

TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY SEPTEMBER 26, 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 – 8/22/2012
Exhibit: Agenda Report No. 1
Recommendation: Motion to Approve
- E. PUBLIC:**
- F. ACTION:**
 - 2. Final Review and Make Recommendation to Council re: Decorative Water Features and Ponds**
Exhibit: Agenda Report No. 2
Recommendation: Action
- G. DISCUSSION:**
 - 3. Review Material of "Light Industrial" Zoning and Recommendation to Council**
Exhibit: Agenda Report No. 3
Recommendation: Discussion
 - 4. Code Requirements for Assisted Living Facilities**
Exhibit: Agenda Report No. 4
Recommendation: Discussion
- H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:**
- 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: September 26, 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 August 22, 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
AUGUST 22, 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, excused
	LIZ RITTER
ALTERNATE:	WAYNE ABARE
ALTERNATE:	LEEANNE SAYLORS
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

C. ADDITIONS/DELETIONS/CHANGES: Krieger said the two items under F. ACTION should be under G. DISCUSSION. They had not finished with Ponds and hadn't started on Light Industrial and would need to read up on the material previously given out. Reilly said if they complete discussion tonight they can both be on agenda for action at next meeting. Consensus to move them both to DISCUSSION.

D. CONSENT AGENDA:

1. **Approval of Minutes** Planning and Zoning Meeting – 8/08/2012

MOTION: Reilly / Krieger to approve minutes of 8/8/12 as corrected.

Corrections: Board Secretary made the changes in real time to the minutes.

pg 3/22 last big para, they could "convert"

The prior sentence, he lined through that they will maintain the road. Krieger said if it is public Bob said 2nd line Ed White holds license to do anything – add what he can do with propane.

Krieger said he didn't like the whole para. Board said leave it as that is what he said.

Propane vehicles don't burn carbon – please clarify. Abare said regarding a business coming in, he thought if it was consistent with zoning they would just move in. Franklin explained how it came about. The Building Official originally told staff that they were going to buy the property on the other side of the tracks known as the old post office site, and build a gas transfer station complete with a railroad spur. Such a project would require a site plan and submittal through staff and P&Z. It was not until tonight that the staff heard it was proposed for an existing site on Garden Street that is already a commercial site. The Building Official had told them to appear before P&Z.

Depending on extent of their project, they may just need a building permit and approval of Building Official. Chair said it was good idea to bring new projects to P&Z Board. This was their introduction and presentation on what they wanted to do. Krieger continued: page 4/22, accidents sb plural.

Last line on 3rd para – if we switched over we would no longer need foreign oil. Krieger thought that should be stricken. Leeanne again said it is public comment. The first line use his name, Ed White name instead of "he"

5/22 at top, 1 foot freeboard or berm. Wouldn't you want to specify. Delete Wayne's statement. Wilbur said the one foot is in relation to a pond of 660 feet in length for wave action. Wilbur said requiring a one foot would be excessive for smaller ponds. They will not have wave action.

6/22 D., shall be used on site.

VOTE: All Ayes.

- E. **PUBLIC HEARING: none**
- F. **ACTION: Changed to Discussion at beginning of meeting**
- G. **DISCUSSION:**

2. Checklist and Permit Requirements for Decorative Water Features and Ponds

Exhibit: Agenda Report No. 2
Recommendation: Discussion

The Board had left off at the beginning of Section 7 at end of last meeting. Reilly asked for clarification. The yellow highlighted areas were what Board had changed previously; the red were changes made at last meeting. Reilly said to go to page 7 (pg 14/23). Krieger said no, go to page 2 (pg 9/22) as he had reread some of that and has additional comments and questions.

Pg. 9/22 Section 2.A.6. Evidence of the DWF "area" – is that supposed to be "project site". Change it and delete "area". Ritter said up before that section in Definitions, L., add a comma after wells.

#6, if it was an environmental survey and not a wetland survey. This is just for DWF. Purpose of survey is to show wetland. Krieger said any of those listed should be acceptable. Wilbur would be happy with letter from DEP or County resources. Krieger said it is supposed to be a simple process. Abare said he talked to the Building Official and Cloutier said he only trusts the DEP letter and only if it is current. If it is more than five years old then he does not trust it. Abare said that the Building Official had let a project go forward and then found it was in a wetland then it came back to him.

Krieger said they need a declarative statement to put responsibility on property owner. Wilbur would support leaving it at DEP and deleting the rest.

Krieger said leave it to the home owner and contractor. He went back to his plastic pool example.

Board said anyone wanting a building permit for a plastic pool has an IQ problem.

Krieger said that is what they are assuming with this language.

Abare said leave the DEP recommendation and delete the rest. Abare said if you talk about the site, like in 4, which includes trees to remain and trees for removal, you are talking about the whole site. The wetlands area you are talking about is only about the wetland area. It is correct the way it is. Go to K. we used project site at last meeting; they changed all the "area" to "project site". Abare is fine with it. Put "." after Protection.

7. Krieger said his note said (work this) and asked Board to read it. Board agreed to cut it into two sentences. One is for filling. If being used on site, show where material will be used.

8. If filling a DWF, indicate the type of material to be used. 8 becomes 9.

Pg 10/22 evidence that the pond site letter.

8. 3rd line, if the material is not useable, comma

Wilbur said compaction is important for both the pond and DWF. Copy 9 in ponds into DWF as 8.

11/22 Krieger has problem with D, a pond area, he changed it to soil and it should be "area". A pond area with soils. Trying to add the soils. It makes sense, leave it. Krieger was looking at it on its own. Leave it.

Page 12/22 on thing at bottom of page, 6.D.1. except topsoil. Wilbur said it emphasizes that topsoil is to remain.

Page 13/22. 7. new material. Top of page – why is it necessary? Krieger has problem with “sales” from page before. No excavated material shall be sold, traded. Krieger mentioned pools again. Krieger said make a declarative statement. You got permission to get rid of material and then you can't. If it is leaving site you should have permission to sell it if you want.

Wilbur read definition of mining and excavating from Chapter 7.5 and also about muck.

Ritter said then put “no mining is permitted”. Reilly said before 1,2,3, in the opening para, then it is not necessary. If no mining is permitted. Why would he want to repeat it. Reilly said why are the bullets there. There is advertising for sand to sell now. Leeanne said at last meeting it was stated we do not have pro-active code enforcement. We can put whatever we want in code but unless there is code enforcement to uphold code. There is code enforcement if there is a complaint. Abare related about the property he sold to Paladin. They knew they could not mine it.

No mining is allowed. Add to language in preamble. No DWF or pond being constructed, altered, will Add and E. Excavated material for the purpose of Mining is prohibited.

Krieger said stop it at sold. This covers it for both. Board said leave entire phrase in so it matches the other section.

- A. Krieger said they should change 6 months to 180 days so it matches other place in code. Board said leave it.
- B. Extension – Krieger asked why only one. Other permits can be extended more than once. Leave it in. It does say for good cause. Leave it as is.
- D. add “a” before DWF and “pond” should be singular.

8.0 Change the wording from starting with “no”. Use “any” filling activities for a and b. Change A. to start with A permit. NO is negative. Reilly said the formatting for 8. Standards is too far over. Secretary will correct formatting. Board then realized that the permit will only be reviewed if there is a statement that it will adversely affect adjacent property. Ignore suggested change and leave as is.

9.0 six – month. A fine may be levied consistent with town code. No. Krieger said there is a resolution that lists all fees and fines. Wilbur said Code Enforcement and Special Master determine fine and it “may” be levied. It let's applicant know there may be consequences. Board consensus to leave it as stated.

Abare said it would be helpful to Council to capture the essence of the problems they addressed when they present this to Council. What was the problem and because of that we defined two types of structures.

- 1/4 acre required no permit
- Conflict with Art VII site plan review
- Control mining
- Eng said 300 trucks of fill
- Streamline definitions

Abare said we need to do this to give help Council. He will put those in order. Krieger said he still has problem with digging a pond requiring a separate permit from a home if they are done at same time. Franklin explained the reason for permits for each and how it is helpful to have them separate. A new home could need a culvert permit, land clearing permit, home construction

permit, pond permit, pool permit, fence permit. They each have different inspections and completion requirements.

Checklist: change order so DWF is before Pond and include with recommendation to Council so they can see what staff is going to use in Building Department.

Abare also asked if his handout would be included so Council could understand the process. Include Abare's handout.

Construct ____ or Alter _____ or Fill ____ or Alter _____

Make two applications; one for construction of DWF or pond and another for filling of same. No

Wilbur said going back to Bud's question about what is used in the fill.

Construct / Alter is ok. Still need a permit if you want to fill.

Change the next question to FDEP and then jurisdictional requirements. Be consistent with their words.

Oakmont mitigated wetland in development. It covers all the bases.

Checklist is ok.

Add "alter" to pond checklist.

Leeanne said signature line is missing from pond checklist. It is there. Staff just didn't copy it out to save on paper.

The application fee for ponds applies to cover cost up front for Engineer review. That is not necessary for DWF review.

Make this an Action Item for next meeting. Board asked for it to be reviewed by Attorney and then come back to P&Z in ordinance form. Leeanne asked if they are referring to sending it to Town Attorney Karl Bohne; that will be an expense and the Council is trying to keep expenses down. Perhaps they should ask Council first if it can be sent to Attorney.

Wilbur said the Town Attorney used to sit with P&Z Board and give advice as these were developed.

Franklin suggested Board make a recommendation to Council to allow Attorney to review, format and return to P&Z for final action to Council.

MOTION: Reilly / Krieger to recommend Council direct staff to send their efforts to Attorney for review and drafting into ordinance and return to P&Z.

Discussion. Tell Council they plan to make recommendation to approve at P&Z meeting on 9/26/12 or Oct meeting, depending on when they get it back from Attorney.

VOTE: All Ayes.

3. Define "Light Industrial" Zoning

Exhibit: Agenda Report No. 4
Recommendation: Discussion

Chair explained the reasoning for a need for light industrial. Trades people. Commercial Limited is not suitable. The limiting factor is the infrastructure. Leeanne said it makes sense for LI by I-95 and RR corridor. If you have a zoning designation for that it would be better.

Chair said it is important to define this before sending FLUM recommendation to Council. Abare said if you do that then you notify county and tax may be raised. Abare said the people that own these properties should be involved in changes that may increase their taxes. People should be invited. Discussion of the process. Have 10 acres. How can he develop it if we change zoning. Franklin explained that the P&Z Board has been reviewing the FLUM since 2004 and each time they took it to Council it came back with direction to do more. It has not gotten to the point of holding Public Hearings or drafting into ordinance form. There are Malabar requirements to not only send notice to the property owners but to also send notice to the property owners within 500 feet of the proposed areas. No changes have been made without public involvement.

Saylors said about light commercial – review areas they would like to have that designation or do we want to merge it with CL as Krieger suggests.

Wilbur thinks LI belongs in certain areas and CL should be a buffer. We have enough areas where it would be the higher and best use. We have to turn them away now because we have no area for trades. Saylors said in the overall area we have so much land that is dedicated to conservation. Identify areas that work very well for development and keep it consistent in just those areas.

Krieger said they need to pull packet together from before and review the material. This is not ready for action at next meeting.

Board stopped here.

4. Code Requirements for Assisted Living Facilities

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

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

Vote: All Ayes. The meeting adjourned 10:00 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: September 26, 2012

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

SUBJECT: Decorative Water Features and Ponds

BACKGROUND/HISTORY:

The Board reviewed Article V, Section 1-5.27 at the last meeting (8/22/12) and requested that the Council authorize the Town Attorney to review the Board's revised Article V Section 1-5.27 document and craft it into an ordinance. The Council approved this request at the September 12, 2012 Council Meeting.

The P&Z document was sent to Attorney Bohne and he reviewed it and put it into the proper ordinance form showing what would be repealed and the new material to be inserted.

Attorney Bohne moved the Appeal Section to the end (from Section 5 to Section 9). He stated the appeal section should be at end of the regulation. He also changed the references to Section 5 to read Section 9.

He also said the definition of "excavation" should include "of land"

He commented that although the regulation states that pond cleaning did not require a permit the regulation did not provide any directives on pond maintenance and asked if that was intentional.

He changed the language in Section 8 from "outside jurisdictional agency" to "all outside agencies having jurisdiction over a pond"

If the Board makes a recommendation to Council it would be on the council agenda for October 1, 2012.

ATTACHMENTS:

- Memo from Debby Franklin #2012-TC/T-56
- Town Councils Agenda Item #6 & Recommendation from the P&Z Board
- Portion of Minutes from Council meeting 12/5/2011
- Attorney Revised Ordinance No. 2012-60 (13 pages)

ACTION OPTIONS:

Final Review and Recommendation to Council

TOWN OF MALABAR

MEMORANDUM

Date: September 14, 2012 2012-TC/T-56

To: Planning and Zoning Board
Denine Sherear, P&Z Bd Secretary

From: Debby K. Franklin, Town Clerk-Treasurer

Ref: P&Z Recommendation re: Legal Review of Article V, Section 1-5.27

At the regular Council meeting of September 12, 2012 Council considered the P&Z Board request to have their draft of the language for Article 1-5.27 reviewed and crafted into an ordinance. Council approved unanimously to direct staff to send it to Attorney Bohne.

The draft document has been sent to Mr. Bohne and when we get it back it will be presented to the P&Z Board.

TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 6
Council Meeting Date: September 12, 2012

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

SUBJECT: Request from P&Z Board for Legal Review of Amendment to Article V re:
Ponds and Decorative Water Features (DWF)

BACKGROUND/HISTORY:

The P&Z Board has been working on an amendment to Article V, Section 1-5.27 to provide instruction and guidelines to applicants desiring to construct a Decorative Water Feature or Pond.

The original direction for the Board to review this Code was from Council. There had been a conflict between Article VII, requiring a Site Plan for disturbance of 1000sf of land and Article V allowing ponds less than 10,890sf to be constructed with no permit or even plan review or Town oversight.

The P&Z Board brought their preliminary recommendation to Council in December 2011 to seek Council action on their idea to draft two separate sets of regulations: a simple one for small water bodies less than 1000sf in size called "Decorative Water Features" and a more detailed set of regulations for water bodies greater than 1000sf in size referred to as ponds. Council voted in support of their recommendation and the Board has continued working on these regulations and included checklists to provide assistance to both the applicant and Town staff.

The P&Z Board would like to have the Attorney review their draft document and put it in ordinance form so they can consider his comments before making their final recommendation to Council. Due to the unknown cost involved in asking the Attorney to review this document, the P&Z Board wanted to have Council approve this action.

At the P&Z Board meeting on 8/22/12 they made the following motion:

MOTION: Reilly / Krieger to recommend Council direct staff to send their efforts to Attorney for review and drafting into ordinance and return to P&Z.

Discussion. Tell Council they plan to make recommendation to approve at P&Z meeting on 9/26/12 or their October meeting, depending on when they get it back from Attorney.

VOTE: All Ayes

FINANCIAL IMPACT:

Attorney Review Costs are estimated at two hours

ATTACHMENTS:

- Portion of Council Minutes from 12/5/11

ACTION OPTIONS: Staff requests Action.

F. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING

2. Recommendations from P & Z Board related to:

- Definitions for Art V related to Ponds
- Parking RVs in Front Yards

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Pond Recommendation:

Mayor said this started with guy wanting to build a pond larger than ¼ acre on adjacent lot to his house. He asked Franklin. Franklin said that issue came up first when a person was allowed to build a pond ¼ acre or less and they had issues with DEP. Also because of the conflict with Article VII that requires a site plan for disturbance of land 1000sf or larger. Clerk took issue to Council and was directed to send to P&Z. Mayor said it had to do with a guy who wanted to put ¼ acre pond on his adjacent lot and the amount of engineering was excessive and costly. Rivet asked Mayor for clarification. Mayor said 1000sf or less would require permit and checklist; larger would require site plan. Smaller water features would only have to follow checklist and meet setbacks; no expensive engineering. Acquaviva said they are recommending that Council approve these recommendations that would require they keep excavated material on lot. Yes. They came up with three recommendations. Define small water area and larger water area and third recommendation is don't take fill off site. Code currently says don't take from Town. Acquaviva asked for Attorney opinion. Attorney has no problem with what they want to call a water feature or pond. Code does provide exceptions regarding excavated material for developments, allowing it to be removed. Attorney said there could be issue with telling people they can't remove fill from their lot. Perhaps it should say it should first be used on site and then excess can be removed. Current Code requires it to stay within Town unless it is a listed exception. Chair said Council could just provide consensus. Franklin said if Council takes formal action it will provide direction to staff and let P&Z know they are working in the right direction. They will continue to work on the checklist.

MOTION: Rivet / Acquaviva to approve the P&Z Board definition of water feature and ponds.

VOTE: All Ayes.

ORDINANCE NO. 2012-60

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING SECTION 1-5.27 RELATING TO PONDS; CREATING STANDARDS FOR DECORATIVE WATER FEATURES AND PONDS; PROVIDING FOR DEFINITIONS; PROVIDING FOR PERMITS FOR DECORATIVE WATER FEATURES AND PONDS; PROVIDING FOR DESIGN CONSIDERATIONS FOR DECORATIVE WATER FEATURES OR PONDS; PROVIDING FOR A REVIEW PROCESS AND PERFORMANCE STANDARDS; PROVIDING FOR THE COMPLETION OF DECORATIVE WATER FEATURES AND PONDS; PROVIDING FOR STANDARDS FOR FILL ACTIVITIES; PROVIDING FOR PENALTIES AND AN APPEAL PROCESS; PROVIDING FOR REPEAL, SEVERABILITY, INCORPORATION INTO THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, as follows:

Section 1. Article V, Section 1-5.27 is amended in full to read as follows:

~~“General Provisions. It shall be a violation of this ordinance for any person to construct, or permit to be constructed, or to fill a pond within the Town of Malabar without first obtaining a Pond Permit from the Town of Malabar.~~

~~1. Pond Permit. Any person wishing to construct or permit to be constructed a pond of one quarter (1/4) acre in size or greater or to fill a pond of any size within the Town of Malabar must, as a precondition, obtain a Pond Permit. Ponds one quarter (1/4) acre or less must meet setback requirements. In order to obtain a Pond Permit, an applicant must:~~

~~A. Pay the designated Pond Permit Application fee prior to the Town accepting any application for a Pond Permit. The Pond Permit Application Fee shall be set by a Resolution of the Town Council;~~

~~B. If the applicant desires to construct a pond, the applicant shall provide the following documentation to the Town Clerk as part of the Pond Permit Application;~~

~~1. A site plan containing the existing and proposed elevations for the entire project, site, the location of the proposed pond, a survey of the project site, said (survey to contain topographic data), tree locations and a plot plan.~~

~~2. Applicant must provide a written estimate of the quantity of fill which is proposed to be excavated, and a plan for disposal of said fill in accordance with this Section.~~

~~3. Any other documents that shall be required by the Town Engineer for purposes of demonstrating compliance with the performance standards of Section 1-5.27.5.A-F and completing a conclusive review of the proposed site.~~

- ~~C. If an applicant desires to fill a pond the applicant shall submit the following:
 - ~~1. A Pond Permit Application containing, at a minimum the following:
 - ~~a. A site plan of the existing pond including total area of the surface covered by water; depth of pond; and its proximity to structure;~~
 - ~~b. The estimated amount of fill to be used, as well as, the type of fill to be used;~~
 - ~~c. Name of contractor performing the fill activity;~~
 - ~~d. Any and all other information required by the Town Engineer.~~~~
 - ~~D. The Town Clerk shall not accept an application for a Pond Permit unless the applicant has submitted an original and two (2) copies of all required documents, and paid all required permit fees.~~
 - ~~E. In addition to a Pond Permit fee required herein the applicant must, apply for and obtain a Land Clearing Permit required by the Town's Code of Ordinances.~~~~
- ~~2. Review process. The following process for review shall apply to all pond permit applications presented to the Town of Malabar for consideration:
 - ~~A. The review process shall begin when the applicant has submitted to the Town Clerk all required documents as set forth in paragraph 1, where applicable, of this section and all applicable application fees have been paid.~~
 - ~~B. Within five (5) working days of the receipt of a completed application and application fee, the Town Clerk shall forward one copy each of the application and the required documentation to the Town Building Official and the Town Engineer. The Town Building Official shall review the application to insure the completeness and accuracy of the submitted information, and shall notify the Town Engineer of any inaccuracies or incompleteness.~~
 - ~~C. The Town Engineer shall review the application and, within two weeks of receipt of the application by the Town Engineer, the Town Engineer shall recommend that the application for a pond permit be:
 - ~~1. Approved;~~
 - ~~2. Approved, subject to certain conditions, or~~
 - ~~3. Denied.~~~~
 - ~~D. 1. If the Town Engineer recommends approval of the pond permit application, the application shall be forwarded to the Planning and Zoning Board for their consideration and action on the next available Planning and Zoning Board Agenda. The review procedures in sections 1-7.1 through 1-7.6 to the extent not inconsistent with this section shall apply. The Town Engineer and the Town's Planning and Zoning Board may impose reasonable conditions upon the applicant for a pond permit. Upon consideration and action by the Planning and Zoning Board the matter shall be forwarded to the Town Council for consideration and action. Upon approval by the Town Council of the pond permit application, the Building Official shall issue a pond permit to the applicant. The pond permit, however, shall contain the statement of the conditions which must be met by the applicant as set forth by the Town~~~~

~~Engineer, the Planning and Zoning Board, and approved by the Council. Upon acceptance of a pond permit which has stated condition, the applicant agrees to perform all conditions set forth in the pond permit.~~

~~2.. A pond permit shall not be issued if the Town Engineer recommends denial of the permit.~~

~~3. *Appeal process.* 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 pond permit, or to issue a pond permit upon conditions, may be appealed to Town Council, by the applicant, within ten days of the applicant receiving notice of the denial of his permit or approval with conditions.~~

~~B. To appeal a decision to Town Council, the applicant must submit, in writing, a notice to the Town Council of the intention to appeal the decision of the Town Building Official and request the matter to be placed on the Council's agenda. The Notice of Appeal shall contain the basis upon which the appeal is being made.~~

~~C. Upon receipt of a timely notice of appeal, the Town Clerk shall set the matter on the Town Council's agenda, said appeal to be heard by Council, within thirty (30) days of the date of notice of appeal. The Town Clerk shall submit all documentation relating to the application and permit to Council for review.~~

~~D. The Town Council shall review the issue and determine whether the decision of the Building Official shall be upheld, modified or reversed. All decisions of the Town Council are final.~~

~~E. Appeals of decisions of the Town Council may be taken to a court of competent jurisdiction.~~

~~4. *Definitions:*~~

~~A. *Allowable material* shall mean uncontaminated sand, soil or dirt or other items approved by the Town Engineer. Construction debris and yard waste shall not be considered allowable material.~~

~~B. *Conservation elevation (also control elevation)*. The lowest elevation at which water can be released through the control device and/or the designed normal water level of the pond.~~

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

~~D. *To fill* shall mean the adding of allowable material to alter the existing topography or characteristics of a pond.~~

~~E. *Project site*. That area where the pond shall be located and all other affected areas of the property.~~

~~F. *Wet season water table*. 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).~~

~~G. *Side slopes.* The ratio between the horizontal and vertical distance of the pond as measured from any point in the pond to the property line or finished floor of any improvement. (See Diagram "A")~~

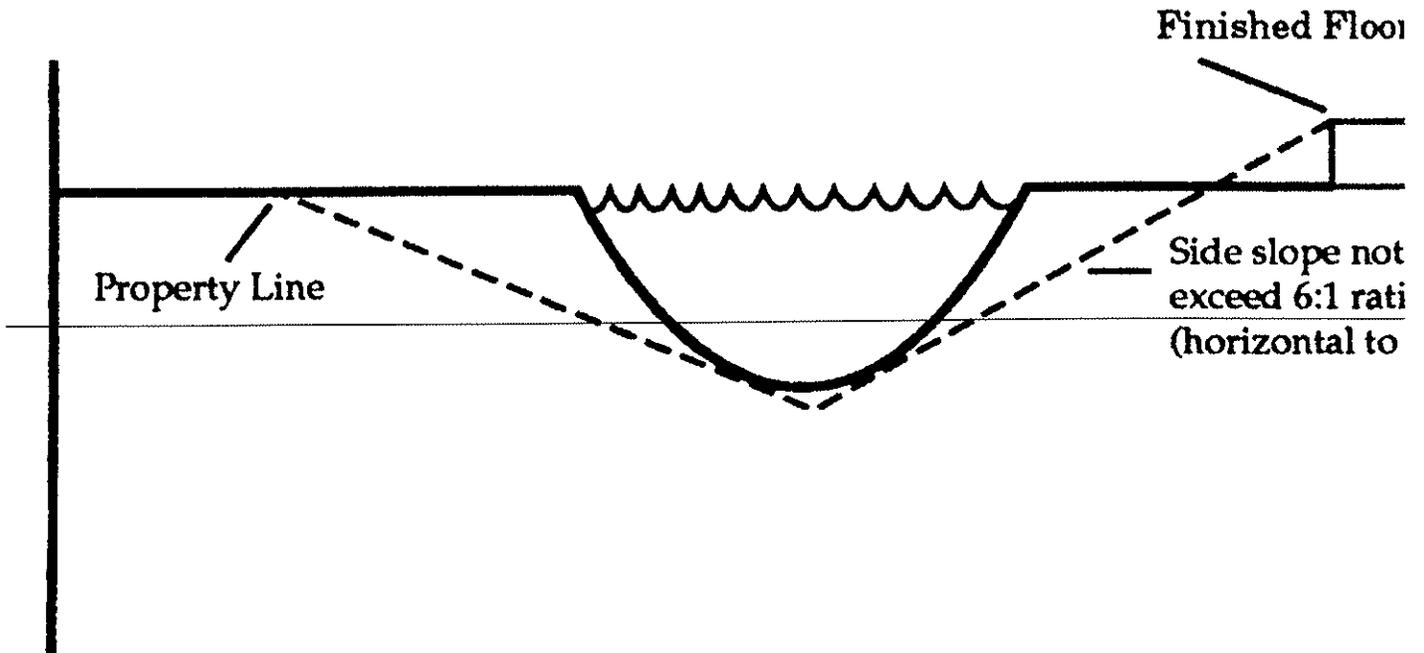


Diagram A

~~H. *Littoral zone.* That portion of the pond which is less than three (3) feet deep as measured from the conservation elevation.~~

~~I. *Pond.* Shall mean any excavation for the purpose of retaining water wherein the surface area is one quarter (1/4) acre in size or greater. Notwithstanding this definition of pond, all fill activity which reduces the surface area of an existing water body, regardless of size, may only be accomplished after a permit authorizing such activity is issued by the Town.~~

~~5. *Performance standards for the construction of a pond.*~~

~~A. *Setbacks.* Setbacks shall be measured from the conservation elevation and shall be set based on the following criteria:~~

~~1. Side slopes shall not exceed 6:1 (horizontal to vertical) as measured from existing grade at property lines or finished floor elevation at buildings or structures.~~

~~2. The setback from any right of way shall comply with the setback requirements of Table 1.3.3(E) of Article III of this Code. The setback in this subsection shall apply to all ponds, whether or not a permit is required for construction of such pond.~~

~~3. The setback from any abutting residentially zoned property line shall be forty (40) feet from such abutting property line otherwise setbacks shall be thirty (30) feet from abutting property line. The setback in this subsection shall apply to all ponds, whether or not a permit is required for construction of such pond.~~

~~4. The pond and any related site grading shall not adversely affect off-site drainage patterns.~~

~~B. Conservation elevation. The proposed design or conservation elevation shall be set at or near the wet season water table. Wells shall not be used to maintain a water level elevation above the seasonal water table and must have float control device installed when there is an outfall. The pond and discharge structure shall not draw the water table below its wet seasonal elevation.~~

~~C. No pond, regardless of size and regardless of whether or not a pond permit is necessary shall be greater than twelve (12) feet in depth as measured from the conservation elevation to the deepest point.~~

~~D. Littoral zone. A minimum of thirty (30) percent of the pond area shall be littoral zone and shall be planted with suitable wetland vegetation.~~

~~E. Disposal of excavated material. All excavated topsoil shall be disposed of on-site. All other excavated material, unless otherwise provided for herein, shall be disposed of on-site. Off site disposal of excavated material, except topsoil, shall be permitted under the following conditions:~~

~~1. The pond has a total surface acreage of less than one quarter (1/4) acre;~~

~~2. For any pond for which a pond permit is required the excavated material may be disposed of off site if a certification is presented to the Town by a Florida licensed professional engineer stating that the excavated material, except topsoil, can not be utilized on-site. In submitting the certification the engineer shall take the following into consideration:~~

~~a. The size of the site.~~

~~b. Available on-site retention.~~

~~c. The impact of on-site disposal will have on adjoining properties.~~

~~d. No excavated material from a pond which one quarter acre or larger in size may be sold; offered for sale or trade or bargained for anything of value.~~

~~3. Excavated material which is unsuitable for use on the site because of high organic content (muck) may be disposed of off-site if approved by the Town Engineer.~~

~~F. Discharge structures shall be designed to limit the maximum discharge rate to the pre-development discharge rate. The discharge velocity shall be controlled so as to not erode or cause scouring of existing or proposed facilities. Structures shall only discharge to a point of legal positive out-fall.~~

~~6. *Completion.*~~

~~A. Pond permit 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 pond permit extension may be appealed to Town Council in the same manner set forth in paragraph 3 of the section.~~

~~7. *Failure to complete.*~~

~~A. A fine up to two hundred fifty dollars (\$250.00) per day may be assessed against any applicant who fails to complete a pond within the six month period of the permit.~~

~~B. Further, the Town, at its discretion, may require the applicant to restore the land to the condition prior to obtaining a pond permit if the pond is not completed within the allotted time.~~

~~C. It shall be the obligation of the applicant to notify the Town of completion. The pond shall be complete only after a final inspection by the Town Building Official.~~

~~8. *Standards for fill activities:*~~

~~A. No pond shall be filled if, in the opinion of the Town Engineer, the filling of the pond will adversely effect on and off-site drainage; promotes soil erosion on or off-site; or adversely affects the natural environment.~~

~~B. Before any pond shall be filled, approval from outside governmental agencies having jurisdiction over filling of water bodies must be submitted to the Town.~~

"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.

1. **Definitions.** As used in this section the following words and phrases shall have the following definition:

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, pipe, gypsum wallboard and lumber, metal, asphalt paving material, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation or maintenance of a structure.

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. For purposes of complying with applicable set-backs a DWF shall be considered a structure.

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.

E. *Excavated Material.* Shall mean the material, not top soil, removed from the project site. 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.

F. *Freeboard.* Freeboard is the safety feature to be incorporated into the design for all ponds. Freeboard is the added height (berm) of the soil surface over the design water surface elevation.

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

H. *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.

I. *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.

J. *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 or depth of an existing pond, regardless of size, may only be accomplished after a permit authorizing such activity has been issued. For purposes of complying with applicable set-backs a Pond shall be considered a structure.

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

L. *Water Source.* Shall mean the source of the water filling the DWF or pond, included but not limited to ground water table, wells, and springs.

2. Permits for Decorative Water Features and Ponds.

A. *Decorative Water Feature (DWF).* Any person wishing to construct, alter, or to fill a DWF within the Town of Malabar must, as a precondition, apply for 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 – i.e., a sketch, property survey, aerial survey, plat map; a professional signed and sealed survey is not required.

a. Indicate on sketch the location, size, dimension and depth of DWF to be constructed OR filled

- b. Existing structures shown on drawing (including setbacks from all property lines)
- c. 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.
- d. Location of well(s) and drain field(s) within 75 feet of project site.
- e. Evidence that the DWF project site is not in a wetland. This could be a letter from Florida Department of Environmental Protection.
- f. Plan for use of excavated material or written statement on method of disposal. If being used on site, show on sketch where materials will be used or type of material to be used for filling the DWF.
- g. When filling in a DWF indicate the type of material to be used and the method of compaction.
- h. 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, alter, or to fill an existing pond within the Town of Malabar must, as a precondition, apply for a pond permit. In order to obtain a pond permit, the applicant is required to submit an original and (2) sign/sealed engineered Site Plans with the following information shown:

1. Boundary of property will be shown by heavy line- i.e. sketch, property survey, aerial survey, plat map and topography.
2. Proposed project site location, dimensions and depth of Pond to be constructed or filled showing setbacks from property lines.
3. Dimensions to show the side slope elevations.
4. Existing structures shown on Site Plan (including setbacks from all property lines)
5. An identification of trees in Pond project site with a dbh (dimension at breast height) of 8" or greater
6. Location of well(s) and drain field(s) within 75 feet of project site.
7. Evidence that the pond project site does not affect wetlands. This could be a letter from Florida Department of Environmental Protection.
8. Site Plan to show use of top soil and estimated volume of excavated material at the project site. Show on site plan where material will be used including engineered estimates of post construction topography. If material is not useable, a letter from a Florida licensed 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.
9. When filling in a pond, a written explanation on the type of material to be used to fill the pond and the method of compaction.
10. Stormwater drainage / retainage and overflow plan. Indicate with arrows on site plan how overflow water from pond will drain.

3. 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. Ponds should have a minimum of one foot of freeboard or minimum amount determined by Florida licensed engineer to keep water from washing over the sides of the pond due to wave action or flooding.
- D. A Pond area with high amounts of clay is desirable for retaining water. 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. The decision to install a pond liner shall be that of the applicant.

4. 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 review. The Building Official may visit the project site to verify information.
- 2. If all information is compliant 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 approves the permit with conditions, the applicant may appeal the decision as stated in Section 9.
- 4. If the Building Official denies the permit for non-compliance, the applicant may appeal the decision as stated in Section 9.

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 review compliance. The Building Official may visit the project site to verify information but it is not mandatory.
2. If all information is compliant 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 approve 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 Building Official or Town Engineer approves the permit with conditions, the applicant may appeal the decision as stated in Section 9.
4. If the Building Official or Town Engineer denies the permit for non-compliance, the applicant may appeal the decision as stated in Section 9.

5. Performance Standards for the construction of a Decorative Water Features and Ponds.

- A. Setbacks shall be as stated in Table 1-3.3.A pertaining to structures for the applicable zoning category.
- 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. Uses of Excavated material. All excavated topsoil shall remain on site. All other excavated material, unless otherwise provided for herein, shall be used 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 excavated material may be disposed of offsite if a certification is presented to the Town by a Florida licensed 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 uses may have on adjoining properties.
 - d. No excavated material may be sold or offered to sale or trade or bargained for anything of value.
 - e. Excavated material for the purpose of mining is prohibited.
 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. Discharge structures shall only discharge to a point of legal positive out-falls.

6. 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 180 days from the date of issue.
- B. An extension may only be granted once upon good cause after review and approval by the Town Council. Any request for extension shall be made in writing and filed with the Building Department prior to the expiration of the permit. The request for extension will be put on the next available Town council agenda. The Town council may entertain an extension filed after the existing permit expired for good cause shown; however, no request for extension shall be entertained by the Town Council which is filed 30 days or greater from the expiration of the permit.
- C. Refusal by the Town Building Official to issue a decorative water feature or pond permit extension may be appealed to the board of Adjustment in the same manner set forth in Section 9 below.
- D. The routine maintenance and upkeep of a DWF or Pond will not require a permit.

7. 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 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. Failure to Complete Construction of Decorative Water Features or Ponds

- A. A fine of up to \$250 per day may be assessed against any applicant who fails to complete a DWF or pond within the six (6) month period. A fine may be levied with Town Code.
- 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.

9. Appeal process for Decorative Water Features and Ponds.

If an applicant's permit is approved with conditions or denied, the applicant shall have the right to appeal such conditions or denial to the Board of Adjustment under the following procedure:

- A. An appeal made to Board of Adjustment by the applicant shall be made within ten business days of the applicant receiving notice of the approval with conditions or denial of the permit.
- B. To appeal a decision to the board of Adjustment, the applicant must submit, in writing, a notice to the Board of Adjustment of the intention to appeal the decision of the Town Engineer or Building Official and request the matter to be placed on the Board'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 Board of Adjustment's agenda within forty five (45) days of the date of notice of appeal. The Town Clerk shall submit all documentation relating to the application and permit to Board for review.
- D. The Board of Adjustment 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 Board of Adjustment are final and there shall be no rehearing entertained. The proceedings before the board of Adjustment shall be quasi-judicial.
- E. Appeals of decisions of the Board of Adjustment may be taken to a court of competent jurisdiction within 30 days of the rendition of the decision by the board of Adjustment."

Section 2. Repeal. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed and all Ordinances or parts of Ordinances not in conflict herewith are hereby continued in full force and effect.

Section 3. Severability. In the event a court of competent jurisdiction shall hold or determine that any part of the this ordinance is invalid or unconstitutional, the remainder of the is Ordinance shall not be effected and it shall be presumed that the Town Council, Town of Malabar did not intend to enact such invalid or unconstitutional revision. It shall further be assumed that the Town Council would have enacted the remainder of this Ordinance without said invalid and unconstitutional revision, thereby causing said remainder to remain in full force and effect.

Section 5. Incorporation. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida and it is herby provided that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

Section 6. Effective Date. This Ordinance shall become effective immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council member _____
_____. The motion was seconded by Council member _____ and, upon
being put to a vote, the vote was as follows:

- Council Member Carl Beatty _____
- Council Member David White _____
- Council Member Steven (Steve) Rivet _____
- Council Member Jeffrey (Jeff) McKnight _____
- Council Member Marisa Acquaviva _____

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida
this ___ day of _____, 2012.

TOWN OF MALABAR
BY: _____
Mayor Phillip R. Crews
Council Chair

Planning & Zoning:
First Reading:
Second Reading:

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

(seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3

Meeting Date: September 26, 2012

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

SUBJECT: Light Industrial Zoning

BACKGROUND/HISTORY:

At the meeting on August 22, 2012, the Board wanted to review the documents from past P & Z meetings, due to the fact this Agenda Item has not been discussed in awhile. Staff has provided all the documentation listed below for Board review and discussion.

ATTACHMENTS:

- Portion of P & Z minutes 07/27/2011
- Portion of Town of Malabar Code Book-Article III Section 1-3.1
- District Provisions Table 1-3.2 Land Use By Districts
- Agenda Report Item 5 from July 27, 2011.
- Memo from Debby Franklin # 2011-TC/T-088
- Melbourne, West Melbourne, Cocoa, Indian Harbour Beach- definitions for "Light Industrial".
- Submittal from Krieger
- Submittal from Wilbur
- Future land Use Map will be provided on overhead projector

ACTION OPTIONS:

Discuss and Recommend to Council

5. Definition of "Light Industrial"

Exhibit: Agenda Report No.5
Recommendation: Discussion

Wilbur stated we should change all CL to LI. He liked IHB definition and add some of W Melb suggested uses: refrigerated storage trucks, bakeries, fruit packing, body shops, paint shops, upholstery shops and the like,

Krieger stated that LI could be added to CL. Wilbur reviewed the maps and the CL is all along I95 and has no access except Booth Road. No access – find me a flower shop that will open back in there.

CL does not fit that area along I95 or the railroad. Those are the only places we have it. Wilbur read the IHB definition. Then add some of the W Melb uses as listed above. You could put your flower shop to that. Krieger then read the Town's definition for IND.

Wilbur said you have 40 potential parcels along I95. We have had numerous businesses that want to open shop and we have no place for them. Krieger is still suggesting merging the two, CL/LI and blend the two uses. Abare said the use is typically along I95 and the RR. Wilbur said it makes more sense to have this separate use.

Wilbur read from Code on CL uses: Wilbur said Limited Commercial person is going to want roadside visibility. A barber shop could be picked up R/LC. But you would have to have a residential component.

Krieger said if Foundation Park builds up, they may want to go there. Abare said that off of R. Conlon Blvd. in Palm Bay is industrial. Wilbur said a lot of the Malabar residents are blue collar workers and would love to have a place for their business. Abare asked about trade schools – they would not like this area. Wilbur said they would if they were learning tractor trailer driving. Wilbur doesn't think they should be merged.

Ryan left at 9:25.

Wilbur said there is CL on the proposed changes to maps on US 1 and those should remain; if you had blended uses you could wind up with LI on Highway 1, which they don't want.

Reilly tended to agree with Krieger and thinks they should be blended. Krieger read from Code on CL – remove the sections dealing with service – Wilbur said it then opens up Highway 1 to also use that. Ritter said why wouldn't you have LI on US1. Wilbur said it protects Highway 1 from Industrial types of uses. Ritter said what is the main difference between the two. Abare said there are certain businesses that you don't want on Highway 1. Stick those uses in LI and put it over-by I95. Contractor that wants to store material or automotive repair in LI.

Ritter asked Morris about triangle. Morris explained the PUD. Their goal is to develop the entire site. They will have a concept before they will come in. Reilly wanted to finish this discussion by 10PM. Ritter said Ryan had already left.

Summary: Reilly asked Krieger to draft a couple sentences to the definition of CL to cover the LI uses. Reilly asked Wilbur to put all his LI uses into a document for next meeting.

K.

CL "Commercial Limited." The CL district is established to implement comprehensive plan policies for managing limited commercial development accessible to major thoroughfares near residential neighborhoods. Such development is intended to provide essential household services in locations highly accessible to residential areas. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods. Such shops generally cater to the following markets:

- Neighborhood residential markets within the immediate vicinity as opposed to city-wide or regional market; or

- A specialized market with customized market demands.

- A Malabar Vernacular Style is required for all development along arterial roadways.

Areas designated for limited commercial development are not intended to accommodate large-scale retail sales, services, and trade activities, generally serving a city-wide or regional market. Such stores would usually differ from limited commercial shops since the former would usually require a larger floor area, carry a relatively larger inventory and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposable containers and/or providing drive-in facilities. No residential uses shall be located in the limited commercial district.

L.

CG "Commercial General." The CG district is established to implement comprehensive plan policies for managing general commercial development. The general commercial district is designed to accommodate general retail sales and services. Sites designated for CG zoning shall be located in highly accessible areas adjacent to major thoroughfares which possess necessary location, site, and market requirements required by general commercial land use activities.

The general commercial district shall also accommodate commercial trades in strategically designated areas as defined in the conditional use criteria. Development standards within the land development code shall require that site plans incorporate amenities necessary to prevent

potential adverse effects on the traffic circulation system, public services, and residential development within the vicinity.

The general commercial district is not intended to accommodate manufacturing, processing, or assembly of goods, sales and services of heavy commercial vehicles and equipment, or related services or maintenance activities; warehousing; uses requiring extensive outside storage; or other activities or trades which may generate nuisance impacts, including glare, smoke, or other air pollutants, noise, vibration or major fire hazards. Finally, no permanent residential housing shall be located within the general commercial district.

The location and distribution of general commercial activities shall be determined based on the following considerations:

- Trip generation characteristics, impact on existing and plan transportation facilities and ability to achieve a functional internal circulation and landscaped off-street parking system;
 - Location and site requirements based on specific needs of respective commercial activities, their market area, anticipated employment generation, and floor area requirements;
 - Compatibility with and impact on other surrounding commercial activities;
 - Relationship to surrounding land uses and natural systems; and
 - Impact on existing and planned community services and utilities.
- A Malabar Vernacular Style is required for all development along arterial roadways.

M.

IND "Industrial." The industrial district is established to implement comprehensive plan policies for managing industrial development. In locating industrial districts, consideration shall be directed to selecting sites accessible to rail facilities, terminal facilities, major arterials, labor markets, and necessary urban services. Industrial districts shall not include residential activities. However, residence for night watchman or custodians whose presence on industrial sites is necessary for security purposes may be approved as an accessory use. Industrial districts shall be accessible to major thoroughfares and shall be buffered from residential neighborhoods. Any additional industrial zoning shall be consistent with the comprehensive plan, including criteria for siting industrial activities, including but not limited to, policy 1-1.3.1, policy 1-1.3.2, and policy 1-1.3.3.

TABLE 1-3.2. LAND USE BY DISTRICTS



	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
RESIDENTIAL USES														
Duplex					P	P					P			
Mobile Homes							P							
Multiple Family Dwelling					P	P					P			
Single Family Dwellings	P	P	P	P	P	P	P				P			
COMMUNITY FACILITIES														
Administrative Services (Public and Not-for-Profit)								P	P	P	P		P	
Child Care Facilities								C			C		C	
Churches, Synagogues and Other Places of Worship	C	C	C	C	C	C		P, A ¹	P	P	P		P	
Clubs and Lodges (Not-for-Profit)									P	P				
Cultural or Civic Activities								P	P	P	P		P	
Educational Institutions								C, A ¹					C	
Golf Course Facilities	C													
Group Homes					C	C		C			P		C	
Hospital and Extensive Care Fa- cilities								C					C	
Nursing Homes (Including Rest Homes and Convalescent Homes)					C	C		C			C		C	
Protective Services					C	C	C	C	C	C	C	C	C	
Public Parks and Recreation	C	C	C	C	C	C	C	C	C	C	C	C	C	
Public and Private Utilities	C	C	C	C	C	C	C	C	C	C	C	C	C	



	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
AGRICULTURAL ACTIVITIES														
Noncommercial Agricultural Operations	P													
Wholesale Agricultural Activities	P													
Commercial Stables	C													
COMMERCIAL ACTIVITIES														
Adult Activities										C				
Bars and Lounges										C				
Bed and Breakfast											P ¹			
Business and Professional Offices								P	P	P	P	P	P	
Enclosed Commercial Amusement										P				
Funeral Homes									P	P	C			
General Retail Sales and Services										P				
Hotels and Motels										P				
Limited Commercial Activities									P	P	P			
Marine Commercial Activities										C*				
Medical Services								P	P	P	P			
Mini Warehouse/Storage									C	P		P		
Parking Lots and Facilities								P	P	P	P		P	
Retail Plant Nurseries									P	P	P			
Restaurants (Except Drive-Ins and fast food service)									P	P	P			
Restaurants (Drive-ins)										P				
Service Station, Including Gasoline Sales													C*	
Trades and Skilled Services										C*			C*	
Veterinary Medical Services								P	P	P	C	P		
Vehicular Sales and Services										C*		P		
Vehicular Services and Maintenance													P	
Wholesale Trades and Services										C*		P		
INDUSTRIAL ACTIVITIES														
Kennels													C	
Manufacturing Activities													P	
Manufacturing Service Establishments													P	
Vehicle and Other Mechanical Repair and Services										C*			P	

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
Warehouse, Storage and Distribution Activities												P		
WATER DEVELOPMENT NONCOMMERCIAL ACTIVITIES														
Noncommercial piers, boat slips, and docks														C



C = Conditional Use

P = Permitted Uses

A = Accessory Use

* = These uses are permitted only on sites abutting Babcock Street, US 1, and West Railroad Avenue.

1 = Allowing up to 1,000 square feet of a church or educational institution for the housing of a caretaker or security guard serving the church or educational institution. No such use shall be allowed unless administrative approval is granted by the Town.

¹ Any Bed and Breakfast which is proposed to have more than five (5) living quarters shall only be approved as a conditional use in accordance with Article VI of the Land Development Regulations.

(Ord. No. 94-4, § 3, 4-3-95; Ord. No. 97-3, § 2, 3-17-97; Ord. No. 05-01, § 1, 3-7-05; Ord. No. 06-19, § 1, 1-11-07)

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 5
Meeting Date: July 27, 2011

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Definition of Light Industrial

BACKGROUND/HISTORY:

This item is continued from last meeting from the discussion of the proposed land use changes on the FLUM. The 500' strip of land to the west of the railroad tracks is currently designated CG. The P&Z Board proposed making it CL. At the last meeting, the Board read from District II and District III on what such a designation allows. The Board directed staff to provide a definition for "light Industrial" which would more likely match what the Board intended for this area.

If the Board supports creating a new land use and zoning classification as "Light Industrial" (LI) staff would include the new designation in the ordinance proposing the other changes to the FLUM. The proposed recommendations to Council regarding the FLUM can all be dealt with in one ordinance, both maps and text.

We have received definitions from four municipalities and may have more before the P&Z meeting on July 27, 2011.

Such a use may fit better along the portion of the west side of the railroad tracks and in some areas that abut I-95 off of Babcock Street.

ATTACHMENTS:

- Memo 2011-TC/T-088 with attachments

ACTION OPTIONS:

Continued Board work towards a recommendation to Council.

TOWN OF MALABAR

MEMORANDUM

Date: July 19, 2011 2011-TC/T-088
To: Planning & Zoning Board
From: Debby K. Franklin, Town Clerk/Treasurer
Ref: Definition of Light Industrial

At the last P&Z meeting, the Board requested a definition for Light Industrial Zoning District that other communities use.

I was able to get one from the City of Melbourne and it reads as follows:
Area intended to have close proximity to rail, air or major roadway facilities and which can serve intensive commercial uses and light manufacturing; warehousing, distribution, wholesaling and other industrial functions of the city and the region. Restrictions herein are intended to minimize adverse influences of the industrial activities on nearby non-industrial area and to eliminate unnecessary industrial traffic through non-industrial areas.

West Melbourne's is very similar. I have attached it as it also lists the principal uses..

Cocoa considers Light Industrial as M1 (Light Manufacturing) and C-W (Wholesale Commercial). I have attached the two pages from Cocoa's Code for your review.

The City of Indian Harbor Beach has a similar definition as Melbourne and West Melbourne but provides specific use information that seems to coincide with what P&Z was discussing at the last meeting. I have attached one page from their Code.

Melbourne's definition of Light Industrial

M-1 — Light Industrial District. The provisions of this district are intended to apply to an area located in close proximity to rail, air or major roadway facilities and which can serve intensive commercial uses and light manufacturing, warehousing, distribution, wholesaling and other industrial functions of the city and the region. Restrictions herein are intended to minimize adverse influences of the industrial activities on nearby non-industrial areas and to eliminate unnecessary industrial traffic through non-industrial areas.

W. Melb

**West Melbourne, Florida, Code of Ordinances >> Subpart B - LAND DEVELOPMENT REGULATIONS
>> Chapter 98 - ZONING >> ARTICLE III. - DISTRICTS >> DIVISION 12. - M-1 LIGHT INDUSTRIAL AND
WAREHOUSING DISTRICT >>**

[Copy link to clipboard](#)

[Sec. 98-521. - Intent.](#)

[Sec. 98-522. - Principal uses and structures.](#)

[Sec. 98-523. - Accessory uses and structures.](#)

[Sec. 98-524. - Conditional uses.](#)

[Sec. 98-525. - Prohibited uses and structures.](#)

[Sec. 98-526. - Lot and structure requirements.](#)

[Secs. 98-527—98-560. - Reserved.](#)

Sec. 98-521. - Intent.

The M-1 light industrial and warehousing district is intended to apply to an area located in close proximity to transportation facilities and which can serve manufacturing, warehousing, distribution, wholesaling and other industrial functions of the city and the region. Restrictions in this division are intended to minimize adverse influences of the industrial activities on nearby nonindustrial areas.

(Ord. No. 45, art. VI, § 9, 8-4-1970; Ord. No. 86-3, § 5, 11-8-1984; Ord. No. 92-12, §§ 1, 2, 7-7-1992; Ord. No. 95-20, § 4, 9-5-1995)

Sec. 98-522. - Principal uses and structures.

In the M-1 light industrial and warehousing district, the following uses and structures are permitted, provided any use or group of uses that is developed, either separately or if developed as a unit with certain site improvements shared in common, is developed on a site of five acres or less:

- (1) Warehousing and wholesaling in enclosed structures, including refrigerated storage.
- (2) Service and repair establishments, dry cleaning and laundry plants, business services, printing plants, welding shops, taxidermists and similar uses.
- (3) Light manufacturing, processing and assembly, such as precision manufacturing, electrical machinery, instrumentation, bottling plants, dairy products plants, bakeries, fruit packing and similar uses.
- (4) Building materials supply and storage; contractors' storage yards except scrap materials. Outside storage areas shall be effectively walled on all sides to avoid any deleterious effect on adjacent property.
- (5) Automotive, major recreational equipment and mobile home sales, storage and repair establishments, such as body shops, dry docking facilities, tire recapping, paint shops, upholstery shops and the like.
- (6) Freight handling facilities; transportation terminals.
- (7) Vocational and trade schools, including those of an industrial nature.
- (8) Veterinary hospitals and clinics.
- (9) Telephone switching stations, electrical, substations and similar operational equipment used by public utilities. Where such a use is housed in a new structure specifically constructed for such use, the following shall apply:
 - a. Setbacks other than required elsewhere in this district:
 1. Front: Ten feet from the property line.
 2. Rear: Ten feet from the property line.
 3. Side, interior: None, except where the use borders a single-family residential district, in which case the setback shall be ten feet.
 4. Side, corner: Ten feet from the property line.
 - b. Landscaping: The site shall be sodded, and a continuous hedge of ligustrum, viburnum or eleagnus, a minimum of five feet in height upon planting, shall be provided around the entire perimeter of the site. An automated sprinkler system shall be installed to provide adequate irrigation for all plant materials on the site.
 - c. Minimum lot size: 1,200 feet; minimum lot width: 30 feet; minimum lot depth: 40 feet.
 - d. Maximum building size: 200 square feet.

Cocoa

1 of 2

more inoperative motor vehicles unless where otherwise specifically permitted but does not include uses established entirely within enclosed buildings.

LARGE RETAIL PROJECT. Any new commercial retail project, whose total gross building area equals or exceeds sixty thousand (60,000) square feet, specifically mercantile uses, and/or shopping center uses. For the purpose of determining building area, multiple buildings located on a single lot and closer than twenty (20) feet together shall be considered one (1) building.

LIGHT FIXTURE, FULL-CUTOFF. A light fixture designed such that no light is projected at or above a ninety (90) degree plane running through the lowest point on the fixture where the light is emitted; and less than ten percent (10%) of the rated lumens are projected between ninety degrees (90°) and eighty degrees (80°).

LIGHT FIXTURE, OUTDOOR. An outdoor illuminating device, reflective surface, lamp and other device, either permanently installed or portable, which is used for illumination or advertisement. Such device shall include, but is not limited to, a searchlight, spotlight and floodlight for:

1. Buildings and structures;
2. Recreational areas;
3. Parking lot lighting;
4. Landscape lighting;
5. Billboards and other signs;
6. Street lighting;
7. Product display lighting;
8. Building overhangs and open canopies.

LIGHT FIXTURE, SEMI-CUTOFF. A fixture that projects no more than five percent (5%) of the rated lumens above a ninety (90) degree plane running through the lowest point on the fixture where the light is emitted; and less than twenty percent (20%) of the rated lumens are projected between ninety degrees (90°) and eighty degrees (80°).

LIGHT MANUFACTURING USES (INCLUDING INCIDENTAL). This shall include light assembly and fabrication that is predominantly for retail sales on premises. This use shall be compatible with the general character of the area and the surrounding uses. Off-street parking and loading requirements shall be adhered to as indicated in article XII, section 1, (b), (8) of the Zoning Code. Such light manufacturing uses shall not create any nuisance in the form of noise, dust, smoke, or odor and shall be subject to the Performance Standards as outlined in article XXV. This definition shall apply to the Central Business District only, given the special character of the area.

LIGHT SOURCE. A complete lighting unit consisting of a lamp and all necessary mechanical, electrical and decorative parts, such as reflectors (mirrored enclosures surrounding the lamp), refractors (glass or plastic enclosures surrounding the lamp) and lenses, designed to direct light rays.

LIVING AREA. See Floor Area.

LOADING SPACE, OFF-STREET. Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space (refer to article XII).

LOT. For purposes of this ordinance, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of:

- (a) A single lot of record;
- (b) A portion of a lot of record;
- (c) A combination of complete lots of record, and portions of lots of record, or of portions of lots of record;
- (d) A parcel of land described by metes and bounds; provided that in no case of division of combination shall any residual lot or parcel be created which does not meet the requirements of this ordinance.

LOT COVERAGE. The percentage of the lot or parcel of land that is covered or occupied by all principal and accessory structures. Fences, driveways, swimming pools, pavers, and decks less than thirty (30) inches in height shall not be included in the computing of lot coverage.

2/2 Cocoa



Sec. 15. - District and intent—C-W, Wholesale Commercial District.

The provisions of this district are intended to apply to an area in close proximity to transportation facilities and which can serve warehousing, distribution, wholesaling and other related functions of the city and region.

(A) PRINCIPAL USES AND STRUCTURES.

- (1) All uses allowed in section 12, general commercial district except uses specifically prohibited.
- (2) Warehousing and wholesaling in enclosed structures, enclosed refrigerated storage.
- (3) Service and repair establishments, dry cleaning; and laundry plants, business services, printing plants, welding shops, taxidermists and similar uses.
- (4) Building materials supply and storage, contractor's storage yard, except scrap materials. Outside storage areas shall be effectively walled on all sides to avoid any deleterious effect on adjacent properties.
- (5) Automotive, major recreational equipment, mobile home and marine, storage and repair establishments such as body shops, tire recapping, paint shops and the like.
- (6) Freight-handling facilities, transportation terminals.
- (7) Vocational and trade schools, including those of an industrial nature.
- (8) Veterinary hospitals and clinics.
- (9) *Reserved.*
- (10) Low intensity industrial uses, such as the manufacturing and assembly of various items, which include scientific, electrical, optical and precision instruments or equipment, within an enclosed structure.
- (11) Television dish receivers and antennae as regulated by article XIII, section 2.1, Television dish receivers and antennae.
- (12) Electronic communication/transmission facilities and exchanges.
- (13) Service stations, subject to the provisions of article XI, section 12, C-G (General Commercial District), subsection (C)(2).
- (14) Retail automotive gasoline/fuel sales as an accessory use to convenience stores subject to the following provisions:
 - a. Access: Convenience stores selling gasoline/fuel shall be located on arterial roadways or on corner lots at intersections of collector roads or roads of higher functional classification (as identified in the City of Cocoa Comprehensive Plan). No driveway or point of access shall be permitted within one hundred (100) feet of an intersection of collector roads or roads of higher functional classification.
 - b. Minimum street frontage: One hundred fifty (150) feet on each abutting street.
 - c. Location of facilities: Gasoline/fuel pumps and other service island equipment shall be set back at least twenty (20) feet from all property lines, fifteen (15) feet from any building, and one hundred (100) feet from the nearest residentially zoned land. In addition, pumps and other service island equipment shall not interfere with the safe and orderly movement of traffic in parking and other vehicular use areas.
 - d. Tank storage: Underground storage is required for all receptacles for combustible materials in excess of two hundred (200) gallons.



(B) ACCESSORY USES AND STRUCTURES.

- (1) Customary accessory uses clearly incidental and subordinate to the principal use and in keeping with the character of the district.

(C) SPECIAL EXCEPTIONS.

- (1) Planned industrial development on a minimum sized parcel of five (5) acres, subject to the conditions set forth in article XIII, section 3, Supplementary District Regulations.
- (2) Any other use in keeping with the character of the district.
- (3) Churches, rectories, parish houses, temples, synagogues, and associated buildings, including educational and recreational facilities.
- (4) Mortuaries and funeral homes.
- (5) Security mobile home or facility located upon public or private property.
- (6) Half-way houses.
- (7) Telecommunication towers and antennas, pursuant to article XIII, section 26

(D) PROHIBITED USES AND STRUCTURES.

- (1) Residential uses including hotels and motels.
- (2) Automobile wrecking yards, junkyards, scrap and salvage yards for secondhand building material.
- (3) Any use deemed objectionable by the standards established in Article XIV, Performance Standards.
- (4) Any other use not specifically or provisionally permitted herein.

Art. XII, § 7

INDIAN HARBOR BEACH CODE

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.

Supp. No. 38

1320.2

APPENDIX A—ZONING

Art. XII, § 9A

IHB 1081

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

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

(7) Minimum yard requirements:

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

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

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

Supp. No. 38

1320.3

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

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: September 26, 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 13, 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.

As a review staff has provided previous agenda item reports and information helpful in this discussion and review process.

ATTACHMENTS:

- Review Packet- Information (25 pages)
- 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

REVIEW PACKET INFORMATION FROM:

P&Z- COUNCIL-MEMO'S

ATTACHMENTS:

- P&Z Agenda Item 2 April 27, 2011
- Ordinance No. 2011-38 P&Z Review 4/27/11
- Memo from Attorney Bohne dated 5/3/2011 Ref: Ord. 2011-38
- Portion of Approved RTCM Min. May 5,2011
- RTCM Agenda Item 4 May 16, 2011
- Portion of Approved RTCM June 6, 2011
- Memo from Debby Franklin dated July 5, 2011 #2011-TC/T-079
- Portion of Approved RTCM Min. June 20, 2011
- P&Z Agenda Item 3 July 13,2011
- Ordinance No. 2011-38 (modified after 5/16/11 RTCM Meeting)
- Memo from Debby Franklin dated July 19, 2011 #2011-TC/T-085
- Portion of Approved P&Z Min. July 13, 2011
- Portion of Approved P&Z Min. July 27, 2011

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: April 27, 2011

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

SUBJECT: Code Amendment for Adult Care Facility (Ord 2011-38)

BACKGROUND/HISTORY:

During the Council discussion of the proposed Assisted Living Facility Site Plan on March 7, the Mayor pointed out that the current Code did not relate to Assisted Living Facilities and the language in the Code was out of date. Action on the Site Plan and CUP was tabled until an ordinance could be adopted. Council directed the Town Attorney to draft an ordinance to update the regulations in our Code to pertain to Adult Care Facilities. Attorney Bohne drafted an ordinance. The Mayor met with the applicant and the property owner and discussed the conditions. Since the April 13 P&Z meeting had been committed to a joint meeting this is the next date for the review of the ordinance by P&Z. Once the P&Z Board makes their recommendation on the ordinance it will go to Council for action on May 16, 2011. Then the Site Plan and CUP application will be considered by Council.

I did do historical research on this type of facility within OI zoning and the intent of the earlier Code and the Comp Plan was to provide for this type of institutional use which was considered differently than independent residential use. I have not discovered why the ordinance was not included in the codification by Municode.

ATTACHMENTS:

Ordinance 2011-38
Letter dated 3/28/11 from Mr. Plata

ACTION:

Recommendation to Council on Ordinance 2011-38

ORDINANCE 2011-38 P&Z Review 4/27/11

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; DELETING SECTION 1-2.6.B. 8, LAND USE CLASSIFICATIONS; PROVIDING FOR ADULT CARE FACILITIES; AMENDING SECTION 1-3.1.I DISTRICT PROVISIONS; PROVIDING FOR LIMITED RESIDENTIAL USES IN THE OI (OFFICE/INSTITUTIONAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; REMOVING REFERENCES TO GROUP HOMES AND PROVIDING FOR ADULT CARE FACILITIES; AMENDING TABLE 1-6.1 (B) DELETING REFERENCES TO GROUP HOMES AND MAKING PROVISIONS FOR ADULT CARE FACILITIES; AMENDING SECTION 1-9.2.12; PROVIDING FOR ADULT CARE FACILITIES; ESTABLISHING PARKING REQUIREMENTS FOR ADULT CARE FACILITIES; DELETING THE DEFINITION OF GROUP CARE FACILITY IN ARTICLE XX; AMENDING TABLE 1-3.3.A PROVIDING FOR A MINIMUM SQUARE FOOTAGE FOR SINGLE FAMILY HOMES IN THE RM-6 ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, as follows:

Section 1. Sections 1-2.6.B.8 is hereby deleted. A new section 1-2.6.B.2 is added to read as follows:

"2. Adult Care Facilities. Any facility meeting the criteria and requirements of Long Term Care Facilities, Part I of Chapter 400; Assisted Living Facilities, Part III of Chapter 400; Adult Day Care Centers, Part V of Chapter 400; Adult Family-Care Homes, Part VII of Chapter 400; Health Care Facilities, Chapter 408 and Continuing Care Facilities under Chapter 651 of the Florida Statutes, as amended from time to time."

(Note to Codifier: Section 1-2.6.B shall be renumbered to accomplish the changes herein).

Section 2. Section 1-3.1.I is amended to read as follows:

• • •

"1. OI "Office-Institutional." The OI district is established to implement comprehensive plan policies for managing office-institutional development. This district is designed to

accommodate businesses and professional offices together with institutional land uses on sites which:

- Have accessibility to major thoroughfares;
- Have potential to be served by a full complement of urban services;
- Contain sufficient land area to accommodate good principles of urban design, including sufficient land area to provide adequate landscaping and buffers to separate existing as well as potential adjacent land uses of differing intensities;
- Accommodate only office buildings and institutional land uses and shall expressly exclude residential uses (except those uses identified as Adult Care Facilities in 1-2.6.B.2), general retail sales and services, warehousing, and outside storage; and
- Frequently serve as a transition area which buffers residential uses located in one area from a nearby area which accommodates uses of a higher intensity.
- A Malabar Vernacular Style is required for all development along arterial roadways.”

• • •

Section 3. Table 1-3.2 of Section 1-3.2 of the Malabar Land Development Code is amended as follows:

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
COMMUNITY FACILITIES														
<u>Adult Care Facilities</u>					<u>C</u>	<u>C</u>		<u>C</u>			<u>C</u>		<u>C</u>	
<u>Group Homes</u>					<u>C</u>	<u>C</u>		<u>C</u>			<u>P</u>		<u>C</u>	

Section 4. Table 1-6.1(B) is hereby amended to delete references to “Group Homes” and substituting in its place the term “Adult Care Facilities” and by amending Note (3) of Table 1-6.1(B) to read as follows:

Conditional Land Uses	Minimum Size Site	Minimum Width/Depth (feet)	Access Required to Street	Building Setback from Residential District/Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District/Nonresidential District (feet)	Perimeter Screening Residential District/Nonresidential District (5)	Curb Cut Controls
<u>Group Homes</u> <u>Adult Care Facilities</u>	(3)	(3)	<u>N/A Arterial</u>	<u>N/A 60/30</u>	<u>N/A 25/20</u>	<u>N/A Type A/C</u>	(7)

• • •

"(3) Minimum spatial requirements shall comply with the standards requirements established by the Florida Department of Health and Rehabilitative Services District Provisions."

...

Section 5. Section 1-9.2 is amended to include the following:

"Adult Care Facilities. One (1) space for each five (5) beds plus one (1) space for each employee, including doctors."

(Note to Codifier: Section 1-9.2 shall be renumbered to accomplish the changes herein).

Section 6. Section 1-20.2 of Article XX is amended by deleting the definition for "*Group Care Facility*".

Section 7. Table 1-3.3.A is hereby amended to provide for a minimum square footage of 1,200 square feet for single family homes in the RM-6 zoning district.

Section 8. Severability. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of this ordinance shall not be affected and it shall be presumed that the Town Council, of the Town of Malabar, did not intend to enact such invalid or unconstitutional provision. It shall be further assumed that the Town Council would have enacted the remainder of this ordinance without said invalid and unconstitutional provision, thereby causing said remainder to remain in full force and effect.

Section 9. Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

Section 10. Codification. The provisions of this ordinance shall become part of the land development code of the Town of Malabar.

Section 11. This Ordinance shall become effective immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council member _____ . The motion was seconded by Council member _____ and, upon being put to a vote, the vote was as follows:

Council Member, Carl Beatty	_____
Council Member, David White	_____
Council Member, Steven (Steve) Rivet	_____
Council Member, Jeffrey (Jeff) McKnight	_____
Council Member, Marisa Acquaviva	_____

This ordinance was then declared to be duly passed and adopted this ____day of _____, 2011.

By: TOWN OF MALABAR

Mayor Thomas M. Eschenberg
Council Chair

First Reading _____
Second Reading _____

ATTEST:

By _____
Debby K. Franklin
Town Clerk/Treasurer

(Seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

MEMORANDUM

Date: 5/3/2011
To: Town of Malabar Planning and Zoning Board
From: Karl W. Bohne, Jr., Town Attorney
Ref: Ordinance 2011-38

The references in the proposed ordinance to the Florida Statutes is broken down as follows:

1. Long Term Care Facilities, Part I of Chapter 400; FS 400.0060 (5): (5) "Long-term care facility" means a nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility.

2. Assisted Living Facilities, Part III of Chapter 400; FS 400. The statute has now changed and the reference now is Part I, Chapter 429, FS 429.02 (5): (5) "Assisted living facility" means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

3. Adult Family-Care Homes, Part VII of Chapter 400, The statute has now changed and the reference is Part II of Chapter 429; FS 429.65 (2); (2) "Adult family-care home" means a full-time, family-type living arrangement, in a private home, under which a person who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders who are not relatives. The following family-type living arrangements are not required to be licensed as an adult family-care home:

(a) An arrangement whereby the person who owns or rents the home provides room, board, and personal services for not more than two adults who do not receive optional state supplementation under s. 409.212. The person who provides the housing, meals, and personal ¹care must own or rent the home and reside therein.

(b) An arrangement whereby the person who owns or rents the home provides room, board, and personal services only to his or her relatives.

(c) An establishment that is licensed as an assisted living facility under this chapter.

4. Adult Day Care Centers Part V of Chapter 400. The statute has changed and the reference is now Part III of Chapter 429; FS 429.901 (1): (1) "Adult day care center" or "center" means any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for a part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services.

5. Health Care Facilities, Part I of Chapter 408; FS 408.032 (8): (8) "Health care facility" means a hospital, long-term care hospital, skilled nursing facility, hospice, or intermediate care facility for the developmentally disabled. A facility relying solely on spiritual means through prayer for healing is not included as a health care facility.

6. Continuing Care Chapter 651: 651.011 (2); (2) "Continuing care" or "care" means, pursuant to a contract, furnishing shelter and nursing care or personal services as defined in s. 429.02, whether such nursing care or personal services are provided in the facility or in another setting designated by the contract for continuing care, to an individual not related by consanguinity or affinity to the provider furnishing such care, upon payment of an entrance fee. Other personal services provided must be designated in the continuing care contract. Contracts to provide continuing care include agreements to provide care for any duration, including contracts that are terminable by either party.

I changed the ordinance to accommodate the changes in the statute and to make it more specific as to the applicable statutes.

L. DISCUSSION ITEMS:

12. Code Amendment for Adult Care Facility (Ord 2011-38) (Acquaviva)

Exhibit: Agenda Report No. 12

Recommendation: Request Discussion and Direction

I was down at Town Hall the other day and I found out P&Z changed this from action to discussion. Council had asked the Attorney to write the new ordinance when we did the whole thing with the assisted living facility that we didn't have in our code the right verbiage for what was being proposed. This is my understanding and that it was proposed under group home since that was what was in code. So the review was a time-tabled item that was supposed to go to P&Z and get back to Council. They've already voted on the project 4 to 1 to approve this project. So now, the ordinance was coming to them to bring the code language up to date as to what an assisted living facility is so Council can consider the project.

She asked Attorney Bohne to confirm her understanding. Bohne stated yes, the current code lists group homes and has a definition of a Florida Statute and the term group homes leaves out a whole bunch of other facilities that would be covered under this thing called adult care facilities. So, it's basically trying to clean up the language in our code.

Acquaviva said what concerned her with P&Z the other day was that we have a time-tabled issue and to be fair to them and to get this back to Council so they can continue the review with updated code, she was concerned when the changed it to discussion and not action.

Mayor said he was there and that is correct; that's the first thing they did when they changed their deletions/corrections to the agenda; they changed it from an action item to a discussion item so they had no intention of making a recommendation to Council that night when they changed it to a discussion item. I have no idea why they did that.

Acquaviva said it was sent to them for that reason and it was a time-tabled event and she thought it would come back to Council in a timely fashion and it wasn't. If they had a problem with the ordinance - it was up for action. Mayor said they asked for more information; they didn't know what these Florida statutes were that were referred to here for one thing. So you're talking about a schedule; the schedule referred to something that was given to the developer who's waiting now as best case. Best case is P&Z gets it and recommends it one time; two readings at Council for the ordinance and it is done. That's best case. Mayor said he made the statement at the time that he did not have any idea what P&Z would do.

Acquaviva stated P&Z really can't hold up an item unless, in that sense of if they have a problem with the ordinance. Mayor stated he thought they can delay it. They certainly can delay it; that's their choice. We don't control them. Acquaviva: I understand but they agreed on the project. My question was that is that getting sent back to be re-written? TA Wilbanks stated they have asked for ordinances from other cities. Mayor said they want more information. Acquaviva was concerned because the ordinance provided updated definitions so if there is a problem with it or they don't like the definitions. She is concerned about that because it is something that was at a public hearing and time tabled. It was sent to them for action; if there's a huge problem and it needs to be re-written or whatever Council should know.

Mayor did not think it needs to be re-written; they didn't delve into it in great detail either. Acquaviva said like Council just did on the fire inspection ordinance. Mayor said that they did not go through it line by line like that. Acquaviva asked if any other Council Member has a concern about this. Mayor said he agreed with her. He said he will be at their next meeting; I go to all the P&Z meeting.

Acquaviva said she is going also. Mayor suggested that if any Council Member is concerned that we're getting an, let's say, unreasonable delay, if you think that, then go to next P&Z meeting.

Acquaviva does not even think it's that. I just want to know what their concerns were and I; in all fairness, I thought when we did speak to the developer, I thought it was going to be in a timely fashion and if it's something major we need to know. Mayor encouraged her to go to the next P&Z meeting and do a card and talk to them and encourage them to come up with a recommendation.

Acquaviva stated they were all here at the Council meeting and knew what was going to go down. If it's a major issue, I think we should know that. I don't know that you all feel that way being Council. Rivet thought Council should not make a decision without hearing their analysis.

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: May 16, 2011

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

SUBJECT: Ordinance 2011-38 – Adult Care Facilities

BACKGROUND/HISTORY:

This was discussed by P&Z at their April 27, 2011 meeting. At their May 11, 2011 meeting the P&Z Board recommend Council approve Ordinance 2011-38 with the changes indicated on the attached ordinance.

The P&Z Board's recommended changes are indicated as underscore for added and lined through for delete and are highlighted in yellow.

ATTACHMENTS:

Ordinance 2011-38

ACTION:

Staff requests Action on ordinance

5.Amend Code to Provide Current Regulations For Adult Care Facility (Ord 2011-38)

Mayor read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; DELETING SECTION 1-2.6.B. 8, LAND USE CLASSIFICATIONS; PROVIDING FOR ADULT CARE FACILITIES; AMENDING SECTION 1-3.1.1 DISTRICT PROVISIONS; PROVIDING FOR LIMITED RESIDENTIAL USES IN THE OI (OFFICE/INSTITUTIONAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; REMOVING REFERENCES TO GROUP HOMES AND PROVIDING FOR ADULT CARE FACILITIES; AMENDING TABLE 1-6.1 (B) DELETING REFERENCES TO GROUP HOMES AND MAKING PROVISIONS FOR ADULT CARE FACILITIES; AMENDING SECTION 1-9.2.12; PROVIDING FOR ADULT CARE FACILITIES; ESTABLISHING PARKING REQUIREMENTS FOR ADULT CARE FACILITIES; DELETING THE DEFINITION OF GROUP CARE FACILITY IN ARTICLE XX; AMENDING TABLE 1-3.3.A PROVIDING FOR A MINIMUM SQUARE FOOTAGE FOR SINGLE FAMILY HOMES IN THE RM-6 ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Action

MOTION: / _____

NO MOTION. ITEM FAILS ON FIRST READING FOR LACK OF A MOTION.

TOWN OF MALABAR

MEMORANDUM

Date: July 6, 2011 2011-TC/T-079
To: Planning & Zoning Board
From: Debby K. Franklin, Town Clerk/Treasurer
Ref: Council Action

At the RTCM of June 20, 2011, Council considered Ordinance 2011-38 amending the Malabar code to provide for new language related to adult care facilities referenced in Florida Statute 429.

Council directed that the ordinance be sent back to P&Z for your consideration of further changes. The motion Council made asked for P&Z to remove residential uses from OI zoning; delete these types of facilities from R/LC zoning and also require more green space for these projects.

I have attached the portion of minutes from the RTCM of June 20, 2011 regarding this ordinance.

K. ACTIONS ITEMS:

ORDINANCE: First Reading

4. Amend Code to Provide Regulations for Adult Care Facility (Ord 2011-38)

Mayor introduced the item. In reviewing the agenda, Clerk had added the site plan review. He reviewed the RTCM March meeting where Council voted the site plan is tabled until the ordinance is drafted to add language. Chair spoke with Attorney and agreed since no action was taken on ordinance, it could be brought back. Chair directed it be brought back for action by Council. Bohne said Council is going to have to deal with this site plan. Chair brought ordinance back with hopes with full Council there would be action on this first reading.

Mayor read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; DELETING SECTION 1-2.6.B. 8, LAND USE CLASSIFICATIONS; PROVIDING FOR ADULT CARE FACILITIES AS A CONDITIONAL USE IN THE OI (OFFICE-INSTITUTIONAL) ZONING DISTRICT; AMENDING SECTION 1-3.1.I DISTRICT PROVISIONS; PROVIDING FOR LIMITED RESIDENTIAL USES IN THE OI (OFFICE/INSTITUTIONAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; REMOVING REFERENCES TO GROUP HOMES AND PROVIDING FOR ADULT CARE FACILITIES; AMENDING TABLE 1-6.1 (B) DELETING REFERENCES TO GROUP HOMES AND MAKING PROVISIONS FOR ADULT CARE FACILITIES; AMENDING SECTION 1-9.2.12; PROVIDING FOR ADULT CARE FACILITIES; ESTABLISHING PARKING REQUIREMENTS FOR ADULT CARE FACILITIES; DELETING THE DEFINITION OF GROUP CARE FACILITY IN ARTICLE XX; AMENDING TABLE 1-3.3.A PROVIDING FOR A MINIMUM SQUARE FOOTAGE FOR SINGLE FAMILY HOMES IN THE RM-6 AND R/LC ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Speakers cards on this.

Pat Reilly, 1985 Howell Lane and Vice Chair of P&Z. He is going to talk about the Board discussion. P&Z had most difficulty with two different types of uses – it is flagged in the ordinance to be addressed by Council. The Board intended that if more than one use is provided for in a zoning, then the most restrictive conditions would apply. They also discussed at length whether or not to have this use as conditional use in RLC or not at all. The biggest debate was in Sec 5, 4 vs. 5 parking spaces. The delta is only 5 spaces, but there was a big debate on this.

Reilly pointed out to Council to make sure you understand that Sec 7 has nothing to do with Assisted Living. This would still need to be approved separately if this ordinance fails.

Reilly also mentioned that Sec 1-2 has to do with cemetery – Bohne said there is a note to the codifier to renumber. The cemetery one will be in there but as another number.

Reilly stated that Sec 5 deletes definition of group care facility but does not add a definition for assisted care facility. Bohne said that adult care facility covers all of those uses referred to in FS 429 and that does include assisted living facilities.

Reilly's personal comments as a resident: His problem is having residents live in OI. No one would ever state that openly. He said the original builders of Malabar created Professional Commercial before it became OI. He stated if it is an assisted living facility, they do live there.

He would also request that if this ordinance is approved, the site plan should go back to P&Z to review under the new guidelines. Acquaviva asked before his personal feelings, those were from P&Z? Yes.

Mr. Charles Leedy, Smith Lane, he would like to see this hospital go in as soon as possible.

Sheila Eschenberg, Beran Lane, one day we will all need something. The adult care facility is needed. The location is such a good spot across from the hospital. Asked Council to give good consideration. In today's economy, it will give jobs to the community. The location next to the children's facility is also good for the children and the adults and there could be visiting between the two places. Please consider.

Chair asked Council to consider the ordinance only. It does not apply to any specific project.

Frank Plata, 3700 Harbor City Blvd. He is not representing any type of facility. Concentrate on the code modification. The code adds a complete piece of mind. The change in FS is no. By adding specific details. The parking is a little more restrictive. The project they are considering is institutional and is consistent with other areas in the county.

You can connect one to the other one. Each one has a specific requirement in ITE and you can go by that for parking. To recap – they started on 9/25/2007. They got help from Bohne and Mills on how to look at code. They are adding definitions and details in code. All of this will be helpful to the elderly so they can be treated.

McKnight has comment before motion. McKnight wanted to make clear why he didn't make motion on this at last meeting. He thought since he didn't support it, he couldn't make motion. Chair clarified, that the motion maker can make an affirmative motion, but cannot speak against the subject. The motion maker can vote against the motion. The seconder to the motion is free to speak pro or con.

MOTION: Acquaviva / _____ to approve ordinance. Motion died for lack of a second.
MOTION: McKnight / Rivet to send ordinance back to P&Z to direct that residences can't be in OI and look at green space requirements and direct they delete this use in RLC.

Discussion. Acquaviva thought the intent was to support the hospital with the OI zoning. Rivet said there are many uses that would be compatible to hospital that are not residential. Acquaviva stated it is not an apartment building. McKnight said it could be.

Acquaviva was at the P&Z meeting, and McKnight said he did not support this project openly. He asked for assistance from P&Z.

Chair said rather than send it back to P&Z, if the majority of Council wants to make changes they can do so, Council can change it. McKnight said that the P&Z Vice-Chair already said they had much debate. Mayor said if Council directs that this go back to P&Z and recommends they remove this use from OI he would also want to recommend to them to take it out of RLC. RLC was not intended for this. It was for small shops and residences. Apartments upstairs with a business downstairs. Rivet said it is a bigger issue. Sounds like there is not much support to

do residential in OI. Atty Bohne said in Article II, the Land Use Section, it refers to community facilities and group homes, and they are listed as a conditional use in OI.

Atty Bohne said their pending application has to be reviewed under current Code. They agreed to wait to allow time to add language to clarify the different uses under FS 429, but their submittal is required to be reviewed under the current code. In the Code on parking requirements, it doesn't list reference group homes. They have right to be reviewed under current Code. Land Use section refers to community facilities and group homes. Mayor said they don't meet current Code. Bohne said this application will be reviewed under current code. If they eliminate the residential component under OI that will not affect this project. McKnight said throughout this process, the applicant has tried to advocate. He doesn't think we should change our code for one applicant. Also to clarify, Atty Bohne stated he told Clerk to get site plan back on agenda if applicant wanted to proceed.

VIOTE: 4 Ayes, 1 Nay (Acquaviva) Motion carried 4 to 1.

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: July 13, 2011

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Council Action Regarding ALF Ordinance 2011-38

BACKGROUND/HISTORY:

This Ordinance 2011-38 was sent back from Council for further amendment by P & Z Board.

ATTACHEMENTS:

Memo 2011-TC/T 079

Portion of RTCM 06/20/11 (3 pages)

Letter from Plata Engineering dated 6/20/11

Ord 2011-38

ORDINANCE NO. 2011-38 (modified after 5/16/11 RTCM mtg.)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; DELETING SECTION 1-2.6.B. 8, LAND USE CLASSIFICATIONS; PROVIDING FOR ADULT CARE FACILITIES AS A CONDITIONAL USE IN THE OI (OFFICE-INSTITUTIONAL) ZONING DISTRICT; AMENDING SECTION 1-3.1.I DISTRICT PROVISIONS; PROVIDING FOR LIMITED RESIDENTIAL USES IN THE OI (OFFICE/INSTITUTIONAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; REMOVING REFERENCES TO GROUP HOMES AND PROVIDING FOR ADULT CARE FACILITIES; AMENDING TABLE 1-6.1 (B) DELETING REFERENCES TO GROUP HOMES AND MAKING PROVISIONS FOR ADULT CARE FACILITIES; AMENDING SECTION 1-9.2.12; PROVIDING FOR ADULT CARE FACILITIES; ESTABLISHING PARKING REQUIREMENTS FOR ADULT CARE FACILITIES; DELETING THE DEFINITION OF GROUP CARE FACILITY IN ARTICLE XX; AMENDING TABLE 1-3.3.A PROVIDING FOR A MINIMUM SQUARE FOOTAGE FOR SINGLE FAMILY HOMES IN THE RM-6 AND R/LC ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, as follows:

Section 1. Sections 1-2.6.B.8 is hereby deleted. A new section 1-2.6.B.2 is added to read as follows:

"2. Adult Care Facilities. Any facility regulated by the State of Florida Agency for Health Care Administration and meeting the criteria and requirements of the provisions of Long Term Care Facilities, Florida Statute 400.0060 (5), as amended from time to time; Nursing Homes Florida Statute 400.011, as amended from time to time; Intermediate, Special Services, and Transitional Living Facilities, Florida Statute 400.701, as amended from time to time; Intermediate Care Facilities for Developmentally Disabled Persons, Florida Statute 400.960, as amended from time to time; Assisted Living Facilities, Florida Statute 429.02 (5), as amended from time to time; Adult Day Care Centers, Florida Statute 429.901 (1) ; Adult Family-Care Homes, Florida Statute 429.65 (2); and Health Care Facilities, Florida Statute 408.032 (8), as amended from time to time. Such facilities are permitted as conditional uses as provided for in Table 1-3.2"

(Note to Codifier: Section 1-2.6.B shall be renumbered to accomplish the changes herein).

Section 2. Section 1-3.1.I is amended to read as follows:

...

"I. OI "Office-Institutional." The OI district is established to implement comprehensive plan policies for managing office-institutional development. This district is designed to accommodate businesses and professional offices together with institutional land uses on sites which:

- Have accessibility to major thoroughfares;
- Have potential to be served by a full complement of urban services;
- Contain sufficient land area to accommodate good principles of urban design, including sufficient land area to provide adequate landscaping and buffers to separate existing as well as potential adjacent land uses of differing intensities;
- Accommodate only office buildings and institutional land uses and shall expressly exclude residential uses (except those Community Facilities defined as Adult Care Facilities in 1-2.6.B.2), general retail sales and services, warehousing, and outside storage; and
- Frequently serve as a transition area which buffers residential uses located in one area from a nearby area which accommodates uses of a higher intensity.
- A Malabar Vernacular Style is required for all development along arterial roadways."

(Question about P&Z intent regarding Multiple uses on same site)

...

Section 3. Table 1-3.2 of Section 1-3.2 of the Malabar Land Development Code is amended as follows:

	RR -65	R S- 21	RS -15	RS -10	RM -4	RM -6	R- M H	OI	CL	C G	R/L C	IN D	IN S	C P
COMMUNITY FACILITIES														
<u>Adult Care Facilities</u>					<u>C</u>	<u>C</u>		<u>C</u>			<u>C</u>		<u>C</u>	
Group Homes					C	C		C			P		C	

Section 4. Table 1-6.1(B) is hereby amended to delete references to "Group Homes" and substituting in its place the term "Adult Care Facilities" and by amending Note (3) of Table 1-6.1(B) to read as follows:

Conditional Land Uses	Minimum Size Site	Minimum Width/Depth (feet)	Access Required to Street	Building Setback from Residential District/Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District/Nonresidential	Perimeter Screening Residential District/Nonresidential District (5)	Curb Cut Controls

					District (feet)		
Group Homes Adult Care Facilities	(3)	(3)	N/A Arterial	N/A 60/25	N/A 25/20	N/A Type A/C	(7)

...
“(3) Minimum spatial requirements shall comply with the standards requirements established by the Florida Department of Health and Rehabilitative Services Town of Malabar District Provisions.”

...
Section 5. Section 1-9.2 is amended to include the following:

“Adult Care Facilities. One (1) space for each five four (5 4) beds plus, the more restrictive of, one (1) space for each employee, including doctors, or one (1) space for per three hundred (300) feet of building area, which ever is greater the standards established by the “Institute of Transportation Engineers”.”

(Note to Codifier: Section 1-9.2 shall be renumbered to accomplish the changes herein).

Section 6. Section 1-20.2 of Article XX is amended by deleting the definition for “Group Care Facility”.

Section 7. Table 1-3.3.A is hereby amended to provide for a minimum square footage of 1,200 square feet for single family homes in the RM-6 and R/LC zoning districts.

Section 8. Severability. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of this ordinance shall not be affected and it shall be presumed that the Town Council, of the Town of Malabar, did not intend to enact such invalid or unconstitutional provision. It shall be further assumed that the Town Council would have enacted the remainder of this ordinance without said invalid and unconstitutional provision, thereby causing said remainder to remain in full force and effect.

Section 9. Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

Section 10. Codification. The provisions of this ordinance shall become part of the land development code of the Town of Malabar.

Section 11. This Ordinance shall become effective immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council member _____ . The motion was seconded by Council member _____ and, upon being put to a vote, the vote was as follows:

Council Member, Carl Beatty	_____
Council Member, David White	_____
Council Member, Steven (Steve) Rivet	_____
Council Member, Jeffrey (Jeff) McKnight	_____
Council Member, Marisa Acquaviva	_____

This ordinance was then declared to be duly passed and adopted this ____day of _____, 2011.

Town Of Malabar
By Mayor Tom Eschenberg

First Reading _____
Second Reading _____

ATTEST:
By _____
Debby K. Franklin
Town Clerk/Treasurer

(Seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR

MEMORANDUM

Date: July 19, 2011 2011-TC/T-085
To: Planning & Zoning Board
From: Debby K. Franklin, Town Clerk/Treasurer
Ref: F.S. Question from P&Z on 7/13/2011

At the P&Z Board meeting of July 13, 2011, Vice-Chair Pat Reilly asked about F.S. 429 as he had researched F.S. 419 in preparation of the P&Z Board meeting. I checked with the Town Attorney and verified that based on the direction he was given to draft Ordinance 2011-38, he utilized only F.S. 429 and F.S. 400 as F.S. 419 dealt with residential zoning. It was his direction to provide an ordinance covering institutional facilities in institutional zoning, not residential.

cc: Town Council

G. DISCUSSION:

3. Adult Living Facility - Ordinance 2011-38

Exhibit: Agenda Report No. 3

Recommendation: Discussion

Speaker card: Frank Plata. Some confusion – some people think that this use can be in residential. ALF under Sec 310.2 of Fla Building Code uses group homes interchangeably with ALF also drug and alcohol rehab center. This was never looked at. Under the State, there is Group I-1 part of 308-2 FBC, definition is broken down as group home with three sections, based on number of occupants:

1-5 persons – developer would pull a residential permit.

6-16 persons – developer would still pull a residential permit but a R4 - still res license

They are going for 48 units with more than 16 persons and are under group I-1 – no doubt about where they are in code – not residential must be under institutional zoning. He also referenced County code. These occupancies – more than 16 persons, supervised care that doesn't require extensive medical; has to be more than 16 persons. He discussed the next level up in licensing requires a nursing person for every 3 occupants. Parking would be almost 1 per unit. Nobody likes this type of facility in residential. The confusion is tremendous; that is why you need to go to Mgmt Company. To have consistency, when you go to building dept you are going to institutional. Most people don't know the state rules. Where do you want seniors to go? If you become familiar with codes you can see the difference. He wished they had more input from the building dept explaining the institutional use vs. residential use. He doesn't want to steer anything... They want this cleared up. Doesn't want this use to get kicked out of institutional. If you look into code the questions are answered. He is here to clarify anything they need. Want to be sure the Town is happy. The owner has nothing to do with this. The other two investors want to make sure this is taken care of in a smooth fashion. Code only needs to substitute or add to group home.

Reilly asked about FS 419, Sec 20. It clearly defines the group homes. He will bring this up later. Plata was referring to I-1 in Florida Building Code. Analogy is warehouse for parts and another is warehouse for bikes but they are both warehouses.

Plata said the uses branch down to 11.2 under 3.8.2, the occupancies would be classified are R1, R2 or I-1. Bldg plans would be totally different. They go by zoning. Can't do this type of use in residential. Can't pull a permit for residential in OI. Plata sat down.

Reilly – agreed partly with Plata. Originally they took out group home and put in ALF. Group homes are good for up to 6 persons. This ordinance should address facilities with over 6 persons. FS 419 addresses these uses. He questioned the reference to FS 429. Franklin will check with Attorney.

He would like this ordinance to deal with this instead of a catch all for everything. They went through the ordinance and made changes and he doesn't think they got incorporated. He sees stuff that did not get incorporated. They did change things. This ordinance is a good starting point to add to the tables but should not delete group homes. He has spent many hours of researching assisted living facilities.

Ritter said originally it was an issue with density. She wants density included. Distinguish between units and people.

Wilbur read the motion from Council. They were asked to consider the Council direction to remove residential from OI Zoning; eliminate this type of facility from R/LC Zoning and consider more green space requirement.

Ritter said this application is to be looked at from current code. Wilbur said we are not discussing the project, just the ordinance. Whatever happens to that project is at Council and is not up to P&Z.

Reilly said we should keep group homes and then add other classifications. Do they want to eliminate group homes from OI and add Adult care facilities. He said the break in classification is the 6 persons – 6 and under is group home. You can't group it all together. That is why you need separate listings. We need to do research.

Abare said Council wants us to revisit this and do more on the ordinance. Ritter said we need to incorporate density as well. Wilbur said we should throw this ordinance out and start over.

Don Krieger – sees two situations – project going before Council is site plan without any ramifications on conditional use which has been stalled. If they are going forward with CUP under OI, he has concern with maximum density. Ritter said any ordinance we do needs to address density. Krieger said we didn't have a lawyer and we had two questions. Multiple uses on a parcel and density. Also parking. Density – should add a density statement such as maximum of six units per acre related to a multiple use parcel. If you are going to stick to high density, what are you talking about? Wilbur if you eliminate the residential component, he would propose going back to Professional Commercial. Krieger said if it is not residential it is less of a burden on the fire services. Most of those uses would also be less intensive.

Krieger said you still have a 48-unit with 96 residents on 5 acres. This seems to short circuit the requirement we have everywhere else. If there are no kitchen facilities then is it a residence?

Reilly referred to them to table – if you eliminated residential from OI and then you don't have to define. Krieger said OI now allows residential use for watchman.

Reilly said you can't talk about the site plan. Krieger said yes he can. He said they accepted the site plan and didn't address conditional uses.

Wilbur said we are to talk about the ordinance. We are looking at redoing the OI classification on what we want to allow in the OI classification. If you take out the residential component then you don't have the density issue.

Abare said to follow up with Krieger's point in OI at the end of the day, they go home. With Assisted living they are going to be living there. You have to decide what a good number is; if it is six units per acre and they talk about 48 units, you would have to have eight acres. These are multi-million dollar projects. Don't want too many people on too little of land.

Krieger said that Council did not hear about their concerns. Reilly said they did. Krieger said they didn't have the minutes. Abare said even Council had some concerns. Density is a big concern.

Krieger said on a multiple use parcel – 5 acres with other uses; what is the density they are going to allow?

Ritter said we have to define what a unit is – are 4 people a unit? Make it clear what you expect.

Abare said you have to go with something that is reasonable. The developers have to permit with the State. Abare said Krieger's point – 5 acres is whole site but they are not there 24/7. Krieger does not see children's center and this type of facility meshing together. These are questions we did ask. Krieger reviewed Usteam and the minutes and doesn't think their concerns were conveyed to Council. Ritter said it went to beds. Krieger said we should make recommendations for conditional use; under CUP, you can state the conditions. Abare said the concern is for the demands on the city. Old people will be calling an ambulance more often. Wilbur said if it is a non-profit then the town will foot the bill.

Krieger asked if they were given a directive or a suggestion from Council. Council could have done anything they wanted and made those changes; they didn't need to send this back, but they did. P&Z Board is an advisory Board. Take it out of OI and also take it out Institutional.

Abare said we could accept as a conditional use – instead of creating a whole new category. Does Board want to create an ordinance dealing with adult care facility? They specifically separate the two. They are not going to get an attorney here. So they need the 310 Build Code and get the FS 419. Discuss the difference of FS 429. Abare said they have adult day care centers in Palm Bay but they go home at night. An assisted living facility is under adult care facility but they are there 24/7. That is a different burden on the city.

Have on for next mtg. F.S. and Bldg Code for next mtg. Get other cities regulations. Reilly researched Melbourne. They are under general commercial and institutional. If we could get other towns. Do they talk about density? Reilly was only interested in zoning. Krieger said density is what shapes the town. It is about lifestyle. It is a major change. An apartment that is housing people. That is an apartment house. Reilly visited quite a few of them. There were 76 persons over 2 acres. That would be 36 per acre. Again that was in a PUD. The other one was on a CG zoning. One was 2-story and one was a 3 story. Abare said there is one that has a large retention pond and that is not considered in their acreage.

Krieger thinks it is a fundamental change if you want to say anything about density. Otherwise it is up to Council. These types of places can only be where there is water. So there is not that much of a rush for this. Abare said there are a lot of potential sites there.

Consider R/LC for the use of group homes also. Wilbur said there is a large track on US 1. Stated that 96 persons on 1.5 acres is not good design. Abare said the project is a big investment and it is not the land, it is the building. If you got more land you can make more parking spaces. His mom still has a car and drives. Krieger said in an urban setting they have more parking. Wilbur said the Mgnt Company after it is built is going to determine the resident type. It could be drug rehab or alcohol rehab. Those are expensive facilities and if they need to fill them. If they have someone with money and a car, they would accept the person with a car if they could write the check. Ritter said there are restrictions from the State.

Wilbur said 2 beds per room, a full kitchen providing two meals a days, cleaning staff, kitchen staff, deliveries, nurses, etc. would require many parking spaces. Abare said there were 49 persons on staff when they looked at Hibiscus Court. They did not even ask if she had a car.

Krieger said in six or seven years from now he doesn't want to be the one pointed to and said that he let something happen that shouldn't have or the other way around. Krieger said the site plan was presented to us in a very quick and unusual manner as far as he was concerned.

Normally they get a conceptual look before they deal with site plan and he feels it is very intense use for a very small piece of property, but the engineers and planners told us it was correct.

3. Research into Requirements for Assisted Living – MOVED TO 6

Exhibit: Agenda Report No. 3

Recommendation: Discussion

Reilly said they were given over 200 pages of Florida Statutes and also the Building Codes to work with and would like to start with the Statutes. He understands that both F.S. 419 and F.S. 429 apply to these uses, as well as others.

Ritter reviewed the cities codes they received and did not like Cocoa Beach with short term and long term mixed – also day time and ALF. She would not want us to use their code, define each use and create requirements for each use.

Wilbur said that ALF is the least regulated and has the highest probability for abuse. The one we looked at before had 90 persons with one person to oversee them. Doubts their certifications, to watch over, give assistance and give meds. Ritter said we do our own and do them as separate uses. We need to figure out where we want these uses. Krieger said we need good urban design. Don said most of the places he has seen have an incredible amount of acreage. Abare said the Hibiscus Park facility had two acres and lots of parking spaces. He said the facility on Merritt Island had a 98 year old person that still had a van and drove it. The ones he looked at had plenty of parking spaces. They weren't exclusively for ALF – they want to keep you when you go into dementia. These are multi-million dollar places, why not put it on a larger parcel and give them more green space and parking. Why jam it on a site so small. Reilly said it was next to water and across from hospital. They have to have water.

Wilbur said on page 127 / regarding emergency requirements – the buildings have to generators to provide self – sustenance in the event of a disaster. This is a must. Wilbur said eliminate ALF in OI and it will get rid of problem. He is against residential use in OI.

Krieger said if you build a condo on US1 you have to have a certain amount of acreage. He thinks the density requirements should be similar for these uses.

Abare said using our current code, a condo project on US 1 allowing six units per acre and say an average of four persons in each unit that would be 24 persons per acre. He thinks that is a reasonable starting place for density. 96 persons would require four acres.

Reilly said the Cedar Creek facility is a planned unit development (PUD) and it is three different uses. Reilly said the one on Merritt Island is not near a hospital.

Ritter said that the Florida Statutes do have regulations for each use of assisted care, age 18 and up and address daytime day care. Krieger said each place needs a definition in the code. Wilbur said the ALF prepares meals and does laundry. Abare stated the demands on the Town would be greater for such a facility compared to a condo.

Summary: continue discussion at next meeting.