

**TOWN OF MALABAR  
PLANNING AND ZONING ADVISORY BOARD  
REGULAR MEETING  
WEDNESDAY AUGUST 12, 2015  
7:30 PM  
MALABAR COUNCIL CHAMBER  
2725 MALABAR ROAD  
MALABAR, FLORIDA**

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**AGENDA**

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**
- D. CONSENT AGENDA :**
  - 1. Approval of Minutes**                      Planning and Zoning Meeting – 7/22/15  
**Exhibit:**                                      Agenda Report No. 1  
**Recommendation:**                      Request Approval
- E. PUBLIC HEARING: none**
- F. ACTION:**
  - 2. Vacate ROW on Johnston Avenue, East of Jennie Street-(Applicant Alisha Cline)**  
**Exhibit:**                                      Agenda Report No. 2  
**Recommendation:**                      Request Approval
  - 3. Amend Signage Code Article XIX, Recommend by Town Council & Town Attorney**  
**Exhibit:**                                      Agenda Report No. 3  
**Recommendation:**                      Request Approval
- G. DISCUSSION:**
  - 4. Final Discussion & Recommendation re: Future Land Use Maps**  
**Exhibit:**                                      Agenda Report No. 4  
**Recommendation:**                      Discussion/Action
- 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: August 12, 2015**

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

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**SUBJECT: Approval of Minutes**

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**BACKGROUND/HISTORY:**

The minutes must reflect the actions taken by the Board:

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

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

**ATTACHMENTS:**

Draft minutes of P&Z Board Meeting of July 22, 2015

**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  
JULY 22, 2015 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
	GEORGE FOSTER
ALTERNATE:	DOUG DIAL
ALTERNATE:	VACANT
BOARD SECRETARY:	DENINE SHEREAR

ADDITIONAL ATTENDEES:

**C. ADDITIONS/DELETIONS/CHANGES:**

None

**D. CONSENT AGENDA:**

- 1. Approval of Minutes** Planning and Zoning Meeting – 7/08/15  
**Exhibit:** Agenda Report No. 1  
**Recommendation:** Request Approval

**Motion: Ryan /Ritter to Recommend Approval of Minutes of 7/08/15 as presented All Vote: Aye**

**E. PUBLIC HEARING: none**

**F. ACTION: none**

**G. DISCUSSION**

- 2. Review & Discussion: Future Land Use Maps for R/LC**  
**Exhibit:** Agenda Report No. 2  
**Recommendation:** Discussion

Reilly went over each FLUM map and updated to July 12, 2015 all changes proposed. The Board went over each map page by page:

**Page 4 FLUM map:**

No Changes

**Page 5 FLUM map:**

The Board discussed changes that were made and discussed to include the whole large lots for property owners and do away with the 330' & 660' east of Weber Road along Malabar Road.

**Page 6 FLUM map:**

The Board discussed Weber Road to Alexander Lane along Malabar Road. The two large lots along Malabar Road east of Duncil Lane to the south the owner made a request for property to be R/LC.

Connie Adams 2240 Raulerson Lane, Malabar asked about zoning designations. Reilly & the Board explained to the resident the different zoning designation and what the Board is presently proposing to the main corridors of Malabar.

Foster stated to Ms. Adams that these proposed changes will not change the zoning that the present property owners reside on, it only makes these zoning changes available if the property owner would like to come in to the Town and request that zoning for their property.

Reilly explained that the north side of Malabar Road, west of Stillwater Preserve subdivision use to be "medium density", Reilly explained it was part of Brookhollow subdivision and was proposed as three stages that never happened and the EEL's property purchased all the land and now it is "Conservation".

**Page 7 FLUM map:**

Board discussed no changes

**Page 8 FLUM map:**

Board discussed no changes. Reilly pointed out the Conservation land being the "Golf Disc Park" along Malabar Road across from Malabar Fire Dept. & "Fern Creek Park" at the corner of Malabar Road and Corey Road.

**Page 9 FLUM map:**

Board discussed no changes

**Page 10 FLUM map:**

Board discussed no changes

The Board discussed Railroad Ave, north of Malabar Road that it is not an accepted Town road and only the people that use this road are the ones that own property back there, the illegal trucks that come into the Storage area and well company.

Foster suggested property east of railroad tracks on north side of Malabar Road to be "CL" instead of "R/LC" it has great potential.

**Page 11 FLUM map:**

Board discussed no changes

**Page 12 FLUM map:**

Board discussed- Foster suggested to change "OI" that is located on US Highway 1 before Jordan Blvd on west side to "CG" or "CL".

Abare said if someone really wanted to change the property, the property owner could come to the Boards and request changes.

**Page 13 FLUM map:**

Board discussed no change

**Page 14 FLUM map:**

Board discussed no change.

Reilly suggested for the Board to read page 23/32-23/30 (PZ Packet 23/32) and the new designations & Tables of what R/LC is defined as. The next meeting should be the final "go through" meeting.

Reilly explained to the Board his process of how he will present to Council the PZ Boards recommendations, in a power point presentation. Reilly suggested a "Special Council Meeting". - Workshop. Ritter suggested giving complete packet to Council to review and suggest a Special Meeting/workshop. Abare said things are suggestive, if Reilly presents to Council it could come back for review.

Reilly & Board discussed how to present the presentation to Council, to deliver the completed package two weeks before the meeting and have as a discussion item and then a following meeting could be an action item or continued discussion.

**H. ADDITIONAL ITEMS FOR FUTURE MEETING**

Sherear handed out memo from Council that was presented by Town Attorney in reference to our Signage Ordinance. Sherear will email packet tomorrow.

Discussion/Action for next PZ Meeting 8/12/15 Code Amendment re: Signage Article XIX per Town Council & Town Attorney Karl Bohne.

Sherear did remind PZ about vacate on the east end of Johnston Ave for the next meeting.

Jeff McKnight 2005 Flashy Lane, Malabar. Mr. McKnight explained what was discussed at Council Meeting in reference to Signage Amendment. McKnight said the Attorney said the signs cannot be judged by its content, there was a recent supreme court judgment where a sign was compared to another sign that was a religious sign and it was ruled it was prejudice against that sign-basically no matter what kind of sign it is they all have to be treated the same. McKnight said the Town Attorney made some initial changes that he saw was obvious, but he is waiting for other municipalities to go through and change their Sign Ordinances.

**I. PUBLIC**

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

Old Business: none

New Business: none

**K. ADJOURN**

There being no further business to discuss, MOTION: Ryan /Abare to adjourn this meeting. Vote: All Ayes. The meeting adjourned 8:35 P.M.

BY:

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

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

\_\_\_\_\_  
Date Approved: as corrected

DRAFT

# TOWN OF MALABAR

## PLANNING AND ZONING

### AGENDA ITEM REPORT

AGENDA ITEM NO: 2  
Meeting Date: August 12, 2015

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

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**SUBJECT: Vacate ROW on Johnston Avenue, East of Jeannie Street- (Applicant Alisha Cline)**

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#### **BACKGROUND/HISTORY:**

This request has been reviewed by staff and it is staff's recommendation that this request for vacate be forwarded to Council with the P&Z Board's favorable recommendation. The right of way is unimproved and the only parcel that would be affected has access from West Railroad Avenue.

#### **ATTACHMENTS:**

- Petition For Vacating of Right-of-Way by owner (Alisha Cline)
- Application to Vacate and Abandon Public Right-of-Way
- Survey of Johnston Avenue
- Radius Map 500'
- Map of Area
- Letter from Emilio Cirelli (property owner within the 500' radius)
- Building Official Comments

#### **ACTION OPTIONS:**

Recommendation/Approval to Council



**TOWN OF MALABAR**  
 2725 MALABAR ROAD  
 MALABAR, FLORIDA 32950-4427  
 3321-727-7764

**PETITION FOR VACATING OF RIGHT-OF-WAY**

Before completing this application, please refer to the attached.

- Petition for vacating right-of-way procedure
- Ordinance 01-06

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

Name of Applicant(s) Alisha Cline Telephone # 321-693-6972

Mailing Address 2585 Johnston Ave, Malabar, FL 32950

Reason for Request I own all adjacent property and the property serves no public purpose.

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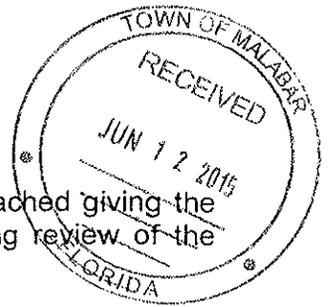
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Fees: \$425.00, which includes advertising, administrative time, mailing and initial review by staff, Town Engineer and Town Attorney. Any additional costs shall be paid by the applicant.

Alisha Cline  
 Signature of Applicant(s)

6/12/15  
 Date

TOWN OF MALABAR  
PETITION TO VACATE



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, Alisha Cline, being first duly sworn, depose and say that I, Alisha Cline, 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.

[Signature]  
Applicant Date 6/12/15

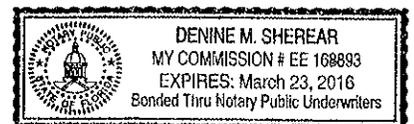
\_\_\_\_\_  
Applicant Date

Sworn and subscribed before me this 12 day of June, 2015.

NOTARY PUBLIC  
STATE OF FLORIDA

Commission No.: EE 168893 My

Denine M. Sherear



TOWN OF MALABAR  
2725 Malabar Road  
Malabar, FL 32950  
Tel. 321-727-7764 FAX 321-722-2234



APPLICATION TO VACATE AND ABANDON PUBLIC RIGHT-OF-WAY

Before completing this application, please refer to Ordinance 01-06, attached.

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

Name of Applicant(s) Alisha Cline Tel 321-693-6972

Mailing Address: 2585 Johnston Ave, Malabar FL 32950

Legal description of public right-of-way covered by application:

Township \_\_\_\_\_, Range \_\_\_\_\_, Section \_\_\_\_\_, Lot/Block \_\_\_\_\_,

Subdivision \_\_\_\_\_, Street Name \_\_\_\_\_.

Other Legal \_\_\_\_\_

172.69 feet by 40' wide UNIMPROVED right of way  
EAST of ~~the~~ Jewiest ROW to Terminus at 28-38-31-00-  
264.

Required attachments:

- Petition to vacate
- Application fee of \$425 which includes advertising, administrative time and mailing. Any additional costs may include, but are not limited to, engineering fees, attorney fees, etc., and shall be paid by the applicant.
- Map of the total area of the public right-of-way.
- List of names, addresses and tax parcel numbers of property owners within 500 feet of the total length of the subject public right-of-way as prepared by a county office with access to public records, i.e. Brevard County GIS division of the Planning and Zoning Department (321-633-2060).

*email*

*Alisha Cline*

6/12/15

Applicant(s)

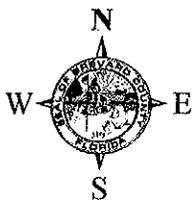
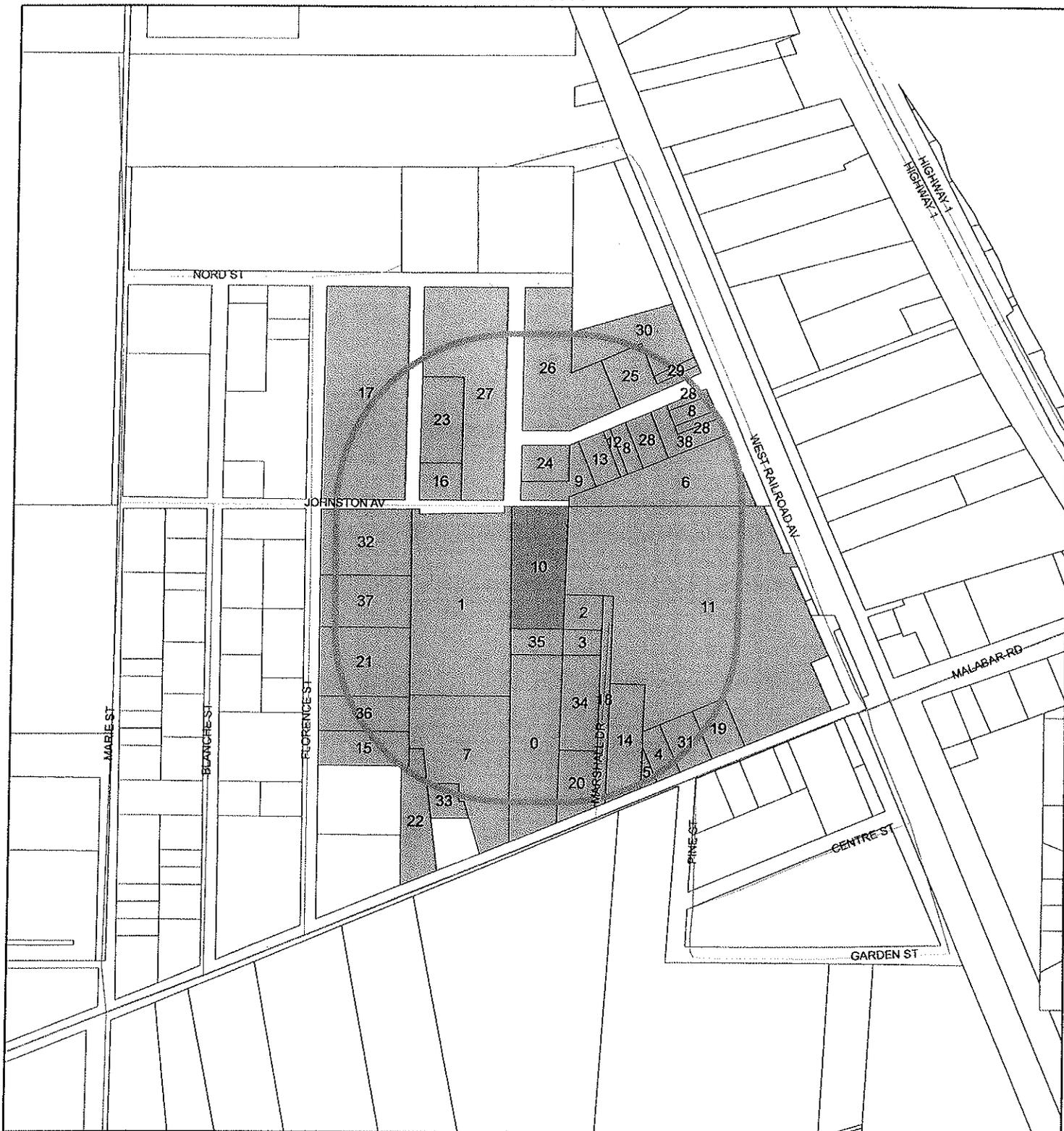
Date



# RADIUS MAP

CLINE, ALISHA

cline500



1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

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.

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

CLINE, Alisha

ALFORD, KIM  
ALFORD, LISA H/W  
2545 JOHNSTON AVENUE  
MALABAR FL 32950-0000

24  
27  
TOTAL

ARNOLD, EILEEN TRUSTEE  
9600 RIVERVIEW DR  
MICCO FL 32976-0000

BAZ JR LLC  
1582 MANZANITA ST NW  
PALM BAY FL 32907-0000

BROOKS, TOMMIE R  
56 BOSSIEUX BLVD  
W MELBOURNE FL 32904-0000

BROOKS, TOMMIE RUTH MARSHALL  
BROOKS, TOMMY A H/W  
56 BOSSIEUX DR  
W MELBOURNE FL 32904-0000

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

CDA SOLUTIONS INC  
P O BOX 500070  
MALABAR FL 32950-0070

CIRELLI, EMILIO  
354 PINWOODS RD  
ORMOND BCH FL 32174-0000

CLINE, ALISHA  
2585 JOHNSTON AVE  
MALABAR FL 32950-0000

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

GERLACH, DOUG  
8865 CENTRAL AVE  
MICCO FL 32976-0000

HERRIN, DAVID A  
2610 MALABAR RD  
MALABAR FL 32950-0000

LIFESTYLES MANAGEMENT CO INC TR  
252 WEST ARDICE AVE STE 428  
EUSTIS FL 32726-0000

LIND, ERICK  
7 REIMERS  
OGALLALA NE 69153-0000

~~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

MATHEWS, TERRY D  
7665 OAK ST N  
MELBOURNE FL 32904-0000

MELLO, DIEGO  
1369 FLORENCE ST  
MALABAR FL 32950-0732

WILLER, WILLIAM E  
WISE, EDITH S  
2530 MALABAR RD  
MALABAR FL 32950-0000

~~POULOS, VERA  
1175 N MARIE STREET  
MALABAR FL 32950-0000~~

POULOS, VERA  
1175 N MARIE ST  
MALABAR FL 32950-0000

~~POULOS, VERA  
175 N MARIE STREET  
MALABAR FL 32950-6919~~

PROPST, DONNA M B  
BROOKS, TOMMIE R ET AL  
56 BOSSIEUX BLVD  
W MELBOURNE FL 32904-0000

RHINE, JAMES G  
RHINE, GREGORY J  
8411 FLIGHT AVE  
LOS ANGELES CA 90045-0000

THOMAS, CHRISTOPHER B  
99 LACHINE ST SW  
PALM BAY FL 32908-0000

THOMAS, GEORGE  
3009 E CORTEZ CT  
IRVING TX 75062-0000

THOMAS, GEORGE A  
THOMAS, BETTY JO  
1435 FLORENCE ST  
MALABAR FL 32950-0000

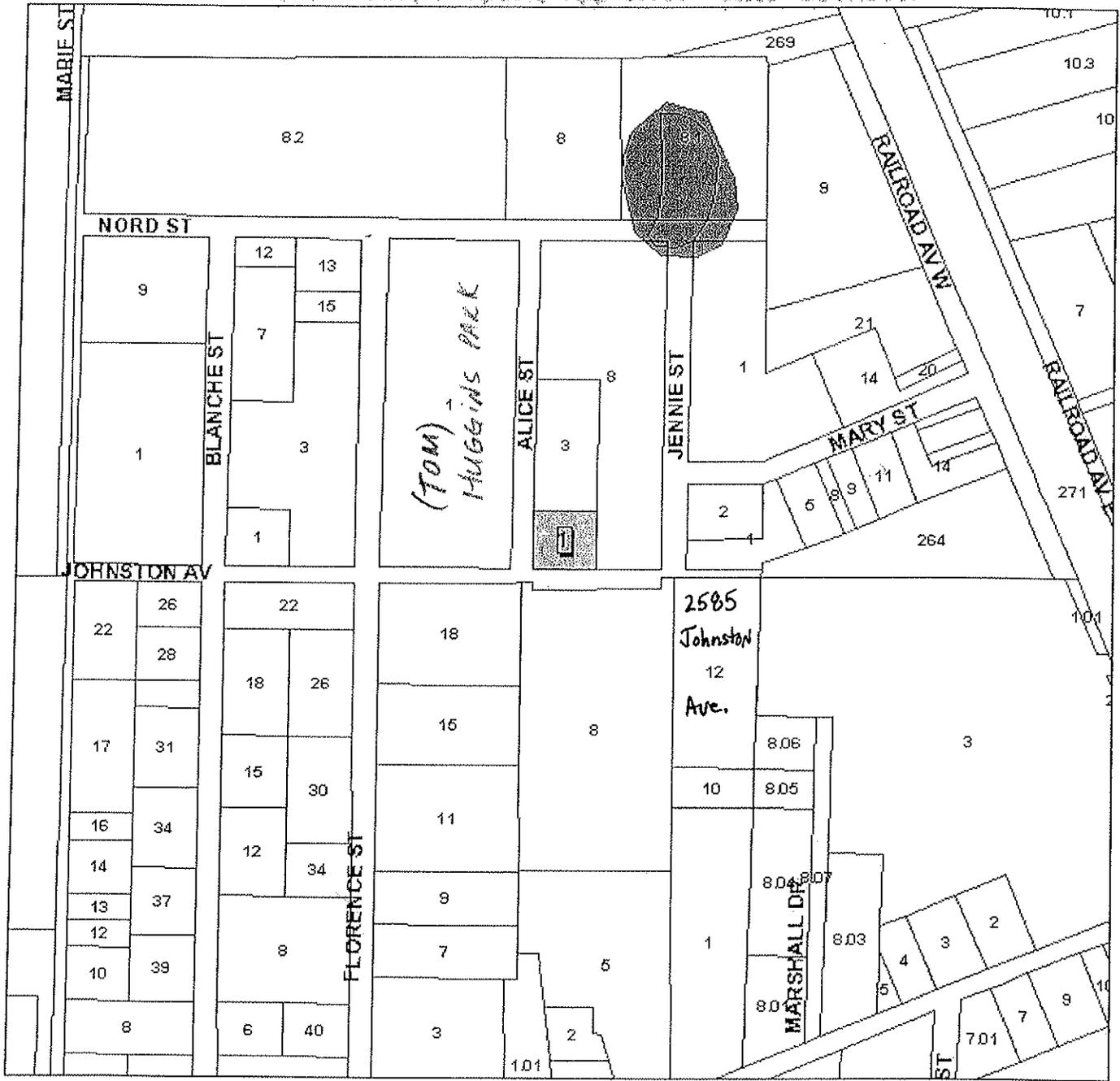
TOWNSEND, JAMES H  
TOWNSEND, ANNA M HW  
1401 FLORENCE ST  
MALABAR FL 32950-0000

WHITE, ALICE ANN  
1345 FLORENCE STREET  
MALABAR FL 32950-0000

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

NORTH

**Dana Blickley, CFA**  
**Brevard County Property Appraiser - MAP SEARCH**



WEST

EAST

	Parcel Identifier	Address	Millage Code	Exemption Code	Use Code	Tax Account
1	Aerial 28-38-31-26-00004.0-0001.0		3420		10	2851021

SOUTH

8.3.2015

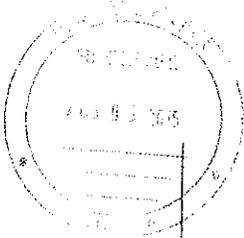
To Whom this May Concern,

As the Owner of Properties near by Requested  
Vacating Right of Way I hereby OBJECT!

I do wish to keep accessing by Properties  
via JOHNSTON AVE.

Mr. Emilio Cirelli  
354 Pine Woods Rd.  
Ormond Beach, FL 32174-8042

Thank you  
*Emilio Cirelli*  
EMILIO CIRELLI



### TOWN OF MALABAR

2725 MALABAR ROAD • MALABAR, FLORIDA 32950  
(321) 727-7764 OFFICE • (321) 722-2234 FAX  
www.townofmalabar.com

Please place the following legal ad one time on July 30, 2015. Please put the title in BOLD font.  
Please send proof to [TOWNCLERK@TOWNOFMALABAR.ORG](mailto:TOWNCLERK@TOWNOFMALABAR.ORG)

Thank you,

Debby Franklin, CMC  
Clerk/Treasurer

#### TOWN OF MALABAR TOWN COUNCIL NOTICE OF PUBLIC HEARING FOR RESOLUTION VACATING RIGHT-OF-WAY

The Town Council of the Town of Malabar, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on August 17, 2015 at 7:30 pm for a public hearing on Resolution 13-2015, a request Alisha Cline to vacate the unimproved 40 foot wide right-of-way shown as Johnston Avenue from Jennie Street east to the terminus of the right-of-way adjacent to Parcel 28-38-31-00-264, a distance of 195.02 feet. Copies of this request is available in the Clerks office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may appear and be heard at this meeting of the Town Council with respect to this request.

Debby Franklin, CMC  
Town Clerk/Treasurer

YOU ARE RECEIVING THIS NOTICE BECAUSE YOUR PROPERTY LIES IN THE 500' RADIUS OF THIS REQUESTED VACATE. MALABAR LAND DEVELOPMENT CODE STATES IN ARTICLE XII, SECTION 1-12-8, I, THAT ALL PROPERTY OWNERS WITHIN 500' OF A VACATE REQUEST SHALL BE SENT A COURTESY COPY OF THE LEGAL AD FOR THE PUBLIC HEARING THAT WILL BE HELD TO DISCUSS THIS REQUEST.

THIS REQUEST WILL FIRST BE PRESENTED TO PLANNING AND ZONING AT THEIR MEETING OF AUGUST 12, 2015 AT 7:30PM. THE APPLICANT IS REQUESTING A FAVORABLY RECOMMENDATION TO BE FORWARDED TO COUNCIL FOR THEIR ACTION ON AUGUST 17, 2015.

INTERESTED PARTIES ARE ENCOURAGED TO ATTEND BOTH MEETINGS.



TOWN OF MALABAR

MEMORANDUM

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**Date:** August 4, 2015 15-BO-014  
**To:** P&Z Board  
Memo To File  
**From:** Roger Cloutier, Building Official RC  
**Ref:** Vacate for Johnston Ave.- Comments

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I reviewed the survey for Johnston Avenue and have no adverse comments concerning this vacate.

**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 3**  
**Meeting Date: August 12, 2015**

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

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**SUBJECT: Amend Signage Code Article XIX Per recommendation from Town Attorney**

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**BACKGROUND/HISTORY:**

The Attorney addressed Council at their meeting on August 3, 2015. He has made the necessary changes to our Signage Code to be compliant with the recent Supreme Court ruling. He strongly recommended that Council quickly adopt these changes. Council directed the P&Z Board to review his revised ordinance and return to Council for adoption.

If the Board wants to make further changes to the ordinance Council said then those changes can be made later.

**ATTACHMENTS:**

- Ordinance 2015-06 with changes from attorney underlined.
- Email from Attorney

**ACTION OPTIONS:**

Recommendation/Approval to Council

# TOWN OF MALABAR

## MEMORANDUM

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**Date:** July 21, 2015 2015-TC/T-040  
**To:** Planning and Zoning Board / Denine Sherear, Board Secretary  
**From:** Debby Franklin, Town Clerk / Treasurer  
**Ref:** Code Amendment re: Signage, Art XIX

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The Attorney advised Council of a recent U.S. Supreme Court case dealing with sign regulations. A small church in Gilbert, Arizona took the city to court over the different treatment their directional sign had to follow compared to other messages, such as political advertisements.

Bottom line is Attorney Bohne looked at our sign code in Article XIX of the Land Development Regulations and said certain changes should be made immediately. He has drafted the attached ordinance and presented it to Council and they supported what the Attorney was saying. Attorney Bohne recommends that the P&Z Board promptly recommend Council approval of this ordinance. This will avoid any possible problems in the near future. If the P&Z Board would like to do a thorough review of the sign code they can do that separately and it can be included in the next ordinance amending the Land Development Code.

**Attachments:**

Ordinance 2015-06

Email dated 6/19/15 from Attorney Bohne with the Supreme Court Ruling

*Article XIX Signage from Code Book*

# **ORDINANCE**

## **2015-06**

ORDINANCE 2015-06

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE CURRENT PROVISIONS OF ARTICLE XIX OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING SECTIONS 1-19.1, DEFINITIONS; 1-19.4, ADMINISTRATION REQUIREMENTS; AND 1-19.10, TEMPORARY PERMITS; NEW SECTION 1-19.19; PROVIDING FOR INCORPORATION INTO THE LAND DEVELOPMENT CODE; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Town Council for the Town of Malabar has determined the need to update and revise its Land Development code relative to signs, in light of the recent United States Supreme Court case of *Reed v. Gilbert*; and

**WHEREAS**, the Court in *Reed* held in part that content based sign regulations were presumptively unconstitutional; and

**WHEREAS**, the Town Council desires to comply with the *Reed* holding and amend the Town sign code; and,

**WHEREAS**, the Town Council finds that protecting and preserving aesthetics, traffic safety, and pedestrian safety are compelling interests and to protect these compelling interested regulations governing such things as size and placement of signs are necessary

**NOW THEREFORE**, be it ordained by the Town Council of the Town of Malabar, Brevard County, Florida as follows:

**Section 1.** Section 1-19.1 of Article XIX of the Town's Land Development Code relating to Signs, is hereby amended to add the following definition:

"Section 1-19.1. - Definitions.

For the purposes of this article certain words and terms shall be interpreted as follows:

...

*Political or Campaign Sign.* Shall mean a sign or poster advertising either a candidate for public office or a political cause, subject to election."

...

**Section 2.** Section 1-19.4.B(d) of Article XIX of the Town's Land Development Code relating to Signs, is hereby amended as follows:

"Section 1-19.4. - Administration requirements.

*B. Filing of Application.* Before any permit is issued, an application provided by the Building Official shall be filed in triplicate together with two (2) sets of drawings and/or specifications as may be necessary to fully advise and acquaint the Building

Official with the location, construction, materials, manner of illumination, securing, ~~wording of the sign~~, and any other data that may be required to ensure the enforcement of these regulations. One (1) set of drawings and/or specifications will be returned to the applicant with the permit. A separate application shall be made for each and every sign.

As a minimum the sign application shall include the following information:

...

(d) ~~Purpose~~Type of sign."

...

**Section 3.** Section 1-19.10.A(3) and Section 1-19.10.B.(3)(d) of Article XIX of the Town's Land Development Code relating to Signs, are amended and a new subsection 1-19.10.B.(3)(f) is hereby added as follows:

"Section 1-19.10. - Temporary permits.

A. The building inspector upon application, may issue temporary permits for the following signs and displays for a period not exceeding thirty (30) days, when in the building inspector's opinion, the use of such signs and displays would be in the public interest and would not result in damage to private property. There will be no license or license fee for these signs, but the regular permit fee shall apply. Temporary signs shall not be illuminated except for holiday signs which may be illuminated or special event signs approved by the Town Council. Such signs shall be located in private property outside of a public right-of-way or easement.

...

(3) Special sale promotion displays in a district where such sales are permitted if such signs are not within five (5) feet inside a store window. Such signs shall be placed not more than fourteen (14) days prior to the special sale promotion and must be removed not later than twenty-four (24) hours after termination of the special sale promotion. A waiver regarding the timing of the sign placement and/or removal may be requested in accordance with the procedures in subparagraph A (2) (c) above.

B. A permit fee for the following signs will not be required:

...

(3) A permit fee for political signs and posters will not be required, provided that said signs are subject to the following regulations:

...

d. Political or campaign signs may be allowed in a public or private right-of-way but shall be located no closer than 3 feet from the edge of pavement or in the case of a dirt road from the edge of the dirt of a public or private street or five feet from the edge of a sidewalk, bike-path, or ped-way. ~~Further any such sign allowed in a public or private right of way may not be placed any~~

~~sooner than 81 days before the election.~~ Such signs shall not be placed closer than 50 feet to a sign of the same candidate.

f. No political sign may not be placed any sooner than 81 days before the election. A waiver regarding the timing of the sign placement and/or removal may be requested in accordance with the procedures in subparagraph A (2) (c) above.

**Section 4.** Severability. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of this ordinance shall not be affected and it shall be presumed that the Town Council, of the Town of Malabar, did not intend to enact such invalid or unconstitutional provision. It shall be further assumed that the Town Council would have enacted the remainder of this ordinance without said invalid and unconstitutional provision, thereby causing said remainder to remain in full force and effect.

**Section 5.** Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

**Section 6.** Codification. The provisions of this ordinance shall become part of the code of ordinances of the Town of Malabar.

**Section 7.** This Ordinance shall become effective immediately upon its adoption.

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

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

**PASSED AND ADOPTED** by the Town Council, Town of Malabar, Brevard County, Florida this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**TOWN OF MALABAR**

BY: \_\_\_\_\_

Mayor Carl A. Beatty

Council Chair

P&Z Meeting:

RTCM First Reading:

RTCM Second Reading:

## Debby Franklin

---

**From:** Karl Bohne <KBohne@fla-lawyers.com>  
**Sent:** Friday, June 19, 2015 9:40 AM  
**To:** Bonilyn Wilbanks  
**Cc:** Debby Franklin  
**Subject:** New United States Supreme Court Case Affecting Sign Codes  
**Attachments:** Reed v. Gilbert USSCT sign codes.pdf

The Supreme Court on Thursday struck down an Arizona town's ordinance that treated signs directing people to a small church's worship services differently than signs with other messages, such as a political candidate's advertisement. The decision was unanimous in favor of the tiny Good News Community Church, which has a long-running dispute with the town of Gilbert, Ariz., over signs planted in public rights of way directing congregants to church meeting places. But the justices split over the correct way to decide the case. Five justices joined Justice Clarence Thomas's decision that the town's regulations are based on the content of the sign's message and thus require the court's highest First Amendment protection. The town "singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter," Thomas wrote. "Ideological messages are given more favorable treatment than messages concerning a political candidate, which are themselves given more favorable treatment than messages announcing an assembly of likeminded individuals."

It is my recommendation that I be authorized to review our current sign code to see if adjustments are necessary.

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

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**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4**  
**Meeting Date: August 12, 2015**

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

---

**SUBJECT: Recommendation to Council re: new FLUM**

---

**BACKGROUND/HISTORY:**

This is ready for final review and recommendation to council.

**ATTACHMENTS:**

- FLUM

**ACTION OPTIONS:**

Recommendation/Approval to Council

# TOWN OF MALABAR PROPOSED FUTURE LAND USE CHANGES

PRESENTED BY THE PLANNING AND ZONING BOARD

July 25, 2015

# Present Land Use Designations

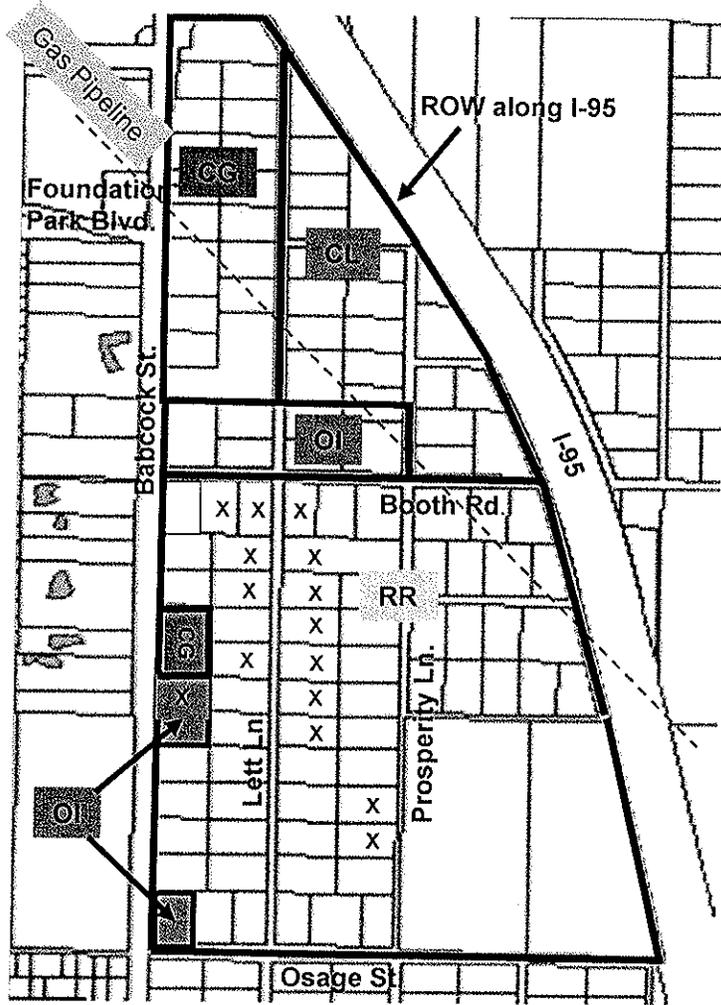
- Residential/Limited Commercial (R/LC)
- High Density Residential (HDR)
- Medium Density Residential (MDR)
- Low Density Residential (LDR)
- Rural Residential (RR)
- Commercial General (CG)
- Commercial Limited (CL)
- Industrial (IND)
- Office Institutional (OI)
- Institutional (INS)
- Open Space and Recreation (OSR)
- Multiple-family Residential or Office Space (MRO)
- Conservation (CON)
- Recreational Services (RS)
- PUD (Residential or Commercial)

# Related Data

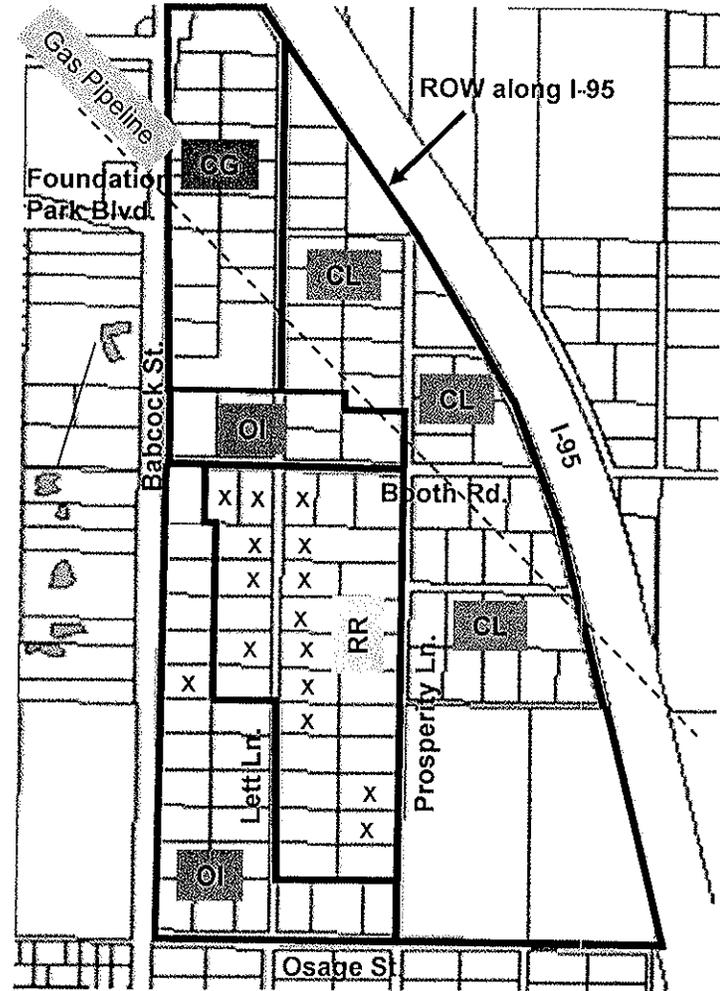
- Use FLU-1 Map for Present Land Use
  - It was 2009's Future Land Use, now it is Malabar's Present Land Use Map
- Definitions of Malabar's Land Use Districts
  - Malabar Land Development Code, Article III, District Provisions handout
  - Board is presently looking at the R/LC densities in the Land Development Codes
- Satellite Aerial Maps

# Land Use Along Babcock Street

## Present Land Use



## Proposed Land Use

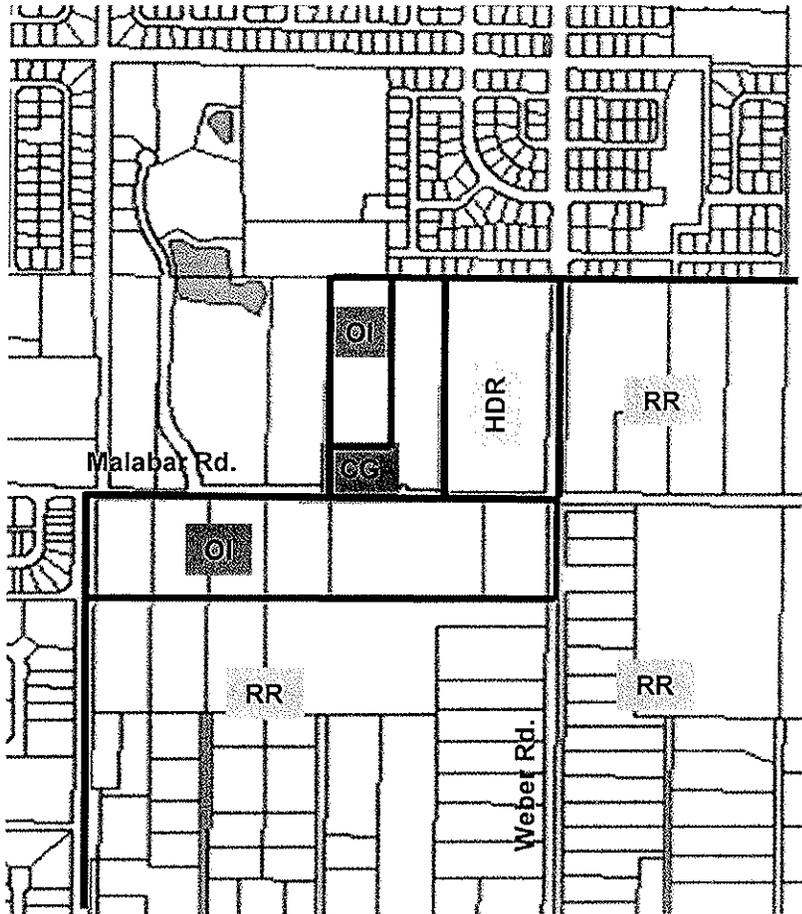


X = Homes

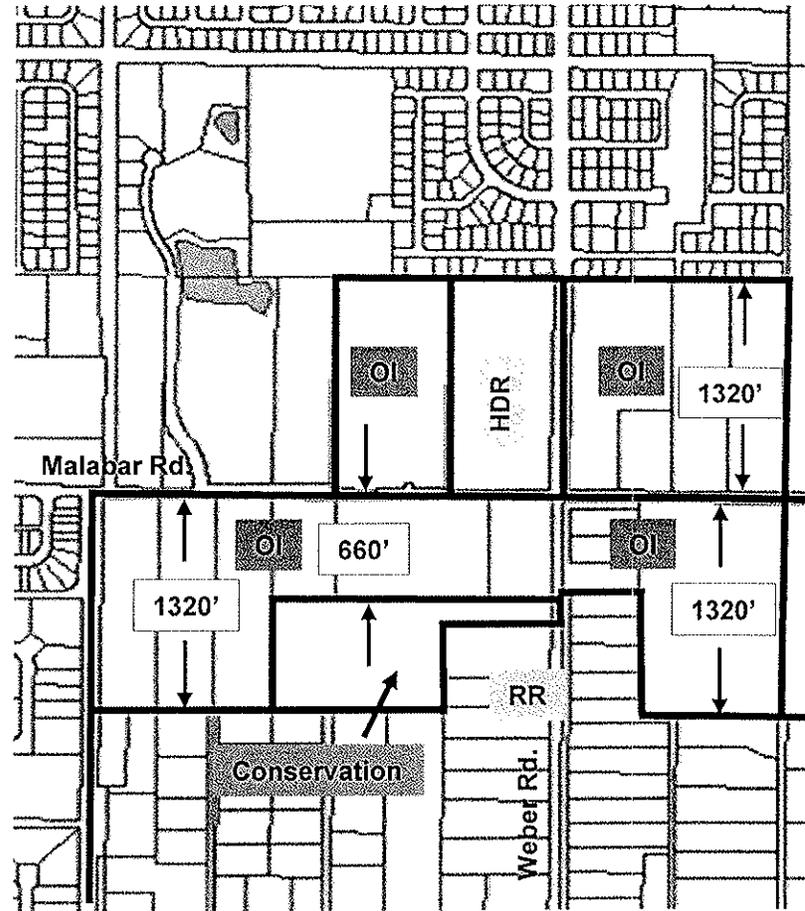
July 25, 2015

# Land Use Along Malabar Rd. (West end)

## Present Land Use

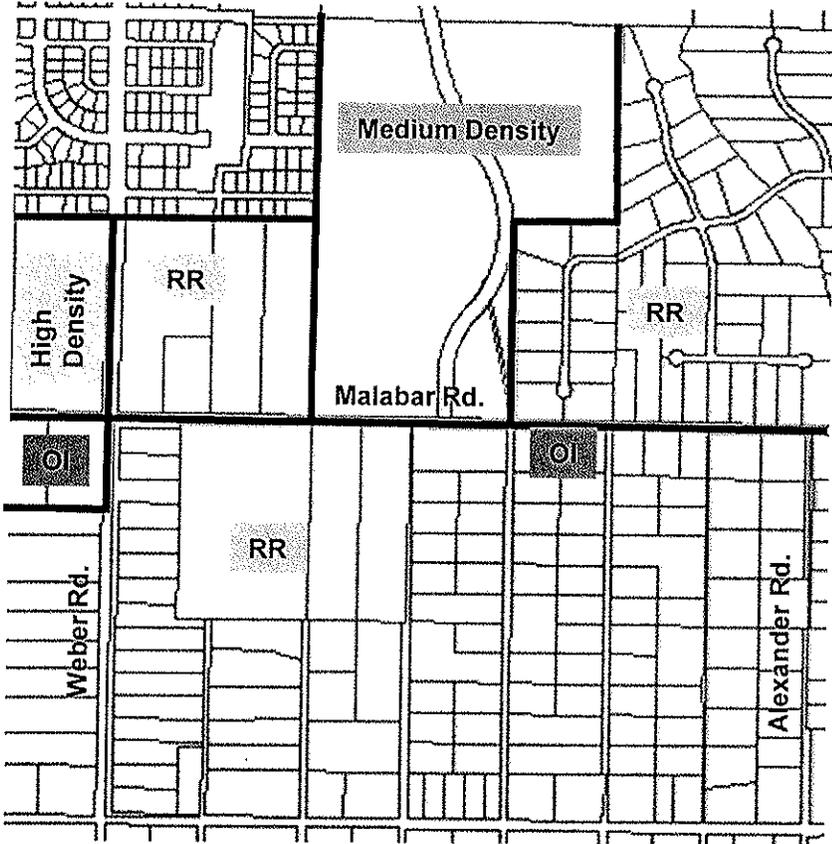


## Proposed Land Use

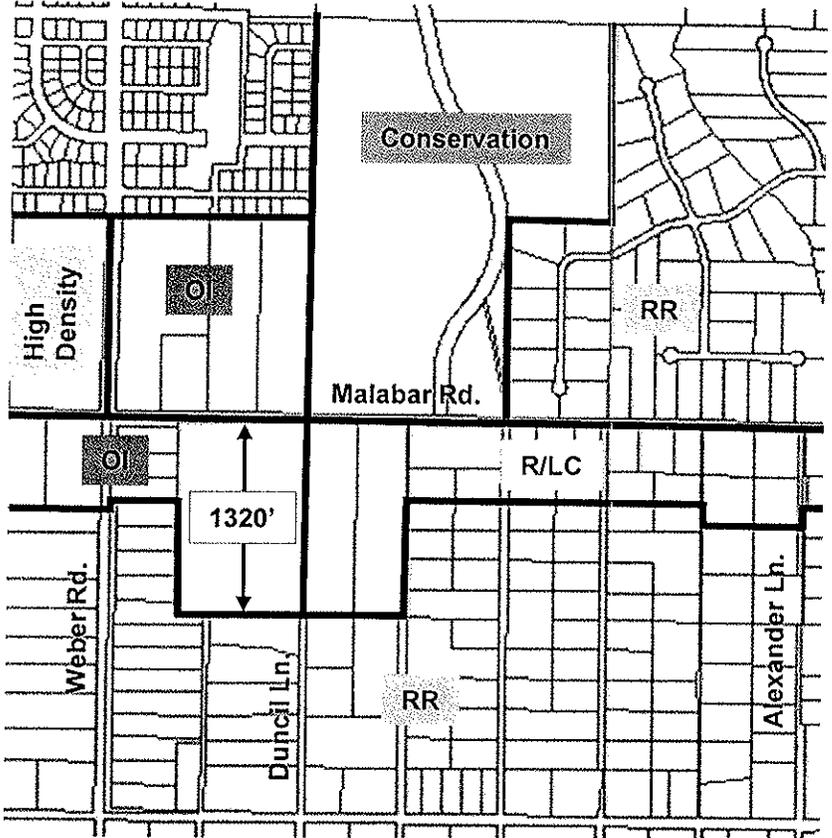


Land Use Along Malabar Rd. (Weber Rd. to Alexander Ln.)

Present Land Use

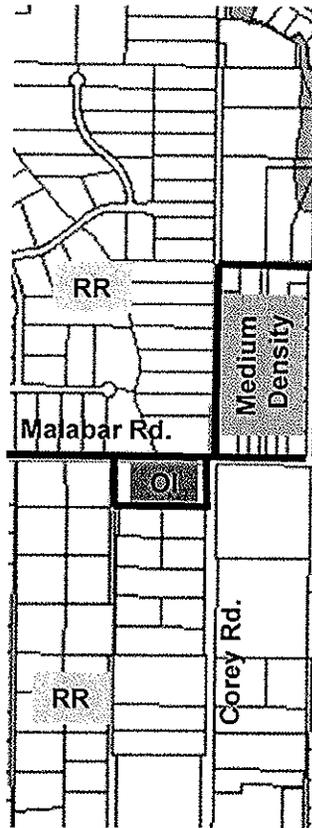


Proposed Land Use

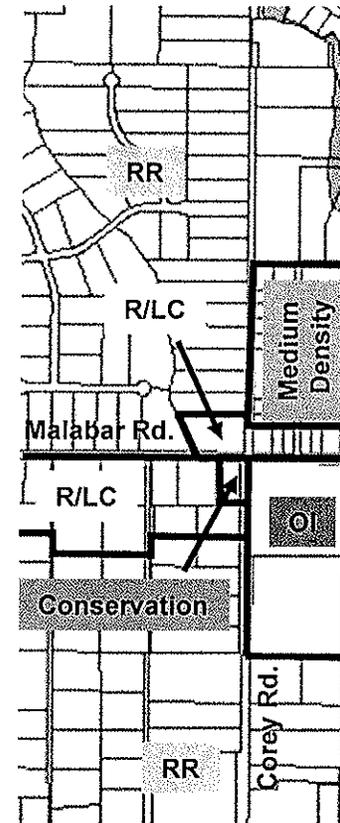


# Land Use Along Malabar Rd. (Alexander Ln. to Corey Rd.)

## Present Land Use

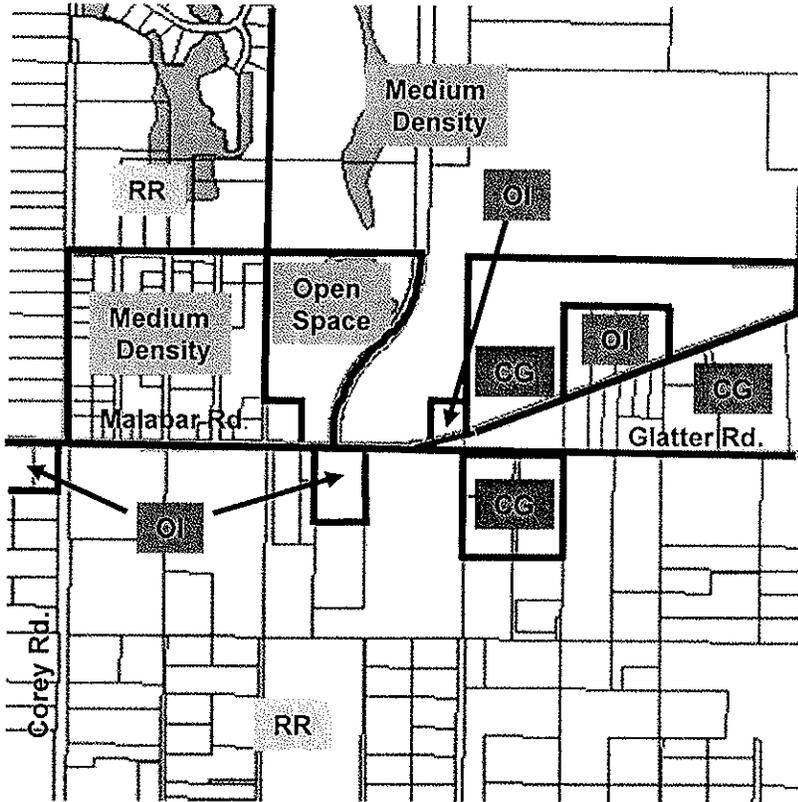


## Proposed Land Use

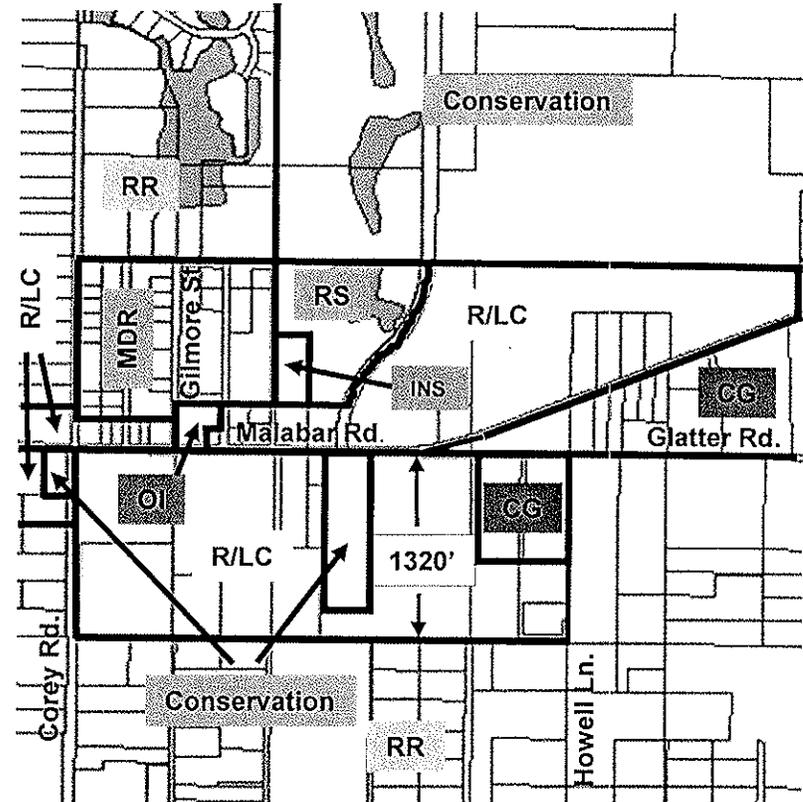


# Land Use Along Malabar Rd. (Corey Rd. to Marie St.)

## Present Land Use

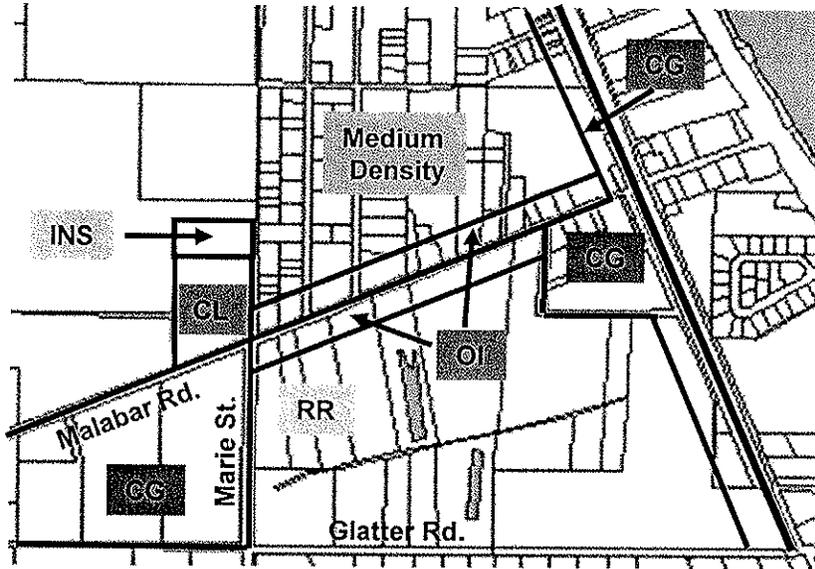


## Proposed Land Use

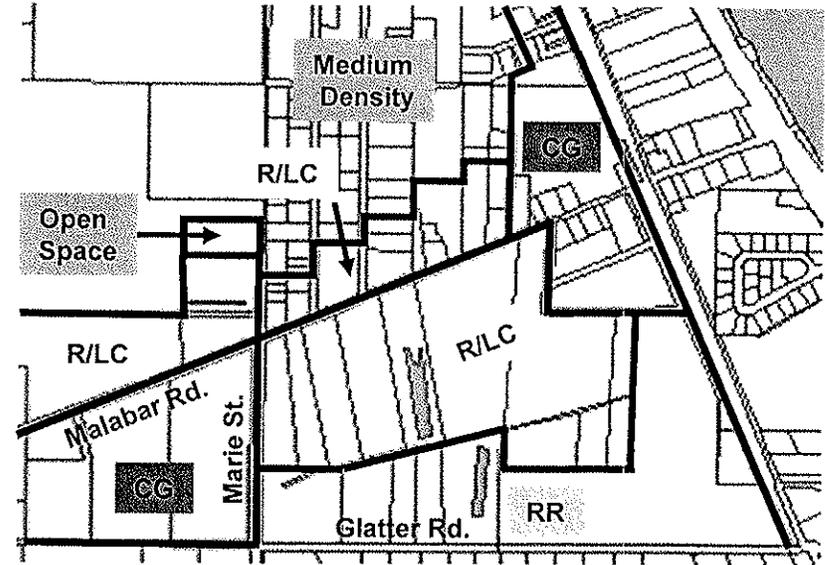


# Land Use Along Malabar Rd. (Marie St. to RR Tracks)

## Present Land Use

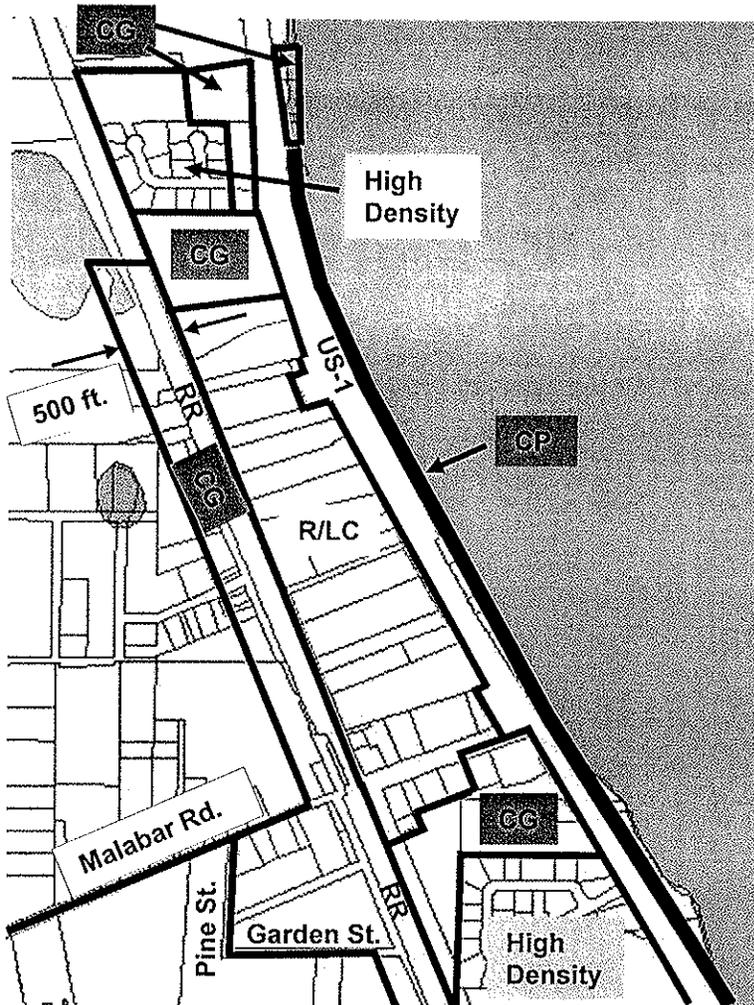


## Proposed Land Use

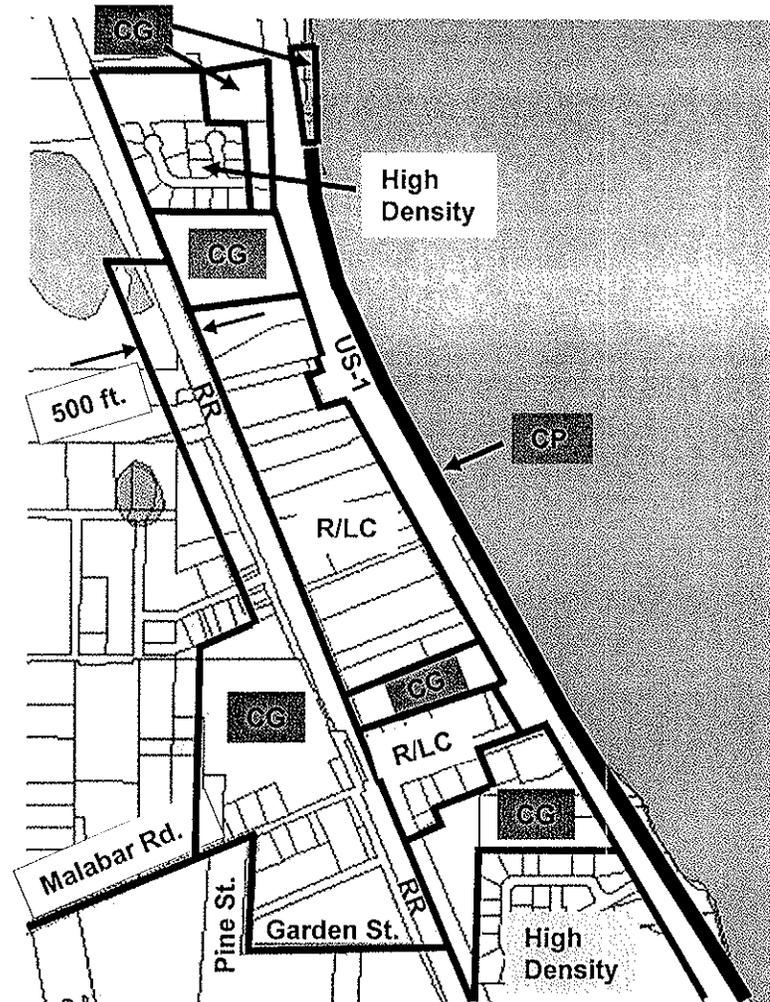


# Land Use Along US-1 (North end of Malabar)

## Present Land Use

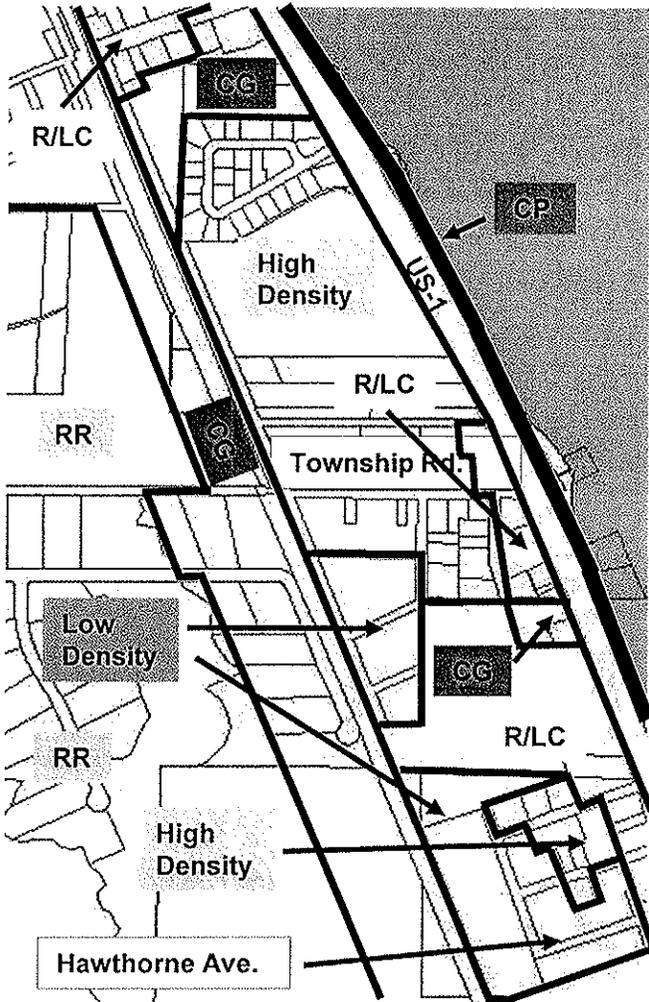


## Proposed Land Use

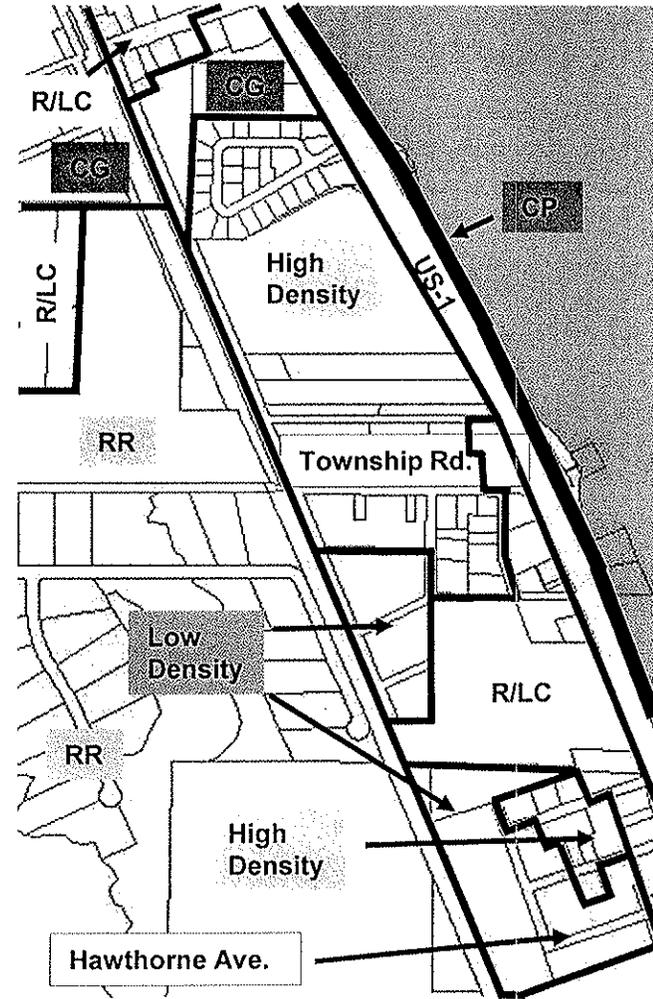


# Land Use Along US-1 (Malabar Rd. to Hawthorn Ave.)

## Present Land Use

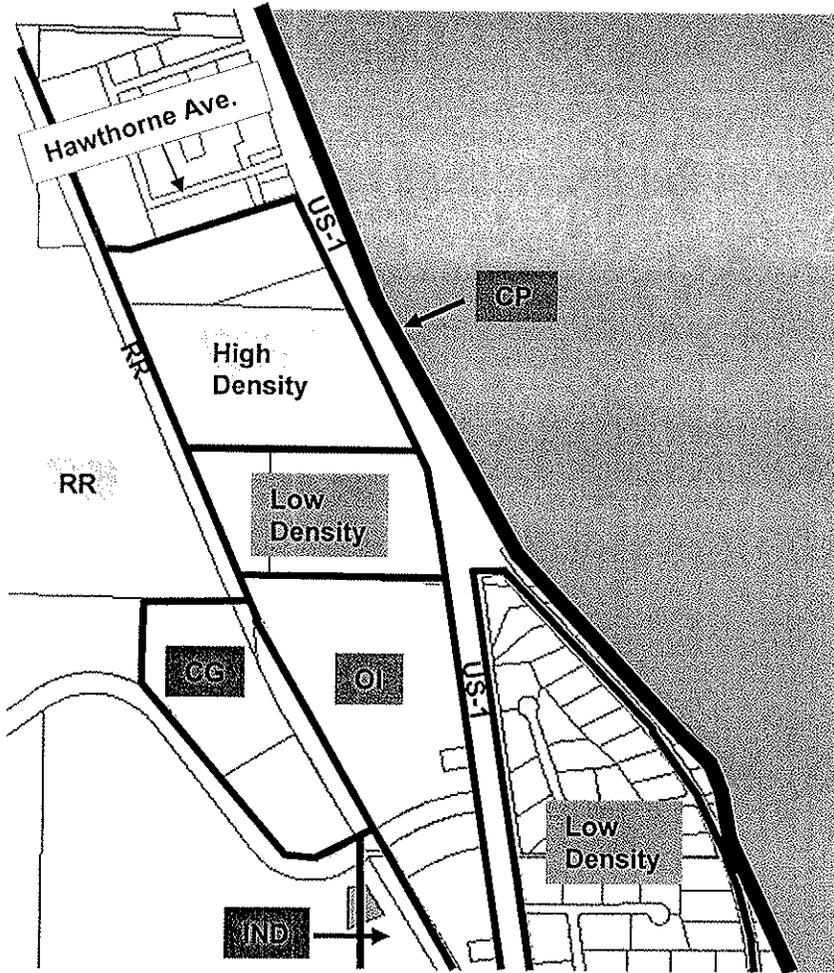


## Proposed Land Use

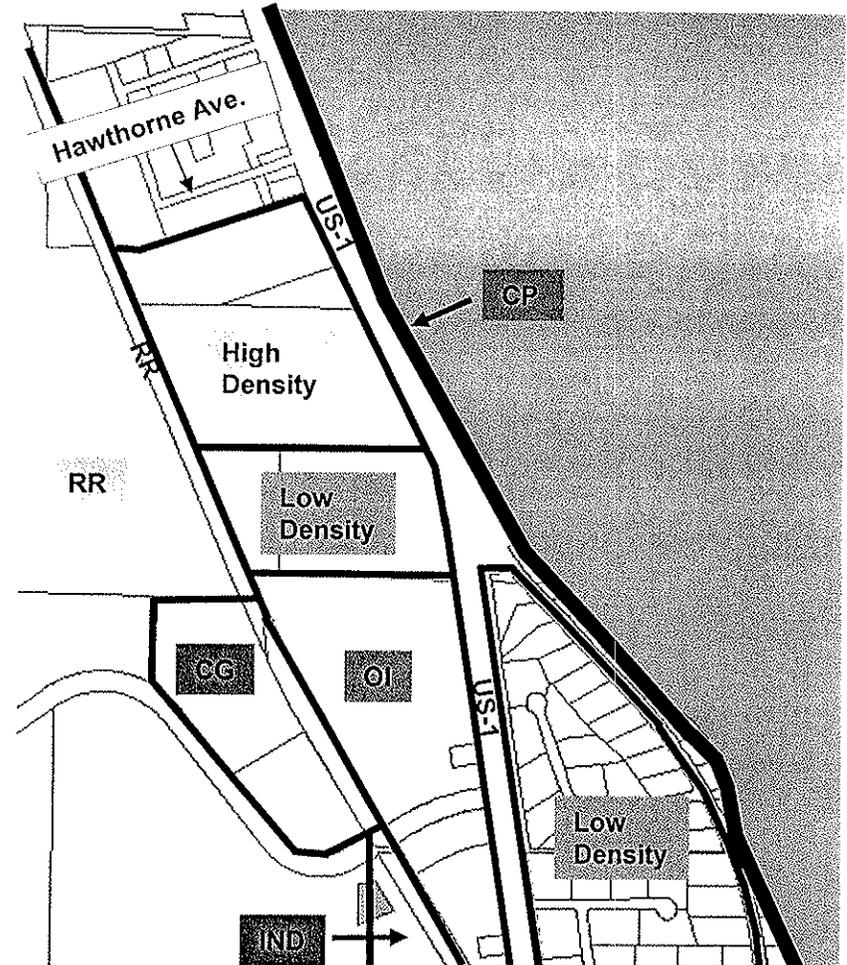


# Land Use Along US-1 (North Rocky Point)

## Present Land Use



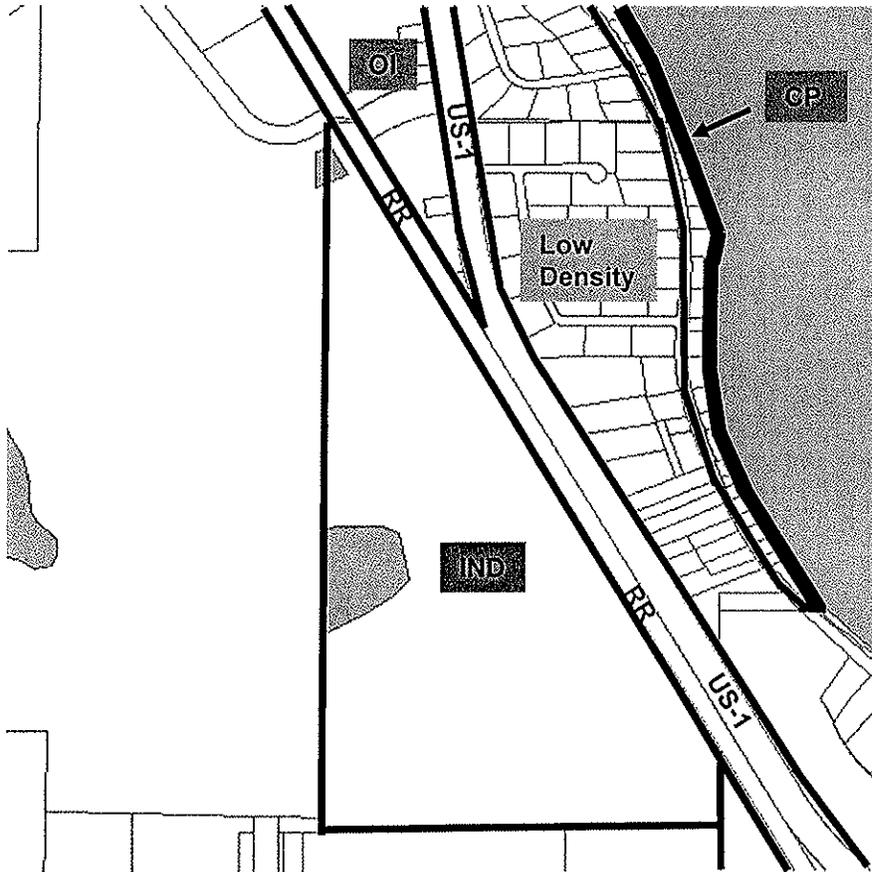
## Proposed Land Use



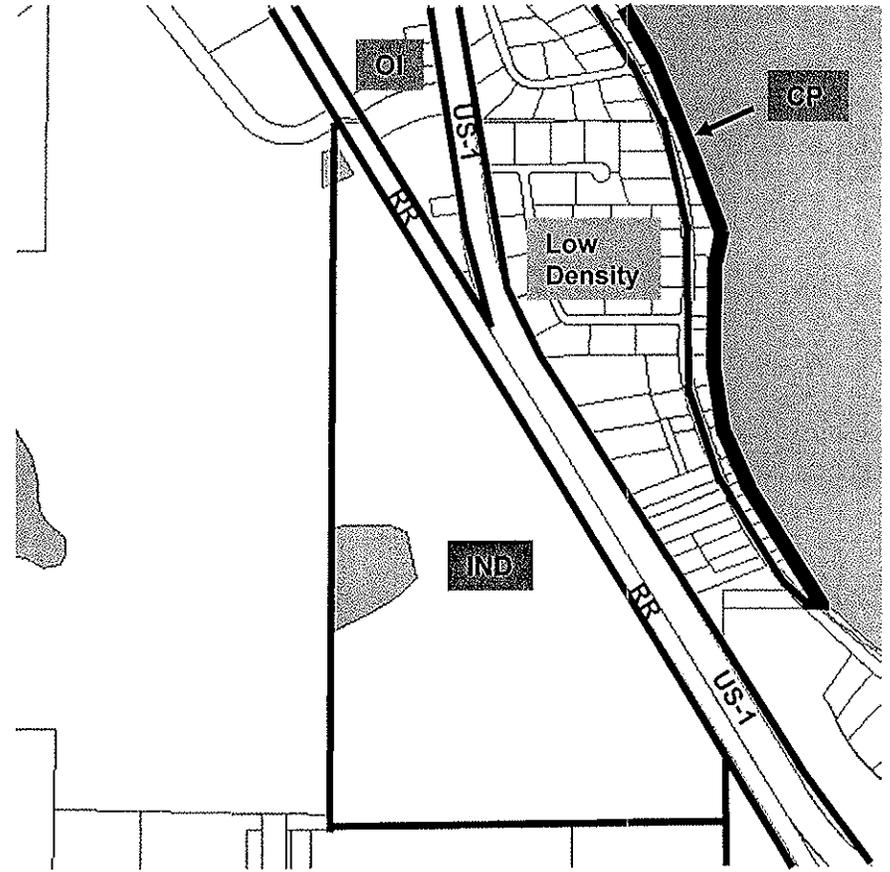
No Change from Present

# Land Use Along US-1 (Rocky Point)

## Present Land Use



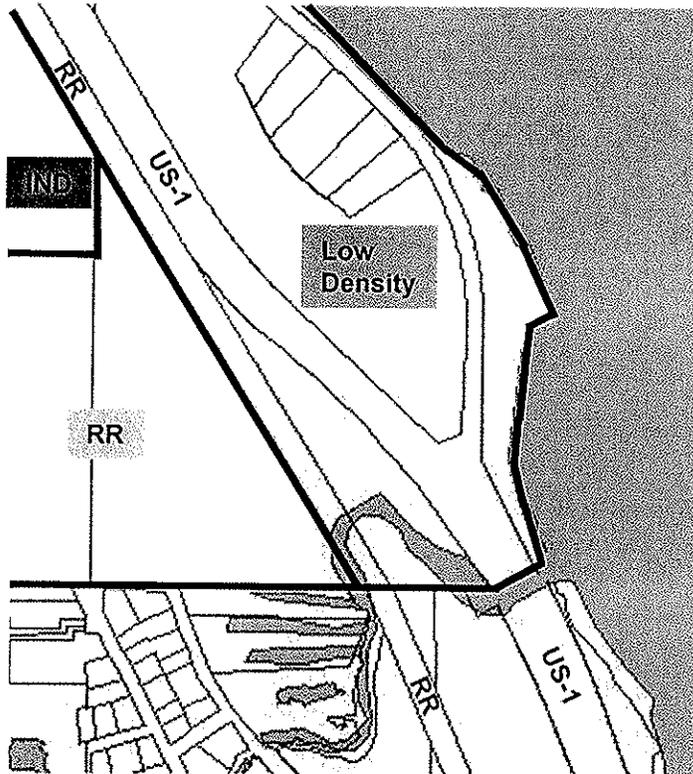
## Proposed Land Use



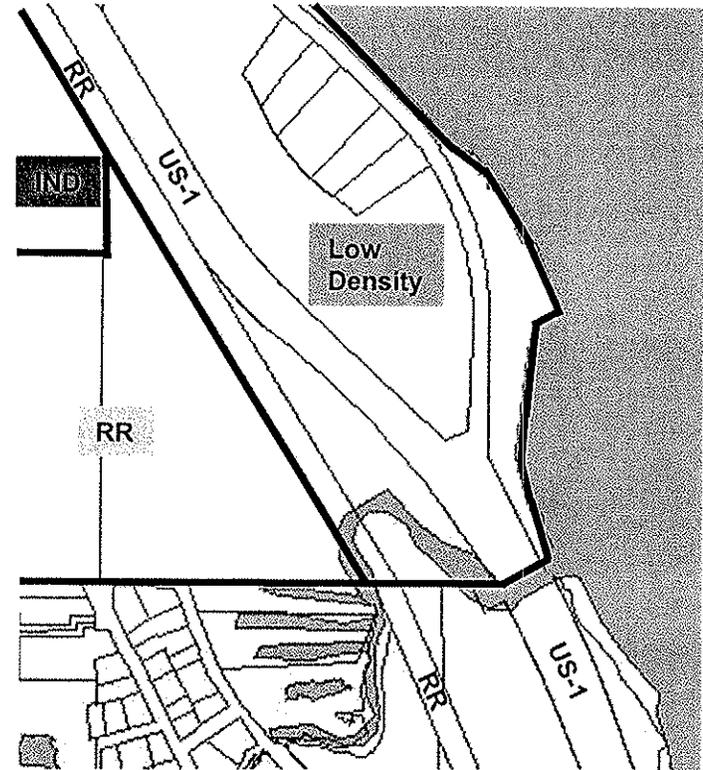
No Change from Present

## Land Use Along US-1 (South Rocky Point)

### Present Land Use



### Proposed Land Use



No Change from Present

Clean Copy (easier reading) (updated 4/22/2015 by Pat Reilly/Denine Sherear)

O.

*R/LC "Residential and Limited Commercial."* The R/LC district is established to implement comprehensive plan policies for managing development on land specifically designated for mixed use Rural Residential and Limited Commercial development on the Comprehensive Plan Future Land Use Map (FLUM). R/LC is intended for flexible land uses including elements of rural and agricultural applications as well as allowing limited commercial applications within a mixed-use district(s). A Malabar Vernacular Style is required for all development along arterial roadways. (see Article V General Provisions Section 1-5.29)

Single family or multiple family residential uses with a density no greater than six (6) units per acre may also be located in the R/LC district. Such residential uses may be located either within a freestanding structure or within a structure(s) housing both Residential and Limited Commercial activities. The R/LC district is intended and shall be interpreted to be a "residential" district, until such time as application is made and accepted for a Limited Commercial activity, and shall then comply with the required setbacks and other size and dimension provisions referenced by zoning district as shown in Table 1-3.3(A).

Such development is intended to accommodate Rural Residential activities together with Limited Commercial goods and services on specific sites designated "R/LC". This residential land use shall permit multiple family residential development, limited commercial development separately where current infrastructure allows, or as a combination of these uses as regulated by Table 1-3.1 and Table 1-3.3(A).

Residential and Limited Commercial activities shall generally cater to the local residential markets within the town as opposed to regional markets or specialized markets with customized market demands.

Residential Dwelling unit(s) shall not exceed commercial use(s) by more than one as regulated by Table 1-3.1.

Limited Commercial use(s) shall not exceed residential dwelling unit(s) by more than one as regulated by Table 1-3.1.

**Table 1-3.1. Permitted Combinations of R/LC Land Uses**

Total Units/ Uses	Residential	Limited Commercial
1	1	0
1	0	1
2	1	1
3	2	1
3	1	2
4	2	2
5	3	2
5	2	3
6	3	3

*(Ord. No. 94-4, § 2, 4-3-95; Ord. No. 07-02, §§ 1-4, 4-2-07; Ord. No. 14-01, § 2, 2-3-14)*

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

Zoning District	Minimum Lot (1)			Maximum Height (ft./stories)	Minimum Living Area (sq. ft.)	Setback (ft.)(2)				Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (D)	Side (C)				
<b>Rural Residential Development</b>													
RR-65	65,340	150	250	35/3	1,500	40	30	30	30	20	N/A	80	0.86
<b>Traditional Single Family Residential Development</b>													
RS-21	21,780	120	160	35/3	1,800	35	20	15	15	35	N/A	65	2.00
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	45	N/A	65	2.904
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	50	N/A	60	4.00
<b>Multiple Family Residential Development</b>													
RM-4	6 Acres Minimum Site	200	200	35/3	1 Bedroom: 900 2 Bedroom: 1100 3 Bedroom: 1300 Each Additional Bedroom: 120	60	40	40	40	50	N/A	50	4.00
RM-6	5 acres Minimum Site	200	200	35/3	Single Family:	25	20	10	10	50	N/A	50	6
					Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	60	40	40	40	50	N/A	50	6
<b>Mixed Use Development</b>													
R/LC	20,000	100	150	35/3	Single Family:	25	20	10	10	50	N/A	50	4
					Multiple Family: 1 Bedroom: 600 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	60	25	10*	20	65	N/A	35	6
					Commercial: Min. Area: 900*					0.20			
<b>Mobile Home Residential Development</b>													
R-MH	Site: 5 Acres Lot: 7000					10	8	8	10	50	N/A	50	6.00
<b>Office Development</b>													

\* R/LC →

REVISED 07/2 MEETING 7/11/15  
 TABLE 1-3.3(A)  
 DISTRICT PROVISIONS  
 § 1-3.3

Zoning District	Minimum Lot (1)			Maximum Height (ft./ stories)	Minimum Living Area (sq. ft.)	Setback (ft.)(2)				Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (A)	Side (C)				
DI	20,000	100	150	30/3	Minimum Floor Area: 1000	36/80	25	20	25	65	20	35	N/A
<b>Commercial Development</b>													
CL	20,000	100	150	35/3	Minimum Floor Area: 900	50	25	10 <sup>a</sup> 15 <sup>b</sup>	20	65	0.20	35	N/A
					Min. Area: 900 Max. Area 4,000								
CG	20,000	100	160	35/3	Minimum Floor Area: 1200 Minimum Hotel/ Motel Area: 300 Each Unit	50	25	20 <sup>a</sup> 15 <sup>b</sup>	30	65	0.20	35	N/A
<b>Industrial Development</b>													
IND	20,000	100	150	35/3	Minimum Floor Area: 1200	60	25	100 <sup>c</sup>	100 <sup>d</sup>	70	0.42	30	N/A
<b>Institutional Development</b>													
INS	20,000	100	150	35/3	Minimum Floor Area: 1200	60	26	20	30	60	0.20 0.10 <sup>e</sup>	40	N/A
<b>Coastal Preservation</b>													
CP	No Size or Dimension Standards Adopted												

<sup>1</sup>Minimum size sites and lots include one-half of adjacent public right-of-way.

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

<sup>3</sup>Setback where rear lot line abuts an alley.

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

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

<sup>6</sup>Recreation activities maximum FAR shall be .10.

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
<b>RESIDENTIAL USES</b>														
Duplex					P	P					P			
Mobile Homes							P							
Multiple Family Dwelling					P	P								
Single Family Dwellings	P	P	P	P	P	P	P				P			
<b>COMMUNITY FACILITIES</b>														
Administrative Services (Public and Not-for-Profit)									P	P	P	P		P
Child Care Facilities								C						C
Churches, Synagogues and Other Places of Worship	C	C	C	C	C	C		P, A <sup>1</sup>	P	P	P			P
Clubs and Lodges (Not-for-Profit)									P	P				
Cultural or Civic Activities								P	P	P	P			P
Educational Institutions								C, A <sup>1</sup>						C
Golf Course Facilities	C													
Hospital and other Licensed Fa- cilities								C						C
Nursing Homes and Related Health Care Facilities					C	C		C						C
Protective Services					C	C		C						C
Public Parks and Recreation	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Public and Private Utilities	C	C	C	C	C	C	C	C	C	C	C	C	C	C
<b>COMMUNITY RESIDENTIAL HOME</b>														
Level 1 (1 to 6 residents/beds)	C <sup>3</sup>				C	C								
Level 2 (7 to 14 residents/beds)					C	C							C	
<b>ASSISTED CARE COMMUNITIES</b>														
<b>I Assisted Living Facility</b>														
Level 1 (1 to 5 residents/beds)		C	C	C	C <sup>4</sup>	C <sup>4</sup>					C			
Level 2 (6 to 15 residents/beds)					C <sup>4</sup>	C <sup>4</sup>								
Level 3 (16 or more residents/ beds)					C <sup>4</sup>	C <sup>4</sup>								
<b>II Adult Family-Care Homes (1 to 5 residents/beds)</b>														
	C <sup>3</sup>	C	C	C	C	C					C			
<b>III Adult Day Care Centers</b>														
					C	C		C			C			C
<b>AGRICULTURAL ACTIVITIES</b>														

DISTRICT PROVISIONS

TABLE 1-3.2

§ 1-3.2

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
Noncommercial Agricultural Operations	P													
Wholesale Agricultural Activities	P													
Commercial Stables	C													
<b>COMMERCIAL ACTIVITIES</b>														
Adult Activities														
Bars and Lounges										C				
Bed and Breakfast										C				
Business and Professional Offices											P <sup>1</sup>			
Enclosed Commercial Amusement Arcade Amusement Center/ Electronic Gaming Establishment								P	P	P	P	P	P	
Funeral Homes										C <sup>2</sup>				
General Retail Sales and Services									P	P	C			
Hotels and Motels										P				
Limited Commercial Activities										P				
Marine Commercial Activities									P	P	P			
Medical Services										C*				
Mini Warehouse/Storage								P	P	P	P			
Parking Lots and Facilities									C	P		P		
Retail Plant Nurseries								P	P	P	P		P	
Restaurants (Except Drive-Ins and fast food service)									P	P	P			
Restaurants (Drive-ins)									P	P	P			
Service Station, Including Gasoline Sales										P				
Trades and Skilled Services										C*		C*		
Veterinary Medical Services										C*		P		
Vehicular Sales and Services								P	P	P	C	P		
Vehicular Services and Maintenance										C*		P		
Wholesale Trades and Services										C*		P		
										C*		P		
<b>INDUSTRIAL ACTIVITIES</b>														
Kennels												C		
Manufacturing Activities												P		

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
Manufacturing Service Establishments														
Vehicle and Other Mechanical Repair and Services												P		
Warehouse, Storage and Distribution Activities										C*		P		
WATER DEVELOPMENT NONCOMMERCIAL ACTIVITIES														
Noncommercial piers, boat slips, and docks														C

C = Conditional Use

P = Permitted Uses

A = Accessory Use

\* = These uses are permitted only on sites abutting Babcock Street, US 1, and West Railroad Avenue.

1 = Allowing up to 1,000 square feet of a church or educational institution for the housing of a caretaker or security guard serving the church or educational institution. No such use shall be allowed unless administrative approval is granted by the Town.

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> Allowed in RR-65, (1 to 2 residents/beds) as defined in FS Title XXX Chapters 419 & 429

<sup>4</sup> ALF Factor of "3" (see section 1-2.6.B.13.B, Part I) only applies to RM-4 & RM-6 for ALF's

(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; Ord. No. 14-01, § 3, 2-3-14)

**Section 1-3.3. Size and dimension criteria.**

*A. Minimum Lot or Site Requirements for All Uses.* Table 1-3.3(A) incorporates required size and dimension regulations which shall be applicable within each respective zoning district. All developments shall have a total land area sufficient to satisfy all standards stipulated within the land development code, including but not limited to:

- Setback requirements;
- Open space, buffers, and landscaping;
- Surface water management;
- Water and wastewater services;
- Access, internal circulation and off-street parking;
- Wetland protection; and
- Soil erosion and sedimentation control standards.

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

# TOWN OF MALABAR

## MEMORANDUM

---

**Date:** January 29, 2015 15-AABO-001

**To:** Debby Franklin, Town Clerk/Treasurer  
Town Council

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

**Ref:** Recommendation from P&Z to Council Increasing the MBC Permitted in R/LC (Residential/Limited Commercial) District.

---

The PZ Board received a directive from Council in December 2014 in reference to increasing the Maximum Building Coverage (MBC) in R/LC district. The PZ Board discussed this at the last few meetings.

On January 28<sup>th</sup>, 2015 the Planning and Zoning Board made a Motion after much discussion and debate. The four options recommended were:

- 1.) 0.20 no matter what size (MBC) Max. Building Coverage-foot print (below diagram *portion* of Article III District Provisions "D")
- 2.) 4,000sf max no matter how big lot size (gross)
- 3.) 4,000sf max first ½ acre with a factor for a ½ acre or acre TBD and every acre after that
- 4.) Any building larger than four thousand (4,000) square feet would be considered Conditional Use.

**Motion: Abare/Ritter Recommend to Council to pick Option #1, after much deliberation and debate.**

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

The PZ Board wanted to include a *portion* of Article III District Provisions "D" see below for clarification:

D.

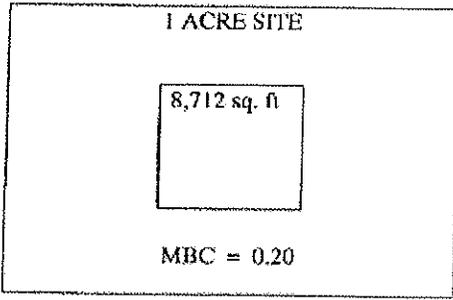
*Maximum Building Coverage.* The term "maximum building coverage" is defined as a measurement of the intensity of development on a site. For purposes of this Code, maximum building coverage (MBC) is used to regulate nonresidential development.

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 I-3.3(D). MAXIMUM BUILDING COVERAGE ILLUSTRATION



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

MBC	=	<u>Total Building Coverage</u>
		Total Lot Area