

**TOWN OF MALABAR**  
**PLANNING AND ZONING ADVISORY BOARD**  
**REGULAR MEETING**  
**WEDNESDAY AUGUST 10, 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** Planning and Zoning Meeting – 07/27/2011  
**Exhibit:** Agenda Report No. 1  
**Recommendation:** Motion to Approve
- E. PUBLIC HEARING:** none
- F. ACTION:**
  - 2. Setbacks in RR-65 Zoning**  
**Exhibit:** Agenda Report No. 2  
**Recommendation:** Action
- G. DISCUSSION:**
  - 3. Internet Cafes Defined and Regulated (Ord. 2011-45)**  
**Exhibit:** Agenda Report No. 3  
**Recommendation:** Discussion
  - 4. Continue Discussion Residential/Limited Commercial Zoning & Density Clarification**  
**Exhibit:** Agenda Report No. 4  
**Recommendation:** Discussion
  - 5. Continue Discussion of "Light Industrial"**  
**Exhibit:** Agenda Report No.5  
**Recommendation:** Discussion
  - 6. Continue to Work on Requirements for Assisted Living**  
**Exhibit:** Agenda Report No. 6  
**Recommendation:** Discussion
- H. PUBLIC:**
- I. OLD BUSINESS/NEW BUSINESS:**
- J. ADJOURN**

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

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service in compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

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

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 1**  
**Meeting Date: August 10, 2011**

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

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**SUBJECT: Approval of minutes**

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**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 July 27, 2011

**ACTION OPTIONS:**

Secretary requests approval of the minutes.

"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  
JULY 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
	LIZ RITTER
ALTERNATE:	WAYNE ABARE
ALTERNATE:	CINDY ZINDEL, leave
SECRETARY:	DENINE SHEREAR, excused
TOWN CLERK/TREASURER	DEBBY FRANKLIN
TOWN ENGINEER	MORRIS SMITH, P.E.

**C. ADDITIONS/DELETIONS/CHANGES: Move Discussion G.3 to last, G.6. Without objection.**

**D. CONSENT AGENDA:**

- 1. Approval of Minutes** Planning and Zoning Meeting – 06/22/2011  
Planning and Zoning Meeting – 07/13/2011  
**Exhibit:** Agenda Report No. 1  
**Recommendation:** Motion to Approve

**MOTION: Reilly / Ryan to approve Minutes of 06/22/2011 with corrections:**

Liz Pg 5, 2<sup>nd</sup> to last para – eliminated" ... will instead of with

Pg 6 2<sup>nd</sup> para, Krieger tried to present this Boards side of the story – Krieger presented history of issue. Next sentence- it was never brought to us prior.

Next para, we could have intensity of project.

Pg 3, on pg 10 maps – no change to Danny's

Top of pg 6, went back and looked that (take at out)

Don, pg 4, Krieger would consider, Krieger add, it should be zoning and land use until you want to do something with land.

6 para down, Krieger, last line, limitation

Pg 3, pg 10 maps, last line, whole coast of Malabar, "because it" doesn't effect zoning.

Pg 2, 2/3 of way down, Wilbur asks change to if there an age limit.

**Vote: All Ayes**

**MOTION: Reilly / Ryan to approve Minutes of 07/13/2011 with corrections:**

Don, pg 2, 4 lines from bottom, doesn't want this use to get kicked out of institutional.

Pg 3, 1/3 way down, you still have 48 units and 96 res, next line, requirements if there are "no" not.

Pg 4, Krieger asked if we were given a directive or a suggestion from Council.

Pg 6, pg 14 3<sup>rd</sup> line, he spoke to someone – they" instead of the

**Vote: All Ayes**

E. PUBLIC HEARING: none

F. ACTION:

G. DISCUSSION:

2. Internet Cafes Defined and Regulated (Ord. 2011-45)

Exhibit: Agenda Report No. 2

Recommendation: Discussion

Reilly said that the facilities are defined as ... means, at least 50 coin operated machines. What if they have 49 machines? If they have one, they can do whatever they want. Something needs to change; 1-49 is one rule and 50 and above is another rule. That was his only problem. Wilbur thought the enclosed amusement could mean 1-49.

Wilbur asked for the difference in the three types that are listed in ordinance. Franklin will get explanation from Attorney Bohne and bring back to another P&Z meeting. DO NOT ADVERTISE – for public hearing.

Krieger asked who brought this up. P&Z stated it was permitted in CG. If there is an ordinance, why not cover everything like contests using your phones.

Reilly stated regarding the "TBD" on Pg 3, he suggested they put Highway 1 and Babcock Street only. Not W. Railroad Avenue because it is not paved. Board concurred.

~~NOTE to staff: Table s/b corrected – Westland to W RR Ave.~~

Summary: Staff will provide feedback from Town Attorney for next meeting on the definition of 1-49 coin operated amusement machines. Also provide distinction on the three types of gaming in ordinance.

**Moved to G.6.( last discussion) item:**

3. Research into Requirements for Assisted Living – MOVED TO 6

Exhibit: Agenda Report No. 3

Recommendation: Discussion

Reilly said they were given over 200 pages of Florida Statutes and also the Building Codes to work with and would like to start with the Statutes. He understands that both F.S. 419 and F.S. 429 apply to these uses, as well as others.

Ritter reviewed the cities codes they received and did not like Cocoa Beach with short term and long term mixed – also day time and ALF. She would not want us to use their code, define each use and create requirements for each use.

Wilbur said that ALF is the least regulated and has the highest probability for abuse. The one we looked at before had 90 persons with one person to oversee them. Doubts their certifications, to watch over, give assistance and give meds. Ritter said we do our own and do them as separate uses. We need to figure out where we want these uses. Krieger said we need good urban design. Don said most of the places he has seen have an incredible amount of acreage. Abare said the Hibiscus Park facility had two acres and lots of parking spaces.

He said the facility on Merritt Island had a 98 year old person that still had a van and drove it. The ones he looked at had plenty of parking spaces. They weren't exclusively for ALF – they want to

keep you when you go into dementia. These are multi-million dollar places, why not put it on a larger parcel and give them more green space and parking. Why jam it on a site so small. Reilly said it was next to water and across from hospital. They have to have water.

Wilbur said on page 127 / regarding emergency requirements – the buildings have to generators to provide self – sustenance in the event of a disaster. This is a must. Wilbur said eliminate ALF in OI and it will get rid of problem. He is against residential use in OI.

Krieger said if you build a condo on US1 you have to have a certain amount of acreage. He thinks the density requirements should be similar for these uses.

Abare said using our current code, a condo project on US 1 allowing six units per acre and say an average of four persons in each unit that would be 24 persons per acre. He thinks that is a reasonable starting place for density. 96 persons would require four acres.

Reilly said the Cedar Creek facility is a planned unit development (PUD) and it is three different uses. Reilly said the one on Merritt Island is not near a hospital.

Ritter said that the Florida Statutes do have regulations for each use of assisted care, age 18 and up and address daytime day care. Krieger said each place needs a definition in the code. Wilbur said the ALF prepares meals and does laundry. Abare stated the demands on the Town would be greater for such a facility compared to a condo.

Summary: continue discussion at next meeting.

#### **4. Residential/Limited Commercial Zoning & Density Clarification**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Discussion

Speaker's Card: Tom Eschenberg, Beran Lane, regarding R/LC, he was not here but he thinks going back to when it was created, the intent was to encourage the mixed use of residential and limited commercial. He stated you have to do something to still encourage it. If someone comes in and wants to build a large apartment building or a large commercial strip center they could. If you want to encourage the mixed use, the simplest way to do it is to put in the Code that the residential use shall not exceed the commercial development by more than one; the commercial development shall not exceed the residential use by more than one.

Reilly said then to change the wording on page 25 (of 43) to add two bullets:

- residential shall not exceed by more than one;
- Commercial shall not exceed res by more than one.

Units changed from 6 to 4,

Specific sites, pg 25, put "." After RLC. Delete along US 1 and make no other reference. The paragraph lists all the things that aren't allowed. Ritter wants items listed that are allowed. Ryan wants to change it to read "limited variety" instead of "limited inventory". Ritter said it is contained with the description. Board doesn't think it is necessary.

Regarding the mix that they are proposing, the Code would need to change to add bullets that state the commercial and residential mix:

- 1 and 1, 2 and 2 or 1 and 2.

Also change the square footage for 1-bedroom apartment to 900sf and then 120sf per additional bedroom; delete the two and three bedroom reference.

Add the 4 to show across from the RLC commercial in the last column.  
Use a footnote on the 4 and 4 and the note will read the same as the above bullets.  
Don't make changes to min lot size.  
Reilly said maximum building coverage is not applicable.  
Discussed the mix again.

NOTE: fix scrivener's error - Pg 134 fix MBC for OI to 0.20.

Carry all the set back regulations across the table for commercial just like multiple family – or get rid of the line,

Also add 1200 for RM 6 and also RLC – RM4 requirement of 1200 is in ord for ALF.

Set backs – footnote 4. Keep it in.

Defining "units" to create a commercial and residential.

Ritter said they should change dwelling to add residential before the word.

Wilbur says leave it. RLC is going to be unique to itself. To come up with definition would be difficult. Krieger said to add "residential" in front of Human habitation in the definition to dwelling.

That will take care of it. BOARD AGREED

Tri-plex should be changed to residential building (take out dwelling). Change for consistency. Clean up and have back for this.

Summary: clean up proposed R/LC changes and have something back for them to review as discussion.

**5. Definition of "Light Industrial"**  
**Exhibit:** Agenda Report No.5  
**Recommendation:** Discussion

Wilbur stated we should change all CL to LI. He liked IHB definition and add some of W Melb suggested uses: refrigerated storage trucks, bakeries, fruit packing, body shops, paint shops, upholstery shops and the like.

Krieger stated that LI could be added to CL. Wilbur reviewed the maps and the CL is all along I95 and has no access except Booth Road. No access – find me a flower shop that will open back in there.

CL does not fit that area along I95 or the railroad. Those are the only places we have it. Wilbur read the IHB definition. Then add some of the W Melb uses as listed above. You could put your flower shop to that. Krieger then read the Town's definition for IND.

Wilbur said you have 40 potential parcels along I95. We have had numerous businesses that want to open shop and we have no place for them. Krieger is still suggesting merging the two, CL/LI and blend the two uses. Abare said the use is typically along I95 and the RR. Wilbur said it makes more sense to have this separate use.

Wilbur read from Code on CL uses: Wilbur said Limited Commercial person is going to want roadside visibility. A barber shop could be picked up R/LC. But you would have to have a residential component.

Krieger said if Foundation Park builds up, they may want to go there. Abare said that off of R. Conlon Blvd. in Palm Bay is industrial, like a junk yard. Wilbur said a lot of the Malabar residents are blue collar workers and would love to have a place for their business. Abare asked about trade schools – they would not like this area. Wilbur said they would if they were learning tractor trailer driving. Wilbur doesn't think they should be merged.

Ryan left at 9:25.

Wilbur said there is CL on the proposed changes to maps on US 1 and those should remain; if you had blended uses you could wind up with LI on Highway 1, which they don't want.

Reilly tended to agree with Krieger and thinks they should be blended. Krieger read from Code on CL – remove the sections dealing with service – Wilbur said it then opens up Highway 1 to also use that. Ritter said why wouldn't you have LI on US1. Wilbur said it protects Highway 1 from Industrial types of uses. Ritter said what is the main difference between the two. Abare said there are certain businesses that you don't want on Highway 1. Stick those uses in LI and put it over by I95. Contractor that wants to store material or automotive repair in LI.

Ritter asked Morris about triangle. Morris explained the PUD. Their goal is to develop the entire site. They will have a concept before they will come in. Reilly wanted to finish this discussion by 10PM. Ritter said Ryan had already left.

Summary: Reilly asked Krieger to draft a couple sentences to the definition of CL to cover the LI uses. Reilly asked Wilbur to put all his LI uses into a document for next meeting.

#### H. PUBLIC:

#### I. OLD BUSINESS/NEW BUSINESS:

Mayor Tom Eschenberg said he had setback issue for Council action and they sent to P&Z Board. No action was taken. Franklin said they did act on it; they had consensus to leave as is and did memo. Mayor said any time Council sends something to P&Z he wants the Board to do a vote on it. Reilly agreed to put on for action at next meeting: Vote on Setbacks – Mayor wants a vote on this.

Resident Tom Eschenberg said after the setbacks he can only use a small portion of his land. A lot of houses are set back further back from their street and thus loose use of land. His house is 143 feet back from property line. This should only apply only to accessory structures. In the future, if there is a pro-active code enforcement there will be many violations.

Krieger is happy to discuss this again. Abare asked if Mayor had asked his neighbor about this. No.

Reilly confirmed the Site Plan and CUP will be on Council agenda for August 15, 2011. Franklin said yes. It has been advertised again so public input can be taken.

Ritter asked about the storage place on Malabar Road that is allowing tractor trailer parking off of West Railroad Avenue. Danny's Malabar Open Storage is on Highway 1 and they were made to leave there. Franklin said she can call and we will complete a Citizen Contact Form and forward to Town Administrator/Code Enforcement Officer.

#### J. ADJOURN:

There being no further business to discuss, **MOTION:** Reilly / Ritter to adjourn this meeting. **Vote:** All Ayes. The meeting adjourned 10:15 P.M.

BY:

Bob Wilbur, Chair

Debby Franklin, Recording Secretary

Date Approved

DRAFT

**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2**  
**Meeting Date: August 10, 2011**

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

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**SUBJECT: Setbacks in RR-65 Zoning**

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**BACKGROUND/HISTORY:**

This item was brought up at last P & Z Meeting on July 27, 2011. The Mayor requests for P & Z to take action on setbacks.

**ATTACHMENTS:**

- Original Packet from P & Z Packet(Agenda 5) from 4/27/2011
- Memo #11-AABO-013 for Debby Franklin
- Portion of Minutes from P & Z 7/27/11

**ACTION OPTIONS:**

Requests formal Motion to Council referencing this issue

**TOWN OF MALABAR**  
**PLANNING AND ZONING**  
**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 5**  
**Meeting Date: April 27, 2011**

**Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer**

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**SUBJECT: Setbacks in RR-65**

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**BACKGROUND/HISTORY:**

At the RTCM of March 21, 2011, the Mayor had submitted an Agenda report and sketches showing the area of a yard in RR-65. The Mayor used Article V as his reference.

There is a contradiction between the information in Article V and the information in Article III and the Table in Article III. Town staff provides the information from Article III to applicants wishing to pull a permit. Article III, with the definitions and the Tables provide all the information on zoning, size and dimension criteria and density that applicants consistently ask about.

I have also attached the memo I gave to Council on March 21 and the attachments showing this discrepancy was brought to Council attention in 1998. There are many similar issues we have come across in the Code. At the time and in subsequent times we have brought some of these issues to Council's attention.

As I state in my memo, our Code has served the residents of Malabar very well in keeping the rural lifestyle in place. From time to time it may be helpful to correct some of these contradictions.

There was no motion from Council on this issue at the RTCM of March 21, 2011. There was general consensus to allow it to go to P&Z for review and consideration.

**ATTACHMENTS:**

Mayor Eschenberg' Agenda Report and sketches dated March 21, 2011  
Clerk's memo dated March 17, 2011 with attachments  
Table 1-3.3showing setback info, Footnote 2 re: setbacks, and Table 1-3.3(E)

**ACTION OPTIONS:**

Recommendation to Council to proceed with Mayor's proposed changes to setbacks or keep existing setbacks

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO. 9

Meeting Date: March 21, 2011

Prepared By: Tom Eschenberg, Mayor

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SUBJECT: SETBACKS

**BACKGROUND:**

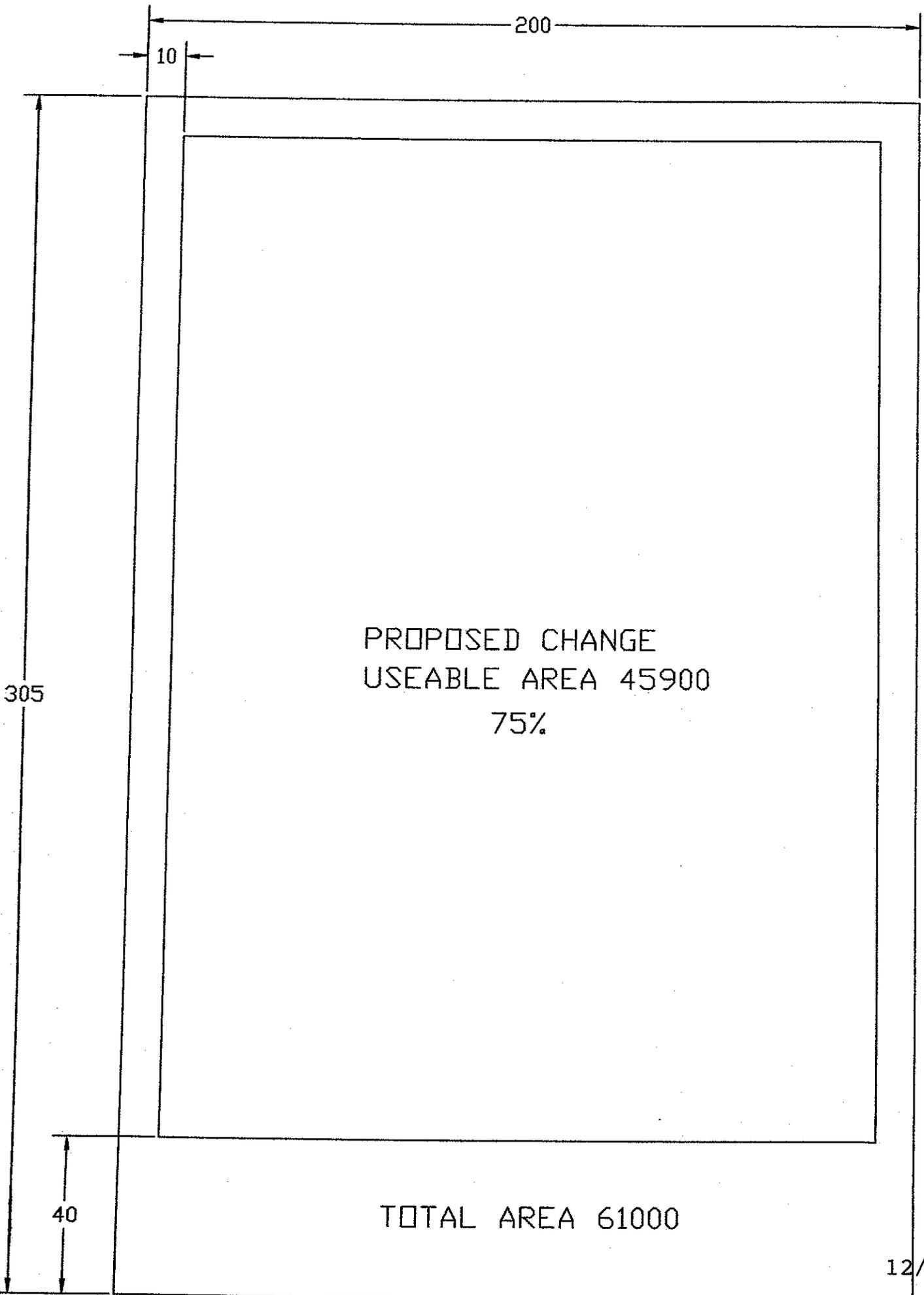
The current code is very restrictive by not allowing landowners the full use of their property. Referring to the sketch of the current code, a property owner in RR65 is allowed to use just a little over half of their property. The code measures the front setback from the center of the right of way. I have shown 40 feet from the front property line which is a more normal setback. People in RR65 usually do not build their houses 15 feet from the road. Homebuilders should be made aware that the further they set back the front of the house, the more land use they are giving up. The sketch is of a typical 1.4 acre lot in RR65. I am proposing a change in the code to 10 foot, side and rear setbacks. I cannot think of any justification for the 30 foot setback. It appears to be an unreasonable "taking" on the part of the town. The second sketch, while still restricting full use of land would be an improvement.

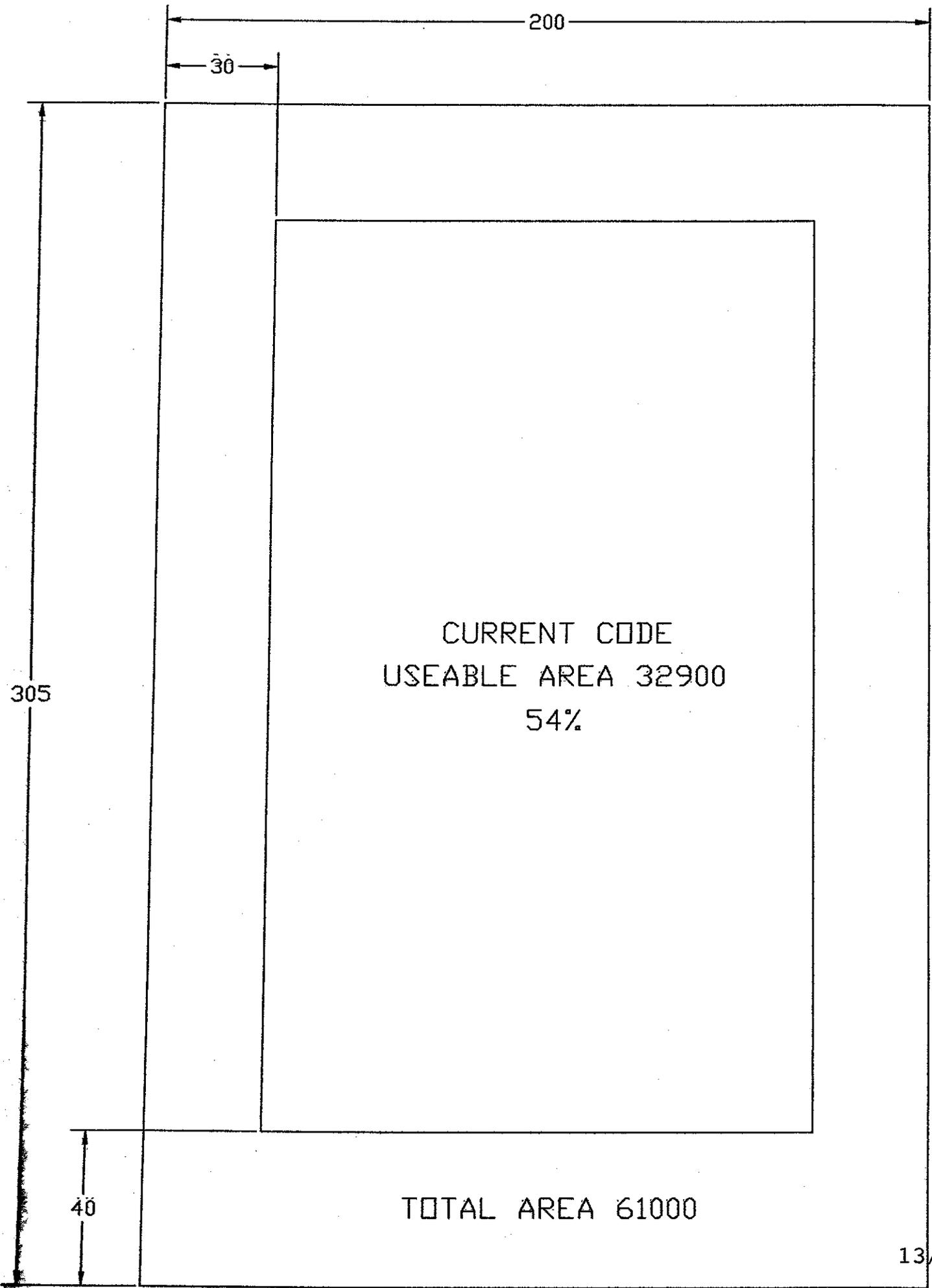
**ATTACHMENTS:**

Current and proposed setback sketches

**ACTION REQUESTED:**

Refer to Planning and Zoning for a recommendation on all residential setbacks.







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Malabar, FL 32950  
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### MEMORANDUM

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**Date:** March 17, 2011 2011-CT-048

**To:** Honorable Mayor Eschenberg

**From:** Debby K. Franklin, Town Clerk/Treasurer

**Ref:** Agenda Item Discussion – Setbacks

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The Mayor's reference to setbacks in Article V of the Land Development Code points out an example of the conflicts and contradictions within the Code. In 1998, the Municode Corp did a cursory review of our Code and pointed out this conflicting language. Later in 1998, the Malabar Code Revision Committee also discussed the contradiction in Article V regarding setbacks and assigned the Building Official and Attorney to resolve. No action came from that and the contradiction remains.

I point this out only to provide an opportunity to speak in defense of our Code. It has served Malabar very well over the years. Article III, District Provisions is probably the most referenced part of the Land Development Code as it provides the definitions for our zoning classifications, explains the maximum building coverage, lays out the lots size and dimension criteria and provides examples of allowable and conditional uses. There is not a day that goes by that we do not refer to that section of the Code.

Article V is used as a catch all for a variety of subjects related to the Land Development Code.

We acknowledge that the Code could use an updating, but feel it provides a good reference and guide to staff, developers and residents.

I have attached some documents for illustration purposes.

Municipal  
Code  
Corporation

RECEIVED JUN 10 1998

June 5, 1998



William P. Hall,  
Town Administrator  
Richard E. Torpy, Esq.  
Town Attorney  
2725 Malabar Road  
Malabar, Florida 32950-4427

Re: Editorial and State Law Analysis of the Land  
Development Code, Town of Malabar, Florida

Dear Messrs. Hall and Torpy:

Pursuant to the contract, I am enclosing the editorial and state law analysis prepared for the review and recommendation of the town staff. The analysis was prepared in the format contemplated under the contract. The Land Development Code as supplemented through ordinance number 97-5 adopted March 17, 1997 has been used as the basis for the analysis.

I would be more than happy to answer any questions and briefly discuss any matter regarding the analysis over the telephone. A more detailed explanation of the items in the analysis may be discussed at an editorial conference which may be scheduled to be held in the town.

Post Office Box 2235

1700 Capital Circle, S.W.

Malabhar, FL 32316-2235

(850) 576-3171

1-800-262-CODE

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→ {  
Copy  
Council Mayor  
VP + 2  
Bids OFF  
Committee  
Torpy

1-5.8

The reference to required side or rear yard as used in this section should be reviewed as fences, etc are not permitted in the required setbacks. The prohibiting of such fences, etc. over underground utilities should perhaps include any easements which may be used for such utilities.

→ 1-5-10

This section on building setbacks should be reviewed as setbacks are in Table 1-3.3(A) and section 1-3.3(A) and (E).

1-5.13,  
1-5.14

The sections on moving structures should probably be in building chapter of the Code of Ordinances as section 6-28 refers to damages to rights-of-way due to building activity.

1-5.15

This section on parking, storage, use, etc. of major recreational equipment should probably be in the Code of Ordinances as it is applicable to public and private property.

1-5.25  
(12)

The reference in this section to child care facility if it meets the definition of family day care home in F.S. § 402.302 (7) should be reviewed with the state law cited which declares such family day care home a valid residential use.

F.S. §  
166.0445

MALABAR CODE REVISION COMMITTEE

OBJECTIVES

REMOVE CONTRADICTIONS.

REMOVE OBSOLETE ORDINANCES.

SIMPLIFY ORDINANCES (LIMIT LEGAL TERMINOLOGY).

INDEX ORDINANCES.

COMPUTERIZE.

(21May98)

## MALABAR CODE REVISION COMMITTEE

<b>Council Member Tom Eschenberg</b>		
Tel: (H) 724-1007	(W) 729-2944	Page: 690-3042
<b>Town Counsel Rick Torpy</b>		
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<b>Code Enforcement Officer Dave Beaudry</b>		
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<b>P&amp;Z Member Bob Wilbur</b>		
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<b>Town Resident Christina Bruzzese</b>		
Tel: (H) 984-2689	(W) 723-0048	Cell: 698-3404
<b>Town Resident Richard Cameron</b>		
Tel: (H) 725-9932	(W) 723-2946	Cell: 258-3618
<b>Town Resident Gary Rasor</b>		
Tel: (H) 722-2627	(W) 259-3811	Page: None
<b>Town Resident Michael Roland</b>		
Tel: (H) 723-0889	(W) 729-6770	Cell: 258-5270
<b>Town Resident Bill Withers</b>		
Tel: (H) 951-1599	(W) None	Page: None

DISTRICT PROVISIONS

§ 1-3.3

TABLE 1-3.3(A). SIZE AND DIMENSION REGULATIONS

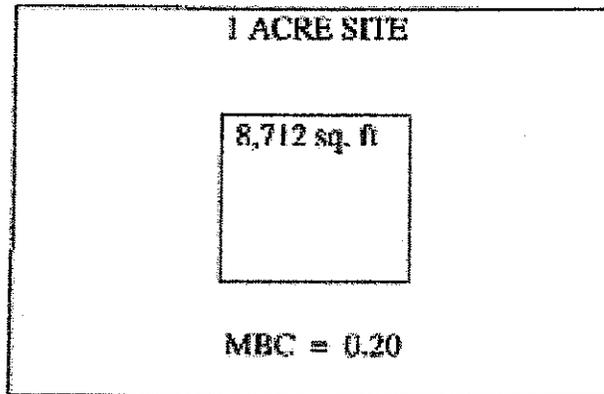
Zoning District	Minimum Lot (L)			Maximum Height (ft./stories)	Depth (ft.)	Minimum Living Area (sq. ft.)	Setback (ft.)(2)			Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Length (ft.)				Front	Rear	Side (I)				
<b>Rural Residential Development</b>													
RR-65	65,340	150	250	35/3	1,500	40	30	30	30	20	N/A	80	0.66
<b>Traditional Single Family Residential Development</b>													
RS-21	21,780	120	150	35/3	1,800	35	20	15	15	35	N/A	65	2.00
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	45	N/A	55	2.904
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	50	N/A	50	4.00
<b>Multiple Family Residential Development</b>													
RM-4	5 Acres Minimum Site	200	200	35/3	1 Bedroom: 900 2 Bedroom: 1100 3 Bedroom: 1300 Each Additional Bedroom: 120	60	40	40	40	50	N/A	50	4.00
RM-6	5 acres Minimum Site	200	200	35/3	Single Family: Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	25	20	10	10	50	n/a	50	6
<b>Mixed Use Development</b>													
R/LC	20,000	100	150	35/3	Single Family: Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	25	20	10	10	50	n/a	50	4
					Commercial: Min. Area: 900 Max. Area 4,000	50	25	10*	20	65	n/a	35	6
<b>Mobile Home Residential Development</b>													
R-MH	Site: 5 Acres Lot: 7000					10	8	8	10	50	N/A	50	6.00
<b>Office Development</b>													

TABLE 1-3.3(A). SIZE AND DIMENSION REGULATIONS

Zoning District	Minimum Lot (L)			Maximum Height (ft./stories)	Minimum Lining Area (sq. ft.)	Setback (ft./ft.)				Maximum Impervious Surface Ratio (%)	Minimum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (D)	Side (C)				
CI	20,000	100	150	35/3	Minimum Floor Area: 1000	35/60	25	20	25	65	20	35	N/A
Commercial Development													
CL	20,000	100	150	35/3	Minimum Floor Area: 900	50	25	10 <sup>a</sup> 15 <sup>b</sup>	20	65	0.20	35	N/A
CG	20,000	100	150	35/3	Min. Area: 900 Max. Area: 4,000	50	25	20 <sup>a</sup> 15 <sup>b</sup>	30	65	0.20	35	N/A
Industrial Development													
IND	20,000	100	150	35/3	Minimum Floor Area: 1200	50 100 <sup>c</sup>	25 100 <sup>e</sup>	20 100 <sup>b</sup>	30 100 <sup>d</sup>	70	0.42	30	N/A
Institutional Development													
INS	20,000	100	150	35/3	Minimum Floor Area: 1200	50	25	20	30	60	0.20 0.10 <sup>g</sup>	40	N/A
Coastal Preservation													
CP	No Size or Dimension Standards Adopted												

<sup>1</sup>Minimum size sites and lots include one-half of adjacent public right-of-way.  
<sup>2</sup>Minimum setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(E) whichever is most restrictive.  
<sup>3</sup>Setback where rear lot abuts an alley.  
<sup>4</sup>Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such case the more restrictive abutting setback shall apply.  
<sup>5</sup>Where any yard of industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.  
<sup>6</sup>Recreation activities maximum FAR shall be .10.

FIGURE 1-3.3(D). MAXIMUM BUILDING COVERAGE ILLUSTRATION



Maximum building coverage for a MBC of 0.20 = 8,712 sq. ft.

$$\text{MBC} = \frac{\text{Total Building Coverage}}{\text{Total Lot Area}}$$

E. *Building Setbacks*. Table 1-3.3(A) provides building setbacks for conventional single family lots as well as for multiple family residential and nonresidential sites. In addition to these setbacks the following building setbacks from thoroughfares shall be enforced. The required minimum setback from the thoroughfare shall be measured from the centerline of the right-of-way. The thoroughfare system is illustrated on the Future Traffic Circulation System: 2010 Map located within the traffic circulation element of the Town of Malabar comprehensive plan. The below cited table identifies rights-of-way within the Town and stipulates minimum required building setbacks from these roadways.

TABLE 1-3.3(E). ADDITIONAL BUILDING SETBACKS FROM STREETS AND ROADS

<i>Transportation Facility</i>	<i>Building Setback (feet)</i>
Arterial Roadways (150 feet R/W)	100
US 1 Highway	
Malabar Road (SR 514)	
Babcock Street (SR 507)	
Major Collector Streets (100 feet R/W)	85
Corey Road	
Weber Road	
Marie Street	
Briar Creek	
Jordan Blvd.	
Local Streets (50—60 feet R/W)	65

TOWN OF MALABAR

MEMORANDUM

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**Date:** May 20, 2011 11-AABO-013  
**To:** Debby Franklin, Town Clerk/Treasurer  
**From:** Denine Sherear, Planning & Zoning Board Secretary  
**Ref:** Comments from P & Z Board meeting April 27, 2011- Agenda item # 5  
about Setbacks in RR-65

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The P & Z Board discussed the setbacks in the RR-65 zoning, with the information presented from the Mayor. The consensus of the Board was to leave the setbacks as they are currently written in the Code for RR-65 Zoning.

Portion of P & Z Minutes from July 27, 2011- Old Business/New Business

Mayor Tom Eschenberg said he had setback issue for Council action and they sent to P&Z Board. No action was taken. Franklin said they did act on it; they had consensus to leave as is and did memo. Mayor said any time Council sends something to P&Z he wants the Board to do a vote on it. Reilly agreed to put on for action at next meeting: Vote on Setbacks – Mayor wants a vote on this.

Resident Tom Eschenberg said after the setbacks he can only use a small portion of his land. A lot of houses are set back further back from their street and thus loose use of land. His house is 143 feet back from property line. This should only apply only to accessory structures. In the future, if there is a pro-active code enforcement there will be many violations.

Krieger is happy to discuss this again. Abare asked if Mayor had asked his neighbor about this. No.

**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 3**  
**Meeting Date: August 10, 2011**

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

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**SUBJECT: Internet Cafes Defined and Regulated (Ord 2011-45)**

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**BACKGROUND/HISTORY:**

This Ordinance 2011-45 is back for review by P & Z, after Attorney revised on 7/29/2011.

This Ordinance was originally drafted by the Attorney to follow direction of Council to provide a clear definition of this use. They also wanted to further regulate these uses by requiring a Conditional Use Permit.

**ATTACHMENTS:**

- Ordinance 2011-45 (revised 7/29/2011)

**ACTION OPTIONS:**

Staff requests consensus regarding "access required to street" and staff will move forward with advertising for a Public Hearing on Ordinance 2011-45.

ORDINANCE NO. 2011-45 (REVISED 07/29/2011)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING SECTION 1-2.6.C. 3, LAND USE CLASSIFICATIONS; PROVIDING FOR AMUSEMENT ARCADE CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; ESTABLISHING AMUSEMENT ARCADE CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-6.1 (B) MAKING PROVISIONS FOR AMUSEMENT ARCADE CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS; AMENDING ARTICLE XX RELATING TO LANGUAGE AND DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, as follows:

**Section 1.** Sections 1-2.6.C.3 is hereby amended to read as follows:

"3. Commercial Amusement, enclosed. Active or passive recreation facilities by profit oriented firms where all activities are conducted within fully enclosed facilities. Facilities as defined herein as Amusement Arcade Centers and/or Electronic Gaming Establishments are permitted as conditional uses as provided for in Table 1-3.2. For purposes herein the following definitions apply:

'Arcade Amusement Center' as used in this section means a place of business which shall have 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. It is specifically intended by this definition that any place of business that does not have at least 50 coin-operated amusement games or machines on premises shall not be granted a conditional use permit to operate such a business. The provisions of Section 849.161, Florida Statutes shall apply to an Arcade Amusement Center.

'Electronic Gaming Establishment' means a business operation, which shall have at least 50 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. It is specifically intended by this definition that any place of business that does not have at least 50 electronic machines or devices shall not be granted a conditional use permit to operate such a business. This term includes, but is not limited to internet cafes, internet sweepstakes cafes, and 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."

**Section 2.** Table 1-3.2 of Section 1-3.2 of the Malabar Land Development Code is amended as follows:

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	IN S	C P
COMMERCIAL ACTIVITIES														
ENCLOSED COMMERCIAL AMUSEMENT										P2				

2. Any Arcade Amusement Center and/or Electronic Gaming Establishment shall only be approved as a conditional use in accordance with Article VI of the Malabar Land Development Code.

**Section 3.** Table 1-6.1(B) is hereby amended to provide for Amusement Arcade Centers and Electronic Gaming Establishments to read as follows:

Conditional Land Uses	Minimum Size Site	Minimum Width/Depth (feet)	Access Required to Street	Building Setback from Residential District/Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District/Nonresidential District (feet)	Perimeter Screening Residential District/Nonresidential District (5)	Curb Cut Controls
<u>Amusement Arcade Center/ Electronic Gaming Establishment</u>	<u>1 Acre</u>	<u>120</u>	Highway 1 and Babcock Street only	<u>100/30</u>	<u>N/A</u>	<u>Type A/C</u>	<u>(7)</u>

**Section 4.** Article XX of the Malabar Land Development Code is amended to change the definition of "Commercial amusement, Enclosed" to read as follows:

*"Commercial Amusement, Enclosed.* A commercial amusement establishment, the operations of which are conducted entirely within the confines of an enclosed building or structure, excluding necessary off-street parking facilities. This definition includes, but is not limited to, the following: bowling alleys, billiard and pool establishments, skating rinks, video arcades, amusement arcade centers, electronic gaming establishments and indoor theaters."

**Section 5.** Severability. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of this 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 be further assumed that the Town Council would have enacted the remainder of this ordinance without said invalid and unconstitutional provision, thereby causing said remainder to remain in full force and effect.

**Section 6.** Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

**Section 7.** Codification. The provisions of this ordinance shall become part of the land development code of the Town of Malabar.

**Section 8.** This Ordinance shall become effective 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, Steven (Steve) Rivet	_____
Council Member, Jeffrey (Jeff) McKnight	_____
Council Member, Marisa Acquaviva	_____

This ordinance was then declared to be duly passed and adopted this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Town Of Malabar  
By Mayor Tom Eschenberg

First Reading \_\_\_\_\_  
Second Reading \_\_\_\_\_

ATTEST:  
By \_\_\_\_\_  
Debby K. Franklin, C.M.C.  
Town Clerk/Treasurer

(Seal)

Approved as to form and content:

\_\_\_\_\_  
Karl W. Bohne, Jr., Town Attorney

**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4**  
**Meeting Date: August 10, 2011**

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

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**SUBJECT: Residential/Limited Commercial Zoning & Density Clarification**

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**BACKGROUND/HISTORY:**

This item is continued from last meeting to discuss the mixed use.

**ATTACHMENTS:**

- **Bring Packet from P & Z Meeting 7/27/2011**

**ACTION OPTIONS:**

Continued Board work towards a recommendation to Council.

**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 5**  
**Meeting Date: August 10, 2011**

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

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**SUBJECT: Definition of Light Industrial**

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**BACKGROUND/HISTORY:**

This item is continued from last meeting from the discussion of the proposed land use changes on the FLUM.

The action was given to Don Kreiger to draft a few sentences to define the CL to cover the LI uses. Action was also given to Bob Wilbur to put all his LI uses into a document for this next meeting.

**ATTACHMENTS:**

- **Bring Packet from P & Z Meeting 7/27/2011**

**ACTION OPTIONS:**

Continued Board work towards a recommendation to Council.

**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 6**  
**Meeting Date: August 10, 2011**

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

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**SUBJECT: Continue to Work on Requirements for Assisted Living**

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**BACKGROUND/HISTORY:**

This is continued discussion from the last P & Z Meeting to work on requirements for Assisted Living in the Town of Malabar.

**ATTACHMENTS:**

- **Bring Packets from Previous Meeting concerning this Agenda Item**

**ACTION OPTIONS:**

Board research on F.S. requirements and Florida Building Code requirements.