

**TOWN OF MALABAR  
REGULAR TOWN COUNCIL MEETING  
MONDAY, FEBRUARY 04, 2019  
7:30 PM  
2725 MALABAR ROAD  
MALABAR, FLORIDA**

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**AGENDA**

- A. CALL TO ORDER, PRAYER AND PLEDGE
- B. ROLL CALL
- C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:
- D. CONSENT AGENDA:
  - 1. Approve Regular Town Council Meeting Minutes of 1/07/2019
    - Exhibit: Agenda Report No. 1
    - Recommendation: Approve Minutes
- E. PRESENTATION BY DAVE MAZZA OF DANA FINANCIAL ADVISORS:
- F. ATTORNEY REPORT:
- G. BCSO REPORT:
- H. BOARD / COMMITTEE REPORTS:
  - T&G Committee; Park & Recreation Board; P&Z Board
- I. STAFF REPORTS:
  - Administrator; PW Director; Clerk; Fire Chief
- J. PUBLIC COMMENTS: Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) **Five (5) Minute Limit per Speaker.**
- K. PUBLIC HEARINGS/SPECIAL ORDERS: 0
- L. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)
- M. ACTION ITEMS:

**ORDINANCES for FIRST READING: 5**

**2. Amend LDC (Ord 2019-01)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTIONS 1-12.5 OF ARTICLE XII, ENTITLED "PROCEDURES FOR ADOPTING, SUPPLEMENTING OR AMENDING THE LAND DEVELOPMENT CODE" OF THE LAND DEVELOPMENT CODE OF THE TOWN; REMOVING THAT PORTION OF SECTION 1-12.5 OF THE LAND DEVELOPMENT CODE OF THE TOWN RELATING TO THE DECISION MAKING AUTHORITY OF THE PLANNING AND ZONING BOARD; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Approve 1<sup>st</sup> Reading of Ordinance 2019-01

**3. Amend LDC (Ord 2019-02)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO TABLE 1-3.3(A) IN ARTICLE III OF THE LAND DEVELOPMENT CODE, PROVIDING FOR FINDINGS; PROVIDING FOR NEW SETBACK ALLOWANCES IN RR-65 ZONING FOR ACCESSORY STRUCTURES ONLY; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Approve 1<sup>st</sup> Reading of Ordinance 2019-02

**4. Amend LDC Art III Table E (Ord 2019-03)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO ARTICLE III, DISTRICT PROVISIONS, SECTION 1.3.3E AND TABLE 1-3.3(E) OF THE LAND DEVELOPMENT CODE, PROVIDING CLARIFYING LANGUAGE FOR SETBACKS FOR PRINCIPAL STRUCTURES ON CERTAIN ROADS, CORRECTING A SCRIVINORS ERROR AND REMOVING CONFLICT WITH COMPREHENSIVE PLAN ON RIGHT OF WAY WIDTH FOR MINOR COLLECTORS AND REMOVING BRIAR CREEK BOULEVARD FROM LIST OF MAJOR COLLECTOR STREETS; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 4

**Recommendation:** Approve 1<sup>st</sup> Reading of Ordinance 2019-03

**5. Amend LDC Art V regarding Setbacks (Ord 2019-04)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO ARTICLE V, GENERAL PROVISIONS, SECTION 1-5.10 OF THE LAND DEVELOPMENT CODE, PROVIDING FOR CLARIFYING LANGUAGE FOR SETBACKS FOR PRINCIPAL STRUCTURES; PROVIDING FOR REFERENCE TO ARTICLE III DISTRICT PROVISIONS TABLE 1-3.3(A) AND TABLE 1-3.3(E) IN THE LAND DEVELOPMENT CODE; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 5

**Recommendation:** Approve 1<sup>st</sup> Reading of Ordinance 2019-04

**RESOLUTIONS: 1**

**6. Amend Administrative Fees (Reso 02-2019)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO THE AMENDMENT OF ADMINISTRATIVE AND PERMIT FEES REQUIRED TO BE ESTABLISHED BY VARIOUS ORDINANCES OF THE TOWN OF MALABAR; PROVIDING FOR REPEAL OF RESOLUTION 4-2014; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 6

**Recommendation:** Approve Reso 02-2019

**MISCELLANEOUS: 1**

**7. Approve Temporary Trailer Placement at 2820 Smith Lane While Home is Constructed**

**Applicants:** Mr. and Mrs. Logan

**Exhibit:** Agenda Report No. 7

**Recommendation:** Approval of Request

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

- N. DISCUSSION/POSSIBLE ACTION:**
- O. PUBLIC COMMENTS: General Items (Speaker Card Required)**
- P. REPORTS – MAYOR AND COUNCIL MEMBERS**
- Q. ANNOUNCEMENTS:**
  - (2) Vacancies on the Board of Adjustment; (2) Vacancies on the Park and Recreation Board
  - (2) Vacancies on the Trails and Greenways Committee
- R. ADJOURNMENT: -**

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105).

The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 1**  
**Meeting Date: February 04, 2019**

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

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**SUBJECT: Approval of Minutes**

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**BACKGROUND/HISTORY:**

Attached are the summary minutes for the following meeting(s):

- Town Council Regular Meeting – 1/7/2019

The minutes are the official record of the actions taken by the Council.

**ATTACHMENTS:**

Draft Minutes of 1/7/19

**ACTION OPTIONS:**

The Town Clerk requests approval of the minutes.

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES**

**JANUARY 07, 2019 7:30 PM**

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

**A. CALL TO ORDER:**

Chair, Mayor Patrick Reilly called the meeting to order at 7:30 pm. CM Ball led P&P.

**B. ROLL CALL:**

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DICK KORN
	DANNY WHITE
	MATT STINNETT
	KARL BOHNE, excused
	DEBBY FRANKLIN

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

PW Director Tom Miliore was present.

Fire Chief Mike Foley was present.

**C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: none**

**D. CONSENT AGENDA:**

**1. Regular Town Council Meeting Minutes 12/11/18 WS and 12/17/18 Regular Mtg**

**Recommendation:** Request Approval

**MOTION:** CM Vail / CM White to approve the 11/17/18 regular meeting minutes and the 12/11/18 Workshop minutes as submitted. **Discussion:** none. **Vote:** 5 Ayes, 0 Nay

**E. ATTORNEY REPORT: not present**

**F. BCSO REPORT: not present**

**G. BOARD / COMMITTEE REPORTS:**

Drew Thompson, Chair, T&G Com: not present – Mayor read Drew's update. Drew met with Palm Bay on Dec 20 at Palm Bay City Hall and it was well attended by trail members from both cities. Discussed mutual joint projects.

Eric Bienvenu, Chair Park & Rec Board: not present

Wayne Abare, Chair, P&Z Board: not present

**H. STAFF REPORTS:**

**ADMINISTRATOR:** He received confirmation today that we will have a running ditcher by Monday.

**PW DIRECTOR:** Tom Miliore, during month of December they worked on the Hall Road project for one week and then caught up on other Town maintenance projects such as complete servicing on ten pieces of equipment, grading, mowing, holiday prep and park maintenance. They also picked up the illegally dumped material on Gator Way, cleaned up PW bldg. and yard and disposed of many loads of concrete debris to dump in Rockledge. CM Danny White asked about road edge areas on Atz Road where the pavement is breaking off. Atz between Weber and Corey on the south side of road. Tom said they will address that. They will go back to regular work plan in January.

**CLERK:** nothing

**FIRE CHIEF –** Got 5 sets of bunker gear. Will issue it by seniority. 500 plus responses. Decon equipment was free due to grant. We have 4 more grants out there. Chief recognized Lt. Hooker, as his primary grant writer.

CM Korn said congrats to Chief and his staff. CM White asked about the decon grant.

Decontaminates the bunker gear after a fire response before it goes back into truck. Grant comes from Div. of Forestry.

**I. PUBLIC COMMENTS: Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items**

come up. Public comments do not require a Council response. (Speaker Card is Required)  
**Five (5) Minute Limit per Speaker.**

**Speaker Card:**

Laura Mahoney, 2475 Malabar Road, read from paper on several issues. (in public file)

Sara Merino, 1720 Benjamin Road, spoke of the Benjamin and Treadwell drainage problem and stated it has been previously discussed more than two years ago and still nothing has been done. Any improvement must be well planned and discussed. Create a swale from Benjamin to Corey and then observe. Her neighbor's water goes onto her property. Thank you.

**J. PUBLIC HEARINGS/SPECIAL ORDERS: 0**

**K. UNFINISHED BUSINESS/GENERAL ORDERS**

**L. ACTION ITEMS: ORDINANCES FOR FIRST READING; 0  
 RESOLUTIONS: 1**

**2. Appoint Mr. Parnel Jean to Park and Recreation Board (Reso 01-2019)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF PARNEL JEAN TO THE MALABAR PARKS AND RECREATION BOARD AS A REGULAR MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 2

**Recommendation:** Adopt Reso 01-2019

Reso read by title only

MOTION: CM White / CM Vail to approve Reso 01-2018. Discussion: none. **Roll Call Vote:** CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye. Motion carried 5 to 0.

**MISCELLANEOUS:**

**3. Request Cancellation of 2<sup>nd</sup> meeting in Jan and Feb for Federal Holidays**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Action

Council consensus to cancel the 2<sup>nd</sup> meeting in January and February unless something comes up later. **Vote:** All Ayes.

**M. DISCUSSION/POSSIBLE ACTION:**

**N. PUBLIC COMMENTS: General Items (Speaker Card Required) none**

**O. REPORTS – MAYOR AND COUNCIL MEMBERS**

CM Ball: Agreed with CM White about the edges of the roads needing repairs. There must be a more effective corrective action on that and it also probably needs sod. Tom said on the intersections he has suggested adding curbing to protect the pavement. On other areas, the damage is from mail carriers and the 4-wheelers.

CM Vail: nothing – years ago we used to have trash bash. We towed carcass of cars out of the woods. Maybe we could bring it back. Maybe work with WM on that. CM Ball said one thing – he mentioned the paint. Someone suggested contacting WM.

CM Rivet: contacted by Mr. Proctor on the north end of Appleby and the problem of the metal working its way back up along the roadway is again an issue. Metal scraps are working their way up and we have had more material added and have used the magnetic rollers. CM Korn asked if we could we use a rented one that is more powerful. CM Vail will ask people in heavy equipment business. CM Rivet then asked about the drainage issues brought up by speaker. TA said it is on his list now for review. Tom said part of the drainage issue in that

area is from the existing ditches on the private properties have been filled in. The property owner on Treadwell has not put in needed pipe and has filled in the ditch.

CM Korn: He said there are only two certified COPs in our area and Jim Roulston is one of them. He also talked to guy about the dumped fencing on Gator Way. Also dumping on Waring Lane and the furniture at Atz and Weber. Own up to your own trash. Get a bagster. Teen Council used to be a big thing. Do we have an adequate number of teens? Start looking around in our districts if anyone is interested. Wires down on Atz Road are ATT and they are out. No through trucks on Weber Road. There are heavy trucks going south to north and speeding. Talked to Mayor and a CM of Valkaria about.

CM White: mentioned the edges of the roads. Issue on Gator Way. He met with one of the persons complaining. Don't need to start a war between neighbors. Thanked Tom for picking it up. Mentioned the illegally dumped tires on Rivet. He had someone on the citizen patrol (BCSO COP's) stop at this house and ask about a lost/found dog. Don't give enough credit to the COP's. Grateful we have people like that in the community.

Mayor: nothing

**P. ADJOURNMENT:**

There being no further business to discuss and without objection, the meeting was adjourned at 8:02 PM.

BY: \_\_\_\_\_  
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 2/4/2019

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2**  
**Meeting Date: February 04, 2019**

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

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**SUBJECT: First Reading of Ord 2019-01 Amending Art XII**

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**BACKGROUND/HISTORY:**

Attached is an ordinance that makes corrections to Article XII that were identified while going through the recent land use and zoning change and the Town Attorney has made the legal corrections.

**ATTACHMENTS:**

Ordinance 2019-01

**ACTION OPTIONS:**

Approve First Reading of Ord 2019-01



**ORDINANCE 2019-01**

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO SECTIONS 1-12.5 OF ARTICLE XII, ENTITLED "PROCEDURES FOR ADOPTING, SUPPLEMENTING OR AMENDING THE LAND DEVELOPMENT CODE" OF THE LAND DEVELOPMENT CODE OF THE TOWN; REMOVING THAT PORTION OF SECTION 1-12.5 OF THE LAND DEVELOPMENT CODE OF THE TOWN RELATING TO THE DECISION MAKING AUTHORITY OF THE PLANNING AND ZONING BOARD WHICH ARE IN CONFLICT WITH THE TOWN CHARTER; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Section 3.05 of the Town Charter provides for the specific authority on the part of the Town Council to create advisory boards; and,

**WHEREAS**, Section 3.01 (5) of the Town Charter generally provides that the Town Council shall have and is required to "Perform such other duties as may be prescribed in ordinances *consistent with the Charter*"; and,

**WHEREAS**, Section 2-250 of the Town's Code of Ordinances created the Town Planning and Zoning Board which "is advisory in nature"; and,

**WHEREAS**, the Town attorney has opined that the sub-section C of Section 1-12.5 which reads: "If the Planning and Zoning Board denies the requested zone change or amendment, this action shall be deemed final unless such action is appealed to the Town Council pursuant to Section 1-12.3(C)(4)" conflicts with the Section 3.05 of the Town Charter which provides for the creation of advisory boards; and,

**WHEREAS**, sub-section C of Section 1-12.5 improperly granted the Planning and Zoning Board apparent final decision making which is in conflict with the Town Charter and Section 2-250 concerning the powers of advisory boards and improperly grants the Town Planning and Zoning Board final decision-making authority concerning zoning matters which is a power reserved unto the Town Council; and,

**WHEREAS**, where a conflict exists between the Charter and the Code, the Charter prevails.

**NOW THEREFORE BE IT ORDAINED**, by the Town Council of the Town of Malabar, Brevard County, Florida, that:

**SECTION 1.** Section 1-12.5 of Article XII of the Town Land Development Code, is hereby amended in full as follows:

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

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

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

2. *Planning and Zoning Board.* The Town Planning and Zoning Board may initiate a land development code amendment.

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

(a) *Property Description.* The application shall describe by legal description and by street address, where possible, the property to be affected by the proposed change

(b) *Current and Proposed Comprehensive Plan Land Use Map Designation.* The current and proposed Comprehensive Plan Land Use Map designation for the subject property shall be identified.

(c) *Current and Proposed Zoning.* The current and proposed zoning for the subject property shall be identified.

(d) *Existing and Proposed Use.* The existing and proposed use of the subject property shall be stated.

(e) *Disclosure of Ownership.* The application shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for rezoning is sought, except publicly held corporations, in which case the names and addresses of the corporate officers shall be sufficient.

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

C. *Planning and Zoning Board Review.* The Planning and Zoning Board, regardless of the source of the proposed zone change petition, shall hold a public hearing(s) thereon, with due public notice. The Town Planning and Zoning Board shall submit a written report and recommendation concerning the proposed changes of zoning to the Town Council for official action. ~~If the Planning and Zoning Board denies the requested zone change or amendment, this action shall be deemed final unless such action is appealed to the Town Council pursuant to Section 1-12.3(C)(4).~~ In its deliberations the Planning and Zoning Board shall consider the following criteria:

1. *Consistency with Plan.* Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service (LOS) standards and the concurrency management program. Any inconsistencies shall be identified by the Planning and Zoning Board.

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

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

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

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

6. *Natural Environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, vegetative commodities, and wellfield protection.

7. *Economic Effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area, or the general welfare.

8. *Orderly Development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

9. *Public Interest; Enabling Act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of this ordinance and its enabling legislation.

10. *Other Matters.* Other matters which the Planning and Zoning Board may deem appropriate.

~~D. *Action Following Reviews By Town Planning and Zoning Board.* If an appeal to a decision of the Planning and Zoning Board is filed, the Town Clerk shall transmit copies of the petition, the comments and the minutes of the Planning and Zoning Board meeting to each member of the Town Council at least seven (7) days before the Council shall consider the appeal. The Town Clerk shall notify the applicant of the time and place of the meeting at which the Council will hear the appeal. Should the Council tentatively approve the petition, the Town Council will proceed to hold a public hearing(s) on the petition.~~

~~Should the Town Planning and Zoning Board approve the petition, the Town Clerk shall transmit copies of the petition, [and] all comments and the minutes of the Planning and Zoning Board meeting to each member of the Council at least seven (7) days before the Council shall consider the petition. Should the Council tentatively approve the petition, public hearing(s) shall be held on the petition.~~

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

**SECTION 2. Conflicting Provisions.** In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule code or regulation, the more restrictive shall apply.

**SECTION 3. Severability.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

**SECTION 4. Inclusion in Code.** It is the intention of the Town Council of Malabar that the provisions of this ordinance shall become and be made a part of the Town Code, and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

**SECTION 5. Effective Date.** This ordinance shall take effect upon adoption.

This ordinance was moved for adoption by Council Member \_\_\_\_\_. The motion was seconded by Council Member \_\_\_\_\_ and, upon being put to a vote, the vote was as follows:

Council Member Grant Ball	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member Dick Korn	_____
Council Member Danny White	_____

This Ordinance will be declared to be duly adopted seven days after the regular meeting of the Malabar Town Council, on this \_\_\_\_ day of \_\_\_\_\_, 2019.

**TOWN OF MALABAR**

1<sup>st</sup> Reading: 2/4/19  
2<sup>nd</sup> Reading: 3/4/19

By:

\_\_\_\_\_  
Mayor Patrick T. Reilly, Council Chair

ATTEST:

\_\_\_\_\_  
Debby K. Franklin, CMC  
Town Clerk/Treasurer

(seal)

Approved as to form and content:

\_\_\_\_\_  
Karl W. Bohne, Jr., Town Attorney

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 3**  
**Meeting Date: February 04, 2019**

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

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**SUBJECT: First Reading of Ord 2019-02 Amending Table 1-3.3(A)**

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**BACKGROUND/HISTORY:**

Attached is an ordinance that amends Article III, District Provisions, Table 1-3.3(A) providing for reduced side and rear setbacks for accessory structures only in RR-65 zoning. This was a recommendation by the Planning and Zoning Board that Council approved at their meeting on August 6, 2012.

**ATTACHMENTS:**

Ordinance 2019-02  
Table 1-3.3(A) showing changes

**ACTION OPTIONS:**

Approve First Reading of Ord 2019-02

## ORDINANCE 2019-02

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO TABLE 1-3.3(A) IN ARTICLE III OF THE LAND DEVELOPMENT CODE, PROVIDING FOR FINDINGS; PROVIDING FOR NEW SETBACK ALLOWANCES IN RR-65 ZONING FOR ACCESSORY STRUCTURES ONLY; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Town Council of the Town of Malabar adopted size and dimension regulations for all zoning classifications for principal structures; and

**WHEREAS**, The Town Council has determined it should amend those regulations to provide for new setback regulations for accessory structure only in RR-65 zoning in the Land Development Code.

**WHEREAS**, The Town Council approved the recommendation from the Planning and Zoning at their meeting on August 6, 2012 establishing a lesser setback for accessory structure in RR-65 Zoning based on the height of the accessory structure and reducing the setback to the height of the accessory structure or 15 feet, whichever is less. Under no conditions will the setback be less than 15 feet from the side or rear property lines.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, THAT:**

**Section 1.** Findings. The above statements are correct.

**Section 2.** Table 1-3.3(A) Size and Dimension Regulations in Article III of the Land Development Code is hereby amended to provide for a footnote "7." That provides for the following language:

"7. In RR-65 Zoning, side and rear setback may be reduced for accessory structures to equal the height of the accessory structure but under no condition be reduced to less than 15 feet. If the height of the accessory structure height is 20 feet, the side and rear setbacks for that building would be 20 feet."

**Section 3.** Codification.

It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that Article III, District Provisions, Section 1-3.3(E) and Table 1-3.3(E) be codified into the next supplement update of the Land Development Code of the Town of Malabar, Florida.

**Section 4.** Severability.

In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected, and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

**Section 5. Conflicts.**

All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

**Section 6. Effective Date.**

This ordinance shall take effect immediately upon its adoption.

This ordinance was moved for adoption by Council Member \_\_\_\_\_ . This motion was seconded by Council Member \_\_\_\_\_ , and being put to a vote, the vote was as follows:

Council Member Grant Ball	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member 4 Dick Korn	_____
Council Member 5 Danny White	_____

This Ordinance will be declared to be duly adopted seven days after the regular meeting of the Town of Malabar Town Council on \_\_\_\_\_, 2019.

**TOWN OF MALABAR**

**By:**

\_\_\_\_\_  
Mayor Patrick T. Reilly, Council Chair

1<sup>st</sup> Reading: 2/4/19  
2<sup>nd</sup> Reading: 3/4/19

(seal)

ATTEST:

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

Approved as to Legal Sufficiency:

\_\_\_\_\_  
Karl W. Bohne, Jr., Town Attorney

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4**  
**Meeting Date: February 04, 2019**

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

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**SUBJECT: First Reading of Ord 2019-03 Amending Table 1-3.3(E)**

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**BACKGROUND/HISTORY:**

Attached is an ordinance that amends Article III, District Provisions, Section 1.3.3E and Table 1-3.3(E) providing for principal building setbacks, correcting Minor Collector road width to 70 feet and removing Briar Creek Boulevard from the list of Major Collector.

This removes the conflict with the Comprehensive Plan.

**ATTACHMENTS:**

Ordinance 2019-03  
Table 1-3.3(E) showing changes

**ACTION OPTIONS:**

Approve First Reading of Ord 2019-03



**ORDINANCE 2019-03**

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO ARTICLE III, DISTRICT PROVISIONS, SECTION 1.3.3E AND TABLE 1-3.3(E) OF THE LAND DEVELOPMENT CODE, PROVIDING CLARIFYING LANGUAGE FOR SETBACKS FOR PRINCIPAL STRUCTURES ON CERTAIN ROADS, CORRECTING A SCRIVINORS ERROR AND REMOVING CONFLICT WITH COMPREHENSIVE PLAN ON RIGHT OF WAY WIDTH FOR MINOR COLLECTORS AND REMOVING BRIAR CREEK BOULEVARD FROM LIST OF MAJOR COLLECTOR STREETS; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council of the Town of Malabar adopted size and dimension regulations for all zoning classifications for principal structures based on the guidelines in the Comprehensive Plan; and

**WHEREAS**, The Town Council has determined there is a need to clarify language in title and body of Section 1-3.3E and Table 1-3.3(E) of Article III, District Provisions, to state the setbacks are for principal structures; and

**WHEREAS**, The Town Council has determined there is a need to correct the list of major collector streets to delete Briar Creek Boulevard and to correct the right of way width for minor collector streets to 70 feet to eliminate the conflict with the Comprehensive Plan.

**WHEREAS**, The Town Council approved these recommendations from the Planning and Zoning at their meeting on August 6, 2012.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, THAT:**

**Section 1.** Findings. The above statements are correct.

**Section 2.** Section 1-3.3(E) and Table 1-3.3(E) are hereby amended to provide for the following language:

~~“Section E. Building Principal Structure Setbacks. Table 1-3.3(A) provides building setbacks for all zoning districts. 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 as in Table 1-3.3(E).~~

~~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~~ Principal Structure Setbacks from Centerline of Thoroughfares Streets and Roads

Transportation Facility	Building Setback (in feet) from C/L
<b>Arterial Roadways (150 feet ROW)</b>	100
Highway 1	
Malabar Road	
Babcock Street	
	Building Setback (in feet) from C/L
<b>Major Collector Streets (100 feet ROW)</b>	85
Corey Road	
Weber Road	
Marie Street	
<del>Briar Creek Boulevard</del>	
Jordan boulevard	
	Building Setback (in feet) from C/L
<b>Minor Collector Streets (70 ft) (80 feet ROW)</b>	75
Atz Road, Hall Road, Old Mission Road	
Benjamin Road, Reese Road	
	Building Setback (in feet) from C/L
<b>Local Streets (50 – 60-foot ROW)</b>	65

“

**Section 3. Codification.**

It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that Article III, District Provisions, Section 1-3.3(E) and Table 1-3.3(E) be codified into the next supplement update of the Land Development Code of the Town of Malabar, Florida.

**Section 4. Severability.**

In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected, and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

**Section 5. Conflicts.**

All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

**Section 6. Effective Date.**

This ordinance shall take effect immediately upon its adoption.

This ordinance was moved for adoption by Council Member \_\_\_\_\_, This motion was seconded by Council Member \_\_\_\_\_, and being put to a vote, the vote was as follows:

Council Member District 1 Grant Ball \_\_\_\_\_  
 Council Member District 2 Brian Vail \_\_\_\_\_  
 Council Member District 3 Steve Rivet \_\_\_\_\_  
 Council Member District 4 Dick Korn \_\_\_\_\_  
 Council Member District 5 Danny White \_\_\_\_\_

This Ordinance will be declared to be duly adopted seven days after the regular meeting of the Town of Malabar Town Council on \_\_\_\_\_, 2019.

**TOWN OF MALABAR**

**By:**

\_\_\_\_\_  
Mayor Patrick T. Reilly, Council Chair

1<sup>st</sup> Reading: 2/4/19

2<sup>nd</sup> Reading: 3/4/19

(seal)

ATTEST:

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

Approved as to Legal Sufficiency:

\_\_\_\_\_  
Karl W. Bohne, Jr., Town Attorney

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2**  
**Meeting Date: August 6, 2012**

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

**SUBJECT: Rationale of Recommendation re: Setbacks in Residential Zoning Districts**

**BACKGROUND/HISTORY:**

The recommendation from P&Z went to Council on 4/16/12. Mayor Eschenberg spoke to Council and stated he had attended the P&Z meetings when this was discussed and that he did not agree with the Board's position. He asked Council to send it back to P&Z Board to get their rationale on their recommendations.

The P&Z Board met on May 9, 2012 and provided their rationale as follows:

Setbacks per Table 1-3.3.A:

P&Z Board felt that only in RR-65 residential zoning could they support a reduced side and rear setback because you are dealing with 1.5 acre (43,560 sf) parcels. Board also only wanted to permit such reduced setbacks for accessory structures – not principal structures. Change the title of Table 1-3.3.A to address "Principal Structures" and address accessory structures with a new Footnote 7.

Board stated in RS-10 (10,000sf) and RS-15 (15,000sf) and RS-21 (21,000sf) the lots are too small to allow additional reduction in side and rear setbacks and still keep the separation between properties.

**Rationale:** The P&Z Board did NOT want it to resemble Palm Bay development. They were also concerned with safety issues for fire services. They listed these bullet items:


- Access for utility service
- Fire safety
- Don't have four sheds in a corner

Setback per Table 1-3.3.E. when using the centerline to determine setbacks.

**Rationale:** Table E is used to ensure consistent setbacks regardless if a property owner has dedicated right-of-way along the road frontage. Sample of different zonings along Malabar Road are attached as an example.

The Board recommended the Table remain as amended with corrections to the two scrivener's errors.

- Briar Creek Blvd should be deleted from list under Major Collector Streets. Briar Creek Blvd was added as it was originally in Ordinance 93-7. During discussions at P&Z and Workshops with Council (big turnout from Brook Hollow) it was consensus to remove it from Ordinance. When the Comp Plan was updated recently the ordinance was incorporated into the update correctly. The Code book has not been corrected since this error was pointed out in 1998 by Code Revision Committee.
- Right-of-way width for Minor Collectors should be 70-feet. The right-of-way width incorrectly shows 80-feet in the Code. The Comp Plan is correct.



Section 1-5.10 should be amended to refer to Principal Structure Setbacks and reference both Table 1-3.3.A or E. whichever provides a greater setback.

**Rationale:** the current wording is redundant and caused confusion to the reader.

**FINANCIAL IMPACT:**

Unknown

**ATTACHMENTS:**

Table 1-3.3.A. with Proposed Changes

Table 1-3.3.E. and Section E. with Proposed Changes

Section 1-5.10 with Proposed Changes

Example of various setbacks on Malabar Road

**ACTION OPTIONS:**

Staff requests Action to approve the recommended changes.

**P&Z Proposed Changes to Malabar Code, Article III, Section E and Table 1-3.3E.**

Section E.

Building Principal Structure Setbacks. Table 1-3.3(A) provides building setbacks for all the zoning districts, 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. required minimum setback from the thoroughfare shall be measured from the centerline of the right-of-way as in Table 1-3.3 (E).

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 PRINCIPAL STRUCTURE SETBACKS FROM CENTERLINE OF THOROUGHFARES STREETS AND ROADS**

Transportation Facility	Building Setback (feet)
<b>Arterial Roadways (150 feet R/W)</b>	<b>100</b>
US 1 Highway	
Malabar Road (SR 514)	
Babcock Street (SR 507)	
<b>Major Collector Streets (100 feet R/W)</b>	<b>85</b>
Corey Road	
Weber Road	
Marie Street	
Briar Creek	
Jordan Blvd.	
<b>Local Streets (50—60 feet R/W)</b>	<b>65</b>
<b>Minor Collector Streets (70 80-feet R/W)</b>	<b>75</b>
Atz Blvd.	
Hall Road	
Old Mission Road	
Benjamin (Reese) Road	




way acquisition needs shall be identified and relative priorities for land acquisition shall be established.

2-1.2.1 Policy:

*Transportation Map.* The Town hereby adopts that Future Transportation System Map. Additional right-of-way (R/W) needs for future roadway and drainage improvements shall be identified based on an assessment to be completed by 2010. The findings regarding specific additional R/W needs for roadway and drainage facility improvements shall be incorporated as an amendment to Future Transportation System Map.

2-1.2.2 Policy:

*Standards of Future Road R/W Acquisition.* The Town hereby adopts the following minimum standards for road rights-of-way:

- 
- a. Arterial Roadways: 150' R/W
  - b. Major Collector Streets: 100' R/W
  - c. Minor Collector Streets: 70' R/W
  - d. Local Streets: 60' R/W (if swale drainage)  
50' R/W (if curb and gutter)

2-1.2.3 Policy:

*Mandatory R/W Dedication/Fees in Lieu.* The Town shall continue to implement a program for mandatory dedication or fees in lieu thereof as a condition of development approval associated with plats, replats, PUDs, or site plans where such development generate a need for new or improved roadways. The purpose and intent of such program shall be to assure that: 1) adequate road R/W and necessary roadway improvements are dedicated and developed concurrent with the impacts of new development; and 2) the cost of such improvements shall be borne by the developer generating the need for the facilities.

2-1.3 Objective:

*Future Roadway Improvements.* The Town shall coordinate with the FDOT and with the Brevard County MPO to attain roadway improvements needed to accommodate future transportation system improvements needed to accommodate system demands.

2-1.3.1 Policy:

*FDOT Planned Roadway Improvements.* The Town shall provide necessary coordination in achieving planned FDOT improvements to Town roadways.

2-1.3.2 Policy:

*FDOT Planned Roadway Improvements.* Brevard County plans to pave Corey and Weber Roads and the Town shall participate in funding a portion of the scheduled improvement pursuant to their interlocal agreement on this subject.



# Existing and Future Functional Classification (2025)

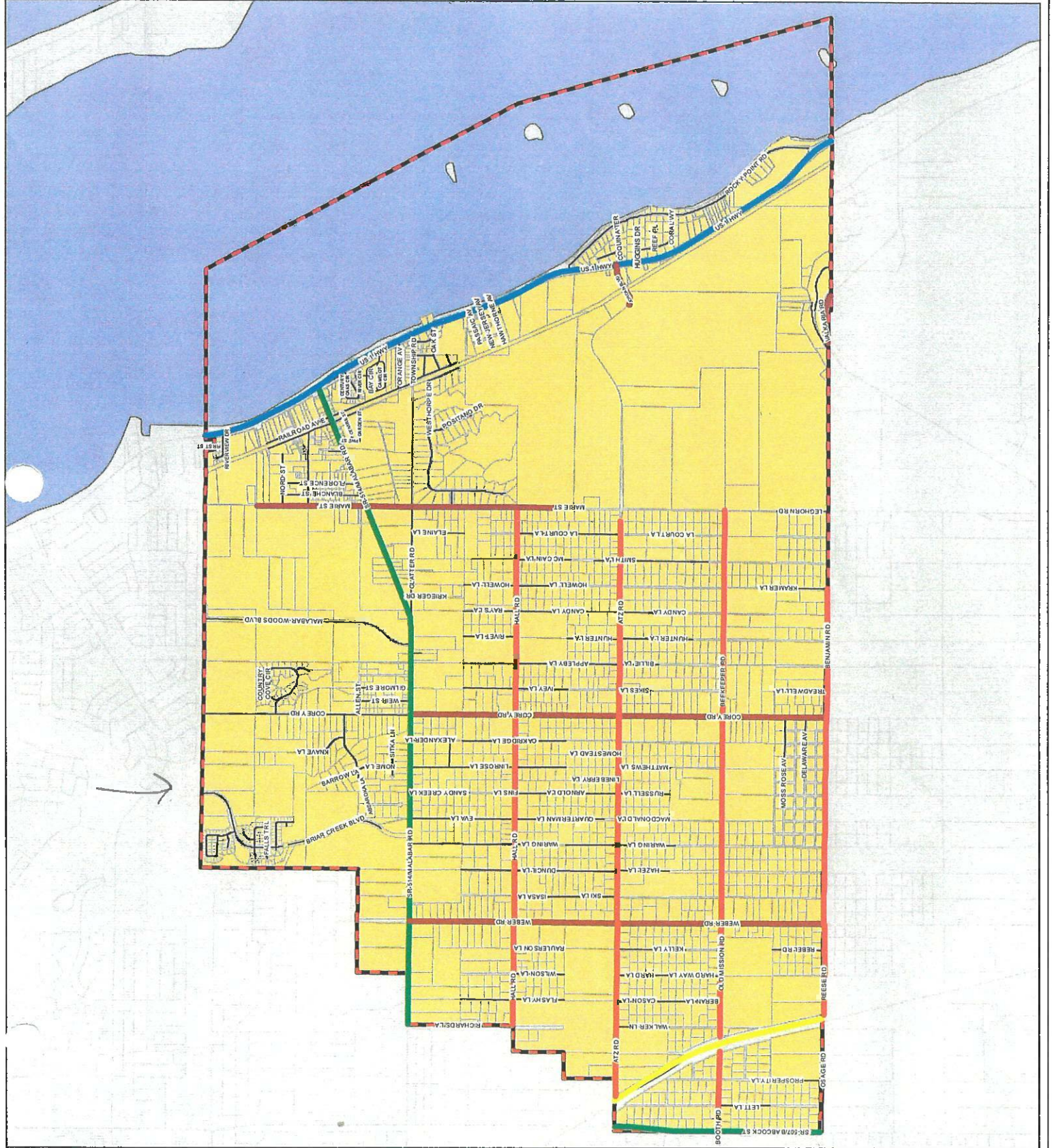
TRN - 3

**Legend**

- Meander Town Boundary
- Existing and Future Roads
- Functional Classification
- URBAN PRINCIPAL ARTERIAL - INTERSTATE
- URBAN PRINCIPAL ARTERIAL
- URBAN MINOR ARTERIAL
- MAJOR COLLECTOR
- MINOR COLLECTOR

Print Date : June, 2009

Source :  
FDOT,  
Town of Malabar, 2009





**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 5**  
**Meeting Date: February 04, 2019**

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

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**SUBJECT: First Reading of Ord 2019-04 Amending Article V**

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**BACKGROUND/HISTORY:**

Attached is an ordinance that amends Article V General Provisions to refer the reader to Article III, District Provisions, Tables 1-3.3(A) and ( E)

This removes the conflict with the Comprehensive Plan.

**ATTACHMENTS:**

Ordinance 2019-04  
Agenda Report from August 6, 2012

**ACTION OPTIONS:**

Approve First Reading of Ord 2019-04

## ORDINANCE 2019-04

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO ARTICLE V, GENERAL PROVISIONS, SECTION 1-5.10 OF THE LAND DEVELOPMENT CODE, PROVIDING FOR CLARIFYING LANGUAGE FOR SETBACKS FOR PRINCIPAL STRUCTURES; PROVIDING FOR REFERENCE TO ARTICLE III DISTRICT PROVISIONS TABLE 1-3.3(A) AND TABLE 1-3.3(E) IN THE LAND DEVELOPMENT CODE; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Malabar adopted size and dimension regulations for all zoning classifications for principal structures based on the guidelines in the Comprehensive Plan; and

WHEREAS, The Town Council has determined there is a need to clarify language in the body of Section 1-5.10 of Article V, General Provisions, to refer to Article III, District Provisions Table 1-3.3 (A) and Table 1-3.3(E) for the setbacks for principal structures; and

WHEREAS, The Town Council approved these recommendations from the Planning and Zoning at their meeting on August 6, 2012.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, THAT:

**Section 1.** Findings. The above statements are correct.

**Section 2.** Section 1-5.10 of Article V are hereby amended to provide for the following language:

~~"Section 1-5.10. Principal Structure Building Setbacks. from the center line of rights of way~~

~~For the purpose of promoting health, safety, and general welfare of the community, and to lessen congestion in the streets; to secure safety from fire, panic, storm, hurricane or other causes; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to provide adequate facilities for transportation, parking, water and sewerage; and to conserve the value of buildings and encourage the most appropriate use of land, all properties with the Town limits shall maintain these minimum building setback lines as measured from the center line of the road.~~

In determining the setback requirement for any principal structures proposed to be located, the setback requirements in this section shall be construed as a minimum setback and if a greater setback is required under any of the zoning districts then such greater setback requirement shall be in compliance with Article III, District Provisions, Table 1-3.3(A) or Table 1-3.3(E), whichever is more restrictive.

~~In the event of the recording of any proposed street or road in the office of the Town Clerk, or in the event of the designation or establishment by the Town Council of any proposed public street or road, the same shall thereupon immediately be used as the reference point for the purpose of determining setbacks for new construction under the terms of this ordinance. This provision shall not prevent the reconstruction of a fully or partially damaged or destroyed legally nonconforming structure so long as the rebuilt structure is consistent with the Building Code. The measurement shall be from the center line of the road. "~~

**Section 3.** Codification.

It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that Article V, General Provisions, Section 1-5.10 be codified into the next supplement update of the Land Development Code of the Town of Malabar, Florida.

**Section 4. Severability.**

In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected, and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

**Section 5. Conflicts.**

All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

**Section 6. Effective Date.**

This ordinance shall take effect immediately upon its adoption.

This ordinance was moved for adoption by Council Member \_\_\_\_\_ This motion was seconded by Council Member \_\_\_\_\_, and being put to a vote, the vote was as follows:

Council Member District 1 Grant Ball	_____
Council Member District 2 Brian Vail	_____
Council Member District 3 Steve Rivet	_____
Council Member District 4 Dick Korn	_____
Council Member District 5 Danny White	_____

This Ordinance will be declared to be duly adopted seven days after the regular meeting of the Town of Malabar Town Council on \_\_\_\_\_, 2019.

**TOWN OF MALABAR**

\_\_\_\_\_  
Mayor Patrick T. Reilly, Council Chair

1<sup>st</sup> Reading: 2/4/19  
2<sup>nd</sup> Reading: 3/4/19

(seal)

ATTEST:

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

Approved as to Legal Sufficiency:

\_\_\_\_\_  
Karl W. Bohne, Jr., Town Attorney

# TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 2  
Meeting Date: August 6, 2012 

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

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**SUBJECT: Rationale of Recommendation re: Setbacks in Residential Zoning Districts**

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## BACKGROUND/HISTORY:

The recommendation from P&Z went to Council on 4/16/12. Mayor Eschenberg spoke to Council and stated he had attended the P&Z meetings when this was discussed and that he did not agree with the Board's position. He asked Council to send it back to P&Z Board to get their rationale on their recommendations.

The P&Z Board met on May 9, 2012 and provided their rationale as follows:

Setbacks per Table 1-3.3.A:

P&Z Board felt that only in RR-65 residential zoning could they support a reduced side and rear setback because you are dealing with 1.5 acre (43,560 sf) parcels. Board also only wanted to permit such reduced setbacks for accessory structures – not principal structures.

Change the title of Table 1-3.3.A to address "Principal Structures" and address accessory structures with a new Footnote 7.

Board stated in RS-10 (10,000sf) and RS-15 (15,000sf) and RS-21 (21,000sf) the lots are too small to allow additional reduction in side and rear setbacks and still keep the separation between properties.

**Rationale:** The P&Z Board did NOT want it to resemble Palm Bay development. They were also concerned with safety issues for fire services. They listed these bullet items:


- Access for utility service
- Fire safety
- Don't have four sheds in a corner

 Setback per Table 1-3.3.E. when using the centerline to determine setbacks.

**Rationale:** Table E is used to ensure consistent setbacks regardless if a property owner has dedicated right-of-way along the road frontage. Sample of different zonings along Malabar Road are attached as an example.

The Board recommended the Table remain as amended with corrections to the two scrivener's errors.

- Briar Creek Blvd should be deleted from list under Major Collector Streets. Briar Creek Blvd was added as it was originally in Ordinance 93-7. During discussions at P&Z and Workshops with Council (big turnout from Brook Hollow) it was consensus to remove it from Ordinance. When the Comp Plan was updated recently the ordinance was incorporated into the update correctly. The Code book has not been corrected since this error was pointed out in 1998 by Code Revision Committee.
- Right-of-way width for Minor Collectors should be 70-feet. The right-of-way width incorrectly shows 80-feet in the Code. The Comp Plan is correct.



Section 1-5.10 should be amended to refer to Principal Structure Setbacks and reference both Table 1-3.3.A or E. whichever provides a greater setback.

**Rationale:** the current wording is redundant and caused confusion to the reader.

**FINANCIAL IMPACT:**

Unknown

**ATTACHMENTS:**

Table 1-3.3.A. with Proposed Changes

Table 1-3.3.E. and Section E. with Proposed Changes

Section 1-5.10 with Proposed Changes

Example of various setbacks on Malabar Road

**ACTION OPTIONS:**

Staff requests Action to approve the recommended changes.

TOWN OF MALABAR

MEMORANDUM

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**Date:** August 7, 2012 2012-TC/T-34

**To:** Planning and Zoning Board  
Denine Sherear, P&Z Bd Secretary

**From:** Debby K. Franklin, Town Clerk-Treasurer


**Ref:** P&Z Recommendation re: setbacks in Residential Zoning

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At the regular Council meeting of August 6, 2012 Council listened to P&Z Board Vice-Chair Pat Reilly provide the rationale behind the Board's recommendation on setbacks in residential neighborhoods.

After hearing the rationale, and a brief discussion, the Council voted to approve the P&Z Board's recommendation to allow a reduced side and rear setback, for accessory structures only and only in the RR-65 zoning.

 Council also approved the proposed changes to Table E and Section E in Article III and also approved the proposed changes to Article V, Section 1-5.10.

 Council was in support of keeping both Table 1-3.3.A and Table 1-3.3.E and understood the reason to keep both in the Code. They also understood the need to correct the scrivener's error on the 70' and also the deletion of Briar Creek Blvd as a major collector.

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 6  
Meeting Date: February 04, 2019**

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

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**SUBJECT: Approve Resolution 02-2019 Increasing Administrative Fees**

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**BACKGROUND/HISTORY:**

Attached is a resolution showing both the old fees and the proposed new fees. Some fees were not changed.

**ATTACHMENTS:**

Resolution 02-2019

**ACTION OPTIONS:**

Approve Reso 2-2019.

RESOLUTION 02-2019

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO THE AMENDMENT OF ADMINISTRATIVE AND PERMIT FEES REQUIRED TO BE ESTABLISHED BY VARIOUS ORDINANCES OF THE TOWN OF MALABAR; PROVIDING FOR REPEAL OF RESOLUTION 4-2014; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Malabar's Code of Ordinances requires assessment of various administrative and permit fees; and

WHEREAS, the Town of Malabar's Ordinances and Land Development Code require that the Town Council for the Town of Malabar impose said administrative fees; and

WHEREAS, the Town Council of the Town of Malabar has determined that a revision to the administrative fee schedule is appropriate to update fees to cover the actual costs of professional review, administrative time, legal advertising and mailing costs for notices.

NOW, THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1. ADMINISTRATIVE FEES.** The Town of Malabar does hereby revise administrative fees in accordance with the Town of Malabar's Code of Ordinance and Land Development Code to more accurately reflect the actual costs in 2019.

**EXHIBIT "A"**

**A.**

Planned Unit Development (PUD) review:	\$900.00 plus \$40.00 per acre
Planned Unit Development (PUD) final:	\$900.00 plus \$40.00 per acre
Site Plan Pre-Application Conference (optional) (mandatory): except SFR	\$500.00
Site Plan Review: <del>\$300</del> \$900.00 for 1 <sup>st</sup> acre plus \$50 for each additional acre or portion of acre	
Subdivision <u>S/D or Commercial Development</u> Pre-ap Conference (mandatory)	<del>\$500.00</del> \$1,500.00
Preliminary Plat <u>S/D</u> Review: <del>\$10.00 per lot or \$500.00</del>	\$1,500.00
Final Plat <u>S/D</u> Review: <del>\$20 per lot or \$500.00</del>	\$1,200.00
Pre-Construction Conference for <u>S/D or Commercial Development</u> :	<del>\$150.00</del> \$ 300.00
Variance Request to Board of Adjustment: <u>Residential</u>	<del>\$300.00</del> \$800.00
Variance Request to Board of Adjustment: <u>Commercial</u>	<del>\$300.00</del> \$1,750.00
Special Exception:	\$175.00 plus site plan review fee
Conditional Use Permit Application:	\$175.00 plus site plan review fee
Rezoning Request: <u>Residential</u> \$10.00 per additional acre or portion thereof.	\$325.00 \$625.00 for the first acre plus
Rezoning Request: <u>Commercial</u> \$10.00 per additional acre or portion thereof.	\$325.00 \$1,500.00 for the first acre plus
<u>Future Land Use Map</u> Designation Change:	\$300.00 plus the rezoning fee
Land clearing: <del>\$50.00</del> \$100.00 for the first acre plus \$10.00 per additional acre or portion thereof plus, engineering review costs.	



Residential lot fill permits	<del>\$30.00</del> <u>\$100.00</u> plus engineering costs.	
Tree removal – <del>single tree: \$40.00; for each tree plus \$100 for each protected 5" caliper up to five acres.</del> <u>Type IV Permit – dead, diseased or in fire buffer – no charge</u>		
Multiple Tree Removal:		\$150.00 plus mitigation
Pond permit: Engineering costs only for ponds < ¼ acre; \$25.00 per 1000 sq. ft. of pond area for ponds over ¼ acre in size plus engineering costs.		
Road Vacate and Abandonment request:		\$425.00
Written zoning verification or for the availability of town services.	<del>\$30.00</del>	<u>\$50.00</u>
<del>As-built drawing review: Actual cost of staff</del>		
Development agreement:		\$500.00
Culvert permit: \$100.00 plus actual engineering.		
Contractor registration fee	<del>\$30.00</del>	<u>\$40.00</u>
Dirt Road Construction Application:		
	Street Length up to 200 feet <del>\$740.00</del>	<u>\$800.00</u>
	Street Length up to 400 feet <del>\$770.00</del>	<u>\$825.00</u>
	Street Length up to 600 feet <del>\$840.00</del>	<u>\$890.00</u>
	Street Length up to 800 feet <del>\$880.00</del>	<u>\$930.00</u>
	Street Length up to 1000 feet <del>\$960.00</del>	<u>\$1010.00</u>
	Street Length up to 1200 feet <del>\$1030.00</del>	<u>\$1080.00</u>
	Street Length up to 1400 feet <del>\$1070.00</del>	<u>\$1120.00</u>
Site Plan minor modification		\$150.00
Golf Cart Registration – one-time fee and no renewal fee		\$ 50.00

B. No permit, certificate, or other related document, and no inspections, public notice, or other action shall be instituted until such fees, costs, and charges have been paid. When in accordance with Town codes, a fee is paid, and registration submitted, there shall be no return or rebate of any funds so received, regardless of the Town’s determination in the subject matter. All fees, costs, and charges shall be, upon collection, deposited in the appropriate fund of the Town.

**SECTION 2. CONFLICTS.** All resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this resolution.

**SECTION 3. SEVERABILITY.** In the event a court of competent jurisdiction shall hold or determine that any part of this resolution is invalid or unconstitutional, the remainder of the resolution shall not be affected, and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this resolution without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

**SECTION 4. EFFECTIVE DATE.** This Resolution shall take effect immediately upon passage.

This Resolution was moved for adoption by Council Member \_\_\_\_\_ The motion was seconded by Council Member \_\_\_\_\_ and, upon being put to a vote; the vote was as follows:

- Council Member Grant Ball \_\_\_\_\_
- Council Member Brian Vail \_\_\_\_\_
- Council Member Steve Rivet \_\_\_\_\_
- Council Member Dick Korn \_\_\_\_\_
- Council Member Danny White \_\_\_\_\_

This Resolution was then declared to be duly passed and adopted this 4th day February 2019.

**TOWN OF MALABAR**

By:

ATTEST:

\_\_\_\_\_  
 Mayor Patrick T. Reilly  
 Council Chair

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

(seal)

Approved as to Form and Content:

\_\_\_\_\_  
 Karl W. Bohne, Jr.,  
 Town Attorney

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 7  
Meeting Date: February 04, 2019**

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

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**SUBJECT: Approve Temporary Placement of a Travel Trailer While Constructing SFR at 2820 Smith Lane - Applicants: Mr. and Mrs. Logan**

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**BACKGROUND/HISTORY:**

Malabar Land Development Code Article V, Section 1-5.15 (attached) allows Council to approve the *temporary residential occupancy* in a travel trailer on residential property "*while a new single family home is under construction.*" The application requires a \$500.00 bond that is refundable once the home is completed and the trailer ceases to be used for residential use. If the home is not complete within six-months, the applicant may request one extension.

The Building Department handles the issuance of such a temporary permit once sanitation and temporary utility connections have been approved and established.

In RR-65 Zoning, residential occupancy in an RV is prohibited without issuance of a building permit for new home construction and active progress on the home.

The applicants, Mr. and Mrs. Logan, have submitted all necessary applications for land development and construction of their new home and the building permit has been issued.

**FINANCIAL IMPACT:**

None – bond is returned once the Certificate of Occupancy is issued and the RV ceases to be used for residential occupancy.

**ATTACHMENTS:**

Application and site plan for RV placement  
Map of area showing location  
Section of Code

**ACTION OPTIONS:**

Approval the Temporary Placement of RV while SFR is constructed.

RTCM 2/4/19

TOWN OF MALABAR

JAN 08 2019

RECEIVED



2725 Malabar Road  
Malabar, Florida 32950-4427  
321-727-7764 – Telephone  
321-722-2234 – FAX

**LOCATION AGREEMENT**  
**TEMPORARY LOCATION OF MOBILE HOME, CAMPER, ETC.**

A Recreation Vehicle may be placed on my property located at 2820 SMITH LANE in Malabar, Florida, on a temporary basis, while my home is being built on that property. I agree that the mobile home shall be removed immediately after completion of construction, approximately six months from this date. I also agree to start action on construction of my residence on the property as soon as possible, and be able to show completion or major progress at the end of the six-month period.

In the event the construction is not completed by that date, I will apply to the Town of Malabar for an extension of time. If no progress whatsoever is shown, the Temporary Trailer Permit will be removed immediately, and I will forfeit the \$500.00 security bond.

- o Proof of Ownership
- o Survey or Plot Plan showing location
- o Description; means of septic hook-up, water & power -
- o Reason for mobile home on property
- o Building Permit No. # 84
- o Road Permit Application # N/A
- o Road Bond: N/A

**Signature:**

William L. Lee

Date: 1-8-19

Date Accepted: 1/8/19

Town Clerk: Dorely K. Anand

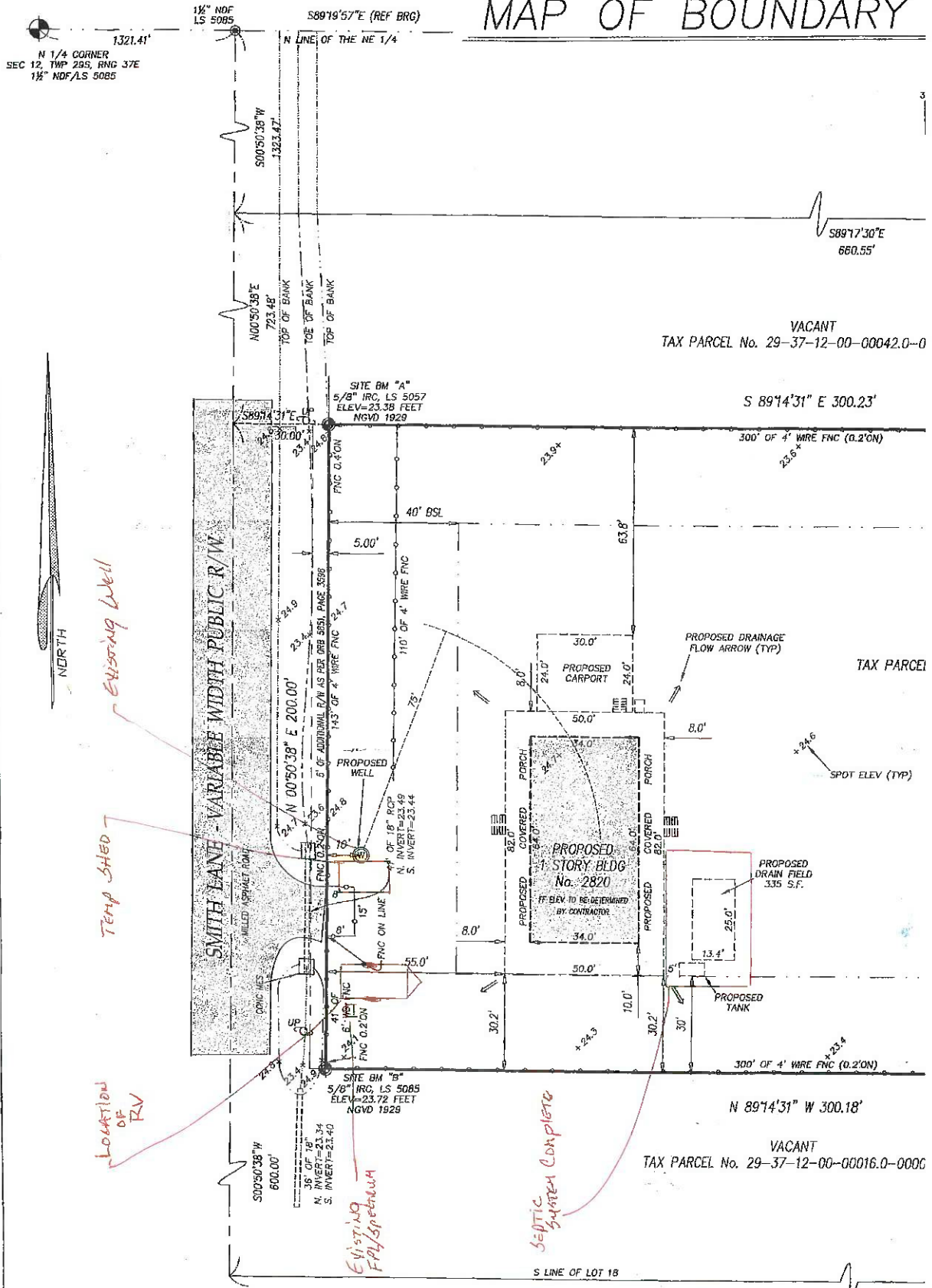
**Signature:**

X

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

KangarooElectric@AOL.COM

# MAP OF BOUNDARY



**CERTIFICATION:**

I HEREBY CERTIFY THAT THE ATTACHED SURVEY WAS DONE UNDER MY DIRECTION AND MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027 FLORIDA STATUTES.

DATE: 8/9/18  
 JOEL A. SEYMOUR PROFESSIONAL LAND SURVEYOR AND MAPPER  
 STATE OF FLORIDA No. 6133

**LEGAL DESCRIPTION:**

ORB 7047, Page 2992:  
 The North 200 feet of the South 600 feet of 11 Range 37 East, Florida Indian River Land Comp Page 165, of the Public Records of Brevard County, Florida, and drainage right of way less and five

**RECEIPT** DATE 1/8/19 No. 668571

RECEIVED FROM Will Logan \$500

2820 Smith W. Malabar DOLLARS

FOR RENT Temp Trailer permit/BOND

FOR check 1220

ACCOUNT		<input type="radio"/> CASH	
PAYMENT		<input checked="" type="radio"/> CHECK	FROM _____ TO _____
BAL. DUE		<input type="radio"/> MONEY ORDER	
		<input type="radio"/> CREDIT CARD	BY <u>[Signature]</u> 3-11

**WILLIAM J LOGAN DBA KANGAROO ELECTRIC**  
 282 PIONEER AVE NE  
 PALM BAY, FL 32907-2483

329.1000

1220

63-8419/2670  
744

DATE 1-8-19

CHECK ARMOR

PAY TO THE ORDER OF Town of Malabar \$ 500.00  
Five Hundred Dollars DOLLARS

**PNC BANK**

PNC Bank, N.A. 001

FOR Temp of/Relocation Trailer

[Signature]

⑈001220⑈ ⑆267084199⑆ 1225158524⑈

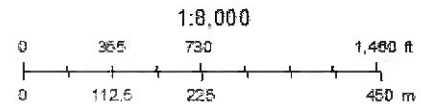
# Brevard County Property Appraiser



January 24, 2019

## 2820 SMITH LANE

2816390



For illustration only. Not a survey. Map layers may not precisely align.  
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