

**TOWN OF MALABAR**  
**PLANNING AND ZONING ADVISORY BOARD**  
**REGULAR MEETING**  
**WEDNESDAY APRIL 25, 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 – 4/11/2012  
**Exhibit:** Agenda Report No. 1  
**Recommendation:** Motion to Approve
- E. **PUBLIC:**
- F. **ACTION:**
- G. **DISCUSSION:**
2. **Continue Review Checklist and Permit Requirements for Decorative Water Features and Ponds**  
**Exhibit:** Agenda Report No. 2  
**Recommendation:** Discussion
3. **Define “Light Industrial” Zoning**  
**Exhibit:** Agenda Report No. 3  
**Recommendation:** Discussion
4. **Code Requirements for Assisted Living Facilities**  
**Exhibit:** Agenda Report No. 4  
**Recommendation:** Discussion
- H. **ADDITIONAL ITEMS FOR FUTURE MEETINGS:**
5. **Discuss Procedures for P&Z Excused Absence Policies**
- I. **PUBLIC:**
- J. **OLD BUSINESS/NEW BUSINESS:**
- **Council Responses to PZ Recommendations**
- K. **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: April 25, 2012**

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

**SUBJECT: Approval of Minutes**

**BACKGROUND/HISTORY:**

The minutes must reflect the actions taken by the Board:

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

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

**ATTACHMENTS:**

Draft minutes of P&Z Board Meeting of April 11, 2012 **(will be provided electronically)**

**ACTION OPTIONS:**

Secretary requests approval of the minutes.

**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2**  
**Meeting Date: April 25, 2012**

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

**SUBJECT: Decorative Water Features and Ponds**

**BACKGROUND/HISTORY:**

The Board's discussion at the last meeting directed that there be a checklist and permit application for both the DWF and the Pond. Staff has used the proposed changes to the pond Code (Reilly) and revised the checklist and application for each.

**ATTACHMENTS:**

Revised Code, Art. V, Section 1-5.27, Ponds by Pat Reilly  
Permit Application and Checklist for DWF (Decorative Water Feature)  
Permit Application and Checklist for Pond Permit

**ACTION OPTIONS:**

Recommend Council approve the changes. This will be included in the ordinance amending the Land Use Code.

**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).* Shall mean 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.* Shall mean 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. *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.

E. *To fill.* Shall mean the adding of allowable material to alter the existing topography or characteristics of a decorative water feature or pond.

F. *Littoral zone.* Shall mean that portion of the decorative water feature or pond which is less than three (3) feet deep as measured from the conservation elevation.

G. *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.

H. *Project site.* Shall mean the area where the decorative water feature or pond shall be located and all other affected areas of the property.

I. *Side slopes.* Shall mean 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")

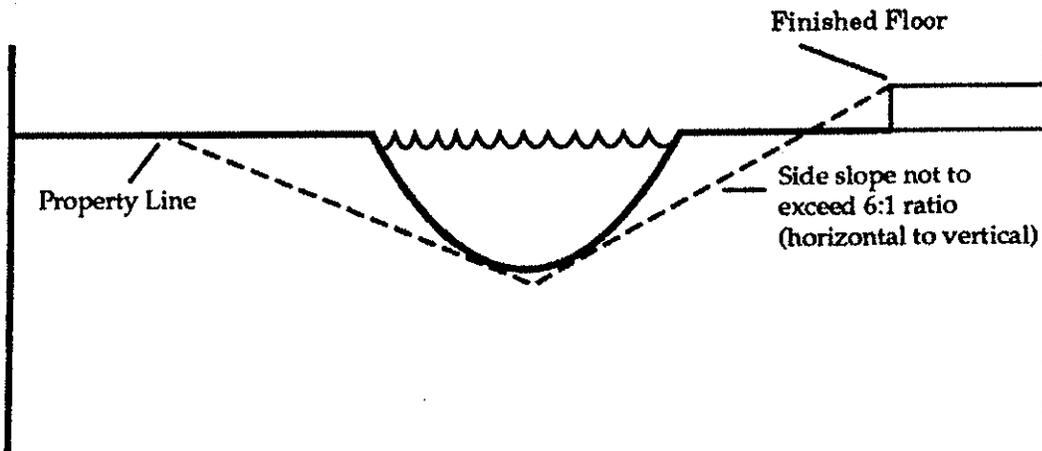


Diagram A

J. *Wet season water table.* Shall mean the 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).

## 2.0 Permits for decorative water features and ponds.

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 decorative water feature permit. A pond 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 for decorative water features or ponds.

1. *Decorative Water Feature*. 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.
  - E. A decorative water feature permit shall not be issued if the Town Engineer recommends denial of the permit.
2. Ponds. 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 decorative water permit be;
    1. Approved;
    2. Approved, subject to certain conditions, or
    3. Denied.

- D. 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 decorative water feature 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.
- E. A pond permit shall not be issued if the Town Engineer recommends denial of the permit.

#### **4.0 Appeal process for decorative water features and ponds.**

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 (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.

#### **6.0 Completion of decorative water features and ponds.**

- 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.

#### **7.0 Failure to complete decorative water features and ponds.**

- 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.

**8.0 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)



TOWN OF MALABAR

2725 Malabar Road, Malabar, Florida 32950
(321) 727-7764 Ext. 14 Fax # (321) 727-9997

PERMIT APPLICATION & CHECKLIST FOR DECORATIVE WATER FEATURE (DWF)

This permit application is intended for those applicants desiring to construct OR to fill a decorative water feature for the purpose of retaining water wherein the surface area is 1,000 square feet or smaller in size. Any 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 has been issued.

Project: Construct a DWF: \_\_\_\_\_ or Fill a DWF: \_\_\_\_\_ Date: \_\_\_\_\_

Street Address: \_\_\_\_\_ Zoning Designation: \_\_\_\_\_

Legal Description (Parcel ID) of Property Covered by Application: \_\_\_\_\_

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

Subdivision: \_\_\_\_\_ Tax Tract No.: \_\_\_\_\_

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

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

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

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

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 an original and two (2) Detailed Drawings with the following information shown:

- Boundary of property shown by a heavy line
Drawing to show size, dimension and depth of DWF to be constructed OR filled
Existing structures shown on drawing (including setbacks from all property lines)
Identification of trees in DWF area with a dbh (dimension at breast height) of 8" or greater
Location of well and drain field
Evidence that DWF area is not in a wetland
Plan for use of excavated material or written statement on method of disposal OR type of material to be used to filling the DWF
Stormwater drainage/retainage and overflow plan

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Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Town's Personnel Reviewing Application \_\_\_\_\_

Approved / Denied \_\_\_\_\_

Comments: \_\_\_\_\_



**TOWN OF MALABAR**

2725 Malabar Road, Malabar, Florida 32950  
(321) 727-7764 Ext. 14 Fax # (321) 727-9997

**PERMIT APPLICATION & CHECKLIST FOR POND**

This application is intended for those applicants desiring to construct OR fill a pond for the purpose of retaining water wherein the surface area is greater than 1,000 square feet. Any 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 has been issued.

Project: Construct a Pond: \_\_\_\_\_ or Fill a Pond: \_\_\_\_\_ Date: \_\_\_\_\_  
Street Address: \_\_\_\_\_ Zoning Designation: \_\_\_\_\_

Legal Description (Parcel ID) of Property Covered by Application:

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

Subdivision: \_\_\_\_\_ Tract No.: \_\_\_\_\_

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

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

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

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

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

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

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

(If yes to any of the above, attach Agency permit and mitigation requirements)

The applicant is required to submit an original and two (2) sign/sealed engineered Site Plans with the following information shown:

- \_\_\_ Boundary of property
- \_\_\_ Show on Site Plan the Proposed dimensions and depth of Pond to be constructed OR filled showing setbacks from property lines
- \_\_\_ Dimensions to show the side slope elevations and wet season water table
- \_\_\_ Existing structures shown on Site Plan (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
- \_\_\_ Evidence from jurisdictional Agency that Pond area is not in a wetland
- \_\_\_ Site Plan to show use of excavated material OR provide a written statement on method of disposal
- \_\_\_ If filling a Pond, provide written evidence of type of material to be used and method of compaction.
- \_\_\_ Stormwater drainage / retainage and overflow plan
- \_\_\_ Application Fee of \$100.00 for Engineering Review by Town

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Town's Engineer \_\_\_\_\_

Approved / Denied \_\_\_\_\_

Conditions: \_\_\_\_\_

**TOWN OF MALABAR  
Disclosure of Ownership**

Where the **property is not owned by the applicant**, a notarized letter/letters must be attached from the owner giving consent to the applicant to request a Permit Application for Pond.

Please complete only one of the following:

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

\_\_\_\_\_

Applicant(s)

\_\_\_\_\_ Date

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary public, State of Florida  
Commission No. \_\_\_\_\_ My Commission Expires \_\_\_\_\_

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

\_\_\_\_\_

Applicant(s)

\_\_\_\_\_ Date

Sworn and subscribed before me this day \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public, State of Florida  
Commission No. \_\_\_\_\_ My Commission Expires \_\_\_\_\_

**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 3**  
**Meeting Date: April 25, 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:**

At the last meeting on March 28, 2012, the Board directed that we include the source document from Chair Bob Wilbur's recommended changes to show the missing line of data. Chair Wilbur's corrected document is attached with the source document.

**ATTACHMENTS:**

Submittal from Krieger  
Corrected submittal from Wilbur

**ACTION OPTIONS:**

Discussion

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

*Limited Commercial Light Industrial*

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

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

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

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

(1) *Principal uses and structures:*

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

(2) *Accessory uses:*

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

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

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

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

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

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

(7) *Minimum yard requirements:*

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

Corrections  
From 3/28/12 P+Z Meeting

IN/TA 3884  
BHT 41170  
0806/172  
08:51 1107/17/10  
19/45

115 261

*Side, corner* 20 feet.  
(Ord. No. 83-1, §§ 1, 2, 8-23-83; Ord. No. 86-6, § 2, 4-8-86; Ord. No. 89-4, § 1, 6-27-89; Ord. No. 94-6, § 1, 1-10-95; Ord. No. 96-7, § 1, 1-14-97; Ord. No. 99-5, § 1, 6-8-99)

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

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

(1) *Principal uses and structures:*

- (A) Warehousing and wholesaling carried on solely within an enclosed structure.
- (B) Service and repair establishments, dry cleaning and laundry plants, business services, printing plants and welding shops.
- (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.
- (F) Vocational and trade schools.

(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 city council:* None.
- (4) *Special exceptions permissible by the zoning board of appeals:* None.
- (5) *Prohibited uses and structures:* All uses not specifically or provisionally permitted herein, and not in keeping with the industrial character of the district.
- (6) *Minimum lot dimensions and floor area and maximum height:*

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

(7) *Minimum yard requirements:*

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

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

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

# TOWN OF MALABAR

## PLANNING AND ZONING

### AGENDA ITEM REPORT

AGENDA ITEM NO: 4  
Meeting Date: April 25, 2012

Prepared By: Denine M. Sherear Planning & Zoning Secretary

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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 the 2010 Chapters:

F.S. 400, Parts I, VI

F.S. 408.032(8)

F.S. 419

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

These sections have now been updated with the 2011 Florida Statutes. We left out the sections on nursing homes, but have it available if you want to review it.

I previously printed sections from the 2007 Florida Building Code. They have also been updated with 2010 Code.

#### **ATTACHMENTS:**

- Brevard County Code (1 page)
- Cocoa Beach Code (8 pages)
- Florida Building Code, 2011 Edition
  - 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
- Florida Statutes, 2011 Edition
  - Chapter 400, Parts I and V
  - Chapter 419
  - Chapter 429, Part I only

#### **ACTION OPTIONS:**

Board Discussion.

***\*NOTE: Please bring 3-Ring Binder from April 11, 2012 P&Z Meeting Agenda Item #6***

**REMINDER:**  
**PLEASE BRING PACKET**  
**(3-RING BINDER)**  
**FROM P&Z MEETING**  
**APRIL 11, 2012**  
**FOR THIS AGENDA**  
**ITEM #4**

**THANK YOU**

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

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 5**  
**Meeting Date: April 25, 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:

- 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.

# TOWN OF MALABAR

## MEMORANDUM

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**Date:** April 17, 2012 2012-TC/T-011

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

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

**Ref:** Council Action of P&Z Recommendations

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The P&Z Board's recommendations went to Council for their meeting on April 16, 2012. Pat Reilly, Vice-Chair of the P&Z Board presented the P&Z Board's positions on both issues. The Mayor submitted his issues with both recommendations to Council. There was also objections to the proposed changes to R/LC by a member of the public.

Neither recommendation was approved by Council.

**Re: R/LC:**

- Council wanted the Board's rationale on reducing the density from 6 to 4. Vice-Chair Reilly explained the Board vision of a rural community and larger lots and the desire to have less density. He also submitted that the other regulations in Table 1.3.3.A would govern the ultimate density depending on lot size, setbacks, impervious surface ratio and maximum building coverage. The concern Council voiced was the suggestion that this would further restrict a land owner's potential use of his land, either to develop or to market. The public comment was that if the density is reduced, the property would not be as profitable at 4 units per acre compared to 6 units per acre.
- Council also wanted it clearer in the language that R/LC properties could be used as residential OR commercial OR both. Vice-Chair Reilly explained that yes the statement was added to Section "O." stating just that. During the Council discussion, they seemed still unclear on this. The Attorney also said the language should be clearer. They were also unclear if there was new development within this land use designation, would it be mandated to be a mixed use combination from the onset?
- The Mayor respectfully disagreed with P&Z Vice-Chair Reilly regarding how many commercial uses you could have on an acre. The Mayor felt that the last column in Table 1-3.3.A should have a 2 instead of a N/A across from the commercial. Mr. Reilly explained that the N/A was in that column specifically because it related to commercial development and all the commercial zoning designations in the Table had N/A in that column because they rely on the minimum and maximum square footage requirements in that column of the table. The Attorney pointed out that the title of that column should be renamed because it refers to "living area" even though it is obvious that for the commercial zoning

designations. I stated that we would correct the title as a housekeeping item when the ordinance is done.

- The Mayor said that the proposed increase from 500sf to 900sf in the multiple family section of the Table also takes away property rights and seemed to have the support of the Council. The Council asked if the Board could provide data or their rationale on why they wanted the increase. Mr. Reilly suggested that the larger size would prevent small shack type efficiencies. Council Member McKnight suggested that 500sf efficiency was a typical size on beach side.

Re: Setbacks:

- The Mayor stated that his position was that if P&Z was going to grant a reduced setback for accessory structures then it should apply to residents in all residential zonings, not just RR-65. Mr. Reilly stated the Board considered his suggestions and determined that with the small lot sizes in RS-10, 15 and 21, having a further reduced setback for accessory structures in those zonings would allow development similar to Palm Bay and not provide space to get vehicles to the side and rear of the lots.
- The Mayor stated that his position was that Table 1.3.3.E. should be deleted as it serves no purpose. He stated that the P&Z Board proposed that it had to remain in LDC because it was referenced in the Comp Plan. The Mayor stated it is not referenced in the Comp Plan. He produced a page from the EAR that did not include all the road types. Both Mr. Reilly and Franklin tried to interject that the Comp Plan as adopted does refer to the rights-of-way for all road classifications. The Mayor as Council Chair stated the item needed more research. That was followed by a motion and second to table which ended the discussion.

RTCM 4/16/12

Agenda Item 5

Recommendation From P&Z on Setbacks

Prepared by; Mayor Tom Eschenberg

While I was pleased to see P&Z recommend some setback relief to residents in RR-65, I believe that all residents are entitled to the same relief. The rear setback in all other residential districts should allow the same 15 foot option given to residents in RR-65. There is no justifiable reason to discriminate against a group of residents just because they do not live in RR-65.

I addressed the P&Z board to try to discern the need for Table 1-3.3E. To me the table seemed confusing and inaccurate. I thought it should be deleted. P&Z did not agree. It was mentioned at the meeting that this table came from the Comprehensive Plan. After doing a little research, it is now apparent that the table is at the very least, obsolete. (ref. EAR 2-1.2)

I recommend that this be sent back to P&Z. If they still wish to keep the table, it needs to be updated to be in conformance with the EAR. Also, any setback in the table needs to be compared with all setbacks in Table 1-3.3A to verify that they are reasonable and proper.

RTCM 4/16/12

Agenda Item 5

P&Z Recommendation on changes to R/LC Zoning

Prepared by: Mayor Tom Eschenberg

Even though the recommendations contain an excellent provision to provide balance between residential and commercial to help meet P&Z's vision of development on the east end of Malabar Road, other recommendations, I believe place unreasonable restrictions on property owners.

The reduction in units per acre from 6 to 4 could very well tip the scales for a property owner to the point that it would not be financially feasible.

The increase in multi-family from 500 to 900 minimum square feet would take away the property owner's option to build small efficiency apartments.

I am a supporter of property rights and strongly object to making the current restrictions even more restrictive.

In reference to changes to Table 1-3.3A, last column (Max Density Unit/Acre) it can never be 4. Under current P&Z recommendation, the density would never exceed 2. Even if the density were left at 6 units per acre, residential would never exceed 3. Commercial should not be N/A. Because of the one and one requirement, commercial should be the same as residential. Making it N/A creates a conflict with the one and one requirement.

# TOWN OF MALABAR

## TOWN COUNCIL MEETING MONDAY APRIL 16, 2012 MALABAR COUNCIL CHAMBERS 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 :

- 1a. **Approval of Minutes** Regular Town Council Meeting – 4/2/2012  
**Exhibit:** Agenda Report No. 1a.

- 1b. **Budget Adjustment – Reso 10- 2012**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2011-2012; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 1b.

**Recommendation:** Request Action on both of the above with one motion and a roll call vote.

**PRESENTATIONS:** Fire Chief Covey to Promote Grant Fuller to Lt and Bob Strandell to Assistant Chief

- E. **PUBLIC COMMENTS:** Three Minutes Limit. Comments may not address subsequent Agenda Items. Does not require Council response. (Speaker Card Required)

- F. **ATTORNEY REPORT**

- G. **BREVARD COUNTY SHERIFF'S OFFICE REPORT**

- H. **PUBLIC HEARINGS:**

- 2. **Amend Chapter 8 of Code of Ordinances (Ord 2012- 51)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 8 FIRE PREVENTION AND PROTECTION; AMENDING ARTICLE II STANDARDS; AMENDING SECTION 8-32 RELATING TO FIRE INSPECTIONS; PROVIDING FOR REPEAL, SEVERABILITY AND INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 2

**Recommendation:** Request Action

- 3. **Submit Referendum Question to Voters (Ord 2012- 52)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; CALLING AND SCHEDULING A PERIODIC ELECTION TO DETERMINE IF THE TOWN SHOULD PURCHASE LAND FOR FUTURE TOWN PURPOSES USING AN ADDITIONAL MILLAGE COMMITTED TO SUCH PURCHASES; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Request Action

**4. Approve New Building Codes (Ord 2012- 53)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; PROVIDING FOR ADOPTION OF CERTAIN MODEL BUILDING AND CONSTRUCTION CODES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 4  
**Recommendation:** Request Action

**I. ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING**

**5. Recommendation from P&Z Board re:**

- **Setbacks in Residential Zones**
- **R/LC Expansion and Reduction in Density**

**Exhibit:** Agenda Report No. 5  
**Recommendation:** Request Action

**6. Request 4-way Stop at Weber and Atz Roads – Resident Dick Korn**

**Exhibit:** Agenda Report No. 6  
**Recommendation:** Request Action

**7. Recommendation from Park & Recreation Board re:**

- **Move Fence at Disc Golf Park**

**Exhibit:** Agenda Report No. 7  
**Recommendation:** Request Action

**J. ACTIONS ITEMS:**

**ORDINANCES:** First Reading - none

**RESOLUTIONS:** none

**MISCELLANEOUS:**

**8. Authorize Placement of Traffic Control Devices (Beatty)**

**Exhibit:** Agenda Report No. 8  
**Recommendation:** Request Action

**(No Recess – Attorney Excused)**

**K. PRESENTATIONS:** done above

**L. PROCLAMATION:** Power Talk 21

**M. STAFF REPORTS:**

ADMINISTRATOR –

CLERK –

**N: DISCUSSION ITEMS:**

**9. Amend Council Procedures (Reso 11-2012)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTION 4 OF RESOLUTION 01-2009, COUNCIL PROCEDURES; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 9  
**Recommendation:** Discussion and Direction

**10. Amend Chapter 13 of Code with Ordinance and Resolution re: Road Assessment Process**

**Exhibit:** Agenda Report No. 10

**Recommendation:** Discussion and Direction

**O: REPORTS – MAYOR AND COUNCIL MEMBERS**

**P. PUBLIC COMMENTS: General Items (Speaker Card Required)**

**Q. ADJOURNMENT:**

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 AGENDA ITEM REPORT

## AGENDA ITEM NO: 5 - Setbacks

Meeting Date: April 16, 2012

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

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**SUBJECT: Recommendations from P&Z Board re:**

- **Setbacks in Residential Zones**

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### **BACKGROUND/HISTORY:**

The P&Z Board has been working on the Setback Question since it was introduced to them by the Mayor in April 2011. Their consensus was that no change in the Code was necessary and sent a memo to Council. The Mayor asked Council to direct them to take formal action on this item.

The issue of setbacks amends the *most used* Table in the Land Development code, Table 1-3.3.A. This table gives direction to staff, property owners, developers, contractors and permit applicants on what Malabar requires for lot size, setbacks, height, density, open space, etc. The P&Z Board is also reviewing this table for other items they have been working, specifically R/LC criteria.

The P&Z Board reviewed the setback issue again on August 10, 2011. They proposed allowing lessor side and rear setbacks in RR-65 zoning only and only for accessory structures. In no case would the setback be less than 15 feet. Their recommendation went to Council September 12, 2011 to amend Table 1-3.3.A in Article III to provide for this. The Mayor asked Council to send it back to P&Z Board and have them consider reduced setbacks in other residential zones.

The P&Z Board discussed it further at their September 11 and 28, 2011 meetings. During these meetings the Mayor brought up Table 1-3.3.E and stated it should be deleted from Code. The Board explained that Table 1-3.3.E. is based on the Comp Plan. The P&Z Board consensus was to keep that Table and further amend Table 1-3.3.A. to clearly state the setback criteria shall meet either Table A or E, *whichever is most restrictive*.

The P&Z Board also agreed to delete Article V, Section 1-5.10 as it was redundant and conflicts with Article III Table 1-3.3.A. and E. The item stayed on the next four agendas but was not discussed as those meetings ended prior to that item coming up.

At the January 11, 2012 P&Z meeting the Board directed that this item was ready to put on their agenda for final action and recommendation to Council at their January 25, 2012 meeting but due to an oversight, it was not put on the agenda. The oversight was realized at the last meeting on March 28, 2012. It was added to the April 11, 2012 agenda for action to Council.

The items proposed for amendment are:

- Change title on Table 1-3.3(A) to add **"FOR PRINCIPAL STRUCTURES"** This will further clarify language in Footnote 7 that the lessor setbacks are for *accessory structures only*.

- Add Footnote #7 to Table 1-3.3(A) to provide lesser setbacks for accessory structures in RR-65 zoning only.
- Board did not want to reduce setbacks for other residential zonings, commercial or mobile home zonings.
- Delete Article V, Section 1-5.10 as it is redundant and confusing – conflicts with Article III Table 1-3.3(A) and (E).

At the meeting on April 11, 2012 the Board made the following motion:

**MOTION:** Reilly / Ritter to recommend Council approve the proposed changes as spelled out in the Agenda Report with changes made this meeting: change the title to Table 1-3.3.E. to read centerline of thoroughfares and in second paragraph of that Table insert the word "principal" in front of structure.

**Vote:** Ayes, 4; Nay 1 (Krieger)

**FINANCIAL IMPACT:**

N/A

**ATTACHMENTS:**

Proposed Table 1-3.3.A with changes shown  
Proposed Table 1-3.3.E with changes shown  
Proposed Deletion of Article V, Section 1-5.10

**ACTION OPTIONS:**

Staff requests Action

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	MOS	Maximum Density (units per acre)
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (interior)	Side (corner)		Maximum Building Coverage (%)	Minimum Open Space (%)	
<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
<del>RM-4</del>	<del>5-acre min Site</del>	<del>200</del>	<del>200</del>	<del>35/3</del>	Multiple Family 1-bedroom 900 ea. additional Bedroom 120 <del>2-BR: 1100</del> <del>3-BR: 1300</del>	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
<del>RM-6</del>	<del>5-acre min Site</del>	<del>200</del>	<del>200</del>	<del>35/3</del>	Multiple Family <del>1-BR: 500</del> <del>2-BR: 700</del> <del>3-BR: 900</del> 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: 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 <u>1/2 acre</u>	100	150	35/3	Single Family: 1200	25	20	10	10	50	N/A	50	4
R/LC	<u>1/2 acre</u>	<u>100</u>	<u>150</u>	<u>35/3</u>	Multiple Family: 1 Bedroom: 900 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	50	25	10(4)	20	65	N/A	35	<u>6</u> <u>4</u>
R/LC	<u>1/2 acre</u>	<u>100</u>	<u>150</u>	<u>35/3</u>	Commercial Min. Area: 900 Max. Area 4,000	50	<u>25</u>	<u>10(4)</u>	<u>20</u>	<u>65</u>	<del>0-20</del> <u>20</u>	<u>35</u>	<u>N/A</u>
<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

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: 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)
	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 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: 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 of Malabar LDC District Provisions, Article III, Section E.**

**Section E.**

***Building Principal Structure 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. 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 STRUCTURE SETBACKS FROM CENTERLINE OF THOROUGHFARES STREETS AND ROADS**

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

**Section 1-5.10. – Principal Structure 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 principal structures 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.~~

# TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 5 – R/LC

Meeting Date: April 16, 2012

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

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**SUBJECT: Recommendations from P&Z Board re:**

- **R/LC Expansion and Reduction in Density**

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## **BACKGROUND/HISTORY:**

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

The Board will 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.~~ And adding the following sentence: Building or portions of building may have residential or commercial uses or both.

The Board directed that staff insert the word "maximum" in the next sentence in front of density. They also directed that staff change the maximum density from six (6) units to four (4) units under the same section "O".

The Board directed in the same section staff add the following two bullets:

- dwelling unit shall not exceed commercial unit by more than one
- commercial unit shall not exceed dwelling unit by more than one

The Board directed staff to reduce the maximum density for R/LC from 6 units per acre to 4 units per acre under the same section, on the following page of the code.

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. Add N/A to the R/LC section under density column.

(NOTE: fix typo under Section O. last line in second paragraph "disposal" should be disposable" and fix scrivener's error in Table 1-3.3(A) - MBC for OI should be 0.20.. Check with Municode, the last column re: density with central water should be deleted.)

Regarding Article XX, Definitions, the Board directed staff should change *dwelling* to add the word "residential" before the word. Board directed that definitions be added for unit and commercial unit as follows:

- unit: a building or portion of building used for a residential or commercial purpose.
- Commercial unit: a building or portion of building used expressly for a commercial purpose

Change definition of dwelling by adding "residential" in front of Human habitation in the definition to dwelling.

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

At the meeting of April 11, 2012, the P&Z Board unanimously voted to send the following motion to Council with the marked up attachments from the code:

**MOTION:** Reilly / Ryan to recommend Council approve the proposed changes to R/LC in District III, Section O., Table 1-3.3.A and in Article XX, Language and Definitions with the changes noted on the Agenda Report and adding from tonight's meeting: adding the definitions for unit and commercial unit, adding the statement in paragraph in Section "O" before the added bullets, changing the minimum lot size for R/LC to ½ acre to be consistent with other commercial designations in the Table, adding "N/A" to the density column in the Table for R/LC in commercial subsection as the percentage overrides the units.

**VOTE:** All Ayes

**FINANCIAL IMPACT:**

Unknown – there will be costs involved in updating the Land Development Code to comply with the Comp Plan and with the cost of updating the Future Land Use Map

**ATTACHMENTS:**

- Marked up Article III, District Provisions, Section O.
- Marked up Table 1-3.3(A) listing the R/LC zoning
- Marked up Article XX, Language and Definitions

**ACTION OPTIONS:**

Staff requests Action.

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 4 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 maximum density up to four (4) six (6) units per acre. Building or portions of building may have residential or commercial uses or both. 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.
- Dwelling unit shall not exceed commercial unit by more than one
- Commercial unit shall not exceed dwelling unit 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 disposable 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.

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 sf ½ acre	100	150	35/3	Single Family: 1200	25	20	10	10	50	N/A	50	4
R/LC	½ acre	100	150	35/3	Multiple Family: 1 Bedroom: 900 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	50	25	10(4)	20	65	N/A	35	6 4
R/LC	½ acre	100	150	35/3	Commercial Min. Area: 900 Max. Area 4,000	50	25	10(4)	20	65 20	20	35	N/A
<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

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.

Portion from Malabar LDC Article XX, Language and Definitions (this language is straight from the code. Underlined words are proposed additions and strike-through are proposed deletions)

Commercial Unit. A building or portion of building used expressly for commercial purposes.

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. 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, 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.

Unit. A building or portion of a building used for a residential or commercial purpose