

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
December 10, 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
	GEORGE FOSTER
ALTERNATE:	VACANT
ALTERNATE:	VACANT
BOARD SECRETARY:	DENINE SHEREAR
RECORDING SECRETARY	DEBBY FRANKLIN

ADDITIONAL ATTENDEES: Keith Mills, Town Planner and Debby Franklin, Town Clerk, Recording Secretary for Items 2 & 3.

C. ADDITIONS/DELETIONS/CHANGES:

D. CONSENT AGENDA:

- | | | |
|----|----------------------------|--|
| 1. | Approval of Minutes | Planning and Zoning Meeting – 11/12/14 |
| | Exhibit: | Agenda Report No. 1 |
| | Recommendation: | Motion to Approve |

Motion: Ritter/Abare To Recommend Approval of Minutes of 11/12/14 as presented All Vote: Aye

E. PUBLIC HEARING:

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

Chair stated this is a quasi-judicial hearing and the rules and procedures have been adopted to follow. He also reminded Board to only judge the request as the code stands now and as the Comp Plan stands now not on any assumed future land use or zoning change that might come before them at a later date. Ex-Parte communications have to be disclosed; if members have spoken to persons or visited the site they need to state who, what, where and when. Chair noted that no disclosures were made.

Chair stated the request and called applicant/representative to podium. Mr. William Carmine, 1320 Stack Road, Palm Bay, Florida. Is coming before the Board a second time. He reapplied due to the misconception that the first application included the property on the east side of Highway 1. He will answer any questions.

Public Hearing open:

Hans Kemmler, 2785 Malabar Road. Wants to support the applicant's request for the change in zoning. He has patronized Malabar Mo's before Mr. Carmine took it over. When he took over he got rid of the bad patrons that would not follow the rules. When he leased the building for his Motor Sports business in Grant at the time of the recession and has made it a success. He also mentioned a blight study was done years ago that showed the need for the plan for development of SR514 and Highway 1. The news it made in Malabar was the cost of the study rather than the findings. He doubts many people bothered to read it but he did. He will refer to that study again on Monday. Result: He wants to express his support of the project and will be at Council on Monday to speak in favor of it there as well.

Jim Milucky, 1280 Highway 1, handed Denine a flash drive and asked her to flip through pictures of properties along Highway 1 from Yellow Dog property to the south end of Town. When he got to his property, he said he has lived at his house for a dozen years.

He then showed pictures of marine businesses along highway 1. His point was the applicant's place does not look at all like that. He thinks Council misunderstood his point when he showed them at Council.

Jim then pointed out some contradictions in the minutes. Reference to opinions vs. facts. It was his opinion that the Clerk wrote her opinion in the agenda report when she stated the area along Highway 1 had historically been Highway Commercial. Historically you could go back to when the Indians lived along the river it wasn't commercial. Contrary to Chair's opinion – there is a lot to discuss – package went from 15 pages to 50 pages.

He said the minutes from Oct 6, Oct 20 and Nov 3 council meetings weren't up on the website and he asked how P&Z could have their meeting on Nov 12 if they had not read those minutes. If you haven't read the minutes you are not ready to evaluate the request. The applicant was asked to consider a lesser zoning. He doesn't think they have all the information. The history is nice but what is important is the current zoning.

For the record pg 34 of 124 in package; the applicant's property "does abut" commercial land – Jim said those are simply opinions of PZ Chair, Clerk and Planner; they are not facts.

He then said RLC – he won't drone on about the risks of changing zoning to CG. He referenced material he had handed out to Board and said to look at "A" in the drawing he handed out – west and east of railroad.

Directly related to staff, the December 10 agenda report (pg 8 of 124) regarding his statement about a change of heart - it would be ok if it was a factual representation, but it is not. Check the minutes on what he said.

He asked Board to step back and consider the consequences. If this is approved then Highway 1 corridor will then be developed commercially. He said he knows of a parcel in the area that is only 75 feet wide and if you have a 30 foot side setback then the building could only be 15 wide. He

thinks the applicant got derailed by staff. If he paid twice he would be mad. Consider denial of CG change and allow him to build in existing zoning. Not his intent to offend anyone.

Hans Kemmler, had two comments. It was put forth at a council meeting that it would be a strip club if the zoning was changed. That is not valid. He has a successful business and would be an asset to this area.

Barb Kemmler, also has a business out of their home and has CG next door. She has known Mr. Carmine personally and professionally since 1992. She hopes the Town supports this request.

Mr. Carmine, to clarify, it is in black and white in the code and the comp plan that for his use CG zoning is required. It was not a scrivener's error. There is a piece of property in CG that has 40% building coverage and Councilman Krieger has a CG parcel surrounded by residential property.

Mr. Carmine said all this does is open the door so he can apply for site plan.

Hans Kemmler, stated if he was on the council and something was coming before them that was near his property he would not vote.
Public Hearing closed.

MOTION: Abare / Foster to recommend Council approval of the Land Use Map Amendment and Zoning change for the WEST SIDE ONLY of the 3+/- acre parcel ID 28-38-31-00-00750 aka 1300 Highway 1 from RLC to CG.

Discussion: Wayne said it is the 2nd attempt. He was told the history of R/LC and it was to give relief to existing homeowners. Wayne said the reason he is here again is because the Mayor vetoed it. Both P&Z and Council supported this use. This is three acres and it would be a good location. What harm would be caused by having commercial development on Highway 1.

Foster said his history and track record as a business owner is spotless. He thanks Franklin for her tremendous packet of information. No negative feedback from internet search. He is a good neighbor and a good citizen. There seems to be no objection to have him have his business. Foster said it would be a tremendous asset of the town. It is documented throughout package that this use is only permitted in CG.

Liz agreed with the business being located there; it is the zoning. This is about zoning. She did not know why it is back here when they made a recommendation to Council and it never made it to Council. When it is changed it's changed for good. Chair repeated his opening statement. The request should be judged on the current LDC and Comp Plan. Liz said we are rolling over things. She wanted to know why their recommendation was not considered by Council. Why is the applicant reapplying? Said things are being rushed through and the Code just needs to be tweaked. Bud agreed with everything that Liz said and said there are residents next door to this property and they have to be considered.

Wayne asked Liz why she thinks it is error in interpretation. Liz said that is why it was vetoed. She was misinformed that there could be a developer's agreement. That is why she supported it the first time. She then found out from the attorney that they can't do a developer's agreement to restrict the use. Liz said why couldn't Council approve their recommendation and let him proceed.

Chair asked Planner about spot zoning and "abutting" property. Keith Mills said spot zoning that surrounding properties do not have same zoning. Even an interstate can separate something like this would not be considered spot zoning. Keith had asked staff for the outcome of the future plans

for Highway 1 and Malabar Road. He learned they are still working on it. The Town needs to decide what they want for development on these corridors.

Keith said it sounds like each faction is not opposed to what they are proposing. In reference to the Developer's Agreement, that sounds like contract zoning and that is not allowed. Keith said Abare was referring to changing the zoning code to accommodate this use. This is a zoning issue right now. If they can tweak the zoning then that would resolve it. Liz said nothing happened. He is hearing bits and pieces of it and hasn't really been involved with the process. Courts have determined, and attorney can present case law; but this would not be spot zoning.

What is the indecision on what the town really wants on SR514 and US1. That should be decided.

Hypothetically, if you rezone a parcel and then a neighboring property comes in and they ask for a zoning change; each is considered as separate requests and it is not spot zoning. What does the town want in this corridor? It sounds like this board tried to make an effort.

Chair said contrary to what Mr. Milucky said about CG he is incorrect. Under code you can't have residential use in CG so any properties that currently have homes on them would not be considered for rezoning to CG. Only vacant land would qualify for a rezoning to CG.

Wayne talked to a lot of residents. Most of the people here would want no development. He also gave Debby high marks for doing the research and putting the package together. There is some history here that they should know.

Planner said if someone comes in to change the land use and town approves it and subsequently they ask for the zoning to be changed to be in conformance with land use. It could have a structure and then it would be a nonconforming.

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

F. ACTION:

3. **Elhoim Christian Church Site Plan Review for two Parcels 28-37-36-00-00759 (1.62 acres) & 28-37-36-00-00760(1.38 acres) aka temporary address: 2170 Malabar Road, Malabar FL 32950**
Applicant: Mr. Scott Glaubitz, P.E. with BSE Consultants, Inc. representing Elhoim Christian Church
Exhibit: Agenda Report No.3
Recommendation: Action to Council

Chair called applicant's agent to podium.
They received comments back from the Third Party Fire review and responded.

Liz talked about doors on dumpster enclosures. Doors are never closed. Silly little question.

George looked on internet regarding citizen comments. Currently in Palm Bay. He is troubled by the lack of community comments.

He would feel a lot better if he had comments. Did they bring anything good to the community?

Liz asked about slab under water treatment.

Pat said what is missing:

Front rear and side elevations

Const. material and color

Traffic impact statement – weds and Sun, everyday, etc?

Staff: Planner said his other comments had been addressed. They responded and he is good.

MOTION: Wayne/Liz to recommend Council approval of the Site Plan for the Church at 2170 Malabar Road,

Discussion: none

ROLL VOTE: Reilly, Aye; Ryan, Aye; Foster, Aye; Ritter, Aye; Abare, Aye. Motion passed 5 to 0.

G. DISCUSSION:

4. Directive from Council Increasing the MBC Permitted in R/LC

Exhibit: Agenda Report No. 4

Recommendation: Discussion

The Board discussed the Tables 1.3.3(A) Size & Dimension and 1.3.2 Land Use by Districts

Reilly explained in Article II & III where it said 4,000sf put in parenthesis reference to (20,000 sf), then .2 total coverage. Ritter said the .2's are already there and the maximum is refereeing to ½ acre.

Reilly said the problem is the two Tables (1.3.3(A) & 1.3.2, Land Development Code, and Comp Plan are all together they all state 4,000 sf maximum there is no .2, it does not care how big the property is.

Reilly said the reason is past Board Members did not want no big buildings on US 1 (not bigger than 4,000 sf). Reilly explained that the history is that US 1 was strip zoned all the way down it was B1 & B2 zoning then the residents had trouble and to help the residence it was changes to R/LC.

Reilly explained in order to change the Comp Plan, Land Development, and all Tables and Charts you have to make property owners understand they can put a bigger building on R/LC based on .2 densities for commercial land only. The mistake may have been that the .2 shouldn't have been in this chart.

Ritter explained that even with the bigger buildings in R/LC there is limited types of businesses you go to CG you not limiting anything.

The Board discussed the intent of R/LC is you can live there and any business that go into R/LC are compatible with the residential.

Abare explained that the value of what this Board will be doing in the next few months is to define what types of businesses make sense along US 1.

Sherear made a statement for the record page 57&58 of 124 (P&Z Agenda Packet 12/10/14) about residential and limited development is intended for commercial district.

The Board discussed that the Comp Plan and Land Development Code verbiage is almost identical they need to be the same. Reilly said the Comp Plan has served us well since 1962.

Abare suggested to have an official workshop and advertise it have people come in and tell us what they thinks should be allowed, this way if they don't like what the Board does at least they were given the opportunity to be heard. Reilly said that the Board should discuss this first.

Ritter and Abare discussed that building area is the foot print being 4,000sf; it could be two stories which is 8,000sf. Reilly said there are units per acre also. The Board discussed the ratio of businesses vs residences.

Ryan asked do we get direction from Council what should be along US 1 or does this Board come up with it.

Reilly asked the Board what column are they in favor of, are you in favor of the max. living area of 4,000 (is per ½ acre) or the .2 density is per ½ acre in Art II & Art III.

- 1.) The .20%
- 2.) 4,000 max. foot print (the intent)

The Board discussed again to have a workshop and have it very well advertised with mailing and signs, web site.

Ryan said that things change. Foster said property rights go to the constitution you have a right to use the property to your benefit.

Reilly said that we need to move forward and pursue both options:

- 1.) Change Comp Plan to allow greater than 4, 000sf MBC to .20 or max floor area per(1/2 acre) and add verbiage
- 2.) Go to straight .20%

Reilly suggested for the next meeting:

- Alternatives what to do, with all interested parties- workshop
- Give choices

- 1.) .20% no matter what size (MBC) Max. Building Coverage –foot print (Page 80/124)PZ 12/10/14
- 2.) 4000sf max no matter how big lot size (gross)
- 3.) 4000 max first ½ acre with a factor for a ½ acre or acre TBD and every acre after that

Review list of what is allowed in R/LC.

- H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:**
I. PUBLIC: none
J. OLD BUSINESS/NEW BUSINESS:

Old Business: none
New Business: none

K. ADJOURN

There being no further business to discuss, **MOTION:** Ryan/Ritter to adjourn this meeting. **Vote:** All Ayes. The meeting adjourned 10:15P.M.

BY:

Patrick T. Reilly
Pat Reilly, Chair

Denise Sherear
Denise Sherear, P&Z Board Secretary

11/28/15
Date Approved: as corrected