

TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY SEPTEMBER 9, 2015
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 – 8/26/15(not ready)
- 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) - Council Tabled and sent back to PZ for Recommendation**
- Exhibit:** Agenda Report No. 2
- Recommendation:** Request Approval

- G. DISCUSSION:**

- 3. **Continue Discussion to Amending Assisted Living Facilities (ALF) Ordinance 2014-01 ref: to Office/Institutional (OI) Zoning.**
- Exhibit:** Agenda Report No. 3
- Recommendation:** Discussion
- 4. **Discussion: The 500 ft. Radius notification for Public Hearings**
- Exhibit:** Agenda Report No. 4
- Recommendation:** Discussion
- 5. **Discussion: Article III- District Provisions Table 1-3.2 Land Use by District Community Facilities- Reference to Churches & "Conditional Uses"**
- Exhibit:** Agenda Report No. 5
- 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: September 9, 2015

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 August 26, 2015 (**NOT READY**)

ACTION OPTIONS:

Secretary requests approval of the minutes.

TOWN OF MALABAR
PLANNING AND ZONING
AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: September 9, 2015

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

SUBJECT: Vacate ROW on Johnston Avenue, East of Jeannie Street- (Applicant Alisha Cline)-Council tabled & sent back to PZ for Recommendation

BACKGROUND/HISTORY:

This request for vacate on Johnston Ave went to Council on August 24, 2015 as scheduled for a "Public Hearing", after consulting the Town Attorney for direction. The Town Council after much discussion with surrounding property owners and applicant sent this back to PZ for a recommendation.

ATTACHMENTS:

- Memo & Draft Minutes from Council Meeting 8/24/15
- Packet that was presented to Council on 8/24/15

ACTION OPTIONS:

Recommendation/Approval to Council

TOWN OF MALABAR

MEMORANDUM

Date: August 4, 2015 2015-TC/T-046
To: Planning and Zoning Board / Denine Sherear, Board Secretary
From: Debby Franklin, Town Clerk / Treasurer
Ref: Vacate Request – Cunningham re: Johnston Avenue

The Council held a public hearing on this request on August 24, 2015. They reviewed the minutes and the package of information provided and felt it should be further discussed by Planning & Zoning Board after more information is verified.

Council made a motion to table with was successful with a 3 to 2 vote.

I have attached the draft minutes of that meeting that dealt with this request.

F. PUBLIC HEARINGS: 3

2. RESOLUTION 15-2015 A RESOLUTION OF THE TOWN OF MALABAR, VACATING THE UNIMPROVED PUBLIC RIGHT OF WAY KNOWN AS JOHNSTON AVENUE EAST OF THE UNIMPROVED RIGHT OF WAY KNOWN AS JENNIE STREET TO THE FURTHEST POINT OF APPLICANTS PARCEL 12; AND PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2
Recommendation: Approval of Reso 15-2015

Resolution read by title only.

CM Korn disclosed he sister owns land in the area. CM Krieger, Vail and Ball also had contact with property owners. Mayor made similar disclosure.

Chair opened the PH.

Comments:

Phil Crews, lived on Johnston for quite a few years. This connects Blanche and Marshall. He does not favor vacating any ROWs. He said when they gave away Blvd in Preserve and hoped to get some ROW on Marie St from the County but they never did. Does not support vacating. He asked if he could comment on what Mr. Hard said. Crews now lives off Weber Road and part of the problem was the improper placement of the outfall serving Weber Woods SD. That was a big part of problem and that has been corrected. The culvert has been lowered and the stormwater flows really well now. Along the east side it drains well and thought the Town PW staff did a great job.

Kim Alford, Johnston Avenue, owns property adjacent to Clines. He said her (applicant) idea that we have gun crazy problem are wrong. Jennie and Alice were vacated and if they go ahead and vacate this portion, then the 1164 feet that is approved (with last 306' being a payback) then all traffic would turn around at his place. He measured the distance from Marie St and saw the survey pin. He is commissioning a survey that will show that it is his property. You are giving away my property and you do not have the right to do that.

Charles, Randy Charmichael, 609 Aldin Place, Melb Bch. The notice he received that the Reso was listed as 13-2015, the correct one is 15-2015, and Clerk clarified. He sent letters to all of .0and did not get it until the 12th. He didn't read it until the 13th. His bottom line position in this is the loss of access equals loss of value. He does not claim to be a realtor. Not to take time to go thru all the points in his letter. Don't pass this as it means he will lose half of his access. She understands Ms. Clines desire to join the property. In this instance no other property owners are harmed. He doesn't know what the benefit to the town would be. They are charged with doing what is best for the town. By a line of sight from the survey markers, Smith Surveying – in looking eastward from her home, he does see that the landscaping appears to be in the ROW. If there is any existence of the controversy then he has more concerns.

Applicant called to podium.

Applicant went over Power Point and pointed out her house, the line of sight looking east from her property and looking west from W. Railroad Avenue.

Pat Reilly, 1985 Howell Lane, Chairman of P&Z. It got tabled because their Board had some concerns which have been somewhat answered but wanted the applicant to bring in more information. He showed how the parcel could be developed. There is no land lock issue if that ROW is vacated. He said they couldn't vote on it as there was no consensus. So they tabled it. Chair closed the PH.

MOTION: CM Vail / CM Acquaviva to table. **VOTE:** Ayes, 3; Nays, 2 (Ball, Korn)

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: August 24, 2015

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

SUBJECT: Action on Request to Vacate – Portion of Johnston Avenue

BACKGROUND/HISTORY:

See Attachments

This is a Public Hearing

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Petition and Application from Alisha Cline
Radius Map, list of property owners within 500', Notice of legal ad to residents on radius list
Memo from Denine Sherear, AABO re: P&Z Board Comments
Question and Answers between Staff and Attorney Bohne re: Tabling of Public Hearing Item
LDC, Article 12, Section 1-12.8 re: Vacates
List of Accepted Streets showing Johnston Ave as 306'
Map showing accepted and unaccepted roadways
Reso 15-2015 vacating portion of Johnston w/ Exhibit A
PA color maps showing applicant's parcels (2)
Letter from Mr. Cirelli opposing vacate request w/ PA map showing parcels he owns
Letter from Mr. Carnichael opposing vacate w/ PA map showing parcel he owns

ACTION OPTIONS:

Action by Council



TOWN # 9
PH # 2

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.

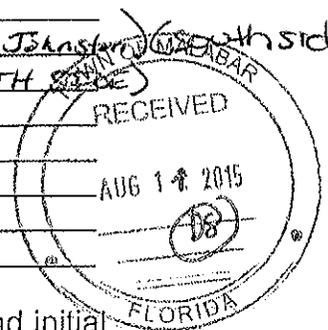
Name of Applicant(s) Alisha Cline Telephone # 321-693-6972

Mailing Address 2585 Johnston Ave, Malabar, FL 32950

Reason for Request I own all adjacent property and the property serves no public purpose (both to the North and South of Johnston Ave)

Parcel ID: 28-38-31-54-00001.0-0012.0 (2585 Johnston) (Southside)

Parcel ID: 28-38-31-26-00002.0-0001.0 (North Side)

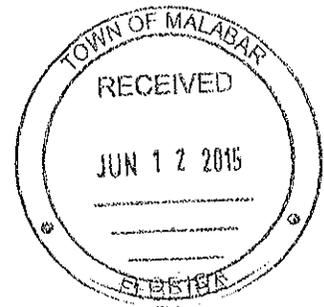


Fees: \$425.00, which includes advertising, administrative time, mailing and initial review by staff, Town Engineer and Town Attorney. Any additional costs shall be paid by the applicant.

Alisha Cline
Signature of Applicant(s)

6/12/15
Date

TOWN OF MALABAR
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: 2885 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 ~~J~~ Jenoviest ROW to terminus at 283831-00-
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

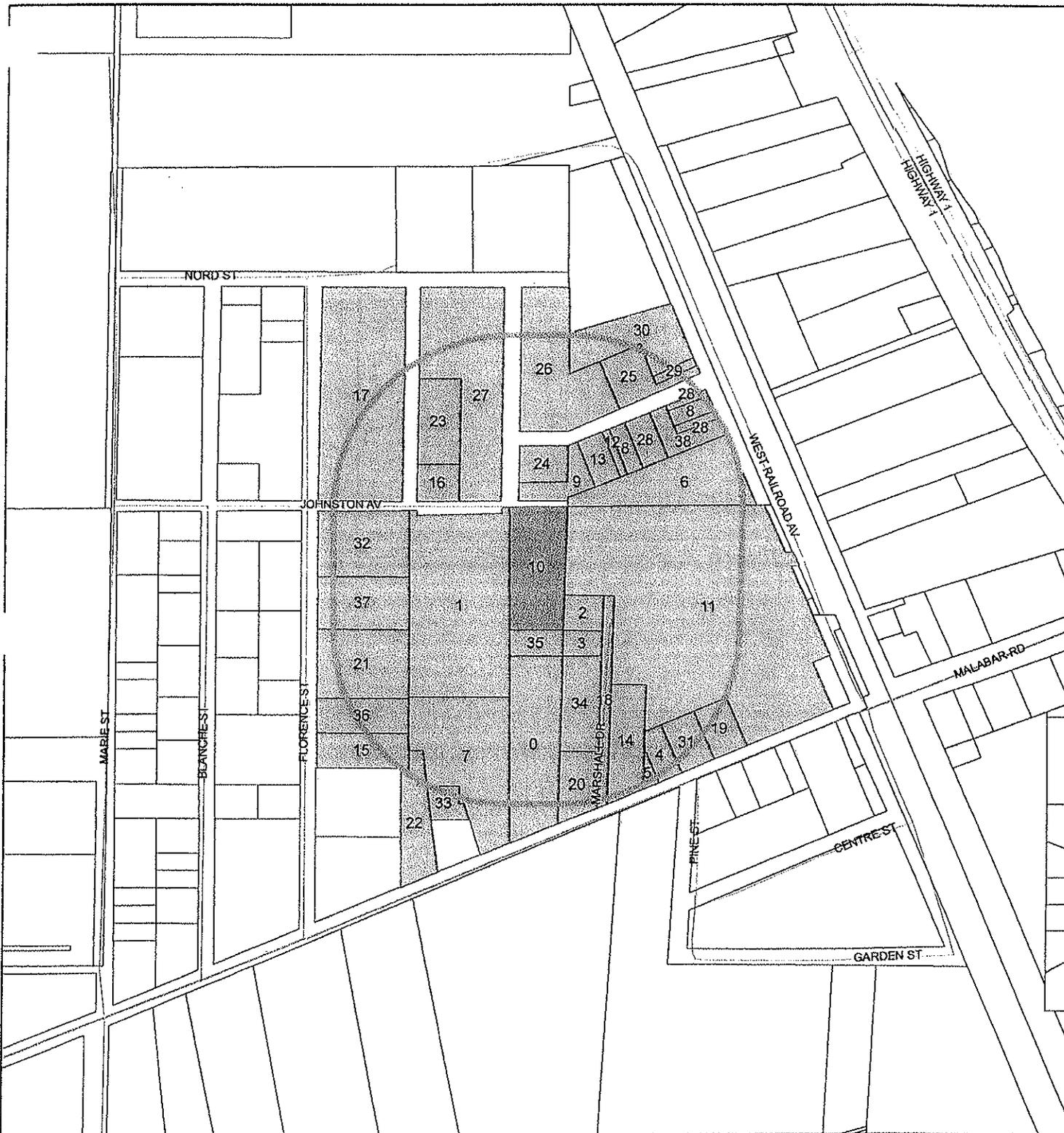
Applicant(s)

Date

RADIUS MAP

CLINE, ALISHA

cline500



1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

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 herein.

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 PINEWOODS 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

IND, ERICK
REIMERS
D GALLALA 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

MILLER, WILLIAM E
MISE, EDITH S
530 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

cline500
Page2

TOWNSEND, JAMES H
TOWNSEND, ANNA M H/W
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



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

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

Date: August 14, 2015 15-AABO-025

To: Debby Franklin, Town Clerk/Treasurer
Town Council

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

Ref: Comments from PZ Board: Vacate of ROW on Johnston Avenue, East of Jennie Street (Applicant Alisha Cline)

The last meeting that PZ had on 8/12/15 there was an Action Item to Petition to Vacate ROW on Johnston Avenue, East of Jennie Street the Applicant (Alisha Cline) who resides at 2585 Johnston Avenue. The reason Alisha Cline petitioned for this request is she owns adjacent properties and the property serves no public purpose, and she has been maintaining the right-of-way. Ms. Cline would like to join these properties together for tax purposes and fence these properties.

At the PZ Meeting on 8/12/15 Ms. Cline explained to the Board that traffic comes down Johnston Avenue and turns around at her property on a regular basis she was told by Brevard County Sheriff that before she purchased the residence (2011) at 2585 Johnston Avenue that it was a known house for drug activity.

Mr. Kim Alford who resides at 2545 Johnston Avenue spoke from the "Public" voicing his concerns that the Boards should go on the side of caution and research all options before making a final recommendation for this request to vacate this portion of Johnston Avenue.

The Chair summarized Board Member's requests for clarification:

- To determine is Johnston Ave. a ROW?
- If the improved road stops at Jennie? (as per our road list Johnston Ave is improved 1,164 ft. east from center line of Marie Street- the last 306 feet is payback under 01-01)
- Applicant to modify application to put fence across Johnston Ave. to stop people from coming up driveway and give Town a key. (if the vacate is not approved)

The PZ Board discussed the Vacate of Right-of-Way extensively and made this Motion:

Motion: Abare/ Ritter To Table the Vacate of ROW and Applicant bring back more information VOTE: All Ayes

8/13/15 Question:

Karl,

The vacate that was requested on Johnston Avenue that I sent you the info on and you agreed with engineer Morris that the vacate should start at the east side of Jennie Street. It was legally posted and notices were sent to 500' radius alerting them that the two public hearings were to be held on 8/12/15 at P&Z and 8/24 at TC.

Here is the problem. P&Z tabled the item last night because a resident on the WEST side who complained that if the vacate was granted then Jennie would be improved for access and he would have traffic turning north at the end of his property. I have attached a map showing the location of resident to west of applicant's property. See blow for other reasons they gave for tabling.

As far as I have heard from Denine that was a factor in the Board tabling the request. They want to bring it back at their next meeting. My problem is that the posting and notices and legal ad all have been done with 8/24/15 date for Council. Can it still go to Council with comment that this went before P&Z and they took no action or do we have to go through the expense of re-advertising and reposting and resending notices?

The following concerns of the PZ Board should be added to reason of Tabling this Agenda Item at PZ 0812 2015.

Chair summarized Board Member's requests for clarification:

- > To determine is Johnston Ave a ROW? *s/s survey PROVIDED*
- > If the improved road stops at Jennie? (as per our road list Johnston Ave is improved 1,164 ft. east from center line of Marie Street- the last 306 feet is payback under 01-01)
- > Applicant to modify application to put fence across Johnston Ave, to stop people from coming up driveway and give Town a key. (if the vacate is not approved)

Debby and Denine

8/13/15 Answer:

Staff,

In order to save an extra advertising fee the matter should be brought to the council with an explanation of what happened and it is being forwarded to council to hold their public hearing and at the end the council should table their vote and send it back to P&Z for further discussion/analysis... I do not think we need to advertise the 2 subsequent meetings but courtesy notices should be mailed to those who are interested. The notice can identify both meetings. Each board can, if they want, reopen the public hearing.

My suggestion for the future, because we incur expenses in advertising, if this occurs the P&Z should recommend denial and state the reasons which should be sent to council. The council would then hold the public hearing and close it and "table" their vote until further comment and recommendation is received from P&Z. This will save cost, but at a minimum mailed notice of the subsequent meetings should be made. The notice can identify both the P&Z meeting and Council meeting.

Karl Bohne

Section 1-12.8. - Vacate and abandonment.

- A. *Definitions:* For purposes of this Section the following terms shall have the following meanings:
 - 1. *Vacate and abandon* shall mean vacate, abandon, close, renounce, disclaim or any other term that indicates the relinquishment of the Town's right, title or interest in a public right-of-way.
 - 2. *Public right-of-way* shall mean public road, street, highway, easement, way, thoroughfare.
- B. The Town Council may by resolution vacate and abandon any public right-of-way.
- C. All requests for a vacate and abandonment of any public right-of-way shall be by petition and shall state the name and address of all persons owning property abutting said public right-of-way and shall give a description of the public right-of-way sought to be vacated and abandoned.
- D. Petitions for a vacate and abandonment shall be submitted to the Town at least twenty-one (21) days prior to a regularly scheduled Planning and Zoning Board meeting. Meetings are the second Wednesday of each month. The following information shall be submitted with the petition:
 - 1. List of all property owners within five hundred (500) feet of the total length of the subject public right-of-way. Such list shall be prepared by a county office with access to public records, i.e. property appraiser. *letters sent out 7/30/15* ✓
 - 2. A map of the total area of the public right-of-way and property owners with the area requested to be vacated and abandoned identified. ✓
- E. The petition and all associated documents shall be forwarded to the Building Official for distribution to the appropriate Town staff. Staff shall review the request and determine if any conflict may exist or if there may be any reason that the Town should not grant the request. Written staff comments shall be forwarded to the Building Official within ten (10) working days following receipt of the vacate request. ✓
- F. The Building Official shall present the vacate and abandon request and staff comments to the next regularly scheduled Planning and Zoning Board meeting for consideration and recommendation to the Town Council. *8/12/15* ✓
- G. The request and Planning and Zoning Board recommendation shall be forwarded to the Town Council for authorization to proceed. *originally 8/17/15 RTCM CANCELLED RESCHEDULED 8/24/15 RTCM "Public Hearing"*
- H. Before the adoption of any resolution vacating and abandoning any public right-of-way, the Town Clerk shall cause to be published in a newspaper of general circulation in the Town a notice that the Town Council shall hold a public hearing regarding said resolution. Said notice shall be published at least fourteen (14) days prior to the date of said public hearing.
- I. A courtesy copy of the notice shall be mailed to all property owners identified in subparagraph D. above and to all utility companies serving south Brevard County. *7/30/15 - 8/7/15 8/10/15*
- J. Any decision by the Town Council concerning a vacate and abandonment shall be a legislative decision and governed by the fairly debatable standard.
- K. Notice of the adoption of the resolution vacating and abandoning any public right-of-way by the Town Council shall be published one (1) time within thirty (30) days following its adoption in a newspaper of general circulation in the Town.
- L. The proof of publication of notice of the public hearing, the resolution adopted by the Town Council, and the proof of publication of the notice of adoption of the resolution all shall be recorded in the public records of Brevard County after same has been completed.

Submitted 6/12/15

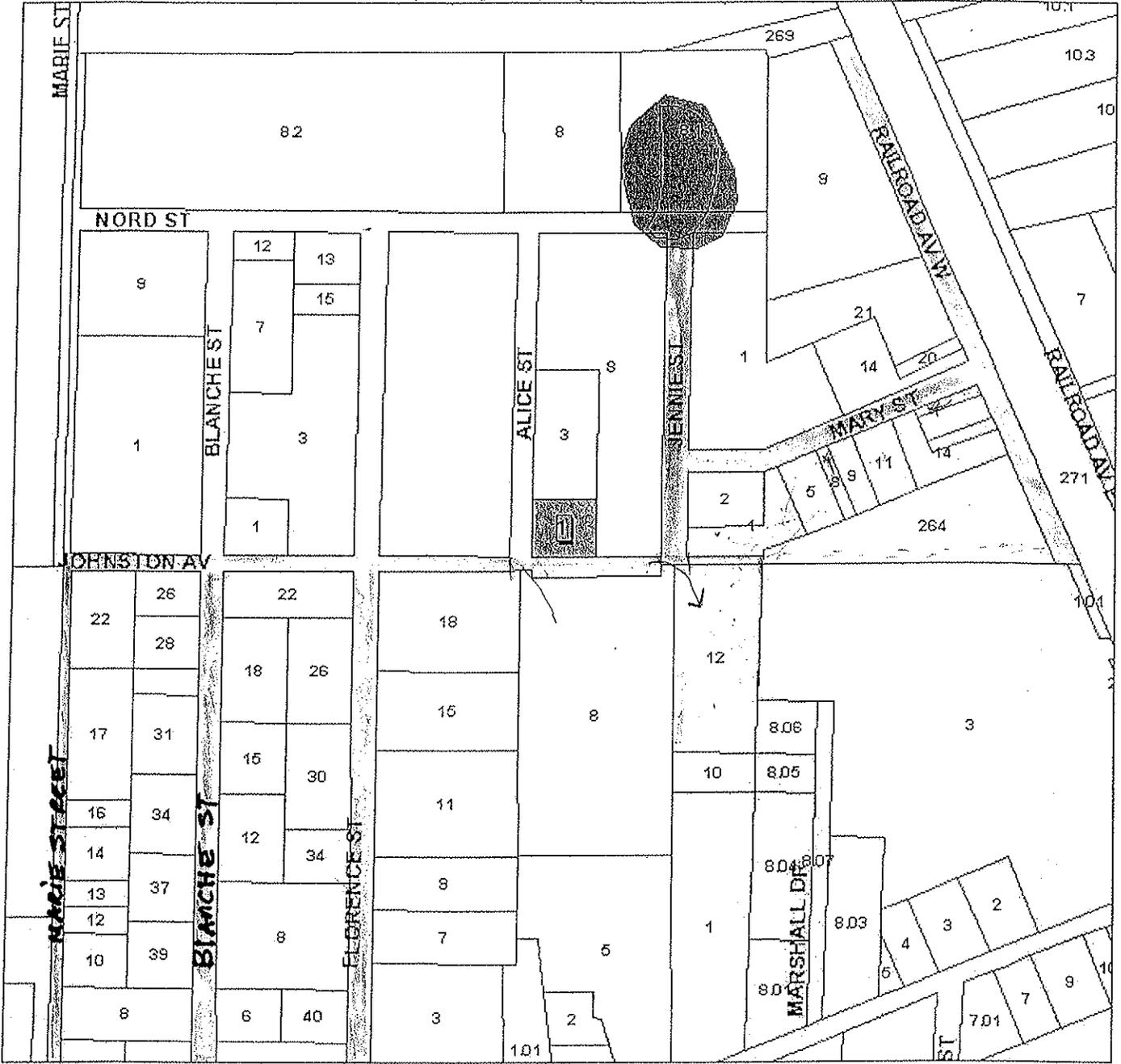


Town of Malabar - Public Right-of-Ways Accepted Streets
5/10/2004

NOTE: THIS LIST DOES NOT INCLUDE ALL TOWN-OWNED RIGHT-OF-WAY

- ...s Trail (Brook Hollow) (1,219 ft. paved from center line Briar Creek Boulevard to center line Briar Creek Boulevard)
- First Lane (240 ft. paved north from center line Riverview Drive)
- Flashy Lane (1,275 ft. north from Hall Road to dead end)
(530 ft. x 25 ft. south from center line Hall Road)
- Florence Street (1,200 ft. paved north from center line Malabar Road)
- Garden Street (528 ft. east from center line Pine Street to dead end)
- Gilmore Street (1,280 ft. north from center line Malabar Road to center line Allen St.)
- Glatter Road (1,584 ft. east from center line Malabar Road)
(2,640 ft. east from center line Elaine Lane)
- Hall Road (13,200 ft. west from center line Marie Street to town limits)
(5,280 ft. of total--paved; 7,920 unpaved)
- Hard Lane (500' south of center line of Atz Road)
- Hard Way Lane (730 ft. north from center line Old Mission Road) (plus 400 ft. north from Old Mission--payback under 90-3)
- Hawthorne Avenue (150 ft. west from center line US#1)
- Hollow Brook Lane (Brook Hollow) (2,045 ft. paved north from center line Briar Creek Boulevard)
- Holloway Trail (Brook Hollow) (324 ft. paved west from center line Briar Creek Boulevard)
- Homestead Lane (Sugar Pines) (1,200 ft. paved north from center line Atz Road to dead end)
- Howell Lane (1,100 ft. north from center line Hall Road to dead end)
(528 ft. south from center line Hall Road).
- Huggins Drive (808 ft. paved east from center line US#1).
- Hunter Lane (1,320 ft. north from center line Atz Road)
(1,500 ft. south from center line of Atz Rd.--payback under 90-3)
- Jasa Lane (730 ft. south from center line of Hall Road)
- Jay Lane (800 ft. south from center line of Hall Road)
- Johnston Avenue * (1,164 ft. east from center line Marie Street) (the last 306 feet is a payback under 01-01) ←
- Jordan Boulevard (1,010 ft. paved west from the center line US#1)
- Joy Lane (1,483 ft. south from the center line of Atz Road)
- Kramer Lane (1,322 ft. north from center line of Benjamin Road--payback under 91-2)

Dana Blickley, CFA
Brevard County Property Appraiser - MAP SEARCH



Parcel Identifier	Address	Millage Code	Exemption Code	Use Code	Tax Account
1 Aerial 28-38-31-26-00004.0-0001.0		34Z0		10	2851021

Red = improved/accepted Streets
 Green = unimproved but platted Row
 Blue = Applicants property

RESOLUTION 15-2015

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA VACATING AND ABANDONING 172 FEET OF UNIMPROVED RIGHT OF WAY KNOWN AS JOHNSTON AVENUE IN SECTION 31, TWSP 28, RNG 38 BETWEEN SD 54 LOT 1, PAR 12 AND SD 26, LOT 2, PAR 1, A DISTANCE OF 172 FEET, BEGINNING AT THE EAST SIDE OF JENNIE STREET RUNNING EAST TO THE END OF PAR 12. LOCATED IN THE TOWN OF MALABAR; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Malabar has determined to partially vacate and abandon a certain right-of-way located in the town corporate limits. The portion of the right-of-way being abandoned is described in Section 1 of this Resolution and is hereinafter referred to as the "Right of Way"; and,

WHEREAS, the Town Council of the Town of Malabar has considered the petition to vacate as the applicants own the parcels to the north and south and wish to join them for their homestead; and,

WHEREAS, the Town Council has considered the access to Parcel 264 from the existing West Railroad Avenue; and,

WHEREAS, the Right-of-Way south of the centerline of Johnston Avenue, approximately 172 foot right-of-way will become part of Parcel 12; and north of the centerline will become part of Parcel 1; and,

WHEREAS, the Town Council deems it does not serve any public need to require the right-of-way to be improved and will also prevent Johnson Avenue from becoming a collector between West Railroad Avenue and Marie Street and that it is in the best interest of the Town to vacate and abandon the said Right-of-Way; and,

WHEREAS, the Town desires to vacate and abandon to the adjacent property owners the 172 foot right-of-way more particularly described in Section 1 of this Resolution.

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

Section 1. Right-of-Way Abandoned. The Town hereby vacates and abandons the following property:

The 25' - 40' wide right-of-way between Parcels 1 and 12 a distance of 172 feet beginning at the east point of Jennie Street and running east to the eastern most point of parcel 12.

Section 2. A map showing the area vacated is attached hereto as **Exhibit "A."**

Section 3. Conflict. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 4. Effective Date. This resolution shall take effect upon the recording at the Clerk of Courts.

This Resolution was moved for adoption by Council Member _____ and was seconded by Council Member _____ and, upon being put to a vote, the vote was as follow:

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

This Resolution was declared duly passed and adopted this ___th day of August, 2014.

Town of Malabar

Mayor Carl A. Beatty, Council Chair

ATTEST:

Debby K. Franklin, C.M.C.
Town Clerk/Treasure

(Seal)

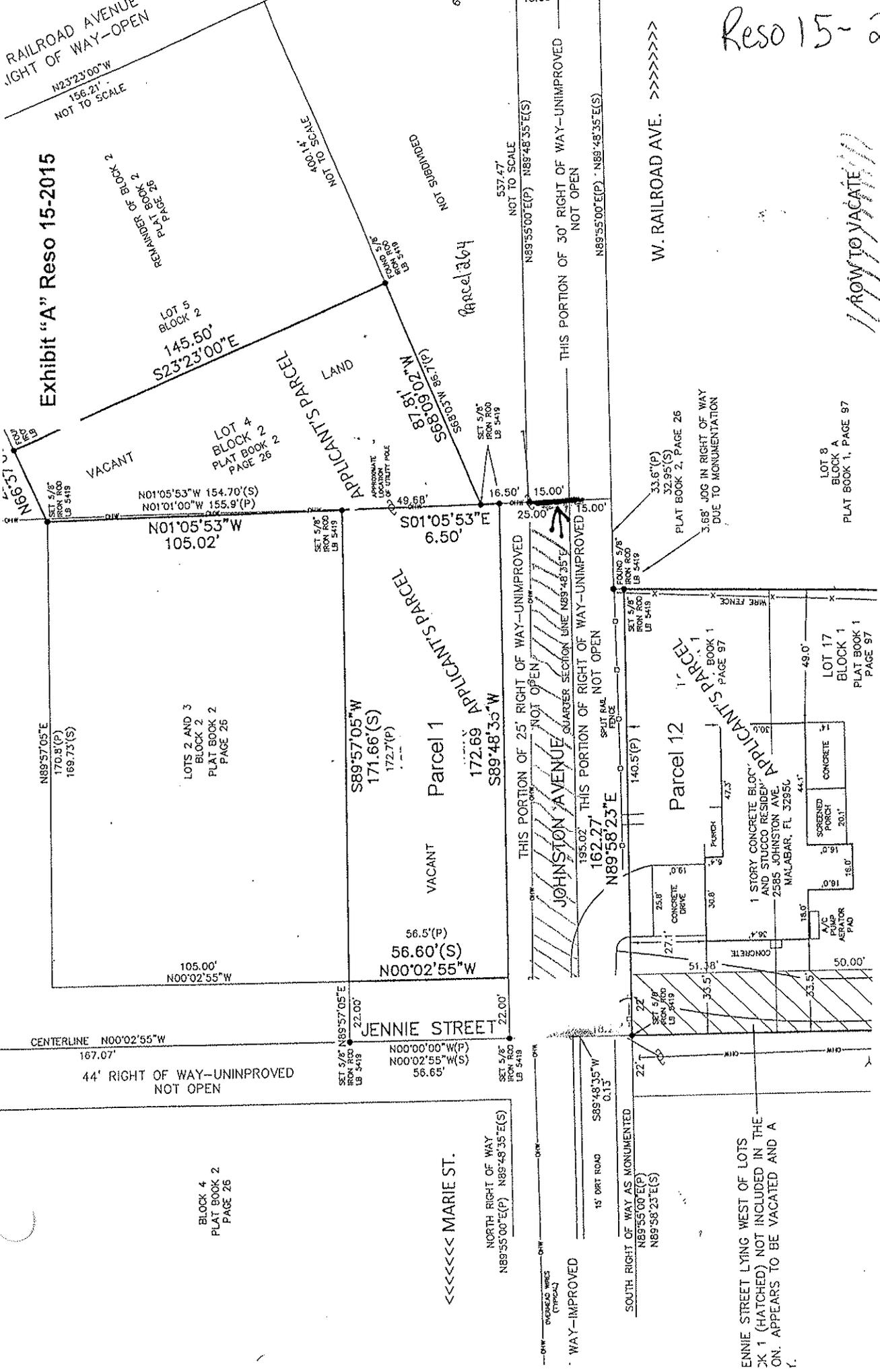
Approved as to Form and Content:

Karl W. Bohne, Jr.
Town Attorney

RAILROAD AVENUE
RIGHT OF WAY-OPEN
N23°23'00"W
156.21'
NOT TO SCALE

Exhibit "A" Reso 15-2015

Reso 15-2015
"A"



LOT 5
BLOCK 2
145.50'
S23°23'00"E

LOT 4
BLOCK 2
172.7'(P)
S89°57'05"W

LOT 3
BLOCK 2
171.66'(S)
172.7'(P)

LOT 2 AND 3
BLOCK 2
170.8'(P)
169.73'(S)

LOT 1
BLOCK 2
172.7'(P)
S89°57'05"E

Parcel 1
VACANT
172.69
S89°48'30"W

Parcel 12
VACANT
140.5'(P)
N89°58'23"E

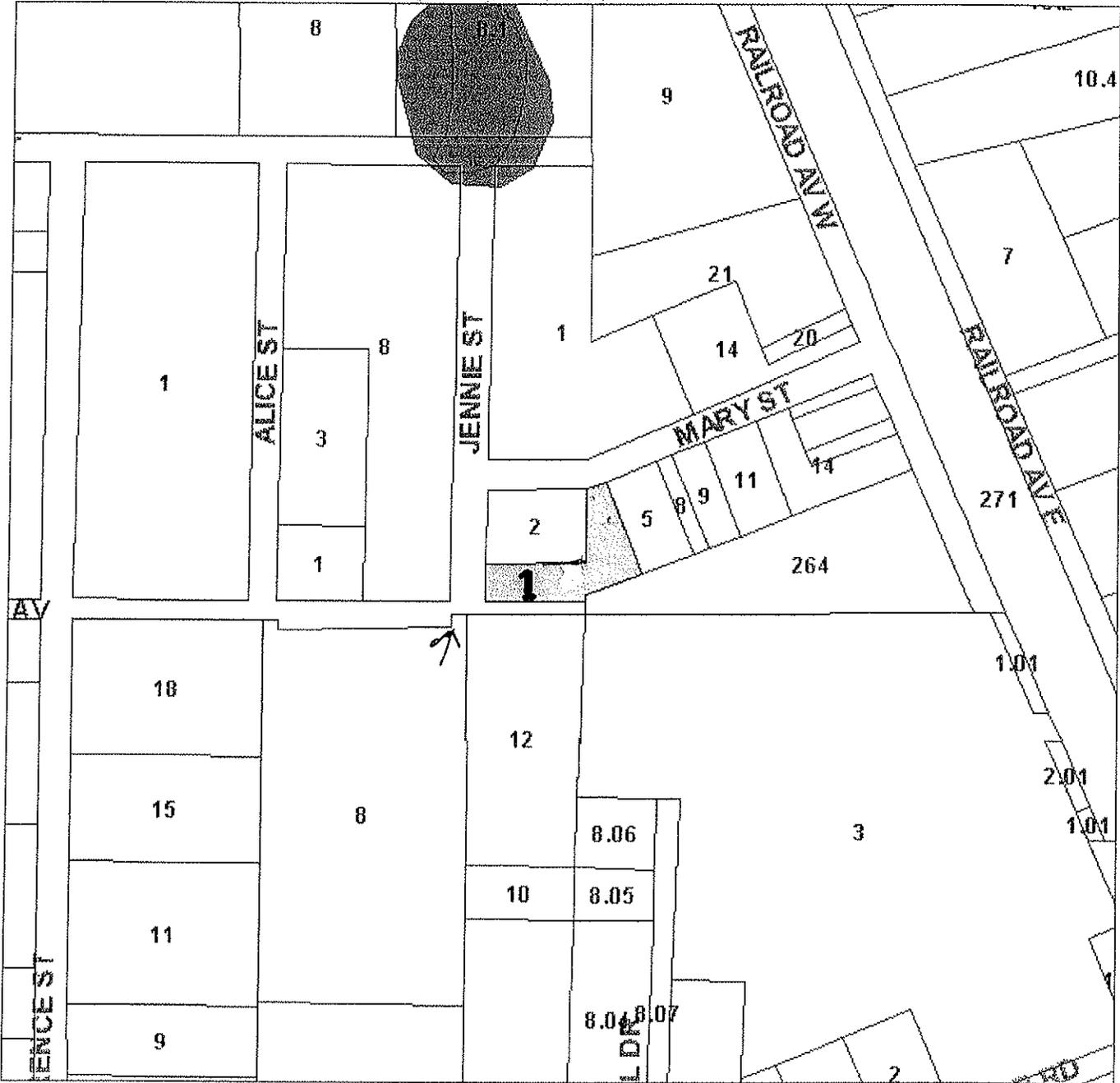
Parcel 1
VACANT
172.69
S89°48'30"W

ROW TO VACATE

Parcel 1
VACANT
172.69
S89°48'30"W

ENNIE STREET LYING WEST OF LOTS
2K 1 (HATCHED) NOT INCLUDED IN THE
CON. APPEARS TO BE VACATED AND A

Dana Blickley, CFA
Brevard County Property Appraiser - MAP SEARCH

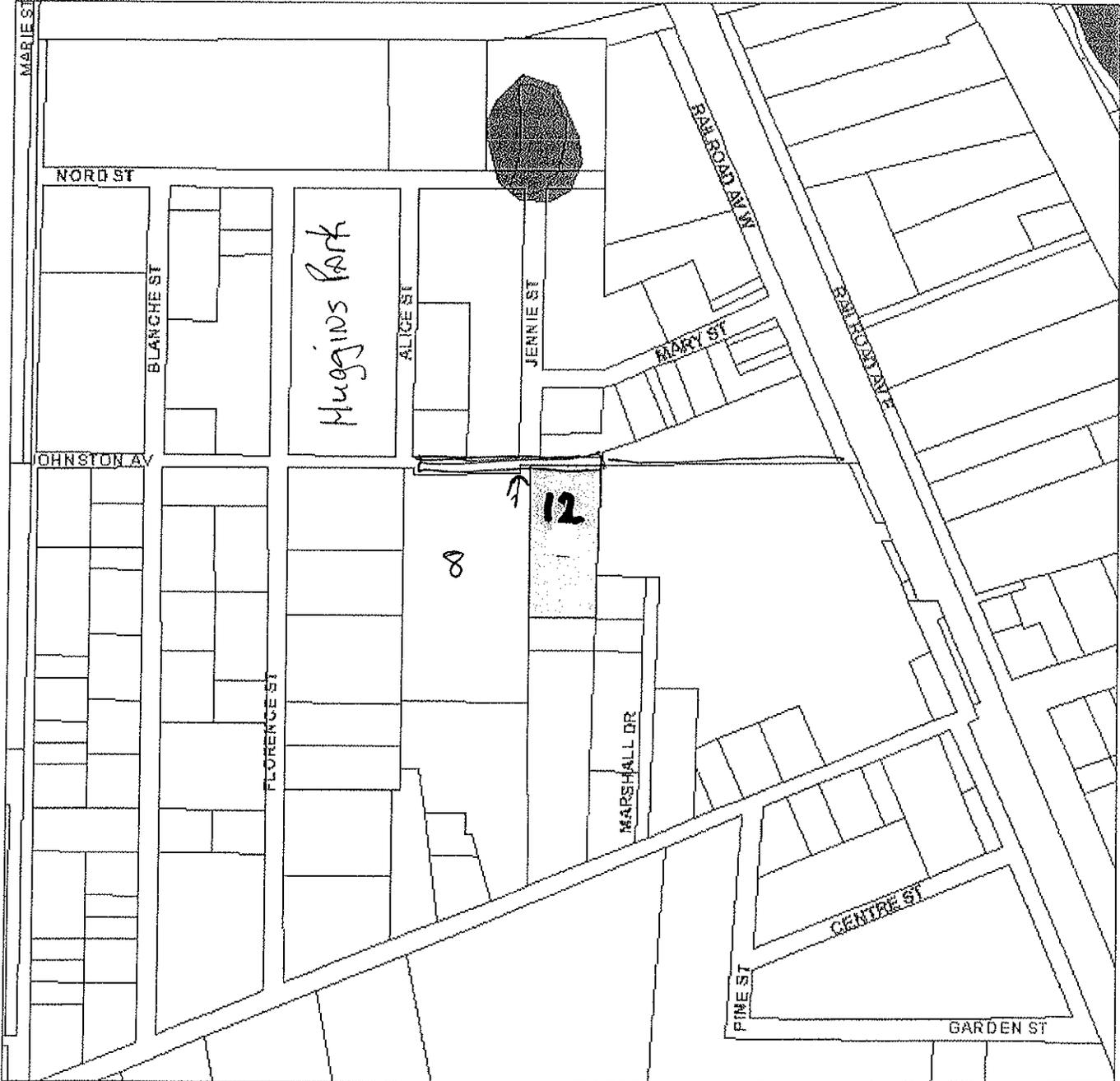


	Parcel Identifier	Address	Millage Code	Exemption Code	Use Code	Tax Account
1	Aerial 28-38-31-26-00002.0-0001.0	3420			10	2851010

↑ John J Pollaks S/D

Dana Blickley, CFA

Brevard County Property Appraiser - MAP SEARCH



	Parcel Identifier	Address	Millage Code	Exemption Code	Use Code	Tax Account
1	Aerial 28-38-31-54-00001.0-0012.0	2585 JOHNSTON AVE	34Z0	1	110	2851112



SNEDEKERS S/D

8.5.2015

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

Thank you,

Click Action: Parcel Info Distance 0

Decrease Zoom Bar Aerial View Range Increase

View
 Map Aerial
 Change
 Locate
 Parcel ID
 Zoom to
 Brevard County
 Printable Version
 Map Prev
 Check below then
 Parcels
 Schools
 RoadNames
 Water
 Update
 Help Legend

Attention: The br level must be 100' click to select the parcel.

28-38-31-26-00002-0-0009-0

Mr Cirelli
 parcels

P&Z Board Member Wayne Abare
Town of Malabar
c/o Town of Malabar
2725 Malabar Rd.
Malabar, FL 32950-4427



August 13, 2015

RE: Pending Request to Vacate Johnston Ave. Right of Way

I am the owner of a property in the Town of Malabar described as Parcel 28-38-31-00-264. My property is situated adjacent to the east end of the unimproved right of way for Johnston Avenue. This letter is to express my objection in the strongest possible terms to the approval Resolution 13-2015 requesting the vacating of a portion of the Johnston Ave. right of way. My property will suffer severe adverse effects and de-valuation if this Resolution is approved, since it will eliminate fully half of the current access to my property.

The first notice I received of this pending matter arrived in my mail on Wednesday August 12, 2015 and was opened by me this morning. I have the envelope bearing its August 10 postmark. By the time I opened my mail this morning the 8/12 P&Z Board meeting at which this matter came up, and was apparently tabled, had obviously already occurred. I received no prior notification of this matter from the Town of Malabar. Rest assured I would have attended the meeting to respectfully express my objection had I but known that it was scheduled.

I will attend any future meetings at which this matter is scheduled to come up, as long as I know in advance that they are scheduled, and if unable to attend personally will be represented at same by legal counsel.

I urge first that this matter receive the full and open consideration it deserves under law and according to the Charter of the Town of Malabar before any action is taken. I further request that you vote against resolution 13-2015 if it should come before your board or council. Should you desire to discuss my position in this matter I can be reached at my home address, by e-mail to randy@glennstire.com, or on my cell phone at (321)543-1425. Thank you very much for your consideration.

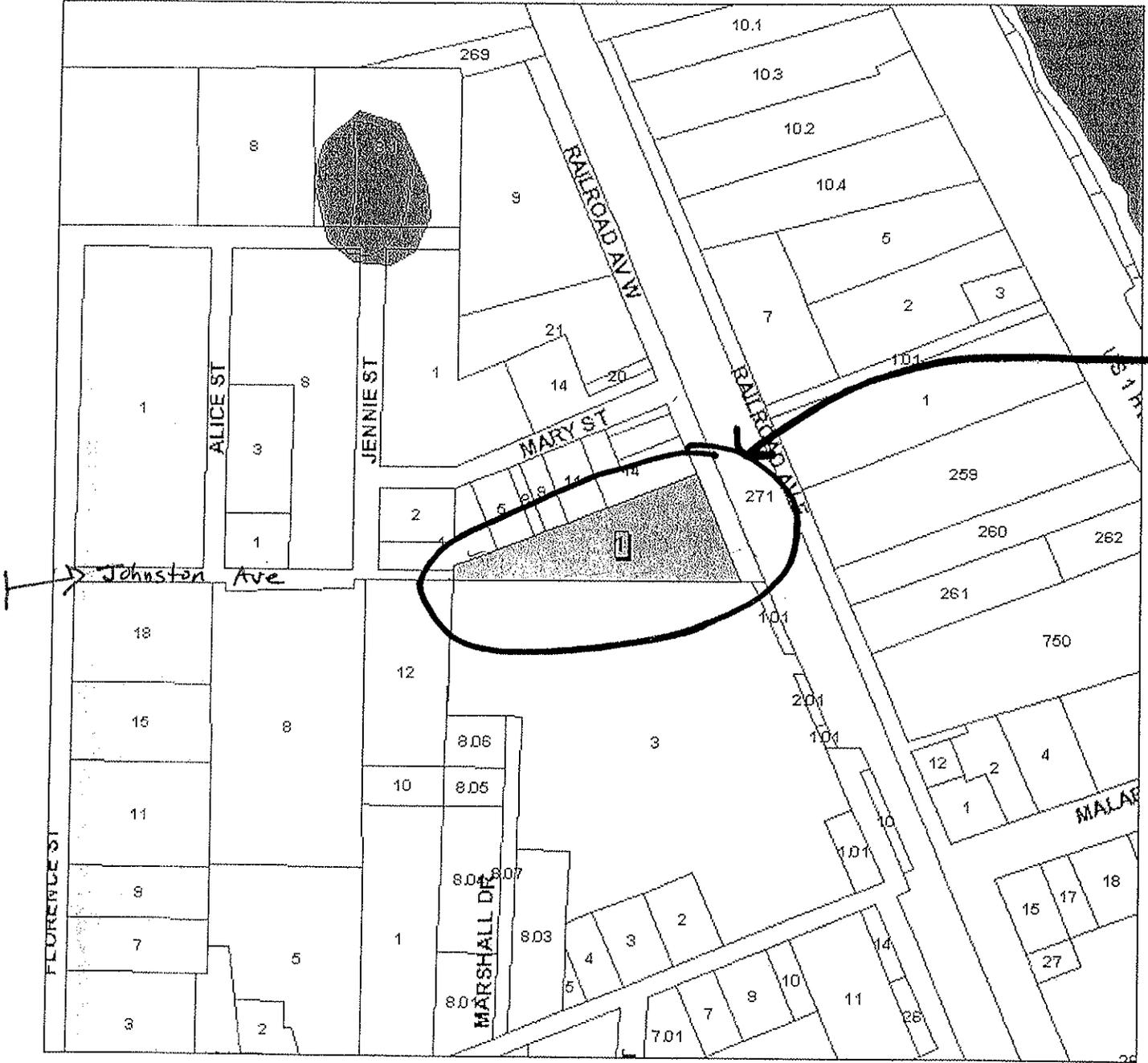
Respectfully,

A handwritten signature in black ink, appearing to read "C. Randall Carmichael". The signature is stylized and cursive.

C. Randall (Randy) Carmichael
609 Alden Place
Melbourne Beach, FL 32951

North

Dana Blickley, CFA
Brevard County Property Appraiser - MAP SEARCH



MR Carmichael's PROPERTY

East

Parcel Identifier	Address	Millage Code	Exemption Code	Use Code	Tax Account
1 Aerial 28-38-31-00-00264.0-0000.0		3420		1000	2850957

South

Orange is Driveway into 2526 Johnston Ave

Pink - Strips Alisha Cline Property Owner

Yellow - Vacate Area

Gold Yellow -

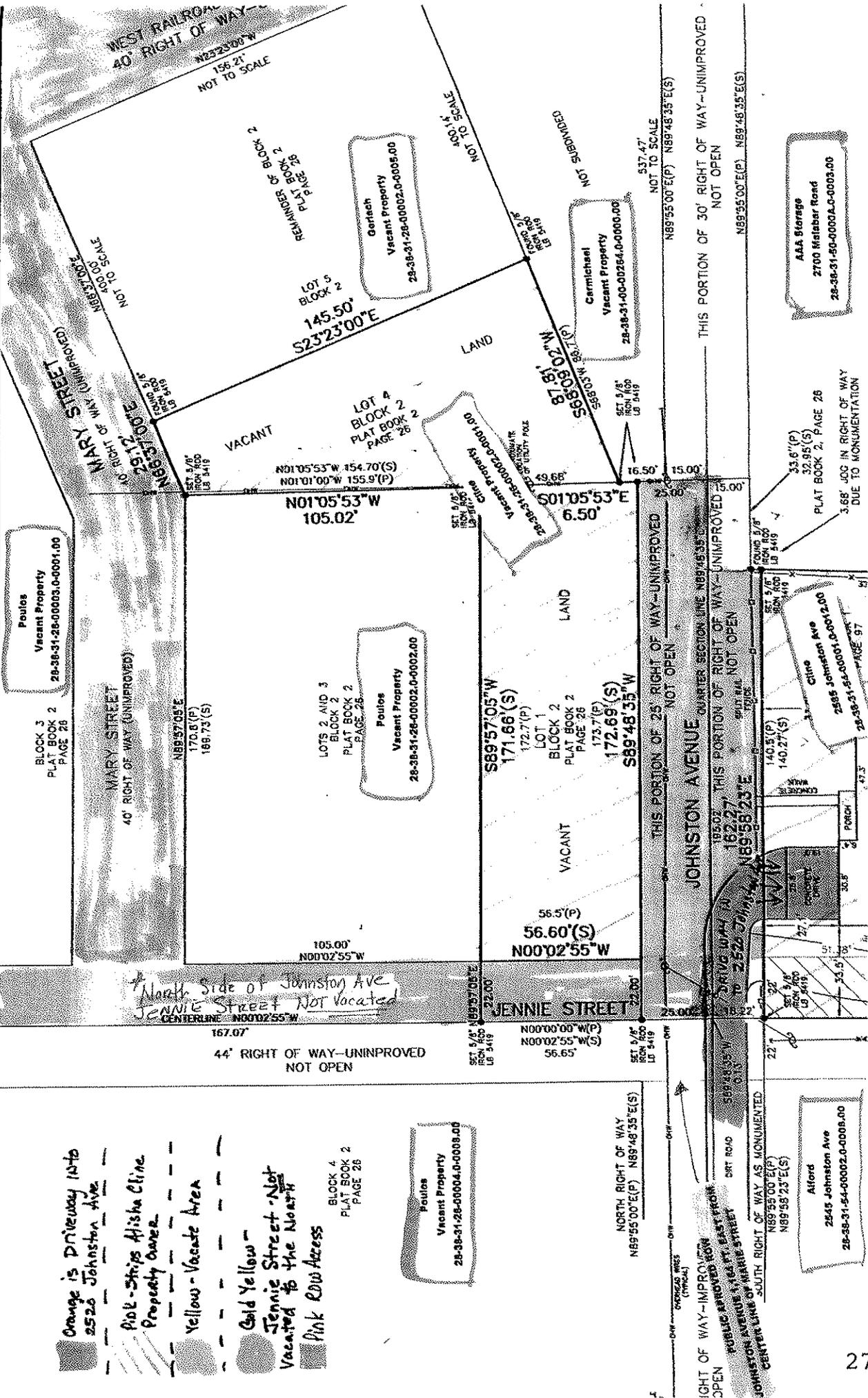
Jennie Street - Not Vacated to the North

Pink Row Access

BLOCK 4 PLAT BOOK 2 PAGE 28

Poules Vacant Property 28-38-31-28-00004.0-0008.00

Alford 2845 Johnston Ave 28-38-31-54-00002.0-0008.00



North Side of Johnston Ave
JENNIE STREET Not Vacated
CENTERLINE N00°02'55\"/>

44' RIGHT OF WAY--UNIMPROVED NOT OPEN

NORTH RIGHT OF WAY
N89°55'00\"/>

RIGHT OF WAY--IMPROVED OPEN
PUBLIC IMPROVED ROW
JOHNSTON AVENUE 146.5 FT. EAST FROM
CENTERLINE OF MARY STREET
DIRT ROAD
SOUTH RIGHT OF WAY AS MONUMENTED

THIS PORTION OF 25' RIGHT OF WAY--UNIMPROVED NOT OPEN

JOHNSTON AVENUE

THIS PORTION OF 30' RIGHT OF WAY--UNIMPROVED NOT OPEN

QUARTER SECTION LINE N89°48'35\"/>

THIS PORTION OF 30' RIGHT OF WAY--UNIMPROVED NOT OPEN

AAA Storage 2700 Malabar Road 28-38-31-50-0000A.0-0005.00

PLAT BOOK 2, PAGE 26

3.68' JOG IN RIGHT OF WAY DUE TO MONUMENTATION

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: September 9, 2015

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

SUBJECT: Discuss Amending Assisted Living Facility (ALF) Ordinance 2014- 01 in ref: to Office Institutional (OI) Zoning.

BACKGROUND/HISTORY:

The PZ reviewed this Ordinance at the last PZ Meeting on 8/26/15 and the Board requested more information from the present State Statutes to amend the verbiage referenced to ALF's in the "OI" zoning. The Board discussed changing verbiage to match Table 1-3.2 & 1.6.1(B).

On page 3 of ALF Ordinance 2014-01, the PZ Board suggested revising the Part I "Long –Term Care Facility" paragraph in accordance with the Florida Statutes Title XXX, for clarification.

ATTACHMENTS:

- ALF Adopted Ordinance 2014-01
- Information from Florida Statutes 2015

ACTION OPTIONS:

Discussion

Malabar Ordinance

No. 2014-01

Assisted Living Facilities (ALF)

ORDINANCE 2014-01

A ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING SECTION 1-2.6.B. LAND USE CLASSIFICATIONS; PROVIDING FOR PUBLIC HEALTH CARE FACILITIES AND SOCIAL WELFARE FACILITIES; AMENDING SECTION 1-3.1.I DISTRICT PROVISIONS; PROVIDING FOR LIMITED RESIDENTIAL USES IN THE OI (OFFICE/INSTITUTIONAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; REMOVING REFERENCES TO GROUP HOMES AND AMENDING REFERENCES TO NURSING HOMES AND HOSPITALS AND PROVIDING FOR COMMUNITY RESIDENTIAL HOMES AND ASSISTED CARE COMMUNITIES; AMENDING TABLE 1-6.1 (B) REMOVING REFERENCES TO GROUP HOMES AND AMENDING REFERENCES TO NURSING HOMES AND HOSPITALS AND PROVIDING FOR COMMUNITY RESIDENTIAL HOMES AND ASSISTED CARE COMMUNITIES; AMENDING SECTION 1-9.2; ESTABLISHING PARKING REQUIREMENTS FOR PUBLIC HEALTH FACILITIES AND SOCIAL WELFARE FACILITIES; AMENDING SECTION 1-20.2 OF ARTICLE XX, DEFINITIONS; PROVIDING FOR DEFINITIONS OF HOSPITAL AND OTHER LICENSED FACILITIES, ADULT FAMILY-CARE HOME, ASSISTED LIVING FACILITY, ADULT DAY CARE CENTERS AND COMMUNITY RESIDENTIAL HOME; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

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

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

"B. Community Facilities.

1. *Administrative Services (Public or Private Not-for-Profit).* Activities typically performed by not-for-profit private or public social services and utility administrative offices.
2. *Cemetery.* Property used for the interring of the dead.
3. *Child Care Services.* Activities typically performed by an agency, organization or individual providing day care without living accommodations for preteens not related by blood or marriage to, and not the legal wards or foster children of, the attendant adult.
4. *Clubs and Lodges (Not-for-Profit).* Activities typically performed by a group of persons for social or recreational purposes not operated for profit and not including activities which primarily render services which are customarily carried on as a business for profit.

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

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

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

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

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

8. *Places of Worship.* Activities customarily performed in a building where persons regularly assemble for religious worship and which building, together with its accessory building and uses, is maintained and controlled by a religious body organized to sustain public worship.

9. *Protective Services.* Fire, law enforcement and emergency medical related facilities planned and operated for the general welfare of the public.

10. *Public Health Facilities*

The Town has labeled the facilities below as Public Health Facilities. These facilities are also referenced in Florida Statutes, Title XXIX, in Chapters 395 and 408. Notwithstanding the identification of other facilities in Florida Statutes, Title XXIX, in Chapters 395 and 408, the facilities below are the only Public Health Facilities provided for by the Town.

A. Hospital and other Licensed Facilities

"Hospital and other Licensed Facilities " means any establishment that:

- (a) Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours

by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and

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

However, the provisions of this chapter do not apply to any institution conducted by or for the adherents of any well-recognized church or religious denomination that depends exclusively upon prayer or spiritual means to heal, care for, or treat any person. For purposes of local zoning matters, the term "hospital" includes a medical office building located on the same premises as a hospital facility, provided the land on which the medical office building is constructed is zoned for use as a hospital; provided the premises were zoned for hospital purposes on January 1, 1992. Refer to Chapters 395 and 408.

B. Nursing Homes and Related Health Care Facilities

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

Part I Long-Term Care Facilities

"Long-term care facility" means a nursing home facility, ~~assisted-living facility, adult family care home,~~ board and care facility, or any other similar residential adult care facility (additional reference: see Florida Statutes, Title XXX, Chapter 429, Social Welfare).

** See definition
ck 400 FLST
400.060(6)*

Part II Nursing Homes

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

Part V Intermediate, Special Services, and Transitional Living Facilities

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

government share the cost of providing care, is an appropriate option to explore in the continuum of care.

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

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

13. *Social Welfare Facilities*

The Town has labeled the facilities below as Social Welfare Facilities. These facilities are also referenced in Florida Statutes, Title XXX, in Chapters 408 and 430.

Notwithstanding the identification of other facilities in Florida Statutes, Title XXX, in Chapters 408 and 430, the facilities below are the only Social Welfare Facilities provided for by the Town.

A. Community Residential Homes

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

There are 2 levels of Community Residential Homes:

Level 1 is between 1 to 6 residents/beds

Level 2 is between 7 to 14 residents/beds

B. Assisted Care Communities

Part I Assisted Living Facilities

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

There are 3 levels of Assisted Living Facilities:

Level 1 is between 1 to 5 residents/beds

Level 2 is between 6 and 15 residents/beds

Level 3 is 16 residents/beds or more

In the RM-4 and RM-6 zoning districts, an ALF Factor of 3 will be used to determine the residents/bed density. For example, RM-4 is allowed 4 units per acre multiplied

by the 3 ALF Factor is equal to 12 residents/beds per acre. RM-6 is allowed 6 units per acre multiplied by the 3 ALF Factor is equal to 18 residents/beds per acre.

Part II Adult Family-Care Homes

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

Part III Adult Day Care Centers

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

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

• • •

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

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

• • •

Section 3. Table 1-3.2 of Section 1-3.2 of the Malabar Land Development Code, Community Facilities, is hereby amended to delete references to “Group Homes”, and by amending references to “Hospitals and Extended Care Facilities” and “Nursing Homes (including Rest Homes and Convalescent Homes)” and adding references to Community Residential Home and Assisted Care Communities to read as follows:

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

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

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

Section 4. Table 1-6.1(B) is hereby amended to delete references to "Group Homes", and by amending references to "Hospitals and Extended Care Facilities" and "Nursing Homes (including Rest Homes and Convalescent Homes)" and adding references to Community Residential Home and Assisted Care Communities to read as follows:

"Conditional Land Uses	Minimum Size Site (3)	Minimum Width/Depth (feet) (3)	Access Required to Street	Building Setback from Residential District/Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District/Nonresidential District (feet)	Perimeter Screening Residential District/Nonresidential District (5)	Curb Cut Controls
Group-Homes	(3)	(3)	N/A	N/A	N/A	N/A	(7)
Hospitals and Extended-Care-other Licensed Facilities	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)
Nursing Homes (including Rest-Homes and Convalescent Homes) and Related Health Care Facilities	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
<u>Community Residential Home</u>							
<u>Level 1 (1 to 6 residents/beds)</u>	<u>1.5 acres</u>	<u>210</u>	<u>Paved</u>	<u>60/30</u>	<u>25/20</u>	<u>Type A/C</u>	<u>(7)</u>
<u>Level 2 (7 to 14 residents/beds)</u>	<u>3 acres</u>	<u>210</u>	<u>Paved</u>	<u>60/30</u>	<u>25/20</u>	<u>Type A/C</u>	<u>(7)</u>
<u>Assisted Care Communities</u>							
<u>I Assisted Living Facility</u>							
<u>Level 1 (1 to 5 residents/beds)</u>	<u>2 acres</u>	<u>210</u>	<u>Arterial</u>	<u>60/30</u>	<u>25/20</u>	<u>Type A/C</u>	<u>(7)</u>
<u>Level 2 (6 to 15 residents/beds)</u>	<u>3 acres</u>	<u>210</u>	<u>Arterial</u>	<u>60/30</u>	<u>25/20</u>	<u>Type A/C</u>	<u>(7)</u>
<u>Level 3 (16 or more residents/beds)</u>	<u>5 acres</u>	<u>325</u>	<u>Arterial</u>	<u>100/75</u>	<u>25/20</u>	<u>Type A/C</u>	<u>(7)</u>
<u>II Adult Family- Care Homes</u>							
<u>(1 to 5 residents/beds)</u>	<u>2 acres</u>	<u>210</u>	<u>Paved</u>	<u>60/30</u>	<u>25/20</u>	<u>Type A/C</u>	<u>(7)</u>
<u>III Adult Day Care Facilities</u>	<u>2 acres</u>	<u>210</u>	<u>Arterial</u>	<u>60/30</u>	<u>25/20</u>	<u>Type A/C</u>	<u>(7)</u>

• • •

“(3) Minimum spatial requirements shall comply with the requirements established by the Town of Malabar District Provisions or the Florida Statues, whichever requirement is greater.”

• • •

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

11. *Social Welfare Facilities.* One (1) space for every three (3) residents/beds plus one (1) space per employee on the largest shift.”

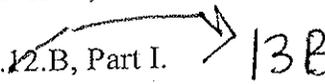
12. *Public Health Facilities.* One (1) space for each five (5) beds plus one (1) space for each employee, including doctors, or one (1) space for per three hundred (300) feet of building area, whichever is greater.”

• • •

Section 6. Section 1-20.2 of Article XX is amended by deleting the definition for “*Group Care Facility*” and amending “*Extended Care Facility*” and establishing the following additional definitions:

“*Hospital and other Licensed Facilities*” As defined in section 1-2.6.B.10.A

“*Adult Family-Care Home*” As defined in section 1-2.6.B.13.B, Part II.

“*Assisted Living Facility*” As defined in section 1-2.6.B.~~12~~.B, Part I.  13B

“*Adult Day Care Centers*” As defined in section 1-2.6.B.13.B, Part III

“*Community Residential Home*” As defined in section 1-2.6.B.13.A.”

Section 7. 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 8. Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

Section 9. Codification. The provisions of this ordinance shall become part of the land development code of the Town of Malabar.

Section 10. This Ordinance shall become effective immediately upon its adoption.

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

Council Member James Milucky
Council Member Wayne Abare
Council Member Steven (Steve) Rivet
Council Member Dick Korn
Council Member Marisa Acquaviva

Aye
Aye
Aye
Aye
Aye

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 3rd day of February, 2014.

Town of Malabar
no signature - veto by Mayor
Carl A. Beatty, Mayor

First Reading 1/6/14 PASSED 5/0
Second Reading 2/3/14
Vetoed by Mayor 2/12/14
Council Vote to Override 3/3/14

Results:

Jim Milucky Aye
Wayne Abare Aye
Steve Rivet Aye
Dick Korn Aye
Marisa Acquaviva Aye

Ordinance adopted / fails (circle one)



TOWN OF MALABAR

By:

Steve Rivet
Steve Rivet, Council Chair

ATTEST:

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

Approved as to form and content:

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

Chapter 400

(s. 400.980)

PART X
HEALTH CARE CLINIC ACT
(ss. 400.990-400.995)

PART XI
TRANSITIONAL LIVING FACILITIES
(ss. 400.997-400.9986)

PART I
LONG-TERM CARE FACILITIES:
OMBUDSMAN PROGRAM

- 400.0060 Definitions.
- 400.0061 Legislative findings and intent; long-term care facilities.
- 400.0063 Establishment of the State Long-Term Care Ombudsman Program; designation of ombudsman and legal advocate.
- 400.0065 State Long-Term Care Ombudsman Program; duties and responsibilities.
- 400.0067 State Long-Term Care Ombudsman Council; duties; membership.
- 400.0069 Long-term care ombudsman districts; local long-term care ombudsman councils; duties; appointment.
- 400.0070 Conflicts of interest.
- 400.0071 State Long-Term Care Ombudsman Program complaint procedures.
- 400.0073 State and local ombudsman council investigations.
- 400.0074 Local ombudsman council onsite administrative assessments.
- 400.0075 Complaint notification and resolution procedures.
- 400.0077 Confidentiality.
- 400.0078 Citizen access to State Long-Term Care Ombudsman Program services.
- 400.0079 Immunity.
- 400.0081 Access to facilities, residents, and records.
- 400.0083 Interference; retaliation; penalties.
- 400.0087 Department oversight; funding.
- 400.0089 Complaint data reports.
- 400.0091 Training.

400.0060 Definitions.—When used in this part, unless the context clearly dictates otherwise, the term:

- (1) “Administrative assessment” means a review of conditions in a long-term care facility which impact the rights, health, safety, and welfare of residents with the purpose of noting needed improvement and making recommendations to enhance the quality of life for residents.
- (2) “Agency” means the Agency for Health Care Administration.
- (3) “Department” means the Department of Elderly Affairs.
- (4) “District” means a geographical area designated by the state ombudsman in which individuals certified as ombudsmen carry out the duties of the State Long-Term Care Ombudsman Program. A district may have one or more local councils.

(5) "Local council" means a local long-term care ombudsman council designated by the ombudsman pursuant to s. 400.0069. Local councils are also known as district long-term care ombudsman councils or district councils.

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

(7) "Office" means the Office of the State Long-Term Care Ombudsman Program created by s. 400.0063.

(8) "Ombudsman" means an individual who has been certified by the state ombudsman as meeting the requirements of ss. 400.0069, 400.0070, and 400.0091.

(9) "Representative of the State Long-Term Care Ombudsman Program" means the state ombudsman, an employee of the state or district office certified as an ombudsman, or an individual certified as an ombudsman serving on the state or a local council.

(10) "Resident" means an individual 18 years of age or older who resides in a long-term care facility.

(11) "Secretary" means the Secretary of Elderly Affairs.

(12) "State council" means the State Long-Term Care Ombudsman Council created by s. 400.0067.

(13) "State ombudsman" means the State Long-Term Care Ombudsman, who is the individual appointed by the Secretary of Elderly Affairs to head the State Long-Term Care Ombudsman Program.

(14) "State ombudsman program" means the State Long-Term Care Ombudsman Program operating under the direction of the State Long-Term Care Ombudsman.

History.—ss. 1, 30, ch. 93-177; s. 4, ch. 95-210; s. 1, ch. 2006-121; s. 1, ch. 2015-31.

400.0061 Legislative findings and intent; long-term care facilities.—

(1) The Legislature finds that conditions in long-term care facilities in this state are such that the rights, health, safety, and welfare of residents are not fully ensured by rules of the Department of Elderly Affairs or the Agency for Health Care Administration or by the good faith of owners or operators of long-term care facilities. Furthermore, there is a need for a formal mechanism whereby a long-term care facility resident, a representative of a long-term care facility resident, or any other concerned citizen may make a complaint against the facility or its employees or against other persons who are in a position to restrict, interfere with, or threaten the rights, health, safety, or welfare of a long-term care facility resident. The Legislature finds that concerned citizens are often more effective advocates for the rights of others than governmental agencies. The Legislature further finds that in order to be eligible to receive an allotment of funds authorized and appropriated under the federal Older Americans Act, the state must establish and operate an Office of State Long-Term Care Ombudsman, to be headed by the State Long-Term Care Ombudsman, and carry out a long-term care ombudsman program.

(2) It is the intent of the Legislature, therefore, to use voluntary citizen ombudsman councils under the leadership of the State Long-Term Care Ombudsman and, through them, to operate a state ombudsman program, which shall, without interference by any executive agency, undertake to discover, investigate, and determine the presence of conditions or individuals that constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. To ensure that the effectiveness and efficiency of such investigations are not impeded by advance notice or delay, the Legislature intends that the representatives of the State Long-Term Care Ombudsman Program not be required to obtain warrants in order to enter into or conduct investigations or onsite administrative assessments of long-term care facilities. It is the further intent of the Legislature that the environment in long-term care facilities be conducive to the dignity and independence of residents and that investigations by representatives of the State Long-Term Care Ombudsman Program shall further the enforcement of laws, rules, and regulations that safeguard the health, safety, and welfare of residents.

Select Year:

The 2015 Florida Statutes

Title XXX
SOCIAL WELFARE

Chapter 429
ASSISTED CARE COMMUNITIES
CHAPTER 429
ASSISTED CARE COMMUNITIES

[View Entire Chapter](#)

PART I
ASSISTED LIVING FACILITIES
(ss. 429.01-429.55)



PART II
ADULT FAMILY-CARE HOMES
(ss. 429.60-429.87)

PART III
ADULT DAY CARE CENTERS
(ss. 429.90-429.931)

PART I
ASSISTED LIVING FACILITIES

- 429.01 Short title; purpose.
- 429.02 Definitions.
- 429.04 Facilities to be licensed; exemptions.
- 429.07 License required; fee.
- 429.075 Limited mental health license.
- 429.08 Unlicensed facilities; referral of person for residency to unlicensed facility; penalties.
- 429.11 Initial application for license; provisional license.
- 429.12 Sale or transfer of ownership of a facility.
- 429.14 Administrative penalties.
- 429.17 Expiration of license; renewal; conditional license.
- 429.174 Background screening.
- 429.176 Notice of change of administrator.
- 429.177 Patients with Alzheimer's disease or other related disorders; certain disclosures.
- 429.178 Special care for persons with Alzheimer's disease or other related disorders.
- 429.18 Disposition of fees and administrative fines.
- 429.19 Violations; imposition of administrative fines; grounds.
- 429.195 Rebates prohibited; penalties.
- 429.20 Certain solicitation prohibited; third-party supplementation.

- 429.22 Receivership proceedings.
- 429.23 Internal risk management and quality assurance program; adverse incidents and reporting requirements.
- 429.24 Contracts.
- 429.255 Use of personnel; emergency care.
- 429.256 Assistance with self-administration of medication.
- 429.26 Appropriateness of placements; examinations of residents.
- 429.27 Property and personal affairs of residents.
- 429.275 Business practice; personnel records; liability insurance.
- 429.28 Resident bill of rights.
- 429.29 Civil actions to enforce rights.
- 429.293 Presuit notice; investigation; notification of violation of residents' rights or alleged negligence; claims evaluation procedure; informal discovery; review; settlement offer; mediation.
- 429.294 Availability of facility records for investigation of resident's rights violations and defenses; penalty.
- 429.295 Certain provisions not applicable to actions under this part.
- 429.296 Statute of limitations.
- 429.297 Punitive damages; pleading; burden of proof.
- 429.298 Punitive damages; limitation.
- 429.31 Closing of facility; notice; penalty.
- 429.34 Right of entry and inspection.
- 429.35 Maintenance of records; reports.
- 429.41 Rules establishing standards.
- 429.42 Pharmacy and dietary services.
- 429.44 Construction and renovation; requirements.
- 429.445 Compliance with local zoning requirements.
- 429.47 Prohibited acts; penalties for violation.
- 429.49 Resident records; penalties for alteration.
- 429.52 Staff training and educational programs; core educational requirement.
- 429.53 Consultation by the agency.
- 429.54 Collection of information; local subsidy.
- 429.55 Consumer information website.

429.01 Short title; purpose.—

(1) This act may be cited as the "Assisted Living Facilities Act."

(2) The purpose of this act is to promote the availability of appropriate services for elderly persons and adults with disabilities in the least restrictive and most homelike environment, to encourage the development of facilities that promote the dignity, individuality, privacy, and decisionmaking ability of such persons, to provide for the health, safety, and welfare of residents of assisted living facilities in the state, to promote continued improvement of such facilities, to encourage the development of innovative and affordable facilities particularly for persons with low to moderate incomes, to ensure that all agencies of the state cooperate in the protection of such residents, and to ensure that needed economic, social, mental health, health, and leisure services are made available to residents of such facilities through the efforts of the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Children and Families, the Department of Health, assisted living facilities,

and other community agencies. To the maximum extent possible, appropriate community-based programs must be available to state-supported residents to augment the services provided in assisted living facilities. The Legislature recognizes that assisted living facilities are an important part of the continuum of long-term care in the state. In support of the goal of aging in place, the Legislature further recognizes that assisted living facilities should be operated and regulated as residential environments with supportive services and not as medical or nursing facilities. The services available in these facilities, either directly or through contract or agreement, are intended to help residents remain as independent as possible. Regulations governing these facilities must be sufficiently flexible to allow facilities to adopt policies that enable residents to age in place when resources are available to meet their needs and accommodate their preferences.

(3) The principle that a license issued under this part is a public trust and a privilege and is not an entitlement should guide the finder of fact or trier of law at any administrative proceeding or in a court action initiated by the Agency for Health Care Administration to enforce this part.

History.—ss. 1, 2, ch. 75-233; ss. 12, 13, ch. 80-198; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; s. 2, ch. 87-371; s. 2, ch. 91-263; s. 28, ch. 92-33; ss. 1, 38, 39, ch. 93-216; s. 6, ch. 95-210; s. 46, ch. 95-418; s. 122, ch. 99-8; s. 2, ch. 2006-197; s. 243, ch. 2014-19.

Note.—Former s. 400.401.

429.02 Definitions.—When used in this part, the term:

- (1) “Activities of daily living” means functions and tasks for self-care, including ambulation, bathing, dressing, eating, grooming, and toileting, and other similar tasks.
- (2) “Administrator” means an individual at least 21 years of age who is responsible for the operation and maintenance of an assisted living facility.
- (3) “Agency” means the Agency for Health Care Administration.
- (4) “Aging in place” or “age in place” means the process of providing increased or adjusted services to a person to compensate for the physical or mental decline that may occur with the aging process, in order to maximize the person’s dignity and independence and permit them to remain in a familiar, noninstitutional, residential environment for as long as possible. Such services may be provided by facility staff, volunteers, family, or friends, or through contractual arrangements with a third party.
- (5) “Assisted living facility” means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.
- (6) “Chemical restraint” means a pharmacologic drug that physically limits, restricts, or deprives an individual of movement or mobility, and is used for discipline or convenience and not required for the treatment of medical symptoms.
- (7) “Community living support plan” means a written document prepared by a mental health resident and the resident’s mental health case manager in consultation with the administrator of an assisted living facility with a limited mental health license or the administrator’s designee. A copy must be provided to the administrator. The plan must include information about the supports, services, and special needs of the resident which enable the resident to live in the assisted living facility and a method by which facility staff can recognize and respond to the signs and symptoms particular to that resident which indicate the need for professional services.
- (8) “Cooperative agreement” means a written statement of understanding between a mental health care provider and the administrator of the assisted living facility with a limited mental health license in

which a mental health resident is living. The agreement must specify directions for accessing emergency and after-hours care for the mental health resident. A single cooperative agreement may service all mental health residents who are clients of the same mental health care provider.

(9) "Department" means the Department of Elderly Affairs.

(10) "Emergency" means a situation, physical condition, or method of operation which presents imminent danger of death or serious physical or mental harm to facility residents.

(11) "Extended congregate care" means acts beyond those authorized in subsection (17) that may be performed pursuant to part I of chapter 464 by persons licensed thereunder while carrying out their professional duties, and other supportive services which may be specified by rule. The purpose of such services is to enable residents to age in place in a residential environment despite mental or physical limitations that might otherwise disqualify them from residency in a facility licensed under this part.

(12) "Guardian" means a person to whom the law has entrusted the custody and control of the person or property, or both, of a person who has been legally adjudged incapacitated.

(13) "Limited nursing services" means acts that may be performed by a person licensed under part I of chapter 464. Limited nursing services shall be for persons who meet the admission criteria established by the department for assisted living facilities and shall not be complex enough to require 24-hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints.

(14) "Managed risk" means the process by which the facility staff discuss the service plan and the needs of the resident with the resident and, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact, in such a way that the consequences of a decision, including any inherent risk, are explained to all parties and reviewed periodically in conjunction with the service plan, taking into account changes in the resident's status and the ability of the facility to respond accordingly.

(15) "Mental health resident" means an individual who receives social security disability income due to a mental disorder as determined by the Social Security Administration or receives supplemental security income due to a mental disorder as determined by the Social Security Administration and receives optional state supplementation.

(16) "Office" has the same meaning as in s. 400.0060.

(17) "Personal services" means direct physical assistance with or supervision of the activities of daily living and the self-administration of medication and other similar services which the department may define by rule. "Personal services" shall not be construed to mean the provision of medical, nursing, dental, or mental health services.

(18) "Physical restraint" means a device which physically limits, restricts, or deprives an individual of movement or mobility, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, and a posey restraint. The term "physical restraint" shall also include any device which was not specifically manufactured as a restraint but which has been altered, arranged, or otherwise used for this purpose. The term shall not include bandage material used for the purpose of binding a wound or injury.

(19) "Relative" means an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of an owner or administrator.

(20) "Resident" means a person 18 years of age or older, residing in and receiving care from a facility.

(21) "Resident's representative or designee" means a person other than the owner, or an agent or employee of the facility, designated in writing by the resident, if legally competent, to receive notice of changes in the contract executed pursuant to s. 429.24; to receive notice of and to participate in meetings between the resident and the facility owner, administrator, or staff concerning the rights of the resident; to assist the resident in contacting the State Long-Term Care Ombudsman Program or local ombudsman council if the resident has a complaint against the facility; or to bring legal action on behalf of the resident pursuant to s. 429.29.

(22) "Service plan" means a written plan, developed and agreed upon by the resident and, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact, if any, and the administrator or designee representing the facility, which addresses the unique physical and psychosocial needs, abilities, and personal preferences of each resident receiving extended congregate care services. The plan shall include a brief written description, in easily understood language, of what services shall be provided, who shall provide the services, when the services shall be rendered, and the purposes and benefits of the services.

(23) "Shared responsibility" means exploring the options available to a resident within a facility and the risks involved with each option when making decisions pertaining to the resident's abilities, preferences, and service needs, thereby enabling the resident and, if applicable, the resident's representative or designee, or the resident's surrogate, guardian, or attorney in fact, and the facility to develop a service plan which best meets the resident's needs and seeks to improve the resident's quality of life.

(24) "Supervision" means reminding residents to engage in activities of daily living and the self-administration of medication, and, when necessary, observing or providing verbal cuing to residents while they perform these activities.

(25) "Supplemental security income," Title XVI of the Social Security Act, means a program through which the Federal Government guarantees a minimum monthly income to every person who is age 65 or older, or disabled, or blind and meets the income and asset requirements.

(26) "Supportive services" means services designed to encourage and assist aged persons or adults with disabilities to remain in the least restrictive living environment and to maintain their independence as long as possible.

(27) "Twenty-four-hour nursing supervision" means services that are ordered by a physician for a resident whose condition requires the supervision of a physician and continued monitoring of vital signs and physical status. Such services shall be: medically complex enough to require constant supervision, assessment, planning, or intervention by a nurse; required to be performed by or under the direct supervision of licensed nursing personnel or other professional personnel for safe and effective performance; required on a daily basis; and consistent with the nature and severity of the resident's condition or the disease state or stage.

History.—s. 3, ch. 75-233; ss. 12, 14, ch. 80-198; s. 2, ch. 81-318; ss. 6, 19, ch. 82-148; ss. 41, 79, 83, ch. 83-181; s. 4, ch. 85-145; s. 3, ch. 87-371; s. 10, ch. 89-294; s. 3, ch. 91-263; s. 1, ch. 93-209; ss. 2, 38, 39, ch. 93-216; s. 7, ch. 95-210; ss. 1, 22, 47, ch. 95-418; s. 2, ch. 97-82; s. 1, ch. 98-80; s. 98, ch. 2000-318; ss. 2, 29, ch. 2006-197; s. 138, ch. 2007-230; s. 34, ch. 2015-31; s. 5, ch. 2015-126.

Note.—Former s. 400.402.

429.04 Facilities to be licensed; exemptions.—

(1) For the administration of this part, facilities to be licensed by the agency shall include all assisted living facilities as defined in this part.

(2) The following are exempt from licensure under this part:

- (a) Any facility, institution, or other place operated by the Federal Government or any agency of the Federal Government.
- (b) Any facility or part of a facility licensed under chapter 393 or chapter 394.
- (c) Any facility licensed as an adult family-care home under part II.
- (d) Any person who provides housing, meals, and one or more personal services on a 24-hour basis in the person's own home to not more than two adults who do not receive optional state supplementation. The person who provides the housing, meals, and personal services must own or rent the home and reside therein.
- (e) Any home or facility approved by the United States Department of Veterans Affairs as a residential care home wherein care is provided exclusively to three or fewer veterans.
- (f) Any facility that has been incorporated in this state for 50 years or more on or before July 1, 1983, and the board of directors of which is nominated or elected by the residents, until the facility is sold or its ownership is transferred; or any facility, with improvements or additions thereto, which has existed and operated continuously in this state for 60 years or more on or before July 1, 1989, is directly or indirectly owned and operated by a nationally recognized fraternal organization, is not open to the public, and accepts only its own members and their spouses as residents.
- (g) Any facility certified under chapter 651, or a retirement community, may provide services authorized under this part or part III of chapter 400 to its residents who live in single-family homes, duplexes, quadruplexes, or apartments located on the campus without obtaining a license to operate an assisted living facility if residential units within such buildings are used by residents who do not require staff supervision for that portion of the day when personal services are not being delivered and the owner obtains a home health license to provide such services. However, any building or distinct part of a building on the campus that is designated for persons who receive personal services and require supervision beyond that which is available while such services are being rendered must be licensed in accordance with this part. If a facility provides personal services to residents who do not otherwise require supervision and the owner is not licensed as a home health agency, the buildings or distinct parts of buildings where such services are rendered must be licensed under this part. A resident of a facility that obtains a home health license may contract with a home health agency of his or her choice, provided that the home health agency provides liability insurance and workers' compensation coverage for its employees. Facilities covered by this exemption may establish policies that give residents the option of contracting for services and care beyond that which is provided by the facility to enable them to age in place. For purposes of this section, a retirement community consists of a facility licensed under this part or under part II of chapter 400, and apartments designed for independent living located on the same campus.
- (h) Any residential unit for independent living which is located within a facility certified under chapter 651, or any residential unit which is colocated with a nursing home licensed under part II of chapter 400 or colocated with a facility licensed under this part in which services are provided through an outpatient clinic or a nursing home on an outpatient basis.

History.—ss. 4, 5, ch. 75-233; ss. 12, 15, ch. 80-198; s. 2, ch. 81-318; ss. 42, 79, 83, ch. 83-181; s. 4, ch. 87-371; s. 4, ch. 91-263; ss. 3, 38, 39, ch. 93-216; s. 19, ch. 93-268; s. 2, ch. 94-206; s. 1055, ch. 95-148; s. 8, ch. 95-210; s. 2, ch. 98-80; s. 1, ch. 98-148; ss. 2, 30, ch. 2006-197.

Note.—Former s. 400.404.

429.07 License required; fee.—

- (1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: September 9, 2015

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

SUBJECT: Discuss 500 ft. Radius notification for Public Hearings

BACKGROUND/HISTORY:

The PZ Board would like to discuss the radius notification for Public Hearings to see if the radius area needs to be extended more than 500 feet. I have attached the surrounding municipality's requirements for your review.

ATTACHMENTS:

- Surrounding Municipalities Radius Requirements.
- Town of Malabar Radius Requirements

ACTION OPTIONS:

Discussion

SURROUNDING MUNICIPALITIES **RADIUS REQUIREMENTS**

- **City of Palm Bay (500 ft.)**
- **Indian Harbour Beach (250 ft.)**
- **City of Melbourne (500 ft.)**
- **Satellite Beach (250 ft.)**

City of Palm Bay

Costs that may be incurred by the city related to a continuance requested by and granted to an applicant by the Council or a board shall be imposed against the applicant in the amount equal to the additional costs expended by the city. Failure by the applicant to pay the costs within seven (7) calendar days after written notification from the city shall render the matter as a withdrawal under this chapter.

(Ord. 2006-57, passed 6-1-06)

§ 51.07 PUBLIC HEARING NOTICES.

(A) *Newspaper publication.* Notice of all public hearings shall be advertised in a newspaper of general circulation within the city as required by Florida Statutes.

(B) *Courtesy mailout.*

(1) All property owners within five hundred (500) feet of property which is the subject of a rezoning, future land use map amendment, conditional use, zoning variance, architectural style exception, preliminary subdivision or final subdivision, shall be transmitted a courtesy notice by mail stating: the date, time and place of the hearing; the type of petition to be considered at the hearing; and the location where the petition may be reviewed.

(2) The names of the property owners shall be as listed in the most current edition of the Brevard County Tax Rolls. Failure to mail or the failure of a property owner to receive a courtesy notice shall not affect any action or proceedings taken on the subject matter.

(3) When a property within these five hundred (500) foot distances is included in a legally constituted property owners', homeowners', or condominium association boundary, a courtesy notice will also be provided to that association based on the latest contact information available from the Office of the City Clerk.

(C) *Signs posted on the subject property.*

(1) All properties that are subject to a rezoning, future land use map amendment, conditional use, zoning variance, architectural style exception, preliminary subdivision or final subdivision, shall be posted by the owner/applicant, at their expense, with a sign(s) meeting the following criteria:

(a) Sign(s) shall have minimum dimensions of forty-eight inches by forty-eight inches (48" x 48"). Sign(s) pertaining to a single-family residence shall be a minimum of twenty-four inches by twenty-four inches (24" x 24").

(b) The bottom of the sign(s) shall be placed a minimum of thirty-six inches (36") above grade.

(c) Sign(s) shall be located as close to the front property line (and side corner property line on corner lots) as possible, or in other locations approved by the Growth Management Director, in order to achieve maximum visibility.

(d) Corner properties shall require two (2) such signs, one each facing both streets.

(e) Sign(s) shall include the date, time and place of the public hearing, applicant's name, and the specific request(s).

(f) Sign(s) shall be posted ten (10) days prior to the advertised public hearing for the Planning and Zoning Board meeting at which the matter is to be considered and shall remain in place until after the final public hearing on the matter by the City Council. Such signs shall be removed within forty-eight (48) hours of the conclusion of the final public hearing on the matter.

(D) *Large area rezonings and future land use map amendments.* Administrative rezonings or administrative Future Land Use Map amendments shall meet the requirements of F.S. § 166.041 (3)(c), in lieu of the requirements contained in this section.

(E) *Failure to post sign(s).*

(1) Failure to post the sign(s) within the time frame specified within division (C) of this section shall result in the continuance of the public hearing. The matter shall be rescheduled in accordance with § 51.03(B) above. The applicant shall pay a fee equaling one-half (1/2) the initial filing fee.

(2) Upon the continuance of a public hearing, failure to post the sign(s) within the time frame specified or to pay the fee within three (3) working days of the date the public hearing is rescheduled, shall render the matter as a withdrawal under this chapter.

(Ord. 2006-57, passed 6-1-06; Am. Ord. 2009-35, passed 5-21-09)

Indian Harbour Beach

Sec. 1. - General requirements.

The city council may permit a conditional land use as provided herein, by resolution granting permission for such use after a public hearing before the planning and zoning board, at which persons interested, shall be accorded an opportunity to be heard. At such hearing the planning and zoning board may recommend such reasonable conditions that it deems necessary to, or desirable for, the public interest. Any resolution permitting conditional land use as provided herein shall be construed as permitting only the specifically named or described conditional land use, and not any other conditional land use. Any property or premises designated upon the zoning map by the letter symbol "C" alone shall be restricted to the specific conditional land use permitted and may be used for no other use whatsoever. Any property or premises designated by the letter symbol "C" before and in conjunction with the letter symbol for a residential, commercial or industrial district shall be restricted to use for that particular conditional land use specified or the use permitted in the designated use district, i.e., the letters "C-R shall denote a conditional land use permitted in an R-1AAA use district and the premises so designated may be used only for the specific conditional land use permitted or for single family residences as provided in that use district. In granting any conditional land use, the city council shall prescribe any reasonable conditions that it deems necessary to, or desirable for, the public interest. A conditional land use shall not be permitted by the city council unless and until:

- (A) A written application for such conditional land use is submitted in duplicate, giving the lot, block and addition, or other legal description of the lands desired for such conditional use; the names and addresses of all the owners of said land, the conditional land use desired and the reason for requesting the conditional land use, and shall contain a preliminary site plan per Chapter 104 of the city's Land Development Regulations. The application shall be signed and acknowledged by each and every owner of said lands.
- (B) All applications for a conditional land use shall be submitted to the planning and zoning board for study and written recommendations by said board, which recommendations shall become a part of the official record of the city in connection with said application.
- (C) Upon receipt of the application, a date shall be set for a public hearing before the planning and zoning board at which parties in interest and citizens shall have an opportunity to be heard. The city clerk shall cause a copy of the notice to be mailed, in accordance with subsection (D), to property owners within a two-hundred-fifty-foot radius of the boundaries of the subject property, at least fifteen (15) days prior to the date of such hearing. The applicant shall be responsible for providing the city a list of such addresses at least thirty (30) days prior to the date of the hearing and a copy of said notice shall be posted on the property for which a conditional land use is sought and at the city hall. All notices shall state in substance the conditional land use desired and the reason for requesting the conditional land use, and a legal description of the property. A copy of said notice shall be sent by certified mail to the owner of the property for which a conditional land use is sought, or his agent.
- (D) Individual notice of the consideration thereof shall be given to the owners of all property in such affected area in person or by regular mail; provided however, that failure of an owner to receive such individual notice shall not affect any action or proceedings taken hereunder.
- (E)

At the time and place set forth in the notice, the planning and zoning board shall conduct public hearing to consider such request for the conditional land use desired. Any party may appear in person or be represented by counsel at the public hearing. At the time of said public hearing, and in no event later than one (1) week from the date thereof, the planning and zoning board shall forward the application for a conditional land use to the city council together with their written recommendations. The city council shall hold its own public hearing for the purpose of gathering the facts concerning the application and the recommendations of the planning and zoning board. The city council shall act upon the application no later than the second regular council meeting following the receipt of the written recommendations from the planning and zoning board, unless a delay is requested by the applicant.

(Ord. No. 2011-4, § 6, 10-25-11)

City of Melbourne

Sec. 4.13. - Notice of public hearings.

- (a) *Notice by state law.* All notices of any public hearings required hereunder shall be as provided by Florida law, unless otherwise provided herein.
- (b) *Courtesy notice.* The following requirements shall apply to any proposed change to the future land use map or site specific policies affecting an individual parcel of land, all as set forth in the future land use element of the comprehensive plan:

- 
- (1) A courtesy notice may be mailed to the property owners of record of any parcel of real property or portion thereof within a radius of 500 feet of all boundaries of the property subject to the amendment. Failure to mail the courtesy notice, failure to include all information in correct form or substance as required herein, or failure of the intended recipient to receive the notice, shall not affect any action or proceeding taken to amend the comprehensive plan.
 - (2) The property owners to whom the courtesy notice may be mailed shall be those property owners listed on the latest ad valorem tax rolls prepared by Brevard County and on file at city hall at the time of mailing of the courtesy notice. Mailing shall be by first class, United States mail, postage prepaid. Notice shall be deemed to have been given when the courtesy notice is deposited in the United States mail.
 - (3) The courtesy notice shall state the general nature of the proposed amendment, as well as any proposed text, general location of the property subject to the proposed amendment, time, date, and place of the proposed public hearing by the local planning agency/planning and zoning board and the projected date for the first public hearing by the city council, and the fact that any individual desiring to appeal any action taken at said hearing may need to ensure that a verbatim transcript is made of hearing(s) relating to the proposed amendment.
 - (4) The courtesy notice shall be mailed at least 15 days prior to the date of the public hearing by the local planning agency/planning and zoning board. The courtesy notice shall be prepared and mailed by the city at the expense of the applicant for the proposed plan amendment.

(Ord. No. 92-39, § 15, 9-8-1992)

Sate llite Beach

Sec. 30-209. - Duties.

(a) *Duties.* The board shall have the following duties:

- (1) Advise the city council on all matters governed by this chapter or otherwise required by law.
- (2) Conduct hearings on proposed rezoning requests, subdivision plats, site plans except for single-family and duplex residential units, conditional uses, and amendments to this chapter.
- (3) In accordance with F.S. § 163.3164, serve as the city's land development regulation commission.

(b) *Eligible applicants.* Any person or entity, including the city council and any department or board of the city, may file an application with the building department to request approval of any of the actions in (a)(2) of this section.

(c) *Public hearings.*

- (1) The building official shall refer all applications to the board, which shall hold a public hearing to consider the proposed action no later than 60 days from the date the application was first received by the building department.
- (2) All city departments shall provide written comments and recommendations to the board at least seven days before the hearing.
- (3) The board shall review each application to determine if it meets the requirements of this chapter and the city's comprehensive plan. For rezoning requests, the board shall consider the effect of the change on the subject property and surrounding properties and the amount of undeveloped land in the general area and in the city having the same classification as that requested.
- (4) The board shall report its findings and recommendations to the city council.
- (5) Notice of public hearings.

a. *Required notices.* At least 15 days before the public hearing before the board and the subsequent hearing before the city council, notice of the hearing shall be posted at city hall and:

1. Posted on the subject property, for requests for rezoning, conditional uses, and site-plan and subdivision plat approvals;
2. Published in a newspaper of general circulation within the city, for requests for rezoning, conditional uses, and amendments to this chapter; and
3. Sent by certified mail to the subject property owner or owner's agent or the applicant as applicable, for all requested actions.

b. *Courtesy notices.*

1. Property owners. For all requests except amendments to this chapter, at least 15 days before the public hearings before both the board and the city council, the city shall mail a courtesy notice to the owners of record, as maintained by the tax assessor, of all property located within 250 feet of the subject property.

2.



Adjacent communities. For rezoning requests, at least 15 days before the public hearings before both the board and the city council, when a zoning district boundary proposed to be changed lies within 250 feet of an adjoining incorporated or unincorporated area, the city shall mail a courtesy notice to the applicable governing body.

3. For all requested actions, failure to mail or receive any courtesy notice shall not affect any action or proceeding taken under this section.
- c. For all requested actions, the applicant shall pay the cost of providing all notices.

TOWN OF MALABAR
RADIUS INFORMATION

- f. Not injurious to the public welfare or intent of Code. Variance granted shall be in harmony with the general intent and purpose of the comprehensive plan or Code and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
 - g. Conditions and safeguards may be imposed. Variance granted may have conditions imposed in conformity of Chapter 163 Florida Statutes, the Comprehensive Plan or the Land Development Code and shall be written into the final order before applicant signs and the document is recorded at the Brevard County Clerk of Courts.
 - h. Time limit may be imposed.
 - i. No "use" variance permitted in specified instances. Under no circumstances shall the board of adjustment grant a variance to permit a use not generally or by special exception permitted in the zoning district involved or any use expressly or by implication prohibited in the zoning district involved. Existence of nonconforming use of neighboring lands, structures or buildings in the same zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance.
- (6) *Procedures for processing matters before the board of adjustment.*
- a. Any aggrieved person or any person affected by any decision of the building official or succeeding administrative officer may appeal the decision. Such appeals shall be submitted within thirty (30) days of such decision and shall be heard within sixty (60) days. The appeal shall be submitted on an application form provided by the town. In addition, the applicant must submit a radius package produced by Brevard County listing all properties within five hundred (500) feet of the property involved in the application. The applicant may also include a cover letter explaining the reasons for the appeal or request. These all become part of the hearing package. The administrative officer, upon notification of said appeal, shall transmit to the secretary of the board all papers or materials constituting the record upon which the action appealed from was taken. These shall also become part of the hearing package for the board of adjustment. Before the hearing package is assembled, the application shall be reviewed by the appropriate town staff and a written recommendation shall be submitted and shall be part of the record of the application.
 - b. *Hearing of appeal, notice required.* All meetings of the board of adjustment are held only after public notice has been given providing the date, time and place of the meeting; name of the board holding the meeting; a brief description of the matter to be considered; and a legal description of the property or other appropriate information identifying the property involved. The meeting notice shall be published at least two (2) times in a newspaper of general circulation in the town, the first publication of which shall be at least fifteen (15) days before the hearing. The board secretary shall also mail a copy of the notice to all property



owners within five hundred (500) feet of the property involved in the application. If the property involved in the application is a condominium association or a home owners association, the required notice shall be sent by certified mail to the association and by regular mail to the individual owners. The applicant is required to post the property involved in the application with a sign of approximately a total of two (2) square feet placed so as to be visible from the adjacent dedicated public road right-of-way, or private access easement. The sign should contain the same information as the notice.

- (7) *Judicial review of decisions of board of adjustment.* An applicant aggrieved by any decision of the board of adjustment may apply to the circuit court in the judicial circuit where the board of adjustment is located for judicial relief. Said application must be made within thirty (30) days after the decision by the board of adjustment. The election of remedies shall lie with the appellant.
- (8) See division 1, section 2-211 above for other regulations.

(b) *Fees.* The town council shall establish by resolution the appropriate schedule of fees, charges and expenses and a collection procedure for appeals, action requests and other matters pertaining to the board of adjustment. The board of adjustment shall have the authority to expend any funds so appropriated by the town council for purposes and activities authorized herein.

(c) *Authority, power and rules of procedure.*

- (1) *Authority.* In no instance shall the board grant a use of land in any zoning district other than those uses allowed in such district as a permitted use or a conditional use.
- (2) *Duties and powers.* The board of adjustment shall have the following powers:
 - a. *Hear and decide administrative appeals.* Hear and decide appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any land development code or regulation adopted pursuant to this act.
 - b. *Hear and decide requests for variances.* Hear and authorize upon appeal such variance from the terms of the ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary and undue hardship.

"Variance" as used in connection with the provisions of this chapter dealing with zoning, means a modification of the Land Development Code regulations when such variance will not be contrary to the public interest and when, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. A variance is authorized only for area and size of structure or size of yards and open spaces, and may not include a variance for any use or a density increase contrary to that permitted in the respective districts. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance

Section 1-12.6. - Procedures for public hearings.

Due public notice shall be provided pursuant to § 166.041 F.S.

Select Year:

The 2015 Florida Statutes

[Title XII](#)
MUNICIPALITIES

[Chapter 166](#)
MUNICIPALITIES

[View Entire Chapter](#)

166.041 Procedures for adoption of ordinances and resolutions.—

(1) As used in this section, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(a) “Ordinance” means an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law.

(b) “Resolution” means an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body.

(2) Each ordinance or resolution shall be introduced in writing and shall embrace but one subject and matters properly connected therewith. The subject shall be clearly stated in the title. No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection.

(3)(a) Except as provided in paragraph (c), a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(b) The governing body of a municipality may, by a two-thirds vote, enact an emergency ordinance without complying with the requirements of paragraph (a) of this subsection. However, no emergency ordinance or resolution shall be enacted which establishes or amends the actual zoning map designation of a parcel or parcels of land or that changes the actual list of permitted, conditional, or prohibited uses within a zoning category. Emergency enactment procedures for land use plans adopted pursuant to part II of chapter 163 shall be pursuant to that part.

(c) Ordinances initiated by other than the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to paragraph (a). Ordinances that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances initiated by the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

1. In cases in which the proposed ordinance changes the actual zoning map designation for a parcel or parcels of land involving less than 10 contiguous acres, the governing body shall direct the clerk of the governing body to notify by mail each real property owner whose land the municipality will redesignate by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance as it affects that

property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the governing body. The governing body shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.

2. In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the governing body shall provide for public notice and hearings as follows:

a. The local governing body shall hold two advertised public hearings on the proposed ordinance. At least one hearing shall be held after 5 p.m. on a weekday, unless the local governing body, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

b. The required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper of general paid circulation in the municipality and of general interest and readership in the municipality, not one of limited subject matter, pursuant to chapter 50. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least 5 days a week unless the only newspaper in the municipality is published less than 5 days a week. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The (name of local governmental unit) proposes to adopt the following ordinance: (title of the ordinance).

A public hearing on the ordinance will be held on (date and time) at (meeting place).

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the general area. In addition to being published in the newspaper, the map must be part of the online notice required pursuant to s. 50.0211.

c. In lieu of publishing the advertisement set out in this paragraph, the municipality may mail a notice to each person owning real property within the area covered by the ordinance. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of any public hearing on the proposed ordinance.

(4) A majority of the members of the governing body shall constitute a quorum. An affirmative vote of a majority of a quorum present is necessary to enact any ordinance or adopt any resolution; except that two-thirds of the membership of the board is required to enact an emergency ordinance. On final passage, the vote of each member of the governing body voting shall be entered on the official record of the meeting. All ordinances or resolutions passed by the governing body shall become effective 10 days after passage or as otherwise provided therein.

(5) Every ordinance or resolution shall, upon its final passage, be recorded in a book kept for that purpose and shall be signed by the presiding officer and the clerk of the governing body.

(6) The procedure as set forth herein shall constitute a uniform method for the adoption and enactment of municipal ordinances and resolutions and shall be taken as cumulative to other methods now provided by law for adoption and enactment of municipal ordinances and resolutions. By future ordinance or charter amendment, a municipality may specify additional requirements for the adoption or enactment of ordinances or resolutions or prescribe procedures in greater detail than contained herein. However, a municipality shall not have the power or authority to lessen or reduce the requirements of this section or other requirements as provided by general law.

(7) Five years after the adoption of any ordinance or resolution adopted after the effective date of this act, no cause of action shall be commenced as to the validity of an ordinance or resolution based on the failure to strictly adhere to the provisions contained in this section. After 5 years, substantial compliance with the provisions contained in this section shall be a defense to an action to invalidate an ordinance or resolution for failure to comply with the provisions contained in this section. Without limitation, the common law doctrines of laches and waiver are valid defenses to any action challenging the validity of an ordinance or resolution based on failure to strictly adhere to the provisions contained in this section. Standing to initiate a challenge to the adoption of an ordinance or resolution based on a failure to strictly adhere to the provisions contained in this section shall be limited to a person who was entitled to actual or constructive notice at the time the ordinance or resolution was adopted. Nothing herein shall be construed to affect the standing requirements under part II of chapter 163.

(8) The notice procedures required by this section are established as minimum notice procedures.

History.—s. 1, ch. 73-129; s. 2, ch. 76-155; s. 2, ch. 77-331; s. 1, ch. 83-240; s. 1, ch. 83-301; s. 2, ch. 95-198; s. 5, ch. 95-310; s. 5, ch. 2012-212.

Section 1-12.2. - Board of adjustment.

A. *Procedures for Processing Matters Before the Board.*

1. *Appeal Proceedings.* Appeals to the Board of Adjustment concerning interpretation or administration of this Chapter [Code] may be taken by any aggrieved person or by any person or officer of the governing body of the Town affected by any decision of the Building Official or succeeding administrative officer. Such appeals shall be taken within a reasonable time, not to exceed sixty (60) days (or such lesser period as may be provided by the rules of the Board of Adjustment) after the rendering of the order, requirement, decisions, or determination appealed, by filing with the Building Official or other administrative officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The appeal shall be in the form prescribed by the rules of the Board. The administrative officer from whom the appeal is taken shall, upon notification of the filing and prior to the hearing date, transmit to the Board of Adjustment all papers or materials constituting the record upon which the action appealed from was taken.
2. *Hearing of Appeal, Notice Required.* The Board of Adjustment shall fix a reasonable time for the hearing of appeal, give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. At the hearing any party may appear in person or be represented by an agent or by an attorney at law authorized to practice in the State of Florida. Appellants may be required to assume such reasonable costs in connection with appeals as may be determined by the Town Council through action in setting of fees to be charged for appeals.
3. *Vote Required for Matter Before Board.* The concurring vote of a majority of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter [Code], or to effect any variation in the application of this chapter [Code].
4. *Procedures for Processing Variances.* A variance from the terms of these regulations shall not be granted by the Board of Adjustment unless and until:
 - a. A written application specifying the grounds for the variance is submitted. See Section 1-12.2(D)(2).
 - b. Notice of public hearing shall have been given as identified in Section 1-12.2(E)(8) herein.
 - c. The public hearing shall have been held, with the aggrieved parties appearing in person or represented by an attorney at law authorized to practice in the State of Florida.
 - d. The Board of Adjustment shall have determined that the application is complete and that granting the variance meets the criteria for granting variance and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
5. *Expiration of Variance or Determinations.* Variances and special exceptions shall become void if not exercised within six (6) months of the date granted.
- 6.

Extension of Variance Determinations. Before this six (6) months period has expired, the applicant may make a request to the Board of Adjustment by letter for an additional six (6) months extension. Any further extensions of time shall require a new application to be processed as a new case.

7. *Stay of Proceedings.* An appeal to the Board of Adjustment stays all work on the premises and all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with him, that by reason of facts stated in the certificate, a stay would cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Building Official or administrative official from whom the appeal is taken and on due cause shown.
8. *Public Notice.* All proceedings shall be conducted only after public notice has been given. The public notice shall contain at least the following items:
 - a. The date, time and place of meeting.
 - b. The title of the Board, conducting such meeting.
 - c. A brief description of the matter to be considered.
 - d. A legal description of the property, other appropriate information identifying the property involved.

The giving of public notice of hearing, as herein required, shall be deemed sufficient when a notice is published at least two (2) times in a newspaper of general circulation in the Town, the first publication of which shall be at least fifteen (15) days before the hearing and a copy of such notice is mailed to all property owners, as shown in the records of the County property appraiser, within two hundred (200) feet of the property involved in the application. If the property involved in the application is a condominium, then the required notice shall be by certified mail to the condominium association and by regular mail to the individual owners.

The following additional notice may be provided:

- a. The property to be considered for change may be posted with a sign of approximately a total area of two (2) square feet placed so as to be visible from the adjacent dedicated public road right-of-way, or private access easement.
 - b. The sign should contain the information required above.
9. *Recommendation Filed.* On all proceedings held before the Board of Adjustment, the Building Official or other representative designated by the Town Council shall review the application and file a recommendation on each item. Such recommendations shall be received, heard and filed prior to final action on any item before the Board, and shall be part of the record of the application. (In reference to administrative appeals, a summary explanation shall be filed in place of a recommendation).
- B. *Judicial Review of Decisions of Board of Adjustment.* Any person or persons jointly or severally, aggrieved by any decision of the Board of Adjustment, or any officer, department, Board, commission or Town Council may apply to the circuit court in the judicial circuit where the Board of Adjustment is located for judicial relief within thirty (30) days after the decision by the Board of

Adjustment. Review in the circuit court shall be either by a trial de novo, which shall be governed by the Florida Rules of Civil Procedure, or by petition for writ of certiorari, which shall be governed by the Florida Appellate Rules. The election of remedies shall lie with the appellant.

(Ord. No. 06-09, § 1, 7-17-06; Ord. No. 14-08, § 4, 2-3-14)

Editor's note—

Ord. No. 14-08, § 4, adopted June 16, 2014, redesignated previous Land Development Code subsections 1-12.2 A.—D. as a new Code § 2-240, deleting the material from LDC § 1-12.2 and renumbering subsequent subsections.

Cross reference— Administration, ch. 2.

Section 1-12.8. - Vacate and abandonment.

- A. *Definitions:* For purposes of this Section the following terms shall have the following meanings:
1. *Vacate and abandon* shall mean vacate, abandon, close, renounce, disclaim or any other term that indicates the relinquishment of the Town's right, title or interest in a public right-of-way.
 2. *Public right-of-way* shall mean public road, street, highway, easement, way, thoroughfare.
- B. The Town Council may by resolution vacate and abandon any public right-of-way.
- C. All requests for a vacate and abandonment of any public right-of-way shall be by petition and shall state the name and address of all persons owning property abutting said public right-of-way and shall give a description of the public right-of-way sought to be vacated and abandoned.
- D. Petitions for a vacate and abandonment shall be submitted to the Town at least twenty-one (21) days prior to a regularly scheduled Planning and Zoning Board meeting. Meetings are the second Wednesday of each month. The following information shall be submitted with the petition:
1. List of all property owners within five hundred (500) feet of the total length of the subject public right-of-way. Such list shall be prepared by a county office with access to public records, i.e. property appraiser.
 2. A map of the total area of the public right-of-way and property owners with the area requested to be vacated and abandoned identified.
- E. The petition and all associated documents shall be forwarded to the Building Official for distribution to the appropriate Town staff. Staff shall review the request and determine if any conflict may exist or if there may be any reason that the Town should not grant the request. Written staff comments shall be forwarded to the Building Official within ten (10) working days following receipt of the vacate request.
- F. The Building Official shall present the vacate and abandon request and staff comments to the next regularly scheduled Planning and Zoning Board meeting for consideration and recommendation to the Town Council.
- G. The request and Planning and Zoning Board recommendation shall be forwarded to the Town Council for authorization to proceed.
- H. Before the adoption of any resolution vacating and abandoning any public right-of-way, the Town Clerk shall cause to be published in a newspaper of general circulation in the Town a notice that the Town Council shall hold a public hearing regarding said resolution. Said notice shall be published at least fourteen (14) days prior to the date of said public hearing.
- I. A courtesy copy of the notice shall be mailed to all property owners identified in subparagraph D. above and to all utility companies serving south Brevard County.
- J. Any decision by the Town Council concerning a vacate and abandonment shall be a legislative decision and governed by the fairly debatable standard.
- K. Notice of the adoption of the resolution vacating and abandoning any public right-of-way by the Town Council shall be published one (1) time within thirty (30) days following its adoption in a newspaper of general circulation in the Town.
- L. The proof of publication of notice of the public hearing, the resolution adopted by the Town Council, and the proof of publication of the notice of adoption of the resolution all shall be recorded in the public records of Brevard County after same has been completed.

M. The Town Council shall establish by resolution the appropriate schedule of fees, charges and expenses and a collection procedure.

(Ord. No. 01-06, § 1, 3-4-02)

Section 1-12.9. - Town-initiated vacate and abandonment.

- A. Nothing in this Section shall be construed to limit, abrogate, deny or otherwise impose restrictions on the Town from vacating and abandoning any public right-of-way of the Town. Notwithstanding any provision of this Section the town shall have the absolute legislative right to vacate and abandon any public right-of-way in the Town. Any decision to vacate and abandon any public right-of-way of the Town which was initiated by the Town shall be governed by the fairly debatable standard.
- B. Before the adoption of any resolution vacating and abandoning any public right-of-way, the Town Clerk shall cause to be published in a newspaper of general circulation in the Town a notice that the Town Council shall hold a public hearing regarding said resolution. Said notice shall be published at least fourteen (14) days prior to the date of said public hearing.
-  C. The Town may send a courtesy notice of the Town Council's intent to vacate and abandon any public right-of-way to all property owners within five hundred (500) feet along the said right-of-way to be vacated and abandoned.
- D. Notice of the adoption of the resolution vacating and abandoning any public right-of-way by the Town Council shall be published one (1) time within thirty (30) days following its adoption in a newspaper of general circulation in the Town.

(Ord. No. 01-06, § 1, 3-4-02)

TOWN OF MALABAR
PLANNING AND ZONING
AGENDA ITEM REPORT

AGENDA ITEM NO: 5
Meeting Date: September 9, 2015

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

SUBJECT: Article III- District Provisions Table 1-3.2 Land Use by District Community Facilities- Reference to Churches & “Conditional Uses”

BACKGROUND/HISTORY:

The PZ discussed at the last meeting on 8/26/2015 the “Conditional Use’s” that are listed under the Community Facilities in reference to Churches. They would like to discuss this and suggest changes to this Table.

ATTACHMENTS:

- Table 1-3.2 Land Use by District

ACTION OPTIONS:

Discussion

TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
RESIDENTIAL USES														
Duplex					P	P					P			
Mobile Homes							P							
Multiple Family Dwelling					P	P					P			
Single Family Dwellings	P	P	P	P	P	P	P				P			
COMMUNITY FACILITIES														
Administrative Services														
(Public and Not-for-Profit)														
Child Care Facilities								P	P	P	P		P	
Churches, Synagogues and Other								C			C		C	
Places of Worship	C	C	C	C	C	C		P, A ¹	P	P	P		P	
Clubs and Lodges														
(Not-for-Profit)														
Cultural or Civic Activities									P	P				
Educational Institutions								P	P	P	P		P	
Golf Course Facilities								C, A ¹					C	
Hospital and other Licensed Facilities	C													
Health Care Facilities														
Nursing Homes and Related									C					
Health Care Facilities														
Protective Services						C		C						
Public Parks and Recreation						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
COMMUNITY RESIDENTIAL HOME														
Level 1 (1 to 6 residents/beds)						C								
Level 2 (7 to 14 residents/beds)						C								C
ASSISTED CARE COMMUNITIES														
I Assisted Living Facility														
Level 1 (1 to 5 residents/beds)		C	C	C	C ⁴	C ⁴								
Level 2 (6 to 15 residents/beds)					C ⁴	C ⁴								
Level 3 (16 or more residents/beds)						C ⁴								
II Adult Family-Care Homes														
(1 to 5 residents/beds)		C	C	C	C	C							C	
III Adult Day Care Centers														C
AGRICULTURAL ACTIVITIES														

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													
COMMERCIAL ACTIVITIES														
Adult Activities														
Bars and Lounges										C				
Bed and Breakfast										C				
Business and Professional Offices											P ¹			
Enclosed Commercial Amusement								P	P	P	P	P	P	
Arcade Amusement Center/ Electronic Gaming Establishment										P				
Funeral Homes									P	C ²				
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		
INDUSTRIAL ACTIVITIES														
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												P		
Noncommercial piers, boat slips, and docks														C

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

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

- 1 = Allowing up to 1,000 square feet of a church or educational institution for the housing of a caretaker or security guard serving the church or educational institution. No such use shall be allowed unless administrative approval is granted by the Town.
- 1 Any Bed and Breakfast which is proposed to have more than five (5) living quarters shall only be approved as a conditional use in accordance with Article VI of the Land Development Regulations.
- 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.
- 3 Allowed in RR-65, (1 to 2 residents/beds) as defined in FS Title XXX Chapters 419 & 429
- 4 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)