

**TOWN OF MALABAR**  
**PLANNING AND ZONING ADVISORY BOARD**  
**REGULAR MEETING**  
**WEDNESDAY JUNE 22, 2011**  
**7:30 PM**  
**MALABAR COUNCIL CHAMBER**  
**2725 MALABAR ROAD**  
**MALABAR, FLORIDA**

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**AGENDA**

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**
- D. CONSENT AGENDA :**
  - 1. Approval of Minutes - Requires Motion to Remove from Table**  
Planning and Zoning Meeting – 05/11/2011
    - Exhibit:** Agenda Report No. 1
    - Recommendation:** Motion to Approve
- E. PUBLIC HEARING:**
- F. ACTION:**
  - 2. Internet Café about Zoning in the Town of Malabar**
    - Exhibit:** Agenda Report No. 2
    - Recommendation:** Action
  - 3. Proposed Maps of Land Use Changes for Review Revised (6/15/2011) -**  
Babcock Street-Malabar Road-US1 Corridor
    - Exhibit:** Agenda Report No. 3
    - Recommendation:** Discussion/Action
  - 4. Fence Ordinance 2011- Revision from 4/27/2011**
    - 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 22, 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 May 11, 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  
May 11, 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 Vice-Chair Pat Reilly.

**B. ROLL CALL:**

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

**C. ADDITIONS/DELETIONS/CHANGES:**

**D. CONSENT AGENDA :**

**1. Approval of Minute- Planning and Zoning Meeting- 04/27/2011**

**Exhibit: Not Ready**  
**Recommendation:**

**E. PUBLIC HEARING:**

**F. ACTION:**

**2. Amend Code to Provide Current Regulations for Adult Facility (Ord 2011-38) REVISED BY TOWN ATTORNEY May 3, 2011**

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.I 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 AND R/LC ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 2  
**Recommendation:** Action

Reilly reading Ord.2011-38 out loud.

Reilly is opening up to the "speaker cards: and will do them in the order he received them.

Jeff McKnight, 2005 Flashy Lane, I have concerns of facility, I know you are going to be discussing parking, from the site plan I have seen personally I think they are inadequate for that type of facility. I don't think it is appropriate to rely on a working relationship with the Berri Patch to accommodate some of their parking. I want to see something very solid to prevent this from becoming strictly a 55 and older apt complex. I know it is listed as assisted living but right now there is nothing from preventing residence 55 and older from living there. I could foresee this becoming a 55 and older apt complex or strictly if it changes hands an apt complex, I don't want to see that either. Also, I want you to consider the impact of what 96 additional Malabar residence in that zoning would do to the community.

I have one unrelated statement, I had recommended to Council to have fire inspection code brought to you and the Attorney and Council said it wasn't appropriate to bring to you, if anyone could give me personal input for that I need help. I currently do not have enough help to review this and provide input to the Attorney, either as a Board or individually, I cannot direct you as a Council member, I respect your opinions and there is a wealth of experience here and I can use some help on this.

Reilly thinks we can add this as discussion item on Agenda, any residence in the Town of Malabar can put anything on any Agenda.

Tom Eschenberg, 2835 Beran Lane, just a couple points:

- 1.) I guess I can understand now, why you changed this from an Action Item to a Discussion Item at your last meeting. I want to encourage you to make a decision tonight, recommend it to Council the Ord. as is, recommend it with changes, or send it up with no recommendation.
- 2.) Looking at Ord. the only other thing is, I don't think a facility like this ought to be allowed at all in RLC, I don't think it was ever the intent to have these facilities in RLC.
- 3.) I believe the Nursing Homes are in RLC, I don't think they belong there either, while you are looking at this, you might consider deleting those from RLC zoning.

Frank Plata, 3700 N. Harbor City Blvd. representing Plata Engineering the draft Ord. was very well together, this is an excellent attempt by Town Attorney only six items being covered.

The main part, "parking", the flexibility of this type of development this is a very low density, low impact, which has the flexibility of number not only employees but also medical service, given the location of this property Institutional (OI) close to the hospital is ideal to limit the amount of extra services you have to keep on staff to service the residents, with this the amount of parking is less. We don't need full staff of nursing or medical.

The Ord the way it is written is in accord to the Institute of Traffic Engineers, and codes it depends on the amount of medical staff you have in the facilities. The location of this parcel is the best location for evacuation route.

We are picking this parcel it has some benefit "OI" compared to Brevard County and Melbourne, very comparable. There is always a concern it can be looked at as Apt complex and different use. The only entity that can control it is the Town; individual rooms have no kitchen facilities. A facility permitted for strictly as an "assisted living facility." Given all the restrictions there is nothing else.

You could not convert this facility easily to change the use. In all the paper work only designated this as an assisted living facility.

Plata states, "from our view we understand your concern, we want to have a project that is beneficial to the elderly that they can afford. This parcel being so close to the hospital will eliminate cost to elderly." The latest one open is \$4,500.00 per month, for full service. I believe

the elderly are being neglected that is why we picked the Town of Malabar, the convenient location to the hospital with the best access and utility.

Reilly asked Plata about statement he made, that there will be very few medical personal. Plata response basically 1 nurse for assisting for pill dispensing/medication. The assisted living has like extended care license which is basically "Level 1", we will have complete agreement we are still looking for management companies, whoever is interested when we know the type of foot prints we can end up with, they will have good agreement with hospital.

Reilly asks Plata how many in staff will there be per shift. Plata answers, the ratio of employee is 16 per shift, at night 2-3 per night overlap employees. Meal preparation is the most for staff.

Plata, the average for this facility is 16 employees, you can go down to 12 employees, depends on facility, the parking available is more than enough.

Reilly is trying to get a definitive number of staff; every time you come it changes. 18 is a good number we will work with that.

Zindel asks Plata about the management company and that you do not seem to know what the Management rules and regulations are or how they are going to handle this. Do you build these facilities and turn them over or do you run them.

Plata explains that his firm is putting together the package; right now we are merging property owners with management companies. The management company is from Merritt Island the one interested in this facility. (Cedar Creek)

Plata explains the big variable is not the management company, but the financial part. The financing is very expensive most have the H.U.D. The overhead in financing gets wasted in paper work.

Plata explains that HUD provides the main financing for this type of facility with low rate and 40 years people try to get this it is very accessible for the owner of the facility. Bigger companies can do different things it would be too expensive to develop. We are trying to do something with different local management companies and work the package with local banks and local investors. The advantage we have is the location next to hospital is very good.

Zindel asks the splitting of the property, creating another parcel of Land, the Berri Patch is a school and exempt from real-estate taxes, this parcel will be taxable so it will be a full profit facility. How will you work this with the driveway and acreage?

Plata responds that is the type of benefit that is required from the Florida Department of Transportation that we will be encouraged to connect part of this project for one driveway. The property itself is master drainage, that part stays together forever; it is part of the permit. As far as taxes it will be a separate building and taxed accordingly.

Plata adds that is you look at previous foot prints and design of his project parcel was medical offices complex which has the same foot print, There was going to be 900 trips a day, the only thing changes is the footprint and like 200 trips per day. According to the information with the FDOT, back in 2004.

Reilly states to keep questions limited to the Ord. we cannot talk about site plan.

Krieger, asks Plata is the floor space 25,000 sq ft? Then 3 stories is 53,444 sq ft  
Plata responds, right now 53,000 with the overall for 3 floors.

Krieger asks Plata, if he used parking calculation as 1 space for every 5 beds? Plata responds that is correct, plus employees. This is the correct numbers with the Institute of the Transportation of Engineers.

Krieger, our Art 9, the closest thing they have is nursing homes or hospitals also claim they want 1 one space for every 300 sq ft. of building area, that is not impervious area that is the whole building area which comes out to 178 parking spaces.

Plata express that he thinks there is an error in the code for nursing homes; maybe the Town Engineer can research this issue.

Krieger adds that when you get to smaller dwellings it becomes more intense.

Plata states that this parking calculation came from semi public use like an auditorium and is 300 sq foot for medical offices, this or is what is questionable a separate item not nursing homes take a look this is double more than anywhere else.

Krieger comments that this is a question of density, and problems with conditional Use. As a Board we take word of staff that everything was done correctly, we had send comments with concerns to the Town Council about density.

Krieger adds that these people are ambulatory, Plata responds that these people are 85 years and older, I don't think they will be going in and out. The families take care of that person going out with family members.

Krieger, asks Plata the people residing at this facility will they have to go out of facility for medical and pharmaceutical needs? Plata responds with normally once a week a van will transport for appointments and medication needs by the staff.

Reilly adds that Bud has a question

Ryan, as far as medicines and pharmacies and so forth is it going to be one single source that contracts for all the residents or can they pick and choose their own. Plata responds with probably not they collect their medication from CVS or Walgreens. Bud comments that the plan is the residents make their own choice. Plata agrees with this.

Abare, are you familiar with Hibiscus Court , I agree putting next to hospital is a good fit, Abare asks why they use 60 parking spaces.

Plata responds with if they have to have separate Alzheimer & Assisted Living there are different staff for the combination of services.

Abare states the concern is parking, once you put this building up you will have issues. I can see this possibly owned by different people in the future.

Plata is explaining that we are only offering 48 units, if there is a combination of facilities it would fall under different licensing it depends on the type of licensing from assisted living to nursing home and if medical is offered. When we know the numbers the Town can control the compliance of the building for future uses.

Smith suggests a single driveway can be recommended to revise for drop off of patients. Plata adds that your comparison is different when you add Alzheimer care to a facility.

Reilly wants to clarification 48 rooms – 96 beds.

Plata states that it will be accurate per code for parking to total parking of 37.

Ryan, asks what about when residents get visitors?

The Board is discussing the parking with Plata explaining the facilities change with the level of assistance. Plata explains the approximate cost is \$3500.00 - 4,000.00 per month, per resident. Plata adds the charges include transportation for the residents.

Ritter asks if the 48 units have double beds. Plata said this is flexibility, different results for different facilities.

Ben Elliot, Plata Engineering 3700 N Harbor Blvd, the Ordinance is a double revision explaining about the facility.

Elliot questions about the setbacks in the revised Ord. it was 25 feet on page 2.

Krieger comments that this property represents a multiple use. Plata adds the previous approval of this property is "OI", for a medical building to use a common driveway and drainage area.

This is not a residential use, in a commercial use. Plata did the research about mailing address.

Ritter asks about the mail for the considered residents. Plata responds that the majority of mail goes to the family members.

Reilly brings the discussion back to Board.

Reilly reads Bob Wilbur's comments to Board due to his absence. (Attach to minutes).

Krieger comments that this Ordinance I think should be for all cases. In Article 9 – 300 sq feet, this site is 1.5 acres of the 5 acre parcel. Consider the density and multi uses in zoning classification as two different things.

Ritter adds we try our best to clarify and simplify things. Some Ord. are confusing compare with Florida State.

Reilly comments on a facility called, Cedar Creek in Merritt Island. He did some research to understand about the Ordinance. He went on line to see about this facility to find out what types of zoning specifications are required.

Abare noted that the Town Attorney did a good job of revising the Ordinance. It is a very tight site. Abare added that if this Ordinance was adopted tonight it could not meet the proper setbacks.

Krieger commented if this place was a rehab center and not a residence, the greatest density is 6 units per acre so it will equal 9 units.

Board is going over the Ordinance line by line:

**Section 1:**

Reilly asks for any corrections from the Board

The Board is discussing the Florida Statue "429" check with Attorney to see if "Adult Care Facility" is all lumped into one or individual.

Krieger adds if/when they amend statues does that supersede.

**Section 2:**

"OI" the thing that changes was bullet number 4 uses to Community Facilities

General Titles:

**429 Assisted Care Communities keep**

Kreiger suggests this should be considered a "Multiple Use".

Abare, if some one wanted to do two things on the same parcel they could.

**Section 3: none**

**Section 4:**

Reilly comments that there is a question about the setbacks?

Reilly and Board recommend changing to 60/25 on the Building setbacks from Residential District/ Nonresidential District (feet)

On (3) Add Town of Malabar before District Provisions.

**Section 5:**

Reilly said that under "Adult Care Facilities" Wilbur wanted 1space for 4 beds Krieger all is saying whatever is greater or more restrictive, "Institution of Transportation of Engineers" (ITE) standards.

Or ITE whichever is more restricted

- Density

Options:

- 1.) 1 space to 5 beds Liz  
W/ITE Regulations
- 2.) 1 space to 4 beds  
w/ ITE regulations
- 3.) ITE regulated

Addition foot notes suggested:

Abare is concerned when they get conditional approval they get only what they ask for.

Smith, suggests "A developer's agreement" should run with every conditional use it is recorded in the public record and a non negotiable and binding and follows with the property.

**Motion: Recommendation to Approval Current Regulations for Adult Facility for Ord 2011-38 as Amended: Vote: All Ayes**

Don Foley, the Owner of Berri Patch a community driveway, there will be a division in practical matter the property is going to be separated and obtain a different tax folio.

Foley adds the he feels comfortable with the process.

**G. DISCUSSION:**

**H. PUBLIC:**

**I. OLD BUSINESS/NEW BUSINESS:**

The Board is discussing the process of the site plan process and presentation of projects and the times table of events.

**J. ADJOURN:**

There being no further business to discuss, **MOTION: Reilly/Abare to adjourn this meeting.**  
**Vote: All Ayes.** The meeting adjourned 10: 25 P.M.

BY:

\_\_\_\_\_  
Bob Wilbur, Chair

\_\_\_\_\_  
Denine M. Sherear, Secretary

\_\_\_\_\_  
Date Approved

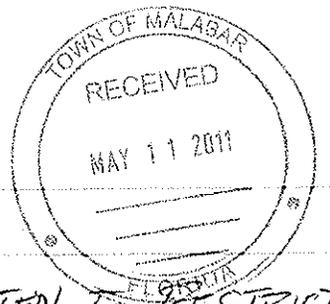
# TOWN OF MALABAR

## MEMORANDUM

**Date:** May 11, 2011 11-AABO-012  
**To:** P & Z Board Members  
**From:** Denine Sherear, Planning & Zoning Board Secretary  
**Ref:** Bob Wilbur- Chair of P & Z Board Comments For Meeting May11, 2011

Please see attached to this memo comments that Bob Wilbur- Chair of Planning & Zoning Board has provided in reference to the "Adult Care Facility Ordinance". Bob will not be present at this meeting of 05/11/2011.

# ADULT CARE FACILITY ORD



- ① WHERE AS OI WAS ORIGINALLY WRITTEN TO RESTRICT RESIDENTIAL USAGE AS AN ALLOWED USE, AND MAKE# CONDITIONAL I AM OPPOSED TO CHANGING THE WORDING PAGE 2 SECTION 2 1-3.1.1 I FEARS THIS WOULD MAKE THIS AN ALLOWABLE USE.
- ② I DO NOT FEEL ANY RESIDENTIAL USE SHOULD BE CONSIDERED ~~FOR~~ ADULT CARE FACILITIES THAT ARE NOT CONTROLLED BY THE STATE HEALTH SERVICES I AM AGAINST ANY USAGE THAT WOULD FALL UNDER DISTRICT PROVISIONS.
- ③ I FEEL THAT WE SHOULD WE SHOULD CONTROL THE MINIMUM LOT SIZE WIDTH & DEPTH WITH A FORMULA THAT WOULD ESTABLISH THE NUMBER OF UNITS ALLOWED (DENSITY) INCREASE
- ④ PARKING SHOULD BE 1 SPACE PER 4 BEDS PLUS PARKING FOR FULL STAFF AT PEAK HRS, OFFICE KITCHEN, NURSING + DR'S AND MAINT.
- ⑤ TO QUALIFY FOR CONDITIONAL USE THE FACILITE SHOULD NOT BE A BURDEN ON EMERGL SERV, AMBULANCIE FIRE ECT.

Bob Wilkin

**TOWN OF MALABAR**  
**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2**  
**Meeting Date: June 22, 2011**

**Prepared By: Denine Sherear, P&Z Board Secretary**

**SUBJECT: Internet Café about Zoning in the Town of Malabar**

**BACKGROUND/HISTORY:**

At the RTCM of June 6, 2011 the Council discussed the issue of Internet Cafes in other cities. The Town Attorney Karl Bohne explained that you can't prohibit them, but you control their location through zoning.

Council has directed this Board to determine the proper zoning for these types of establishments.

**ATTACHMENTS:**

- Memo # 2011-TC/T- 075 from Debby K. Franklin, Town Clerk/Treasurer to the Planning & Zoning Board
- Two Emails from the Town Attorney Karl Bohne, one dated June 9, 2011(1 page) and, the other one dated June 7, 2011 (3 pages)
- Portion of Draft Council minutes dated June 6, 2011
- Ordinance No. 2011-26 City of Palm Bay (8 pages)
- City of Melbourne Information (8 pages)

# TOWN OF MALABAR

## MEMORANDUM

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**Date:** June 7, 2011 2011-TC/T-075  
**To:** Planning & Zoning Board  
**From:** Debby K. Franklin, Town Clerk/Treasurer  
**Ref:** Council Action

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At the RTCM of June 6, 2011, Council discussed the issue of Internet Cafes and the problems other cities have experienced. Town Attorney Karl Bohne suggested that in other cities he represents, they have handled the issue with zoning. He explained that you can't prohibit them, but you control their location through zoning regulations.

Council directed that the Planning and Zoning Board determine the proper zoning for such establishments.

I have attached an email from the Town Attorney and the minutes from the RTCM of June 6, 2011.

## Town Clerk / Treasurer

P+Z

**From:** Karl Bohne [kbohne@fla-lawyers.com]  
**Sent:** Thursday, June 09, 2011 9:46 AM  
**To:** Town Clerk / Treasurer  
**Subject:** RE: Internet Cafes

As long as the "thing" meets with state law it is a legal business. You can't receive money from the machine. However, you are allowed to redeem the credits from the machine. You can not redeem for cash. You can redeem for prizes, including, gift cards. I have not come across any age limitations.

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**From:** Town Clerk / Treasurer [mailto:townclerk@townofmalabar.org]  
**Sent:** Thursday, June 09, 2011 9:31 AM  
**To:** Karl Bohne  
**Subject:** Internet Cafes

Karl, I have read the email you sent to Bonnie on arcades. I do not see the difference between the arcade at Andretti Park on Babcock and the Internet cafes. If they both require inserting a coin, and the skill to press a button and you win tickets, etc, is it simply the value of the prize? Can kids under 18 go to these Internet Cafes?

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*Debby K. Franklin, C.M.C.*

Town Clerk/Treasurer

Town of Malabar

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## Town Clerk / Treasurer

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**From:** Karl Bohne [kbohne@fla-lawyers.com]  
**Sent:** Tuesday, June 07, 2011 10:26 AM  
**To:** Bonilyn Wilbanks  
**Cc:** Town Clerk / Treasurer  
**Subject:** Arcades

### Arcades

#### **What does the law make illegal (§849.16 Fla. Stat.):**

It is illegal to manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used or kept in any room, space, or building owned, leased or occupied by the person or under the person's management or control:

- a) Any machine that is operated by the insertion of a coin and whose outcome is unknown to the player and not decided by the use of skill
- b) Winning the game results in:
  - a. The right to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or
  - b. The right to secure additional chances or rights to use such machine, apparatus, or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.

#### **When the laws do not apply (§849.161 Fla. Stat.):**

These laws do not apply to an arcade amusement center. An arcade amusement center is defined as a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility. An arcade amusement center is exempt/legal if it has:

- a) Amusement games or machines which operate by putting a coin in
- b) Skill is required to earn points/tickets/coupons which can be traded in for goods other than money/alcohol
- c) The value of the goods obtained by the player in exchange for the points/tickets/coupons does not exceed 75 cents on any game.

#### **What happens to the machine when the proprietor is arrested (§849.17 Fla. Stat.):**

The arresting officer takes the machine into custody and takes an inventory of it at the scene and deliver that list to the person from whom the objects were seized. Whatever agency seizes the machine shall remain in possession of it pending the investigation.

Upon conviction of the person arrested a judge will order the machines forfeited and destroyed. Proper notice to the person from whom they were seized is required. (§849.18 Fla. Stat.)

#### **Can the places where these machines operate be considered nuisances (§849.20 Fla. Stat)?**

Any place operating machines in contravention of the law is declared to be a common nuisance.

If someone knowingly allows their place to be used for such illegal purposes, their place shall be subject to a lien for and may be sold to pay all fines or costs assessed against the person guilty of such nuisance.

Any person can bring an action in equity to stop the nuisance (§849.21 Fla. Stat.)

#### **What are the penalties for violating the statutes (§849.23 Fla. Stat.):**

- a) First time: Second degree misdemeanor

- b) Second time: First degree misdemeanor
- c) Third time: Third degree felony and is considered a "common offender"

**Case law and other noteworthy items:**

- a) The arcade amusement center exception does not apply when the only way to operate the machines is with dollar bills
  - a. *City of Melbourne v. Gervais*, 896 So.2d 972 (Fla. 5<sup>th</sup> DCA 2005)
- b) The arcade center exception does apply to amusement centers that use machines which accept both coins and dollar bills
  - a. *Rowe v. Duval*, 975 So.2d 526, 529 (Fla. 1<sup>st</sup> DCA, 2008)
- c) §§849.16 and 849.161 are not unconstitutionally vague
  - a. *City of Melbourne v. Gervais*, 896 So.2d 972 (Fla. 5<sup>th</sup> DCA 2005) (Citing to *Delorme v. State*, 895 So.2d 1252 (Fla. 5th DCA 2004) and *State v. Cyphers*, 873 So.2d 471 (Fla. 2d DCA 2004)).
- d) A bill (proposed §849.162) is before the FL Senate that proposes to require regulation by the Department of Agriculture and Consumer Services. The proposed bill would also require a license to operate as an exempted amusement center. The licenses would be \$1000 annually. Local governments cannot issue licenses if the state does not first license the person.

Here is language I have used for other municipalities concerning these activities:

*Arcade Amusement Centers* shall have the same meaning as provided in F.S. 849.161, as amended from time to time.

**ELECTRONIC GAMING ESTABLISHMENT.** Means a business operation, whether a principal use or accessory use, where persons utilize electronic machines or devices, including but not limited to, computers and gaming terminals, to conduct games of chance and/or a game promotion pursuant to Section 849.094, F.S., including sweepstakes, and where cash, prizes, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such redeemed or distributed items are determined by the electronic games played or by predetermined odds. This term includes, but is not limited to internet cafes, internet sweepstakes cafes, cybercafés or sweepstakes cafes. This definition is applicable to any Electronic Gaming Establishment, whether or not the electronic machine or device utilized:

- (a) is server-based;
- (b) uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;
- (c) uses software such that the simulated game influences or determines the winning or value of the prize;
- (d) selects prizes from a predetermined finite pool of entries;
- (e) uses a mechanism that reveals the content of a predetermined sweepstakes entry;
- (f) predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed;
- (g) uses software to create a game result;
- (h) requires deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of payment to activate the electronic machine or device;
- (i) requires direct payment into the electronic machine or device, or remote activation of the electronic machine or device;
- (j) requires purchase of a related product, regardless if the related product, if any, has legitimate value;
- (k) reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded;
- (l) determines and associates the prize with an entry or entries at the time the sweepstakes is entered; or

(m) a slot machine or other form of electrical, mechanical, or computer game. It is the intent of this definition to classify any mechanism utilized at any Electronic Gaming Establishment that seeks to avoid application of this definition through the use of any subterfuge or pretense whatsoever. Electronic Gaming Establishments do not include *Arcade Amusement Centers*, regulated pursuant to Section 849.161, Florida Statutes, or the official Florida Lottery. The term Prize as used herein shall mean any gift, award, gratuity, good, service, credit, or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

*INTERNET CAFE. See Electronic Gaming Establishment.*

*INTERNET SWEEPSTAKES CAFE. See Electronic Gaming Establishment.*

As I stated at the meeting I think it would be appropriate to find the proper zoning district for these activities.

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.

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**L. DISCUSSION ITEMS:**

**10. Internet Cafes**

**Exhibit:** Agenda Report No. 10

**Recommendation:** Request Discussion and Direction

Rivet said banning these might be too broad. Let's only disallow the very thing we don't want. Karl Bohne explained the Chuck E Cheese exemption for the tickets you win on arcade games. In these types of internet cafes, you redeem the tickets for as an example, a cash card for Wal-Mart. Mayor said this should be an issue for the State Legislature. Atty Karl Bohne has told other cities that he represents that they need to define the appropriate zoning for it. You control it with zoning. The other cities have addressed it is with zoning. Mayor said this is a perfect item for P&Z to identify what zoning these places should be allowed in.

Atty Karl Bohne said Melbourne closed down some of these establishments where you pay \$20.00 and get 20.00 of credit on a machine that you simply hit an enter button. After a long process in court it was determined by court that hitting the button was considered to be a game of skill. The payout can't exceed 75 cents per spin. If you spin a 1000 times and you can collect 500. Consensus of Council to send to P&Z for determine of proper zoning.

---

ORDINANCE NO. 2011-26

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, CHAPTER 185, ZONING CODE, BY INCLUDING A DEFINITION FOR ELECTRONIC GAMING ESTABLISHMENT; PROVIDING CRITERIA FOR ITS CLASSIFICATION WITHIN THE ZONING DISTRICTS OF THE CITY; AMENDING THE REQUIREMENTS FOR ARCADE AMUSEMENT CENTERS: PROVIDING FOR RETROACTIVE APPLICATION: PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY,

BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, Chapter 185, Zoning Code, Subchapter 'General Provisions', Section 185.006, Definitions, is hereby amended and shall henceforth read as follows:

"Section 185.006 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

\*\*\*

CYBERCAFE. See Electronic Gaming Establishment.

\*\*\*

ELECTRONIC GAMING ESTABLISHMENT. Means a business operation, whether a principal use or accessory use, where persons utilize electronic machines or devices, including but not limited to, computers and gaming terminals, to conduct games of chance and/or a game promotion pursuant to Section 849.094, F.S., including sweepstakes, and where cash, prizes, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such redeemed or distributed items are determined by the electronic games played or by predetermined

odds. This term includes, but is not limited to internet cafes, internet sweepstakes cafes, cybercafés or sweepstakes cafes. This definition is applicable to any Electronic Gaming Establishment, whether or not the electronic machine or device utilized: (a) is server-based; (b) uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries; (c) uses software such that the simulated game influences or determines the winning or value of the prize; (d) selects prizes from a predetermined finite pool of entries; (e) uses a mechanism that reveals the content of a predetermined sweepstakes entry; (f) predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed; (g) uses software to create a game result; (h) requires deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of payment to activate the electronic machine or device; (i) requires direct payment into the electronic machine or device, or remote activation of the electronic machine or device; (j) requires purchase of a related product, regardless if the related product, if any, has legitimate value; (k) reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded; (l) determines and associates the prize with an entry or entries at the time the sweepstakes is entered; or (m) a slot machine or other form of electrical, mechanical, or computer game. It is the intent of this definition to classify any mechanism utilized at any Electronic Gaming Establishment that seeks to avoid application of this definition through the use of any subterfuge or pretense whatsoever. Electronic Gaming Establishments do not include *Arcade Amusement Centers*, regulated pursuant to Section 849.161, Florida Statutes, or the official Florida Lottery.

\* \* \*

*INTERNET CAFE.* See *Electronic Gaming Establishment.*

*INTERNET SWEEPSTAKES CAFE.* See *Electronic Gaming Establishment.*

\* \* \*

*PRIZE.* Means any gift, award, gratuity, good, service, credit, or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

\* \* \*

**SECTION 2.** The City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, Chapter 185, Zoning Code, Subchapter 'District Regulations', Section 185.043, CC – Community Commercial District, Subsection (D), Conditional Uses, is hereby amended and shall henceforth read as follows:

"Section 185.043 CC – COMMUNITY COMMERCIAL DISTRICT.

\* \* \*

(D) *Conditional uses:*

\* \* \*

(14) Electronic Gaming Establishments subject to the provisions set forth in Section 185.088(M)."

**SECTION 3.** The City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, Chapter 185, Zoning Code, Subchapter 'District Regulations', Section 185.044, HC – Highway Commercial District, Subsection (D), Conditional Uses, is hereby amended and shall henceforth read as follows:

"Section 185.044 HC — HIGHWAY COMMERCIAL DISTRICT.

\* \* \*

(D) *Conditional uses.*

(11) Electronic Gaming Establishments subject to the provisions set forth in Section 185.088(M)."

**SECTION 4.** The City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, Chapter 185, Zoning Code, Subchapter 'Conditional Uses', Section 185.088, Special Requirements and Conditions, is hereby amended and shall henceforth read as follows:

"Section 185.088 SPECIAL REQUIREMENTS AND CONDITIONS.

For those conditional uses listed below, the following special requirements shall apply in addition to those of Section 185.087:

(K) *Arcade amusement center.* A conditional use may be granted under the following conditions:

(1) The facility shall be located no less than one hundred (100) feet, measured from the outer wall of the facility to the closest property line, of any residentially zoned land, as well as any land designated as recreation and open space use by the Palm Bay Comprehensive Plan and Future Land Use Map.

\* \* \*

(3) No two facilities, operating pursuant to this subdivision or subdivision (M), shall be located closer than five hundred (500) feet from one another, measured from the closest outer wall of each facility. Nothing in this section shall be construed as to prevent a business from operating under both subdivision (K) and subdivision (M) in the same facility without the need for additional approval, provided the machines and business operations are kept separate and apart from one another, preventing comingling of usage, and do not otherwise violate the provisions of Chapter 849, Florida Statutes or any regulation of the state.

\* \* \*

~~(8) A management plan shall be submitted and approved. The business location shall operate under the following management plan:~~

~~(i.) The facility shall not have any reflective or other opaque material on the exterior windows which limits or restricts the visibility of the interior of the facility from the exterior of the facility under normal circumstances;~~

~~(ii.) Upon initially opening and on June 1 of each calendar year thereafter, the business shall report to the Growth Management Director and the Finance Director the number of machines being operated within the facility; and~~

~~(iii.) Smoking shall be prohibited within the facility; and~~

~~(iv.) The business shall not operate in violation of county, state or federal law.~~

(9) The facility business shall not operate between the hours of 2:00 a.m. and 7:00 a.m.

\* \* \*

(11) In the event an Arcade Amusement Center is operating in a dual-capacity under subdivision (M), patrons utilizing sweepstakes computers shall be made aware of the rules of the sweepstakes, as required by State Law or the regulation of any appropriate state agency, and shall otherwise comply with the laws and regulations of the state in regard to such sweepstakes gaming.

\* \* \*

(M) Electronic Gaming Establishment. A conditional use may be granted under the following conditions:

(1) The facility shall be located no less than one hundred (100) feet, measured from the outer wall of the facility to the closest property line, of any residentially zoned land, as well as any land designated as recreation and open space use by the Palm Bay Comprehensive Plan Future Land Use Map.

(2) The facility shall be located no less than one thousand (1,000) feet, measured from the outer wall of the facility to the closest property line, of any school.

(3) No two facilities, operating pursuant to this subdivision or subdivision (K), shall be located closer than five hundred (500) feet from one another, measured from the closest outer wall of each facility. Nothing in this section shall be construed as to prevent a business from operating under both subdivision (K) and subdivision (M) in the same facility without the need for additional approval, provided the machines and business operations are kept separate and apart from one another, preventing comingling of usage, and do not otherwise violate the provisions of Chapter 849, Florida Statutes or any regulation of the state.

(4) If the facility is placed within a freestanding building the site must contain a parking ratio of one parking space per two (2) game machines, regardless of whether the building is new or existing.

(5) If the facility is located in a shopping center, or other buildings with shared parking, it shall not utilize more than ten percent (10%) of the overall parking, based upon the ratio above.

(6) The number of devices within the facility shall be governed by the Land Development Code of the City of Palm Bay as well as Florida Statutes and laws.

(7) The consumption, possession, dispensation, or sale of alcohol, shall be prohibited.

(8) The business location shall operate under the following management plan:

(i.) The facility shall not have any reflective or other opaque material on the exterior windows which limits or restricts the visibility of the interior of the facility from the exterior of the facility under normal circumstances;

(ii.) Upon initially opening and on June 1 of each calendar year thereafter, the business shall report to the Growth Management Director and the Finance Director the number of machines being operated within the facility; and

(iii.) Smoking shall be prohibited within the facility; and

(iv-) The business shall not operate in violation of county, state or federal law.

(9) The business shall not operate between the hours of 2:00 a.m. and 7:00 a.m.

(10) All patrons of the business shall be made aware that they are participating in a computer-based sweepstakes, including the rules of the sweepstakes, as required by State Law or the regulation of any appropriate state agency.

A conditional use shall not be construed to authorize any game or machine that may be construed as a gambling device under Florida law."

**SECTION 5.** It is the expressed intention of the City Council that the provisions of this Ordinance have retroactive effect back to June 5, 2008, and shall be applicable to all businesses currently operating pursuant to the provisions of Section 185.088(K) and Section 185.088(M) of the Code of Ordinances.

**SECTION 6.** All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

**SECTION 7.** It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of Ordinances and the sections may be renumbered to accomplish such intention.

**SECTION 8.** If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the

inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

**SECTION 9.** The provisions within this ordinance shall take effect immediately upon the enactment date, with the expressed retroactive application.

Read in title only at Meeting No. 2011-11, held on March 23, 2011; and read in title only and duly enacted at Meeting No. 2011-12, held on April 7, 2011.

\_\_\_\_\_  
John J. Mazziotti, MAYOR

ATTEST:

\_\_\_\_\_  
Alice Passmore, CITY CLERK

Reviewed by CAO: \_\_\_\_\_

Applicant: City of Palm Bay  
Case No.: T-2-2011

***Words stricken through shall be deleted; underscored words shall be included. Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.***

6/3/11

## Palm Bay City Council meeting



Highlights from Thursday's meeting:

### AMENDMENTS TO GAMING CODE **Approved 5-0**

Council discussed proposed amendments to the arcade and electronic gaming establishment code, including the distance between an Internet cafe and an arcade. Each must be at least 500 feet from another similar business, but could be within 500 feet of each other. Also changed: parking requirements, allowing a pro-rated calculation of parking. If an arcade or Internet cafe takes up 50 percent of building space, it would be allowed 50 percent of available parking.

**What's next:** Variances requested by businesses affected by the changes will be brought to council July 7.

### TRASH PICKUP WORKSHOP & SURVEY **Approved 5-0**

Council agreed to look at surveying the community about desire to return to twice-weekly trash pickup, with related concerns including cost.

**What's next:** Council members directed the city manager to schedule a workshop regarding questions to be asked on the survey.

City manager will craft proposed questions.

### CITY MANAGER'S CONTRACT **Approved 5-0**

Vote approved details of employment contract for incoming city manager Sue Hann. Details include a base salary of \$149,256.

**What's next:** Hann's official starting date is June 13.

### COMMUNITY DEVELOPMENT ADVISORY BOARD

Two new members were appointed to the Community Development Advisory Board. They are Jane Williams and Sharon Maynard.

Palm Bay City Council meets June 16 at 120 Malabar Road. For agendas, go to <http://www.palmbayflorida.org/citycouncil/meetings/agd.html>.

## BCC now has 519 staff members

### BCC, from IB

full-time staff reductions," he said.

BCC now has 249 full-time professors and 519 full-time staff members.

The last significant round of layoffs was in May 2010 when 56 positions were eliminated for a \$2.6 million savings.

The 17 full-time employees whose positions were eliminated this week were given severance pay based on the number of years they've worked at the school.

The severance ranges

center for global education at a salary of \$61,800, the learning management systems administrator, who made \$62,260 and the director of career and technical programs who made \$59,770.

Among the already vacant positions eliminated: a criminal justice coordinator at \$54,508, a student advisor at \$37,292 and two admissions/records specialists who made \$35,009 each.

BCC serves about 25,000 students on four traditional campuses and an online campus. ■

## Decision had to wait on getting new leader

### HOUSING, from IB

director of Brevard County Housing and Human Services, turned down the job May 19. Because of U.S. Department of Housing and Urban Development regulations, board members had waited a year for her to become eligible for the post.

The Cocoa Housing Authority owns and operates 346 public-housing properties and manages 149 Section 8 vouchers.

Last year's search generated 52 applicants, and

five finalists were interviewed, said Nancy Dresser, Cocoa deputy community development director.

According to the latest job-seeking advertisement, applicants must possess a bachelor's degree and five years of related experience.

The Cocoa Housing Authority is considered a "troubled" agency by HUD because of issues in a 2008 audit and a potential Section 8 debt of \$1.4 million, Chairman Bruce Tate said. ■

Contact Neale at 321-242-3638 or [rneale@floridatoday.com](mailto:rneale@floridatoday.com).

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**Denine Sherear**

**From:** Jeffrey Higgins [jhiggins@melbourneflorida.org]  
**Sent:** Friday, June 17, 2011 3:22 PM  
**To:** Denine Sherear  
**Subject:** City of Melbourne Codes  
**Attachments:** APP B ART V SEC 2 -Tables 1B-2B Non-Residential Uses.pdf; APP B ART V SEC 2 -Tables 1B-2B Non-Residential Uses.doc

Amusement center. An establishment where the principal use is the operation of mechanical, computer, internet, electronic and/or video type game machines that may provide tickets or coupons redeemable for prizes. - Appendix B, Article II, Definitions.

Table 1B. Table of Uses, Non-Residential Districts - Appendix B, Article V, Section 2.

		R-P	C-1A	C-1	C-2	C-3	C-P
M-1	M-2	I-1					
Amusement	N	N	C	P	C	P	P
Center	P	P					

(1.1) Amusement center—One (1) parking space for each two (2) seats/machines. - Appendix D, Chapter 9, Article V, Section 9.72

**R-P — Residential—Professional District.** The provisions of this district are intended to apply to a transition area between commercial and residential uses. Principal uses and restrictions of the district are intended to promote and protect low or medium density residential development in combination with low intensity commercial development to provide a buffer area between residential and nonresidential areas as well as to facilitate cohesive grouping of more intensely developed commercial activities with high traffic generating capabilities.

**C-1A — Professional, Offices and Services District.** The provisions of this district are intended to apply to an area adjacent to major streets and convenient and complementary to major commercial, industrial and/or transportation facilities. The types of uses permitted and other restrictions are intended to provide an amenable environment for the development of professional offices and services separate from the intensive development of commercial and industrial facilities.

**C-1 — Neighborhood Commercial District.** The provisions of this district are intended to apply to an area adjacent to arterial and major collector streets and convenient to major residential areas. The types of uses permitted are intended to serve consumer needs. Lot sizes and other restrictions are intended to reduce conflicts with adjacent residential uses and to minimize the interruption of traffic along thoroughfares.

**C-2 — General Commercial District.** The provisions of this district are intended to apply to an area intended to be developed and preserved as a major commercial center serving the commercial needs of the community and region as well as the motoring public. The types of uses and other restriction are intended to promote adequate protection from conflicts with adjacent residential and other noncommercial uses, and to minimize the interruption of traffic along adjacent thoroughfares.

**C-3 — Central Business District.** This district is intended to apply to the central commercial, professional, financial, governmental and civic core of the city. Lot and building regulations are intended to permit intensive development of the area and to discourage uses not requiring a central location and which would create friction with performance of central functions.

**C-P — Commercial Parkway District.** The provisions of this district are intended to apply to areas located adjacent to a main highway. The types of uses permitted and restrictions are intended to serve the needs of

the motorist and provide an amenable impression of the city. Large lot sizes and other restrictions are intended to minimize frequent ingress and egress to the highway from abutting uses, thereby allowing the thoroughfare to serve its primary function of carrying an uninterrupted flow of traffic.

M-1 — Light Industrial District. The provisions of this district are intended to apply to an area located in close proximity to rail, air or major roadway facilities and which can serve intensive commercial uses and light manufacturing, warehousing, distribution, wholesaling and other industrial functions of the city and the region. Restrictions herein are intended to minimize adverse influences of the industrial activities on nearby non-industrial areas and to eliminate unnecessary industrial traffic through non-industrial areas.

M-2 — General Industrial District. The provisions of this district are intended to apply to an area located in close proximity to rail, air and major roadway facilities and which can serve general manufacturing, storage, distribution and other general industrial functions of the city, state and region. Restrictions herein are intended to minimize adverse influence of the industrial activities on nearby non-industrial areas and to eliminate unnecessary industrial traffic through non-industrial areas.

I-1 — Institutional District. The provisions applicable to this district are intended to apply to an area which can serve the needs of the community for public and semi-public facilities of an educational, recreational, health or cultural nature. Since the site and building requirements for such uses vary with the size and type of use, a review and approval of the plans is specified and the zoning itself is predicated upon the approval of the site plan.

I hope this helps. If you need other information I will be happy to help.

Sincerely,

Jeffrey Higgins, AICP  
Planner  
City of Melbourne  
900 East Strawbridge Avenue  
Melbourne, FL 32901  
321-608-7508  
321-608-7519 (Fax)

**Table 1B. Table of Uses, Non-Residential Districts**

<b>USE</b>	<b>R-P</b>	<b>C-1A</b>	<b>C-1</b>	<b>C-2</b>	<b>C-3</b>	<b>C-P</b>	<b>M-1</b>	<b>M-2</b>	<b>I-1</b>
Amusement center*	N	N	C	P	C	P	P	P	P
Agricultural uses*	N	N	N	N	N	N	C	C	N
Assisted living facilities	C	C	P	P	C	P	P	P	P
Bars (see Art. VI, sale of alcohol)	N	N	C	C	C	C	C	C	C
Bed and breakfast	N	N	P	P	P	N	N	N	N
Brewpub	N	N	P	P	P	P	P	P	N
Building, contractor & equipment storage (outdoor) <sup>1</sup>	N	N	N	N	N	N	P	P	N
Car wash establishments, free-standing*	N	N	N	C	N	C	P	P	N
Child care facilities	C	C	P	P	P	P	P	N	P/A
Church, convent or parish house	C	P	P	P	P	P	P	P	P
Clubs and lodges	N	N	P	P	P	P	C	C	C
Community center building	C	C	C	P	C	P	P	N	N
Convenience stores with gas pumps/ gas stations*	N	N	N	C	N	C	P	P	N
Domestic violence shelter*	P	N	P	P	N	P	N	N	P
Drive-in theaters*	N	N	N	N	N	C	N	N	N
Dwellings, accessory (see Art. VII, Section 2(C))	P	P	P	P	P	P	P	P	P
Dwellings, multi-family (see Art. VI, Section 1(I))	P	P	P/C	N	P	P/C	N	N	N
Dwellings, single-family (see Art. VI, Section 1(I))	P	P	P	N	P	N	N	N	N

**Table 1B. Table of Uses, Non-Residential Districts**

<b>USE</b>	<b>R-P</b>	<b>C-1A</b>	<b>C-1</b>	<b>C-2</b>	<b>C-3</b>	<b>C-P</b>	<b>M-1</b>	<b>M-2</b>	<b>I-1</b>
Dwellings, two-family/duplex (see Art. VI, Sec. 1(I))	P	P	P	N	P	N	N	N	N
Electronic assembly	N	N	N	P	C	P	P	P	N
Group home facilities	C	C	C	C	C	C	N	N	N
Hospitals	N	C	P	P	N	P	P	N	P
Hotels, motels <sup>2</sup>	N	N	P	P	P	P	P	P	N
Kennel	N	N	N	C	N	C	P	P	N
Laboratories (research, medical & dental) and clinics	P	P	P	P	P	P	P	P	N
Landfill for non-household waste	N	N	N	N	N	N	C	C	N
Manufacturing, heavy	N	N	N	N	N	N	N	P	N
Manufacturing, light	N	N	N	N	N	N	P	P	N
Marinas*	N	N	C	C	C	C	N	N	N
Micro-brewery	N	N	N	C	C	C	C	P	N
Mini-storage facilities	N	N	C	C	N	C	P	P	N
Nursing and convalescent homes	P	P	P	P	N	P	N	N	P
Office/financial institutions	P <sup>3</sup>	P	P	P	P	P	P	P	N
Outdoor display (see Article VII, Section 2(F))	N	N	N	N	P/A	P/A	P	P	N
Parking facilities as a principal use	C	C	P	P	P	P	P	P	P
Plant nurseries*	N	N	N	N	N	P	P	P	N

**Table 1B. Table of Uses, Non-Residential Districts**

USE	R-P	C-1A	C-1	C-2	C-3	C-P	M-1	M-2	I-1
Public use	C	C	C	P	C	P	P	P	P
Public utility service facilities*	C	C	C	C	C	C	P	P	P*
Recovery home/halfway house*	N	N	N	C	N	C	N	N	C
Recreation, indoor	N	N	C	P	C	P	P	P	P
Recreation, outdoor	N	N	N	N	N	C	C	C	N
Recreational vehicle (RV) parks*	N	N	N	N	N	C	N	N	N
Recycling facility *	N	N	N	N	N	N	C	P	N
Restaurants	N	C	P	P	P	P	P	P	N
Retail	P <sub>4</sub>	P <sub>4</sub>	P <sub>5</sub>	P <sub>5</sub>	P <sub>5</sub>	P	P	P	N
Schools	C	C	P	P	P	P	P	P	P
School, non-academic instruction	C	C	P	P	P	P	P	P	P
Service, vehicle	N	N	N	C	N	C	P	P	N
Service, business	N	P	P	P	P	P	P	P	N
Service, major vehicle*	N	N	N	N	N	N	P	P	N
Service, personal	P	P	P	P	P	P	P	P	N
Shelter, homeless shelter facilities*	N	N	N	C	N	N	N	N	C
Soup kitchens*	N	N	N	C	N	N	C	C	P
Studio, art	N	N	P	P	P	P	P	P	N
Temporary labor agency*	N	N	N	P	N	P	P	P	N

<b>Table 1B. Table of Uses, Non-Residential Districts</b>										
<b>USE</b>	<b>R-P</b>	<b>C-1A</b>	<b>C-1</b>	<b>C-2</b>	<b>C-3</b>	<b>C-P</b>	<b>M-1</b>	<b>M-2</b>	<b>I-1</b>	
Vehicle impounding yard*	N	N	N	C	N	C	P	P	N	
Vehicle sales and rental with accessory services*	N	N	N	P	N	P	P	P	N	
Veterinary clinic*	N	C	P	P	C	P	P	P	N	
Veterinary hospital*	N	N	C	P	C	P	P	P	N	
Warehousing and wholesaling *	N	N	N	N	N	N	P	P	N	
Wholesaling from sample stocks.	N	N	N	P	P	N	P	P	N	

\* See Article VI, Section 2, Use Standards, or Article VII, Section 2, Standards for Accessory Uses, for special conditions.

P - Permitted Uses;

C - Uses that require Conditional Use approval;

N- Prohibited; P/A - Permitted as Accessory Use;

P/C - Permitted or Conditional Use

- 1 Outside storage areas shall be effectively walled on all sides where adjacent to rights-of-way or non-industrial uses, per Appendix D, Chapter 9, Article III, Section 9.45, to avoid any deleterious effect on adjacent property.
- 2 Provided that the minimum floor area for hotel and motel units shall be three hundred (300) square feet.
- 3 Financial Institutions in R-P require Conditional Use approval.
- 4 Directly associated with a profession.
- 5 Except automotive and similar uses. See Article VI, Section (2)(F) for outdoor display standards.
- 6 In enclosed structures, including refrigerated storage and bulk storage, excluding hazardous substances, hazardous wastes and petroleum products.

Table 2B. Table of Dimensional Standards, Non-Residential Districts

NON-RESIDENTIAL	R-P	C-1A	C-1	C-2	C-3	C-P	M-1	M-2	I-1*
Minimum lot area (sq. ft.)	7,000	6,000	5,000	5,000	4,000	22,500	10,000	10,000	20,000
Minimum lot width (ft.) 1	70	60	50	50	30	150	100	100	100
Minimum lot depth (ft.)	100	100	100	100	100	150	100	100	150
Maximum lot coverage (%)	40	50	50	50	1002	40	50	50	
Minimum building area (sq. ft.)	See table 2A	300	300	300	300	300	300	300	300
Maximum height (ft.) 4	355	40	40 fn25	40 fn25	80 fn25	40 fn25	40	40	NA
Minimum setback requirements (ft.) 6			See footnote 7						25 8
Front	20	25	20	20 ft.	None	50	20	20	
Side interior lot 9	7.5	None	None	None	None	25	None	None	
Side corner lot	20	20	20	20 ft.	None	40	20	20	
Rear	20	20	15	20 ft.	None	30	20	20	
Rear-abutting alley	15	15	10	10 ft.	None	10 ft.	15	15	
Additional buffer 10	N	N	Y	Y	Y	Y	Y	Y	Y

1 If calculated a mean width, the width at the street line shall not be less than eighty (80) per cent of the required lot width except for lots on the turning circles of cul-de-sac or on the outside radius of a curve; in such cases the lot width at the street line shall be no less than twenty-five (25) feet.

2 Except for required yards.

3 Except where no buildings are proposed.

4 See Article IV, Section 1, Exceptions and Variations to Height Regulations.

- 5 Additional height may be allowed subject to Conditional Use approval and the criteria standards set forth in IV, Section 1 (Exceptions and Variations to Height).
- 6 See Art. VI(I), Residential Uses in Non-Residential Districts, and Art. IV, Section 1, Exceptions and Variations to Height Regulations, for additional setbacks requirements.
- 7 Residential developments in a C-1 zone must meet the yard requirements specified for the R-2 zone.
- 8 Thirty-five (35) feet if abutting a residential use; fifty (50) feet if adjacent to a collector or arterial. Ten (10) additional feet setback for every ten (10) feet in height over ten (10) feet. Interior yards shall meet the requirements necessary for adequate police and fire protection.
- 9 If abutting a residential district that requires setbacks, use the setback required in that district along the abutting property line. For multi-story developments, see Article IV, Section 1, Exceptions and Variations to Height Regulations for additional setback requirements. For multi-Townhome setbacks are determined between buildings; interior townhome units do not have side setback requirements.
- 10 Notwithstanding the setbacks required as noted in the table above, new COM, HDR, IND, and INST developments requiring formal site plan approval, adjacent to established single-family lots, shall provide a buffer of no less than fifty (50) lineal feet, (unless subject to Appendix B, Article IV, Section 1(b)). A six-foot masonry wall and vegetative landscape buffer shall be provided. This does not apply to projects located within redevelopment districts.

**TOWN OF MALABAR**  
**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 3**  
**Meeting Date: June 22, 2011**

**Prepared By: Denine Sherear, P&Z Board Secretary**

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**SUBJECT: Proposed Maps of Land Use Changes Revised June 15, 2011 Review**

**BACKGROUND/HISTORY:**

Please see in this packet the maps that were corrected by Board member; Pat Reilly, for your review for the Proposed Land Use Changes along Babcock Street, Malabar Road, and US 1 Corridor.

Make recommendation to forward to Council.

**\*Please bring maps from the June 8, 2011 P & Z Meeting that were in your packet to compare changes made.**

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**ATTACHMENTS:**

- Maps of Babcock Street , Malabar Road, and US 1 Corridor (14 pages)

# TOWN OF MALABAR PROPOSED FUTURE LAND USE CHANGES

PRESENTED BY THE PLANNING AND ZONING COMMITTEE

JUNE 15, 2011

# Present Land Use Designations

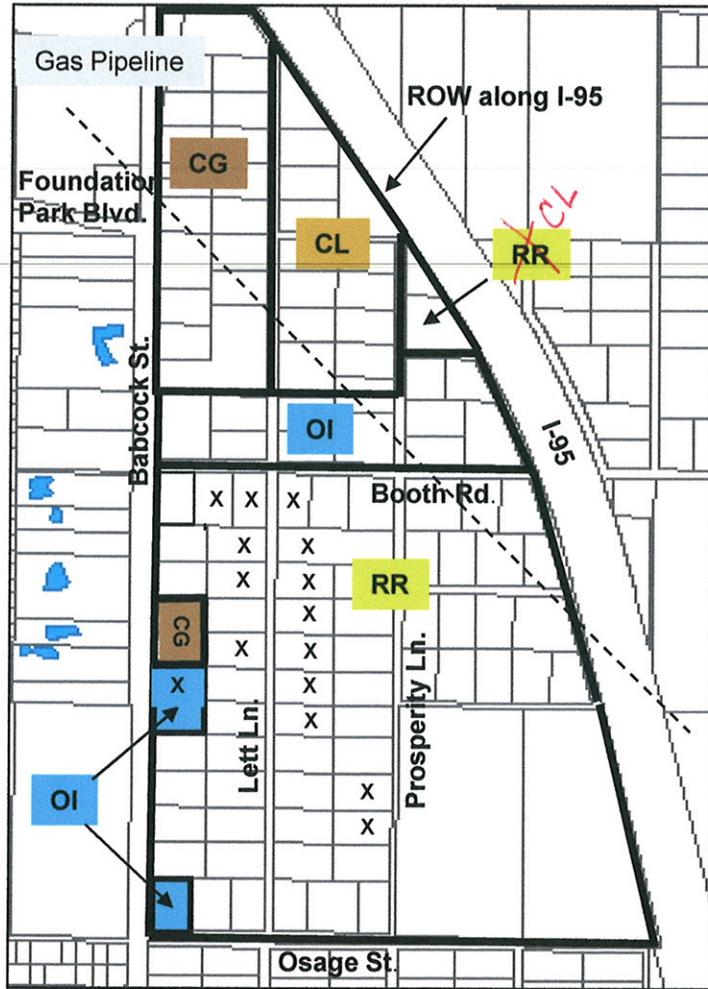
- Residential/Limited Commercial (R/LC)
- High Density Residential (HDR)
- Medium Density Residential (MDR)
- Low Density Residential (LDR)
- Rural Residential (RR)
- Commercial General (CG)
- Commercial Limited (CL)
- Industrial (IND)
- Office Institutional (OI)
- Institutional (INS)
- Open Space and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

# Related Data

- Use FLU-1 Map for Present Land Use
  - It was 2009's Future Land Use, now it is Malabar's Present Land Use Map
- Definitions of Malabar's Land Use Districts
  - Malabar Land Development Code, Article III, District Provisions handout
  - Board is presently looking at the R/LC densities in the Land Development Codes
- Satellite Aerial Maps

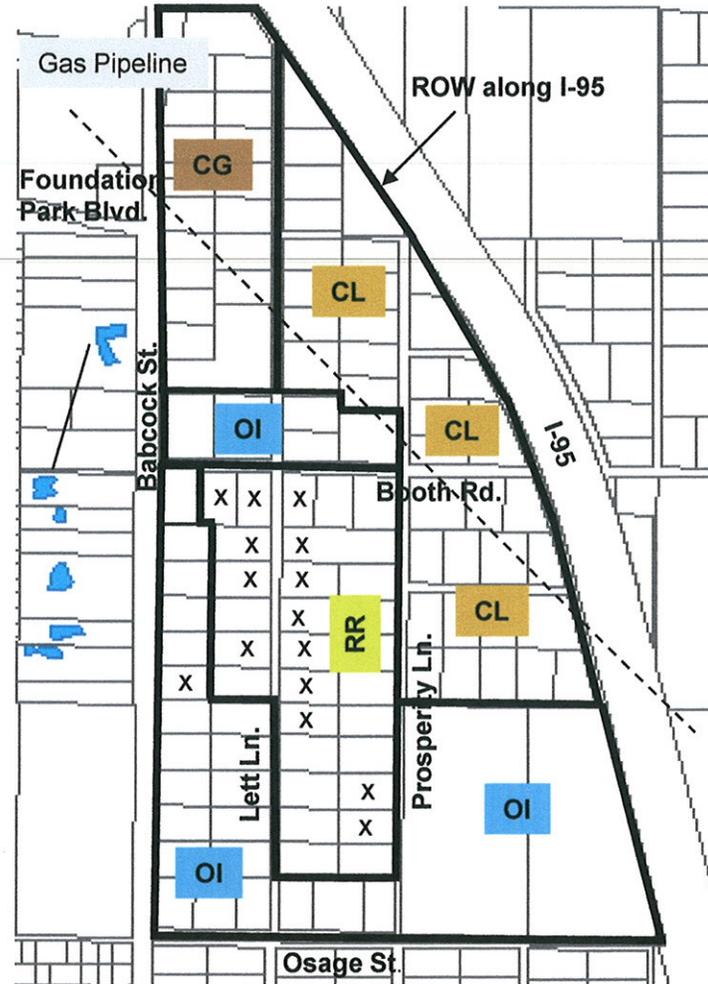
# Land Use Along Babcock Street

## Present Land Use



X = Homes

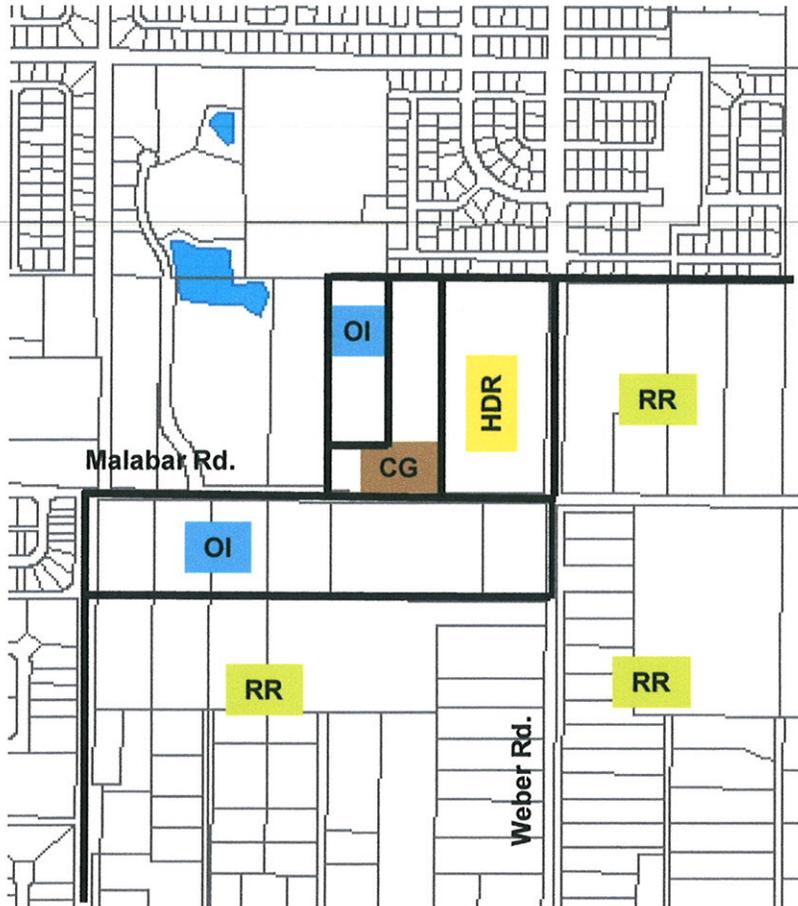
## Proposed Land Use



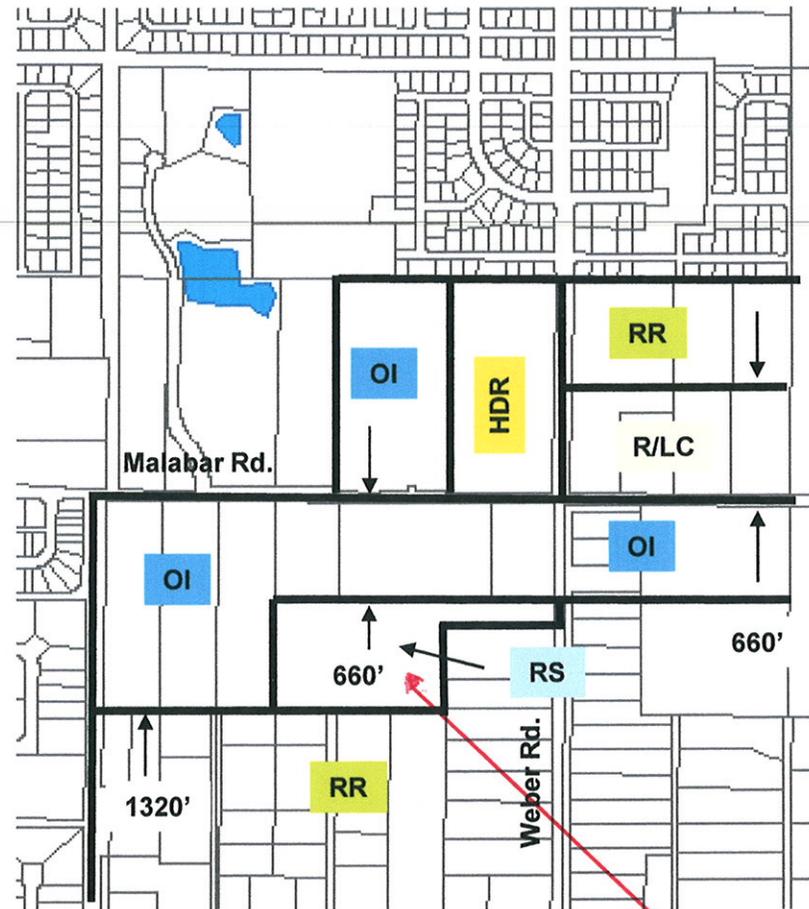
June 15, 2011

# Land Use Along Malabar Rd. (West end)

## Present Land Use



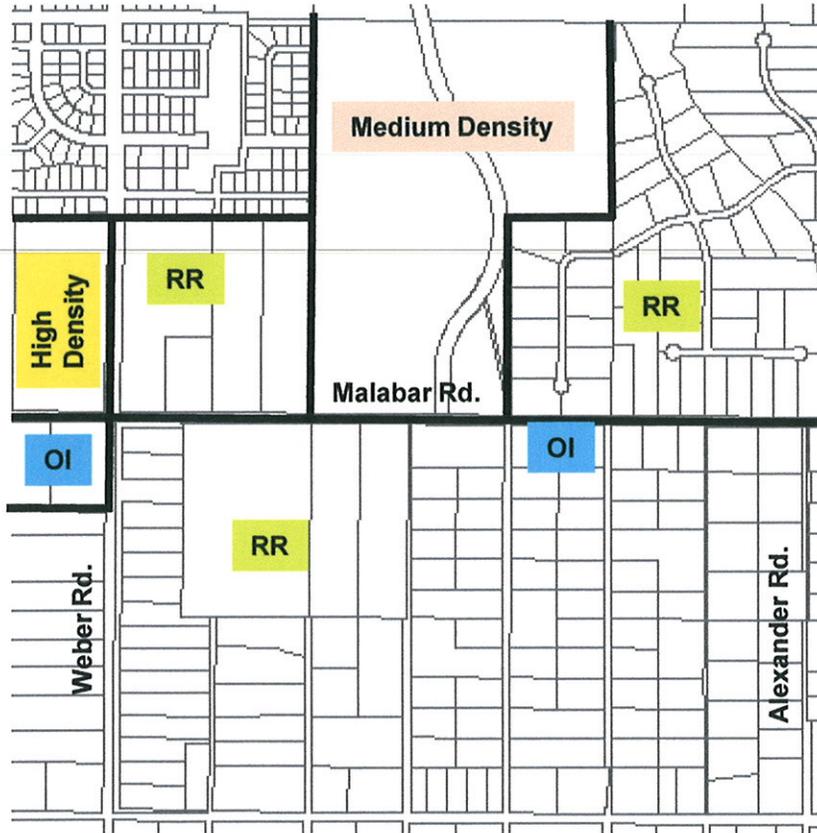
## Proposed Land Use



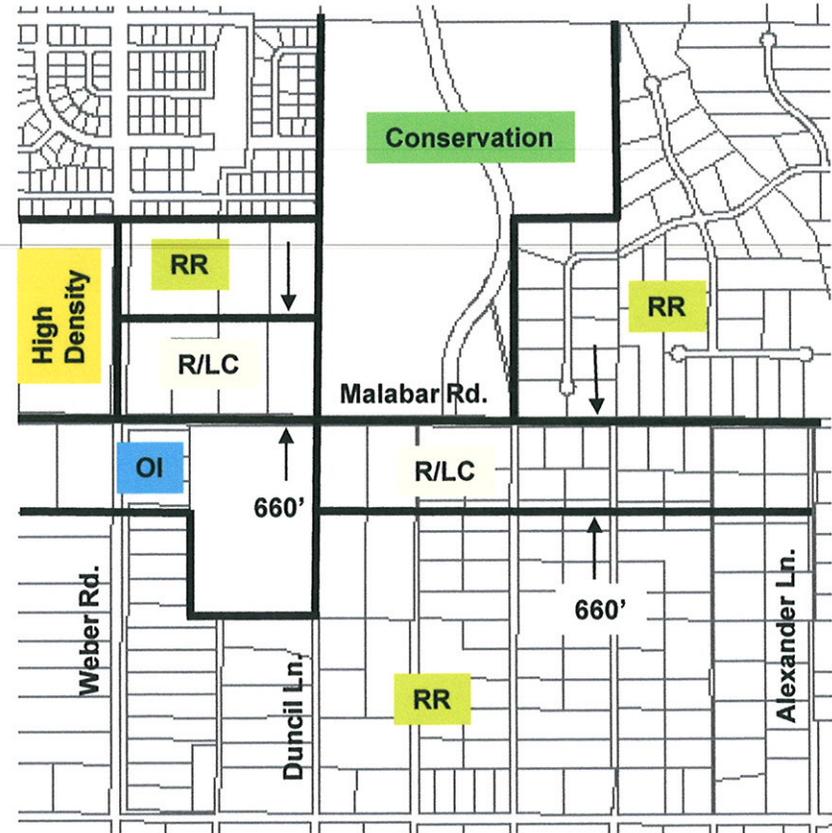
June 15, 2011

# 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

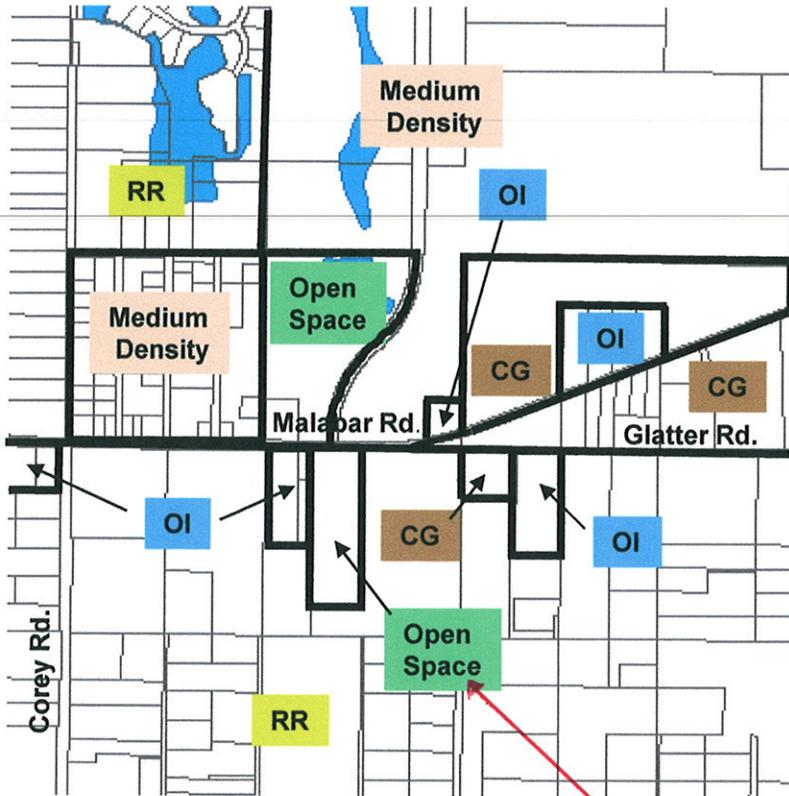


## Proposed Land Use



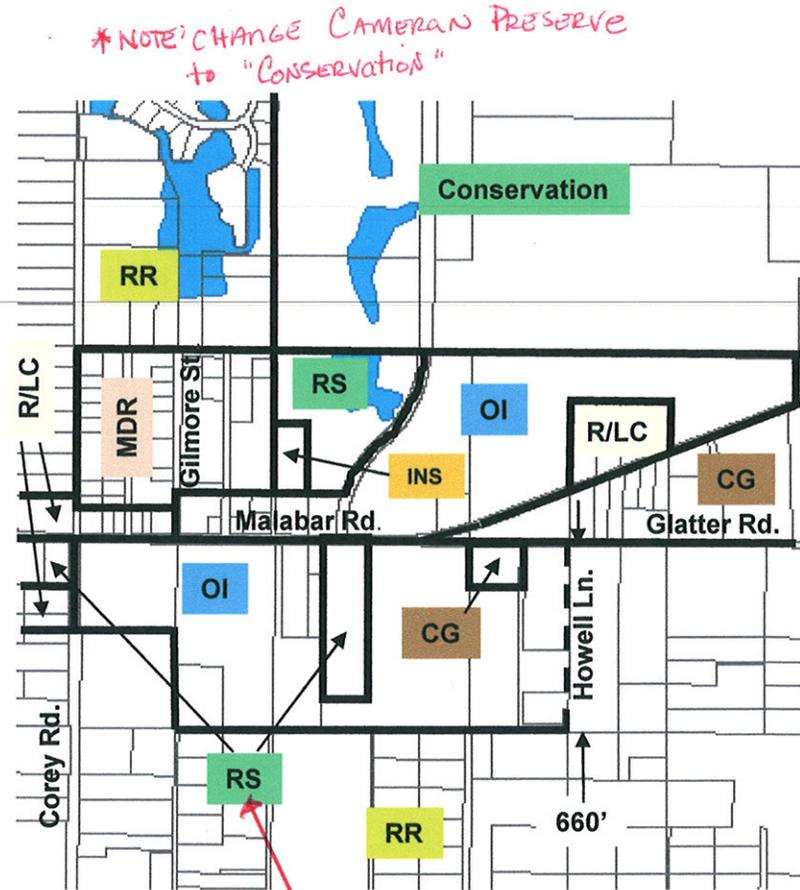
# Land Use Along Malabar Rd. (Corey Rd. to Marie St.)

## Present Land Use



IS "OI"  
NOW

## Proposed Land Use

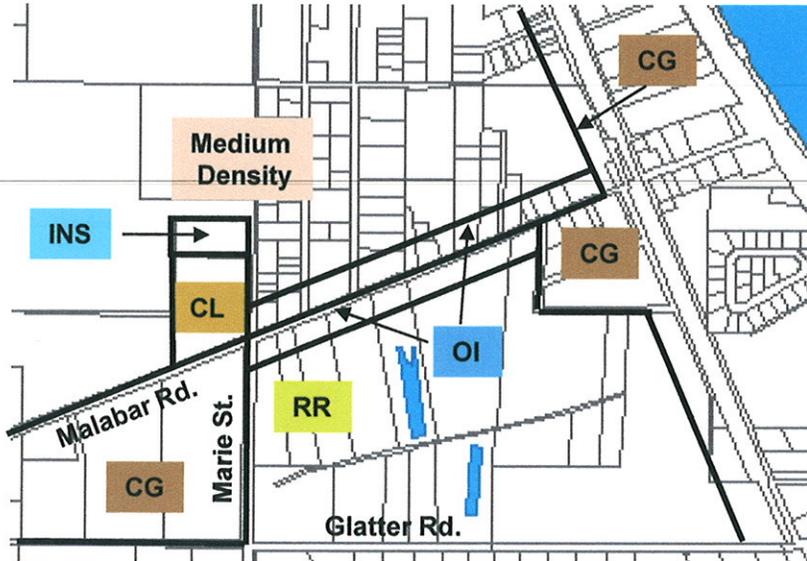


"RS"  
should be  
"CONSERVATION"  
\*GOLF DISC PK  
\*FERN CREEK PK

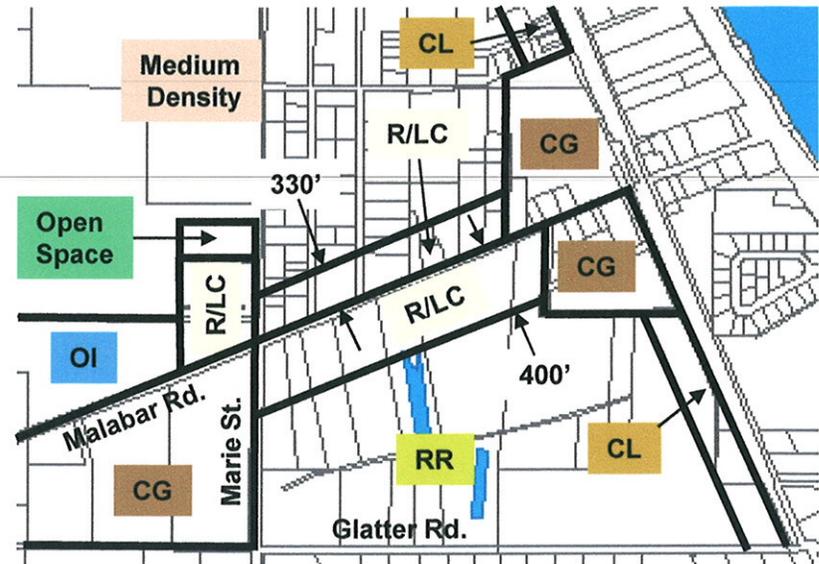
June 15, 2011

# Land Use Along Malabar Rd. (Marie St. to US-1)

## Present Land Use

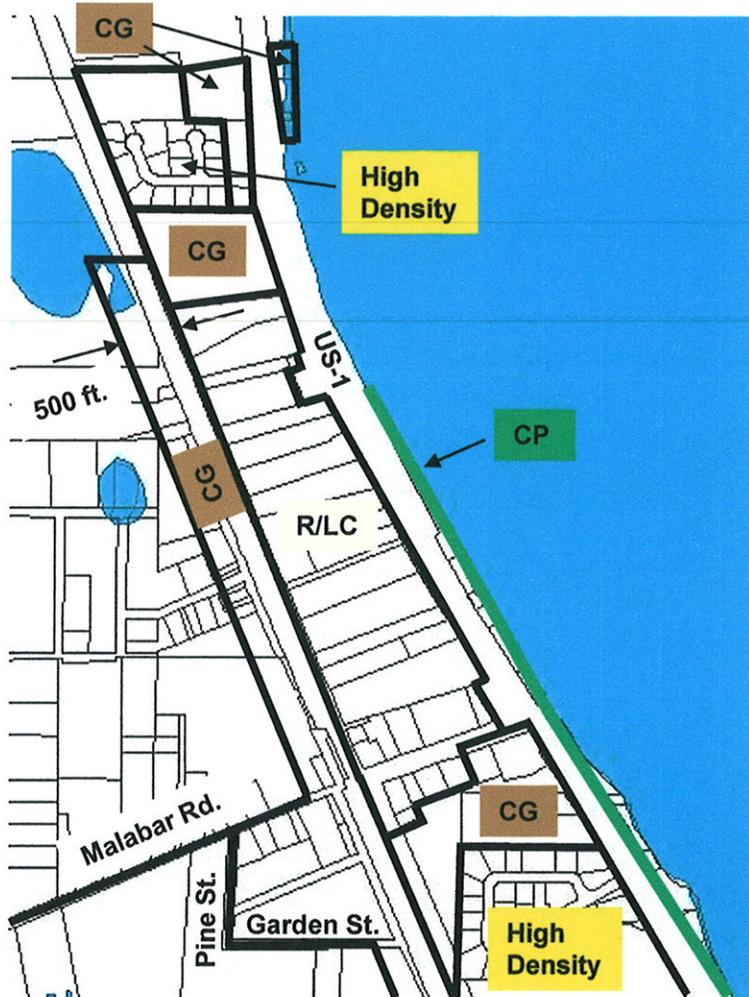


## Proposed Land Use



## Land Use Along US-1 (North end of Malabar)

### Present Land Use

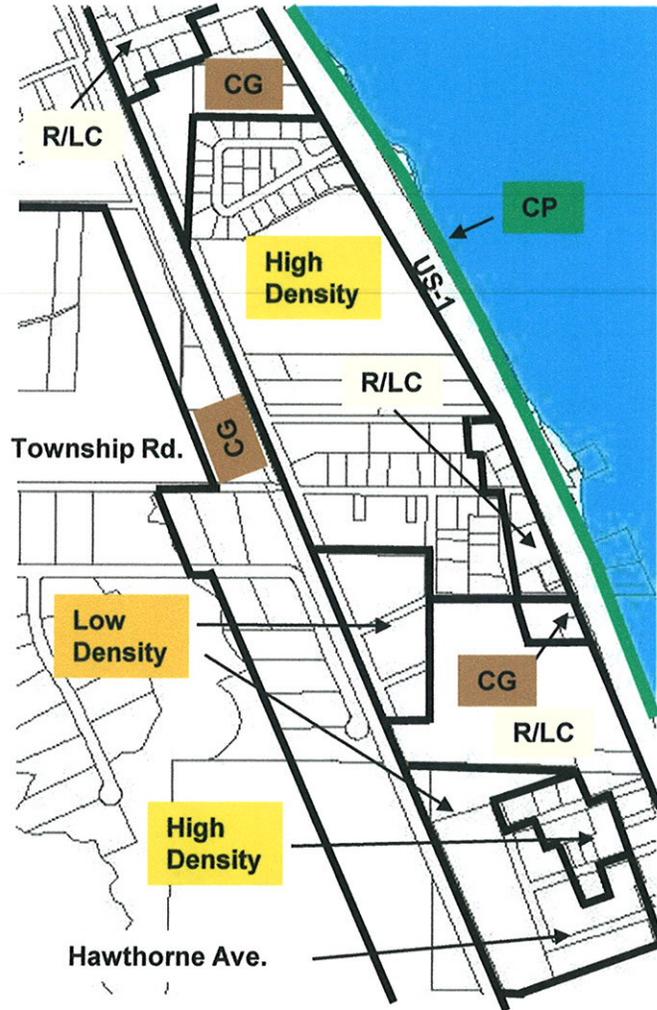


### Proposed Land Use

- Change CG to CL
- Verify north most property is presently CG
- Verify storage facility is presently CG

## Land Use Along US-1 (Malabar Rd. to Hawthorn Ave.)

### Present Land Use

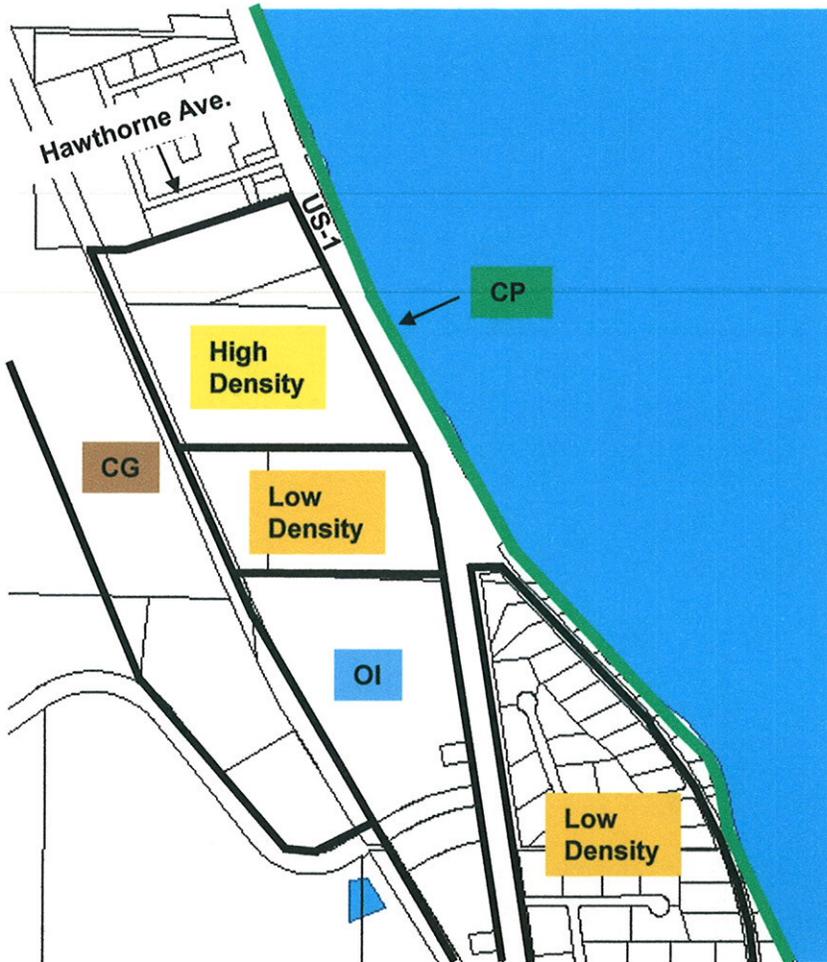


### Proposed Land Use

- Change CG to CL

# Land Use Along US-1 (North Rocky Point)

## Present Land Use



## Proposed Land Use

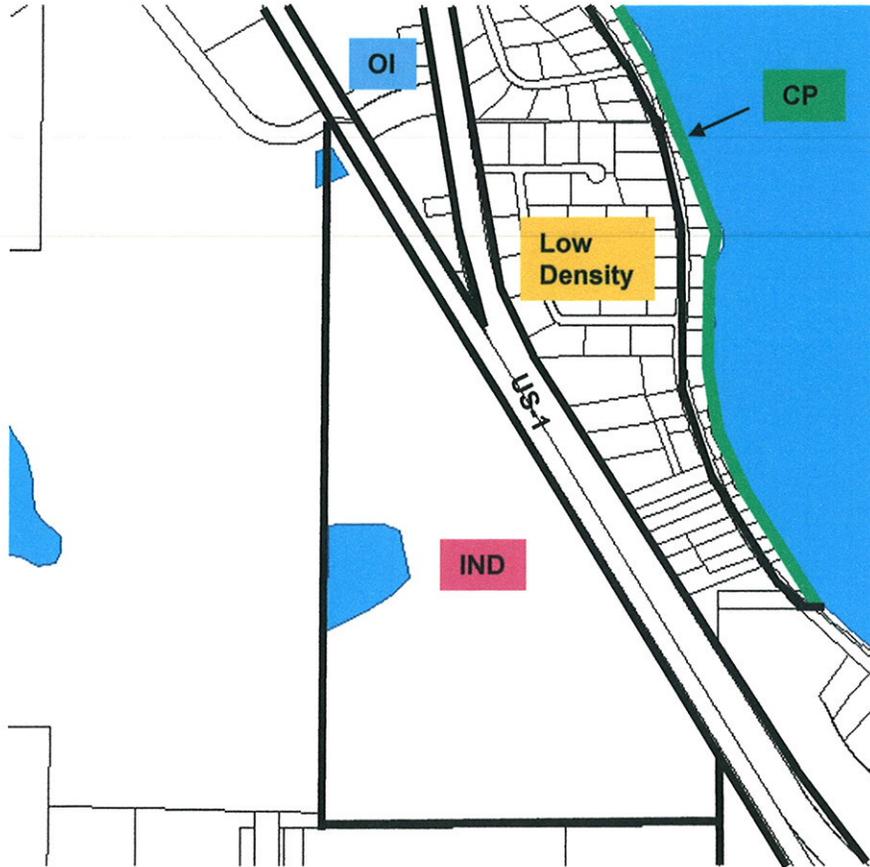
- Change CG to CL

NOTES:  
will "CL" Adversely  
AFFECT - DATA MANAGEMENT  
It is allowed in "CG" & will  
be NON-CONFORMING "CL".

## Land Use Along US-1 (Rocky Point)

Present Land Use

Proposed Land Use

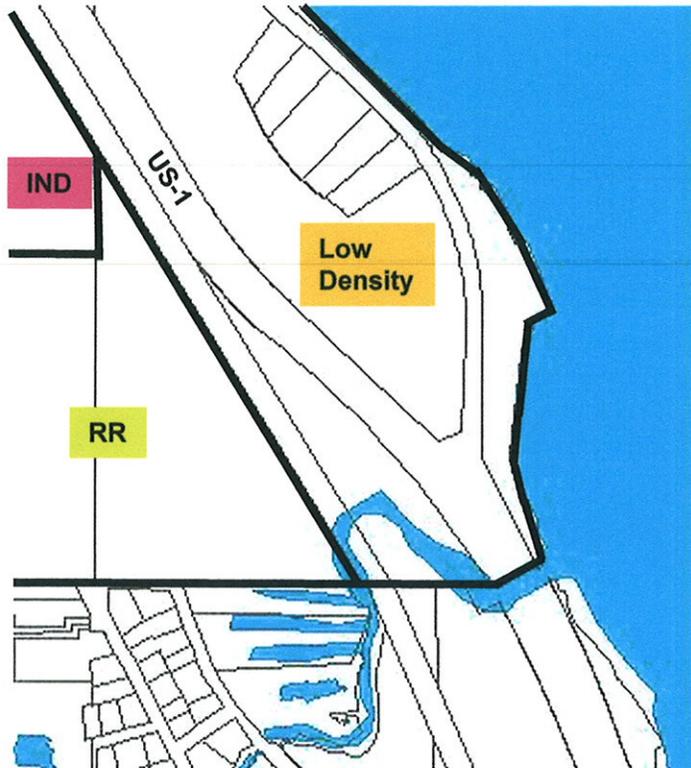


June 15, 2011

## Land Use Along US-1 (South Rocky Point)

**Present Land Use**

**Proposed Land Use**



June 15, 2011

**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4**  
**Meeting Date: June 22, 2011**

**Prepared By: Denine Sherear, P&Z Board Secretary**

**SUBJECT: Revision to Fence Ordinance by P & Z on April 27, 2011**

**BACKGROUND/HISTORY:**

At the P & Z Meeting on June 8, 2011 this Board requested to review the Fence Ord.-of April 27, 2011 with all suggested corrections.

**ATTACHMENTS:**

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

**ACTION OPTIONS:**

Recommendation to Council on proposed changes

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 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.

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

(f) Materials and design requirements.

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

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.