

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING**  
**April 27, 2011 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 P.M. Prayer and Pledge led Chair Bob Wilbur.

**B. ROLL CALL:**

CHAIR:	BOB WILBUR
VICE-CHAIR:	PATRICK REILLY
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN, excused
	LIZ RITTER
	WAYNE ABARE
ALTERNATE:	CINDY ZINDEL
SECRETARY:	DENINE SHEREAR
TOWN PLANNER	KEITH MILLS, excused
TOWN ENGINEER	MORRIS SMITH, P.E. excused

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

Vice Chair Reilly stated for the record that Bud Ryan called him and asked to be excused.

Reilly, I would like to move Section "H. Public" up between D & E so that the Public does not have to stay the entire meeting. Also, move Action Item 2 the "Ordinance" and Action Item 5 the "Set Backs" as Discussion because there was not enough time to go through the Ordinance, I would like to discuss and vote at the next meeting. Wilbur asks Board if all in favor of those changes. **Vote:** All Ayes

**D. CONSENT AGENDA :**

**1. Approval of Minute- Planning and Zoning Meeting- 03/23/2011**

**Exhibit:** Agenda Report No. 1

**Recommendation:** Action

**MOTION:** Reilly/Ritter To approve Minutes of 03/23/2011 as corrected. **Vote:** All Ayes

Krieger corrections, page 1 second arrow under Land Acquisition, west should be east.

Ritter page 2, under Infrastructure, third arrow down:

- Easement for drainage: Maintenance/update of Drainage ditch behind west of railroad Camelot the Town has cleaned in the past from access of railroad right of way the FEMA ditch.

Page 2 typo third paragraph "out let" should be outlet.

Page 2 sentence before the Motion:

"The Board is discussing the addition of a pedestrian trail along Malabar Road on the north side being setback from the road and pipe ditch to be should be safe for pedestrians."

Page 2, under "G" second sentence take out the, after "Abare is discussing".

Page 3 third sentence add to the end of sentence that the south end of Rocky Point is the "Nelson Property" to clarify area talking about.

**H. PUBLIC:** moved to after Consent Agenda

Bob Segman, 2305 La Court Lane, Malabar FL. I am Chair of the Park and Recreation Board. He requested a zoning map that does have the setbacks and where they are located in the Town of Malabar. This is for possible development of a bike path. Sherear gave Bob a copy of the Town Zoning District Packet, including a Town Map.

**E. PUBLIC HEARING:** none

**F. ACTION:**

2. **Amend Code to Provide Current Regulations for Adult Care Facility (Ord 2011-38)** Moved to Discussion
3. **Proposed Fence Ordinance (Mayor Eschenberg)**  
**Exhibit:** Agenda Report No. 3  
**Recommendation:** Action

**Motion:** Reilly/Krieger To approve the "clean" version for discussion **Vote:** All Ayes

Reilly corrections on "clean" version is formatting:

Page 2 corrections: under "(d)" the 4. Was taken away.

Page 2 under "(d)", I thought there was a specific Ordinance for subdivisions.

Page 3 under "i" the sub numbers should be lined up under the "i".

Krieger corrections:

Fences, walls, gates, entrance ways it seems not all of them are mentioned but really referring to all these related structures. It seems that because they have more finely defined "entrance way" that at the end of "G" Page 3 "clean" version, where it says "fence or wall" I suggested putting commas, ie. "fence, wall, gate, or entrance way" to include them all.

It appears that sometimes in this section they reference just fence and wall, and other times throughout they list all four, and then sometimes add related structures to the documentation like on page 3 (i) -1.

Ritter along with Krieger suggests in the corrections:

Everywhere it lists "wall, fence, gate, entranceway, and related structures that becomes everywhere that fences is mentioned

Page 1 I would like to add "Perimeter" as one of the definitions means an outside boundary of a subdivision or multiple adjoining lots. This will clean it up.

Reilly, corrections on Page 2 of "Clean" version under (c) the 5 & 6 do not have periods after the numbers.

Wilbur- Page 2 #5 at the end of the paragraph

Ritter corrections Page 1- (b) first paragraph need commas after Industrial and after Institutional.

Ritter corrected Page 1- (b) the second sentence to read:

Fences or walls located, erected, constructed, or altered, on any property located in a commercial, industrial, and institutional district shall be no more than eight (8) feet in height, including barbed wire for security.

Krieger explains a culvert permit has a completely separate diagram as to the widths that are required and all that, it is taken care of elsewhere. It is handled in another section via the Building Official, because if you are putting a culvert in you have to put it in a certain way. Wilbur

adds that in the building code there must be specifications for a normal driveway. Krieger adds that is why the entrance way was put back 15 feet so the culvert is built appropriately.

Ritter Page 2- (d) - eliminate 1 and just make it (d) only.

Corrected as follows:

(d) Height restrictions for a perimeter fence or wall in residential district subdivisions/developments. No portion of a fence, wall, or related structures located on any perimeter property shall exceed six (6) feet in height.

Ritter Page 2- (e)

Corrected as follows:

(e) Maintenance of fences, walls, or related structures. All fences, walls, and related structures in the Town shall be maintained in good repair and in a structurally sound condition. All such structures shall be maintained to their original specifications.

Ritter Page 2- (f) 3- b

Correct as follows:

b. Barbed wire. Except in the RR-65 animals only around the control area. In the Commercial, Industrial, and Institutional Districts for the top of the fences.

Ritter Page 3-(i)-1

Correct as follows:

- 1- No permanent wall, fence, gate, entrance way, or related structures shall be constructed on any public right-of-way or easement.

Krieger, right-of-ways are under a completely different set of statues than easements. We did not want to use the term permanent fence, but wanted to specify what a non permanent fence or gate may be constructed on a public easement providing to make sure that the Town is not responsible for removing it, this was in the original code.

The Board is discussing about public easements and permanent easements

Krieger is explaining about non permanent which means it can be removed.

Ritter Page 3

The Board wants to see a clean copy with their recommendation to come back before the P & Z Board before forwarding to Council.

**Amended Motion:**

**Motion:** Reilly/Krieger To Approve the Recommended changes to the "Clean Version" of Fence Ordinance Provided, Then Forward to Council for Approval. **Vote:** All Ayes

**4. Extend Moratorium or Formulate Regulations Pertaining to "Pain Clinics & Pain Management Clinics"**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Action

**Motion:** Reilly/Krieger Recommend to Council To Extend The Moratorium **Vote:** All Ayes

Wilbur wants to know if there is a time frame for this Moratorium, can we get a longer Moratorium than 180 days. Abare, you are not going to like it in 180 days from now. Reilly adds the Council was supposed to do something about this Moratorium. The Board is discussing that maybe they are waiting for the state to change the law before any decisions are made.

Wilbur adds that other municipalities may be putting together Ordinances to put regulations on these clinics; we should do the same thing. Ritter suggests we should just not have it available in our codes. The Board is discussing the different areas this could be allowed in our Town.

Krieger if we want to extend the Moratorium, extend it but in addition talk to the Town Attorney and ask where in our Town Code does this presently affects us.

Wilbur suggests extending the Moratorium and direct Council to get with the Town Attorney and look at creating an Ordinance to prohibit these things from happening in Malabar.

## **G. DISCUSSION:**

### **Moved From "F. Action" Item #2 to Discussion:**

#### **2. Amend Code to Provide Current Regulations for Adult Care Facility (Ord 2011-38)**

##### **This is for Discussion not Action.**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; DELETING SECTION 1-2.6.B. 8, LAND USE CLASSIFICATIONS; PROVIDING FOR ADULT CARE FACILITIES; AMENDING SECTION 1-3.1.I DISTRICT PROVISIONS; PROVIDING FOR LIMITED RESIDENTIAL USES IN THE OI (OFFICE/INSTITUTIONAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; REMOVING REFERENCES TO GROUP HOMES AND PROVIDING FOR ADULT CARE FACILITIES; AMENDING TABLE 1-6.1 (B) DELETING REFERENCES TO GROUP HOMES AND MAKING PROVISIONS FOR ADULT CARE FACILITIES; AMENDING SECTION 1-9.2.12; PROVIDING FOR ADULT CARE FACILITIES; ESTABLISHING PARKING REQUIREMENTS FOR ADULT CARE FACILITIES; DELETING THE DEFINITION OF GROUP CARE FACILITY IN ARTICLE XX; AMENDING TABLE 1-3.3.A PROVIDING FOR A MINIMUM SQUARE FOOTAGE FOR SINGLE FAMILY HOMES IN THE RM-6 ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Wilbur is reading the Code. The Board is discussing this Adult Care Facility

Abare there is detail in this proposed Ordinance, there is detail that was not included in here, like parking spaces. Reilly adds there are 1 space per 5 beds and 1 space for each 5 employees in Section 5.

Ritter adds they are referencing a lot of Florida Statutes but it doesn't say "FS" Section it just says amending. If it is from Florida Statutes it should say "FS".

Reilly explains the lawyer wrote this Ordinance. The Board wants data that supports the Florida Statutes.

Ritter, discussing the letter sent (March 28, 2011), from Plata Engineering to Mayor and Town Attorney, Plata lists a group home, assisted living facility, why are we deleting group home and putting assisted living. We need to get everything the same.

Zindel explained this doesn't fit in group homes and they are trying to make a section for assisted living.

Abare passed out a paper a few meetings ago in reference to a facility in Melbourne by hospital called Hibiscus Court they have 78 maximum capacity (60 assisted living & 18 Alzheimer care), 14 % of assist living have a car. They have 60 parking spaces provided. Empty spaces most of the time, 10-15 spaces for staff.

Zindel and Ritter talking about Adult Care facility and assisted living being two different things,

Krieger needs more time to look at this Ordinance, I have some very fundamental questions nothing to do with parking spaces, it has to do with the fact as to Institutional zoning you are adding Residential limited uses. We need more information as to what the limits are.

Some time is needed to look at this and understand to see what other facets of code this impacts on writing a new Ordinance that fundamentally you are building a new structure it could be a hotel next week it could be a hospital and their residents (rights of residents) .

This is a residence, where all "care facilities" means you are not going to live there the rest of your life. This is a fundamental change of a zoning.

Wilbur adds that Office Institutional "OI" doesn't allow residence; it is a Conditional use only.

Ritter says that it is considered to be a "long term care facility", which is not the same as a "day care" or a "health care facility" or "family care home".

Abare adds that the applicant (Plata) came and talk to the Town about the requirements for that site, drainage and everything else and thought that this Ordinance would allow this Conditional Approval if the Town would grant them that for Assisted Living, closer inspection it's not a very good fit.

Wilbur we are just discussing in generalities.

Zindel asks if these Chapters 400 codes that are in this Ordinance the Florida Statues are they the states subdivision and land development code or do they address codes for these particular facilities that they have listed in these chapters and parts listed.

Krieger looks at this as a high density residence; it should be under a residential code.

Wilbur trying to understand if this is going to eliminate a group home classification and takes adult care facility to different level.

The Board is discussing zoning listed in zoning table.

Reilly in Section- 2 bottom of first page & top of page 2 they only address Office Institutional "OI", they should also address Institutional because this is a Conditional Use in "OI" but it's also a Conditional Use in Institutional (INS), they only addressed the office. The "INS" does not have residents in it either. They would need to add "INS" to this.

Kreiger page 2 third bullet down, the spread out communities and areas spread out, and now we're doing the opposite we're putting everything together. Reilly states it is in code now.

Krieger adds we are making a residential use out of "OI", I am not sure if Conditional Use under what we have existing today could be placed on the facility that we don't have to go through this writing/Ordinance every time someone comes in with a different definition.

Abare, if they have people during the day and at the end of the day everyone went home you could fit it under "OI". But they live there 24/7. I am thinking it is a "RM" we don't have right now. This assisted living is a stand alone.

Krieger, I would like to check a few assisted living facilities to see if they have multiple zoning. Abare adds personally he does not have problem with this type of facility being built in Malabar with the appropriate limitations and parking spaces, if done right it would be an asset to the Town.

Reilly, discuss Page 2 Section 4 the setbacks there used to be N/A's look to see if you agree the underlined changes.

The Board is discussing Table 1-6.1(B), Ritter asks about foot note (3) top of page 3, what "District Provisions", which Town of Malabar? Brevard? Florida? Not specified.

Wilbur; would like to see in this Ordinance what the District Provisions are for the minimal spatial requirements.

Wilbur- Page 3 of the Ordinance the lined out portion "Florida Department of Health and Rehabilitative Services" I want to know what the District Provisions allow.

Krieger had gone over to the care facility across the street next to the hospital in Palm Bay and asked if anyone lived there and they told me that Palm Bay would not allow that.

Reilly, asks the Board what do you need from staff?

- Abare we want this to be a standalone instead of referencing a bunch of things we cannot look at right now. Recommend that they break out "assisted living" separately instead of mixing. Ritter difference between care facilities (temporary in & out) than an actual living.  
If we amend these Ordinances to allow this that it is approved only for the planned use for "assisted living" and it does not go into something else, so that ten years from now it is not a Holiday Inn.
- Wilbur if it is regulated by "Florida Department of Health and Rehabilitative Services" I think they know a lot more about the care industry than we do trying to cover something under District Provisions. If we are going to consider a Conditional Use in an area that is not normally allowed then it should be something of quality that can be regulated.
- Krieger, once you're a resident what kind of restrictions can you put on a residence for example can they have a business license? Suddenly you are going to have a large group of new residents. It could actually create new district problems.
- Zindel is there anything wrong with looking at someone else's Ordinances as to how they handle this similar situation, Plata Engineering address City of Melbourne and Brevard County regulations as examples of "assisted living" used in Institutional Zoning.
- Reilly, the requirements that are sited on page 323 in the Land Development Code for the Florida Department of Health and Rehabilitative Services how did this apply to "group home"
- Krieger if it were in RLC zoning can it can have a relatively high density why can't there be an assisted living in RLC, which is a commercial zoning and residential zoning- still need a conditional use.

#### **G. DISCUSSION:**

**Moved From "F. Action" Item #5 to Discussion:**

**This is for Discussion not Action.**

- 5. Setbacks In RR-65 Zoning**  
**Exhibit:** Agenda Report No. 5

**Recommendation:** Action

Reilly agrees with the Mayor. Board agrees with principal that the people should be able to do as much with their land as possible.

Julianna Hirsh, 1035 Malabar Rd, the setbacks 30 rear 30 sides and 40 in the front. How long has that been enforced, why do we change it. The idea is we do not want to widen the road and do anything. It will change the entire appearance of Malabar. What is suggested that the setback be? To be ten feet, Hirsh said you might as well move to Palm Bay. Are we going to keep Malabar as Malabar or build it right up to the street like ever place else. There is different zoning in this Town and they can do that. For 100 years we had it the way it is. To change it in this Town it is criminal. This setback situation is so serious that you need to think about it. Thank you.

Reilly, I am in favor of using 75% vs 54% more of your land, and people put sheds within those 30 feet.

Abare does roof line or side of shed have to meet setback.

Krieger when I look at this within the most general aspect, no I do not want my house walls 10 feet from the setbacks.

Abare if you have a 1.4 acre lot if you put the building further back it looks nicer to look "estate like" it looks nice. The side setbacks 30 are not impediment.

Wilbur when we did these setbacks in RR-65 so you would be able to put your house able to be buffered with landscape and trees and if you wanted to do a barn or two story house you are not on top of your neighbor. Allows room around the property for emergency vehicles.

Tom Eschenberg, 2835 Beran Lane this came up because I drive around almost every Friday afternoon this Town with Eagle Corp Patrol, me and David look and see code violations. One day the Council may change in this Town and we might want proactive code enforcement instead of reactive code enforcement at some point down the road.

While out on Eagle Corp Patrol, seeing storage sheds all over south Malabar this applies to accessory buildings. I saw future potential problems and I thought this would head it off. Maybe you want to say this only applies to accessory buildings and leave the main building alone, Probably most of those buildings were done without a permit.

Abare asks why you would want to encourage people to put up accessory structures ten feet from the property line.

Eschenberg, if I wanted to put another shed on my lot I could not and meet the 30 foot setback. I do not have the 1.4 acres to use. About 1/3 floods in the summer time if we get any kind of heavy rain.

Eschenberg, why should 6 or 7 people on P &Z and 5 people on Council say this is the rule for you because I don't like the looks of it otherwise. You got to follow my rules because I want things to look the way I want them to look, I am taking your freedom away from you to do what you want so you can meet my vision of what something should look like. It doesn't have to happen in this Town. It happens from the Fed, Gov't all the way down.

Krieger the problem is not setbacks, the problem is that everyone is "Grandfathered in", until they have to replace something. (this is a quote from Mr. Rivet)

Abare adds the problem is going to arise with deed restrictions properties you get someone that wants a shed and you tell them the 30 feet setbacks and he cannot do this, but the neighbor has a shed, why can he have one and I cannot.

Krieger is addressing what the Mayor said is correct, it is not the setbacks it is the fact that the Council can change and Committees can change, the fact is no entity in a Town, when they come into a Town they come in with a set of rules that is the set of rules they, you change the rules afterwards it is not retroactive to these people it is for the new people.

Abare for example the state and everyone is changing requirements.

Krieger said there are a lot of violations in this Town, but I would like to see some protection in this Town for the people who were here and helped build this Town and brought it up to where it is today. Deed restrictions are for gated communities and for people who want to live under those restriction but rural Malabar should be as general and unspecific as possible.

Reilly on Table 1-3.3(A) Size And Dimension Regulation, it was circle in our packet the setbacks what we can think about, this is for the actual structure we can make a note or something that says accessory building we can change it to ten feet to somehow get Tom's idea into the Table.

Board is suggesting leaving the setbacks as they are in the RR-65 zoning.

## **G. DISCUSSION:**

### **6. Regulations on Internet Cafes**

**Exhibit:** Agenda Report No. 6

**Recommendation:** Discussion

Reilly explaining this is like on line gambling. ie: bingo and poker. The Action of this item is that staff would like to have regulations on the books before someone comes in looking to have this type of establishment and what zoning would be appropriate.

Krieger suggests that if we do not want gambling establishments in the Town then if we want to say that just say there will be no gambling establishments, we don't have a code for this.

Ritter they would have to get some kind of business license, where it would end up in our classification.

The Board is discussing different scenarios, Wilbur recommends that we put a moratorium of 180 days and some direction once we find out what the judge is going to rule, and have some time to do some further research.

Reilly asks the Board if they want to adopt regulations to control Internet Cafés, the consensus of the Board is no.

**Motion:** Reilly/Ritter Recommend To Council To put a Moratorium of 180 Days To Regulate Internet Café. **Vote:** All Ayes: Krieger Nay

**H. PUBLIC:** moved to after Consent Agenda

**I. OLD / NEW BUSINESS**

Zindel, brings back about the RR-65 that was discussed, page about the Malabar Code Revision Committee about the setbacks objectives the foot note in the table that is totally contradictory of what the code says that the setbacks start from the center line of Hwy. The Table 1.3-3 (A) says in the footnote that from the centerline of Hwy or whatever is most restrictive.

Krieger bring up at next meeting.

Krieger is reporting that Corey Road is falling apart south of Malabar Rd in front of the "Liford" old house the road is cracking, where the creek crosses.

**J. ADJOURN:**

There being no further business to discuss, **MOTION:** Reilly/Krieger to adjourn this meeting.  
**Vote:** All Ayes. The meeting adjourned 10:05 P.M.

BY:   
Bob Wilbur, Chair

  
Denine M. Sherear, Secretary

6/08/11  
Date Approved