

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
June 12, 2007**

The Public Hearing of the Volusia County Planning and Land Development Regulation Commission was called to order by **Gary Huttman**, 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:

GARY HUTTMANN, Chairman
DARLA LIPKE, Vice-Chairman
TAVER CORNETT, Secretary
STONY SIXMA
JIM RUSSELL
FRANK SEVERINO
JAY YOUNG

STAFF PRESENT

JAMIE SEAMAN, Assistant County Attorney
MARY ROBINSON, Building and Zoning Director
SCOTT ASHLEY, Planning Manager
DAVID ZECHNOWITZ, Planner III
JOHN H. STOCKHAM, Planner III
CHRISTIAN NAGLE, Planner II
YOLANDA SOMERS, Zoning Secretary

APPROVAL OF MINUTES

Approval of the May 8, 2007 Minutes

Member Cornett commented Page 4, Line 29 should be corrected to read 55, as opposed to 65.

Member Sixma **MOVED** to **APPROVE** the minutes for May 8, 2007 with the correction. Member Cornett **SECONDED** the motion. Motion **CARRIED** unanimously.

PUBLIC HEARINGS ON SPECIAL EXCEPTION AND ZONING CASES

Chairman Huttman 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.

Chairman Huttman commented that a number of the items on the Agenda refer to being forwarded to County Council for their July 27 meeting and is actually going to be the July 19 meeting. He asked the members to make note of that on their Agendas.

Jamie Seaman, 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.

CONTINUED ITEMS

PUD-07-007 – Application of **Darren Elkind, Paul & Elkind, Attorney for Owner, Glenwood Properties, LLC, Owner**, requesting a **Rezoning** from the A-1 (Prime Agriculture) and A-2 (Rural Agriculture) zoning classifications to the Glenwood Park RPUD (Residential Planned Unit Development) zoning classification. The property is located on the west side of Grand Avenue, at its intersection with Plymouth Avenue west of the City of DeLand; ± 219.6 acres (Ashley) **Staff Request – 30 day continuance**

Chairman Huttman invited the public to speak on above case. No one responded. Member Sixma **MOVED** to continue case **PUD-07-007** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

PUD-07-032 – Application of **Carson Good, Contract Purchaser, Michael Marder, DeLand Hwy 44 Properties, LLC, Owners**, requesting a Rezoning from R-3C (Urban Single-Family Residential / Thoroughfare Overlay Zone) zoning classification to the DeLand Good Capital Group BPUDC (Business Planned Unit Development / Thoroughfare Overlay Zone) zoning classification. The property is located on the south side of State Road 44, at its intersection with South Kepler Road, north of the City of DeLand; ± 4.1 acres (Zechnowitz) **Due Public Notice – 30 day continuance**

Member Sixma **MOVED** to continue case **PUD-07-032** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

S-07-065 – Application of **Bernard Serafinowicz, Owner**, requesting a **Special Exception** for a Recreational Facility on A-1 (Prime Agriculture) zone property. The property is located on the northeast side of Pineda Road, approximately 500 feet north from its intersection with Ranch Road, north of the City of Deltona; ± 11.01 acres (Zechnowitz) **Staff Request – 30 day continuance**

Member Sixma **MOVED** to continue case **S-07-065** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

V-07-072 – Application of **Robert Riggio, Attorney for Owners, Kelly & Julie Caudill, Owners**, requesting a Variance to Section 801.01(e) to allow an accessory structure (exceeding 500 sq.ft.) rear yard setback (10 ft. in lieu of the required 40 ft.) and a side yard setback (5 ft. in lieu of the required 15 ft.) on Whispering Creek RPUD (Residential Planned Unit Development) zoned property. The property is located at the west end of Country Farms Road, approximately 1,900 ft. west from its intersection with Tomoka Farms Road in the Whispering Creek Residential Planned Unit Development; ± 1.43 acres (Nagle) **Staff Request – 30 day continuance**

Member Sixma **MOVED** to continue case **V-07-072** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

CONSENT AGENDA

NONE

NEW BUSINESS

Z-07-063 - Application of **Karen & Richard Gilman, Owners**, requesting for a **Rezoning** from the A-1 (Prime Agriculture) zoning classification to the A-4 (Transitional Agriculture) zoning classification. The property is located on the north side of Duroc Drive, approximately 359 feet

west from its intersection with Yorkshire and Duroc Drive, near the City of Lake Helen; ± 9.76 acres (Stockham) **Tentatively scheduled for the July 19, 2007 County Council public hearing time certain 2:00 p.m.**

John Stockham, Planner III, presented the Staff Report. He stated the subject property is non-conforming since a total of 10 acres is required in the A-1 zoning classification. It is located on an unimproved road east of the City of Lake Helen in an area of all A-1 zoned properties. There is a drainage area, designated Flood Zone A, located to the southwest of the subject property. He reported there is only one other zoning classification in the surrounding area that permits smaller parcels; the A-2 zoning classification, which permits parcels of 5 acres and is the preferred density for the Rural future land-use. Existing A-1 zoning with a minimum 10-acre lot size requirement is compatible with the rural future land-use category, however this zoning classification has a larger minimum lot size than 5 acres in order to help preserve and encourage agricultural uses. He explained the proposed A-4 classification is more suited for areas that are in transition from being agricultural to being more residential in character. The requested A-4 classification has a minimum lot size of 2.5 acres, which only provides land area for limited personal agricultural production. With regard to land-use considerations, the Comprehensive Plan contains specific policies relating to the location of the requested rezoning application. He stated under the Rural land-use category compatibility of the proposed development will be viewed within the context of existing uses, public facility capacity in the area, suitability for wells and septic tank usage and the natural features of the parcel in question. He stated the Rural land-use on the future land-use map typically allows one unit per 5 acres and may allow one unit per acre if the surrounding land-uses warrant it. Quoting from the Comprehensive Plan he stated that vacant parcels or tracts of land that do not meet the compatibility and suitability criteria, or are in areas which have not been previously platted with less than 5 acres in size, shall only be developed with lot sizes that are 5 acres or greater. The current request to rezone to a classification that would allow lot sizes of 2.5 acres each does not meet the location criteria of this rural land-use element. A study of the lot sizes within the 660 ft. vicinity radius specified revealed that no lot smaller than 5 acres exists. He reported that the Comprehensive Planning staff memorandum also notes the criteria for rezoning to a higher density also includes the appropriateness of allowing more density in an area based on environmental character of the subject property. The northern portion of the property has a forested wetland system that extends beyond the subject property. This indicates that the subject property may not be suitable to support more density. The staff memorandum from Dave Griffis notes there are soils present that will limit community development. These soils have the constraint of being hydric. He concluded that the site is located on Duroc Dr. which is unimproved and narrow and does not lend itself for increased density in the area. Staff evaluation is based on the eight applicable criteria in Section 1103 of the Zoning Ordinance, Item E, by which the Commission shall consider an amendment to the official zoning map. Mr. Stockham then read the eight items and stated Staff finds this request not compatible with the Rural future land-use element of the Comprehensive Plan and the impact on the natural environment is problematic. He also found no changes in the circumstances or conditions affecting the surrounding area, since the area is predominantly geared towards larger-scale agricultural uses such as grazing, especially to the north of Ohio Ave. Additionally, some of the soils found on the property do not support community development and are a constraint to granting this rezoning request. Staff recommends DENIAL of this application.

Mr. Stockham presented photos and maps on the overhead and offered to answer any questions.

Member Sixma asked if there was A-1 zoning in the area surrounding subject property.

Mr. Stockham replied there is A-1 completely surrounding the property.

Karen Gilman, 1310 Duroc Dr., Lake Helen, Owner stated the wetlands to the north are not actually on their property, but on the fence-line. She stated they just want to build another house on their property. She further stated there are other 2.5 to 5-acre lots in the area and she doesn't understand why they're not zoned properly such as four lots off Owens Drive. She was told at the pre-meeting there are other lots similar to the proposal to the north within the 660 feet.

Eric Hopton, 1309 Duroc Dr., Lake Helen stated he lives south of the applicant and has lived in the area his entire life. He is opposed because the area is a swamp. He has concerns about the wildlife, a possible increase of similar requests to rezone, the impact on the roads, and the door being opened for permitting of towers and so forth. He stated he has no issue with the applicant building a second house on 5 acres, but is opposed to the rezoning to A-4.

Chairman Huttman mentioned a memo has been received from Charles & Virginia Kinnan not in favor of the rezoning request.

Karen Gilman then stated they purchased their property under the impression it was 10.5 acres, and all they really want to do is obtain approximately two 5-acre lots so they can build a second house for one of their children and comply with Zoning.

Member Severino asked if there is another method to achieve the applicant's goals.

Mr. Stockham replied possibly going to A-2.

Member Severino asked if Staff has met with the applicant to discuss that possibility.

Mr. Stockham replied that 9.76 acres subdivided into 5 acres and 4.76 acres creates another non-conforming lot, which is an issue. He also clarified the wetlands at the north of the property do extend across the property line and the other 2.5 - 5-acre lots mentioned by the applicant are A-1 non-conforming parcels (part of an exempt unrecorded subdivision).

Member Russell asked the applicant to indicate where on the property they intended to build the second house. The applicant replied on the south side, not impacting any wetlands.

Mary Robinson, Building & Zoning Director, commented on the procedure for building permit applications to be flagged for the Environmental Group review.

Member Cornett asked the applicant if they have explored the possibility of acquiring the extra ¼ acre to reach 10 acres.

Karen Gilman replied the only possibility is McCormick's piece as the rest is homesteaded.

Member Russell and **Mary Robinson** further discussed the possibility of meeting again with the applicant.

Karen Gilman commented she would be agreeable to the A-2 with a non-conforming lot.

Further Staff discussion ensued about the possibility of this case going to Council with PLDRRC recommending A-2, but with the Staff recommendation of denial still applying because creating a non-conforming lot is not consistent with the Comprehensive Plan and Zoning Ordinance.

Member Lipke **MOVED** to FORWARD case **Z-07-063** to County Council with recommendation of **DENIAL**. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

Member Sixma **MOVED** to FORWARD a RECOMMENDATION to County Council for a rezoning to A-2 classification in this case. Member Severino **SECONDED** the motion.

Member Young stated he was not agreeable to generating another non-conforming lot.

Member Sixma stated it would be up to Council, but gives the applicant a glimmer of hope.

Member Russell stated he would support an A-2 rezoning with two lots, one being non-conforming.

Mary Robinson clarified this Commission does not review subdivision plans or lot line adjustments.

Ms. Seaman further clarified that if the Commission is in favor of the A-2 (the one 5-acre lot and the one 4.76-acre) the vote would be yes now, and the recommendation would go to the County Council.

Mary Robinson stated creating a non-conforming lot does not comply with the regulations. She would recommend from a Staff perspective the applicant resubmit a Residential PUD (Planned Unit Development) Application.

Member Young asked for clarification.

Member Russell stated he felt the RPUD application would be the better option.

Member Severino asked if the applicant would be willing to go forward with Staff's recommendation on the RPUD.

Applicants nodded in the affirmative.

Member Cornett inquired if heading in the direction of the PUD application, what is the least expensive or most expeditious manner in handling this case.

Mary Robinson replied continuance, with additional fees for the RPUD. It would also have to be re-advertised.

Ms. Seaman commented a denial by Council means they can't come back within a year.

Member Cornett asked how long the PUD process is.

Mary Robinson replied typical process is 90 days to Council and explained what would be needed to apply.

Member Cornett addressed the applicants and explained the PUD as a potential choice for them, with more fees and another 60- to 90 days, or they could go before County Council with the motion on the floor now.

Ms. Seaman explained the PUD allows some flexibility. It does require more engineering and costs up front.

Member Lipke suggested the applicants continue to explore purchasing neighboring properties.

Member Lipke **MOVED TO RESCIND** the recommendation of DENIAL. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

Member Sixma **MOVED TO CONTINUE** Case **Z-07-063** for 90 days. Member Lipke **SECONDED**. Motion **CARRIED** unanimously.

Mary Robinson advised the applicant to proceed quickly with their application.

Eric Hopton asked if the zoning will change.

Ms. Seaman replied if the applicant's application is approved they would end up with two lots; one 5-acre and one 4.76. It will be re-noticed, re-publicized, and adjacent property owners will receive notices. It would not be A-1. It would be a PUD zoning designation.

PUD-07-074 – Application of **Christopher Challis, Cobb & Cole, Attorney for Owner, Shirley A Barnes, Owner**, requesting an **Amendment** to the Rodeo Lakes RPUD (Residential Planned Unit Development) Resolution No. 2004-214 to include but not limited to amending the number of dwelling units, preliminary plan and development standards. The property is located on the east side of Rodeo Road approximately 1,100 feet north of its intersection with S.R. 40; ± 80 acres (Ashley) **Tentatively scheduled for the July 19, 2007 County Council public hearing time certain 2:00 p.m.**

Scott Ashley, Planning Manager, presented the Staff Report. He stated the primary development portion of the subject property is the southern 40 acres, with 15 lots originally approved in 2004. The access point was from SR 40, ending with a cul de sac on the western end of the project. During site plan review it was discovered the property had extensive wetlands on the eastern portion which would be greatly impacted if the project were developed as shown on the plan with 15 lots and the roadway access from SR 40. He stated the applicant has a revised project layout with 11 lots, various changes to languages within the document regarding lot dimensions, re-routing the access point to Rodeo Rd. with a cul de sac in the middle of the property, and allowing the eastern portion to be maintained in a natural state. To minimize impact, he stated the applicant has proposed a building envelope of just under 10,000 sq.ft. The minimum lot width is proposed to be reduced from 150 ft. to 135 ft. as well as the sideyard setbacks from 25 ft. to 15 ft. to minimize the wetland impacts and extending into the 100-year flood plain. He stated a key element is that under the original PUD, with the idea that no wetlands were to be impacted at that time, there was language in the PUD documents (Page 5 of the proposed amendment) that all wetlands shall be protected with a 50 ft. upland buffer. Since more wetlands exist than originally thought when the PUD was approved in 2004, this has had a great impact on the ability to site the improvements, the lot layout and the roadway on the prime development area. Staff proposes striking that language to allow the applicant to seek the ability to go through the processes of the Land Development code and to seek some relief if possible through a separate process (Wetland Alteration Permit). He stated Staff has modified the language under the Environmental Considerations section to allow the applicant to address all applicable environmental provisions through the Wetland Alteration Permit. Staff is in support of most of the requested changes. Staff has concerns with the plan still showing substantial impact, specifically where the cul de sac is located. Three lots are totally within the wetland area at this point. He pointed out the wetland boundary and the 50 ft. required buffer on the overhead. These areas would have to be mitigated through the Alteration Permit. Staff recommends a further reduction of the number of lots from 11 to 8. Staff recommends **APPROVAL** subject to the conditions listed.

Chairman Huttman asked **Mr. Ashley** for clarification on the reduction of lots.

Chris Challis, Cobb & Cole, 150 Magnolia Ave., Daytona Beach, Attorney for Owner, Shirley A. Barnes commented on the history of this project and the wetlands on the property. He stated it is historically farmed agricultural property or cow pasture and low-quality wetlands. He spoke on the Wetland Alteration Permit application which identifies more particularly what the wetlands are. The wetlands being impacted by the three lots in question are improved woodland pasture wetlands and a ditch. The issue between the application and what Staff is recommending is 2.97 acres. Using an aerial photo on the overhead, he pointed out the three lots in question, the proposed access road and the cul de sac indicating that most of the area has already been cleared for some time. He stated the applicant has been working with Staff to minimize impact. The original plan called for 12.5 acres of wetland impacts. The proposed plan today calls for 3.08 acres of wetland impacts (a 75 percent reduction). They have also proposed a 25 percent reduction in the number of lots, from 15 to 11, to comply with the Comprehensive Plan. He addressed the consideration of the functional value of the wetlands being impacted and pointed out under UMAM (Uniform Mitigation Assessment Method) the value is 1.49 units or very low value ecologically speaking. The applicant is also proposing to

mitigate by creating 2.2 acres of new wetlands to the north side of the cypress hammock and planting 10,000 new plants. They also propose to enhance current wetlands with ecological plantings at the edges of the man-made ponds. Approximately 73 acres will be preserved in perpetuity as wetlands and be allowed to return to its natural state over time. The UMAM value of the proposed mitigation is 7.49, a win-win in his opinion.

Chairman Huttman inquired about the Staff recommendation of 8 units while seeming to support the 11. The traffic report is based on 11 units, not 8. He questioned the inconsistency.

Mr. Challis explained that the Staff Report focused on the language in the Development Agreement which said there would be no wetland impacts, assuming the cow pastures weren't wetlands. He stated Staff's position is that the applicant needs to avoid and minimize and was prohibited from proceeding under the 15-unit plan. The applicant has worked with Staff to find a compromise and proposed this Amendment reducing the lots to 11 and changing the language.

Member Lipke asked Staff to concur and explain the low quality of the wetlands.

Mr. Ashley deferred to the County Environmental staff recommendations in the Staff Report. Utilizing the aerial photo, he reviewed the history of the original PUD application and development review which revealed more wetlands than originally anticipated. He stated quality of the wetlands has been an issue between the applicant and Environmental staff. He reiterated the reasons Staff recommends 8 units on the southern portion of the property.

Member Lipke asked if Staff's opinion is "wetlands are wetlands" and quality is not an issue.

Mr. Ashley again deferred to the Environmental staff and their recommendation.

Mr. Challis stated assessment of the value of the wetlands is part of the procedure at all levels and presented photos of the relevant areas.

Ed Morafski, LPG Environmental, 5207 Monserrat Dr., Lakeland, FL spoke to the quality of the wetlands and UMAM mandates. He explained what he found on his exploration of the property, showing photos of the ditches and the pasture grasses.

Mr. Challis pointed out the proposed cul de sac and proposed 3 lots on the overhead

Mr. Morafski resumed his analysis of this site and reiterated his opinion the wetlands are of low quality. He pointed out other agencies have concurred. The pasture areas are being maintained by the ground water, enough to support hydric soils, but with the ongoing activities over the years, it is not functioning at near capacity for what that type of system should be, which is forested wetland.

Chairman Huttman asked since the approved PUD is for 15 units, couldn't the applicant potentially just build 11 units rather than face an amendment restricting them to 8.

Mr. Ashley stated the approved plan at the moment has access through the eastern wetlands area, dictated by County Council because of concerns by neighbors on Rodeo Rd. He stated the process of the Amendment is necessary and brings us to this point with a possible solution.

Tara Boujoulian, (Volusia County) Wetland Manager stated that the Ordinance does not discriminate against low quality wetlands. She explained avoidance is the first priority and minimization/mitigation being lower priorities. If the wetlands are of lower quality, less mitigation would be required to offset the impacts, but it doesn't necessarily allow people to impact more wetlands if they're lower quality.

Member Lipke asked if it was Ms. Boujoulian's opinion they were lower quality.

Ms. Boujoulian replied some are lower, some are higher such as the cypress wetland. She pointed to that area on the aerial. She stated the impacts to area 621 are on the southern end.

There was further discussion on area 621 by **Mr. Challis** and how the Wetland Alteration permit addresses this.

Member Severino asked if the applicant's avoidance of minimization from the previous PUD agreement isn't enough for Staff and is Staff asking for additional.

Ms. Boujoulian replied Environmental staff's position, based upon history, has been not to support creation of lots that are entirely wet. When the PUD was first reviewed information was incomplete and Staff would have proceeded differently with all the facts available. She stated reasonable use remains to be determined.

Member Young asked for clarification that if the applicant sticks with this plan they would be restricted to 8 lots.

Mr. Ashley replied Staff is recommending reduction from 11 lots to 8, removing the three lots that are totally wet.

Ted Schiess, 3450 Golden Meadow Ln, Ormond Beach, FL indicated the location of his property and spoke to the history of the corner of subject property and reasons for the existing drainage ditch. He stated his concerns about the drainage ditch, water flow to SR 40, and subject property being prone to flooding. He presented photos. He supports the project, but is concerned about drainage.

Member Sixma mentioned that the wax myrtles couldn't live if the land is wet.

Mr. Schiess disagreed.

Member Sixma further commented on water levels being abnormal the last 3 years and asked about the conditions under normal circumstances.

Mr. Schiess replied normally the ditch would be half to completely full.

Mr. Challis stated he would be happy to speak to Mr. Schiess about his ditch issues even though the project boundary doesn't affect the ditch.

Chairman Huttman asked for clarification that the ditch is north of subject property.

Mr. Challis replied the ditch runs along the eastern boundary. The filling of it was somewhere towards the south maybe in between the RA and A-2.

Mr. Schiess pointed out where the ditch was filled in on the aerial. He stated the water coming from the north flows to the east and he wondered why someone would fill it that ditch.

Member Severino asked if the applicant were to move forward with 11 lots, they still have to go through Wetland approvals and may not get to use all 11.

Mr. Ashley replied that's correct. There is no guarantee for 11 lots. Staff recommends the 8 lots to make it easier for the applicant.

Member Severino asked if the applicant wants the opportunity to pursue that or is the applicant okay with 8 lots.

Mr. Challis stated yes, they would like to continue the discussion for 11 lots and continue to look at the assessment and Wetland Alteration permit submitted.

Sam Merrill, 4 Mystic Lake, Ormond Beach, FL stated he is the contract purchaser of the subject property. He commented that efforts have gladly been made over 4 years to reach a compromise solution, dropping from the original 17 lots to asking for 11. He asked the Commission to consider these efforts.

Member Young asked if this Commission recommends approval of 11 lots, wetland approval is still required, but the applicant will have the opportunity.

Mr. Ashley replied yes

Member Severino **MOVED** to FORWARD case **PUD-07-074** to County Council with recommendation of **APPROVAL** but to not amend the Development Agreement from 11 units to 8. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

VARIANCE AND SPECIAL EXCEPTION APPLICATIONS

NEW BUSINESS

S-07-051 – Application of **Darren Elkind, Paul & Elkind, Attorney for Owner, Ray Hagood, Owner**, requesting a **Special Exception** for a Mini-Warehouse on B-4 (General Commercial) zoned property. The property is located on the east side of State Road (SR) 11, at its intersection with Lake Molly Avenue, west of the City of DeLand; ± 4.9 acres (Nagle)

Tentatively scheduled for the July 19, 2007 County Council public hearing time certain 2:30 p.m.

Christian Nagle, Planner II, presented the Staff Report. The area development pattern consists of a mixture of commercial use, single family dwellings, mobile homes and vacant land. Subject property adjoins a mobile home park (MH-1) to the north and adjoins R-3 (urban single-family residential) to the east. The mini-warehouse proposal includes 241 storage units in 9 buildings, a decorative tower and a 2-story office/dwelling unit for the manager. The manager's apartment is subject to separate approval next on the agenda item. Two storm water areas are also proposed for the property. Four large vehicle storage spaces are proposed for the northwest corner of the property in addition to landscape buffers along the perimeters and at the entrance. He stated access to the storage units are via outward facing exterior doors. The proposed development is subject to the Comprehensive Plan policies, the Zoning Ordinance, and Section 827 of the Zoning Ordinance. These standards require significant site plan and architectural design to help protect the adjoining residential properties. He stated if the Special Exception is approved it should include appropriate conditions to ensure land-use compatibility and enhance community aesthetics. Staff suggests storage bay doors face inward or be visual screened from adjacent rights-of-way and properties. Storage units should only be used for storage purposes. He touched on the Health Dept. requirements regarding the septic tank drain field and proper abandonment of an old septic system. The four large parking spaces will need to be relocated so they are behind the building line and also not adjacent to the residential lots to the north. He noted John Cheney, Traffic Engineering, had 5 recommendations in the Staff Report if the Special Exception is approved and the subsequent reduction of approximately 1800 daily trips, as opposed to the traffic generation for a convenience store with gas pumps. He referred to Fire Dept. comments in the Staff Report. In reviewing the criteria of Section 1104.H of the Zoning Ordinance, Staff finds that the application, with appropriate conditions and relocation of the septic system out of a required landscape buffer, can meet the nine special exception criteria. Staff recommends **APPROVAL** of the request subject to the nine conditions listed in the report, with the two proposed changes to Condition #1 and Condition #7 as follows:

Condition #1 – increase maximum number of outdoor vehicle parking spaces to ten (instead of two) and to change the wording to “motor vehicle, recreation vehicle and boat storage parking spaces” (from boat rental parking spaces).

Condition #7 – change wording to “Lake Molly Avenue and State Road 11” (instead of just Lake Molly Avenue).

Darren Elkind, Paul & Elkind, 505 Deltona Blvd., Deltona, FL spoke about the application meeting all the requirements of the Zoning Ordinance. He stated a mini-warehouse is less intrusive to the neighborhood than other businesses allowed under B-4 zoning. He stated Condition #8 is an arbitrary number and they would like to change the maximum storage building height to 20 ft. He also mentioned abandonment permits have been applied for with the Health Department and the home shown on the survey has been removed with a demolition permit.

Member Cornett asked the applicant if he is comfortable with the two changes presented in the Staff Report.

Mr. Elkind responded he asked for those changes and explained why.

Chairman Huttman asked if abandoning the wells indicates that central water is definitely available.

Mr. Nagle answered central water is available to the site.

Member Cornett asked Staff if the 20 ft. height on the interior structures is a problem.

Mr. Nagle replied no, with the understanding they would still be one-story structures.

Mr. Elkind further commented the planner for this project is a responsible individual from the community, with a proven track-record.

Cara West, 200 Lake Molly Ave., DeLand, FL, expressed concerns about the lighting and maintenance of the proposed project including the landscape buffer.

Further discussion ensued between **Ms. West** and **Mr. Elkind** regarding lighting and traffic patterns.

Mr. Nagle stated the Staff recommended conditions to include site lighting controls.

Mr. Elkind stated that site access from State Road 11 would be difficult.

Member Sixma **MOVED** to FORWARD case **S-07-051** to County Council with recommendation of **APPROVAL** as presented by staff with changes as discussed. Member Cornett **SECONDED** the motion. Motion **CARRIED** unanimously.

S-07-068 – **Darren Elkind, Paul & Elkind, Attorney for Owner, Ray Hagood, Owner**, requesting a **Special Exception** for only one single-family dwelling for the owner or manager of an existing permitted principal use on B-4 (General Commercial) zoned property. The property is located on the east side of State Road (SR) 11, at its intersection with Lake Molly Avenue, west of the City of DeLand; ± 4.9 acres (Nagle) **Tentatively scheduled for the July 19, 2007 County Council public hearing time certain 2:30 p.m.**

Christian Nagle, Planner II presented the Staff Report. He stated this dwelling is proposed for the second story of the proposed office building in the previous case. This Special Exception is entirely dependent on the approval of the previous case Special Exception. The request is consistent with the Comprehensive Plan and Zoning Ordinance and meets all nine criteria listed in Section 1104. Approval of the Special Exception should improve site security and should be of benefit to the property owner. Staff feels the traffic generated will be insignificant. Staff recommends **APPROVAL** subject to the four conditions in the Staff Report.

Darren Elkind, Paul & Elkind, 505 Deltona Blvd., Deltona, FL clarified Condition #3 stating the dwelling to be occupied only by the manager is understood by Staff to be the manager and his family, but he would like the condition amended. He stated Condition #4 requires a minimum of 1000 sq. ft. and the applicant proposes a minimum of 600 sq.ft.

Mr. Nagle commented the 1st floor of the office building is 2800 sq. ft. Staff would prefer to keep it at 1000 sq. ft., especially if the manager has a family.

Mr. Elkind expressed concern with overbuilding.

Member Cornett suggested swapping maximum for minimum.

Ms. Seaman, Asst. County Attorney, suggested references to square footage of the proposed dwelling be stricken from the request. The applicant agreed.

Member Cornett **MOVED** to FORWARD case **S-07-068** to County Council with recommendation of **APPROVAL** with the changes as discussed. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

S-07-061 – Application of **Edward Clemens and Janice Lamb, Owners**, requesting for a **Special Exception** for Class B Home Occupation on RA (Rural Agriculture Estate) zoned property. The property is located on the south side of Turnbull Bay Road, across from its intersection with Hideaway Forest Trail, near the City of New Smyrna Beach; ± 1.07 acres (Zechnowitz) **Tentatively scheduled for the July 27, 2007 County Council public hearing time certain 2:30 p.m.**

Dave Zechnowitz, Planner III, presented the Staff Report. He stated the subject property is located in a rural area with a development pattern of single family homes on half-acre to 5-acre lots. The request is to conduct catalogue firearm and ammunition sales on a part-time basis over the Internet, with approximately five customers per week and by appointment only. He indicated the applicant would be happy to operate under a Class A Home Occupation which does not allow customer visits to the premises, but the Federal Bureau of Alcohol, Tobacco & Firearms requires gun dealers to sell firearms from a federally-licensed and inspected premise that is zoned to allow customers. Section 807.00 of the Zoning Ordinance permits Class B occupations if approved by the County Council and if they do not change the residential character of the neighborhood, do not generate more traffic than a SFR or adversely affect the habitability or value of surrounding properties. Any violation of Section 807.00 may result in revocation of the Home Occupation. Therefore, Staff recommends **APPROVAL** of the request because it is consistent with the intent and purpose of the Zoning Ordinance and it meets the expressed requirements of the Special Exception.

Edward Clemens 139 Flomich St., Holly Hill, FL explained his intent is not to manufacture guns or operate a gun store, but to legally buy and sell guns over the Internet within the guidelines of the BATF. He stated probably less than five people per week would visit the premises.

Chairman Huttman asked the applicant if he lives on the site.

Mr. Clemens replied, "Sometimes". His fiancé lives there. It's her property.

Member Cornett asked if there will be inventory on the premises.

Mr. Clemens answered no inventory, but he will get a fireproof, locked safe for guns and ammunition awaiting pick up. He stated he will not be advertising or putting up any signs.

Elaine Fritts, 690 Yupon Ave., New Smyrna Beach, FL voiced her objection to gun sales in a residential area.

Sue Perry, 1221 Commodore Dr., New Smyrna Beach, FL stated she owns 5 lots directly across the street from the residence. She is opposed because of her concerns about opening the door for more businesses, break ins and the lack of ownership by the applicant.

Mike Hickson (opposed) was called, but did not appear.

James Vaughn, 2646 Turnbull Bay Rd., New Smyrna Beach, FL stated his opposition because large trucks will deliver from the wholesaler and he feels stocking ammunition presents danger to the neighborhood.

Bob Deeves, 2565 Turnbull Bay Rd., New Smyrna Beach, FL (opposed) was called, but chose not to speak.

John Alden, 1711 Hideaway Forest Trail, New Smyrna Beach, FL stated he is an officer of a community association but wished to speak as an individual. He is opposed to changing the zoning with concern to the traffic it may generate. He brought up concerns about the number of vehicles and activities already present at the single-family residence, and any possible requirements for gun safety programs.

Paul Betournay, 2830 Conway Rd., New Smyrna Beach, FL stated his objection to the applicant not being the owner of the property. He pointed out Conway Rd. is not a road. It's a 9-1-1 designated, private land with private easement for ingress and egress and is privately maintained. He stated the subject property owner has no legal right of way or easement rights or legal access to Conway Rd. per Florida Statute. He stated there are already numerous code violations on the subject property. He feels the applicant may eventually go farther than what is allowed with this request. He disagrees with Staff and cited various Florida Statutes, claiming an exception to the exception.

Member Young asked the applicant if BATF has restricted the number of guns his license allows.

Mr. Clemens replied no.

Member Young asked if Staff had considered a full size business at this location if the applicant's BATF license allows that.

Mr. Zechnowitz replied it was considered, but would be an unenforceable condition. That regulation is left to the BATF.

Chairman Huttman asked if ownership is an issue here.

Ms. Seaman replied it is her understanding the owner gave Mr. Clemens authorization to represent her.

Chairman Huttman asked if Staff needed to address the exception to the exception statements made.

Mr. Zechowitz stated he didn't understand the statement. However, there is no specific limitation on the number of traffic trips.

Noreen Brownson, 3050 Turnbull Bay Rd., New Smyrna Beach, FL presented handouts and asked for common sense to prevail in this situation. She is a member of a neighborhood community group that includes the subject property and feels granting this request would violate the residential nature of the neighborhood. In the past other applicants have applied for storage buildings, mulch sales or tractor/trailer storage on their residential properties, but were denied by PLDR. She stated concern with the number of children riding horses in the area. She agreed with previous speakers and is opposed to the request.

Peg Strahman, 1569 Lewis Lane, New Smyrna Beach, FL, lives behind the subject property. She is opposed to a business in a residential neighborhood, the hazards caused by guns and ammunition, and the possible reduction in property values.

Andrew Briggs, 2724 Turnbull Bay Rd., New Smyrna Beach, FL, a long-time resident has concerns for the safety of his family. He stated a BATF license allows large caliber weapons and it concerns him. He is opposed to the request.

Member Severino asked if the Fire Marshall has commented on this request.

Mr. Zechowitz replied no, and pointed out the request is for catalog sales, not for a gun store. It is accessory to the residential use of the property.

Mr. Briggs asked what would limit them from further growth or from storing more. He stated more safety concerns.

Mr. Zechowitz replied this Home Occupation would not be subject to Fire Marshall inspections. Nothing prevents a homeowner from stockpiling guns and ammunition.

Mr. Briggs disagreed.

Chairman Huttman asked Staff if these conditions can be enforced.

Mr. Zechowitz answered some are unenforceable by the County. The applicant is regulated by BATF. If he doesn't comply with Section 807.00, the Special Exception would be revoked.

Further discussion ensued regarding the built-in protections of the Special Exception should future activities contrary to a residence develop.

Chairman Huttman requested a letter received from **Tim & Sheila Stanbro, 2820 Turnbull Bay Rd., New Smyrna Beach, FL** be entered into the record. They are opposed.

Renee Nellis, 2800 Conway Rd., New Smyrna Beach, FL is opposed to the sale of firearms in a residential neighborhood with children.

Mr. Clemens stated he is not trying to change the situation of the neighborhood.

Member Russell commented on what appears to be conflicting requirements regarding customers.

Mr. Zechnowitz explained the Institute of Traffic Engineers Manual uses a figure of 10 traffic trips per day for a single family residence. If this business generated more, the applicant would be in violation of the Home Occupation regulation.

Member Russell stated his concern is that we would have to rely later on complaints and additional enforcement to restrict that activity or we could say at this time it does not appear to be appropriate use for this building in this neighborhood.

Member Cornett **MOVED** to FORWARD case **S-07-061** to County Council with recommendation of **DENIAL**. Member Russell **SECONDED** the motion. Motion **CARRIED** unanimously.

V-07-062 – Application of **Bill & Stephanie Mooney, Owners**, requesting a Variance to Section 600.01 *Nonconforming Lots* to separate three jointly owned lots; and a Variance to the minimum lot width (80 feet in lieu of the required 85 feet) to allow the creation of two new nonconforming lots on R-3 (Urban Single Family Residential) zoned property. The property is located on the north side of Berlin Street West, ± 250 feet west of its intersection with U.S. Highway 17 North, in the Rural Community of DeLeon Springs; ± 26,080 sq.ft. (Nagle)

Christian Nagle, Planner II presented the Staff Report. He stated the area development pattern consists of single family dwellings, vacant land and a few businesses along US Highway 17. Subject property includes a single family dwelling on three adjoining platted lots, platted in 1886. According to the applicant's survey, the property is 160 ft. wide and 163 ft. deep. The total property exceeds the R-3 zoning classification minimum lot area requirement of 10,000 sq. ft. and the minimum lot width of 85 ft. However, the property is not wide enough to create two new conforming lots with each lot having a minimum lot width of 85 ft. as required by the Zoning Ordinance. The requested Variance is to allow the applicant to separate the individual lots and recombine them into two, new, non-conforming lots. One lot would include the existing single family home. He stated the other lot would possibly be used for the construction of a new single family home. Each new lot would not meet the R-3 standards separately. He cited Section 600.01 of the Ordinance. If the variances are approved, the applicants would be eligible to submit a future subdivision application to the Land Development Office. According to the applicant, both proposed lots would be 80 ft. in width and ± 163 ft. in depth. He stated of the 19 parcels reviewed in the immediate area zoned R-3, six did not meet the minimum requirements. Of those six, only 4 were less than 75 ft. in width. Because the property is

located in a Rural Community, it can be used consistent with its R-3 zoning. The requested variances do not conflict with the Comprehensive Plan Rural Community designation. However, the applicant is not entitled to the granting of the variance just because of the existence of other lots or parcels that don't conform to the existing zoning. He reported the Health Dept. indicated septic and well permits would be allowed on both proposed lots. Staff finds that literal interpretation of the Zoning Ordinance would not deprive the property owners of reasonable use of their property. They already have reasonable use and can continue to use the property without the granting of the requested Variance. It is Staff's opinion the requested Variance is not in harmony with the intent of the Zoning Ordinance since it would allow the creation of non-conforming lots. Staff recommends **DENIAL** since all five required criteria have not been met, the property owners have reasonable use of their property and the granting would allow the creation of non-conforming lots.

Member Cornett asked for clarification on the ownership of the property.

Mr. Nagle replied the Agenda should reflect Bill & Stefanie Mooney are agents for the owners, Salvador & Florinda Barrera.

William Mooney, 117 N. Garfield Ave., DeLand, FL, Agent for Salvador and Florinda Barrera, Owners stated there are other small properties in the area of subject property and granting of the request would conform with the surrounding area.

Member Severino asked the applicant about hardship,

Mr. Mooney replied no, except for going through the process.

Chairman Huttman asked Staff if there's any another way to do this

Mr. Nagle suggested rezoning, but that would be problematical.

Member Russell **MOVED** to **DENY** Case **V-07-062**. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

Member Lipke asked if there is a need for the second home.

Mr. Mooney replied he was actually trying to purchase the lot from the Barreras.

V-07-064 – Application of **Michael Solari and John Thompson, Owners**, requesting **Variations** to Section 806.01 *Fences, walls and hedges* for a fence in the south and east front yards (6 ft. in lieu of the maximum allowed 4 ft.) for a metal fence; a variance to Section 801.01(e) for an accessory structure height (17 ft. in lieu of the maximum allowed 15 ft.) for a detached garage on the R-3 (Urban Single Family Residential) portion and a Variance to Section 806.04 *Fences, walls and hedges* for a fence in the north front yard (6 ft. 6.5 in. in lieu of the maximum allowed 4 ft.) for a non-metal fence and a variance to Section 806.04 *Fences, walls and hedges* in the south front yard (9 ft. in lieu of the maximum allowed 8 ft.) for entry

columns and lanterns on the B-4 (General Commercial) portion of the R-3 (Urban Single Family Residential) and B-4 (General Commercial) zoned property. The property is located on the north side of Camphor Lane, approximately 140 feet east from its intersection with State Road 15-A; ± 2.3 acres (Stockham)

John Stockham, Planner III presented the Staff Report. He stated subject property is zoned B-4 Commercial on the western half (close to SR 15A) and R-3 Residential on the eastern half. Built in 1886, the Stetson Mansion is listed on the National Register of Historic Places. The applicants intend to add the proposed fencing for security, add columns to define the entrance drive in an aesthetically appealing manner, and add the detached garage to update the premises and provide storage space. Zoning Ordinance 80-8 limits the height of a fence in the front yard of an urban single family residential zoned property to 4 ft. Also, the height of the proposed garage would be 2 ft. higher than the 15 ft. allowed. The proposed entry columns with 30-inch lanterns on top would be about 1 ft. higher than allowed on the Commercial side of the property. He remarked on the varied circumstances with this split-zoned property, the historic and unusual nature of the existing 3-story dwelling and the potential for possibly rezoning for Commercial uses. He stated Traffic Engineering felt the metal fence, as shown on the site plan, if approved at 6 ft. in height, would not interfere with the traffic view triangle. However, regarding hardship, he stated all of the circumstances of the fences/columns do not meet the five criteria required to grant this request for the fencing. He presented photographs and drawings of the proposed structures and fencing. Staff recommends **DENIAL** of the variance requests for the fencing and columns with lanterns. Staff recommends **APPROVAL** of the detached garage since it would be in harmony with this unique dwelling and the intent and purpose of the Zoning Ordinance and the Comprehensive Plan.

Member Cornett asked if the columns without the lanterns comply with the height limitation.

Mr. Stockham replied yes, it's the lighting fixture that's pushing them over the limit.

Member Cornett asked for the approximate height of the 3-story house.

Applicant (from the audience) answered 35 feet.

Michael Solari, 1031 Camphor Lane, DeLand, FL presented letters of support from all adjoining neighbors to the Commission. He stated he is restoring the historic Stetson Mansion to present it as a stop on the proposed Volusia Heritage Corridor. He thanked the Planning & Zoning Dept. for their help and cooperation with this project and for their recommendation of approval on the detached garage. He outlined his feelings on the special conditions and circumstances of the subject property, highlighting the architectural details, long history, and need for oversized landscaping and decoration. Photos were submitted for the overhead. He mentioned another home in the neighborhood with fence and columns 6 ft. and above. Other homes outside the neighborhood are similar in nature and have fencing and entry features ranging from 5 ft. to 6 ft. These homes are also set back some distance from the road, creating an appealing scale. He presented more photos of older homes with stately fences. He stated the need for the security that a 6 ft. fence, partnered with a hedge, would provide. They have had problems with loitering, littering, vandalism and uninvited guests taking self-guided tours.

He explained why rezoning to Commercial or placing the fence 30 ft. from the property line would be undesirable options. He stressed the need for security. He further stated denial of the variance would deprive him of the right to have a fence that is appropriate given the unique history and character of the Stetson Mansion, the size of the lot, and the distance of the mansion from the front property line. He feels the variance is consistent with the Comprehensive Plan particularly with the directive to continue periodic review of the Zoning Ordinance 80-8 to ensure that requirements and policies promote the protection and viable economic use of designated historic resources.

Chairman Huttman read a letter of support from the Administrative Director of the DeLand Museum of Art.

Member Russell questioned the long-term planned use for the building.

Mr. Solari replied it will be their home.

Maureen Kemp, 319 W. Minnesota Ave., DeLand, FL spoke in support of the variance citing the appropriateness of the proportions.

Member Sixma commented on the many 6' wrought iron fences in the DeLand area.

Member Cornett **MOVED** to **APPROVE** Case **V-07-064** in its entirety based upon the applicant's presentation. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

S-07-066 – Application of **Sheryl Stock, Owner**, requesting a **Special Exception** for a Farm worker living facility on A-1 (Prime Agriculture) zoned property. The property is located on the east side of Pell Road, at its intersection with Lopez Road. The property is near the Wire Grass Prairie in the community of Osteen; ± 10 acres (Stockham) **Tentatively scheduled for the July 19, 2007 County Council public hearing time certain 2:30 p.m.**

John Stockham, Planner III, presented the Staff Report. He stated subject property is situated at the northern end of a farming area, surrounded on the north and west by property owned by the St. John's River Water Management District and Volusia County. The area to the south is predominantly nursery, sod-growers, a mixture of single-family dwellings and pasture lands. He stated the applicant is currently residing in the existing mobile home on the subject property. She proposes to build a new home as her primary residence and provide the existing mobile home for an individual she employs as a farm worker. He stated the applicant travels frequently for business, thus finding it necessary to hire the individual to maintain and operate her 10-acre farm. Operations consist of raising horses, goats, chickens, quail, pheasant, peacocks and various crops, and providing taxidermy services. Products are both donated and sold. This property has recently been approved for an Agricultural Tax Exemption. He presented a site plan and discussed locations of existing and proposed structures. He stated the existing mobile home does comply with the size, distance and screening requirements for a farm worker facility per Section 817.00(k) of Zoning Ordinance 80-8. For these reasons and since the applicant

does own the property and operate the farm as an approved agricultural business the Special Exception proposed is consistent with the Zoning Ordinance and Comprehensive Plan. The proposed farm worker facility will help provide on-site security and enable continuous operation of the farm. The applicant will be able to meet applicable requirements regulating this use, and the dwelling unit will not create any traffic congestion. Staff recommends **APPROVAL** of this request subject to the applicant operating and maintaining the proposed use. Also, if the mobile home is demolished or removed, only a comparable facility will be eligible to replace it.

Chairman Huttman asked for clarification on a comparable facility.

Mr. Stockham replied only another double-wide mobile home would be considered a comparable facility.

Mary Robinson explained the history regarding that statement. After further discussion, It was decided the Staff recommendation would be amended to say “comparable double-wide mobile home”.

Member Cornett suggested Staff include mention of Agricultural Exemptions in future cases involving Farm Worker Living Facilities .

Mary Robinson agreed and will look into it. She explained the procedures already in place with regard to building permits and Agricultural Exemptions.

Member Cornett further commented on his concerns with applying for the Ag Exemption and actually having an approved Ag Exemption.

Mr. Stockham presented the approved Agricultural Exemption on the overhead, and suggested quantifying the condition for comparable facility with a square footage dimension (1,500 sq.ft.) as well as adding the terms “manufactured, modular or mobile home”.

Sheryl Stock, 1889 Pell Rd.,Osteen, FL agreed with the Staff Report and understands the conditions discussed.

Member Lipke **MOVED** to FORWARD case **S-07-066** to County Council with recommendation of **APPROVAL** with conditions as noted and modified by Staff. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

S-07-067 – Application of **William & Sally Stevens, Owners**, requesting a **Special Exception** for a Temporary Campsites for 3 days before, during, and 3 days after any regularly scheduled racing event at the Daytona International Speedway for Speedweeks, Bikttoberfest, the Pepsi 400, and Bike Week on A-2 (Rural Agriculture) zoned property. The property is located on the northwest side of U.S. Highway 1, approximately 3,200 feet north from its intersection with Interstate 95 (I-95), near Destination Daytona in the community of Ormond Beach; ± 5.7 acres (Zechnowitz) **Tentatively scheduled for the July 19, 2007 County Council public hearing time certain 2:30 p.m.**

Dave Zechnowitz, Planner III, presented the Staff Report. He stated subject property is the site of the Moonshine Temporary Campground. The request is to renew the Special Exception for another five years. The campground has operated for the past 15 years under three successive Special Exceptions. It was approved by County Council for 100 campsites and will remain as developed now. He stated there have been no negative reports from any State or County Departments involved with permitting or monitoring the campground. Therefore, Staff recommends **APPROVAL** subject to the conditions outlined in the report because it's compatible with the surrounding area. He suggested adding a 14th condition that any future changes to the Special Exemption language in the Zoning Ordinance will control the terms of this approval.

Chairman Huttman asked for clarification on Condition #14.

Mr. Zechnowitz explained without the language in Condition 14, the applicant would be limited to the requirements as they stand today. If there are future changes to the Zoning Ordinance, Staff would like them to be able to comply with the new regulations.

Member Cornett asked if that would also apply to a future 50 campsite limitation.

Mr. Zechnowitz replied that's a good point.

Chairman Huttman asked if the intent was to make it consistent with the Itinerant Merchant dates of operation.

Mr. Zehnowitz replied that was the original intent.

It was agreed, after more discussion, to phrase Condition #14 "to control the dates of operation".

Sally Stevens, 730 Santa Anna, Ormond Beach, FL made herself available for any questions.

Chairman Huttman asked if she agreed with all the Staff conditions.

Ms. Stevens replied yes.

The applicant was complimented on their 15 year record of compliance and **Mary Robinson** explained how proactive Volusia County Code Compliance is in that area.

Member Cornett **MOVED** to FORWARD case **S-07-067** to County Council with recommendation of **APPROVAL** with conditions as listed and amended by Staff. Member Lipke **SECONDED** the motion. Motion **CARRIED** unanimously.

V-07-069 – Application of **Geof Felton, Felton Construction, Inc, Agent for Owners, John & Brigitte Pugh, Owners**, requesting a **Variance** for a north front yard setback (17.7 ft. in lieu of the required 30 ft.) and a west front yard setback (27.7 ft. in lieu of the required 30 ft.) on R-3 (Urban Single Family Residential) and RC (Resource Corridor) zoned property. The property is located on the north side of Flowing Well Road at its intersection with Branchwater Bend, adjacent to Lake Beresford in the Hontoon Island Study Area; ± 21,760 sq.ft (Ashley)

Scott Ashley, Planning Manger presented the Staff Report. He stated this action is before the Commission due to damage sustained in the February 2007 tornado event. The structure was non-conforming. To rebuild, it must comply with regulations as they are today. However, the existing layout of the property is oddly shaped and fronts on a canal. He stated it also has frontage on two streets. It is at the angle of Branchwater Bend that the property corner does not meet the setbacks. There is a 17.7 ft. setback from this angle and 27.7 ft. from the other angle he indicated on the monitor. The home has been on the property since 1973 and was uniquely placed at an angle. There is also a pool and pool enclosure with a wall built to match the exterior of the dwelling. These structures are relatively undamaged by the tornado. The applicant is requesting to rebuild the home in the same configuration and size to utilize the remaining pool, pool enclosure, patio structures and existing well & septic. Replacement of a similar size residence cannot be done without encroachment into a yard area; conditions that have existed for over 30 years. He stated circumstances are not the fault of the applicant and it is a long-term non-conforming structure without any problems to the neighborhood. He stated the roadway only serves three property owners. Therefore Staff recommends **APPROVAL** of the request.

Geof Felton, Felton Construction, 129 Lake Charles Rd., DeLand, FL, Agent for Owners John & Brigitte Pugh clarified the rebuilt dwelling will be more-or-less in the same physical location, but will not be the exact footprint. He stated otherwise it will comply with Building Codes and Zoning Codes. He further stated the Petition for Variance says “same square footage” but the square footage may be larger or smaller. He stated he does intend to stay within the general footprint.

Chairman Huttman asked Mr. Ashley to comment.

Mr. Ashley replied there is no objection.

Member Cornett **MOVED** to **APPROVE** case **V-07-069** based on Staff recommendation. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

V-07-073 – Application of **Robert Riggio, Attorney for Owners, Roy & Marilyn Idell, Owners**, requesting **Variance** to Section 600.01, *Nonconforming Lots* to separate Lots 98 and 115 from Lots 99 and 100 on R-9 (Urban Single Family Residential) zoned property. The property is located on the east side of Oriole Avenue, approximately 150 feet south from its intersection with Heron Street in the community of Wilbur-by-the-Sea; ± 6,700 sq.ft (Nagle)

Christian Nagle, Planner II presented the Staff Report. He stated subject property is a vacant 50 x 134 foot parcel extending from Oriole Ave. to Atlantic Ave. South. The immediate area is single-family dwellings, duplexes and scattered vacant lots. Nearby parcels range in size from 60x80 to 100x200 ft.. The most common parcels are 50x100 and 50x134 ft. The R-9 classification requires a minimum lot size of 7500 sq. ft. and 75 ft. minimum lot width. The property is non-conforming at 6700 sq. ft. and 50 ft. width. According to the applicant, all four lots were under common ownership from October 1983 until November 1999, when Lots 98 and 115 were sold as a separate entity. After subsequent sales, the current owners purchased the property in March 2001. Section 600.01 of the Zoning Ordinance specifies adjoining non-conforming lots, owned by the same person on or after July 28, 1980, are considered to be undividable. These lots are, by definition, an undividable parcel and another single-family dwelling may not occur without the granting of the appropriate Variance. He stated Comprehensive Plan policies are included in the Staff Report. They encourage vehicle access to the property from Oriole Ave. Traffic Engineering concurs. Staff is recommending the property owners provide a non-vehicular access easement with rights granted to Volusia County along the Atlantic Ave. South frontage. He stated Staff has reviewed the criteria for granting the variance. The applicant meets all five criteria. There are special circumstances peculiar to the land involved and which are not applicable to other lands in the same zoning classification. He stated it is non-conforming and was improperly sold by a previous property owner, separate from Lots 99 and 100, in non-compliance with Zoning Ordinance requirements. Literal interpretation would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification because he would not be able to build a single-family dwelling without the granting of the Variance. Not granting the Variance would create a hardship on the applicant. He stated Staff recommends **APPROVAL** subject to the recommended conditions included with the Staff Report.

Robert Riggio, 400 S. Palmetto Ave., Daytona Beach, FL, Attorney for Owners, Roy & Marilyn Idell presented old Wilbur-by-the-Sea plats for the overhead and spoke to history of the subject lots. He stated in the 1980's the County purchased or condemned a 60 foot area off Atlantic Ave. South for beach parking, leaving Lot 98 only 30 feet deep. During the process of applying for a building permit, the applicants were asked to demonstrate their non-conformity. Title work revealed the issue of Lots 98 and 115 having been previously joined together with Lots 99 and 100, after the date in 1980 when the Zoning Code took effect. An aerial photo was shown to demonstrate how built up the neighborhood is and how similar the lots are in size. He stated there is no ability to expand the subject property. No use other than residential is allowed and they intend to build a single-family residence. He stated the applicants are agreeable to the conditions recommended by Staff.

Member Severino asked if separating the two parcels creates another non-conforming lot.

Mr. Nagle responded the Variance legalizes the situation. Without granting the Variance they can't build on the property which is unreasonable hardship.

Robert Riggio stated these two properties have always been sold subject to separate deeds. Lots 99 and 100 were on one deed. Lots 98 and 115 were on another deed. This method of

conveyance led to the previous owner transferring an existing deed. They were never actually considered as one lot, although under the Zoning Code that created the issue today.

Member Cornett **MOVED** to **APPROVE** case **V-07-073** based on Staff recommendations. Member Lipke **SECONDED** the motion. Motion **CARRIED** unanimously.

OLD BUSINESS

V-07-025 – Application of **James and Laura Williams, Owners**, requesting a **Variance** for a front yard setback on Beresford Avenue (5 ft. in lieu of the required 30 ft.) and a **variance** for an east side yard (5 in. in lieu of the required 10 ft.) to reconstruct a pole barn on I-1 (light Industrial) and RC (Resource Corridor) zoned property. The property is located on the north side of West Beresford Road, approximately 100 ft. northwest from its intersection with South Beresford Road, adjacent to the City of DeLand; ± 2.5 acres (Ashley)

V-07-025 has been settled.

PUBLIC ITEMS

NONE

STAFF ITEMS

NONE

COMMISSION COMMENTS

Election of PLDRC Officers

Member Lipke **MOVED** to elect Member Hutmann for **Chairman**. The motion was **SECONDED** by Member Russell. Motion **CARRIED** unanimously.

Member Cornett **MOVED** to elect Member Lipke for **Vice-Chairman**. The motion was **SECONDED** by Member Russell. Motion **CARRIED** unanimously.

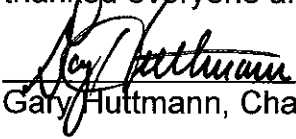
Member Lipke **MOVED** to elect Member Cornett for **Secretary**.. The motion was **SECONDED** by Member Sixma. Motion **CARRIED** unanimously.

PRESS AND CITIZEN COMMENTS

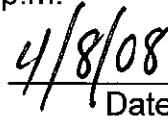
NONE

ADJOURNMENT

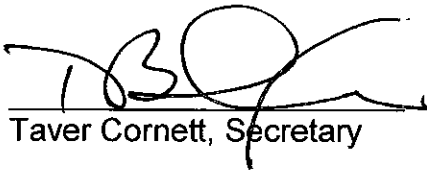
Having no further comments from the public, staff or Commissioners, Chairman Huttman thanked everyone and adjourned the meeting at 1:24 p.m.



Gary Huttman, Chairman



Date



Taver Cornett, Secretary



Date