

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION  
PUBLIC HEARING HELD  
September 11, 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 August 14, 2007 Minutes**

Member Cornett **MOVED** to **APPROVE** the minutes for August 14, 2007. Member Russell **SECONDED** the motion.

Discussion ensued about the missing Comprehensive Plan Amendment minutes. Member Cornett and Member Russell **WITHDREW** their motion and second.

Member Cornett **MOVED** to **CONTINUE** the approval until next month's hearing. Member Russell **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**

**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) **60 day continuance**

Member Sixma **MOVED** to continue case **PUD-07-032** for 60 days. Member Russell **SECONDED** the motion. Motion **CARRIED** unanimously.

**Chairman Huttman** expressed concern about the time frame and expense of continuances.

**Dave Zechnowitz, Planner III** stated this applicant has retained a new attorney and the case should be moving forward soon.

**Z-07-063** - Application of **Karen & Richard Gilman, Owners**, requesting for a **Rezoning** from the A-1 (Prime Agriculture) zoning classification to the A-4 (Transitional Agriculture) zoning classification. The property is located on the north side of Duroc Drive, approximately 359 ft. west from its intersection with Yorkshire and Duroc Drive, near the City of Lake Helen; ± 9.76 acres (Stockham) **90-day continuance**

Member Sixma **MOVED** to continue case **Z-07-063** for 90 days. Member Russell **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 in the community of City of Edgewater and north of Oak Hill; ± 5.1 acres (Stockham) 8423-00-00-0010 **60-day continuance**

Member Sixma **MOVED** to continue case **S-07-098** for 60 days. Member Russell **SECONDED** the motion. Motion **CARRIED** unanimously.

**V-07-101** – Application of **Steven Westbrook, Agent for Owner, Frank Gabriel and Linda Fern, Owners**, requesting a **Variance** for a front yard setback (20 ft. 4 in. in lieu of the required 25 ft.) and a rear yard setback (9 ft. 9 in. in lieu of the required 20 ft.) 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 **30-day continuance**

Member Sixma **MOVED** to continue case **V-07-101** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

## **CONSENT AGENDA**

NONE

## **NEW BUSINESS**

**PUD-07-100** – Application of **Robbie Tollison, Agent for Owner, Heritage Heating & Air, Inc, Owner**, requesting a **Rezoning** from the B-4 (General Commercial) zoning classification to the Heritage Heating & Air, Inc BPUD (Business Planned Unit Development) zoning classification. The property is located on the east side of North U.S. Highway 17, 185 feet from the intersection with West Cherry Street. The property is near CSX Railroad located in the community of Seville; ± 1 acre (Zechnowitz) **Tentatively scheduled for the October 18, 2007 County Council public hearing time certain 2:00 p.m.**

**Dave Zechnowitz, Planner III** presented the Staff Report. He stated the subject property is located on Highway 17 in the Rural Community of Seville just south of Seville Elementary School. The applicant is proposing to build a mechanical contractor's shop for his heating and air conditioning business. Since this is not a permitted use in the current B-4 zoning the applicant is requesting a BPUD. The preliminary plan depicts a 3,600 sq. ft warehouse with office, requiring 6 parking spaces. Also shown on the plan is access via a single driveway from Highway 17. Utilities will be from an on-site, limited-use public water well and septic system. The land uses listed in the BPUD are some of those listed in B-4, with the addition of some less intensive B-5 uses, including the contractor shop. The property's future land use is Rural and he stated it lies within a Rural Community so any change in zoning must be processed as a BPUD. The Comprehensive Plan policies and commercial land use location guidelines listed in the Staff Report speak to the appropriateness and limitations of business uses in non-urban areas. He outlined briefly, the use cannot be a traffic generator, must be less than 5 acres, should be located on a major highway and should not disrupt the rural lifestyle of the area. The applicant's development proposal is consistent with these policies and guidelines and with the recommended changes to the Development Agreement meets the BPUD regulations set forth in Section 813.00 of the Zoning Ordinance. Staff recommends **APPROVAL** of the request because it is consistent with the Comprehensive Plan.

**Robbie Tollison, 975 McBride Rd., Seville, Agent for Owner**, had no comments other than to agree with the Staff Report.

Member Cornett **MOVED** to **FORWARD** case **PUD-07-100** to the County Council with a recommendation of **APPROVAL**. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

## **OLD BUSINESS**

NONE

## **VARIANCE AND SPECIAL EXCEPTION APPLICATIONS**

### **NEW BUSINESS**

**V-07-097** – Application of **Carl Fronk, Owner**, requesting a **Variance** to Section 801.01(d) for an accessory structure (1,350 sq.ft. in lieu of the maximum allowed 432 sq.ft.) and a **variance** to Section 801.01(e) to allow an accessory structure height (17 ft. in lieu of the maximum allowed 15 ft.) on the R-3 (Urban Single-Family Residential) zoned property. The property located on the west side of South Woodward Avenue, at its intersection with Brittain Avenue, located in the community of DeLand; ± 0.53 acres (Zechnowitz) 7018-12-01-0010

**Dave Zechnowitz, Planner III.** presented the Staff Report. He stated the subject property is in a low density, urban residential subdivision west of the City of DeLand. The R-3 zoning classification requires a ¼ acre minimum lot area, which is the predominant parcel size in the vicinity. The subject property is a ½ acre lot developed with a 906 sq. ft. single-family dwelling built in 1939. The size of the home is non-conforming with the R-3 classification's minimum floor area of 1,000 sq. ft. The applicant lives out of state and visits DeLand several times a year for week-long visits. His eventual intention is to demolish the old house and build a new 2,700 sq. ft. home. Section 801.01(d) of the Zoning Ordinance states the cumulative area of all accessory buildings or structures shall not exceed 50% of the square footage of the principal structure. The regulations in Section 801 were intended to prevent accessory structures from overwhelming the principal structure of the applicant or adjoining property owners. The special conditions and circumstances in this case are that the applicant's home is quite small in comparison to the average-size home in the neighborhood. He stated the lot size of the subject property is twice the size of what is required in the R-3 zoning classification. The applicant's property is a large, corner lot and the neighbors' adjoining lots are comparable in size. The proposed garage will not overcrowd or overwhelm the lots or buildings on those properties. However, the request is not the minimum that will allow the applicant to make reasonable use of his land. Therefore Staff recommends **DENIAL** of the application, but will support a Variance to allow a 1,000 sq. ft. garage with a maximum of 400 sq. ft. of living area at a maximum height of 15 ft. He stated the rationale is the applicant's property could be divided into two lots,

each containing a 1,000 sq. ft. living area home, the minimum required in R-3. Each property could have a detached accessory 500 sq. ft. garage. That is how staff arrived at 1,000 sq. ft. of garage that would be reasonable. If PLDRC agreed to approve this request he stated four additional conditions:

1. 6 individual lots must be combined into a unified site.
2. Living area of the guest quarters will be limited to 400 sq. ft.
3. The accessory structure cannot be rented and can only be occupied by the owner or his guests.
4. Advertising the accessory structure for rental for any length of time or the act of renting the accessory structure will constitute grounds for revocation of the Variance in accordance with Section 1003 of the Zoning Ordinance.

**Chairman Huttman** asked Staff if the applicant was coming forward to get approval of a site plan for a 2,700 sq. ft. house at the same time, would he only need a Variance for the height.

**Mr. Zechnowitz** replied that is correct.

**Carl Fronk, 1150 Ridge Rd., Langhorne, PA , Owner**, spoke about his background and life in Pennsylvania. His ultimate intention for the subject property is to build a house. He explained he would like to live on-site during construction. To explain his size and height request he stated the desire to shelter his truck, boat and motorcycle and to build an interior staircase in the proposed garage. He commented on several different options presented by Staff and the reasons he found them undesirable. He also stated he has invested time and money in tidying up the property, removing tree stumps etc.

**Chairman Huttman** asked the applicant if he was opposed to Staff's alternative recommendations.

**Mr. Fronk** replied he had no intent to rent this garage or apartment and no problem with the lot combination. He stated he did have an issue with the 400 sq. ft. guest quarters.

**Chairman Huttman** asked if he was okay with the 1,000 sq. ft. structure, but was it a question of how much was dedicated to living quarters.

**Mr. Fronk** replied the living quarters would be on the 2<sup>nd</sup> floor. With the height restriction and 1,000 sq. ft. he stated he couldn't even begin to get 400 sq. ft. He suggested the 1,350 sq. ft. is not an unreasonable request on a ½ acre-plus corner lot and would not be unusual to the neighborhood. He discussed roof pitch and the possibility of 19 ft. height for the structure.

**Mr. Dyer** reminded the Commission the Variance request is for 17 ft. in lieu of the maximum 15 ft. and it would be inappropriate to modify the original request at this time.

**Chairman Huttman** replied he understood. He asked the applicant again if he was okay with what Staff had recommended approval of.

**Mr. Fronk** replied the 1,000 sq. ft. structure would not be acceptable to him.

**Mr. Dyer** reminded the Commission to apply the criteria for granting a Variance and stated they are not obligated to grant or deny both. They could grant one, but not the other. He reminded them the burden is on the applicant to prove by substantial, competent evidence that he satisfies each of these criteria. He read the criteria into the record. He further stated one of the reasons for the Variance request is that the principal structure on the lot is smaller than those in the neighborhood, but the applicant had stated that it is his ultimate intention to demolish the principal structure. He stated this would be something for the Commission to consider, which may undermine the request for the accessory structure and the guest house to begin with and something for the Commission to wrangle with.

**Mr. Fronk** stated he was under the impression he could not demolish the existing building because the proposed building is not a home. He believes he cannot have just a garage on the property. He stated he believes he can secure a permit, build a new home, and have 90 days or 6 months to demolish the previous existing building. He stated there is no intent to demolish that building once the proposed structure is put up. He would be agreeable to sign something.

**Mr. Dyer** quoted from the Staff Report that it is the applicant's eventual intention to demolish the old house and build a new 2,700 sq. ft. home. He stated Staff got that information somewhere. He stated if the Commission grants the Variance, there is nothing to prevent the applicant from demolishing the principal structure as long as he met the requirements for getting a demolition permit. Even though the applicant is saying now it is not his intention to build a 2,700 sq. ft. home, he could as long as he met the demolition permit requirements. He pointed out the applicant has stated the small, principal structure is one of the reasons he needs the accessory structure.

**Member Russell** asked the applicant if he would consider taking down the existing house and building the new house and garage now.

**Mr. Fronk** stated he had considered that but prefers to build the garage first and live on the property during construction of the main home. He has done this twice in Pennsylvania. He stated again he would be willing to sign an affidavit that he would not demolish the existing house until he has built a new house. He expressed some question about the sequence of events regarding demolition and building.

**Mr. Dyer** stated demolition is a separate process not before the Commission today. He stated there is nothing the Commission can impose today to prevent the applicant from demolishing the principal structure in the future.

**Member Young** asked the applicant if the Staff recommendations would be suitable.

**Mr. Fronk** replied he would like to have 1,350 sq. ft. with more than 400 sq. ft. for living area. He agreed with the other recommendations. He stated he was in agreement with not building an obtrusive or offensive structure.

**Gayle Bailey, 1514 Brittain Ave., DeLand, FL** inquired about the future of the four trees on the property located near the proposed structure.

**Mr. Fronk** replied one tree might have to be removed.

**Member Severino** expressed his conflict in that the 1,350 sq. ft. is based on a future 2,700 sq. ft. home, but what would prevent the applicant from never building that 2,700 sq. ft. home. He stated granting the Variance may cause injury to the surrounding area.

**Chairman Huttman** asked for clarification why a new house and garage wouldn't need a Variance but the accessory structure does.

**Mary Robinson, Building and Zoning Director**, explained if the garage was attached to the house there would not be a height issue. The proposed structure is free-standing.

**Chairman Huttman** inquired if the way for the applicant to get what he wants is to do more now.

**Member Severino** restated his conflict. Overall, the request is not unreasonable but he felt the criteria are not being met for granting a Variance.

**Chairman Huttman** asked Staff if a permit was obtained to build a 2,700 sq. ft. home that included a 1,350 sq. ft. garage, would the order of construction be an issue.

**Ms. Robinson** replied yes.

**Member Russell** commented in Bethune Beach building a boat house with living space is not allowed prior to building the home on the lot.

**Mr. Dyer** asked Staff to confirm that the proposed 1,350 sq. ft. is calculated on 50% of a future 2,700 sq. ft. home that the applicant is not obligated to build.

**Mr. Zechnowitz** replied no. 1,350 sq. ft. is what the applicant had proposed from the beginning, without any consideration of building a new home. The applicant currently has the option of dividing the property and building a much larger home with a garage on both lots if he wanted to. He stated the applicant is trying to do a minimum amount of building on the total site. It happened that he discussed future plans with the applicant and he indicated he would probably build a 2,400 sq. ft. house. If part of that is a garage, the total area is counted. He might build a 3,000 sq. ft. home or a 2,000 sq. ft. home.



**Mr. Dyer** asked if granting the Variance obligates the applicant to rebuild a principal structure.

**Mr. Zechnowitz** replied he is not obligated.

**Member Russell** amended his earlier statement about Bethune Beach to indicate accessory structures cannot be build before the house.

Member Young **MOVED** to **DENY** both Variances in case **V-07-097**. Member Russell **SECONDED** the motion.

After a brief discussion on the possibility of continuance or arriving at new square footage figures, it was decided to proceed with the vote.

Motion to DENY **CARRIED** 6-1. **Member Sixma** was opposed.

**S-07-099** – Application of **Edward, Martha & Melissa Meadows, Owners**, requesting a **Special Exception** for a Garage Apartment on the A-2 (Rural Agriculture) zoned property. The property is located on the east side of Meadow Lane ± 3,600 feet south of its intersection with Halifax Drive, west of the City of Port Orange; ± 5 acre (Nagle) 6224-00-00-0033 **Tentatively scheduled for the October 18, 2007 County Council public hearing time certain 2:00 p.m.**

**Christian Nagle, Planner II** presented the Staff Report. He stated the subject property abuts the city limits of Port Orange and includes a single family dwelling and accessory structures. There are single family dwellings and a few agricultural uses in the area. The applicants are requesting a garage apartment living quarters for Melissa Meadows and her son so that she may help her parents maintain the subject property. He stated the proposed garage apartment is a detached one-story building with a living area of 800 sq. ft. and a 936 sq. ft. 3-car garage. The proposed garage apartment qualifies as a garage apartment as defined by the Zoning Ordinance. He displayed the applicants' conceptual site plan on the overhead projector, showing the proposed garage apartment behind and to the right of the single family dwelling. This proposed garage apartment is also consistent with the density provisions of the Rural future land use element of the Comprehensive Plan and the applicable objectives and policies of the Tomoka Farms Rd. local plan area. According to comments from other Departments, the proposed garage apartment should not have adverse environmental impacts. The applicants will also need to apply for the appropriate permits from the Health Dept. to construct the proposed garage apartment. He stated the requested Special Exception meets the requirements of the Special Exception, is consistent with the Comprehensive Plan and Zoning Ordinances Amended, and is compatible with the surrounding area. It should not materially affect the public interest and it's unlikely to materially alter the character of the neighborhood. Staff recommends **APPROVAL** of the request subject to the proposed 1-story garage apartment being located and constructed on the property as shown on the submitted site plan.

**Melissa Meadows and Martha Meadows, 2363 Meadow Lane, Port Orange, Owners** stated they are in agreement with the Staff Report.

Member Severino **MOVED** to **FORWARD** case **S-07-099** to the County Council with a recommendation of **APPROVAL** with Staff's conditions. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

**OLD BUSINESS**

NONE

**PUBLIC ITEMS**

NONE

**STAFF ITEMS**

NONE

**COMMISSION COMMENTS**

NONE

**PRESS AND CITIZEN COMMENTS**

NONE

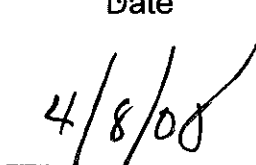
**ADJOURNMENT**

Having no further comments from the public, staff or Commissioners, Chairman Huttman thanked everyone and adjourned the meeting at 10:07 a.m.

  
\_\_\_\_\_  
Gary Huttman, Chairman

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Taver Cornett, Secretary

  
\_\_\_\_\_  
Date