



Board of Adjustments Public Hearing

Thursday, August 27, 2020 at 6:00 pm

1. Call to Order
2. ROLL CALL
3. NOMINATE CHAIR AND VICE-CHAIR
4. CONSENT AGENDA

- a. Approval of Minutes

Board of Adjustments Meeting 05/28/2020

Exhibit: Agenda Report Number 4a

Attachments:

- Agenda Report Number 4a (Agenda_Report_Number_4a.pdf)

5. VARIANCE HEARING

- a. Case # BOA 03-082020 LaFontaine

Applicant Requests a 15-foot Variance to rear setback of 20-feet required in the Malabar Land Development Code, Article III Table 1-3.3(A) Size and Dimension Regulations in RS-10 Zoning to construct an Accessory Structure.

Applicant: Donald LaFontaine

Location: 1040 Steeplechase Circle

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)

6. NEW BUSINESS/STAFF REPORTS/MEMBERS REPORTS

7. ADJOURNMENT

NOTICE OF RIGHT OF APPEAL OF BOARD OF ADJUSTMENT DECISIONS

In accordance with the Town of Malabar Code Chapter 2 Article VIII Div. 4 Section 2-240, 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 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.

| Agenda published on 08/24/2020 at 8:14 PM

TOWN OF MALABAR
BOARD OF ADJUSTMENT

AGENDA ITEM REPORT

AGENDA ITEM NO: 4.a.
Meeting Date: August 27, 2020

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

SUBJECT: Approval of minutes

BACKGROUND/HISTORY:

The minutes included for approval are from the May 28, 2020 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 28, 2020

TOWN OF MALABAR
BOARD OF ADJUSTMENT
PUBLIC HEARING
TUESDAY, MAY 28, 2020 MEETING MINUTES
6:00 P.M.

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

1. **CALL TO ORDER & PRAYER AND PLEDGE**
2. **MAYOR PATRICK T. REILLY TO SWEAR IN NEW AND RETURNING MEMBERS**

3. **ROLL CALL**

Members:

David Sowards, Chair
Donna Hanna, Vice-Chair
Chuck Frazee
Joanne Korn
Katie Abare
Charles "Bud" Ryan, Alt., excused
Christian Sabatino, Alt.

Staff:

Karl Bohne, Town Attorney, excused
Denine Sherear, Board Secretary
Debby Franklin, Recording Clerk
Richard Kohler, Deputy Clerk

Mayor Reilly administered Oath to BOA Chair David Sowards, reappointed in October 2019 and new member Christian Sabatino, appointed on May 4, 2020. New BOA Alternate Member took his seat.

Chair announced that there was a quorum. Chair welcomed new members, Katie Abare and Christian Sabatino. He explained that the Board had two variance requests before them for consideration and that staff had prepared

4. **CONSENT AGENDA**

- 4.a. **Approval of Minutes - Board of Adjustment Meeting 5/7/2019**
Exhibit: Agenda Report 4.a.

Chair requested a motion by a member who had attended the meeting on 5/7/2019.

MOTION: BOA Member Hanna / BOA Member Frazee to approve the minutes of 5/07/19 as submitted. No discussion. Chair called for the vote. Vote: All Ayes.

Chair asked for those presenting their cases and any others offering to give testimony to stand and raise their right hand and be sworn in. The applicants stood and were sworn in.

5. **VARIANCE HEARINGS – 2**

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.

Applicant: Leonard Jenkins

Location: 2205 Ivey Lane, Malabar, Florida

Exhibit: Agenda Report No 5.a.

Recommendation: Action

Chair asked the applicant to the podium to present.

Mr. Leonard Jenkins, 2205 Ivey Lane, Malabar, made his request for a variance for a new detached accessory structure. Asking for an 8-foot variance to the 40-foot front setback. BOA Vice-Chair Donna Hanna asked if the building could be moved back and what of the existing outbuilding. Applicant explained the desire to maintain their current unobstructed view from the backyard required the encroachment and the outbuilding would be moved further to the south. The new garage / workshop is planned to blend with the existing home while using the existing driveway. BOA Member Chuck Frazee explained he had been by the site this date and talked to the neighbor across the street and they were in support of the request. He was able to visualize what the applicant is attempting. He sees this as the best solution with less hardcover and restated the neighbor was very complementary. Applicant stated his neighbor to the north, Mrs. Huff, is here tonight in support of this request. BOA Member Joanne Korn asked if he could not add a second driveway with a front entrance or add a curved driveway extension to reach the garage without the encroachment.

BOA Member Christian Sabatino asked the location of the septic. Applicant stated that the existing septic was on the other side of the house. A separate septic would be required for the bathroom in the workshop and a shop sink in the garage. It is planned for just behind the new building and would be level with surrounding yard.

Chair asked if staff had reviewed and did it meet criteria. Clerk stated staff comments were in packet.

Chair declared the Public Hearing open. Chair asked for any members of the public to speak to come forward and give their name and address.

Mayor Patrick T. Reilly, 1985 Howell Lane explained using the overhead what the applicant was requesting and in order to use the existing driveway and allow side entry the encroachment was necessary.

No other public. Chair closed Public Hearing and brought it back to the Board. Chair then asked if any members needed to make disclosure.

BOA Member Chuck Frazee made disclosure that he was there today spoke with the neighbor across the street from the applicant. Neighbor had just recently poured a slab in her front yard and intends to put a building.

BOA Member Katie Abare disclosed she drove by the applicant's property yesterday. Chair asked for a motion to approve, approve with conditions or reject the request.

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

BOA Member Donna Hanna Nay

BOA Member Chuck Frazee Yes

BOA Member Joanne Korn Nay

BOA Member Katie Abare Yes

BOA Member David Sowards Yes

Motion carried 3 to 2.

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 (RLC) 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 5.b.

Chair asked the applicant to the podium to present.

Mr. Kemmler, 2785 Malabar Road, made his request. He is requesting a variance to build a deck and stairs on the front of his house.

His home has only one entrance. It used to have secondary exit from the upper floor on the east side, but it was lost during a past hurricane. Since that time, he has replaced his septic and there is now a new septic system where those stairs landed. Showing on the overhead, the deck would go most of the width of the house and have stairs that lead to the ground.

BOA Member Joanne Korn asked if he was doing this for use as a Bed and Breakfast (B&B). Applicant replied that years ago they were the proponents in getting Malabar Council to adopt the Bed and Breakfast regulations in the Malabar Code. At that time, they thought water was coming down US1. They are no longer planning the B&B because of the extreme expense of the water suppression system that would be required. The only alternative would be to add a second exit from the second floor and that also would not be financially feasible. Applicant restated that the request is for their personal use and life safety exit for their family use. BOA Vice-Chair Hanna stated that they had to build a new septic system where the old stairs used to be and that is why the stairs can't be rebuilt there.

Chair declared the Public Hearing open. Chair asked for any members of the public to speak to come forward. None.

Chair closed the Public Hearing.

Chair then asked if any members needed to make disclosure. As it is on Malabar Road most people drive by it daily. Chair asked for a motion to approve, approve with conditions or reject the request.

MOTION: BOA Member Hanna / BOA Member 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 Katie Abare Aye

BOA Member David Sowards Aye

Motion carried 5 to 0.

BOA Vice-Chair Hanna stated for the benefit of the new members that the decisions of the BOA do not set precedent. Each request for a variance stands on its own and is considered individually. Because they have granted a variance to setbacks in the past does not guarantee anything.

6. NEW BUSINESS/STAFF REPORTS/MEMBER REPORTS

Consensus to set next meeting for November 17, 2020 after the election in order to nominate the Chair and Vice-Chair for the next year and approve the previous meeting minutes.

7. ADJOURNMENT

MOTION: BOA Vice-Chair Hanna / BOA Member Frazee to adjourn. Vote: All Ayes. Meeting adjourned at 6:32 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

AGENDA ITEM NO: 5.a.
Meeting Date: August 27, 2020

Prepared By: Denine Sherear, Building Department Manager

SUBJECT: Variance Request, Case # BOA 03-082020 Mr. Donald LaFontaine (Property Owner) Requests a 15-foot variance to the 20-foot required rear setback in the RS-10 zoning per LDC Art III, District Provisions, Table:1-3.3(A).

BACKGROUND/HISTORY:

The setback requirement is 20 feet per Town Code in the Residential Single Family (Medium Density) RS-10 Zoning. The Applicant is requesting a 15-foot variance to the rear setback abutting Florida Audubon Society Inc.

The Brookhollow Subdivision has an Architectural Review Committee (ARC) that has reviewed and approved this request. Mr. LaFontaine has provided documentation noting the rear set back measured from the surveyed property line to the edge of the accessory structure.

Staff (Building Official) has reviewed this request and has no adverse comments. Property owners within 500' have been noticed re: this request and the date of the Hearing.

ATTACHMENTS:

- Application for Variance
- Property Appraiser's Radius map
 - List of property owners within 500' radius that were notified
 - Legal Ad
 - Notice sent to property owners
- Table 1-3.3 (A) Size and Dimension Regulations/Zoning Map
- Staff Comments, Attorney

ACTION OPTIONS:

Staff requests approval of this request.

Application Package

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) DONALD B. LAFONTAINE Tel: (321) 412-4712

Mailing Address: 1040 STEEPLECHASE CIR.

Legal description of property covered by application:

Township _____, Range _____, Section _____, Lot/Block _____, Parcel _____, Subdivision
BROOK HOLLOW PHASE ONE LOT 106

Other Legal PARCEL # 28 3735-25-*106, TAX ACCT. 2846246

Property Address: 1040 STEEPLECHASE CIR

Present zoning classification RS 10

Intended use for property PRIVATE HOME

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

REQUIRED TO PUT IN AN ACCESSORY BUILDING (15' BY 20')

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).
- 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.

Donald B. Lafontaine

Applicant(s)

7/20/2020

Date

TOWN OF MALABAR

JUL 20 2020

RECEIVED

TOWN OF MALABAR - VARIANCE REQUEST
(Page 2)

TOWN OF MALABAR

JUL 20 2020

RECEIVED

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

Please complete only one of the following:

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

Signature of Applicant(s) _____ Date _____

Sworn and subscribed before me this _____ day of _____, 20____.

Notary Public, State of Florida
Commission No. _____ My Commission Expires _____.

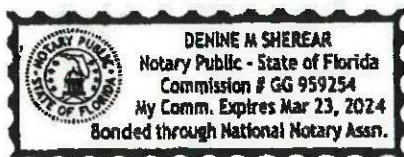
I, DONALD B. LAFONTAINE, being first duly sworn, depose and say that I, DONALD B. LAFONTAINE, am the Owner of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said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

Donald B. Lafontaine _____ 7/20/2020
Signature of Applicant(s) Date

Sworn and subscribed before me this 20 day of July, 2020.

LAFONTAINE, DONALD BRUCE

Notary Public, State of Florida
Commission No. GG 959254 My Commission Expires MAR 23, 2024



Request for 15 ft encroachment into the rear setback adjoining the Audubon property

To whom it may concern,

This is a request for a 15 ft encroachment into the rear setback required in RS10 zoning. The property directly behind the house is Audubon property.

The encroachment being requested is the minimum that will make possible the reasonable use of the building. With the encroachment, the building will set 5 ft into the Homeowners property. This results in 9 ft between the house and the opening to the building. This 9 ft will enable access into and out of the building by a golf cart as shown in Figure 1. Figure 2 shows the dimensions of Accessory building and plan use.

The land has about a 2 ft elevation drop from the house to the back of the property line. This drop results in the placement of the opening being on the side closest to the house (again) for easy access into and out of the accessory building by a golf cart.

The conditions upon which this petition for an encroachment relates, are consistent with two other properties within the same zoning district (Brook Hollow). Namely 1035 Steeplechase (garage) and 1300 Pemberton (pool) which have both encroachments resulting in the structures setting 5 ft into the Homeowners property. These encroachments are along Audubon and EELs property respectively.

Brook Hollow is a deed restricted community and as such, approval for the accessory building has been granted by the Brook Hollow ARC committee and a copy has been submitted along with this request. The variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

I appreciate your time looking into this request and look forward to answering any questions you may have during the hearing.

Sincerely,



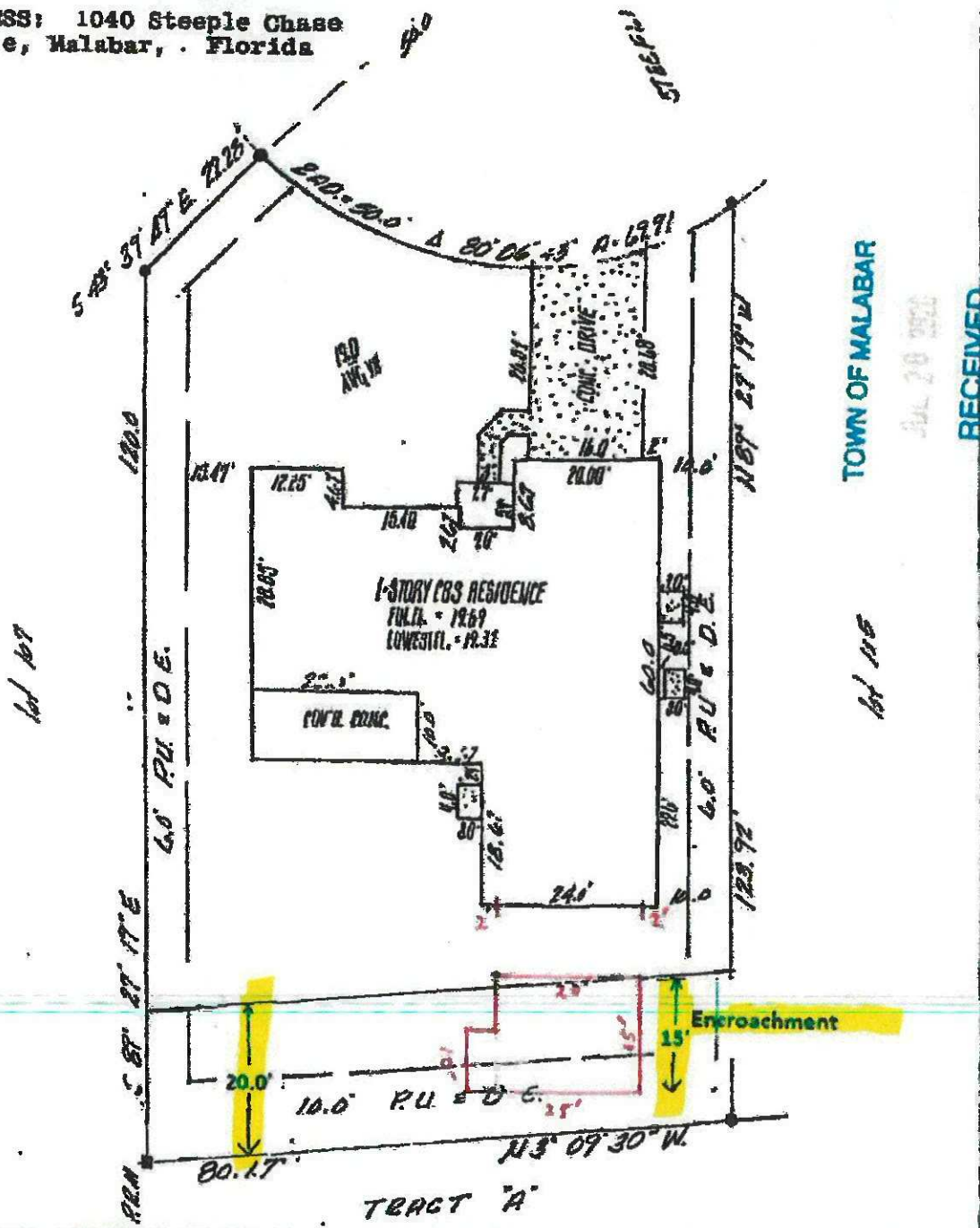
Homeowner of 1040 Steeple Cir. Malabar Florida.

TOWN OF MALABAR

AUG 17 2020

RECEIVED

ADDRESS: 1040 Steeple Chase Circle, Malabar, Florida



TOWN OF MALABAR

RECEIVED

⊙-FOUND IRON ROD ○-SET IRON ROD WITH CAP R.L.E. No. 1761 ▲-FOUND NAIL AND DISK &-SET NAIL AND DISK

PLAT OF SURVEY for: DONALD B. AND ANNETTE L. LA FONTAINE; AMERIFIRST MORTGAGE CORP.; CHICAGO TITLE

SURVEYOR'S NOTES: THIS PROPERTY HAS NOT BEEN ABSTRACTED BY SURVEYOR FOR EASEMENTS AND/OR RIGHTS OF WAYS OF RECORD.

Bearings based on RECORD PLAT
Elevations based on NNVD MFL

LOT 106 BLOCK - BROOM HOLLOW PHASE 7

As recorded in Plat Book 39 Page 70-72
Public Records of Brevard County, Florida.

Certified true and correct to the best of my knowledge and belief and in conformity with applicable minimum technical standards set forth by the Florida Board of Land Surveyors, pursuant to 21-HH-6 Florida Administrative Code.

Hugh J. Smith
Hugh J. Smith, Florida Professional Land Surveyor No. 1761

This survey is prepared and certified for the exclusive use of the client named herein. It is not valid without the embossed Surveyor's SEAL.

DWN. BY: *[Signature]*

SCALE: 1" = 22.0'

TYPE	DATE	JOB #
FINAL INSTRUMENT	7-20-08	-
PROVISIONAL ONLY	7-22-08	-
SURVEY = F.I.F.D.M.	6/16/07	-

HUGH J. SMITH LAND SURVEYING, INC.
1405 Palm Bay Road, N.E. Palm Bay, Florida 32909 (321) 734-0100

ARC Change Request Form – Part 2 - Info

Please complete the requested information below and submit completed form to BHCA
 (please attach additional information, such as plans, color pallets and/or permits, if applicable)

Date of Request:		Name of Requestor:	
7/6/2020		DON LAFONTAINE	
Property Address:		Mailing Address:	
1040 STEEPLE CHASE CIR.		1040 STEEPLE CHASE CIR.	
Contact Phone:		Contact Email:	
(321) 412-4714		don.lafontaine@.uk@.gr.kenes45.com	
Summary of Request:			
ACCESSORY BUILDING (SEE ATTACHED)			
Site Clearing Plan		Building Plan	
please be specific, removal of trees requires a Town of Malabar Permit		please submit all associated plans and, if already obtained, copy of required Town of Malabar permit	
NONE REQUIRED		① HOA APPROVAL ② WAIVER FROM TOWN OF MALABAR ③ 15X20, SHINGLE, CONCRETE 48" STORCO.	
If Paint Involved...	Brand:	Color Name:	Color Pallette Ref:
Main surface areas	BARE	SAME AS HOUSE	
Trim surfaces	BARE WHITE	WHITE	

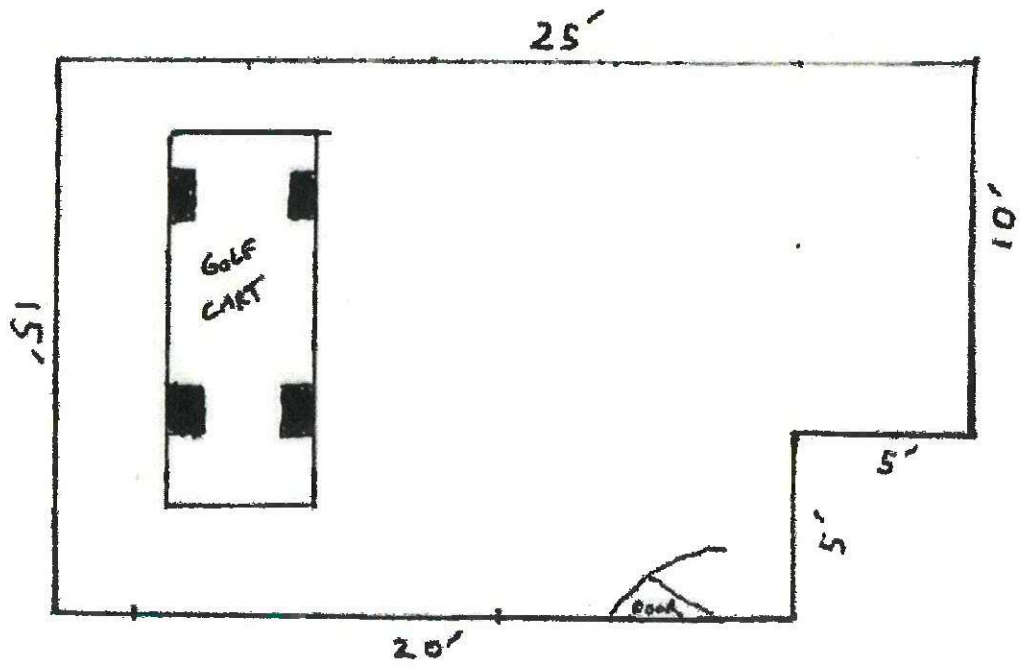
STOP! This section is reserved for ARC sign-off regarding status outcome of review...

Date:	Request Approved:	Need More Info:	Request Denied:
July 15, 2020	 BHCA-ARC		

TOWN OF MALABAR

JUL 20 2020

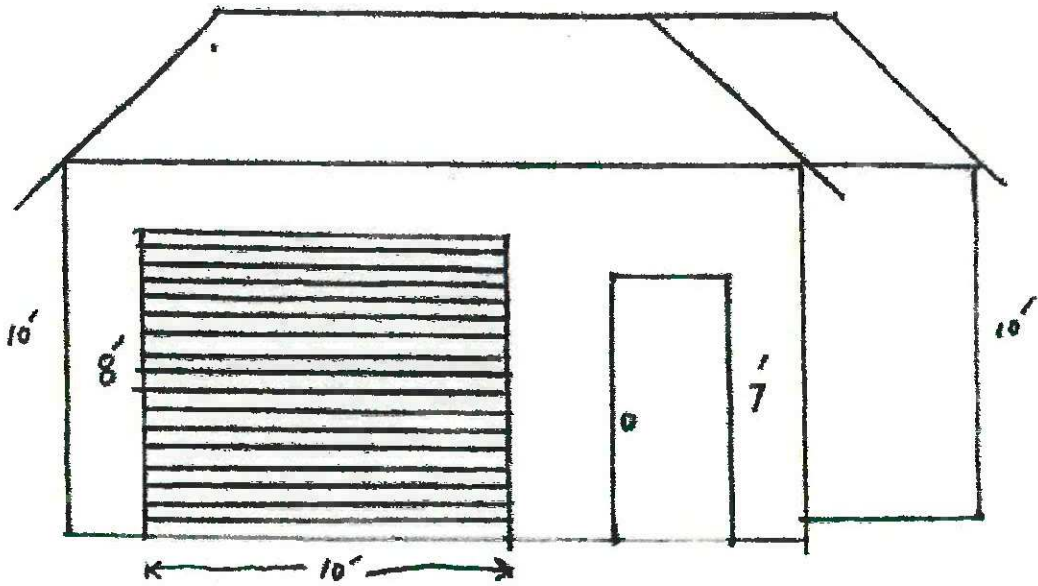
RECEIVED



TOWN OF MALABAR

AUG 24 2020

RECEIVED





Brevard County Property Appraiser

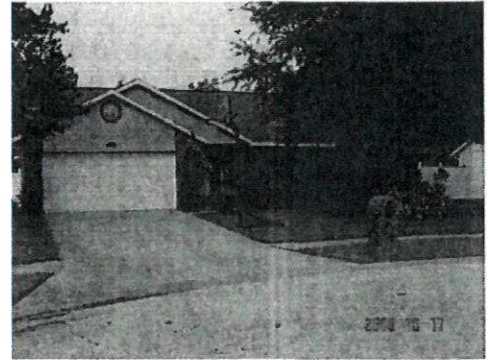
Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

PROPERTY DETAILS

Account	2846246
Owners	Lafontaine, Donald B Jr; Lafontaine, Annette L Life Estate
Mailing Address	1040 Steeplechase Cir Malabar FL 32950
Site Address	1040 Steeplechase Cir Malabar FL 32950
Parcel ID	28-37-35-25-* -106
Property Use	0110 - Single Family Residence
Exemptions	HEX1 - Homestead First HEX2 - Homestead Additional
Taxing District	34Z0 - Malabar
Total Acres	0.23
Subdivision	Brook Hollow Phase One
Site Code	0150 - Cnsrv/Tract/Buf Frtg
Plat Book/Page	0033/0090
Land Description	Brook Hollow Phase One Lot 106



VALUE SUMMARY

Category	2019	2018	2017
Market Value	\$190,950	\$190,380	\$178,830
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$125,530	\$123,190	\$120,660
Assessed Value School	\$125,530	\$123,190	\$120,660
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	\$75,530	\$73,190	\$70,660
Taxable Value School	\$100,530	\$98,190	\$95,660

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
10/06/2011	--	WD	Improved	7159/0823
06/01/1988	\$96,300	WD	--	2920/1047
06/01/1988	\$29,000	WD	--	2918/1454

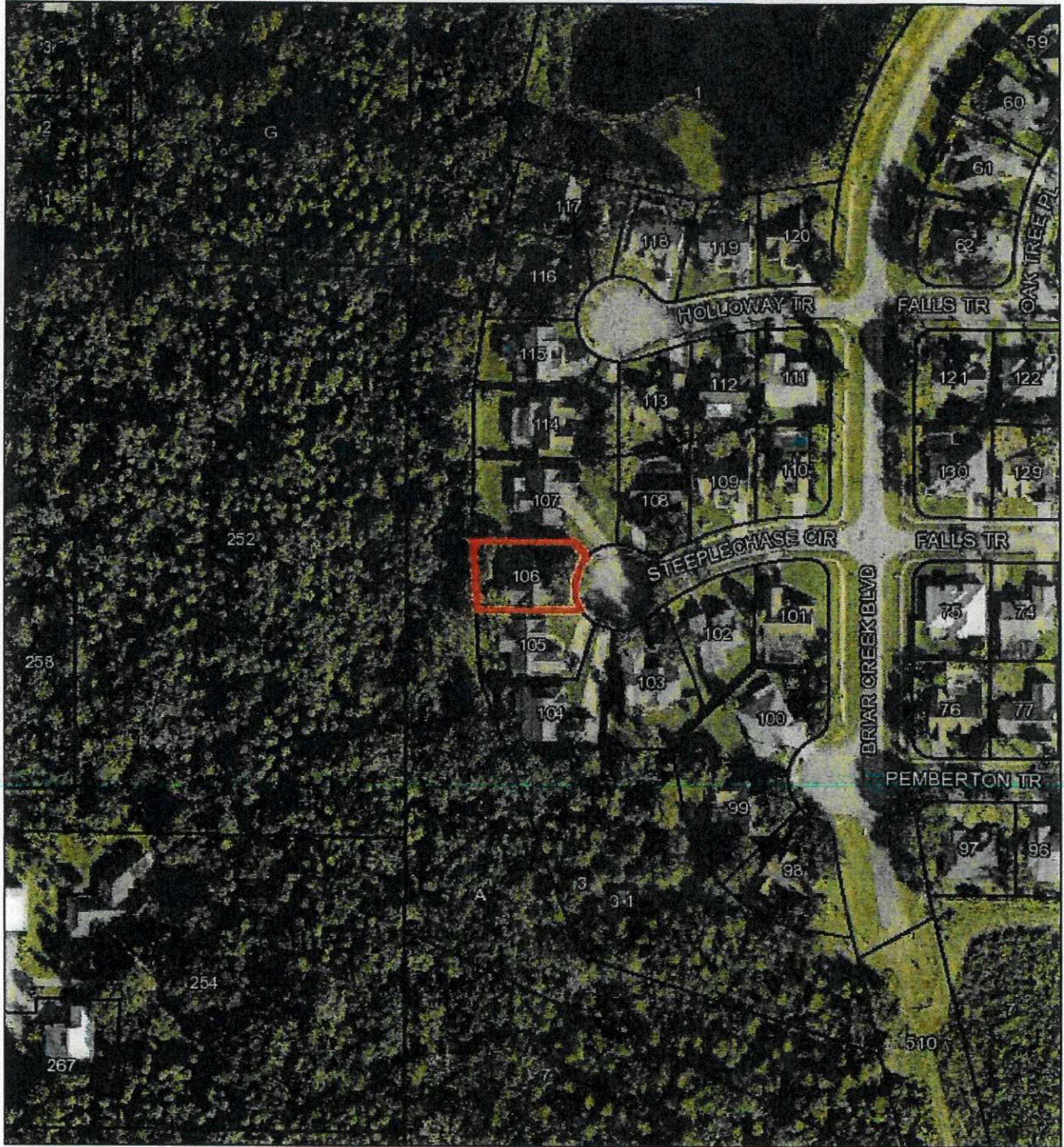
BUILDINGS

PROPERTY DATA CARD #1

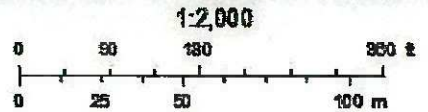
Building Use: 0110 - Single Family Residence

Materials	Details	
Exterior Wall:	Stucco	Year Built 1988
Frame:	Masnryconc	Story Height 8
Roof:	Asph/Asb Shngl	Floors 1
Roof Structure:	Hip/Gable	Residential Units 1
		Commercial Units 0
Sub-Areas	Extra Features	
Base Area (1st)	Wood Deck	180
Garage		
Open Porch		
Total Base Area		
Total Sub Area		

Brevard County Property Appraiser



July 20, 2020



2846850

For illustration only. Not a survey. Map is/are may not precisely align.
© BCPAO 2015

Malabar Code
Table 1-3.3(A)
Zoning Map

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

Zoning District	Minimum Lot (1)		Depth (ft.)	Maximum Height (ft.) (stories)	Minimum Height (ft.) (stories)	Setback (ft.)			Maximum Imperious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater		
	Size (sq. ft.)	Width (ft.)				Front	Rear	Sides (ft.)					Sides (ft.)	Sides (ft.)
Rural Residential Development														
RR-66	66,340	150	250	35/3	1,500	40	30	30	30	30	30	80	0.66	
Traditional Single Family Residential Development														
RS-21	21,780	120	150	35/3	1,800	35	20	15	15	15	35	65	2.00	
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	15	45	55	2,904	
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	10	50	50	4.00	
Multiple Family Residential Development														
RM-4	5 Acres Minimum Site	200	300	35/3	1 Bedroom: 900 2 Bedroom: 1100 3 Bedroom: 1300 Each Additional Bedroom: 120	60	40	40	40	40	50	N/A	4.00	
RM-6	5 acres Minimum Site	200	200	35/3	Single Family: Multiple Family: 1 Bedroom: 600 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	25	20	10	10	10	50	n/a	6	
Mixed Use Development														
RLC	20,000	100	150	35/3	Single Family: Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120 Commercial: Min. Area: 900 Max. Area 4,000	25	20	10	10	10	50	n/a	4	
Mobile Home Residential Development														
R-MH	Site: 5 Acres Lot: 7000					10	6	8	10	10	60	N/A	6.00	
Office Development														
O1	20,000	100	150	35/3	Minimum Floor Area: 1000	35/60	25	20	25	25	65	20	35	N/A
Commercial Development														

Legal Ad
Notices Mailed
Radius Map
List of Property

owners

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

To: brelegals@gannett.com

August 5, 2020

From: Debby Franklin, Town Clerk, Town of Malabar Account #126287
townclerk@townofmalabar.org

Please place the following legal ad two times: **Thursday, August 13, 2020 and Thursday, August 20, 2020**. Please put the heading in **BOLD** font. Please send proof via email to: 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, August 27, 2020 at 6:00 p.m., at Malabar Town Hall located at 2725 Malabar Road, Malabar, Florida. Applicant Don LaFontaine is requesting a fifteen (15) foot variance to Malabar Land Development Code Article III, Table 1-3.3(A) Size and Dimension Regulations, Rear Setback of 20 feet in RS-10 Residential Zoning to build an accessory structure to house a golf cart. Location is 1040 Steeplechase Circle, Malabar, Florida. Citizens are encouraged to attend and offer comment.

Town of Malabar, 2725 Malabar Road, Malabar, FL 32950
321.727.7764 (Office) 321.727.9997 (Fax) 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 AUGUST 27, 2020 AT
6:00PM.**

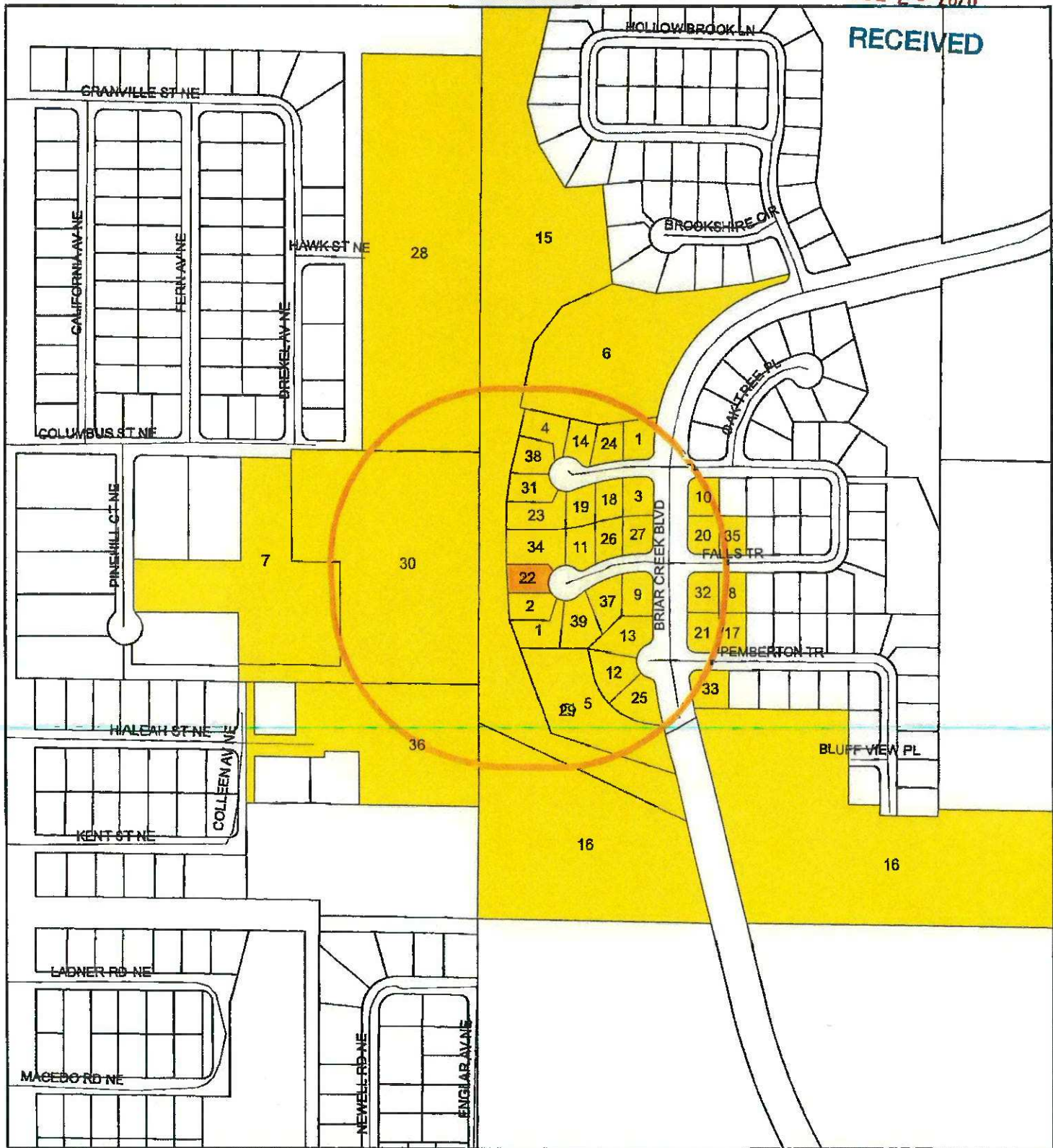
RADIUS MAP

LAFONTAINE, DONALD B JR
lafontaine500

TOWN OF MALABAR

JUL 20 2020

RECEIVED







1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

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Produced by BoCC - GIS Date: 7/19/2020

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

36

TOWN OF MALABAR

LAFONTAINE, Don

JUL 20 2020

RECEIVED

BABER, DAVID R
BABER, GINORIS
1045 STEEPLECHASE CIR
MALABAR FL 32950-6808

BABER, STEVE ANTHONY
BABER, CHARLENE RAYE
1140 S US HIGHWAY 1
MALABAR FL 32950-6909

BARBARA J HORN REVOCABLE TRUST
930 HOLLOWAY TRL
MALABAR FL 32950-6807

BROOK HOLLOW COMMUNITY ASSOC INC
PO BOX 500377
MALABAR FL 32950-0377

BUDROW, WALTER P JR
BUDROW, REBECCA D
PO BOX 061600
PALM BAY FL 32906-1600

BUGGENHOUT, CHRISTIAN
NIHOUL, JACQUELINE E
910 FALLS TRAIL
MALABAR FL 32950-

COLLOREDO, JOHN C
COLLOREDO, ROCHELLE P
1005 STEEPLECHASE CIRCLE
MALABAR FL 32950-

COTTI, ERIC J
COTTI, LINDSEY M
1115 FALLS TRL
MALABAR FL 32950-

DRISCOLL, NEAL W
DRISCOLL, MARY K
1020 STEEPLECHASE CIR
MALABAR FL 32950-

FAGAN, MICHAEL SEAN
FAGAN, ANA MARIE
825 SADNET CIR NE
PALM BAY FL 32905-

FIFIELD, JOSEPH A
JORDAN, MELISSA
1160 BRIAR RUN CIRCLE
MALABAR FL 32950-

FISCHER, CHARLES
FISCHER, CHRISTINE
920 HOLLOWAY TRL
MALABAR FL 32950-6807

FLORIDA AUDUBON SOCIETY INC
1101 AUDUBON WAY
MAITLAND FL 32751-

FLORIDA, STATE OF (IITF)
DIVISION OF STATE LANDS
C/O FL DEPT/ENVIRON PROTECT
3900 COMMONWEALTH BLVD - MS 115
TALLAHASSEE FL 32399-3000

GERACI, SANTO JOSEPH,III
GERACI, HANNAH MICHELLE
1215 PEMBERTON TRL
MALABAR FL 32950-6815

GOLDSTEIN, WILLIAM
DUTTON, KELLY
915 HOLLOWAY TRL
MALABAR FL 32950-

JAMES, ELDON M
JAMES, BORIS A G
925 HOLLOWAY TRAIL
MALABAR FL 32950-

JONES, DAVID
JONES, DEBORAH PINDER
905 FALLS TRL
MALABAR FL 32950-6811

KICHA, FERN L
KICHA, LOUIS PETER
1205 PEMBERTON TRL
MALABAR FL 32950-

LAFONTAINE, DONALD B JR
LAFONTAINE, ANNETTE L LIFE ESTATE
1040 STEEPLECHASE CIR
MALABAR FL 32950-

LALOND, RICHARD J
LALOND, SUSAN A
39 WOODMAN CIRCLE
WEYMOUTH MA 02190-

LEE, ALAN R
LEE, JEANNE M
910 HOLLOWAY TRAIL
MALABAR FL 32950-

LEE, CHI-SHING
TAM, WINNIE CHOI-MEI
64 GRAND VIEW AVE
QUINCY MA 02170-

LOBECK, STEVEN A
1010 STEEPLECHASE CIR
MALABAR FL 32950-

MURDOCK, ALLEN C
MURDOCK, MARIA
1000 STEEPLECHASE CIR
MALABAR FL 32950-6808

PALM BAY, CITY OF
120 MALABAR RD SE
PALM BAY FL 32909-

PALM BAY, CITY OF
120 MALABAR ROAD SE
PALM BAY FL 32905-

PARKS, JOAN L
PARKS, GARY N
945 HOLLOWAY TRL
MALABAR FL 32950-6807

PATEL, ROHIT D
PATEL, VIBHA R
900 FALLS TRAIL
MALABAR FL 32950-

POHL, MANFRED
POHL, PATRICIA G
1200 PEMBERTON TRL
MALABAR FL 32950-

POWERS, DIANE F
POWERS, DANIEL B
852 NW NORDEN NW ST
PALM BAY FL 32907-8242

PROVOST, BERNADINE S TRUSTEE
915 FALLS TRAIL
MALABAR FL 32950-

RATAJCZYK, ANTONI SR
RATAJCZYK, ROSALIA LIFE ESTATE
471 COLLEEN AVE NE
PALM BAY FL 32907-

SMELSER, PATTY JO
1015 STEEPLECHASE CIR
MALABAR FL 32950-

THOMPSON, ANDREW ROY
THOMPSON, CYNTHIA LYNN TRUSTEES
940 HOLLOWAY TRAIL
MALABAR FL 32950-

WIGLEY, SANDRA DENISE
1025 STEEPLECHASE CIR
MALABAR FL 32950-6808

TOWN OF MALABAR

JUL 20 2020

RECEIVED

BUFF_ID|TAXID|PARCELID|OWNER1|OWNER2|MAIL1|MAIL2|CITY_STATE_ZIP5_ZIP4
 1|0| -
 2|2846245|28 3735-25-*-105|BABER, DAVID R|BABER, GINORIS|1045 STEEPLECHASE
 CIR||MALABAR FL 32950-6808
 3|2846251|28 3735-25-*-111|BABER, STEVE ANTHONY|BABER, CHARLENE RAYE|1140 S US
 HIGHWAY 1||MALABAR FL 32950-6909
 4|2846257|28 3735-25-*-117|BARBARA J HORN REVOCABLE TRUST||930 HOLLOWAY TRL||MALABAR
 FL 32950-6807
 5|2846275|28 3735-25-3|BROOK HOLLOW COMMUNITY ASSOC INC||PO BOX 500377||MALABAR FL
 32950-0377
 6|2846273|28 3735-25-1|BROOK HOLLOW COMMUNITY ASSOC INC||PO BOX 500377||MALABAR FL
 32950-0377
 7|2846121|28 3735-00-258|BUDROW, WALTER P JR|BUDROW, REBECCA D|PO BOX 061600||PALM
 BAY FL 32906-1600
 8|2846214|28 3735-25-*-74|BUGGENHOUT, CHRISTIAN|NIHOUL, JACQUELINE E|910 FALLS
 TRAIL||MALABAR FL 32950-
 9|2846241|28 3735-25-*-101|COLLOREDO, JOHN C|COLLOREDO, ROCHELLE P|1005 STEEPLECHASE
 CIRCLE||MALABAR FL 32950-
 10|2846261|28 3735-25-*-121|COTTI, ERIC J|COTTI, LINDSEY M|1115 FALLS TRL||MALABAR
 FL 32950-
 11|2846248|28 3735-25-*-108|DRISCOLL, NEAL W|DRISCOLL, MARY K|1020 STEEPLECHASE
 CIR||MALABAR FL 32950-
 12|2846239|28 3735-25-*-99|FAGAN, MICHAEL SEAN|FAGAN, ANA MARIE|825 SADNET CIR
 NE||PALM BAY FL 32905-
 13|2846240|28 3735-25-*-100|FIFIELD, JOSEPH A|JORDAN, MELISSA|1160 BRIAR RUN
 CIRCLE||MALABAR FL 32950-
 14|2846258|28 3735-25-*-118|FISCHER, CHARLES|FISCHER, CHRISTINE|920 HOLLOWAY
 TRL||MALABAR FL 32950-6807
 15|2846271|28 3735-25-A|FLORIDA AUDUBON SOCIETY INC||1101 AUDUBON WAY||MAITLAND FL
 32751-
 16|2846104|28 3735-00-7|FLORIDA, STATE OF (IITF)|DIVISION OF STATE LANDS|C/O FL
 DEPT/ENVIRON PROTECT|3900 COMMONWEALTH BLVD - MS 115|TALLAHASSEE FL 32399-3000
 17|2846217|28 3735-25-*-77|GERACI, SANTO JOSEPH, III|GERACI, HANNAH MICHELLE|1215
 PEMBERTON TRL||MALABAR FL 32950-6815
 18|2846252|28 3735-25-*-112|GOLDSTEIN, WILLIAM|DUTTON, KELLY|915 HOLLOWAY
 TRL||MALABAR FL 32950-
 19|2846253|28 3735-25-*-113|JAMES, ELDON M|JAMES, BORIS A G|925 HOLLOWAY
 TRAIL||MALABAR FL 32950-
 20|2846270|28 3735-25-*-130|JONES, DAVID|JONES, DEBORAH PINDER|905 FALLS
 TRL||MALABAR FL 32950-6811
 21|2846216|28 3735-25-*-76|KICHA, FERN L|KICHA, LOUIS PETER|1205 PEMBERTON
 TRL||MALABAR FL 32950-
 22|2846246|28 3735-25-*-106|LAFONTAINE, DONALD B JR|LAFONTAINE, ANNETTE L LIFE
 ESTATE|1040 STEEPLECHASE CIR||MALABAR FL 32950-
 23|2846254|28 3735-25-*-114|LALOND, RICHARD J|LALOND, SUSAN A|39 WOODMAN
 CIRCLE||WEYMOUTH MA 02190-
 24|2846259|28 3735-25-*-119|LEE, ALAN R|LEE, JEANNE M|910 HOLLOWAY TRAIL||MALABAR FL
 32950-
 25|2846238|28 3735-25-*-98|LEE, CHI-SHING|TAM, WINNIE CHOI-MEI|64 GRAND VIEW
 AVE||QUINCY MA 02170-

TOWN OF MALABAR

JUL 20 2020

RECEIVED

26|2846249|28 3735-25-*-109|LOBECK, STEVEN A||1010 STEEPLECHASE CIR||MALABAR FL
32950-
27|2846250|28 3735-25-*-110|MURDOCK, ALLEN C|MURDOCK, MARIA|1000 STEEPLECHASE
CIR||MALABAR FL 32950-6808
28|2845881|28 3735-FT-*-G|PALM BAY, CITY OF||120 MALABAR RD SE||PALM BAY FL 32909-
29|2851737|28 3735-25-3.1|PALM BAY, CITY OF||120 MALABAR ROAD SE||PALM BAY FL 32905-
30|2846118|28 3735-00-252|PALM BAY, CITY OF||120 MALABAR RD SE||PALM BAY FL 32909-
31|2846255|28 3735-25-*-115|PARKS, JOAN L|PARKS, GARY N|945 HOLLOWAY TRL||MALABAR FL
32950-6807
32|2846215|28 3735-25-*-75|PATEL, ROHIT D|PATEL, VIBHA R|900 FALLS TRAIL||MALABAR FL
32950-
33|2846237|28 3735-25-*-97|POHL, MANFRED|POHL, PATRICIA G|1200 PEMBERTON
TRL||MALABAR FL 32950-
34|2846247|28 3735-25-*-107|POWERS, DIANE F|POWERS, DANIEL B|852 NW NORDEN NW
ST||PALM BAY FL 32907-8242
35|2846269|28 3735-25-*-129|PROVOST, BERNADINE S TRUSTEE||915 FALLS TRAIL||MALABAR
FL 32950-
36|2846119|28 3735-00-254|RATAJCZYK, ANTONI SR|RATAJCZYK, ROSALIA LIFE ESTATE|471
COLLEEN AVE NE||PALM BAY FL 32907-
37|2846242|28 3735-25-*-102|SMELSER, PATTY JO||1015 STEEPLECHASE CIR||MALABAR FL
32950-
38|2846256|28 3735-25-*-116|THOMPSON, ANDREW ROY|THOMPSON, CYNTHIA LYNN TRUSTEES|940
HOLLOWAY TRAIL||MALABAR FL 32950-
39|2846243|28 3735-25-*-103|WIGLEY, SANDRA DENISE||1025 STEEPLECHASE CIR||MALABAR FL
32950-6808

TOWN OF MALABAR

JUL 20 2020

RECEIVED

Email from Town Attorney

RE: Town of Malabar- Variance Request

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

Fri 8/7/2020 11:55 AM

To: Denine Sherear <dsherear@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.
This will depend upon the facts presented to the BOA
- 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.
It doesn't appear the condition was created by the applicant
- 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.
It also does not appear a special privilege would be conferred
- 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.
This will depend upon the facts presented to the BOA
- 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.
The BOA basically need to determine if a 15 foot variance is too much
- 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?
It seems the HOA approved it and that might be evidence that this is harmonious.

- 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.

Let me point out a few matters which may assist the BOA. First, the property to the rear appears to be conservation property and the impact of the variance would be minimal, if any. The application suggests similar variances have been granted in the subdivision. The BOA should be given this historical data. Although in my opinion there is no precedence set for past approvals, such past approvals could assist the BOA. The HOA has approved the request subject to town approval.

One more point to be mindful of is that the area in question appears to be a PUDE (Public Utility and Drainage Easement) and this encroachment appears to only leave 5 feet of the 20 foot easement. We need to determine if there are any public utilities within this area and if 5 feet is sufficient for future utilities, if any, and how it affects drainage.

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

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From: Denine Sherear [mailto:dsherear@townofmalabar.org]

Sent: Friday, August 7, 2020 10:06 AM

To: Karl Bohne <kbohne@fla-lawyers.com>

Cc: Debby Franklin <townclerk@townofmalabar.org>

Subject: Town of Malabar- Variance Request

Karl,

I have attached a variance request can you please provide a legal opinion in memo form. The meeting is August 27. 2020 @ 6PM

Thank you,

Respectfully,

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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