

**TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY JUNE 8, 2011
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA**

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**
- D. CONSENT AGENDA :**
 - 1. Approval of Minutes - Planning and Zoning Meeting – 04/27/11
Planning and Zoning Meeting – 05/11/11(Available
6/6/2011)**
 - Exhibit:** Agenda Report No. 1
 - Recommendation:** Motion to Approve
- E. PUBLIC HEARING:**
- F. ACTION:**
 - 2. Leave of Absence Letter Submitted by Alternate P & Z Member-
Cindy Zindel**
 - Exhibit:** Agenda Report No. 2
 - Recommendation:** Action
 - 3. Proposed Maps of Land Use Changes Final Review – Babcock Street-
Malabar Road-US 1 Corridor**
 - Exhibit:** Agenda Report No. 3
 - Recommendation:** Discussion/Action
 - 4. Fence Ordinance 2011 – Town Attorney Revised**
 - Exhibit:** Agenda Report No. 4
 - Recommendation:** Action
- G. 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: June 8, 2011

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

SUBJECT: Approval of minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

- Who made the Motion
- What is the motion
- Who seconded the motion
- What was the vote

Malabar has historically included discussion to provide the reader the understanding of how the Board came to their vote. It is not verbatim and some editing is done to convey the thought. People do not speak the way they write.

ATTACHMENTS:

Draft minutes of P&Z Board Meeting of April 27, 2011

Draft minutes of P&Z Board Meeting of May 11, 2011(**Available 6/6/2011**)

"The following draft minutes are subject to changes and/or revisions by the Planning and Zoning Board and shall not be considered the official minutes until approved by the P&Z Board."

MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
April 27, 2011 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 Chair Bob Wilbur.

B. ROLL CALL:

CHAIR:	BOB WILBUR
VICE-CHAIR:	PATRICK REILLY
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN, excused
	LIZ RITTER
	WAYNE ABARE
ALTERNATE:	CINDY ZINDEL
SECRETARY:	DENINE SHEREAR
TOWN PLANNER	KEITH MILLS, excused
TOWN ENGINEER	MORRIS SMITH, P.E. excused

C. ADDITIONS/DELETIONS/CHANGES: none

Vice Chair Reilly stated for the record that Bud Ryan called him and asked to be excused. Reilly, I would like to move Section "H. Public" up between D & E so that the Public does not have to stay the entire meeting. Also, move Action Item 2 the "Ordinance" and Action Item 5 the "Set Backs" as Discussion because there was not enough time to go through the Ordinance, I would like to discuss and vote at the next meeting. Wilbur asks Board if all in favor of those changes. **Vote:** All Ayes

D. CONSENT AGENDA :

1. Approval of Minute- Planning and Zoning Meeting- 03/23/2011

Exhibit: Agenda Report No. 1

Recommendation: Action

MOTION: Reilly/Ritter To approve Minutes of 03/23/2011 as corrected. **Vote:** All Ayes

Krieger corrections, page 1 second arrow under Land Acquisition, west should be east.

Ritter page 2, under Infrastructure, third arrow down:

- Easement for drainage: Maintenance/update of Drainage ditch ~~behind~~ west of railroad Camelot the Town has cleaned in the past from access of railroad right of way the FEMA ditch.

Page 2 typo third paragraph "out let" should be outlet.

Page 2 sentence before the Motion:

"The Board is discussing the addition of a pedestrian trail along Malabar Road on the north side being setback from the road and pipe ditch to be safe for pedestrians."

Page 2, under "G" second sentence take out ~~the~~, after "Abare is discussing".

Page 3 third sentence add to the end of sentence that the south end of Rocky Point is the "Nelson Property" to clarify area talking about.

H. PUBLIC: moved to after Consent Agenda

Bob Segman, 2305 La Court Lane, Malabar FL. I am Chair of the Park and Recreation Board. He requested a zoning map that does have the setbacks and where they are located in the Town of Malabar. This is for possible development of a bike path. Sherear gave Bob a copy of the Town Zoning District Packet, including a Town Map.

E. PUBLIC HEARING: none**F. ACTION:**

2. **Amend Code to Provide Current Regulations for Adult Care Facility (Ord 2011-38)** Moved to Discussion
3. **Proposed Fence Ordinance (Mayor Eschenberg)**
Exhibit: Agenda Report No. 3
Recommendation: Action

Motion: Reilly/Krieger To approve the "clean" version for discussion **Vote:** All Ayes

Reilly corrections on "clean" version is formatting:

Page 2 corrections: under "(d)" the 4- Was taken away.

Page 2 under "(d)", I thought there was a specific Ordinance for subdivisions.

Page 3 under "i" the sub numbers should be lined up under the "i".

Krieger corrections:

Fences, walls, gates, entrance ways it seems not all of them are mentioned but really referring to all these related structures. It seems that because they have more finely defined "entrance way" that at the end of "G" Page 3 "clean" version, where it says "fence or wall" I suggested putting commas, i.e. "fence, wall, gate, or entrance way" to include them all.

It appears that sometimes in this section they reference just fence and wall, and other times throughout they list all four, and then sometimes add related structures to the documentation like on page 3 (i) -1.

Ritter along with Krieger suggests in the corrections:

Everywhere it lists "wall, fence, gate, entranceway, and related structures that becomes everywhere that fences is mentioned

Page 1 I would like to add "Perimeter" as one of the definitions means an outside boundary of a subdivision or multiple adjoining lots. This will clean it up.

Reilly, corrections on Page 2 of "Clean" version under (c) the 5 & 6 do not have periods after the numbers.

Wilbur- Page 2 #5 at the end of the paragraph

Ritter corrections Page 1- (b) first paragraph need commas after Industrial and after Institutional.

Ritter corrected Page 1- (b) the second sentence to read:

Fences or walls located, erected, constructed, or altered, on any property located in a commercial, industrial, and institutional district shall be no more than eight (8) feet in height, including barbed wire for security.

Krieger explains a culvert permit has a completely separate diagram as to the widths that are required and all that, it is taken care of elsewhere. It is handled in another section via the

Building Official, because if you are putting a culvert in you have to put it in a certain way. Wilbur adds that in the building code there must be specifications for a normal driveway. Krieger adds that is why the entrance way was put back 15 feet so the culvert is built appropriately.

Ritter Page 2- (d) - eliminate 1 and just make it (d) only.

Corrected as follows:

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

Ritter Page 2- (e)

Corrected as follows:

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

Ritter Page 2- (f) 3- b

Correct as follows:

b. Barbed wire. Except in the RR-65 animals only around the control area. In the Commercial, Industrial, and Institutional Districts for the top of the fences.

Ritter Page 3-(i)-1

Correct as follows:

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

Krieger, right-of-ways are under a completely different set of statues than easements. We did not want to use the term permanent fence, but wanted to specify what a non permanent fence or gate may be constructed on a public easement providing to make sure that the Town is not responsible for removing it, this was in the original code.

The Board is discussing about public easements and permanent easements

Krieger is explaining about non permanent which means it can be removed.

Ritter Page 3

The Board wants to see a clean copy with their recommendation to come back before the P & Z Board before forwarding to Council.

Amended Motion:

Motion: Reilly/Krieger To Approve the Recommended changes to the "Clean Version" of Fence Ordinance Provided, Then Forward to Council for Approval. **Vote:** All Ayes

4. Extend Moratorium or Formulate Regulations Pertaining to "Pain Clinics & Pain Management Clinics"

Exhibit: Agenda Report No. 4

Recommendation: Action

Motion: Reilly/Krieger Recommend to Council To Extend The Moratorium **Vote:** All Ayes

Wilbur wants to know if there is a time frame for this Moratorium, can we get a longer Moratorium than 180 days. Abare, you are not going to like it in 180 days from now. Reilly adds the Council was supposed to do something about this Moratorium. The Board is discussing that maybe they are waiting for the state to change the law before any decisions are made.

Wilbur adds that other municipalities may be putting together Ordinances to put regulations on these clinics; we should do the same thing. Ritter suggests we should just not have it available in our codes. The Board is discussing the different areas this could be allowed in our Town.

Krieger if we want to extend the Moratorium, extend it but in addition talk to the Town Attorney and ask where in our Town Code does this presently affects us.

Wilbur suggests extending the Moratorium and direct Council to get with the Town Attorney and look at creating an Ordinance to prohibit these things from happening in Malabar.

G. DISCUSSION:

Moved From "F. Action" Item #2 to Discussion:

2. Amend Code to Provide Current Regulations for Adult Care Facility (Ord 2011-38)

This is for Discussion not Action.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; DELETING SECTION 1-2.6.B. 8, LAND USE CLASSIFICATIONS; PROVIDING FOR ADULT CARE FACILITIES; AMENDING SECTION 1-3.1.1 DISTRICT PROVISIONS; PROVIDING FOR LIMITED RESIDENTIAL USES IN THE OI (OFFICE/INSTITUTIONAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; REMOVING REFERENCES TO GROUP HOMES AND PROVIDING FOR ADULT CARE FACILITIES; AMENDING TABLE 1-6.1 (B) DELETING REFERENCES TO GROUP HOMES AND MAKING PROVISIONS FOR ADULT CARE FACILITIES; AMENDING SECTION 1-9.2.12; PROVIDING FOR ADULT CARE FACILITIES; ESTABLISHING PARKING REQUIREMENTS FOR ADULT CARE FACILITIES; DELETING THE DEFINITION OF GROUP CARE FACILITY IN ARTICLE XX; AMENDING TABLE 1-3.3.A PROVIDING FOR A MINIMUM SQUARE FOOTAGE FOR SINGLE FAMILY HOMES IN THE RM-6 ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Wilbur is reading the Code. The Board is discussing this Adult Care Facility

Abare there is detail in this proposed Ordinance, there is detail that was not included in here, like parking spaces. Reilly adds there are 1 space per 5 beds and 1 space for each 5 employees in Section 5.

Ritter adds they are referencing a lot of Florida Statues but it doesn't say "FS" Section it just says amending. If it is from Florida Statues it should say "FS".

Reilly explains the lawyer wrote this Ordinance. The Board wants data that supports the Florida Statutes.

Ritter, discussing the letter sent (March 28, 2011), from Plata Engineering to Mayor and Town Attorney, Plata lists a group home, assisted living facility, why are we deleting group home and putting assisted living. We need to get everything the same.

Zindel explained this doesn't fit in group homes and they are trying to make a section for assisted living.

Abare passed out a paper a few meetings ago in reference to a facility in Melbourne by hospital called Hibiscus Court they have 78 maximum capacity (60 assisted living & 18 Alzheimer care), 14 % of assist living have a car. They have 60 parking spaces provided. Empty spaces most of the time, 10-15 spaces for staff.

Zindel and Ritter talking about Adult Care facility and assisted living being two different things,

Krieger needs more time to look at this Ordinance, I have some very fundamental questions nothing to do with parking spaces, it has to do with the fact as to Institutional zoning you are adding Residential limited uses. We need more information as to what the limits are.

Some time is needed to look at this and understand to see what other facets of code this impacts on writing a new Ordinance that fundamentally you are building a new structure it could be a hotel next week it could be a hospital and their residents (rights of residents) .

This is a residence, where all "care facilities" means you are not going to live there the rest of your life. This is a fundamental change of a zoning.

Wilbur adds that Office Institutional "OI" doesn't allow residence; it is a Conditional use only.

Ritter says that it is considered to be a "long term care facility", which is not the same as a "day care" or a "health care facility" or "family care home".

Abare adds that the applicant (Plata) came and talk to the Town about the requirements for that site, drainage and everything else and thought that this Ordinance would allow this Conditional Approval if the Town would grant them that for Assisted Living, closer inspection it's not a very good fit.

Wilbur we are just discussing in generalities.

Zindel asks if these Chapters 400 codes that are in this Ordinance the Florida Statues are they the states subdivision and land development code or do they address codes for these particular facilities that they have listed in these chapters and parts listed.

Krieger looks at this as a high density residence; it should be under a residential code.

Wilbur trying to understand if this is going to eliminate a group home classification and takes adult care facility to different level.

The Board is discussing zoning listed in zoning table.

Reilly in Section- 2 bottom of first page & top of page 2 they only address Office Institutional "OI", they should also address Institutional because this is a Conditional Use in "OI" but it's also a Conditional Use in Institutional (INS), they only addressed the office. The "INS" does not have residents in it either. They would need to add "INS" to this.

Kreiger page 2 third bullet down, the spread out communities and areas spread out, and now we're doing the opposite we're putting everything together. Reilly states it is in code now.

Krieger adds we are making a residential use out of "OI", I am not sure if Conditional Use under what we have existing today could be placed on the facility that we don't have to go through this writing/Ordinance every time someone comes in with a different definition.

Abare, if they have people during the day and at the end of the day everyone went home you could fit it under "OI". But they live there 24/7. I am thinking it is a "RM" we don't have right now. This assisted living is a stand alone.

Krieger, I would like to check a few assisted living facilities to see if they have multiple zoning. Abare adds personally he does not have problem with this type of facility being built in Malabar with the appropriate limitations and parking spaces, if done right it would be an asset to the Town.

Reilly, discuss Page 2 Section 4 the setbacks there used to be N/A's look to see if you agree the underlined changes.

The Board is discussing Table 1-6.1(B), Ritter asks about foot note (3) top of page 3, what "District Provisions", which Town of Malabar? Brevard? Florida? Not specified.

Wilbur; would like to see in this Ordinance what the District Provisions are for the minimal spatial requirements.

Wilbur- Page 3 of the Ordinance the lined out portion "Florida Department of Health and Rehabilitative Services" I want to know what the District Provisions allow.

Krieger had gone over to the care facility across the street next to the hospital in Palm Bay and asked if anyone lived there and they told me that Palm Bay would not allow that.

Reilly, asks the Board what do you need from staff?

- Abare we want this to be a standalone instead of referencing a bunch of things we cannot look at right now. Recommend that they break out "assisted living" separately instead of mixing. Ritter difference between care facilities (temporary in & out) than an actual living.
If we amend these Ordinances to allow this that it is approved only for the planned use for "assisted living "and it does not go into something else, so that ten years from now it is not a Holiday Inn.
- Wilbur if it is regulated by "Florida Department of Health and Rehabilitative Services" I think they know a lot more about the care industry than we do trying to cover something under District Provisions. If we are going to consider a Conditional Use in an area that is not normally allowed then it should be something of quality that can be regulated.
- Krieger, once you're a resident what kind of restrictions can you put on a residence for example can they have a business license? Suddenly you are going to have a large group of new residents. It could actually create new district problems.
- Zindel is there anything wrong with looking at someone else's Ordinances as to how they handle this similar situation, Plata Engineering address City of Melbourne and Brevard County regulations as examples of "assisted living" used in Institutional Zoning.
- Reilly, the requirements that are sited on page 323 in the Land Development Code for the Florida Department of Health and Rehabilitative Services how did this apply to "group home"
- Krieger if it were in RLC zoning can it can have a relatively high density why can't there be an assisted living in RLC, which is a commercial zoning and residential zoning- still need a conditional use.

G. DISCUSSION:

Moved From "F. Action" Item #5 to Discussion:

This is for Discussion not Action.

5. Setbacks In RR-65 Zoning

Exhibit:

Agenda Report No. 5

Recommendation: Action

Reilly agrees with the Mayor. Board agrees with principal that the people should be able to do as much with their land as possible.

Julianna Hirsh, 1035 Malabar Rd, the setbacks 30 rear 30 sides and 40 in the front. How long has that been enforced, why do we change it. The idea is we do not want to widen the road and do anything. It will change the entire appearance of Malabar. What is suggested that the setback be? To be ten feet, Hirsh said you might as well move to Palm Bay. Are we going to keep Malabar as Malabar or build it right up to the street like ever place else. There is different zoning in this Town and they can do that. For 100 years we had it the way it is. To change it in this Town it is criminal. This setback situation is so serious that you need to think about it. Thank you.

Reilly, I am in favor of using 75% vs 54% more of your land, and people put sheds within those 30 feet.

Abare does roof line or side of shed have to meet setback.

Krieger when I look at this within the most general aspect, no I do not want my house walls 10 feet from the setbacks.

Abare if you have a 1.4 acre lot if you put the building further back it looks nicer to look "estate like" it looks nice. The side setbacks 30 are not impediment.

Wilbur when we did these setbacks in RR-65 so you would be able to put your house able to be buffered with landscape and trees and if you wanted to do a barn or two story house you are not on top of your neighbor. Allows room around the property for emergency vehicles.

Tom Eschenberg, 2835 Beran Lane this came up because I drive around almost every Friday afternoon this Town with Eagle Corp Patrol, me and David look and see code violations. One day the Council may change in this Town and we might want proactive code enforcement instead of reactive code enforcement at some point down the road.

While out on Eagle Corp Patrol, seeing storage sheds all over south Malabar this applies to accessory buildings. I saw future potential problems and I thought this would head it off. Maybe you want to say this only applies to accessory buildings and leave the main building alone, Probably most of those buildings were done without a permit.

Abare asks why you would want to encourage people to put up accessory structures ten feet from the property line.

Eschenberg, if I wanted to put another shed on my lot I could not and meet the 30 foot setback. I do not have the 1.4 acres to use. About 1/3 floods in the summer time if we get any kind of heavy rain.

Eschenberg, why should 6 or 7 people on P &Z and 5 people on Council say this is the rule for you because I don't like the looks of it otherwise. You got to follow my rules because I want things to look the way I want them to look, I am taking your freedom away from you to do what you want so you can meet my vision of what something should look like. It doesn't have to happen in this Town. It happens from the Fed, Gov't all the way down.

Krieger the problem is not setbacks, the problem is that everyone is "Grandfathered in", until they have to replace something. (this is a quote from Mr. Rivet)

Abare adds the problem is going to arise with deed restrictions properties you get someone that wants a shed and you tell them the 30 feet setbacks and he cannot do this, but the neighbor has a shed, why can he have one and I cannot.

Krieger is addressing what the Mayor said is correct, it is not the setbacks it is the fact that the Council can change and Committees can change, the fact is no entity in a Town, when they come into a Town they come in with a set of rules that is the set of rules they, you change the rules afterwards it is not retroactive to these people it is for the new people.

Abare for example the state and everyone is changing requirements.

Krieger said there are a lot of violations in this Town, but I would like to see some protection in this Town for the people who were here and helped build this Town and brought it up to where it is today. Deed restrictions are for gated communities and for people who want to live under those restriction but rural Malabar should be as general and unspecific as possible.

Reilly on Table 1-3.3(A) Size And Dimension Regulation, it was circle in our packet the setbacks what we can think about, this is for the actual structure we can make a note or something that says accessory building we can change it to ten feet to somehow get Tom's idea into the Table.

Board is suggesting leaving the setbacks as they are in the RR-65 zoning.

G. DISCUSSION:

6. Regulations on Internet Cafes

Exhibit: Agenda Report No. 6

Recommendation: Discussion

Reilly explaining this is like on line gambling. ie: bingo and poker. The Action of this item is that staff would like to have regulations on the books before someone comes in looking to have this type of establishment and what zoning would be appropriate.

Krieger suggests that if we do not want gambling establishments in the Town then if we want to say that just say there will be no gambling establishments, we don't have a code for this.

Ritter they would have to get some kind of business license, where it would end up in our classification.

The Board is discussing different scenarios, Wilbur recommends that we put a moratorium of 180 days and some direction once we find out what the judge is going to rule, and have some time to do some further research.

Reilly asks the Board if they want to adopt regulations to control Internet Cafés, the consensus of the Board is no.

Motion: Reilly/Ritter Recommend To Council To put a Moratorium of 180 Days To Regulate Internet Café. **Vote:** All Ayes: Krieger Nay

H. PUBLIC: moved to after Consent Agenda

I. OLD / NEW BUSINESS

Zindel, brings back about the RR-65 that was discussed, page about the Malabar Code Revision Committee about the setbacks objectives the foot note in the table that is totally contradictory of what the code says that the setbacks start from the center line of Hwy. The Table 1.3-3 (A) says in the footnote that from the centerline of Hwy or whatever is most restrictive.

Krieger bring up at next meeting.

Krieger is reporting that Corey Road is falling apart south of Malabar Rd in front of the "Liford" old house the road is cracking, where the creek crosses.

J. ADJOURN:

There being no further business to discuss, **MOTION:** Reilly/Krieger to adjourn this meeting.
Vote: All Ayes. The meeting adjourned 10:05 P.M.

BY:

Bob Wilbur, Chair

Denine M. Sherear, Secretary

Date Approved

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: June 8, 2011

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Cindy Zindel, Alternate P & Z Board Member- Leave of Absence Letter

BACKGROUND/HISTORY:

Please see attached letter submitted by Alternate, Cindy Zindel on May 27, 2011. She will be absent from June 1, 2011 to December 1, 2011.

As she explains in the attached letter, if this leave of absents is unacceptable and her position needs to be filled, she understands.

The Board needs to make recommendation to Council to either allow the leave of absence or to replace this alternate position.

ATTACHMENTS:

- Letter from Cindy Zindel

5/27/2011



Dear Town Council - Planning & Zoning Board,

I, Cindy Zindel am requesting a leave of absence for approximately six months, starting June 1st, 2011 to December 1, 2011.

If this is unacceptable please feel free to fill my seat with another candidate.

Sincerely,

Lucinda Zindel
AKA Cindy Zindel

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: June 8, 2011

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Proposed Maps of Land Use Changes Final Review

BACKGROUND/HISTORY:

Please see in this packet the maps that were corrected for your review for the Proposed Land Use Changes along Babcock Street, Malabar Road, and US 1 Corridor.
Make recommendation to forward to Council.

ATTACHMENTS:

- Maps of Babcock Street & Malabar Road (7 pages)
- Map of US 1 Corridor (7 pages)

TOWN OF MALABAR PROPOSED FUTURE LAND USE CHANGES

PRESENTED BY THE PLANNING AND ZONING COMMITTEE

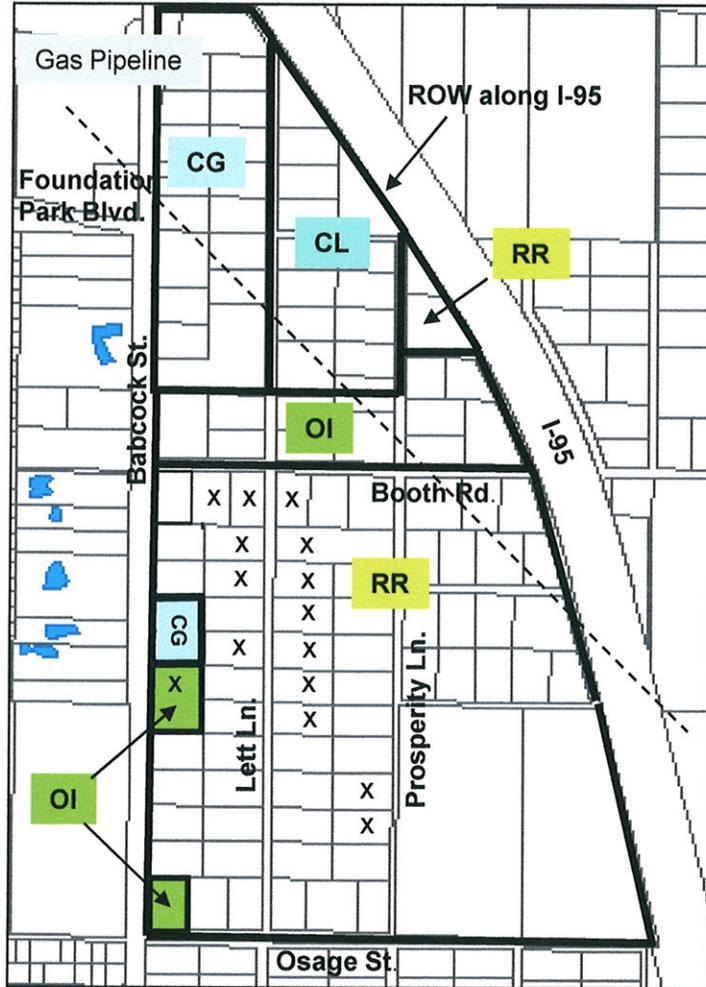
FEBRUARY 24, 2010 (updated August 31, 2010)

Present Land Use Designations

- Residential/Limited Commercial (R/LC)
- High Density Residential (HDR)
- Medium Density Residential (MDR)
- Low Density Residential (LDR)
- Rural Residential (RR)
- Commercial General (CG)
- Commercial Limited (CL)
- Industrial (IND)
- Office Institutional (OI)
- Institutional (INS)
- Open Space and Recreation (OSR)
- Multiple-family Residential or Office Space (MRO)
- Conservation (CON)
- Recreational Services (RS)
- PUD (Residential or Commercial)

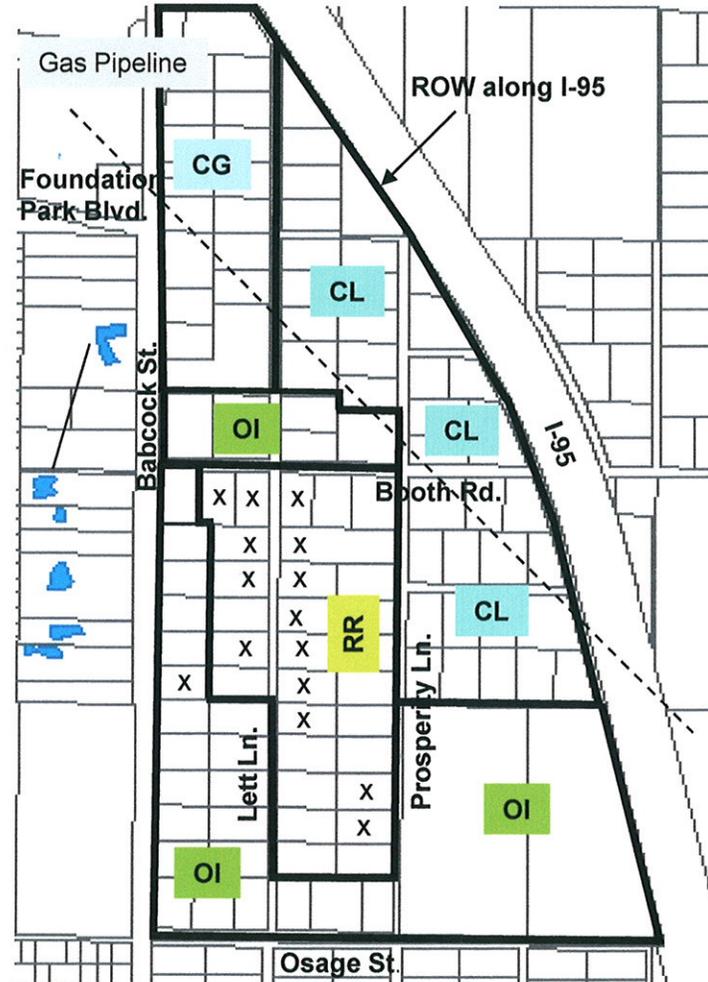
Land Use Along Babcock Street

Present Land Use



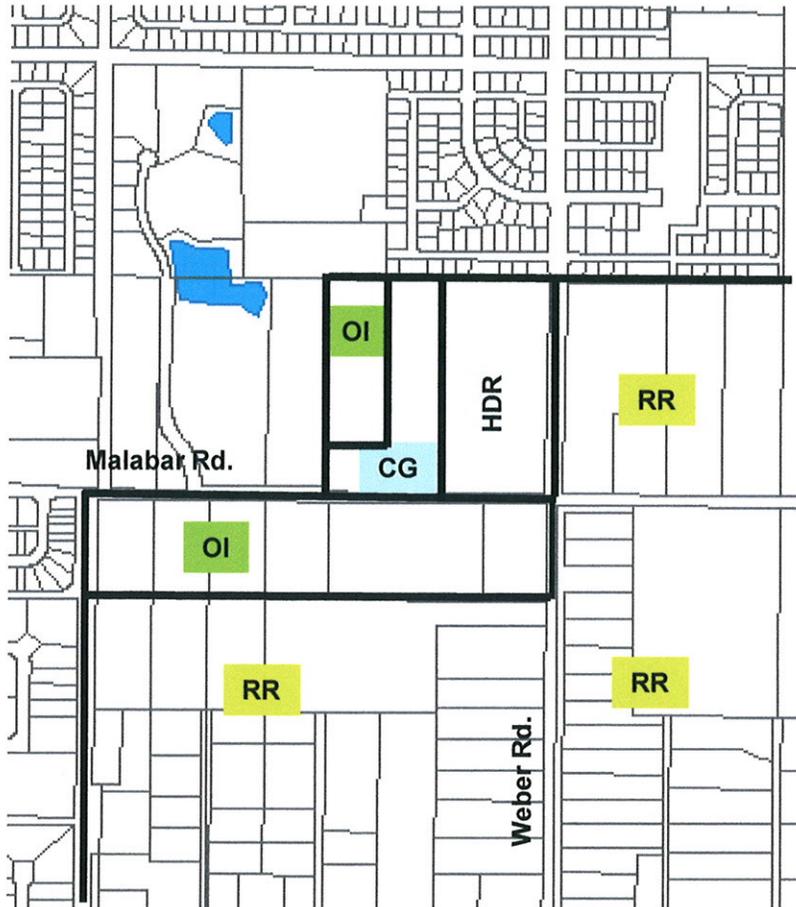
X = Homes

Proposed Land Use

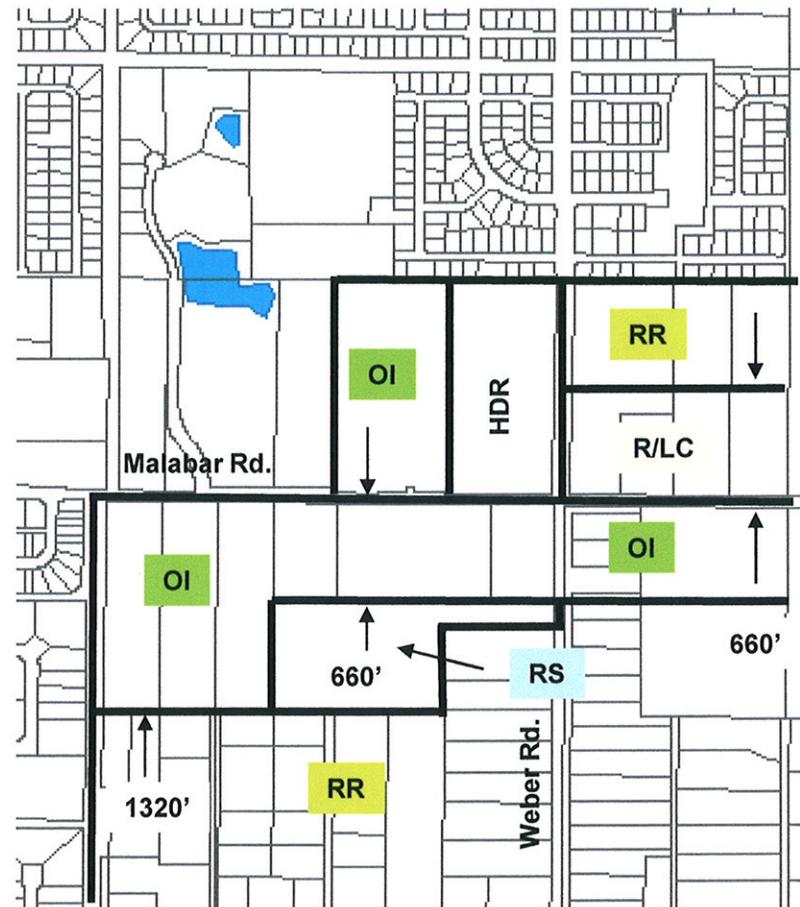


Land Use Along Malabar Rd. (West end)

Present Land Use

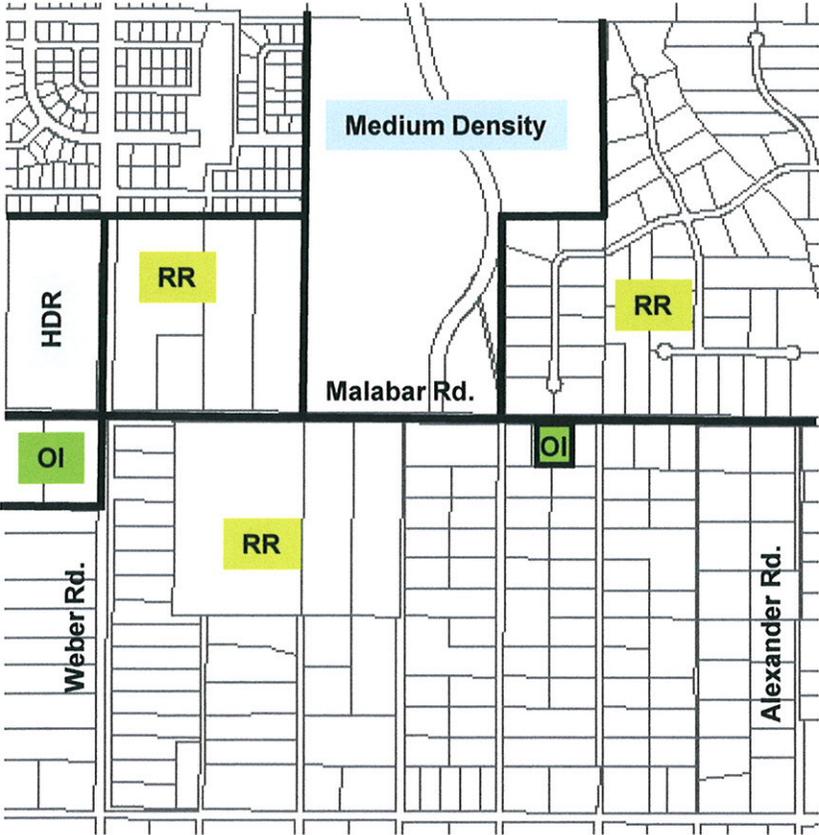


Proposed Land Use

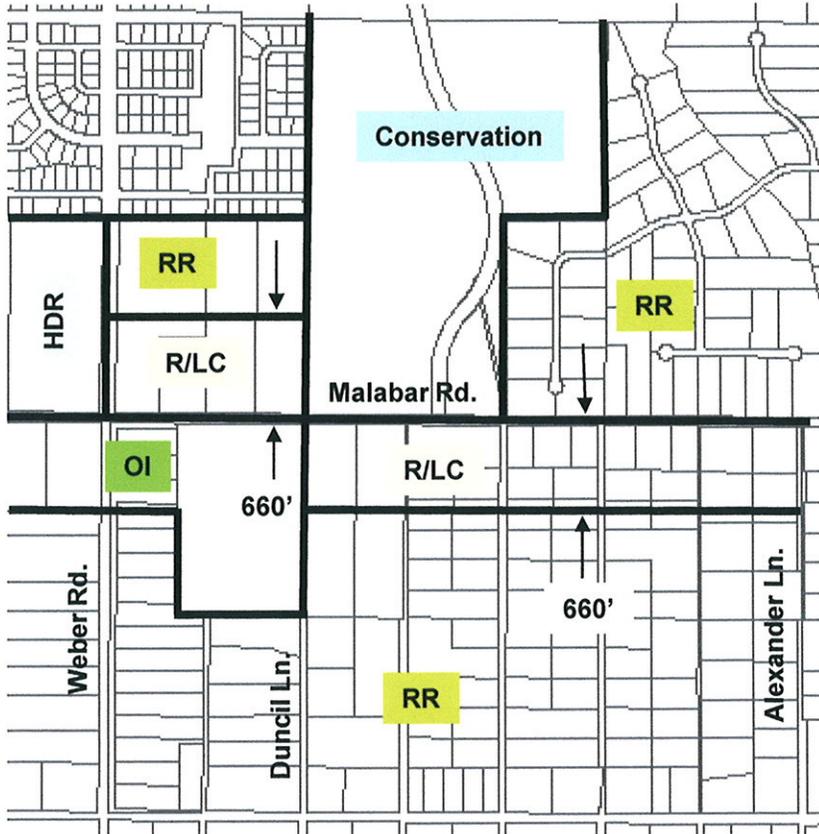


Land Use Along Malabar Rd. (Weber Rd. to Alexander Ln.)

Present Land Use



Proposed Land Use

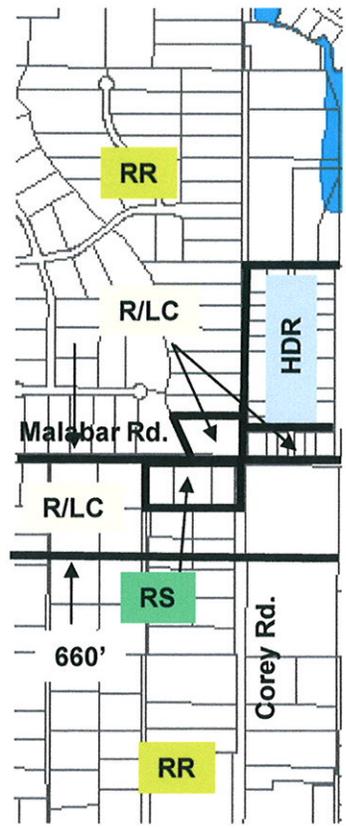


Land Use Along Malabar Rd. (Alexander Ln. to Corey Rd.)

Present Land Use

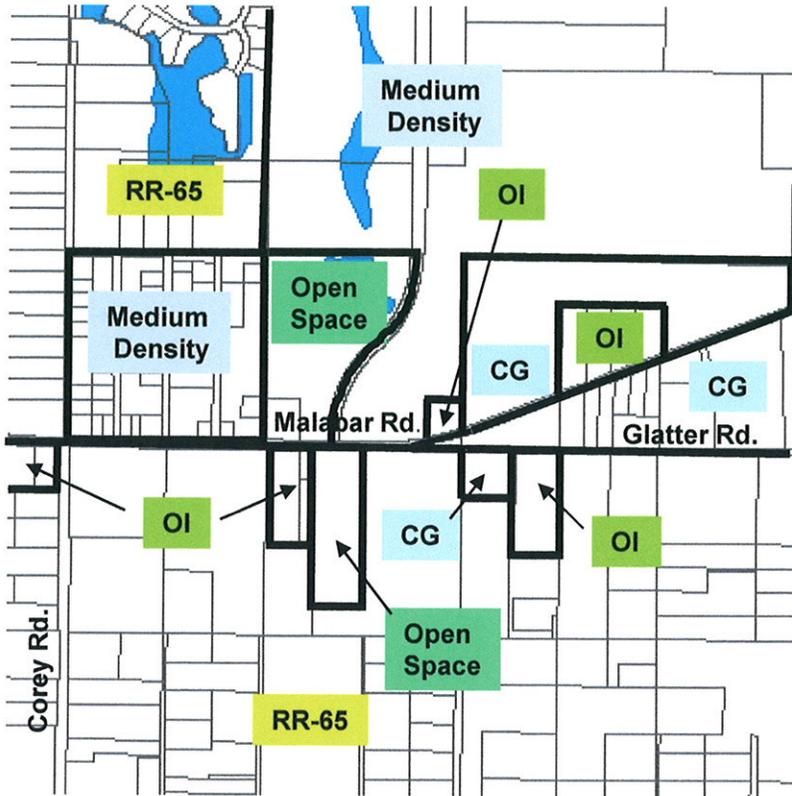


Proposed Land Use

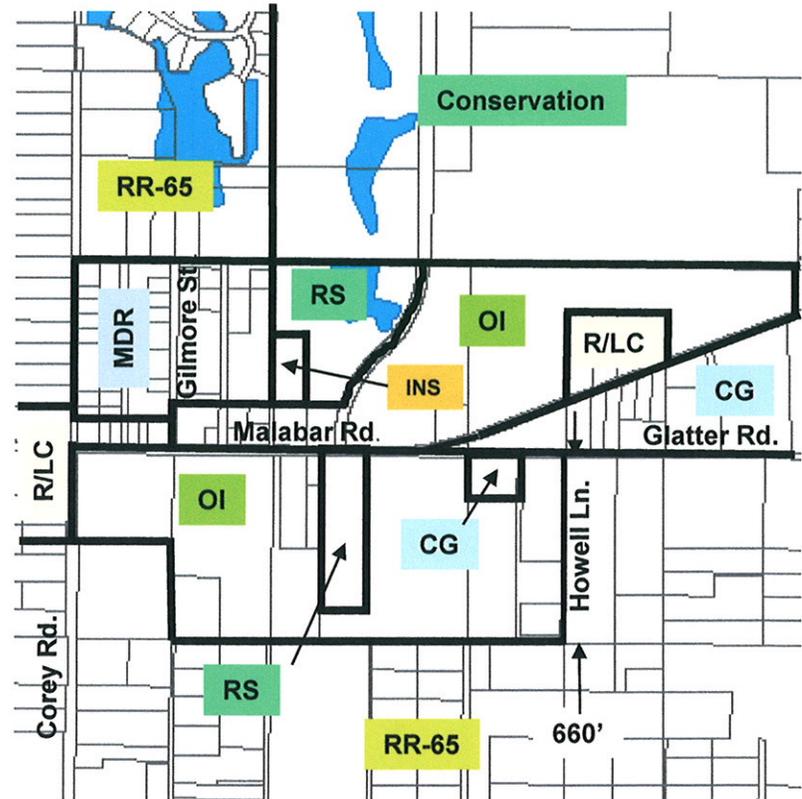


Land Use Along Malabar Rd. (Corey Rd. to Marie St.)

Present Land Use

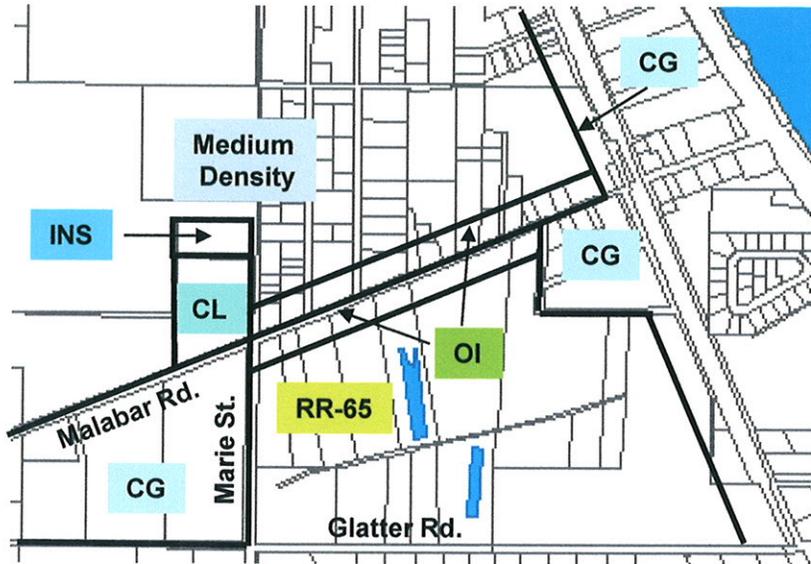


Proposed Land Use

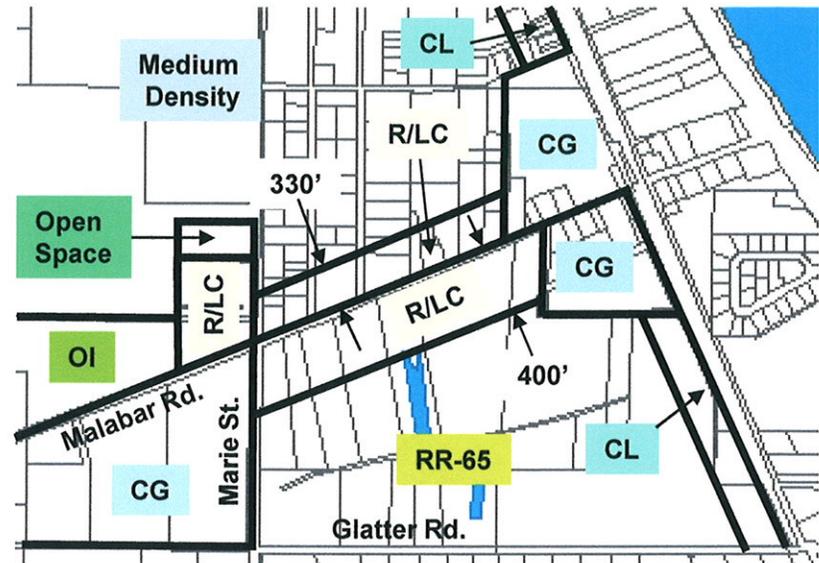


Land Use Along Malabar Rd. (Marie St. to US1)

Present Land Use



Proposed Land Use



Legend

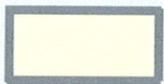


Malabar Town Boundary

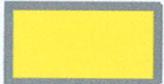


Roads

Malabar Future Land Use



RESIDENTIAL/LIMITED COMMERCIAL



HIGH DENSITY RESIDENTIAL



MEDIUM DENSITY RESIDENTIAL



LOW DENSITY RESIDENTIAL



RURAL RESIDENTIAL



COMMERCIAL GENERAL



COMMERCIAL LIMITED



INDUSTRIAL

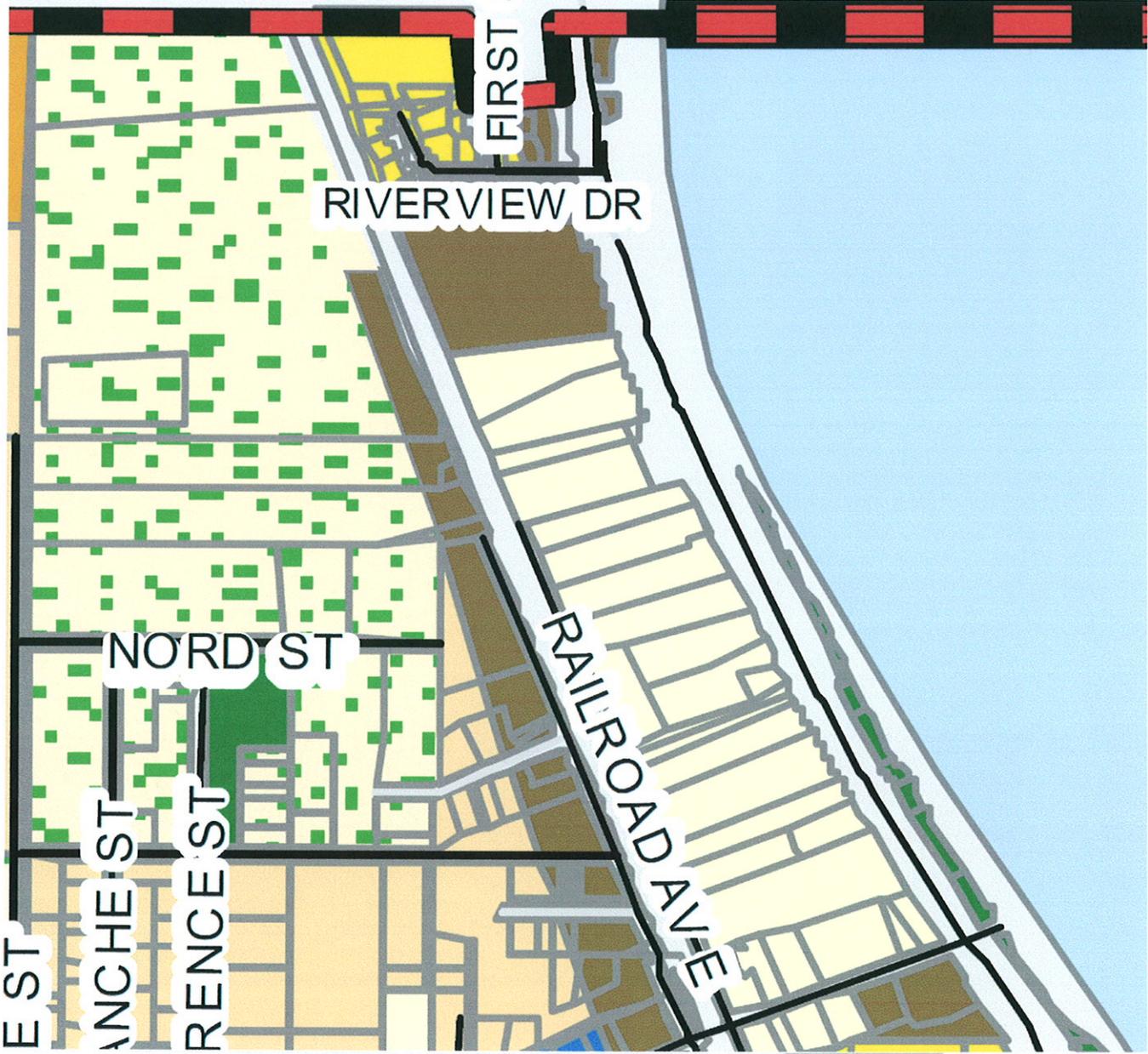


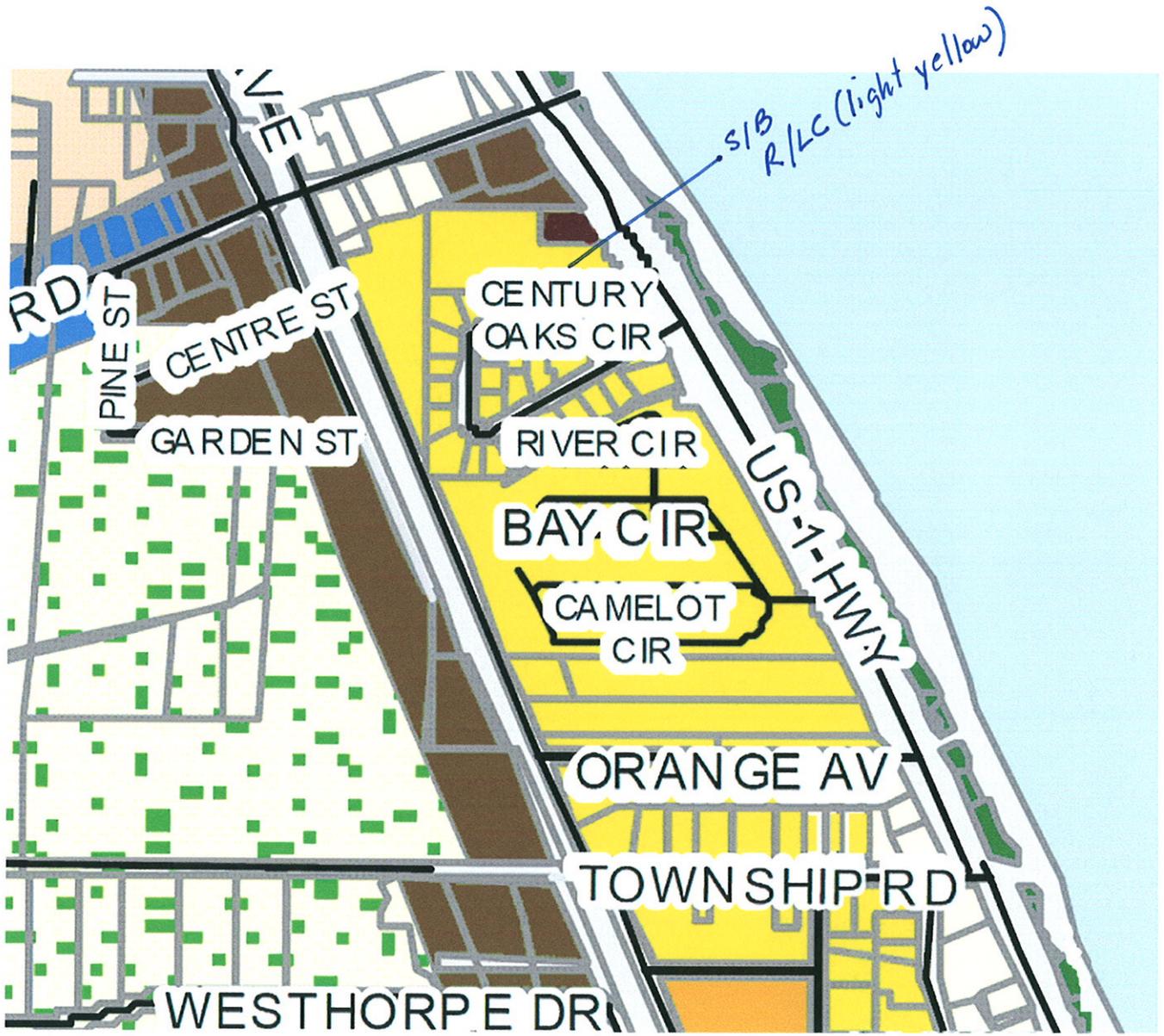
OFFICE INSTITUTIONAL



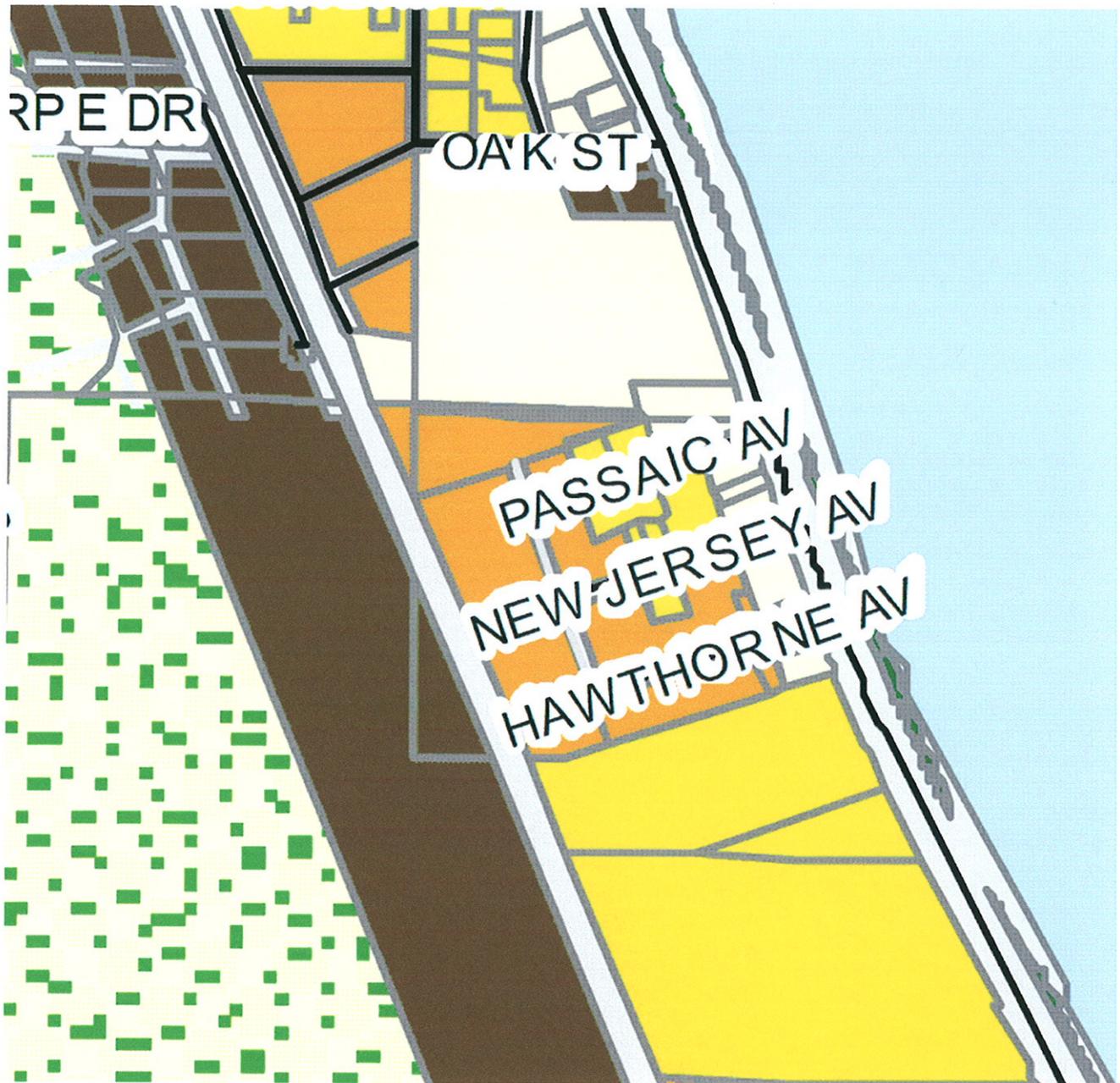
OPEN SPACE & RECREATION

MALABAR FINAL 2010 FLU-9

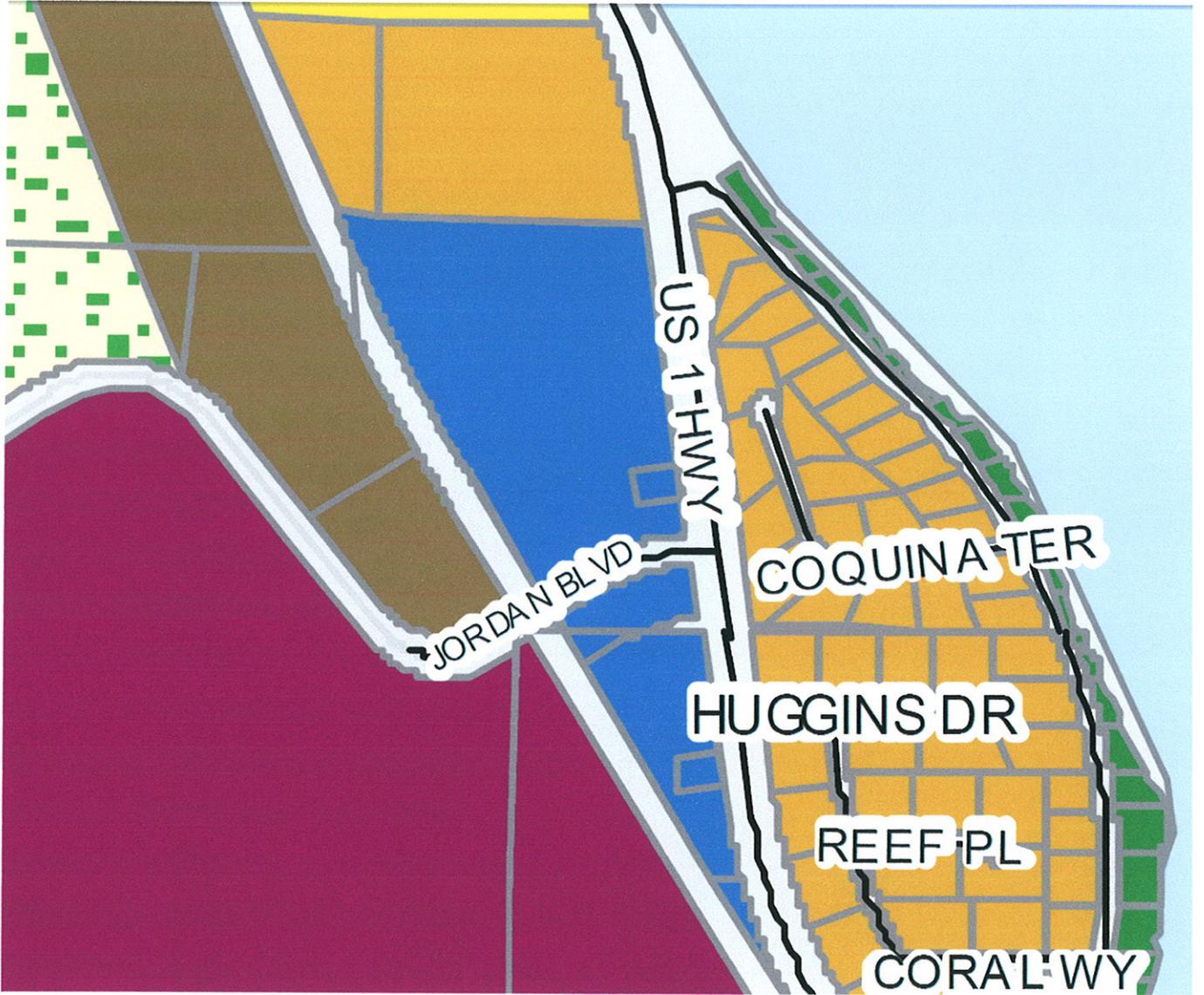


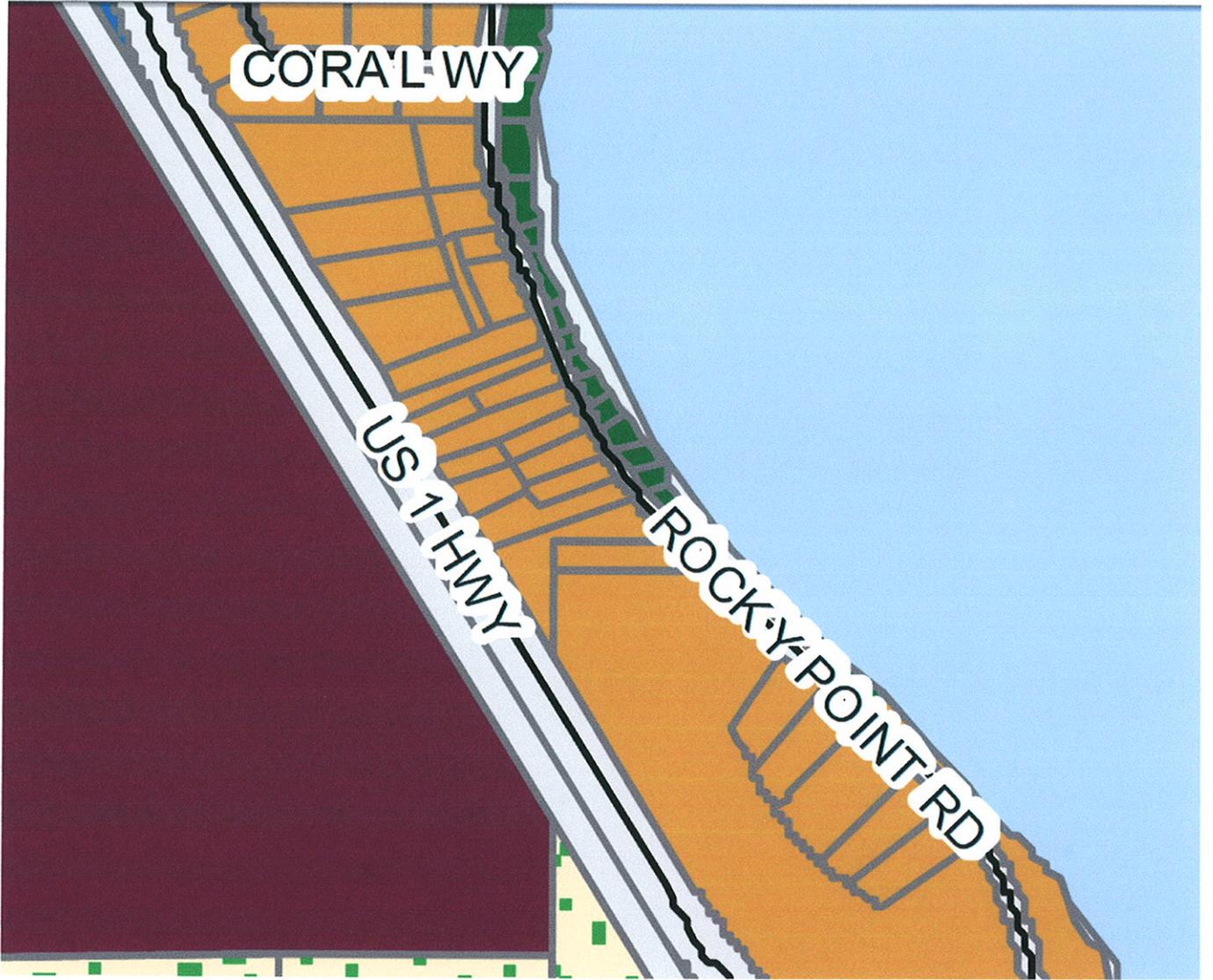


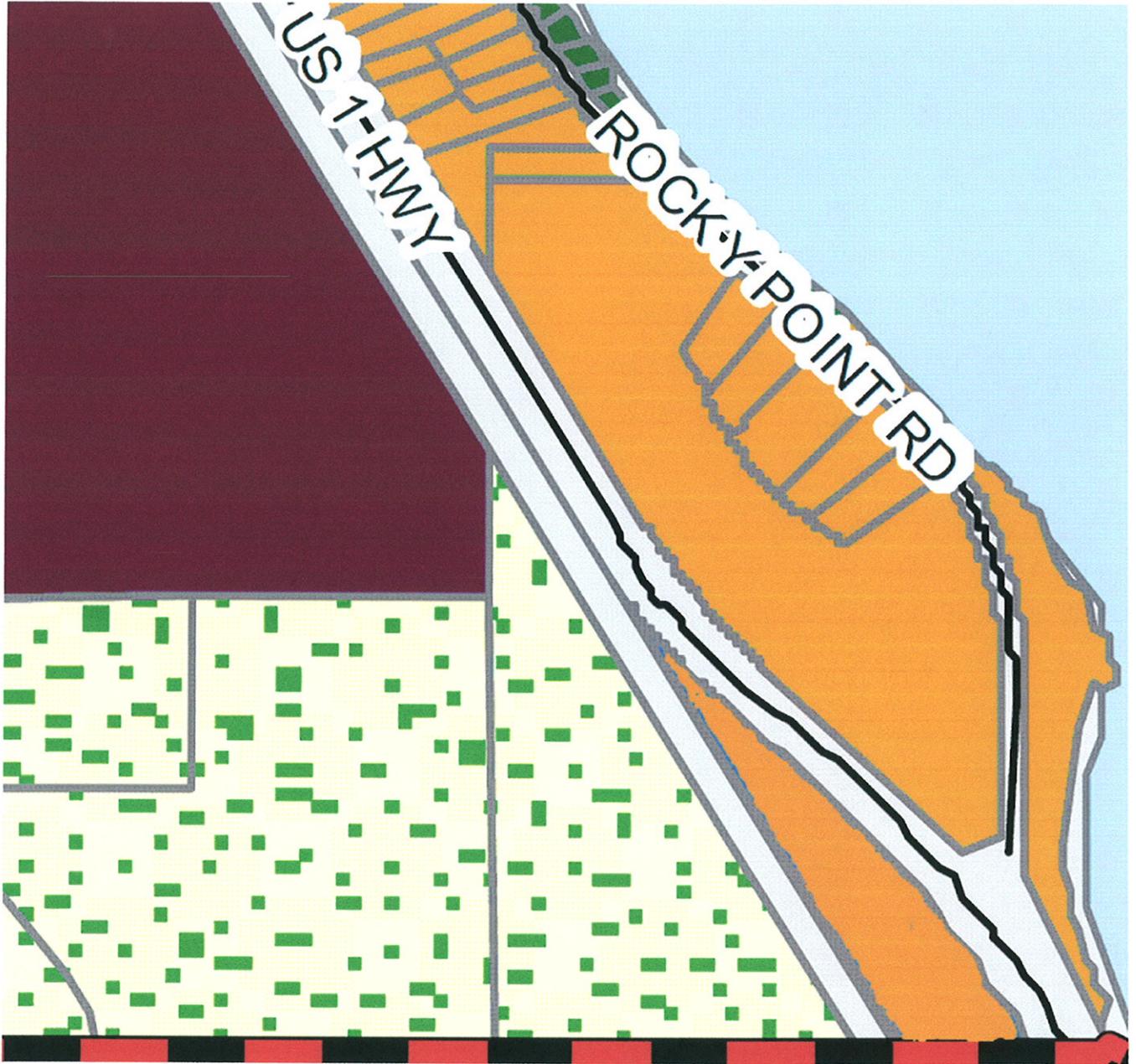
Page 2 Revised



Page 3 Revised







Page 6 Revised

TOWN OF MALABAR
PLANNING AND ZONING
AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: June 8, 2011

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Revisions to Fence Ordinance by Town Attorney

BACKGROUND/HISTORY:

At the P & Z Meeting on April 27, 2011 the Board reviewed the "clean" & "marked up" versions of the Fence Ordinance. The corrections and suggestions made by this Board were sent to the Town Attorney for review.

Please review Fence Ordinance provided by Attorney and make recommendation to Council.

ATTACHMENTS:

- Email from Town Attorney
- Fence Ordinance by Attorney
- Fence Ordinance suggestions submitted by P & Z from April 27, 2011 meeting

ACTION OPTIONS:

Recommendation to Council on proposed changes

Town Clerk / Treasurer

From: Karl Bohne [kbohne@fla-lawyers.com]
Sent: Friday, June 03, 2011 1:50 PM
To: Town Clerk / Treasurer
Cc: Bonilyn Wilbanks
Subject: Fence ordinance
Attachments: 2011 Fence Ordinance II.doc

Here is what I came up with. It was very difficult to track the changes by the P&Z because I could not determine if they were making changes to the previous draft of the ordinance we preseted or if they were going directly from the code book. also the changes made did not correspond with any section of the code book so it was basically a guessing game on my part. Ignore the formatting for now. Please review and tell me how on or off I am.

Karl W. Bohne, Jr.
Schillinger & Coleman, P.A.
1311 Bedford Drive
Melbourne, FL 32940
321-255-3737 Telephone
321-255-3141 Facsimile

To ensure compliance with Treasury Regulations (31 CFR Part 10, Sec. 10.35), we inform you that any tax advice contained in this correspondence was not intended or written by us to be used, and cannot be used by you or anyone else, for the purpose of avoiding penalties imposed by the Internal Revenue Code.

THE INFORMATION CONTAINED IN THIS E-MAIL COMMUNICATION IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENT NAMED ABOVE. This message may be an Attorney-Client communication, and as such is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of the message is strictly prohibited. If you have received this transmission in error, please notify me immediately by telephone and/or by reply e-mail. Thank you.

ORDINANCE NO. 2011-36

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

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

WHEREAS, Currently, the maximum height of a fence or wall located between the front building line and the front lot line in all residential zoning except RR-65 zoning district is limited to four feet and is four and a half feet in RR-65 zoning 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, Providing for separate regulations and 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 revising and adding the following definitions to read as follows:

"Section 1-5.8. Fences and walls.

(a) *Definitions.*

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

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

Adjacent property means a lot or parcel immediately across a public or private right-of-way or street from the lot or parcel in question.

Arch means the structure above the entrance gate or other supplemental decorative feature above the entrance gate that meets the minimum FDOT height requirement of 13.6 feet for safe passage of emergency vehicles. As stated in definition of entrance gate, these structures must be set back 15 feet from the front property line.

• • •

Existing grade means the grade of the land prior to modification by excavating or filling activities. In the case where fences or walls are to be installed abutting a non-tidal water body, existing grade shall be the elevation of ordinary high water.

Entrance Gate means a gate designed for ingress and egress for pedestrian and/or vehicular traffic to and from a lot or parcel that directly connects to the public roadway. Entrance Gates shall be constructed of materials suited for outdoor applications and may be opened manually or by automated means and may be guided by hinges, tracks, or other approved means as approved by the Adopted Building Code.

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

~~Fence~~ means ~~a vertical row of nonliving material, placed close together or abutting each other in such a manner as to form a boundary or barrier between two (2) adjacent parcels of land. a hedge, structure, or partition, erected for the purpose of enclosing a piece of land, or to divide a piece of land into distinct portions, or to separate two (2) abutting estates. An enclosure about a field or other space, or about any object; especially an enclosing structure of wood, metal or other materials intended to prevent intrusion from without and straying from within.~~ Such amenities as kennels, cages, corals, trellises and related conveniences are not fences for the purposes of this subsection.

Gate means a rigid structure to open and close in order to allow ingress and egress through a fence or wall. Gates may ~~shall~~ be constructed of approved materials suited for outdoor applications and may be opened manually or by automated means and may be guided by hinges, tracks, or other approved means as approved by the Adopted Building Code.

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

• • •

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, while the viewer is standing flat-footed on the abutting parcel of land.

Perimeter means the outside boundary of a residential subdivision or multiple residential lots adjoining each other.

• • •

3. Posts and stringers required for the support of opaque fences shall face inward toward the applicant's property and shall not be visible from the side facing any adjacent or abutting property, for which such fence permit was issued. Wood posts shall be pressure treated for ground contact ~~or of a wood type~~ or composed of material type with a natural resistance to decay, and termites and other wood destroying organisms as listed in the adopted building code.

• • •

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. In the commercial, industrial, and institutional districts only for the top of the fences.

SECTION 4. ARTICLE V Section 1-5.8 (e) of the Malabar Land Development Code is hereby amended to read as follows:

"(e) Height restrictions for fences, walls, gates, entranceways, and related structures in residential districts. Fences, or walls, gates, entranceways and related structures 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, gate, entranceway or related structure located between the front building line and the front lot line shall be more than four (4) five (5) feet in height and if located to the rear of the front building line shall be no more than six (6) feet in height

• • •

4. For any lot or parcel not containing a structure, the requirements of section 1-5.8 subsection (e) 1, 2 and 3 shall be applied in the same manner as if a structure had been constructed in accordance with such required yard area or setback as specified within the zoning district requirements.

5. Any lot or parcel in RR-65 shall be permitted a fence or wall six (6) feet or less and gates

• • •

Wall means horizontally constructed rows, vertical row primarily composed of masonry materials, placed close together or abutting each other in such a manner as to form a boundary or barrier between two (2) parcels of land and is non-load bearing. For construction offset compliance, the structural footer of the wall shall be included as part of the wall.

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

• • •

SECTION 2. Article V Sections 1-5.8 (b) and (c) of the Malabar Land Development Code are hereby amended to read as follows:

“(b) Permit required for fence, ~~or walls, entranceway and related structures~~. No fence, ~~or walls, entranceway or related structures~~ shall be constructed, erected, replaced or altered between abutting parcels unless a permit therefore has been obtained from the Town by the owner of the property on which such fence, ~~or wall, entranceway and related structures~~ 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~~. The Building Official shall deny a permit if he believes the proposed structure creates a threat to health or safety. Unless requested otherwise by the applicant, denial of a permit shall create an automatic appeal to the Town Council after consideration and recommendation by the Planning & Zoning Board. Permits are not required for periodic repair and maintenance of an existing fence or wall.

(c) Permit fee. Permit fees shall be calculated in accordance with ~~Resolution 9-94 and all succeeding resolutions~~ fee resolutions by the Town Council. No permit shall be issued unless and until all fees associated with said permit are paid.”

SECTION 3. ARTICLE V Section 1-5.8 (d) of the Malabar Land Development Code is hereby amended to read as follows:

“1. All fences, ~~or walls, gates, entranceways and related structures~~ 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 constructions, required materials, height and location and as authorized by the adopted Building Code, if any.

and/or entranceway gates shall be permitted eight (8) feet or less in height fifty-four (54) inches. 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, gate, entranceway or related structure 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. Entranceways in the RR-65 District shall be permitted to be eighteen (18) feet in height or less. If any part of the entranceway structure is erected over a driveway, then that part of the entranceway structure shall meet the minimum requirements of the Florida Department of Transportation.

6. If a gate is installed on property in any district which is to provide ingress and egress to the subject property from a major collector road, the gate must be set back at least fifteen (15) feet from the property line.

7. Except as otherwise provided for in this section, no portion of any entranceway shall be more than six (6) feet in height.

Section 5. ARTICLE V Section 1-5.8 (f) of the Malabar Land Development Code is hereby amended to read as follows:

"(f) Height restrictions for fences, or walls, gates, entranceways and related structures in commercial, industrial, and or institutional districts. Fences, or walls, gates, entranceways or related structures located, erected, constructed, reconstructed or altered on any property located in a commercial, industrial, and institutional district shall comply with the following height requirements: be no more than eight (8) feet in height, including barbed wire for security.

1. Commercial, Industrial and Institutional districts shall be no more than eight (8) feet in height including barbed wire for security.

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

SECTION 6. ARTICLE V Section 1-5.8 (g) of the Malabar Land Development Code is hereby amended to read as follows:

• • •

"(g) Maintenance of fences and walls. All fences, walls, gates, entranceways and related structures in the Town shall be maintained in good repair and in a structurally sound condition

and maintained to their original specifications. All fences, walls, gates, entranceways and related structures shall be upright and plumb continuous in alignment.

• • •

SECTION 7. ARTICLE V Section 1-5.8 (h) of the Malabar Land Development Code is hereby amended to read as follows:

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

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

~~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 public easement.~~

~~3~~ 2. A non permanent type fence or gate may be constructed on an any public easement providing the property owner making application for such fence or gate has submitted written permission from any affected property owners and agrees in writing, at the time of application for permit, that the property owner and/or any successors in interest will bear the expense of removal of such fence when access to said public easement is required.

SECTION 8. ARTICLE V Section 1-5.8 (i) of the Malabar Land Development Code is hereby amended to read as follows:

"(i) Height restrictions for a perimeter fence, wall, gate and related structures in residential district subdivisions/ developments or multiple adjoining residential lots. No portion of a fence, wall, gate or related structures located on any perimeter property in residential district subdivisions/development or multiple adjoining residential lots shall exceed six (6) feet in height. Perimeter Fencing for Certain Residential Subdivisions/Developments. Any perimeter fencing and/or wall which is placed or located on any portion of the perimeter boundaries of a residential subdivision or development shall comply with the following:

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

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

~~at any public or private right-of-way, driveway or street providing access to such lot or parcel, and at an abutting intersection.~~

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

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

SECTION 9. ARTICLE V Section 1-5.8 Fences, of the Malabar Land Development Code is hereby amended by adding subsection (j) to read as follows:

"i. The Town council may authorize non-compliant design specifications only after considering the recommendation of the Planning and Zoning Board. Prior to approving subject structure the Town Council shall render a finding that the structure is safe and visually compatible in the area.

SECTION 10. ARTICLE V Section 1-5.8 Fences, of the Malabar Land Development Code is hereby amended by adding subsection (K) to read as follows:

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

SECTION 11. CODIFICATION. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the provisions of Section 1 of this ordinance become part of the Land Development Code of the Town of Malabar. The Town Clerk is hereby authorized and directed to cause the provisions of sections 1, 2, 3, 4 and 5 of this ordinance to be incorporated into the Town's Land Development Code.

SECTION 12. 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 13. CONFLICT. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 14. 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 Carl Beatty	_____
Council Member David White	_____
Council Member Steve Rivet	_____
Council Member Jeffrey (Jeff) McKnight	_____
Council Member Marisa Acquaviva	_____

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

BY: TOWN OF MALABAR

Mayor Thomas M. Eschenberg

First Reading: 0 _____
Second Reading: 0 _____

ATTEST:

Debby K. Franklin
Town Clerk/Treasurer

Approved as to form and
legal sufficiency by:

Karl W. Bohne, Jr.
Town Attorney

Section 1-5.8. Fences, 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Height restrictions for fences, walls, gates, and related structures in commercial, industrial, or institutional districts. Fences or walls located, erected, constructed, or altered on any property located in a commercial, industrial, and institutional district shall ~~comply with the following height requirements:~~ **be no more than eight(8) feet in height, including barbed wire for security.** Commercial, Industrial and Institutional districts shall be no more than eight (8) feet in height including barbed wire for security.

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

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

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

(d) Height restrictions for 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 Zoning Districts, RS, RR-65, R-MH, & RM, 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 shall exceed six (6) feet in height.

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

(f) Materials and design requirements.

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

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

(g) Permit required for fence, walls, entranceway and related structures. No fence, walls, entranceway or related structures shall be constructed, erected, replaced or altered between abutting parcels unless a permit therefore has been obtained from the Town by the owner of the property on which such fence or wall is to be located, or by some other person duly authorized by such owner. The application for such permit shall be on a form provided by the building official and shall be accompanied by drawings showing the proposed location of and the specifications for the type of construction. The Building Official shall deny a permit if he believes the proposed structure creates a threat to health or safety. Unless requested otherwise by the applicant, denial of a permit shall create an automatic appeal to the Town Council after consideration and recommendation by the Planning & Zoning Board. Permits are not required for periodic repair and maintenance of an existing fence or wall.

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

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

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

1. No wall, fence, gate, entranceway, or related structure shall be constructed on any public right-of-way and except as provided in subsection (i) 2 hereof, no fence shall be constructed on any public easement.

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

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

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

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

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