



# Planning and Zoning Board Meeting

Wednesday, July 22, 2020 at 7:00 pm

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. CONSENT AGENDA  
APPROVAL OF MINUTES
5. PUBLIC HEARINGS : 2

- a. **Property Owner requests a Zoning Map Amendment to comply with Future Land Use Map (FLUM) Designation of Rural/Limited Commercial (R/LC) in the Comprehensive Plan. The property is located at 2525 Malabar Road, Malabar Florida, 32950. The request is to change the Zoning from Office Institutional (OI) & Rural Residential (RR-65) to Residential/Limited Commercial (R/LC). The owner/applicant is Mr. Nick Shalton.**

Exhibit: Agenda Report Number 5a(1) and Agenda Report Number 5a(2)

#### **Attachments:**

- Agenda Report Number 5a(1) (Agenda\_Report\_Number\_5a\_1\_.pdf)
- Agenda Report Number 5a(2) (Agenda\_Report\_Number\_5a\_2\_.pdf)

- b. **Property owner requests a Land Use Map Amendment for the 24.35 acre(+/-) site known as a portion of Lots 25 and 26 in the Florida Indian River Land Company Subdivision, Section 2, Township 29 South, Range 37, Plat Book 1, Page 165 of the Public Records of Brevard County, Florida more particularly described in Ordinance 2020-08 from Office Institutional (OI) to Rural Residential (RR) designation. The application is submitted by Mr. Malcolm Kirschenbaum, Manager of Weber Woods, LLC.**

Exhibit: Agenda Report Number 5b

#### **Attachments:**

- Agenda Report Number 5b (Agenda\_Report\_Number\_5b.pdf)

6. DISCUSSION/POSSIBLE ACTION ITEMS
7. ADDITIONAL ITEMS FOR FUTURE MEETING
8. PUBLIC COMMENTS
9. OLD BUSINESS/NEW BUSINESS
  - a. Old Business

**b. New Business**

Board Member Comments

Next regular Meeting - June 26th, 2019

**10. ADJOURNMENT**

---

Contact: Denine Sherear (dsherear@townofmalabar.org 1321727764) | Agenda published on  
07/17/2020 at 11:22 AM

# TOWN OF MALABAR

## PLANNING AND ZONING BOARD MEETING

**AGENDA ITEM NO: 5.a**

**Meeting Date: July 22, 2020**

Prepared By: Denine Sherear, Planning & Zoning Board Secretary

---

**SUBJECT: Property Owner Nicholas Shalton Requests a Zoning Map Amendment for the 4.72+/- acre parcel located at 2525 Malabar Road from Office Institutional (OI) and Rural Residential (RR) to Residential Limited Commercial (R/LC) to achieve consistency with the Future Land Use Map in the Comprehensive Plan. Property is in Section 31, Township 28 and Range 38 in the Town of Malabar.**

---

### **BACKGROUND/HISTORY:**

This is a request from a property owner to change the zoning to match the Town's intended use on the Future Land Use Map in the Town's Comprehensive Plan.

The current zoning has the first 400 feet south of Malabar Road designated as Office Institutional (OI) and the remainder of the parcel to the south designated as Rural Residential (RR). The Town recently adopted an amended Future Land Use Map (FLUM) that changed the entire parcel to the mixed-use designation of Residential Limited Commercial (R/LC).

The property currently has a non-conforming single-family home in the OI area, a violation of the zoning regulations.

A recommendation from P&Z for Council to approve the zoning change will make the zoning consistent with the FLUM designation and allow the home to be renovated and occupied.

This is a zoning map amendment only. There is no request to change the FLUM.

The Town Council will hear this request at their August 3, 2020 meeting.

### **ATTACHMENTS:**

Application package from property owner

Legal Advertisement for Florida Today and Notices to property owners based on radius package

Memo & Emails from Planner, Engineer, and Town Attorney

### **ACTION OPTIONS:**

Recommendation to Council

Application for Zoning Change by  
Property Owner Nicholas Shalton

Brevard County Property Appraiser  
information sheet and map

Malabar Land Development Code  
Article XII, Section 1-12.5.A.3.

Malabar Zoning Map showing subject  
parcel

Malabar FLUM Map showing R/LC

TOWN OF MALABAR  
2725 Malabar Road, Malabar, Florida 32950 TOWN OF MALABAR  
(321) 727-7764 – Telephone  
(321) 727-9997 - Fax

Date: 6/16/2020

JUN 16 2020  
No. ZC 02-2020  
**RECEIVED**

APPLICATION FOR LAND USE AMENDMENT AND ZONING CHANGE

Before completing this application, please refer to the attached:

- General Information
- Section 1-12.5 - Procedures for Adopting, Supplementing or Amending the Land Development Code
- Florida Statutes, Chapter 166.041(c)
- Article III - District Provisions

4.72 AC

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

Name of Applicant(s): Nicholas R. Shalton Telephone #: 321-750-3936  
Mailing Address: 295 Ocean View Ln B Indian River, FL 32903

Legal description of property covered by application:

Township: 28 Range: 38 Section: 31  
Lot/Block: 54. B-4, Parcel Subdivision: Snedekers Subd  
Other Legal: \_\_\_\_\_

Property Address: 2525 Malabar Rd.

- Current and Proposed Comprehensive Plan Land Use Map Designation. The current and proposed Comprehensive Plan Land Use Map designation for the subject property shall be identified: Current: R/LC Proposed: R/LC
- Current and Proposed Zoning. The current and proposed zoning for the subject property shall be identified: Current: OF/RR 65 Proposed: R/LC
- Existing and Proposed Use. The existing and proposed use of the subject property shall be stated: Current: R/LC Proposed: R/LC

Fees:

- Rezoning - \$625.00 for first acre plus \$10 for each additional acre, which includes administrative time and mailing. Any advertising or additional costs\* shall be paid by the applicant for **Residential**.
  - Land Use Charges - \$300 which includes administrative time and mailing. Any advertising or additional costs\* shall be paid by the applicant for **Residential**.
  - Rezoning & Land Use Charges - \$1500.00 for first acre plus \$10 for each additional acre, which includes administrative time and mailing. Any advertising or additional costs\* shall be paid by the applicant for **Commercial**.
- (\*Additional costs may include, but are not limited to engineering fees, attorney fees, etc.)

Required Attachments:

- Completed application, including Disclosure of Ownership (Pages 1 & 2)
- Fee of \$ 665.00 in check or money order payable to *Town of Malabar*. We do not accept cash or credit cards.
- Radius package from Brevard County P&Z GIS Department providing a list of names and addresses of property owners and legal descriptions of all property within 500 feet of the boundaries of the property covered by this application. The source of this list must be the most current records maintained by the Brevard County Tax Appraiser's Office. (321-633-2060)

Signature of Applicant

Signature of Applicant

TOWN OF MALABAR  
APPLICATION FOR LAND USE AMENDMENT AND ZONING CHANGE  
TOWN OF MALABAR

JUN 16 2020

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 rezoning review of 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.

\_\_\_\_\_  
Applicant Date

\_\_\_\_\_  
Applicant Date

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

NOTARY PUBLIC  
STATE OF FLORIDA

Commission No.: \_\_\_\_\_ My Commission Expires: \_\_\_\_\_

I, Nicholas Shalton, being first duly sworn, depose and say that I, Nicholas Shalton, 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]  
Applicant Date 6/16/2020

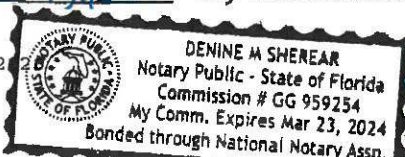
Nicholas Shalton  
Applicant Date

Sworn and subscribed before me this 16 day of June, 2020.

NOTARY PUBLIC  
STATE OF FLORIDA

Commission No.: GG 959254 My Commission Expires: MAR 23 2024

LU AND ZONING CHG AP  
Revised February 14, 20



Denine M Sherear  
Denine M Sherear



# Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700  
<https://www.bcpao.us>

## PROPERTY DETAILS

Account	2851074
Owners	Shalton, Nicholas R
Mailing Address	2525 Malabar Rd Malabar FL 32950
Site Address	2525 Malabar Rd Malabar FL 32950
Parcel ID	28-38-31-54-B-4
Property Use	0110 - Single Family Residence
Exemptions	None
Taxing District	34Z0 - Malabar
Total Acres	4.72
Subdivision	Snedekers Subd Of Malabar
Site Code	0381 - Malabar Rd (Sr514)
Plat Book/Page	0001/0097
Land Description	Snedekers Subd Of Malabar W 1/2 Of Lot 4 Lying N Of Ditch Blk B



## VALUE SUMMARY

Category	2019	2018	2017
Market Value	\$260,180	\$240,820	\$172,400
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$260,180	\$240,820	\$172,400
Assessed Value School	\$260,180	\$240,820	\$172,400
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$260,180	\$240,820	\$172,400
Taxable Value School	\$260,180	\$240,820	\$172,400

## SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
06/29/2017	\$275,000	WD	Improved	7932/1405
10/01/1998	\$139,000	04	Improved	3906/0492
02/01/1996	--	QC	Improved	3545/4502
01/01/1979	\$75,000	--	--	1997/0223
09/01/1971	\$70,000	--	--	1198/0079

## BUILDINGS

### PROPERTY DATA CARD #1

Building Use: 0110 - Single Family Residence

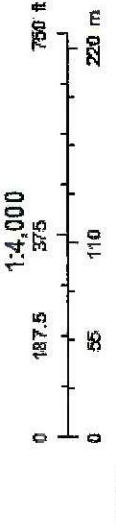
Materials	Details	
Exterior Wall:	Brick	Year Built 1972
Frame:	Wood Frame	Story Height 8
Roof:	Asph/Asb Shngl	Floors 1
Roof Structure:	Wood Truss	Residential Units 1
		Commercial Units 0
Sub-Areas	Extra Features	
Base Area (1st)	1,854	Carport 460
Open Porch	36	Enclosed Room 420
Total Base Area	1,854	Outbuilding 100
Total Sub Area	1,890	Covered Patio 114

# Brevard County Property Appraiser



November 18, 2019

2525 Malabar Rd  
 Malabar FL





ADMINISTRATIVE PROCEDURES

§ 1-12.5

**Section 1-12.4. Town Council's role.**

A. *Legislative Intent.* The legislative intent of the land development code is to provide the Town Council of the Town of Malabar zoning powers necessary to implement the Comprehensive Plan consistent with enabling legislation of Chapter 163 F.S.

B. *Powers of Town Council.*

1. *Enact Zoning Regulations.* Following receipt of a written report from the Town Planning and Zoning Board, the Town Council may amend or supplement the regulations and districts fixed by the adopted Town land development code. The Town Council shall hold a public hearing on such matters, with due public notice, if any change is to be considered and shall act on the proposed change after such hearing. In cases where the recommendation of the Town Planning and Zoning Board is adverse to the proposed change, such change shall not become effective except by an affirmative vote of a majority of three (3) members of the Town Council, after due process.
2. *Establish Fees and Appropriate Funds.* The Town Council may by resolution establish fees, charges, and expenses imposed by these land development code regulations.
3. *Consider and Act on Development Issues as Required.* The Town Council shall consider and act on development and growth management issues pursuant to this Code, Chapter 163 F.S., and other applicable laws and regulations.
4. *Enforce Land Development Code.* The Town Council shall enforce the land development code, including carrying out appropriate administrative and legal actions.
5. *Appoint and Confirm Members of Requisite Boards and Commissions.* The Town Council shall appoint and confirm members of the Town Planning and Zoning Board, the Board of Adjustment, and any other Board, Commission or Committee as may be deemed necessary by the Town Council or applicable laws.

Cross reference—Town council, § 2-26 et seq.

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

A. *Initiating Amendments to the Land Development Code.* Amendments to the Land Development Code may be initiated by:

1. *Town Council.* The Town Council may initiate an amendment to the land development code by approving a written statement expressing its intent to amend this code and shall submit such written statement and any relevant supportive material to the Town Planning and Zoning Board for review and action pursuant to Section 1-12.5. C., 1-12.6(C) [1-12.5(C)] of this Chapter [Code].
2. *Planning and Zoning Board.* The Town Planning and Zoning Board may initiate a land development code amendment.

§ 1-12.5

MALABAR LAND DEVELOPMENT CODE

3. *Property Owner(s)*. An amendment to the land development code may be initiated by a petition signed by a property owner, or the property owner's authorized agent. Such petition shall be submitted to the office of the Town Clerk together with a fee as shall be determined by resolution of the Town Council. As many lots or parcels of property as the applicant may desire may be included in any single petition if they constitute one (1) contiguous. The petition shall be submitted on an application form prescribed by the Town Clerk. The application shall include, but not be limited to, the following:

- (a) *Property Description*. The application shall describe by legal description and by street address, where possible, the property to be affected by the proposed change
- (b) *Current and Proposed Comprehensive Plan Land Use Map Designation*. The current and proposed Comprehensive Plan Land Use Map designation for the subject property shall be identified.
- (c) *Current and Proposed Zoning*. The current and proposed zoning for the subject property shall be identified.
- (d) *Existing and Proposed Use*. The existing and proposed use of the subject property shall be stated.
- (e) *Disclosure of Ownership*. The application shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for rezoning is sought, except publicly held corporations, in which case the names and addresses of the corporate officers shall be sufficient.

B. *Administrative Review*. The Town Clerk shall forward zoning change petitions, for which appropriate fees have been submitted, to all appropriate administrative staff for their review and comment. The application shall be reviewed for conformance with the requirements of this Chapter [Code].

C. *Planning and Zoning Board Review*. The Planning and Zoning Board, regardless of the source of the proposed zone change, shall hold a public hearing(s) thereon, with due public notice. The Town Planning and Zoning Board shall submit a written report and recommendation concerning proposed changes to the Town Council for official action. In its deliberations the Planning and Zoning Board shall consider the following criteria:

1. *Consistency with Plan*. Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service (LOS) standards and the concurrency management program. Any inconsistencies shall be identified by the Planning and Zoning Board.
2. *Conformance with Ordinances*. Whether the proposal is in conformance with all applicable requirements of the Town of Malabar Code of Ordinances.

ADMINISTRATIVE PROCEDURES

§ 1-12.6

3. *Changed Conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations involved which are relevant to the amendment.
4. *Land Use Compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.
5. *Adequate Public Facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.
6. *Natural Environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, vegetative commodities, and wellfield protection.
7. *Economic Effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area, or the general welfare.
8. *Orderly Development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.
9. *Public Interest; Enabling Act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of this ordinance and its enabling legislation.
10. *Other Matters.* Other matters which the Planning and Zoning Board may deem appropriate.

D. *Town Council Review.* The Town Council shall hold a public hearing on the requested zone change petition or amendment, with due public notice, if any change is to be considered and shall then act on the proposed change. An affirmative vote of three (3) members of the Town Council is required for favorable action on a zone change petition or amendment for which the Town Planning and Zoning Board has recommended denial. In its deliberations the Town Council shall consider the criteria identified in Section 1-12.5(C) above together with the findings and recommendations of the Planning and Zoning Board. Any modifications or revisions to the Town Planning and Zoning Board recommendation which involve a greater area of land to be rezoned or a more intensive zoning classification shall be the subject of an additional public hearing before the Town Council with due notice prior to action by the Town Council.

(Ord. No. 19-01, § 1, 3-4-19)

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

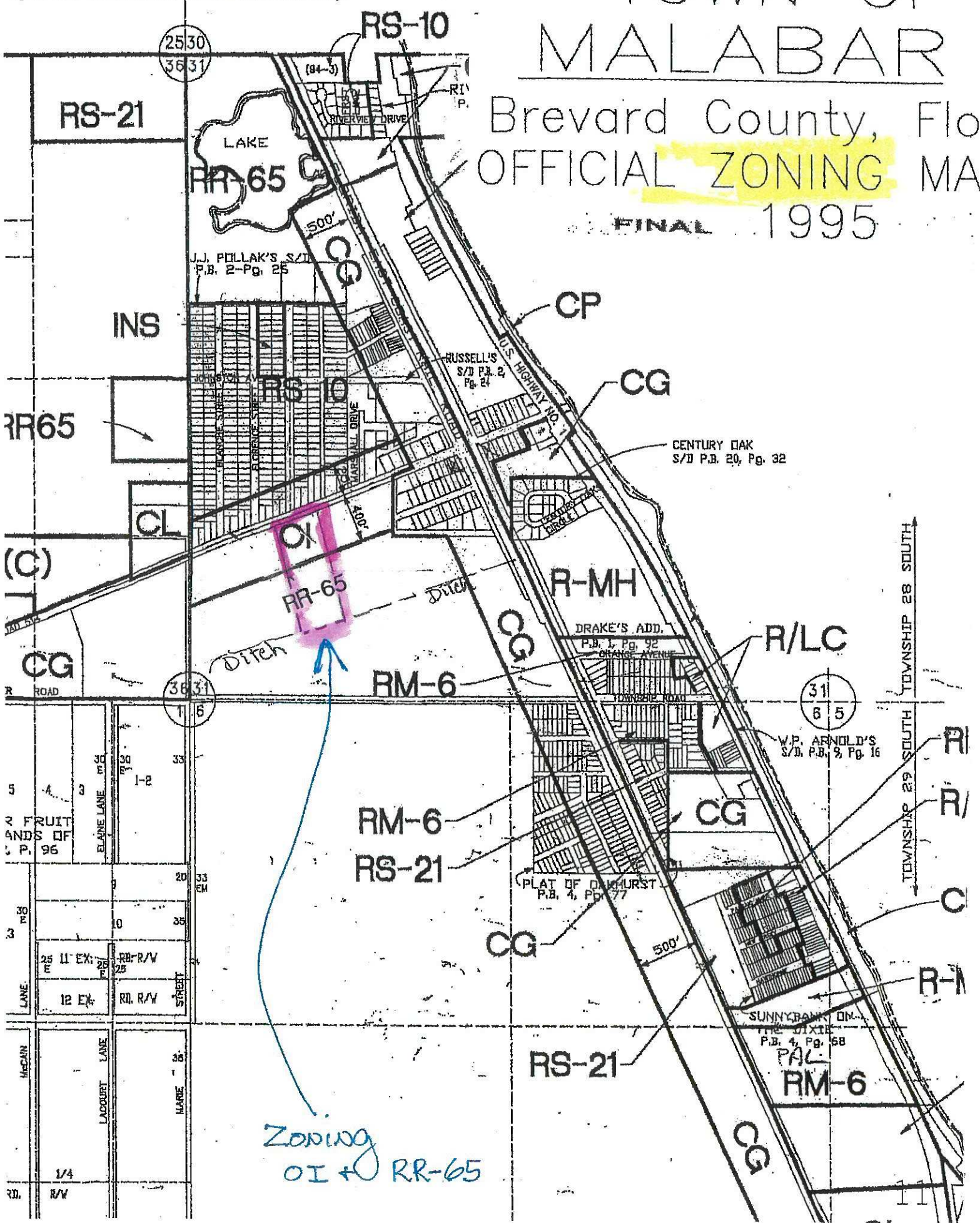
**Section 1-12.6. Procedures for public hearings.**

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

RANGE 37 EAST RANGE 38 EAST

# TOWN OF MALABAR

## Brevard County, Flo OFFICIAL ZONING MA FINAL 1995



Zoning  
OI + RR-65





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

To: [brelegals@gannett.com](mailto:brelegals@gannett.com)

June 24, 2020

From: Debby Franklin, Town Clerk, Town of Malabar, Acct # 126287

Please place the following legal ad one time on Thursday, July 2, 2020. 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.

**TOWN OF MALABAR  
NOTICE OF PUBLIC HEARINGS**

The Town of Malabar's Planning and Zoning Board shall conduct a Public Hearing on Wednesday July 22, 2020 at 7:00 PM to consider a request for a Zoning Map change from Office Institutional (OI) and Rural Residential (RR-65) to Residential/Limited Commercial (R/LC) to match the current Future Land Use Map Designation for a 4.72+/- acre site located at 2525 Malabar Road. The applicant is the Property Owner, Mr. Nicholas Shalton.

The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, August 03, 2020 at 7:30 PM or as soon thereafter as the matter can be heard, to conduct a public hearing on the same request and to consider the recommendation from the Planning and Zoning Board.

Copies of this document are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. *All interested parties may email comments to [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at these meetings of the Planning and Zoning Board and Town Council with respect to this topic.*

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. Debby Franklin, CMC, Town Clerk/Treasurer.



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

June 24, 2020

**TOWN OF MALABAR  
NOTICE OF PUBLIC HEARINGS**

The Town of Malabar's Planning and Zoning Board shall conduct a Public Hearing on Wednesday July 22, 2020 at 7:00 PM to consider a request for a Zoning Map change from Office Institutional (OI) and Rural Residential (RR-65) to Residential/Limited Commercial (R/LC) to match the current Future Land Use Map Designation for a 4.72+/- acre site located at 2525 Malabar Road. The applicant is the Property Owner, Mr. Nicholas Shalton.

The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, August 03, 2020 at 7:30 PM or as soon thereafter as the matter can be heard, to conduct a public hearing on the same request and to consider the recommendation from the Planning and Zoning Board.

Copies of this document are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. *All interested parties may email comments to [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at these meetings of the Planning and Zoning Board and Town Council with respect to this topic.*

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. Debby Franklin, CMC, Town Clerk/Treasurer.

**DEAR PROPERTY OWNER:**

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE LISTED AS A PROPERTY OWNER WITHIN 500' OF THE PROPOSED REQUEST TO AMEND THE TOWN'S ZONING MAP TO MATCH THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP. YOU ARE INVITED TO EMAIL, SUBMIT WRITTEN COMMENTS OR ATTEND AND SPEAK AT THE PUBLIC HEARINGS AT THE:**

**PLANNING AND ZONING BOARD MEETING ON WEDNESDAY, JULY 22, 2020 AT 7:00PM  
AND MALABAR COUNCIL MEETING ON MONDAY, AUGUST 03, 2020 AT 7:30PM.**

24

SHALTON, Nick

BATCHER, MICHAEL A  
2099 NE SYRACUSE CT  
PALM BAY FL 32905-3923

BEATTY, CARLALAN  
775 STONY CREEK RD  
HADLEY NY 12835-2309

CATANIA, MICHAEL  
1415 FLORENCE ST  
MALABAR FL 32950-6918

CDA SOLUTIONS INC  
7622 EMERALD DR, STE 5  
WEST MELBOURNE FL 32904-1124

CREEL, KEVIN  
CREEL, TAMMY  
1445 BLANCHE ST  
MALABAR FL 32950-6906

DAVIS, LAURANCE III  
DAVIS, GLORIA  
1475 MARIE ST  
MALABAR FL 32950-

GASPERINI, ROSITA SERNA  
1405 BLANCHE ST  
MALABAR FL 32950-6906

GRINDLEY, JOEL  
130 POINSETTA ST  
INDIALANTIC FL 32903-2537

HANCOCK, JAMES H, JR  
PO BOX 140791  
ORLANDO FL 32814-0791

JEAN ANN BAMBERGER REVOCABLE  
TRUST  
PO BOX 500057  
MALABAR FL 32950-0057

MAHONEY, MARK D  
MAHONEY, LAURA  
2475 MALABAR RD  
MALABAR FL 32950-

MARSHALL, TIMOTHY W  
MARSHALL, JACQUELINE  
3795 BURTON RD  
MALABAR FL 32950-

MATHEWS, TERRY D  
7665 OAK ST N  
MELBOURNE FL 32904-

MILLER, WILLIAM E  
WISE, EDITH S  
2530 MALABAR RD  
MALABAR FL 32950-

MP42 LLC  
PO BOX 23023  
TAMPA FL 33623-2023

OAKMONT PRESERVE SUBDIVISION  
HOMEOWNERS ASSOCIATION INC  
300 E NEW HAVEN AVE  
MELBOURNE FL 32901-

PROCTOR, DOUGLAS K  
5792 DE SOTO ROAD  
LAKE WORTH FL 33463-

ROULSTON, JAMES K  
ROULSTON, CAROL K  
PO BOX 500067  
MALABAR FL 32950-0067

SHALTON, NICHOLAS R  
2525 MALABAR RD  
MALABAR FL 32950-4410

SLATE PROPERTY MANAGEMENT LLC  
7790 INDUSTRIAL RD  
MELBOURNE FL 32904-1631

THOMAS, CHRISTOPHER B  
299 LACHINE ST SW  
PALM BAY FL 32908-

THOMAS, GEORGE  
3009 E CORTEZ CT  
IRVING TX 75062-

TOWNSEND, JAMES H  
1401 FLORENCE ST  
MALABAR FL 32950-6918

WILBUR, ROBERT JR  
WILBUR, KATHIE L  
PO BOX 500559  
MALABAR FL 32950-0559

TOWN OF MALABAR

MAY 05 2020

RECEIVED



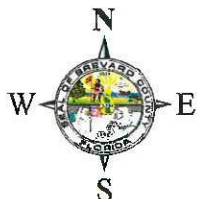
# RADIUS MAP

TOWN OF MALABAR

2525 MALABAR ROAD  
shalton500

MAY 05 2020

RECEIVED



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: 3/6/2020

- Buffer
- Subject Property
- Notify Property
- Parcels

MAY 05 2020

RECEIVED

BUFF\_ID | TAXID | PARCELID | OWNER1 | OWNER2 | MAIL1 | MAIL2 | CITY | STATE | ZIP5 | ZIP4  
 1 | 0 | -  
 2 | 28511144 | 28 | 3831-54-4-40 | BATCHER, MICHAEL A | 2099 NE SYRACUSE CT | PALM BAY FL 32905-3923  
 3 | 2850963 | 28 | 3831-00-500 | BEATTY, CARL ALAN | 775 STONY CREEK RD | HADLEY NY 12835-2309  
 4 | 28511121 | 28 | 3831-54-3-7 | CATANIA, MICHAEL | 1415 FLORENCE ST | MALABAR FL 32950-6918  
 5 | 28511116 | 28 | 3831-54-2-5 | CDA SOLUTIONS INC | 7622 EMERALD DR, STE 5 | WEST MELBOURNE FL 32904-1124  
 6 | 28511128 | 28 | 3831-54-4-6 | CREEL, KEVIN | 1445 BLANCHE ST | MALABAR FL 32950-6906  
 7 | 28511168 | 28 | 3831-54-5-44 | DAVIS, LAURANCE III | DAVIS, GLORIA | 1475 MARIE ST | MALABAR FL 32950-  
 8 | 28511129 | 28 | 3831-54-4-8 | GASPERINI, ROSITA SERNA | 1405 BLANCHE ST | MALABAR FL 32950-6906  
 9 | 2851069 | 28 | 3831-54-B-1.02 | GRINDLEY, JOEL | 130 POINSETTA ST | INDIALANTIC FL 32903-2537  
 10 | 28511172 | 28 | 3831-54-5-50 | HANCOCK, JAMES H, JR | PO BOX 140791 | ORLANDO FL 32814-0791  
 11 | 2851072 | 28 | 3831-54-B-3.02 | JEAN ANN BAMBERGER REVOCABLE | TRUST | PO BOX 500057 | MALABAR FL 32950-0057  
 12 | 2851075 | 28 | 3831-54-B-4.01 | JEAN ANN BAMBERGER REVOCABLE | TRUST | PO BOX 500057 | MALABAR FL 32950-0057  
 13 | 2851077 | 28 | 3831-54-B-4.03 | JEAN ANN BAMBERGER REVOCABLE | TRUST | PO BOX 500057 | MALABAR FL 32950-0057  
 14 | 2851070 | 28 | 3831-54-B-3 | MAHONEY, MARK D | MAHONEY, LAURA | 2475 MALABAR RD | MALABAR FL 32950-  
 15 | 2851171 | 28 | 3831-54-5-48 | MARSHALL, TIMOTHY W | MARSHALL, JACQUELINE | 3795 BURTON RD | MALABAR FL 32950-  
 16 | 2851170 | 28 | 3831-54-5-47 | MARSHALL, TIMOTHY W | MARSHALL, JACQUELINE | 3795 BURTON RD | MALABAR FL 32950-  
 17 | 2851169 | 28 | 3831-54-5-46 | MARSHALL, TIMOTHY W | MARSHALL, JACQUELINE | 3795 BURTON RD | MALABAR FL 32950-  
 18 | 2851055 | 28 | 3831-50-A-8.01 | MATHEWS, TERRY D | 7665 OAK ST N | MELBOURNE FL 32904-  
 19 | 2851114 | 28 | 3831-54-2-1.01 | MILLER, WILLIAM E | WISE, EDITH S | 2530 MALABAR RD | MALABAR FL 32950-  
 20 | 2851076 | 28 | 3831-54-B-4.02 | MP42 LLC | PO BOX 23023 | TAMPA FL 33623-2023  
 21 | 2851088 | 28 | 3831-54-B-52 | MP42 LLC | PO BOX 23023 | TAMPA FL 33623-2023  
 22 | 2865076 | 28 | 3831-UU-P.4 | OAKMONT PRESERVE SUBDIVISION | HOMEOWNERS ASSOCIATION INC | 300 E NEW HAVEN  
 AVE | MELBOURNE FL 32901-  
 23 | 2851127 | 28 | 3831-54-4-1 | PROCTOR, DOUGLAS K | 5792 DE SOTO ROAD | LAKE WORTH FL 33463-  
 24 | 2851118 | 28 | 3831-54-3-1 | ROULSTON, JAMES K | ROULSTON, CAROL K | PO BOX 500067 | MALABAR FL 32950-0067  
 25 | 2851074 | 28 | 3831-54-B-4 | SHALTON, NICHOLAS R | 2525 MALABAR RD | MALABAR FL 32950-4410  
 26 | 2851068 | 28 | 3831-54-B-1.01 | SLATE PROPERTY MANAGEMENT LLC | 7790 INDUSTRIAL RD | MELBOURNE FL 32904-1631  
 27 | 2851115 | 28 | 3831-54-2-2 | THOMAS, CHRISTOPHER B | 299 LACHINE ST SW | PALM BAY FL 32908-  
 28 | 2851119 | 28 | 3831-54-3-3 | THOMAS, GEORGE | 3009 E CORTEZ CT | IRVING TX 75062-  
 29 | 2851122 | 28 | 3831-54-3-9 | TOWNSEND, JAMES H | 1401 FLORENCE ST | MALABAR FL 32950-6918  
 30 | 2851073 | 28 | 3831-54-B-3.03 | WILBUR, ROBERT JR | WILBUR, KATHIE L | PO BOX 500559 | MALABAR FL 32950-0559



**NOTICE OF PUBLIC HEARINGS**

CASE NO. ZC-7-2020  
The Public Hearings will be conducted at the Town of Malabar Council Chambers,  
2725 Malabar Road, Malabar, FL 32955

Planning and Zoning Board Meeting  
Wednesday, July 22, 2020 @ 7:00 pm

Town Council Meeting  
Monday, August 3, 2020 @ 7:30 pm

APPLICANT: Nicholas Shullis

**REQUEST ZONING CHANGE FROM O1 & RR-65 TO R1C  
LOCATION: 2525 MALABAR ROAD, MALABAR FLOR 34**

This zoning application may be inspected by the public at the Town Clerk's Office between the hours of 9:00 AM and 4:00 PM weekdays. Interested citizens are encouraged to appear at these hearings and provide comments regarding the proposed ordinance. Persons with disabilities needing assistance to participate in a virtual or in-person hearing should contact the Clerk's Office ADA Coordinator at least 10 business days before the hearing at 321-727-7764, Denine Sherear, Town Clerk.

**FOR MORE INFORMATION  
CONTACT THE BUILDING DEPARTMENT  
AT (321) 727-7764 X 14**

Town Attorney Bohne email on the ten  
criteria for consideration

Town Engineer Smith Memo

Town Planner Tod Mowery

**RE: Town of Malabar- Review for 2525 Malabar Road Malabar (Re Zoning parcel to match the FLUM Amended in December 2019)**

kbohne@fla-lawyers.com <kbohne@fla-lawyers.com>

Tue 6/30/2020 5:10 AM

To: Denine Sherear <dsherear@townofmalabar.org>

Cc: Matt Stinnett <TownManager@townofmalabar.org>; Debby Franklin <townclerk@townofmalabar.org>;  
todm@redtaildg.com <todm@redtaildg.com>

As a starting point, no development orders may be issued for this property unless the comp plan and the zoning are consistent. The current FLUM designates this property as RLC. The current zoning is OI. Clearly the zoning and FLUM are inconsistent. So in order to develop this property the FLUM and zoning must be consistent. As I recall the Council amended the FLUM for this and other properties to RLC and left the zoning designation as is and left the zoning decision up to the landowner.

The rezoning application requests that the zoning be changed to RLC which would be consistent with the FLUM.

Our rezoning criteria, 1-12.5 C, for which the Council/P&Z must consider are as follows (my comments in red):

1. Consistency With Plan. Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service (LOS) standards and the concurrency management program. Any inconsistencies shall be identified by the Planning and Zoning Board. **The proposed zoning will be consistent with the comp plan**
2. Conformance With Ordinances. Whether the proposal is in conformance with all applicable requirements of the Town of Malabar Code of Ordinances. **To be determined by facts presented at hearing**
3. Changed Conditions. Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations involved which are relevant to the amendment. **I offer as a suggestion that the Council's decision to change the FLUM on this property has created the inconsistency between the FLUM and current zoning**
4. Land Use Compatibility. Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved. **To be determined by facts presented at hearing**
5. Adequate Public Facilities. Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. **To be determined by facts presented at hearing**
6. Natural Environment. Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, vegetative commodities, and wellfield protection. **To be determined by facts presented at hearing**
7. Economic Effects. Whether, and the extent to which, the proposal would adversely affect the property values in the area, or the general welfare. **To be determined by facts presented at hearing**
8. Orderly Development. Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified. **To be determined by facts presented at hearing**
9. Public Interest; Enabling Act. Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of this ordinance and its enabling legislation. **To be determined by facts presented at hearing**
10. Other Matters. Other matters which the Planning and Zoning Board may deem appropriate. **I am not privy to any other matters or conditions proposed or discussed by the P&Z. To be determined by facts presented at hearing**

Because **this is a rezoning only and not coupled with a comp plan amendment** the public hearing is quasi-judicial. This means that the council sits as the Judge of the evidence and makes its determination based on competent substantial evidence.

The evidence that meets this standard is more than mere opinion. It must be fact based opinion. This usually comes in the form of expert testimony. Unsupported opinions do not rise to the level of competent substantial evidence. Put another way, opinions that are not based on facts are generally not regarded as competent substantial evidence.

The Supreme Court of Florida has defined substantial evidence as "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred." *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla.1957). For the "substantial" evidence to also constitute "competent" evidence, the evidence relied upon "should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." see *Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla.1986).

Such evidence and testimony, including that of the objecting residents must "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." Certainly the presentation of the applicant with evidence, the staff and the members of the public should be considered. Such evidence; however, should be more than mere opinions unsupported by facts. However, where the opinions are fact based then they are to be given due consideration. Lay witnesses may offer their views in land use cases about matters not requiring expert testimony. For example, lay witnesses may testify about the natural beauty of an area because this is not an issue requiring expertise. Lay witnesses' speculation about potential problems and general unfavorable impacts of a proposed land use are not, however, considered evidence. Similarly, lay witnesses' opinions that a proposed land use will devalue homes in the area are insufficient to support a finding that such devaluation will occur. There must be evidence other than the lay witnesses' opinions to support such claims.

When the facts are such that a zoning authority has a choice between two alternatives, it is up to the zoning authority to make the choice. Under the correct legal standard, citizen testimony in a zoning matter is perfectly permissible and constitutes evidence, so long as it is fact-based. Mere generalized statements of opposition are to be disregarded, but fact-based testimony is not. The facts disclosed by objecting neighbors should be considered.

But I must caution that if the zoning request is denied it will definitely prevent the property from being developed and it could form the basis for a Bert Harris claim. Such a claim is based on the premise that a governmental act which inordinately burdens real property can lead to the governmental body paying compensation to the landowner.

The obvious question is what does the applicant propose as the use of the property if the rezoning is approved. The best answer is that the permitted uses in RLC could be potential uses for the property.

Karl W. Bohne, Jr.  
Schillinger & Coleman, P.A.  
1311 Bedford Drive  
Melbourne, FL 32940  
[321-255-3737](tel:321-255-3737) Telephone  
[321-255-3141](tel:321-255-3141) Facsimile  
Office Hours:

8:30 a.m. to 5:00 p.m. Monday thru Thursday

8:30 a.m. to 12 Noon on Friday

THE INFORMATION CONTAINED IN THIS E-MAIL COMMUNICATION IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENT NAMED ABOVE. This message may be an Attorney-Client communication, and as such is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of the message is strictly prohibited. If you have received this transmission in error, please notify me immediately by telephone and/or by reply e-mail. Thank you.

IMPORTANT: Schillinger & Coleman, P.A. utilizes spam and junk email filtration applications in its email information systems. These applications may prevent or delay delivery of certain email communications. If you do not receive a timely response to an email communication, please contact the intended recipient via telephone at [321-255-3737](tel:321-255-3737).

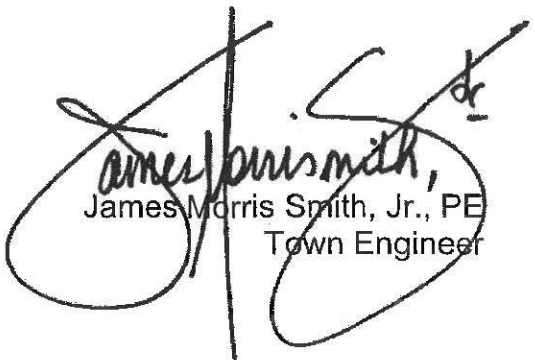
**TOWN OF MALABAR**  
**MEMORANDUM**

Date:	June 30, 2020	Memo: 20-CE-12
To:	Denine Sherear, Building Department Manager	Project No.
From:	Morris Smith, Town Engineer	Variance No.:
Ref:	Rezoning Request to Match FLUM Amended in December 2019	

---

As per your request, I have reviewed the Application package for the above referenced item and I have no objections to the Rezoning Request.

Very Truly Yours,



James Morris Smith, Jr., PE  
Town Engineer



---

**TO:** Planning and Zoning Board, Town of Malabar

**FROM:** Tod Mowery, AICP, Town Planner

**RE:** Rezoning Request for Nicholas R. Shalton property located at 2525 Malabar Road

**DATE:** July 15, 2020

---

**CURRENT ZONING AND LAND USE:** OI/RR65 Office Institutional and Rural Residential / RLC Residential Limited Commercial

**APPLICANT:** Nicholas R. Shalton

**OWNER:** Nicholas R. Shalton

**LOCATION:** 2525 Malabar Road

**PARCEL IDs:** 28-38-31-54-B-4

**LEGAL DESCRIPTION:** Snedekers Subd of Malabar W ½ of Lot 4 Lying N of Ditch Blk B.

**SIZE:** 4.72 acres

**EXISTING USE:** Single Family Home

**SURROUNDING ZONING / LAND USE**

South: Town of Malabar – RR65/RLC

West: Town of Malabar - OI/RLC

North: Town of Malabar – OI/RLC

East: Town of Malabar – OI/RLC

**REQUESTED ZONING:** R/LC - Residential Limited Commercial



100 S. 2nd Street, Fort Pierce, FL 34950  
772-742-1555  
info@redtaildg.com

Land Planning - Landscape Architecture - Project Management Permitting - Government Consulting



**BACKGROUND AND ANALYSIS:**

This applicant is requesting consideration for a rezoning from OI/RR65 to RLC. The property was subject to a recent Town Land Use change, initiated by the Town Council. This particular site is located in an area the Town Council has designated for a change in zoning to the R/LC category and thus an application that does not require a lot of special or unique consideration. The applicant's site is the first site within the recently changed land use area

In evaluating the proposal, the Town of Malabar's Land Development Code, in Article XII, Section 1-12.5 C. provides for the following criteria to be considered when seeking to amend the Zoning (our review in italics.)

**1. Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service (LOS) standards and the concurrency management program.**

*There are no identified inconsistencies at this stage, and the surrounding parcels in each direction appear to lead to a consistent request in line with the minimum levels of service (LOS) standards. This site is clearly consistent with the Comprehensive Plan.*

**2. Conformance With Ordinances. Whether the proposal is in conformance with all applicable requirements of the Town of Malabar Code of Ordinances.**

*There are no identified nonconformities at this stage. At the time of site plan, an analysis may be more fully evaluated to determine conformity including elevations, height, parking requirements and ingress/egress.*

**3. Changed Conditions. Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations involved which are relevant to the amendment.**

*The subject site has not seen any changes since the effective date of the Town's regulations and it remains consistent with the Town's regulations.*

**4. Land Use Compatibility. Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.**

*The subject site has a dual zoning designation and it will now have a singular designation. The designation is compatible and would not result in any incompatible land uses.*

**5. Adequate Public Facilities. Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.**

*There are no known public facility issues that would affect consideration of the site to the proposed designation.*

**6. Natural Environment. Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of**

# TOWN OF MALABAR

## PLANNING AND ZONING BOARD MEETING

AGENDA REPORT NO: 5.b.

Meeting Date: July 22, 2020

Prepared By: Denine Sherear, Board Secretary

---

**SUBJECT: Public Hearing this Request:**

Land Use Map Amendment for the 24.35 acre (+/-) site known as a portion of Lot 25 and 26 in the Florida Indian River Land Company Subdivision, Section 2, Township 29 South, Range 37 East, Plat Book 1, Page 165 of the Public Records of Brevard County, Florida more particularly described in Ordinance 2020-08 from Office Institutional (OI) to Rural Residential (RR) Designation. The application is submitted by Mr. Malcolm Kirschenbaum, Manager of Weber Woods, LLC.

---

**BACKGROUND/HISTORY:**

This request is being made by the current property owner. When the Twin Lakes Subdivision was initially submitted, the applicant was told that it would be reviewed under the current Land Use Designation and Zoning Designation. When Council finally adopted the amended Future Land Use Map it changed the Designation from RR to OI, creating an inconsistency between the Zoning and Land Use.

In order to avoid possible conflicts in the future they are requesting we revert back to the previous Land Use Designation of RR in order to be consistent with the development of the subdivision zoning of RR-65.

The Memorandum attached to the application explains the issue.

If Council approves this request at the first reading of the ordinance the request will be submitted to the State for a 30-day review period. It will also be sent to the other agencies that have authority to comment on the requested change. If no challenges are made to the requested amendment it will be legally advertised and formally adopted at a subsequent Public Hearing at Council in September.

**ATTACHMENTS:**

Application, Memorandum summarizing need  
Council Minutes of 5/6/19 stating subdivision would be reviewed under RR land use  
Future Land Use Map showing parcel to be changed back to RR  
Notice of Public Hearing on Request published in Florida Today

**ACTION OPTIONS:**

Recommendation to Council

TOWN OF MALABAR  
2725 Malabar Road, Malabar, Florida 32950  
(321) 727-7764 – Telephone  
(321) 727-9997 - Fax

JUN 24 2020 9:18

Date: June 15, 2020

No. \_\_\_\_\_

APPLICATION FOR LAND USE AMENDMENT  
AND ZONING CHANGE

Before completing this application, please refer to the attached:

- General Information
- Section 1-12.5 - Procedures for Adopting, Supplementing or Amending the Land Development Code
- Florida Statutes, Chapter 166.041(c)
- Article III - District Provisions

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

Name of Applicant(s): Malcolm Kirschenbaum, Weber Woods LLC Telephone #: \_\_\_\_\_  
Mailing Address: 516 Delannoy Ave, Cocoa, FL 32922

Legal description of property covered by application:

Township: 29 Range: 37 Section: 02  
Lot/Block: 26/25 Parcel Subdivision: \_\_\_\_\_  
Other Legal: See Exhibit A.

Property Address: Not assigned.

- Current and Proposed Comprehensive Plan Land Use Map Designation. The current and proposed Comprehensive Plan Land Use Map designation for the subject property shall be identified: Current: Office Institutional Proposed: Rural Residential
- Current and Proposed Zoning. The current and proposed zoning for the subject property shall be identified: Current: RR-65 Proposed: RR-65
- Existing and Proposed Use. The existing and proposed use of the subject property shall be stated: Current: Vacant Residential Land Single-Family Proposed: single family residential subdivision with 16 lots

Fees:

- Rezoning - \$325 for first acre plus \$10 for each additional acre, which includes administrative time and mailing. Any advertising or additional costs\* shall be paid by the applicant.
- Land Use Charges - \$300 which includes administrative time and mailing. Any advertising or additional costs\* shall be paid by the applicant.
- Rezoning & Land Use Charges - \$625 for first acre plus \$10 for each additional acre, which includes administrative time and mailing. Any advertising or additional costs\* shall be paid by the applicant.

(\*Additional costs may include, but are not limited to engineering fees, attorney fees, etc.)

Required Attachments:

- Completed application, including Disclosure of Ownership (Pages 1 & 2)
- Fee of \$ 300 in check or money order payable to *Town of Malabar*. We do not accept cash or credit cards.
- Radius package from Brevard County P&Z GIS Department providing a list of names and addresses of property owners and legal descriptions of all property within 500 feet of the boundaries of the property covered by this application. The source of this list must be the most current records maintained by the Brevard County Tax Appraiser's Office.

Signature of Applicant

Signature of Applicant

TOWN OF MALABAR  
APPLICATION FOR LAND USE AMENDMENT AND ZONING CHANGE

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 rezoning review of the property.

Please complete only one of the following:

I, Malcolm Kirschenbaum, Manager of Weber Woods, LLC, being first duly sworn, depose and say that I, Malcolm Kirschenbaum, Manager of Weber Woods, LLC, 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]  
Applicant

6/18/2020  
Date

Applicant

Date

Sworn and subscribed before me this 18<sup>th</sup> day of June, 2020.

NOTARY PUBLIC  
STATE OF FLORIDA

Commission No.: GG 272725 My Commission Expires: 10/30/2022



I, Malcolm Kirschenbaum, Manager of Weber Woods, LLC, being first duly sworn, depose and say that I, Malcolm Kirschenbaum, Manager of Weber Woods, LLC, 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]  
Applicant

6/18/2020  
Date

Applicant

Date

Sworn and subscribed before me this 18<sup>th</sup> day of June, 2020.

NOTARY PUBLIC  
STATE OF FLORIDA

Commission No.: GG 272725 My Commission Expires: 10/30/2022



Town of Malabar Comprehensive Plan Amendment Application Memorandum

Property owned by Weber Woods LLC

Parcel ID No. 29-37-02-00-253

Comprehensive Plan Amendment

In 2019, the Town adopted a Comprehensive Plan amendment to the text and Future Land Use map, which changed the FLUM designation of the Property and several other properties fronting Malabar Road to Office-Institutional (O-I) (the "Amendment"). The O-I designation allows for business, professional and institutional uses. The plain text of the Comprehensive Plan regarding Office Institutional designation does not allow for residential development.

During the related Town Council meetings, the Council indicated that the intent was for the single-family residential development proposed for the Property (the "Intended Use"), as shown on the preliminary plat under review at the time (and subsequently approved) to be reviewed utilizing the prior Future Land Use designation for the Property, Rural Residential. However, the Amendment created an inconsistency with the Comprehensive Plan designation for the Property and both the zoning designation and the Intended Use of the Property.

\* Florida courts have determined that a development order (such as a final plat) must be consistent with the comprehensive plan as it exists on the date of issuance of the development order, not on the date of application. See, *Lake Rosa v. Bd. of Cty. Comm'rs*, 911 So. 2d 206, 208 (Fla. Dist. Ct. App. 2005). Therefore, a preliminary plat under review cannot be "vested" from the Comprehensive Plan amendment and the Town Council cannot "waive" the inconsistency of the Intended Use with the Comprehensive Plan.

There is a risk that all future development orders issued for the Property, including the final plat and building permits, could be challenged as inconsistent with the Town Comprehensive Plan. See, for example, *Pinecrest Lakes, Inc. v. Shidel*, 795 So.2d 191 (Fla. 4th DCA 2001), rev. denied, 821 So.2d 300 (Fla. 2002) (where the court ordered the demolition of nineteen two-story buildings upon finding them to be inconsistent with the local comprehensive plan). Even if development approvals have been obtained, this risk will continue to remain until such time as the project is in compliance with the Comprehensive Plan.

Consequently, a Comprehensive Plan amendment to change the Property from Office Institutional back to Rural Residential on the Town's FLUM is required for the future approvals (such as the construction plans, final plat and building permits) to be legally sufficient. To accomplish this, we have provided a Comprehensive Plan amendment application and map, a draft ordinance and an outline of how to submit a Comprehensive Plan amendment to the Department of Economic Opportunity.

4. Proposed Depth of Six Parcels on the south side of Malabar Road for both R/LC and OI Land Use Designations on FLUM before final adoption

Speakers:

Mr. Jack Kirshenbaum, Attorney representing the 25-acre site east of Weber Road. His clients submitted letters to Town and State opposing the proposed land use designation change to OI and to the depth issue. They have already submitted for a subdivision development under the current land use and zoning and wanted confirmation that it will be considered under the existing regulations.

Jack Hessey, Whimsical Lane. He commented that half of the six owners of the properties are from out of state. He thinks Council is being over generous to the out of town speculators.

Bruce Moia, MBV Associates, representing 25-acre piece. They have been here a couple of times. The owners are not in favor of the change. He is the owner of MBV and they recently submitted for a subdivision development.

Attorney Bohne told Council the applicants submitted a subdivision package for preliminary plat review. It will be reviewed under the current land use and zoning designation of RR (rural residential).

**MOTION:** CM Rivet / CM Vail to keep the depth to 660 feet - for discussion.

Discussion: CM Rivet understands we support commercial development. He supports that unless it negatively impacts the rural residential community. Putting commercial land use next to residential at the depth of 1,320 feet is too far into RR land use. Splitting the land use for these deep lots will protect the rural development. If we are serious about keeping Malabar rural, we would oppose a deeper depth.

CM Ball does not agree. To take a whole property and divide it could hurt both values. CM Rivet said the alternative is keeping it all the same. Keep it rural.

CM White said 660" is a lot of depth. He understands the resident's concerns, but a 660-foot buffer is extreme. He agrees with CM Vail.

CM Vail said splitting the land would create access problems. CM Vail said he thinks we can provide adequate buffer between the two land use designations so that the existing RR uses will not be adversely affected. We have a very limited commercial development especially due to the State purchase of land in the Industrial Park. We have to use the commercial we have. Residential tax base will not support the Town.

CM Ball said the key is to leave commercial development along the main corridors to support the rural residential development.

CM Vail keep it a whole property. The downside is the 660' buffer will be worthless. CM Vail said there are already regulations on buffer requirements in the code and if necessary, they can amend those to make it more restrictive.

Juliana Hirsch, 1035 Malabar Road. If we move to keep it half and half, then you will still need a buffer between the commercial and the residential. CM Rivet's argument doesn't stand. There is a larger buffer requirement whenever commercial abuts residential so if the land use change is at 1,320 feet or 660 feet, there will be a more restrictive setback. If Council changes the separation line to 660 feet, there is still a setback requirement due to the land use change. She stated she was asked personally during the P&Z discussion and the early Council discussions and does not see an additional protection to land owners, but rather an additional burden/restriction. If the land use designation goes back 1320 or 660 you will still have Commercial abutting residential. Whether you move the line. It is still abutting – she is totally against this. She stated that the wetland people have looked at her property and said that most of it is wetlands.

**Vote:** Ayes, 1 (CM Rivet); Nay, 3

**MOTION:** CM Vail / CM Ball to reset the depth to 1,320 feet for land use designation.

**Vote:** 3 Ayes; 1 Nay (CM Rivet)

# TOWN OF MALABAR

## FUTURE LAND USE MAP



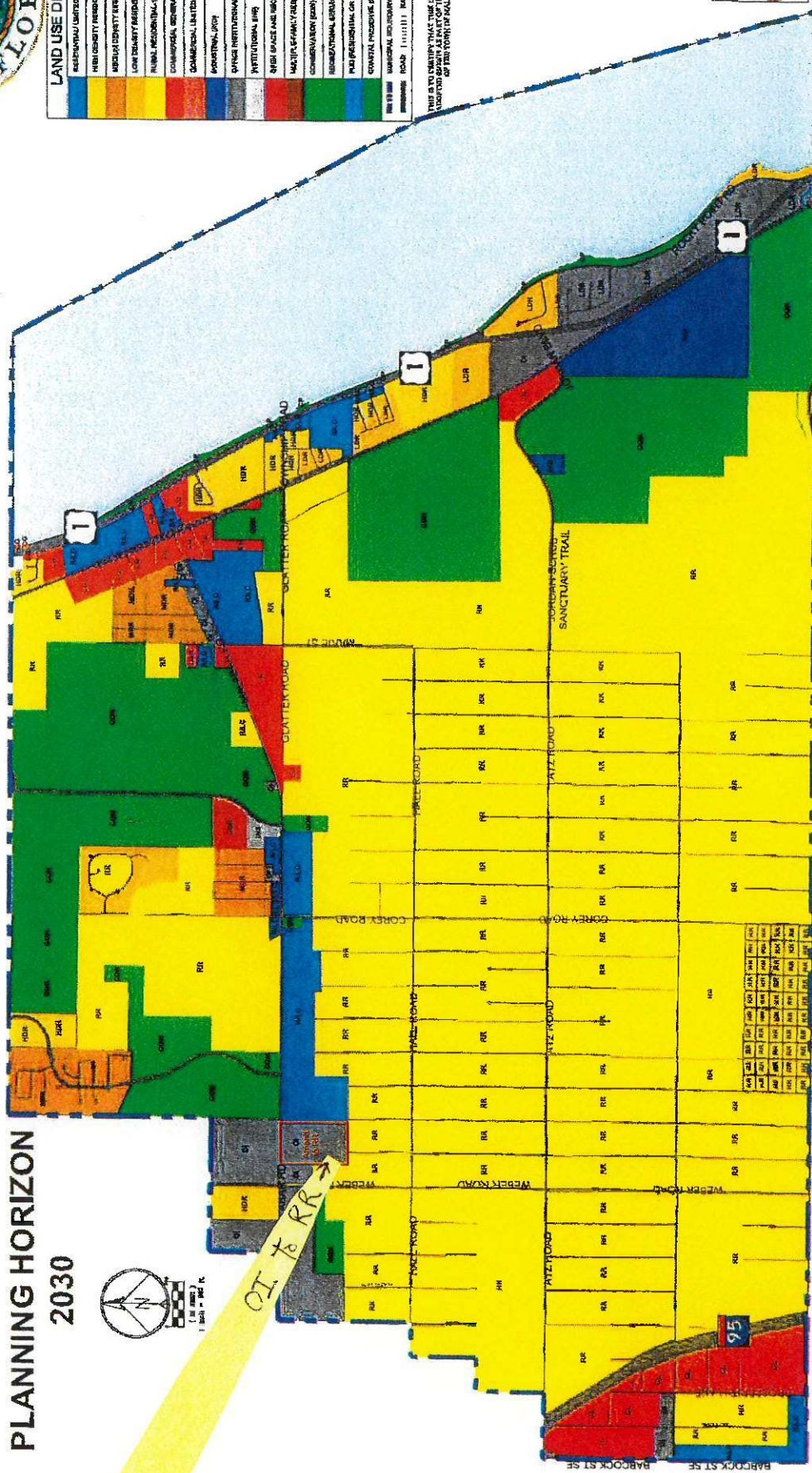
PLANNING HORIZON  
2030



01.7 RR

LAND USE DESIGNATIONS	
[Color]	RESIDENTIAL LIMITED COMMERCIAL (RLC)
[Color]	HIGH DENSITY RESIDENTIAL (HD) UNITS PER ACRE (UPA)
[Color]	MEDIUM DENSITY RESIDENTIAL (MD) UNITS PER ACRE (UPA)
[Color]	LOW DENSITY RESIDENTIAL (LD) UNITS PER ACRE (UPA)
[Color]	RECREATION (RE)
[Color]	COMMERCIAL GENERAL (CG)
[Color]	COMMERCIAL LIMITED (CL)
[Color]	INDUSTRIAL (I)
[Color]	OFFICE INSTITUTIONAL (OI)
[Color]	ARTS/CREATIVE (AR)
[Color]	RECREATION AND INSTITUTIONAL (RI)
[Color]	MULTI-FAMILY RESIDENTIAL (MFR) UNITS PER ACRE (UPA)
[Color]	CONVENTIONAL (CON)
[Color]	UNIVERSITY/RESEARCH (UR)
[Color]	HEALTH CARE (HC)
[Color]	CONVENTIONAL RESIDENTIAL (CR)
[Color]	ROAD (R)
[Color]	RAILROAD (RR)

THIS IS TO EMPHASIZE THAT THE TOWN OF MALABAR, FLORIDA IS A PART OF THE COUNTY OF BREVARD, FLORIDA.



BREVARD COUNTY, FLORIDA  
REVISED DATE: MAY, 2012

To: [brelegals@gannett.com](mailto:brelegals@gannett.com) June 29, 2020  
From: Debby Franklin, Town Clerk, Town of Malabar  
Account # 126287  
[townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)

Please place the following ¼ page display ad (no less than 2 columns wide by 10 inches long) in the non-legal section one time: Wednesday, July 8, 2020. Please put the heading in BOLD and the headline in 18 point 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.

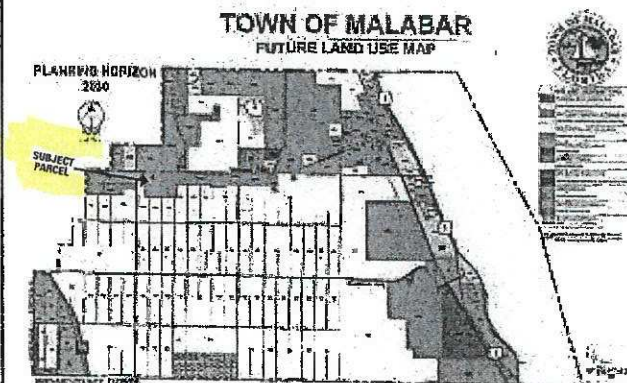
Thank you,  
Debby K. Franklin, C.M.C.  
Town Clerk/Treasurer

**NOTICE OF COMPREHENSIVE PLAN LARGE SCALE  
AMENDMENT**

**TOWN OF MALABAR NOTICE OF PUBLIC HEARINGS  
FOR ADOPTION OF THE MALABAR COMPREHENSIVE  
PLAN LARGE SCALE AMENDMENT 2020-01; AMENDING  
THE FUTURE LAND USE MAP OF THE COMPREHENSIVE  
PLAN OF THE TOWN FROM OFFICE INSTITUTION (OI) TO  
RURAL RESIDENTIAL (RR) FOR A PARCEL IN THE TOWN  
LYING ON THE SOUTH SIDE OF MALABAR ROAD EAST OF  
WEBER ROAD; PROVIDING FOR AN EFFECTIVE DATE**

Town of Malabar Planning and Zoning Board will hold a Public Hearing on July 22, 2020 at 7:00 p.m., or as soon thereafter as the matter may be heard in the Council Chamber located at 2725 Malabar Road, Malabar, Florida. The Planning and Zoning Board will vote on a recommendation to Malabar Town Council for their consideration of the adoption of the Comprehensive Plan Amendment 2020-01 with Ordinance 2020-08 at their Public Hearing on August 3, 2020 at 7:30 p.m.

Comprehensive Plan Amendment 2020-01 is submitted for Expedited State review to revert the land use designation on this parcel that was intended to retain its previous land use designation of Rural Residential.



A copy of the proposed amendment incorporated in Ordinance 2020-08 and map are available for the public inspection at Malabar Town Hall, 2725 Malabar Road, Malabar, Florida between the hours of 8:30AM and 4:30PM weekdays. All interested parties may appear and be heard at these meetings or submit written comments to the Town Clerk with respect to these topics. In compliance with the Americans with Disabilities Act (ADA) Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, 24 hours in advance of the meeting at 321-727-7764. Debby K. Franklin, C.M.C., Town Clerk/  
Treasurer.