

ORDINANCE 2023-03

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING ARTICLE VI, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA; AMENDING SECTION 1-6.1, SUBSECTION A, INTENT AND PURPOSE; AMENDING SECTION 1-6.1, SUBSECTION B, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA; AND AMENDING TABLE 1-6.1(B) – CONDITIONAL LAND USE REQUIREMENTS; ADDING CRITERIA FOR FUNERAL HOMES AND MINI WAREHOUSE/STORAGE; REMOVING REFERENCES TO TRADE AND SKILLED SERVICES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, conditional use and special exception use provide greater opportunity for business development in the Town of Malabar; and

WHEREAS, the Town of Malabar has a limited number of conditional use and special exception use criteria; and

WHEREAS, the Town of Malabar wishes to ensure that the burden of proof for a conditional use is on the applicant; and

WHEREAS, the Town Council with the recommendation by the Malabar Planning and Zoning Board on May 10, 2023, seek to allow certain Conditional Use and Special Exception Uses to become more available to its residents; and

WHEREAS, Town Council has determined that the proposed amendments serve the public health, safety and welfare of the citizens of the Town of Malabar, Florida.

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

SECTION 1. ARTICLE VI SECTION 1-6.1, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA, SUBSECTION (A) of the Town Land Development Code is hereby amended to read as follows:

- A. *Purpose and Intent.* This Section is intended to stipulate general provisions and criteria for considering the approval of conditional uses on specific sites within various zoning districts. Conditional uses shall be permitted only upon a finding that the respective use and proposed site plan satisfies the specific criteria of Section 1-6.1(C) cited herein.

SECTION 2. ARTICLE VI SECTION 1-6.1, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA, SUBSECTION (B) of the Town Land Development Code is hereby amended to read as follows:

- B. Specific Criteria Regulating Conditional Uses. A conditional use shall be permitted only upon a finding that the proposed conditional use, application, and site plan complies with the criteria herein unless the town determines that the proposed conditional use does not meet the criteria herein provided and the proposed conditional use is adverse to the public's interest. In addition to the site plan criteria of Article VII, an application for a conditional use shall describe the proposed land use characteristics and site plan techniques proposed to mitigate against possible adverse impacts to properties in the immediate vicinity. A conditional use permit applicant has the burden of proof to meet all the applicable requirements for the issuance of a conditional use. The applicant must demonstrate, by substantial competent evidence, that the application and all requirements and conditions for the granting of a conditional use have been met established and that the applicant accepts the conditions as recommended by the Planning and Zoning Board and those subsequently adopted and imposed by the Town Council relating to the conditional use.
1. Characteristics of use described. The following characteristics of a proposed conditional use shall be clearly described as part of the conditional use application:
- a. Scale and intensity. Scale and intensity of use as measured by the following:
- i. Floor area ratio;
 - ii. Traffic generation;
 - iii. Square feet of enclosed building for each specific use;
 - iv. Proposed employment;
 - v. Proposed number and type of service vehicles;
 - vi. Off-street parking needs; and
 - vii. Other specifications and/or characteristics of the proposed use describing the nature, character, and intensity of the use, including

compatibility with existing and anticipated uses within the immediate vicinity.

b. Site improvements. On- or off-site improvement needs generated by the proposed use and not identified in the preceding subparagraph "a.":

- i. On- or off-site facilities required to serve the proposed uses such as utilities, public facilities, roadway or signalization improvements, or other similar improvements, including proposed accessory structures or facilities; and
- ii. Other unique facilities/structures proposed as part of site improvements.

c. On-site amenities. On-site proposed to enhance site and planned improvements. Amenities including mitigative techniques such as open space, setbacks from adjacent properties, screening and buffers, including landscaped berms proposed to mitigate against adverse impacts to adjacent sites.

d. Public facilities. If the conditional use is for a public or semi-public facility, the primary and auxiliary service areas shall be described together with the existing and anticipated network of related facilities accommodating service area needs within the incorporated and unincorporated areas of Brevard County.

2. Criteria for conditional use review and approval. In addition to site plan identified in Article VII, applications for a conditional use shall clearly demonstrate the following:

- a. Land use compatibility. The applicant shall demonstrate that the conditional use, including its proposed scale and intensity, traffic generating characteristics, and off-site impacts are compatible and harmonious with adjacent land uses and will not adversely impact land use activities in the immediate vicinity.

Similarly, where the use is substantially different from other uses in the district and is not intended to serve the residents in the immediate vicinity, the applicant shall bear the burden of demonstrating that the use is appropriate to the subject site and immediate vicinity and cannot and/or should not be located at an alternative site. In order for a non-residential use to be approved within a residential area, the applicant must demonstrate that a location outside the residential area would not provide for the essential site location needs of the facility or use.

b. Land use consistency. The applicant shall demonstrate that the conditional use is consistent with the Comprehensive Plan and compliant with all applicable federal, state, county and town laws and ordinances. Where permits are required from governmental agencies other than the town, these permits shall be obtained as a condition of approval.

c. Land use capability. The applicant shall demonstrate that the land is capable of supporting the use, as measured by the following:

b.i. Sufficient site size and adequate site specifications to accommodate the proposed use. The size and shape of the site, the proposed setbacks and buffer areas, the proposed access and internal circulation, and the site design enhancements must be adequate to accommodate the proposed scale and intensity of conditional use requested. The site shall be of sufficient size to accommodate site design amenities such as screening, buffers, landscaping, open space, off-street parking, efficient internal traffic circulation, and similar site plan improvements needed to mitigate against potential adverse impacts of the proposed use.

e.ii. Public and semi-public facilities within residential areas. A public or semi-public facility proposed within any type of residential district must provide an essential service to residential dwelling units within the immediate vicinity and the applicant must

demonstrate that alternative sites zoned for non-residential use cannot accommodate the functions of the facility.

- d.-iii. Proper use of mitigative techniques. The applicant shall demonstrate that the conditional use and site plan has been designated to incorporate mitigative techniques needed to prevent adverse impacts to adjacent land uses. In addition, the design scheme shall appropriately address off-site impacts to ensure that land use activities in the immediate vicinity, including community infrastructure are not burdened with adverse impacts detrimental to the general public health, safety and welfare.
- e.-iv. Hazardous waste and hazardous emissions. The proposed use shall not generate hazardous waste, hazardous emissions, or require use of hazardous materials in its operations without use of town approved mitigative techniques designed to prevent any adverse impact to the general health, safety and welfare. The plan shall provide for appropriate identification of hazardous waste and hazardous material, regulate its use, storage and transfer consistent with best management principles and practices. No use which generates hazardous waste, hazardous emissions or uses hazardous materials shall be located in the town unless specific location is consistent with the Comprehensive Plan, land development regulations, and does not adversely impact wellfields, aquifer recharge areas, or other conservation resources. Such uses shall be located within a non-residential district.
- f.-v. Compliance with applicable laws and ordinances. A conditional use application shall demonstrate compliance with all applicable federal, state, county and town laws and ordinances. Where permits are required from governmental agencies other than the town, these permits shall be obtained as a condition of approval.

SECTION 3. ARTICLE VI SECTION 1-6.1, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA; TABLE 1-6.1(B) CONDITIONAL LAND USE REQUIREMENTS to be amended to read as:

| Conditional Land Uses | Minimum Size Site | Minimum Width/Depth (feet) | Access Required to Street | Building Setback from Residential District / Nonresidential District (feet) | Parking Lot Setbacks from Adjacent Residential District / Nonresidential District (feet) | Perimeter Screening Residential District / Nonresidential District (5) | Curb Cut Controls | Other |
|--|-----------------------|----------------------------|-----------------------------------|---|--|--|-------------------|-------|
| Child Care Facilities | 1 Acre | 145 | Paved | 50/30 | 15/10 | Type A/B | (7) | |
| Places of Worship | 5 Acres | 250 | Paved | 70/45 | 25/20 | Type A/C | (7) | |
| Educational Institution | (1) | 500 | Arterial | 70/45 | 25/20 | Type A/C | (7) | |
| Enclosed Arcade Amusement Center/Electronic Gaming Establishment | 1 Acre | 120 | Highway 1 and Babcock Street only | 100/30 | N/A | Type A/C | (7) | |
| <u>Funeral Homes</u> | <u>2 Acres</u> | <u>250</u> | <u>Paved</u> | <u>100/75</u> | <u>25/20</u> | <u>Type A/C</u> | <u>(7)</u> | |
| Golf Courses | (2) | 500 | Paved | 70/45 | 25/20 | Type C/C | (7) | |
| Hospitals and other Licensed Facilities | 5 Acres | 325 | Arterial | 100/75 | 25/20 | Type A/C | (7) | |
| Nursing Homes and Related Health Care Facilities | 2 Acres | 210 | Paved | 60/30 | 25/20 | Type A/C | (7) | |
| Protective Services | (4) | 120 | Paved | 50/30 | 25/20 | Type A/C | (7) | |
| Public Parks and Recreation Areas | 5 Acres | 325 | Paved | 70/45 | 25/20 | Type C/C | (7) | |
| Public and Private Utilities | N/A | 120 | N/A | 70/30 | 25/20 | Type A/C | (7) | |
| Commercial Stables | 5 Acres | 325 | N/A | 100/75 | 50/40 | Type B/C | | |

| | | | | | | | | |
|--|-----------------------|-------------------|---|----------------------|---------------------|------------------------|-------------------|-----|
| Adult Entertainment | 1 Acre (8, 9, 10) | 120 | US1 / Babcock | 100/30 | N/A | Type A/C | (7) | (6) |
| Bars and Lounges | 1 Acre (8, 9) | 120 | US1 / Babcock | 100/30 | N/A | Type A/C | (7) | (6) |
| <u>Mini Warehouse/ Storage</u> | <u>4 Acres</u> | <u>250</u> | <u>Paved</u> | <u>100/30</u> | <u>25/20</u> | <u>Type A/B</u> | <u>(7)</u> | |
| Limited Manufacturing Activities | 1 Acre | 100/150 | Arterial / West Railroad Avenue | 100/25 | 25/20 | Type A/C | (7) | |
| Limited Manufacturing Services | 1 Acre | 100/150 | Arterial / West Railroad Avenue | 100/25 | 25/20 | Type A/C | (7) | |
| Marine Commercial Activities | 1 Acre | 120 | US1 / Babcock / West Railroad Avenue | 100/30 | N/A | N/A | (7) | |
| Service Stations, Including Gasoline Sales | 1 Acre (8) | 145 | Arterial | 100/30 | N/A | N/A | (7) | |
| Trades and Skilled Services | 1 Acre (8) | 145 | US1 / Babcock / West Railroad Avenue | 100/30 | N/A | Type A/C | (7) | |
| Vehicular Services and Maintenance | 1 Acre (8) | 145 | US1 / Babcock / West Railroad Avenue | 100/30 | N/A | Type A/C | (7) | |
| Wholesale Trades and Services | 1 Acre | 145 | US1 / Babcock / West Railroad Avenue | 50/30 | 15/10 | Type A/C | (7) | |
| Kennels | 1 Acre | 145 | N/A | 100/30 | 15/10 | Type A/C | (7) | |
| Vehicular and Other Mechanical | 1 Acre (8) | 145 | US1 / Babcock / West Railroad | 100/30 | 15/10 | Type A/C | (7) | |

| | | | | | | | |
|---|-----------|-----|----------|--------|-------|----------|-----|
| Repair | | | Avenue | | | | |
| Noncommercial Piers, Boat Slips and Docks | N/A | N/A | N/A | N/A | N/A | N/A | (7) |
| Community Residential Home | | | | | | | |
| Level 1 (1 to 6 residents/beds) | 1.5 acres | 210 | Paved | 60/30 | 25/20 | Type A/C | (7) |
| Level 2 (7 to 14 residents/beds) | 3 acres | 210 | Paved | 60/30 | 25/20 | Type A/C | (7) |
| Assisted Care Communities | | | | | | | |
| I Assisted Living Facility | | | | | | | |
| Level 1 (1 to 5 residents/beds) | 2 acres | 210 | Arterial | 60/30 | 25/20 | Type A/C | (7) |
| Level 2 (6 to 15 residents/beds) | 3 acres | 210 | Arterial | 60/30 | 25/20 | Type A/C | (7) |
| Level 3 (16 or more residents/beds) | 5 acres | 325 | Arterial | 100/75 | 25/20 | Type A/C | (7) |
| II Adult Family-Care Homes | | | | | | | |
| (1 to 5 residents/beds) | 2 acres | 210 | Paved | 60/30 | 25/20 | Type A/C | (7) |
| III Adult Day Care Facilities | 2 acres | 210 | Arterial | 60/30 | 25/20 | Type A/C | (7) |

SECTION 4. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 5. Conflicting Provisions. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or town law, rule, code or regulations, the more restrictive shall apply.

SECTION 6. Inclusion in Code. It is the intention of the Town Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

SECTION 7. Effective Date. This Ordinance shall take effect ninety (90) days after the adoption of this Ordinance.

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

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|---------------------------------|------------|
| Council Member Marisa Acquaviva | <u>Aye</u> |
| Council Member Brian Vail | <u>Aye</u> |
| Council Member Jim Clevenger | <u>Aye</u> |
| Council Member David Scardino | <u>Aye</u> |
| Council Member Mary Hofmeister | <u>Aye</u> |

This ordinance was then declared duly passed and adopted this 4 day of December 2023.

(Seal)



TOWN OF MALABAR

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

ATTEST:

Richard W. Kohler
 Richard W. Kohler, Town Clerk

Approved for Legal Sufficiency:

Karl Bohne, Jr.
 Karl Bohne, Jr, Town Attorney

First Reading: 09/11/2023

Vote: 4 to 0.

Second Reading: 12/04/2023

Vote: 5 to 0.