

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
JUNE 25, 2014 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
ALTERNATE:	GEORGE FOSTER
ALTERNATE:	VACANT
BOARD SECRETARY:	DENINE SHEREAR

ADDITIONAL ATTENDEES:

C. ADDITIONS/DELETIONS/CHANGES: Krieger suggested taking "Public" after "Consent Agenda" and move discussion Item #3 before #2. No objections from Board.

D. CONSENT AGENDA:

- 1. Approval of Minutes** Planning and Zoning Meeting – 12/11/2013
Planning and Zoning Meeting – 5/14/2014

Exhibit: Agenda Report No. 1

Recommendation: Motion to Approve

Chair asked for a motion to UN table the P&Z minutes of 12/11/13

MOTION: Krieger/ Ryan to UN table minutes of 12/11/2013 for correction and approval **Vote:** All Ayes

MOTION: Ritter/ Ryan to approve minutes of 12/11/13 as amended.

Corrections:

Reilly page 4/79 under Discussion

1st parag and 1st line though should be off

5th parag 2nd line friar should be frail

Vote: All Ayes

Chair asked for a motion to approve P&Z minutes of 5/14/2014

MOTION: Ritter/Ryan to approve minutes of 5/14/14 as amended.

Clarification:

Under "Public" Juliana Hirsch add (AAA Storage)

Vote: All Ayes

E. PRESENTATION:
F. ACTION:

Public:

Bridget Ports 1340 Hall Road, said she has some questions and concerns about a home development that is going to be 3 acres behind 2035 Fins Lane. She said they (new properties owners) are planning to extend the road (Fins Lane) and blocking off the drainage and taking out big trees. Bridget said that there is already a drainage problem there and all the water that comes down Hall Road comes into her driveway at 1340 Hall Road and goes out back of her house and there is a huge "oil slick" that comes down the side of her house between 1360 & 1340 Hall Road.

Bridget said she is concerned that where they (new property owners) want to build their house it is going to cause drainage issues. When she (Bridget) came here 20 years ago they were told that the only lots that had access off of Hall Road were the lots behind 1340 Hall Road and the rest of the lots had to come off Sandy Creek Lane. Bridget wanted to know what can be done to stop them (new property owners) from coming down Hall Road & Fins Lane. There is just no access for more traffic to come down that way and the road is not wide enough & not built for more traffic.

Reilly asked if Fins Lane is developed to the front edge of property, or the whole length. Mrs. Herndon responded that it is not the full length.

Bridget said that there is a creek with drainage & we have it on our survey of our property of where the drainage goes out to Turkey Creek. Bridget also said if you come to her property when it rains that her pasture is full & the drainage ditch, the rain pours off Hall Road into her property. We have replaced our driveway about 6 times. Bridget said when & if they (new property owners) build and the permits are pulled, she hopes they have to come off Sandy Creek Lane, because that is the way it was supposed to be.

Reilly asked if she talked to the Town Staff. Bridget responded, yes. Bridget said that Mrs. Herndon had paperwork that the Oak tree has to be saved to preserve the trees in the Town of Malabar, a builder told them that they are going to come through & plow the tree down. Bridget said the comment was made to everyone is that if they have money they can do what they want,

Matt Herndon 2035 Fins Lane said he wanted to follow up with what Bridget said. Mr. Herndon explained that he stopped his road at 90% approx. 530 feet from Hall Road to his property. The reason he did not continue the road is that he did not want to take down any more trees or mess with the drainage. He explained that there are concerns with the drainage, even his house was built up to today's code 8 years ago and he still has drainage problems even though he followed the Towns proper drainage plan. Mr. Herndon's concerns are that they were told when the lots were sold beyond their property they would come in through Sandy Creek Lane, it is set up for two way traffic, Fins Lane is not and there is already drainage tied in all the way to Malabar Road, easier access to get rid of the water on Sandy Creek Lane.

Mr. Herndon's other concerns are that they were required to put pipe in at the beginning of Fins Lane, that is tied in to nothing, so there is standing water. Mr. Herndon said sometimes they repaired the road themselves. Mr. Herndon is concerned with the increase of traffic and the existing drainage issue this is going to create more problems by extending Fins Lane when the new property owners could come in Sandy Creek Lane which is already set up for two way traffic and drainage.

Reilly said that they will note to have Town Engineer look at the option of Sandy Creek Lane. Mr. Herndon said he just wanted to voice his opinion on this matter.

Mr. Herndon said that his neighbor to the west of him did not give 25 ft of right of way. Mr. Herndon also stated that the proposed new property owners only want to extend the road 30 to 40 feet just to gain access to their property. Mr. Herndon said that he was required to build the road to the end of his property. They (new property owners) should be held to same standards.

Mr. Herndon said that he does not get paid back for any portion of the road he built. Reilly said that shouldn't be you should get reimbursement. Mr. Herndon said he was told by Debby at the Town that was not the case. Reilly asked what year he built his house. Herndon replied 2007.

Krieger asked Mr. Herndon if he spoke with his district Councilman Representative. Mrs. Herndon said that they have made a request. Krieger said to the best of his knowledge the road development code changes often and to get a copy of the current Ordinance for the requirements for a new property owner to develop a road.

Reilly suggested to Mr. Herndon to have a meeting with Bonnie, the Town Administrator. Ryan said to go to the Town of Malabar.org and everything in Code is available there.

William H. Hard, Jr. known as "Skip" 2560 Hard Lane, Malabar said he lived there since 1981. He said that he has a massive drainage problem. He handed out documentation to the Board. (copy to secretary for the record)

Mr. Hard said that he sent out via email to the Board pictures showing graphic pictures of water damage that he suffers whenever it rains 2 or 3 inches. Mr. Hard explained that he received data from the Town records in reference to the property on the west side of Walker Lane; he went on to explain that a gentlemen built a house in 1982, the Town issued a permit, but no CO was given, because he would not deed the west half of Walker Lane to the Town to complete Walker Lane. In the data he received from the Town there was a memo from Council and Mr. Torpe that recommended giving the man a CO. Mr. Hard believed that no CO has been given to date. There is no leverage today to take that 25 feet on the west side of Walker Lane, that is important because Mr. Hard said that the Town Engineer has wanted to put a major ditch to intersect the drainage coming from the west side of I-95 and ends up flooding most of the SW section of Malabar without that ditch we are stuck where we are.

Mr. Hard explained to the Board about the drainage route from I-95 where the culvert goes under I-95 to the east, the issue is I-95 it is like a big dam and the culvert is the one out flow from the dam. Reilly said the water flows NE. Mr. Hard said it sure does. Mr. Hard said he has been here time and time again for the same issue; the problem is that he lives in a sparsely populated section of Malabar. Hard was one of the first to build and those that built after him built their house pad higher, so they have flooded yards not houses. Mr. Hard told Board that at one time he had 10" in his garage during a rain storm.

Reilly asked Mr. Hard what is the solution, the Town's solution. Mr. Hard replied to somehow get a ditch built along Walker Lane. Mr. Hard spoke about the house on the south end of Walker Lane that has an Atz Road address, but use Walker Lane as ingress/egress to access their property. Mr. Hard did not know if the Town could put up a barrier prohibiting the property owner from using Walker Lane.

Reilly said that if you built a ditch on the west side of Walker Lane up to Atz Road, what would Raising Cane farm say? Mr. Hard replied that they have worked with Karl (Beatty) in the past. Mr. Hard said ideally that is what should be done, pull a ditch through Raising Cane farms and connect to the ditch at Hall Road and all the way back to Walker Lane and intercede from I-95 ditch and take it all north.

Reilly said to get a satellite view and have a solution and give it to the Town, have a meeting with Bonnie, Town Administrator.

Krieger suggested using Cason Lane for major ditch, Cason Lane to Atz Road to intercept water. Krieger suggested you don't have to have a major ditch if you have two minor ones and sometimes a swale is better than a ditch. Krieger said that Cason Lane appears to be a full width road and appears to have the area to work on the right of way for drainage.

Ryan suggested to Mr. Hard to get his neighbors together to make it a collective effort.

Juliana Hirsh 1035 Malabar Road, Malabar, said on a lighter note she was here to clarify that Mr. Foster was right about when her property was closed it was 1984. She thanked Board.

John Seybold, 1830 Corey Road said there are two things he would like to discuss; it is concerning the development of Devin Lane which is being developed parallel to Alexander Lane to the east. Mr. Seybold's back lot backs up to Devin Lane.

Mr. Seybold said that his one concern is that there was a variance granted, and the variance stated the trees along Alexander Lane had to be left intact, and when the permit was issued that said that the overhanging branches could be trimmed, but not scathed by heavy equipment. Mr. Seybold said he has a large pine tree on his property that was hit with large equipment and knocked multiple branches off. Mr. Seybold said that there are restrictions on the permit and those have not been followed, he said that he contacted Denine at the Town and she said that the Town had no authority to do anything about that. Mr. Seybold said he talked to the County because the contractor is licensed through the County and they said because he is working in Malabar they have no jurisdiction.

Reilly asked Denine about the permit.

Denine explained to the Board that a permit is through Malabar for Devin Lane and that in the Variance that was approved the construction of the road can meander around the trees to construct the "country lane", things in Malabar are unique. The "country lane" which is Devin Lane is to go adjacent to Alexander Lane, so property owner could access their vacant lots. Denine explained that in the Variance it said to save as many trees as possible while constructing Devin Lane. I offered a copy of Variance to the Board.

Krieger said you only meander within a right of way, not on someone else's property. Denine said that her understanding was that Morris, Town Engineer went out and spoke to residents on Alexander Lane, due to a few calls of concern. Denine also explained that FPL was out there relocating some guy wires, we have no authority over FPL. Denine also explained the person building the road was notified by the Town to submit a letter in reference to the trees hit by equipment as far as status of damage.

Mr. Seybold showed photo's to the Board of the tree's and a fence post and he explained that the tree was inside his property line, he said it was hit by heavy equipment and this changed the whole character of the area that had nice cover and shade..

Krieger asked if the road is ½ of full width. Denine responded 25 ft with drainage on the east side. Mr. Seybold said from the back of his property line to the edge of Alexander Lane is 25 ft.

Foster said after he looked at the photos that Mr. Seybold presented it looks like the trees can be cleaned up with trimming. He asked Mr. Seybold if he spoke with equipment operator about the trees. Mr. Seybold said he did not. Mr. Seybold spoke with Councilman Korn this afternoon and Korn suggested he send a letter to the contractor.

Foster said he is very familiar with heavy equipment, and the critical thing is the roots. Mr. Seybold said he would communicate with the construction crew. Mr. Seybold is concerned with the limitations on the clearing permit and it was not followed, it would seem the Town would have an interest in pursuing that and make sure the people follow the terms of the permits that are issued.

Krieger said that there was a variance, so Mr. Seybold should have known in advance this was being constructed. The Town should know what these people are doing, our inspectors should be inspecting so they are doing what they should be doing. Krieger suggests that all work should be stopped till there is an answer. Krieger asked if all work has been stopped. Denine responded I believe the work has been stopped. Krieger asked if the Town stopped the work. Denine responded the Town has not, Krieger asked who has stopped the work, Denine responded the Fla. Fish & Wildlife, due to other issues, I believe it is with turtles on the property. Mr. Seybold said that he had information on the turtles and he understands that a few burrows were covered over and (1) was killed, that is a whole different level with the state. I believe they (property owners/contractor) are in communication with the state regarding these issues.

Mr. Seybold said he believes that there is a disconnect of how we issue permits and how we enforce the permits, and how clauses in the permits are followed.

Denine clarified to Krieger that Alexander Lane is a private drive. Mr. Seybold clarified that one of the trees that was taken down was on the center of their (property owner) lot, internal not on right of way. Mr. Seybold said there weren't any trees saved on the right of way that he was aware of, there were trees on the edge not taken down. The right of way itself, if there were any trees they were taken down.

Ryan asked who the equipment operator was reporting to. Denine responded that there was a licensed contractor that pulled the permit.

Krieger asked if there was a "bond" on the project, normally when you build a road there is a bond filed for damages. Denine tried to explain that it was taken out of Code.

Mr. Seybold said he had the engineer diagrams from St. John's; it is available on the web.

Mr. Seybold discussed the drainage on the two properties that Mr. Silver owns, they are going to have retention swales of some sort inside the property line, and the ditch is along the road. Mr. Seybold is concerned that if the swales are not maintained or subsequently filled in then his property in the back will have flooding issues. If the swales are not under the Town control and remain on private property it is going to be hard to make sure they are maintained the way they need to be. Mr. Seybold said he spoke to the design engineer and as designed it should do what it

is suppose to. The engineer told Mr. Seybold he had to approve it before it was signed off by St. John's.

Reilly asked Mr. Seybold what would be the solution to this problem.

Ball said to Mr. Seybold that after all you are telling us, you probably need to be speaking to a lawyer instead of us. Mr. Seybold said he has.

Reilly suggested to Mr. Seybold to work with the Town Staff. Denine explained that Morris Smith, Town Engineer inspects the roads. Reilly suggested Mr. Seybold meet with Morris.

Krieger suggested to have very detailed discussions with Town Councilmen, because all the Town Councilmen represent all districts in this town.

Reilly suggested scheduling weekly meetings with Bonnie, Town Administrator and having a group of concerned citizens, that way you know what is going on and demand to see what is going on.

Mr. Herndon said there has been lack of communication on her (Bonnie) part. I have sent her several emails and phone calls when we tried to get Fins Lane fixed and never received a call back from her (Bonnie). Mrs. Herndon said after 3 months they came into face her, and Bonnie said why didn't you just email me. Mr. Herndon told her that he did and she did not return emails or phone calls. Reilly suggested having a Council person with you for your meeting.

Krieger said since there is a hold on the project for Devin Lane, he suggested a "Stop Work Order".

Motion: Krieger/ Ryan Recommendation to Council/ staff To put "stop Work" order on Devin Lane project **Vote:** All Ayes.

Denine explained to the Board for clarification purposes to look at all the information concerning issues spoke under "Public"

E. PRESENTATION:

F. ACTION:

G. DISCUSSION:

(Discussion Item #3 was discussed before #2)

2. Continue Discussion on Future Land Use Maps and Defining R/LC

Exhibit:	Agenda Report No. 2
Recommendation:	Discussion

The Board discussed page 15/70 the revision done by Ritter.

Reilly went over page 22/79 the suggestion that Krieger had for "additional points of discussion"

- 1.) Reevaluating six units in R /LC, Reilly said no it already went to Council.
- 2.) Yes in mixed you can always go higher to a higher use
- 3.) New development would be built to Code.

Ritter/Ball discussed the size and scale of a business, and said that is what will determine the location.

Reilly suggested that we us the words "similar to" because you cannot list every business and it will be up to the Board.

*note the February 12, 2014 PZ Agenda book is missing page 117 & 118 from the District Provisions (Code Book) include in next meeting 7/9/14 label pages 26a & 26/58

Ritter explained to the Board that the amount of businesses vs residential will regulate itself by the Chart in R/LC verbiage.

Reilly suggested for next meeting to review pages 15-16- &17 of 79,

3. Discuss Off-Street Parking and Contiguous Parking
Exhibit: Agenda Report No. 3
Recommendation: Discussion

Krieger discussed page 54/70 about off street parking, parking lot should be defined as a contiguous area not divided by a road or right of way with speeds greater than 35mph. Krieger explained to Board the definition of parking in Malabar right now does not have anything about contiguous parking to the best of my knowledge.

Krieger read #6 on page 65/ 79, Krieger /Reilly suggested "zoning" instead of district.

Krieger suggested changing the definition page to separate parking, parking is contiguous or off site parking.

Ryan suggested "off site" and decide whether a major road is allowed to separate "off street" parking from a business, it would have to be approved by the Town. Krieger said that there should be something about safety too,

Reilly said if we use #6 on page 65/79 and add words with safety to that verbiage for review for next meeting.

The Board discussed different verbiage from other municipalities about off street parking.

Ritter/Krieger suggested different definitions for the following:

- Parking (contiguous) property where business is owned (same owner)
- Off street:
- Off site:
- On street parking- none

Reilly suggested coming up with definitions for the next meeting.

H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:

Krieger suggested roads and drainage improvements for additional items to discuss.

I. PUBLIC

(Moved to after Consent Agenda)

J. OLD BUSINESS/NEW BUSINESS:

Krieger asked about the EEL's property clearing off of Malabar Road on north side. Denine explained this is for fire breaks and that a permit was pulled, the state trumps the Town.

Ryan asked what is going on with the AAA Storage facility still using the side gate for business. Denine said it was suggested by chair to talk to Bonnie (Town Administrator) at last meeting.

Denine told Board that the permit was submitted for the "Malabar Local Market" on south US HWY 1.

The Board discussed the Ordinance that was approved by Council regarding Town Board guide lines.

Reilly suggested that people should have gone to the Council meetings to fight it. Reilly said there were two meetings that addressed this and the Agenda's were posted. Ritter said she was there. Krieger said he had requested from this Board to ask Town Council to send us a copy before the 1st reading. Denine said on 5/14/14 she gave this Board copies of the draft Ordinance. Denine explained that Council was providing verbiage and it was not going to the Boards.

K. ADJOURN

There being no further business to discuss, **MOTION:** Krieger/Ball to adjourn this meeting. **Vote:** All Ayes. The meeting adjourned 10:02P.M.

BY:

Patrick T. Reilly
Pat Reilly, Chair

Denine Sherear
Denine Sherear, P&Z Board Secretary

7/9/14
Date Approved: as corrected