

TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
TUESDAY NOVEMBER 22, 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 – 11/09/2011
Exhibit: Agenda Report No. 1
Recommendation: Motion to Approve
- E. PUBLIC HEARING: none**
- F. ACTION:**
 - 2. **Recommendation Re: Requirements for Pond & Lake Site Plans**
Exhibit: Agenda Report No. 2
Recommendation: Action
 - 3. **Recommendation Re: RVs & Trailers in Front Yards of Residential Zoning**
Exhibit: Agenda Report No. 3
Recommendation: Action
- G. DISCUSSION:**
 - 4. **Recommendation Re: Tractor Trailer Parking in Residential Zonings**
Exhibit: Agenda Report No. 4
Recommendation: Discussion
 - 5. **Recommendation Re: Setbacks in All Residential Zoning Classifications**
Exhibit: Agenda Report No. 5
Recommendation: Discussion
 - 6. **Residential/Limited Commercial Zoning & Density Clarification**
Exhibit: Agenda Report No.6
Recommendation: Discussion
 - 7. **Definitions for "Light Industrial" Zoning**
Exhibit: Agenda Report No.7
Recommendation: Discussion
 - 8. **Code Requirements for Assisted Living Facilities**
Exhibit: Agenda Report No.8
Recommendation: Discussion
- H. PUBLIC:**
- I. OLD BUSINESS/NEW BUSINESS:**
 - 9. **Recommendation Re: Electronic Gaming**
Exhibit: Agenda Report No. 9
Recommendation: Action
- 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 22, 2011

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

SUBJECT: Approval of minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

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

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

ATTACHMENTS:

Draft minutes of P&Z Board Meeting of November 09, 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
NOVEMBER 09, 2011 7:30 PM**

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 7:30 P.M. Prayer and Pledge led Chair Bob Wilbur.

B. ROLL CALL:

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

B. Nominations for Chair and Vice-Chair.

Reilly / Ritter nominated Bob Wilbur for Chair. No other nominations. Vote: All Ayes.

Ryan / Krieger nominated Pat Reilly for Vice-Chair. No other nominations. Vote: All Ayes

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
Planning and Zoning Meeting – 10/12/2011

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Reilly / Ryan to approve Minutes of 09/14/2011 with corrections:

Corrections: pg 2, 3 para on a minor site plan, if a minor site plan is not required for < 1.4 ac then how would you – what triggered the site plan?

2 para up – Morris suggests delete at bottom. Lack of hyphenation on re-codify.

Next para – middle and discretion may waive the requirements. Put at his discretion may

Pg 3 5 para Morris explains last line – is it just not defined – is sb it

Pg 6 a way sb two word (3rd from bottom)

Vote: All Ayes

MOTION: Reilly / Ryan to approve Minutes of 09/28/2011 with corrections:

Corrections:

Pg 3, 4th para last line, Wilbur restated that pond permit should be required.

Pg 4, 2nd para, Krieger your have moved your front line.

Next para, and said that even council would be in violation

Last line if affected – and it

Pg 5, big para Wilbur said he talked and there would several similar cases and cases. Get rid of period after cases.

Pg 6 foot of dirt sb "only" a foot of dirt (talking about culvert)

pg 8, 5th para Abare, next building sb next meeting.

Pg 9 1st line delete first 5 words as duplicate.

Old business – middle trails to get of sb off

Para above that 6 lines, if boat does damage ot sb to.

Pg 6, #4 3rd line, he said it was his error

Pg 5, after continuing – check other places add "that" will be affected

Vote: All Ayes

MOTION: Reilly / Krieger to approve Minutes of 10/14/2011 with corrections:

Corrections:

Pg 2, 3rd line work with what we sb have

Pg 4, top Abare with change to a question – is a tractor trailer allowed to park under current code

Vote: All Ayes**E. PUBLIC HEARING: none****F. ACTION:****G. DISCUSSION:****2. Continued Discussion – List of requirements for site plans related to ponds ¼ acre in size or smaller.****Exhibit:** Agenda Report No. 2**Recommendation:** Discussion

Discussion:

Reilly said there wasn't that much different between Abare's and the current code. What Reilly did was to separate ponds and lakes. His is an outline. Permits for Pond would be <1000 sf and would have subsections A-E in code. Then on next page you have Permits for Lakes and they will have subsections A – E in code. Today he thought about 3 categories: 0-1000 sf, 1001sf -1/4 ac and then greater than ¼ acre. He mentioned it for their consideration.

Reilly said there should be a separate process for ponds and a separate process for lakes. He also said the definitions should be moved to the front of the section. Currently they are buried in Section 4. Move them to the front of the ordinance. Reilly added subsections h, i, and j in the definitions.

He also said they should change the quarter-acre to 10,000sf surface area. Board agreed. So using the sample ordinance which he put together by cutting and pasting the 1991 pdf ordinance into the ordinance from 2003; blending together and changing all ¼ acre references to 10,000sf surface area. Then what has to happen for each section, lake and pond, is provide the review process and a lot of it should be the same. But for the minor site plan, you need to list requirements as bullets; do same for lakes.

Board agreed to the following classifications:

- 0-1000sf surface area = decorative water feature – only requirement is to meet setbacks.
- 1001sf-10,000sf surface area is a Pond and requires a minor site plan
- Greater than 10,000sf surface area is a lake and requires a major site plan

We can use Town Eng Morris checklist for minor site plan and our existing site plan checklist for the major site plan.

Board consensus to not put a checklist in the ordinance – just reference it.

Krieger said residential homes do not have any stormwater requirement. Clerk said they do have a requirement. It is spelled out on checklist for single family home permit application.

They discussed various requirements for thresholds. Krieger said what is the reason they are digging the pond. Is it ok to buy land and dig only a lake or pond. Krieger asked how you determine what is top soil and what is not? Is it a mining operation?

Krieger said when you dig a pond to build a house it should not require a separate permit. It should be part of the permitting process for the home. Abare said the code is for the 1 in 10 persons that may not follow the rules.

Note to Board: Reilly said the difference between the 1991 ord and the 2003 ord. that Mr. Booth had drafted. He compared them side by side and the only thing Booth changed was to add the sentence on page 270, 1-5.27 ponds - ponds less than ¼ acre only have to meet setbacks. Reilly said that alone means that you don't need a permit. We need to change that and require a permit.

If the requirement is to retain the material onsite that will limit the size of the hole you are going to dig. Ritter said only organic material and muck should be allowed to remove from the property.

Board agreed they need to work on a checklist. Reilly will work on this some more. They need definitions for all three.

Abare says write a spec first with the summary items that would apply to all of them. Once we agree on them then we can focus on the checklist. What are the attributes we are trying to protect: protect wetlands, meet setbacks, plan review?

Summary: Board agreed there is no action for Eng Morris. Abare can work on 7-8 items that should apply to all of them and Reilly will work on checklist for ponds and lakes. Bring back to next meeting.

3. Recreational Vehicles & Trailers in front yards of residential zoning.

Exhibit: Agenda Report No. 3

Recommendation: Discussion

Discussion:

Abare said most 18 wheelers have two axles on trailers. Ritter said some have more. Abare said private persons may have a coach and RV and up to 42' and rig says private, not for hire. Abare thought Ritter's mention of that could be the defining part of issue.

Krieger said the key is required yard. In his view, when he reads the front yard and if he put an RV behind a 30" post he has defined the line.

Abare asked what action was taken on PZ 10/12/11 motion. Franklin said it went to Council and there was no action because the Mayor asked Council to send it back to P&Z to consider all zoning classifications and also consider the tractor trailer parking issue. Council sent it back to P&Z. Ritter said you have to be consistent. If we don't mind RVs in front yards then change code to add that "required" front yard means setback. Once you have met that setback you are ok. Change current code to add this word.

Krieger says it doesn't need to be changed. Required setback means front yard. Board reviewed 1-5.15 and read it aloud. Wilbur said we got memo from attorney and all we had to do is change Code to add "required" to front yard.

MOTION: Reilly / Ryan recommend that interpretation of Section 1-5.15 change front yard to "required" from yard as defined as in 1-5.8. A. definitions, yard, 1) required front yard. Required front yard = setbacks. Article XX, Section 1-20.2 Language and Definitions needs to be changed to add "required". No vote.

In PZ opinion, required front yard means setbacks. Reilly said the Attorney will look at all the areas of code that need to be changed when doing the ordinance. If it is beyond the setback it is not part of the Town's issue. There is no violation if RVs are beyond the setbacks. Abare please update to ensure required front yard = setbacks.

Ryan left. (Had stated at beginning that he may have to leave due to health issue)

Krieger said Council was asking their opinion. Wilbur said the opinion didn't have a definition. Motion as stated in 10/12/11 meeting did not include definition. Abare said let's lock it in with a definition. The open unoccupied space beyond the setback. Krieger said that to change the code costs 1000's of dollars.

Krieger said on page 1187, Art XX, yard, front yard and rear yard. Missing definition for side yard. They want all required yards to equal setbacks.

MOTION: Krieger / Ritter Consensus of Board that required yards are equivalent to setbacks. We believe that any restrictions for personal equipment or vehicles should be limited to required yards and setbacks. Tell them that PZ will continue to work on conflicts within the code.

Vote: All Ayes. (Abare voted for Ryan)

Re: Article V, Section 1-5.15 recommend to Council that it only applies to front yards. This will be done as separate motion after rest of Mayor items from his memo are reviewed at next meeting.

Wilbur said we need to change definition in code. Abare stated the acceptable placement of any RV shall be treated the same as the allowable placement of the home or any accessory buildings. After discussion, that was shown to Abare that the code only restricts RVs from front yards. RVs can still park on side and rear with no interference.

Take out front and add required. The definition in Art XX, yard, shall add the word *required* and add definition for side yard.

Wilbur said there were no restrictions for side yards. Krieger then pointed out that their recommendation does not affect RVs in the side yard.

They will continue review of this at next meetings.

4. Continued Discussion for Parking Tractor Trailers in Residential Zoning

Exhibit: Agenda Report No. 4

Recommendation: Discussion

Discussion:

Abare said the definition could be if it is for hire. They discussed individual cases. Krieger spoke of a tractor trailer parking on the paved road near him. Nobody complains. Ritter said there was a case where someone died by running into the rear of a rig that should not have been parked there. Krieger said what about a person having a party. Party is infrequent. Not same as parking rig on regular basis.

They discussed the 48 hours should be 72 hours. Wilbur said to think of the unintended consequences. He referenced a rig parking on Marie Street. Krieger said lets separate things. It is not fluid dripping – that could be any vehicle. If they park on their land it would not bother him. It would if it was dripping. Abare said if might bother others.

Ritter said it is a safety issue. Should not be allowed to park on street.

1-5.16, 2nd para take out reference to owner or add lease. No. Discussed responsible party. Also discussed allowing residents to keep vehicles of friends from other areas. Could lead to a parking lot.

Wilbur liked the County code allowing the rig to park on land with a CUP. Still can't park the trailer. Wilbur read from the county requirements 1-6. Perhaps the town could do a similar thing. Minimum lot size of ½ acre or larger. There is no limit of time you can leave it there. Permit lasts one year. If it is a garage or covered or buffered.

The problem with the current issue is the guy that wants a letter stating it is ok to park both tractor and trailer on his property. His property is in RS-10 zoning and abuts Malabar Road which would require a setback of 100' from centerline.

- *Board agreed Article V, Section 1-5.16 needs to be chopped up and made into several sentences. Do for next meeting – split up into different topics.*
- *Create a CUP list. Either they sign up and know who is responsible for vehicle and issue a CUP. It will ask if they will abide by Town regulations, then ok; otherwise you need to park elsewhere.*

Krieger said it is mixing metaphors. He thinks a trailer without tags in back yard is not the town business. They read the section again.

Wilbur said go to Sebastian code on trailers – he read the steps and Board all agreed with them.

Krieger said Board was considering allowing tractor trailer parking in RR-65 residential. If it is not in RR-65 we can't consider it.

Reilly recommended we skip Agenda Items #5 - #8. All agreed.

5. **Setbacks in all Residential Zoning Classifications**
6. **Continued Discussion: R/LC Zoning & Density Clarification**
7. **Continued Discussion: Definition of "Light Industrial"**
8. **Continue to work on Assisted Living Facility Regulations**

H. PUBLIC:

Tom Eschenberg, speaking as Mayor, explained about Abare's question of making recommendations on items under Discussion on the agenda. Mayor said regarding Council, if it is a discussion item Council won't take action on it unless it is administrative in nature. The belief is the public hasn't been properly noticed. If they look at the agenda and it is under discussion then they may want to wait until it is under action before they decide to attend.

Mayor said P&Z sent an item to Council at last meeting that was under discussion. You make the recommendation after it is moved up under action.

I. OLD BUSINESS/NEW BUSINESS:

Ritter still sees footnote 7, she does not think it makes sense the way it is written. Still thinks it is confusing. Krieger said that Board will be looking at this again before it goes to council.

Franklin explained the information from Council regarding the Internet Café ordinance and why the attorney explained it needed the definitions he had written so that we would have authority. There was no statutory definition. Krieger and Ritter explained that the reason they took it out was for that reason. If and when the State or County create a definition then the Town would have to pay to change their ordinance again to comply with their definition. They asked if the attorney knew that. Franklin said she did not think so unless that was in the minutes. They would like to have this for action before it is scheduled for Public Hearing before P&Z on December 14, 2011.

Board considered the November calendar and chose November 22, 2011 for their next meeting. It is a Tuesday and the calendar shows it available.

J. ADJOURN:

There being no further business to discuss, **MOTION:** Reilly / Krieger to adjourn this meeting.
Vote: All Ayes. The meeting adjourned 10:30 P.M.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: Nov 22, 2011

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

SUBJECT: Requirements for Ponds and Lakes

BACKGROUND/HISTORY:

At the last meeting the Board agreed to the following classifications:

- 0-1000sf surface area = decorative water feature – only requirement is to meet setbacks.
- 1001sf-10,000sf surface area is a Pond and requires a minor site plan
- Greater than 10,000sf surface area is a lake and requires a major site plan

They agreed to use the Town Eng Morris Smith's checklist as guide for minor site plan and our existing site plan checklist as guide for the major site plan.

Board consensus to not put a checklist in the ordinance – just reference it. Board agreed they need to work on a checklist. Reilly will work on this some more. They need definitions for all three.

Summary: Board agreed there is no action for Eng Morris. Abare can work on 7-8 items that should apply to all of them and Reilly will work on checklist for ponds and lakes. Bring back to next meeting.

ATTACHMENTS:

Minor Site Plan - Checklist from Engineer

PZ Member Abare's Spec sheet

Major Site Plan - Site Plan Ap for non-residential projects

ACTION OPTIONS:

MOTION: Recommend Council adopt the following definitions:

- water bodies less than 1000sf are a decorative water feature,
- water bodies less than 10,000sf are ponds
- water bodies greater than 10,000sf are lakes

and further recommend that no excavated material shall leave Malabar unless it is muck.

P&Z Board will continue to work on checklist as aid for applicants.

From PZ 9/28/11 Item #2
MORRIS SMITH - TOWN ENGINEER

POSSIBLE Permit Application Check List Items - ¼ acre or Less of Soil Displacement:

- Greater than 75 feet from Septic Tank and/or Drainfield
- Meets or Exceeds Building Setbacks for Zoning
- Positive Overflow Discharge to Town of Malabar Stormwater Discharge Swale/Ditch
- Soil Displaced Remains On-site
- Accurate Layout Plan (to Scale) on Boundary Survey Showing Soil Displacement Area
- Accurate Layout Plan (to Scale) on Boundary Survey Showing Location of Displaced Soil
- Proposed Location of Stormwater Best Management Practices (BMP) Silt Fence, Siltation Barriers, etc.
- Typical Section for Side Slopes Inside Soil Displacement Area
- Executed Disclosure of Ownership
- Sod Side Slopes and Positive Overflow Discharge Path
- Wetland Lines if Applicable
- Fee or No Fee ??? (P&Z to Review and Approve/Disapprove for No Fee?)

Denine Sherear

From: Wayne Abare [wabare@cfl.rr.com]
Sent: Friday, November 11, 2011 9:12 AM
To: Denine Sherear
Cc: Abare, Wayne
Subject: Lakes

Denine

I have prepared a list of issues and concerns for digging a Lake, see below. Please forward to the other members of the P&Z Board.

Thanks, Wayne Abare

Major Lake Issues/Concerns

Provide Site Plan which Details

Property lines including all Setback & Right-of-Ways

Proposed placement of Lake

Is placement of Lake within above Setback & Right-of-Ways?

Detailing any overflow pipe(s) including size(s) of pipes

Are sides of Lake tapered as per Malabar's Code?

Will sod be used around Lake Perimeter to stabilize soil?

Description and quantity of any major Tree removal

Online Brevard County overlay of any Wetlands on property

Proposed placement of excavated soil

Are swales sufficient to direct water away from neighbors?

While reviewing these Lake issues ask yourself which of the above concerns should not be required for a smaller Lake or a Pond?



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

APPLICATION FOR NON-RESIDENTIAL 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.

_____ 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: Nov 22, 2011

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

SUBJECT: Recreational Vehicles & Trailers in Front yards of all Residential Zoning

BACKGROUND/HISTORY:

There was a Recommendation to Council made at the last meeting (11/09/11) Please see below the Recommendation made for review and clarification. The recommendation can go to Council for action and if they vote to approve then that will be the rule staff follows until the code gets changed.

MOTION: Krieger / Ritter Consensus of Board that required yards are equivalent to setbacks. We believe that any restrictions for personal equipment or vehicles should be limited to required yards and setbacks. Tell them that PZ will continue to work on conflicts within the code.

Vote: All Ayes. (Abare voted for Ryan)

ATTACHMENTS:

Section 1-5.16

Minutes from last meeting

Mayor's proposed changes related to RVs

ACTION OPTIONS:

MOTION: Recommend Council determine that "required" yards are equivalent to setbacks. Regarding the prohibition of parking of RVs and trailers in front yards, the Code is referring to the "required" front yard area only. There are no restrictions to parking RVs and trailers in the side or rear yards.

1-5.15

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.

3. Recreational Vehicles & Trailers in front yards of residential zoning.

Exhibit: Agenda Report No. 3

Recommendation: Discussion

Discussion:

Abare said most 18 wheelers have two axles on trailers. Ritter said some have more. Abare said private persons may have a coach and RV and up to 42 ' and rig says private, not for hire. Abare thought Ritter's mention of that could be the defining part of issue.

Krieger said the key is required yard. In his view, when he reads the front yard and if he put an RV behind a 30" post he has defined the line.

Abare asked what action was taken on PZ 10/12/11 motion. Franklin said it went to Council and there was no action because the Mayor asked Council to send it back to P&Z to consider all zoning classifications and also consider the tractor trailer parking issue. Council sent it back to P&Z. Ritter said you have to be consistent. If we don't mind RVs in front yards then change code to add that "required" front yard means setback. Once you have met that setback you are ok Change current code to add this word.

Krieger says it doesn't need to be changed. Required setback means front yard. Board reviewed 1-5.15 and read it aloud. Wilbur said we got memo from attorney and all we had to do is change Code to add "required" to front yard.

MOTION: Reilly / Ryan recommend that interpretation of Section 1-5.15 change front yard to "required" from yard as defined as in 1-5.8. A. definitions, yard, 1) required front yard. Required front yard = setbacks. Article XX, Section 1-20.2 Language and Definitions needs to be changed to add "required". No vote.

In PZ opinion, required front yard means setbacks. Reilly said the Attorney will look at all the areas of code that need to be changed when doing the ordinance. If it is beyond the setback it is not part of the Town's issue. There is no violation if RVs are beyond the setbacks. Abare please update to ensure required front yard = setbacks.

Ryan left. (Had stated at beginning that he may have to leave due to health issue)
Krieger said Council was asking their opinion. Wilbur said the opinion didn't have a definition. Motion as stated in 10/12/11 meeting did not include definition. Abare said let's lock it in with a definition. The open unoccupied space beyond the setback. Krieger said that to change the code costs 1000's of dollars.

Krieger said on page 1187, Art XX, yard, front yard and rear yard. Missing definition for side yard. They want all required yards to equal setbacks.

MOTION: Krieger / Ritter Consensus of Board that required yards are equivalent to setbacks. We believe that any restrictions for personal equipment or vehicles should be limited to required yards and setbacks. Tell them that PZ will continue to work on conflicts within the code.
Vote: All Ayes. (Abare voted for Ryan)

Re: Article V, Section 1-5.15 recommend to Council that it only applies to front yards. This will be done as separate motion after rest of Mayor items from his memo are reviewed at next meeting.

Wilbur said we need to change definition in code. Abare stated the acceptable placement of any RV shall be treated the same as the allowable placement of the home or any accessory buildings. After discussion, that was shown to Abare that the code only restricts RVs from front yards. RVs can still park on side and rear with no interference.

Take out *front* and add *required*. The definition in Art XX, yard, shall add the word *required* and add definition for side yard.

Wilbur said there were no restrictions for side yards. Krieger then pointed out that their recommendation does not affect RVs in the side yard.

They will continue review of this at next meetings.

MAYOR'S PROPOSED CHANGES TO RV PARKING

Delete 1. and replace with:

1. A limited number of recreational vehicles may be parked in the front yard or driveway.

In RS-10 and 15, the limit shall be one.

In RS-21 the limit shall be two.

In RR-65 the limit shall be three.

Add to 2. Children under 14 years of age are exempt and may sleep overnight in an RV.

Delete 4.

Requested action: Send to P&Z for a recommendation on Mayor's proposed changes.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: Nov 22, 2011

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

SUBJECT: Tractor Trailer Parking in Residential Zonings

BACKGROUND/HISTORY:

The Board discussed this at the last meeting and had consensus on the following:

- *Board agreed Article V, Section 1-5.16 needs to be chopped up and made into several sentences. Do for next meeting – split up into different topics.*
- *Create a CUP list. Either they sign up and know who is responsible for vehicle and issue a CUP. It will ask if they will abide by Town regulations, then ok; otherwise you need to park elsewhere.*

The other points made by the Board:

- Trailers without tags in the back yard are not the Town's business.
- If they go with a CUP then the 48 hour limit is not required
- The request to park a tractor trailer has to be in RR-65 zoning

ATTACHMENTS:

Minutes from last meeting
Section 1-5.16
Conditional Use Application (to be modified)
Email from Attorney Bohne
Definitions from Florida Statutes
Information from other areas

ACTION OPTIONS:

Board Discussion

4. Continued Discussion for Parking Tractor Trailers in Residential Zoning

Exhibit: Agenda Report No. 4

Recommendation: Discussion

Discussion:

Abare said the definition could be if it is for hire. They discussed individual cases. Krieger spoke of a tractor trailer parking on the paved road near him. Nobody complains. Ritter said there was a case where someone died by running into the rear of a rig that should not have been parked there. Krieger said what about a person having a party. Party is infrequent. Not same as parking rig on regular basis.

They discussed the 48 hours should be 72 hours. Wilbur said to think of the unintended consequences. He referenced a rig parking on Marie Street. Krieger said lets separate things. It is not fluid dripping – that could be any vehicle. If they park on their land it would not bother him. It would if it was dripping. Abare said if might bother others.

Ritter said it is a safety issue. Should not be allowed to park on street.

1-5.16, 2nd para take out reference to owner or add lease. No. Discussed responsible party. Also discussed allowing residents to keep vehicles of friends from other areas. Could lead to a parking lot.

Wilbur liked the County code allowing the rig to park on land with a CUP. Still can't park the trailer.

Wilbur read from the county requirements 1-6. Perhaps the town could do a similar thing. Minimum lot size of ½ acre or larger. There is no limit of time you can leave it there. Permit lasts one year. If it is a garage or covered or buffered.

The problem with the current issue is the guy that wants a letter stating it is ok to park both tractor and trailer on his property. His property is in RS-10 zoning and abuts Malabar Road which would require a setback of 100' from centerline.

- *Board agreed Article V, Section 1-5.16 needs to be chopped up and made into several sentences. Do for next meeting – split up into different topics.*
- *Create a CUP list. Either they sign up and know who is responsible for vehicle and issue a CUP. It will ask if they will abide by Town regulations, then ok; otherwise you need to park elsewhere.*

Krieger said it is mixing metaphors. He thinks a trailer without tags in back yard is not the town business. They read the section again.

Wilbur said go to Sebastian code on trailers – he read the steps and Board all agreed with them.

Krieger said Board was considering allowing tractor trailer parking in RR-65 residential. If it is not in RR-65 we can't consider it.

1-5.16

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)

TOWN OF MALABAR
2725 Malabar Road, Malabar, FL 32950
Tel. 321-727-7764 x 14

APPLICATION FOR CONDITIONAL USE PERMIT

Before completing this application please refer to Malabar Land Development Code
- Article VI Conditional Use and Special Exception Use Criteria
- Articles VII Site Plan Review & VIII Surface Water Management

This application must be completed, with required attachments listed below, and returned to the Town Clerk's office.

Name of Applicant(s) _____ Tel _____
E- Mail Address: _____
Mailing
Address: _____

Owner of Property: _____
Legal description of property covered by application:
Township _____, Range _____, Section _____, Lot/Block _____, Parcel _____
Subdivision _____. Present zoning classification _____ Other
Legal _____ Acreage _____
Property Address _____
Intended use for property: BE VERY SPECIFIC

Attach additional sheet if necessary.

Fees:

Conditional Use -\$175.00 which includes, advertising, administrative time and mailing.
Any additional costs* shall be paid by the applicant.

Site Plan Fee- \$ 300.00 for the first acre, plus \$50.00 per acre or portion thereof over the first acre

(*Additional costs may include, but are not limited to, engineering fees, attorney fees, etc.)

Required attachments to be submitted – 10 paper copies and one (1) electronic copy:

Completed application, including Disclosure of Ownership (Pages 1 & 2)

Payment of \$ _____, in **check or money order** payable to the Town of Malabar.

Site plan showing all required improvements, landscape buffering, storm water, fire protection, parking, ingress, egress, dust abatement, solid waste removal plan.

Signature of Applicant(s)

Date

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

Select Year:

The 2011 Florida Statutes

[Title XXIII](#)
MOTOR VEHICLES

[Chapter 320](#)
MOTOR VEHICLE LICENSES

[View Entire Chapter](#)

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(1) “Motor vehicle” means:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, such vehicles as run only upon a track, bicycles, or mopeds.

(b) A recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. Recreational vehicle-type units, when traveling on the public roadways of this state, must comply with the length and width provisions of s. [316.515](#), as that section may hereafter be amended.

As defined below, the basic entities are:

1. The “travel trailer,” which is a vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle. It is primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use. It has a body width of no more than 8½ feet and an overall body length of no more than 40 feet when factory-equipped for the road.

2. The “camping trailer,” which is a vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

3. The “truck camper,” which is a truck equipped with a portable unit designed to be loaded onto, or affixed to, the bed or chassis of the truck and constructed to provide temporary living quarters for recreational, camping, or travel use.

4. The “motor home,” which is a vehicular unit which does not exceed the length, height, and width limitations provided in s. [316.515](#), is a self-propelled motor vehicle, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

5. The “private motor coach,” which is a vehicular unit which does not exceed the length, width, and height limitations provided in s. [316.515\(9\)](#), is built on a self-propelled bus type chassis having no fewer than three load-bearing axles, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

6. The “van conversion,” which is a vehicular unit which does not exceed the length and width limitations provided in s. [316.515](#), is built on a self-propelled motor vehicle chassis, and is designed for recreation, camping, and travel use.

7. The “park trailer,” which is a transportable unit which has a body width not exceeding 14 feet

and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. The total area of the unit in a setup mode, when measured from the exterior surface of the exterior stud walls at the level of maximum dimensions, not including any bay window, does not exceed 400 square feet when constructed to ANSI A-119.5 standards, and 500 square feet when constructed to United States Department of Housing and Urban Development Standards. The length of a park trailer means the distance from the exterior of the front of the body (nearest to the drawbar and coupling mechanism) to the exterior of the rear of the body (at the opposite end of the body), including any protrusions.

8. The "fifth-wheel trailer," which is a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit, of gross trailer area not to exceed 400 square feet in the setup mode, and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

(2)(a) "Mobile home" means a structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. For tax purposes, the length of a mobile home is the distance from the exterior of the wall nearest to the drawbar and coupling mechanism to the exterior of the wall at the opposite end of the home where such walls enclose living or other interior space. Such distance includes expandable rooms, but excludes bay windows, porches, drawbars, couplings, hitches, wall and roof extensions, or other attachments that do not enclose interior space. In the event that the mobile home owner has no proof of the length of the drawbar, coupling, or hitch, then the tax collector may in his or her discretion either inspect the home to determine the actual length or may assume 4 feet to be the length of the drawbar, coupling, or hitch.

(b) "Manufactured home" means a mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act.

(3) "Owner" means any person, firm, corporation, or association controlling any motor vehicle or mobile home by right of purchase, gift, lease, or otherwise.

(4) "Trailer" means any vehicle without motive power designed to be coupled to or drawn by a motor vehicle and constructed so that no part of its weight or that of its load rests upon the towing vehicle.

(5) "Semitrailer" means any vehicle without motive power designed to be coupled to or drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

(6) "Net weight" means the actual scale weight in pounds with complete catalog equipment.

(7) "Gross weight" means the net weight of a motor vehicle in pounds plus the weight of the load carried by it.

(8) "Cwt" means the weight per hundred pounds, or major fraction thereof, of a motor vehicle.

(9) "Truck" means any motor vehicle with a net vehicle weight of 5,000 pounds or less and which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a cabinet box, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers.

(10) "Heavy truck" means any motor vehicle with a net vehicle weight of more than 5,000 pounds, which is registered on the basis of gross vehicle weight in accordance with s. 320.08(4), and which is designed or used for the carriage of goods or designed or equipped with a connecting device for the purpose of drawing a trailer that is attached or coupled thereto by means of such connecting device and includes any such motor vehicle to which has been added a cabinet box, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers.

(11) "Truck tractor" means a motor vehicle which has four or more wheels and is designed and equipped with a fifth wheel for the primary purpose of drawing a semitrailer that is attached or coupled thereto by means of such fifth wheel and which has no provision for carrying loads independently.

(12) "Gross vehicle weight" means:

(a) For heavy trucks with a net weight of more than 5,000 pounds, but less than 8,000 pounds, the gross weight of the heavy truck. The gross vehicle weight is calculated by adding to the net weight of the heavy truck the weight of the load carried by it, which is the maximum gross weight as declared by the owner or person applying for registration.

(b) For heavy trucks with a net weight of 8,000 pounds or more, the gross weight of the heavy truck, including the gross weight of any trailer coupled thereto. The gross vehicle weight is calculated by adding to the gross weight of the heavy truck the gross weight of the trailer, which is the maximum gross weight as declared by the owner or person applying for registration.

(c) The gross weight of a truck tractor and semitrailer combination is calculated by adding to the net weight of the truck tractor the gross weight of the semitrailer, which is the maximum gross weight as declared by the owner or person applying for registration; such vehicles are together by means of a fifth-wheel arrangement whereby part of the weight of the semitrailer and load rests upon the truck tractor.

(13) "Passenger," or any abbreviation thereof, does not include a driver.

(14) "Private use" means the use of any vehicle which is not properly classified as a for-hire vehicle.

(15)(a) "For-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire."

(b) The following are not included in the term "for-hire vehicle": a motor vehicle used for transporting school children to and from school under contract with school officials; a hearse or ambulance when operated by a licensed embalmer or mortician or his or her agent or employee in this state; a motor vehicle used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of such supplies or to associations of such growers or consumers; a motor vehicle temporarily used by a farmer for the transportation of agricultural or horticultural products from any farm or grove to a packinghouse or to a point of shipment by a transportation company; or a motor vehicle not exceeding 1½ tons under contract with the Government of the United States to carry United States mail, provided such vehicle is

not used for commercial purposes.

(16) "Road" means 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.

(17) "Brake horsepower" means the actual unit of torque developed per unit of time at the output shaft of an engine, as measured by a dynamometer.

(18) "Department" means the Department of Highway Safety and Motor Vehicles.

(19)(a) "Registration period" means a period of 12 months or 24 months during which a motor vehicle or mobile home registration is valid.

(b) "Extended registration period" means a period of 24 months during which a motor vehicle or mobile home registration is valid.

(20) "Marine boat trailer dealer" means any person engaged in:

(a) The business of buying, selling, manufacturing, or dealing in trailers specifically designed to be drawn by another vehicle and used for the transportation on land of vessels, as defined in s. 327.02; or

(b) The offering or displaying of such trailers for sale.

(21) "Renewal period" means the period during which renewal of a motor vehicle registration or mobile home registration is required, as provided in s. 320.055.

(22) "Golf cart" means a motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

(23) "Apportioned motor vehicle" means any motor vehicle which is required to be registered, or with respect to which an election has been made to register it, under the International Registration Plan.

(24) "International Registration Plan" means a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of fleet miles operated in various jurisdictions.

(25) "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles, which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a power unit having a gross vehicle weight in excess of 26,001 pounds;

(b) Is a power unit having three or more axles, regardless of weight; or

(c) Is used in combination, when the weight of such combination exceeds 26,001 pounds gross vehicle weight.

Vehicles, or combinations thereof, having a gross vehicle weight of 26,001 pounds or less and two-axle vehicles may be proportionally registered.

(26) "Commercial motor vehicle" means any vehicle which is not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight. A vehicle that occasionally transports personal property to and from a closed-course motorsport facility, as defined in s. 549.09(1)(a), is not a commercial motor vehicle if the use is not for profit and corporate sponsorship is not involved. As used in this subsection, the term "corporate sponsorship" means a

payment, donation, gratuity, in-kind service, or other benefit provided to or derived by a person in relation to the underlying activity, other than the display of product or corporate names, logos, or other graphic information on the property being transported.

(27) "Motorcycle" means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, excluding a vehicle in which the operator is enclosed by a cabin unless it meets the requirements set forth by the National Highway Traffic Safety Administration for a motorcycle. The term "motorcycle" does not include a tractor or a moped.

(28) "Moped" means any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground, and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.

(29) "Interstate" means vehicle movement between or through two or more states.

(30) "Intrastate" means vehicle movement from one point within a state to another point within the same state.

(31) "Person" means and includes natural persons, corporations, copartnerships, firms, companies, agencies, or associations, singular or plural.

(32) "Registrant" means a person in whose name or names a vehicle is properly registered.

(33) "Motor carrier" means any person owning, controlling, operating, or managing any motor vehicle used to transport persons or property over any public highway.

(34) "Motorized disability access vehicle" means a vehicle designed primarily for handicapped individuals with normal upper body abilities and designed to be fueled by gasoline, travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground, and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.

(35) "Resident" means a person who has his or her principal place of domicile in this state for a period of more than 6 consecutive months, who has registered to vote in this state, who has made a statement of domicile pursuant to s. 222.17, or who has filed for homestead tax exemption on property in this state.

(36) "Nonresident" means a person who is not a resident.

(37) "Electric vehicle" means a motor vehicle that is powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current.

(38) "Disabled motor vehicle" means any motor vehicle as defined in subsection (1) which is not operable under its own motive power, excluding a nondisabled trailer or semitrailer, or any motor vehicle that is unsafe for operation upon the highways of this state.

(39) "Replacement motor vehicle" means any motor vehicle as defined in subsection (1) under tow by a wrecker to the location of a disabled motor vehicle for the purpose of replacing the disabled motor vehicle, thereby permitting the transfer of the disabled motor vehicle's operator, passengers, and load to an operable motor vehicle.

(40) "Wrecker" means any motor vehicle that is used to tow, carry, or otherwise transport motor

vehicles and that is equipped for that purpose with a boom, winch, car carrier, or other similar equipment.

(41) "Tow" means to pull or draw any motor vehicle with a power unit by means of a direct attachment, drawbar, or other connection or to carry a motor vehicle on a power unit designed to transport such vehicle from one location to another.

(42) "Low-speed vehicle" means any four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. s. 571.500 and s. 316.2122.

(43) "Utility vehicle" means a motor vehicle designed and manufactured for general maintenance, security, and landscaping purposes, but the term does not include any vehicle designed or used primarily for the transportation of persons or property on a street or highway, or a golf cart, or an all-terrain vehicle as defined in s. 316.2074.

(44) For purposes of this chapter, the term "agricultural products" means any food product; any agricultural, horticultural, or livestock product; any raw material used in plant food formulation; and any plant food used to produce food and fiber.

(45) "Mini truck" means any four-wheeled, reduced-dimension truck that does not have a National Highway Traffic Safety Administration truck classification, with a top speed of 55 miles per hour, and which is equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, and seat belts.

History.—ss. 1, 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1006, 1011; ss. 2, 5, ch. 8410, 1921; s. 2, ch. 9156, 1923; s. 1, ch. 9157, 1923; ss. 1, 3, ch. 10182, 1925; CGL 1280, 1285, 1677; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933; s. 1, ch. 20743, 1941; s. 1, ch. 20911, 1941; s. 1, ch. 26923, 1951; s. 1, ch. 59-351; s. 1, ch. 65-61; s. 1, ch. 65-446; ss. 23, 24, 35, ch. 69-106; s. 1, ch. 70-215; s. 1, ch. 70-391; s. 93, ch. 71-377; s. 1, ch. 72-339; s. 1, ch. 73-284; s. 2, ch. 74-243; s. 3, ch. 75-66; s. 2, ch. 76-135; s. 4, ch. 76-286; s. 1, ch. 77-180; s. 1, ch. 77-357; s. 1, ch. 78-221; s. 125, ch. 79-400; s. 12, ch. 81-151; s. 22, ch. 82-134; s. 3, ch. 83-188; s. 23, ch. 83-215; s. 1, ch. 83-318; s. 1, ch. 84-182; s. 7, ch. 84-260; s. 5, ch. 85-155; s. 43, ch. 85-180; s. 10, ch. 85-309; s. 4, ch. 85-343; s. 11, ch. 86-243; s. 11, ch. 87-161; s. 20, ch. 87-198; s. 5, ch. 87-225; s. 1, ch. 88-147; s. 66, ch. 89-282; s. 2, ch. 89-320; s. 1, ch. 90-163; s. 4, ch. 90-270; s. 5, ch. 92-148; s. 39, ch. 94-306; s. 910, ch. 95-148; s. 10, ch. 95-247; s. 10, ch. 95-333; s. 29, ch. 96-413; s. 3, ch. 97-58; s. 2, ch. 99-163; s. 15, ch. 99-248; s. 39, ch. 2001-196; s. 1, ch. 2007-242; s. 16, ch. 2008-176; s. 2, ch. 2008-179; s. 6, ch. 2009-183.

11/9/11

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: 5

Meeting Date: Nov 22, 2011

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

SUBJECT: Recommendation Re: Setbacks in All Residential Zoning Classifications

BACKGROUND/HISTORY:

The setbacks for yards were determined in 1983 by Ord 7-8-83 to be Front40; Rear- 30 and Side-30. They have remained that in RR-65 zoning. They are less in smaller residential classifications.

The P&Z Board continued discussion on this at their 9/28/2011 meeting and made the following points:

- Each member to look at Table 1-3.3.A and make recommendations on other Zoning classifications. They have already done RR-65.
- All agreed that the current setbacks should remain for principal structures
- Table 1-3.3.A. should be labeled for principal structures
- *Auxiliary* should be changed to *accessory* structures to maintain consistency in Code
- There was some concern with having reduced setbacks in the smaller zoning classes.
- Board didn't want to change setbacks in Mobile Home or Commercial Zonings
- What about R/LC? – Per Code, R/LC is considered commercial
- Instead of an exact footage use a formula for accessory structures: allow setback reduction up to half as long as height of accessory structure is not more than reduced setback
- What are regulations from Sebastian, Palm Bay and the County for the average side, rear and front setbacks for accessory structures. They are as follows:
 - I. Palm Bay Front- 25; Rear- 25; Side-8(i) & 25(c)
 - II. Sebastian: Front- 25; Rear- 20; Side-10
 - III. County: Front-25; Rear- 20; Side- 15
- Require access around and between properties? (Current Code requires 20' between principal structures but is silent on accessory structures next to principal structures. That may be covered under the building codes.
- Board made a motion to add a footnote 7 to Table 1-3.3.A. to provide for accessory structure setbacks.

ATTACHMENTS:

Setbacks from other areas (previous package)

Sample wording for Footnote 7.

Table 1-3.3.A with proposed changes

Section 1-5.10 – redundant and confusing

Section 1-5.6 Accessory Structures – info on "required" yard area

ACTION OPTIONS:

Board Discussion

Staff recommends that Article V, Section 1-5.10 be deleted from the code. It conflicts and causes confusion regarding the setbacks stated in Table 1-3.3.A. and E. We would recommend that this be part of whatever amendment is proposed.

Portion of Minutes from P & Z Meeting 8/10/11- page 2: See corrections below

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

Corrected version of Motion:

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 will increase in proportion with the height of the Auxiliary building. ie: the height of the Building 20 feet will equal 20 foot setback. All Vote: All Ayes all 5

Section 1-3.3. Size and dimension criteria.

A. *Minimum Lot or Site Requirements for All Uses.* Table 1-3.3(A) incorporates required size and dimension regulations which shall be applicable within each respective zoning district. All developments shall have a total land area sufficient to satisfy all standards stipulated within the land development code, including but not limited to:

- Setback requirements;
- Open space, buffers, and landscaping;
- Surface water management;
- Water and wastewater services;
- Access, internal circulation and off-street parking;
- Wetland protection; and
- Soil erosion and sedimentation control standards.

Conventional single family lots shall be required pursuant to square footage requirements stipulated in Table 1-3.3(A). Similarly, more intense development within multiple family residential districts and other specified nonresidential districts shall maintain sites having minimum acreage requirements stipulated in Table 1-3.3(A).

Portion of Minutes from P & Z Meeting 8/10/11- page 2: See corrections below

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

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- 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 greater 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

an *It will increase in proportion with the height of the build
ie HT of Bldg 20 = set 20 Ft All Ayes*

TABLE 1-3.3(A). SIZE AND DIMENSION REGULATIONS ADD: FOR PRINCIPAL STRUCTURES

Zoning District	Minimum Lot (L)		Maximum Height (ft./stories)	Depth (ft.)	Setback (ft.) (S)			Maximum Ingressions Surface Rec. Ht. (%)	Maximum Building Coverage	Minimum Open Space (%)	Minimum Density (units per acre) with Control Water and Wastewater
	Size (sq. ft.)	Width (ft.)			Front	Rear	Side (I)				
Rural Residential Development											
RR-55	65,340	150	35/3	250	40	30 (1)	30 (1)	20	N/A	50	0.65
Traditional Single Family Residential Development											
RS-21	21,780	120	35/3	150	35	20 (1)	15 (1)	25	N/A	65	2.00
RS-15	15,000	100	35/3	120	30	20 (1)	15 (1)	45	N/A	65	2.504
RS-10	10,000	75	35/3	100	25	20 (1)	10 (1)	60	N/A	50	4.00
Multiple Family Residential Development											
RM-4	5 Acres Minimum Site	200	35/3	200	60	40	40	60	N/A	50	4.00
RM-6	5 acres Minimum Site	200	35/3	200	25	20	10	60	n/a	80	6
Mixed Use Development											
R/LC	20,000	100	35/3	150	25	20	10	50	n/a	50	4
Mobile Home Residential Development											
R-MH	Site: 5 Acres Lot: 7000				50	25	10 (1)	65	n/a	35	6
Office Development											
					10	8	8	10	0.20	50	6.00

TABLE 1-3.3(A). SIZE AND DIMENSION REGULATIONS ADD: FOR PRINCIPAL STRUCTURES

Zoning District	Minimum Lot (1)				Setback (ft.) ²				Maximum Impervious Surface Area (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)	Maximum Height (ft./stories)	Front	Rear	Side (1)	Side (2)				
CA	20,000	100	150	35/3	35/80	25	20	25	65	20	35	N/A
Commercial Development												
CL	20,000	100	150	35/3	50	25	10 ⁴ 15 ³	20	65	0.20	35	N/A
					Min. Area: 900 Max. Area: 4,000							
CG	20,000	100	150	35/3	50	25	20 ⁴ 15 ³	30	65	0.20	35	N/A
					Minimum Floor Area: 1200 Minimum Hotel/Motel Area: 300 Each Unit							
Industrial Development												
IND	20,000	100	150	35/3	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	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.

Proposed Footnote #7 for Residential Setbacks

Add:

Footnote 7 should read "The sides and rear setbacks reduced to 15 feet for auxiliary structures only, and will increase in proportion with the height of the auxiliary building. i.e.: the height of the building is 20 feet, this will equal the 20 foot setback"

B. *Area requirements for uses not served by central water and wastewater services.* All proposed development within areas not served by central water and wastewater services shall comply with the septic permitting requirements of Brevard County.

C. *Impervious Surface Requirements (ISR) for All Uses.* The term "impervious surface" is defined as that portion of the land which is covered by buildings, pavement, or other cover through which water cannot penetrate. The impervious surface ratio requirement controls the intensity of development, by restricting the amount of the land covered by any type of impervious surface.

1. *Calculation of ISR.* The impervious surface ratio (ISR) is calculated for the gross site by dividing the total impervious surface by the gross site area. Water bodies are impervious but shall not be included as such in the ISR calculation.

Cluster development or other site design alternatives may result in individual lots exceeding the ISR, while other lots may be devoted entirely to open space. The Town may require, as a condition of approval, deed restrictions or covenants which guarantee the maintenance of such open space in perpetuity. The ISR requirement shall not be bypassed or reduced. However, the intent is to allow maximum flexibility through calculating ISR on the gross site, and not on a lot-by-lot basis.

2. *Use of Porous Material.* Porous concrete, asphalt, porous turf block, or similar materials may be used subject to approval of the Town Engineer.
3. *Compliance with ISR Stipulated in Table 1-3.3(A).* All proposed development shall comply with the standards given in the table of impervious surface ratios in Table 1-3.3(A).

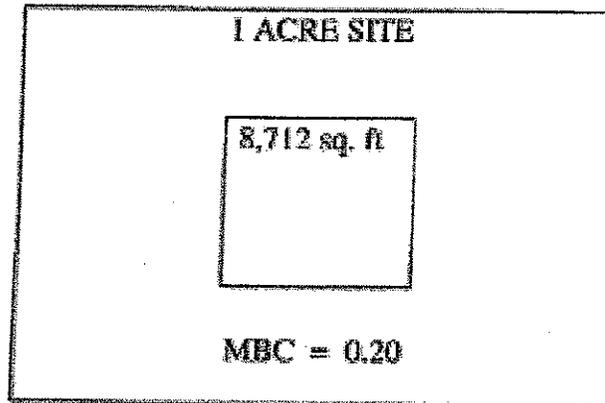
Where a proposed development is donating or dedicating land based on a plan approved by the Town, the gross site before dedication or donation shall be used to calculate ISR. This does not relieve the applicant from providing all required on-site buffers, landscaping, stormwater management areas, setbacks, and other required project amenities.

D. *Maximum Building Coverage.* The term "maximum building coverage" is defined as a measurement of the intensity of development on a site. For purposes of this Code, maximum building coverage (MBC) is used to regulate nonresidential development.

1. *Calculation of MBC.* The MBC is the relationship between the total building coverage on a site and the gross site area. The MBC is calculated by adding together the total building coverage of a site and dividing this total by the gross site area. See figure 1-3.3(D) for a graphic illustration of this concept.

All proposed nonresidential development shall comply with the MBC requirements stipulated in Table 1-3.3(A) for the zoning district in which the development is located.

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



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

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

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

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

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

Minor Collector Streets (80 feet R/W)

75

Atz Blvd.

Hall Road

Old Mission Road

Benjamin (Reese) Road

F. *Minimum Distance Between Principal Buildings.* The minimum distance between principal buildings shall be twenty (20) feet. The distance shall be measured at the narrowest space between buildings and shall not include roof overhang.

(Ord. No. 92-8, § 1(B), (D), (J), 8-18-92; Ord. No. 94-4, § 4, 4-3-95; Ord. No. 96-1, § 1, 3-4-96; Ord. No. 97-5, § 1, 3-17-97; Ord. No. 02-03, § 1, 8-5-02; Ord. No. 03-02, § 1, 2-24-03; Ord. No. 04-08, §§ 1, 2, 7-12-04; Ord. No. 06-05, § 1, 2-6-06; Ord. No. 06-16, §§ 1, 2, 10-2-06)

Section 1-5.9. Regulation of waterways, watercraft and marine related structures.

A. *Regular Mooring of Watercraft.* "Regularly moored" shall mean moored in the same general area at least eight (8) hours a day for ten (10) days in any month. Watercraft shall not be regularly moored along any shore without the consent of the riparian land owner. Regularly moored watercraft shall not be used as dwellings. Watercraft shall not be permitted as business offices or other related commercial enterprises. Regularly moored watercraft shall be kept in seaworthy condition when not in a permitted repair area.

B. *Maximum Permitted Projection of Waterfront Structure.* Unwalled boat shelters may be erected over boatslips, but no part of such shelter may extend landward past the shoreline or be higher than fifteen (15) feet. Docks shall not project outward from shore without approval by the U.S. Army Corps of Engineers and/or any other agency having appropriate jurisdiction.

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

Section 1-5.10. Building setbacks from center line of rights-of-way.

For the purpose of promoting health, safety and general welfare of the community, and to lessen congestion in the streets; to secure safety from fire, panic, storm, hurricane or other causes; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to provide adequate facilities for transportation, parking, water and sewage; and to conserve the value of buildings and encourage the most appropriate use of land, all properties within the town limits shall maintain these minimum building setback lines as measured from the center line of the road.

In determining the setback requirement for any building proposed to be located, the setback requirements in this section shall be construed as a minimum setback and if a greater setback is required under any of the zoning districts then such greater setback requirement shall be enforced.

In the event of the recording of any proposed street or road in the office of the Town Clerk, or in the event of the designation or establishment by the Town Council of any proposed public street or road, the same shall thereupon immediately be used as the reference point for the purpose of determining setbacks for new construction under the terms of this Ordinance. This provision shall not prevent the reconstruction of a fully or partially damaged or destroyed legally nonconforming structure so long as the rebuilt structure is consistent with the Building Code. The measurement shall be from the center line of the road.

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

Section 1-5.11. Regulation of obstructions to visibility.

A. *Regulation Against Obstruction to Traffic and Traffic Visibility.* There shall be no structures or planting which materially obstructs traffic and traffic visibility.

B. *Corner Lots.* On a corner lot in any district, nothing shall be erected, placed, planted or allowed to grow in such a manner as to materially impede traffic visibility within the triangular space bounded by the street frontage property lines of the subject corner lot and a

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

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 6
Meeting Date: Nov 22, 2011

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Residential/Limited Commercial Zoning & Density Clarification

BACKGROUND/HISTORY:

This item has been discussed at the July and August meetings and consensus was reached on reducing the density from 6 to 4 and establishing a maximum use for both residential and commercial. The Code currently provides for R/LC only along Highway 1. The proposed changes would allow it also along Malabar Road and Babcock Street.

The recommendations from P&Z went to the Attorney to draft into a proposed ordinance for your review.

The draft ordinance also provides for the correction of Westland to W. Railroad Avenue.

ATTACHMENTS:

- Draft Ordinance xx-2011
- Working Docs from P&Z

DRAFT Ordinance

ORDINANCE NO. ~~11~~ - 2011

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING SECTION 1-3.1 (O), R/LC RESIDENTIAL AND LIMITED COMMERCIAL; REDUCING DENSITY FROM 6 UNITS PER ACRE TO 4 UNITS PER ACRE; PROVIDING FOR THE NUMBER OF RESIDENTIAL/COMMERCIAL USES ALLOWED; CORRECTING A SCRIVENER'S ERROR IN SECTION 1-3.2; AMENDING TABLE 1-3.3.A; PROVIDING FOR A MINIMUM SQUARE FOOTAGE FOR SINGLE FAMILY HOMES IN THE R/LC ZONING DISTRICT; PROVIDING FOR MINIMUM SQUARE FOOTAGE FOR MULTIPLE FAMILY DWELLINGS; PROVIDING FOR CRITERIA FOR COMMERCIAL USES IN R/LC; PROVIDING A MINIMUM SQUARE FOOTAGE FOR SINGLE FAMILY HOMES IN THE RM-6 ZONING DISTRICT; CORRECTING A SCRIVENER'S ERROR IN THE OI ZONING DISTRICT; AMENDING REFERENCES IN TABLE 1-6.1 (B) IN THE "ACCESS REQUIRED TO STREET" COLUMN FROM "WESTLAND" TO "WEST RAILROAD AVENUE"; AMENDING ARTICLE XX, LANGUAGE AND DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Section 1. Section 1-3.1 (O) is amended to read as follows:

"O. *R/LC Residential and Limited Commercial.*" The R/LC district is established to implement comprehensive plan policies for managing development on land specifically designated for mixed use Residential and Limited Commercial development on the Comprehensive Plan Future Land Use Map (FLUM). Such development is intended to accommodate limited commercial goods and services together with residential activities on specific sites designated "R/LC" which are situated along the west side of the US 1 corridor as delineated on the FLUM. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods as well as single family and multiple family structures with a density up to ~~six~~ four (64) units per acre. Commercial activities shall generally cater to the following markets:

- Local residential markets within the town as opposed to regional markets; or
- Specialized markets with customized market demands.
- A Malabar Vernacular Style is required for all development along arterial roadways.
- Residential use shall not exceed commercial use by more than one.
- Commercial use shall not exceed residential use by more than one.

Areas designated for mixed use Residential and Limited Commercial development are not intended to accommodate commercial activities with a floor area in excess of four thousand (4,000) square feet, such as large-scale retail sales and/or service facilities or trade activities. These types of commercial activities generally serve regional markets and the intensity of such commercial activities is not generally compatible with residential activities located within the same structure or located at an adjacent or nearby site. Such stores would usually differ from limited commercial shops since the former would usually require a floor area larger than four thousand (4,000) square feet; would generally carry a relatively larger inventory; and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large-scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposal containers and/or providing drive-in facilities.

Single family or multiple family residential uses with a density no greater than ~~six-four~~ (64) units per acre may also be located in the R/LC district. Such residential uses may be located either within a freestanding structure or within a structure housing both Residential and Limited Commercial activities. The R/LC district is intended and shall be interpreted to be a "commercial" district with respect to required setbacks and other size and dimension provisions referenced by zoning district in this Code."

Section 2. Section 1-3.2 is amended to read as follows:

"Section 1-3.2. - Land use by districts.

Table 1-3.2 "Land Use by Districts" stipulates the permitted and conditional uses by district.

Permitted uses are uses allowed by right provided all applicable regulations within the land development code are satisfied as well as other applicable laws and administration regulations. Conditional uses are allowable only if approved by the Town pursuant to administrative procedures found in Article VI. The applicant requesting a conditional use must demonstrate compliance with conditional use criteria set forth in Article VI.

No permitted use or conditional use shall be approved unless a site plan for such use is first submitted by the applicant. The applicant shall bear the burden of proof in demonstrating compliance with all applicable laws and ordinances during the site plan review process. Site plan review process is set forth in Article ~~XVII~~."

Section 3. Table 1-3.3(A) is amended, in part, to read as follows:

SEE ATTACHED EXHIBIT A

Zoning District	Minimum Lot (1)		Depth (ft.)	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.)				Front	Rear	Side (f)				
RM-6	.5 acres Minimum Site	200	200	35/3	Single Family: 1200 Multiple Family: 500 1 Bedroom: 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	25	20	10	10	n/a	50	6
Mixed Use Development												
R/LC	20,000	100	150	35/3	Single Family: 1200 Multiple Family: 1 Bedroom: 500-900 2-Bedroom: 700 3-Bedroom: 900 Each Additional Bedroom: 120	25	20	10	10	n/a	50	4
						50	25	10 ⁴	20	n/a	35	6 4
R/LC	20,000	100	150	35/3	Commercial Min. Area: 900 Max. Area 4,000	50	25	10 ⁴	20	0.20	35	4
Office Development												
O/	20,000	100	150	35/3	Minimum Floor Area: 1000	35/ 60	25	20	25	20 0.20	35	N/A

Editor's note— 1 Minimum size sites and lots include one-half of adjacent public right-of-way.
Editor's note— 2 Minimum setbacks determined from the existing right-of-way line where the yard abouts 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.
Editor's note— 3 Setback where rear lot line abuts an alley.

Section 4. Table 1-6.1(B) is hereby amended, in part, to replace references to "WESTLAND" in the "Access Required to Street" column to "WEST RAILROAD AVENUE" as follows:

<i>Conditional Land Uses</i>	<i>Access Required to Street</i>
Marine Commercial Activities	US 1/Babcock/ Westland <u>West Railroad Ave</u>
Trades and Skilled Services	US 1/Babcock/ Westland <u>West Railroad Ave</u>
Vehicular Services and Maintenance	US 1/Babcock/ Westland <u>West Railroad Ave</u>
Wholesale Trades and Services	US 1/Babcock/ Westland <u>West Railroad Ave</u>
Vehicular and Other Mechanical Repair	US 1/Babcock/ Westland <u>West Railroad Ave</u>

Section 5. Article XX is amended in part to read as follows:

Dwelling. A structure or portion thereof which is used expressly for residential human habitation.

Dwelling, Attached. A residential one-family dwelling attached to two or more one family dwellings by common vertical walls.

Dwelling, Detached. A residential dwelling which is not attached to any other dwelling by any structural means.

• • •

Dwelling, Triplex. A residential dwelling containing three (3) dwelling units, each of which has direct access to the outdoors or to a common hall.

• • •

Dwelling Unit. One room or rooms connected together, constituting a separate, independent residential housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be the same structure, and containing independent cooking, sleeping, and toilet facilities.

Section 6. *Severability.* In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of this ordinance shall not be affected and it shall be presumed that the Town Council, of the Town of

Malabar, did not intend to enact such invalid or unconstitutional provision. It shall be further assumed that the Town Council would have enacted the remainder of this ordinance without said invalid and unconstitutional provision, thereby causing said remainder to remain in full force and effect.

Section 7. Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

Section 8. Codification. The provisions of this ordinance shall become part of the land development code of the Town of Malabar.

Section 9. This Ordinance shall become effective immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council member _____.

The motion was seconded by Council member _____ and, upon being put to a vote, the vote was as follows:

Council Member, Carl Beatty	_____
Council Member, David White	_____
Council Member, Steven (Steve) Rivet	_____
Council Member, Jeffrey (Jeff) McKnight	_____
Council Member, Marisa Acquaviva	_____

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

Town of Malabar
By: Mayor Tom Eschenberg

First Reading _____
Second Reading _____

ATTEST:
By _____
Debby K. Franklin, Town Clerk/Treasurer

(Seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

Working Documents

working doc for
ART III ORS 49-2011

DISTRICT PROVISIONS

§ 1-3.1

provides a management strategy for negotiating innovative development concepts, design amenities, and measures for protecting natural features of the land. The management process shall promote public and private coordination and cooperation. The land development code incorporates detailed regulations, standards, and procedures for implementing the planned unit development concept.

The planned unit development district shall be available as a voluntary approach for managing specific development characteristics and project amenities to be incorporated in residential, commercial, industrial or mixed use development. Developers who voluntarily participate in the process shall bind themselves as well as their successors in title to the stipulations within the development order approving the planned unit development district.

↓
O. *R/LC "Residential and Limited Commercial."* The R/LC district is established to implement comprehensive plan policies for managing development on land specifically designated for mixed use Residential and Limited Commercial development on the Comprehensive Plan Future Land Use Map (FLUM). Such development is intended to accommodate limited commercial goods and services together with residential activities on specific sites designated "R/LC" which are situated along the west side of the US-1 corridor as delineated on the FLUM. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods as well as single family and multiple family structures with a density up to six (6) units per acre. Commercial activities shall generally cater to the following markets: 4

- Local residential markets within the town as opposed to regional markets; or
- Specialized markets with customized market demands.
- A Malabar Vernacular Style is required for all development along arterial roadways.

ADD 2 Bullets →

Areas designated for mixed use Residential and Limited Commercial development are not intended to accommodate commercial activities with a floor area in excess of four thousand (4,000) square feet, such as large-scale retail sales and/or service facilities or trade activities. These types of commercial activities generally serve regional markets and the intensity of such commercial activities is not generally compatible with residential activities located within the same structure or located at an adjacent or nearby site. Such stores would usually differ from limited commercial shops since the former would usually require a floor area larger than four thousand (4,000) square feet; would generally carry a relatively larger inventory; and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large-scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposal containers and/or providing drive-in facilities.

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

20/26

§ 1-3.1

MALABAR LAND DEVELOPMENT CODE

4

Single family or multiple family residential uses with a density no greater than six (6) units per acre may also be located in the R/LC district. Such residential uses may be located either within a freestanding structure or within a structure housing both Residential and Limited Commercial activities. The R/LC district is intended and shall be interpreted to be a "commercial" district with respect to required setbacks and other size and dimension provisions referenced by zoning district in this Code.

(Ord. No. 94-4, § 2, 4-3-95; Ord. No. 07-02, §§ 1-4, 4-2-07)

Section 1-3.2. Land use by districts.

Table 1-3.2 "Land Use by Districts" stipulates the permitted and conditional uses by district.

Permitted uses are uses allowed by right provided all applicable regulations within the land development code are satisfied as well as other applicable laws and administration regulations. Conditional uses are allowable only if approved by the Town pursuant to administrative procedures found in Article VI. The applicant requesting a conditional use must demonstrate compliance with conditional use criteria set forth in Article VI.

No permitted use or conditional use shall be approved unless a site plan for such use is first submitted by the applicant. The applicant shall bear the burden of proof in demonstrating compliance with all applicable laws and ordinances during the site plan review process. Site plan review process is set forth in Article ~~X~~ ^{3/8} VII

Cross reference—Alcoholic beverages, ch. 4.

DISTRICT PROVISIONS

§ 1-3.3

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	Maximum Density (units per acre)	With Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)			Depth (ft.)	Front	Side (D)				
Rural Residential Development											
RR-65	66,240	150	250	350	40	30	30	20	N/A	80	0.66
Traditional Single Family Residential Development											
RS-21	21,780	120	150	350	35	20	15	35	N/A	66	2.00
RS-15	15,000	100	120	350	30	20	15	45	N/A	55	2.904
RS-10	10,000	75	100	350	25	20	10	50	N/A	50	4.00
Multiple Family Residential Development											
RM-4	5 Acres Minimum Site	200	200	350	60	40	40	50	N/A	50	4.00
	5 acres Minimum Site	200	200	350	25	20	10	50	n/a	50	6
					60	40	40	60	n/a	50	6
Mixed Use Development											
M/C	20,000	100	150	350	25	20	10	10	10	50	4
					50	25	10 ⁴	20	n/a	35	4
					900						4
											4
Mobile Home Residential Development											
R-MH	Site: 5 Acres Lot: 7000				10	8	8	10	10	60	6.00
Office Development											
O1	20,000	100	150	350	35/60	25	20	25	20	35	N/A
Commercial Development											
CL	20,000	100	150	350	50	25	10 ⁴ 15 ⁵	20	0.20	35	N/A

5/B 0.20

ART XX

LANGUAGE AND DEFINITIONS

§ 1-20.2

Dormitory. A building intended or used principally for sleeping accommodations where such building is related to an education or public institution including religious institutions.

Drive-in Establishment. An establishment, which by design, physical facilities, service or by packaging procedures encourages or permits customers to receive services, obtain goods or be entertained while remaining in motor vehicle.

Duplex. See Dwelling, Two Family.

Dwelling. A structure or portion thereof which is used expressly for human habitation. Residential

Dwelling, Attached. A one-family dwelling attached to two or more one family dwellings by common vertical walls. RESIDENTIAL

Dwelling, Detached. A dwelling which is not attached to any other dwelling by any structural means. RESIDENTIAL

Dwelling, Multiple Family. A residential building designed for or occupied by two or more families living independently of each other.

Dwelling, Single Family. A residential building containing only one (1) dwelling unit and occupied exclusively by one (1) family as a single housekeeping unit.

Dwelling, Triplex. A dwelling containing three (3) dwelling units, each of which has direct access to the outdoors or to a common hall. RESIDENTIAL

Dwelling, Two Family. A residential building containing only two (2) dwelling units and not occupied by more than two (2) families.

Dwelling Unit. One room or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be the same structure, and containing independent cooking, sleeping, and toilet facilities. RESIDENTIAL

Dwelling Unit, Single-Family. A detached residential dwelling unit other than a mobile home, designed for and occupied by one (1) family.

Dwelling Unit, Two Family. A detached residential building containing two (2) dwelling units, designed for occupancy by not more than two (2) families.

Dwelling Unit, Mobile Home. A detached residential dwelling unit designed for transportation after fabrication, on streets or highways on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a dwelling unit completed and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities and the like.

Dwelling Unit, Multiple-Family. A residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

ART VI

TABLE 1-6.1(B). CONDITIONAL LAND USE REQUIREMENTS

Conditional Land Uses	Minimum Size Site	Minimum Width/Depth (feet)	Access Required to Street	Building Setback from Residential District (feet)	Parking-Lot Setbacks from Adjacent Residential/Nonresidential District (feet)	Perimeter Screening Residential District/Nonresidential District (ft)	Other Controls
Child Care Facilities	1 Acre	145	Paved	50/30	15/10	Type A/B	(7)
Places of Worship	5 Acres	250	Paved	70/45	25/20	Type A/C	(7)
Educational Institution	(1)	500	Arterial	70/45	25/20	Type A/C	(7)
Golf Courses	(2)	500	Paved	70/45	25/20	Type C/G	(7)
Group Homes	(3)	(3)	N/A	N/A	N/A	N/A	(7)
Hospital and Extensive Care Facilities	5 Acres	325	Arterial	100/75	25/20	Type A/C	(7)
Nursing Homes	2 Acres	210	Paved	80/30	25/20	Type A/C	(7)
Protective Services	(4)	320	Paved	50/30	25/20	Type A/C	(7)
Public Parks and Recreation Areas	5 Acres	325	Paved	70/45	25/20	Type C/G	(7)
Public and Private Utilities	N/A	120	N/A	70/30	25/20	Type A/C	(7)
Commercial Stables	5 Acres	325	N/A	100/75	50/40	Type B/C	(6)
Adult Entertainment	1 Acre (8, 9, 10)	120	US 1/3abcock	100/30	N/A	Type A/C	(6)
Bars and Lounges	1 Acre (8, 9)	120	US 1/3abcock	100/30	N/A	Type A/C	(6)
Marine Commercial Activities	1 Acre	120	US 1/3abcock/Westland	100/30	N/A	N/A	(7)
Service Stations, Including Gasoline Sales	1 Acre (8)	145	Arterial	100/30	N/A	N/A	(7)
Trades and Skilled Services	1 Acre (8)	145	US 1/3abcock/Westland	100/30	N/A	Type A/C	(7)
Vehicle Services and Maintenance	1 Acre (8)	145	US 1/3abcock/Westland	100/30	N/A	Type A/C	(7)
Wholesale Trades and Services	1 Acre	145	US 1/3abcock/Westland	50/30	15/10	Type A/C	(7)
Kennels	1 Acre	145	N/A	100/30	15/10	Type A/C	(7)
Vehicle and Other Mechanical Repair	1 Acre (8)	145	US 1/3abcock/Westland	100/30	15/10	Type A/C	(7)
Noncommercial Piers, Boat Slips and Docks	N/A	N/A	N/A	N/A	N/A	N/A	(7)

change westland to W. Railroad Ave.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 7
Meeting Date: November 22, 2011

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Definition of "Light Industrial"

BACKGROUND/HISTORY:

At the P&Z Meeting on July 27, 2011 this Board asked Members Wilbur and Krieger to come up with definition for this use. They both submitted their documents but they have not been reviewed yet by Board.

ATTACHMENTS:

Minutes from 7/27/11 and 8/10/11 meetings
Definition of Light Industrial by PZ Member Wilbur
Definition of Light Industrial by PZ Member Krieger

ACTION OPTIONS:

Board Discussion

Submitted by: Don Krieger 8/10/2011 P & Z Meeting

Limited Commercial Light Industrial

CL-LI "Limited Commercial- Light Industrial" The CL-LI district is established to implement comprehensive plan policies for managing such development accessible to major transport facilities as well as accommodate the needs of adjacent or local residential neighborhoods. Such development is intended to provide local services as well as to provide more intensive commercial uses as well as limited light manufacturing, warehousing, distribution and other light industrial functions applicable to the region.

Areas designated for *CL-LI* development are intended to accommodate businesses such as neighborhood shops, light industrial services, limited metal or material fabrication facilities including welding services, electric services, light assembly, limited mechanical repair including but not limited to auto repair, plumbing services, health, environmental, and septic services, as well as the supply of other goods and services compatible to a specialized market with customized market demands. Uses, which are not compatible include but are not limited to large scale discount stores, supermarkets, department stores, large scale wholesale, commercial amusements, and fast food establishments. No residential uses shall be located in this district.

Submitted by: Bob Wilbur 8/10/2011 P & Z Meeting

District and intent "Light Industrial District" (Suggestions from Indian Harbour Beach Code) with additions from Bob Wilbur.

The uses in this district are intended to be located in close proximity to transportation facilities and serving as the manufacturing, warehousing, distribution, wholesaling and other industrial functions of the **town**. Restrictions herein are intended to minimize adverse influences of the industrial activities on nearby nonindustrial areas.

(1) *Principal uses and structures:*

- (A) Warehousing and wholesaling carried on solely within an enclosed structure, **including refrigerated storage.**
- (B) Service and repair establishments, dry cleaning and laundry plants, business services, printing plants and welding shops, **bakeries, fruit packing, and similar uses.**
- (C) Light manufacturing processing and assembly, such as precision manufacturing of electrical machinery and instrumentation.
- (D) Building materials supply and storage, contractor's storage yard, except scrap materials. Outside storage areas shall be walled or screened on all sides to avoid any deleterious effects on adjacent properties.
- (E) Marine sales, storage and repair establishments, and automotive repair, paint and body shops, **transportation terminals, and freight handling.**
- (F) Vocational and trade schools, **veterinary hospital and clinics.**

(2) *Accessory uses:*

- (A) Retail sales of products manufactured, processed or stored on the premises.
- (B) Customary accessory uses of one or more of the principal uses, clearly incidental and subordinate to the principal use in keeping with the industrial character of the district.

(3) *Conditional land uses permissible by **Town** Council: None*

(4) *Special exceptions permissible by the zoning board of appeals: None*

(5) *Prohibited uses and structures: All uses not specifically or provisionally permitted herein, and not in keeping with the industrial character of the district.*

(6) *Minimum lot dimensions and floor area and maximum height:*

Minimum Lot	Minimum Lot	Minimum Lot	Minimum Floor	Maximum Height
9,000 sq. ft	90 ft.	100 ft.	600 sq. ft.	35 ft.

(7) *Minimum yard requirements:*

Front	25 feet
Rear	20 feet; 15 feet when abutting an alley

Side, interior None, except where use borders a zoning district requiring setbacks, in which case said required setbacks, shall also apply in this district

Side, corner 20 feet

DRAFT

Side, corner 20 feet.

(Ord. No. 83-1, §§ 1, 2, 8-23-83; Ord. No. 86-6, § 2, 4-8-86; Ord. No. 89-4, § 1, 6-27-89; Ord. No. 94-6, § 1, 1-10-95; Ord. No. 96-7, § 1, 1-14-97; Ord. No. 99-5, § 1, 6-8-99)

Sec. 8. District and intent: M-1, Light Industrial District.

The uses in this district are intended to be located in close proximity to transportation facilities and serving as the manufacturing, warehousing, distribution, wholesaling and other industrial functions of the city. Restrictions herein are intended to minimize adverse influences of the industrial activities on nearby nonindustrial areas.

(1) Principal uses and structures:

- (A) Warehousing and wholesaling carried on solely within an enclosed structure. *INDUSTRIAL REFRIGERATED STORAGE*
- (B) Service and repair establishments, dry cleaning and laundry plants, business services, printing plants and welding shops. *BAKERY, FROST PACKING*
- (C) Light manufacturing processing and assembly, such as precision manufacturing of electrical machinery and instrumentation.

- (D) Building materials supply and storage; contractor's storage yard, except scrap materials. Outside storage areas shall be walled or screened on all sides to avoid any deleterious effects on adjacent properties.

- (E) Marine sales, storage and repair establishments, and automotive repair, paint and body shops. *REPAIR, TRANSPORTATION MAINTENANCE*
- (F) Vocational and trade schools. *TERMINALS*

- (2) Accessory uses: *VERTICAL HOSTEL CLINICS*
- (A) Retail sales of products manufactured, processed or stored on the premises.

- (B) Customary accessory uses of one or more of the principal uses, clearly incidental and subordinate to the principal use in keeping with the industrial character of the district.

IHB 10/1
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APPENDIX A—ZONING Art. XII, § 9A

- (3) Conditional land uses permissible by city council: None.
- (4) Special exceptions permissible by the zoning board of appeals: None.

(5) Prohibited uses and structures: All uses not specifically or provisionally permitted herein, and not in keeping with the industrial character of the district.

(6) Minimum lot dimensions and floor area and maximum height:

Minimum Lot Area	Minimum Lot Width	Minimum Lot Depth	Minimum Floor Area	Maximum Height
9,000 sq. ft.	90 ft.	100 ft.	600 sq. ft.	35 ft.

(7) Minimum yard requirements:

- Front 25 feet.
- Rear 20 feet; 15 feet when abutting an alley.
- Side, interior None, except where use borders a zoning district requiring setbacks, in which case said required setbacks shall also apply in this district.

Side, corner 20 feet.

Sec. 9A. District and intent: P-1 Institutional.

The provisions of this district are intended to apply to an area which can serve the needs of the community for public utility facilities, correctional facilities and in-patient mental health facilities, which facilities by their nature require substantial security and aesthetic buffers in order to protect the health and welfare of the city. Since the site and building requirements for such uses vary with the size and type of use, a review and approval of a site plan shall be a prerequisite for approval of any change of zoning to the P-1 Institutional classification.

5. Definition of "Light Industrial"

Exhibit: Agenda Report No.5
Recommendation: Discussion

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

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

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

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

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

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

Ryan left at 9:25.

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

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

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

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

5. Continue Discussion of "Light Industrial"

Exhibit: Agenda Report No.5

Recommendation: Discussion

Krieger discussing document submitted on 8/10/ 2011 for "Light Industrial" (LI), trying to keep things simple. The only thing I would add to this is somehow having a "CL" as buffer to "Light Industrial". That "LI" would have to have a buffer of so many properties and limit to the roads.

The Board is discussing the Documents submitted by Bob Wilbur and Don Krieger defining "Light Industrial"

Wilbur adds that "LI" needs to put specific uses were you are not impacting through traffic. We need to come up with a usage that fits the areas; you can still use "CL" even though changed to "LI" because it is a less usage.

Ritter adds that Krieger has the general and Wilbur has some of the specific ideas for Light Industrial and we don't want others to interpret.

The Board is discussing different ways to combine the two documents to form a "light Industrial" use.

Wilbur states he is not trying to take away Limited Commercial, just needs to add to the use. You can make the transition from the less intense use areas to higher intense use area using commercial limited or light industrial. It was suggested to give usages that are more attractive to Foundation Park area. Abare adds that we should take the cities we have reviewed with this usage and take the best of the best. Wilbur stated he liked how Indian Harbour Beach layed out there code it matched us a little better. Basically we are a rural residential town, and we have a few isolated spots to the service industry. Krieger discussing about merging the way others look at light industrial. Ritter adds that limited commercial is perfect for RLC, Krieger says it all relates.

Reilly suggesting in Article II Land Use & Zoning page 853 in book, Commercial Limited = "CL", we want to add CL or LI , or change this CL /LI or just add LI, that would be on the first page then you go to page 63- Section 1-2.6 is Land Use Classifications , presently has #8 is Limited Commercial Activities, it has a whole list of things, somehow we have to merge the words Don did in a previous definition article all that there or we could add it there or add a #8a or #9 Limited Commercial Activities and add Bob's portion and mix it to put in the code.

Wilbur, if we have a "CL" designation there can be other places in Town we can use the "CL" designation, if we add Light Industrial designation we don't have to worry about those usages going into "CL" district, especially where we have R/LC keeping "LI" usage out of R/LC if we merge the two definitions together. There is potential for enough usages to designate in its own classification. They are already buffers.

Definitions:

"LC" Limited Commercial

"LI" Light Industrial

"RLC" Residential Limited Commercial

Krieger adds, let industrial be industrial.

Krieger / Reilly suggests for the next meeting to look at list on page 60, 61 & 62 to cross out or add to this list. Take Don and Bob's input and merge the two to bring back for discussion.

Krieger would like to see where the Town says something specific if you are in a more intense zoning you can do a less intense activity.

Wilbur would like staff to get code from Sebastian for "Light Industrial".

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 8
Meeting Date: November 22, 2011

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Material for P&Z Research into Requirements for Assisted Living

BACKGROUND/HISTORY:

At the July 10, 2011 P&Z meeting the Board asked that staff provide the Florida Statutes that deal with groups homes and assisted living. Those documents were provided in the packet for July 27, 2011. They included:

F.S. 400, Parts I, II, V, VIII

F.S. 408.032(8)

F.S. 419

F.S. 429, Parts I, II, and III

I also printed from the 2007 Florida Building Code the following Sections:

Section 308, Institutional Group I

Section 310, Residential Group R

Section 313, Daycare, Group D

Section 433, Adult Day Care

Section 434, Assisted Living Facilities

Section 436, Day Care Occupancies

This agenda item has not been discussed since the material has been provided due to full agendas and time constraints.

ATTACHMENTS:

- As stated above (previously handed out – will be on overhead)
- Brevard County Code (1 page)
- Cocoa Beach Code (8 pages)

ACTION OPTIONS:

Board Discussion.

From 7/27/11

BREWARD City Code

1 page

Sec. 62-1826. - Assisted living facilities and treatment and recovery facilities.

Assisted living facilities and treatment and recovery facilities. Assisted living facilities and treatment and recovery facilities shall comply with the following requirements, where applicable:

(1)

Dispersal of facilities. The minimum distance between facilities, measured from the property line, shall be 1,000 feet.

(2)

Neighborhood compatibility. In the institutional zoning classification, the external appearance of the assisted living facility's or treatment and recovery facility's structures and building sites shall maintain the general character of the area. Exterior building materials, bulk, landscaping, fences and walls and general design shall be compatible with those of surrounding dwellings.

(3)

Facility standards.

a.

Prior to the granting of any permit for assisted living facilities or treatment and recovery facilities, the state department of health and rehabilitative services shall verify compliance with the following standards:

1.

There shall be not less than 250 square feet of floor space per assigned resident.

2.

There shall be one bathroom per two bedrooms. The bedroom square footage shall be not less than 75 square feet per assigned resident.

3.

Centralized cooking and dining facilities shall equal 30 square feet per assigned resident.

b.

If the request for a permit for assisted living facilities or treatment and recovery facilities is for a structure to be built, floor plans of the structure shall be submitted and approved prior to issuance of the permit.

(4)

Reserved.

(5)

Off-street parking. There shall be two parking spaces, plus two additional parking spaces for every five occupants for which the facility is permitted.

(6)

Compliance with state regulations. Violations of applicable statutes and regulations of the state shall be deemed violations of this division.

(Ord. No. 04-29, § 38, 8-5-04)

Editor's note— Ord. No. 04-29, § 38, adopted August 5, 2004, amended § 62-1903 in its entirety, and redesignated the provisions as § 62-1826. Formerly, § 62-1903 pertained to adult congregate living facilities and treatment and recovery facilities, and derived from the Code of 1979, § 14-20.16.2(B)(2); Ord. No. 97-49, § 12, adopted December 9, 1997, and Ord. No. 2003-03, § 32, adopted January 14, 2003.

COCOA BEACH (CB)

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I. *Sidewalks.* This shall be installed in accordance with the provisions of section 4-32 of these regulations.

J. *Density.*

1. Transient lodging facilities: Twenty-eight (28) units per acre.
2. Multifamily dwellings: Ten (10) dwelling units per acre.
3. Once a lot, tract, parcel of land, or portion thereof has been utilized for the purposes of computing density for residential, transient lodging facility occupancy and said residential, transient lodging facility project has been approved for and/or constructed with the maximum number of units permitted under density allowances, no subdivision or use of that land or construction of any type will be permitted thereon, except the permitted accessory uses for the residential or transient lodging development on said land.
4. Non-residential uses: Building coverage not to exceed thirty-five (35) percent and floor area ratio (FAR) not to exceed 2.5. Non-residential uses that are accessory to residential uses must meet the accessory use requirements set forth above. A reduction in residential density may be credited to non-residential uses as follows: One (1) residential dwelling unit per acre may be converted to an equivalent non-residential FAR of 0.15.

K. *Pervious surface.* See Table 4-01 of these regulations for design standards.

(Ord. No. 1349, § 2, 2-20-2003; Ord. No. 1381, § 3, 4-15-2004; Ord. No. 1395, §§ 2--4, 4-21-2005; Ord. No. 1500, § 7, 8-20-2009)

↙ **Section 3-10. CN neighborhood commercial district.**

- A. *Scope.* The regulations contained within this section shall apply in the CN district.
- B. *Purpose.* To meet the wide spectrum of retail and service needs of the total community, this district allows certain office business, retail and personal services, while specifically prohibiting any transient lodging facility and time-share related uses. These districts are located near the transportation hubs of the city to make them easily accessible to the resident and traveling population of the city. This zoning district shall only be allowed within a commercial land use classification as identified on the city's future land use map.
- C. *Permitted principal uses and structures.* This shall be:
1. Retail (excluding retail fish markets).
 2. Personal service shops and stores, such as beauty and barbershops, laundry/dry-cleaning.
 3. Commercial recreational facilities within a soundproof building.
 4. Professional offices and clinics.
 5. Financial institutions.
 6. Business offices.
 7. Restaurants which are located greater than one hundred (100) feet from any residentially zoned property (RS-1, RM-1, and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.
 8. Nightclubs and bar and lounges within a soundproof building which are located

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greater than one hundred (100) feet from any residentially zoned property (RS-1, RM-1, and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.

- 9. Pet shops within a soundproof, air-conditioned building.
- 10. Communication media facilities and offices.
- 11. Commercial parking lots or parking garages.
- 12. Enclosed car wash.
- 13. Art studios and galleries.
- 14. Animal hospitals and kennels within a soundproof, air conditioned building.
- 15. Each principal use in a phased development must be allocated to an individual site which meets all of the requirements set forth in these regulations.
- 16. Major and minor public utility structures owned, operated, franchised or supervised by the city.
- 17. Adult entertainment establishments located in accordance with provisions of section 4-80 of these regulations, and operated in accordance with the City of Cocoa Beach Sexually Oriented Business and Adult Entertainment Establishment Ordinance (the Code of Ordinances of the City of Cocoa Beach, Florida Chapter 2.5).

D. Permitted accessory uses and structures.

- 1. This shall be the uses and structures which:
 - a. Are customarily accessory and clearly incidental and subordinate to permitted or permissible uses and structures (i.e., sheds, docks, and garages).
 - b. Are located on the same lot as the permitted or permissible use of structure, or on a contiguous lot in the same ownership.
 - c. Do not involve operations or structures not in keeping with the character of the district.
- 2. Any freestanding accessory structure will be included in the calculation of maximum lot coverage, intensity of uses, and other zoning regulations related to structures in this district.
- 3. Yard requirements for accessory structures shall be the same as for principal structures. Side setbacks for accessory structures shall be the same as for the tallest principal structure on the parcel.

E. Special exceptions. If determined to be appropriate and compatible with adjacent land uses, and after public notice and hearing and subject to appropriate conditions and safeguards, the board of adjustment may permit the following as special exceptions:

- 1. Churches and similar places of worship with their attendant educational buildings and recreational facilities, if located on a major street or thoroughfare.
- 2. Existing residential units, hotels, motels, or transient lodging establishments and uses, including all customary accessory buildings in existence as of May 4, 2000, which would otherwise be considered a nonconforming use shall be deemed a special exception following validation of same by resolution of city commission. If such use of a structure, or structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three-year period, the special exception shall be deemed to have expired and such use shall not thereafter be allowed to exist.

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3. Mini warehouses and storage facilities provided that:
 - a. No single compartment shall have a floor area exceeding one thousand five hundred (1,500) square feet.
 - b. Each compartment shall have an exterior independent entrance under exclusive control of the tenant thereof.
 - c. Use of compartment shall be limited to storage of personal property.
 - d. There shall be no outside storage of goods or materials of any type on the site of facility the storage area is located in a side or rear yards and fenced as authorized by section 4-67, Chapter IV of these regulations and the fence shall be constructed of opaque material.
4. Indoor auction sales.
5. Filling (service) station without major vehicle repairs, providing it shall not be located within a fifteen hundred (1,500) foot radius of an existing station. Vehicles stored on the premises longer than forty-eight (48) hours shall be placed within a suitably screened storage area.
6. Commercial marinas, provided all structures are located within the bulkhead lines and not adjacent to a residential district.
7. Mechanical garage with all activities conducted within fully enclosed buildings. Vehicles stored on the premises longer than forty-eight (48) hours shall be placed within a suitable screened storage area.
8. Nightclubs and cocktail lounges within a soundproof building and restaurants which are within one hundred (100) feet of any residentially zoned property (RS-1, RM-1 and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.
9. Outdoor seating that is in conjunction with and clearly accessory to any permitted or special exception restaurant, nightclub, or cocktail lounge use. When considering an application for outdoor seating, the board must consider the special exception criteria listed below, in addition to that criteria listed in section 5-57C. The board may deny the request, approve the request, or approve with conditions the request, based upon a review of these considerations. The board may assign additional conditions and safeguards as deemed necessary:
 - a. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
 - b. Whether or not outdoor lighting will create additional nuisance impacts to existing or planned adjacent land uses.
 - c. Whether or not outdoor entertainment will create additional nuisance impacts, including but not limited to noise impacts, to existing or planned adjacent land uses.
 - d. Whether or not additional parking must be provided.
 - e. Whether or not it is necessary to restrict the hours of operation for the outdoor seating.
 - f. Any other issue that is reasonably related to the nature of the request.
10. Any legitimate commercial use not prohibited in this zone but not falling within the specific permitted uses and which, by a preponderance of evidence, is shown to further the interests of the citizens of Cocoa Beach in the establishment of a low-density family

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oriented residential and resort community with paramount consideration given to the health, comfort, well being, and quality of life for the citizens.

11. Public and private schools offering a general education curriculum.
12. Free-standing retail fish markets.
13. Major public utility structures owned, operated, franchised or supervised by the city.
14. All residential uses in existence at the date of adoption of these regulations.
15. Hospice, assisted living facility, short-term respite care center, geriatric care center, or adult day care center.

16. *Tattoo studios and body-piercing salons.* When considering an application for tattoo studios and body-piercing salons, the board must consider the special exception criteria listed below, in addition to that criteria listed in subsection 5-57C. The board may deny the request, approve the request, or approve with conditions the request, based upon a review of these considerations. The board may assign additional conditions and safeguards as deemed necessary:

- a. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
- b. No new or relocated tattoo studio or body-piercing salon should be placed within two thousand (2,000) feet of any lawfully existing tattoo studio or body-piercing salon establishment. This distance shall be measured from any public entrance or exit of the new or relocated establishment in a straight line of the existing establishment. The board may consider establishments be located closer than the two thousand-foot standard, if by the preponderance of evidence such new or relocated establishment promotes the welfare of the community and serves to promote the preamble to the city charter.
- c. Any other issue that is reasonably related to the nature of the request.
- d. If the owner of a currently existing tattoo studio or body-piercing salon, as of August 20, 2009, loses his lease or use of his building or building location through no fault of his own and is unable to find a comparable replacement site two thousand (2,000) feet from another tattoo studio or body-piercing salon, then, in such circumstances if properly established, the board shall allow such an owner to relocate to another site that may be within two thousand (2,000) feet of an existing tattoo studio or body-piercing salon. This provision is not applicable to owners subsequent to August 20, 2009 to include those who may acquire a corporately owned tattoo studio or body-piercing salon.

F. *Prohibited uses and structures.* This shall be any uses not listed as permitted or allowed by special exception and specifically:

1. Single, duplex, triplex and multifamily structures, except those in existence on the date (May 4, 2000) and considered and regulated as specified above.
2. Hotels, motels, or transient lodging establishments and uses, including time shares, except those in existence of the date of adoption of this ordinance (May 4, 2000) and considered and regulated as a special exception as specified above.
3. Storage and transfer facilities.
4. Industrial activities.
5. Commercial activities in dwelling units of apartments, motels and hotels.
6. Outside automobile sales.

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7. Junkyards.

8. Any other use incompatible with the exclusive commercial character of the district and its permitted uses.

9. Parking or display of any vehicle for sale.

10. Facilities and services which create through objectionable noise, air pollution, obnoxious odors, or other annoyances are considered incompatible and not in keeping with the residential and family-oriented tourist-amenity intent of the district.

11. Wholesale and retail sale of fireworks.

G. *Minimum off-street parking requirements.* See Chapter IV, Article III of these regulations.

H. *Limitations on signs.* See Chapter VI of these regulations.

I. *Sidewalks.* This shall be installed in accordance with the provisions of section 4-32 of these regulations.

J. *Density.*

1. Existing residential or transient lodging units and corresponding calculated density in existence as of May 4, 2000. Once a lot, tract, parcel of land, or portion thereof has been utilized for the purposes of computing density for residential (ten (10) dwelling units per acre), transient lodging facility occupancy (twenty-eight (28) rooms per acre) and said residential, transient lodging facility project has been approved for and/or constructed with the maximum number of units permitted under density allowances, no subdivision or use of that land or construction of any type will be permitted thereon, except the permitted accessory uses for the residential or transient lodging development on said land.

2. Non-residential uses: Building coverage not to exceed thirty-five (35) percent and floor area ratio (FAR) not to exceed 2.5. Non residential uses that are accessory to existing residential uses shall not exceed twenty (20) percent of the gross floor area of the residential structure. A reduction in residential density may be credited to non-residential uses at an equivalent of one (1) residential dwelling unit per acre equals a non-residential FAR of 0.15, or one (1) transient lodging unit per acre equals a non-residential FAR of 0.05.

K. *Pervious surface.* See Table 4-01 of these regulations for design standards.

(Ord. No. 1349, § 2, 2-20-2003; Ord. No. 1381, § 4, 4-15-2004; Ord. No. 1388, § 3, 7-1-2004; Ord. No. 1397, §§ 2, 3, 6-16-2005; Ord. No. 1500, § 8, 8-20-2009)



Section 3-11. CG general commercial district.

A. *Scope.* The regulations contained within this section shall apply in the CG district and may be permitted in the future land use designation of general commercial.

B. *Purpose.* This district is intended for general business and services to meet the wide spectrum of retail and service needs of the total community. These districts are located near the transportation hubs of the city to make them easily accessible to the resident and traveling population of the city.

C. *Permitted principal uses and structures.* This shall be:

1. Retail (excluding retail fish markets).
2. Commercial recreational facilities within a soundproof building.

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3. Professional offices and clinics.
4. Financial institutions.
5. Business offices.
6. Transient lodging facilities.
7. Restaurants which are located greater than one hundred (100) feet from any residentially zoned property (RS-1, RM-1, and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.
8. Nightclubs and bar and lounges within a soundproof building which are located greater than one hundred (100) feet from any residentially zoned property (RS-1, RM-1, and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.
9. Pet shops within a soundproof, air-conditioned building.
10. Communication media facilities and offices.
11. Commercial parking lots or parking garages.
12. Personal service shops and stores including but not limited to beauty and health salons, astrology and palm readers, tattoo parlors, clothing, gifts, small appliances, and art studios.
13. Enclosed car wash.
14. Animal hospitals and kennels within a soundproof, air conditioned building.
15. Public utility structures owned, operated, franchised or supervised by the city.
16. Health clubs and gyms.
17. Adult entertainment establishments located in accordance with provisions of section 4-80 of these regulations, and operated in accordance with the City of Cocoa Beach Sexually Oriented Business and Adult Entertainment Establishment Ordinance (the Code of Ordinances of the City of Cocoa Beach, Florida Chapter 2.5).

D. *Permitted accessory structures and uses.* This shall be those uses and structures which:

1. Are customarily accessory and clearly incidental and subordinate to permitted principal uses and structures (i.e., sheds, docks and garages). To be considered accessory use which does not count towards lot coverage, the proposed use must be located within the primary structure.
2. Nonresidential uses that are accessory to residential or transient lodging uses shall not exceed twenty (20) percent of the gross floor area of the residential structure. A reduction in residential or transient lodging density may be credited to non-residential uses at an equivalent of one (1) residential dwelling unit per acre equals a non-residential FAR of 0.15, or one (1) transient lodging unit per acre equals a non-residential FAR of 0.05.
3. Are located on the same parcel as the principal use or structure.

E. *Special exceptions.* After public notice and hearing and subject to appropriate conditions and safeguards, the board of adjustment may permit the following as special exceptions:

1. Indoor auction sales.
2. Filling (service) station without major vehicle repairs, providing it shall not be located within a fifteen hundred (1,500) foot radius of an existing station. Vehicles stored on the

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premises longer than forty-eight (48) hours shall be placed within a suitably screened storage area.

3. Churches and similar places of worship with their attendant educational buildings and recreational facilities, if located on a major street or thoroughfare.

4. Nightclubs and cocktail lounges within a soundproof building and restaurants which are within one hundred (100) feet of any residentially zoned property (RS-1, RM-1 and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.

5. Outdoor seating that is in conjunction with and clearly accessory to any permitted or special exception restaurant, nightclub, or cocktail lounge use. When considering an application for outdoor seating, the board must consider the special exception criteria listed below, in addition to that criteria listed in section 5-57C. The board may deny the request, approve the request, or approve with conditions the request, based upon a review of these considerations. The board may assign additional conditions and safeguards as deemed necessary:

a. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.

b. Whether or not outdoor lighting will create additional nuisance impacts to existing or planned adjacent land uses.

c. Whether or not outdoor entertainment will create additional nuisance impacts, including but not limited to noise impacts, to existing or planned adjacent land uses.

d. Whether or not additional parking must be provided.

e. Whether or not it is necessary to restrict the hours of operation for the outdoor seating.

f. Any other issue that is reasonably related to the nature of the request.

6. Commercial marinas, provided all structures are located within the bulkhead lines and not adjacent to a residential district.

7. Mechanical garage with all activities conducted within fully enclosed buildings. Vehicles stored on the premises longer than forty-eight (48) hours shall be placed within a suitable screened storage area.

8. Mini-storage with suitable screening compatible with the architecture of the project. On-site parking shall be provided on the basis of one (1) space per five hundred sixty (560) square feet of gross floor area. One-half (1/2) of the parking sites may be sodded or landscaped. The individual mini-storage; however, it shall not preclude the use of the facility as a depot for such purposes as franchised distribution. If motor vehicles or vessels are stored in an individual facility, there shall be not mechanical work performed on the premises.

9. Any legitimate commercial use not prohibited in this zone but not falling within the specific permitted uses and which, by a preponderance of evidence, is shown to further the interests of the citizens of Cocoa Beach in the establishment of a low-density family oriented residential and resort community with paramount consideration given to the health, comfort, well being, and quality of life for the citizens.

10. Public and private schools offering a general education curriculum.

11. Free-standing retail fish markets.

12. Major public utility structures owned, operated, franchised or supervised by the city.

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13. Hospice, assisted living facility, short-term respite care center, geriatric care center, or adult day care center.

14. *Tattoo studios and body-piercing salons.* When considering an application for tattoo studios and body-piercing salons, the board must consider the special exception criteria listed below, in addition to that criteria listed in subsection 5-57C. The board may deny the request, approve the request, or approve with conditions the request, based upon a review of these considerations. The board may assign additional conditions and safeguards as deemed necessary:

a. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.

b. No new or relocated tattoo studio or body-piercing salon should be placed within two thousand (2,000) feet of any lawfully existing tattoo studio or body-piercing salon establishment. This distance shall be measured from any public entrance or exit of the new or relocated establishment in a straight line of the existing establishment. The board may consider establishments be located closer than the two thousand-foot standard, if by the preponderance of evidence such new or relocated establishment promotes the welfare of the community and serves to promote the preamble to the city charter.

c. Any other issue that is reasonably related to the nature of the request.

d. If the owner of a currently existing tattoo studio or body-piercing salon, as of August 20, 2009, loses his lease or use of his building or building location through no fault of his own and is unable to find a comparable replacement site two thousand (2,000) feet from another tattoo studio or body-piercing salon, then, in such circumstances if properly established, the board shall allow such an owner to relocate to another site that may be within two thousand (2,000) feet of an existing tattoo studio or body-piercing salon. This provision is not applicable to owners subsequent to August 20, 2009 to include those who may acquire a corporately owned tattoo studio or body-piercing salon.

F. *Prohibited uses and structures.* This shall be any uses not listed as permitted or allowed by special exception and specifically:

1. Industrial uses and structures.

2. Facilities and services which create through objectionable noise, air pollution, obnoxious odors, or other annoyances are considered incompatible and not in keeping with the residential and family-oriented tourist-amenity intent of the district.

3. Wholesale and retail sale of fireworks.

4. Any other use incompatible with the exclusive commercial character of the district and its permitted uses.

G. *Minimum off-street parking requirements.* See Chapter IV, Article III of these regulations.

H. *Limitations on signs.* See Chapter VI of these regulations.

I. *Sidewalks.* This shall be installed in accordance with the provisions of section 4-32 of these regulations.

J. *Density.*

1. Transient lodging facility: Twenty-eight (28) units per acre.

2. Once a lot, tract or parcel of land, has been used to compute density for transient lodging occupancy and said transient lodging project has been approved for and/or constructed with the maximum number of units permitted under density allowances, no

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 9
Meeting Date: November 22, 2011

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

SUBJECT: Internet Cafes / Electronic Gaming – Lack of Definition in Ordinance

BACKGROUND/HISTORY:

This item was discussed at the last P&Z meeting as information only. After hearing the Board's reasons for their modification to the Attorney's ordinance, she put it back on Council agenda for November 21, 2011.

Clerk will provide an update at your meeting.

ATTACHMENTS:

- Agenda report for Council meeting 11/21/11
- Minutes from Council meeting of 11/7/11

ACTION OPTIONS:

Discussion.

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: November 21, 2011

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

SUBJECT: Recommendation from Planning & Zoning Board

BACKGROUND/HISTORY:

Council approved the ordinance drafted by the Attorney at their meeting on Nov 7. Council wanted Clerk to explain their reasoning to P&Z before they had it come back to them for a public hearing. The Clerk gave the information to the Planning and Zoning Board on Nov 9.

They felt Council missed their point for their position of not including a definition. If Malabar proposes a definition and then the State comes up with one and they conflict then the Town will have to spend more money to amend the code. By just leaving the reference to a statutory definition, when one is created by the State, the Town won't have to go back and adopt another ordinance to amend the definition.

The P&Z Board is under the impression that it costs thousands of dollars to adopt an ordinance. The legal ad for the public hearings for code changes require one legal ad before the public hearing at Council and the average cost is \$73.00. Ordinances regarding changes to the Land Development Code or site plans, CUPs, etc., require a public hearing at P&Z and at Council but they can be advertised in the same ad if the dates are known. The dates usually are known ahead of time for planning purposes of the applicant and staff. Those ads run about \$75.00.

The cost of the Attorney to research and draft an ordinance depends of course on the topic but in the case of the firearm ordinance, the Attorney charged us \$300.00 to review the code and draft the ordinance. In some cases staff drafts the ordinance or does the research or both and forwards the information to the Attorney to save money.

My understanding from the last Council meeting was that we were to advertise this for a public hearing at P&Z on Dec 14, 2011.

FINANCIAL IMPACT:

ATTACHMENTS:

DRAFT ordinance from P&Z Board
Council minutes from 11/7/11

ACTION:

Staff requests Action and Direction to Staff

3. Recommendations from Planning & Zoning Board – Gaming Establishments

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

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Mayor said Atty drafted ord and sent it to PZ and they changed it. Atty did memo. They eliminated definition for gaming establishment. They instead grouped them together and referenced a F.S. Attorney Bohne said there is no definition for these internet gambling (electronic gaming establishments. Leaving as P&Z wants it would create an issue. He would recommend the definitions as he wrote stay in. Bohne said they also took out the correction to the table in Art VI. That needs to be in there as well as it is an amendment to the LDC. He had added it to correct another issue of a wrong street name in Table in Article VI. It was originally put in ordinance for ALF and he changed it to this ordinance to correct that other issue. It has been removed. When you do an ordinance to the LDC you can combine the amendments. Regarding electronic gambling, the State will eventually have to deal with these things and if the State determines how they will handle these strip mall casinos. But until then this will provide Malabar with coverage. McKnight wanted it to go back to P&Z. Franklin said that they could discuss it at P&Z on Wednesday. She can bring it up under old business or staff reports. Franklin also said that once Council approves the wording and directs it to be put in ordinance form, then the ordinance will go to P&Z for a Public Hearing before coming to Council for a first reading. Mayor asked if they could discuss this at next P&Z and then have for the 1st PH at their following meeting. Franklin said they will try and schedule a second meeting in November but not for PH. They could discuss and then it could go on for PH at their December meeting.