

MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
September 10, 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 7:30 pm. Prayer and Pledge led by Chair Bob Wilbur.

B. ROLL CALL:

CHAIR:	BOB WILBUR
VICE-CHAIR:	PATRICK REILLY
BOARD MEMBERS:	RICHARD CAMERON
	DON KRIEGER
	BUD RYAN
ALTERNATE:	CINDY ZINDEL, excused
ALTERNATE:	LIZ RITTER
SECRETARY:	DENINE FUSCO-SCARBRO,
BUILDING OFFICIAL	ROGER CLOUTIER

Also present: Keith Mills, Town Planner

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 / Reilly to approve P&Z minutes of 7/23/08 as submitted.

Vote: All Ayes.

E. PUBLIC HEARING: 1

2. Conditional Use Permit Application for Commercial Stable and Wholesale Agricultural, 2265 Atz Road, Malabar; Applicants Dan and Marsha Michael, 17.3 acres in RR-65 Zoning.

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Chair stated this would be a Public Hearing.

Chair asked applicant to make presentation. Dan Michael introduced himself and his wife. He had cleared an area of his property and wanted to mulch the debris left from his clearing on his property and then fill in a few low spots. With the mulching it is more for than the low spots. They moved here in 1998 and improved the property and bought more land. They have continually had horses. They are looking for approval and help on how to do this better so they can enjoy their land and make use of it. Dan said that 2 times in the last 8 years she has had two horses there for 6 months. During the fires she helped and the town has asked to help on search and rescue. This application is being done to comply with the town code. For the record it will be one horse a year in addition to the six they have. Wanted to state that for the record. Reilly asked applicants if they are going to charge to board. Yes. Reilly explained that is why they are required to get a CUP. Once you accept payment it is a commercial operation and certain information is required.

Wilbur stated that the grinding and hauling of land clearing debris doesn't require a CUP. If that is all he is wanting then he can call someone in to grind and have it hauled off after he has filled his low spots. Dan Michael said he was trying to be green and keep the material on his

property. The gravel is from the Pt. Malabar shopping center. He would like to get that material at a reasonable price and he knows the town has been interested in it. He would like to store it on his property and sell to interested persons. Wilbur and Reilly said that would then be a commercial use.

Wilbur asked about the wetlands. Dan Michael said his properties are not in wetlands.

Krieger asked about the noticing requirement. Franklin stated that legal posting was done, property was posted and the letters were sent out to properties owners within 500 feet.

Krieger asked if their properties are contiguous? If they are, then are they asking for vacating LaCourt Lane? He is confused and it is all combined on the property and will they be considered one property.

Dan Michael stated the properties south of Lot 28 and 87 are mostly wetlands. The water comes all the way up. He said there are lots back there. You can't build back there on the listed lots due to wetlands.

Wilbur stated the road access does exist. The gate blocks access and land locks those properties. If you want to make this a continuous property the town would have to vacate the row. Wilbur showed the property on the aerial behind dais. He showed the wetlands and the uplands and both LaCourt and Marie Street access them. Wilbur explained that they would have to improve the road to the town standards if they wanted to develop those lots.

Krieger asked if it was one property – no, it is 8 properties. They never asked for the Right-Of-Way and they have maintained and they have no intent of asking town for Right Of Way. Dan Michael said they didn't need a traffic study; it would be small operation.

Cameron asked if he could speak. Cameron introduced himself - 28 years ago he moved here. Ten years ago they could have asked to do what they want to do and it may have been approved. He doesn't think they would be able to do what they want on their land. The rules in town won't allow it and the new rules in the state are going to make it very hard to accomplish. He proposed they will not get a majority vote in favor of their request. He felt Malabar was no longer a country town. He suggested they have a grinder come in and grind and then they can use it for the low spots and their stables. They have a drainage problem and will continue to have the same problem.

Chair asked Building Official if he had any questions or statements. No. Chair asked Planner Keith Mills. Keith Mills explained his questions were not answered. Some of his questions were answered with tonight's presentation. He would need more information if they wanted to pursue this. He referenced the parking. It doesn't show where the operations are going to take place. The access points aren't well defined for the users. The Engineer Bill S. had also asked questions that don't seem to be answered. There are things he would have to see in more detail in order to review. He noted the Building Official and Fire Marshal also had questions. Keith Mills also stated it was not so much about the traffic study as it is about what it is going to be used for. How many boarders, parking, hours of operation, the info that allows him to understand what is taking place there. It is not just a traffic study.

Public:

George Foster, Malabar Road, is there as a character reference for applicant. They have taken in foster children, volunteered for the town, taken down trees, developed the park, friend of the fire department, and volunteered his property and equipment and expertise. Been a friend to him personally and done exceptional work to make their property nice. He is always

volunteering to help neighbors. Recently during fires was a big help. They have done a great job and he supports their boarding and mulching operation.

Bob Graham, 2140 Atz Road, He has two questions. The fence on his property. The pillars were replaced with a new fence. He has been there for 8 years and the gate has been locked. He wanted to know who put the gate up and the locks. Why is it allowed for construction equipment and kept locked.

Dan Michael said that he had to get permission to build the fence. The columns were put in the right of way during (Town Administrator) Mr. Hall's tenure. The problem with 4 wheelers. The town put big wooden pilings in and then railroad ties and concrete pillars. They took the pillars out and replaced it with columns. The double gates open up wide enough for fire trucks. He stated they got permission to put the double gate across the right of way of LaCourt. They drive through their own gate that is to the west.

Board determined it was an issue for Code Enforcement.

Adele Gratten, 2125 Smith Lane. Stated she moved to Malabar from Palm Bay to have a large lot. She likes the country and the horses. She didn't even know LaCourt Lane right of way existed behind her house until this night. She had seen the gate. Her biggest concern is not the horses; it is the mulching, the gravel, and its effect on the residential aspect. It will put the houses at lower value. Today it just a little bit. They already have a problem with the road on Marie Street. Traffic can't get through there now. What are trucks going to do to the sink hole? What about the increased traffic, more cars. She was also surprised about the 500' distance – the whole neighborhood should be notified. She only got the notice 2 weeks ago. Marie Street goes down and she can hear the trucks from her porch. It is not the kind of neighborhood she wants to live in. She wants it quiet. That is it. Thank you.

Public Hearing Closed.
Back to Board.

Krieger: sees it as 8 lots of land and agrees and if you are going to do commercial mulching and gravel it is not the same as commercial stable.

Reilly stated it is an incomplete package; it is not contiguous; he did not see Engineer Bill S. memo dated in May addressed. He did not see response to Planner Keith Mills memo from May. Both should be addressed before it came to this Board.

Reilly further stated in the Table 1-6 on pg 322 of Land Development Code, it states that wholesale services are only allowed on US 1, Babcock, or Westland. The wholesale is not allowed in RR-65. In the Table in Dist Prov (Art. III) It implies that wholesale agricultural activities are permitted in RR-65. Wood and gravel are not agricultural.

Reilly would like to see this split up into two requests. Do horse stable on the west side of LaCourt. The applicant already has a house there. He is not in favor of any wholesale activity of mulching and gravel. The stable could not be on the east side of LaCourt because the Code says you must have your principal structure first. House is principal structure. Referenced Gentile CUP request. Reilly also tried to do a stable on Waring and was told he had to build house first.

Wilbur said the road, LaCourt is not meant for commercial traffic. It is for local traffic. He agreed with Reilly. Gravel is not an agricultural pursuit. Gravel and mulch are run out in large dump trailers. He mentioned the mining operation on Marie St during construction of Oakmont.

Cameron: He believes that the applicant understands that he made a mistake. The came here in honesty and got beat up and knows he should just go and enjoy his land. Cameron stated that Malabar was a truck farm in early 1900s, but no more. We are now a gated community. Town is so far behind in meeting the state and local requirements for the infrastructure and drainage.

Reilly stated the CUP was approved on Weber Road.

Ryan agreed with every sentiment. He can not support the request.

Ritter would support the commercial stable on the west side with the road opened. She did know that the town blocked it off in the past and stated that it would have to be reviewed.

MOTION: Reilly / Krieger to recommend Council deny this CUP application for Dan and Marsha Michael for Commercial Stable and Wholesale Agricultural Use for Mulch/Gravel at 2265 Atz Road, Malabar for the reasons stated.

Discussion. Ritter would suggest they reapply for the commercial stable portion. Talk to your council member or the mayor. He sees this time and time again. They recommend they come to this board first. We are rural and like horses and don't like construction and don't like noise. It is a shame they expended funds and come to this board and get rejected in this way.

Vote: Ayes, 5; 0, Nay.

Reilly asked if they wanted to reapply for commercial stables he would be happy to help them.

Reilly action move 4 to 3. Reilly/Krieger.

Heard after reptile man.

F. ACTION:

- 3. Pictures for Malabar Vernacular (Ord. No. 2008-10)** AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE III, SECTION 1-5.29(c) and (e); PROVIDING FOR A DEFINITION OF "MIRROR BUILDING AND PROVIDING FOR ILLUSTRATIONS OF THE MALABAR VERNACULAR STYLE; AMENDING ARTICLE XX, DEFINITIONS, REVISING THE DEFINITION OF "MALABAR VERNACULAR STYLE"; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Recommendation to Town Council

Krieger said he is ambivalent. Include them if you want. Wilbur said don't include the pictures. They are doing the ordinance an injustice. Reilly agreed. Ritter said she is more visual and thought the pictures would help. Krieger stated the ordinance clearly describes the styles.

Krieger said when he did the rewrite of the ordinance, he included the drawings. The ordinance verbiage says enough. Cameron said they want the old look that is new.

MOTION: Reilly / Ryan to recommend Council approve Ord. No. 2008-10 without pictures being included as part of the ordinance.

Discussion: Krieger stated they can have a whole book of pictures to look at if they want examples. The narrative clearly describes the types.

Vote: All Ayes.

Heard next:

4. **Request Zoning Approval for Wholesale Reptile Holding and Captive Breeding Project in RR-65 Zoning Applicant** Mike Roberts to present
Exhibit: Agenda Report No. 4
Recommendation: Request Action

Roberts introduced himself. Discussed his background as Missionary for 12 years. He began writing a book. Developed contacts and discovered the financial gains that could be had. Went to Guinea in started exporting animals. In Guinea you get export permits – the government licensed people. Built Cobra Enterprises. His company is still down there. He exports for Incredible Pets. One of the collections developed and then sold his animals. He wants to get involved in this. He explained himself. He explained the package. Fed and State licenses. The most difficult is the State of Florida. How animals are kept. He is the only American that holds an export license. Classification is where it gets complicated.

He is looking for property with at least one acre that he could afford. City of Melbourne helped him a lot. What do you classify a snake as? They said it was a horse. Suntime said it was considered a dog and you can only have 3. Many different answers but no real help.

How do you want to classify this activity? His licensing will require a notarized letter from the Town stating there are no objections to the zoning for this use. He needs this to get a Class II to get a dwarf Cayman which only gets to 18" but also would allow a crocodile.

He explained the breeding project process. He will sell on internet. There is an EBay equivalent for reptiles. No customers at house. Port of entry is Miami. Confined operations for home based financial gain. He wants to be welcomed into community. Is looking at property on Appleby.

Krieger asked about tracking devices in case of disaster. Required on reptiles of concern only. Potential to become invasive or pose a threat. The anaconda he deals with and requires to be chipped. It is not a good snake. He will not be dealing with it.

Krieger said the Code doesn't cover this but it would be a hot button item. As a commercial operation he would think there should be questions to legal – would the town take on liability if they licensed him. If we allow one type on animal that could be dangerous, would we be setting precedent for others.

Ryan said that nothing in RR-65 would permit this. Cameron said he is impressed with him, but he wouldn't vote for it. Wilbur also has a venomous license and gave it up when he decided to have children. He believes it should be in a commercial district. It would take the Board and the Council a lot of time to discuss this. He wishes him well but says he doesn't think it would fit. Krieger said that there was someone that wanted to wash dogs and he was turned down. Krieger asked what zoning Incredible Pets is in? Commercial. The Serpantarium in St. Cloud? Commercial.

Ryan said it is not allowed in RR-65. He thinks it should be in industrial or commercial. He would still need a business license. It is quite a tangled web. Thanks for the opportunity. Roberts wants a crystal clear understanding.

Reilly said that the direction to the Board was to provide a recommendation to staff and he got nothing from staff. He looked through the tables and there was nothing that could support his endeavor. Reilly thought it is a commercial operation.

Board Consensus is not to support such a use in RR-65.

G. DISCUSSION ITEMS: this item not discussed

~~5. Fencing in General
Exhibit: Agenda Report No. 4
Recommendation: Discussion~~

H. OLD BUSINESS/NEW BUSINESS:

Ryan said he has made three requests to the TA and has not been responded. Also the neighbor has a problem. These matters can't be let go. Building Official Cloutier gave an update. He was at her house and reminded her that there is only a certain amount of time. She assured him there would be done. He is monitoring it. Ryan wanted answer on neighbor's gate.

Cameron talked about drainage. How can he address it? Go to council. Wilbur suggested recreating the drainage committee. Franklin suggested he speak to BWF. She is working on drainage and has met with citizens and wants to hear from residents. Wilbur suggested a workshop on drainage. He will call Sharon for an appointment.

Reilly stated there should be a Public Hearing Procedure for chair to follow that the Board all knows. The Applicant comes first, and the Board asks questions only. Then they sit down and the Board hears from staff and learns what is factual related to the request. It is then opened to Public for their comment. Listen to their comments and then close the Public portion and bring it back to Board. Staff will create a bulleted list for Chair. Reilly had a whole list of things that he wanted to say to Board without applicant standing at microphone. Do a Checklist: Applicant, staff, public, and then board. You need staff up front to state what is in the code.

Chair asked Building Official why this was brought to Board. He expected staff to follow his sheet and then the applicant comes in and meets with him and goes over the comments. If they want to proceed, they must respond to the comments. Miscommunications prevented the answers from being provided.

Reilly also had as new business item. Referencing the applicant's package - it was incomplete from staff. He saw they were given copies of Art VI and Art VII. They chose not to include it in their package. Reilly understood there are different levels of ability but there must be some criteria to use. He was not comfortable. It is hard to get some items from town. It has to make good business system. He believes that staff can have a checklist for the applicant also. Use the checklist and be firm. We will put checklist together from requirements in Art VII and include a requirement for an Informal Wetlands Determination because that will not cost the applicant any money, and an aerial of the project site. We will put it on Town letterhead and make them sign it.

This item was not discussed.

~~6. Foundation Park Boulevard East - Update
Exhibit: Agenda Report No. 5
Recommendation: Discussion~~

Chair welcomed Liz Ritter to Board. Council appointed her to Board as alternate on 09/08/08. Board discussed purpose of alternate position on Board. It is important for alternate member to attend meetings and be familiar with the issues. When there is a vacancy, the Board makes a recommendation to Council on who should replace the member. But in regular meetings, Alt. No. 1 would vote for the missing first regular member and Alt. #2 would only vote if a second member is absent. Alternates are critical and they need to be familiar with issues. Zindel is excused for part of the year because she spends part of the year up north. We potentially had a major issue come before the Board and not only almost didn't have enough members and no

alternates. They need to discuss the purpose of the alternate position and put on as an Action item for next agenda.

I. ADJOURN:

There being no further business to discuss, **MOTION: Reilly / Cameron to adjourn this meeting.**
Vote: All Ayes. The meeting adjourned at 10:10 PM.

BY:

Bob Wilbur

Bob Wilbur, Chair

Denine Fusco-Scarbro

Denine Fusco-Scarbro, Secretary

10/08/08

Date Approved