

**TOWN OF MALABAR**  
**PLANNING AND ZONING ADVISORY BOARD**  
**REGULAR MEETING**  
**WEDNESDAY NOVEMBER 13, 2013**  
**7:30 PM**  
**MALABAR COUNCIL CHAMBER**  
**2725 MALABAR ROAD**  
**MALABAR, FLORIDA**

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**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 – 10/23/2013  
**Exhibit:**    Agenda Report No. 1  
**Recommendation:**                                Motion to Approve
- E. **PRESENTATION:**
- F. **ACTION:**
  - 2. **Applicant for Planning & Zoning Alternate: Mr. George Foster**  
**Exhibit:**    Agenda Report No. 2  
**Recommendation:**                                Action
- G. **DISCUSSION:**
  - 3. **Final Discussion on Code Requirements for Assisted Living Facilities**  
**Exhibit:**    Agenda Report No. 3  
**Recommendation:**                                Discussion
- H. **ADDITIONAL ITEMS FOR FUTURE MEETING**
- 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: November 13, 2013**

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

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**SUBJECT: Approval of Minutes**

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**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 October 23, 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  
OCTOBER 23, 2013 7:30 PM**

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

**A. CALL TO ORDER, PRAYER AND PLEDGE:**

Meeting called to order at 7:30 P.M. Prayer and Pledge led 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:	
BOARD SECRETARY:	DENINE SHEREAR

Denine stated that also present were Mayor Beatty and Clerk Franklin

**C. ADDITIONS/DELETIONS/CHANGES:** Chair changes E. Public Hearing to F. Action as a PH is not required. No objection.

**D. CONSENT AGENDA:**

- 1. Approval of Minutes** Planning and Zoning Meeting – 10/9/13

**MOTION:** Bud / Liz to approve minutes of 10/09/2013 as corrected:

Corrections: Grant pg 4/68 someone as sb has

To sb of

L iz 5/68 1<sup>st</sup> line Korn is explaining that Grant Reilly say sb says

3<sup>rd</sup> para take the

7<sup>th</sup> para definition of a sb an

6/68 then social Ritter explains that we should

6<sup>th</sup> para 2<sup>nd</sup> line need

We are reading as if it

You are required

Under new business affected burden take ed off

Line starting with Korn said owner sb owned publicly

Ryan is explaining that everyone understands the way that was affect sb effect

7/68 add Palm Bay to sentence

2<sup>nd</sup> para 2<sup>nd</sup> line Ritter they sb Palm Bay – Denine said they said they

**VOTE:** All Ayes.

**E. PUBLIC HEARING: (moved to F. Action)**

**F. ACTION:**

- 2. Request for a Change to Land Use Designation and Rezoning from CL to R/LC located at: 1490 Marie Street, Malabar. Applicants, Mr. and Mrs. Murdoch.**  
**Exhibit:** Agenda Report No. 2

**Recommendation:**

Action to Council

Chair called applicant to podium.

Thomas Murdoch introduced himself and wife Joanne as the new owners of the "old school house" and stated they are currently doing restoration work on the building. The change they are asking for is so they can reside upstairs and use the downstairs for weddings, events, parties, meetings, etc. They have created an LLC for the business they propose. They would like to live upstairs so they can oversee the use of the downstairs when it is rented.

~~Chair asked if the Brevard Hardwoods would remain. Murdoch explained that he would not. He is looking for another location. Murdoch thinks the world of Jim Noble and will miss him when he is gone. He has done much to help them along the way.~~

Chair asked if anyone from audience wanted to speak. No one came forward.

Chair asked Board if they had any questions for Mr. Murdoch. Chair asked Mr. Murdoch to take a seat.

Liz asked if they would have to do anything re: parking. Leeanne said it was a lesser use than CL.

Chair asked for motion for approval for discussion purposes.

**MOTION:** Grant / Ryan to recommend approval of Ord 2013-67 for the change to the land use designation and the rezoning request as submitted by the Murdoch's at 1490 Marie Street, Malabar, FL.

Discussion: Grant said it is not a lesser use. Having it open for parties and get-togethers. That is what Jim has used it for until now. Ryan said there is another old school house in Sebastian that was renovated and it is great. Murdoch's said they have been there. Ryan said he was heavily involved with the discussions re: the Town possibly buying the building. Although it would be a good purchase there were requirements the Town could not afford.

Mr. Murdoch said they know the Nobles were good stewards of the property and they also will be good stewards of the property. He would like to time the opening of the time capsule with the Town at SpringFest or some other Town event. Ryan said it is a welcome addition to Town. Denine showed the picture of the new paint job they had done.

Chair stated that he recommends approval based on the following points:

1. Follows the Proposed Land Use changes that the Board recommends for the future of the Town.
2. Meets the intent of the R/LC Land Use District definition in Article 3 in the Land Development Code.
3. Cultural and Civic Activities are a Permitted Use in R/LC per Table 1-3.2 in the Land Development Code.
4. Meets the parameters in Table 1-3.3(A), Size and Dimension Regulations for R/LC.

Chair called for any other discussion. None.

Chair called for **Roll Call Vote**: Board did roll.

Krieger, Aye; Reilly, Aye; Ryan, Aye; Ball, Aye; Ritter, Aye;. Motion carried 5 to 0.

This part of the meeting ended at 7:51 and Franklin left.

**G. DISCUSSION:****3. Continued Discussion on Code Requirements for Assisted Living Facilities****Exhibit:** Agenda Report No. 3**Recommendation:** Discussion

Chair stated Board should continue discussion on Code Requirements for ALF's and start with "Off-Street Parking". First, there was a speaker's card from Mr. Paladin.

Mr. Paladin, gave an update that basically they are putting their package together to go forward with the next phase, which is our entitlement stage. Once we get approved, I am confident that sooner or later we will get this passed and I will get approved so I am going forward with that. I will be going to New York next week to validate the budget so I will be able to obtain the funds and have them ready to go. Basically everything we talked about I am in agreement with, so I am just here to see how the wording goes to see if I can be of any help and as far as the "Off-Street Parking", I sent some information on that and they are all about the same, basically any of those fit because I have so much room around the building, I can meet that Code and meet your requirement. Paladin thanked the Board for all their hard work and if he could be of any assistance he is there.

Reilly we need to go to "Off Street Parking" and finalize this and put the package together then go back through everything.

Reilly go to page 66/68 re: email information from Gary Parris. Reilly made the ratio so they were all the same, 2:3 or 2:5 ,

- Brevard County has a ratio of 2:5, that equates to 12 per 30
- City of Palm Bay has a ratio of 1: 2.63 that is 11 per 30
- Melbourne has ratio of 2:3, that is 20 per 30

Reilly, go to page 68/68 it says "plus one (1) space per employee on the largest shift", I would like to have this in the words. Reilly explains that when they submit the site plans for review, would the number of employees be on site plan? Reilly is figuring how the Town can judge this, how many parking spots per employees. Ritter adds that they would have to go through all these calculations before they get their permit. Paladin responds, that our marketing study will reflect that. Reilly says if you have "x" amount of beds and "x" amount of staff, like 2% or 10%. Paladin says that in the marketing study it does break that down and does say based on three, 8 hour shifts. We are getting an updated marketing study and we can get that study. Paladin says that you can recommend that this be put on the site plan when it is submitted. Reilly is explaining that the parking is based on the size of the project.

Ritter, Chapter 408 (FS) all the administrative stuff that they go through they have to submit, financing, studies they do and all I think they have to tell them the size of staff and ratio to beds. Paladin adds that he has this on his site plan for "Reflections" project in Indian River County.

Grant suggest

- Brevard County if we have 200 beds, we work on 5 number we get 80 spaces
- Palm Bay 76 spaces
- Melbourne 133 spaces

Reilly says that Melbourne is the most spaces, 12 out of 30 is like 1/3. Ritter suggests that this is assisted living, these are active people I prefer Melbourne 2 spaces per 3 beds, because a majority of these units are singles so they are going to have cars. It is rural.

Leeanne asks that isn't this in addition to staff that we are adding spaces for the largest shift that the other shifts would not have as many so they would be available in the evening. Grant says you have to have enough parking spaces for the busiest time; otherwise people are parking down US 1. Reilly adds that you want it to be self contained.

Krieger has question, if any of these places use eco stones? I like the high figure and the lower density, but I don't like pavement that much. I don't know development wise or design wise whether it is easier to put in. Krieger used for example Ballard Park. The majority of the time the parking lot is empty, but you need it when you need it and you don't want people driving on the grass, but is there a way of mixing and matching that in the design, just a thought. Other than that I go for maximum parking spaces, but allow a percentage of them in this other format, which would be an easier format to follow.

Paladin comments actually what you are recommending is a little harder but it can be mixed in with regular parking spaces so you can break it up so you don't have rows and rows of asphalt, it is not an attractive look, so it can be worked in and taking this recommendation is why I am here every time, we take notes and do our designs to give to our architects.

Grant suggests that there are several semi-permeable surfaces you can use, many are grid with gravel or grass or combo gridded. Your heavy traffic is going to have to be pavement, if you have overflow parking that would work for it.

Paladin says that my landscaping architect will design that in with the landscaping; it is a good recommendation for plan.

Ritter comments that we would ask for that many parking sites, but not require that they all have to be paved. Reilly commented it would part of the site plan review not for what is being done here tonight.

Reilly suggestion is 50% for parking; Ritter says some of these did not make sense to me. Reilly suggests 50 %for parking, of residents/ beds

Suggestions for Off Street Parking:

Reilly suggests it read like Melbourne's does:

"One (1) space per two (2) residents/beds plus one (1) space per employee on the largest shift"

Reilly comments that after all the analogies he did 50 % is the best suggestion. This is just an idea and we will re-look at all of this when it comes back as an Ordinance.

Ritter likes Melbourne's Code, there is no Off-Street Parking. Reilly adds it is all self contained parking. Ritter comments that we are rural and we should have the room. Krieger comments that more is better, is there no statistics per beds or employees. Ritter responds that it depends on size and level of services provided.

Paladin comments that the 125 bed project he is doing right now the employees is like 44 employees, that is not one shift. Paladin comments that the permeable surface will have to be approved.

Leeanne comments on permeable surfaces, you have to take into consideration the mobility of the people and the hazards to these people, their dexterity may not be like ours. You have to be care of the surface. Ritter adds to make employees park in this area of permeable surface.

Reilly suggests to the Board:

1-9.2 Parking spaces required by use.

Page 58 & 60

Make it #31

Assisted Living Facilities. Two (2) parking spaces per three (3) residence/beds. Plus (1) parking space per employee on largest shifts.

~~Reilly asks if this is the same ratio for all the adult family care homes. Ritter says it depends on the service, some do not have staff, and they live there.~~

Leeanne asks if it would create a problem if it was put by hospitals and nursing homes. Reilly responds it is going to be a separate row. Leeanne was just thinking if someone was looking for parking requirements for these types of facilities, if they are all in the same general area. Reilly says if you look at #11 on page 58/68 that is what Leeanne is meaning.

Reilly talks about putting it under (D) "Off-Street Loading Regulations", there is not going to be any off street parking so it is not needed in this section,

Reilly and Ritter were discussing "Day Care Facilities" would come under the sq ft. parking regulations. Ritter suggests the "homes" are not the same as the "facilities." Reilly agrees.

Reilly suggests #32

Adult Family-Care Homes.

Ritter looked up family care homes, level 1 and 2, on page 38/68 under Part II add "Refer to Chapter 429 & 408", Ch. 408 for all the health care refers to all the Administrative procedures.

Krieger suggest having a preamble explaining to refer to relevant Chapters.

Ritter is discussing Part II Adult Family-Care Homes and different levels, in application they only refer to 1 to 5 persons, anything more they refer to Community Residential Homes like a planned community it is more controlled like a public entity instead of private. Leeanne suggests that on #32 Family Care and in parentheses put (1 to 5).

The Board is discussing the Table 1-3.2 under Adult Family-Care Homes to remove levels and only have 1 to 5.

Ritter explains that "Adult Family-Care Homes" is a home and it is not regulated like they do the other ones, Reilly explains that we can, the Town can regulate for parking. Grant suggests that we don't want to address that because we don't have enough information. Ritter suggests page 87-89/160 in ALF book. It only relates to the zoning requirement, it is a family type atmosphere. The consensus of the Board is no #32 under Sec 1-9.2.

Reilly will check "Adult Family-Care" levels

**Reilly and Board is going over Tables and Verbiage for Corrections:**

Page 39, Table 1-3.2 going over table for corrections, rm on bottom is capital RM.

Page 40 Table 1-6.1(B) delete under "Adult Family-Care Homes no level-4 or level-2

Page 45 of 68 Ritter reads in application no more than 5, take out both level just leave 1 to 5

Page 36 of 68 *draft verbiage*

Reilly asks Board if there are any other words you would like to add in preamble for "Public Health" add under A. Hospital to refer to Chapters 295 & 408, B. Nursing Home & Related Health Care Facilities, refer to Chapters 400 & 408.

Reilly tells Sherear he will update Article III with tonight's editing and forward to me

Page 37 of 68 2.Social Welfare preamble 408 – 430.

- A. Community Residential Homes refer to Chapters 408 & 419, B. Assisted Care Communities, exceeding should be exceeding & or at end of that sentence should be of refer to Chapters 408 & 429

Page 38 of 68 Part II delete levels and refer to Chapters 408-429. Part III refer to Chapters 408-429.

Sherear reminds Chair Reilly and Board about inserting automatic updates from the Florida Statutes. Ritter adds, "any FS are inclusive". Reilly notes to get attorney to cover that. After 1. Public Health and 2. Social Welfare in the preamble.

Reilly suggests putting a final packet together. Reilly would like the lawyers "word file" for the Ordinance, He could come in on a Friday off and work to make the Ordinance. Ritter said let her know when you are coming and she would come over too.

**H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:** The second meeting in November will be cancelled.

**I. PUBLIC:**

Carl Beatty, I got an issue and the Council sent me here. Ritter says to state your name and address, Carl Beatty 2944 Century Oaks Circle, Malabar

Two important things that just came up:

- Sober Homes how to control them what happens is they go in and buy a foreclosed home and put bunk bed, 4 people per room and there is "a loop hole" in the law that allows this, as long as they do a urine test once a month they can do this and it slips through the cracks and you cannot control them. If they do treatment then they are controlled. So right now everyone is trying to figure out what we can do to stop that, because what they do is pick up a cheap house and they sublet each bed in the house and make a small fortune. It is happening down south, and Melbourne I think has one.

Grant comments that he thought we addressed this and said we did not think it was not a good fit for our Town. Carl explains that you don't have a choice; Ritter says they are unregulated, so how would you regulate them. Carl explains that is what is happening, whether you lobby Tallahassee to pass laws or find some way to control through zoning, but you have to do it before they get here, because once they're in they are "grandfathered in". Because they go into residential areas and this is allowed, it is called a "Sober Home". I do not know the fix on it yet because no one has come up with it. I want to let you know that the Leagues working on it everybody is working on it trying to find some way to control it.

- People buy "Non-Conforming" properties they buy it and sell it, and subdivide it and sell it. You can't stop someone from selling anything, you can sell one foot off your property you are allowed to do it. The Town is stuck with it, now we have these little houses on substandard lots and once they burn to the ground they can't build.

Carl says that I am just letting you know about these two things coming down the pike and everybody is working on how to handle it. They don't have the answers yet.

Krieger asked about Sober Homes and are they rentals; Carl responds yes they rent out the beds. Krieger says that as soon as you rent I thought the state is involved with rentals. Carl said they check it, it's under the disability act because they are addicted or whatever then they fall in that category but because they don't do any rehab they don't fall in the review process and they are in between, they don't watch them and we can't do anything and there they are. Carl is explaining to the Board what the "Sober Homes" are whoever is in there whether it is addiction alcohol or drugs and the only thing to qualify is a urine test once a month or something to prove they are. Ritter asks do they need license. Carl responds, "No". Ritter says than how do we regulate something that does not need a license. Carl says that is the problem the way the rules are. Krieger says that is a business, Ritter adds it is a rental that has to pay taxes supposedly. Leeanne asks how they receive money, Carl responds by renting beds.

Reilly asks what do I do. Carl says I am just letting you know it is there, it is brought up at the League dinner, it is an issue and everyone is panicking. Reilly says that Bonnie sent an email about this, I thought we were going to be directed by Council to do something on this, I thought the lawyer was going to check into it to see if our Code complied to keep them out. I am going to throw it back to Council and Staff to direct the Board if it is needed. Carl commenting it is a bad situation and all these other cities say we can't do anything with them. Reilly says we were not directed to do anything. Carl says that next time he talks to Tobias he is going to ask him what can you guys do about this it is terrible.

The last item, I got requested by several people that there are issues with P&Z and some people weren't happy what is going on, I tried to be as diplomatic as possible and I brought up to Council Monday night and they indicated that if P&Z has a problem with an individual or whatever or issues or whatever they put it together and bring it back to them and whole Council nodded their head that that is what needed to be done. I did not say actual names or anything because I am second on line about stuff, I did not observe or hear anything directly and that is why I left it open. So if you have anything that is why I am here, I told them I was coming, and they want an answer, they want whatever the issues are brought forward so it can be dealt with in whatever way.

#### **J. OLD BUSINESS/NEW BUSINESS:**

Reilly had about "Sober Homes" to get direction

Reilly discussing about November 27<sup>th</sup>, is the Wednesday before Thanksgiving. I would like to not have this meeting. Also, December 25<sup>th</sup> is a Wednesday; there will no meeting on that date either.

Reilly says to take these two dates of the calendar, but I would really like to give the Council an Ordinance for their December 2<sup>nd</sup> meeting, so they can have two meetings to discuss it if needed because there has to be a "Public Hearing" and if it all happens in January that would be good. Sherear reminds of the advertising process. If we need a meeting on the November 19<sup>th</sup> or 21<sup>st</sup> the third week in November we can try it. I think we can do it all at the November 13<sup>th</sup> meeting.

Krieger thinks you are being pre-mature myself, I think there is other issues that have come up recently. Reilly say it is independent. Krieger says it has to do with the tables and that is the water and sewer problem and there are different people who look at things a different way and I would make it more specific that when a table says water and sewer means the water is there. It doesn't mean you are going to negotiate it. Reilly & Ritter said it is handled by the state; it is not us the check list in the application. Krieger is saying his understanding from the last meeting you sent the paperwork to the Council that you will hook up sewer system when it goes in front of your property. Reilly comments that is a total independent subject from us writing Code for Assisted Living. Krieger is talking about a table and the table says how many people you can have if you have water and sewer and here is how many if you can't. Ritter explains if it is not there then they would not be able open, the Department of Health is not going to give them a license. Krieger is discussing that things have changed since we lost the water utilities department. Is there a defense here, because now state law determines who hooks up and who doesn't? Ritter said it was at the last meeting and they are suppose to be working on that because Palm Bay can waive the requirements for mandatory hook-up if it goes by, Krieger says they can but they may not. Reilly said that is why it was brought to Council to address it. Krieger adds that the Town is losing a significant amount of sovereignty here. There are hundreds of people that are involved anytime anyone a mile down the road wants to say Palm Bay, I would like a sewer. Then everyone would be required whether they put a septic tank in last week will be required to hook up within 365 days. That means that we are not a Town anymore we are a City, because the definition between Town and City is the type of infrastructure they have. Reilly says our goal was to write an Assisted Living

Code that is what we are doing. Reilly explains that there is two "Public Hearings" after we are done you can go in front of Council. Krieger would like to see the verbiage added to this that infrastructure has to be in place, normally when you expand an infrastructure you do it one property at a time because it is there only huge major projects you see it 1 mile or 2 mile. There is no utility in this Town anymore. There is no defense to the people that own property. Reilly is explaining to Krieger that the project comes to the Town and the Town says where is water or sewer? Reilly says you do everything in parallel, if you are going to do a project you do things in parallel. The Code is one part of the parallel. Ritter says no business is going to put all the time, money, and effort into a building that they don't think they will have the utilities there to function. Ritter says the Town needs to get a waiver from Palm Bay because of the right-of-way. This was brought to Town Council last meeting. We cannot hold someone hostage to that. Reilly explains to Krieger that this has nothing to do with the Code we are writing; it is a separate issue with the Town,

Reilly good point to bring up if the site plan does come through that all the people that are along US1 that are going to be affected by this water/sewer line.

### **Under "New Business"**

Ryan for about the last year I have been getting copies of every P&Z and every Council meeting verbatim, by tape or CD. On Tuesday I listen to RTCM of 10/21/13 at the very end there was some comments made by the Mayor and Wayne Abare concerning calls they have had that there is problems with PZ everything I heard led me to believe the issue is Ms. Saylor's serving on this Board.

Speaking for myself I find Ms. Saylor's for the past 11 months or so, her presence on this Board has been counterproductive for the following reasons:

- The baseless Sunshine Ethics Complaint, which in her own complaint she said the conversation she was privileged to overhear was inaudible, so where is the complaint there. It was turned down out of hand by the Ethics Commission, and yet she is still on this Board.
- She also called the Chair "Bias" at the Officer selection meeting without any factual basis
- She has three times brought up disputes with neighbors that have nothing to do with the Boards function and at the disapproval of the Board at the last time. In addition there was a 20 minute speech of commentary made to Council on 9/23/13 concerning the problems with her neighbors and that is not a Town function problem either.
- The problem we run into the fact is she cannot be advanced as a full time Member based on the attorney's opinion because her husband serving on Town Council, and therefore cannot advocate with her.
- Town Code requires that there be 5 Members and 2 Alternates on this Board, she takes up a place where a true Alternate can be advanced, and she cannot. She serves no useful purpose at this point based on that situation. She was also passed over by this Board once already for advancement when Grant Ball was appointed to a permanent seat.

In addition there has been no apology of any kind for the baseless accusations made by her concerning members of this Board. The irony of it all she would probably make a good member if it wasn't for these behavioral problems, and with a heavy heart it has been a very sleepless 24-36 hours since I listened to the tape of the Council meeting from Monday night that I come up with this Motion, and I am going to make a Motion right now that this Board discuss and make a decision on whether she should be, whether there should be a recommendation to Council that she be removed from this Board. If anyone has any questions or discussion now is the time.

Krieger says he is angry, I have been angry for the last year. I have been angry when I was accused falsely a year ago. My time line to this we were introduced by Debby to Ms Saylor's Milucky and a month later her husband ran for and was elected and the next meeting I had some sort of ethics violation against me and not only me, but when that occurred I had to find a way of

not having to pay incredible amounts of money for a lawyer, so who did the Town and the League of Cities defending both you and I for something that was never brought to our attention at the time this occurred. It was brought to Council and then again without really be informed we get a letter from an Ethics Board, now that damages people whether or not your guilty or not guilty once somebody has written a complaint against you it is there it will never go away.

Time line again, the Town wrote a resolution placing Ms. Saylor Milucky as a member, and later on Grant, because Wayne Abare left, you apply the Town was very specific when you came that you were not being placed as a member of our committee you were being place as an Alternate.

~~The same correction that took place with Grant Ball, they had to rescind the Resolution and rewrite~~ it as alternate that is neither here or there, except for the fact that now because of the decision from the lawyer you cannot serve on this Board. You cannot be promoted, you cannot be a member of this Board, either the Council has to correct the Resolution making her an alternate again and then again making her a member which they cannot do so essential it is not just the things that have been done which are incorrect, I know false witness has taken place against you and I so I expected the Council to correct this over the last year. I expected it to go away by itself, I don't like bring these things up but structurally I cannot understand how we can maintain this Committee the way it is people have asked me about coming on board as alternates and they see people already there and they ask about the history and you don't want to tell them the history. Also I feel that almost everything I say here I have to watch out for what is being written and what's the next complaint that is going to take place and again no apology that is not good. How much is too much, damage of reputation. Krieger says to Reilly he understands you lost two clearances with your job, which is money. The Town spent money. If I had to hire a lawyer to do the same thing the League of Cities did for us it would not have ended there. Also, a few months ago we were threatened again by a Town Councilman that is wasn't over and something is going to occur so I still don't know if it has ended. Even with an apology and again the points that you made. You cannot be a member as long as your husband is a member of the Council, it doesn't make sense.

Ryan likes to add that Pat Reilly security clearance was dropped by two levels and that is serious stuff and it was all based on nothing. Krieger said it has not harmed me yet, I give people recommendations all the time. It was frivolous the complaint was groundless it was materially insufficient that is what the Ethics said. Ryan adds on its own merits.

Ryan adds I have lived with this and tried to reconcile this for the past year, I just cannot do it, and I had enough of this situation. I am asking this Board to seriously consider remedial action.

Krieger said the day before Bob Wilbur left, he said talk out your differences here and we didn't we waited for Council to come back.

Leeanne asked if she was allowed to speak and Reilly said you are allowed to discuss, she said she appreciates it. She said to Don that you approached me several times during the election and you called my office and you made certain statements to me and certain comments and statements about various people that are employees of the city and you made some very outrageous things, and I really did not put those in there. I left it alone. I was put on this Board prior to my husband's election. My husband's election had nothing to do with me being here. The Council can appoint me to, my husband cannot vote on it. The Council could elevate me to a position, if they so chose, as long as my husband recused himself from voting, Krieger and Reilly say they disagree with that. Leeanne goes on to say that probably wouldn't happen and I am not even concerned with that, but I truly honestly feel a lot of regret I never meant for anything to create any difficulty for Mr. Reilly.

Your comments to me, then you came to a Council meeting about several of things you had said to me in person and over the telephone, all of a sudden got brought up at a Planning & Zoning Meeting and I didn't know where they came from. I went to the Council with my complaint, hoping

the Council could resolve the situation. I was advised by several people at the Town level to file a complaint. I never re-filed the complaint because I was told I filed it with the wrong entity, that I needed to re-file it and I never re-filed, I never said another word and never done anything. I have felt that I couldn't come to you to apologize or to Pat and apologize because I would be violating some Sunshine Law by even discussing it, but I am truly sorry if created any difficulty, I never meant for it to create any difficulty I was hoping it could have been resolved at that meeting when I was told that I could no longer serve and I said I am not violating anything. You later learned that I wasn't but I never meant for it to escalate to the point that it did and I never felt that I could approach anyone outside this setting, and I do deeply regret if it created any difficulties whatsoever but I have not taken any steps or any measures or any advice from members of our Town, I am not talking about residents, I am talking about employees of the Town, I have not taken any advice to re-file or do anything and I have not or have no intention of filing anything. Again I apologize I absolutely did not mean for it to create any difficulty whatsoever. I appreciate the opportunities that you have allowed me to serve and I have enjoyed my service. Thank you.

Ritter comments that I don't understand how you can file a Sunshine violation with the Ethics Board and not think it was not going to cause a problem. Leeanne responds, "I wasn't thinking" and I was operating on some advice that was probably poor advice. Ritter says that you ultimately made that decision. Leeanne responds, "I did" Ritter says we as a Board have to work together, so why would you not make a decision for your own working ethics, you have gone to the Sunshine violations you had to have know the effect it would have had, it is not a light thing to do. It is a very serious thing to charge someone with sunshine violation and Ethics Board violations and you made those charges, nobody else.

Ryan would like to add I was seat between you and Pat; the only vacant seat was Bob Wilbur. I could hear what they were talking about; they were talking about the election that just took place and you say you couldn't hear it I don't believe that, because I could and you were sitting next to me. Leeanne responds that I walked into the room and you were not here, this was prior to a meeting this was not during a meeting. Ryan says he believes he got here before you did. Ryan says to Leeanne that she is not telling the truth and she is making up a story. Reilly comments that we got the facts.

Krieger adds hurt feelings are hurt feeling and apologies are apologies. But carnage took place. It did not help the Town it cost the Town. I still say that functionally I have a problem with the nepotism no matter what the lawyer says I find a structural problem in the Town with what I consider the ~~????~~ Board in the Town the Council. It came up at the election and we were assured that there was no problem, but there is a problem the problem is the decision that the lawyer got back from what I understand it that at the present time if I left you cannot appoint and because there is a nepotistic problem. There is a structural problem here not just a problem with personalities. I will watch what I say much more carefully not that I did anything wrong ever. The results are the proof of the pudding, and I actually kind of miss Bob, I have suspicion that the main reason he left was this rift. I would ask you to step down because of the structural problem. I don't want to go any further, I do think it is for the betterment of the Town because if there were alternates that wanted to take the seat because we have a vacant seat now that could possibly do the learning process and take a seat on this Board. Right now you can't do that and your husband might be there 6 years.

My understanding is that there is nothing you can do. Technically what should happen is they should correct the Resolution as they did with Grant Ball and make sure when you came on this Board that you were an alternate that is not what it said my understanding is legally the lawyer said there is not any place you can go so you are an alternate, you got to back and id you want to become a member here they have to put another Resolution together but they cannot physically do that.

Grant asks a question, he was not here at the time all this took place, if I am understanding everything, what I am understanding, is that Leeanne filed an ethics violation against Don Krieger and Pat Reilly for discussing issues while not session. Leeanne responds to Grant, "whether I can be on the Board or not". They were discussing your ability to serve on the Board. Ryan says be careful how you answer that. Leeanne says to Ryan, "I am sorry you were not here" I did not see you when I walked in this room I got here. Leeanne says I do not want to argue this point with you it had nothing to do with you. And it really did not have anything to do with Pat; it had more to do with Mr. Krieger and his attacks during the campaign and then the mudslinging. I get a phone call in my office the Saturday after the election from Mr. Krieger, I was approached during the election by Mr. Krieger and told that I could no longer serve that I would have to step down that it was a violation and there was no basis, before my husband even ran for office we had made sure there was not a problem but Mr. Krieger approached me three times election day and made a phone call to my office, Grant asks what did that have to do with Ethics violation. Grant and Ritter ask if that was a rebuttal to get back at Don and sucked Pat into it and ruin his reputation. Leeanne says, "No". Then I come to a P&Z meeting early and the only people here are Debby, Denine, Pat, and Don. This is 15 to 20 minutes before the meeting and I did not file the complaint at that time. I went to two people here at Town Hall and discussed it with them. I brought it before Council and said this is what happened. I was hoping that Council would say ok, we shouldn't do this so let's not do this anymore and everybody play nice. That is all I hope would be accomplished by going to Council. But Council chose not to address it or inquire about it. So I talked with people here at Town Hall again and I was advised by two of them that I needed to file this. I did not think ahead. Ritter asked if they were here. Leeanne says who here and Ritter says the people who advised you to file.

Grant is trying to understand that due to "bad blood" between you and Don Krieger that you may or may not have heard something between Pat & Don and told people that they were in violation of the Sunshine Law. Leeanne says, "I did not know I had bad blood". Grant says that is horrible. Do you know how hard it is to get a security clearance, I know I have had them, it is impossible. Leeanne responds that she had no idea.

Ryan asks if that would have made a difference, and Leeanne says, actually it would have.

Reilly comment is that in Europe there is thing called "a vote of no confidence", that is when you lose respect, trust, and confidence in a member of the Board or an officer of the Board. I truly believe the Board has lost all three of those. It is a parliamentary procedure, but not a part of Roberts Rules of Order and what I would like is a motion from this Board of "a vote of no confidence", a consensus from the Board on removing Leeanne as an alternate from the Board. Ryan said he will make motion.

Motion: Ryan/Ritter Recommendation to Council the consensus of the Board is a vote of no confidence to remove Ms. Leeanne Saylor from the P&Z Board Vote:

Krieger says all this is going to solve is going through another procedure talking to another lawyer, have the lawyer say we have to sit down in front of Council and that will not go any where. I have a structural problem with the fact you are taking up space, your taking up technical space of an alternate that could possibly advance to the Board. I don't know how long these Board members are going to remain Board members, but then we have space for one other alternate. My problem there is something broke here either way, but that is all I can say.

Reilly said it would be easier if you resigned, if you want to do that. Krieger said I think the Town lawyer should have known that when he got his decision. Reilly said he tried but I could not get an answer out of him. Reilly said it is up to you, I will take a vote there is a motion and discussion, and I am giving her an out that she did not give me and Don. Leeanne says she appreciates it, there is a motion and it ok to vote on that go ahead with that, all I am going to say to that I would like the

opportunity to catch my breath and if its ok to I'd like to send you an email later, I just want to have an opportunity to digest and it may not never have to go to Council. Reilly says in 2 minutes it is going to Council. Your decision is now.

Krieger suggest tabling this or we can make a recommendation that we want a specific decision. Reilly said we did what we were supposed to do. Ryan says the motion is not to give time the motion is for a decision. If you resign between now and the Council meeting then it will not be on the Council meeting. Ryan says we still have a motion and a second. Reilly says we are still in discussion and I am trying to give her an out.

Reilly wants the chemistry of the Board back; the Board has lost respect for you and confidence in you, every time I come to a meeting I am so scared that I have to do everything right and I have to look over my shoulder and it frustrates me. It has been hard for 11 months now. Ryan says you could have been a good member but your attitude and actions indicate otherwise. The best thing you can do for this Board is to resign or we can take it to Council and they can make the decision, but your decision has to come now. Reilly says that you have two weeks.

Motion: Ryan/Ritter Recommendation to Council the consensus of the Board is a vote of no confidence to remove Ms. Leeanne Saylor from the P&Z Board Vote: roll call

Kreiger aye

Pat aye

Ryan aye

Grant aye

Ritter aye

Motion carries 5.0

**K. ADJOURN**

There being no further business to discuss, **MOTION:** Ryan / Ritter to adjourn this meeting.

**Vote: All Ayes.** The meeting adjourned 9:52 P.M.

BY:

\_\_\_\_\_  
Pat Reilly, Chair

\_\_\_\_\_  
Denine Sherear, P&Z Board Secretary

\_\_\_\_\_  
Date Approved:

**TOWN OF MALABAR**  
**PLANNING AND ZONING**  
**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2**  
**Meeting Date: November 13, 2013**

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

**SUBJECT: Applicant for Planning & Zoning Alternate: Mr. George Foster**

We received an application for an alternate position on this P&Z Board. The applicant is Mr. George Foster; he has been a Malabar resident for 8 to 9 years. Mr. Foster will be present at this meeting.

This will be on the Council Agenda as an "Action Item" on November 18, 2013 meeting.

**ATTACHMENTS:**

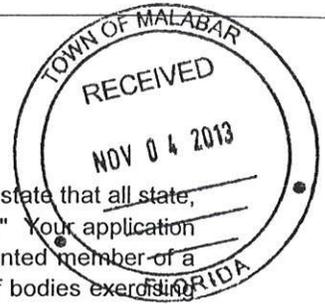
Application for Mr. George Foster dated November 4, 2013

**ACTION OPTIONS:**

Recommendation to Council for P&Z Alternate

TOWN OF MALABAR

APPLICATION FOR APPOINTMENT TO BOARD/COMMITTEE



NOTE: Florida's Public Records Law, Chapter 119, Florida Statutes states, "It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person." Your application when filed will become a public record and subject to the above statute. In addition, any appointed member of a board of any political subdivision (except members of solely advisory bodies) and all members of bodies exercising planning, zoning or natural resources responsibilities are required to file a financial disclosure form within 30 days after appointment and annually thereafter for the duration of the appointment as required by F.S. Chap. 112.

NAME: George Foster TELEPHONE: 223-4472
ADDRESS: 1205 Malabar Rd Malabar, FL 32950
EMAIL: GeorgesFoster@bellsouth.net

RESIDENT OF TOWN FOR 12 MONTHS OR LONGER: [X] YES [ ] NO

OCCUPATION: (If retired, please indicate former occupation or profession.)

Heavy Equipment Contractor, Registered nurse

PROFESSIONAL AND/OR COMMUNITY ACTIVITIES:

Maintain the Malabar / Marie St Public Works yard

ADDITIONAL INFORMATION/REFERENCES:

Brian Vail, Bud Ryan

Please select the Board that you would like to serve on by indicating first choice & second choice:

Board of Adjustment Planning & Zoning (alternate)
Parks & Recreation Trails & Greenways

By Town Charter, most boards require removal of members after 3 successive absences.

Signature of Applicant

Date 11/3/13

Please return this form to: Town Clerk, Town of Malabar, 2725 Malabar Road, Malabar, FL 32950-4427, Email: townclerk@townofmalabar.org

Note: If you need more information concerning the duties of these Boards, please contact the Town Clerk. Please attach a copy of your resume to this application. You will be notified of the date of the Town Council Meeting that your application will be considered for appointment. You will need to plan to attend the Council Meeting.

I have been resident and business owner for 8 to 9 yrs. I currently in a semi-retired position that allows me additional available time to participate in the planning and zoning board. I have a major interest in the future of Malabar, appreciate the support of council. 16/31

**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 3**  
**Meeting Date: November 23, 2013**

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**Prepared By: Denine M. Sherear Planning & Zoning Secretary**

**SUBJECT: Code Requirements for Assisted Living Facilities (ALF)**

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**BACKGROUND/HISTORY:**

At the 10/23/13 Meeting the Board reviewed the Tables 1-3.2 and 1-6.1(B) along with the verbiage to create an Ordinance for ALF's.

Chair Pat Reilly, has received all the Board's suggestions and information for the ALF Ordinance. Pat has prepared a *draft* Ordinance with this verbiage using the last Ordinance that Attorney Bohne provided to this Board on 9/13/13, which was Ordinance (version #6). It is presented to this Board for final review and corrections then make a recommendation.

**ATTACHMENTS: (Please bring 3-Ring Binder from June 26<sup>th</sup> Meeting)**

- Pat Reilly Version of Draft Ordinance #6 update 9/13/13 & Definitions (dated 11/6/13)
- Tables 1-3.2 & 1-6.1(B) Revised from P&Z Meeting on 10/23/13

**ACTION OPTIONS:**

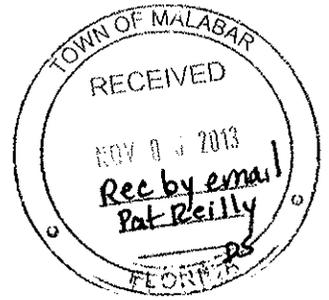
Board Discussion/Recommendation

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**Draft Ordinance**  
**For**  
**Assisted Living Facility**

**Submitted: 11/6/2013**

**By: Pat Reilly**

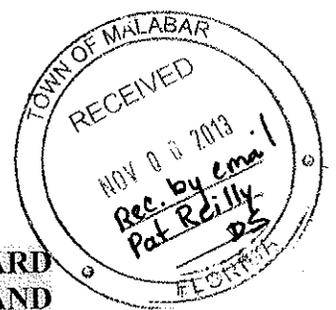


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Pat's Notes:

1. Karl to rewrite Title section.
2. Hospitals and Extended Care Facilities. Do we delete the Extended Care Facilities part of this and just keep the Hospital?? It's in the Charts as Hospitals and Extended Care Facilities.
3. How to address the Extended Care Facility if added. Also, see Section 6.
4. Sections 1-2.6.B(13). Public Health Facilities, B, Part 1. In the Long Term Care Facility, it has Assisted Living Facilities in it??
5. In Section 5, I changed the wording back to the original code but added "and Related Health Care Facilities".
6. Finish Section 6 definitions.

ORDINANCE NO. \_\_\_\_\_ (Revision #6- 9/13/13) (PTR)



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

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

**Section 1.** Sections 1-2.6.B is amended as follows:

"B. *Community Facilities.*

1. *Administrative Services (Public or Private Not-for-Profit).* Activities typically performed by not-for-profit private or public social services and utility administrative offices.

2. *Cemetery.* Property used for the interring of the dead.

3. *Child Care Services.* Activities typically performed by an agency, organization or individual providing day care without living accommodations for preteens not related by blood or marriage to, and not the legal wards or foster children of, the attendant adult.

4. *Clubs and Lodges (Not-for-Profit)*. Activities typically performed by a group of persons for social or recreational purposes not operated for profit and not including activities which primarily render services which are customarily carried on as a business for profit.

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

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

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

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

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

~~8. *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.~~

~~118. *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.~~

~~129. *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.~~

10. *Public Health Facilities*

Refer to Florida Statutes (F.S.) Title XXIX, Chapters 381 thru 408 for the definitions and requirements of the following Public Health Facilities.

A. Hospital

"Hospital" means any establishment that:

(a) Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and

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

However, the provisions of this chapter do not apply to any institution conducted by or for the adherents of any well-recognized church or religious denomination that depends exclusively upon prayer or spiritual means to heal, care for, or treat any

person. For purposes of local zoning matters, the term "hospital" includes a medical office building located on the same premises as a hospital facility, provided the land on which the medical office building is constructed is zoned for use as a hospital; provided the premises were zoned for hospital purposes on January 1, 1992. Refer to Chapters 395 and 408.

B. Nursing Home and Related Health Care Facilities

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

Part I Long-Term Care Facilities

"Long-term care facility" means a nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility.

Part II Nursing Homes

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

Part III Intermediate, Special Services, and Transitional Living Facilities

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

Hospitals and/or Extensive Care Facilities are not considered Adult Care Facilities as defined herein. (Do we need this statement??)

~~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.~~

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

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

13. Social Welfare Facilities

Refer to Florida Statutes (F.S.) Title XXX, Chapters 408 thru 430 for the definitions and requirements of the following Social Welfare Facilities.

A. Community Residential Homes

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

There are 2 levels of Community Residential Homes:

Level 1 is between 1 to 6 residence/beds

Level 2 is between 7 to 14 residence/beds

B. Assisted Care Communities

Part I Assisted Living Facilities

“Assisted Living Facility (ALF)” means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator. Refer to Chapter 408 and 429.

There are 3 levels of Assisted Living Facilities:

Level 1 is between 1 to 5 residence/beds

Level 2 is between 6 and 15 residence/beds

Level 3 is 16 residence/beds or more

In the RM-4 and RM-6 zoning districts, an ALF Factor of 3 will be used to determine the residence/bed density. For example, RM-4 is allowed 4 units per acre multiplied by the 3 ALF Factor is equal to 12 residence/beds per acre. RM-6 is allowed 6 units per acre multiplied by the 3 Assisted Living Factor is equal to 18 residence/beds per acre.

Part II Adult Family-Care Homes

“Adult Family-Care Homes” means a full-time, family-type living arrangement, in a private home, under which a person who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders who are not relatives. Refer to Chapters 408 and 429.

Part III Adult Day Care Centers

“Adult Day Care Centers” or center means any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services. Refer to Chapters 408 and 429.

Adult Care Facilities. Any facility regulated by the State of Florida Agency for Health Care Administration and meeting the criteria and requirements of the provisions of Chapter 400 Parts I and II, Florida Statutes, as amended from time to time; and Chapter 429, Parts I – III, Florida Statutes, as amended from time to time. Such facilities are permitted as conditional uses as provided for in Table 1-3.2 (Do we need this statement?? Also, do we add it to 10, Public Health Facilities??)

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

•••

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

- Have accessibility to major thoroughfares;
- Have potential to be served by a full complement of urban services;
- Contain sufficient land area to accommodate good principles of urban design, including sufficient land area to provide adequate landscaping and buffers to separate existing as well as potential adjacent land uses of differing intensities;
- Accommodate only office buildings and institutional land uses and shall expressly exclude residential uses (except those Community Facilities defined as Nursing Home Facilities in 1-2.6.B.10(B)), general retail sales and services, warehousing, and outside storage; and
- Frequently serve as a transition area which buffers residential uses located in one area from a nearby area which accommodates uses of a higher intensity.
- A Malabar Vernacular Style is required for all development along arterial roadways.”

•••

**Section 3.** Table 1-3.2 of Section 1-3.2 of the Malabar Land Development Code is amended to delete references to “Group Homes” and by deleting references to “Nursing Home (including Rest Homes and Convalescent Homes)” to read as follows:

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

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

(4) ALF Factor of “3” only applies to RM4 & RM6 for ALF’s

**Section 4.** Table 1-6.1(B) is hereby amended to delete references to “Group Homes” and by deleting references to “Nursing Home (including Rest Homes and Convalescent Homes)” and by amending Note (3) of Table 1-6.1(B) to read as follows:

Conditional Land Uses	Minimum Size Site	Minimum Width/Depth (feet)	Access Required to Street	Building Setback from Residential District/Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District/Nonresidential District (feet)	Perimeter Screening Residential District/Nonresidential District	Curb Cut Controls
						(5)	
<b>Group Homes</b>	<b>(3)</b>	<b>(3)</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>(7)</b>
<b>Nursing Homes</b>	<b>2 Acres</b>	<b>210</b>	<b>Paved</b>	<b>60/30</b>	<b>25/20</b>	<b>Type A/C</b>	<b>(7)</b>
Nursing Homes and Related Health Care Facilities	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
Community Residential Home							
Level 1 (1 to 6 persons)	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
Level 2 (7 to 14 persons)	3 acres	210	Paved	60/30	25/20	Type A/C	(7)
Assisted Care Communities							
I Assisted Living Facility							
Level 1 (1 to 5 persons)	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 2 (6 to 15 persons)	3 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 3 (more than 16 persons)	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)
II Adult Family- Care Homes							
(1 to 5 persons)	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
III Adult Day Care Facilities	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)

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“(3) Minimum spatial requirements shall comply with the ~~standards requirements~~ established by the ~~Florida Department of Health and Rehabilitative Services~~ Town of Malabar District Provisions.” (A suggested alternative from staff is: “(3) Minimum spatial requirements shall be the greater of \_\_\_\_\_ acres or the spatial requirements established by the State of Florida for such facility”)

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

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

“31. *Assisted Living Facilities.* One (1) space for two (2) residence/beds plus one (1) space per employee on the longest shift.”

**Section 6.** Section 1-20.2 of Article XX is amended by deleting the definition for “*Group Care Facility*” and “*Extended Care Facility*”. Add the following definitions:  
“*Public Health Facilities.* (Just copy from above??)  
“*Social Welfare Facilities.* (Just copy from above??)

**Section 7.** Table 1-3.3.A is hereby amended to provide for a minimum square footage of 1,200 square feet for single family homes in the RM-6 and R/LC zoning districts (**note to Town Council, the current table does not have any minimum square footage listed for single family homes in the RM-6 and R/LC zoning districts as it appears that this was inadvertently omitted and the Town has consistently interpreted the table to require 1,200 square feet for single family homes in the RM-6 and R/LC zoning districts**) (**This might have already been passed by Council**)

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

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

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

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

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

Council Member Wayne Abare \_\_\_\_\_

Council Member James Milucky \_\_\_\_\_  
Council Member Steven (Steve) Rivet \_\_\_\_\_  
Council Member Jeffrey (Jeff) McKnight \_\_\_\_\_  
Council Member Marisa Acquaviva \_\_\_\_\_

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Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida  
this \_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Town of Malabar  
By Steven Rivet, Chairperson

First Reading \_\_\_\_\_  
Second Reading \_\_\_\_\_

ATTEST:  
By \_\_\_\_\_  
Debby K. Franklin  
Town Clerk/Treasurer

(Seal)

Approved as to form and content:

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

REVISED from last P&Z (10/23/13) suggestions. Conditional(C) & Permitted (P) .

Table 1-3.2

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
Hospital and Extensive Care Facilities								C					C	
Nursing Homes and Related Health Care Facilities						C		C					C	
Community Residential Home														
Level 1 (1 to 6 persons)	C (3)				C	C								
Level 2 (7 to 14 persons)					C	C							C	
Assisted Care Communities														
Assisted Living Facility														
Level 1 (1 to 5 persons)		C	C	C	C (4)	C (4)					C			
Level 2 (6 to 15 persons)					C (4)	C (4)								
Level 3 (16 or more persons)					C (4)	C (4)								
Adult Family-Care Homes (1 to 5 persons)	C (3)	C	C	C	C	C					C			
Adult Day Care Centers					C	C		C			C		C	

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

(4) ALF Factor of "3" only applies to RM4 & RM6 for ALF's

REVISED from last P&Z (10/23/13) suggestions.

Table 1-6.1(B)

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
Hospital and Extensive Care Facilities	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)
Nursing Homes and Related Health Care Facilities	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
Community Residential Home							
Level 1 (1 to 6)	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
Level 2 (7 to 14)	3 acres	210	Paved	60/30	25/20	Type A/C	(7)
Assisted Care Communities							
I Assisted Living Facility							
Level 1 (1 to 5)	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 2 (6 to 15)	3 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 3 (more than 16)	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)
II Adult Family- Care Homes							
(1 to 5)	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
III Adult Day Care Facilities							
2 acres	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)