



Planning and Zoning Board Meeting

Wednesday, September 8, 2021 at 6:00 pm

1. CALL TO ORDER, PRAYER AND PLEDGE
2. ROLL CALL
3. APPROVAL OF AGENDA
4. CONSENT AGENDA

APPROVAL OF MINUTES

a. Approval of Minutes of 08/25/2021

Exhibit: Agenda Report Number 4a

Attachments:

- **Agenda Report Number 4a** (Agenda_Report_Number_4a.pdf)

5. PUBLIC HEARING: 0

6. ACTION ITEMS : 4

a. Amend Article XV Related to Tree Protection and Restoration with Textual Updates

Exhibit: Agenda Report Number 6a

Attachments:

- **Agenda Report Number 6a** (Agenda_Report_Number_6a.pdf)

b. Recommendation of "Final Draft" to Council Amending the Land Development Code Article V Section 1-5.6 General Provisions to Allow for Portable Storage for temporary storage of personal items in Portable Storage Units for a set period.

Exhibit: Agenda Report Number 6b

Attachments:

- **Agenda Report Number 6b** (Agenda_Report_Number_6b.pdf)

c. Amend Article V, General Provisions, Section 1.5-22 Fill and Erosion Control with Textual Updates (ordinance 2021-20)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V IN THE LAND DEVELOPMENT CODE TO ADD NEW SECTIONS DEALING WITH APPLICATION, PERMITTING AND OPERATIONAL REGULATIONS FOR BRINGING ADDITIONAL FILL ON RESIDENTIAL PROPERTIES AND REQUIRING PROPER EROSION CONTROLS MEASURES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 6c

Attachments:

- **Agenda Report Number 6c** (Agenda_Report_Number_6c.pdf)

d. Amend Article VII, Site Plan Procedures, Section 1-7.1. Applicability and filing procedures with Textual Updates (Ordinance 2021-21)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VII IN THE LAND DEVELOPMENT CODE TO UPDATE APPLICABILITY AND FILING PROCEDURES FOR SITE PLANS, BOTH RESIDENTIAL AND COMMERCIAL; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 6d

Attachments:

- **Agenda report Number 6d** (Agenda_Report_Number_6d.pdf)

7. DISCUSSION/POSSIBLE ACTION ITEMS: 0

8. ADDITIONAL ITEMS FOR FUTURE MEETING: 0

9. PUBLIC COMMENTS

10. OLD BUSINESS/NEW BUSINESS

a. Old Business

b. New Business

Board Member Comments

Next regular Meeting - September 22, 2021

11. ADJOURNMENT

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4.a.

Meeting Date September 8, 2021

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. These minutes 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 8/25/2021

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 25, 2021, 6:05 PM**

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

1. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 6:00 P.M. Prayer and Pledge led by Vice-Chair Liz Ritter.

2. ROLL CALL:

CHAIR:	WAYNE ABARE, EXCUSED
VICE-CHAIR:	LIZ RITTER
BOARD MEMBERS:	MARY HOFMEISTER
	DOUG DIAL, ABSENT
	GEORGE FOSTER
ALTERNATE:	SUSAN SHORTMAN
ALTERNATE:	JEFF RINEHART, EXCUSED
BOARD SECRETARY:	DENINE SHEREAR

ADDITIONAL ATTENDEES:

INTERIM TOWN MANAGER: LISA MORRELL

3. ADDITIONS/DELETIONS/CHANGE:

Chair Abare called and asked to be excused. Alternate Shortman will vote in place of Board Member Dial & Alternate Rinehart asked to be excused, out of town working.

4. CONSENT AGENDA:1

4.a. Approval of Minutes Planning and Zoning Meeting – 8/11/2021

Exhibit: Agenda Report No. 4.a
Recommendation: Request Approval

**Motion: Shortman /Foster to Approve Minutes for August 11, 2021, as amended, All Vote
: ALL Aye**

Board went over minutes and amended.

5. PUBLIC HEARING:0

6. ACTION 2

6.a. Review & Recommend to Council Adoption of a for Small Scale Amendment to Comprehensive Plan to establish “Private Property Rights” to add language associated to goals & policies governing property rights Ordinance 2021-16 (Directed by Council).

Exhibit: Agenda Report. 6. a

Ritter explained that the PZ is going to review document for Small Scale Amendment to the Comprehensive Plan & asked if this document for "private property rights" is passable by law just a review for legal "e's"

ITM Morrell, explained to the PZ Board for the record that private property rights have been required by law into the Comprehensive Plan element for. The DEO said it would be a small-scale Amendment to the Comp Plan because it is an element for private property rights.

Community Outreach is in a public meeting not a Town meeting and are required in a non-objective public place to discuss for site plans, etc. Another suggestion is to talk to the neighbors in the area and get feedback before coming to the Town.

ITM Morrell said whether approved or denied by this Board this will move forward to Council.

Foster said it doesn't sound controversial to Foster, it adds a few more protections to the individuals and community that are going to have a project.

Ritter asked about public notices and ITM Morrell explained it is not in the Code. Morrell explained that Debby (Town Clerk/Treasurer) have had that discussion. Sherear said we copied portion of Palm Bays Code and ITM Morrell said we need to modify verbiage. Ritter asked where it is advertised and ITM explained a radius package is done and it can be posted digitally, by US Postal, etc. The applicant pays for public notice.

Motion: Foster/Hofmeister the PZ Recommend to Council Adoption of a for Small Scale Amendment to Comprehensive Plan to establish "Private Property Rights" to add language associated to goals & policies governing property rights
Ordinance 2021-16 Roll Call Vote:

- Foster Aye
 - Shortman, Aye
 - Ritter Aye
 - Hofmeister Aye
- Recommendation carried 4 to 0

6.b. Recommend Council to Amend the Land Development Code Article V Section 1-5.6 General Provisions to Allow for Portable Storage for temporary storage of personal items in Portable Storage Units for a set period.

Exhibit:

Agenda Report. 6. b

ITM Morrell explained to Board that there was a request of a storage unit (Pod) from the neighborhood on a property located for too long of a period. ITM Morrell explained there is no code that can be enforced, the town would want to add to the Land Development Code and make it part of the zoning code where a pod can be brought to the house or location for a set period.

ITM Morrell explained that she had looked at state Statues it said anything under less than 720 sq feet is exempt in the FBC (Florida Building Code) no strapping, no permit.

ITM Morrell's request is to add language to code and any suggestions from the PZ Board would assist with the verbiage. Surrounding municipalities allow 14 days, in the event of a delay they can

notify the Town of the situation. The Town Manger can allow for this delay due to circumstances. It appears that 3 months is a bit too long.

What would seem to be a reasonable amount of time for a temporary storage unit delivered to a site for moving purpose, not a shed?

ITM Morrell explained that Denine found a place in the code to place this item LDC Article V Section 1-5.6 "D"

Ritter said that it was her husband that complained about storage unit on US HWY 1 in Mobile Home Park (MHP) that had been there a period. This takes away from his business.

Shortman said if it residential and not insight of neighbors what is the point. ITM Morrell explained if she cannot stand on the road and see a code violation it cannot be written up.

Shortman said if she had a storge unit she would want it on her parking lot not on the landscaping.

Ritter suggested verbiage used on page 15 of 8/25/2021 PZ Meeting dealing with Temporary Storage Use

ITM Morrell, the Town Council is complaint driven and the state law has taken away the anonymous ability, it must come from a person, place, or thing so the advised party can know where the complaint came from.

The Board discussed the verbiage submitted to them and updated for final draft.

ITM Morrell handed out 1 page Code for PZ to review, from other municipality and Board is going to take a 5-minute recess and come back to discuss.

The Board Reviewed both documents. It was discussed that the storage unit is not visible from the road, out of sight. Ritter asked about fines and ITM Morell explained this will be presented to the Code Board and fines will be accessed accordingly.

The PZ Board went over the document that ITM Morrell handed out for review and revised verbiage to add to LDC Article V General Provisions Section 1-5-6 Accessory Buildings.

PZ Board asked to bring back a "clean copy" for review on September 8, 2021.

7. DISCUSSION:0

7.a. *Intentionally left Blank*

8. *Intentionally left Blank*

9. ADDITIONAL ITEMS FOR FUTURE MEETING

10. PUBLIC

11. OLD BUSINESS/NEW BUSINESS:

Old Business:

ITM Morrell updated the PZ Board on current food truck located on Malabar Road and US Hwy 1. This truck will be moving to new property, in which is improved over by the Palm Bay Hospital. There is current activity going on at site and electric will be added for food truck. ITM explained to the current food truck individual that there will need to be a primary structure on property.

Hofmeister asked if anything is given back to Town from mobile food vendors. ITM Morrell responds that we get a portion of the state sale food tax.

New Business:

Reminder: Next Meeting – September 8, 2021

K. ADJOURN

There being no further business to discuss, MOTION: Hofmeister / Shortman to adjourn this meeting. Vote: All Ayes. The meeting adjourned 7:12 P.M.

BY:

Liz Ritter, Vice-Chair

Denine Sherear, Board Secretary

Date Approved: as presented/corrected

DRAFT

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 6.a.
Meeting Date September 8, 2021

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

SUBJECT: Recommendation of "Final Draft" to Amend the Land Development Code Article V Section 1-5.6 General Provisions to Allow for Portable Storage for temporary storage of personal items in Portable Storage Units for a set period.

BACKGROUND/HISTORY:

At the August 25, 2021 PZ Meeting there was discussion for action to recommend to Council That Malabar Town Code does not have regulations in the Code pertaining to temporary storage units located on residential sites. ITM Morrell received a Code Compliant concerning this issue.

- This Agenda Item is a part of housekeeping to insert into our code. This verbiage was revised, for Amending the Land Development Code to be reviewed by Council. The PZ Board wanted to see the Draft before it went to Council. The verbiage was added to Section 1-5.6 "D" in the Code book.

ATTACHMENTS:

- *Draft* Portion of Malabar Land Development Code Article V Section 1-5.6 (D.) Accessory buildings (ITM Lisa Morrell)

ACTION OPTIONS:

Action to Council

Section 1-5.6. Accessory buildings.

- A. *Presence of Principal Building Required.* No accessory building shall be constructed upon a lot until the construction of a principal building has been issued a certificate of occupancy and no accessory building shall be used unless the principal building is in use. No structure which has been constructed as a principal use for the housing of animals or for agricultural purposes shall be used as a residence.
- B. *Prohibited in Required Yard.* No accessory building or structure shall be located in any required yard area.
- C. *General Regulations of Accessory Building.* No mobile homes, travel trailers, or old cars shall be permitted as an accessory structure. No accessory structure shall be built without a permit first being issued by the Building Official expressly authorizing the accessory structure. If the Building Official is in doubt as to the type of added accessory structure or whether a proposed accessory use is a duly authorized accessory use or structure within the district in which it is proposed, then the Building Official shall forward the issue to the Planning and Zoning Board and the Town Council for action.

D. Temporary Storage Unit is defined and typically utilized temporarily for the storage of personal belongings only, as part of the process of household moving and/or part of a household intent to store items offsite at a commercial storage location. . This definition does not include storage units authorized by the Florida Building Code pursuant to Fla. Stat. § 553.73.

1. Temporary storage units may be permitted provided such units comply with the following provisions:

- (a) Permitted in Residential Areas: Any land zones RR-65, RS-10, RS-15, RS-21, RM-4, RM6, R-MH, R/LC, and PUD designated for single family and multiple family uses
- (b) Size: Temporary storage units, shall not exceed nine (9) feet in height, ten (10) feet in width, and 24 feet in length.
- (c) Location: temporary storage units may be in a required setback and shall not be placed in any right-of-way or easement and shall not be in such a manner to impair a motor vehicle operator's view of other motor vehicles, bicycles, or pedestrians upon entering or exiting rights-of-way.
- (d) Time frame: Temporary storage units are allowed in residential districts for a period not exceeding 14 days and no more than two times a year on residentially zoned property.
- (e) The temporary storage unit shall not be utilized for the following:
 - i. Storage of live animals;
 - ii. Utilized for human habitation;
 - iii. Storage of hazardous or flammable materials;
 - iv. Advertising is prohibited on the temporary storage unit except for the name and phone number of the vendor of the unit.

2. The Town Manager, or his designee, may grant one (1) extension to the time limit established in subsection (1) above with written request by the property owner demonstrating a delay in the removal of the temporary storage unit and a time certain of removal.

3. Exemptions. The above regulations shall not apply to temporary storage units that are placed for construction purposes in connection with a valid building permit or during any period of declared emergency by federal, state, or local official action.

4. Violations and provision for schedule fines will follow the Town of Malabar Code of Ordinances, Land Development Code, Article XII entitled Administrative Procedures for land development and code enforcement.

TOWN OF MALABAR

PLANNING & ZONING ADVISORY BOARD

AGENDA ITEM NO: **6.b**
Meeting Date: September 8, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Amend Article XV Related to Tree Protection and Restoration with Textual Updates

BACKGROUND/HISTORY:

Staff has compared the land clearing permits within the Land Development Code, Article XV, entitled, Tree Protection and Restoration with the Town's operations of processing permits which revealed an omission of land clearing activity of grubbing and vegetation removal and recommends the following changes for clear applicability of the review and issuance of land clearing permits and processing:

1. Textual change throughout the code from Building Official to Town Manager, or designee; Removal of Item E. entitled "*Classification of permits*" from Section 1-15.8 entitled "*Permits available; criteria for issuing permits; permit determinations; required replacements or relocations*".
2. Amending and adding the criteria text from 1-15.8 to Section 1-15.9 entitled, "*Permits, submittal requirements, Review and Determination.*" to each land clearing permit items: A. Type I permit, B. Type II permit, C. Type III permit, D. Type IV permit. These permits relate to the removal of trees and diameter breast height (dbh) unit of measure from removal and replacement.
3. Amending Item D. Type IV permit, adding (2.d.) to include the reference to Section 1-15.14 emergency tree or tree of special significance removal, whereas a Type IV permit is required for these two activities with another section of code.
4. Adding item E. Type V permits for land clearing permits for the land clearing activities related to non-removal of trees with the removal of vegetation and underbrush (less than 6' in height) with limited soil and sediment disturbance for maintenance or nuisance, firebreaks, and/or future land development activities (example, parcel survey).

These amendments clearly define the applicability of land clearing permits that were not enforced due to the types of permits established, only related to tree removal and did not address non-removal of tree, land clearing permit activity.

ATTACHMENTS:

Amending LDC Article XV, Tree Protection and Restoration.

FISCAL IMPACT: None

ACTION OPTIONS: Consideration and motion to approve text amendments and additions to Land Development Code, Article XV, Tree Protection and Restoration as presented or with comments for consideration by Town Council.

Article XV TREE PROTECTION AND RESTORATION¹

Section 1-15.1. Short title.

This ordinance shall be known and may be cited as the Town of Malabar Tree Protection and Restoration Ordinance.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.2. Authority and power.

Pursuant to the Constitution of the State of Florida and Chapter 163 of the Florida Statutes the Town of Malabar Town Council is vested with the authority to adopt the Town of Malabar Tree Protection and Restoration Ordinance to be administered by the Town ~~Manager~~ Administrator, or his or her designee.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.3. Purpose and intent.

It is the intent of this ordinance to promote the health, safety and general welfare of the current and future residents of the Town of Malabar by establishing minimum standards for the regulation of the planting, maintenance, preservation, protection and removal of trees within the Town of Malabar. Is further intended to perpetuate adequate tree numbers and canopy in order to maintain the economic, environmental and aesthetic status of the Town. To this end, it shall be unlawful to cut down, damage, poison or in any other manner destroy or cause to be destroyed and tree, mangrove, or other vegetation as covered by the provisions of this Ordinance except in accordance with the provisions set forth herein.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.4. Beautification trust fund.

A beautification trust fund is hereby established for the purpose of accruing revenues generated by the receipt of monies collected as application fees and the equivalent values as prescribed herein, and for the expenditure of such funds for the purpose of establishing beautification projects on public lands. All projects will be approved by the Town Council.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.5. Definitions.

For the purpose of this article, the following terms shall have those meanings set forth herein.

¹Editor's note(s)—Ord. No. 03-17, § 1, adopted January 5, 2004, repealed the former Art. XV, §§ 1-15.1Editor's note(s)—1-15.14, and enacted a new Art. XV as set out herein. The former Art. XV pertained to similar subject matter and derived from Ord. No. 90-5, 4-17-90; Ord. No. 90-7, § 2, 11-7-90.

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- a. *Bond* shall mean a cashiers check payable to the Town of Malabar in an amount equal to the equivalent replacement value of the tree(s) to be removed an or relocated and given as guarantee of replacement by the applicant.
 - b. *Branch collar* shall mean the trunk tissue that forms around the base of a branch between the main trunk and the branch.
 - c. *Caliper* shall mean the diameter of a tree measured four and one-half (4½) feet above the ground, rounded to the nearest one-half (½) inch.
 - d. *Canopy* shall mean the upper portion of a tree, consisting of limbs, branches and leaves.
 - e. *Conifer* shall mean a pine tree or cone bearing seed plant.
 - f. *Diameter at breast height (DBH)*. The standard measure of a single stemmed tree at four and one-half (4½) feet above grade adjacent to tree. When a tree has grown with cluster stems at breast height, DBH shall be equal to the sum or aggregate of the individual stems measured at four and one-half (4½) feet above grade.
 - g. *Drip line* shall mean the natural outside end of the branches of a tree or shrub projected vertically to the ground.
 - h. *Grubbing* shall mean the removal or destruction of any living rooted shrubbery; denuding of a parcel by digging, raking, or dragging; activities which disturb the roots of such vegetation or the soil in which such roots are located in a manner which is calculated to result or likely to result, in the death, destruction or removal of such vegetation.
 - i. *Land clearing* shall mean the removal or grubbing, by any means, of any type of vegetation from land not including, however, activities governed by tree removal or mangrove alteration permits.
 - j. *Mangrove*. Rooted shall mean rooted trees and seedlings of the following species, but only when having a coastal or estuarine association:
 - i. Red Mangrove—*Rhizophora Mangle*;
 - ii. Black Mangrove—*Avicennia Germinans*;
 - iii. White Mangrove—*Laguncularia Racemosa*;
 - iv. Buttonwood or Button Mangrove—*Conocarpus Erecta*
 - k. *Protected area* shall mean an area surrounding a protected, historic, or tree of special significance within which physical intrusion is prohibited in order to prevent damage to the tree, roots and soil around the tree base, the dimensions of which shall be established by the Town and set forth in the tree removal permit, in accordance with section.
 - l. *Protected tree* shall mean all trees and all significant grouping of trees of the West Indian or Tropical origin of any size and all mangrove regardless of size; excluding, however, the following trees and plants, regardless of size or location:
 - i. Australian Pine—*Casuarina Cunninghamiana*; *Casuarina Lepidophlia*; *Casuarina Equisetifolia*;
 - ii. Ear Pod Tree—*Enterolobium Cyclocarpum*
 - iii. China Berry—*Melia Azedarach*
 - iv. Brazilian Pepper Tree—*Schinus Terebinthifolius*
 - v. Melaleuca, Punk or Paper Tree—*Melaieuca Leucadendron*
 - vi. Chinese Tallow Tree—*Sapium Sebiferum*

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- vii. Air Potatoe—*Dioscorea-bulbifera*, *Dioscorea alata*
 - viii. Kudzu Vine—*Pueraria Montana*
 - ix. Climbing Fern—*Lygodium Japonicum*, *Lygodium microphyllum*
 - x. African Bowstring Hemp—*Sause Viera Hyacinthoides*
 - xi. Castor Bean Plant—*Racinus Communis*
 - xii. Any species found on the Florida Exotic Pest Plant Council's list of Florida's most Invasive Species.
- m. *Cabbage Palms*(*Sable Palmetto*) and *Citrus Trees* of all varieties shall not be considered to be protected trees, but such trees shall be included in the tree survey in the event the applicant chooses to make use of such trees as a credit against the trees otherwise required under an applicable landscaping regulation or requirement. If so designated, these Palms and Citrus shall become protected trees under this ordinance.
 - n. *Protective barrier* shall be made of one-inch to two-inch wide stakes spaced a minimum of five (5) to eight (8) feet and eighteen (18) inches to twenty-four (24) inches above ground with the top two-inch to four-inch marked by fluorescent orange paint or tape.
 - o. *Remove or removal* shall mean the actual physical removal or the effect of removal through damaging, poisoning or other direct or indirect action in resulting in or likely to result in the death of a tree.
 - p. *Tree survey* shall mean a physical on-site survey and plot of trees.
 - q. *Trees of special significance* shall mean a tree which is determined by the Town Council to be a value to the community because of its type, size, age or other significant tree characteristics.
 - r. *Historic tree* shall mean a tree which has been found by the Town Council to be of notable historic interest to the Town based on its age, species, size, or historic association with the Town.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.6. General prohibitions.

Unless expressly exempted herein, it shall be unlawful and subject to the penalties provided herein for any person directly or indirectly by another on his behalf to:

1. Remove, relocate, destroy or damage, any tree on any site or tract without first obtaining a tree removal permit or mangrove alteration permit pursuant to this ordinance;
2. Perform any land clearing or grubbing unless a land clearing permit has been issued pursuant to this ordinance;
3. Encroach on to protected areas established pursuant to this ordinance by any of the following acts or omissions:
 - a. Trenching, digging, movement or storage of any vehicle within or across a protected area;
 - b. The storage of building materials, debris, fill, soil or any other matter within a protected area;
 - c. The cleaning of material or equipment within a protected area;
 - d. The disposal of any liquid or solid waste material such as paints, oil, solvents, asphalt, concrete, mortar, or other materials similarly harmful within a protected area; and
 - e. The placement of any structure or site improvement within a protected area.

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4. Violate or fail to observe any of the requirements set forth in section 1-15.6 of this ordinance pertaining to tree and mangrove protection.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.7. Limited exemptions.

- A. *Existing bona fide agricultural operations and nurseries.* The intent of this ordinance is not to prohibit a reasonable expansion of an existing bona fide agricultural activity. Accordingly, an existing agricultural activity operating in the Town of Malabar with a state agricultural tax exemption together with a Town business license for a five-year duration shall be allowed to expand operations. However, the applicant for such an expansion shall first present the Town Manager, or designee, Building Official with a plan as described in section 1-15.8(B)(1).

The plan shall demonstrate to the satisfaction of the Town Manager, or designee, Building Official that the requested land clearing and tree removal impacts the minimum tree removal necessary to accommodate a reasonable expansion of an existing agricultural activity and that a failure to allow such tree removal would be unreasonable and would severely restrict or prohibit such reasonable expansion activity.

The Town Manager, or designee, Building Official shall have authority to approve such a plan for tree removal and shall order a tree removal permit upon the applicant's compliance with the terms of this subsection.

In addition, all licensed plant and/or tree nurseries shall be exempt from the terms and provisions of this article as it may impact trees and plants growing on the premises and intended for commercial sale in the licensee's ordinary course of business.

- B. *Other activities.* Notwithstanding anything to the contrary in this ordinance, the following activities shall be lawful without application for or issuance of a tree removal or land clearing permit. None of these exemptions shall apply to any mangrove; nor shall they apply to dune vegetation. Burden of proving entitlement to any particular exemption shall lie with the person claiming use of the exemption, in the event the exempted activity ever becomes subject to an enforcement proceeding.
 1. *Limited pruning (excluding mangroves).* The limited pruning and trimming of any tree or other vegetation as necessary for the clearing of a path not to exceed four (4) feet in width to provide physical access or view necessary to conduct a survey or site examination for the preparation of subdivision plats, site plans, or tree surveys, provided such clearing or removal is conducted under the direction of a Florida registered surveyor or engineer.
 2. *Restricted landscape maintenance.* Routine landscape maintenance such as trimming or pruning of vegetation which is not intended to result in the eventual death of a plant, mowing of yards or lawns, or any other landscaping or gardening activity which is commonly recognized as routine maintenance or replacement.
 3. *Work by utility service.* The removal, trimming, pruning or alteration of any tree or vegetation in an existing utility easement or right-of-way provided such work is done by or under the control of the operating utility company and said company has received all necessary licenses or permits to provide utility service within the easement.
 4. *Minor alteration to preserve existing access.* The removal, pruning, trimming or alteration of any tree or vegetation for the purpose of maintaining an existing access to a property with minimum necessary alteration to natural vegetation.
 5. *Damaged trees.* Any tree which has been destroyed or damaged beyond saving by natural cause or causes not covered by other sections of this ordinance, or which constitutes an immediate peril to life,

property, or other trees, may be removed by obtaining a Type IV permit issued at no cost to the applicant.

- 6.(d) *Pruning or removal of trees and foliage.* Where any portion of the canopy is within thirty (30) feet of any structure located on property that may be endangered by the possibility of fire or physical damage or destruction by wind or rain, said vegetation with a six inch basil diameter or less may be pruned or removed without a permit. Trees and foliage meeting these criteria with greater than a six-inch basil diameter may be pruned or removed upon the issuance of a Type IV permit from the Town Manager, or designee, Building Official. Additionally, trees or vegetation, where the canopy is greater than thirty (30) feet from any structure located on property, may be pruned without a permit or removed upon the issuance of a Type IV permit from the Building Official if the canopy height is equal to or greater than the distance from the canopy to the structure. Non-Native trees and foliage species as well as dead trees and foliage with less than a six-inch basil diameter may be removed without permit and those with a greater than six-inch basil diameter may be removed upon the issuance of a Type IV permit from the Town Manager, or designee, Building Official.

(Ord. No. 08-08, § 1, 10-20-08)

Section 1-15.8. Permits available; criteria for issuing permits; permit determinations; required replacements or relocations.

- A. *Permits available.* The following permits with stated limitations shall be available upon proper application to the Building Official and compliance with this ordinance.
1. *Tree removal permit:* A tree removal permit shall not authorize the destruction of a mangrove unless criteria governing mangrove alteration is satisfied.
 2. *Land clearing permit:* A land clearing permit does not authorize the removal or destruction of protected trees, nor does it authorize any alteration to a mangrove.
 3. *Mangrove alteration permit:* No mangrove shall be altered unless the Town Manager, or designee, Building Official has issued appropriate permits based on a determination that all criteria governing both tree removal and mangrove alteration permits have been satisfied.
- B. *Criteria for issuing permits.* The following criteria shall be satisfied prior to issuance of a tree removal, mangrove alteration, or land clearing permit, respectively.
1. *Criteria for issuing a land clearing or tree removal permit.* In determining whether or not a permit required by this ordinance should be issued, the Town Manager, or designee, Building Official shall consider the following criteria:
 - a. The condition of the tree with respect to disease, insect attack, danger of falling, proximity to existing or proposed structures and interference with utilities services;
 - b. The necessity of removing a tree to construct proposed improvements in order to allow reasonable economic use of the property;
 - c. The topography of the land where the tree is located and the effect removal of the same would have on: erosion, soil moisture retention, increased or decreased flow or diversion in the flow of surface waters, and impact on overall surface water, management;
 - d. The number and density of trees existing on site;
 - e. The relative significance or uniqueness of the tree as a historic or specimen tree;

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- f. Impact on the natural environment, including: ground and surface water stabilization, water quality and aquifer recharge, ecological impacts, noise buffer, air quality, and wild life habitat;
 - g. The ease with which the applicant can alter or revise the proposed development or improvement in order to accommodate existing mangrove or trees; and
 - h. The economic hardship which would be imposed upon the applicant should the permit not be granted.
 2. *Criteria for issuing a mangrove alteration permit.* In determining whether or not to issue a permit, as required by this ordinance to alter a mangrove, the Building Official shall consider not only tree removal criteria of subparagraph B(1) of this section, but shall also consider the following criteria and incorporate them as conditions of the permit if issued. A violation of any of these provisions shall be deemed to be unlawful and subject to all penalties provided for herein.
 - a. At least fifty (50) percent of the original canopy of any mangrove trees shall be continuously retained.
 - b. White mangroves and buttonwood shall not be trimmed at all at a distance less than two (2) feet above the natural ground elevation. All resultant sprout re-growth shall be allowed to attain a height of a minimum of three (3) feet above natural ground elevation.
 - c. On red mangroves, no prop roots shall be damaged, removed or buried by fill or other means.
 - d. Red mangroves may be hedged down to a minimum height of six (6) feet, providing the limitations in subparagraphs a. and g. above [sic] are not exceeded.
 - e. On a black mangrove of ten (10) feet or less in height there shall be no cutting or trimming below the lowest two (2) living lateral limbs, unless a significant canopy area is left at the top of the tree. Further, no pneumatophores shall be damaged or removed nor shall they be buried by fill or other means.
 - f. No large mangrove cuttings shall be discarded into any estuary, marsh, river, or adjacent water course.
 - g. Pruning, removal and relocation of mangroves shall be prohibited between December 1st and February 15th.
 - h. All cuts shall be made cleanly and at the base of the branch or limb cut, except when done with respect to the shaping of a hedge.
 - i. A mangrove alteration permit shall not authorize removal of any mangrove unless the applicant replaces or relocates that number of mangroves necessary to revegetate an area approximately equal to the area destroyed, on the same development site. The applicant must provide an affirmative program satisfactory to the Building Official to assure survival of the replaced or relocated mangroves and to stabilize the shoreline from which mangroves were removed. The approved program shall be considered an express condition of the permit.
 - j. Notwithstanding the criteria of subparagraph B(2) of this section, the property owner/applicant may elect a replanting and hedging program, under direction and control of the Building Official, and under which replacement juvenile red mangroves may be hedged several times each year and maintained at a height after periodic hedging of three (3) feet. A mandatory and integral part of this program is that hedged material (clippings) shall be left atop the hedged mangroves until leaf drop from the hedged material (clippings) has occurred. The dropped leaves shall then become part of the estuary food chain.
 3. *Criteria for issuing a land clearing permit.* In determining whether or not to issue a permit to clear or grub land as required by this ordinance, the Town Manager, or designee, ~~Building Official~~ shall consider

whether the applicant has or is complying with all tree and land clearing provisions of this ordinance and shall base a decision regarding issuance of a permit on the following criteria:

- a. The minimum necessary vegetation removal on the property for purposes of land surveying or land preparation for development or other economic uses;
- b. Whether visual access is necessary to comply with tree survey requirements;
- c. Whether the applicant has provided protective barriers around all protected trees on the site or will utilize light machinery, which does not penetrate or severely compact the soil, for clearing understory vegetation in protected areas;
- d. The impact upon natural and man-made systems including erosion and surface water management and other impacts identified in section 1-15.8. To this end the applicant shall provide a reasonable written plan for controlling erosion which may be expected to occur as a result of the proposed clearing or grubbing. The plan shall incorporate some or all of the following measures necessary to achieve soil stabilization, prevent erosion, and promote efficient surface water management, including: temporary seeding and mulching, sodding, diversion berms, interceptor ditches, sediment barriers, sediment basins, and related appurtenances or devices. All provisions of an erosion control plan shall be incorporated as express conditions of the land clearing permit issued and a violation of any of the conditions or provisions of the plan shall be considered a violation of this ordinance, and subject to all enforcement provisions. The Building Official may require written elaboration of a proposed plan prior to issuance of a permit in order to clarify the nature and design of measures intended by the applicant.

4. The Town Manager or designee shall consider accessibility to the property and may require a culvert for property access, whether temporary or permanent, prior to the issuance of any permit type in the section

C. *Tree removal, mangrove alteration, and land clearing permit determinations.* The Town Manager, or designee, Building Official shall only issue a tree removal, mangrove alteration or land clearing permit upon a finding that all applicable requirements of this ordinance have been satisfied including criteria for issuance as set forth in section 1-15.8(B) as well as provisions governing required replacements in section 1-15.8(D). Notwithstanding, no permit shall be granted if the Town Manager, or designee, Building Official determines that any one of the following conditions exists:

1. *Ability to reasonably shift location of proposed improvements.* That the applicant can reasonably shift the location of the structure, building or improvement which he wishes to construct on the site, while maintaining the existence of the subject trees or mangroves and still permitting the construction of such building or improvement on the site;
2. *Ability to reasonably modify design concept.* That the applicant can reasonably modify the design of a structure, building or other proposed improvement while maintaining the existence of the trees or mangroves proposed to be removed and still permit construction of a substantially similar building on the site; or
3. *Land clearing or removal generates substantial adverse impact.* That the land clearing or the removal of the subject trees or mangroves will have a substantial adverse impact on the urban and natural environment.

D. *Required replacement or relocation of trees.* All trees that are removed or destroyed shall be replaced by a species of protected trees to be approved by the Town Council and to be kept on file in the Office of the Town Clerk. The cost of replacing trees shall be incurred by the applicant/developer. The specifications regulating the replacement of trees are cited below:

1. *Characteristics of replacement trees.* The replacement tree(s) shall have at least equal shade potential screening properties; and/or other characteristics comparable to that of the trees(s) requested to be removed.
 2. *Size of replacement trees.* Replacement tree(s) are to be made according to a standard of one (1) inch diameter at breast height (DBH) total replacement for each one (1) inch DBH removed, unless otherwise agreed upon by both the Town Manager, or designee, Building Official and applicant. Any number of trees may be utilized to meet the inch-for-inch requirement provided acceptable spacings and design are maintained.
 3. *Tree species.* Relocated or replacement trees shall include only species defined as protected trees under this ordinance.
 4. *Minimum standards for replacement trees.* All replacement tree(s) must have a minimum overall planted height of eight (8) feet at the time of planting and a Florida Department of Agriculture Nursery Grade Standard (quality) of No. 1 or better.
 5. *Transplanting and maintenance requirements.* All trees transplanted pursuant to this ordinance shall be maintained in a healthy, living condition. Any such trees which die shall be replaced by the applicant. The Building Official shall retain jurisdiction to insure compliance with this section.
 6. *Waivers of replacement tree(s) specifications.* The Town Manager, or designee, Building Official may waive the size or minimum standards specifications if the applicant can demonstrate that the current market conditions are such that replacement tree(s) meeting these specifications are not readily available. Similarly the number of required replacements may be waived by the Town Manager, or designee, Building Official if the Building Official determine ~~determine~~ **determined** that the remaining number of trees to be preserved on site are of sufficient number and quality to substantially comply with the purpose and intent of the tree protection ordinance. Substitute tree(s) allowed under this waiver provision must have the approval of the Town Manager, or designee Building Official.
- E. ~~Classification of permits: Each applicant for a permit, as set forth below, shall conform with the procedures that are applicable to that particular type of permit:~~
1. ~~Type I permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with any development plan required by the Land Development Code.~~
 2. ~~Type II permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with issuance of any right-of-way use or any driveway connection permit pursuant of the Land Development Code.~~
 3. ~~Type III permits shall be required for the removal of any tree five (5) inches dbh and larger in conjunction with the application and issuance of a building permit that was not, as a part of a related development permit, reviewed for tree removal and/or replacement.~~
 4. ~~Type IV permits shall be required for the removal of any tree where a Type I, II, or III permit is not required and the tree is ten (10) inches dbh and larger (five (5) inches dbh and larger for non-single-family).~~

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.9. Permits, submittal requirements, Review and Determination.

Each applicant for a permit, as set forth below, shall conform with the procedures that are applicable to that particular type of permit:

- A. *Type I permit.*

Type I permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with any development plan required by the Land Development Code.

1. *Submittal:* Projects which require a Type I permit shall submit the following to the Town ~~Manager Administrator~~, or his designee, concurrent with the submittal of a development plan as required by the Land Development Code:
 - a. Tree location survey identifying tree(s) ten (10) inches dbh and larger and all trees two (2) inches dbh and larger.
 - b. Tree plan prepared or approved by a registered landscape architect as authorized by Florida Statutes Chapter 481, as amended, or other type pf professional as approved by the Town Administrator or his designee.
2. *Review and determination process:* The review and determination process shall be concurrent with the applicable development plan process.

B. *Type II permit.*

Type II permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with issuance of any right-of-way use or any driveway connection permit pursuant of the Land Development Code.

1. *Submittal:* Projects which require a Type II permit shall submit the following to the Town ~~Manager Administrator~~, or his designee, concurrent with the submittal of a right-of-way use or driveway connection permit application:
 - a. A sketch identifying the location and general description of tree(s) five (5) inches dbh and larger. For projects larger than one single-family dwelling, a Tree Location Survey identifying tree(s) five (5) inches dbh and larger shall be submitted.
2. *Review and determination process:* The review and determination process shall be concurrent with the review process.

C. *Type III permit.*

Type III permits shall be required for the removal of any tree five (5) inches dbh and larger in conjunction with the application and issuance of a building permit that was not, as a part of a related development permit, reviewed for tree removal and/or replacement.

1. *Submittal:* Projects that require a Type III permit shall submit the following to the Town ~~Manager Administrator~~ or his designee, concurrent with the submittal of a building permit application:
 - a. A sketch showing location and a general description of tree(s) five (5) inches dbh and larger.
2. *Review and determination process:* The review and determination process shall be concurrent with the review of the building permit application. Reasonable effort shall be made to minimize tree removal such as design modification and requests for variances, e.g., variances in lot width or set back requirements, where the tree proposed for removal is ten (10) inches dbh and larger. After reasonable effort is made to minimize tree removal and the location of the tree prohibits the use of the site for the intended and desired purpose, a tree removal permit may be granted.

D. *Type IV permit.*

Type IV permits shall be required for the removal of any tree where a Type I, II, or III permit is not required and the tree is ten (10) inches dbh and larger (five (5) inches dbh and larger for non single-family).

1. *Submittal:* Tree removal requiring a Type IV permit shall submit two copies of the following to the Town ~~Manager Administrator~~, or his designee:

- a. Permit application demonstrating compliance with one (1) or more of the criteria below.
 - b. A sketch showing location and a general description of tree(s) ten (10) inches dbh and larger (five (5) inches dbh and larger for non single-family).
 - c. Tree plan if applicable.
2. *Review and determination process:* The tree removal permit shall only be granted where at least one of the following criteria is met:
- a. *Use.* Reasonable effort has been made to minimize tree removal such as design modification and requests for variances, e.g., variances in lot width or set back requirements, where the tree(s) proposed for removal is ten (10) inches dbh and larger, however, the location of the tree(s) prohibits the use of the site for the intended and desired purpose.
 - b. *Proximity to structures.* The tree or its root system is determined to be detrimental to the integrity of the structure's foundation.
 - c. *Thinning.* The removal of such tree is beneficial to the enhanced growth of other trees on site.
 - d. A type IV permit is required for the removal of any designated tree of special significance or emergency tree removal as defines in Section 1-15.14.

E. Type V permits

Type V permits shall be required for any use of a motorized and or rotary equipment method to remove underbrush and vegetation less than six (6) feet in height, and not defined as a tree, for the propose of unimproved property maintenance as required in the Town’s code of ordinance of nuisance vegetation and or firebreak protection of property in conjunction with any development plan required by the Land Development Code

- 1. *Submittal:* Tree removal requiring a Type V permit shall submit two copies of the following to the Town ~~Manager~~ Administrator, or his designee:
 - a. Survey of the property. Permit application demonstrating compliance with one (1) or more of the criteria below.
 - b. A sketch showing location and a general description of removal of underbrush and vegetation less than six (6) feet in height. This permit does not permit the removal of any trees.
- 2. *Review and determination process:* The permit shall only be granted where at least one of the following criteria is met:
 - a. Use. Reasonable effort has been made to minimize the impact of root and soil sediment and the topology of the property for the purpose of clearing nuisance and overgrown vegetation to maintain or gain access for development activities, reduce a nuisance to abutting property owners and rights-of way, or reduce fire hazards for the protection of life and property.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.10. Application procedure and fees.

- A. *Required application.* Application for issuance of any permit required by this ordinance shall be made in writing to the Town Building Department ~~Official~~ on a form provided by the Town. The form shall request all information necessary to evaluate a particular application including, but not limited to:
 - 1. Statement as to the applicant's interest in the property and reasonable proof of ownership.
 - 2. Legal description of the property and a boundary survey or accurate scaled drawing thereof:

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3. A tree survey indicating all trees and including those trees that are intended for removal, relocation, or alteration in any way and those which will be left undisturbed. A written explanation shall be included with the tree survey which identifies those criteria in section 1-15.8 of this ordinance which justify issuance of the requested permit.
 4. If land clearing is intended, an erosion control plan as described in section 1-15.8(B)(3), together with reasons for clearing or grubbing of the site.
 5. The application shall be submitted and processed concurrently with site plan review or subdivision approval, as the case may be, when such approvals are otherwise required to make use of the property. The site plan or subdivision preliminary plat shall be prepared in a manner to allow ready comparison with the tree survey, to assess whether the cited criteria have been met. All items shown shall be properly dimensioned, scaled and referenced to the property lines, easements, and setback or yard requirements. If known, existing and proposed site elevations and major contours shall be included:
 6. An administrative fee to offset the cost of evaluating the application shall be collected in an amount determined by resolution of the Town Council and a copy of the Florida Tree Protection Manual for builders and developers will be issued to each applicant for use as a guide to development.
- B. ~~Town's Building official's authority to inspect.~~ The filing of an application shall be deemed to extend permission to the Town Manager or designee, ~~Building Official~~ to inspect the subject property if necessary for purpose of evaluating the application.
- C. *Permit expiration.* Any permit issued hereunder shall remain valid for a term of six (6) months and may be renewed for a second six-month period upon request to the Town Manager or designee ~~Building Official~~. The Town Manager ~~Building Official~~ may require reapplication and full review in those renewal cases where site conditions have changed substantially from the date of issuance of the initial permit as a result of natural growth of trees and vegetation, or high winds, hurricane, tornado, flooding, fire, or other act of God. If a permit required by this ordinance has been issued concurrently with site plan or subdivision approval, then such permit shall run concurrently with the site plan or subdivision approval and shall be renewed together therewith.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.11. Tree protection during development of land.

- A. For the purposes of Type I and II permits, prior to the clearing or grubbing of land, or the removal of any tree, the applicant shall clearly mark all tree(s) for which tree(s) removal permit(s) are granted and shall erect barriers around the tree(s) to be retained on site so as to create a protected zone.
1. The protected zone shall extend from the tree trunk in all directions a minimum of two-thirds ($\frac{2}{3}$) of that tree's drip line.
 2. Barriers of a minimum of three (3) feet in height shall be erected outside the protected zone to prevent encroachment. Barriers shall remain in place and be in good condition throughout all development and building activity.
 3. For large property areas containing stands of trees to be retained that are separated from grubbing, clearing, and construction, in lieu of placing barriers as described above, may be partitioned off by placing the barriers around the perimeter of the stand area on the sides where grubbing, clearing or construction, etc., is occurring as long as an equivalent protected zone is established.
 4. The applicant, owner, developer, builder or agent shall not cause or permit the movement of equipment or the storage of equipment, material, and debris or fill to be placed within the protected

zone. No excavation shall occur within the protected zone and there shall be no cleaning of equipment or material or the storage or disposal of waste materials such as paints, petroleum products, oils, solvents, asphalts, concrete, mortar, or any other material within the protected zone. There shall be no fire or burning within thirty (30) feet of the protected zone.

5. Protective barriers may be removed for the final grading. Removal of vegetation or any landscaping activities within the barrier area shall be accomplished by mowing or hand clearing. If landscaping is to be located within the protected zone, clearing by light rubber-wheeled machinery only in the area and to the extent necessary shall be allowed.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.12. Trees of special significance.

- A. *Designation.* Trees of special significance are those trees or grouping of trees designated as such by a resolution of the Town Council. Designations can only be initiated by the property owner(s) of such tree(s) or on Town owned property by Town staff. After initiated, designation shall be reviewed by Town staff and those trees meeting the requirements of this section shall be presented to the Town Council who shall decide whether to designate a tree(s) as a tree of special significance. Trees designated as trees of special significance shall have a preservation easement, prepared by the owner(s) of the tree(s), created around them extending a minimum of fifteen (15) feet in all directions from the trunk and such preservation easement shall be recorded, by the owner(s) of the tree(s), in the public records of the Town of Malabar. Trees may be so designated if one of the following criteria applies:
 1. It is a historic tree, which is a tree of notable historical interest and value to the Town because of its location or historical association with the community.
 2. It is a specimen or grand tree, which is a tree of high value to the community because of its type, size, age, exceptional characteristics or other relevant criteria. See Schedule A and B.
 3. It is a champion tree, which is a tree that has been identified by the Florida Division of Forestry as being the largest of its species within the State of Florida or by the American Forestry Association as being the largest of its species in the United States or the world.
- B. *Protection.* A variance of the required minimum front, rear, and side yard setbacks may be granted to allow the preservation of trees of special significance. Topping of trees of special significance shall be subject to all penalties and fines as provided by this ordinance. The removal of any designated tree of special significance requires; a Type IV permit; a site inspection and written evaluation by a certified arborist demonstrating that removal is deemed necessary to avoid an immediate peril to life and/or the condition of the tree warrants removal; removal is approved by the Town Council; and the replacement shall be as determined by the Town Council.

Schedule A
Species and Minimum Points Needed to be a Grand Tree

American Elm (<i>Ulmus Americana</i>)	100
Bald Cypress (<i>Taxodium distichum</i>)	120
Hickory (<i>Carya spp.</i>)	110
Live Oak (<i>Quercus virginiana</i>)	110
Pine (<i>Pinus spp.</i>)	110
Redbay (<i>Persea borbonia</i>)	85
Sand Live Oak (<i>Quercus geminate</i>)	70
Southern Magnolia (<i>Magnolia grandiflora</i>)	80

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(Supp. No. 24)

Southern Red Cedar (<i>Juniperus silicicola</i>)	90
Sugarberry (<i>Celtis laevigata</i>)	95
Sweetbay (<i>Magnolia virginiana</i>)	90
Sweetgum (<i>Liquidambar styraciflua</i>)	100

Schedule B
Measurements

Trunk diameter (DBH)	one point per inch
Height to the nearest foot	one point per foot
Average canopy spread to the nearest foot	one point for each four foot
(measure the longest and shortest diameters of the limb spread or drip line and divide by 2)	

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.13. Variance.

In so much as the requirements of this ordinance have been determined to be of vital importance to the health, safety and well being of the community, the desire to preserve a protected tree, whether mandated by this ordinance or not, shall be considered prima fascia a unique or special condition or circumstance peculiar to the land involved for the purpose of application for a variance from the literal requirements of a Land Development Ordinance, or Regulation pertaining to building setbacks, parking space requirements or road right-of-way widths, provided adjustments are made elsewhere on site to preserve the maximum permitted lot coverage and the total minimum number of parking spaces, and provided safety precautions are taken to offset any hazards resulting from the trees to right-of-way widths.

Such variance requests shall be made in accordance with the procedures in section 1-12.2.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.14. Emergency tree removal.

When it is necessary to expedite the removal of damaged or destroyed trees in the interest of public safety, health and general welfare following high winds, storms, hurricanes, tornadoes, floods, freezes, fires or other man-made or natural disasters, Building Official may issue a type IV permit for the removal of such damaged tree and the applicant shall not be required to pay a permit fee.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.15. Penalties and enforcement-special hearing master jurisdiction.

Penalties for violations of this article, including conditions of any permit issued hereunder, shall include a fine of up to five hundred dollars (\$500.00) per tree illegally removed. In addition, any violation of this article, or any permit issued hereunder, shall also be punishable by a fine of not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed sixty (60) days or both such fine and imprisonment. Each unauthorized removal of a tree protected by this article shall be deemed a separate offense.

Any person violating the provisions of this article XV is subject to the jurisdiction of the special hearing master and in any enforcement proceeding, the special hearing master may consider mitigating measures voluntarily undertaken by the alleged violator such as replacement or relocation of trees or vegetation or other landscaping improvements in fashioning its remedy. The special hearing master, in addition to the fine imposed

herein shall also have the authority to require restorative measures he or she deems necessary. Such restorative measures include, but are not limited to the following:

- A. The replanting of a tree twice the size of one illegally removed of the same type;
- B. By replanting the same type trees with five-inch dbh or greater in a sufficient number such that the total number of dbh inches of the replanted trees equals twice the total number of dbh inches of trees removed without authorization;
- C. The payment of a mitigation fee of two hundred dollars (\$200.00) per diameter inch of the trees removed without authorization to the beautification trust fund.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.16. Appeals.

Except for decisions of the Board of Adjustments, any person aggrieved by the Administration or interpretation of any of the terms or provisions of this article may appeal to the Town Council, which, after a hearing, with notice to the appellant may reverse, affirm or modify, in whole or in part the order, requirement, decision or determination appealed from, and they make such an order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the Administrator from whom the appeal is taken. This provision does not confer upon the Town Council any appellate jurisdiction over a determination of the Special Hearing Master or Board of Adjustments.

(Ord. No. 03-17, § 1, 1-5-04)

TOWN OF MALABAR

PLANNING & ZONING ADVISORY BOARD

AGENDA ITEM NO: 6.C.
Meeting Date: September 8, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Amend Article V, General Provisions, Section 1.5-22 Fill and Erosion Control with Textual Updates

BACKGROUND/HISTORY:

Staff has recognized the difficulty in calculation and interpreting the fill permit requirements for applicants and property owners. The amended code requires a fill permit for all land disturbances of 1,000 square feet and or the addition of 30 yards of fill. 30 yards is equivalent to (2) 15 yard dump trucks. The amendment also includes clear references to codes and regulations pertaining to erosion control requirements to ensure no adverse impacts to adjacent properties and or streams to maintain water quality and proper drainage.

ATTACHMENTS:

Amending LDC Article V, General Provisions, Sec. 1-5.22. Standards for Land Excavation or Fill and Erosion Control.

FISCAL IMPACT: None

ACTION OPTIONS: Consideration and motion to approve text amendments and additions to Land Development Code, Article V, General Provisions as presented or with comments for consideration by Town Council.

ORDINANCE 2021-20

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V IN THE LAND DEVELOPMENT CODE TO ADD NEW SECTIONS DEALING WITH APPLICATION, PERMITTING AND OPERATIONAL REGULATIONS FOR BRINGING ADDITIONAL FILL ON RESIDENTIAL PROPERTIES AND REQUIRING PROPER EROSION CONTROLS MEASURES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council desires to update the Code of Ordinances relating to a standards for fill permitting and erosion control requirements.

WHEREAS, the Town Council desires to locate these regulations within the Article dealing with General Provision in the Land Development Code with references to the Building Code in Chapter 6 and Site Plan regulations in Article VII.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Malabar, Brevard County, Florida:

SECTION 1. Article V, General Provisions, in the Land Development Code Section 1-5.22 is amended to read as follows:

“Sec. 1-5.22. Standards for Land Excavation or Fill and Erosion Control.

~~No Any site work adding more than 30 yards of material or disturbing more than 1,000 square feet of land which redirects and/or increases or reduces off-site natural drainage or runoff to or from a site shall not be undertaken without prior application, approval, and issuance of a permit by the Town Engineer in order to assure no adverse impacts will occur on adjacent lands and to assure appropriate erosion control measures are followed. The Code provides regulations governing such activities. See Article VII, Site Plan Design and Article VIII, Surface Water Management.~~

A. Purpose and intent.

The intent of this article is to promote consistent regulations related to land-disturbing and fill activities on any land area greater than 1,000 square feet within the Town to ensure the protection of natural resources, water quality, flood prevention and erosion control measures are followed.

For the purpose of this article, the following terms, phrases, words and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present term include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Terms listed in Article VII and Article VIII may also apply to this article.

Erosion and sedimentation control permit. A permit issued by the Town based on an approved erosion and sedimentation control (ESC) plan in conjunction with development permit or redevelopment approval.

Filling (fill). The placement of any soil or other solid material either organic or inorganic on a natural ground surface or an excavation in an effort to change the existing grade or recompose the soil.

Finished grade. The final grade or elevation of the ground surface forming the proposed design.

Land-disturbing activity. Any land change which may result in soil erosion from water or wind; including, but not limited to, clearing, dredging, grading, excavating, transporting and filling of land and for which a ESC permit is required.

Sediment. Solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, ice or gravity as a product of erosion.

Slope. Degree of deviation of a surface from the horizontal usually expressed in ratio of horizontal to vertical dimension.

Stabilization. The process of establishing an enduring soil cover of vegetation and/or mulch or other ground cover and/or a combination when installing temporary or permanent structures for the purpose of reducing to a minimum the transport of sediment by wind, water or gravity.

Structural practices. Soil and water conservation measures other than vegetation, utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating, or disposing of runoff to prevent excessive sediment loss; including, but not limited to open sediment basins, dikes, level spreaders, waterways or outlet diversions, grade stabilization structures, sediment traps, land grading, etc.

Unacceptable filling (fill). Any material from another site other than excavated earth. Any material prohibited as fill material by state or county regulations.

Watercourses. Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows either continuously or intermittently and which has a defined channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow of flood water.

Sec. 1-5.23. - Scope and exclusions.

(a) Scope and exclusions. This section shall apply to any land-disturbing activity involving 1,000 square feet of land, undertaken by any person on any lands, except for the following:

(1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, maintenance work, or other related activities which result in minor soil erosion, except those affecting drainage easements.

(b) Procedure for permitting land-disturbing activity.

(1) No person shall perform any land-disturbing activity without first obtaining a permit from the Building Department after certification by Town personnel that the proposed activity is consistent with these regulations. Such permit shall be in addition to any other permits or approvals required for the project by any other ordinances, rules and regulations in effect.

(2) Application for a land disturbing activity must be made to the Town on an application form provided by the Town and must be accompanied by an erosion and sedimentation control plan. The applicant's erosion and sedimentation control plan shall include, as a minimum, the following information for the entire tract of land to be disturbed regardless of whether the tract will be developed in stages:

a. A narrative description of the overall project. This narrative shall include:

1. Anticipated starting and completion dates for each sequence and stage of land disturbing activities and the expected date the final stabilization will be completed.

2. A description of the sediment control program and sediment control practices.

3. An adequate description of general topographical and soil conditions of the tract.

4. A description of the zoning classification and uses of adjacent property and a general description of existing structures, building and other fixed improvements located within a perimeter of 200 feet of the boundary line of applicant's property.

5. A description of the maintenance program for sediment control facilities including inspection programs, revegetation of exposed soils, method and frequency of removal and disposal of solid waste material removed from control facilities and disposition of temporary structural measures.

6. The type of soil or material to be used for filling, if applicable.

b. Maps, drawings and supportive computations bearing the signature and seal of a licensed engineer and containing:

1. A site location drawing of the proposed project indicating the location of the proposed project in relation to jurisdictional boundaries of roadways and watercourses.

2. A boundary line survey of the site on which the work is to be performed.

3. A plan for temporary and permanent vegetative and structural erosion and sediment control measures.

(3) Approval of application and issuance of permits.

a. The Town Building Official or designee shall certify the erosion and sedimentation control plan upon finding that the requirements of this section have been met.

b. If the tract is to be developed in phases, then the Building Department may issue a separate permit for a master plan or for each phase.

c. The permit may be suspended or modified by the Town upon a finding that the holder is not in compliance with this section or has violated any of the provisions or conditions of the permit.

d. No building permit shall be issued until a required land disturbing ESC permit certifying approval of the erosion and sedimentation control plan is obtained in accordance with this section.

(c) Principles and standards.

(1) Implementation. Soil erosion and sediment control measures shall conform to the standards and specifications of this chapter. The application of measures shall apply to all features of the site, including street and utility installations, drainage facilities, watercourses, and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion and sediment pollution during all stages of any land-disturbing activity.

(2) General design principles. Practical combinations of the following principles shall be utilized as a minimum, in planning measures to be installed for any land-disturbing activity:

a. The land-disturbing activity shall conform to existing topography and soil type so as to create the lowest practical erosion potential.

b. Land-disturbing activities shall be conducted in a manner minimizing erosion.

- c. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum.
- d. Erosion control must be strictly maintained during cut and fill operations.
- e. Disturbed soil shall be stabilized as quickly as practicable or as directed.
- f. Whenever feasible, natural vegetation shall be retained, protected and supplemented.
- g. Temporary vegetation or mulching shall be employed to protect exposed critical areas during development.
- h. Permanent vegetation and structural erosion control measures shall be installed as soon as practicable.
- i. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping surface of fills.
- j. To the extent necessary, sediment in runoff water must be trapped by the use of debris basins, sediment basins, silt traps or similar measures until the disturbed area is stabilized.
- k. Cuts and fills must be constructed in such a manner that erosion and runoff from the site does not endanger adjoining property.
- l. Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners without adequate provisions for an equivalent alternate system with a positive outfall.
- m. Rights-of-way, including streets and sidewalks or pedways, and drainage ways, or watercourses shall be kept clear of all debris/dirt, etc.
- n. Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible and provided in any case, that such crossings are kept to a minimum, and sedimentation control devices are provided.

(d) Maintenance. Maintenance of all soil erosion and sedimentation control practices whether temporary or permanent, shall be at all times the responsibility of the owner.

SECTION 2. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 4. Conflicting Provisions. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or town law, rule, code, or regulations, the more restrictive shall apply.

SECTION 5. Inclusion in Code. It is intention of the Town Council 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 take effect immediately upon passage and 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 Marisa Acquaviva	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

This ordinance was then declared duly passed and adopted this ____ day of _____ 2021.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin, C.M.C., Town Clerk/Treasurer

(seal)

Approved for Legal Sufficiency:

Karl Bohne, Jr, Town Attorney

P&Z Board: 09/08/2021
First Reading: 09/14/2021 Vote ____ to ____
Second Reading: 9/27/2021

TOWN OF MALABAR

PLANNING & ZONING ADVISORY BOARD

AGENDA ITEM NO: 6.d.

Meeting Date: September 8, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Amend Article VII, Site Plan Procedures, Section 1-7.1. Applicability and filing procedures with Textual Updates

BACKGROUND/HISTORY:

With the recommendation of approval for amending LDC Article V, General Provisions, Sec. 1-5.22. Standards for Land Excavation or Fill and Erosion Control, it is necessary to amend and clarify Site Plan Procedures in Article VII, Section 1-7.1 Applicability and Filing Procedures of the Land Development Code to ensure all land disturbances greater than 1,000 square feet where fill is required, a permit is also required to protect adjacent property's, proper drainage, and erosion control is complied.

ATTACHMENTS:

Amending LDC Article VII, Site Plan Procedures, Section 1-7.1. Applicability and filing procedures

FISCAL IMPACT: None

ACTION OPTIONS: Consideration and motion to approve text amendments and additions to Land Development Code, Article VII, Site Plan Procedures as presented or with comments for consideration by Town Council.

ORDINANCE 2021-21

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VII IN THE LAND DEVELOPMENT CODE TO UPDATE APPLICABILITY AND FILING PROCEDURES FOR SITE PLANS, BOTH RESIDENTIAL AND COMMERCIAL; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council desires to update the Code of Ordinances relating to a standards for Site Development Procedures for both residential and commercial developments.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Malabar, Brevard County, Florida:

SECTION 1. Article VII, Section 1-7.1. Site Plan Procedures in the Land Development Code Section 1-5.22 is amended to read as follows:

“Sec. 1-7.1. Applicability and filing procedures.

Site plan approval, as provided for herein shall be required for each of the following:

1. All permitted uses, ~~except single family homes or single family home accessory structures. However, all uses and structures shall comply with surfacewater management criteria of Article VIII~~ and Fill and Erosion Control criteria in Article V.
2. All conditional uses.
3. Any use or change in use resulting in the land disturbance of one thousand (1,000) square feet of ~~impervious surface area~~ of the entire site.
4. The provisions of Article VIII: Surface Water Management shall apply to all site plans as if the same were incorporated in this Article.
5. Any development including single family residences which will involve any clearing, fill, grading or other form of disturbing the land by the movement of earth shall comply with the provisions of Article V as if the same were incorporated in this Article. ~~provided that any one of the following descriptions applies to said movement.~~
 - ~~(a) Excavation, fill or any combination thereof which will exceed five hundred (500) cubic yards.~~
 - ~~(b) Fill which will exceed three (3) feet in vertical depth at its deepest point as measured from the natural ground surface.~~
 - ~~(c) Excavation which will exceed four (4) feet in vertical depth at its deepest point as measured from the natural ground surface.~~
 - ~~(d) Excavation, fill or any combination thereof which will exceed an area of one thousand (1,000) square feet.~~
 - ~~(e) Plant and/or tree cover is to be removed from an area exceeding one thousand (1,000) square feet on any parcel of land.~~
- (f) Whenever any amount of excavation or fill is proposed within one hundred (100) feet of a stream, stream channel or body of water a soil erosion and sedimentation control plan shall be provided. See Article V, Section

A. *General Site Plan Review Procedure.* In all cases requiring site plan review, no structure or parking area, or part thereof, shall be erected or used, or land or water used, or any change of use consummated, nor shall any building permit be issued therefor, unless a site plan for such structure or use shall have been reviewed by the Town Staff and Planning and Zoning Board and received approval by Town Council.

1. *Filing.* Before such site plan shall be approved, an application for such approval shall be filed with the Town Clerk. ~~then directed to the Building Official and/or the Town Engineer or other designated officials for their recommendation. Town Engineer is defined as that Town employee, or outside Florida registered engineer contracted by the Town, responsible for performing the duties specified herein as the Town Engineer.~~

2. *Application, Fee and Disclosure of Ownership.* Such application shall be in a form substantially in accordance with the form prescribed by the Town Clerk, copies of which may be obtained from the Town Clerk's office. A written power of attorney authorizing a person other than the owner(s) to sign such application must be attached to said application.

All applications shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for site plan approval is sought, except publicly held corporations, in which case the name and address of the corporation and principal executive officers will be sufficient.

The fee schedule for site plan review shall be as determined by resolution of the Town Council.

3. *Review by Town Staff and Planning and Zoning Board.* The application shall be forwarded to the Building Department for Town Staff review ~~Official and/or the Town Engineer or other designated officials for their recommendation~~ to the Planning and Zoning Board. Town Engineer is defined as that Town employee, or outside Florida registered engineer contracted by the Town, responsible for performing the duties specified herein as the Town Engineer.

~~The Town shall proceed to make appropriate studies and/or reviews required to make an appropriate evaluation. The application with evaluative comment shall then be forwarded to the Town Planning and Zoning Board for their consideration and action.~~ The site plan review process shall be carried out in accordance with procedures established by the Planning and Zoning Board, so as to prevent inconvenience and delay to the project.

After reviewing a site plan and staff recommendations, the Planning and Zoning Board shall recommend approval or disapproval. The Planning and Zoning Board shall provide written comments documenting any conditions of approval. If site plan is recommended for disapproval, the Planning and Zoning Board shall specify in writing the reasons for recommending denial. All recommendations of the Planning Board together with the written record shall be forwarded to the Town Council for final action.

3. *Action by the Town Council.* The Town Council shall consider the recommendations of staff and the Planning and Zoning Board and approve with or without conditions, or disapprove the site plan. The Town Council may attach to its approval of a site plan any reasonable conditions, limitations or requirements which are found necessary, in its judgement, to effectuate the purpose of this Section and carry out the spirit and purpose of the Zoning Ordinance.

Any condition shall be made a written record and affixed to the site plan as approved. If the Town Council disapproves a site plan, the reasons shall be stated in writing and the appeal shall be to the Court of appropriate jurisdiction.

B. Review of Minor Site Plans.

1. *Applicability.* For the purposes of this section, minor site plans shall include the following:

- a. Residential projects comprised of a single building, having less than five (5) dwelling units, or:
- b. Projects containing less than one thousand (1,000) square feet of new impervious surface area.

c. Single family homes and accessory buildings or ponds which require site plan approval pursuant to section 1-7.1.5.

2. *Submission Requirements for Minor Site Plans.* Minor site plans shall only include that information required in Sections 1-7.2, 1-7.3, which is determined to be applicable to the proposed minor site plan by the Building Department Official and Town Engineer.

3. *Minor Site Plan Review Procedures.* All minor site plan applications shall be reviewed by the Building Official and Town Staff Engineer and Building Official and approved by the Building Official, the Planning and Zoning Board and the Chairperson of the Town Council. However, single family homes, accessory buildings or ponds may be approved by the Building Official. Appeals of such decisions shall be conducted pursuant to section 1-7.4

~~C. *Minor Modifications of Site Plans.* Minor modifications to approved site plans shall include changes such as the:~~

- ~~1. Addition of awnings, canopies or other ornamental structures; redesign and different location of pools, parking spaces, drives and driveways; or modifications in stairs or elevations of decks, porches, terraces and fencing;~~
- ~~2. Addition of parking spaces not to exceed twenty-five (25) percent, including fractions thereof, of the total number of existing parking spaces or five (5) spaces, whichever is the greater amount;~~
- ~~3. Attached or detached additions to buildings which do not increase the floor area in excess of five hundred (500) square feet;~~
- ~~4. Installation of utility system improvements including buildings not exceeding two hundred (200) square feet.~~

~~4.5.~~ Aside from minor modifications to site plans as herein defined, any change in use of buildings, structures, land or water, or institutions of new uses, or alteration or major improvements to existing structures, or erection of new buildings or structures shall require a new site plan submittal in accordance with all procedures and provisions of this Code.

Such changes to approved site plans shall be reviewed by the Building Official and or other designated Town consultants/Staff. ~~If the Building Official and Town Engineer have no objection to the request based on its compliance with the Code, such minor modifications shall be submitted for approval by the Town Council Chairperson after review by the Planning and Zoning Board. The Town Council Chairperson shall report each change so approved to the Town Council for the record at the next scheduled meeting.~~

5. D. Conformance with Zoning Regulations Required. Any such building, structure or use shall be erected, altered, installed and maintained in full conformity with the provisions of the zoning ordinance and the approved site plan.

...

SECTION 2. Remainder of Article. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida that the remainder of the Article remain the same.

SECTION 3. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

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Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
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TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin, C.M.C., Town Clerk/Treasurer

(seal)

Approved for Legal Sufficiency:

Karl Bohne, Jr, Town Attorney

P&Z Board: 09/08/2021

First Reading: 09/14/2021 Vote to .

Second Reading: 9/27/2021