

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
MAY 23, 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 7:35 P.M. Prayer and Pledge led Chair Bob Wilbur.

B. ROLL CALL:

CHAIR:	BOB WILBUR
VICE-CHAIR:	PAT REILLY, excused
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN
	LIZ RITTER
ALTERNATE:	WAYNE ABARE
ALTERNATE:	CINDY ZINDEL
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

Abare will vote in Reilly's absence.

C. ADDITIONS/DELETIONS/CHANGES: none.

D. CONSENT AGENDA:

- 1. Approval of Minutes Planning and Zoning Meeting – 5/9/12**

MOTION: Ritter / Ryan to approve 5/9/12 minutes as corrected / submitted.

Changes: pg 3, 1/3 of way down, do the trick the mayor show them... embellish so it more understandable in future;

Pg 2, 1/2 down, with not will.

Last para, Wilbur said no it is planned – it is the plan

End of para Wilbur 6 lanes and a bike path not lane -

Pg 3, 2nd para 2nd look at Malabar 195, it is greater – embellish.

Pg 3, 4th para embellish, and add parcel and add within the setback.

Pg 4, 4th from bottom, Wilbur put it into perspective came about.

Pg 6, Tom what does it matter. Add each neighbor has 15 feet setback.

Vote: All Ayes

E. PUBLIC HEARING: none

F. PUBLIC: none

G. ACTION: none

H. DISCUSSION:

- 2. Continue Review Checklist and Permit Requirements for Decorative Water Features and Ponds**

Exhibit: Agenda Report No. 3

Recommendation: Discussion

Continue to review checklist for DWF and ponds

Ritter pointed out multiple corrections to code amendment. Wilbur said the section on excavated material needs to be added back in to the code.

On page 10 regarding allowable material – should it be spelled out? No

Add on page 13/47 about excavated material, 6th bullet down and shall remain on site.

pg 25/47 add to definition

Ryan pg 10/47 1-0 definitions, B. const debris, add the word "not"

Under C. maximum depth, UF what does that stand for? University of Florida.

Krieger said he lined through all of that. Franklin said the Board wanted staff to provide information to help the applicant. Wilbur said it should stay in.

Krieger looked at side slope and when you are talking about different material you can have different side slopes. Krieger also said on page 10/47 it refers to both construct or to fill a DWF or pond. He did not think it should refer to excavation and fill at same time. Krieger said he looks at 1000sf, when he dug his pond it was for his house and his house is 1900sf. Krieger still feels 1000 sf is too small.

Krieger questioned the definitions again; depth per UF Max depth is x. It is the deepest part of the pond. Krieger also questioned freeboard – why is it there. Wilbur said St Johns gets their info from UF and they provide good standards.

Abare said that Krieger had stated so many things in rapid fire form that he didn't like about the proposed code without giving Board a chance for discussion on any one of them and it was frustrating. Krieger stated they didn't need all the definitions. Abare said it doesn't hurt anybody to have definitions in to help the applicant.

Wilbur referred to the alternative side slope variations Franklin had copied out for them. The sketches showed a typical 30' wide DWF providing deeper depth so they could have tropical fish or use for recreation. Board discussed reasons for having 6:1 slope or allowing a more severe slope or a combination.

Board agreed to take out the Exhibit A. Application should ask for source of water for DWF or pond. Remove the ratios. Let the applicant provide the slope detail and the Town Engineer will review and determine if it is appropriate.

Abare asked where did 6:1 come from. Wilbur thinks they should keep the 6:1 for ponds and allow other slopes for DWF. Abare said they should get a legal opinion. Franklin will ask Town Attorney. They also discussed the Town's authority to require fencing so DWF or pond does not become an attractive nuisance.

Ritter said on Pg14/47 under appeal process A, within 10 days, sb 10 "business" days.
Last para, written "letter, stating" – Bob, Bud and Cindy disagree.

Wilbur said the failure to complete section was left out on the proposed draft. The fine of up to \$250.00 per day should be left in; it does not require it but it allows it by use of the word "may". Town may require applicant to complete. Why? Why harm the resident if you can't complete? Wilbur said it will make people think twice if they have to pay if they don't complete.

Board wanted to add back the language to allow for permit extension. They discussed that all building permits expire in six months unless it has received an acceptable interim inspection. Board decided to leave it in. The Board discussed appealing to Council vs. the Board of Adjustment and decided that the applicant can appeal to Council and if appropriate, then Council will direct applicant to BOA. Abare said any resident can go to council and they can then say go to the BOA.

Ryan said then they can go to court if they want to appeal the decision of the BOA. Wilbur said no two situations are going to be the same. The code says fine may be *up to \$250 per day*.

Franklin said it goes to Special Master. Wilbur said \$250 may seem excessive but there may be a large borrow pit excavation. Abare said he is softening – it “may be assessed” so Wilbur likes the town to have the discretion in the restoring - again with the *may*. Wilbur, Ryan and Abare are for leaving in requirement to restore – again with the *may*. Ritter is against making someone restore. Wilbur said it eliminates an attractive nuisance of an unfinished DWF or pond

Staff will get legal opinion on side slope requirements and Town's authority.
Staff will add back the words about the excavated material from Section 5, E. 2 and 3.

Abare wanted to go through his example for the permit application; to require a permit but not engineering for a DWF. The property he used for a sample is the property he wants to buy. He agreed to add dimensions on distance to wells. Existing ponds. Shows the DEP area. They went over the application and then went over his verbiage. Setbacks should also be added to example. Checklist said define the maximum depth. He estimated the amount of excavated material. Suggested adding an initial line there.

This meets the intent of what we want them to do. DWF does not require a topo but may require for a pond. Abare can clean this up and bring this back. Brevard County soil survey has maps that will show wetlands.

Board agreed to change application to read:

Wetlands: Present Y / N; If yes, is there a 75' Separation Y / N;
If no, is Mitigation required? Y / N; is FDEP Permit required? Y / N

Board directed staff run the application by Engineer and Building Official to see if they have any comments. The wording on both require addressing stormwater management.

Also ask for the source of water: artesian well with a control device.

Abare will update his example with these comments.

Abare will ask DEP if there is a required buffer. Wilbur said they should show that the excavated material will not be put in wetlands. Send the clean copy to the Board.

Stop here at 10PM – Items 3, 4, 5 for next meeting.

3. **Define “Light Industrial” Zoning**
Exhibit: Agenda Report No. 4
Recommendation: Discussion
4. **Code Requirements for Assisted Living Facilities**
Exhibit: Agenda Report No. 5
Recommendation: Discussion

I. **ADDITIONAL ITEMS FOR FUTURE MEETINGS:**

5. **Discuss Procedures for P&Z Excused Absence Policies**

J. PUBLIC:

Tom Eschenberg, Beran Lane, said re: setbacks and emergency vehicles. What does it matter if each property has a 15' setback then 15' and 15' and you have 30 feet so what does it matter. He stated again that the Table 1-3.3.E. does not match the EAR. Reilly explained to him that EAR is like an ECO was at Harris. The final drawing is like the Comp Plan and that was approved.

Wilbur said Council should hire a planner for the town.

Franklin will print Comp Plan for all members.

Wilbur suggested he ask Council to develop a schedule so a different council person comes to every other meeting. That is in addition to the Mayor.

They would also like more citizens to attend the meetings.

K. OLD BUSINESS/NEW BUSINESS:

Question on Oakmont Preserve. They have a horse trail. Developer dedicated the right of way for the trail and constructed it. The Town maintains it. Franklin explained that the horse users prefer the natural ground for the trail to either mulch or paved. She gave example of west side of Marie Street between Glatter and Malabar.

L. ADJOURN

There being no further business to discuss, **MOTION: Ryan / Abare to adjourn this meeting. Vote: All Ayes.** The meeting adjourned 10:15 P.M.

BY:


Bob Wilbur, Chair


Debby Franklin, Recording Secretary


Denine Sherear, P&Z Board Secretary

6/13/2012
Date Approved