

**TOWN OF MALABAR**  
**PLANNING AND ZONING ADVISORY BOARD**  
**REGULAR MEETING**  
**WEDNESDAY MAY 23, 2012**  
**7:30 PM**  
**MALABAR COUNCIL CHAMBER**  
**2725 MALABAR ROAD**  
**MALABAR, FLORIDA**

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**AGENDA**

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**
- D. CONSENT AGENDA :**

- 1. Approval of Minutes**                      Planning and Zoning Meeting – 5/9/2012
  - Exhibit:**                                      Agenda Report No. 1
  - Recommendation:**                      Motion to Approve

- E. PUBLIC:**
- F. ACTION:**
- G. DISCUSSION:**

- 2. Continue Review of Checklist and Permit Requirements for Decorative Water Features and Ponds**
  - Exhibit:**                                      Agenda Report No. 2
  - Recommendation:**                      Discussion
- 3. Define “Light Industrial” Zoning**
  - Exhibit:**                                      Agenda Report No. 3
  - Recommendation:**                      Discussion
- 4. Code Requirements for Assisted Living Facilities**
  - Exhibit:**                                      Agenda Report No. 4
  - Recommendation:**                      Discussion
- 5. Discuss Procedures for P&Z Excused Absence Policies**
  - Exhibit:**                                      Agenda Report No. 5
  - Recommendation:**                      Discussion/Action

- H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:**
- I. PUBLIC:**
- J. OLD BUSINESS/NEW BUSINESS:**
- K. ADJOURN**

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

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

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 1**  
**Meeting Date: May 23, 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 May 9, 2012

**ACTION OPTIONS:**

Secretary requests approval of the minutes.

**P&Z Meeting 5/23/2012**

**Agenda Item 1**

**Minutes from 5/9/2012**

**Still in process and will be sent separately**

# TOWN OF MALABAR

## PLANNING AND ZONING

### AGENDA ITEM REPORT

**AGENDA ITEM NO: 2**  
**Meeting Date: May 23, 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

**This Agenda Item was  
From  
P&Z Meeting May 9,  
2012**

**That packet had color photos and  
yellow highlighted information, to  
conserve on color ink this packet  
is black/white**



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. *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.

C. *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.* Sides 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

D. *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.

E. *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.

F. *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

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

H. *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")

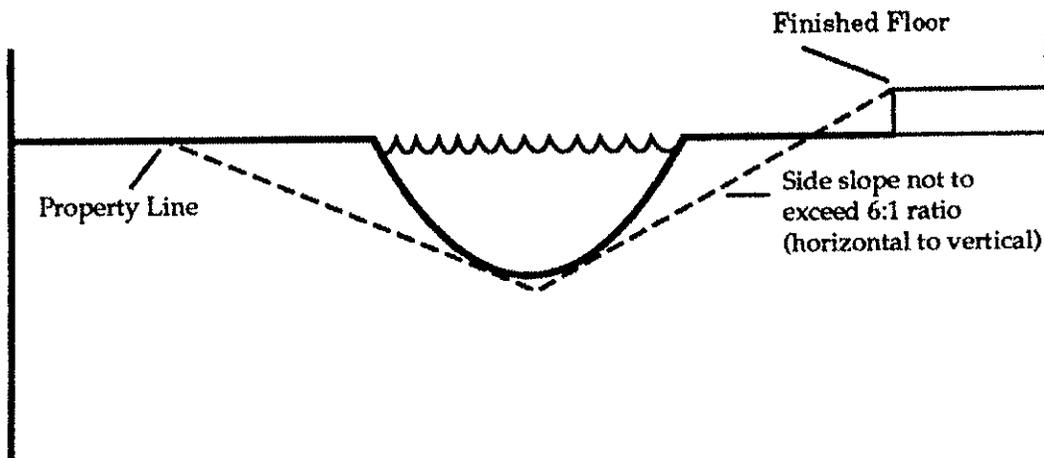


Diagram A

I. *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 <sup>11</sup>/<sub>47</sub>

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.

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1. *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

### 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.
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.

#### **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 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.

#### **6.0 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.

(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: X For 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 / retaining, and overflow plan

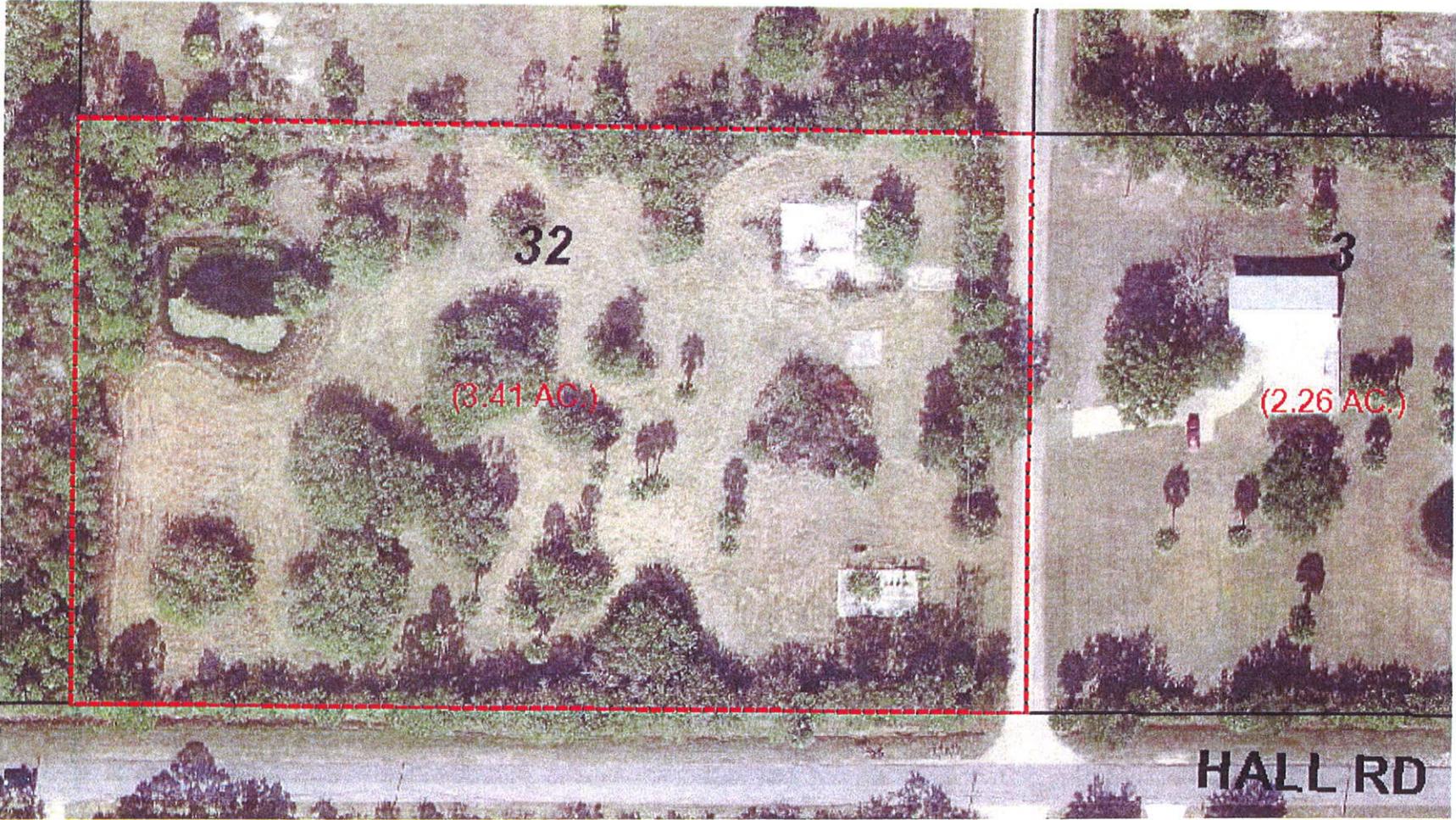
Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Town's Personnel Reviewing Application \_\_\_\_\_ Approved / Denied \_\_\_\_\_

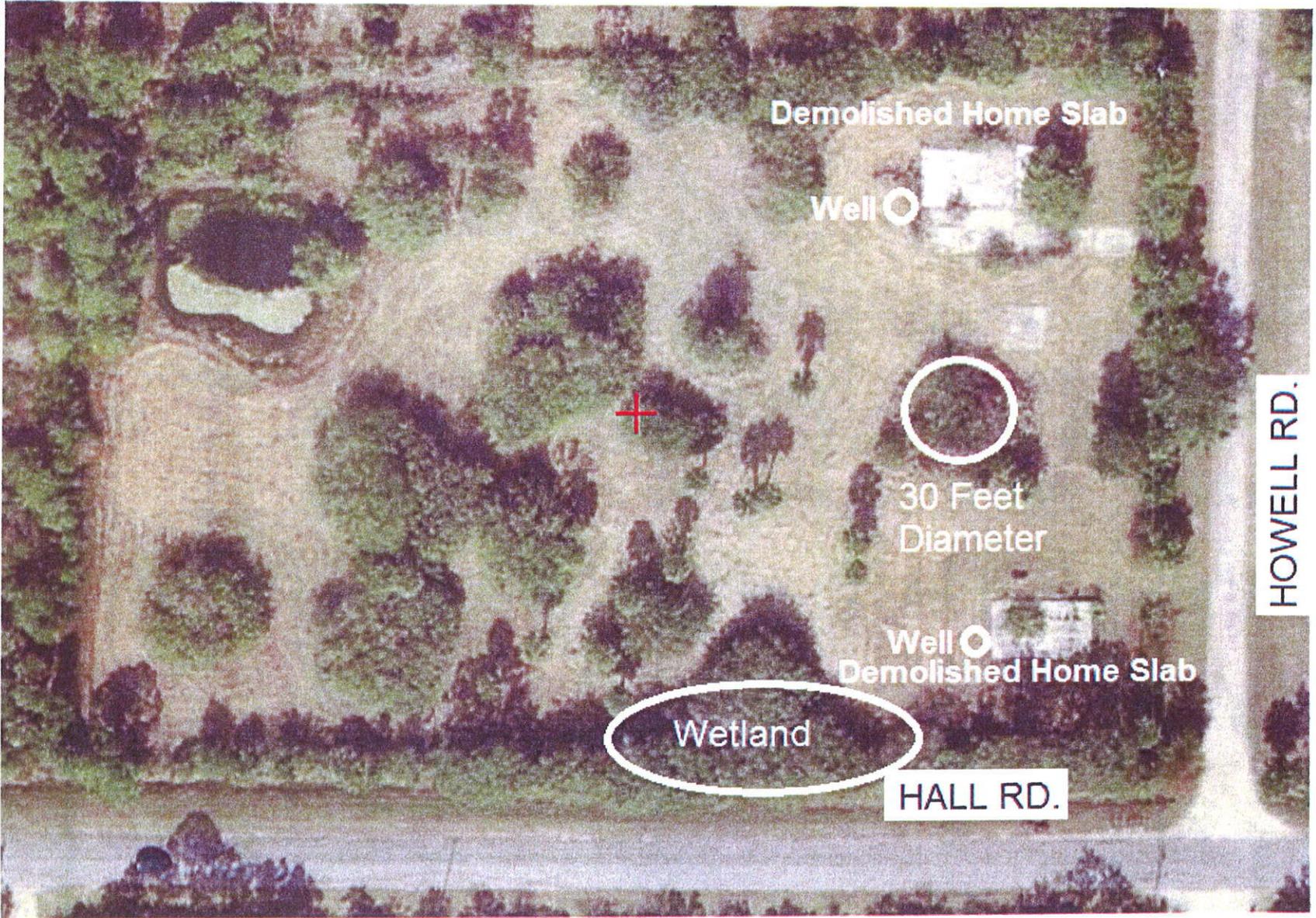
Comments: \_\_\_\_\_

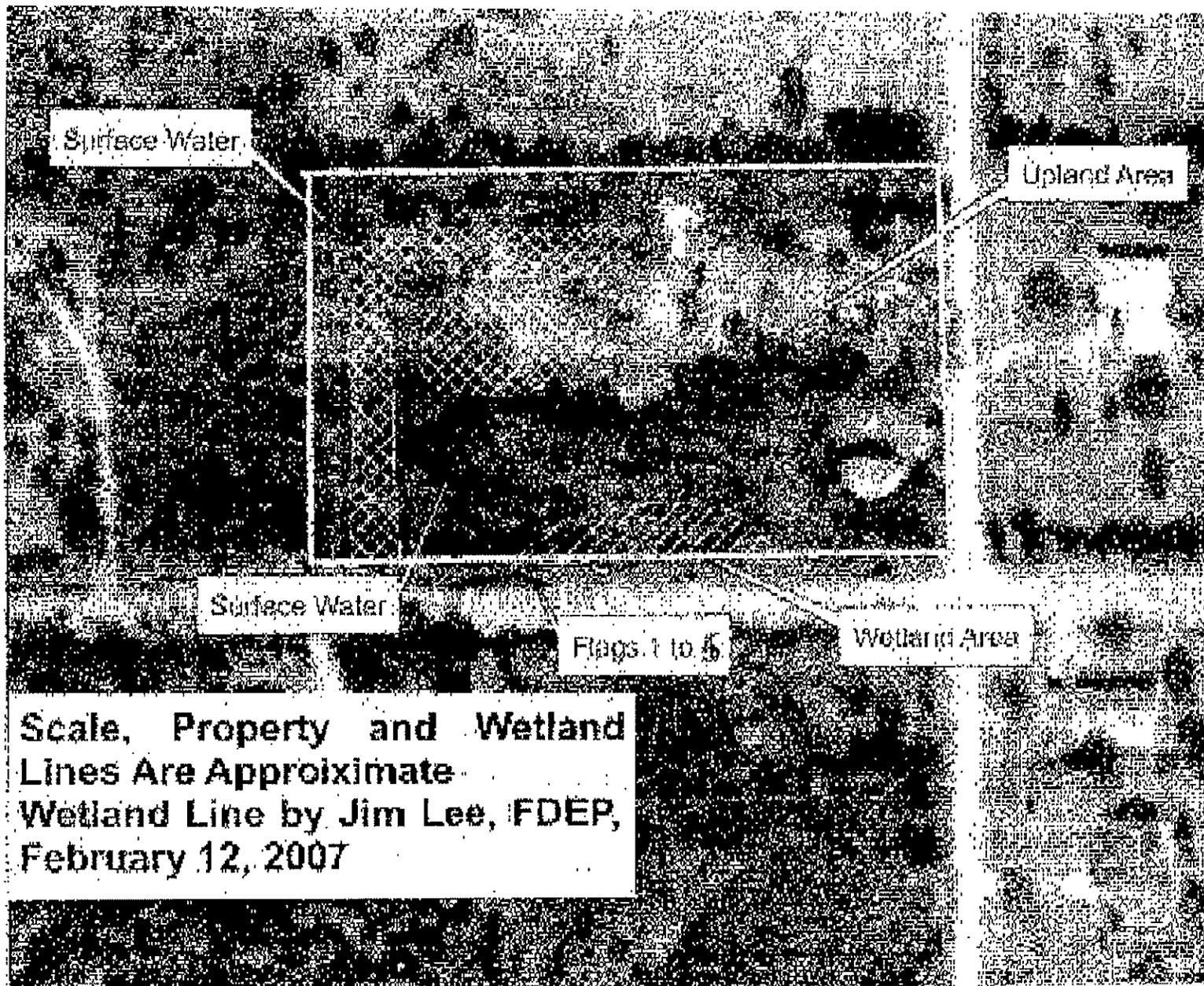
Signature of Town's Personnel Reviewing Application \_\_\_\_\_ Approved / Denied \_\_\_\_\_

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









**Scale, Property and Wetland  
Lines Are Approximate  
Wetland Line by Jim Lee, FDEP,  
February 12, 2007**

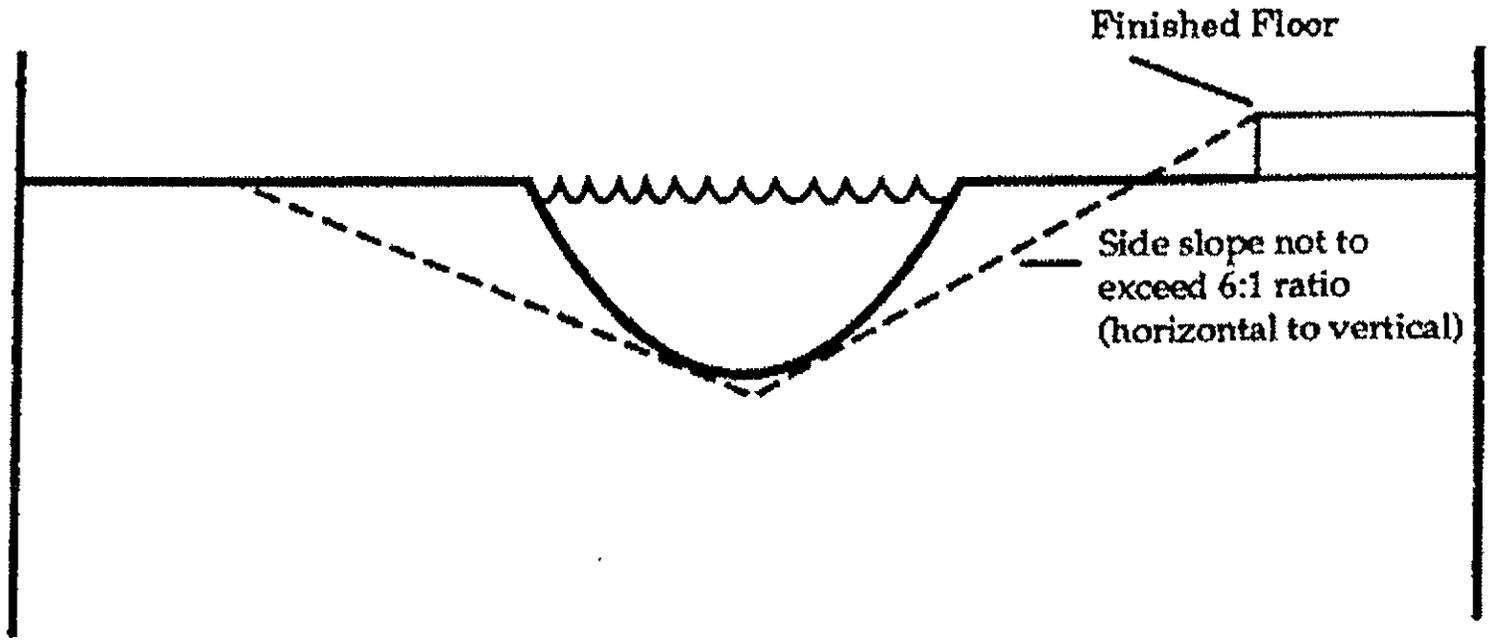


Diagram A

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")

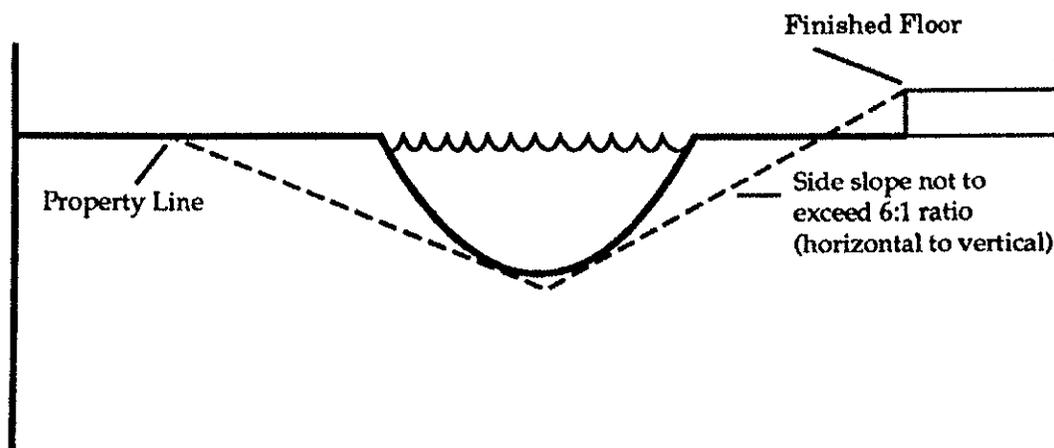


Diagram A

~~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 26 / 47

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.

~~A. Pay the designated decorative water feature permit application fee prior to the Town accepting any application for a decorative water feature permit.~~ 27 / 47

~~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 (¼) 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: 3**  
**Meeting Date: May 23, 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 and uses permissible by Town Council: None

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

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

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

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

(7) Minimum yard requirements:

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

CORRECTIONS  
From 3/28/12 P+Z Meeting



# TOWN OF MALABAR

## PLANNING AND ZONING

### AGENDA ITEM REPORT

AGENDA ITEM NO: 4  
Meeting Date: May 23, 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**

**THANK YOU**

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

**AGENDA ITEM NO: 5**  
**Meeting Date: May 23, 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

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**Date:** March 14, 2012 2012-TC/T-002  
**To:** Denine Sherear, Secretary to Planning & Zoning Board  
P&Z Board  
**From:** Debby K. Franklin, Town Clerk/Treasurer  
**Ref:** P&Z Excused Absences

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

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

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

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

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

**8. Approval of Board Absence Procedure****Exhibit:** Agenda Report No. 8**Recommendation:** Request Action

Speaker's Card: Pat Reilly, Howell Lane, and Vice-Chair of P&amp;Z Board.

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

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

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

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

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

Back in session at 10:30PM

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

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

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

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

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

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

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