

V-13-016



VARIANCE APPLICATION
THE ZONING ORDINANCE OF VOLUSIA COUNTY, FLORIDA

PLEASE PRINT OR TYPE

Pre-Application Meeting Date: 1/24/2013

APPLICANT: James W. Tivy, jwtivy@earthlink.net
119 Wisteria Drive, Longwood, FL 32779
(407) 467-7746

STATUS: Owner [checked] Agent for Owner [checked] Attorney for Owner Contract Purchaser

OWNER: Maria Uspenski
528 18th Street, Boulder, CO 80302

This is a request for a Variance for a Lot Separation and Front and Rear Setbacks Reduction Variance on

R-9W zoned property. The Comprehensive Plan Land Use Designation is ULT

Size of Parcel 5,656.68 (0.13 acres) Tax Parcel #: 8505-01-28-0090

Address of Property: 6000 Turtle mound Road

This property is located on the West side of Turtle mound Rd./St./Ave., approximately 0 ft./mi. N-S-E-W from its intersection with Atlantic Rd./St./Ave. The property is near Bethune Beach, and/or adjacent to the City of New Smyrna Beach.

Circle applicable Utility: Private Septic/Well Central Sewer/Water by: City of NSB Other:

APPLICATION WILL NOT BE ACCEPTED UNLESS ALL OF THE FOLLOWING ARE ATTACHED:

- Two (2) signed and sealed surveys of the property (no more than 2 years old).
Two (2) copies of the legal description (furnished on 3 1/2 inch computer disk or CD-ROM, if possible).
Authorization of Owner (if applicant is other than the Owner or Attorney for the Owner).
3 Copies of site plan (to scale) complying with § 72-415(1)(d) of the Zoning Ord., and 1 reduced to 8 1/2 " x 11".
Non-conforming lot letter, if applicable. (to be updated)
Written petition as described in Section 72-379(1)(a)(4) (complete attached form).
Pre-Application Meeting Form
Application fee.

Case # V-13 0116

ADDITIONAL INFORMATION FOR VARIANCE FROM SECTION 72-206(1) (NONCONFORMING LOT)

- ❖ The survey must show location, site and dimensions of existing structure(s), and distances of structure from all lot lines.
- ❖ A copy of the Deed(s).

ALL SUBMITTALS MUST BE MADE IN PERSON BY 12:00 NOON ON DEADLINE DATE AND FEES MUST BE PAID BEFORE APPLICATION WILL BE ACCEPTED.

IF THIS APPLICATION IS APPROVED, ALL OTHER COUNTY ORDINANCES SHALL BE COMPLIED WITH AND FEES PAID.

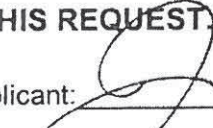
This request will be considered at the Planning and Land Development Regulation Commission Public Hearing on _____ (mo/day/yr), in the County Council Chambers of the Thomas C. Kelly Administration Center, 123 West Indiana Avenue, DeLand, Florida, beginning at 9:00 a.m.

Under Section 72-379(4), if a Variance does not begin to serve the purpose for which it was granted within 12 months from the date of rendition, or if its use is abandoned for 12 consecutive months from the date of rendition, it shall expire.) However, the zoning enforcement official may extend the variance for up to an additional 12 month period of time if the applicant can demonstrate that a good-faith reliance has been on-going to accomplish the approved variance.


APPLICANT'S RIGHTS FOR APPEAL OR REHEARING AND RES JUDICATA ARE STATED IN SECTIONS 72-378 AND 72-380 OF THE ZONING ORDINANCE, AS AMENDED.

ANY NEW INFORMATION TO BE PRESENTED AT THE PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION FOR ANY APPLICATION WILL BE GROUNDS TO CONTINUE AN APPLICATION TO THE NEXT PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION. APPLICANTS SHALL INFORM AND PROVIDE STAFF WITH THE NEW INFORMATION PRIOR TO THE PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION.

BY SIGNING, I HEREBY AUTHORIZE VOLUSIA COUNTY STAFF PERMISSION TO VIEW AND ENTER UPON THE SUBJECT PROPERTY FOR THE PURPOSES OF INVESTIGATING AND REVIEWING THIS REQUEST.

Signature of Applicant:  _____
PRINT NAME James W. Tiny

Signature of Applicant: _____
PRINT NAME _____

----- DO NOT WRITE BELOW THIS LINE -----
Date Submitted: 1/25/13 Accepted/Reviewed By: 

FILING FEE PAID: 576.00 RECEIPT#: _____ OFFICE: DeLand

AMANDA ROW ID: 751190
CITY NOTIFICATION REQUIRED (1,320 ft.) YES _____ NO X

NAME OF CITY _____

VOLUSIA COUNTY
WRITTEN PETITION FOR A VARIANCE

Section 72-379(1)(a)(4) of the Zoning Ordinance of Volusia County, as amended, requires that each applicant for a Variance submit a written petition as part of the application. The written petition must clearly describe how the Variance request satisfies all of the specific conditions necessary for the granting of the Variance, as listed in the Ordinance.

The following items must be completed in sufficient detail to allow Current Planning to determine if the application complies with the Ordinance (use additional sheets if necessary):

- A. What special condition(s) and circumstance(s) exist which are peculiar to your land, structure, building, or sign and are not applicable to other lands, structures, buildings, or signs in the same zoning classification? Were these special condition(s) and circumstance(s) the result of actions by you?

There is a house at 5914 S. Atlantic Avenue situated on lots 7 and 8 under parcel #8505-01-28-0070, which had formerly been owned by Maria Uspenski at the same time as the subject property comprising lots 9, 10, and 11 under parcel #8505-01-28-0070. The house at 5914 South Atlantic was purchased by Maria's father in the early 1980's, and upon his death in 2000 was inherited by his wife, Natasha. In July of 2003, Natasha quit-claimed the house at 5914 South Atlantic Avenue to herself and Maria, as JTWRORS. In early 2004, the subject property was purchased by Natasha through the estate with the intention to build a house for her son. On July 31, 2004, Natasha passed away and no house was ever built. Being titled as JTWRORS, the house automatically passed to Maria. Her father's estate was finally settled in late 2006 and the subject property was transferred to her by the trustee. At no point was there any attempt made to combine the properties, or annex the subject property for use by the house at 5914 South Atlantic Avenue. The lot was never cleared or fenced, and property taxes have been paid based on the assessed value as a buildable lot. The house at 5914 S. Atlantic Avenue was sold in May of 2011, and the lot was listed for sale.

- B. How would literal interpretation of the Zoning Ordinance deprive you of rights commonly enjoyed by other properties in the same zoning classification and be an unnecessary and undue hardship on you?

Without this variance, no structure can be built on the subject property, which would cause economic hardship as its value would be limited.

- C. Explain how the Variance(s) you are requesting is/are the minimum Variance(s) that will make it possible for you to make reasonable use of your land, building, structure or sign:

This variance request is the minimum required as it would allow for a house to be built on the subject property.

(A) - Lot Separation 1/2

D. The general intent and purpose of the Zoning Ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10 is to lessen congestion in the streets; to promote public health, safety, morals, and the general welfare; to properly provide for the use of land and governmental services; and to preserve the character, appearance, and aesthetic qualities of Volusia County by regulating signs.


1. Is your request for Variance(s) consistent with this intent and purpose?

Yes. A new house would be constructed under the latest building codes, and would properly provide for the use of the land as provided for under the Volusia County Comprehensive Plan.

and

2. Explain how your request for Variance(s) will not be injurious to the surrounding area:

A new house constructed under the latest building codes would properly provide for the use of the land while minimizing the impacts to the environment through effective water retention, appropriate safety measures with regards to parking to lessen congestion in the streets, and should help to increase the values of surrounding properties.



Applicant's Signature

1/25/2013

Date

Applicant's Signature

Date

Ⓐ - Lot Separation 2/2

VOLUSIA COUNTY
WRITTEN PETITION FOR A VARIANCE

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The following items must be completed in sufficient detail to allow Current Planning to determine if the application complies with the Ordinance (use additional sheets if necessary):

- A. What special condition(s) and circumstance(s) exist which are peculiar to your land, structure, building, or sign and are not applicable to other lands, structures, buildings, or signs in the same zoning classification? Were these special condition(s) and circumstance(s) the result of actions by you?

The irregular shape of the subject property and limited lot depth make it impossible to build a reasonable structure within the current setbacks. See the attached survey, which delineates the current irregularly shaped buildable area comprising 1,235.97 square feet.

- B. How would literal interpretation of the Zoning Ordinance deprive you of rights commonly enjoyed by other properties in the same zoning classification and be an unnecessary and undue hardship on you?

Homes in the immediate vicinity have been built on smaller properties with rectangular footprints and less than required setbacks that allow for efficient and effective use of their properties. Without this variance, only an irregular structure could be built on the subject property, which would be more expensive to build than a conventional house and would not fit in with the surrounding homes in the area.

- C. Explain how the Variance(s) you are requesting is/are the minimum Variance(s) that will make it possible for you to make reasonable use of your land, building, structure or sign:

The proposed house has been situated as far forward as possible on the lot, and contemplates building on more than one story, with part of the house overhanging the recommended minimum setback on the ground floor in front of the garage. Based on this, the requested impacts from building a roughly rectangular house on an irregular lot with a 10' variance to the required 25' setback for the front yard are the minimum required to make reasonable use of the land.

Ⓑ - Front Setback 1/2

D. The general intent and purpose of the Zoning Ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10 is to lessen congestion in the streets; to promote public health, safety, morals, and the general welfare; to properly provide for the use of land and governmental services; and to preserve the character, appearance, and aesthetic qualities of Volusia County by regulating signs.

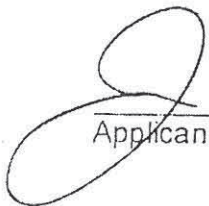
1. Is your request for Variance(s) consistent with this intent and purpose?

Yes. A new house would be constructed under the latest building codes, and would properly provide for the use of the land as provided for under the Volusia County Comprehensive Plan.

and

2. Explain how your request for Variance(s) will not be injurious to the surrounding area:

The variance of 10' from the 25' required front setback will allow other areas of the property to be used to minimize the impacts to the environment through effective water retention and conservation of wetlands. Along with the setback of garages to a minimum of 20' from the front of the lot, a circular driveway is proposed, so as to create safe egress without people having to back out of the driveway into the main road. A new house would be aesthetically pleasing and would fit in with the existing neighborhood, while helping to increase property values.



Applicant's Signature

1/25/2013

Date

Applicant's Signature

Date

ⓑ - Front Setback 2/2

VOLUSIA COUNTY
WRITTEN PETITION FOR A VARIANCE

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The irregular shape of the subject property and limited lot depth make it impossible to build a reasonable structure within the current setbacks. See the attached survey, which delineates the current irregularly shaped buildable area comprising 1,235.97 square feet.

-
-
-
- B. How would literal interpretation of the Zoning Ordinance deprive you of rights commonly enjoyed by other properties in the same zoning classification and be an unnecessary and undue hardship on you?

Homes in the immediate vicinity have been built on smaller properties with rectangular footprints and less than required setbacks that allow for efficient and effective use of their properties. Without this variance, only an irregular structure could be built on the subject property, which would be more expensive to build than a conventional house and would not fit in with the surrounding homes in the area.

-
-
- C. Explain how the Variance(s) you are requesting is/are the minimum Variance(s) that will make it possible for you to make reasonable use of your land, building, structure or sign:

By pulling the proposed house as far forward as possible on the lot, and building on more than one story, with part of the house overhanging the recommended minimum setback on the ground floor in front of the garage, the requested impacts from building a roughly rectangular house on an irregular lot with a 5' variance to the required 25' setback requirement for a rear waterfront yard are the minimum required to make reasonable use of the land.

(C) - Rear Setback 1/2

D. The general intent and purpose of the Zoning Ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10 is to lessen congestion in the streets; to promote public health, safety, morals, and the general welfare; to properly provide for the use of land and governmental services; and to preserve the character, appearance, and aesthetic qualities of Volusia County by regulating signs.

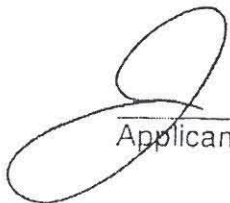
1. Is your request for Variance(s) consistent with this intent and purpose?

Yes. A new house would be constructed under the latest building codes, and would properly provide for the use of the land as provided for under the Volusia County Comprehensive Plan.

and

2. Explain how your request for Variance(s) will not be injurious to the surrounding area:

The variance of 5' from the 25' setback requirement for rear waterfront yards will allow other areas of the property to be used to minimize the impacts to the environment through effective water retention and conservation of wetlands. A new house would be aesthetically pleasing and would fit in with the existing neighborhood, while helping to increase property values.


Applicant's Signature

1/25/2013
Date

Applicant's Signature

Date

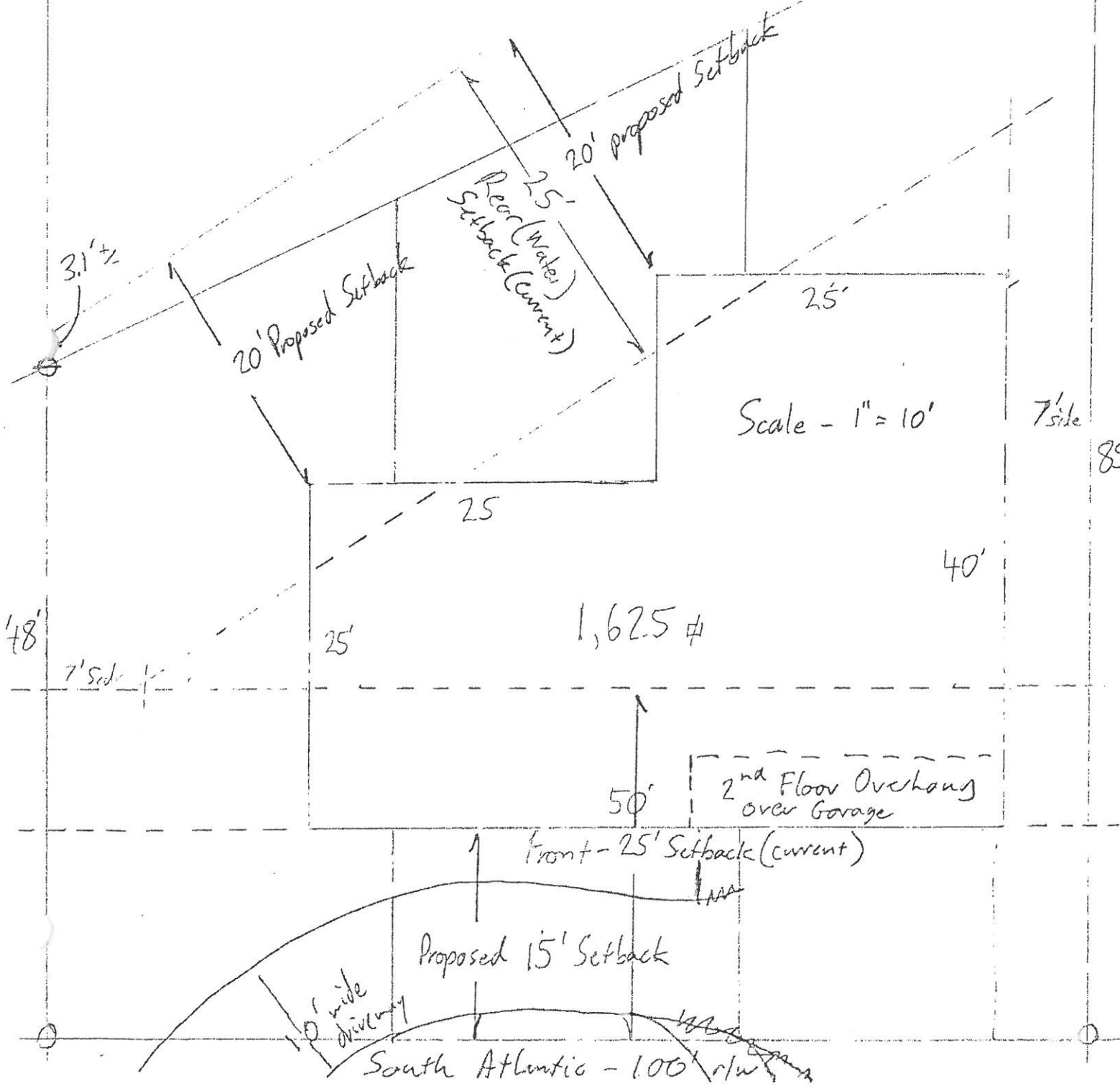
© - Rear Setback 2/2

5906 - 34'4" x 37'4" - 1,300 sq ft approx.
 5910 - 38' x 42' +/- - 1,557 sq ft approx.
 5914 - 34' x 37' +/- - 1,258 sq ft approx.

VARIANCE SITE PLAN

Site Plan: Page 1 of 2

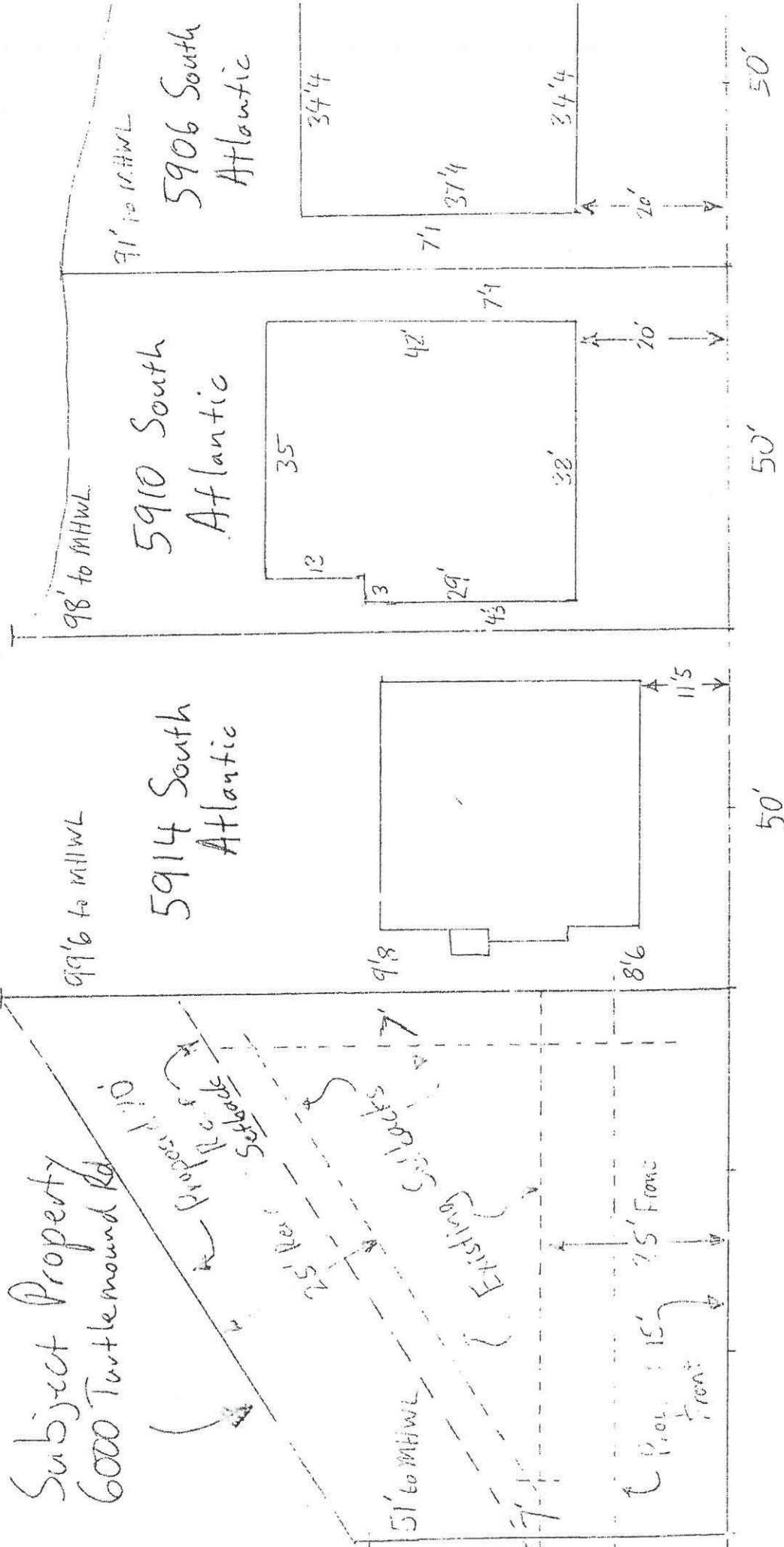
Parcel: 8505-01-28-0090
 6000 Turtle mound Rd.



Site Plan: Page 2 of 2

Parcel: 8505-01-28-0090
6000 Turtle mound Rd.

Scale: 1" = 20'



South Atlantic Ave - 100' r/w



GROWTH AND RESOURCE MANAGEMENT DEPARTMENT
PLANNING AND DEVELOPMENT SERVICES DIVISION
CURRENT PLANNING ACTIVITY
123 W. Indiana Avenue, Deland, FL 32720
(386) 736-5959

PUBLIC HEARING: April 9, 2013 - Planning and Land Development Regulation Commission (PLDRC)

CASE NO: V-13-016

SUBJECT: Variance to separate nonconforming lots and variances for front and waterfront yards for a proposed single-family dwelling on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) zoned property.

LOCATION: County Road A1A, Bethune Beach

APPLICANT: James Tivey, contract purchaser

OWNER: Maria Uspenski

STAFF: Christian Nagle, AICP, Planner II

I. SUMMARY OF REQUEST

The applicant requests a variance to separate two contiguous nonconforming parcels and approval of a front yard variance and a waterfront yard variance to build a proposed single-family dwelling on a vacant parcel. Another person owns the other contiguous nonconforming parcel, which includes a single-family dwelling. Both parcels are nonconforming to the 7,500 square feet lot area requirement of the R-9W zoning classification. The applicant has proposed a single-family dwelling that does not comply with the R-9W classification's minimum 25-foot front and waterfront yard requirements. The subject property has a lot depth of 66.5 feet as defined by the zoning code and does not include a seawall. Therefore, the applicant is requesting the following variances:

Variance 1: A variance to subsection 72-206(1) *Nonconforming lot* to separate parcels 8505-01-28-0090 and 8505-01-28-0070;

Variance 2: A variance for a front yard from the required 25 feet to 15 feet; and

Variance 3: A variance for a waterfront yard from the required 25 feet to 18 feet for a proposed single-family dwelling on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) zoned property.

Staff recommendation: Approval for Variance 1 with a staff recommended condition and denial of Variances 2 and 3 because they do not fully meet the five criteria for granting of the variances.

II. SITE INFORMATION

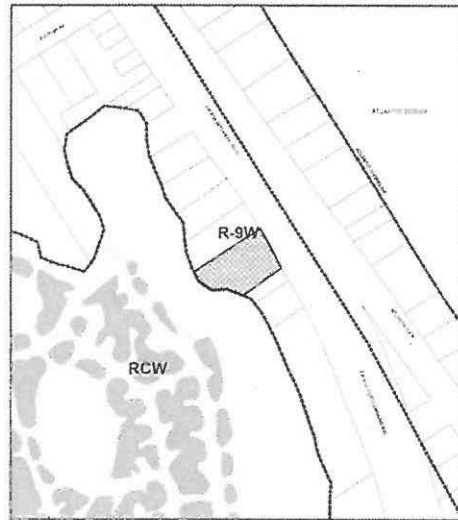
- 1. Location: The property is located on the west side of County Road A1A approximately 500 feet south from its intersection with Catfish Avenue, Bethune Beach.
- 2. Parcel No(s): 8505-01-28-0090 and 8505-01-28-0070.
- 3. Property Size: ±5,656 square feet for parcel 8505-01-28-0090 and ± 3,750 square feet for parcel 8505-01-28-0070.
- 4. Council District: 3
- 5. Zoning: R-9W
- 6. Future Land Use: ULI
- 7. ECO Overlay: Yes
- 8. NRMA Overlay: Yes
- 9. Adjacent Zoning and Land Use:

DIRECTION	ZONING	FUTURE LAND USE	CURRENT USE
North:	R-9W	ULI	Single-family dwelling
East:	R-9W	ULI	Single-family dwelling and vacant
South:	R-9W	ULI	Vacant
West:	RCW	NA	Indian River

10. Location Maps:



2012 AERIAL MAP



ZONING MAP

III. BACKGROUND AND PREVIOUS ACTIONS

The subject property consists of vacant parcel 8505-01-28-0090 (Property A) and contiguous parcel 8505-01-28-0070, (Property B) that is developed with a single-family dwelling, built in 1976. Per the applicant's nonconforming lot letter and staff research, both parcels were in common ownership from July 31, 2004 to May 20, 2011. Per the Property Appraiser's records, Maria Uspenski owns Property A, and Property B is owned by Nancy

Lackey, Trustee for the NJMSL Revocable Trust.

The atypical property is zoned Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W), which requires a minimum lot area of 7,500 square feet and 75 feet in minimum lot width. Both foregoing parcels are nonconforming because they are each less than 7,500 square feet in area. In addition, Property B has a nonconforming lot width of 50 feet per Property Appraiser's records and a 1976 property survey filed with variance case V-76-B052.

County staff determined that both parcels are eligible for building permit(s) according to the county subdivision regulations. However, subsection 72-206(1) of the code specifies that adjoining, nonconforming lots that abut in single ownership on or after a certain code amendment date are considered an undivided lot for the purposes of the zoning code. To implement this code requirement, property owners are required to obtain approval of a lot combination during the building permit application process, or they can apply for a variance.

Variance 1 is requested on behalf of the property owner, to grant relief from code subsection 72-206(1) *Nonconforming lots*, to separate lots required to be combined by code. Property A consists of three contiguous 25-foot wide platted lots. Property B consists of two contiguous 25-foot wide platted lots.

Variances 2 and 3 are front and waterfront yard variances to construct a proposed multi-story (2,000 square feet to 4,000 square feet) single-family dwelling on vacant Property A. Per the applicant's information; the proposed house has a ground floor "foot print area" of $\pm 1,525$ square feet and is at least two-stories in height.

Variance 2 is requested because the proposed house has a 15-foot front yard setback, except for its ground level attached garage part, which is recessed, to provide a proposed 20-foot front yard setback, between the front (eastern edge) of the proposed garage door(s) and the front property line. Except for the ground level garage part, the rest of the proposed house has a 15-foot front yard setback, per the applicant's plot plan.

Property A has no seawall and abuts the Indian River. Per the zoning code, the property's waterfront yard is measured from the mean high water mark of the Indian River, since its mean high water mark falls with the lot lines, per the property survey and the recorded subdivision plat. The property is completely vegetated with saw palmetto and yaupon hollies in the eastern portion and red mangroves along the western portion.

Variance 3 is requested because part of the proposed house has a minimum 18-foot waterfront set back. As provided by the surveyor, only 102.8 square feet of the "foot print" area of the proposed house, encroaches into property's required 25-foot waterfront yard.

III. REVIEW CRITERIA AND ANALYSIS

Section 72-379 (1) a. 4 *Variances* of the zoning code contains five applicable criteria by which a variance application may be granted. The following staff evaluation using these criteria is as follows:

i. Special conditions and circumstances exist which are peculiar to the land, structure, sign, or building involved and which are not applicable to other lands, structures, signs, or buildings in the same zoning classification.

Variance 1: The property consists of two contiguous nonconforming parcels that do not comply with the minimum lot area and/or minimum lot width requirements of the R-9W zoning classification. One parcel (Property A) is vacant. The other parcel (Property B) has a single-family dwelling built in 1976, subsequent to the approval of several variances by the former Volusia County Board of Adjustment (BOA). The BOA granted variances to the front yard, lot width, and lot area. The foregoing approved variances and stipulation, runs with the property.

Both parcel A and B were under the single ownership of Maria Uspenski from 2004 to 2011, when she sold Property B to current owner, Nancy Lackey, Trustee for the NJMSL Revocable Trust. This property sale did not comply with subsection 72-206(1) of the zoning code. Approval of a variance is required to grant the current property owners relief from the code requirement to combine the two-nonconforming properties into one parcel. Approval of a zoning variance is also required to allow a permitted principal structure on Property A. Staff finds that Variance 1 meets this criterion for approval.

Variances 2 and 3: Special conditions and circumstances exist because Property A has a limited lot depth of 66.5 feet, due to its irregular shape. Property A also has a nonconforming lot area of 5,656 square feet per the property survey. Staff finds the application meets this criterion for Variances 2 and 3.

ii. The special conditions and circumstances do not result from the actions of the applicant.

Variance 1: These forgoing actions are not the result of actions by the applicant, Mr. James Tivey. Staff finds that Variance 1 meets this criterion for approval.

Variances 2 and 3: The applicant is not responsible for Property A's limited lot depth of 66.5 feet, or for its nonconforming lot area. Staff finds the application meets this criterion for Variances 2 and 3.

iii. Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification, under the terms of the ordinance, and would work an unnecessary and undue hardship on the applicant.

Variance 1: Literal interpretation of the code would require the owners to combine the five contiguous lots into one parcel owned by two different owners and prevent the construction of a permitted principal structure on Property A. This would be an unnecessary hardship on the owners. Staff finds that Variance 1 meets this criterion for approval.

Variances 2 and 3: However, literal code interpretations in this case would limit construction of a principal residential structure on Property A, to a contiguous triangular ($\pm 1,235$ square feet) part of Property A, as shown on the property survey. This available lot area on the property outside of all required yards is unusually shaped and relatively small in which to construct a customary shaped single-family dwelling, in the R-9W zoning

classification. Staff finds reasonable relief from applicable front yard and/or waterfront yard setback requirements is needed to assist with construction of a customarily shaped single-family dwelling on the property, and that the application meets this criterion.

iv. The variance granted is the minimum variance that will make possible the reasonable use of the land, building, structure, or sign.

Variance 1: Approval of this variance will allow Property A and Property B to exist independently as separated parcels for purposes of the zoning code and enable a permitted principal use and structure on Property A. Staff finds variance 1 meets this criterion.

Variance 2: This requested variance for a 15-foot front yard setback is not the minimum variance that will make possible the reasonable use of Property A. The applicant has the option to downsize the proposed building footprint. Based on available information, staff finds that the application does not meet this criterion for Variance 2.

Variance 3: Based on the applicant's plot plan granting this variance enables the rear of the proposed single-family dwelling, to have a customary shape. Per the surveyor, only 102.8 square feet of the proposed home encroaches into the property's required 25-foot waterfront yard. Based on available information, staff finds that Variance 3 can meet this criterion for approval with conditions.

v. The grant of the variance will be in harmony with the general intent and purpose of this ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10, as amended, and that such variance will not be injurious to the area involved.

Variance 1: Granting this requested variance is in harmony with the general intent and purpose of the zoning ordinance. The requested section 72-206(1) variance is unlikely to be injurious to the immediate area. Staff noted no specific applicable comprehensive plan policies that apply to Variance 1. Staff finds that Variance 1 can meet this criterion for approval with conditions.

Variance 2: The requested variance with appropriate conditions is unlikely to create fire hazards, or significantly block adequate light or air and should not be injurious to the immediate area. However, if Variance 2 is approved, a condition is needed to promote the public safety and welfare that requires the proposed garage has a minimum 20-foot setback from the front property line, and the proposed single-family dwelling and driveway are designed and constructed in compliance with county code requirements. Staff finds that Variance 2 can meet this criterion for approval with conditions.

Variance 3: Per the enclosed comments from environmental management staff, the rear of the property includes a red mangrove wetlands system, which is in the Natural Resource Management Area and is subject to a 50-foot buffer. Staff found the following specific comprehensive plan policies applicable to this requested variance:

Policy 11.1.1.16: Development adjacent to estuarine and riverine shoreline areas shall maintain a habitat buffer zone to protect or conserve the canopy, understory and ground cover of native upland vegetation and wetlands.

Policy 12.2.1.1: *Existing, relatively uninterrupted expanses of natural resources contained within the County shall be managed as an individual unit, providing natural resources the highest degree of protection in land development decisions and planning. These lands shall comprise the Natural Resource Management Area (NRMA) established in the Future Land Use Element.*

Variance 3 could meet this criterion with approval of a Wetland Alteration Permit.

V. STAFF RECOMMENDATION

Staff finds that the application meets the criteria for approval of Variance 1. Therefore, staff recommends approval of the variance to section 72-206(1) *Nonconforming lot* to separate parcels 8505-01-28-0090 and 8505-01-28-0070 on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) zoned property, subject to the following condition:

1. The property owner or authorized agent(s) shall combine Lots 8, 9, and 10, Block 28 in Bethune Volusia Beach Unit 2 of 7, into one unified parcel by submission and completion of a subdivision exemption application through the land development office within 60 days of the date of variance rendition. The unified parcel shall have a minimum lot width of 75 feet as defined by the zoning code and shall be consistent with this approved variance.

However, staff does not find that the requested variances 2 and 3 meet all five criteria for approval as described in the staff report. For those reasons, staff also recommends denial of the variances for a front yard from the required 25 feet to 15 feet (Variance 2); and a waterfront yard from the required 25 feet to 18 feet (Variance 3) for a proposed single-family dwelling (Variance 3) on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) zoned property.

However, if the PLDRC determines that Variances 2 and 3 do meet the five criteria for granting a variance, then staff offers the following conditions for the commission's consideration:

1. The front yard (Variance 2) and waterfront yard (Variance 3) setback variances are limited to the proposed $\pm 1,525$ square feet single-family dwelling "footprint" area only, consistent with the enclosed variance site plan.
2. No impervious surfaces or structures shall be constructed or placed upon the subject property except as shown on the approved variance site plan. No balconies, decks, porches or stairways or other appurtenances, excluding a dock, shall extend or overhang into any yard area established on the approved variance plan.
3. The property owner and successors or authorized agent(s) shall obtain and complete all required development and building permits and inspections for the proposed single-family dwelling including a wetland alteration permit and demonstrate compliance with the Indian River Lagoon Surface Water Improvement Management Overlay Zone on the property (parcel 8505-01-28-0090).

4. Any garage or carport on the property shall be attached to the dwelling and have a minimum 20-foot setback measured from closest point of such garage or carport to the front property line. The required driveway on the property shall be designed and constructed in compliance with county code requirements.

VI. ATTACHMENTS

- Variance site plan and property survey
- Written petition and applicant information
- Reviewer comments
- Maps

VII. AUTHORITY AND PROCEDURE

The commission may, except as otherwise provided in Section 72-379 of the zoning code, authorize, after due public notice upon application on a form prescribed by the zoning enforcement official, such variance or 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. Said variance application shall be heard only if it is presented by the person owning 51 percent or more of the specific area of land involved or upon an administrative application by the county council. Any new information to be presented at the planning and land development regulation commission meeting for any application will be grounds to continue an application to the next planning and land development regulation commission meeting. Applicants shall inform and provide staff with the new information prior to the planning and land development regulation commission meeting.

1 Peter Tivy, 5910 South Atlantic Avenue, New Smyrna Beach, Florida, father of the
2 applicant, spoke in favor of the request.

3
4 Member Mills requested clarification as to why the request was for the rear of the
5 property and not the front.

6
7 Mr. Ashley responded the request was the best way to reduce the setbacks and not
8 encroach into the parking area in the front and into the waterfront setbacks in the rear.
9 Mr. Ashley also spoke to Ms. Lackey's inquiry on the proposed layout of the home on
10 the lot by stating Ms. Lackey's variances were approved in the 1970's, which were
11 subject to different standards and that her lot is a substandard lot.

12
13 **Member Gove motioned to APPROVE case V-13-016 as requested, subject to the**
14 **following staff recommended conditions:**

- 15
16 **1. The property owner or authorized agent(s) shall combine Lots 8, 9, and 10,**
17 **Block 28 in Bethune Volusia Beach Unit 2 of 7, into one unified parcel by**
18 **submission and completion of a subdivision exemption application through**
19 **the land development office within 60 days of the date of variance rendition.**
20 **The unified parcel shall have a minimum lot width of 75 feet as defined by the**
21 **zoning code and shall be consistent with this approved variance.**
- 22
23 **2. The front yard (Variance 2) and waterfront yard (Variance 3) setback**
24 **variances are limited to the proposed ±1,525 square feet single-family**
25 **dwelling "footprint" area only, consistent with the enclosed variance site**
26 **plan.**
- 27
28 **3. No impervious surfaces or structures shall be constructed or placed upon**
29 **the subject property except as shown on the approved variance site plan.**
30 **No balconies, decks, porches or stairways or other appurtenances,**
31 **excluding a dock, shall extend or overhang into any yard area established on**
32 **the approved variance plan.**
- 33
34 **4. The property owner and successors or authorized agent(s) shall obtain and**
35 **complete all required development and building permits and inspections for**
36 **the proposed single-family dwelling including a wetland alteration permit and**
37 **demonstrate compliance with the Indian River Lagoon Surface Water**
38 **Improvement Management Overlay Zone on the property (parcel 8505-01-28-**
39 **0090).**
- 40
41 **5. Any garage or carport on the property shall be attached to the dwelling and**
42 **have a minimum 20-foot setback measured from closest point of such**
43 **garage or carport to the front property line. The required driveway on the**
44 **property shall be designed and constructed in compliance with county code**
45 **requirements.**

46
47 **Member Mills seconded the motion. Motion CARRIED (5:1), with Member Bender**
48 **in opposition.**

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PUBLIC ITEMS

NONE

STAFF ITEMS

NONE

STAFF COMMENTS

Mr. Ashley stated the Joint City County Commission partnership needed a replacement for Mr. Cornett. Members Young and Gove currently serve. The Commission agreed Member Mills would be the third representative.

COMMISSION COMMENTS

Member Young asked if staff could estimate how many variances would come in for the B-8 zoned areas.

Mr. Ashley replied he was unsure. Council enacted the Resolution to allow for application for variances in these areas for a period of one (1) year, without the required application fees.

Member Gove requested an update on the proposed asphalt/batch plant.

Mr. Ashley stated staff was looking at the classifications, which allowed this use. The application was continued to the May 14, 2013, hearing.

PRESS AND CITIZEN COMMENTS

NONE

ADJOURNMENT

Having no further comments from the public, staff, or commissioners, Member Severino thanked everyone and adjourned the meeting at 12:29 p.m.



**Growth and Resource Management
Planning and Development Services**

April 18, 2013

Mr. James Tivy
119 Wisteria Drive
Longwood, Florida 32779

**RE: PLDRC rendition letter for variance case V-13-016
Parcel Nos.: 8505-01-28-0090 and 8505-01-28-0070**

Dear Mr. Tivy:

At its hearing of April 9, 2013, the Planning and Land Development Regulation Commission (PLDRC) took the following final action:

Approved a variance to subsection 72-206(1) *Nonconforming lot* to separate parcels 8505-01-28-0090 and 8505-01-28-0070; a variance for a front yard setback from the required 25 feet to 15 feet (Variance 2); and a variance for a waterfront yard setback from the required 25 feet to 18 feet for a proposed single-family dwelling (Variance 3) on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (R-9W) zoned property, subject to the following conditions:

1. The property owner or authorized agent(s) shall combine Lots 8, 9, and 10, Block 28 in Bethune Volusia Beach Unit 2 of 7, into one unified parcel by submission and completion of a subdivision exemption application through the land development office within 60 days of the date of variance rendition. The unified parcel shall have a minimum lot width of 75 feet as defined by the zoning code and shall be consistent with this approved variance.
2. The front yard (Variance 2) and waterfront yard (Variance 3) setback variances are limited to the proposed $\pm 1,525$ square feet single-family dwelling "footprint" area only, consistent with the enclosed variance site plan.
3. No impervious surfaces or structures shall be constructed or placed upon the subject property except as shown on the approved variance site plan. No balconies, decks, porches or stairways or other appurtenances, excluding a dock, shall extend or overhang into any yard area established on the approved variance plan.

4. The property owner and successors or authorized agent(s) shall obtain and complete all required development and building permits and inspections for the proposed single-family dwelling including a wetland alteration permit and demonstrate compliance with the Indian River Lagoon Surface Water Improvement Management Overlay Zone on the property (parcel 8505-01-28-0090).

EXPIRATION OF VARIANCE: If a variance does not begin to serve the purpose for which it was granted within 12 months from the date of rendition, or if its use is abandoned for 12 consecutive months from the date of rendition, it shall expire provided, however, that the zoning enforcement official may extend the variance for up to an additional 12 month period of time if the applicant can demonstrate that a good faith reliance has been on going to accomplish the approved variance. Good faith reliance may include, but is not limited to, the securing of any required permits from other governmental agencies/jurisdictions or the expenditure of substantial funds upon reliance of the approved variance. (Section 72-379(4) of the zoning code).

Please submit a copy of this letter and the enclosed variance site plan to building and zoning staff. This will assist you to obtain zoning approval for your building permit applications. Building and zoning staff were notified of the approved variance. If modifications are made to this approved plan, those changes must meet the requirements of the applicable regulations of the zoning code.

If you have any questions, please contact Christian Nagle, AICP, Planner II, at (386) 943-7059 extension 12028.

Sincerely,


Scott Ashley, AICP
Planning Manager

Attachment: Approved variance site plan

c: Maria Uspenski, 528 18TH Street, Boulder, Colorado 80302
Robert Walsh, Interim Director, Building & Zoning Division
Janice Cornelius, Property Appraiser's Office
Zoning Technicians
Case file

PLOT PLAN

VARIANCE SITE PLAN



Variance 1: To separate Parcel A and Parcel B.

R=1860.08'(P)
 Δ=1°32'30"(M)
 L=25.03'(M)
 C=50.05'(M)
 CB=N35°01'38"W(M)

C1
 R=1860.08'(P)
 Δ=2°18'13"(P)
 L=37.40'(P)
 C=74.78'(P)
 CB=S33°06'16"E(P)

NW CORNER OF LOT 5, BLOCK B
 FND 5/8" IRON ROD & CAP #2599

SW CORNER OF LOT 8, BLOCK B
 FND 5/8" IRON ROD NO NUMBER

NE CORNER OF LOT 7, BLOCK 28
 FND 1" IRON PIPE NO NUMBER



Variance 3

Variance 2

B CASE # **V-13-016** DATE **04/09/13**
 BY **XX** PLDR COUNTY COUNCIL
 ANY CHANGES TO THIS PLAN MUST MEET REQUIREMENTS OF CHAPTER 72, LAND PLANNING, AS AMENDED. THE SITE PLAN MUST COMPLY WITH ALL FEDERAL, STATE, AND LOCAL DEVELOPMENT REGULATIONS.

SURVEYORS NOTES:

ALL BEARINGS SHOWN
 SUBJECT PROPERTY CONTAINING 0.13 ACRES, 5,656.68 SQUARE FEET
 1,235.97 SQUARE FEET WITHIN SETBACK LINES
 THIS SURVEY WAS PREPARED WITH THE BENEFIT OF FDOT
 MAP #79130-2104 SHEET 4 OF 6, DATED 1958
 SBL = BUILDING SETBACK LINE

- = ASPHALT
- = BRICK
- = CONCRETE

PROPERTY ADDRESS: 6000 TURTLEMOUND ROAD - NEW SMYRNA BEACH, FLORIDA 32169

- LEGEND
- P = PLAT
 - M = MEASURE
 - P.O.B. = POINT OF BEGINNING
 - P.O.C. = POINT OF COMMENCEMENT
 - C.L. = CENTER LINE
 - N.S.D. = NAIL AND DIMS
 - R.W. = RIGHT OF WAY
 - C.L.F. = CHAIN LINK FENCE
 - W.F. = WOOD FENCE
 - C.B.W. = CONCRETE BLOCK WALL
 - P.C. = POINT OF CURVATURE
 - P.T. = POINT OF TANGENCY
 - (D) = DESCRIPTION
 - R = RADII
 - L = ARC LENGTH
 - Δ = CENTRAL ANGLE
 - C = CHORD
 - C.B. = CHORD BEARING
 - P.L.L. = POINT IN LINE
 - I.P. = INTERNAL
 - P.R.C. = POINT OF REVERSE CURVATURE
 - P.C.C. = POINT OF COMPOUND CURVATURE
 - C.A.L. = CALCULATED
 - P.R.S. = PERMANENT REFERENCE POINTS
 - O.U.L. = OVERHEAD UTILITY LINE
 - C.N.A. = CONDUIT NOT ACCESSIBLE
 - H. = HOLE
 - C.F. = CONCRETE FOUNDATION
 - C.L. = CURB LINE
 - D.L. = DEGRADED LINE
 - P.U. = PUBLIC UTILITY LINE

FIRST CHOICE SURVEYING INC.

LIST OF ENCROACHMENTS:

GRAPHIC SCALE: 1" = 30'

Legal Description:
 LOTS 9, 10 AND 11, BLOCK 28, BETHUNE-VOLUSIA BEACH SUBDIVISION, UNIT 2 OF 7 UNITS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 11, PAGE 155 THROUGH 161, INCLUSIVE, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; LESS THAT PART WITHIN THE STATE ROAD RIGHT-OF-WAY

CERTIFIED TO: (AS FURNISHED)
JAMES TIVY (EXCLUSIVELY)

CLIENT NO: N/A
 JOB NO: 13653
 FIELD DATE: 01/19/13
 APPROVED BY: AER
 CHECKED BY: AER
 DRAWN BY: BEK
 DRAWN DATE: 01/21/13

NOT A SURVEY