



# Board of Adjustments Public Hearing

Thursday, May 11, 2023 at 6:00 pm

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

**a. Approval of Minutes of 08/11/2022**

Exhibit: Agenda Report Number 3a

**Attachments:**

- **Agenda Report Number 3a** (Agenda\_Report\_Number\_3a.pdf)

**4. VARIANCE HEARING**

**a. ITEM 4.A HAS BEEN POSTPONED TO A FUTURE DATE Case No. 01-042023 Applicant requests a Variance to the Malabar Land Development Code Article III, Table 1-3.3(A); Size & Dimension Regulations in RR-65 Zoning to construct a Single-Family Residence.**

Applicants are Mrs. Diana E. Cho/Oscar Hotusing/Jesus Quintero (Contractor) ; Location: Vacant Parcel ID: 29-37-01-00-835. Aka: 2480 LaCourt Lane, Malabar, Florida, 32950.

Exhibit: Agenda Report Number 4a

**Attachments:**

- **Agenda Report Number 4a** (Agenda\_Report\_Number\_4a.pdf)

**b. Case No. 02-042023 Applicant requests a Variance to Malabar Land Code Article III, Table 1-3.3(A); Size & Dimension Regulations in RR-65 Zoning to construct a Detached Steel Structure.**

Applicant is: Mr. Christopher Peters; Location: Residential Property ID: 29-37-10-00-74 Aka: 2885 Hard Way Lane, Malabar, Florida, 32950.

Exhibit: Agenda Report Number 4b

**Attachments:**

- **Agenda Report Number 4b** (Agenda\_Report\_Number\_4b.pdf)

**c. Case No. 03-042023 Applicant requests a Variance to Malabar Land Development Code Article III, Table 1-3.3(A); Size & Dimension Regulations in RR-65 Zoning to construct a Single-Family Residence.**

Applicants are: Mr. & Mrs. Dennis & Patty Martin; Location: Residential Property ID: 29-37-03-00-757 Aka: 2175 Wilson Lane (north side of driveway area), Malabar, Florida, 32950.

Exhibit: Agenda Report Number 4c

**Attachments:**

- **Agenda Report Number 4c** (Agenda\_Report\_Number\_4c.pdf)

**5. NEW BUSINESS/STAFF REPORTS/MEMBERS REPORTS**

**6. ADJOURNMENT**

**NOTICE OF RIGHT OF APPEAL OF BOARD OF ADJUSTMENT  
DECISIONS**

In accordance with the Town of Malabar Land Development Code Article XII, any person aggrieved may appeal a decision of the Board of Adjustment in Circuit Court of Brevard County. An appeal must be filed within 30 days after the filing of such decision with the Town Clerk, but not thereafter. Provisions for review of Board of Adjustment decisions must be in a manner provided by the laws of the State of Florida.

Any person desiring to appeal any decision made by the Board of Adjustment with respect to any matter considered at such meeting or hearing, will need a record of the proceedings, and for such purposes, must insure that a verbatim record and transcript of the proceeding is made in a form acceptable for official court proceedings, which record includes the testimony and evidence upon which the appeal is to be based. It shall be the responsibility of the person desiring to appeal any decision to prepare a verbatim record and transcript at his/her own expense, as the Town does not provide one.

# TOWN OF MALABAR

## BOARD OF ADJUSTMENT PUBLIC HEARING

### AGENDA ITEM REPORT

AGENDA ITEM NO: 3.a.

Meeting Date May 11, 2023

Prepared By: Denine M. Sherear, Building Department Manager

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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. 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 Board of Adjustment Public Hearing of 8/11/2022

#### **ACTION OPTIONS:**

Secretary requests approval of the minutes.

# TOWN OF MALABAR

## BOARD OF ADJUSTMENT PUBLIC HEARING THURSDAY, AUGUST 11, 2022 MEETING MINUTES 6:00 P.M.

This meeting of the Malabar Board of Adjustment was held at Town Hall at 2725 Malabar Road.

1. **CALL TO ORDER**
2. **ROLL CALL:**  
David Sowards, Chair  
Donna Hanna, Vice-Chair  
Charles Frazee  
Joanne Korn  
Katie Abare  
Christine Sabatino, Alternate  
Bud Ryan, Alternate Excused

### **STAFF:**

Karl Bohne, Town Attorney  
Matt Stinnett, Town Manager  
Denine Sherear, Board Secretary

Secretary Sherear announced there is a quorum.

### 3. **NOMINATE CHAIR AND VICE-CHAIR**

Sowards explained that the Board has to nominate a Chair & Vice-Chair.

#### **Chair:**

Korn nominated David Sowards as Chair and Frazee seconded the nomination no other nominees for Chair.

Motion: Korn/Frazee Nominate David Sowards as Chair of the BOA. All Vote: All Ayes

#### **Vice-Chair:**

Frazee nominated Donna Hanna as Vice-Chair and Korn seconded the nomination no other nominees for Vice-Chair.

Motion: Frazee/Korn Nominate Donna Hanna as Vice-Chair of the BOA. All Vote: All Ayes

### 4. **CONSENT AGENDA**

- 4a. **Approval of Minutes- None**

### 5. **VARIANCE HEARING-1**

- 5a. **Case # BOA 01-082022 Nelson**

**Applicant Requests a Variance to the north lot line depth of the 150-feet required in the Malabar Land Development Code, Article III Table 1-3.3(A) Size and Dimension Regulations in RS-21 Zoning to construct a Single-Family Residence.**

Applicant: Mr. William Nelson  
Location: 3045 Rocky Point Road (south end of Rocky Point Rd Township 29,  
Range 38, Section 8, north portion of Parcel 751)  
Exhibit: Agenda Report 5.a.

Sowards stated that this is a Quasi Judicial Proceeding and any one desiring to offer testimony must raise their right hand to be sworn in.

Mr. Nelson raised his right hand and was sworn in by Chair Sowards

Chair explained to Board & Public the proceedings of the meeting, the applicant will present his request and the Board will ask questions of the applicant Mr. Nelson

Mr. Bill Nelson (Applicant) attended meeting via Microsoft Teams, he stated his name and he is at his Washington headquarters and he appreciates being able to attend via internet connection. He explained that he is a life long resident of Florida, he grew up on the property located in Rocky Point back in 1924 until later in life he moved to Tallahassee FL. He now lives in Orlando.

Mr. Nelson said his attorney is present who is Mr. Repperger from the WhiteBird Law Firm and a court reporter recording the meeting.

Mr. Nelson explained the lot requesting the variance is in the RS 21 zoning (½ acre only is required with proper set backs & lot requirements) it is for single family residents, the lot that he is requesting the variance is ¾ of an acre. The depth per code is 150' and the width required is 120' (the front width is 270.02' +/- along Rocky Point Road & the rear width is 283.'+/-). The south property line is 151.75' and complies with Town code, the north property line is 83.81' , this is the request for a variance to the code of 150' depth. The issue that Mr. Nelson stated is due to the meandering River shoreline and the angle of the river on the north property line is only 83.81' and this is the reason that he becomes before this Board for a variance to approve this lot for a single family residence.

Mr. Nelson stated that the proposed buyer has bought the 2 lots to the south of requested lot for variance, and each lot is ¾ of an acre and those lots have shore lines that meander. Mr. and Mrs. Apsey plan to purchase this current lot if approved to build a single family residence.

Mr. Nelson showed the proposed house on the property survey with setbacks (25' scenic easement and appears to be an additional 75' on north property line) referencing rear, front, and south property setback locations.

Mr. Cliff Repperger (Attorney representing Mr. Nelson) 2101 Wavery Place St #100, Melbourne FL with White Bird Law Firm

Mr. Repperger touched on a few points of Variance Request.

- Agenda had referenced a 32 ft Variance on the north required depth of 150' in the RS21 Zoning. The present depth is (83.81') on the north side depth
- RS 21 Zoning Table 1-3.3(A) Size and Dimension Regulations
- Mr. Nelson stated that the lot meets all other required RS 21 zoning criteria to build a single-family residence

Mr. Repperger stated that as a result of the tapering shoreline of the Indian River this variance is requested to meet building requirements, he referenced the Town's Code required for Variances for the criteria in moving forward which is in Section 2-240 (a)(5) a.

Mr. Repperger stated that this is a special condition not created by the applicant. The applicant (Mr. Nelson) meets and exceeds all required criteria for RS 21

Mr. Repperger commented that this is the minimum variance requested to build a single family residence on this lot, the hardship would be created if the lot can not be used for this purpose. He referenced all points in the code for determining the variance.

Mr. Repperger did note that this lot is on the east side of Rocky Point Road, there is a 25' scenic easement that is granted to the property to the west side reserved and nothing will be constructed on this "scenic easement".

The house is located to the south of the north property line.

Mr. Repperger believes that all the code criteria is met for granting the variance.

Chair Sowards asked the Board if there are any questions from the Board.

BM Frazee asked applicant who is going to own the easement, the person building the house? Mr. Repperger responded that the scenic easement is owned by the said property owner and is subject to the easement.

The property located on the west side of Rocky Point has the right to the easement and will stay with the property until the property owners agree otherwise. The recorded easement has to be kept open with access.

Attorney Bohne stated that the property owner to the west has submitted a letter and documentation concerning the easement and concerns. Staff is aware of this easement concern. Bohne explained that if the Board was to grant the variance, it would be within reasonable interest to include conditions that the new owner of parcel 27 would maintain and respect the said easement to the owner to the west. The recorded easement would be protected to the form as noted in the recorded easement, basically the 25' easement would have to remain untouched.

The Board Chair would be presented with language in written form as a Final Order that would be granted with conditions concerning this easement.

Attorney Bohne explained to the Board about the "Scenic Easement" that was recorded with property owner to the west.

Chair Sowards asked if there were anymore questions for Mr. Nelson.

Board will now open to Public Hearing, to hear from interested persons, then close Public Hearing

Ms Lynch, 3010 Rocky Point Road, asked about clarification of easement and leaving it as is, about cutting down trees, if you leave it as is the trees are too tall and you will not have scenic view

Attorney Bohne responded that the easement that is recorded in the public records defines whatever the rights and obligations of what the parties are to be, it is documented in the "Scenic

Easement". This variance does not deal with this or a legal interpretation of the actual conditions of easement. If there is a violation, then either party has the right to stop the violation of that easement.

Mr. Nelson responded that he had that easement recorded for the enjoyment of property owners to the west. He stated he spoke to Mr. & Mrs. Kent the property owners to the west and the scenic easement is for the enjoyment of property owner to put in sod and maintain the area nothing over 4 feet in height.

Chair Sowards reads into the minutes the letter submitted by the property owners Mr. & Mrs. Kent who own the parcel to the west (attached).

Mr. Nelson said he reached out to the Kent's and sent a proposed layout of single family residence.

Closed the Meeting to the Public and brought back to the Board for discussion. If any of Board Members have spoken to anyone or visited site they must first disclose before discussion begins.

**Disclosure:** Sabatino, Frazee, Sowards, Abare

Sowards drove by property.

Abare talked to residents

Frazee comment it is great as long as purchases that we have in our code. Bohne said Staff feels comfortable with lot depth, it is up to the Board to determine the Variance. Bohne explained that whomever purchases this lot #27 will have to abide by the conditions set forth if this variance is approved and whatever conditions are imposed and agreed on.

Sowards comments if this variance is not granted it cannot be built on due to depth requirement.

Chair Sowards asked for a Motion to Approve, Deny, or Approve with conditions.

**Motion: Hanna/Korn To Approve the Variance of 32 feet +/- to the required 150 feet for the north property depth for property know as: 3045 Rocky Point Road Malabar FL 32950, allowing a Single Family resident to be built in the RS 21 zoning with Conditions that the 25 foot Scenic Easement to the east is recorded and attached to the property and maintained according to record. Chair called for rollcall vote.**

**Roll Call Vote:**

BOA Member Donna Hanna, Aye  
BOA Member David Sowards, Aye  
BOA Member Charles Frazee, Aye  
BOA Member Joanne Korn, Aye  
BOA Member Katie Abare, Aye

**Motion carried with Conditions 5 to 0 Vote.**

Attorney Bohne explained the next step is to Finalize this Variance with a Final Order, accepted and signed by Chair. Then go forward with house plans and come back before the Town for building permits.

TOWN OF MALABAR

Debby K. Franklin, CMC  
Town Clerk/Treasurer  
2725 Malabar Road  
Malabar, FL 32950

AUG 09 2022

RECEIVED

August 9, 2022

Dear Ms. Franklin,

This letter is in response to C. William Nelson's request for a variance on the property located at the south end of Rocky Point Road, Township 29, Range 38, Section 8, Parcel 751 (the northern third), Malabar, Florida. The property is also known as Lot 27. This property is located directly across from the property my husband and I purchased last September from Mr. Nelson. Our property (3040 Rocky Point Road, known as Lot 2 in our contract) was apportioned so that most of it is on the west side of Rocky Point Road and a small portion is located on the water side on which we can build a dock. The water side portion is not directly across the street from us, but slightly north. Please see diagram labeled Attachment A on page 9 of our attached contract for a clear picture of how the properties are oriented. We expressed our concern to Mr. Nelson that we only wished to purchase the property if the view across the street remained unobscured. He therefore granted a 25 foot scenic easement (also attached to this letter) then another 75 foot of property for unobstructed view which extended into lot 27. The reference to the additional 75 feet is included in Section 23 of the Additional Terms in our contract reads as follows: "As it relates to Lot 27 across Rocky Point Road from Lot 2, Seller agrees to include a scenic easement of 25 feet which will run south from the northern property line of Lot 27. The Seller agrees to allow the owner of Lot 2 to clear the scenic easement and an additional 75 feet of Lot 27 at their expense. In the event that Lot 27 is sold, the Seller shall require the new owner of Lot 27 to maintain and keep that portion of Lot 27 cleared and unobstructed or agree to allow the Owners of Lot 2 to continue to maintain it at their cost until Lot 27 is developed. The Buyer of lot 2 will not restrict the new owners of lot 27 (except for the scenic easement) from full use and enjoyment of their land, under the current zoning and as allowed and authorized by the local, State and County governments."

Our concern is that the new property owners are required to respect the scenic easement of 25 feet and should also be required to abide by Mr. Nelson's agreement regarding the additional 75 feet.

Please contact us at (954)701-7690 or via email at [JCorreiaKent@aol.com](mailto:JCorreiaKent@aol.com).

Sincerely,

  
Joanne Correia-Kent

Cc: Denine Sherear  
Melany Crawford



6. NEW BUSINESS/STAFF REPORTS/MEMBER REPORTS

7. ADJOURNMENT

ADJOURNMENT:

MOTION: BOA Member Frazee/BOA Member Abare to adjourn. Vote: All Ayes.  
Meeting adjourned at 6:49P.M.

BY: \_\_\_\_\_  
BOA Chair David Sowards

ATTEST BY:

\_\_\_\_\_  
Denine Sherear  
Board Secretary

\_\_\_\_\_  
Date Approved:

\_\_\_\_\_  
Debby K. Franklin, C.M.C.  
Town Clerk / Treasurer

**NOTICE OF RIGHT OF APPEAL  
OF BOARD OF ADJUSTMENT DECISIONS**

In accordance with the Town of Malabar Land Development Code Article XII, any person aggrieved may appeal a decision of the Board of Adjustment in Circuit Court of Brevard County. An appeal must be filed within 30 days after the filing of such decision with the Town Clerk, but not thereafter. Provisions for review of Board of Adjustment decisions must be in a manner provided by the laws of the State of Florida.

*"Person aggrieved" shall be in accordance with the Town of Malabar Land Development Code.*

# TOWN OF MALABAR

## AGENDA ITEM REPORT

**AGENDA ITEM NO: 4.a.**

**Meeting Date: May 11, 2023**

**Prepared By: Denine Sherear, Building Department Manager**

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**SUBJECT: Variance Request, Case # BOA 01-042023 Ms. Cho (property owner); requests a variance to Malabar Land Development Code Article III, Table 1-3.3(A) Size and Dimension Regulations, Minimum set back from front is 40 feet & if on corner is 40 feet and rear & side are 30 feet setbacks. The Variance is for the rear & front.**

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### **BACKGROUND/HISTORY:**

This request came in to the Building Department's Office. Ms. Cho/Oscar Hotusing/Jesus Quintero(contractor) would like to construct a single-family residence. Due to wetlands (mitigation enclosed in this packet) and setbacks a variance is requested for rear property survey of 10 feet and front property survey of approx. of 15 feet.

There was work commenced on property before Variance request which included property clearing, going through open drainage ditch & possible wetland areas, and culvert installed improperly. The culvert is the only permit that has been submitted & picked-up. The culvert still has not been installed properly. The other required permits needed have not been permitted yet.

It appears that certain criteria will need to be met to build a single-family residence.

### **ATTACHMENTS:**

- Application for Variance (letter from property owner)
- FDEP- Mitigation for wetlands
- Property Appraiser's Radius map
  - List of property owners within 500' radius that were notified.
  - Notice sent to property owners.
- Code requirements for a variance.

### **ACTION OPTIONS:**

Staff requests approval of this request.

BP  
1958

TOWN OF MALABAR  
2725 Malabar Road  
Malabar, FL 32950  
Tel. 321-727-7764 x 14

TOWN OF MALABAR

SEP 20 2022

VARIANCE APPLICATION

RECEIVED

This application must be completed, with required attachments, and returned to the Town Clerk's office.

Name of Applicant(s) Diana E Cho Tel: 321-2619686

Mailing Address: 932 Tavernier Circle Palm Bay 32905

Legal description of property covered by application:

Township \_\_\_\_\_, Range \_\_\_\_\_, Section \_\_\_\_\_, Lot/Block \_\_\_\_\_, Parcel \_\_\_\_\_, Subdivision \_\_\_\_\_

Other Legal PARCEL ID # 29-37-01-02835 E 1/2 OF E 1/2 OF L 25 N 8 1/2 OF W 1/2 OF SE 1/4 OF SE 1/4 OF S 35 FT PAD

Property Address: 2480 LA COURTLANE 2274 PG 1729

Present zoning classification RR65

Intended use for property Residential

Reason for variance request / appeal (state specific hardship or attach correspondence, drawings, etc.).

see attachment

Required attachments:

- Hearing fee of \$500.00 for Residential and \$1,750.00 for Commercial, which includes advertising, administrative time, legal noticing and mailing.
- Proof of ownership
- Site Plan
- Water and sewer facilities to be fully explained (if applicable).
- List of property owners (with tax parcel numbers) within 500 feet of referenced property as shown in the records of the County Property Appraiser. This "Radius" package is available from the Brevard County Planning and Zoning GIS Section located at the Viera government center, in Building A, Room 114, phone 321-633-2060. There is a fee for this package.

Diana E Cho  
Applicant(s)

9/7/22  
Date

SEP 20 2022

RECEIVED

REASON FOR VARIANCE REQUEST

Thank you for taking the time to review my variance request. As one of the requirements I must show good reason for the Town to grant this variance. As some of you may know I unfortunately acted in haste in clearing out the property. As a result, this has not only cost me financially but also set me back in this process many months to complete constructing my dream home.

The location of this parcel, having two roadways creates an additional restriction as to "setbacks" that non-corner lots that is one of the reasons I am requesting the variance. Furthermore, clearing additional land is not something that can be done as a desire to maintain the natural habitat. As mentioned above, that cost me time and money already.

If I am not granted this variance I would have to contract for new architectural drawings and then resubmit for the approval process. This will cause another delay in constructing as well as hundreds if not thousands of dollars in unanticipated expenses.

I ask that you accept this request as an attachment and grant my request.

Thank you

*Diana Cho*

POSTPONED

SEP 20 2022

RECEIVED

TOWN OF MALABAR - VARIANCE REQUEST  
(Page 2)

Where the property is not owned by the applicant, a letter/letters must be attached giving the notarized consent of the owner/owners to the applicant to request a variance on the property.

Please complete only one of the following:

I, DIANA, E. CHO, being first duly sworn, depose and say that I, DIANA, E. CHO, am the legal representative of the Owner or Lessee of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Diana E. Cho  
Signature of Applicant(s)

9/7/22  
Date



ANGEL AMARANTE  
Notary Public  
State of Florida  
Comm# HH232583  
Expires 2/22/2026

Sworn and subscribed before me this 07 day of SEPTEMBER, 2022.

Notary Public, State of Florida  
Commission No. HH232583

My Commission Expires 02/22/2026

[Signature]

I, DIANA, E. CHO, being first duly sworn, depose and say that I, DIANA, E. CHO, am the Owner of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Diana E. Cho  
Signature of Applicant(s)

9/7/22  
Date



ANGEL AMARANTE  
Notary Public  
State of Florida  
Comm# HH232583  
Expires 2/22/2026

Sworn and subscribed before me this 07 day of SEPTEMBER, 2022.

Notary Public, State of Florida  
Commission No. HH232583

My Commission Expires 02/22/2026

[Signature]

TOWN OF MALABAR

OCT 28 2022

RECEIVED

TOWN OF MALABAR - VARIANCE REQUEST  
(Page 2)

Where the property is not owned by the applicant, a letter/letters must be attached giving the notarized consent of the owner/owners to the applicant to request a variance on the property.

Please complete only one of the following:

I, OSCAR NOTUSIA, being first duly sworn, depose and say that I, OSCAR NOTUSIA, am the legal representative of the Owner or Lessee of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Signature of Applicant(s)

10/28/2022  
Date

Sworn and subscribed before me this 28 day of October, 2022.

Notary Public, State of Florida

Commission No. HH 092350 My Commission Expires 2/14/25



~~I, \_\_\_\_\_, being first duly sworn, depose and say that I, \_\_\_\_\_ am the Owner of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.~~

~~Signature of Applicant(s)~~

~~Date~~

~~Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.~~

~~Notary Public, State of Florida~~

~~Commission No. \_\_\_\_\_ My Commission Expires \_\_\_\_\_.~~

TOWN OF MALABAR  
OCT 29 2023

RECEIVED

TOWN OF MALABAR - VARIANCE REQUEST  
(Page 2)

Where the property is not owned by the applicant, a letter/letters must be attached giving the notarized consent of the owner/owners to the applicant to request a variance on the property.

Please complete only one of the following:

I, OSCAR NOTUSIA, being first duly sworn, depose and say that I, OSCAR NOTUSIA, am the legal representative of the Owner or Lessee of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

[Signature]  
Signature of Applicant(s)      10/28/2022  
Date

Sworn and subscribed before me this 28 day of October, 2022.

Notary Public, State of Florida  
Commission No. HH 092350 My Commission Expires 2/14/25



~~I, \_\_\_\_\_, being first duly sworn, depose and say that I, \_\_\_\_\_, am the Owner of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.~~

~~Signature of Applicant(s)      Date~~

~~Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.~~

~~Notary Public, State of Florida  
Commission No. \_\_\_\_\_ My Commission Expires \_\_\_\_\_~~

SEP 20 2022

RECEIVED

RECEIVED

North side

Approved for Driveway Culvert ONLY

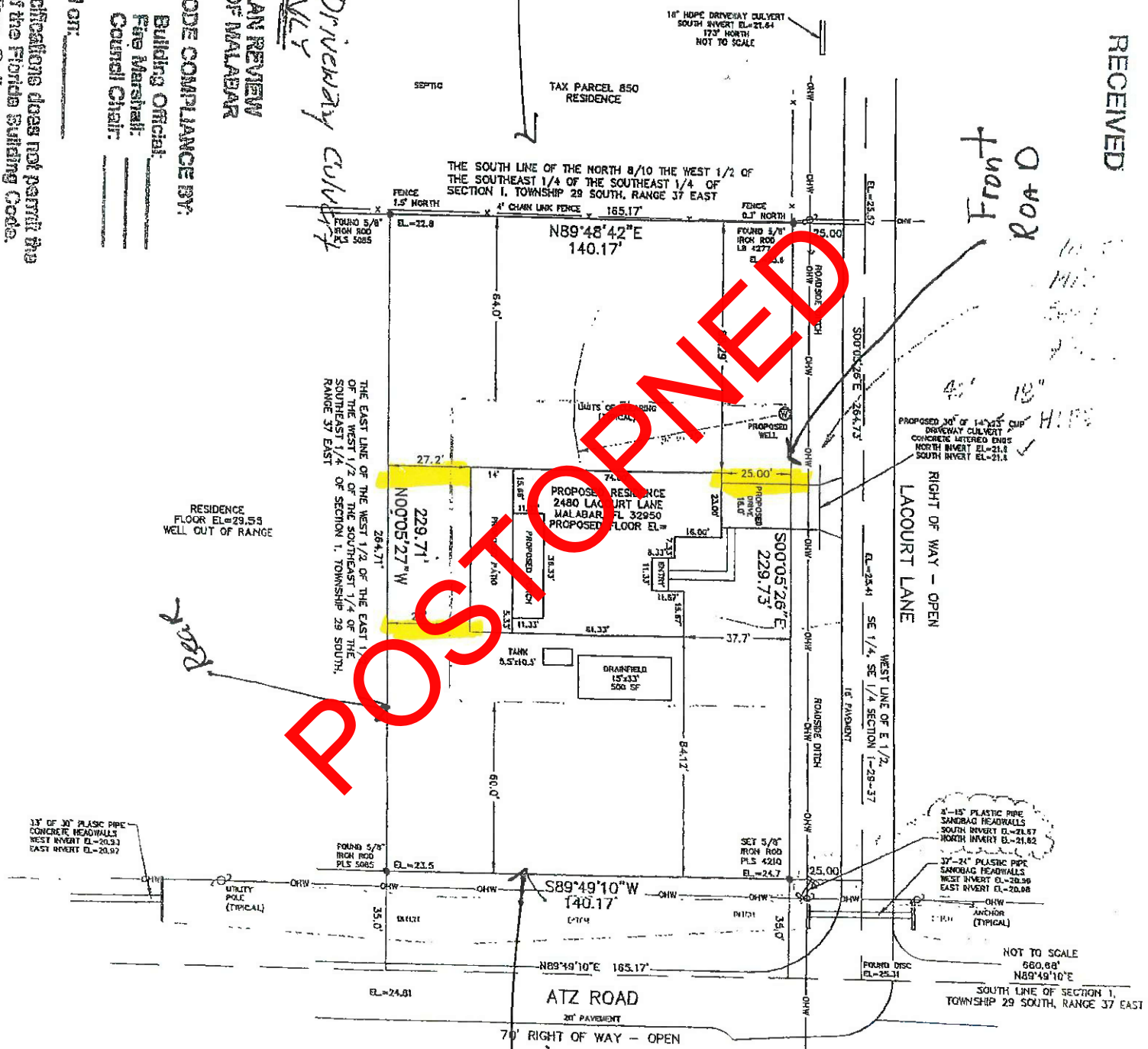
STEP PLAN REVIEW  
TOWN OF MALABAR

REVIEWED FOR CODE COMPLIANCE BY:

Engineer: \_\_\_\_\_  
Planner: \_\_\_\_\_  
Attorney: \_\_\_\_\_  
PEZ Bd: \_\_\_\_\_  
Approved By Town Council on: \_\_\_\_\_

Building Official:  
Fire Marshall:  
Council Chair:

Approval of Plans and Specifications does not permit the violation of any section of the Florida Building Code.



POSTPONED

Back

side w/ Road Frontage





POSTOPNED



**POSTOPNED**

**POSTOPNED**

POSTOPNED

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Project Boundary

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POSTPONED



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# TOWN OF MALABAR

## AGENDA ITEM REPORT

**AGENDA ITEM NO: 4.b.**

**Meeting Date: May 11, 2023**

Prepared By: Denine Sherear, Building Department Manager

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**SUBJECT:** Variance Request, Case # BOA 02-042023 Mr. Christopher Peters (property owners); request a variance to Malabar Land Development Code Article III, Table 1-3.3(A) Size and Dimension Regulations, Minimum front set back is 40 feet and side road is 40 feet in RR-65 Zoning for corner parcels. The Variance request is 24 feet from side setback along Old Mission Road.

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### **BACKGROUND/HISTORY:**

This request came in to the Building Department's Office. Mr. Christopher Peters would like to construct a detached steel building 24 ft x 40 ft. The location for the steel structure is limited in order to save as many trees and maintain a natural landscape on the property.

Mr. Peters has provided a survey and location of the steel structure. Typically, the setback would be a minimum of 15 ft but due to being on a corner it is designated as two frontages as stated in our code.

Property owners within 500ft have been noticed re: this request and the date of Hearing.

### **ATTACHMENTS:**

- Application for Variance (letter from property owner)
- Property Appraiser's Radius map
  - List of property owners within 500' radius that were notified.
  - Notice sent to property owners.
- Code requirements

### **ACTION OPTIONS:**

Staff requests approval of this request.

JAN 27 2023

RECEIVED

TOWN OF MALABAR  
2725 Malabar Road  
Malabar, FL 32950  
Tel. 321-727-7764 x 14

VARIANCE APPLICATION

This application must be completed, with required attachments, and returned to the Town Clerk's office.

Name of Applicant(s) Christopher Peters Tel: 321-917-9196

Mailing Address: 2885 Hard Way Lane, Malabar, FL 32950

Legal description of property covered by application:

Township 295, Range 37E, Section 10, Lot/Block 18, Parcel \_\_\_\_\_, Subdivision \_\_\_\_\_

Other Legal \_\_\_\_\_

Property Address: Same as above

Present zoning classification RR

Intended use for property No change

Reason for variance request / appeal (state specific hardship or attach correspondence, drawings, etc.)

See attached document & drawings.

Required attachments:

- Hearing fee of \$~~200.00~~ for Residential and \$~~500.00~~ for Commercial, which includes advertising, administrative time, legal noticing and mailing.
- Proof of ownership
- Site Plan
- Water and sewer facilities to be fully explained (if applicable). Septic/well on drawing
- List of property owners (with tax parcel numbers) within 500 feet of referenced property as shown in the records of the County Property Appraiser. This "Radius" package is available from the Brevard County Planning and Zoning GIS Section located at the Viera government center, in Building A, Room 114, phone 321-633-2080. There is a fee for this package.

\* PRICE AS NOTED  
paid w/ check #  
540  
\$400.00  
Pete

Town will provide →

[Signature]  
Applicant(s)

1-27-23  
Date



# Brevard County Property Appraiser

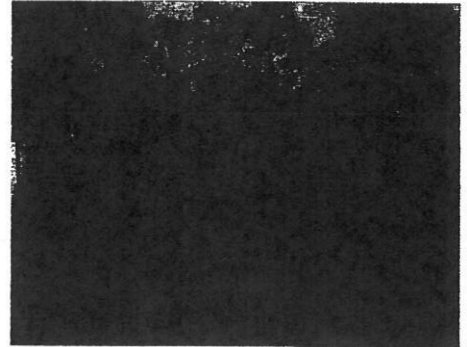
Titusville • Viera • Melbourne • Palm Bay

## PROPERTY DETAILS

Phone: (321) 264-6700

<https://www.bcpao.us>

Account	2931261
Owners	PETERS, CHRISTOPHER J; PETERS, JOY C
Mailing Address	2885 HARD WAY LN MALABAR FL 32950
Site Address	2885 HARD WAY LN MALABAR FL 32950
Parcel ID	29-37-10-00-74
Property Use	0110 - SINGLE FAMILY RESIDENCE
Exemptions	HEX1 - HOMESTEAD FIRST HEX2 - HOMESTEAD ADDITIONAL
Taxing District	3420 - MALABAR
Total Acres	1.16
Subdivision	--
Site Code	0001 - NO OTHER CODE APPL.
Plat Book/Page	0000/0000
Land Description	W 200 FT OF S 1/4 OF LOT 18 OF PB 1 PG 165 EX S 35 FT & W 25 FT AS DES IN ORB 2264 PG 2429



## VALUE SUMMARY

Category	2022	2021	2020
Market Value	\$359,940	\$244,260	\$231,990
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$135,710	\$127,910	\$126,150
Assessed Value School	\$135,710	\$127,910	\$126,150
Homestead Exemption	\$25,000	\$25,000	\$25,000
Additional Homestead	\$25,000	\$25,000	\$25,000
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$85,710	\$77,910	\$76,150
Taxable Value School	\$110,710	\$102,910	\$101,150

## SALES/TRANSFERS

Date	Price	Type	Instrument
06/15/2011	--	WD	6393/2497
06/30/1991	\$115,000	WD	3135/0295
01/01/1986	\$136,000	PT	2663/0206
07/01/1983	\$9,500	WD	2442/2890
11/01/1980	\$5,000	--	2264/2429

## BUILDINGS

### PROPERTY DATA CARD #1

Building Use: 0110 - SINGLE FAMILY RESIDENCE

Materials	Details	
Exterior Wall:	BRICK	Year Built 1983
Frame:	WOOD FRAME	Story Height 8
Roof:	ASPH/ASB SHNGL	Floors 1
Roof Structure:	HIP/GABLE	Residential Units 1
		Commercial Units 0
<b>Sub-Areas</b>		<b>Extra Features</b>
Base Area (1st)	1,760	Fireplace 1
Garage	550	Garage Detached 720
Open Porch	96	Carport 576
Screen Porch	226	Shipping Container Storage Unit 20-39 Ft 1

JAN 27 2023

RECEIVED

Town of Malabar  
Variance Application

I would like to place a 24' x 40' steel building on my property. However, areas of available space for such a structure with ease of access for use are limited. Figure 1 shows the current layout of my property. The shaded area along the side adjacent to Old Mission Rd and the corner area adjacent to Old Mission Rd and my neighbor to the East is densely wooded for the most part. The density increases in that SE corner of property, there are many large pines and other trees in that area. I moved into the house in the summer of 1991 and I have kept this area wooded intentionally as I like having the trees and natural landscape present in my yard. There is also a power pole which carries the main power line to my house. These issues make it much more difficult to access the area in the SE corner as a potential site for the building.

We'd also like to have the building located somewhat close to the house and have easy access to the driveway. The planned usage is multi-purpose. I have a collector car(s) I need to store properly, and we are considering raising goats as a side business. We have some friends in Sebastian doing this and they could use some help and would assist us in setting up. Also, with an adult son living with us, storage is becoming an issue.

After careful consideration, the location proposed on the property is shown in Figure 2. This area has the benefit of being the least densely wooded of the entire S/SW corner area, thus requiring the least number of trees removed and allowing the building to be visually shielded from view. I estimate the trees to be removed would be 2 pines, 3 live oaks (small to medium) and 3 palms (various sizes). I intend to keep the wooded area of my property as natural as possible and this location minimizes the number of trees I would need to remove and provides ease of construction access and ease of usage access, as well as natural visual coverage.

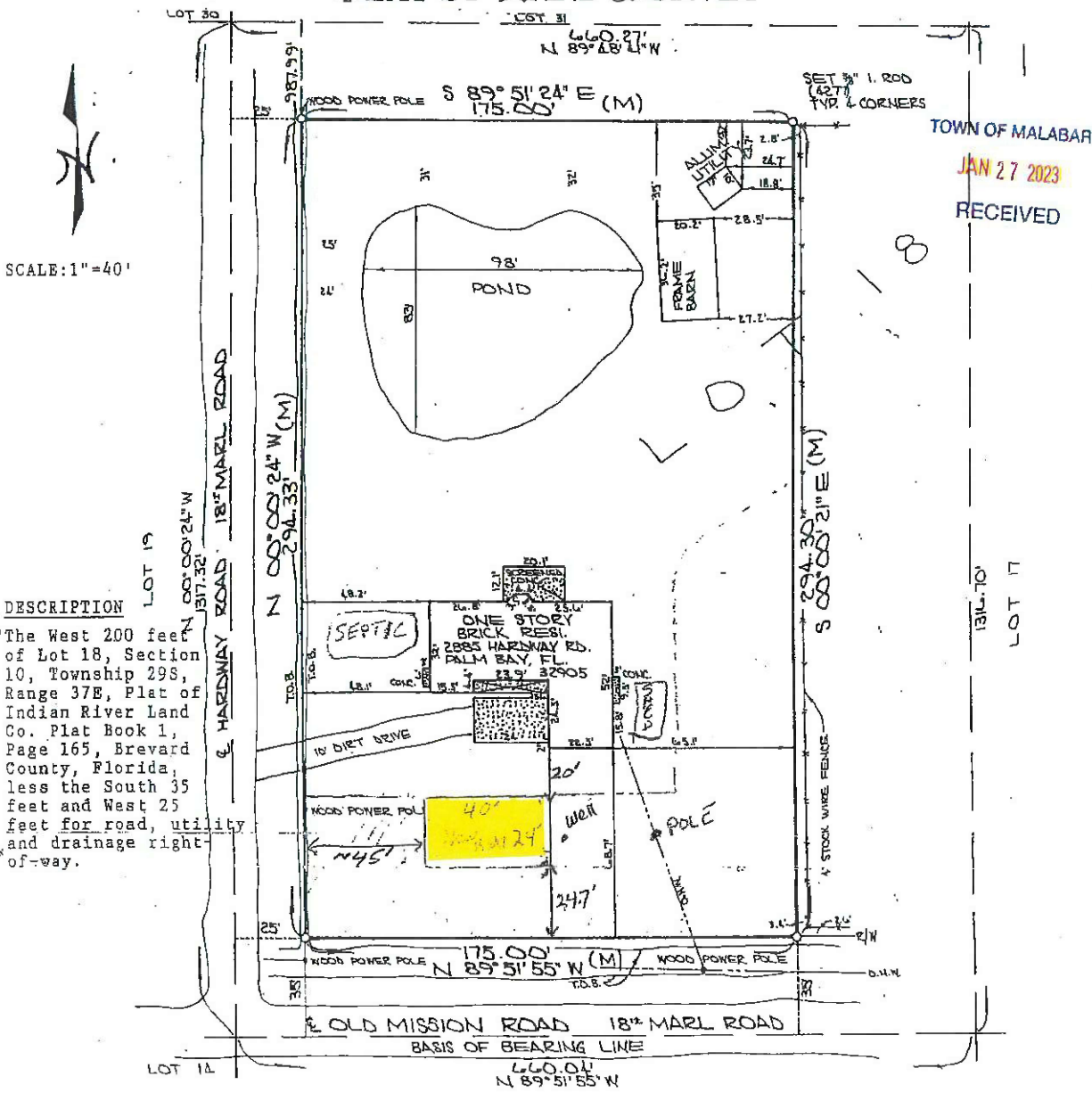
The variance is requested due to the resulting distance between the south side of the building adjacent to Old Mission Rd. The west side adjacent to Hard Way Lane is not an issue. There is a natural demarcation line between the driveway area and the woods to the south. It is along this line that I want to place the front face of the new building. This line I measured at 18' from the south edge of my house foundation. The house is 68.7' from the property line and the proposed building is 24' deep. I am proposing the distance of the new building to be 20' from the south side of the house. This results in the side adjacent to Old Mission Rd being 24.7' from the south property line. Thus, I am requesting a reduction in the side easement from 40' to 24'.

Thank you for your consideration,

Chris Peters



# PLAT OF LAND SURVEY



SCALE: 1"=40'

**DESCRIPTION**

The West 200 feet of Lot 18, Section 10, Township 29S, Range 37E, Plat of Indian River Land Co. Plat Book 1, Page 165, Brevard County, Florida, less the South 35 feet and West 25 feet for road, utility and drainage right-of-way.

TOWN OF MALABAR

JAN 27 2023

RECEIVED

**BOUNDARY SURVEY WITH IMPROVEMENTS FOR**

Christopher J. & Joyce C. Peters

ALSO CERTIFIED TO: BancBoston Mortgage Corporation  
 State Title & Guaranty Co., Inc of Brevard  
 Old Republic National Title Insurance Company  
 Lot Contains 51504.3 Square feet or 1.18 acres  
 Job no. 93-1566 More or Less  
 Field Book no. 67-57

**SURVEYOR'S NOTES:**

- Bearings based on Record Plat line as shown on above sketch of survey, indicated by (BASIS OF BEARING LINE).
- Location of underground utilities and underground foundations are not abstracted and have not been located as part of this survey except as shown.
- Property situated in FLOOD ZONE "X" according to FIRM MAP OF BREVARD COUNTY, Florida, map number 12009G0605 E.
- Elevations (if shown) are based on NGVD (NATIONAL GEODETIC VERTICAL DATUM), 1929.
- This survey was prepared without benefit of a current title report and therefore may not indicate all encumbrances affecting subject property.

**CERTIFICATION**

I HEREBY CERTIFY That this Boundary Survey represents a field survey performed on 10/12/93 and recently prepared by the undersigned, Meets the Minimum Technical Standards for Land Surveying in Florida as set forth by the Florida Board of Professional Land Surveyors, and pursuant to Chapter 472.027 Florida Statutes per Chapter 21-BB-6, Florida Administrative Code.

*[Signature]* 10/10/93  
 Richard E. Pate, P.L.S. DATE  
 FLORIDA REGISTRATION NO. 4505

Drawn By	Date Drawn	Date Filed	Description	Checked By
R.A.P.	10/14/93	10/12/93	Boundary w/improve.	R.A.P.

**Brevard Land Surveying Inc.**  
 1326 Malabar Road S.E. Suite "B"  
 Palm Bay Florida 32907  
 (407)729-0195

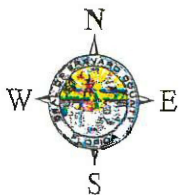
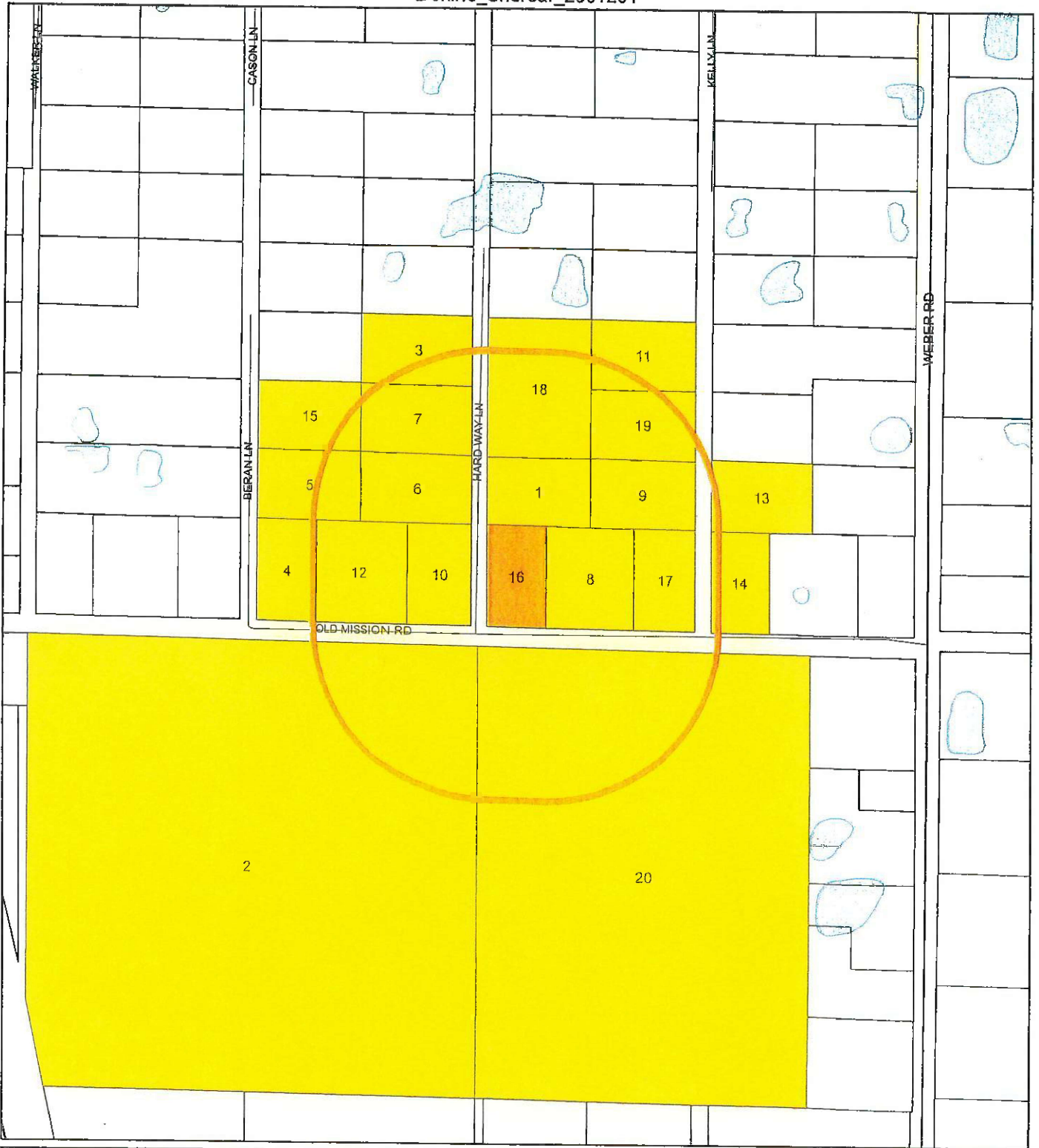
- LEGEND**
- (F) - Flag
  - (M) - Marker
  - (C) - Calculated from closed traverse
  - (D) - Dead
  - (W) - Sight of Way
  - CONC - Concrete
  - Dist. - Description
  - O.R.W. - Overland River
  - P.P. - Power Pole
  - R. - Elevation
  - Refr. - Refraction
  - AC - Air Conditioner
  - G.W. - Guy Wire
  - Int. - Joint
  - PS - Pipe Line
  - St. - Stake
  - C.R.L. - Concrete Block Stone
  - T.R.M. - Temporary Bench Mark
  - LP - Iron pipe
  - LR - Iron Rod
  - CL - Center line
  - CR - Corner line
  - P.C.P. - Permanent corner point
  - P.F.C. - Permanent Approval Measurement
  - P.C. - Point of Curve
  - Fl. - Fossil
  - (B) - Bench
  - T.O.B. - Top of bank
  - T.O.R. - Top of Road
  - N.A.D. - Nail and Disk
  - ~ ~ ~ - Conceptual drainage

NOT VALID UNLESS EMBOSSED WITH SURVEYOR'S SEAL

# RADIUS MAP

PETERS, CHRISTOPHER J

Denine\_Sherear\_2931261







1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 4/6/2023

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

BEHRMANN, JACQUELIN  
BEHRMANN, GERDA  
2835 HARD WAY LANE  
MALABAR FL 32950-

BRENDA F JOYNER REVOCABLE  
LIVING TRUST  
NANCY A JOYNER REVOCABLE LIVING  
TRUST  
230 ORMOND DR  
INDIALANTIC FL 32903-3430

BUCHEN, MICHAEL  
2770 HARD WAY LANE  
MALABAR FL 32950-

COPLEY-PALMER, DINA  
2835 BERAN LN  
MALABAR FL 32950-3661

COPLEY-PALMER, DINA MARIE  
PALMER, RICHARD  
2835 BERAN LN  
MALABAR FL 32950-3661

CORRAL, MARIA ELENA  
2830 HARD WAY LANE  
MALABAR FL 32950-

GARWOOD, EUGENE W TRUSTEE  
2790 HARD WAY LN  
MALABAR FL 32950-

GAULT, DANIEL P  
650 OLD MISSION RD  
MALABAR FL 32950-3609

GAULT, DANIEL P  
650 OLD MISSION RD  
MALABAR FL 32950-

HOSEY, PHILLIP E  
HOSEY, AMY D  
580 OLD MISSION RD  
MALABAR FL 32950-

KAIDIRMAOGLU, ANASTASIOS  
KAIDIRMAOGLU, FRANCISCA  
49 WOODLAND CT  
E ISLIP NY 11730-

KRAUSE, JOHN A  
KRAUSE, TERESA R  
550 OLD MISSION RD  
MALABAR FL 32950-3607

MARTIN, CAROL L  
ABBOTT, BECKY  
PO BOX 414  
NEWFANE VT 05345-0414

MARTIN, STEPHEN  
MARTIN, ELAINE  
720 OLD MISSION RD  
MALABAR FL 32950-

MOLESKI, CHARLES J  
MOLESKI, DEBRA L  
2785 BERAN LN  
MALABAR FL 32950-

PETERS, CHRISTOPHER J  
PETERS, JOY C  
2885 HARD WAY LN  
MALABAR FL 32950-3603

REID, JOAN JEANNETTE  
680 OLD MISSION RD  
MALABAR FL 32950-3609

VENDELY, JOHN  
FEATHERSTON, DEBRA  
2825 HARD WAY LANE  
MALABAR FL 32950-

VENDELY, JOHN A  
FEATHERSTON, DEBRA K  
2825 HARD WAY LN  
MALABAR FL 32950-3603

WEBER, KENNETH J  
PO BOX 500056  
MALABAR FL 32950-0056



2725 Malabar Road  
Malabar, FL 32950  
321-727-7764 (Office) 321-727-9997 (Fax)  
[www.townofmalabar.org](http://www.townofmalabar.org)

April 12, 2023

To: [brelegals@gannett.com](mailto:brelegals@gannett.com)  
From: Richard Kohler, Town Clerk, and Town of Malabar  
[townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)

Please place the following legal notice **two** times in your paper; on Friday, April 21, 2023, and again on Thursday, May 4, 2023. Please put the heading in **BOLD** font. Please send proof via email to: [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) and mail ONE affidavit to 2725 Malabar Road, Malabar, FL 32950. This ad does not qualify for a discount.

Thank you,  
Richard Kohler  
Town Clerk

**TOWN OF MALABAR  
NOTICE OF PUBLIC HEARING**

The Malabar Board of Adjustment will hear Variance Request at a Public Hearing to be held on Thursday, May 11, 2023, at 6PM, at 2725 Malabar Road, Malabar, Florida. Applicants, Mr. Christopher Peters (property owner) requests a variance to Malabar Land Development Code Article III, Table 1-3.3(A) Size and Dimension Regulations, Minimum front set back is 40 feet and side road is 40 feet and the rear is 30 feet in RR-65. Applicant requests a variance to the front requirement on the south frontage of Old Mission Road of 16 feet. Otherwise, the lot exceeds all other criteria. This is to install an accessory structure and save the trees.

Area under request is located in Township 29, Range 37, Section 10, Lot 74 Aka: 2885 Hard Way Lane, Malabar FL 32950. All interested citizens are encouraged to attend and offer comments. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Richard Kohler Town Clerk/Treasurer



2725 Malabar Road  
Malabar, FL 32950  
321-727-7764 (Office) 321-727-9997 (Fax)  
[www.townofmalabar.org](http://www.townofmalabar.org)

**TOWN OF MALABAR  
NOTICE OF PUBLIC HEARING**

The Malabar Board of Adjustment will hear a Variance Requests at a Public Hearing to be held on Thursday, May 11, 2023, at 6PM, at 2725 Malabar Road, Malabar, Florida. Case-BOA 02-042023 Applicants Mr. Christopher Peters request a variance to Malabar Land Development Code Article III, Table 1-3.3(A) Size and Dimension Regulations, Minimum front setback is 40 feet and side is 40 feet located on corner or adjacent to road, the rear is 30 feet in RR-65 Zoning. Otherwise, the lot exceeds all other criteria. The request is for 24 feet into the setbacks along Old Mission Road to construct a steel accessory structure and maintain trees and natural landscaping on property.

Area under request is located in Township 29, Range 37, Section 10, Lot 74 Aka: 2885 Hard Way Lane Malabar FL 32950. All interested citizens are encouraged to attend and offer comments. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Richard Kohler, Town Clerk/Treasurer

**Dear Property Owner,**

**If you receive this notice then you are listed as an owner of property, as shown in the records of the County Property Appraiser's office, within 500' of the project site. This Notice is provided as required by Malabar Code Chapter 2, Section 2-240.6.a. You are invited to attend or submit your comments before the meeting to the [TownClerk@townofmalabar.org](mailto:TownClerk@townofmalabar.org)**

# **TOWN OF MALABAR**

## **CODE**

### **REQUIREMENTS**

salvaged machinery, used furniture and household equipment, and the processing of used, discarded or salvaged materials as part of manufacturing operations. The storage of non-operable machinery, equipment or automobiles for sixty (60) days or longer shall be prima facie evidence the property is a junk yard.

*Kennels, Commercial.* Any lot or premises on which four or more dogs, cats or other domestic animals, at least four months of age, are housed or accepted for boarding, trimming, grooming and/or bathing for which remuneration is received.

*Kennels, Non-Commercial.* Any building or buildings and/or land used, designated or arranged for the boarding, breeding, or care of four or more dogs, cats, pets, fowl, or other domestic animals belonging to the owner thereof, kept for purposes of show, hunting, or as pets (but not to include riding stables).

*Loading Space.* An off-street space within the main building or on the same lot, providing for the standing, loading or unloading of vehicles.

*Lot.* A lot shall mean a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as are required in this chapter [Code]. Lot shall be comprised of contiguous land. Provided that in no case of division or combination shall any residential lot or parcel be created which does not meet the requirements of this chapter [Code]. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of:

- (1) A single lot of record;
- (2) A portion of a lot of record;
- (3) A combination of complete lots of record, and portions of lots of record;
- (4) A parcel of land described by metes and bounds.

*Lot, Building.* A building site area which shall be at least the minimum area required for the zone in which said area is located and such building lot shall be consistent with all lot requirements within the respective zoning district. The term "building lot" is not necessarily synonymous with the term "lot" as defined above. A building lot is always at least one lot or one lot plus a part of another lot or a combination of two or more lots or fractions thereof.

*Lot, Corner.* A lot abutting upon two or more streets at their intersections.

*Lot, Double Frontage (also Through Lots).* A lot having a frontage on two non-intersecting streets, as distinguished from a corner lot.

*Lot Frontage.* The portion nearest the street. For purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under yards in this section.

*Lot Lines.* The lines bounding a lot.

*Lot Measurements.*

- (1)

**Town of Malabar**  
2725 Malabar Road  
Malabar, FL 32950-4427

A. *Purpose, Use and Maintenance of Yards.* The purpose of yards required in this Chapter [Code] is to provide open space around and between structures for health, safety and aesthetic purposes. All required yards and landscaped areas where not used for parking, driveways, sidewalks, or other approved structures shall be planted and maintained in lawn, sod, or landscaping including flower beds, shrubs, hedges or other generally accepted landscaping material approved by the Building Official. A yard may be planted and maintained in its natural condition so long as the yard is maintained and does not become a public nuisance. Landscaping material, including trees, shall not obstruct the vision of the motoring public. The landscape requirements of Article XIV shall further regulate development within all zoning districts, excepting single family zoned districts.

B. *Front Yards.*

1. *Lots with double frontage.* The front yard regulations shall apply to both streets on through lots or double frontage lots.

2. *Corner lots.* There shall be a front yard on each street side of a corner lot, provided, however, that the buildable width of such lot shall not be reduced to less than thirty (30) feet; provided, further, that no accessory building on a corner lot shall project beyond the front yard line on either street.

3. *Encroachment of porches or terraces.* An open unenclosed and uncovered porch or paved terrace may project into the front yard for a distance of not more than ten (10) feet.

4. *Encroachment of gasoline service facilities.* Gasoline filling station pumps and pump islands may be located within a front yard, provided they are not less than fifteen (15) feet from any property line.

5. *Walls and Fences shall not Constitute Traffic Hazards.* In a required front yard, no fence or wall shall be permitted which creates a traffic hazard by materially impeding vision.

6. *Configuration and Measurement of Front Yard Depth.* Depth of required front yards shall be determined in accordance with footnote 2 in Table 1-3.3(A).

C. *Side Yard.* Width of required side yards shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.

D. *Rear Yards.* Depth of required rear yards shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line.

E. *Yard Encroachment By Shading.* Notwithstanding any other provisions of the Code, no new building, man-made object or coniferous trees will be located in such a manner that it will cast a shadow (damaging to the use of a solar system) into adjacent required yard setbacks, between the hours of 8:00 A.M. E.S.T. and 4:00 P.M. E.S.T. at the winter solstice.

The purpose of this is to enhance the natural warming during winter months for plant life and habitat on adjoining property as well as safeguarding the users of solar heating roof panels.

(F)



**Section 1-3.3. Size and dimension criteria.**

A. *Minimum Lot or Site Requirements for All Uses.* Table 1-3.3(A) incorporates required size and dimension regulations which shall be applicable within each respective zoning district. All developments shall have a total land area sufficient to satisfy all standards stipulated within the land development code, including but not limited to:

- Setback requirements;
- Open space, buffers, and landscaping;
- Surface water management;
- Water and wastewater services;
- Access, internal circulation and off-street parking;
- Wetland protection; and
- Soil erosion and sedimentation control standards.

Conventional single family lots shall be required pursuant to square footage requirements stipulated in Table 1-3.3(A). Similarly, more intense development within multiple family residential districts and other specified nonresidential districts shall maintain sites having minimum acreage requirements stipulated in Table 1-3.3(A).

**Section 1-3.3. Size and dimension criteria.**

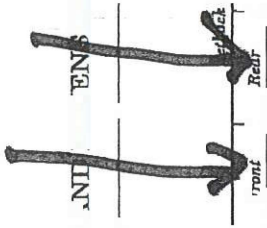
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- Setback requirements;
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- Surface water management;
- Water and wastewater services;
- Access, internal circulation and off-street parking;
- Wetland protection; and
- Soil erosion and sedimentation control standards.

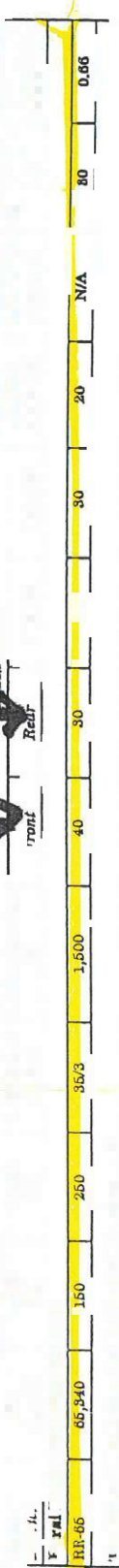
Conventional single family lots shall be required pursuant to square footage requirements stipulated in Table 1-3.3(A). Similarly, more intense development within multiple family residential districts and other specified nonresidential districts shall maintain sites having minimum acreage requirements stipulated in Table 1-3.3(A).

own of Malabar  
725 Malabar  
Malabar 32950-442

**SETBACKS**



**ZONING**



**own of Malabar**

Malaba 32950-4427

Minimum size sets and ts incl

Adjacent public right way.

Minimum setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center line of the street.

Table 1-8

Setback

# TOWN OF MALABAR

## AGENDA ITEM REPORT

**AGENDA ITEM NO: 4.C.**  
**Meeting Date: May 11, 2023**

**Prepared By: Denine Sherear, Building Department Manager**

---

**SUBJECT: Variance Request, Case # BOA 03-042023 Mr. & Mrs. Dennis & Patty Martin (property owners); request a variance to a Malabar Land Development Code Article III Table 1-3.3(A) Size & Dimension Regulations in RR-65 Zoning to construct a Single-Family Residence.**

---

### **BACKGROUND/HISTORY:**

This request came in to the Building Department Office. Mr. & Mrs. Dennis & Patty Martin would like to request a Variance to the parcel size in RR-65, which is 1.5 acres per single-family residence, except for the Cape Kennedy lots that were deeded before Ordinance 7-1-76 can be less acreage and conform with requirements. The current property that the Martins want to split, and sell is 1.29 acres+ road right of way. The Martins would want this variance to be maintained with the vacant parcel so a single-family residence could be constructed.

### **ATTACHMENTS:**

- Application for Variance (letter from resident)
- Property Appraiser's Radius map
  - List of property owners within 500' radius that were notified.
  - Notice sent to property owners.
- Code requirements

- **ACTION OPTIONS:**

Staff requests approval of this request.

Pl. CK #  
1152 400

TOWN OF MALABAR  
2725 Malabar Road  
Malabar, FL 32950  
Tel. 321-727-7764 x 14

TOWN OF MALABAR

MAR 20 2023

RECEIVED

VARIANCE APPLICATION

This application must be completed, with required attachments, and returned to the Town Clerk's office.

Name of Applicant(s) Dennis Martin, Patty Tel: 814-673-7236

Mailing Address: 2175 Wilson Lane Martin Malabar

Legal description of property covered by application:

Township \_\_\_\_\_, Range \_\_\_\_\_, Section \_\_\_\_\_, Lot/Block \_\_\_\_\_, Parcel \_\_\_\_\_, Subdivision  
29-37-03-00-757

Other Legal \_\_\_\_\_

Property Address: 2175 Wilson Lane

Present zoning classification RR 45

Intended use for property SFR

Reason for variance request / appeal (state specific hardship or attach correspondence, drawings, etc.)

see attached letter - 1.35 Acres requirement is  
1.5 acres for buildable lot

Required attachments:

- Hearing fee of ~~\$800.00~~ <sup>400.00</sup> for Residential and \$1,750.00 for Commercial, which includes advertising, administrative time, legal noticing and mailing.
- Proof of ownership
- Site Plan
- Water and sewer facilities to be fully explained (if applicable).
- List of property owners (with tax parcel numbers) within 500 feet of referenced property as shown in the records of the County Property Appraiser. This "Radius" package is available from the Brevard County Planning and Zoning GIS Section located at the Viera government center, in Building A, Room 114, phone 321-633-2060. There is a fee for this package.

TOWN →

Dennis Martin, Patty A. Martin 3-20-23  
Applicant(s) Date

TOWN OF MALABAR

MAR 20 2023

RECEIVED

TOWN OF MALABAR - VARIANCE REQUEST  
(Page 2)

N/A

Where the property is not owned by the applicant, a letter/letters must be attached giving the notarized consent of the owner/owners to the applicant to request a variance on the property.

Please complete only one of the following:

I, \_\_\_\_\_, being first duly sworn, depose and say that I, \_\_\_\_\_, am the legal representative of the Owner or Lessee of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

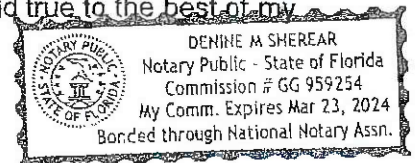
Signature of Applicant(s) \_\_\_\_\_ Date \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public, State of Florida  
Commission No. \_\_\_\_\_ My Commission Expires \_\_\_\_\_.

I, Dennis & Patty Martin, being first duly sworn, depose and say that I, Dennis & Patty Martin, am the Owner of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Dennis & Patty Martin 3-20-23  
Signature of Applicant(s) \_\_\_\_\_ Date \_\_\_\_\_



Sworn and subscribed before me this 20 day of MARCH, 2023.

Notary Public, State of Florida  
Commission No. MAR 23 2024 My Commission Expires Mar 23 2024



# Brevard County Property Appraiser

Titusville • Viera • Melbourne • Palm Bay

## PROPERTY DETAILS

Phone: (321) 264-6700

<https://www.bcpao.us>

Account	2922750
Owners	MARTIN, DENNIS S; MARTIN, PATTY A
Mailing Address	2175 WILSON LN MALABAR FL 32950
Site Address	2175 WILSON LN MALABAR FL 32950
Parcel ID	29-37-03-00-757
Property Use	0110 - SINGLE FAMILY RESIDENCE
Exemptions	HEX1 - HOMESTEAD FIRST HEX2 - HOMESTEAD ADDITIONAL
Taxing District	3420 - MALABAR
Total Acres	2.57
Subdivision	--
Site Code	0001 - NO OTHER CODE APPL.
Plat Book/Page	0000/0000
Land Description	PART OF LOT 15 SUBD AS DESC IN ORB 3163 PG 1560 PAR 761 & 762



## VALUE SUMMARY

Category	2022	2021	2020
Market Value	\$313,720	\$228,400	\$202,330
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$123,040	\$119,460	\$117,820
Assessed Value School	\$123,040	\$119,460	\$117,820
Homestead Exemption	\$25,000	\$25,000	\$25,000
Additional Homestead	\$25,000	\$25,000	\$25,000
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$73,040	\$69,460	\$67,820
Taxable Value School	\$98,040	\$94,460	\$92,820

## SALES/TRANSFERS

Date	Price	Type	Instrument
04/13/2012	\$134,500	WD	6581/1354
06/01/1998	\$79,000	02	3864/2199
12/01/1996	\$41,500	02	3631/4617
09/01/1996		CT	3605/3753
11/30/1991	\$85,000	WD	3163/1560
05/30/1964	--	WD	0696/0418

## BUILDINGS

### PROPERTY DATA CARD #1

Building Use: 0110 - SINGLE FAMILY RESIDENCE

Materials	Details	
Exterior Wall:	STUCCO	Year Built 1973
Frame:	WOOD FRAME	Story Height 8
Roof:	ASPH/ASB SHNGL	Floors 1
Roof Structure:	HIP/GABLE	Residential Units 1
		Commercial Units 0
<b>Sub-Areas</b>		<b>Extra Features</b>
Base Area (1st)	1,206	Paving - Stone 150
Total Base Area	1,206	Outbuilding 192
Total Sub Area	1,206	



MAR 20 2023

RECEIVED

Town of Malabar,

Our intent is to sell a parcel of our land for a single family home to be built.

My husband and I maintain the grass and trees regularly. We would like the trees to be kept on the property.

Due to health issues, it is increasingly difficult to properly maintain.

Thank you for your consideration in this matter.

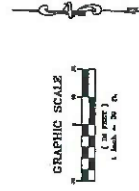
Fatty A. Martin

3-20-23

Fatty A. Martin

RECEIVED

TOWN OF MALBAR  
MAR 20 2023



1	As Shown
2	Proposed
3	Existing
4	Survey
5	Boundary
6	Setback
7	Right of Way
8	Water
9	Other

JOB NO.	22-0283
DATE	03-14-2023
SCALE	AS SHOWN
SHEET	1 of 1

**1.29 acres + row**

1.29 acres + row

**NOTICE TO THE PUBLIC**

1. I, the undersigned, certify that I am a duly qualified and licensed Professional Engineer in the State of Florida, and that I am duly licensed to practice my profession in the State of Florida.

2. I have personally examined the plans and specifications for the proposed project, and I have found them to conform to the requirements of the Florida Building Code, and I have found them to be in accordance with the applicable provisions of the Florida Building Code.

3. I have personally examined the site, and I have found it to be suitable for the proposed project, and I have found it to be in accordance with the applicable provisions of the Florida Building Code.

4. I have personally examined the plans and specifications for the proposed project, and I have found them to conform to the requirements of the Florida Building Code, and I have found them to be in accordance with the applicable provisions of the Florida Building Code.

5. I have personally examined the site, and I have found it to be suitable for the proposed project, and I have found it to be in accordance with the applicable provisions of the Florida Building Code.

6. I have personally examined the plans and specifications for the proposed project, and I have found them to conform to the requirements of the Florida Building Code, and I have found them to be in accordance with the applicable provisions of the Florida Building Code.

7. I have personally examined the site, and I have found it to be suitable for the proposed project, and I have found it to be in accordance with the applicable provisions of the Florida Building Code.

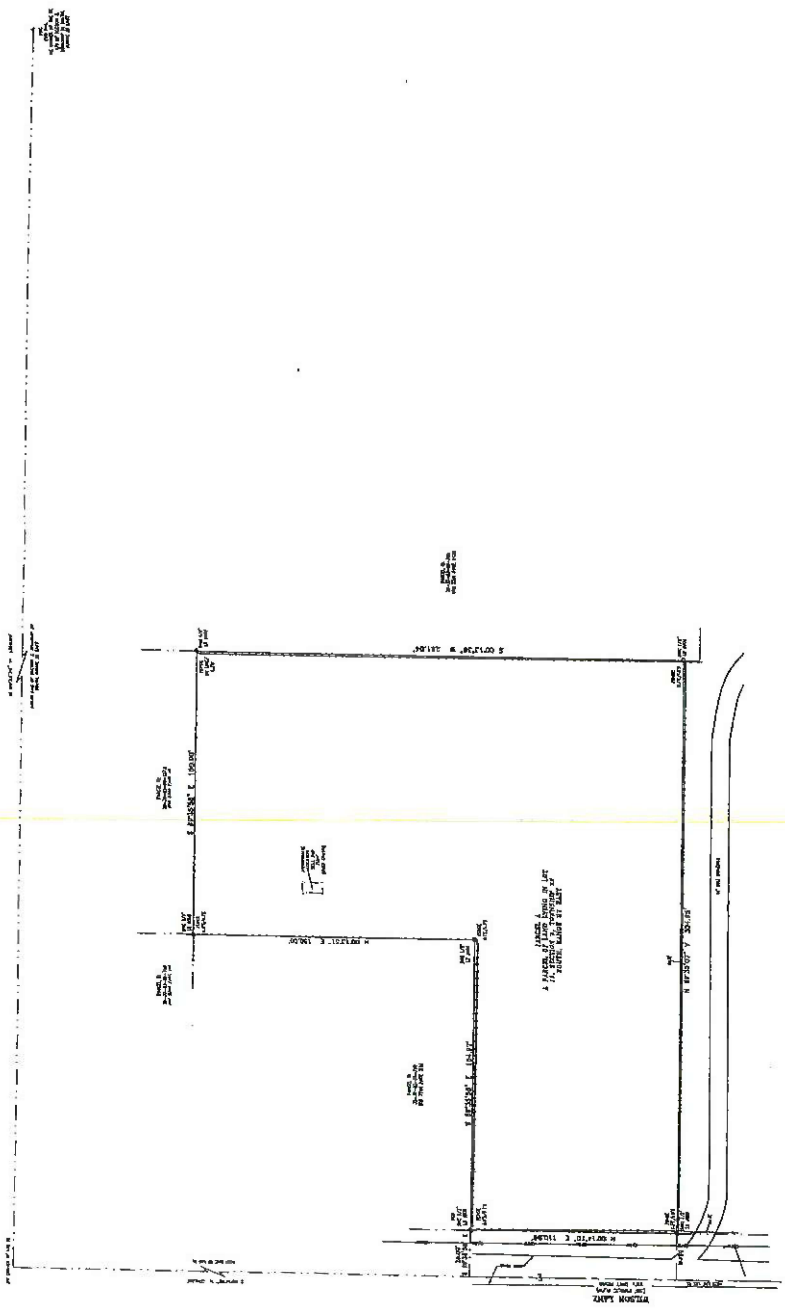
8. I have personally examined the plans and specifications for the proposed project, and I have found them to conform to the requirements of the Florida Building Code, and I have found them to be in accordance with the applicable provisions of the Florida Building Code.

9. I have personally examined the site, and I have found it to be suitable for the proposed project, and I have found it to be in accordance with the applicable provisions of the Florida Building Code.

10. I have personally examined the plans and specifications for the proposed project, and I have found them to conform to the requirements of the Florida Building Code, and I have found them to be in accordance with the applicable provisions of the Florida Building Code.

APPROVED:  
TERRY W. LARSEN, MALBAR, FL 32818

CERTIFIED TO:  
DORIS L. MARTY  
PATRY A. MARTY



655 Surveying and Mapping, LLC  
700 22nd Floor  
Suite 24  
West Beach, FL 33500  
772-488-8200



655 Surveying and Mapping, LLC  
4800 University Blvd  
Suite 2  
Palm Bay, FL 32909  
321-554-8278

MAP OF SURVEY  
BOUNDARY SURVEY



2725 Malabar Road  
Malabar, FL 32950  
321-727-7764 (Office) 321-727-9997 (Fax)  
www.townofmalabar.org

### TOWN OF MALABAR NOTICE OF PUBLIC HEARING

The Malabar Board of Adjustment will hear a total of one Variance Requests at a Public Hearing to be held on Thursday, May 11, 2023, at 6PM, at 2725 Malabar Road, Malabar, Florida. Case #BOA 03-042023 Applicants Mr. & Mrs. Martin request a variance to Malabar Land Development Code Article III, Table 1-3.3(A) Size and Dimension Regulations, the minimum parcel size in RR-65 is 1.5 acres per single-family residences, except for Cape Kennedy lots that were deeded before 1977 can be less acreage. The current property that the Martin's want to split and sell is 1.29 acres + road right of way. The Martin's would want this variance to maintain with vacant parcel so that a single-family house can be constructed.

Area under request is located in Township 29, Range 37, Section 03, Lot 757.1 Aka: north of 2175 Wilson Lane, Malabar FL 32950. All interested citizens are encouraged to attend and offer comments. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Richard Kohler, Town Clerk/Treasurer

#### **Dear Property Owner,**

**If you receive this notice then you are listed as an owner of property, as shown in the records of the County Property Appraiser's office, within 500' of the project site. This Notice is provided as required by Malabar Code Chapter 2, Section 2-240.6.a. You are invited to attend or submit your comments before the meeting to the TownClerk@townofmalabar.org**



2725 Malabar Road  
Malabar, FL 32950  
321-727-7764 (Office) 321-727-9997 (Fax)  
[www.townofmalabar.org](http://www.townofmalabar.org)

April 19, 2023

To: [brelegals@gannett.com](mailto:brelegals@gannett.com)  
From: Richard Kohler, Town Clerk, and Town of Malabar  
[townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)

Please place the following legal notice two times in your paper; on Friday, April 21, 2023, and again on Thursday, May 4, 2023. Please put the heading in **BOLD** font. Please send proof via email to: [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) and mail ONE affidavit to 2725 Malabar Road, Malabar, FL 32950. This ad does not qualify for a discount.

Thank you,  
Richard Kohler  
Town Clerk

**TOWN OF MALABAR  
NOTICE OF PUBLIC HEARING**

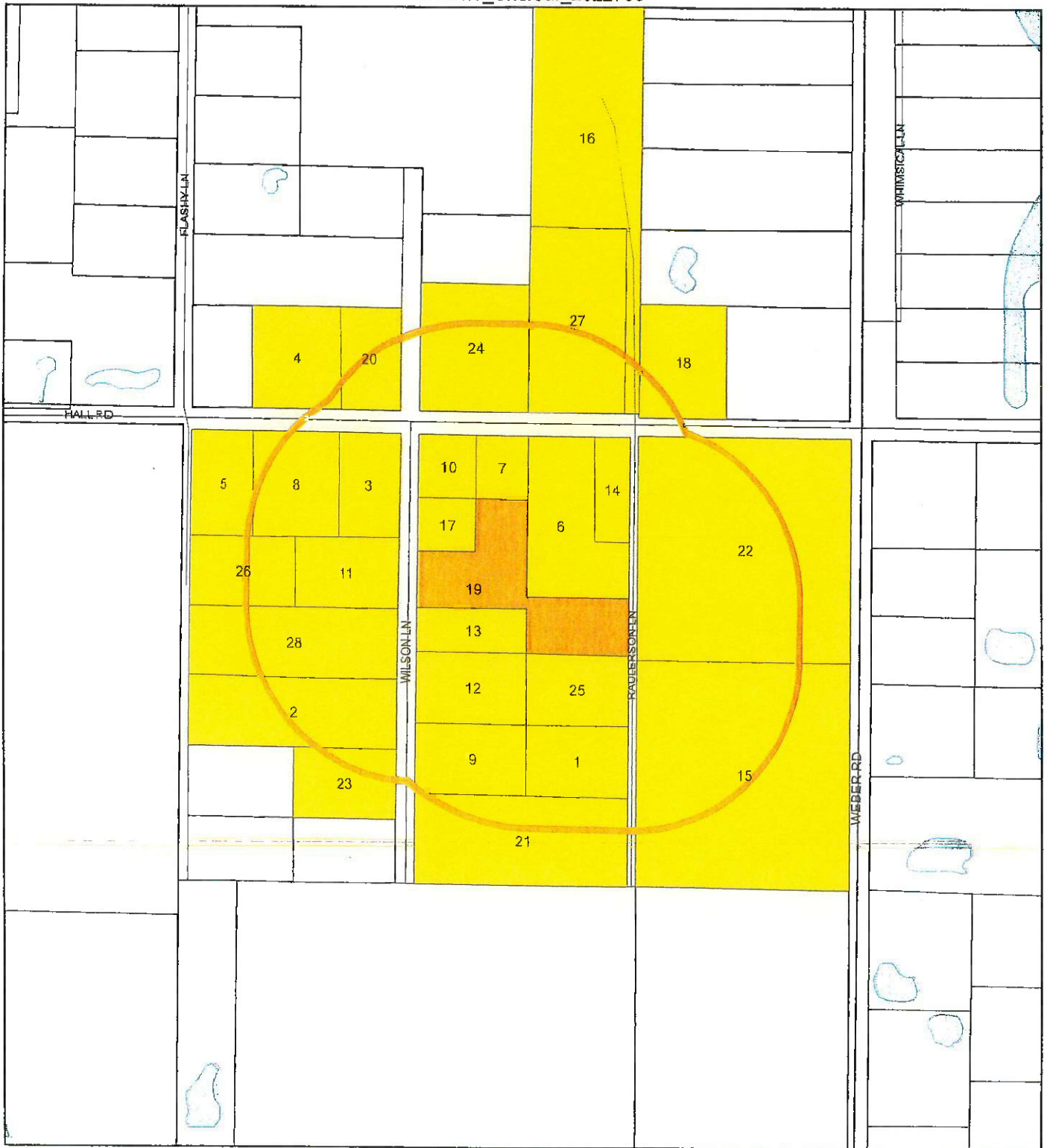
The Malabar Board of Adjustment will hear BOA 03-042023 Variance Request at a Public Hearing to be held on Thursday, May 11, 2023, at 6PM, at 2725 Malabar Road, Malabar, Florida. Applicants, Mr. & Mrs. Dennis & Patty Martin (property owners) requests a variance to Malabar Land Development Code Article III, Table 1-3.3(A) Size and Dimension Regulations, the request is to split and sell off a portion of vacant land to build which located in the RR65 Zoning. A Single-Family lot is 1.5 acres in this zoning. The lot is 1.29 acres, plus the right of way of road. The property owners, Mr. & Mrs. Martin, would want this variance to be maintained with vacant parcel so that a single-family house can be constructed. (See letter attached submitted by property owners).

Area under request is located in Township 29, Range 37, Section 03, Lot 757.1 Aka: North of 2175 Wilson Lane, Malabar FL 32950. All interested citizens are encouraged to attend and offer comments. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Richard Kohler Town Clerk/Treasurer

# RADIUS MAP

MARTIN, DENNIS S

Denine\_Sherear\_2922750







1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 4/6/2023

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

ADAMS, DAVID L  
ADAMS, CONSTANCE K  
2240 RAULERSON LANE  
MALABAR FL 32950-

BARRANTI, JOHN C  
2230 WILSON LANE  
MALABAR FL 32950-

BISHOP, JUSTIN  
426 CREMONA AVE NW  
PALM BAY FL 32907-1841

BOCKELMAN FAMILY REVOCABLE  
LIVING TRUST  
540 HALL RD  
MALABAR FL 32950-3108

BUTLER, JEFFREY A  
BUTLER, RAQUEL K  
515 HALL RD  
MALABAR FL 32950-3106

CAMERON, BARBARA K  
665 HALL RD  
MALABAR FL 32950-3108

D'AMICO, JOHN FRANCIS, JR  
635 HALL RD  
MALABAR FL 32950-3108

DABKOWSKI, KENNETH  
DABKOWSKI, NANCY  
555 HALL RD  
MALABAR FL 32950-

DERSCHE, PAUL  
PETERS, CHRISTINA  
2255 WILSON LN  
MALABAR FL 32950-3123

FERRELL, ERIC A  
FERRELL, KAREN L B  
615 HALL RD  
MALABAR FL 32950-

FLETCHER, RANDALL STUARD  
2160 WILSON LN  
MALABAR FL 32950-3123

GUERRERO, ALEXANDER  
2225 WILSON LANE  
MALABAR FL 32950-

HANNA, KIMBLE G JR  
HANNA, DONNA J  
2195 WILSON LANE  
MALABAR FL 32950-

HENTHORN, RICHARD J, JR  
815 BETHEL RD  
MARIETTA OH 45750-6380

HUNGERBUHLER, JASON  
2120 MCCAIN LN  
MALABAR FL 32950-3505

KIRCHER-JOYNER, KRISTI LEE  
300 2ND AVE  
MELBOURNE BEACH FL 32951-2508

LONG, RICKEY  
2135 WILSON LN  
MALABAR FL 32950-3123

LURKEN, SCOTT F  
LURKEN, SHELLY A  
700 HALL RD  
MALABAR FL 32950-

MARTIN, DENNIS S  
MARTIN, PATTY A  
2175 WILSON LN  
MALABAR FL 32950-3123

MILLS, EDWARD A  
MILLS, SALLY J  
2045 FLASHY LN  
MALABAR FL 32950-

MORRISON, WILLIAM A  
MORRISON, CYNTHIA S  
2290 RAULERSON LANE  
MALABAR FL 32950-

SALMAN, SALMAN  
PO BOX 360179  
MELBOURNE FL 32936-0179

SIMPSON, JAMES M  
SIMPSON, MEGAN G TRUSTEES  
4603 OLDE FOREST DR  
GREENSBORO NC 27406-8746

STROSS FAMILY TRUST  
600 HALL RD  
MALABAR FL 32950-3107

TAYKO, CHRISTOPHER  
19881 COBBLESTONE CIR  
VENICE FL 34292-4185

TAYLOR, DAVID SCOTT  
2165 FLASHY LANE  
MALABAR FL 32950-

VLIEGENTHART, ANNE L  
630 HALL RD  
MALABAR FL 32950-3107

WIESE, TY C  
9368 HITO CT  
SAN DIEGO CA 92129-4915

# **TOWN OF MALABAR**

## **CODE**

### **REQUIREMENTS**

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Article III

DISTRICT PROVISIONS

This article describes the purposes and intent of each zoning district, identifies permitted and conditional uses by zoning district, and provides size and dimensional regulations for respective zoning districts.

Section 1-3.1. Purpose and intent of districts.

This section presents the basic purpose and intent of each zoning district.

- A. *CP "Coastal Preserve."* The CP district was originally established by the Town Council through Ordinance Number 7-1-76, § 5.12 and Ordinance Number 7-12-79 § 1. This district is intended to preserve a narrow strip of land east of highway US 1 directly abutting the Indian River Lagoon, a State designated Aquatic Preserve. The district provisions are intended to assist in implementing land use, coastal management, and conservation goals, objectives, and policies within the comprehensive plan. For instance, the district provisions reduce exposure to natural hazards to persons or property as a result of windstorms and high tides; preserve the marine resources of the Aquatic Preserve; and restrict usage to noncommercial piers, boat slips, and docks.
- B. *RR-65 "Rural Residential."* The rural residential district is established to implement comprehensive plan policies for managing rural residential development at a density not to exceed one and one-half (1.5) acres per dwelling unit. The district is intended to protect and preserve existing agricultural and rural residential lands. These lands are generally developed for agricultural uses or for large lot rural residential home sites. The areas designated for rural residential development generally contain few urban services and the street system is generally incapable of carrying traffic generated by more intense urban development. The district is intended to accommodate and preserve a unique lifestyle which cannot be accommodated in more dense residential areas.
- C. *RS-21 "Single-Family Low-Density Residential."* This district is established to implement comprehensive plan policies for managing low-density, single-family residential development at a density not to exceed two (2) single-family dwelling units per acre. The RS-21 district is established in order to protect the quality and character of existing and future conventional single-family low-density neighborhoods, preserve open space, and manage future densities in order to assure compatibility with existing developments, natural features of the land, as well as existing and projected public services and facilities within the area.
- D. *RS-15 "Single-Family Medium-Density Residential."* The RS-15 district is designed to accommodate traditional single-family development on lots not less than 15,000 square feet. The district is established to preserve the stability of existing and future conventional single-family residential neighborhoods, preserve open space, and man-



**Section 1-3.3. Size and dimension criteria.**

A. *Minimum Lot or Site Requirements for All Uses.* Table 1-3.3(A) incorporates required size and dimension regulations which shall be applicable within each respective zoning district. All developments shall have a total land area sufficient to satisfy all standards stipulated within the land development code, including but not limited to:

- Setback requirements;
- Open space, buffers, and landscaping;
- Surface water management;
- Water and wastewater services;
- Access, internal circulation and off-street parking;
- Wetland protection; and
- Soil erosion and sedimentation control standards.

Conventional single family lots shall be required pursuant to square footage requirements stipulated in Table 1-3.3(A). Similarly, more intense development within multiple family residential districts and other specified nonresidential districts shall maintain sites having minimum acreage requirements stipulated in Table 1-3.3(A).

TABLE 1-3.3(A). SIZE AND DIMENSION REGULATIONS

Zoning District	Minimum Lot (L)		Depth (ft.)	Maximum Height (ft.)	Minimum Lot Area (sq. ft.)	Front	Setback (ft.)			Maximum Impervious Surface Ratio (%)	Maximum Driveway Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)					Rear	Side (L)	Side (R)				
<b>Rural Residential Development</b>													
RR-65	65,340	150	250	35/3	1,500	40	30	30	30	20	N/A	80	0.66
<b>Traditional Single Family Residential Development</b>													
RS-21	21,750	120	150	35/3	1,800	35	20	15	15	35	N/A	65	2.00
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	45	N/A	65	2.004
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	50	N/A	50	4.00
<b>Multiple Family Residential Development</b>													
RM-4	5 Acres Minimum Site	200	200	35/3	1 Bedroom: 900 2 Bedroom: 1100 3 Bedroom: 1300 Each Additional Bedroom: 120	60	40	40	40	50	N/A	50	4.00
RM-8	5 acres Minimum Site	200	200	35/3	Single Family: Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	25	20	10	40	50	n/a	50	6
<b>Mixed Use Development</b>													
MU-0	20,000	100	150	35/3	Single Family: Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120 Commercial: Min. Area: 900 Max. Area: 4,000	25 50	20 25	10 10 <sup>4</sup>	10 20	50 65	n/a n/a	50 35	4 6
<b>Mobile Home Residential Development</b>													
MH-0	5 Acres Lot: 7000					10	5	5	10	50	N/A	50	6.00
<b>Office Development</b>													
O1	20,000	100	150	35/3	Minimum Floor Area: 1000	35/60	25	20	25	65	20	35	N/A
<b>Commercial Development</b>													

Supp. No. 23

*Zonidk* →

