

**ORDINANCE 2021-02**

A ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S COMPREHENSIVE PLAN FUTURE LAND USE ELEMENT; PROVIDING FOR A TEXT CHANGE TO THE PERMITTED MAXIMUM BUILDING COVERAGE IN THE RESIDENTIAL AND LIMITED COMMERCIAL (R/LC) MIXED USE DESIGNATION; PROVIDING FOR A SIMILAR CHANGE IN THE LAND DEVELOPMENT CODE DELETING THE MAXIMUM BUILDING COVERAGE OF 4,000SF AND UTILIZING THE TWENTY PERCENT COVERAGE AS STATED IN TABLE 1-3.3(A); PROVIDING FOR CODIFICATION; SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR TRANSMISSION TO THE FLORIDA STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; PROVIDING AN EFFECTIVE DATE.

**Whereas**, the Town of Malabar adopted a Comprehensive Plan amendment in 2019 that provided for the mixed-use designation of Residential/Limited Commercial (R/LC) to be expanded from the previously Highway 1 locations to also allow such development along Malabar Road and Babcock Street; and

**Whereas**, the Town of Malabar desires to allow a development to utilize twenty percent (20%) of the gross lot size and delete the reference to the maximum of 4,000sf stated in Chapter 1 of the Comp Plan adopted a Comprehensive Plan amendment in 2019 that provided for the mixed use.

**Whereas**, the Town of Malabar has received technical assistance comments back from the State DEO and desires to further amend this ordinance in include the recommendations regarding the Comprehensive Plan amendment will become effective 31 days after receiving the letter of compliance from the State DEO, and the amendments to the Land Development Code shall then be considered effective after that period.

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

**Section 1.** Section 1-2.2.6 (b) of the Town's Comprehensive Plan, Element/Chapter 1, Future Land Use Designation for Residential and Limited Commercial (R/LC) development amended to read as follows:

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1-2.2.6 Policy:

*Criteria for the Residential and Limited Commercial Development R/LC Designation.* The following criteria for development within the R/LC FLUM designation shall be incorporated into the Town of Malabar Land Development Regulations:

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b. *Limited Commercial Uses.* Limited Commercial uses with the R/LC FLUM designation shall have a minimum floor area of nine hundred (900) square feet and a ~~maximum of four thousand (4,000) square feet~~ permitted maximum building coverage of twenty percent (20%) of the gross lot size.

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**Section 2.** Section 1-3.1. Purpose and Intent of Districts, of Article III, District Provisions, of the Land Development Code to read as follows:

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O. *R/LC "Residential and Limited Commercial."* The R/LC district is established to implement comprehensive plan policies for managing development on land specifically designated for mixed use Residential and Limited Commercial development on the Comprehensive Plan Future Land Use Map (FLUM). Such development is intended to accommodate limited commercial goods and services together with residential activities on specific sites designated "R/LC" which are situated along the west side of the US 1 corridor, situated on the north and south side of Malabar Road and those sites on the east side of Babcock Street as delineated on the FLUM. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods as well as single family and multiple family structures with a density up to six (6) units per acre. Commercial activities shall generally cater to the following markets:

- Local residential markets within the town as opposed to regional markets; or
- Specialized markets with customized market demands.
- A Malabar Vernacular Style is required for all development along arterial roadways.

Areas designated for mixed use Residential and Limited Commercial development are not intended to accommodate commercial activities ~~with a floor area in excess of four thousand (4,000) square feet~~, such as large-scale retail sales and/or service facilities or trade activities. These types of commercial activities generally serve regional markets, and the intensity of such commercial activities is not generally compatible with residential activities located within the same structure or located at an adjacent or nearby site. Such stores would usually differ from limited commercial shops ~~since the former would usually require a floor area larger than four thousand (4,000) square feet~~; would generally carry a relatively larger inventory; and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large-scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposal containers and/or providing drive-in facilities.

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**Section 3.** Table 1-3.3 (A) of Article III of the Town’s Land Development Code is amended to delete the Maximum Building Size and read as follows:

Table 1-3.3(A) Size and Dimension regulations

Zoning District	Minimum Lot (1)			Maximum Height (ft./stories)	Minimum (sq. ft.) Commercial: sq ft	Setback (ft.)(2)				Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (I)	Side (C)				
R/LC	20,000	100	150	35/3	900sf Max 4,000sf	50	25	10	20		20%	35	6

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**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 this 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 be further assumed that the Town Council would have enacted the remainder of this ordinance without said invalid and unconstitutional provision, thereby causing said remainder to remain in full force and effect.

**Section 5.** Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

**Section 6.** Codification. The provisions Section 2 and Section 3 of this ordinance shall become part of the Land Development Code of the Town of Malabar only after the plan amendment has taken effect.

**Section 7.** Effective Date. The effective date of this plan amendment, if the amendment is not timely challenged, shall be 31 days after the state land planning agency notifies the local government that the plan amendment package is complete. If the amendment is timely challenged, this amendment shall become effective on the date the state land planning agency or the Administration Commission enters a final order determining this adopted amendment to be in compliance. Sections 2 and 3 shall become part of the Land Development Code of the Town of Malabar only after the plan amendment has taken effect.

The foregoing Ordinance was moved for Final adoption by Council Member White. The motion was seconded by Council Member Acquaviva and, upon being put to a vote, the vote was as follows:

Council Member Marisa Acquaviva	Aye
Council Member Brian Vail	Aye
Council Member Steve Rivet	Aye
Council Member David Scardino	Aye
Council Member Danny White	Aye

This ordinance was then declared to be adopted by Council this 03rd day of May 2021.

**TOWN OF MALABAR**

Original signed  
Mayor Patrick T. Reilly,  
Council Chair

(seal)

**ATTEST**

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

Approved as to form and content:

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Karl W. Bohne, Jr., Town Attorney

P&Z Board Review: 02/24/2021  
Transmittal Council Reading: 3/15/2021 Vote: All Ayes.  
Adoption Second Reading: 5/03/2021.  
Effective date: appx June 6, 2021

