

**TOWN OF MALABAR**  
**PLANNING AND ZONING ADVISORY BOARD**  
**REGULAR MEETING**  
**WEDNESDAY MARCH 28, 2012**  
**7:30 PM**  
**MALABAR COUNCIL CHAMBER**  
**2725 MALABAR ROAD**  
**MALABAR, FLORIDA**

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**AGENDA**

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**
- D. CONSENT AGENDA :**
  - 1. Approval of Minutes**                      Planning and Zoning Meeting – 3/14/2012  
**Exhibit:**    Agenda Report No. 1  
**Recommendation:**                                Motion to Approve
  
- E. PUBLIC:**
- F. ACTION:**
  
- G. DISCUSSION:**
  - 2. R/LC Zoning Clarification**  
**Exhibit:**    Agenda Report No. 2  
**Recommendation:**                                Discussion
  
  - 3. Continue Review of Checklist and Requirements for Decorative Water Features and Ponds**  
**Exhibit:**    Agenda Report No. 3  
**Recommendation:**                                Discussion
  
  - 4. Define “Light Industrial” Zoning**  
**Exhibit:**    Agenda Report No. 4  
**Recommendation:**                                Discussion
  
  - 5. Code Requirements for Assisted Living Facilities**  
**Exhibit:**    Agenda Report No. 5  
**Recommendation:**                                Discussion
  
- H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:**
  - 6. Setbacks in Residential Zonings**
  - 7. Discuss Procedures for P&Z Excused Absence Policies**
  
- I. OLD BUSINESS/NEW BUSINESS:**
- J. ADJOURN**

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

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

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 1**  
**Meeting Date: March 28, 2012**

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

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**SUBJECT:** Approval of Minutes

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**BACKGROUND/HISTORY:**

The minutes must reflect the actions taken by the Board:

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

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

**ATTACHMENTS:**

Draft minutes of P&Z Board Meeting of March 14, 2012

**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  
MARCH 14, 2012 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:	PAT REILLY
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN, excused
	LIZ RITTER
ALTERNATE:	WAYNE ABARE
ALTERNATE:	CINDEL ZINDEL
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

Chair stated that Ryan called and asked to be excused. Abare will be voting in his place.

**B. ADDITIONS/DELETIONS/CHANGES:**

Franklin stated that the land use and zoning changes the Town is requesting have been advertised as the required ordinances. Copies are available for each member. Also on the Public Hearing items I will be doing a roll call vote on the motion.

Ritter makes disclosure that she will not be voting on Agenda Item 2 as she is an interested party and has submitted a Form 8B.

**D. CONSENT AGENDA:**

**1. Approval of Minutes** Planning and Zoning Meeting – 2/8/12 & 2/22/12

**MOTION:** Ritter / Abare to approve 2/8/12 minutes as corrected.

Corrections: Krieger said on pg 2 starting with Abare, should that be "then" not that.

**Vote:** all Ayes

**MOTION:** Reilly / Ritter to approve 2/22/12 minutes as corrected.

Corrections: Krieger said on pg 5, at bottom, 2<sup>nd</sup> word should be "race" car; page 6 "town" misspelled.

**Vote:** All Ayes

Ritter stated she would be abstaining from voting as she has an interest in the property and has submitted the required form.

**E. PUBLIC HEARING:**

**2. Site Plan Review for Public Pool & (2) Bath Houses; Camelot RV Park Inc.-1600 Highway 1, Malabar. Applicant, Mr. Robert Ritter, Pres. Camelot RV Park, Inc. & Mr. David Bistarkey, Adobe Builders, Inc.**

**Site Plan of Camelot:**

Chair called applicant to podium. Dave Bistarky, Adobe builders

Reilly asked how the electric will get to pool and bath houses. Where is power coming from? It is in place already and will be coming from the lift station area. Reilly asked if there was a drain field. No, there is an existing sewer there. No other questions.

Chair opened **PUBLIC HEARING**

None

Chair closed **PUBLIC HEARING**

Reilly would question the sentence that states that historically the area does not flood. He looked at it and did not think it would flood. Bistarkey said it was reviewed by St. Johns and it did not trip the requirement their permit. Krieger said he thought it was neutral. Reilly tried to read the plumbing plan and all the notes looked like they were cut and pasted, numbers were not sequential. They are standard notes from codes. He only mentioned as he would question if he were the Building Official. They are random notes, if someone had to work to this he would question this whole block. Reilly said it is standard Building Code stuff. Bistarkey said he could not submit complete construction plans until the site plan is approved and those plans have the detailed information. He tried to submit last October. Reilly said the site plan submittal should include elevations of the structures.

Sherear emailed the electronic pdf of the elevations. Reilly explained to Bistarkey that it is on the checklist for site plan. Krieger asked about bathhouses; one bathhouse for men and one for women? Yes.

**MOTION:** Reilly / Abare to recommend Council approve the site plan for a public pool and two bath houses for Camelot RV Park, Inc.

**ROLL CALL Vote:** Krieger, Aye; Reilly, Aye; Wilbur, Aye; Ryan, excused; Abare, Aye; Ritter, abstained.

Motion passed 4 to 0

**3. Land Use Amendment & Zoning Changes; 2540 Malabar Road, Malabar; "OI" (Office Institutional) to "R/LC" (Residential/Limited Commercial); Applicant, Town of Malabar**

Chair asked staff for intro. Franklin explained the agenda report gives the history and that after the permit was issued, this appeared to be the prudent method to correct the situation and do no harm to the applicant.

Franklin explained that the ordinances making these changes have been advertised with the public hearing and will be forwarded to Council with P&Z recommendation for their April 2 meeting. Land use change must precede the zoning change. It is the Town's error and to avoid liability we could have taken this to Board of Adjustment and appeal the administrative decision of the Building Official. Thrift store is retail and that is not permitted use in Office Institutional zoning. The P&Z Board had previously recommended this area be changed to R/LC. The Town Council previously approved handling the Serene Harbor facility as a small scale amendment (SSA) to Comp Plan so they could proceed with grant expansion.

Krieger called Point of Order. He questioned why it was retail. Taking money? He had to describe what he did when he did his project. Krieger stated if this is a non-profit organization then how is it retail. If this comes up to a certain level of operation? Krieger also stated we don't allow R/LC except on US 1 and we have not provided a definition for it. He read from Table 1-3.2 and said non-profit organizations are allowed in OI. This is a nonprofit. Wilbur said it is still retail sales. Abare said why not consider it as a conditional use?

Chair called property owner Kim Frodge to podium to explain what it is. She is a volunteer. Nana's House purchased the house to operate a thrift cottage. People donate things, volunteers sort it and then people come and they buy it. 100% of money is used to provide safe loving home for abused and neglected and abandoned children. Home is in Palm Bay. They have office space upstairs. That is the plan. Operate a thrift store.

Franklin explained that staff has worked hard to expedite this to do no harm to property owner. The P&Z Board asked about this at last meeting. Staff followed up and learned that the permit had been issued for renovations for a thrift store. Town Administrator consulted with Town Attorney and that resulted in recommendation to appeal Building Official decision at BOA as retail is not permitted in OI. Further discussion came up with the alternative to go forward with the change of land use and zoning as small scale amendment as this is part of the previous recommendation to change this area between Marie Street and railroad. Attorney further recommended that it should be at Town expense as it was our error.

Krieger said he knows attorneys are wrong sometimes. Suggested they could approve this use until the entire area is ready to be sent to Council to change these areas.

Much discussion. Franklin stated she did not research alternatives since we rely on our Attorney to provide guidance. She did not research what defined retail as the Attorney stated that a thrift store is retail. Franklin said the thrift store whether profit or non-profit is still going to require a BTR (business tax receipt) to operate. Also the current Code provides for definition of R/LC and Town approved a similar small scale amendment in 2004 in same corridor.

Staff pulled up the FLUM map as approved in the EAR and showed them the RLC change made.

Abare said it is not a sin against the vision in the situation we are in. Chair Wilbur said the ordinances will be therapeutic and resolve the problem.

Reilly said we need to do the change. They can give it away. In order to get a BTR they have to have the right zoning. You can give them conditional approval. Abare has already bought into it. Wilbur said that is what we are trying to avoid. Ritter asked why OI doesn't allow retail.

Krieger said throw in a Conditional Use and let them go forward. Abare said just add as a conditional use. Krieger said we have an accepted land use; we just have to wait for someone to come in and ask for the zoning change. Abare said the FLU is what the Town would like to see. Some will want it and others will not.

Staff made copies of Article VI, Conditional Use Table to show that what they are proposing is not in Malabar Code. Staff was given direction to bring this as a land use and zoning change as the best method to resolve this. The first option was to proceed with a Board of Adjustment hearing to appeal the administrative decision of the Building Official. We are following the direction of the paid professionals the Town uses to advise staff. Franklin said it is not staff's job to research alternatives to what the Attorney has recommended.

Reilly and Krieger were looking at Table 1-3.2 Land Use and it shows non-profits. Franklin said that is for clubs like the Knights of Columbus. Krieger said they sell cookies there. Franklin said they are in CG zoning.

Ms. Froge said she is facing deadlines with the insurance inspection; they want to see the shop set up with product and need to take pictures of the store.

Krieger rescinded the point of order.  
Wilbur stated for the record this was legally advertised.

Franklin read Ordinance 2012-49 into record:

~~AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING COMPREHENSIVE PLAN AMENDMENT NO. 2012-1 (SSA); AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN OF THE TOWN FROM OFFICE INSTITUTIONAL (OI) TO RESIDENTIAL LIMITED COMMERCIAL (R/LC) LYING ON THE NORTH SIDE OF MALABAR ROAD, ON PROPERTY LOCATED IN TOWNSHIP 28, RANGE 38, SECTION 31, SUBDIVISION 54, PARCEL 00002.0-0037.00, ALSO KNOWN AS 2540 MALABAR ROAD, LOCATED IN THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING AN EFFECTIVE DATE.~~

Franklin read Ordinance 2012-50 into record:

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; REZONING THE PROPERTY AS FOLLOWS: A PARCEL OF LAND LYING ON THE NORTH SIDE OF MALABAR ROAD, LOCATED IN TOWNSHIP 28, RANGE 38, SECTION 31, SUBDIVISION 54, PARCEL 00002.0-0037.00, ALSO KNOWN AS 2540 MALABAR ROAD, IN THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; FROM OFFICE INSTITUTIONAL (OI) TO RESIDENTIAL LIMITED COMMERCIAL (R/LC); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

Change date on bottom of ordinances to reflect 3/14/12 and change year to 2012 on Town Administrator's memo.

### **Public Hearing Opened**

Tom Eschenberg, Beran Lane. Point of order, he read through Table and did not find Thrift store as a permitted use in OI. He has vision for Malabar Road. It is still a vision. They have been working on this for years. Eschenberg said Krieger indicated it should stay a vision. They had said they did not want to change the zoning on parcels out of concern of increased taxes. But when people come in and request it, we should act on it.

There is now a request that matches the vision. It is the first little step. We have talked about this many times. Little shops or shops with residences upstairs. Government ought to be accommodating. When it matches the vision the government should not stand in the way.

### **Chair closes PUBLIC HEARING**

Abare said it is not at odds with the Town vision and they should support it.

**MOTION:** Reilly / Abare to recommend Council approve Ord 2012-49 and Ord 2012-50.

Discussion. Reilly said it is over .25 acre. Other thing is we have already done this in 2004 down the street. This is a no brainer. This is what the Town envisioned and this is what we should do. Krieger said he is for whatever will get these people what they need. The Town is asking for this; people did not come in and ask. This came to us backward. He would prefer they allow this using another method. Krieger doesn't want to see this happen in other situations.

Abare said he is confused about the land use and zoning change process. Franklin explained that with the recent legislative changes, small scale amendments no longer have to be reviewed by the State but the process must still be followed that provides that you cannot change a zoning on a property if it conflicts with the land use. That is why the land use change must be done first so that the change to the zoning will not create a conflict.

Ritter said the Board is not supposed to get these applications this way; we need to be more cautious in reviewing applications and talking with people. In this case this is what we want to happen. Chair Wilbur said that is up to Council to handle that aspect.

~~Abare said he thinks he will be more cautious in future. Wilbur said the Building Official should have a written report for P&Z at each meeting explaining what is happening in Department. That is why they have a "New Business" agenda item.~~

~~Zindel asked about who made it OI as there is a house and it has been used as residential. Wilbur said the entire town was changed back in the 1980s. It was done administratively.~~

Krieger said the R/LC should be changed to the entire depth of the proposed line. Wilbur said no, the property owner should come in for that. Zindel said the other property owners will want the Town to pay for their change as well. Hopefully the Town won't make another mistake. That is why the Town is paying for this.

**ROLL CALL Vote:** Krieger, Aye; Reilly, Aye; Wilbur, Aye; Ryan, excused; Abare, Aye; Ritter, Aye, Motion passed 5 to 0.

F. PUBLIC:

G. ACTION:

4. **Section 1-5.16 Tractor Trailer Parking in Residential Zonings**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Action

Chair Wilbur introduced item.

**MOTION:** Ritter / no second to approve revised Sec. 1-5.15.

Speaker Card, Tom Eschenberg, Beran Lane, stated Board mixed Section 1-5.15 and Section 1-5.16.16 together at last meeting. He submitted two memos addressing each separately. He came up with tractor trailer parking should be handled separately. His teen council is going to get it at next meeting.

Another memo on Section 1-5.15, no parking in the setback. You are focusing on RR-65 where there are big front yards. He has picture to pass around, showing a boat in a front yard that will not be allowed to park there if this is approved. Secretary can keep picture for record.

Also the limit in his memo would discourage an accumulation in the front yard. What is Council going to say and what they are going to say. They may be more apt to approve it if there is some limit. Those are his two latest thoughts.

Discussion. Reilly said the title is wrong. Should be Section 1-5.15. They deliberately merged the two into Section 1-5.15 and then reserved 1-5.16 for Conditional Use Permitting. He said they should go forward with what Ritter had drafted and they had modified at last meeting and work on Section 1-5.16 for commercial vehicles for hire.

Abare re: Mayors comments. Usually agrees with him. Mayor is asking for them to reconsider and allow parking in the setback area. What is new about his memo?

Krieger said Mayor's memo is the most similar to the existing code. This represents a reconstruction. He likes Mayors sec 1, mentioning separate zonings. Can incorporate into the motion. Reilly said they are discussing .15 and .16 again as separate in the Mayor's.

Krieger marked up first memo and made no changes to his second one. He has a problem with maneuverability. Ritter said that is going to take care of itself.

Abare aren't we opening this up. Cindy why are we discussing these code sections? Ritter said it is too vague. Board Secretary Sherear handed out corrected agenda report page with correct ~~Section title and reference. Krieger is not bothered with how long it takes. Government should be slow.~~

Regarding the picture of the boat in the front yard, 48 hours limit, if he can't get it in back yard.

Abare said trying to balance between those thinking you can do whatever in Malabar and others who want measures. If you want to you have to have it then have a bigger piece of land.

Reilly said under the proposed change, A.1, shall not remain in the same place. Required front yard = setback. Krieger asked how does this solve the combination of Mayor's 2<sup>nd</sup> memo.

Abare said it is a balancing act. Krieger said consider the person speaking at earlier meeting, he was from a subdivision that developed an area for RVs and then did away with it. Wilbur said that is problem with HOA being adjacent to RR-65.

They discussed "and vs. or" in the title re: boats and trailers. Tags on or not. Reilly thinks it should be "and" – in A.4. last line, and vs. or. More discussion. Franklin said at earlier meeting they selected "or" because if there is repairs after hurricanes they will be a certificate of completion, not a certificate of occupancy.

Re: proposed Section B.2. how we can ask for valid registration. "Not under the control". Abare said need that for enforcement. Wilbur said leave as valid registration or in control of by legal resident. Abare has no problem with the "or". No problem with having someone park a friend's truck on property for 6 months.

Wilbur said if you don't have title or a paper stating you have control of, then you don't have to have a registration.

Ritter said she does not have to have it obscured; if it has valid tag it is not required to be obscured.

Reilly said we have not stayed on agenda item. Back to valid registration, title or under the control of by the legal resident.

Ritter said B.2. Still does not allow parking in back yard. Sentence is too long. They discussed it again. Krieger doesn't like "obscured"; to what percent must it be obscured?

Ritter said expand on item 1 for valid registration and then item 2 for those that aren't registered. She thinks that was their intent.

Krieger said problem also is the sentence is starting with a negative. Eliminate the no. They will rephrase. Zindel asked who is going to complain.

Ritter read change as Sherear made real time changes on overhead. All agreed. Krieger said the wording should be "behind the principal structure" or enclosed by and again asked hat is obscured? What is definition of obscure? Wilbur said it is limited. What about approved private streets?

Krieger said what about adjacent yards? That is suitable for a complaint now. Town can respond only if there is a complaint. It comes down to what Town Administrator needs in code for enforcement.

Zindel has neighbor that has a big boat facing Allen Street that is visible from both Corey Road and Allen Streets. Does it have a tag on it? If it is current he can park it anywhere that is not on public right-of-way or in front setback.

Krieger referred to what residents who came in and said in Palm Bay you could have it behind the front line of the principal structure.

If it is tagged it can stay anywhere. The 48 hours is for parking in the right of way or in the required front yard (=setback). We are more lenient that Palm Bay. Reilly read item 2 again and they added "or" between registration and title. Sherear changed on overhead.

**MOTION:** Ritter / Reilly to recommend Council approve the revised Art V, Sec 1-5.15 as submitted by P&Z Board.

**VOTE:** Ayes, 4; Nay, 1 (Krieger) Motion carried 4 to 1

Board stopped here for meeting.

**H. DISCUSSION:**

**5. Continue Review of Checklist and Requirements for Ponds**

**Exhibit:** Agenda Report No. 5

**Recommendation:** Discussion

**6. Define "Light Industrial" Zoning**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Discussion

**I. ADDITIONAL ITEMS FOR FUTURE MEETINGS:**

**7. Setbacks in Residential Zonings**

**8. R/LC Zoning Clarification**

**9. Code Requirements for Assisted Living Facilities**

**J. PUBLIC:**

Tom Eschenberg, Beran Lane, will oppose this so you need to show up to Council meeting on April 2, 2012. Won't be on next agenda. Recommends they drive around Town and start looking at houses and see how many people they will now not allow to parking in the front yard.

Ritter said you can't park there now; with their recommendation, you can park in front yard, just not in setback area. Eschenberg said the 48- hour time limit is not enforceable.

Eschenberg said another interpretation of B.1, parking of vehicles for more than 48 hours shall not block a road. Could be interpreted as less than 48 hours it is ok. Ritter said that is addressed in A. What about parking a car in the driveway and it is within the setback. Abare said you can't write a perfect code. Abare said between Krieger and Mayor nothing would get changed.

Eschenberg said re: B.2., a vehicle not under the control of resident should be hidden. If it on your property, it is assumed it is under your control. He gave example of an old camping trailer with no tag and looks rough and is in the front yard behind the setback. If there is a complaint, they can say, no it is under my control. With his version, it is written how to deal with the situation.

Wilbur said they have considered his recommendations and now it is Council's turn.

Abare asked what Eschenberg wanted. Eschenberg said do what he wrote. He will submit to Council his versions. Krieger said if you want committee to do good work, then Council should consider Board's recommendations. Krieger said if Council changes the P&Z recommendation, ~~They should say yes, no or send it back. Krieger said if you want to train a committee to do good work you don't change the recommendation.~~

Eschenberg said his three minutes are up. He doesn't like what they are going to do to people who will not be able to park in their driveway.

**OLD BUSINESS/NEW BUSINESS:**

Old – none

New:

Franklin stated that the Building Official had met with the owner of Malabar Nursery. He is purchasing the property on the other side of the tracks to use as a back stock location for large trees for his nursery. The R/LC and CG zoning permits the use of retail nursery use and according to the meeting there will not be a disturbance of land greater than 1000sf. The BO will review this as a minor site plan review with the Town Eng. He has no plans for the building at this time.

There is interest in raising cell tower at TV station on Babcock to 200 feet. A CUP was approved for the original tower. The increase may be considered as a modification to the site plan if a when it happens.

Procedure for excused absences was discussed by Council 3/5/12. They directed that each Board should make their own policy and then an ordinance would be drafted to incorporate the procedures for each Board. Council directed that the proposed procedures drafted by the Town Administrator should be given to each Board.

Make this a Discussion Item for next meeting.

Krieger mentioned about the 1000 sf criteria for site plan. Once you have developed your land he doesn't care how you change it. You have to go through a completely different plan

Wilbur, Reilly, Abare said the 1000 sf limit serves a very good purpose.

Wilbur asked if we can get potential stuff going on in the Bldg Dept so they can head it off instead of doing damage control. He understands why we had to do it this time.

**L. ADJOURN**

There being no further business to discuss, MOTION::Reilly / Abare to adjourn this meeting. Vote: All Ayes. The meeting adjourned 10:20 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: March 28, 2012**

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

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

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##### **BACKGROUND/HISTORY:**

The Board wants to establish the criteria for R/LC so an ordinance can be drafted to amend Malabar Land Development Code to provide for R/LC for properties along Malabar Road, Babcock Street and Highway 1.

Recommend Council approve the changes to Article III regarding (R/LC) Section "O." by deleting the words after "RLC" as follows:

"Such development is intended to accommodate limited commercial goods and services together with residential activities on specific sites designated "RLC", ~~which are situated along the west side of the US1 corridor as delineated on the FLUM.~~

In the following sentence, change six(6) units to four (4) units.

In the same section add the following two bullets:

- residential use shall not exceed commercial use by more than one
- commercial use shall not exceed residential use by more than one

Reduce the maximum density for R/LC from 6 units per acre to 4 units per acre under same section, following page.

In Table 1-3.3(A) carry down the size and dimension regulations into the multiple family field; increase the required sf for 1 bedroom from 500 to 900 and delete the 2 and 3 bedroom reference. Reduce the units per acre from 6 to 4.

- NOTE: fix scrivener's error in Table 1-3.3(A) - MBC for OI should be 0.20.
- Regarding Article XX, Definitions, they should change dwelling to add residential before the word. Krieger said to add "residential" in front of Human habitation in the definition to dwelling. That will take care of it. BOARD AGREED
  - Tri-plex should be changed to residential building (take out dwelling). Change for consistency.

##### **ATTACHMENTS:**

- Marked up Code Article III, Table 1-3.3(A) and Article XX encompassing all Board recommendations
- Portion of 07/27/2011 P&Z minutes

##### **ACTION OPTIONS:**

Recommend Council approve the changes to Article III and Article XX

Sec. 1-3.2.

Portion of Malabar LDC District Provisions Article III

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

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

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

Single family or multiple family residential uses with a density no greater than four (4) ~~six (6)~~ units per acre may also be located in the R/LC district. Such residential uses may be located either within a freestanding structure or within a structure housing both Residential and Limited Commercial activities. The R/LC district is intended and shall be interpreted to be a "commercial" district with respect to required setbacks and other size and dimension provisions referenced by zoning district in this Code.

1-1-2017 10:32:33 AM

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

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

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

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

1-1-2017 10:32:33 AM

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS FOR PRINCIPAL STRUCTURES See (numbered) Notes below

Zoning District	Minimum Lot (1)			Maximum Height (ft./stories)	Minimum Living Area (sq. ft.)	Setback (ft.) from property line (2)				MISR Maximum Impervious Surface Ratio (%)	MBC Maximum Building Coverage (%)	MOS Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (interior)	Side (corner)				
<b>Rural Residential Development</b>													
RR-65	65,340	150	250	35/3	Single Family: 1500	40	30 (7)	30 (7)	30	20	N/A	80	1
<b>Traditional Single Family Residential Development</b>													
RS-21	21,780	120	150	35/3	1,800	35	20	15	15	35	N/A	65	2
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	45	N/A	55	3
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	50	N/A	50	4
<b>Multiple Family Residential Development</b>													
RM-4	5-acre min Site	200	200	35/3	Single Family 1,200	60	40	40	40	50	N/A	50	4
RM-4	5-acre min Site	200	200	35/3	Multiple Family 1-bedroom 900 ea. additional Bedroom 120 2-BR: 1100 3-BR: 1300	60	40	40	40	50	N/A	50	4
RM-6	5-acre min Site	200	200	35/3	Single Family 1200	25	20	10	10	50	N/A	50	6
RM-6	5-acre min Site	200	200	35/3	Multiple Family 1-BR: 500 2-BR: 700 3-BR: 900 1-Bedroom 900 ea. additional Bedroom 120	60	40	40	40	50	N/A	50	6

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

Note 2 Minimum Setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(A) or (E) whichever is most restrictive.

Editor's note - 3 Setbacks where rear lot line abuts alley

Note 4 Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such cases the more restrictive abutting setback shall apply

Note 5 Where any yard of Industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.

Note 6 Recreation activities Maximum Building coverage shall be 20% FAR shall be 10%.

Note 7: In RR-65 sides and rear may be reduced to 15' for accessory structures only and will increase in proportion with the maximum height of the accessory structure, i.e. If the height of the accessory structure is 20 feet, this will equal a 20 foot setback.

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS FOR PRINCIPAL STRUCTURES See (numbered) Notes below

Minimum Lot (1)						Setback (ft) from property line (2)							
Zoning District	Size (Sq. ft)	Width (ft)	Depth (ft)	Max Height Ft/stories	Min Living Area (sq ft)	Front	Rear	Side (Int)	Side (corner)	MISR (%)	MBC (%)	MOS (%)	Max Density Unit/ac
<b>Mobile Home Residential Development</b>													
R-MH	Site: 5 acres Lot: 7000					10	8	8	10	50	N/A	50	6
<b>Mixed Use Development</b>													
R/LC	20,000	100	150	35/3	Single Family: 1200	25	20	10	10	50	N/A	50	4
R/LC	20,000	100	150	35/3	Multiple Family: 1 Bedroom: 900 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	50	25	10(4) <sup>4</sup>	20	65	N/A	35	6 4
R/LC	20,000	100	150	35/3	Commercial Min. Area: 900 Max. Area: 4,000	50	25	10(4) <sup>4</sup>	20	65	0.20 20	35	
<b>Office Development</b>													
OI	20,000	100	150	35/3	Minimum Floor Area: 1000	35/60	25	20	25	65	20	35	N/A

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

Note 2 Minimum Setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(A) or (E) whichever is most restrictive.

Editor's note - 3 Setbacks where rear lot line abuts alley.

Note 4 Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such cases the more restrictive abutting setback shall apply.

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TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS FOR PRINCIPAL STRUCTURES See (numbered) Notes below.

Zoning District	Minimum Lot (1)			Maximum Height (ft./stories)	Minimum Living Area (sq. ft.)	Setback (ft.) from property line (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 (interior)	Side (corner)				
<b>Commercial Development</b>													
CL	20,000	100	150	35/3	Min Floor Area: 900 Max Floor Area: 4000	50	25	10 (4) 15 (3)	20	65	<del>20</del> 20	35	N/A
CG	20,000	100	150	35/3	Min Floor Area: 1200 Minimum Hotel/Motel Area: 300 ea unit	50	25	20 (4) 15 (3)	30	65	<del>20</del> 20	35	N/A
<b>Industrial Development</b>													
IND	20,000	100	150	35/3	Min Floor Area: 1200	50 100(5)	25 100(5)	20 100(5)	30 100(5)	70	<del>42</del> 42 Check Comp Plan	30	N/A
<b>Institutional Development</b>													
INS	20,000	100	150	35/3	Min floor Area: 1200	50	25	20	30	60	<del>20</del> 20 <del>10(6)</del> 10(6)	40	N/A
<b>Coastal Preservation</b>													
CP	No Size and Dimension Standards/Regulations Adopted												

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

Note 2 Minimum Setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(A) or (E) whichever is more restrictive.

Editor's note - 3 Setbacks where rear lot line abuts alley

Note 4 Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such cases the more restrictive abutting setback shall apply.

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Note 7: In RR-65 sides and rear may be reduced to 15' for accessory structures only and will increase in proportion with the maximum height of the accessory structure, ie. If the height of the accessory structure is 20 feet, this will equal a 20 foot setback.

## Portion from Malabar LDC Article XX, Language and Definitions

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

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

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

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

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

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

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

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

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

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

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

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

**4. Residential/Limited Commercial Zoning & Density Clarification****Exhibit:** Agenda Report No. 4**Recommendation:** Discussion

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

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

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

Units changed from 6 to 4,

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

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

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

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

Add the 4 to show across from the RLC commercial in the last column.

Use a footnote on the 4 and 4 and the note will read the same as the above bullets.

Don't make changes to min lot size.

Reilly said maximum building coverage is not applicable.

Discussed the mix again.

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

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

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

Set backs – footnote 4. Keep it in.

Defining "units" to create a commercial and residential.

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

Wilbur says leave it. RLC is going to be unique to itself. To come up with definition would be difficult.

Krieger said to add "residential" in front of Human habitation in the definition to dwelling.

That will take care of it. BOARD AGREED

Tri-plex should be changed to residential building (take out dwelling). Change for consistency.

Clean up and have back for this.

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

**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

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**AGENDA ITEM NO: 3**  
**Meeting Date: March 28 2012**

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

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**SUBJECT: Decorative Water Features and Ponds**

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**BACKGROUND/HISTORY:**

The Board directed staff to send checklist and application in Word so Board could provide input.

**ATTACHMENTS:**

Edited Portion of Art. V, Section 1-5.27, Ponds by Pat Reilly  
Checklist for DWF (Decorative Water Feature)  
Application for Pond Permit – Draft 2

**ACTION OPTIONS:**

Recommend Council approve the changes. This will be included in the ordinance amending the land use code.

(Note: Sections are changed to separate Decorative Water Features and Ponds)

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**Section 1-5.27** Decorative Water Features and Ponds

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

**1.0 Definitions.**

- A. Allowable material shall mean uncontaminated sand, soil or dirt or other items approved by the Town Engineer. Construction debris and yard waste shall not be considered allowable material.
- B. Conservation elevation (also control elevation). The lowest elevation at which water can be released through the control device and/or the designed normal water level of the decorative water feature or pond.
- C. Construction debris means material generally considered not to be water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard and lumber, metal, asphalt paving material, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation or maintenance of a structure.
- D. To fill shall mean the adding of allowable material to alter the existing topography or characteristics of a decorative water feature or pond.
- E. Project site. That area where the decorative water feature or pond shall be located and all other affected areas of the property.
- F. Wet season water table. Elevation of the ground water table during normal wet season conditions as determined by SCS (Soil Conservation Service) or competent engineering studies (referenced to National Geodetic Vertical Datum).
- G. Side slopes. The ratio between the horizontal and vertical distance of the decorative water feature or pond as measured from any point in the decorative water feature or pond to the property line or finished floor of any improvement. (See Diagram "A")

*Diagram A*

- H. Littoral zone. That portion of the decorative water feature or pond which is less than three (3) feet deep as measured from the conservation elevation.
- I. Decorative Water Feature. Shall mean any excavation for the purpose of retaining

water wherein the surface area is 1,000 square feet or smaller in size. Notwithstanding this

~~definition of decorative water feature, all fill activity which reduces the surface area of an existing water body, regardless of size, may only be accomplished after a permit authorizing such activity is issued by the Town.~~

J. Pond. Shall mean any excavation for the purpose of retaining water wherein the surface area is greater than 1,000 square feet in size. Notwithstanding this definition of pond, all fill activity which reduces the surface area of an existing water body, regardless of size, may only be accomplished after a permit authorizing such activity is issued by the Town.

## **2.0 Permits.**

1. **Decorative Water Feature:** Any person wishing to construct or permit to be constructed or fill a decorative water feature within the Town of Malabar must, as a precondition, obtain a decorative water feature permit. A decorative water feature must meet setback requirements. In order to obtain a decorative water feature permit, an applicant must:
  - A. Pay the designated decorative water feature permit application fee prior to the Town accepting any application for a decorative water feature permit. The decorative water feature permit application fee shall be set by a Resolution of the Town Council;
  - B. If the applicant desires to construct a decorative water feature, the applicant shall provide the following documentation to the Town Clerk as part of the decorative water feature permit application;
    1. A site plan containing the existing and proposed elevations for the entire project, site, the location of the proposed decorative water feature, a survey of the project site, said (survey to contain topographic data), tree locations and a plot plan.
    2. Applicant must provide a written estimate of the quantity of fill which is proposed to be excavated, and a plan for disposal of said fill in accordance with this section.
    3. Any other documents that shall be required by the Town Engineer for purposes of demonstrating compliance with the performance standards of section 1-5.27.5.A—F and completing a conclusive review of the proposed site.
  - C. If an applicant desires to fill a decorative water feature, the applicant shall submit the following:
    1. A decorative water feature permit application containing, at a minimum the following:
      - a. A site plan of the existing decorative water feature including total area of the surface covered by water; depth of decorative water feature; and its proximity to structure;
      - b. The estimated amount of fill to be used, as well as, the type of fill to be used;
      - c. Name of contractor performing the fill activity;
      - d. Any and all other information required by the Town Engineer.

- D. The Town Clerk shall not accept an application for a decorative water feature permit unless the applicant has submitted an original and two (2) copies of all required documents, and paid all required permit fees.
- E. In addition to a decorative water feature permit fee required herein the applicant must, apply for and obtain a land clearing permit required by the Town's Code of Ordinances.

2 Ponds: Any person wishing to construct or permit to be constructed or fill a pond within the Town of Malabar must, as a precondition, obtain a pond permit. Ponds must meet setback requirements. In order to obtain a pond permit, an applicant must:

- A. Pay the designated pond permit application fee prior to the Town accepting any application for a pond permit. The pond permit application fee shall be set by a Resolution of the Town Council;
- B. If the applicant desires to construct a pond, the applicant shall provide the following documentation to the Town Clerk as part of the pond permit application;
1. A site plan containing the existing and proposed elevations for the entire project, site, the location of the proposed pond, a survey of the project site, said (survey to contain topographic data), tree locations and a plot plan.
  2. Applicant must provide a written estimate of the quantity of fill which is proposed to be excavated, and a plan for disposal of said fill in accordance with this section.
  3. Any other documents that shall be required by the Town Engineer for purposes of demonstrating compliance with the performance standards of section 1-5.27.5.A—F and completing a conclusive review of the proposed site.
- C. If an applicant desires to fill a pond the applicant shall submit the following:
1. A pond permit application containing, at a minimum the following:
    - a. A site plan of the existing pond including total area of the surface covered by water; depth of pond; and its proximity to structure;
    - b. The estimated amount of fill to be used, as well as, the type of fill to be used;
    - c. Name of contractor performing the fill activity;
    - d. Any and all other information required by the Town Engineer.
- D. The Town Clerk shall not accept an application for a pond permit unless the applicant has submitted an original and two (2) copies of all required documents, and paid all required permit fees.
- E. In addition to a pond permit fee required herein the applicant must, apply for and obtain a land clearing permit required by the Town's Code of Ordinances.

### 3.0 Review process.

1. The following process for review shall apply to all decorative water feature permit applications presented to the Town of Malabar for consideration.
  - A. The review process shall begin when the applicant has submitted to the Town Clerk all required documents as set forth in paragraph 1, where applicable, of this section and all applicable application fees have been paid.
  - B. Within five (5) working days of the receipt of a completed application and application fee, the Town Clerk shall forward one copy each of the application and the required documentation to the Town Building Official and the Town Engineer.

The Town Building Official shall review the application to insure the completeness and accuracy of the submitted information, and shall notify the Town Engineer of any inaccuracies or incompleteness.

- C. The Town Engineer shall review the application and, within two weeks of receipt of the application by the Town Engineer, the Town Engineer shall recommend that the application for a decorative water permit be;
1. Approved;
  2. Approved, subject to certain conditions, or
  3. Denied.
- D. If the Town Engineer recommends approval of the decorative water feature permit application, the application shall be forwarded to the Planning and Zoning Board for their consideration and action on the next available Planning and Zoning Board Agenda. The review procedures in sections 1-7.1 through 1-7.6 to the extent not inconsistent with this section shall apply. The Town Engineer and the Town's Planning and Zoning Board may impose reasonable conditions upon the applicant for a decorative water feature permit. Upon consideration and action by the Planning and Zoning Board the matter shall be forwarded to the Town Council for consideration and action. Upon approval by the Town Council of the decorative water feature permit application, the Building Official shall issue a decorative water feature permit to the applicant. The decorative water feature permit, however, shall contain the statement of the conditions which must be met by the applicant as set forth by the Town Engineer, the Planning and Zoning Board, and approved by the Council. Upon acceptance of a decorative water feature permit which has stated condition, the applicant agrees to perform all conditions set forth in the decorative water feature permit.
- A decorative water feature permit shall not be issued if the Town Engineer recommends denial of the permit.
  - The following process for review shall apply to all pond permit applications presented to the Town of Malabar for consideration.
    - A. The review process shall begin when the applicant has submitted to the Town Clerk all required documents as set forth in paragraph 1, where applicable, of this section and all applicable application fees have been paid.
    - B. Within five (5) working days of the receipt of a completed application and application fee, the Town Clerk shall forward one copy each of the application and the required documentation to the Town Building Official and the Town Engineer. The Town Building Official shall review the application to insure the completeness and accuracy of the submitted information, and shall notify the Town Engineer of any inaccuracies or incompleteness.
    - C. The Town Engineer shall review the application and, within two weeks of receipt of the application by the Town Engineer, the Town Engineer shall recommend that the application for a pond permit be;
      1. Approved;
      2. Approved, subject to certain conditions, or
      3. Denied.

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

#### **4.0 Appeal process.**

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

- A. An appeal of a decision not to issue a decorative water feature or pond permit, or to issue a decorative water feature or pond permit upon conditions, may be appealed to Town Council, by the applicant, within ten days of the applicant receiving notice of the denial of his permit or approval with conditions.
- B. To appeal a decision to Town Council, the applicant must submit, in writing, a notice to the Town Council of the intention to appeal the decision of the Town Building Official and request the matter to be placed on the Council's agenda. The Notice of Appeal shall contain the basis upon which the appeal is being made.
- C. Upon receipt of a timely notice of appeal, the Town Clerk shall set the matter on the Town Council's agenda, said appeal to be heard by Council, within thirty (30) days of the date of notice of appeal. The Town Clerk shall submit all documentation relating to the application and permit to Council for review.
- D. The Town Council shall review the issue and determine whether the decision of the Building Official shall be upheld, modified or reversed. All decisions of the Town Council are final.
- E. Appeals of decisions of the Town Council may be taken to a court of competent jurisdiction.

## 5.0 Performance standards for the construction of a decorative water feature and ponds.

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

1. Side slopes shall not exceed 6:1 (horizontal to vertical) as measured from existing grade at property lines or finished floor elevation at buildings or structures.

2. The setback from any right-of-way shall comply with the setback requirements of Table 1.3.3(E) of Article III of this Code. The setback in this subsection shall apply to all decorative water features and ponds, whether or not a permit is required for construction of such decorative water feature or pond.

3. The setback from any abutting residentially zoned property line shall be forty (40) feet from such abutting property line otherwise setbacks shall be thirty (30) feet from abutting property line. The setback in this subsection shall apply to all decorative water features and ponds, 4. The decorative water feature or pond and any related site grading shall not adversely affect off-site drainage patterns.

B. **Conservation elevation.** The proposed design or conservation elevation shall be set at or near the wet season water table. Wells shall not be used to maintain a water level elevation above the seasonal water table and must have float control device installed when

there is an outfall. The decorative water feature or pond and discharge structure shall not draw the water table below its wet seasonal elevation.

C. No decorative water feature or pond, regardless of size shall be greater than twelve (12) feet in depth as measured from the conservation elevation to the deepest point.

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

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

1. The pond has a total surface acreage of less than one-quarter ( $\frac{1}{4}$ ) acre;

2. For any decorative water feature or pond for which a permit is required the excavated material may be disposed of off-site if a certification is presented to the Town by a Florida licensed professional engineer stating that the excavated material, except topsoil, can not be utilized on-site. In submitting the certification the engineer shall take the following into consideration:

a. The size of the site.

b. Available on-site retention.

c. The impact of on-site disposal will have on adjoining properties.

d. No excavated material from a pond which one-quarter acre or larger in size may be sold; offered for sale or trade or bargained for anything of value.

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

- F. Discharge structures shall be designed to limit the maximum discharge rate to the pre-development discharge rate. The discharge velocity shall be controlled so as to not erode or cause scouring of existing or proposed facilities. Structures shall only discharge to a point of legal positive out-fall.
- A. Decorative water feature or pond permits issued pursuant to this section shall be effective for a period of six (6) months from the date of issue.
- B. An extension may only be granted once upon good cause after review and approval by the Town Building Official.
- C. Refusal by the Town Building Official to issue a decorative water feature or pond permit extension may be appealed to Town Council in the same manner set forth in paragraph 3 of the section.

#### **6.0 Failure to complete.**

- A. A fine up to two hundred fifty dollars (\$250.00) per day may be assessed against any applicant who fails to complete a decorative water feature or pond within the six-month period of the permit.
- B. Further, the Town, at its discretion, may require the applicant to restore the land to the condition prior to obtaining a decorative water feature or pond permit if it's not completed within the allotted time.
- C. It shall be the obligation of the applicant to notify the Town of completion. The decorative water feature or pond shall be complete only after a final inspection by the Town Building Official.

#### **7.0 Standards for fill activities.**

- A. No decorative water feature or pond shall be filled if, in the opinion of the Town Engineer, the filling of the decorative water feature or pond will adversely affect on and off-site drainage; promotes soil erosion on or off-site; or adversely affects the natural environment.
- B. Before any decorative water feature or pond shall be filled, approval from outside governmental agencies having jurisdiction over filling of water bodies must be submitted to the Town.

(Ord. No. 91-1, 3-19-91; Ord. No. 03-12, § 1, 12-1-03 revised 10/26/2011)



2725 Malabar Road  
Malabar, FL 32950  
321-727-7764 Ext. 14 321-727.9997 (Fax)  
www.townofmalabar.org

### Checklist for Decorative Water Feature (DWF) (size 1,000 sf or less)

- 1. Located more Greater than 50 75 feet from Septic Tank and/or Drain field
- 2. Meets or exceeds Building Setbacks for Zoning
- 3. Positive Overflow Discharge to Town of Malabar Stormwater Discharge Swale/Ditch
- 4. ~~Soil Displaced Remains On Site~~
- 5. Detailed Plan ~~Accurate Layout Plan (to Scale) on Boundary Survey~~ showing DWF location, trees in project area and placement of excavated material ~~Soil Displacement Area~~
- 6. ~~Accurate Layout Plan (to Scale) on Boundary Survey Showing Location of Displaced Soil~~
- 7. ~~Proposed Location of Stormwater Best Management Practices (BMP) Silt Fence, Siltation Barrier, etc~~
- 8. ~~Typical Section for Side Slopes Inside Soil Displacement Area~~
- 9. Executed Disclosure of Ownership
- 10. Sod Side Slopes and Positive Overflow Discharge Path
- 11. Wetland Lines if Applicable
- 12. Pay Permit Fee



**TOWN OF MALABAR**

**2725 Malabar Road, Malabar, Florida 32950**

**(321) 727-7764 Ext. 14 Fax # (321) 727-9997**

**APPLICATION FOR POND PERMIT**

This application is intended for those applicants desiring to construct a pond with an area size larger than 1,000 square feet.

Project Name: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Property Owner(s): \_\_\_\_\_ Telephone: \_\_\_\_\_

E- Mail Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Fax: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_ Cell: \_\_\_\_\_

Legal Description of Property Covered by Application:

Township: \_\_\_\_\_ Range: \_\_\_\_\_ Section: \_\_\_\_\_ Lot/Block: \_\_\_\_\_, Parcel: \_\_\_\_\_

Subdivision: \_\_\_\_\_ Tax Acct No: \_\_\_\_\_

Gross acreage: \_\_\_\_\_ Setbacks: Front: \_\_\_\_\_; Rear: \_\_\_\_\_; Side: \_\_\_\_\_; Side corner: \_\_\_\_\_

Flood Zone: \_\_\_\_\_ Per FEMA Flood Insurance Rate Map

Wetlands Present: \_\_\_\_\_ Mitigation required? \_\_\_\_\_ Permit required? \_\_\_\_\_

The applicant is required to submit TWO Scaled Dimensional Drawing with supporting documents, The following information is required per Article VII of the Malabar Land Development Code and must be shown on the Drawing or submitted as an addendum to the drawing.

- \_\_\_\_\_ Boundary of property shown by a heavy line
- \_\_\_\_\_ Existing structures shown on drawing (including setbacks from all property lines)
- \_\_\_\_\_ Identification of trees in pond area with a dbh (dimension at breast height) of 8" or greater
- \_\_\_\_\_ Location of well and drain field
- \_\_\_\_\_ Stormwater management plan

\*\*\*\*\*

Pond Review - \$100.00 for ponds over 1,000sf.

- Summary of Required Attachments for Site Plan Review:
  - Completed Application, including Disclosure of Ownership (Pages 1 and 2).
  - Fee of \$ \_\_\_\_\_, in **check or money order**, payable to the Town of Malabar.
  - Copies of all Federal, State, and Local agency permits. **It shall be the applicant's responsibility to obtain such outside permits, prior to Town review.**

Signature of Applicant(s):

Date:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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

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**AGENDA ITEM NO: 4**  
**Meeting Date: March 28, 2012**

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

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**SUBJECT: Light Industrial Zoning**

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**BACKGROUND/HISTORY:**

This is picked up from earlier meetings. Board was going to discuss submittals from Board Members.

**ATTACHMENTS:**

Submittals from Board Members  
Minutes from P&Z mtg 7/27/11

**ACTION OPTIONS:**

Discussion

**District and intent "Light Industrial District"**

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

*(1) Principal uses and structures:*

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

*(2) Accessory uses:*

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

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

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

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

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

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

*(7) Minimum setback requirements:*

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

*Limited Commercial Light Industrial*

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

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

**5. Definition of "Light Industrial"**

**Exhibit:** Agenda Report No.5  
**Recommendation:** Discussion

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

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

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

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

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

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

Ryan left at 9:25.

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

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

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

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

# TOWN OF MALABAR

## PLANNING AND ZONING

### AGENDA ITEM REPORT

**AGENDA ITEM NO: 5**  
**Meeting Date: March 28, 2012**

Prepared By: Debby Franklin, Town Clerk/Treasurer

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

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**BACKGROUND/HISTORY:**

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

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

F.S. 408.032(8)

F.S. 419

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

Also printed from the 2007 Florida Building Code the following Sections:

Section 308, Institutional Group I

Section 310, Residential Group R

Section 313, Daycare, Group D

Section 433, Adult Day Care

Section 434, Assisted Living Facilities

Section 436, Day Care Occupancies

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

**ATTACHMENTS:**

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

**ACTION OPTIONS:**

Board Discussion.

# TOWN OF MALABAR

## PLANNING AND ZONING

### AGENDA ITEM REPORT

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**AGENDA ITEM NO: 6**  
**Meeting Date: March 28, 2012**

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

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**SUBJECT: Setbacks in Table 1-3.3(A) and E. And Rewording of Section 1-5.10.**

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#### **BACKGROUND/HISTORY:**

The Board directed staff to incorporate all proposed changes to setbacks into Table 1-3.3(A). This includes the proposed new Footnote 7, adding clearer titles to column headings and filling in regulations in each block.

We also revised the language in Table 1-3.3(E)

#### **ATTACHMENTS:**

- Table 1-3.3(A ) with proposed changes
- Table 1-3.3(E ) with proposed changes
- Section 1-5.10 with proposed changes
- Mayor's suggestions for Table 1-3.3 (E)

#### **ACTION OPTIONS:**

Recommend Council approve the changes. This will be included in the ordinance amending the land use code.

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS FOR PRINCIPAL STRUCTURES See (numbered) Notes below

Zoning District	Minimum Lot (1)			Maximum Height (ft./stories)	Minimum Living Area (sq. ft.)	Setback (ft.) from property line (2)				MISR Maximum Impervious Surface Ratio (%)	MBC Maximum Building Coverage (%)	MOS Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (interior)	Side (corner)				
<b>Rural Residential Development</b>													
RR-65	65,340	150	250	35/3	Single Family: 1500	40	30 (7)	30 (7)	30	20	N/A	80	1
<b>Traditional Single Family Residential Development</b>													
RS-21	21,780	120	150	35/3	1,800	35	20	15	15	30	N/A	65	2
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	45	N/A	55	3
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	50	N/A	50	4
<b>Multiple Family Residential Development</b>													
RM-4	5-acre min Site	200	200	35/3	Single Family 1,200	60	40	40	40	50	N/A	50	4
RM-4	5-acre min Site	200	200	35/3	Multiple Family 1-bedroom 900 ea. additional Bedroom 120 2 BR: 1100 3 BR: 1300	60	40	40	40	50	N/A	50	4
RM-6	5-acre min Site	200	200	35/3	Single Family 1200	25	20	10	10	50	N/A	50	6
RM-6	5-acre min Site	200	200	35/3	Multiple Family 1 BR: 500 2 BR: 700 3 BR: 900 1 Bedroom 900 ea. additional Bedroom 120	60	40	40	40	50	N/A	50	6

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

Note 2 Minimum Setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(A) or (E) whichever is most restrictive.

Editor's note - 3 Setbacks where rear lot line abuts alley

Note 4 Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such cases the more restrictive abutting setback shall apply

Note 5 Where any yard of Industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.

Note 6 Recreation activities Maximum Building coverage shall be 20% FAR shall be 10%.

Note 7: In RR-65 sides and rear may be reduced to 15' for accessory structures only and will increase in proportion with the maximum height of the accessory structure, ie. If the height of the accessory structure is 20 feet, this will equal a 20 foot setback.

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS FOR PRINCIPAL STRUCTURES See (numbered) Notes below

Minimum Lot (1)						Setback (ft) from property line (2)							
Zoning District	Size (Sq. ft)	Width (ft)	Depth (ft)	Max Height Ft/stories	Min Living Area (sq ft)	Front	Rear	Side (Int)	Side (corner)	MISR (%)	MBC (%)	MOS (%)	Max Density Unit/ac
<b>Mobile Home Residential Development</b>													
R-MH	Site: 5 acres Lot: 7000					10	8	8	10	50	N/A	50	6
<b>Mixed Use Development</b>													
R/LC	20,000	100	150	35/3	Single Family: 1200	25	20	10	20	50	N/A	50	4
R/LC	20,000	100	150	35/3	Multiple Family: 1 Bedroom: 900 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	50	25	10(4) <sup>5</sup>	20	65	N/A	35	6 4
R/LC	20,000	100	150	35/3	Commercial Min. Area: 900 Max. Area: 4,000	50	25	10(4) <sup>5</sup>	20	65	0-20 20	35	
<b>Office Development</b>													
O1	20,000	100	150	35/3	Minimum Floor Area: 1000	35/60	25	20	25	65	20	35	N/A

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

Note 2 Minimum Setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(A) or (E) whichever is most restrictive.

Editor's note - 3 Setbacks where rear lot line abuts alley.

Note 4 Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such cases the more restrictive abutting setback shall apply.

Note 5 Where any yard of Industrial zone property abuts a residential district, the building setback for such yard shall be 100 feet.

Note 6 Recreation activities Maximum Building coverage shall be 20% FAR shall be 10%.

Note 7: In RR-65 sides and rear may be reduced to 15' for accessory structures only and will increase in proportion with the maximum height of the accessory structure, ie. If the height of the accessory structure is 20 feet, this will equal a 20 foot setback.

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS FOR PRINCIPAL STRUCTURES See (numbered) Notes below

Zoning District	Minimum Lot (1)				Maximum Height (ft./stories)	Minimum Living Area (sq. ft.)	Setback (ft.) from property line (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.)	Maximum Height (ft./stories)			Front	Rear	Side (interior)	Side (corner)				
<b>Commercial Development</b>														
CL	20,000	100	150	35/3	Min Floor Area: 900 Max Floor Area: 4000	50	25	10 (4) 15 (3)	20	65	<del>20</del> 20	35	N/A	
CG	20,000	100	150	35/3	Min Floor Area: 1200 Minimum Hotel/Motel Area: 300 ea unit	50	25	20 (4) 15 (3)	30	65	<del>20</del> 20	35	N/A	
<b>Industrial Development</b>														
IND	20,000	100	150	35/3	Min Floor Area: 1200	50 100(5)	25 100(5)	20 100(5)	30 100(5)	70	<del>42</del> 42 Check Comp Plan	30	N/A	
<b>Institutional Development</b>														
INS	20,000	100	150	35/3	Min Floor Area: 1200	50	25	20	30	60	<del>20</del> 20 <del>10(6)</del> 10(6)	40	N/A	
<b>Coastal Preservation</b>														
CP	No Size and Dimension Standards/Regulations Adopted													

Note 1 Minimum size sites and lots include plus one-half of adjacent public right-of-way.  
 Note 2 Minimum Setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(A) or (E) whichever is most restrictive.  
 Editor's note - 3 Setbacks where rear lot line abuts alley.  
 Note 4 Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such cases the more restrictive abutting setback shall apply.  
 Note 5 Where any yard of Industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.  
 Note 6 Recreation activities Maximum Building coverage shall be 20% FAR shall be 10%.  
 Note 7: In RR-65 sides and rear may be reduced to 15' for accessory structures only and will increase in proportion with the maximum height of the accessory structure, ie. If the height of the accessory structure is 20 feet, this will equal a 20 foot setback.

Section E.

~~Building Principal Structures Setbacks. Table 1-3.3(A) provides building setbacks for all the zoning districts, conventional single family lots as well as for multiple family residential and nonresidential sites.~~

~~In addition to these setbacks the following building setbacks from thoroughfares shall be enforced. The the required minimum setback from the thoroughfare shall be measured from the centerline of the right-of-way.~~

~~as in Table 1-3.3 (E). The thoroughfare system is illustrated on the Future Traffic Circulation System: 2010 Map located within the traffic circulation element of the Town of Malabar comprehensive plan. The below cited table identifies rights-of-way within the Town and stipulates minimum required building setbacks from these roadways.~~

~~TABLE 1-3.3(E)-ADDITIONAL BUILDING PRINCIPAL STRUCTURES SETBACKS FROM THOROUGHFARES STREETS AND ROADS FROM CENTERLINE~~

<del>Transportation Facility</del>	<del>Building Setback (feet)</del>
<del>Arterial Roadways (150 feet R/W)</del>	<del>100</del>
<del>US 1 Highway</del>	
<del>Malabar Road (SR 514)</del>	
<del>Babcock Street (SR 507)</del>	
<del>Major Collector Streets (100 feet R/W)</del>	<del>85</del>
<del>Corey Road</del>	
<del>Weber Road</del>	
<del>Marie Street</del>	
<del>Briar Creek</del>	
<del>Jordan Blvd.</del>	
<del>Local Streets (50—60 feet R/W)</del>	<del>65</del>
<del>Minor Collector Streets' (80 feet R/W)</del>	<del>75</del>
<del>Atz Blvd.</del>	
<del>Hall Road</del>	
<del>Old Mission Road</del>	
<del>Benjamin (Reese) Road</del>	

**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. Ref Art III-Table 1-3.3 (A) & (E)

~~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.~~

2/6/2012

From: Mayor Tom Eschenberg

Ref: Table 1-3.3(E) Additional Building Setbacks

Questions and observations.

Arterial roadways are specified at 150 feet. Does this mean that if the roadway is not 150 feet, the table does not apply? The same for major collector streets at 100 feet. Malabar Road is nowhere near a 150 foot ROW. I doubt that major collectors are 100 feet.

Briar Creek and Jordan Blvd are no longer major collectors. They end at EEL's land.

Minor collectors are all in RR-65. This table would never apply.

Setbacks specified in Table 1-3.3(a) would never apply to RS-10, RS-15, RL/C and RM6 because table 1-3.3(E) is more restrictive. This appears to be an unreasonable restriction in those districts especially on local streets.

My recommendation: Delete Table 1-3.3(E)

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

**AGENDA ITEM REPORT**

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**AGENDA ITEM NO: 7**  
Meeting Date: March 28, 2012

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

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**SUBJECT:** Discuss Excused Absence Policy

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**BACKGROUND/HISTORY:**

Council discussed this at March 5, 2012 meeting and left it up to each Board to create a policy to handle excused absences.

**ATTACHMENTS:**

Memo from Clerk 3/14/12  
Recommended Procedures from the Administrator  
Portion of Minutes from Council Meeting 3/5/2012

**ACTION OPTIONS:**

Board discussion and direction to Secretary

# TOWN OF MALABAR

## MEMORANDUM

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**Date:** March 14, 2012 2012-TC/T-002

**To:** Denine Sherear, Secretary to Planning & Zoning Board  
P&Z Board

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

**Ref:** P&Z Excused Absences

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At the regular Council meeting of March 5, 2012 the method of requesting an excused absence was discussed. The Council left it to each Board to come up with a procedure and asked that the procedures the Town Administrator drafted be passed on to each Board.

Once the method is established it can be formally changed in the Code.

### **Recommended Procedures For Notifying Any Board About Impending Absences:**

If a Board Member finds that they will not be able to attend a scheduled meeting they are use the following procedures:

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- If before the close of business for Town Hall, the Board Member should contact the Secretary of the Board they are on. In the event they are not in they should speak with the Town Clerk or Deputy Town Clerk.
- If the notification occurs after the close of business hours for Town Hall, the Board Member may leave a phone message on the Town Hall phone. If they prefer to speak with a person, they may call the Town Clerk on the cell phone provided to her or the Town Administrator on her cell phone. These numbers will be provide to all Board Members upon assignment to any Board.
- The Town Clerk and the Board Secretaries are responsible prior to any scheduled meeting to check for phone messages on the Front Office phone lines for any messages of absences. They will report the message immediately to the Board Chair upon his arrival for the meeting.

**8. Approval of Board Absence Procedure****Exhibit:** Agenda Report No. 8**Recommendation:** Request Action~~Speaker's Card: Pat Reilly, Howell Lane, and Vice-Chair of P&Z Board~~

He handed out packet to Council. The 1<sup>st</sup> page is for Mayor and Council; it doesn't say what to do, just says Council to excuse. Then Art. XII for P&Z says absences are excused and approved by the Chairman, definitely says who is the approver. This should be under a different section, not just alternate sections. Under Code for Park, it has its own stand alone section, says excuse approved by the Chairman. BOA is next; again it is in wrong place, approved by Chairman. Presently there is not a written process. One should be able to call Town Hall, Board Chair or another Board Member or Vice-Chair. Nor should it be implied that it is a sunshine violation if one does that. Solution, update Code with procedure each Board wants to use.

Reilly only calls in once in a while, and he wants it in Code and Land Dev Code. Acquaviva asked what is an excused absence, a Magic game or sick and who decides. Also what about excessive absences. Reilly said it is up to the Chairman of the Boards. Unless it is the Chairman of the Board. In his case, it is hard to come up with the dates. Reilly said as long as you call it in, it should be a good and sufficient cause. McKnight said there is no requirement to call in. It could be important, and he is excused. Don't have a process for that.

TA said she was given direction to write procedures. McKnight thought the direction was to explore the procedures, not require. Board should do their own procedures.

Chair called for a recess at 10:25 for 5 min

MOTION: McKnight / Beatty to extend for 45 minutes. VOTE: all Ayes.

Back in session at 10:30PM

Reilly continued, at renewal time and he comes before the Council, he has an excessive excused absences and would like to move him to alternate and do that in November. As Chairman of Board, they dictate what alternate member moves up.

Charter says the Council decides about excused absences. Reilly would like the Board to be able to call the Chairman or others and also should change the Code and Land Development Code.

Mayor said is that consensus of Council: have each Board set their own plan. Acquaviva did ask about that, about not being at the meeting and there could be a perception. Mayor said if she called him and there could be the perception then you could say the same thing about when they attend the Space Coast League of Cities (SCLC) monthly dinners. Acquaviva said Mayor said put away the perception of violation of sunshine. The secretary is the keeper of the minutes. Mayor said the job is to prepare for the meeting.

Beatty said the three Boards do legislative actions when they vote on them. The Chair has been given an executive power to decide on excused or not. Has nothing to do with legislative power. That is as far as it goes. McKnight said we are a small Town and we are going to talk to each other. When the Chair excuses them it is executive function, not legislative. Atty Bohne agreed with what Beatty said but if you are opening the grounds for discussion then the Board starts to entertain. If you give them the grounds for an excused absence. If the Chair says you

are excused, you are excused. You don't even have to have a reason. Acquaviva said you can excuse him but not me because you don't like me. Mayor said let each Board establish policy. Come up with something like what TA proposed policy.

---

Chair said he was asked by Mr. Bud Ryan to read the following into the record:  
Regarding the Agenda Item 8 Report prepared by Town Clerk: in the first paragraph, sentence three states, "he stated he was listed as excused in the minutes of a meeting where he also was referenced as making comments during the meeting". This indeed did happen but was corrected by me when the draft minutes were read for approval at a subsequent meeting. That took place in 2011. A search of the official minutes should reveal that error and correction if properly recorded.

Mayor said we should also have a procedure for Council. Mayor said he will clean it up and present it at next meeting.