



Planning and Zoning Board Meeting

Wednesday, October 26, 2022 at 6:00 pm

1. CALL TO ORDER, PRAYER AND PLEDGE
2. ROLL CALL
3. APPROVAL OF AGENDA
4. CONSENT AGENDA

APPROVAL OF MINUTES

- a. **Approval of Minutes of 10/12/2022**

Exhibit: Agenda Report Number 4a

Attachments:

- **Agenda Report Number 4a** (Agenda_Report_Number_4a.pdf)

5. PUBLIC COMMENTS
6. PUBLIC HEARING
7. ACTION ITEMS: 1

- a. **Continued discussion and amend the Land Development Code to allow "Limited" Manufacturing in the R/LC, CL and CG Commercial Land Use and Commercial Zoning Districts.**

Originally Presented by Mayor Patrick T. Reilly

Exhibit: Agenda Report Number 7a

Attachments:

- **Agenda Report Number 7a** (Agenda_Report_Number_7a.pdf)

8. DISCUSSION/POSSIBLE ACTION ITEMS
9. ADDITIONAL ITEMS FOR FUTURE MEETING
10. PUBLIC COMMENTS
11. OLD BUSINESS/NEW BUSINESS

- a. **Old Business**
- b. **New Business**

Board Member Comments

Next regular Meeting - November 9, 2022

12. ADJOURNMENT

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4.a.
Meeting Date October 26, 2022

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

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

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

Malabar has historically included discussion to provide the reader the understanding of how the Board came to their vote. These minutes 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 10/12/2022

ACTION OPTIONS:

Secretary requests approval of the minutes.

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

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
OCTOBER 12, 2022, 6:00 PM**

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

1. CALL TO ORDER, PRAYER, AND PLEDGE:

Meeting called to order at 6:00 P.M. Prayer and Pledge led by Chair Wayne Abare.

2. ROLL CALL:

| | |
|-----------------------|--|
| CHAIR: | WAYNE ABARE |
| VICE-CHAIR: | DOUG DIAL |
| BOARD MEMBERS: | LIZ RITTER, EXCUSED GEORGE FOSTER, SUSAN SHORTMAN |
| ALTERNATE: | VACANT |
| ALTERNATE: | VACANT |
| BOARD SECRETARY: | DENINE SHEREAR |
| ADDITIONAL ATTENDEES: | PATRICK T. RIELLY, MAYOR LISA MORRELL, SPECIAL PROJECTS MANAGER |

3. ADDITIONS/DELETIONS/CHANGE:

Sherear stated that Board Member Ritter called and asked to be excused. We do have a quorum.

Morrel stated she handed out reference material for Home-based Businesses as related to the review of the code. The highlighted points are as follows:

The Bill that was passed CS/HB 403 Home-based Businesses:

- This must be secondary to a dwelling. There must be a residence first
- Live in dwelling and Bill allows 2 employees to partake state law
- This Bill is adopted in FL Statute
- The parking followed in the site plan review according to code
- Cannot generate traffic flow more than a home adjacent surrounding area
- No storage of heavy equipment, but in RR-65 we do allow equipment, just not visible from the street
- In front property area it must look like surrounding area homes
- No retail transactions just minimal traffic as per FL Statutes
- Local, State must regulate sign code, cannot generate vibration or noise, smoke, or odors
- Cannot regulate for more stringent business than next door where no business activity is conducted.
- Hazard materials
- Light manufacturing is for assembly of a product, but not creating smoke, noise, and vibration., etc.no hazards materials.

- This Bill is in place and just for reference for background materials if it is discussed during amending Land Development Code.
- This document may be useful when discussing the R/LC zoning, where this is allowed but preempted by the state Bill. (For guidance)

Pat Reilly, Town of Malabar, Mayor 1985 Howell Lane.

Mayor stated he provided words to get started with amending Code and Table 1-3.2 Land Use by Districts Art III District Provisions.

The Mayor explained that in the R/LC (Residential /Limited Commercial) the Board will have to determine if they would like this "Limited Commercial" to be Conditional (C) or Permitted Use (P)

4. CONSENT AGENDA:1

- 4.a. Approval of Minutes** Planning and Zoning Meeting – 03/23/2022
Planning and Zoning Meeting -09/14/2022

Exhibit: Agenda Report No. 4.a
Recommendation: Request Approval

Motion: Foster/Shortman to Approve Minutes of 03/23/2022 as presented

Voted: All Ayes

Motion: Dial /Shortman to Approve Minutes of 09/14/2022 as presented

Voted: All Ayes

5. PUBLIC HEARING/COMMENTS:0

Barbara Cameron, Hall Road stated that her heart is with the Trails & Greenways Committee, she resigned from the PZ Board. She commented that her neighbor has applied for the PZ Board, she has wonderful neighbors.

Sherear asked Dave Taylor, who applied for the PZ Board to attended tonight's meeting and sent him a copy of the agenda.

Foster shared with the Board that he will not be renewing his term on the PZ Board for November 2022. He thanked the board.

6. ACTION:0

7. DISCUSSION:1

- 7.a. Continued Discussion and Review to amend Land Development Code to include "Limited" Manufacturing in the R/LC, CL, and CG Commercial Land Use and Commercial Zoning Districts.** (Originally Presented by Mayor Patrick T. Reilly on September 14, 2022)

Exhibit: Agenda Report No. 7.a.
Recommendation: Discussion/Action

Abare reviewed what was previously discussed at the October 12, 2022, meeting about industrial zoning areas being limited in our Town. He added that the Mayor thinks that Limited Manufacturing would do well in certain areas noted throughout the Town.

Abare said there is "Light" & "Limited" Manufacturing in our code presently with different definitions. The Mayor is purposing to define which definition to use Light or Limited would be the first step.

Morrell said on Agenda 7a. there are two definitions for the Board to review, it is an action item to determine if Light or Limited Commercial is going to be used.

Morrell explains that Industrial allows for manufacturing in general. The Mayor would like to incorporate low impact manufacturing in the Limited/ Light. When writing the Code, the PZ Board should advise the Council of what terminology should be used. The definitions provided in this packet are more of a legal assistance in determining the correct wordsmithing for the code.

Mayor explained on page 10 of this packet is Industrial, the term manufacturing is addressed in this section and not to change this. But a suggestion to change Limited Manufacturing in CG, R/LC , and CL.

The R/LC is already addressed in the FL Statutes, the Mayor explained you do not have to address code for this section, just if you want to add C- for Conditional or P- for Permitted.

Mayor explained the more usage you put in the code or the more restricted leaves less of an opportunity for error if someone comes in to develop a property and states they are "similar to". It will be addressed already in the code.

Abare asks for comments from the Board:

Foster is an advocate for commercial development on arterial roads. Manufacturing with safeguards is a benefit, not to close to residential homes.

Abare said if it this type of development is allowed in CG this can be controlled.

Shortman stated that the FL statue only is for a Home-based Business at this point.

Dial said making the Commercial areas P-Permitted or C-Conditional helps restrict certain development.

Foster said that R/LC should be Conditional

Mayor would like to see, Permitted Use in CG, Conditional Use in CL, and Condition Use in R/LC These are all on the arterial roadways (US I, Malabar Road, and Babcock Street)
Mayor said if you don't want it in R/LC it is ok.

Dial explained at the previous meeting that this is something we all want to do.

- Dial word- smithed about Limited and Light Manufacturing Services

Mayor said it is separated in the Code for Limited and Commercial Services provides a service and Manufacturing provides a product.

- Service is a service separate as a definition
- Manufacturing is a Product

Dial said we can over think this, but it is defined in suggested code verbiage.

Shortman commented that the Bard is all on the same page and in agreement of suggestions, there just need to be more "wordsmithing".

Morrell discussed having a workshop amongst the Board without the Mayor herself to wordsmith this as a group.

Abare said that the Board will rely on Lisa and Attorney to review so verbiage is correct moving forward.

Morrell / Abare discussed next step to workshop and wordsmithing with Board. After the Board has reviewed and ready to move forward the Board secretary can pass this to staff and the Attorney for any corrections or suggestions needed to comply with the code. The important part to consider is permitted and conditional uses.

Morrell explained to Abare the main part of this code is:

- Page 7 of 14 of this Agenda Packet (Items 9 & 10) the underlying text has been added
- Table 1.3.2
- Page 10 Industrial codes
- Page 13 limited manufacturing & limiting services

Abare stated that Dial may Chair next meeting on 10/26/2022.

Dial explained not to overthink what is suggested.

Abare suggested to write down thoughts and bring back to next meeting.

Morrell, suggested to send comments to the Board secretary and she will include in next meeting package.

Motion Dial/Shortman to determine limited or light and use Limited Manufacturing as a lead further qualify for term. All Vote: Aye

Dial suggested in his verbiage to use Limited & light Manufacturing services and explain categories.

Mayor looked for activities at a lower level and discussed light and limited manufacturing with Board. There will be common uses.

Morrell will provide "word" copy to use for submitting suggestions.

8. *Intentionally left Blank*
9. **ADDITIONAL ITEMS FOR FUTURE MEETING**
10. **PUBLIC COMMENTS**
11. **OLD BUSINESS/NEW BUSINESS:**

Old Business:

New Business:

Mayor in reference to Drew Thompson who is with the Trails and Greenways brought to the attention about the zoning for Institutional (was in blue color on map). The intent was to keep it Conservation. Parks are institutional

Main land Conservation is the intent suggestion about zoning for the Institutional land. A suggestion would be to change this zoning. The concern is low-income housing.

Morrell added that you have to have the property owner agree with this zoning changed.

Reminder: Next Meeting – October 26, 2022

K. ADJOURN

There being no further business to discuss, **MOTION: Shortman / Dial to adjourn this meeting.**
Vote: All Ayes. The meeting adjourned 7: 16 P.M.

BY:

Wayne Abare, Chair

Denine Sherear, Board Secretary

Date Approved: as presented

DRAFT

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 7.a.
Meeting Date October 26,2022

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

SUBJECT: Continued discussion to amend the Land Development Code, to include "Limited" Manufacturing in certain zoning districts; Residential /Limited Commercial (R/LC), Commercial Limited (CL), and Commercial General (CG).

BACKGROUND/HISTORY:

At the last PZ Meeting on October 12, 2022, it was discussed to have each Board Member submit suggestions to include in the Agenda Packet for amending the Land Development code.

The Board will review all suggestions and continue to work on amending this code sending back comments to staff before making a motion to send to Council.

Discussion Items to include the following:

- **Bring PZ Agenda Packets from the past two (2) Meetings September 14, 2022 & October 12, 2022**
- **Doug Dial comments**

ACTION OPTIONS:

Discussion/Action

**PLEASE BRING PZ AGENDA PACKETS FOR
THE PAST TWO MEETINGS:**

- **OCTOBER 12, 2022**
- **SEPTEMBER 14, 2022**

Denine Sherear

TOWN OF MALABAR

From: Douglas Dial <dougdi@icloud.com>
Sent: Friday, October 21, 2022 11:50 AM
To: Denine Sherear
Cc: Wayne Abare; Liz Ritter; Susan Shortman; George Foster; David Taylor
Subject: Re: PZ "Word Document" pertaining to Limited Commercial
Attachments: Dial InputsAgenda Attachment Section_1_2.6.____Land_use_classifications..pages

OCT 21 2022

RECEIVED By EMAIL
DS

Denine and fellow P&Z members,

Here are my edits/inputs from the the submittal by Pat Riley and Lisa Morrell.

As you'll see I've agreed with the basic inputs submitted. Looks good! We agreed in the last meeting, to use the term "Limited Manufacturing" and "Limited Manufacturing Services." I think the descriptions for these are fine. For my ease, I've highlighted their submitted changes in "red." I also renumbered the section to reflect the inclusion of the two categories.

I also highlighted in red the changes to the Land Use Districts Table 1-3.2. My only addition is a footnote within the R/LC district to reference the state regulation on Home-based businesses.

I suspect you may also have other sample revisions to the code that you might want to include as well.

Looks like we're close to me. We can discuss on Wednesday.

Thanks,

Doug

**DOUG DIAL, VICE CHAIR
PZ MEMBER**

AGENDA ITEM REPORT NO: 7.a.

- **COMMENTS FOR LAND DEVELOPMENT CODE SECTION 1-2 LAND CLASSIFICATIONS.**
- **TOTAL PAGES 18 (INCLUDES EMAIL AND TABLE 1-3.2 LAND USE BY DISTRICT)**

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.

TOWN OF MALABAR
 OCT 21 2022
 RECEIVED
 BY EMAIL

A. *Residential Activities.*

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

B. *Community Facilities.*

1. *Administrative Services (Public or Private Not-for-Profit).* Activities typically performed by not-for-profit private or public social services and utility administrative offices.
2. *Cemetery.* Property used for the interring of the dead.
3. *Child Care Services.* Activities typically performed by an agency, organization or individual providing day care without living accommodations for preteens not related by blood or marriage to, and not the legal wards or foster children of, the attendant adult.
4. *Clubs and Lodges (Not-for-Profit).* Activities typically performed by a group of persons for social or recreational purposes not operated for profit and not including activities which primarily render services which are customarily carried on as a business for profit.
5. *Cultural or Civic Activities.* Activities typically performed by public or private not-for-profit private entities for the promotion of a common cultural or civic objective such as literature, science, music, drama, art or similar objectives.
6. *Educational Institutions.* A place for systematic instruction with a curriculum the same as customarily provided in a public school or college. These activities include nursery school and kindergarten facilities designed to provide a systematic program to meet organized training requirements.
7. *Golf Course and Support Facilities.* A golf course is comprised of at least nine separate holes and may be regulation length, executive length, or par three (3) length. A golf course shall be required to comply with recommended minimum design standards established by the U.S. Golf Association or the American Society of Golf Course Architects. The following acreage requirements shall be the minimum standards for a golf course:

| Type of Golf Course | Minimum Acres Required |
|---------------------|------------------------|
| Regulation Course | 120 acres |
| Executive Course | 40 acres |
| Par 3 Course | 35 acres |

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

8. *Places of Worship.* Activities customarily performed in a building where persons regularly assemble for religious worship and which building, together with its accessory building and uses, is maintained and controlled by a religious body organized to sustain public worship.
9. *Protective Services.* Fire, law enforcement and emergency medical related facilities planned and operated for the general welfare of the public.

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

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

A. Hospital and other Licensed Facilities

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

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

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

B. Nursing Homes and Related Health Care Facilities

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

Nursing Home and Health Care Facilities.

Part I Long-Term Care Facilities

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

Part II Nursing Homes

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

Part V Intermediate, Special Services, and Transitional Living Facilities

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

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

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

13. *Social Welfare Facilities.* The Town has labeled the facilities below as Social Welfare Facilities. These facilities are also referenced in Florida Statutes, Title XXX, in Chapters 408 and 430. Notwithstanding the identification of other facilities in Florida Statutes, Title XXX, in Chapters 408 and 430, the facilities below are the only Social Welfare Facilities provided for by the Town.

A. Community Residential Homes

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

There are 2 levels of Community Residential Homes:

Level 1 is between 1 to 6 residents/beds

Level 2 is between 7 to 14 residents/beds

B. Assisted Care Communities

Part I Assisted Living Facilities

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

There are 3 levels of Assisted Living Facilities:

Level 1 is between 1 to 5 residents/beds

Level 2 is between 6 and 15 residents/beds

Level 3 is 16 residents/beds or more

In the RM-4 and RM-6 zoning districts, an ALF Factor of 3 will be used to determine the residents/bed density. For example, RM-4 is allowed 4 units per acre multiplied by the 3 ALF Factor is equal to 12 residents/beds per acre. RM-6 is allowed 6 units per acre multiplied by the 3 ALF Factor is equal to 18 residents/beds per acre.

Part II Adult Family-Care Homes

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

Part III Adult Day Care Centers

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

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. Limited Manufacturing Activities. This land use classification is intended to accommodate small limited item shops with limited inventory serving a specialized market with customized service demand. This classification is intended to include the following:

- 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;
- Limited packaging and processing activities;
- Research and development technology;
- Small Machine shops

Other similar limited 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].

10. Limited Manufacturing Services, such as low impact machinery repair and service 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.

11. *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.
12. *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.
13. *Parking Lots and Facilities.* Governmental or private commercial building of [or] structure solely for the off-street parking or storage of operable motor vehicles.
14. *Plant Nurseries.* Retail sale of flowers, shrubs, trees, and plants as well as landscaping contractors and provision of related consultative services.
15. *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.
16. 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.
 - (c) *Mobile Food Dispensing Vehicle* means any vehicle that is licensed by the State of Florida as a public food service establishment {See F.S. § 509.013(5) for definition of a public food service establishment} and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.
 - (d) *Mobile Food Dispensing Vendor*. The operator of a Mobile Food Dispensing Vehicle.
 - (e) *Location of mobile food dispensing vehicle/vendor*. A mobile food dispensing vendor may operate a mobile food dispensing operation in the following locations:
 - 1. *Town-Owned Property*.
 - A. On the following Town-owned property, total operation must be contained within the area designated for their operation by the Town Manager or designee:
 - 1. Malabar Community Park
 - 2. Sandhill Trailhead Park
 - 3. Town Hall
 - B. *Access*. A mobile food dispensing vendor shall not operate or park in any location that impedes the ingress or egress of traffic, building entrances, pedestrian ingress or egress, emergency exits, or access to businesses. Notwithstanding anything to the contrary herein, a mobile food dispensing vendor may only operate on Town-Owned Property in areas so designated by the Town.
 - C. *Conflict*. A mobile food dispensing vendor may not operate on or at any location where the Town Manager or designee determines that a conflict exists between a mobile food dispensing vendor's vehicle or operation and an existing license or franchise agreement, contractual obligation, or any other public health or safety concern, including but not limited to a special event or rental facility.
 - 2. *Improved Property*.
 - A. A mobile food dispensing vendor may operate on improved private property located within the following zoning districts, only with the written permission of the property owner(s). Evidence of a property owner's written permission must be available for inspection by the Town upon request while the mobile food dispensing vendor is operating.
 - 1. Commercial General (CG)
 - 2. Industrial (IND)

3. Residential/Limited Commercial (R/LC)
 4. Office Institutional (OI)
 5. Commercial Limited (CL)
 6. Institutional (INS)
- B. *Set-back Requirement.* When operating on private property, a mobile food dispensing vendor may operate only if set-back at least fifty (50) feet from any abutting residential district and at least one hundred and fifty (150) feet from any exclusively single family residential structure, unless the owner(s) of the residential structure immediately abutting such proposed location provides the mobile food dispensing vendor with express written permission to operate. The one hundred and fifty-foot set-back requirement is reduced to fifty (50) feet where an intervening non-residential building, such as a commercial building, screens the operation from the direct view of the single-family residential structure.
- C. *Access.* A mobile food dispensing vendor shall not operate or park in any location that impedes the ingress or egress of traffic, pedestrian ingress or egress, building entrances, blocks a public or private right-of-way, emergency exits, or access to businesses. A mobile food dispensing vendor may locate upon a public or private utility easement area; provided, however, that such location may be terminated by the town Manager if it is determined that such location has caused a deterioration to such easement or utility service needs unrestricted access to the easement area.
3. *Construction areas.* A mobile food dispensing vendor may operate on private property that has an active building permit as part of a commercial or multi-family construction site. Such operation may also occur on a site undergoing master infrastructure construction within a single-family subdivision until the first certificate of occupancy is issued.
4. *Principal structure requirement.* A mobile food dispensing vendor may only operate on a lot that has a permitted principal structure.
- [5.] *Stationary location requirement.* A mobile food dispensing vendor must operate from a stationary location, but may operate from multiple locations throughout the day, except as otherwise permitted in this article.
17. *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.
18. *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.
19. *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.
20. *Vehicular Sales and Related Services.* The retail or wholesale sale or rental of motor vehicles and related equipment, with incidental services and maintenance.
21. *Veterinary Medical Services.* The provision of animal medical care and treatment by a Florida licensed veterinarian.

22. *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 (½) 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 (½) 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; Ord. No. 20-14, § 1, 12-21-20)

Article III DISTRICT PROVISIONS

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(s)—Alcoholic beverages, ch. 4Cross reference(s)—.

| TABLE 1-3.2. LAND USE BY DISTRICTS | | | | | | | | | | | | | | | |
|--|-----------|-----------|-----------|-----------|------|------|----------|-------------------|----|----|------|-----|-----|----|--|
| | RR-6 5 | RS-2 1 | RS-1 5 | RS-1 0 | RM-4 | RM-6 | R- MH | OI | CL | CG | R/LC | IND | INS | CP | |
| RESIDENTIAL USES | | | | | | | | | | | | | | | |
| Duplex | | | | | P | P | | | | | P | | | | |
| Mobile Homes | | | | | | | P | | | | | | | | |
| Multiple Family Dwelling | | | | | P | P | | | | | P | | | | |
| Single Family Dwellings | P | P | P | P | P | P | P | | | | P | | | | |
| COMMUNITY FACILITIES | | | | | | | | | | | | | | | |
| Administrative Services (Public and Not-for-Profit) | | | | | | | | P | P | P | P | | P | | |
| Child Care Facilities | | | | | | | | C | | | C | | C | | |
| Churches, Synagogues and Other Places of Worship | | | | | | | | P, A ¹ | P | C | C | | P | | |
| Clubs and Lodges (Not-for-Profit) | | | | | | | | | P | P | | | | | |
| Cultural or Civic Activities | | | | | | | | P | P | P | P | | P | | |
| Educational Institutions | | | | | | | | C, A ¹ | | | | | C | | |
| Golf Course Facilities | C | | | | | | | | | | | | | | |
| Hospital and other Licensed Facilities | | | | | | | | C | | | | | C | | |
| Nursing Homes and Related Health Care Facilities | | | | | C | C | | C | | | | | C | | |
| Protective Services | | | | | C | C | C | C | C | C | C | C | C | C | |
| Public Parks and Recreation | C | C | C | C | C | C | C | C | C | C | C | C | C | C | |
| Public and Private Utilities | C | C | C | C | C | C | C | C | C | C | C | C | C | C | |

| | | | | | | | | | | | | | |
|---|----------------|---|---|---|--|----------------|----------------|---|---|---|---|----------------|---|
| COMMUNITY RESIDENTIAL HOME | | | | | | | | | | | | | |
| Level 1 (1 to 6 residents/beds) | C ³ | | | | | C | C | | | | | | |
| Level 2 (7 to 14 residents/beds) | | | | | | C | C | | | | | | C |
| ASSISTED CARE COMMUNITIES | | | | | | | | | | | | | |
| I Assisted Living Facility | | | | | | | | | | | | | |
| Level 1 (1 to 5 residents/beds) | | C | C | C | | C ⁴ | C ⁴ | | | | | C | |
| Level 2 (6 to 15 residents/beds) | | | | | | C ⁴ | C ⁴ | | | | | | |
| Level 3 (16 or more residents/beds) | | | | | | C ⁴ | C ⁴ | | | | | | |
| II Adult Family-Care Homes | | | | | | | | | | | | | |
| (1 to 5 residents/beds) | C ³ | C | C | C | | C | C | | | | | C | |
| III Adult Day Care Centers | | | | | | | | | | | | | |
| | | | | | | C | C | | C | | | C | C |
| AGRICULTURAL ACTIVITIES | | | | | | | | | | | | | |
| Noncommercial Agricultural Operations | P | | | | | | | | | | | | |
| Wholesale Agricultural Activities | P | | | | | | | | | | | | |
| Commercial Stables | C | | | | | | | | | | | | |
| COMMERCIAL ACTIVITIES | | | | | | | | | | | | | |
| Adult Activities | | | | | | | | | | | | C | |
| Bars and Lounges | | | | | | | | | | | | C | |
| Bed and Breakfast | | | | | | | | | | | | P ¹ | |
| Business and Professional Offices | | | | | | | | P | P | P | P | P | P |
| Enclosed Commercial Amusement | | | | | | | | | | | | P | |
| Arcade Amusement Center/ Electronic Gaming Establishment | | | | | | | | | | | | C ² | |
| Funeral Homes | | | | | | | | | P | P | C | | |
| General Retail Sales and Services | | | | | | | | | | | | P | |
| Hotels and Motels | | | | | | | | | | | | P | |
| Limited Commercial Activities | | | | | | | | | P | P | P | | |

| | | | | | | | | | | | | | | |
|--|--|--|--|--|--|--|---|---|---|----|----|---|----|---|
| Limited Manufacturing Activities | | | | | | | | | C | P | Cs | | | |
| Limited Manufacturing Services | | | | | | | | | C | P | Cs | | | |
| Marine Commercial Activities | | | | | | | | | | C* | | | | |
| Medical Services | | | | | | | P | P | P | P | | | | |
| Mini Warehouse/Storage | | | | | | | | C | P | | | P | | |
| Parking Lots and Facilities | | | | | | | P | P | P | P | | | P | |
| Retail Plant Nurseries | | | | | | | | P | P | P | | | | |
| Restaurants (Except Drive-Ins and fast food service) | | | | | | | | P | P | P | | | | |
| Restaurants (Drive-ins) | | | | | | | | | | P | | | | |
| Service Station, Including Gasoline Sales | | | | | | | | | | C* | | | C* | |
| Trades and Skilled Services | | | | | | | | | | P | | | P | |
| Veterinary Medical Services | | | | | | | P | P | P | P | C | | P | |
| Vehicular Sales and Services | | | | | | | | | | C* | | | P | |
| Vehicular Services and Maintenance | | | | | | | | | | C* | | | P | |
| Wholesale Trades and Services | | | | | | | | | | C* | | | P | |
| INDUSTRIAL ACTIVITIES | | | | | | | | | | | | | | |
| Kennels | | | | | | | | | | | | | | C |
| Manufacturing Activities | | | | | | | | | | | | | P | |
| Manufacturing Service Establishments | | | | | | | | | | | | | P | |
| Vehicle and Other Mechanical Repair and Services | | | | | | | | | | | C* | | P | |
| Warehouse, Storage and Distribution Activities | | | | | | | | | | | | | P | |
| WATER DEVELOPMENT NONCOMMERCIAL ACTIVITIES | | | | | | | | | | | | | | |
| Noncommercial piers, boat slips, and docks | | | | | | | | | | | | | | C |

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

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

- 1 Any Bed and Breakfast which is proposed to have more than five (5) living quarters shall only be approved as a conditional use in accordance with Article VI of the Land Development Regulations.
- 2 Any Arcade Amusement Center and Electronic Gaming Establishment as defined herein shall only be approved as a conditional use in accordance with Article VI of the Malabar Land Development Code.
- 3 Allowed in RR-65, (1 to 2 residents/beds) as defined in FS Title XXX Chapters 419 & 429
- 4 ALF Factor of "3" (see section I-2.6.B.13.B, Part I) only applies to RM-4 & RM-6 for ALF's
- 5 Subject to FL state law associated with CS/HB 403 related to Home-based Businesses which outlines allowances and restrictions such as property use, residents, parking, signage, and federal, state and local regulations related to use/storage/disposal of hazardous materials.

(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; Ord. No. 2016-03, § 1, 2(Exh. A), 10-3-16; Ord. No. 20-02, §§ 1, 2, 3-2-20