



Planning and Zoning Board Meeting

Wednesday, May 10, 2023 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 03/22/2023**

Exhibit: Agenda Report Number 4a

Attachments:

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

5. PUBLIC COMMENTS
6. PUBLIC HEARING
7. DISCUSSION/POSSIBLE ACTION ITEMS

- a. **Review additions/changes to Amend the Land Development Code Article VI "Conditional Use and Special Exception Use Criteria" to define and suggest clarification on Conditional Use and Land Development.**

Presented by Mayor Patrick T. Reilly (Originally on 03/22/2023)

Exhibit: Agenda Report Number 7a

Attachments:

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

8. 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 - May 24th, 2023

12. ADJOURNMENT

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4.a.

Meeting Date May 10, 2023

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 with the understanding of how the Board came to their vote. These minutes are 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 03/22/2023

ACTION OPTIONS:

The 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
MARCH 22, 2023, 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 (by Dave Taylor) and Pledge led by Chair Wayne Abare.

2. ROLL CALL:

CHAIR:	WAYNE ABARE
VICE-CHAIR:	DOUG DIAL
BOARD MEMBERS:	LIZ RITTER
	DAVE TAYLOR
	SUSAN SHORTMAN
ALTERNATE:	MEGHAN WOLFGRAM, EXCUSED
ALTERNATE:	VACANT
BOARD SECRETARY:	DENINE SHEREAR

ADDITIONAL ATTENDEES: PATRICK T. RIELLY, MAYOR

4. CONSENT AGENDA:1

4.a. **Approval of Minutes** Planning and Zoning Meeting – 02/8/2023

Exhibit:	Agenda Report No. 6.a
Recommendation:	Request Approval

The board discussed and corrected minutes, the minutes were revised. Amended, and approved.

Motion: Dial/Shortman to Approve Minutes of 2/8/2023 as amended,

Voted: All Ayes

5. PUBLIC COMMENTS

6. PUBLIC HEARING:0

7. DISCUSSION ITEMS:1

7.a. Amend the Land Development Code Article VI "Conditional Use and Special Exception Use Criteria" to define and suggest clarification on Conditional Use and Land Development.

Presented by: Mayor Patrick T. Reilly

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

Abare explained to the Board the progress of this Land Use Amendment, the document will go from here to staff and Town attorney and reviewed before it moves on to Council.

Abare and the Board are reviewing "Proposed document for Article VI Conditional Use."

Mayor Reilly 1985 Howell Lane presented this item to the Board. It has been brought to his attention that Article VI has to be updated, he suggests that the three "C" 's need to be added to clarify the Conditional Use, which are:

- **Capability:** Is the land Capable of Conditional Use
- **Compatibility:** Is the land Compatible with other land adjacent
- **Consistent:** Is the land consistent with Comp Plan

It is suggested to clarify this, the Code tht ws written was edited by Mayor Reilly and Matt, Town Manager. The reason was to clarify the criteria that was written.

Mayor would like to update Table 1-3.2 by District- Land Use. It was also explained about conditional use not permitted use.

It is suggested for the PZ Board to go through the Tables Section Table 1-6.1(B) & Table 1-3.2, any changes need to be documented and the reason for the change.

The Mayor went through the proposed changes for Section 1-6.1 Conditional uses. A sentence was added by the Mayor on Section 1-6.1 Conditional Uses under (B) at end of paragraph add:

"Such as the burden of proof lies with the applicant to show compliance to the specified criteria."

Abare said at the next meeting the Board will review and suggest changes to clarify proposing ideas.

The PZ Board discussed different areas in the town.

Ritter said the C's are regulated by state, Abare said the P's are too. Dial and the Board discussed the Tables and Conditional Uses

Abare explains to Taylor Article III Table 1-3.2 and its purpose for Town Usages and zoning.

The PZ discussed water availability. Morrell (Special Projects Manager) discussed water with the City of Palm Bay to add to Malabar.

The Mayor said that Morrell will also add Limited Manufacturing & Limited Manufacturing services to Table 1-6.1

The PZ Board will review changes already proposed and forward further changes to the secretary to place on next meeting to discuss.

8. **ACTION ITEMS:0**
9. **ADDITIONAL ITEMS FOR FUTURE MEETING**
10. **PUBLIC COMMENTS**

Abare asked if anyone has public comments.

11. **OLD BUSINESS/NEW BUSINESS:**

Old Business:

New Business:

- **Reminder:** Next Meeting –April 12, 2023

12. ADJOURN

There being no further business to discuss, MOTION: Ritter / Shortman to adjourn this meeting.
Vote: All Ayes. The meeting adjourned 7:11 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 May 10, 2023

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

SUBJECT: Review additions/changes to Amend the Land Development Code Article VI “Conditional Use and Special Exception Use Criteria” to define and suggest clarification on Conditional Use and Land Development. Presented by: Mayor Patrick T. Reilly

BACKGROUND/HISTORY:

Mayor Reilly brought before this Board a discussion for Article VI concerning “Condition Use” to discuss on March 22, 2023. It was suggested to define and clarify this Land Development Code.

There are suggestions noted in the “proposed” Document marked in “RED”. There is also the existing Article VI as it is in our current code.

The Board will review all suggestions and “word smith” their suggestions on clarification for Conditional Use and Land Development and bring back to a future meeting. I have received no comments from Board Members.

Mayor Reilly made some suggestions which are in this packet for review.

Discussion Items to include the following:

- **Proposed edition Article VI Conditional Use and Special exception Use Criteria (In CODE Presently)**
- **Table 1-3.2 LAND USE BY DISTRICTS**

ACTION OPTIONS:

Discuss / Action to Staff & Council

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 only 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, **The burden of proof lies with the applicant to show compliance to the specified criteria.**
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. 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. Land use consistency. The applicant shall demonstrate that the conditional use is consistent with the Comprehensive Plan and compliant 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. Land use capability. The applicant shall demonstrate that the land is capable of supporting the use, as measured by the following:

- i. *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.
- ii. *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.
- iii. *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.
- iv. *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.

d. ~~*TBD. Place holder for additional language under review to be proposed by staff at a later date.*~~

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 Section. 1-7.1 of this Code. The procedure 8

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 Section 1-7.1 and Section 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)	
Funeral Homes								
Golf Courses	(2)	500	Paved	70/45	25/20	Type C/C	(7)	
Hospitals and other Licensed Facilities	5 Acres	325	Arterial	100/75	25/20	Type A/C	(7)	
Nursing Homes and Related Health Care Facilities	2 Acres	210	Paved	60/30	25/20	Type A/C	(7)	
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)
Mini Warehouses/Storage								
Marine Commercial Activities	1 Acre	120	US 1/Babcock/West Railroad Avenue	100/30	N/A	N/A	(7)	
Service Stations, Including Gasoline Sales	1 Acre (8)	145	Arterial	100/30	N/A	N/A	(7)	

Trades and Skilled Services	1 Acre (8)	145	US 1/Babcock/ West Railroad Avenue	100/30	N/A	Type A/C	(7)
Vehicular Services and Maintenance	1 Acre (8)	145	US 1/Babcock/ West Railroad Avenue	100/30	N/A	Type A/C	(7)
Wholesale Trades and Services	1 Acre	145	US 1/Babcock/ West Railroad Avenue	50/30	15/10	Type A/C	(7)
Kennels	1 Acre	145	N/A	100/30	15/10	Type A/C	(7)
Vehicular and Other Mechanical Repair	1 Acre (8)	145	US 1/Babcock/ West Railroad Avenue	100/30	15/10	Type A/C	(7)
Noncommercial Piers, Boat Slips and Docks	N/A	N/A	N/A	N/A	N/A	N/A	(7)
Community Residential Home							
Level 1 (1 to 6 residents/beds)	1.5 acres	210	Paved	60/30	25/20	Type A/C	(7)
Level 2 (7 to 14 residents/beds)	3 acres	210	Paved	60/30	25/20	Type A/C	(7)
Assisted Care Communities							
I Assisted Living Facility							
Level 1 (1 to 5 residents/beds)	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 2 (6 to 15 residents/beds)	3 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 3 (16 or more residents/beds)	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)
II Adult Family-Care Homes							
(1 to 5 residents/beds)	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
III Adult Day Care Facilities	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)

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 ft of residential or institutional district.
- (7) No more than two curb cuts shall be permitted to any one street frontage. The ingress-egress width shall be restricted to a maximum width of thirty (30) feet at the point of curvature at the property line; shall be located no closer than thirty (30) feet to a right-of-way intersection; and shall be at least ten (10) feet removed from property lines. A minimum fifty (50) feet separation shall be maintained between curb cuts. The Town may require controlled access, including dedication of cross easements and joint use of drive. The Town Council may grant a waiver to these requirements after considering the recommendations of the Planning and Zoning Board and the Town staff.
- (8) Shall not be located adjacent to a residential district, including the RR district.
- (9) Shall not be located within 1000 feet of a religious institution, educational institution, or public park.
- (10) Reference Town of Malabar Ordinance Regulating Adult Entertainment.

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

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

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-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
RESIDENTIAL USES														
Duplex					P	P					P			
Mobile Homes							P							
Multiple Family Dwelling					P	P					P			
Single Family Dwellings	P	P	P	P	P	P	P				P			

- ¹ Any Bed and Breakfast which is proposed to have more than five (5) living quarters shall only be approved as a conditional use in accordance with Article VI of the Land Development Regulations.
- ² Any Arcade Amusement Center and Electronic Gaming Establishment as defined herein shall only be approved as a conditional use in accordance with Article VI of the Malabar Land Development Code.
- ³ Allowed in RR-65, (1 to 2 residents/beds) as defined in FS Title XXX Chapters 419 & 429
- ⁴ ALF Factor of "3" (see section 1-2.6.B.13.B, Part I) only applies to RM-4 & RM-6 for ALF's (Ord. No. 94-4, § 3, 4-3-95; Ord. No. 97-3, § 2, 3-17-97; Ord. No. 05-01, § 1, 3-7-05; Ord. No. 06-19, § 1, 1-11-07; Ord. No. 12-48, § 2, 1-23-12; Ord. No. 14-01, § 3, 2-3-14; Ord. No. 2016-03, § 1, 2(Exh. A), 10-3-16; Ord. No. 20-02, §§ 1, 2, 3-2-20