

TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY OCTOBER 10, 2012
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**
- D. CONSENT AGENDA :**
 - 1. Approval of Minutes** Planning and Zoning Meeting – 09/26/2012
Exhibit: Agenda Report No. 1
Recommendation: Motion to Approve
- E. PUBLIC:**
- F. ACTION:**
- G. DISCUSSION:**
 - 2. Review Material of “Light Industrial” Zoning and Recommendation to Council**
Exhibit: Agenda Report No. 2
Recommendation: Discussion
 - 3. Code Requirements for Assisted Living Facilities**
Exhibit: Agenda Report No. 3
Recommendation: Discussion
- H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:**
- I. PUBLIC:**
- J. OLD BUSINESS/NEW BUSINESS:**
- K. ADJOURN**

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

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: October 10, 2012

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

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

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

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

ATTACHMENTS:

Draft minutes of P&Z Board Meeting of September 26, 2012

ACTION OPTIONS:

Secretary requests approval of the minutes.

"The following draft minutes are subject to changes and/or revisions by the Planning and Zoning Board and shall not be considered the official minutes until approved by the P&Z Board."

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
SEPTEMBER 26, 2012 7:30 PM**

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

A. CALL TO ORDER, PRAYER AND PLEDGE:

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

B. ROLL CALL:

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

C. ADDITIONS/DELETIONS/CHANGES:

D. CONSENT AGENDA:

1. **Approval of Minutes** Planning and Zoning Meeting – 8/22/2012

MOTION: Reilly / Ryan to approve minutes of 8/22/12 as submitted.

VOTE: All Ayes.

E. PUBLIC: none

F. ACTION:

2. **Final Review and Make Recommendation to Council re: Decorative Water Features and Ponds**

Exhibit: Agenda Report No. 2

Recommendation: Action

Krieger stated he needed to leave at 9PM

MOTION: Reilly / Ryan to recommend Council approve the ordinance relating to decorative water features and ponds.

Discussion. Reilly on pg 8/68 of meeting package, at the beginning; it is his recommendation that the Board give the Council the old code as written now and the new ordinance with no strike throughs. Reilly said on pg 17/68 take the "DWF" out of the preamble – it is in wrong place; keep only words in that location. The use of the abbreviation in 1C is correct. Reilly didn't see the checklist. Reference in the section for permits A and B and under and new 2. and reference the checklist. It is a tool it is not going to be codified. Board discussed where to place the checklists. Reference in both DWF and Pond sections.

A-10 would be refer to DWF checklist provided

A-11 would be refer to Pond checklist provided

Krieger had read through the legally reviewed draft and had several comments. He had a concern with the appeal going to BOA instead of the Council. P&Z had directed that appeal should go to Council. Also on pg 23/68, Sec 3.E. it states that appeals of the decision may be taken to court of competent jurisdiction. P&Z had said Council and it has been changed to BOA.

He read thru the definitions. Reilly said the language follows the existing code and told Krieger to look at pg 14. Krieger said that answers his question but it doesn't mean they like it. Wilbur asked Franklin if an appeal had ever gone to BOA regarding a pond. Not that Franklin knew. Franklin explained the BOA is set up to consider appeals to administrative decisions of the Building Official or variances to our land development code. They receive the appeal packet and have legal guidance from town attorney. If applicant doesn't like the BOA decision, they can go to court only.

Abare didn't think the BOA would understand the reasoning behind P&Z actions on this code amendment; they have worked on it for a year. Saylor said the BOA also has our Town atty to help them understand the questions and the appeal.

Krieger also sees scrivener's problems with the proposed ordinance.

Krieger referenced the attorney changing the section regarding jurisdictions. It should all be the same. Pg 22/68 7.B. says "outside jurisdictional agency" and it should all be put in similar format. Krieger said use that same term in the permitting section and on the checklist. Krieger said on pg 19/68 Section B. 8., it refers to engineer instead of jurisdictional agency.

Wilbur said the Attorney language is fine with him. Saylor said the section Krieger referred to calls for a letter from an Engineer if the material is not suitable. That should not come from a jurisdictional agency. She is fine with the way it is written. So are Wilbur, Reilly and Ritter.

Krieger referred to pg 20/68 3B, water source may be surface runoff; in definitions on page 18.L. we wanted to include rain - not limited to. Board said that is ok and leave it as written.

Krieger referred to pg 21/68 bottom of page, limit discharge – can't do that. He took out and changed to "control" - he did not see how anyone could limit discharge. Reilly said it is verbatim from the old code. Ritter said it reads that "post construction" can't exceed "pre-development" runoff. That is why it says "limit." Wilbur explained that process – an applicant has to design project to "limit" runoff after construction to not exceed pre-constructive runoff.

Board said to leave language as stated.

Reilly referred to pg 15 and confirmed that the diagram was deleted by Board. Should be more obvious. The reason is that the side slopes is covered by the design section of code.

Ryan referred to pg 22 at bottom A., typo "with" should be "per" Town Code. He also thought on pg 23, 9.E. the word "may" should be replaced with "must"

Ask Attorney if we should change language in this section and also in Art XII because it reads the same way there.

Abare handed out his bulleted summary sheet that he said he was going to develop so council could easily see the major reasons of why the P&Z Board developed this they way they did.

Wayne referred to pg 11/68 and thought there was an error in minutes from Council. He thought the current code allowed mining. Franklin said no the current code does not permit mining.

Saylor said we will give them Abare's bulleted list so they can see why P&Z worked on this. Reilly said he should also add on the bulleted list that they restructured this by putting definitions first, making it more user friendly and made each one a stand alone section, DWF and pond; also added design considerations and checklists.

Krieger asked regarding the excavated material why do we care if it is being sold. He is not supporting mining but is looking at the why the Town should care why an applicant can sell or trade material he can't use.

The Board then started the discussion again on selling the material. Saylor said there have been cases where an applicant provides a stretch of the truth on whether it is useable. If there is no financial gain they may be less likely to try and sell it.

Abare said point is well taken.

Ryan said in 2011 there were dump trucks coming south on McCain loaded with fill. He said he called that in a couple of times. Abare said Jordan Davidson dug the ponds and sold the fill. Wilbur said the ponds in CC were borrow pits. The twin lakes area were borrow pits dug on Radensic's land.

Ryan asked the Board if a swimming pool could be considered a DWF? He said they haul off the fill. Ryan retold his pool story about contractor taking fill off side when he had his pool put in. He later called the contractor and asked them to drop off excavated material from other pool constructions so they wouldn't have to haul it to landfill.

VOTE: Ayes, 4 (Reilly, Wilbur, Ritter, Ryan); Nay, 1 (Krieger)

Reilly asked what Krieger's reasons were for voting against motion. Krieger said he disagrees with the appeal going to BOA and the restriction on selling the material. He also disagrees with the process and permit required for a DWF.

G. DISCUSSION:

- 3. Review Material of "Light Industrial" Zoning and Recommendation to Council**
Exhibit: Agenda Report No. 3
Recommendation: Discussion

Abare referenced the Melbourne definition and why they want it close to I-95 and the RR areas. Wilbur said to have them in the same area as LC (limited commercial) it would not work. He still felt that designating those areas like the triangle (I-95 – Babcock) and the west side of the RR area then you take away the others that would be objectionable. If you were next to the RR and could get a spur. Wilbur said there used to be a spur. Reilly said what are we going to discuss at next meeting. Ritter said along the RR we don't have easy way to get to US 1 and/or I-95 and LI requires that and it not a good location for tractor trailers. Wilbur said LI would allow a lot more than that. He said maybe we don't want freight use; light industrial would limit use. Saylor said it makes sense because of the proximity of the RR track for light industrial. Wilbur said it would only be on the west side of the tracks.

Ritter said she did not support LI by the RR because of the residential on the east side of the tracks. She did support that use in the I-95 and Babcock area. Wilbur said all the time he has been on P&Z he has tried to get this use. Krieger said the whole concept was to limit the changes required to the code and creation of more ordinances. Krieger said they should not be talking about this as the roads are not here for this kind of use.

The members discussed the commercial limited (CL) and the limited industrial (LI) again. Wilbur said read the definition in code for commercial limited in District Provisions and nothing fits in these areas. Saylor said it has serious limitations with no city water.

Reilly said they had talked about changing the CG to something less intense and explained the history of the discussion. Trying to make it less intense but not commercial limited. Wilbur referred

them to IHB code. Wilbur read from the Malabar code the types of uses that would be allowed. He thought those types of uses would be appropriate. He suggested the Board make up their own list. For areas we are going to keep CL keep as we have definitions for now.

Abare asked of Wilbur if people have come here and been sent away because those uses didn't fit anywhere? Abare explained problem Lowes has; they are annexing into West Melbourne on condition of getting city water. Wilbur said Malabar doesn't have any large enough parcels along the RR track that would create a problem; no room for a large facility with 50 employees. This opens up the area for utilization. Reilly said if those uses listed by Wilbur could fit in an existing zoning then he would not support creating a new type. If they don't fit in an existing class that is a good reason to have a new class.

Krieger said that is why he suggested combining the two – industrial and commercial light. His idea is to reduce the number of ordinances having to be created. Instead, you could change a table.

Saylor asked if they have ever taken into consideration what the commercial designation on R/LC does to property owners. She described problems they have had in getting property insurance. If she tries to get commercial insurance on her property she can't because she lives there. She can't get residential insurance because she has a business there. She is having to fight the county.

Wilbur is glad they brought it up. He explained the history of R/LC. It was created so property owners could live and operate a business from their residence. They were able to get mortgages and were no longer harmed if they had to rebuild.

Wilbur and Abare both said old Melbourne has had similar mixed use for years and she should talk to them about insurance. Wilbur said the area in Pinellas County also is a very successful built up mixed use area.

Reilly said for next meeting Board can review these uses. Chair said let's do it tonight. Wilbur explained why the Board should want to limit the industrial; they don't want to full industrial. Abare said why not just rewrite the industrial uses since there is no other area with that designation that could develop. Wilbur wants to provide an area for the small business person to work from so they don't have to go to Palm Bay.

Reilly said if it is only one parcel then why rewrite the section. Abare said they could change the asterisk (*) for CG in Table 1-3.3.B. Krieger said they should be able to do a less intense use than the zoning allows.

Abare said what attracts small business to Malabar? Krieger said it was the low price and the lack of requirements for sidewalks and impact fees.

Wilbur read the CG language from the Article III in the Code on what it is not intended to accommodate; appears to eliminate all but storefront. Does not allow trades like welding shops. Ritter said if you look at the Table in Article III lists uses under CG and trades is listed; the Table listing doesn't coincide with the narrative. Ritter said they should get the two of them to say the same thing. Abare agreed. Krieger said do it within the categories we have. Krieger disagreed with the description for CG. He said if you are in an enclosed building and if someone is silver soldering a something it should be permitted. We could have a flex zoning. They would go thru a process. Krieger said they should not just make categories up for the sake of making categories. Saylor asked if a bakery wanted to come in what zoning would they need?

Abare liked adding uses to the list we currently have. Development requires water and sewer. Krieger said what about naming a section flex-commercial.

Wilbur suggested a designation for the triangle area. Something needs to be done to rectify what they can't do in CG. Saylor said make CG and IND more flexible. Krieger said Wilbur has specific things that are wanted; are those businesses that could fit in other categories. Wilbur is looking at businesses that have come to us and we have not had a place for them.

MOTION: Reilly / Ryan to skip the ALF item and go to Old/New Business.

VOTE: All Ayes.

4. Code Requirements for Assisted Living Facilities

Exhibit: Agenda Report No. 4

Recommendation: Discussion

H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:

I. PUBLIC:

J. OLD BUSINESS/NEW BUSINESS:

Ritter and Ryan asked about follow-up on the parking of tractor trailers at AAA Storage. Ryan said he sent email to TA Wilbanks. Board Secretary stated that TA had sent letter to owner. Wilbur asked Franklin. Franklin did not have copy of letter and had no information on what was in letter. Secretary also had no information. Ritter said when Board asks about an item staff should be able to provide updates.

Secretary told Board that the Building Dept had received the first permit package for a house in Weber Woods subdivision. Stanley Homes has said they will have multiple homes in the development.

L. ADJOURN

There being no further business to discuss, **MOTION:** Reilly / Ryan to adjourn this meeting. **Vote:** All Ayes. The meeting adjourned 9:50 P.M.

BY:

Bob Wilbur, Chair

Debby Franklin, Recording Secretary

Denine Sherear, P&Z Board Secretary

Date Approved

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: October 10, 2012

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

SUBJECT: Light Industrial Zoning

BACKGROUND/HISTORY:

Continued discussion from last P&Z meeting of September 26, the Board members individually were going to make a list of the type of businesses that we want to see in Malabar and where we want to put them.

In addition, staff provided a zoning map of the Town, to review areas for possible business type locations, along with Article II Land Use & Zoning.

ATTACHMENTS:

- Portion of P & Z minutes 07/27/2011
- Portion of Town of Malabar Code Book-Article III Section 1-3.1
- District Provisions Table 1-3.2 Land Use By Districts
- Agenda Report Item 5 from July 27, 2011.
- Memo from Debby Franklin # 2011-TC/T-088
- Melbourne, West Melbourne, Cocoa, Indian Harbour Beach- definitions for "Light Industrial".
- Submittal from Krieger
- Submittal from Wilbur
- Town of Malabar Zoning Map (1995)
- Article II Land Use & Zoning
- Future land Use Map will be provided on overhead projector

ACTION OPTIONS:

Discuss and Recommend to Council

5. Definition of "Light Industrial"

Exhibit: Agenda Report No.5
Recommendation: Discussion

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

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

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

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

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

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

Ryan left at 9:25.

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

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

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

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

K.

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

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

- A specialized market with customized market demands.

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

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

L.

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

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

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

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

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

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

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

TABLE 1-3.2. LAND USE BY DISTRICTS



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

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DISTRICT PROVISIONS

§ 1-3.2



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

§ 1-3.2

MALABAR LAND DEVELOPMENT CODE

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



- C = Conditional Use
- P = Permitted Uses
- A = Accessory Use

* = These uses are permitted only on sites abutting Babcock Street, US 1, and West Railroad Avenue.
 1 = Allowing up to 1,000 square feet of a church or educational institution for the housing of a caretaker or security guard serving the church or educational institution. No such use shall be allowed unless administrative approval is granted by the Town.

¹ Any Bed and Breakfast which is proposed to have more than five (5) living quarters shall only be approved as a conditional use in accordance with Article VI of the Land Development Regulations.
 (Ord. No. 94-4, § 3, 4-3-95; Ord. No. 97-3, § 2, 3-17-97; Ord. No. 05-01, § 1, 3-7-05; Ord. No. 06-19, § 1, 1-11-07)

DISTRICT PROVISIONS

§ 1-3.2

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

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

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Definition of Light Industrial

BACKGROUND/HISTORY:

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

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

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

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

ATTACHMENTS:

- Memo 2011-TC/T-088 with attachments

ACTION OPTIONS:

Continued Board work towards a recommendation to Council.

TOWN OF MALABAR

MEMORANDUM

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

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

I was able to get one from the City of Melbourne and it reads as follows:

Area intended to have close proximity to rail, air or major roadway facilities and which can serve intensive commercial uses and light manufacturing; warehousing, distribution, wholesaling and other industrial functions of the city and the region. Restrictions herein are intended to minimize adverse influences of the industrial activities on nearby non-industrial area and to eliminate unnecessary industrial traffic through non-industrial areas.

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

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

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

Melbourne's definition of Light Industrial

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

W. Melb

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

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Sec. 98-521. - Intent.

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

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Sec. 98-524. - Conditional uses.

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Sec. 98-526. - Lot and structure requirements.

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Sec. 98-521. - Intent.

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

(Ord. No. 45, art. VI, § 9, 8-4-1970; Ord. No. 85-3, § 5, 11-8-1984; Ord. No. 92-12, §§ 1, 2, 7-7-1992; Ord. No. 95-20, § 4, 9-5-1995)

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

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

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

Cocaa

1 of 2

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

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

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

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

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

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

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

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

LIVING AREA. See Floor Area.

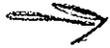
LOADING SPACE, OFF-STREET. Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street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

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

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

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

2/2 Cocoa

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

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

(A) PRINCIPAL USES AND STRUCTURES.

- (1) All uses allowed in section 12, general commercial district except uses specifically prohibited.
- (2) Warehousing and wholesaling in enclosed structures, enclosed refrigerated storage.
- (3) Service and repair establishments, dry cleaning; and laundry plants, business services, printing plants, welding shops, taxidermists and similar uses.
- (4) Building materials supply and storage, contractor's storage yard, except scrap materials. Outside storage areas shall be effectively walled on all sides to avoid any deleterious effect on adjacent properties.
- (5) Automotive, major recreational equipment, mobile home and marine, storage and repair establishments such as body shops, tire recapping, paint shops and the like.
- (6) Freight-handling facilities, transportation terminals.
- (7) Vocational and trade schools, including those of an industrial nature.
- (8) Veterinary hospitals and clinics.
- (9) *Reserved.*
- (10) Low intensity industrial uses, such as the manufacturing and assembly of various items, which include scientific, electrical, optical and precision instruments or equipment, within an enclosed structure.
- (11) Television dish receivers and antennae as regulated by article XIII, section 21, Television dish receivers and antennae.
- (12) Electronic communication/transmission facilities and exchanges.
- (13) Service stations, subject to the provisions of article XI, section 12, C-G (General Commercial District), subsection (C)(2).
- (14) Retail automotive gasoline/fuel sales as an accessory use to convenience stores subject to the following provisions:
 - a. Access: Convenience stores selling gasoline/fuel shall be located on arterial roadways or on corner lots at intersections of collector roads or roads of higher functional classification (as identified in the City of Cocoa Comprehensive Plan). No driveway or point of access shall be permitted within one hundred (100) feet of an intersection of collector roads or roads of higher functional classification.
 - b. Minimum street frontage: One hundred fifty (150) feet on each abutting street.
 - c. Location of facilities: Gasoline/fuel pumps and other service island equipment shall be set back at least twenty (20) feet from all property lines, fifteen (15) feet from any building, and one hundred (100) feet from the nearest residentially zoned land. In addition, pumps and other service island equipment shall not interfere with the safe and orderly movement of traffic in parking and other vehicular use areas.
 - d. Tank storage: Underground storage is required for all receptacles for combustible materials in excess of two hundred (200) gallons.

(B) ACCESSORY USES AND STRUCTURES.

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

(C) SPECIAL EXCEPTIONS.

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

(D) PROHIBITED USES AND STRUCTURES.

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

Art. XII, § 7

INDIAN HARBOUR BEACH CODE

Side, corner 20 feet.

(Ord. No. 83-1, §§ 1, 2, 8-23-83; Ord. No. 86-6, § 2, 4-8-86; Ord. No. 89-4, § 1, 6-27-89; Ord. No. 94-6, § 1, 1-10-95; Ord. No. 96-7, § 1, 1-14-97; Ord. No. 99-5, § 1, 6-8-99)

Sec. 8. District and intent: M-1, Light Industrial District.

The uses in this district are intended to be located in close proximity to transportation facilities and serving as the manufacturing, warehousing, distribution, wholesaling and other industrial functions of the city. Restrictions herein are intended to minimize adverse influences of the industrial activities on nearby nonindustrial areas.

(1) Principal uses and structures:

- (A) Warehousing and wholesaling carried on solely within an enclosed structure.
- (B) Service and repair establishments, dry cleaning and laundry plants, business services, printing plants and welding shops.
- (C) Light manufacturing processing and assembly, such as precision manufacturing of electrical machinery and instrumentation.
- (D) Building materials supply and storage; contractor's storage yard, except scrap materials. Outside storage areas shall be walled or screened on all sides to avoid any deleterious effects on adjacent properties.
- (E) Marine sales, storage and repair establishments, and automotive repair, paint and body shops.
- (F) Vocational and trade schools.

(2) Accessory uses:

- (A) Retail sales of products manufactured, processed or stored on the premises.
- (B) Customary accessory uses of one or more of the principal uses, clearly incidental and subordinate to the principal use in keeping with the industrial character of the district.

APPENDIX A—ZONING

Art. XII, § 9A

IHB 10/1

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

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

(7) Minimum yard requirements:

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

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

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

Limited Commercial Light Industrial

CL-LI "Limited Commercial- Light Industrial" The CL-LI district is established to implement comprehensive plan policies for managing such development accessible to major transport facilities as well as accommodate the needs of adjacent or local residential neighborhoods. Such development is intended to provide local services as well as to provide more intensive commercial uses as well as limited light manufacturing, warehousing, distribution and other light industrial functions applicable to the region.

Areas designated for *CL-LI* development are intended to accommodate businesses such as neighborhood shops, light industrial services, limited metal or material fabrication facilities including welding services, electric services, light assembly, limited mechanical repair including but not limited to auto repair, plumbing services, health, environmental, and septic services, as well as the supply of other goods and services compatible to a specialized market with customized market demands. Uses, which are not compatible include but are not limited to large scale discount stores, supermarkets, department stores, large scale wholesale, commercial amusements, and fast food establishments. No residential uses shall be located in this district.

District and intent "Light Industrial District" (Suggestions from Indian Harbour Beach Code) with additions from Bob Wilbur.

The uses in this district are intended to be located in close proximity to transportation facilities and serving as the manufacturing, warehousing, distribution, wholesaling and other industrial functions of the **town**. Restrictions herein are intended to minimize adverse influences of the industrial activities on nearby nonindustrial areas.

(1) *Principal uses and structures:*

- (A) Warehousing and wholesaling carried on solely within an enclosed structure, **including refrigerated storage.**
- (B) Service and repair establishments, dry cleaning and laundry plants, business services, printing plants and welding shops, **bakeries, fruit packing, and similar uses.**
- (C) Light manufacturing processing and assembly, such as precision manufacturing of electrical machinery and instrumentation.
- (D) Building materials supply and storage; contractor's storage yard, except scrap materials. Outside storage areas shall be walled or screened on all sides to avoid any deleterious effects on adjacent properties.
- (E) Marine sales, storage and repair establishments, and automotive repair, paint and body shops, **transportation terminals, and freight handling.**
- (F) Vocational and trade schools, **veterinary hospital and clinics.**

(2) *Accessory uses:*

- (A) Retail sales of products manufactured, processed or stored on the premises.
- (B) Customary accessory uses of one or more of the principal uses, clearly incidental and subordinate to the principal use in keeping with the industrial character of the district.

(3) *Conditional land uses permissible by Town Council: None*

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

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

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

Minimum Lot <u>Area</u> 9,000 sq. ft	Minimum Lot <u>Width</u> 90 ft.	Minimum Lot <u>Depth</u> 100 ft.	Minimum Floor <u>Area</u> 600 sq. ft.	Maximum Height 35 ft.
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(7) *Minimum yard requirements:*

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

TOWN OF MALABAR

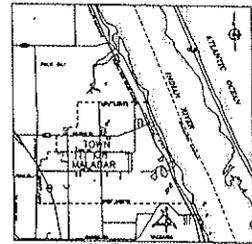
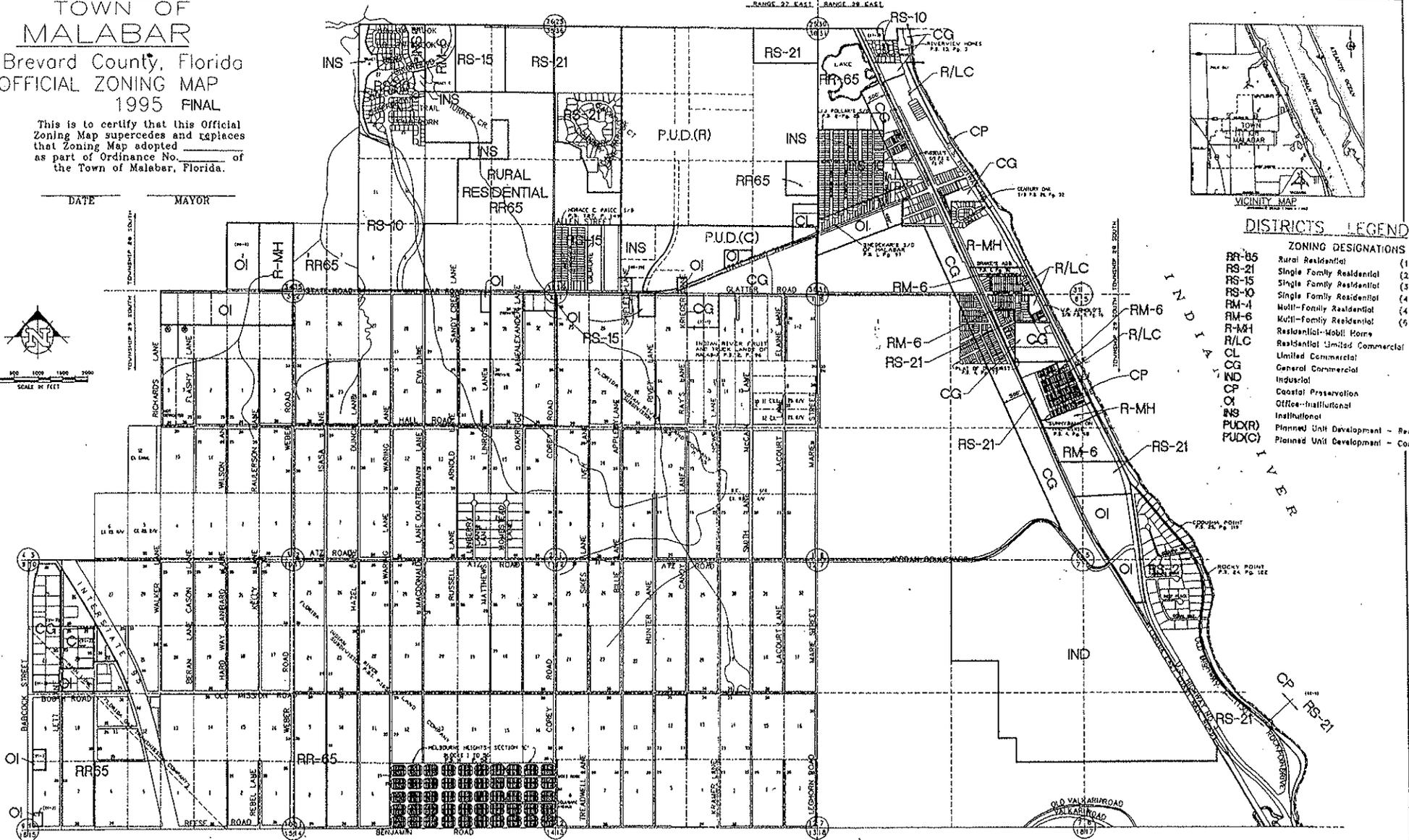
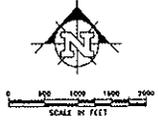
Brevard County, Florida

OFFICIAL ZONING MAP

1995 FINAL

This is to certify that this Official Zoning Map supercedes and replaces that Zoning Map adopted as part of Ordinance No. _____ of the Town of Malabar, Florida.

DATE _____ MAYOR _____



DISTRICTS LEGEND

ZONING DESIGNATIONS	
RR-05	Rural Residential (1.5 Ac./)
RS-21	Single Family Residential (2 Units/)
RS-15	Single Family Residential (3 Units/)
RS-10	Single Family Residential (4 Units/)
RM-1	Multi-Family Residential (4 Units/)
RM-6	Multi-Family Residential (5 Units/)
R-MH	Residential-Mobile Homes
R/LC	Residential Limited Commercial
CL	Unlimited Commercial
CG	General Commercial
IND	Industrial
CP	Coastal Preservation
OI	Office-Institutional
INS	Institutional
PUD(R)	Planned Unit Development - Residential
PUD(C)	Planned Unit Development - Commercial

Malabar, Florida, Code of Ordinances >> - LAND DEVELOPMENT CODE >> Article II - LAND USE AND ZONING >>

Article II - LAND USE AND ZONING

- Section 1-2.1. - Implementing the Comprehensive Plan.
Section 1-2.2. - Zoning districts established.
Section 1-2.3. - Official Zoning Map and district boundaries.
Section 1-2.4. - Interpretation of district boundaries.
Section 1-2.5. - Compliance with district regulations.
Section 1-2.6. - Land use classifications.
Section 1-2.7. - Procedures and criteria for review of "similar" uses.

Section 1-2.1. - Implementing the Comprehensive Plan.

In order to implement the Comprehensive Plan in a manner consistent with § 163.3201, Florida Statutes, the following zoning regulations are hereby established. They are intended to assist in managing comprehensive planning issues surrounding the use and/or development of specific lots, parcels, and tracts of land or any combination thereof within the Town of Malabar.

Section 1-2.2. - Zoning districts established.

Table 1-2.1, "Future Land Use Map (FLUM) Designations and Zoning Districts" references adopted FLUM designations contained in the land use element of the Town of Malabar Comprehensive Plan and identifies corresponding zoning districts which are hereby established in order to implement the FLUM designations, respectively.

TABLE 1-2.1. FUTURE LAND USE MAP DESIGNATIONS AND ZONING DISTRICTS

Future Land Use Map Designations		Corresponding Zoning Districts	
OSR	Open Space and Recreation	CP INS	Coastal Preservation Institutional
RR	Rural Residential	RR-65	Rural Residential
LDR	Low Density Residential	RS-21	Single Family LDR
MDR	Medium Density Residential	RS-15 RS-10 RM-4	Single Family MDR Single Family MDR Multiple Family MDR
HDR	High Density Residential	RM-6 R-MH	Multiple Family HDR Residential Mobile Home
MRO	Multiple-family Residential or Office	RM-4	Multiple

		OI	Multiple Family MDR Office-Institutional
OI	Office-Institutional	OI INS	Office-Institutional Institutional
CL	Commercial Limited	CL	Commercial Limited
CG	Commercial General	CG	Commercial General
R/LC	Residential and Limited Commercial	R/LC	Residential and Limited Commercial
IND	Industrial	IND	Industrial
INS	Institutional	INS	Institutional
*PUD(R)	Planned Unit Development (Residential)	PUD(R)	Planned Unit Development (Residential)
*PUD(C)	Planned Unit Development (Commercial)	PUD(C)	Planned Unit Development (Commercial)
*PUD(I)	Planned Unit Development (Industrial)	PUD(I)	Planned Unit Development (Industrial)

*Planned Unit Development (PUD) designations are special overlay map designations intended to promote voluntary public/private partnerships for managing and coordinating objectives which promote innovative development concepts, design amenities, and measures for protecting natural features of the land.

(Ord. No. 94-4, § 1. 4-3-95)

Section 1-2.3. - Official Zoning Map and district boundaries.

- A. *Map Adoption.* The boundaries of each zoning district are on the Official Zoning Map for The Town of Malabar, Florida. The boundaries of the districts, together with all explanatory statements thereon, are hereby adopted and incorporated as a part of this Code.
- B. *Map Amendment.* No changes or amendments to the Official Zoning Map shall be made except in compliance and conformity with all procedures set forth in this Code. If changes or amendments are made to district boundaries or other subject matter portrayed on the Official Zoning Map, such changes or amendments shall be made promptly after official adoption of the change or amendment as provided for herein. The Town Clerk shall be responsible for assuring that the physical updating and amendment of the Official Zoning Map is carried out in a timely manner.

The new Official Zoning Map may correct drafting and clerical errors or omissions in the prior Official Zoning Map, but no such corrections shall have the effect of amending the Code or any subsequent amendment thereto without duly noticed public hearings as provided herein.

When any Official Zoning Map is replaced, the prior Map or any significant parts thereof remaining, shall be preserved together with all available records pertaining to its adoption and amendment.

Section 1-2.4. - Interpretation of district boundaries.

When uncertainty exists as to boundaries of the districts on the Official Zoning Map, the following rules shall apply:

- (1) *Center Lines.* Boundaries indicated as approximately following the center lines of streets, highways and alleys shall be construed as following such lines.
- (2) *Lot, Section and Tract Lines.* Boundaries indicated as approximately following platted lot lines, section or tract lines shall be construed as following such lines.
- (3) *Political Boundaries.* Boundaries indicated as approximately following political boundaries shall be construed as following such political boundaries.
- (4) *Railroad Lines.* Boundaries indicated as following railroad lines shall be construed to be following the centerline of the railroad right-of-way.
- (5) *Shorelines.* Boundaries indicated as following shorelines shall be construed as following such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline, boundaries indicated as approximately following the centerline of streams, rivers, canals, or other bodies of water shall be construed to follow such centerlines.
- (6) *Parallel Lines.* Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 5 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
- (7) *Bisecting Lines.* Where district boundary lines approximately bisect blocks, the boundaries are the median line of such blocks, between the center line of boundary streets.
- (8) *Uncertainties.* Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map or in case any other uncertainty exists, the Town Council shall interpret the intent of the Official Zoning Map as to the location of district boundaries.
- (9) *Street Abandonments.* Where a public road, street or alley is officially vacated or abandoned, the regulations applicable to the property to which it reverted shall apply to such vacated or abandoned road, street, or alley.
- (10) *Excluded Areas.* Where parcels of land and water areas have been inadvertently excluded from a zoning district classification in any manner, said parcels shall be classified in conformance with the most restrictive zoning district which abuts the excluded area until or unless changed pursuant to amendment procedures contained herein.

Section 1-2.5. - Compliance with district regulations.

No building or structure shall be erected, reconstructed or structurally altered, nor shall any building, land or water be used for any purpose other than a use permitted in the district in which such building, land or water is located. No building or land shall be used so as to produce greater heights, smaller yards, less unoccupied area, or higher density or intensity than is prescribed for such building or land within the district regulations in which the building or land is located. No lot, which is now or which may be hereafter built upon shall be so reduced in area so that the yards and open spaces will be smaller than prescribed by this Code.

Section 1-2.6. - Land use classifications.

The purpose of these provisions is to classify uses into specially defined types on the basis of common functional characteristics and land use compatibility. These provisions apply throughout the zoning regulations.

All land use activities are classified into the following activity types.

A. *Residential Activities.*

1. Single Family Dwellings.
2. Two Family Dwellings.
3. Multi Family Dwellings.
4. Mobile Homes.
5. Accessory Residential Activities.

B. *Community Facilities.*

1. *Administrative Services (Public or Private Not-for-Profit).* Activities typically performed by not-for-profit private or public social services and utility administrative offices.
2. *Cemetery.* Property used for the interring of the dead.
3. *Child Care Services.* Activities typically performed by an agency, organization or individual providing day care without living accommodations for preteens not related by blood or marriage to, and not the legal wards or foster children of, the attendant adult.
4. *Clubs and Lodges (Not-for-Profit).* Activities typically performed by a group of persons for social or recreational purposes not operated for profit and not including activities which primarily render services which are customarily carried on as a business for profit.
5. *Cultural or Civic Activities.* Activities typically performed by public or private not-for-profit private entities for the promotion of a common cultural or civic objective such as literature, science, music, drama, art or similar objectives.
6. *Educational Institutions.* A place for systematic instruction with a curriculum the same as customarily provided in a public school or college. These activities include nursery school and kindergarten facilities designed to provide a systematic program to meet organized training requirements.
7. *Golf Course and Support Facilities.* A golf course is comprised of at least nine separate holes and may be regulation length, executive length, or par three (3) length. A golf course shall be required to comply with recommended minimum design standards established by the U.S. Golf Association or the American Society of Golf Course Architects. The following acreage requirements shall be the minimum standards for a golf course:

Type of Golf Course	Minimum Acres Required
Regulation Course	120 acres
Executive Course	40 acres
Par 3 Course	35 acres

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

8. *Group Homes.* Facilities licensed by the Florida Department of Health and Rehabilitative Services (HRS) or a successor agency to provide a family residential living environment for persons with special needs, disabilities or

handicaps. This service is provided in a minimum restriction home environment and includes supervision, and low intensive personal or therapeutic care necessary to meet physical, emotional, and social needs of clients.

9. *Hospitals and Extensive Care Facilities.* Institutions providing health and rehabilitative services, primarily for in-patients, and medical or surgical care; including, as an integral part of the institution, related facilities, central service facilities, and staff offices. These institutions:
 - (a) Offer health and rehabilitative services more intensive than those offered in group homes, room and board facilities, and general nursing care. Medical offices, hospital and extensive care facilities offer facilities and beds for use beyond twenty-four (24) hours by individuals requiring diagnosis, treatment, or care for illness, rehabilitative services, injury, deformity, infirmity, abnormality, disease, or pregnancy; and
 - (b) Regularly make available at least clinical laboratory services, diagnostic X-Ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent, including rehabilitative services.

A hospital or extensive care facility shall not include a facility for the care or treatment of the sick who depend exclusively upon prayer or spiritual means for healing in the practice of a religion (§ 395.002(6), F.S.).

10. *Nursing Homes (including Rest Homes or Convalescent Homes).* Activities customarily performed by a home for the elderly or infirmed in which three or more persons not of the immediate family are received, kept or provided with food, shelter and care for compensation. This activity shall not include duly state licensed volunteer adult foster care homes in which three or less foster adults are placed. Neither does the principal activity include hospitals, clinics or similar institutions devoted to the diagnosis and treatment of the sick or injured.
 11. *Places of Worship.* Activities customarily performed in a building where persons regularly assemble for religious worship and which building, together with its accessory building and uses, is maintained and controlled by a religious body organized to sustain public worship.
 12. *Protective Services.* Fire, law enforcement and emergency medical related facilities planned and operated for the general welfare of the public.
 13. *Public Parks and Recreation Areas.* Public parks and recreation land and facilities developed for use by the general public.
 14. *Public and Private Utilities (including Essential Government Services).* Use of land which is customary and necessary to the maintenance and operation of essential public services, such as electricity and gas transmission systems; water distribution; wastewater collection and disposal; communication; and similar services and facilities.
- C. *Commercial Activities.*
1. *Bars and Lounges.* A commercial establishment selling and dispensing for the drinking on the premises of liquor, malt, wine or other alcoholic beverages. This shall not include the sale of alcoholic beverages accessory to and within a restaurant use.
 2. *Business and Professional Offices.* Offices extending the following services which provide advice, information or consultation of a professional nature: insurance, real estate, and financial services; banking services; and executive

management and administrative activities. This classification excludes commercial storage of goods and chattels for the purpose of sale or resale as a principal use.

3. *Commercial Amusement, Enclosed.* Active or passive recreation facilities by profit oriented firms where all activities are conducted within fully enclosed facilities.
4. *Drive-thru Facilities.* A facility, which by design, physical character, and/or by operation (i.e., service or packaging procedures) encourages or permits customers to receive services, obtain goods or be entertained while remaining in the motor vehicle.
5. *Funeral Homes.* Undertaking and funeral services involving care and preparation of human deceased prior to burial, including crematory facilities.
6. *General Retail Sales and Services.* Retail sale or rental from the premises of goods and/or services to include all uses listed under limited commercial activities as well as the following:

Appliance Stores, without major warehousing.

Art Shops and Supplies.

Bakeries, excluding wholesale production and distribution.

Bicycle Shops.

Copying Services.

Cosmetic Stores.

Department Stores.

Drapery Stores.

Drug Stores.

Dry Cleaning establishments complying with Class IV or Class V Fire Code Prevention requirements and using only Class IV solvents such as perchlorethelene, except for spotting as provided for in Section 9.6(m) of the Fire Prevention Code.

Dry Goods Stores.

Fabric Stores.

Furniture Stores.

Garden Supplies.

Grocery Stores.

Hardware Stores, without outside storage of lumber and other building supplies.

Health and Exercise Studios.

Home Furnishing Stores.
Lawn and Garden Supplies.
Large Specialty Shops.
Luggage and Leather Goods Stores.
Office Equipment and Supplies.
Paint and Wallpaper Retail Sales.
Pet Supply and Pet Shops.
Sporting Goods Stores.

Other similar retail sales and service activities conducted within a fully enclosed building approved by the Town Council after receipt of a recommendation from the Planning and Zoning Commission. The use shall not include: wholesaling, warehousing, outside storage and distribution functions. The use shall not exhibit any characteristic dissimilar or incompatible with the uses identified herein. In review and approval of a request for a "similar" use, the Planning and Zoning Board and the Town Council shall use the procedures and criteria cited in the following Section 1-2.6 [1-2.7].

7. *Hotels and Motels.* A building or other structure used, maintained or advertised as a place where sleeping accommodations are supplied for rent to transient guests, in which ten (10) or more rooms are furnished for the accommodation of such guests; and which may have as an accessory use one or more dining room areas.



8. *Limited Commercial Activities.* Small limited item shops and stores limited to retail sales of personal service items, including small convenience items or services typically needed on a frequent and recurring basis. This land use classification is intended to accommodate shops with limited inventory serving: (1) a household market area in the immediate vicinity as opposed to citywide or region; (2) a specialized market with customized service demand; or (3) a tourist oriented market area in the immediate vicinity. This classification is intended to include the following:

Bait and Tackle Shop.

Barber and Beauty Shops.

Book and Stationary Stores.

Candy and Ice Cream Stores.

Clothiers.

Drug Stores and Pharmacies.

Dry Cleaning and Laundry Pick-Up Substations and Self-Service Facilities.

Florists.

Gift Shops.

Hobby and Handicraft Shops.

Interior Decorators.

Jewelry Stores.

Meat Shops.

Novelty and Curio Shops.

Optical Stores.

Photo Supplies and Studios.

Shoe Repair Shops.

Tailors or Seamstress.

Other similar limited commercial activities conducted in a fully enclosed building which are approved by Town Council after receipt of a recommendation from the Planning and Zoning Board. Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such "similar" uses shall be as cited in the following section, § 1-2.6 [1-2.7]. The use shall comply with criteria cited in the above definition of limited commercial activities and shall not include more intense general retail sales and services. The procedures and criteria for review of other similar limited commercial activities shall be as cited in the following section, § 1-2.6 [1-2.7].

9. *Waterfront Marine Related Activities.* The following marine related land uses are included in this land use classification: commercial wet or dry storage and boat sales and rental; Marine power sales and service; and bait and tackle shop; and excluding marine salvage and boat yards.
10. *Medical Services.* The provision of therapeutic, preventive or other corrective personal treatment services by physicians, dentists and other licensed medical practitioners, as well as the provision of medical laboratory testing and analysis services. These services are provided to patients who are admitted for examination and treatment by a physician and with no overnight lodging. This land use classification includes pharmacies when developed as an accessory use within a medical service facility.
11. *Parking Lots and Facilities.* Governmental or private commercial building of [or] structure solely for the off-street parking or storage of operable motor vehicles.
12. *Plant Nurseries.* Retail sale of flowers, shrubs, trees, and plants as well as landscaping contractors and provision of related consultative services.

13. *Restaurants (excluding drive-ins and fast food service).* Any establishment (which is not a drive-in service establishment) where the principal business is the sale of food, desserts or beverages to the customer in a ready-to-consume state and where the design or principal method of operation includes two or more of the following:
 - (a) Customers, normally provided with an individual menu, are served generally in non-disposable containers by a restaurant employee at the same table or counter at which items are consumed.
 - (b) Ice cream parlors and other specialty restaurants having floor area exclusively within a shopping or office center and sharing common parking facilities with other businesses within the center and expressly prohibiting freestanding stores having characteristics of a drive-in restaurant.
 - (c) A cafeteria or cafeteria type operation where foods, desserts or beverages generally are served in non-disposable containers and consumed within the restaurant building.
 - (d) Customers purchase food, desserts or beverages for carryout.
14. *Restaurants (drive-ins and fast food service).* Any establishment where the principal business is the sale of foods, desserts or beverages generally contained in a ready-to-consume state and whose design, method of operation or any portion of whose business includes one or both of the following:
 - (a) The restaurants are self-service. Food is generally served in disposable containers and customers generally do the busing and clean-up for themselves or foods, desserts or beverages are served directly to the consumer in a motor vehicle.
 - (b) The consumption of foods, desserts or beverages within a motor vehicle parked upon the premises, or consumption at other facilities on the premises is allowed, encouraged or permitted.
15. *Service Stations, Including Gasoline Sales.* Establishments for the dispensing of motor fuels and related projects at retail and having pumps, underground storage tanks and other facilities for such activity and which may include the retail sale of minor automobile parts and accessories such as tires, batteries, spark plugs, fan belts, shock absorbers, mirrors, floor mats, cleaning and polishing materials and similar items, and which may include the inspection, servicing or minor repair of motor vehicles within enclosed service bays or stalls. For the purpose of this Code, these services shall not include body repair and painting, frame straightening, or tire recapping or vulcanizing.
16. *Trades and Skilled Services.* Shops providing services requiring skilled labor or craftsmanship for repair including household items, office equipment, appliances, printing, blue printing, carpet sales and service, feed stores, lawn and maintenance services, newspaper printing, radio and television broadcasting, restaurant equipment and supply sales and services. All such activities shall not include outside storage.
17. *Vehicular Service and Maintenance.* Vehicular establishments providing sale of minor automobile parts and accessories such as tires, batteries, spark plugs, fan belts, shock absorbers, mirrors, floor mats, cleaning and polishing materials and similar items, and which may include the inspection, servicing or minor repair of motor vehicles. These services shall not include body repair and

- painting, frame straightening, or tire recapping or vulcanizing.
18. *Vehicular Sales and Related Services.* The retail or wholesale sale or rental of motor vehicles and related equipment, with incidental services and maintenance.
 19. *Veterinary Medical Services.* The provision of animal medical care and treatment by a Florida licensed veterinarian.
 20. *Wholesale Trades and Services.* The display, limited storage and sale of goods to other firms for resale, excluding outside storage, except as otherwise provided in this chapter [Code].

 D. *Industrial Activities.* The following land uses are included in the industrial land use classification where the same are conducted within a totally enclosed building except as specifically provided herein:

1. *Kennels* for boarding of domestic dogs and cats and veterinary medical operations.
2. *Manufacturing Activities* including:
 - Manufacturing or processing of electronic components, optical instruments, electrical appliances, or other precision components;
 - Assembly and distribution of goods;
 - Maintenance, repair, reconditioning, and cleaning;
 - Printing;
 - General packaging and processing activities;
 - Research and development technology;
 - Commercial laundries;
 - Machine shops;
 - Agricultural research laboratories;
 - Vocational and trade schools;
 - Sale of building material.

Other similar manufacturing activities conducted in a fully enclosed building which are approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The uses shall exclude metal fabrication, chemical or petroleum manufacturing, rubber or plastics manufacturing, or other use generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such uses shall be as cited in the following Section 1-2.6 [1-2.7].

3. *Manufacturing Service Establishments*, such as heavy machinery repair and service; heavy machinery or heavy equipment rental or other service uses approved by the Town Building Official based on similarity of use, excluding services which may generate potentially harmful nuisance impacts; and based on absence of any characteristic dissimilar and incompatible with the uses identified herein.
4. *Vehicle and Other Mechanical Repairs and Services*, including those not

- permitted as commercial zoning activities including paint and body shops.
5. *Warehousing, Storage and Distribution Activities*, including building contract construction, building supplies, furniture stores with major warehousing, and trade services with extensive warehousing, trucking support facilities, or requirement of outside storage.
- E. *Agricultural Activities*. The following land uses are included in the agricultural land use classification. No such activity shall permit commercial retail operations, except as otherwise expressly provided in the definition and/or the agricultural district provisions cited within this Code.
1. *Commercial Stables*, including a stable operated for profit on a minimum five (5) acre site of not more than one (1) horse for the first one (1) acre and one (1) additional horse for each additional one-half (½) acre. Also reference conditional use criteria.
 2. *Noncommercial Agricultural Activities*, including home gardens, noncommercial greenhouses, and keeping of agricultural animals. Keeping of agricultural animals shall be limited to one (1) agricultural animal for the first one (1) acre and one (1) additional animal for each additional one-half (½) acre.
 3. *Wholesale Agricultural Activities*, including harvested agricultural crops, fish and aquatic farms, grazing of cattle, and wholesale trade of products grown or raised on premises. These agricultural operations shall be restricted to sites with a minimum of five (5) acres.
- All animals permitted pursuant to this subsection shall be maintained within a controlled area bounded by a fence or other barrier approved by the Town.

Section 1-2.7. - Procedures and criteria for review of "similar" uses.

In the classification of uses stipulated in § 1-2.5 [1-2.6], wherever reference is made to the phrase "other similar" uses approved by Town Council after receipt of recommendations from the Planning and Zoning Board, the Planning and Zoning Board and the Town Council shall apply the following procedures and criteria in the review of such uses:

- (a) The criteria for review shall be the same general criteria used in review of conditional uses.
- (b) Procedures for review shall be the same procedures used in review of a conditional use.
- (c) In addition, the Town Council shall determine: (1) whether the use is similar in character to other uses cited in the specific land use classification; and (2) whether the impacts generated by the use are similar in character to the impact generated by other uses cited in the specific land use classification.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: October 10, 2012

Prepared By: Denine M. Sherear Planning & Zoning Secretary

SUBJECT: Material for P&Z Research into Requirements for Assisted Living

BACKGROUND/HISTORY:

At the July 13, 2011 P&Z meeting the Board asked that staff provide the Florida Statutes that deal with groups homes and assisted living. Those documents were provided in the packet for July 27, 2011. They included the 2010 Chapters:

F.S. 400, Parts I, VI

F.S. 408.032(8)

F.S. 419

F.S. 429, Parts I, II, and III

These sections have now been updated with the 2011 Florida Statutes. We left out the sections on nursing homes, but have it available if you want to review it.

I previously printed sections from the 2007 Florida Building Code. They have also been updated with 2010 Code.

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

ATTACHMENTS:

- Review Packet- Information (25 pages)
- Brevard County Code (1 page)
- Cocoa Beach Code (8 pages)
- Florida Building Code, 2011 Edition
 - Section 308, Institutional Group I
 - Section 310, Residential Group R
 - Section 313, Daycare, Group D
 - Section 433, Adult Day Care
 - Section 434, Assisted Living Facilities
 - Section 436, Day Care Occupancies
- Florida Statutes, 2011 Edition
 - Chapter 400, Parts I and V
 - Chapter 419
 - Chapter 429, Part I only

ACTION OPTIONS:

Board Discussion.

***NOTE: Please bring 3-Ring Binder from April 11, 2012 P&Z Meeting Agenda Item #6**

***REMINDER:
PLEASE BRING
PACKET
(3-RING BINDER)
FROM P&Z MEETING
APRIL 11, 2012 FOR
THIS AGENDA ITEM***

THANK YOU

REVIEW PACKET INFORMATION FROM:

P&Z- COUNCIL-MEMO'S

ATTACHMENTS:

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

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

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

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

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

BACKGROUND/HISTORY:

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

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

ATTACHMENTS:

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

ACTION:

Recommendation to Council on Ordinance 2011-38

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

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

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

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

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

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

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

• • •

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

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

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

...

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

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

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

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

...

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

...

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

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

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

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

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

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

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

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

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

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

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

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

By: TOWN OF MALABAR

Mayor Thomas M. Eschenberg
Council Chair

First Reading _____
Second Reading _____

ATTEST:

By _____
Debby K. Franklin
Town Clerk/Treasurer

(Seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

MEMORANDUM

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

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

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

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

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

(a) An arrangement whereby the person who owns or rents the home provides room, board, and personal services for not more than two adults who do not receive optional state supplementation under s. 409.212. The person who provides the housing, meals, and personal¹ care must own or rent the home and reside therein.

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

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

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

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

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

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

L. DISCUSSION ITEMS:

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

Exhibit: Agenda Report No. 12

Recommendation: Request Discussion and Direction

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

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

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

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

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

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

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

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

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

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

TOWN OF MALABAR

AGENDA ITEM REPORT

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

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

SUBJECT: Ordinance 2011-38 – Adult Care Facilities

BACKGROUND/HISTORY:

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

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

ATTACHMENTS:

Ordinance 2011-38

ACTION:

Staff requests Action on ordinance

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

Mayor read by title only.

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

Exhibit: Agenda Report No. 5

Recommendation: Action

MOTION: / _____.

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

TOWN OF MALABAR

MEMORANDUM

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

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

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

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

K. ACTIONS ITEMS:

ORDINANCE: First Reading

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

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

Mayor read by title only.

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

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Speakers cards on this.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TOWN OF MALABAR
PLANNING AND ZONING
AGENDA ITEM REPORT

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

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Council Action Regarding ALF Ordinance 2011-38

BACKGROUND/HISTORY:

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

ATTACHEMENTS:

Memo 2011-TC/T 079
Portion of RTCM 06/20/11 (3 pages)
Letter from Plata Engineering dated 6/20/11
Ord 2011-38

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

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

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

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

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

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

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

...

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

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

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

...

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

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

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

Conditio nal Land Uses	Minimum Size Site	Minimu m Width/ Depth (feet)	Access Require d to Street	Building Setback from Residential District/Nonre sidential District (feet)	Parking Lot Setbacks from Adjacent Residential District/ Nonreside ntial	Perimeter Screening Residential District/ Nonreside ntial District (5)	Curb Cut Control s

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Town Of Malabar
By Mayor Tom Eschenberg

First Reading _____
Second Reading _____

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

(Seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR

MEMORANDUM

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

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

cc: Town Council

G. DISCUSSION:

3. Adult Living Facility - Ordinance 2011-38

Exhibit: Agenda Report No. 3

Recommendation: Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **Research into Requirements for Assisted Living – MOVED TO 6**
Exhibit: Agenda Report No. 3
Recommendation: Discussion

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

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

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

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

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

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

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

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

Summary: continue discussion at next meeting.