TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY DECEMBER 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 – 11/19/2015
   Planning and Zoning Meeting – 09/23/2015
   Exhibit: Agenda Report No. 1
   Recommendation: Request Approval

E. PUBLIC HEARING: none
F. ACTION:

2. **Recommendation to Council: Amending Assisted Living Facilities (ALF) Ordinance 2014-01 ref: to Office/Institutional (OI) Zoning.**
   Exhibit: Agenda Report No. 2
   Recommendation: Action

3. **Recommendation to Council: Amending Article III- District Provisions Table 1-3.2 Land Use by District Community Facilities- Reference to Churches & "Conditional Uses"**
   Exhibit: Agenda Report No. 3
   Recommendation: Action

G. DISCUSSION:

4. **Continue Discussion: The 500 ft. Radius notification for Public Hearings**
   Exhibit: Agenda Report No. 4
   Recommendation: Discussion

H. ADDITIONAL ITEMS FOR FUTURE MEETING
I. PUBLIC:
J. OLD BUSINESS/NEW BUSINESS:
K. ADJOURN

NOTE: THERE MAY BE ONE OR MORE MALABAR ELECTED OFFICIALS ATTENDING THIS MEETING.
If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service in compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: December 9, 2015

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

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SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

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

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

ATTACHMENTS:
Draft minutes of P&Z Board Meeting of November 19, 2015
Draft minutes of P&Z Board Meeting of September 23, 2015

ACTION OPTIONS:
Secretary requests approval of the minutes.

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

MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
SEPTEMBER 23, 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, EXCUSED
	WAYNE ABARE
	GEORGE FOSTER
ALTERNATE:	DOUG DIAL, EXCUSED
ALTERNATE:	VACANT
BOARD SECRETARY:	DENINE SHEREAR

ADDITIONAL ATTENDEES:

C. ADDITIONS/DELETIONS/CHANGES: none

D. CONSENT AGENDA:

1. **Approval of Minutes** Planning and Zoning Meeting – 8/26/15
Planning and Zoning Meeting – 9/09/15(Not Ready)

Exhibit: Agenda Report No. 1
Recommendation: Request Approval

Motion: Ritter/Abare: To Recommend Approval Minutes of 8/26/15 as presented All Vote; Aye

Reilly asked about the status of minutes on the Town web site. Sherear responded that it is not completely up to date presently, but she is working on it.

E. PUBLIC HEARING: none
F. ACTION:
G. DISCUSSION:

2. **Continue Discussion to Amending Assisted Living Facilities (ALF) Ordinance 2014-01 ref: to Office/Institutional (OI) Zoning.**
Exhibit: Agenda Report No. 2
Recommendation: Discussion

Reilly suggested taking out the words "assisted living facility" on page 11/30 B Part I Long Term Care Facility. Reilly said he went through Florida Statutes Chapters 400 & 408 and there is no mention of "assisted living facility" or "adult family care home".

Ritter explained to the Board her handouts for the Florida Statutes that were used and the changes made in 2015 with adoptions and updates. The Board discussed the handouts that Ritter handed out. (Attach to these minutes)

Foster asked Ritter about taking out the words that Reilly suggested above and she was in agreeance.

Ritter said in looking over the 2015 Florida Statute updates in reference to the licensing, the Town does not have much to do with it.

Ritter said Assisted Living Facility (ALF) needs to be put by itself, Abare said we have the right of where we want ALF's, and Florida State has rights in reference to an ALF in a house 1 or 2 beds.

The Board numbers the pages that Ritter handed out about Florida Statutes (pages1-14).

Foster discussed where in Town would a large facility be placed, Reilly said RM-6 (high density) & RM-4 (low density) on US 1.

The Board discussed the table of locations for ALF's.

Reilly suggested to the Board to go through handouts that Ritter provided at this meeting, the two things to look at is "Public Health" & "Social Welfare".

Abare said to make an Ordinance that the Town defines where ALF's are allowed as far as zoning, acreage, and location but everything else will be according to FL Statutes. Reilly/Ritter discussed that what needs to be in Ordinance is what the Town does not want. Foster said we should say the minimum in our Ordinance and then say according to FL Statutes.

Reilly explained that when this Ordinance was originally written the Board went through the different Florida Statutes referencing "Public Health Facilities & Social Welfare" inserting what the Town would accept.

Abare suggested for paragraph on page 11/30 B Part 1 Long-Term Care Facilities to insert "not" in front of assisted living facility & "not "in front of adult family care home. Foster suggested a sentence at the end stating not to include assisted living facility & adult family care home.

The Board suggested the following changed version:

Part I Long -Term Care Facilities
"Long Term care facility" only means a nursing home facility or not ~~assisted living facility~~, not ~~adult family care home~~, board and health care facility, or any other similar residential adult care facility (additional reference: see Florida Statutes, Title XXX, Chapter 429, Social Welfare)

Reilly suggested for Homework:

- Go through Ritter's handout packet from this meeting
- Look in between comas on Part I Long-Term Care Facility and put yes or no.

- Research definitions on what is a nursing home facility and adult family care home, board and care facility

Foster asked about Part V on page 11/30 the Intermediate Living Facilities; possibly eliminate this from what we would accept in the Town. Abare agrees and Foster agrees. A potential area for problems for properties to be destroyed or run down.

Reilly said to look at Part V on page 11/30

Page 14/30 Table to remove "C" under "OI" for Nursing Homes and Related Health Care Facilities
Page 16/30 Section 6 "Assisted Living Facility" As defined in section 1-2.6.B.~~12.B,~~**13.B,**Part I.

3. Discussion: The 500 ft. Radius notification for Public Hearings
Exhibit: Agenda Report No. 3
Recommendation: Discussion

Reilly explained to the Board that he asked staff to see where the 500 ft. Radius is presently in the Code Book. It is in the Board of Adjustment for variances & vacates. Abare said that it should be in other areas of Code Book and we should make a list.

The Board made the following List:

- Site Plan Reviews
- Commercial Site Plan '
- All Conditional Uses
- Public Utilities
- Abandonment of ROW
- BOA for variances
- Land Use Changes and rezoning
- Abandonment of improved and unimproved of existing ROW
  Look for distances for categories

The Board discussed where to insert the above list in the Code Book: Administration/Land Development

Foster said things are important for vacates when you talk about a public right-of-way everyone will be affected. It should be publicly advertised.

Reilly suggested Homework:
- Add to above list notifications for Public Hearings
- Make suggestions of footage for radius for different notifications

4. Discussion: Article III- District Provisions Table 1-3.2 Land Use by District Community Facilities- Reference to Churches & "Conditional Uses"
Exhibit: Agenda Report No. 4
Recommendation: Discussion

Abare explained a few weeks ago two gentlemen came to a PZ Meeting informally and wanted to get a feel from this Board about convert a residential house into a church. This would be a conditional use (C).

P&Z 9-23-15 Hand Outs from Liz Ritter

Dear P&Z Members,

Please find attached the following pages. They are a F.Y.I. assembly of information. I hope they help with understanding the complexity of this area. Sorry for the lateness. Thanks, Liz Ritter

PS The colors make it quicker to find & identify, my quirk.

2015 Florida Statutes Title Page (1 purple page)

Title XXIX Public Health Chapters 381 to 408 (1 lite green page)

Chap **395**.001 & 395.002 / Chap 400 Part 1 & 400.0061 (1 yellow page)

Chap **400**.021 Definitions Nursing Homes & Related HC Fac (1 green page)

Chap **408**.801 & 408.802 (1 white page)

Title XXX Social Welfare Chapters 409 to 430 (1 orange page)

(Title XXXII; Chap 464 Nursing Practice Act Purpose on bottom of page)

Chap **419** Community Residential Homes (3 white pages)

Chap **429 Part I ALF** info (1 blue page)

Chap **429 Part II** Adult Family-Care Homes (1 pink page)

Title XXXVII Insurance **Chap 651** Continuing Care Contracts (1 blue page)

Chap **429 part III** Adult Day Care Centers (1 orange page)

Chapter 381 - PUBLIC HEALTH: GENERAL PROVISIONS
Chapter 382 - VITAL STATISTICS
Chapter 383 - MATERNAL AND INFANT HEALTH CARE
Chapter 384 - SEXUALLY TRANSMISSIBLE DISEASES
Chapter 385 - CHRONIC DISEASES
Chapter 386 - PARTICULAR CONDITIONS AFFECTING PUBLIC HEALTH
Chapter 388 - MOSQUITO CONTROL
Chapter 390 - TERMINATION OF PREGNANCIES
Chapter 391 - CHILDREN'S MEDICAL SERVICES
Chapter 392 - TUBERCULOSIS CONTROL
Chapter 393 - DEVELOPMENTAL DISABILITIES
Chapter 394 - MENTAL HEALTH

Chapter 395 - HOSPITAL LICENSING AND REGULATION

Part I - HOSPITALS AND OTHER LICENSED FACILITIES (ss. 395.001-395.3041)
Part II - TRAUMA (ss. 395.40-395.51)
Part III - RURAL HOSPITALS (ss. 395.602-395.6061)
Part IV - PUBLIC MEDICAL ASSISTANCE TRUST FUND (ss. 395.701-395.7017)
Part V - FAMILY PRACTICE TEACHING HOSPITALS (ss. 395.805-395.807)

Chapter 397 - SUBSTANCE ABUSE SERVICES
Chapter 399 - ELEVATOR SAFETY

Chapter 400 - NURSING HOMES AND RELATED HEALTH CARE FACILITIES

Part I - LONG-TERM CARE FACILITIES: OMBUDSMAN PROGRAM (ss. 400.0060-400.0091)
Part II - NURSING HOMES (ss. 400.011-400.334)
Part III - HOME HEALTH AGENCIES (ss. 400.461-400.5185)
Part IV - HOSPICES (ss. 400.6005-400.611)
Part V - INTERMEDIATE CARE FACILITIES (ss. 400.701, 400.801)
Part VI - PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS (ss. 400.901-400.916)
Part VII - HOME MEDICAL EQUIPMENT PROVIDERS (ss. 400.92-400.957)
Part VIII - INTERMEDIATE CARE FACILITIES FOR DEVELOPMENTALLY DISABLED PERSONS (ss. 400.960-400.969)
Part IX - HEALTH CARE SERVICES POOLS (s. 400.980)
Part X - HEALTH CARE CLINIC ACT (ss. 400.990-400.995)
Part XI - TRANSITIONAL LIVING FACILITIES (ss. 400.997-400.9986)

Chapter 401 - MEDICAL TELECOMMUNICATIONS AND TRANSPORTATION
Chapter 402 - HEALTH AND HUMAN SERVICES: MISCELLANEOUS PROVISIONS
Chapter 403 - ENVIRONMENTAL CONTROL
Chapter 404 - RADIATION
Chapter 405 - MEDICAL INFORMATION AVAILABLE FOR RESEARCH
Chapter 406 - MEDICAL EXAMINERS; DISPOSITION OF HUMAN REMAINS

Chapter 408 - HEALTH CARE ADMINISTRATION

Part I - HEALTH FACILITY AND SERVICES PLANNING (ss. 408.031-408.7071)
Part II - HEALTH CARE LICENSING: GENERAL PROVISIONS (ss. 408.801-408.832)
Part III - HEALTH INSURANCE ACCESS (ss. 408.909-408.910)
Part IV - HEALTH AND HUMAN SERVICES ELIGIBILITY ACCESS SYSTEM (ss. 408.911-408.918)

2015 Florida Statutes TITLE XXIX PUBLIC HEALTH

Chapter 395 HOSPITAL LICENSING AND REGULATION

Part I Hospitals and Other Licensed Facilities (ss.395.01 – 395.3041)

395.001 Legislative intent.—It is the intent of the Legislature to provide for the protection of public health and safety in the establishment, construction, maintenance, and operation **of hospitals, ambulatory surgical centers, and mobile surgical facilities** by providing for licensure of same and for the development, establishment, and enforcement of minimum standards with respect thereto.

395.002 Definitions.—As used in this chapter:

(12) **"Hospital"** means any establishment that:

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

(b) Regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent, **except that a critical access hospital, as defined in s. 408.07, shall not be required to make available treatment facilities for surgery, obstetrical care, or similar services as long as it maintains its critical access hospital designation and shall be required to make such facilities available only if it ceases to be designated as a critical access hospital. (added since 2012)**

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.

Chapter 400 NURSING HOMES AND RELATED HEALTH CARE FACILITIES

Part I ONG-TERM CARE FACILITIES: OMBUDSMAN PROGRAM (ss. 400.0060-400.0091)

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

(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.

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

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, ... The Legislature finds that concerned citizens are often more effective advocates for the rights of others than governmental agencies. ...

(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. ....

PART II SECTION 021 Definitions.

400.021 Definitions.—When used in this part, unless the context otherwise requires, the term:

(1) "Administrator" means the licensed individual who has the general administrative charge of a facility.

(2) "Agency" means the Agency for Health Care Administration, which is the licensing agency under this part.

(3) "Bed reservation policy" means the number of consecutive days and the number of days per year that a resident may leave the nursing home facility for overnight therapeutic visits with family or friends or for hospitalization for an acute condition before the licensee may discharge the resident due to his or her absence from the facility.

(4) "Board" means the Board of Nursing Home Administrators.

(5) "Custodial service" means care for a person which entails observation of diet and sleeping habits and maintenance of a watchfulness over the general health, safety, and well-being of the aged or infirm.

(6) "Department" means the Department of Children and Families.

(7) **"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.**

(8) "Geriatric outpatient clinic" means a site for providing outpatient health care to persons 60 years of age or older, which is staffed by a registered nurse, a physician assistant, or a licensed practical nurse under the direct supervision of a registered nurse, advanced registered nurse practitioner, physician assistant, or physician.

(9) "Geriatric patient" means any patient who is 60 years of age or older.

(10) "Local ombudsman council" means a local long-term care ombudsman council established pursuant to s. 400.0069, located within the Older Americans Act planning and service areas.

(11) "Nursing home bed" means an accommodation which is ready for immediate occupancy, or is capable of being made ready for occupancy within 48 hours, excluding provision of staffing; and which conforms to minimum space requirements, including the availability of appropriate equipment and furnishings within the 48 hours, as specified by rule of the agency, for the provision of services specified in this part to a single resident.

(12) **"Nursing home facility"** means **any facility which provides nursing services** as defined in part I of chapter 464 and which is licensed according to this part.

(13) "Nursing service" means such services or acts as may be rendered, directly or indirectly, to and in behalf of a person by individuals as defined in s. 464.003.

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

(15) "Planning and service area" means the geographic area in which the Older Americans Act programs are administered and services are delivered by the Department of Elderly Affairs.

(16) "Representative of the State Long-Term Care Ombudsman Program" has the same meaning as in s. 400.0060.

(17) "Respite care" means admission to a nursing home for the purpose of providing a short period of rest or relief or emergency alternative care for the primary caregiver of an individual receiving care at home who, without home-based care, would otherwise require institutional care.

(18) "Resident care plan" means a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and the resident or his or her designee or legal representative, which includes a comprehensive assessment of the needs of an individual resident; the type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being; a listing of services provided within or outside the facility to meet those needs; and an explanation of service goals.

(19) "Resident designee" means a person, other than the owner, administrator, or employee of the facility, designated in writing by a resident or a resident's guardian, if the resident is adjudicated incompetent, to be the resident's representative for a specific, limited purpose.

(20) "State Long-Term Care Ombudsman Program" has the same meaning as in s. 400.0060.

(21) "Therapeutic spa services" means bathing, nail, and hair care services and other similar services related to personal hygiene.

408.801 Short title; purpose.—

(1) This part may be cited as the "Health Care Licensing Procedures Act."

(2) The Legislature finds that there is unnecessary duplication and variation in the requirements for licensure by the agency. It is the intent of the Legislature to provide a streamlined and consistent set of basic licensing requirements for all such providers in order to minimize confusion, standardize terminology, and include issues that are otherwise not adequately addressed in the Florida Statutes pertaining to specific providers.

[1]**408.802 Applicability.**—The provisions of this part apply to the provision of services that **require licensure** as defined in this part and to the following entities licensed, registered, or certified by the agency, as described in chapters 112, 383, 390, 394, **395, 400, 429,** 440, 483, and 765:

(1) Laboratories authorized to perform testing under the Drug-Free Workplace Act, as provided under ss. 112.0455 and 440.102.
(2) Birth centers, as provided under chapter 383.
(3) Abortion clinics, as provided under chapter 390.
(4) Crisis stabilization units, as provided under parts I and IV of chapter 394.
(5) Short-term residential treatment facilities, as provided under parts I and IV of chapter 394.
(6) Residential treatment facilities, as provided under part IV of chapter 394.
(7) Residential treatment centers for children and adolescents, as provided under part IV of chapter 394.
(8) Hospitals, as provided under part I of chapter 395.
(9) Ambulatory surgical centers, as provided under part I of chapter 395.
(10) Mobile surgical facilities, as provided under part I of chapter 395.
(11) Health care risk managers, as provided under part I of chapter 395.
(12) Nursing homes, as provided under part II of chapter 400.
(13) Assisted living facilities, as provided under part I of chapter 429.
(14) Home health agencies, as provided under part III of chapter 400.
(15) Nurse registries, as provided under part III of chapter 400.
(16) Companion services or homemaker services providers, as provided under part III of chapter 400.
(17) Adult day care centers, as provided under part III of chapter 429.
(18) Hospices, as provided under part IV of chapter 400.
(19) Adult family-care homes, as provided under part II of chapter 429.
(20) Homes for special services, as provided under part V of chapter 400.
(21) Transitional living facilities, as provided under part XI of chapter 400.
(22) Prescribed pediatric extended care centers, as provided under part VI of chapter 400.
(23) Home medical equipment providers, as provided under part VII of chapter 400.
(24) Intermediate care facilities for persons with developmental disabilities, as provided under part VIII of chapter 400.
(25) Health care services pools, as provided under part IX of chapter 400.
(26) Health care clinics, as provided under part X of chapter 400.
(27) Clinical laboratories, as provided under part I of chapter 483.
(28) Multiphasic health testing centers, as provided under part II of chapter 483.
(29) Organ, tissue, and eye procurement organizations, as provided under part V of chapter 765.

History.—s. 5, ch. 2006-192; s. 89, ch. 2007-5; s. 132, ch. 2007-230; s. 19, ch. 2009-218; s. 23, ch. 2012-160; **s. 9, ch. 2015-25.**

[1]Note.—Section 11, ch. 2006-192, provides that "[a]ll provisions that apply to the entities specified in s. 408.802, Florida Statutes, as created by this act, in effect on October 1, 2006, that provide for annual licensure fees are hereby adjusted to provide for biennial licensure fees with a corresponding doubling of the amount."

NOTE: Chapter 419 Community Residential Homes is NOT listed here.. Liz

Title XXX SOCIAL WELFARE (Ch. 409-430) P&Z 9-23-15

Chapter 409 - SOCIAL AND ECONOMIC ASSISTANCE
Chapter 410 - AGING AND ADULT SERVICES
Chapter 411 - HANDICAP OR HIGH-RISK CONDITION PREVENTION AND EARLY CHILDHOOD ASSISTANCE
Chapter 413 - VOCATIONAL REHABILITATION
Chapter 414 - FAMILY SELF-SUFFICIENCY
Chapter 415 - ADULT PROTECTIVE SERVICES
Chapter 418 - RECREATION DISTRICTS

Chapter 419 - COMMUNITY RESIDENTIAL HOMES
(3 pages attached)

Chapter 420 - HOUSING
Chapter 421 - PUBLIC HOUSING
Chapter 422 - HOUSING COOPERATION LAW
Chapter 423 - TAX EXEMPTION OF HOUSING AUTHORITIES
Chapter 425 - RURAL ELECTRIC COOPERATIVES
Chapter 427 - SPECIAL TRANSPORTATION AND COMMUNICATIONS SERVICES

Chapter 429 - ASSISTED CARE COMMUNITIES
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)

Chapter 430 - ELDER AFFAIRS

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Title XXXII REGULATION OF PROFESSIONS AND OCCUPATIONS (Ch. 454-493)

Chapter 464 - NURSING (Relates to Chap.400 Part II Nursing Homes)

Part I - NURSE PRACTICE ACT (ss. 464.001-464.027)

464.002 Purpose.—The sole legislative purpose in enacting this part is to ensure that every nurse practicing in this state meets minimum requirements for safe practice. It is the legislative intent that nurses who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state.

Part II - CERTIFIED NURSING ASSISTANTS (ss. 464.201-464.2085)

419.001 Site selection of community residential homes.

(1) For the purposes of this section, the term:

(a) **"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 Families or licensed by the Agency for 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.

(b) "Licensing entity" or "licensing entities" means the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Children and Families, or the Agency for Health Care Administration, all of which are authorized to license a community residential home to serve residents.

(c) "Local government" means a county as set forth in chapter 7 or a municipality incorporated under the provisions of chapter 165.

(d) "Planned residential community" means a local government-approved, planned unit development that is under unified control, is planned and developed as a whole, has a minimum gross lot area of 8 acres, and has amenities that are designed to serve residents with a developmental disability as defined in s. 393.063 but that shall also provide housing options for other individuals. The community shall provide choices with regard to housing arrangements, support providers, and activities. The residents' freedom of movement within and outside the community may not be restricted. For the purposes of this paragraph, local government approval must be based on criteria that include, but are not limited to, compliance with appropriate land use, zoning, and building codes. A planned residential community may contain two or more community residential homes that are contiguous to one another. A planned residential community may not be located within a 10-mile radius of any other planned residential community.

(e) **"Resident"** means any of the following: a **frail elder** as defined in s. 429.65; **a person who has a handicap** as defined in s. 760.22(7)(a); **a person who has a developmental disability** as defined in s. 393.063; **a nondangerous person who has a mental illness** as defined in s. 394.455; or **a child who is found to be dependent** as defined in s. 39.01 or s. 984.03, or **a child in need of services** as defined in s. 984.03 or s. 985.03.

(f) "Sponsoring agency" means an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home.

(2) **Homes of six or fewer residents** which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use for the purpose of local laws and ordinances. **Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes shall not be located within a radius of 1,000 feet of another existing such home with six or fewer residents.** Such homes with six or fewer residents shall not be required to comply with the notification provisions of this section; provided that, prior to licensure, the sponsoring agency provides the local government with the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located in order to show that no other community residential home is within a radius of 1,000 feet of the proposed home with six or fewer residents. **At the time of home occupancy, the sponsoring agency must notify the local government that the home is licensed by the licensing entity.**

Part 1 ASSISTED LIVING FACILITIES (ss. 429.01 – 429.55)

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

(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.

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

History.—s. 34, ch. 2015-31; s. 5, ch. 2015-126.

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.

11

429.63 Legislative intent; purpose.—

(1) **The Legislature encourages the provision of care for disabled adults and frail elders in family-type living arrangements in private homes.**

(2) Adult family-care homes provide housing and personal care for disabled adults and frail elders who choose to live with an individual or family in a private home. The adult family-care home provider must live in the home. The purpose of this part is to provide for the health, safety, and welfare of residents of adult family-care homes in the state.

(3) The Legislature recognizes that adult family-care homes are an important part of the continuum of **long-term care.** The personal care available in these homes, which may be provided directly or through contract or agreement, is intended to help residents remain as independent as possible in order to **delay or avoid placement in a nursing home or other institution. Regulations governing adult family-care homes must be sufficiently flexible to allow residents to age in place** if resources are available to meet their needs and accommodate their preferences.

(4) The Legislature further finds and declares that licensure under this part is a public trust and a privilege, and not an entitlement. This principle must guide the finder of fact or trier of law at any administrative proceeding or circuit court action initiated by the department to enforce this part.

(5) **Rules of the department relating to adult family-care homes shall be as minimal and flexible as possible to ensure the protection of residents while minimizing the obstacles that could inhibit the establishment of adult family-care homes.**

429.65 Definitions.—As used in this part, the term:

(2) **"Adult family-care home"** 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.**

The following family-type living arrangements are not required to be licensed as an adult family-care home:

(a) An arrangement whereby the person who owns or rents the home provides room, board, and personal services for **not more than two adults** who do not receive optional state supplementation under s. 409.212. The person who provides the housing, meals, and personal [1]**care** must own or rent the home and reside therein.

(b) An arrangement whereby the person who owns or rents the home provides room, board, and personal services **only to his or her relatives.**

(c) An establishment that is licensed as an assisted living facility under this chapter.

(8) **"Disabled adult"** means any person between **18 and 59 years of age**, inclusive, who is a resident of the state and who has one or more **permanent** physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

(9) **"Frail elder"** means a functionally impaired elderly person who is **60 years of age or older** and who has physical or mental limitations that restrict the person's ability to perform the normal activities of daily living and that impede the person's capacity to live independently.

(11) **"Provider" means a person who is licensed to operate an adult family-care home.**

(14) **"Resident"** means a person receiving room, board, and personal care in an adult family-care home.

[1]**Note.**—As amended by s. 3, ch. 98-338. Section 21, ch. 98-80, **substituted the word "services" for the word "care."**

For P&Z 9-23-15 Liz

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

(1) "Advertising" means the dissemination of written, visual, or electronic information by a provider, or any person affiliated with or controlled by a provider, to potential residents or their representatives for the purpose of inducing such persons to subscribe to or enter into a contract for continuing care or continuing care at-home.

(2) **"Continuing care"** or **"care"** means, pursuant to a contract, furnishing shelter and nursing care or personal services to a resident who resides in a facility, whether such nursing care or personal services are provided in the facility or in another setting designated in the contract for continuing care, by an individual not related by consanguinity or affinity to the resident, upon payment of an entrance fee.

(3) "Continuing Care Advisory Council" or "advisory council" means the council established in s. 651.121.

(4) "Continuing care at-home" means, pursuant to a contract other than a contract described in subsection (2), furnishing to a resident who resides outside the facility the right to future access to shelter and nursing care or personal services, whether such services are provided in the facility or in another setting designated in the contract, by an individual not related by consanguinity or affinity to the resident, upon payment of an entrance fee.

(5) "Entrance fee" means an initial or deferred payment of a sum of money or property made as full or partial payment for continuing care or continuing care at-home. An accommodation fee, admission fee, member fee, or other fee of similar form and application are considered to be an entrance fee.

(6) **"Facility"** means a place where continuing care is furnished and may include one or more physical plants on a primary or contiguous site or an immediately accessible site. As used in this subsection, the term "immediately accessible site" means a parcel of real property separated by a reasonable distance from the facility as measured along public thoroughfares, and the term "primary or contiguous site" means the real property contemplated in the feasibility study required by this chapter.

(7) "Generally accepted accounting principles" means those accounting principles and practices adopted by the Financial Accounting Standards Board and the American Institute of Certified Public Accountants, including Statement of Position 90-8 with respect to any full year to which the statement applies.

(8) "Insolvency" means the condition in which the provider is unable to pay its obligations as they come due in the normal course of business.

(9) "Licensed" means that the provider has obtained a certificate of authority from the department.

(10) "Nursing care" means those services or acts rendered to a resident by an individual licensed or certified pursuant to chapter 464.

(11) "Personal services" has the same meaning as in s. 429.02.

(12) "Provider" means the owner or operator, whether a natural person, partnership or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, which owner or operator provides continuing care or continuing care at-home for a fixed or variable fee, or for any other remuneration of any type, whether fixed or variable, for the period of care, payable in a lump sum or lump sum and monthly maintenance charges or in installments. The term does not apply to an entity that has existed and continuously operated a facility located on at least 63 acres in this state providing residential lodging to members and their spouses for at least 66 years on or before July 1, 1989, and has the residential capacity of 500 persons, is directly or indirectly owned or operated by a nationally recognized fraternal organization, is not open to the public, and accepts only its members and their spouses as residents.

(13) "Records" means the permanent financial, directory, and personnel information and data maintained by a provider pursuant to this chapter.

(14) **"Resident"** means a purchaser of, a nominee of, or a subscriber to a continuing care or continuing care at-home contract. Such contract does not give the resident a part ownership of the facility in which the resident is to reside, unless expressly provided in the contract.

(15) "Shelter" means an independent living unit, room, apartment, cottage, villa, personal care unit, nursing bed, or other living area within a facility set aside for the exclusive use of one or more identified residents.

395.002 Definitions.—As used in this chapter:

(16) **"Licensed facility"** means a hospital, ambulatory surgical center, or mobile surgical facility licensed in accordance with this chapter.

*** ** *** ** *** ** *** ** ***

2015 FS Title XXX SOCIAL WELFARE Chap 429 Assisted Care Communities

Part III Adult Day Care Centers (ss. 429.90 – 429.931)

429.90 Purpose.—The purpose of this part is to develop, establish, and enforce basic standards for adult day care centers in order to assure that a program of therapeutic social and health activities and services is provided to adults who have functional impairments, in a protective environment that provides as noninstitutional an atmosphere as possible.

429.901 Definitions.—As used in this part, the term:

(1) **"Adult day care center"** 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 a 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.

(2) "Agency" means the Agency for Health Care Administration.

(3) **"Basic services"** include, but are not limited to, providing a protective setting that is as noninstitutional as possible; therapeutic programs of social and health activities and services; leisure activities; self-care training; rest; nutritional services; and respite care.

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

(5) "Multiple or repeated violations" means 2 or more violations that present an imminent danger to the health, safety, or welfare of participants or 10 or more violations within a 5-year period that threaten the health, safety, or welfare of the participants.

(6) "Operator" means the licensee or person having general administrative charge of an adult day care center.

(7) "Owner" means the licensee of an adult day care center.

(8) "Participant" means a recipient of basic services or of supportive and optional services provided by an adult day care center.

(9) "Supportive and optional services" include, but are not limited to, speech, occupational, and physical therapy; direct transportation; legal consultation; consumer education; and referrals for followup services.

429.905 Exemptions; monitoring of adult day care center programs **colocated with assisted living facilities or licensed nursing home facilities.—**

(1) The following are exempt from this part:

(a) Any facility, institution, or other place that is operated by the Federal Government or any agency thereof.

(b) Any freestanding inpatient hospice facility that is licensed by the state and which provides day care services to hospice patients only.

(2) A **licensed assisted living facility**, a **licensed hospital**, or a **licensed nursing home** facility may provide services during the day which include, but are not limited to, social, health, therapeutic, recreational, nutritional, and respite services, **to adults who are not residents**. Such a facility need not be licensed as an adult day care center; however, the agency must monitor the facility during the regular inspection and at least biennially to ensure adequate space and sufficient staff. If an assisted living facility, a hospital, or a nursing home **holds itself out to the public as an adult day care center, it must be licensed as such** and meet all standards prescribed by statute and rule. **For the purpose of this subsection, the term "day" means any portion of a 24-hour day.**

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

MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
November 19, 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 Vice Chair Liz Ritter.

B. ROLL CALL:

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

ADDITIONAL ATTENDEES:

B. NOMINATION FOR CHAIR AND VICE CHAIR
Motion: Ritter/Abare To nominate Pat Reilly for Chair. All Vote: Aye

Motion: Ryan/Abare To nominate Liz Ritter for Vice Chair Roll Call Vote: Foster; Nay, Abare; Aye, Reilly; Aye, Ryan; Aye.
Motion Carried 3 to 1 for Liz Ritter for Vice Chair

Motion: Ritter/ Foster To nominate Wayne Abare for Vice Chair (no vote Ritter was nominated first)

C. ADDITIONS/DELETIONS/CHANGES: none

D. CONSENT AGENDA:

1.	**Approval of Minutes**	Planning and Zoning Meeting – 10/28/15 Planning and Zoning Meeting – 9/23/15 not ready
	Exhibit:	Agenda Report No. 1
	Recommendation:	Request Approval

Motion: Ritter/Ryan: To Recommend Approval Minutes of 10/28/15 as corrected All Vote; Aye

Ritter Corrections:
Page 4/21 3rd parag last word in sentence ~~weeds~~ should be work
Page 4/21 4th parag after ....2015 Florida Statutes in two places the second sentence ~~next~~ should be in the
Page 4/21 10th parag. How much RM4 ~~us~~ is

Page 4/21 7th Parag. incomplete sentence, listen to tape for clarification

Abare Corrections
Page 4/21 last sentence Wayne agrees the default should be 500 ft. and Abandonment of Improved & Unimproved of existing ROW should be more.

Reilly to correct "sb" and replace with should be.

E. PUBLIC HEARING: none
F. ACTION:
G. DISCUSSION:

2. Continue Discussion to Amending Assisted Living Facilities (ALF) Ordinance 2014-01 ref: to Office/Institutional (OI) Zoning.
Exhibit: Agenda Report No. 2
Recommendation: Discussion

Juliana Hirsch 1035 Malabar Road, Malabar, discussed that Assisted Living Facility (ALF) being non for profit, Hirsch was there at meeting when Mr. Foley discussed his ALF facility on Malabar Road and it would be a taxed based facility. We need to make sure that it is, and not going to be non for profit, Malabar is in trouble enough for no taxes. It should all be looked at if a company is making money they need to pay taxes. If it is not in our code we should look at this, we get too many people with no taxes. If you are going to make a profit in this Town you have to pay your taxes.

Reilly said that when a person comes in for site plan they do not have to say whether it is for profit or not. It is with the license for the state. Hirsch said you can do an Ordinance or something that if a business is making money they need to pay their taxes.

Ryan added that a lot of times how they become non for profit is the company takes the profit and pays their executives so they come out to zero. Hirsch said that this Town should be smart enough to take action to get taxes if a business is making a profit.

Abare said there is cost associated with buildings, we really can't control this.

Juliana said that Foley said his ALF he would pay taxes. Reilly said that the only way we could do this is to put in our Code that we only allow for profit facilities, but it would be challenged.

Reilly said we can ask the attorney if the Town can require that an ALF's be a for profit only business.

Question for the Attorney:

Can the Town require a non for profit or not for profit in ALF's and be excluded from our tax base, can we (the Town) include a statement in the Ordinance for the ALF i.e. for profit ALF only. How can this be enforced? Can the ALF change after it has been in business awhile to a non for profit?

Juliana Hirsch stated that it can be brought up to the attorney as a hardship that all this property that the EEL's (Environmentally Endangered Land) owns in Malabar has been taken off the tax base.

Foster said if we are more business friendly there would be more revenue and we would have more activity on every level. We have a long history of making it difficult for business to be here. Abare agreed, Ritter said because we have no water and sewer. Ryan asked Foster why he moved here and Foster responded he purchased a property on Malabar Road but didn't think it was going to be 50 years before anything was going to be built there. Ritter responded things can be built there you just have to bring the water/sewer. Foster said it should not be required that every business be required to have water/sewer. Ritter/Ryan responded it is not Malabar it is the health dept. and the state. Abare said he is with Foster that a little bit of business in this Town would be good.

Reilly and Board discussed the map on page 7/21 map showing ALF Facilities. (Hand out from Ryan at last meeting). Reilly said that the state of Florida has rules that ALF's cannot be too close to each other. Ritter asked about the certificate of need for ALF's. Reilly said this is a good map to have.

The Board discussed that this would all have to go through the state to see if area allowed ALF's in specific locations.

Foster said that he spoke to a number of people, staff, and Council the majority of Council does not agree with taking "OI" out of no one spending the night in "OI" zoning. That there might be one or two of Town Officials that might be in favor of policy of "no spending the night in "OI" but, he was told that more than half of Council says that is exactly where ALF belongs in "OI" the majority of Council does not want PZ Board to take ALF's out of "OI". Reilly/ Ritter explained to Foster that PZ Board was directed by Council in writing to take ALF's out of our "OI" zoning.

Reilly said we have in writing that residential is not allowed in "OI" unless we get a new letter from Council that they do want ALF's in "OI". Foster said that he was told that might have been a recommendation of a former Council.

Abare said there is a lot of talk about where to put things, he asked Board to look at page 19/21 Table 1-3.2 Land Use By Districts.

Abare said that you buy property for single family and you would like to stay that way, we are not anti we have plenty of land where people can do what they want. If we start sticking things in single family areas that do not belong, I believe it is the wrong thing to do; we have places to put ALF's.

Ryan said it was never intended to be that way about living in "OI". Ryan suggested that we as homeowners need to see who would be affected by all this.

Abare said if the Town of Malabar does not have the right to rule over the Table 1-3.2 then we need to just go home. The point is instead of the people coming in here and leading them on for a conditional use we can give them direction on what is allowed on Table 1-3.2 and what areas.

Ritter discussed the email from Attorney Bohne page 17/18 of 21. Ritter said that per the email from the Attorney the state rules over somethings whether we like it or not, unless we are more liberal.

Ritter discussed per state Statutes ALF's are allowed, but in Malabar we have listed as Conditional Uses, so it comes before the Board for approval.

The Board extensively discussed corrections for the ALF Ordinance 2014-01: There are three (3) changes:

1.) Part I Long Term Care Facilities
"Long Term care facility" only means a nursing home facility or ~~assisted living facility, adult family care home,~~ board and health care facility, ~~or any other similar residential adult care facility (additional reference: see Florida Statutes, Title XXX, Chapter 429, Social Welfare)~~

2.) Section 1-3.2 Land Use By Districts- Table 1-3.2 page 2 remove the ~~"C"~~ under OI for Nursing Homes

3.) Section 1-20.2 Definitions of term page 1 *Assisted Living Facility* ~~12.B~~ should be 13.B

The board discussed extensively ALF Ord 2014-01,Part I to clarify verbiage, to not allow ALF in "OI".

Reilly said this Agenda Item will be for "Action" at the next PZ Meeting 12/9/2015.

3. Continue Discussion: The 500 ft. Radius notification for Public Hearings
Exhibit: Agenda Report No. 3
Recommendation: Discussion

Reilly and Board discussed Radius Notifications, the PZ Board made a list of seven (7) subjects that require radius notifications and at what distance at the PZ Meeting on 10/28/2015.

Foster said the item on #8 Abandonment of Improved & Unimproved of existing ROW should go to 1,000 ft. It is a big deal. I don't think 500 ft. is enough. The consensus of the Board is:
Abare; ok with 1,000 ft.
Reilly; ?
Ryan; error on side of caution, all that is affected
Ritter; ok with 1,000 ft.

Reilly explained that the radius goes from the property boarder of all sides.

Homework: Next meeting: 12/9/15
* Sherear will provide "Articles" from Code Book, PZ Board will determine where to locate the list of subjects requiring radius notification.

4. Continue Discussion: Article III- District Provisions Table 1-3.2 Land Use by District Community Facilities- Reference to Churches & "Conditional Uses"
Exhibit: Agenda Report No. 4
Recommendation: Discussion

Abare suggested removing all "C"'s under residential in Table 1-3.2 Land Use By District for Churches, Synagogues and Other Places of Worship.

The Board discussed Attorney's opinion on page 17/21 in referencing to not treating Churches any different than any other business and it is not a residence.

Reilly said this Agenda Item will be for "Action" at the next PZ Meeting 12/9/2015.

H. ADDITIONAL ITEMS FOR FUTURE MEETING

- Foster would like to discuss Table 1-3.2 for a "Discussion Item" review R/LC columns

Reilly said to Foster to provide a chart of why you want to do this so it can be put as an Agenda Item. Look at R/LC in Table 1-3.2 tell what you want specifically and why and submit to Denine. Foster is against the blanks, he would like to bring up to "C" conditional uses. Reilly explained that a few months ago this was all turned in to Council for R/LC.

- Ritter asked if there is any way that we as a Town can limit the storage unit business, Reilly said the problem is, what can we do with Land without sewer or water?

I. PUBLIC

Juliana Hirsch 1035 Malabar Road, she had a question about Office Institutional, she asked what does the word Institution mean? Hirsch said it is a place where people stay, so in Office Institution if you don't want people to stay overnight you need to take the Institution out of the office. Hirsch said to change the wording of Institution. Reilly responded with definition from Article II code book.

Hirsch discussed:

- The 500 feet you measure outer boundaries and I had this done and the County starts from the center.

- The 1,000 feet should not apply to Brook Hollow etc., 500 feet is enough and includes a lot of people.

J. OLD BUSINESS/NEW BUSINESS:

Old Business:

New Business: none
Sherear told PZ Board about the upcoming Public Hearing for BOA on 12/15/2015 in Country Cove requesting a setback of 4 feet Variance for pool & screen enclosure, property backs up to conservation land.

K. ADJOURN

There being no further business to discuss, MOTION:Abare / RItter to adjourn this meeting. Vote: All Ayes. The meeting adjourned 9:38 P.M.

BY:

_____
Patrick Reilly, Vice Chair

_____
Denine Sherear, Board Secretary

_____
Date Approved: as presented/corrected

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

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

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

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

BACKGROUND/HISTORY:
This Assisted Living Facility (ALF) Ordinance 2014-01 came up as a discussion item during a PZ Meeting; it was under the original recommendation of Council to not allow ALF Facilities in the "OI" Zoning. The amendment to this Ordinance is to correct & clarify this recommendation.

The PZ has reviewed this Ordinance at the last few PZ Meetings. The PZ Board suggested revising the Part I "Long –Term Care Facility" paragraph in accordance with the Florida Statutes Title XXX, for clarification.

The PZ Board has made some corrections to this Ordinance and would like to forward to Council their final recommendations.

ATTACHMENTS:

- Ordinance 2014-01 Assisted Living Facility (ALF)
- Corrections to Amend Ordinance 2014-01

ACTION OPTIONS:
Recommendation to Council

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:

Type of Golf Course	*Minimum Acres Required*
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.

* see definition CH 400 FLST 400.0060(6)

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).

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:

"COMMUNITY FACILITIES	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
~~Group Homes~~					~~C~~	~~C~~		~~C~~			~~P~~		~~C~~	
Hospitals and ~~Extended Care~~ other Licensed Facilities								C						
Nursing Homes ~~(including Rest Homes and Convalescent Homes)~~ and Related Health Care Facilities					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	

(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)
Community Residential Home							
Level 1 (1 to 6 residents/beds)	1.5 acres	210	Paved	60/30	25/20	Type A/C	(7)
Level 2 (7 to 14 residents/beds)	3 acres	210	Paved	60/30	25/20	Type A/C	(7)
Assisted Care Communities							
I Assisted Living Facility							
Level 1 (1 to 5 residents/beds)	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 2 (6 to 15 residents/beds)	3 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 3 (16 or more residents/beds)	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)
II Adult Family- Care Homes							
(1 to 5 residents/beds)	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
III Adult Day Care Facilities	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)

• • •

"(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. The motion was seconded by Council Member Abare and, upon being put to a vote, the vote was as follows:

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

(seal)

Ordinance adopted / fails (circle one)

TOWN OF MALABAR
By:
Steve Rivet, Council Chair

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

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

AGENDA ITEM #2

AMENDMENTS MADE TO ORDINANCE 2014-01

ASSISTED LIVING FACILITIES

AS FOLLOWS:

1.) Section 1-2.6- Land Use Classifications page 2 (B) Nursing Homes and Related Health Care Facilities

*Part I Long-Term Care Facilities

2.) Section 1-3.2 Land Use By Districts- Table 1-3.2 page 2 remove the ~~"C"~~ under OI

3.) Section 1-20.2- Definitions of term page 1 *Assisted Living Facility* ~~12.B~~ should be 13.B

Section 1-2.6. - Land use classifications.

The purpose of these provisions is to classify uses into specially defined types on the basis of common functional characteristics and land use compatibility. These provisions apply throughout the zoning regulations.

All land use activities are classified into the following activity types.

A. *Residential Activities.*

1. Single Family Dwellings.
2. Two Family Dwellings.
3. Multi Family Dwellings.
4. Mobile Homes.
5. Accessory Residential Activities.

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:

Type of Golf Course	Minimum Acres Required
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

DELETE →

~~"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).~~

CORRECT →

Part I Long-Term Care Facilities
"Long Term care facility" only means a nursing home facility or board and health care facility.

Part II Nursing Homes

"Nursing Home Facility" means any institution, building, residence, private home, or other place, whether operated for profit or not, including a place operated by a county

Section 1-3.2. - Land use by districts.

Table 1-3.2 "Land Use by Districts" stipulates the permitted and conditional uses by district.

Permitted uses are uses allowed by right provided all applicable regulations within the land development code are satisfied as well as other applicable laws and administration regulations. Conditional uses are allowable only if approved by the Town pursuant to administrative procedures found in Article VI. The applicant requesting a conditional use must demonstrate compliance with conditional use criteria set forth in Article VI.

No permitted use or conditional use shall be approved unless a site plan for such use is first submitted by the applicant. The applicant shall bear the burden of proof in demonstrating compliance with all applicable laws and ordinances during the site plan review process. Site plan review process is set forth in Article X.

Cross reference— Alcoholic beverages, ch. 4.

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)								P	P	P	P		P	
Child Care Facilities								C			C		C	
Churches, Synagogues and Other Places of Worship	C	C	C	C	C	C		P, A[1]	P	P	P		P	
Clubs and Lodges (Not-for-Profit)									P	P				

Cultural or Civic Activities								P	P	P	P		P	
Educational Institutions								C, A[1]					C	
Golf Course Facilities	C													
Hospital and other Licensed Facilities								C					C	
Nursing Homes and Related Health Care Facilities					C	C		~~C~~					C	
Protective Services					C	C	C	C	C	C	C	C	C	
Public Parks and Recreation	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	
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]								

correct

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														
Noncommercial Agricultural Operations	P													
Wholesale Agricultural Activities	P													
Commercial Stables	C													
COMMERCIAL ACTIVITIES														
Adult Activities										C				
Bars and Lounges										C				
Bed and Breakfast											P[1]			
Business and Professional Offices								P	P	P	P	P	P	
Enclosed Commercial Amusement										P				
Arcade Amusement Center/ Electronic Gaming Establishment										C[2]				
Funeral Homes									P	P	C			

General Retail Sales and Services										P				
Hotels and Motels										P				
Limited Commercial Activities									P	P	P			
Marine Commercial Activities										C*				
Medical Services								P	P	P	P			
Mini Warehouse/Storage									C	P		P		
Parking Lots and Facilities								P	P	P	P		P	
Retail Plant Nurseries									P	P	P			
Restaurants (Except Drive-Ins and fast food service)									P	P	P			
Restaurants (Drive-ins)										P				
Service Station, Including Gasoline Sales										C*		C*		
Trades and Skilled Services										C*		P		
Veterinary Medical Services								P	P	P	C	P		
Vehicular Sales and Services										C*		P		
Vehicular Services and Maintenance										C*		P		
Wholesale Trades and Services										C*		P		

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

C	=	Conditional Use
P	=	Permitted Uses
A	=	Accessory Use
*	=	These uses are permitted only on sites abutting Babcock Street, US 1, and West Railroad Avenue.
1	=	Allowing up to 1,000 square feet of a church or educational institution for the housing of a caretaker or security guard serving the church or educational institution. No such use shall be allowed unless administrative approval is granted by the Town.

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

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

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

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

(Ord. No. 94-4, § 3, 4-3-95; Ord. No. 97-3, § 2, 3-17-97; Ord. No. 05-01, § 1, 3-7-05; Ord. No. 06-19, § 1, 1-11-07; Ord. No. 12-48, § 2, 1-23-12; Ord. No. 14-01, § 3, 2-3-14)

Section 1-20.2. - Definitions of terms.

Terms not otherwise defined herein shall be interpreted first by reference to the Comprehensive Plan and this Code; secondly, by reference to generally accepted engineering, planning, or other professional terminology if technical; and otherwise according to common usage, unless the context clearly indicates otherwise.

For the purpose of enforcing and administering this Code, the following words shall have the definitions and meanings herein ascribed:

Abandon. To discontinue a use for more than six (6) consecutive months.

Abutting. See adjoining.

Access. For purposes of this Ordinance, the term access shall mean a way for prospective purchasers, visitors, and prospective customers to get from parking facilities to the model home. Such access shall be a minimum of 30" wide.

Access, Point of. A driveway or other opening for vehicles onto a public street.

Accessory Use or Structure. A use or a structure subordinate to the principal use or building on the same lot and serving a purpose customarily incidental to the use of the principal building, provided any such structure is built with or after the construction of the principal building.

Adjoining Lot or Land. A lot or parcel of land that shares all or part of a common lot line including a common right-of-way with another lot or parcel of land.

Administrative Office. A room, studio, suite or building in which the management and general administrative functions are performed.

Administrative (or Town) Official. The person appointed by the Town Council to administer and enforce this chapter [Code] who is normally the building inspector.

Adult Day Care Centers. As defined in section 1-2.6.B.I3.B, Part III.

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

Advertising Structure. A structure of any kind or character erected or maintained for outdoor advertising purposes, upon which any outdoor advertising sign may be placed.

Airport. A special facility designed to accommodate the takeoff and landing of aircraft [and which] may be equipped with hangars, facilities for refueling and repairing airplanes, taxiways, tie down areas, and various accommodations for passengers.

Alley. A roadway dedicated to public use which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

Alteration. Any change in the arrangement of a building, including work affecting the structural parts of a building or any change in occupancy.

Apartment. An independent housekeeping unit in an apartment house.

Apartment House. Any building or part thereof where separate accommodations for more than two (2) families living independently of each other are supplied to transient or permanent guests or tenants.

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

Correction

Awning. A light, protective appurtenance to a building.

Bars. Any place selling and dispensing for the drinking on the premises of liquor, malt, wine, or other alcoholic beverages.

Basement. A story partly underground and having at least one-half of its height below the level of the contacting grade.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: December 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 Board discussed Table 1-3.2 at the last few PZ Meetings, they 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.

This suggestion came as a result of persons walking into PZ Meetings presenting a scenario of purchasing a residential home in a designated residential area and convert into a place of Worship. The PZ Board explained the issues of roads, water/septic availability, traffic flow, and the process of the Board of Adjustment for a Conditional Use and notification of the 500 ft. radius of neighbors not wanting traffic and commercial buildings in a residential area. The PZ Board always presented to the "scenario seekers" that there are plenty of areas in Malabar that do permit this use. It was after this that the PZ Board suggested to have this as an Agenda Item to revise/remove the conditional use in residential areas for Churches, Synagogues and Other Places of Worship and those that wish to have this use would look under permitted areas.

It is the suggestion of the PZ Board to remove the "C's" (Conditional Use) in the following residential zoning districts RR-65, RS-21, RS-15, RS-10, RM-4, and RM-6. There were also corrections made on Table 1-3.2 Land Use by Districts under "Community Facilities" under the, "OI" zoning for Churches, Synagogues and Other Places of Worship (P,A,1) per foot notes, and Educational Institutions (C,A,1) to make larger #1's not small #1's per footnotes. This is noted on attached Table 1-3.2.

ATTACHMENTS:

- Table 1-3.2 Land Use by District, with corrected recommendations

ACTION OPTIONS:
Recommendation to Council

Corrections

Remove "C"

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)								P	P	P	P		P	
Child Care Facilities								C			C		C	
Churches, Synagogues and Other Places of Worship	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~		P, A[1]	P	P	P		P	
Clubs and Lodges (Not-for-Profit)									P	P				
Cultural or Civic Activities								P	P	P	P		P	
Educational Institutions								C, A					C	
Golf Course Facilities	C													
Hospital and other Licensed Facilities								C					C	
Nursing Homes and Related Health Care Facilities					C	C		C					C	
Protective Services					C	C	C	C	C	C	C	C	C	
Public Parks and Recreation	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	
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														

P, A, 1

C, A, 1

44/95

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

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

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

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SUBJECT: Discuss 500 ft. Radius notification for Public Hearings

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BACKGROUND/HISTORY:
The PZ Board has discussed the radius notification for Public Hearings to see if the radius area needs to be extended more than 500 feet for each specific subject area for "Public Hearings". The PZ Board has made a list of seven (7) subjects and areas of different radius distances. At this meeting PZ Board will work on location where they could be placed in the Code Book.

ATTACHMENTS:
- Work Sheet for Radius Notifications
- Chapters & Articles from Code Book

ACTION OPTIONS:
Discussion

7

Work Sheet for Agenda Item #4

Radius Notifications

P+Z mtg
10/28/15

#	SUBJECT	RADIUS FOOTAGE	LOCATION IN CODE BOOK	
1.	Site Plan Review	Default is already 500'		Art VII
2.	Commercial Site Plan Review	↓	↓	Art VII
3.	All Conditional Uses	↓	↓	Art VI
4.	Public Utilities	All that may be affected		Art XVII
5.	~~Abandonment of ROW~~	same as # 8		
6.	BOA for Variances	500'		Chap 2
7.	Land Use Changes & Rezoning	500'	Art XII	
8.	Abandonment of Improved & Unimproved of existing ROW	Greater than 500'	Art XII	
9.				
10.				
11.				
12.				
13.				
14.				

CHAPTER 2

Chapter 2

Sec. 2-240. - Establishment and purpose of board of adjustment.

(a) *Establishment and purpose.* The board of adjustment is hereby established which shall consist of five (5) seats and two (2) alternate seats. The board of adjustment shall meet only on an as needed basis when a property owner requests a variance to the Land Development Code or the Street and Road Improvement Code. They shall also hear and consider challenges to the administrative decisions by the town building official or town engineer. The quorum for the board of adjustment is four (4) members. The board of adjustment sits in a quasi-judicial position when considering variances to the Land Development Code. The board of adjustment shall have the authority to compel attendance of witnesses at hearings or meetings and to administer oaths. Any appeal of the decision of the board of adjustment shall be made through the circuit court and must be made within thirty (30) days of the finding by the BOA. The town council shall establish by resolution the appropriate application fee to be submitted.

(1) *Alternate member duties.* The alternate member of the board of adjustment may attend all meetings of the board of adjustment but shall act only in the absence, disability or disqualification of a regular member thereof. When an alternate member acts, the minutes of the board of adjustment shall reflect the name of the absent, disabled or disqualified member in whose place the alternate is acting. The alternate members shall alternate to act in the place and stead of a regular voting member.

(2) *Criteria for review of administrative order.* The board of adjustment may reverse or affirm, wholly or partly, or may modify the order made by an administrative official in the enforcement of any land development code or regulation and shall memorialize their decision in a final order.

(3) *Findings of board of adjustment.* Final orders of the board of adjustment shall be recorded at the Brevard County Clerk of Court and filed in the property file, with a copy kept with the meeting minutes and a copy to the applicant.

(4) *Majority vote required.* The concurring vote of a majority of all the members of the board of adjustment shall be necessary to reverse any administrative order or decision. Decisions in favor of an applicant's request for a variance shall also require a majority vote of all the members.

(5) *Criteria for determining variances.* In order to authorize any variance from the terms of this ordinance, the board of adjustment must find the following:

a. Existence of special conditions or circumstances which are peculiar to the land, structure or building and are not applicable to other lands, structures or buildings in the same zoning district.

b. Conditions not created by applicant.

c. Special privilege not conferred to applicant not entitled to others in same zoning.

d. Hardship conditions exist. The literal interpretation of the provisions of the Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would cause unnecessary and undue hardship on the applicant.

e. Only the minimum variance granted. Variance granted shall be the minimum variance that will make possible the reasonable use of the land, building or structure.

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 nor shall a variance be granted because of the presence of nonconformities in the zoning district or classification or in adjoining zoning districts or classifications.

c. *Require attendance at hearings and administer oaths.* The board of adjustment shall have the authority to compel the attendance of witnesses at hearings or meetings and to administer oaths.

(3) *Rules of procedure.* The board of adjustment shall establish and adopt rules of procedure subject to approval by the town council which include policies for, but not limited to:

- Election and duties of officers;
- Meeting schedule, time and place;
- Establishing agenda and order of business and method of transacting such business;
- Procedure for action and voting by members;
- Conduct of public hearings;
- Rules of conduct;
- Parliamentary procedure;
- Maintenance of records; and
- Method of amending the same.

a. *Officers.* The board shall elect a chairman and vice chairman from among its members and shall appoint a secretary who may be an officer or employee of the governing body. The board may create and fill such other offices as it may determine to be necessary for the conduct of its duties. The chairman, or in his absence, the vice-chairman, may administer oaths and compel the attendance of witnesses.

b. *Terms of officers of the board.* Terms of all such offices shall be for one (1) year, with eligibility for re-election.

c. *Maintenance of records.* The board of adjustment shall keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record. Such records shall include, but not be limited to, minutes of proceedings, showing the vote of each member upon each matter of business (including absent members and members failing to vote for other reasons). All such records shall be filed with the office of the town clerk.

d. *Schedule of meetings.* Meetings of the board shall be held at the call of the chairman and at such times as the board may determine.

e. *Quorum.* A quorum for action by the board shall consist of four (4) members.

f. *Other rules of procedure.* The board shall adopt such other additional rules as if deems necessary to conduct its business, subject to approval by the town council.

(d) *Criteria for determinations by the board of adjustment.*

(1) *Criteria for review of administrative orders.*

a. *Possible actions.* In review of administrative orders the board of adjustment may, upon appeal and in conformity with provisions of this act, reverse or affirm, wholly or partly, or may modify the 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, and may make any necessary order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken.

b. *Majority vote required.* The concurring vote of a majority of all the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass under any such ordinance.

(2) *Criteria for determining variances.* In order to authorize any variance from the terms of this chapter, the board of adjustment must find the following:

a. *Existence of special conditions or circumstances.* That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.

b. *Conditions not created by applicant.* That the special conditions and circumstances do not result from the actions of the applicant.

c. *Special privileges not conferred.* That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings, or structures in the same zoning district.

d. *Hardship conditions exist.* That literal interpretation of the provisions of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the ordinance and would work unnecessary and undue hardship on the applicant.

e. *Only the minimum variance granted.* That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.

f. *Not injurious to public welfare or intent of ordinance.* That the grant of the variance will be in harmony with the general intent and purpose of the comprehensive plan or this chapter 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.* In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with Chapter 163 F.S., the comprehensive plan, and any ordinance enacted under its authority. Violation of such conditions and safeguards, when made a part of the terms under with the variance is granted, shall be deemed a violation of the ordinance.

h. *Time limit may be imposed.* The board of adjustment may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both.

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 by the terms of the ordinance in the zoning district. No 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.

(Ord. No. 14-08, §§ 3, 4, 6-16-14)

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. Section 3 of that same ordinance further amended the newly created Code subsection 2-240(a).

ARTICLE VI

Article VI

Section 1-6.1. - Conditional uses.

A. *Purpose and Intent.* This Section is intended to stipulate general provisions and criteria for considering the approval of conditional uses on specific sites within various zoning districts. Conditional uses shall be permitted upon a finding that the respective use and proposed site plan satisfies the specific criteria of Section 1-6.1(C) cited herein.

B. *Specific Criteria Regulating Conditional Uses.* A conditional use shall be permitted only upon a finding that the proposed conditional use, application, and site plan complies with the criteria herein unless the town determines that the proposed conditional use does not meet the criteria herein provided and the proposed conditional use is adverse to the public's interest. In addition to the site plan criteria of Article VII, an application for a conditional use shall describe the proposed land use characteristics and site plan techniques proposed to mitigate against possible adverse impacts to properties in the immediate vicinity.

1. *Characteristics of use described.* The following characteristics of a proposed conditional use shall be clearly described as part of the conditional use application:

a. *Scale and intensity.* Scale and intensity of use as measured by the following:

i. Floor area ratio;

ii. Traffic generation;

iii. Square feet of enclosed building for each specific use;

iv. Proposed employment;

v. Proposed number and type of service vehicles;

vi. Off-street parking needs; and

vii. Other specifications and/or characteristics of the proposed use describing the nature, character, and intensity of the use, including compatibility with existing and anticipated uses within the immediate vicinity.

b. *Site improvements.* On- or off-site improvement needs generated by the proposed use and not identified in the preceding subparagraph "a.":

i. On- or off-site facilities required to serve the proposed uses such as utilities, public facilities, roadway or signalization improvements, or other similar improvements, including proposed accessory structures or facilities; and

ii. Other unique facilities/structures proposed as part of site improvements.

c. *On-site amenities.* On-site proposed to enhance site and planned improvements. Amenities including mitigative techniques such as open space, setbacks from adjacent properties, screening and buffers, including landscaped berms proposed to mitigate against adverse impacts to adjacent sites.

d. *Public facilities.* If the conditional use is for a public or semi-public facility, the primary and auxiliary service areas shall be described together with the existing and anticipated network of related facilities accommodating service area needs within the incorporated and unincorporated areas of Brevard County.

2. *Criteria for conditional use review and approval.* In addition to site plan identified in Article VII, applications for a conditional use shall clearly demonstrate the following:

a. *Land use compatibility.* The applicant shall demonstrate that the conditional use, including its proposed scale and intensity, traffic generating characteristics, and off-site impacts are compatible and harmonious with adjacent land uses and will not adversely impact land use activities in the immediate vicinity.

Similarly, where the use is substantially different from other uses in the district and is not intended to serve the residents in the immediate vicinity, the applicant shall bear the burden of demonstrating that the use is appropriate to the subject site and immediate vicinity, and cannot and/or should not be located at an alternative site. In order for a non-residential use to be approved within a residential area, the applicant must demonstrate that a location outside the residential area would not provide for the essential site location needs of the facility or use.

b. *Sufficient site size and adequate site specifications to accommodate the proposed use.* The size and shape of the site, the proposed setbacks and buffer areas, the proposed access and internal circulation, and the site design enhancements must be adequate to accommodate the proposed scale and intensity of conditional use requested. The site shall be of sufficient size to accommodate site design amenities such as screening, buffers, landscaping, open space, off-street parking, efficient internal traffic circulation, and similar site plan improvements needed to mitigate against potential adverse impacts of the proposed use.

c. *Public and semi-public facilities within residential areas.* A public or semi-public facility proposed within any type of residential district must provide an essential service to residential dwelling units within the immediate vicinity and the applicant must demonstrate that alternative sites zoned for non-residential use cannot accommodate the functions of the facility.

d. *Proper use of mitigative techniques.* The applicant shall demonstrate that the conditional use and site plan has been designated to incorporate mitigative techniques needed to prevent adverse impacts to adjacent land uses. In addition, the design scheme shall appropriately address off-site impacts to ensure that land use activities in the immediate vicinity, including community infrastructure are not burdened with adverse impacts detrimental to the general public health, safety and welfare.

e. *Hazardous waste and hazardous emissions.* The proposed use shall not generate hazardous waste, hazardous emissions, or require use of hazardous materials in its operations without use of town approved mitigative techniques designed to prevent any adverse impact to the general health, safety and welfare. The plan shall provide for appropriate identification of hazardous waste and hazardous material, regulate its use, storage and transfer consistent with best management principles and practices. No use which generates hazardous waste, hazardous emissions or uses hazardous materials shall be located in the town unless specific location is consistent with the Comprehensive Plan, land development regulations, and does not adversely impact wellfields, aquifer recharge areas, or other conservation resources. Such uses shall be located within a non-residential district.

f. *Compliance with applicable laws and ordinances.* A conditional use application shall demonstrate compliance with all applicable federal, state, county and town laws and ordinances. Where permits are required from governmental agencies other than the town, these permits shall be obtained as a condition of approval.

C. *Review Procedures.* The application for a conditional use on a form to be provided by the Town Clerk shall be submitted to the Town Clerk with the site plan required pursuant to Sec. 1-7.1 of this Code. The procedure for approval shall be the same as for the procedures identified in Chapter VII for site plan review.

The applicant shall demonstrate on the site plan documents and scale drawings that the proposed improvements shall comply with all specifications cited in Table 1-6.1(B). The procedure for review by the Planning and Zoning Board and the Town Council shall be the same as stipulated for site plan review in Sections 1-7.1 and 1-7.5.

TABLE 1-6.1(B). CONDITIONAL LAND USE REQUIREMENTS

Conditional Land Uses	Minimum Size Site	Minimum Width/ Depth (feet)	Access Required to Street	Building Setback from Residential District/Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District/ Nonresidential District (feet)	Perimeter Screening Residential District/ Nonresidential District (5)	Curb Cut Controls	Other
Child Care Facilities	1 Acre	145	Paved	50/30	15/10	Type A/B	(7)	
Places of Worship	5 Acres	250	Paved	70/45	25/20	Type A/C	(7)	
Educational Institution	(1)	500	Arterial	70/45	25/20	Type A/C	(7)	
Enclosed Arcade Amusement Center/Electronic Gaming Establishment	1 Acre	120	Highway 1 and Babcock Street only	100/30	N/A	Type A/C	(7)	
Golf Courses	(2)	500	Paved	70/45	25/20	Type C/C	(7)	
Hospitals and other Licensed Facilities	5 Acres	325	Arterial	100/75	25/20	Type A/C	(7)	
Nursing Homes and Related	2 Acres	210	Paved	60/30	25/20	Type A/C	(7)	

Health Care Facilities								
Protective Services	(4)	120	Paved	50/30	25/20	Type A/C	(7)	
Public Parks and Recreation Areas	5 Acres	325	Paved	70/45	25/20	Type C/C	(7)	
Public and Private Utilities	N/A	120	N/A	70/30	25/20	Type A/C	(7)	
Commercial Stables	5 Acres	325	N/A	100/75	50/40	Type B/C		
Adult Entertainment	1 Acre (8, 9, 10)	120	US 1/Babcock	100/30	N/A	Type A/C	(7)	(6)
Bars and Lounges	1 Acre (8, 9)	120	US 1/Babcock	100/30	N/A	Type A/C	(7)	(6)
Marine Commercial Activities	1 Acre	120	US 1/Babcock/ West Railroad Avenue	100/30	N/A	N/A	(7)	
Service Stations, Including Gasoline Sales	1 Acre (8)	145	Arterial	100/30	N/A	N/A	(7)	
Trades and Skilled	1 Acre (8)	145	US 1/Babcock/	100/30	N/A	Type A/C	(7)	

Services			West Railroad Avenue				
Vehicular Services and Maintenance	1 Acre (8)	145	US 1/Babcock/ West Railroad Avenue	100/30	N/A	Type A/C	(7)
Wholesale Trades and Services	1 Acre	145	US 1/Babcock/ West Railroad Avenue	50/30	15/10	Type A/C	(7)
Kennels	1 Acre	145	N/A	100/30	15/10	Type A/C	(7)
Vehicular and Other Mechanical Repair	1 Acre (8)	145	US 1/Babcock/ West Railroad Avenue	100/30	15/10	Type A/C	(7)
Noncommercial Piers, Boat Slips and Docks	N/A	N/A	N/A	N/A	N/A	N/A	(7)
Community Residential Home							
Level 1 (1 to 6 residents/bed	1.5 acres	210	Paved	60/30	25/20	Type A/C	(7)

s)								
Level 2 (7 to 14 residents/beds)	3 acres	210	Paved	60/30	25/20	Type A/C	(7)	
Assisted Care Communities								
I Assisted Living Facility								
Level 1 (1 to 5 residents/beds)	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)	
Level 2 (6 to 15 residents/beds)	3 acres	210	Arterial	60/30	25/20	Type A/C	(7)	
Level 3 (16 or more residents/beds)	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)	
II Adult Family-Care Homes								
(1 to 5 residents/beds)	2 acres	210	Paved	60/30	25/20	Type A/C	(7)	
III Adult Day Care Facilities	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)	

Note: Arterial streets refer to transportation linkages on the Major Thoroughfare Plan within the Comprehensive Plan (i.e., Malabar Road, US 1, and Babcock Street).

(1) Minimum spatial requirements for public and private, primary and secondary educational institutions shall comply with standards used by the Brevard County School Board and the State of Florida.

(2) Minimum spatial requirements for golf courses shall comply with standards recommended by the U.S. Golf Association or the American Society of Golf Architects.

(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.

(4) Minimum spatial requirements for the American Insurance Association and the National Fire Prevention and Control Administration.

(5) The Type A, B, and C screening requirements reflect the standards cited in Section 1-4.1(G)(2)(a)—(c).

(6) No parking lot or structure within 200;ft; of residential or institutional district.

(7) No more than two curb cuts shall be permitted to any one street frontage. The ingress-egress width shall be restricted to a maximum width of thirty (30) feet at the point of curvature at the property line; shall be located no closer than thirty (30) feet to a right-of-way intersection; and shall be at least ten (10) feet removed from property lines. A minimum fifty (50) feet separation shall be maintained between curb cuts. The Town may require controlled access, including dedication of cross easements and joint use of drive. The Town Council may grant a waiver to these requirements after considering the recommendations of the Planning and Zoning Board and the Town staff.

(8) Shall not be located adjacent to a residential district, including the RR district.

(9) Shall not be located within 1000 feet of a religious institution, educational institution, or public park.

(10) Reference Town of Malabar Ordinance Regulating Adult Entertainment.

(Ord. No. 94-4, § 9, 4-3-95; Ord. No. 12-48, §§ 3, 4, 1-23-12; Ord. No. 14-01, § 4, 2-3-14)

Cross reference— Adult entertainment establishments, regulations, § 10-26 et seq.

ARTICLE VII

Article VII - SITE PLAN REVIEW

Section 1-7.1. - Applicability and filing procedure.

Site plan approval, as provided for herein shall be required for each of the following:

1. All permitted uses, except single family homes or single family home accessory structures. However, all uses and structures shall comply with surfacewater management criteria of Article VIII.
2. All conditional uses.
3. Any use or change in use resulting in one thousand (1,000) square feet of impervious surface area on the entire site.
4. The provisions of Article VIII: Surface Water Management shall apply to all site plans as if the same were incorporated in this Article.
5. Any development including single family residences which will involve any clearing, grading or other form of disturbing the land by the movement of earth provided that any one of the following descriptions applies to said movement.
   (a) Excavation, fill or any combination thereof which will exceed five hundred (500) cubic yards.
   (b) Fill which will exceed three (3) feet in vertical depth at its deepest point as measured from the natural ground surface.
   (c) Excavation which will exceed four (4) feet in vertical depth at its deepest point as measured from the natural ground surface.
   (d) Excavation, fill or any combination thereof which will exceed an area of one thousand (1,000) square feet.
   (e) Plant and/or tree cover is to be removed from an area exceeding one thousand (1,000) square feet on any parcel of land.
   (f) Whenever any amount of excavation or fill is proposed within one hundred (100) feet of a stream, stream channel or body of water a soil erosion and sedimentation control plan shall be provided.

A. *General Site Plan Review Procedure.* In all cases requiring site plan review, no structure or parking area, or part thereof, shall be erected or used, or land or water used, or any change of use consummated, nor shall any building permit be issued therefor, unless a site plan for such structure or use shall have been reviewed by the Town Planning and Zoning Board.

1. *Filing.* Before such site plan shall be approved, an application for such approval shall be filed with the Town Clerk then directed to the Building Official and/or the Town Engineer or other designated officials for their recommendation. Town Engineer is defined as that Town employee, or outside Florida registered engineer contracted by the Town, responsible for performing the duties specified herein as the Town Engineer.
2. *Application, Fee and Disclosure of Ownership.* Such application shall be in a form substantially in accordance with the form prescribed by the Town Clerk, copies of which may be obtained from the Town Clerk's office. A written power of attorney authorizing a person other than the owner(s) to sign such application must be attached to said application.

   All applications shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for

site plan approval is sought, except publicly held corporations, in which case the name and address of the corporation and principal executive officers will be sufficient.

The fee schedule for site plan review shall be as determined by resolution of the Town Council.

3. *Review by Town Staff and Planning and Zoning Board.* The application shall be forwarded to the Building Official or Town Engineer and such other staff as may be pertinent. The Town shall proceed to make appropriate studies and/or reviews required to make an appropriate evaluation. The application with evaluative comment shall then be forwarded to the Town Planning and Zoning Board for their consideration and action. The site plan review process shall be carried out in accordance with procedures established by the Planning and Zoning Board, so as to prevent inconvenience and delay to the project.

   After reviewing a site plan and staff recommendations, the Planning and Zoning Board shall recommend approval or disapproval. The Planning and Zoning Board shall provide written comments documenting any conditions of approval. If site plan is recommended for disapproval, the Planning and Zoning Board shall specify in writing the reasons for recommending denial. All recommendations of the Planning Board together with the written record shall be forwarded to the Town Council for final action.

4. *Action by the Town Council.* The Town Council shall consider the recommendations of staff and the Planning and Zoning Board and approve with or without conditions, or disapprove the site plan. The Town Council may attach to its approval of a site plan any reasonable conditions, limitations or requirements which are found necessary, in its judgement, to effectuate the purpose of this Section and carry out the spirit and purpose of the Zoning Ordinance.

   Any condition shall be made a written record and affixed to the site plan as approved. If the Town Council disapproves a site plan, the reasons shall be stated in writing and the appeal shall be to the Court of appropriate jurisdiction.

B. *Review of Minor Site Plans.*

1. *Applicability.* For the purposes of this section, minor site plans shall include the following:

   a. Residential projects comprised of a single building, having less than five (5) dwelling units, or:

   b. Projects containing less than one thousand (1,000) square feet of new impervious surface area.

   c. Single family homes and accessory buildings or ponds which require site plan approval pursuant to section 1-7.1.5.

2. *Submission Requirements for Minor Site Plans.* Minor site plans shall only include that information required in Sections 1-7.2, 1-7.3, which is determined to be applicable to the proposed minor site plan by the Building Official and Town Engineer.

3. *Minor Site Plan Review Procedures.* All minor site plan applications shall be reviewed by the Town Engineer and Building Official and approved by the Building Official, the Planning and Zoning Board and the Chairperson of the Town Council. However, single family homes, accessory buildings or ponds may be approved by the Building Official. Appeals of such decisions shall be conducted pursuant to section 1-7.4

C. *Minor Modifications of Site Plans.* Minor modifications to approved site plans shall include changes such as the:

1. Addition of awnings, canopies or other ornamental structures; redesign and different location of pools, parking spaces, drives and driveways; or modifications in stairs or elevations of decks, porches, terraces and fencing;

2. Addition of parking spaces not to exceed twenty-five (25) percent, including fractions thereof, of the total number of existing parking spaces or five (5) spaces, whichever is the greater amount;

3. Attached or detached additions to buildings which do not increase the floor area in excess of five hundred (500) square feet;

4. Installation of utility system improvements including buildings not exceeding two hundred (200) square feet.

5. Aside from minor modifications to site plans as herein defined, any change in use of buildings, structures, land or water, or institutions of new uses, or alteration or major improvements to existing structures, or erection of new buildings or structures shall require a new site plan submittal in accordance with all procedures and provisions of this Code.

Such changes to approved site plans shall be reviewed by the Building Official and or other designated Town consultants/Staff. If the Building Official and Town Engineer have no objection to the request based on its compliance with the Code, such minor modifications shall be submitted for approval by the Town Council Chairperson after review by the Planning and Zoning Board. The Town Council Chairperson shall report each change so approved to the Town Council for the record at the next scheduled meeting.

D. *Conformance with Zoning Regulations Required.* Any such building, structure or use shall be erected, altered, installed and maintained in full conformity with the provisions of the zoning ordinance and the approved site plan.

(Ord. No. 91-1, 3-19-91)

Section 1-7.2. - Considerations in reviewing site plans.

The Planning and Zoning Board shall not approve a site plan unless a finding is made that such site plan conforms to all applicable provisions of the land development regulations.

A. *Site Location and Character of Use.* The Comprehensive Plan together with the land development regulations, including size and dimension regulations, general provisions, performance standards, and the list of permitted and conditional uses, off-street parking, landscaping, required open spaces, yards and building setbacks shall collectively be the principal guides in determining the suitability of the location of the proposed use.

B. *Appearance of Site and Structures.* The appearance of site and structures shall be coordinated for the purpose of creating a pleasing and harmonious overall environment. The choice of building materials, plant materials, lighting and other building and site improvements shall be commensurate with the objectives of the subject use without generating adverse visual impact on surrounding properties or transportation corridors. Architectural style or design is not restricted. Evaluation of the appearance of a project shall be based on the quality of its overall design and relationship to the impacted area considering the following factors:

1. *Harmonious Overall Design.* The exterior of buildings and structures including mass, facade and materials shall be in harmony with the site and the general character of the impacted area and shall not be gaudy or garish. Awnings or ornamental features shall be designed in a manner harmonious with the building design and shall be of appropriate scale, shape, and pattern in order to reinforce good design principles. Similarly, awnings or ornamental features shall not use incompatible or extraordinary scale, shapes, color schemes, patterns or other extraordinary features for purposes of attracting attention. The appearance of buildings and structures shall be disapproved under Section 1-7.2(B) in extreme cases only and reasonable doubt shall be resolved in favor of the applicant.

2. *Location and Screening of Mechanical Equipment, Utility Hardware and Waste Storage Areas.* Mechanical equipment or other utility hardware other than antennas and stacks on roofs shall be harmonious with the building or they shall be located and/or screened so as not to be visible from any public ways within the impacted area. Similarly, refuse and waste storage areas shall be screened from adjacent properties and public ways by appropriate fences, walls or hedges. In cases where dumpsters must be located in areas highly visible

from any public right-of-way, the Town Planning and Zoning Board shall be authorized to require appropriate vegetative or structural screening to shield an unsightly condition.

3. *Commercial and Industrial Activities Conducted in Enclosed Buildings.* All businesses, services or manufacturing or processing shall be conducted within completely enclosed buildings. If the Town Council determines that a demonstrated necessity exists for outside storage or display due to the impracticality and unreasonableness of enclosure of such services, storage and display areas, in such case such service, storage and display areas or yards shall be screened by a continuous fence or wall or by landscaping and berm system so as to provide a ninety (90) percent opaque screen with a minimum height of five (5) to eight (8) feet, unless the same is demonstrated by the applicant to the Town Council's satisfaction to be impractical and unreasonable.

4. *Exterior Lighting.* Exterior lighting shall be provided and shall be so arranged as to shield or deflect the light from adjoining properties and public streets.

C. *Access, Internal Circulation, Off-Street Parking and Other Traffic Impacts.* The Town Building Official and/or designated staff shall advise on matters related to this subsection 1-7.2(C):

1. *Internal Circulation System Design and Access/Egress Considerations.* Driveways, curb cuts, and areas for the parking and internal circulation of vehicles shall be located, designed and controlled so as to provide for safe and convenient circulation within the site and safe and convenient access from and onto adjoining streets. The Town Staff shall review such design considerations based on standard traffic engineering principals and practices and such specifications as may be adopted by resolution of the Town Council. Requirements of Article IX of this Chapter [Code] shall be applied for off-street parking. Among factors to be considered shall be need for acceleration and deceleration lanes; the number, location and size of curb cuts and access drives from adjacent streets; the location and design of driveways and access aisles to parking spaces, the arrangement, delineation and marking for parked areas; and the means of access to buildings for fire-fighting apparatus and other emergency vehicles.

2. *Separation of Vehicular and Pedestrian Areas.* Parking areas and driveways shall be clearly identified and separated from principal pedestrian routes and recreation areas by curbs, pavement markings, planting areas, fences or similar features designed to promote pedestrian safety.

D. *Traffic Impacts.* A traffic impact analysis shall be required for site plan reviews pursuant to standards, procedures and criteria defined herein. The traffic impact analysis is designed to achieve objectives stipulated in the transportation element of the Comprehensive Plan.

1. *Applicability.* A transportation impact study shall be required if:

(a) A proposed development generates more than one thousand (1,000) trips per day. Such development shall maintain a level of service C, daily condition and level of service D for peak hour conditions on collector and arterial street segments as noted below. The trip generation shall be based on the Institute of Transportation Engineers, Trip Generation Manual (1988) unless the applicant can demonstrate that unique development characteristics will result in substantially different rates.

2. *Impact Study Areas.* The transportation impact study area shall include all arterial and collector streets within one half (½) mile of the site entrance and/or shall include the nearest arterial roads that will be impacted by the development. For developments which generate between five hundred (500) and one thousand (1,000) trips during the peak hour or over one thousand (1,000) trips during the peak hour, the study area shall be one (1) and three (3) miles respectively. Estimates of peak hour trip generation shall be determined by the applicant's Florida Registered Traffic Engineer and shall be approved by the Town Engineer. Peak hour traffic impact shall be assessed, with and without the development, for all collector and arterial road segments and their respective intersections

with other collector and arterial roadways within the designated service area. If additional traffic counts are warranted, they shall be the applicant's responsibility.

3. *Contents.* The transportation impact analysis shall contain the following:

   (a) A detailed description of the collector and arterial road network, including existing and proposed roadway widths and right-of-way widths; existing and proposed traffic signals and traffic control devices; existing and proposed ingress and egress locations, including existing or proposed acceleration or deceleration lanes or turning lane improvements.

   (b) A detailed description of the existing and proposed land uses within the impacted study area including stages of construction and anticipated completion dates.

   (c) A detailed description of the existing traffic conditions, including the Average Annual Daily Traffic (AADT) and the highest average peak hour volume for all collector and arterial roads within the study area. The AADT shall be based on a current twenty-four (24) hour traffic count provided by the applicant. The current twenty-four (24) hour traffic count shall be adjusted to compensate for seasonal variations. This adjustment shall be determined by utilizing Florida Department of Transportation (DOT) or traffic counts calculated quarterly at traffic count stations in the Town of Malabar. The methodology and assumptions underlying the annual adjustment shall be clearly stated. The average peak hour traffic volume shall be the highest average peak hour volume for any weekday twenty-four (24) hour period.

   (d) A detailed Service Level C condition analysis of all collector and arterial roadways and intersections within the study area based on procedures outlined in the 1965 Highway Capacity Manual (including the Northwestern Monographs) and in the Transportation Research Circular No. 212, "Interim Material on Highway Capacity," Transportation Research Board, January, 1980.

   (e) A description of all the existing collector and arterial roadways and intersections that are at or below the Service Level C condition (Service Levels C, D, E, or F).

   (f) A detailed analysis of traffic impact of the development, including trip generations (average 24-hour weekday and highest average weekday hour), internal and external trips, trip absorptions and trip distributions over all collector and arterial roads within the study area. The trip generation shall be based on the latest edition of the Institute of Traffic Engineers Trip Generation Manual, unless a qualified traffic engineer demonstrates that unique qualities of the development will result in different rates. All methodology and assumptions must be clearly stated.

   (g) A detailed cumulative transportation impact of the existing traffic conditions including traffic from the development, normal increases in traffic and increases from allocation of road capacity to already approved projects. This analysis must identify projected AADT and peak hour volumes for all the collector and arterial roads and must describe all the roadways and intersections that will be at or below the Service Level C daily condition or Service Level D peak hour condition.

4. *Traffic Study and Traffic Data Inventory and File.* The Town Engineer shall keep a file on all traffic studies including the future capacity allocated for each project. In determining the projected demand in subsection 1-7.2(D)(3)(g) above, the impact analysis shall include trips already allocated in previous development approvals. The Town shall provide information when available and where appropriate data already exists in order to prevent duplication of efforts and unnecessary costs.

5. *Improvements to Roadways and/or Traffic Control Devices.* Transportation improvements such as intersection improvements; additional turning, acceleration or deceleration lanes; modified land delineations; new or improved traffic control devices; or other such improvements may be required in order to maintain a level of service C daily condition and/or a level of service D peak hour condition. In such case, the applicant for a

development permit may be required to fund and/or install the necessary improvements or provide a legal assurance, such as a performance bond or other surety approved by the Town Attorney, prior to the issuance of a building permit. Where the traffic impact does not generate traffic volume that substantiates the total improvement needs, the Town Council shall determine an equitable participation in the required improvement. The participation by the applicant may, at the discretion of the Town Council, consist of a pro-rata dollar share of improvement costs.

E. *Open Space and Landscape.* Open space shall be comprised of permeable open surfaces, excluding principal structures and impermeable surfaces. No parking areas shall be included as open area. Active recreation areas may be counted as open area.

1. *Residential Open Space Requirement.* All residential development shall preserve a minimum of fifty (50) percent of the upland area as open space. Uplands shall be defined as those areas which are not permanent water bodies or wetlands as defined in Section 1-7.2(G)(2) at the time of application. A maximum of thirty (30) percent of any totally landlocked water body may be credited as open space. At no time shall water bodies comprise more than twenty (20) percent of the total upland open space requirements.

2. *Non-Residential Open Space Requirement.* Non-residential development shall provide a minimum of twenty (20) percent open space.

3. *Mixed Use Open Space Requirement.* Where residential and non-residential development is permitted pursuant to the Town of Malabar Land Development Regulations, the following pro rata open space requirement shall be enforced.

$$OS = NRA / TA \times .2\ TA + RA / TA \times .5\ TA$$

OS	= Open	Space
NRA	= Non-Residential	Acreage
RA	= Residential	Acreage
TA	= Total Area	

4. *Use of Open Space.* Open space and spaces between buildings required by this Chapter [Code] shall be located and improved so as to reasonably serve the purposes for which the requirements are intended. These purposes include provisions of adequate light and air, appropriate separation between buildings and uses, enhancement of privacy, sufficient area for recreation and leisure pursuits (in residential areas) and to facilitate surface water drainage.

5. *Preserve Natural Landscape.* The natural landscape of the site shall be preserved as much as possible for purposes of enhancing the general appearance of the site as well as to prevent excessive storm water run-off, erosion, siltation and dust.

F. *Required Screening of Abutting Residential and Non-Residential Uses.* In order to maintain stability of residential areas, non-residential development within or abutting residential districts and multiple family development abutting single family residential districts, shall provide a fence or a wall or a combination of a berm and landscaping so as to provide a continuous ninety (90) percent opaque solid screen not less than eight (8) feet in height to form a continuous screen along such abutting property lines. In addition, one tree shall be provided for each thirty-five (35) lineal feet or fraction thereof of such landscape barrier. Notwithstanding, all developments shall comply with the landscape requirements of Article XIV. Where a conflict exists with the standards of this paragraph, the more restrictive requirement shall prevail.

Credit may be given for existing plant material against the requirements of this section. Adjustments may be rendered by the Town Council to the requirements of this paragraph based on demonstrated need by the applicant and recommendations of Town Staff and the Planning and Zoning Board. The site plan applicant and successors in ownership shall maintain the continuous screen in perpetuity.

G. *Flood Prone Land and Wetland Preservation.* In order to promote and preserve natural hydrological conditions and to preserve water recharge areas, water supply and water quality, and natural habitats, the following regulations shall be applied to wetland areas.

1. *Flood Prone Land.* Construction in flood prone areas shall comply with the Town's flood plain management policies.

2. *Wetland Defined.* Wetland areas shall include hydric soils and wetland species identified by the DER pursuant to § 17-4.022, F.A.C. Site specific investigations shall confirm the existence of wetland systems based on on-site soil and vegetative analysis with assistance of appropriate representatives of the State Department of Environmental Regulation, the St. John's River Water Management District, U.S. Army Corps of Engineers, and the U. S. Soil Conservation Service.

3. *Wetland Development Restrictions and Interpretations.* No development other than approved passive recreation, open space, restricted accessway, bird sanctuary, natural stormwater retention/detention, or natural preserve shall be allowed in a wetland area unless "competent evidence" indicates that:

   (a) Dominant vegetation is no longer comprised of wetland types normally found in the specified soil; and

   (b) The water regime has been permanently altered artificially or naturally in a manner to preclude its associated watershed areas from functioning as wetlands. Applicants for site plan review shall have an opportunity to so demonstrate that any wetland designations within the confines of their property no longer function as wetlands as defined above. The County urban forester, the soil conservationist as well as representatives of the State Department of Environmental Regulation, U.S. Army Corps of Engineers and the St. John's River Water Management District may be made a part of the site plan review process to assist in identifying and delineating wetlands. The applicant may request that a waiver of the provisions of this section be granted by the Planning and Zoning Board for small isolated marginal wetlands for which the developer shall provide viable compensatory preserve areas which mitigate against a loss of viable wetland systems. The Planning and Zoning Board shall consider the recommendation of the Town Engineer prior to taking action on such a request and shall grant the same only in the case of an overriding public interest. Finally, this section shall not prevent the construction of one single family home on existing lots of record.

The provisions of Article VIII: Surface Water Management are hereby incorporated into this subsection by reference.

H. *Available Potable Water.* All future applications for new development shall be required to connect to a central water system except as herein provided.

1. *Exceptions for Limited Scale Development.* When connection to a central water system is not feasible, applicants for limited scale development adaptive to service by an interim water system, may be allowed if approved by the County Director of Public Health subject to the following conditions:

   a. Assurance in writing from a central water utility that extension of lines to the development is not part of its master plan for expansion; and,

   b. Agreement by the applicant that the system shall be connected to the central utility system at no cost to the Town when service becomes available. The applicant shall be required to post a performance bond or other surety approved by the Town Council after considering recommendation of the Town Engineer and the Town Attorney. The performance bond shall be for the express purpose of constructing water system improvements required as a condition of subdivision approval.

2. *Intent of Regulating Procedure.* The intent of this permitting procedure is: (1) to maintain a comprehensive data base concerning water supply and quality; (2) to discourage unregulated proliferation of private water systems; and (3) to achieve a subsystem design which can be effectively and economically integrated into a central public system certified and regulated by an approved local public service entity at a later point in time and to encourage a compact urban development pattern by managing the location, timing and scale of land development to assure that new development can be efficiently served by public facilities without adversely impacting the City's fiscal capacity; and (4) to discourage all new subdivision of land unless served by a central water utility and to similarly discourage nonresidential development on existing lots of record when such sites are not serviced by a central water utility.

3. *Testing of Private Wells.* In addition, the Town may undertake any necessary action to prevent or remedy water supply and water quality problems. To this the Town may request analysis of water quality and supply of all permitted private wells based on evolving problems and issues associated with water resources. The private well owner may be assessed by the Town after due public hearings for needed water quality, supply problems, requisite testing, laboratory analysis, and improvements, deemed necessary and fiscally equitable.

I. *Wastewater Service.* All applicants for development shall be required to connect to a public wastewater utility regulated by the Public Service Commission, the Department of Environmental Regulation (DER) and/or the County Environmental Health Department. Where a system for wastewater is unavailable, the applicant shall provide an interim wastewater system approved by the DER and/or the County Environmental Health Department and shall agree in writing that the system will be connected to a public wastewater utility at no cost to the Town when service becomes available.

1. *Intent and Purpose of Regulating Wastewater Disposal Systems.* The intent of this provision is: (1) to discourage unregulated proliferation of private package treatment plants; (2) to achieve a subsystem design which can be effectively and economically integrated into a major central public wastewater system at a future point in time which would be certified and regulated by a local public entity; and (3) to encourage a compact urban development pattern by managing the location, timing, and scale of land development to assure that new development can be efficiently served by public facilities without adversely impacting the City's fiscal capacity.

2. *Design Standards and Required Guarantee.* The system shall be designed to satisfy performance standards of the Department of Environmental Regulation (DER), other applicable regional, state, or federal standards, or standards which may be hereafter adopted by the Town. The applicant shall be required to post a performance bond or other surety approved by the Town Council after considering recommendations of the Town Engineer and the Town Attorney. The performance bond shall be for the express purpose of constructing waste water system improvements required as a condition of subdivision approval.

3. *Regulating Use of Septic Tanks and Wastewater Disposal Fields.* Notwithstanding any other provisions of this Code, when septic tank and waste disposal field is the only means of individual sewage disposal, the County Environmental Health Department shall enforce State law regulating use of septic tanks and wastewater disposal fields.

J. *Soil Erosion, Sedimentation Control, and Estuary Water Resource Protection.*

1. *Applicability.* In order to prevent both soil erosion and sedimentation, and to protect both ground and surface water resources, a soil erosion and sedimentation control plan shall be required as a part of an application for site plan review whenever a development will involve any clearing, grading, or other form of disturbing land by the movement of earth, provided that any one of the following descriptions applies to said movement:

(a) Excavation, fill, or any combination thereof will exceed five hundred (500) cubic yards.

(b) Fill will exceed three (3) feet in vertical depth at its deepest point as measured from the natural ground surface.

(c) Excavation will exceed four (4) feet in vertical depth at its deepest point as measured from the natural ground surface.

(d) Excavation, fill or any combination thereof will exceed an area of one thousand (1,000) square feet.

(e) Plant and/or tree cover is to be removed from an area exceeding one thousand (1,000) square feet on any parcel of land.

(f) Whenever excavation or fill is proposed within one hundred feet of a stream, stream channel, or body of water, a soil erosion and sedimentation control plan shall be provided.

2. *Definitions.* For the purposes of this subsection 1-7.2(J) the following definitions are provided:

(a) *Soil erosion* shall mean any removal and/or loss of soil by the action of water, gravity, or wind. Erosion includes both the detachment and transport of soil particles.

(b) *Sedimentation* shall mean the settling out of the soil particles which are transported by water or wind. Sedimentation occurs when the velocity of water or wind in which soil particles are suspended is slowed to a sufficient degree and for a sufficient period of time to allow the particles to settle out of suspension or when the degree of slope is lessened to achieve the same result.

(c) *Erodible slope* shall mean all slopes with inclines in excess of four (4) percent unless modified by the Town Engineer based on consideration of specific soil conditions.

(d) *Large flat surface area (unpaved)* shall mean an area which is flat or whose slope is less than four (4) percent and which consists of more than one thousand (1,000) square feet of exposed soil.

3. *Erosion Water Quality Control Measures.* All measures necessary to minimize water quality degradation soil erosion and to control sedimentation in the disturbed land area shall be implemented. The following protection shall be provided for all disturbed areas: minimize velocities of water runoff, maximize protection of disturbed areas from stormwater runoff, and retain sedimentation within the development site as early as possible following disturbances. A list of major problem areas for erosion and sedimentation water control degradation control follows. For each one, the purpose(s) of requiring control is described. Soil erosion and sedimentation control measures for all such areas shall be provided with a view toward achieving the specific purpose listed below for which a control plan is required:

(a) *Erodible slopes:* Prevent detachment and transportation of soil particles from slope.

(b) *Streams, streambeds, streambanks, bodies of water, lake shorelines:* Prevent detachment and transportation of soil particles.

(c) *Drainageways:* Prevent detachment and transportation of soil particles (which would otherwise deposit in streams, bodies of water, or wetlands); promote deposit or sediment loads (traversing these areas) before these reach bodies of water.

(d) *Land adjacent to streams, ponds, lakes, and wetlands:* Prevent detachment and transportation of soil particles. The applicant shall not adversely impact aquatic vegetation within the sensitive transition zone located between the upland and the mean high water line (ordinary high water line for non-tidal waters). No such vegetation shall be disturbed without approval of the Town. Any such approval shall be based on a demonstrated necessity which promotes the overall public health, safety and welfare. Furthermore, any such disturbance of aquatic vegetation shall be compensated by revegetation based on a plan approved by the Town as stipulated herein. The applicant shall coordinate plans for development along the riverfront or

tidal waters with the Florida Department of Environmental Regulation as well as the U.S. Army Corp of Engineers where tidal waters might be impacted. Where deemed appropriate by the Town, the site plan shall include the planting of native indigenous aquatic plant vegetation to promote stability of the shoreline and to enhance water quality.

(e) *Enclosed drainage structure:* Prevent sedimentation in structure, erosion at outfall of system, and deposit of sediment loads within system or beyond it.

(f) *Large flat surface areas (unpaved):* Prevent detachment of soil particles and their off-site transportation.

(g) *Impervious surfaces:* Prevent the detachment and transportation of soil (in response to an increase in the rate and/or volume of runoff of the site or its concentration caused by impervious surfaces).

(h) *Borrow and stockpile areas:* Divert runoff from face of slopes which are exposed in the excavation process; convey runoff in stabilized channels to stable disposal points; leave borrow areas and stockpiles in stable condition. Creation of water bodies by excavation and/or impoundment shall comply with applicable provisions of Article VIII.

(i) *Adjacent properties:* Prevent their erosion and/or being deposited with sediment.

K. *Additional Considerations.* The Planning and Zoning Board or the Town Council may require additional information be provided by the petitioner for site plan review in order to carry out a review process which is necessary to fulfill the purpose, intent and spirit of this Chapter [Code].

(Ord. No. 91-1, 3-19-91)

Section 1-7.3. - Information to be included in site plan.

A site plan, for the purposes of this Section, shall include, but not necessarily be limited to, the following requirements:

1. Site plan with lot configuration, finished ground floor elevations, contours and designating number of dwelling units, square footage of site, building coverage, square footage of paved areas and open area, and setbacks to scale indicating compliance with regulations.
2. A scaled drawing of the side, front and rear facades of the building or structure, including roof pitch, fenestration including treatment of roof line, windows, and doors as well as a description of materials to be used.
3. Generalized floor plan indicating uses and square footage of each proposed use within each building or structure, building exterior construction material and color, and building height.
4. Location and character of all outside facilities for waste disposal; storage areas; or display.
5. Location and dimensions of all curb cuts, driveways, dedicated cross-easements including their design, location, alignment, dimensions, and specifications; details of off-street parking and loading areas, and vehicular surfaces available for maneuvering, including surface materials, number of employees and number and type of vehicles owned by the establishment. Any combined off-street parking facilities shall be submitted with an agreement specifying the nature of the arrangement, its anticipated duration, and signatures of all concerned property owners.
6. Location of all pedestrian walks, malls, yards and open spaces.
7. Location, size, character, color and copy, height and design of all signs.
8. Location and character of landscaped areas and recreation areas.
9. Location, design and character of all public, semi-public, or private utilities such as water and wastewater disposal facilities, underground or overhead electric lines, gas transmission lines, or other similar facilities or services.

10. Location, height and general character of perimeter or ornamental walls, fences, landscaping, including berms and other required screening devices and any other plans for protecting adjacent property owners.

11. Surface water drainage facilities plan showing existing and proposed grading, drainage patterns and earthwork computations, certified by an engineer or architect registered in the State of Florida.

12. Location of existing easements and rights-of-way.

13. Land survey with complete legal description prepared and certified by a registered surveyor. All architecture or engineering designs must be prepared by a professional architect or engineer registered in the State of Florida pursuant to Florida Statutes 467 and 471 as exists or hereafter amended and which require an appropriate seal on the subject plan prior to issuance of a building permit.

14. Verified statement showing each and every individual person having a legal and/or equitable ownership interest in the subject property except publicly held corporations whose stock is traded on a nationally recognized stock exchange, in which case the name and address of the corporation and principal executive officers will be sufficient.

15. The applicant for site plan review may, at his option, submit a preliminary site plan sketch indicating a general idea of how it is proposed to develop the parcel. Upon tentative approval of a sketch, the applicant can then proceed to have a detailed site plan prepared in accordance with the requirements in this section.

(Ord. No. 91-1, 3-19-91)

Section 1-7.4. - Approval, disapproval and appeal procedure.

A. *Approval Procedure.* Upon the approval of such site plan by the Town Council, a building permit may be issued pursuant to Subsection 1-7.4(B) by the Town Building Official. Appeals to disapprovals by the Town Council shall be to the Court of jurisdiction.

B. *Timing of the Release of Building Permits.* No permits shall be granted by the Building Official until the time for appeal from the decision of the Town Council as herein provided shall have expired. Appeal to the Courts shall not bar the issuance of permits unless the court grants an injunction.

C. *Disapproval Procedure.* If the Planning and Zoning Board recommends denial of a site plan or if the Town Council denies a site plan approval, the reasons said plan was denied shall be specified with specific reference to those sections of the applicable Town Ordinances on which said denial was based. No reasons other than those so stated shall be presented to the Town Council or to the court.

Section 1-7.5. - Termination, extension and transferability.

The site plan approval shall terminate twelve (12) months thereafter, if construction has not been started as evidenced by steady and continuous progress, including the pouring of footings by said termination date. Extensions may be granted by the Town Council at its sole and absolute discretion. Any request for extension shall be made in writing prior to the expiration of the site plan and such request for extension shall be reviewed by the Planning and Zoning Board which shall make a recommendation on the request for extension to the Town Council. In the event the property receiving site plan approval shall be sold, transferred, leased, or the ownership thereof changes in any way whatsoever, the site plan approval shall be transferrable.

(Ord. No. 08-09, § 1, 9-8-08)

Section 1-7.6. - Violations.

Failure to comply and continually maintain all approved elements of an approved site plan, including landscape, appearance and other site development features, shall be a violation of this Code subject to enforcement and penalty procedure of Section 1-12.7 of this Code.

ARTICLE XII

Article XII

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 a 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.

ARTICLE XVII

Article XVII

Article XVII - REQUIRED IMPROVEMENTS AND DESIGN STANDARDS

Section 1-17.1. - Required improvements.

The following tangible improvements are required in conjunction with the development of a subdivision within the Town of Malabar. A Florida registered professional engineer shall be employed to design all required improvements. The required improvements shall be completed prior to recording the plat in the manner prescribed in this ordinance or the applicant shall submit to the Town a guarantee in one of the forms prescribed by this ordinance to assure the installation of the required improvements.

A. *Alleys.* Alleys may be required along rear lot lines of commercial and industrial subdivisions.

B. *Bridges and Culverts.* Where a subdivision is traversed by or develops canals, water courses, lakes, streams, waterways or channels, bridges or culverts shall be provided as necessary to facilitate the proposed street system. The bridge or culvert requirement is subject to the agency having jurisdiction over above enumerated facilities.

C. *Buffers, Including Berms, Fences and Landscaping.* Screening such as fences, berms and other landscaping shall be required for the following reasons:

1. Visual screening between adjacent incompatible or potentially incompatible land uses or zoning categories including, but not limited to, single family residential development adjacent to multiple family structures.

2. Open space distances between adjacent incompatible or potentially incompatible land uses or zoning categories, especially when building heights increase or noise becomes a problem.

3. Movement barriers to prevent direct driveway cuts onto collector or arterial streets.

Screening shall be required on lot lines which border collector or arterial streets. Masonry walls or suitable alternatives shall be provided when noise from adjacent streets is or is judged to be a potential future problem. Berms or suitable screening may be required between lots, especially commercial, industrial, or offices, and adjacent incompatible or potentially incompatible land uses. Along collector or arterial roads suitable screening may be used instead of a masonry fence if noise from the road will not adversely affect the proposed use.

Buffer zones, either open space or specially vegetated, may be required between adjacent incompatible or potentially incompatible land uses especially where problems with building heights, noise, or scenic impairment might be a problem.

Where a buffer screen of decorative masonry, plant materials, fences, [or] berms are required, or where desired by the applicant and approved by the Town, such walls, vegetative screens, or fences shall be set back at least one (1) foot from the right-of-way and shall be so constructed that pilasters or fence terminal anchor posts shall be installed at the corners of each lot in such manner that each property owner might maintain his own section or provisions shall be made to have them maintained by a community association or other appropriate private entity.

D. *Clearing, Grading, and Filling.* The subdivision shall be graded and where necessary, filled to comply with the stormwater management requirements prescribed in Article VIII of this Code. Developers shall be required to clear all rights-of-way and to make all grades, for streets, alleys, lots and other areas, compatible for drainage as prescribed in the stormwater management requirements of Article VIII of this Code.

All fill shall be free of muck, peat, clay, unstable soils, organic matter such as logs, stumps, trees, clippings and cuttings and any form of junk, rubbish, trash, liquid or solid wastes, any form of debris that is subject to consolidation, disintegration, erosion or encourages the

presence of insects, termites, or vermin. The type of fill within the rights-of-way shall be satisfactory to and meet with the approval of the Building Official or other designated staff, who shall require soil tests of the backfill and the underlying material at the cost of the applicant and who shall require the development's project engineer to certify the type of material and method of placement.

In the interest of preservation of existing trees and other natural beauty, the Building Official or other designated staff may vary the requirements of this section where aesthetic and environmental conditions will be enhanced but will not adversely affect property drainage of the area.

Land clearing, excavation and fill permits as required by the Town of Malabar Code of Ordinances shall be obtained from the Building Official or other designated staff prior to commencement of clearing, grading or filling work.

E. *Storm Water Management.* An adequate comprehensive drainage system, including necessary ditches, canals, swales, percolation areas, berms, dikes, piers, detention ponds, storm sewers, drain inlets, manholes, headwalls, end walls, culverts, bridges and other appurtenances shall be required in all subdivisions for the positive drainage of storm and ground water. The drainage system shall provide for surface waters affecting the subdivision. In addition, storm water treatment facilities shall be required in the subdivision to control storm water runoff quality by providing for on-site percolation and/or retention or other appropriate treatment technique for storm water. Such requirements shall be predicated on the provisions of Article VIII of this Code.

F. *Fire Protection Facilities.* Fire protection facilities described in Section 20A-17.2(P)(2) [1-17.2(O)(2)] shall be provided in all residential, commercial and industrial subdivisions.

G. *Monuments.* Monuments shall be set as prescribed by Chapter 177, Florida Statutes, as amended.

H. *Dedication of Lands for Parks and Recreation.* All residential development shall provide an equitable dedication of land for public park purposes and/or fees in lieu thereof pursuant to the standards stated below. The standards provided herein are stipulated to implement policies within the parks and recreation element. The standards shall apply to all residential applications for subdivision approval. No property shall be assessed twice for respective subdivision plat applications unless a rezoning subsequently increases the density permitted on a respective parcel(s) of land.

1. *Requirements.* As a condition of development, the developer shall dedicate land to the Town of Malabar, pay a fee in lieu thereof, or a combination thereof, at the option of the Town, for park and recreational purposes at the time and according to the standards and formula described in this section. No dedication or payment shall be required when it can be shown that sufficient park facilities already exist as determined by the application of the recreation standards herein cited for meeting the needs of the projected area population.

2. *General Standard.* The public interest, convenience, health, welfare and safety require that five (5) acres of property for each one thousand (1,000) persons residing in the Town be devoted for park and recreational purposes. To determine park and recreational land to be dedicated within the service area of proposed developments, analysis shall consider available facilities inventoried in the Town of Malabar Comprehensive Plan: Data Inventory and Analysis, and application of the "Technical Standards" established in Section 1-17.1(H)(6).

3. *Fees in Lieu of Land Dedication.* If it is demonstrated by the applicant to the satisfaction of the Town Council that no park or recreation facility can be located in whole or part within the proposed development to serve the immediate and future needs of the residents of the development, or if the proposed development shall consist of fifty (50) dwelling units or less, the developer may, in lieu of dedicating land, pay a fee equal to the fair market value

of the land which would have been required to be dedicated as defined in Section 1-7.1(H)(6).

4. *Use of Money.* The money collected shall be paid to the Town of Malabar and placed in a reserve account within a special fund. Monies within the reserve account shall be used and expended solely for the acquisition, improvement, expansion or implementation of parks and recreational facilities of the Town. The monies and accrued interest from fees paid for any given development shall be used solely for acquisition of park land or facilities reasonably related to serving said development.

5. *Determination of Fair Market Value.* Where a fee is required to be paid in lieu of land dedication, the value of the property shall be determined by the value per acre assigned by the Brevard County Property Appraiser on the most recent tax roll or the sale price at the most recent sale of the property, whichever is greater.

6. *Technical Standards for Determining Dedication Requirement.*

a. *Dedication Formula.* The following formula shall be used:

Average Number of Persons Per Dwelling Unit	×	5 Acres / 1,000 Persons	=	Acreage Requirement Per Dwelling Unit

Example for a single family dwelling unit:

(2.46 Persons/Unit) × 5 Acres / 1,000 Persons = 0.0123 Acres/Unit

b. *Dedication Table.* The following table is derived from the foregoing and shall be applied to each development according to dwelling type:

Dwelling Type	Average Household Size Per Dwelling Unit	Acreage Requirement Per Dwelling Unit
Single Family/Townhouse	2.46	0.0123
Multi Family/Mobile Home	2.2	0.0110

c. *Land Dedication or Fee.* The Town Council shall determine whether to accept land dedication or require payment of a fee in lieu thereof, after consideration of the following:

(i) Topography, vegetation, hydrology, access and location of land in the development available for dedication;

(ii) Size shall be five (5) acres or larger with a shape and natural features adaptive to passive or active recreation.

(iii) Availability of potential alternate park lands and location of previously acquired park property; and

(iv) Consistency with the Comprehensive Plan.

d. *Credit for Private Recreational Space and Facilities.* Where private recreational space and facilities are provided in a proposed development and are to be privately owned and maintained by the future residents of the development, credit shall be given against land dedication or payment of fees in lieu thereof, as determined pursuant to section 1-7.1(H)(6)(e) [1-17.1(H)(6)(e)], provided that all of the following standards are met:

(i) The yards, setbacks, and other open areas required by zoning and building ordinances and regulations shall not be included in the computation of private recreational space and facilities.

(ii) The private ownership and maintenance is adequately provided by recorded, written agreement, conveyance, or restrictions.

(iii) The use of the private recreational space and facilities is restricted for park and recreational purposes by recorded covenant which runs with the land in favor of the future owner's property and which cannot be defeated or eliminated without the consent of the Town Council.

(iv) The proposed private recreational space and facilities are reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, vegetation, hydrology, access and location.

(v) Environmental preserves which have boardwalks, nature trails, water access, or other usable recreational features, may count for up to ten (10) percent of the required dedication.

e. *Computation of Credit for Private Recreational Space and Facilities.* The credit available for private recreational space and facilities shall be the sum of two (2) components, each of which shall credit against no more than fifty (50) percent of the land dedication requirement as follows:

(i) *Recreational space component.* The recreational space component is a composite measure of the extent to which the development provides for the net recreational requirement (NRR) per person for four (4) categories of recreational space, expressed in square feet per person and as a percentage of the total, as follows:

	Recreational Space Category	Net Recreation Requirement Per Person (square feet)	Percent of Net Recreation Requirement Per Person Based on Area
1.	Picnic	17	8
2.	Golf	65	30

3.	Multi-purpose Field	65	30
4.	Open space	71	32
	TOTALS:	218	100

(ii) *Recreational facilities component.* The recreational component is a composite measure of the extent to which the development provides for the net recreational requirement (NRR) per person for four (4) categories of recreational facilities, expressed in square feet per person as follows:

Recreational Facilities Category		Net Recreation Requirement NRR Per Person (square feet)	Percent of Net Recreation Requirement Per Person Based on Area
1.	Multi-purpose Court	15	19
2.	Swimming	21	27
3.	Playground	22	28
4.	Support facilities	20	26
	TOTALS:	78	100

(iii) *Maximum allowable credit.* The foregoing composites are combined as follows to establish the maximum allowable credit for each category as a percentage of the total (land dedication) requirement:

Recreational Use Category		Net Recreation Requirement Per Person (square feet)	Maximum Allowable Credit (Percentage of Land Dedication Requirement)
1.	Picnic	17	4

2.	Golf	65	15
3.	Multi-purpose fields	65	15
4.	Open space	71	16
5.	Multi-purpose courts	15	7
6.	Swimming	21	21
7.	Playground	22	3
8.	Support Facilities	20	19
	TOTALS:	296	100

7. *Credit for Private Recreational Space and Facilities.* The Town Council may grant full or partial credit for private recreational space and facilities pursuant to the standards established herein. Such credit shall be applied against the total dedication requirements for parks and recreation pursuant to Section 1-17.1(H)(6) of this code. These guidelines and standards are established in order to ensure that private recreational spaces and facilities provide an appropriate range of recreational opportunities for residents of proposed developments.

   a. *General Guidelines.* Where private recreational space and facilities are provided in a proposed development and are to be privately owned and maintained by the future residents of the development, credit shall be given against land dedication or payment of fees in lieu thereof, as determined pursuant to section 1-17.1(H)(6) provided that all of the following standards are met:

      i. The yards, setbacks, and other open areas required by zoning and building ordinances and regulations shall not be included in the computation of private recreational space and facilities.

      ii. The private ownership and maintenance is adequately provided by recorded, written agreement, conveyance, or restrictions.

      iii. The use of the private recreational space and facilities is restricted for park and recreational purposes by recorded covenant which runs with the land in favor of the future owner's property and which cannot be defeated or eliminated without the consent of the Town Council.

      iv. The proposed private recreational space and facilities are reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, vegetation, hydrology, access and location.

      v. Notwithstanding other standards or limitations of this section, environmental preserves which have boardwalks, nature trails, water access, or other usable

recreational features may count for up to ten (10) percent of the required dedication.

b. *Computation of Credit for Private Recreational Space and Facilities.* As stated in the paragraph above, "General Guidelines," the procedure for computing private recreational space and facilities considers both the recreational space component and the recreational facilities component. No space or facility shall be credited unless it meets the minimum Net Recreation Requirements (NRR) established herein. The individual spaces included in the recreational space component shall comprise no more than fifty percent (50%) of the total dedication requirement; and further the facilities outlined in the recreational facilities component shall comprise no more than fifty percent (50%) of the total dedication requirement of Section 1-17.1(H)(6).

i. *Recreational Space Component.* This provision is intended to ensure that residents of proposed developments which provide private recreational areas include adequate levels of open space which are suitable for either active or passive recreational purposes. Developers meeting the minimum Net Recreational Requirements (NRR) for the four (4) types of recreational spaces shall be granted credit for such space(s) up to a maximum of fifty percent (50%) of the total dedication requirement. No credit shall be given to recreational spaces which do not satisfy the NRR requirements for the respective area.

(1) *Common Open Space.* Open space which is held under common ownership by the homeowners association and/or the developer of the proposed project shall be credited as part of the recreational space component provided:

- The area contains no rights-of-way, easements or required yards;
- No more than fifty percent (50%) of the common open space area is comprised of water bodies; and
- The common open space area does not include any other lands used for other recreational space or facilities computation.

Credit for common open space shall be computed as follows:

Number of Dwelling Units	×	Ave. Household Size	×	NRR	=	Min. Size Credited Common Open Space
_____	×	_____	×	71 sq. ft.	=	_____ sq. ft.

(2) *Golf Courses.* Areas designed and constructed for the purposes of playing golf, including putting greens, practice tees and driving ranges shall be credited as part of the recreational space component. The golf course shall not include any rights-of-way, easements or required yards. Credit for golf courses shall be computed as follows:

Number of Dwelling	×	Ave. Household Size	×	NRR	=	Min. Size Credited Golf Course

Units						
_____	×	_____	×	65 sq. ft.	=	_____ sq. ft.

(3) *Multi-Purpose Fields.* Level and open play areas which have a configuration readily adaptable to outdoor activities, including but not limited to baseball, soccer and football shall be credited as part of the recreational space component. Multipurpose fields shall provide landscaping along not less than twenty-five percent (25%) of the perimeter in order to provide shade and a fully vegetative playing surface. Credit for multi-purpose fields shall be computed as follows:

Number of Dwelling Units	×	Ave. Household Size	×	NRR	=	Min. Size Credited Multi-Purpose Field
_____	×	_____	×	65 sq. ft.	=	_____ sq. ft.

(4) *Picnic Areas.* Land areas designed to encourage picnicking shall be credited as part of the recreational space component. The picnic areas shall provide sufficient tables and benches, grills, supportive landscaping and reasonable access to drinking water and restroom facilities. Credit for picnic areas shall be computed as follows:

Number of Dwelling Units	×	Ave. Household Size	×	NRR	=	Min. Size Credited Picnic Area
_____	×	_____	×	17 sq. ft.	=	_____ sq. ft.

(5) *Total Creditable Recreational Space.* Up to a maximum of fifty percent (50%) of the total parks and recreation requirements of Section 20A-17.1(H)(6) [1-17.1(H)(6)] may be comprised of the recreational space components established herein.

ii. *Recreational Facilities Component.* This provision is intended to ensure that residents of proposed developments which provide private recreational areas include adequate facilities for recreational purposes. Developers meeting the minimum Net Recreation Requirement (NRR) for the four (4) types of

recreational facilities shall be granted credit for such facility or group of facilities, up to a maximum of fifty percent (50%) of the total dedication requirement. No credit shall be given to recreational [facilities] which do not satisfy the NRR requirements for the respective facility.

(1) *Playground Facilities.* Land areas which are designed to provide both free play and apparatus for stationary play shall be credited as part of the recreational facilities component. Such playground facilities shall be located in areas which prevent conflict with vehicular traffic and shall be located within the view of other recreational space and/or facilities or residential units. The playground shall be provided with suitable landscaping and shall have reasonable access to drinking water and restroom facilities. Credit for playground facilities shall be computed as follows:

Number of Units Dwelling Units	×	Ave. Household Size	×	NRR	=	Min. Size Credited Playground Facility
_____	×	_____	×	22 sq. ft.	=	_____ sq. ft.

(2) *Swimming Facilities.* Swimming pools and other bodies of water within the perimeter of the development which are deemed suitable for primary water contact and active water recreation shall be credited as part of the recreational facilities component. Decks and other open areas within the facility which completely surround the swimming area shall be included in computations, provided that credit for any such deck or area shall not exceed one hundred fifty percent (150%) of the surface area of the water. Restroom and dressing facilities shall be provided. Credit for swimming facilities shall be computed as follows:

Number of Units Dwelling Units	×	Ave. Household Size	×	NRR	=	Min. Size Credited Swimming Facility
_____	×	_____	×	21 sq. ft.	=	_____ sq. ft.

(3) *Support Facilities.* Land areas and facilities which are deemed to be supportive to recreational activities, including decks, pavilions, patios, restrooms, bath houses, dressing rooms, pedestrian walkways, bicycle paths and parking areas for recreational spaces and facilities shall be credited as part of the recreational facilities component. Support facilities shall not be interpreted to include any facilities attached to residential units or parking areas or pedestrian walkways which are provided primarily to support residential units in the development. Credit for support facilities shall be computed as follows:

Number of Units Dwelling Units	×	Ave. Household Size	×	NRR	=	Min. Size Credited Support Facility
_____	×	_____	×	20 sq. ft.	=	_____ sq. ft.

(4) *Court Facilities.* Facilities which are designed and constructed for the safe enjoyment of sports activities including, but not necessarily limited to, tennis, shuffleboard, basketball, handball and racquetball shall be credited as part of the recreational facilities component. The land area for which credit may be given shall include all land area within any fence completely surrounding court facilities. Credit for court facilities shall be computed as follows:

Number of Units Dwelling Units	×	Ave. Household Size	×	NRR	=	Min. Size Credited Court Facility
_____	×	_____	×	15 sq. ft.	=	_____ sq. ft.

(5) *Total Creditable Recreational Facilities.* Up to a maximum of fifty percent (50%) of the total parks and recreation requirements of Section 20A-17.1(H)(6) [1-17.1(H)(6)] may be comprised of the recreational facilities component, established herein.

I. *Permanent Control Points (P.C.P.'s).* Permanent control points (P.C.P.'s) shall be provided in accordance with Chapter 177, Florida Statutes, as amended. Where required improvements are constructed prior to recording the plat, the permanent control points (P.C.P.'s) shall be set prior to submission of the final plat and certified by the surveyor of the plat. Where required improvements are constructed after recording, the guarantee for such improvements shall incorporate placement of permanent control points (P.C.P.'s) and the surveyor's certificates shall indicate that permanent control points will be set within one year from the date of recording of the plat under surety posted with the Town for the required improvements.

J. *Wastewater Systems.* Central Wastewater collection, wastewater treatment and disposal systems shall be provided for all subdivisions excepting subdivisions zoned RR-65. The entire wastewater collection and treatment system must be engineered and coordinated with the Town and designed to State DER standards.

K. *Sidewalks and Bicycle Paths.* Sidewalks shall be constructed on both sides of all collector and arterial streets. They may be constructed concurrent with building construction or deferred and guaranteed by the posting of surety.

A required sidewalk may be waived by the Town Council when adequate pedestrian circulation is provided by bicycle/pedestrian paths. The control, jurisdiction and maintenance obligation of bicycle/pedestrian paths not located within the road right-of-way shall be placed in a property owner's association, condominium association or cooperative apartment association, as defined

by the State Law, or an improvement district. Bicycle/pedestrian paths shall be constructed concurrently with other required improvements, or deferred and guaranteed by the posting of surety. When pedestrian circulation is accomplished solely by bicycle/pedestrian paths not within the street right-of-way the required right-of-way width specified in the design standards of Section 1-17.2(J)(5) of this code may be reduced by eight (8) feet upon approval of the Town Engineer and the Town Council. A dual system consisting of sidewalks within the road right-of-way and bicycle/pedestrian paths outside of the road right-of-way may be used to provide adequate pedestrian circulation. The paths may be constructed concurrently with other required improvements or deferred and guaranteed by the posting of surety.

L. *Streets.* All streets and related facilities required to serve the proposed subdivision shall be constructed and paved by the applicant pursuant to specifications herein stipulated. The construction shall consist of, but not be limited to, street grading, base preparation and surface course along with drainage as required under this article.

M. *Street Markers.* Street markers shall be provided at each intersection in the type, size and location required by applicable State, County or Town regulations. Street name signs shall carry the street name approved on the subdivision plat as well as the approved street number if practical.

N. *Street Lighting.* Street lights shall be installed at each street intersection, at mid-block locations where the distance between intersections exceeds 900 feet, and at the end of each cul-de-sac. Such lights shall be required on interior streets and may be required on alleys, boundary streets, and access paths if the Town Council finds that the anticipated frequency of usage makes such requirement reasonable for public safety and welfare. Wherever, in the opinion of the Town Engineer, a dangerous condition is created by sharp curves or irregularities in street alignment, additional lights shall be required. The street lights and mounting poles shall be a type approved by the Town Engineer and shall be wired for underground service except where overhead service is permitted. The applicant shall place deed restrictions covering the property to be developed which state that the owners of property within the subdivision are subject to assessment by the Town under a legally constituted improvement or special taxing district or by a property owners' association or a condominium or cooperative association as defined by Florida Law for the cost of maintenance and operation of such street lights. Upon completion of the development, street lights shall be owned, operated and maintained separately or jointly by a property owners' association, or a condominium or cooperative association as defined by Florida Law, and the public utility furnishing the electrical service.

O. *Central Water System.* A complete water supply, distribution and treatment system shall be provided for all subdivisions. In the event individual water facilities are allowed under applicable State and County Regulations, the applicant shall be required to deposit in escrow with the Town for the purpose of constructing a water distribution and treatment system, the amount of the cash or a guarantee acceptable to the Town equal to 125% of the system's estimated construction and installation costs as certified by the project engineer and approved by the Town Engineer. The design of the entire system shall be engineered and coordinated with the Town Engineer to meet applicable local and State specifications.

P. *Traffic Control Devices.* The applicant shall install all required traffic control devices based on design requirements, including but not limited to, traffic lights, information and warning signs, acceleration or deceleration lanes, lane delineators, and other necessary traffic control devices on all roads within and interfacing with the subdivision. A traffic impact analysis pursuant to Section 1-7.2(D) of this Code, approved by the Town Engineer and the Department of Transportation (DOT), shall determine traffic light requirements. All control devices shall be consistent with the Florida DOT Manual entitled "Uniform Traffic Control Devices for Streets and Highways." If, at any time prior to final acceptance, an unforeseen need becomes apparent for signing, pavement markings, or other traffic controls, that were not shown on the approved plans, the Town reserves the right to require the additional traffic control devices in the interest of public safety and as a condition of Town acceptance.

Q. *Erosion Control.* Seeding, mulching, sodding, and/or other acceptable methods shall be performed as required to prevent undue erosion during all construction activities. Erosion and sedimentation control measures stipulated in Section 1-7.2(K) [1-7.2(J)] shall be carried out as applicable. The applicant shall be required to keep accumulations of sand and earth out of the curb, gutter, swales, and drainage ditches. Temporary siltation basins may be required during construction. Maintenance shall be provided by the applicant for the two-year period of the road guarantee and for each lot until final inspection is passed.

Section 1-17.2. - Design standards.

The design of the required subdivision improvements shall be in accordance with standard engineering principles. Design data, such as calculations and analysis, shall be submitted along with the development plans covering important features affecting design and important features of construction. Such calculations and analysis shall include, but not be limited to, high ground and surface water elevations, drainage facilities of all kinds, subsurface soil data, alternate pavement and subgrade types, and radii at intersections when standards of the American Association of State Highway Officials (AASHO) are inadequate. The design of required improvements shall be accomplished in such a manner that they shall be equal to or exceed the following:

A. *Access.*

1. *General Design of Access.* Access shall be provided as follows:

   (a) In order to provide ease and convenience in ingress and egress to private property and the maximum safety with the least interference to the traffic flow on public streets, classified major collector and above, the number and location of driveways shall be regulated by the dedication of access rights to the Town.

   (b) Street stubs to adjoining undeveloped areas shall be provided when required to give access to such areas or to provide for proper traffic circulation. Streets stubs in excess of two hundred fifty (250) feet shall be provided with a temporary cul-de-sac turnaround.

   (c) Tapers, deceleration lanes, left-turn lanes, bypass lanes, median modifications or other design features may be required to protect the safe and efficient operation of the access street.

   (d) Every lot or parcel shall be served from a publicly dedicated street; however, an applicant may retain as private a local street if the following conditions are met: (1) Public right-of-way is not required in order to serve adjacent development that is existing or projected; (2) A permanent access easement is granted for service and emergency vehicles and for maintenance of public and semi-public utilities; and (3) A reciprocal easement for ingress and egress is granted all residents of the development.

2. *Specific Access Design.* Points of access (driveways) to lots developed within a subdivision shall be located a minimum of thirty (30) feet from intersecting right-of-way lines or local streets and one hundred eighty (180) feet from intersecting right-of-way lines on all other streets of higher classification as defined in this ordinance. The subdivision shall be designed to provide access to the lots by the use of local streets. Local street connections to collector streets shall be a minimum of six hundred sixty (660) feet apart and collector street connections to arterial streets shall be a minimum of one thousand three hundred twenty (1320) feet apart. Where access is desired along collector or arterial streets, it shall be provided by means of a marginal access road. The first point of access to the marginal access (frontage) road from collector and arterial streets shall be a minimum of three hundred thirty (330) feet from intersection right-of-way lines as shown on the Comprehensive Plan and Major Thoroughfare Plan, with intermittent points at median opening locations being a minimum of six hundred sixty (660) feet from intersecting right-of-way lines, unless otherwise approved by the Town Engineer. Access spacing of lesser

lengths may be granted if requested by the applicant and if approved by the Town Engineer.

3. *Commercial/Industrial Driveways and Internal Circulation.*

   (a) Vehicular circulation must be completely contained within the property and vehicles located within one portion of the development must have access to all other portions without using the adjacent street system.

   (b) Acceptable plans must illustrate that proper consideration has been given to the surrounding street plan, traffic volumes, proposed street improvements, vehicular street capacities, pedestrian movements, and safety.

   (c) No driveway shall be constructed in the radius return of an intersection.

4. *Service Drives.* Where a subdivision borders on or contains a railroad right-of-way, limited access highway right-of-way, or arterial street, the Town Council may require a service drive or suitable provisions for future service drives approximately parallel to and on each side of such right-of-way, at a distance suitable for the appropriate use of the intervening land, as for park purposes in residential districts, or for commercial or industrial purposes in appropriate districts. Distances involving right-of-way shall also be determined with due regard for the requirements of approach grades and future grade separations.

B. *Alleys.* Alleys shall be paved eighteen (18) feet wide in a minimum twenty (20) feet wide right-of-way for commercial and industrial use, all having appropriate radii for the use intended. Alley intersections and sharp changes in alignment shall be avoided and dead end alleys are prohibited.

C. *Blocks.* The length, width and shape of blocks shall be determined with due regard to:

1. Provision of adequate building sites suitable to the special needs of the type of use contemplated.

2. Zoning requirements as to lot size and dimensions.

3. Need for convenient access, circulation, control and safety of vehicular and pedestrian traffic.

4. Most advantageous use of topography and preservation of mature trees and other material features wherever possible.

   (a) Block lengths shall not exceed 1320 feet between intersecting streets. Greater lengths may be approved by the Town Engineer where special topographical conditions exist.

   (b) Pedestrian crosswalks not less than eight (8) feet wide may be required where deemed essential to provide circulation or access to schools, playgrounds, shopping centers, transportation and other community facilities.

D. *Bridges.* Bridges shall be designed pursuant to current State Department of Transportation practices and specifications and shall include planning for utilities installation.

Low maintenance materials shall be used. The bridge shall have a clear roadway width between curbs two (2) feet in excess of the pavement width in each direction and shall provide four (4) feet wide sidewalks on each side. All bridge structures shall be designed for HS 20-44 loading, incorporating adequate erosion protection.

E. *Comprehensive Storm Water Management System.*

1. *General Storm Drainage System Design Criteria.* All subdivisions shall have comprehensive storm drainage facilities. The design data of the drainage system shall be submitted along with the construction plans in a report form prepared by the applicant's engineer indicating the method of control of storm and ground water pursuant to criteria of Section 1-7.2(H) [1-7.2(G)] of this Code.

F. *Easements.*

1. *Utility Easements.* Utility easements six (6) feet wide along each side of each lot shall be provided where necessary to accommodate all required utilities across lots and where possible shall be centered on lot lines with convenient access for maintenance. Utility easements ten (10) feet wide shall be provided for underground utilities across that portion of the lot adjacent to a street. Utility easements seven and one-half (7½) feet wide along the rear property of each lot shall also be provided. Additional utility easements may be required by the Town when, in the opinion of the Town Engineer, such easements are necessary for continuity of utility service between developments and where necessary for maintenance and service.

2. *Drainage Easements.* Drainage easements shall be provided where necessary at a width adequate to accommodate the drainage facilities. A minimum of fifteen (15) feet shall be provided for underground storm drainage installations. Where canals or ditches are permitted and in compliance with this code, the width shall be adequate to accommodate drainage facilities plus ten (10) feet on one side for maintenance purposes. Drainage easements shall be provided to facilitate drainage of surface waters from contributory areas. When a subdivision is traversed by or develops canals, water courses, lakes, streams, drainage ways or channels, there shall be provided a drainage easement or right-of-way conforming substantially with the lines of such water course and of such further width or construction or both as will be adequate for maintenance purposes.

G. *Lots.* All lots shall have frontage on a street which has a minimum right-of-way [of] fifty (50) feet. All lots shall have area, frontage, width and depth required by the zoning district in which said lots are located. The minimum width of a lot fronting on the inside of curvature of a street or cul-de-sac shall be measured from side boundary to side boundary along the chord of the front setback line. Notwithstanding lots developed under an approved planned unit development shall be regulated by lot dimension requirements stipulated in the approved planned unit development site plan. When a subdivision is proposed upon land with existing structures that are to be retained, lots are to be designed so as not to cause said existing structures to become non-conforming with respect to building area or lot size. When lots are platted abutting a collector or arterial street, access should be limited to local streets. Access from individual lots generally should not be permitted directly to collector or arterial streets. Flag lots shall be expressly prohibited.

1. *Double Frontage Lots.* Double frontage lots or through lots shall be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation. Where double frontage lots are developed they shall be buffered as required by this ordinance.

2. *Corner Lots.* Corner lots shall have a width equal to the width required by the Zoning Ordinance for internal lots, plus the difference between the required front yard width and required side yard width.

H. *Seawalls, Bulkheads, Piers and Docks.* Seawalls, bulkheads, piers and docks installed along access waterways shall be installed under permit issued by the Town Engineer. Seawalls and bulkheads shall not be constructed below the mean high water line unless permitted by the controlling Federal or State Agency.

I. *Soils.* The plan shall show the location and results of test borings of the subsurface condition of the tract to be developed. The tests shall be the type performed by the Soil Conservation Service including percolation characteristics and detailed soils data.

When non-pervious soils (hard pan or other impervious soils) or unstable soils (peat, muck, etc.) are encountered the plan shall reflect a satisfactory design to cope with such conditions. If the soil analysis reflects that the area contains hard pan or other impervious soils or contains peat, muck or other unstable materials, the Town Engineer shall require such additional design and construction as are necessary to assure proper drainage and development of the area. The

number of tests and their location shall be mutually determined by the applicant's engineer and the Town Engineer and shall be recorded as to location and result on the construction plans.

J. *Streets.* The proposed subdivision street layout shall be coordinated with the adopted Comprehensive Plan and Major Thoroughfare Plan, as exists or as may hereinafter be amended, and with the street system of the surrounding area. Consideration shall be given to existing and planned streets, relation to topographical conditions, to public convenience, safety and their appropriate relation to the proposed use of the land to be served by such streets.

1. *Streets Adjoining Unsubdivided Land.* When a new subdivision adjoins unsubdivided and, new streets which in the opinion of the Town Engineer, the Planning and Zoning Board, and/or the Town Council are required to serve the abutting unsubdivided land, those streets shall be designed as collector streets and shall be carried to the boundary of the tract proposed to be subdivided. Local streets, when extended to the boundary of the tract, shall be designed in a manner that will discourage through traffic.

2. *Curvilinear Street Design.* The use of curvilinear design of street layouts is encouraged to promote aesthetically pleasing appearance and to prevent the use of grid design in order to discourage through traffic.

3. *Impact of Major Thoroughfare Plan.* The new subdivision shall provide for the incorporation and compatible development of present and future streets as generally delineated on the Major Thoroughfare Plan adopted by the Town Council under the Comprehensive Plan Ordinance, when such present or future streets are affected by the proposed subdivision. Notwithstanding, where the Town Engineer and/or the Planning and Zoning Board recommend, and the Town Council determines that there is a need for incorporating a new or realigned major thoroughfare based on characteristics of specific development proposals as well as changed conditions since the adoption of the Comprehensive Plan, the Town shall require subdivision applicants to conform to the newly prescribed road improvement.

4. *Traffic Analysis.* A subdivision shall prepare a traffic impact analysis pursuant to Section 1-7.2(D) of this Code, if the proposed subdivision is projected to generate a traffic flow above the threshold therein defined. The Traffic Impact Analysis shall be prepared by a professional engineer and shall be used to determine the number of lanes, capacity of street systems proposed or effected by the development, and the phasing of improvements.

5. *Street Right-Of-Way Characteristics.* Street improvements shall be designed in a manner compatible with design characteristics of the Brevard County functional classification system as established in the Town and in the County Comprehensive Plans as cited below:

	Characteristics
Arterial Streets	
Move traffic to, from and through the County. Longer distance trips within the County. Property access is a secondary function.	R-O-W generally 150 feet to accommodate 4—6 lanes, turnouts, medians, etc. 12;ft; lanes; median desirable. Signalization at intersections with arterials and major collectors. Turn and deceleration lanes at intersections. Frontage roads desirable; restricted access from

	adjacent property and streets (660;ft; minimum separation desired).
Major Collector Streets	
Main feeder streets to arterial routes from developed areas.	R-O-W of 100 feet to accommodate 4 lanes, walks or bike paths, drainage, etc. 12;ft; lanes; median not required. Residential streets should access route at limited points and direct access from lots should be minimized in lot layout. Can be used as component of bike path system if adequate auto and bike separation can be achieved in right-of-way.
Minor Collector Streets	
Feeder Street to major collector or arterial streets from developed areas.	R-O-W of eighty (80) feet and all other specifications shall be the same as for major collector streets.
Local Streets	
Function is to provide access to adjacent property. Design should discourage through use.	R-O-W of 50 feet to accommodate 2 lanes where curb and gutter is proposed; right-of-way of 60 feet to accommodate two lanes where swales are proposed. 12;ft; lanes

These design parameters may be adjusted based on projected traffic carrying capacities of specific developments and application of accepted principles and practices of traffic engineering and design of facilities. The specific design features shall be recommended for approval by the Town Engineer prior to acceptance by the Town.

7. *Dead End Streets (cul-de-sacs).* Dead-end streets shall be prohibited except when designed as a cul-de-sac. Such streets shall not exceed the length of six hundred (600) feet in length except where natural geographic barriers exist necessitating a greater length approved by the Town Engineer. When constructed with a curb and gutter cul-de-sacs shall have fifty (50) feet of right-of-way approach to a ninety (90) feet diameter turn-around circle. When constructed with swale drainage cul-de-sacs shall have sixty (60) feet of right-of-way approach to a one hundred (100) feet diameter turnaround circle or fifty (50) feet of right-of-way with a dedicated easement ten (10) feet wide on each side. Width of surface course of pavement shall be twenty (20) feet on the approach and sixty (60) feet diameter for the turn-around. Approach and turn-around shall be constructed in accordance with this

ordinance. If a dead-end street is of a temporary nature, an adequate turn-around within the proposed right-of-way shall be required.

8. *Construction in Muck or Clay Areas.* The design of streets proposed in excessive muck areas shall be considered on an individual basis. All plans submitted for construction in such areas shall be certified by a Florida Registered Engineer. Prior to issuance of a permit for such construction, the Town Engineer and Planning and Zoning Board shall approve the engineered plan as submitted by the applicant.

9. *Street Grades.* Street grades shall be determined in relation to the drainage installations for the subdivision. Street grades shall not exceed 3% unless adequate protection from erosion is provided or be less than 0.30% for swale sections or 0.20% for guttered sections unless otherwise approved by the Town Engineer. Road grades shall be shown on the development plans by the direction, percent of gradient and with centerline lineal distances between control points.

10. *Intersection of Local Streets.* Intersections at local streets shall have a minimum separation of one hundred twenty-five (125) feet.

11. *Marginal Access Streets.* Where a subdivision abuts or contains an existing limited access highway, freeway or arterial street, a marginal access street shall be required to afford separation of through and local traffic.

12. *Local Streets.* Local streets shall be so laid out that use by through traffic shall be discouraged.

13. *Railroads on or Abutting Subdivisions.* When a subdivision borders on or contains a railroad right-of-way, a street or easement, as recommended by the Town Engineer, approximately parallel to and on each side of such right-of-way may be required at a distance suitable for appropriate use of the intervening land for recreation or buffer purposes in residential districts or for commercial or industrial purposes in appropriate districts.

14. *Half Streets.* Half or partial streets shall not be permitted. Whenever a tract to be subdivided borders on an existing half or partial street, the other part of the street shall be required to be dedicated and constructed within such tract. A proposed subdivision that adjoins or includes an existing street which does not conform to the minimum right-of-way requirements of these regulations shall provide for the dedication of additional right-of-way along either one or both sides of said street so that the minimum right-of-way requirements of these regulations are fulfilled.

15. *Street Names.* Extensions of existing streets shall bear the same name of the existing street. In no case shall the name of a proposed new street, which is not part of an existing facility, duplicate or be phonetically similar to existing street names.

16. *Alignment, Tangent, Deflection, Radii.* Streets shall be laid out to intersect as nearly as possible at right angles. Multiple intersections involving the junction of more than two streets shall be prohibited. The point of curvature of any local street shall not be closer than one hundred (100) feet to the point of intersection. All intersections shall be designed to provide adequate stopping and sight distance in accordance with the current edition of AASHTO Standards. When the centerline of a local street deflects by more than ten (10) degrees, it shall be curved with a radius adequate to assure safe sight distance and driver comfort, but never less than a minimum centerline radius of one hundred (100) feet. Property lines at street intersections shall have twenty-five (25) feet or greater radius and street pavement radii shall be a minimum of thirty (30) feet.

17. *Street Markers.* Street markers shall be provided at each intersection.

18. *Sidewalks.* Where provided sidewalks shall be a minimum of four (4) feet wide. They shall be constructed of concrete having a compressive strength of 2500 pounds per square inch at twenty-eight (28) days. In commercial areas, thickness shall be six (6) inches. In other

areas, thickness shall be four (4) inches. The cross slope shall be one-quarter (¼) inch per foot.

K. *Bicycle/Pedestrian Paths.* Bicycle/pedestrian paths shall be eight (8) feet wide and shall be constructed in accordance with the current FDOT Bicycle Facilities Planning and Design Manual.

L. *Off-Street Parking Areas.* Off-street parking areas shall be provided in accordance with Section 1-8.1 [1-9.1] of this Code and shall contain provisions for ingress, egress, vehicular and pedestrian traffic, and orderly temporary storage of motor vehicles. Parking areas including vehicular storage spaces, driveways and access aisles shall be laid out and striped in accordance with the minimum parking standards of Article VIII [Article IX] of this Code. Parking areas including spaces, driveways, and access aisles shall be constructed in accordance with the following standards:

1. Parking areas for all residential lots and for commercial lots having an area of 15,000 square feet or less shall have a wearing surface of one (1) inch of Type SI or Type II asphalt concrete laid over a subbase not less than six (6) inches thick, free of muck and organic materials, stabilized to a minimum 50 p.s.i. F.V.B.

2. Non-residential parking areas for lots with areas greater than 15,000 square feet shall be paved in the same manner as a local street.

3. Adequate drainage shall be provided for a one-in-ten-year storm in all off-street parking areas.

   Catch basins and underground drainage piping or storm sewers shall discharge into retention areas or pits equipped with natural filtration facilities before discharging into drainage ditches, canals, natural lakes, streams or water courses.

M. *Utilities.* Utilities, including franchised utilities, power and light, telephone and telegraph, water, sewer, cable television, wiring to street lights and gas shall be installed underground.

1. *Coordination of Easements.* Easements shall be coordinated with requisite utility authorities and shall be provided as prescribed by this ordinance for the installation of underground utilities or relocating existing facilities in conformance with the respective utility authority's rules and regulations.

2. *Waivers.* The Town Engineer may waive the requirement for underground installation if the service to the adjacent area is overhead and it does not appear that further development in adjacent areas with underground utilities is possible. Any new service which is allowed by the waiver herein to be supplied by overhead utilities shall be connected to a service panel that is convertible for underground utility service at a future date.

3. *Applicant Responsibility for Underground Installations.* The applicant shall make necessary cost and other arrangements for such underground installations with each of the persons, firms or corporations furnishing utility service involved.

4. *Construction within Easements.* Utilities shall be constructed in easements as prescribed by this ordinance.

N. *Utility Installation.* After the subgrade for a street has been completed, the remainder of the street right-of-way has been graded and before any road or street construction material is applied, all underground work for the water mains, sanitary sewers, gas mains, telephone, electrical power conduits, cable television and any other utilities with appurtenances and branches for surface connections shall be completely installed throughout the width of the street to the sidewalk area or provisions made so that the roadway or right-of-way will not be disturbed for utilities installations or service connections. All underground improvements so installed for the purpose of future service connections shall be properly capped and backfilled.

O. *Central Water Systems.* The design and installation of a central water system shall comply with the Town's adopted Comprehensive Plan and shall conform to the accepted standards for

municipal water supply and fire protection systems as prescribed by the "National Fire Codes" and the "Fire Protection Handbook" published by the National Fire Prevention Association as exists or may hereinafter be amended.

1. *General Requirements for Central Water System.*

   a. *Water Supply.* Supply to the central water system shall have sufficient water storage or emergency pumping facilities to furnish not less than one day's estimated peak domestic consumption plus the minimum fire flow required for the development as specified hereinafter.

   b. *Distribution System.* The distribution system shall provide connections to each individual lot, to each public facility, to all required fire hydrants and fire protection systems and to median strips for irrigation where landscaped unless the median strips are irrigated by a separate system. Water mains shall be required in each street right-of-way and shall be looped except in cul-de-sacs less than three hundred (300) feet long and cross streets not requiring service connections.

   Plans for the central water system including fire protection facilities and appurtenances shall be submitted to the Town Engineer for review and approval.

   Central water systems shall comply with the following requirements according to the type of development or subdivision served as prescribed herein.

2. *Requirements for Central Water Systems.* The central water system for all developments shall furnish sufficient potable water to provide for the total estimated peak daily domestic demand. In addition, for one (1) and two (2) story single family and duplex residential developments, a fire flow capability shall be provided of not less than five hundred (500) gallons per minute at residual pressures of not less than twenty (20) pounds per square inch at the most critical fire hydrant relative to distance from point of supply and elevation of the hydrant. The central water system for multiple family residential, mobile home, commercial, industrial, institutional or other daytime or nighttime population high density developments and installations shall furnish sufficient potable water to provide for the total estimated peak daily domestic demand, but in no case less than the standard applied by the Insurance Service Organization (ISO).

   a. *Fire Hydrant Location.* Fire hydrants shall be located so that they are spaced no more than five hundred (500) feet apart and no more than two hundred fifty (250) feet to the center of any lot in the subdivision. Fire hydrants shall not be connected to or supplied by water distribution mains less than six (6) inches in diameter.

   b. *Fire Hydrant Cut-Off Valve.* A cut-off valve with the top of its valve box located at finished grade to house the valve stem shall be installed between each fire hydrant and the distribution main supplying it with water. At all times the cut-off valve shall remain in the "ON" position except when it is used to cut off the water flow to the fire hydrant for repair or replacement of the hydrant and its branch piping.

   c. *Fire Hydrant Installation.* Fire hydrants shall be installed to [so] that the elevation of the bottom of hose connection outlets shall be not less than twenty-four (24) inches nor more than thirty (30) inches above finished grade at each hydrant. Finished grade shall be level for a radius of not less than five (5) feet around each hydrant.

   d. *Water Distribution Mains Installation.* Water distribution mains shall be installed in all streets, except cross-streets not requiring service connections and cul-de-sacs less than three hundred (300) feet long. Water distribution mains shall be looped or interconnected with valves to enable localizing any portion of the distribution system except for short branches supplying not more than five (5) lots.

P. *Central Wastewater System.* The central wastewater system shall be designed by a professional engineer, registered in the State of Florida, conforming to acceptable standards of

sound practices for wastewater collection systems and shall conform to all requirements of State and wastewater permitting authorities. The entire wastewater collection system must be engineered and coordinated with the Town's Comprehensive Plan. The appurtenances to the system shall be equal to or shall exceed the minimum requirements of the Town and applicable Florida Statutes. Upon submittal of construction plans for a central system as prescribed by this ordinance, the design engineer shall supply data, calculations and analysis showing important features affecting design including, but not limited to:

1. Number of units, bedrooms, other domestic wastewater generators.
2. The type of units and expected population or estimated flow of wastewater from any unit designed for use.
3. The number of proposed connections to the system and the anticipated flow of sewage to the wastewater treatment plant computed in accordance with current DER criteria.
4. Any other meaningful information necessary to arrive at estimates of amounts and character of wastewater pertinent to the design.

Q. *Individual Sewage System.* Individual wastewater systems consisting of pipes, tanks or treatment devices and subsurface absorption fields or other devices shall meet the requirements of this ordinance, the requirements of all requisite Federal, State and regional permitting agency regulations and shall be designed and located to facilitate a convenient and economical connection to a future central sewage system.

R. *Water and Sewage Treatment and Processing Plants.* Construction plans and specifications for both water and wastewater treatment and processing plants to serve a proposed subdivision shall be submitted concurrently to DER and the Town Engineer for approval. The entire water and wastewater facilities shall be engineered and coordinated with the Town's Comprehensive Plan.

S. *Median Strips and Entranceways.*

1. *Median Strips.* Median strips which are part of a dedicated or deeded right-of-way may not be utilized for any purpose other than by the Town or a public utility. Where an applicant desires or is required to beautify a median strip in a subdivision, he may do so by placing grass, shrubs, and/or approved species of trees within the median strip in accordance with the Town landscape ordinance and the Town of Malabar Code of Ordinances.

2. *Subdivision Entranceways.* Subdivision entranceways consisting of wall, fences, gates, rock piles or the like are not permitted within the median strip or other areas in a dedicated or deeded right-of-way. Entranceways, if divided, shall be divided by a raised or landscaped median strip and shall be not less than two (2) lanes each twelve (12) or more feet wide. Decorative entranceways shall be constructed upon plots of land adjacent to the right-of-way in compliance with the zoning, building, landscaping and sign codes and placed so as not to constitute a traffic hazard. A guard house located so as not to create a traffic hazard may be constructed at the entrance to a development having private streets.

   Where an applicant is specifically permitted by the Town to construct decorative entrances, structures, or landscaping within the right-of-way of any street, the applicant or community homeowners' association shall provide an adequate bond to guarantee maintenance for a specified period and to provide for removal for such structures and for landscaping at the end of such period on order by the Town for cause. The Town shall not accept any liability or responsibility for maintenance for decorative entrances, structures, or landscaping in rights-of-way. Such improvements shall be designed in such a manner so as to not obstruct desirable visibility or restrict turning movements.

T. *Traffic Control Devices.* The design of traffic control devices shall be in accordance with the Manual for Uniform Traffic Control Devices as per Florida Statutes, Chapter 316.131.

U. *Monuments.* The design of Permanent Reference Monuments ("P.R.M.'s"), and Permanent Control Points, ("P.C.P.'s") shall be as prescribed by Chapter 177, Florida Statutes, as amended. Where such monuments occur within street pavement areas, they shall be installed in a typical water valve box and cover, as prescribed in these regulations. All information pertaining to the location of "P.R.M.'s," such as underground installations, and similar facilities, shall be indicated in note form on the plat.

V. *Commercial and Industrial Subdivisions.* Commercial and industrial subdivisions shall comply with all of the requirements of this ordinance, except that all local streets shall be designed according to the collector street typical section contained in these regulations.

W. *Mobile Home Subdivisions.* Mobile home developments shall comply with all of the requirements of this code and the Town of Malabar Code of Ordinances. Mobile home developments shall be classified as either rental trailer parks for use as temporary and/or transient residence purposes with single entity ownership or as permanent residence areas with individual ownership of contiguous lots in a condominium or cooperative association. The "association" shall function with unified control as a single ownership entity. Mobile home developments are intended to provide planned space for occupancy of prefabricated, detached, transportable, single family dwelling units containing all utility and sanitary conveniences including electrical and plumbing connections which may be attached to approved permanent utility systems. To retain mobility, the undercarriage shall remain attached to the mobile home unit.

Storm shelters shall be provided to sixty percent (60%) of the proposed total number of residents of the Mobile Home Development. The storm shelter shall be a permanent building complying with Southern Standards Building code and its first floor shall be located at an elevation above the one-in-one-hundred-year flood level.