



**PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY, JANUARY 24, 2007
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA**

AGENDA

CALL TO ORDER

ROLL CALL OF MEMBERS

ADDITIONS AND DELETIONS:

PUBLIC

MINUTES FROM JANUARY 10, 2006 ADVISORY BOARD MEETING:

ACTION ITEMS:

1. REQUEST FOR FENCE HEIGHT EXCEPTION RR-65. APPLICANT JOHN SEYBOLD, 1830 COREY ROAD, MALABAR

DISCUSSION/REVIEW:

1. ADULT FAMILY CARE FACILITIES – GENERAL INFORMATION FOR DISCUSSION PER COUNCIL DIRECTIVE

OLD BUSINESS/NEW BUSINESS:

PUBLIC

ADJOURN:

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 insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service.

In compliance with 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 – PLANNING & ZONING ADVISORY BOARD
1/24/07 MEETING MINUTES**

ROLL CALL:

Bob Wilbur, Chair	Ed Booth, Town Admin, excused
Richard Cameron	Debby Franklin, Sec., excused
Patrick Reilly, V-Chair	Cindi Kelley, Recording Secretary
Kathleen Clasen	Keith Mills, Town Planner, excused
Don Krieger, excused	Bill Stephenson, Town Eng., excused
Bud Ryan, Alt. #1 (will be voting in Krieger's absence)	
Cindy Zindel, Alt. #2	

Also in the audience was Mayor Eschenberg.

Meeting called to order at 7:35PM. Prayer and Pledge led by Chair Bob Wilbur.

ROLL CALL OF MEMBERS – see above.

ADDITIONS AND DELETIONS: None

PUBLIC:

MINUTES FROM JANUARY 10, 2007 ADVISORY BOARD MEETING: MOTION:

Reilly / Ryan to approve as presented. VOTE: all ayes

ACTION ITEMS:

2. REQUEST FOR FENCE HEIGHT EXCEPTION IN RR-65 ZONING. APPLICANT JOHN SEYBOLD, 1830 COREY ROAD, MALABAR

MOTION: Reilly / Clasen to approve fence height exception. Discussion. Ryan asked why it should be approved. Cameron noted for the record that the applicant was not present. Reilly stated that his request is no different than other requests that have been granted. The 5-foot fencing is along Corey Road with a 6-foot gate. The 6-foot privacy fence is up in the yard area and not part of this request. The request is for 5-foot field fence along the side property line – not along Corey – Reilly corrected himself. Clasen thought 6-foot fence was allowed around a property. Reilly reads from Code – Sec 1-5.8.E.5., Fences and Walls, states that lots in RR-65 zoning shall be permitted fences up to 54” within the required front yard and up to 6-feet, not in the front yard., if authorized by the Town Council and Planning and Zoning. Board discussed what a front yard was – that area from the front line of the house to the front property line. Front of property is Corey Road. Request is for fence along north property line. Ryan states that applicant wants a board on board fence which is essentially a no-look fence. Board explained that the privacy fence by the pool does not require an exception. Look at diagram. Clasen asked if what they are asking for is allowed why are they bringing it to this Board. Reilly explained that in order to exceed 54” within the font yard, they have to get permission. We approve or disapprove and then it goes to Council. We have done this a number of times. Ryan stated there were security concerns. Reilly stated

that the cover letter explained those concerns. Reilly clarified the applicant is asking for five feet (60") along the north property line. VOTE: all aye.

DISCUSSION:

2. ADULT FAMILY CARE FACILITIES – GENERAL INFORMATION FOR DISCUSSION PER COUNCIL DIRECTIVE

Wilbur stated that this is continued from the last meeting, with direction from Council to get more information. Requestor had inquired if this would be an allowed use in RR-65 zoning and with current code it is not. Staff has supplied more information regarding statutes and definitions of this type of facility and those that are cared in them. Clasen asked if this was a permitted use or conditional use in RR-65. Cameron stated RR-65 is Rural Residential and this request should not be a variance – that the requestor should have asked for a conditional use permit.

Reilly stated if we want to allow this, we would need to change the code to add this use to the District Provisions Table of allowed and conditional uses. Cameron stated this should be up to Council to decide if they want this type of activity. Clasen asked why this was coming back to the Board. Reilly explained that the request went to Council – did they want staff to spend time and money on getting more information on this type of use – they directed staff to get more information and provide it to this Board. That is in your package – the State law, what do other towns do, etc. After reviewing this package of information the P&Z Board would then make a recommendation to Council to either add it to the Table, add a new Chapter to the Code, etc. Clasen asked if the packet had information on what other towns do – she did not see anything. Cameron said other towns don't let horses in their back yards but Malabar does. If other towns allow this in their residential it does not mean we have to. He went through the application and it is a State application. Cameron had a house on two acres in Palm Bay and the person who wanted to buy it wanted to use it for a congregate living facility and the neighbors did not want that use.

Previous Malabar Councils and planning consultants did not see the need to add this type of use in RR-65 zoning. Cameron felt if we allowed this use we would set a precedent for others who may want to do similar things. Cameron asked what the maximum number she could house under this license – Wilbur started reading the definitions of the types of persons that may be housed in such a facility. Clasen asked what zoning would this be allowed in. Reilly stated Institutional. Cameron stated we have had requests to allow small home run businesses in this zoning that would not add to the density of the town and have turned them down because of concerns of increased traffic and lack of ability to control the use and keep it from expanding. He cited the dog grooming example. Cameron's personal experience with this type of use in homes has not been favorable – they have partitioned off parts of the bedrooms to provide small living area for residents. He does not feel it goes with Malabar's RR-65 zoning. If Council wants to help her out, they should provide this use as a conditional use in the Code with conditions she would have to meet. The application package the

Board had in their package was simply the State application – Council would have to create a Malabar application. Clasen agreed. Ryan stated that at the last P&Z meeting, the requestor was present and he asked her if this was a “for profit” business, and she said yes. Then she explained to Council that it is a “break-even” compensation. The State compensates her for each person. Cameron thought each person pays her – the State just oversees the facility – they are not wards of the State. Recording Secretary Kelley stated that P&Z Secretary Franklin explained to Council that the applicant would have to agree to accept qualified clients for a specific dollar amount specified by the State to cover their care expenses. Ryan stated that this just adds to the questions. Clasen asked what her incentive to do this would be if it is not monetary? Clasen read that this would be additional income for her, which would allow her to stay in her home and take care of her father. Clasen compared it to taking in a foster child. Ryan asked the question because if it were a profit making business in RR-65 zoning it would be germane to the discussion. Clasen stated that compensating someone for doing the work is not considered “profit” –it covers the expense. Wilbur said from what he read, the owner would have to be on premises at all times, 24 hours a day or have a designee so she would have to have an employee registered by the State because none of these people could be left without supervision. Clasen stated that she did not feel this was a use for RR-65 zoning – it should be in institutional zoning. Chair recognized new member Zindel. She read from State application about zoning requirements within the city the applicant wished to operate should be single family or multi-family. This area is zoned single-family. The application goes on to say that only if the area is not zoned single family should the applicant contact the local jurisdiction. Clasen stated that is what the state says but each municipality has their own zoning. Zindel asked if the assumption could be made since it is stated on the application it should be allowed? Since Malabar doesn’t have a provision for this and these are State rules and regulations. She is reading it as an allowed use. Cameron stated that the application may state that but each Town has their own rules which are usually more stringent. Zindel admitted not knowing much about zoning but felt that spot zoning is not right and if something is allowed in one zoning in one city it should be allowed in another. Just because it is not specifically stated in this zoning designation, it should not mean that it is not an allowed use. Cameron explained that we allowed her to do it in RR-65 zoning we would be spot zoning. Zindel felt she should be before the Board of Adjustment to see if it is an allowed use in this zoning, because we don’t know if it is allowed in that zone because it is not listed. Ryan stated this use could be classified as one of three of the following: group home, which is defined, hospital or extensive care, which he doesn’t think applies, or nursing homes. The only permitted use is group home in R/LC zoning. The other two are “conditional uses” and neither lists RR-65 zoning as a possible location. Wilbur’s concern was that group homes could have residents from any of these listed agencies. Clasen does not feel it fits in RR-65 zoning. A better fit would be R/LC or Institutional. They ask where the requestor had in mind – a five bedroom home in RR-65 zoning. She will be bringing in her father with Alzheimer’s and since she will be home with him wants to care for several others in the other rooms. That is what led to her inquiry. Cameron said he was for sending it back to Council. Reilly explained that Council is looking for a recommendation from this Board on this use. Zindel thought they should nail down what zoning community residential homes

fall in to. Reilly explained that presently community residential homes would be classified as group homes and they are only considered for location in R/LC zoning. Zindel said group homes are for kids. No, it could be any group and any age – group of people living together not related and not necessarily self-sufficient. Wilbur read from the packet that the facility would house seven to 14 unrelated residents who operate as a functional family, including such supervision and care by supportive staff as may be necessary to meet the physical and emotional needs of the residents. Ryan asked if this was discussion as a result of a motion. No. He asked if a motion could be made. Reilly explained that this is under discussion in order to make a recommendation to Council. Zindel stated that the definition did consider them a “family.” Ryan felt that this use does not fit any current category and for that reason Council should decide if they want to create a category to fit this use or not approve it because it does not fit one of the acceptable uses in the Code. Ryan felt this use would require a new category. Ryan does not consider this use a group home. Wilbur said if they had an allowance for housing just certain uses and not mixing them together it would be a better situation. Clasen asked if Wilbur would want a group home of teenagers living next to him - ? She doesn't and that is why she lives where she does. Wilbur did not think it would affect anyone's privacy. Clasen said these people would be receiving guests and visitors. Zindel asked if there was an R/LC category. Yes.

(Individual conversations made it impossible to discern proceedings – Chair pounded for order and recognized Juliana Hirsch from the audience.

Juliana Hirsch, 1035 Malabar Road, Malabar, felt that allowing this type of facility would jeopardize the entire RR-65 community because it would not stop with this one lady's request, for which she has great compassion. She stated that the P&Z members are picked to watch over the properties.

Chair asked for consensus of members.

Reilly stated that it should be considered in residential zoning. Their residential is 1.5 acre but other residential areas in Malabar are $\frac{1}{4}$ acre and $\frac{1}{2}$ acre and this request could be made for those areas as well. The State requirements call for these uses within residential zoning classifications and there is a classification for six or less. He felt that the recommendation should go to Council to consider changing the District Provisions Table to allow this, or to have it's own section. He reminded the Board members that the Code does not include every single possibility – it is meant as a guideline, and if it is similar to, and in his opinion this use is similar to a group home, then that is what we should do. This is a community home and our RR-65 is a community zoning. He believes it should be looked at and not deny it simply because it does not fit the table.

Wilbur felt the use should be in R/LC and is not sure how many homes there should be. If we run out of space in R/LC then we can look at it in RR-65. This is the first request we have had. He is not sure how big the demand is for this usage. Wilbur had asked for comments from the Town Planner but did not receive them. He would like to hear from him.

Cameron has a two-fold response. 1) The requestor is not looking for an area to open this type of facility. She has a home in RR-65 zoning and is asking for us to essentially spot zone to allow her to operate. Cameron does not feel that fits in the RR-65 classification. 2) We had been asked by Franklin to consider allowing second homes on lots in RR-65 for mother-in-law or family housing. In essence, a double family residence in RR-65 which currently only permits single family residences. This Board rejected that idea immediately. That would have been one or two additional family members in a second home. This requested use is for up to eight unrelated persons within one single family home. Cameron does not feel it is appropriate.

Clasen agreed with Cameron and with Mrs. Hirsch's comments. She does not feel this is what people came to Malabar and bought land in RR-65 intended to be faced with and considers it a real danger to consider this. We should not do this.

Ryan reads the definition of "group care facility" from the Code book and it does not rule out halfway homes for prisoners on release, or other similar uses. For that reason alone, he is against it in RR-65 zoning. Period. The definition is quite clear and in his opinion not just a guideline. Wilbur agreed. That was his concern.

Zindel referred to the State application requiring the facility to be in single family or multi-family zoning for this "adult family care home" and has a provision where she can seek a variance if the zoning states she can not have that.

Wilbur responded that the Adult Care Home is within the regulations for community residential facilities and as such he felt that if you allow it then you would also have to allow residents that are sent from the Department of Juvenile Justice, Department of Children and Family, Elder Affairs, the whole mix.

Zindel responded that for the benefit of the Town and the requestor that this should go before the Board of Adjustment to specifically state if it should be allowed. Wilbur said she could go to staff in the Building Department and find out what is permitted in the zoning. It takes money to go to the Board of Adjustment. Zindel is stating that if the requestor is told that her proposed use is not allowed in RR-65 zoning she could seek a variance. If granted, then she would be allowed that specific use.

Wilbur said if she signs up with the State she will get whatever type person the State sends her. Zindel asked why the requestor would want someone she doesn't know in her house. Cameron stated that what is in the packets is different than what the requestor told the P&Z Board at their last meeting. Ryan asked if the minutes from the last meeting were available. They are in the packet.

Reilly asked to be recognized. In response to Cameron's statement, Reilly stated that this is not spot zoning. Spot zoning would be if you allowed R/LC within RR-65 area. This is not a zoning change request. In response to Ryan, Reilly meant that this "adult care home" use is "similar to" group homes or you make its own classification. Those

uses are currently only permitted in R/LC. Ryan asked if this use is allowed then you would be permitting an R/LC use in a RR-65 zoning. Yes.

Chair summarizes stating the Board members are not in agreement and we have no input from the Planner. We have no Building Official and no Town Administrator and Franklin is out sick. Chair asked Board if they wanted to table this item or just send the minutes to Council.

Ryan said if we are going to consider allowing this we should restrict who can be sent – No we can not. That would be discrimination. That is the problem with these State programs.

MOTION: Cameron/Clasen to recommend Council deny this use as it does not fit in RR-65 zoning unless they over-ride this and allow it in RR-65. Discussion.

Reilly thought we should wait to make a recommendation to Council until we have heard from the Planner. He will also research how these homes are treated in other cities. He would like to deny this motion and wait until we get more information from staff and see what other municipalities do. Cameron stated that Malabar is not like the other areas around us and we should not compare ourselves to them. We are a rural community and our lifestyle is not the norm in Viera, Melbourne or Palm Bay. Malabar Boards were set up to protect what we have at the present time and it is getting harder and harder to keep that lifestyle intact. Due to different opinions and new people coming into town we are rapidly losing our rural atmosphere. Cameron felt his motion was appropriate for the Town and if the motion carries, the rural character will last a little longer. Once you start cutting up your RR-65 into different sanctioned uses, the next thing you will have is body refinishing. There are already areas set up for this type of use. This is a convenient request by the requestor, simply because they chose to buy a large house in RR-65 zoning and allow the one person who has to stay home anyway bring in additional funds to help support the property. It is a personal issue and not a community issue. Cameron is looking at it for what is best for the community. The information you get from the planner will be looking at a generality. We are individual and unique.

Ryan stated that even if this is denied, Council must be asked to create a definition for this use. Assisted living should be clearly defined. Cameron said when we are done with this motion, he can make a motion.

Chair called for a roll call vote: Aye, Reilly, Wilbur, Cameron, Clasen, Ryan (voting in Krieger's absence) Motion carries.

Ryan stated that the next motion should ask Council to come up with a definition for what the requestor wants to do and determine what zoning it might fit in under the prevue of future planning. Wilbur would like to see this discussed on a night we have the planner. Ryan is particularly concerned with halfway houses for people who are not responsible for their own actions. Wilbur is concerned that without professional

background the operator, who is doing it for convenience, will be overwhelmed when these situations come up as Ryan suggested. Cameron stated it is not possible to care for five others while caring for someone with Alzheimer's and take them shopping, do the cooking, cleaning etc. It is not possible to do without help or employees for two shifts.

Zindel stated that this Board made a recommendation to deny this and the P&Z agenda stated that this Board was only asked to discuss this. Wilbur stated this Board recommends to Council. It is advisory. Zindel felt Ryan's proposed motion was closer to what was asked of the Board. Cameron thought Ryan was going to make the motion. Wilbur said we don't have a planner or an attorney or outside information. Zindel questioned where we get the use classifications. Cindi Kelley stated she would get Zindel a Code book. Reilly said it is very clear in Article II or the Land Development Code, Land Use, what is intended for each classification. Zindel asked if it clearly stated what is allowed in RR-65. Yes. And this is not allowed in this zoning. Correct. Zindel felt then that the requestor should go before the Board of Adjustment. Reilly asked Ryan as a previous Board of Adjustment member if this would go there. No, zoning issues do not go to the BOA.

NEW BUSINESS:

Cindi Kelley stated for the record a reminder that the Visioning Workshop with Council is the upcoming Monday, January 29th at 7:30PM and all P&Z members are asked to attend. They have set aside 2.5 hours for this. It is the first of several meetings planned. If you don't have a map contact the Building Department for one. Wilbur asked about the parameters. Mayor explained that as a group they will be asked to consider the changes proposed as a result of previous workshops two years ago. Are those proposed changes adequate or do they want to make other changes. Whatever changes are decided on by Council ultimately will be carried out by the new administrator.

Zindel asked how many members had a copy of the Comp Plan. Reilly explained that all P&Z members get a copy of the Comp Plan when they get their code books. They are separate documents. Ryan does not think he has one. Wilbur explained that the Comp Plan is two booklets, Goals and Objectives and Data Inventory. Ms. Kelley will try to get a code book to Zindel by Monday. Kelley advises Board that outside discussion between two or more board members of items that may come before them as a Board for a vote is a violation of the Sunshine Law. Ryan asked the Mayor if it was alright to discuss things from the past. Mayor said so long as it can't reasonably be considered to come before your board again. Zindel said it is ok to talk about code and comp plan and what it says. Mayor cautions her on holding conversations with other members on possible changes to the code or the comp plan.

OLD BUSINESS:

Reilly stated that he had attended the last two council meetings to present that the column and fence height was more than our code permitted. He is referring to Oakmont Preserve. Reilly stated that P&Z did not see the Final Plat. They have 7.5 foot columns. And it is written on the final plat as 7.5 foot. He measured Stillwater's and theirs is 90". P&Z did not see that Final Plat either. Stillwater did come before this board and Council to increase the column and fence height to six foot. They were to construct 2' x 2' by 6' and they built 2' x 2' by 90". That exceeded 72" by 1.5 feet. Council did nothing at either meeting. It was brought to his attention that the fence code dealt with lots and these are subdivisions. He would like to have on the upcoming P&Z agenda either as a discussion item or action item, how we can stop these subdivisions from being allowed to exceed the column and fence height in RR-65. He proposes to require it to be added to the site plan review process. Wilbur would also like to revisit the subdivision chapter of the Land Development Code (sound of keystrokes blanked out what he said). Ryan suggested to Council that all mitigation be passed before Council. Ryan said he asked Rose who signed off on the column height – that would tell us a lot. Reilly also wanted to bring up Site Plan approval. He researched this and there is only one Site approval. There is an optional preliminary site plan process. He thinks the previous boards should have recognized this and required involvement in all site plans. Ryan stated he has a problem with the mitigation process which is no more than making a deal. Ryan stated that in exchange for moving eight Sabel Palms down to the Park, which will probably die anyway, the developer was allowed to do things that otherwise wouldn't be allowed, like stripping the property clean. He thinks the deal was made by the Town Administrator. Wilbur stated that is why the Board needs to review the entire site plan and find out what the developer will provide and what the environmental studies show. The project across the street was allowed to get by with a five or less gopher tortoise permit and there were many more than that. Clasen has seen that many gopher tortoises along that road. Ryan stated that Wilbur had cleared the property for years and thus knew what was out there and he, Ryan looked at the tree survey and it showed very little of what you knew was there. Wilbur stated there was a three foot diameter Oak in the back, close to the location of the retention pond. The retention pond does not have to have straight lines. Ryan stated that the Code allows for tree removal if it is where the structure will be placed, but it does not mean clear cutting the lot. When Ryan was running for office he got many calls on that issue. That is why he thinks all mitigation should be passed before Council before it is a done deal. Wilbur thinks we are on the right path with not issuing clearing permits until site plan approval. In reviewing the environmental study provided by the applicant, if the Town disputes it we can hire our own and have another study done to confirm or deny what they are saying is accurate.

Ryan also stated that he has heard hearsay from many different sources that on Sundays there are a lot of Pence trucks leaving the project from north Marie and going elsewhere full and returning empty. He doesn't know how true that is.

ADJOURN:

MOTION: Reilly / ? to adjourn. Without objection. Vote: All Aye. Meeting adjourned at 9:30 pm.

Cindi Kelley, Recording Secretary

Bob Wilbur, Chairman

Date approved

Note: Due to technical problems the disc containing the draft minutes was unreadable. The minutes were transcribed from tape by Debby Franklin 3-9-07.