

“The following draft minutes are subject to changes and/or revisions by the Planning and Zoning Board and shall not be considered the official minutes until approved by the P&Z Board.”

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
November 19, 2015 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 Vice Chair Liz Ritter.

B. ROLL CALL:

CHAIR:	PAT REILLY
VICE-CHAIR:	LIZ RITTER
BOARD MEMBERS:	BUD RYAN
	WAYNE ABARE
	GEORGE FOSTER
ALTERNATE:	DOUG DIAL, EXCUSED
ALTERNATE:	VACANT
BOARD SECRETARY:	DENINE SHEREAR
RECORDING SECRETARY:	

ADDITIONAL ATTENDEES:

B. NOMINATION FOR CHAIR AND VICE CHAIR

Motion: Ritter/Abare To nominate Pat Reilly for Chair. All Vote: Aye

Motion: Ryan/Abare To nominate Liz Ritter for Vice Chair Roll Call Vote: Foster; Nay, Abare; Aye, Reilly; Aye. Ryan; Aye.

Motion Carried 3 to 1 for Liz Ritter for Vice Chair

Motion: Ritter/ Foster To nominate Wayne Abare for Vice Chair (no vote Ritter was nominated first)

C. ADDITIONS/DELETIONS/CHANGES: none

D. CONSENT AGENDA:

- | | |
|-------------------------------|---|
| 1. Approval of Minutes | Planning and Zoning Meeting – 10/28/15
Planning and Zoning Meeting – 9/23/15 not ready |
| Exhibit: | Agenda Report No. 1 |
| Recommendation: | Request Approval |

Motion: Ritter/Ryan: To Recommend Approval Minutes of 10/28/15 as corrected All Vote: Aye

Ritter Corrections:

Page 4/21 3rd parag last word in sentence ~~weeds~~ should be work

Page 4/21 4th parag after2015 Florida Statutes in two places the second sentence ~~next~~ should be in the

Page 4/21 10th parag. How much RM4 ~~us is~~

Page 4/21 7th Parag. incomplete sentence, listen to tape for clarification

Abare Corrections

Page 4/21 last sentence Wayne agrees the default should be 500 ft. and Abandonment of Improved & Unimproved of existing ROW should be more.

Reilly to correct "sb" and replace with should be.

E. PUBLIC HEARING: none

F. ACTION:

G. DISCUSSION:

2. Continue Discussion to Amending Assisted Living Facilities (ALF) Ordinance 2014-01 ref: to Office/Institutional (OI) Zoning.

Exhibit: Agenda Report No. 2

Recommendation: Discussion

Juliana Hirsch 1035 Malabar Road, Malabar, discussed that Assisted Living Facility (ALF) being non for profit, Hirsch was there at meeting when Mr. Foley discussed his ALF facility on Malabar Road and it would be a taxed based facility. We need to make sure that it is, and not going to be non for profit, Malabar is in trouble enough for no taxes. It should all be looked at if a company is making money they need to pay taxes. If it is not in our code we should look at this, we get too many people with no taxes. If you are going to make a profit in this Town you have to pay your taxes.

Reilly said that when a person comes in for site plan they do not have to say whether it is for profit or not. It is with the license for the state. Hirsch said you can do an Ordinance or something that if a business is making money they need to pay their taxes.

Ryan added that a lot of times how they become non for profit is the company takes the profit and pays their executives so they come out to zero. Hirsch said that this Town should be smart enough to take action to get taxes if a business is making a profit.

Abare said there is cost associated with buildings, we really can't control this.

Juliana said that Foley said his ALF he would pay taxes. Reilly said that the only way we could do this is to put in our Code that we only allow for profit facilities, but it would be challenged.

Reilly said we can ask the attorney if the Town can require that an ALF's be a for profit only business.

Question for the Attorney:

Can the Town require a non for profit or not for profit in ALF's and be excluded from our tax base, can we (the Town) include a statement in the Ordinance for the ALF i.e. for profit ALF only. How can this be enforced? Can the ALF change after it has been in business awhile to a non for profit?

Juliana Hirsch stated that it can be brought up to the attorney as a hardship that all this property that the EEL's (Environmentally Endangered Land) owns in Malabar has been taken off the tax base.

Foster said if we are more business friendly there would be more revenue and we would have more activity on every level. We have a long history of making it difficult for business to be here. Abare agreed, Ritter said because we have no water and sewer. Ryan asked Foster why he moved here and Foster responded he purchased a property on Malabar Road but didn't think it was going to be 50 years before anything was going to be built there. Ritter responded things can be built there you just have to bring the water/sewer. Foster said it should not be required that every business be required to have water/sewer. Ritter/Ryan responded it is not Malabar it is the health dept. and the state. Abare said he is with Foster that a little bit of business in this Town would be good.

Reilly and Board discussed the map on page 7/21 map showing ALF Facilities. (Hand out from Ryan at last meeting). Reilly said that the state of Florida has rules that ALF's cannot be too close to each other. Ritter asked about the certificate of need for ALF's. Reilly said this is a good map to have.

The Board discussed that this would all have to go through the state to see if area allowed ALF's in specific locations.

Foster said that he spoke to a number of people, staff, and Council the majority of Council does not agree with taking "OI" out of no one spending the night in "OI" zoning. That there might be one or two of Town Officials that might be in favor of policy of "no spending the night in "OI" but, he was told that more than half of Council says that is exactly where ALF belongs in "OI" the majority of Council does not want PZ Board to take ALF's out of "OI". Reilly/ Ritter explained to Foster that PZ Board was directed by Council in writing to take ALF's out of our "OI" zoning.

Reilly said we have in writing that residential is not allowed in "OI" unless we get a new letter from Council that they do want ALF's in "OI". Foster said that he was told that might have been a recommendation of a former Council.

Abare said there is a lot of talk about where to put things, he asked Board to look at page 19/21 Table 1-3.2 Land Use By Districts.

Abare said that you buy property for single family and you would like to stay that way, we are not anti we have plenty of land where people can do what they want. If we start sticking things in single family areas that do not belong, I believe it is the wrong thing to do; we have places to put ALF's.

Ryan said it was never intended to be that way about living in "OI". Ryan suggested that we as homeowners need to see who would be affected by all this.

Abare said if the Town of Malabar does not have the right to rule over the Table 1-3.2 then we need to just go home. The point is instead of the people coming in here and leading them on for a conditional use we can give them direction on what is allowed on Table 1-3.2 and what areas.

Ritter discussed the email from Attorney Bohne page 17/18 of 21. Ritter said that per the email from the Attorney the state rules over somethings whether we like it or not, unless we are more liberal.

Ritter discussed per state Statutes ALF's are allowed, but in Malabar we have listed as Conditional Uses, so it comes before the Board for approval.

The Board extensively discussed corrections for the ALF Ordinance 2014-01: There are three (3) changes:

1.) Part I Long Term Care Facilities

“Long Term care facility” only means a nursing home facility or assisted living facility, adult family care home, board and health care facility, or any other similar residential adult care facility (additional reference: see Florida Statutes, Title XXX, Chapter 429, Social Welfare)

2.) Section 1-3.2 Land Use By Districts- Table 1-3.2 page 2 remove the “C” under OI for Nursing Homes

3.) Section 1-20.2 Definitions of term page 1 Assisted Living Facility 12-B should be 13.B

The board discussed extensively ALF Ord 2014-01, Part I to clarify verbiage, to not allow ALF in “OI”.

Reilly said this Agenda Item will be for “Action” at the next PZ Meeting 12/9/2015.

- 3. Continue Discussion: The 500 ft. Radius notification for Public Hearings**
- Exhibit:** Agenda Report No. 3
- Recommendation:** Discussion

Reilly and Board discussed Radius Notifications, the PZ Board made a list of seven (7) subjects that require radius notifications and at what distance at the PZ Meeting on 10/28/2015.

Foster said the item on #8 Abandonment of Improved & Unimproved of existing ROW should go to 1,000 ft. It is a big deal. I don’t think 500 ft. is enough. The consensus of the Board is:

Abare; ok with 1,000 ft.

Reilly; ?

Ryan; error on side of caution, all that is affected

Ritter; ok with 1,000 ft.

Reilly explained that the radius goes from the property boarder of all sides.

Homework: Next meeting: 12/9/15

* Sherear will provide “Articles” from Code Book, PZ Board will determine where to locate the list of subjects requiring radius notification.

- 4. Continue Discussion: Article III- District Provisions Table 1-3.2 Land Use by District Community Facilities- Reference to Churches & “Conditional Uses”**
- Exhibit:** Agenda Report No. 4
- Recommendation:** Discussion

Abare suggested removing all “C”s under residential in Table 1-3.2 Land Use By District for Churches, Synagogues and Other Places of Worship.

The Board discussed Attorney’s opinion on page 17/21 in referencing to not treating Churches any different than any other business and it is not a residence.

Reilly said this Agenda Item will be for “Action” at the next PZ Meeting 12/9/2015.

H. ADDITIONAL ITEMS FOR FUTURE MEETING

- Foster would like to discuss Table 1-3.2 for a “Discussion Item” review R/LC columns

Reilly said to Foster to provide a chart of why you want to do this so it can be put as an Agenda Item. Look at R/LC in Table 1-3.2 tell what you want specifically and why and submit to Denine. Foster is against the blanks, he would like to bring up to "C" conditional uses. Reilly explained that a few months ago this was all turned in to Council for R/LC.

- Ritter asked if there is any way that we as a Town can limit the storage unit business, Reilly said the problem is, what can we do with Land without sewer or water?

I. PUBLIC

Juliana Hirsch 1035 Malabar Road, she had a question about Office Institutional, she asked what does the word Institution mean? Hirsch said it is a place where people stay, so in Office Institution if you don't want people to stay overnight you need to take the Institution out of the office. Hirsch said to change the wording of Institution. Reilly responded with definition from Article II code book.

Hirsch discussed:

- The 500 feet you measure outer boundaries and I had this done and the County starts from the center.
- The 1,000 feet should not apply to Brook Hollow etc., 500 feet is enough and includes a lot of people.

J. OLD BUSINESS/NEW BUSINESS:

Old Business:

New Business: none

Sherear told PZ Board about the upcoming Public Hearing for BOA on 12/15/2015 in Country Cove requesting a setback of 4 feet Variance for pool & screen enclosure, property backs up to conservation land.

K. ADJOURN

There being no further business to discuss, MOTION: Abare / Ritter to adjourn this meeting. Vote: All Ayes. The meeting adjourned 9:38 P.M.

BY:

Patrick Reilly, Vice Chair

Denine Sherear, Board Secretary

Date Approved: as presented/corrected