

TOWN OF MALABAR
BOARD OF ADJUSTMENT PUBLIC HEARING
TUESDAY, MAY 31, 2016
6:00 P.M.
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

- A. **CALL TO ORDER**
- B. **ROLL CALL**
- C. **CONSENT AGENDA**
 - 1. **Approval of Minutes**
Board of Adjustment Meeting 12/15/2015
Exhibit: Agenda Report No 1
Recommendation: Motion to Approve
- D. **VARIANCE HEARING**
 - 2. **Applicant Requests a Variance to Chapter 13, Section 13-38. (C) Malabar Code of Ordinance relating to Roadway Improvement to allow Special Conditions.**
Applicants are: Mr. & Mrs. David Kello
Location: ROW Adjacent to Vacant Parcel ID: 29-37-12-00-00016.0-000.0
Aka: 2850 Smith Lane, Malabar, Florida
Exhibit: Agenda Report No 2
Recommendation: Action
- E. **NEW BUSINESS/STAFF REPORTS/MEMBER REPORTS**
- F. **ADJOURNMENT**

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

In accordance with the Town of Malabar Code Chapter 2 Article VIII Div.4 Sec 2-240, 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 Town 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.

TOWN OF MALABAR
BOARD OF ADJUSTMENT

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: May 31, 2016

Prepared By: Denine M. Sherear, Board of Adjustment Secretary

SUBJECT: Approval of minutes

BACKGROUND/HISTORY:

The minutes included for approval are from the December 15, 2015 BOA meeting. The Board of Adjustment only meets if there is a need.

The minutes reflect the testimony given and the action of the Board, and therefore only a member who was present at that meeting can make the motion to approve the minutes. Any member can second and all regular members can vote on the approval of the minutes.

ATTACHMENTS:

- Draft minutes of BOA Meeting of December 15, 2015

TOWN OF MALABAR

BOARD OF ADJUSTMENT PUBLIC HEARING

TUESDAY, DECEMBER 15, 2015 MEETING MINUTES
6:00 P.M.

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

A. CALL TO ORDER

B. ROLL CALL

David Sowards, Chair
Donna Hanna, Vice-Chair
Charles Frazee
Jim Clevenger
Joanne Korn
John Seybold, Alternate

Karl Bohne, Town Attorney, excused

Debby Franklin, Town Clk, Recording Clerk

C. CONSENT AGENDA

1. Approval of Minutes

Board of Adjustment Meeting – 10/29/2015

Exhibit: Agenda Report No 1

Recommendation: Motion to Approve

MOTION: Frazee / Korn to approve the minutes of 10/29/15 as submitted. No discussion. Chair called for the vote. **VOTE:** All Ayes.

New Business – Chair introduced new member John Seybold who will act as a alternate on this Board with the rights to discuss but can only vote in the absence of a regular member.

No old business

D. VARIANCE HEARING

Chair called all those who wished to speak, offer testimony or submit evidence to stand and be sworn in. Several members in audience stood. Staff Debby Franklin also stood and all were sworn by Chair Sowards.

Chair explained to Board Members that first they will hear from the applicants, then ask questions of them about their presentation. Board will then hear from staff. Board will then open to Public Hearing, hear from interested persons, then close Public Hearing and bring back for Board discussion. If any of Board Members have spoken to anyone or visited site they must first disclose before discussion begins.

2. Applicants request a Variance to LDC Article III, District Provisions, regarding rear setbacks for accessory structure in Residential (RS21) zoning.

Applicants are Mr. and Mrs. Mark Britt

Location: 1671 Country Cove Circle, Country Cove Subdivision, Parcel ID: 28-37-36-25-00000.0-0015, Malabar, Florida

Exhibit: Agenda Report No 2

Recommendation: Action

Chair read the request and called the applicant to podium to present.

Mr. Britt came to podium and stated request for a 4 foot variance to rear setback required in RS-21 zoning. They are requesting this in order to place a pool in their back yard. The special circumstance is that the builder originally built the home with a 55' setback from the front property line instead of 35' leaving little room in the rear of the home for a pool.

Chair asked if the Board understood what was being asked. Yes, Board understood request.

Chair asked Staff for Comments: Franklin stated they met the requirement for "special conditions" as the applicant had no involvement with the original placement of the home when constructed. Staff has no adverse comments (Bldg Official, Engineer, Attorney)

Chair opened Public Hearing. None. Chair closed Public Hearing.

Chair asked for a motion.

Motion: Hanna / Frazee to approve the requested variance of 4' from the 25' rear setback required in Town LDC code.

Discussion: none

Roll Call Vote: Donna Hanna, Aye; Jim Clevenger, Aye; Charles Frazee, Aye; Joanne Korn, Aye; David Sowards, Aye. Variance approved 5-0.

E. NEW BUSINESS/STAFF REPORTS/MEMBER REPORTS

F. ADJOURNMENT

ADJOURNMENT:

MOTION: Hanna / Frazee to adjourn. Vote: All Ayes.

Meeting adjourned at 6:20 : P.M.

BY: _____
BOA Chair David Sowards

ATTEST BY:

Debby K. Franklin, C.M.C.
Town Clerk / Treasurer

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.

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: May 31, 2016

Prepared By: Debby K. Franklin, Town Clerk/Treasurer

SUBJECT: Variance Request, Mr. & Mrs. David Kello (property owners); request a variance to Chapter 13 road improvement, in order to improve Smith Lane southward a distance of 55 feet in order to preserve existing wetlands further to the south within the right of way.

BACKGROUND/HISTORY:

This request came in to the Clerk's Office. Mr. & Mrs. David Kello has purchased three adjoining properties at the southern end of Smith Lane off of Atz Road, to build a residence. This variance request to Chapter 13 road improvement, in order to improve Smith Lane southward a distance of only 55 feet in order to preserve existing wetlands further to the south within the right of way. If at such time in the future Smith Lane should be improved the applicants agree to pay their portion of those improvement costs. The recorded order will contain this requirement.

Town Staff has reviewed this request and has no adverse comments.

ATTACHMENTS:

- Application for Variance
- Property Appraiser's Radius map
 - List of property owners within 500' radius that were notified
 - Notice sent to property owners
- Code requirements for a variance. (Section 1-13.38(C) Street Improvements)
- Staff Comments
- Legal opinion from Attorney Bohne

ACTION OPTIONS:

Staff requests approval of this request.

To: Members of the Board Of Adjustments and Whomever else it may concern:

From: David And Krista Kello of 1041 Hall Rd Malabar FL

RE: Variance Request for ROW improvement adjacent to 2850 Smith Lane

I would like to thank you in advance for your consideration of our application for a variance regarding the extension of the ROW on Smith Lane. Currently the Malabar Town Code requires that I extend the ROW to the furthest end of my lot (a total of 200 feet) that is adjacent to the road. After careful consideration and considerable amounts of research (and professional opinions) I am requesting a variance to extend Smith Lane LESS than 200 feet.

My wife and I enjoy the natural rural setting that is the backdrop of Malabar. Smith Lane is no exception. It is scattered with gorgeous scenery and wildlife which allows for tranquility and peace when taking in its views. A part of the scenery are natural wetlands that make this area truly special. In the ROW in front of my property exists a natural wetlands habitat (please see attachment from Atlantic Environmental). This natural wetland is a condition that was not created by myself and I believe it to be a special condition/circumstance that warrants being kept protected and natural. It allows the natural flow of water to be shed into an area known as "Twin Lakes" and should be preserved for the enjoyment of all that have access to it. I believe that building the ROW over the wetlands would not only ruin the rurality of that area, but would also severely impact one of the natural lakes by eliminating natural flow of water which I also believe would impact the wildlife that utilize the lake.

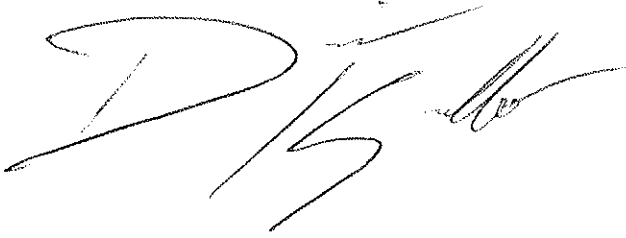
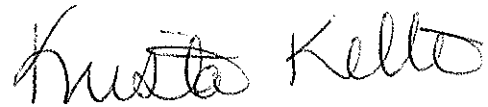
Even though the natural wetlands were flagged by an ecologist during a "dry spell" he was still able to clearly identify that a very large portion of the ROW is within wetlands beginning roughly 55' past the current end of Smith Lane. We are asking for your approval to grant us the ability to extend the road as close as reasonably possible to the wetlands without impacting it. Our plan would be to extend the road with the help of a local General Contractor who will utilize plans written by a licensed civil engineer to extend all current swales and the ROW as close as reasonably possible to that 55' line. We also plan to protect that portion of wetlands from future manmade damage by erecting an effective gate to limit traffic only to: owners of the land to the south of Smith Lane, the Town of Malabar, and (most importantly) fire and emergency services.

My wife and I pride ourselves on being great ambassadors to the Town of

Malabar. As a successful real estate agent, I find myself constantly talking about how great our community is. We consistently encourage many people who have otherwise never considered Malabar to come and experience what it is like to live in a town where you can see the stars clearly at night and hear nothing but the frogs and animals when the moon is bright. This variance would allow us to maintain that beauty while also allowing us to come closer to the nature than we love so much.

Thank you for your consideration,

David and Krista Kello

A stylized, cursive handwritten signature of David Kello, featuring a large, sweeping 'D' and 'K'.A cursive handwritten signature of Krista Kello, written in a clear, flowing script.

VARIANCE APPLICATION

This application must be completed, with required attachments, and returned to the Town Clerk's office.

Name of Applicant(s) DAVID + KRISTA Kew Tel: 321-427-4748

Mailing Address: 1041 Hall Rd Malabar FL 32950

Legal description of property covered by application:

Township 29, Range 37, Section 12, Lot/Block 8, Parcel 16, Subdivision _____

Other Legal _____

Property Address: 2850 Smith lane, Malabar FL 32950

Present zoning classification RR-65


Intended use for property Residential Home, Single family

Reason for variance request (state specific hardship or attach correspondence, drawings, etc.).

Wetlands are present in the ROW. See Attachments 1-4

Required attachments:

- Hearing fee of \$300.00 which includes advertising, administrative time and mailing. Any additional costs* shall be paid by the applicant. (*Additional costs may include, but are not limited to, engineering fees, attorney fees, etc.)
- Proof of ownership
- Site Plan
- Water and sewer facilities to be fully explained (if applicable).
- List of property owners (with tax parcel numbers) within 500 feet of referenced property as shown in the records of the County Property Appraiser. This "Radius" package is available from the Brevard County Planning and Zoning GIS Section located at the Viera government center, in Building A, Room 114, phone 321-633-2060. There is a fee for this package.



Applicant(s)

Date

TOWN OF MALABAR - VARIANCE REQUEST
(Page 2)

Where the property is not owned by the applicant, a letter/letters must be attached giving the notarized consent of the owner/owners to the applicant to request a variance on the property.

Please complete only one of the following:

I, _____, being first duly sworn, depose and say that I, _____, am the legal representative of the Owner or Lessee of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Signature of Applicant(s) _____ Date _____

Sworn and subscribed before me this _____ day of _____, 20____.

Notary Public, State of Florida
Commission No. _____ My Commission Expires _____.

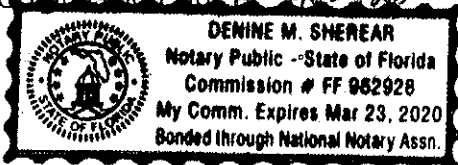
I, David KELLO, being first duly sworn, depose and say that I, David
KELLO, am the Owner of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Signature of Applicant(s) _____ Date 4/18-16

Sworn and subscribed before me this 18th day of April, 2016.

Notary Public, State of Florida
Commission No. FF 962928

My Commission Expires MAR 23, 2020



Prepared by:
Peninsula Title Services, LLC
4888 Babcock Street NE
Palm Bay, Florida 32905
File Number: 16-31259

CFN 2016063729, OR BK 7586 PAGE 1075.
Recorded 04/07/2016 at 08:34 AM, Scott Ellis, Clerk of Courts,
Brevard County
Doc ID: \$308.00 # Pgs:1

Warranty Deed

Made this 1 day of April, 2016, A.D. By **WALTER F. TIERNEY**, a single man, whose address is: 1443 Kaslo Circle NW, Palm Bay, Florida 32907, hereinafter called the grantor, to **DAVID KELLO and KRISTA KELLO**, husband and wife, whose address is: 1041 Hall Road, Malabar, Florida 32950, hereinafter called the grantee:

(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of Ten Dollars, (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Brevard County, Florida, viz:

Parcel One:
The North 200 feet of the South 400 feet of the West 1/2 of Lot 18, Section 12, Township 29 South, Range 37 East, of the plat of Florida Indian River Land Company, according to the plat thereof, as recorded in Plat Book 1, Page 165, of the Public Records of Brevard County, Florida, less the West 25 feet for road, utility and drainage right of way.

Parcel Two:
The North 200 feet of the South 400 feet of the East 1/2 of Lot 18, Section 12, Township 29 South, Range 37 East, of the plat of Florida Indian River Land Company, according to the plat thereof, as recorded in plat Book 1, Page 165, of the Public Records of Brevard County, Florida, less the East 25 feet for road, utility and drainage right of way.

Parcel Three:
The East 1/2 of the South 200 feet of Lot 18, Section 12, Township 29 South, Range 37 East, of the plat of Florida Indian River Land Company, according to the plat thereof, as recorded in Plat Book 1, Page 165, of the Public Records of Brevard County, Florida, less the East 25 feet for road, utility and drainage right of way and less the South 35 feet for road, utility and drainage right of way.

Subject to restrictions, reservations and easements of record, governmental authority, if any and taxes for the year 2016 and subsequent years.

Said property is not the homestead of the Grantor(s) under the laws and constitution of the State of Florida in that neither Grantor(s) or any members of the household of Grantor(s) reside thereon.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances.

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

[Signature]
FIRST WITNESS
Printed Name Gloria Robaina

[Signature]
WALTER F. TIERNEY
Address: 1443 Kaslo Circle NW, Palm Bay, Florida 32907

[Signature]
SECOND WITNESS
Printed Name Jarret L King

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me this 1 day of April, 2016, by **WALTER F. TIERNEY**, a single man, who is/are personally known to me or who has produced Drivers License identification.

My Commission Expires:

[Signature]
Notary Public
GLORIA ROBAINA
Notary Public - State of Florida
My Comm. # 104200
Commission # HF 104200



657 Montreal Avenue • Melbourne, FL 32935

ph 321.676.1505 • fax 321.676.1730

April 13, 2016

Mr. David Kello
1041 Hall Road
Malabar, Florida 32950

Re: Wetland Assessment
Smith Lane Right-of-Way
Malabar, Florida
AES File No. 1639

Dear Mr. Kello:

Atlantic Environmental Solutions, Inc. (AES) has completed a wetland assessment of the Smith Lane right-of-way adjacent to parcel # 29-37-12-00-00016.0-0000.00 located south of the existing terminus of Smith Lane, Malabar, Florida (Figure 1). The survey was completed on April 12, 2016. Following is a summary of our findings.

To determine the extent of St. Johns River Water Management District (SJRWMD) and U.S. Army Corps of Engineers (USACE) jurisdictional wetlands supported by this site, AES utilized the protocol outlined in Chapter 62-340.300 in the *SJRWMD Management and Storage of Surface Waters Applicant's Handbook*, and the 1987 *Corps of Engineers Wetland Delineation Manual*. These methodologies allow the designation of wetland boundaries through the examination of certain physical indicators that may be apparent in current on-site conditions. Specifically, these indicators are: predominantly hydrophytic vegetation, hydric soil characteristics, and hydrology (signs of surface saturation or inundation for a significant length of time). In addition to the analysis of these indicators, the utilized protocols recognize the value of sound scientific judgment when determining the actual extent of state and federally jurisdictional wetlands.

Based on our findings, we determined that SJRWMD and, possibly, USACE jurisdictional wetlands occupy approximately 0.06 acres of the surveyed right-of-way (Figure 1). This wetland extends off-site to the southwest which is connected to a larger freshwater marsh system. It is difficult to determine if the wetland within the right-of-way existed before the extensive off-road vehicle use within this area. Regardless, the flagged wetland area meets the jurisdictional criteria. Dominant vegetation includes torpedograss, coinwort, meadow beauty, creeping oxeye, wax myrtle, soft rush, and blue maidencane.

The rest of the right-of-way surveyed consists of uplands. Vegetation in the uplands is dominated by saw palmetto, scattered slash pine, gallberry, wax myrtle, wiregrass, and bracken fern.

Attachment #1

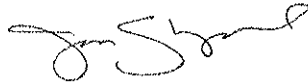
With regards to the extension of Smith Lane, a permit will need to be obtained through SJRWMD and USACE for this southern extension. SJRWMD will require mitigation for wetland impacts while USACE should not if impacts are less than 0.1 acres.

Should you desire further services or have any questions, please do not hesitate to contact our office.

Sincerely,



David G. Purkerson, MS, PWS
Senior Ecologist

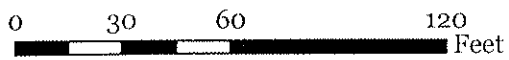


Jon H. Shepherd, MS, PWS
President/Ecologist



Project: Smith Lane ROW

Figure 1: Wetland Map

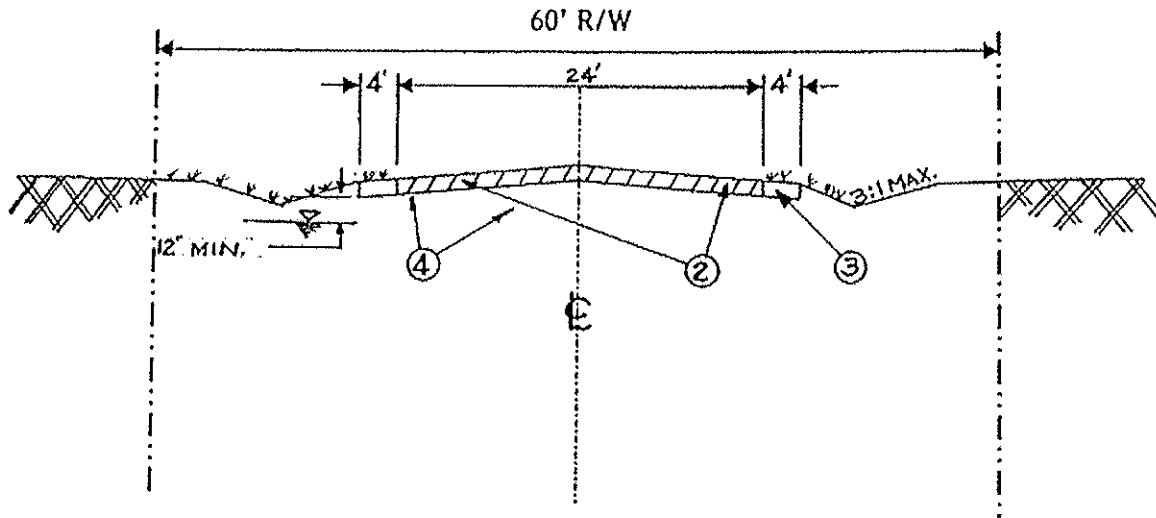


2015 Aerial, Brevard County, Florida

ATLANTIC
 ENVIRONMENTAL SOLUTIONS
 ENVIRONMENTAL PERMITTING & MITIGATION
 AES Proj #: 1639

EXHIBIT "B-2"

TYPICAL UN-PAVED ROAD SECTION FOR 60' WIDE R/W



1. CLEAR & GRUB 60' R/W EXCEPT FOR SPECIMEN TREES TO BE LEFT OUTSIDE SWALES. DISPOSE OF ALL DEBRIS.
2. STABILIZED AND MECHANICALLY MIXED 8" THICK ROAD-BASE COMPACTED TO 98% OF MAXIMUM DENSITY PER AASHTO T-180 WITH MINIMUM LBR = 40
3. STABILIZED SHOULDERS BOTH SIDES. SOD ADJACENT TO THE PAVEMENT MINIMUM 2' WIDE AND ON SWALE SLOPES.
4. SUITABLE SOILS FREE OF ORGANICS. COMPACT TO 98% DENSITY PER AASHTO T-180
5. DRAWING IS NOT TO SCALE

Exhibit B-2

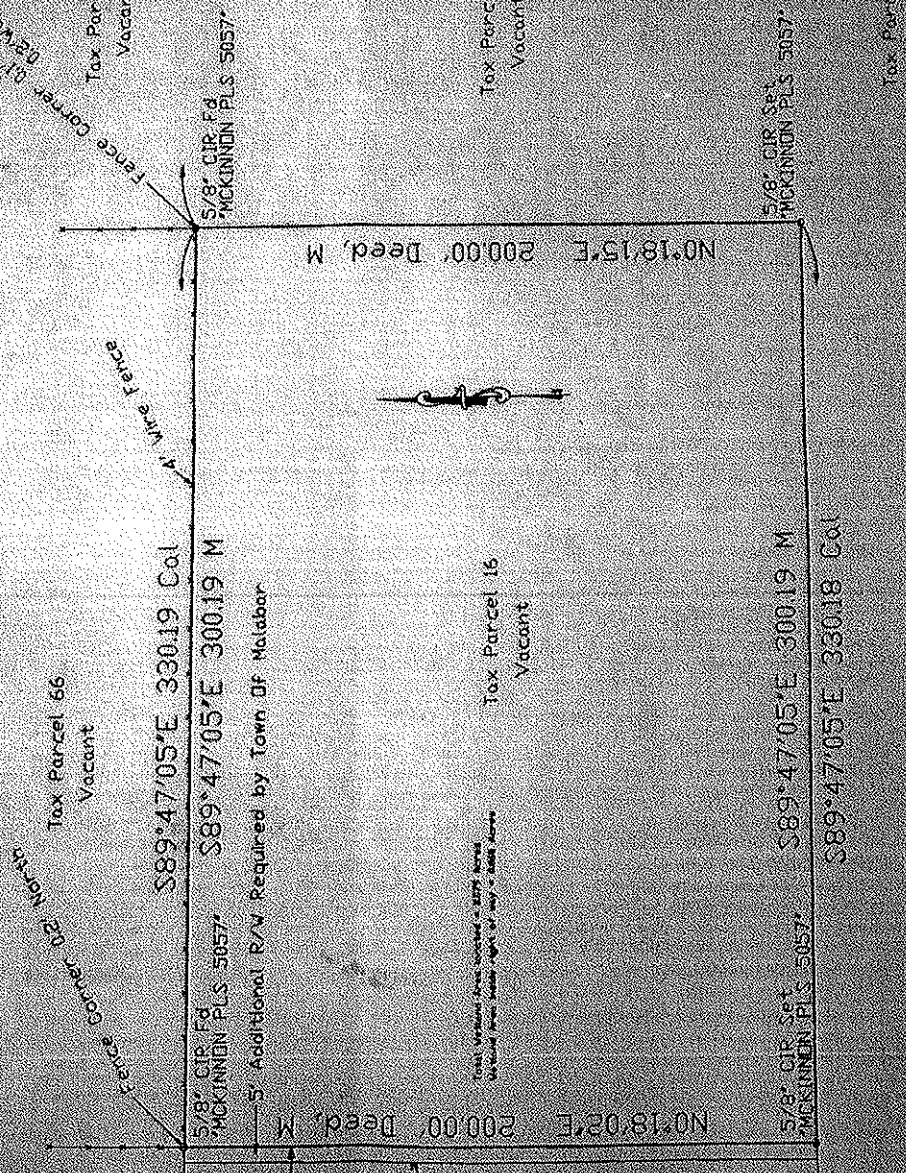
MAP OF SURVEY

C/L Atz Road North Line Section 12
 5/8" CIR Set
 MCKINNON PLS 5057

Surveyors Notes:

Flood zone X per Map # 12009C0677G revised March 17, 2014.
 The Survey Depicted Here Is Not Covered By Professional Liability Insurance. Additions or deletions to survey maps or reports by other than the signing party or parties is prohibited without written consent of the signing party or parties.
 Bearings referenced to the Centerline of Smith Lane being N0°18'02"E Assumed.
 No underground installations have been located except as shown.
 Boundary Survey completed 3/26/2016
 Wetland location completed 4/14/2016

Records of Deeds, Grants, Easements, Leases, etc. are referred to in this report and are hereby and expressly made a part of this report.



Legend
 Contour
 Found
 R/W Right of Way
 Centerline
 Professional Land Surveyor
 Measured
 CR=Corner Iron Rod
 M=Marked
 H=Hatched

Tax Parcel	Area	Notes
Tax Parcel 53	Vacant	
Tax Parcel 56	Vacant	
Tax Parcel 58	Vacant	
Tax Parcel 59	Vacant	
Tax Parcel 60	Vacant	
Tax Parcel 61	Vacant	
Tax Parcel 62	Vacant	
Tax Parcel 63	Vacant	
Tax Parcel 64	Vacant	
Tax Parcel 65	Vacant	
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Tax Parcel 91	Vacant	
Tax Parcel 92	Vacant	
Tax Parcel 93	Vacant	
Tax Parcel 94	Vacant	
Tax Parcel 95	Vacant	
Tax Parcel 96	Vacant	
Tax Parcel 97	Vacant	
Tax Parcel 98	Vacant	
Tax Parcel 99	Vacant	
Tax Parcel 100	Vacant	

CRAIG S. MCKINNON
 LAND SURVEYOR

5/24
 A. Hachmann #3

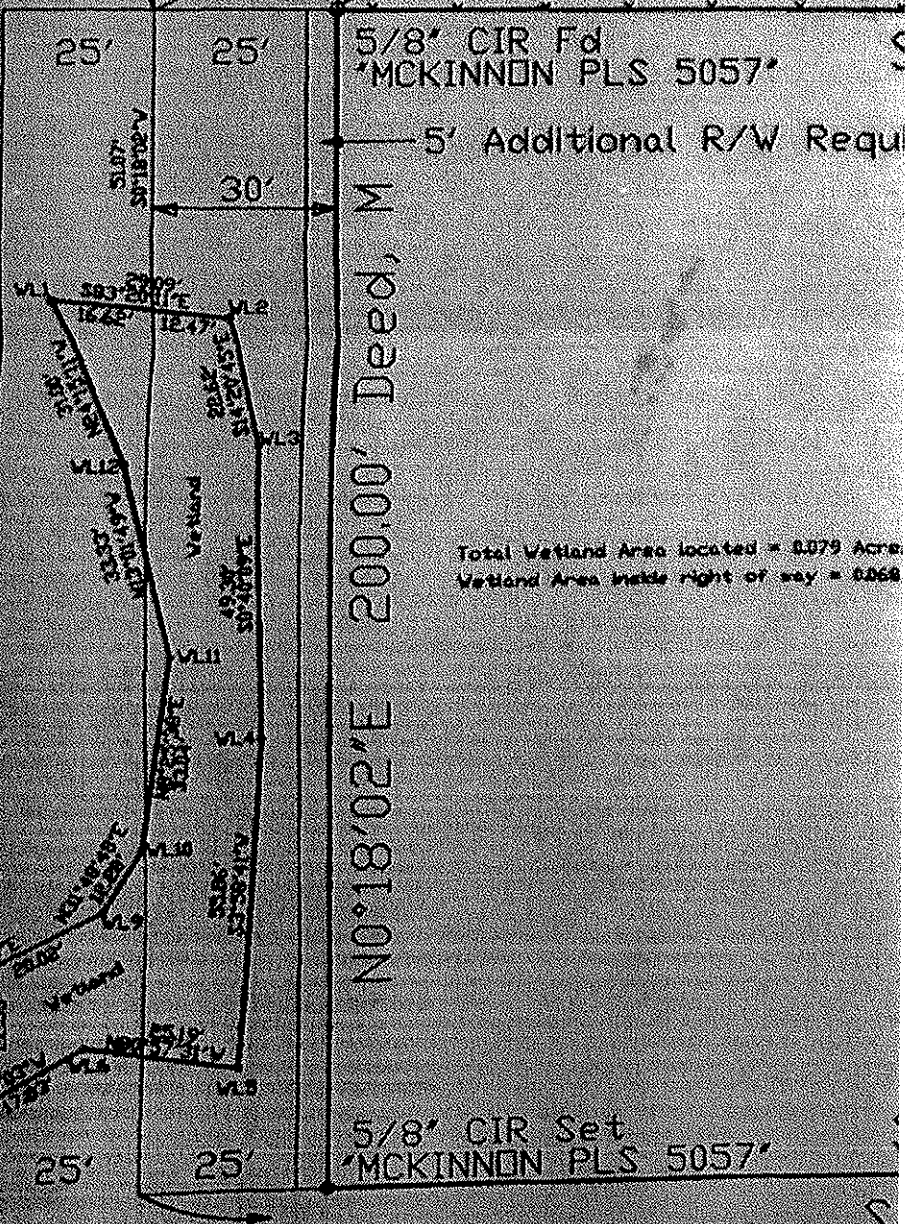
Boundary Survey of
Wetland location of

R/W V
C/L Smith Lane
2246.9

Fence Corner 0.2' North

1-51

N0°18'02"E 200.00' Deed Unimproved Not Open



Total Wetland Area located = 8.079 Acres
Wetland Area inside right of way = 8.068

N0°18'02"E 200.00' Deed, M

5/8" CIR Set
MCKINNON PLS 5057

RECITATION
 I HEREBY CERTIFY THAT THIS SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS AS SET
 FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 1101.01,
 FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 110.01, FLORIDA STATUTES.

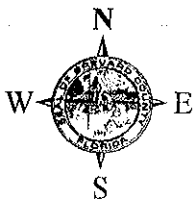
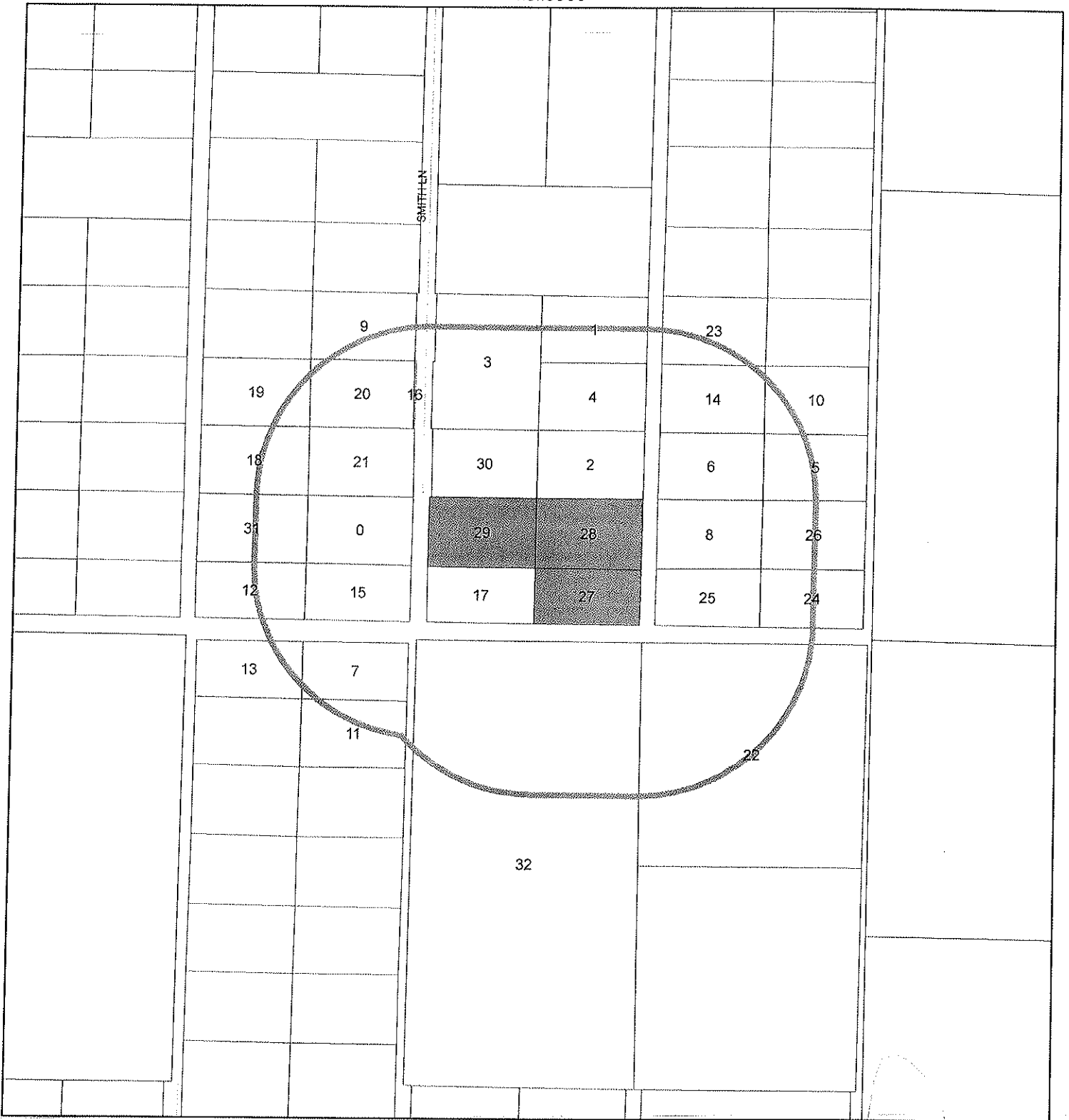
Craig A. McKinnon
 CRAIG A. MCKINNON
 SURVEY IS NOT VALID UNLESS IT IS
 ENCLOSED WITH SURVEYOR'S SEAL

16/24
Attachment #4

RADIUS MAP

TIERNEY, WALTER F

kello500



1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

- Buffer
- Subject Property
- Notify Property
- Parcels

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

ke\10500-0.txt

BUFF_ID	TAXID	PARCELID	OWNER1	OWNER2	MAIL1	MAIL2	CITY_STATE_ZIP5_ZIP4	ADDRESS	ZIP
0	2931809	29 371200	BARNARD, MICHAEL	BARNARD, ANN L	1113	POWHATAN PKWY	HAMPTON VA	23661	0
1	2931837	29 371200	BELL, MICHAEL	LEE	1130	SE 12TH ST	STUART FL	34996	4120
2	2931800	29 371200	CHADWICK, BOYD	JOHN	12750	SMITH LANE	MALABAR FL	32950	0
3	2931840	29 371200	CHADWICK, BOYD	JOHN	CHADWICK, JENNIFER L	H/W	2750 SMITH LANE	MALABAR FL	32950 0
4	2931762	29 371200	CHADWICK, BOYD	JOHN	CHADWICK, JENNIFER LYNN	H/W	12750 SMITH LN	MALABAR FL	32950 0
5	2931759	29 371200	DANAHER, PETER J	IDANAHER, KAREN H/W	849	SW 12TH AVE	BOCA RATON FL	33486	8427
6	2931805	29 371200	DANAHER, PETER J	IDANAHER, KAREN H/W	849	SW 12TH AVE	BOCA RATON FL	33486	8427
7	2931983	29 371200	FRANKLIN PROPERTY RESEARCH LLC		P O BOX 2700	FT PIERCE FL	34954	2700	
8	2931794	29 371200	FRAZIER, MICHAEL C		113	TIMBER RIDGE LANE	MARSHALL IL	62441	0
9	2931793	29 371200	GARNIER, SHANNON	GARNIER, IVAN	RAFAEL H/W	2755 SMITH LN	MALABAR FL	32950	0
10	2931813	29 371200	GOCKE, JACK E	GOCKE, VIRGINIA	2505	OSAGE DR	GLENVIEW IL	60025	0
11	2932016	29 371200	GREGORIADES, ARELYS		1254	VAN NOSTRAND AVE #1	JERSEY CITY NJ	7305	2119
12	2931749	29 371200	HALL, R A		13795	CROSSTOWN RD UNIT 41	NORTHELD VT	5663	6930
13	2931990	29 371200	KERMANI, SASAN		17825	BABCOCK ST SE	PALM BAY FL	32909	0
14	2931754	29 371200	LOGIE, WILLIAM B		LIFE ESTATE	16740 PANSY DRIVE	MIRAMAR FL	33023	0
15	2931835	29 371200	MA, TE-CHAO		13504	PINESMOKE CRES	MISSISSAUGA ON	L4Y 3L3	CANADA 0 0
16	2965151	29 371200	MALABAR, TOWN OF		12725	MALABAR RD	MALABAR FL	32950	0
17	2931760	29 371200	MC ADAM, ROBERT C		ESTATE	17575 LAKE ST #6A	RIVER FOREST IL	60305	0
18	2931783	29 371200	MC DONALD, ROBERT T		1120	FLORES ST	MELBOURNE BCH FL	32951	0
19	2931804	29 371200	MC DONALD, ROBERT T		1120	FLORES STREET	MELBOURNE BCH FL	32951	0
20	2931792	29 371200	O'ROURKE, KEVIN	O'ROURKE, PAMELA S	2805	SMITH LN	MALABAR FL	32950	0
21	2931821	29 371200	O'ROURKE, KEVIN	O'ROURKE, PAMELA S	2805	SMITH LN	MALABAR FL	32950	3529
22	2931964	29 371200	PARK, CHARLHO	PARK, YOUNG SEON	H/W	2091 WINDBROOK DR	PALM BAY FL	32909	0
23	2931788	29 371200	POWELL, A B		1074	BELLERUE RD	HALIFAX VA	24558	0
24	2931751	29 371200	RYAN, GERALD A		15215	OLD GALLOWS WAY	NAPLES FL	34105	5658
25	2931757	29 371200	RYAN, GERALD A		1639	GULF SHORE BLVD N	NAPLES FL	34102	5552
26	2931756	29 371200	RYAN, GERALD A		1639	GULF SHORE BLVD N	NAPLES FL	34102	5552
27	2931797	29 371200	TIERNEY, WALTER F		1443	KASLO CIR NW	PALM BAY FL	32907	0
28	2931763	29 371200	TIERNEY, WALTER F		1443	KASLO CIR NW	PALM BAY FL	32907	0
29	2931753	29 371200	TIERNEY, WALTER F		1443	KASLO CIR NW	PALM BAY FL	32907	0
30	2931803	29 371200	TIERNEY, WALTER F		1443	KASLO CIR NW	PALM BAY FL	32907	0
31	2931832	29 371200	TROPICAL GROUP INVESTMENTS LLC		1841	SW 19TH STREET	BOCA RATON FL	33486	0
32	2962503	29 371200	WONG, JOYCE MAY TRUSTEE		17545	WEEPING WILLOW TRAIL	BOCA RATON FL	33487	0





2725 Malabar Road
Malabar, FL 32950
321-727-7764 (Office) 321-727-9997 (Fax)
www.townofmalabar.org

Dear Property Owner,

If you received this notice then you are listed as an owner of property, as shown in the records of the County Property Appraiser's office, within 500' of the project site.

~~May 9, 2016~~

~~To: brelegals@gannett.com
From: Debby Franklin, Town Clerk, and Town of Malabar
townclerk@townofmalabar.org~~

~~Please place the following legal notice **two** times in your paper on Thursday, May 5, 2016 and again on Thursday, May 19, 2016. Please put the heading in **BOLD** font. Please send proof via email to: townclerk@townofmalabar.org and mail **ONE** affidavit to 2725 Malabar Road, Malabar, FL 32950. This ad does not qualify for a discount.~~

~~I thank you.
Debby K. Franklin, C.M.C., Town Clerk/Treasurer~~

TOWN OF MALABAR NOTICE OF PUBLIC HEARING

The Malabar Board of Adjustment will hear one Variance Request at a Public Hearing to be held on **Tuesday, May 31, 2016 at 6PM, at 2725 Malabar Road, Malabar, Florida.** Applicants, Mr. & Mrs. Dave Kello request a variance to Chapter 13 road improvement, in order to improve Smith Lane southward a distance of only 55 feet in order to preserve existing wetlands further to the south within the right of way. If at such time in the future Smith Lane should be improved the applicants agree to pay their portion of those improvement costs.

Area under request is located in Township 29, Range 37, Section 12 adjacent to parcel 16. All interested citizens are encouraged to attend and offer comment. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Debby K. Franklin, C.M.C., Town Clerk/Treasurer

(2) However, should such principal structure not be located wholly on one (1) lot, or should the owner desire to construct accessory uses, ponds or outbuildings (accessory to the principal structure) on the contiguous lot, then the local street/road shall be improved through the furthest boundary on which such accessory building to be constructed.

(c) The board of adjustment may only grant a variance to the requirements of subsection (b)(1) and (2). Notwithstanding the authority granted to the board of adjustment in section 1-12 of the Town of Malabar Land Development code the below stated procedures shall in all respects be utilized for a variance to subsection (b)(1) and (2). In order to authorize a variance under this section the board of adjustment must find the following:

(1) That special conditions and circumstances exist and that the presence of which would make complying with subsection 13-38(b)(1) or (2) unreasonable. Financial or economic reasons, conditions or circumstances shall not be grounds for a variance under this section;

(2) The special conditions and circumstances are not caused in any way by the owner or applicant;

(3) That such variances will not be injurious or detrimental to the public welfare;

(4) That the variance granted is the minimum variance that will make possible the reasonable use of the land;

(5) As a condition to the issuance of a variance the owner of the property shall dedicate the right of way required by section 13-39 of the code through the furthest boundary of the lot of record on which a principal structure or accessory structure is to be constructed. The owner shall also execute an agreement in recordable form with the town that binds the owner and his/her successors in interest to pay for the proportionate share of completion of the road through the furthest boundary of the lot of record on which a principal structure or accessory structure is constructed in the event the road is completed by another. The board of adjustment may impose additional reasonable conditions and safeguards that it deems appropriate;

(6) The board of adjustment may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both.

(Ord. No. 01-01, § 1-3, 2-5-01; Ord. No. 03-01, § 2, 2-24-03; Ord. No. 03-05, § 1, 6-16-03; Ord. No. 07-11, § 1, 7-16-07; Ord. No. 08-07, § 1, 6-16-08)

Sec. 13-39. Precondition to issuance of building permit—Dedication of sufficient right-of-way.

Except as provided for in section 13-39.1, as a precondition for the issuance of any building permit for a permitted structure on property that abuts an unimproved or unaccepted right-of-way within the Town of Malabar, Brevard County, Florida, the owner of the property

be modified by the town council, by resolution, provided that no such modification shall affect any owner who has filed an application for a building permit prior to the effective date of any such change in the standards.

(Ord. No. 01-01, § 1-11, 2-5-01)

Sec. 13-47. Reimbursement for expenses incurred by owner in connection with the construction of road improvement.

The certified costs, as determined pursuant to sections 13-43 and 13-44 hereinabove, shall be reimbursed to the individual expending such monies to complete the improvement, or their assignees (provided such assignment is recorded as hereinbelow described), by monies obtained from property owners who subsequently apply for building permits on property adjacent to or abutting any street that has been improved by the owner seeking reimbursement, provided that such improvement has been accepted by the town and further provided that the construction of the improvement was commenced after the effective date of this division [February 5, 2001] and in accordance with the terms and conditions of this division.

The method of reimbursement shall be as follows: In order for any property owner to obtain a development permit for a property that abuts any street that had previously been fully or partially improved pursuant to the terms and conditions set forth in this division, such owner must, at the time of application for a development permit, post a cash bond with the town in accordance with the formula hereinbelow described.

An owner who wants a development permit for a parcel of property that abuts an improved street or section thereof, that had been previously completely improved pursuant to this division, shall pay an amount equal to their pro rata share of the total certified costs of the completed permitted section based upon a formula whereby the total certified costs of the improved sections are multiplied by a fraction, the numerator of which shall be the number of front feet of such owner's parcel that abuts the fully improved section, and the denominator of which shall be the number of total front feet of all parcels that abut such section. These monies shall be paid to the town as a precondition for issuance of a building permit.

The monies received by the town from such owner shall be disbursed to the owners of record, or assigns of record, who expended the certified costs to improve such street, pro rata, based upon the amount by which such reimbursed owners expended funds in excess of what would have been their pro rata share of the total improvement as determined by the same manner described hereinabove, less an amount equal to fifty dollars (\$50.00) or one (1) percent of the monies received from the owner making such reimbursement, whichever is greater, which monies shall be retained by the town to cover its administrative costs. Such monies shall be disbursed to such owner within thirty (30) days after receipt of a written request for reimbursement by the owner.

(Ord. No. 01-01, § 1-12, 2-5-01)

TOWN OF MALABAR
MEMORANDUM

Date: May 26, 2016
To: Doug Hoyt, Town Administrator
From: Morris Smith, Town Engineer
Ref: Southerly Extension of Smith Lane

Memo: 16-CE-04
Project No.:
Variance No.:

I have reviewed the survey of the wetlands line delineated in the Town's right-of-way adjoining Mr. David Kello parcel of land, provided by William Suiter, PSM. The Brevard County Parcel Tax Account number is 2931753. I have also walked his parcel of land adjacent to the Town's right-of-way. I understand the expense that Mr. Kello faces to fill in, impact those wetlands if Smith Lane is extended to his southern property line.

The residents in this neighborhood are in the process of investigating the financial feasibility of the paving Smith Lane. The Town has requested a decision from the St. Johns River Water Management to see if they require a Permit for this paving project.

It is my understanding that Mr. Kello is requesting that he "build-short", not the full length of his parcel. This would give him just enough extension of Smith Lane to connect his parcel to this "built-short" portion of Smith Lane and possibly avoid impacting the wetlands shown on his survey.

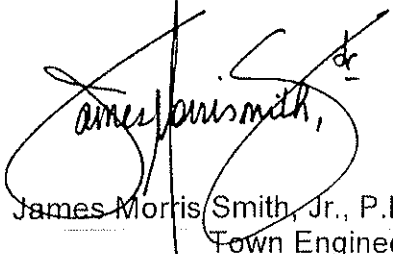
With the possibility of Smith Lane becoming paved I would expect that property owners south of Mr. Kello will become more interested in developing their lots as well.

It is my opinion that Mr. Kello should build the road completely along the frontage, to its southern most boundary line, however; the Town's code allows for building short.

If that is the decision of the Board, that decision should be made with a recorded document provision, that at some future time when the parcel south of Mr. Kello is to be developed, that Mr. Kello, his heirs and assigns, will be required to pay 100% of the costs arising of the roadway construction, that fronts his property. That cost will include but not be limited to the permitting, wetlands mitigation and physical roadway construction. There seems to be a high probability of this possible future construction having a paved surface.

Very Truly Yours,

DN: c=US, o=IdenTrust ACES
Business Representative,
ou=JAMES MORRIS SMITH JR PE
PSM LLC, cn=James M Smith Jr,
0.9.2342.19200300.100.1.1=A0109
7C00000144C2E806330000A6CA
'Date: 2016.05.26 13:47:52 -04'00



James Morris Smith, Jr., P.E.
Town Engineer
Florida License 45392
May 26th, 2016

Memorandum

To: Town Clerk

Date: May 19, 2016

From: Karl W. Bohne, Jr.

Re: Road Reimbursement

You recently posed a scenario based on the road reimbursement code in chapter 13 of the code of ordinances. Essentially the question is: What is the proper road reimbursement calculation for a property owner who was granted a variance pursuant to Section 13-38 (c) and another separate property owner comes in and builds the remainder of the road which abuts the property that was granted the variance?

The scenario you posed is as follows: Joe owns lot A on a given road. Bob owns the vacant lot B across the street. They both front on an unimproved section of ROW just below the terminus of the accepted portion of the given road.

Joe requests a variance to improve only 50 feet from the current terminus in order to avoid wetlands and to preserve the rural nature of the area. He would improve the 50 feet long by 50 ft wide ROW to Town dirt road standards. He agrees to the stipulation in the BOA Order that states at such time as the road beyond his 50 feet improvement is built, he will be responsible for paying his share of the improvement cost for the remaining 150 feet. The variance is granted and Joe improves the 50 of ROW at a cost of 4,000.00.

Now Betty wants to build on the next lot up and must improve the 200 feet in front of her lot PLUS the remaining 150 feet in front of Joe and Bob's lots. She does this and it cost her 36,000. Does Joe pay for the cost of the entire 150 abutting his and Bob's property or just the cost of the 150 abutting his own property?

Prior to the 2003 amendment to Chapter 13 there was no provision for a variance and Joe would have had to build the entire road through the far end of his property and hope someday to collect from Bob. So I can see how some would argue that but for the variance Joe would normally foot the whole bill for constructing the road through the far end of his property.

But section 13-38 (c) (5) now states that when Joe got the variance he had to agree that if the rest of the road was built by another person abutting Joe and Bob's property Joe would need to agree to reimburse that new road builder, Betty, his proportionate share of the 150 feet.

The issue is: What does "proportionate share" or put another way "pro rata" share mean? I believe we can get the meaning of proportionate share by reading section 13-47. In part, that section requires an owner who wants to build on a road that was built by another to pay an amount equal to their pro rata share of the total cost of the completed permitted road section. The formula is determined as follows: the total cost of the improved sections multiplied by a fraction, with a numerator of the front footage of the owner's property that abuts the completed road and the denominator is the total number of front footage of all parcels that abut the built road.

Based upon this it is my opinion that once the variance is granted and the person who was granted the variance agrees to pay their proportionate share of the future construction of the road, their obligation to pay for the entire cost of the full road is replaced by the provisions of 13-38 (c) (5) and Joe only must pay for that portion of the improved road by Betty that fronts his piece.