

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: July 25, 2012

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

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

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

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

ATTACHMENTS:

Draft minutes of P&Z Board Meeting of June 13 & 27, 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
JUNE 13, 2012 7:30 PM**

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 7:30 P.M. Prayer and Pledge led Chair Bob Wilbur.

B. ROLL CALL:

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

C. ADDITIONS/DELETIONS/CHANGES:

D. CONSENT AGENDA:

1. **Approval of Minutes** Planning and Zoning Meeting – 5/23/12

MOTION: Abare/ Ryan to approve 5/23/12 minutes as submitted.

Board discussing and reviewing minutes. Wilbur states if you don't want it in the minutes don't say it.

Vote: All Ayes

E. PUBLIC: none

F. ACTION:

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

Reilly states that staff gave suggestion, it was suggested that the chairman be contacted. Ryan adds that is the smartest was to go, it is the chairman that makes the decision if it is excused or not.

Wilbur likes the procedure from staff as far as when you can call in and get in touch with everyone. Ritter, if you know ahead of time you are going to let everyone know. There is email.

Zindel asks about with Florida having the Sunshine Law to contact a Board member your particular the chair directly may be misunderstood. Reilly added it was checked by attorney and Abare explained it is a one way conversation.

Wilbur, to discuss an absent is a one way conversation. Reilly explains the rule is to not discuss something you will be voting on. Ryan states the Sunshine Law is there to prevent gross violations.

Krieger says that our policy is by the consensus of our Board and municode clearly states that we can do that.

Board consensus is that the Chairman determines the excused absence. Abare suggests calling Town Hall.

Ritter adds none of these suggestions is a "must do first" but to let someone know and as a Board we prefer to stick with our Chairman to let him know what is going on and if you cannot get a hold of him leave a message at the Town or email him.

Reilly reads to the Board Article VII, to stick with code. The Chairman is who approves absences.

Ryan states any sufficient way to contact anyone.

Wilbur suggests going to staff first to let them know if we have a quarm (three Members).

Motion: Reilly/Ryan Recommendation to Maintain Article XII Section 1-12.3 that the Chairman of the Board approves absences and to contact the Recording Secretary, or Board Members, or Town Staff to notify of an absence. Vote: All Ayes

Wilbur and Ritter suggest putting in the minutes the protocol for contacting someone in the event of an absence.

Abare suggest sending an email to Debby first then copying the chair and other Board Members.

Krieger, we have a code and we know who makes the final discussion the Chairman makes final decision of excused absence.

Krieger, do an email to all Board Members.

Wilbur there is a difference between emergency and a few days ahead, staff needs to know if we have a quarm or not so the rest of Board is contacted if meeting is cancelled.

Ryan's point is an excused absence is strictly an internal matter for this Board only. If a person cannot make meeting owe it to get in touch with Denine the Secretary for the Board.

Ritter, I agree to contact Bob, Chairman or call Board Secretary, she is the one who prepares the information and needs to know.

Wilbur explains you can be excused for anything you need to be excused for there is no criteria to be excused. He thinks this Board has good work ethic not to abuse this.

Krieger read minutes from Town Council Meeting about absences that the Town Council left it that each Board set there own and the Council is the superior deciding feature.

Zindel, asks where in the Code is the absence listed, Reilly responds Article XII.

Ritter suggests that this absence policy should be put in the proper place to be found.

Ryan suggests taking this discussion and the results of it and other things that are particular to the rules that we go by in P&Z and make a pamphlet that is available to any current member or new member that might come along so they understand what the policy for absences and it is there in writing. An in house document.

Abare suggests we put policy into Code to clarify and capture into the future. Reilly explains that is documented and on tape and recorded in minutes and if you want to change at a later date you make a list. It costs money to change Land Development Code.

Ritter and Abare suggest a clarification of Code in some appendix somewhere. Wilbur adds to make list of recommendations and give to staff and let them stick it where it needs to be. Reilly explains the next codification of Code book, what is found will be fixed.

G. DISCUSSION:

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

Exhibit:

Agenda Report No. 3

Recommendation:

Discussion

Abare explains about the example that he submitted (picture) about pond slope for legal opinion, attorney submitted legal opinion. Abare explains that Wilbur wanted 7.0 put back in for Article V Section 1-5.27 and add words about "fill".

Abare discussing about the legal opinion on the slope is that it is not a big deal and neither is the fence.

Wilbur said that this hand out given out tonight about from Florida Fish & Wild Life about ponds is excellent handout for residence that comes in for a pond permit.

Abare said that when he has come to the Town for information he has received 50 pages and some information is over whelming.

Reilly asked about underlined areas in packet, is that what is added to the Code? Sherear replies that was what was added into Code or put back by Board recommendation from last meeting.

Reilly asks about "Freeboard" definition and Ritter explains that it is information from the University of Florida information packet on ponds.

Krieger wants to add the word pond in the definition "Excavated Material" in the fourth sentence after If and before material.

Wilbur there is no reason you cannot use the material on site.

Ritter explains that is just definitions it can't hurt anything. Abare, the more definitions the better to understand things in the code.

Krieger, defines existing DWF sometimes staff & Towns changes

Abare, the DEP and all the rules we don't want people doing things and the Town condoning things It gets ugly fast, these procedures keep things from happening it is a good overall.

Abare says you have to put common sense. Krieger says if you are not changing anything no one should bother you.

Abare is talking about DWF, and to come to Town and get permit at no charge. It is to your benefit go through paper work and this way it will be on file with Town.

Krieger suggests going through definition and seeing consensus of this Board. Abare states what prompted all this that Town Engineer explained we don't have requirements for 350 truck loads of fill, it is huge amount and a major change to a piece of property.

Wilbur adds we took a big step forward to clarify things with DWF and Pond, definition and check lists.

Abare created this example I want someone that comes into Town a year or so from now to know what they can do and how to do it and show them an example.

Krieger agrees that a simple process but for a pond it should be more restricted because they are larger.

Reilly comments on the example drawing (pg 16) that Abare did, that it should have size of DWF, Abare says it is on pg 14 in explanation (cover letter). Reilly suggests a space on check list and on drawing.

Abare added the way the water flows now, and added setbacks and well. Abare explains it is all in the verbiage.

Board is discussing the 75 feet for well distance away from DWF or pond.

Corrections for Article V Section 1-5.27 Pond & DWF: Noted on pages

Reilly corrections & suggestions:

- Page 19 add on C. (DWF) at end before the "."
- get rid of ADD: and put ABC's through out definitions
- Page 21 consistence with numbers & letters under 2.0 & 3.0.
- Page 21&22 the bullets should be numbers at the bottom take out (DWF) under 3.0 first sentence
- Get rid of all under lines
- Get rid of all decorative water feature (DWF)
- Page 25 spell out DWF (never put DWF in bold)

Abare corrections & suggestions:

- Page 26 added wetlands present Y & N and things underlined
- Update example drawing
- Page 27 Abare Storm Water Drainage Plan?

Board is discussing the check lists and correcting.

- Page 27 correct Application fee as \$_____ for Engineering Review by Town leave blank, per Boards consensus.

Reilly suggests bringing back a cleaned up copy of DWF & Pond.

The Board is discussing the slopes of a pond 6:1 slope; it was on a grid sheet.

Krieger states that the slopes depend on what you are using pond for.

Krieger suggests you don't need Diagram "A". Wilbur said it is up to establish the slopes.

Wilbur explains a pond is a 6:1 ration.

Ritter / Krieger notation about fences are not required or at property owners discretion Then Wilbur reads the memo 2012-TC/T-22

Reilly states if you do not say anything at all about fences it is already inferred.

Krieger has corrections & suggestions:

- Berm instead of freeboard
- Impound area, not the surface area the minimum surface area of the pond. Ryan suggestion putting "average surface area"
- Krieger suggests for **Impound surface area to add in** minimum surface area for the DWF and Pond
- Littoral Zone?
- Pond second sentence, where in the impound surface area is greater than, 1,000sq ft
- I. "to fill" you are not affecting the area

Reilly asks why was "Impound Area" added. Board answers for definition purpose and informative information.

Zindel is explaining that the surface area is inside your 1,000 sq ft that you are disturbing as long as it is inside your 1,000 sq ft you are good to go. The Impound area is telling you if you dig a pond and you hold no water you need to put a liner in to hold water. Ritter explains it is for information purposes only.

Abare expresses that Krieger has made a couple good points let's discuss them one by one. Krieger states it all relates to impound area.

Wilbur states we are wasting time beating all this to death.

Abare asks who would decide if a pond sealer or liner was needed, Board responds to this Ritter suggests it is up to the applicant

Wilbur, adds it is the design standards of who wants the pond or DWF?
Zindel and Krieger are discussing the definition
Wilbur clarifying the informative definitions

The Board is discussing extensively the definitions of the Pond & DWF and informative information.

Zindel explaining the definitions only!
Ritter adds there are definition and informative information.
Wilbur explains to Board these are mechanisms' that will help you establish and impound level that you may want or don't want.

Page 21 J- Add "for example" after definition of words.
Reilly to add Informative Definitions 3.0 insert into Article V Section 1-5.27

Abare, the slopes depends on the material digging into. Abare slope determined by soil

The Town will accommodate the situation for the pond or DWF. Abare slope determined by soil

Board suggestions:

- Combine Design Considerations with Side Slopes
- Krieger about reference to Florida Engineer Wilbur adds it is so noted and he wouldn't change a thing.
- Board is going through definitions and clarifying
- Slope designation is in permit application

Ritter suggests if a property owner wanted to have a certain slopes they would use clay or rock. If you're hiring someone to do your pond they are going to know slopes and test dirt.

Krieger asked staff how many independent pond permits have been issued without building SFR. Sherear responds possibly two or three in five years.

Abare states that some changes proposed are actually better for homeowner.

Board suggestion to make Action Item for next meeting June 27, 2012

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:**

Krieger, asks about the political signs and 8 ft signs have not had chance to look at ordinance. The real-estate agencies seem to have carte blanche. Sherear responds that they are supposed to get permits.

Abare asks if political candidates have to pay sign permit fee. Sherear responds they don't pay fee but do register in our Town.

Krieger suggests that there should be a maximum size of a political sign in this Town. Reilly suggests to Krieger to go to Council.

K. ADJOURN

There being no further business to discuss, **MOTION: Reilly /Ryan to adjourn this meeting. Vote: All Ayes.** The meeting adjourned 10:06 P.M.

BY:

Bob Wilbur, Chair

Denine Sherear, P&Z Board Secretary

Date Approved

DRAFT

"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
JUNE 27, 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
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN
	LIZ RITTER
ALTERNATE:	WAYNE ABARE
ALTERNATE:	CINDY ZINDEL
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

C. ADDITIONS/DELETIONS/CHANGES: none.

D. CONSENT AGENDA:

1. **Approval of Minutes** Planning and Zoning Meeting – Not Ready

E. PUBLIC HEARING: none

F. PUBLIC: none

G. ACTION:

2. **Recommendation to Council re: Checklist and Permit Requirements for Decorative Water Features and Ponds**
Exhibit: Agenda Report No. 2
Recommendation: Discussion

MOTION: Reilly / Ritter to recommend Council approve the Board's amendments to Section 1-5.27 regarding ponds and decorative water features (DWF).

Discussion. Krieger doesn't think this is ready for Action to Council. He thinks there is still a lot to review here in the ordinance and not just the multiple typos. The Board was cutting a lot out of the ordinance at last meeting. Doesn't think they can consider action without having the minutes from the last meeting.

MOTION: Reilly / Ritter to rescind the previous motion. Vote: All Ayes.

MOTION: Reilly / Krieger to move to discussion. **VOTE:** All Ayes.

Starting with Section 1-5.27 General Provisions, Ryan said he reads this draft ordinance as an average citizen would and has problem with using the word *fill an existing DWF or pond* and suggested inserting the word "in" after fill in the paragraph under General Provisions. Otherwise it is very confusing. Ryan said later in the ordinance it is written as *filling in*.

Reilly said Definition Section I., pg 5/18 it defines *to fill*.

Abare said if you want to fill a septic you *condemn*. If you want to *abandon* the septic that is the term they use so we could introduce that word. That will get away from confusion they are having to figure out if you are filling it with water or dirt. .

Wilbur said *fill* is a commonly used term. Abare said water is also a material. Ryan said further in Section 7.0 Standards for fill activity.

Ryan said on page 9/18 no permit for *filling in* makes more sense than the first use. Reilly stated they are different used differently. Ritter said add the word "in" in the General Provisions. Suggested since it is a noun and a verb they should add a new word so they know what you are talking about.

Krieger said we started this process with what was there in the code and then Board split it into two things and then Reilly revised the ordinance to be separate for DWF and pond. Last meeting cut a lot out of ordinance. Now we are down to seven pages and he has many mark ups for DWF and a few in the pond portion. He sees things missing from DWF section. He looks at definition section and he doesn't think that under A. it should be a Town *engineer*. Everything a person does has to be to code so you don't have to be specific. He questions the word *wherein* in "C" regarding the purpose of retaining water for 1000sf or smaller. He took out the whole last sentence. He did add in several pages, if you read the ordinance literally you can't maintain a pond. Ordinance language should include a phrase that allows maintenance of ponds or a DWF without a permit.

Krieger also questioned on page 4/18 the reference to topsoil stating it is not necessary. Again you have to bring another individual in to evaluate the soil. Wilbur explained what topsoil is and that it is necessary and per code to not remove either the topsoil or the other fill from the project site unless it is not suitable. Krieger said it should not be necessary.

Abare said Krieger again brought up 15 items in rapid succession without opportunity for Board to speak to each. He said the Board is trying to finish this. We need to go through it systematically, item by item and take a Board poll at each item to see if there is consensus. Reilly asked first if they liked the structure of the ordinance. No objections.

Starting back at the top of General Provisions, Board discussed *filling* again. Ryan wants to add the word "in" - Wilbur said we will never get through this stuff at this rate. Abare said the words defined should be italicized.

Krieger said take out *to fill* entirely and put in to construct or "alter". Ryan likes it. Board agrees to change that. Reilly said there are three actions: to construct, to be constructed or to alter. Reilly polled Board and four members supported this change. Wilbur opposed.

Re: adding a statement that maintenance does not require a permit. Discussed if it should be at end of section (Krieger) or at the beginning of section (Ritter).

Krieger said it should be approved by the *town* only. It is inappropriate to tell Council they need to have an engineer. If five people on Council determine that peanuts are appropriate fill then it is ok.

They discussed who is the Town. Krieger gave his example of the little plastic pool again. Zindel said the definitions are inclusive for both DWF and ponds.

Wilbur said the engineer is the only one with the knowledge of allowable material. Krieger said the Council is the authority. Reilly said if they make this change, it will change many other sections. Abare suggested using *town representative*. No, Krieger said just Town. Wilbur said it could be Engineer or Building Official. Wilbur said if he is proposing to take the Engineer out of this ordinance then that is ludicrous.

Board discussed if they needed to define town engineer. Ryan said use Building Official – Krieger said no.

Wilbur said whenever we get ready to take action on an agenda item and do something then Krieger brings up the “*what if*” scenarios and then they beat the item to death.

Ritter suggested they use *Town or appropriate staff*. Wilbur said he did not think the Building Official would have the ability to review pond requirements.

Abare said it is good for the Board to hear all the members’ opinions during discussion and then they can make their decision and move on.

After this discussion, the Board agreed to leave the General Provisions as written in handout with exception of the acronym for decorative water features. It should be taken out of the bolded title and insert it in the paragraph.

They began review of Section A.

- A. No engineer, just town.
- B. No should be *not*. Krieger questioned need for this.
- C. Delete the 2nd sentence. It is addressed in Section 7.
- D. Krieger said 2nd sentence should be deleted. Board agreed to leave it in at last mtg. Liz said for informative purposes and that is why they kept it. Discussed putting it under General Provisions as DWF. If it is there, then it doesn’t need to be under definition. Krieger and Liz debate. Add comma after “for example”. Leave everything else as it was.
- E. Add two commas. Abare doesn’t like the last sentence. That is the informative part. Change the language to clay will support a steeper slope. Abare said you can’t dig until you have a permit. Use the Brevard Cty soil book. Abare said that is hit or miss.

Krieger said that all the second sentences from E, F, G and H should be taken out and put them under *Design Considerations* on pg 9/18. Wilbur left at 8:35.

Reilly said under design considerations all it says is slope. Krieger said to take from E, F, G and H and put it in a new Section 5.5 for Design Consideration or put it before that section or at the very end.

Ryan said does the code need to include the informative information that they are discussing moving to a new section. Zindel said yes because they might be doing it themselves.

Reilly said they said months ago that it should be definitions and informative information in this section. Zindel said it isn’t added as a requirement but to help applicants.

- F. Add the comma -
- G. Ok except move the 3rd sentence starting with ponds.

Reilly said *Design Considerations* is not defined and they should have a definition for it - the parameters used in design process. DWF and ponds are going to be different for different applicants.

Put designs considerations before permit review. Between 2 and 3. Make Design Considerations 3.0 and then make Review Process as 4.0.

H. Krieger said a pond is a body that holds water. Change to "Area that holds water". Add back in DWF to this section. Rest of this section goes to Design Considerations.

I. Put the word *alter* in this section.

J. Ok

K. Delete depth from definition. The second sentence should be moved to General Provision – already has been so it can be deleted.

L. Ok

M. Move the entire section to Design Considerations.

N. Change the definition, well, ground water table, spring, etc. Kill the rest. Reilly asked Krieger what the difference was between *for example and such as*? Ryan suggested it state "can include but not limited to".

O. New definition

Krieger 6/18 #4, impacted area should be *project site*.

#5 location wells and/or drain fields within 75' of the project site.

Pg11/18 DWF is on top in title and it should not be there.

Stop here and get new Sec 3 drawn up.

H. DISCUSSION:

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:

J. PUBLIC:

Juliana Hirsch said she is very serious regarding the distances and thinks 50' is too close. She asked why there is any restriction on distances from a well. Distance from drain field is more important than for well.

K. OLD BUSINESS/NEW BUSINESS:

Board Secretary told Board that Sue Hann's dad, Joe Provost, died last week. He was 77. Franklin reminded Board that Form 1's are due. Board Secretary told Board that they had received a Board application from Leeanne Saylor who is in audience tonight. Zindel stated she would be willing to give up her seat as an Alternate on the Board. Zindel explained that she travels up north for part of the year and may have to return to care for her mother. Introductions to Board were made. Leeanne said she would like to sit on the Board and would like to be an advocate for Malabar

L. ADJOURN

There being no further business to discuss, **MOTION: Ryan / Krieger to adjourn this meeting. Vote: All Ayes.** The meeting adjourned 9:45 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: July 25, 2012

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

SUBJECT: Decorative Water Features and Ponds

BACKGROUND/HISTORY:

The Board reviewed the proposed Amendment Article V Section 1-5.27(dated 6/27/12), Decorative Water Features (DWF) and Ponds. After much discussion, corrections, and wording of the proposed Amendment Art V, Section 1-5.27 the Board will review the corrected copy from the last meeting.

The Board added a number "3.0"- Design Considerations for Decorative Water Features or Ponds under this heading examples and informative information will assist in the construction of DWF and Ponds.

The formatting of Article V Section 1-5.27 will be put in to Code Book format by Municode.

ATTACHMENTS:

"Clean" Proposed Code Amendment 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

ACTION OPTIONS:

Continued Discussion

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 alter an existing decorative water (DWF) feature or pond within the Town of Malabar without first obtaining a decorative water feature or pond permit from the Town of Malabar.

0 Definitions.

A. *Allowable material.* Shall mean uncontaminated sand, soil or dirt or other items approved by the Town. 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 (DWF).* Shall mean any excavation for the purpose of retaining water wherein the surface area is 1,000 square feet or smaller in size.

D. *Depth, Maximum permitted.* The maximum depth allowed for a DWF or a pond is 12 feet. For example, 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.

F. *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.

G. *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.

H. *Impound Area.* The area of the pond or DWF that holds the water.

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. *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.

K. *Pond.* Shall mean any excavation for the purpose of retaining water wherein the surface area or depth is greater than 1,000 square feet in size. Any fill activity which reduces the surface area or depth of an existing pond, regardless of size, may only be accomplished after a permit authorizing such activity has been issued.

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

0 Permits for Decorative Water Features and Ponds.

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

1. 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.
2. Indicate on sketch the location, size, dimension and depth of DWF to be constructed OR filled
3. Existing structures shown on drawing (including setbacks from all property lines)
4. An identification of trees in DWF project site with a dbh (dimension at breast height) of 8" or greater. This includes both trees to remain and those proposed for removal.
5. Location of well(s) and drain field(s) within 75 feet of project site
6. 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.
7. 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.
8. Stormwater drainage / retainage and overflow plan. Indicate with arrows on sketch how overflow water from DWF will drain.

B. *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:

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

3. Proposed project site location, dimensions and depth of Pond to be constructed OR filled showing setbacks from property lines
4. Dimensions to show the side slope elevations and wet season water table
5. Existing structures shown on Site Plan (including setbacks from all property lines)
6. An identification of trees in Pond project area with a dbh (dimension at breast height) of 8" or greater
7. Location of well(s) and drain field(s) within 75 feet of project site and that are affected by project area.
8. 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.
9. 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.
10. If filling in a pond, a written explanation on the type of material to be used to fill the pond and the method of compaction.
11. Stormwater drainage / retainage and overflow plan. Indicate with arrows on site plan how overflow water from pond will drain.

3.0 Design Considerations for Decorative Water Features or Ponds

- A. *Design Considerations.* Side slopes depend on the stability of the excavated material. For example side slopes shall mean the ratio between the horizontal and vertical distance of excavated ponds as measured from the edge of the water and 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.
- B. *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.

- C. *Water Source*. Shall mean the source of the water filling the DWF or pond, included but limited to ground water table, wells and springs.
- D. 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
- E. Soils with high amounts of clay are good for the pond 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
- F. If pond 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

4.0 Review process for Decorative Water Features or Ponds.

A. *Decorative Water Feature (DWF)*. The following process for review shall apply to all permit applications presented to the Town of Malabar for consideration.

1. 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.
2. 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.
3. If the Building Official denies the permit for non-compliance, the applicant may appeal the decision as stated in Section 4.
4. If the Building Official approves the permit with conditions, the applicant may appeal the decision as stated in Section 4.

B. *Ponds*. The following process for review shall apply to all pond permit applications presented to the Town of Malabar for consideration.

1. 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.
2. 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.

3. If the Town Engineer or Building Official denies the permit for non-compliance, the applicant may appeal the decision as stated in Section 4.
4. If the Town Engineer or Building Official approves the permit with conditions, the applicant may appeal the decision as stated in Section 4.

5.0 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.

6.0 Performance Standards for the construction of a Decorative Water Features 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.

7.0 **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.
- D. The routine maintenance and upkeep of DWF & Ponds will not require a permit

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.

9.0 **Failure to Complete Construction of Decorative Water Features or Ponds**

- 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 DWF 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)

DRAFT



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

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 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
- ___ Proposed 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 \$ _____ for Engineering Review by Town

Signature of Applicant: _____ Date: _____

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: July 25, 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 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 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

Ord. No. 99-1, § 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.

Supp. No. 38 1320.2

CLY 17R

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DC:GT 1107/17/110

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

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

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

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

(7) *Minimum yard requirements:*

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

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

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

Supp. No. 38 1320.3

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: July 25, 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