

**TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY DECEMBER 14, 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 – 11/22/2011
Exhibit: Agenda Report No. 1
Recommendation: Motion to Approve
- E. PUBLIC HEARING:**
 - 2. **Ordinance 2012-48 Electronic Gaming**
Exhibit: Agenda Report No. 2
Recommendation: Action
- F. PUBLIC:**
 - 3. **Don Barker – Update on Access to Properties in Triangle from Babcock Street**
 - 4. **Kim Frodge – Introduce Prospective “Nana’s House” in Town of Malabar**
- G. ACTION:**
- H. DISCUSSION:**
 - 5. **Update from Council and Continue Requirements for Ponds**
Exhibit: Agenda Report No. 5
Recommendation: Discussion
 - 6. **Tractor Trailer Parking in Residential Zonings**
Exhibit: Agenda Report No. 6
Recommendation: Discussion
 - 7. **Setbacks in All Residential Zoning Classifications**
Exhibit: Agenda Report No. 7
Recommendation: Discussion
- I. ADDITIONAL ITEMS FOR FUTURE MEETINGS:**
 - 8. **Residential/Limited Commercial Zoning & Density Clarification**
 - 9. **Definitions for “Light Industrial” Zoning**
 - 10. **Code Requirements for Assisted Living Facilities**
- J. PUBLIC:**
- K. OLD BUSINESS/NEW BUSINESS:**
- L. 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: December 14, 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 22, 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 22, 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, excused
	LIZ RITTER
ALTERNATE:	WAYNE ABARE, voting for Ryan
ALTERNATE:	CINDY ZINDEL, excused
SECRETARY:	DENINE SHEREAR
TOWN CLERK/TREASURER	DEBBY FRANKLIN

Reilly stated Ryan had called him and asked to be excused. Wilbur stated he also got a call from Ryan asking to be excused. Wilbur reiterated that Board Members need to call Town Hall if and when they can't make a meeting.

C. ADDITIONS/DELETIONS/CHANGES:

D. CONSENT AGENDA:

1. **Approval of Minutes** Planning and Zoning Meeting – 11/07/2011

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

MOTION: Reilly / Ritter to approve Minutes of 11/07/2011 with corrections:

Corrections:

Reilly said on pg 3, 4th para, Reilly will work on this (means ordinance) not checklist

Same page, 6th para – Reilly will work on checklist sb ordinance

Krieger - Pg 4, underlined motion – tell "council" instead of tell them

Vote: All Ayes.

E. PUBLIC HEARING: none

F. ACTION:

2. **Recommendation Re: Requirements for Pond & Lake Site Plans**

Exhibit: Agenda Report No. 2

Recommendation: Action

MOTION: Reilly / _____ to recommend Council adopt the following definitions:

- water bodies less than 1000sf are a decorative water feature,
- water bodies greater than 1,001sf to 10,000sf are ponds
- water bodies greater than 10,001sf are lakes
- further recommend that excavated material shall remain on site unless it is muck

Discussion: Abare questioned the different requirements between a pond and a lake – most review steps would be similar. No one offered a different requirement for lake. What is difference between pond and lake (minor and major) site plan. Abare gave example of a 9000sf pond vs. a 11,000sf lake; both have adjoining neighbors. If we don't require both to comply with same checklist neighbor will complain to town if we didn't require pond to do swales. Why didn't you protect me. Got problem now.

Reilly thinks he is asking for only two categories.

Wilbur explained why they came up with three categories was to grant relief for those wanting a simple fish pond. That those small ones would be called water features and only have to comply with setbacks. The others would require site plans.

Abare said Art VII refers to site plan for over 1000sf. Why have three types if two of them require site plans? Discussion over excavated material - must stay onsite or in Town?

Krieger said he is not willing to set the three and then work around the requirements. Whether it is 10,000sf or 50,000sf – again is the difference in surface or volume. Also, it doesn't say not removed from site – it shall not be removed from Town. Krieger wants to continue work on the ordinance. Reilly said ask Council if this is what they are looking for before they go forward. If they don't like the three classes then why go forward. Abare wants to look at conflicts in current ordinances and if that results in a new category then take to Council. Krieger said permit would be required to dig any hole. He said the measurements being used are not clear – volume or surface. Reilly disagrees with volume. Abare is talking about sf. Is lake tapered? Are trees going to be removed? Ritter suggested three types: less than 1000sf would need to meet setbacks only. Next type would be pond in conjunction with house construction. Next would be pond construction alone on undeveloped parcel.

They discussed principal structure requirement before accessory. Krieger suggested a percentage of lot size requirement for ponds.

Reilly amended motion and Krieger concurred:

MOTION: Reilly / Krieger to recommend Council adopt the following definitions: (amended)

- water bodies less than 1000sf are a decorative water feature.
- water bodies greater than 1,001sf are ponds
- further recommend that excavated material shall remain on site.

Vote: Ayes: 4 (Reilly, Wilbur, Ritter, Abare for Ryan) Nay: 1 (Krieger) – Motion carried

Krieger referenced the estimated size of his pond at 4000sf and stated that more details should be worked out. He thought decorative water feature should be defined as less than 5,000sf.

Abare said the 1000 sf is already there in the code. Abare said the difference is with water feature under 1000 sf you are not likely to impact your neighbor. Wilbur suggested two categories – 1000sf or less or if it is more. Ritter explained the difference <1000sf or more than 1001sf. More than would require a site plan. Less would only be the simple checklist. Use minor site plan checklist be used for water features and the other checklist for major site plan.

Public: Brian Vail, 2700 Smith Lane, dug a 1 acre pond and the permit cost was exorbitant. Cost was more than house permit. He was using all fill on site and did it per code. A lot of us have 5 acres of land. Took him a long time to get the money for that. Questioned the definition of suitable soil. Deemed unsuitable – classification – needs more. That loop hole needs to be closed. Fine sand left and there was nothing submitted to verify it as unsuitable. He did have to get a separate clearing permit to make sure the trees weren't protected. This was 10 years ago. Franklin said the Fee Resolution has been changed since his permit.

Krieger said the case we just heard, was one fifth of the property that doesn't include the house or setbacks. Wilbur said what may be unsuitable for compaction could be used for garden. Wilbur said Code should state organic material.

Krieger referenced the exceptions listed in code for excavation and asked if we should have separate requirements. He used the example of the value of the fill.

Reilly said that for the next meeting they should all consider the requirements for site plan for ponds greater than 1000 sf.

3. Recommendation Re: RVs & Trailers in Front Yards of Residential Zoning

Re: **Art V, Section 1-5.15**

Exhibit: Agenda Report No. 3

Recommendation: Action

Speaker Card: Thomas Trembley, 1085 Atz Road, he has questions. Re: boats and RVs in front yards. His concern is if we accommodate that restriction, is there a control as what people can do without it getting out of hand.

Speaker Card: Dick Korn, Weber Road since 1987. Commends the break down – shall add the word required. When he moved here he brought an RV and this came up. Spent money and extended the DW and parked the RV there. Parking in Front yard should be allowed.

When other people move into town and want more modernity move into a rural area they want to make changes. We have been here a lot of years. Don't want that to happen because we are a rural community. If they don't like the community, then why move here. Liz asked what his position is. As more people move in we need to protect that and that is why you have. Wayne is confused on his position. Should we punish that person by telling him that his RV should be behind the front of his house. Trembley said no. He agrees with the Mayor. Remove the restriction. What happens if it is completely removed? Ritter said they are discussing the required front yard setback. The section between their house and the setback line.

Abare said we spent a fair amount of time looking at current code and regulations. We believe the current code allows you to put those vehicles in the front yard just not the required front yard area.

Open to Board -

Discussion: Krieger perused the code and the zoning categories were different. He referenced Art II and is looking at this as a wordsmith. R/LC is it looked at as com or res? It is commercial but it starts with an "R". Same with RR it starts with "rural" – so it is not residential. Where can people keep their stuff? He thinks we are looking at it in the wrong manner. In RR (rural residential) there is no prohibition of parking major recreational vehicles since the code only references residential zoning. Keep that in mind – Rural came from agricultural.

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 front yards and setbacks. Tell them that P&Z will continue to work on conflicts within the code.

Regarding the prohibition of personal equipment of vehicles should be limited to front yard and setbacks 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. Wilbur said we have to add "required" and remove residential. Tell Council we will continue to work on this.

Wilbur said go back to the Attorney's letter. He summarized the perceived problem in town is the parking in front yard – that is the front line of house. Only thing we have to change is add "required" front yard.

Reilly read the definitions of yards - Line in front of structure. Krieger said you could put a post in the ground in the front yard and that would then be a structure and the line would be behind that.

Vote: Ayes: 4 (Reilly, Wilbur, Ritter, Abare for Ryan) Nay: 1 (Krieger) – Motion carried

G. DISCUSSION:**4. Recommendation Re: Tractor Trailer Parking in Residential Zonings****Re: Art V, Section 1-5.16****Exhibit:** Agenda Report No. 4**Recommendation:** Discussion

Reilly wants to hold off on this. No consensus. Ritter wants to add FS 320 definitions for trucks, tractors and heavy trucks. Krieger said 1-5.16 talks about – if you lease it you are insuring it. Use something that covers when it is something loaned.

Wilbur said most of conflict is between the two paragraphs. His recommendation was to show registration.

Wilbur said if they want to have a tractor trailer then put it in enclosed building and apply for a CUP. Only allows them to put the tractor not the whole rig. Then we don't have breakdown of roads. Then Town knows where they are and who they are. Does a driver have to have a BTR? CUP would be valid for one year.

Wilbur suggested contacting code compliance and see how it is doing. It is a way to regulate it and make it available in certain areas - must be at least half acre or larger. Livestock trailers are exempt as agricultural.

This did not come from a violation it came from a request from guy who wanted to get a letter saying it was ok. If we came up with CUP and came up conditions then they could apply and we could monitor issues.

Board agreed they still need to change the wording of these two paragraphs in Art V, Section 1-5.16

Krieger read from code – titled to proper owner purchase, lease, and gift or otherwise - Is it "under control" of the property owner. Take the requirement out of the code. Use the definition in the FS. Shall be controlled by instead of owned and titled by.

Abare asked Krieger if he thought tractor trailer should be allowed or not. Krieger said neighbor that parks a rig on road and nobody complains. Board then discussed width of ROW. Ritter repeated story of rig on side of road that someone crashed into and died.

Krieger said if there is a complaint then have them go thru the CUP process. First see if there is a problem. If not bothering anyone and there are no complaints – no problems. If problems and complaints, the go thru process if you want a CUP to allow parking.

Abare asked Reilly if he thought tractor trailer should be allowed or not. Reilly replied ok for tractor only.

Public: Chuck McClelland, 2050 Linrose, owner of Chucks Towing, stated he is under control of vehicles but does not own them. Control of vehicle is the right word to use. Ritter read Florida Statute definition and agreed. Board agreed to use this definition

Reilly said Board should look at the two paragraphs in Section 1-5.16 for next meeting, the Attorney's letter and the F.S. definitions.

MOTION: Reilly / Krieger recommend we skip 5, 6, 7, 8 til next time. **Vote:** All Ayes.

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: Discussion and Direction

Franklin reported that this item and the proposed ordinance was on Council agenda the previous night. Council directed that they go with Atty version.

Wilbur – sidewalks on Malabar Road on north side. Look at MPO about sidewalk – from PO to US 1. From Corey to hospital. Pipe the ditch and cover over it.

The Mailboat capital improvement plan has bike path for 2014. Krieger said Park Board was talking about this at last mtg. They are looking for passages. Different types of bikes. Another committee working on this. Wilbur said make our request known.

Krieger, drive around GV there are new signs - Watch out for golf carts and Golf Carts sharing roadway.

Krieger, new business, concerning newsletter. Comes out periodically. Inform people of the changes. He wasn't aware that it was coming out. He thought Board should see what is going out before it is sent to printer. They should review and have opportunity to comment. Franklin said that the next newsletter will go out in January and as she reported to Council the previous night, there will be articles focusing on each Board and its responsibilities and duties and ask for volunteers to submit an application. She said he is welcome to provide an article.

J. ADJOURN:

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

Vote: All Ayes. The meeting adjourned 10:30 P.M.

BY:

Bob Wilbur, Chair

Debby Franklin, Recording Secretary

Denine Sherear, P&Z Board Secretary

Date Approved

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: December 14, 2011

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

SUBJECT: Public Hearing on Ord 2012-48 Electronic Gaming

BACKGROUND/HISTORY:

Council approved the ordinance drafted by the Attorney at their meeting on Nov 7, 2011. 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, 2011. Clerk then gave Council the P&Z response as follows at the RTCM of 11/21/2011:

P&Z 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.

Council directed that Clerk go forward with the advertisement for Public Hearing on the Attorney version of the ordinance.

Clerk explained to Council that perhaps 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.

Municode updates the electronic version of the Malabar Code as each ordinance is adopted for a minimal cost.

ATTACHMENTS:

Ordinance 2012-48

ACTION:

Staff requests P&Z Board to make a MOTION to recommend Council approve Ord 2012-48, disapprove or approve with changes.

ORDINANCE NO. 2012-48

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

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

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

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

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

'Electronic Gaming Establishment' means a business operation, which shall have at least 50 electronic machines or devices, including but not limited to, computers and gaming terminals, to conduct games of chance and/or a game promotion pursuant to Section 849.094, F.S., including sweepstakes, and where cash, prizes, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such redeemed or distributed items are determined by the electronic games played or by predetermined odds. It is specifically intended by this definition that any place of business that does not have at least 50 electronic machines or devices shall not be granted a conditional use permit to operate such a business. This term includes, but is not limited to internet cafes, internet sweepstakes cafes, and cybercafés or sweepstakes cafes. This definition is applicable to any Electronic Gaming Establishment, whether or not the electronic machine or device utilized:

(a) is server based;

(b) uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;

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

The term *Prize* as used herein shall mean any gift, award, gratuity, good, service, credit, or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize."

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

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	C P
COMMERCIAL ACTIVITIES														
ENCLOSED COMMERCIAL AMUSEMENT										P				
ARCADE AMUSEMENT CENTER/ELECTRONIC GAMING ESTABLISHMENT										C2				

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

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

Conditional Land Uses	Minimum Size Site	Minimum Width/Depth (feet)	Access Required to Street	Building Setback from Residential District/Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District/Nonresidential District (feet)	Perimeter Screening Residential District/Nonresidential District (5)	Curb Cut Controls
<u>ENCLOSED AMUSEMENT ARCADE CENTER/ELECTRONIC GAMING ESTABLISHMENTS</u>	<u>1 Acre</u>	<u>120</u>	<u>Highway 1 and Babcock Street only</u>	<u>100/30</u>	<u>N/A</u>	<u>Type A/C</u>	<u>(7)</u>

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

Section 5. Article XX of the Malabar Land Development Code is amended to change the definition of "Commercial Amusement, Enclosed" to read as follows:

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

Section 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.

BY:
TOWN OF MALABAR

Mayor Thomas M. Eschenberg

PH at P&Z: 12/14/11
First Reading: 12/19/2011
Second Reading: 01/03/2012

Town Of Malabar
By Mayor Tom Eschenberg

First Reading _____
Second Reading _____

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

(Seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: December 14, 2011

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

SUBJECT: Don Barker – Update on Access to Properties in Triangle from Babcock Street

Don Barker speaking under “**PUBLIC**” to give update on progress on access to properties located in Triangle area from Babcock Street.

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: December 14, 2011

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

SUBJECT: Kim Frodge - To Introduce a Prospective "Nana's House" in the Town of Malabar

Kim Frodge speaking under "**PUBLIC**" to introduce Prospective "Nana's House" in the Town of Malabar.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 5
Meeting Date: Dec 14, 2011

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

SUBJECT: Update from Council and Continue Requirements for Ponds

BACKGROUND/HISTORY:

Council considered the P&Z Board recommendation at the RTCM of 12/5/11. The info given to Council follows:

PONDS: They (P&Z) are working on the pond issue that came to them regarding the conflict in our code; in Art V, "ponds" ¼ ac in size or less require no permit and Art VII that states that any disturbance of land affecting 1000sf of surface requires a site plan review. In considering the initial reason Council approved the permit waiver for small ponds to help residents that just wanted a fish pond and balancing that with the fact that a ¼ acre pond could result in over 300 loads of excavated material. They are also reviewing the section of code that allows some types of fill to be removed from Town. As they continue to work on this they wanted to confirm that they had Council support in their preliminary assessments. If Council concurs and adopts the suggested definitions, then they will proceed with the requirements for permitting and review.

MOTION: Reilly / Krieger to recommend Council adopt the following definitions: (amended)

- water bodies less than 1000sf are a decorative water feature,
- water bodies greater than 1,001sf are ponds
- further recommend that excavated material shall remain on site.

Vote: Ayes: 4 (Reilly, Wilbur, Ritter, Abare for Ryan) Nay: 1 (Krieger) – Motion carried

This was not a unanimous vote but the desire was to get Council input on this basic concept before they proceeded.

After discussion, the Council approved the P&Z Board's recommendation as presented. The Attorney did voice concern over requiring applicants to retain fill on their own lot. Council thought Board may want to change that to requirement to keep fill in Town.

Council understands P&Z will continue working on the related issues the P&Z Board brought up in their minutes; such as site plan requirements and the checklists.

ATTACHMENTS:

DRAFT Minutes from RTCM 12/5/2011 regarding Ponds
Minor Site Plan - Checklist from Engineer
PZ Member Abare's Spec sheet
Major Site Plan - Site Plan Ap for non-residential projects

ACTION OPTIONS:

Continue Discussion

Portion of RTCM 12/5/2011 related to ponds

Pond Recommendation:

Mayor said this started with guy wanting to build a pond larger than ¼ acre on adjacent lot to his house. He asked Franklin. Franklin said that issue came up first when a person was allowed to build a pond ¼ acre or less and they had issues with DEP. Also because of the conflict with Article VII that requires a site plan for disturbance of land 1000sf or larger. Clerk took issue to Council and was directed to send to P&Z. Mayor said it had to do with a guy who wanted to put ¼ acre pond on his adjacent lot and the amount of engineering was excessive and costly. Rivet asked Mayor for clarification. Mayor said 1000sf or less would require permit and checklist; larger would require site plan. Smaller water features would only have to follow checklist and meet setbacks; no expensive engineering. Acquaviva said they are recommending that Council approve these recommendations that would require they keep excavated material on lot. Yes. They came up with three recommendations. Define small water area and larger water area and third recommendation is don't take fill off site. Code currently says don't take from Town. Acquaviva asked for Attorney opinion. Attorney has no problem with what they want to call a water feature or pond. Code does provide exceptions regarding excavated material for developments, allowing it to be removed. Attorney said there could be issue with telling people they can't remove fill from their lot. Perhaps it should say it should first be used on site and then excess can be removed. Current Code requires it to stay within Town unless it is a listed exception. Chair said Council could just provide consensus. Franklin said if Council takes formal action it will provide direction to staff and let P&Z know they are working in the right direction. They will continue to work on the checklist.

MOTION: Rivet / Acquaviva to approve the P&Z Board definition of water feature and ponds.

VOTE: All Ayes.

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: 6

Meeting Date: December 14, 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 several meetings 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.*

This was discussed for both the Tractor cab and trailer and just for the cab. Board also discussed not requiring anything until there is a complaint and then require the CUP. A sample CUP application is provided.

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

Staff contacted Brevard County Zoning and got the following information:

They require the applicant to be the occupant of the property and the truck to be an integral part of the annual income. In both cases, it only allows the cab to park on property.

- Their CUP process requires a minimum lot size of .5 acre, costs 849.00 and goes through the same process as a rezoning (two public hearings, notification of surrounding properties within 500').
- They also offer an *Administrative Waiver* for parcels of at least 2.5 acres, costs 277.00 annually and requires a signed affidavit from adjacent property owners and verified size of property by survey.

ATTACHMENTS:

Minutes from P&Z Mtg 9/11/11 and 11/22/11 mtgs

Section 1-5.16

SAMPLE Modified Conditional Use Application

Email from Attorney Bohne

Definitions from Florida Statutes

Info from County Zoning Dept

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.

4. Recommendation Re: Tractor Trailer Parking in Residential Zonings

Re: Art V, Section 1-5.16

Exhibit: Agenda Report No. 4

Recommendation: Discussion

Reilly wants to hold off on this. No consensus. Ritter wants to add FS 320 definitions for trucks, tractors and heavy trucks. Krieger said 1-5.16 talks about – if you lease it you are insuring it. Use something that covers when it is something loaned.

Wilbur said most of conflict is between the two paragraphs. His recommendation was to show registration.

Wilbur said if they want to have a tractor trailer then put it in enclosed building and apply for a CUP. Only allows them to put the tractor not the whole rig. Then we don't have breakdown of roads. Then Town knows where they are and who they are. Does a driver have to have a BTR? CUP would be valid for one year.

Wilbur suggested contacting code compliance and see how it is doing. It is a way to regulate it and make it available in certain areas - must be at least half acre or larger. Livestock trailers are exempt as agricultural.

This did not come from a violation it came from a request from guy who wanted to get a letter saying it was ok. If we came up with CUP and came up conditions then they could apply and we could monitor issues.

Board agreed they still need to change the wording of these two paragraphs in Art V, Section 1-5.16

Krieger read from code – titled to proper owner purchase, lease, and gift or otherwise - Is it "under control" of the property owner. Take the requirement out of the code. Use the definition in the FS. Shall be controlled by instead of owned and titled by.

Abare asked Krieger if he thought tractor trailer should be allowed or not. Krieger said neighbor that parks a rig on road and nobody complains. Board then discussed width of ROW. Ritter repeated story of rig on side of road that someone crashed into and died.

Krieger said if there is a complaint then have them go thru the CUP process. First see if there is a problem. If not bothering anyone and there are no complaints – no problems. If problems and complaints, the go thru process if you want a CUP to allow parking.

Abare asked Reilly if he thought tractor trailer should be allowed or not. Reilly replied ok for tractor only.

Public: Chuck McClelland, 2050 Linrose, owner of Chucks Towing, stated he is under control of vehicles but does not own them. Control of vehicle is the right word to use. Ritter read Florida Statute definition and agreed. Board agreed to use this definition

Reilly said Board should look at the two paragraphs in Section 1-5.16 for next meeting, the Attorney's letter and the F.S. definitions.

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

Conditional Use Permit (CUP) Application for Tractor Cabs*

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

Applicants for a CUP to provide for parking of Tractor Cabs on large lot residential lots in Malabar must have a minimum of 21,000 sf and be located in areas zoned RS-21 or RR-65. If approved a CUP permit will be issued. Once paid, the CUP will be valid for one year period and is renewable by administratively extension for successive one-year periods. However, if the activity ceases to be compatible with the character of the neighborhood as evidenced by code enforcement complaints, the CUP may be revoked by the Town.

Name of Property Owner _____ Tel _____
Name of Applicant(s) _____ Tel _____
Property Address _____
Owner Email _____
Applicant E- Mail Address: _____
Mailing Address: _____
Present zoning classification _____ Acreage _____

Attach a Scaled Dimensional Sketch Plan showing the location of all structures on the parcel, where the Tractor Cab will be parked, ingress and egress, buffering (existing or proposed), and estimated distance to adjacent structures.

General Standards of Review:

- The proposed conditional use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation and traffic generated
- Ingress and egress to the property shall be adequate for tractor cabs
- The proposed conditional use will not cause a diminution in value of abutting residential property
- The proposed conditional use will not have adverse impact or substantially interfere with the use or enjoyment on adjacent and nearby properties due to noise, odor, particulates, smoke, fumes or other emissions or other nuisance activity generated by conditional use
- The proposed conditional use must have existing or proposed screening or buffering to eliminate or reduce adverse nuisance, sight or noise impacts on adjacent and nearby properties.

Application Fee for Tractor Cab Conditional Use -\$120.00. Annual CUP fee is \$50.00.

Signature of Applicant(s)

Date

TOWN OF MALABAR

Where the property is not owned by the applicant, a letter/letters must be attached giving the notarized 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 Owner 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 application are honest and true to the best of my/our knowledge and belief.

Applicant(s) Date

Sworn and subscribed before me this _____ day of _____, 20____.

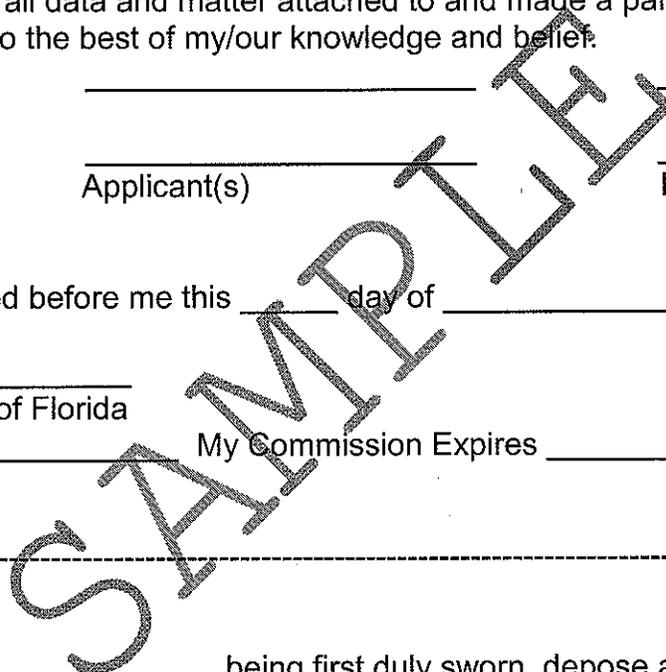
Notary Public, State of Florida
Commission No. _____ My Commission Expires _____.

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 of _____, 20____.

Notary Public, State of Florida
Commission No. _____ My Commission Expires _____.



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.

BREVARD

ADMINISTRATIVE
WAIVER

Sec. 62-2132. Administrative permit for commercial vehicle parking at a residence.

(a) Any residential property owner may request from the zoning official an administrative permit to park a commercial motor vehicle on a residential lot. Such a permit may be issued only under the following conditions:

- (1) The parcel must be a developed single-family residential lot of at least two and one-half acres 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 must be maintained in operating condition.
- (4) The commercial motor vehicle may be a tractor cab but shall not include a trailer.
- (5) The commercial motor vehicle, or any equipment or machinery on the vehicle, may not for any reason be left running for extended periods of time.

(b) Applicants for the administrative permit shall submit a letter to the zoning official setting forth the specific request and the need therefore. The letter shall have the following documents attached thereto:

- (1) A signed affidavit from all property owners within 200 feet indicating no objection to the requested permit.
- (2) Verification by certified survey, recorded deed or other means satisfactory to the zoning official to determine the size and developed status of the lot.

(c) Failure of the applicant to obtain signatures of all property owners within 200 feet will result in denial of the administrative permit. Denial of the request for an administrative permit under the provisions of this section may be appealed to the board of county commissioners in public meeting. The county shall notify all property owners within 200 feet of the date, place and time of the meeting.

(d) Administrative permits are valid for one year and are renewable for successive one-year periods. However, if the activity ceases to be compatible with the character of the neighborhood, as evidenced by code enforcement investigation, the permit shall not be renewed and may be revoked. The owner will be notified in writing if the permit is revoked or will not be renewed administratively. Renewals of permits that are revoked administratively or which are not renewed administratively may be reconsidered only by board of county commissioners action pursuant to subsection (c) above.

(Ord. No. 96-19, § 1, 4-16-96)

BREVARD

C.U.P. process

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 8' 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 Section 62-1901(d). The property owner will be

notified in writing if the CUP extension is not renewed pursuant to Section 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.

(Ordinance No. 2010-11, enacted May 6, 2010.)

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 7

Meeting Date: December 14, 2011

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

SUBJECT: Setbacks in All Residential Zoning Classifications

BACKGROUND/HISTORY:

The setbacks for yards were determined in 1983 by Ord 7-8-83 to be Front 40; 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:

- 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 Art II of Code, R/LC is considered commercial
- Board agreed to add footnote #7 to Table 1-3.3.A. to provide for accessory structure setbacks. 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
- Reviewed setbacks from other areas. 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.

ATTACHMENTS:

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:

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 1-3.3A. and E. We would recommend that this be part of whatever amendment is proposed.

The use of “required” in Section 1-5.6 which currently prohibits accessory structures in required yards will now conflict with the new approved recommendations that setback area means required yard.

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

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

ADD: FOR PRINCIPAL STRUCTURES

Zoning District	Minimum Lot (1)				Maximum Height (ft./ stories)	Minimum Living Area (sq. ft.)	Setback (ft.)(2)				Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)	Front			Rear	Side (I)	Side (C)					
Rural Residential Development														
RR-65	65,340	150	250	35/3	1,500	40	30 ⁽¹⁾	30 ⁽¹⁾	30	20	N/A	80	0.66	
Traditional Single Family Residential Development														
RS-21	21,780	120	150	35/3	1,800	35	20	15	15	35	N/A	65	2.00	
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	45	N/A	55	2.904	
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	50	N/A	50	4.00	
Multiple Family Residential Development														
RM-4	5 Acres Minimum Site	200	200	35/3	1 Bedroom: 900 2 Bedroom: 1100 3 Bedroom: 1300 Each Additional Bedroom: 120	60	40	40	40	50	N/A	50	4.00	
RM-6	5 acres Minimum Site	200	200	35/3	Single Family:	25	20	10	10	50	n/a	50	6	
					Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	60	40	40	40	50	n/a	50	6	
Mixed Use Development														
R/LC	20,000	100	150	35/3	Single Family:	25	20	10	10	50	n/a	50	4	
					Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	50	25	10 ⁽⁴⁾	20	65	n/a	35	6	
					Commercial: Min. Area: 900 Max. Area 4,000					0.20				
Mobile Home Residential Development														
R-MH	Site: 5 Acres Lot: 7000					10	8	8	10	50	N/A	60	6.00	
Office Development														

DISTRICT PROVISIONS

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

Zoning District	Minimum Lot (1)			Maximum Height (ft./ stories)	Minimum Living Area (sq. ft.)	Setback (ft.)(2)				Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (1)	Side (C)				
OI	20,000	100	150	35/3	Minimum Floor Area: 1000	35/60	25	20	25	65	20	35	N/A
Commercial Development													
OL	20,000	100	150	35/3	Minimum Floor Area: 900	60	25	10 ⁴ 15 ³	20	65	0.20	35	N/A
					Min. Area: 800 Max. Area: 4,000								
CG	20,000	100	150	35/3	Minimum Floor Area: 1200 Minimum Hotel/Motel Area: 300 Each Unit	50	25	20 ⁴ 15 ³	30	65	0.20	35	N/A
Industrial Development													
IND	20,000	100	150	35/3	Minimum Floor Area: 1200	50 100 ⁵	25 100 ⁵	20 100 ⁵	30 100 ⁵	70	0.42	30	N/A
Institutional Development													
INS	20,000	100	150	35/3	Minimum Floor Area: 1200	50	25	20	30	60	0.20 0.10 ⁶	40	N/A
Coastal Preservation													
CP	No Size or Dimension Standards Adopted												

¹Minimum size sites and lots include one-half of adjacent public right-of-way.

²Minimum setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(B) 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"

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: