

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
MAY 7, 2013 7:00 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 7:02 P.M. Prayer and Pledge led by Chair Pat Reilly.

B. ROLL CALL:

CHAIR:	PAT REILLY
VICE-CHAIR:	LIZ RITTER
BOARD MEMBERS:	BUD RYAN
	DON KRIEGER
	GRANT BALL
ALTERNATE:	LEEANNE SAYLORS
ALTERNATE:	DICK KORN, excused
TOWN ATTORNEY:	KARL BOHNE
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

C. ADDITIONS/DELETIONS/CHANGES: Don suggested moving Public Hearing before going over the minutes. Chair stated that the Public Hearing is set for 7:30pm so they need to stick to agenda.

D. CONSENT AGENDA:

1. **Approval of Minutes** Planning and Zoning Meeting – 4/10//2013 & 4/16/2013

MOTION: Liz / Bud to approve minutes of 4/10/2013 as corrected:

Corrections: Grant has provided his corrections to Denine.

Liz 4/73 2nd sentence is missing something – or do you think we should come – check tape
5/73 2nd sentence – we are not changing. In order to do that. We would have to come up with
6/73 half way down, Mills, 3rd line down. The most objectionable to resident's sb not near to residential. Check tape

7/73 2nd para, 2nd sentence, the way it is, not the way it would limit
9/73 3rd para, half way down, starting with Grant - sb it is not

VOTE: All Ayes.

MOTION: Liz / Bud to approve minutes of 4/16/2013 as corrected:

Corrections: Grant has submitted his to Denine.

Liz, pg 14/73 half way down, last sentence - Liz asked about parking spaces - sb zero not 0.

VOTE: All Ayes.

Chair asked if they could start the Public Hearing early. It was 7:16 P.M. Attorney said they could start the Public Hearing and if anyone from public arrives, they will extend if needed to let them speak.

F. PUBLIC HEARING:

2. **Commercial Site Plan Application for Malabar Local Market located on a portion of: 1870 & 1896 Hwy 1, Malabar. Mr. Frank Plata of Plata Engineering, Inc., Representing Applicants, Jung-Lin Chen and Shu-Ching Chen.**

Exhibit: Agenda Report No. 2

Recommendation: Action to Council

Chair went through some procedures. He stated that the procedures have been provided to the Board for quasi-judicial hearings. Anyone wishing to speak has to come to the podium and state their name and address. Any evidence that is submitted should be given to the Clerk with copies to the Board. He explained the need for disclosures by Board Members of any ex-parte communications or site visits. There were none given.

Chair invited applicant's representative to podium. Frank Plata, Plata Engineering, 4700 N. Harbor City Blvd. He represents the owners and they will be owner operators of the businesses. The first step is the construction of one building with two or three bays. Owner will be moving his optical business from Melbourne.

Plata stated that a larger project had been proposed for this parcel in 2007 and at that time they had the permit for drainage had been approved by St. Johns and FDOT. This new proposal is for a portion of the 16 acres just under two acres.

He quoted from Table 1-3.3.A. re: size and stated that the 4000sf maximum is for the parcel size stated in Table 1-3.3.A. Plata referenced article in Town's newsletter in October 2010.

Plata said Site plan is done in feet and nothing has changed. The lighting code is at .2 lux and it can be met and does not spill over to adjacent properties. If there is additional building in the future they may have to move some of the lighting.

Plata said re: FDOT concerns, they had permit back from 2007 for a more intense use proposed. Per FDOT requirements, they need 14 feet and there is only 18 feet total so they will be giving FDOT an easement of about 10 feet. FDOT wants the flow to go from north to south.

Frank said the staff comments provided after their review will be addressed in the notes on revised site plan or changed on the site plan prepared for the Council meeting. Frank said the owner lives just south of Malabar in Grant.

Frank said the existing culvert pipe will have to be shifted to the west so it is on the property and not in the easement they are giving to FDOT. They are providing that to eliminate any problems in the future.

Don asked if the culvert is moved to their property then the owner has to maintain it and what assurance do they have that it will be done. Frank said the owner would have to do a bond and enter into a maintenance agreement with FDOT.

Frank said the driveway they are proposing may serve the north two acres in a future development. The 14 acres north of that is on the market. The owners only desire to develop these two acres depicted on the site plan submitted.

Don asked whether the entrance is proposed for a driveway or a dedicated right-of-way. Frank said it is a driveway.

Attorney said what Board is reviewing is for the project that has been submitted for this 1.95 acres. This project acreage cannot be used to meet any requirement in any future proposed development to the north.

Don asked about the map showing he has two properties that he put together and then split it up to create the 1.95 acre site. Frank said it was all one property when it was purchased. Don said he is confused about changing two properties. Pat explained they are only developing 1.95 of the two properties. Frank said in the sale they are combined in the legal. Don thinks it has to be made into

one property first. He wants to do it right. He admitted he didn't know the requirement. Frank said it is not listed as separate parcel. Frank stated there is only one legal description and it is all together. Once they get the site plan approved they will go to County and have the E-911 system updated and a new address assigned. Liz asked about the two addresses. They are related to previous structures on the property. Frank said after the site plan then they will reconfigure the address.

Pat asked if the legal description on page 1 covers the entire 16 acre area the applicants bought. Frank said yes. Pat said if the Board saw it as one piece it may settle some questions. The Attorney asked Frank Plata if they had a deed in client's name. Frank said yes and would provide the deed.

Don said you cut out the 1.95 acre and with the setbacks – can any part of the storm water drainage system be in the setback? Yes, the setback per code is 10 feet. Liz asked if there is a requirement to fence the drain field. Frank said it is not required. Frank said the green area is in the back with the septic and drain field. Grant asked if pavement would be curbed. Yes. Don asked about setback and said the Town requires a 20 foot setback in this zoning. He said even if the Health Dept only requires five (5) foot setback; the Town requires 20 feet for any structure.

Don thinks the drain field is a structure. Attorney read definition of structure and it does not include drain field. Krieger said nor does it exclude it. The Attorney stated the County Health Department has jurisdiction.

Chair asked Clerk to make note in minutes to have information from applicant included in the submittal for Council that clarifies this issue. Who has jurisdiction. Frank will do research regarding the 5' vs. 20' question. Also is a drain field considered a structure? And who has jurisdiction?

Liz asked about the driving area and pedestrian area and asked if they should be separate? Note says sidewalk flush with pavement. Frank said that is to accommodate the handicapped. He has handicap parking in rear it is the most direct access. Each bay with a door will have a handicap access. Where there are no doors it is curbed. The sidewalk is raised. The ramp can't be more than 2% slope. There is a minimum of 5 feet for turning area. The distance from the building is 5 feet.

Leeanne asked about the note from the Attorney about the lot size. Frank stated the minimum is 900sf per unit and the maximum is 4000sf per unit. It will be less than 4000sf per bay. They may make it two or three separate bays. Leeanne asked if the maximum in the Table 1-3.3.A was per parcel.

Frank referenced the P&Z minutes of January 11 where they said it is 4000sf maximum per unit. The Town Code limits it to 4000 per unit.

Frank also said in 2007 they were proposing a 60,000 sq. ft. building. He referenced multi-story structure that only has a 4000 sf of building coverage. Malabar was not going to do total floor area of 4000sf per site; it is per ½ acre .

Attorney said those projects were not approved. Liz said that per the Town's LDC, Table 1-3.3.A. states the maximum square footage restriction is per each ½ acre site. Attorney agrees with that analysis. Attorney stated that with the 1.95 acre, the applicant is under what he could do put there. He could do a larger building. Attorney said that his opinion is that it could be larger than 4000sf based on project site. It would be necessary to define this project site.

Leeanne asked about R/LC – it was created so you could live there and have a business also.

Attorney said no; when you go to the Table of allowed uses; a mixed use area does not exclude a single use. Attorney said you could read the intent on page 117 of Land Development Code and it is for solely commercial or residential or a mix.

Frank said there are two double doors per unit on the north side. Frank said they will market it for LC. Owner will rent at least half the building. It will be concrete block with truss that slopes to the back. The trusses will be north to south. The exterior will match the Town vernacular requirements. The units may be 1200 or 1800 sf each. Liz asked why they don't have toilets in each unit or at least centrally located. Frank said it is down at the end and open in the front with a covering over the sidewalk to allow flexibility in the layout of the bays. It has been designed to show the vernacular style. The north side is the only side that has doors. There is no sidewalk on the south side.

For Council packet add the side view (elevation) of the front and rear of the building. Don said they need to provide the front, rear and side elevations in the site plan. No exit to the back.

Grant asked about provision for large vehicle parking. There is also commercial parking in the back where there are no doors. Frank said the parking spaces have 11' width. Employees will park in the back area. What type of clientele are they trying to attract. A small antique sales shop and possibly repair. Bud said it is not a shopper friendly layout. If it is raining they have a long way to go to get inside. Frank said it is planned for a destination type of use. By design they are limiting the traffic. Small shops. Art repair. It will not be like a strip shopping.

Pat asked if owner is going to move in after it is built. He is going to use one or two of them and rent out the others. Bud asked if they would have an auto repair place. No, the height is only 8 foot. They would need 20 foot height. Also the zoning is wrong. Bud asked if there was only one bathroom for three bays. Frank said that the bathrooms would have two stalls plus a handicap stall in each plus a urinal. He has to work around the drinking well, irrigation and drain field. Attorney stated that auto repair would not be allowed in this zoning.

Chair stated that owners had presented in 2012 for a flea market. They want commercial only. They don't want residential. That is what was said. Pat had said they would have more options if it was CG. He could support a flea market in CG. Not in R/LC. Frank said in January they got taste of reality with the costs involved in doing commercial development. The market analysis they did supported this. It is not conducive for flea market development and couldn't compete with the flea market in Eau Gallie. They are currently marketing the north 14 acres for residential.

Pat said looking at the big picture and trying to do phased development in R/LC does not work. He said he would not have problem with this in CG. Frank said reality is they don't have the money to do a commercial development. They changed their minds on that in January.

Pat also researched other cities for flea markets request. Brevard County has flea markets in Light Industrial, Section 62-1930 and listed as a conditional use. Pat said to him a flea market is not compatible in R/LC zoning. Frank said they are not going for a flea market. That is not the plan. What they are looking at right now is Malabar Local Market. Pat stands corrected. He was basing that on information provided last November.

Attorney said the subject matter is for the two acres. Attorney stated if the applicant wanted to do a flea market it would take 20 acres.

Pat said the Note 4 on page 1 states the Future Land Use is Commercial. Frank explained that our requirement states the application must state the current zoning and the land use designations. Our current land use parcel map states that R/LC is considered Commercial. Pat said he had misread it. He thought he was following up with their earlier request for a flea market.

(Note: R/LC zoning is designated as R/LC for FLUM)

Pat said Table 1-3.3.A; the last column states the maximum density. It says N/A across from R/LC and that is the out. It is N/A because the other columns in the Table govern commercial development. Liz mentioned the detached sign. Frank said the Town Code requires that it be shown on site plan so he tried to indicate it. The actual size will be determined by Code. It will be at the entrance. It will be per Code as to height.

Bud asked how thick the concrete will be. 6". If you do less then you have problems with cracking. The owner wants to do the extra with fiber mesh. Bud said it is an observation but isn't the concrete parking area a perfect area for use as foundation for another building. Liz said the parking lot area is sloped and wouldn't work for a foundation for another building. Attorney said that any additional building would require another site plan.

Leeanne said if he is doing the optical part for now but he has the business on New Haven. Frank said it is for cash flow for the construction of the new building. Attorney asked if the large parking area is for open storage as that would not be allowed. Frank said no, this is a very small space and with one car parked you can't get a fire truck around there. Frank said the owner can sell his business in Melbourne. The front area elevation is determined by height for the dry detention. Liz is concerned with adverse effects on the property to south. Frank said there will be no adverse affects to the property owner to the south. They will have both a solid fence and a natural vegetation buffer between the properties maintaining the current elevations.

Bud asked about the thin dotted lines on the concrete. It just designates the area needed for parking. Bud is referring to thin dotted lines in building. Frank said it is the truss line. Owner prefers concrete to asphalt. Don said they could add 20 feet in the back. Frank said the drainage is a big issue. They worked out the dimensions. If they put more concrete in the back the whole project has to move back on the lot. He spent much time on the elevations required and what they would have to do to meet the requirements. They would love to do circular drive around back, but then the detention area would have to be larger. They have tight requirements on the drainage and it requires all this area to be green area over the tank. It worked out to 1.95 acres. It was an exercise to meet the needed calculations. Don asked why the well was so far away. They had to work around the adjacent properties drain fields. They also have to have fire protection. Liz asked again about why they didn't put any parking in front.

Chair asked if there was anyone else to speak.

Susan Cable, 3090 Passaic Avenue, wanted to know how close the fence would be. Frank showed on the overhead where the fence would be on the property line and the natural buffering will also be there and there would also not be any lights. Frank said they could stop the wood fence before her house.

Chair said Debby to work with the applicants to come up with a compromise on the fence. Start fence at power pole. Susan Cable said she can then continue to enjoy the view of the river. And Frank said the breeze would not be impacted by the wood fence if it were stopped short. Grant said the fence would be one of the last things to be done. So if Ms. Cable calls to complain, the contractor would be obliged to assist her to minimize any adverse conditions. Attorney said yes. They call that harmonizing with surrounding area.

Wayne Abare, 2530 Rocky Point Road, when he built his house his neighbor made him design a swale. He asked if all the drainage would be directed to retention pond. Liz asked to put up page 3 of

5 that shows the drainage areas. There is no drainage outward. It drains to the center and finds its way to detention area. The slopes will be pretty well defined.

Chair asked about staff comments. Attorney said he said he would address the lux requirement in the motion. Frank said they extended the numbers and they didn't have to change anything.

Public Hearing is closed.

Chair asked if Board had any other questions from staff. No further comments.

Chair asked for a motion.

MOTION: Don / Bud to recommend approval of site plan for Malabar Local Market on Highway 1 in Malabar with following conditions:

- Applicant to provide more clarification on the drain field setback (is drainfield considered a structure)
- Applicant to provide a recorded deed with the legal description of the property in the name of the owners
- Cooperate with neighbor to south, Ms. Susan Cable, on fence placement,
- Applicant to address the lux lighting issue,
- Applicant to provide a side view of north and south elevations, (oblique view)
- Applicant to provide entrance sign detail.
- After approval of site plan, the applicant will provide a recorded instrument showing the 1.95 acres carved out of the original 16 acres.

Discussion. No additional comment. Chair called for **Roll Call Vote:** Secretary called roll. Pat, Aye; Liz, Aye; Don, Aye; Bud, Aye; Grant, Aye. **Motion** carried 5 to 0.

G. **ACTION: none**

H. **DISCUSSION: none**

I. **ADDITIONAL ITEMS FOR FUTURE MEETINGS:** Tuesday May 21st is next meeting. If the site plan is not submitted the meeting will be cancelled and the regular meeting will be held on Wednesday May 22, 2013.

J. **PUBLIC: none**

K. **OLD BUSINESS/NEW BUSINESS: none**

L. **ADJOURN**

There being no further business to discuss, **MOTION:** Bud / Grant to adjourn this meeting. **Vote:** All Ayes. The meeting adjourned 9:15 P.M.

BY:

Patrick T. Reilly
Pat Reilly, Chair

Debby K. Franklin
Debby Franklin, Recording Secretary

Denise Sherear
Denise Sherear, P&Z Board Secretary

5/21/2013
Date Approved: