

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
MARCH 14, 2012 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:	PAT REILLY
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN, excused
	LIZ RITTER
ALTERNATE:	WAYNE ABARE
ALTERNATE:	CINDEL ZINDEL
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

Chair stated that Ryan called and asked to be excused. Abare will be voting in his place.

C. ADDITIONS/DELETIONS/CHANGES:

Franklin stated that the land use and zoning changes the Town is requesting have been advertised as the required ordinances. Copies are available for each member. Also on the Public Hearing items I will be doing a roll call vote on the motion.

Ritter makes disclosure that she will not be voting on Agenda Item 2 as she is an interested party and has submitted a Form 8B.

D. CONSENT AGENDA:

1. Approval of Minutes Planning and Zoning Meeting – 2/8/12 & 2/22/12

MOTION: Ritter / Abare to approve 2/8/12 minutes as corrected.

Corrections: Krieger said on pg 2 starting with Abare, should that be “then” not that.

Vote: all Ayes

MOTION: Reilly / Ritter to approve 2/22/12 minutes as corrected.

Corrections: Krieger said on pg 5, at bottom, 2nd word should be “race” car; page 6 “town” misspelled.

Vote: All Ayes

Ritter stated she would be abstaining from voting as she has an interest in the property and has submitted the required form.

E. PUBLIC HEARING:

2. Site Plan Review for Public Pool & (2) Bath Houses; Camelot RV Park Inc. 1600 Highway 1, Malabar. Applicant, Mr. Robert Ritter, Pres. Camelot RV Park, Inc. & Mr. David Bistarkey, Adobe Builders, Inc.

Chair called applicant to podium. Dave Bistarky, Adobe Builders

Reilly asked how the electric will get to pool and bath houses. Where is power coming from? It is in place already and will be coming from the lift station area. Reilly asked if there was a drain field.

No, there is an existing sewer there. No other questions.

Chair opened **PUBLIC HEARING:** None

Chair closed **PUBLIC HEARING**

Reilly would question the sentence that states that historically the area does not flood. He looked at it and did not think it would flood. Bistarkey said it was reviewed by St. Johns and it did not trip the requirement for their permit. Krieger said he thought it was neutral. Reilly tried to read the plumbing plan and all the notes looked like they were cut and pasted, numbers were not sequential. They are standard notes from codes. He only mentioned as he would question if he were the Building Official. They are random notes, if someone had to work to this he would question this whole block. Reilly said it is standard Building Code stuff. Bistarkey said he could not submit complete construction plans until the site plan is approved and those plans have the detailed information. He tried to submit last October. Reilly said the site plan submittal should include elevations of the structures.

Sherear emailed the electronic pdf of the elevations. Reilly explained to Bistarkey that it is on the checklist for site plan. Krieger asked about bathhouses; one bathhouse for men and one for women? Yes.

MOTION: Reilly / Abare to recommend Council approve the site plan for a public pool and two bath houses for Camelot RV Park, Inc.

ROLL CALL VOTE: Krieger, Aye; Reilly, Aye; Wilbur, Aye; Ryan, excused; Abare, Aye; Ritter, abstained.

Motion passed 4 to 0

3. Land Use Amendment & Zoning Changes; 2540 Malabar Road, Malabar; "OI" (Office Institutional) to "R/LC" (Residential/Limited Commercial); Applicant, Town of Malabar

Chair asked staff for intro. Franklin explained the agenda report gives the history and that after the permit was issued, this appeared to be the prudent method to correct the situation and do no harm to the applicant.

Franklin explained that the ordinances making these changes have been advertised with the public hearing and will be forwarded to Council with P&Z recommendation for their April 2 meeting. Land use change must precede the zoning change. It is the Town's error and to avoid liability we could have taken this to Board of Adjustment and appeal the administrative decision of the Building Official. Thrift store is retail and that is not permitted use in Office Institutional zoning. The P&Z Board had previously recommended this area be changed to R/LC. The Town Council previously approved handling the Serene Harbor facility as a small scale amendment (SSA) to Comp Plan so they could proceed with grant expansion.

Krieger called Point of Order. He questioned why it was retail. Taking money? He had to describe what he did when he did his project. Krieger stated if this is a non-profit organization then how is it retail. If this comes up to a certain level of operation? Krieger also stated we don't allow R/LC except on US 1 and we have not provided a definition for it. He read from Table 1-3.2 and said non-profit organizations are allowed in OI. This is a nonprofit. Wilbur said it is still retail sales. Abare said why not consider it as a conditional use?

Chair called property owner Kim Frogde to podium to explain what it is. She is a volunteer. Nana's House purchased the house to operate a thrift cottage. People donate things, volunteers sort it and then people come and they buy it. 100% of money is used to provide safe loving home for abused and neglected and abandoned children. Home is in Palm Bay. They have office space upstairs. That is the plan. Operate a thrift store.

Franklin explained that staff has worked hard to expedite this to do no harm to property owner. The P&Z Board asked about this at last meeting. Staff followed up and learned that the permit had

been issued for renovations for a thrift store. Town Administrator consulted with Town Attorney and that resulted in recommendation to appeal Building Official decision at BOA as retail is not permitted in OI. Further discussion came up with the alternative to go forward with the change of land use and zoning as small scale amendment as this is part of the previous recommendation to change this area between Marie Street and railroad. Attorney further recommended that it should be at Town expense as it was our error.

Krieger said he knows attorneys are wrong sometimes. Suggested they could approve this use until the entire area is ready to be sent to Council to change these areas.

Much discussion. Franklin stated she did not research alternatives since we rely on our Attorney to provide guidance. She did not research what defined retail as the Attorney stated that a thrift store is retail. Franklin said the thrift store whether profit or non-profit is still going to require a BTR (business tax receipt) to operate. Also the current Code provides for definition of R/LC and Town approved a similar small scale amendment in 2004 in same corridor.

Staff pulled up the FLUM map as approved in the EAR and showed them the RLC change made.

Abare said it is not a sin against the vision in the situation we are in. Chair Wilbur said the ordinances will be therapeutic and resolve the problem.

Reilly said we need to do the change. They can give it away. In order to get a BTR they have to have the right zoning. You can give them conditional approval. Abare has already bought into it. Wilbur said that is what we are trying to avoid. Ritter asked why OI doesn't allow retail.

Krieger said throw in a Conditional Use and let them go forward. Abare said just add as a conditional use. Krieger said we have an accepted land use; we just have to wait for someone to come in and ask for the zoning change. Abare said the FLU is what the Town would like to see. Some will want it and others will not.

Staff made copies of Article VI, Conditional Use Table to show that what they are proposing is not in Malabar Code. Staff was given direction to bring this as a land use and zoning change as the best method to resolve this. The first option was to proceed with a Board of Adjustment hearing to appeal the administrative decision of the Building Official. We are following the direction of the paid professionals the Town uses to advise staff. Franklin said it is not staff's job to research alternatives to what the Attorney has recommended.

Reilly and Krieger were looking at Table 1-3.2 Land Use and it shows non-profits. Franklin said that is for clubs like the Knights of Columbus. Krieger said they sell cookies there. Franklin said they are in CG zoning.

Ms. Frodge said she is facing deadlines with the insurance inspection; they want to see the shop set up with product and need to take pictures of the store.

Krieger rescinded the point of order.
Wilbur stated for the record this was legally advertised.

Franklin read Ordinance 2012-49 into record:

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING COMPREHENSIVE PLAN AMENDMENT NO. 2012-1 (SSA); AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN OF THE TOWN FROM OFFICE INSTITUTIONAL (OI) TO RESIDENTIAL LIMITED COMMERCIAL (R/LC) LYING ON THE NORTH SIDE OF MALABAR ROAD, ON PROPERTY LOCATED IN TOWNSHIP 28, RANGE 38, SECTION 31,

SUBDIVISION 54, PARCEL 00002.0-0037.00, ALSO KNOWN AS 2540 MALABAR ROAD, LOCATED IN THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING AN EFFECTIVE DATE.

Franklin read Ordinance 2012-50 into record:

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; REZONING THE PROPERTY AS FOLLOWS: A PARCEL OF LAND LYING ON THE NORTH SIDE OF MALABAR ROAD, LOCATED IN TOWNSHIP 28, RANGE 38, SECTION 31, SUBDIVISION 54, PARCEL 00002.0-0037.00, ALSO KNOWN AS 2540 MALABAR ROAD, IN THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; FROM OFFICE INSTITUTIONAL (OI) TO RESIDENTIAL LIMITED COMMERCIAL (R/LC); PROVIDING FOR AMENDMENT TO THE OFFICIAL TOWN ZONING MAP; PROVIDING AN EFFECTIVE DATE.

Change date on bottom of ordinances to reflect 3/14/12 and change year to 2012 on Town Administrator's memo.

Public Hearing Opened

Tom Eschenberg, Beran Lane. Point of order, he read through Table and did not find Thrift store as a permitted use in OI. He has vision for Malabar Road. It is still a vision. They have been working on this for years. Eschenberg said Krieger indicated it should stay a vision. They had said they did not want to change the zoning on parcels out of concern of increased taxes. But when people come in and request it, we should act on it.

There is now a request that matches the vision. It is the first little step. We have talked about this many times. Little shops or shops with residences upstairs. Government ought to be accommodating. When it matches the vision the government should not stand in the way.

Chair closes PUBLIC HEARING

Abare said it is not at odds with the Town vision and they should support it.

MOTION: Reilly / Abare to recommend Council approve Ord 2012-49 and Ord 2012-50.

Discussion. Reilly said it is over .25 acre. Other thing is we have already done this in 2004 down the street. This is a no brainer. This is what the Town envisioned and this is what we should do. Krieger said he is for whatever will get these people what they need. The Town is asking for this; people did not come in and ask. This came to us backward. He would prefer they allow this using another method. Krieger doesn't want to see this happen in other situations.

Abare said he is confused about the land use and zoning change process. Franklin explained that with the recent legislative changes, small scale amendments no longer have to be reviewed by the State but the process must still be followed that provides that you cannot change a zoning on a property if it conflicts with the land use. That is why the land use change must be done first so that the change to the zoning map will not create a conflict.

Ritter said the Board is not supposed to get these applications this way; we need to be more cautious in reviewing applications and talking with people. In this case this is what we want to happen. Chair Wilbur said that is up to Council to handle that aspect.

Abare said he thinks he will be more cautious in future. Wilbur said the Building Official should have a written report for P&Z at each meeting explaining what is happening in that Department. That is why they have a "New Business" agenda item.

Zindel asked about who made it OI as there is a house and it has been used as residential. Wilbur said the entire town was changed back in the 1980s. It was done administratively.

Krieger said the R/LC should be changed to the entire depth of the proposed line. Wilbur said no, the other property owner should come in and ask for that. Zindel said the other property owners will want the Town to pay for their change as well. Hopefully the Town won't make another mistake. That is why the Town is paying for this.

ROLL CALL VOTE: Krieger, Aye; Reilly, Aye; Wilbur, Aye; Ryan, excused; Abare, Aye; Ritter, Aye, Motion passed 5 to 0.

F. PUBLIC:

G. ACTION:

4. **Section 1-5.15 Use, Parking or Storage of Vehicles, Boats and Boat Trailers**
Exhibit: Agenda Report No. 4
Recommendation: Action

Chair Wilbur introduced item.

MOTION: Ritter / no second to approve revised Sec. 1-5.15.

Speaker Card, Tom Eschenberg, Beran Lane, stated Board mixed Section 1-5.15 and Section 1-5.16.16 together at last meeting. He submitted two memos addressing each separately. He came up with tractor trailer parking should be handled separately. His teen council is going to get it at their next meeting.

Another memo on Section 1-5.15, no parking in the setback. You are focusing on RR-65 where there are big front yards. He has picture to pass around, showing a boat in a front yard that will not be allowed to park there if this is approved. Secretary can keep picture for record.

Also the limit in his memo would discourage an accumulation in the front yard. What is Council going to say and what they are going to do. They may be more apt to approve it if there is some limit. Those are his two latest thoughts.

Discussion. Reilly said the title is wrong. Should be Section 1-5.15. They deliberately merged the two into Section 1-5.15 and then reserved 1-5.16 for Conditional Use Permitting. He said they should go forward with what Ritter had drafted and they had modified at last meeting and work on Section 1-5.16 for commercial vehicles for hire.

Abare re: Mayors comments. Usually agrees with him. Mayor is asking for them to reconsider and allow parking in the setback area. What is new about his memo?

Krieger said Mayor's memo is the most similar to the existing code. This represents a reconstruction. He likes Mayor's sec 1, mentioning separate zonings. Can incorporate into the motion. Reilly said they are discussing .15 and .16 again as separate in the Mayor's.

Krieger marked up first memo and made no changes to his second one. He has a problem with maneuverability. Ritter said that is going to take care of itself.

Abare aren't we opening this up. Zindel asked why we are discussing these code sections. Ritter said it is too vague. Board Secretary Sherear handed out corrected agenda report page with correct Section title and reference. Krieger is not bothered with how long it takes. Government should be slow.

Regarding the picture of the boat in the front yard, 48 hours limit, if he can't get it in back yard.

Abare said they are trying to balance between those who think you can do whatever you want in Malabar and others who want measures in place. If you want to, you have to have a bigger piece of land.

Reilly said under the proposed change, A.1, shall not remain in the same place. Required front yard = setback. Krieger asked how does this solve the combination of Mayor's 2nd memo.

Abare said it is a balancing act. Krieger said consider the person speaking at earlier meeting, he was from a subdivision that developed an area for RVs and then did away with it. Wilbur said that is problem with HOA being adjacent to RR-65.

They discussed "and vs. or" in the title re: boats and trailers. Tags on or not. Reilly thinks it should be "and" – in A.4. last line, and vs. or. More discussion. Franklin said at earlier meeting they selected "or" because if there is repairs after hurricanes they will be a certificate of completion, not a certificate of occupancy.

Re: proposed Section B.2. how we can ask for valid registration. "Not under the control". Abare said need that for enforcement. Wilbur said leave as valid registration or in control of by legal resident. Abare has no problem with the "or". No problem with having someone park a friend's truck on property for 6 months.

Wilbur said if you don't have title or a paper stating you have control of, then you don't have to have a registration.

Ritter said she does not have to have it obscured; if it has valid tag it is not required to be obscured.

Reilly said we have not stayed on agenda item. Back to valid registration, title or under the control of by the legal resident.

Ritter said B.2. Still does not allow parking in back yard. Sentence is too long. They discussed it again. Krieger doesn't like "obscured"; to what percent must it be obscured?

Ritter said expand on item 1 for valid registration and then item 2 for those that aren't registered. She thinks that was their intent.

Krieger said problem also is the sentence is starting with a negative. Eliminate the no. They will rephrase. Zindel asked who is going to complain.

Ritter read change as Sherear made real time changes on overhead. All agreed. Krieger said the wording should be "behind the principal structure" or enclosed by and again asked what is obscured? What is definition of obscure? Wilbur said it is limited. What about approved private streets? Approved private streets are streets that the Town does not have to pay to maintain. Like in a gated subdivision or like Camelot RV Park. Reilly asked about time limit under this section. There is no time limit under this section. The time limit is under Section A.

Krieger said what about adjacent yards? That is suitable for a complaint now. Town can respond only if there is a complaint. It comes down to what Town Administrator needs in code for enforcement. Ritter said this is only for #2, not for #1. Under #2, if it is untagged and up on blocks the adjacent neighbor can complain. Abare said that the Administrator needs to have something to give ability to go after if there is a complaint. It is under #2 if you don't have valid title. Adjacent property owner can't complain under #1, he can complain under #2.

Zindel has neighbor that has a big boat facing Allen Street that is visible from both Corey Road and Allen Streets. Does it have a tag on it? Ritter said #2 is for when there is not a valid registration; then it must be in an enclosed structure or be obscured. If it has valid registration he can park it anywhere that is not on public right-of-way or in front setback.

Reilly said #3 stands alone and is not part of either #1 or #2. Ritter said they left adjacent property owner in #2 so if there is a vehicle untagged in a back yard and has been there awhile then they can complain.

Krieger referred to what residents who came in and said in Palm Bay you could have it behind the front line of the principal structure. This would be more restrictive than Palm Bay. Krieger asked if they could negate the requirement for enclosure if it is behind the principal structure. Ritter stated that the only requirement for the enclosure is if it does not have a valid registration.

Ritter said if it is properly tagged it can stay anywhere; front, side rear yards for as long as they want, as long as it is not blocking a public or approved private street or in the required front yard (=setback).

Abare said this is more lenient than Palm Bay. You can park it in your front yard as long as you are beyond the setback area. Krieger said ok as long as it is not in a public right of way it does not have to be in an enclosed building.

Reilly read item 2 again related to vehicle without a valid registration, title, under the control of...Board agreed to restate as ...without a valid registration or valid title or under the control of the legal resident or property owner shall not be parked. Wilbur said a registration expires but a title does not. Sherear changed on overhead.

MOTION: Ritter / Reilly to recommend Council approve the revised Art V, Sec 1-5.15 as submitted by P&Z Board.

VOTE: Ayes, 4; Nay, 1 (Krieger) Motion carried 4 to 1

Board stopped here for meeting.

H. DISCUSSION:

5. Continue Review of Checklist and Requirements for Ponds

Exhibit: Agenda Report No. 5

Recommendation: Discussion

6. Define "Light Industrial" Zoning

Exhibit: Agenda Report No. 6

Recommendation: Discussion

I. ADDITIONAL ITEMS FOR FUTURE MEETINGS:

7. Setbacks in Residential Zonings

8. R/LC Zoning Clarification

9. Code Requirements for Assisted Living Facilities

J. PUBLIC:

Tom Eschenberg, Beran Lane, will oppose this so you need to show up to Council meeting on April 2, 2012. Recommends they drive around Town and start looking at houses and see how many people they will now not allow to park their boat in their front yard.

Ritter said you can't park there now; with their recommendation, you can park in front yard, just not in setback area. Eschenberg said in smaller residential zonings the houses are at the setback line. He also said this would not allow people in RR-65 who choose to set their house back farther would not allow them to park in their front yard. Board said yes they can; they must just be beyond the setback area. Eschenberg said the 48 - hour time limit is almost impossible to enforce per the Attorney. Abare said if there is a complaint then the Administrator can start the clock. Eschenberg

said staff isn't going to want to do that. Abare said that is part of her job. Ritter said they have done it in the past.

Eschenberg said another interpretation of B.1, parking of vehicles for more than 48 hours shall not block a road. Could be interpreted as less than 48 hours it is ok. Ritter said that is addressed in A.

Eschenberg said houses with a 25 foot setback and the house is at setback line and they park their cars in driveway in front of house. They are now parking a car in the driveway and it is within the setback and if they don't move it within 48 hours they are in violation. Abare said you can't write a perfect code; they are trying to create a code for 98% of the situations. Eschenberg said Krieger said they should take til Christmas to work on this and he agrees. Abare said between Krieger and the Mayor nothing would get changed.

Eschenberg said re: B.2., a vehicle not under the control of resident should be hidden. If it is on your property, it is assumed it is under your control. Eschenberg gave example of Krieger's trailer that has no tag. It is under his control so doesn't need to be hidden. You have negated the whole thing.

Eschenberg gave example of an old camping trailer with no tag and looks rough and is in the front yard behind the setback and has been there over a year. Then there is a complaint, and the Administrator goes out and they can say, no it is under their control. Abare said his point is frustrating because they added this wording to accommodate the Mayor who suggested the friend that was going up north for six months.

Eschenberg said with his version, it is written how to deal with the situation.

Chair Wilbur said they have considered his recommendations and now it is Council's turn.

Abare asked what Eschenberg wanted. Eschenberg said do what he wrote. He will submit to Council his versions. Krieger said if you want committee to do good work, then Council should consider Board's recommendations. Krieger said Council should say yes, no or send it back. Krieger said if you want to train a committee to do good work you don't change the recommendation.

Eschenberg said his three minutes are up. He doesn't like what they are going to do to people who will not be able to park in their driveway.

OLD BUSINESS/NEW BUSINESS:

Old – none

New:

Franklin stated that the Building Official had met with the owner of Malabar Nursery. He is purchasing the property on the other side of the tracks to use as a back stock location for large trees for his nursery. The R/LC and CG zoning permits the use of retail nursery use and according to the meeting there will not be a disturbance of land greater than 1000sf. The BO will review this as a minor site plan review with the Town Eng. He has no plans for the building at this time.

There is interest in raising cell tower at TV station on Babcock to 200 feet. A CUP was approved for the original tower. The increase may be considered as a modification to the site plan if a when it happens.

Procedure for excused absences was discussed by Council 3/5/12. They directed that each Board should make their own policy and then an ordinance would be drafted to incorporate the

procedures for each Board. Council directed that the proposed procedures drafted by the Town Administrator should be given to each Board.

Make this a Discussion Item for next meeting.

Krieger mentioned about the 1000 sf criteria for site plan. Once you have developed your land he doesn't care how you change it. You shouldn't have to go through a completely different plan review.

Wilbur, Reilly, Abare said the 1000 sf limit serves a very good purpose.

Wilbur asked if we can get potential stuff going on in the Bldg Dept so they can head it off instead of doing damage control. He understands why we had to do it this time.

L. ADJOURN

There being no further business to discuss, **MOTION::Reilly / Abare to adjourn this meeting. Vote: All Ayes.** The meeting adjourned 10:20 P.M.

BY: 
Bob Wilbur, Chair


Debby Franklin, Recording Secretary


Denine Sherear, P&Z Board Secretary

3/22/12 as corrected
Date Approved