

MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
November 12, 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
	WAYNE ABARE
	VACANT
ALTERNATE:	GEORGE FOSTER
ALTERNATE:	VACANT
BOARD SECRETARY:	DENINE SHEREAR

C. NOMINATION

Ritter / Foster nominated Pat Reilly for Chair. Vote: All Ayes.

Abare / Ryan nominated Liz Ritter for Vice-Chair. Vote: All Ayes.

D. ADDITIONS/DELETIONS/CHANGES:

Chair said that George Foster will be a voting Member tonight due to two openings.

Reilly had additional items for H "Discussion":

- 1a. The Sunshine Law
- 1b. The US 1 Land Use & Zoning Change Ordinance (2014-018)
- 1c. To Recommend George Foster as a regular PZ Board Member

E. CONSENT AGENDA:

- | | |
|-------------------------------|---------------------------------------|
| 1. Approval of Minutes | Planning and Zoning Meeting – 10/8/14 |
| Exhibit: | Agenda Report No. 1 |
| Recommendation: | Motion to Approve |

MOTION: Ritter / Ryan To Recommend Approval of Minutes of 10/8/14 as corrected **Vote: All Ayes.** **Corrections:** Ritter page 5/27 5th sentence peruse = porous

F. PUBLIC HEARING:

G. ACTION:

H. DISCUSSION:

1a. The Sunshine Law

Reilly stated that we are a Board and we need to follow the Sunshine Laws that we have been given several times in the packets. There is no discussion amongst Board Members after the close of meetings (concerning Agenda items) only in a public forum.

1b. The Land Use/Zoning change for US 1 R/LC to CG (1300 Highway 1)

Reilly explained that it passed Council twice at "Public Hearings" 3 to 2 votes both times, but the Mayor "vetoed" it, at the last Council meeting when they tried to override the "veto" there was only four Council Members present and it has to be 4 to 1 to override the "veto". It failed 2 to 2.

Reilly suggested placing a new Ordinance in front of the new Council. I would like a recommendation for an approval from this Board to send Council a new Ord. Reilly explained that when an Ordinance gets "vetoed" it has to come back as a new Ordinance. The new Ordinance does address the east side of US 1 where the R/LC to CG does not apply to the riverside. (this was one of the Mayors complaints) Reilly suggested sending this new ordinance to Council where it will have to be another "Public Hearing."

Reilly said he would like to make a recommendation to Council so they can approve this new Ordinance so they can move forward. The lawyer may say it has to come back to P&Z as a "Public Hearing". Reilly pointed out that it already passed on this Board 4 to 1 in favor.

Reilly explained to the Board that there is nothing to discuss, it was discussed for three (3) months, and it is just a matter of reapplying the Ordinance to the new Council. The verbiage got changed per Mayors veto to exclude the east side of US 1. Ritter said that was not the only issue. Reilly said that was a major issue.

Abare said the Mayor had a problem with the 3.3 acres and said they could build the 5,000 sq ft without going to CG.

Ritter suggested that we need to look at our table and define it better. Reilly explained that they did not want big box stores along US1 that is why they rezoned it all R/LC. The 4,000 sq ft was intended for ½ acre.

The Board discussed clarifying R/LC.

Ritter said the project is not what is bothering people it the CG zoning. Ritter said the people that she heard from over the "veto" were glad the Mayor did what he did, it is spot zoning.

Reilly said that it is not spot zoning. Ritter said there is no CG contiguous to this property. Reilly said on the west side. Ritter said there is railroad right of way. Reilly said technically it is land against land.

Abare said that the Attorney didn't think it was spot zoning but didn't defend that. Foster said that the Attorney commented that this project would not be allowed in any other zoning other than CG. Reilly said that was because of square footage of the building.

Ritter said we should correct the 4,000 sq ft it would be more appropriate than changing the zoning. Reilly said the applicant comes in under the present laws. Ritter said the present laws are not interpreted correctly.

Abare said if we do correct the problem how would you go about it. Reilly explained using the .2 density against the acreage. Reilly said the marine store is not meant for R/LC it is meant for CG zoning.

Abare said that Willy's Attorney said the Mayor should not have had the authority to veto, it is quasi-judicial so his (Mayor) veto powers do not apply to those decisions. Abare said that Willy might have a reasonable argument. Abare said give the new Council an opportunity.

Ryan made an observation that we have a member in the audience who might shed the light on the issue.

Don Krieger 2345 Lineberry Lane, Ryan said that he had voted "no" on this project. Krieger said he didn't believe that CG is the only zoning designation that he can operate under. KellWill project is not primarily marine; he is a motor type device. The CG zoning is too extreme of a jump. I am never against anyone doing with their land what they want to do. There is no limitation also this Board was working on R/LC definition. The R/LC may become the largest zoning in this Town. Krieger said he didn't see a problem with the project just a problem with spot zoning. It is spot zoning by the technical definition. There is a conflict.

Krieger said in the past the changes that were made are very complicated and problems will come up it does not mean you have to put the highest zoning possible.

Krieger said the gentleman (Willy Carmine) said specifically he is not using the waterfront for a Marine purpose. Reilly said general retail sales are only allowed in CG zoning. It does not fit R/LC even as it stands.

Abare said so much of zoning is subject to interpretation of this Board and Council. Reilly said that we should re-introduce what we have with the new Council.

Abare suggested sending a draft Ordinance to Council saying that our current zoning table appears to be in conflict with itself. In the R/LC the .2 and the 4,000 sq ft are in conflict with each other as far as larger parcels.

The Board discussed extensively Table 1.3-3a and R/LC definition.

MOTION: Abare/ Ritter Recommend to Council to Approve the application for a 10,000 sq ft building under the existing R/LC zoning after PZ's close review there was considerable discussion about Table 1-3.3(A) (Size & Dimension Regulations) about Commercial maximum building area of 4,000 sq ft the maximum pertaining to the 20,000 sq ft size whereas the maximum building coverage of .20 would pertain to total lot size.

Roll Call Vote: Abare, Aye; Reilly, Aye; Ryan, Aye; Foster, Aye; Ritter, Aye **Motion carried 5 to 0**
Discussion:

The consensus of the Board the "Motion" is a good solution.

1c. To Recommend to Council to make George Foster a Permanent P&Z Board Member

MOTION: Abare / Ryan Recommend Council Appoint Alternate Member George Foster as a Permanent Board Member. **Vote:** All Ayes

2. Continue Discussion re: Off-Street and Contiguous Parking

Exhibit: Agenda Report No. 2

Recommendation: Discussion

Reilly said this is all pretty much completed except for reviewing.

Page 16/27(P&Z Packet 11/12/14)

Foster suggested definition for:

Porous: Part-time for temporary like Church, Park, Fair, and Festival Parking must be up to specification of the Town Engineer, Town Planner, and Building Official a to composition, compaction, drainage and grade.

Sherear explained the definition presently is one that she provided the Board suggested combining the two definitions and bring back to next meeting and numbering 1 & 2 for Non Porous & Porous.

The Board discussed Section 1.9-2 (page 15/27 P&Z Packet 11/12/14)

Ritter made correction under "C" second line took out "with sale" and put in Not intended for.

Board would like clean copy of Section 1.9.2 with underline & cross outs only.

Krieger said bicycles are self-propelled vehicle & golf carts all require a driver.

Definition:

Motor Vehicle/Vehicle – page 19/27 & 20/27 (PZ 11/12/14)

Ritter recommended for alphabetical order of *Parking* definitions.

The Board discussed definitions & asked staff to review the state definitions for “motor vehicles & vehicle.

- 3. Continue Discussion re: Future Land Use Maps and Defining R/LC**
- Exhibit:** Agenda Report No. 3
- Recommendation:** Discussion

Ritter suggested on page 25/27 (P&Z Packet 11/12/14)

R/LC definition corrected 3rd line “limited/low....”

Ritter suggested anything over 10,000 sq ft should come before the Board and Council for review.

Abare suggested that any building over the 4,000 sq ft would come before the Board for Conditional Use to protect the Town.

Reilly said to work on the paragraph for a 20,000 sq ft lot anything greater than 4,000 is a Conditional Use.

The Board discussed on page 27/27 (P&Z Packet of 11/12/14) and clarifying the 4,000sq ft /or per 20,000 sq ft.lot size. Add a sentence that states:

- Any building larger than 4,000 sq ft would be considered a Condition Use.

Add verbiage under R/LC.

I. ADDITIONAL ITEMS FOR FUTURE MEETINGS:

- Required Signage for Site Plan Review (Ryan)
- Public Notice requirements (Ryan)

J. PUBLIC

Don Krieger 2345 Line berry Lane discussed that in the newspaper (Florida Today) on Nov.4, 2014 about “overwhelmed sewers” it discussed that most infrastructure in Brevard County is terribly strained. The concern is about extending a sewer system into a rural town when the agencies are already stressed. The difference between City & Town, a city has infrastructure and a Town has very limited infrastructure. Krieger discussed about when the franchise (City of Palm Bay) was written it was to maintain what did already exist, not for future extensions. He reviewed the state statutes.

Krieger suggested in the future a moratorium on any future projects or buildings that would extend a sewer system into our town until the franchise is made to protect the people of the town. Krieger said he is worried about the infrastructure in Brevard is stressed.

Krieger stated that 24 million gallons of was dumped by Brevard County water system into Indian River Lagoon. We have the cleanest section of the whole area of the Indian River Lagoon of the whole system.

Other things Krieger discussed:

- To extend notification on projects beyond the 500 ft

- Draft minutes are used for recommendation and a lot of quick activity has been taking
- Parking in high density areas, if you build a house (2 spaces) double the parking suggested when you look at site plans you should look at the parking- RM 6 And R/LC are residential zonings not commercial

Krieger said that an ALF is an apartment house, it is a conditional use. Reilly explained to Krieger it has been taking care of.

Krieger said he liked being on the Zoning Board and he appreciated former Council people that just don't go home they continue to work with the Town like Wayne and Liz. Reilly said to Krieger that he hoped that he represented District 3 and represented the Town of Malabar while he makes his decisions on Council. Krieger responded that he always will.

Juliana Hirsch 1035 Malabar Road, Moratoriums are not good unless there is a real good reason for it. There are so many builders in bankruptcy it is terrible, don't consider a Moratorium until you know there is a reason for it.

K. OLD BUSINESS/NEW BUSINESS:

Old Business: none

New Business:

Reference to canceling meetings:

- Wednesday November 26, 2014 the meeting before Thanksgiving Cancelled Ryan/ Ritter
- Wednesday December 24, 2014 the meeting before Christmas Holiday Cancelled Ryan/ Ritter

Motion: Ryan/Ritter to Recommend to Cancel the following P&Z Meetings due to Holidays November 26, 2014 & December 24, 2014 All Vote: All Ayes

There is only one more meeting December 10, 2014. Reilly would like to finish Off-Street Parking, and in January send it to Council.

Sherear explained to the Board about the site plan that might be coming before them on December 10th. They (Elhoim Christian Church) on Malabar Road west of Marie Street on north side had introduced the project awhile ago.

Abare asked about having the PZ Meetings at 7:00 PM. The consensus of the Board said that would not work for them.

L. ADJOURN

There being no further business to discuss, **MOTION: Ryan/Ritter to adjourn this meeting. Vote: All Ayes.** The meeting adjourned 9:40 P.M.

BY:


Pat Reilly, Chair


Denine Sherear, P&Z Board Secretary

12/10/14
Date Approved: as presented