

TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
SPECIAL MEETING
TUESDAY MAY 21, 2013
7:00 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 – 05/7/2013
 - Exhibit:** Agenda Report No. 1
 - Recommendation:** Motion to Approve

- E. **PUBLIC HEARING-(continued from 04/16/2013 as advertised):**
 - 2. **Conditional Use Permit for Extensive Care Facility located at: 2605 Malabar Road, Malabar. Applicants, Mr. Jeffrey Giovino & Mr. Steve Riley are Representatives for Vision Quest National.**
 - Exhibit:** Agenda Report No. 2
 - Recommendation:** Action to Council

- F. **ACTION: NONE**

- G. **DISCUSSION: NONE**

- 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: May 21, 2013

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 May 7, 2013

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
MAY 7, 2013 7:00 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 7:02 P.M. Prayer and Pledge led by Chair Pat Reilly.

B. ROLL CALL:

CHAIR:	PAT REILLY
VICE-CHAIR:	LIZ RITTER
BOARD MEMBERS:	BUD RYAN
	DON KRIEGER
	GRANT BALL
ALTERNATE:	LEEANNE SAYLORS
ALTERNATE:	DICK KORN, excused
TOWN ATTORNEY:	KARL BOHNE
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

C. ADDITIONS/DELETIONS/CHANGES: Don suggested moving Public Hearing before going over the minutes. Chair stated that the Public Hearing is set for 7:30pm so they need to stick to agenda.

D. CONSENT AGENDA:

1. Approval of Minutes Planning and Zoning Meeting – 4/10//2013 & 4/16/2013

MOTION: Liz / Bud to approve minutes of 4/10/2013 as corrected:

Corrections: Grant has provided his corrections to Denine.

Liz 4/73 2nd sentence is missing something – or do you think we should come – check tape
5/73 2nd sentence – we are not changing. In order to do that. We would have to come up with
6/73 half way down, Mills, 3rd line down. The most objectionable to resident’s sb not near to residential. Check tape

7/73 2nd para, 2nd sentence, the way it is, not the way it would limit

9/73 3rd para, half way down, starting with Grant - sb it is not

VOTE: All Ayes.

MOTION: Liz / Bud to approve minutes of 4/16/2013 as corrected:

Corrections: Grant has submitted his to Denine.

Liz, pg 14/73 half way down, last sentence - Liz asked about parking spaces - sb zero not 0.

VOTE: All Ayes.

Chair asked if they could start the Public Hearing early. It was 7:16 P.M. Attorney said they could start the Public Hearing and if anyone from public arrives, they will extend if needed to let them speak.

F. PUBLIC HEARING:

2. Commercial Site Plan Application for Malabar Local Market located on a portion of: 1870 & 1896 Hwy 1, Malabar. Mr. Frank Plata of Plata Engineering, Inc., Representing Applicants, Jung-Lin Chen and Shu-Ching Chen.

Exhibit: Agenda Report No. 2

Recommendation: Action to Council

Chair went through some procedures. He stated that the procedures have been provided to the Board for quasi-judicial hearings. Anyone wishing to speak has to come to the podium and state their name and address. Any evidence that is submitted should be given to the Clerk with copies to the Board. He explained the need for disclosures by Board Members of any ex-parte communications or site visits. There were none given.

Chair invited applicant's representative to podium. Frank Plata, Plata Engineering, 4700 N. Harbor City Blvd. He represents the owners and they will be owner operators of the businesses. The first step is the construction of one building with two or three bays. Owner will be moving his optical business from Melbourne.

Plata stated that a larger project had been proposed for this parcel in 2007 and at that time they had the permit for drainage had been approved by St. Johns and FDOT. This new proposal is for a portion of the 16 acres just under two acres.

He quoted from Table 1-3.3.A. re: size and stated that the 4000sf maximum is for the parcel size stated in Table 1-3.3.A. Plata referenced article in Town's newsletter in October 2010.

Plata said Site plan is done in feet and nothing has changed. The lighting code is at .2 lux and it can be met and does not spill over to adjacent properties. If there is additional building in the future they may have to move some of the lighting.

Plata said re: FDOT concerns, they had permit back from 2007 for a more intense use proposed. Per FDOT requirements, they need 14 feet and there is only 18 feet total so they will be giving FDOT an easement of about 10 feet. FDOT wants the flow to go from north to south.

Frank said the staff comments provided after their review will be addressed in the notes on revised site plan or changed on the site plan prepared for the Council meeting. Frank said the owner lives just south of Malabar in Grant.

Frank said the existing culvert pipe will have to be shifted to the west so it is on the property and not in the easement they are giving to FDOT. They are providing that to eliminate any problems in the future.

Don asked if the culvert is moved to their property then the owner has to maintain it and what assurance do they have that it will be done. Frank said the owner would have to do a bond and enter into a maintenance agreement with FDOT.

Frank said the driveway they are proposing may serve the north two acres in a future development. The 14 acres north of that is on the market. The owners only desire to develop these two acres depicted on the site plan submitted.

Don asked whether the entrance is proposed for a driveway or a dedicated right-of-way. Frank said it is a driveway.

Attorney said what Board is reviewing is for the project that has been submitted for this 1.95 acres. This project acreage cannot be used to meet any requirement in any future proposed development to the north.

Don asked about the map showing he has two properties that he put together and then split it up to create the 1.95 acre site. Frank said it was all one property when it was purchased. Don said he is

confused about changing two properties. Pat explained they are only developing 1.95 of the two properties. Frank said in the sale they are combined in the legal. Don thinks it has to be made into one property first. He wants to do it right. He admitted he didn't know the requirement. Frank said it is not listed as separate parcel. Frank stated there is only one legal description and it is all together. Once they get the site plan approved they will go to County and have the E-911 system updated and a new address assigned. Liz asked about the two addresses. They are related to previous structures on the property. Frank said after the site plan then they will reconfigure the address.

Pat asked if the legal description on page 1 covers the entire 16 acre area the applicants bought. Frank said yes. Pat said if the Board saw it as one piece it may settle some questions. The Attorney asked Frank Plata if they had a deed in client's name. Frank said yes and would provide the deed.

Don said you cut out the 1.95 acre and with the setbacks – can any part of the storm water drainage system be in the setback? Yes, the setback per code is 10 feet. Liz asked if there is a requirement to fence the drain field. Frank said it is not required. Frank said the green area is in the back with the septic and drain field. Grant asked if pavement would be curbed. Yes. Don asked about setback and said the Town requires a 20 foot setback in this zoning. He said even if the Health Dept only requires five (5) foot setback; the Town requires 20 feet for any structure.

Don thinks the drain field is a structure. Attorney read definition of structure and it does not include drain field. Krieger said nor does it exclude it. The Attorney stated the County Health Department has jurisdiction.

Chair asked Clerk to make note in minutes to have information from applicant included in the submittal for Council that clarifies this issue. Who has jurisdiction. Frank will do research regarding the 5' vs. 20' question. Also is a drain field considered a structure? And who has jurisdiction?

Liz asked about the driving area and pedestrian area and asked if they should be separate? Note says sidewalk flush with pavement. Frank said that is to accommodate the handicapped. He has handicap parking in rear it is the most direct access. Each bay with a door will have a handicap access. Where there are no doors it is curbed. The sidewalk is raised. The ramp can't be more than 2% slope. There is a minimum of 5 feet for turning area. The distance from the building is 5 feet.

Leeanne asked about the note from the Attorney about the lot size. Frank stated the minimum is 900sf per unit and the maximum is 4000sf per unit. It will be less than 4000sf per bay. They may make it two or three separate bays. Leeanne asked if the maximum in the Table 1-3.3.A was per parcel.

Frank referenced the P&Z minutes of January 11 where they said it is 4000sf maximum per unit. The Town Code limits it to 4000 per unit.

Frank also said in 2007 they were proposing a 60,000 sq building. He referenced multi story structure that only has a 4000 sf of building coverage. Malabar was not going to do total floor area of 4000sf.

Attorney said those projects were not approved. Liz said that per the Town's LDC, Table 1-3.3.A, states the maximum square footage restriction is per each ½ acre site. Attorney agrees with that analysis. Attorney stated that with the 1.95 acre, the applicant is under what he could do put there. He could do a larger building. Attorney said that his opinion is that it could be larger than 4000sf based on project site. It would be necessary to define this project site.

Leeanne asked about R/LC – it was created so you could live there and have a business also.

Attorney said no; when you go to the Table of allowed uses; a mixed use area does not exclude a single use. Attorney said you could read the intent on page 117 of Land Development Code and it is for solely commercial or residential or a mix.

Frank said there are two double doors per unit on the north side. Frank said they will market it for LC. Owner will rent at least half the building. It will be concrete block with truss that slopes to the back. The trusses will be north to south. The exterior will match the Town vernacular requirements. The units may be 1200 or 1800 sf each. Liz asked why they don't have toilets in each unit or at least centrally located. Frank said it is down at the end and open in the front with a covering over the sidewalk to allow flexibility in the layout of the bays. It has been designed to show the vernacular style. The north side is the only side that has doors. There is no sidewalk on the south side.

For Council packet add the side view (elevation) of the front and rear of the building. Don said they need to provide the front, rear and side elevations in the site plan. No exit to the back.

Grant asked about provision for large vehicle parking. There is also commercial parking in the back where there are no doors. Frank said the parking spaces have 11' width. Employees will park in the back area. What type of clientele are they trying to attract. A small antique sales shop and possibly repair. Bud said it is not a shopper friendly layout. If it is raining they have a long way to go to get inside. Frank said it is planned for a destination type of use. By design they are limiting the traffic. Small shops. Art repair. It will not be like a strip shopping.

Pat asked if owner is going to move in after it is built. He is going to use one or two of them and rent out the others. Bud asked if they would have an auto repair place. No, the height is only 8 foot. They would need 20 foot height. Also the zoning is wrong. Bud asked if there was only one bathroom for three bays. Frank said that the bathrooms would have two stalls plus a handicap stall in each plus a urinal. He has to work around the drinking well, irrigation and drain field. Attorney stated that auto repair would not be allowed in this zoning.

Chair stated that owners had presented in 2012 for a flea market. They want commercial only. They don't want residential. That is what was said. Pat had said they would have more options if it was CG. He could support a flea market in CG. Not in R/LC. Frank said in January they got taste of reality with the costs involved in doing commercial development. The market analysis they did supported this. It is not conducive for flea market development and couldn't compete with the flea market in Eau Gallie. They are currently marketing the north 14 acres for residential.

Pat said looking at the big picture and trying to do phased development in R/LC does not work. He said he would not have problem with this in CG. Frank said reality is they don't have the money to do a commercial development. They changed their minds on that in January.

Pat also researched other cities for flea markets request. Brevard County has flea markets in Light Industrial, Section 62-1930 and listed as a conditional use. Pat said to him a flea market is not compatible in R/LC zoning. Frank said they are not going for a flea market. That is not the plan. What they are looking at right now is Malabar Local Market. Pat stands corrected. He was basing that on information provided last November.

Attorney said the subject matter is for the two acres. Attorney stated if the applicant wanted to do a flea market it would take 20 acres.

Pat said the Note 4 on page 1 states the Future Land Use is Commercial. Frank explained that our requirement states the application must state the current zoning and the land use designations. Our current land use parcel map states that R/LC is considered Commercial. Pat said he had misread it. He thought he was following up with their earlier request for a flea market.

(Note: R/LC zoning is designated as R/LC for FLUM)

Pat said Table 1-3.3.A; the last column states the maximum density. It says N/A across from R/LC and that is the out. It is N/A because the other columns in the Table govern commercial development. Liz mentioned the detached sign. Frank said the Town Code requires that it be shown on site plan so he tried to indicate it. The actual size will be determined by Code. It will be at the entrance. It will be per Code as to height.

Bud asked how thick the concrete will be. 6". If you do less then you have problems with cracking. The owner wants to do the extra with fiber mesh. Bud said it is an observation but isn't the concrete parking area a perfect area for use as foundation for another building. Liz said the parking lot area is sloped and wouldn't work for a foundation for another building. Attorney said that any additional building would require another site plan.

Leeanne said if he is doing the optical part for now but he has the business on New Haven. Frank said it is for cash flow for the construction of the new building. Attorney asked if the large parking area is for open storage as that would not be allowed. Frank said no, this is a very small space and with one car parked you can't get a fire truck around there. Frank said the owner can sell his business in Melbourne. The front area elevation is determined by height for the dry detention. Liz is concerned with adverse effects on the property to south. Frank said there will be no adverse affects to the property owner to the south. They will have both a solid fence and a natural vegetation buffer between the properties maintaining the current elevations.

Bud asked about the thin dotted lines on the concrete. It just designates the area needed for parking. Bud is referring to thin dotted lines in building. Frank said it is the truss line. Owner prefers concrete to asphalt. Don said they could add 20 feet in the back. Frank said the drainage is a big issue. They worked out the dimensions. If they put more concrete in the back the whole project has to move back on the lot. He spent much time on the elevations required and what they would have to do to meet the requirements. They would love to do circular drive around back, but then the detention area would have to be larger. They have tight requirements on the drainage and it requires all this area to be green area over the tank. It worked out to 1.95 acres. It was an exercise to meet the needed calculations. Don asked why the well was so far away. They had to work around the adjacent properties drain fields. They also have to have fire protection. Liz asked again about why they didn't put any parking in front.

Chair asked if there was anyone else to speak.

Susan Cable, 3090 Passaic Avenue, wanted to know how close the fence would be. Frank showed on the overhead where the fence would be on the property line and the natural buffering will also be there and there would also not be any lights. Frank said they could stop the wood fence before her house.

Chair said Debby to work with the applicants to come up with a compromise on the fence. Start fence at power pole. Susan Cable said she can then continue to enjoy the view of the river. And Frank said the breeze would not be impacted by the wood fence if it were stopped short. Grant said the fence would be one of the last things to be done. So if Ms. Cable calls to complain, the contractor would be obliged to assist her to minimize any adverse conditions. Attorney said yes. They call that harmonizing with surrounding area.

Wayne Abare, 2530 Rocky Point Road, when he built his house his neighbor made him design a swale. He asked if all the drainage would be directed to retention pond. Liz asked to put up page 3 of 5 that shows the drainage areas. There is no drainage outward. It drains to the center and finds its way to detention area. The slopes will be pretty well defined.

Chair asked about staff comments. Attorney said he said he would address the lux requirement in the motion. Frank said they extended the numbers and they didn't have to change anything.

Public Hearing is closed.

Chair asked if Board had any other questions from staff. No further comments.

Chair asked for a motion.

MOTION: Don / Bud to recommend approval of site plan for Malabar Local Market on Highway 1 in Malabar with following conditions:

- Applicant to provide more clarification on the drain field setback (is drainfield considered a structure)
- Applicant to provide a recorded deed with the legal description of the property in the name of the owners
- Cooperate with neighbor to south, Ms. Susan Cable, on fence placement,
- Applicant to address the lux lighting issue,
- Applicant to provide a side view of north and south elevations, (oblique view)
- Applicant to provide entrance sign detail.
- After approval of site plan, the applicant will provide a recorded instrument showing the 1.95 acres carved out of the original 16 acres.

Discussion. No additional comment. Chair called for **Roll Call Vote**: Secretary called roll. Pat, Aye; Liz, Aye; Don, Aye; Bud, Aye; Grant, Aye. **Motion** carried 5 to 0.

G. **ACTION: none**

H. **DISCUSSION: none**

I. **ADDITIONAL ITEMS FOR FUTURE MEETINGS:** Tuesday May 21st is next meeting. If the site plan is not submitted the meeting will be cancelled and the regular meeting will be held on Wednesday May 22, 2013.

J. **PUBLIC: none**

K. **OLD BUSINESS/NEW BUSINESS: none**

L. **ADJOURN**

There being no further business to discuss, **MOTION:** Bud / Grant to adjourn this meeting. **Vote:** All Ayes. The meeting adjourned 9:15 P.M.

BY:

Pat Reilly, 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: May 21, 2013

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

SUBJECT: Public Hearing: Vision Quest National "Conditional Use Permit" 2605 Malabar Road, Malabar FL 32950 (continued from 4/16/13 as advertised)

BACKGROUND/HISTORY:

The Board tabled this Agenda Item to a certain date being May 21, 2013 at 7:00PM, so the applicant could provide a Full Site Plan. Staff explained to the Applicants Article VII 1-7.3 that lists the requirements that will need to be included. The Town Attorney explained that with out a Complete Site Plan it would be hard for the P&Z Board to make a recommendation.

The Applicant said that they would know by May 8, 2013 if they would be submitting an Engineered Site Plan for May 21, 2013 @ 7:00PM. The Town did not receive any Site Plan submittal by the applicants from Vision Quest National. The owner of the property Jay Wolfington did submit a packet to give to this Board.

ATTACHMENTS:

- Town Attorney Memo dated April 25, 2013
- Letter from Serene Harbor, Inc dated May 6, 2013
- Email from Bonilyn Wilbanks(Town Administrator) to property owner dated May 6, 2013
- Email from Phebe Powell(Department of Children Family Services) dated May 9, 2013
- Email & Attachment from property owner Jay Wolfington dated May 7, 2013

ACTION:

Recommendation to Town Council Re: CUP For Extensive Care Facility

To: Planning and Zoning board
From: Town Attorney
Date April 25, 2013
Re: Vision Quest CUP

We need to be mindful that labels do not control the substance of what they propose. The Town clerk indicated that she was provided some information that the state will license these types of facilities as group homes. My preliminary research discloses that the state definition of a "Residential Group Home" is a living environment for children who have been adjudicated dependent and are expected to be in foster care for a minimum of 6 months with 24-hour-awake staff or live-in group home parents or staff. Beginning July 1, 2001, all facilities must be appropriately licensed in this state, and they must be accredited by July 1, 2005.
FS 409.1677

Also, FS 393.063 defines "Group home facility" as a residential facility licensed under this chapter which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall be at least 4 but not more than 15 residents.

The application for CUP seems to describe this as an Extensive Care Facility which we do not adequately define. We do define "Extended Care Facility as "A long term care facility or a distinct part of a facility licensed or approved as a nursing home, infirmary unit of a home for the aged or a governmental medical institution."

However, the CUP applied for is for the designation of "Hospital and Extensive Care Facilities". Hospitals are defined as "A building or group of buildings, having facilities for one or more overnight patients, used for providing services for the in-patient medical or surgical care of sick or injured humans, and which may include related facilities such as laboratories, out-patient departments, training facilities, and staff offices; provided, however, it is coordinate to the main use and must be an integral part of the hospital operations."

Under 1-2.6.B.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.

If this facility is to be licensed as a “group home” then it clearly is neither a Hospital nor Extensive (Extended) Care Facility.

Under 1.2.6.B.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.

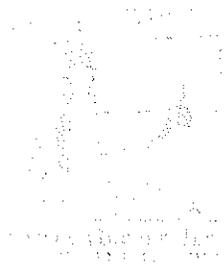
A *Group Care Facility* is defined by our code as “A facility or dwelling unit housing no more than six (6) residents in a residential structure, living together as a single housekeeping unit under a common housekeeping management plan based on an intentionally structured relationship providing organization and stability.”

The Vision Quest proposal indicates that it will have no more than 14 residents in the facility.

The matter gets further compounded by the requirements of the Florida Building code. If a group facility houses 6 to 16 residents it is to be constructed under the Florida Building Code, Residential. Of course we do not allow residential uses in OI. Furthermore, if the facility houses more than 16 residents then it is to be constructed as an Institutional Group I, Group I-1 facility. So if there are more than 16 residents then it is considered “Institutional” for purposes of the building code. However, it is suggested it will be licensed as a group facility which by our definition is 6 or fewer residents in a residential structure.

Group homes by our code are conditional uses; however, by definition A *Group Care Facility* can not exceed 6 residents in a “residential structure”. Of course we do not allow residential structures in OI. There appears to be an inconsistency in our code where we allow Group homes as a conditional use but by definition of a group care facility we could never allow one in as a conditional use. So in order to clarify any inconsistency in our code if a facility proposes to house a group of 6 or fewer residents in an institutional type facility (although per the Florida Building code it would only be required to be constructed as a “Residential (6-16 residents), and not a typical residential facility, we would probably have to allow it assuming it meets the maximum number of residents allowed by code, i.e. 6.

So it seems by definition that even if licensed by the state as a group home if the number of residents exceeds 6, notwithstanding the prohibition against residential structures in OI, this facility can not be considered for a CUP as a group home in OI as it exceeds the permitted number of residents per our definition. Also, it is not a hospital by definition or an extensive (extended) care facility by definition. It seems to me that the term extended and extensive are for our code purposes synonymous. So arguably, and after closer review, the type of facility proposed does not appear to meet any of the facilities for which a CUP in OI can be granted. Quite frankly, we have no provisions in our code for a CUP that would apply to this situation as a CUP.



May 6, 2013

Planning and Zoning Board
Town of Malabar
2725 Malabar Road
Malabar, FL 32950

To Whom It May Concern:

I received the notice of the application from VisionQuest for conditional use of the property across the street from our facility to accommodate a group home for troubled adolescent males referred by juvenile justice. It is my understanding, from the companies own website, that these" adolescent boys have difficulty maintaining stable placement due to poor emotional control, delinquency, or antisocial behavior".

During my research of VisionQuest I found a few issues that raise red flags for me. No one I spoke to both at the state and local level believed that putting this type of facility across the street from one that housed victims of domestic violence and their children is a good mix. My contacts at DCF tell me that there is no pending request to DCF from VisionQuest to license a facility in Brevard. My understanding is that one of the most frequent issues at VisionQuest facilities is that participants often attempted to run from the program. I am concerned that the facility will not have adequate security or staff to keep the young males from running or attempting escape.

As you might be aware, though many of these young males may themselves be victims of abuse they might also have a juvenile history of crimes up to and including assault. I am concerned that this might pose an unnecessary risk to the women and children who seek safety at our facility. Additionally, I am concerned that once the word spreads that our facility has a group home across the street that houses troubled male adolescents that women fleeing from abusive homes will be afraid to come and bring their children to stay with us.

I hope you understand that, as the director of Serene Harbor, I felt an obligation to not only our program participants but the Town of Malabar to express my concern. I have and will continue to enjoy working side by side with the Town of Malabar to provide for the needs of our families and the citizens of Malabar as a whole.

Sincerely,


Melody R. Keeth
Executive Director



Town Clerk / Treasurer

From: Bonilyn Wilbanks
Sent: Monday, May 06, 2013 10:51 AM
To: Jay Wolfington
Cc: Town Clerk / Treasurer; Denine Sherear
Subject: Regarding May 21st Meeting

Mr. Wolfington,

The meeting on the 21st is for P&Z to make a determination regarding your CUP proposal that you presented on April 16th's P & Z Meeting. You are to submit a site plan that addresses the 15 criteria items required in our Article VII. It was felt the one submitted fell short.

You have now subsequently requested to change the CUP rules. To change the CUP rules, it must be presented to Council and if they concur it is sent to P&Z Board by Council. P&Z Board will work with the rules suggested changes, and then make a recommendation back to Council. This is an estimated 6-month process.

So you need to decide whether you are going to take your time and submit to staff the site plan or present rule change request to Council. You can get on the Council Agenda until May 20th as long as you have your material to us by May 13th. The date for the site plan to be turned in is May 15th, but you need to advise us by May 7th as this is a Special Meeting called for you to present the site plan. If you are not going to present on the 21st we need to cancel the Special Meeting and go forward with a regular P & Z meeting on May 22nd.

Have a great day!

Bonilyn Wilbanks

Bonilyn Wilbanks
Town Administrator
Town of Malabar
2725 Malabar Road
Malabar, FL 32950
321.727.7764 ext. 13
www.townofmalabar.org

Please Note: Florida has a broad public records law. As a result, any written communication created or received by Town of Malabar officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.

Town Clerk / Treasurer

From: Phebe Powell [Phebe_Powell@dcf.state.fl.us]
Sent: Thursday, May 09, 2013 11:13 AM
To: Town Clerk / Treasurer
Subject: Group Home

Good Morning Ms Franklin

It is my understanding that an organization is expressing interest in opening a group home in Malabar that would be licensed by DCF. Currently, our Regional DCF Licensing Unit is not aware of a new program in Brevard, and any new prospective applicant would have to first go through Brevard Family Partnership and get a needs letter to move forward with DCF. It is my understanding that Brevard Family Partnership currently not issuing needs letters as there is not a need for additional group programs in their area.

Can you please relay this information to the P&Z Board.

Phebe Powell

Community Development Administrator

Department of Children & Families -Circuit 18

375 Commerce Parkway, Suite 101

Rockledge, Florida 32955

Phone: 321-634-3640

cell 407-409-0050

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Denine Sherear

From: Jay Wolfington [jaywolfington@gmail.com]
Sent: Tuesday, May 07, 2013 2:35 PM
To: Bonilyn Wilbanks
Cc: Town Clerk / Treasurer; Denine Sherear
Subject: Meetings
Attachments: Malabar letter 2.pdf

Ms. Wilbanks:

With the new information that the Town Attorney found after the April 16th meeting, applicant respectfully requests to stay on the agenda for the P&Z meeting May 21. This will allow applicant to discuss this new information with the Town Attorney and P&Z and give all parties a chance to discuss P&Z options. From there P&Z can make the determination as to whether to request a site plan given the new information. Therefore, applicant requests that the attached be forwarded to the Town Attorney and P&Z in preparation of the meeting on May 21.

Applicant also respectfully requests to be on the agenda for the Council meeting on May 20th and asks that the attached document be forwarded to the Council in preparation for the May 20 meeting.

Being on the agenda for both meetings will allow for rapid information dissemination to Council and P&Z to enable a speedy resolution of this zoning issue.

Thank you,
Jay Wolfington

To: Malabar Planning and Zoning and Council

From: Applicant Vision Quest – May 7, 2013

Re: Use of existing vacant building at 2605 Malabar Rd. previously a day care center.

Summary:

Vision Quest is requesting expedited review and approval of a means that would allow use of the vacant building at 2605 Malabar Road that was previously used as a day care center.

Vision Quest (www.VQ.com) is a national recognized company that specializes in working with neglected and abused children. They will be working with children from the Florida Department of Children and Families and have requested to use the existing building to provide residence for up to 14 children as a Group Care Facility.

The existing building is zoned Office and Institutional (OI). A Group Home is designated as a Conditional Use in the OI District (please see attached and highlighted Art. III, Sect 1-3.2 - Land use by district). The difficulty is that by Malabar Code a Group Home can only be six children.

Given that this facility would create good paying long term jobs in the area, would provide tax revenue to the area, make use of vacant property as well as help children in the area there are a number of potential fixes outlined below.

1. Since the only requirement in the Malabar code for a Group Home is that it meet Florida requirements, I believe the Town could grant three separate uses to allow the 14 children. If this is possible a site plan and appropriate State of Florida acceptance would be provided. The only requirements on Group Homes as far as site size, setbacks, access required to street, perimeter screening, etc., are defined as not applicable or “shall comply with standards established by Florida Department of Health and Rehabilitative Services” (please see attached and highlighted Art. VI Conditional Use and Special Exception Use Criteria, Table 1-6.1(B) Conditional land Use Requirements)
2. The second option would be to amend the Malabar code to bring it in line with the Brevard County code and have a designation that allows up to 14

people in a Group home in the OI district. Article XX could have the following added:

“Group Home in OI District - A facility or dwelling unit in an OI district housing no more than fourteen (14) residents in a residential structure, living together as a single housekeeping unit under a common housekeeping management plan based on an intentionally structured relationship providing organization and stability.”

This addition to the Malabar Zoning definitions will bring it in line with the Brevard County definition Group Home (please see attached)

Thank you,

Respectfully Submitted

Jay Wolfington

jaywolfington@gmail.com

Phone 813.966.3627

MALABAR LAND DEVELOPMENT CODE

- **ARTICLE III- DISTRICT PROVISIONS**
- **ARTICLE VI- CONDITIONAL USE & SPECIAL
EXCEPTION USE CRITERIA**
- **ARTICLE XX-LANGUAGE & DEFINITIONS**
- **ARTICLE II- LAND USE & ZONING**

Agenda Item 2

P&Z Meeting 5/21/13

Article III - DISTRICT PROVISIONS

This article describes the purposes and intent of each zoning district, identifies permitted and conditional uses by zoning district, and provides size and dimensional regulations for respective zoning districts.

[Section 1-3.1. - Purpose and intent of districts.](#)

[Section 1-3.2. - Land use by districts.](#)

[Section 1-3.3. - Size and dimension criteria.](#)

Section 1-3.1. - Purpose and intent of districts.

This section presents the basic purpose and intent of each zoning district.

- A. *CP "Coastal Preserve."* The CP district was originally established by the Town Council through Ordinance Number 7-1-76, § 5.12 and Ordinance Number 7-12-79 § 1. This district is intended to preserve a narrow strip of land east of highway US 1 directly abutting the Indian River Lagoon, a State designated Aquatic Preserve. The district provisions are intended to assist in implementing land use, coastal management, and conservation goals, objectives, and policies within the comprehensive plan. For instance, the district provisions reduce exposure to natural hazards to persons or property as a result of windstorms and high tides; preserve the marine resources of the Aquatic Preserve; and restrict usage to noncommercial piers, boat slips, and docks.
- B. *RR-65 "Rural Residential."* The rural residential district is established to implement comprehensive plan policies for managing rural residential development at a density not to exceed one and one-half (1.5) acres per dwelling unit. The district is intended to protect and preserve existing agricultural and rural residential lands. These lands are generally developed for agricultural uses or for large lot rural residential home sites. The areas designated for rural residential development generally contain few urban services and the street system is generally incapable of carrying traffic generated by more intense urban development. The district is intended to accommodate and preserve a unique lifestyle which cannot be accommodated in more dense residential areas.
- C. *RS-21 "Single-Family Low-Density Residential."* This district is established to implement comprehensive plan policies for managing low-density, single-family residential development at a density not to exceed two (2) single-family dwelling units per acre. The RS-21 district is established in order to protect the quality and character of existing and future conventional single-family low-density neighborhoods, preserve open space, and manage future densities in order to assure compatibility with existing developments, natural features of the land, as well as existing and projected public services and facilities within the area.
- D. *RS-15 "Single-Family Medium-Density Residential."* The RS-15 district is designed to accommodate traditional single-family development on lots not less than 15,000 square feet. The district is established to preserve the stability of existing and future conventional single-family residential neighborhoods, preserve open space, and manage future densities in order to assure that future densities are compatible with existing developments, natural features of the land, as well as existing and projected public services and facilities within the area.
- E. *RS-10 "Single-Family Medium-Density Residential."* The RS-10 district is established to implement comprehensive plan policies for managing traditional single-family residential development on lots not less than 10,000 square feet. This district is established to preserve the stability of existing and future single-family residential neighborhoods, preserve open space, and manage future densities in order to assure that they are compatible with existing developments, natural features of the land, as well as existing and projected public services and facilities within the area.
- F. *R-MH "Residential Mobile Homes."* The R-MH district is established to implement comprehensive plan policies for managing high density mobile home residential development. The district is designed for managing mobile home development at a density not to exceed six units per acre. The district is intended to provide sites for mobile home development within existing established mobile home parks.
- G. *RM-4 "Multiple-Family Medium-Density Residential."* The RM-4 district is established to implement comprehensive plan policies for managing medium-density residential development not to exceed four units per acre. The district is established to ensure sufficient land area for development of medium-density multiple-family residential developments which are fully serviced by adequate public facilities. Sites for medium-density multiple-family residential development shall be located so that they provide a smooth transition between low density residential development and areas developed and/or designated for more intense uses.
- H. *RM-6 "Multiple-Family High-Density Residential Development."* The RM-6 district is established to implement comprehensive plan policies for managing high-density residential development at a density not to exceed six units per acre. The district is established to ensure that sufficient land is available for developments of high-density residential development and is intended to ensure availability of adequate public facilities.
- 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, 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.



- J. **INS "Institutional Services."** The INS district is established to implement comprehensive plan policies for managing institutional development. The district is intended to accommodate public and semi-public facilities such as government administration buildings; fire, police, and rescue services; health care delivery services; and educational institutions. Land uses such as places of worship, cultural or civic centers, and other similar public or private not-for-profit uses may be included within this district.
- 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.
- N. **PUD "Planned Unit Development."** The PUD district is established to implement comprehensive plan policies for managing planned unit development. The comprehensive plan incorporates policies encouraging innovative development concepts, including mixed use development. The planned unit development is intended to provide a voluntary framework for coordinating objectives of developers which may require departures from established public policy. The planned unit development district provides a management strategy for negotiating innovative development concepts, design amenities, and measures for protecting natural features of the land. The management process shall promote public and private coordination and cooperation. The land development code incorporates detailed regulations, standards, and procedures for implementing the planned unit development concept.
- The planned unit development district shall be available as a voluntary approach for managing specific development characteristics and project amenities to be incorporated in residential, commercial, industrial or mixed use development. Developers who voluntarily participate in the process shall bind themselves as well as their successors in title to the stipulations within the development order approving the planned unit development district.
- O. **R/LC "Residential and Limited Commercial."** The R/LC district is established to implement comprehensive plan policies for managing development on land specifically designated for mixed use Residential and Limited Commercial development on the Comprehensive Plan Future Land Use Map (FLUM). Such development is intended to accommodate limited commercial goods and services together with residential activities on specific sites designated "R/LC" which are situated along the west side of the US 1 corridor as delineated on the FLUM. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods as well as single family and multiple family structures with a density up to six (6) units per acre. Commercial activities shall generally cater to the following markets:
- * Local residential markets within the town as opposed to regional markets; or
 - * Specialized markets with customized market demands.
 - * A Malabar Vernacular Style is required for all development along arterial roadways.

Areas designated for mixed use Residential and Limited Commercial development are not intended to accommodate commercial activities with a floor area in excess of four thousand (4,000) square feet, such as large-scale retail sales and/or service facilities or trade activities. These types of commercial activities generally serve regional markets and the intensity of such commercial activities is not generally compatible with residential activities located within the same structure or located at an adjacent or nearby site. Such stores would usually differ from limited commercial shops since the former would usually require a floor area larger than four thousand (4,000) square feet; would generally 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 disposal containers and/or providing drive-in facilities.

Single family or multiple family residential uses with a density no greater than six (6) units per acre may also be located in the R/LC district. Such residential uses may be located either within a freestanding structure or within a structure housing both Residential and Limited Commercial activities. The R/LC district is intended and shall be interpreted to be a "commercial" district with respect to required setbacks and other size and dimension provisions referenced by zoning district in this Code.

(Ord No 94-4, § 2, 4-3-95; Ord No 07-02, §§ 1-4, 4-2-07)

Section 1-3.2. - Land use by districts.

Table 1-3.2 "Land Use by Districts" stipulates the permitted and conditional uses by district.

Permitted uses are uses allowed by right provided all applicable regulations within the land development code are satisfied as well as other applicable laws and administration regulations. Conditional uses are allowable only if approved by the Town pursuant to administrative procedures found in Article VI. The applicant requesting a conditional use must demonstrate compliance with conditional use criteria set forth in Article VI.

No permitted use or conditional use shall be approved unless a site plan for such use is first submitted by the applicant. The applicant shall bear the burden of proof in demonstrating compliance with all applicable laws and ordinances during the site plan review process. Site plan review process is set forth in Article X.

Cross reference— Alcoholic beverages, ch 4

TABLE 1-3.2 LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	Ol	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 Facilities								C					C	
Nursing Homes (Including Rest Homes and Convalescent Homes)					C	C		C			C		C	
Protective Services					C	C	C	C	C	C	C	C	C	C
Public Parks and Recreation	C	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	C
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														



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										C*		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		
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)

Section 1-3.3. - Size and dimension criteria.

- A. *Minimum Lot or Site Requirements for All Uses.* Table 1-3.3(A) incorporates required size and dimension regulations which shall be applicable within each respective zoning district. All developments shall have a total land area sufficient to satisfy all standards stipulated within the land development code, including but not limited to:
- Setback requirements;
 - Open space, buffers, and landscaping;
 - Surface water management;
 - Water and wastewater services;
 - Access, internal circulation and off-street parking;
 - Wetland protection; and
 - Soil erosion and sedimentation control standards.

Conventional single family lots shall be required pursuant to square footage requirements stipulated in Table 1-3.3(A). Similarly, more intense development within multiple family residential districts and other specified nonresidential districts shall maintain sites having minimum acreage requirements stipulated in Table 1-3.3(A).

TABLE 1-3.3(A). SIZE AND DIMENSION REGULATIONS

Zoning District	Minimum Lot (1)			Maximum Height (ft./stories)	Minimum Living Area (sq. ft.)	Setback (ft.)(2)				Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (I)	Side (C)				
Rural Residential Development													
RR-65	65,340	150	250	35/3	1,500	40	30	30	30	20	N/A	80	0.66
Traditional Single Family Residential Development													
RS-21	21,780	120	150	35/3	1,800	35	20	15	15	35	N/A	65	2.00
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	45	N/A	55	2.904
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	50	N/A	50	4.00
Multiple Family Residential Development													
RM-4	5 Acres Minimum Site	200	200	35/3	1 Bedroom: 900 2 Bedroom: 1100 3 Bedroom: 1300 Each Additional Bedroom: 120	60	40	40	40	50	N/A	50	4.00
RM-6	5 acres Minimum Site	200	200	35/3	Single Family:	25	20	10	10	50	n/a	50	6
					Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	60	40	40	40	50	n/a	50	6
Mixed Use Development													
R/LC	20,000	100	150	35/3	Single Family:	25	20	10	10	50	n/a	50	4
					Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	50	25	10 ¹	20	65	n/a	35	6
					Commercial: Min. Area: 900 Max. Area 4,000						0.20		
Mobile Home Residential Development													
R-MH	Site: 5 Acres Lot: 7000					10	8	8	10	50	N/A	50	6.00
Office Development													
OI	20,000	100	150	35/3	Minimum Floor Area: 1000	35/60	25	20	25	65	20	35	N/A
Commercial Development													
CL	20,000	100	150	35/3	Minimum Floor Area: 1000	50	25	10 ¹ 15 ³	20	65	0.20	35	N/A

					Min. Area: 900 Max. Area 4,000								
CG	20,000	100	150	35/3	Minimum Floor Area: 1200 Minimum Hotel/Motel Area: 300 Each Unit	50	25	20 ¹ 15 ³	30	65	0.20	35	N/A
Industrial Development													
IND	20,000	100	150	35/3	Minimum Floor Area: 1200	50	25	20 100 ⁵	30 100 ⁵	70	0.42	30	N/A
Institutional Development													
INS	20,000	100	150	35/3	Minimum Floor Area: 1200	50	25	20	30	60	0.20 0.10 ⁶	40	N/A
Coastal Preservation													
CP	No Size or Dimension Standards Adopted												

1 Minimum size sites and lots include one-half of adjacent public right-of-way

2 Minimum setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(E); whichever is most restrictive

3 Setback where rear lot line abuts an alley

4 Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such case the more restrictive abutting setback shall apply

5 Where any yard of industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet

6 Recreation activities maximum FAR shall be .10

- B. **Area requirements for uses not served by central water and wastewater services.** All proposed development within areas not served by central water and wastewater services shall comply with the septic permitting requirements of Brevard County.
- C. **Impervious Surface Requirements (ISR) for All Uses.** The term "impervious surface" is defined as that portion of the land which is covered by buildings, pavement, or other cover through which water cannot penetrate. The impervious surface ratio requirement controls the intensity of development, by restricting the amount of the land covered by any type of impervious surface.
 - 1. **Calculation of ISR.** The impervious surface ratio (ISR) is calculated for the gross site by dividing the total impervious surface by the gross site area. Water bodies are impervious but shall not be included as such in the ISR calculation. Cluster development or other site design alternatives may result in individual lots exceeding the ISR, while other lots may be devoted entirely to open space. The Town may require, as a condition of approval, deed restrictions or covenants which guarantee the maintenance of such open space in perpetuity. The ISR requirement shall not be bypassed or reduced. However, the intent is to allow maximum flexibility through calculating ISR on the gross site, and not on a lot-by-lot basis.
 - 2. **Use of Porous Material.** Porous concrete, asphalt, porous turf block, or similar materials may be used subject to approval of the Town Engineer
 - 3. **Compliance with ISR Stipulated in Table 1-3.3(A).** All proposed development shall comply with the standards given in the table of impervious surface ratios in Table 1-3.3(A).
Where a proposed development is donating or dedicating land based on a plan approved by the Town, the gross site before dedication or donation shall be used to calculate ISR. This does not relieve the applicant from providing all required on-site buffers, landscaping, stormwater management areas, setbacks, and other required project amenities.
- D. **Maximum Building Coverage.** The term "maximum building coverage" is defined as a measurement of the intensity of development on a site. For purposes of this Code, maximum building coverage (MBC) is used to regulate nonresidential development.
 - 1. **Calculation of MBC.** The MBC is the relationship between the total building coverage on a site and the gross site area. The MBC is calculated by adding together the total building coverage of a site and dividing this total by the gross site area. See figure 1-3.3(D) for a graphic illustration of this concept.
All proposed nonresidential development shall comply with the MBC requirements stipulated in Table 1-3.3(A) for the zoning district in which the development is located

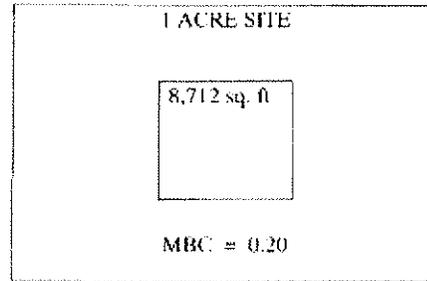


FIGURE 1-3.3(D). MAXIMUM BUILDING COVERAGE ILLUSTRATION

Maximum building coverage for a MBC of 0.20 = 8,712 sq. ft.

MBC =	Total Building Coverage	Total Lot Area

E. *Building Setbacks.* Table 1-3.3(A) provides building setbacks for conventional single family lots as well as for multiple family residential and nonresidential sites. In addition to these setbacks the following building setbacks from thoroughfares shall be enforced. The required minimum setback from the thoroughfare shall be measured from the centerline of the right-of-way. The thoroughfare system is illustrated on the Future Traffic Circulation System: 2010 Map located within the traffic circulation element of the Town of Malabar comprehensive plan. The below cited table identifies rights-of-way within the Town and stipulates minimum required building setbacks from these roadways.

TABLE 1-3.3(E). ADDITIONAL BUILDING SETBACKS FROM STREETS AND ROADS

Transportation Facility	Building Setback (feet)
Arterial Roadways (150 feet R/W)	100
US 1 Highway	
Malabar Road (SR 514)	
Babcock Street (SR 507)	
Major Collector Streets (100 feet R/W)	85
Corey Road	
Weber Road	
Marie Street	
Briar Creek	
Jordan Blvd.	
Local Streets (50-60 feet R/W)	65
Minor Collector Streets (80 feet R/W)	75
Atz Blvd.	
Hall Road	
Old Mission Road	
Benjamin (Reese) Road	

F. *Minimum Distance Between Principal Buildings.* The minimum distance between principal buildings shall be twenty (20) feet. The distance shall be measured at the narrowest space between buildings and shall not include roof overhang
(Ord. No. 92-6, § 1(B), (D), (E), 8-18-92; Ord. No. 94-1, § 4, 4-3-95; Ord. No. 95-1, § 1, 3-4-96; Ord. No. 97-5, § 1, 3-17-97; Ord. No. 02-03 § 1, 8-5-02; Ord. No. 03-02, § 1, 2-24-03; Ord. No. 04-06 §§ 1, 2, 7-17-04; Ord. No. 06-05, § 1, 2-6-05; Ord. No. 06-15, §§ 1, 2, 10-2-06)

Mafabar, Florida, Code of Ordinances >> - LAND DEVELOPMENT CODE >> Article VI - CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA
>>

Article VI - CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA

Section 1-6.1 - Conditional uses

Section 1-6.1. - Conditional uses.

- A. *Purpose and Intent.* This Section is intended to stipulate general provisions and criteria for considering the approval of conditional uses on specific sites within various zoning districts. Conditional uses shall be permitted upon a finding that the respective use and proposed site plan satisfies the specific criteria of Section 1-6.1(C) cited herein.
- B. *Specific Criteria Regulating Conditional Uses.* A conditional use shall be permitted only upon a finding that the proposed conditional use, application, and site plan complies with the criteria herein unless the town determines that the proposed conditional use does not meet the criteria herein provided and the proposed conditional use is adverse to the public's interest. In addition to the site plan criteria of Article VII, an application for a conditional use shall describe the proposed land use characteristics and site plan techniques proposed to mitigate against possible adverse impacts to properties in the immediate vicinity.
1. *Characteristics of use described.* The following characteristics of a proposed conditional use shall be clearly described as part of the conditional use application:
 - a. *Scale and intensity.* Scale and intensity of use as measured by the following:
 - i. Floor area ratio;
 - ii. Traffic generation;
 - iii. Square feet of enclosed building for each specific use;
 - iv. Proposed employment;
 - v. Proposed number and type of service vehicles;
 - vi. Off-street parking needs; and
 - vii. Other specifications and/or characteristics of the proposed use describing the nature, character, and intensity of the use, including compatibility with existing and anticipated uses within the immediate vicinity.
 - b. *Site improvements.* On- or off-site improvement needs generated by the proposed use and not identified in the preceding subparagraph "a.":
 - i. On- or off-site facilities required to serve the proposed uses such as utilities, public facilities, roadway or signalization improvements, or other similar improvements, including proposed accessory structures or facilities; and
 - ii. Other unique facilities/structures proposed as part of site improvements.
 - c. *On-site amenities.* On-site proposed to enhance site and planned improvements. Amenities including mitigative techniques such as open space, setbacks from adjacent properties, screening and buffers, including landscaped berms proposed to mitigate against adverse impacts to adjacent sites.
 - d. *Public facilities.* If the conditional use is for a public or semi-public facility, the primary and auxiliary service areas shall be described together with the existing and anticipated network of related facilities accommodating service area needs within the incorporated and unincorporated areas of Brevard County.
 2. *Criteria for conditional use review and approval.* In addition to site plan identified in Article VII, applications for a conditional use shall clearly demonstrate the following:
 - a. *Land use compatibility.* The applicant shall demonstrate that the conditional use, including its proposed scale and intensity, traffic generating characteristics, and off-site impacts are compatible and harmonious with adjacent land uses and will not adversely impact land use activities in the immediate vicinity.
Similarly, where the use is substantially different from other uses in the district and is not intended to serve the residents in the immediate vicinity, the applicant shall bear the burden of demonstrating that the use is appropriate to the subject site and immediate vicinity, and cannot and/or should not be located at an alternative site. In order for a non-residential use to be approved within a residential area, the applicant must demonstrate that a location outside the residential area would not provide for the essential site location needs of the facility or use.
 - b. *Sufficient site size and adequate site specifications to accommodate the proposed use.* The size and shape of the site, the proposed setbacks and buffer areas, the proposed access and internal circulation, and the site design enhancements must be adequate to accommodate the proposed scale and intensity of conditional use requested. The site shall be of sufficient size to accommodate site design amenities such as screening, buffers, landscaping, open space, off-street parking, efficient internal traffic circulation, and similar site plan improvements needed to mitigate against potential adverse impacts of the proposed use.
 - c. *Public and semi-public facilities within residential areas.* A public or semi-public facility proposed within any type of residential district must provide an essential service to residential dwelling units within the immediate vicinity and the applicant must demonstrate that alternative sites zoned for non-residential use cannot accommodate the functions of the facility.
 - d. *Proper use of mitigative techniques.* The applicant shall demonstrate that the conditional use and site plan has been designated to incorporate mitigative techniques needed to prevent adverse impacts to adjacent land uses. In addition, the design scheme shall appropriately address off-site impacts to ensure that land use activities in the immediate vicinity, including community infrastructure are not burdened with adverse impacts detrimental to the general public health, safety and welfare.
 - e. *Hazardous waste and hazardous emissions.* The proposed use shall not generate hazardous waste, hazardous emissions, or require use of hazardous materials in its operations without use of town approved mitigative techniques designed to prevent any adverse impact to the general health, safety and welfare. The plan shall provide for appropriate identification of hazardous waste and hazardous material, regulate its use, storage and transfer consistent with best management principles and practices.

No use which generates hazardous waste, hazardous emissions or uses hazardous materials shall be located in the town unless specific location is consistent with the Comprehensive Plan, land development regulations, and does not adversely impact wetlands, aquifer recharge areas, or other conservation resources. Such uses shall be located within a non-residential district.

- f. *Compliance with applicable laws and ordinances.* A conditional use application shall demonstrate compliance with all applicable federal, state, county and town laws and ordinances. Where permits are required from governmental agencies other than the town, these permits shall be obtained as a condition of approval.
- C. *Review Procedures.* The application for a conditional use on a form to be provided by the Town Clerk shall be submitted to the Town Clerk with the site plan required pursuant to [Sec. 1-7.1](#) of this Code. The procedure for approval shall be the same as for the procedures identified in Chapter VII for site plan review.

The applicant shall demonstrate on the site plan documents and scale drawings that the proposed improvements shall comply with all specifications cited in [Table 1-6.1\(B\)](#). The procedure for review by the Planning and Zoning Board and the Town Council shall be the same as stipulated for site plan review in Sections [1-7.1](#) and [1-7.5](#).

TABLE 1-6.1(B). CONDITIONAL LAND USE REQUIREMENTS

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	Other
Child Care Facilities	1 Acre	145	Paved	50/30	15/10	A/B Type	(7)	
Places of Worship	5 Acres	250	Paved	70/45	25/20	A/C Type	(7)	
Educational Institution	(1)	500	Arterial	70/45	25/20	A/C Type	(7)	
Golf Courses	(2)	500	Paved	70/45	25/20	C/C Type	(7)	
Group Homes	(3)	(3)	N/A	N/A	N/A	N/A	(7)	
Hospital and Extensive Care Facilities	5 Acres	325	Arterial	100/75	25/20	A/C Type	(7)	
Nursing Homes	2 Acres	210	Paved	60/30	25/20	A/C Type	(7)	
Protective Services	(4)	120	Paved	50/30	25/20	A/C Type	(7)	
Public Parks and Recreation Areas	5 Acres	325	Paved	70/45	25/20	C/C Type	(7)	
Public and Private Utilities	N/A	120	N/A	70/30	25/20	A/C Type	(7)	
Commercial Stables	5 Acres	325	N/A	100/75	50/40	B/C Type		
Adult Entertainment	1 Acre (8, 9, 10)	120	US 1/Babcock	100/30	N/A	A/C Type	(7)	(6)
Bars and Lounges	1 Acre (8, 9)	120	US 1/Babcock	100/30	N/A	A/C Type	(7)	(6)
Marine Commercial Activities	1 Acre	120	US 1/Babcock/Westland	100/30	N/A	N/A	(7)	
Service Stations, Including Gasoline Sales	1 Acre (8)	145	Arterial	100/30	N/A	N/A	(7)	
Trades and Skilled Services	1 Acre (8)	145	US 1/Babcock/Westland	100/30	N/A	A/C Type	(7)	
Vehicular Services and Maintenance	1 Acre (8)	145	US 1/Babcock/Westland	100/30	N/A	A/C Type	(7)	
Wholesale Trades and Services	1 Acre	145	US 1/Babcock/Westland	50/30	15/10	A/C Type	(7)	
Kennels	1 Acre	145	N/A	100/30	15/10	A/C Type	(7)	
Vehicular and Other Mechanical Repair	1 Acre (8)	145		100/30	15/10	A/C Type	(7)	

			US 1/Babcock/ Westland				
Noncommercial Piers, Boat Slips and Docks	N/A	N/A	N/A	N/A	N/A	N/A	(7)

Note: Arterial streets refer to transportation linkages on the Major Thoroughfare Plan within the Comprehensive Plan (i.e., Malabar Road, US 1, and Babcock Street).

(1) Minimum spatial requirements for public and private, primary and secondary educational institutions shall comply with standards used by the Brevard County School Board and the State of Florida.

(2) Minimum spatial requirements for golf courses shall comply with standards recommended by the U.S. Golf Association or the American Society of Golf Architects.



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

(4) Minimum spatial requirements for the American Insurance Association and the National Fire Prevention and Control Administration.

(5) The Type A, B, and C screening requirements reflect the standards cited in Section 1-4.1(G)(2)(a)—(c).

(6) No parking lot or structure within 200ft; of residential or institutional district.

(7) No more than two curb cuts shall be permitted to any one street frontage. The ingress-egress width shall be restricted to a maximum width of thirty (30) feet at the point of curvature at the property line; shall be located no closer than thirty (30) feet to a right-of-way intersection; and shall be at least ten (10) feet removed from property lines. A minimum fifty (50) feet separation shall be maintained between curb cuts. The Town may require controlled access, including dedication of cross easements and joint use of drive. The Town Council may grant a waiver to these requirements after considering the recommendations of the Planning and Zoning Board and the Town staff.

(8) Shall not be located adjacent to a residential district, including the RR district.

(9) Shall not be located within 1000 feet of a religious institution, educational institution, or public park.

(10) Reference Town of Malabar Ordinance Regulating Adult Entertainment.

(Ord No 94-4, § 9, 4-3-95)

Cross reference— Adult entertainment establishments, regulations, § 10-26 et seq

Maitabar, Florida, Code of Ordinances >> - LAND DEVELOPMENT CODE >> Article XX - LANGUAGE AND DEFINITIONS >>

Article XX - LANGUAGE AND DEFINITIONS

Section 1-20.1 - General interpretation.

Section 1-20.2 - Definitions of terms.

Section 1-20.1. - General interpretation.

For the purpose of this chapter [Code], certain terms used herein are herewith defined. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural and words in the plural number include the singular number. The word "shall" is always mandatory and not merely directory. The word "building" shall include the word "structure." The word "used" shall include arranged, designed, constructed, altered, converted, rented, leased or intended to be used.

Section 1-20.2. - Definitions of terms.

Terms not otherwise defined herein shall be interpreted first by reference to the Comprehensive Plan and this Code; secondly, by reference to generally accepted engineering, planning, or other professional terminology if technical, and otherwise according to common usage, unless the context clearly indicates otherwise.

For the purpose of enforcing and administering this Code, the following words shall have the definitions and meanings herein ascribed:

Abandon. To discontinue a use for more than six (6) consecutive months.

Abutting. See adjoining.

Access. For purposes of this Ordinance, the term access shall mean a way for prospective purchasers, visitors, and prospective customers to get from parking facilities to the model home. Such access shall be a minimum of 30" wide.

Access, Point of. A driveway or other opening for vehicles onto a public street.

Accessory Use or Structure. A use or a structure subordinate to the principal use or building on the same lot and serving a purpose customarily incidental to the use of the principal building, provided any such structure is built with or after the construction of the principal building.

Adjoining Lot or Land. A lot or parcel of land that shares all or part of a common lot line including a common right-of-way with another lot or parcel of land.

Administrative Office. A room, studio, suite or building in which the management and general administrative functions are performed.

Administrative (or Town) Official. The person appointed by the Town Council to administer and enforce this chapter [Code] who is normally the building inspector.

Advertising Structure. A structure of any kind or character erected or maintained for outdoor advertising purposes, upon which any outdoor advertising sign may be placed.

Airport. A special facility designed to accommodate the takeoff and landing of aircraft [and which] may be equipped with hangars, facilities for refueling and repairing airplanes, taxiways, tie down areas, and various accommodations for passengers.

Alley. A roadway dedicated to public use which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

Alteration. Any change in the arrangement of a building, including work affecting the structural parts of a building or any change in occupancy

Apartment. An independent housekeeping unit in an apartment house.

Apartment House. Any building or part thereof where separate accommodations for more than two (2) families living independently of each other are supplied to transient or permanent guests or tenants.

Awning. A light, protective appurtenance to a building.

Bars. Any place selling and dispensing for the drinking on the premises of liquor, malt, wine, or other alcoholic beverages.

Basement. A story partly underground and having at least one-half of its height below the level of the contacting grade.

Bed and Breakfast. A Bed and Breakfast is an owner-occupied residential structure, with no more than _____ sleeping rooms used as guest rooms, which has been modified to serve as a transient public lodging establishment, which provides accommodation and meal services and which is recognized as a bed and breakfast in the community in which it is situated.

Board of Adjustment. A body authorized to hear and decide administrative appeals, special exceptions and variances from the strict application of the zoning code.

Buffer Strip. A parcel or tract of land, plant material or other landscaping that is used to separate one use from another to shield or block noise, light or other nuisances.

Buildable Area. The portion of lot remaining after required yards have been provided.

Builder. Any person, firm, association, syndicate, partnership, corporation, realtor or corporation who constructs model homes and other residential dwellings for sale to the public.

Building. Any structure having a roof supported by columns or walls.

Building Height. The vertical dimension measured from the finished grade at the building line to the highest point of the structure, including any and all decorative and safety structures, unless exempted under 1.5.1 of the Land Development.

Building, Principal. A building in which the principal use of the lot in which it is located is conducted.

Business Office. Facility consisting of desks, files, phone banks, telephone switchboards, typewriters, or other equipment usually associated with and utilized in a business office.

Cemetery. Property used for the interring of the dead.

Child. A person less than eighteen (18) years of age.

Child Care. The care, protection and supervision of a child on a regular basis which supplements for the child, in accordance with his individual needs, daily care, enrichment opportunities, and health supervision and where a payment, fee or grant is made for care.

Child Care Facility. Includes any child center or child care arrangement that provides child care for more than five (5) children unrelated to operator and which received a payment, fee or grant for any of the children receiving care, wherever operated, and whether or not operated for profit, except that the following are not included: Public schools and nonpublic schools which are in compliance with the compulsory school attendance law, Chapter 232, Florida Statutes; summer camps having children in full-time residence; summer day camps, and Bible schools normally conducted during vacation periods. The provisions of this act shall not apply to a child care facility which is an integral part of a church or parochial schools conducting regular classes or courses of study.

Church or Other Places of Worship. Any structure and/or site legally approved for and used upon a permanent basis by a recognized and established religious sect or denomination as a place where such persons regularly assemble primarily for public worship.

Clinic. Any structure or premises used as an establishment for medical, dental or surgical examination and/or treatment of persons classed as outpatients who are not lodged overnight and maintained and/or operated by any licensed person or organization of persons.

Club, Private. A property owned or leased and operated by a group of persons and maintained and operated solely by and for the members of such group and their guests and not available for unrestricted public access or use. Such a club may be either a profit making or a not-for-profit enterprise.

Commercial Amusement. Establishments engaged primarily in providing amusement or entertainment for a fee or admission charge.

Commercial Amusement, Enclosed. A commercial amusement establishment, the operations of which are conducted entirely within the confines of an enclosed building or structure, excluding necessary off-street parking facilities. This definition includes, but is not limited to, the following: bowling alleys, billiard and pool establishments, skating rinks, video arcades, and indoor theaters.

Commercial Amusement, Temporary. A commercial amusement which is established as a temporary use. This definition includes, but is not limited to, the following: circuses, carnivals, festivals, fairs and special exhibitions.

Commercial Amusement, Unenclosed. A commercial amusement which is conducted in an outdoor area or in an unenclosed structure. This definition includes, but is not limited to, the following: drive-in theaters, miniature golf courses, golf driving ranges, animal or vehicular race tracks, amusement parks and stadiums.

Commercial Fishery. A commercial establishment for the receiving, processing, packaging, storage, and wholesale or retail distribution and sale of products of the sea. Such an establishment may include facilities for the docking, loading, unloading, fueling, icing and provisioning of vessels and for the drying, maintenance and storage of equipment.

Comprehensive Plan. The Town of Malabar Comprehensive Plan, as may hereinafter be amended and which was prepared and adopted pursuant to the "County and Municipal Planning and Land Development Regulation Act," Chapter 163, Part II, Florida Statutes.

Conditional Use. Any use which may be allowed by a Conditional Use Permit pursuant to Article VI, Conditional Use Criteria.

Conditional Use Permit. Any administrative permit issued pursuant to Article VI, Conditional Use Criteria.

Condominium. That form of ownership of condominium property under which units of improvements are subject to ownership by one or more owners, and there is appurtenant to each unit as part thereof an undivided share in the common elements. Condominium property means and includes the land in a condominium whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

Contiguous. Next to, abutting, or touching and having a boundary, or portion thereof, which is coterminous.

Contractor. Any person, firm, association, syndicate, partnership, realtor, or corporation engaged in the business of accepting orders or contracts, either as a general contractor or subcontractor, for construction of model homes and other residential dwellings for sale to the public.

Courtyard. An open, unobstructed, unoccupied space, other than a yard, on the same premises on which the building is located. A court entirely surrounded by the building is an inner court. A court bounded on three (3) sides by the building and on the fourth side by any lot line is a lot line court. A court with at least one side opened to a yard, alley or street is an outer court.

Cultural Facilities. Establishments where the principal use is of an historical, educational or cultural interest, which are not operated commercially.

Developer. A "developer" is any individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity commencing proceedings under this ordinance to effect the subdivision and/or development of land in the Town of Malabar and includes "subdivider," including model homes.

Development. The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, enlargement of any structure; any mining, excavation, landfill or land disturbance, or any extension of the use of the land.

District. Any section [or] area of the Town of Malabar to which these regulations apply, within which the zoning requirements are uniform.

Dormitory. A building intended or used principally for sleeping accommodations where such building is related to an education or public institution including religious institutions.

Drive-in Establishment. An establishment, which by design, physical facilities, service or by packaging procedures encourages or permits customers to receive services, obtain goods or be entertained while remaining in motor vehicle.

Duplex. See Dwelling, Two Family.

Dwelling. A structure or portion thereof which is used expressly for human habitation.

Dwelling, Attached. A one-family dwelling attached to two or more one family dwellings by common vertical walls.

Dwelling, Detached. A dwelling which is not attached to any other dwelling by any structural means.

Dwelling, Multiple Family. A residential building designed for or occupied by two or more families living independently of each other.

Dwelling, Single Family. A residential building containing only one (1) dwelling unit and occupied exclusively by one (1) family as a single housekeeping unit.

Dwelling, Triplex. A dwelling containing three (3) dwelling units, each of which has direct access to the outdoors or to a common hall.

Dwelling, Two Family. A residential building containing only two (2) dwelling units and not occupied by more than two (2) families.

Dwelling Unit. One room or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be the same structure, and containing independent cooking, sleeping, and toilet facilities.

Dwelling Unit, Single-Family. A detached residential dwelling unit other than a mobile home, designed for and occupied by one (1) family.

Dwelling Unit, Two Family. A detached residential building containing two (2) dwelling units, designed for occupancy by not more than two (2) families.

Dwelling Unit, Mobile Home. A detached residential dwelling unit designed for transportation after fabrication, on streets or highways on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a dwelling unit completed and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities and the like.

Dwelling Unit, Multiple-Family. A residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

Easement. A grant by a property owner of the right of use of his land by another party for a specific purpose.

Excavations. Removal or recovery by any means whatsoever of soil, rock, minerals, mineral substances or organic substances other than vegetation, from water or land on or beneath the surface thereof, or beneath the land surface, whether exposed or submerged.

Extended Care Facility. A long term care facility or a distinct part of a facility licensed or approved as a nursing home, infirmary unit of a home for the aged or a governmental medical institution.

Family. A single individual, doing his own cooking, and living upon the premises as a separate housekeeping unit, or a collective body of persons doing their own cooking and living together upon the premises as a separate housekeeping unit in a domestic relationship based upon economic or domestic bond, as distinguished from a group occupying a boarding house, lodging house, club, fraternity or hotel.

Fast Food Restaurant. An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant structure or off premises.

Fence (or Wall). A freestanding structure of any material or combination of materials erected for confinement, screening or partition purposes.

Flag Lot. A lot not fronting on or abutting a public road and where access to the public road is by a narrow, private right-of-way.

Floodplain. An area likely to flood based on the officially adopted Flood Issuance [Insurance] Rate Map (FIRM).

Floodplain, Tidal. An area likely to flood or become inundated from water which is subject to tidal action.

Floor Area. The sum of the gross horizontal areas of the several floors of a building or buildings measured from exterior faces of exterior walls or from the center line of walls separating two (2) attached buildings. The required minimum floor area within each district shall not apply to accessory uses; however, the floor area of accessory uses may be computed as a part of the area of the principal use.

Foster Housing Facility. Substitutes for family units where one or two resident adults care for no more than five (5) persons in an environment which approximates family living.

Frontage. All the property abutting measured along the street line.

Funeral Home. A premises, structure or site used as a commercial establishment for the preparation of deceased humans for burial and/or for the conduction of funeral services prior to burial or other disposition of deceased human remains. Such a premises, structure or site shall not be used for the burial, prolonged storage or permanent disposition of deceased human remains.

Garage, Mechanical. Any enclosed structure used for the storage, care, minor repair, or equipping for operation of motor vehicles, or where automotive mechanical service is provided, excluding paint and body repair.

Garage, Private. A detached accessory building or portion of a main building used for the parking or storage of automobiles of the occupants of the main building. A carport is considered a private garage. No garage may be erected prior to construction of a dwelling, or the garage may be built simultaneously with the residence.

Gasoline Service Station. Any structure, building, or land, used for the dispensing, sale, or offering for sale, at retail, of any motor vehicle fuels, oils or accessories and in connection with which is performed general motor vehicle servicing as distinguished from repair service.

Governmental Facility. Any office, facility, building or property owned, leased, or used by the Federal Government, the State of Florida, or any unit of local government, except such uses as are specifically listed elsewhere in this ordinance as specific uses, and except housing projects sponsored by government agencies.

Green Area. See "Open Space."

Greenhouses. A building wherein the temperature and humidity can be regulated for the cultivation of exotic or out of season plants.

Group Care Facility. A facility or dwelling unit housing no more than six (6) residents in a residential structure, living together as a single housekeeping unit under a common housekeeping management plan based on an intentionally structured relationship providing organization and stability.

Hobby. A subject or pursuit in which one takes absorbing interest.

Home Occupation. Any money-raising occupation or activity carried on within a residential property, where the activity is conducted only by members of the family living within the residence, where products are not offered for sale from the premises, where no evidence of the occupation is visible or audible from the exterior of the residential property, where traffic is not generated in excess of that customary of a residence, and where no commercial vehicles are kept on the premises or parked overnight on the premises unless otherwise permitted by these regulations. The occupation must be clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change residential character thereof.

Hospital. A building or group of buildings, having facilities for one or more overnight patients, used for providing services for the in-patient medical or surgical care of sick or injured humans, and which may include related facilities such as laboratories, out-patient departments, training facilities, and staff offices; provided, however, it is coordinate to the main use and must be an integral part of the hospital operations.

Hotels and Motels. Every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are supplied for pay to transient or permanent guests or tenants, in which rooms are furnished for the accommodation of such guests and which may have one or more dining rooms or cafes where meals or lunches are served to such transient or permanent guests, such sleeping accommodations and dining rooms or cafes being conducted in the same building or buildings in connection therewith.

Houseboat. A watercraft used as a dwelling and moored in the same general area at least eight (8) hours a day for ten (10) days in any month.

Junk. Old and dilapidated modes of conveyance such as automobiles, trucks, tractors, watercraft, and other such vehicles and parts thereof; wagons and other kinds of vehicles and parts thereof; household appliances, scrap building material, scrap contractors' equipment, tanks, casks, cans, barrels, boxes, drums, piping, bottles, glass, old iron machinery, rags, paper, excelsior, hair, mattresses, beds, and bedding or any other kind of scrap or waste material which is stored, kept, handled or displayed.

Junk Vehicle. A vehicle which has not had a current license plate or cannot be moved under its own power.

Junk Yard. A place where waste, discarded or salvaged materials are bought, sold, exchanged, stored, based, cleaned, packed, disassembled or handled, including auto wrecking yards, house wrecking yards, used lumber yards, and places or yards for use of salvaged house wrecking and structural steel materials and equipment, but excluding pawn shops and establishments for the sale, purchase or storage of used cars in operable condition, salvaged machinery, used furniture and household equipment, and the processing of used, discarded or salvaged materials as part of manufacturing operations. The storage of non-operable machinery, equipment or automobiles for sixty (60) days or longer shall be prima facie evidence the property is a junk yard.

Kennels, Commercial. Any lot or premises on which four or more dogs, cats or other domestic animals, at least four months of age, are housed or accepted for boarding, trimming, grooming and/or bathing for which remuneration is received.

Kennels, Non-Commercial. Any building or buildings and/or land used, designated or arranged for the boarding, breeding, or care of four or more dogs, cats, pets, fowl, or other domestic animals belonging to the owner thereof, kept for purposes of show, hunting, or as pets (but not to include riding stables).

Loading Space. An off-street space within the main building or on the same lot, providing for the standing, loading or unloading of vehicles.

Lot. A lot shall mean 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 required in this chapter [Code]. Lot shall be comprised of contiguous land. Provided that in no

case of division or combination shall any residential lot or parcel be created which does not meet the requirements of this chapter [Code]. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of:

- (1) A single lot of record;
- (2) A portion of a lot of record;
- (3) A combination of complete lots of record, and portions of lots of record;
- (4) A parcel of land described by metes and bounds.

Lot, Building. A building site area which shall be at least the minimum area required for the zone in which said area is located and such building lot shall be consistent with all lot requirements within the respective zoning district. The term "building lot" is not necessarily synonymous with the term "lot" as defined above. A building lot is always at least one lot or one lot plus a part of another lot or a combination of two or more lots or fractions thereof.

Lot, Corner. A lot abutting upon two or more streets at their intersections.

Lot, Double Frontage (also Through Lots). A lot having a frontage on two non-intersecting streets, as distinguished from a corner lot.

Lot Frontage. The portion nearest the street. For purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under yards in this section.

Lot Lines. The lines bounding a lot.

Lot Measurements.

- (1) *Depth of a Lot* shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.
- (2) *Width of a Lot* shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the front building line established by the minimum from [front] setback of the required front yard, provided however that width between side lot lines at their foremost points (where they intersect with the street line) shall not be less than eighty (80) percent of the required lot width except in case of a lot on the turning circle of a cul-de-sac, where the eighty-percent requirement shall not apply. Front lot lines on a cul-de-sac shall be no less than forty (40) feet.

Lot of Record. A lot which is a part of a subdivision, the map of which has been recorded in the Office of the Clerk of the Circuit Court of Indian River County or a lot described by metes and bounds, the description of which has been thus recorded.

Malabar Vernacular Style. An architectural style representing Florida's historical influences upon the development of the Town of Malabar. This eclectic style includes elements such as elevated first floors, covered porches, verandas and overhangs that create a relationship to the street at human scale. This may include Cracker, Mediterranean, Caribbean, as well as, other documented local common archetype styles dating back to the turn of the 19th century. The design standards provided in Section 1-5.29 of the Land Development Code of the Town shall apply to any structure required to be built in the Malabar Vernacular style.

Manufactured Building. A closed structure, building assembly, or system of subassemblies, which may include structural, electrical, plumbing, heating, ventilating or other service systems manufactured in manufacturing facilities, for installation or erection, with or without other specified components, as a finished building or as part of a finished building which shall include but not be limited to residential, commercial, institutional, storage and industrial structure (F. S. 553.36). The building plans for such structures must be sealed by the Florida Department of Community Affairs.

Marina. A place for the sale and service of boats and marine supplies, exclusive of boat or ship building.

Maximum building coverage. The total building coverage on any lot divided by the total lot area.

Mining. The removal, either in or upon the soil of the earth or beneath the soil, of any valuable inert or lifeless substance formed or deposited in its present position through natural agencies alone, as a commercial business.

Mini-Warehouse/Mini-Storage. A mini-warehouse/mini-storage is defined as a fully enclosed, single story, building or buildings that may contain removable interior partitions and having individual compartmentalized units, stalls or lockers with privately controlled access points which are to be rented as storage space for customers' goods, wares, or personal property. No individual storage unit shall exceed five hundred (500) square feet in floor space. No unit shall be used for any wholesale or retail operations; however, it shall not preclude use as a depot for such purposes as franchised distribution.

An office for the rental of the storage spaces may be included, provided it does not exceed three hundred (300) square feet, excluding any bathroom facilities.

Mobile Home Park. A tract of land in one ownership, which provides rental spaces for mobile homes.

Mobile Home Park, Transient. A facility which provides short term parking areas for travel trailers, travel campers and mobile homes, along with the provision of utilities, recreation and related services.

Mobile Home Site. A lot or space or plot of ground within a mobile home park or trailer park, designated for the accommodation of not more than one mobile home or trailer coach.

Mobile Home Subdivision. A recorded subdivision of land officially recorded which provides individual sites, for sale, for mobile homes.

Model Home. A finished, single-family residential unit, including units in a multifamily structure and mobile homes for which a certificate of occupancy could be obtained, located in a residentially zoned district but utilized as an example of a product offered for sale to purchasers (by a realtor, builder, developer or contractor). The dwelling house may be furnished but not occupied as a residence while being used as "Model Home."

Motel. See Hotel.

Noncomplying Building or Structure. Any building or other structure which is a lawful use (permitted or nonconforming) but which does not comply with all applicable provisions of this Code, including bulk regulations, off-street parking requirements, landscape requirements, performance standards, or airport height hazard zone requirements, either on the effective date of this Ordinance or as a result of any subsequent amendment.

Nonconforming Use. A use of a building or structure or of a tract of land which, at the time of the commencement of the use, was a permitted use in the zoning district, or any legal change thereto from the time of the commencement thereof until the effective date of this Ordinance, but which does not, on the effective date of this Ordinance, conform to the use criteria of the district in which it is located.

Open Space (Green Area). Open space includes the gross area of the site less building coverage, parking surface and internal traffic circulation system.

Parking Lot. An area or plot of ground, used for the storage or parking of motor vehicles either for compensation or to provide an accessory service to a business, industrial or residential use.

Parking Space, Off-Street shall mean a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room. Required off-street parking areas for three (3) or more automobiles shall have individual spaces marked and shall be so designed, maintained and regulated that no parking or maneuvering incidental to parking shall be on any public street, walk or alley, and so that any automobile may be parked and unparked without moving another.

For purposes of rough computation, an off-street parking space and necessary access and maneuvering room may be estimated at three hundred (300) square feet, but off-street parking requirements will be considered to be met only when actual spaces meeting the requirements above are provided and maintained, improved in a manner appropriate to the circumstances of the case, and in accordance with all ordinances and regulations of the Town.

Permeable Surface. Any surface permitting full or partial absorption of stormwater into previously unimproved land.

Premises. Any land together with any structures occupying it.

Principal Structure. A building in which is conducted the principal use of the lot on which it is situated. An attached carport, shed, garage or any other structure with one (1) or more walls or a part of one (1) wall being a part of the principal building and structurally dependent, totally or in part, on the principal building, shall comprise a part of the principal building and be subject to all regulations applied to the principal building. A detached and structurally independent carport, garage or other structure shall conform to the requirements of an accessory building. A structure conforming as an accessory building may be attached to the principal building by an open breezeway.

Public Water and Sewer Service. This shall mean water and sewer systems, including pipes, rights-of-way and treatment plants, owned and operated by the Town or operated under a franchise granted by the Town.

Recreational and Landscaped Open Space. Unroofed or screen roofed ornamental landscaped areas and recreational areas which are easily accessible and regularly available to occupants of all dwelling units on the lot wherein the open space is located. Rooftops, porches, raised decks, parking spaces, driveways, utility and service areas are not calculated as open space.

Right-of-Way Line. The boundary line between highway, road or street and a tract or parcel of land adjoining such highway, road or street. The right-of-way line shall be considered the property line.

Setback. The minimum horizontal distance between the street, rear or side line of the lot and the front, rear or side lines of the building, including porches, carports and accessory uses.

Shopping Center. A group of commercial establishments planned, constructed and managed as a total entity with customer and employee parking provided on-site, provisions for goods delivery separated from customer access, aesthetic considerations and protection from the elements.

Shoreline. The mean high water line for tidal water bodies and ordinary high water line for non-tidal waters for inland water bodies.

Special Exceptions. A special exception is a use that would not be appropriate generally or without restriction throughout a particular zoning district but would, if controlled as to number, area, location or relation to the neighborhood, be appropriate.

Story. That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there be no floor above it, then the space between such floor and ceiling next above. If any portion of a roof area is intended for human occupancy, except for maintenance purposes, then such roof area shall also be considered a story, notwithstanding that no floor or ceiling is located above it.

Street. A thoroughfare which affords principal means of access to abutting property. Street classifications include the following:

Arterial. Arterial streets serve as principal routes through the Town. The purpose of these facilities is to move large volumes of traffic from one part of the region or county to another. Arterial roads also provide connections between major activity centers of the County or Town.

Major Collector Streets. Major collector streets collect and distribute traffic from residential access streets to arterial streets or other collector streets.

Minor Collector Streets. Minor collector streets collect traffic from local streets and feed traffic to major collectors and arterials.

Residential Access Streets (Local Streets). Streets which directly serve abutting properties and residences. These streets should be relatively safe and quiet and should be completely free of any through traffic.

Street Line. See Right-of-Way Line.

Structure. Anything constructed or erected with a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences, signs and poster panels, driveways, pools, and ponds.

Structural Alteration. Any change in either the supporting members of a building, such as bearing walls, columns, beams, and girders, or in the dimensions or configurations of the roof or exterior walls.

Subdivision. The division and recording in accordance with law of a parcel of land into two or more lots or blocks for the purpose of transfer of ownership or development for development, sale or lease.

Swimming Pool. A water-filled enclosure, permanently constructed or portable, having a depth of more than eighteen (18) inches below the level of the surrounding land, or an above-surface pool, having a depth of more than thirty (30) inches, designed, used and maintained for swimming and bathing.

Townhouse. A one-family dwelling in a group of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common fire resistant walls.

Variance. A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.

Warehouse. A warehouse shall mean any premises where the principal use is the storage of merchandise, products, or materials in bulk, for a fee or charge or for distribution to other establishments operated by the same business enterprise or establishment. A warehouse may include accessory wholesales, but shall not be deemed to include retail sales establishments, motor freight terminals, mini-warehouses or the bulk storage of flammable, explosive, toxic, or noxious materials as a principal use. No commercial vehicles (semi-trailers) shall be parked on the site overnight. No manufacturing, processing or craftsman of any kind shall be permitted.

Yard. An open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the minimum horizontal distance between the lot line and the structure shall be used.

Yard, Front. A yard extending across the front of a lot between the side yard lines, and being the minimum horizontal distance between the street line and the structure of any projections thereof, other than the projections of uncovered steps. On corner lots and through lots all yards which abut the street are considered front yards.

Yard, Rear. A yard extending across the rear of the lot between the inner side yard lines. In the case of through lots and corner lots, there will be no rear yards, but only front and side yards.

Yard, Side. A yard between any structure and the side line of the lot, and extending from the front lot line to the rear yard and being the minimum horizontal distance between a side lot line and the side of any structure. A yard which is not a front or rear yard.

(Ord No 97-3, § 1, 3-17-97, Ord No 06-05, § 2, 2-6-06, Ord No 06-16, § 3, 10-2-06, Ord No 06-19, § 3, 1-11-07, Ord No 07-02, § 6, 4-2-07, Ord No 08-04, §§ 2, 3, 4-7-08, Ord No 08-13, § 2, 10-20-08)

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Article II - LAND USE AND ZONING

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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 Space	RM-4 RM-6 OI	Multiple Family HDR 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



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.

BREVARD COUNTY LAND DEVELOPMENT CODE

➤ SECTION 62-1101 BREVARD COUNTY ZONING DEFINITIONS

Agenda Item 2

P&Z Meeting 5/21/13

Brevard County Zoning Definitions

Sec. 62-1101. Short title.

This article shall be known and may be cited as the Brevard County Zoning Regulations.
(Code 1979, § 14-20.01)

Sec. 62-1102. Definitions and rules of construction.

For the purpose of this article, the following terms shall have the meaning set forth in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

Accessory building or use means a building, structure or use on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure, provided the building, structure or use shall be constructed after or concurrently with the principal structure.

- (1) Accessory buildings or structures include but are not limited to private garages, storage sheds, carports, greenhouses, gazebos, cabanas, utility buildings/rooms, verandas, glass rooms, porches, screened porches or awnings, swimming pools and screened enclosures, and private residential boat docks with up to two slips for use of the occupants of the principal residential structure. Buildings or structures secondary and incidental to agricultural uses include, but are not limited to stables, barns, paddock areas and storage areas. Accessory buildings or structures may have a full or half bath; but may not have living quarters or a kitchen, unless such structure is a guesthouse consistent with section 62-1932.
- (2) Accessory uses include a child or adult day care center accessory to a church, a golf driving range accessory to a golf course, and the package sales of alcoholic beverages accessory to a convenience store. Pursuant to subsection 62-2100.5(1)(f), one single-family garage apartment is accessory to a single-family residence in multi-family zoning classifications. Pursuant to subsection 62-2100.5(2), horses and agricultural pursuits are accessory to a principal residence.
- (3) Except where otherwise provided in this section, an addition which is attached to a principal structure shall not be considered an accessory building, but shall be considered part of the principal structure. "Attached" for the purpose of this regulation means that the addition is integrated visually, structurally and architecturally with the principal structure, contains a common roof with similar design to the principal structure, and permits access between the principal structure and the addition either internally or under the common roof. If there is a connection between the

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addition and the principal structure which is not enclosed but is comprised solely of the common roof, then the addition shall be considered part of the principal structure if the length of the connection does not exceed the length of the addition by more than 50 percent (or 20 feet, whichever is less). Otherwise, the addition shall be considered a detached accessory structure. "Enclosed" for the purpose of this regulation means an area under a roof which has solid walls at least four feet in height around its entire circumference, or which is 100 percent screened from floor to ceiling, such that the enclosed inside space is clearly separated from the outside space.

Air curtain incinerator (a type of solid waste management facility defined in chapter 94, article I of this Code) means a portable or stationary combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.

Alley means a public right-of-way or passageway, less than 30 feet in width, which usually abuts the rear of the premises, or upon which service entrances or buildings abut, not generally used as a thoroughfare or for general traffic and not otherwise officially designated as a street.

Alteration means any change in the arrangement of a building; any work affecting the structural parts of a building; or any change in wiring, plumbing or heating and air conditioning systems.

Aquaculture means the cultivation, production, and raising of the natural products of water, including associated activities such as landing, processing and transporting of shellfish. For the purposes of this chapter, aquaculture shall be divided into three categories:

Case I. Product is brought on-shore (landed) from a lease and transferred from that point to an off-site market.

Case II. Product is grown on site (i.e., hatchery or nursery) and transferred to the property owner's lease. On parcels having a commercial or industrial zoning classification as described below, the product may also be sold to the customer directly from the site.

Case III. Product is brought on-shore and then is further processed on site (deperation) before being transferred off site.

Aquaculture Case I and Case III are permitted in BU-2 or industrial classifications. Aquaculture, Case II is permitted in BU-1, BU-2 or industrial zoning classifications. All cases are permitted in AU, PA and AGR classifications.

Brevard County Zoning Definitions

Aquaculture operations means activities related to the hatchery, nursery and maintenance of the product, including tanks, sludge application areas, settling facilities wet storage areas of containers, culture containers, activities related to the cultivation and maintenance of marine algae or other food stocks. The setbacks for aquaculture operations shall not include intake and discharge structures.

Assigned resident means any person residing in a residential social service facility as a result of being elderly, handicapped or family deprived, and having been assigned to that facility in accordance with licensing restrictions of the state department of health and rehabilitative services. For purposes of this subsection, the term "family deprived" shall mean abused, neglected or abandoned children, dependent adults or adults who are incapable of living alone due to age or infirmity and who are unable to reside with family members. The following persons shall not be considered as assigned residents: any person meeting the criteria for involuntary placement under F.S. ch. 394; any person who has been convicted of a felony, or entered a plea of guilty or nolo contendere to, or has been found not guilty by reason of insanity under F.S. § 776.08; or any person who has been convicted of, or entered a plea of guilty or nolo contendere to, or been found not guilty by reason of insanity of any sex offense under F.S. § 917.012.

Assisted living facility (ALF) means a structure in which the owner or operators are subject to licensing and approval by the state, whether operated on a profit or nonprofit basis. Such facilities may provide lodging, food and one or more personal services for unrelated adults and shall not be regulated or operated by or associated with any jail, prison or correctional facility or system. Generally, such facilities shall have more than 14 clients and must be licensed by the state as an assisted living facility. If a facility is not licensed by the state, such facility must be approved by the county.

Automobile repair, major means repairs of a nature that usually cannot be done quickly and which will encompass more highly skilled work. Such repairs include removal of the engine head or pan, engine transmission or differential. Often this work is necessary as a result of a major component failure or an accident. These types of repairs cannot be done while the customer waits, and will often take more than one day to complete. Such repairs include but are not limited to:

Accident repairs.

Automotive machine shops.

Framework and frame straightening.

Grinding valves, cleaning carbon or removing the head of engines or crankcases.

Major engine repair, replacement, rebuilding or reconditioning.

Paint and body work.

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Radiator recoring and rebuilding.

Replacement of body parts and fenders.

Tire recapping.

Transmission and differential repair, replacement, or rebuilding.

Welding.

Automobile repair, minor means repairs of a nature that can usually be done quickly with minimum noise, odor or other negative impacts. This includes preventative maintenance or replacement of easily accessible parts that routinely wear out. This does not include removal of the engine head or pan, engine transmission or differential. These types of repairs can be often done while the customer waits, and usually will not take more than one day to complete. Such repairs include but are not limited to:

Air conditioning maintenance and refrigerant replacement.

Audio installation and repairs.

Brake pads, shoes, rotors and drums replacement.

Chassis lubrication.

Electrical components repair and replacement.

Fuel injection systems and carburetor replacement.

Fuel pumps and fuel lines.

Ignition systems, sparkplugs, and batteries.

Motor oil, engine cooling and lubrication, brake fluid, transmission and other fluid replacement.

Mufflers, tailpipes, water hoses, fan belts, headlights and light bulbs, floor mats, seat covers, wipers and wiper blades, and replacement of grease retainers and wheel bearings.

Rustproofing.

Shock absorbers or other suspension systems replacement.

Tire replacement, repair and servicing, but no recapping.

Brevard County Zoning Definitions

Tuning engines, with the exception of grinding valves, cleaning carbon or removing the head of engines or crankcases.

Washing, polishing and detailing.

Wheel balancing and alignment.

Windshield, window replacement.

Wiring repairs.

Automotive sales and service facilities means the site used for sale or storage of new and used automobiles, service stations, paint and body repair shops and automotive repair garages, including the sales and servicing of any automotive component. No storage of junk or wrecked motor vehicles, other than the temporary storage of those motor vehicles awaiting repair, shall be permitted. A minimum of 75 percent of the motor vehicles shall be operable and readily accessible to the public for inspection and operation. For purposes of this subsection, temporary storage of junk or wrecked motor vehicles shall mean that the vehicle may remain on the site for a length of time not to exceed 120 days in any calendar year.

Bar and cocktail lounge mean any place in the business of selling and dispensing alcoholic beverages of any type, or any place where any sign is exhibited or displayed indicating that alcoholic beverages are obtainable within or thereon, and where such beverages are consumed on the premises.

Barn means a building for the housing of farm animals and storage of farm-related products, feed, equipment, machinery or fleets of vehicles or aircraft.

Biomedical waste incinerator (a type of solid waste management facility defined in chapter 94, article I of this Code) means a combustion apparatus, furnace or other device used for igniting, incinerating or burning biomedical waste to a temperature high enough and for a period long enough to ensure destruction of all pathogenic organisms and render such waste noninfectious and harmless.

Bluff line means an ambulatory line which shifts with shoreline changes signifying the edge of a marine cliff or bluff or a steep bank located beside a river, ravine, plain or ocean, or the broad, steep face of a bank or headland.

Board of adjustment. See article II, division 4, of this chapter.

Boardinghouse means a building, other than an apartment building, hotel, motel, motor lodge or restaurant, where meals, lodging, or lodging and meals are provided for fair compensation for three or more persons.

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Boatbuilding means the process of building, constructing, manufacturing or assembling water vessels within a substantial building.

Boundary of classification means the centerline of a street or right-of-way, or the centerline of the alleyway between the rear or side property lines, or, where no alley exists, the rear or side property lines of all lots, bordering on any zone limits or any zone boundary shown on the official zoning map.

Breezeway/visual corridor.

- (1) *Oceanfront breezeway/visual corridor* means a corridor across the full depth of oceanfront properties which shall be reserved to ensure unrestricted movement of ocean breezes and to provide visual access to the ocean. The corridor shall include all land from the mean low-water line to State Road A1A, or other dedicated public right-of-way running parallel to the ocean, whichever lies closer to the ocean, and shall include a minimum of 30 percent of subject property's width. The width of the corridor shall be measured as described in section 62-2105. Notwithstanding any other provision of this article to the contrary, this minimum 30 percent breezeway/visual corridor requirement shall include all oceanfront properties, except single-family residential. Single-family residential structures on the oceanfront shall continue to be subject to State of Florida Department of Environmental Protection guidelines establishing a 60 percent coverage of the shore-parallel width of the property, pursuant to F.S. ch. 161.053, "Coastal Construction and Excavation" and Florida Administrative Code Chapter 16B-33.008.
- (2) *Riverfront breezeway/visual corridor* means a corridor across the full depth of riverfront properties, which shall include all land from the mean low-water line to a distance of 250 feet, or the distance to the closest dedicated public right-of-way running parallel to the water, whichever distance is less, and shall include a minimum of 30 percent of the subject property's width. The width of the corridor shall be measured as described in section 62-2105. Notwithstanding any other provision of this article to the contrary, this minimum 30 percent breezeway/visual corridor requirement shall include all riverfront properties, except single-family residential.

Building means any structure constructed or used for residence, business, industry or other private or public purposes, including structures that are accessory to such uses, provided such structures are in compliance with the Standard Building Code. This shall include but not be limited to single-family dwellings, sheds, garages, carports, storerooms and other stationary structures.

Building height.

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- (1) Where a building or structure is constructed with a flat roof, the height of the building or structure shall be the vertical distance measured from the average elevation of the finished development grade of the building site to the finished elevation of the flat roof of the uppermost story, excluding elevator or mechanical equipment screens.
- (2) Where a building or structure is constructed with a hip roof or gabled roof, the height of the building or structure shall be the vertical distance measured from the average elevation of the finished development grade of the building site to the highest bearing point of the roof trusses or roof joists of an acceptable slope, which slope shall not exceed 45 degrees or 12-on-12, provided that any habitable space located within the confines of the acceptable slope shall be solely for the use of the occupants of the floor immediately below and not used as a separate occupancy. Church steeples, bell towers, or other similar features customarily used to identify a church shall be excluded from the height restriction, as long as the height at the top of the identifying feature as measured from finished development grade does not exceed 200 percent of the maximum height or height threshold.
- (3) Where one level of parking is provided under any principal building, excluding single family homes, building height shall be measured from the elevation of the lowest point of the structure of the first habitable floor to a point defined in either subsection (1) or (2) of this definition; provided, however, that setbacks, breezeway/visual corridor and fire protection requirements under this article shall be based on building height as measured from the average elevation of the finished development grade of the building site.

Building line. Compliance with setbacks shall be determined by measuring from any projection of the structure or any vertical support of a covered roof section to the nearest point of the lot line.

Building site means the ground area of a building or buildings together with all open spaces surrounded by said building or buildings under the same ownership.

Captive wildlife means animals of a species not usually domesticated in the United States, and requiring permitting or licensing for possession by the State of Florida Fish and Wildlife Conservation Commission as Class I or Class II wildlife or poisonous or venomous reptiles per F.S. §§ 372.86 or 372.922, or Rule 68A-6.002, F.A.C.

Certified survey. A survey, sketch, plan, map or other exhibit is said to be certified when a written statement regarding its accuracy or conformity to specified standards is signed and sealed by a registered surveyor licensed by the state.

Civic, philanthropic or fraternal organizations means:

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- (1) A group of people formally organized to pursue goals or activities for a common nonprofit interest or purpose, usually cultural, religious, or social, with regular meetings and usually characterized by certain membership qualifications, supported by the payment of regular periodic fees and dues, and a constitution and/or bylaws;
- (2) A nonprofit, humanitarian organization involved in an active effort to promote human welfare; or
- (3) An organization that promotes fellowship among its members and is devoted to the principle of volunteer community service.

Community center means a building used for recreational, social, educational, and cultural activities, usually owned by a nonprofit organization such as a homeowners association, located in the same neighborhood as and operated solely for the benefit of its resident membership.

Composting facility (defined in chapter 94, article I of this Code) means a solid waste management facility where solid waste is processed using composting technology. Processing shall be limited to vegetative debris generated from land clearing activities. The vegetative debris may be processed by physically turning, windrowing, aeration or other mechanical handling. Simple exposure of organic matter to the elements resulting in a natural decay, with little or no mechanical handling, is considered disposal and for the purpose of this chapter would not be considered a composting facility. Composting of other materials shall be performed under the conditional use requirements of the solid waste management facility.

Conditional use. See division 5 of this article.

Contractors. NAICS 235.

County means the unincorporated areas of Brevard County, Florida.

County zoning regulations means those regulations relating to land use and control adopted by ordinance by the board of county commissioners under the authority of various state and local laws.

Court. A street court is a concave lateral extension of the primary street pavement with a turning radius of not less than 35 feet and a depth which may range upward to a maximum of 70 feet.

Development rights means the number of residential dwelling units that a specific parcel of real property can generate or yield given a zoning classification's gross density provision.

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Duplex means a residential building designated for or occupied by two families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, multiple-family means a residential building designed for or occupied by more than two families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, single-family means a private residence building used or designed for use as a home or residence, in which the use and management of all sleeping quarters and all appliances for sanitation, cooking, ventilation, heating and lighting are designed primarily for the use of one family unit. All rooms within the building must have internal access, and the building shall have only one kitchen and one electrical meter, unless otherwise provided in this section. No other structure located on the lot may contain a kitchen except where otherwise provided in this section. Shelters that are not designed and constructed in compliance with Brevard County, State and other applicable development codes for a single-family dwelling, such as tents, lean-tos, and sheds, are prohibited from use as a residence on a temporary or permanent basis. A second electrical meter on a single-family zoned lot for detached accessory structures or docks shall be permitted where the accessory structure is located more than 100 feet from the residence or where the boat dock is located more than 100 feet from the residence or where the boat dock is separated from the residence by a public right-of-way.

Farmer's stand means a roadside stand operated by the landowner of agriculturally zoned property to sell produce grown on that site to the general public.

Fireworks means any combustible or explosive composition or substance or combinations of substances or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, or any article containing any explosives or flammable compound or any tablets or other device containing any explosives or flammable compound or any tablets or other device containing any explosive substance, as defined by Chapter 791.01(4)(a), Florida Statutes (2003). "Fireworks" does not include sparklers approved by the division of the state fire marshal of the Department of Financial Services pursuant to Chapter 791.013, Florida Statutes (2003), novelties, trick noisemakers, toy pistols, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound or mixture are used, as defined by Chapter 791.01(4)(b) and (c), Florida Statutes (2003). Wholesale fireworks sales shall require IU-1 zoning, whereas retail sales of items not so defined as fireworks shall be permitted in the BU-1 and BU-1-A classifications.

Fish camps are commercial activities located near adjacent water bodies for the purpose of supporting recreational activities. Fish camps provide immediate access to water bodies. Facilities provided at fish camps may include boat ramps supported by slips and piers extending into the water body. Fish camps may also sell items normally bought at convenience stores, examples are such items as prepackaged food and beverages together with specialty items associated with fishing or other water-type recreational

Brevard County Zoning Definitions

uses. Fish camps may have other accessory uses which provide services to boaters and/or fishermen which may include bait and tackle shops and accessory restaurants as limited by section 62-1835.4.5.

Floor area means the sum of the gross horizontal areas of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the centerlines of walls separating two attached buildings. The required minimum floor area within each classification shall not apply to accessory structures.

Floor area ratio (FAR) is computed by dividing the gross floor area of all buildings on a lot by the area of that lot.

Foster home means a dwelling unit in which the owners or operators are subject to licensing and approval by state department of health and rehabilitative services, and where the owners or operators live permanently and provide full-time care and supervision to a maximum of five assigned residents who are unrelated to the owners or operators. The maximum number of assigned residents shall be reduced by one for each minor child, natural or adopted, of the foster parents.

Frontage means the distance measured along a road right-of-way which provides access to the property, or the distance measured along a major water body. If a lot fronts both on a road right-of-way and a major water body, the definition set out under *Lot, double-frontage* shall apply.

Garage, private means a structure not larger than 600 square feet in area, unless otherwise provided in this article, for the private use of the owner or occupant of the principal building on a lot or for the use of his family or domestic employees for the storage of noncommercial motor vehicles, and which has no public shop or mechanical service in connection therewith.



Group home means a facility in which the owners or operators are subject to licensing and approval by the state department of children and families, and where the owners or operators provide basic care, personal services and supervision necessary to meet the physical, emotional and social needs of assigned residents. A group home shall house no more than 14 assigned residents. Group homes shall be categorized by levels, according to the number of assigned residents residing on the premises, as follows:

- (1) Level I: No more than six assigned residents.
- (2) Level II: Seven to 14 assigned residents.

Guesthouse means living quarters within a detached accessory building located on the same premises as the main building, to be used for housing members of the family occupying the main building or their temporary guests. Such quarters shall be subject to the provisions of section 62-1932, shall have no separate utility meters, and shall not be rented or otherwise used as a separate dwelling.

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Hazardous waste facility means any building, site, structure, or equipment at or by which hazardous waste, which is generated off-site, is transferred to, disposed of, stored, or treated and required to obtain an operating permit for a hazardous waste treatment, storage and/or disposal facility by the Florida Department of Environmental Protection.

Heavy industry means the manufacture of goods under the following NAICS codes: 21-Mining, 322-Paper Manufacturing, 324-Petroleum and Coal Products, 325-Chemical Manufacturing, 311611, 311615-Slaughtering of Animals or Poultry, 31611-Leather Tanning, 3221-Pulp or Paper Mills, 32531-Fertilizer, 32732-Ready-mix Concrete, 336-Transportation Equipment, outdoors, and 2211-Electric Power Generation.

Hotel and motel mean a building designed or used to provide lodging, or boarding and lodging, to the public, for transients, tourists or persons of shortterm residence, in which there are six or more guestrooms, with limited or no kitchen facilities being offered, and with the building being open to the general traveling public, as opposed to the customary purpose and use of a boardinghouse or lodginghouse, apartment building or multiple-family dwelling.

Independent living facility (ILF) means a residential structure having at least 16 living units designed and operated to house adults over 55 years of age and their spouses, while providing meals, transportation, and 24-hour security, and other personal services, but not on-site medical services. Such facilities may not be subject to state licensing and may be operated either on a profit or nonprofit basis. Such facilities shall not be regulated or operated by or associated with any jail, prison or correctional facility or system.

Industry means the manufacture of goods under the following NAICS codes: 311-Food (except 311611 and 311615), 312-Beverages, 313-Textile Mills, 314-Textile Product Mills, 315-Apparel Manufacturing, 316-Leather and Allied Products (except 31611), 321-Wood Products, 323-Printing and Related Support Activities, 326-Plastics and Rubber, 327-Nonmetallic Mineral Production (except Ready-mix Concrete 32732), 331-Primary Metals, 332-Fabricated Metals Products, 333-Machinery, 334-Computer and Electronic Products, 335-Electrical Equipment, 336-Transportation Equipment indoor manufacture, 337-Furniture and Related Equipment, 339-Miscellaneous Manufacturing. Utilities; 2212-Natural Gas Distribution above ground facilities, 2213-Water, Sewer, and other Utilities. Underground utilities or overhead distribution lines for power are not considered a land use.

Junkyard means an open area where any waste, used or secondhand materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including but not limited to scrap iron and other metals, paper, rags, rubber tires and bottles. The term includes the activity commonly known as an auto wrecking yard.

Kennel, pet means the keeping of any pet or pets, regardless of number, for sale, breeding, boarding or treatment purposes, except in an animal hospital, animal grooming

Brevard County Zoning Definitions

parlor or pet shop, as permitted by this article.

Kitchen means a room or area within a room whose primary purpose is to store, prepare and cook food. A kitchen will have a refrigerator to store food, counter space and a sink to prepare food, and a stove and/or range to cook food.

Land alteration means any land alteration, excavation or private lake as defined in article XIII, division 4 or 5, of this chapter.

Landfill means a solid waste disposal facility, which is an area of land or an excavation where wastes are or have been placed for disposal for which a permit issued by the Florida Department of Environmental Protection is required. This term does not include:

- (a) Land application sites where reclaimed water, effluents or wastewater residuals are applied to the land through spray irrigation, land spreading, or other methods;
- (b) A surface impoundment for the treatment and disposal of stormwater or wastewater; or
- (c) An injection well into which fluids are injected, by gravity flow or under pressure.

Learning center means a private organization that provides personalized instructional services to students of any age, where the student/teacher ratio does not exceed 3:1.

Living area means the minimum internal area of a residential building as measured by its outside dimensions, exclusive of carports, porches, sheds and attached garages. However, living area may include up to 25 percent of an enclosed garage or screened porch under the primary roof, but not to exceed ten percent of the minimum living area requirement of the applicable residential zoning classification. Living area shall be usable and shall have a minimum ceiling height of seven feet.

Lot means a parcel of land shown on a recorded plat, or any piece of land described by a deed recorded in the official records book of the county. The mean high-water line of major natural water bodies will be used in computing lot size and density and the establishment of setbacks for waterfront property in tidal areas. The ordinary high-water level shall be utilized in nontidal areas.

Lot, corner means any lot situated at the junction of and abutting on two or more intersecting streets. If the angle of intersection of the centerlines of two streets is more than 135 degrees, the lot fronting on the intersection is not a corner lot. A lot fronting only one named street curving around it (as described in Figure 1) is considered a corner lot if the street abuts two adjacent lot lines and if the intersection of the centerlines of the

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street is 135 degrees or less.

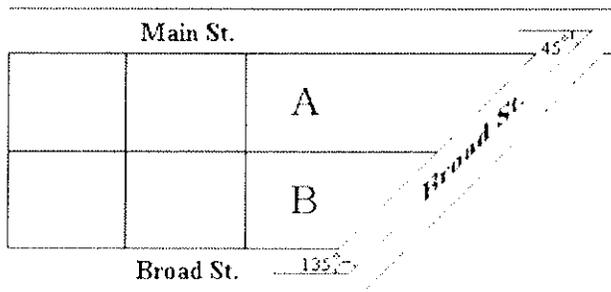


Figure 1 Both lots A and B are corner lots

Lot coverage means that portion of any lot, parcel or tract of land which is covered by all structures.

Lot depth means that distance between the midpoints of straight lines connecting the foremost points of the side lot lines in the front and the rearmost points of the side lot lines in the rear. To determine the rearmost points of side lot lines for irregular lots, see the definition for rear lot line set forth in this section.

Lot, double-frontage. A double-frontage or through lot is defined as a lot that has frontage on two streets. The applicable front setback requirement shall apply to both frontages, regardless of which line the landowner elects as the front line, except as provided for within subsection 62-2109(d). (See also *Lot line, front.*)

Lot, interior means any lot which is not a corner lot.

Lot, key means an interior lot so subdivided or situated as to have its side lines coincide with the rear lot lines of adjacent lots on either or both of its sides.

Lot line, front. In the case of a lot abutting upon only one street, the front lot line is the line separating such lot from the right-of-way line of the street. In the case of double-frontage lots, easement lots, and flag lots, one such line shall be elected by the owner to be the front lot line for the purpose of this article. The front lot line may be the frontage along a major water body.

Lot line, rear. The rear lot line is that boundary which is opposite and most distant from the front lot line. In the case of a rear lot line in which such lot line is more than 20 degrees from parallel to the front lot line, the rear lot line shall be that assumed line parallel to the front lot line, the length of which shall not be less than 50 percent of the required lot width.

Lot line, side. A side lot line is any lot boundary line not a front lot line or a rear lot line. A side lot line separating a lot from a street is an exterior side lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

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Lot width means the distance between straight lines connecting the front and rear lot lines at each side of the lot, drawn perpendicular to parallel side lot lines, or, if not parallel, measured across the rear of the minimum required front yard as established by the front setback. The following exceptions apply:

- (1) The width between side lot lines at the front lot line shall not be less than 72 percent of the required lot width.
- (2) In the case of lots on the turning circle of culs-de-sac or courts, the distance as measured using the chord length between the side lot lines at the intersection with the front lot line shall not be less than 67 percent of the required lot width. If the lot is one-half acre or greater in size, the lot width on culs-de-sac or courts shall not be required to exceed 60 feet and shall not be required to have the minimum lot width at the building setback line.
- (3) In appropriate circumstances as provided in this article, lot width may be measured on the basis of actual frontage on a road right-of-way or street rather than perpendicular to the side lot lines as provided in this definition, when the property abuts a road right-of-way or street existing prior to the adoption of the ordinance from which this article is derived. In order for lot width to be determined based on actual frontage within the confines of the lot, the acute angle created by the front property line and the parallel side lot lines shall be no less than 60 degrees and the obtuse angle created shall be no greater than 120 degrees. In these instances, the front property line shall be determined by drawing a straight line between the front most points of the side lot lines where they intersect the road right-of-way or street.

Marina means a facility or structure which provides mooring, docking, anchorage, fueling, repairs or other services for watercraft. Docks accessory to single-family uses are exempt from this definition.

- (1) *Residential/recreational marina* means community docks serving subdivisions, condominiums or private organizations having three to 30 slips, inclusive. No fueling, wastewater pumpout or repair facilities are associated with these marinas.
- (2) *Commercial/recreational marina* means facilities having greater than 30 slips or any marina which has fueling, wastewater pumpout or repair facilities serving recreational interests.
- (3) *Commercial/industrial marina* means facilities serving largely commercial interests. Fueling facilities, repair, wastewater pumpout facilities and commercial sale of fish, including loading and shipping activities, are

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permitted within this category.

Materials recovery facility (defined in F.S. § 403.703 [1997]) means a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

Medical clinic means medical facilities for the diagnosis and treatment of outpatients.

Mining and smelting operations.

- (1) Mining involves the excavation of solid minerals, including but not limited to clay, gravel, phosphate, lime, shell and shells (excluding live shellfish), stone and sand, from any mine, quarry, pit or other real property, when the mine, quarry, pit or other real property is under common ownership involving a minimum size of 50 acres; except the definition of mining does not include the following:
 - a. Earth-moving operations which are incidental to agricultural pursuits.
 - b. Site preparation and finish grading for permitted uses.
 - c. Dredging activity under necessary approved permits.
 - d. Construction and maintenance of drainage canals when such activities are approved by the county engineer.
 - e. Earth-moving operations which are a part of county-approved construction, such as subdivision improvements or excavations for a structure approved under a valid building permit.
 - f. Installation of utilities.
 - g. Excavation relating to the accessory use of land and drainage when the excavation is to be refilled upon completion of the excavation, such as excavation relating to the placement of septic tanks and drainfields and grave-digging operations.
 - h. Construction of swimming pools under a valid building permit.
 - i. Excavation related to foundations of any building or structure done under a valid building permit.
 - j. Excavation where no excavated materials are sold, whether

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directly or indirectly, or transferred from one parcel of land to any noncontinuous parcel of land.

k. Land alterations.

- (2) Smelting operations include activities relating to the processing, by any means, of any materials excavated from any real property located within or outside of the county. This definition shall apply notwithstanding the fact that the materials are transported to the site of the smelting operations from another noncontiguous parcel of property.

Mobile home means a modular unit which is designed for temporary or permanent single-family residential use and which is mobile as defined by F.S. ch. 320, and is built on an integral chassis with an attached running gear. A mobile home shall be constructed to comply with federal mobile home construction and safety standards promulgated by the United States Department of Housing and Urban Development. All mobile homes used for residential purposes shall have a license from the state division of motor vehicles pursuant to F.S. ch. 320. Further, all regulations contained in F.S. ch. 319 shall apply. If a mobile home is no longer eligible for a title certificate under F.S. ch. 319, the structure shall no longer be considered a mobile home. This definition does not include modular units defined as travel trailers in this section.

Modular coach means a modular unit residential building, either a mobile home as defined in F.S. ch. 320, or a modular factory-built mobile housing unit that falls under the jurisdiction of the state department of community affairs under the Housing Act of 1971. The unit may have parts and sections fabricated and assembled as a complete unit at a central plant and moved to a permanent site, or component parts may be fabricated in one area and assembled as a complete structure permanently upon a site. Units may have wheels and axles when transported to the site but are intended to remain permanent structures once located or assembled on a site.

Modular factory-built home means a modular unit residential building comprised of one or more dwelling units, or habitable rooms or component parts thereof, which is either wholly manufactured or is in substantial part constructed in central manufacturing facilities and bears the approval of the state department of community affairs under the provisions of the Housing Act of 1971. However, this term does not apply to mobile homes as defined by F.S. ch. 320.

Motel. See Hotel.

Mulching facility means a facility where landclearing debris is mechanically chipped or ground for landscaping material, landfill cover or fuel.

NAICS codes means classifications established by the North American Industrial Classification System (NAICS). Some uses will be defined only by their NAICS classification.

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Nonconforming use. See division 2, subdivision II, section 62-1181, of this article.

Non-governmental organization (NGO) means a non-profit organization conducting life science, ocean, coastal and marine research, or environmental science research in partnership with a government entity.

Office and research means office buildings and research facilities (NAICS 5417, 54138).

Open space, usable common.

- (1) Usable common open space means a total amount of improved usable area including outdoor space permanently set aside and designated on a site development plan as recreational or open space for use by the landowners or residents of a development. Such usable space may be in the form of active or passive recreational areas, including but not limited to playgrounds or tot lots, golf courses, beach frontage, nature trails, lakes, bikeways or community recreational facilities with such amenities as a swimming pool, tennis courts and shuffleboard courts. The usable common open space shall be improved to the extent necessary to complement the residential uses, meet the minimum needs of the residents, and contain compatible and complimentary structures for the benefit and enjoyment of the landowners or residents. For the designation of usable common open space per the percentage-of-site requirement of an applicable zoning classification, the following shall be excluded (except under certain conditions defined in this definition), but exclusions are not necessarily limited only to these areas and facilities:
 - a. All easements and drainage facilities.
 - b. Parking areas, including all pavement areas, grassed median strips or areas, and parking space grassed island separators.
 - c. Rights-of-way.
 - d. Private streets, roads and driveways.
 - e. Minimum setback areas.
 - f. Spacing between all structures.
 - g. A structure's space envelope, defined as an area lying within 7 1/2 feet of any exterior wall of the structure. The structure space envelope shall be shown by dotted lines on the site development plan.

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h. Open space areas having a width of less than 40 feet or a size of less than 4,000 square feet, unless such areas are specifically improved for recreational use as set forth in this subsection.

(2) The zoning division director may, however, accept all or portions of easements, setback areas and spacings between structures (in excess of minimums) as active usable common open space, provided the following conditions are met:

- a. All proposed facilities to be located in such areas shall be compatible with the active and passive recreational facilities examples stated in this subsection;
- b. Facilities shall not represent an inordinate, unjustifiable amount of superficial low-cost facilities such as picnic tables and nature trails which are placed indiscriminately and have little definable function within the context of the site's natural amenities or recreational and open space needs of the development's future residents;
- c. The proposed facilities or activities shall not interfere with the primary function of the easements, setbacks or structure spacings; and
- d. No facility shall lie within the space envelope of any proposed structure.

(3) The zoning division director may also accept areas located within designated parking areas, provided each area has a minimum size of 2,000 square feet and a minimum width of 30 feet for a trapezoidal or trapezium shape, or either a minimum 25-foot base or a 50-foot height for a triangular shape.

(4) In any residential project requiring common recreation and open space, active recreation shall be provided at a rate that varies with the density of the project according to the following table. The remainder of the required total common usable recreation and open space requirement may be devoted to passive recreation.

Density (units per acre)	Active Recreation (acres per 100 units)
Less than or equal to 10	1.5
More than 10 and less than or equal to 15	1.0
More than 15	0.5

(5) The exclusion of water bodies which are in whole or part drainage easements may be waived by the board of county commissioners after

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adequate measures are provided which guarantee in perpetuity a level of water quality acceptable for recreational purposes. Private navigable canals shall not be utilized in fulfilling the common open space requirement beyond that which is allowed for water bodies as provided in this definition.

- (6) In the PUD zoning classification, if golf courses are used to partially fulfill common open space requirements, such areas may not exceed 60 percent of the required open space. Where a golf course is utilized to partially fulfill the open space requirement, other facilities to meet the active residential needs of children and adults shall be provided. All water areas included as part of the open space requirement, other than private canals, shall be permanent water bodies and shall be improved with docks or piers and shall have a three to one minimum sloped edge extending at least 20 feet into the water areas and planted with grass and maintained around all sides so not to harbor mosquitoes, insects and rodents, unless it is determined by an environmental review of the water body that such slope or improvements would be detrimental to the ecology of such water body site. A slope of three to one shall be utilized with seawalls.

Orphanage means one or more buildings used for the semipermanent 24-hour care of orphans or other children deprived of parental care, operated by a public agency or a philanthropic or charitable organization, but shall not include a foster home or correctional institution, or commercial enterprises operated by such organization or any party acting on its behalf.

Overriding public benefit means the result of a development action by a private propertyowner that substantially preserves, restores or enhances those natural functions which define and make up the Conservation/Environmental Area I classification provided for by the conservation and coastal zone protection elements of the county comprehensive plan. An overriding public benefit shall include but not be limited to proposals which preserve, restore or enhance the floodplain, wetland or prime aquifer recharge functions and provide for dedication of associated lands to the county or other acceptable public entity or agency.

Parking lot means an area or plot of ground used for the storage or parking of motor vehicles either for compensation or to provide an accessory service to a business, industrial or residential use.

Passive recreation. Recreation uses are considered passive where very minimum alteration of vegetation, topography or other native features is necessary, and the actual use and enjoyment of the site amenities requires only a small amount of physical effort by an individual. Activities which are considered passive include but are not limited to hiking, nature observation, primitive camping, nonmotorized boating, shelling, swimming, picnicking, archeological or historic preservation, and hunting or fishing as provided for by the state fish and game laws. Site alterations which are considered

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acceptable for passive activities are exemplified by boardwalks, picnic areas, wildlife feeding areas, outdoor educational displays, observation stations, archaeological or historic markers, and paths and trails for walking or hiking. Areas which may be considered for passive recreation areas include wetlands and associated uplands, wildlife habitats, floodplains, vegetative communities including native vegetation to meet landscaping requirements, water bodies and aquifer recharge areas.

Performance Overlay District means a geographically defined area that encompasses one or more underlying zones and that imposes additional requirements above that required by these underlying zones. "Performance Overlay District (POD)" shall impose additional requirements upon any industrial use seeking to locate within the POD. These additional requirements would surpass the underlying zoning classification requirements and any other regulation that was less stringent than those listed in the POD.

Pets means those animals and fowl normally domesticated in the United States, typically obtained at pet shops, and kept in or around the home for pleasure rather than utility, e.g., dogs, cats, canaries, mynahs, parrots, parakeets, fish, rabbits and rodents and excluding animals defined by the state as class I or class II wildlife, as set forth in Rule 68A-6.0022(2), F.A.C. Pets are permitted in any GU or residential zoning classification unless otherwise prohibited in section 62-2108, pertaining to farm animals and fowl.

Plant nursery means a full service retail sales establishment which sells plants that are purchased wholesale from off site. Accessory items can include packaged fertilizer, seed, mulch, and topsoil, as well as other packaged items commonly associated with a retail plant nursery, as long as such items are stored inside of a solid or screened structure. However, the sale or outside storage of bulk items, and/or the on-site storage of commercial vehicles or heavy equipment, shall be prohibited in the BU-1 or agricultural zoning classifications, except with a conditional use permit for "plant nursery (with outside bulk storage of mulch, topsoil, etc.)" in BU-1 as provided in section 62-1942, or a "landscaping business" in the agricultural classifications as provided in section 62-1837. A BU-2 or Industrial zoning classification is otherwise required for such use.

Private heliports shall apply to all sites used or intended to be used for the landing and take-off of private helicopters for residential purposes.

Professional office means a building providing office space for use by a person or persons engaged in an occupation generally classified as being professional in nature, including but not limited to the following: appraisers, architects, attorneys, accountants, engineers, doctors, dentists, osteopaths, chiropractors, optometrists, realtors and other similar or related professions. Specifically excluded from such use is the display, sale, storage and delivery of goods and merchandise.

Public benefit means the result of a development action by a private property owner that preserves, restores or enhances the floodplain, wetland or aquifer recharge functions; or a proposal that substantially enhances the compatibility of land uses or

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alleviates the public's burden regarding capital expenditures for essential services in the area of a transfer district.

Public building means a structure owned and operated by a municipality, county, state or federal government or any agency thereof and utilized for a public service or purpose.

Recovered materials (defined in F.S. § 403.703 [1997]) means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. Recovered materials as described above are not solid waste.

Recovered materials processing facility (defined in F.S. § 403.703) means a facility engaged solely in the storage, processing, resale or reuse of recovered materials. Such a facility is not a solid waste management facility if it meets the conditions of F.S. § 403.7045(1)(F).

Residential social service facility (RSSF) means a governmental, nongovernmental, nonprofit or for-profit facility providing an alternative to institutional placement, in which a caretaker provides 24-hour-a-day care to assigned residents at a location separate and apart from the assigned resident's own parents, relatives or guardians, and assists such assigned residents to the extent necessary for them to participate in normal activities and to meet the demands of daily living. Residential social service facilities shall include foster homes, family shelter homes, group homes, adult congregate living facilities, and treatment and recovery facilities, as defined in this section.

Resort dwelling means any single family dwelling or multifamily dwelling unit which is rented for periods of less than 90 days or three calendar months, whichever is less, or which is advertised or held out to the public as a place rented for periods of less than 90 days or three calendar months, whichever is less. For the purposes of this chapter, a resort dwelling is a commercial use. For the purposes of this definition, subleases for less than 90 days are to be considered separate rental periods. This definition does not include month-to-month hold-over leases from a previous lease longer than 90 days.

Right-of-way line. The right-of-way line shall be considered a property line, and all front setback requirements provided in this article shall be measured from the right-of-way line. Side and rear yard depths shall be measured from property lines, except that the depth for corner lots shall be controlled by the right-of-way of the side street.

Roadside stand means any motor vehicle, stall, building, tent, counter or other method or device which is being utilized for the temporary display, storage or sale of any type of goods or services and which shall not exceed 30 feet.

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Screened porch (as used in subsections 62-1340(5), 62-1341(5), 62-1342(5), and 62-1446(d)) means non-conventionally built screened rooms, typically with aluminum frames and roofs, which cannot be enclosed into living area. The reduced rear setback provision in these sections is not intended to apply to conventionally built screened rooms, having permanent roofs and supporting posts and beams that are structurally similar to the residence, which could later be enclosed to permanent living spaces.

Self storage mini-warehouse means a fully enclosed building having individual compartmentalized units, bays or lockers which are to be used only as storage space for customer's personal property.

Setback means the minimum horizontal distance between the lot line and the building line. When two or more lots under one ownership are used, the exterior property lines shall be used in determining setbacks.

Shipyards means the use of property for the building, constructing, manufacturing, assembling, repairing, maintaining or overhauling of water vessels outside of a substantial structure.

Shopping center (as used in section 62-1906(4)) means a community commercial shopping center in a BU-1 or BU-2 zoning classification, having at least 21,800 square feet of floor area, an anchor retail tenant, and space for other retail users. The complex shall be used primarily for retail uses as opposed to professional, medical, office, warehouse or other use.

Sign. See article IX of this chapter.

Single-family attached residential means a multiple residential unit structure that is architecturally and characteristically compatible with single-family detached residential lifestyles. These residential characteristics include architectural styles which share a common wall. Each residential unit shall be contiguous to and have direct access to a designated yard, and have its own entrance separate from any other unit within the same structure.

Skateboard ramp means a curved or flat surface, elevated on one or more sides, for the use of skateboards, bikes or other nonpowered wheeled vehicles in the performance of various maneuvers.

Solid waste disposal facility means any solid waste management facility which is the final resting place for solid waste including landfills, incineration facilities that produce ash from the process of incinerating municipal solid waste.

Solid waste management facility (defined in F.S. § 403.703 [1997]) means any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal,

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recycling, processing or storage of solid waste, including biomedical waste and construction and demolition debris. The term does not include recovered materials processing facilities which meet the requirements of F.S. § 403.7046, except the portion of such facilities, if any, that is used for the management of solid waste.

Special use means a special use permit previously issued by the board of county commissioners under section 25 of the county zoning regulations between October 1, 1967, and August 2, 1973. Existing uses that were established under special use permits shall be considered non-conforming uses, unless they are listed as permitted uses in the zoning classification within which they are located. If the use permitted by a special use permit has not been established, or has been discontinued or abandoned pursuant to sections 62-1182 and 62-1183, the special use permit shall be considered invalid.

Story means that portion of a building included between the surface of any floor and the surface of the next floor above it, or, if there be no floor above it, then the space between such floor and ceiling next above it.

Structure means anything constructed or erected, the use of which requires rigid location on the ground, or attachment to something having permanent location on the ground, including but not limited to supporting walls, signs, covered screened enclosures and any other covered area; provided, however, neither a fence, nor a non-supporting wall acting as a screen or fence, nor an elevated boardwalk shall be considered a structure for the purpose of setbacks.

Telephone switching facilities. Telephone switching facilities utilizing a standardized unmanned building requiring only one parking space and occupying less than 300 square feet are exempt from site plan requirements and minimum square footage requirements in all zoning classifications.

Tenant dwelling means a single-family dwelling to be used by yearround employees, on the basis of one dwelling unit per five acres of land, provided such dwellings are accessory to the principal use of the land. A tenant dwelling may be a mobile home pursuant to the requirements of section 62-1843.

Townhouse means a single-family dwelling unit constructed in a series or group of attached units with property lines separating such units.

Transfer of development rights (TDR) is used to describe the severing of development rights from a specific parcel of real property and transferring the development rights to another separate and specific parcel of real property, or to another portion of the same parcel of real property.

Transfer station (defined in F.S. § 403.703 [1997]) means a site the primary purpose of which is to store or hold solid waste for transport to a processing or disposal facility.

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Transportation means the facilities for land, air, or water transportation NAICS codes: 481-Air, 482-Rail, 483-Water, 485-Transit and ground passenger, 486-Pipelines, 485-Transit and ground passenger is not an industrial use and is regulated by the applicable zoning classification where permitted.

Treatment and recovery facility means a secure or nonsecure facility which provides residential rehabilitation services, including room and board, personal care and intensive supervision in casework with emphasis on treatment and counseling services. Such facility may include an outpatient component, and shall include but not be limited to psychiatric residential treatment programs, drug and alcoholic rehabilitation programs, group treatment centers, and group treatment centers for status offenders. Such facility shall be licensed by the state department of health and rehabilitative services as a treatment and recovery facility. If such facility is not licensed by the state department of health and rehabilitative services, it must be approved by the county division of health and social services.

Trucking. NAICS 484.

Unincorporated areas means any land in the county not lying within the boundaries of a duly incorporated village, town or municipality.

Variance. See article II, division 5, section 62-251, of this chapter.

Volume reduction plant means a solid waste management facility which incinerates, pulverizes, compacts, shreds, and bales, composts, or otherwise accepts and processes solid waste for recycling or disposal.

Waste disposal. NAICS 562.

Waterfront. Any site shall be considered as waterfront property provided any or all of its lot lines abut on or are contiguous to any body of water, including a creek, canal, bay, ocean, river or any other body of water, natural or artificial, not including a swimming pool, whether the lot line is a front lot line, a rear lot line or a side lot line.

Worship, place of means a building that by design and construction is primarily intended for conducting organized religious services, including associated accessory uses such as schools, day care facilities, recreational facilities, meeting halls, and counseling.

Yard means an open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward. (Code 1979, § 14-20.04; Ord. No. 93-26, § 1, 11-10-93; Ord. No. 95-03, § 1, 1-26-95; Ord. No. 96-46, § 7, 10-22-96; Ord. No. 97-46, § 2, 12-2-97; Ord. No. 98-03, § 2, 1-29-98; Ord. No. 98-11, § 1, 2-26-98; Ord. No. 98-28, § 1, 4-30-98; Ord. No. 99-07, § 5, 1-28-99; Ord. No. 99-33, § 1, 5-6-99; Ord. No. 99-45, § 1, 8-12-99; Ord. No. 2000-03, § 1, 1-11-00; Ord. No. 2000-07, § 1, 1-25-00; Ord. No. 2000-30, § 1, 5-9-00; Ord. No. 2000-50, § 2, 10-31-00; Ord. No. 00-51, § 2, 10-31-00; Ord. No. 01-07, § 5, 2-20-01; Ord. No.

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01-020, § 1, 4-24-01; Ord. No. 01-63, § 1, 10-2-01; Ord. No. 2001-71, § 1, 11-1-01; Ord. No. 02-014, § 1, 3-19-02; Ord. No. 2002-42, § 1, 8-27-02; Ord. No. 2002-49, § 1, 9-17-02; Ord. No. 2002-58, § 1, 11-12-02; Ord. No. 02-62, § 1, 12-17-02; Ord. No. 2003-03, § 2, 1-14-03; Ord. No. 03-30, § 1, 7-22-03; Ord. No. 03-39, § 1, 8-12-03; Ord. No. 04-17, § 2, 5-6-04; Ord. No. 04-29, § 1, 8-5-04; Ord. No. 2005-25, §§ 1, 2, 5-19-05; Ord. No. 05-27, § 1, 5-19-05; Ord. No. 06-003, § 1, 1-10-06; Ord. No. 06-21, § 1, 4-25-06; Ord. No. 06-26, § 1, 5-4-06; Ord. No. 06-36, § 1, 5-24-06; Ord. No. 06-37, § 1, 7-11-06)