

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING  
JUNE 27, 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
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN
	LIZ RITTER
ALTERNATE:	WAYNE ABARE
ALTERNATE:	CINDY ZINDEL
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

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

**D. CONSENT AGENDA:**

- 1. Approval of Minutes** Planning and Zoning Meeting – Not Ready

**E. PUBLIC HEARING:** none

**F. PUBLIC:** none

**G. ACTION:**

- 2. Recommendation to Council re: Checklist and Permit Requirements for Decorative Water Features and Ponds**

**Exhibit:** Agenda Report No. 2

**Recommendation:** Discussion

**MOTION:** Reilly / Ritter to recommend Council approve the Board's amendments to Section 1-5.27 regarding ponds and decorative water features (DWF).

Discussion. Krieger doesn't think this is ready for Action to Council. He thinks there is still a lot to review here in the ordinance and not just the multiple typos. The Board was cutting a lot out of the ordinance at last meeting. Doesn't think they can consider action without having the minutes from the last meeting.

**MOTION:** Reilly / Ritter to rescind the previous motion. Vote: All Ayes.

**MOTION:** Reilly / Krieger to move to discussion. **VOTE:** All Ayes.

Starting with Section 1-5.27 General Provisions, Ryan said he reads this draft ordinance as an average citizen would and has problem with using the word *fill an existing DWF or pond* and suggested inserting the word "in" after fill in the paragraph under General Provisions. Otherwise it is very confusing. Ryan said later in the ordinance it is written as *filling in*.

Reilly said Definition Section I., pg 5/18 it defines *to fill*.

Abare said if you want to fill a septic tank you have to *condemn it*. If you want to *abandon* the septic that is the term they use so we could introduce that word. That will get away from confusion they are having to figure out if you are filling it with water or dirt. .

Wilbur said *fill* is a commonly used term. Abare said water is also a material. Ryan said further in Section 7.0 Standards for fill activity.

Ryan said on page 9/18 no permit for *filling in* makes more sense than the first use. Reilly stated they are different used differently. Ritter said add the word "in" in the General Provisions. Suggested since it is a noun and a verb they should add a new word so they know what you are talking about.

Krieger said we started this process with what was there in the code and then Board split it into two things and then Reilly revised the ordinance to be separate for DWF and pond. Last meeting cut a lot out of ordinance. Now we are down to seven pages and he has many mark ups for DWF and a few in the pond portion. He sees things missing from DWF section. He looks at definition section and he doesn't think that under A. it should be a *Town engineer*. Everything a person does has to be to code so you don't have to be specific. He questions the word *wherein* in "C" regarding the purpose of retaining water for 1000sf or smaller. He took out the whole last sentence. He did add in several pages, if you read the ordinance literally you can't maintain a pond. Ordinance language should include a phrase that allows maintenance of ponds or a DWF without a permit.

Krieger also questioned on page 4/18 the reference to topsoil stating it is not necessary. Again you have to bring another individual in to evaluate the soil. Wilbur explained what topsoil is and that it is necessary and per code to not remove either the topsoil or the other fill from the project site unless it is not suitable. Krieger said it should not be necessary.

Abare said Krieger again brought up 15 items in rapid succession without opportunity for Board to speak to each. He said the Board is trying to finish this. We need to go through it systematically, item by item and take a Board poll at each item to see if there is consensus. Reilly asked first if they liked the structure of the ordinance. No objections.

Starting back at the top of General Provisions, Board discussed *filling* again. Ryan wants to add the word "in" - Wilbur said we will never get through this stuff at this rate. Abare said the words defined should be italicized.

Krieger said take out *to fill* entirely and put in to construct or "alter". Ryan likes it. Board agrees to change that. Reilly said there are three actions: to construct, to be constructed or to alter. Reilly polled Board and four members supported this change. Wilbur opposed.

Re: adding a statement that maintenance does not require a permit. Discussed if it should be at end of section (Krieger) or at the beginning of section (Ritter).

Krieger said it should be approved by the *town* only. It is inappropriate to tell Council they need to have an engineer. If five people on Council determine that peanuts are appropriate fill then it is ok.

They discussed who is the *Town*. Krieger gave his example of the little plastic pool again. Zindel said the definitions are inclusive for both DWF and ponds.

Wilbur said the engineer is the only one with the knowledge of allowable material. Krieger said the Council is the authority. Reilly said if they make this change, it will change many other sections. Abare suggested using *town representative*. No, Krieger said just *Town*. Wilbur said it could be Engineer or Building Official. Wilbur said if he is proposing to take the Engineer out of this ordinance then that is ludicrous.

Board discussed if they needed to define town engineer. Ryan said use Building Official – Krieger said no.

Wilbur said whenever we get ready to take action on an agenda item and do something then Krieger brings up the "what if" scenarios and then they beat the item to death.

Ritter suggested they use *Town or appropriate staff*. Wilbur said he did not think the Building Official would have the ability to review pond requirements.

Abare said it is good for the Board to hear all the members' opinions during discussion and then they can make their decision and move on.

After this discussion, the Board agreed to leave the General Provisions as written in handout with exception of the acronym for decorative water features. It should be taken out of the bolded title and insert it in the paragraph.

They began review of Section A.

- A. No engineer, just town.
- B. No should be *not*. Krieger questioned need for this.
- C. Delete the 2<sup>nd</sup> sentence. It is addressed in Section 7.
- D. Krieger said 2<sup>nd</sup> sentence should be deleted. Board agreed to leave it in at last mtg. Liz said for informative purposes and that is why they kept it. Discussed putting it under General Provisions as DWF. If it is there, then it doesn't need to be under definition. Krieger and Liz debate. Add comma after "for example". Leave everything else as it was.
- E. Add two commas. Abare doesn't like the last sentence. That is the informative part. Change the language to clay will support a steeper slope. Abare said you can't dig until you have a permit. Use the Brevard Cty soil book. Abare said that is hit or miss.

Krieger said that all the second sentences from E, F, G and H should be taken out and put them under *Design Considerations* on pg 9/18. Wilbur left at 8:35.

Reilly said under design considerations all it says is slope. Krieger said to take from E, F, G and H and put it in a new Section 5.5 for Design Consideration or put it before that section or at the very end.

Ryan said does the code need to include the informative information that they are discussing moving to a new section. Zindel said yes because they might be doing it themselves.

Reilly said they said months ago that it should be definitions and informative information in this section. Zindel said it isn't added as a requirement but to help applicants.

- F. Add the comma -
- G. Ok except move the 3<sup>rd</sup> sentence starting with ponds.

Reilly said *Design Considerations* is not defined and they should have a definition for it - the parameters used in design process. DWF and ponds are going to be different for different applicants.

Put designs considerations before permit review. Between 2 and 3. Make Design Considerations 3.0 and then make Review Process as 4.0.

- H. Krieger said a pond is a body that holds water. Change to "Area that holds water". Add back in DWF to this section. Rest of this section goes to Design Considerations.
- I. Put the word *alter* in this section.

- J. Ok
- K. Delete depth from definition. The second sentence should be moved to General Provision – already has been so it can be deleted.
- L. Ok
- M. Move the entire section to Design Considerations.
- N. Change the definition, well, ground water table, spring, etc. Kill the rest. Reilly asked Krieger what the difference was between *for example and such as*? Ryan suggested it state “can include but not limited to”.
- O. New definition

Krieger 6/18 #4, impacted area should be *project site*.  
 #5 location wells and/or drain fields within 75’ of the project site.  
 Pg11/18 DWF is on top in title and it should not be there.

Stop here and get new Sec 3 drawn up.

**H. DISCUSSION:**

- 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:**

**J. PUBLIC:**

Juliana Hirsch said she is very serious regarding the distances and thinks 50’ is too close. She asked why there is any restriction on distances from a well. Distance from drain field is more important than for well.

**K. OLD BUSINESS/NEW BUSINESS:**

Board Secretary told Board that Sue Hann’s dad, Joe Provost, died last week. He was 77. Franklin reminded Board that Form 1’s are due. Board Secretary told Board that they had received a Board application from Leeanne Saylor who is in audience tonight. Zindel stated she would be willing to give up her seat as an Alternate on the Board. Zindel explained that she travels up north for part of the year and may have to return to care for her mother. Introductions to Board were made. Leeanne said she would like to sit on the Board and would like to be an advocate for Malabar

**L. ADJOURN**

There being no further business to discuss, **MOTION:** Ryan / Krieger to adjourn this meeting. **Vote:** All Ayes. The meeting adjourned 9:45 P.M.

BY:   
 Bob Wilbur, Chair

  
 Debby Franklin, Recording Secretary

  
 Denine Sherear, P&Z Board Secretary

07/25/2012 Date Approved