

**MALABAR PLANNING & ZONING BOARD REGULAR MEETING**  
**August 13, 2008                      7:30 PM**

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

**A.     CALL TO ORDER, PRAYER AND PLEDGE:**

Meeting called to order at 7:36 pm. Prayer and Pledge led by Chair Bob Wilbur.

**B.     ROLL CALL:**

CHAIR:	BOB WILBUR
VICE-CHAIR:	PATRICK REILLY, excused
BOARD MEMBERS:	RICHARD CAMERON
	DON KRIEGER
	BUD RYAN
ALTERNATE:	CINDY ZINDEL, excused
ALTERNATE:	VACANT
SECRETARY:	MICHELE KELLY

Also present: Building Official roger Cloutier and Mayor Tom Eschenberg.

**C.     ADDITIONS/DELETIONS/CHANGES: None.**

**D.     CONSENT AGENDA**

**1.        Approval of Minutes**

Regular Planning and Zoning Meeting – July 23, 2008

**Exhibit:**                      Agenda Report No. 1

**Recommendation:**    Motion to approve

**MOTION: Krieger / to approve as corrected**

Discussion. List corrections:

Ryan stated he had trouble reading the minutes.

Krieger pg 3, para 1: "...wind storm and rain storm can't have..." should be have read: "...wind storm and rain storm can have..."

Krieger pg 4, bottom of Agenda No 2: "Krieger will trump kate and..." should be: "Krieger will truncate..." ALTERNATIVELY, Krieger suggested just changing it to "Krieger will shorten..."

Ryan pg 3, "Krieger-I think it should cover and species of trees..." should be: "...should cover any species of trees..."

Board consensus: to have minutes proofed and bought back for approval.

**E.     STAFF REPORTS:**

**F.     PUBLIC HEARING:**

**2.        Amending Article XV Providing for a Tree Buffer (Ord. No. 2008-08)**

**Exhibit:**                      Agenda Report No. 2

**Recommendation:**    Recommendation to Town Council

Public Hearing opened. No one from the public spoke.

Public Hearing closed.

Discussion.

Krieger had e-mailed the modified version. Krieger stated that he believed that his modified version of the Article had gone to Town Council (TC). Secretary said it had not gone to Council.

Krieger stated that he only made modifications to the 'wording' of the Article and not to any names/statements/etc. He took out the word "Pine Tree" out of the document and then focused on two 'major' topics, which were the 6-inch base diameter (about an 18 or 19-inch circumference) and the distance of 30 feet from a structure. Anything equal to or larger than the 6-inch base diameter was referred to the Building Department for a Type 4 permit. Discussion revolved around where the base diameter of the tree was to be taken; it was generally agreed that it would be measured 3 feet from the ground.

Wilbur noted that from March 31<sup>st</sup> to the middle of November the Scrub Jays are nesting and that this issue needs to be taken into consideration. Cameron remarked that many of the Scrub Jays might have moved so nesting areas may be different.

Krieger noted that Mayor Eschenberg had raised this issue to P&Z in order to make it safe for structures. The Article changes included broadening to different species of trees, differentiated between native and non-native trees, and large and small trees.

Wilbur wanted to see specifications made to 'structures' in order not to provide carte blanche land clearing. Krieger noted that all new structures require a permit and all trees 6-inches and over would still require a Type 4 permit so the Building Official would be required to make the decision.

Krieger added that this Ordinance is for residents clearing trees that can damage structures during fires and hurricanes. Krieger believes that this Ordinance will be beneficial and is fair to all residents. Nuisance plants are addressed in this ordinance with the term of 'non-native' plants.

**MOTION:** Krieger / Reilly to recommend Council approval of the modifications to Ordinance No. 2008-08. **Vote:** Krieger, Reilly, Wilbur, Ryan, Ayes; Cameron, Nay. Passes 4 to 1

**G. ACTION:** None

**H. DISCUSSION ITEMS – General Items**

**3. Amend LDC to Provide Clarification to Malabar Vernacular (Proposed Ord No. 2008-XX)**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Recommendation to Town Council

Wilbur asked about Section 1 (e): "...depicted in illustration numbers E (1)-E ( ) are deemed "Malabar Vernacular Style"." Wilbur believed pictures need to be added showing the common styles for the Central East Coast for the Malabar area. Pictures can give an idea but it does not necessarily include everything. Examples of current Malabar buildings were discussed. Krieger found specific styles through the University system that are historical styles in specific areas. Cameron suggested the Historical Society of Florida in Cocoa, FL.

Wilbur believes that what Malabar wants to attract is 'Mom & Pop' personalized small businesses and shops that will 'fit-into' the deco of Malabar.

Reilly asked about (e) on pg 1 "...depicted in illustration numbers E (1)-E ( ) are deemed "Malabar Vernacular Style".", regarding the illustrations. Krieger stated that the illustrations already exist and they were with the original Ordinance.

Krieger and Wilbur believed P&Z should okay the 'language' of the Ordinance and forward it on to TC. However, Krieger would like to know if passing this Ordinance would mean that no new pictures/illustrations could be added without doing a Resolution.

**MOTION:** Ryan / Krieger to recommend Council approve the changes to the Ordinance 2008-XX (Section 1.5.29) Malabar Vernacular

**Vote:** All Ayes

#### **I. OLD BUSINESS/NEW BUSINESS:**

Ryan: Columns on Eva Lane. Property owner has agreed to re-do the columns per code and has dropped off all of the paperwork required for the permit.

Ryan asked if there has been an official complaint about the owner to the North with the big steel gates. Cameron stated that this owner had been 'brought to task' about a tiki hut, and a permit was obtained for the tiki hut, but the gate was never addressed. Ryan asked for verification if it was or was not conforming.

Juliana Hirsch, 1035 Malabar Road: Stated there are several of these types of violations around Town and they might as well all be knocked down because this particular owner not only has these high and huge columns but the columns are in the ROW. These columns look beautiful but the Town needs either to aggressively move toward removing them or forget about it. Ms. Hirsch believes the Ord. needs to be changed. Ryan asked the Board if the Ord. could be retroactive. Either something should be done or this subject should be dropped. Ryan stated that this issue needs to be followed by all and not by just a few.

Reilly stated that both homes' fences were brought up the same night and that both fences would to be followed up on; Reilly stated that the Board should make a recommendation that Code Enforcement act on the fence issue for the house to the North. Reilly thinks the complaints Ryan has will most likely need to be handled personally by seeing the Town Administrator.

Krieger stated that although no specific plans are being discussed; think about what the Town will look like and if 8-foot walls would be the preference.

Wilbur discussed code enforcement was needed for the commercial properties and housing developments that are not being maintained. Wilbur gave examples of: Malabar Grill on Hwy 1, which is now gone along with, a residence east of the Post Office; Weber Woods; and Stillwater Preserve. Wilbur believes that these maintenance issues need to be kept on top of.

Krieger noted that he has seen several sites that the Town has not been able to keep up with such as ditches, roads, etc.; therefore, if one cannot maintain their own then they should not be able to complain about others. Krieger stated that being in a rural community people should be given some leeway. If the neighbors or locals are complaining then something should be done—that is reactive. Ryan stated that the reactive stance is the position of Council. Wilbur stated that he did not believe the residents know that they need to call in and complain. Krieger remarked that if that was the case then the public needs to be informed, maybe by placing the information in the Mailboat.

Ryan. Town Hall Site Committee.

He Informed Board what the Site Committee discussed. With the budget and the shortfalls, the Committee asked TC for direction.

Reilly. "Guidelines for Model Ordinance Language For Protection of Water Quality and Quantity Using Florida Friendly Lawns and Landscapes." Reilly requested input from the Board—place this issue on the next agenda, table the issue, or what decision did the Board want. Krieger does not want to make any decision; there are many rules that need to be followed, this concept is an economic factor not set as a developer guide.

Hirsh (speaker) noted that Malabar does not have an overuse of water and that these types of guidelines are not necessary. Krieger stated that the biggest user of water in Malabar is Palm Bay. Reilly reiterated the question, does the Board want to consider this issue for the next P&Z meeting or table it. Ryan noted that the Mayor is pushing this issue and Ryan believes that if this is enacted then there can be some quantification to it. Reilly suggested that this be discussed at next meeting and then make a recommendation to Council.

Krieger believed this is all premature when the Comp Plan is being worked on that will affect the zoning map of the Town yet the Board still has not received any feedback. No joint meetings that was implied would happen are not occurring and therefore the Board has no idea what will be developed and changed. Ryan asked if there has been any progress on getting the interim meeting with the Comp Planners. Wilbur stated that they wanted meetings so they can make suggestions prior to making any final decisions.

Cameron stated that he was confused about all the ordinances being passed in the Town of Malabar. The Town was to be a rural community, set up for larger spaces for housing. There are more requirements of government are being forced on the citizens, from the types of gates to the number of trees, how close or how far away the trees can be. He has never seen a rural community being governed the way this community is now being governed. This community is now becoming government heavy as to what the lifestyle can and cannot be, and it is becoming just the opposite of what this Town was founded on. Krieger agrees with Cameron and would like to see in this Town a Residence Bill of Rights, as well as, a Resident's Business Owner's Bill of Rights because he sees all types of rules coming into the Town. Krieger noted that Ordinances are commonly drawn up much stricter than ever enforced so the rules are there when a Board wants to become strict. Ryan stated that these Ordinances have come along to establish a look of the Town. Wilbur and Ryan gave examples of unattractive structures and attractive structures that suits and benefits the environment. Krieger believes that the citizens do not get involved in the meetings and when the Ordinances are passed the citizens need to be voting. Krieger would rather see one (1) or two (2) story buildings where the structure are both the business and the home; this is what he envisions US 1 to become and not condo and townhouses.

Reilly brought Board back to the original question, add to next meeting or table it, regardless read the Guidelines and determine. Bring back to next meeting— put on next agenda.

Cameron. Alternates.

Cameron raised the issue of not having alternates. Basically, the Board is currently missing two (2) alternates because Zindel is out on vacation. Krieger asked if the openings were posted in the last Mailboat. Cameron commented that they had not received any responses from multiple letters that ran in the Mailboat. Discussion was held that no one is volunteering for any Board.

Krieger. Leave of Absence.

Krieger stated that in October and September he will possibly not be available and need to be excused. If he is available, he will come to the meetings. This is a formal submission to have a Leave of Absence.

Wilbur. Community Fire Safety Meeting.

Wilbur stated that the Division of Forestry was holding a Community Fire Safety Meeting at the Fire Department.

Reilly. Request of Board.

Reilly asked the Board to spend a lot of time reviewing the Paladin project. This cannot be discussed at that time but if there are any questions to bring them into the Building Department and speak with the Building Official.

Ryan. General Comment.

Ryan brought up the budget. Ryan voiced his deep concern about the shortfall and the concern about the pressure to bring in some higher density zoning to increase the tax base, which would bring in more money than a lower density zoning. Krieger stated that the problems in the past with the higher density zoning were the effects of the Indian River Lagoon, and the results of DOT, Natural Resources, St. Johns River Management District, the phases of the plans, etc. Krieger noted that the Board needs to be aware of the time limits of the phases and that plan with phases do not include all phases. Cameron stated that when there are plans that have phases the reviews are up to the planners and the people who run the community. He continued that the Board's comments are from a 'layperson' view—as someone who lives in the Town— and how each would like to see the Town, based on Ordinances, it is not their job to scrutinize the plans and what they are going to allow, that is up to the Building Department and the Council. This Board gives their recommendation on what is they feel should followed according to the rules and a time limit, etc., but each phase has a time limit, different phases are not grandfathered in because prior phases were approved. Wilbur noted that the Board needs to keep projects of each phase in mind as projects are reviewed, examples given of MIMA (sidewalks) and Brook Hollow (road to Malabar Road).

Ryan. Building Department.

Ryan and Krieger noted that they came to pick up the P&Z packet the Building Department was being moved. Cameron stated that Mr. Booth rented the trailer but the trailer is going away to cut costs.

Staff:

Verify when Cindi Zindel will be back. [November 1, 2008]

**J. ADJOURNMENT:**

There being no further business to discuss, **MOTION:** Ryan / Krieger to adjourn this meeting.

**Vote:** All Ayes. The meeting adjourned at 8:50 PM.

BY:

Bob Wilbur  
Bob Wilbur, Chair

Not with town on 11/12/08  
Michele Kelly, Secretary

11/12/08  
Date Approved

Minutes done by Debby Franklin, Town Clerk