 Policy:

Conservation of potable water supply. The potable water supply shall be conserved by enforcing potable water standards to be developed as part of the Land Development Code.

1-3.6 Objective:

Coordinating coastal area population densities. Coastal area population densities shall be coordinated with the Brevard County Peacetime Emergency Plan, Disaster Evacuation Plan (as exists or as hereinafter may be amended) and shall also be consistent with applicable regional hurricane evacuation plans.

1-3.6.1 Policy:

Continuing review of population densities. The Town shall coordinate with Brevard County in order to assure continued compliance with the County disaster evacuation plan (referenced above). In addition, the Town shall coordinate with Brevard County in order to remain responsive to issues which may impact County hurricane evacuation plans, including issues surrounding planned State improvements to S.R. 514.

1-3.7 Objective:

Minimize impacts on Indian River Lagoon. The Town shall allow the expansion of existing facilities which will have minimum impact on the Indian River Lagoon system and to discourage their location in inappropriate areas.

1-3.7.1 Policy:

Strategic placement of infrastructure. Infrastructure shall be located in areas where maximum physical advantage exists, where the least dredging and maintenance are required, and where adequate resources will not be adversely affected subject to State and Federal regulations.

1-3.7.2 Policy:

Water quality. Present and future facilities along the Indian River Lagoon shall not degrade water quality in the estuaries of the region per State and Federal regulations. [9J-5.012(3)(c)(8 and 13)]

1-3.7.3 Policy:

Utilization of existing facilities. Expansion of facilities along the Indian River Lagoon, where environmentally feasible, rather than construction of new facilities, shall be encouraged. [9J-5.012(3)(c)(8 and 14)]

1-3.8 Objective:

Consistency with the State Aquatic Preserve Plan for the Indian River Lagoon. Resource planning and management activities shall be coordinated with the State Aquatic Preserve Management Plan for the Indian River Lagoon.

1-3.8.1 Policy:

Indian River Lagoon Aquatic Preserve Plan. The Town shall coordinate with appropriate County, regional, and State agencies in managing development and resource conservation issues impacting the Indian River lagoon Aquatic Preserve.

1-3.9 Objective:

Coordinate timing and staging of public and private development. The location, scale, timing, and design of development shall be coordinated with public facilities and services in order to promote cost effective land development patterns and direct future development only to those areas where provision of public facilities necessary to meet level of service standards are available concurrent with the impacts of the development.

1-3.9.1 Policy:

Development orders and permitting process. Development orders and permits for all future development shall be timed and staged to assure that requisite infrastructure and services are available to respective developments concurrent with the impacts of development.

1-3.9.2 Policy:

Design of public facilities and utilities. Public facilities and utilities shall be located and designed to: 1) maximize the efficiency of services provided; 2) minimize related costs; and 3) minimize adverse impacts on natural systems.

1-3.9.3 Policy:

Developments not served by public water and/or wastewater systems. All developments in areas not serviced by public water and/or wastewater systems shall be governed by applicable State laws and administrative regulations.

1-3.9.4 Policy:

Accommodating requisite infrastructure. During the subdivision review, site plan review, and permitting processes the Town shall insure that respective future developments allocate sufficient land area for infrastructure required to support proposed development.

1-3.10 Objective:

Consider application of innovative land and water resource management concepts. Monitor state-of-the-art concepts for managing land and water resources and land development regulations which are responsive to unique development and conservation issues confronted by the Town.

1-3.10.1 Policy:

Incorporate innovative techniques in the land development regulations. The Town's land development regulations shall incorporate land and water resource management techniques which have been demonstrated to be successful and cost effective in resolving development and conservation issues.

1-3.11 Objective:

Intergovernmental coordination. The Town shall coordinate land and water resource management issues with other applicable public agencies at all levels of government pursuant to the Intergovernmental Coordination Element.

1-3.11.1 Policy:

Implementing intergovernmental coordination. The Town shall require that development applications be coordinated, as appropriate, with the City of Palm Bay, Town of Grant-Valkaria, Brevard County, special districts, the East Coast Regional Planning Council, the St. John's River Water Management District, as well as State and Federal agencies prior to issuance of a development order or permit.

1-3.12 Objective:

Continuing land use programs. The Town shall implement land use goals and objectives by carrying out a continuing program of land use activities below cited.

1-3.12.1 Policy:

Land use information system. Maintain and periodically update the land use information system.

1-3.12.2 Policy:

Land use trends. Monitor and evaluate population and land use trends.

1-3.12.3 Policy:

Fiscal management. Implement fiscal management policies of the capital improvement program and budget.

1-3.12.4 Policy:

Administer land use controls. Administer adopted land use controls, including the zoning code, subdivision regulations, building regulations, electrical code, flood drainage prevention regulations, housing code, water and sewer codes, traffic regulations, fire code, and regulations governing streets and sidewalks.

1-3.12.5 Policy:

Public assistance. Provide continuing land use information and assistance to the public.

1-3.12.6 Policy:

Intergovernmental coordination. Coordinate land development issues where applicable with other public agencies at all levels of government pursuant to the Intergovernmental Coordination Element of this plan.

1-3.12.7 Policy:

Manage current developmental impacts. Evaluate and manage impacts of proposed development pursuant to existing ordinances, including but not limited to, public facilities, natural environment, and impact on stable residential neighborhoods.

1-3.12.8 Policy:

Urban design and community appearance. Good principles of urban design shall be applied through site plan review procedures in order to enhance general community appearance as well as to preserve and enhance open space landscape. This program shall assist in protecting major natural and manmade resources within the Town, including such scenic natural resources as the Indian River lagoon, and tributaries of Turkey Creek and Goat Creek, as well as developing residential neighborhoods or centers of commercial or institutional activity.

1-3.12.9 Policy:

Special land use studies. In order to maintain land use policies responsive to changing conditions, problems, and issues, the Town shall undertake special studies as needed to develop specific local strategies for resolving unanticipated land use problems and issues.

1-3.13 Objective:

Continuing evaluation of Land Use Element effectiveness. The Town shall use the following policies as criteria in evaluating the effectiveness of the Land Use Element.

1-3.13.1 Policy:

Review the impact of change indicators on land use policy. Major shifts in the magnitude, distribution, and characteristics of population and land use shall serve as indicators of possible changes in land use needs. The policy implications of major shifts in land use characteristics shall be evaluated on a continuing basis. Land use policy shall be refined as needed in order to remain responsive to evolving problems and issues.

1-3.13.2 Policy:

Schedule, budget and implement programmed activities. The timely scheduling, programming, budgeting and implementation of programmed land use activities identified in this Element shall be evidence of the Town's effectiveness in carrying out a systematic program for implementing adopted land use goals, objectives and policies.

1-3.13.3 Policy:

Coordinate with public and private sectors. While continually implementing and evaluating the Land Use Element, the Town shall maintain a process of intergovernmental coordination as well as coordination with private sector groups interested in land use policy and programs. The effectiveness of this approach shall be evaluated by the success of coordination mechanisms in resolving land use problems and issues.

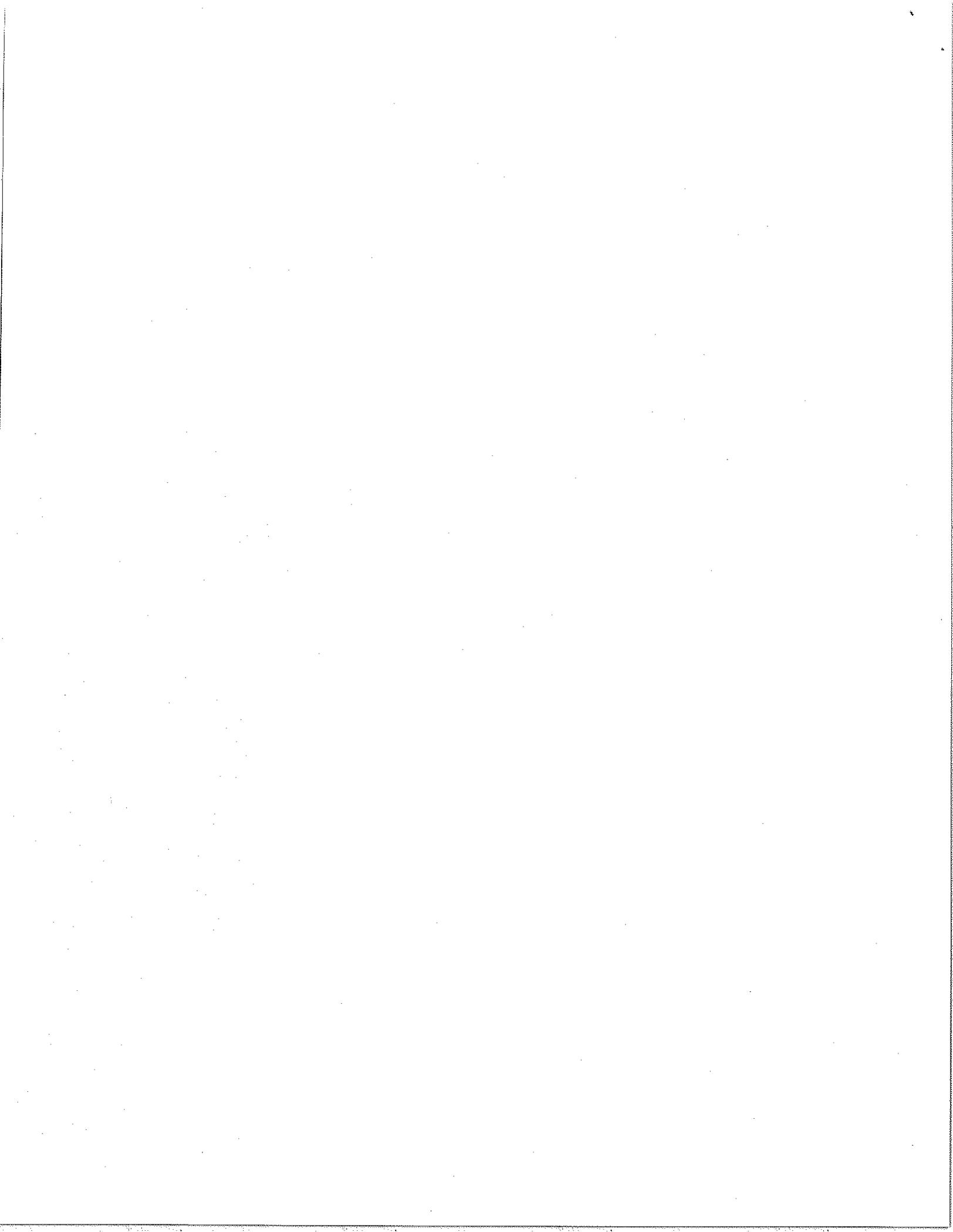
1-3.13.4 Policy:

Achieve effective resolution of land use goals, objectives, and policies.
The effectiveness of the Land Use Element shall be measure by the Town's success in achieving land use goals, objectives, and policies. The Land Use Element incorporates a systematic planning process for identifying land use problems and issues implementing corrective actions.

Appendix 1A Florida Master Site File Historic and Archaeological Sites (2008)

| Site Name | Site Type | Site Detail | Cultural Affiliation | Survey Evaluation | State Historic Preservation Office (SHPO) Evaluation | Human Remains |
|----------------|-----------------------------|-----------------|--|---------------------------|--|---------------|
| MALABAR | Prehistoric shell midden | Ceramic scatter | Malabar I and Malabr II | Not Evaluated by Recorder | Not Evaluated by SHPO | |
| DAMON | Prehistoric burial mound(s) | Ceramic scatter | Prehistoric | Not Evaluated by Recorder | Not Evaluated by SHPO | YES |
| Brick Chimney | Building remains | | Twentieth century American, 1900-present | Ineligible for NRHP | Not Evaluated by SHPO | |
| Historic Canal | Canal | | Twentieth century American, 1900-present | Ineligible for NRHP | Not Evaluated by SHPO | |

Source: Florida Master Site File, Florida Division of Historic Resources, 2008.



TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: March 10, 2010

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Amendments to Fence Ordinance, Article V

BACKGROUND/HISTORY:

The Mayor asked Council at the RTCM of 2/1/2010 to allow his recommendation regarding the fence ordinance to be considered by the P & Z Board. His proposal was brought back to P&Z on February 10, 2010 for your review and comments, looking for Action to bring back to Council for closure. The topic was tabled at that meeting.

In order to continue this discussion, a MOTION will be necessary to remove the item from the table.

Staff was asked to prepare historical documentation from the many times that this issue was previously discussed.

Council agreed with the Town Attorney's legal opinion based on the definition within our Code. Attorney Bohne determined that stand alone columns are not part of a fence, per the definition. Also the setback within the Code applied to buildings, porches and accessory structures. We have enclosed that as well.

ATTACHMENTS:

- Article V
- Minutes from P&Z
- Memo 10-TC-011

ACTION REQUESTED:

Formulation of recommendations to bring to Council to bring this subject to final disposition.

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.
- Water Towers.
- Ventilators.
- 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.

(Ord. No. 08-04, § 1, 4-7-08)

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.
5. Fences, walls and hedges shall be permitted in required yards subject to the provisions established in this chapter [Code].

6. In a nonresidential district required off-street parking may be located in the front yard except that no parking space shall be permitted within ten (10) feet of the front lot line. Furthermore, the Town may require applicants for development to submit plans which include dedicated cross easements for joint use of driveway curb cuts, driveways, and accessways required to provide access to off-street parking on adjacent sites. The purpose of this requirement is to achieve more efficient management of curb cuts onto major state roads and to attain greater levels of safety and public convenience.
7. In the multifamily residential districts, parking may be located in the front yard except that no parking space shall be permitted within twenty (20) feet of the front lot line.
8. Open, unenclosed porches, platforms or paved terraces not covered by a roof or a canopy, and which do not extend above the level of the first floor of the building, may extend or project into the required yard area not more than six (6) feet or utility easement.

(Ord. No. 92-8, § 1(C), 8-18-92)

Section 1-5.3. Lots of record less than minimum size (grandfather clause).

Any lot of record existing prior to Ordinance 7-1-76 as well as Section I of the Brook Hollow S/D which contains less land area or width than required in the district in which it is located may be used for a use permitted in such district. However, if the substandard lot adjoins other land of the same owner which if used could correct the area or width deficiencies of the substandard lot, then:

- (1) The substandard lot shall not be rendered a developable lot unless the nonconformity is remedied; and, furthermore,
- (2) The subsequent sale of the substandard lot, adjoining lot, or portion thereof, shall not result in a vested development right in [the] substandard lot unless the transaction corrects the deficiency in the substandard lot.

Section 1-5.4. Regulations for required yards.

A. Purpose, Use and Maintenance of Yards. The purpose of yards required in this Chapter [Code] is to provide open space around and between structures for health, safety and aesthetic purposes. All required yards and landscaped areas where not used for parking, driveways, sidewalks, or other approved structures shall be planted and maintained in lawn, sod, or landscaping including flower beds, shrubs, hedges or other generally accepted landscaping material approved by the Building Official. A yard may be planted and maintained in its natural condition so long as the yard is maintained and does not become a public nuisance. Landscaping material, including trees, shall not obstruct the vision of the motoring public.

The landscape requirements of Article XIV shall further regulate development within all zoning districts, excepting single family zoned districts.

B. *Front Yards.*

1. *Lots with double frontage.* The front yard regulations shall apply to both streets on through lots or double frontage lots.
2. *Corner lots.* There shall be a front yard on each street side of a corner lot, provided, however, that the buildable width of such lot shall not be reduced to less than thirty (30) feet; provided, further, that no accessory building on a corner lot shall project beyond the front yard line on either street.
3. *Encroachment of porches or terraces.* An open unenclosed and uncovered porch or paved terrace may project into the front yard for a distance of not more than ten (10) feet.
4. *Encroachment of gasoline service facilities.* Gasoline filling station pumps and pump islands may be located within a front yard, provided they are not less than fifteen (15) feet from any property line.
5. *Walls and Fences shall not Constitute Traffic Hazards.* In a required front yard, no fence or wall shall be permitted which creates a traffic hazard by materially impeding vision.
6. *Configuration and Measurement of Front Yard Depth.* Depth of required front yards shall be determined in accordance with footnote 2 in Table 1-3.3(A).

C. *Side Yard.* Width of required side yards shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.

D. *Rear Yards.* Depth of required rear yards shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line.

E. *Yard Encroachment By Shading.* Notwithstanding any other provisions of the Code, no new building, man-made object or coniferous trees will be located in such a manner that it will cast a shadow (damaging to the use of a solar system) into adjacent required yard setbacks, between the hours of 8:00 A.M. E.S.T. and 4:00 P.M. E.S.T. at the winter solstice.

The purpose of this is to enhance the natural warming during winter months for plant life and habitat on adjoining property as well as safeguarding the users of solar heating roof panels.

(F) *Burying of Materials / Debris on Properties.* No person shall bury any debris or materials which are subject to decompositions or erosion or corrosion or that encourage the presence of termites, insects or vermin anywhere within the town other than in an authorized dumping area. Debris and materials shall include, but are not limited to trees or parts thereof, brush, roofing materials, plaster products, lumber, automobile parts or bodies, any waste which may

accumulate as a result of construction or manufacturing processes, wood and paper boxes, wrapping materials, wastes, plastics, and paper products. Also included are materials that are considered hazardous waste by the department of environmental protection, per Florida Administrative Code, or would affect ground water quality. Any other material must be approved by permit obtained from the town engineer.

(Ord. No. 92-8, § 1(E), 8-18-92; Ord. No. 97-4, § 2, 3-17-97)

Section 1-5.5. Wastewater facilities.

Whenever a lot is not served by an approved sanitary sewer, adequate open space as required by the Brevard County Environmental Services Unit shall be provided for a septic tank and drainage field to serve the uses erected on the subject lot. The sanitary installations may be located in a front or side yard, but not closer than five (5) feet to any lot line or within any easements. Notwithstanding, no septic tank shall be located within seventy-five (75) feet of mean high water (MHW) along the Indian River, or any tributary thereof. All package plants must conform to the applicable standards of the Florida Department of Environmental Regulation (FDER), including, but not limited to, location relative to the mean high water line.

Section 1-5.6. Accessory buildings.

A. *Presence of Principal Building Required.* No accessory building shall be constructed upon a lot until the construction of a principal building has been issued a certificate of occupancy and no accessory building shall be used unless the principal building is in use. No structure which has been constructed as a principal use for the housing of animals or for agricultural purposes shall be used as a residence.

B. *Prohibited in Required Yard.* No accessory building or structure shall be located in any required yard area.

C. *General Regulations of Accessory Building.* No mobile homes, travel trailers, or old cars shall be permitted as an accessory structure. No accessory structure shall be built without a permit first being issued by the Building Official expressly authorizing the accessory structure. If the Building Official is in doubt as to the type of added accessory structure or whether a proposed accessory use is a duly authorized accessory use or structure within the district in which it is proposed, then the Building Official shall forward the issue to the Planning and Zoning Board and the Town Council for action.

Section 1-5.7. Storage of gasoline and other combustible fluids.

Any storage of gasoline and other combustible fluids shall be subject to compliance with all State and local laws pertaining to storage of gasoline and other combustible fluids.

Cross reference—Fire prevention and protection, ch. 8.

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 therefor 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.

(Ord. No. 99-1, § 1, 4-19-00; Ord. No. 08-05, § 1, 5-5-08)

Cross reference—Buildings and building regulations, ch. 6.

TOWN OF MALABAR

2/10/10

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: February 10, 2010

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Fence Ordinance that the Mayor Proposed to Council at Town Council Meeting on February 1, 2010 Looking for Approval from P & Z Board.

BACKGROUND/HISTORY:

Mayor asked Council at the RTCM of 2/1/2010 to allow his recommendation regarding fence ordinance to be considered by P&Z.

ATTACHMENTS:

- Portion of RTCM Draft minutes
- Document 1-4 Fence Ordinance Proposed

5. **Fence Ordinance Proposed Change (Mayor)**

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Discussion: All Mayor Eschenberg is asking is for an okay from Council to send to P&Z to make a recommendation to Council. Rivet and Vail are both good with this. Vail would like this to go to P&Z. McKnight has an issue with some of the wording. Rivet stated that P&Z shouldn't restrict anything unless there is a really good reason. McKnight and Vail suggested that Mayor's recommendations be sent back to P&Z.

MOTION: Vail / McKnight to send Mayor's recommendations to P&Z. VOTE:

All Ayes.

Motion carried 4 to 0.

DOCUMENT 1

AGENDA ITEM NO. 5

FENCE ORDINANCE PROPOSED CHANGE

Submitted by Mayor

After attending the last P&Z meeting, it has become apparent that the change to the fence ordinance has stalled. In order to get the process moving again, I am submitting a change that will address "ENTRANCEWAYS". Along with other changes I recommend, the people of Malabar will have more freedom and less government interference in their property rights.

Requested action: Send the Mayor's proposed fence ordinance changes to P&Z for evaluation and recommendation.

DOCUMENT 2

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

(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.

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, 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.

Gate means that portion of an entranceway installed for the purpose of controlling passage to and from the property on which it is located.

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 therefor 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 or entranceways 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 or entranceways 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 shall be more than four (4) ~~six (6)~~ 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~~ eight (8) feet 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 eight (8) feet in height including barbed wire for security. ~~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 or entranceway structure excluding a gate shall be constructed on any public easement, utility easement or public right-of-way.
 2. No fence including a gate 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 and gate 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 and entranceway which is placed or located on any portion of the perimeter boundaries of a residential subdivision or development shall comply with this section. ~~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.~~

Document 4

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 or entranceway 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 or entranceway 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.

(j) Height restrictions for entranceways in residential districts. Entranceways 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 entranceway located between the front building line and the front lot line shall be more than six (6) feet in height.**
2. **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.**
3. **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.**

(Ord. No. 99-1, § 1, 4-19-00; Ord. No. 08-05, § 1, 5-5-08)
Cross references: Buildings and building regulations, ch. 6.

7/22/09

F. ACTION:

1. **Fence Ord #1 & #2**

Exhibit: Agenda Report No. 2
Recommendation: Action

Liz Ritter handed out the definitions she came up with for terms discussed relating to fence discussion. Franklin explained the two ordinances. One was corrected as a result of the Joint Meeting in May. It was recognized that all of the P&Z Board recommendations had not been included in ordinance that went to Council. Staff found those P&Z minutes and made revisions and have that one for P&Z review this night marked as #2.

There were also recommendations that resulted from the Joint Meeting with Council. Those recommendations were included in the ordinance marked #1.

Staff is looking for a recommendation on the two ordinances – it is not either or. If you like both we will combine them.

Regarding the ordinance marked #1 – Krieger said the definitions conflict with #2. He referenced language conflicts in the ordinance marked #1 in the fourth *WHEREAS*, should read same as third *WHEREAS*. In same ordinance, at the bottom, the reference to entranceway fails to mention setbacks. This is a completely different issue. He has many more markups on page 2. Krieger said the whole column thing was an issue. They used *within* instead of *attached to* when referring to columns. Arches is in there and there was supposed to be a setback.

Krieger also has issue in Section 6, limiting the height of a column to 2 feet above height of fence. Column is not part of the fence. Krieger said it was a language thing. Krieger referenced portion that stated columns shall not exceed six feet – what if it is part of an archway? Krieger stated if it is within the setback, you need to get a permit. Krieger has issue with this. Wilbur asked BO Roger Cloutier about the column and archway. The archway requires engineering and gets expensive.

Krieger said it was the P&Z Board that put #2 together. Joint meetings should be for large issues not small issues. Both of these ordinances are not what they said. He spent his time looking at #1 and finding inconsistencies, not realizing he should have reviewed both. Wilbur asked Franklin to explain again the background on the two ordinances. Staff did not want to assume P&Z wanted to incorporate Joint Meeting recommendation into their draft. That is why there were two ordinances. Krieger was not at Joint Meeting. Council wanted to provide staff with guidance on what to require for fences.

Zindel said what is wrong with ordinance #2? Krieger said #2 doesn't match what came out of P&Z. Krieger will go back to his notes. He likes to read about it carefully and study it. Is there a time issue – there is no rush. Wilbur likes #1 because it addresses columns. Ritter said take the columns out. Wilbur asked which one they favor. Krieger will have to look at each line. Generally, it mixed gates and entry gates. The original paperwork said that the entry gate can be constructed of any material; Ryan questioned the gates in ordinance #2 relating to gates 4 foot and less in width and more than 4 foot in width. That is for human traffic and vehicle traffic. Wilbur is happy with #1. Krieger said if we keep columns in, then we need to integrate that with the 13'6". Ryan said since there is no time limit on this, we should take this home and review and come back with suggestions. Wilbur asked BO Roger Cloutier which was the simplest and most straight forward ordinance. Cloutier said he likes #2 because it is simple. If you get too many details in there then it is hard to

7/22/09

enforce. Ritter said just to add columns to #2 ord and take the whole line out when a column is used within a fence, it shall not extend more than 2 feet higher than fence. On #2, Sec 1, entranceways, gates and add columns. And then remove the last sentence. Krieger said it should read *attached* to not *within* when referring. Columns a supporting structure attached to a fence or associated with a fence. Krieger said if they are within the setback, then they don't come into this. If it is just columns, it is not a fence and needs a different type of permit. The LaCourt structure is not a column. If it is part of fence, it is a fence, not a column. Krieger said if he is building something it needs to be in the Building Code. BO Roger Cloutier said that the columns should not be addressed in the fence ordinance. Krieger said it should be as P&Z recommended.

MOTION: Reilly / Ryan to send ordinance #2 as is back to Council.

Ryan wanted columns included in the ordinance. Ritter asked BO Roger Cloutier if they are building just columns, then what is needed. Cloutier stated columns are covered in the Building Code and don't need to be part of fence code...

Vote: All Ayes.

TOWN OF MALABAR
PLANNING AND ZONING

7/22/09

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 tthat 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 mean 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.

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

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

5127109

MALABAR JOINT TOWN COUNCIL / PLANNING AND ZONING WORKSHOP

May 27, 2009 7:00 PM

This joint meeting of the Malabar Town Council and the P&Z Board was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER:

The meeting was called to order at 7:00 pm by Chair Thomas Eschenberg. The prayer and pledge were led by Mayor.

B. ROLL CALL: COUNCIL

MAYOR/CHAIR
VICE-CHAIR:
COUNCIL MEMBERS:

TOM ESCHENBERG
PATRICIA DEZMAN, excused
NANCY BORTON
BRIAN VAIL
STEVE RIVET
JEFF MCKNIGHT
BONILYN WILBANKS-FREE
DEBBY FRANKLIN

TOWN ADMINISTRATOR:
TOWN CLERK/TREASURER:

ROLL CALL: P&Z

CHAIR
VICE-CHAIR:
BOARD MEMBERS:

BOB WILBUR
PAT REILLY
BUD RYAN
LIZ RITTER
DON KRIEGER
CINDY ZINDEL, ALT
BRIDGET PORTS, ALT
DENINE FUSCO-SCARBRO

BOARD SECRETARY:

C. DISCUSSION: FENCE REGULATIONS

Mayor opened with explanation that Council thought a joint meeting would help resolve all issues regarding fences and gates. Rivet explained the need for a gate definition and width of opening for fire response vehicles. Vail said he didn't want it to keep going back and forth between P&Z and Council. There have been gates that are higher and they are very nice, but the width and depth should be stated in the code. Wilbur stated that some individuals wanted to make individual statements with their gates and there are no rules in place to provide for fire dept to get into the gate - how far back from the road. The decorative arches should be 13'6" for the fire dept equipment to get through without damaging the entrance. Cloutier state the FDOT criteria met most of those criteria. Vail said if we make it too far back then we are taking. Rivet said we should have different regulations for local roads and another for major collectors like Corey Road. Wilbur said the setback for the gate is so they don't block traffic on any road. Wilbur said if you are going to re-do your fences then comply with new regulations. Ritter said that they didn't want to be so specific that everything that doesn't conform is out of compliance. Ritter said BO knows what is required and they can use FDOT guidance. Vail said we don't have a standard. Gate is fence. Ritter said a gate can be moved and a fence can't. She thinks they should be different. Rivet said we can change code to make it different. McKnight said he agreed with Rivet. He has seen gates that have guy wires. We should be careful. Borton sees the need for the fire dept. Ports said there are other issues like the culvert and brush that also would prevent fire equipment to get into a property. Ryan said is would behoove neighbor to make sure fire dept can get into neighboring property.

BWF said that she has two issues and stated the two pieces of fence at Rocky Point Road that is held up by a pile of dirt. She was told there is no requirement for fences to meet or for posts to be cemented.

They did reverse the fence upon notice. It can become a hazard. Franklin showed the Malabar code on fence materials and maintenance – it is in our code. We showed code in Malabar and discussed the heights and the requirements. Borton didn't want a million stipulations. Vail said he has seen fences that are 4 feet high and the gates were huge. Some looked completely out of place. Ritter said we could allow a certain percentage of the height of the fence for the gate. Ryan said we could allow a 1.5 times the height of the fence. Cloutier did not want to have to use calculator to determine if the percentage was met or exceeded while out doing inspections. He said the FDOT provide the minimum height should be 13.6 for fire equipment to enter. Cloutier said he has authority to say if it's over ten feet then he can require engineering on the entrance. Mayor cautioned group on linking gate height to a percentage of the height of the fence. He said the gate on Eva Lane had a gate but no fence. If you let him put in a fence it would have to be limited to that formula. Ritter said that Cloutier had told them that FDOT. Wilbur said create a definition for fence entranceways and gates. Allow emergency vehicles through it, under and a definition for entranceway or gate. Ryan said the allowable height of gate can be a percentage up from the fence.

Vail likes the curved design of the fence/wall on Eva Lane. He would like to prohibit a 4-foot fence with a box 8-foot gate. Can they require a sloped increase? Cloutier said if you are back 12-feet you can go up higher. Vail said one of his fences has been bumped back 10 feet so he can get his truck off the road. Ports can't do that. Wilbur said we are talking about one main entry gate that the fire dept would use; we aren't referring to pedestrian gates. Wilbur said we run into this because we are rural. The problems we have encountered aren't found in other cities. The other codes didn't apply to us. McKnight said that during the fires he did not see any fire trucks on property. They were on the roads. He did not like to complicate it with slopes. They discussed using FDOT standards. Cloutier said that would be sufficient.

Franklin said we are looking for specific guidance in code – construction requirements to comply with Building Code wind code of 130 mph. Cloutier said that there is no requirement in Building Code for fences. BWF said we don't require the posts to be concreted in. Cloutier said then every fence would require engineering. BWF said in South Florida they had an inspection requirement of the concrete for the posts. They discussed the complaint between the neighbors on Rocky Point Road. McKnight said it should be up to HOA and we should not change code to settle dispute between neighbors.

Ryan asked about wind codes for fences in FDOT regulations. They don't reference them. Rivet said we don't want them flying off in hurricane. BWF said to require concrete in post holes and type of material. Ryan stated that during the hurricane the wind caught the Ivey growing on his fence and broke it. They discussed posts rotting and the problem with wood posts in concrete. They also deteriorate.

Regarding surveys, Ritter said when a new fence comes in, let Roger state where the fence goes. Wilbur said to require a survey and if a survey is in the file let them use it.

Ryan said the two properties on Eva Lane should not be allowed to benefit under the new rules. Franklin stated on the record that both had responded to the code violation letters, applied for permits, paid the double fee and are waiting for town resolution on fence height issue to resolve their violations.

Borton said getting something in the code is better than nothing; we need to establish basic requirements. Ryan said if the State standards are enforceable, then why don't we just adopt them. Entrance ways at least 13.6 and not to exceed 16 feet for emblem is what Cloutier recommended. We have to have something for them to refer to. We need a standard.

Vail asked about the height of columns?

Franklin said that none of the other cities had a separate definition for gates.

addressed gates and entranceways. McKnight said there is a word missing. Ritter said gates should be compatible with fence. Separate gate and entranceways from fences. Vail asked if there was a state building code. Roger said FDOT does not apply to local streets. Borton said we should adopt their standards. Reilly said in section 2 - we eliminated some of that wording and added other. We don't have then rewritten ordinance. Franklin and Scarbro found the notes from Krieger with language for entrance gates.

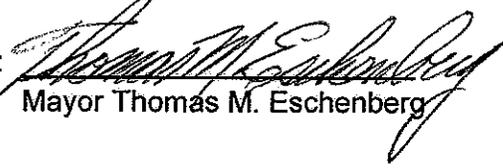
Consensus to change code to entranceways. Then add language for gates, fence columns, gate columns and provide definition. For both entranceway and fence line. Include the light fixtures above the columns. Ryan asked Cloutier to come up with appropriate language for ordinance. McKnight is happy with the changes suggested by Krieger and P&Z. Staff will make the additions and present to P&Z for a review and then send to Council.

Vail asked if columns going to addressed separately if they are within the fence line or holding up the gate. We will provide for fence columns, gates, entrance columns. Mayor said to be careful. He said there was a house on Cason that had high columns one week and the next week they were cut down. Cloutier said the home owner was here. Owner said in order to get CO he had to cut them down. He is interested in hearing if the height will be increased before he finishes the fence. Right now there are just two columns.

D. ADJOURNMENT

There being no further business to discuss, MOTION: McKnight / Rivet to adjourn this meeting.
VOTE: All Ayes. The meeting adjourned at 8:30 PM.

BY:

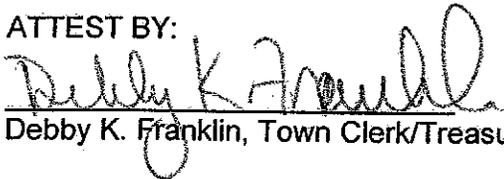

Mayor Thomas M. Eschenberg

Minutes by:


Denine Fusco-Scarbro, Secretary

Date Approved: 06/15/09

ATTEST BY:


Debby K. Franklin, Town Clerk/Treasurer

5/27/2009

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 A DEFINITION OF THE TERM ENTRANCE 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 OF 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 wall 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 term *Entrance Gate* to read as follows:

"Entrance Gate means that portion of a fence installed for the purpose of controlling passage to and from the property upon which it is located. 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"

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 one (1) entrance gate and supporting structures within the required front yard. The entrance gate, as well as its support structures, shall not be lower than _____ feet the fence or wall to which such entrance gate and support structures are attached nor exceed _____ feet above the fence or wall to which such gate and support structures are attached. Entrance gates may be supplemented by an arch or other decorative feature above the entrance gate as long as the arch or decorative feature meets the height requirements herein and is approved by the Town Fire Department for safe passage of emergency vehicles. The entrance gate and support structures must be located across the primary means of ingress and egress serving the property and shall be set back at least 12 feet from the front property lot

line.”

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.

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

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 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 _____, 2008.

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

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 therefor 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.

(Ord. No. 99-1, § 1, 4-19-00; Ord. No. 08-05, § 1, 5-5-08)

Cross references: Buildings and building regulations, ch. 6.

Reilly made statement that with CG land it is hard to make money with this land due to the fact there is no water and sewer, so mini storage is the easiest way to go.

MOTION: Krieger / Reilly to recommend to Town Council to approve and accept this Site Plan as submitted for Mr. Ken Adams with the following stipulations:

- DOT clears permitting
- Florida Vernacular is addressed properly
- Required (2) wells are supplied as planned for fire protection

Vote: All Ayes

Zindel asked why the property had to be advertised for public hearing. Kreiger suggestion to staff, to please provide the Board with a memo of any up coming projects or new business if we are aware of them in advance.

T.P. Mills and T.E. Stephenson left approx. 9:05 P.M.

 **F. ACTION:**

3. Fence Height Ordinance 2009-99

Exhibit: Agenda Report No. 3

Recommendation: Action

Kreiger has re-written the definition and #6 of the ordinance to clearly define all "Entrance Gates" and "Gates", along with number 6 under Section 2. (See Attached).

B.O. Cloutier has submitted a Memo # 09-BO-006 to clarify the definitions of gates Section 2 #6 only correcting the height with 13.6 not 13.4 feet.

There is a discussion amongst the board about the definitions that have been handed Kreiger explains the definitions and fence design. Wilbur expresses that Cloutier's definition are short and to the point on "Entrance Ways".

Recommendation to Council: To approve this Ordinance 2009-99 using the definition sheet submitted by Krieger with corrects as submitted.

Where "Entrance Gate": is defined an (s) would be inserted after A gate (s).

Where #6 is revised Section 2. Article V
FDOT height requirements (min. 13.6 feet to max. of 16 feet in height) for safe passage of emergency vehicles. The entrance gate and support structure must be set back at least 12 feet from the front property line and a minimum of 20 feet in width.

MOTION: Reilly / Kreiger to recommend to Council to approve with corrections as stated above **Vote: All Ayes**

G. PUBLIC:

H. OLD BUSINESS/NEW BUSINESS:

Reilly would like to know when Town staff (Engineer, Planner, Cloutier) get their packages for P & Z meetings. DFS explained if certain staff members are needed to attend a meeting, they get a P&Z packet on the Friday before the meeting.

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: February 25, 2009

Prepared By: Denine Fusco-Scarbro, Planning Zoning Secretary

SUBJECT: Fence Height Ordinance 2009-99

BACKGROUND/HISTORY:

This issue has been discussed at previous P&Z meetings as it related to various applicants. In December the Board reviewed a draft ordinance provided by staff. They made recommendations that it be amended to include a minimum height for entranceways and setbacks. The attorney revised and P&Z reviewed during the last meeting on January 28, 2009.

The Board tabled the action item and the Acting Chair directed that each P&Z member provide their comments for further revisions at the next meeting.

ATTACHMENTS:

- Draft Ordinance No. 2009-99 Revised

ACTION OPTIONS:

This will require a MOTION to remove from the table in order to discuss. After discussion, staff requests action in the form of a MOTION to recommend Council approve/deny/approve with further changes, the revised Ordinance 2009-99.

TOWN OF MALABAR

Agenda #3

MEMORANDUM

Date: February 23, 2009 09-BO-006
To: Planning & Zoning Board
From: Roger Cloutier, Building Official
Ref: Comments from Roger for Ordinance No. 2009-99 Revised

Please see below my suggestions for Ordinance No. 2009-99 Revised version that is in your P & Z packets dated 2-25-09.

SECTION 2. # 6. ONLY

Subject to the requirements in the subsection the owner of any lot or parcel located in the RR-65 District may install one (1) entrance gate and supporting structures within the required front yard, the entrance gate, as well as its support structures.

Entrance Gate may be supplemented by an arch or other decorated feature above the entrance gate as long as the arch or decorative feature meets minimal height requirements to clear 13.4 feet and a maximum of 16 feet.

Set backs must be at least 12 feet from front property line and minimum of 20 feet in width.

ORDINANCE NO. 2009-99

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE V OF THE MALABAR LAND DEVELOPMENT CODE; 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 OF 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 wall 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.

WHEREAS,

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 (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 one (1) entry gate and gate supporting structures within the required front yard. The gate, as well as the support structures for the gate, shall not exceed ___ feet above the fence or wall to which such gate and support structures are attached. The gate and support structures must be located across the primary means of ingress and egress serving the property and shall be set back at least ___ feet from the front lot line."

SECTION 2. 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 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 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 _____, 2008.

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. 2009-99 *Revised*

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 A DEFINITION OF THE TERM *ENTRANCE 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 OF 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 wall 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.

WHEREAS,

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 term *Entrance Gate* to read as follows:

"*Entrance Gate* means that portion of a fence installed for the purpose of controlling passage to and from the property upon which it is located. 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"

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 one (1) entrance gate and supporting structures within the required front yard. The entrance gate, as well as its support structures, shall not be lower than the fence or wall to which such entrance gate and support structures are attached nor exceed ___ feet above the fence or wall to which such gate and support structures are attached. Entrance gates may be supplemented by an arch or other decorative feature above the entrance gate as long as the arch or decorative feature meets the height requirements herein and is approved by the Town Fire Department for safe passage of emergency vehicles. The entrance gate and

support structures must be located across the primary means of ingress and egress serving the property and shall be set back at least ___ feet from the front property lot line."

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.

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

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 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 _____, 2008.

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

MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
January 28, 2009 7:30 PM

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 7:30 P.M. Prayer and Pledge led by Vice-Chair Pat Reilly.

B. ROLL CALL:

CHAIR:

VICE-CHAIR:

BOARD MEMBERS:

ALTERNATE:

ALTERNATE:

SECRETARY:

BOB WILBUR,

PATRICK REILLY, Chaired meeting

DON KRIEGER

BUD RYAN

LIZ RITTER

CINDY ZINDEL

BRIDGET PORTS

DENINE FUSCO-SCARBRO

Also present: Mayor Eschenberg.

Roger Cloutier- Building Official

Chief Joe Gianantonio- Fire Chief

C. ADDITIONS/DELETIONS/CHANGES: none

D. CONSENT AGENDA

1. Approval of Minutes

Regular Planning and Zoning Meeting- 12/10/08

MOTION: Wilbur / Ryan to approve P&Z minutes of 12/10/08 as corrected. Vote:
All Ayes.

Krieger has corrections to minutes on page 2, G. Public about less then half way down page starting with.... to the board mine sound , should be mine sand.

Also, page 4, the bottom of the first paragraph one line up start with....other ways to address this problem if you want to have a nice line in the fence Ordinance with out having a separate gate Ordinance. Changed other to are and to have a nice line changed ...addition to. So it will read as follows... there are ways to address this problem if you want additions to the fence Ordinance with out making a separate gate Ordinance.

Ritter has corrections, page 1 G. Public, Mr. Smith is Mr. Morris Smith. Page 2 G. Public 1/3 way down page change to Morris Smith.

Amended minutes as corrected. Vote: All Ayes

E. PUBLIC HEARING: None

F. ACTION:

2. Fence Height Ordinance 2009-99

Exhibit: Agenda Report No. 2

Recommendation: Recommendation to Council

Reilly is explaining to board about discussing this Ordinance 2009-99 revised version- Motion to approve.

Krieger states this is not ready for approve. It is up to the board to discuss, states Reilly,

we have to fill in the blanks and review the Ordinance. At the end of our discussion we can make a motion to table this item to next meeting if you want to continue discussion or approve this after our discussion.

Reilly is explaining to the board about what is in the code book, describes what a front yard is in section 1-5.5 walls & fences.

Ritter is discussing among the board the required footage in front of the houses and where the gate sits off the property line.

Reilly explains you can put a gate 30 feet from the center line of the road per our Town code. This only applies to new house.

Discussion among the board about the radius for emergency vehicle to turn into gate areas. Cloutier explains to the board the DOT standards for fence set backs is 12 feet from property line to allow turning radius for emergency vehicles.

Ports, expresses concern about ingress and egress as a second entrance way.

Cloutier explains the ordinance is just for the main entry gate.

Krieger suggests that the gate has nothing to do with the entrance gate, a gate has nothing to do with culverts or radius from the road, there is no limitation on the number of gates or placement of gates unless it violates DOT standards.

Take out "entrance gates" just put "gate" in its place or specify that an entrance gate has more specifications.

The definition of a gate should be addressed. A gate is defined as a portion of a fence installed for the purpose of controlled passage.

There should be a standard for fire safety and passage of emergency vehicles we should try to simplify procedures.

Ryan suggests to use "car length" as a term., i.e." entrance way has to be a car length into the property"

Wilbur suggests to table all this until we get opinions and suggestions from the attorney on how to legally handle all this.

Krieger suggested rewriting the definitions and bring back to next meeting.

The discussion among the board, Krieger suggests if it is in the boundaries of 48- 54 inches, it is not a special structure if it is a special structure then it's an auxiliary structure and you have to get another permit.

Wilbur made the comment to leave the fence Ordinance alone. Ritter, it is all gate issues in this Ordinance 2009-99 not fence.

Cloutier, suggests to leave it all alone and address the height issue.

Discussion among the board to make the Ordinance read "entrance way" instead of entrance gate. Cloutier explains the state statues of distances.

Ryan suggests that we should go by the Fire Department needs for emergency vehicle access. Board is reviewing overhead pictures of DOT standards of driveways and discussing standards with Cloutier.

Chief Gianantonio explained to board about access to properties and how important this is.

Reilly, states point of order.

Reilly talks about options for correcting these issues:

- Option 1- Do not do anything about this Ordinance 2009-99.
- Option 2- Change entrance gate to entrance way and re write accordingly.
- Option 3- Only address gates, due to the fact everything else is in the code.

Krieger's idea is to give people more rights by defining gates and entry gates. If a resident wants to build big entrance way, they need a structural permit. Krieger states he will write something up and keep it simple.

Ryan wants to reread revised Ordinance 2009-99, before making any decisions.

Discussion among the board is to separate gates from fences, we need to pull gates away from fences. Gates and arches are not fences.

Another idea is to provide a welcome packet for new residents of Malabar, explaining when a permit is needed and a list of permits, so work without a permit is not done.

Reilly wants the (2) residents on Eva Lane to not benefit from this new Ordinance due to the fact work was done illegally with out a permit

Reilly suggests that every board member should write what they think and bring it back to the board next meeting.

MOTION: Ryan / Ritter to table Fence Height Ordinance 2009-99. Vote: All Ayes

Discussion:

To bring comments and suggestions back at the next P & Z meeting, and review in our Town code book pages 257-261.



G. PUBLIC: none

H. OLD BUSINESS/NEW BUSINESS:

4. Driveway Turnouts

Exhibit: Agenda Report No. 3

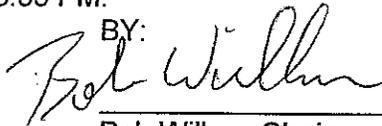
Recommendation: Discussion

Reilly clarifies with Cloutier that the ROW is the distance from the center line of the road or the edge of the property. Cloutier explains he requests a survey of property that he goes by the survey and property line for correct measurements. The section 8-47 in the code book covers the information for the Fire Department for emergency access

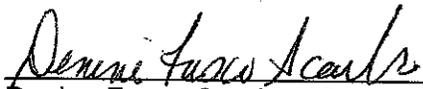
5. Show video for Swim safety

SI. ADJOURN:

There being no further business to discuss, **MOTION: Ryan / Wilbur to adjourn this meeting. Vote: All Ayes.** The meeting adjourned at 8:55 PM.

BY: 

Bob Wilbur, Chair



Denine Fusco-Scarbro, Secretary

4-22-09
Date Approved

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: January 28, 2009

Prepared By: Denine Fusco-Scarbro, Planning Zoning Secretary

SUBJECT: Fence Height Ordinance 2009-99

BACKGROUND/HISTORY:

During the last meeting on December 10, 2008 a draft Ordinance No. 2009-99 was given for you to review from the Town Attorney. The revised Ordinance No. 2009-99 shows changes recommended by P & Z Board.

ATTACHMENTS:

- Draft Ordinance No. 2009-99 (12-10-08)
- Draft Ordinance No. 2009-99 Revised
- Memo 08-TC-104 from Debby Franklin- Town- Clerk Treasurer

ACTION OPTIONS:

Staff requests action in the form of a MOTION to recommend Council approve Ordinance 2009-99 as revised.

ORDINANCE NO. 2009-99

DRAFT 1
12-10-08

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE V OF THE MALABAR LAND DEVELOPMENT CODE; 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 OF 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 wall 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.

WHEREAS,

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 (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 one (1) entry gate and gate supporting structures within the required front yard. The gate, as well as the support structures for the gate, shall not exceed ___ feet above the fence or wall to which such gate and support structures are attached. The gate and support structures must be located across the primary means of ingress and egress serving the property and shall be set back at least ___ feet from the front lot line."

SECTION 2. 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.

DRAFT 2
12-10-08

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 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 _____, 2008.

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. 2009-99 *Revised*

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 A DEFINITION OF THE TERM *ENTRANCE 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 OF 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 wall 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.

WHEREAS,

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 term *Entrance Gate* to read as follows:

"*Entrance Gate* means that portion of a fence installed for the purpose of controlling passage to and from the property upon which it is located. 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"

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 one (1) entrance gate and supporting structures within the required front yard. The entrance gate, as well as its support structures, shall not be lower than the fence or wall to which such entrance gate and support structures are attached nor exceed ___ feet above the fence or wall to which such gate and support structures are attached. Entrance gates may be supplemented by an arch or other decorative feature above the entrance gate as long as the arch or decorative feature meets the height requirements herein and is approved by the Town Fire Department for safe passage of emergency vehicles. The entrance gate and

support structures must be located across the primary means of ingress and egress serving the property and shall be set back at least ___ feet from the front property lot line."

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.

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

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 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 _____, 2008.

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



TOWN OF MALABAR

MEMORANDUM

Date: December 15, 2008 08-TC-104
To: Roger Cloutier, Building Official
From: Debby K. Franklin, Town Clerk-Treasurer
Ref: Setback Requirements, Article III, Table 1-3.3.A. and E.

Roger, I sent the following request to the Attorney last week:

Karl, I need you to review the setback regulations in Article III, Table 1-3.3A and Table E. The Building Official Roger Cloutier says there is confusion. In his experience he has never used the center of the road, because the road could be crooked. He talked about this at P&Z and now they are all confused. Can you provide an easy explanation of the two types of measurements or propose we change the code.

This morning, Karl replied:

I am of the opinion that the two tables are not in conflict. Whichever set back is more restrictive applies. I see Roger's concern; however, he does not have to be the one to determine where the edge of ROW is or where the centerline of the ROW is. That must be depicted on a survey which the applicant must present. This is because the improved road may not be located in the center of the ROW and the edge of the improved road may not be the edge of the public ROW. If there is any doubt a survey should for the most part show where the ROW is.

4/23/08

Cameron noted that six (6) ft fences are not uncommon for large animals. Krieger asked if there should not be some option of go over six (6) ft. Wilbur verifies that this Ord. is related to residential fencing only.

Motion: Reilly / Krieger recommend to TC approval of Ord. 2008-05 with the amended change as recorded.

Vote: All Ayes

F. ACTION: None



G. DISCUSSION ITEMS – General Items

3. Fencing in General

Exhibit: Agenda Report No. 3

Recommendation: Discussion and possible action

Presentation given of Town Of Malabar gateways— pictures taken by the Mayor. Each gate/entryway was viewed and discussed as to any violations, problems, or issues.

This discussion was to discuss gateways that would be set past set backs and onto an owner's property and not a gate/entry at the perimeter at individual's property line.

Reilly stated that if the gateways are built into the property by 20 ft, or the setback, then the fence Ord. should not be the rule. Cloutier discussed two safety issues of gateways with electric gates. These gates need to be electronically connected to the Fire Department, so the gate will open for an emergency vehicle with a sound or code. Also, the length of a fire trucks can be up to 30 to 40 ft. and therefore the driveway entry needs to accommodate the length of a truck because the electronic beam on the truck needs to be facing the sensor of the gate. Headwalls can also interfere with fire trucks entering and leaving driveways.

Krieger asked that if such gateways are applied for by a homeowner then those permits should be brought to the Board. Wilbur noted that a gateway description needs to be structured in writing to allow for safe entry of a Fire Truck—heights and width issues. Zindel requested clarification as to how a height is measured. Cloutier stated that the Code states that a fence will be measured at the outside of the property to the top of the fence and that all fences must be built within the owner's property line and not directly on the property line.

Krieger would rather call this topic as "Grand Entryway" or "Entryways" this could reduce the complication of confusing it with the Fence Code. Wilbur noted the need to provide base structure/details for general specifications/criteria of an Entryway. Krieger asked if this issue with the specifications would have to be codified or could this be handled administratively only.

Krieger asked if entryways are not already part of the construction code as an accessory structure. Reilly suggested adding a definition to the Code. Wilbur suggested that this would help with clarifying and avoid confusion. A possible definition could be: Entryways can exceed fence wall heights if it is within the required setbacks.

Cameron stated that residence, especially new residences, need to learn what is and is not allowable within the Town of Malabar. Miscommunication, no communication, or someone just not knowing can cause many misunderstandings. Krieger asked if these issues should be looked at for new construction only since new construction would have to obtain a permit anyway.

Board has determined to leave the Code alone at this time.

**H. OLD BUSINESS/NEW BUSINESS:
Malabar Vernacular Ordinance**

None

Foundation park Boulevard – Update from Town Administrator

Zindel asked for clarification regarding Zoning of the area and about rezoning. Discussion followed.

Motion: Reilly / Krieger put on future agenda until maps and more information can be obtained.

Wilbur asked if there was any information about future building in the Town. Discussed Oakmont Preserves – Changes to plans, fire protection, and preserves around and in the division.

Krieger ask about Stillwater Preserves and fencing around subdivision.

Krieger asked about the culvert pipes on the side of the road. Cloutier clarified that a crane is necessary for installing the culverts; Wilbur added that there is a delay due to monies in order to get a crane with the necessary equipment.

Krieger asks about Serene Harbor and the dirt mounds. Cloutier clarified that the dirt will be utilized when they begin building phase II plans and the demolition of the present building. The trees in the middle of the dirt are currently being protected by the dirt.

I. ADJOURN:

Motion: Reilly / Krieger to adjourn

Vote: All Ayes

Meeting adjourned at: 8:57pm

Michele Kelly

Michele Kelly, Secretary

Bob Wilbur

Bob Wilbur, Chairman

May 14, 2008

Date Approved

**TOWN OF MALABAR
PLANNING & ZONING ADVISORY BOARD**

APRIL 23, 2008 MEETING MINUTES

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

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

ROLL CALL:

Bob Wilbur, Chair

Patrick Reilly, V-Chair

Richard Cameron

Don Krieger

Bud Ryan -- Excused

Cindy Zindel, Alt. #3 #1-- non-voting

Michele Kelly, Secretary

Denine Fusco-Scarbro, Secretary in Training

Roger Cloutier, Building Official

C. ADDITIONS/DELETIONS/CHANGES None

D. CONSENT AGENDA

1. Approval of Minutes

Regular Planning and Zoning Meeting – April 9, 2008

Exhibit: Agenda Report No. 1

Recommendation: Motion to approve

Motion: Krieger / Cameron to recommend P&Z approve minutes

Vote: All Ayes

E. PUBLIC HEARING:

2. Fencing for Subdivisions (ORD 2008-05)

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 RELATEING TO THE HEIGHT OF FENCES OR WALLS LOCATED ON THE PERIMETER OF A RESIDENTIAL SUBDIVISION; PROVIDING FOR CONDIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Motion to approve

Chair opened Public Hearing, noted that Public Hearing was advertised. The Chair read Ord. 2008-05 Opening.

Motion: Reilly / Krieger to recommend to TC approval of Ord. 2008-05.

Typo found in Ord. 2008-05, Section 1, I, #2, line 1: "...development that is not part of a platted residential lot shall exceed 54 inches." Should read "...development that is not part of a platted residential lot shall not exceed 54 inches."

TOWN OF MALABAR

MEMORANDUM

Date: March 3, 2010 10-TC-011
To: Roger Cloutier, Building Official
From: Debby K. Franklin, Town Clerk/Treasurer
Ref: Council Approval from RTCM March 1, 2010

At the regular Town Council meeting of March 1, 2010, Council approved the request from Mr. Don Foley for columns and a gate for the entrance at 2000 Weber Road.

Portion of DRAFT minutes for Agenda Item 2 from RTCM of March 1, 2010:

- 2. Recommendation from P&Z Board – Columns for Mr. Foley**
Exhibit: Agenda Report No. 2
Recommendation: Request Action

Mr. Foley proposed to P&Z and they recommended unanimously that he be allowed to build a six-foot column with gate. They will be building a house there for his daughter and son-in-law. Mr. Foley felt that Weber Road is a true north-south corridor. They want to make a statement on this corridor. They feel the permitted 54" was a little to low to make that statement. His request originally started with comparing what he wants with Stillwater and Oakmont and they both have 8-foot tall gate posts. Mr. Foley stated the Mayor had suggested to P&Z at that meeting to allow gate posts to 18' to allow for western style entranceways. Tonight he is asking for 6-foot and in the future would like to ask for higher columns. Franklin stated that she and Attorney Bohne had discussed this and looked at the Code today. Bohne stated a request for a column to support a gate is not considered part of a fence, by the definition of *fence* in Malabar Code. Following the definition from within our Code, this should not have come to P&Z or Council. The setback definition refers to buildings, not columns. It specifically refers to buildings, including porches, carports and accessory uses (sheds, barns, etc.), not columns. Bohne reiterated that per the Code, the height limit the columns could not exceed is 35' – this request does not exceed that height. Franklin had prepared copies of the definitions of a *fence* from the Code and also the definition of *setback* and provided them to Council.

Chair stated this is what he has been saying for years. Chair stated that based on that legal opinion and understanding the fence height limitations do not apply to the columns that hold a gate. Consensus was that the columns and gate can be put in now then later a fence could be added, and the gate would be pre-existing. Based on this no motion is needed.

Later in the meeting under discussion, Mr. Ryan from the Planning and Zoning Board spoke:

L. DISCUSSION ITEMS:

Bud Ryan asked what was given as extra info for Agenda Item 2. Franklin gave him a copy of what was given to Council. When does the gate become a fence? When the gate is put in with the fence. Mayor said P&Z tabled it at the last meeting because they were dealing with the land use issues.

cc: Property file

independent carport, garage or other structure shall conform to the requirements of an accessory building. A structure conforming as an accessory building may be attached to the principal building by an open breezeway.

Public Water and Sewer Service. This shall mean water and sewer systems, including pipes, rights-of-way and treatment plants, owned and operated by the Town or operated under a franchise granted by the Town.

Recreational and Landscaped Open Space. Unroofed or screen roofed ornamental landscaped areas and recreational areas which are easily accessible and regularly available to occupants of all dwelling units on the lot wherein the open space is located. Rooftops, porches, raised decks, parking spaces, driveways, utility and service areas are not calculated as open space.

Right-of-Way Line. The boundary line between highway, road or street and a tract or parcel of land adjoining such highway, road or street. The right-of-way line shall be considered the property line.

→ *Setback.* The minimum horizontal distance between the street, rear or side line of the lot and the front, rear or side lines of the building, including porches, carports and accessory uses.

Shopping Center. A group of commercial establishments planned, constructed and managed as a total entity with customer and employee parking provided on-site, provisions for goods delivery separated from customer access, aesthetic considerations and protection from the elements.

Shoreline. The mean high water line for tidal water bodies and ordinary high water line for non-tidal waters for inland water bodies.

Special Exceptions. A special exception is a use that would not be appropriate generally or without restriction throughout a particular zoning district but would, if controlled as to number, area, location or relation to the neighborhood, be appropriate.

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, then the space between such floor and ceiling next above. If any portion of a roof area is intended for human occupancy, except for maintenance purposes, then such roof area shall also be considered a story, notwithstanding that no floor or ceiling is located above it.

Street. A thoroughfare which affords principal means of access to abutting property. Street classifications include the following:

Arterial. Arterial streets serve as principal routes through the Town. The purpose of these facilities is to move large volumes of traffic from one part of the region or county to another. Arterial roads also provide connections between major activity centers of the County or Town.

Major Collector Streets. Major collector streets collect and distribute traffic from residential access streets to arterial streets or other collector streets.

Easement. A grant by a property owner of the right of use of his land by another party for a specific purpose.

Excavations. Removal or recovery by any means whatsoever of soil, rock, minerals, mineral substances or organic substances other than vegetation, from water or land on or beneath the surface thereof, or beneath the land surface, whether exposed or submerged.

Extended Care Facility. A long term care facility or a distinct part of a facility licensed or approved as a nursing home, infirmary unit of a home for the aged or a governmental medical institution.

Family. A single individual, doing his own cooking, and living upon the premises as a separate housekeeping unit, or a collective body of persons doing their own cooking and living together upon the premises as a separate housekeeping unit in a domestic relationship based upon economic or domestic bond, as distinguished from a group occupying a boarding house, lodging house, club, fraternity or hotel.

Fast Food Restaurant. An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant structure or off premises.

→ *Fence (or Wall).* A freestanding structure of any material or combination of materials erected for confinement, screening or partition purposes.

Flag Lot. A lot not fronting on or abutting a public road and where access to the public road is by a narrow, private right-of-way.

Floodplain. An area likely to flood based on the officially adopted Flood Issuance [Insurance] Rate Map (FIRM).

Floodplain, Tidal. An area likely to flood or become inundated from water which is subject to tidal action.

Floor Area. The sum of the gross horizontal areas of the several floors of a building or buildings measured from exterior faces of exterior walls or from the center line of walls separating two (2) attached buildings. The required minimum floor area within each district shall not apply to accessory uses; however, the floor area of accessory uses may be computed as a part of the area of the principal use.

Foster Housing Facility. Substitutes for family units where one or two resident adults care for no more than five (5) persons in an environment which approximates family living.

Frontage. All the property abutting measured along the street line.

Funeral Home. A premises, structure or site used as a commercial establishment for the preparation of deceased humans for burial and/or for the conduction of funeral services prior to burial or other disposition of deceased human remains. Such a premises, structure or site

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: March 1, 2010

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Mr. Don Foley- 2000 Weber Road, Wants to place Front Gate with Height above 54" along with Pillars to lead into driveway on property

BACKGROUND/HISTORY:

Mr. Don Foley would like to construct a front entrance gate that is above the height of 54". He presented his case and reason for the request to the P&Z Board on January 13, 2010. He has provided documentation and pictures.

ATTACHMENTS:

- Document 1 & 2- Shows Height and drawings of Entrance Way
- Document 3 & 4 - Survey and Property Location
- Pictures are on Overhead for Presentaton
- Portion of approved minutes from P&Z meeting of January 13, 2010

By R x K - Malabar Ild

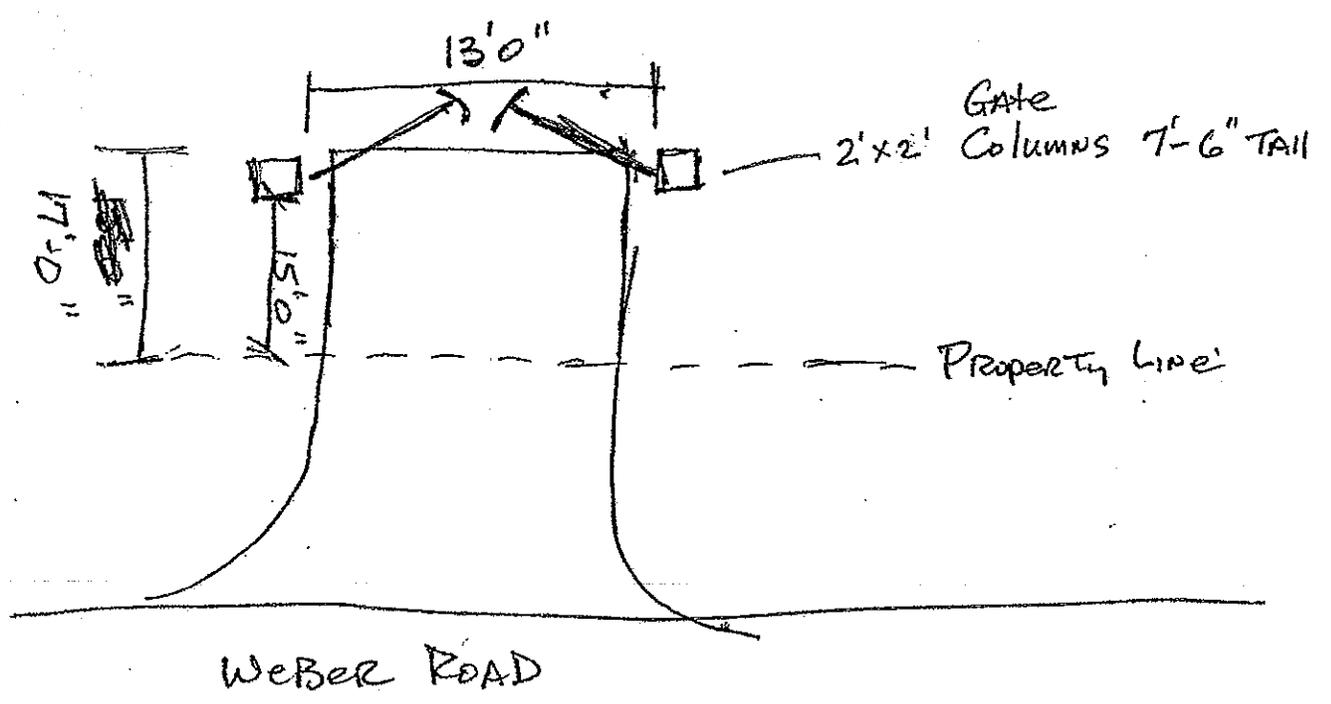
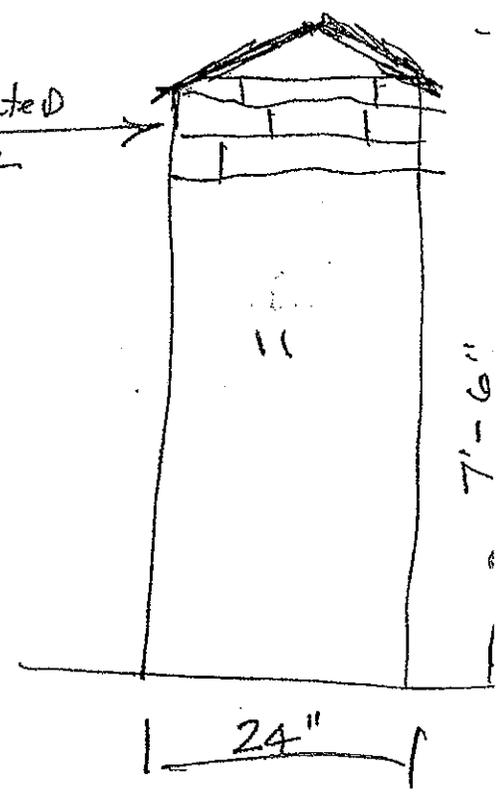
DOCUMENT 1

Debbie Franklin

Town Hall



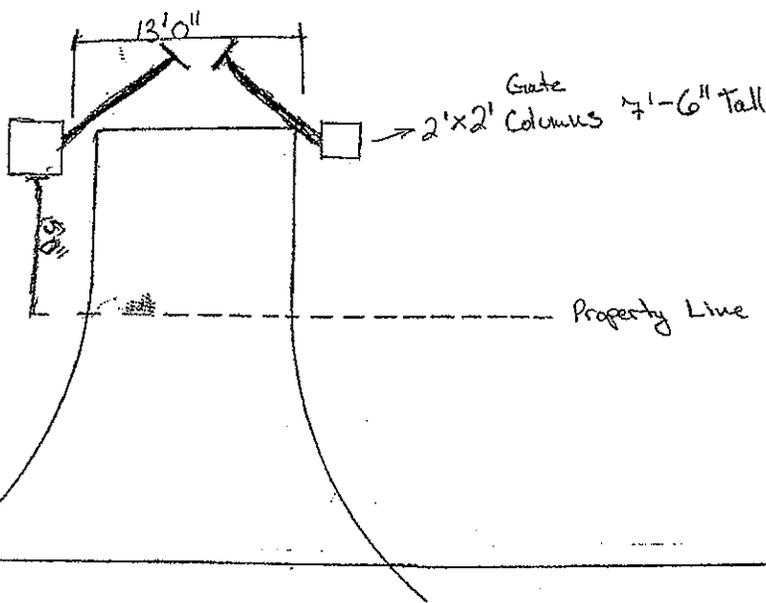
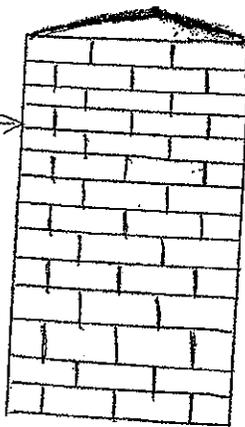
Simulated
Rock





Gate
Column

Simulated
Rock



2000 Weber Rd.
Don Foley

BENCHMARK:
NAIL & DISK
EL.=25.68

BENCHMARK:
NAIL & DISK
EL.=25.57

86' RIGHT OF WAY (OPEN)

CENTERLINE

WEBER ROAD

(22' PAVEMENT)

18" PIPE
157' NORTH
HOLES INVERT=21.83
SOUTH INVERT=21.80

33.0'

SWALE

S 00°32'36" W
225.00'

SWALE

33.0'

FOUND 4" x 4" CONCRETE
PERMANENT REFERENCE
MONUMENT PLS 4437
NORTHEAST CORNER
OF DALTON SUBDIVISION

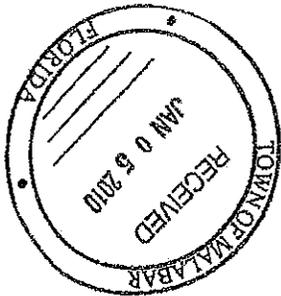
SEPTIC
SYSTEM

FENCE
7.0' WEST
0.3' NORTH

WELL OVER 25'

CONCRETE POLE
HW 5/8"
IRON ROD
LB 5419

FENCE
7.5' WEST
1.2' NORTH



NORTH LINE OF DALTON SUBDIVISION

625.29'

VACANT LAND

626.36'

LOT 2, WEBER ROAD ACRES
(PLAT BOOK 43, PAGE 69)

FIELD WIRE FENCE

6' PU & DE

EL.=23.6

EL.=23.2

EL.=23.6

EL.=24.4

LOT 2

EL.=23.7

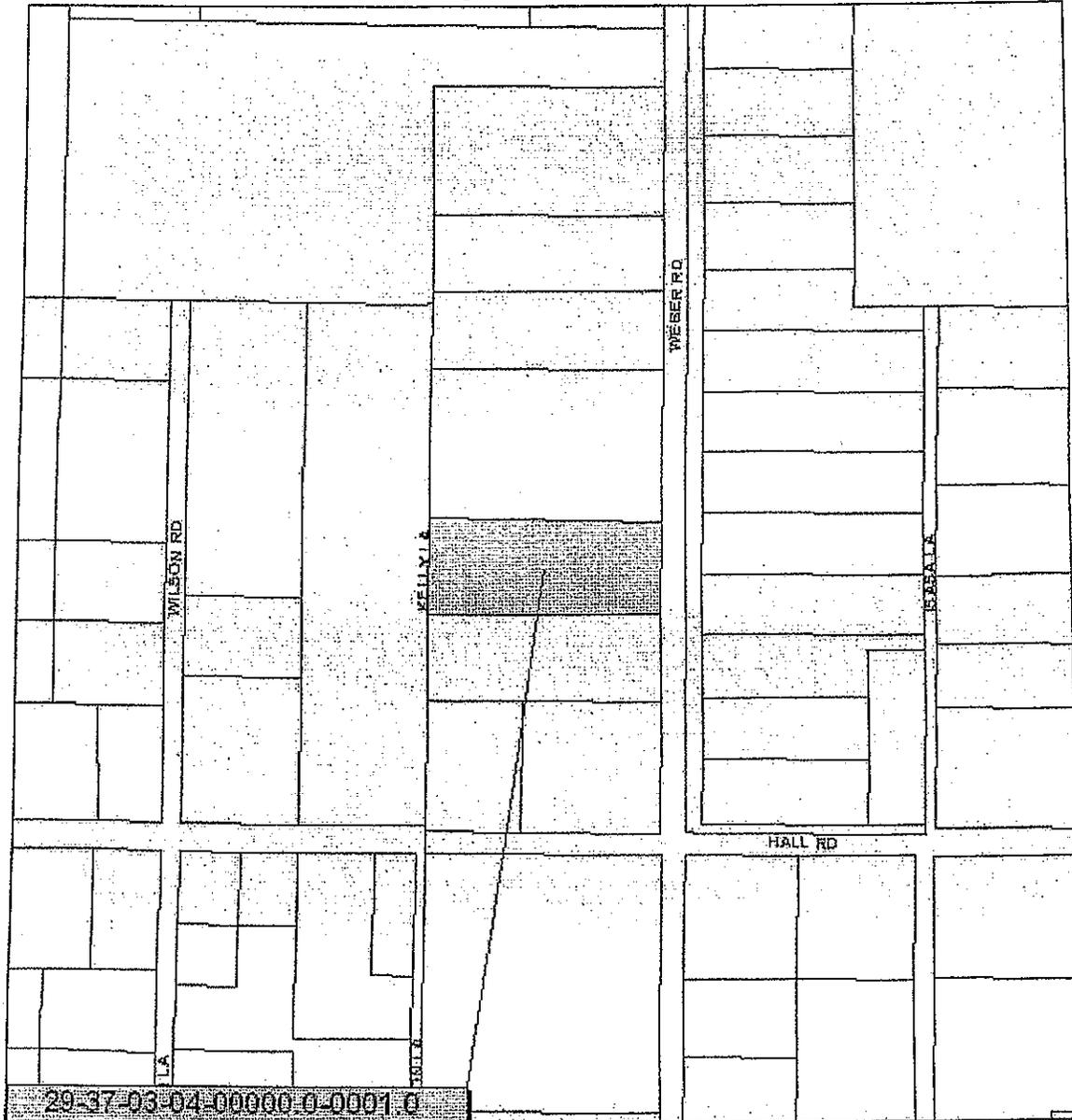
EL.=26.1

6' PU & DE

FIELD WIRE FENCE

DOCUMENT 4
(LOCATION)

Jim Ford, CFA
Brevard County Property Appraiser - Map Search



Portion of Approved P&Z Minutes from January 13, 2010

2. **Request for Gate Columns higher than 54" in RR-65 Zoning, 2000 Weber Road, applicant Don Foley**

Exhibit: Agenda Report No. 2

Recommendation: Request for Action

Mr. Foley, 3851 Atlantic Ridge Lane, Grant- Valkaria purchased the property located at 2000 Weber Rd Malabar, Mr. Foley's daughter Holiday is expressing and explaining the point of the gates is to embellish property with an entrance to have 7' 6" inch columns. Mr. Foley did explain this will be agricultural land and he would not be building a residence for approximately 1 year or so.

Reilly asks if they can build a gate before the actual residence. Cloutier, explains they can put a gate before a residence.

Mr. Foley, expresses this problem has been going on for several years with the height issues, we would like permission to go to Council. The property is in the "RR-65" zoning.

Mr. Foley expressed about the different Columns in the Town and presented pictures to the Board, one of the examples being Oakmont Subdivision, (Roy Pence) which is located on Marie Street.

Reilly expressed that the reason there is a height limit is so something like the columns at Oakmont does not happen again. This is the limit in the RR-65 Zoning is 6 feet.

Mr. Foley is asking to allow this request to be passed on to Council for review and direction of the 7 foot Column request for the front gate.

Wilbur explains about "entrance ways" and arches, that what were proposed is 6 feet height limits.

Krieger says anybody can go before Council to ask for a review it does not have to be recommended by this Board.

Recommendation has to do with distance from road and

Wilbur, explains to

Zindel, asks how tall are your gates going to be? Foley says the Columns will be about 7 foot in height and gate about 6 inches lower.

Reilly suggests temporarily conforming to the fence height then proceed when the Ordinance is in place.

Krieger explains that we can recommend to Council, with a 6 foot rule to comply.

Mr. Foley explains that this gate entrance sets back, approximately 30 feet,

Wilbur closes discussion to applicant, back to board for discussion.

Ryan, stick to 54" height if it goes to Council.

The discussion is among the board and discussion to Staff of direction.

Board is discussing the Motion to allow Mr. Foley to apply for a 6 foot gate opening.

MOTION: Krieger/Ryan: Recommend Council approve the six (6) foot height for columns for front gate @ 2000 Weber Road. VOTE: All Ayes