

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING  
SEPTEMBER 26, 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
	LIZ RITTER
ALTERNATE:	WAYNE ABARE
ALTERNATE:	LEEANNE SAYLORS
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

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

**D. CONSENT AGENDA:**

1. **Approval of Minutes** Planning and Zoning Meeting – 8/22/2012

**MOTION:** Reilly / Ryan to approve minutes of 8/22/12 as submitted.

**VOTE:** All Ayes.

**E. PUBLIC:** none

**F. ACTION:**

2. **Final Review and Make Recommendation to Council re: Decorative Water Features and Ponds**

**Exhibit:** Agenda Report No. 2

**Recommendation:** Action

Krieger stated he needed to leave at 9PM

**MOTION:** Reilly / Ryan to recommend Council approve the ordinance relating to decorative water features and ponds.

Discussion. Reilly on pg 8/68 of meeting package, at the beginning; it is his recommendation that the Board give the Council the old code as written now and the new ordinance with no strike throughs. Reilly said on pg 17/68 take the "DWF" out of the preamble – it is in wrong place; keep only words in that location. The use of the abbreviation in 1C is correct. Reilly didn't see the checklist. Reference in the section for permits A and B and under and new 2. and reference the checklist. It is a tool it is not going to be codified. Board discussed where to place the checklists. Reference in both DWF and Pond sections.

A-10 would be refer to DWF checklist provided

A-11 would be refer to Pond checklist provided

Krieger had read through the legally reviewed draft and had several comments. He had a concern with the appeal going to BOA instead of the Council. P&Z had directed that appeal should go to Council. Also on pg 23/68, Sec 3.E. it states that appeals of the decision may be taken to court of competent jurisdiction. P&Z had said Council and it has been changed to BOA.

He read thru the definitions. Reilly said the language follows the existing code and told Krieger to look at pg 14. Krieger said that answers his question but it doesn't mean they like it. Wilbur asked

Franklin if an appeal had ever gone to BOA regarding a pond. Not that Franklin knew. Franklin explained the BOA is set up to consider appeals to administrative decisions of the Building Official or variances to our land development code. They receive the appeal packet and have legal guidance from town attorney. If applicant doesn't like the BOA decision, they can go to court only.

Abare didn't think the BOA would understand the reasoning behind P&Z actions on this code amendment; they have worked on it for a year. Saylor said the BOA also has our Town atty to help them understand the questions and the appeal.

Krieger also sees scrivener's problems with the proposed ordinance.

Krieger referenced the attorney changing the section regarding jurisdictions. It should all be the same. Pg 22/68 7.B. says "outside jurisdictional agency" and it should all be put in similar format. Krieger said use that same term in the permitting section and on the checklist. Krieger said on pg 19/68 Section B. 8., it refers to engineer instead of jurisdictional agency.

Wilbur said the Attorney language is fine with him. Saylor said the section Krieger referred to calls for a letter from an Engineer if the material is not suitable. That should not come from a jurisdictional agency. She is fine with the way it is written. So are Wilbur, Reilly and Ritter.

Krieger referred to pg 20/68 3B, water source may be surface runoff; in definitions on page 18.L. we wanted to include rain - not limited to. Board said that is ok and leave it as written.

Krieger referred to pg 21/68 bottom of page, limit discharge – can't do that. He took out and changed to "control" - he did not see how anyone could limit discharge. Reilly said it is verbatim from the old code. Ritter said it reads that "post construction" can't exceed "pre-development" runoff. That is why it says "limit." Wilbur explained that process – an applicant has to design project to "limit" runoff after construction to not exceed pre-constructive runoff.

Board said to leave language as stated.

Reilly referred to pg 15 and confirmed that the diagram was deleted by Board. Should be more obvious. The reason is that the side slopes is covered by the design section of code.

Ryan referred to pg 22 at bottom A., typo "with" should be "per" Town Code. He also thought on pg 23, 9.E. the word "may" should be replaced with "must"

Ask Attorney if we should change language in this section and also in Art XII because it reads the same way there.

Abare handed out his bulleted summary sheet that he said he was going to develop so council could easily see the major reasons of why the P&Z Board developed this they way they did.

Wayne referred to pg 11/68 and thought there was an error in minutes from Council. He thought the current code allowed mining. Franklin said no the current code does not permit mining.

Saylor said we will give them Abare's bulleted list so they can see why P&Z worked on this. Reilly said he should also add on the bulleted list that they restructured this by putting definitions first, making it more user friendly and made each one a stand alone section, DWF and pond; also added design considerations and checklists.

Krieger asked regarding the excavated material why do we care if it is being sold. He is not supporting mining but is looking at why the Town should care why an applicant can sell or trade material he can't use.

The Board then started the discussion again on selling the material. Saylor said there have been cases where an applicant provides a stretch of the truth on whether it is useable. If there is no financial gain they may be less likely to try and sell it.

Abare said point is well taken.

Ryan said in 2011 there were dump trucks coming south on McCain loaded with fill. He said he called that in a couple of times. Abare said Jordan Davidson dug the ponds and sold the fill. Wilbur said the ponds in CC were borrow pits. The twin lakes area were borrow pits dug on Radensic's land.

Ryan asked the Board if a swimming pool could be considered a DWF? He said they haul off the fill. Ryan retold his pool story about contractor taking fill off side when he had his pool put in. He later called the contractor and asked them to drop off excavated material from other pool constructions so they wouldn't have to haul it to landfill.

**VOTE: Ayes, 4 (Reilly, Wilbur, Ritter, Ryan); Nay, 1(Krieger)**

Reilly asked what Krieger's reasons were for voting against motion. Krieger said he disagrees with the appeal going to BOA and the restriction on selling the material. He also disagrees with the process and permit required for a DWF.

**G. DISCUSSION:**

**3. Review Material of "Light Industrial" Zoning and Recommendation to Council**

**Exhibit:** Agenda Report No. 3

**Recommendation:** Discussion

Abare referenced the Melbourne definition and why they want it close to I-95 and the RR areas. Wilbur said to have them in the same area as LC (limited commercial) it would not work. He still felt that designating those areas like the triangle (I-95 – Babcock) and the west side of the RR area then you take away the others that would be objectionable. If you were next to the RR and could get a spur. Wilbur said there used to be a spur. Reilly said what are we going to discuss at next meeting. Ritter said along the RR we don't have easy way to get to US 1 and/or I-95 and LI requires that and it is not a good location for tractor trailers. Wilbur said LI would allow a lot more than that. He said maybe we don't want freight use; light industrial would limit use. Saylor said it makes sense because of the proximity of the RR track for light industrial. Wilbur said it would only be on the west side of the tracks.

Ritter said she did not support LI by the RR because of the residential on the east side of the tracks. She did support that use in the I-95 and Babcock area. Wilbur said all the time he has been on P&Z he has tried to get this use. Krieger said the whole concept was to limit the changes required to the code and creation of more ordinances. Krieger said they should not be talking about this as the roads are not here for this kind of use.

The members discussed the commercial limited (CL) and the limited industrial (LI) again. Wilbur said read the definition in code for commercial limited in District Provisions and nothing fits in these areas. Saylor said it has serious limitations with no city water.

Reilly said they had talked about changing the CG to something less intense and explained the history of the discussion. Trying to make it less intense but not commercial limited. Wilbur referred

them to IHB code. Wilbur read from the Malabar code the types of uses that would be allowed. He thought those types of uses would be appropriate. He suggested the Board make up their own list. For areas we are going to keep CL keep as we have definitions for now.

Abare asked of Wilbur if people have come here and been sent away because those uses didn't fit anywhere? Abare explained problem Lowes has; they are annexing into West Melbourne on condition of getting city water. Wilbur said Malabar doesn't have any large enough parcels along the RR track that would create a problem; no room for a large facility with 50 employees. This opens up the area for utilization. Reilly said if those uses listed by Wilbur could fit in an existing zoning then he would not support creating a new type. If they don't fit in an existing class that is a good reason to have a new class.

Krieger said that is why he suggested combining the two – industrial and commercial light. His idea is to reduce the number of ordinances having to be created. Instead, you could change a table.

Saylor asked if they have ever taken into consideration what the commercial designation on R/LC does to property owners. She described problems they have had in getting property insurance. If she tries to get commercial insurance on her property she can't because she lives there. She can't get residential insurance because she has a business there. She is having to fight the county.

Wilbur is glad they brought it up. He explained the history of R/LC. It was created so property owners could live and operate a business from their residence. They were able to get mortgages and were no longer harmed if they had to rebuild.

Wilbur and Abare both said old Melbourne has had similar mixed use for years and she should talk to them about insurance. Wilbur said the area in Pinellas County also is a very successful built up mixed use area.

Reilly said for next meeting Board can review these uses. Chair said let's do it tonight. Wilbur explained why the Board should want to limit the industrial; they don't want to full industrial. Abare said why not just rewrite the industrial uses since there is no other area with that designation that could develop. Wilbur wants to provide an area for the small business person to work from so they don't have to go to Palm Bay.

Reilly said if it is only one parcel then why rewrite the section. Abare said they could change the asterisk (\*) for CG in Table 1-3.3.B. Krieger said they should be able to do a less intense use than the zoning allows.

Abare said what attracts small business to Malabar? Krieger said it was the low price and the lack of requirements for sidewalks and impact fees.

Wilbur read the CG language from the Article III in the Code on what it is not intended to accommodate; appears to eliminate all but storefront. Does not allow trades like welding shops. Ritter said if you look at the Table in Article III lists uses under CG and trades is listed; the Table listing doesn't coincide with the narrative. Ritter said they should get the two of them to say the same thing. Abare agreed. Krieger said do it within the categories we have. Krieger disagreed with the description for CG. He said if you are in an enclosed building and if someone is silver soldering a something it should be permitted. We could have a flex zoning. They would go thru a process. Krieger said they should not just make categories up for the sake of making categories. Saylor asked if a bakery wanted to come in what zoning would they need?

Abare liked adding uses to the list we currently have. Development requires water and sewer. Krieger said what about naming a section flex-commercial.

Wilbur suggested a designation for the triangle area. Something needs to be done to rectify what they can't do in CG. Saylor said make CG and IND more flexible. Krieger said Wilbur has specific things that are wanted; are those businesses that could fit in other categories. Wilbur is looking at businesses that have come to us and we have not had a place for them.

**MOTION:** Reilly / Ryan to skip the ALF item and go to Old/New Business.

**VOTE:** All Ayes.

**4. Code Requirements for Assisted Living Facilities**

**Exhibit:** Agenda Report No. 4  
**Recommendation:** Discussion

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

**I. PUBLIC:**

**J. OLD BUSINESS/NEW BUSINESS:**

Ritter and Ryan asked about follow-up on the parking of tractor trailers at AAA Storage. Ryan said he sent email to TA Wilbanks. Board Secretary stated that TA had sent letter to owner. Wilbur asked Franklin. Franklin did not have copy of letter and had no information on what was in letter. Secretary also had no information. Ritter said when Board asks about an item staff should be able to provide updates.

Secretary told Board that the Building Dept had received the first permit package for a house in Weber Woods subdivision. Stanley Homes has said they will have multiple homes in the development.

**L. ADJOURN**

There being no further business to discuss, **MOTION:** Reilly / Ryan to adjourn this meeting. **Vote:** All Ayes. The meeting adjourned 9:50 P.M.

BY:   
Bob Wilbur, Chair

  
Debby Franklin, Recording Secretary

  
Denine Sherear, P&Z Board Secretary

10/10/2012 as corrected Date Approved