

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
November 13, 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	Left 10:35 am
TAVER CORNETT, Secretary	Absent
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 August 14, 2007 Minutes

Member Sixma **MOVED** to **APPROVE** the minutes for August 14, 2007.
Member Russell **SECONDED** the motion. Motion **CARRIED** unanimously.

- Approval of August 20, 2007 Minutes

Member Sixma **MOVED** to **APPROVE** the minutes for August 20, 2007.
Member Severino **SECONDED** the motion. Motion **CARRIED** unanimously.

- Approval of October 9, 2007 Minutes

Member Sixma **MOVED** to **APPROVE** the minutes for October 9, 2007
Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

- Approval of October 31, 2007 Minutes

Member Sixma **MOVED** to **APPROVE** the minutes for October 31, 2007
Member Severino **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.

- **Disclosure of Ex Parte Communications**

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

- Jim Russell - No
- Frank Severino - No
- Stony Sixma - No
- Jay Young - No
- Taver Cornett - No
- Darla Lipke - No
- Gary Huttman - No

CONTINUED ITEMS

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) **30-day continuance**

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

Z-07-111 – Application of **Gary and Jayne Carroll, Owners**, requesting a **Rezoning** from the A-2 (Rural Agriculture) zoning classification to the A-4 (Transitional Agriculture) zoning classification. The property is located on the southwest side of Adeline Avenue, at its intersection with Williams Road, west of the City of Orange City; ± 10.06 acre (Stockham) 8016-00-00-0040 **30-day continuance**

Member Severino **MOVED** to continue case **Z-07-111** for 30 days. Member Russell **SECONDED** the motion. Motion **CARRIED** unanimously.

PUD-07-127 – Application of **Greg Duggan for Jordan Development, Contractor Purchaser, William Koch, Jr. and W. L. Kirk and J. Scott Kirk, Owners**, requesting a **Rezoning** from the A-3C(2) (Transitional Agriculture / Thoroughfare Overlay Zone /Activity Center), A-3(2) (Transitional Agriculture / Activity Center), I-1C(2) (Light

Industrial / Thoroughfare Overlay Zone / Activity Center), and I-1(2) (Light Industrial / Activity Center) zoning classifications to the Victoria Pointe BPUDC(2) (Business Planned Unit Development / Thoroughfare Overlay Zone / Activity Center) and BPUD(2) (Business Planned Unit Development / Activity Center) zoning classifications. This property is located on the southeast corner of S.R. 472 and Kentucky Avenue (CR 4101) extending east to the S.R. 472 and Interstate 4 highway interchange, surrounded by the cities of Deltona, DeLand, and Orange City; ± 71.2 acres (Ashley) 8106-00-00-0132 and 8106-04-00-0180 **30-day continuance**

Member Severino **MOVED** to continue case **PUD-07-127** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

S-07-122 – Application of **Michael Whaley and Sully Ferritto, 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, Biktobberfest, the Pepsi 400, and Bike Week on A-2 (Rural Agriculture) zoned property. The property is located on the north side of U. S. Highway 1, ± 3,200 feet west of its intersection with the Interstate Highway 95, near the City of Ormond Beach; ± 2.6 acres (Nagle) 3126-00-00-0150 **30-day continuance**

Member Severino **MOVED** to continue case **S-07-122** for 30 days. Member Lipke **SECONDED** the motion. Motion **CARRIED** unanimously.

S-07-129 – Application of **Kelly Spiros, Owner**, requesting a Special Exception for a Kennel on proposed RR (Rural Residential) zoned property. The property is located on the east side of Edgewater Canal Road, approximately ½ mile north from its intersection with Massey Road, west of the City of Edgewater; ± 2.86 acres (Zechnowitz) 7430-05-02-0470 **30-day continuance**

Member Severino **MOVED** to continue case **S-07-129** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

V-07-124 - Application of **Florence Ridley & Steve Scheurer, Agents for Owner, Marilyn Ford, Owner**, requesting a Variance to Section 817.00(k)(3) *Special Exceptions. Farm Worker Living Facility* for a north side yard setback (35.9 ft. in lieu of the required 100 ft.) and a south side yard setback (88 ft. in lieu of the required 100 ft.) on the MH-3 portion of the MH-3 (Rural Mobile Home) and RC (Resource Corridor) zoned property. The property located on the west side of Volco Road, 1.6 Miles from the intersection with U.S. Highway 1, located south of the City of Edgewater; ± 5.1 acres (Stockham) 8423-00-00-0010 **30-day continuance**

Member Severino **MOVED** to continue case **V-07-124** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

S-07-098 – Application of **Marilyn Ford, Owner**, requesting for a **Special Exception** for a Farm Worker Living Facility on the MH-3 (Rural Mobile Home) portion of the MH-3

(Rural Mobile Home) and RC (Resource Corridor) zoned property. The property located on the west side of Volco Road, 1.6 Miles from the intersection with U.S. Highway 1, located south of the City of Edgewater; ± 5.1 acres (Stockham) 8423-00-00-0010 **Tentatively schedule for the December 20, 2007 County Council at 2:00 p.m**

Member Severino **MOVED** to continue case **S-07-098** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

V-07-121 – Application of **Bo Hawryluk, Agent for Owners, Corrado and Dominica DiPietro, Owners**, requesting a **Variance** to Section 801.01(a) for a swimming pool enclosure (2.5 ft. in lieu of the required 5 ft.) on R-4 (Urban Single-Family Residential) and R-6 (Urban Two-Family Residential) zoned property. The property located on the south side of North Ocean Aire Terrace, approximately 200 ft. west of its intersection with Ocean Shore Boulevard (State Road A-1-A), in the Ormond-by-the-Sea area; ± 6,750 sq. ft. (Zechnowitz) 3216-02-00-0340 **30-day Continuance**

Member Severino **MOVED** to continue case **V-07-121** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

CONSENT AGENDA

NONE

NEW BUSINESS

NONE

OLD BUSINESS

NONE

VARIANCE AND SPECIAL EXCEPTION APPLICATIONS

NEW BUSINESS

V-07-115 – Application of **Jan E. Singleton McCleary, Owner**, requesting a **Variance** for a north side yard setback (29.22 ft. in lieu of the required 50 ft) to construct an accessory storage building on A-1 (Prime Agriculture) zoned property. The property is located on the east side of Old Perkins Highway at its intersection with State Road 11, north of Blackwelder Road and the City of DeLand; ± 2 acres (Nagle) 5021-00-00-0622

Christian Nagle, Planner II, presented the Staff Report. He stated the subject property includes the applicant's mobile home dwelling and a 24 x 32 foot concrete slab. He stated the immediate area includes mobile homes, single family dwellings and vacant acreage lots. The property is nonconforming due to its two acre size. The applicant is requesting the variance for the purpose of erecting an accessory storage building on an existing concrete slab. Before the applicant bought the property in March 2007 she was informed that a storage building had been located on the concrete slab in violation of the 50 foot side yard set back requirement for this zoning classification. Based on county records no building permit was obtained by the previous owner to erect the storage building. Building permits are not required for concrete slabs. The staff review found that there are particular circumstances related to the land and structures involved that are not applicable to other lands or structures in the A-1 zoning classification. The applicant is not responsible for the nonconforming lot or the concrete slab. However, the applicant is responsible for the proposed reconstruction of the building in the side yard. Denial of the requested variance would impede the applicants proposed reuse of the concrete slab as a building foundation for a storage building. Literal interpretation of the Zoning Ordinance provisions would not deprive her of rights commonly enjoyed by other property owners in the A-1 classification. The property is large enough to place the storage building to comply with the minimum yard requirements. Granting the request is unlikely to be injurious to the surrounding area, however, staff finds that the applicant has not meet all five (5) conditions for granting the request for variance as required by section 1000.3.03 of the Zoning Ordinance. Granting the request and variance is not the minimum variance required for the property to have reasonable property use. The applicant could relocate the proposed storage building to comply with the minimum yard requirements. For these reasons staff recommends **DENIAL** of the request.

Mr. Dyer asked staff to clarify whether staff found the application had met any or all of the five (5) criteria as outlined on page two of the staff report.

Mr. Nagle replied the request is consistent with the purpose and intent of the Zoning Ordinance. The variance is not required to have reasonable use of the property. The requested variance is not the minimum variance necessary for reasonable use of the property since the property is large enough to allow relocation of the proposed building.

Mr. Dyer commented that the staff report implied that the applicant did not meet 4 of the 5 criteria and that 4(e) was one that was met.

Mr. Nagle replied that there are special circumstances relating to the property, therefore the first of the criteria has been met. Staff found the variance is not the minimum variance needed to make reasonable use of the property. The request is consistent with the purpose of the Zoning Ordinance, which is one of the criteria and the Comprehensive Plan consistent requirement does not apply in this particular case.

Mr. Dyer asked if criteria 4(b) actions do not result from actions of the applicant.

Mr. Nagle replied that the applicant meets 4(b) criteria because she is neither responsible for the construction of the slab nor is she responsible for the nonconforming lot.

Mr. Dyer asked about 4(c) literal interpretation of the ordinance that would deprive the applicant of the rights commonly enjoyed by other properties in this zoning district.

Mr. Nagle replied that this was not met.

Mr. Dyer clarified that the request did not meet criteria 4(c) or 4(d).

Mr. Nagle agreed.

Chairman Huttman asked if the staff report in the third full paragraph on page 3 of 4 refers to reasonable use of the existing concrete slab or to reasonable use of the property.

Mr. Nagle replied the applicant could reconstruct the proposed storage building elsewhere on the property and meet the side yard requirements. Permits are not required for a concrete slab. The applicant could use the concrete slab without a building on it.

Chairman Huttman asked the definition of a structure.

Mr. Nagle replied that anything erected or attached to the ground with the exception of a fence is a structure.

Chairman Huttman asked if a basketball hoop is a structure.

Mr. Nagle replied yes if it's partly attached to the ground.

Tim Rogers, 2203 Spruce Street, DeLand, Agent for the Owner, He objected to Mr. Nagle's recommendation for denial. He said the applicant owns a 2 acre parcel that is 165 ft. wide. He said the majority of lots surrounding Ms. McCleary, are 250-300 ft. wide, although a lot of them are deeper. This is a nonconforming lot under the A-1 zoning and in this case her lot is nonconforming because of its width. If the applicant takes 50 ft. off each side as a set back, she has 65 ft. in which to locate a 32 ft. wide slab. He said the applicant's husband owns a forklift business and he runs flatbed trucks in and out of this parcel with forklifts on it. He said there is only a 30-foot wide area to operate vehicles. He said there is a 15-20 foot buffer existing of natural vegetation all the way around this parcel, except on the front portion of it. He said the cost of rebuilding a slab to conform to the zoning classification on the set backs is an undue hardship. The proposed structure has no power, no water, it's a storage building. The previous owner did not get a permit. Ms. McCleary knew she had to get a building permit. He said not granting the variance would cause a financial hardship to rebuild it

even if she tries to reuse a portion of this slab, the slab will have to be cut in the middle, another footing added to it so that the building can be reattached to it.

Member Russell asked if a 20 foot slab extension could be built so that the proposed building would be in required setbacks.

Mr. Rogers replied the type of building that was on it before was a prefab aluminum structure with aluminum frame but due to the new engineering requirements as far as footing, wind load calculations, this particular slab does not have a footing going down through the middle of it. The slab would have to be cut and a new slab extension would have to be doweled and attached to for the structural integrity of the slab.

Member Russell replied it's still within the realm of possibility.

Mr. Rogers replied anything is possible. The main item is the cost of rebuilding a slab or even extending this one. It will cost \$3000 to \$4000 in just the price of concrete and labor.

Ms. Robinson stated economic reasons are not a reason for hardship. If Ms. McCleary's husband is a contractor with a forklift business, it is not a permitted use in the A-1 district and therefore should not be a consideration for granting this variance. If he does open for business there and a complaint is received, there would be Zoning Code enforcement action against the property owner.

Mr. Rogers replied that Mr. McCleary does not run the business from the property. He works at a business in Pierson. But he does drive the vehicles home, if he has to do a delivery and drive back and forth to work.

Ms. Robinson replied that's a zoning violation.

Member Young asked if before purchasing the property the applicant was aware of this.

Mr. Rogers replied he was aware she needed a building permit to put the building back up.

Member Young asked if she understood that the slab was not compliant.

Mr. Rogers stated he does not know.

Member Lipke asked who made the PLDRC variance packet.

Mr. Rogers answered he did.

Member Lipke replied so that's the back of the written petition for variance.

Mr. Rogers replied yes.

Member Lipke said she understands that the applicant at the time of the purchase was informed there had previously been a metal storage building located on slab but due to its construction the previous owner was forced to dismantle it.

Mr. Dyer stated, it's my understanding, I've been told that information had been provided by the applicant.

Lloyd Flanagan, 5775 Old Perkins Highway, Deleon Springs, said he resides to the south of subject property and does not object to the variance. He said the owner to the north is an overland truck driver who does not object to the variance. Mr. Fink, the property owner on the other side of Highway 11 does not object. He said the applicant should be able to put up the same building. He said there are other smaller RR zoned properties in the area and objected to a recently constructed house near his property. It's .33 acre lot with a two story house. For reference, the case was V-06-115, Solomon. The rear door of that house is 15 foot off the rear property line. He also objected to other people erecting fabric structures, shade tree tarps, billboard tarps and other things.

Mr. Nagle added that the subject lot exceeds the minimum lot width. The requirement for the A-1 district is 150 feet, and this lot is wider than 150 feet. There is sufficient room on the lot to relocate the storage building.

Mr. Dyer clarified to the commission, Staff presented the facts from their position and the applicant has made a statement on the nonconformity issue. You can characterize that as rebutting the statement made by the applicant. You can take facts from both sides and weight them as you will.

Member Young commented the structure can be built. It has to be relocated, moved slightly. Part of the existing slab can be reused, and it isn't stopping the structure from being erected on the subject property and being in compliance.

Chairman Huttman and Mr. Nagle agreed.

Member Lipke stated, on the other hand, a reasonable mind could say the variance is a reasonable request and adjoining property owners are not concerned about it. It seems like an appropriate and good use of what's there and an exceptional situation.

Member Russell moved to **DENY** t case **V-07-115**. Member Young **SECONDED** the motion.

Motion for DENIAL **CARRIED** with a vote of 5 to 1. Members Sixma, Russell, Severino, Young, & Chairman Huttman voted to DENY the variance request. Member Lipke opposed the denial.

CHAIRMAN Huttman: Reopening case **PUD-07-130**, already read into the record.

Scott Ashley, Planning Manager, presented the Staff Report. He stated this request was to rezone from B4W, MH-5W and RC to MPUD and RCW. There are some unique requirements for projects dealing with natural vegetation retention which has been worked into this project. The subject property does have an existing subdivision preliminary plat approval. The applicant was moving through the process for final plat approval when they proposed to alter some of the minimum standards of the MH-5, which is a mobile home classification. The classification also provides for standard single family dwellings, which is what is being proposed. The surrounding area is primarily platted subdivisions consisting of mixed mobile home and standard single family residences. These particular subdivisions have canal home sites that lead to the Indian River. The frontage along U.S. 1 has commercial zoning and as indicated located very close to the City of Oak Hill, just south of the subject site. He stated the purpose of this PUD is to allow for some different design other than the conventional standards for the project which include the ability to increase the maximum lot coverage from the traditional 35% to 48% and to allow for joint use of boat docks on the river front lots. There are six (6) proposed riverfront lots that would share common docks. As indicated, the subdivision improvements have already been constructed and completed and they are waiting for final plat approval. The development consists of 63 lots, with a mixture of lot sizes from 50' by 110' to 50'x100', with lots on the river 130' to 140' in depth. The key issue for Staff is the applicants request to increase the lot coverage.

Staff wanted to make sure it would work from an engineering standpoint since the storm water and all the other improvements have already been approved, designed, and constructed in the subdivision. Staff has proposed in the Development Agreement and outlined on the Staff Report that there would be a restriction of 43% lot coverage for buildings, that would include the single family dwelling and any accessory structure, but then the total impervious coverage incorporating any sidewalks and driveways would be a total of 48% for the lots themselves. This differs from what the applicant had asked for, which was 48% for buildings. Staff recommends 48% for total impervious, so that the storm water system still works. The applicant will be discussing some new language about averaging out the coverage calculation so that there may be the ability to allow lots that have higher lot coverage while other lots are smaller. That will be discussed and incorporated into the Development Agreement so there may be a mixture of home sizes and styles within this development. As an existing developed site most of the Comprehensive of Plan policies which are listed on pages 4, 5 and 6 of the report have been addressed. Some of the environmental issues concern the protective buffers on the river front and the applicant meeting the Class II requirements by providing green spaces. There is native vegetation or planted native vegetation areas within the project. They also correspond with the requirement of the 20% common open space requirements for a PUD. One of the new items added is the proposed wording dealing with the docks on the eastern end of the property, and a community fishing pier. This would not provide for any boat access to the site but only as a fishing pier that would serve all the residents in the community. He stated the applicant is proposing to have 3 dock structures that would serve the 6 lots that front the river. Two owners would

share in one structure and these would be as Staff proposed, constructed and permitted by the applicants so they would be built and ready for any future homeowner instead of a home owner being required to build a dock that would serve two lots. Also, within the Development Agreement Staff recommended specific dimensional standards applicable for this project. The previous documents presented by the applicant were basically referring to the MH-5 classification. The specific language has been placed in the Development Agreement. The environmental considerations have been addressed, the dock information based on the existing project, the density that fits in with the urban medium land use designation surrounding development area. Staff recommends **APPROVAL** of the rezoning of the property to MPUD, subject to the conditions outlined in the Staff Report on pages 8 and 9.

Glenn Storch, 1620 S. Clyde Morris Blvd, Suite 300, Daytona Beach, Attorney for Owner stated that this is one of those cases where the development is basically done and they have come in for the rezoning. The applicant thought they had developed this as an overall vision and discovered one minor detail which was a provision in the code that limits the roof area with a MH-5 to 35%. The overall vision is to create a Caribbean style community and minimize the number of lots. Normally each lot is entitled to a dock so you would have 6 lots permitted for 6 docks and potential for a fishing village. Under the rules and regulations there are setbacks between lots for docks. The idea of sharing a dock makes sense from an environmental standpoint and from aesthetic standpoint but it can not be done without changing the rules in this situation. There are two (2) proposed changes in this case. One is to allow for the docks to be on the property lines and shared by the two lots therefore not requiring twice as many docks. That will decrease the amount that is RC covered and it increases the aesthetic for the people who are near this area. All the docks and all the boat houses will be built consistent with the Caribbean theme. This area was permitted under St. Johns for storm water based on an average of 2680 square feet of impervious surface per lot. We are to limit it to 2680 square feet of impervious surface on each lot or the average of the set amounts in the event two (2) or more lots are permitted concurrently. For example if there are 2 lots and one lot has 2600 square feet of home and one has 1600 square feet, we can average those as long as long as they don't rise to twice 2680. With the Caribbean village style theme there will be some variation and differences so you can have a larger house next to a smaller house. This will allow variation yet at the same time fit within the impervious surface area that is required. The language proposed and added to the development agreement states there will be a limit of 2600 of impervious surface for each lot or the average set amounts in event that 2 or more lots are permitted concurrently at the same time that they are brought in so no one has to keep track of anything. Once lots are built upon, no additional construction of additional impervious surface area shall be permitted. He stated the developer will place this restriction in all deeds conveying property to a third party and there will be no changes as time goes along.

Mr. Ashley stated Staff will modify the report subject to the language provided by Mr. Storch

Mr. Storch stated this is almost a platted subdivision. We are trying to make it better.

Member Russell moved to **APPROVE** case **PUD-07-130** with conditions 1 and 2 and the amended language to number 3. Member Lipke **SECONDED**.

Chairman Huttman stated we have a motion and a second for **APPROVAL** with the conditions 1 and 2 and the amended language to number 3.

Motion was **CARRIED** unanimously.

V-07-118 – Application of **Steven and Bianca DeFrancesco, Owners**, requesting a **Variance** to Section 600.01 *Nonconforming Lots* to separate Lot 23 from Lots 17, 18, 19, 23 and 24; a Variance to the front yard setback (20 ft. in lieu of 40 ft.); and a Variance to the rear yard setback (18.25 ft. in lieu of 40 ft.) on RR (Rural Residential) zoned property. The property is located on the west side of New Marsh Road, approximately 550 ft. north of its intersection with CR 4047 (Marsh Road), north of the City of DeLand; ±13,300 sq. ft. (Stockham) 6014-01-00-0230

John Stockham, Planner III, presented the Staff Report. He stated the subject lot was platted in 1963. The nonconforming lot status is a result of the zoning classification being Rural Residential zoning which requires one acre. The surrounding area consists of single family homes constructed on similar-size lots to the west and larger lots to the north, to the south, and on the A-1 zone lands across the road to the east. The subject property was purchased in February 2007 and it was soon discovered by the applicants that variances would be required in order to build the proposed three bedroom two bath single family home on this site. As a result the owners are requesting front and rear yard setback variances due to the lot's limited depth and a variance for the overall size. The variance for the lot size is a result of a nonconforming lot letter being unusable since an owner has owned adjoining or contiguous property at one time or another since 1980. The only remedy to the situation is to apply for a variance under section 600.01. Because of the subject properties nonconforming size and limited depth from New Marsh Road, there is apparent hardship in trying to build the proposed single family home per the setback requirements. The proposal is to build a home of approximately 2,500 square feet with the garage being set back about 20 feet and then a rear screen porch being setback 18.25 feet. Other home sites in the Rural Residential zoning classification would not be faced with these setback hardships because these sites would normally be the one acre in size. This plat was created 44 years ago. At one time it was zoned R1, but now it's zoned RR which requires the one acre. Literal interpretation of the provisions of the Zoning Ordinance with regard to the setbacks required for the RR zoning classification would prevent a home from being constructed on this nonconforming lot. This size of the parcel is greater than all of the other standard residential and mobile home sizes in all classifications except the R-1 classification. Since this original 1963 plat had lots of this size for the majority of the subdivision, granting subject variances in allowing the proposed single family home to be built would not be harmful to the surrounding area. He stated staff has a requested modification for the front yard and rear yard setbacks. Some setback relief is merited in

order to construct the single family home on the property and make reasonable use of this wide, yet shallow, residential lot.

The Health Department noted since the subject lot was platted prior to 1972 it is allowed to be developed with a well and septic system. Staff does not support the original variance request for the setbacks due to the requested dimensions being insufficient for the neighborhood and the size of the lot. Staff has an alternative recommendation of the setbacks that could be supported by the Land Development office. Staff also supports the variance for the size of the nonconforming lot since it was platted at its current size in 1963 well before the uniform zoning ordinance went into effect in 1980.

Staff recommends **APPROVAL** of the variance to separate subject lot 23 from 17, 18, 19, 22, and 24, and **DENIAL** of the variance as originally requested for front yard setback 20 ft. in lieu of 40 ft. and rear yard setback 18.25 ft. in lieu of 40 ft. Staff recommends the **APPROVAL** of a variance for the front yard setback of 25 ft. in lieu of 40 ft. and the rear yard setback of 20 ft. in lieu of 40 ft.

Mr. Dyer stated for the purposes of the record to ask the applicant if they concur with staff's alternative recommendation for the front yard and rear yard setbacks.

Steve DeFrancesco, owner, stated his wife agrees with it. He does not. He stated that they found out during their research that the county does not own the road. Actually it's the neighbors across the road that actually owns the property all the way up to where their property would begin.

Bianca DeFrancesco, owner, added the road is only partly County owned and the other half of it is the property of the people across the street. It's just from traffic traveling through there that has created a road and they have let it stand as that. The new owners have said they are going leave it as it is.

Chairman Huttman advised that does not change the request or the location of your property boundary.

Bianca DeFrancesco replied they did look at other builders to see what they could work with. They have worked with staff and found a floor plan that will work with the staff's recommendations.

Steven DeFrancesco stated he will agree with the 25 ft. and 20 ft. variances. However, he would like a couple more feet because the builder said that it will be close, so a couple more feet would be appreciated since it is not a main road and there is not much traffic.

Mr. Dyer explained if the applicant is not inclined to go with staff's recommendation, the original request is before the Commission.

Member Lipke concurred she did not think there was room for a couple of feet.

Bianca DeFrancesco answered we are perfectly content with the staff's recommendations. We can work with it.

Chairman Huttman asked the applicant again if he accepts the Staff's recommended variances.

Bianco DeFrancesco replied even the builder said that's as tight as we can get the house on there.

Member Lipke **MOVED** to **APPROVE** the Variance request for case **V-07-118**, based on Staff's alternative approval of the front yard setback variance of 25 ft. in lieu of 40 ft. and the rear yard setback of 20 ft. in lieu of 40 ft. Member Severino **SECONDED** the motion.

Chairman Huttman clarified the recommendation does include the approval of the variance to section 600.01, separating the lots.
The motion **CARRIED** unanimously.

V-07-119 – Application of **Art Tyler, Agent for Artesian Pools, Agent for Owners, Jim and Gwenn Cianci, Owners**, requesting a **Variance** to the Spruce Creek Fly-In RPUD dimensional standards for a swimming pool in Unit II-D (6 ft. in lieu of the required 8 ft.) and a variance to the Spruce Creek Fly-In RPUD dimensional standards for a swimming pool enclosure in Unit II-D (3 ft. in lieu of the required 8 ft.) on Spruce Creek Fly-In RPUD (Residential Planned Unit Development) zoned property. The property located on the east side of Grumman Court, approximately 300 ft. north from its intersection with Country Club Drive, in Subdivision II of the Spruce Creek Fly-In RPUD; ± 18,450 sq. ft. (Zechnowitz) 6236-07-00-3680 **V-07-119**.

Dave Zechnowitz, Planner III, presented the Staff Report. He stated the subject property is developed with a single family residence and a screen enclosed swimming that was built in 1995. The former owner did not comply with the required 8 foot side yard setback. The approved permit they received called for a 10 foot west side yard setback, but the pool was actually built with a 6 ft. setback and the screen area 3 ft. setback from the west side property line. The pool contractor never called for any inspections, so the permit expired. In September of this year the applicant applied for a permit to repair the pool and screen and add 4 feet to the enclosure to the south to expand the pool deck. Staff recommends the **APPROVAL** of the variance to maintain the existing set backs for the pool and screen, subject to the condition in the Staff Report because literal interruption of the ordinance would impose an unnecessary hardship to move and rebuild the pool and screen. This is the minimum variance necessary for the owners to make reasonable use of the structures. The screen enclosure should not be expanded.

Arthur Tyler, 1967 Stacy Circle, Deltona, Florida, Applicant, agreed with Staff's recommendation. He added the original contractor went out of business and he has the Spruce Creek Fly-In Architectural Review Board endorsement stating they accept the plan.

Member Severino **MOVED** to **APPROVE** case **V-07-119** as presented by Staff.

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

V-07-120 – Application of **Kevin Loftus, Agent for Owner, West Volusia Habitat for Humanity, Inc., Owner**, requesting a **Variance** to Section 600.01 *Nonconforming Lots* to separate Lots 4 and 5, Block 4 Riverside Estates Subdivision on R-4 (Urban Single Family Residential) zoned property. The property is located on the east of South Shell Road, approximately ½ mile from its intersection with SR 44, west of the City of DeLand; ± 14,500 sq. ft. (Ashley) 7914-01-04-0040 and 7914-01-04-0050

Scott Ashley, Planning Manager, presented the Staff Report. He stated the subject lots are platted at 50 ft. by 145 ft.. The R4 classification has a minimum lot width of 75 feet and lot area requirement of 7500 square feet. If the applicant applied for a building permit Staff would require the lots be combined. This request is to allow the lots to stand separately so they can build a single family home on each of the 50 foot wide lots. Staff found unique conditions and peculiar circumstances related to the property. The properties are nonconforming with the development standards of the R4 because it is based on the 1952 plat. The applicant did buy the two parcels from a previous owner and since they are nonconforming, they have to be combined to meet the minimum standard. Although the applicant is not responsible for the creation of the 50 foot wide lots, they are the common owner of both lots. In this particular subdivision the lots are platted at 50 ft x 145 ft. The majority of the lots within this neighborhood have common ownership of at least 2 or more lots. For that reason literal interpretation will not deprive the applicant of commonly enjoyed rights by others in the same classification. Granting the variance would be injurious to the area because of the ownership pattern of the subdivision. Staff recommends **DENIAL** of the request.

Mr. Dyer asked Staff if the same owner built on a single parcel based on a nonconforming letter in August 2006 and whether the hardship issue is of their own creation.

Mr. Ashley replied yes.

Mr. Dyer asked if they had or should have had knowledge of the requirements of 600.01

Mr. Ashley answered probably because they are about to complete a home to the north, it was on a single lot. The nonconforming lot letter was provided for the building permit in order to allow the permitting to take place. There are also two homes built further south in this same subdivision approximately 10 years ago by the same organization and they were built on two lots combined to make one build able site. That is the background for Staff's opinion that there was some knowledge in the organization that this would be required and given the pattern of development of the subdivision.

Member Severino inquired if the applicant had purchased a single one of these lots and applied, would he be allowed to build a house on half of what we are looking at today.

Mr. Ashley responded, based on the submission of a nonconforming lot letter, if it showed the person they were buying the property from or any previous owner back to 1980 had not owned any other adjoining lots, then yes, subject to meeting all the setbacks standards of the R4, they would have been allowed a building permit for one lot.

Kevin Loftus, 819 West Pennsylvania, Deland, Agent for Owner, stated that Habitat for Humanity, Inc. built down the road from this site on a single lot. A nonconforming lot letter was submitted as required, but Habitat for Humanity did not understand what the lot letter meant. The two subject lots were a great opportunity to build two homes. Habitat for Humanity, Inc. does not have records going back very far, or legal counsel. The costs so far on both lots are approximately \$5519.00 in survey's, septic permits, water permits, drawings, trust drawings, etc to become the burden of Habitat's customer if the variance is not approved. He stated it was a mistake and Habitat for Humanity Inc. should have known, but they didn't. He asked the Commission to look beyond staff's recommendation and look to the bigger picture, which is serving the people of Volusia County.

Member Young asked Staff if Habitat had purchased those lots at a different time, in other words, purchased one, then later on purchased another one, would they have been able to construction if they had bought a single lot.

Mr. Ashley answered yes if Habitat for Humanity, Inc. had bought a single lot, one lot only from a lot owner who did not own any other joining lots, and met all the other requirements of the R-4 with the submission of the nonconforming lot letter similar to what they did up the street, they would have been able to build on this lot.

Mr. Dyer commented frequently when you have a single nonconforming lot, it can't meet the set backs that are in place so they ask for a variance for the set backs. It's nonconformity with regards to lots, that if a single person at some point purchases two or more nonconforming lots, at the point they purchase those lots that are adjacent to one another, they become one lot and the policy intent behind that is to encourage the elimination of nonconforming lots in the county to combine multiple parcels to make them conforming. At the point the applicant purchased lots 4 and 5 by operation of our ordinance, lots 4 and 5 became one lot for purposes of the zoning code, undivided.

Chairman Huttman asked how did it get this far. The applicant stated they were well into the process before this issue of separating lots.

Ms. Robinson responded the applicant came in to apply for a permit and it was discovered that they could not get a nonconforming lot letter on the two lots. That's very

typical of what would trip a pre application meeting with a planner to advise them on what the variance process is.

Mr. Loftus replied the reason it was brought up was because a home was needed to be designed to fit a fifty foot lot.

Chairman Huttman asked if there was some negligence on the part of the county that Habitat for Humanity Inc. wasn't informed, and it does not sound like that is the case.

Mr. Loftus replied, not at all.

Chairman Huttman asked Teresa to come forward and give her name and address.

Teresa McDonald, stated her address as 1629 Center Street.

Chairman Huttman inquired of Teresa, in these relationships is there a commitment, and if the cost has to be absorbed by a single individual then does the mortgage goes up.

Mr. Loftus replied saying Teresa has been assigned to one of the two proposed lots.

Chairman Huttman asked Teresa if she has some investment in this, can she get out of it, if the mortgage goes up.

Mr. Loftus answered Teresa has qualified into the program. Teresa may not qualify if the mortgage could go up. If the price of the home goes too far up, then all of a sudden the applicant does not qualify. In this case, the amount that is invested plus double the cost of the land, each lot was approximately \$16,000 or \$17,000, it will be a difference in Teresa's monthly payment and what she can afford and what she can't.

Mr. Dyer noted Ms. Somers passed out three letters of opposition and at this time we would make them part of the record.

Mitchell Koffsky, 233 DeBary Drive, DeBary, stated he is an adjacent land owner and did sit down with the Planning Department. Planning said you can not build on a 50 foot. So he joined the lots. He stated that contrary to what this gentleman said, Habitat knew this; they did this three years ago on Old New York, right around the corner. All he was asking is if it is done for them, please do it for him.

Member Severino stated that the PLDRRC has been reminded by Mr. Dyer to not take other occurrences as precedence setting or take them into account when deciding on this factor. But he found the only hardship on the applicant is that of timing. If the applicant had bought and proceeded with one lot at a time, this wouldn't be an issue.

Chairman Huttman said he was trying to get at whether the county had any responsibility in this. While sympathetic, Habitat for Humanity builds quite a few homes and it seems this should have been part of the due diligence involved.

Member Young added he is inclined to go along with Chairman Huttman as he understands the hardship involved as far as the planning of two items, but then on the other hand it would be setting precedence against other people that buy adjoining lots.

Mr. Dyer commented that each case stands alone, however each case would need to meet the criteria for a variance.

Member Severino **MOVED** to **APPROVE** case **V-07-120**. Member Sixma **SECONDED** the motion. Motion **FAILED** 3-2. Members Young and Russell opposed. Members Cornett and Lipke not present.

Mr. Dyer explained that the variance request will be denied for failure to obtain affirmative vote of four, unless there is an additional motion, but no additional motion is necessary.

Ms. Somers asked the chair to explain to the applicant what just happened.

Mr. Huttman explained that the variance request was denied because it was not an affirmative vote of four. What can happen is variance requests can be appealed to the County Council.

Ms. Robinson added once the letter of rendition is issued, the time clock starts on the appeal period of 10 days.

V-07-123 – Application of **Michael Whaley and Sully Ferritto, Owners**, requesting a **Variance** to Section 600.01 *Nonconforming Lots* to separate parcel 3126-00-00-0150 and parcel 3126-00-00-0070 on A-2 (Rural Agriculture) zoned property. The property is located on the north side of U. S. Highway 1, ± 3,200 feet west of its intersection with the Interstate Highway 95, near the City of Ormond Beach; ± 2.6 acres (Nagle) 3126-00-00-0150

Christian Nagle, Planner II, presented the Staff Report. He stated the subject property is situated in a mixed use area including businesses, vacant lands and a mobile home park. The subject property is 2.6 acres in size and does not conform to the minimum parcel size for the A-2 zoning classifications. Per the applicant's nonconforming lot letter the subject property adjoins another parcel to the east that was formerly owned by the applicants. When the applicants bought the subject property they already owned the adjoining parcel and at that time both of those parcels became one lot under the provisions of Section 600.01 of the Zoning Ordinance. Staff found there are special conditions and circumstances which are peculiar to the land involved which is not applicable to other lands in the same zoning classification. The applicants are responsible for the creation of this nonconforming lot. The special circumstances are

the result of the actions of the applicant since they conveyed title to the adjacent property to another entity. Literal interpretations of the provisions of the Zoning Ordinance would not deprive the owners of reasonable use of the property since they can continue to use it as any other owner of a nonconforming A-2 zoned property. Granting the requested variance is not in harmony with the general intent and purpose of the Zoning Ordinance since it allows the re-creation of a nonconforming lot. Staff finds the applicants do not meet all the five criteria for granting the requested variances. The requested variance authorizes the continuance of a nonconforming lot, therefore staff can not support this request and staff recommends the variance be **DENIED**.

James Morris, Storch, Morris, and Harris, 420 S. Nova Road, Daytona Beach, Attorney for Owner, stated the request is to reestablish a nonconforming lot. The subject property was a free standing property in 1980 which is the trigger date for allowing nonconforming uses. The property owners owned an adjacent 5.4 acre lot. By operation of the Zoning Code, Section 600, it joined the two pieces of property. If the ownership was different, the properties would not have been joined by operation of the Zoning Code. The property owners bought the 5.4 acre property first then purchased the subject property. They sold the 5.4 acre property to a partnership which is controlled by other unrelated people. The property owners are unable to reacquire that property. They did not know at the time they purchased the adjoining property that Section 600 of the Zoning Ordinance would merge their title.

He stated the subject property does not meet the minimum 5-acre lot requirement of the A-2 Zoning Classification and because of the common title between the property owner when they bought the 2.6 acre property, the Zoning Code merged the two and said it is one piece of property. He stated the important fact is that the subject property back in 1980 was free standing and had they not merged the title, it would still be a permitted nonconforming lot. Mr. Morris said the owners don't have any reasonable use for the property. The staff report says the property owners are allowed reasonable use because you can use this like any other nonconforming A-2 piece of property that does not require structures. He continued it is unreasonable to not allow non-agricultural structures on the property. The Zoning Code Section 1003.03, specifically says that a variance may be granted to separate lots required to be combined under Section 600.01 of this ordinance, and the PLDRC may grant the requested variance. He stated the property title opinion letter states correctly that the subject and adjoining properties have never been merged nor have their tax parcels been merged. The property owners have never done anything to join the title. They simply bought two pieces of property side by side. He stated this application is different than other Section 600.01 cases since the property can not be built on and it can only be used for those A-2 uses that don't require structures. The variance criteria states that the PLDRC may grant variances from the terms of this Ordinance as will not be contrary to the public interest. When owing to special conditions, a literal enforcement of the provision of this ordinance would result in unnecessary and undue hardship. He stated the decision to grant or deny the variance is discretionary, as a quasi-judiciary hearing, and the PLDRC has the ability to consider the facts of the case. Peculiar circumstances exist in that the subject property was a free standing nonconforming lot in July 1980, but became an illegal nonconforming lot when the owners bought the property next door and

inadvertently joined the property title and then sold the 5.4 adjoining property. He continued that the special conditions and circumstances do not result from the actions of the applicant. The literal criteria interpretation of the provision of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification as structures can be built on most properties in the same zoning classification. Mr. Morris stated it would be contrary to the public interest to promote the uses that the staff says could be done on this property. The A-2 classification allows uses such as aviaries, other farming type activities that the PLDRC may not want to promote given the location of the property. Mr. Morris stated denying the variance would be contrary to the public interest and that the variance granted is a minimum variance that will make possible the reasonable use of the land. Mr. Morris stated he was requesting to reestablish the nonconforming status of the property. There is no use proposed for the land. He stated the requested variance would be in harmony with the general intent and purpose of the Zoning Ordinance. Mr. Morris stated the operation of the Zoning Code created the problem, and that the property owners don't have any ability to cure it. He asked the PLDRC to grant the variance.

Ms. Robinson asked Mr. Morris if his client has considered rezoning the property to make it a conforming lot.

Mr. Morris replied that in the past, the property owners of the 5.4 acre adjoining property had received opposition to their rezoning request, so his clients did not pursue rezoning their property.

Mr. Dyer stated that without commenting on the evidence, Mr. Morris properly provided a copy of the criteria for a variance and stated the PLDRC has the authority to grant a variance to Section 600.01. He stated that he understood the hardship was created by the Zoning Code, not necessarily the property owner. He also noted that the PLDRC may consider the information presented to determine if the applicants created a hardship.

Chairman Huttman asked Staff if the applicant is not deprived of the use of the property and if the A-2 property uses are appropriate for the property.

Mr. Nagle answered those are appropriate uses based on the property's existing zoning. The property owners can pursue the principle permitted uses that are allowed in the A-2 zoning classification that does not require the issuance of a building permit.

Mr. Dyer stated the Zoning Code provides for permitted uses and special exceptions for the property.

Mr. Nagle added if the variance is denied, the applicants do have the option of applying for the property to be rezoned.

Ms. Robinson stated the property owners to the south of their property did inquire about rezoning to B-4 zoning. The future land use category of the Comprehensive Plan

is Urban Low Intensity, so rezoning the other property would have required a Comprehensive Plan amendment. She continued that is where they might have run into some objection from the long range planning staff about a Comprehensive Plan amendment to a commercial land use category. Urban Low Intensity allows for limited commercial zoning as B-2, neighborhood commercial and she said there is quite a long list of uses permitted in the B2 zoning classification.

Mr. Nagle added the ULI category also allows B-9 zoning and an appropriate BPUD zoning. All those zoning classifications can be applied for without a Comprehensive Plan amendment.

Mr. Morris stated if the Comprehensive Plan amendment was pursued, that would be a small scale comp plan amendment. The County does not have any additional acreage to allocate to small scale amendments. The owners are trying to reestablish the subject property as a free standing property. He asked the variance to be granted and said the PLDRC has the power to grant the variance if the facts warrant it. He stated he thought it is a fact based case based on timing of property purchases.

Mr. Dyer noted that there are only 5 PLDRC members present and an affirmative vote of 4 members is required.

Member Young stated basically the property owner ignorance of the Zoning Ordinance generated the problem because if the owners had understood, they would not have so purchased both properties.

Mr. Morris replied that is true but they could also have easily avoided it, had they created a separate cooperate entity.

Member Young continued it still boils down to if they had understood the Zoning Ordinance they could have avoided this issue.

Member Severino stated, he questioned who caused the hardship. It seems the Comp Plan policy caused the hardship.

Member Russell asked what would be the result and impact on the owner if the application was denied.

Mr. Morris answered there is nothing they can do with the property except non structural A-2 uses and his argument was tied to the issue of public interest when you look at what surrounds this property.

Mr. Dyer clarified that Mr. Morris was not stating there is no use for the property. He's stating that because it would be a nonconforming lot that eliminates those uses which would require the obtainment of a building permit.

Mr. Morris elaborated on which would be reasonable uses for that property.

Member Russell asked Mr. Morris if the property could be rezoned.

Mr. Morris replied there's no moratorium on Comprehensive Plan amendments, but an issue with small scale amendment application.

Ms. Robinson stated there are other zoning classifications that can be applied for that are consistent with the current future land use designation on the property that would not require him to file an application for a Comprehensive Plan amendment.

Mr. Dyer stated there are two types of Comprehensive Plan amendments, small scale and large scale. Jurisdictions are able to do small scale, there's a 60 acre cap each calendar year, that's beneficial because it's a more expedited process. The large scale process which Mr. Morris's clients could pursue is a lengthier process, but still available. Mr. Morris is referring to the acreage cap on small scale amendment applications. There are already applications on file for 2008, there may be more applications than acreage allowed for 2008 small scale year.

Member Russell asked Ms. Robinson is there other zoning that he could apply for without going through either small scale or large scale amendment.

Ms. Robinson replies yes, B-2, BPUD application or the B-9 classifications.

Mr. Morris stated the staff report does not say that and that submitting a Comprehensive Plan amendment application would be time consuming.

Chairman Huttman asked Mr. Morris if he is saying the staff's comments about the B2, B9 and BPUD didn't come up before today.

Mr. Morris replied they did not.

Mr. Dyer explained they are not required to, and that any additional evidence may be presented during this hearing. Mr. Morris is not limited to the language in the Staff Report and that both Staff and the applicant may present additional information as long as it is not contrary to the Zoning Ordinance or application.

Chairman Huttman commented he would think Staff would look at ways to work with the applicant to avoid the need for a variance. He asked if the zone change options were presented as part of that discussion.

Ms. Robinson commented that the history of this variance arose out of a review of a Special Exception application for a temporary camp ground. She said the applicant may not want to rezone because it would impede their ability to do a temporary campground.

Mr. Morris agreed and said that his clients did not know about their problem until they inquired about a Special Exception application. He said his clients can't submit the Special Exception or other uses without this variance.

Member Severino **MOVED** to **APPROVE** case **V-07-123**. Member Sixma **SECONDED** the **MOTION**.

The Motion **CARRIED** 4 to 1. Member Young opposed the motion. Members Lipke and Cornett were absent.

S-07-125 – Application of **David Morgan, Agent for Owner, The Living Cornerstone Inc., Owner**, requesting a **Special Exception** for a Day Care Center on A-2 (Rural Agriculture) and RC (Resource Corridor) zoned property. The property is located on the south side of Taylor Road, approximately 6/10 of a mile west of its intersection with Spruce Creek Boulevard, adjacent to the City of Port Orange; ±11.8 acres (Ashley) 6225-03-00-0030 **Tentatively schedule for the December 20, 2007 County Council at 2:00 p.m.**

Scott Ashley, Planning Manager presented the Staff Report. He stated a church has been at this site since the 1990's and has operated a daycare center for the church during that time period. They expanded the daycare use to accommodate non-members of the church and currently operate a 100 child daycare center within the existing church building. They are requesting to legitimize the daycare use and are also asking for an increase to 150 children. The facility will be operated from 7:00am to 6:00pm, Monday thru Friday. The applicant is planning to build a new structure to accommodate the purposed new use. Currently the day care use is operated within the church building itself, which is located in front facing Taylor Road. The proposal is to build a newer structure behind the house of worship and add additional parking facility to accommodate the new use. That plan is in your package (aerial view shown). The surrounding area is rural in nature but is in transition to a more suburban type area. City of Port Orange is to the east of them, across the street is the Rock Church and behind that is a platted and developed single family residential subdivision. Further south the land is zoned RPUD for a future urban subdivision. The Comprehensive Plan has a day care policy concerning impact on residential character of area. The structure will be similar in size and scope as the existing church building. Set back provisions of zoning classification will be met. Staff finds the proposed use is consistent and will meet the applicable zoning requirements therefore we recommend **Approval** subject to the five (5) conditions that are in the staff report.

David Morgan, 530 Ridgewood Avenue, Holly Hill, Agent for Owner, stated we think it is a very necessary item out in that area. There are kids that need day care and it would be a valuable service.

Chairman Huttman inquired do you have the Staff Report and do you agree with the conditions the staff has placed on it?

Mr. Morgan confirmed he has the Staff Report and does understand it.

Chairman Huttman asked if the capacity is determined by the state, or the county.

Mr. Ashley responded the Department of Department of Children and Families will be licensing the facility and they make the ultimate determination. We will be looking at the maximum of 150, subject to site planning, traffic information, and state agency requirements.

Chairman Huttman asked if anything changes over the years that would allow them to be licensed for over 150, would they still would be limited to 150.

Mr. Morgan answered that is correct.

Member Sixma moves for **APPROVAL** for case **S-07-125** with all the staff conditions.

Member Severino **SECONDED**.

The Motion **CARRIED** unanimously.

V-07-126 – Application of **William Schaaf, Agent for Owners, Estate of Eloise Page, Owner, Patricia Smith, Owner**, requesting a **Variance** to Section 600.01 *Nonconforming Lots* to separate parcels; a Variance to the minimum lot width (130 ft. in lieu of the required 150 ft.) for parcel 8105-00-00-0370 on A-3 (Transitional Agriculture) zoned property. The property is located on the north side of Emmel Road, approximately 300 ft. east from its intersection with Stevens Street, in the rural community of Cassadaga; ± 0.62 acres (Zechnowitz) 8105-00-00-0360 and 8105-00-00-0370

Dave Zechnowitz, Planner III presented the Staff Report. He stated the subject property is comprised of two non-conforming lots, each approximately ½ acre. A3 requires a minimum lot size of one acre. According to section 600.01 the lots are considered to be an undivided parcel because they were owned by the same person after July 29, 1980. The westerly lot is owned by the estate of Eloise Page and the adjacent lot is owned by Patricia Smith, her caregiver and friend. In 2007 Eloise Page owned both lots for a short period of time. The applicant is the personal representative of the estate of Eloise Page and has been court ordered to sell the estate lot and distribute the proceeds to Ms. Page's heirs. The adjacent lot was gifted to Ms. Smith for her services to Ms. Page and since Ms. Page has passed away Ms. Page has no recourse for relief. In order to accomplish both ends the lots must be separated with a variance to waive section 600.01. He stated each lot is owned by a different entity or different person. Neither lot can be sold or developed without the grant of this variance. This consequence was not created by the applicant or the current owners and literal interpretation of the Zoning Ordinance would result in an unnecessary and undue hardship. Staff recommends **APPROVAL** of the variance because it is the minimum necessary to allow the applicant and owners to make reasonable use of their land.

William Schaaf, P.O. Box 15026, Gainesville, Agent for Owners, replied he had a copy of report and does concur.

Melinda McCracken, 280 Emmel Road, Cassadaga, stated she is the adjacent property owner. The issue with this is that the lot line has moved considerably and most of the subject lot is at least 1/3 water. We are going from a lot that is 130 x 175 ft. to a building lot that is 130x 100 ft. maybe. They want to separate so they can put another house there which is going to cause flooding to the people in the existing house and also run into problems with septic and wells. She spoke on behalf of herself and two neighbors. She stated this is a very low area right at the end of the property and it will cause the road to flood during high water. If they do anything with this lot they are making a nonconforming lot that they will be right back here fighting for a building permit. It is not a build able lot. It has never been a build able lot.

Chairman Huttman asked Staff if the variance is granted, will the applicants still have a ways to go before they can build. This does not approve any site plan.

Mr. Zechnowitz replied the separation gives the owner the right to apply for building permits and meet the technical requirements of the building code and the zoning ordinance. The distinction between this case and others is that the westerly lot is owned by the estate of Ms. Page and the adjacent lot to the east is owned by another individual and she has no recourse against the deceased Ms. Page. So there is no opportunity to combine these parcels.

Mr. Dyer stated that the language for nonconforming lots is very strict. It was intended to encourage the combination of lots to make them conforming over time. Per existing code, no portion of undivided lots shall be sold or subdivided in a manner that does not comply with the lot width or lot area requirements established by article 7 of the Zoning Ordinance. By the operation of the ordinance if the owner deeds a portion of a lot to someone else and by virtue of that action creates a quit claim nonconforming lot under our code, that property was never legally transferred. It remains one lot. That is why when people ask for variances as title as a requested variance to separate lots, it's being presented to you that they own a portion of a lot they wish to build on. Under the ordinance, the zoning code never recognized that division. So for the purposes of the zoning code it's still one lot. The applicants are asking permission to separate the lots.

Patricia Smith, Owner, stated she is the one who is in question on the lot. She would like to clarify that those lots were never adjoined. Eloise Page became a recent owner of the lot she owns. There are deeds that go back to 1967 after Elsie Emmel starting dividing up the lots on Emmel road and selling them off. Eloise was not part of it at that time except where her house is situated; the lot had belonged to other people. They were never adjoined as one lot. There's really not a separation issue, except legally.

Mr. Dyer asked Staff if the lots were combined over a period of time.

Mr. Zechnowitz answered when Ms. Smith took title to the easterly lot; she took title in her name with another person as joint tenants with right of survivorship. He died and at that moment she became the owner of one lot by operation of our ordinance.

Mr. Dyer commented that Staff said she has no recourse; we do not get into those issues or render legal advice on it. There is an estate in place, we will not comment one way or the other whether she has recourse or not, maybe she does. But that would not be necessarily relevant for the request.

Chairman Huttman asked for any additional comments from Mr. Schaaf.

Mr. Schaaf stated Ms. Page was advised to quit claim the deed to Trish Smith and was assured that everything was okay. He explained the nature of the hardship that if it stays as one unit it is not build able and unusable for Trish Smith and it would go against the desire of Ms. Page. He asked the Commission to help get the estate sold in a fair and compensational way for everybody's concern.

Member Sixma asked Staff if approval today means the applicant will get a building permit.

Mr. Zechowitz answered they would have to meet all the requirements of the Zoning Ordinance and building code to be able to construct a home on that lot, as well as address an wetland issues also. Regardless of what happens to the adjacent lot, the estate lot can be sold and the assets distributed among the heirs if this variance is approved.

Member Russell moves to **APPROVE** case **V-07-126**. Member Severino **SECONDED** the motion. The motion **CARRIED** unanimously.

OLD BUSINESS

NONE

PUBLIC ITEMS

1. **Small Scale Comprehensive Plan Amendment (CMPA-006-07) Massarella Properties Inc, OwnerTerry James, Comprehensive Planning Manager, Growth & Resource Mgmt.**

STAFF ITEMS

NONE

COMMISSION COMMENTS


NONE

PRESS AND CITIZEN COMMENTS

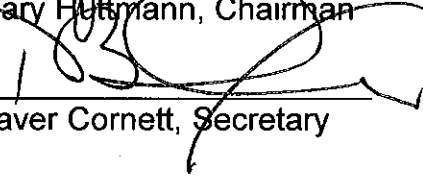
NONE

ADJOURNMENT

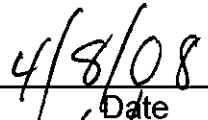
Having no further comments from the public, staff or Commissioners, Chairman Huttman thanked everyone and adjourned the meeting at 12.02 pm.



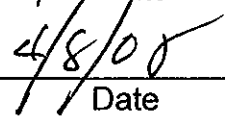
Gary Huttman, Chairman



Taver Cornett, Secretary



Date



Date