

Recommendation: Discussion

8. Continue to Work on Requirements for Assisted Living

Exhibit: Agenda Report No.8

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: November 9, 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

Draft minutes of P&Z Board Meeting of September 28, 2011 **may be ready by Monday 11/7**

Draft minutes of P&Z Board Meeting of October 12, 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
SEPTEMBER 14, 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
	WAYNE ABARE
ALTERNATE:	CINDY ZINDEL, excused
SECRETARY:	DENINE SHEREAR
TOWN ENGINEER	MORRIS SMITH, P.E.

C. ADDITIONS/DELETIONS/CHANGES:

D. CONSENT AGENDA:

- 1. Approval of Minutes** Planning and Zoning Meeting – 08/24/2011
Exhibit: Agenda Report No. 1
Recommendation: Motion to Approve

Motion: Reilly/ Ryan To Approve the Minutes as corrected. All Vote: All Ayes

Krieger corrections, page 3 4th parag. from bottom Williams, I was trying to comply with intent of code,

Page 4 , 1st parag. last sentence correct sentence with, “ Morris, when someone knowledgeable cannot interpret code easily for homeowners to understand.”

Page 6, 4 sentences from top “Brookhollow ~~ne~~ or”

Ryan corrections, page 3 2nd parag. from top third sentence “We have a definition of a pond that’s greater than” ¼ acre in size....

Page 6, 2nd sentence from top” RV’s parked in front yards. ~~we~~ We”

Abare corrections, page 3 5th parag. from bottom, “Abare said if somebody wanted to put a pond ~~less that~~ than ¼ acre, they should show on the survey where it meets the setbacks and where is located.

Page 6, after second parag. “1- “I don’t like the look of it”

E. PUBLIC HEARING:

F. ACTION:

- 2. Internet Cafes Defined and Regulated (Ord. 2011-48)**
Exhibit: Agenda Report No. 2
Recommendation: Action

Motion: Reilly/Krieger To Recommend to Council Ordinance 2011-48 revised 7/29/2011, then later revised by PZ Board on 8/24/2011. ALL Vote Aye, Wilbur, Krieger, Reilly, Ryan, Ritter .

G. DISCUSSION:**3. Morris Smith, P.E. Town Engineer- Requirements for Site Plans as they relate to Excavation and Ponds less than ¼ acre of water surface area****Exhibit:** Agenda Report No. 3**Recommendation:** Discussion

Morris went back through Town Ordinances to 1978, several places there are in conflict, especially in setback area.

(Morris submitted "EXHIBIT A" attached)

Morris is explaining to Board, the research he did on the Ordinances'. Morris explains that the Town is on record in the 2003 Ordinance for wanting to allow our homeowners to dig something a ¼ or less without going through a giant process. The ¼ acre or less still trips the 1,000 sq ft requirement for a site plan.

Morris suggests a real simple thing to change, at bottom the bottom of summary it seem to me a simple thing to change without changing a lot of paragraphs and codes and re codify things.

We have a list of items, that require a minor site, but it does not include surface water area less than ¼ acre. We can insert this as item "D". This would be a simplest way it would allow the Engineer and Building Official to review this process.

Morris suggest we have to add some kind of activity, I came up with the word, "soil displacement" In 2010, the amendment of code 2010-30, section1, item "F", it is added that the Town Engineer and discretion may waive the requirements for the pond permit, for the construction of the pond considering the size of the pond, its location, its intended use, and any other factors the Engineer deems appropriate in considering the waive of a pond permit for the construction of a pond. If we require a minor site plan because we are tripping the 1,000 sq ft surface area displacement, it is the trees and brush.

Ritter, if on minor site plan, and does not require for displacement of ground for ¼ acre in size, then how would you determine if the soil needs to be kept on property. Morris replies that Town Council would have to re write the Code.

Reilly asks if the only suggestion is to make it a minor site plan.

Morris suggests that there is a list of (4) things for Minor Site Plan:

- Setback
- Silt fence
- Best management process
- Check List

As soon as we say greater than 1,000 sq ft we require a site plan review. But the "Minor Site Plan", gives me the Engineer and Building Official the check list ability.

Krieger is discussing about the dirt not leaving Malabar. Abare adds that a pond might aid in water retention.

Morris explains if you are in the flood plain you are reducing the ability of the flood plain by and that dirt, digging a pond for storm water storage

The Board is discussing the property on Lett Lane that wants to build a pond on adjacent parcel and then spread dirt accordingly on both properties.

Abare commented that he was told that wetland determinations are good for 5 years and then reset.

Abare asks if Town can be liable for if something was approved by the Town and then later DEP came back and said wetlands were disturbed.

Morris explains that we ask for DEP letter when a permit is applied for, for building.

Krieger as we do more research into this issue in reference to pond, who is doing this Staff or Engineer and do we have permission from Council to spend time of staff to this kind of work, normally we ask for information and we process the information.

Morris explains that staff has done 90% of the work and I have done about two hours reading and going through the information.

Ritter adds that we could put stipulation in section for pond and expand the definitions to cover the issues.

Wilbur agrees that there should be an oversight of the project and should be easy and affordable.

Morris explains to Board that there are several agencies that have independent stipulations based on the particular site. Morris explains that the Code says they can move the dirt in particular circumstances.

Krieger asks about Ord. 7-19 85 is there a pond less than ¼ acres? Morris responds that at last meeting anytime we say "pond" it does not refer to anything less than ¼ acre.

Morris explains in 78' they refer to as holding ponds and retention ponds, Krieger adds that in 1985 we had a definition of ponds being any water body than after that we added a definition of a ¼ acre, which doesn't mean that there is not ponds less than a ¼ acre, it is just not defined within the body that is needs to be defined, but it is there in our Ordinances.

Morris says anything less than ¼ acre is a hole in the ground. Ryan looked up the definition of a **Pond is: a body of water usually smaller than a lake. Lake is: a considerable inland body of standing water.**

Reilly, reads page 273 definitions/general provisions and reads Pond Definition: shall mean any excavation for the purpose of retaining water were in the surface area is ¼ acre in size or greater. So if it is under ¼ acre it is not a pond. Reilly suggests we should have another definition for ponds less than ¼ acre, which is "soil displacement".

Morris is explaining the "minor site plan" and "full site plan", the minor site plan gives the Town Engineer and Building Official the lead way to use discretion.

Morris explains that for a "minor site plan",

- a residential project comprised of a single building
- projects containing less than 1,000 sq ft of new impervious surface
- a single family home & accessory buildings for ponds, which require a site plan approval for 1-7.1-5 we could add a letter to that code.

Morris suggests that any major or minor site plan there should be a required pre- application meeting.

Krieger suggests name for pond ¼ acre or less: "man made water body, retention and/or aesthetic man made water bodies less than ¼ acre in surface size"

Morris suggests, for the soil, a soil displacement activity.

Krieger asks what this would be called, Morris responds" Minor Site Plan".

Reilly suggests adding to definitions.

Wilbur suggests to repeal the Ord. 03 11 and do away with a ¼ acre or less no permit. If you want to dig a pond you get a permit. For certain sizes we can minimize the requirements.

Ritter's concern is that dirt stays on site when doing excavating and the dirt is distributed.

Ryan discussing with Board about recommending to eliminating Ord. 03 11. Ritter adds that we need to make sure everything else is taken care of and covered.

Reilly requests for next meeting:

- the 1978 Ord.
- the 1985 Ord.
- the 2003 Ord.

Bring back to next meeting

Morris left 8:30 PM

4. Continue Recreational Vehicles & Trailers in front yards of-Residential Zoning

Exhibit: Agenda Report No. 4

Recommendation: Discussion

Reilly explains to the Board that that Denine has more information on this Item so there is no action comes out of this meeting there is more data to review, just discussion.

There will be more discussion next meeting.

Wilbur opens to public- speaker cards submitted

Bob Rossman 1635 Country Cove, Malabar FL. I have been a resident of Malabar for 22 years. When I came to this County I was allowed to live anywhere, we picked Malabar for a specific reason. I was employed by Palm Bay, and I do not want to see Malabar become like Palm Bay. That is why I am here; a majority of my life was in law enforcement.

Every Monday for the last six years, I do meals on wheels; I have watched this Town to go to the Town that appears to be more & more like Palm Bay. The property rights in Palm Bay allow people to do anything they want.

Rossman, what brought this trailer issue to attention, was the house on Corey Rd and Atz Rd. Rossman mentions Benjamin Road and the beautiful homes that have large facilities to park RV's and campers inside.

Rossman explains that if you drive through the Town a lot of people that have boats, RV, Campers, and they also have a facility to park them in.

If you have a smaller parcel there is no limit of places that you could put & store things in this Town. Some people in this Town want to change things in this Town what we do to accommodate themselves, I am totally opposed to it. I liked the way the Town was. I love this Town. I am a little disappointed of what I see what is going on in this Town. You can enforce it we do not have to be repressive, we can use discretion. Changing what we have now is not the right way to do it. Enforcing the way we do it might be the right way to go about doing it,

Reilly asked Rossman not sure what he wants, if he is for or against the issue.

Rossman explains, "I am opposed to changing what the current way we do it.

There is a way to do this is and discretion, means if we have a violation this is what our codes are. It is about enforcing our codes.

Abare and the Board is discussing different scenarios with Mr. Rossman concerning boat/ trailers behind the front line of the house.

Krieger asks if Country Cove has a facility to park RV's, it was suggested to residents to use facilities outside Country Cove. Rossman believes it was due to aesthetics reasons.

Rossmann, I don't think that having these RV's & boats, etc affects the property value, I believe it is aesthetics.

Bill Withers, 2324 Candy Lane, Malabar, I am in opposition to this issue.

At last Meeting, our Mayor brought up some things that this was one of his pet projects, People want to change the existing code these are our Community Standards of our Town and they are usually our, minimum standards of our Town. But, what about those that comply with this law, and put it behind the house,

Another thing the Mayor said, it will lower property values, I owned a real-estate company locally, the non conforming homeowner, the homeowner affects the adjoining property value around you. My trailer is in my backyard. If you approve this, it will open up the door down the road for more standards to change.

We have codes why change them, because one man wants too. Some of this just happened, we have no code enforcement.

Withers, suggested that Bonnie can go out and be code enforcement. The house that started all this is on NE corner Corey Rd and Atz Rd, in the front driveway is about a 35' home trailer. There are other home trailers around town and some are being lived in.

Withers, apathy rules the politics in this Town, it is unfortunate.

Abare, it is my understandings we don't currently have proactive code enforcement.

Tom Eschenberg, 2345 Beran Lane Malabar, Parking RV- Issue The additional information came out of the Council Monday evening which came out of parking RV's – Section 1-15.5. The issue that came up at Council was 1-15-6 which has to do with parking other vehicles other than recreational vehicles. It was an issue that came because a resident called me. It is indirectly related, has to do with parking vehicles in the yard. It can definitely be handled separately, but if there is any changes to be made it can be done all together. The 1-15.6 would apply more towards commercial trailers.

Tom expressed we are no where's near as Palm Bay as far as code enforcement is concerned. Palm Bay has been extremely aggressive, in enforcing their Codes.

Tom addresses filing complaints, Mr. Withers said he has filed complaints with Bonnie. When I brought up the issue to Council about parking RV's in the front yard, I asked Council to send to P & Z for a recommendation. Bonnie brought up that she had a current situation with a RV parked in the front yard, she asked if she should hold off enforcing this issue until this gets resolved and Council said, "Yes, hold off".

In 1995 that was the first year I ran for Council, philosophy is what behind this is what is behind all this, it is not because people are not follow the code. Back in 95' I sent out a couple campaign letters my main theme was "Freedom". That has always been my political philosophy to give people as much freedom as possible. That is all I am thinking of here.

Look at the Code, are we giving the people of Malabar all the Freedom we can possibly give them or is there some valued reason we should limit their freedom.

A few other recommendations:

> Living in a trailer- this is a violation you can't live in a trailer
Just think about how much freedom you can give the people.

Ryan, states that the word "Freedom", is pretty broad, does someone really have the freedom to do what you want, even if it against the law.

Tom responds that you as law makers have to give them that freedom, not take it away from them.

Ryan, Council is reactive not proactive, if there is a lot of abuse of Town Ord., they have to document what is going on.

Abare adds that if you got an RV and someone is parking on their driveway and they move it because they are not meeting the Code, they move it to their side yard. Then have issues with the grass growing and not being cut. If they have a long driveway they might be better to leave it in the driveway.

Wilbur talks about required front yard setbacks, as long as it is behind that required setback they are ok.

Wilbur, if someone has an issue with RV's in the Front yard; they should have it in a storage unit area or has an extra lot to park it.

Abare, if you have a large piece of land, you can set your house further back your RV's have to be further back, might recommend that the Ord. be updated.

Wilbur said to leave it "as is". As long as you're not encroaching into that required front yard setback, in whatever zoning you are in.

Wilbur, code enforcement, most cases, parked being used and someone is living in. Boats most people comply A lot pour concrete pads and put down the side of the house. Wilbur suggests staying with reactive code enforcement it is a lot more civilized.

Krieger with time and a good set of Ord. if you do it correctly and with discretion the RR-65 is what this is all about, I am into freedom. If you don't like freedom then form a homeowners association.

Ritter if someone comes in with a complaint then you have to enforce the code.

Reilly we don't have to do anything, just go along with the front set backs.

Wilbur explained to the Board, that we do have code enforcement and how he gave addresses along Malabar Road to Code enforcement and it was addressed.

Reilly agrees with Wilbur that we don't have to do anything and base it on, "no major recreation vehicles should be stored in any residential front yard" then look up definition of "front yard" go to the provisions of the Town of Malabar, it is a horizontal line is determined by Table 1-3.3(A) size & dimension regulated setbacks you go to different zones.

Ritter adds that the ones that are offensive to others are the ones that are in the front yards near the roadways.

The Board is discussing using Table 1-3.3(A) to clarify the front setbacks.

Ritter suggests instead of front yard it should be required front yard setbacks in whatever district they are in, there is no question. It just clarifying the situation.

Krieger asks if there is away to do this with policy rather than changing Ordinances.

Reilly receive new date and continue discussion.

The following Items 5-6-7 will be discussed at a future meeting.

- 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:

Tom Eschenberg 2935 Beran Lane, Malabar FL. The Council had recommendation about setbacks, about 15 feet. I convinced Council to send back to P & Z to look at other residential setbacks. I over looked this.

I. OLD BUSINESS/NEW BUSINESS:

J. ADJOURN:

There being no further business to discuss, **MOTION: Ryan / Reilly to adjourn this meeting. Vote: All Ayes.** The meeting adjourned 9:30 P.M.

BY:

Bob Wilbur, Chair

Denine Sherear, Recording Secretary

Date Approved

“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
OCTOBER 12, 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, excused
	WAYNE ABARE, voting
ALTERNATE:	CINDY ZINDEL, excused
SECRETARY:	DENINE SHEREAR
TOWN ENGINEER	MORRIS SMITH, P.E., excused

C. ADDITIONS/DELETIONS/CHANGES:

D. CONSENT AGENDA:

~~1. Approval of Minutes Planning and Zoning Meeting 09/14/2011
Planning and Zoning Meeting 09/28/2011
Exhibit: Agenda Report No. 1
Recommendation: Motion to Approve~~

Not ready yet

E. PUBLIC HEARING:

F. ACTION:

G. DISCUSSION:

- 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

Reilly suggests that somebody needs to go through both Ordinances 91 & 03 to compare and simplify. Wilbur adds now that we have an engineer on board to better advise us of different situations and a check list handed out at the 9/28/11 PZ Meeting.

Abare notes that in Ord 91-1, there is no off site dirt disposal permitted, than later it says you can take muck off site.

Reilly clarifies, that you can take muck off site and leave top soil.

Krieger does not mind championing the Ordinance's 91 & 03, but as a group we are trying to simplify smaller than a ¼ acre pond issues. Generally the solution of this is not to change Ordinances', but to work with what we are to solve problems at hand; right now we have a set of existing rules. Krieger adds that we should have a simple template for simple buildings.

Reilly explains that we are trying to solve under ¼ acre. Wilbur suggests "minor pond".

Krieger suggests we should call it a "decorative water body", not a pond. Also, that we do have agencies such as St. Johns Water Management, and DEP involved, as long as the rules are followed for them and ok'd by those organizations, it will go through the "Town" with simple procedures.

Krieger agrees that he can look at both Ordinances and bring back to Board, noting 2 areas (1) don't take dirt off property. (2) no mining of dirt.

Abare states that when building a house & digging a pond you need to know where the dirt goes.

Krieger says that you should not take dirt out of Malabar. Abare said the ponds help the drainage.

Reilly gives the pond definition out of the code book to the Board. (page273)

Reilly suggests that we should come up with a "Minor Pond", to simplify for less than ¼ acre ponds.

Wilbur notes that the definition of pond in 91 Ord. is 200 sq ft. anything smaller than 200 sq ft would be a hole in the ground.

Wilbur suggests to go back to the 91 Ord., but 03 Ord. has a lot of good points that the cut off is too great.

Wilbur says you can do a Pond "A" and Pond "B":

Pond A 200 sq ft or less

Pond B 200 sq ft or more

The Board is discussing combining both Ordinances 91 & 03.

Wilbur explains to the Board that the Town Engineer was trying to simplify things so that we don't have to change Ordinance.

Abare suggests cleaning up 2003 Ord. and redefining "minor pond", under 1,000 sq ft. & not allowing dirt to be hauled off.

Reilly suggests redefining in the General Provisions:

POND: Add Pond "A" 0-1,000 sq ft or less- "Minor Site Plan Review" with the check list.

LAKE: Add Pond "B" 1,000- up sq ft or more- "Major Site Plan review"

Reilly sums up that to go through the 2003 Ord. and see what places that we need to add the verbiage, in Code Book, page 269 Sec 1-5.27 in General Provisions

Abare is going to review and bring back to Board, to include three things:

1. Definition of size
2. Maintaining fill on property
3. Using check list for "Minor" * & "Major"

3. Continued Discussion Recreational Vehicles & Trailers in front yards of Residential Zoning

Exhibit: Agenda Report No. 3

Recommendation: Discussion

Abare, if the front setbacks were meet, it didn't have to be the front of the house it could be front setback.

Reilly replies with that the lawyer said that was wrong. Wilbur responds with in reference to fence Ord. that changed everything.

Krieger, stated that two meetings ago Reilly brought up the fact about the setbacks.

Krieger reviews that the memo from the attorney was given at the meeting, it is not understood that the attorney thinks that things are affected outside the fence Ord.

Krieger is discussing the two front yards that the attorney brought up

- The defined front yard
- required front yard

Krieger brings up the Nuisance Ord., it seems as though we already have the rules it's a matter if you have something in your front yard maybe put a hedge to deflect the site.

Abare should we send a statement to Council that we collective believe that the current Ordinances allow these things beyond the required front setback. Abare explaining that this is our interpretation.

The Board is discussing Front yard setbacks, Reilly explains that the Fence Ord. calls front yard setbacks from the center of the road; Krieger adds that any structures any projections thereof.

Abare suggest that we believe that the current Ord. would allow these vehicles if they are behind the front setback, not the required front yard and send to Council.

Krieger reads any projection in fact the setback line 1187 definition in code book

Krieger asks if this can be done without changing the Ord. and be done by Resolution as an interpretation.

Wilbur suggests directing attorney to change Section 1-5.15 to change the term to "Required Front Yard" and any other related changes that are needed in definitions.

Motion: Reilly/ Ryan Recommendation to Council that Our interpretation of Section 1-5.15 of the Current Ord. Item #1 Paragraph change Residential Front Yard to Required Front Yard. Yards are within setbacks, as defined in Table 1-3.3(A)Update the definition of 1-20.2 Language & definition of yard , front yard, rear yard and side yard All Vote: 4 Ayes: Wilbur, Ryan, Reilly, Abare 1 Nay: Kreiger

4. Continued Discussion for Parking of Tractor Trailer Trucks in Residential Zonings

Exhibit: Agenda Report No. 4

Recommendation: Discussion/Action

Reilly is reading to Board Section 1-5.16 from Code Book.

Ryan what of someone puts up a pole barn for temp construction, it would be under building permit,

Wilbur, reads letter from Sept 6, 2011 from Town Attorney Karl Bohne.

Wilbur suggest to get consistency

Abare, can we stop someone from parking an 18 wheeler in there yard?

Krieger, about letter for Tractor Trailer

Abare asks about 18 wheelers breaking roads and culverts, Krieger responds that if the roads are built right with proper specifications or the road is built wrong, he brought up the Ord. that if there is construction and road is damaged then they are responsible for repair.

Abare with current Ordinance if a tractor trailer parks,

The Board is discussing parking tractor trailers in residential zoning. Ord. visibility can you see it? and who has the ownership of truck?

The Ord./ Code that Reilly read Section 1-5.16 from Code Book, has to do with two things

- Visibility, is it behind house of garage
- Ownership

Reilly what can we do with this verbiage, anything exceeding greater than GVW 2.5 tons? Or by axels?

Krieger asks if there are weight limits on roads in the Town. Roads are built according to specification.

Krieger asks different between parked or stored vehicle?

The Board discusses different options for limits concerning Tractor Trailers.

Reilly suggests for next time:

Option:

- GVW weight
- Axels
- Storing

Ryan what do other municipalities have in place as far as Tractor Trailers?

Bring back next meeting.

Wilbur reads what Attorney wrote; the Board needs to look at this next meeting.

Agenda Items 5,6,7,8 for next Meeting Agenda.

Wilbur suggests reviewing the setbacks- Agenda #5 so we are not too liberal with setbacks, and look at fire codes so things are not jammed up.

5. Continued Discussion Setbacks in All Residential Zoning Classifications

Exhibit: Agenda Report No. 5

Recommendation: Discussion/Action

6. Continued Discussion Residential/Limited Commercial Zoning & Density Clarification- Attorney R/LC (Ord. 2011-49)

Exhibit: Agenda Report No. 6

Recommendation: Discussion/Action

7. Continue Discussion of "Light Industrial"

Exhibit: Agenda Report No.7

Recommendation: Discussion

8. Continue to Work on Requirements for Assisted Living

Exhibit: Agenda Report No.8

Recommendation: Discussion

H. PUBLIC:

Tom Eschenberg 2835 Beran Lane, Malabar FL. Comments about RV'S & Trailers parked in front yard, I was surprised you took action and made recommendation to Council, reason being that there wasn't proper notice given to public if public had known you were going to take action on this item public would have come. Without proper notice to the public I don't think it was proper for you to make recommendation to Council tonight. It should be on next meeting for action item so the public would know. A couple things missing from recommendation, is to add definition for RV For example: a race care, with RV – Toy Haulers

Wilbur, tractor trailers need to define

Tom- this started because all the RV's parked in front yards. I brought a recommendation to Council, and then sent off to P &Z. There were minor things that weren't addressed, Section 1-5.15:

- About pop up trailers not being popped up, I want to eliminate this.
- You can't sleep over night, exemption kids under the age of 15

There had been a complaint made about an RV parked in driveway at Corey Rd & Atz Rd. Bonnie had mentioned that she needed to go out as a code enforcement issue.

Tom had given Teen Council this RV parking issue, the teen council passed motion to allow RV's to park in front yards anywhere in Malabar. Tom is going to bring back to Teen Council to show unintended consequences of what they passed.

Tom explaining different scenarios for Teen Council.

Tom speaking about the parking of Tractor Trailers in Malabar, it is in the Land Development Code, P &Z has to deal with it first,

There is two ways to do it:

- You can send some stuff down
- Revise the Ord, and send you an Ord.

Tom adds he would like to see people do whatever they want on their property as long as it doesn't affect someone else.

The wording of Ordinance needs to be change and allow people to do whatever they want as long as it doesn't affect anyone else allow land owner as much freedom with their land.

Krieger comments that if there is a business on property they should have a BTR License.

Ryan adds you can't simplify laws, there is always going to be an unforeseen area.

I. OLD BUSINESS/NEW BUSINESS:

Krieger impressed with drainage with storm this past week. The only thing I saw was in the newspaper having to do with Quarterman that has been an ongoing.

J. ADJOURN:

There being no further business to discuss, **MOTION:** Ryan / Reilly to adjourn this meeting.

Vote: All Ayes. The meeting adjourned 9:45 P.M.

BY:

Bob Wilbur, Chair

Denine Sherear, Recording Secretary

Date Approved

CONFIDENTIAL

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: Nov 9, 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 (10/12/2011), this Board suggested to obtain a permit for Site Plan, Excavation, and Ponds a ¼ acre or less of water surface area. This Board is reviewing all information and provides a check list suggesting "minor site plan review" that will have an "A" Pond & "B" Pond designating large and small ponds for review. I have researched the pond information and emailed the Brevard County information for review.

This minor site plan review and check list will assist our Town staff in obtaining compliance with the S.N.A.P Program (Simplified Nimble Accelerated Permitting). This program, supported by the Economic Development Commission of Florida's Space Coast, is designed to simplify the permit process. Roger, the Building Official and I have been working to meet all the criteria for this program.

It is essential to expedite this minor site plan check list to submit as one of the requirements; along with other forms and information that is done on a point system, in order to receive this S.N.A.P Certificate.

ATTACHMENTS:

You each received a soft and hard copy of Wayne Abare's proposed pond ord changes for the Oct 26 mtg.

Pat Reilly has also submitted a ordinance for your review. It is attached

(Bring packets from past P & Z Meeting 8/24/2011-9/28/11)

ACTION OPTIONS:

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

mtg.
11/9/11



Pat Reilly's Edited Present Pond Ordinance Version (10/26/2011)

Notes:

- I made a split between ponds and lakes at $\frac{1}{4}$ acre. Pond less than or equal to $\frac{1}{4}$ acre, and lake is greater than $\frac{1}{4}$ acre.
- Paragraph 1.0 Permits (Separated Ponds and Lakes)
- Paragraph 2.0 Review Process (Separated Ponds and Lakes)
- Paragraph 3.0 thru 8.0 (Changed the word Ponds to "Ponds and Lakes", or "Ponds or Lakes")
- I would like to move paragraph 4.0 Definitions to be paragraph 1.0

Section 1-5.27 Ponds and Lakes

General provisions. It shall be a violation of this ordinance for any person to construct, or permit to be constructed, or to fill a pond or lake within the Town of Malabar without first obtaining a pond or lake permit from the Town of Malabar.

1.0 Permits:

1. Ponds: Any person wishing to construct or permit to be constructed a pond of one-quarter ($\frac{1}{4}$) acre in size or smaller or to fill a pond within the Town of Malabar must, as a precondition, obtain a pond permit. Ponds one quarter ($\frac{1}{4}$) acre or less must meet setback requirements. In order to obtain a pond permit, an applicant must:

A. Pay the designated pond permit application fee prior to the Town accepting any application for a pond permit. The pond permit application fee shall be set by a Resolution of the Town Council;

B. If the applicant desires to construct a pond, the applicant shall provide the following documentation to the Town Clerk as part of the pond permit application;

1. A site plan containing the existing and proposed elevations for the entire project, site, the location of the proposed pond, a survey of the project site, said (survey to contain topographic data), tree locations and a plot plan.
2. Applicant must provide a written estimate of the quantity of fill which is proposed to be excavated, and a plan for disposal of said fill in accordance with this section.
3. Any other documents that shall be required by the Town Engineer for purposes of demonstrating compliance with the performance standards of section 1-5.27.5.A—F and completing a conclusive review of the proposed site.

C. If an applicant desires to fill a pond the applicant shall submit the following:

1. A pond permit application containing, at a minimum the following:
 - a. A site plan of the existing pond including total area of the surface covered by water; depth of pond; and its proximity to structure;
 - b. The estimated amount of fill to be used, as well as, the type of fill to be used;
 - c. Name of contractor performing the fill activity;
 - d. Any and all other information required by the Town Engineer.

D. The Town Clerk shall not accept an application for a pond permit unless the applicant has submitted an original and two (2) copies of all required documents, and paid all required permit fees.

E. In addition to a pond permit fee required herein the applicant must, apply for and obtain a land clearing permit required by the Town's Code of Ordinances.

2. Lakes: Any person wishing to construct or permit to be constructed a lake of greater than one-quarter (¼) acre in size or to fill a lake within the Town of Malabar must, as a precondition, obtain a lake permit. In order to obtain a lake permit, an applicant must:

A. Pay the designated lake permit application fee prior to the Town accepting any application for a lake permit. The lake permit application fee shall be set by a Resolution of the Town Council;

B. If the applicant desires to construct a lake, the applicant shall provide the following documentation to the Town Clerk as part of the lake permit application;

1. A site plan containing the existing and proposed elevations for the entire project, site, the location of the proposed pond, a survey of the project site, said (survey to contain topographic data), tree locations and a plot plan.
2. Applicant must provide a written estimate of the quantity of fill which is proposed to be excavated, and a plan for disposal of said fill in accordance with this section.
3. Any other documents that shall be required by the Town Engineer for purposes of demonstrating compliance with the performance standards of section 1-5.27.5.A—F and completing a conclusive review of the proposed site.

C. If an applicant desires to fill a lake the applicant shall submit the following:

1. A lake permit application containing, at a minimum the following:
 - a. A site plan of the existing lake including total area of the surface covered by water; depth of lake; and its proximity to structure;
 - b. The estimated amount of fill to be used, as well as, the type of fill to be used;
 - c. Name of contractor performing the fill activity;
 - d. Any and all other information required by the Town Engineer.

D. The Town Clerk shall not accept an application for a lake permit unless the applicant has submitted an original and two (2) copies of all required documents, and paid all required permit fees.

E. In addition to a lake permit fee required herein the applicant must, apply for and obtain a land clearing permit required by the Town's Code of Ordinances.

2.0 Review process.

1. The following process for review shall apply to all pond permit applications presented to the Town of Malabar for consideration.

A. The review process shall begin when the applicant has submitted to the Town Clerk all required documents as set forth in paragraph 1, where applicable, of this section and all applicable application fees have been paid.

B. Within five (5) working days of the receipt of a completed application and application fee, the Town Clerk shall forward one copy each of the application and the required documentation to the Town Building Official and the Town Engineer. The Town Building Official shall review the application to insure the completeness and accuracy of the submitted information, and shall notify the Town Engineer of any inaccuracies or incompleteness.

C. The Town Engineer shall review the application and, within two weeks of receipt of the application by the Town Engineer, the Town Engineer shall recommend that the application for a pond permit be:

1. Approved;
2. Approved, subject to certain conditions, or
3. Denied.

D. 1. If the Town Engineer recommends approval of the pond permit application, the application shall be forwarded to the Planning and Zoning Board for their consideration and action on the next available Planning and Zoning Board Agenda. The review procedures in sections 1-7.1 through 1-7.6 to the extent not inconsistent with this section shall apply. The Town Engineer and the Town's Planning and Zoning Board may impose reasonable conditions upon the applicant for a pond permit. Upon consideration and action by the Planning and Zoning Board the matter shall be forwarded to the Town Council for consideration and action. Upon approval by the Town Council of the pond permit application, the Building Official shall issue a pond permit to the applicant. The pond permit, however, shall contain the statement of the conditions which must be met by the applicant as set forth by the Town Engineer, the Planning and Zoning Board, and approved by the Council. Upon acceptance of a pond permit which has stated condition, the applicant agrees to perform all conditions set forth in the pond permit.

2. A pond permit shall not be issued if the Town Engineer recommends denial of the permit.

2. The following process for review shall apply to all lake permit applications presented to the Town of Malabar for consideration.

A. The review process shall begin when the applicant has submitted to the Town Clerk all required documents as set forth in paragraph 1, where applicable, of this section and all applicable application fees have been paid.

B. Within five (5) working days of the receipt of a completed application and application fee, the Town Clerk shall forward one copy each of the application and the required documentation to the Town Building Official and the Town Engineer. The Town Building Official shall review the application to insure the completeness and accuracy of the submitted information, and shall notify the Town Engineer of any inaccuracies or incompleteness.

C. The Town Engineer shall review the application and, within two weeks of receipt of the application by the Town Engineer, the Town Engineer shall recommend that the application for a pond permit be:

- 1.** Approved;
- 2.** Approved, subject to certain conditions, or
- 3.** Denied.

D. 1. If the Town Engineer recommends approval of the lake permit application, the application shall be forwarded to the Planning and Zoning Board for their consideration and action on the next available Planning and Zoning Board Agenda. The review procedures in sections 1-7.1 through 1-7.6 to the extent not inconsistent with this section shall apply. The Town Engineer and the Town's Planning and Zoning Board may impose reasonable conditions upon the applicant for a pond permit. Upon consideration and action by the Planning and Zoning Board the matter shall be forwarded to the Town Council for consideration and action. Upon approval by the Town Council of the lake permit application, the Building Official shall issue a lake permit to the applicant. The lake permit, however, shall contain the statement of the conditions which must be met by the applicant as set forth by the Town Engineer, the Planning and Zoning Board, and approved by the Council. Upon acceptance of a lake permit which has stated condition, the applicant agrees to perform all conditions set forth in the lake permit.

2. A pond permit shall not be issued if the Town Engineer recommends denial of the permit.

3. Appeal process. If an applicant's permit is denied, or approved with conditions, the applicant shall have the right to appeal such a denial or conditions to the Town Council under the following procedure:

A. An appeal of a decision not to issue a pond permit, or to issue a pond permit upon conditions, may be appealed to Town Council, by the applicant, within ten days of the applicant receiving notice of the denial of his permit or approval with conditions.

B. To appeal a decision to Town Council, the applicant must submit, in writing, a notice to the Town Council of the intention to appeal the decision of the Town Building Official and request the matter to be placed on the Council's agenda. The Notice of Appeal shall contain the basis upon which the appeal is being made.

C. Upon receipt of a timely notice of appeal, the Town Clerk shall set the matter on the Town Council's agenda, said appeal to be heard by Council, within thirty (30) days of the date of notice of appeal. The Town Clerk shall submit all documentation relating to the application and permit to Council for review.

D. The Town Council shall review the issue and determine whether the decision of the Building Official shall be upheld, modified or reversed. All decisions of the Town Council are final.

E. Appeals of decisions of the Town Council may be taken to a court of competent jurisdiction.

4. Definitions.

A. *Allowable material* shall mean uncontaminated sand, soil or dirt or other items approved by the Town Engineer. Construction debris and yard waste shall not be considered allowable material.

B. *Conservation elevation (also control elevation)*. The lowest elevation at which water can be released through the control device and/or the designed normal water level of the pond.

C. *Construction debris* means material generally considered not to be water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt roofing material, pip, gypsum wallboard and lumber, metal, asphalt paving material, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation or maintenance of a structure.

D. *To fill* shall mean the adding of allowable material to alter the existing topography or characteristics of a pond.

E. *Project site*. That area where the pond shall be located and all other affected areas of the property.

F. *Wet season water table*. Elevation of the ground water table during normal wet season conditions as determined by SCS (Soil Conservation Service) or competent engineering studies (referenced to National Geodetic Vertical Datum).

G. *Side slopes*. The ratio between the horizontal and vertical distance of the pond as measured from any point in the pond to the property line or finished floor of any improvement. (See Diagram "A")

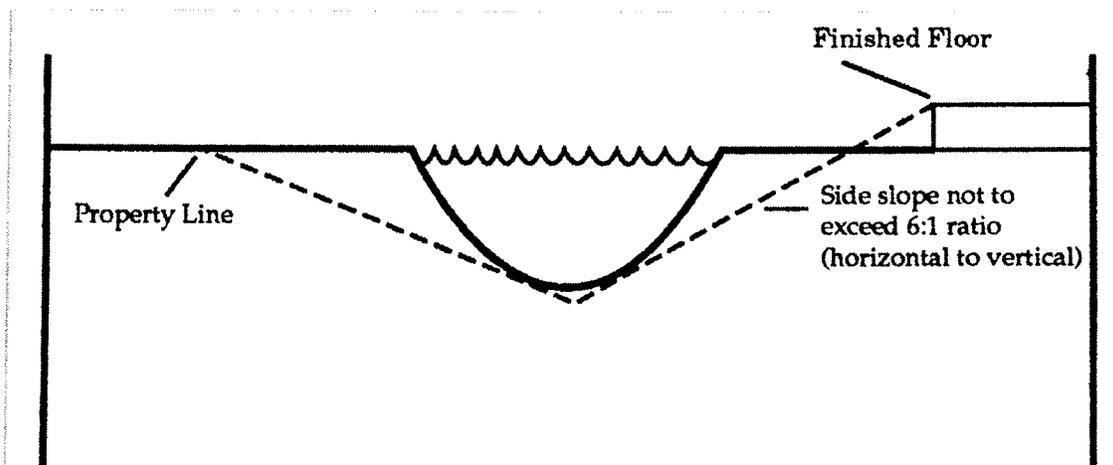


Diagram A

H. Littoral zone. That portion of the pond which is less than three (3) feet deep as measured from the conservation elevation.

I. Pond. Shall mean any excavation for the purpose of retaining water wherein the surface area is one-quarter ($\frac{1}{4}$) acre in size or smaller. Notwithstanding this definition of pond, all fill activity which reduces the surface area of an existing water body, regardless of size, may only be accomplished after a permit authorizing such activity is issued by the Town.

J. Lake. Shall mean any excavation for the purpose of retaining water wherein the surface area is greater than one-quarter ($\frac{1}{4}$) acre in size. Notwithstanding this definition of lake, all fill activity which reduces the surface area of an existing water body, regardless of size, may only be accomplished after a permit authorizing such activity is issued by the Town.

5. Performance standards for the construction of a pond and lakes.

A. Setbacks. Setbacks shall be measured from the conservation elevation and shall be set based on the following criteria:

- 1.** Side slopes shall not exceed 6:1 (horizontal to vertical) as measured from existing grade at property lines or finished floor elevation at buildings or structures.
- 2.** The setback from any right-of-way shall comply with the setback requirements of Table 1.3.3(E) of Article III of this Code. The setback in this subsection shall apply to all ponds and lakes, whether or not a permit is required for construction of such pond or lake.
- 3.** The setback from any abutting residentially zoned property line shall be forty (40) feet from such abutting property line otherwise setbacks shall be thirty (30) feet from abutting property line. The setback in this subsection shall apply to all ponds, whether or not a permit is required for construction of such pond.
- 4.** The pond or lake and any related site grading shall not adversely affect off-site drainage patterns.

B. Conservation elevation. The proposed design or conservation elevation shall be set at or near the wet season water table. Wells shall not be used to maintain a water level elevation above the seasonal water table and must have float control device installed when there is an outfall. The pond or lake and discharge structure shall not draw the water table below its wet seasonal elevation.

C. No pond or lake, regardless of size and regardless of whether or not a pond or lake permit is necessary shall be greater than twelve (12) feet in depth as measured from the conservation elevation to the deepest point.

D. Littoral zone. A minimum of thirty (30) percent of the pond area shall be littoral zone and shall be planted with suitable wetland vegetation.

E. Disposal of excavated material. All excavated topsoil shall be disposed of on-site. All other excavated material, unless otherwise provided for herein, shall be disposed of on-site. Off-site disposal of excavated material, except topsoil, shall be permitted under the following conditions:

- 1.** The pond has a total surface acreage of less than one-quarter ($\frac{1}{4}$) acre;
- 2.** For any pond or lake for which a permit is required the excavated material may be disposed of off-site if a certification is presented to the Town by a Florida licensed professional engineer stating that the excavated material, except topsoil, can not be utilized on-site. In submitting the certification the engineer shall take the following into consideration:
 - a.** The size of the site.
 - b.** Available on-site retention.
 - c.** The impact of on-site disposal will have on adjoining properties.
 - d.** No excavated material from a pond which one-quarter acre or larger in size may be sold; offered for sale or trade or bargained for anything of value.

3. Excavated material which is unsuitable for use on the site because of high organic content (muck) may be disposed of off-site if approved by the Town Engineer.

F. Discharge structures shall be designed to limit the maximum discharge rate to the pre-development discharge rate. The discharge velocity shall be controlled so as to not erode or cause scouring of existing or proposed facilities. Structures shall only discharge to a point of legal positive out-fall.

6. *Completion.*

A. Pond or lake permits issued pursuant to this section shall be effective for a period of six (6) months from the date of issue.

B. An extension may only be granted once upon good cause after review and approval by the Town Building Official.

C. Refusal by the Town Building Official to issue a pond permit extension may be appealed to Town Council in the same manner set forth in paragraph 3 of the section.

7. *Failure to complete.*

A. A fine up to two hundred fifty dollars (\$250.00) per day may be assessed against any applicant who fails to complete a pond or lake within the six-month period of the permit.

B. Further, the Town, at its discretion, may require the applicant to restore the land to the condition prior to obtaining a pond or lake permit if the pond is not completed within the allotted time.

C. It shall be the obligation of the applicant to notify the Town of completion. The pond or lake shall be complete only after a final inspection by the Town Building Official.

8. *Standards for fill activities.*

A. No pond or lake shall be filled if, in the opinion of the Town Engineer, the filling of the pond or lake will adversely affect on and off-site drainage; promotes soil erosion on or off-site; or adversely affects the natural environment.

B. Before any pond or lake shall be filled, approval from outside governmental agencies having jurisdiction over filling of water bodies must be submitted to the Town.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: Nov 9, 2011

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

SUBJECT: Review of Recommendation on Recreational Vehicles & Trailers in Front yards of Residential Zoning

BACKGROUND/HISTORY:

There was a Recommendation to Council made at the last meeting (10/12/11) Please see below the Recommendation made for review and clarification.

Per the Malabar Code; the parking of recreational vehicles in the front yards is restricted.

Motion: Reilly/ Ryan Recommendation to Council that Our interpretation of Section 1-5.15 of the Current Ord. Item #1 Paragraph change Residential Front Yard to Required Front Yard . Yards are within setbacks, as defined in Table 1-3.3(A)Update the definition of 1-20.2 Language & definition of yard , front yard, rear yard and side yard All Vote: 4 Ayes Wilbur, Ryan, Reilly, Abare 1 Nay: Krieger

ATTACHMENTS:

Denine has researched regulations for commercial vehicles and tractor trailers and that information is attached. This can also be used for Agenda Item 4.

(Bring Packet from P & Z Meetings 8/24/2011 - 10/12/2011)

ACTION OPTIONS:

Recommendation to Council.

11/9/11

3 &
4

Information on
Commercial Vehicles
& Tractor Trailers
In
Residential
Zoning

- Sebastian
- Brevard
- Melbourne

Sebastian, FL

Sec. 54-2-7.13. - Mobile homes, travel trailers, campers, boats, trailers, and recreational vehicles.

- (a) *Mobile homes prohibited.* No mobile homes shall be permitted in any zoning district except the R-MH or PUD-MH Districts.
- (b) *Parking and storage of recreational vehicles.* Recreational vehicles as described herein may be parked, stored or placed on any improved lot in any residential district, provided that:
- (1) The recreational vehicle is owned, rented or leased by the person residing on the same improved lot on which the recreational vehicle is located.
 - (2) Except as provided in section 54-2-7.13(d), the recreational vehicle is not used for residential, office or commercial purposes.
 - (3) The recreational vehicle is not used for sleeping, housekeeping, or living quarters while parked on any improved lot.
 - (4) The recreational vehicle is located to the rear of the front building line, and in no event less than 25 feet from the front lot line, or is located wholly within a carport or garage. Notwithstanding the foregoing sentence, with respect to locating recreational vehicles on an improved corner lot, the recreational vehicle need only be located behind the front yard setback for such improved corner lot and need not be located to the rear of the front building line for the secondary front yard.
 - (5) The recreational vehicle is not located within any road, drainage or utility right-of-way.
 - (6) In the event that the recreational vehicle is a collapsible camping trailer, the trailer must be stored in the collapsed state.
 - (7) The recreational vehicle must bear a current and proper registration.
 - (8) The recreational vehicle, other than a utility trailer or a cargo trailer, shall not exceed 40 feet in length. The recreational vehicle that is a utility trailer or a cargo trailer shall not exceed 24 feet in length.
 - (9) No more than two recreational vehicles at the same time shall be permitted on any lot outside of an enclosed garage.
- (c) *Commercial trailers and boats.* Notwithstanding any prohibition inferred in any previous paragraphs of section 54-2-7.13(b), trailers and boats utilized for commercial purposes may be kept on real property located in a residentially zoned district owned by the person who also owns the trailer or boat if the following provisions are complied with:
- (1) One, but not more than one, commercial utility or cargo trailer, that does not exceed 24 feet in length and eight feet in height, may be parked on any lot located in any residential district if it is parked in accordance with the other provisions of section 54-2-7.13(b)(4) and it is substantially screened by either vegetation or a six-foot stockade type fence from the view of the adjacent property.
 - (2) One, but not more than one, boat used for commercial purposes, not exceeding 40 feet in length, may be parked or stored on any lot located in any residential district, if there is no unloading or loading of any material, fish or shellfish when located in the residential district and the boat is substantially screened by either vegetation or a six-foot stockade type fence from the view of the adjacent property.
- For the purposes of the restrictions set forth in section 54-2-7.13(b)(9), a commercial trailer or a commercial boat shall be counted as one recreational vehicle.
- (d) *Temporary trailers.* Trailers used temporarily in connection with construction as a dwelling, office, salesroom, or security headquarters may be located temporarily in all zoning districts only after a building permit has been issued and during the periods of construction activity, under a temporary zoning permit; provided that: All setbacks are complied with and all utilities, including water and sewer are provided; and Any such trailer must be removed within ten days after completion of construction or after the issuance of a certificate of occupancy, whichever first occurs.

Sec. 54-2-7.14. - Large trucks and heavy equipment.

- (a) *Zoning districts where prohibited.* It shall be unlawful for any person, either as owner, agent, occupant, lessee, tenant, landlord, or otherwise, to park, store, deposit, or to cause or allow any parking, storage, or deposit on any real property zoned as RE-40, RS-20, RS-10, RM-8, R-MH, PUD-R, or PUD-MH or any property then being used for residential use however zoned, any road tractor, semi-trailer, heavy equipment, or heavy truck.
- (b) *Exceptions.* The restrictions of this section shall not apply to:
- (1) All other zoning districts not actually being used as single-family use.
 - (2) Real property where construction is underway pursuant to a valid building permit and the items otherwise prohibited are being utilized for such ongoing construction.
 - (3) The item otherwise prohibited is being loaded or unloaded.
 - (4) Vehicles such as a van, pickup truck or paneled truck, provided each such vehicle not exceed 23 feet in length and/or nine feet in height.
 - (5) Emergency parking of such prohibited vehicles or items provided such they are removed within 24 hours of the start of the emergency.
 - (6) Such items being utilized by any governmental entity for a legitimate purpose.
 - (7) Vehicles exceeding 23 feet in length and/or nine feet in height which are parked within an enclosed garage.

Brevard FL

Sec. 62-1921.3. - Commercial vehicle parking at a residence.

(a) Where not otherwise permitted by section 62-2117, any residential property owner may request a conditional use permit to park one commercial motor vehicle on a residential lot. Such conditional use permit may be issued only under the following conditions:

- (1) The parcel must be a developed single-family residential lot of at least one-half acre in size.
- (2) The commercial motor vehicle must be operated by the occupant of the residence and must be essential to the occupant's principal means of employment.
- (3) The commercial motor vehicle is to be parked within a fully enclosed garage. However, the applicant may request, and the board may consider, an alternative means of visually buffering the vehicle given the character of the neighborhood and the lot upon which it is to be parked. Such alternative buffering may include cold and drought resistant vegetation or fencing up to eight feet in height (notwithstanding the provisions of section 62-2109).
- (4) The commercial motor vehicle must be maintained in operating condition.
- (5) The commercial motor vehicle may be a tractor cab but shall not include a tractor trailer.
- (6) The commercial motor vehicle, or any equipment or machinery on the vehicle, may not for any reason be left running and unattended by the operator, except for the purpose of preparing the vehicle to be driven off site.

(b) The conditional use permit is valid for one year and is renewable by administrative extension for successive one-year periods. However, if the activity ceases to be compatible with the character of the neighborhood as evidenced by a code enforcement complaint, or if the occupancy of the residence changes, any CUP may be revoked pursuant to subsection 62-1901(d). The property owner will be notified in writing if the CUP extension is not renewed pursuant to subsection 62-1901(d). Once a CUP is not renewed administratively, the conditional use permit will be considered to be expired and may be reconsidered only by the board of county commissioners as a new conditional use permit pursuant to paragraph (a) above.

(Ord. No. 10-11, § 1, 5-6-10)

Melbourne FL

Melbourne, Florida, Code of Ordinances >> PART II - CITY CODE >> Chapter 31 - TRAFFIC AND MOTOR VEHICLES >> ARTICLE II. - PARKING >> DIVISION 2. - LARGE TRUCKS AND HEAVY EQUIPMENT >>

DIVISION 2. - LARGE TRUCKS AND HEAVY EQUIPMENT

Sec. 31-41. - Definitions.

Sec. 31-42. - Districts in which parking is prohibited.

Sec. 31-43. - Exceptions.

Sec. 31-44. - Penalty and enforcement.

Secs. 31-45—31-60. - Reserved.

Sec. 31-41. - Definitions.

As used herein, the following terms shall have the meanings herein ascribed to them, unless the context requires otherwise:

Bus shall mean a motor vehicle designed or constructed to carry more than fifteen (15) persons plus the driver.

Easement shall mean that strip of land reserved for public utilities, drainage and other public services, the title to which shall remain in the property owners, subject to the right of use designated in the reservation of the servitude.

Gross weight shall mean the weight of a vehicle plus the weight of any load thereon.

Park or parking shall mean the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers as may be permitted by law under this article.

Right-of-way shall mean land in which the state, county, or city owns the fee or has an easement devoted to or required for use as a public street, road, sidewalk, utility, drainage structure, swale, etc.

Road tractor shall mean any motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon, either independently or as any part to the weight of a vehicle or load so drawn.

Roadway shall mean that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two (2) or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately, but not to all such roadways collectively.

Semitrailer shall mean any vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Special mobile equipment shall mean any vehicle not designed or used primarily for the transportation of persons or property. By way of example, and not by way of limitation, "special mobile equipment" shall include ditch-digging apparatus, well-boring apparatus, and road construction and maintenance machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, tractors or other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls and scrapers, power shovels and draglines, self-propelled cranes and earth-moving equipment, and forklifts.

Street or highway shall mean the entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic.

Trailer shall mean any vehicle with or without motive power designed for carrying persons or property or for being drawn by a motor vehicle.

Travel trailer or mobile camper shall mean a self-propelled or nonself-powered vehicle capable of being towed by an ordinary automobile or by the self-powered vehicle upon which it is constructed, whose primary

use is temporary lodging while traveling or camping and is not used for habitation except in designated areas while within the city.

Truck shall mean any motor vehicle designed, used or maintained primarily for the transportation of property.

Truck tractor shall mean any motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

Zoning districts shall mean the use districts as defined by the Zoning Code, Appendix B.

(Code 1980, § 33-41(1); Ord. No. 2002-73, § 1, 10-22-02)

Sec. 31-42. - Districts in which parking is prohibited.



It shall be unlawful for any person, either as agent, owner, occupant, lessee, tenant or otherwise to park, store, deposit or allow, cause or permit to be parked, stored, or deposited any bus, road tractor, semitrailer, truck tractor, or any combination thereof, or any other truck or special mobile equipment or other heavy equipment of whatever type, size or nature on any public or private property of the EU (single-family residential), R-1AAA (single-family residential), R-1AA (single-family residential), R-1A (single-family residential), R-1B (single-family residential), R-2 (one-, two-, and multiple-family), R-3 (multiple-family), R-4 (two-family), R-P (residential-professional) or residential-occupied portion of PUD (planned unit development) zoning districts of the city.

(Code 1980, § 33-41(2); Ord. No. 2002-73, § 1, 10-22-02)

Sec. 31-43. - Exceptions.

The provisions of this division shall not apply to:

- (1) The following zoning districts: C-P (commercial parkway), C-1 (neighborhood commercial), C-1A (professional offices and services), C-2 (general commercial), C-3 (central business district), M-1 (light industrial), M-2 (general industrial), I-1 (institutional), R-A (residential holding), R-2T (planned residential development for mobile home parks), and the commercial-occupied portion of PUD (planned unit development).
- (2) Private property whereon construction is underway, for which a current and valid building permit has been issued by the city, as to those vehicles actively engaged in such construction.
- (3) Those persons performing lawful and authorized work upon the premises where the vehicle is parked, including immediate pickup or delivery service.
- (4) Any motor vehicle having a gross vehicle weight rating of not more than ten thousand (10,000) pounds.
- (5) Any vehicle that is parked entirely inside a garage or is parked in a carport where no part of the vehicle extends outside the roof line of such carport.
- (6) Travel trailers or mobile campers parked in accordance with appendix D, chapter 9, City Code.
- (7) The emergency parking of a disabled vehicle. However, any such vehicle shall be removed from the residential district within twenty-four (24) hours by wrecker towing or other available means regardless of the nature of the emergency.

(Code 1980, § 33-41(3); Ord. No. 85-65, § 1, 9-10-85; Ord. No. 96-23, § 1, 5-14-96; Ord. No. 2002-73, § 1, 10-22-02)

Sec. 31-44. - Penalty and enforcement.

- (a) The owner of any vehicle parked upon the streets, highways, roadways, sidewalks, easements, parkways and all public property and public rights-of-way in the city in violation of this division shall be guilty of a noncriminal parking violation in accordance with the procedure and requirements provided for in F.S. § 316.1967.
- (b) No person or property owner either as agent, owner, occupant, lessee, tenant or otherwise shall allow any vehicle to be parked or stored on any private property in the city in violation of this division. All violations of this division will be referred to the code enforcement board for disposition.

(Code 1980, § 33-41(4), (5); Ord. No. 2002-73, § 1, 10-22-02)

Cross reference— Code enforcement board, § 2-131 et seq.

Secs. 31-45—31-60. - Reserved.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4

Meeting Date: Nov 9, 2011

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

SUBJECT: Continued Discussion of the Parking of Tractor Trailers in Residential Zonings

BACKGROUND/HISTORY:

This is continued discussion from last P & Z Meeting (10/12/2011); this Board discussed different options to regulate Tractor Trailer parking in Residential Zoning.

The items for review from the last meeting were to look at:

- Weight of trucks
- The amount of Axels
- The storing of the truck /location on the property.

Also to look at the other municipalities and what they have in place for similar circumstances.

ATTACHMENTS:

(Bring Packet from P & Z Meeting 9/28/2011- Item No.3 & 10/12/11)

ACTION OPTIONS:

Discussion and Work towards a recommendation to Council.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 5
Meeting Date: Nov 9,, 2011

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

SUBJECT: Setbacks in All Residential Zoning Classifications

BACKGROUND/HISTORY:

This Board did not get to this Item at the last P&Z Meeting (10/12/11). The Board had requested more information from surrounding municipalities, i.e. Sebastian, Palm Bay, Melbourne, and Brevard County to compare the different setbacks in the different residential zonings.

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:

(Please bring P&Z Packet from 9/28/2011 & 10/12/11)

ACTION OPTIONS:

Requests discussion and consideration of setbacks in all residential zoning classifications

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 6
Meeting Date: Nov 9, 2011

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

SUBJECT: Residential/Limited Commercial Zoning & Density Clarification

BACKGROUND/HISTORY:

This item was not discussed at last P&Z meeting (10/12/2011); it will be for continued discussion.

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: 7
Meeting Date: Nov 9, 2011

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

SUBJECT: Definition of Light Industrial

BACKGROUND/HISTORY:

At the last P & Z Meeting on 10/12/2011, 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: 8
Meeting Date: Nov 9, 2011

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

SUBJECT: Continue to Work on Ordinance 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.