

TOWN OF MALABAR

BOARD OF ADJUSTMENT PUBLIC HEARING JUNE 16, 2008 MEETING MINUTES 7:00P.M.

This meeting of the Malabar Board of Adjustment was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER AND ROLL CALL

The meeting was called to order at by the Chair, Paul Marpil, at 7:30PM.

B. ROLL CALL

Roll Call:

Paul Marpil, Chair

Donna Hanna, V-Chair

Carl Conklin

Barry Alexander

Pat Bennington-resigned

Jonathon Bull, Alt, # 1

Karl Bohne, Attorney

Debby Franklin, Secretary

C. CONSENT AGENDA

1. Approval of Minutes

Board of Adjustment Meeting – 4/22/07

Exhibit: Agenda Report No 1

Recommendation: Motion to Approve

MOTION: Hanna/ Conklin to approve minutes from 4/22/08 as presented

Discussion: none

Vote: All Ayes

D. VARIANCE – RE-HEARING

2. Request from James Taranto for a Re-Hearing

Applicant requests Re-Hearing on Variance request to Malabar Code of Ordinance Chapter 13, Section 13-38.C regarding road right-of-way improvement on Rebel Lane, north of Reese Road, west of Weber Road, adjacent to Parcel 783, located in Section 10, Township 29, Range 37, Malabar, Florida

Exhibit: Agenda Report No 2

Recommendation: Action

Attorney explained the reason for granting the re-hearing and the due process issue. The applicant stated he was not provided the opportunity to respond or rebut the resident's comments at the first hearing. Bohne thought it wise to allow the Board to have this meeting and allow the applicant to respond to the resident's previous comments. The applicant can provide the rebuttal he stated in his request he was not allowed to do at the earlier hearing. Then the Board can decide if the rebuttal provided evidence to grant the rehearing and reverse their earlier decision or deny the rehearing.

Chair asked if everyone understands. Yes. Chair called the applicant and asked if he understood.

Applicant James Taranto, 420 Sea Grape, Indialantic, Florida. Yes he understands now. He did not mean to state he wasn't allowed to speak. He misunderstood what the Chair was saying. He wanted to respond to the resident's comments.

Applicant handed out a packet to Board members. Attorney advised Board the information they are to consider is only his rebuttal to the resident's earlier comments. This is his opportunity to respond to the comments of the residents, Rossi and Hawkins. The Board is not to consider new evidence.

Taranto stated that regarding Ms. Rossi, she stated she does want the road to be installed because she loves the wildlife; she wants the road to be installed. In other words, she doesn't want a neighbor. Mr. Hawkins, his reason was he could not turn around a 1mil dollar piece of fire equipment on that road. You can't do that on any road in Malabar. He went down Prosperity (Lane) last month after the fires and no vehicle could turn around on it. So Mr. Hawkins point is completely irrelevant. Ms. Rossi wants to preserve wildlife and how is extending the road preserving wild life. By forcing to extend the road, it is too expensive for anyone to build the road alone. The adjacent property is grandfathered in and will not have to share in the cost of the road improvement. He has no other rebuttal.

Chair closes and brings back to Board for discussion: Chairs advises Board to only consider what Taranto had stated in his rebuttal. Attorney Bohne advised the Board that if they determine that the information just produced by applicant was sufficient to change their mind then grant the rehearing and essentially reverse the previous order.

MOTION: Alexander /Conklin to deny the request for a rehearing.
Discussion. None.

Chair called for roll call vote: Hanna, Aye; Conklin, Aye; Alexander, Aye; Bull, Aye (after question). Board Member Bull asked questions of Board Attorney – is this a taking and can they consider the information he just submitted in handout. Bohne stated the handout should be disregarded. He had the opportunity to submit that with the first hearing. The Board has the inherent right to grant a rehearing but has no statutory requirement to rehear. We allowed it due to the issue of due process. Regarding the taking – it is not a taking. We allow a building permit if they build the road. We allow the variance. His opinion is that the first hearing was properly heard. If we denied the permit after he built the road it would be a taking. It does not fit that description. The handout is not relevant.

E. NEW BUSINESS

3. Consider Procedures for Hearings

Exhibit: Agenda Report No 3

Recommendation: Action

Chair said it is basically the last two pages of the packet. The only two things to consider are, under #5 A and B - under time limits for the public to speak. Chair is looking for time limits.

MOTION: Conklin/Hanna to limit time in both A and B to ten minutes and provide a prohibition of rehearing in the procedures. Attorney clarifies that the applicant can speak for longer time and then others that want to speak are limited to the 5 or ten minutes. This would prevent persons from going on and on. Give the applicant more time. There is a case in court now challenging the time restriction on the applicant. Conklin asked if the Chair can designate the time on each

case. No. They should be in the procedures and the Board can make it more. Attorney asked Board to include in these procedures that re-hearings are not allowed. While the Board has inherent authority to provide for reconsiderations, but the procedure should state the guidelines. Bull said he would like it to go to 15 minutes. Alexander thinks ten minutes is plenty. Marpil said you could make A and B the same or grant more to a HOA that has a speaker representing many residents.

Vote: Ayes, 3; Nay, 1 (Bull) Motion approved 3 - 1.

F. ADJOURNMENT

ADJOURNMENT:

Motion: Alexander / Hanna to adjourn. **Vote:** All Ayes. Meeting adjourned at 7:30 P.M.

Debby Franklin

Debby Franklin, Secretary

Paul Marpil

Paul Marpil, Chair

4/20/2009

Date Approved:

**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.