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**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
August 12, 2008**

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

FRANK SEVERINO, CHAIR
GARY HUTTMANN, VICE CHAIR **ABSENT**
JAMES RUSSELL, SECRETARY
TAVER CORNETT
STONY SIXMA
JAY YOUNG

STAFF PRESENT

BRUCE PAGE, Assistant County Attorney
MARY ROBINSON, Building and Zoning Director
DAVID ZECHNOWITZ, Planner III
JOHN H. STOCKHAM, Planner III
CHRISTIAN NAGLE, Planner II
YOLANDA SOMERS, Zoning Secretary
MARCY CHAFFIN, Recording Secretary

ELECTION OF NEW CHAIR

Member Sixma **MOVED** to nominate Vice Chair, Frank Severino.
Member Cornett **SECONDED** the nomination.
The nomination **CARRIED** unanimously.

ELECTION OF NEW VICE CHAIR

Member Cornett **MOVED** to nominate Gary Huttman.
Member Young **SECONDED** the nomination.
The nomination **CARRIED** unanimously.

ELECTION OF NEW SECRETARY

Member Sixma **MOVED** to nominate James Russell.
Member Cornett **SECONDED** the nomination.
The nomination **CARRIED** unanimously.

APPROVAL OF MINUTES

Approval of July 8, 2008 Minutes

Member Cornett **MOVED** to **APPROVE** the July 8, 2008 Minutes.

Member Sixma **SECONDED** the motion.

The motion **CARRIED** unanimously.

PUBLIC HEARINGS ON SPECIAL EXCEPTION AND ZONING CASES

Chair 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.

Bruce Page, 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.

Mr. Page asked for disclosure of ex parte communications. He recommended that any Member who has had communications with a member of the public or the applicant on any agenda item, state so at this time with a brief comment.

- Chair, Severino No
- Member Cornett: No
- Member Huttman: Absent
- Member Russell: No
- Member Young: No
- Member Sixma: No

CONSENT AGENDA

Z-08-050 - Application of Laundra Soper, Agent for Owners, Patricia Seacott and Laundra Soper, Owners, requesting a Rezoning from the A-2 (Rural Agriculture) zoning classification to the A-4 (Transitional Agriculture) zoning classification. The property is located on the east side of Jackson Woods Road, at its intersection with Jackson Ranch Road in the community of DeLand; ± 10 Acres (Ashley) 7026-00-00-0092 & 7026-00-00-0104 Tentatively schedule for the September 18, 2008 County Council at 2:00 p.m.

David Zechnowitz, Planner III, presented the Staff Report. He stated the subject property consists of two five acre lots. The area development pattern is made up of agriculturally zoned lots ranging from 2 ½ to 10 acres. The subject parcel has a designation of rural on the future land use map which has a maximum density of one dwelling per five acres. However, there is a provision in the rural land use that allows smaller lot sizes of one acre, if the property is in the vicinity of similar size lots or an urban boundary. He stated that both scenarios apply in this case and Staff recommends **APPROVAL**.

Laundra Soper, 476 Cypress Avenue, Orange City, applicant, stated that they have built on the back five acres as they lost their house (which will be torn down), in the hurricanes of 2004. They will be building on the front of the property so she can be close to her mother as she has is ill and needs assistance.

Member Cornett **MOVED** to **FORWARD** case # **Z-08-050** to the County Council with the recommendation of **APPROVAL** as presented by Staff.

Member Sixma **SECONDED** the motion. The motion **PASSED** unanimously.

ITEMS TO BE CONTINUED

Z-08-024 – Application of Glenn Storch, Storch Morris & Harris, LLC, Attorney for Owner, K1J6, LLC, Owners, requesting a Rezoning from the A-3 (Transitional Agriculture) zoning classification to the A-2 (Rural Agriculture) zoning classification. The property is located at the terminus of Airport Road, approximately ¼ mile north of CR 15-A, the property is the Bob Lee Airport; ± 33.23 acres (Zechnowitz) 6017-00-00-0050 30-day continuance requested

Member Sixma **MOVED** to continue case # **Z-08-024** for 30 days. Member Young **SECONDED** the motion. The motion **CARRIED** unanimously.

Z-08-037 - Application of Rafael Gonzalez, Agent for Owner, Victor M. San Inoceno, 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.

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Member Sixma **MOVED** to continue case # **Z-08-037** for 30 days. Member Cornett **SECONDED** the motion. The motion **CARRIED** unanimously.

Charles Shelton, New Smyrna Beach, adjacent property owner, requested a continuance for longer than 30 days as he is dealing with a property dispute and has been taking time off from work to come to the PLDRC meetings. He requested 120 days continuance so the title insurance and lawyers can work out the dispute.

Bruce Page stated that only the applicant can request an extension and an adjacent property owner may not ask for the extension.

Chair Severino stated that the agenda items are available a week before the PLDRC meetings and can be checked to see if a continuance has been requested or not and it is on the internet.

Mr. Shelton stated he did see the information but thought the board was granting the continuance this morning and since his property is affected doesn't he get any input?

Chair Severino answered when the agenda item comes up to be heard he will have the opportunity to be heard.

Charles Shelton stated he would like to have the dispute resolved so he does not have to come back to see if there is a rezoning action occurring on a continuing basis.

Mary Robinson stated to go with the 30 day continuance and then before the next meeting there will be contact with the applicant and the adjacent property owner. If it has to be continued again, at that time Staff will address a longer continuance.

NEW BUSINESS

PUD-08-045 – Application of Abraham Kamaly, Owner, requesting a Major amendment to the Daytona Fence BPUD including but not limited to the addition of internet car sales as a permitted use on DAYTONA FENCE BPUD zoned property. The property is located on the north side of U.S. 92 approximately 1,700 ft. east from its intersection with Indian Lake Road. The property is near the City of Daytona Beach in the Highridge Estates subdivision; ± 37,700 sq ft (Zechnowitz) 6206-01-36-0200 Tentatively schedule for the October 2, 2008 County Council at 2:00 p.m.

David Zechnowitz, Planner III, presented the Staff Report. He stated this request is for an amendment to the existing Daytona Fence Planned Unit Development that was approved by County Council in 2000. It is a site that is developed with a single family residence, a pool, office and several accessory sheds. Uses permitted in the development agreement are general offices, a single family dwelling for owner or manager of the existing permitted use. He stated the applicant is requesting the addition of internet auto sales, so he may rent the property to a new tenant. The new use will allow customers by appointment only, to inspect and purchase automobiles they have viewed online. A small inventory of vehicles will be stored behind the existing

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building and fence that fronts US 92 and will not be visible or accessible from the highway. Use will include minor repairs and detailing. He stated that adjacent property uses include a charter bus storage facility with auto sales, a proposed contractor shop and office, the Daytona Auto Auction, the old Highridge Motel and the United Way business offices. In order for the proposed internet auto sales use to be consistent with the Highridge Plan and Urban Medium Land Use, the principal use must be general office with auto sales as an ancillary use. He stated that in the amended development agreement, Kamaly BPUD, no display of vehicles or signage related to auto sales will be visible from Highway US 92. Also a 1 foot non vehicular access must be recorded along US Highway 92 to prevent future access. The applicant is not proposing any changes to the site and it will keep the residential appearance and not affect the existing character of the neighborhood. Staff recommends **APPROVAL**.

Member Cornett asked if the easement will run with the land, not the BPUD.

Mr. Zechnowitz answered correct.

Chair Severino asked if the applicant was available, but the applicant was not.

Member Cornett **MOVED** to **FORWARD** case # **PUD-08-045** to the County Council with a recommendation of **APPROVAL** as presented by Staff. Member Young **SECONDED** the motion. The motion **PASSED** unanimously.

PUD-08-046- Application of DRS Enterprises, LLC, Agent for Owner, Donald & Brenda Hess, Owners, requesting a Rezoning from the B-4 (General Commercial) zoning classification to the B&D ENTERPRISES BPUD (Business Planned Unit Development) zoning classification. The property is located on the north side of Enterprise-Osteen Road, approximately 436 feet from intersection with North State Road 415 in the community of Osteen, adjacent to the City of Deltona; ± 1.78 Acres (Stockham) 9218-06-13-0014 Tentatively schedule for the October 2, 2008 County Council at 2:00 p.m.

John H. Stockham, Planner III, presented the Staff Report. He stated the proposal is to create a new flex-office flex-warehouse building on vacant property, which is currently zoned B-4. The new zoning of BPUD will have some B-4 uses and add additional B-5 uses. The applicant plans to use the property for his construction contracting business, storage of his automobile collection and it will include a vehicle repair and body shop. The location is on the edge of a commercially-zoned area in Osteen, close to horse farms, and a manufactured home community. The zoning of B-5 will allow the proposed uses, it is located outside of the 100 year flood plane, and has adequate soils for well and septic field construction. There is enough road frontage and it is close to State Road 415, which is a state arterial road. He stated that a memo from Comprehensive Planning and John Thompson outlined the proposal for the Osteen Joint Planning Agreement that will create an Osteen Commercial Village. In regards to that memo, Staff has included in the development agreement that the building have a two-story minimum height that can be achieved through architectural treatments. Environmental

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Management commented that the site provides potential habitat for the tortoise and Florida Scrub Jays, which means the applicant will have to submit additional surveys and environmental information at the time of final site plan review. Zoning Staff stated that the site could be improved by switching locations of the well site and septic field to protect the specimen trees along the road. Staff recommends **APPROVAL** along with staff recommended changes to the development agreement. This includes revising language in the development standards to remove the references to the JPA, the Joint Planning Area agreement because that agreement has not yet been approved. The Staff recommendations also include referencing, for the signage requirements, section 827.09 of the Zoning Ordinance, and for architecture, section 827 of the Zoning Ordinance, which requires the applicant to coordinate with the City of Deltona on corridor and gateway standards. He continued referencing section 813 for placing utilities underground and section 827 for other site plan design standards, coordinating with the City of Deltona. He stated that under Staff item #3, architectural elevations and treatments, color or materials, shall be varied a minimum of every 25 feet, either vertical or horizontal. He placed the site plan on the overhead.

Member Sixma asked about the Deltona reference.

John Stockham replied that section 827, the non-residential design standards of the Zoning Ordinance, requires that if a non-residential building is placed on a county thoroughfare or within a mile of the city limits, or adjacent to the city limits, that the city's design standards apply. Staff coordinates with the cities regarding their corridor standards.

Member Cornett asked how does the county ordinances relate to the JPA process and are the protections the same.

Mary Robinson answered that the design standards for JPA are still under development but there are guidelines from the City of Deltona that will need to be adhered to.

Member Cornett asked how the prospective language of the JPA might relate to the current design standards.

John Stockham stated that there are design standards (from the proposed JPA) that are in progress for this commercial area such as minimum building heights shall be two story and varying the architectural treatments every 25 feet, which have been incorporated into the development agreement.

Mary Robinson added that the design criteria is similar to section 827.

Derrick Salmon, DRS Enterprises, 2930 Grand Street, Deltona, for the applicant. He stated the building will look better than others in the community as they have taken the time and effort to do so. The businesses that will be operating out of the offices will bring jobs to the area.

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Chair Severino inquired if the applicant had read the changes to the development agreement.

Mr. Salmon stated he had read it, talked with Staff and it is all good.

Member Cornett **MOVED** to **FORWARD** case # **PUD-08-046** to the County Council based on Staff recommendations and the supplement. Member Sixma **SECONDED** the motion. The motion **CARRIED** unanimously.

OLD BUSINESS

NONE

VARIANCE AND SPECIAL EXCEPTION APPLICATIONS

ITEMS TO BE CONTINUED

S-08-025 – Application of Glenn Storch, Storch Morris & Harris, LLC, Attorney for Owner, K1J6, LLC, Owners, requesting a Special Exception for a Fixed-wing aircraft landing fields and helipads on the proposed A-2 (Rural Agriculture) zoned property. The property is located at the terminus of Airport Road, approximately ¼ mile north of CR 15-A, the property is the Bob Lee Airport; ± 33.23 acres (Zechowitz) 6017-00-00-0050 30-day continuance requested.

Member Cornett **MOVED** to continue case # **S-08-025** for 30 days. Member Sixma **SECONDED** the motion. The motion **CARRIED** unanimously.

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

Member Sixma **MOVED** to continue case # **S-08-038** for 30 days. Member Young **SECONDED** the motion. The motion **CARRIED** unanimously.

V-08-041- Application of Michael Burkhead, Agent for TBCOM Properties, Agent for Owners, Marco & Veronica Pichardo, Owners, requesting a Variance to Section 817.00(w)(5)(e) Setbacks and Separation to allow a 180-foot monopole communication tower (404.02 ft. in lieu of the required 1,000 ft.) on A-4 (Transitional Agriculture) zoned property. The property is located on the east side of Fifer Drive, approximately 700 feet from intersection with Beckwith Street adjacent to the municipal limits of the City of

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Deltona; ± 2.5 acres (Stockham) 8101-00-00-0432 30-day continuance requested.

Member Young **MOVED** to continue case # **S-08-041** for 30 days. Member Sixma **SECONDED** the motion. The motion **CARRIED** unanimously.

Gregory K. Stubbs, AICP, Director Growth & Resource Management introduced the new Senior Planning Manager, Becky Mendez who will be responsible for the Current Planning Section of the Planning & Development Services Division. This section will deal with land development, all pre-development sites, re-zoning reviews, PUD's, DRI's, everything the PLDRC has been normally getting including variances which will be handled under one umbrella of the Planning and Development Services. This is to create a communicative organization that is transparent. Becky will take over the PLDRC under Kelly McGee starting with the October cases. He stated there will also be ordinance changes.

Becky Mendez stated she has come from the City of Deltona where she has worked with their planning and zoning board for the last six years. She stated she has also worked with the DRC and the coordinating of those two together. She continued that she is excited to be here and available.

NEW BUSINESS

V-08-048 - Application of Gerard Pendergast, Agent for Owner, James Tibbs, Owner, requesting a Variance for an east front yard setback on South Atlantic Avenue (15 ft. in lieu of required 25 ft.); Variance for an east front yard setback on South Atlantic Avenue (9 ft. in lieu of required 21.5 ft.) for a third-floor unenclosed balcony; Variance for a north front yard setback on Cod Avenue (7 ft. in lieu of the required 25 ft.); Variance for a waiver to Section 600.01 Nonconforming Lots to allow construction of a single-family dwelling on a substandard lot in the R-9W (Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements & Management (SWIM) Overlay Zone) classification. The property is located on the west side of South Atlantic Avenue, approximately 1100 feet north from intersection with Dolphin Avenue in the community of Bethune Beach; ± 3,462 sq.ft. (Nagle) 8505-01-29-0010

Christian Nagle, Planner II, presented the Staff Report. The request is for a series of variances to enable the construction of a proposed three story single family residence on a substandard lot. The property is unusual as it has street frontage on three sides, is a through lot and is abutted by a home on the south side. The lot became a substandard lot due to the construction of Turtle Mound Road. He showed the applicant's conceptual lot plan with the driveway off of South Atlantic Avenue with a proposed parking space that is perpendicular to the driveway, a 15 foot setback from the front property line on South Atlantic Avenue and a 25 foot setback on Turtle Mound Road. The proposed footprint of the home is 24 feet by 36 feet with a wraparound unenclosed balcony on the third level and a proposed front entry porch 3½ feet by 14 feet. The applicant is seeking a variance to allow part of the front porch on the South Atlantic Avenue side to encroach into the required setback. Most of the porch is 3 ½

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feet in width except for a two six foot wide sections to allow for outdoor furniture. He stated that Staff suggested to the applicant that the proposed home be moved five feet further west which is closer to Turtle Mound Road so that cars parked in the driveway will not intrude into the right-a-way of South of Atlantic Avenue. He stated variances would be needed to allow the proposed home and wrap around porch be closer to Turtle Mound Road. He stated that Staff supports the requested variance to locate the home 7 feet from the north property line on Cod Avenue because it is an unopened right-of-way and is unlikely to be opened in the future and this property is the only privately owned property that abuts Cod Avenue. He stated that Staff does not support the applicant's original request to have a 15 foot front yard setback along the east property line and Staff does not support the 9 foot proposed setback for the front porch along South Atlantic Avenue. However, the applicant has indicated he is willing to relocate the house as proposed by Staff should the Commission grant the requested variances. He stated that Staff recommends **APPROVAL** for the requested variances as outlined in the Staff report.

Member Cornett asked if these are remnant lots from the road right-a-way construction issue.

Mr. Nagle answered yes.

Member Cornett asked if Staff is recommending just moving everything five feet west.

Mr. Nagle answered yes.

Gerard Pendergast, Agent for Owner, stated that they started working on this request since last October because of the three street situation. He stated that the property was purchased in October 2007 with the understanding that no variances were required. However, when applying for permits it was discovered that the lot was substandard. A substandard lot variance was immediately applied for and then other issues came up. He stated they have worked with Staff and have come to agreement for all issues except for the 15 foot front setback instead of a 20 foot front setback because it was agreed upon when the property was purchased. He stated he has photographs and can explain more if needed.

Member Cornett stated for technical reasons the photographs should be viewed.

Chair Severino asked Mr. Pendergast if he was in agreement with the majority of Staff's recommendation except for the front yard setback.

Mr. Pendergast replied yes.

Member Cornett asked Mr. Pendergast if he wanted to keep the 15 foot setback in the front yard and gain 5 feet in the backyard.

Mr. Pendergast answered yes because on the west side of the property there is an undisturbed vegetation area and a sand dune. The lot drops off from an elevation of 13

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feet to 7 feet and that part of the lot will remain undisturbed. Turtle Mound Road is the more heavily traveled and noisy road so they want to stay further away from it and preserve the native vegetation near the road.

Member Cornett asked if the front wall of the house is not moved, do they want to move the rear wall toward Turtle Mound 5 feet.

Mr. Pendergast answered no and said he does not want to change the house plans.

Member Cornett clarified that the house foot print stays the same and the proposed house is setback 15 feet from the South Atlantic right-a-way, and the applicant does not want to move it 5 feet west.

Mr. Pendergast stated yes, the applicant proposed setback from the east property line is 15 feet, but between that and the edge of the pavement is a 20 foot road easement. He said this property has large easements, there is 20 feet between South Atlantic Avenue and the property line and there is 32 feet between the pavement edge of Turtle Mound Road and the property line. If the road easement in the front is counted, the drive way will be 35 feet long. There is the three street issue and the 15 feet setback came from thinking that the lot was a corner lot. He said when you have 2 streets you are allowed a 15 feet setback on one side, but the lot abuts three streets so it became a negotiation point.

Member Young asked for clarification of the request.

Mr. Nagle answered stating that Staff recommends that the two applicant requested variances, the 15 foot setback variance from South Atlantic and the variance for a 9 foot setback for the proposed front porch from South Atlantic be denied and the house be moved five feet to the west. He showed the survey and noted that the western 15 feet of the property slopes towards Turtle Mound Road which is indicated on the survey. He stated he spoke with Mr. Tibbs, the property owner, and Mr. Tibbs indicated he did not object to the Staff's variance recommendations if that's the way the PLDRC wants to proceed.

Member Cornett asked what the setback is for the house to the south of the proposed house.

Mr. Nagle answered that house was built in 1981. He spoke to Mr. Rusnaic, the owner, who is objecting to the setback variances along South Atlantic Avenue. Mr. Rusnaic's house is located approximately 25 feet from South Atlantic Avenue and the new house requested setback variances will make it unsafe to exit his driveway as it will block his view to the properties to the north as it will sit closer to South Atlantic Avenue than his house or other houses to the south. Mr. Nagle stated he spoke with Mr. McLarnon, the property owner across South Atlantic Avenue who also called objecting to the two setbacks for South Atlantic Avenue.

Member Young asked Staff if most of the houses have more than a 15 feet setback.

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Mr. Nagle replied that Mr. Rusnaic stated his house was approximately 25 feet from South Atlantic Avenue and stated it would be difficult to be exact without survey's for the other houses.

Mr. Pendergast showed aerial photographs of the homes in the area, and said the property across the street from the applicant's property and which has approximately 5 foot front yard setback and probably 5 foot driveway in the easement and a single car garage. A side view of the property taken from Turtle Mound Road was shown which shows the native vegetation that starts at the top of the dune and goes down to the street. He stated they have been working with the Utilities Commission of New Smyrna Beach concerning sewer connections.

Discussion continued showing the various views of the street and homes in relation to the applicant's property.

Member Russell inquired if the other side of the unopened Cod street is common property.

Mr. Pendergast replied the other side of the unopened Cod is DOT property.

Mr. Nagle stated it is a remnant piece and is Volusia County property.

Member Russell asked if vacating Cod Avenue row has been requested.

Mr. Pendergast stated the property owner had considered submitting a vacation application but if approved, they would still be 6 square feet short of the 5000 square feet minimum lot area needed to make the property not non-conforming. He stated there have been discussions requesting the Cod Avenue row to be closed.

Member Young asked for clarification that the request is to be 5 feet closer to the South Atlantic Avenue and therefore protruding out further toward South Atlantic Avenue than the three existing houses.

Member Russell asked if that included the porch not the footprint of the house.

Mr. Pendergast replied yes, including the porch.

Member Russell asked if the porch is covered.

Mr. Pendergast stated the porch is open, unenclosed and under the roof overhang of 3.5 feet . He said part of the balcony is 6 feet in width to allow room for furniture.

Member Russell asked if the main bearing wall will be even with the adjacent house or located toward South Atlantic Avenue more.

Mr. Pendergast answered that the front wall will be even with the front porch of the

house to the south. He explained the proposed roof lines, of his a adjacent homes.

Member Cornett asked if there is a photograph of that.

Member Young stated that the front wall of Mr. Tibbs home will be 5 feet closer to South Atlantic Avenue than the other house.

Mr. Pendergast answered yes it will be.

Member Russell asked if there would be any advantage to have a 25 foot setback from South Atlantic Avenue.

Mr. Pendergast answered it is only 5 feet which is setting the house either 15 feet or 20 feet back from South Atlantic Avenue. If the house is setback the 20 feet, the structure will be closer to the west which is closer to the vegetation and closer to the traffic, along Turtle Mound Road.

Member Young stated that the applicant is trying to get 5 feet closer to South Atlantic Avenue putting the front wall of the home closer and obstructing other properties which is what the neighbors are concerned about.

Mr. Pendergast stated the next door neighbor has a six foot hedge that begins at the easement and runs toward the house back to Turtle Mound Road. He said the hedge already blocks the view of the road.

David Rusnaic, 6034 S. Atlantic Avenue. He stated that the house directly across the street owned by Mr. McLarnon has a 12 foot long driveway not a 5 foot long driveway. His setback is 12 feet because he measured yesterday. He stated his house has a roof that covers his patio and is not an unexposed patio and his house sits back 25 feet as does every other house in line. The hedges are not high and do not cause an obstruction. He stated that the applicant's variance request is not for 5 feet but for 10 feet. He stated the applicant wants to go from a 25 foot setback to a 15 foot setback. He said the applicant wants to take it from a standard 25 feet setback and reduce the setback 10 feet, and then put in a balcony also. The house across the road with a 12 foot drive causes the cars to stick out into the road a foot or so. If the applicant's house is a 15 foot setback, it will be difficult for cars to go side by side up the road. The landscaping along the road will be ruined and it will be a safety factor in the right-a-way. He stated he will be looking into a concrete wall of the proposed house and the whole road will change it's look.

Mr. Young asked if he is the adjacent house.

Mr. Rusnaic stated he is and his house is over 25 feet from the road as is his neighbor's Dan's house south of him, and his neighbor's Tom's house south of that. Then there is an empty lot and virtually every house going down the road (South Atlantic Avenue) is 25 feet off the road. This house will stick out and it is a safety factor. He stated, the real question is does the homeowner want to pay the expense to level

the ground in the back of the lot where it slopes 3.5 feet down.

Marc McLarnon, 6035 S. Atlantic Avenue. He stated he is the home directly across the street from the proposed house. He stated his home is the poster home as to why a diminished setback is not a good idea. He stated he is thrilled to have a house across the street and has no objection to the proposed setback on Cod Avenue. He continued that his home's setback is only 12 feet and it is an issue especially when two cars pass each other along the street. Granting a 15 foot setback instead of the 25 foot setback takes it out of harmony and compromises the road which is already narrow. When two cars pass you go slow. He stated he considered purchasing this property about two years ago and was aware of the challenges to this property with the setback on South Atlantic, the front setback on Cod and the front setback on Turtle Mound. If you have all these setbacks you have a house that is only 13 feet in depth which does not make sense. He stated he did not want the challenge of going through the variance requests, but he is in favor of granting variances to get a nice home on the property. He said the lot is big enough to allow a 25 foot setback from South Atlantic Avenue. He continued that the Turtle Mound Road construction took part of the property 10-15 years ago. The native vegetation is vegetation that has grown up after DOT tore it all up in the last 10-15 years, not 50 years ago. He stated the applicant is not responsible for the condition of the lot but should have been aware of the lot being non standard. He continued that you compromise when you purchase a beach house. This is not a necessary compromise as all the other houses on the street are at a minimum of a 25 foot setback. He said the driveways appear to be 35 feet long, which is deceiving. It is not a 35 foot driveway, from what he can interrupt.

Mr. Nagle stated that the actual driveway on the property would only be 15 feet in depth. There is another 20 feet of driveway located in the right-a-way that connects to the edge of the pavement of South Atlantic Avenue. There would be 35 feet from the edge of pavement to the end of the proposed driveway. The reason Staff is recommending the house be moved west is to prevent cars from intruding into the right-of-way of South Atlantic Avenue which can be done if the house is further west.

Marc McLarnon stated that is all they are really asking for is the house be moved further west. There is the space to do it and it can be seen in the photographs there are long driveways coming up to the back of the houses. These are the conditions everyone has to live with when you live on this section of South Atlantic Avenue. He stated there is a lot of room to work behind the houses.

Member Young asked the applicant why they do not want to move the 5 feet back.

Mr. Pendergast replied the vegetation is not an issue as the site will not be filled. The house will be on pilings because of its location to the Coastal Construction Zone. The habitable house will be 18 to 24 inches above the grade and do not want to disturb the grade or drainage on the site. He stated they were not trying to destroy the vegetation. The setbacks occurred because of the corner lot situation. There are three streets and when on a corner lot you allowed 25 feet on one side and 15 feet on the other. Cod Avenue is an unopened street. He said he thought Cod Avenue would be

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considered a side yard for setbacks. He continued that Staff wanted to split the setback to be 20 feet which puts the house in the center of the site. The survey shows the majority of the site is flat, it is about 13.2 feet elevation in the center then it begins to slope off. The reason the house was sited there was to not disturb the site.

Mr. Nagle stated that in the initial discussions it was thought to be a corner lot but with further review of the zoning ordinance, Staff determined that the property is a through lot that has three front yards. Therefore, unless a variance is granted there is a 25 foot set back requirement from the north property line along Cod Avenue.

Mr. Pendergast stated that during due diligence they meet with the planning department. The project was designed to the setbacks that were agreed upon. When they requested a building permit they found out there was an issue. He stated if they had known there was a variance involved, the owner would not have purchased the property. The meetings were held prior to purchase and they had a site plan, a survey and a non-conforming lot letter. He continued that they have been working with Staff for 10 months. He said the idea was to avoid variances and issues.

Chair Severino asked Staff if the traffic report that stated the proposed residence will not block the site distance on South Atlantic, was that the original proposed location or Staff's proposed location.

Mr. Nagle answered that the traffic report comments are based on the applicants requested variances.

Chair Severino continued that in the traffic report Turtle Mound's level of service and daily trips are noted but there is no report on South Atlantic.

Mr. Nagle stated the County does not do traffic counts on South Atlantic.

Member Cornett asked for the photographs to be shown.

Mr. Nagle showed the applicant's photographs of the property and the adjacent area.

Discussion continued regarding the direction of the photographs, the property lines, property elevation and easements.

Chair Severino stated due to the hardship of a substandard lot it is magnifying other issues of the site. There is a storm water retention requirement due to the Indian River Lagoon Surface Water Management and a 35% requirement for retaining native vegetation. Distance requirements as setbacks and easements have been presented without survey information and there seems to be some confusion as to numbers quoted.

Member Young asked Staff if moving the 5 feet back would cause vegetation requirement problems.

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Mr. Nagle answered that there should not be a problem. The requirement of 35% still has to be met but the land development code allows the planting of native vegetation to make up for vegetation that may have to be moved.

Member Russell asked if concrete pavers are considered impervious surface.

Mr. Nagle answered that it is an impervious surface. The applicant would be required to obtain a driveway permit for the proposed driveway. He stated he is not sure pavers can be used in a County right-a-way.

Member Young stated that he does not see that moving the building back will be a problem as it should not interfere with the vegetation and the grade should not be a problem, since there will be pilings. He is not sure there is a hardship in moving the building back five feet.

Member Sixma makes a **MOTION** for **APPROVAL** of case # **V-08-048** with Staff's recommendation of the 20 foot setback instead of the 15 foot setback.

Member Sixma asked the applicant if he was okay with the Staff's two conditions.

Mr. Pendergast answered he was fine with them.

Chair Severino states the motion is for Staff's recommended variances.

Member Cornett **SECONDED** the motion. The motion **CARRIED** Unanimously.

V-08-051 - Application of C. Allen Watts, Attorney for Owner, Kathleen Coughlin Tr., Owner, requesting a Variance for a waterfront yard setback (21.5 ft. in lieu of the required 25 ft.). The property is located on the west side of John Anderson Drive, between Beau Rivage Drive and Sand Dunes Drive in the community of Ormond Beach; ± 0.6 acres (Zechnowitz) 3221-00-03-0090

Dave Zechnowitz, Planner III presented the Staff Report. He stated the subject property is a waterfront lot developed with a single family dwelling, detached garage, a pool, and a cabana. The lot is 113 feet deep except where the seawall extends into the property at it's north end where it is 96 feet deep. The existing cabana is set back 20 feet from the wall as was required when it was built. The applicant is proposing to construct a larger, new cabana to replace the existing one. In 1998 the zoning ordinance was amended to require a 25 foot water front yard setback regardless of the lot depth and this made the current cabana non conforming. The proposed cabana will be less non conforming at 21.5 feet which requires a 3 1/2 foot variance. Staff finds that special conditions and circumstances exist because the sea wall juts into the property which causes a unique non self imposed hardship and the request is the minimum variance that will allow the applicants to build one foot behind an existing non conforming building and make reasonable use of the proposed structure for its intended purpose. Staff recommends **APPROVAL** of the variance requested.

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Allen Watts, 351 E. New York Ave, Suite 200, Deland, attorney for the applicants. He showed a photograph of the sea wall and explained the sea wall is westerly of the proposed building except for the area directly in front of the proposed building. Twenty years ago when the house was built there was vegetation on the natural river bank and the sea wall was set around that vegetation. The vegetation is now gone but the sea wall still comes in at that point on the lot and is now used for the start of the boat pier. There would not have been a problem with building the game room on the west side of the existing garage except that the zoning has changed to a 25 foot setback rather than 20% of the lot, which is 20 feet. Two procedural problems have arisen; one is that the notice mailed to the neighbors had the wrong date on it. There were 400 other notices sent out on the same day as the six for this and were to have the date of August 12th but had the date of another hearing. He stated they have secured written waivers of the ten day notice from each of the six neighbors. The other problem just discovered, is that the applicant does ask for 20 feet. The applicant's plans are for where the existing cabana is located, 20 feet off from the sea wall. He stated that on the plans there is a shaded deck area and the existing cabana in the middle of what is the proposed cabana. It does center on the deck and face the pool. The plan is to take down the cabana and deck and build the game room which is an extension westerly from the existing garage. He stated when the application was submitted, 20 feet was requested in lieu of 25 feet. He continued that the plans used were out of date. The plans showed a 29 foot game room that would have extended within 21.5 feet of the sea wall.

The Staff report reflected the minimum necessary to build the building. The building plans they currently have is for 30 feet and 4 inches. It brings the building out to the same as the existing cabana. He stated what should be requested is that the decision be made in regards to the 21.5 foot variance and then they will supplement the application to ask for the other 1.5 feet, but it will require a new notice and poster to be put up. There are no problems with the neighbors and that the Staff analysis would be the same. He stated he needs to complete this according to the applicant's current plan which is to come out at exactly where the existing cabana is located. It does not increase the non conformity, but is not eligible for a replacement structure because it is a total reconstruction, not a repair of prior existing building. He stated he is requesting to approve this variance as it has been advertised and noticed at 21.5 feet with the knowledge that they will be back for the other 1.5 feet if you pass the first one.

Member Sixma asked if the applicant would like to continue the request.

Allen Watts answered no.

Chair Sererino asked if Staff or Legal had any comments.

Mr. Page replied that you can proceed as recommended.

Mr. Zechowitz answered that it will be a new request and Staff would not have an objection.

Member Russell asked Staff if that was no objection to giving the applicant another 1.5

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feet.

Mr. Zechnowitz stated that's correct.

Member Cornett stated that technically it will be two variances.

Member Cornett **MOVED** that case # **V-08-051** be **APPROVED** for 21.5 feet in lieu of the required 25 feet based on the recommendation of Staff. Member Sixma **SECONDED** the motion. The motion **CARRIED** unanimously.

OLD BUSINESS

NONE

PUBLIC ITEMS

NONE

STAFF ITEMS

NONE

COMMISSION COMMENTS

NONE

PRESS AND CITIZEN COMMENTS

ADJOURNMENT

Having no further comments from the public, staff or Commissioners, Chair Severino thanked everyone and adjourned the meeting at 10:36 am.

Frank E. Severino III, Chair

Date

James Russell, Secretary

Date