

1     **PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION**  
2                     **PUBLIC HEARING HELD**  
3                     **OCTOBER 14, 2008**  
4  
5

6     The Public Hearing of the Volusia County Planning and Land Development Regulation  
7     Commission was called to order by **Frank Severino**, at 9:00 a.m. in the County Council  
8     Meeting Room of the Thomas C. Kelly Administration Center, 123 West Indiana  
9     Avenue, DeLand, Florida. On roll call, the following members answered present, to-wit:

10  
11     **FRANK SEVERINO, CHAIRMAN**  
12     **GARY HUTTMANN, VICE CHAIRMAN**  
13     **JIM RUSSELL, SECRETARY**  
14     **TAVER CORNETT**  
15     **JEFF GOVE**  
16     **STONY SIXMA**  
17     **JAY YOUNG**  
18

19     **STAFF PRESENT**

20  
21     **MIKE DYER, Assistant County Attorney**  
22     **BECKY MENDEZ, Senior Planner**  
23     **SCOTT ASHLEY, Planning Manager**  
24     **JOHN H. STOCKHAM, Planner III**  
25     **CHRISTIAN NAGLE, Planner II**  
26     **YOLANDA SOMERS, Zoning Secretary**  
27

28     **APPROVAL OF MINUTES**

29  
30     **Approval of the August 12, 2008 Minutes**

31  
32     No discussion

33  
34     Member Cornett **MOVED** to **APPROVE** the minutes for August 12, 2008. Member  
35     Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

36  
37     **Approval of the September 9, 2008 Minutes**

38  
39     No discussion

40  
41     Member Huttman **MOVED** to **APPROVE** the minutes for September 9, 2008. Member  
42     Cornett **SECONDED** the motion. Motion **CARRIED** unanimously.

## PUBLIC HEARINGS ON SPECIAL EXCEPTION AND ZONING CASES

**Chairman Severino** explained the procedure for forwarding the Commission's decisions to the County Council and invited the public to speak for or against any of the cases being heard.

**Mike Dyer, Assistant County Attorney**, explained that decisions by this body on special exception cases and cases which rezone real property from one classification to another pursuant to the Zoning Ordinance are recommendations only to the County Council and do not constitute a final hearing. New evidence may be introduced at the County Council public hearing. Decisions on variances made by this body constitute final action, subject to an appeal to the County Council. What this means is that no new evidence may be presented at the time of the County Council public hearing on appeal. An aggrieved party that appeals such a decision is confined to the record made before this body. Hearings by this body on rezonings, special exceptions and variances are quasi-judicial in nature meaning that this body is acting more like a court and must take into account all oral, written or demonstrative evidence presented. Their decisions on these cases must be based on competent, substantial evidence in the record. Competent, substantial evidence has been defined, as that evidence a reasonable mind would accept to support a conclusion.

### **Disclosure of Ex Parte Communications**

Members of the Volusia County Planning & Land Development Regulation Commission Board are asked to please disclose, for the record, the substance of any ex parte communications that have occurred before or during the public hearing at which a vote is to be taken on any quasi-judicial matters.

- Jay Young stated none
- Taver Cornett stated none
- Jim Russell stated none
- Frank Severino stated none
- Gary Huttman stated none
- Stony Sixma stated none
- Jeff Gove stated none

### **CONTINUED ITEMS**

**Z-08-037** - Application of **Rafael Gonzalez, Agent for Owner, Victor M. San Inocenio, Owner**, requesting a **Rezoning** from the A-1 (Prime Agriculture) zoning classification to the A-4 (Transitional Agriculture) zoning classification. The property is located on the east side of State Road 415, at its intersection with Sorento Road in the community of Samsula; ± 14.785 Acres (Nagle) 8201-00-04-0010 **30-day continuance requested**

Member Sixma **MOVED** to **CONTINUE** Zoning case Z-08-037 for 30 days. Member Huttman **SECONDED** the motion. Motion **CARRIED** unanimously.

1 **S-08-038** - Application of **Michael Burkhead, Agent for TBCOM Properties, Agent**  
2 **for Owners, Marco & Veronica Pichardo, Owners**, requesting a **Special Exception**  
3 for a Communication tower exceeding 70 feet in height above ground level (180 ft.  
4 monopole) and requesting Waivers to Section 817.00(w)(5)(e) Setback and Separation  
5 for a range of 990.6 ft. to 648.5 ft. in lieu of the required 1,000 ft. from a dwelling on A-4  
6 (Transitional Agriculture) zoned property. The property is located on the east side of  
7 Fifer Drive, approximately 700 feet from intersection with Beckwith Street adjacent to  
8 the City of Deltona; ± 2.5 acres (Stockham) 8101-00-00-0432 **30-day continuance**  
9 **requested**

10  
11 **Member Cornett** asked if this needed more than 30 days as this as been continued  
12 several times.

13  
14 **John H. Stockham, Planner III**, replied that the applicant and staff have working  
15 together and 30 days should be sufficient.

16  
17 Member Cornett **MOVED** to **CONTINUE** Special Exception case S-08-038 for 30 days.  
18 Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

19  
20  
21 **V-08-041- Application of Michael Burkhead, Agent for TBCOM Properties, Agent**  
22 **for Owners, Marco & Veronica Pichardo, Owners**, requesting a **Variance** to Section  
23 817.00(w)(5)(e) *Setbacks and Separation* to allow a 180-foot monopole communication  
24 tower (404.02 ft. in lieu of the required 1,000 ft.) on A-4 (Transitional Agriculture) zoned  
25 property. The property is located on the east side of Fifer Drive, approximately 700 feet  
26 from intersection with Beckwith Street adjacent to the municipal limits of the City of  
27 Deltona; ± 2.5 acres (Stockham) 8101-00-00-0432 **30-day continuance requested**

28  
29 Member Huttman **MOVED** to **CONTINUE** Variance case V-08-041 for 30 days.  
30 Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

## 31 **CONSENT AGENDA**

32  
33  
34 NONE

## 35 **NEW BUSINESS**

36  
37  
38 **PUD-08-049** - Application of **Jason Gambone, Agent for Owner, Seagate**  
39 **Investments Inc, Owner**, requesting a **Rezoning** from the MH-7 (Mobile Home Park)  
40 zoning classification to the VILLAS OF TOMOKA RPUD (Residential Planned Unit  
41 Development) zoning classification. The property is located on the western terminus of  
42 Golf Avenue, approximately ¾ mile from its intersection with Nova Road, near the  
43 Spring Leaf Subdivision and the City of Daytona Beach; ± 74.63 acres (Stockham)  
44 4232-02-31-0010, 4232-02-43-0010 & 4232-02-43-0060 **Tentatively scheduled for the**  
45 **December 4, 2008 County Council public hearing.**

46  
47 **John H. Stockham, ASLA, Planner III**, presented the staff report summarizing that the  
48 existing MH-7 zoning classification would allow a mobile home development of  
49 approximately 117 units on 5,000 sq. ft. lots in the northern 30 acres of uplands. This

1 proposal is for the development of 122 townhomes clustered in the northern 30 acres of  
2 uplands and one single family residential lot. Staff finds this proposal with staff  
3 recommended changes to the Master Development Plan and Development Agreement  
4 to be consistent with the Comprehensive Plan. Staff recommends to the Commission  
5 approval with the modification that conditions #2 be stricken because the tree  
6 preservation is being addressed in the proposed development agreement and condition  
7 #5 because staff does not have the details for the proposed signage, street lights or  
8 entrance walls. This will be addressed during the Final Site Plan process. Also on  
9 Page 9 of 16 in the proposed development agreement, the sentence referring to the  
10 signage package should be stricken for the same reason as condition # 5. Staff  
11 presented the applicant's color site plan showing the clustered 122 townhomes to the  
12 north and the one (1) single-family residence on a 2.5 acre lot to the east on the  
13 property. The site plan also showed the forestry wetlands on the property and the  
14 required 20% open space is in the uplands including the tot lot and basketball court, a  
15 sidewalk and recreational trail surrounded by the forestry wetland.

16  
17 **Member Cornett** asked if there was any other purpose for the single family residence  
18 other than revenue. The other question was referring to the City of Daytona Beach  
19 comments about the connecting road access, whether the one emergency access is  
20 going to deal with that issue.

21  
22 **Mr. Stockham** replied that based on our review and comments from Traffic and Fire  
23 Services this would be adequate.

24  
25 **Member Huttman** asked about condition #4 referring to incorporating bike paths and  
26 lanes into the overall development plan, is there anything more than the one trail going  
27 to the storage area or is that an issue more for the site plan process.

28  
29 **Mr. Stockham** replied that it was more for the final site plan process regarding a school  
30 bus stop and bike or walking drives to and from the residences and the stop.

31  
32 **Chairman Severino** asked about the subsection C on page 6 of the proposed  
33 Development Agreement is the intent that the amenities are complete before vertical  
34 construction.

35  
36 **Mr. Stockham** replied affirmatively and that staff could be agreeable to changing the  
37 language to simply state on Page 6 Line 25 and Page 7 Line 1 "the amenities shall be  
38 completed by the time infrastructure is complete."

39  
40 **Member Young** asked about the connection to Avenue K is it at Palm Street

41  
42 **Mr. Stockham** stated the where the access point closer to Oak Street and Boles Drive.

43  
44 **Member Young** stated he drove the road and had problems getting through due to  
45 parked cars and had to go down Palm Street to get through.

46  
47 **Jason Gambone, Vice President of Northstar Development Services**, presented  
48 exhibits showing the Daytona Pines plat and the color site plan. All of the units are

1 designed to back up to the wetlands or the ponds. The single family lot is for revenue  
2 purposes because that lot would otherwise be unused.

3  
4 **Member Young** asked why access is from Oak Street and not Palm Street.

5  
6 **Mr. Gambone** replied accessing from Palm Street would impact the wetlands.

7  
8 **Member Young** asked about the utility road.

9  
10 **Mr. Gambone** replied it is a right of way and not apart of the subject property.

11  
12 **Member Russell** asked about the square footage of the units and projected price.

13  
14 **Mr. Gambone** replied it ranges from 2-story 1,300 living sq. ft. to 1,800 living sq. ft. and  
15 do not have a project price yet but the design has not been committed to yet.

16  
17 **Member Young** asked about the area development, there is a lot of low income mobile  
18 home developments and the proposal is for upscale townhome development.

19  
20 **Mr. Gambone** stated that we are working on a workforce type reasonable price but we  
21 are not quite to that point that is why the flexibility is proposed in the floor plans and  
22 designs.

23  
24 **Member Russell** asked about the size of the paved road (curb to curb).

25  
26 **Mr. Gambone** replied it was required to be 24 feet wide.

27  
28 No public participation.

29  
30 Member Huttman **MOVED** to **FORWARD** case **PUD-08-049** to the County Council for  
31 **APPROVAL** subject to Conditions 1,3, and 4 and changes to page 9 of 16, Line 1 and 2  
32 and Page 6, Line 25 and Page 7, Line 1 as presented. Member Sixma **SECONDED** the  
33 motion. Motion **CARRIED** 6 to 1, Member Russell opposed.

## 34 **OLD BUSINESS**

35  
36  
37 NONE

## 38 **VARIANCE AND SPECIAL EXCEPTION APPLICATIONS**

### 39 **NEW BUSINESS**

40  
41  
42  
43 **S-08-058** – Application of **John & Kari Phillips, Owners**, requesting a **Special**  
44 **Exception** for a mobile home on RC (Resource Corridor) zoned property. The property  
45 is located on the west end of Causey Lane, approximately 2,200 feet south from its  
46 intersection with Cherry Street, in the community of Seville; ± 25 acres (Ashley) 4805-  
47 00-00-0156 **Tentatively scheduled for the November 13, 2008 County Council**  
48 **public hearing.**

1  
2 **Scott Ashley, Planning Manger**, presented the staff report. This special exception  
3 request is to allow a mobile home on 25 acres of Resource Corridor zoned property.  
4 This property is surrounded by A-1 Prime Agriculture and RC Resource Corridor zoned  
5 properties near the rural community of Seville. Mobile homes are a permitted use in the  
6 A-1, but require a special exception in the RC. This request is consistent with the  
7 surrounding area as there is a mixture of mobile and manufactured homes; there are  
8 some wetlands and flood plain constraints on the property so the mobile home is being  
9 proposed on the west side of the property. There are current environmental issues that  
10 need to be address during the building permit process. Staff recommends approval with  
11 two conditions listed in the staff report.

12  
13 **John and Kari Phillips, 1350 Causey Lane, Seville, FL 32190** was present.

14  
15 **Member Severino** asked if they would like to say anything.

16  
17 **Kari Philips** replied no.

18  
19 No public participation.

20  
21 Member Cornett **MOVED** to **FORWARD** Special Exception case S-08-058 to County  
22 Council with a recommendation of **APPROVAL WITH CONDITIONS** as presented by  
23 Staff. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

24  
25 **V-08-063** - Application of **Dennis Comer, Owner**, requesting a **Variance** for a west  
26 front yard from the required 40 ft. to 27 ft. for a garage addition; and a variance for a  
27 south side yard setback from the required 25 ft. to 15 ft. for a swimming pool on A-3  
28 (Transitional Agriculture) zoned property. The property is located on the south side of  
29 Mercers Fernery Road, at its intersection with Cherokee Hammock, near the community  
30 of Glenwood; ± 1.1 acres (Nagle) 6031-04-00-0010

31  
32 **Christian Nagle, Planner II**, presented the staff report. The subject property is located  
33 at the corner of Cherokee Hammock (a private road) and Mercers Fernery Road. The  
34 property contains a single family dwelling and accessory structures. The applicant is  
35 requesting to make improvements to the single family dwelling by constructing an  
36 addition in the front yard and a swimming pool in the rear of the house. An aerial photo  
37 is presented to illustrate the number of lots that are accessed from Cherokee Hammock.  
38 Site photos are presented to show the existing property. Staff amends the staff report  
39 condition #2 to strike "or safety fence" from the sentence. These improvements can be  
40 located elsewhere on the property however considering the use of the property and the  
41 surrounding area, staff can support the variance for the swimming pool with the four  
42 amended conditions mentioned in the staff report. Staff does not support the front yard  
43 variance for the proposed garage, as there is adequate space on the property for the  
44 structure.

45  
46 **Member Gove** asked to clarify the access of Cherokee Hammock.

47  
48 **Mr. Nagle** replied that it provides access to twelve lots, four of which are developed.

1 **Member Gove** asked about where the front yard setback to the structure is measured  
2 from as the site plan drawing indicates the edge of pavement.  
3

4 **Mr. Nagle** replied that the measurement is from the edge of the easement not the  
5 pavement; the line of the site plan was drawn to long.  
6

7 **Member Young** asked if the garage could be located adjacent to the existing garage.  
8

9 Mr. Nagle replied that it was his understanding the existing garage would be mostly  
10 demolished and the new garage would be one overall structure and the applicant plans  
11 to reuse three of the existing garage walls, driveway and electric service.  
12

13 **Member Severino** asked about the character of the neighborhood.  
14

15 **Mr. Nagle** replied that there are vacant lands, lands developed with single family  
16 residences, but that he didn't see any real active agricultural pursuits nearby cross  
17 Cherokee Hammock it appears that one property is developed with an equestrian use.  
18

19 **Member Cornett** asked to look at the aerial again, and then asked if the property to the  
20 west was a fernery operation.  
21

22 **Mr. Nagle** confirmed that it was a fern operation. The properties to the north of Mercers  
23 Fernery are residential zoning classifications and the properties to the south and west  
24 are agricultural zoning classifications.  
25

26 **Dennis Comer, 1860 Mercers Fernery Rd, DeLand, Owner**, stated that only 4 parcels  
27 have access via Cherokee Hammock according to his ingress and egress easement  
28 deed. Cherokee Hammock is a limited private access driveway. The existing garage is  
29 approximately 47 feet from the edge of the easement. The new addition be a  
30 multipurpose building with about 1,500 sq. ft. of actual garage space. The variances  
31 should be approved because Cherokee Hammock is a private driveway not public  
32 access therefore the requested variances should not affect public use or safety. The  
33 addition will be ascetically compatible with the existing house. Mr. Comer said there are  
34 three letters from the neighbors here submitted stating no objection to the requested  
35 variances.  
36

37 **Member Severino** asked if any of the letters are from anyone that has access to  
38 Cherokee Hammock.  
39

40 **Mr. Comer** replied one letter is. The other two letters are from the neighbors to the  
41 east.  
42

43 **Member Huttman** asked if the living space of the addition is new information to the  
44 staff.  
45

46 **Mr. Nagle** replied that he was told by the applicant yesterday, that the proposed  
47 building was a multipurpose building and not just a garage.  
48

1 **Member Huttmann** asked if it was additional living space of the home or separate such  
2 as a garage apartment type.

3  
4 **Mr. Comer** explained it would be additional living space for the home, like a great room.

5  
6 **Member Russell** asked if the new addition could be moved eight feet toward the house  
7 in a compromise.

8  
9 **Mr. Comer** replied that if the addition was moved then the area between the two  
10 buildings in the rear yard would be unusable.

11  
12 **Member Russell** asked if that was the only deterrent.

13  
14 **Mr. Comer** replied that the area is used for his barbeque and if the common area was  
15 shortened then it would not be able to be used practically.

16  
17 **Member Gove** asked Mr. Comer if his construction drawings were already done.

18  
19 **Mr. Comer** replied yes, and that the neighbors have seen the plans and are in favor of  
20 it.

21  
22 **Member Severino** asked if there was any way to confirm how many lots have legal  
23 access.

24  
25 **Michael Dyer, Assistant County Attorney**, replied not during the course of this  
26 hearing.

27  
28 **Becky Mendez, Senior Planning Manger**, stated that access on Cherokee Hammock  
29 is limited whether it is four or twelve; and that it will never be improved to connect to any  
30 additional road. Staff can support the garage/multipurpose setback variance with the  
31 condition that the building will meet and be compatible with the existing design of the  
32 dwelling. So condition # 1 should be modified to that variance request to include the  
33 from the required 40 ft to the 27 ft. as long as the exterior of the façade of the proposed  
34 building matches the existing dwelling. Condition # 2 should be revised to strike the last  
35 three words "or safety fence" of the staff's recommended condition.

36  
37 No public participation.

38  
39 **Member Huttmann MOVED to APPROVE case V-08-063** with the following conditions:

- 40 1. The façade of the new addition match the architectural design of the existing  
41 single family dwelling unit.
- 42  
43 2. The south side yard setback of fifteen (15) feet from twenty-five (25) feet is  
44 granted for construction of an in-ground swimming pool. The fifteen (15) feet  
45 setback shall apply to the pool, pool deck and screen enclosure.
- 46  
47 3. The applicant is required to obtain required building permit(s) before  
48 construction commences on property.
- 49

4. All other Zoning and Land Development Code Requirements of the Volusia County Code of Ordinances shall be met.

Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

**V-08-064** – Application of **Jason Brooks, Agent for Owners, Gene and Joseph Self, Owners**, requesting a **Variance** for a north side yard setback from the required 8 ft. to 6.81 ft.; a **Variance** for a south side yard setback from the required 12 ft. to 11.23 ft.; and a **Variance** to the total maximum lot coverage from a maximum allowed of 2,625 sq. ft. to 2,729 sq. ft. for an existing single-family dwelling in the R-4(5) (Urban Single Family Residential / Highridge Neighborhood) zoning classification. The property is located on the west side of Roosevelt Boulevard, ±350 ft. north of its intersection with General Doolittle Road in the Highridge Estates; ± 15,000 sq. ft. (Nagle) 6206-02-22-0110

**Christian Nagle, Planner II**, summarized the staff report by describing the property as a single tax parcel comprised of two platted lots (Lot 11 and Lot 12). The request is so that the owner can sell one of the lots; however this would create nonconforming setbacks and lot coverage to the existing dwelling. Staff recommends approval subject to two conditions in the staff report as the request meets the criteria for approval.

**Jason Brooks, 32 Mayfield Terrace, Ormond Beach, Florida**, the owners are family friends and the reason for the variances is to proceed with the sell to the lot to the adjacent property owner. I am in agreement with the conditions of approval.

No public participation.

Member Cornett **MOVED** to **APPROVE WITH CONDITIONS** case **V-08-064** as presented by Staff. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

**V-08-068** - Application of **Century Realty Funds, Inc, Agent for Owner, OB Commercial Property Develop Co LLC, Owner**, requesting a **Variance** for a rear yard setback from the required 100 ft. to 88.71 ft. on B-3 (Shopping Center) zoned property. The property is located on the west side of Ocean Shore Boulevard, at its intersection with Longwood Drive, in the community of Ormond by the Sea; ± 10.8 acres (Ashley) 3234-11-01-0120

**Scott Ashley, Planning Manger**, presented the staff report. This request is for a property is located in Ormond by the sea and is known as the Ormond Beach mall that consists of a grocery store and other small retailers built in 1967. It is nonconforming to today’s zoning regulations, such as parking requirements and building setbacks. It is an odd configured parcel; the B-3 classification has the largest setback requirements and is a rare zoning classification in the County. The renovation is approximately 30 feet which includes a 12 foot encroachment into the setback. Part of the proposal is the removal of a formerly used car wash currently used as storage. This will more than compensate for the addition. Staff supports the request as it meets the 5 criteria to grant a variance however staff would like to modify condition # 2 to strike “of Article 3”.

1  
2 **Member Gove** asked about northwest corner west of the car wash on the survey, is  
3 there one lot zoned residential as part of this property.

4  
5 **Mr. Ashley** replied that there is one and that part of the improvement will be converted  
6 to green open space and stormwater area. The landscape buffering will increase from  
7 currently 25 feet wide to approximately 35 to 40 feet. Photos of the site were explained  
8 and shown.

9  
10 **Member Severino** mentioned according to the site plan there will be a truck well and  
11 loading dock and asked how far from the property line will the loading area be.

12  
13 **Mr. Ashley** replied if built to county codes it would be approximately 72 feet from the  
14 edge to the property line. However the area will not be covered and therefore the  
15 setback is from the structure.

16  
17 **Dwight Durrant, Zev Cohen, 300 Interchange Blvd, Ormond Beach, FL 32174,**  
18 **Applicant,** stated that the request for 88 ft. to allow some flexibility. Asked why the  
19 modification to the condition #2.

20  
21 **Becky Mendez, Senior Planning Manager,** replied that the reason the modification to  
22 the condition is so that Article 3 is the Final Site Plan requirement in the Land  
23 Development Code. By including all the sections of the LDC, it allows the DRC to  
24 modify the requirements based on the existing conditions. Staff views this as a  
25 redevelopment and not a new development that would have to comply with all the  
26 current Code requirements.

27  
28 **Mr. Durant** requested a little flexibility with the wall, thinking of using a precast wall  
29 panel structure however here may be issues with power lines. We are committed to  
30 provide something more permanent to the chain link fence.

31  
32 **Member Cornett** asked if the building was being torn down and rebuilt or if this was an  
33 addition. Is the precast type something like the Interstate walls?

34  
35 **Mr. Durrant** replied they were tearing down and rebuilding. Something like that, it is  
36 where the posts have footers and the panels slide into place.

37  
38 No public participation.

39  
40 **Mr. Ashley** requested that a wall system be provided instead of the fence along the  
41 property lines of lots 18, 19, and 20 be a condition to provide a solid visual screening.

42  
43 **Mr. Durrant** agreed and wanted to clarify the wall would be located along the adjoining  
44 property lines of Lots 18, 19, and 20 of the adjacent subdivision directly behind the  
45 addition to the Publix.

46  
47 Member Russell **MOVED** to **APPROVED WITH FOUR CONDITIONS** case **V-08-068** as  
48 presented by Staff. Member Young **SECONDED** the motion. Motion **CARRIED**  
49 unanimously.

1  
2 **V-08-069** – Application of **Suzanne Konchan, Agent for Owners, Johanne & Karen**  
3 **Uyttewall, Owners**, requesting a **Variance** for a northeast side yard from the required  
4 25 ft. to 4.2 ft. for an existing 473.4 sq. ft. accessory pole barn # 1; a **Variance** for a  
5 northeast side yard from the required 25 ft. to 4.1 ft. for an existing 321.6 sq. ft.  
6 accessory pole barn # 2; a **Variance** for a northeast side yard from the required 25 ft. to  
7 1.9 ft. for an existing 241.2 sq. ft. accessory shed # 1; and a **Variance** for a southwest  
8 side yard setback from the required 25 ft. to 2.1 ft. for an existing 456.3 sq. ft. accessory  
9 shed # 2 on MH-8 (Rural Mobile Home Estate) zoned property. The property is located  
10 on the south side of Ragis Road, ±1,200 ft. west of its intersection with Airpark Road,  
11 near the City of Edgewater; ±4.9 acres (Nagle) 8438-01-00-1392  
12

13 **Christian Nagle, Planner II**, presented staff report. He summarized that this request  
14 was to facilitate setback variances for four existing accessory structures. Without this  
15 variance request approval, the applicant will not be able to submit an after-the-fact  
16 building permit application for shed # 1. One structure was built October – November  
17 1991, the other three structures were built in 1997-1998. The site plan shows the  
18 accessory structures, three are on the west property line and there is one on the east  
19 property line. Three structures were built when there was an Agricultural Tax  
20 Exemption and Shed # 1 was built without the Agricultural Tax Exemption. The  
21 applicants stated they were told they did not need building permits for the structures and  
22 were not advised about having to meet setback requirements. Section 500.00 *Zoning*  
23 *Affects all Premises* and Section 502.00 *Yard, Lot Coverage, Floor Area, and Building*  
24 *Height Requirements* of the Zoning Ordinance 80-8, requires compliance with  
25 applicable Zoning Ordinance requirements for premises, buildings, structures, and signs  
26 erected, constructed, moved, or altered, in unincorporated Volusia County. Staff finds  
27 there are special circumstances and conditions applicable to the property and buildings  
28 involved; that literal interpretation of Zoning Ordinance requirements would hamper  
29 continued use of the four subject accessory buildings; that the granting of the requested  
30 variances with proper conditions appear in harmony with the general intent and purpose  
31 of the Zoning Ordinance and that such variances, are unlikely to be injurious to the area  
32 involved. The property owners are responsible for some of the special conditions and  
33 circumstances involved, since they are responsible for construction of the subject  
34 accessory buildings in non-compliance with minimum yard requirements. Therefore,  
35 while they do not meet all of the requirements of Section 1003.01(4) of the Zoning  
36 Ordinance 80-8, staff does not object to approval of the variances subject to the five  
37 conditions in the staff report. Staff has received an objection letter from an adjoining  
38 property owner.  
39

40 **Member Cornett** asked about the commercial activity on the property, is that in  
41 compliance with the current zoning.  
42

43 **Mr. Nagle** replied that it had been referred to Code Enforcement.  
44

45 **Member Cornett** asked if permits were pulled for the other accessory structures.  
46

47 **Mr. Nagle** replied that there is a Code Enforcement review for that as well.  
48

49 **Member Gove** asked if this case was brought through Code Enforcement.

1  
2 **Mr. Nagle** replied based on his information that was correct.  
3

4 **Michael Dyer** stated that there are times that it is not unusual for cases to be brought  
5 about from a code enforcement issue, this is the applicants' way of trying to achieve  
6 compliance and therefore staff does not focus its recommendation on the code  
7 enforcement issues as it is irrelevant to the five criteria set forth in the Zoning  
8 Ordinance.  
9

10 **Member Severino** asked that if the applicant had asked prior to building, would staff  
11 support the requests as stated.  
12

13 **Mr. Nagle** replied that it was unlikely since there is no hardship apparent and the size of  
14 the property.  
15

16 **Member Young** asked what the ramifications would be if this request was denied.  
17

18 **Mr. Nagle** replied that the applicants would have to move or demolish the structures to  
19 comply with the setback requirements. The applicants have stated they would lose the  
20 ability to use the structures.  
21

22 **Suzanne Konchan, 25 Sugar Mill Lane, Flagler Beach**, applicant for property owners,  
23 stated building permits have been started but are waiting the outcome of this hearing so  
24 they can apply for all permits at once. This started in December 2007 from an  
25 anonymous complaint about a business and the structures. The applicant purchased  
26 the property in 1991; they have a letter from County staff that states the business is  
27 allowed on the property. The owners were told they did not need building permits for  
28 the structures; however they didn't ask and were not told they needed to meet setbacks.  
29 The shed has been there for 17 years and the other three structures for 11 years.  
30 There are 5 statements from property owners along Ragis Road not objecting to the  
31 variances submitted. There are many other properties that have accessory structures in  
32 the side yards; this is not an unusual circumstance for this area. There is a hardship to  
33 the owners, the structures have been there for years, it would be an economic hardship  
34 for them to have to move or demolish them.  
35

36 **Member Cornett** asked about the nature of the business on the property.  
37

38 **Ms. Konchan** replied that there are tree trimming trucks are parked, they are parked  
39 there overnight and leave out in the morning and there are no activities on the property.  
40

41 **Member Russell** asked about the letter of objection stating the noise from the  
42 employees and chippers.  
43

44 **Ms. Konchan** replied no activities but parking the trucks, the chipper is stored on the  
45 property but does not operate on the property.  
46

47 **Member Russell** asked if the owners were still raising goats and cows.  
48

49 **Ms. Konchan** replied no cows but there are goats.

1  
2 **Member Russell** asked if the Agricultural Tax Exemption was still in effect.

3  
4 **Ms. Konchan** replied that the Agricultural Tax Exemption ended in 2001.

5  
6 **Mr. Nagle** showed photos of the subject structures. Three structures are on the east  
7 property line. Pole barns # 1 and # 2 are unenclosed. The wood shed #1 is enclosed.  
8 The wood shed #2 is on the west property line which is being referred to by the  
9 applicant has the goat barn. Explains varies photo orientation.

10  
11 **Member Cornett** asked if staff knew what the mail box was for in picture number 4.

12  
13 **Mr. Nagle** replied no.

14  
15 **Member Severino** asked if he could see the photo of the goat barn again.

16  
17 **Member Cornett** asked what the mail box was for.

18  
19 **Karen Uyttewaal, 2950 Ragis Road, Edgewater**, replied there is no use for the  
20 mailbox.

21  
22 **Susan Howard, 1645 Tanner Circle, Edgewater**, adjacent property owner, opposed,  
23 stated they created their own hardship. She stated that other neighbors and the  
24 Uyttewaals said they never spoke to the County, and there was never had agriculture  
25 pursuit on the property. This negatively affects our property value. My property adjoins  
26 the subject property on the "goat" barn side. Since 1991, according to zoning staff,  
27 some kind of a permit or registration of buildings has been required in the County.

28  
29 **Member Severino** asked if there was any visual screening between the structure and  
30 property.

31  
32 **Ms. Howard** replied just trees; there might be a wire fence.

33  
34 **Member Huttman** asked how long she has owned her property.

35  
36 **Ms. Howard** replied since 2001.

37  
38 **Member Severino** asked if she agreed with the noise assessment of the applicant.

39  
40 **Ms. Howard** replied no, there is constant chipper noise, truck coming and going, and  
41 gun fire.

42  
43 **Member Russell** asked if she knew where the gunfire was coming from.

44  
45 **Ms. Howard** replied that the gunfire was from Mr. Uyttewaal shooting in a mound in the  
46 backyard.

47  
48 **Scott Thurrott, 1645 Tanner Circle, Edgewater**, opposed, stated he was very upset  
49 about the information the applicant was supplying. The sheds are ridiculously close to

1 the property line. There is noise, dumping, and burning of trees. The applicant is not  
2 telling the truth. They have not raised cattle or goats. There is 55 gallon diesel drum to  
3 fuel their trucks. There is no hardship in moving the shed; carports are conveniences,  
4 not hardships. Property value is a concern. The property owner owns adjoining  
5 property has well.

6  
7 **Member Young** asked how long he has lived there.

8  
9 **Mr. Thurrott** replied seven years.

10  
11 **Member Young** asked if staff had seen any debris on the property.

12  
13 **Mr. Nagle** replied he did not inspect the property and is not aware of anything other  
14 than the structures in this request.

15  
16 **Member Huttman** asked Michael Dyer about the Tax Agricultural Exemption being an  
17 issue in this case since there seems to be contradiction to the livestock that may or may  
18 not be on the property.

19  
20 **Michael Dyer, Assistant County Attorney**, replied that the exemption issue is not  
21 critically relevant to this request. This request is for the setback variance of structures  
22 not if they were required to obtain permits and when they were exempted for obtaining  
23 permits. There may be other issues regarding this property and it may be relevant to  
24 those but staff has presented a recommendation based on the criteria in which a  
25 variance may be granted.

26  
27 **Member Russell** asked if fires on that property would require permits.

28  
29 **Mr. Dyer** stated he didn't have a definitive answer, but he believed a permit was  
30 required by the Fire Marshal and could get an answer from Fire Services if necessary.

31  
32 **Ms. Konchan** stated the goat barn is not adjoining to Ms. Howard and Mr. Thurrott  
33 properties. This structure is adjoining a retention pond. This is a neighborhood dispute  
34 and it is hard not to get in the middle. These structures have been here for at least 11  
35 years and were there prior to either speaker purchasing their properties. This has been  
36 very stressful for the owners and they have been trying to obtain compliance.

37  
38 **Member Russell** stated that the applicant had mentioned that several properties along  
39 Ragis Road had similar situations, and he asked if the applicant knew if these structures  
40 were built prior to or after 1991.

41  
42 **Ms. Konchan** replied she could not answer that, she didn't know.

43  
44 Public Hearing closed.

45  
46 Commission discussion:

47  
48 **Member Severino** agreed there seems there is a lot of neighborhood conflict which is  
49 out of our purview, and that we are not a board that disburses punishment for after-the-

1 fact issues, however this request does not meet the five criteria which we review  
2 specifically items (b), (d) and (e).

3  
4 **Member Cornett** stated that the concern is not about the exemption or when it was  
5 granted, that really is not in the purview. He was concerned that an affirmative action  
6 by this board would legitimize a commercial operation.

7  
8 **Member Young** agreed that the one building can be construed as a commercial  
9 operation.

10  
11 **Member Huttman** stated that this isn't a use variance. Granting the setback  
12 variances would be for the structures not the use on the property.

13  
14 **Member Cornett** replied that it's like the camel putting the nose under the tent.

15  
16 **Member Young** replied that if we allow the variances that we would be affirming the  
17 operation since the structures are for the operation.

18  
19 **Mr. Dyer** clarified that the variances today are for setbacks, and if the variances are  
20 granted as requested and there is a use operating on the property that is not allowed by  
21 the Ordinance, the County can still pursue that violation. The commission is free to  
22 agree or disagree with the recommendation based on the information presented and the  
23 decision can be made in that context.

24  
25 **Member Severino** asked staff to display the photo with the three structures. He asked  
26 whose house was in the background of the picture. Assumed it was the property owner  
27 to the east. There is a very small proximity between the structure in question and that  
28 property with little or no visual screening.

29  
30 **Member Russell** pointed out that there seems to be some type of fence on the rear  
31 side of this structure.

32  
33 **Mr. Nagle** stated that particular fence was not shown on the applicants' site plan  
34 however it appears to be on the applicants' property.

35  
36 **Member Huttman** stated that there have been arguments regarding the use of the  
37 property and the relationship between the neighbors that are not part of this variance  
38 request.

39  
40 **Ms. Konchan** asked to speak to the commission again.

41  
42 **Member Severino** granted request.

43  
44 **Ms. Konchan** informed the commission that the property owner to the east is Ms. Ngy,  
45 and she spoke to her and that she didn't have an objection. There is also 5 other  
46 property owners supporting this request. She also wanted to remind the commission  
47 that for years this property was zoned agricultural and had an Agricultural Tax  
48 Exemption. The practices of the County at the time in 1991 and 1997 were very

1 different from the professional way they are run today. We are trying to come into  
2 compliance.

3  
4 **Member Severino** closed the public again.

5  
6 Member Huttman **MOVED** to APPROVE WITH CONDITIONS case **V-08-069** as  
7 presented by Staff. Member Sixma **SECONDED** the motion.

8  
9 **Member Cornett** asked to amend the motion to include a condition that each and every  
10 building on the property receives a building permit.

11  
12 **Member Huttman** asked for the reason of the amendment.

13  
14 **Member Cornett** replied that every building have a building permit.

15  
16 **Member Sixma** stated the property had an exemption when some of the structures  
17 were built.

18  
19 **Member Cornett** stated the property does not now and we are dealing with the property  
20 now and not then.

21  
22 **Member Severino** asked Mr. Dyer for guidance in how to proceed.

23  
24 **Mr. Dyer** replied that if the amendment was seconded then the commission could vote  
25 on that amendment, however if it didn't pass the commission could vote on the original  
26 motion.

27  
28 **Member Russell** seconded the amendment and asked Member Cornett what impact  
29 would requiring each building to have a building permit versus what we have before us  
30 today.

31  
32 **Member Cornett** replied that each structure on the property is built to code therefore  
33 eliminating the safety issue dealing with these structures.

34  
35 **Mr. Dyer** stated that the staff present here today is not prepared to speak to any of the  
36 applicable building issues in this case. Since your decision is final today, you could  
37 table this or continue this so that we can obtain appropriate staff to discuss the  
38 implications of the amendment and whether under the Florida Building Code it can be  
39 enforced.

40  
41 **Member Cornett** stated a little background about the structures were built during an  
42 exemption, none meet setbacks. The motion proposed is that all buildings on the  
43 property whether they were constructed during an exemption period or not be required  
44 to obtain building permits as the property currently does not have an exemption on it.  
45 The issue is when the buildings were

46  
47 **Michael Nelson, Deputy Building Official**, stated that the general answer is if it was  
48 an agricultural tax exempt building and the use of the building has not changed then the

1 building code says it can exist as is. If the use of the building has changed then the  
2 building would need a change of use permit.

3  
4 **Member Cornett** and **Member Russell** withdrew the motion amendment provided that  
5 the condition is added that the applicant is required prior to the variance having legal  
6 effect obtain review by the County Building Department of the necessity to pull any  
7 permits or any change of use permits on the structures subject to the application today.

8  
9 Motion **FAILED** 2 to 5 (Young, Severino, Russell, Cornett and Gove)

10  
11 Member **Young** moved to **DENY** case V-08-069 based on 4(b). Member **Russell**  
12 **SECONDED** the motion and included reasons 4(c) and 4(d). Motion **CARRIED** 5 to 2  
13 (Huttmann and Sixma)

14  
15 **OLD BUSINESS**

16  
17 NONE

18  
19 **PUBLIC ITEMS**

- 20  
21 1. Small Scale Comprehensive Plan Amendment CPMA-003-08  
22 .....Terry James, Comprehensive Planning Manager

23  
24 **Becky Mendez, Senior Planner**, presented staff report. This is a small scale  
25 amendment for a 5.46 acre parcel that is located on the east side of US 1 north of the  
26 intersection with I-95. The current future land use is urban low intensity and the  
27 applicant is requesting an amendment to the commercial future land use. Based on the  
28 land use compatibility analysis, staff recommends approval of this request. This request  
29 with your recommendation will be forwarded to County Council to be transmitted to the  
30 Volusia County Growth Management Commission and then to the Department of  
31 Community Affairs for notice of intent. The exhibits will be modified; the US 1 right-of-  
32 way land use is not concurrent with the adjacent property as should be.

33  
34 **Member Cornett** asked if there were comments from the City of Ormond Beach.

35  
36 **Susan Jackson, Planner III**, replied that they have provided comments not opposing  
37 this request.

38  
39 **Member Russell** asked if this was the property the special events' parking request was  
40 on.

41  
42 **Scott Ashley, Planning Manager**, replied that the request was on the property  
43 adjoining to the north of this subject property.

44  
45 **Member Huttmann** asked if the Ormond Crossings DRI had been approved.

46  
47 **Ms. Jackson** replied that the Ormond Crossings DRI has not been approved at the time  
48 of this staff report and the applicant has been encouraged to work with the Ormond  
49 Beach staff and the Ormond Crossing DRI in regards with the traffic impacts.

1  
2 **DJ Rogers, Smith Hood & Perkins, 444 Seabreeze Blvd, Ste. 900, Daytona Beach,**  
3 **attorney for applicant,** stated that this request is being asked so that in the future it  
4 can be developed into flex office warehouse space and not a general strip commercial  
5 center.

6  
7 No public participation.

8  
9 Member **Cornett MOVED** to **FORWARD** CPMA-003-08 **CONSISTENT** with the  
10 comprehensive plan to County Council. Member **Huttmann SECONDED**.

11  
12 **Member Russell** commented that he opposed because it continues to override the  
13 purpose of the DRI. This development might not be compatible in the future.

14  
15 **MOTION** carries 6 to 1 (Russell opposed)

## 16 17 **STAFF ITEMS**

18  
19 NONE

## 20 21 **COMMISSION COMMENTS**

22  
23 Discussion about the appearance of the new staff reports and addition of the report  
24 summary, commission would like to see the case number and applicants stand out a  
25 little better and there was concern regarding giving a motion to the commission for  
26 action.

## 27 28 **PRESS AND CITIZEN COMMENTS**

29  
30 NONE

## 31 32 **ADJOURNMENT**

33  
34 Having no further comments from the public, staff or Commissioners, Chairman  
35 Severino thanked everyone and adjourned the meeting at 12:05 p.m.

36