

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING  
SEPTEMBER 24, 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, EXCUSED DON KRIEGER GRANT BALL
ALTERNATE:	GEORGE FOSTER
ALTERNATE:	VACANT
BOARD SECRETARY:	DENINE SHEREAR

**ADDITIONAL ATTENDEES:**

TOWN CLERK/TREASURER	DEBBY FRANKLIN
TOWN ENGINEER	MORRIS SMITH

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

Reilly said Bud Ryan is excused and George Foster will be voting in his place.

Krieger suggested putting "Discussion" Items 4 & 5 in the "Old Business" for time purposes.

**D. CONSENT AGENDA:**

- |                               |                                    |
|-------------------------------|------------------------------------|
| <b>1. Approval of Minutes</b> | Planning and Zoning Meeting – none |
| <b>Exhibit:</b>               | Agenda Report No. 1                |
| <b>Recommendation:</b>        | Motion to Approve                  |

**E. PUBLIC HEARINGS: 2**

- |   |                     |
|---|---------------------|
| <b>2. Land Use Amendment &amp; Zoning Change for Parcel 28-38-31-00-00750 aka 1300 Highway 1, Malabar, FL 32950; Request to change from Residential/Limited Commercial (R/LC) to Commercial General (CG):</b> |                     |
| Applicant: KellWill, LLC, represented by Mr. William Carmine.   |                     |
| <b>Exhibit:</b>   | Agenda Report No. 2 |
| <b>Recommendation:</b>  | Action to Council   |

Land Use Map Amendment and Zoning Change for A 3.22 acre site, Parcel 28-38-31-00-00750, aka 1300 Highway 1, Malabar, Florida 32950 from Residential/Limited Commercial (R/LC) to Commercial General (CG); applicant is the KellWill, LLC represented by Willy Carmine. Ord 2014-14

Chair stated the request and called applicant/representative to podium. Mr. William Carmine, 1320 Stack Road, who explained why he wanted the land use map and zoning change on the property so he could relocate his Route1 Motor Sports business to Malabar. He had come before P&Z Board before he purchased the property and after receiving conceptual support, he is ready to move forward.

George asked if he also owns Malabar Mo's. Yes. George said it is a good place and thinks he would be a good neighbor. Grant said some of the concerns are more about how you develop the property more than the zoning. He has been by his current business and noticed applicant receives deliveries that are off loaded by stopping in Hwy 1.

Carmine said he currently leases .75 of an acre. They are busting at the seams at current location. He grew up here and wants to put his 2<sup>nd</sup> business in the Town he loves. The proposed site is 3.25 acres. Grant asked if he was going to put adequate access so they don't have to stop on Hwy 1. Yes, he will have enough property so they can get off the highway accept deliveries.

Don asked if the goods are considered sporting goods. Willy said yes, they could be; power sports, 3-wheelers, seadoos, ATV and utility vehicles. Don asked not big boats? No, not at this time and it is pretty unlikely for the future. In Brevard County they are considered a small business. Don asked about the environmental issue since there is an extreme slope. Willy stated the elevation at Hwy 1 is about 22 feet. He has ordered the topo and will be doing the environmental survey based on the outcome of this request.

Liz said if it a specialty business, why not keep as RLC? The footprint of building is over the limit for RLC (4000sf). Liz said that the table says that is max per 20,000sf so he could really have 12,000sf. Chair asked if he had plans for east side? No. Don said a better zoning would be as CL.

Chair then opened it to the public.

Jim Milucky, 1280 Highway 1, has property to the north and has owned for 12 years; he works and resides there. He is concerned being in a small business, with limited hours and residences on two of his four sides. Changing to CG is so wide open he would like to encourage P&Z to discuss and consider, specialty, conditional use, or one jump not two in intensity. His intent is to share with P&Z that once the zoning is changed to CG the applicant could sell it. They went through a similar kind of request recently on Babcock. Granted there are more residences in that area.

George asked Milucky if there is any sort of "meeting in the middle" with Mr. Carmine related to a buffer area between properties or maybe a surety bond for his action. Milucky said he reached out at least four times to meet with applicant with no response. Why should they negotiate now?

Don asked if this applicant was able to construct his plan and if it was a less intense zoning would he support the project? Milucky said tentatively yes, but he needs to do more study before answering definitively.

Chair then closed the public hearing and brought it back to Board for discussion.

Chair said to Board, if you make a motion, you must support the motion; seconder does not.

MOTION: George / Liz to recommend to Council approval of the Land Use Map Amendment and Zoning change for the 3.22 acre parcel ID 28-38-31-00-00750 aka 1300 Highway 1 from RLC to CG with the condition that a Developers Agreement be recorded to state that if it is not developed as proposed for his Route 1 Motor Sports business then the land use and zoning would not be recognized as CG and would remain RLC.

Chair answered Don's question. Applicant is asking for CG. Per Article 1-2.6, he cannot put it under specialty shop or sporting goods (Art III, Section 1-3.1.O.) It is a marine type activity. RLC and CL both have a maximum floor area of 4000sf. Don discloses that he also got a notice, as he owns property within the radius. He is not against the project, but is concerned with the other uses that can go in a CG zoning down the road. George said it abuts CG zoning on the south and west. Don disagreed saying the railroad and SR514 separate them.

Engineer Morris Smith said CL not intended large scale retail, repair and service. Don said there are so many inconsistencies in classifications; it should be able to go there with a conditional use or special exception. Put conditions on it. Liz said it includes repair of vehicles.

George said the building he wants to construct would clearly be in violation in the RLC. There is no question that he can't do it in RLC. He is a good, clean, neat business and has had no problem. He has been a good neighbor. George supports him moving his business here and approving the request to change the land use and zoning.

Grant said the concern is if he doesn't go forward with his project and it is sold and becomes a 24 hour business. Town Engineer Smith asked if the Town has used a developer's agreement. Franklin said yes. Town Engineer said they could craft a document that would restrict only that use on the property.

Carmine said he does not have a problem with what Engineer Smith said. It is not his intent to do anything other than build his business there so he can grow. He is young and would want to pass on his business to his children.

Chair asked Debby about getting a legal opinion on attaching such a condition. Franklin thought it could be done but would get legal opinion before the 10/6/14 Council meeting. Liz said they all feel his intentions are true. Don said they could make the recommendation to allow this use in the CL zoning.

George said the Chairman and staff have said that CG is the only zoning that would allow him to put his business there. There are no alternatives. If we want him to come, we have to approve the request. George said they also have the assurance from the staff that there will be a developer's agreement.

ROLL VOTE: Krieger, Nay; Reilly, Aye; Foster, Aye; Ball, Aye; Ritter, Aye. Motion passed 4 to 1.

3. **Request to Vacate 375' of Fins Lane Right-of-Way Between Malabar Road and Hall Road:** Applicants Federico & Teresa Calderon.  
**Exhibit:** Agenda Report No. 3  
**Recommendation:** Action to Council

Request to Vacate 375' of Fins Lane ROW Between Malabar and Hall Roads: Applicants: Federico and Teresa Calderon, 1075 Glencove Drive, Palm Bay, FL 32907. They are owners of lots 70, 65 and 66 north of the approved terminus of Fins Lane that he was granted a variance to only have to

improve 100 feet of roadway in order to gain access to the parcels they wish to join into one parcel and develop into a 4.33 ranchette. (adding .43 onto the tax rolls (.33 from Calderon and .10 from Parcel 78).

Chair asked for disclosures: Liz & Pat drove down and looked at site.

The two lots to the north of Calderon's (Parcels 40 and 50) can be accessed from existing Sandy Creek Lane.

Federico Calderon presented his request and explained they were granted variance to build short so the road does not divide their property. He explained the current road improvement was done short by about 75 feet. He has to improve that portion and an additional 25 feet in front of parcel 70 in order to get a driveway in. They have not decided where on their property they will build the house but the driveway will be off of the 25 foot extension in front of lot 70.

Chair asked for staff comments. Engineer Morris Smith said this is an excellent way to keep the local streets from becoming collectors.

Chair then opened it to the public.

Brian Vail, Smith Lane, his only concern is where the road extend; what about utilities? Calderon that will depend on where they decide to put the house. They have to pay for the install of the poles and give easement. Parcels 40 and 50 would get their utilities from Sandy Creek Lane. Then Brian asked about drainage. Calderon explained they have walked the property themselves with Town Engineer and paid to have an environmental study done so they are aware of the ditch blockages. Once the ditches are cleaned and the pipes are in, the drainage in the whole area will be better. The ditches are all on private properties and if everyone would clean their ditches that would improve the drainage dramatically.

The owner of lot 77 – (fronts Eva Lane) is happy not to have two through streets but is concerned with drainage. He explained that the drainage goes through all of their properties and when the ditches are clogged the water in his backyard is deep.

Chair then closed the public hearing and brought it back to Board for discussion.

Staff (Town Clerk) explained that this is the first step. After this Board's recommendation it will go to Council on October 6, 2014 for final action. If approved, then the applicant can start on the ROW improvement for the appx 100' necessary to plan a driveway into lot 70.

**MOTION: George / Grant to recommend to Council to approve the vacate request of 375 feet of Fins Lane by applicant's Federico and Teresa Calderon.**

Discussion: Don is not in favor of vacates but if it helps Town and helps the property owner he could support it. Don said if you vacate you should be required to allow for cul-de-sacs. Chair said it is not relevant. Liz said there should be cul-de-sacs at the end of all dead end roads. Don said applicants should be required to allow for cul-de-sacs at the south end of Sandy Creek Lane and also at the north end of Fins Lane.

George said Mr. Calderon should not be burdened with this requirement unless everyone is made to comply with this requirement. George said the Town Engineer has explained that the drainage will be dealt with and the lots will all have access. George said the community is in agreement; it protects both streets from becoming through roads. Chair said there is no need to have two through streets next to each other.

Don said we have talked about the problem of access for fire trucks for 35 – 40 years.

ROLL VOTE: Krieger, Nay; Reilly, Aye; Foster, Aye; Ball, Aye; Ritter, Nay. Motion passed 3 to 2.

**F. ACTION:**

**G. DISCUSSION:**

**4. Continue Discussion re: Off-Street and Contiguous Parking**

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

No discussion

**5. Continue Discussion re: Future Land Use Maps and Defining R/LC**

**Exhibit:** Agenda Report No. 5  
**Recommendation:** Discussion

No discussion

**6. Discuss Roads & Drainage in Malabar**

**Exhibit:** Agenda Report No. 6  
**Recommendation:** Discussion

No discussion

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

Reilly suggested to eliminate Item #6 for Discussion- Roads & Drainage (Board is done discussing).

**I. PUBLIC**

Dezman Cook 813 Glencove Ave, Palm Bay FL. The reason why they were here is to discuss property at 2605 Malabar Road; they want to open a senior assisted living facility. He said it was already zoned for this in the past. The realtor told him to come to P&Z to discuss this idea. Ritter asked how many beds? Cook replies 10 to 12 beds. Ritter said it was a day care not an assisted living facility.

Krieger asked Cook if he had received paper work from staff relating to assisted living facilities (ALF) and requirements.

Reilly said to see how much property is required for an ALF in this area. Reilly also said to look at the Ordinance that was passed in January for ALF's in the Town of Malabar.

Teresa Lee 7770 SE Federal Hwy, Hobe Sound, FL The realtor proposed the whole 24 acres for the lease.

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

Old Business:

The Board discussed about the legal opinion on minute taking. Ball said it is an undo burden for the secretary to go beyond what is required. Reilly said if you read what the lawyer said there is no "minimum required", just taking notes and it is not a requirement to record. Reilly said the answer is the best job Denine can do is what it is. Ball said the key points should be included in the minutes not verbatim. Krieger added that we were going to do that in the next minutes. Ball would like to see the minutes before the next meeting. Ball said we should abbreviate the minutes.

New Business:

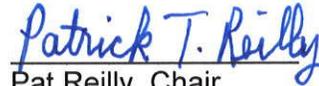
Foster asked if we have gone through the FLUM & R/LC completely. Reilly replied that Don feels there is more business basically the verbiage of R/LC needs to be discussed.

**K. ADJOURN**

There being no further business to discuss, **MOTION:** Krieger / Ritter to adjourn this meeting.

**Vote:** All Ayes. The meeting adjourned 9:15P.M.

BY:

  
Pat Reilly, Chair

  
Denine Sherear, P&Z Board Secretary

  
Date Approved: as corrected