

TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY SEPTEMBER 28, 2011
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**

- D. CONSENT AGENDA :**
 - 1. Approval of Minutes** Planning and Zoning Meeting – 09/14/2011
Exhibit: Agenda Report No. 1
Recommendation: Motion to Approve

- E. PUBLIC HEARING: none**

- F. ACTION: none**

- G. DISCUSSION:**
 - 2. Continued Discussion with Morris Smith, P.E. Town Engineer- List of Requirements for Site Plans as they relate to Excavation and Ponds less than ¼ acre of water surface area**
Exhibit: Agenda Report No. 2
Recommendation: Discussion

 - 3. Continued Discussion Recreational Vehicles & Trailers in front yards of Residential Zoning, adding parking of Tractor Trailer Trucks in Residential Zonings.**
Exhibit: Agenda Report No. 3
Recommendation: Discussion

 - 4. Setbacks in All Residential Zoning Classifications**
Exhibit: Agenda Report No. 4
Recommendation: Discussion/Action

 - 5. Continued Discussion Residential/Limited Commercial Zoning & Density Clarification- Attorney R/LC (Ord. 2011-49)**
Exhibit: Agenda Report No. 5
Recommendation: Discussion/Action

 - 6. Continue Discussion of "Light Industrial"**
Exhibit: Agenda Report No.6
Recommendation: Discussion

 - 7. Continue to Work on Requirements for Assisted Living**
Exhibit: Agenda Report No.7
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: September 28, 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 September 14, 2011 (will be emailed on 9/24/11)

ACTION OPTIONS:

Secretary requests approval of the minutes.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: September 28, 2011

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

SUBJECT: Morris Smith, Town Engineer Discusses Requirements for Site Plan as related to Excavation and Ponds ¼ acre or less of water surface area

BACKGROUND/HISTORY:

This discussion is continued from last P& Z Meeting (9/14/2011), Morris Smith-Town Engineer will be present to discuss requirements that this Board suggested to obtain a permit for Site Plan, Excavation, and Ponds a ¼ acre or less of water surface area. Morris will provide a check list and review concerns about minor site plans.

ATTACHMENTS:

(Bring packet from P & Z Meeting 8/24/2011)

- Site Plan Review Application (4 pages) presently

ACTION OPTIONS:

Discussion to clarify requirements for Site Plan, Excavation and Ponds ¼ acre or less



TOWN OF MALABAR
2725 Malabar Road, Malabar, Florida 32950
(321) 727-7764 Ext. 16
Fax # (321) 727-9997

APPLICATION FOR SITE PLAN REVIEW

Project Name: _____ Date: _____

Developer Name: _____ Telephone: _____

Mailing Address: _____ Fax: _____

City, State, Zip: _____ Cell: _____

Name of Property Owner(s): _____ Telephone: _____

E- Mail Address: _____

Mailing Address: _____ Fax: _____

City, State, Zip: _____ Cell: _____

Name of Engineer(s): _____ Telephone: _____

Mailing Address: _____ Fax: _____

City, State, Zip: _____ Cell: _____

Name of Architect(s): _____ Telephone: _____

Mailing Address: _____

City, State, Zip: _____ Cell: _____

Legal Description of Property Covered by Application:

Township: _____ Range: _____ Section: _____ Lot/Block: _____, Parcel: _____

Subdivision: _____ Tax Acct No.: _____

Other Legal: _____

Present Land Use Designation: _____ Present Zoning Classification: _____

Zoning of abutting property: North: _____ South: _____ East: _____ West: _____

Existing and Proposed Use for Property: _____

Gross acreage: _____ Net acreage: _____ Gross density: _____

Setbacks: Required and Proposed: Front: _____ / _____ ; Rear: _____ / _____ ;

Side: _____ / _____ ; Side corner: _____ / _____

Flood Zone: _____ Per FEMA Flood Insurance Rate Map

SITE PLAN APPLICATION AND CHECKLIST

Site Acreages:

| | SF | Acres | Percentage |
|------------|----|-------|------------|
| Pervious | | | |
| Impervious | | | |
| Pond | | | |
| Total | | | |

Wetlands Present: _____ Mitigation required? _____ Permit required? _____

The applicant is required to submit TWO original Site Plans with supporting documents, 10 TEN paper copies and ONE copy on CD ROM in Portable Document Format (PDF), including graphic and textual materials and support documents. The following information is required per Article VII of the Malabar Land Development Code and must be shown on the site plan (SP) or submitted as an addendum (AD) to the site plan. Please mark where the following information can be found:

- _____ Landscape and irrigation plan (existing and proposed) shown on plans.
- _____ Boundary of property shown by a heavy line.
- _____ Access by means of paved dedicated right-of-way (driveway width).
- _____ Topographic survey for existing and proposed conditions.
- _____ Existing and proposed structures shown on site plan (including setbacks from all property lines and normal high water elevation and building separations).
- _____ Typical front, rear and side elevations of proposed structure(s).
- _____ All existing and proposed utilities (including inverts of pipes, etc)
- _____ Location of all easements.
- _____ Fire protection, existing and proposed that meet state and local requirements.
- _____ Proposed location of well.
- _____ Proposed location of septic and drainfield
- _____ Stormwater management plan (including soils report and drainage calculations)
- _____ Flood Zone(s) depicted on site plan.
- _____ Tree Location Survey identifying trees inches dbh and larger.
- _____ Tree Plan prepared or approved by a Florida registered landscape architect.

Updated 07/26/10

_____ Required Open Space/Recreational areas.

Site Plan Review - \$300 for the first acre plus \$50 per acre for each additional acre or portion thereof for projects consisting of 1,000 or more square feet of impervious surface; plus all costs, excluding advertising, administrative time, and mailing.

- Summary of Required Attachments for Site Plan Review:
 - Completed Application, including Disclosure of Ownership (Pages 1 and 2).
 - Radius Package for 500' distance from project site perimeter – obtained from the Brevard County Planning and Zoning GIS Department in Viera – call 321-633-2000
 - Fee of \$_____, in **check or money order**, payable to the Town of Malabar.
 - Site Plan – (10) paper copies plus one electronic copy.
 - Reason for Site Plan Review (attach correspondence, drawings, etc.)
 - Copies of all Federal, State, and Local agency permits. **It shall be the applicant's responsibility to obtain such outside permits.**

Signature of Applicant(s):

Date:

Signature of Town's Personnel

TOWN OF MALABAR
Disclosure of Ownership

Where the property is not owned by the applicant, a letter/letters must be attached giving the notarize consent of the owner/owners to the applicant to request a site plan review of the property.

Please complete only one of the following:

I/we, _____, being first duly sworn, depose and say that I/we, am/are the legal representative(s) of the Owners or lessee of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said are to be honest and true to the best of my/our knowledge and belief.

Applicant(s)

Date

Sworn and subscribed before me this _____ day of _____, 20__

Notary public, State of Florida

Commission No. _____ My Commission Expires _____.

.....

I/we, _____, being first duly sworn depose and say that I/we, am/are the Owner(s) of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my/our knowledge and belief.

Applicant(s)

Date

Sworn and subscribed before me this day _____ day of _____, 20__

Notary Public, State of Florida

Commission No. _____ My Commission Expires _____.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3

Meeting Date: September 28, 2011

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

SUBJECT: Continued Discussion of Recreational Vehicles & Trailer in Front yards of Residential Zoning, adding parking of Tractor Trailers in Residential Zonings

BACKGROUND/HISTORY:

This is continued discussion from last P & Z Meeting (9/14/2011); the Mayor proposes changes to allow such parking. Per the Malabar Code; the parking of recreational vehicles in the front yards is restricted.

The adding of Tractor Trailer Parking in residential zoning was an action item from the Mayor to ask Council to direct P&Z to consider truck and tractor trailer parking in residential zoning. The Councils consensus was to send this to P&Z Board for review and recommendation. Mayor said staff should present all information that Council had to this Board for their consideration while reviewing this item.

ATTACHMENTS:

(Bring Packet from P & Z Meeting 8/24/2011)

- Memo #2011-TC/T-104 from Debby Franklin, Town Clerk/Treasurer-1 page
- Agenda Item No.13 from RTCM 9/12/2011- 4 pages
- General Provisions page 263 & 264- 2 pages
- Memo #11-TA-048 from Bonilyn Wilbanks, Town Administrator- 1 page

ACTION OPTIONS:

Discussion and Work towards a recommendation to Council.

TOWN OF MALABAR

MEMORANDUM

Date: September 13, 2011 2011-TC/T-104
To: Planning and Zoning Board
From: Debby K. Franklin, Town Clerk/Treasurer
Ref: Council Action – Parking of Trucks in Residential Zoning

The Malabar Town Council agenda of September 12, 2011 had an action item from the Mayor to ask Council to direct the P&Z Board to consider truck and tractor trailer parking in residential zoning classifications. He had been asked to write a letter on Town letterhead stating he could park his trailer on his residential property. The Mayor did some research into the Code, Article V, Section 16, and discussed it with the Town attorney. They both felt that this needs to be clarified in the Code.

Mayor stated he had previously asked Council to direct P&Z Board to consider RV parking and this is similar and would also like the P&Z Board to review this. Council consensus to send this to the P&Z Board for their review and recommendation.

The Town Administrator said there have been numerous complaints about this issue not just about this resident but also about other tractor trailers that park on their residential property. She referenced problems with the turning radius of the trucks causing damage to Town culverts and open the drainage system because some drive through the ditch to get to their property. There is also damage to roads again by the turning radius of the large rigs on local dirt roads. She also mentioned EPA considerations because of our reliance on wells and the fact that parking these types of vehicles have certain EPA considerations so they don't drip fluids down into the ground.

Mayor said staff should present all information they had to P&Z Board for their consideration while reviewing this item.

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 13
Meeting Date: September 12, 2011

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

SUBJECT: Parking of Trailers in Residential Zoning – Direct P&Z to Review

BACKGROUND/HISTORY:

Council Chair, Mayor Eschenberg asked that this be placed on agenda for action by council to direct P&Z board to review and make recommendation to Council.

FINANCIAL IMPACT:

ATTACHMENTS:

Email from Mayor Eschenberg to Town Attorney Karl Bohne and response
Minutes from 1998 regarding similar issue

ACTION OPTIONS:

Direction to P&Z Board

FROM Mayor to Karl Bohne -

A Malabar resident called and asked me to send him a letter stating that it is legal for him to park a work trailer at his home. The trailer is owned by the company he works for. The company requires him to pick up the trailer in Orlando in the morning and return it to Orlando at the end of the work day. The resident said the company is concerned that if he parked the trailer at his house, the town would tow it away.

I would like to help the resident and my first thought was; parking the trailer would be legal so long as it was not in the front yard. I checked the code book and the only section I could find that applies is 1-5.16. As usual, the code is somewhat muddy. The first paragraph of 1-5.16 requires vehicles without current tags to be hidden from view. The second paragraph refers to "above referenced vehicles". Above referenced vehicles seems to refer to vehicles without current tags or could it be read as any vehicles. Either way, the vehicle must belong to the property owner or legal resident. Reading it as any vehicle would preclude Uncle Jim from parking his motor home in your side yard while he visits you. Probably not original intent. Also, an "any vehicle" reading would create a code enforcement problem. Would code enforcement go from house to house and ask residents to prove ownership of any vehicles parked in their side or back yard? I don't think so.

I am going to take this to Council and ask them to either delete the second paragraph or clarify it. In the meantime, is there any way I can help the resident?

Town Clerk / Treasurer

From: Tom Eschenberg [teschenberg@cfl.rr.com]
Sent: Tuesday, September 06, 2011 2:39 PM
To: Town Clerk / Treasurer
Subject: Fwd: RE: Parking Trailers

----- Original Message -----

Subject: RE: Parking Trailers

Date: Tue, 6 Sep 2011 13:19:28 -0400

From: Karl Bohne <kbohne@fla-lawyers.com>

To: Tom Eschenberg <teschenberg@cfl.rr.com>

I can see where the confusion lies. I have searched the Town codes and it does not appear that there is any other code section that specifically addresses this point. Obviously, section 1-5.16 needs some work.

First off, the town should not tow this trailer. Worst case would be code enforcement action. However, in so much as the Town council has set a policy that the town is to only conduct proactive code enforcement it seems to me that nothing will occur until we get a complaint.

One way to read the code section referenced is to separate the two paragraphs. The first paragraph would appear to only apply to those specific vehicles that do not have a current license plate. Vehicles that do not have a current license plate would have to meet the requirements of the first paragraph.

The second paragraph appears to apply to licensed vehicles. You are correct that vehicles falling under the second paragraph must be titled in the name of the property owner or legal resident on the property.

For example, a vehicle without a current license plate must be in an enclosed building, carport or behind a barrier which obscures visibility from the street or adjacent property provided that it is not located within required yard areas as required by the first paragraph. The second paragraph would not apply to a vehicle without a current license plate because that paragraph would appear to allow the vehicle to be seen from the street or adjacent property which obviously conflicts with the first paragraph. The only way to reconcile this potential for a conflict is to declare that the second paragraph only applies to vehicles with a current license.

I think that the inclusion in the second paragraph of the phrase "shall be titled in the name of the property owner or legal resident" was intended to prevent residential lots from being vehicle storage areas. I would agree that enforcement of the ownership requirement could be difficult. Interestingly, if a vehicle is parked or stored in compliance with the first paragraph it does not appear that it needs to be titled in the property owner or legal resident. Again, more confusion or inconsistency.

The code needs to be revised. First, each paragraph should be designed to specifically meet two different situations; one for currently licensed vehicles and the other for vehicles without a current license plate. Also, the Council should amend the code to address the "title" issue. If the Council desires to keep this requirement then it should apply to both paragraphs. If they desire to remove it their needs to be safe guards in place to assure that residential properties do not become vehicle storage yards (which arguably are only allowed in the IND zoning district). In your example of "Uncle Joe" he probably could park his motor home on the property in accordance with 1-5.15; however, "Uncle Joe" would not be allowed to store a cargo trailer on the property.

I remember some years ago when the council considered some limitations on trucks it was met with fierce resistance from the citizens. So the Council should be cognizant of what happened in the past.

Right now if he has this trailer and it is not titled in his name he does run the risk of a complaint and code action. I think it is safe to say that the trailer will not be towed by the Town.

We might want to consider a code change that is more in line with the provisions of 1-5.15 and regulate how long a trailer may be parked, size limitations, location, etc. The council will need to determine if they want to limit it to trailers only. What about other types of heavy equipment?

-----Original Message-----

From: Tom Eschenberg [mailto:teschenberg@cfl.rr.com]

Sent: Monday, September 05, 2011 8:49 AM

To: Karl Bohne

Subject: Parking Trailers

Karl,
I need your opinion. Please see attached.
Tom

- (ii) Illustrate in narrative and graphic form the proposed changes to the building or structure after it has been moved, that will bring the structure into compliance with all applicable requirements of the Town's adopted Building Code as well as the Town Land Development Code.

If drawings of the structure or building to be moved showing compliance as above stated are on record with the Town already, the above requirement for drawings of the structure is waived. The Town Council, if necessary, shall request a designated professional to examine and recommend to the Town Council whether the drawings and proposed routing are compliant with Town regulations prior to issuance of a permit. The applicant shall bear costs associated with the Town's review of the plans.

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

Section 1-5.14. Structures to have access.

Every building hereafter erected or moved shall be on a lot adjacent to an approved street, and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

All lots on which structures are to be built shall have a minimum width of twenty-five (25) feet along or adjacent to an approved street. The Town Council may provide a waiver to this requirement after considering recommendations of the Planning and Zoning Board.

Section 1-5.15. Parking, storage or use of major recreational equipment.

Major recreational equipment is defined as including boats and boat trailers, pickup campers or coaches (designed to be mounted on an automotive vehicle), motorized dwellings, collapsible camping trailers or motorized dwellings, tent trailers and the like, and cases or boxes used for transporting recreational equipment whether occupied by such equipment or not.

1. No major recreational equipment shall be parked or stored in any residential front yard in any residential district for more than forty-eight (48) hours during loading or unloading.
2. No such major recreational equipment shall be used for living, sleeping, housekeeping, office, or commercial purposes when parked or stored on a residential lot, or in any location not approved for such use.
3. No such major recreational equipment shall be located within a public right-of-way.
4. If such equipment is a collapsible camping trailer, the trailer shall be stored in a collapsed state.

Mobile homes or other mobile equipment or structures used temporarily in connection with construction, used as a dwelling, office or sales room may be located temporarily in all districts

only after the release of a building permit and during the period of construction activity, under a temporary zoning permit, provided however, said trailer must be removed within ten (10) days after completion of construction.

Cross reference—Boats, marinas and waterways, ch. 5.



Section 1-5.16. Parking, storage of vehicles.

No automotive vehicles or trailers of any kind or type or any recreational equipment without required current license plates shall be parked or stored on any residentially zoned property other than in an enclosed building, carport or behind a barrier which obscures visibility from any public or approved private street, or adjacent property provided the location is not in any required yard area. This section shall not apply to operative agricultural vehicles or equipment within an RR-65 district.

Any above referenced vehicles or equipment that are visible from a public or private street or from adjacent property shall be titled to the property owner or legal resident or it shall be considered abandoned property under ordinance 3-1-77, § 1 (Section 11-26, Town of Malabar Code of Ordinances).

(Ord. No. 92-8, § 1(F), (G), 8-18-92)

Section 1-5.17. Proximity of dwelling units to railroad tracks.

No dwelling unit shall be located closer than five hundred (500) feet from the railroad tracks unless it has been soundproofed to attenuate an exterior sound pressure level of one hundred (100) decibels.

Section 1-5.18. Standards for required on-site or off-site improvements.

All sidewalks, other walkways, streets, drainage facilities, utilities or other on- or off-site improvements shall meet applicable standards of the Town's subdivision regulations for sidewalks.

Section 1-5.19. Keeping of animals.

The keeping of grazing animals shall be allowed in any rural residential district provided that where the lot size is less than two and one-half (2½) acres, one (1) animal shall be allowed for the first acre plus one (1) additional animal for each additional one-half (½) acre thereafter.

Cross reference—Animals, ch. 4.

Section 1-5.20. Reserved.

Editor's note—Ordinance No. 04-08, § 3, adopted July 12, 2004, repealed § 1-5.20 in its entirety. Formerly, such section pertained to residential structures on lots less than one acre in area and derived from Ord. No. 90-5, 4-17-90.

TOWN OF MALABAR

MEMORANDUM

Date: September 22, 2011 11-TA-048
To: Bob Wilbur, Planning & Zoning Board Chairman
From: Bonilyn Wilbanks, Town Administrator
Ref: Tractor Trailer Parking in Residential Yards

The Council has forwarded the issue of tractor-trailer parking on residential property to you for review and recommendations. At the Council Meeting, I expressed concerns on two items that the Council asked that I bring to your attention as you consider the matter. The items of concern are:

- Damage to swales and culverts
- Contamination of ground water from leaking fluids onto the ground that percolates into the ground and possible EPA violations
- Residents "renting" out the properties for truck parking

Currently on Kelly Lane we have just recently replaced the culvert at the intersection of Atz Road & Kelly Lane. The intersection has already been worn down and the home owner's mitered end is cracked on one side. Without proper monitoring more damage could be done if they drive across the swales.

In researching this matter with EPA they advised that they do not prohibit the parking on private property, however, if the truck leaks and contaminates the ground soil the property owner would be responsible for cleaning up per EPA standards and a fine. This is critical as we have so many residents on wells and this contamination could impact the ground water. It is recommended that the resident be informed of this information prior to parking the vehicle. Perhaps a way to insure this would be to have the resident sign a form stating the responsibility for the property owner.

If there is further information that you would like on this matter, I would be happy to assist the board member in any way I can.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4

Meeting Date: September 28, 2011

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

SUBJECT: Setbacks in All Residential Zoning Classifications

BACKGROUND/HISTORY:

There was a recommendation sent to Council from the 8/10/11 P&Z Meeting. It only made recommendation to the RR-65 Zoning. The Mayor asked Council for the Item to be sent back to P&Z for their consideration of setbacks in all residential zoning classifications. He had stated it was his oversight. The Council consensus was to bring this back to P&Z.

ATTACHMENTS:

- Memo #2011-TC/T-103 from Debby Franklin – 1 page
- Agenda Item No. 4 from RTCM 9/12/2011- 5 pages
- Email from Debby Franklin, Town Clerk/Treasurer , Directions from Town Attorney-1 page
- Article V, General Provisions from Code Book-4 pages
- Ordinance No. 7-8-83 (Page 4)- 1 page
-

ACTION OPTIONS:

Requests discussion and consideration of setbacks in all residential zoning classifications

TOWN OF MALABAR

MEMORANDUM

Date: September 13, 2011 2011-TC/T-103
To: Planning and Zoning Board
From: Debby K. Franklin, Town Clerk/Treasurer
Ref: Council Action - Setbacks

The Malabar Town Council agenda of September 12, 2011 had a recommendation from the P&Z Board regarding setbacks. There was no action taken on this item. The Mayor asked that the item be sent back to P&Z for their consideration of setbacks in all residential zoning classifications, not just RR-65. He stated it was his oversight. Council consensus to send this back to P&Z Board for further consideration of setbacks in all residential zoning classifications.

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 4

Meeting Date: September 12, 2011

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

SUBJECT: Recommendation from Planning & Zoning Board

BACKGROUND/HISTORY:

The Planning and Zoning Board reconsidered setbacks in Rural Residential and took formal action at their meeting on August 10, 2011. They had previously considered this item at their meeting in April and had consensus that current code did not need changing. The Mayor asked that Council direct that they take formal action on this item.

At their 8/10/11 meeting they recommended providing a new foot note #7 to Table 1-3.3.A. to provide for lessor side and rear setbacks for auxiliary buildings in RR-65 zoning. The setbacks could be 15 feet as long as the maximum height of the auxiliary building did not exceed 15 feet.

I have provided a marked up copy of the Table 1-3,3(A) showing a footnote 7.

FINANCIAL IMPACT:

ATTACHMENTS:

Memo 11-AABO-016 from Denine Sherear, Secretary to P&Z Board

DRAFT minutes from P&Z 8/10/11

Amended Table 1-3.3(A)

ACTION:

Staff requests Action on Recommendation

TOWN OF MALABAR

MEMORANDUM

Date: August 24, 2011 11-AABO-016
To: Debby Franklin, Town Clerk/Treasurer
Town Council
From: Denine Sherear, Planning & Zoning Board Secretary
Ref: Recommendation to Council about Setbacks in RR-65 Zoning in the
Town of Malabar.

The Planning & Zoning Board reviewed direction from Council about Setbacks in the RR-65 Zoning in the Town of Malabar at the Meeting on August 10, 2011.

Motion to Council is:

Motion: Abare / Ritter Recommend To Council to add a footnote #7 in Table 1-3.3(A) in the RR-65 zoning that the sides and rear setbacks reduced to 15 ft for Auxiliary Structures only, and for the Maximum Height not to exceed the modified setbacks. All Vote: All Ayes all 5

ATTACHEMENTS:

- Draft Portion of P&Z Minutes of 8/10/2011

Portion of P & Z Draft Minutes of 8/10/2011

F. ACTION:

2. Setbacks in RR-65 Zoning
Exhibit: Agenda Report No. 2

Recommendation: Action

Reilly explains that the Mayor wanted action item, where a vote was taken.

Krieger there are issues here:

- The house on the property line, you don't want a 35 feet house on the property line
- If you put a shed or something within ten ft of property line, an auxiliary structure of some sort you need to talk about relative height.

Krieger asks if you can add to table that auxiliary structures are exempt and have something else like a ten ft rule.

Wilbur adds that he looked at setbacks in other designations, it is not that much greater than anywhere else. The Board is discussing that setbacks were established in RR- 65, to keep property back and fire apparatus to get to property.

Abare is seeing the current setbacks 40 front, 30 sides, 30 rear in RR-65. In Coquina Pt subdivision they are 15 on the sides.

Krieger adds your setbacks can be greater, but not less than the Town.

Abare states what is up for review is 30 ft each side and 30 in the rear. If we went to something less than 30 ft the ht should be less.

Abare, if you went to 15 feet the building couldn't be greater than 15 ft tall. I would go along with 15 feet on sides and 30 on the back restriction the ht of building can't be greater than the setback.

Ritter, just on an auxiliary buildings the setback with ht and add a few ft.

Krieger asks what we would physically change in code. 1-3.3A Reilly suggest to leave setbacks and put notes that would say, leave at 30 for houses, and for auxiliary structures between 10- 30 feet that the height not to exceed the distance of the setback.

Ritter suggest setbacks determined by ht of building.

Reilly says there is a lot of people that do not meet the code, so trying correcting now.

Ritter, put something for auxiliary structures

The Board is discussing the different setbacks in reference to auxiliary building.

Reilly Options suggestions

- 1 Recommend changing setbacks from 30 ft to 10 ft as shown on page 12
- 2 Only for auxiliary structures to change to 10 ft setbacks, plus additional setback for height of bldg
- 3 The 15 ft on the side and leave 30 back and 40 front auxiliary only and height restrictions
- 4 Conditional Use for minimum of 20 ft on sides for accessory structure

Krieger auxiliary structure that may violate the setback it has to meet the criteria of the properties and are unusual and shall not be closer than 15 feet from property line, there should be wiggle room.

Ritter it depends what the structure is going to be used for.

Krieger, if building was great that 1000 sq ft it came for review.

Abare add an asterisk in the table 1.3.3(A) for an Auxiliary Building the side setbacks 15 ft and ht proportional.

Motion: Abare / Ritter Recommend To Council to add a footnote #7 in Table 1-3.3(A) in the RR-65 zoning that the sides and rear setbacks reduced to 15 ft for Auxiliary Structures only, and for the Maximum Height not to exceed the modified setbacks. All Vote: All Ayes all 5

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

| Zoning District | Minimum Lot (1) | | | Maximum Height (ft./ stories) | 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.) | Depth (ft.) | | | Front | Rear | Side (D) | Side (C) | | | | |
| Rural Residential Development | | | | | | | | | | | | | |
| RR-65 | 65,340 | 150 | 250 | 35/3 | 1,500 | 40 | 30 (17) | 30 (17) | 30 | 20 | N/A | 80 | 0.66 |
| Traditional Single Family Residential Development | | | | | | | | | | | | | |
| 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 |
| Multiple Family Residential Development | | | | | | | | | | | | | |
| 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: | 25 | 20 | 10 | 10 | 50 | n/a | 50 | 6 |
| | | | | | Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120 | 60 | 40 | 40 | 40 | 50 | n/a | 50 | 6 |
| Mixed Use Development | | | | | | | | | | | | | |
| R/LC | 20,000 | 100 | 150 | 35/3 | Single Family: | 25 | 20 | 10 | 10 | 50 | n/a | 50 | 4 |
| | | | | | Multiple Family: 1 Bedroom: 600 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120 | 50 | 25 | 10 ⁴ | 20 | 65 | n/a | 35 | 6 |
| | | | | | Commercial: Min. Area: 900 Max. Area 4,000 | | | | | 0.20 | | | |
| Mobile Home Residential Development | | | | | | | | | | | | | |
| R-MH | Site: 5 Acres Lot: 7000 | | | | | 10 | 8 | 8 | 10 | 50 | N/A | 50 | 6.00 |
| Office Development | | | | | | | | | | | | | |

DISTRICT PROVISIONS

§ 1-3.3

Supp. No. 18

123

23/33

| Zoning District | Minimum Lot (1) | | | Maximum Height (ft./ stories) | 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.) | Depth (ft.) | | | Front | Rear | Side (I) | Side (C) | | | | |
| OI | 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 ⁴ 15 ³ | 20 | 65 | 0.20 | 35 | N/A |
| | | | | | Min. Area: 900 Max. Area 4,000 | | | | | | | | N/A |
| CG | 20,000 | 100 | 150 | 35/3 | Minimum Floor Area: 1200 Minimum Hotel/Motel Area: 300 Each Unit | 50 | 25 | 20 ⁴ 15 ³ | 30 | 65 | 0.20 | 35 | N/A |
| Industrial Development | | | | | | | | | | | | | |
| IND | 20,000 | 100 | 150 | 35/3 | Minimum Floor Area: 1200 | 50 100 ⁵ | 25 100 ⁵ | 20 100 ⁵ | 30 100 ⁵ | 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 ⁶ | 40 | N/A |
| Coastal Preservation | | | | | | | | | | | | | |
| CP | No Size or Dimension Standards Adopted | | | | | | | | | | | | |

¹Minimum size sites and lots include one-half of adjacent public right-of-way.
²Minimum 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.
³Setback where rear lot line abuts an alley.
⁴Setback 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.
⁵Where any yard of industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.
⁶Recreation activities maximum FAR shall be .10.

ADD:

Footnote 7 should read "Rear and/or side setbacks for accessory structure may be reduced by up to 15 feet as long the height of the accessory structure does not exceed the new setback. Where both a rear and side set back are requested the height of the accessory structure shall not exceed the greater of the two new set backs".

Denine Sherear

From: Town Clerk / Treasurer
Sent: Tuesday, September 13, 2011 8:54 AM
To: Denine Sherear
Subject: setbacks

RE: setbacks the Attorney said to also look at Sections
1-5.4E.
1-5.6
1-5.2

Also please include page 4 from ord 7-8-83

Debby K. Franklin, C.M.C.

Town Clerk/Treasurer
Town of Malabar
2725 Malabar Road
Malabar, FL 32950
townclerk@townofmalabar.org
321-727-7764 x12
321-722-2234 Fax
321-213-8009 Cell
Town Website: www.townofmalabar.org

Please Note: Florida has a broad public records law. As a result, any written communication created or received by Town of Malabar officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.

Article V

GENERAL PROVISIONS

Section 1-5.1. Height exceptions.

The below cited appurtenances or mechanical devices typically required to be placed above roof level and not intended for human occupancy may exceed height limitations cited within this Code upon approval by the Town Council. The Town Council shall first consider the recommendation of the Planning and Zoning Board. A staff recommendation shall be provided by the Building Official and/or the Town Engineer. The appurtenances or mechanical devices shall include:

- Chimneys.
- Water Towers.
- Ventilators.
- Radio and Television Antennas.
- Other similar duly approved appurtenances or mechanical devices.

In no case shall any permitted heights be in conflict with the height regulations established for the Valkaria Airport by Brevard County and/or the Federal Aviation Administration. An elevator is hereby declared intended for human occupancy and shall not be considered for an exception to the height regulations.

(Ord. No. 08-04, § 1, 4-7-08)

 **Section 1-5.2. Encroachments into required yards.**

Every part of a required yard shall be open and unobstructed by any structure or portion of a structure from thirty (30) inches above the general ground level of the graded lot upward, except as hereinafter provided or as otherwise permitted in this chapter [Code]:

1. Fixed or movable awnings may project not over eighteen (18) inches into a required yard.
2. Chimneys, fireplace or pilaster may project not over three (3) feet into a required yard.
3. Fire escapes, stairways and balconies which are unroofed and not enclosed may project not over five (5) feet into a required rear yard, or not over three and one-half (3½) feet into a required side yard in any residential district.
4. Overhangs, hoods, canopies or marquees may project not over three (3) feet into a required yard. Notwithstanding, residential roof overhangs may extend four (4) feet into a required yard.
5. Fences, walls and hedges shall be permitted in required yards subject to the provisions established in this chapter [Code].

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

(Ord. No. 92-8, § 1(C), 8-18-92)

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

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

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

 **Section 1-5.4. Regulations for required yards.**

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

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

B. Front Yards.

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

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

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

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

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

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

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

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

Section 1-5.5. Wastewater facilities.

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

Section 1-5.6. Accessory buildings.

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

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

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

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

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

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

Section 1-5.8. Fences and walls.

(a) Definitions.

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

TOWN OF MALABAR

ORDINANCE NO. 7-9-83

F. MINIMUM YARD REQUIREMENTS (DEPTH OF FRONT AND REAR YARDS, WIDTH OF SIDE YARDS):

- 1. Front - 40 feet
- 2. Side Interior - 30 feet
- 3. Side Corner - 30 feet
- 4. Rear - 30 feet
- 5. Accessory buildings may be constructed in side and rear yards, if no portion is closer than 10 feet to the other buildings, nor closer than 30 feet to any property line.

G. MAXIMUM FLOOR AREA RATIO OR LOT COVERAGE BY ALL BUILDINGS:

- 1. 20% of lot area

H. MAXIMUM HEIGHT:

- 1. The height limits for a building shall be two and one half stories (2½), but not over 35 feet.

I. MINIMUM LIVING AREA OF RESIDENTIAL STRUCTURE: 1200 sq. ft.

J. MINIMUM OFF-STREET PARKING REQUIREMENTS:

- 1. Each lot shall have an off-street parking space for two cars, not located in required yards.

Section 2. All other ordinances or portions thereof in conflict herewith are repealed to the extent of conflict.

Section 3. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgement shall not affect, impair, invalidate or nullify the remainder of this Ordinance, but in effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgement a decree shall be rendered.

Section 4. This Ordinance shall become effective immediately upon its passage by the Town Council of Malabar, Florida.

Section 5. This Ordinance was duly passed and adopted, after two Public Hearings, at a regular meeting of the Town Council of Malabar, Florida, held on the 6th day of September, 1983.

(Seal)

M. J. Palmieri
Mayor

E. D. [Signature]
Chairman, Town Council

First Public Hearing: 8-9-83
Second Public Hearing: 8-16-83
First Reading: 8-16-83
Second Reading: 9-6-83

ATTEST: _____
Town Clerk

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 5
Meeting Date: September 28, 2011

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

SUBJECT: Residential/Limited Commercial Zoning & Density Clarification

BACKGROUND/HISTORY:

This item is continued from July 27, 2011 meeting. The Board wants to establish the criteria for R/LC so an ordinance can be drafted to amend Malabar Land Development Code to provide for R/LC for properties along Malabar Road, Babcock Street and Highway 1.

The Town Clerk sent P & Z's proposed changes to the Attorney to put in Ordinance form, after the July 27, 2011 meeting. It is back for this Boards review & recommendation.

ATTACHMENTS:

- **Bring Packet from previous Meetings which include the following:**
 - Ordinance 49-2011 from Karl Bohne- Town Attorney (8/2011) 5 pages
 - Article III, District Provisions, page 117,118, and 123
 - Page 1179 from Language and Definitions related to "UNITS"
 - Page 322 from Table 1-6.1(B) Conditional Land Use Requirements

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: September 28, 2011

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

SUBJECT: Definition of Light Industrial

BACKGROUND/HISTORY:

At the last P & Z Meeting on 9/14/2011, P & Z did not get to this Agenda Item; this Item is continued from previous meetings for the discussion of the proposed land use changes on the FLUM.

The Board discussed the suggestions submitted by Don Krieger and Bob Wilbur at last P & Z meeting on 8/10/2011. Staff was directed to get City of Sebastian's zoning for "Light Industrial". The Board is going to review all comments and suggestions and work towards a recommendation to Council.

ATTACHMENTS:

- **Bring Packet from P & Z Meeting 7/27/2011**
- **Bring packet from P & Z Meeting 8/24/2011**

ACTION OPTIONS:

Continued Board work towards a recommendation to Council.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 7

Meeting Date: September 28, 2011

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

SUBJECT: Continue to Work on Requirements for Assisted Living

BACKGROUND/HISTORY:

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

ATTACHMENTS:

- **Bring Packets from July 27,2011 Meeting concerning this Agenda Item**

ACTION OPTIONS:

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