

**TOWN OF MALABAR**  
**PLANNING AND ZONING ADVISORY BOARD**  
**REGULAR MEETING**  
**WEDNESDAY FEBRUARY 10, 2016**  
**7:30 PM**  
**MALABAR COUNCIL CHAMBER**  
**2725 MALABAR ROAD**  
**MALABAR, FLORIDA**

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**AGENDA**

- A. **CALL TO ORDER, PRAYER AND PLEDGE**
- B. **ROLL CALL**
- C. **ADDITIONS/DELETIONS/CHANGES**
- D. **CONSENT AGENDA :**
  - 1. **Approval of Minutes**                      Planning and Zoning Meeting – 01/27/2016 not ready  
**Exhibit:**    Agenda Report No. 1  
**Recommendation:**                                Request Approval
- E. **PUBLIC HEARING: none**
- F. **ACTION:**
  - 2. **Recommendation to Council: Amend the Code Book to insert the 500 ft. Radius notifications for Public Hearings**  
**Exhibit:**    Agenda Report No. 2  
**Recommendation:**                                Recommendation to Council
  - 3. **Recommendation to Council: Amend the Assisted Living Facilities (ALF) Ordinance 2014-01 ref: Office/Institutional (OI) Zoning.**  
**Exhibit:**    Agenda Report No. 3  
**Recommendation:**                                Recommendation to Council
- G. **DISCUSSION:**
  - 4. **Discuss Malabar Land Development Code; Table 1-3.2 Land Use by District R/LC column to consider more freedom for Land Owners on major road arteries (George Foster)**  
**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: February 10, 2016**

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

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**SUBJECT: Approval of Minutes**

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**BACKGROUND/HISTORY:**

The minutes must reflect the actions taken by the Board:

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

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

**ATTACHMENTS:**

Draft minutes of P&Z Board Meeting of January 27, 2016 **not ready**

**ACTION OPTIONS:**

Secretary requests approval of the minutes.

**TOWN OF MALABAR**  
**PLANNING AND ZONING**  
**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2**  
**Meeting Date: February 10, 2016**

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

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**SUBJECT: Amend the Code Book to insert the 500 ft. Radius Notifications for Public Hearings**

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**BACKGROUND/HISTORY:**

The PZ Board discussed verbiage & location of Radius Notifications for Public Hearings at the last Meeting on 1/27/2016. Chair, Pat Reilly submitted suggestions for verbiage and locations in the different Code Book Chapters & Articles at PZ Meeting on 1/13/2016.

The PZ Board will review final suggestions at this meeting and make recommendation to Council to Amend the Code Book to include Radius Notifications for Public Hearings in different locations in the Code Book

**ATTACHMENTS:**

- Work sheet PZ Board used to Amend Radius Notifications
- Chapters & Articles from Code Book to be Amended- marking changes in black marker

**ACTION OPTIONS:**

Recommendation to Council

## Work Sheet for Agenda Item # 2

### Radius Notifications

#	SUBJECT	RADIUS FOOTAGE	LOCATION IN CODE BOOK
1.	Site Plan Review	500 ft.	Article VII
2.	Commercial Site Plan Review	500 ft.	Article VII
3.	All Conditional Uses	500 ft.	Article VI
4.	Public Utilities	All affected	Article VII
5.	Abandonment of ROW	-	-
6.	BOA for Variances	500 ft. Correction only	Chapter 2
7.	Land Use Changes & Rezoning	500 ft. All affected	Application
8.	Abandonment of Improved & Unimproved of existing ROW	Greater than 500ft.? 1,000 ft	1-12.9 & 1-12.8 D

# Portion of Article VII

- ① Site Plan Review
- ② Commercial Site Plan Review
- ③ Public Utilities Review

## 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 applicant must submit a radius package produced by Brevard County listing all of the properties within five hundred (500) feet of the property involved in the application. If application is related to public utilities, notification must be given to all affected property owners. The Building department will send a letter to all of the listed properties notifying them of the applicant's intentions** 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

# Article VI Conditional Uses

## 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	2 Acres	210	Paved	60/30	25/20	Type A/C	(7)	

Related 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	1 Acre	145	US	100/30		Type	(7)	

Skilled Services	(8)		1/Babcock/ West Railroad Avenue		N/A	A/C		
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	1.5	210	Paved	60/30				

to 6 residents/beds)	acres				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	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)	

Facilities								
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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 Statutes, 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 feet 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.

**D. Notification. The applicant must submit a radius package produced by Brevard County listing all of the properties within five hundred (500) feet of the property involved in the application. The Building department will send a letter to all of the listed properties notifying them of the applicant's intentions.**

(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.

*Added*  
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# BOA FOR VARIANCES

Section 1-12.2. - Board of adjustment.

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

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

which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Building Official or administrative official from whom the appeal is taken and on due cause shown.

8. *Public Notice.* All proceedings shall be conducted only after public notice has been given. The public notice shall contain at least the following items:
- The date, time and place of meeting.
  - The title of the Board, conducting such meeting.
  - A brief description of the matter to be considered.
  - A legal description of the property, other appropriate information identifying the property involved.

**correction** → 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~~ **five hundred (500) 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:

- 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.
  - 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 XII Abandonment <sup>IMPROVED / unimproved</sup> ROW

Section 1-12.5. - Procedures for adopting, supplementing or amending the land development code.

- A. *Initiating Amendments to the Land Development Code.* Amendments to the land development code may be initiated by:
1. *Town Council.* The Town Council may initiate an amendment to the land development code by approving a written statement expressing its intent to amend this code and shall submit such written statement and any relevant supportive material to the Town Planning and Zoning Board for review and action pursuant to Section 1-12.6(C) [1-12.5(C)] of this Chapter [Code].
  2. *Planning and Zoning Board.* The Town Planning and Zoning Board may initiate a land development code amendment.
  3. *Property Owner(s).* An amendment to the land development code may be initiated by a petition signed by a property owner, or the property owner's authorized agent. Such petition shall be submitted to the office of the Town Clerk together with a fee as shall be determined by resolution of the Town Council. As many lots or parcels of property as the applicant may desire may be included in any single petition if they constitute one contiguous. The petition shall be submitted on an application form prescribed by the Town Clerk. The application shall include, but not be limited to, the following:
    - (a) *Property Description.* The application shall describe by legal description and by street address, where possible, the property to be affected by the proposed change.
    - (b) *Current and Proposed Comprehensive Plan Land Use Map Designation.* The current and proposed Comprehensive Plan Land Use Map designation for the subject property shall be identified.
    - (c) *Current and Proposed Zoning.* The current and proposed zoning for the subject property shall be identified.
    - (d) *Existing and Proposed Use.* The existing and proposed use of the subject property shall be stated.
    - (e) *Disclosure of Ownership.* The application 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 rezoning is sought, except publicly held corporations, in which case the names and addresses of the corporate officers shall be sufficient.
- B. *Administrative Review.* The Town Clerk shall forward zoning change petitions, for which appropriate fees have been submitted, to all appropriate administrative staff for their review and comment. The application shall be reviewed for conformance with the requirements of this Chapter [Code].
- C. *Planning and Zoning Board Review.* The Planning and Zoning Board, regardless of the source of the proposed zone change petition, shall hold a public hearing(s) thereon, with due public notice. The Town Planning and Zoning Board shall submit a written report and recommendation concerning the proposed change of zoning to the Town Council for official action. If the Planning and Zoning Board denies the requested zone change or amendment, this action shall be deemed final unless such action is appealed to the Town Council pursuant to Section 1-12.3(C)(4). In its deliberations the Planning and Zoning Board shall consider the following criteria:

1. *Consistency With Plan.* Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service (LOS) standards and the concurrency management program. Any inconsistencies shall be identified by the Planning and Zoning Board.
  2. *Conformance With Ordinances.* Whether the proposal is in conformance with all applicable requirements of the Town of Malabar Code of Ordinances.
  3. *Changed Conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations involved which are relevant to the amendment.
  4. *Land Use Compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.
  5. *Adequate Public Facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.
  6. *Natural Environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, vegetative commodities, and wellfield protection.
  7. *Economic Effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area, or the general welfare.
  8. *Orderly Development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.
  9. *Public Interest; Enabling Act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of this ordinance and its enabling legislation.
  10. *Other Matters.* Other matters which the Planning and Zoning Board may deem appropriate.
- D. *Action Following Reviews By Town Planning and Zoning Board.* If an appeal to a decision of the Planning and Zoning Board is filed, the Town Clerk shall transmit copies of the petition, the comments and the minutes of the Planning and Zoning Board meeting to each member of the Town Council at least seven (7) days before the Council shall consider the appeal. The Town Clerk shall notify the applicant of the time and place of the meeting at which the Council will hear the appeal. Should the Council tentatively approve the petition, the Town Council will proceed to hold a public hearing(s) on the petition.
- Should the Town Planning and Zoning Board approve the petition, the Town Clerk shall transmit copies of the petition, [and] all comments and the minutes of the Planning and Zoning Board meeting to each member of the Council at least seven (7) days before the Council shall consider the petition. Should the Council tentatively approve the petition, public hearing(s) shall be held on the petition.
- E. *Town Council Review.* The Town Council shall hold a public hearing on the requested zone change petition or amendment, with due public notice, if any change is to be considered and shall then act on the proposed change. An affirmative vote of three (3) members of the Town Council is required for favorable action on a zone change petition or amendment for

which the Town Planning and Zoning Board has recommended denial. In its deliberations the Town Council shall consider the criteria identified in Section 1-12.5(C) above together with the findings and recommendations of the Planning and Zoning Board. Any modifications or revisions to the Town Planning and Zoning Board recommendation which involve a greater area of land to be rezoned or a more intensive zoning classification shall be the subject of an additional public hearing before the Town Council with due notice prior to action by the Town Council.

**Cross reference**— Ordinance adoption procedure, § 2-76 et seq.

Section 1-12.6. - Procedures for public hearings.

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

Section 1-12.8. - Vacate and abandonment.

A. *Definitions:* For purposes of this Section the following terms shall have the following meanings:

1. *Vacate and abandon* shall mean vacate, abandon, close, renounce, disclaim or any other term that indicates the relinquishment of the Town's right, title or interest in a public right-of-way.
2. *Public right-of-way* shall mean public road, street, highway, easement, way, thoroughfare.

B. The Town Council may by resolution vacate and abandon any public right-of-way.

C. All requests for a vacate and abandonment of any public right-of-way shall be by petition and shall state the name and address of all persons owning property abutting said public right-of-way and shall give a description of the public right-of-way sought to be vacated and abandoned.

D. Petitions for a vacate and abandonment shall be submitted to the Town at least twenty-one (21) days prior to a regularly scheduled Planning and Zoning Board meeting. Meetings are the second Wednesday of each month. The following information shall be submitted with the petition:

1. List of all property owners within ~~five hundred (500) feet~~ one **thousand (1,000) feet** of the total length of the subject public right-of-way. Such list shall be prepared by a county office with access to public records, i.e. property appraiser. **The Building Department will send a letter to all of the listed properties notifying them of applicant's intentions.**
2. A map of the total area of the public right-of-way and property owners with the area requested to be vacated and abandoned identified.

E. The petition and all associated documents shall be forwarded to the Building Official for distribution to the appropriate Town staff. Staff shall review the request and determine if any conflict may exist or if there may be any reason that the Town should not grant the request. Written staff comments shall be forwarded to the Building Official within ten (10) working days following receipt of the vacate request.

F. The Building Official shall present the vacate and abandon request and staff comments to the next regularly scheduled Planning and Zoning Board meeting for consideration and recommendation to the Town Council.

Corrected

Add

- G. The request and Planning and Zoning Board recommendation shall be forwarded to the Town Council for authorization to proceed.
- H. Before the adoption of any resolution vacating and abandoning any public right-of-way, the Town Clerk shall cause to be published in a newspaper of general circulation in the Town a notice that the Town Council shall hold a public hearing regarding said resolution. Said notice shall be published at least fourteen (14) days prior to the date of said public hearing.
- I. A courtesy copy of the notice shall be mailed to all property owners identified in subparagraph D. above and to all utility companies serving south Brevard County.
- J. Any decision by the Town Council concerning a vacate and abandonment shall be a legislative decision and governed by the fairly debatable standard.
- K. Notice of the adoption of the resolution vacating and abandoning any public right-of-way by the Town Council shall be published one (1) time within thirty (30) days following its adoption in a newspaper of general circulation in the Town.
- L. The proof of publication of notice of the public hearing, the resolution adopted by the Town Council, and the proof of publication of the notice of adoption of the resolution all shall be recorded in the public records of Brevard County after same has been completed.
- M. The Town Council shall establish by resolution the appropriate schedule of fees, charges and expenses and a collection procedure.

(Ord. No. 01-06, § 1, 3-4-02)

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

- A. Nothing in this Section shall be construed to limit, abrogate, deny or otherwise impose restrictions on the Town from vacating and abandoning any public right-of-way of the Town. Notwithstanding any provision of this Section the town shall have the absolute legislative right to vacate and abandon any public right-of-way in the Town. Any decision to vacate and abandon any public right-of-way of the Town which was initiated by the Town shall be governed by the fairly debatable standard.
- B. Before the adoption of any resolution vacating and abandoning any public right-of-way, the Town Clerk shall cause to be published in a newspaper of general circulation in the Town a notice that the Town Council shall hold a public hearing regarding said resolution. Said notice shall be published at least fourteen (14) days prior to the date of said public hearing.
- C. The Town may **shall** send a ~~courtesy~~ notice of the Town Council's intent to vacate and abandon any public right-of-way to all property owners within ~~five hundred (500) feet~~ **one thousand (1,000) feet** along the said right-of-way to be vacated and abandoned. **The Building Department will send a letter to all of the listed properties notifying them of the Town's intentions.**
- D. Notice of the adoption of the resolution vacating and abandoning any public right-of-way by the Town Council shall be published one (1) time within thirty (30) days following its adoption in a newspaper of general circulation in the Town.

(Ord. No. 01-06, § 1, 3-4-02)

corrected

Add

**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 3**  
**Meeting Date: February 10, 2016**

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: Office Institutional (OI) Zoning.**

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**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 Board made some corrections and additions to this Ordinance and would like to review and forward to Council their final recommendations.

**ATTACHMENTS:**

- Corrections to Amend Ordinance 2014-01

**ACTION OPTIONS:**

Recommendation to Council

**SECTION 1-3.2**  
**LAND USE BY DISCTRICTS**  
**PAGE 0-6**

**CORRECTIONS MADE ON PAGE 0**

**CORRECTIONS MADE ON PAGE 2**

# Portion of Article III District Provisions

development shall be located so that they provide a smooth transition between low density residential development and areas developed and/or designated for more intense uses.

H. *RM-6 "Multiple-Family High-Density Residential Development."* The RM-6 district is established to implement comprehensive plan policies for managing high-density residential development at a density not to exceed six units per acre. The district is established to ensure that sufficient land is available for developments of high-density residential development and is intended to ensure availability of adequate public facilities.



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

- Have accessibility to major thoroughfares;
- Have potential to be served by a full complement of urban services;
- Contain sufficient land area to accommodate good principles of urban design, including sufficient land area to provide adequate landscaping and buffers to separate existing as well as potential adjacent land uses of differing intensities;
- Accommodate only office buildings and institutional land uses and shall expressly exclude residential uses ~~(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.

Deleted



J. *INS "Institutional Services."* The INS district is established to implement comprehensive plan policies for managing institutional development. The district is intended to accommodate public and semi-public facilities such as government administration buildings; fire, police, and rescue services; health care delivery services; and educational institutions. Land uses such as places of worship, cultural or civic centers, and other similar public or private not-for-profit uses may be included within this district.

K. *CL "Commercial Limited."* The CL district is established to implement comprehensive plan policies for managing limited commercial development accessible to major thoroughfares near residential neighborhoods. Such development is intended to provide essential household services in locations highly accessible to residential areas. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods. Such shops generally cater to the following markets:

- Neighborhood residential markets within the immediate vicinity as opposed to city-wide or regional market; or
- A specialized market with customized market demands.
- A Malabar Vernacular Style is required for all development along arterial roadways.

Areas designated for limited commercial development are not intended to accommodate large-scale retail sales, services, and trade activities, generally serving a city-wide or regional market. Such stores would usually differ from limited commercial shops since the former would usually require a larger floor area, carry a relatively larger inventory and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery



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
<b>RESIDENTIAL USES</b>														
Duplex					P	P					P			
Mobile Homes							P							
Multiple Family Dwelling					P	P					P			
Single Family Dwellings	P	P	P	P	P	P	P				P			
<b>COMMUNITY FACILITIES</b>														
Administrative Services (Public and Not-for-Profit)								P	P	P	P		P	
Child Care Facilities								C			C		C	
Churches, Synagogues and Other Places of Worship	C	C	C	C	C	C		P, A <sup>1</sup>	P	P	P		P	
Clubs and Lodges (Not-for-Profit)									P	P				

Cultural or Civic Activities									P	P	P	P		P
Educational Institutions									C, A <sup>1</sup>					C
Golf Course Facilities	C													
Hospital and other Licensed Facilities									C					C
Nursing Homes and Related Health Care Facilities					C	C								C
Protective Services					C	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	C
Public and Private Utilities	C	C	C	C	C	C	C	C	C	C	C	C	C	C
COMMUNITY RESIDENTIAL HOME														
Level 1 (1 to 6 residents/beds)	C <sup>3</sup>				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 <sup>4</sup>	C <sup>4</sup>						C		
Level 2 (6 to 15 residents/beds)					C <sup>4</sup>	C <sup>4</sup>								

*Remove* →

Level 3 (16 or more residents/beds)					C <sup>4</sup>	C <sup>4</sup>									
II Adult Family-Care Homes															
(1 to 5 residents/beds)	C <sup>3</sup>	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 <sup>1</sup>			
Business and Professional Offices									P	P	P	P	P	P	
Enclosed Commercial Amusement											P				
Arcade Amusement Center/ Electronic Gaming Establishment												C <sup>2</sup>			
Funeral Homes										P	P	C			





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**  
**PORTION OF DEFINITIONS OF TERMS**  
**PAGE 1**

**CORRECTIONS MADE ON PAGE 1**

↘ 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.13.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.42-B **13B**, Part I.

*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.

← Correction

**SECTION 1-2.6**  
**LAND USE CLASSIFICATIONS**  
**PAGE 1-10**

**CORRECTIONS MADE ON PAGE 2 & 3**



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.

**Add**  
↓

**The Town may defer from Florida Statutes to maintain its rural nature as stated in the Town Charter**

A. Hospital and other Licensed Facilities

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

- (a) Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and
- (b) Regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent.

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

B. Nursing Homes and Related Health Care Facilities

Refer to Chapters 400 and 408 for the definitions and requirements of the following

Nursing Home and Health Care Facilities.

Part I Long-Term Care Facilities

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

**Delete**  
↓

**Part I Long-Term Care Facilities**

**"Long Term care facility" only means a nursing home facility or board and health care facility.**

**Add**

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.

**ADD**  
↓

**The Town may defer from Florida Statutes to maintain its rural nature as stated in the Town Charter.**

#### 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.

#### C. Commercial Activities.

1. *Bars and Lounges.* A commercial establishment selling and dispensing for the drinking on the premises of liquor, malt, wine or other alcoholic beverages. This shall not include the sale of alcoholic beverages accessory to and within a restaurant use.
2. *Business and Professional Offices.* Offices extending the following services which provide advice, information or consultation of a professional nature: insurance, real estate, and financial services; banking services; and executive management and administrative activities. This classification excludes commercial storage of goods and chattels for the purpose of sale or resale as a principal use.
3. *Commercial Amusement, Enclosed.* Active or passive recreation facilities by profit oriented firms where all activities are conducted within fully enclosed facilities. Facilities as defined herein as amusement arcade centers and/or electronic gaming establishments are permitted as conditional uses as provided for in Table 1-3.2. For purposes herein the following definitions apply:

*Arcade Amusement Center* as used in this section means a place of business which shall have at least fifty (50) coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility. It is specifically intended by this definition that any place of business that does not have at least fifty (50) coin-operated amusement games or machines on premises shall not be granted a conditional use permit to

operate such a business. The provisions of F.S. § 849.161 shall apply to an arcade amusement center.

*Electronic Gaming Establishment* means a business operation, which shall have at least fifty (50) electronic machines or devices, including but not limited to, computers and gaming terminals, to conduct games of chance and/or a game promotion pursuant to F.S. § 849.094, including sweepstakes, and where cash, prizes, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such redeemed or distributed items are determined by the electronic games played or by predetermined odds. It is specifically intended by this definition that any place of business that does not have at least fifty (50) electronic machines or devices shall not be granted a conditional use permit to operate such a business. This term includes, but is not limited to internet cafes, internet sweepstakes cafes, and cybercafes or sweepstakes cafes. This definition is applicable to any electronic gaming establishment, whether or not the electronic machine or device utilized:

- (a) Is server based;
- (b) Uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;
- (c) Uses software such that the simulated game influences or determines the winning or value of the prize;
- (d) Selects prizes from a predetermined finite pool of entries;
- (e) Uses a mechanism that reveals the content of a predetermined sweepstakes entry;
- (f) Predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed;
- (g) Uses software to create a game result;
- (h) Requires deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of payment to activate the electronic machine or device;
- (i) Requires direct payment into the electronic machine or device, or remote activation of the electronic machine or device;
- (j) Requires purchase of a related product, regardless if the related product, if any, has legitimate value;
- (k) Reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded;
- (l) Determines and associates the prize with an entry or entries at the time the sweepstakes is entered; or
- (m) A slot machine or other form of electrical, mechanical, or computer game. It is the intent of this definition to classify any mechanism utilized at any electronic gaming establishment that seeks to avoid application of this definition through the use of any subterfuge or pretense whatsoever. Electronic gaming establishments do not include arcade amusement centers, regulated pursuant to F.S. § 849.161, or the official Florida Lottery.

The term *prize* as used herein shall mean any gift, award, gratuity, good, service, credit, or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

4. *Drive-thru Facilities.* A facility, which by design, physical character, and/or by operation (i.e., service or packaging procedures) encourages or permits customers to receive services, obtain goods or be entertained while remaining in the motor vehicle.
5. *Funeral Homes.* Undertaking and funeral services involving care and preparation of human deceased prior to burial, including crematory facilities.
6. *General Retail Sales and Services.* Retail sale or rental from the premises of goods and/or services to include all uses listed under limited commercial activities as well as the following:

Appliance Stores, without major warehousing.

Art Shops and Supplies.

Bakeries, excluding wholesale production and distribution.

Bicycle Shops.

Copying Services.

Cosmetic Stores.

Department Stores.

Drapery Stores.

Drug Stores.

Dry Cleaning establishments complying with Class IV or Class V Fire Code Prevention requirements and using only Class IV solvents such as perchlorethelene, except for spotting as provided for in Section 9.6(m) of the Fire Prevention Code.

Dry Goods Stores.

Fabric Stores.

Furniture Stores.

Garden Supplies.

Grocery Stores.

Hardware Stores, without outside storage of lumber and other building supplies.

Health and Exercise Studios.

Home Furnishing Stores.

Lawn and Garden Supplies.

Large Specialty Shops.

Luggage and Leather Goods Stores.

Office Equipment and Supplies.

Paint and Wallpaper Retail Sales.

Pet Supply and Pet Shops.

Sporting Goods Stores.

Other similar retail sales and service activities conducted within a fully enclosed building approved by the Town Council after receipt of a recommendation from the Planning and Zoning Commission. The use shall not include: wholesaling, warehousing, outside storage and distribution functions. The use shall not exhibit any characteristic dissimilar or incompatible with the uses identified herein. In

review and approval of a request for a "similar" use, the Planning and Zoning Board and the Town Council shall use the procedures and criteria cited in the following Section 1-2.6 [1-2.7].

7. *Hotels and Motels.* A building or other structure used, maintained or advertised as a place where sleeping accommodations are supplied for rent to transient guests, in which ten (10) or more rooms are furnished for the accommodation of such guests; and which may have as an accessory use one or more dining room areas.
8. *Limited Commercial Activities.* Small limited item shops and stores limited to retail sales of personal service items, including small convenience items or services typically needed on a frequent and recurring basis. This land use classification is intended to accommodate shops with limited inventory serving: (1) a household market area in the immediate vicinity as opposed to citywide or region; (2) a specialized market with customized service demand; or (3) a tourist oriented market area in the immediate vicinity. This classification is intended to include the following:

Bait and Tackle Shop.

Barber and Beauty Shops.

Book and Stationary Stores.

Candy and Ice Cream Stores.

Clothiers.

Drug Stores and Pharmacies.

Dry Cleaning and Laundry Pick-Up Substations and Self-Service Facilities.

Florists.

Gift Shops.

Hobby and Handicraft Shops.

Interior Decorators.

Jewelry Stores.

Meat Shops.

Novelty and Curio Shops.

Optical Stores.

Photo Supplies and Studios.

Shoe Repair Shops.

Tailors or Seamstress.

Other similar limited commercial activities conducted in a fully enclosed building which are approved by Town Council after receipt of a recommendation from the Planning and Zoning Board. Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such "similar" uses shall be as cited in the following section, § 1-2.6 [1-2.7]. The use shall comply with criteria cited in the above definition of limited commercial activities and shall not include more intense general retail sales and services. The procedures and criteria for review of other similar limited commercial activities shall be as cited in the following section, § 1-2.6 [1-2.7].

9. *Waterfront Marine Related Activities.* The following marine related land uses are included in this land use classification: commercial wet or dry storage and boat sales and rental; Marine power sales and service; and bait and tackle shop; and excluding marine salvage and boat yards.
10. *Medical Services.* The provision of therapeutic, preventive or other corrective personal treatment services by physicians, dentists and other licensed medical practitioners, as well as the provision of medical laboratory testing and analysis services. These services are provided to patients who are admitted for examination and treatment by a physician and with no overnight lodging. This land use classification includes pharmacies when developed as an accessory use within a medical service facility.
11. *Parking Lots and Facilities.* Governmental or private commercial building of [or] structure solely for the off-street parking or storage of operable motor vehicles.
12. *Plant Nurseries.* Retail sale of flowers, shrubs, trees, and plants as well as landscaping contractors and provision of related consultative services.
13. *Restaurants (excluding drive-ins and fast food service).* Any establishment (which is not a drive-in service establishment) where the principal business is the sale of food, desserts or beverages to the customer in a ready-to-consume state and where the design or principal method of operation includes two or more of the following:
  - (a) Customers, normally provided with an individual menu, are served generally in non-disposable containers by a restaurant employee at the same table or counter at which items are consumed.
  - (b) Ice cream parlors and other specialty restaurants having floor area exclusively within a shopping or office center and sharing common parking facilities with other businesses within the center and expressly prohibiting freestanding stores having characteristics of a drive-in restaurant.
  - (c) A cafeteria or cafeteria type operation where foods, desserts or beverages generally are served in non-disposable containers and consumed within the restaurant building.
  - (d) Customers purchase food, desserts or beverages for carryout.
14. *Restaurants (drive-ins and fast food service).* Any establishment where the principal business is the sale of foods, desserts or beverages generally contained in a ready-to-consume state and whose design, method of operation or any portion of whose business includes one or both of the following:
  - (a) The restaurants are self-service. Food is generally served in disposable containers and customers generally do the busing and clean-up for themselves or foods, desserts or beverages are served directly to the consumer in a motor vehicle.
  - (b) The consumption of foods, desserts or beverages within a motor vehicle parked upon the premises, or consumption at other facilities on the premises is allowed, encouraged or permitted.
15. *Service Stations, Including Gasoline Sales.* Establishments for the dispensing of motor fuels and related projects at retail and having pumps, underground storage tanks and other facilities for such activity and which may include the retail sale of minor automobile parts and accessories such as tires, batteries, spark plugs, fan belts, shock absorbers, mirrors, floor mats, cleaning and polishing materials and similar items, and which may include the inspection, servicing or minor repair of motor vehicles within enclosed service bays or stalls. For the purpose of this Code, these services shall not include body repair and painting, frame straightening, or tire recapping or vulcanizing.
16. *Trades and Skilled Services.* Shops providing services requiring skilled labor or craftsmanship for repair including household items, office equipment, appliances, printing, blue printing, carpet sales and service, feed stores, lawn and maintenance services,

newspaper printing, radio and television broadcasting, restaurant equipment and supply sales and services. All such activities shall not include outside storage.

17. *Vehicular Service and Maintenance.* Vehicular establishments providing sale of minor automobile parts and accessories such as tires, batteries, spark plugs, fan belts, shock absorbers, mirrors, floor mats, cleaning and polishing materials and similar items, and which may include the inspection, servicing or minor repair of motor vehicles. These services shall not include body repair and painting, frame straightening, or tire recapping or vulcanizing.
  18. *Vehicular Sales and Related Services.* The retail or wholesale sale or rental of motor vehicles and related equipment, with incidental services and maintenance.
  19. *Veterinary Medical Services.* The provision of animal medical care and treatment by a Florida licensed veterinarian.
  20. *Wholesale Trades and Services.* The display, limited storage and sale of goods to other firms for resale, excluding outside storage, except as otherwise provided in this chapter [Code].
- D. *Industrial Activities.* The following land uses are included in the industrial land use classification where the same are conducted within a totally enclosed building except as specifically provided herein:
1. *Kennels* for boarding of domestic dogs and cats and veterinary medical operations.
  2. *Manufacturing Activities* including:
    - Manufacturing or processing of electronic components, optical instruments, electrical appliances, or other precision components;
    - Assembly and distribution of goods;
    - Maintenance, repair, reconditioning, and cleaning;
    - Printing;
    - General packaging and processing activities;
    - Research and development technology;
    - Commercial laundries;
    - Machine shops;
    - Agricultural research laboratories;
    - Vocational and trade schools;
    - Sale of building material.

Other similar manufacturing activities conducted in a fully enclosed building which are approved by the Town Council after receipt of a recommendation from the Planning and Zoning Board. The uses shall exclude metal fabrication, chemical or petroleum manufacturing, rubber or plastics manufacturing, or other use generating potentially harmful nuisance impacts such as noise, vibrations, glare, dust, explosive or fire hazard, offensive odors beyond the property line, or air or water pollution.

Prior to approving any such "similar" use, the Town Council shall render a finding that the use is similar to the uses identified herein and will produce impacts similar in nature to impacts generated by those activities specifically permitted herein. The burden of proof resides with the applicant. The procedures and criteria for review of such uses shall be as cited in the following Section 1-2.6 [1-2.7].

3. *Manufacturing Service Establishments*, such as heavy machinery repair and service; heavy machinery or heavy equipment rental or other service uses approved by the Town Building Official based on similarity of use, excluding services which may generate potentially harmful nuisance impacts; and based on absence of any characteristic dissimilar and incompatible with the uses identified herein.
  4. *Vehicle and Other Mechanical Repairs and Services*, including those not permitted as commercial zoning activities including paint and body shops.
  5. *Warehousing, Storage and Distribution Activities*, including building contract construction, building supplies, furniture stores with major warehousing, and trade services with extensive warehousing, trucking support facilities, or requirement of outside storage.
- E. *Agricultural Activities*. The following land uses are included in the agricultural land use classification. No such activity shall permit commercial retail operations, except as otherwise expressly provided in the definition and/or the agricultural district provisions cited within this Code.
1. *Commercial Stables*, including a stable operated for profit on a minimum five (5) acre site of not more than one (1) horse for the first one (1) acre and one (1) additional horse for each additional one-half ( $\frac{1}{2}$ ) acre. Also reference conditional use criteria.
  2. *Noncommercial Agricultural Activities*, including home gardens, noncommercial greenhouses, and keeping of agricultural animals. Keeping of agricultural animals shall be limited to one (1) agricultural animal for the first one (1) acre and one (1) additional animal for each additional one-half ( $\frac{1}{2}$ ) acre.
  3. *Wholesale Agricultural Activities*, including harvested agricultural crops, fish and aquatic farms, grazing of cattle, and wholesale trade of products grown or raised on premises. These agricultural operations shall be restricted to sites with a minimum of five (5) acres.
- All animals permitted pursuant to this subsection shall be maintained within a controlled area bounded by a fence or other barrier approved by the Town.

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

# **Malabar Ordinance**

**No. 2014-01**

## **Assisted Living Facilities (ALF)**

ORDINANCE 2014-01

A ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING SECTION 1-2.6.B. LAND USE CLASSIFICATIONS; PROVIDING FOR PUBLIC HEALTH CARE FACILITIES AND SOCIAL WELFARE FACILITIES; AMENDING SECTION 1-3.1.1 DISTRICT PROVISIONS; PROVIDING FOR LIMITED RESIDENTIAL USES IN THE OI (OFFICE/INSTITUTIONAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; REMOVING REFERENCES TO GROUP HOMES AND AMENDING REFERENCES TO NURSING HOMES AND HOSPITALS AND PROVIDING FOR COMMUNITY RESIDENTIAL HOMES AND ASSISTED CARE COMMUNITIES; AMENDING TABLE 1-6.1 (B) REMOVING REFERENCES TO GROUP HOMES AND AMENDING REFERENCES TO NURSING HOMES AND HOSPITALS AND PROVIDING FOR COMMUNITY RESIDENTIAL HOMES AND ASSISTED CARE COMMUNITIES; AMENDING SECTION 1-9.2; ESTABLISHING PARKING REQUIREMENTS FOR PUBLIC HEALTH FACILITIES AND SOCIAL WELFARE FACILITIES; AMENDING SECTION 1-20.2 OF ARTICLE XX, DEFINITIONS; PROVIDING FOR DEFINITIONS OF HOSPITAL AND OTHER LICENSED FACILITIES, ADULT FAMILY-CARE HOME, ASSISTED LIVING FACILITY, ADULT DAY CARE CENTERS AND COMMUNITY RESIDENTIAL HOME; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

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

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

“B. *Community Facilities.*

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

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

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

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

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

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

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

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

10. *Public Health Facilities*

The Town has labeled the facilities below as Public Health Facilities. These facilities are also referenced in Florida Statutes, Title XXIX, in Chapters 395 and 408.

Notwithstanding the identification of other facilities in Florida Statutes, Title XXIX, in Chapters 395 and 408, the facilities below are the only Public Health Facilities provided for by the Town.

A. Hospital and other Licensed Facilities

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

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

Added Sentence



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

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

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

B. Nursing Homes and Related Health Care Facilities

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

Part I Long-Term Care Facilities

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

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

Added sentence  
Deleted

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.

Added Sentence  
↓

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 1-3.1.1 is amended to read as follows:

•••

“1. *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.”

**Delete**

•••

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

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

Deleted "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 I-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	(2)	(3)	N/A	N/A	N/A	N/A	(7)
Hospitals and Extended-Care-other Licensed Facilities	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)
Nursing Homes (including Rest-Homes and Convalescent Homes) and Related Health Care Facilities	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
<u>Community Residential Home</u>							
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)
<u>Assisted Care Communities</u>							
<u>I. Assisted Living Facility</u>							
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)
<u>II. Adult Family-Care Homes</u>							
(1 to 5 residents/beds)	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
<u>III. Adult Day Care Facilities</u>	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 Statutes, 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.

“*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.”

**Corrected  
13B**

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

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

Aye  
Aye  
Aye  
Aye  
Aye

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 3<sup>rd</sup> 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: [Signature]  
Steve Rivet, Council Chair

ATTEST:

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

Approved as to form and content:

[Signature]  
Karl W. Bohne, Jr., Town Attorney

**TOWN OF MALABAR**  
**PLANNING AND ZONING**  
**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4**  
**Meeting Date: February 10, 2016**

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

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**SUBJECT: Discuss Malabar Development Code; Table 1-3.2 Land Use by District R/LC column to consider more freedom for land owners on major road arteries (George Foster)**

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**BACKGROUND/HISTORY:**

This Agenda Item request came up by Board Member George Foster, to discuss more usages and freedom for property owners who reside in the R/LC zoning district, who are on a major road artery.

I have attached the portion of Table 1-3.2 Land Use by District that BM Foster presented to me with black dots in the R/LC column.

**ATTACHMENTS:**

- Portion of Table 1-3.2 Land Use By Districts (R/LC)

**ACTION OPTIONS:**

Discussion

# AGENDA ITEM #4

Discussion

TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
Noncommercial Agricultural Operations	P													
Wholesale Agricultural Activities	P													
Commercial Stables	C													
<b>COMMERCIAL ACTIVITIES</b>														
Adult Activities														
Bars and Lounges										C				
Bed and Breakfast										C				
Business and Professional Offices											P <sup>1</sup>			
Enclosed Commercial Amusement								P	P	P	P	P	P	
Arcade Amusement Center/ Electronic Gaming Establishment									P	P				
General Homes										C <sup>2</sup>				
General Retail Sales and Services									P	P	C			
Hotels and Motels										P				
Limited Commercial Activities										P				
Marine Commercial Activities										P				
Medical Services										P				
Mini Warehouse/Storage										P				
Parking Lots and Facilities										C				
Retail Plant Nurseries								P	P	P				
Restaurants (Except Drive-ins and fast food service)									P	P				
Restaurants (Drive-ins)										P				
Service Station, Including Gasoline Sales										P				
Trades and Skilled Services										C*				
Veterinary Medical Services										C*				
Vehicular Sales and Services								P	P	P				
Vehicular Services and Maintenance										C*				
Wholesale Trades and Services										C*				
<b>INDUSTRIAL ACTIVITIES</b>														
Kennels														C
Manufacturing Activities														P

MALABAR LAND DEVELOPMENT CODE

§ 1-3.2