

TOWN OF MALABAR
PLANNING AND ZONING
AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: May 9, 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
Draft minutes of P&Z Board Meeting of April 25, 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
APRIL 11, 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
	LIZ RITTER
ALTERNATE:	WAYNE ABARE, excused
ALTERNATE:	CINDEL ZINDEL
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

C. ADDITIONS/DELETIONS/CHANGES: none.

D. CONSENT AGENDA:

1. **Approval of Minutes** Planning and Zoning Meeting – 3/28/12

MOTION: Reilly / Ritter to approve 3/28/12 minutes as submitted.

Vote: All Ayes

E. PUBLIC HEARING: none

F. PUBLIC: none

G. ACTION:

2. **R/LC Zoning Clarification**

Exhibit: Agenda Report No. 2

Recommendation: Action

Speaker Card: Tom Eschenberg, 2835 Beran Lane, has questions, not comments. What was the Board's rationale in reducing density from 6 to 4? What was Board's rationale in increasing the minimum square footage for residential from 500 to 900? Eschenberg said the Board appeared to have confusion on what is a unit at last meeting and that needs to be clarified. He asked himself if someone had one acre, what could they built there. He looked at Table 1-3.3.A. and the maximum building coverage is 20% and that comes up to 8,7120sf on one acre.

Wilbur told him that the build out is limited by other areas in the Table; for example if they don't have central water and sewer their development is limited. Eschenberg referred to a multiple family that is N/A in the density column and asked Board how much can you cram on one acre. Wilbur said that it again would be governed by the Table; the Maximum Impervious Surface Ratio (MISR) is 65%.

Eschenberg asked, can you get 8 residential units on one acre? Reilly asked where he is getting 8. Eschenberg said if you have 8 commercial business units you must have at least 7 residential units.

All Board Members said no; the limit is four. Ritter said a building is a unit.

Eschenberg said their intent is 4 business and 4 residential per acre. Eschenberg said something has to be clarified

No said Board. It is a total of 4. One unit with 4 uses in it. Use is a division of a building. Unit is not the term to use. Ritter said the max is 4 uses. Reilly said a use is either commercial or residential

Page 13/158 and look at the definition.

Unit 2 family. Two dwelling units in a detached building shows a conflict as it references two units. So units can't be same as building. Krieger said you have a 20,000 square foot parcel of land. He said think of the models done by the engineer. Ritter said shared unit with doctor office and also other use.

Board goes over the definitions at the time.

Dwelling attached

Dwelling detached

Res bldg in multifamily.

Krieger said need to clarify the difference between use and unit; he gets confused.

Ryan asked if they have other cities regulations that we could look at.

Krieger said this is a problem.

Building can have both commercial and residential uses. Wilbur said combine it for RLC and have both definitions in there. Or if they are going to go to commercial. He thinks residential definitions are sufficient for what they want to do. Residential he feels are good.

Within a building, you could have 4 separate uses or units or have 4 separate buildings. Zindel asked if you could meet setbacks. Krieger said he has seen ads that state there are "x" number of units available. That is up to the advertiser. Don then brought up the B&B and asked if the landlord is a business and then the balance may be squewed. He said unit is confusing. Krieger said there are 4 things you can do on 20,000 sf.

Wilbur said add language from definition in commercial and residential and pick that out and add it to this page of definitions. For allowable commercial uses in RLC, that portion is what you use. The rest is based on residential. Liz also asked about table heading; shouldn't say minimum living area for commercial areas. Staff will change heading.

Board asked about last column in the table on first page only; appears to be wrong. Franklin said she thinks it was deleted in 2005 but staff will check.

Franklin said that the table provides minimum lot requirements; for R/LC it is 20,000 square feet. The density column is based on one acre. Presently allows 6 units per acre. If person only has 20,000 sf lot it is less than a half acre. Zindel said then you can only have 2 per 20,000. No, then you could only have 1 since it is less than ½ acre.

Wilbur explained the reason RLC was created so these little lots could be used and not harmed. Board discussed units per acre. Wilbur explained that units are term for residential uses. For commercial development, the Table uses square footage. Each commercial use is governed by sf. Franklin said Planner Keith Mills tried to explain this difference but Board wanted to combine them.

Wilbur said for commercial development you are limited by the square footage. For R/LC you have separated the requirements based on use. For the residential part in R/LC you have that identified

in Table 1-3.3.A by single family and multiple family. Wilbur explained how you could do an existing multi-family structure with four each 900sf units and be under the 4000sf maximum limit for R/LC under commercial. (Note: the table was not previously separated between multiple family and commercial.) Ritter and Krieger questioned the square footage at Nanna's House. Wilbur said that Nannas house was a mistake and they should use a better example.

They are looking at requirements for R/LC in Table 1-3.3.A as they would apply to mixed use. The Table provides multiple requirements that applicant must comply for multiple family development or commercial development; like the maximum building coverage (MBC) of 20% of the lot (footprint of building on lot); Maximum Impervious Surface Ratio (MISR) of 65% (amount of lot that can be covered with non-pervious structures (buildings, ponds, driveways); and Minimum Open space (MOS) of 35% (amount of lot that must remain green).

Board agreed to change the minimum lot size for R/LC to ½ acre. The correction to the ½ ac size is for RLC only.

The commercial part for RLC should be "N/A" to be consistent with other commercial listings in table.

Wilbur said they could add the definition for limited commercial within the R/LC so they know what is allowed in RLC for commercial. They could find the definition under LC (limited commercial). Wilbur said that is not a definition. Maybe we don't have anything. Wilbur said they should add definition as part of it.

"Use" is what it is being used for. "Use" is for commercial or residential. No more confusion.

Board agreed to not add the "s" in the bullets. But do change to *unit* in the bullet or use *use/unit*. Reilly said he is changing his thinking from last meeting. They discussed to change or not. Change or not change. Do not change.

Add before bullets: Building or portions of building may have residential or commercial uses or both.

Wilbur would like it to be tied to RLC. The definition should also be in RLC.

Commercial unit – a building or portion of building used expressly for commercial purposes.

A unit is a building or a portion of a building in use for a residential or commercial purpose.

That needs to be straight.

Add it to Article XX.

Reilly said to send to Council this sheet of paper (agenda report) with changes noted. And add N/A to the last column for R/LC in commercial because the percentage overrides the units. And then for Art XX add the definition for commercial and unit. And change the minimum lot size to ½ acre to RLC.

MOTION: Reilly / Ryan to recommend Council approve the proposed changes to R/LC in District III, Table 1-3.3.A and in Article XX, Language and Definitions with the changes noted 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 Table, add N/A to the density column in the Table for R/LC in commercial subsection as the percentage overrides the units.

VOTE: All Ayes**3. Setbacks in Residential Zonings****Exhibit:** Agenda Report No. 3**Recommendation:** Action

Speaker card: Tom Eschenberg, 2835 Beran Lane, make one more appeal for people in other residential districts to give them the same benefit that you are proposing for RR65. On page 16 and note 7.

Reilly said the Board has discussed his request already and did not agree. Ritter said they are smaller lots and houses are closer together. Krieger is saying in RS 10, 15 and RLC he is proposing they be allowed to reduce setback to 15 feet in the rear.

Tom Eschenberg said his big problem is this: Table 1-3.3.E. that causes nothing but confusion.

Ritter explained the reason for the two tables when ROW hasn't been dedicated. Eschenberg also said Briar Creek and Jordan should not be in Table. He said get rid of Table E altogether. Eschenberg would suggest the code use words, anticipating the future. He also doesn't think we should require certain setbacks on roads under jurisdiction of State. He doesn't know what State is going to do that will be used for right-of-way (ROW). Wilbur said you have to have it in there for the here and now, based on the future. We don't know what we are going to need for pedestrian corridor and drainage and they have to fit within the right-of-way (ROW).

Eschenberg again asked what Table E accomplishes. Zindel said the right-of-way widths are in the Comp Plan. Eschenberg said per the E.A.R it is not consistent. Reilly said the E.A.R. was approved and action was then taken to update the 1988 Comp Plan. It was approved in 2010. The Comp Plan states that within a certain number of years, the Land Development Code would be updated/amended to be consistent with the Comp Plan.

Eschenberg insisted the page he was referring to was the latest document. Franklin offered to get approved Comp Plan. No. Reilly said it is in the updated Comp Plan and that trumps the land development Code.

Ryan agreed with Reilly and said there has to be some sort of guideline. He understands Eschenberg' motivation and agrees with him that there should be no development on Malabar Road.

Reilly disagrees with the request to change the rear setbacks. The reasons were stated before as to getting back to those areas.

MOTION: Reilly / Ritter to recommend Council approve the proposed changes as spelled out in the Agenda Report with changes made this meeting.

Vote: Ayes, 4; Nay 1 (Krieger)

Discussion. Krieger mentioned the half roads that were subject of lawsuits in the past. Wilbur said the Town has to look at the future needs.

Change title in Table E. to add Principal Structures and put centerline before thoroughfares. In Section 1-5.10 change title to Principal Structure Setbacks. In the second paragraph of this section, change the word *building* to *principal structures*.

Board ended here for this meeting and moved to J. Public. No objection.

H. DISCUSSION:

4. Continue Review Checklist and Permit Requirements for Decorative Water Features and Ponds
5. Define "Light Industrial" Zoning
6. Code Requirements for Assisted Living Facilities

I. ADDITIONAL ITEMS FOR FUTURE MEETINGS:

7. Discuss Procedures for P&Z Excused Absence Policies

J. PUBLIC:

Tom Eschenberg, Beran Lane, 2835 Beran Lane, acknowledged that Board will be sending a couple of recommendations to Council. He said maybe they shouldn't be doing that unless someone from this Board is there to answer the questions he is going to ask. On RLC he is going to ask Council the same questions and see how they answer. Wilbur said as long as the Building Dept understands the Code that is what counts.

Eschenberg continued about the maximum density per acre for the commercial in R/LC. The P&Z Board made it N/A. P&Z Vice-Chair Reilly said his answer is in the minutes. Wilbur said the Board has done the best it could and doesn't have the benefit of having an attorney at meetings. He referenced previous work they had done for over a year and then Ed Booth threw it out. They do the best they can. Council can change it once it gets to them.

OLD BUSINESS/NEW BUSINESS:

Old –

New:- Chair asked Board Members to propose a meeting date that would work for a Joint Meeting. Krieger said they should not have a Joint meeting on a single issue. Reilly said he will be in Ireland on 5/23/12, the proposed date for the meeting. Franklin said that Council Member David White can't make any Wednesday meeting. Council Member Carl Beatty can't make the May 9 meeting. Chair Wilbur said it is up to the Board when they want to do the workshop. What night is best for everybody?

Zindel said the joint meetings they have had have not accomplished anything. There are seven of them and seven of P&Z and multiple conversations and 14 different ideas and it goes on until there is complete confusion. Zindel said the P&Z Board should have an attorney. The codes they propose are only as good as it will stand up in court. They want to make code easy to understand for residents and make it so you don't have to jump through hoops. Council is taking their recommendations and then just sending them back to the Board. Instead the recommendation should be discussed by Council and then go to Attorney and then come back to P&Z. Zindel said let's get on with it. The P&Z Board has spent months and months on these issues and they should get some kind of feedback from Council. She said to put her on record that a Joint meeting at this time would be a waste of time. She said the P&Z Board will present their ideas on what the code should look like and send to Council. Then Council can approve it, tweak it or send it to Attorney to change.

Ritter said to Eschenberg that they, the Board also have their own opinions on these issues but they set them aside to look at what is best for Malabar. They do their best and then send it to Council.

Reilly said that Eschenberg is in a position to sway the Council.

Ritter asked Eschenberg what Council didn't like about the recent recommendation they sent. Eschenberg said one issue they didn't like was the unlimited amount of vehicles allowed in the yard. Ritter said their wording controlled that.

Ryan asked if someone would go from P&Z to answer questions Monday April 16, 2012. Reilly will go if Liz can't, Wilbur will try to attend. Zindel said they should not have to go and defend their position. Krieger said Council should accept reject or amend their recommendations. Wilbur said they should be reading the P&Z Board meeting minutes and asking staff questions. They also have staff they can ask.

The Board would like to hear back from Council. Krieger said Council is boss. The P&Z Board is supposed to be saving Council time. The Board needs to hear what the issues and complaints are from Council.

Ryan said Council deals with a lot of different things and they don't appreciate the level of detail this Board gets into.

MOTION: Krieger / Ryan to recommend to Council that a Joint meeting would be counterproductive on a single subject until they send their specific problems with the Board's recommendation. Wilbur said include Attorney comments and suggestions to correct as well.

Vote: All Ayes

Board reiterated that if Council has a complaint or complaints they should list them and send them to Board.

L. ADJOURN

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

Vote: All Ayes. The meeting adjourned 10:15 P.M.

BY:

Bob Wilbur, Chair

Debby Franklin, Recording Secretary

Denine Sherear, P&Z Board Secretary

Date Approved

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**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
APRIL 25, 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
	LIZ RITTER
ALTERNATE:	WAYNE ABARE
ALTERNATE:	CINDEL ZINDEL
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

C. ADDITIONS/DELETIONS/CHANGES: none

D. CONSENT AGENDA:

1. **Approval of Minutes** Planning and Zoning Meeting — 4/11/12 — not ready

E. PUBLIC HEARING: none

F. PUBLIC: none

G. ACTION: none

H. DISCUSSION:

2. **Continue Review Checklist and Permit Requirements for Decorative Water Features and Ponds**

Exhibit: Agenda Report No. 2
Recommendation: Discussion

Discussion:

Regarding the code, Reilly copied everything the same and kept them (DWF and ponds) separated up until page 9/45, Section 4.0, Appeal process because it should be the same process for both. Reilly thought they should go through the overview and then review the checklist. He reminded Board they had previous discussions regarding the bottom of pg 10, 5.E, disposal of excavated material. Ryan said on page 4/45 under definitions for construction debris, it says "no" instead of "not".

The Board discussed language and grammar in the code. Reilly explained that the parts being referenced for grammar changes are in the existing code. Reilly said once they go over the checklist for DWF and Ponds the code language will change. Reilly said once they review the checklist much of the code language could be deleted. Ritter said the language refers to a site plan and thought they simplified that. Krieger did not want permit fee for DWF. Ritter said the code should provide the information on the checklist. Reilly said they could just reference that the applicant must submit criteria on checklist. Reilly said the DWF has 8 items on checklist and ponds have 11, so it is shorter.

Ritter wanted to go back to the beginning of the definitions and said the structure of paragraph is redundant. First sentence should not say construct or fill. First sentence should refer to construct and second sentence refer to fill. Ryan is not clear on fill; did it mean fill with water? No, fill in an existing DWF per the definition.

They are saying to rewrite this part. Reilly said go to your checklist and use that language; you could get rid of 1 2 and 3. Code said topo should be required. Abare said filling an existing DWF should be a simpler process but still needs review and permit. Krieger likes separating the little thing and big thing. He crossed out most of Section "A" and "B" and most of code under DWF. He doesn't want Town to charge for DWF as there is currently no charge. On page 5/45 of packet, Section 2.1, line 2. Construct or fill. Yes permit is required for both. It was in the original code.

Wilbur explained why people may have constructed a DWF or pond in order to get fill for house pad. Ritter said add the word existing in front of DWF or pond in reference to filling; that will make it clear. Ryan asked where Reilly wanted to get to - what they do with excavated material. Abare said they are stumbling over the filling of an existing pond or DWF. Abare said if you mess with wetlands the FDEP will get involved. The Building Official has already done this and got in trouble. It is important for Town to look at these things. Wilbur said in a perfect world you could let people do whatever they want. But you can't do that now. Need to figure out what the short list is. Checklist is on pg 13. Krieger debated that the town will not get into trouble with FDEP. Krieger said the code refers to the town engineer. Krieger said the town engineer should not be referenced. We did not have an engineer in the past and may not in the future and you are creating too much bureaucracy. Krieger said if you are not affecting the neighbors you should be able to construct or fill. Abare said he looked at a property and it has a small wetland on it and he could not even mow it. Abare thinks the Town would help people out with these things.

Krieger said you should have another definition for a water body. Abare is asking Krieger what he is saying - less than 1000sf no permit? Don said there should be no charge and no permit if it is part of construction of house. Abare said it should not be about trying to trick the Building Official. Ritter said you have some developers that have cleared everything. The idea with the trees.

Chair Wilbur said they are digressing from agenda item. Abare said Krieger is entitled to his opinion. Wilbur said in November 2011, disposal of the material shall be onsite for any pond where a permit is required. Wilbur said there must be a certified letter from an engineer (pg 11) stating it is not suitable, it does not say town engineer. It can be any licensed professional engineer. Ritter said under 3 on same page, unacceptable material if approved by Town Eng? It conflicts. The Town eng can review the professional engineer's written assessment. Ritter said you should have the option to get your own engineer but it has to be approved by town engineer.

Wilbur said if they don't want to use Town Eng, they can get something from a certified licensed engineer. Put it in both places and add the choice. Krieger said that if you have them sign an affidavit that says they won't affect their neighbor's property should be sufficient. Reilly said change it from engineer to town bldg dept on pg 5 and 6.

Ritter said add "existing" in front of DWF and pond in reference to fill.

Abare goes back to beginning. 5/45; are we going to keep it? Krieger took out fill in first paragraph. He does not think fill should be part of DWF process. Reilly, Ryan and Wilbur state fill should remain in code. Add "existing". Krieger is outvoted. Krieger said the more precise you make it the harder it is to follow. The concept is to get your building done so no one in the future can do what you did.

Board begins review of code at application for DWF. There is no application fee for this. Permit fees are under a resolution that Council sets. Abare said under "a.", the second sentence could be scratched. Lawyer wants it in there. Leave it like it is per Abare. Then "b", the following info should be provided: per the checklist. Show tree location; it is on the checklist. Abare thinks that is too much work for applicant. Wilbur says they are trying to make it simpler and Krieger is

trying to make it too simple. It is in there for a reason.

Franklin suggested using the checklist and marking up the code to conform to the checklists; staff could do for next meeting. Wilbur said Board wasn't asked to change code; they were tasked with dealing with ¼ acre ponds with no permitting.

Abare said on page 5/45 they are going to throw out requirement for proposed elevations. Wilbur said what about keeping that in; a builder's level will show that elevation. Wayne said you are not going to get real topo data that way. Wilbur said Brevard County Soil Survey will also give topo info. Reilly said they were not going to require a full blown site plan except for ponds.

Abare said what they talked about is showing a sketch of the boundary of property and road and trees so they don'tt have to hire an engineer and the Building Official shouldn't be making him get topo info.

Ryan said for 1000 or less DWF, you get drainage this way during normal periods and then you get a big rain and it fills up and goes another way. Reilly said 1000sf can be a size of 33' by 33'. Krieger stated he has a pond that is 50 by 20 feet. Wilbur said it can't be 12' deep due to the side slope requirement. Wilbur said even on small DWF by the time you spread out your excavated material you have affected that area. Krieger said you have to tell how the water is going to go when it overflows. What are you going to do with that? If you make a berm around it. Wayne said Roger would tell people to not put it in the swale. Ryan said when they put in his pool he had them put the fill in the swale on the north side of property that was low.

Zindel said a small DWF should not require a site plan because it conflicts with Art VII; under 1000 does not require a site plan. The berm will keep the fertilizer from running in to the DWF.

Krieger said if the town wants to be helpful they could include this information and that would be a friendly town. Abare said it does require a drawing. Chair Wilbur said lets go to 13/45 the checklist.

Ritter went over the definition again and wants it's stated to construct in first sentence and then the second sentence to fill. Don said it should not reference fill at all. Bob doesn't have problem with any of it. Bob said a permit is needed for both. Or get rid of the second sentence. Bud said eliminate second sentence. Bob said it needs to be there.

Wilbur gave example of someone trying to fill DWF with junk from yard instead of approved fill material. That is what we did in the good old days.

Reilly said let's talk about the 8 items.

- 1) Download dwg from PA office. – Why does it say heavy line?

Liz wanted to go back to definition first. Either change sentence 1 or add a second sentence. Majority agreed that a permit is required. Wayne said they will not be confused. The next line explains it. Bud and Bob and Wayne agree. They understand her point of view. They can go over grammer later. Want to get to meat. Back to #1. ie. Sketch, property survey, aerial survey, plat map.

- 2) Dwg showing location (add)

- 3) Ok

- 4) Id of trees – add impacted by dwf impacted area.

- 5) Location of well – add (s) could be multiple also for drainfield(s)

- 6) Location of wetlands. That is important. Don disagrees. Pat wants a lawyer's opinion. He thinks there is a minimum threshold and below that they are not involved. Abare said it could be any size. Bob said the fill matl could be used and that would impact the upland area and that the fill does not affect. Pat wants to know what the cutoff is for wetlands. Pat said take an action to have clarification for the minimum threshold for

both DEP and St Johns and that will fix that area. Staff will contact both agencies and get clarification on minimum threshold for them to get involved.

7) Plan to use excavated material and overflow plan and make it simple.

8) Don't Combine with 7. Summary is leave separate. Stormwater plan. They want to know if the water from overflow is going to go to the ditch or does it go back into the pond or into a skimmer or what. Wayne said you have to get a degree in civil eng to complete this. We should be providing examples. Just show you are not going to have runoff. Bob explained sheet flow and if you build it up you may be adversely affecting the flow of stormwater. Krieger said water runs off your property goes to the swale and that is not going to change. Wilbur said you are going to dig a hole and if the DWF is built then you are creating more water and you have to demonstrate what you are going to do with this extra water. Abare said add the words to say you must have a valve and you can't let it run. Reilly said add it to definition to the drainage plan.

Wilbur is all in favor of letting them do this but have to ensure there is not an adverse impact to neighbor's. Abare gave example of when neighbors sue each other and Town is called in. Krieger agreed and said they should mark up a sample property in different zonings and show how the house and DWF are going to be. Ryan said come up with a typical application and use for an example to give applicants. Reilly said who is going to do the drainage plan.

Franklin said that the requirements are in the code and the process is in code and it has been enforced at least since 2004. No construction project can adversely affect the stormwater on an adjacent property. Even for single family home construction the applicant shows on the site plan where the trees are which will be removed, all proposed construction, and how the stormwater will drain after holding the first inch. That was not done in the past.

Abare said he would come up with an example. Franklin said that staff already provides applicants with samples of a pond application. Abare will provide something showing the stormwater drainage. Abare will pretend to be an exasperated applicant.

Zindel asked about free-flowing wells and also about restrictions on watering. Some Board Members thought the restriction didn't apply to wells or irrigation by ponds. Wilbur mentioned the requirement for a Consumption Use Permit. That is for large wells. You can't let it run. You have to have float or valves. Abare gave example of a property in Malabar where the neighbor had well and let it flood his property for years and now it is a protected wetland. Wilbur said by building it you are creating wetland area that is then protected and you can't fill it.

Krieger gave example of filling the DWF with leaves.

Reilly wants to go to Section E. on pg 6 and said this section should be eliminated. Abare said bottom of pg 5 and top of page 6 will change after they see his example. If example and checklist give enough info then they can be eliminated.

Krieger said back to the permit application. If he is going to Home Depot for one of those little things, is a permit required. He still doesn't know where the 1000 feet came from. He thinks 500sf or less should require nothing and the 1000 should be increased to 1500. Franklin said much of what Krieger is referring to is considered landscaping and would not require a permit.

Board started discussing above ground pools and if permit is required. Franklin said yes permit is required and there is a checklist. Krieger asked for philosophical purposes, what about the effect on stormwater systems caused by installations of these pools.

Board will end for this meeting and pick up at next meeting with Abare's example. Chair Wilbur said they will finish up on DWF and move onto ponds at next meeting.

3. **Define "Light Industrial" Zoning**
4. **Code Requirements for Assisted Living Facilities**

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

5. **Discuss Procedures for P&Z Excused Absence Policies**

I. **PUBLIC:**

Tom Eschenberg, Beran Lane, as he watches this agony on ponds and DWF he forgot why they were doing this. P&Z Chair said they were charged with this and Eschenberg asked who charged them.

Abare said Town Eng pointed out that 1/4 acre pond could result in 300 loads of material being removed. Wilbur said a contractor came in wanting to build a pond just less than 1/4 acre in size on parcel adjacent to the one his house was on. He wanted to use some of the fill and haul off the rest. There were wetlands on the parcel with the home.

Franklin said issue started earlier when problem came up in Building Department and they saw the conflict between Article VII requirement for site plan for projects exceeding 1000sf and the amended pond code stating ponds less than 1/4 acre required no permit. It went to Council and Council pulled it from agenda as it involved land use and needed to go to P&Z first.

J. **OLD BUSINESS/NEW BUSINESS:**

• **Council Responses to PZ Recommendations**

Reilly summarized his appearance at Council on April 16 on the two P&Z recommendations. Council tabled the setback recommendation. Regarding the recommendation on R/LC Council asked the Board's reasoning for going from 6 to 4 in density. He stated they did it for density purposes to keep with rural character and using 4000sf and 6 per was more than half the property.

Reilly said Council asked why they were suggesting going from 500 to 900sf for one bedroom multi-family. He didn't really have anything for that. Council said when P&Z makes a recommendation to Council they would like to have the reasons for those changes.

Put on agenda for next meeting. They are advisory they just make recommendations.

Franklin said we have had a resident ask about the recent article in Florida Today on chickens and how the county is considering allowing more than one chicken in residential neighborhoods. He stated the County had a prohibition of roosters in those neighborhoods. He is bothered by a neighbor's rooster. I explained that chickens and roosters are considered agricultural and RR-65 is the only zoning that would allow such creatures. Does the Board want to discuss providing more specifics on the types of agricultural animals?

Also the Fla Today had article on the mobile food vendors and how cities don't know how to regulate them. They respond to social media and set up at different locations without advance notice and are gone after the lunch or dinner hour. They have become quite popular in south Florida and are moving up the state. Melbourne Council has directed their staff to come up with suggestions on how to regulate.

Sherear said the Palm House has finalized the purchase of land on other side of RR for addition to nursery. Franklin said staff mentioned this at previous P&Z that the Building Official and Engineer would be reviewing this as a minor site plan and it would not be coming to P&Z.

L. ADJOURN

There being no further business to discuss, MOTION: Reilly / Ryan to adjourn this meeting. Vote: All Ayes. The meeting adjourned 9:48 P.M.

BY:

Bob Wilbur, Chair

Debby Franklin, Recording Secretary

Denine Sherear, P&Z Board Secretary

Date Approved

DRAFT

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: May 9, 2012

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

SUBJECT: Rationale for P&Z Board Recommendations R/LC Expansion & Reduction in Density

BACKGROUND/HISTORY:

The P&Z Board sent recommendations to Council concerning these two topics of "Setbacks in Residential Zones" and "R/LC Expansion & Reduction in Density". Neither of the recommendations was approved and was sent back to P&Z Board for clarification and rationale.

R/LC – Clarify Board's recommendation when both a commercial use and a residential unit share a parcel one can't exceed the other by more than one.

Rationale: The District Provisions as currently written provide R/LC as a zoning classification that will allow a property to be used as follows:

- solely for commercial purpose and regulates that development or use by the size and dimension criteria in Table 1-3.3.A.
- solely for Single Family Development up to 4 homes per acre if they can get septic permits for that density AND meet the other size and dimension criteria in Table 1-3.3.A.
- solely for Multiple Family development and currently allows 6 units per acre if they can get septic permits for that density AND meet the other size and dimension criteria in Table 1-3.3.A.

Proposed changes would increase 1-bedroom unit from 500sf to 900sf in Multiple Family and reduce maximum density from 6 to 4 units.

Rationale: the District Provisions state that 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. As such it is logical to change the 500 to 900 to be consistent with the minimum for commercial in R/LC. By increasing the minimum unit size to 900 and in order to meet the other criteria in the size and dimension criteria in Table 1-3.3.A. you could not get 6 units per acre.

- a mixture of the above regulated by the criteria in Table 1-3.3.A.

Proposed change would limit the mixed use so that whatever combination of residential and limited commercial is proposed, one use doesn't exceed the other by more than one.

ATTACHMENTS:

- Memo from Town Clerk/Treasurer #2012-TC/T-011 (in 4/25/12 packet)
- Proposed Agenda Report for Council on May 21, 2012
- Table 1-3.3.A with changes
- Proposed changes to Art XX Language and Definitions

ACTION OPTIONS:

P&Z Board Clarification to forward Recommendations back to Council

PROPOSED

TOWN OF MALABAR
AGENDA ITEM REPORT

AGENDA ITEM NO: tbd - R/LC
Council Meeting Date: May 21, 2012

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

SUBJECT: Recommendations from P&Z Board Clarified with Board's Rationale re:
• R/LC Expansion and Reduction in Density

BACKGROUND/HISTORY:

The P&Z Board is proposing amended 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 and, Babcock Street in addition to Highway 1. When this land use and zoning designation was created in 1994 it was for Highway 1 only. During the update of the Comp Plan process which began in 2004, the Planning and Zoning Board and Council desired to extend this use to other areas in Malabar.

To accomplish this the P&Z Board recommended Council approve the proposed 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.~~

The P&Z Board also recommended adding the following description in the next sentence of that section "O":

This land use and zoning shall permit single family residential development, multiple family residential development, limited commercial development separately or as a combination of these uses as regulated by Table 1-3.3.A.

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) residential units per acre. A building or portions of a building may have residential or commercial uses or a combination of both.

Residential / Limited 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 use by more than one
- Commercial use shall not exceed residential dwelling units by more than one

Building or portions of building may have residential or commercial uses or both as regulated by Table 1-3.3.A..

The P&Z Board also recommended In Table 1-3.3(A) for R/LC to carry down the Size and Dimension Regulations into the *multiple family field*; but to increase the required square footage for a 1 bedroom unit from 500sf to 900sf and delete the 2 and 3 bedroom reference. The Board felt this reduction was consistent with rural nature of Malabar. By reducing the multiple family units per acre from 6 to 4 it would be consistent with this proposed change, i.e. 4 x 900sf = 3600. As the last sentence in Section "O" states the r/LC is intended and shall be interpreted to be a "commercial" district with respect to required setbacks and other size and dimension provisions set out in table 1-3.3.A.

Reilly said that inserting the "N/A" to the R/LC section across from commercial under the "Maximum Density" column made it consistent with the other commercial classes.

(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, Languages and Definitions, the Board directed staff should change definitions involving *dwelling* to add the word "residential" before the word in each entry. 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
- Dwelling, Tri-plex should be changed to add 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 approved in 2010 and with the cost of updating the Future Land Use Map and Zoning 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.

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
Mobile Home Residential Development													
R-MH	Site: 5 acres Lot: 7000					10	8	8	10	50	N/A	50	6
Mixed Use Development													
R/LC	20,000-sf <u>1/2 acre</u>	100	150	35/3	Single Family: 1200	25	20	10	10	50	N/A	50	4 <u>2</u>
<u>R/LC</u>	<u>1/2 acre</u>	<u>100</u>	<u>150</u>	<u>35/3</u>	Multiple Family: 1 Bedroom: <u>900</u> 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	50	25	10(4)	20	65	N/A	35	6 <u>4</u>
<u>R/LC</u>	<u>1/2 acre</u>	<u>100</u>	<u>150</u>	<u>35/3</u>	Commercial Min. Area: 900 Max. Area 4,000	<u>50</u>	<u>25</u>	<u>10(4)</u>	<u>20</u>	<u>65</u>	0-20 <u>20</u>	<u>35</u>	<u>N/A</u>
Office Development													
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: Side 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.

(this language is straight from the Code. Underlined words are proposed additions and strike-throughs 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.

 Residential/Limited Commercial: A building or portion or portions of a building that may have residential or commercial uses or a combination of both.

(this language is straight from the Code. Underlined words are proposed additions and strike-throughs are proposed deletions)



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

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: May 9, 2012

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

SUBJECT: Rationale for P&Z Board Recommendations Setbacks in Residential Zonings

BACKGROUND/HISTORY:

The P&Z Board sent recommendations to Council concerning these two topics of "Setbacks in Residential Zones" and "R/LC Expansion & Reduction in Density". Neither of the recommendations was approved and was sent back to P&Z Board for clarification and rationale.

Setbacks – The Mayor supported a reduced setback for side and rear setbacks for all residential zonings. P&Z Board felt that in RR-65 they could support a reduced side and rear setback because you are dealing with 1.5 acre (43,560 sf) parcels. In RS-10 (10,000sf) and RS-15 (15,000sf) and RS-21 (21,000sf) the lots are too small to allow additional reduction in side and rear setbacks and still keep the separation between properties.

Rationale: The P&Z Board did want it to resemble Palm Bay development. They were also concerned with safety issues for fire services.

Setback Table 1-3.3.E. when using the centerline to determine setbacks.

Rationale: Table E is used to ensure consistent setbacks regardless if a property owner has dedicated right-of-way along the road frontage. Sample of different zonings along Malabar Road are attached as an example.

The Board recommended the Table remain as amended with corrections to the two scrivener's errors.

- Briar Creek Blvd should be deleted from list under Major Collector Streets. Briar Creek Blvd was added as it was originally in Ordinance 93-7. During discussions at P&Z and Workshops with Council (big turnout from Brook Hollow) it was consensus to remove it from Ordinance. When the Comp Plan was updated recently the ordinance was incorporated into the update correctly. The Code book has not been corrected yet.
- Right-of-way width for Minor Collectors should be 70 feet. The right-of-way width incorrectly shows 80 feet. In the original ordinance the word seventy is used but the numeric was changed to 80. When Ordinance 93-7 was done it reiterated that Minor collectors should be 70 and the recent update to the Comp Plan reflects that correction. The Code book still needs to be corrected.

Section 1-5.10 should be amended to refer to Principal Structure Setbacks and reference both Table 1-3.3.A or E. whichever provides a greater setback.

Rationale: the current wording is redundant and caused confusion to the reader.

ATTACHMENTS:

- Table 1-3.3.A and E with changes
- Proposed changes to Section 1-5.10

ACTION OPTIONS:

P&Z Board Clarification to forward back to Council

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)
Arterial Roadways (150 feet R/W)	100
US 1 Highway	
Malabar Road (SR 514)	
Babcock Street (SR 507)	
Major Collector Streets (100 feet R/W)	85
Corey Road	
Weber Road	
Marie Street	
Briar Creek	
Jordan Blvd.	
Local Streets (50—60 feet R/W)	65
Minor Collector Streets (70 80-feet R/W)	75
Atz Blvd.	
Hall Road	
Old Mission Road	
Benjamin (Reese) Road	

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.) for residential or Minimum commercial sf	Setback (ft.) from property line (2)				MISR Maximum Impervious Surface Ratio (%)	MBC Maximum Building Coverage (%)	MOS Minimum Open Space (%)	Maximum Density (units per acre) residential use only
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (interior)	Side (corner)				
Rural Residential Development													
RR-65	65,340	150	250	35/3	Single Family: 1500	40	30 (7)	30 (7)	30	20	N/A	80	1
Traditional Single Family Residential Development													
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
Multiple Family Residential Development													
RM-4	5-acre min Site	200	200	35/3	Single Family 1,200	60	40	40	40	50	N/A	50	4
<u>RM-4</u>	<u>5-acre min Site</u>	<u>200</u>	<u>200</u>	<u>35/3</u>	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
<u>RM-6</u>	<u>5-acre min Site</u>	<u>200</u>	<u>200</u>	<u>35/3</u>	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 lot size 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)				MISR (%)	MBC	MOS	Max
Zoning District	Size (Sq. ft)	Width (ft)	Depth (ft)	Max Height Ft/stories)	Min Living Area (sq ft) <u>for residential or commercial sf</u> <u>Minimum</u>	Front	Rear	Side (Int)	Side (corner)	Max Impervious Surface Ration (%)	Maximum Building Coverage (%)	Minimum Open Space (%)	Maximum Density (units per acre) <u>residential use only</u>
Mobile Home Residential Development													
R-MH	Site: 5 acres Lot: 7000					10	8	8	10	50	N/A	50	6
Mixed Use Development													
R/LC	20,000 <u>½ acre</u>	100	150	35/3	Single Family: 1200	25	20	10	10	50	N/A	50	4- 2
<u>R/LC</u>	<u>½ 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	6 4
<u>R/LC</u>	<u>½ acre</u>	<u>100</u>	<u>150</u>	<u>35/3</u>	Commercial Min. Area: 900 Max. Area 4,000	<u>50</u>	<u>25</u>	<u>10(4)</u>	<u>20</u>	<u>65</u>	<u>0-20</u> <u>20</u>	<u>35</u>	<u>N/A</u>
Office Development													
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.) <u>for residential or Minimum commercial sf</u>	Setback (ft.) from property line (2)				MISR Maximum Impervious Surface Ratio (%)	MBC Maximum Building Coverage(%)	MOS Minimum Open Space (%)	Max Density Maximum Density (units per acre) <u>Residential only</u>
	Size (sq. ft.)	Width (ft.)	Depth (ft.)	Maximum Height (ft./stories)			Front	Rear	Side (interior)	Side (corner)				
Commercial Development														
CL	20,000	100	150	35/3	Min Floor Area: 900 Max Floor Area: 4000	50	25	10 (4) 15 (3)	20	65	.20 <u>.20</u>	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	.20 <u>.20</u>	35	N/A	
Industrial Development														
IND	20,000	100	150	35/3	Min Floor Area: 1200	50 100(5)	25 100(5)	20 100(5)	30 100(5)	70	.42 <u>.42</u> Check Comp Plan	30	N/A	
Institutional Development														
INS	20,000	100	150	35/3	Min Floor Area: 1200	50	25	20	30	60	.20 <u>.20</u> .10(6) <u>10(6)</u>	40	N/A	
Coastal Preservation														
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.

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

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3

Meeting Date: May 9, 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 the code language be revised to reflect the checklist agreed to by Board on DWF.

P&Z Member Abare volunteered to craft an example to provide applicants on what was expected on a permit submittal for a DWF. The Board wanted to make it a simple process.

Board did not begin review of pond checklist at last meeting.

Staff revised the checklist for DWF and the code to conform with checklist.
Staff revised the checklist for Ponds and the code to conform with the checklist

ATTACHMENTS:

Sample applications with checklists
Sample from P&Z Member Abare for handout with application

Revised Code, Article V, Section 1-5.27, Ponds – amended to reflect checklists
“Clean” copy of Article V, Section 1-5.27 for DWF and Ponds

Permit Application and Checklist for DWF (Decorative Water Feature)
Permit Application and Checklist for Pond Permit

Typical site plan that is submitted currently for a permit.

ACTION OPTIONS:

Continue Discussion



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 a decorative water feature (DWF) for the purpose of retaining water wherein the surface area is 1,000 square feet or smaller in size.

This permit application is intended for those applicants desiring to fill any existing decorative water feature (DWF). 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 Acct 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, ie. Sketch, property survey, aerial survey, plat map.
Drawing to show location, 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 impacted area with a dbh (dimension at breast height) of 8" or greater
Location of well(s) and drain field(s)
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

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 a pond for the purpose of retaining water wherein the surface area is greater than 1,000 square feet. This application is also intended for those applicants desiring to FILL an existing pond. 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: _____ Tax Acct 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
- ___ Proposed project site location, 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 impacted Pond area with a dbh (dimension at breast height) of 8" or greater
- ___ Location of well(s) and drain field(s)
- ___ 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 _____
Conitions: _____

**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 _____.

P&Z Meeting 5/9/12

Revised code Section 1-5.27
Showing just the new language

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 an existing 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 no to be water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt roofing material, pip, gypsum wallboard and lumber, metal, asphalt paving material, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation or maintenance of a structure.

D. *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.

ADD: *Depth, Maximum permitted.* The maximum depth allowed for a DWF or a pond is 12 feet. Per the UF Extension Service ponds should be at least 6 to 8 feet deep. Shallow water should be avoided unless the site is to be used to attract waterfowl.

ADD: *Design Considerations.* Side slopes depend on the stability of the excavated material. Side slopes of excavated ponds should be no steeper than natural angle of repose of the material being excavated. For example clay soils have a steeper angle of repose than sandy soils.

ADD: *Freeboard.* Freeboard is the a safety feature to be incorporated into the design for all ponds. Freeboard is the added height of the soil surface over the design water surface elevation. Ponds less than 660 feet long should have a minimum of one foot of freeboard. This is included to keep water from washing over the sides of the pond due to wave action or flooding. This may also be a requirement for DWF on smaller residential lots.

ADD: *Impound Area.* The area of the pond that hold the water. Soils with high amounts of clay are good for the ponded area. Sandy clays and loam soils will still impound water. Soils with high levels of sand or gravel may have excessive seepage unless water tables are naturally high. A pond sealer or lining may be necessary in these situations

E. *To fill*. Shall mean the adding of allowable material to alter the existing topography or characteristics of the surface area of an existing decorative water feature or pond. Permit is required.

F. *Littoral zone*. Shall mean that portion of the decorative water feature or pond which is close to the shore and allows sunlight to reach the bottom, typically less than three (3) feet deep. as measured from the conservation elevation.
Or delete this entire definition.

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. Any fill activity which reduces the surface area of an existing pond, regardless of size, may only be accomplished after a permit authorizing such activity has been issued. The primary use

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. The side slopes may vary depending on the intended use of the pond or DWF. A 6:1 slope means that at six feet from the edge of the water it would be one foot deep. (See Diagram "A")

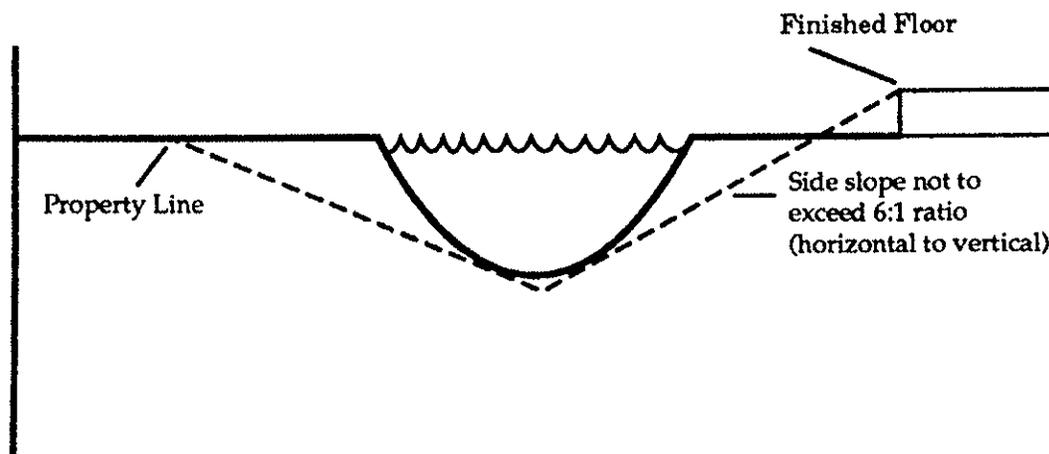


Diagram A

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).~~ ?

K. *Site Selection*. Site selection and placement of pond are critical to the success of the pond. The water source for the pond may be surface runoff from the pond watershed (the area that drains into the pond) or it may come from

subsurface seepage in areas with high water tables. Factors such as soil characteristics and the existence of local springs must be considered in site selection. If the primary use of the pond is fire protection it should be located near the structures to be protected.

2.0 Permits for decorative water features and ponds.

1. *Decorative Water Feature.* Any person wishing to construct or permit to be constructed a decorative water feature (DWF) within the Town of Malabar must, as a precondition, obtain a decorative water feature (DWF) permit. Any person wishing to fill an existing decorative water feature (DWF) or permit to be filled an existing decorative water feature (DWF) within the Town of Malabar must, as a precondition, obtain a decorative water feature permit.

In order to obtain a decorative water feature permit, an applicant must provide the following:

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 – ie. a sketch, property survey, aerial survey, plat map; a professional signed and sealed survey is not required.
- Indicate on sketch the location, 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 impacted area with a dbh (dimension at breast height) of 8" or greater. This includes both trees to remain and those proposed for removal.
- Location of well(s) and drain field(s)
- Evidence that DWF area is not in a wetland. This could be a letter from Florida Department of Environmental Protection, a printout from the Brevard County Natural Resources, aerial from Brevard County Property Appraiser or property survey.
- Plan for use of excavated material or written statement on method of disposal OR type of material to be used to filling the DWF. If being used onsite, show on sketch where material will be used.
- Stormwater drainage / retainage and overflow plan. Indicate with arrows on sketch how overflow water from DWF will drain.

~~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 an existing pond within the Town of Malabar must, as a precondition, obtain a pond permit. In order to obtain a pond permit, an applicant must:

- submit an original and two (2) sign/sealed engineered Site Plans with the following information shown:
- Boundary of property

- Proposed project site location, 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 impacted Pond area with a dbh (dimension at breast height) of 8" or greater
- Location of well(s) and drain field(s)
- 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

~~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 (DWF) permit applications presented to the Town of Malabar for consideration.
 - The application will be forwarded to the Building Official for compliance. The Building Official may visit the project site to verify information but it is not mandatory.
 - If all information is consistent with Town Code, the Building Official will approve the application and a permit will be issued. The permit fee will be consistent with the fee resolution adopted by Council.
 - If the Building Official denies the permit for non-compliance, the applicant may appeal the decision as stated in Section 4.
 - If the Building Official approves the permit with conditions, the applicant may appeal the decision as stated in Section 4.
- ~~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.
- The application will be forwarded to the Building Official for compliance. The Building Official may visit the project site to verify information but it is not mandatory.
 - If all information is consistent with Town Code, the Building Official will forward a copy to the Town Engineer for review. If the Town Engineer determines that the pond, project site, drainage plan are all in compliance, the Town Engineer will sign off on the permit application and a permit will be issued. The permit fee will be consistent with the fee resolution adopted by Council.
 - If the Town Engineer or Building Official deny the permit for non-compliance, the applicant may appeal the decision as stated in Section 4.
 - If the Town Engineer or Building Official approves the permit with conditions, the applicant may appeal the decision as stated in Section 4.
- ~~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 Engineer or 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 Town Engineer or 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.~~

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 Section 4 above.

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 permit for filling in an existing decorative water feature shall be reviewed unless a written statement that the filling will not adversely affect the natural environment of the applicant's property or adjacent properties.
- B. No permit for filling in an existing pond shall be reviewed unless a written evidence from the outside jurisdictional agency is attached to the application indicating that the filling will not adversely affect the natural environment of the applicant's property or adjacent properties.
- ~~C. 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; promote soil erosion on or off-site; or adversely affect the natural environment.~~
- ~~D. 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 with the permit application.~~

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

P&Z Meeting 5/9/12

Sample to be Given to Applicant for
Decorative Water Feature (DWF)
Application

Provided by P&Z Member Wayne Abare

APPLICATION for DECORATIVE WATER FEATURE

See pictures of property. The first picture is an aerial from the Brevard County Property Appraisers Site showing the shape of the 3 Acre property as well as the property boundary lines. The second picture is also from the same site showing a closer aerial view.

The placement for the proposed Decorative Water Feature is shown in modified picture three as a white circle with a diameter of 30 feet. The total area of 706 square feet is well below the maximum of 1000 square feet required to fall under a Decorative Water Feature.

Note that the front and side setbacks exceed the building setbacks for RR65. The placement of existing wells is shown in picture 3. The septic tanks and drain fields have been abandoned. This was done through the Brevard Health department. The septic tanks were collapsed and the ground filled. The well locations are identified on picture three.

The fourth picture is from a Department of Environmental Wetland Audit performed in 2007. Note the only wet land area is along Hall road and well removed from the proposed Decorative Water Feature site.

The depth of the Decorative Water Feature is 4 feet maximum and the side slopes will conform to the drawing shown in Diagram A.

The amount of fill dirt being removed is estimated to be approximately 30 cubic yards. The fill will be used on site to fill in low and uneven portions of lot. No fill will be used near the wetland site or near the edges of the property to insure land drainage will not be affected.

The vegetation in the area to be cleared consists of Pepper Trees. A land clearing permit for this application is not required since Pepper trees can be removed at any time. The Contractor will be John Doe Construction.

See completed Decorative Water Feature Permit Application next page.



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 a decorative water feature (DWF) for the purpose of retaining water wherein the surface area is 1,000 square feet or smaller in size.

This permit application is intended for those applicants desiring to fill any existing decorative water feature (DWF). ~~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: **May 2012**
 Street Address: **Hall & Howell** Zoning Designation: **RR65**

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

Township: **29** Range: **37** Section: **XX** Lot/Block: **XX** Parcel: **XX**

Subdivision: **N/A** Tax Acct No.: _____

Name of Property Owner(s): **John Doe** Telephone: _____

E- Mail Address: _____

Mailing Address: _____ Fax: _____

City, State, Zip: **Malabar, FL** Cell: _____

Gross acreage: **3** Setbacks: Front: **40**; Rear: _____; Side: **30** Side corner: **30**

Flood Zone: Per FEMA Flood Insurance Rate Map

Wetlands Present: **Yes** Mitigation required? **No** Permit required? **No**

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, i.e. sketch, property survey, aerial survey, plat map.
- Drawing to show location, 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 impacted area with a dbh (dimension at breast height) of 8" or greater
- Location of well(s) and drain field(s)
- 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 / retention, and overflow plan

Signature of Applicant: _____ Date: _____

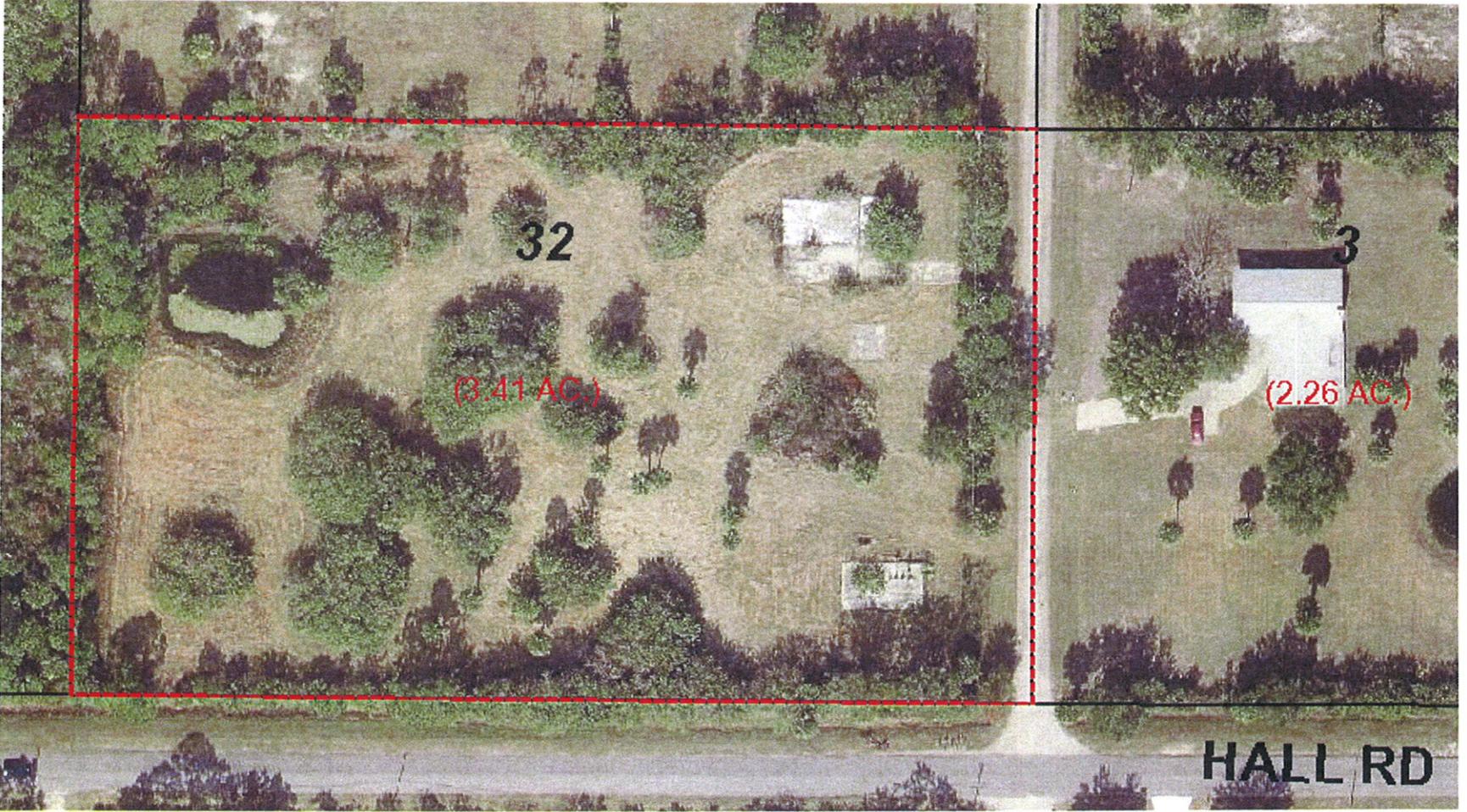
Signature of Town's Personnel Reviewing Application _____ Approved / Denied _____

Comments: _____

Signature of Town's Personnel Reviewing Application _____ Approved / Denied _____

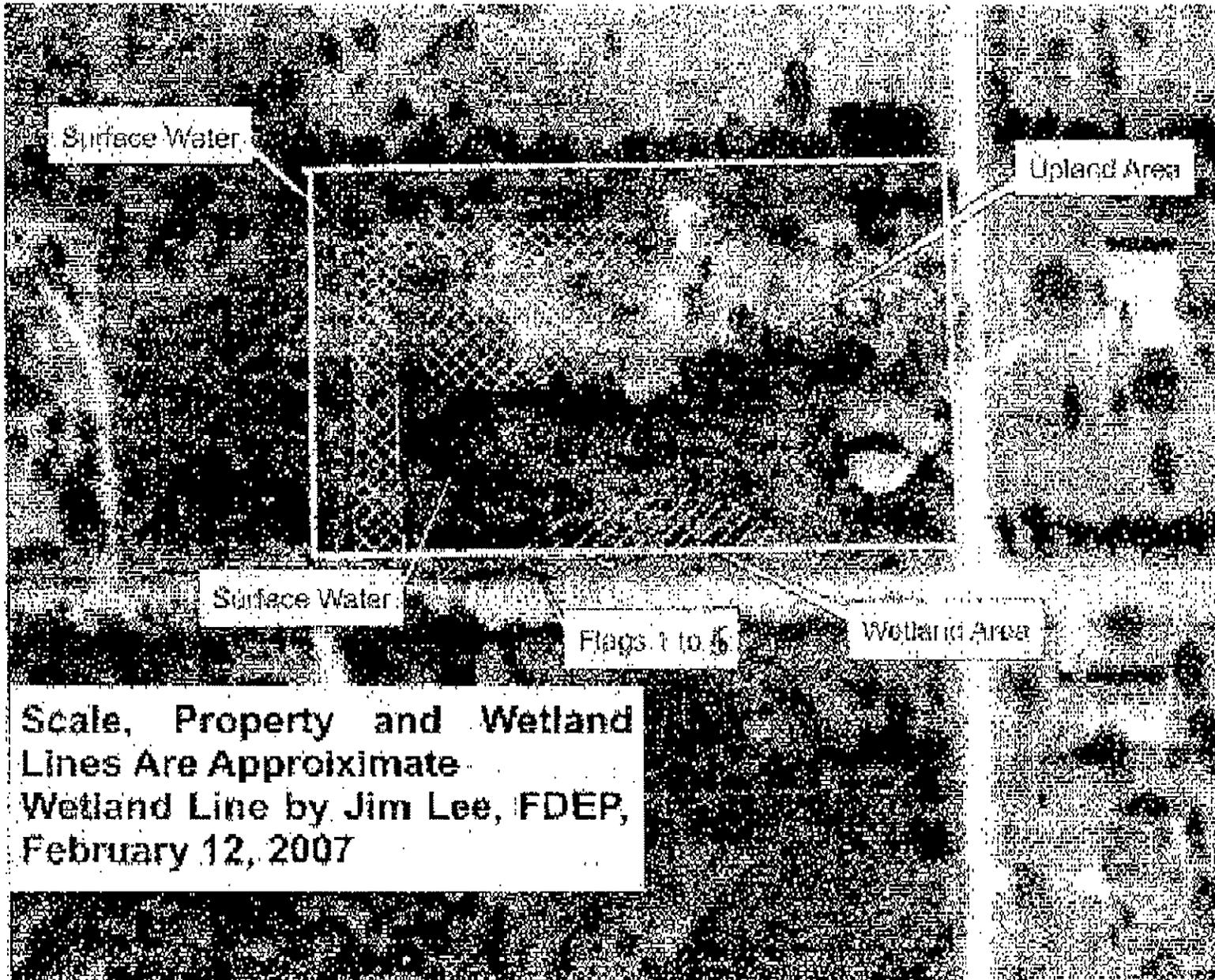
Comments: _____











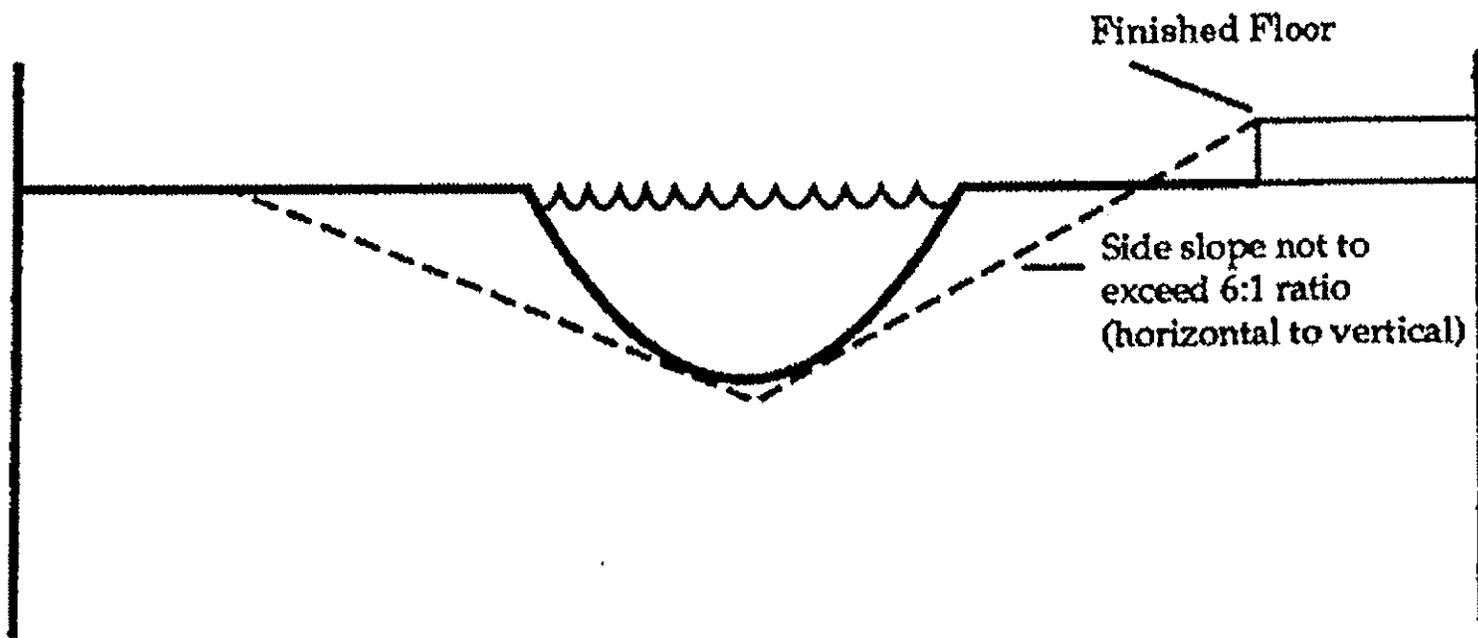


Diagram A

P&Z Meeting 5/9/12

Revised code Section 1-5.27

Showing both the new language and the existing
code language

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 an existing 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 no to be water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt roofing material, pip, gypsum wallboard and lumber, metal, asphalt paving material, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation or maintenance of a structure.

D. *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.

ADD: *Depth, Maximum permitted.* The maximum depth allowed for a DWF or a pond is 12 feet. Per the UF Extension Service ponds should be at least 6 to 8 feet deep. Shallow water should be avoided unless the site is to be used to attract waterfowl.

ADD: *Design Considerations.* Side slopes depend on the stability of the excavated material. Side slopes of excavated ponds should be no steeper than natural angle of repose of the material being excavated. For example clay soils have a steeper angle of repose than sandy soils.

ADD: *Freeboard.* Freeboard is the a safety feature to be incorporated into the design for all ponds. Freeboard is the added height of the soil surface over the design water surface elevation. Ponds less than 660 feet long should have a minimum of one foot of freeboard. This is included to keep water from washing over the sides of the pond due to wave action or flooding. This may also be a requirement for DWF on smaller residential lots.

ADD: *Impound Area.* The area of the pond that hold the water. Soils with high amounts of clay are good for the ponded area. Sandy clays and loam soils will still impound water. Soils with high levels of sand or gravel may have excessive seepage unless water tables are naturally high. A pond sealer or lining may be necessary in these situations

E. *To fill*. Shall mean the adding of allowable material to alter the existing topography or characteristics of the surface area of an existing decorative water feature or pond. Permit is required.

F. *Littoral zone*. Shall mean that portion of the decorative water feature or pond which is close to the shore and allows sunlight to reach the bottom, typically less than three (3) feet deep. -as measured from the conservation elevation.
Or delete this entire definition.

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. Any fill activity which reduces the surface area of an existing pond, regardless of size, may only be accomplished after a permit authorizing such activity has been issued. The primary use

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. The side slopes may vary depending on the intended use of the pond or DWF. A 6:1 slope means that at six feet from the edge of the water it would be one foot deep. (See Diagram "A")

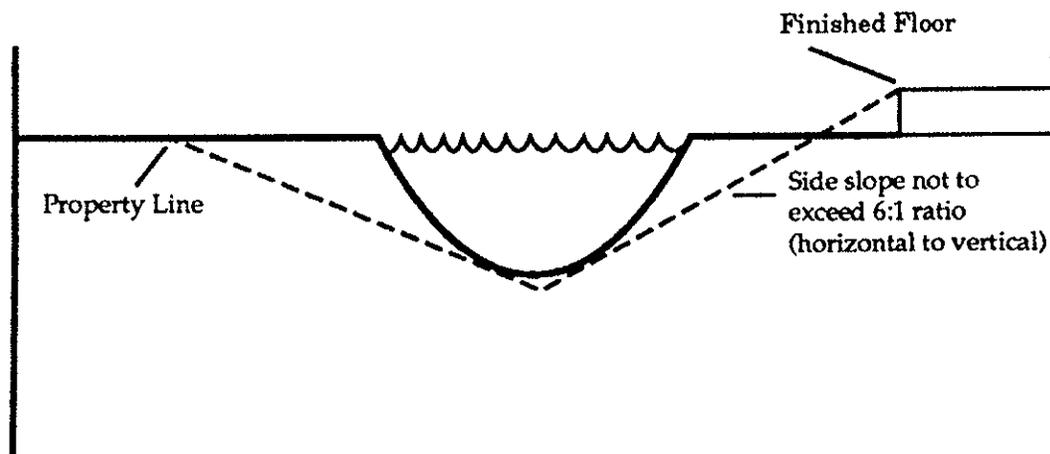


Diagram A

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).~~ ?

K. *Site Selection*. Site selection and placement of pond are critical to the success of the pond. The water source for the pond may be surface runoff from the pond watershed (the area that drains into the pond) or it may come from

subsurface seepage in areas with high water tables. Factors such as soil characteristics and the existence of local springs must be considered in site selection. If the primary use of the pond is fire protection it should be located near the structures to be protected.

2.0 Permits for decorative water features and ponds.

1. *Decorative Water Feature.* Any person wishing to construct or permit to be constructed a decorative water feature (DWF) within the Town of Malabar must, as a precondition, obtain a decorative water feature (DWF) permit. Any person wishing to fill an existing decorative water feature (DWF) or permit to be filled an existing decorative water feature (DWF) within the Town of Malabar must, as a precondition, obtain a decorative water feature permit.

In order to obtain a decorative water feature permit, an applicant must provide the following:

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 – ie. a sketch, property survey, aerial survey, plat map; a professional signed and sealed survey is not required.
- Indicate on sketch the location, 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 impacted area with a dbh (dimension at breast height) of 8" or greater. This includes both trees to remain and those proposed for removal.
- Location of well(s) and drain field(s)
- Evidence that DWF area is not in a wetland. This could be a letter from Florida Department of Environmental Protection, a printout from the Brevard County Natural Resources, aerial from Brevard County Property Appraiser or property survey.
- Plan for use of excavated material or written statement on method of disposal OR type of material to be used to filling the DWF. If being used onsite, show on sketch where material will be used.
- Stormwater drainage / retainage and overflow plan. Indicate with arrows on sketch how overflow water from DWF will drain.

~~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 an existing pond within the Town of Malabar must, as a precondition, obtain a pond permit. In order to obtain a pond permit, an applicant must:

- submit an original and two (2) sign/sealed engineered Site Plans with the following information shown:

- Boundary of property

- Proposed project site location, 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 impacted Pond area with a dbh (dimension at breast height) of 8" or greater
- Location of well(s) and drain field(s)
- 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

~~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 (DWF) permit applications presented to the Town of Malabar for consideration.
 - The application will be forwarded to the Building Official for compliance. The Building Official may visit the project site to verify information but it is not mandatory.
 - If all information is consistent with Town Code, the Building Official will approve the application and a permit will be issued. The permit fee will be consistent with the fee resolution adopted by Council.
 - If the Building Official denies the permit for non-compliance, the applicant may appeal the decision as stated in Section 4.
 - If the Building Official approves the permit with conditions, the applicant may appeal the decision as stated in Section 4.
- ~~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.
- The application will be forwarded to the Building Official for compliance. The Building Official may visit the project site to verify information but it is not mandatory.
 - If all information is consistent with Town Code, the Building Official will forward a copy to the Town Engineer for review. If the Town Engineer determines that the pond, project site, drainage plan are all in compliance, the Town Engineer will sign off on the permit application and a permit will be issued. The permit fee will be consistent with the fee resolution adopted by Council.
 - If the Town Engineer or Building Official deny the permit for non-compliance, the applicant may appeal the decision as stated in Section 4.
 - If the Town Engineer or Building Official approves the permit with conditions, the applicant may appeal the decision as stated in Section 4.
- ~~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 Engineer or 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 Town Engineer or 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 Section 4 above.

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 permit for filling in an existing decorative water feature shall be reviewed unless a written statement that the filling will not adversely affect the natural environment of the applicant's property or adjacent properties.
- B. No permit for filling in an existing pond shall be reviewed unless a written evidence from the outside jurisdictional agency is attached to the application indicating that the filling will not adversely affect the natural environment of the applicant's property or adjacent properties.
- ~~C. 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; promote soil erosion on or off site; or adversely affect the natural environment.~~
- ~~D. 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 with the permit application.~~

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

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: May 09, 2012

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

SUBJECT: Light Industrial Zoning

BACKGROUND/HISTORY:

At the 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

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
9,600 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

Side, corner 20 feet.

(Ord. No. 83-1, §§ 1, 2, 8-23-88; 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.

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1320.2

- (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.

Supp. No. 38

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TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 5
Meeting Date: May 9, 2012

Prepared By: Denine M. Sherear Planning & Zoning Secretary

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

BACKGROUND/HISTORY:

At the July 10, 2011 P&Z meeting the Board asked that staff provide the Florida Statutes that deal with groups homes and assisted living. Those documents were provided in the packet for July 27, 2011. They included 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: 6
Meeting Date: May 9, 2012

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

SUBJECT: Discuss Excused Absence Policy

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

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

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 1st 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.