

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
SEPTEMBER 14, 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
	LIZ RITTER
	WAYNE ABARE
ALTERNATE:	CINDY ZINDEL, excused
SECRETARY:	DENINE SHEREAR
TOWN ENGINEER	MORRIS SMITH, P.E.

C. ADDITIONS/DELETIONS/CHANGES:

D. CONSENT AGENDA:

- 1. Approval of Minutes** Planning and Zoning Meeting – 08/24/2011
Exhibit: Agenda Report No. 1
Recommendation: Motion to Approve

Motion: Reilly/ Ryan To Approve the Minutes as corrected. **Vote:** All Ayes

Krieger corrections, page 3 4th parag. from bottom Williams, I was trying to comply with intent of code,

Page 4 , 1st parag. last sentence correct sentence with, "Morris, when someone knowledgeable cannot interpret code easily for homeowners to understand.

Page 6, 4 sentences from top "Brookhollow ~~æ~~ or "

Ryan corrections, page 3 2nd parag. from top third sentence "We have a definition of a pond that's greater than" ¼ acre in size....

Page 6, 2nd sentence from top" RV's parked in front yards. ~~we~~-We"

Abare corrections, page 3 5th parag. from bottom, "Abare said if somebody wanted to put a pond less ~~that~~ than ¼ acre, they should show on the survey where it meets the setbacks and where is located.

Page 6, after second parag. "1- "I don't like the look of it"

E. PUBLIC HEARING:

F. ACTION:

- 2. Internet Cafes Defined and Regulated (Ord. 2011-48)**
Exhibit: Agenda Report No. 2
Recommendation: Action

Motion: Reilly/Krieger To Recommend to Council Ordinance 2011-48 revised 7/29/2011, then later revised by PZ Board on 8/24/2011. **Vote:** All Ayes: Wilbur, Krieger, Reilly, Ryan, Ritter .

G. DISCUSSION:

3. **Morris Smith, P.E. Town Engineer- Requirements for Site Plans as they relate to Excavation and Ponds less than ¼ acre of water surface area**

Exhibit: Agenda Report No. 3

Recommendation: Discussion

Morris went back through Town Ordinances to 1978, several places there are in conflict, especially in setback area.

(Morris submitted "EXHIBIT A" attached)

Morris is explaining to Board, the research he did on the Ordinances'. Morris explains that the Town is on record in the 2003 Ordinance for wanting to allow our homeowners to dig something a ¼ or less without going through a giant process. The ¼ acre or less still trips the 1,000 sq ft requirement for a site plan.

Morris suggests a real simple thing to change, the bottom of summary it seem to me a simple thing to change without changing a lot of paragraphs and codes and re-codify things.

We have a list of items, that require a minor site, but it does not include surface water area less than ¼ acre. We can insert this as item "D". This would be a simplest way it would allow the Engineer and Building Official to review this process.

Morris suggest we have to add some kind of activity, I came up with the word, "soil displacement"

In 2010, the amendment of code 2010-30, section1, item "F", it is added that the Town Engineer at his discretion may waive the requirements for the pond permit, for the construction of the pond considering the size of the pond, its location, its intended use, and any other factors the Engineer deems appropriate in considering the waive of a pond permit for the construction of a pond.

If we require a minor site plan because we are tripping the 1,000 sq ft surface area displacement, it is the trees and brush.

Ritter, if a minor site plan is required for displacement of ground for less than a ¼ acre in size, then how would you determine if the soil needs to be kept on property. Morris replies that Town Council would have to re write the Code.

Reilly asks if the only suggestion is to make it a minor site plan.

Morris suggests that there is a list of (4) things for Minor Site Plan:

- Setback
- Silt fence
- Best management process
- Check List

As soon as we say greater than 1,000 sq ft we require a site plan review. But the "Minor Site Plan", gives me the Engineer and Building Official the check list ability.

Krieger is discussing about the dirt not leaving Malabar. Abare adds that a pond might aid in water retention.

Morris explains if you are in the flood plain you are reducing the ability of the flood plain by and that dirt, digging a pond for storm water storage

The Board is discussing the property on Lett Lane that wants to build a pond on adjacent parcel and then spread dirt accordingly on both properties.

Abare commented that he was told that wetland determinations are good for 5 years and then reset.

Abare asks if Town can be liable for if something was approved by the Town and then later DEP came back and said wetlands were disturbed.

Morris explains that we ask for DEP letter when a permit is applied for, for building.

Krieger as we do more research into this issue in reference to pond, who is doing this Staff or Engineer and do we have permission from Council to spend time of staff to this kind of work, normally we ask for information and we process the information.

Morris explains that staff has done 90% of the work and I have done about two hours reading and going through the information.

Ritter adds that we could put stipulation in section for pond and expand the definitions to cover the issues.

Wilbur agrees that there should be an oversight of the project and should be easy and affordable.

Morris explains to Board that there are several agencies that have independent stipulations based on the particular site. Morris explains that the Code says they can move the dirt in particular circumstances.

Krieger asks about Ord. 7-19 85 is there a pond less than ¼ acres? Morris responds that at last meeting anytime we say "pond" it does not refer to anything less than ¼ acre.

Morris explains in 78' they refer to as holding ponds and retention ponds, Krieger adds that in 1985 we had a definition of ponds being any water body than after that we added a definition of a ¼ acre, which doesn't mean that there is not ponds less than a ¼ acre, it is just not defined within the body that it needs to be defined, but it is there in our Ordinances.

Morris says anything less than ¼ acre is a hole in the ground. Ryan looked up the definition of a **Pond is: a body of water usually smaller than a lake. Lake is: a considerable inland body of standing water.**

Reilly, reads page 273 definitions/general provisions and reads Pond Definition: shall mean any excavation for the purpose of retaining water were in the surface area is ¼ acre in size or greater. So if it is under ¼ acre it is not a pond. Reilly suggests we should have another definition for ponds less than ¼ acre, which is "soil displacement".

Morris is explaining the "minor site plan" and "full site plan", the minor site plan gives the Town Engineer and Building Official the lead way to use discretion.

Morris explains that for a "minor site plan",

- a residential project comprised of a single building
- projects containing less than 1,000 sq ft of new impervious surface
- a single family home & accessory buildings for ponds, which require a site plan approval for 1-7.1-5 we could add a letter to that code.

Morris suggests that any major or minor site plan there should be a required pre- application meeting.

Krieger suggests name for pond ¼ acre or less: "man made water body, retention and/or aesthetic man made water bodies less than ¼ acre in surface size"

Morris suggests, for the soil, a soil displacement activity.

Krieger asks what this would be called, Morris responds "Minor Site Plan".

Reilly suggests adding to definitions.

Wilbur suggests to repeal the Ord. 03 11 and do away with a ¼ acre or less no permit. If you want to dig a pond you get a permit. For certain sizes we can minimize the requirements.

Ritter's concern is that dirt stays on site when doing excavating and the dirt is distributed.

Ryan discussing with Board about recommending to eliminating Ord. 03 11. Ritter adds that we need to make sure everything else is taken care of and covered.

Reilly requests for next meeting:

- the 1978 Ord.
- the 1985 Ord.
- the 2003 Ord.

Bring back to next meeting

Morris left 8:30 PM

4. Continue Recreational Vehicles & Trailers in front yards of-Residential Zoning

Exhibit: Agenda Report No. 4

Recommendation: Discussion

Reilly explains to the Board that that Denine has more information on this Item so there is no action comes out of this meeting there is more data to review, just discussion.

There will be more discussion next meeting.

Wilbur opens to public- speaker cards submitted

Bob Rossman 1635 Country Cove, Malabar FL. I have been a resident of Malabar for 22 years. When I came to this County I was allowed to live anywhere, we picked Malabar for a specific reason. I was employed by Palm Bay, and I do not want to see Malabar become like Palm Bay. That is why I am here; a majority of my life was in law enforcement.

Every Monday for the last six years, I do meals on wheels; I have watched this Town to go to the Town that appears to be more & more like Palm Bay. The property rights in Palm Bay allow people to do anything they want.

Rossman, what brought this trailer issue to attention, was the house on Corey Rd and Atz Rd. Rossman mentions Benjamin Road and the beautiful homes that have large facilities to park RV's and campers inside.

Rossman explains that if you drive through the Town a lot of people that have boats, RV, Campers, and they also have a facility to park them in.

If you have a smaller parcel there is no limit of places that you could put & store things in this Town. Some people in this Town want to change things in this Town what we do to accommodate themselves, I am totally opposed to it. I liked the way the Town was. I love this Town. I am a little disappointed of what I see what is going on in this Town. You can enforce it we do not have to be repressive, we can use discretion. Changing what we have now is not the right way to do it. Enforcing the way we do it might be the right way to go about doing it,

Reilly asked Rossman not sure what he wants, if he is for or against the issue.

Rossman explains, "I am opposed to changing what the current way we do it.

There is a way to do this is and discretion, means if we have a violation this is what our codes are.

It is about enforcing our codes.

Abare and the Board is discussing different scenarios with Mr. Rossman concerning boat/ trailers behind the front line of the house.

Krieger asks if Country Cove has a facility to park RV's, it was suggested to residents to use facilities outside Country Cove. Rossman believes it was due to aesthetics reasons.

Rossman, I don't think that having these RV's & boats, etc affects the property value, I believe it is aesthetics.

Bill Withers, 2324 Candy Lane, Malabar, I am in opposition to this issue.

At last Meeting, our Mayor brought up some things that this was one of his pet projects, People want to change the existing code these are our Community Standards of our Town and they are

usually our, minimum standards of our Town. But, what about those that comply with this law, and put it behind the house,

Another thing the Mayor said, it will lower property values, I owned a real-estate company locally, the non conforming homeowner, the homeowner affects the adjoining property value around you. My trailer is in my backyard. If you approve this, it will open up the door down the road for more standards to change.

We have codes why change them, because one man wants too. Some of this just happened, we have no code enforcement.

Withers, suggested that Bonnie can go out and be code enforcement. The house that started all this is on NE corner Corey Rd and Atz Rd, in the front driveway is about a 35' home trailer. There are other home trailers around town and some are being lived in.

Withers, apathy rules the politics in this Town, it is unfortunate.

Abare, it is my understandings we don't currently have proactive code enforcement.

Tom Eschenberg, 2345 Beran Lane Malabar, Parking RV- Issue The additional information came out of the Council Monday evening which came out of parking RV's – Section 1-15.5. The issue that came up at Council was 1-15-6 which has to do with parking other vehicles other than recreational vehicles. It was an issue that came because a resident called me. It is indirectly related, has to do with parking vehicles in the yard. It can definitely be handled separately, but if there is any changes to be made it can be done all together. The 1-15.6 would apply more towards commercial trailers.

Tom expressed we are no where's near as Palm Bay as far as code enforcement is concerned. Palm Bay has been extremely aggressive, in enforcing their Codes.

Tom addresses filing complaints, Mr. Withers said he has filed complaints with Bonnie. When I brought up the issue to Council about parking RV's in the front yard, I asked Council to send to P & Z for a recommendation. Bonnie brought up that she had a current situation with a RV parked in the front yard, she asked if she should hold off enforcing this issue until this gets resolved and Council said, "Yes, hold off".

In 1995 that was the first year I ran for Council, philosophy is what behind this is what is behind all this, it is not because people are not follow the code. Back in 95' I sent out a couple campaign letters my main theme was "Freedom". That has always been my political philosophy to give people as much freedom as possible. That is all I am thinking of here.

Look at the Code, are we giving the people of Malabar all the Freedom we can possibly give them or is there some valued reason we should limit their freedom.

A few other recommendations:

> Living in a trailer- this is a violation you can't live in a trailer
Just think about how much freedom you can give the people.

Ryan, states that the word "Freedom", is pretty broad, does someone really have the freedom to do what you want, even if it against the law.

Tom responds that you as law makers have to given them that freedom, not take it away from them.

Ryan, Council is reactive not proactive, if there is a lot of abuse of Town Ord., they have to document what is going on.

Abare adds that if you got an RV and someone is parking on their driveway and they move it because they are not meeting the Code, they move it to their side yard. Then have issues with the

grass growing and not being cut. If they have a long driveway they might be better to leave it in the driveway.

Wilbur talks about required front yard setbacks, as long as it is behind that required setback they are ok.

Wilbur, if someone has an issue with RV's in the Front yard; they should have it in a storage unit area or has an extra lot to park it.

Abare, if you have a large piece of land, you can set your house further back your RV's have to be further back, might recommend that the Ord. be updated.

Wilbur said to leave it "as is". As long as you're not encroaching into that required front yard setback, in whatever zoning you are in.

Wilbur, code enforcement, most cases, parked being used and someone is living in. Boats most people comply A lot pour concrete pads and put down the side of the house. Wilbur suggests staying with reactive code enforcement it is a lot more civilized.

Krieger with time and a good set of Ord. if you do it correctly and with discretion the RR-65 is what this is all about, I am into freedom. If you don't like freedom then form a homeowners association.

Ritter if someone comes in with a complaint then you have to enforce the code.

Reilly we don't have to do anything, just go along with the front set backs.

Wilbur explained to the Board, that we do have code enforcement and how he gave addresses along Malabar Road to Code enforcement and it was addressed.

Reilly agrees with Wilbur that we don't have to do anything and base it on, "no major recreation vehicles should be stored in any residential front yard" then look up definition of "front yard" go to the provisions of the Town of Malabar, it is a horizontal line is determined by Table 1-3.3(A) size & dimension regulated setbacks you go to different zones.

Ritter adds that the ones that are offensive to others are the ones that are in the front yards near the roadways.

The Board is discussing using Table 1-3.3(A) to clarify the front setbacks.

Ritter suggests instead of front yard it should be required front yard setbacks in whatever district they are in, there is no question. It just clarifying the situation.

Krieger asks if there is a way to do this with policy rather than changing Ordinances.

Reilly receive new date and continue discussion.

The following Items 5-6-7 will be discussed at a future meeting.

5. **Continued Discussion Residential/Limited Commercial Zoning & Density Clarification- Attorney R/LC (Ord. 2011-49)**
Exhibit: Agenda Report No. 5
Recommendation: Discussion/Action
6. **Continue Discussion of "Light Industrial"**
Exhibit: Agenda Report No.6
Recommendation: Discussion
7. **Continue to Work on Requirements for Assisted Living**
Exhibit: Agenda Report No. 7
Recommendation: Discussion

H. PUBLIC:

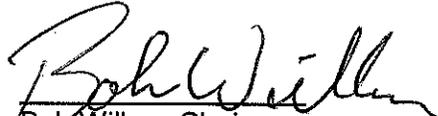
Tom Eschenberg 2935 Beran Lane, Malabar FL. The Council had recommendation about setbacks, about 15 feet. I convinced Council to send back to P & Z to look at other residential setbacks. I over looked this.

I. OLD BUSINESS/NEW BUSINESS:

J. ADJOURN:

There being no further business to discuss, **MOTION:** Ryan / Reilly to adjourn this meeting. **Vote:** All Ayes. The meeting adjourned 9:30 P.M.

BY:


Bob Wilbur, Chair


Denine Sherear, Recording Secretary

11/9/2011 as corrected

Date Approved