



# Board of Adjustments Public Hearing

Thursday, May 28, 2020 at 6:00 pm

1. Call to Order
2. MAYOR PATRICK T. RILEY TO SWEAR IN NEW AND RETURNING MEMBERS
3. ROLL CALL
4. CONSENT AGENDA

- a. Approval of Minutes

Board of Adjustment Meeting 05/7/2019

Exhibit: Agenda Report 4a

**Attachments:**

- Agenda Report 4a (Agenda\_Report\_4a\_sw.pdf)

5. VARIANCE HEARINGS-2

- a. Case # BOA 01-052020 Jenkins

Applicant Requests a Variance to Malabar Land Development Code, Article III Table 1-3.3(A) Size and Dimension Regulations, Setback Requirement in Rural Residential (RR-65) Zoning to construct a detached garage / workshop.

Applicant: Loenard Jenkins

Location: 2205 Ivey Lane, Malabar, Florida

Exhibit: Agenda Report 5a, 5b, & 5c

**Attachments:**

- Agenda Report 5a (Agenda\_Report\_5a\_sw.pdf)
- Agenda Report 5b (Agenda\_Report\_5b\_sw.pdf)
- Agenda Report 5c (Agenda\_Report\_5c\_sw.pdf)

- b. Case # BOA 02-052020 Kemmler

Applicant Requests a Variance to Malabar Land Development Code, Article III, Table 1-3.3(E) Setback Requirement in Residential Limited Commercial (R/LC) Zoning on Malabar Road and Article V, Encroachments as they relate to his legal non-conforming structure that pre-existed the Land Development Code; to construct a secondary exit from upstairs.

Applicant: Hans Kemmler

Location: 2785 Malabar Road, Malabar, Florida

Exhibit: Agenda Report 5d, & 5e

**Attachments:**

- Agenda Report 5d (Agenda\_Report\_5d\_sw.pdf)

- [Agenda Report 5e \(Agenda\\_Report\\_5e\\_sw.pdf\)](#)

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

**7. ADJOURNMENT**

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| Agenda published on 05/26/2020 at 9:27 AM

**TOWN OF MALABAR**  
**BOARD OF ADJUSTMENT**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4.a.**  
**Meeting Date: May 28, 2020**

**Prepared By: Denine M. Sherear, Board of Adjustment Secretary**

**SUBJECT: Approval of minutes**

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**BACKGROUND/HISTORY:**

The minutes included for approval are from the May 7, 2019 BOA meeting. The Board of Adjustment only meets if there is a need.

The minutes reflect the testimony given and the action of the Board, and therefore only a member who was present at that meeting can make the motion to approve the minutes. Any member can second and all regular members can vote on the approval of the minutes.

**ATTACHMENTS:**

- Draft minutes of BOA Meeting of May 7, 2019

**TOWN OF MALABAR**  
**BOARD OF ADJUSTMENT**  
**PUBLIC HEARING**  
**TUESDAY, MAY 07, 2019 MEETING MINUTES**  
**6:00 P.M.**

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

**A. CALL TO ORDER**

**B. ROLL CALL**

David Sowards, Chair  
Donna Hanna, Vice-Chair  
Chuck Frazee  
No public Joanne Korn  
Jim Clevenger, excused

Karl Bohne, Town Attorney  
Tod Mowery, Town Planner  
Debby Franklin, Recording Clerk  
Denine Sherear, Board Secretary

Chair announced that there was a quorum.

**C. CONSENT AGENDA**

1. **Approval of Minutes - Board of Adjustment Meeting 1/8/2019**  
**Exhibit: Agenda Report.1**

**MOTION: BOA Member Chuck Frazee / BOA Member Joanne Korn to approve the minutes of 1/08/19 as submitted. No discussion. Chair called for the vote. Vote: All Ayes.**

Chair asked for those offering to give testimony to stand and raise their right hand and be sworn in. The applicants, their representatives and Staff Franklin, Mowery and Sherear stood and were sworn in.

**D. VARIANCE HEARING**

2. **Requests: Case No. 2019-0507-3**
  - 1) a 14-foot Variance to Malabar Land Development Code, Article III, Section 1-3, Table 1-3.3(A) Size and Dimension Criteria, Rear Setback Requirement of 20 feet in Residential (RS-10) Zoning to construct a pool.
  - 2) a four (4) foot Variance to the ten (10) foot requirement between a lot line and the water's edge of a pool per Article V, Section 1-5.26.1. a.

**Applicants are:** Mr. Hughes

**Location:** 1300 Pemberton Trail, (Brook Hollow subdivision), Malabar, Florida

**Exhibit:** Agenda Report No 2

**Recommendation:** Action

Chair asked the applicant to the podium to present.

Mr. Erik Hughes, 1300 Pemberton Trail, made his request for a variance for a swimming pool. Asking for 14-foot variance to setback and a 6-foot variance between water's edge and the lot line.

Chair asked if staff had reviewed and did it meet criteria. Town Planner said staff had reviewed and recommended approval. Town Attorney clarified that the applicant is asking for two variances: one for the setback and the second for the distance between water edge and lot line.

Chair declared the Public Hearing open. Chair asked for any members of the public to speak to come forward. No public input.

Chair closed the Public Hearing.

Chair then asked if any members needed to make disclosure. None.

BOA Vice-Chair clarified that the BOA does not set precedent. Each request for a variance stands on its own and is considered individually. Because they have granted variance to setbacks in the past does not guarantee anything.

**MOTION: BOA Member Chuck Frazee / BOA Member Joanne Korn to approve the variance request as submitted. No further discussion. Chair called for a rollcall vote.**

BOA Member Donna Hanna Aye

BOA Member Chuck Frazee Aye

BOA Member Joanne Korn Aye

BOA Member David Sowards Aye

**Motion carried 4 to 0.**

**3. Requests: Case No. 2019-0507-2**

1) a Variance to Malabar Land Development Code, Article XIV, Section 1-14, Table 1-14.6 requiring a 40-foot landscape strip between the parking lot and Malabar Road in Office Institutional (OI) Zoning due to the hardship caused by the FDOT acquisition for the Malabar Road widening project.

2) a Variance to the literal requirements of the Code as permitted in Article XV, Section 1-15.13 to preserve the maximum permitted lot coverage.

**Applicants** are: Malabar Professional Plaza, LG, represented by Mr. Jim Hall of Hall Development Services Inc.

**Location:** 775 Malabar Road, Malabar, Florida

Chair asked the applicant to the podium to present.

Mr. Hall, Hall Development Services Inc., to make the request for applicant Malabar Professional Plaza, for a variance from Art XIV and Art XV due to the widening of Malabar Road. When plaza was built it met all the requirements. Prior to building additional buildings on parcel or if there should be destruction of existing building the owner wants assurance there will not be harmed due to the condemnation of the ROW necessary for the widening creating a non-conforming site.

Mr. Hall stated they want the variance to ensure they would be able to rebuild and/or expand without loss of parcel size. The ROW being condemned varies from 12 feet to 25 feet.

Attorney stated that the staff recommendation is to grant an even 25-foot variance to the 40-foot landscape requirement.

Mr. Hall said they also wanted to make sure any new building would not have a deeper setback requirement due to the "taking" moving the property line. Franklin stated that the setback requirement for buildings is measured from the centerline so there is no need for a variance. Staff believed the second request was to allow variance to the landscape requirements due to the potential loss of trees.

BOA Member Joanne Korn asked about the double ditch. Mr. Hall said the ditch would be realigned and some of the trees would be lost. Some would be left on the edge of the ditch. Mr. Hall asked about the sign regulations requiring signs to be setback ten feet from edge of road. The drainage goes into the DOT new system.

Attorney Bohne said this is a classic case for grounds for a variance. Meets the requirement for the setback as is based on the centerline of SR514. If there is question on future development, whether to east, south or west, there will not be a requirement for a 40-foot buffer.

Chair declared the Public Hearing open. Chair asked for any members of the public to speak to come forward.

Summer DeGel, Attorney representing Dr. Leedy, has one point she wanted on the record. Memo says Dr. Leedy will donate ROW. Attorney Bohne said the Town can't do that and there are no conditions on the variance requests. She asked this be noted for the record.

Chair asked for any other testimony. None.

Chair closed the Public Hearing.

Chair then asked if any members needed to make disclosure. No disclosures.

Attorney said it meets requirement.

MOTION: BOA Member Donna Hanna / BOA Member Joanne Korn to approve the variance requests as submitted. No further discussion. Chair called for a rollcall vote.

BOA Member Donna Hanna Aye

BOA Member Chuck Frazee Aye

BOA Member Joanne Korn Aye

BOA Member David Sowards Aye

Motion carried 4 to 0.

**E. NEW BUSINESS/STAFF REPORTS/MEMBER REPORTS**

None

**F. ADJOURNMENT**

MOTION: BOA Member Chuck Frazee / BOA Member Donna Hanna to adjourn. Vote: All Ayes. Meeting adjourned at 6:30 P.M.

BY:

BOA Chair David Sowards

ATTEST BY:

Denine Sherear  
Board Secretary

Date Approved:

Debby K. Franklin, C.M.C.  
Town Clerk/Treasurer  
Recording Secretary

**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 5.a.

Meeting Date: May 28, 2020

Prepared By: Debby K. Franklin, C.M.C., Town Clerk / Treasurer

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**SUBJECT: 5.a. Case # BOA 01-052020 Jenkins**

**Applicant Requests a Variance to Malabar Land Development Code, Article III Table 1-3.3(A) Size and Dimension Regulations, Setback Requirement in Rural Residential (RR-65) Zoning to construct a detached side load garage / workshop.**

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### BACKGROUND/HISTORY:

Mr. Jenkins submitted his application in mid-February to request a variance to the Malabar Code's setback requirement.

The house was built in 2002 with a paved driveway. The proposed new detached garage/workshop would only be able to utilize the existing driveway with the proposed layout Mr. Jenkins has illustrated in his application.

Malabar Staff recommends this Variance request be approved.

This variance was legally advertised on May 7 and 21, 2020 and notices were mailed to all property owners within 500 feet.

### ATTACHMENTS:

- Cover Letter and Application packet from Leonard Jenkins
- Town's Article III, Table 1-3.3 (A) regarding Setbacks
- Legal Ad and Notices mailed to properties within 500 feet and map
- Email from Town Attorney
- Memo from Town Engineer Morris Smith
- Comments from Surrounding Property owners and Town responses

### ACTION OPTIONS:

Approve Variance Request to permit an eight-foot (8') encroachment into the 40' front setback requirement to permit a detached side load garage / workshop as indicated on site plan.

To: Town of Malabar  
Building Department  
2725 Malabar Rd  
Malabar, FL 32950

**Case # BOA 01-052020 Jenkins**

From: Leonard Jenkins  
2205 Ivey Lane  
Malabar, FL 32950  
Ph. 321-961-5656  
e. rockinlen@att.net

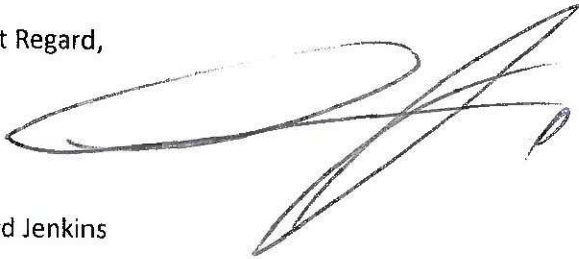
Re: Variance Application

Please find the attached application for variance to the front set back of our property. We have been planning for about 5 years, with various building shapes and positions on our property. We have finally found the perfect scenario for our property but have encountered an encroachment of the front set back. I have attached a set of preliminary proposed building plans from my architect. We wish to build a garage / hobby workshop next to our home with a side load garage. In order to achieve the aesthetics and the ability to have the side load that we want the building will encroach the front set back by approximately 8' of the 40' code. We wish to be granted a variance to allow us to build the building we really want to build.

Regarding water and sewer, we are still debating to actually put in a functioning bathroom in the workshop and wash sink in the garage OR to just pre plumb in the slab and cap for future possibilities. This decision is being based on cost to do it. Heidekruger Well & Pump Services said we can connect to our existing well for water, with the hook up plumbing. I had Brevard County Environmental Health Department do a site visit in August of 2015 for a proposed leech field behind the then proposed building. It will be pretty much in the same spot and was approved by them and within all codes. They will hold my partial paid deposit towards permitting. We are still getting quotes from Septic companies for the possible leech field and tank for our sewer needs of this new building. This decision will be made before we can get final engineering plans on the building.

A radius Package was purchased from Brevard County and emailed to Denine Sherear at [dsherear@townofmalabar.org](mailto:dsherear@townofmalabar.org)

Kindest Regard,



Leonard Jenkins

**TOWN OF MALABAR**

**FEB 12 2020**

**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) Leonard Jenkins Tel: 321-961-5656

Mailing Address: 2205 Ivey Lane

Legal description of property covered by application:

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

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

Property Address: 2205 Ivey Lane

Present zoning classification \_\_\_\_\_

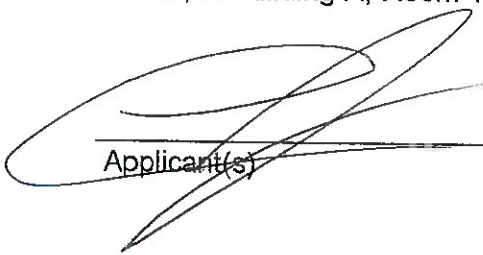
Intended use for property garage / workshop

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

See Attached  
- Proposed Bldg Plan Drawings  
- Hardship letter  
- Radius package emailed to dsteraro@townofmalabar.org

Required attachments:

- Hearing fee of ~~\$300.00~~ <sup>800.00</sup> which includes advertising, administrative time and mailing. Any additional costs\* shall be paid by the applicant. (\*Additional costs may include, but are not limited to, engineering fees, attorney fees, etc.)
- Proof of ownership
- Site Plan
- <sup>N/A</sup> 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.

  
Applicant(s)

2-12-2020  
Date

TOWN OF MALABAR

FEB 12 2020

RECEIVED



LOT FIT  
SCALE: 1/8" = 1'-0"

NOT A PLOT PLAN  
NOT A SURVEY

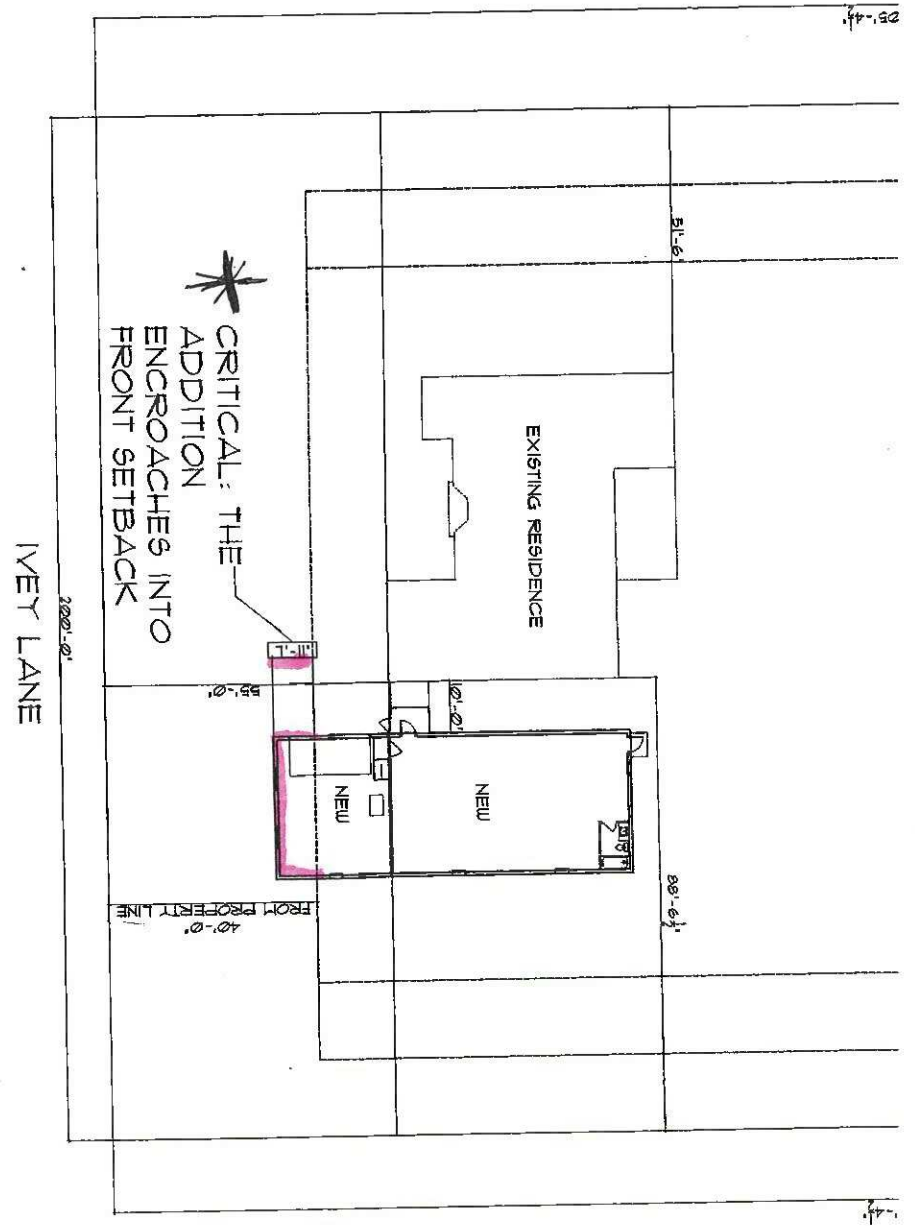


TABLE 1-3.3(A). SIZE AND DIMENSION REGULATIONS

ART III  
↓

Zoning District	Minimum Lot (L)			Maximum Height (ft. stories)	Minimum Living Area (sq. ft.)	Setback (ft.) (S)			Side (C)	Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (I)					
<b>Rural Residential Development</b>													
RR-65	65,340	150	250	35/3	1,500	40	30	30	30	20	N/A	80	0.85
<b>Traditional Single Family Residential Development</b>													
RS-21	21,780	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	55	2.904
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	1,800	60	40	40	40	50	N/A	50	4.00
RM-6	5 acres Minimum Site	200	200	35/3	1,200 sf	25	20	10	10	50	n/a	50	6
					Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	60	40	40	40	50	n/a	50	6
<b>Mixed Use Development</b>													
M/C	20,000	100	150	35/3	12,000 sf	25	20	10	10	50	n/a	50	4
					Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	50	25	10 <sup>4</sup>	20	65	n/a	35	6
					Commercial: Min. Area: 900 Max. Area: 4,000						D-20 D		
<b>Mobile Home Residential Development</b>													
R-MH	Site: 5 Acres Lot: 7000					10	8	8	10	50	N/A	50	6.00
<b>Office Development</b>													

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)

May 5, 2020

From: Debby Franklin, Town Clerk, Town of Malabar Account #126287  
[townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)

Please place the following legal ad two times: **Thursday, May 7, 2020 and Thursday, May 21, 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. This ad DOES qualify for the discount.

Thank you,

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

**TOWN OF MALABAR  
NOTICE OF  
NOTICE OF PUBLIC HEARING**

The Malabar Board of Adjustment will hear one Variance Request at a Public Hearing to be held on Thursday, May 28, 2020 at 6:00 p.m., at Malabar Town Hall located at 2725 Malabar Road, Malabar, Florida. Applicant Leonard Jenkins is requesting an eight (8) foot variance to Malabar Land Development Code Article III, Table 1-3.3(A) Size and Dimension Regulations, Front Setback of 40 feet in Rural Residential Zoning (RR-65) to build a garage/workshop adjacent to the existing single-family home. Location is 2205 Ivey Lane, Malabar, Florida. Citizens are encouraged to attend and offer comment.

AD#4181544 3/28/2020  
TOWN OF MALABAR  
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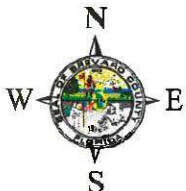
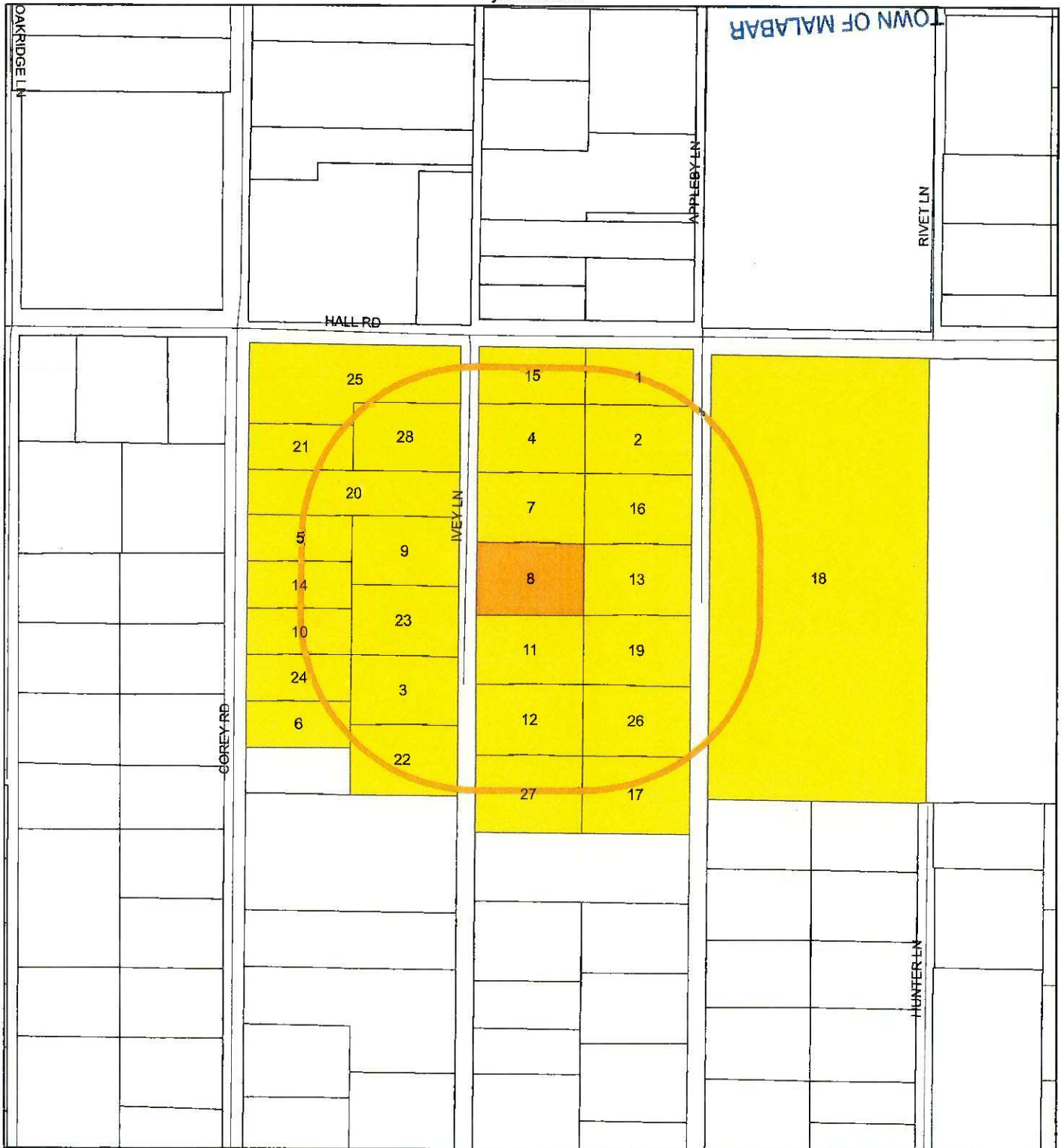
# RADIUS MAP

LEONARD JENKINS - GARAGE WORKSHOP  
jenkins500

RECEIVED

FEB 12 2020

TOWN OF MALABAR



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: 2/10/2020

- Buffer
- Subject Property
- Notify Property
- Parcels

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)

May 7, 2020

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[townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)

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Thank you,

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

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**\*\*\*\*\*DEAR PROPERTY OWNER\*\*\*\*\***  
**YOU ARE RECEIVING THIS NOTICE**  
**BECAUSE YOU ARE LISTED AS A**  
**PROPERTY OWNER WITHIN 500' OF THE**  
**PROPOSED VARIANCE REQUEST. YOU**  
**ARE INVITED TO ATTEND AND SPEAK**  
**AT THE PUBLIC HEARING ON THE**  
**REQUEST ON THURSDAY MAY 28, 2020**  
**AT 6:00PM.**

TOWN OF MALABAR

FEB 12 2020

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jenkins500  
Page1

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JENKINS, Leonard

ARMSTRONG, ROBERT G  
ARMSTRONG, SANDRA L  
1775 HALL RD  
MALABAR FL 32950-

BIAS, LARRY  
BIAS, DELLIA  
2130 APPLEBY LN  
MALABAR FL 32950-3553

CARTER, DENNIS W  
CARTER, MELANIE  
2260 IVEY LANE  
MALABAR FL 32950-

CONLON, WILLIAM P  
HOWELL, MELVA C  
2145 IVEY LN  
MALABAR FL 32950-

COWART, MACK  
1820 E HWY 55  
CLOVER SC 29710-

GOD PLEASING  
7512 DR PHILLIPS BLVD, # 50  
ORLANDO FL 32819-5420

HUFF, JAMES  
HUFF, KAREN  
2175 IVEY LN  
MALABAR FL 32950-3508

JENKINS, LEONARD F  
JENKINS, RENEE L  
2205 IVEY LANE  
MALABAR FL 32950-

JOHNSON, SANDRA G  
4115 GRANT RD  
GRANT FL 32949-8216

LEWIT, LIONEL H  
LEWIT, BETH TRUSTEES  
2225 COREY RD  
MALABAR FL 32950-

MESSERSMITH, IRVING A  
MESSERSMITH, MARGO  
PO BOX 1798  
CULLMAN AL 35056-

MESSERSMITH, IRVING A  
MESSERSMITH, MARGO  
P BOX 1798  
CULLMAN AL 35056-

MOOR, WYATT R  
MOOR, SUSAN R  
2210 APPLEBY LANE  
MALABAR FL 32950-

NGUYEN, DAT  
1720 FLAMEVINE PL  
MALABAR FL 32950-4337

OPTEUM MORTGAGE ACCEPTANCE  
CORPORATION SERIES 2005-1  
301 W BAY ST  
C/O TIAA FSB D/B/A TIAA BANK  
F/K/A EVERBANK  
JACKSONVILLE FL 32202-5184

OWEN, THOMAS R  
NEWSTEAD-OWEN, TAMMY L  
2140 APPLEBY LN  
MALABAR FL 32950-3553

QUIROZ, SAUL  
QUIROZ, LUZ MARY  
4610 GENTRICE DR  
VALRICO FL 33694-

RIDDLE, SETH  
1757 CROGHAN DR  
MELBOURNE FL 32940-

RIDDLE, SETH A  
RIDDLE, MARIA  
1757 CROGHAN DR  
MELBOURNE FL 32940-6014

ROBINS, GEORGE C  
ROBINS, PATRICIA A  
2175 COREY RD  
MALABAR FL 32950-

ROBINS, GEORGE G  
ROBINS, PATRICIA A  
2175 COREY ROAD  
MALABAR FL 32950-

RUNGE, ROBERT E  
6 CLEVELAND AVE  
YORK SC 29745-1433

SHORTMAN, SUSAN  
2240 IVEY LN  
MALABAR FL 32950-3557

STAGLIANO, ROBERT  
2245 COREY RD  
MALABAR FL 32950-3526

THOMAS, MICHAEL JAMES  
THOMAS, TROYA A  
2110 IVEY LN  
MALABAR FL 32950-3504

VINTROUX, WILLIAM  
VINTROUX, WILLIAM L  
1011 NE SUNSWEPT NE RD  
PALM BAY FL 32905-4845

VINTROUX, WILLIAM L  
VINTROUX, BRONWYN  
5420 WILLOUGHBY DR  
MELBOURNE FL 32934-2819

WAINIKAINEN, PAUL  
WAINIKAINEN, DONNA  
2140 IVEY LANE  
MALABAR FL 32950-



TOWN OF MALABAR

FEB 12 2020

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jenkins500|Page1| | |  
JENKINS, Leonard| | | |  
ARMSTRONG, ROBERT G|ARMSTRONG, SANDRA L|1775 HALL RD||MALABAR FL 32950-  
BIAS, LARRY |BIAS, DELLIA|2130 APPLEBY LN||MALABAR FL 32950-3553  
CARTER, DENNIS W|CARTER, MELANIE|2260 IVEY LANE||MALABAR FL 32950-  
CONLON, WILLIAM P|HOWELL, MELVA C|2145 IVEY LN||MALABAR FL 32950-  
COWART, MACK||1820 E HWY 55||CLOVER SC 29710-  
GOD PLEASING||7512 DR PHILLIPS BLVD, # 50||ORLANDO FL 32819-5420  
HUFF, JAMES|HUFF, KAREN|2175 IVEY LN||MALABAR FL 32950-3508  
JENKINS, LEONARD F|JENKINS, RENEE L|2205 IVEY LANE||MALABAR FL 32950-  
JOHNSON, SANDRA G||4115 GRANT RD||GRANT FL 32949-8216  
LEWIT, LIONEL H|LEWIT, BETH TRUSTEES|2225 COREY RD||MALABAR FL 32950-  
MESSERSMITH, IRVING A|MESSERSMITH, MARGO|PO BOX 1798||CULLMAN AL 35056-  
MESSERSMITH, IRVING A|MESSERSMITH, MARGO|P BOX 1798||CULLMAN AL 35056-  
MOOR, WYATT R|MOOR, SUSAN R|2210 APPLEBY LANE||MALABAR FL 32950-  
NGUYEN, DAT||1720 FLAMEVINE PL||MALABAR FL 32950-4337  
OPTEUM MORTGAGE ACCEPTANCE |CORPORATION SERIES 2005-1||301 W BAY ST|C/O TIAA FSB  
D/B/A TIAA BANK |F/K/A EVERBANK|JACKSONVILLE FL 32202-5184  
OWEN, THOMAS R|NEWSTEAD-OWEN, TAMMY L|2140 APPLEBY LN||MALABAR FL 32950-3553  
QUIROZ, SAUL|QUIROZ, LUZ MARY|4610 GENTRICE DR||VALRICO FL 33594-  
RIDDLE, SETH||1757 CROGHAN DR||MELBOURNE FL 32940-  
RIDDLE, SETH A|RIDDLE, MARIA|1757 CROGHAN DR||MELBOURNE FL 32940-6014  
ROBINS, GEORGE C|ROBINS, PATRICIA A|2175 COREY RD||MALABAR FL 32950-  
ROBINS, GEORGE G|ROBINS, PATRICIA A|2175 COREY ROAD||MALABAR FL 32950-  
RUNGE, ROBERT E||6 CLEVELAND AVE||YORK SC 29745-1433  
SHORTMAN, SUSAN||2240 IVEY LN||MALABAR FL 32950-3557  
STAGLIANO, ROBERT||2245 COREY RD||MALABAR FL 32950-3526  
THOMAS, MICHAEL JAMES|THOMAS, TROYA A|2110 IVEY LN||MALABAR FL 32950-3504  
VINTROUX, WILLIAM|VINTROUX, WILLIAM L|1011 NE SUNSWEPT NE RD||PALM BAY FL 32905-4845  
VINTROUX, WILLIAM L|VINTROUX, BRONWYN|5420 WILLOUGHBY DR||MELBOURNE FL 32934-2819  
WAINIKAINEN, PAUL|WAINIKAINEN, DONNA|2140 IVEY LANE||MALABAR FL 32950-  
jenkins500|Page2| | |

RE: Town of Malabar- BOA Review (Jenkins)

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

Town Attorney

Sat 5/9/2020 7:15 AM

To: Denine Sherear <dsherear@townofmalabar.org>

Cc: Debby Franklin <townclerk@townofmalabar.org>

The BOA needs to make the following determinations. My guidance comments are in red. The ultimate decision as to whether the applicant has met the factors below is on the board based upon the evidence presented:

- a. Existence of special conditions or circumstances which are peculiar to the land, structure or building and are not applicable to other lands, structures or buildings in the same zoning district.  
This requires the Board to determine if there are any unique or unusual characteristics regarding or applicable to the applicant's property itself and not shared by other property in the area, and there exists an undue and unnecessary hardship created by the zoning regulations
- b. Conditions not created by applicant. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. If, however, the only allowable uses are economically impossible, then a variance would be allowed. If the applicant has created the need for a variance then the variance should be denied.
- c. Special privilege not conferred to applicant not entitled to others in same zoning. A variance cannot be granted if it confers upon the applicant any greater privilege or right that others cannot enjoy. The variance must be consistent or in harmony with, or not subversive or in derogation of the spirit, intent, purpose or general plan of zoning regulations.
- d. Hardship conditions exist. The literal interpretation of the provisions of the Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would cause unnecessary and undue hardship on the applicant. See a, b, and c. above. In addition, a self-imposed hardship is not a ground for a variance. The applicant needs to show that strict application of the zoning code will produce an unnecessary hardship. The hardship must be peculiar to the land, structure, or building involved and must not be applicable to other lands or structures in the same zoning district.
- e. Only the minimum variance granted. Variance granted shall be the minimum variance that will make possible the reasonable use of the land, building or structure. If a variance is granted, is it the minimum necessary to relieve the hardship? The variance granted cannot be based upon "this is what I want", rather it must be based upon this is "what is necessary" to enjoy the land as others similarly situated would enjoy.
- f. Not injurious to the public welfare or intent of Code. Variance granted shall be in harmony with the general intent and purpose of the comprehensive plan or Code and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare. Granting the variance must not adversely affect the zoning scheme as a whole. Granting of a variance should be avoided where the proposed variance is not shown to be in harmony with, and not "in derogation of the spirit, intent, purpose, or general plan of the zoning regulations. The Board might consider whether the variance, if granted, would somehow change the character of the neighborhood or put another way will the variance, if granted, be in harmony with the surrounding neighborhood?
- g. Conditions and safeguards may be imposed. Variance granted may have conditions imposed in conformity of Chapter 163 Florida Statutes, the Comprehensive Plan or the Land Development Code and shall be written into the final order before applicant signs and the document is recorded at the Brevard County Clerk of Courts. All development orders, including variances, must be consistent with the Comprehensive Plan policies, objectives and goals under Chapter 163.

- h. Time limit may be imposed. The Board may impose a time limit condition to construct the structure if the variance is granted and failure to do so or failure to have an extension granted, the variance could expire.
- i. No "use" variance permitted in specified instances. Under no circumstances shall the board of adjustment grant a variance to permit a use not generally or by special exception permitted in the zoning district involved or any use expressly or by implication prohibited in the zoning district involved. Existence of nonconforming use of neighboring lands, structures or buildings in the same zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance. This is not applicable here.

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

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**From:** Denine Sherear [mailto:[dsherear@townofmalabar.org](mailto:dsherear@townofmalabar.org)]  
**Sent:** Friday, May 8, 2020 2:08 PM  
**To:** Karl Bohne <[kbohne@fla-lawyers.com](mailto:kbohne@fla-lawyers.com)>  
**Cc:** Debby Franklin <[townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)>  
**Subject:** Town of Malabar- BOA Review (Jenkins)

Karl,  
Can you please provide a written memo concerning this BOA request.

*Thank you,  
Denine*

Denine Sherear, Building Department Manager  
Town of Malabar  
2725 Malabar Road, Malabar FL 32950  
office: 321-727-7764 x 14  
fax: 321-727-9997  
Office Hours: 8:30AM to 5:00PM

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**TOWN OF MALABAR  
MEMORANDUM**

TOWN OF MALABAR

MAR 24 2020

RECEIVED

Date: March 24, 2020  
To: Denine Sherear, Assistant Building Official  
From: Morris Smith, Town Engineer  
Ref: Front Yard Setback Variance – Leonard Jenkins Residence – 2205 Ivey Lane

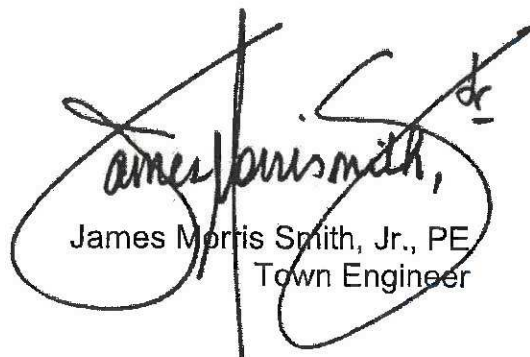
Memo: 20-CE-03  
Project No.  
Variance No.:

---

As per your March 13<sup>th</sup> request, I have reviewed the request for a Variance to the Front Yard Setback distance. I recommend that the Town of Malabar Board of Adjustment allow an 8 foot reduction (20%) in the front yard setback for this parcel. The front yard setback will be 32 feet, not 40 feet.

I have no objections to this request.

Very Truly Yours,



James Morris Smith, Jr., PE  
Town Engineer

Comments from Property Owner at 2145 Ivey  
and Responses from Town Staff

**RE: Malabar Fw: May 28th Variance request hearing 2205 Ivey Lane**

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

Town Attorney

Tue 5/19/2020 10:48 AM

To: Debby Franklin <townclerk@townofmalabar.org>

Cc: Denine Sherear <dsherear@townofmalabar.org>

My suggestion:

“Mr. \_\_\_\_\_, thank you for expressing your concerns. Under the criteria for the granting of a variance, the Board of Adjustments has to look at specific items. Aesthetics is not a specific criteria. We cannot consider the aesthetics of a proposed structure if it otherwise meets with the Town’s code. As you can imagine what one person thinks is aesthetically pleasing another may think is unpleasing and that can only lead to arbitrary decisions. So, although the code refers to a variance not being injurious to the public welfare, that relates to the use and not how it looks. The Board will need to determine if this use is consistent with the intent of the code, which staff has opined it is. He is asking for a variance which would allow a side entry garage (which is permitted by code) and an attached workshop (which is clearly an accessory use to the home). In order for the side entry garage to be constructed for 2 cars, there needs to be enough room for 2 cars to swing in right to enter the designated garage bay. Without moving the garage 8 feet into the front setback the side entry for 2 cars cannot be safely accomplished.

The applicant has the burden to meet the variance criteria. This will be presented before the Board of Adjustment at a public hearing and the Board will have the final say as to whether to grant the request. “

Karl W. Bohne, Jr.  
Schillinger & Coleman, P.A.  
1311 Bedford Drive  
Melbourne, FL 32940  
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**From:** Debby Franklin [mailto:townclerk@townofmalabar.org]

**Sent:** Monday, May 18, 2020 9:00 AM

**To:** kbohne@fla-lawyers.com

**Cc:** Denine Sherear <dsherear@townofmalabar.org>

**Subject:** Malabar Fw: May 28th Variance request hearing 2205 Ivey Lane

Karl, the variance request is for 8 feet into the front setback. This neighbor is concerned about the scale of the entire addition. Is there any suggested response we can offer to clarify?

Denine states there are others that are also concerned.

***Debby K. Franklin***

Certified Municipal Clerk

Town Clerk Treasurer

[townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)



Town of Malabar

2725 Malabar Road

Malabar, FL 32950

[www.TownofMalabar.com](http://www.TownofMalabar.com)

---

**From:** Denine Sherear <[dsherear@townofmalabar.org](mailto:dsherear@townofmalabar.org)>  
**Sent:** Thursday, May 14, 2020 4:32 PM  
**To:** Matt Stinnett <[TownManager@townofmalabar.org](mailto:TownManager@townofmalabar.org)>  
**Cc:** Debby Franklin <[townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)>  
**Subject:** Fw: May 28th Variance request hearing 2205 Ivey Lane

see below

*Thank you,  
Denine*

Denine Sherear, Building Department Manager  
Town of Malabar  
2725 Malabar Road, Malabar FL 32950  
office: 321-727-7764 x 14  
fax: 321-727-9997  
Office Hours: 8:30AM to 5:00PM

---

**From:** Denine Sherear <[dsherear@townofmalabar.org](mailto:dsherear@townofmalabar.org)>  
**Sent:** Thursday, May 14, 2020 4:24 PM  
**To:** Bill Conlon <[WConlon@Att.net](mailto:WConlon@Att.net)>  
**Subject:** Re: May 28th Variance request hearing 2205 Ivey Lane

↙ The front set back for the residence is 40 feet per code, he is asking for 8 feet into that front set back.

*Thank you,  
Denine*

Denine Sherear, Building Department Manager  
Town of Malabar  
2725 Malabar Road, Malabar FL 32950  
office: 321-727-7764 x 14  
fax: 321-727-9997  
Office Hours: 8:30AM to 5:00PM

---

**From:** Bill Conlon <WConlon@Att.net>  
**Sent:** Thursday, May 14, 2020 4:19 PM  
**To:** Denine Sherear <dsherear@townofmalabar.org>  
**Subject:** RE: May 28th Variance request hearing 2205 Ivey Lane

↙ From looking at drawing received, new building is going to protrude roughly 20 plus feet [ approx ] out from front on existing home, which includes the 8' variance. I am using the 10' measurement between buildings for scale. Using same I get 30 x 65 [ approx ] for building. I don't see why this has to create a variance, the building can easily be moved back, it will already create a out of balance optics for this street, no need to stick out another 8'. It is of major proportion and lacks less than 100 sq ft from exceeding the living area of existing home. [ base area 2015 ] [ 30x65= 1950 ]. One heck of a garage.

Thank you and you keep safe,

Bill Conlon

---

**From:** Denine Sherear [mailto:dsherear@townofmalabar.org]  
**Sent:** Thursday, May 14, 2020 2:51 PM  
**To:** Bill Conlon  
**Subject:** Re: May 28th Variance request hearing 2205 Ivey Lane

↙ Good Afternoon Mr. Conlon,  
The variance requested that was mailed to you is a neighbor going through the variance request process per our Town code. The request is to add a garage to match the house which will encroach 8 (eight) feet into the front property set back (towards Ivey Lane) I would be glad to include any comments or concerns you have to the Board of Adjustment.

Thank you and be safe!

*Thank you,  
Denine*

Denine Sherear, Building Department Manager  
Town of Malabar  
2725 Malabar Road, Malabar FL 32950  
office: 321-727-7764 x 14  
fax: 321-727-9997  
Office Hours: 8:30AM to 5:00PM

---

**From:** Bill Conlon <WConlon@Att.net>  
**Sent:** Thursday, May 14, 2020 10:59 AM  
**To:** Denine Sherear <dsherear@townofmalabar.org>  
**Subject:** FW: May 28th Variance request hearing 2205 Ivey Lane

Town of Malabar  
Denine Sherear



**Fw: May 28th Variance request hearing 2205 Ivey Lane**

Denine Sherear <dsherear@townofmalabar.org>

Thu 5/14/2020 4:32 PM

To: Matt Stinnett <TownManager@townofmalabar.org>

Cc: Debby Franklin <townclerk@townofmalabar.org>

see below

*Thank you,  
Denine*

Denine Sherear, Building Department Manager

Town of Malabar

2725 Malabar Road, Malabar FL 32950

office: 321-727-7764 x 14

fax: 321-727-9997

Office Hours: 8:30AM to 5:00PM

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Subject: Re: May 28th Variance request hearing 2205 Ivey Lane

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*Thank you,  
Denine*

Denine Sherear, Building Department Manager

Town of Malabar

2725 Malabar Road, Malabar FL 32950

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Bill Conlon

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Thank you and be safe!

*Thank you,  
Denine*

Denine Sherear, Building Department Manager  
Town of Malabar  
2725 Malabar Road, Malabar FL 32950  
office: 321-727-7764 x 14  
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Office Hours: 8:30AM to 5:00PM

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**From:** Bill Conlon <WConlon@Att.net>  
**Sent:** Thursday, May 14, 2020 10:59 AM  
**To:** Denine Sherear <dsherear@townofmalabar.org>  
**Subject:** FW: May 28th Variance request hearing 2205 Ivey Lane

Town of Malabar  
Denine Sherear  
Building Dept Manger

Good morning Denine –

Due to the inaccessibility to view building prints amid Corona virus lock down, I would suggest this hearing be delayed. The site plan [?] received in mail is lacking measurements to fully comprehend impact of new building protruding out in front. A updated site plan with measurements would suffice. If neighbors/concerned property owners had a more detailed site plan on variance request, they could make a objective decision, I would think.

I visited Town Hall today in hope of viewing building prints with measurements but locked down,  
no access. told to contact you. Not the best of times

Thank you,

Bill Conlon  
2145 Ivey Lane



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[www.avast.com](http://www.avast.com)

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Email to Property Owner related to telephone call expressing concerns about

- commercial operation in residential zoning
  - proximity to side property line
  - potential line of sight issues

Caller represents the owner of vacant Parcel533 to the south

## Malabar request for info

Debby Franklin <townclerk@townofmalabar.org>

Mon 5/18/2020 8:46 AM

To: cullmanhomes@aol.com <cullmanhomes@aol.com>

Cc: Denine Sherear <dsherear@townofmalabar.org>

📎 2 attachments (1 MB)

RR65 Dist Prov.pdf; 2205 Ivey Ln.pdf;

Hello Brian,

Your concerns regarding the variance request were the potential for commercial development, the side setback distance and the potential of line of sight issues for the eight foot encroachment.

Attached please find an aerial of the existing house followed by a sketch showing his proposed new addition would encroach into the 40' setback 7' 11". Then I attached a larger scale aerial and the survey from his submittal showing 87' between his property line and the edge of his house. The proposed addition is shown as 28' wide, leaving 59' between the new building wall and the property line.

I have also attached the language from our code and the table that provides the regulations on what is permitted in each zoning classification.

The aerials should show there would be no line of sight issue with the eight foot encroachment.

Once the package is sent out to the Board members, I will forward a copy to you.

***Debby K. Franklin***

Certified Municipal Clerk

Town Clerk Treasurer

townclerk@townofmalabar.org

321-727-7764



Town of Malabar

2725 Malabar Road

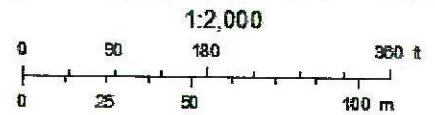
Malabar, FL 32950

[www.TownofMalabar.com](http://www.TownofMalabar.com)

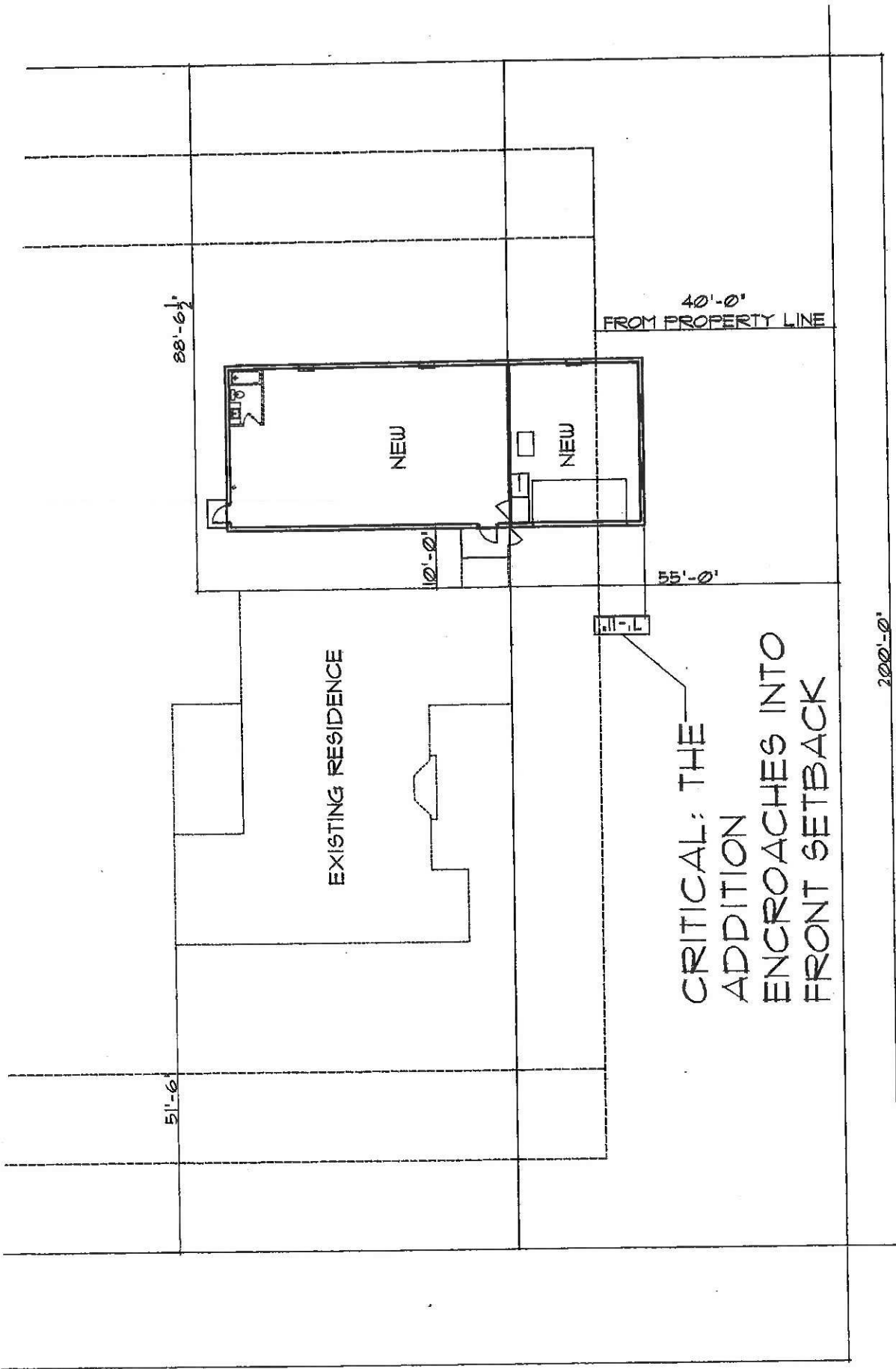
# Brevard County Property Appraiser



May 15, 2020



2846350



IVEY LANE

200'-0"

CRITICAL: THE  
ADDITION  
ENCROACHES INTO  
FRONT SETBACK

40'-0"  
FROM PROPERTY LINE

55'-0"

10'-0"

88'-6 1/2"

51'-0"

EXISTING RESIDENCE

NEW

NEW



01/19/2019

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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-

DISTRICT PROVISIONS

§ 1-3.2

TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-66	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/ILC	IND	INS	CP
<b>RESIDENTIAL USES</b>														
Duplex					P	P					P			
Mobile Homes							P							
Multiple Family Dwelling					P	P					P			
Single Family Dwellings	P	P	P	P	P	P	P				P			
<b>COMMUNITY FACILITIES</b>														
Administrative Services (Public and Not-for-Profit)								P	P	P	P		P	
Child Care Facilities								C			C		C	
Churches, Synagogues and Other Places of Worship								P, A <sup>1</sup>	P	C	C		P	
Clubs and Lodges (Not-for-Profit)									P	P				
Cultural or Civic Activities								P	P	P	P		P	
Educational Institutions								C, A <sup>1</sup>					C	
Golf Course Facilities	C													
Hospital and other Licensed Facilities									C				C	
Nursing Homes and Related Health Care Facilities						C	C	C	C				C	
Protective Services						C	C	C	C	C	C	C	C	
Public Parks and Recreation	C	C	C	C	C	C	C	C	C	C	C	C	C	
Public and Private Utilities	C	C	C	C	C	C	C	C	C	C	C	C	C	
<b>COMMUNITY RESIDENTIAL HOME</b>														
Level 1 (1 to 6 residents/beds)	C <sup>3</sup>					C	C							C
Level 2 (7 to 14 residents/beds)						C	C							
<b>ASSISTED CARE COMMUNITIES</b>														
I Assisted Living Facility														
Level 1 (1 to 5 residents/beds)		C	C	C	C <sup>4</sup>	C <sup>4</sup>	C <sup>4</sup>					C		
Level 2 (6 to 15 residents/ beds)					C <sup>4</sup>	C <sup>4</sup>	C <sup>4</sup>							
Level 3 (16 or more residents/ beds)					C <sup>4</sup>	C <sup>4</sup>	C <sup>4</sup>							
II Adult Family-Care Homes (1 to 5 residents/beds)		C	C	C	C	C	C						C	
III Adult Day Care Centers								C					C	
<b>AGRICULTURAL ACTIVITIES</b>														

TABLE 1-3.2. LAND USE BY DISTRICTS

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

DISTRICT PROVISIONS

§ 1-3.2

TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
Manufacturing Service Establishments														
Vehicle and Other Mechanical Repair and Services												P		
Warehouse, Storage and Distribution Activities										C*		P		
<b>WATER DEVELOPMENT</b>												P		
<b>NONCOMMERCIAL ACTIVITIES</b>														
Noncommercial piers, boat slips, and docks														C

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

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

1 Any Bed and Breakfast which is proposed to have more than five (5) living quarters shall only be approved as a conditional use in accordance with Article VI of the Land Development Regulations.

2 Any Arcade Amusement Center and Electronic Gaming Establishment as defined herein shall only be approved as a conditional use in accordance with Article VI of the Malabar Land Development Code.

3 Allowed in RR-65, (1 to 2 residents/beds) as defined in FS Title XXX Chapters 419 & 429

4 ALF Factor of "3" (see section 1-2.6.B.13.B, Part D) only applies to RM-4 & RM-6 for ALF's (Ord. No. 94-4, § 3, 4-3-95; Ord. No. 97-3, § 2, 3-17-97; Ord. No. 05-01, § 1, 3-7-05; Ord. No. 06-19, § 1, 1-11-07; Ord. No. 12-48, § 2, 1-23-12; Ord. No. 14-01, § 3, 2-3-14; Ord. No. 2016-03, § 1, 2(Exh. A), 10-3-16)

# TOWN OF MALABAR

## AGENDA ITEM REPORT 5.b.

Meeting Date: May 28, 2020

Prepared By: Debby K. Franklin, C.M.C., Town Clerk / Treasurer

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**SUBJECT: 5.b. Case # BOA 02-052020 Kemmler**

**Applicant Requests a Variance to Malabar Land Development Code, Article III, Table 1-3.3(E) Setback Requirement in Residential Limited Commercial (R/LC) Zoning on Malabar Road and Article V, Encroachments as they relate to his legal non-conforming structure that pre-existed the Land Development Code, to construct a secondary exit from upstairs.**

---

### BACKGROUND/HISTORY:

Mr. Kemmler submitted his application for a variance on 3/24/2020. His home was built in 1920. During the multiple hurricanes in 2004 the front balcony and stairs was lost. In 2006, Malabar adopted an ordinance creating regulations for Bed and Breakfast (B&B) facilities, specifically with this home in mind and at his request. They would only be allowed in R/LC zoning with a maximum of five rooms available and in compliance with all other jurisdictional approvals.

Mr. Kemmler is now interested in pursuing the B&B use and has learned that the Florida Fire Code requires a secondary exit from the upper floor. Mr. Kemmler desires to reconstruct the exit from the second floor in compliance with the current ADA and Fire Code which would require a six-foot (6') encroachment into the required yard area and would further increase the non-compliance of the front setback along Malabar Road.

The Town Attorney has submitted an opinion that Mr. Kemmler is entitled to request this variance as this structure was built decades before the Malabar setback regulations were adopted.

In support of the application is the evidence that the Malabar Council adopted the Ordinance permitting B&B facilities with this home in mind, knowing that compliance with Fire Code and ADA regulations would also be required.

Malabar Staff recommends this Variance request be approved.

This variance was legally advertised on May 7 and 21, 2020 and notices were mailed to all owners within 500 feet.

### ATTACHMENTS:

- Application packet from Hans Kemmler
- Town's Article III, Table 1-3.3 (E); Article V and Article XI
- Legal Ad and Notices mailed to properties within 500 feet and map
- Email Memo from Attorney Bohne

### ACTION OPTIONS:

Approve Variance Request to permit a six-foot (6') encroachment into the required yard area to permit a balcony exit and staircase from the second floor.

Case # BOA 02-052020 Kemmler

TOWN OF MALABAR

MAR 24 2020

RECEIVED

VARIANCE APPLICATION

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

Name of Applicant(s) Haus Kemmler Tel: 321-223-6222

Mailing Address: 2783 Malabar Rd \* Built in 1920

Legal description of property covered by application:

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

Other Legal Parcel ID 28-38-31-54-C-20

Property Address: 2783 Malabar Rd, Malabar FL 32950

Present zoning classification RLC

Intended use for property Residential

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

My house was built and I purchased it before the current code for setback existed. I need to build a deck on the second story in the front to provide ingress/egress. This deck required a six foot deck protruding from the front to allow a 4 foot wide staircase to the ground to the west. Ingress/egress required for fire safety purposes.

Required attachments:

Hearing fee of \$800.00 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). N/A

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.

AAC Kem 3/23/2020  
Applicant(s) Date



# Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

## PROPERTY DETAILS

Account 2851095  
 Owners Kemmler, Hansel C; Kemmler, Barbara B  
 Mailing Address 2785 Malabar Rd Malabar FL 32950  
 Site Address 2785 Malabar Rd Malabar FL 32950  
 Parcel ID 28-38-31-54-C-20  
 Property Use 0110 - Single Family Residence  
 Exemptions HEX1 - Homestead First  
 HEX2 - Homestead Additional  
 Taxing District 34Z0 - Malabar  
 Total Acres 0.41  
 Subdivision Snedekers Subd Of Malabar  
 Site Code 0381 - Malabar Rd (Sr514)  
 Plat Book/Page 0001/0097  
 Land Description Snedekers Subd Of Malabar Lots 20,21 Blk C

**TOWN OF MALABAR**

MAR 23 2020

RECEIVED



## VALUE SUMMARY

Category	2019	2018	2017
Market Value	\$184,610	\$186,020	\$167,570
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$132,400	\$129,940	\$127,270
Assessed Value School	\$132,400	\$129,940	\$127,270
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	\$82,400	\$79,940	\$77,270
Taxable Value School	\$107,400	\$104,940	\$102,270

## SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
06/23/2004	\$215,000	WD	Improved	5325/6881
02/01/1974	\$25,000	--	--	1417/0310

## BUILDINGS

### PROPERTY DATA CARD #1

**Building Use:** 0110 - Single Family Residence

Materials	Details	
Exterior Wall: Vinyl/Aluminum	Year Built	1920
Frame: Wood Frame	Story Height	8
Roof: Sheet Metal	Floors	2
Roof Structure: Hip/Gable	Residential Units	1
	Commercial Units	0

Sub-Areas	Area	Extra Features	Value
Base Area (1st)	1,408	Pool Deck	440
Base Area (2nd)	1,408	Wood Deck	339
Open Porch	88	Patio - Concrete	64
Utility Room	154	Pool - Residential	1
Total Base Area	2,816	Fireplace	1
Total Sub Area	3,058	Screen Enclosure	528







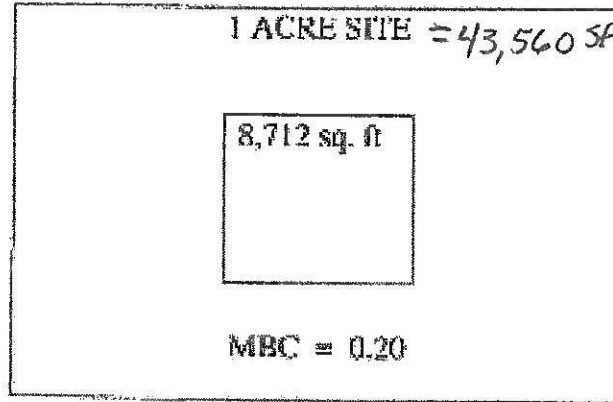
Art III

Sec 1-3.3E  
Table E

§ 1-3.3

MALABAR LAND DEVELOPMENT CODE

FIGURE 1-3.3(D). MAXIMUM BUILDING COVERAGE ILLUSTRATION



Maximum building coverage for a MBC of 0.20 = 8,712 sq. ft.

$$\text{MBC} = \frac{\text{Total Building Coverage}}{\text{Total Lot Area}}$$

E. *Building Setbacks.* Table 1-3.3(A) provides building setbacks for conventional single family lots as well as for multiple family residential and nonresidential sites. In addition to these setbacks the following building setbacks from thoroughfares shall be enforced. The required minimum setback from the thoroughfare shall be measured from the centerline of the right-of-way. The thoroughfare system is illustrated on the Future Traffic Circulation System: 2010 Map located within the traffic circulation element of the Town of Malabar comprehensive plan. The below cited table identifies rights-of-way within the Town and stipulates minimum required building setbacks from these roadways.

TABLE 1-3.3(E). ADDITIONAL BUILDING SETBACKS FROM STREETS AND ROADS

<i>Transportation Facility</i>	<i>Building Setback (feet)</i>
Arterial Roadways (150 feet R/W)	100
US 1 Highway	
Malabar Road (SR 514)	
Babcock Street (SR 507)	
Major Collector Streets (100 feet R/W)	85
Corey Road	
Weber Road	
Marie Street	
Briar Creek	
Jordan Blvd.	
Local Streets (50—60 feet R/W)	65

Article V

GENERAL PROVISIONS

6 FT

**Section 1-5.1. Height exceptions.**

The below cited appurtenances or mechanical devices typically required to be placed above roof level and not intended for human occupancy may exceed height limitations cited within this Code upon approval by the Town Council. The Town Council shall first consider the recommendation of the Planning and Zoning Board. A staff recommendation shall be provided by the Building Official and/or the Town Engineer. The appurtenances or mechanical devices shall include:

- Chimneys.
- Water Towers.
- Ventilators.
- Radio and Television Antennas.
- Other similar duly approved appurtenances or mechanical devices.

In no case shall any permitted heights be in conflict with the height regulations established for the Valkaria Airport by Brevard County and/or the Federal Aviation Administration. An elevator is hereby declared intended for human occupancy and shall not be considered for an exception to the height regulations.

(Ord. No. 08-04, § 1, 4-7-08)

**Section 1-5.2. Encroachments into required yards.**

Every part of a required yard shall be open and unobstructed by any structure or portion of a structure from thirty (30) inches above the general ground level of the graded lot upward, except as hereinafter provided or as otherwise permitted in this chapter [Code]:

1. Fixed or movable awnings may project not over eighteen (18) inches into a required yard.
2. Chimneys, fireplace or pilaster may project not over three (3) feet into a required yard.
3. Fire escapes, stairways and balconies which are unroofed and not enclosed may project not over five (5) feet into a required rear yard, or not over three and one-half (3½) feet into a required side yard in any residential district.
4. Overhangs, hoods, canopies or marquees may project not over three (3) feet into a required yard. Notwithstanding, residential roof overhangs may extend four (4) feet into a required yard.
5. Fences, walls and hedges shall be permitted in required yards subject to the provisions established in this chapter [Code].

B. *Continuance of Noncompliance.* The lawful use of a noncomplying building or structure may be continued subject to provisions of this code.

C. *Rules for Interpretation.* Nothing in this code shall be interpreted as authorization for, or approval of, continuation of any illegal use of a building, structure, premises of [or] land, in violation of any ordinance in effect at the time of the passage of this ordinance. The casual, ~~intermittent~~, temporary, or illegal use of land, building or structure shall not be sufficient to establish the existence of a nonconforming use. Any building or structure for which a lawful building permit was issued prior to the enactment of this ordinance, and construction of which is in conformity with approved site plans, if applicable, and building plans shall not be affected by this ordinance if the planned building or structure is built in full compliance with this code as it existed at the time of the issuance of the building permit. However, if such building or structure does not conform to the provisions of this code which cause such planned building, structure or use to be nonconforming or noncomplying, then it shall be nonconforming or noncomplying, or both, as the case may be, by applying this ordinance to the building, structure or use.

**Section 1-11.4. Nonconforming lots of record.**

Where a lot has an area and/or frontage less than the required minimum for the district in which it is located and was recorded in the Town on the date such lot was zoned and rezoned to its current district classification said lot may be used for any use permitted in the district in which it is located, so long as the remaining provisions are complied with; provided, however, that in any residential district, the only use permitted on such nonconforming lot shall be one single-family dwelling. In all cases, any other zoning variances needed must be obtained from the Board of Adjustment, which may grant only the minimum variance necessary to the reasonable utilization of such lots, excepting lots platted prior to 7/1/76 shall be governed by Section 1-5.3 of this Code.

**Section 1-11.5. Increase in nonconformities prohibited.**

A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity and [this] shall include without being limited to:

- A. Extension of a nonconforming use to any other building or other structure. Extension of a nonconforming use to any land area other than the specific land area that was actually and directly occupied by such use on the effective date of this ordinance (or on the effective date [of] subsequent amendment thereto that causes such use to become nonconforming).
- B. Extension of a nonconforming use within a building or other structure to any portion of floor area on the same or another floor that was not actually and directly occupied by such use on the effective date of this ordinance (or on the effective date of a subsequent amendment thereto that causes such use to become nonconforming). Notwithstanding, an existing nonconforming use may be extended within its existing structure if the extension does not require additional new floor area and such exten-

Town of Malabar, 2725 Malabar Road, Malabar, FL 32950  
321.727.7764 (Office) 321.727.9997 (Fax) www.townofmalabar.org

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

May 5, 2020

From: Debby Franklin, Town Clerk, Town of Malabar Account #126287  
[townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)

Please place the following legal ad two times: **Thursday, May 7, 2020 and Thursday, May 21, 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. This ad DOES qualify for the discount.

Thank you,

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

**TOWN OF MALABAR  
NOTICE OF  
NOTICE OF PUBLIC HEARING**

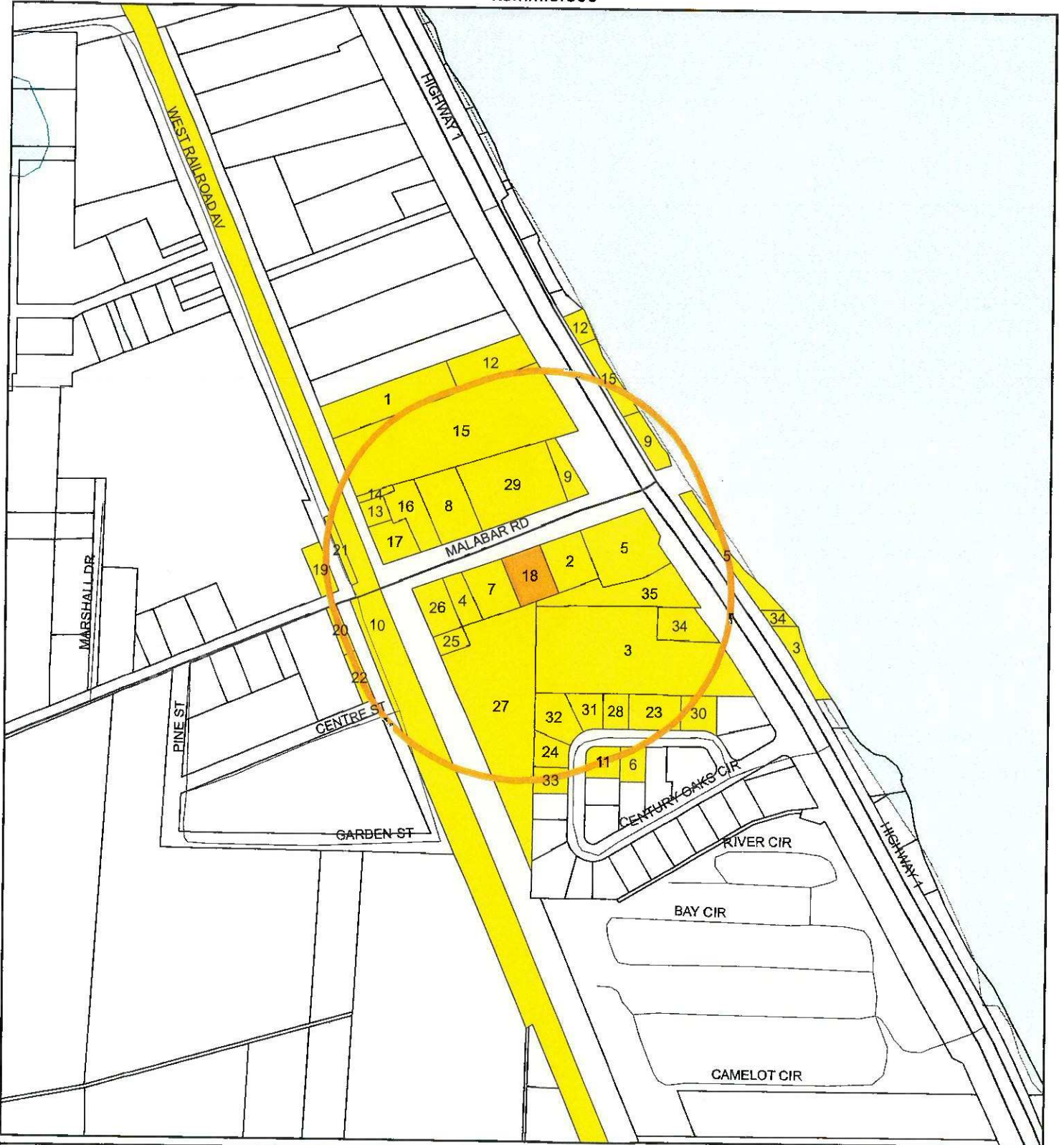
The Malabar Board of Adjustment will hear one Variance Request at a Public Hearing to be held on Thursday, May 28, 2020 at 6:00 p.m., at Malabar Town Hall located at 2725 Malabar Road, Malabar, Florida. Applicant Hans Kemmler is requesting a variance to Malabar Land Development Code Article III, Table 1-3.3(E) Front Setback of 100 feet in Residential Limited Commercial Zoning (RLC) and/or a variance to Article V, Section 1-5.2, regarding encroachments into required yard area to build a balcony and secondary exit from the second floor facing Malabar Road. Location is 2785 Malabar Road, Malabar, Florida. Citizens are encouraged to attend and offer comment.

Ad#181826 5/07, 5/21/20  
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NOTICE OF PUBLIC HEARING**  
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# RADIUS MAP

KEMMLER, HANSEL C

kemmler500







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: 3/23/2020

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

Town of Malabar, 2725 Malabar Road, Malabar, FL 32950  
321.727.7764 (Office) 321.727.9997 (Fax) [www.townofmalabar.org](http://www.townofmalabar.org)

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**DEAR PROPERTY OWNER:  
YOU ARE RECEIVING THIS NOTICE  
BECAUSE YOU ARE LISTED AS A  
PROPERTY OWNER WITHIN 500' OF THE  
PROPOSED VARIANCE REQUEST. YOU  
ARE INVITED TO ATTEND AND SPEAK AT  
THE PUBLIC HEARING ON THE REQUEST  
ON THURSDAY MAY 28, 2020 AT 6:00PM.**



26

TOWN OF MALABAR

KEMMLER, Hans

MAR 23 2020  
RECEIVED

BROWN, LOUISE E TRUSTEE  
PO BOX 500151  
MALABAR FL 32950-0151

CARMINE LLC  
PO BOX 600835  
MALABAR FL 32950-0835

CHAPMAN, DEBRA A  
CHAPMAN, CARL H  
1410 S US HIGHWAY 1  
MALABAR FL 32950-4425

COCHRANE, PAULINE  
COCHRANE, ROY  
PO BOX 500833  
MALABAR FL 32950-0833

DEVVRAT CORPORATION INC  
1360 HIGHWAY 1  
MALABAR FL 32950-

DOUGLAS, BRUCE S  
2917 CENTURY OAK  
MALABAR FL 32950-

EASTON, RICHARD  
8514 DAMASCUS DR  
PALM BEACH GARDENS FL 33418-6014

EASTON, RICHARD H  
8514 DAMASCUS DR  
PALM BEACH GARDENS FL 33418-6014

EDGER PROPERTIES LLC  
PO BOX 950847  
LAKE MARY FL 32795-0847

FLORIDA EAST COAST RAILWAY LLC  
7150 PHILIPS HWY  
JACKSONVILLE FL 32256-6802

HEIN, STARR NADINE  
4525 BERRY RD  
GRANT FL 32949-2412

KAMDEN HOMES LLC  
1280 S US HIGHWAY 1 BLVD  
MALABAR FL 32950-6911

KELLWILL LLC  
1300 S US HIGHWAY 1  
MALABAR FL 32950-4413

KEMMLER, HANSEL C  
KEMMLER, BARBARA B  
2785 MALABAR RD  
MALABAR FL 32950-

LAWRENCE, FITZGERALD  
LAWRENCE, MARIA  
2728 MALABAR RD  
MALABAR FL 32950-4411

MALABAR, TOWN OF  
2725 MALABAR RD  
MALABAR FL 32950-

OLSON, ALLAN C  
OLSON, DINAH MARIE  
2912 CENTURY OAKS CIRCLE  
MALABAR FL 32950-

PAXTON, DUANE R  
2932 CENTURY OAK CIR  
MALABAR FL 32950-

PROCTOR, DOUGLAS K  
2460 MALABAR ROAD  
MALABAR FL 32950-

R & L VENDING LLC  
440 E 19TH ST  
PATERSON NJ 07524-

RAY, DEANNE HUGGINS  
PO BOX 500175  
MALABAR FL 32950-0175

RILEY, RENEE S  
RILEY, GARRICK B  
PO BOX 7657  
DELRAY BCH FL 33482-

SCOTT, WILLIAM R  
2924 CENTURY OAKS CIR  
MALABAR FL 32950-

TOOD, BRITNEY BETH  
2928 CENTURY OAKS CIR  
MALABAR FL 32950-

WOOD, MIREYA  
2936 CENTURY OAKS CIR  
MALABAR FL 32950-4401

HY PROPERTIES LLC  
US HIGHWAY 1  
FL 32949-2217



## Variance Request/Nonconformity Kemmler

MALABAR TOWN ATTORNEY

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

Tue 5/5/2020 6:01 PM

To: Debby Franklin <townclerk@townofmalabar.org>

On the Bed and Breakfast variance you had indicated to me the current structure as it exists today without a variance preceded our code, especially with respect to set backs and required yards. I would agree that as it exists today the existing structure, without any modifications would be "grandfathered" and allowed to be used as a bed and breakfast. However, due to certain life safety code requirements the applicant will need to provide a second story ingress/egress (you told me there once was a door on the second floor now boarded up due to hurricane damage). He would also need to install a staircase for the second story ingress/egress which would now encroach into the required front yard and set back.

The issue therefore is whether our code would allow for the expansion if the non-conformity due to the further encroachment into the required front yard and set back.

### Section 1-11.1. - Definitions.

A Noncomplying Building or Structure is defined as any building or other structure which is a lawful use (permitted or nonconforming) but which does not comply with all applicable provisions of this code, including size and dimension regulations, off-street parking requirements, landscape requirements, nuisance abatement standards, or height requirements either on the effective date of this ordinance or as a result of any subsequent amendment. Herein such noncomplying building or structure may be referred to as a noncompliance. Clearly this structure falls within this definition.

### Section 1-11.5. - Increase in nonconformities prohibited.

A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity and [this] shall include without being limited to:

F. No structural alterations shall be made to any building or structure occupied by a nonconforming use except as permitted by this Section.

Clearly the addition of both a second story balcony and staircase would be a structural alteration. The issue is whether there is a provision of the nonconformity code that would allow the additional balcony and staircase.

### Section 1-11.7. - Structural alterations to nonconformities or noncompliances.

Where a lawful structure or use exists at the effective date of adoption or amendment of this Code, and it could not be built or used under the terms of this Code by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other site development standards or requirements concerning the structure or use, it may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. Alteration, Extension, Enlargement or Expansion of Nonconforming Use or Noncomplying Building or Structure. No such alteration, extension, enlargement or expansion of a nonconforming use or noncomplying building or structure shall be permitted in a way which increases its nonconformance or noncompliance with present site development and use standards of the zoning district in which it is located, but any such structure or use or portion thereof may be altered to decrease its nonconformance or noncompliance with present site development and use standards of the zoning district in which it is located. **Nothing in this subsection shall prohibit the Building Official from ordering the compliance with all other provisions of this code and applicable building construction and safety related codes.**

The bolded language would appear to require the applicant to comply with current safety codes applicable here and this would seem to provide justification for the allowance for the installation of the balcony and stairs. The question then becomes is whether an expansion of a nonconformity can be the subject matter of a variance.

In my opinion the provisions of Article XII of the Land Development Code are written broadly enough to apply to a variance under these specific facts. The BOA will need to make the determination if the variance criteria have been met.

Karl W. Bohne, Jr.  
Schillinger & Coleman, P.A.  
1311 Bedford Drive  
Melbourne, FL 32940  
321-255-3737 Telephone  
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.

IRS CIRCULAR 230 NOTICE: Pursuant to Treasury Department Circular 230, this is to advise you unless we otherwise expressly state in writing, email communications, including all attachments, from this firm are not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties. This firm does not give legal advice as to federal or state tax issues.