

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
October 9, 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

**MICHAEL DYER, 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 September 11, 2007 Minutes

Member Severino **MOVED** to **APPROVE** the minutes for September 11, 2007. 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.

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

Mr. Dyer 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.

There were none.

CONTINUED ITEMS

Z-07-076 – Application of **Glenn Storch, Storch Morris & Harris, LLC, Attorney for Owner, Hinrough LLC, Owner**, requesting a **Rezoning** from the A-2W (Rural Agriculture / Indian River Lagoon Surface Water Improvements and Management Overlay Zone) zoning classification to the A-3W (Transitional Agriculture / Indian River Lagoon Surface Water Improvements and Management Overlay Zone) zoning classification. The property is located on the east side of South US Highway 1 at its intersection with Kennedy Parkway, south of the City of Oak Hill; ±9.36 acres (Ashley) **60-day continuance**

Member Cornett **MOVED** to continue case **Z-07-076** for 60 days. Member Severino **SECONDED** the motion.

Member Russell asked if there was a reason for the request for continuance.

Mary Robinson, Building & Zoning Director, replied the applicant is working out wetland issues on the rear of the property.

Member Russell stated he would like to see some consistency with stating the reason for the continuance.

Ms. Robinson stated that could be done.

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) **60-day continuance**

Chairman Huttman stated, per memo in the packet, the applicant needs more time to submit a site plan to address comments by the TRS.

Member Sixma **MOVED** to continue case **Z-07-076** for 60 days. Member Severino **SECONDED** the motion. Motion **CARRIED** unanimously.

CONSENT AGENDA

Z-07-104 – Application of **Thomas Arnold Jr, Trustee and Owner**, requesting a **Rezoning** from the A-2 (Rural Agriculture) zoning classification to A-4 (Transitional

Agriculture) zoning classification. The subject property is located on the west side of Beresford Road South near and north of its intersection with Collins Grove Road, west of the City of DeLand; ± 10 acres (Nagle)7924-01-00-0180 and 7924-01-00-0190

Christian Nagle, Planner II presented the Staff Report. He stated the applicant regrets he could not attend PLDRC due to limited resources. The subject property is vacant and wooded. It fronts on paved S. Beresford Rd. He stated the property is in a rural area located northeast of Lake Beresford. The area development pattern includes vacant woodlands, commercial agriculture, timber land and single-family-dwelling land uses on acreage and non-acreage parcels. If the rezoning request is successful, the subject property could be divided into four proposed 2.5-acre lots. It is too small to be divided into four lots without the requested rezoning. Such a subdivision would be dependent on approval of the rezoning request and would be a separate application. The property is designated Rural on the future land use map. The Rural category is assigned to areas that have a mix of agriculture and low-density residential development. Per the Comprehensive Plan, the allowable density in the Rural category ranges from one unit per 10 acres to one unit per acre. The preferred density in this category is one dwelling per 5 acres. The subject property is eligible for consideration of the requested rezoning because of where it is located. More than 50% of the property is within 660 ft. of an Urban land use category. The Urban land use category is located to the northeast of the property. The property is also within 660 ft. of existing, eligible subdivisions with lot sizes of less than 5 acres. These lots are along both sides of S. Beresford Rd., north and south of the subject property. The Comprehensive Plan states the actual lot and sizes depend upon the compatibility of the proposed development as viewed within the context of existing uses, public facility capacity in the area, suitability for wells and septic tanks and natural features of the property. The subject property has topography that slopes away from the road, towards the railroad tracks. The property has both well-drained and poorly-drained soil types. He stated it is not mapped as being flood prone. Water and sanitary service would be by well and septic systems. Environmental Management, School Board and Health Dept. staff does not object to the proposed rezoning. Traffic Engineering comments indicated rezoning, if approved, would generate 19 additional average daily trips on the road system. The road system is adequate to handle this. A-4 Transitional Agriculture district allows several uses, including single-family dwellings and many commercial agricultural uses, as does the A-2 zoning classification. However, he stated, the chief difference is that the A-4 classification has a 2.5-acre minimum lot size. The subject property is suitable for the requested A-4 zoning because of the location and character of the immediate area. The development pattern along both sides of S. Beresford Rd. within 660 ft. of the property includes single-family dwellings on existing or approved lots of less than 5 acres. In this area the majority of the parcels are less than 5 acres. Two parcels are less than one acre. Therefore the request for A-4 zoning as applied to the property is consistent with the Rural land use category of the Comprehensive Plans and compatible with the character of the surrounding area. The A-2 classification still allows for single-family residential dwelling use and commercial agriculture use. Staff recommends **APPROVAL** of the request because it is consistent with the Rural future land use

designation. The proposed rezoning should not materially alter the character or development pattern in the area.

Chairman Huttman asked Staff to comment on the extent of the A-2 zoning east of the railroad tracks and inquired if any of that property in the area is more appropriate for A-4.

Mr. Nagle replied the Comprehensive Plan has policies that make properties within 660 ft. of eligible subdivisions with smaller lot sizes eligible for the rezoning. He stated this one looks odd on the map because the majority of the property to the east of the railroad tracks is zoned A-2. However, the actual lot sizes of several parcels are not five acres or more in size. Also, the subject property is only 10 acres, so if the rezoning is approved it would mean only two additional single-family homes on the property. The applicant does not have immediate development plans. The property fronts on a paved road.

Chairman Huttman inquired about comments from the City of DeLand.

Mr. Nagle replied none were received.

Jane Bolding, 1105 S. Beresford Rd., DeLand, FL lives directly across the street from subject property. She spoke in opposition to this request because it will change the rural nature of the neighborhood.

James Clark, 1110 S. Beresford Rd., DeLand, FL spoke in opposition. He contended the applicant intends to sell the property by breaking it down into smaller portions.

Chairman Huttman inquired if there was anyone present representing the applicant. He acknowledged the owner was not represented and presented a letter from the applicant on the overhead.

Member Young asked Staff for clarification on whether the subject property would become two or four parcels.

Mr. Nagle replied if the rezoning is approved, the applicant is interested in dividing the property into four parcels. He stated with current zoning, it could be divided into two parcels.

Mr. Dyer explained to the public that the applicant, Mr. Arnold, is not present and is not required to be present. Staff can comment on the application but cannot speak for him.

Chairman Huttman stated, per the applicant's letter, he is saving his trip to Florida for the County Council meeting.

Member Cornett **MOVED** to **FORWARD** case **Z-07-104** to the County Council with a recommendation for **DENIAL** as it creates spot zoning. Member Sixma **SECONDED** the motion.

Member Lipke asked if the groves in the area are active.

Member Cornett replied yes.

Member Lipke asked for more clarification on Staff's recommendation of approval.

Mr. Nagle commented the subject parcel is wooded and not currently being used for agricultural purposes. He stated Staff is favorable to the rezoning based on the Rural provisions of the Comprehensive Plan where it says the property is eligible for the requested rezoning because of its location and because the Rural category does give a range of permissible lot sizes, from one acre up to 10 acre lots. Also, the parcels within 660 ft. of the property fronting on Beresford Rd. do have lot sizes less than 5 acres. Overall Staff supports the request because it's consistent with the Rural land use designation.

Member Lipke followed up with a question about the other larger parcels on the southeast corner of the property being just as likely to request the same rezoning or are they the existing groves referred to.

Mr. Nagle replied the groves are near Collins Grove Rd. and also to the north of the property. If the rezoning is approved, he stated it may encourage other people to submit similar rezoning applications.

Mr. Dyer spoke to Member Cornett's reference to spot zoning. He cited the 5th element of the criteria to consider approval: that the proposed rezoning is appropriate due to changes and circumstances or conditions in the area. He also cited the 7th element: whether the rezoning request affects the use or value in the area or otherwise stated as is it compatible with the surrounding areas. He thought Member Cornett was touching upon both of those elements in the negative.

Chairman Huttman asked Staff since the request is consistent with the Rural land use category if spot zoning is an issue.

Mr. Dyer responded one of the other criteria for rezoning questions whether or not the proposed rezoning is consistent with the Comprehensive Plan. The future land use element has a matrix that identifies for any particular feature of land use designation what zoning categories are appropriate. He stated there is no Comprehensive Plan consistency issue from Staff's prospective. That alone doesn't carry the day. Just because the rezoning request is compatible with the Comprehensive Plan does not obligate the Commission to recommend approval.

Member Severino mentioned a discrepancy between the last page in the Commission's packet with relation to lot shape and size vs. the diagram showing on the overhead. He stated it would bear significantly on his opinion on the Motion. He stated there are smaller lot sizes to the north, but a larger plot designated -0010 on Staff's sheet on the overhead. He asked which page is most accurate.

Mr. Nagle replied the view on the overhead doesn't include the other lots mentioned. It doesn't go that far. He pointed out the property to the north and indicated they are definitely parcels smaller than 5 acres.

Member Lipke asked if they have residential uses currently.

Mr. Nagle replied they are non-conforming lots, zoned A-2

Ms. Robinson stated if those lots are owned by the same individual, they cannot be built on individually. Code requires that the lots be combined to at least try to meet the Zoning. It may not meet the 5-acres, but it would be less of a non-conformity if they were combined.

Motion **CARRIED** 4-3. Members Severino, Huttman and Russell were opposed.

Z-07-107 – Application of **Dirk and Cynthia Merks, Owners**, requesting a **Rezoning** from the B-4 (General Commercial) zoning classification to the MH-5 (Urban Mobile Home Subdivision) zoning classification. The property is located on the south side of Bream Drive, in the community of Pine Island Mobile Home Park north of Seville; ±11,475 sq.ft. (Zechnowitz) 4742-00-00-0130

Member Cornett **MOVED** to **FORWARD** case **Z-07-107** to the County Council with a recommendation for **APPROVAL**. Member Sixma **SECONDED** the motion.

Member Cornett asked how Pine Island received B-4.

Ms. Robinson replied it was probably in existence prior to the 1990 Comprehensive Plan. In those areas the zoning was left intact and did not go through the administrative rezoning. She stated there were a few lots zoned B-4 and over the years they've come in and rezoned to the MH-5.

Motion **CARRIED** unanimously.

NEW BUSINESS

NONE

OLD BUSINESS

NONE

VARIANCE AND SPECIAL EXCEPTION APPLICATIONS

NEW BUSINESS

V-07-106 – Application of **Brent Cohen, Agent for Owner, Margaret A. Youngman, Owner**, requesting a **Variance** for a rear waterfront yard setback (1.0 ft. in lieu of the required 25 ft.) as measured from the edge of the coquina seawall for an expansion of an existing accessory deck structure on R-9W (Urban Single-Family Residential / Indian River Lagoon Surface Water Improvements and Management Overlay Zone) zoned property. The property is located on the east side of South Atlantic Avenue, approximately 500 feet south from the intersection with Sheepshead Avenue located in the community of Bethune Beach, south of the City of New Smyrna Beach; ± 4,000 sq. ft. (Stockham) 8505-01-17-0170

John Stockham, Planner III presented the Staff Report. He stated the subject property is comprised of Lots 17 and 18 of Block 17 of Bethune Beach and contains a single-family home, constructed in 1973 prior to the 1980 Uniform Zoning Ordinance. This oceanfront home site originally had a covered deck along with a boardwalk that crossed the coquina revetment down to the beach. The subject deck was recently expanded without obtaining required building permits and approvals, which has resulted in a setback encroachment and this Variance request. A new wood stairway was also constructed to connect the elevated covered deck expansion to the existing revetment boardwalk to the beach. The subject deck expansion has been cited as a violation because of the lack of a building permit and for it being constructed within the required 25 ft. waterfront yard setback. The deck addition is considered an expansion of a non-conforming structure per Section 600.031 of the Zoning Ordinance, which is not permitted. Prior to the expansion, the elevated deck observed a non-conforming waterfront yard setback of approximately 15 ft, measured from the end of the covered deck to the closest edge of the coquina revetment. Presently the expanded deck is 1 ft. at its closest point from the top of the coquina rock revetment. Under Section 818 of the Zoning Ordinance, waterfront yard setbacks are measured from the top of any revetment in the same manner as a seawall. He stated through this Variance process, the owner hopes to get the zoning approval in place in order to file for a building permit. Chapter 11, Section 5.0 of the Comprehensive Plan requires maintenance of native vegetation and erosion prevention to take place along areas of seawalls. Policy 11.4.1.9 states any construction done shall avoid the removal of dune vegetation. The subject deck expansion covers and prevents sunlight from reaching dune vegetation that, by evidence of historical photographs, once existed behind the coquina revetment. He also stated this matter is scheduled for a Code Board hearing pending the outcome of this Variance request. The Environmental Management Office expressed no specific

objection to this request; however they expressed concern about whether the site would be able to comply with the storm water management requirements of the Class II overlay that involves the Indian River Lagoon Surface Water Management Overlay. Regarding hardship, the non-conforming size of the subject property was not the result of the owner's actions. The original covered, second story deck was already a nonconforming structure and permitted to remain as long as it was not expanded or relocated in any way per Section 600.03 of the Zoning Ordinance. Staff feels the need for an after-the-fact Variance was the result of the owner's actions since the deck was expanded without first obtaining the proper building permit approvals including zoning and inspections. He mentioned the existing crossover walkways in the area were done in the 1970's and apparently are grandfathered in per the terms of the Ordinance. He stated the subject Variance request is not consistent with the requirements of a Variance as found in the Zoning Ordinance and the Comprehensive Plan, because the deck is an expansion of a non-conforming structure in violation of the Zoning Ordinance and because the deck was built without protecting existing dune vegetation. It is a self-imposed hardship for the purposes of this request. Staff recommends **DENIAL**. He presented aerial photographs on the overhead and pointed out that the deck expansion had covered up some of the native dune vegetation that was starting to grow back between the revetment and the covered non-conforming existing deck.

Mr. Dyer asked for clarification on which of the 5 elements for a Variance were not satisfied,

Mr. Stockham replied 4(a), (b) and (d) have not been satisfied.

Chairman Huttman asked about the discrepancy between the Property Appraiser and the survey of the property. He stated if the survey is correct it would affect the 25 ft. waterfront setback.

Mr. Stockham referred to the site plan. The Property Appraiser measures from the bottom of the revetment. The survey measures out to the mean high water mark, adding additional square feet making it an approximately 8,000 sq. ft. parcel size.

Chairman Huttman asked if the setback is measured from the bottom of the revetment.

Mr. Stockham replied the setback is measured from the top of the revetment, in the same manner as a seawall.

Member Russell asked if the tiki deck east of the revetment is the maximum square footage allowed.

Mr. Stockham replied he would need to do further research on that.

Margaret Youngman, 6949 S. Atlantic Ave. New Smyrna Beach, Owner asked the Commission to consider granting the request because decks on either side of her property have been allowed to be built and remain standing.

Member Russell asked why the denial of this request would result in a hardship.

Ms. Youngman replied paying to have it taken down would be a financial hardship. If it is allowed to remain, they would continue to enjoy the backyard and have access to the beach.

Member Russell mentioned they would still have the enjoyment of the covered deck.

Ms. Youngman replied that's true.

Member Lipke asked the applicant what were their assumptions when they expanded the deck.

Ms. Youngman replied her son was repairing the covered deck after the hurricanes and they didn't think they needed a permit to expand it. They expanded to match their neighbor's decks and did it out of ignorance. She stated they didn't know a permit was needed until the inspector showed up. They took down a deck under construction on the side but misunderstood he was objecting to the expanded deck on the back.

Member Cornett asked if the construction was done by a contractor.

Ms. Youngman answered no. Her son did the work.

Member Lipke asked about neighboring decks although she was aware they are not at issue today.

Mr. Stockham repeated there are no complaints or violations on file for the neighbors to the north and south.

Member Young asked Staff when the neighboring decks were built.

Ms. Youngman answered in the 1990's and late 1980's.

Mr. Stockham replied early 1990's. He further stated Section 1003.03 of the Zoning Ordinance states that no non conforming use of neighboring lands, structures, signs or buildings in the same zoning classification and their permitted use of lands, structures, signs or buildings in other zoning classifications shall be considered grounds for the authorization of a Variance. Those non-conforming decks would not necessarily be justification.

Ms. Youngman commented they were prepared to take it down if that's the Commission's decision.

Member Severino asked to see the aerial photo and inquired when the photo was taken.

Mr. Stockham replied it is from the 2006 file on the County GIS system. The exact month is unknown.

Member Severino stated from the aerial photo the residence to the north has what appears to be a roof up to the coquina revetment. But looking at the photographs, he didn't see a cover over the neighbor's deck which extends almost as far as the applicant's. He asked if the Property Appraiser had record of a permit.

Mr. Stockham clarified the aerial photo is from the County GIS system which is separate from the Property Appraiser's aerial photography. He stated Staff's research indicated that in 2003 the neighbor to the north came in to replace portions of their deck after storm damage and it was approved by a zoning technician for them to do the repairs. It is unknown what research was done at that time to see if their deck could remain.

Member Severino expressed his desire to know if the neighboring deck to the north was a properly permitted structure as he considers criteria (4)(c).

Mr. Dyer cited criteria (4)(c) and reminded the Commission to look at the entire zoning classification, not necessarily the neighborhood. If something was allowed to exist that wasn't consistent with the zoning code it would not rise to the level of a "right commonly enjoyed under the terms of the Zoning Ordinance". He further stated if something was mistakenly allowed or there was a nonconforming structure lawfully built at the time but now cannot be built under the terms of the Ordinance, criteria (4)(c) cannot be satisfied.

Chairman Huttman mentioned for the record a letter was received from Darrell Hanson, 6953 S. Atlantic Ave. hoping the Variance is denied.

Mr. Stockham clarified Mr. Hanson is the neighbor to the south.

Member Russell **MOVED** to **DENY** case **V-07-106** based on the Staff Report. Member Young **SECONDED** the motion. Motion **CARRIED** 6 to 1. Member Sixma was opposed.

S-07-108 – Application of **Sheryl Denan for Anchor Towner, Agent for Owners, Cheryl and Frank Benedict, Owners**, requesting a **Special Exception** for Communication tower exceeding 70 feet in height above ground level (180 foot monopole) and Waivers to Section 817.00(w)(5)(e) *Setbacks and separation* (601 ft. in lieu of the required 1,000 ft.) for a residence on tax parcel 7306-01-00-0010; (778 ft. in lieu of the required 1,000 ft.) for a residence on tax parcel 7306-00-00-0040; (894 ft. in

lieu of the required 1,000 ft.) for a residence on tax parcel 7306-01-00-0150); (825 ft. in lieu of the required 1,000 ft.) for a residence on tax parcel 7201-00-00-0094; (600 ft. in lieu of the required 1,000 ft.) for a residence on tax parcel 7201-00-00-0093 on A-1 (Prime Agriculture) zoned property. The property is located on the east side of Airport Road, approximately 850 feet north of Pioneer Trail, north of the municipal limits of New Smyrna Beach and southwest of the municipal limits of Port Orange; ±10 acres (Zechnowitz) 7306-01-00-0012 **Tentatively scheduled for the November 15, 2007 County Council public hearing time certain 2:00 p.m.**

Dave Zechnowitz, Planner III presented the Staff Report. He stated the proposed 180 ft. monopole communications tower is designed to accommodate six carriers for co-location purposes. It's located in a Rural area with agricultural uses and also Urban medium-density residential development in the nearby cities of New Smyrna Beach and Port Orange. The lease parcel is a 6,400 sq. ft. site within the 10-acre parent tract. There are no existing towers within a 2-mile radius. The proposed tower will be set back at least 90 ft. (half its height) from any property line. He stated it's also being built to withstand the Florida Building Code 125 mph, 3-second gust. The applicants have submitted the required Statement of Need and the Radio Frequency Propagation Maps demonstrating the improved coverage with the proposed tower. An FAA Determination of No Hazard to Air Navigation has been submitted. The FAA does not require towers less than 200 ft. above ground level to be lighted. However Staff recommends the tower is lighted for the safety of low-flying aircraft operations of the Sheriff and Mosquito Control. He further stated there are five single-family residences within 1,000 ft. of the proposed tower. They are owned by four different families. Three families have signed notarized letters of no objection. Staff does support the granting of all five waivers. The City of New Smyrna Beach expressed no objection to the tower, but did inquire about the possibility of camouflaging it. As presented, this request meets the criteria set forth in Sections 817.00(w)(4) and 1104.00(h) of the Zoning Ordinance, except for the separation waivers, which Staff supports. Staff recommends **APPROVAL** of the request subject to the conditions outlined in the Report because the tower will not be a hazard or public nuisance or present any danger to the public.

Member Russell asked if comments were received from the City of Port Orange.

Mr. Zechnowitz replied no.

Jim Morris, 420 S. Nova Rd., Daytona Beach, FL, Agent for Owner stated the subject property is still farmed. He pointed out the proximity to Urban development with Waters Edge in Port Orange and Venetian Bay off State Road 44. He contended this proposal helps preserve agricultural uses by providing additional revenue to his clients as they continue to farm and it will improve cellular service to neighboring subdivisions. He stated no objections to the conditions in the Staff Report. He objects to the Sheriff's report which incorrectly addressed a proposed 1,000 ft. tower. He felt the Sheriff's Office comments would not apply to their proposed 180 ft. tower. He also discussed the limited approach and landing zones of Spruce Creek Airport. He contended the subject property is too far removed to have any effect.

Member Severino asked about the approach and landing patterns at the New Smyrna Beach Airport.

Mr. Morris replied that airport is also too far away to be affected; about six miles.

Member Sixma **MOVED** to **FORWARD** case **S-07-108** to the County Council for **APPROVAL** with conditions outlined in the Staff Report. Member Russell **SECONDED** the motion.

Member Lipke suggested re-contacting Captain Norris of the Sheriff's Office prior to the County Council meeting.

Mr. Zechnowitz replied another memo will be obtained.

Motion **CARRIED** with a vote of 6-0. Member Cornett not present to vote.

V-07-109 – Application of **Daniel Rodriguez for Distinct Design Inc, Agent for Owner, Oscar Dobrow, Owner**, requesting a **Variance** to the north front yard setback on Dolphin Avenue (18 ft. in lieu of the required 25 ft.) for an accessory structure on R-4 (Urban Single Family Residential) zoned property. The property is located on the east side of Dolphin Avenue at its intersection with Bass Drive, north of Ormond Beach; ± 5313 sq. ft. (Nagle) 3216-01-00-0860

Christian Nagle, Planner II presented the Staff Report. He stated the applicant is proposing a raised deck with associated open stairs. The property includes a one-story single-family home built in 1961 and accessory structures. It is a non-conforming lot size. The immediate area consists of single-family dwellings and scattered vacant lots. The proposed deck is located on the north front side of the house, facing Bass Drive. It is proposed in an irregular shape and elevated to a proposed height of 8.5 ft. to provide the property owner with a beach view without obstructing the existing windows. He stated there were no specific Comprehensive Plan policies applicable to this application. Section 1003.01 of the Zoning Ordinance provides the 5 criteria by which a Variance may be granted or denied. Staff's review of these criteria found there are special circumstances and conditions which are peculiar to the land involved. The property is odd-shaped and is a non-conforming corner lot. He stated however, since the applicant does not meet all 5 criteria for granting the Variance, Staff recommends **DENIAL** of this request.

Daniel Rodriguez, Distinct Design Inc., South Daytona, FL, Agent for Owner stated the reason for the Variance is to be able to see the ocean from a deck large enough to accommodate the family. He pointed out the request is only a 7 ft. difference in the setback, in the octagonal section of the proposed deck, and there is no other suitable location available on the property.

Member Russell asked what the total proposed square footage is.

Mr. Rodriguez answered by presenting a photo of the house showing the dimensions. He discussed the hardship on the owner with over \$4000 in expenses incurred and cancellation fees if the Variance is not granted.

More discussion ensued about the possibilities of building a deck smaller in area, moving existing utilities, or building on top of the existing screened patio on the other side of the home. These suggestions were not acceptable to the applicant.

Member Lipke asked Staff how the proposed elevated deck would fit into the integrity of the neighborhood.

Mr. Nagle replied he did not see any elevated decks during his site visit and pointed out a good view of the beach would be doubtful from this location.

Mr. Rodriguez submitted a photo of an elevated deck in the immediate neighborhood.

Mr. Nagle stated the existence of this other deck does not justify the granting of this requested Variance.

Mr. Dyer explained the Variance is for a north front yard setback. The proposed elevation is not the issue today.

Member Severino **MOVED** to **DENY** case **V-07-109** based on the Staff Report and the lack of a hardship. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

S-07-112 – Application of **Jim Huff for Craig & Associates, LLC, Agent for Owner, Entravision Communications Corp, Owner**, requesting a **Special Exception** for a Communication tower exceeding 70 feet in height above ground level (250 foot self support lattice) and a waiver to Section 817.00(w)(8) *Landscaping* on FR (Forestry Resource) zoned property. The property is located approximately $\frac{3}{4}$ of a mile north of the intersection of Nine Mile Road and Cedar Way, northwest of the Town of Pierson; ±40 acres (Ashley) Part of 4701-01-00-0930 **Tentatively scheduled for the November 15, 2007 County Council public hearing time certain 2:00 p.m.**

Scott Ashley, Planning Manager presented the Staff Report. He stated this request is for a communications tower on Nine Mile Point Road, incorrectly identified as Nine Mile Road in the Staff Report. Subject tower is surrounded by a conservation area jointly owned by the St. John's River Water Management District and Volusia County. There is no development whatsoever in this area. There is limited development in the surrounding area, with single-family and some agricultural uses to the south of Nine Mile Point Road and along U.S. 17 to the east of the subject site. The request is for a 250 ft. self-supporting lattice tower. This tower would be on a 40 acre tract that is currently occupied by a 970 ft.

guyed tower that's been in place since the mid-1980's. He stated because there is an existing tower on site, the new tower is required under the Ordinance to set back at least 3,000 ft. from a guyed tower. It will not do so in this request, and there is a companion case for a Variance to that setback separation. This tower is intended to serve the Spring/Nextel wireless network along the U.S. 17 corridor. This tower will fill a gap in the network system. Existing network towers are located 4 miles to the north and 7 miles to the south. He stated an engineering study by Eric Kohl of HCI Technologies indicates the existing guyed tower is not structurally able to support any additional equipment. The existing tower is old and does not meet current building code standards for wind load and weight capacity to provide co-location. Therefore, the applicant is asking for a new tower adjacent to it. Staff recommends **APPROVAL** subject to the conditions listed in the Staff Report.

Jim Huff, Craig & Associates LLC, 2917 West SR 434, Longwood, FL, Agent for Owner assured the Board everything possible was done but it was determined they could not use the existing tower. The owner would not allow the extensive repairs that would be necessary. He stated he doesn't believe there will be an issue with the FAA since the new tower will be near the existing 1,000 ft. tower. He is in agreement with the Staff Report and the conditions.

Chairman Huttman asked if the comments from Volusia County Radio Services regarding possible interference were being addressed.

Mr. Ashley replied follow-up information had been received from the Sprint engineer addressing Mr. Cawood's concerns about interference at 800 MHZ. Radio Services is no longer concerned. The tower will be operating at 1800-1900 MHZ and will not have any impact on the County system. Future changes to Sprint nationwide will distance the frequencies even more.

In response to a question from **Member Young**, **Mr. Huff** replied even though it cannot support what Sprint needs, the existing tower will remain to transmit television signals.

Mr. Ashley stated he failed to mention approval of this case would be subject to approval of the companion case V-07-113.

Mr. Dyer asked if the opposite would be true. Would a condition to the Variance case be that the Special Exception is approved by County Council in November?

Mr. Ashley replied yes

Member Cornett **MOVED** to **FORWARD** case **S-07-112** to the County Council with a recommendation for **APPROVAL** based on the Staff Report. Member Lipke **SECONDED** the motion. Motion **CARRIED** unanimously.

V-07-113 – Application of **Jim Huff for Craig & Associates, LLC, Agent for Owner, Entravision Communications Corp, Owner**, requesting a **Variance** to Section 817.00(5)(c) *Setbacks and separation* to allow a lattice tower (656 feet in lieu of the

required 3,000 feet from a guyed tower) on FR (Forestry Resource) zoned property. The property is located approximately ¾ of a mile north of the intersection of Nine Mile Road and Cedar Way, northwest of the Town of Pierson; ±40 acres (Ashley) Part of 4701-01-00-0930

Scott Ashley, Planning Manager presented the Staff Report. He stated this Variance is because of the location of an existing 970 ft. guyed tower on the subject tract. The existing tower was not an option for the applicant's use because it required substantial structural upgrades the owner was not willing to undergo to bring it up to current Code. Staff feels there are some unique and special circumstances because the existing tower is old and not able to structurally accommodate the new equipment. The new tower is needed to better serve the U.S. 17 corridor, eliminating the need to locate closer to the single-family homes on that corridor. He stated one of the goals of the Zoning Ordinance is to try to provide for some form of co-location, either on existing towers or close to other towers to provide a separation from existing residential development. The structural issues on the existing guyed tower are not a result of the applicant's actions. Literal interpretation of the Ordinance would force the tower to be located closer to existing residential development, which the Ordinance is also trying to prevent. Therefore, Staff feels there are unique circumstances related to this particular site that warrant the Variance. Staff recommends **APPROVAL** subject to the condition that Special Exception Case S-07-112 is approved.

Jim Huff, Craig & Associates LLC, 2917 West SR 434, Longwood, FL, Agent for Owner stated they are in agreement with the Staff Report.

Member Cornett **MOVED** to **APPROVE** case **V-07-113** based on the Staff Report. Member Severino **SECONDED** the motion. Motion **CARRIED** unanimously.

V-07-114 – Application of **Jean and Kim Alepin, Owners**, requesting **Variance** to Section 801.01(e) for an accessory structure height (17.33 ft. in lieu of the maximum allowed 15 ft.) for a detached garage on R-3 (Urban Single Family Residential) zoned property. The property is located on the south side of Westchester Drive ± 220 feet east of its intersection with Larchmont Drive, west of the City of DeLand; ±1.5 acres (Nagle) 7028-01-14-0010

Christian Nagle, Planner II presented the Staff Report. He stated the subject property includes the applicant's home and accessory structures, with single-family dwellings and scattered vacant lots in the immediate area. Building height for a gable-roof building is defined by the Zoning Ordinance as the vertical distance between the finished grade along the front of the structure to the average distance between the eaves and the roof ridge. The subject structure is under construction with an approved building permit. The area requiring the height variance is only a portion of the building, with one-third meeting the 15 ft. maximum height limit. During the course of the construction, the need for the Variance was discovered when the applicant submitted a revision to lower the building floor elevation to better follow a natural slope on the

building site. The original building permit required additional site filling. He stated the applicant has received frame inspection approval for the structure under construction. Staff finds altering the structure of the building to comply with the maximum height requirements of the Zoning Ordinance would be difficult and impractical. Approval of the Variance request is also needed to enable the applicant to get a final inspection on the building. He stated Staff has received a phone call from a neighbor who identified herself as Mrs. Mertz. She called to object to the Variance request because the structure, in her opinion, is too large. She also objected to the height of the building. Staff pointed out the structure is more than 130 ft. back from the front property line and it complies with the maximum building area requirements of the Zoning Ordinance. Size of the structure is not an issue. Staff finds special circumstances exist. Sloping ground conditions are not a result of the applicant's actions. Literal interpretation of the revisions of the Zoning Ordinance would impede reasonable completion of the building under construction and would work an unnecessary and undue hardship on the applicant. The proposed garage height increase should also be in harmony with the single-family dwelling on the site and is unlikely to be injurious to the surrounding area. For these and other reasons stated in the Staff Report, Staff recommends **APPROVAL** of the requested variance.

Jean & Kim Alepin, no address given, Owners stated during construction the permit was revised to better accommodate the existing natural slope on the property. They asked for approval of the variance.

Member Cornett commented this property is located in the old dune system running through the DeLand area. He is familiar with the slope.

Member Lipke **MOVED** to **APPROVE** case **V-07-114** based on the Staff Report. Member Russell **SECONDED** the motion. Motion **CARRIED** unanimously.

OLD BUSINESS

V-07-101 – Application of **Steven Westbrook, Agent for Owner, Frank Gabriel and Linda Fern, Owners**, requesting a **Variance** for a rear yard setback (9 ft. 9 in. in lieu of the required 20 ft.); a **variance** to lot coverage (39% in lieu of the maximum 35% allowed) and a **waiver** of Section 600.01 *Nonconforming Lots* for a substandard lot on the R-9 (Urban Single-Family Residential) zoned property. The property located on the east side of Cardinal Boulevard, approximately 219 feet south from the intersection with Sea Gull Street, located in the community of Wilbur by the Sea; ± 3,750 sq.ft. (Ashley) 6312-04-00-4030

Scott Ashley, Planning Manager presented the Staff Report. He stated the Wilbur-by-the-Sea subdivision was platted in 1916 with 50 ft. x 75 ft. deep lots. The current R-9 zoning classification has a minimum lot size of 7,500 sq. ft. and a minimum lot width of

75 ft. The subject property, at 3,750 sq. ft., is not only non-conforming but is also substandard since it contains less than 5,000 sq. ft. of land area. He stated additionally the R-9 has a minimum floor area requirement of 1,000 sq. ft. The subject home was permitted in 1986 and included an 8 x 14 ft. patio deck on the rear side. Current tax rolls indicate an unfinished screen porch but a 1993 survey, done when the property was purchased, shows an aluminum glass room approximately 9.9 ft. x 18.9 ft. He stated the applicant is proposing a solid, permanent addition in the same location as the former porch. When the applicant learned the porch was not a permitted structure, they removed it, leaving the patio slab. He stated the home currently has 34% lot coverage. Staff feels there are some circumstances and special conditions regarding this property. Being a substandard lot created in 1916, it has the disadvantage of not meeting the requirements of the R-9 zoning classification. The house is only 970 sq. ft., also non-conforming with the minimum floor area requirement. If the variances and waivers are granted, the total floor area would increase to approximately 1,157 sq. ft. The requested variances are a result of the applicant's actions, however the proposed addition being sought with the variances is a replacement to a screened or glassed-in porch that existed before the applicant purchased the property, and it existed until the early part of this year. There is a mixture of conforming and non-conforming R-9 and R-3 lots in the immediate area. There are slighter larger non-conforming lots adjacent to subject property. Very few are substandard because of lot combinations in the past. Staff finds that the applicant has not met all of the criteria to grant the requested variances and recommends **DENIAL** of the Variances, however would recommend **APPROVAL** of the Waiver to relieve the owner or future owner from having to apply for this particular item again.

Member Cornett asked Staff about any research through the Property Appraiser's database regarding the aluminum glass room.

Mr. Ashley replied their documentation referenced a 112 sq. ft. unenclosed porch. At 8x14 ft., he stated, it's the same size as the slab shown when the house was built in 1986. The 1993 survey references a larger, existing patio/porch area with no history of permits.

Steven Westbrook, ASW Construction, Agent for Owner stated the proposed addition is a replacement. When the owners realized the existing addition was unpermitted they removed it. He described the tragic and personal reasons the applicant has more need for additional living space.

Member Cornett asked the applicant if he had photos of preexisting glass room.

Mr. Westbrook replied no, but the proposed addition would have the same roof slope on the same concrete pad, but would have solid walls, better able to withstand hurricane conditions.

Member Young **MOVED** to **APPROVE** case **V-07-101**, both variances and the waiver. Member Severino **SECONDED** the motion. Motion **CARRIED** unanimously.

PUBLIC ITEMS

NONE

STAFF ITEMS

NONE

COMMISSION COMMENTS

Member Russell inquired about utilizing Google Earth photos for more comprehensive views on many of these cases.

Ms. Robinson stated Staff could look into it.

Member Severino inquired when the Board will approve the August minutes.

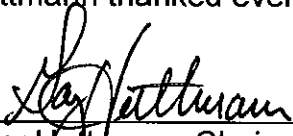
Yolanda Somers, Zoning Secretary replied the Comprehensive Planning portion of the August minutes have been received and will be included in next month's packet.

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 11:10 a.m.



Gary Huttman, Chairman

4/8/08
Date



Taver Cornett, Secretary

4/8/08
Date