

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
DECEMBER 11, 2013 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 by Chair Pat Reilly.

B. ROLL CALL:

CHAIR:	PAT REILLY
VICE-CHAIR:	LIZ RITTER
BOARD MEMBERS:	BUD RYAN
	DON KRIEGER
	GRANT BALL, EXCUSED
ALTERNATE:	GEORGE FOSTER, VOTING FOR BALL
ALTERNATE:	VACANT
BOARD SECRETARY:	DENINE SHEREAR

ADDITIONAL ATTENDEES: COUNCIL MEMBER ACQUAVIVA

C. ADDITIONS/DELETIONS/CHANGES: Chair said he would like to move public before the Discussion so they didn't have to sit through whole meeting. No objections.

D. CONSENT AGENDA:

- 1. Approval of Minutes** Planning and Zoning Meeting – (not ready)

MOTION: BUD / DON TO TABLE TO NEXT MEETING.

PUBLIC AGENDA ITEM "I" MOVED HERE:

Tim Duncan, pastor of Brevard Worship Center, 6825 Babcock Street introduced himself and their plan to build a new church and parking lot on the property in front of the existing metal buildings. They will keep the existing buildings and use them for offices or other church purposes. The request is scheduled for the P&Z agenda of January 8, 2014. Don asked about the driveway. Pastor explained that the driveway will stay the same and is located just north of Booth Road and south of Ace Hardware. He just wanted to introduce himself. Board thanked him.

Kim Frodge of Nanna's House: She explained their mission is to help children of abusive homes and give them a safe place to stay. They have been doing this for the last five years. They are completely community funded. They take in newborn babies to age 11. She is hoping to build a gated community of eight block homes with metal roofs with five children max in each home for a total of 40 children. Pat explained that the development she is describing would need property in R-M4 or R-M6 zoning, both along Highway 1. Don said she would have to have a minimum of 1-acre for each house in order to get septic. Don thinks it falls under the subdivision code. You would have to have eight wells not one and same with septic. He is thinking of a development like she described would fall under subdivision. Bud asked why she is limited to five kids per home. It is the most family like. These kids have never experienced a good home life. She also said that with five kids and two house parents, you could use a mini-van; if more you would have more liability, with multiple vehicles, etc.

She asked where in Malabar she could do this. Chair said on Hwy 1 in R-M4 & R-M6 and Don was correct in saying she would need water and sewer. She asked if there was any land like that on Highway 1. Chair said no, but there is a proposed project that will have to bring the city water and sewer down to its location. They are on the R-M6 zoned area. Chair thought there were one or two other R-M4 parcels. Bud said she could stop by Town Hall staff and get a zoning map to see

where the area is. Don said the majority of land in Malabar is RR-65, rural residential zoning. Liz asked about Babcock Street – Denine said it is CG, OI and RR-65. Don said you can't put that in institutional. Ms. Frodge said in Palm Bay she would have to be in Institutional Zoning. She said it sounds like she would have to get the one or two parcels on Hwy 1 or it is pretty bleak to try and have it in Malabar. Bud told her there would be more options for her in Palm Bay. Chair said he didn't think she could do her project without city water and sewer. Ms. Frodge thanked them. Bud asked what she had taken away from this. Ms. Frodge said that she can't build in Malabar and to go to Palm Bay. Chair said that is not what they said. She would need to find property in the right zoning for multiple residences and either have enough acreage for septic or have water and sewer. She thanked Board. Board thanked her.

E. PRESENTATION: none

F. ACTION: none

G. DISCUSSION:

2. Discussion of Sober Homes

Exhibit: Agenda Report No. 2

Recommendation: Discussion

Chair asked for this to be on agenda.

First off the Chair wanted to thank Board for all their hard work and dedication on getting the ALF regulations to Council. Chair explained the Attorney is drafting it into the proper language for Council's consideration.

The TA had mentioned that she had addressed the issue of the proliferation of sober Homes in South Florida to Council and Dick Korn and Leeanne Saylor told Council that the P&Z Board had already looked at this. The Chair said the Sober Homes issue may be something that they have already covered in the regulations they just created, but he wanted the Board to read up on it and discuss if anything needs to be done. They won't have another meeting until January so they will have plenty of time to read the material. Liz thought the definition could just be added to the ALF regulations. The Chair explained he didn't want to hold up getting the ALF regulations to Council.

Chair said under F.S. 400 (pg 13 of 64, Part 3.a) and Liz said on pg 14, (#11); both places appear to cover this use. Liz said just add a definition for Sober Homes and state it is governed under F.S. 419. Board discussed just adding verbiage to Article III under community residential homes. Don cautioned stating that these types of uses are not allowed in code could have legal problems regarding discrimination. He thinks Attorney should add in the proper language and then ordinance should come back to P&Z Board.

Denine directed them to the 12-pg packet she had placed at their seats re: survey FLC had done on this issue. It seems most of these places pop up and there is no oversight. Don said if it is a rental home, then it is a business and they should have a BTR.

Don said a few years ago they had considered a huge development on Highway 1 and part of it was rehab. Liz said it was for frail elders and that is allowed. She doesn't know how it got described as also having rehab.

Denine said when she talked to Melbourne, they indicated that their legal department was also reviewing how to regulate sober homes. Don said he likes broader categories; sometimes less is more on laws. For every law that is written there could be a challenge. Don said it is difficult to control if someone owns a house and invites four others to live there. Liz said if they pay rent. Don said that if someone goes to Europe and rents out their home; said that they all know that it is a State controlled thing. Don said they even have a Council Member that rents out a house. He doesn't want to know what his neighbors are doing but if they are going to operate a sober home

then perhaps the Board should look at putting them in an institutional zoning. Liz said she also thought that it should be in Institutional. Don said in reading the handout, it seems hard to regulate where and how many you can have in a community without the discrimination issue coming up.

Don suggested adding code language "any forms of rehabilitation services shall be defined by State legislation." Still would need to run it by Attorney.

George suggested we just don't allow them based on the problems other cities have encountered.

Chair recognized Juliana Hirsch, 1035 Malabar Road. She said they should just state that they do not allow them in residential areas. Seems pretty simple to her. Juliana said that you can have up to five persons in your home as long as you don't charge. That's the crux, how do you find out. George said eventually the neighbors will come forward and then the Town can take action.

Council Member Marisa Acquaviva recognized: She was interested in hearing their discussion about sober homes because it is becoming a real issue down south, She stated they did a moratorium on pill mills to go on record that those types of facilities aren't welcome here. Perhaps we could do something similar. Don asked how long was the moratorium for pill mills? 6 or 8 months? He thinks it would just encourage sober homes to locate here. Liz said the problem is they are not required to be regulated. Chair added that a moratorium would just be a short term fix. She thanked Board again for their participation in this discussion.

Two questions for Attorney in form of motion:

MOTION: Don / Liz P&Z Board is recommending that they get a legal opinion on the following issues related to sober homes/half-way homes/rehabilitative homes:

- 1) Is there any advantage to doing a moratorium on these?
- 2) a. Is it appropriate under Community Residential Homes in the draft ordinance to add sober homes / half-way homes / rehabilitative homes in Section 1, 13, A, and what are the possible ramifications?
 - b. Should sober homes/half-way homes/rehabilitative homes be included in Article XX, Definitions, Section 6, 1-20.2?

VOTE: none taken.

H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:

I. PUBLIC:

J. OLD BUSINESS – None / NEW BUSINESS:

Don asked if everyone was aware of the accident on Highway 1 last Friday night. He saw two reports on the news that stated that Malabar was doing something wrong and that is a State road. The other report from Orlando said they were crossing at Riverview Drive which is way south of the restaurant. Liz said everyone with property on both sides of the highway has the same problem. She said their park visitors that use the dock have to cross the Highway. Chair said it is 4-lanes of highway. Don said the report said the speed limit in that area is 45mph and that the driver wasn't speeding. Don said it is a State road, the speed limit is 55mph and the person probably was speeding. Don said he doesn't know what the facts are but...

Bud said there are four different speed limits between here and Melbourne. Bud said he knows people go faster than that from personal experience. Liz said they slow down at Robert Conlon because the police are there. Liz said there are commercial, business, residential, vacant and nothing and then residential along there.

Bud said he has to be careful but he questions the wisdom of having a restaurant with a large clientele, especially in the evening, the dark...if it is an appropriate place to have to cross the street to get to it? Liz said they have complementary valet parking and have had for several months. She also asked them to remember these are adults. She said it is hard to imagine they didn't see the head lights or the driver didn't see the couple, but it is really dark up there at times. She said they need more lighting up there. Don said the reports said they were crossing where the light was to the south of the restaurant and were hit well south of the building and were projected up to the building. Liz said they wouldn't cross there in the dark. Bud said the parking across the street is diagonal from the restaurant. Bud said he questions the wisdom of allowing them to operate; something like this was bound to happen; he was just waiting for it to happen. Don said the question is, is there a liability back to the Town? Liz said no, it is on the property owner. Bud said the owner of the Shack was also killed the same way.

Bud asked if the place was approved with separate parking, perhaps they should propose that places that could pose a danger should have parking on the same lot as the structure. Liz said not necessarily but they should have lighting. Don said who is responsible? Liz said if it is a business operating after dark it should be their responsibility, but it is a US highway – you can't just put lights up without approval.

Chair said what it sounded like Bud was trying to say was that for new construction they should consider contiguous parking if the property is intersected by a road. Bud said perhaps on roads with a speed over 25mph or present a clear and present danger to the public.

George said as a business person he understands the significance of a riverfront property and the great food, but there is not enough parking on the river side so there must be an alternative. They could require that the business provide for safe crossing either with a mode of transportation like a shuttle/trolley or with a pedestrian crossing with a light and button. Chair gave example of Officer's Club at Patrick. They have a light and crosswalk for pedestrians between the club on the beachside and the parking on the west side. Liz, Don and Bud agree it should be the business owner's responsibility. Bud said his personal opinion is that if that happened the business owner should seriously consider relocating.

Chair said homework assignment is to read up on off-street parking. Chair said it could be just adding language to the code that says new construction shall have contiguous parking with the parcel the structure is located.

George said as a business person, he understands the benefit of the riverfront location and there has to be an alternative to just mandating they relocate. You can mandate that the property owner provide safe measures for their clientele, such as a trolley.

Don also wanted on an upcoming meeting to discuss the issue of Palm Bay having the utilities now and they could put in sewer and require hook-up within 365 days. The other issue is the sphere of notification of property owners notified when there is a project that proposes water and sewer lines. If a project is approved then 100 current residents could be required to hook up without any say because the city of Palm Bay has the control, not the Town of Malabar. George didn't think that the City of Palm Bay could do that; Chair concurred that they couldn't do it. Bud said yes they could. Liz said it is the option of the provider and Mr. Paladin said he would work on this. Liz said we missed the opportunity to put that into the contract the first time. Now maybe the Council can get it into the contract. Chair said that is not their job. Don said it is part of planning and is part of their job and right now there is another city in control of every road and area in Malabar and we are at their whim. Bud said he brought this up before. It is a real concern. Liz said it wasn't presented properly before. And now there are new council members. Liz said Mr. Paladin has said he has leverage and will get it in his contract. Don said the real issue is the sewer and if the law says the provider can say you must hook-up and you know you are going to make a bundle of money by all

these people that now have to hook up it won't matter about any agreements. Also it won't matter if you have a perfectly performing septic; you will be forced to hook up to sewer with 365 days. Liz said no, it could be worded in the agreement with the provider. Don said it is in the code now with the approved agreement with Palm Bay and that is what needs to be changed.

Don asked that whenever a waterline is proposed that all possibly affected property owners be notified by mail; not just the 500' around the project site. Chair said that was done. Don asked Denine. Denine said it was changed from 200' to 500'. Liz and Don suggest that notice be sent to any potentially affected persons be notified.

K. ADJOURN

There being no further business to discuss, **MOTION: Ryan / Don to adjourn this meeting. Vote: All Ayes.** The meeting adjourned 10:30P.M.

BY:

Patrick T. Reilly
Pat Reilly, Chair

Denine Sherear
Denine Sherear, P&Z Board Secretary

6/25/14
Date Approved