

TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY DECEMBER 10, 2014
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**
- D. CONSENT AGENDA :**
 - 1. **Approval of Minutes** Planning and Zoning Meeting – 11/12/14
Exhibit: Agenda Report No. 1
Recommendation: Request Approval
- E. PUBLIC HEARING:**
 - 2. **Land Use Map Amendment & Zoning Change for That Portion of Parcel 28-38-31-00-00750** aka 1300 Highway 1, Malabar, FL 32950 lying on the WEST side of Highway 1; Request to change from Residential/Limited Commercial (R/LC) to Commercial General (CG).
Applicant: KellWill, LLC, represented by Mr. William Carmine.
Exhibit: Agenda Report No. 2
Recommendation: Action to Council
- F. ACTION:**
 - 3. **Elhoim Christian Church Site Plan Review for two Parcels 28-37-36-00-00759 (1.62 acres) & 28-37-36-00-00760(1.38 acres)** aka temporary address: 2170 Malabar Road, Malabar FL 32950
Applicant: Mr. Scott Glaubitz, P.E. with BSE Consultants, Inc. representing Elhoim Christian Church
Exhibit: Agenda Report No.3
Recommendation: Action to Council
- G. DISCUSSION:**
 - 4. **Directive from Council Increasing the MBC Permitted in R/LC**
Exhibit: Agenda Report No. 4
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: December 10, 2014

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 November 12, 2014

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
November 12, 2014 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
	WAYNE ABARE
	VACANT
ALTERNATE:	GEORGE FOSTER
ALTERNATE:	VACANT
BOARD SECRETARY:	DENINE SHEREAR

C. NOMINATION

Ritter / Foster nominated Pat Reilly for Chair. Vote: All Ayes.
Abare / Ryan nominated Liz Ritter for Vice-Chair. Vote: All Ayes.

D. ADDITIONS/DELETIONS/CHANGES:

Chair said that George Foster will be a voting Member tonight due to two openings.

Reilly had additional items for H "Discussion":

- 1a. The Sunshine Law
- 1b. The US 1 Land Use & Zoning Change Ordinance (2014-018)
- 1c. To Recommend George Foster as a regular PZ Board Member

E. CONSENT AGENDA:

- | | |
|-------------------------------|---------------------------------------|
| 1. Approval of Minutes | Planning and Zoning Meeting – 10/8/14 |
| Exhibit: | Agenda Report No. 1 |
| Recommendation: | Motion to Approve |

MOTION: Ritter / Ryan To Recommend Approval of Minutes of 10/8/14 as corrected **Vote: All Ayes.** **Corrections:** Ritter page 5/27 5th sentence peruse = porous

F. PUBLIC HEARING:

G. ACTION:

H. DISCUSSION:

1a. The Sunshine Law

Reilly stated that we are a Board and we need to follow the Sunshine Laws that we have been given several times in the packets. There is no discussion amongst Board Members after the close of meetings (concerning Agenda items) only in a public forum.

1b. The Land Use/Zoning change for US 1 R/LC to CG (1300 Highway 1)

Reilly explained that it passed Council twice at "Public Hearings" 3 to 2 votes both times, but the Mayor "vetoed" it, at the last Council meeting when they tried to override the "veto" there was only four Council Members present and it has to be 4 to 1 to override the "veto". It failed 2 to 2.

Reilly suggested placing a new Ordinance in front of the new Council. I would like a recommendation for an approval from this Board to send Council a new Ord. Reilly explained that when an Ordinance gets "vetoed" it has to come back as a new Ordinance. The new Ordinance does address the east side of US 1 where the R/LC to CG does not apply to the riverside. (this was one of the Mayors complaints) Reilly suggested sending this new ordinance to Council where it will have to be another "Public Hearing."

Reilly said he would like to make a recommendation to Council so they can approve this new Ordinance so they can move forward. The lawyer may say it has to come back to P&Z as a "Public Hearing". Reilly pointed out that it already passed on this Board 4 to 1 in favor.

Reilly explained to the Board that there is nothing to discuss, it was discussed for three (3) months, and it is just a matter of reapplying the Ordinance to the new Council. The verbiage got changed per Mayors veto to exclude the east side of US 1. Ritter said that was not the only issue. Reilly said that was a major issue.

Abare said the Mayor had a problem with the 3.3 acres and said they could build the 5,000 sq ft without going to CG.

Ritter suggested that we need to look at our table and define it better. Reilly explained that they did not want big box stores along US1 that is why they rezoned it all R/LC. The 4,000 sq ft was intended for ½ acre.

The Board discussed clarifying R/LC.

Ritter said the project is not what is bothering people it the CG zoning. Ritter said the people that she heard from over the "veto" were glad the Mayor did what he did, it is spot zoning.

Reilly said that it is not spot zoning. Ritter said there is no CG contiguous to this property. Reilly said on the west side. Ritter said there is railroad right of way. Reilly said technically it is land against land.

Abare said that the Attorney didn't think it was spot zoning but didn't defend that. Foster said that the Attorney commented that this project would not be allowed in any other zoning other than CG. Reilly said that was because of square footage of the building.

Ritter said we should correct the 4,000 sq ft it would be more appropriate than changing the zoning. Reilly said the applicant comes in under the present laws. Ritter said the present laws are not interpreted correctly.

Abare said if we do correct the problem how would you go about it. Reilly explained using the .2 density against the acreage. Reilly said the marine store is not meant for R/LC it is meant for CG zoning.

Abare said that Willy's Attorney said the Mayor should not have had the authority to veto, it is quasi-judicial so his (Mayor) veto powers do not apply to those decisions. Abare said that Willy might have a reasonable argument. Abare said give the new Council an opportunity.

Ryan made an observation that we have a member in the audience who might shed the light on the issue.

Don Krieger 2345 Lineberry Lane, Ryan said that he had voted "no" on this project. Krieger said he didn't believe that CG is the only zoning designation that he can operate under. KellWill project is

not primarily marine; he is a motor type device. The CG zoning is too extreme of a jump. I am never against anyone doing with their land what they want to do. There is no limitation also this Board was working on R/LC definition. The R/LC may become the largest zoning in this Town. Krieger said he didn't see a problem with the project just a problem with spot zoning. It is spot zoning by the technical definition. There is a conflict.

Krieger said in the past the changes that were made are very complicated and problems will come up it does not mean you have to put the highest zoning possible.

Krieger said the gentleman (Willy Carmine) said specifically he is not using the waterfront for a Marine purpose. Reilly said general retail sales are only allowed in CG zoning. It does not fit R/LC even as it stands.

Abare said so much of zoning is subject to interpretation of this Board and Council. Reilly said that we should re-introduce what we have with the new Council.

Abare suggested sending a draft Ordinance to Council saying that our current zoning table appears to be in conflict with itself. In the R/LC the .2 and the 4,000 sq ft are in conflict with each other as far as larger parcels.

The Board discussed extensively Table 1.3-3a and R/LC definition.

MOTION: Abare/ Ritter Recommend to Council to Approve the application for a 10,000 sq ft building under the existing R/LC zoning after PZ's close review there was considerable discussion about Table 1-3.3(A) (Size & Dimension Regulations) about Commercial maximum building area of 4,000 sq ft the maximum pertaining to the 20,000 sq ft size whereas the maximum building coverage of .20 would pertain to total lot size.

Roll Call Vote: Abare, Aye; Reilly, Aye; Ryan, Aye; Foster, Aye; Ritter, Aye **Motion carried 5 to 0**
Discussion:

The consensus of the Board the "Motion" is a good solution.

1c. To Recommend to Council to make George Foster a Permanent P&Z Board Member

MOTION: Abare / Ryan Recommend Council Appoint Alternate Member George Foster as a Permanent Board Member. **Vote:** All Ayes

2. Continue Discussion re: Off-Street and Contiguous Parking

Exhibit: Agenda Report No. 2

Recommendation: Discussion

Reilly said this is all pretty much completed except for reviewing.

Page 16/27(P&Z Packet 11/12/14)

Foster suggested definition for:

Porous: Part-time for temporary like Church, Park, Fair, and Festival Parking must be up to specification of the Town Engineer, Town Planner, and Building Official a to composition, compaction, drainage and grade.

Sherear explained the definition presently is one that she provided the Board suggested combining the two definitions and bring back to next meeting and numbering 1 & 2 for Non Porous & Porous.

The Board discussed Section 1.9-2 (page 15/27 P&Z Packet 11/12/14)

Ritter made correction under "C" second line took out "with sale" and put in Not intended for.

Board would like clean copy of Section 1.9.2 with underline & cross outs only.

Krieger said bicycles are self propelled vehicle & golf carts all require a driver.

Definition:

Motor Vehicle/Vehicle – page 19/27 & 20/27 (PZ 11/12/14)

Ritter recommended for alphabetical order of *Parking* definitions.

The Board discussed definitions & asked staff to review the state definitions for "motor vehicles & vehicle.

3. Continue Discussion re: Future Land Use Maps and Defining R/LC

Exhibit: Agenda Report No. 3
Recommendation: Discussion

Ritter suggested on page 25/27 (P&Z Packet 11/12/14)

R/LC definition corrected 3rd line "limited/low...."

Ritter suggested anything over 10,000 sq ft should come before the Board and Council for review.

Abare suggested that any building over the 4,000 sq ft would come before the Board for Conditional Use to protect the Town.

Reilly said to work on the paragraph for a 20,000 sq ft lot anything greater than 4,000 is a Conditional Use.

The Board discussed on page 27/27 (P&Z Packet of 11/12/14) and clarifying the 4,000sq ft /or per 20,000 sq ft.lot size. Add a sentence that states:

➤ Any building larger than 4,000 sq ft would be considered a Condition Use.
 Add verbiage under R/LC.

I. ADDITIONAL ITEMS FOR FUTURE MEETINGS:

- Required Signage for Site Plan Review (Ryan)
- Public Notice requirements (Ryan)

J. PUBLIC

Don Krieger 2345 Line berry Lane discussed that in the newspaper (Florida Today) on Nov.4, 2014 about "overwhelmed sewers" it discussed that most infrastructure in Brevard County is terribly strained. The concern is about extending a sewer system into a rural town when the agencies are already stressed. The difference between City & Town, a city has infrastructure and a Town has very limited infrastructure. Krieger discussed about when the franchise (City of Palm Bay) was written it was to maintain what did already exist, not for future extensions. He reviewed the state statutes.

Krieger suggested in the future a moratorium on any future projects or buildings that would extend a sewer system into our town until the franchise is made to protect the people of the town. Krieger said he is worried about the infrastructure in Brevard is stressed.

Krieger stated that 24 million gallons of was dumped by Brevard County water system into Indian River Lagoon. We have the cleanest section of the whole area of the Indian River Lagoon of the whole system.

Other things Krieger discussed:

- To extend notification on projects beyond the 500 ft
- Draft minutes are used for recommendation and a lot of quick activity has been taking

- Parking in high density areas, if you build a house (2 spaces) double the parking suggested when you look at site plans you should look at the parking- RM 6 And R/LC are residential zonings not commercial

Krieger said that an ALF is an apartment house, it is a conditional use. Reilly explained to Krieger it has been taking care of.

Krieger said he liked being on the Zoning Board and he appreciated former Council people that just don't go home they continue to work with the Town like Wayne and Liz. Reilly said to Krieger that he hoped that he represented District 3 and represented the Town of Malabar while he makes his decisions on Council. Krieger responded that he always will.

Juliana Hirsch 1035 Malabar Road, Moratoriums are not good unless there is a real good reason for it. There are so many builders in bankruptcy it is terrible, don't consider a Moratorium until you know there is a reason for it.

K. OLD BUSINESS/NEW BUSINESS:

Old Business: none

New Business:

Reference to canceling meetings:

- Wednesday November 26, 2014 the meeting before Thanksgiving Cancelled Ryan/ Ritter
- Wednesday December 24, 2014 the meeting before Christmas Holiday Cancelled Ryan/ Ritter

Motion: Ryan/Ritter to Recommend to Cancel the following P&Z Meetings due to Holidays November 26, 2014 & December 24, 2014 All Vote: All Ayes

There is only one more meeting December 10, 2014. Reilly would like to finish Off-Street Parking, and in January send it to Council.

Sherear explained to the Board about the site plan that might be coming before them on December 10th. They (Elhoim Christian Church) on Malabar Road west of Marie Street on north side had introduced the project awhile ago.

Abare asked about having the PZ Meetings at 7:00 PM. The consensus of the Board said that would not work for them.

L. ADJOURN

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

BY:

Pat Reilly, Chair

Denine Sherear, P&Z Board Secretary

Date Approved: as corrected

TOWN OF MALABAR

AGENDA ITEM REPORT PLANNING & ZONING

AGENDA ITEM NO: 2
Meeting Date: December 10, 2014

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

SUBJECT: Land Use Map Amendment & Zoning Change for the portion of Parcel 28-38-31-00-00750 aka 1300 Highway 1, Malabar, Florida 32950 located on the west side of Highway 1, from Residential/Limited Commercial (R/LC) to Commercial General (CG); Applicant KellWill, LLC, Represented by Mr. William Carmine. (Ord 1-2015)

BACKGROUND/HISTORY:

Mr. Carmine's previous request had been approved by Council but vetoed by the Mayor. According to the Charter, in order to override a veto Council must have a favorable 4/5 vote to override and it did not meet that criteria and the veto prevailed.

The Attorney stated that the veto did not prevent the applicant from re-applying with the same request. Mr. Carmine submitted his second application on November 18, 2014 and re-posted his property. Another legal ad was run for this Public Hearing as well as one before Council on December 15.

The current application has indicated clearly that the request was solely for the portion of his property that lies on the west side of Highway 1. He has also indicated he would be willing to abide by certain stipulations/conditions at the site plan approval hearing as long as they did not restrict his ability to run his business. CG zoning is what this property has been historically.

The Mayor made some statements at the 10/6/14 meeting and some Board Members also made statements that were put in the respective minutes but are not correct. Although the applicant has riparian rights to the property on the east side of Highway 1 the application is strictly for the west side of Highway 1. His statement that the acreage on the application including the east side was incorrect. If the application was intended for both sides then the ordinance would have also included the request to change from CP to CG and it did not. In determining the gross lot size of a property, a property owner is permitted to use half of the adjacent public right of way in the calculation per the District Provisions Table 1-3.3(A), footnote #1. It was said that it wasn't clear what the size of the property or if the east side was included and that has been specifically addressed.

It was said he could have a change of heart once it is CG and put something in that would be outside of our land use plan and the Town would not like. That is also a misstatement. Any development or change in use requires a site plan to be submitted and reviewed and approved as we have done with the rehab facility proposed on Highway 1 and the boy's group home on Malabar Road. When the applicants came in to propose a spur to allow them to convert a house to a propane distribution center.

The Town of Malabar has been well served by our Comprehensive Plan and the Land Development Code. Staff has offered on numerous occasions to go over both the Code and the Comp Plan with anyone who has a question. We have also provided resource material to both Members and Council.

He also gave impression that the 4,000 sf maximum building coverage was a mistake because "if you have ten acres you are stuck at 4,000 sf MBC." It was the intent of the Town Council when they created R/LC to give relief to the existing home owners that had homes in what had become CG. Please see attachment of minutes from RTCM 10/17/1994 for evidence.

A municipality that has an adopted Comprehensive Plan cannot approve a land use development that is in conflict with such plan. That is why it is required to first amend the Comp Plan and then amend the zoning map. See attachment of P&Z Minutes of 2/14/1989.

The property involved in this request is over three acres. It has been vacant and for sale for many years. In the past it was a junk yard. Mr. Carmine proposes to relocate his successful business from G-V to Malabar so both of his businesses are in the Town of Malabar, where he grew up in and has worked with his family for almost 30 years.

Mayor said the request to change to CG would be a "heavier" use and with no contiguous property it would be spot zoning. The Town's professional Planner that we contract with has stated on the record that this is not spot zoning. The Land Development Code and Comprehensive Plans (past and current) planned for CG on the major collectors. The definition of "abutting" from our Code has been attached. There is no zoning classification between R/LC and CG. R/LC is mixed use in a commercial zoning; LC is strictly limited commercial with no reside

The Applicant has complied with all application procedures. The applicant will be going to Council on December 15 and Jan 5, 2015.

He is already a business owner in Malabar and desires to bring his other business from Grant/Valkaria to the Town of Malabar. He has outgrown his current rented premises and wants to build a 10,000 sf building on this 3.22 acre site. The current zoning does not allow for floor area in excess of four (4,000) thousand square feet. The property on the south side of Malabar Road is currently CG as is the property by the railroad tracks.

The method used to make these changes is by ordinance. This is considered a Small Scale Amendment and does not go to Tallahassee for review.

Council also gave direction that P&Z Board look at changing the permitted uses in R/LC so businesses like KellWill, LLC could build in existing zoning. That would require a Large Scale Comp Plan Amendment which would be much more expensive for the Town.

ATTACHMENTS:

- Re-submittal of Application for Land Use Amendment & Zoning Changes
- Proposed Ordinance 2015-01 providing for those changes
- Portions of LDC and Tables
- Portions of Minutes from P&Z and Council

ACTION OPTIONS:

Recommendation to Council

ORDINANCE 2015-01

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE COMP PLAN MAP AND ZONING MAP FOR THE THREE (3+/-) ACRES OF LOT 750 LOCATED ON THE WEST SIDE OF HIGHWAY 1 IN TOWNSHIP 28, RANGE 38, SECTION 31, NORTH OF MALABAR ROAD, AKA 1300 HIGHWAY 1, MALABAR, FLORIDA, FROM RESIDENTIAL/LIMITED COMMERCIAL (R/LC) TO COMMERCIAL GENERAL (CG); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; 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. The property is hereby re-designated on the land use map and rezoned on the zoning map from *Residential/Limited Commercial (R/LC)* to *Commercial General (CG)* for the property described as follows:

That portion of Lot 750 lying on the west side of Highway 1 in Township 28, Range 38, Section 31, Malabar, Florida.

Section 2. The Town Clerk is hereby authorized and directed to cause the revisions to the Land Use Map and Official Town Zoning Map as referenced in Article II of the Land Development Code to show the zoning change set forth above.

Section 3. The effective date of this ordinance shall be six (6) days following adoption by Council.

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 Grant Ball _____
- Council Member Brian Vail _____
- Council Member Don Krieger _____
- Council Member Dick Korn _____
- Council Member Marisa Acquaviva _____

This ordinance will become effective and considered adopted by the Town Council, Town of Malabar, Brevard County, Florida six days from the date of this meeting: _____, 2015.

(seal)

**BY:
TOWN OF MALABAR**

Mayor Carl Beatty, Council Chair

ATTEST:

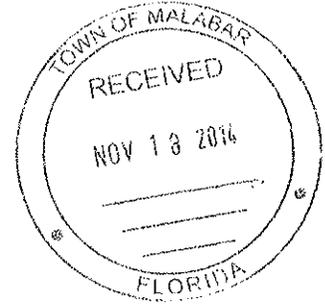
By: _____
Debby K. Franklin, C.M.C.
Town Clerk/Treasurer

Approved as to form and content:

Legally Advertised to
Comply w/ FS 125 and 166
Hearing at P&Z: 12/10/2014
Ord First Reading: 12/15/2014
Second Reading: _____

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR
2725 Malabar Road, Malabar, Florida 32950
(321) 727-7764 - Telephone
(321) 727-9997 - Fax



Date: 11/16/2014

APPLICATION FOR LAND USE AMENDMENT
AND ZONING CHANGE

Before completing this application, please refer to the attached:

- General Information
- Section 1-12.5 - Procedures for Adopting, Supplementing or Amending the Land Development Code
- Florida Statutes, Chapter 166.041(c)
- Article III - District Provisions

This application must be completed, with required attachments listed below, and returned to the Town Clerk's office.

Name of Applicant(s): KEL WILL, LLC Telephone #: 321 626-1835
Mailing Address: P.O. Box 537 Grant, FL 32949

Legal description of property covered by application: ATTACHED
Township: _____ Range: _____ Section: _____
Lot/Block: _____ Parcel Subdivision: _____
Other Legal: _____

Property Address: 1300 Highway 1 Malabar FL

- Current and Proposed Comprehensive Plan Land Use Map Designation. The current and proposed Comprehensive Plan Land Use Map designation for the subject property shall be identified: Current: RLC Proposed: CG
- Current and Proposed Zoning. The current and proposed zoning for the subject property shall be identified: Current: RLC Proposed: CG
- Existing and Proposed Use. The existing and proposed use of the subject property shall be stated: Current: RLC Proposed: CG

Fees:

- Rezoning - \$325 for first acre plus \$10 for each additional acre, which includes administrative time and mailing. Any advertising or additional costs* shall be paid by the applicant.
 - Land Use Charges - \$300 which includes administrative time and mailing. Any advertising or additional costs* shall be paid by the applicant.
 - Rezoning & Land Use Charges - \$625 for first acre plus \$10 for each additional acre, which includes administrative time and mailing. Any advertising or additional costs* shall be paid by the applicant. \$655.00
- (*Additional costs may include, but are not limited to engineering fees, attorney fees, etc.)

Required Attachments:

- Completed application, including Disclosure of Ownership (Pages 1 & 2)
- Fee of \$_____ in check or money order payable to *Town of Malabar*. We do not accept cash or credit cards.
- Radius package from Brevard County P&Z/GIS Department providing a list of names and addresses of property owners and legal descriptions of all property within 500 feet of the boundaries of the property covered by this application. The source of this list must be the most current records maintained by the Brevard County Tax Appraiser's Office.

William Carri
Signature of Applicant

Signature of Applicant

TOWN OF MALABAR
APPLICATION FOR LAND USE AMENDMENT AND ZONING CHANGE

Where the property is not owned by the applicant, a letter/letters must be attached giving the notarized consent of the owner/owners to the applicant to request a rezoning review of the property.

Please complete only one of the following:

I, _____, being first duly sworn, depose and say that I, _____, am the legal representative of the Owner or Lessee of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Applicant Date

Applicant Date

Sworn and subscribed before me this _____ day of _____, 20_____.

NOTARY PUBLIC
STATE OF FLORIDA

Commission No.: _____ My Commission Expires: _____.

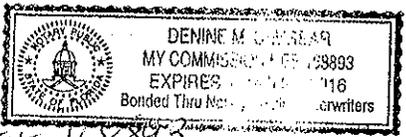
I, William J. Cornice, being first duly sworn, depose and say that I, William J. Cornice, am the Owner of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

William J. Cornice Applicant 11/16/14 Date
William J. Cornice Applicant 11/16/14 Date

Sworn and subscribed before me this 16 day of November, 2014.

NOTARY PUBLIC
STATE OF FLORIDA

Denise M. Shearer



Commission No.: March 23, 2016 My Commission Expires: 12/31/16

FROM KARL BOHNE

Process to Exercise a Mayoral Veto:

Pursuant to the Town's charter the Mayor shall have the power to veto any ordinance [Town Charter 2.04 (a)]. The Mayor shall exercise the within ___ days of the Town Councils vote, on second reading, to adopt the ordinance, except in the instance where an emergency ordinance is adopted on first reading [FS 166.041 (3) (c) and Town Charter 2.17 (b) and (e)] such veto shall be exercised within ___ days of its adoption on first reading.

If the Mayor exercises a veto the Mayor shall do so in writing and the Mayor shall state the grounds for the veto which veto shall be filed with the clerk, who shall present the veto and grounds for the veto to the council at its next scheduled meeting. The matter may not be removed from the agenda, postponed, or tabled. A four-fifths vote of all the members of the council shall then make the ordinance effective notwithstanding the veto of the mayor.

Agenda Item for Veto:

Veto agenda item is placed on the next council meeting agenda following the mayoral veto. The chair shall read Mayor's objections verbatim.

Neither the Town Council nor the Mayor can elaborate on or debate the veto or the stated grounds for the veto until there is a "Motion to Override the Mayor's Veto" that is seconded.

If there is a motion to override the veto and a second, then discussion and debate shall occur as normal, except the Mayor gets to speak first and last on the subject matter.

After debate, the motion shall be voted on. The vote shall be a roll-call vote. Four (4) affirmative votes are required to override the veto.

The Council cannot amend the ordinance which is the subject matter of the veto at the meeting where the issue to override the Mayor's veto is concerned. Should the veto pass nothing herein is designed to prevent a new ordinance from being proposed to amend the ordinance and should the veto fail nothing herein is designed to prevent a new ordinance from being proposed relating to the subject matter of the vetoed ordinance.

The Town council cannot reconsider a failed override vote or a vote that overrides the veto.

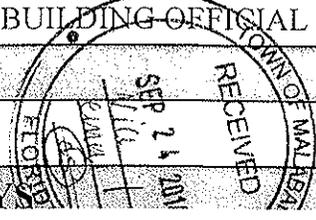
If there is no motion to override, or if a motion to override does not get a second, then the ordinance shall not pass and shall be ineffective due to the Mayor's veto.

New Format for Ordinances:

It now seems to me that the effective date provisions of our ordinances needs to change:

**Town of Malabar
BUILDING DEPARTMENT REVIEW SHEET**

PROJECT:	Zoning & Land Use Change from R/LC to Commercial 1300 Highway 1 Malabar, FL	DATE ROUTED:	9/ 15 /2014
BP.:	n/a	DATE TO BE RETURNED*:	__ 9 / 19 __ /2014
APPLICANT	Willy Carmine WillKell, LLC 321-626-1835	DEPT.:	MORRIS SMITH, TOWN ENGINEER x KEITH MILLS, TOWN PLANNER ← CHRISTOPHER ROBINSON, FIRE CHIEF ROGER CLOUTIER, BUILDING OFFICIAL
MARK IF NO COMMENTS:		REVIEWER'S SIGNATURE:	
PLEASE RETURN WITHIN 5 BUSINESS DAYS			
TOTAL HOURS WORKED ON REVIEW			
Included:			
COMMENTS: Surrounding Land Use – Residential/Limited Commercial to the east; Commercial General to the west; Conservation to the east.			
Surrounding Zoning – R/LC to the north and south; CG to the west; CP to the east.			
Lot meets minimum zoning requirements of requested zoning.			
Since CG is adjacent to the west, request is not a spot zoning. ←			
Proposed use, sale and repair of motorsports, would be a permitted use in compliance with requested land use and zoning, but not with current land use and zoning.			
There is one parcel near the northern town limits adjacent to US 1 and at least two parcels south of Malabar Road adjacent to US 1 that are currently zoned CG.			
Although all applications stand on their own, approval of this application would probably open up properties north of Malabar Road along US 1 to similar applications.			
If application is approved and applicant proceeds with development, submittal and approval of a site plan would be required.			
The purpose and intent for both current and proposed zoning districts can be applied to the subject property location on US 1.			



NOT
SPOT
ZONING

or delivery of a personal service of notice upon all property owners within a certain distance of the property to be affected, or the posting of a sign on the affected property.

revision of ordinance A revision of a zoning ordinance is distinguished from a zoning amendment in that the revision is considered to be more comprehensive. A revision usually results in a total reorganization of the ordinance and the map. The entire zoning process within the community is subjected to study, and, as a result of changing conditions either in the region, the area, or the municipality itself, a number of basic changes are proposed in the ordinance and map. Rather than do this on a piecemeal basis as an amendment, it is frequently found to be easier to do it as a comprehensive revision, which, in essence, means a rewriting of the ordinance and at least a re-examination of the map itself.

rezoning Rezoning is a familiar term applied to both zoning amendments and zoning revisions. It is the commonly accepted term that refers to any change in the zoning ordinance. Newspapers frequently refer to a simple, minor amendment as rezoning of an area. Rezoning can apply to a small area, a large portion of the municipality, or the entire community. The process that must be followed in rezoning is the same as for a zoning amendment or a zoning revision.

special permit A term coming into more frequent use because of the inclusion within zoning terminology of the special use permit technique. This is similar to the exception, but rather than being a permitted use as an exception, a degree of discretion is built into the ordinance by the terms that are set forth, giving either the zoning board or the planning commission the right of determination as to the compatibility of the proposed use with the comprehensive plan of the municipality, as well as other stated considerations. The special use permit will be indicated in the terms of the ordinance, and an elaborate procedure of application and review will be established. The idea is that the use of a special nature can be permitted in a zone in which it would not ordinarily be a permitted use because of the additional safeguards that have been placed in the special requirements.

spot zoning The amendment to a zoning ordinance that, by its very nature, is offensive to the comprehensive scheme of zoning. This may be an amendment dealing with one lot, several lots, or a large area. The determination of spot zoning is based more upon the resulting detriment to the comprehensive scheme of development than it is on the area to which the zoning is applied. As it is much more difficult to apply comprehensive zoning thinking to a small parcel or to one lot, there is a tendency for the designation of spot zoning to be applied to one-lot zoning, far more than to larger area zoning. As a result, the mistaken philosophy has been created that the term spot zoning applies only where you have amended a zoning map to draw a district boundary around a lot in one ownership. This does not necessarily hold true. If the zoning amendment can be shown to be a part of a comprehensive plan and it can clearly be indicated that it is a phase of a coordinated scheme of development, it is, in all probability, not spot zoning.



Detail by Entity Name

Florida Limited Liability Company

KELLWILL LLC

Filing Information

Document Number	L13000089550
FEI/EIN Number	46-3018485
Date Filed	06/21/2013
State	FL
Status	ACTIVE
Effective Date	06/20/2013

Principal Address

5110 S US HIGHWAY 1
GRANT, FL 32949

Mailing Address

PO BOX 587
GRANT, FL 32949

Registered Agent Name & Address

Kellie, Wright L
1322 Stadt Road NW
Palm Bay, FL 32907

Name Changed: 01/28/2014

Address Changed: 01/28/2014

Authorized Person(s) Detail

Name & Address

Title MGR

WRIGHT, KELLIE
1322 STADT RD NW
PALM BAY, FL 32907

Title MGR

CARMINE, WILLIAM J
2805 MALABAR ROAD
MALABAR, FL 32950

Annual Reports

Report Year	Filed Date
2014	01/28/2014

[Home](#) [Contact Us](#) [E-Filing Services](#) [Document Searches](#) [Forms](#) [Help](#)
Document Images

01/28/2014 -- ANNUAL REPORT	View image in PDF format
06/21/2013 -- Florida Limited Liability	View image in PDF format

[Copyright](#) and [Privacy Policies](#)
State of Florida, Department of State

Dana Blickley, CFA
Property Appraiser
Brevard County, FL



Property Details

General Parcel Information

Parcel ID:	28-38-31-00-00750.0-0000.00	Millage Code:	3420	Exemption:		Use Code:	1000
Site Address:	1300 HIGHWAY 1 , MALABAR 32950					Tax ID:	2850966

Site Address is assigned by Brevard County Address Assignment for E-911 purposes and may not reflect the postal community name.

Owner Information

Owner Name:	NOLA PRIME PROPERTIES LLC
Second Name:	
Mailing Address:	1928 S PATRICK DRIVE
City, State, Zipcode:	INDIAN HBR BCH, FL 32937

Abbreviated Description

Sub Name:	PART OF LOTS 2,3 AS DES IN DB 287 PG 359 EX RD R/W
------------------	--

Value Summary

Roll Year:	2012	2013	2014
Market Value Total: ¹	\$204,480	\$204,480	\$204,480
Agricultural Market Value:	\$0	\$0	\$0
Assessed Value Non-School:	\$204,480	\$204,480	\$204,480
Assessed Value School:	\$204,480	\$204,480	\$204,480
Homestead Exemption: ²	\$0	\$0	\$0
Additional Homestead: ²	\$0	\$0	\$0
Other Exemptions: ²	\$0	\$0	\$0
Taxable Value Non-School: ³	\$204,480	\$204,480	\$204,480
Taxable Value School: ³	\$204,480	\$204,480	\$204,480

Land Information

Acres:	3.22
Site Code:	114
Land Value:	\$204,480

1: Market value is established for ad valorem purposes in accordance with s.193.011(1) and (8), Florida Statutes. This value does not represent anticipated selling price for the property.

2: Exemptions are applicable for the year shown and may or may not be applicable if an owner change has occurred.

3: The Additional Homestead exemption does not apply when calculating taxable value for school districts pursuant to Amendment 1.

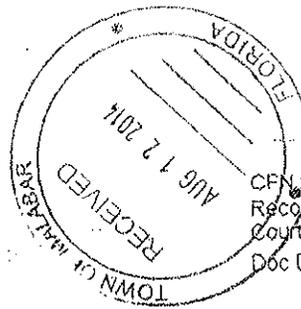
Sale Information

Official Records Book/Page	Sale Date	Sale Amount	Deed Type	Sale Screening Code	Sale Screening Source	Physical Change Code	Vacant/Improved
6486/1809	11/11/2011	\$100	QC	11			V
5951/1036	5/5/2009	\$348,500	QC	11			V
5392/1294	11/30/2004	\$575,000	WD	24	03		I
4304/0890	3/6/2001	\$100,000	WD	05	01		I
3398/0342	6/1/1994	\$60,000		99	03		I
2903/1646	5/1/1988	\$100	WD				
2824/0192	7/1/1987	\$100	WD				
2720/1089	8/1/1986	\$0	NN				

Sale screening and sale screening source codes are for assessment purposes only and have no bearing on potential marketability of the property.

THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:

GrayRobinson, P.A.
1795 West NASA Boulevard
Melbourne, Florida 32901
321-727-8100
ATTN: LKC



CFN 2014109641. OR BK 7137 PAGE 2345
Recorded 06/02/2014 at 03:18 PM, Scott Ellis, Clerk of
Courts, Brevard County
Doc D: \$1032.50 # Pgs:3

Actual Consideration: \$147,459.69
Property Appraiser's Parcel ID Number: 28-38-31-00-00750.0-0000.00

WARRANTY DEED

THIS WARRANTY DEED made the 29th day of May, 2014, by NOLA PRIME PROPERTIES, LLC, a Florida limited liability company, whose address is 1928 S. Patrick Drive, Indian Harbour Beach, FL 32937, (hereinafter referred to as "Grantor") to KELLWILL, LLC, a Florida limited liability company, whose address is 5110 S. US Highway 1, Grant, FL 32949, (hereinafter referred to as "Grantee");

[Whenever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations.]

WITNESSETH: That the Grantor, for and in consideration of the sum of Ten and no/100 Dollars (\$10.00) and other valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, all that certain land situate, lying and being in Brevard County, Florida:

SEE ATTACHED LEGAL DESCRIPTION MARKED EXHIBIT "A".

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land; that the Grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances whatsoever, save and except only for the following, to wit:

1. Ad valorem real property taxes for the year 2014 and any taxes or assessments levied or assessed against the Property subsequent to the date hereof.

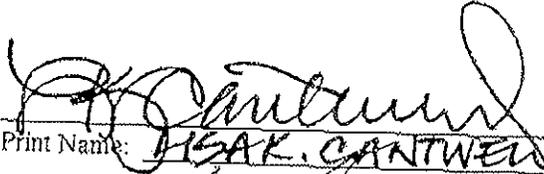
2. Restrictions and easements of record, if any, but this reference to such restrictions shall not serve to reimpose the same.

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

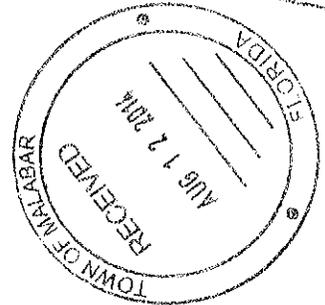
GRANTOR:

NOLA PRIME PROPERTIES, LLC, a Florida limited liability company


 Print Name: LISA K. CANTWELL

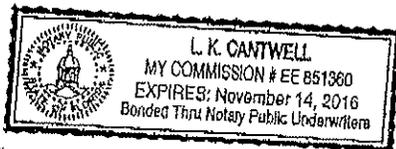
By: Christopher A. Layman
 Its: Manager Member


 Print Name: Karen Loraine



STATE OF FLORIDA
 COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 29th day of May, 2014, by CHRISTOPHER A. LAYMAN, as Manager Member of NOLA PRIME PROPERTIES, LLC, a Florida limited liability company.



Personally known, or

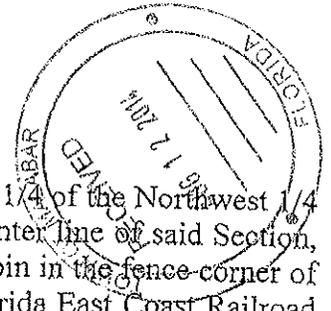
Produced identification

Type of Identification Produced FLORIDA DRIVERS LICENSE

(Notary Seal)

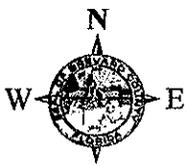
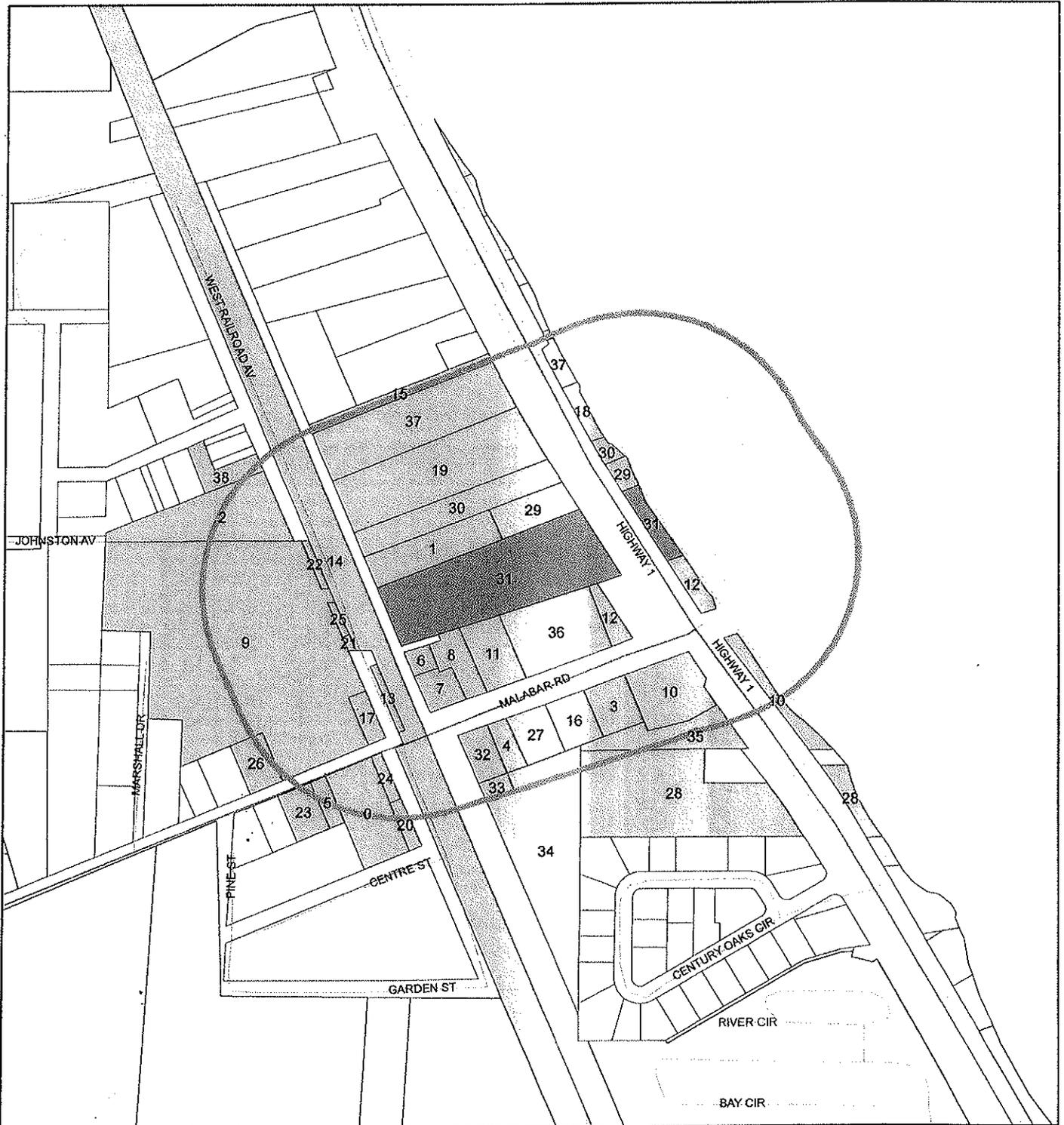

 Signature of Notary Public
 Print Name: LISA K. CANTWELL
 My Commission Expires: _____

LEGAL DESCRIPTION
Exhibit "A"



Beginning at old concrete post at the Southwest corner of the Southeast 1/4 of the Northwest 1/4 of Section 31, Township 28 South, Range 38 East, thence along the center line of said Section, South 88 degrees and 50 minutes East a distance of 688 feet to an iron pin in the fence corner of the Northwest corner of the Farley property on the East side of the Florida East Coast Railroad right-of-way and 50 feet East of the center of the Southbound track of said railroad, thence Southerly along the East side of said railroad right-of-way a distance of 370 feet to an iron pin in the fence corner at the Southwest corner of the Farley property which point is the Place of Beginning, thence follow old fence approximately North 72 degrees and 30 minutes East a distance of 792 feet to concrete post on West shore of Indian River ("X" a Palm North 10 degrees East 8 feet and Palm North 40 degrees West 7.2 feet) thence continue on a straight line to the shore of the Indian River, thence follow the meanderings of the shore of the Indian River to point 200 feet Northwesterly from the above line, measured at right angles; thence Southwesterly parallel to said line of the Southeasterly side of the Farley tract and 200 feet distant therefrom to the fence on the East side of said railroad right-of-way at a concrete post, thence Southeasterly along the East side of said right-of-way to the Point of Beginning. Less and except road right-of-way for U.S. Highway No. 1 as presently exist, and LESS AND EXCEPT a right-of-way for East Railroad Avenue.

RADIUS MAP
NOLA PRIME PROPERTIES LLC
 carmine500



1:4,800 or 1 inch = 400 feet
 Buffer Distance: 500 feet

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does

RAY, DEANNE HUGGINS
P O BOX 500175
MALABAR FL 32950-0175

WIEHL, SAMANTHA S
1230 US HIGHWAY 1
MALABAR FL 32950-0000

WOOD, MELVIN C
WOOD, REBECCA
726 ROYAL PALM PL
VERO BEACH FL 32960-5140

BROWN, LOUISE E TRUSTEE
P O BOX 500151
MALABAR FL 32950-0151

CARMICHAEL, C RANDALL
609 ALDEN PLACE
MELBOURNE BCH FL 32951-0000

CARMINE LLC
P O BOX 600835
MALABAR FL 32950-0835

COCHRANE, PAULINE
COCHRANE, ROY H/W
P O BOX 500833
MALABAR FL 32950-0833

CURRI PROPERTIES LLC
2893 N HARBOR CITY BLVD
MELBOURNE FL 32935-6224

DEBELLAS, JOSEPH TRUSTEE
MARKS, ROBERT D
1100 BROOK ST NE
PALM BAY FL 32905-0000

DEVVRAT CORPORATION INC
1360 HIGHWAY 1
MALABAR FL 32950-0000

EASTON, RICHARD
EASTON, MARY K H/W
8514 DAMASCUS DRIVE
PALM BEACH GARDENS FL 33418-0000

EDGER PROPERTIES LLC
1672 WEST HIBISCUS BLVD
MELBOURNE FL 32901-0000

FDG RAIL HOLDINGS 14 LLC
4601 TOUCHTON RD
JACKSONVILLE FL 32246-0000

FLORIDA EAST COAST RAILWAY LLC
7411 FULLERTON ST SUITE 300
JACKSONVILLE FL 32256-3629

FRANCO, HECTOR I
WIEHL, SAMANTHA SUSAN
1230 US HIGHWAY 1
MALABAR FL 32950-0000

KEMMLER, HANSEL C
KEMMLER, BARBARA B H/W
2785 MALABAR RD
MALABAR FL 32950-0000

KEMPFER'S FEED & SEED INC
2728 MALABAR ROAD
MALABAR FL 32950-0000

KRIEGER, DONALD E
2345 LINEBERRY LANE
MALABAR FL 32950-0000

LINNELL, MICHAEL L
DOUGLAS, CONNIE S H/W
2275 GRANT RD
GRANT FL 32949-8104

MALABAR, TOWN OF
2725 MALABAR RD
MALABAR FL 32950-0000

MALABAR, TOWN OF
1803 AIRPORT BLVD
MELBOURNE FL 32901-0000

MARSHALL, JIMMIE A TRUSTEE
P O BOX 500176
MALABAR FL 32950-0176

MARSHALL, LORRAINE LIFE ESTATE
P O BOX 500031
MALABAR FL 32950-0031

BILLIE, GEORGE SR TRUST
912 DARWIN LN NE
PALM BAY FL 32905-0000

MASSINGILL, DANNY G
1410 HIGHWAY 1
MALABAR FL 32950-0000

MILUCKY, JAMES J
1280 HIGHWAY 1
MALABAR FL 32950-0000

MILUCKY, JAMES J
SAYLORS, LEEANNE J H/W
1280 HIGHWAY 1
MALABAR FL 32950-0000

NOLA PRIME PROPERTIES LLC
1928 S PATRICK DRIVE
INDIAN HBR BCH FL 32937-0000

PROCTOR, DOUGLAS K
2460 MALABAR ROAD
MALABAR FL 32950-0000

QUINBY SNYDER LLC
608 B N US HIGHWAY 1
FORT PIERCE FL 34950-0000

P&Z Mtg 12/10/2014

Recommendation from P&Z

RTCM minutes of 10/6/14

Malabar Land Dev Code Art V – definition of “abutting”

Malabar Land Dev Code Art III – Table 1-3.2 & 1-3.3(A)

**Malabar Land Dev Code Art II – Table 1-2.1 & definition of
Limited Commercial**

F. PUBLIC HEARINGS: 1st of 2 for 2nd readings

2. Land Use Amendment & Zoning Change for Parcel 28-38-31-00-00750 aka 1300 Highway 1, Malabar, FL 32950; Request to change from Residential/Limited Commercial (R/LC) to Commercial General (CG); Applicant: KellWill, LLC, represented by Mr. William Carmine.

(Ord 2014-14)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; RECLASSIFYING THE COMP PLAN MAP AND REZONING THE PROPERTY AS FOLLOWS: THE 3.22 ACRE PARCEL IN TOWNSHIP 28, RANGE 38, SECTION 31, LOT 750, LYING ON THE WEST SIDE OF HIGHWAY 1, NORTH OF MALABAR ROAD, AKA 1300 HIGHWAY 1, MALABAR, FLORIDA, FROM RESIDENTIAL/LIMITED COMMERCIAL (R/LC) TO COMMERCIAL GENERAL (CG); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2
Recommendation: Request Adoption of Ord 2014-14

Chair read the title only and then allowed discussion by Mayor per Mayor's request. Mayor said he is not against the issue per se but several things have to be addressed. We are changing the land use plan at the same time as the zoning. The maps he sees don't show similar zoning on contiguous parcels. The only issue he saw there was that they were limited to 4000sf. What he reads is no matter how large your lot is you are limited to 4000sf. If that is true then it is not fair. If you have ten acres you are stuck at 4000sf MBC and if you have one acre you can do the same; so we need to look at that. It shows a rezoning from whatever it is to a heavy commercial and it includes the strip of land on the river, so are we now spot zoning on the river? Does that allow them to put a billboard down there? If it meets the criteria we can't stop him. Mayor is really adamant do they want to include the property on the east side as commercial when everything else is coastal preservation. Mayor said final thing is he believes if they look at the ordinance, they need to amend the light commercial/residential zoning to allow more than 4000sf, based on the size of the lot. He is not advocating for that he is just saying maybe they should look at that first. Bar none, the coastal preservation shouldn't be part of it and the size of the building could be addressed with a change to the zoning instead of change to land use.

Franklin asked Chair if she could respond. The request is specifically for the west side of Highway 1 and the east side would remain Coastal Preserve. She explained that the map the Mayor was looking at was from the Property Appraiser showing the entire site for the radius package for notification of adjacent property owners within 500 feet. The request was specifically for the west side.

Dick said the request is to relocate his marine business; it is not strictly a marine business. There is much more to it; it would not be dependent on marine access. Applicant agreed. Dick said Mayor referenced "heavy" commercial and that is not one of their classifications. Dick said the way he is looking at this application he is looking for a way to build a more than 4000sf building. Chair stated they would get that answer when they open the public hearing.

Franklin said the applicant should be able to present before the public hearing. Chair called the applicant to podium. Jim said to allow applicant to speak but he would also like to speak.

Applicant, William Carmine, introduced himself; he grew up in Malabar and has been a business owner here since 2000. They have been looking at the subject property for several years and came before the Planning and Zoning Board last year and asked for an informal opinion on the possible rezoning and everybody was on board to do that. Last year they put a contract on the property; and closed on property last May. They are looking to relocate their power sports

business to this location. They have outgrown their current location in G-V. They opened it in 2007 and have grown every year since then. They appeared before P&Z Board last week and received a favorable recommendation. He has always considered bringing this other business to Malabar and thought it would be a complement to the Highway 1 corridor. This second business would then be close to Malabar Mo's which they also own. He is just asking for Council support in reaching for his dreams.

Mayor said he read through packet and understands that applicant wants to develop $\frac{3}{4}$ of an acre. If there is an adjustment to the current zoning it would allow him to do what he wants without opening it up to one big commercial endeavor. He could have a change of heart, or lose his franchise and sell and that person would want to build something way outside of our land use plan. If it is not in the land use plan and not contiguous then we need to evaluate that. Mayor is trying to figure out a way he can build a 10,000sf building and that is something that P&Z can recommend and Council can do without changing the category. All he had to work with was the maps so he didn't know the request wasn't for the property on the east side so it will stay as coastal preservation and he was afraid that would be spot zoning. To change the zoning to something heavier if there is nothing contiguous that is spot zoning. He is looking at reevaluating to allow someone to have a larger building on a larger lot. That is his consensus.

Applicant said the $\frac{3}{4}$ ac that he referred to is what they are currently on. The parcel they purchased it 3.25 acre. The 10,000sf building is what their original intent was. They have not gone through any civil or structural engineering yet; this is the step they must cross before they get to that point. He went for the zoning change because that is what was in black and white in the Code when he met here with staff. In order to operate the business he currently operates in Grant the zoning needs to be General Commercial (CG).

Marisa said she asked Clerk about this and asked her to speak to the CG. Franklin said that it does about CG on the west and is the only zoning that would allow retail sales and service of vehicles. Franklin said when they did the Future Lane Use update in the Comp Plan Council expanded the R/LC to other areas along Malabar Road and Babcock Street, so if you are changing the definition to allow a larger footprint, it would require a text change to the Comp Plan which would be considered a Large Scale Comp Plan Amendment requiring State review. This request is very straight forward, if you want to do this permitted use you need this CG zoning and that is why Town staff gave applicant that direction. Also, the Town Planner stated that this is not spot zoning.

Chair opened public hearing:

Pat Reilly, P&Z Chair, the P&Z Board recommended approval of this request 4 to 1. The no vote wanted a lower commercial zoning. He pointed out that the material in the packet clearly showed that this use would only be allowed in CG zoning. Pat said as Franklin and the Planner have stated, it is not spot zoning as there is similar zoning in the area. The setbacks are a little stricter.

The buffering and other issues are part of the site plan review and are not part of this request. He asked Attorney about this at their P&Z meeting; this request is strictly land use change and rezoning; not a site plan review.

Leeanne Saylor, 1280 Highway 1, is the property owner next she lives in and it adjoins, abuts and faces the property they are discussing. Saylor said as Reilly said there are two things they can do; change it to commercial or make it a conditional use. She doesn't think anyone has considered or evaluated the conditional use. Not only do she and her husband own 1280 Hwy 1 but they own 1270 Hwy 1. No one from the Town of Malabar made any effort to reach out to them before this went before P&Z, not a Clerk, not a Manager. It was also a surprise to Mr. Carmine

because no one had made contact with them before meeting. Saylor admits she was serving on P&Z Board last year when Mr. Carmine came before Board but at that time but there was no discussion that there was going to be a change to such a liberal, open use. If something were to happen to Mr. Carmine, the commercial zoning would allow it to become a car lot, a package store open seven days a week, 24 hours a day. That is commercial zoning and it is right beside her home. She doesn't think there is a single person on the dais that would appreciate having a 10,000sf commercial building next to their homes. It is not what Mr. Carmine is proposing that they are opposing, it is the blanket of commercial zoning that would allow just about anything on this property should something happen to Mr. Carmine. God forbid something should happen to them tomorrow and that would be what happens. She asked if they would like to have Callagy Tire next to their homes. (Clerk's Note: Callagy Tire was located at 950 Highway 1 in front of and abutting Riverview Homes for 11 years 1977-1988.) She said that she thought they were doing this backwards; instead of changing the zoning, they should be considering keeping it as R/LC. Right now they have no idea what the use is going to be. Once it is commercial zoning they can't say...she doesn't understand why they can't consider a conditional use. She said Mr. Carmine said he has outgrown his space in Grant; he has also outgrown the parking at his Malabar Mo's; what is to prohibit him from using his land across the street for overflow parking. What's to prohibit him from moving his restaurant next to us as a 7-day a week operation going until all hours. We live next to this property. We have lived there twelve (12) years and never thought the property to the south would be developed CG. They think that Mr. Carmine would probably be a good neighbor but they don't know who would come after that may not be a good neighbor. They think the blanket jump to commercial (general) is too great.

Liz Ritter, 2860 Orange Avenue, also on the P&Z Board. Stated that they struggled with that and said there are ways to restrict the use; there is a contractor's agreement that states that if it is not developed as he proposes then the zoning would revert back. It is Residential / Limited Commercial so it is not just residential but they did have a lot of discussion on it and concerns. There is a contractor's agreement that they can propose so if he doesn't do what he says he'll do, then it would revert to R/LC.

Jim Milucky, CM, stepped down from dais and stood at podium as the resident of 1280 Hwy 1. He said his father purchased the property they live on in Dec 2002. In 2003 he opened his accounting business and it has operated there since then. In 2005 his father Quit Claimed a portion of the land to him for their legal, homesteaded residence. Wants to correct a few conceptions / impressions. The property to the north and south is residential light (limited) commercial and to the east is the river. The part he wants to correct the misconception that the property to the west and he challenges anyone to come walk the property with him; first you have to cross East Railroad right of way, then the railroad and then West Railroad road and then you hit commercial property. That is a huge buffer between his property and the commercial to the west. It is disingenuous to say there is commercial adjoining the property because that is not correct. He said to the south there is just a little sliver that is commercial and is not buildable he is told and then there are little houses, not skyscrapers and factories. Milucky then went through a series of pictures he had taken along Highway 1 starting at the southwest corner of SR515 and Hwy 1, a commercial business with Malabar Mo's behind it. He pointed out a boat dealer on US 1 saying this is what a marine business looks like. He showed the metal building across the street from the Yellow Dog Café, it is also commercial (commercial general). The restaurant is zoned commercial (commercial general). He then went south past the commercial to Camelot which he said looked very nice. He pointed out Discount Marine, opened on a Sunday and taking delivery on a Sunday. He went through more pictures and then pointed out several more marine businesses along Highway 1 with boats in the front yard. He then said he had showed them what commercial, marine commercial, restaurant commercial and gas station commercial. He then

showed a picture of a number of residences along Highway 1 in the residential light commercial (limited commercial). He said some of these lots are so small it would never be possible to develop them into commercial. He then showed Mike Linnell's property with a house and a five plex. Then he showed his home with plantation shutters and a cupola and a big setback with green grass and nothing parked in the front yard. Then he showed Danny's Open Storage with the stuff parked in front of property. He said the marine business belongs in commercial general; it does not belong next to his house. He then referenced P&Z Board's recommended changes to the FLUM and it did not reflect CG it referred to a current use of R/LC and no proposed changes. He doesn't know how they got off track thinking they could put a commercial property in the middle of a residential area. Milucky referenced what Mayor Beatty had said and also P&Z Member Krieger re: some of the uses allowed in CG zoning. Milucky told Council they have to stop listening to what someone is "gonna do" because that will get them in trouble. He read through a list of uses permitted in CG and then got to "adult entertainment" and bars and lounges. Milucky said Mr. Carmine owns a full liquor bar and restaurant and he hears the music wafting through the air every Friday and Saturday night and Sunday afternoon. Once Council votes, if they vote, to change the zoning to the 3.22 acres south of his home then a bar, restaurant lounge could go there. He could improve East Railroad Avenue to access the new property and then Milucky will have a bar next to his home. Would that be permitted next to Mr. Rivet, Abare, Acquaviva or the Mayor's house? He said that is where the rubber meets the road. He said that they are being asked to change the zoning next to his house to allow CG use and it is entirely out of place. He has shown them an example of what marine looks like. He will show more pictures in two weeks if he needs to; commercial zoning is not the correct zoning for this area. He doesn't care that staff has told Mr. Carmine that CG is the only zoning that would permit his marine business. Nobody put a gun to his head and said you have to buy that property. It was what it was when he bought it, gopher turtles and all. Milucky said his property used to be a tattoo parlor. Look where he has taken it. There are other properties along this corridor where you can have a correctly zoned marine business. It just doesn't happen to be the 3.22 acres south of his home. Thank you.

Wayne asked him if he also has hours on Sunday's during tax season. Milucky said he did not think he had ever seen a client on a Sunday. Wayne has seen many cars there on Sundays. Milucky said he has three cars, he has seen his cars. Wayne asked about what P&Z Member Ritter had said about the contractor agreement; if such an agreement could be drafted would that allay his concerns? Atty said that is what Liz said but that is not what can be done with a developer agreement. Atty said the Dev Agreement is designed to clarify how a property will be developed; it is not designed to state what can be done in a particular zoning. Once the zoning change is approved it runs with the land and whatever is permitted in that zoning can be done on property; you can't put a restriction on the zoning. Franklin stated that they had this concern at the P&Z Board meeting on 9/24/14 and Board asked her to get a legal opinion. Franklin contacted the Attorney the next day and he said you can't word the agreement to state the zoning would "revert" for reasons expressed by the Attorney but they could word the agreement that if the project wasn't developed in a stated amount of time then the land use change and zoning change would not be approved.

Leeanne Saylor, if they do a developer's agreement, and he builds a 10,000sf building and he does what he says he is going to do; it would already be zoned commercial (general), what prohibits him from changing what he originally agreed to and doing something else or selling it and it being used for whatever falls within commercial (general) zoning. Nothing precludes him from selling the property or transferring the property and it has new ownership and then it can be utilized as something else. She said once you change the zoning to commercial (general) and have a 10,000sf building and she doesn't understand why they can't do a conditional use and

keep the R/LC zoning. She said nothing in the Code Book or nothing in their Planning and Zoning is carved in stone.

Attorney stated they could have a developer's agreement that would limit the size of the 10,000sf building, but you cannot use a developer's agreement to restrict a proper zoning use. Attorney said the Mayor is correct and if the property gets rezoned to CG then it runs with the land. They could turn around and sell it tomorrow and construct whatever is permitted in CG zoning. To be clear, the Attorney said a marine commercial activity is a conditional use activity in CG zoning. If he decides to put in a restaurant that is a permitted use and he just goes in and gets a building permit. (Note: Before any development permits could be issued all projects must go through the Site Plan requirements in Article VII.)

Chair acknowledged Mr. Carmine: He would like to address and clarify a couple of things. He asked Council to refer back to the P&Z Board meeting of Aug 28, 2013. He then read from the minutes of that meeting where he clearly stated his intent and Mrs. Milucky, who was on P&Z Board at that time, clearly supported his proposition. He told Council he did his due diligence before purchasing this property and he did ask Mr. and Mrs. Milucky and he did speak to them on several occasions at Malabar Mo's. He said they did ask him over to talk about his plans for the property and he didn't make it over until after the P&Z meeting. Carmine said Jim and Leeanne know/knew what his intentions of the land were. He is a straight forward guy and a straight shooter; he grew up in this Town and he believes a man's word is his worth. His intention is not to move Malabar Mo's there. He wouldn't even have that business if he wasn't bred into it. The pictures Jim showed of marine businesses on Hwy 1 have been there for 20+ years. He could not build that at this location; it would never get through the site plan review process. He has to comply with the Malabar Vernacular. What he builds here will complement the area and complement the neighbor's property much better than the property to the north. Also he wants to say that this parcel of land has been for sale for many many years and the Milucky's had the opportunity to buy it and do whatever they wanted with it if they didn't want to see anything change with it.

Mrs. Milucky said that she was sure Mr. Carmine would build a nice building and she meant what she said before but on the other hand she still doesn't think zoning it Commercial General is the right move. She is not opposed to what Willy wants to do she is concerned that when you do a blanket zoning that travels with the property and stays with the property; if something happened to Willy and he was no longer her neighbor then you have opened the door for anything permitted in CG zoning.

Juliana Hirsch, 1035 Malabar Road, thinks if Council can allow Mr. Carmine to do what he wants with a conditional use that is the way to go.

TA asked Chair if she could respond to prior comment about the Town Clerk and Town Administrator or any other Town staff not reaching out and making contact with Milucky's or any other residents. It is not in their purview or a requirement to do so; the Clerk's office sends out radius notices to all property owners within 500' before both the P&Z Board meeting and the Council meeting giving the time and date of the meeting, the applicant and their request. She always ensures that the letters go out and she does read the minutes of the board meetings and she is aware that this was discussed last year and the willingness to have them as a neighbor was clearly stated in the minutes. The applicant did what is recommended and came before the Board before proceeding with the purchase and all processes were followed in our code. There is no requirement to have staff or the applicant personally contact the adjacent property owners. Some cities may have such a requirement but Malabar does not.

Chair closed public hearing and brought it back to Council.

Wayne asked Franklin or P&Z Chair to speak to any possible way to allow Mr. Carmine to proceed with his project without the zoning change.

Franklin said that it could not be done without setting a precedent. It would also require a change to the Comp Plan. Attorney said that the proposed use could not be done in R/LC. If you wanted to allow this you would have to change the Comp Plan, the Land Development Regulations and the language in the Zoning map to allow this as a permitted or conditional use. Nothing larger than 4000 sf is allowed in R/LC. It currently is not allowed in R/LC.

Dick said he has a good bit of history on that piece of property. In 1999 he considered buying that land with his brother. They decided against it primarily because it was Highway 1 and it was a business street. Dick said (directed to Milucky) it was not a home at that time; there was not a bathroom in that building at that time. Dick complimented Milucky's on what they have done with the property and how they have improved it. But it was not a house back then, it was a business area. Dick said Grant Ball runs a business out of his house; there was also a lady that did alterations out of the house Linnell owns. That is a business area.

Dick said the pictures Jim showed were a damn lie; he picked out the very worse things he could show as pictures. If you look at the business location of Mr. Carmine currently; it looks nice and he has done a good business down there; it is kept clean and neat and he is a good neighbor to those people.

Dick said we have one of the very lowest millage rates at 1.8 and the average is 4.6+. One of the ways to keep it low is to allow businesses with which we are comfortable that provide tax revenue. Dick said we are debating this because someone bought a business and turned it into their house in a business district. So you want everyone else's millage rate to go up so you can keep a business from building next to your commercial property. That is wrong. If you don't want to live in a business area, then don't live there. Dick is angry because he was on P&Z Board when Mr. Carmine came before them, and Leeanne was on Board and they received him very well. He was willing to do whatever. He was impressed with him then and is impressed with him now and how he has kept his cool better than Dick.

Chair recognized Mayor: Mayor said several things, factoids if you will. The previous junkyard was a gas station and when the guy died they cleared it off. Just north of there was a home with a death in the family, it was not good, he will not advertise what happened but they tore the building down because of what happened. Next to it is another house, which the Milucky's bought. The next building Milucky's bought was a cabinet shop. Behind them is a residence. She's like 80 years old and has diabetes so bad she can't drive because she can't feel her feet but she is a very smart woman. He would suggest they put this request in abeyance and look at changing the current zoning to allow him to do what he wants without increasing the zoning. If they find out they can't change the permitted uses then they can pick up with the rezoning request.

Wayne asked the Attorney if all the Council Members were ok to vote on this. Attorney stated he was listening very carefully and Milucky did not say anything to show any financial gain or detriment. Wayne called for the question. Jim and Marisa still want to speak. Marisa said she read through the entire package and the applicant came before P&Z Board before he purchased it and explained what he wanted to do; Milucky's wife was on P&Z Board at the time; the Board, including Leeanne, supported the applicant's request. She thought it was pretty cut and dried.

Jim said to Korn it is not the first time he has been called a liar and told Korn that he was so far out of line. He took pictures of the businesses as they are; not in the worst possible manner as Korn implied. Milucky asked P&Z Chair Reilly to lower his hand as it was distracting when he was speaking. He said Council had it all wrong; he shouldn't have to defend his property rights. He doesn't care what Leeanne said or what was in the building before he renovated it. Mr. Carmine should be here pleading for his life to get the zoning changed. He is in the proper zoning for his home and not a marine business. He is surrounded by the railroad, the river and residences. He said they can scream until they are blue but his is a residence and not a business. He is talking about General Commercial property abutting his residence. He is asking for the property to remain R/LC. He feels the pain; he can't fix the past; but the decision you will make will affect not only Malabar, but me, for the rest of my days. Milucky said Council is making this decision about what to do next to me. He wished Korn did not take this issue so casually. Korn said he wouldn't tell a man to go forward with their support. Chair gavelled him. Korn said Milucky addressed him. Korn would not have deceived a man in to spending his money.

P&Z Chair Reilly addressed Council and said that per Reso 29-2008, Quasi-Judicial Procedures, Abare is 100% correct and read from Exhibit "A" of that Reso, Subsection II.7.c "However, no discussion amongst Council Members shall be made unless and until a motion and a second have been made." These procedures have not been followed. Attorney said the Council had suspended the rules. Reilly said that can't be done on quasi-judicial proceedings. Chair and several Council Members said that Council agreed to suspend the rules.

MOTION: Abare / Korn to approve the request in the Ordinance 2014-14 providing the land use and zoning change to CG as presented by KellWill, LLC.

ROLL CALL VOTE: 1) Abare, Aye; Korn, Aye; Acquaviva, Aye; Milucky, Nay; Rivet, Nay.

Motion carried 3 to 2.



Abut or abutting property means a lot or parcel sharing a common boundary with the lot or parcel in question, or a lot or parcel immediately across a public or private right-of-way or street from the lot or parcel in question.

Commercial district means any area of the Town having the zoning classification CL or CG in accordance with the land development regulations of the Town.

Entrance gate means a gate designed for ingress and egress for vehicular traffic to and from a lot or parcel that directly connects to the public roadway. Entrance gates may be opened manually or by automated means and may be guided by hinges, tracks, or other means.

Entranceway means columns, poles, walls, arches or other structures that define a point of entry onto a property. The entranceway may or may not have a gate.

Fence means a vertical row of nonliving material, placed close together or abutting each other in such a manner as to form a boundary or barrier between two (2) adjacent parcels of land. Such amenities as kennels, cages, corals, trellises and related conveniences are not fences for the purposes of this subsection.

Gate means a rigid structure to open and close in order to allow ingress and egress through a fence or wall. Gates may be opened manually or by automated means and may be guided by hinges, tracks, or other means.

Height means the distance from existing grade to the top of such fence or wall including post and/or uprights measured on the side facing abutting property.

Industrial district means any area of the Town having the zoning classification IND in accordance with the land development regulations of the Town.

Institutional district means any area of the Town having the zoning classification INS in accordance with the land development regulations of the Town.

Opaque shall mean that objects located on one side of a fence or wall are not visible from the opposite side when the viewer's line of sight to such object is through such fence or wall.

Perimeter means outside boundary of a subdivision or multiple adjoining lots.

Residential district means any area of the Town having the zoning classification RR-65, RS-21, RS-15, RS-10, RM-4, RM-6, R-L/C or R-MH, in accordance with the land development regulations of the Town.

Wall means a vertical row primarily composed of masonry materials placed close together or abutting each other in such a manner as to form a boundary or barrier between two (2) parcels of land.

Yard means an open, unoccupied space on the same lot or parcel with a building or buildings, other than a court, which is unobstructed from the ground upwards by buildings or structures.

§ 1-3.2

MALABAR LAND DEVELOPMENT CODE

DISTRICT PROVISIONS

TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-5	R-MH	OI	CL	CG	R/LC	IND	INS	CP
AGRICULTURAL ACTIVITIES														
Noncommercial Agricultural Operations	P													
Wholesale Agricultural Activities	P													
Commercial Stables	C													
COMMERCIAL ACTIVITIES														
Adult Activities										C				
Bars and Lounges										C				
Bed and Breakfast											P ¹			
Business and Professional Offices							P		P	P	P	P	P	
Enclosed Commercial Amusement										P				
Arcade Amusement Center/ Electronic Gaming Establishment											C ²			
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 ²				
Medical Services									P	P	P			
Mini Warehouse/Storage									C	P		P		
Parking Lots and Facilities									P	P	P		P	
Retail Plant Nurseries									P	P	P			
Restaurants (Except Drive-Ins and fast food service)										P	P			
Restaurants (Drive-ins)										P				
Service Station, Including Gasoline Sales										P				
Trades and Skilled Services										C ²		C ²		
Veterinary Medical Services										C ²		P		
Vehicular Sales and Services							P		P	P	C	P		
Vehicular Services and Maintenance										C ²		P		
Wholesale Trades and Services										C ²		P		P

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.

- 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.
- Any Arcade Amusement Center and Electronic Gaming Establishment as defined herein shall only be approved as a conditional use in accordance with Article VI of the Malabar Land Development Code.

(Ord. No. 94-4, § 3, 4-3-95; Ord. No. 97-3, § 2, 3-17-97; Ord. No. 05 § 1, 3-7-05; Ord. No. 06-19, § 1, 1-11-07; Ord. No. 12-48, § 2, 1-23-12)

ART III

TABLE 1-3.3 (A) SIZE AND DIMENSION REGULATIONS See (numbered) Notes below

Zoning District	Minimum Lot (1)				Setback (ft) from property line (2)					MOS (%)	Max Density Unit/ac		
	Size (Sq. ft)	Width (ft)	Depth (ft)	Max Height Ft/stories)	Min Living Area (sq ft)	Front	Rear	Side (Int)	Side (corner)			MISR (%)	MBC (%)
Mobile Home Residential Development													
R-MH	Site: 5 acres Lot: 7000					10	8	8	10	50	N/A	50	6
Mixed Use Development													
R/LC	½ acre	100	150	35/3	Single Family: 1200	25	20	10	10	50	N/A	50	2
R/LC	½ acre	100	150	35/3	Multiple Family: 1 Bedroom: 900 Each Additional Bedroom: 120	50	25	10(4)	20	65	N/A	35	6
R/LC	½ acre	100	150	35/3	Commercial Min. Area: 900 Max. Area 4,000	50	25	10(4)	20	65	20	35	N/A
Office Development													
OI	20,000	100	150	35/3	Minimum Floor Area: 1000	35/60	25	20	25	65	20	35	N/A

Note 1 Minimum lots plus one-half of adjacent public right-of-way.

Note 2 Setbacks determined pursuant to Table 1-3.3(A) or (E) whichever is most restrictive.

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

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

Note 6 Recreation activities Maximum Building coverage shall be 20% FAR shall be 10%.

Note 7: Side and rear may be reduced to 15' for accessory structures only and will increase in proportion with the maximum height of the accessory structure, ie. if the height of the accessory structure is 20 feet, this will equal a 20 foot setback.

LAND USE AND ZONING

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	Coastal Preservation	
* CON	Conservation	INS	Institutional	
			To Be Done	
* RS	Recreation		To Be Done	
RR	Rural Residential	RR-65	Rural Residential	= Ag or 1 du per 1.5 ac
LDR	Low Density Residential	RS-21	Single Family LDR	= 1 du per 21K sf
MDR	Medium Density Residential	RS-15	Single Family MDR	= 1 du per 15K sf
		RS-10	Single Family MDR	= 1 du per 10K sf
		RM-4	Multiple Family MDR	
HDR	High Density Residential	RM-6	Multiple Family HDR	= require 5 acre site
		R-MH	Residential Mobile Home	
MRO	Multiple-family Residential or Office Space	RM-4	Multiple Family HDR	
		RM-6	Multiple Family MDR	
		OI	Office-Institutional	
OI	Office-Institutional	OI	Office-Institutional	
		INS	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	max 4 du per
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)

* NEW

LAND USE AND ZONING

§ 1-2.6

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].

P&Z Meeting 12/10/2014

P&Z Minutes 3/21/1974

Pg 8 from Ord 7-1-76 listing Zoning Designations

RTCM minutes of 7/17/1979

Pg from Zoning Code re: Ord 5-19-82

Zoning Map as of 1985

RTCM minutes 10/3/1988: how land use map designations were changed before adoption of Comp Plan

P&Z Minutes from 2/14/1989 explaining how the land development regulations should be changed to provide consistency with the newly adopted Comp Plan

Zoning Designations as of 1991

RTCM minutes of 10/17/1994 with legal opinion

Current Comp Plan pages 12, 16, 18, 19 & 20

1974



Minutes of the Zoning Board Meeting
Mar 21, 1974

Chairman Zeller called the meeting to order at 7:35. All members except Mr. DeCaro were present. Mr. DeCaro having missed three consecutive meetings, is dropped from the Board. Mr. Zeller turned the meeting over to Chmn Radencic of the Town Council. Chmn Radencic then called the Town Council to order.

Present were Chmn Radencic, Cnmn Batten and Fisher. Chmn Radencic requested the second reading of Ordinances 7-1-74 and 14-1-74 in full by the Clerk, Mrs. Guerin. Mrs. Guerin read Ord. 7-1-74 in full. Motion to accept the reading was by Cnmn Fisher and Cnmn Batten seconded. All votes were aye. Clerk Guerin then read Ord. 14-1-74 in full and motion to accept the reading was by Cnmn Batten, with Cnmn Fisher seconding, and all votes aye. Chmn Radencic then called for a motion to adjourn and Cnmn Batten so moved, second by Cnmn Fisher and all votes aye. The meeting adjourned and the floor returned to Zoning Chairman Zeller.

Chmn Zeller asked for suggestions on dealing with the upcoming Building Permit requests after Apr. 1. It was noted that meeting would be held each 1st and 3rd Thursdays.

The results of the questionnaire were observed and noted as follows: More residents than non-residents responded, about 2 1/2 to 1. The residents seemed to be much more in favor of small residential and small or no business districts, as opposed to higher density residential and large business districts, than the non-residents. However, the non-residents were not in favor of heavy development as much as they were of medium range development. This gave the overall preference as follows: Size of business district preferred was Small with 84 votes (None was the next frequent with 44, and Large the least with 30). Residential preference was Rural first with 100 votes (Next was Single-Family at 48 and last was Multi-Family with 14 votes.) The mandate was for limited and controlled zoning, therefore. The Board agreed that this philosophy would guide them in their creation of the revised ordinance.

Geographically, the Board decided to make a preliminary plan for reference during the revising period. This plan was agreed upon by all as follows:



1. the east riverfront along US#1 should not be developed any further than it already is, from Malabar's north to the south boundary.
2. from US#1 to the railroad North of Malabar Rd. to be Commercial except Riverview Homes.
3. South of Malabar Rd. from the railroad to US#1 is to be Multi-family south to the junction with Jordan Rd., except as noted in #5.
4. West of the railroad to Marie St. from Township R7 north to the City Limits is to be Single Family with grandfather clause exceptions.

4.6 Repairs and Maintenance. On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of 12 months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding 10 per cent of the current replacement cost of the non-conforming structure or non-conforming portion of the structure as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.

If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

4.7 Uses Under Special Exception Provisions Not Non-Conforming Uses. Any use which is permitted as a special exception in a district under the terms of this ordinance (other than a change through Board of Adjustment action from a non-conforming use to another use not generally permitted in the district) shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.

4.8 Temporary Uses. The casual, intermittent, temporary or illegal use of land or structures shall not be sufficient to establish the existence of a non-conforming use. Such use shall not be validated by the adoption of this ordinance unless it complies with the terms of this ordinance.

5.0 USE DISTRICTS AND REGULATIONS. For the purpose of classifying, regulating and restricting the locations of trade and industries, and the location of buildings designed for industry, business, residence and other uses, the Town of Malabar hereby is divided into use districts as follows:

- 1. A-Agricultural
- 2. RA-Residential-Agricultural
- 3. R-1 Single Family Residential
- 4. R-2 Single Family Residential
- 5. R-3 Single Family Residential
- 6. RM-1 Multi-Family Residential
- 7. RM-2 Multi-Family Residential
- 8. MH- Mobile Home District
- 9. B-1 Professional and Commercial
- 10. B-2 Highway Commercial
- 11. I-1 Light Industrial
- 12. CP-1 Coastal Preservation

CL -
G -

1979

Ordinance 6-1-79, Montalto/Richards request for rezoning. A motion to read in full was made by Councilwoman Todd with a second by Councilwoman Fenter. Motion was carried unanimously. This is the second and final reading. The Planner read the Ordinance in full. A motion to adopt was made by Councilwoman Fenter with a second by Councilwoman Todd. Motion was carried unanimously. Ordinance 6-1-79 was passed and adopted.

Ordinance 6-3-79, Orange Properties Inc. request to rezone 23 acres. A motion to read was made by Councilwoman Todd with a second by Councilwoman Fenter. Motion was carried unanimously. The Planner read Ordinance 6-3-79 in full for the second and final reading. A motion to adopt was made by Councilman Radencic with a second by Councilwoman Fenter. Motion was carried unanimously. Ordinance 6-3-79 was passed and adopted.

Ordinance 6-4-79, Orange Properties Inc. request to rezone 200 + acres. A motion to read was made by Councilman Radencic with a second by Councilwoman Todd. Motion was carried unanimously. The Planner read Ordinance 6-4-79 in full for the second and final reading. A motion to adopt was made by Councilwoman Fenter with a second by Councilman Radencic. Motion was carried unanimously. Ordinance 6-4-79 was passed and adopted.

Mr. Bud Fenter commented on the veto message of the Mayor wherein the Mayor felt that property values would decline in the Rocky Point area with the advent of commercial rezoning. Mr. Fenter remarked that a \$60,000 home was constructed on U. S. #1 near the automotive service and salvage business. This same home was sold recently for about \$120,000. He indicated that it was a fallacy to believe values would be lowered by the inclusion of a B-1 zoning in Rocky Point.

Correspondence

The Planner read a letter from Cocoa Beach expressing opposition to an "impractical County 201 Plan". This plan deals with waste treatment in the County.

Old Business

A discussion was held on the animal control act. Attorney Barlow, recommended that the Town wait until the County formalized the changes in agreements which will be necessary. The Attorney will advise the Town when to act. The Council agreed to delay action until advice is received from the Attorney.

Attorney Barlow read an offer from Lanier Company to accept one half of the bill for service to the old copier. He recommended we pay the amount of \$47.49 and forget the case. Councilwoman Todd with a second from Councilwoman Fenter moved to pay the \$47.49. Motion was carried unanimously.

1982

of the community and the region. The types of uses and other restrictions are intended to promote adequate protection from conflicts with adjacent residential and other noncommercial uses, and to minimize the interruption of traffic along adjacent thoroughfares.
(Ord. No. 7-1-76, § 5.10, 10-5-76; Ord. No. 1-16-79, § 2(5.10), 5-1-79; Ord. No. 5-19-82, § 3, 7-6-82)

Sec. 20-317. Principal uses and structures.

The following principal uses and structures are permitted in the B-2 highway commercial district for any use or group of uses which are developed, either separately or as a unit with certain site improvements shared in common:

- (1) Hotels and motels not exceeding fifteen (15) units per acre;
- (2) Eating and drinking establishments, bakeries, confectioners and like uses where goods made on the premises will be sold on the premises;
- (3) Grocery stores;
- (4) Commercial recreation structures such as theaters, golf driving ranges, bowling alleys, skating rinks and similar uses except drive-in theaters;
- (5) Retail stores, sales and display rooms, appliance and furniture stores, wholesale goods display and sales (no manufacture of goods);
- (6) Personal service establishments such as beauty and barber shops, dry cleaning, laundromat or laundry services;
- (7) Public and private parking lots;
- (8) Car repair, automotive services or other repair/replacement shops such as for boats, appliances, upholstery, furniture or other subject to the provisions of item (9);
- (9) New and used motor vehicles, major recreational equipment and mobile home sales or rentals with accessory services; subject to the following restrictions:

- a. All outside areas where merchandise is displayed shall be paved.
- b. All servicing and repair facilities except gasoline pumps shall be located in an enclosed structure.
- c. There shall be no storage of junked or wrecked motor vehicles or items other than temporary storage for those awaiting repair. Such temporary storage shall be in an enclosed area and the vehicles or other items shall not be visible from outside the property.
- d. Ingress and egress points shall not be placed so as to interfere with the movement of pedestrian traffic on public sidewalks.
- e. A six-foot opaque concrete or wood fence or visual screen shall be required to buffer such uses from adjacent areas.
(Ord. No. 7-1-76, § 5.10, 10-5-76; Ord. No. 1-16-79, § 2(5.10), 5-1-79; Ord. No. 5-19-82, § 3, 7-6-82)

Sec. 20-318. Accessory uses and structures.

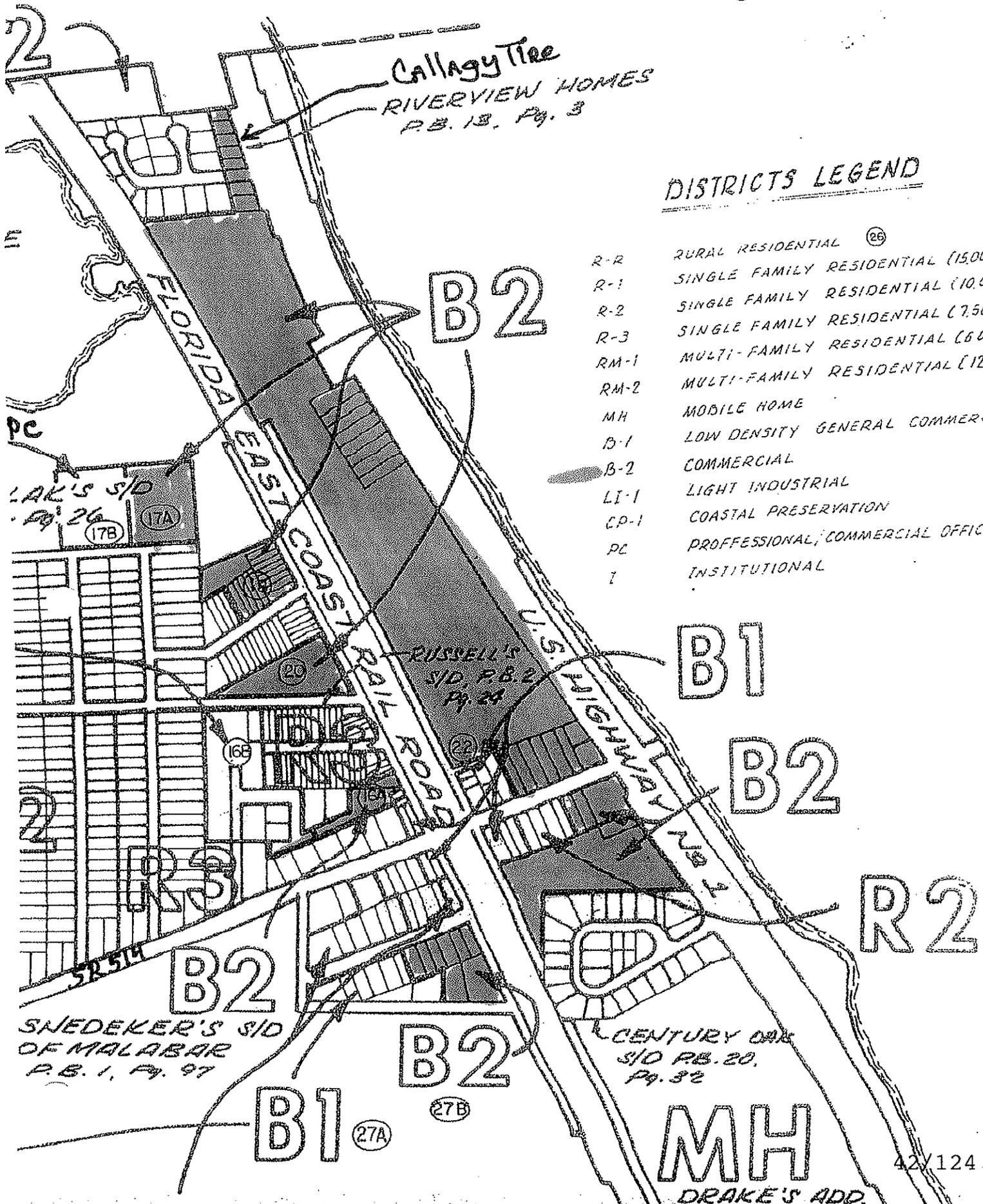
In the B-2 highway commercial district, customary accessory uses of one (1) or more of the principal uses clearly incidental and subordinate to the principal use are permitted, in keeping with the commercial character of the district.
(Ord. No. 7-1-76, § 5.10, 10-5-76; Ord. No. 1-16-79, § 2(5.10), 5-1-79; Ord. No. 5-19-82, § 3, 7-6-82)

Sec. 20-319. Conditional uses permissible by town council.

The following conditional uses are permissible by the council in the B-2 highway commercial district:

- (1) Commercial radio and television broadcasting studios and offices including tower, relay and transmission lines that would exceed thirty-five (35) feet;
- (2) Service stations, subject to the following provisions:
 - a. Minimum floor area six hundred (600) square feet exclusive of interior service area;
 - b. Setbacks other than required elsewhere in the district.

Zoning 1985



DISTRICTS LEGEND

- R-2 RURAL RESIDENTIAL (26)
- R-1 SINGLE FAMILY RESIDENTIAL (15,000)
- R-2 SINGLE FAMILY RESIDENTIAL (10,000)
- R-3 SINGLE FAMILY RESIDENTIAL (7,500)
- RM-1 MULTI-FAMILY RESIDENTIAL (6 DU/A)
- RM-2 MULTI-FAMILY RESIDENTIAL (12 DU)
- MH MOBILE HOME
- B-1 LOW DENSITY GENERAL COMMERCIAL
- B-2 COMMERCIAL
- LI-1 LIGHT INDUSTRIAL
- CP-1 COASTAL PRESERVATION
- PC PROFESSIONAL, COMMERCIAL OFFICE
- I INSTITUTIONAL

1988

Town Council Regular Meeting
October 3, 1988
Minutes

This regular meeting of the Town Council of the Town of Malabar, Brevard County was called to order at 7:00 p.m. by Chairwoman Diana Alagood in Council Chambers of Town Hall, 2725 Malabar Road, Malabar, Florida.

PRESENT: Chairwoman, Diana Alagood Attorney, Paul Kreuzkamp
 Councilmembers: Susan Theriault Town Clerk, Rosalie Lasky
 Edward Wenger

Councilman William Hard was absent.
Councilman Donald Krieger was excused.
Mayor Eugene Callagy was excused.

APPROVAL OF MINUTES

There were no minutes to approve.

PUBLIC HEARINGS AND/OR COUNCIL ACTIONS

Mr. Harry Schmertmann stated his presence as a representative of DCA
-Review of Candidate Qualifications

MOTION: Wenger/Theriault to accept John Geil and Susan Theriault candidate qualifications.

Vote: all ayes, Motion carried

-Southern Bell/BrookHollow easement was brought to the Table.

Mr. Bob Johnson represented Southern Bell's interests. Town Engineer, William Messersmith wrote that he has no problem with the proposed location.

The structure will just be a cabinet and all will be underground. Item B was struck from the Agreement. Atty. Kreuzkamp asked for a "clean" copy of the Agreement; Mr. Johnson states he will provide.

MOTION: Wenger/Theriault to approve agreement with changes to be made in Section B and new copy to be provided and no work until the document is signed.

Vote: all ayes, Motion carried.

-Extension of County Interlocal Agreement (gas tax) was brought to the Table.

MOTION: Theriault/Wenger to extend date to October 18, 1988 for Mayor Callagy to so sign the Interlocal Agreement.

Vote: all ayes, Motion carried.

-Gielich/Ricciardo right-of-way dedication was brought to the Table.

Atty. Kreuzkamp recommends a title search. Chm. Alagood felt Town should ask for Hall Road easement also, and Councilman Wenger advised pursuit of Appleby Lane easement too.

MOTION: Wenger/Theriault ask also for 25 ft. Appleby and 15 ft. on Hall Road.

Vote: all ayes, Motion carried.

-Howard, Walter home occupational license for Heating & Air Conditioning was brought to the Table.

Mr. Howard stated he already has an Occupation License as a contractor, and this request will create no additional traffic.

MOTION: Theriault/Wenger to approve home occupational license for Walter Howard.

Town Council minutes
October 3, 1988 continued Page 2

Vote: all ayes, Motion carried.

-Ordinance 88-36, Final Approval of Schedule C to Ordinance 6-5-84 (Road Ordinance) was brought to the Table.

MOTION: Wenger/Theriault to approve Ordinance 88-36, Schedule C to Ordinance 6-5-84.

Vote: Theriault-aye, Wenger-aye, Alagood-aye. All ayes, Motion carried.

Les Solin, David Moon and William Messersmith arrived at 7:30 p.m.

-Public Hearing and Final Reading of Ordinance to Adopt the Comprehensive Land Use Plan

Chm. Alagood opened the meeting to the Public Hearing on the Comprehensive Land Use Plan with call of agenda'd speakers.

Dominick Vitaliano stated he would not speak.

Chm. Alagood calls for other Public comments.

Ken Marshall, would like to have parcel 753 where Brevard Hardwoods is located designated commercial. Stated adjoining property owners (Denius and The First) are also seeking commercial designation.

Paul Gaugelmann, represented the Denius interests states PUD designation is acceptable.

David Barth, represented the Buehler Trust, requested change from Rural Residential to Light Industrial for the subject property as he feels this would be the best zoning for this area. He would be willing to work under a PUD.

Mrs. Geraldine Radencic, stated she wants the Buehler Trust property to remain designated Rural Residential; she read a letter from the County regarding this particular parcel.

Margaret White, Chairwoman Planning and Zoning Advisory Board, urged Council to defer decision on the Denius property until a later date when the Town has knowledge of the proposed bridge and accesses as she states concern that some parcels could create dangerous curb areas. Also, encouraged Council to leave the Buehler Trust area RR as it is in an environmentally sensitive area and a major recharge area; the Town has designated 420 acres for Industrial use and that is a sufficient amount and any expansion of Industrial zoning is not acceptable with the Town's goal.

Ralph Turnberg, Chairman Roads and Drainage Advisory Board, urged Council to leave the Buehler Trust area with the current RR land use designation. He cited the land had RR designation when it was purchased, and the Town has no obligation to provide profit to out-of-town developers. No adjoining property owners would be favorably affected by change.

Jerry Nothstine, represented the Valkaria Home Owners Association to request the Buehler Trust area remain designated RR.

Robert Dow, addressed his concerns for the recharge area located in the Buehler Trust property.

Paula May, spoke regarding contamination of the Indian River and her concerns over the quality of water for fishing, shellfish and drinking water. She feels there is no need for more Industrial designation.

John Radencic, asked about traffic, crime and services if there is

Town Council minutes
October 3, 1988 continued Page 3

additional industrial development.

Robert Dow, read into the record a memo of September 15, 1988 from Les Solin, Town Planner to Margaret White (attached with permanent minutes).

MOTION: Theriault/Wenger for a break at 9:00 p.m.

Vote: all ayes, Motion carried.

The meeting reconvened at 9:20 p.m.

Hugh Normile, represented the interests of William Nelson requested LDR land use designation for approximately 5 acres but to leave some CP subject to flexibility depending on topography.

Bob May, wants the property just north to the Nelson property to be preserved Coastal Preservation.

Chm. Alagood called for any other interested parties.

John Foley, asked about the OI land use designation (it was explained this was the same as PC). He stated he speaks for all of the residents of Lett Lane north of Old Mission Road and multifamily is not wanted there and as the property still has MRO land use designation the "multifamily" should be removed.

Chm. Alagood calls for additional Public comments. There were none. She introduced Mr. Schwertmann as an observer from the Department of Community Affairs, and explained he can make no comments.

Chm. Alagood closed the meeting to the Public. Had the proposed Land Use Map made visible to all.

MOTION: Wenger/Theriault the 2.5 acre parcel (#753) on the west side of Marie Street occupied by Brevard Hardwoods by designated CL.
Vote: all ayes, Motion carried.

MOTION: Wenger/Theriault the area on the north side of Malabar Road adjoining Malabar Woods on the west, bordered by Marie Street on the east and extending north to a point that lines up with an easement running from Marie Street west (known as the Denius property) be designated CG-PUD.

Vote: all ayes, Motion carried.

MOTION: Wenger/Theriault parcels #757, 758, 759, 760 be designated OI on the Land Use map.

Vote: all ayes, Motion carried.

MOTION: Wenger/Theriault the parcel north of Malabar Road and east of the entrance to Malabar Woods be designated CG-PUD on the Land Use map.

Vote: all ayes, Motion carried.

MOTION: Theriault/Wenger the outparcel (#503) fronting on Malabar Road be designated OI.

Vote: all ayes, Motion carried.

MOTION: Wenger/Theriault the property known as the Buehler Trust located north of Valkaria Road be left RR.

Comp Plan
1988

Town Council minutes
October 3, 1988 continued Page 4

Vote: all ayes, Motion carried.

MOTION: Theriault/Wenger to designate the triangle bordered by Lett Lane on the west, Old Mission Road on the South, I-95 on the east and including parcels 270 and 266 (corner of Babcock and Old Mission Road) be designated OI.

Vote: all ayes, Motion carried.

MOTION: Theriault/Wenger grant a land use designation of LDR with no development whatsoever in the hurrican velocity zone, the demarcation line of which is to be decided at the time of issuance of a development order.

Vote: all ayes, Motion carried.

Atty. Kreuzkamp advises against P & Z recommendation #8, tying site plan to zoning applications in all zoning classifications except RR and R-1 because this would represent contract zoning.

MOTION: Theriault/Wenger change the land use designation for the property on the south side of Malabar Road and on the west side of Linrose Lane to OI.

Vote: all ayes, Motion carried.

MOTION: Theriault/Wenger change the land use designation for the three parcels on the south side of Malabar Road extending from Alexander Lane eastward to Corey Road to OI.

Vote: all ayes, Motion carried.

MOTION: Theriault/Wenger change the land use designation for the parcel on the south side of Malabar Road opposite the entrance to Malabar Woods to OI.

Vote: all ayes, Motion carried.

MOTION: Theriault/Wenger change the land use designation for the 200' strip just to the west of the 300' strip running along the west side of the FEC railroad tracks commencing 150' north of Malabar Road and extending north to approximately 1200' from the Town's northern boundary of CG.

Vote: all ayes, Motion carried.

MOTION: Wenger/Theriault to designate the area between US#1 and the FEC railroad tracks extending from Malabar Road north to the Town limits (with the exception of the Riverview Home Subdivision), and on the west side of US#1 currently occupied by Callagy Tires and Mrs. Fitzgerald CG.

Vote: all ayes, Motion carried.

MOTION: Wenger/Theriault leave Light Industrial designation on the Land Use Plan at .42 FAR.

Vote: all ayes, Motion carried.

Town Council minutes
October 3, 1988 continued Page 5

Atty. Kreuzkamp advised Council to carry over adoption of Ordinance to accept the Comp Plan until they have had an opportunity to study the document. He pointed out they have not had time to review the map or the revisions, and he advises against voting to adopt without having done so. Mr. Schmertmann feels DCA would be understanding regarding the tightness of the timeframe. Chm. Alagood calls a Special Meeting at 7:30 p.m., October 11, 1988 for adoption of the Comprehensive Land Use Plan.

MOTION: Theriault/Wenger for Council to direct Les Solin, Town Planner to inform DCA of the problem with time.

Vote: all ayes, Motion carried.

ADJOURNMENT

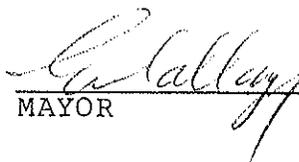
MOTION: Theriault/Wenger to adjourn at 11:30 p. m.

Vote: all ayes, Motion carried.

Date accepted: November 1, 1988

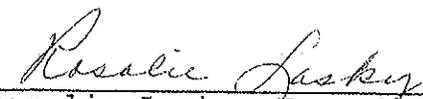


CHAIRWOMAN, Diana Alagood



MAYOR

ATTEST:



Rosalie Lasky, Town Clerk

MSB

1989

Margaret White, Chairperson
Planning & Zoning Board, Town of Malabar
February 14, 1989
Page Three

within one year after submission of its revised comprehensive plan to the Department of Community Affairs of the State of Florida. The Town of Malabar is presently within this one year period. The Town has not, as yet, revised its existing land development regulations so that all of the provisions therein are consistent with the most recently adopted Comprehensive Plan. There exists, for example, an inconsistency between Chapter 7 of the Code of Ordinances and objective 6-1.6 of the Comprehensive Plan with regard to mining regulations.

The Florida Legislature anticipated that certain inconsistencies could develop between newly enacted comprehensive plans and already existing land development regulations. Section 163.3194 was enacted to provide guidance to developers and local government officials in the event that such inconsistencies applied to an application for a development order. Subsection (1) of this Section provides specific guidelines for resolving any potential inconsistencies.

(a) After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.

(b) All land development regulations enacted or amended shall be consistent with the adopted comprehensive plan, or element or portion thereof, and any land development regulations existing at the time of adoption which are not consistent with the adopted comprehensive plan, or element or portion thereof, shall be amended so as to be consistent. If a local government allows an existing land development regulation which is inconsistent with the most recently adopted comprehensive plan, or element or portion thereof, to remain in effect, the local government shall adopt a schedule for bringing the land development regulation into conformity with the provisions of the most recently adopted comprehensive plan, or element or portion thereof. During the interim period when the provisions of the most recently adopted comprehensive plan, or element or portion thereof, and the land development regulations are inconsistent, the provisions of the most recently adopted comprehensive plan, or element or portion thereof, shall govern any action taken in regard to an application for a development order.

1991

CG - COMMERCIAL GENERAL

- o Portions of Lots 1 through 7 (inclusive) of the Riverview Homes subdivision (PB 13, Pg. 3), which are west of U.S. Highway #1, Section 31. See Article 2.
- o Parcel #250.3 of the Town of Malabar in Section 31, Township 28S, Range 38E (AKA River View Cafe, Old Daddy's site).
- o All lands between the FEC railroad and U.S. Highway 1, which are north of Malabar Road and south of the Riverview Homes subdivision (PB 13, Page 3), except cemetery, Section 31.
- o All lands between the FEC railroad and U.S. Highway #1, which are south of Malabar Road and north of the Century Oaks subdivision (PB 20, Pg 32), Section 31.
- o All lands between the FEC railroad and U.S. Highway #1; from the northern boundary of parcel #759 of the Town of Malabar proceeding south to the southern boundary of a subdivision known as Sunnybank on the Dixie (PB 4, Pg 68), Section 6.
- o A strip of land 500' wide which runs along the western edge of the FEC railroad right-of-way, beginning at a point 1,200' +/- south of the Town's northern limit and proceeding south to Jordan Boulevard.
- o All lands east of Pine Street, west of the FEC railroad, north of Garden Street, and south of Malabar Road, Section 31.
- o All lands south of Malabar Road, north of Glatter Road, and west of Marie Street, Section 36.
- o The north two and one-half acres, exclusive of road right of way, of Lot 8, Section 1, Township 29S, Range 37E, of the Indian River Fruit and Truck Lands (PB 2, Pg 95), Parcel 53.
- o All lands east of Babcock Street, west of Lett Lane, and south of Atz Road, with a southern limit of the northern boundary of parcels 266 and 278 of the Town of Malabar, Section 10. See Article 4.
- o A piece of land in the northeastern portion of the Town of Malabar; on the Town's northern boundary, east of the FEC railroad, north of the Riverview Homes subdivision (PB 13, Page 3), and west of U.S. Highway 1. See Article 1.

CL - COMMERCIAL LIMITED

- o A piece of land on the northwestern corner of the intersection of Malabar Road and Marie Street, consisting of parcels #752, #753, and #762 of the Town of Malabar, Section 36. See Article 5.

TOWN COUNCIL MINUTES

OCTOBER 17, 1994

This meeting of the Malabar Town Council was called to order by Chairman John Kelvington at 7:35 p.m., October 17, 1994 in the Town Hall at 2725 Malabar Road, Malabar, Florida.

ROLL Mayor, J. Durand, Excused J. Kelvington, Chairman
S. Theriault R. Grady
Y. Rasor J. Hurley
R. Torpy, Town Attorney
Wm. Hall, Administrator
R. Lasky, Clerk

Prayer and Pledge led by Chairman John Kelvington.

Additions and deletions to agenda: None

MOTION: Grady/Rasor to accept the consent agenda, A through C.
VOTE: All Aye

Consent Agenda:
a. Minutes 10/3
b. Fire Chief Report
c. Clerk's Report

Chair opened the public portion on Ordinance 94-3.
MOTION: Grady/Hurley to read 94-3 by title only.
VOTE: All Aye

Hurley reads Ordinance 94-3 by title only.

ORDINANCE 94-3



AN ORDINANCE OF THE TOWN OF MALABAR AMENDING THE COMPREHENSIVE PLAN: TO ESTABLISH A NEW MIXED USE FUTURE LAND USE MAP DESIGNATION OF "RESIDENTIAL LIMITED COMMERCIAL (R/LC); AMENDING THE FUTURE LAND USE MAP FOR THE FOLLOWING AREAS WITHIN THE WESTSIDE US 1 CORRIDOR: 1) CERTAIN LANDS WEST OF US 1 FROM CG TO R/LC; 2) PARCEL 250.1, NORTH OF RIVERVIEW DRIVE FROM CG TO HDR; 3) CERTAIN LAND WITHIN OR NEAR THE DRAKE, OAKHURST, AND CRESCENT S/D FROM CG TO HDR; 4) PARCEL 751 AND 500 LOCATED APPROXIMATELY 1,045 FEET NORTH OF JORDAN BLVD. AND WEST OF US 1 FROM MRO TO HDR; AND PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

Hurley gave a brief history of 94-3 and 94-4 to help the residents understand that the Florida Legislature established DCA to monitor Land Use. In October 1988 Malabar adopted the current plan. Some property along US 1 was changed from HDR to Commercial General, which made certain properties non-conforming. Residents petitioned Council to rezone back to residential, since home additions and residential sales were affected. One parcel in the Riverview sub-division became landlocked. It needs to be rezoned to HDR. There is a pie shaped piece South of Malabar Road, off of Passaic Avenue that needs to be added to the HDR designation.

Kelvington opened the meeting to the public.

Anne Crane - 3020 Township explained that she got the rezoning petition going 2 to 3 years ago. We can't sell because the property is zoned commercial and we can't add to our homes. This has been a hardship on some of the residents.

Steward Berkeley - 3000 Township was one of three properties on Township to be changed to R/LC in the original plan. Has been in favor the new zoning as it was first written and asked why the first plan was not approved. Has talked to several council members and gets different answers.

- Torpy explained that the first proposal was returned to Planning and Zoning because it didn't get enough votes. This ordinance is more tailored to the needs of the residents. Council concerned that the first proposal went to far.

- Berkeley explained that the three residents he speaks for were in favor of the original plan, first it was R/LC now HDR.

- Hurley - If Wecker and Berkeley properties were allowed to be R/LC they would be the only two off US 1 to be zoned that way.

- Berkeley - there is also a triangular area.

- Hurley explained that they are going to amend that tonight.

- Berkeley feels R/LC acts as a buffer.

A discussion followed on buffers.

- Hurley - changing the triangle was recommended by P & Z to Council. Most restrictive provisions will apply for contiguous properties. Council can't meet every single persons desire, but looks to what's best for the majority.

Torpy - There needs to be a pattern, Berkeley was not left out or singled out.

- Berkeley - did fit a year ago, but does not now.
- Rasor - if we gave him what he wants, it would be spot zoning.
- Torpy replied that it looks like spot zoning to him.
- Hurley disagrees.

Marti Carmine - 2805 Malabar Road explained that her property is not being rezoned, but her business can't be next to residential.

- Torpy explained it would not be abutting residential - will not become non-conforming. R/LC needs specific definition, we need to add that.

Chairman Kelvington closed the meeting to the public.

- Hurley points out pie shape from Passaic to the Rail Road track. P & Z requested property be changed from CG to HDR, (8.1) and do not consider it for R/LC.

Torpy and Hurley discuss this at length.

- Theriault declares a conflict of interest. Has property in the area under discussion. There is a problem as some of the lots are not along the highway, two lots are behind the highway.

- Torpy asked if they are one parcel.

- Bob Theriault explained they are three parcels in the description. 100 x 150 residential and only good for parking lot. Buildings on front parcel extend back.

- Torpy asked if they are taxed separately for that piece?

- Bob Theriault replied same deed - different legals. You are denying us the best use of the property. Can't build on it.

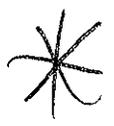
- Torpy explained that when the Town is making zoning changes they cannot deny beneficial use of the land.

- Chair requested Mr. Torpy look into the problem.

1994

- Hurley - in changing the zoning to HDR will be RM6. RM6 required 5 acres with front set backs of 60 ft., rear 40 ft., and side 40 ft. Talked with Les Solin and he suggested the language contain some type of grandfather clause so owners would not have to go to the Board of Adjustment for a variance.
- Torpy would like to see set back language. HDR-RM6 now non-conforming.
- Hurley - we can go up the chain to RS-10.
- Torpy - need to change language specific to those parcels. "Be treated as RS-10"
- Attorney to address this issue.
- Hurley under HDR -RMH, would this allow for trailers?
Attorney to review.
- Torpy - IF R/CL is next to CG may not be impacted negatively.
Attorney will write definition.

Town Atty



MOTION: Hurley/Rasor to accept Ordinance 94-3 amending comp plan for first reading with recommended changes.

VOTE:	Kelvington	Aye	Theriault	Abstain
	Grady	Aye	Hurley	Aye
	Rasor	Aye		

MOTION: Grady/Rasor to read 94-4 by title only.

VOTE: All Aye

Hurley reads Ordinance 94-4 by title only.

ORDINANCE 94-4

AN ORDINANCE OF THE TOWN OF MALABAR AMENDING THE LAND DEVELOPMENT REGULATIONS BY ESTABLISHING A MIXED USE RESIDENTIAL AND LIMITED COMMERCIAL (R/LC) DISTRICT; PROVIDING FOR SPECIFIC R/LC ZONING MAP AMENDMENTS; DESCRIBING A PURPOSE AND INTENT FOR THE R/LC DISTRICT; DEFINING LAND USES, AND SIZE AND DIMENSION CRITERIA FOR THE R/LC DISTRICT; PROVIDING FOR MAXIMUM SQUARE FOOTAGE FLOOR AREA FOR LIMITED COMMERCIAL USES IN THE CL AND R/CL ZONING DISTRICTS; AMENDING THE CONDITIONAL USE CRITERIA OF ARTICLE VI; AND PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.



1-1.2.2 Policy:

General pattern of commercial land use. In order to promote efficient flow of traffic along thoroughfares, achieve orderly development and minimize adverse impact on residential quality, commercial development shall be concentrated in strategically located areas having location characteristics which best accommodate specific land, site, public facilities and market location requirements of respective commercial uses.

1-1.2.3 Policy:

Provide appropriate locations for commercial office development. Office development shall be encouraged to locate on accessible sites near major thoroughfares and may serve as transitional uses separating more intensive commercial uses from residential development. In addition, office complexes may be compatible with multiple family units and/or institutional uses situated on strategically located sites along major thoroughfares where the sites are of sufficient size to accommodate land requirements for controlled access, effective internal circulation and off-street parking, and appropriate landscape, screening and buffering to assure stability and protection of established or anticipated future residential areas.

The Office-Institutional (OI), Multiple-Family Residential or Office (MRO), and Residential and Limited Commercial (R/LC) land use designations, as described in herein, are designed to carry out the intent of this objective. Land Development Code performance standards shall require significant landscaping, screening, urban design controls.

1-1.3 Objective:

Planning for industrial development. Sufficient land shall be allocated to accommodate industrial development.

1-1.3.1 Policy:

General considerations in locating industrial development. The allocation of land resources for industrial development shall reflect the location and space requirements of industrial activities and potential fiscal and environmental impacts on the Town of Malabar. The location and distribution of specific types of industrial activities shall be determined based on the following considerations:

- a. Trip generation characteristics, impact on existing and planned transportation systems, including dependency on rail, air, or trucking for distribution of material and goods;
- b. Anticipated employment generation, floor area requirements, and market area;
- c. Ability to meet established performance standards for preventing or minimizing nuisance impacts, such as emission of air pollutants, glare, noise or odor, generation of hazardous by-products;
- d. Impact on established and planned development and natural systems; and

demand, and adequacy of public facilities. Supportive community facilities and accessory land uses may be located within areas designated LDR. The Town land development regulations shall provide regulatory procedures for considering such uses

The low density designation is established to protect the quality and character of existing stable low density single family neighborhoods, preserve open space, and encourage densities which are compatible with existing developments, natural features of the land, as well as existing and projected public services and facilities for the area.

1-2.1.4 Policy:

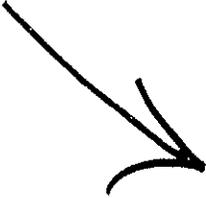
Medium Density Residential Development (MDR). Areas delineated on the Future Land Use Map for medium density residential development shall be developed and/or maintained as residential neighborhoods. This designation allows for multi-family and single family structure types and maximum density of up to four (4) dwelling units per acre. The medium density designation is intended to ensure sufficient land area for developments of medium density and the adequacy of existing and/or projected public facilities for the area. Supportive community facilities and accessory land uses may be located within areas designated MDR. The Town land development regulations shall provide regulatory procedures for considering such uses.

Review of specific densities of developments shall be directed toward preserving stability of established residential areas. Sites for medium density residential developments should be located so that they provide a smooth transition between lower density residential areas and areas developed and/or designated for other more intense uses.

1-2.1.5 Policy:

High Density Residential Development (HDR). High density residential development ranges up to a maximum of six (6) units per acre. The high density policy designation is intended to primarily provide for multiple family residential development at higher densities which shall be adequately supported by public services and facilities, and maintain compatibility with the surrounding area. The specific designated for high density development shall be accessible to existing or anticipated future major thoroughfares and requisite utilities. In addition, these areas generally shall be highly accessible to commercial services. Specific density of future development proposals within these areas shall provide for smooth transition in residential density, preserve stability of established residential areas, and shall include sufficient open space, parking and landscaping to reinforce goals and objectives for quality living areas.

1-2.2 Objective:



Allocating commercial development. The Future Land Use Map shall identify the allocation of commercial land for: 1) multiple-family residential or office development; 2) limited commercial development; and 3) general commercial activities. The allocation of land for commercial development is compatible with goals and objectives identified in the Comprehensive Plan and consistent with supportive research and analysis. The policies stated below provide an explanation of the

residential neighborhoods. Such development is intended to provide essential household services in locations highly accessible to residential areas. For instance, sites within this designation are intended to accommodate neighborhood shops with limited inventory or goods. Such shops generally cater to the following markets: 1) neighborhood residential markets within the immediate vicinity as opposed to city-wide or regional markets; or 2) a specialized market with customized demands. Commercial development within the limited commercial designation shall generally be restricted to any of the following uses: neighborhood convenience stores; small limited item shops and stores restricted to retail sales of convenience items and services including barber, beauty care, and other personal services; small scale drugstores, laundry and dry cleaning pick-up stations; specialty shops; small scale activities associated with a specialized facility.



Areas designated for limited commercial development are not intended to accommodate large scale retail sales, service, 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 a 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, supermarkets; department stores; large scale wholesaling and warehousing activities; general sales, service or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; fast food establishments primarily serving in disposable containers and/or providing drive-in facilities, and other similar services to be expressly defined in the zoning ordinance.



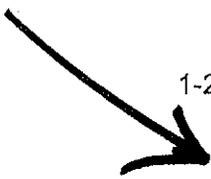
No residential uses shall be located in a CL designated area.



1-2.2.4 Policy:

General Commercial Development (CG). The general commercial areas are designated on the Future Land Use Maps for purposes of accommodating general retail sales and services. These areas are located in highly accessible areas adjacent to major thoroughfares which possess necessary location, site, and market requirements. Zoning policy shall stipulate provisions regulating specific land uses.

The areas designated for general commercial development are specifically not adaptive to permanent residential housing and such uses shall be located in other areas designated for residential development.



1-2.2.5 Policy:

Residential and Limited Commercial Development (R/LC). The R/LC Future Land Use Map designation is intended to accommodate and shall accommodate a mixture of land uses expressly restricted to uses allowed in the "limited commercial" designation together with uses allowed on lands designated for high density residential activities with a density no greater than six (6) units per acre. Such residential uses may be located either within a free standing structure or within a structure housing both Residential and



Limited Commercial activities. The "R/LC" FLUM designation 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 the Town's Land Development Code. The "R/LC" Future Land Use Map (FLUM) designation is intended to apply to and shall only be applied to sites situated on the west side of the US 1 corridor, sites on Malabar Road and sites situated on the east side of Babcock Street. The "R/LC" FLUM designation shall apply only to the following specific areas:

- a. Land south of the south property line of parcel 252 and 251 located 400+/- feet south of Riverview Home S/D; east of the FEC R/W; north of an irregular line formed by the south property line of lots 15-21 which front on the south side of Malabar Road; the east property line of lot 21 fronting on the south side of Malabar Road; and west of an irregular line formed by the US 1 R/W and the west property line of lot 22 which fronts on the south side of Malabar Road.
- b. Land south of Orange Avenue R/W and north of Township Road within the Drake S/D, lots 41, A, B, C, D, E, F, G and West of US 1; and the land east of Crescent Road, north of Oak Street R/W, and west of the US 1 R/W.
- c. Land South of the north property line formed by parcel 7.1, approximately 860 feet south of Oak Street and on the West side of US 1 Highway; and the west and south property lines of parcel 7.1 and east of the west property lines of the following lots all of which abut US 1 R/W and are located in the Sunnybank on the Dixie S/D; lots 1-10 in block C, lots 1-12 in block B, and lots 1-4 in block A; north of the south property line of lot 1, block A, Sunnybank on the Dixie S/D; and west of the US 1 R/W.
- d. Land on either the north or south side of Malabar Road between the F.E.C. Railroad and the west end of Town.
- e. Land on the east side of Babcock Street from I-95 south to Osage Street. These sites currently are characterized by a mixture of generally small scale commercial businesses together with predominantly single family residential land uses. Acres designated "R/LC" are not suitable for and shall not be developed for large scale general retail activities or other commercial activities more intense than land uses expressly provided for in the "limited commercial" Future Land Use Map designation (Reference Policy 1-2.2.3) since such development would be incompatible with existing and anticipated future residential development within or in the vicinity of areas designated "R/LC" on the Future Land Use Map.

1-2.2.6 Policy:

Criteria for the residential and Limited Commercial Development R/LC Designation.
 The following criteria for development within the R/LC FLUM designation shall be incorporated into the Town of Malabar Land Development Regulations:

- a. *Percent of Site for Mixed Use Development.* Within the R/LC designation where Residential and Limited Commercial activities are proposed to occupy the same site and/or the same building the following minimum and maximum percentages shall apply:

	Minimum	Maximum
Limited Commercial	20%	90%

Residential 10% 80%

- 
- b. *Limited Commercial Uses.* Limited Commercial uses within the R/LC FLUM designation shall have a minimum floor area of nine hundred (900) square feet and a maximum of four thousand (4,000) square feet.
 - c. *Residential Uses.* Single family units shall have a maximum density of four (4) units per acre. Multiple family uses shall have a density no greater than six (6) units per acre. However, any residential site located with a high surficial aquifer area on the Atlantic Coastal Ridge and not served by central water and wastewater shall have a density no greater than two (2) units per acre.
 - d. *Minimum Lot Requirements.* Lots within the R/LC FLUM designation shall have a minimum lot size of 20,000 square feet, a minimum width of 100' and a minimum depth of 150'.
 - e. *Setbacks Requirements.* Single family units shall have setbacks of 25' in the front, 10' on the interior and street sides, and 20' in the rear. Multiple family units shall have setbacks of 50' in the front, 10' on the interior side, 20' on the street side, and 25' in the rear.
 - f. *Building Height Requirements.* Any building within the R/LC FLUM designation shall have a maximum height of thirty-five (35) feet or three (3) stories.
 - g. *Coverage Requirements.* Single family residential uses shall have an impervious surface ratio of 50% with a minimum open space requirement of 50%. Multiple family residential uses shall have an impervious surface ratio of 65% with a minimum open space requirement of 35%. Limited commercial uses shall have a maximum floor to area ratio (FAR) of 0.20.
 - h. *Buffering.* The R/LC district is intended and shall be interpreted to be a "commercial" district with respect to required buffering and other provisions referenced by zoning district in the Land Development Code.
- 

1-2.7 Objective:

Allocating Industrial Development (IND). The Future Land Use Map shall allocate land resources for existing and anticipated future industrial needs and requisite support services.

1-2.7.1 Policy:

Industrial Land Use Designation. The allocation of industrial land use designations should provide a high priority to industry's frequent need for strategically located lands which are accessible to rail and terminal facilities, major arterials or interchanges, labor markets and necessary urban services.

Industrially designated areas are not generally adaptive to residential use and as such industrial activities shall not be located in areas designated for residential development. This provision shall not prohibit residences for night watchmen or custodians whose presence on industrial sites is necessary for security purposes. Such a use may be permitted as an accessory use through appropriate zoning procedures.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: December 10, 2014

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

SUBJECT: Elhoim Christian Church Site Plan Review for two Parcels 28-37-36-00-00759 (1.62 acres) & 28-37-36-00-00760(1.38 acres) aka temporary address: 2170 Malabar Road, Malabar FL 32950

BACKGROUND/HISTORY:

The Applicant, Mr. Scott M. Glaubitz, P.E., BSE Consultants, Inc. representing Elhoim Christian Church has applied for a Site Plan Review for a 10,000 SF Church Facility with a future expansion of 5,000 SF on 3+ acres of vacant land, to be located at 2170 Malabar Road, Malabar. (Temporary address until properties are joined) The property is zoned Office Institution "OI".

A pre-application meeting was held on January 15, 2014. Comments from Town Staff, ie., Planner, Engineer, Building Official, Fire Chief and Attorney were provided to the applicant at the pre-ap meeting. Post comments provided by then applicants' Engineer, Jim Trauger. The Applicant has now contracted with Engineer Scott Glaubitz. He came in and introduced himself to Clerk and me and showed his rendition of what the other engineer had done.

The Application went out to Town Staff for the Project Review process and when comments where returned they were emailed out to the Applicant for any revisions or comments present.

The Town Council will then consider this Boards' recommendation at the next regular scheduled Town Council Meeting.

ATTACHMENTS:

- Complete Memo & Packet given to Staff for review
- Staff comments
- B.S.E Consultant, return comments (11/4/14)
- Large Site Plan (Please return after meeting of 11/10/14)

ACTION OPTIONS:

Action to Council

TOWN OF MALABAR

MEMORANDUM

Date: November 18, 2014 14-AABO-033

To: Roger Coutier, Building Official
Morris Smith, Town Engineer
Keith Mills, Town Planner
Karl Bohne, Town Attorney
Christopher Robinson, Fire Chief
FPE, Forensic PPLC (Brian Foster) Third Party Fire Review

From: Denine M. Sherear, Administrative Assistant to the Building official

Ref: Review for Site Plan for Elohim Christian Church Malabar Road, Malabar, FL 32950

The Applicant, Mr. Scott M. Glaubitz, P.E., BSE Consultants, Inc. representing Elhoim Christian Church has applied for a Site Plan Review for a 10,000 SF Church Facility with a future expansion of 5,000 SF on 3+ acres of vacant land, to be located at 2170 Malabar Road, Malabar. (Temporary address until properties are joined) The property is zoned Office Institution "OI".

This review will be going before the Planning & Zoning Board on November 10, 2014 @ 7:30PM and you are all asked to attend.

A pre-application meeting was held on January 15, 2014. Comments from Town Staff, ie., Planner, Engineer, Building Official, Fire Chief and Attorney were provided to the applicant at the pre-ap meeting. Post comments provided by then applicants' Engineer, Jim Trauger. The Applicant has now contracted with Engineer Scott Glaubitz. He came in and introduced himself to Clerk and me and showed his rendition of what the other engineer had done. He wanted our once over before submitting. They have now submitted for the Site Plan review and I have listed everything included in this package.

Attached please find:

- Site Plan Application Package
- Portion of Town of Malabar Zoning map
- Portion of Town Code, Article III District Provisions defining Office Institutional (OI) and Tables 1-3.2 & 1-3.3(A)
- Radius Map for 500' from 2170 Malabar Road and list of property owners
- Malabar Code Article V, Section 1-5.29 re: Florida Vernacular
- Large (12) page folded (24"x36") Site Plan & (1) page Boundary Survey
- Staff comment sheets from pre-ap

The Building Official has requested a turnaround time of ten (10) business days for staff review of application. Please provide your comments to this office within that time frame and we will forward them to the applicant/Boards accordingly.

We appreciate your cooperation with our process.



B.S.E. CONSULTANTS, INC.

Consulting ~ Engineering ~ Land Surveying

Scott M. Glaubitz, P.E., P.L.S.
President

Hassan Kamal, P.E.
Vice President

October 30, 2014



Via Courier

Mr. Roger Cloutier
Building Official
Town of Malabar
2725 Malabar Road
Malabar, FL 32950

**Re: Elhoim Christian Church
B.S.E. File # 11245**

Dear Mr. Cloutier:

For your review, enclosed please find our Site Plan Submittal for the above referenced project. Included in this submittal are the following documents:

1. Application for Non-Residential Site Plan Review
2. Brevard County 500' Radius Package
3. Check # 1017 in the amount of \$400.00 for the Application Review Fee
4. One (1) Stormwater Management Report
5. Twelve (12) sets of the Site Plans (two sets signed/sealed)
6. One (1) CD-Rom containing a PDF copy of the Site Plans

We would appreciate your prompt processing, review and approval of the enclosed and if you have any questions, please feel free to call me.

Very truly yours,

Scott M. Glaubitz P.E. P.L.S.

Scott M. Glaubitz, P.E., P.L.S.
President
B.S.E. Consultants, Inc.

SMG/alm
11245.town.corr.14-s2973.oct

cc: Ryan Runte, Certified General Contractors Inc.

Enclosures

Civil ~ Agricultural ~ Transportation ~ Utility ~ Site Planning ~ Environmental
312 South Harbor City Boulevard, Suite #4, Melbourne, FL 32901
(321) 725-3674 ~ Fax (321) 723-1159
Toll Free ~ 1-800-523-4BSE (4273)
info@bseconsult.com

62/124



TOWN OF MALABAR
2725 Malabar Road, Malabar, Florida 32950
(321) 727-7764 Ext. 14
Fax # (321) 727-9997



APPLICATION FOR NON-RESIDENTIAL SITE PLAN REVIEW

Project Name: Elhoim Christian Church Date: October 30, 2014

Developer Name: Ryan Runte, Certified General Contractors Inc. Telephone: (321) 984-5000
 Mailing Address: 1120 Palmetto Ave. Fax: (321) 724-4659
 City, State, Zip: Melbourne, FL 32901 Cell: (321) 403-7813

Name of Property Owner(s): Elhoim Christian Church Telephone: (321) 872-4375
 E- Mail Address: _____
 Mailing Address: P.O. Box 100385 Fax: _____
 City, State, Zip: Palm Bay, FL 32910 Cell: _____

Name of Engineer(s): Scott M. Glaubitz, P.E., BSE Consultants, Inc. Telephone: (321) 725-3674
 Mailing Address: 312 S Harbor City Blvd., Suite 4 Fax: (321) 723-1159
 City, State, Zip: Melbourne, FL 32901 Cell: (321) 403-1436

Name of Architect(s): _____ Telephone: _____
 Mailing Address: _____
 City, State, Zip: _____ Cell: _____

Legal Description of Property Covered by Application:

Township: 28S Range: 37E Section: 36 Lot/Block: _____, Parcel: _____
 Subdivision: _____ Tax Acct No.: 2846312 & 2846313
 Other Legal: _____

Present Land Use Designation: O1 Present Zoning Classification: O1
 Zoning of abutting property: North: PUD(C) South: Malabar Road East: PUD(C) West: O1
 Existing and Proposed Use for Property: Existing: Vacant Land; Proposed: Church

Gross acreage: 3.16 Net acreage: 3.16 Gross density: N/A

Setbacks: Required and Proposed: Front: 100' / >160' ; Rear: 25' / >40' ;
 Side: 20' / >100' ; Side corner: 25 / N/A

Flood Zone: X Per FEMA Flood Insurance Rate Map

SITE PLAN APPLICATION AND CHECKLIST

Site Acreages:

	SF	Acres	Percentage
Pervious	71,870	1.65	52%
Impervious	40,950	0.94	30%
Pond	24,830	0.57	18%
Total	137,650	3.16	100

Wetlands Present: No Mitigation required? N/A Permit required? N/A

The applicant is required to submit TWO original Site Plans with supporting documents, 10 TEN paper copies and ONE copy on CD ROM in Portable Document Format (PDF), including graphic and textual materials and support documents. The following information is required per Article VII of the Malabar Land Development Code and must be shown on the site plan (SP) or submitted as an addendum (AD) to the site plan. Please mark where the following information can be found:

Sheet 11 Landscape and irrigation plan (existing and proposed) shown on plans.

Sheet 4 Boundary of property shown by a heavy line.

Sheet 5 Access by means of paved dedicated right-of-way (driveway width).

Sheet 4 Topographic survey for existing and proposed conditions.

Sheet 5 Existing and proposed structures shown on site plan (including setbacks from all property lines and normal high water elevation and building separations.

Church not yet designed Typical front, rear and side elevations of proposed structure(s).

Sheets 4, 6 and 7 All existing and proposed utilities (including inverts of pipes, etc)

Sheet 4-7 Location of all easements.

Sheet 7 Fire protection, existing and proposed that meet state and local requirements.

Sheet 7 Proposed location of well.

Sheet 7 Proposed location of septic and drain field

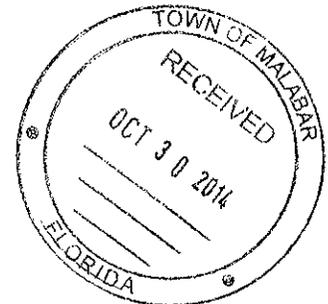
Report Stormwater management plan (including soils report and drainage calculations) *(To Engineer)*

Sheet 5 Flood Zone(s) depicted on site plan.

Sheet 4 Tree Location Survey identifying trees inches dbh and larger.

N/A Tree Plan prepared or approved by a Florida registered landscape architect.

N/A Required Open Space/Recreational areas.



Updated 05/02/12

Site Plan Review - \$300 for the first acre plus \$50 per acre for each additional acre or portion thereof for projects consisting of 1,000 or more square feet of impervious surface; plus all costs, excluding advertising, administrative time, and mailing.

- Summary of Required Attachments for Site Plan Review:
 - ✗ Completed Application, including Disclosure of Ownership (Pages 1 and 2).
 - ✗ Radius Package for 500' distance from project site perimeter – obtained from the Brevard County Planning and Zoning GIS Department in Viera – call 321-633-2070 x52245
 - ✗ Fee of \$400.00, in **check or money order**, payable to the Town of Malabar.
 - ✗ Site Plan – (10) paper copies plus one electronic copy.
 - ✗ Reason for Site Plan Review (attach correspondence, drawings, etc.)
 - Copies of all Federal, State, and Local agency permits. **It shall be the applicant's responsibility to obtain such outside permits.**

Signature of Applicant(s):

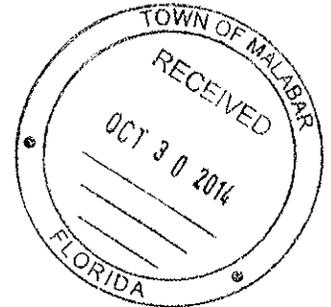
Date:

Sah
 Samuel Rosario, Pastor, Elhoim Christian Church

10/20/14

Demmi Sheeran
 Signature of Town's Personnel

10/30/14



TOWN OF MALABAR
Disclosure of Ownership

Where the **property is not owned by the applicant**, a letter/letters must be attached giving the notarize consent of the owner/owners to the applicant to request a site plan review of the property.

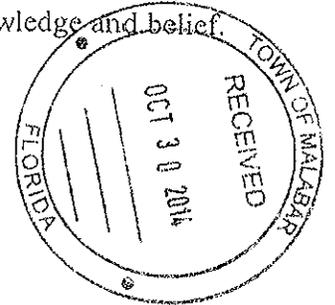
Please complete only one of the following:

I/we, _____, being first duly sworn, depose and say that I/we, am/are the **legal representative(s)** of the Owners or lessee of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said are to be honest and true to the best of my/our knowledge and belief.

Applicant(s)

Date

N/A



Sworn and subscribed before me this _____ day of _____, 20____

Notary public, State of Florida

Commission No. _____ My Commission Expires _____

Notary Signature

I/we, Samuel Rosario, Pastor of Elhoim Christian Church, being first duly sworn depose and say that I/we, am/are **the Owner(s) of the property** described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my/our knowledge and belief.

Samuel Rosario

Samuel Rosario

Applicant(s)

10/10/14
Date

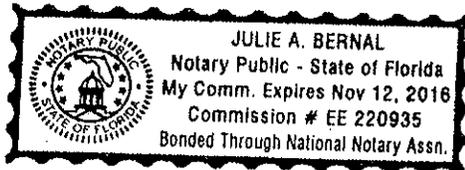
Sworn and subscribed before me this day 20th day of October, 20 14

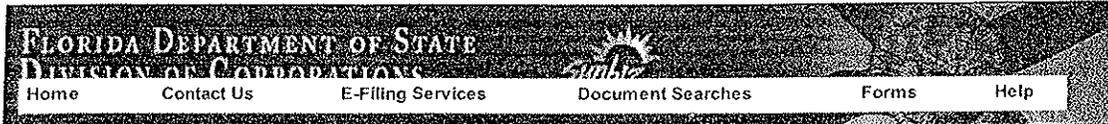
Notary Public, State of Florida

Commission No. EE 220935 My Commission Expires 11.12.16

Julie A. Bernal
Notary Signature

Updated 05/02/12





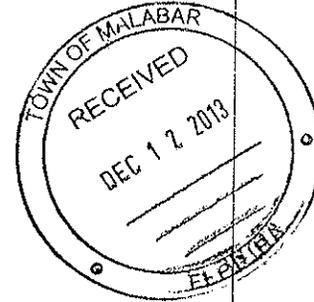
Detail by Entity Name

Florida Non Profit Corporation

ELHOIM CHRISTIAN CHURCH, INC.

Filing Information

Document Number	N02000003593
FEI/EIN Number	300226519
Date Filed	05/08/2002
State	FL
Status	ACTIVE



Principal Address

2154 DR. HARVEY RILEY ST N E
PALM BAY, FL 32905

Changed: 02/24/2012

Mailing Address

PO BOX 100385
PALM BAY, FL 32910

Changed: 04/27/2006

Registered Agent Name & Address

ROSARIO, SAMUEL PASTOR
1241 GOODE DR N E
PALM BAY, FL 32907

Name Changed: 02/24/2012

Address Changed: 02/24/2012

Officer/Director Detail

Name & Address

Title PD

ROSARIO, SAMUEL PASTOR
1241 GOODE DR N E
PALM BAY, FL 32907

Title SEC

ROSARIO, ELIZABETH
301 RILEY ST N E
PALM BAY, FL 32907

Title TRES

BURGOS, JOSE A
1520 WIGMORE ST SE

[Copyright © and Privacy Policies](#)

State of Florida, Department of State

Title O

VARGAS, CARMEN L
730 CHELSEA AVE N E
PALM BAY, FL 32905

Title O

NIEVES, MARIA L
1335 WAYSIDE CT N E
PALM BAY, FL 32905

Title Officer

ALVARADO, CARMEN S
356 CORQUETAVE NE
PALM BAY, FL 32907

**Annual Reports**

Report Year	Filed Date
2011	02/22/2011
2012	02/24/2012
2013	04/22/2013

Document Images

04/22/2013 -- ANNUAL REPORT	View image in PDF format
02/24/2012 -- ANNUAL REPORT	View image in PDF format
02/22/2011 -- ANNUAL REPORT	View image in PDF format
02/19/2010 -- ANNUAL REPORT	View image in PDF format
03/23/2009 -- ANNUAL REPORT	View image in PDF format
04/14/2008 -- ANNUAL REPORT	View image in PDF format
04/25/2007 -- ANNUAL REPORT	View image in PDF format
04/27/2006 -- ANNUAL REPORT	View image in PDF format
04/11/2005 -- ANNUAL REPORT	View image in PDF format
02/23/2004 -- ANNUAL REPORT	View image in PDF format
03/05/2003 -- ANNUAL REPORT	View image in PDF format
05/08/2002 -- Domestic Non-Profit	View image in PDF format

Dana Blickley, CFA

Brevard County Property Appraiser - MAP SEARCH



Zoom To	Account	Owner	Property Address	Parcel Identifier
1	Aerial 2846312	ELHOIM CHRISTIAN CHRUCH INC		28-37-36-00-00759.0-0000.0



NORTH

Dana Blickley, CFA

Brevard County Property Appraiser - MAP SEARCH



WEST

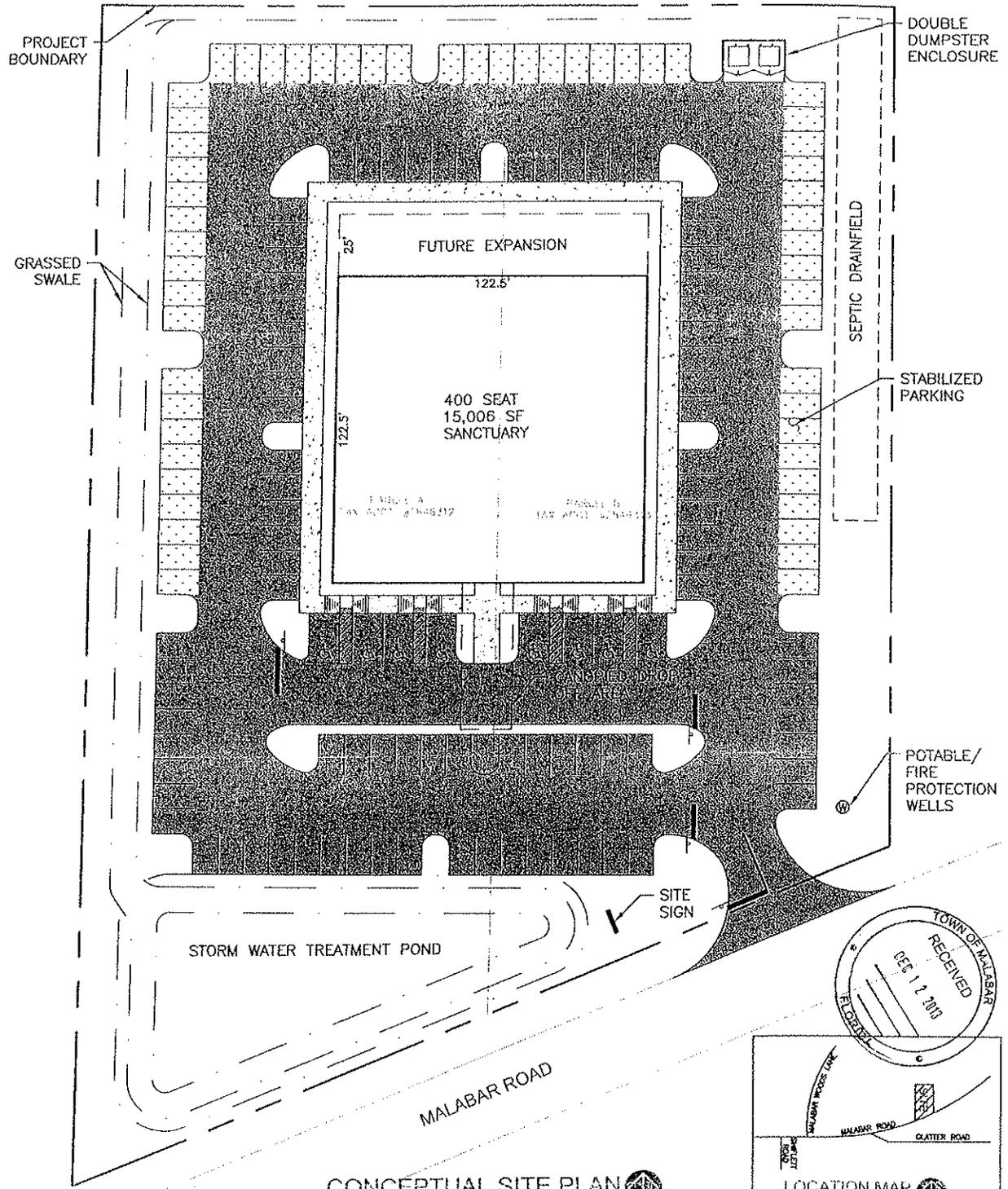
EAST

Zoom To	Account	Owner	Property Address	Parcel Identifier
1	Aerial	2846313	ELHOIM CHRISTIAN CHURCH INC	28-37-36-00-00760.0-0000.0

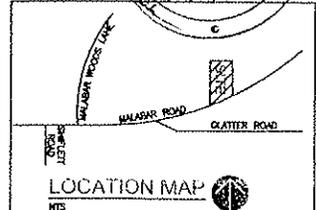
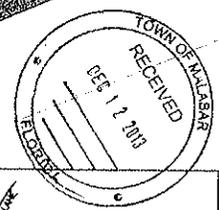


SOUTH

ELHOIM CHRISTIAN CHURCH



CONCEPTUAL SITE PLAN



SITE CHARACTERISTICS:

THIS PROJECT CONSISTS OF THE CONSTRUCTION OF A 15,000 SQUARE FOOT CHURCH SANCTUARY AND TYPICAL SITE AMENITIES TO ACCOMMODATE THE BUILDING INCLUDING VEHICULAR AREAS, SIDEWALKS, A DUMPSTER ENCLOSURE, STORMWATER PONDS, LANDSCAPING AND UTILITIES. THIS AREA OF MALABAR DOES NOT HAVE WET UTILITIES READILY AVAILABLE SO WE ARE PROPOSING A POTABLE WELL FOR WATER AND AN ON-SITE SEPTIC SYSTEM FOR SANITARY WASTE WATER DISPOSAL. WATER FOR FIRE PROTECTION IS PROPOSED TO BE PROVIDED BY A SEPARATE ON-SITE WELL. THE CURRENT ZONING OF THIS SITE PERMITS CHURCHES AND PLACES OF WORSHIP AS AN ALLOWABLE USE BY RIGHT PER TABLE 1-3.2 OF THE TOWN CODE. WE ANTICIPATE MEETING THE PARKING REQUIREMENTS FOR THE PROPOSED CHURCH BUILDING AS WELL AS PROVIDING AMPLE REQUIRED PARKING FOR THE CONSTRUCTION OF A FUTURE ADDITION TO THE BUILDING. WE REQUEST A WAIVER OR VARIANCE FROM THE CODE TO ALLOW A PORTION OF THE VEHICULAR PARKING SPACES TO BE STABILIZED GRASS PARKING.

TOTAL ACREAGE: ±3.0 ACRES
 FUTURE LAND USE: CURRENT=OI PROPOSED=R/LC
 FLOOD ZONE: ZONE X PER FEMA MAP 12009C0540F DATED AUG. 18, 1992
 MAXIMUM BUILDING HEIGHT: 35'

PARKING CALCULATIONS:

CHURCH OR OTHER PLACE OF WORSHIP: ONE (1) SPACE FOR EACH THREE (3) SEATS IN AUDITORIUM OR CHAPEL AREA.
 400 SEAT SANCTUARY
 400 SEATS / 3 SEATS = 134 PARKING SPACES
 REQUIRED: 134 PARKING SPACES INCLUDING 5 HANDICAP SPACES
 PROVIDED: 150 PARKING SPACES INCLUDING 8 HANDICAP SPACES



1120 E. PALMETTO AVE., MELBOURNE, FLORIDA 32961
 321-984-5000 ext. 11 FAX: 321-724-4659

ELHOIM
 CHRISTIAN
 CHURCH

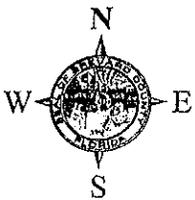
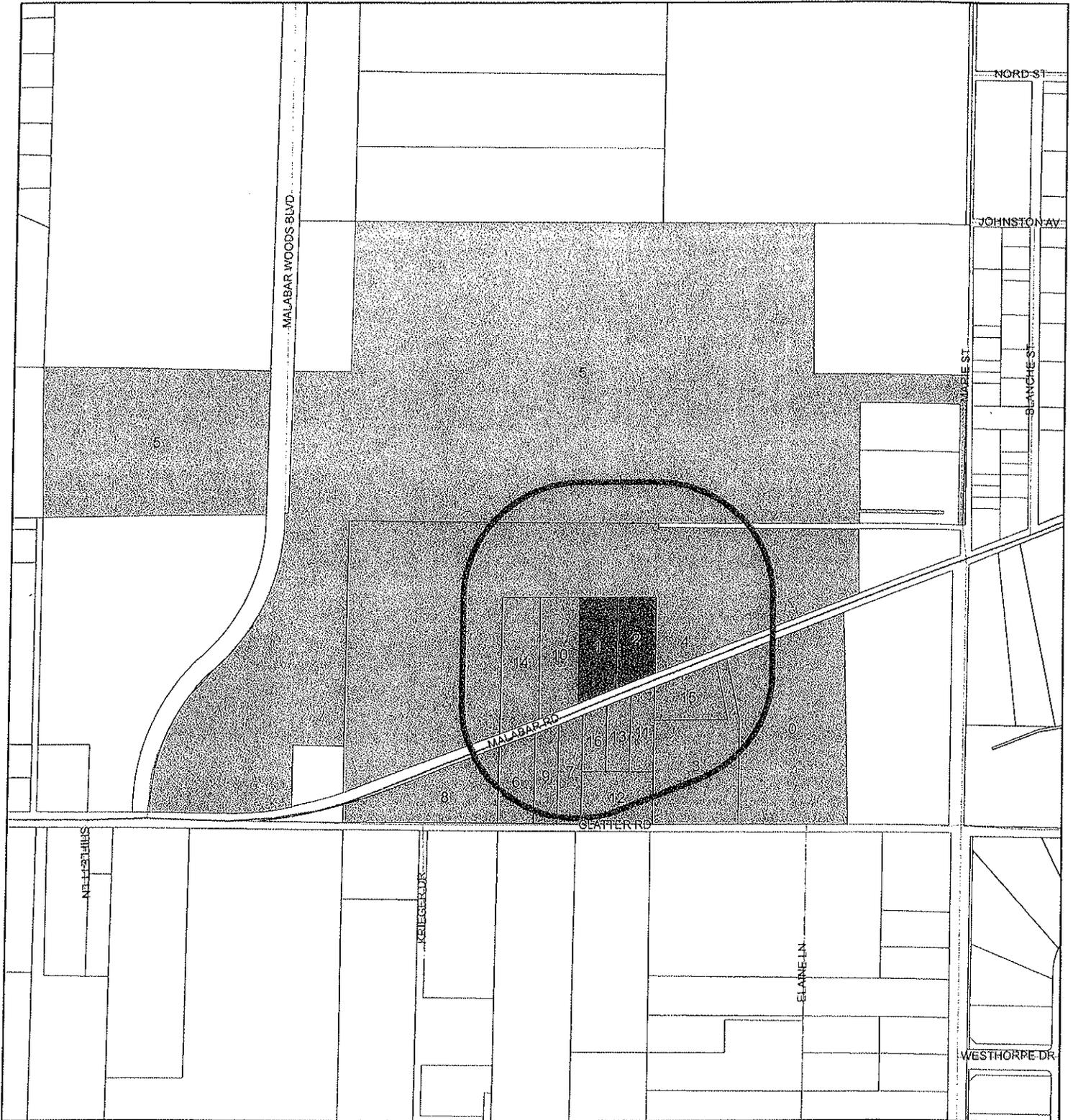
PO BOX 100385 PALM BAY, FLORIDA 32910



CONSTRUCTION ENGINEERING GROUP
 2651 eou galle hivel, suite o melbourne, fl 32935
 tel. 321.253.1221 fax 321.253.1123
 consulting engineers 71-124
 phone 408897

RADIUS MAP

ELHOIM CHRISTIAN CHURCH INC
ElhoimChurch500



1:7,200 or 1 inch = 600 feet

Buffer Distance: 500 feet

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

ShoimChurch500
Page1

BSE Consultants, Inc.

ADAMS, KENNETH G TRUSTEE
P O BOX 500790
MALABAR FL 32950-0790

SHOIM CHRISTIAN CHURCH INC
P O BOX 100385
MALABAR FL 32910-0385

FLORIDA POWER & LIGHT CO
700 UNIVERSE BLVD
JUNO BEACH FL 33408-0000

FLORIDA, STATE OF (IITF)
3900 COMMONWEALTH BLVD MS 115
TALLAHASSEE FL 32399-3000

FLORIDA, STATE OF (IITF)
DIVISION OF STATE LANDS
C/O FL DEPT OF ENVIRON PROT
300 COMMONWEALTH BLVD - MS 115
TALLAHASSEE FL 32399-3000

LAHMAN, LAURA LEE
CANNONE, ANTHONY H H/W
11259 NW 15TH STREET
CORAL SPRINGS FL 33071-0000

LOSCH, HULDA M
127 QUEEN AVE
SHAMOKIN DAM PA 17876-9277

MCLACHLAN, SCOTT
180 GLATTER RD
MALABAR FL 32950-0000

MCLACHLAN, SCOTT
1805 COREY RD
MALABAR FL 32950-0000

MCLACHLAN, SCOTT
2180 GLATTER ROAD
MALABAR FL 32950-0000

LAN ONE INC
P O BOX 501195
MALABAR FL 32950-1195

TINDALL, LAWRENCE WILLIAM
2215 MALABAR RD
MALABAR FL 32950-0000

WILBORN, JAMES H
WILBORN, LEONA G H/W
P O BOX 500473
MALABAR FL 32950-0473



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

TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
RESIDENTIAL USES														
Duplex					P	P								
Mobile Homes							P				P			
Multiple Family Dwelling					P	P								
Single Family Dwellings	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				
Educational Institutions								P	P	P	P			P
Golf Course Facilities	C							C, A ¹						C
Group Homes														
Hospital and Extensive Care Facilities					C	C		C			P			C
Nursing Homes (Including Rest Homes and Convalescent Homes)								C						C
Protective Services						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

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.

2 Any Arcade Amusement Center and Electronic Gaming Establishment as defined herein shall only be approved as a conditional use in accordance with Article VI of the Malabar Land Development Code.

(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; Ord. No. 12-48, § 2, 1-23-12)

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

Zoning District	Minimum Lot (L)			Maximum Height (ft./stories)	Minimum Living Area (sq. ft.)	Setback (ft./ft)			Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (ft.)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (I)				
O1	20,000	100	150	35/3	Minimum Floor Area: 1000	35/60	25	20	25	20	35	N/A
Commercial Development												
CL	20,000	100	150	35/3	Minimum Floor Area: 900	50	25	10 ^a 15 ^b	20	0.20	35	N/A
CG	20,000	100	150	35/3	Min. Area: 900 Max. Area: 4,000 Minimum Floor Area: 1200 Minimum Hotel/Motel Area: 300 Each Unit	50	25	20 ¹ 15 ³	30	0.20	35	N/A
Industrial Development												
IND	20,000	100	150	35/3	Minimum Floor Area: 1200	50 100 ^c	25 100 ^d	20 100 ^e	30 100 ^f	0.42	30	N/A
Institutional Development												
INS	20,000	100	150	35/2	Minimum Floor Area: 1200	50	25	20	30	0.20 0.10 ^g	40	N/A
Coastal Preservation												
CP	No Size or Dimension Standards Adopted											

¹Minimum size sites and lots include one-half of adjacent public right-of-way.
²Minimum 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.
³Setback where rear lot line abuts an alley.
⁴Setback 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.
⁵Where any yard of industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.
⁶Recreation 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).

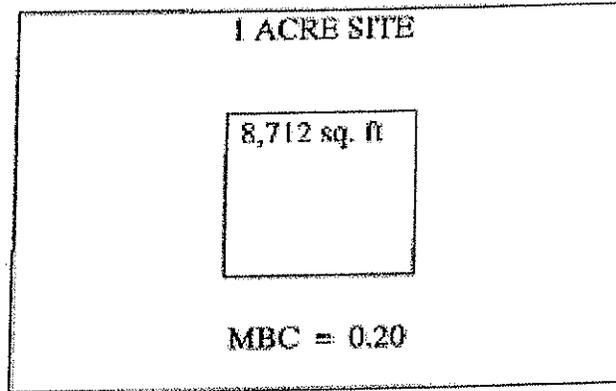
Where a proposed development is donating or dedicating land based on a plan approved by the Town, the gross site before dedication or donation shall be used to calculate ISR. This does not relieve the applicant from providing all required on-site buffers, landscaping, stormwater management areas, setbacks, 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.

$$\text{MBC} = \frac{\text{Total Building Coverage}}{\text{Total Lot Area}}$$

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

<i>Transportation Facility</i>	<i>Building Setback (feet)</i>
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

2. Pole mounted lighting. Site lighting mounted onto poles or any device intended for the mounting of lighting shall not exceed the maximum height allowed for street lighting.
3. Lights mounted to buildings or structures. Site lighting mounted onto buildings or other structures shall not exceed the highest point of the roof of the building or structure upon which such lighting is located, however; lighting attached to residential structures or accessory structures thereto shall not exceed the height of the eave.
4. The Town recognizes that some indirect off site illumination may occur. To that extent, site lighting meeting the criteria in this section shall be presumed in compliance with this Code.

(Ord. No. 06-01, § 1, 1-12-06; Ord. No. 07-04, § 1, 6-4-07)



Sec. 1-5.29. Design requirements for development within office institutional, commercial limited, commercial general and residential/limited commercial along arterial roadways.

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

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

7. Trim colors shall be white or light pastels. (Trim shall be considered railings, columns, door and window surrounds, soffits, shutters, gutters and downspouts, and other decorative elements.) Trim finishes shall be of a contrasting lighter color than that of the primary building color with the exception of white as a primary building color.
8. There shall be no area greater than four hundred (400) square feet of contiguous blank wall area on any front facade that remains unadorned by architectural features that include, but are not limited to, windows, doors, lights, banding trim or porch elements.
9. There shall not be any singular facade that has greater than 100' lineal feet of run without a minimum sixteen-inch break, by using a directional or material change.
10. Metal-clad structures are permissible. Internal bracing must be certified to accept additional finishes or structures applied to the exterior metal panels. No external "X" bracing is to be visible on any front facade. Finish panels must be able to accept a painted finish. All exterior wall finishes must match the primary building color. The use of corrugated, synthetic or fiberglass panels is prohibited on any front wall or any front roof surface. All design requirements must be met for metal-clad structures as for any other new structure.

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

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

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

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

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

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

1. *Materials.* The color, construction and material of each sign should be compatible with the architecture on the site.
2. *Design.* Every sign frame or support shall be designed as a sympathetic architectural element of the building(s) to which it is principally related.
3. Free standing signs shall have landscaping at the base.

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

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

(Ord. No. 07-02, § 5, 4-2-07; Ord. No. 08-13, § 1, 10-20-08)

Denine Sherear

From: Jim Trauger [jtrauger@cegengineering.com]
Sent: Wednesday, January 15, 2014 2:03 PM
To: Denine Sherear; morris@morrissmitheng.com; Bonilyn Wilbanks
Cc: RRunte@cgcflorida.com
Subject: Pre-application meeting for Elhoim Church on Malabar Road

Good afternoon,

Thank you for taking the time to meet with us this morning to go over the proposed church project on Malabar Road. I think that the meeting was very positive and I got the feeling that the client was pleased with your collective cooperation in helping us hone in on what would be required for this site.

Below I have listed some of the key points discussed at our meeting; please feel free to add anything that that has been omitted or make any comments as you see fit:

- Overall impervious and FAR calculations shall be listed on the plans to ensure adherence with code requirements.
- Staff would support stabilized parking for all spaces on-site except those required for handicap accessibility.
- The well feed for fire protection could be used in lieu of a hydrant since public supply is not available for this site. Interior protection systems will be addressed separately per building construction and build out size.
- The proposed church use is exempt from Malabar/ Florida vernacular architectural code.
- A buffer (landscaping or fence) should be provided adjacent to the residential lot (West) but buffering will not be required adjacent to the County park (East and North).
- Access shall be coordinated with the Malabar ROW owner (FDOT).
- Specimen hardwood trees removed would need to meet replacement criteria per code.
- It is advised in moving forward to introduce the conceptual project to the P&Z board for input.

We also received a copy of some comments from Keith, Morris and Christopher that should be considered in the site design.

Please let me know if you feel there should be any additions or corrections to the above list. We will assume all are in agreement with the above list unless stated otherwise.

Thanks again for meeting with us; we look forward to working with you further on this project.

Sincerely,

Jim Trauger, P.E.

Civil Engineer
Office: (321) 253-1221 ext. 1765
Direct: (321) 610-1765
Cell: (321) 292-0745
Fax: (321) 253-3123

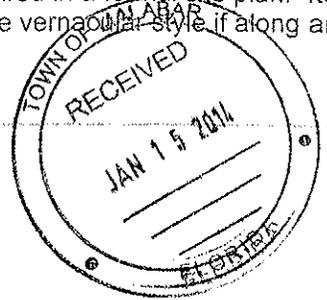


2651 W. Eau Gallie Blvd, Suite A

Denine Sherear

From: Karl Bohne [KBohne@fla-lawyers.com]
Sent: Wednesday, January 15, 2014 9:48 AM
To: Denine Sherear
Cc: Town Clerk / Treasurer
Subject: RE: Pre Application Site Plan Meeting for Construction Engineer Group - Church

I don't have much to comment on as the conceptual plan does not show many details as required in a formal site plan. Its zoned OI so obviously the use must meet zoning and it seems that construction must be of the vernacular style if along an arterial roadway.



From: Denine Sherear [mailto:dsherear@townofmalabar.org]
Sent: Tuesday, January 14, 2014 3:10 PM
To: Karl Bohne
Subject: FW: Pre Application Site Plan Meeting for Construction Engineer Group - Church

Dear Karl ,

Please see attached a pre application for Elholm Church, proposed for Malabar Road west of Marie Street, on north side of Malabar Road. Also the packet I sent out to staff for review. We are having a pre application meeting tomorrow at 9:30AM with staff, can you please review and email any comments you may have concerning this pre application.

Thank you,
Denine

Denine M. Sherear
Admin Assist. to Building Official
Building Department- Permitting
2725 Malabar Road
Malabar , FL 32950
321-727-7764 x 14
321-727-9997 fax

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.

From: Denine Sherear
Sent: Friday, January 03, 2014 2:12 PM
To: 'morris'
Subject: FW: Pre Application Site Plan Meeting for Construction Engineer Group - Church

Morris,
This is a electronic version of the hard copy I gave you before Christmas. I am waiting to hear from applicant about meeting date and will let you know.

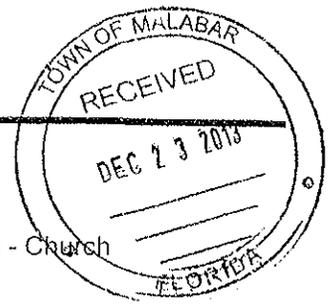
Thank you,
Take care of yourself!

D9nine

Town Planner

Denine Sherear

From: Keith Mills [kmills@cfl.rr.com]
Sent: Saturday, December 21, 2013 9:53 PM
To: Denine Sherear
Subject: Re: Pre Application Site Plan Meeting for Construction Engineer Group - Church



Denine,

I have looked over this conceptual plan. Obviously, there is not much detail and very little dimensions shown. I don't see any major issues, but here are a few observations:

- A lot of the landscape area is taken up by drainage and drainfield areas. Sufficient room for all the required landscaping without interference from other facilities must be part of the design.
- A portion of the parking is proposed to be unpaved. I assume staff will discuss this with the applicant.
- As long as the future expansion does not increase the number of seats, the proposed parking will be adequate as indicated for the proposed expansion. If the number of seats will increase, then the proposed parking won't be enough.
- The site is located on a curve so site lines for exiting traffic will be critical.

If you have any questions, let me know. Have a great holiday.

On Tue, Dec 17, 2013 at 11:40 AM, Denine Sherear <dsherear@townofmalabar.org> wrote:

Dear Keith,

Please see attached electronic pre application for proposed Church located on Malabar Road. If you could provide your comments concerning this project, we will be scheduling a meeting with staff and the applicant in the near future. If you could please let me know what time frame that you need to review and provide comments back to me that would be great.

Thank you,

Denine

Denine M. Sherear

Admin Assist. to Building Official

Building Department- Permitting

2725 Malabar Road

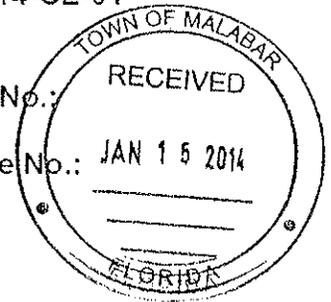
TOWN OF MALABAR
MEMORANDUM

Date: January 15th, 2014
To: Denine Sherear, Admin Assist. to Building Official
Building Department- Permitting
From: Morris Smith, Town Engineer
Ref: Elohim Christian Church
Conceptual Site Plan Review for Pre-App Meeting

Memo: 14-CE-01

Project No.:

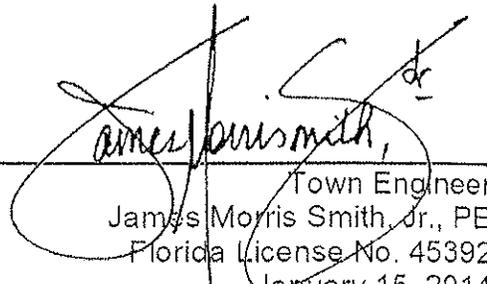
Variance No.:



I have made a review of the application submitted by Mr. Jim Trauger, requesting the Town to review the Conceptual Site Plan submitted by Construction Engineering Group and I respond as follows:

1. The setback from the proposed drinking water well to the onsite sewage treatment and disposal system for the wastewater will be controlled by Florida Administrative Code (FAC) Chapter 64E-6 Table I,
2. The Town would like a statement as to the type of Public drinking water well is proposed for the project, also as defined by FAC Chapter 64E-6 FAC,
3. The type of Drinking Water System its design and operation of the system is defined in Chapter 64E-8 FAC,
4. The well construction design and permitting will be in compliance with FAC Chapter 62-532,
5. The Town would like a statement on the number of regularly served meals the Church proposes to prepare and serve,
6. The Florida Department of Transportation will control the driveway access connection to Malabar Road and
7. The location and geometry of the Stormwater Management System appears to be appropriate.

Very Truly Yours,


Town Engineer
James Morris Smith, Jr., PE
Florida License No. 45392
January 15, 2014

Town of Malabar ♦ 2725 Malabar Road ♦ Malabar, FL 32950-4427 ♦ (321) 727-7764
townclerk@townofmalabar.org

Town of Malabar
BUILDING DEPARTMENT REVIEW SHEET

PROJECT:	ELHOIM CHRISTIAN CHURCH MALABAR ROAD	DATE ROUTED:	12/17/2013
BP.:		DATE TO BE RETURNED*:	12/27/2013
APPLICANT	Mr. Jim Trauger, PE w/ Construction Engineering Group 321-292-0745 jtrauger@cegengineering.com	DEPT.:	MORRIS SMITH, TOWN ENGINEER KEITH MILLS, TOWN PLANNER ROBERT STRANDELL, FIRE CHIEF ROGER CLOUTIER, BUILDING OFFICIAL

MARK IF NO COMMENTS:	REVIEWER'S SIGNATURE:
-----------------------------	------------------------------

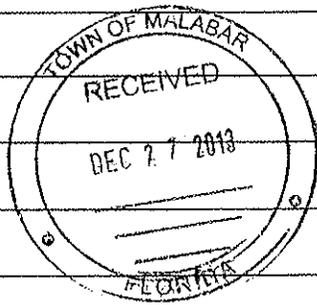
PLEASE RETURN WITHIN 10 BUSINESS DAYS

TOTAL HOURS WORKED ON REVIEW: _____

Included: _____

COMMENTS: *Fire Chief 1) Fire Protection Sprinkler system?
Alarm system? 2) Knox-Box location.*

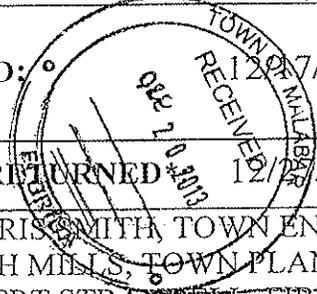
*↓
Chief Christopher Robinson*



Due to the deadline requirements, if there is no response within allotted time frame it will be considered as No Comments.

Town of Malabar
BUILDING DEPARTMENT REVIEW SHEET

PROJECT:	ELHOIM CHRISTIAN CHURCH MALABAR ROAD	DATE ROUTED:	12/27/2013
BP.:		DATE TO BE RETURNED:	12/28/2013
APPLICANT	Mr. Jim Trauger, PE w/ Construction Engineering Group 321-292-0745 jtrauger@cegengineering.com	DEPT.:	MORRIS SMITH, TOWN ENGINEER KEITH MILLS, TOWN PLANNER ROBERT STRANDELL, FIRE CHIEF ROGER CLOUTIER, BUILDING OFFICIAL



MARK IF NO COMMENTS:	REVIEWER'S SIGNATURE: <i>Roger Cloutier</i>
-----------------------------	--

PLEASE RETURN WITHIN 10 BUSINESS DAYS

TOTAL HOURS WORKED ON REVIEW: _____

Included: _____

COMMENTS: *No adverse comments*

Due to the deadline requirements, if there is no response within allotted time frame it will be considered as No Comments.

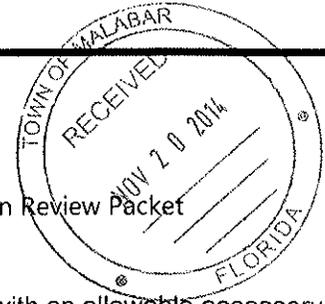
TOWN STAFF REVIEW FOR:

**ELHOIM CHRISTIAN CHURCH SITE
PLAN REVIEW**

TOWN ATTORNEY

Denine Sherear

From: Karl Bohne [REDACTED]
Sent: Thursday, November 20, 2014 9:19 AM
To: Denine Sherear
Subject: RE: Elhiom Christian Church 2170 Malabar Road Site Plan Review Packet



From my reading the proposed use as a church clearly falls with in OI as a permitted use with an allowable accessory use of up to 1,000 square feet for a care taker or security guard. The site total more than 137,000 square feet more than the required 20,000 square foot lot size by table 1-3.3(A). Proposed set backs meet or exceed code. Impervious surface is 30% which is well under the code allowance of 65%. I am not sure about maximum building coverage and minimum open space. Height needs to be addressed. Design requirements will be handled at construction and not really at site planning although making the applicant aware of the Vernacular Style is advisable.

From: Denine Sherear [mailto:dsherear@townofmalabar.org]
Sent: Wednesday, November 19, 2014 4:30 PM
To: Karl Bohne
Cc: Debbie Franklin
Subject: Elhiom Christian Church 2170 Malabar Road Site Plan Review Packet

Karl,
Please see attached for your review.

Thank you,
Denine

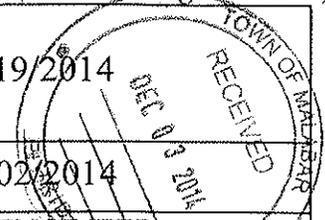
Denine M. Sherear
Admin Assist. to Building Official
Building Department- Permitting
2725 Malabar Road
Malabar , FL 32950
321-727-7764 x 14
321-727-9997 fax
Hours: 8:30AM- 4:30PM

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.

Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing

**Town of Malabar
BUILDING DEPARTMENT REVIEW SHEET**

PG 1 OF 2
(Return to Roger Cloutier)



PLEASE RETURN ATTACHED SITE PLAN(S)

PROJECT:	ELHOIM CHRISTIAN CHURCH MALABAR ROAD	DATE ROUTED:	11/19/2014
BP.:		DATE TO BE RETURNED*:	12/02/2014
APPLICANT	Mr. Scott Glaubitz, PE w/ BSE Consultants, Inc 321- 725-3674 sglaubitz@bseconsult.com	DEPT.:	MORRIS SMITH, TOWN ENGINEER KEITH MILLS, TOWN PLANNER CHRISTOPHER ROBINSON, FIRE CHIEF ROGER CLOUTIER, BUILDING OFFICIAL

MARK IF NO COMMENTS:	REVIEWER'S SIGNATURE:	12.3.14
-----------------------------	------------------------------	---------

PLEASE RETURN WITHIN BUSINESS DAYS

TOTAL HOURS WORKED ON REVIEW: 2 hrs.

Included:

COMMENTS:

① Called Lance Decuir, PM for ATKINS, FDOT consultant for SR 514 - Malabar Road. FDOT is not taking any parcel for ROW, in this area, North of SR 514.

TOWN ENGINEER

* Due to the deadline requirements, if there is no response within allotted time frame it will be considered as No Comments.

TOWN Planner

To: Denine Shearer

From: Keith Mills

Subject: Comments for Elhoim Christian Church



1. My pre-ap comments were either addressed or staff made decisions on them at the pre-ap.
2. Provide location of site lighting with applicable lighting details.
3. Provide a scaled drawing of the side, front and rear facades of the building or structure, including roof pitch, fenestration including treatment of roof line, windows, and doors as well as a description of materials to be used. (I realize there is a statement that the building hasn't been designed as yet)
4. Show building exterior construction material.
5. Show location, size, character, color and copy, height and design of all signs.
6. It appears the perimeter hedge requirement along the east and north property lines was eliminated at the pre-ap. However, it appears a hedge or fence was required along the west property line. Show the hedge or fence.

**Town of Malabar
BUILDING DEPARTMENT REVIEW SHEET**

PROJECT:	ELHOIM CHRISTIAN CHURCH MALABAR ROAD	DATE ROUTED:	12/17/2013
BP.:		DATE TO BE RETURNED*:	12/27/2013
APPLICANT	Mr. Jim Trauger, PE w/ Construction Engineering Group 321-292-0745 jtrauger@cegengineering.com	DEPT.:	MORRIS SMITH, TOWN ENGINEER KEITH MILLS, TOWN PLANNER ROBERT STRANDELL, FIRE CHIEF ROGER CLOUTIER, BUILDING OFFICIAL

MARK IF NO COMMENTS:	REVIEWER'S SIGNATURE:
-----------------------------	------------------------------

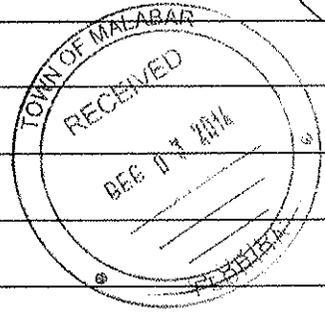
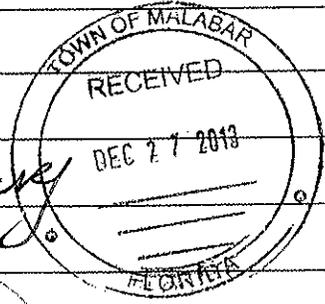
PLEASE RETURN WITHIN 10 BUSINESS DAYS
TOTAL HOURS WORKED ON REVIEW: _____

Included: _____

COMMENTS: Fire Chief 1) Fire Protection Sprinkler system?
Alarm system? 2) Knox-Box location.

↓
Chief Christopher Robinson

2nd MEANS OF EGRESS ROADWAY



FIRE Chief Robinson

to the deadline requirements, if there is no response within allotted time frame it will be considered as No Comments.

THIRD PARTY FIRE SAFETY

FPE FORENSICS, PLLC
FIRE PROTECTION DESIGN & CONSULTING

41 Freedom Dr., Murphy, NC 28906 &
4017 Murfield Dr. E., Bradenton, FL 34203
Phone: (828) 837-2551 (w) (941)928-8138 (c)
E-Mail: brfoster@fpeforensics.com



December 4, 2014

Mrs. Denine Sherear, Adm. Asst. to the Building Official
Town of Malabar Fire Department
2725 Malabar Road
Malabar, FL 32950-4427

RE: Elhoim Christian Church, Malabar Road, Malabar, FL
Plans Prepared by: B.S.E. Consultants, Inc.
Plan Set Dated: Not Indicated on Plans

Dear Mrs. Sherear,

We have received one set of site plans for a proposed 10,000 ft² church and an indicated future 5,000 ft² expansion. The plans show a single 25 foot entrance off of Malabar Road (SR 514) leading to an 18 foot circular drive and an extended 18 foot drive around the rest of the building. The building perimeter roadway loop has 10 ft. radius corners. No roadway markings for fire department access are shown.

A site fire well is shown 63 feet from the southeast corner of the building in addition to a dry fire hydrant that is 58 feet from the building. Roadway access to the hydrant would place the fire engine even closer to the building. There is no indication of an additional water supply that will be necessary for fire sprinklers once the expansion is added.

Based on our review of the site plan, we have the following comments:

1. The combined first and second phase of this project will result in the need to install automatic sprinklers in the building. No provisions have been provided on the site for the location of a fire sprinkler water supply such as a pressure tank or pump and tank/cistern. Please indicate the location of the proposed fire sprinkler water supply and the minimum requirements.
2. Per the Florida Fire Prevention Code (NFPA 1) paragraph 18.2.3.2.2, access to all portions of the building shall not exceed 150 feet. While the plan does depict a roadway around the building, the roadway is not in compliance with 18.2.3.4.1.1 which requires a 20 foot minimum roadway. The turns in the roadway also do not meet the requirements of 18.2.3.4.3.1 which require the AHJ to approve the turning radius. Previous editions of the Fire Prevention Code required a 50 foot turning radius. The Town of Malabar will require a minimum inside radius of 30 feet on all access paving.
3. Markings for fire department access on the pavement are required by the Fire Prevention Code (NFPA 1) section 18.2.3.5 and its subsections.
4. The fire hydrant and fire well connections should be revised so that the fire engines do not have to come any closer than 75 feet from the structure to reduce the potential fire exposure to the equipment while fighting a fire.
5. Fire flow calculations are needed in accordance with the Florida Fire Prevention Code (NFPA 1) section 18.4.4.

Mrs. Denine Sherear
December 4, 2014
Page 2 of 2

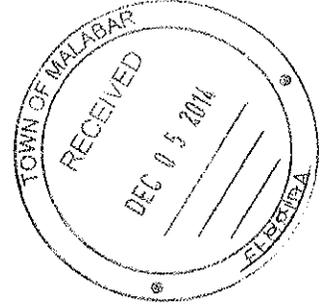
6. To ensure that there is no bottle neck in the entrance road off of Malabar Road, the entrance drive needs to be widened to 30 feet.

Based on the comments above, the site plan is not considered acceptable and is not in compliance with the requirements of the Florida Fire Prevention Code. The plans should be redesigned to incorporate the items above.

Sincerely,



Brian R. Foster, F.P.E.,
Florida Certified Fire Safety Inspector,
President



cc FPEF Job No: 1082-14
cc Chief Christopher Robinson via E-Mail



B.S.E. CONSULTANTS, INC.

Consulting ~ Engineering ~ Land Surveying

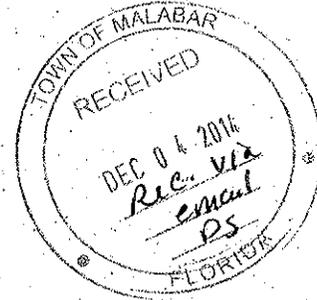
Scott M. Glaubitz, P.E., P.L.S.
President

Hassan Kamal, P.E.
Vice President

December 4, 2014

Via E-mail

Ms. Denine Sherear
Town of Malabar
2725 Malabar Road
Malabar, FL 32950



Re: Elhoim Christian Church
B.S.E. File # 11245

Dear Denine:

Below, please find our responses to the Town Planner and Engineer comments, along with additional status updates of other review agencies:

TOWN ENGINEER COMMENT

1. **Called Lance Decuir, PM for Atkins, FDOT consultant for SR-514 (Malabar Road). FDOT is not taking any parcel for ROW, in this area, north of SR-514.**

Good news for the project.

TOWN PLANNER COMMENTS

1. **My pre-app comments were either addressed or Staff made decisions on them at the pre-app.**

No response necessary.

2. **Provide location of site lighting with applicable lighting details.**

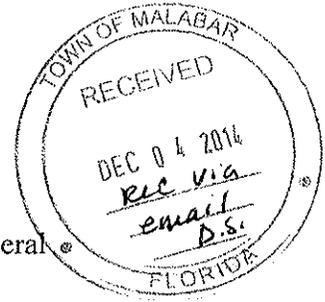
Due to budget, site lighting will consist of building wall-pacs only. Those wall-pacs will be shown on the building at building review. Due to the size of the parcel and building location, there will be no light spillage impacts.

3. **Provide a scaled drawing of the side, front and rear facades of the building or structure, including roof pitch, fenestration including treatment of roof line, windows and doors as well as a description of materials to be used. (I realize there is a statement that the building hasn't been designed as of yet.)**

This comment has been forwarded to the Owner and Certified General Contractors to be addressed.

Civil ~ Agricultural ~ Transportation ~ Utility ~ Site Planning ~ Environmental
312 South Harbor City Boulevard, Suite #4, Melbourne, FL 32901
(321) 725-3674 ~ Fax (321) 723-1159
Toll Free ~ 1-800-523-4BSE (4273)
info@bseconsult.com

97/124



4. Show building exterior construction material.

This comment has been forwarded to the Owner and Certified General Contractors to be addressed.

5. Show location, size, character, color and copy, height and design of all signs.

This comment has been forwarded to the Owner and Certified General Contractors to be addressed.

6. It appears the perimeter hedge requirement along the east and north property lines was eliminated at the pre-app. However, it appears a hedge or fence was required along the west property line. Show the hedge or fence.

The Town Planner is correct. We believed the tree plants along the west property line would meet the requirement; however, a fence will be added as a fence will be more sustainable than a hedge.

Other agency review comments that we have addressed:

1. The HRS Septic System has been redesigned as an alternating dosing system. No location change.
2. FDOT provided a typical section for asphalt, base and subbase for the driveway located within FDOT right-of-way. Both the asphalt and base courses were thicker than we originally showed on the plans.
3. We slightly relocated the side doors based upon a floor plan received from the Owner.

Following the December 10, 2014 Planning & Zoning meeting and any additional comments from Staff, we will resubmit as necessary or as directed by Town Staff.

Should you have any questions, feel free to contact me.

Very truly yours,

Scott M. Glaubitz P.E. P.L.S.

Scott M. Glaubitz, P.E., P.L.S.

President

B.S.E. Consultants, Inc.

SMG/jab

11245.town.corr.14-s2999.dec

cc: Ana Saunders, P.E., Project Engineer, BSE Consultants, Inc.
Ryan Runte, Certified General Contractors, Inc.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: December 10, 2014

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

SUBJECT: Directive from Council Increasing the MBC Permitted I R/LC

BACKGROUND/HISTORY:

This Item was a directive from Town Council at the 11/17/14 RTCM that P&Z Board discuss expanding the building size allowed in R/LC and submit recommendations to Council in a timely manner.

ATTACHMENTS:

- Memo # 2014-TC/T-044 from Debby Franklin, Town Clerk/Treasurer
- Portion of Draft RTCM Minutes from 11/17/14
- Attorney Karl Bohne comments (11/19/2014)
- FL Statutes Chapter 317-320-327-316

ACTION OPTIONS:

Discussion/ Recommendation to Council

TOWN OF MALABAR

MEMORANDUM

Date: December 3, 2014 2014-TC/T-044
To: Denine Sherear and Planning and Zoning Board
From: Debby Franklin, Town Clerk / Treasurer
Ref: Council Request

At the Town Council meeting of 11/17/14 Council directed that the Planning and Zoning Board discuss the possibility of expanding on the building size allowed in R/LC and submit your recommendations to Council in a timely fashion.

I have attached the minutes of the meeting for your review.

2. P&Z Board Recommendations

- Move George Foster up to Regular P&Z Member (Agenda Report 3)
- Clarify Maximum Floor Area for R/LC in Table 1-3.3.A.

Exhibit: Agenda Report No. 2
 Recommendation: Request Approval

Chair called on Pat Reilly to podium.

Pat Reilly, Chair of P&Z Board spoke to these items.

They have lost two members of Board due to their transition to Council and they would like to move up George from alternate to regular member.

Pat referred to Table 1-3.3(A) in the Malabar Land Development Code and explained how residential land use is regulated by the '*Maximum Impervious Surface*' percentage and the '*Minimum Open Space*' saying that those two columns should add to 100 percent. Residential land uses do not have a Maximum Building Coverage (MBC) percentage. The commercial land uses are regulated by the column '*Maximum Building Coverage (MBC)*.' In the case of R/LC it lists 20 percent for MBC, but it also shows a maximum floor area of 4,000sf on a lot size of 20,000sf (which is 20%).

As Chair of the P&Z Board, he had proposed the P&Z Board consider a new request as suggested by Atty by the applicant for the LU and ZC change as it conforms to all our requirements. The veto does not prohibit the applicant from re-applying. The applicant would change the language clarifying it will specifically be the west side of Highway 1 and offering conditions to quell the earlier concerns. The Board felt that it should be handled differently and they discussed this at the last meeting and would like clarification by the Atty so that if an applicant has a larger parcel it would be permissible to have a larger MBC within the existing R/LC zoning.

CM Dick asked if they could just change the table. Atty said yes, but they would need to also first change the Comp Plan and then the LDC. A text change to the Comp Plan is considered a Large Scale Amendment (LSA). Dick asked would it be quicker that way or re-applying? Atty said he would have to clarify.

CM Grant Ball got a call from Milucky and what they need to look at is what the MBC should be in this R/LC. If they go strictly by the 20 percentage, then a three acre parcel could build a 26K sf building. Do they want to allow a big box like Wal-Mart or do we want to cap the limit so a Wal-Mart couldn't be built in Town. If we want to keep the rural nature of Malabar then they may want another limitation in addition to the 20 percent MBC. That is his concern.

Chair/Mayor said he talked to the Attorney and it was a scrivener's error per the Atty. Mayor said they need to look at the corridor and see if they need to re-evaluate how they regulate MBC.

CM Brian asked how many large parcels are within the R/LC. Franklin said they sent notices out to all property owners within the R/LC along Highway 1 in 2012 when they were considering changing the land use and/or bring water down the Highway. Chair/Mayor said P&Z should review all of this and recommend changes.

Marisa said she would like to hear from the Atty. Atty said there are two places in the Land Dev Code that say 4000 sf building size is the maximum allowed; the Tabled in Art III and under "O" in that same Section. Then you go to the Comp Plan and it is consistent with what he just referenced. Atty said it is a little more than a scrivener's error. If you want to look at allowing this you may want to consider conditional uses. You might think about adding some additional uses to Art VI (conditional use).

MOTION: Dick / Brian to task the P&Z Board to look at this suggestion and bring it back to Council in a timely fashion with a recommendation to amend this Table.

Atty Bohne said he got a call from Atty Patrick Healy and they said that the P&Z Board's recommendation would not be possible as the Council can't approve something not permitted in the code. To approve Carmine to go forward with his project before Comp Plan and Code are amended would not be allowed. He would still be out of compliance.

CM Marisa, point of order, we made a big deal of this before and she wants that on the record.

William Carmine,

This is coming up before you because his proposed project was brought to staff and he was told per the code what needed to be done to allow such a use. He attended the P&Z Board meeting on 8/28/13 and described his business plan for a 10K sf building and was warmly supported. He also got a majority vote on both readings at council. Then Mr. Mayor vetoed it. His business plan was stated as marine. His is more under retail sales and services of vehicles. It was looked at for his benefit but it clearly won't help him. He had planned to be at the site plan stage. The CP was a concern and he can address that; there is no development allowed in CP. A developer's agreement was proposed and he can commit, saying he won't make it an adult entertainment; he is open to doing so.

CM Brian asked Atty if he could reapply – Atty said yes, but the process would be no quicker than having the P&Z go through the Large Scale Comp Plan Amendment. He is still going to incur extra time.

Mr. Carmine asked what he needed to do to reapply for the land use and zoning change? CM Marisa, asked Atty about the process, Mayor vetoed it and we didn't have 4/5 vote and we didn't have five council persons present at meeting. The Mayor, one person, can change the outcome that has been approved by Council two times and recommended for approval by P&Z. She sees a problem with that.

CM Dick said let the people who have looked at this the most determine the use. Dick said he has a concern about the money the applicant has spent. P&Z Chair Pat Reilly said the intent now is to come up with an answer.

CM Don does not see this as a problem. He sees this as an issue. The school house was changed and it is much larger. He thought CL was a compromise. He was the lone person. He still does not see a problem. Go in under CL as a conditional use. We are not trying to prevent businesses from coming into Town. We intend to change RLC to automatically LC. CG is such an extreme jump; they could have an oil refinery. He never saw the problem.

CM Brian said a lot of things are coming to light. We need to adjust the RLC. It is not going to be Mom and Pop businesses. Not to accommodate one person. But that is not consistent with what you see on Hwy 1.

CM Ball said he lives there. He is his neighbor. He remembers when it was a junk yard. The busiest corridor in Town is Hwy 1. It is the most commercial area they have. Some of those properties could have a RR spur. What they need to decide is what to do with other properties.

Chair/Mayor said it looks like we go by the chart using the 20%. If we do that, it is on our dime. Do changes to RLC. Then do the other separately. If he starts over then he is spending more money.

CM Brian asked Atty. Attorney said the Comp Plan says 4000sf maximum building size; you can't get around that. So you are going to have to do a large scale comp plan change. Then do a zoning change. Opening up RLC to additional uses may have unintended consequences.

Mr. Carmine stated it clearly states in CG classification that this use is allowed. He sells motorcycles. These are titled vehicles. There is a reason he applied for CG zoning. He stated that CG is all over this place. At the end of the day you have to make money. Applicant said at an earlier meeting the Mayor said *what if everyone else wants to be changed*. So what? What is wrong with that?

Opening up LC or RLC to allow opening up to allow more uses. Atty said re: Marisa comments and having only four CM present; under Malabar Charter the Mayor has ability to veto.

Atty said a Text change is a LSA (Large Scale Amendment).

CM Don said PZ should look at Art III, part 1 and 2.

CM Dick said he would like P&Z to come back with recommendation for this in a timely manner.

Much discussion as this would not solve the issue. The sales and service of recreational vehicles can only be done in CG.

Debbie Franklin

From: Karl Bohne <KBohne@fla-lawyers.com>
Sent: Wednesday, November 19, 2014 11:14 AM
To: Bonilyn Wilbanks; Debbie Franklin
Subject: RLC changes

In considering the limitation of "vehicle sales and service" in RLC to things like ATVs the following definitions might be considered:

FS 317.003:

"ATV" means any motorized off-highway or all-terrain vehicle 50 inches or less in width, having a dry weight of 1,200 pounds or less, designed to travel on three or more nonhighway tires, and manufactured for recreational use by one or more persons.

"Off-highway vehicle" means any ATV, two-rider ATV, ROV, or OHM that is used off the roads or highways of this state and that is not registered and licensed for highway use pursuant to chapter 320.

"OHM" or "off-highway motorcycle" means any motor vehicle used off the roads or highways of this state that has a seat or saddle for the use of the rider and is designed to travel with not more than two wheels in contact with the ground, but excludes a tractor or a moped.

"ROV" means any motorized recreational off-highway vehicle 65 inches or less in width, having a dry weight of 2,000 pounds or less, designed to travel on four or more nonhighway tires, and manufactured for recreational use by one or more persons. The term "ROV" does not include a golf cart as defined in ss. 316.003 and 320.01 or a low-speed vehicle as defined in s. 320.01.

"Two-rider ATV" means any ATV that is specifically designed by the manufacturer for a single operator and one passenger.

As it relates to limited marine sales and services maybe we should look at the following

FS 327.02 (33)

"Personal watercraft" means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

Please forward to the P&Z.

Karl W. Bohne, Jr.
Schillinger & Coleman, P.A.
1311 Bedford Drive
Melbourne, FL 32940
321-255-3737 Telephone
321-255-3141 Facsimile

Office Hours:

8:30 a.m. to 5:00 p.m. Monday thru Thursday

8:30 a.m. to 12 Noon on Friday

THE INFORMATION CONTAINED IN THIS E-MAIL COMMUNICATION IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENT NAMED ABOVE. This message may be an Attorney-Client communication, and as such is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of the message is strictly prohibited. If you have received this transmission in error, please notify me immediately by telephone and/or by reply e-mail. Thank you.

Select Year:

The 2014 Florida Statutes

[Title XXIII](#)
MOTOR VEHICLES

[Chapter 317](#)
OFF-HIGHWAY VEHICLE TITLING

[View Entire Chapter](#)

317.0003 Definitions.—As used in this chapter, the term:

(1) “ATV” means any motorized off-highway or all-terrain vehicle 50 inches or less in width, having a dry weight of 1,200 pounds or less, designed to travel on three or more nonhighway tires, and manufactured for recreational use by one or more persons.

(2) “Dealer” means any person authorized by the Department of Revenue to buy, sell, resell, or otherwise distribute off-highway vehicles. Such person must have a valid sales tax certificate of registration issued by the Department of Revenue and a valid commercial or occupational license required by any county, municipality, or political subdivision of the state in which the person operates.

(3) “Department” means the Department of Highway Safety and Motor Vehicles.

(4) “Florida resident” means a person who has had a principal place of domicile in this state for a period of more than 6 consecutive months, who has registered to vote in this state, who has made a statement of domicile pursuant to s. [222.17](#), or who has filed for homestead tax exemption on property in this state.

(5) “OHM” or “off-highway motorcycle” means any motor vehicle used off the roads or highways of this state that has a seat or saddle for the use of the rider and is designed to travel with not more than two wheels in contact with the ground, but excludes a tractor or a moped.

(6) “Off-highway vehicle” means any ATV, two-rider ATV, ROV, or OHM that is used off the roads or highways of this state and that is not registered and licensed for highway use pursuant to chapter 320.

(7) “Owner” means a person, other than a lienholder, having the property in or title to an off-highway vehicle, including a person entitled to the use or possession of an off-highway vehicle subject to an interest held by another person, reserved or created by agreement and securing payment of performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(8) “Public lands” means lands within the state that are available for public use and that are owned, operated, or managed by a federal, state, county, or municipal governmental entity.

(9) “ROV” means any motorized recreational off-highway vehicle 65 inches or less in width, having a dry weight of 2,000 pounds or less, designed to travel on four or more nonhighway tires, and manufactured for recreational use by one or more persons. The term “ROV” does not include a golf cart as defined in ss. [316.003](#) and [320.01](#) or a low-speed vehicle as defined in s. [320.01](#).

(10) “Two-rider ATV” means any ATV that is specifically designed by the manufacturer for a single operator and one passenger.

History.—s. 57, ch. 2002-295; s. 43, ch. 2005-164; s. 3, ch. 2009-137; s. 2, ch. 2010-198; s. 43, ch. 2010-223; s. 83, ch. 2013-160; s. 4, ch. 2014-187.

Copyright © 1995-2014 The Florida Legislature • [Privacy Statement](#) • [Contact Us](#)

Select Year:

The 2014 Florida Statutes

[Title XXIII](#)
MOTOR VEHICLES

[Chapter 320](#)
MOTOR VEHICLE LICENSES

[View Entire Chapter](#)

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(1) “Motor vehicle” means:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, special mobile equipment as defined in s. [316.003\(48\)](#), vehicles that run only upon a track, bicycles, swamp buggies, or mopeds.

(b) A recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. Recreational vehicle-type units, when traveling on the public roadways of this state, must comply with the length and width provisions of s. [316.515](#), as that section may hereafter be amended. As defined below, the basic entities are:

1. The “travel trailer,” which is a vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle. It is primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use. It has a body width of no more than 8½ feet and an overall body length of no more than 40 feet when factory-equipped for the road.

2. The “camping trailer,” which is a vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

3. The “truck camper,” which is a truck equipped with a portable unit designed to be loaded onto, or affixed to, the bed or chassis of the truck and constructed to provide temporary living quarters for recreational, camping, or travel use.

4. The “motor home,” which is a vehicular unit which does not exceed the length, height, and width limitations provided in s. [316.515](#), is a self-propelled motor vehicle, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

5. The “private motor coach,” which is a vehicular unit which does not exceed the length, width, and height limitations provided in s. [316.515\(9\)](#), is built on a self-propelled bus type chassis having no fewer than three load-bearing axles, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

6. The “van conversion,” which is a vehicular unit which does not exceed the length and width limitations provided in s. [316.515](#), is built on a self-propelled motor vehicle chassis, and is designed for recreation, camping, and travel use.

7. The "park trailer," which is a transportable unit which has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. The total area of the unit in a setup mode, when measured from the exterior surface of the exterior stud walls at the level of maximum dimensions, not including any bay window, does not exceed 400 square feet when constructed to ANSI A-119.5 standards, and 500 square feet when constructed to United States Department of Housing and Urban Development Standards. The length of a park trailer means the distance from the exterior of the front of the body (nearest to the drawbar and coupling mechanism) to the exterior of the rear of the body (at the opposite end of the body), including any protrusions.

8. The "fifth-wheel trailer," which is a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit, of gross trailer area not to exceed 400 square feet in the setup mode, and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

(2)(a) "Mobile home" means a structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. For tax purposes, the length of a mobile home is the distance from the exterior of the wall nearest to the drawbar and coupling mechanism to the exterior of the wall at the opposite end of the home where such walls enclose living or other interior space. Such distance includes expandable rooms, but excludes bay windows, porches, drawbars, couplings, hitches, wall and roof extensions, or other attachments that do not enclose interior space. In the event that the mobile home owner has no proof of the length of the drawbar, coupling, or hitch, then the tax collector may in his or her discretion either inspect the home to determine the actual length or may assume 4 feet to be the length of the drawbar, coupling, or hitch.

(b) "Manufactured home" means a mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act.

(3) "Owner" means any person, firm, corporation, or association controlling any motor vehicle or mobile home by right of purchase, gift, lease, or otherwise.

(4) "Trailer" means any vehicle without motive power designed to be coupled to or drawn by a motor vehicle and constructed so that no part of its weight or that of its load rests upon the towing vehicle.

(5) "Semitrailer" means any vehicle without motive power designed to be coupled to or drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

(6) "Net weight" means the actual scale weight in pounds with complete catalog equipment.

(7) "Gross weight" means the net weight of a motor vehicle in pounds plus the weight of the load carried by it.

(8) "Cwt" means the weight per hundred pounds, or major fraction thereof, of a motor vehicle.

(9) "Truck" means any motor vehicle with a net vehicle weight of 5,000 pounds or less and which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a cabinet box, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers.

(10) "Heavy truck" means any motor vehicle with a net vehicle weight of more than 5,000 pounds, which is registered on the basis of gross vehicle weight in accordance with s. 320.08(4), and which is designed or used for the carriage of goods or designed or equipped with a connecting device for the purpose of drawing a trailer that is attached or coupled thereto by means of such connecting device and includes any such motor vehicle to which has been added a cabinet box, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers.

(11) "Truck tractor" means a motor vehicle which has four or more wheels and is designed and equipped with a fifth wheel for the primary purpose of drawing a semitrailer that is attached or coupled thereto by means of such fifth wheel and which has no provision for carrying loads independently.

(12) "Gross vehicle weight" means:

(a) For heavy trucks with a net weight of more than 5,000 pounds, but less than 8,000 pounds, the gross weight of the heavy truck. The gross vehicle weight is calculated by adding to the net weight of the heavy truck the weight of the load carried by it, which is the maximum gross weight as declared by the owner or person applying for registration.

(b) For heavy trucks with a net weight of 8,000 pounds or more, the gross weight of the heavy truck, including the gross weight of any trailer coupled thereto. The gross vehicle weight is calculated by adding to the gross weight of the heavy truck the gross weight of the trailer, which is the maximum gross weight as declared by the owner or person applying for registration.

(c) The gross weight of a truck tractor and semitrailer combination is calculated by adding to the net weight of the truck tractor the gross weight of the semitrailer, which is the maximum gross weight as declared by the owner or person applying for registration; such vehicles are together by means of a fifth-wheel arrangement whereby part of the weight of the semitrailer and load rests upon the truck tractor.

(13) "Passenger," or any abbreviation thereof, does not include a driver.

(14) "Private use" means the use of any vehicle which is not properly classified as a for-hire vehicle.

(15)(a) "For-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire."

(b) The following are not included in the term "for-hire vehicle": a motor vehicle used for transporting school children to and from school under contract with school officials; a hearse or ambulance when operated by a licensed embalmer or mortician or his or her agent or employee in this state; a motor vehicle used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of such supplies or to associations of such growers or consumers; a motor vehicle temporarily used by a farmer for the transportation of agricultural or horticultural products from any farm or grove to a packinghouse or to a point of shipment by a transportation company; or a motor vehicle not exceeding 1½ tons under contract with the Government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes.

(16) "Road" means the entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic.

(17) "Brake horsepower" means the actual unit of torque developed per unit of time at the output shaft of an engine, as measured by a dynamometer.

(18) "Department" means the Department of Highway Safety and Motor Vehicles.

(19)(a) "Registration period" means a period of 12 months or 24 months during which a motor vehicle or mobile home registration is valid.

(b) "Extended registration period" means a period of 24 months during which a motor vehicle or mobile home registration is valid.

(20) "Marine boat trailer dealer" means any person engaged in:

(a) The business of buying, selling, manufacturing, or dealing in trailers specifically designed to be drawn by another vehicle and used for the transportation on land of vessels, as defined in s. 327.02; or

(b) The offering or displaying of such trailers for sale.

(21) "Renewal period" means the period during which renewal of a motor vehicle registration or mobile home registration is required, as provided in s. 320.055.

(22) "Golf cart" means a motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

(23) "International Registration Plan" means a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of fleet miles operated in various jurisdictions.

(24) "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles, which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds;

(b) Is a power unit having three or more axles, regardless of weight; or

(c) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Vehicles, or combinations thereof, having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles may be proportionally registered.

(25) "Commercial motor vehicle" means any vehicle which is not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight. A vehicle that occasionally transports personal property to and from a closed-course motorsport facility, as defined in s. 549.09(1)(a), is not a commercial motor vehicle if the use is not for profit and corporate sponsorship is not involved. As used in this subsection, the term "corporate sponsorship" means a payment, donation, gratuity, in-kind service, or other benefit provided to or derived by a person in relation to the underlying activity, other than the display of product or corporate names, logos, or other graphic information on the property being transported.

(26) "Motorcycle" means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, excluding a vehicle in

which the operator is enclosed by a cabin unless it meets the requirements set forth by the National Highway Traffic Safety Administration for a motorcycle. The term "motorcycle" does not include a tractor or a moped.

(27) "Moped" means any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground, and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.

(28) "Interstate" means vehicle movement between or through two or more states.

(29) "Intrastate" means vehicle movement from one point within a state to another point within the same state.

(30) "Person" means and includes natural persons, corporations, copartnerships, firms, companies, agencies, or associations, singular or plural.

(31) "Registrant" means a person in whose name or names a vehicle is properly registered.

(32) "Motor carrier" means any person owning, controlling, operating, or managing any motor vehicle used to transport persons or property over any public highway.

(33) "Motorized disability access vehicle" means a vehicle designed primarily for handicapped individuals with normal upper body abilities and designed to be fueled by gasoline, travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground, and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.

(34) "Resident" means a person who has his or her principal place of domicile in this state for a period of more than 6 consecutive months, who has registered to vote in this state, who has made a statement of domicile pursuant to s. 222.17, or who has filed for homestead tax exemption on property in this state.

(35) "Nonresident" means a person who is not a resident.

(36) "Electric vehicle" means a motor vehicle that is powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current.

(37) "Disabled motor vehicle" means any motor vehicle as defined in subsection (1) which is not operable under its own motive power, excluding a nondisabled trailer or semitrailer, or any motor vehicle that is unsafe for operation upon the highways of this state.

(38) "Replacement motor vehicle" means any motor vehicle as defined in subsection (1) under tow by a wrecker to the location of a disabled motor vehicle for the purpose of replacing the disabled motor vehicle, thereby permitting the transfer of the disabled motor vehicle's operator, passengers, and load to an operable motor vehicle.

(39) "Wrecker" means any motor vehicle that is used to tow, carry, or otherwise transport motor vehicles and that is equipped for that purpose with a boom, winch, car carrier, or other similar equipment.

(40) "Tow" means to pull or draw any motor vehicle with a power unit by means of a direct attachment, drawbar, or other connection or to carry a motor vehicle on a power unit designed to transport such vehicle from one location to another.

(41) “Low-speed vehicle” means any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. s. 571.500 and s. [316.2122](#).

(42) “Utility vehicle” means a motor vehicle designed and manufactured for general maintenance, security, and landscaping purposes, but the term does not include any vehicle designed or used primarily for the transportation of persons or property on a street or highway, or a golf cart, or an all-terrain vehicle as defined in s. [316.2074](#).

(43) For purposes of this chapter, the term “agricultural products” means any food product; any agricultural, horticultural, or livestock product; any raw material used in plant food formulation; and any plant food used to produce food and fiber.

(44) “Mini truck” means any four-wheeled, reduced-dimension truck that does not have a National Highway Traffic Safety Administration truck classification, with a top speed of 55 miles per hour, and which is equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, and seat belts.

(45) “Swamp buggy” means a motorized off-road vehicle that is designed or modified to travel over swampy or varied terrain and that may use large tires or tracks operated from an elevated platform. The term does not include any vehicle defined in chapter 261 or otherwise defined or classified in this chapter.

History.—ss. 1, 6, ch. 7275, 1917; s. 1, ch. 7737, 1918; RGS 1006, 1011; ss. 2, 5, ch. 8410, 1921; s. 2, ch. 9156, 1923; s. 1, ch. 9157, 1923; ss. 1, 3, ch. 10182, 1925; CGL 1280, 1285, 1677; s. 3, ch. 15625, 1931; s. 3, ch. 16085, 1933; s. 1, ch. 20743, 1941; s. 1, ch. 20911, 1941; s. 1, ch. 26923, 1951; s. 1, ch. 59-351; s. 1, ch. 65-61; s. 1, ch. 65-446; ss. 23, 24, 35, ch. 69-106; s. 1, ch. 70-215; s. 1, ch. 70-391; s. 93, ch. 71-377; s. 1, ch. 72-339; s. 1, ch. 73-284; s. 2, ch. 74-243; s. 3, ch. 75-66; s. 2, ch. 76-135; s. 4, ch. 76-286; s. 1, ch. 77-180; s. 1, ch. 77-357; s. 1, ch. 78-221; s. 125, ch. 79-400; s. 12, ch. 81-151; s. 22, ch. 82-134; s. 3, ch. 83-188; s. 23, ch. 83-215; s. 1, ch. 83-318; s. 1, ch. 84-182; s. 7, ch. 84-260; s. 5, ch. 85-155; s. 43, ch. 85-180; s. 10, ch. 85-309; s. 4, ch. 85-343; s. 11, ch. 86-243; s. 11, ch. 87-161; s. 20, ch. 87-198; s. 5, ch. 87-225; s. 1, ch. 88-147; s. 66, ch. 89-282; s. 2, ch. 89-320; s. 1, ch. 90-163; s. 4, ch. 90-270; s. 5, ch. 92-148; s. 39, ch. 94-306; s. 910, ch. 95-148; s. 10, ch. 95-247; s. 10, ch. 95-333; s. 29, ch. 96-413; s. 3, ch. 97-58; s. 2, ch. 99-163; s. 15, ch. 99-248; s. 39, ch. 2001-196; s. 1, ch. 2007-242; s. 16, ch. 2008-176; s. 2, ch. 2008-179; s. 6, ch. 2009-183; s. 20, ch. 2012-174; s. 27, ch. 2012-181; s. 27, ch. 2013-160.

Select Year:

The 2014 Florida Statutes

[Title XXIV](#)
VESSELS

[Chapter 327](#)
VESSEL SAFETY

[View Entire Chapter](#)

327.02 Definitions.—As used in this chapter and in chapter 328, unless the context clearly requires a different meaning, the term:

- (1) “Airboat” means a vessel that is primarily designed for use in shallow waters and powered by an internal combustion engine with an airplane-type propeller mounted above the stern and used to push air across a set of rudders.
- (2) “Alien” means a person who is not a citizen of the United States.
- (3) “Boating accident” means a collision, accident, or casualty involving a vessel in or upon, or entering into or exiting from, the water, including capsizing, collision with another vessel or object, sinking, personal injury, death, disappearance of a person from on board under circumstances that indicate the possibility of death or injury, or property damage to any vessel or dock.
- (4) “Canoe” means a light, narrow vessel with curved sides and with both ends pointed. A canoe-like vessel with a transom may not be excluded from the definition of a canoe if the width of its transom is less than 45 percent of the width of its beam or it has been designated as a canoe by the United States Coast Guard.
- (5) “Commercial parasailing” means providing or offering to provide, for consideration, any activity involving the towing of a person by a motorboat if:
 - (a) One or more persons are tethered to the towing vessel;
 - (b) The person or persons ascend above the water; and
 - (c) The person or persons remain suspended under a canopy, chute, or parasail above the water while the vessel is underway.

The term does not include ultralight glider towing conducted under rules of the Federal Aviation Administration governing ultralight vehicles as defined in 14 C.F.R. part 103.

- (6) “Commercial vessel” means:
 - (a) A vessel primarily engaged in the taking or landing of saltwater fish or saltwater products or freshwater fish or freshwater products, or a vessel licensed pursuant to s. [379.361](#) from which commercial quantities of saltwater products are harvested, from within and without the waters of this state for sale to the consumer or to a retail or wholesale dealer.
 - (b) Any other vessel, except a recreational vessel as defined in this section.
- (7) “Commission” means the Fish and Wildlife Conservation Commission.
- (8) “Dealer” means a person authorized by the Department of Revenue to buy, sell, resell, or otherwise distribute vessels. Such person must have a valid sales tax certificate of registration issued by the Department of Revenue and a valid commercial or occupational license required by any county, municipality, or political subdivision of the state in which the person operates.

(9) "Division" means the Division of Law Enforcement of the Fish and Wildlife Conservation Commission.

(10) "Documented vessel" means a vessel for which a valid certificate of documentation is outstanding pursuant to 46 C.F.R. part 67.

(11) "Floating structure" means a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term "vessel" provided in this section. Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a floating structure.

(12) "Florida Intracoastal Waterway" means the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.

(13) "Homemade vessel" means a vessel built after October 31, 1972, for which a federal hull identification number is not required to be assigned by the manufacturer pursuant to federal law, or a vessel constructed or assembled before November 1, 1972, by an entity other than a licensed manufacturer for its own use or the use of a specific person. A vessel assembled from a manufacturer's kit or constructed from an unfinished manufactured hull is considered to be a homemade vessel if such a vessel is not required to have a hull identification number assigned by the United States Coast Guard. A rebuilt or reconstructed vessel may not be construed to be a homemade vessel.

(14) "Kiteboarding" or "kitesurfing" means an activity in which a kiteboard or surfboard is tethered to a kite so as to harness the power of the wind and propel the board across a body of water. For purposes of this subsection, the term "kite" has the same meaning as used in 14 C.F.R. part 101.

(15) "Houseboat" means a vessel that is used primarily as a residence for at least 21 days during any 30-day period in a county of this state if such residential use of the vessel is to the preclusion of its use as a means of transportation.

(16) "Length" means the measurement from end to end over the deck parallel to the centerline, excluding sheer.

(17) "Lien" means a security interest that is reserved or created by a written agreement recorded with the Department of Highway Safety and Motor Vehicles pursuant to s. 328.15 and that secures payment or performance of an obligation and is generally valid against third parties.

(18) "Lienholder" means a person holding a security interest in a vessel, which interest is recorded with the Department of Highway Safety and Motor Vehicles pursuant to s. 328.15.

(19) "Live-aboard vessel" means:

- (a) A vessel used solely as a residence and not for navigation;
- (b) A vessel represented as a place of business or a professional or other commercial enterprise; or
- (c) A vessel for which a declaration of domicile has been filed pursuant to s. 222.17.

A commercial fishing boat is expressly excluded from the term "live-aboard vessel."

(20) "Livery vessel" means a vessel leased, rented, or chartered to another for consideration.

(21) "Manufactured vessel" means a vessel built after October 31, 1972, for which a federal hull identification number is required pursuant to federal law, or a vessel constructed or assembled before November 1, 1972, by a duly licensed manufacturer.

(22) "Marina" means a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis. A commercial establishment authorized by a licensed vessel manufacturer as a dealership is considered a marina for nonjudicial sale purposes.

(23) "Marine sanitation device" means equipment, other than a toilet, for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage. Marine sanitation device Types I, II, and III shall be defined as provided in 33 C.F.R. part 159.

(24) "Marker" means a channel mark or other aid to navigation, an information or regulatory mark, an isolated danger mark, a safe water mark, a special mark, an inland waters obstruction mark, or mooring buoy in, on, or over the waters of the state or the shores thereof, and includes, but is not limited to, a sign, beacon, buoy, or light.

(25) "Moored ballooning" means the operation of a moored balloon pursuant to 14 C.F.R. part 101.

(26) "Motorboat" means a vessel equipped with machinery for propulsion, irrespective of whether the propulsion machinery is in actual operation.

(27) "Muffler" means an automotive-style sound-suppression device or system designed to effectively abate the sound of exhaust gases emitted from an internal combustion engine and prevent excessive sound when installed on such an engine.

(28) "Navigation rules" means, for vessels on:

(a) Waters outside established navigational lines of demarcation as specified in 33 C.F.R. part 80, the International Navigational Rules Act of 1977, 33 U.S.C. s. 1602, as amended, including the appendix and annexes thereto, through October 1, 2012.

(b) All waters not outside of such established lines of demarcation, the Inland Navigational Rules Act of 1980, 33 C.F.R. parts 83-90, as amended, through October 1, 2012.

(29) "Nonresident" means a citizen of the United States who has not established residence in this state and has not continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

(30) "Operate" means to be in charge of, in command of, or in actual physical control of a vessel upon the waters of this state, to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

(31) "Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person which is reserved or created by agreement and securing payment of performance of an obligation. The term does not include a lessee under a lease not intended as security.

(32) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(33) "Personal watercraft" means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(34) "Portable toilet" means a device consisting of a lid, seat, containment vessel, and support structure which is specifically designed to receive, retain, and discharge human waste and which is capable of being removed from a vessel by hand.

(35) "Prohibited activity" means activity that will impede or disturb navigation or creates a safety hazard on waterways of this state.

(36) "Racing shell," "rowing scull," or "racing kayak" means a manually propelled vessel that is recognized by national or international racing associations for use in competitive racing and in which all occupants, with the exception of a coxswain, if one is provided, row, scull, or paddle and that is not designed to carry and does not carry any equipment not solely for competitive racing.

(37) "Recreational vessel" means a vessel:

(a) Manufactured and used primarily for noncommercial purposes; or

(b) Leased, rented, or chartered to a person for his or her noncommercial use.

(38) "Registration" means a state operating license on a vessel which is issued with an identifying number, an annual certificate of registration, and a decal designating the year for which a registration fee is paid.

(39) "Resident" means a citizen of the United States who has established residence in this state and has continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

(40) "Sailboat" means a vessel whose sole source of propulsion is the wind.

(41) "Sustained wind speed" means a wind speed determined by averaging the observed wind speed rounded up to the nearest mile per hour over a 2-minute period.

(42) "Unclaimed vessel" means an undocumented vessel, including its machinery, rigging, and accessories, which is in the physical possession of a marina, garage, or repair shop for repairs, improvements, or other work with the knowledge of the vessel owner and for which the costs of such services have been unpaid for more than 90 days after the date written notice of the completed work is given by the marina, garage, or repair shop to the vessel owner.

(43) "Vessel" is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(44) "Waters of this state" means any navigable waters of the United States within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, and canals under the jurisdiction of this state.

History.—s. 1, ch. 59-399; s. 1, ch. 63-103; s. 1, ch. 65-361; s. 17, ch. 69-216; ss. 25, 35, ch. 69-106; s. 3, ch. 70-336; s. 132, ch. 71-377; s. 1, ch. 72-16; s. 1, ch. 72-55; ss. 1, 15, ch. 74-327; s. 23, ch. 79-334; s. 1, ch. 81-100; s. 1, ch. 81-114; s. 76, ch. 82-226; s. 1, ch. 83-20; s. 2, ch. 84-184; s. 1, ch. 85-252; s. 1, ch. 88-133; s. 1, ch. 89-136; s. 2, ch. 89-250; s. 2, ch. 94-241; s. 152, ch. 94-356; s. 951, ch. 95-148; s. 1, ch. 95-333; s. 3, ch. 98-308; ss. 18, 89, ch. 99-245; s. 2, ch. 2000-362; s. 1, ch. 2006-172; s. 194, ch. 2008-247; s. 6, ch. 2009-86; s. 1, ch. 2013-194; s. 2, ch. 2014-70.

Note.—Former s. 371.021.

Select Year:

The 2014 Florida Statutes

[Title XXIII](#)
MOTOR VEHICLES

[Chapter 316](#)
STATE UNIFORM TRAFFIC CONTROL

[View Entire Chapter](#)

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(1) **AUTHORIZED EMERGENCY VEHICLES.**—Vehicles of the fire department (fire patrol), police vehicles, and such ambulances and emergency vehicles of municipal departments, public service corporations operated by private corporations, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the Department of Health, the Department of Transportation, and the Department of Corrections as are designated or authorized by their respective department or the chief of police of an incorporated city or any sheriff of any of the various counties.

(2) **BICYCLE.**—Every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device. No person under the age of 16 may operate or ride upon a motorized bicycle.

(3) **BUS.**—Any motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) **BUSINESS DISTRICT.**—The territory contiguous to, and including, a highway when 50 percent or more of the frontage thereon, for a distance of 300 feet or more, is occupied by buildings in use for business.

(5) **CANCELLATION.**—Cancellation means that a license which was issued through error or fraud is declared void and terminated. A new license may be obtained only as permitted in this chapter.

(6) **CROSSWALK.**—

(a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway, measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway.

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

(7) **DAYTIME.**—The period from a half hour before sunrise to a half hour after sunset. Nighttime means at any other hour.

(8) **DEPARTMENT.**—The Department of Highway Safety and Motor Vehicles as defined in s. [20.24](#). Any reference herein to Department of Transportation shall be construed as referring to the Department of Transportation, defined in s. [20.23](#), or the appropriate division thereof.

(9) DIRECTOR.—The Director of the Division of the Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles.

(10) DRIVER.—Any person who drives or is in actual physical control of a vehicle on a highway or who is exercising control of a vehicle or steering a vehicle being towed by a motor vehicle.

(11) EXPLOSIVE.—Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effect on contiguous objects or of destroying life or limb.

(12) FARM TRACTOR.—Any motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(13) FLAMMABLE LIQUID.—Any liquid which has a flash point of 70 degrees Fahrenheit or less, as determined by a Tagliabue or equivalent closed-cup test device.

(14) GROSS WEIGHT.—The weight of a vehicle without load plus the weight of any load thereon.

(15) HOUSE TRAILER.—

(a) A trailer or semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways, or

(b) A trailer or a semitrailer the chassis and exterior shell of which is designed and constructed for use as a house trailer, as defined in paragraph (a), but which is used instead, permanently or temporarily, for the advertising, sales, display, or promotion of merchandise or services or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

(16) IMPLEMENT OF HUSBANDRY.—Any vehicle designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.

(17) INTERSECTION.—

(a) The area embraced within the prolongation or connection of the lateral curblines; or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles; or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(18) LANED HIGHWAY.—A highway the roadway of which is divided into two or more clearly marked lanes for vehicular traffic.

(19) LIMITED ACCESS FACILITY.—A street or highway especially designed for through traffic and over, from, or to which owners or occupants of abutting land or other persons have no right or easement, or only a limited right or easement, of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be parkways from which trucks, buses, and other commercial vehicles are excluded; or they may be freeways open to use by all customary forms of street and highway traffic.

(20) LOCAL AUTHORITIES.—Includes all officers and public officials of the several counties and municipalities of this state.

(21) MOTOR VEHICLE.—Except when used in s. 316.1001, a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, swamp buggy, or moped. For purposes of s. 316.1001, “motor vehicle” has the same meaning as in s. 320.01(1)(a).

(22) MOTORCYCLE.—Any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor or a moped.

(23) OFFICIAL TRAFFIC CONTROL DEVICES.—All signs, signals, markings, and devices, not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(24) OFFICIAL TRAFFIC CONTROL SIGNAL.—Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

(25) OPERATOR.—Any person who is in actual physical control of a motor vehicle upon the highway, or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(26) OWNER.—A person who holds the legal title of a vehicle, or, in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee, or lessee, or mortgagor shall be deemed the owner, for the purposes of this chapter.

(27) PARK OR PARKING.—The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers as may be permitted by law under this chapter.

(28) PEDESTRIAN.—Any person afoot.

(29) PERSON.—Any natural person, firm, copartnership, association, or corporation.

(30) PNEUMATIC TIRE.—Any tire in which compressed air is designed to support the load.

(31) POLE TRAILER.—Any vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(32) POLICE OFFICER.—Any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations, including Florida highway patrol officers, sheriffs, deputy sheriffs, and municipal police officers.

(33) PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (53)(b), any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(34) RADIOACTIVE MATERIALS.—Any materials or combination of materials which emit ionizing radiation spontaneously in which the radioactivity per gram of material, in any form, is greater than 0.002 microcuries.

(35) RAILROAD.—A carrier of persons or property upon cars operated upon stationary rails.

(36) RAILROAD SIGN OR SIGNAL.—Any sign, signal, or device erected by authority of a public body or official, or by a railroad, and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

(37) RAILROAD TRAIN.—A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except a streetcar.

(38) RESIDENCE DISTRICT.—The territory contiguous to, and including, a highway, not comprising a business district, when the property on such highway, for a distance of 300 feet or more, is, in the main, improved with residences or residences and buildings in use for business.

(39) REVOCATION.—Revocation means that a licensee's privilege to drive a motor vehicle is terminated. A new license may be obtained only as permitted by law.

(40) RIGHT-OF-WAY.—The right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.

(41) ROAD TRACTOR.—Any motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon, either independently or as any part of the weight of a vehicle or load so drawn.

(42) ROADWAY.—That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein refers to any such roadway separately, but not to all such roadways collectively.

(43) SADDLE MOUNT; FULL MOUNT.—An arrangement whereby the front wheels of one vehicle rest in a secured position upon another vehicle. All of the wheels of the towing vehicle are upon the ground, and only the rear wheels of the towed vehicle rest upon the ground. Such combinations may include one full mount, whereby a smaller transport vehicle is placed completely on the last towed vehicle.

(44) SAFETY ZONE.—The area or space officially set apart within a roadway for the exclusive use of pedestrians and protected or so marked by adequate signs or authorized pavement markings as to be plainly visible at all times while set apart as a safety zone.

(45) SCHOOL BUS.—Any motor vehicle that complies with the color and identification requirements of chapter 1006 and is used to transport children to or from public or private school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children. The term "school" includes all preelementary, elementary, secondary, and postsecondary schools.

(46) SEMITRAILER.—Any vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon, or is carried by, another vehicle.

(47) SIDEWALK.—That portion of a street between the curbline, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians.

(48) SPECIAL MOBILE EQUIPMENT.—Any vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including, but not limited to, ditchdigging apparatus, well-boring apparatus, and road construction and maintenance machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earthmoving carryalls and scrapers, power shovels and draglines, and self-propelled cranes and earthmoving equipment. The term does not include house trailers, dump trucks, truck-mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(49) **STAND OR STANDING.**—The halting of a vehicle, whether occupied or not, otherwise than temporarily, for the purpose of, and while actually engaged in, receiving or discharging passengers, as may be permitted by law under this chapter.

(50) **STATE ROAD.**—Any highway designated as a state-maintained road by the Department of Transportation.

(51) **STOP.**—When required, complete cessation from movement.

(52) **STOP OR STOPPING.**—When prohibited, any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or to comply with the directions of a law enforcement officer or traffic control sign or signal.

(53) **STREET OR HIGHWAY.**—

(a) The entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic;

(b) The entire width between the boundary lines of any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons, or any limited access road owned or controlled by a special district, whenever, by written agreement entered into under s. 316.006(2)(b) or (3)(b), a county or municipality exercises traffic control jurisdiction over said way or place;

(c) Any area, such as a runway, taxiway, ramp, clear zone, or parking lot, within the boundary of any airport owned by the state, a county, a municipality, or a political subdivision, which area is used for vehicular traffic but which is not open for vehicular operation by the general public; or

(d) Any way or place used for vehicular traffic on a controlled access basis within a mobile home park recreation district which has been created under s. 418.30 and the recreational facilities of which district are open to the general public.

(54) **SUSPENSION.**—Temporary withdrawal of a licensee's privilege to drive a motor vehicle.

(55) **THROUGH HIGHWAY.**—Any highway or portion thereof on which vehicular traffic is given the right-of-way and at the entrances to which vehicular traffic from intersecting highways is required to yield right-of-way to vehicles on such through highway in obedience to either a stop sign or yield sign, or otherwise in obedience to law.

(56) **TIRE WIDTH.**—Tire width is that width stated on the surface of the tire by the manufacturer of the tire, if the width stated does not exceed 2 inches more than the width of the tire contacting the surface.

(57) **TRAFFIC.**—Pedestrians, ridden or herded animals, and vehicles, streetcars, and other conveyances either singly or together while using any street or highway for purposes of travel.

(58) **TRAILER.**—Any vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle.

(59) **TRUCK.**—Any motor vehicle designed, used, or maintained primarily for the transportation of property.

(60) **TRUCK TRACTOR.**—Any motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(61) **MIGRANT OR SEASONAL FARM WORKER.**—Any person employed in hand labor operations in planting, cultivation, or harvesting agricultural crops.

(62) **FARM LABOR VEHICLE.**—Any vehicle equipped and used for the transportation of nine or more migrant or seasonal farm workers, in addition to the driver, to or from a place of employment or employment-related activities. The term does not include:

- (a) Any vehicle carrying only members of the immediate family of the owner or driver.
- (b) Any vehicle being operated by a common carrier of passengers.
- (c) Any carpool as defined in s. 450.28(3).

(63) BICYCLE PATH.—Any road, path, or way that is open to bicycle travel, which road, path, or way is physically separated from motorized vehicular traffic by an open space or by a barrier and is located either within the highway right-of-way or within an independent right-of-way.

(64) CHIEF ADMINISTRATIVE OFFICER.—The head, or his or her designee, of any law enforcement agency which is authorized to enforce traffic laws.

(65) CHILD.—A child as defined in s. 39.01, s. 984.03, or s. 985.03.

(66) COMMERCIAL MOTOR VEHICLE.—Any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle:

- (a) Has a gross vehicle weight rating of 10,000 pounds or more;
- (b) Is designed to transport more than 15 passengers, including the driver; or
- (c) Is used in the transportation of materials found to be hazardous for the purposes of the

Hazardous Materials Transportation Act, as amended (49 U.S.C. ss. 1801 et seq.).

A vehicle that occasionally transports personal property to and from a closed-course motorsport facility, as defined in s. 549.09(1)(a), is not a commercial motor vehicle if it is not used for profit and corporate sponsorship is not involved. As used in this subsection, the term “corporate sponsorship” means a payment, donation, gratuity, in-kind service, or other benefit provided to or derived by a person in relation to the underlying activity, other than the display of product or corporate names, logos, or other graphic information on the property being transported.

(67) COURT.—The court having jurisdiction over traffic offenses.

(68) GOLF CART.—A motor vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes.

(69) HAZARDOUS MATERIAL.—Any substance or material which has been determined by the secretary of the United States Department of Transportation to be capable of imposing an unreasonable risk to health, safety, and property. This term includes hazardous waste as defined in s. 403.703(13).

(70) STRAIGHT TRUCK.—Any truck on which the cargo unit and the motive power unit are located on the same frame so as to form a single, rigid unit.

(71) TANDEM TRAILER TRUCK.—Any combination of a truck tractor, semitrailer, and trailer coupled together so as to operate as a complete unit.

(72) TANDEM TRAILER TRUCK HIGHWAY NETWORK.—A highway network consisting primarily of four or more lanes, including all interstate highways; highways designated by the United States Department of Transportation as elements of the National Network; and any street or highway designated by the Florida Department of Transportation for use by tandem trailer trucks, in accordance with s. 316.515, except roads on which truck traffic was specifically prohibited on January 6, 1983.

(73) TERMINAL.—Any location where:

- (a) Freight either originates, terminates, or is handled in the transportation process; or
- (b) Commercial motor carriers maintain operating facilities.

(74) TRANSPORTATION.—The conveyance or movement of goods, materials, livestock, or persons from one location to another on any road, street, or highway open to travel by the public.

(75) VEHICLE.—Every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(76) BRAKE HORSEPOWER.—The actual unit of torque developed per unit of time at the output shaft of an engine, as measured by a dynamometer.

(77) MOPED.—Any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels; with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground; and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.

(78) NONPUBLIC SECTOR BUS.—Any bus which is used for the transportation of persons for compensation and which is not owned, leased, operated, or controlled by a municipal, county, or state government or a governmentally owned or managed nonprofit corporation.

(79) WORK ZONE AREA.—The area and its approaches on any state-maintained highway, county-maintained highway, or municipal street where construction, repair, maintenance, or other street-related or highway-related work is being performed or where one or more lanes is closed to traffic.

(80) MAXI-CUBE VEHICLE.—A specialized combination vehicle consisting of a truck carrying a separable cargo-carrying unit combined with a semitrailer designed so that the separable cargo-carrying unit is to be loaded and unloaded through the semitrailer. The entire combination may not exceed 65 feet in length, and a single component of that combination may not exceed 34 feet in length.

(81) TANDEM AXLE.—Any two axles whose centers are more than 40 inches but not more than 96 inches apart and are individually attached to or articulated from, or both, a common attachment to the vehicle, including a connecting mechanism designed to equalize the load between axles.

(82) MOTORIZED SCOOTER.—Any vehicle not having a seat or saddle for the use of the rider, designed to travel on not more than three wheels, and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground.

(83) ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE.—Any self-balancing, two-nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of 750 watts (1 horsepower), the maximum speed of which, on a paved level surface when powered solely by such a propulsion system while being ridden by an operator who weighs 170 pounds, is less than 20 miles per hour. Electric personal assistive mobility devices are not vehicles as defined in this section.

(84) TRAFFIC SIGNAL PREEMPTION SYSTEM.—Any system or device with the capability of activating a control mechanism mounted on or near traffic signals which alters a traffic signal's timing cycle.

(85) VICTIM SERVICES PROGRAMS.—Any community-based organization whose primary purpose is to act as an advocate for the victims and survivors of traffic crashes and for their families. The victims services offered by these programs may include grief and crisis counseling, assistance with preparing victim compensation claims excluding third-party legal action, or connecting persons with other service providers, and providing emergency financial assistance.

(86) MOTOR CARRIER TRANSPORTATION CONTRACT.—

(a) A contract, agreement, or understanding covering:

1. The transportation of property for compensation or hire by the motor carrier;
2. Entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire; or
3. A service incidental to activity described in subparagraph 1. or subparagraph 2., including, but not limited to, storage of property.

(b) "Motor carrier transportation contract" does not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or other

agreements providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment.

(87) **TRAFFIC INFRACTION DETECTOR.**—A vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. Any notification under s. 316.0083(1)(b) or traffic citation issued by the use of a traffic infraction detector must include a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated.

(88) **TRI-VEHICLE.**—An enclosed three-wheeled passenger vehicle that:

- (a) Is designed to operate with three wheels in contact with the ground;
- (b) Has a minimum unladen weight of 900 pounds;
- (c) Has a single, completely enclosed, occupant compartment;
- (d) Is produced in a minimum quantity of 300 in any calendar year;
- (e) Is capable of a speed greater than 60 miles per hour on level ground; and
- (f) Is equipped with:

1. Seats that are certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 207, "Seating systems" (49 C.F.R. s. 571.207);
2. A steering wheel used to maneuver the vehicle;
3. A propulsion unit located forward or aft of the enclosed occupant compartment;
4. A seat belt for each vehicle occupant certified to meet the requirements of Federal Motor Vehicle Safety Standard No. 209, "Seat belt assemblies" (49 C.F.R. s. 571.209);
5. A windshield and an appropriate windshield wiper and washer system that are certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 205, "Glazing Materials" (49 C.F.R. s. 571.205) and Federal Motor Vehicle Safety Standard No. 104, "Windshield Wiping and Washing Systems" (49 C.F.R. s. 571.104); and
6. A vehicle structure certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 216, "Rollover crush resistance" (49 C.F.R. s. 571.216).

(89) **SWAMP BUGGY.**—A motorized off-road vehicle that is designed or modified to travel over swampy or varied terrain and that may use large tires or tracks operated from an elevated platform. The term does not include any vehicle defined in chapter 261 or otherwise defined or classified in this chapter.

(90) **AUTONOMOUS VEHICLE.**—Any vehicle equipped with autonomous technology. The term "autonomous technology" means technology installed on a motor vehicle that has the capability to drive the vehicle on which the technology is installed without the active control or monitoring by a human operator. The term excludes a motor vehicle enabled with active safety systems or driver assistance systems, including, without limitation, a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane keep assistance, lane departure warning, or traffic jam and queuing assistant, unless any such system alone or in combination with other systems enables the vehicle on which the technology is installed to drive without the active control or monitoring by a human operator.

(91) **LOCAL HEARING OFFICER.**—The person, designated by a department, county, or municipality that elects to authorize traffic infraction enforcement officers to issue traffic citations under s. 316.0083(1)(a), who is authorized to conduct hearings related to a notice of violation issued pursuant to s. 316.0083. The charter county, noncharter county, or municipality may use its currently appointed

code enforcement board or special magistrate to serve as the local hearing officer. The department may enter into an interlocal agreement to use the local hearing officer of a county or municipality.

(92) **SANITATION VEHICLE.**—A motor vehicle that bears an emblem that is visible from the roadway and clearly identifies that the vehicle belongs to or is under contract with a person, entity, cooperative, board, commission, district, or unit of local government that provides garbage, trash, refuse, or recycling collection.

(93) **UTILITY SERVICE VEHICLE.**—A motor vehicle that bears an emblem that is visible from the roadway and clearly identifies that the vehicle belongs to or is under contract with a person, entity, cooperative, board, commission, district, or unit of local government that provides electric, natural gas, water, wastewater, cable, telephone, or communications services.

History.—s. 1, ch. 71-135; s. 1, ch. 72-179; s. 1, ch. 74-213; s. 1, ch. 76-286; s. 1, ch. 77-174; s. 1, ch. 80-316; s. 23, ch. 82-186; s. 1, ch. 83-68; s. 1, ch. 83-164; s. 1, ch. 83-188; s. 1, ch. 83-298; s. 1, ch. 84-284; s. 9, ch. 85-309; s. 2, ch. 87-88; s. 5, ch. 87-161; s. 1, ch. 87-178; s. 1, ch. 87-270; s. 3, ch. 88-91; s. 2, ch. 88-93; s. 4, ch. 88-130; s. 63, ch. 89-282; s. 3, ch. 91-418; s. 8, ch. 94-306; s. 893, ch. 95-148; s. 1, ch. 95-247; s. 26, ch. 98-280; s. 2, ch. 98-308; s. 86, ch. 99-13; s. 80, ch. 99-248; s. 5, ch. 99-385; s. 41, ch. 2000-152; ss. 67, 133, ch. 2002-20; s. 955, ch. 2002-387; s. 27, ch. 2005-164; s. 1, ch. 2005-177; s. 1, ch. 2006-81; s. 5, ch. 2006-290; s. 1, ch. 2007-210; s. 62, ch. 2008-4; s. 1, ch. 2008-179; s. 2, ch. 2010-80; s. 1, ch. 2010-223; s. 8, ch. 2010-225; s. 11, ch. 2012-88; s. 2, ch. 2012-111; ss. 15, 106, ch. 2012-174; s. 2, ch. 2012-181; s. 4, ch. 2013-160; s. 3, ch. 2014-216.

Copyright © 1995-2014 The Florida Legislature • [Privacy Statement](#) • [Contact Us](#)