



**PLANNING AND ZONING ADVISORY BOARD  
REGULAR MEETING  
WEDNESDAY, JUNE 13, 2007  
7:30 PM  
MALABAR COUNCIL CHAMBER  
2725 MALABAR ROAD  
MALABAR, FLORIDA**

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**AGENDA**

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**
- D. CONSENT AGENDA**
- 1. Approval of Minutes**  
Regular Planning and Zoning Meeting – 05/09/07  
Exhibit: Agenda Report No. 1  
Recommendation: Motion to approve
- E. PUBLIC:**
- F. ACTION**
- 2. Recommendation to Council on Landscape Change on approved Site Plan, Malabar Mini-Storage, 2700 Malabar Road, Malabar**  
Exhibit: Agenda Report No. 2  
Recommendation: Motion to approve
- G. DISCUSSION ITEMS**
- 3. Accessory structure larger than 1000 sf, 3065 Passaic, applicant Steward Berkley, steel arch building 1600 sf in RM-6 zoning.**  
Exhibit: Agenda Report No. 3  
Recommendation: Consensus with project
  - 4. Land Use and Rezoning Change Request for 2735 Malabar Road – will be a Public Hearing on June 27, 2007**  
Exhibit: Agenda Report No. 4  
Recommendation: No Action at this time
  - 5. Fire Wise Communities Program – Bob Wilbur**  
Exhibit: Agenda Report No. 5  
Recommendation: No Action at this time
  - 6. Continue review of Goals in Comprehensive Plan for E.A.R. preparation**  
Exhibit: Previously handed out

**OLD BUSINESS/NEW BUSINESS:**

**Florida Vernacular Ordinance**

**ADJOURN:**

**TOWN OF MALABAR – PLANNING & ZONING ADVISORY BOARD  
6/13/07 MEETING MINUTES**

**ROLL CALL:**

Bob Wilbur, Chair, arrived at 7:45  
Richard Cameron,  
Patrick Reilly, V-Chair  
Kathleen Clasen, absent  
Don Krieger  
Bud Ryan, Alt. #1, voting for Clasen  
Cindy Zindel, Alt. #2

Bill Stephenson, Town Eng, excused  
Debby Franklin, Secretary  
Keith Mills, Town Planner

Meeting called to order at 7:30 PM. Prayer and Pledge led by Acting Chair Pat Reilly.

**ROLL CALL OF MEMBERS** – see above.

**ADDITIONS AND DELETIONS:** none

**MINUTES FROM MAY 9, 2007 ADVISORY BOARD MEETING:**

**MOTION:** Cameron / Krieger to approve minutes of May 9, 2007 as corrected.

< Pg 8, the paragraph above the motion – Krieger said the visioning meeting – remove “the”

< On page 8, motion of Ryan/ Krieger – Krieger does.. add “NOT”

< On page 9 in second paragraph last sentence s/b “can”

< On page 11 – Krieger stated that – the town has approved other projects – clarify that secretary stated instead of Krieger. Vote: All Aye.

**E. PUBLIC – other than on the agenda**

**F. ACTION**

- 2. Recommendation to Council on Landscape Change on approved Site Plan, Malabar Mini-Storage, 2700 Malabar Road, Malabar**  
**Exhibit: Agenda Report No. 2**  
**Recommendation: Motion to approve**

Acting Chair asked Malabar Mini-Storage developer to explain the change to the plan.

Kelly Vickers, 1124 Brook St NE, Palm Bay, FL said he thought the change was as simple as “*six of one and half a dozen of the other*”. Vickers has talked to (University of Florida Extension Service Food and Commercial Horticultural and Small Farm Agent) Ms. Linda Seals and she says that the change is not the same. Vickers said the Ficus was put in by a local landscape contractor. Vickers explained that everything in this project he has done as much as he can do to make it the best possible. He has done research on this today as he only received notification of this meeting on Monday. There are eight or nine varieties of Ficus that are used for hedges. He is from down south and there are Ficus everywhere. He is the owner and also does not want the driveway messed up. Vickers said if he must change the plantings it won’t cost him the 3K that is mentioned (in the memo) – it will cost the local landscape contractor. He has not paid the local landscaper. If this change is not approved it will be a problem for the installer.

Vickers said he also has another change to ask for on the site plan – he shows a horse that will be added to the fence. There will be 8 of them on top of the fence.

Acting Chair Reilly told Vickers that the item on the agenda is the landscape material planted along Malabar Road.

Reilly stated that it is his understanding that if the Ficus hedge is maintained then it will not be a problem. Ryan stated it is clear that the site plan called for Sweet Viburnum to be used. The problem will be more extensive if it (Ficus) goes to tree height.

Vickers said the Ficus hedge will be kept so the mural can be seen and the sign can be read. Ficus are all over down south. They come from down south. His partner is a landscaper for 15 years. The Ficus are planted about three (3) feet apart.

Wilbur thinks the developer's landscaper substituted a substandard plant. Wilbur said in the long run, for maintenance purposes, it is in Vickers best interest to have the landscaper change out the material to what was approved on the site plan. Vickers said the landscaper will have a problem doing that and will probably lien his property. Vickers said if he improves his standing with this Board by meeting the plan requirements he will make an enemy of the local landscape contractor.

Vickers explained that they were robbed of many trees and had to put up a fence. Cameron stated that stealing from construction sites, residential and commercial is fairly common and as a developer, he must expect that and take necessary protections.

Ryan asked if the landscaper changed from Viburnum to Ficus with Vickers approval. Vickers replied in the affirmative, stating it was a group decision. Cameron explained that any deviation from the approved plans on a commercial project are very difficult to make and have to be approved.

Vickers said if the plants are kept short – small hedges – then the root systems do not cause problems. Cameron is from south Florida and is aware that small hedges can still have large root systems.

Ryan said that it is the applicant's problem.

Krieger thought Board was mixing topics. Krieger did not know what genus of Ficus was that was planted, but stated it is not exotic. It is not listed in the current Code as prohibited. There are landscaping techniques that can be used to deal with it. He asked if there was a maintenance plan. The Town Code provides procedures if the owner does not properly maintain the property.

Krieger stated there was a change from the plan, but is it not an illegal plant. We are being asked to make a recommendation to Council to approve the change.

Acting Chair asked Franklin why it was before P&Z. Franklin said that it is brought to this Board because the information required for the Certificate of Occupancy included a requirement for an affidavit from the landscaper stating the material complied with the approved site plan. Applicant, his partner and the General Contractor all said they could not get the affidavit.

Cameron asked why they would consider a change if it is not more benign? It is mostly because it is after the fact. This is a commercial project. There was an approval process. Cameron is not willing to put his name on a recommendation to Council for a convenience to the installer.

Ryan asked what was planted. Vickers said it was the Ficus Benjamina. Ryan stated that it's roots can grow to 10 feet. Vickers is also concerned but how big are the roots going to get if he keeps it trimmed to three feet?

Acting Chair Reilly asked Linda Seals, University of Florida (UF) Institute Food and Agricultural Sciences, Brevard County Extension Center, Commercial Horticultural and Small Farm Agent, to provide information on the Ficus species that was planted. She explained that the hand-out provided information on Ficus Retusa and Benjamina. The Ficus is not listed as an "*Invasive*" species but they are not recommended close to roadways, pavement or buildings because of their aggressive root systems. It is their mantra to tell citizens "Right Plant Right Place" and they do recommend Ficus in the right place. The roots will grow 3X the size of the canopy of the Ficus. There are other considerations that will also affect the size of the roots – watering, fertilizers, weather, etc.

Ms. Seals stated the Ficus do have a very aggressive root system. They tell homeowners not to plant Ficus near concrete or water or sewer lines.

Wilbur asked her if it would be general knowledge of the landscaper to know this? Seals replied, not necessarily. Wilbur asked which would be more freeze tolerant. Seals replied the Sweet Viburnum.

Ryan – referring to the UF information, what "may" happen with a Ficus "will not" happen with the Viburnum. If the roots are 3x the size of the canopy and they are planted 3' apart, the roots will intermingle. Seals stated that if the Ficus hedge is kept trimmed they may not create an issue. She showed a picture of the Ficus Benjamina as a full grown tree (attached to minutes). Ryan asked Seals if there was a big difference in the cost of Ficus versus Viburnum. She wasn't sure.

Krieger asked Seals if the hedge is a proper use according to the UF. Seals stated the approximate eight foot (8') root system (3 times the size of the canopy) is going to be as big and robust as it can get. The plant will behave as if it were 60' tall tree.

Acting Chair recognized person from the audience, Ms. Jimmie Marshal, Malabar native, 2650 Malabar Road. She lives next door to project and she has watched the Malabar Mini-Storage from the start and it is very nice looking. She has a friend that has a Ficus in a house in a planter that has caused no problems. She felt if the Site Plan had listed Ficus the Board would not have known any different. The project is the prettiest place on the road. They have done everything they can to make it nice.

Acting Chair Reilly brought it back to the Board for discussion and a motion. Ryan said it is not what is on the plan that was submitted and approved.

Cameron asked if the plan is changed

Wilbur stated the engineer and architect selected what was the best product for the site. For some reason it was changed.

Cameron responded to Jimmie Marshal. He said the decision on this has nothing to do with the quality of the project. Marshal said it was an honest mistake. If they had known... Ignorance is no excuse but she thinks the Board should approve the Ficus.

Krieger stated that if the applicant put in another plant that was not Ficus would the applicant be before this Board. Franklin explained that the change could be approved by the Building Official if it was consistent with Malabar Code. We do not have a Building Official. Interim Building Official in Palm Bay does not deal with landscaping – that is duty of separate zoning department. Malabar Town Administrator directed it to this Board for recommendation.

Vickers said that he is going to please this Board. Vickers said the landscape guy told Franklin that Ficus was going to be planted. Board stated Franklin can not approve the change.

Acting Chair Reilly asked Franklin to respond. Franklin stated that the issue began when the material was first planted and several people came in to ask why Ficus was being planted. That is when Building Department asked for an affidavit of compliance to the Landscape Plan. The Temporary C.O. was issued for 30 days. The applicant was to provide the items listed on the letter within the 30 days. The 30 days was up on June 7, 2007.

Acting Chair Reilly stated the options for the Board:

- Make a motion to have Council recommend it to BOA for a variance
- Change the Code to allow Ficus
- Make a motion to deny request

Applicant's partner Bobbie Marks asked the Board if the Viburnum plants were not available what could they use in place of them. If they can not get 450 plants. Reilly stated that they are only required to put in 175. Applicants wanted it to look good fast – that is why they planted Ficus and planted more than required. They just want the project to look the best.

Acting Chair Reilly asked Planning Consultant Keith Mills to comment. Planning consultant Mills stated that a variance is not appropriate. This issue is not a BOA issue. In whatever manner this happened, the issue is: this is a change to their Site Plan. It is a function of this Board since the Town Administrator said that it should come before this Board. The recommendation would go to Council.

Krieger asked if the Board recommended approval would this set a precedent? Mills asked about the configuration. Are the plants near a road or paved parking. They are between the parking and the Malabar Road. If the Board is making a decision based on special circumstances, what are the special circumstances.

Krieger said the substitution is not now on the bad list of the Town. The list is referring to trees that are adjacent to public rights-of-way. Malabar is a State Road. It is unclear if it would tear up the roadway if maintained.

Mills said they could recommend approval of the change or denial. Krieger proposed adding Ficus as an approved shrub or tree.

Vickers stated that if this process sets back getting the C.O. then he will change out the Ficus. He does not want to delay getting the C.O. They have already been granted a one-week extension. He does not want to continue asking for the substitution of the Ficus if it means it will hold up getting the CO.

Krieger asked about procedure. Mills read from the Code - *All plant material shall be a of a species adaptive to the East Central Florida regiond...*”.

Mills stated the request is after the fact but it does not change the P&Z recommendation.

**MOTION:** Wilbur / Krieger to recommend Council direct the applicant to stick to the original site plan and replace the Ficus with Vibernum. Vote: Reilly, Wilbur, Cameron, Ryan, Aye; Krieger, Nay. Motion will be forwarded to Council.

## **G. DISCUSSION ITEMS**

- 3. Accessory structure larger than 1000 sf, 3065 Passaic, applicant Steward Berkley, steel arch building 1600 sf in RM-6 zoning.  
Exhibit: Agenda Report No. 3  
Recommendation: Consensus with project**

**Motion to approve: Cameron / Krieger. Vote: all aye.**

- 4. Land Use and Rezoning Change Request for 2735 Malabar Road – will be a Public Hearing on June 27, 2007  
Exhibit: Agenda Report No. 4  
Recommendation: No Action at this time**

This is an introduction of this project. Staff has met with applicant and their engineer over the last year. Will be a public hearing at the next P&Z.

Richard Torpy gave an overview of the project, explaining the units are each 1224sf. These are business people that want flex space. They may want to use the entire area for office or showroom but are limited to the storage area to 500sf because of our Code. It is ideal for Malabar Road. Because of this we have to ask for Industrial. Torpy would suggest getting the zoning district in place and bind it with a developers agreement and record it with the property. It runs with the land. This is a brief overview and will speak in more detail at the Public Hearing.

Cameron asked what would stop the next person from asking for similar changes. Torpy stated Town would say they have a recorded developers agreement. Town would still have the compatibility issue. The current land use is CG and RLC.

Torpy said the building could be built in CG. The issue is the storage area is limited to 500sf. This is not a minor issue. Those limitations are intended to limit larger warehouses. The buildings will be condos and the owners will want to design and build to suit their needs.. The restrictions in the zoning district CG.

Ryan asked about perceived problems of having IND. Torpy said with the current zoning code asking for IND is the only one we could ask for. It is the most intense but that is what we have. Ryan said he is asking the town to change the zoning to suit the project. Torpy explained that developers and applicants make similar requests all the time. That is how the RLC zoning developed along Highway 1 in Malabar.

Torpy said the project can be built but would be more flexible with the allowance to increase the storage capacity. Ryan asked if there is another way to accomplish this without rezoning. Yes, grant a variance to the site plan process. He suggests a mini-PUD. Keith said the majority of the property would allow what is being proposed. RLC would not support this. The reserve is in regards to CG to define flex space and add that as a CUP and set it up so you have controls in what is being allowed.

Cameron said you have FEC on one side, residential MH on the east side, It is an excellent concept. Cameron would not like IND. They have already turned down another applicant. Torpy said he agreed with Mills.

Mills said this would still be a SSA because of the RLC. The concept is mini-store front. They would be buying the unit and free to design to suit. Mills said they would be limited by the parking.

Cameron asked if Mills thought this could be changed without changing to the IND. Yes. Mills said that at some point this Board discussed changing railroad corridor to be some kind of IND. If you are wanting a gateway plan for Malabar Road then you don't want IND on Malabar Road. The zoning now would allow mini-warehouses. If you could stay with the existing zoning and change the RLC to CG. It is a strangely shaped property. Russell stated the buildings will be wholly within the CG and the RLC would be for parking.

Mills is not in favor of variances. Three 9000sf buildings (50 x 125) on back section. Torpy said the most viable – create a CUP that allows this particular use. You would need to add a definition for flex space.

Krieger asked if these are owned would there be a condo owners covenants. Yes. They are being drafted. The deed restrictions and covenants have also limiting factors. There is one in Melbourne - not sure where. Palm Bay has a similar concept for the one near the senior center. Mills said you would have to put a cap on square footage.

Wilbur also said the setbacks from Malabar Road and the residential units. Torpy said the CUP would allow certain uses to have specific restrictions to protect the site and protect the neighborhood. And then the project is given specific restrictions by the Board.

Mills said discussion items like this are good. The applicant has applied for land use and rezoning and the Public Hearing is set for two weeks.

What is actually being discussed is a separate issue. Mills stated that is the drawback to having these items as discussion.

Torpy said timing is a consideration. Perhaps allow this with a use variance. What the Public Hearing will cover is a separate question from what is being discussed.

Torpy asked if this Board likes the concept then he can talk to his applicants.

Mills said we could do a binding site plan and put in the provisions.

Wilbur said the concept is interesting but he would not support IND if on well and septic. Applicant explained that they propose to bring water and sewer from Highway 1 to the railroad tracks. Franklin explained that the Town Engineer had done a memo and it would be in their packet for the Public Hearing.

**5. Fire Wise Communities Program – Bob Wilbur**  
**Exhibit: Agenda Report No. 5**  
**Recommendation: No Action at this time**

Wilbur said a community up by Starke got certified as a Fire wise community. Wilbur attended a one day seminar in Palm Bay a few years ago to discuss this and identify fire problems and sowed weak point in development. Then they showed a site plan and identified fire problems out of the ground for developers. He thought it would be a good idea to do this. There is a fellow in Tallahassee that will come down and do this program. It may be a go. The Fire Chief and Asst Fire Chief support this. It is a public program that would benefit the residents. It is free and DOF puts it on.

**MOTION: Wilbur/ Krieger to recommend Council support Firewise Community awareness Vote: All Aye.**

**6. Continue review of Goals in Comprehensive Plan for E.A.R. preparation**  
**Exhibit: Previously handed out**

Reilly said that he is Chair and wants board members support for doing this at home. It requires commitment to do this and you all agreed to do this. CIP is being worked on by TA and she will provide. Zindel asked about the status of the CIP.

Zindel asked about DCA grant money- We did use DCA grant money to to the 86-87 update. Pat said this is due at the next meeting. Krieger Wilbur and Reilly are the only ones that did it Krieger suggestion for next meeting, Write 2 or 3 lines as your own synopsis for each of the 9 topics. We are going to concentrate on the ones we have problems with. Also the last ones are just telling us what we have to do...

Mills will check his email for professional opinion on land use along Malabar Road he sent Bill Stephenson.

**OLD BUSINESS/NEW BUSINESS:**

Florida Vernacular Ordinance Franklin told Board she got information on Gateway plan and is working on it. Will provide draft for their review soon. Wilbur will not be here on the 27<sup>th</sup> for the next meeting.

Cindi Zindel went down to the RM-6 District and saw the uses in the area and the uses are not RM-6. Even the lot size is not the 200' x 200' . You may want to have that looked at. Franklin brought Board up to date on previous joint workshop that proposed correcting these non-conforming areas to RLC.

**ADJOURN:**

**MOTION:** Kreiger/ Ryan to adjourn. Vote: All Aye. Meeting adjourned at 10:00 PM

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Debby Franklin, Secretary

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Pat Reilly, Vice Chair, Acting Chair for meeting

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Date approved