

BOARD OF ADJUSTMENT PUBLIC HEARING



**TUESDAY, JUNE 27, 2006
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA**

AGENDA

We are very glad you have joined us for tonight's Board of Adjustment Meeting. Meeting agendas can be accessed on the town's website (www.townofmalabar.org). The public will have an opportunity to speak after presentations to the Board by the Petitioner/Applicant and Town Staff. The public may be allowed to speak at other times, at the discretion of the Chairperson. When you are recognized, please state your name and address and speak directly into the microphone. Please address all comments and questions to the Chairperson.

Town Attorney: Karl Bohne, Jr., P.A.

Regular Members: Paul Marpil, Chair, Anne Varco, Vice Chair, Carl Conklin, Barry Alexander, Pat Benington

Alternate Members: Vacant – please apply at Clerk's office

Purpose: The Board of Adjustment renders written decisions regarding a) zoning variances and, b) appeals to administrative decisions of the Town of Malabar Land Development Code.

Other: Copies of the staff report are available to the public for inspection approximately one week prior to the hearing. Interested parties and citizens may review the case file at the Building Department, Town Hall, 2725 Malabar Road, during normal business hours. Please call 723-3261 x 16 for more information.

A. CALL TO ORDER AND ROLL CALL

1. Approval of Minutes – April 18, 2006

B. OLD BUSINESS – None

C. NEW BUSINESS

1. **Variance:** Request for variance per Chapter 13, Section 13-38 (c) regarding road improvement
Case #: 2006- 2
Owner/Agent: Mark and Patricia Ireland (Owner); No agent
Location: Parcel 29-37-12-00-00753.0-0000
Staff Representative: Norm Smith, Building Official; Bill Stephenson, Town Engineer; Keith Mills, Planning Consultant

Summary: Applicants are requesting a variance to the road improvement requirement regarding 1,200 lineal feet of right-of-way along their 20-acre parcel on the north end of the existing Kramer Lane, more specifically, the right-of-way to the east of Parcel 753 in Section 12, Township 29, Range 37. They are requesting Board approval for postponement of the requirement to improve the right-of-way prior to issuing permits. They claim as their hardship the multiple valuable wetlands within the right-of-way that would be destroyed in order to put in the road and the associated cost to do so. They do

not believe there will be development in this area for a long time due to these wetlands and the wetlands to the north within the unimproved right-of-way known as Old Mission Road. They are willing to dedicate the additional right-of-way the Code requires along Kramer Lane. They want to build a single family home on the property.

D. STAFF REPORTS

E. MEMBER REPORTS

F. ADJOURNMENT **Next Meeting –**

**NOTICE OF RIGHT OF APPEAL
OF BOARD OF ADJUSTMENT DECISIONS**

In accordance with the Town of Malabar Land Development Code Article XII, any person aggrieved may appeal a decision of the Board of Adjustment in Circuit Court of Brevard County. An appeal must be filed within 30 days after the filing of such decision with the Town Clerk, but not thereafter. Provisions for review of Board of Adjustment decisions must be in a manner provided by the laws of the State of Florida.

“Person aggrieved” shall be in accordance with the Town of Malabar Land Development Code.

Any person desiring to appeal any decision made by the Board of Adjustment with respect to any matter considered at such meeting or hearing, will need a record of the proceedings, and for such purposes, must insure that a verbatim record and transcript of the proceeding is made in a form acceptable for official court proceedings, which record includes the testimony and evidence upon which the appeal is to be based. It shall be the responsibility of the person desiring to appeal any decision to prepare a verbatim record and transcript at his/her own expense, as the City does not provide one.

ATTN: PERSONS WITH DISABILITIES. In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations to participate in this proceeding shall, at least forty-eight (48) hours prior to the meeting, contact the Office of the Town Clerk at (321) 727-7764 x 12.

**TOWN OF MALABAR – BOARD OF ADJUSTMENT
PUBLIC HEARING
6/27/06 MEETING MINUTES**

This meeting of the Malabar Board of Adjustment was held at Town Hall at 2725 Malabar Road. The meeting was called to order at by the Chair, Paul Marpil, at 7:30PM.

Roll Call:

Paul Marpil, Chairman
Pat Benington, excused
Anne Varco. Vice Chair
Carl Conklin
Barry Alexander

Ed Booth, Town Admin, excused
Norman Smith, Bldg Ofc, excused
vacant, Alt. # 1
vacant, Alt, # 2
Debby Franklin, Secretary

Secretary stated Benington is excused and that this Board had a quorum.

MOTION: Varco / Conklin to approve minutes of April 18, 2006. Vote: All Aye

AGENDA ITEMS:

A. CALL TO ORDER AND ROLL CALL – see above

B. OLD BUSINESS - none

C. NEW BUSINESS

1. **Variance:** Request for variance per Chapter 13, Section 13-38 (c) regarding road improvement
Case #: 2006- 2
Owner/Agent: Mark and Patricia Ireland (Owner); No agent
Location: Parcel 29-37-12-00-00753.0-0000
Staff Representative: Memo from Bill Stephenson, Town Engineer
Draft Order from Karl Bohne, Town Attorney
Additional: Letter from adjacent property owner

Chair Marpil asked applicant to present.

Mark Ireland, currently resides at 490 Jolly Roger Drive, Satellite Beach and owns the property in question on Kramer lane. Currently have access at the north end of Kramer Lane via a driveway, permitted by the Building Department, and requests to use the same driveway to build a home. His main reason for requesting this is: To extend Kramer Lane 1200' we would have to cross through some wetlands and to destroy natural wetlands there are no sound reasons to at this time – he has no need to at this time. He would be agreeable to pay for his share of the road when it does go in. To destroy wetlands needlessly would be a waste. He thinks it will be a long time before it will be developed. He has contacted all of the other owners and can't see a road going in there for quite some time.

Chair asked members to make any required Disclosures:

Member Barry Alexander disclosed he has seen the property from both Kramer and Old Mission. Member Conklin saw the Kramer end of the property, but did not speak to

anyone, Member Varco drove by south end. Chair Marpil disclosed he walked the entire property – from the sign outside the gate to the north end at Old Mission.

Member Alexander asked where applicant proposed to put his house. They are not sure yet. Much will be determined by outcome of this meeting. Ireland had considered accessing from Old Mission, but that way goes through three wetlands.

Applicant is willing to give up the necessary right-of-way along Kramer. Chair Marpil asked if he had read the draft Order. Ireland said yes but wanted to ask about the 50K deposit. He is willing to legally sign something to make him responsible without having to pay 50K now that could be held for five or ten or more years.

Chair Marpil mentioned memo from engineer regarding detouring around the wetland basically around the driveway. This Board has the option of doing anything. They need to find a happy median between the Town, the residents and the applicants. Chair explained the idea for the request for a 50K deposit for a specific time. We have a lot of wetlands in Malabar. We have in the past granted variances that now land beyond it then desires development. The person who was given the variance then has no obligation to pay his share of road improvement.

Chair Marpil suggested putting specific requirements to dedicate r-o-w around the wetlands. The Malabar Code requires an applicant to improve the road right-of-way to the furthest point of the property to be approved prior to issuing a permit. If the second lot north desires to develop the road, the applicant should be responsible for sharing the costs to the furthest point of the lot. Same for each lot on the east side, all the way up. There is also another wetland area further up. So that would be more mitigation with St. Johns.

Member Conklin stated it appeared the applicant had adequate access within the existing right-of-way. From the audience, Bobbi Moccia stated that the right-of-way area is considered a wetland – it has been dry recently, but when it rains, the shallowest part of the wetland is five feet from his fence post. Ireland stated you can see the water line on the fence posts. She stated the abutting properties are owned by her. Chair Marpil Chair stated that he will open it to the neighbors shortly. Chair Marpil explained the reason for the 50K deposit to be escrowed is that it is an estimate, in today's dollars, of the construction cost for 1200' of road. The Town is trying to address the issue of fairness when granting a variance to still hold the applicant responsible for his share of future road improvement costs.

No other questions from Board. Chair Marpil asked applicant if he would be willing to dedicate addition r-o-w around the existing wetland – a curve or swinging arc around the western edge of the wetlands and back to the eastern property edge. It would have to be wide enough for emergency vehicles. Ireland would certainly consider it; he doesn't want to destroy the wetlands, but he doesn't want to give up three acres. He does not know what that would entail. No other questions.

Chair opened Public Hearing to neighbors and general public:

Bobbi Moccia lives at 3135 Kramer Lane and wants to explain that to the east of his fence line is where her property begins. She bought that parcel which is mostly wetland and one other. She has no plans to develop them. When it rains all the water runs

down into the wetland. She doesn't want to give up any r-o-w and never plans to. She would hate to see him have to fill it in. She has contacted someone at St. Johns and was told they are not even mitigating with all the water issues they are having. She is ok with him jogging around if that is what this Board decides he should do. She will not give up any r-o-w through the wetlands. The wetlands is one of the reasons she bought there.

Elmer Hutchenson, his property is to the south and abuts up to Irelands. If anything is set aside would they be intruding onto his property? Would they be putting in a ditch line? He is not excited about giving up any r-o-w. He bought 4+ acres and bought there because he likes to be neighborly without being on top of one another. Also, on his property there is a ditch line that crosses his property and goes down to Benjamin. He has done mitigation and it is not easy. In order to get a road through there would be alot. . .

Chair Marpil asked who had accompanied Ireland. Tim Kraver, sitting next to Ireland will be hopefully building his house. Chair Marpil asked how much of the wetlands when flagged protrudes into the r-o-w - they extend to within 5 to 10 feet of the fence.

Julianna Hirsch, 1035 Malabar Road. She has concerns: by giving these little permissions, the Board is not considering all the property owners. She wants Board to look out for all the property owners – and not adversely impact them. She is sure that the applicant knew what he was buying and what the requirements would be. She does not agree with people knowing of the difficulties or the expense to deal with them when they buy the property and then asking for concessions from those rules.

Applicant Ireland does not want to get out of his responsibilities. He has tried to buy various adjacent properties and he just does not believe that those people are ready to build. He wants to keep with the Malabar theme and not destroy property like that when he has perfectly adequate access. He is willing to pay his share for road if it should develop. The ecological survey states that the best access is coming off just like he has. Should development occur and it will he will pay his share.

His house builder stated that the property owners on the east side are all individual and it will take a long time to develop. Because of the location of the wetlands, he feels that this variance request is pretty workable.

Chair Marpil mentioned the right-of-way. The right-of-way exists but if individuals don't give additional frontage the Town will never get the required 60' right-of-way. He understands applicant's position – the requirement would require a road to "nowhere.". Secretary explained that the Comp Plan and Code Book spell out what the right-of-way width should be for each type road. Some partial rights-of-way exist now and we ask property owners to dedicate additional so we reach our goal. Where rights-of-way exist, the road would still require improvement. The right-of-way under discussion does exist, and does connect to another unimproved right-of-way known as Old Mission. In that regard it is not a road to nowhere.

Chair Marpil continued: If the owner of the eighth lot up comes in and wants to develop his property, is applicant willing to dedicate the additional r-o-w? Yes. Chair Marpil suggested as a condition of granting the variance the dedication of whatever additional land around the "arc" of the wetland. That is a suggestion for the Board to think about –

this Board can require these things. He has new members and wants to explain that conditions can be attached to the variance, if it is granted. Member Alexander asked how they would get around the southern corner that belongs to Hutchinson. Secretary stated the Council recently granted the Town Administrator and Engineer certain leeway to vary the improvement requirements within a r-o-w – that may help here to avoid the corner, possibly going from 50' to 40'. Several people state that there is nowhere close to that much width available.

Chair Marpil would like to find a happy median between the Town and the applicant. Varco says that most of the people don't want to give up the wetlands or the r-o-w. Everyone seems in agreement that Old Mission or Kramer will not be developed in the near future. Neighbors here don't want the road. Marpil's feeling is that he doesn't have enough information on the width of the right-of-way at the SW corner of the property. If it were to jog in front of the current entrance, how would it jog? Who should survey road r-o-w and pay for it? Could they get something from the Building Department on how the road could be arced to come back to the east r-o-w? Chair Marpil told Board they could table it until they get enough facts to see if it could even be done.

Chair Marpil is concerned with neighbors - they have stated they don't want to give up wetlands. He asked if Ireland has looked into cost of filling in the wetland in the right-of-way. No, Ireland has not checked into it because he does not want to have to fill it in; at least not now. Ireland asked if we weren't getting ahead of things. He doesn't want to dedicate land around the west side of the wetland now and have to pay for a survey and engineering to figure out how a diversion could be built. He doesn't want to do that now. Ireland also does not want to impact neighbor Hutchinson's property.

Chair Marpil asked if he would be willing to dedicate the 18' wide driveway then he could spring it out to a wider portion. The design would have to be done by a road engineer. It would have to be wide enough for public safety. That would be a prerequisite to getting the variance. Ireland would have to dedicate and improve the curve around the wetland back to the existing r-o-w.

Member Varco suggested tabling and having the town engineer determine how much land would be required to be dedicated.

Chair Marpil stated that we have given variances so applicants could get access to their property. He further explained that this gave the applicant a free ride later on when others needed to improve the road in order to pull a permit. There was no legal thing required. That is where this 50K. deposit suggestion came in. That is what brought all of that up.

Ireland stated again he does not want to negate his responsibilities.

Table and send to engineer to do a road design and then to Council to approve the design around the wetland area and then build that area; curve will become Town r-o-w and applicant's gate and entrance would be moved to off the curved area.

That would be the steps Chair would suggest.

Ireland thinks Board is getting ahead of the problem.

Member Varco understands the applicant's position as: if a road is to be built in the future he will be willing to dedicate whatever r-o-w is necessary to get around the wetland within the right-of-way and share in the cost of the road improvement at that time. Yes.

Chair Marpil restated for Board: the applicant is asking for a variance as submitted. Applicant wants to continue to use the existing, permitted driveway to access property. Chair suggested a condition that if one of the lots to the east of applicant's parcel should want to develop, that he would be under obligation to share in the cost 50/50 of building that road, whatever the cost; even if it includes having to fill in that wetland. If the owner of the fourth lot up wanted to develop, Ireland would be required to dedicate sufficient property around the wetland to get back to the north-south right-of-way known as Kramer Lane.

Ireland is willing to stipulate that if it had to be done but would only want to dedicate the bare minimum needed to make it legal, to be determined by the town engineer, and he would only want to dedicate it if the need should ever come up. He understood that it will most likely be more expensive in the future but he is willing to accept that – he really thinks that it will not happen. He would not want the Town to get any more than is required. Chair stated that the Board can only ask for the minimum variance needed.

Chair ran through some possibilities for the Board members:

- accept the variance request as submitted, with the stipulation that at any future date when the adjacent properties will be built on the eastern side, he will share the cost equally;
- If additional road right-of-way is needed in order to transverse the wetlands, he is willing to dedicate it;

Ireland's house builder, hardship is not increased to the adjacent property owners have is not increased any more by Mark being there. Mark is not the problem – mother nature is. Board has granted relief to others. And we have the option to require conditions. The use will go from ag to residential. We have a wetland in the middle of the r-o-w. The gate size restricts any road width to 18'.

MOTION: Alexander/ Varco TO GRANT VARIANCE REQUEST AS SUBMITTED WITH FOLLOWING STIPULATIONS:

1) THAT SHOULD THE ADJACENT PROPERTIES ON THE EASTERN SIDE BE DEVELOPED, THAT HE SHARE IN THE COST OF THE ROAD IMPROVEMENT EQUALLY

AND

2) IF ADDITIONAL ROW IS NEEDED HE HAS AGREED THAT HE WILL DEDICATE SAID R-O-W EVEN IF TRANSVERSING WETLANDS.

Discussion: none

VOTE: All Aye.

Next meeting may be on August 8 or 22. Chair Marpil then mentioned the recent trouble regarding the Sunshine Law and some potential conflict on another Board. He drives it home to this Board - We are quasi judicial. They cannot speak to one another. They can look at the property in question and speak to the applicant and others but must disclose those visits or conversations.

When the Council appoints new members they give you this book (Guide to Sunshine). There is a lot of stuff missing from this pamphlet. The stuff that came up at the last council meeting is not covered in that pamphlet. The biggest point is don't talk to other members on this Board.

MOTION: Alexander/Varco to adjourn meeting. Vote: All Aye. Adjourned at 9:15 PM

Debby Franklin, Secretary Date

Paul Marpil, Chairman Date