

ORDINANCE 2014-01

A ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING SECTION 1-2.6.B. LAND USE CLASSIFICATIONS; PROVIDING FOR PUBLIC HEALTH CARE FACILITIES AND SOCIAL WELFARE 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 AMENDING REFERENCES TO NURSING HOMES AND HOSPITALS AND PROVIDING FOR COMMUNITY RESIDENTIAL HOMES AND ASSISTED CARE COMMUNITIES; AMENDING TABLE 1-6.1 (B) REMOVING REFERENCES TO GROUP HOMES AND AMENDING REFERENCES TO NURSING HOMES AND HOSPITALS AND PROVIDING FOR COMMUNITY RESIDENTIAL HOMES AND ASSISTED CARE COMMUNITIES; AMENDING SECTION 1-9.2; ESTABLISHING PARKING REQUIREMENTS FOR PUBLIC HEALTH FACILITIES AND SOCIAL WELFARE FACILITIES; AMENDING SECTION 1-20.2 OF ARTICLE XX, DEFINITIONS; PROVIDING FOR DEFINITIONS OF HOSPITAL AND OTHER LICENSED FACILITIES, ADULT FAMILY-CARE HOME, ASSISTED LIVING FACILITY, ADULT DAY CARE CENTERS AND COMMUNITY RESIDENTIAL HOME; 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 is amended as follows:

“B. *Community Facilities.*

1. *Administrative Services (Public or Private Not-for-Profit).* Activities typically performed by not-for-profit private or public social services and utility administrative offices.
2. *Cemetery.* Property used for the interring of the dead.
3. *Child Care Services.* Activities typically performed by an agency, organization or individual providing day care without living accommodations for preteens not related by blood or marriage to, and not the legal wards or foster children of, the attendant adult.
4. *Clubs and Lodges (Not-for-Profit).* Activities typically performed by a group of persons for social or recreational purposes not operated for profit and not including activities which primarily render services which are customarily carried on as a business for profit.

5. *Cultural or Civic Activities.* Activities typically performed by public or private not-for-profit private entities for the promotion of a common cultural or civic objective such as literature, science, music, drama, art or similar objectives.

6. *Educational Institutions.* A place for systematic instruction with a curriculum the same as customarily provided in a public school or college. These activities include nursery school and kindergarten facilities designed to provide a systematic program to meet organized training requirements.

7. *Golf Course and Support Facilities.* A golf course is comprised of at least nine separate holes and may be regulation length, executive length, or par three (3) length. A golf course shall be required to comply with recommended minimum design standards established by the U.S. Golf Association or the American Society of Golf Course Architects. The following acreage requirements shall be the minimum standards for a golf course:

<i>Type of Golf Course</i>	<i>Minimum Acres Required</i>
Regulation Course	120 acres
Executive Course	40 acres
Par 3 Course	35 acres

Commercial miniature golf courses and driving ranges and similar facilities are excluded from this activity as defined.

8. *Places of Worship.* Activities customarily performed in a building where persons regularly assemble for religious worship and which building, together with its accessory building and uses, is maintained and controlled by a religious body organized to sustain public worship.

9. *Protective Services.* Fire, law enforcement and emergency medical related facilities planned and operated for the general welfare of the public.

10. *Public Health Facilities*

The Town has labeled the facilities below as Public Health Facilities. These facilities are also referenced in Florida Statutes, Title XXIX, in Chapters 395 and 408.

Notwithstanding the identification of other facilities in Florida Statutes, Title XXIX, in Chapters 395 and 408, the facilities below are the only Public Health Facilities provided for by the Town.

A. Hospital and other Licensed Facilities

"Hospital and other Licensed Facilities " means any establishment that:

(a) Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours

by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and

(b) Regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent.

However, the provisions of this chapter do not apply to any institution conducted by or for the adherents of any well-recognized church or religious denomination that depends exclusively upon prayer or spiritual means to heal, care for, or treat any person. For purposes of local zoning matters, the term "hospital" includes a medical office building located on the same premises as a hospital facility, provided the land on which the medical office building is constructed is zoned for use as a hospital; provided the premises were zoned for hospital purposes on January 1, 1992. Refer to Chapters 395 and 408.

B. Nursing Homes and Related Health Care Facilities

Refer to Chapters 400 and 408 for the definitions and requirements of the following Nursing Home and Health Care Facilities.

Part I Long-Term Care Facilities

“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 (additional reference: see Florida Statutes, Title XXX, Chapter 429, Social Welfare).

Part II Nursing Homes

“Nursing Home Facility” means any institution, building, residence, private home, or other place, whether operated for profit or not, including a place operated by a county or municipality, which undertakes through its ownership or management to provide for a period exceeding 24-hour nursing care, personal care, or custodial care for three or more persons not related to the owner or manager by blood or marriage, who by reason of illness, physical infirmity, or advanced age require such services, but does not include any place providing care and treatment primarily for the acutely ill. A facility offering services for fewer than three persons is within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services.

Part V Intermediate, Special Services, and Transitional Living Facilities

Intermediate care facilities; intent.—The Legislature recognizes the need to develop a continuum of long-term care in this state to meet the needs of the elderly and disabled persons. The Legislature finds that there is a gap between the level of care provided in assisted living facilities and in nursing homes. The Legislature finds that exploration of intermediate-level care facilities which would fill the gap between assisted living facilities and nursing homes, where both the federal and state

government share the cost of providing care, is an appropriate option to explore in the continuum of care.

11. *Public Parks and Recreation Areas*. Public parks and recreation land and facilities developed for use by the general public.

12. *Public and Private Utilities (including Essential Government Services)*. Use of land which is customary and necessary to the maintenance and operation of essential public services, such as electricity and gas transmission systems; water distribution; wastewater collection and disposal; communication; and similar services and facilities.

13. *Social Welfare Facilities*

The Town has labeled the facilities below as Social Welfare Facilities. These facilities are also referenced in Florida Statutes, Title XXX, in Chapters 408 and 430.

Notwithstanding the identification of other facilities in Florida Statutes, Title XXX, in Chapters 408 and 430, the facilities below are the only Social Welfare Facilities provided for by the Town.

A. Community Residential Homes

“Community Residential Home” means a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Family Services or licensed by the Agency of Health Care Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. Refer to Chapters 408 and 419.

There are 2 levels of Community Residential Homes:

Level 1 is between 1 to 6 residents/beds

Level 2 is between 7 to 14 residents/beds

B. Assisted Care Communities

Part I Assisted Living Facilities

“Assisted Living Facility (ALF)” 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. Refer to Chapter 408 and 429.

There are 3 levels of Assisted Living Facilities:

Level 1 is between 1 to 5 residents/beds

Level 2 is between 6 and 15 residents/beds

Level 3 is 16 residents/beds or more

In the RM-4 and RM-6 zoning districts, an ALF Factor of 3 will be used to determine the residents/bed density. For example, RM-4 is allowed 4 units per acre multiplied

by the 3 ALF Factor is equal to 12 residents/beds per acre. RM-6 is allowed 6 units per acre multiplied by the 3 ALF Factor is equal to 18 residents/beds per acre.

Part II Adult Family-Care Homes

“Adult Family-Care Homes” 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. Refer to Chapters 408 and 429.

Part III Adult Day Care Centers

“Adult Day Care Centers” 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 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. Refer to Chapters 408 and 429.”

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 Nursing Homes and Related Health Care Facilities in 1-2.6.B.10(B)), 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.”

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Section 3. Table 1-3.2 of Section 1-3.2 of the Malabar Land Development Code, Community Facilities, is hereby amended to delete references to “Group Homes”, and by amending references to “Hospitals and Extended Care Facilities” and “Nursing Homes (including Rest Homes and Convalescent Homes)” and adding references to Community Residential Home and Assisted Care Communities to read as follows:

<u>"COMMUNITY FACILITIES</u>	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
<u>Group Homes</u>					€	€		€			P		€	
<u>Hospitals and Extended Care other Licensed Facilities</u>								C						
<u>Nursing Homes (including Rest Homes and Convalescent Homes) and Related Health Care Facilities</u>					C	C		C			€		C	
<u>Community Residential Home</u>														
<u>Level 1 (1 to 6 residents/beds)</u>	C (3)				C	C								
<u>Level 2 (7 to 14 residents/beds)</u>					C	C							C	
<u>Assisted Care Communities</u>														
<u>I Assisted Living Facility</u>														
<u>Level 1 (1 to 5 residents/beds)</u>		C	C	C	C (4)	C (4)					C			
<u>Level 2 (6 to 15 residents/beds)</u>					C (4)	C (4)								
<u>Level 3 (16 or more residents/beds)</u>					C (4)	C (4)								
<u>II Adult Family-Care Homes</u>														
<u>(1 to 5 residents/beds)</u>	C (3)	C	C	C	C	C					C			
<u>III Adult Day Care Centers</u>					C	C		C			C		C	

(3) Allowed in RR-65, (1 to 2 residents/beds) as defined in FS Title XXX Chapters 419 & 429

(4) ALF Factor of "3" (see section 1-2.6.B.13.B, Part I) only applies to RM-4 & RM-6 for ALF's"

Section 4. Table 1-6.1(B) is hereby amended to delete references to "Group Homes", and by amending references to "Hospitals and Extended Care Facilities" and "Nursing Homes (including Rest Homes and Convalescent Homes)" and adding references to Community Residential Home and Assisted Care Communities to read as follows:

"Conditional Land Uses	Minimum Size Site (3)	Minimum Width/ Depth (feet) (3)	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
Group Homes	(3)	(3)	N/A	N/A	N/A	N/A	(7)
Hospitals and Extended Care other Licensed Facilities	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)
Nursing Homes (including Rest Homes and Convalescent Homes) and Related Health Care Facilities	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
<u>Community Residential Home</u>							
Level 1 (1 to 6 residents/beds)	1.5 acres	210	Paved	60/30	25/20	Type A/C	(7)
Level 2 (7 to 14 residents/beds)	3 acres	210	Paved	60/30	25/20	Type A/C	(7)
<u>Assisted Care Communities</u>							
<u>I Assisted Living Facility</u>							
Level 1 (1 to 5 residents/beds)	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 2 (6 to 15 residents/beds)	3 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 3 (16 or more residents/beds)	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)
<u>II Adult Family- Care Homes</u>							
(1 to 5 residents/beds)	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
<u>III Adult Day Care Facilities</u>	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)

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“(3) Minimum spatial requirements shall comply with the requirements established by the Town of Malabar District Provisions or the Florida Statues, whichever requirement is greater.”

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

11. *Social Welfare Facilities.* One (1) space for every three (3) residents/beds plus one (1) space per employee on the largest shift.”

12. *Public Health Facilities.* One (1) space for each five (5) beds plus one (1) space for each employee, including doctors, or one (1) space for per three hundred (300) feet of building area, whichever is greater.”

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Section 6. Section 1-20.2 of Article XX is amended by deleting the definition for “*Group Care Facility*” and amending “*Extended Care Facility*” and establishing the following additional definitions:

“*Hospital and other Licensed Facilities*” As defined in section 1-2.6.B.10.A

“*Adult Family-Care Home*” As defined in section 1-2.6.B.13.B, Part II.

“*Assisted Living Facility*” As defined in section 1-2.6.B.12.B, Part I.

“*Adult Day Care Centers*” As defined in section 1-2.6.B.13.B, Part III

“*Community Residential Home*” As defined in section 1-2.6.B.13.A.”

Section 7. 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 8. Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

Section 9. Codification. The provisions of this ordinance shall become part of the land development code of the Town of Malabar.

Section 10. This Ordinance shall become effective immediately upon its adoption.

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

Council Member James Milucky
Council Member Wayne Abare
Council Member Steven (Steve) Rivet
Council Member Dick Korn
Council Member Marisa Acquaviva

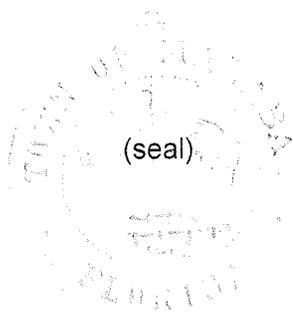
Aye
Aye
Aye
Aye
Aye

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 3rd day of February, 2014.

Town of Malabar
no signature – veto by Mayor
Carl A. Beatty, Mayor

First Reading 1/6/14 PASSED 5/0
Second Reading 2/3/14
Vetoed by Mayor 2/12/14
Council Vote to Override 3/3/14

Results:
Jim Milucky Aye
Wayne Abare Aye
Steve Rivet Aye
Dick Korn Aye
Marisa Acquaviva Aye



Ordinance adopted / fails (circle one)

TOWN OF MALABAR
By: [Signature]
Steve Rivet, Council Chair

ATTEST:
By [Signature]
Debby K. Franklin, C.M.C.
Town Clerk/Treasurer

Approved as to form and content:
[Signature]
Karl W. Bohne, Jr., Town Attorney