

TOWN OF MALABAR
PLANNING AND ZONING
AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: September 23, 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

Draft minutes of P&Z Board Meeting of September 9, 2015 **(NOT READY)**

ACTION OPTIONS:

Secretary requests approval of the minutes.

"The following draft minutes are subject to changes and/or revisions by the Planning and Zoning Board and shall not be considered the official minutes until approved by the P&Z Board."

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
AUGUST 26, 2015 7:30 PM**

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

A. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 7:30 P.M. Prayer and Pledge led by Chair Pat Reilly.

B. ROLL CALL:

CHAIR:	PAT REILLY
VICE-CHAIR:	LIZ RITTER
BOARD MEMBERS:	BUD RYAN
	WAYNE ABARE
	GEORGE FOSTER
ALTERNATE:	DOUG DIAL, Late 7:36PM
ALTERNATE:	VACANT
BOARD SECRETARY:	DENINE SHEREAR

ADDITIONAL ATTENDEES:

C. ADDITIONS/DELETIONS/CHANGES:

Reilly asked to move "Public" up to after "Consent Agenda" there is a public request card.

D. CONSENT AGENDA:

- 1. Approval of Minutes** Planning and Zoning Meeting – 8/12/15
Exhibit: Agenda Report No. 1
Recommendation: Request Approval

Corrections:

Abare, Page 6/48 1st parag. 3rd line at end of line, Abare said ~~he we does do~~ not....

Ritter/Foster page 5/48 4th parag from the bottom 1st line before we (the Town) give up the ROW, the ROW should be shown all the same. 2nd line end of line "down" should be done

Motion: Ryan /Ritter to Recommend Approval of Minutes of 8/12/15 as corrected All Vote: Aye

Public:

Steve Holmes 1359 Banford Street, Palm Bay, He said is a Pastor for Testimony of Life Church and Melvin is his assistant. He explained that their church has been meeting at FIT College. They are looking for property to purchase for a church and training classes. Mr. Holmes explained he found property for sale at 2130 Isasa Lane, Malabar just east of Weber Road. Mr. Holmes wanted to come to this Board to get a feel to see if they could pursue a "conditional use" using the house

for a church, training, and counseling. Mr. Holmes explained that they could extend the back of the house to use for sanctuary space. Mr. Holmes said there are 40-50 members in the church since 1991, they do own property in Melbourne (vacant land) and to build on vacant land it is difficult.

Ritter asked if this would be temporary until they build in Melbourne, Mr. Holmes said they need to grow members to fund a building.

Foster asked if it would be permanent location or temporary on Isasa Lane. Mr. Holmes explained he has 2 acres of land in Melbourne off of Florida Ave. where he would like to build a sanctuary. Foster asked if there is a time line you would stay in Malabar on Isasa Lane. Mr. Holmes said 3-5 years maximum.

Reilly explained the hurdles, according to Article III of our Land Development Code this would be a conditional use in a RR-65 land use district. Reilly said in order to get a "Conditional Use" there would be a 500 radius packet required around the property in which a letter would be mailed out to everyone within that area and they would either support or go against a Conditional Use. For this property to be turned into a church there will be a Site Plan required with parking and a whole list for the review. The other things required are possible septic and road improvement. Ryan added that there will probably be changes to the inside of building that would be required.

Foster said since it is a residential area there is going to be a large expense to bring this from residential to a church. Foster said that the churches in our Town are on the arterial roads.

Reilly explained to Mr. Holmes to look at Art III- Table 1-3.2 Land Use By Districts to see where churches are "permitted".

Ryan suggested speaking to the Church on Marie Street south of Malabar Road about having services.

E. PUBLIC HEARING: none
F. ACTION:

2. Final Review and make Recommendation to Council for: Future Land Use Maps & R/LC Definition.
Exhibit: Agenda Report No. 2
Recommendation: Action

Reilly said he did all updates, except the streets that he will do before it goes to Council.

Reilly explained that Council will get all this and Satellite Arial Maps, and new R/LC and present Land Use Maps.

Board went through Presentation of FLUM changes/additions

Page 2: Added Coastal Preserve

Page 4: Added "CL" to bottom left

Page 7: Changed Malabar Road & Corey Road on north side corner to R/LC

Page 8: Add "RR" under Glatter Rd.

Page 10: Move "R/LC" in water east of Malabar Road

Reilly/Board discussed the R/LC verbiage, no changes

Reilly said he will update maps one final time, then get with Denine to do packet to present to Council as a discussion item. Reilly suggested to do the R/LC verbiage first, and then look at the FLUM maps.

Motion: Ritter/ Abare Recommendation to Present to Council for Final Review for FLUM maps and R/LC Definitions Vote: All Ayes

Motion Passed 5:0

Dial suggested doing a summary with maps to present to Council. Foster also suggested pointing out major changes that were done, then present in smaller portions so they will understand and except.

Reilly explained that the whole packet will have to be given to Council for them to understand,

G. DISCUSSION:

3. Discuss Amending Assisted Living Facilities (ALF) Ordinance 2014-01 ref: to Office/Institutional (OI) Zoning.

Exhibit: Agenda Report No. 3
Recommendation: Discussion

Reilly said for the record they (Applicants) came in with their plan for Nursing Homes/Group Homes.

Reilly read page 42/48 (B.) Part I Long Term Care Facility, and page 44/48 under "OI".

Reilly explained the Council does not want residential in "OI".

Reilly explained what he thinks occurred took "Long Term Care Facility" out of Florida Statutes Title XXX Chapter 429 the definition. It might be good to just strike out "assisted living facility".

Ritter suggested that some verbiage might need to be changed and refer to Florida Statutes.

The Board discussed what needs to be corrected and what needs to be excluded.

For next meeting copy FL ST Title XXX (30) Chapter 429 Social Welfare for PZ Board.

Abare discussed reviewing Conditional Uses on Art III Table 1-3.2 under churches and Foster said that we should look at the whole Table 1-3.2.

Reilly said that on page 47-48 under Sec 6, "Assisted Living Facility" As defined in section 1-2.6B 42-B, **13B**, Part I **correction**.

Reilly said the definition will go on page 42/48 not in Article XX (20) Definitions.

H. ADDITIONAL ITEMS FOR FUTURE MEETING

- Action Johnston Ave. Vacate will be on for next meeting in September (9/9/15) it was "Tabled" at Council Meeting on 8/25/15.
- Discussion Abare, Table 1-3.2 the churches all have "C" for Condition Use.

Foster suggested going through the Table 1-3.2 and look at all the other "Conditional Uses".

- Discussion Ryan asked about if 500 ft. radius packet is large enough for notification for Public Hearings.

I. PUBLIC

J. OLD BUSINESS/NEW BUSINESS:

Old Business: none

New Business: none

K. ADJOURN

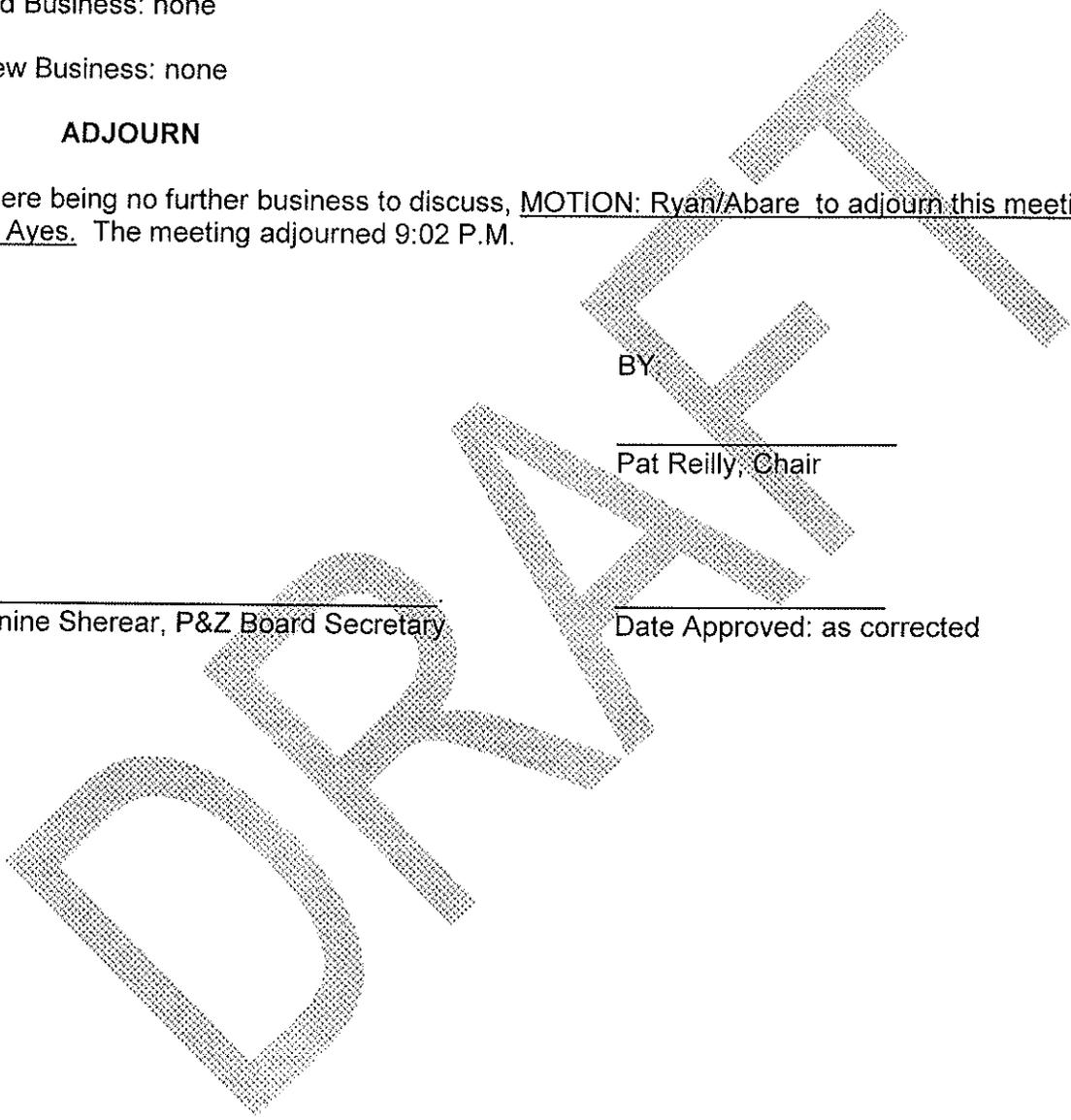
There being no further business to discuss, MOTION: Ryan/Abare to adjourn this meeting. Vote: All Ayes. The meeting adjourned 9:02 P.M.

BY

Pat Reilly, Chair

Denine Sherear, P&Z Board Secretary

Date Approved: as corrected



TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: September 23, 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 two PZ Meeting 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.

Board Members will review and bring back suggestions to this meeting.

ATTACHMENTS:

- ALF Adopted Ordinance 2014-01
- Board Members, Chair-Pat Reilly & Vice Chair- Liz Ritter will provide handouts at Meeting (9/23/15)

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 1-3.1.1 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
CH 400 FL ST
400.0560 (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					G	G		G			P		G	
Hospitals and Extended-Care other Licensed Facilities								C						
Nursing Homes (including Rest Homes and Convalescent Homes) and Related Health Care Facilities					C	C		C			G		C	
<u>Community Residential Home</u>														
Level 1 (1 to 6 residents/beds)	C (3)				C	C								
Level 2 (7 to 14 residents/beds)					C	C							C	
<u>Assisted Care Communities</u>														
I Assisted Living Facility														
Level 1 (1 to 5 residents/beds)		C	C	C	C (4)	C (4)					C			
Level 2 (6 to 15 residents/beds)					C (4)	C (4)								
Level 3 (16 or more residents/beds)					C (4)	C (4)								
II Adult Family-Care Homes														
(1 to 5 residents/beds)	C (3)	C	C	C	C	C					C			
III Adult Day Care Centers					C	C		C			C		C	

(3) Allowed in RR-65, (1 to 2 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 D) 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.

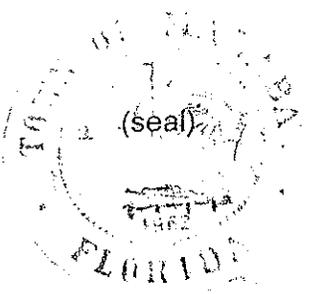
Town of Malabar
no signature - veto by Mayor
Carl A. Beatty, Mayor

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: [Signature]
Steve Rivet, Council Chair



ATTEST:

By: [Signature]
Debby K. Frahclin, C.M.C.
Town Clerk/Treasurer

Approved as to form and content:
[Signature]
Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR
PLANNING AND ZONING
AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: September 23, 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. The Board wanted to verify if this radius requirement is located any place else in the Code Book besides in the Board of Adjustment.

I have attached Sec 1-12.8 & 1-12.9 for your review.

The following Town's application forms have a 500' radius packet requirement for:

- Site Plan Review
- Land Use Amendment and/or Zoning Changes

ATTACHMENTS:

- Town of Malabar Radius Requirements
- Located in Section 1-12.8 Vacate & Abandonment & Section 1-12.9 Town-initiated vacate and abandonment

ACTION OPTIONS:

Discussion

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.

TOWN OF MALABAR
RADIUS PACKETS REQUIRED IN THE
FOLLOWING AREAS OF THE CODE BOOK:

➤ **Section 1-12.8 & Section 1-12.9**





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)

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: 4
Meeting Date: September 23, 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 meeting on 8/26/2015 to have this at a future meeting as a "Discussion Item". The Board would like to review this Table and make suggestions to revise the "C's" which represents Conditional Use that are listed under the Community Facilities in reference to Churches in the Town of Malabar.

ATTACHMENTS:

- Table 1-3.2 Land Use by District

ACTION OPTIONS:

Discussion

DISTRICT PROVISIONS

§ 1-3.2

TABLE 1-3.2. LAND USE BY DISTRICTS

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

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

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

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

1 Any Bed and Breakfast which is proposed to have more than five (5) living quarters shall only be approved as a conditional use in accordance with Article VI of the Land Development Regulations.

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 D) 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)