

TOWN OF MALABAR

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

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

A. CALL TO ORDER

B. ROLL CALL

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

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

Chair announced that there was a quorum.

C. CONSENT AGENDA

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

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

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

D. VARIANCE HEARING

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

1) a 14-foot Variance to Malabar Land Development Code, Article III, Section 1-3, Table 1-3.3(A) Size and Dimension Criteria, Rear Setback Requirement of 20 feet in Residential (RS-10) Zoning to construct a pool.

2) a four (4) foot Variance to the ten (10) foot requirement between a lot line and the water's edge of a pool per Article V, Section 1-5.26.1. a.

Applicants are: Mr. Hughes

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

Exhibit: Agenda Report No 2

Recommendation: Action

Chair asked the applicant to the podium to present.

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

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

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

Chair closed the Public Hearing.

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

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

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

BOA Member Donna Hanna Aye

BOA Member Chuck Frazee Aye

BOA Member Joanne Korn Aye

BOA Member David SowardsAye

Motion carried 4 to 0.

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

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

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

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

Location: 775 Malabar Road, Malabar, Florida

Chair asked the applicant to the podium to present.

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

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

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

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

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

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

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

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

Chair asked for any other testimony. None.

Chair closed the Public Hearing.

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

Attorney said it meets requirement.

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

BOA Member Donna Hanna Aye

BOA Member Chuck Frazee Aye

BOA Member Joanne Korn Aye

BOA Member David SowardsAye

Motion carried 4 to 0.

E. NEW BUSINESS/STAFF REPORTS/MEMBER REPORTS

None

F. ADJOURNMENT

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

BY: Original signed
BOA Chair David Sowards

ATTEST BY:

Denine Sherear
Board Secretary

5/28/2020
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.