

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING  
JULY 13, 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, leave
SECRETARY:	DENINE SHEREAR, excused
TOWN CLERK/TREASURER	DEBBY FRANKLIN
TOWN PLANNER	KEITH MILLS, excused
TOWN ENGINEER	MORRIS SMITH, P.E., excused

Franklin said Zindel is on leave approved by Board. Vice-Chair stated Ryan had called him and had asked to be excused from meeting. Chair asked Franklin to call Ryan and ask him to call Town Hall when he can't attend. Reilly said he called him late, after 6PM, said he had done a lot and was really tired and was going to bed and would like to be excused. Franklin asked and Chair stated he was excused. Vice-Chair stated that Alternate Wayne Abare would be voting in place of Ryan.

**C. ADDITIONS/DELETIONS/CHANGES:**

Minutes are not done. Reilly said that he would like to move F.2. to G.5. as the land use changes are related to the R/LC. Board's recommendation should not go forward to Council until they finalize what they want for R/LC. No objections.

**D. CONSENT AGENDA: none**

~~1. Approval of Minutes - Planning and Zoning Meeting - 06/22/11  
Exhibit: Agenda Report No. 1  
Recommendation: Motion to Approve~~

**E. PUBLIC HEARING: none**

**F. ACTION:**

Moved to G.5

~~2. Proposed Maps of Land Use Changes for Review Revised (7/08/2011) Babcock Street Malabar Road US1 Corridor  
Exhibit: Agenda Report No. 2  
Recommendation: Discussion/Action~~

**G. DISCUSSION:**

3. Adult Living Facility - Ordinance 2011-38

Exhibit: Agenda Report No. 3

Recommendation: Discussion

Speaker card: Frank Plata. Some confusion - some people think that this use can be in residential. ALF under Sec 310.2 of Fla Building Code uses group homes interchangeably with ALF also drug and alcohol rehab center. This was never looked at. Under the State, there is

Group I-1 part of 308-2 FBC, definition is broken down as group home with three sections, based on number of occupants:

1-5 persons – developer would pull a residential permit.

6-16 persons – developer would still pull a residential permit but a R4 - still res license

They are going for 48 units with more than 16 persons and are under group I-1 – no doubt about where they are in code – not residential must be under institutional zoning. He also referenced County code. These occupancies – more than 16 persons, supervised care that doesn't require extensive medical; has to be more than 16 persons. He discussed the next level up in licensing requires a nursing person for every 3 occupants. Parking would be almost 1 per unit. Nobody likes this type of facility in residential. The confusion is tremendous; that is why you need to go to Mgmt Company. To have consistency, when you go to building dept you are going to institutional. Most people don't know the state rules. Where do you want seniors to go? If you become familiar with codes you can see the difference. He wished they had more input from the building dept explaining the institutional use vs. residential use. He doesn't want to steer anything... They want this cleared up. Doesn't want this use to get kicked out of institutional. If you look into code the questions are answered. He is here to clarify anything they need. Want to be sure the Town is happy. The owner has nothing to do with this. The other two investors want to make sure this is taken care of in a smooth fashion. Code only needs to substitute or add to group home.

Reilly asked about FS 419, Sec 20. It clearly defines the group homes. He will bring this up later. Plata was referring to I-1 in Florida Building Code. Analogy is warehouse for parts and another is warehouse for bikes but they are both warehouses.

Plata said the uses branch down to 11.2 under 3.8.2, the occupancies would be classified are R1, R2 or I-1. Bldg plans would be totally different. They go by zoning. Can't do this type of use in residential. Can't pull a permit for residential in OI. Plata sat down.

Reilly – agreed partly with Plata. Originally they took out group home and put in ALF. Group homes are good for up to 6 persons. This ordinance should address facilities with over 6 persons. FS 419 addresses these uses. He questioned the reference to FS 429. Franklin will check with Attorney.

He would like this ordinance to deal with this instead of a catch all for everything. They went through the ordinance and made changes and he doesn't think they got incorporated. He sees stuff that did not get incorporated. They did change things. This ordinance is a good starting point to add to the tables but should not delete group homes. He has spent many hours of researching assisted living facilities.

Ritter said originally it was an issue with density. She wants density included. Distinguish between units and people.

Wilbur read the motion from Council. They were asked to consider the Council direction to remove residential from OI Zoning; eliminate this type of facility from R/LC Zoning and consider more green space requirement.

Ritter said this application is to be looked at from current code. Wilbur said we are not discussing the project, just the ordinance. Whatever happens to that project is at Council and is not up to P&Z.

Reilly said we should keep group homes and then add other classifications. Do they want to eliminate group homes from OI and add Adult care facilities. He said the break in classification is the 6 persons – 6 and under is group home. You can't group it all together. That is why you need separate listings. We need to do research.

Abare said Council wants us to revisit this and do more on the ordinance. Ritter said we need to incorporate density as well. Wilbur said we should throw this ordinance out and start over.

Don Krieger – sees two situations – project going before Council is site plan without any ramifications on conditional use which has been stalled. If they are going forward with CUP under OI, he has concern with maximum density. Ritter said any ordinance we do needs to address density. Krieger said we didn't have a lawyer and we had two questions. Multiple uses on a parcel and density. Also parking. Density – should add a density statement such as maximum of six units per acre related to a multiple use parcel. If you are going to stick to high density, what are you talking about? Wilbur if you eliminate the residential component, he would propose going back to Professional Commercial. Krieger said if it is not residential it is less of a burden on the fire services. Most of those uses would also be less intensive.

Krieger said you still have a 48-unit with 96 residents on 5 acres. This seems to short circuit the requirement we have everywhere else. If there are no kitchen facilities then is it a residence?

Reilly referred to them to table – if you eliminated residential from OI and then you don't have to define. Krieger said OI now allows residential use for watchman.

Reilly said you can't talk about the site plan. Krieger said yes he can. He said they accepted the site plan and didn't address conditional uses.

Wilbur said we are to talk about the ordinance. We are looking at redoing the OI classification on what we want to allow in the OI classification. If you take out the residential component then you don't have the density issue.

Abare said to follow up with Krieger's point in OI at the end of the day, they go home. With Assisted living they are going to be living there. You have to decide what a good number is; if it is six units per acre and they talk about 48 units, you would have to have eight acres. These are multi-million dollar projects. Don't want too many people on too little of land.

Krieger said that Council did not hear about their concerns. Reilly said they did. Krieger said they didn't have the minutes. Abare said even Council had some concerns. Density is a big concern.

Krieger said on a multiple use parcel – 5 acres with other uses; what is the density they are going to allow?

Ritter said we have to define what a unit is – are 4 people a unit? Make it clear what you expect.

Abare said you have to go with something that is reasonable. The developers have to permit with the State. Abare said Krieger's point – 5 acres is whole site but they are not there 24/7. Krieger does not see children's center and this type of facility meshing together. These are questions we did ask. Krieger reviewed Usteam and the minutes and doesn't think their concerns were conveyed to Council. Ritter said it went to beds. Krieger said we should make recommendations for conditional use; under CUP, you can state the conditions. Abare said the concern is for the demands on the city. Old people will be calling an ambulance more often. Wilbur said if it is a non-profit then the town will foot the bill.

Krieger asked if they were given a directive or a suggestion from Council. Council could have done anything they wanted and made those changes; they didn't need to send this back, but they did. P&Z Board is an advisory Board. Take it out of OI and also take it out Institutional.

Abare said we could accept as a conditional use – instead of creating a whole new category. Does Board want to create an ordinance dealing with adult care facility? They specifically separate the two. They are not going to get an attorney here. So they need the 310 Build Code and get the FS 419. Discuss the difference of FS 429. Abare said they have adult day care centers in Palm Bay but they go home at night. An assisted living facility is under adult care facility but they are there 24/7. That is a different burden on the city.

Have on for next mtg. F.S. and Bldg Code for next mtg. Get other cities regulations. Reilly researched Melbourne. They are under general commercial and institutional. If we could get other towns. Do they talk about density? Reilly was only interested in zoning. Krieger said density is what shapes the town. It is about lifestyle. It is a major change. An apartment that is housing people. That is an apartment house. Reilly visited quite a few of them. There were 76 persons over 2 acres. That would be 36 per acre. Again that was in a PUD. The other one was on a CG zoning. One was 2-story and one was a 3 story. Abare said there is one that has a large retention pond and that is not considered in their acreage.

Krieger thinks it is a fundamental change if you want to say anything about density. Otherwise it is up to Council. These types of places can only be where there is water. So there is not that much of a rush for this. Abare said there are a lot of potential sites there.

Consider R/LC for the use of group homes also. Wilbur said there is a large track on US 1. Stated that 96 persons on 1.5 acres is not good design. Abare said the project is a big investment and it is not the land, it is the building. If you got more land you can make more parking spaces. His mom still has a car and drives. Krieger said in an urban setting they have more parking. Wilbur said the Mgnt Company after it is built is going to determine the resident type. It could be drug rehab or alcohol rehab. Those are expensive facilities and if they need to fill them. If they have someone with money and a car, they would accept the person with a car if they could write the check. Ritter said there are restrictions from the State.

Wilbur said 2 beds per room, a full kitchen providing two meals a days, cleaning staff, kitchen staff, deliveries, nurses, etc. would require many parking spaces. Abare said there were 49 persons on staff when they looked at Hibiscus Court. They did not even ask if she had a car.

Krieger said in six or seven years from now he doesn't want to be the one pointed to and said that he let something happen that shouldn't have or the other way around. Krieger said the site plan was presented to us in a very quick and unusual manner as far as he was concerned. Normally they get a conceptual look before they deal with site plan and he feels it is very intense use for a very small piece of property, but the engineers and planners told us it was correct.

#### **4. Residential / Limited Commercial Zoning & Density Clarification**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Discussion

Krieger said R/LC was described as along US 1 and now we are proposing it throughout the town. You would allow group homes in R/LC. Yes. But density would be reduced to 4.

Franklin explained that Board would be recommending that the Code be amended, not the original ordinance be amended.

Wilbur proposed a scenario they had discussed. Duplex with artist studio below. They would require a minimum of one to one development, residential and commercial. Keep them in balance. Franklin explained that if one person wanted to have a bait shop on US 1 in R/LC they could not. She explained that in creating R/LC they were trying to allow homes along US1 to convert or

expand their use to operate a business from their home so they did not have to give up one for the other. Council Member Beatty added that if a house in commercial general zoning burned down it could not get rebuilt. It was done to protect existing homes in CG.

Ritter referred to formula Engineer Morris Smith has drawn with residential and commercial developments; it showed the maximum use of each and coverage. Reilly said the maximum coverage of the land is 20% in Table in Art III and the maximum size is 4000sf.

Krieger said he will send Franklin document they are referring to; he thinks it is a memo from Franklin. Wilbur said what is density going to be? They discussed the mix between the res and commercial. We were talking about separate buildings.

Ritter said we needed to get definition down before we can go forward with land use changes as they have proposed more of this in town.

Krieger said what about multiple buildings; is it 4000sf per acre; what about multiple stories. He gave example of a residence upstairs that ceases can they then have a business.

Consensus:

- the density in R/LC would be changed from 6 to 4.
- add language to allow R/LC in other areas of the town besides US 1. Wilbur said don't worry about the formula. The percentage was to ensure you didn't have more of one than the other.
- Change minimum size for apartment to 900sf in Table. That will establish how many residences you can get on a property.

They discussed this. Four is the max for residences. What is the max for commercial? That is what Krieger will look up; he recalls memo from clerk.

**G.5 (Moved from F.2.)**

**Proposed Maps of Land Use Changes for Review Revised (7/08/2011) Babcock Street-Malabar Road-US1 Corridor**

**Exhibit:** Agenda Report No. 2

**Recommendation:** Discussion/Action

Vice-Chair went over the Power Point presentation. He stated he made changes were made to maps based on previous Board discussions. Some changes were made with staff assistance. Summary:

Pg 5: changed 17 acres to Conservation.

Pg 6: Abare asked about EELs land - do they get financing from State annually. Unknown.

Pg 7: confirmed they wanted RLC on NW corner of Malabar and Corey; it is out parcel, not part of subdivision.

Pg 8: Discussed the jog down at the PO. Reilly stated the depth of OI is 1320 feet. Wilbur questioned the OI to east of Malabar Community Park. Reilly said it used to be CG. They also discussed the placement of the OI line going from the small OI parcel to the larger OI parcel. Consensus to provide OI in the parcel immediately east of Park. The rest of the area designated as OI will be changed to Conservation. It is all part of the Malabar Scrub Sanctuary. Reilly will change this map. Krieger asked about making Institutional if the Town would like to possibly use it in future. Franklin suggested that if the State designated it surplus at some point in future then the Institutional designation may allow something undesirable.

Pg 9 – discussed the new CL designation on west side of RR tracks. Franklin stated perhaps they intended something besides CL and asked them to read from Code on CL. Krieger read CL definition in Article III (page 115 of LDC) and Reilly read from Article II (pg 61 of LDC) on typical uses in CL. They do not seem to fit for the corridor along the railroad tracks. They were looking at

a light industrial use and thought the planner had said the CL would work for this area. Wilbur said they have had numerous requests for a light industrial. They came up with a light industrial. Ritter said should reconsider for along Babcock and I-95 as well.

Franklin will get definition for next meeting of light industrial from other municipalities.

Abare referred to the north side of Malabar Road for the areas proposed for RLC. Did they intend to cut use absolute line or go around existing parcels? Franklin said that if their recommendation is approved, the description could be to go around the existing property lines.

Pg 10: OK

Pg 11: OK; Reilly said OI ended at Glatter. Wilbur referred to large piece that was CG and changed to RLC and maybe it should be changed back to CG. That would give a CG presence on US1. Continued discussion – maybe a Commercial PUD or another type of PUD. CG would allow hotel/motel development or a restaurant. Reilly will flag for further discussion at next meeting. Krieger is thinking it should remain R/LC.

Pg 12: Commented that property owner Skora was at P&Z and did not ask for higher density on his parcel.

Pg 13: No change

Pg 14: referred to part by Goat Creek.

Krieger wanted to know when property values change for tax purposes before they make their recommendation to Council. He spoke to someone at Property Appraiser Office and was told they use best and highest use. Franklin said they do use land use designation but when the FLUM changes and the zoning doesn't she is unsure what they use. Their land use designation on their website does not always reflect a municipality's designation. She will find out before next meeting when the property values would change. Franklin stated another recommendation P&Z needs to address with Council is whether the Town should only make the Land Use Changes to the FLUM and require each property owner to come in and ask for the corresponding zoning change. But there is a requirement that the zoning map can't conflict with the FLUM. If Town changes FLUM and creates conflicts with the Zoning map, how does that work? She will try and get answer from State before next meeting. Can Town create a conflict on a FLUM? Franklin will also get definition from other municipalities on Light Industrial – the intent was for repair shop and contractors.

#### H. PUBLIC:

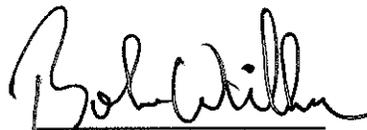
#### I. OLD BUSINESS/NEW BUSINESS:

Krieger asked if anyone wanted to make a motion on density related to 96 bed site plan that will be reviewed by Council at next meeting. Wilbur and Reilly said no. Krieger hopes Council will listen to P&Z minutes on their concerns related to density.

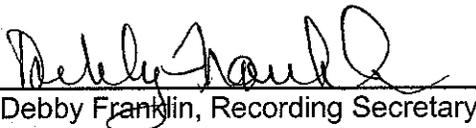
#### J. ADJOURN:

There being no further business to discuss, MOTION: Reilly / Abare to adjourn this meeting. Vote: All Ayes. The meeting adjourned 9:55 P.M.

BY:



Bob Wilbur, Chair



Debby Franklin, Recording Secretary

7/27/2011 corrected  
Date Approved