

**TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY JUNE 13, 2012
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA**

AGENDA

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

- 1. **Approval of Minutes** Planning and Zoning Meeting – 5/23/2012
Exhibit: Agenda Report No. 1
Recommendation: Motion to Approve

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

- 2. **Discuss Procedures for P&Z Excused Absence Policies**
Exhibit: Agenda Report No. 2
Recommendation: Discussion/Action

- G. DISCUSSION:**

- 3. **Continue Review of Checklist and Permit Requirements for Decorative Water Features and Ponds**
Exhibit: Agenda Report No. 3
Recommendation: Discussion
- 4. **Define “Light Industrial” Zoning**
Exhibit: Agenda Report No. 4
Recommendation: Discussion
- 5. **Code Requirements for Assisted Living Facilities**
Exhibit: Agenda Report No. 5
Recommendation: Discussion

- H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:**
- 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: June 13, 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 23, 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
MAY 23, 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 7:35 P.M. Prayer and Pledge led Chair Bob Wilbur.

B. ROLL CALL:

CHAIR:	BOB WILBUR
VICE-CHAIR:	PAT REILLY, excused
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN
	LIZ RITTER
ALTERNATE:	WAYNE ABARE
ALTERNATE:	CINDY ZINDEL
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

Abare will vote in Reilly's absence.

C. ADDITIONS/DELETIONS/CHANGES: none.

D. CONSENT AGENDA:

1. **Approval of Minutes Planning and Zoning Meeting – 5/9/12**

MOTION: Ritter / Ryan to approve 5/9/12 minutes as corrected / submitted.

Changes: pg 3, 1/3 of way down, do the trick the mayor show them... embellish so it more understandable in future;

Pg 2, 1/2 down, with not will.

Last para, Wilbur said no it is planned – it is the plan

End of para Wilbur 6 lanes and a bike path not lane -

Pg 3, 2nd para 2nd look at Malabar 195, it is greater – embellish.

Pg 3, 4th para embellish, and add parcel and add within the setback.

Pg 4, 4th from bottom, Wilbur put it into perspective came about.

Pg 6, Tom what does it matter. Add each neighbor has 15 feet setback.

Vote: All Ayes

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. 3

Recommendation: Discussion

Continue to review checklist for DWF and ponds

Ritter pointed out multiple corrections to code amendment. Wilbur said the section on excavated material needs to be added back in to the code.

On page 10 regarding allowable material – should it be spelled out? No
Add on page 13/47 about excavated material, 6th bullet down and shall remain on site.

pg 25/47 add to definition

Ryan pg 10/47 1-0 definitions, B. const debris, add the word “not”
Under C. maximum depth, UF what does that stand for? University of Florida.
Krieger said he lined through all of that. Franklin said the Board wanted staff to provide information to help the applicant. Wilbur said it should stay in.

Krieger looked at side slope and when you are talking about different material you can have different side slopes. Krieger also said on page 10/47 it refers to both construct or to fill a DWF or pond. He did not think it should refer to excavation and fill at same time. Krieger said he looks at 1000sf, when he dug his pond it was for his house and his house is 1900sf. Krieger still feels 1000 sf is too small.

Krieger questioned the definitions again; depth per UF Max depth is x. It is the deepest part of the pond. Krieger also questioned freeboard – why is it there. Wilbur said St Johns gets their info from UF and they provide good standards.

Abare said that Krieger had stated so many things in rapid fire form that he didn't like about the proposed code without giving Board a chance for discussion on any one of them and it was frustrating. Krieger stated they didn't need all the definitions. Abare said it doesn't hurt anybody to have definitions in to help the applicant.

Wilbur referred to the alternative side slope variations Franklin had copied out for them. The sketches showed a typical 30' wide DWF providing deeper depth so they could have tropical fish or use for recreation. Board discussed reasons for having 6:1 slope or allowing a more severe slope or a combination.

Board agreed to take out the Exhibit A. Application should ask for source of water for DWF or pond. Remove the ratios. Let the applicant provide the slope detail and the Town Engineer will review and determine if it is appropriate.

Abare asked where did 6:1 come from. Wilbur thinks they should keep the 6:1 for ponds and allow other slopes for DWF. Abare said they should get a legal opinion. Franklin will ask Town Attorney. They also discussed the Town's authority to require fencing so DWF or pond does not become an attractive nuisance.

Ritter said on Pg14/47 under appeal process A, within 10 days, sb 10 “business” days.
Last para, written “letter, stating” – Bob, Bud and Cindy disagree.

Wilbur said the failure to complete section was left out on the proposed draft. The fine of up to \$250.00 per day should be left in; it does not require it but it allows it by use of the word “may”. Town may require applicant to complete. Why? Why harm the resident if you can't complete? Wilbur said it will make people think twice if they have to pay if they don't complete.

Board wanted to add back the language to allow for permit extension. They discussed that all building permits expire in six months unless it has received an acceptable interim inspection. Board decided to leave it in. The Board discussed appealing to Council vs. the Board of Adjustment and decided that the applicant can appeal to Council and if appropriate, then Council

will direct applicant to BOA. Abare said any resident can go to council and they can then say go to the BOA.

Ryan said then they can go to court if they want to appeal the decision of the BOA. Wilbur said no two situations are going to be the same. The code says fine may be *up to \$250 per day*.

Franklin said it goes to Special Master. Wilbur said \$250 may seem excessive but there may be a large borrow pit excavation. Abare said he is softening – it “may be assessed” so Wilbur likes the town to have the discretion in the restoring - again with the *may*. Wilbur, Ryan and Abare are for leaving in requirement to restore – again with the *may*. Ritter is against making someone restore. Wilbur said it eliminates an attractive nuisance of an unfinished DWF or pond

Staff will get legal opinion on side slope requirements and Town’s authority.
Staff will add back the words about the excavated material from Section 5, E. 2 and 3.

Abare wanted to go through his example for the permit application; to require a permit but not engineering for a DWF. The property he used for a sample is the property he wants to buy. He agreed to add dimensions on distance to wells. Existing ponds. Shows the DEP area. They went over the application and then went over his verbiage. Setbacks should also be added to example. Checklist said define the maximum depth. He estimated the amount of excavated material. Suggested adding an initial line there.

This meets the intent of what we want them to do. DWF does not require a topo but may require for a pond. Abare can clean this up and bring this back. Brevard County soil survey has maps that will show wetlands.

Board agreed to change application to read:

Wetlands: Present Y/N; If yes, is there a 75’ Separation Y/N;
If no, is Mitigation required? Y/N; is FDEP Permit required? Y/N

Board directed staff run the application by Engineer and Building Official to see if they have any comments. The wording on both require addressing stormwater management.

Also ask for the source of water: artesian well with a control device.

Abare will update his example with these comments.

Abare will ask DEP if there is a required buffer. Wilbur said they should show that the excavated material will not be put in wetlands. Send the clean copy to the Board.

Stop here at 10PM – Items 3, 4, 5 for next meeting.

3. **Define “Light Industrial” Zoning**
Exhibit: Agenda Report No. 4
Recommendation: Discussion
4. **Code Requirements for Assisted Living Facilities**
Exhibit: Agenda Report No. 5
Recommendation: Discussion

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

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

J. PUBLIC:

Tom Eschenberg, Beran Lane, said re: setbacks and emergency vehicles. What does it matter if each property has a 15' setback then 15' and 15' and you have 30 feet so what does it matter. He stated again that the Table 1-3.3.E. does not match the EAR. Reilly explained to him that EAR is like an ECO was at Harris. The final drawing is like the Comp Plan and that was approved.

Wilbur said Council should hire a planner for the town.

Franklin will print Comp Plan for all members.

Wilbur suggested he ask Council to develop a schedule so a different council person comes to every other meeting. That is in addition to the Mayor.

They would also like more citizens to attend the meetings.

K. OLD BUSINESS/NEW BUSINESS:

Question on Oakmont Preserve. They have a horse trail. Developer dedicated the right of way for the trail and constructed it. The Town maintains it. Franklin explained that the horse users prefer the natural ground for the trail to either mulch or paved. She gave example of west side of Marie Street between Glatter and Malabar.

L. ADJOURN

There being no further business to discuss, **MOTION:** Ryan / Abare 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

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: June 13, 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.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: June 13, 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 was to add back in language regarding excavated material. Board also agreed to add the language back in "may assess a fine". After discussion of the wording regarding requiring applicant to restore site to pre-permit condition if they can't finish project was also added back in.

Board wanted to verify if buffers or setbacks were required for wetlands. They are not. Board also wanted to know what the legal authority the Town had regarding allowing steeper side slopes. There are no requirements mandating a 6:1 side slope. Staff has gotten a legal opinion from Town Attorney and we also have guidelines and handout information from Fish and Wildlife and the University of Florida. St. Johns does not have any jurisdiction over water features or ponds on residential property unless they are part of a subdivision development.

P&Z Member Abare went over his examples and Board suggested adding distances be added between property lines and well and septic. 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:

Memo from Franklin regarding Attorney Karl Bohne's legal opinion.

Revised Sample from P&Z Member Abare for handout with application

"Clean" copy of Article V, Section 1-5.27 for DWF and Ponds – for discussion

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

MEMORANDUM

Date: June 7, 2012 2012-TC/T-22
To: Planning and Zoning Board
From: Debby K. Franklin, Town Clerk-Treasurer
Ref: Pond Slopes and reasonable requirements

Here is question I sent to Karl Bohne:

Is there any requirement that the pond area be fenced similar to a pool? The P&Z board is discussing allowing steeper side slopes to provide greater depths for small ponds. They asked at the last meeting on May 23, 2012 that I contact you and ask if there is a law that gives side slope maximums or if it is up to the municipality. I had provided them with the information from the University of Florida on how to construct ponds for a variety of purposes, farm, goldfish etc. That info did not reference any legal requirements for side slopes. Also, Bill Stephenson had recommended the Town allow steeper slopes back in 2005 but Council never took any action on his suggestion.

Here is his response:

As I read the code I have *pond side slopes shall not exceed 6:1*. So in order to allow 3:1 side slopes the code will need to be changed. I am unaware of any state law requirement that there be side slope maximums or that fences are required. I will note that our current code permits the imposition of reasonable conditions for the construction of ponds and requiring a fence would seem to be a reasonable condition justified under health, safety and welfare. However, such a condition must be applied uniformly and not arbitrarily.

One resource to check is the St Johns River Water Management District, although they may not even have jurisdiction if the pond is not part of a surface water management system. Ponds on farms will probably be exempt from our requirements.

The Florida Wildlife commission has some guidelines for the construction of recreational ponds. See attached. I see the attached as only a guide and it is up to the local jurisdiction to govern the construction. I did read the U of F info and it does not appear there is any reference to any state law as you indicated. So as I see it this is purely a local decision.

APPLICATION for DECORATIVE WATER FEATURE

Revised 5/23/12

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 placement for the proposed Decorative Water Feature (DWF) is shown in modified picture 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 with a 75 foot radius stand-off. The DWF is also greater than 75 feet from the Septic Field.

The second 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. In a conversation with James Lee (Environmental Specialist) from the Department of Environmental Protection he told me there is no required stand-off distance from the wetland area.

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 direction of rain water flow is shown with large white arrows on the first site drawing.

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, 32960
 (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). ~~All 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: X 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 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 / retinage and overflow plan

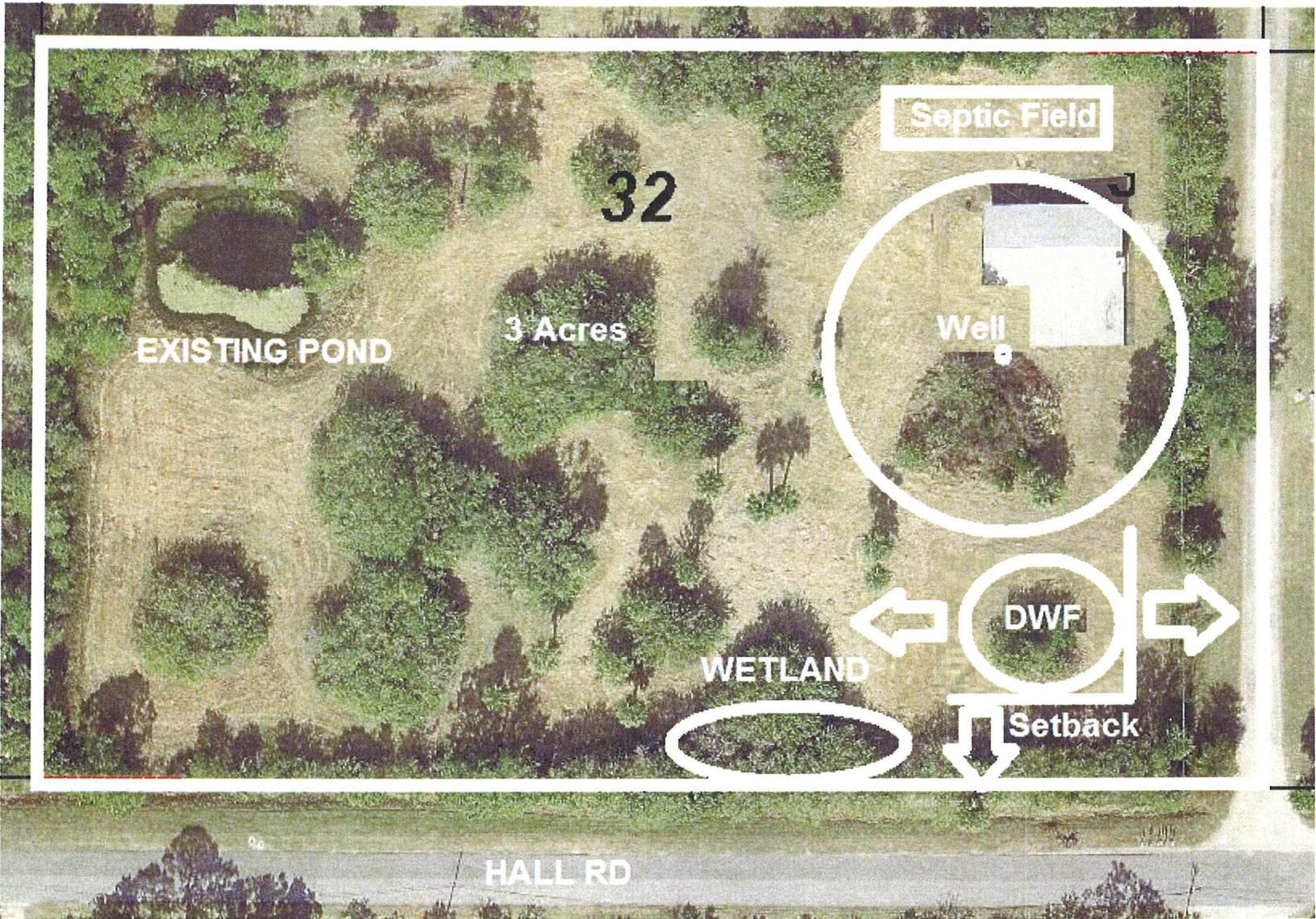
Signature of Applicant: _____ Date: _____

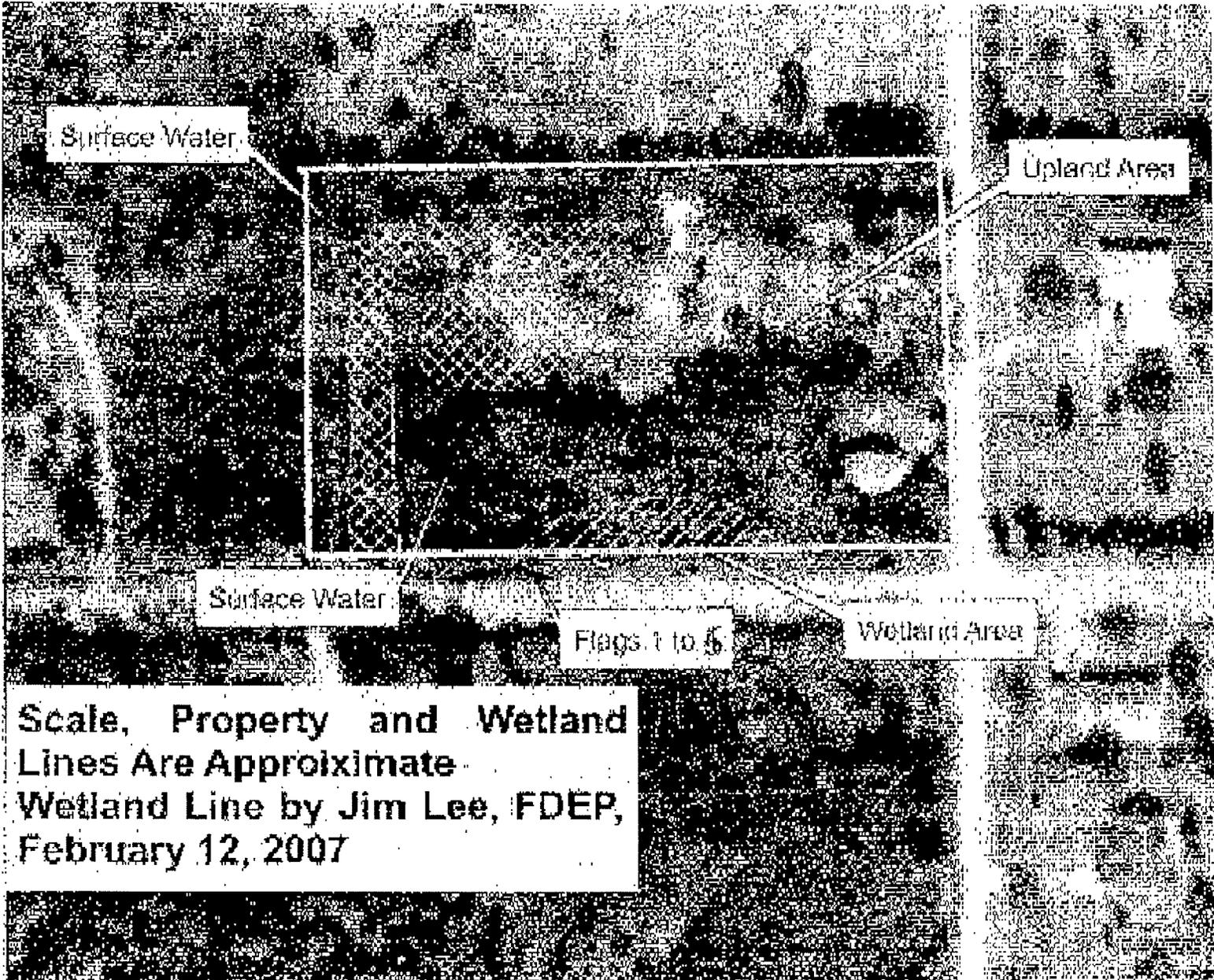
Signature of Town's Personnel Reviewing Application _____ Approved / Denied _____

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**

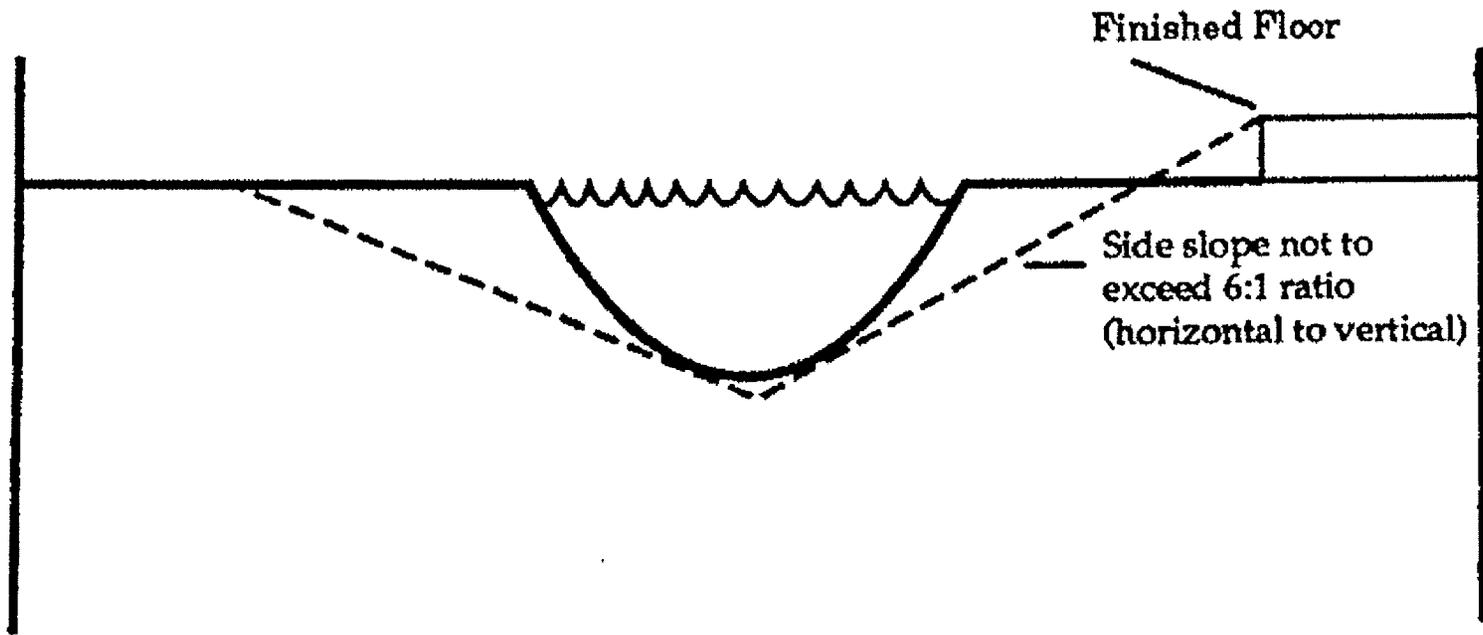


Diagram A

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 not 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 or depth 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: *Excavated Material* Shall mean the material, not top soil, removed from DWF or pond. All topsoil shall be used on site. Use of other excavated material shall be used on the property where the DWF or pond is constructed. If material is not useable a letter from a Florida registered Engineer is required to be submitted to the Town stating why the material is not suitable i.e. due to contamination, muck, etc or the amount exceeds what can be put on the site due to layout of property.

ADD: *Freeboard.* Freeboard is the 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 will 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. *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.

E. *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.

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

G. *Side slopes.* Shall mean the ratio between the horizontal and vertical distance of the decorative water feature or pond as measured from the edge of the water. The side slopes may vary depending on the intended use of the DWF or pond. A 6:1 slope means that at six feet from the edge of the water it would be one foot deep. (See Diagram “A”)

DWF side slopes to be approved by Building Official

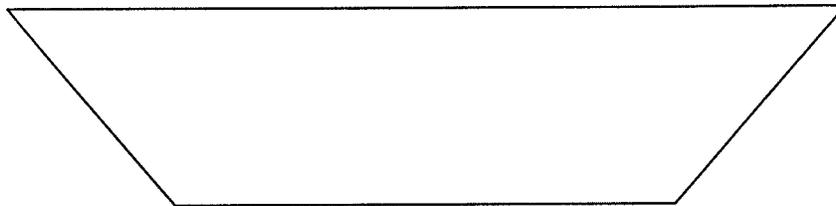


Diagram A

H. *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.

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

J. Water Source. Shall mean the source of the water filling the DWF or pond, for example, elevation of the ground water table during normal wet season conditions as determined by SCS (Soil Conservation Service) or competent engineering studies (referenced to National Geodetic Vertical Datum).

2.0 Permits for decorative water features and ponds.

1. *Decorative Water Feature.* Any person wishing to construct or permit to be constructed 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 fill 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.

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 that pond 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.

Site Plan to show use of top soil and other excavated material on site including estimates. Show on site plan where material will be used including engineered estimates of depth. If material is not useable a letter from a Florida registered Engineer is required to be submitted to the Town stating why the material is not suitable i.e. due to contamination, muck, etc or the amount exceeds what can be put on the site due to layout of property.

- If filling in an existing pond a written explanation on the type of material to be used to fill the pond and the method of compaction.
- Stormwater drainage / retainage and overflow plan. Indicate with arrows on site plan how overflow water from pond will drain.

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 business 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 shall be as stated in Table 1-3.3.A for the applicable zoning
- B. Depth shall in no case exceed 12 feet for either a DWF or pond.
- C. Construction of a DWF or pond or related site grading shall not adversely affect offsite drainage patterns.
- D. 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. For any DWF or pond for which a permit is required the excavated material may be disposed of offsite 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 onsite disposal will have on adjoining properties
 - d. No excavated material may be sold or offered to sale or trade or bargained for anything of value.
 - 2. 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 Town Engineer.
- E. 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 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.

8.0 Failure to Complete Construction of DWF or Pond

- A. A fine of up to \$250.00 per day may be assessed against any applicant who fails to complete a DWF or pond within the six-month period.
- B. Further, the Town, at its discretion, may require the applicant to restore the land to the pre-permit condition if it is 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 the final inspection by the Town.

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



TOWN OF MALABAR

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

PERMIT APPLICATION & CHECKLIST FOR DECORATIVE WATER FEATURE (DWF)

This permit application is intended for those applicants desiring to construct 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 also intended for those applicants desiring to fill an existing decorative water feature (DWF).

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 Y / N; If yes, is Mitigation required? Y / N; is FDEP Permit required? Y / N

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) showing distance to DWF
- ___ Evidence that DWF area is not in a wetland
- ___ Plan for use of excavated material (not top soil) on site indicated by hatched marks on drawing or written statement on method of disposal OR type of material to be used to filling the DWF
- ___ Stormwater drainage / retainage and overflow direction plan shown by arrows on drawing.
- ___ Source of water for DWF or pond _____.

Signature of Applicant: _____ Date: _____

Signature of Town's Personnel Reviewing Application

Approved / Denied



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: Y/N; If yes, is Mitigation required? Y/N; Is FDEP Permit required? Y/N

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 (not top soil) on site indicated by hatched marks on the drawing.
- ___ If filling a Pond, provide written evidence of type of material to be used and method of compaction.
- ___ Stormwater drainage / retainage and overflow plan
- ___ Source of water for Pond _____.
- ___ Application Fee of \$100.00 for Engineering Review by Town

Signature of Applicant: _____ Date: _____

Signature of Town's Engineer

Approved / Denied

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: June 13, 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
9,000 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

From 3/28/12 P+Z Meeting

Side, corner 20 feet.

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

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

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

(1) Principal uses and structures:

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

(2) Accessory uses:

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

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

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

(7) Minimum yard requirements:

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

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

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

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 5
Meeting Date: June 13, 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 group 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