

**TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY OCTOBER 13, 2010
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA**

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**
- D. CONSENT AGENDA :**
 - 1. Approval of Minutes - Planning and Zoning Meeting – 9/22/2010**
 - Exhibit:** Agenda Report No. 1
 - Recommendation:** Motion to Approve
- E. PUBLIC HEARING: none**
- F. ACTION:**
- G. DISCUSSION:**
 - 2. Recommendations from Council – US 1 Corridor Review**
 - Exhibit:** Agenda Reports No. 2
 - Recommendation:** Discussion
- H. PUBLIC:**
 - 3. Request from Citizen For Input on Assisted Living Facility – Ms. Cora Lie Prince for ALF on Atz Road – RR-65 Zoning**
 - Exhibit:** Agenda Reports No. 3
 - Recommendation:** Discussion
- I. OLD BUSINESS/NEW BUSINESS:**
- J. ADJOURN**

NOTE: THERE MAY BE ONE OR MORE MALABAR ELECTED OFFICIALS ATTENDING THIS MEETING.

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service in compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: October 13, 2010

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

SUBJECT: Approval of minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

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

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

ATTACHMENTS:

- Draft minutes of P&Z Board Meeting of September 22, 2010

"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

September 22, 2010 7:35 PM

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

A. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 7:35 P.M. Prayer and Pledge led by Chair Bob Wilbur.

B. ROLL CALL:

CHAIR:	BOB WILBUR
VICE-CHAIR:	PATRICK REILLY
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN, excused
	LIZ RITTER
ALTERNATE:	CINDY ZINDEL
SECRETARY:	DENINE SHEREAR, excused
TOWN PLANNER	KEITH MILLS, excused
TOWN ENGINEER	MORRIS SMITH, P.E.
RECORDING SECRETARY	DEBBY FRANKLIN

For the record, Bud Ryan called Vice-Chair Patrick Reilly and asked to be excused due to injury just before meeting.

C. ADDITIONS/DELETIONS/CHANGES:

D. CONSENT AGENDA -

- 1. Approval of Minute-** Planning and Zoning Meeting- 08/25/10
Exhibit: Agenda Report No. 1
Recommendation: Action

MOTION: Reilly / Ritter to approve minutes of August 25, 2010 with corrections:

Wilbur said he was present at meeting. Correct his excused. Bud Ryan was absent/excused. Ritter; pg 2, #3, Ritter mentioned swapping west side of Logue property with either CITA or Gary Gu's Bonsai Garden riverfront property. Pg 3, 4th line, the building has a potential for a community ctr. It is unique and a property of interest. Also thoughts of adjoining town hall on the parcel south of Noble's if it could be purchased in the future. Down specifically not remove look. Under H public – 3rd sentence, Ritter had asked if pictures had been taken of killed sand hill cranes. Signage was for trail crossing signs.

Krieger; pg 3, 3rd line: is there a time capsule? He was asking. Pg 2 line 3, change to 4, 4 and 2. Next para, 4th line Orange Ave an historical town boat dock – take the word mail out.

VOTE: All Ayes.

E. PUBLIC HEARING: none

F. ACTION: none

G. DISCUSSION:

- 2. Recommendations from Council – US 1 Corridor Review**
Exhibit: Agenda Reports No. 2
Recommendation: Discussion

Wilbur said Council wanted Board to look at US1 corridor again. Since we just got our packet let's look at the information in the packet and bring this to a future meeting. Wilbur asked staff to provide maps of the US1 area showing the existing land use and show aerial with current land use designations. Reilly said it should not be a major undertaking. Zindel asked about the Future land use information. She doesn't have a computer; is the handout info from new Comp Plan? Reilly said the information that was handed out is from the new Comp Plan update dated

August 2009. We are working on the FLUM – the one dated August 2009 and in here it still has all the stuff about RLC being only along the US1 area. Why was that? Reilly said that is one of the changes the P&Z Board has recommended, that it be expanded to Malabar Road. It was originally created for the old homes on US1 so they could use their land. Krieger said that is why they want to correct it. Reilly said Council supports what they have done so far. Zindel said this is the future we are doing – if we are putting commercial along Malabar Road are we infringing on road widening? Krieger said that is what we are discussing if RLC is commercial or residential. The Comp Plan says it is considered commercial. Krieger said that is why the P&Z Board is reviewing this and we have the rest of the Town to consider also. Wilbur said we should look at how the Grant-Valkaria has established their land uses. Krieger said that is why the whole Town needs to be done. Wilbur said we should look at the Comp Plans for the adjacent communities. He directed staff to get their FLUMs and Comp Plans for the next meeting. Staff to also do aerials and land use designations for US1 corridor.

Consensus to move this item to the next meeting.

3. Roadway Designations – Possible Revision

Exhibit: Agenda Reports No. 3

Recommendation: Discussion

Chair asked Malabar Engineer Morris Smith to provide introduction on this item. Smith referred to a land developer he met by name of Rick Harrison who does land development designs. He has trademarked some of the terms. Smith said coving is one of those terms – coves of green spaces – how far can we get the front doors from each other and then meander the roads and utilities.

Smith has worked on three of these type developments with him. The one in particular is Minton Cove behind Publix shopping Center east of Minton Road and north of Palm Bay Road. It is off of Northford Boulevard. The developer had to pay for a third of the road. It is an environmentally friendly design. They gave St Johns (RWMD) a 25' buffer. They put up a cattle fence on the wetlands boundary and we got the St. Johns permit in a record 56 days. They liked it so much. It provided for them to do the layout for the subdivision instead of the developer. Rick Harrison will be in Orlando this weekend for a sustainability seminar. After this 25 minute video, if P&Z has questions he will be happy to ask Mr. Harrison as he will be having breakfast with him on Saturday. The Board watched the 25 minute DVD on "Prefurbia" which provided some history of city development, suburbia development and some new greener ideas.

After the DVD, Smith said the point is for the Board to remember to be open. The development he previously mentioned was in Brevard County. The developers were arguing with a neighboring city regarding trails; the developer proposed a 10-foot wide walking trail throughout the subdivision. The city required two 5-foot sidewalks on both sides of the street. They used their own code to bring on hindrances to a good development. Ultimately it was approved by St. Johns (RWMD) and the City of West Melbourne. Zindel said being green space friendly will become a requirement everywhere. Smith showed another development with the St Johns buffer and the stormwater pond. The only negative was the reduced curved asphalt required more sanitary manholes due to the curved runs. Reduced the widths of the ROWs provided for more green space and larger lot sizes.

Smith encouraged the Board to look at how things are done when you think outside of the box. He showed another development on Dairy Road and then one in Texas. If a project is brought to the Town and it would be good for the community, don't reject it because it doesn't fit your Code exactly.

Smith said Rick Harrison also used "pocket parks" in its green space area. Smith told of how they flew over the sites and took photos and then prepared a power point presentation for a joint workshop. He was showing subdivisions in this area – not another State. They have done over

700 developments in 34 different States. Ritter asked what the average size of the development. The one just shown had 66 acres with 220 units. Zindel said you could not do that here due to the requirement of 1.5 acre per single family home.

Wilbur asked Franklin about the discrepancy. Franklin explained the recent discovery that the LDC showed 80' for minor collectors and the Comp Plan showed 70 feet per an ordinance in 1993. None of the ordinances in the LDC footnote change it to 80 feet. Wilbur asked Morris Smith if we are in line with other communities for ROW widths. Yes. Board consensus to stay with 70 feet for minor collectors and correct the LDC.

Board then discussed Marie Street north of Malabar Road. Franklin mentioned the owner of the ten-acre site north of the Sand Hill Trailhead had stopped in from Atlanta yesterday and met with Franklin and the Town Administrator to discuss the trail easement the Town would like. He may be in favor of granting the easement for a trail along the front of his property but is not in favor of a paved trail and is not in favor of the EELs idea of putting a paved trail around the perimeter of his parcel. Franklin also gave update on meeting with EELs staff, County MPO Bike and Trail personnel to do the paved trail. The grant was through the Federal Stimulus grants and required the trail be entirely within town owned right-of-way. The EELs plan on putting the paved area within their property, west of the fence line. Wilbur thought the trail area, if such an easement is granted in front of Stack's property, should be paved. Wilbur discussed making it a trail.

Wilbur thought is to downgrade Marie Street north of Malabar Road to a minor collector to 70 feet. That should satisfy future development. Ritter asked why it couldn't be reduced to Local Street. Wilbur said because it picks up traffic from Nord Street and Johnston Avenue. Franklin explained the ROW restrictions on Marie Street north and the request for EELs for the Town to straighten the roadway so it lays within the right-of-way to the east of the section line. Currently it meanders to the west onto the EEL property. The fence they installed to delineate their property line is to the right of the roadway that is used. The new owners of the Havet property thought the fence was their western property line and have parked boats out in what is the proper right-of-way. The Town has had meetings with the property owners and explained the situation. We will also be meeting with the County on 9/30/2010 to discuss the trail and will discuss this.

Wilbur said 60 feet is what you have on LaCourt. There is not enough room with 60 feet for a trail along that road. He has been trying to get Marie Street improved down to Atz Road to take the traffic off of LaCourt for 20 years. The EELs have now given the easement necessary for road, drainage and trail development. Krieger said why not leave it like it is? See what the future brings. He sees a problem on LaCourt. What about Marie Street. Krieger said defining what you can do on the right-of-way. He referenced the curved road. That will be a gated community.

Zindel said how you can classify it as a major collector. There is no way it will connect to Pt. Malabar. Wilbur said the traffic count determines the classification of the roads. Morris said yes that is how it is done and typically the burden for the traffic study is put on the developer.

Morris said roads run N/S and avenues run E/W. Franklin said Building Official Boyer stated lanes should be dirt roadways, roads would be paved roadways connecting lanes. Doesn't explain avenues and drives. Wilbur said the roads were roads before they were paved.

Wilbur said that Krieger had a good point and until it is challenged, we should leave it like it is.

H. PUBLIC:

I. OLD BUSINESS/NEW BUSINESS:

4. Council Responses – on P&Z recommendations**Exhibit:** Agenda Reports No. 4**Recommendation:** Discussion

Reilly gave status of Council action:

- Fence regulation will go to Engineer and then to the Attorney – it will not come back to P&Z.
- Logue purchase – suggested we put a committee together to review but the Mayor forgot to come back to it.
- Revising Table – leave it alone
- Old School House – do a committee.

Morris Smith said the committee for school house was because Mayor had interested persons in that property that mayo not have been interested in the riverfront property.

Reilly thought the P&Z Board did a great job. Council also thought they had done a great job. Reilly asked if anyone attended the Grant Valkaria workshop. Franklin said Ryan had said he was going to attend. Reilly asked for the meeting results - Franklin will ask for minutes.

Wilbur said paving the trail in along Marie Street will allow grants for handicap and we could get a restroom. Franklin gave update on Stack property and the meeting they had with Mr. Stack on 9/21/10. Franklin will check on signs for wildlife to put on Marie Street.

Morris gave overview on feasibility in the triangle area. There are platted streets and we could vacate those so they could bring to the table and then they would have to put in the access road. The wetlands you can't build on will benefit the other owners can benefit. The value will be put together and shared and they are very excited. It would come in off Foundation instead of Booth. There will be a buffer. The buffer could be multi-family. Each property owner will be a stake owner. Morris said some of the wetlands are pristine. It is a year later and they are still interested. They have email addresses for the owners that aren't local.

Krieger said he has seen engineer Smith at the stimulus project sites. He asked about corners falling into the ditches. Morris said poor construction techniques are the cause. Morris said the sod and edge of shoulders get higher over time and this is throughout the town and they need to be knocked down. Top of sod should be just below the edge of the asphalt. Now we will have concrete and it will make it worse. There were design requirements and he was not the engineer of record. His job was to make sure the contract requirements were followed. Ritter said it is too bad we didn't get it.

J. ADJOURN:

There being no further business to discuss, **MOTION: Reilly / Ritter to adjourn this meeting. Vote: All Ayes.** The meeting adjourned 9:40 P.M.

BY:

Bob Wilbur, Chair

Debby Franklin, Recording Secretary

Date Approved

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: October 13, 2010

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Discussion About Land Use Along US 1

BACKGROUND/HISTORY:

Due to getting the package so late for the last meeting, it was consensus of board to move this discussion to this meeting. The Board also asked for aeriels of the US 1 corridor.

ATTACHMENTS:

- Aerials of the area with overlay of land use designations and zoning designations (***pick up on Monday 10-11-10***)
- Pages 1-1 through 1-9 of Future Land Use Element of Comp Plan dated August 2009
- Ordinance 2007-02 establishing Malabar Vernacular
- Ordinance 2008-13 amending Malabar Vernacular

From 9/22/2010 meeting package:

- Pages 1-10 thru 1-37 plus Appendix 1A Future Land Use (FLU) Element from Comp Plan dated August 2009
- FLU-1 map
- FLU-9 map

CHAPTER ONE

FUTURE LAND USE ELEMENT

PURPOSE

The purpose of the Future Land Use Element is the designation of future land use patterns as reflected in the goals, objectives and policies contained in the Town of Malabar's Comprehensive Plan. The supporting data provides a broad survey of current land use patterns, natural land features, and availability of public facilities for existing and future development. Future land use patterns are depicted on the Future Land Use Map (Map FLU-9).

PLANNING TIMEFRAMES

The Town of Malabar Comprehensive Plan provides guidance on development and redevelopment over two planning periods: a 5-Year period ending FY 2013 (short term) and a 10-Year period ending FY2018 (long term).

EXISTING LAND USE CONDITIONS

The Town of Malabar is located in the southeast section of Brevard County. While the Town has no beach frontage along the Atlantic Ocean, its eastern border is along the beautiful and ecologically diverse Indian River Lagoon. In the late 1800's mail was delivered to the fledgling community via a mail boat that docked along the Indian River Lagoon's banks. The Town remains proud of their rustic and rural roots. The Future Land Use element supports the Town's desire to retain its rural heritage both in new development and redevelopment.

An analysis of Existing Land Use indicates that single family residential uses make up approximately 20.61% and conservation uses make up 12.14% of the total land area. Vacant lands make up 36.84% of the total town acreage.

An analysis of developed lands indicates the Town has 63.16% of its land developed. Residential development makes up 34.3% of the developed lands and 21.66% of total town acreage. Of developed lands, commercial and industrial lands make up 0.81% and 2.3% respectively.

TABLE 1-1 EXISTING LAND USES

Existing Land Use	Acres	Percentage
AGRICULTURE	89.15	1.30%
AQUATIC PRESERVE	16.35	0.20%
COMMERCIAL	38.43	0.56%
CONSERVATION	1009.45	14.75%
INDUSTRIAL	120.58	1.45%
INSTITUTIONAL	83.33	1.00%
INTRACOASTAL WATERWAY	1,467.95	17.65%
MOBILE HOMES	2.95	1.00%
MULTI-FAMILY RESIDENTIAL	4.08	0.05%

Existing Land Use	Acres	Percentage
PARKS	80.14	0.96%
ROW	501.92	6.04%
SINGLE-FAMILY RESIDENTIAL	1,714.11	20.61%
TRANSPORTATION	39.28	0.47%
VACANT AGRICULTURAL	386.96	4.65%
VACANT COMMERCIAL	343.73	4.13%
VACANT INDUSTRIAL	245.33	2.95%
VACANT INSTITUTIONAL	70.96	0.85%
VACANT RESIDENTIAL	1,987.30	23.90%
VACANT RESIDENTIAL/LIMITED COMMERCIAL	29.45	0.35%
TOTAL	8,315.59	100.00%

Source: Brevard County Property Appraiser; Town of Malabar, Calvin, Giordano & Associates

TABLE 1-2: EXISTING LAND USE, DEVELOPED

Existing Land Use (Developed)	Acres	Percent of Developed Acres
AGRICULTURE	89.15	1.70%
COMMERCIAL	42.58	0.81%
INDUSTRIAL	120.58	2.30%
INSTITUTIONAL	83.33	1.59%
MOBILE HOMES	82.95	1.58%
MULTI-FAMILY RESIDENTIAL	4.08	0.08%
PARKS	80.14	1.53%
ROW	501.92	9.56%
SINGLE-FAMILY RESIDENTIAL	1,714.11	32.64%
TRANSPORTATION	39.28	0.75%
SUBTOTAL DEVELOPED	2,777.62	52.69%
OTHER:		
AQUATIC PRESERVE	16.35	0.31%
CONSERVATION	1,009.45	19.22%
INTRACOASTAL WATERWAY	1,467.95	27.95%
TOTAL DEVELOPED	5,251.86	100.00%

Source: Brevard County Property Appraiser; Calvin, Giordano & Associates

TABLE 1-3: EXISTING LAND USE, UNDEVELOPED/VACANT

Existing Land Use (Undeveloped/Vacant)	Acres	Percent of Undeveloped Acres
VACANT AGRICULTURAL	386.11	12.63%
VACANT COMMERCIAL	357.77	11.70%
VACANT INDUSTRIAL	235.86	7.71%
VACANT INSTITUTIONAL	61.21	2.00%
VACANT RESIDENTIAL	2017.28	65.96%
TOTAL UNDEVELOPED/VACANT	3058.22	100.00%

Source: Brevard County Property Appraiser; Calvin, Giordano & Associates

Future Land Use Designations

Map FLU-9 in the Goals, Objectives, and Policies designates future land uses in the Town. The Future Land Use Map guides future development according to the vision of residents and businesses in the Town. The Future Land Use Map serves as the basis for zoning designations provided in the Land Use and Zoning Code. Table 1-4 shows the distribution of future land uses in the Town.

Source: Brevard County Property Appraiser; Town of Malabar; Calvin, Giordano & Associates, Inc.

As seen in Table 1-5, population projections show an additional 1,303 people may take residence in Malabar between 2005 and 2030. Based upon vacant residential lands, Malabar can accommodate an additional 3,967 additional residents. The Town has sufficient vacant lands to accommodate the projected populations.

FACILITIES ANALYSIS

Sanitary Sewer Facilities

Most of the town relies on septic systems for wastewater treatment. Four private wastewater package treatment plants service three mobile home parks and the Harris Corporation. The Town owns and maintains the sanitary sewer transmission lines to Palm Bay Utility Department (PBUD) for the portion of the Town where sewage collection is provided. PBUD operates the Troutman Waste Water Treatment Plant (WWTP), a 4.0 Million Gallon per Day (MGD) plant located on the east side of Troutman Boulevard and the Troutman Water Reclamation Facility (WRF), a 1.2 MGD plant on the west side of Troutman Boulevard. This is sufficient to serve the PBUD service area in excess of the 10 year planning period.

Potable Water Facilities

The Town of Malabar's potable water is primarily derived from on-site shallow wells, which withdraw water from the surficial aquifer. The Harris Government Systems development operates and maintains a private water treatment plant. The three mobile home parks within the Town also maintain private water treatment facilities.

The Town owns and maintains a water distribution system that purchases its water from the PBUD under a thirty year contract. PBUD operates the Troutman Water Treatment Facility and the South Regional Water Treatment Facility. The Troutman Water Treatment Facility has both a Lime Softening (LS) Water Treatment Plant (WTP) and a Reverse Osmosis WTP.

The permitted withdrawal rates for this plant are 4.7 MGD declining 0.1 MGD per year until 2021, when the withdrawal rate will be 3.4 MGD for the Surficial Aquifer wells and 0.72 MGD for the Floridan Well. The RO WTP has 3 Floridan Aquifer wells permitted to withdraw 2.61 MGD. The current capacity of the RO WTP is 1.5 MGD/with the ability to expand to 3 MGD. The South Regional Water Treatment Facility is an RO facility with five Floridan Aquifer wells with a permitted withdrawal of 5.09 MGD in 2007 expanding to 10.49 MGD in 2021.

Solid Waste

Solid waste collection is provided to the Town under contract with Waste Management Inc. Hazardous wastes are discussed in the Conservation Element. The Town coordinates with Brevard County on solid waste issues, including landfill issues. Solid waste handling and disposal is performed by the Solid Waste Department of Brevard County. The County owns and operates the Central Disposal Facility, Sarno Transfer Station and Landfill, Mockingbird Mulching Facility and the Titusville Transfer Station. The Central Disposal Facility has permitted capacity for nearly 10 years. There is an additional 16 years of capacity in the southern expansion area.

Stormwater Drainage Facilities

The Town of Malabar joined the Brevard County Stormwater Program in 2000. Funding for the stormwater program is collected through taxes by the Town at an average of \$50,000 annually

FUTURE LAND USE DESIGNATION	Acres	Percentage of Total Acres
COMMERCIAL GENERAL	212.42	2.55%
COMMERCIAL LIMITED	25.38	0.31%
HIGH DENSITY RESIDENTIAL	116.76	1.40%
INDUSTRIAL	339.78	4.96%
LOW DENSITY RESIDENTIAL	254.84	3.06%
MEDIUM DENSITY RESIDENTIAL	614.08	7.38%
OFFICE INSTITUTIONAL	138.38	1.66%
OPEN SPACE & RECREATION	52.15	0.63%
RESIDENTIAL/LIMITED COMMERCIAL	54.40	0.65%
RURAL RESIDENTIAL	4,477.89	53.85%
NON-DESIGNATED RIGHT OF WAY	561.54	6.75%
TOTAL	8,315.58	100.00%

Source: Brevard County Property Appraiser, Town of Malabar; Calvin, Giordano & Associates, Inc.

Approximately 66.36% of the total land area is designated for residential uses with the majority of the residential uses designated as Rural Residential. Commercial uses added up to 2.86% and Industrial Land Uses made up nearly 4.09% of the total land area. Open Space and Recreation areas make up 0.63% of the overall land area.

POPULATION

The Town's population was estimated at 2,842 in 2005. The population is expected to increase 10.55% percent to 3,142 residents in 2010. By 2030, the residential population should reach 4,145 residents, which represents an increase of 45.84%.

TABLE 1-5 PROJECTIONS: POPULATION, MALABAR, 2005-2030

Year	Population
2005	2,842
2010	3,142
2015	3,426
2020	3,687
2025	3,925
2030	4,145

Source: Shimberg Center – Florida Housing Data Clearinghouse.
Prepared by: Calvin, Giordano & Associates, Inc.

Annexation

No annexations are being considered at this time.

Analysis of Land Needed to Accommodate Population

TABLE 1-6 VACANT LAND AND POTENTIAL DWELLING UNITS ANALYSIS

Future Land Use of Vacant Lands	Acres	Density	Potential Dwelling Units	Potential Additional Population
HIGH DENSITY RESIDENTIAL	15.43	6 du per acre	92.6	234.3
LOW DENSITY RESIDENTIAL	36.18	2 du per acre	72.4	183.1
MEDIUM DENSITY RESIDENTIAL	38.68	4 du per acre	154.7	391.4
RURAL RESIDENTIAL	1872.41	1 du per 1.5 acre	1248.3	3158.1
TOTAL			1568.0	3966.9

since 2000. The County receives 10% of this fund for administrative costs. Through this program, the County acts as the stormwater administrator for the Town, ensuring that the procedures and policies enacted in the Town are consistent with that of the County. This partnership has proven to be a more efficient and cost effective approach to stormwater management. There are currently no stormwater capital improvement projects planned for the Town.

Transportation

The major north-south traversing roadways for the Town are US-1, SR-507/Babcock Street, Corey Road, Weber Road, Marie Street, and I-95. The major east-west traversing roadways are SR514/Malabar Road, Valkaria Road, Hall Road, and Atz Road.

The level of service analysis for existing conditions indicates that all the roadways within the Town of Malabar, except SR-9/I-95 and SR 507/Babcock Street, are operating at the adopted level of service. A feasibility study regarding widening of Malabar Road was completed by FDOT in 2008. The Brevard County Metropolitan Planning Organization (MPO) is planning engineering studies in 2025 to regarding widening of Babcock Street. FDOT plans to widen I-95 to increase its capacity and address level of service standards as shown in the Schedule of Capital Improvements.

I-95 is also a designated *Strategic Intermodal System (SIS)* corridor within the Town. The SIS is a statewide system of high priority facilities including major interregional highways, airports, deepwater seaports, freight rail terminals, passenger rail and bus terminals, rail corridors, and waterways. There are no additional SIS facilities within the Town; however Port Canaveral and Melbourne International Airport, which are also located in Brevard County, are a *Designated SIS Seaport Hub and Emerging SIS facility, respectively*.

Malabar continues to work with other agencies in the development of greenways and trails. A greenway trail is a multi-use corridor with equestrian paths, and will be kept natural (not paved) in environmentally sensitive areas. The Al Tuttle Trail will link the Malabar Scrub Sanctuary and Jordan Scrub Sanctuary in Malabar to other natural areas outside of the Town's limits such as the preserve by Valkaria Airport, the Turkey Creek Sanctuary, and the Sebastian Buffer Preserve.

One of the major east-west traversing roadways is SR514/Malabar Road. Residents have expressed an interest in developing Malabar Road as a corridor that incorporates low density office and commercial uses in order to promote economic development and provide additional services to the Town. Recently the Town has agreed to widen Malabar Road in furtherance of the development of the corridor.

Parks and Recreation

The Town has adopted a Level of Service of five (5) acres per 1,000 residents. The Town has approximately 150 acres of parks space and will continue to meet their level of service through the short term (5 year) and long term (10 year) planning periods.

The Town has been an important partner to the Brevard County Environmentally Endangered Lands (EELs) program which has set aside approximately 913 acres of wetland and upland community habitats within the Town.

Public Schools

The Brevard County School Board provides figures for current and projected student enrollment and capacity by school for each district. Malabar is within the School Board District 3. Within District 3 there are currently 2 elementary schools, 1 middle school, and 2 high schools serving the Town of Malabar. Following are the current and projected capacity utilization rates for each according to the 2008-2009 Brevard County School District Five Year Facilities Work Program.

TABLE 1-7: PUBLIC SCHOOLS, UTILIZATION

School	Type	Actual 2008-09 Utilization	Projected 2012-13 Utilization
Port Malabar Elementary	Elementary	85%	84%
John F. Turner, Sr. Elementary	Elementary	82%	91%
Stone Middle School	Middle	65%	64%
Palm Bay High School	High	62%	67%
Bayside High school	High	78%	82%

Source: Brevard County School District Five Year Facilities Work Program (2008-09)

Brevard County has adopted a concurrency management system designed to address the need for correction of school facility deficiencies. Specifically, the following tiered Level of Service (LOS) standards for public schools, based upon permanent Florida Inventory of School Houses (FISH) capacity, address the correction of existing school facilities deficiencies.

TABLE 1-8: PUBLIC SCHOOL LEVEL OF SERVICE, 2007-08 – 2011-12

TIERED LEVEL OF SERVICE - SCHOOL YEAR 2008-09 to 2012-13					
Facility Type	2008-09	2009-10	2010-11	2011-12	2012-2013
Elementary Schools	126%	126%	125%	104%	100%
Middle Schools	117%	116%	88%	95%	97%
Junior / Senior High Schools	127%	123%	102%	100%	96%
High Schools	125%	100%	92%	93%	97%

The School District's 2008-09 Five Year Facilities Work Program goes on to project the 2017-18 average utilization rate for all schools will be 82.63%. Therefore, LOS will be met for the five year and ten year planning timeframes.

Capital Improvements

The Town has prepared a financially feasible Schedule of Capital Improvements (SCI) in the Capital Improvement Element. Currently, the Town has scheduled no projects affecting Level of Service standards. The Town included City of Palm Bay potable water projects and FDOT projects in the SCI.

HISTORIC PRESERVATION

On December 24, 1883 Malabar received official designation from the U.S. Postal Service. President Chester A. Arthur appointed R.A. Ward the first Postmaster for the local population of 25. Two times a week, weather permitting, a mailboat, depicted in the Malabar Town seal, hoisted sail and traveled along the shallow Intracoastal Waterway from Jacksonville to deliver the mail. A palmetto shack served as the post office just north of Malabar Road. It was close to a pier north of the Malabar Road - U.S. Highway 1 intersection today. Although never built, the State of Florida had proposed a mule canal to travel inland from this area. Later, the steamboat arrived and dropped off mail further to the south on piers near Orange Avenue that extended over 300 feet to reach the deeper water these craft required. In 1893 the railroad replaced mailboats for delivery of mail and other commodities. The Town would like to mark these sites and incorporate the Town's history into future community facilities to the extent feasible.

The Town maintains Florida Department of State Master Site file information on historic and archaeological sites.

LAND COVER

Map FLU-7 *Habitats and Land Cover* identifies and maps native habitat within the Town. Land coverage can be broadly categorized into disturbed lands, and undisturbed wetland or upland habitats. The developed/disturbed land coverage comprises 1,565.83 acres of the total area. The bulk of this, 1,297.26 acres, is considered urban in nature. The wetland and open water coverage is 2,702.57 acres of the total area. The undisturbed native upland habitats are 4,047.11 acres of the total area.

TABLE 1-9: HABITATS AND LAND COVER

HABITAT LAND COVERAGE		ACRES	HABITAT BREAKDOWN
I.	Improved Pasture	178.08	Section I. Represents developed or disturbed land for a subtotal of 1,565.83 acres or 18.83% of the total area. Nearly 83% of this category of land is considered urban in nature.
	Unimproved Pasture	2.22	
	Row/Field Crops	21.18	
	Citrus	31.67	
	Other Agriculture	19.50	
	Bare Soil/Clearcut	15.92	
	Low Impact Urban	458.14	
	High Impact Urban	839.12	
II.	Open Water	153.65	Section II. Represents the wetland and open water coverage for a subtotal of 2,702.57 acres or 32.5% of the total area. This is comprised of open water along with salt and freshwater native habitats.
	Mangrove Swamp	0.22	
	Salt Marsh	6.59	
	Freshwater Marsh and Wet Prairie	426.84	
	Slough Swamp	218.17	
	Mixed Upland Forest	140.53	
	Cypress Swamp	174.59	
	Hardwood Swamp	114.05	
III.	Dry Prairie	1,217.37	Section III. Represents the native upland

HABITAT LAND COVERAGE		ACRES	HABITAT BREAKDOWN
Grassland		2.89	coverage for a subtotal of 4,047.11 acres or 48.67% of the total area. This is comprised of grassland, scrub and forested habitats.
Shrub and Brushland		45.58	
Sand Pine Scrub		154.17	
Xeric Oak Scrub		24.54	
Pinelands		2,066.78	
Mixed Pine-Hardwood Forest		259.22	
Hardwood Hammocks and Forest		276.56	
LAND COVER TOTAL ACREAGE		6,847.57	

Source: Florida Fish and Wildlife Commission, 2003

Water Resources

Some water ways are manmade features and some are naturally occurring depressional ponds. Two natural water ways, Goat Creek and Turkey Creek also traverse the Town. The predominant water feature that is present is the Indian River Lagoon, which forms the eastern boundary of the Town. *Map FLU-6 Water Bodies* highlights water resources.

Wellfield Protection

No public wellfields or wellfield protection zones are located within the Town.

Soils

Map FLU 3 *Soils*, provides the general distribution of soils in the Town as presented in the 1990 National Cooperative Soil Survey conducted by the U.S. Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS). Conservation Element Table 6-1. *Soils*, provides a list of the soils found in the Town. Appendix 6-A. *Soil Descriptions*, provides a description, as provided by the Natural Resource Conservation Service (NRCS), of each of the soils represented in the Town.

Soil Erosion

Due to the relatively flat topography of the Town, lack of mining or large scale land disturbance, and the protection by the barrier island, soil erosion is not a typical problem in the Town.

Commercially Valuable Minerals

Many areas of central and southern Florida have been utilized to mine sand and lime rock materials for road building and development activities. Other than sand or lime rock substrate, there are no commercially valuable minerals in the Town. There are several inactive mining sites in the Town. Currently, commercial mining is a prohibited use and there are no active mining operations within the Town.

Development and Redevelopment on Flood Prone Areas

Most of the Town is in an X zone, which is defined as areas determined to be outside the 500-year floodplain, (outside the 1% and 0.2% annual chance floodplains). This is an area of minimal flood hazard.

Topography

Map FLU 5 *Topography*, identifies the topography of the Town. The Town is relatively flat with elevations ranging from 0 to 30 feet. The vast majority of the Town is at 20 feet. The lowest elevation is found along the coastline and the two creeks that traverse the Town, Turkey Creek lies in the northwest corner and Goat Creek lies in the southeast corner. The Atlantic Coastal Ridge, a narrow ridge that runs along mainland coastline, forms the highest ground in the Town. It is a natural barrier to drainage of the interior, except where it is breached by shallow sloughs or rivers. From this ridge, the ground slopes gently downward to the western sandy flatlands. The Atlantic Coastal Ridge runs along the vast majority of the eastern coast of the U.S.

Hazard Mitigation

Within the Town there is a potential for impacts from lightning, wildfires, floods and tropical storms, but the most significant natural disaster threat the Town needs to plan for is the event of a hurricane. During a hurricane evacuation, a significant number of vehicles will have to be moved across the local and regional road network. There are no emergency shelters located within the Town. The Town has developed and has in place a current Local Peacetime Emergency Plan and has in place a mutual aid agreement with the Brevard County Sheriff's Office and the State of Florida. The Town also participates in the County Unified Local Mitigation Strategy. The Town coordinates their Post Disaster Redevelopment with the County Emergency Management Office.

NEED FOR REDEVELOPMENT

At this time, the Town contains no areas which require redevelopment. However, the Town, in response to residents' concerns, has identified Malabar Road as an area that should be considered for the development of a corridor plan. The general consensus on Malabar Road is for development of a corridor plan that provides low density commercial and office uses and remains true to the spirit and rural atmosphere of the town. The road incorporates mostly rural residential land uses to the north and south with some segregated office institutional and commercial land uses. The residential homes that currently exist along the road are no longer considered appropriate due to the access constraints and road characteristics which can be described as a main or secondary collector/distributor road rather than a local access road. The speed limit along Malabar Road also raises a concern for existing residential uses. Small clusters of commercial development have spurred along the road due to its centrality and connectivity to other arterial roads and major highways such as US1 and I-95. It is this connectivity that presents an opportunity to develop Malabar Road into a successful corridor. However, density and design standards must be carefully considered in order to preserve the Town's overall rural character.

ORDINANCE NO. 2007-02

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE III, SECTION 1-3.1.I. OFFICE INSTITUTIONAL, TO INCLUDE DESIGN REQUIREMENTS FOR A MALABAR VERNACULAR ARCHITECTURAL STYLE IN OI (OFFICE INSTITUTIONAL) ZONING ALONG ARTERIAL ROADWAYS; AMENDING ARTICLE III, SECTION 1-3.1.K. TO INCLUDE DESIGN REQUIREMENTS FOR A MALABAR VERNACULAR ARCHITECTURAL STYLE IN CL (COMMERCIAL LIMITED) ZONING ALONG ARTERIAL ROADWAYS; AMENDING ARTICLE III, SECTION 1-3.1.L. TO AMEND THE DEVELOPMENT STANDARDS TO INCLUDE DESIGN REQUIREMENTS FOR A MALABAR VERNACULAR ARCHITECTURAL STYLE IN CG (COMMERCIAL GENERAL) ZONING ALONG ARTERIAL ROADWAYS; AMENDING ARTICLE III, SECTION 1-3.1.O. TO AMEND THE DEVELOPMENT STANDARDS TO INCLUDE DESIGN REQUIREMENTS FOR A MALABAR VERNACULAR ARCHITECTURAL STYLE IN R/LC (RESIDENTIAL/COMMERCIAL LIMITED) ZONING ALONG ARTERIAL ROADWAYS; AMENDING ARTICLE V, ADDING SECTION 1-5.29; PROVIDING FOR THE DESIGN REQUIREMENTS FOR A MALABAR VERNACULAR ARCHITECTURAL STYLE IN THE CG, CL, OI AND R/LC ZONING ALONG ARTERIAL ROADWAYS; AMENDING ARTICLE XX, DEFINITIONS, ADDING A DEFINITION FOR MALABAR VERNACULAR STYLE; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, that:

SECTION 1. The Town of Malabar Code of Ordinances, Land Development Code, Article III, Section 1-3.1.I., is amended to add the following:

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

SECTION 2. The Town of Malabar Code of Ordinances, Land Development Code, Article III, Section 1-3.1.K is amended to add the following:

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

SECTION 3. The Town of Malabar Code of Ordinances, Land Development Code, Article III, Section 1-3.1.I is amended to add the following:

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

SECTION 4. The Town of Malabar Code of Ordinances, Land Development Code, Article III, Section 1-3.1.O is amended to add the following:

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

SECTION 5. A new section 1-5.29 is hereby added to The Town of Malabar Code of Ordinances, Land Development Code to read as follows:

“Section 1-5.29. *Design requirements for Development within Office Institutional, Commercial Limited, Commercial General and Residential/Limited Commercial along arterial roadways.*

(a) A Malabar Vernacular architectural style for each structure is required. This shall include the following architectural elevations facing public rights-of-way on arterial roadways:

1. A metal panel, 5-seam or metal shake roof is acceptable. A 5-tab twenty-five (25) year dimensional shingle roof or manufactured equivalent of a wood shake roof is acceptable. 3-tab roof shingles, barrel vaulted tiles, or corrugated roof systems are not permissible.
2. Pitch of main roof, hipped or gable, shall be no greater than 5:12; mansard roof shall be no greater than 9:12; porch roof shall be a lower pitch than the main roof. A minimum 6” overhang is required for any roof structure. All structures must have a minimum 3:12 slope roof. Multiple roof systems with matching roof slopes are permissible. Low slopes (“Flat”) roof systems are permissible when screened by a mansard roof or parapet wall meeting the design requirements.
3. The predominant exterior color shall be pastel shades, white or light earth tones. Dark earth tones are acceptable in brick or stone.
4. Manufactured brick or materials that have the appearance of brick are acceptable. Horizontally struck stucco, exterior insulated finish system stucco panels, board and batten, wood or vinyl siding, and stained hardwood panels shall also be considered acceptable finishes.
5. Front porch. The front porch must encompass an area greater than fifty percent (50%) of the front façade. The porch must be a minimum of 60” in depth.
6. Gingerbread trim; and/or porch railings, columns or posts shall have the appearance of light frame wood construction.
7. Trim colors shall be white or light pastels. (Trim shall be considered railings, columns, door and window surrounds, soffits, shutters, gutters and downspouts,

and other decorative elements.) Trim finishes shall be of a contrasting lighter color than that of the primary building color with the exception of white as a primary building color.

8. There shall be no area greater than 400 square feet of contiguous blank wall area on any front façade that remains unadorned by architectural features that include, but are not limited to, windows, doors, lights, banding trim or porch elements.

9. There shall not be any singular façade that has greater than 100' lineal feet of run without a minimum 16" break, by using a directional or material change.

10. Metal-clad structures are permissible. Internal bracing must be certified to accept additional finishes or structures applied to the exterior metal panels. No external "X" bracing is to be visible on any front façade. Finish panels must be able to accept a painted finish. All exterior wall finishes must match the primary building color. The use of corrugated, synthetic or fiberglass panels is prohibited on any front wall or any front roof surface. All design requirements must be met for metal-clad structures as for any other new structure.

(b) The predominant exterior color shall be applied to all sides of the structure.

(c) The design requirements listed above shall be applicable to all new construction in these zoning districts, and in the case of additions or renovations to, or redevelopment of, an existing building or project, where such addition, renovation or redevelopment exceeds fifty percent (50%) of the square footage of the existing structure(s). A mirror building, defined as a building meant to compliment a pre-existing structure by use of identical material finishes, scale and form, shall be exempt from the design requirements. New buildings that are part of an overall campus plan that has an established architectural theme may be exempt from the design requirements herein with the approval of Town Council.

(d) The design requirements listed above shall be applicable to all accessory structures not exempted by division (10) (c). Any accessory structure not meeting this requirement shall be screened so as to be not visible from the public right-of-way. Mechanical equipment such as gasoline pumps, air and vacuum machines, drive-through menu boards and speaker stations, drive-through teller stations, ATMs, and similar appliances which require direct access by the public shall be exempt from the design review requirements of this section.

(e) Compliance with the requirements set forth in this subsection shall be demonstrated by submittal of building front elevations and color and material samples at the time of site plan review.

(f) Structures in the following use categories are exempt from the design review requirements of this subsection, including: public utility equipment, commercial towers, hospitals and churches.

(g) The Town-wide Sign Code shall be adhered to with the following exceptions:

1. *Materials.* The color, construction and material of each sign should be compatible with the architecture on the site.

2. *Design.* Every sign frame or support shall be designed as a sympathetic architectural element of the building(s) to which it is principally related.

3. Free standing signs shall have landscaping at the base.

(h) Structures having a federal or state historic site status shall be exempt from this subsection.

(i) The Town Council may, by resolution, adopt such administrative policies, manuals and/or fees as necessary to implement the design requirements identified above.”

SECTION 6. The Town of Malabar Code of Ordinances, Land Development Code, Article XX, Section 1-20.2 is amended to add the following:

“Malabar Vernacular Style. An architectural style representing historical influences from the development of Malabar. These include the simple wooden Cracker or the mellow wooden Caribbean dating to the turn of the 19th century that include elements of elevated first floors, porches, verandas and overhangs and that create a relationship to the street at human scale. The design standards provided in Section 1-5.29 of the Land Development Code of the Town shall apply to any structure required to be built in the Malabar Vernacular style.”

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 further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 8. Conflicts. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 9. Effective Date. This Ordinance shall become effective immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Councilmember Moccia. The motion was seconded by Councilmember Borton and, upon being put to a vote, the vote was as follows:

Councilmember Nancy Borton	<u>Aye</u>
Councilmember Brian Vail	<u>Aye</u>
Councilmember Chuck McClelland	<u>Aye</u>

Councilmember Bobbi Moccia Aye
Councilmember Pat Dezman Aye

This Ordinance was then declared to be duly passed and adopted this 2nd day of April, 2007.

TOWN OF MALABAR

BY: Thomas M. Eschenberg
Mayor Thomas M. Eschenberg

First Reading: 02/05/07
Second Reading: 04/02/07

ATTEST:

Susan Kabana
Susan Kabana, CMC
Town Clerk/Treasurer

Approved as to form and content:

Karl W. Bohne, Jr.
Karl W. Bohne, Jr.,
Town Attorney

ORDINANCE NO. 2008-13

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE III, SECTION 1-5.29(c) and (e); PROVIDING FOR A DEFINITION OF "MIRROR BUILDING"; AMENDING ARTICLE XX, DEFINITIONS, REVISING THE DEFINITION OF "MALABAR VERNACULAR STYLE"; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, that:

SECTION 1. Section 1-5.29(c) and (e) of Article V of The Town of Malabar Code of Ordinances, Land Development Code is hereby amended to read as follows:

"Section 1-5.29. Design requirements for Development within Office Institutional, Commercial Limited, Commercial General and Residential/Limited Commercial along arterial roadways.

...

(c) The design requirements listed above shall be applicable to all new construction in these zoning districts, and in the case of additions or renovations to, or redevelopment of, an existing building or project, where such addition, renovation or redevelopment exceeds fifty percent (50%) of the square footage of the existing structure(s). A mirror building, defined as a building meant to compliment a pre-existing structure, of adjacent or connected properties, by use of identical material finishes, scale and form, shall be exempt from the design requirements. New buildings that are part of an overall campus plan that has an established architectural theme may be exempt from the design requirements herein with the approval of Town Council.

...

(e) Compliance with the requirements set forth in this subsection shall be demonstrated by submittal of building front elevations and color and material samples at the time of site plan review. By way of illustration and not by way of limitation the styles depicted in illustration numbers E (1)-E () are deemed "Malabar Vernacular Style".

...

SECTION 2. The Town of Malabar Code of Ordinances, Land Development Code, Article XX, Section 1-20.2 is amended to revise the following definition:

"Malabar Vernacular Style. An architectural style representing Florida's historical influences upon the development of the Town of Malabar. This eclectic style includes elements such as elevated first floors, covered porches, verandas and overhangs that create a relationship to the street at human scale. This may include Cracker, Mediterranean, Caribbean, as well as, other documented local common archetype styles dating back to the turn of the 19th

century. The design standards provided in Section 1-5.29 of the Land Development Code of the Town shall apply to any structure required to be built in the Malabar Vernacular style."

SECTION 3. 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 further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 4. Conflicts. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 5. Effective Date. This Ordinance shall become effective immediately upon its adoption.

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

Council Member Nancy Borton	<u>Aye</u>
Council Member Brian Vail	<u>Aye</u>
Council Member Charles (Chuck) McClelland	<u>Aye</u>
Council Member Jeffrey (Jeff) McKnight	<u>Aye</u>
Council Member Patricia (Pat) Dezman	<u>Aye</u>

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this 20th day of October, 2008.

BY: TOWN OF MALABAR

Thomas M. Eschenberg

Mayor Thomas M. Eschenberg

First Reading: 10/06/08
Second Reading: 10/20/08

ATTEST:

Debby Franklin

Debby K. Franklin
Town Clerk/Treasurer

Approved as to form and
legal sufficiency by:

Karl Bohne

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: October 13, 2010

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Discussion About Assisted Living Facility

BACKGROUND/HISTORY:

At the January 24, 2007 Planning & Zoning Meeting there was a discussion brought to this Board about an Assisted Living Facility in a rural residential area of Malabar.

We now have a similar request to bring to the Board for review and discussion. The property is located on Atz Road, which is designated RR-65 (Rural Residential). This is the third request in as many months regarding this type of facility. We invited the applicant, Ms. Cora Lie Prince to attend this P&Z meeting and see if the Board had changed its opinion on this type of Land Use.

RR-65 "Rural Residential." The rural residential district is established to implement comprehensive plan policies for managing rural residential development at a density not to exceed one and one-half (1.5) acres per dwelling unit. The district is intended to protect and preserve existing agricultural and rural residential lands. These lands are generally developed for agricultural uses or for large lot rural residential home sites. The areas designated for rural residential development generally contain few urban services and the street system is generally incapable of carrying traffic generated by more intense urban development. The district is intended to accommodate and preserve a unique lifestyle which cannot be accommodated in more dense residential areas.

The Malabar Code does not list the term "Assisted Living Facility" and a Group Home is the closest we list. Group Homes are listed as a "Conditional Use" in RM-4, RM-6, OI and INS zoning classifications. They are listed as "Permitted" in R/LC. They are not listed as a permitted use in RR-65 zoning Town Code Table 1-3.2. Land Use By Districts (page 119)

ATTACHMENTS:

- Table 1.3-2 Land Use By District (page 119 of Code)
- Complete Packet of P & Z Meeting w/ Minutes 1/24/2007 (pages 1 – 32)
- Current Florida Statute 419 dealing with Community Residential Homes (Pages 33 - 35)

TABLE 1-3.2. LAND USE BY DISTRICTS

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

**TOWN OF MALABAR – PLANNING & ZONING ADVISORY BOARD
1/24/07 MEETING MINUTES**

ROLL CALL:

Bob Wilbur, Chair	Ed Booth, Town Admin, excused
Richard Cameron	Debby Franklin, Sec., excused
Patrick Reilly, V-Chair	Cindi Kelley, Recording Secretary
Kathleen Clasen	Keith Mills, Town Planner, excused
Don Krieger, excused	Bill Stephenson, Town Eng., excused
Bud Ryan, Alt. #1 (will be voting in Krieger's absence)	
Cindy Zindel, Alt. #2	

Also in the audience was Mayor Eschenberg.

Meeting called to order at 7:35PM. Prayer and Pledge led by Chair Bob Wilbur.

ROLL CALL OF MEMBERS – see above.

ADDITIONS AND DELETIONS: None

PUBLIC:

MINUTES FROM JANUARY 10, 2007 ADVISORY BOARD MEETING: MOTION:

Reilly / Ryan to approve as presented. VOTE: all ayes

ACTION ITEMS:

2. REQUEST FOR FENCE HEIGHT EXCEPTION IN RR-65 ZONING. APPLICANT JOHN SEYBOLD, 1830 COREY ROAD, MALABAR

MOTION: Reilly / Clasen to approve fence height exception. Discussion. Ryan asked why it should be approved. Cameron noted for the record that the applicant was not present. Reilly stated that his request is no different than other requests that have been granted. The 5-foot fencing is along Corey Road with a 6-foot gate. The 6-foot privacy fence is up in the yard area and not part of this request. The request is for 5-foot field fence along the side property line – not along Corey – Reilly corrected himself. Clasen thought 6-foot fence was allowed around a property. Reilly reads from Code – Sec 1-5.8.E.5., Fences and Walls, states that lots in RR-65 zoning shall be permitted fences up to 54" within the required front yard and up to 6-feet, not in the front yard., if authorized by the Town Council and Planning and Zoning. Board discussed what a front yard was – that area from the front line of the house to the front property line. Front of property is Corey Road. Request is for fence along north property line. Ryan states that applicant wants a board on board fence which is essentially a no-look fence. Board explained that the privacy fence by the pool does not require an exception. Look at diagram. Clasen asked if what they are asking for is allowed why are they bringing it to this Board. Reilly explained that in order to exceed 54" within the font yard, they have to get permission. We approve or disapprove and then it goes to Council. We have done this a number of times. Ryan stated there were security concerns. Reilly stated

that the cover letter explained those concerns. Reilly clarified the applicant is asking for five feet (60") along the north property line. VOTE: all aye.

DISCUSSION:

2. ADULT FAMILY CARE FACILITIES – GENERAL INFORMATION FOR DISCUSSION PER COUNCIL DIRECTIVE

Wilbur stated that this is continued from the last meeting, with direction from Council to get more information. Requestor had inquired if this would be an allowed use in RR-65 zoning and with current code it is not. Staff has supplied more information regarding statutes and definitions of this type of facility and those that are cared in them. Clasen asked if this was a permitted use or conditional use in RR-65. Cameron stated RR-65 is Rural Residential and this request should not be a variance – that the requestor should have asked for a conditional use permit.

Reilly stated if we want to allow this, we would need to change the code to add this use to the District Provisions Table of allowed and conditional uses. Cameron stated this should be up to Council to decide if they want this type of activity. Clasen asked why this was coming back to the Board. Reilly explained that the request went to Council – did they want staff to spend time and money on getting more information on this type of use – they directed staff to get more information and provide it to this Board. That is in your package – the State law, what do other towns do, etc. After reviewing this package of information the P&Z Board would then make a recommendation to Council to either add it to the Table, add a new Chapter to the Code, etc. Clasen asked if the packet had information on what other towns do – she did not see anything. Cameron said other towns don't let horses in their back yards but Malabar does. If other towns allow this in their residential it does not mean we have to. He went through the application and it is a State application. Cameron had a house on two acres in Palm Bay and the person who wanted to buy it wanted to use it for a congregate living facility and the neighbors did not want that use.

Previous Malabar Councils and planning consultants did not see the need to add this type of use in RR-65 zoning. Cameron felt if we allowed this use we would set a precedent for others who may want to do similar things. Cameron asked what the maximum number she could house under this license – Wilbur started reading the definitions of the types of persons that may be housed in such a facility. Clasen asked what zoning would this be allowed in. Reilly stated Institutional. Cameron stated we have had requests to allow small home run businesses in this zoning that would not add to the density of the town and have turned them down because of concerns of increased traffic and lack of ability to control the use and keep it from expanding. He cited the dog grooming example. Cameron's personal experience with this type of use in homes has not been favorable – they have partitioned off parts of the bedrooms to provide small living area for residents. He does not feel it goes with Malabar's RR-65 zoning. If Council wants to help her out, they should provide this use as a conditional use in the Code with conditions she would have to meet. The application package the

Board had in their package was simply the State application – Council would have to create a Malabar application. Clasen agreed. Ryan stated that at the last P&Z meeting, the requestor was present and he asked her if this was a “for profit” business, and she said yes. Then she explained to Council that it is a “break-even” compensation. The State compensates her for each person. Cameron thought each person pays her – the State just oversees the facility – they are not wards of the State. Recording Secretary Kelley stated that P&Z Secretary Franklin explained to Council that the applicant would have to agree to accept qualified clients for a specific dollar amount specified by the State to cover their care expenses. Ryan stated that this just adds to the questions. Clasen asked what her incentive to do this would be if it is not monetary? Clasen read that this would be additional income for her, which would allow her to stay in her home and take care of her father. Clasen compared it to taking in a foster child. Ryan asked the question because if it were a profit making business in RR-65 zoning it would be germane to the discussion. Clasen stated that compensating someone for doing the work is not considered “profit” –it covers the expense. Wilbur said from what he read, the owner would have to be on premises at all times, 24 hours a day or have a designee so she would have to have an employee registered by the State because none of these people could be left without supervision. Clasen stated that she did not feel this was a use for RR-65 zoning – it should be in institutional zoning. Chair recognized new member Zindel. She read from State application about zoning requirements within the city the applicant wished to operate should be single family or multi-family. This area is zoned single-family. The application goes on to say that only if the area is not zoned single family should the applicant contact the local jurisdiction. Clasen stated that is what the state says but each municipality has their own zoning. Zindel asked if the assumption could be made since it is stated on the application it should be allowed? Since Malabar doesn't have a provision for this and these are State rules and regulations. She is reading it as an allowed use. Cameron stated that the application may state that but each Town has their own rules which are usually more stringent. Zindel admitted not knowing much about zoning but felt that spot zoning is not right and if something is allowed in one zoning in one city it should be allowed in another. Just because it is not specifically stated in this zoning designation, it should not mean that it is not an allowed use. Cameron explained that we allowed her to do it in RR-65 zoning we would be spot zoning. Zindel felt she should be before the Board of Adjustment to see if it is an allowed use in this zoning, because we don't know if it is allowed in that zone because it is not listed. Ryan stated this use could be classified as one of three of the following: group home, which is defined, hospital or extensive care, which he doesn't think applies, or nursing homes. The only permitted use is group home in R/LC zoning. The other two are “conditional uses” and neither lists RR-65 zoning as a possible location. Wilbur's concern was that group homes could have residents from any of these listed agencies. Clasen does not feel it fits in RR-65 zoning. A better fit would be R/LC or Institutional. They ask where the requestor had in mind – a five bedroom home in RR-65 zoning. She will be bringing in her father with Alzheimer's and since she will be home with him wants to care for several others in the other rooms. That is what led to her inquiry. Cameron said he was for sending it back to Council. Reilly explained that Council is looking for a recommendation from this Board on this use. Zindel thought they should nail down what zoning community residential homes

fall in to. Reilly explained that presently community residential homes would be classified as group homes and they are only considered for location in R/LC zoning. Zindel said group homes are for kids. No, it could be any group and any age – group of people living together not related and not necessarily self-sufficient. Wilbur read from the packet that the facility would house seven to 14 unrelated residents who operate as a functional family, including such supervision and care by supportive staff as may be necessary to meet the physical and emotional needs of the residents. Ryan asked if this was discussion as a result of a motion. No. He asked if a motion could be made. Reilly explained that this is under discussion in order to make a recommendation to Council. Zindel stated that the definition did consider them a “family.” Ryan felt that this use does not fit any current category and for that reason Council should decide if they want to create a category to fit this use or not approve it because it does not fit one of the acceptable uses in the Code. Ryan felt this use would require a new category. Ryan does not consider this use a group home. Wilbur said if they had an allowance for housing just certain uses and not mixing them together it would be a better situation. Clasen asked if Wilbur would want a group home of teenagers living next to him - ? She doesn't and that is why she lives where she does. Wilbur did not think it would affect anyone's privacy. Clasen said these people would be receiving guests and visitors. Zindel asked if there was an R/LC category. Yes.

(Individual conversations made it impossible to discern proceedings – Chair pounded for order and recognized Juliana Hirsch from the audience.

Juliana Hirsch, 1035 Malabar Road, Malabar, felt that allowing this type of facility would jeopardize the entire RR-65 community because it would not stop with this one lady's request, for which she has great compassion. She stated that the P&Z members are picked to watch over the properties.

Chair asked for consensus of members.

Reilly stated that it should be considered in residential zoning. Their residential is 1.5 acre but other residential areas in Malabar are ¼ acre and ½ acre and this request could be made for those areas as well. The State requirements call for these uses within residential zoning classifications and there is a classification for six or less. He felt that the recommendation should go to Council to consider changing the District Provisions Table to allow this, or to have it's own section. He reminded the Board members that the Code does not include every single possibility – it is meant as a guideline, and if it is similar to, and in his opinion this use is similar to a group home, then that is what we should do. This is a community home and our RR-65 is a community zoning. He believes it should be looked at and not deny it simply because it does not fit the table.

Wilbur felt the use should be in R/LC and is not sure how many homes there should be. If we run out of space in R/LC then we can look at it in RR-65. This is the first request we have had. He is not sure how big the demand is for this usage. Wilbur had asked for comments from the Town Planner but did not receive them. He would like to hear from him.

Cameron has a two-fold response. 1) The requestor is not looking for an area to open this type of facility. She has a home in RR-65 zoning and is asking for us to essentially spot zone to allow her to operate. Cameron does not feel that fits in the RR-65 classification. 2) We had been asked by Franklin to consider allowing second homes on lots in RR-65 for mother-in-law or family housing. In essence, a double family residence in RR-65 which currently only permits single family residences. This Board rejected that idea immediately. That would have been one or two additional family members in a second home. This requested use is for up to eight unrelated persons within one single family home. Cameron does not feel it is appropriate.

Clasen agreed with Cameron and with Mrs. Hirsch's comments. She does not feel this is what people came to Malabar and bought land in RR-65 intended to be faced with and considers it a real danger to consider this. We should not do this.

Ryan reads the definition of "group care facility" from the Code book and it does not rule out halfway homes for prisoners on release, or other similar uses. For that reason alone, he is against it in RR-65 zoning. Period. The definition is quite clear and in his opinion not just a guideline. Wilbur agreed. That was his concern.

Zindel referred to the State application requiring the facility to be in single family or multi-family zoning for this "adult family care home" and has a provision where she can seek a variance if the zoning states she can not have that.

Wilbur responded that the Adult Care Home is within the regulations for community residential facilities and as such he felt that if you allow it then you would also have to allow residents that are sent from the Department of Juvenile Justice, Department of Children and Family, Elder Affairs, the whole mix.

Zindel responded that for the benefit of the Town and the requestor that this should go before the Board of Adjustment to specifically state if it should be allowed. Wilbur said she could go to staff in the Building Department and find out what is permitted in the zoning. It takes money to go to the Board of Adjustment. Zindel is stating that if the requestor is told that her proposed use is not allowed in RR-65 zoning she could seek a variance. If granted, then she would be allowed that specific use.

Wilbur said if she signs up with the State she will get whatever type person the State sends her. Zindel asked why the requestor would want someone she doesn't know in her house. Cameron stated that what is in the packets is different than what the requestor told the P&Z Board at their last meeting. Ryan asked if the minutes from the last meeting were available. They are in the packet.

Reilly asked to be recognized. In response to Cameron's statement, Reilly stated that this is not spot zoning. Spot zoning would be if you allowed R/LC within RR-65 area. This is not a zoning change request. In response to Ryan, Reilly meant that this "adult care home" use is "similar to" group homes or you make its own classification. Those

uses are currently only permitted in R/LC. Ryan asked if this use is allowed then you would be permitting an R/LC use in a RR-65 zoning. Yes.

Chair summarizes stating the Board members are not in agreement and we have no input from the Planner. We have no Building Official and no Town Administrator and Franklin is out sick. Chair asked Board if they wanted to table this item or just send the minutes to Council.

Ryan said if we are going to consider allowing this we should restrict who can be sent – No we can not. That would be discrimination. That is the problem with these State programs.

MOTION: Cameron/Clasen to recommend Council deny this use as it does not fit in RR-65 zoning unless they over-ride this and allow it in RR-65. Discussion.

Reilly thought we should wait to make a recommendation to Council until we have heard from the Planner. He will also research how these homes are treated in other cities. He would like to deny this motion and wait until we get more information from staff and see what other municipalities do. Cameron stated that Malabar is not like the other areas around us and we should not compare ourselves to them. We are a rural community and our lifestyle is not the norm in Viera, Melbourne or Palm Bay. Malabar Boards were set up to protect what we have at the present time and it is getting harder and harder to keep that lifestyle intact. Due to different opinions and new people coming into town we are rapidly losing our rural atmosphere. Cameron felt his motion was appropriate for the Town and if the motion carries, the rural character will last a little longer. Once you start cutting up your RR-65 into different sanctioned uses, the next thing you will have is body refinishing. There are already areas set up for this type of use. This is a convenient request by the requestor, simply because they chose to buy a large house in RR-65 zoning and allow the one person who has to stay home anyway bring in additional funds to help support the property. It is a personal issue and not a community issue. Cameron is looking at it for what is best for the community. The information you get from the planner will be looking at a generality. We are individual and unique.

Ryan stated that even if this is denied, Council must be asked to create a definition for this use. Assisted living should be clearly defined. Cameron said when we are done with this motion, he can make a motion.

Chair called for a roll call vote: Aye, Reilly, Wilbur, Cameron, Clasen, Ryan (voting in Krieger's absence) Motion carries.

Ryan stated that the next motion should ask Council to come up with a definition for what the requestor wants to do and determine what zoning it might fit in under the prevue of future planning. Wilbur would like to see this discussed on a night we have the planner. Ryan is particularly concerned with halfway houses for people who are not responsible for their own actions. Wilbur is concerned that without professional

background the operator, who is doing it for convenience, will be overwhelmed when these situations come up as Ryan suggested. Cameron stated it is not possible to care for five others while caring for someone with Alzheimer's and take them shopping, do the cooking, cleaning etc. It is not possible to do without help or employees for two shifts.

Zindel stated that this Board made a recommendation to deny this and the P&Z agenda stated that this Board was only asked to discuss this. Wilbur stated this Board recommends to Council. It is advisory. Zindel felt Ryan's proposed motion was closer to what was asked of the Board. Cameron thought Ryan was going to make the motion. Wilbur said we don't have a planner or an attorney or outside information. Zindel questioned where we get the use classifications. Cindi Kelley stated she would get Zindel a Code book. Reilly said it is very clear in Article II or the Land Development Code, Land Use, what is intended for each classification. Zindel asked if it clearly stated what is allowed in RR-65. Yes. And this is not allowed in this zoning. Correct. Zindel felt then that the requestor should go before the Board of Adjustment. Reilly asked Ryan as a previous Board of Adjustment member if this would go there. No, zoning issues do not go to the BOA.

NEW BUSINESS:

Cindi Kelley stated for the record a reminder that the Visioning Workshop with Council is the upcoming Monday, January 29th at 7:30PM and all P&Z members are asked to attend. They have set aside 2.5 hours for this. It is the first of several meetings planned. If you don't have a map contact the Building Department for one. Wilbur asked about the parameters. Mayor explained that as a group they will be asked to consider the changes proposed as a result of previous workshops two years ago. Are those proposed changes adequate or do they want to make other changes. Whatever changes are decided on by Council ultimately will be carried out by the new administrator.

Zindel asked how many members had a copy of the Comp Plan. Reilly explained that all P&Z members get a copy of the Comp Plan when they get their code books. They are separate documents. Ryan does not think he has one. Wilbur explained that the Comp Plan is two booklets, Goals and Objectives and Data Inventory. Ms. Kelley will try to get a code book to Zindel by Monday. Kelley advises Board that outside discussion between two or more board members of items that may come before them as a Board for a vote is a violation of the Sunshine Law. Ryan asked the Mayor if it was alright to discuss things from the past. Mayor said so long as it can't reasonably be considered to come before your board again. Zindel said it is ok to talk about code and comp plan and what it says. Mayor cautions her on holding conversations with other members on possible changes to the code or the comp plan.

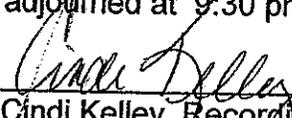
OLD BUSINESS:

Reilly stated that he had attended the last two council meetings to present that the column and fence height was more than our code permitted. He is referring to Oakmont Preserve. Reilly stated that P&Z did not see the Final Plat. They have 7.5 foot columns. And it is written on the final plat as 7.5 foot. He measured Stillwater's and theirs is 90". P&Z did not see that Final Plat either. Stillwater did come before this board and Council to increase the column and fence height to six foot. They were to construct 2' x 2' by 6' and they built 2' x 2' by 90". That exceeded 72" by 1.5 feet. Council did nothing at either meeting. It was brought to his attention that the fence code dealt with lots and these are subdivisions. He would like to have on the upcoming P&Z agenda either as a discussion item or action item, how we can stop these subdivisions from being allowed to exceed the column and fence height in RR-65. He proposes to require it to be added to the site plan review process. Wilbur would also like to revisit the subdivision chapter of the Land Development Code (sound of keystrokes blanked out what he said). Ryan suggested to Council that all mitigation be passed before Council. Ryan said he asked Rose who signed off on the column height – that would tell us a lot. Reilly also wanted to bring up Site Plan approval. He researched this and there is only one Site approval. There is an optional preliminary site plan process. He thinks the previous boards should have recognized this and required involvement in all site plans. Ryan stated he has a problem with the mitigation process which is no more than making a deal. Ryan stated that in exchange for moving eight Sabel Palms down to the Park, which will probably die anyway, the developer was allowed to do things that otherwise wouldn't be allowed, like stripping the property clean. He thinks the deal was made by the Town Administrator. Wilbur stated that is why the Board needs to review the entire site plan and find out what the developer will provide and what the environmental studies show. The project across the street was allowed to get by with a five or less gopher tortoise permit and there were many more than that. Clasen has seen that many gopher tortoises along that road. Ryan stated that Wilbur had cleared the property for years and thus knew what was out there and he, Ryan looked at the tree survey and it showed very little of what you knew was there. Wilbur stated there was a three foot diameter Oak in the back, close to the location of the retention pond. The retention pond does not have to have straight lines. Ryan stated that the Code allows for tree removal if it is where the structure will be placed, but it does not mean clear cutting the lot. When Ryan was running for office he got many calls on that issue. That is why he thinks all mitigation should be passed before Council before it is a done deal. Wilbur thinks we are on the right path with not issuing clearing permits until site plan approval. In reviewing the environmental study provided by the applicant, if the Town disputes it we can hire our own and have another study done to confirm or deny what they are saying is accurate.

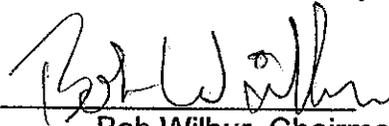
Ryan also stated that he has heard hearsay from many different sources that on Sundays there are a lot of Pence trucks leaving the project from north Marie and going elsewhere full and returning empty. He doesn't know how true that is.

ADJOURN:

MOTION: Reilly / ? to adjourn. Without objection. Vote: All Aye. Meeting adjourned at 9:30 pm.



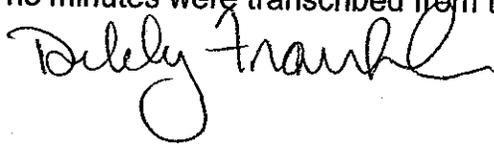
Cindi Kelley, Recording Secretary



Bob Wilbur, Chairman

3-28-07
Date approved

Note: Due to technical problems the disc containing the draft minutes was unreadable. The minutes were transcribed from tape by Debby Franklin 3-9-07.





CHARLIE CRIST
GOVERNOR

ANDREW C. AGWUNOBI, M.D.
SECRETARY

Dear Applicant:

Attached are information and forms for applying for an adult family care home (AFCH) license. Enclosed are copies of Part II, Chapter 429, Florida Statutes (F.S.), and Rule Chapter 58A-14, Florida Administrative Code (F.A.C.), the laws and rules governing AFCH's in Florida. Please review this information carefully before completing the forms. Additional information on AFCH law and regulation may be obtained through the Department of Elder Affairs' web site at elderaffairs.state.fl.us.

All forms must be accurately completed before an application can be processed and a survey of your home scheduled. A \$100 license fee must be attached. The license fee must be in the form of a check or money order made out to the State of Florida. Incomplete forms or forms received without the \$100 fee will be returned.

Information and instructions provided on the following pages are to assist you in understanding what the forms in this package are for and how to complete them, as well as requirements you must have in place in order to obtain an AFCH license and begin operation of your home. The term "provider" is used to refer to the applicant or individual who will operate the AFCH.

1. **Adult Family Care Home License Application Form, AHCA Form 3180-1022.**

APPLICATION TYPE: If you are a new AFCH applicant, you would check "[] Initial Application," and list the total resident capacity requested.

AFCH PROVIDER INFORMATION: This section is asking for information about the provider (license applicant).

OTHER HOUSEHOLD MEMBERS: List all household members residing in your home. Include the provider, the provider's spouse, children, and other occupants by name, date of birth, and relationship to the provider. Do not list AFCH residents.

DESIGNATED RELIEF PERSON: Provide information about each relief person designated to relieve the provider if the provider is not available to provide for the care and supervision of residents. Use additional sheets as necessary.

STAFF: Provide information about each AFCH staff person employed by or under contract to the provider to provide services to residents.

TYPES OF SERVICES TO BE PROVIDED: Check each type of service that you are prepared to provide to residents. At a minimum you must provide room, board, and some personal care to residents.

2727 Mahan Drive, MS#30
Tallahassee, Florida 32308



Visit AHCA online at
<http://ahca.myflorida.com>

AFFIDAVIT: The application must be signed by the provider, and the provider's signature notarized. Note that it includes your acknowledgment of training requirements that must be met by the time of licensing or prior to accepting residents.

(Note: If an item on the application is not applicable, please enter "N/A".)

2. **Background Screening.**

The provider, relief person(s), staff, and all adult household members (age 18 years of age or older) must complete and submit the Level 1 Criminal History Request form, AHCA Form 3110-0002. You must include the correct screening fee in a check made payable to the State of Florida. One check can be submitted with your AFCH application for both the background screening and the application license fee. The Level 1 background screening fee is \$23 for each person screened. A packet, including instructions, is attached for your use.

If the provider, relief person(s), staff, and adult household members have already been screened by the Agency and are currently in compliance with background screening, they may simply complete the enclosed "Adult Family Care Home (AFCH) Background Screening Affidavit of Compliance" (Attachment B).

Background screening information and forms may also be obtained through the Agency's web site at ahca.myflorida.com.

3. **Zoning Approval.**

If the AFCH is located in an area zoned single-family or multi-family, the provider must contact the Department of Children & Families Community Residential Home Coordinator (CRHC), in the district in which the home is located, and obtain completed Form 1786. A list of coordinators is included in this package for your use.

If the AFCH is not located in an area zoned single-family or multi-family, the provider must demonstrate compliance with local zoning requirements. A completed Local Zoning Form, AHCA Form 3180-1021, or a letter on the zoning authority's letterhead which states that the provider is in compliance, must be submitted with the completed application.

4. **Department of Health Sanitation/Food Hygiene Inspection.**

For an initial application, a copy of the Residential Group Care Inspection Report, DH Form 4029 (September 2005), demonstrating compliance with state sanitation/food hygiene standards must be submitted with the completed application. See Department of Health's rule chapter 64E-12. To obtain an inspection, the applicant must submit a written request to the local county health department.

Private residences with septic tanks should have their septic systems inspected by the health department prior to applying for a license. Some private septic systems require expensive capacity conversions.

For more information on the Department of Health, including a list of local county health departments, areas of jurisdiction, and copies of applicable rules visit the Department's web site at doh.state.fl.us.

5. **Fire Safety Inspection.**

A copy of a satisfactory local fire safety inspection report conducted by the local authority having jurisdiction over fire safety must be submitted with the completed application. The purpose of the inspection is to determine that the AFCH is in compliance with fire safety requirements. The agency must receive a copy of the inspection report prior to a survey being scheduled. Please contact your county commission, or if you live within the city limits, your city manager, to determine the local fire safety authority. The provider must submit a written request to their local authority having jurisdiction over fire safety.

6. **Income & Expense Statement, AHCA Form 3180-1017.**

Providers must complete the statement, detailing their current income and expenses. You must show that you presently have the financial ability to meet your expenses and operate your home. If you are already receiving income from persons living in your home, you will need to include both the income and expenses associated with those persons.

7. **Emergency and Evacuation Plan**

Providers must have a written plan specifying procedures for meeting emergencies such as fire, flooding, and hurricanes. The provider must review evacuation plans and emergency procedures with all members of the household including residents. The provider, relief person, and staff must be knowledgeable in procedures for handling emergencies. The plan should also include having adequate emergency and first aid supplies. The plan and supplies will be checked by the surveyor during the survey visit.

Once all the information has been provided and the application is complete, you will be contacted by the local agency office to schedule a survey of your home. Failure to be present at your home site at the designated survey date and time will result in your application being denied.

Mail or submit the completed application package to:

**Agency for Health Care Administration
Assisted Living Unit
2727 Mahan Drive, Mail Stop 30
Tallahassee, FL 32308-5403**

It is your responsibility to maintain a copy of all information you submitted to the agency for your AFCH records. Some of this information must be available for inspection at the time of the agency survey. If you have any questions regarding anything in the application package, please contact this office at 850-487-2515.

Sincerely,
The Agency for Health Care Administration
Division of Health Quality Assurance
Bureau of Long Term Care Services
Assisted Living Unit



Adult Family Care Home (AFCH) License Application

I. APPLICATION TYPE Please check the appropriate box(es)

[] Initial Application [] Renewal Application [] Bed Increase

What is the total number of residents (1 to 5) for which you are applying _____?

Note: Each AFCH must have at least one licensed space designated for an OSS recipient. [AFCHs or assisted living facilities that are converting to an AFCH, that were licensed prior to January 1, 1994, are exempt from this requirement.]

II. AFCH PROVIDER INFORMATION

Provider's Full Name Date of Birth

AFCH Street Address City County Zip Code Telephone #

E-Mail Address Fax # Emergency Telephone #

Do you own ___ or rent ___ the AFCH identified above?

Do you live in the AFCH? ___ Yes ___ No

Provider's Mailing Address (if different from AFCH address) City County Zip Code

Note: An AFCH provider must own or rent the home to be licensed and must live in the AFCH.

Have you ever been excluded, permanently suspended, or terminated from participation in the Medicaid, Medicare, or other governmental health care or health insurance program?

___ Yes ___ No If yes, please describe: _____

III. OTHER HOUSEHOLD MEMBERS List each household member residing at the AFCH address identified in Section II. Do not list AFCH residents.

Full Name	Date of Birth	Relationship to Provider
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Note: Household members include adults who are permanently or regularly present in the home for more than a few hours at a time. A person shall be considered a household member even though the person has another residence if the person is in a position of familial authority or perceived familial authority.

IV. DESIGNATED RELIEF PERSON(S) Use additional pages if there are more than 2 relief persons.

Relief Person's Full Name		Date of Birth		
Street Address	City	County	Zip	Telephone #
Relief Person's Full Name		Date of Birth		
Street Address	City	County	Zip	Telephone #

V. STAFF PERSON(S) Use additional pages if there are more than 2 staff persons.

Staff Person's Full Name		Date of Birth		
Street Address	City	County	Zip	Telephone #
Staff Person's Full Name		Date of Birth		
Street Address	City	County	Zip	Telephone #

VI. TYPES OF SERVICES TO BE PROVIDED Indicate which of the following services your AFCH will provide if needed by the resident. Please check all that apply.

PERSONAL CARE SERVICES (ADLs):

Eating Bathing Dressing Grooming Toileting Walking

NURSING SERVICES:

Administration of Medication Other Nursing Services

Note: The provider, relief person, or staff person must be licensed as a physician, nurse, or physician's assistant to administer medication or provide other nursing services.

VII. AFFIDAVIT

I hereby swear that the statements in this application and its attachments are true and correct, and recognize that failing to meet my responsibilities under this license or providing false information may result in a fine, denial, suspension, or revocation of this license.

I further affirm that by the time of licensing or prior to accepting any residents in my home:

(A) I will have completed the basic adult family care home course.

(B) I, each relief person, and any person to be left in sole charge of residents, will hold currently valid cards indicating completion of courses in First Aid and CPR. [A licensed nurse is exempt from the First Aid requirement.]

(Signature of Provider)

STATE OF FLORIDA
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20____,

by _____
(Name of Provider)

(Signature of Notary Public)

(Notary Public Seal)

Personally Known _____ OR Produced Identification _____.

Type of Identification Produced _____.

AFCH INITIAL APPLICATION CHECKLIST

This checklist is being provided to assist you in making sure you have included all the required forms and copies of all necessary documents with your application. Review carefully to make sure all the forms are completed and check them off the list to make sure all forms are included in the renewal application package. Remember, an initial application received without the required fee will be returned without review.

DOCUMENTS THAT NEED TO BE SUBMITTED WITH YOUR APPLICATION:

- _____ 1. A completed and notarized application
- _____ 2. Health Care Licensing Application
- _____ 3. Health Care Licensing Application Addendum
- _____ 4. License Fee
- _____ 5. Zoning compliance
- _____ 6. Satisfactory sanitation/food hygiene inspection report
- _____ 7. Satisfactory local fire safety inspection report
- _____ 8. Income & Expense Statement
- _____ 9. Level 2 background screening (completed fingerprint card) on the AFCH provider
- _____ 10. Level 1 background screening on each relief person, all staff, and all adult household members)
- _____ 11. Correct background screening fee
- _____ 12. Proof to Occupy the Property
- _____ 13. Community Residential Home Affidavit of Compliance with Chapter 419, Florida Statutes, for Adult Family Care Homes



COMMUNITY RESIDENTIAL HOME AFFIDAVIT OF COMPLIANCE WITH CHAPTER 419, FLORIDA STATUTES FOR ADULT FAMILY CARE HOMES

Name of adult family care home (AFCH): _____

Address: _____ Telephone: (____) _____

City: _____ State: FLORIDA Zip: _____

Number of Licensed Beds: _____ Is the AFCH located in an area zoned single-family or multi-family? Yes No

If NO, compliance with 58A-14.003(1)(a)3., Florida Administrative Code, is required. Please attach AHCA form number 3180-1021 or a letter from the local zoning official verifying zoning.

If YES, please check appropriate zoning: single-family; multi-family.

Compliance with the following is also required:

- I have provided the local zoning authority with the most recently published data compiled by the Agency for Health Care Administration, Department of Elder Affairs and the Agency for Persons with Disabilities, identifying all community residential homes within the jurisdiction of the local zoning authority.
I certify that this adult family care home is not located within a 1,000 foot radius of another community residential home, or has an approved variance* from the local zoning authority.
I further certify that notification of intent to establish this facility has been made to the local zoning authority (copy of dated letter attached).
At the time of home occupancy, I will notify local government that the facility is licensed.
I understand that the Agency for Health Care Administration assumes no financial or other liability in the event an error has been made in calculating, measuring or certifying that this facility meets these dispersion requirements.

*Check if you have an approved variance and attach a copy of approval.

State of _____ County of _____

Sworn and subscribed to before me
This _____ day of _____, _____

NOTARY PUBLIC

The undersigned certifies that the information submitted herein is true and correct.

By _____

Title _____

Date _____

My commission expires: _____

Dear Applicant:

Florida law requires AFCH providers, designated relief persons, adult household members, and all staff be screened by the Florida Department of Law Enforcement (FDLE). Please refer to section 429.67(4), Florida Statutes (F.S.) for specific background screening requirements.

Level 1 Screening

Level 1 screening must be completed on the AFCH provider, designated relief person(s), staff, and all adult household members age 18 or older by completing the Level 1 Criminal History Request form, AHCA Form 3110-0002. You may obtain the Level 1 Criminal History Request form on-line at ahca.myflorida.com by clicking on Background Screening. In addition to the AFCH application fee, you must include the correct screening fee in a check made payable to the State of Florida. One check can be submitted with your AFCH application for both the Level 1 screening and the application license fee. The Level 1 background screening fee is \$23 for each person screened.

If the provider, relief person(s), staff, and adult household members have already been screened by the Agency and are currently in compliance with background screening, they may simply complete the enclosed "Adult Family Care Home (AFCH) Background Screening Affidavit of Compliance" (Attachment).

If you have any questions, please call the Assisted Living Unit at (850) 487-2515.

INSTRUCTIONS FOR BACKGROUND SCREENING

All forms must be thoroughly and accurately completed before the background screening process can proceed. Incomplete forms will be returned for completion, which may cause a delay in the licensing process.

Information and instructions provided below are to assist you in understanding what the forms are for and how to complete them. Please read this information carefully before completing the forms.

I. Level 1 Criminal History Request form:

Complete each item on the form. You should make additional copies of the form as necessary.

II. AFCH Background Screening Affidavit of Compliance (Attachment):

This form is to be completed by the provider, relief person(s), staff, and adult household members (age 18 years or older) who have already been screened by the Agency and are currently in compliance with background screening requirements. You should make additional copies of the form as necessary. Please ensure the document is notarized.

NOTE: You may obtain forms through the Agency's web site at ahca.myflorida.com.

**ADULT FAMILY CARE HOME (AFCH) BACKGROUND SCREENING
AFFIDAVIT OF COMPLIANCE
SECTION 429.67, FLORIDA STATUTES**

Under penalty of perjury, I, _____ do hereby
(Print Name)
certify that I currently comply with the level I background screening requirements of
Chapter 435, Florida Statutes.

(Signature)

(Date)

STATE OF FLORIDA

COUNTY OF _____

BEFORE ME, the undersigned authority, _____
personally appeared, and after first being duly sworn in, did depose and say that he/she did
execute the foregoing Adult Family Care Home Background Screening Affidavit of Compliance
and that the same is true, accurate and correct to the best of his/her knowledge, information and
belief.

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 200__.

NOTARY PUBLIC

My commission expires:

Personally known _____ or Produced identification _____

Type of identification produced _____

What You Should Know About Home Health Care

The Florida Agency for Health Care Administration (AHCA) licenses and regulates health care facilities and health maintenance organizations (HMOs) across the state. AHCA also administers the Medicaid program that provides health care to Florida's low-income and disabled citizens. AHCA's mission is to champion accessible, affordable, quality health care for all Floridians. To help achieve this mission, AHCA publishes the *Consumer Awareness Series*. This series consists of brochures designed to assist the public in making well-informed health care decisions.

This brochure provides information for consumers about health care available in the home. You are encouraged to use all available resources to help you find the health care services you need. Resources can include your physician, your insurance company, and the contacts listed in the Resource Directory at the back of this brochure.

Note: This brochure is not designed to offer medical or legal advice. Please consult with your physician for medical advice and an attorney for legal advice.

Introduction

This brochure contains information concerning health care services provided in the home. Such services may be needed during recuperation after a hospital stay, or to help a disabled or elderly person live independently in their own home.

Some of the topics included in this brochure include:

- Services that are offered.
- Providers that offer these services.
- A description of quality standards.
- Guidelines for selecting a health care provider.
- Sources of assistance.

There are many aspects to health care services in the home and this brochure can help you be informed should you or someone you know need these services.

Health Care Services

Health care services offered in the home may include:

- Nursing care;
- Physical, occupational, respiratory, or speech therapy;
- Home health aide services;
- Medical social services;
- Nutritional counseling;
- Medical equipment and supplies; and
- Homemaker and companion services.

Health Care Providers

Health care providers include companies and independent practitioners. Listed below are types of health care providers that are licensed or registered by the Florida Agency for Health Care Administration (AHCA) to provide services in the home. You may obtain a list of these companies on the AHCA web site: www.FloridaHealthStat.com (under "Facility Locator").

Home Health Agencies

Home health agencies provide nursing care; physical, speech, occupational, respiratory and IV therapy; home health aide services; homemaker and companion; home medical equipment, nutritional guidance, and medical social services in the patient's home or place of residence.

Nurse Registries

Nurse registries arrange for nurses, certified nursing assistants (CNAs), home health aides, homemakers, or companions to provide services to patients in their homes.

Hospices

Hospices provide nursing, physician, social work, and pastoral services; nutritional counseling; and bereavement counseling (dealing with the grief of death and dying) for terminally ill patients and their families. Additional services may include: physical, occupational, speech, and massage therapy; home health aide and homemaker services; home medical equipment and supplies; and respite services. The staff is specially trained to assist the patient and family members who are dealing with death and dying. These services are provided in the patient's place of residence, a hospital, or a hospice facility.

Home Medical Equipment Providers

Home medical equipment providers sell or rent home medical equipment and services. Equipment includes, though is not limited to, oxygen, respiratory equipment, and customized wheelchairs. Services include delivery, set up, instruction, and maintenance of equipment. A home health agency or hospice can also provide this service.

Homemaker and Companion Services

Companies providing only homemaker and companion services must be registered with AHCA. Services include housekeeping, meals, shopping, and trips outside the home. These services can also be offered by a home health agency, nurse registry, or hospice.

Independent Practitioners

An individual health care practitioner may provide health care services in the home, within the scope of his or her state license or registration, or within his or her training. Practitioners include registered nurses (RNs); licensed practical nurses (LPNs); physical, occupational, respiratory, and speech therapists; CNAs; home health aides; homemakers and companions.

If you employ an independent practitioner, you should ask them who will be responsible to pay household employment taxes, income withholding taxes, and unemployment taxes. If the independent practitioner does not pay these taxes, you may be required to pay them.

Quality Standards

Florida law has established certain minimum standards for health care provided in the home by health care companies.

- If a patient is receiving skilled services the patient's physician must sign a treatment order, indicating the services needed. Skilled services are those services provided by a nurse or by a physical, speech, occupational, or respiratory therapist. A plan of care must then be developed, giving details of how the care will be given (sometimes a plan of care is called a POC or a plan of treatment). A plan of care is not required for clients receiving home health aide services without a treatment order or for clients receiving only homemaker or companion services.
- A patient has the right to participate in the planning of his or her care and to receive, upon request, a copy of the plan of care.
- For patients receiving skilled services, a health care professional licensed to perform these services must do an assessment of the patient's condition.
- The plan of care must be reviewed at certain times by the physician, and the care must be coordinated and supervised by the provider. These requirements vary depending on the provider offering the services, so ask the provider and your physician what to expect.

Choosing A Provider and Getting Financial Help

The following are some guidelines in selecting a home health care provider.

- You may want to talk with two or more providers until you find one that meets your needs. You may also want to discuss the choice with your physician. However, you are not required to use a provider recommended by your physician or hospital.
- If you need nursing care, therapy, home health aide services, or home medical equipment, discuss this with your physician. The physician might write a treatment order for your care. If you have a treatment order the cost might be paid by your private insurance or, if you and the home health care provider are eligible, by Medicare or Medicaid (See the "Medicare and Medicaid" section of this brochure).
- If you need help getting a bath or other types of personal care, but you do not need any other medical care, you may want to discuss this with your physician, or you can arrange these services yourself. A home health aide or CNA would provide these services (But not if they are employed or contracted with a homemaker and companion service). Most often these services would be paid with your own money. For possible assistance, check with your insurance company, Medicaid, your local office of the Florida Department of Children and Families, or call the Elder Helpline (through the Florida Department of Elder Affairs) about their local programs. If there is a program in your area, there may be a waiting list.
- If you need someone to help you with shopping, meal preparation, household chores, or driving, these services can be provided by a homemaker or companion. Most often these services would be paid with your own money. For possible assistance, check with your insurance company, your local office of the Florida Department of Children and Families, or the Elder Helpline.

- To locate a health care provider in your area: check the phone book yellow pages, the Internet at www.FloridaHealthStat.com (click on "Facility Locator"), or call AHCA or the Elder Helpline.
- To find out about Medicare eligibility, contact Medicare. For Medicaid eligibility contact your local office of the Florida Department of Children and Families. Further information about these programs is listed under the "Medicare and Medicaid" section of this brochure.

See the "Resource Directory" for contact information on the government agencies listed in this section.

What to Ask the Provider

- You can ask the health care company to show you their current Florida license or registration. Independent licensed practitioners can show you their professional license. Home health aides and CNAs can show you a training certificate. Independent homemakers and companions are not required to have a training certificate. You can verify the license of an independent practitioner on www.FloridaHealthStat.com, under "ProviderStat." The license for a company can be verified on the same web site, under "Facility Locator."
- Ask what health care services will be provided.
- Ask for a written description of fees. The provider should explain what you will pay and what your insurer will cover. If you are covered by Medicare or Medicaid, ask if the provider is eligible to bill one or both of them.
- Ask for proof of current liability insurance. (Homemakers and companions are not required to carry liability insurance.)
- If you are receiving skilled services or are on life-support equipment, the provider is required to be on-call 24-hours a day, 7 days a week. Be sure the provider gives you their 24-hour phone number. If you are receiving only non-skilled services or equipment that is not life supporting, the provider should give you the phone number where you can call during regular service hours.
- Ask about procedures for handling complaints. The provider might have a procedure to handle complaints within their company. You also have the right to file a complaint with the Agency for Health Care Administration.
- The local offices of the Florida Division of Emergency Management maintain a Special Needs Registry for patients who will need assistance with evacuation and sheltering during a disaster, like a hurricane. This assistance is for special needs patients who have a physical or mental condition that requires medical oversight during evacuations. If this describes your situation, ask the provider to help you register with the Special Needs Registry.

- Ask for references.

Medicare and Medicaid

Conditions usually necessary to obtain Medicare or Medicaid home health benefits include the following:

- To qualify for Medicare you must be 65 years or older or disabled or with end-stage renal disease. To qualify for Medicaid you must be low-income, aged, blind or disabled. Applicants must meet certain eligibility requirements.
- The health care provider must have a Medicare or Medicaid provider number. All hospices serve Medicare and Medicaid patients. Home health agencies and home medical equipment providers may or may not have a Medicare and/or Medicaid provider number, so if you are eligible for Medicare or Medicaid you should ask the company if they are eligible too. Nurse registries and homemaker and companion services are not eligible for Medicare or Medicaid.
- For Medicare you must be under the care of a physician, be homebound, need skilled nursing care, physical therapy, speech therapy, or have a continuing need for occupational therapy. "Home" can be a house, apartment, assisted living facility, or adult family-care home. When you leave home, it is for infrequent or short time periods, such as for a doctor's appointment. For information on Medicaid standards, contact your local Medicaid office.
- Services must be on a part-time basis (not 24 hours).
- Your physician must sign a treatment order for you to receive care. Some of the Medicaid waiver programs do not require a physician's treatment order.

Medicaid Waiver Programs

In addition to the regular Medicaid program there are a variety of Medicaid waiver programs that target certain populations, including disabled adults, elderly, brain and spinal cord injured, developmentally disabled, and AIDS patients, among others. For eligibility requirements contact your local office of the Florida Department of Children and Families.

What Is Not Covered by Medicare

- Help getting a bath and other types of personal care unless skilled services are also ordered;
- 24-hour care at home;
- Meals delivered to your home; and
- Homemaker or companion services.

Other Sources of Assistance

The Florida Department of Elder Affairs offers several programs:

Older Americans Act (OAA) - Provides homemaking services, home-delivered meals, medical transportation, home health aide, adult day care, and other services. The OAA is for people 60 years or older, especially those in economic or social need.

Community Care for the Elderly - Provides homemaking, home-delivered meals, and personal care services to frail elders, age 60 and older. Eligibility is based, in part, on a client's inability to perform certain daily tasks essential for independent living, such as meal preparation, bathing, or grooming.

Home Care for the Elderly - Provides a subsidy payment to help relatives keep a low-income elder in their own home or in the home of a caregiver. A participant must be at risk of nursing home placement.

CARES (Comprehensive Assessment Review and Evaluation Services) - Provides assistance obtaining in-home and community services to avoid nursing home care.

SHINE Program (Serving Health Insurance Needs of Elders) - Provides counseling to seniors regarding health insurance, and is available in most counties. SHINE counselors can answer questions about the health coverage requirements of insurers or government programs.

For more information on these programs, contact the Elder Helpline in the "Resource Directory" of this brochure.

Important Phone Numbers

Florida law requires home health agencies, nurse registries, homemaker and companion companies, and home medical equipment providers to inform the patient or family about the toll-free Abuse Registry number for reporting abuse, neglect, or exploitation. Abuse Hotline: (800) 962-2873.

To file a complaint, or to inquire about home health care providers, call AHCA toll-free at: (888) 419-3456.

Resource Directory

Administration on Aging

U.S. Department of Health and Human Services

(202) 619-0724

(800) 677-1116 (Elder Locator)

www.aoa.gov

Centers for Medicare & Medicaid Services

www.cms.hhs.gov

Division of Emergency Management
Florida Department of Community Affairs
(850) 413-9900
(Check phonebook for local listing.)
www.floridadisaster.org

Florida Agency for Health Care Administration
www.fdhc.state.fl.us or www.FloridaHealthStat.com
Home Care Unit (850) 414-6010
Information and Complaints (888) 419-3456

Florida Department of Children and Families
Check phone book for local listing.
www.state.fl.us/cf_web/
(For questions about Medicaid applications and Medicaid eligibility.)

Florida Department of Elder Affairs
Elder Helpline
(800) 963-5337
elderaffairs.state.fl.us

Florida Hospices and Palliative Care, Inc.
(850) 878-2632
www.floridahospices.org

Medicaid
Agency for Health Care Administration
Call (888) 419-3456 for referral to your local Medicaid office.
www.fdhc.state.fl.us
(For information on Medicaid covered services.)

Medicare
(800) 633-4227
www.medicare.gov

Mid-Florida Area Agency on Aging
(800) 262-2243
www.mfaaa.org

National Association for Home Care
(202) 547-7424
www.nahc.org

National Council on the Aging
(202) 479-1200
www.ncoa.org

National Hospice and Palliative Care Organization

(703) 837-1500

www.nhpco.org

For additional copies of this brochure, please contact the AHCA Call Center at (888) 419-3456.

To view or print any brochure in the *Consumer Awareness Series*, please visit

www.FloridaHealthStat.com

Additional brochures in the *Consumer Awareness Series* include:

- A Consumer's Guide to Health and Human Services Programs
- A Consumer's Introduction to Cardiovascular Procedures Using FloridaHealthStat.com
- A Patient's Guide to a Hospital Stay
- Emergency Medical Care
- End-of-Life Issues – A Practical Planning Guide
- Florida Medicaid – A Reference Guide
- Health Insurance Guide for Families and Individuals
- Long-Term Care
- The Heart of a Woman – Women and Heart Disease
- Understanding Prescription Drug Costs
- What to Consider When Choosing an Assisted Living Facility

This brochure may be copied for public use. Please credit the Agency for Health Care Administration for its creation.

If you have comments or suggestions, please call (850) 922-5771.



Jeb Bush
Governor

M. Rony François, M.D., M.S.P.H., Ph.D.
Secretary

IMPORTANT NOTICE

Applicants Applying for:

- ¹Assisted Living Facilities - ²Adult Family Care Homes
- ³Adult Day Care Centers - ⁴Hospice Res. Unit

If you are planning to apply for a license for one of the above four name facilities and your home or facility will serve food and/or have a well, pool, or septic system, contact your local County Health Department (CHD) immediately.

Food Hygiene

All residences and facilities are required to submit a complete floor plan and proposed menu to the local County Health Department (CHD), prior to construction or opening. This is to assure that the kitchen and dining areas have required equipment and meet Chapter 64E-11, FAC. This floor plan shall be drawn to scale and accurately detail the food service and preparation areas, including a list of food equipment to be used. It shall also include all outbuildings, fencing, restrooms, septic system, wells, etc. Fees may be associated with this plan review.

Food Hygiene standards shall be met prior to issuing a license or opening for business. These requirements can be found in the Florida Administrative Code on line at <http://election.dos.state.fl.us/fac/index.shtml> or accessing the DOH website at <http://www.doh.state.fl.us/environment/community/food/index.html>.

Assisted Living Facility	64E-11 FAC for facilities licensed for 25 or more residents. 64E-12.004 FAC for those licensed for 24 or fewer residents.
Adult Family Care Homes	64E-12.004 FAC
Adult Day Care	64E-11 FAC
Hospice Residential Unit	64E-11 FAC

Physical Plant Sanitation

In addition to the food hygiene requirements assisted living facilities, hospice, and adult family care homes must meet physical plant sanitation standards outlined in Chapter 64E-12 FAC, for Community Based Residential Facilities. For more information on the group care inspection go to the DOH website <http://www.doh.state.fl.us/environment/community/group/index.html>.

Well, Pool or Septic System

If your facility/home has a well, pool or septic system on the property to be used for any of the facilities listed at the top of this notice, you must also contact the local County Health Department (CHD) before you submit your application to the Agency for Health care Administration. Some properties with a well, pool, and septic tank can require extensive and costly renovations or modifications before they can be licensed. Fees may be associated with plan reviews of septic systems, pools, and wells. Group home facilities with eight or more residents are considered public pools. Related DOH website links are as follows:

Septic Systems	http://www.doh.state.fl.us/environment/ostds/index.html .
Pools	http://www.doh.state.fl.us/environment/water/swim/index.html .
Drinking Water Well	http://www.doh.state.fl.us/environment/water/index.html .

This list is not complete! Contact your local CHD environmental health section for additional information and to request a DOH environmental health representative inspect your facility/residence for compliance.

Select Year: 2010 

The 2010 Florida Statutes

Title XXX
SOCIAL WELFARE

Chapter 419
COMMUNITY RESIDENTIAL HOMES

[View Entire Chapter](#)

CHAPTER 419 COMMUNITY RESIDENTIAL HOMES

419.001 Site selection of community residential homes.

419.001 Site selection of community residential homes.—

(1) For the purposes of this section, the term:

(a) “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 for 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.

(b) “Licensing entity” or “licensing entities” means the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Children and Family Services, or the Agency for Health Care Administration, all of which are authorized to license a community residential home to serve residents.

(c) “Local government” means a county as set forth in chapter 7 or a municipality incorporated under the provisions of chapter 165.

(d) “Planned residential community” means a local government-approved, planned unit development that is under unified control, is planned and developed as a whole, has a minimum gross lot area of 8 acres, and has amenities that are designed to serve residents with a developmental disability as defined in s. 393.063 but that shall also provide housing options for other individuals. The community shall provide choices with regard to housing arrangements, support providers, and activities. The residents’ freedom of movement within and outside the community may not be restricted. For the purposes of this paragraph, local government approval must be based on criteria that include, but are not limited to, compliance with appropriate land use, zoning, and building codes. A planned residential community may contain two or more community residential homes that are contiguous to one another. A planned residential community may not be located within a 10-mile radius of any other planned residential community.

(e) “Resident” means any of the following: a frail elder as defined in s. 429.65; a person who has a handicap as defined in s. 760.22(7)(a); a person who has a developmental disability as defined in s. 393.063; a nondangerous person who has a mental illness as defined in s. 394.455; or a child who is found to be dependent as defined in s. 39.01 or s. 984.03, or a child in need of services as defined in s. 984.03 or s. 985.03.

(f) “Sponsoring agency” means an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home.

(2) Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use for the purpose of local laws and ordinances. Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes shall not be located within a radius of 1,000 feet of another existing such home with six or fewer residents. Such homes with six or fewer residents shall not be required to comply with the notification provisions of this section; provided that, prior to licensure, the sponsoring agency provides the local government with the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located in order to show that no other community residential home is within a radius of 1,000 feet of the proposed home with six or fewer residents. At the time of home occupancy, the sponsoring agency must notify the local government that the home is licensed by the licensing entity.

(3)(a) When a site for a community residential home has been selected by a sponsoring agency in an area zoned for multifamily, the agency shall notify the chief executive officer of the local government in writing and include in such notice the specific address of the site, the residential licensing category, the number of residents, and the community support requirements of the program. Such notice shall also contain a statement from the licensing entity indicating the licensing status of the proposed community residential home and specifying how the home meets applicable licensing criteria for the safe care and supervision of the clients in the home. The sponsoring agency shall also provide to the local government the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located. The local government shall review the notification of the sponsoring agency in accordance with the zoning ordinance of the jurisdiction.

(b) Pursuant to such review, the local government may:

1. Determine that the siting of the community residential home is in accordance with local zoning and approve the siting. If the siting is approved, the sponsoring agency may establish the home at the site selected.
2. Fail to respond within 60 days. If the local government fails to respond within such time, the sponsoring agency may establish the home at the site selected.
3. Deny the siting of the home.

(c) The local government shall not deny the siting of a community residential home unless the local government establishes that the siting of the home at the site selected:

1. Does not otherwise conform to existing zoning regulations applicable to other multifamily uses in the area.
2. Does not meet applicable licensing criteria established and determined by the licensing entity, including requirements that the home be located to assure the safe care and supervision of all clients in the home.
3. Would result in such a concentration of community residential homes in the area in proximity to the site selected, or would result in a combination of such homes with other residences in the community, such that the nature and character of the area would be substantially altered. A home that is located within a radius of 1,200 feet of another existing community residential home in a multifamily zone shall be an overconcentration of such homes that

substantially alters the nature and character of the area. A home that is located within a radius of 500 feet of an area of single-family zoning substantially alters the nature and character of the area.

(4) Community residential homes, including homes of six or fewer residents which would otherwise meet the definition of a community residential home, which are located within a planned residential community are not subject to the proximity requirements of this section and may be contiguous to each other. A planned residential community must comply with the applicable local government's land development code and other local ordinances. A local government may not impose proximity limitations between homes within a planned residential community if such limitations are based solely on the types of residents anticipated to be living in the community.

(5) All distance requirements in this section shall be measured from the nearest point of the existing home or area of single-family zoning to the nearest point of the proposed home.

(6) If agreed to by both the local government and the sponsoring agency, a conflict may be resolved through informal mediation. The local government shall arrange for the services of an independent mediator or may utilize the dispute resolution process established by a regional planning council pursuant to s. 186.509. Mediation shall be concluded within 45 days of a request therefor. The resolution of any issue through the mediation process shall not alter any person's right to a judicial determination of any issue if that person is entitled to such a determination under statutory or common law.

(7) The licensing entity shall not issue a license to a sponsoring agency for operation of a community residential home if the sponsoring agency does not notify the local government of its intention to establish a program, as required by subsection (3). A license issued without compliance with the provisions of this section shall be considered null and void, and continued operation of the home may be enjoined.

(8) A dwelling unit housing a community residential home established pursuant to this section shall be subject to the same local laws and ordinances applicable to other noncommercial, residential family units in the area in which it is established.

(9) Nothing in this section shall be deemed to affect the authority of any community residential home lawfully established prior to October 1, 1989, to continue to operate.

(10) Nothing in this section shall permit persons to occupy a community residential home who would constitute a direct threat to the health and safety of other persons or whose residency would result in substantial physical damage to the property of others.

(11) The siting of community residential homes in areas zoned for single family shall be governed by local zoning ordinances. Nothing in this section prohibits a local government from authorizing the development of community residential homes in areas zoned for single family.

(12) Nothing in this section requires any local government to adopt a new ordinance if it has in place an ordinance governing the placement of community residential homes that meet the criteria of this section. State law on community residential homes controls over local ordinances, but nothing in this section prohibits a local government from adopting more liberal standards for siting such homes.

History.— s. 1, ch. 89-372; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 36, ch. 93-206; s. 6, ch. 95-152; s. 42, ch. 96-169; s. 222, ch. 97-101; s. 46, ch. 98-280; s. 14, ch. 98-338; s. 53, ch. 99-193; s. 23, ch. 99-284; s. 7, ch. 2000-135; s. 93, ch. 2004-267; s. 34, ch. 2006-86; s. 110, ch. 2006-120; s. 1, ch. 2006-177; s. 99, ch. 2007-5; s. 30, ch. 2008-245; s. 3, ch. 2010-193.