

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
JANUARY 10, 2017**

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

FRANK SEVERINO – *Not Present*

JEFF GOVE

WANDA VAN DAM

JAY YOUNG

JEFFREY BENDER

RONNIE MILLS

JOSEPH ALLEVA – *Not Present*

STAFF PRESENT:

MICHAEL RODRIGUEZ, Assistant County Attorney

SCOTT ASHLEY, AICP, Senior Zoning Manager

SUSAN JACKSON, AICP, Senior Planning Manager

MICHAEL DISHER, AICP, Planner III

SARA PAYNE, Staff Assistant II

APPROVAL OF MINUTES

- **None**

Michael Rodriguez, Assistant County Attorney, provided legal comment.

Disclosure of Ex Parte Communications

Members of the Volusia County Planning & Land Development Regulation Commission Board were asked to please disclose, for the record, the substance of any ex parte communications that had occurred before or during the public hearing at which a vote is to be taken on any quasi-judicial matters. All members present disclosed any communication as listed below.

Member Bender had communication with an outside attorney regarding Ordinance 72-206(3).

Acting Chair Gove explained the use of the three-minute timer for public participation. He stated it was his practice not to use the three-minute timer in order to obtain quality testimony. However, he said the three-minute timer would be invoked if testimony was repetitive with nothing new being presented to the commission.

ITEMS TO BE CONTINUED OR WITHDRAWN

PUD-16-036 – Application of Glenn D. Storch, Esquire, attorney for Cynthia McCallister, owner, requesting a rezoning from Resource Corridor/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (RCW) zoned property to Mixed Planned Unit Development/Indian River Lagoon Surface Water Improvements and Management Overlay Zone (MPUDW). The property is located at 630 Bottle Island Road, New Smyrna Beach; \pm 18.9 acres; 8506-00-00-0111.

Glenn Storch, attorney for Cynthia McCallister, owner, Storch Law Firm, 420 South Nova Road, Daytona Beach, Florida. Mr. Storch stated that it had been discovered that additional information about the land and its previous uses. Therefore, he is requesting a 120-day continuance to be heard at the May 9, 2017, public hearing. He acknowledged additional public notice may need to be re-sent due to the length of time.

Member Young moved to grant a 120-day continuance to the May 9, 2017, PLDRC hearing.

Member Mills seconded the motion. Motion CARRIED unanimously (5:0).

PUBLIC HEARING ON APPLICATIONS

NEW BUSINESS

S-16-078 – Application of Eusebio Ferrusco, agent for John Pugh, owner, requesting a special exception for a flea market on Light Industrial (I-1) zoned property. The property is located at 535 Fair Street, DeLand; \pm 5.15 acres of a \pm 9.93 acre parent parcel; 7940-03-01-0030.

Scott Ashley, AICP, Senior Zoning Manager, gave the staff report. Mr. Ashley explained the request is to establish a flea market for 80 vendors on 5.2 acres of land owned by the Cole Brothers Circus. He said the land faces Fair Street, has been cleared because of past uses, and two buildings currently on the 5.2 acres would not be utilized because the structures are not up to code standards. He referred to the site plan (staff report page 13) showing the intended parking and vendor spaces, as well as the driveway. He stated the vendor stalls would be set up the day of and removed at the conclusion of the event. He said the only permanent fixture would be the parking pad for the required handicap parking spaces. He stated the hours of operation would be Friday and Saturday, 5:00 a.m. to 6:00 p.m. throughout the year with primary access to the site from S.R. 44 to Carlis Road to the Fair Street entrance. He stated the special exception standards listed in Section 72-415(8), of the code, have been met.

Member Mills expressed his concerns regarding the short turning lane on westbound S.R. 44 onto Carlis Road as well as there being no shoulder on Old New York Avenue where Fair Street dead-ends. He then inquired if and when those concerns would be addressed.

1 Mr. Ashley explained if the special exception were approved, the project would go
2 through the site plan review process with the county's Land Development staff and
3 deficiencies would be addressed at that time.

4
5 Member Van Dam inquired if the structures currently on the property were brought up to
6 code, would there be additional action required by the commission or the county
7 council.

8
9 Mr. Ashley stated the buildings were not designed for occupation; however, if the
10 structures were brought into compliance it could be used by vendors for their stalls or
11 storage that is allowed by code. He then clarified that on-site storage is not permitted as
12 a part of this application and the vendors must break down at the end of each event.

13
14 Acting Chair Gove stated that Section 72-293(7) limits the hours of operation to daylight
15 hours (staff report page 5 of 25) and Condition 6 of the staff conditions (staff report page
16 8 of 25) recommends hours of operation be limited to 5:00 a.m. to 6:00 p.m. He then
17 inquired how the hours of operation would be enforced.

18
19 Mr. Ashley explained vendors would begin setting up at 5:00 a.m., and then breaking
20 down by 6:00 p.m., with the flea market open to the public only during daylight hours.
21 He stated hours of operation would be addressed through the county's Code
22 Compliance division if there should be any issues or complaints.

23
24 Ty Harris, attorney for Eusebio Ferrusco, applicant, and John Pugh, owner, Law Firm of
25 Gray-Robinson, 225 NE Mizner Boulevard, Boca Raton, Florida. Mr. Harris explained
26 that the DeLand Flea Market had been in existence on South U.S. Highway 17-92 for
27 approximately 48 years until it was displaced by the Wal-Mart Neighborhood Market. He
28 stated Mr. Pugh, owner of the Cole Brothers Circus, and owner of the subject property,
29 saw a need and decided to provide a five-acre portion of the subject property so the flea
30 market could continue to operate. He stated the flea market has been a weekend
31 destination spot for many years and has grown to more than a place for swap meets.
32 He said the flea market has a Facebook page which illustrates the activities that take
33 place during its hours of operation.

34
35 Mr. Harris stated the property on Fair Street is an ideal location for the flea market
36 because it lies in the railroad corridor surrounded by industrial uses, referring to the
37 aerial map on the overhead (staff report page 22 of 25). He said at one time the Cole
38 Brothers Circus wintered the circus animals on the property; however, the animals had
39 to be removed because the dust and debris caused by the concrete plant compromised
40 their respiratory system. He further stated the flea market would be a good transitional
41 use of the property.

42
43 Mr. Harris then addressed the buildings on the property. He said there is no intention of
44 building new structures or making improvements to the existing structures because of
45 the anticipated future development of the railroad corridor. The only permanent
46 improvement would be a parking pad for handicap parking. Because there are no
47 restroom facilities on the property, he said port-a-lets would be available, which are
48 allowed by the Health Department for events operating no more than 120 days per year.

1 Mr. Harris said the desire is to keep the existing landscaping as a natural buffer and
2 acknowledged this and other things would be addressed during the site plan review
3 process. He then said that the owner of the flea market (Eusebio Ferrusco), the owner
4 of the subject property (John Pugh), and the engineer (Denny Williams) are available to
5 answer any questions. Mr. Harris commented there was no opposition to the project and
6 then asked those in the audience to raise their hand so the commission could recognize
7 their support of the flea market.

8
9 Member Mills inquired if the Hontoon Island community was notified.

10
11 Mr. Harris answered in the affirmative. He stated the subject property is in the Hontoon
12 Study area and because the flea market is a weekend use, it does not impact the Level
13 C service to Hontoon Island roads.

14
15 Member Mills inquired if the flea market would complement the SunRail project.

16
17 Mr. Harris stated he received approval for the SunRail project in 2007. He said since
18 then, the property involved has changed owners and he has not been contacted.
19 Therefore, he could not comment.

20
21 Member Bender inquired if any of the vendors would operate seven days-a-week as
22 was done at the original flea market site.

23
24 Mr. Harris stated the operation is limited to a flea market operating Friday and Saturday
25 only. He said items that cannot be sold are addressed in the staff conditions. He stated
26 the only permanent change would be the parking pad for handicap parking spaces.

27
28 Acting Chair Gove inquired what the future use would be for the remainder of the
29 property not being used for the flea market.

30
31 Mr. Harris responded he would need to defer to Mr. Pugh, owner of the subject
32 property.

33
34 Acting Chair Gove inquired how much traffic is anticipated from the south to Fair Street.

35
36 Mr. Harris responded there would be no way of knowing until the flea market opens.

37
38 Member Bender commented on while he visited the site, he experienced the railroad
39 crossing arms were in the down position. He said he opted to turn around; however, he
40 witnessed other vehicles bypassing the arms. He expressed his concern about the
41 traffic congestion.

42
43 John Pugh, property owner, P.O. Box 1750, DeLand, Florida. Mr. Pugh stated he lives
44 on Hontoon Island and recognizes the potential traffic issues using Old New York
45 Avenue. He said he would like the flea market traffic to come in from S.R 44 to Carlis
46 Road, which would drop visitors almost at the entrance of the flea market. He confirmed
47 that the circus animals can no longer reside on the property because of the dust from
48 the concrete plant.

1 Mr. Pugh addressed the use of the remainder of the property not utilized by the flea
2 market. He said it will be used for the circus twice a year, arriving in the fall and
3 departing in the spring. He clarified he rents the animals used for the shows.

4
5 Member Bender expressed his concern about the potential for increased traffic on Old
6 New York Avenue. He stated people can be asked to follow a desired traffic plan, but
7 they will travel the route that is most convenient for them.

8
9 Mr. Pugh responded that temporary signs will be posted at the junction of S.R. 44 and
10 Old New York Avenue directing vehicles towards Carlis Road. He then said there would
11 be another temporary directional sign closer to Carlis Road. He stated it is not his desire
12 to increase traffic on Old New York Avenue and recognizes the challenges of the
13 railroad crossing.

14
15 Acting Chair Gove inquired if there was a racetrack in the area of the subject property,
16 as it appeared so from the Aerial map.

17
18 Mr. Ashley stated the track shown on the Aerial map is part of the Sheriff's vehicle
19 training course.

20
21 There being no further questions of the applicant, the floor was opened to public
22 participation.

23
24 There being no public participation, the floor was opened for commission discussion.

25
26 Member Mills stated he supports the concept of the flea market but has concerns about
27 the traffic pattern. He said Amtrak has four scheduled stops per day at the DeLand
28 Train Depot, which means the railroad crossing arms would be down at least four times
29 a day. He said he has witnessed the traffic backup it causes on Old New York Avenue.
30 He then expressed his concern about the lack of a shoulder at the intersection of Old
31 New York Avenue and Carlis Road as well as traffic trying to turn around on Old New
32 York Avenue. He added his concern about the short turn lane on westbound S.R. 44
33 onto Carlis Road, which is the applicant's intended traffic plan.

34
35 Acting Chair Gove commented that Traffic Engineering would require a traffic impact
36 analysis or a modified analysis during the site plan review process and he expected the
37 required improvements would be addressed at that time.

38
39 Member Van Dam requested further explanation of the process.

40
41 Mr. Ashley stated through the site plan review process, a more detailed analysis would
42 be looked at to improve the access points. He explained that the average daily traffic
43 count from S.R. 44 to Old New York Avenue to Hontoon Island is significantly lower
44 than what a Level C service road can support. He said the flea market would be in an
45 industrial zoned area with several vacant properties that, if developed, would
46 undoubtedly increase traffic and would be required to mitigate for the traffic impact. By
47 comparison, he said because the flea market would be opened only two days a week,
48 has no permanent development and can be accessed from an alternative traffic route,
49 the impact would be minimum. He then addressed the concern about the turn lane on

1 S.R. 44 onto Carlis Road and said it is considered adequate. He confirmed there will be
2 no access to the flea market from Old New York Avenue and indicated the applicant
3 would try to work with the Department of Transportation (DOT) to secure informational
4 signs to direct traffic to Carlis Road. He said he anticipates there will be traffic on Old
5 New York Avenue but indicated the marketing of the flea market will be focused on
6 getting to the destination via S.R. 44 and Carlis Road.

7
8 Member Mills inquired why Beresford Avenue was excluded from the traffic report (staff
9 report page 17 of 25).

10
11 Mr. Ashley stated he could not make comment.

12
13 Member Bender inquired if a visitor cannot find parking in the lot, will there be limitations
14 on parking on the right-of-way.

15
16 Mr. Ashley stated if there are any complaints, it would be addressed by law enforcement
17 if it becomes a nuisance issue.

18
19 Mr. Harris commented that the original site of the flea market was smaller than the
20 proposed site and he was not aware of any traffic issues. He said the site operated well
21 on a busy highway with a small deaccelerating lane and stacking capacity. He admitted
22 it is a struggle to determine a good transitional use for the subject property because the
23 concrete plant has changed what the area looks like. He stated the traffic for the flea
24 market will minimally impact the traffic going to and from Hontoon Island Monday
25 through Friday. He said the applicant intends to work with the county because he wants
26 the flea market to be a success, then asked the commission for their support.

27
28 Acting Chair Gove inquired if the plant operates on weekends.

29
30 Mr. Harris could not confirm if the plant is operational on the weekends, but
31 acknowledged when he has been in the area, the plant was open.

32
33 Member Mills commented he witnessed stacking issues caused by cars entering the
34 original flea market located on U.S. Highway 17-92, and did not agree with Mr. Harris's
35 observation.

36
37 Acting Chair Gove asked if there was no further discussion to move forward with a
38 motion.

39
40 **Member Van Dam moved to FORWARD case S-16-078 to county council for final**
41 **action with a recommendation of approval for a flea market on Light Industrial (I-**
42 **1) zoned property, subject to the staff-recommended conditions.**

43
44 **Member Young seconded the motion.**

45
46 Member Mills dissented because of the potential traffic impact on the area residents.
47 Member Van Dam suggested to amend the motion to include a condition addressing
48 traffic or include a comment to the county council. Member Mills stated he could not see

1 how a condition would solve the discussed traffic concerns. Acting Chair Gove
2 concurred. Member Mills declined including a comment to county council.
3

4 Member Bender requested a condition be added that would require the applicant to
5 notify the area Home Owner's Associations, or the appropriate groups representing the
6 area residents, that the application for a flea market would be presented to the county
7 council for final approval.
8

9 Mr. Harris stated in his experience, the Hontoon Island residents are very vigilant and
10 are aware of anything they consider controversial happening in the area. He said given
11 the absence of any resident expressing their objection to the application, there
12 appeared to be no issue with the request. He further stated the site plan (staff report
13 page 13) showed the 120 vendor stalls that were operational at the original flea market
14 have been scaled back to 80.
15

16 Member Mills inquired if the applicant would reduce the number of vendor stalls from
17 80.
18

19 Mr. Harris stated the reduction of vendor stalls would be a business decision made by
20 the applicant. He said when the concrete plant was approved, that land use decision
21 changed the agriculture uses in the area, limiting what the adjacent property owners can
22 do with their land. He reiterated because of the dust generated by the adjacent concrete
23 plant, cattle and the circus animals could no longer be kept on the surrounding land. He
24 said the flea market was a good transitional use for the land and asked the commission
25 for approval because people's livelihoods were involved.
26

27 Members Mills and Van Dam inquired if a condition could be placed on the applicant to
28 notify the Hontoon Island Home Owner's Association of the upcoming county council
29 hearing. Member Bender concurred and stated he could not support the requested
30 special exception unless the area residents were notified. He then clarified notification
31 would only go to the Home Owner's Associations in the area and not to each individual
32 resident. He said he agreed with the concept and recognized the impact on the vendors
33 involved, but stated his responsibility is to all citizens impacted by this decision.
34

35 Michael Rodriguez, Assistant County Attorney, stated the applicant has already done
36 the required notification, but if the applicant agreed, a condition could be included that
37 states the applicant would make contact with the appropriate entities and show proof to
38 the county council that contact had been made.
39

40 Mr. Harris affirmed the Home Owner's Associations would be contacted. He further
41 clarified that notice would be sent and a copy would be presented for the record.
42

43 Mr. Rodriguez said that a condition could be added for the applicant to approach the
44 entity by communication of choice, and then provide proof the communication had been
45 made.
46

1 Member Bender moved to amend the motion to FORWARD case S-16-078 to
2 county council for final action with a recommendation of approval for a flea
3 market on Light Industrial (I-1) zoned property, subject to the following ten (10)
4 staff-recommended conditions, plus one (1) condition added by the PLDRC
5 (Condition 11):
6

- 7 1. The special exception is limited to authorization of the flea market use in
8 the I-1 (Light Industrial) zoning classification. Granting the special
9 exception does not constitute a waiver of any site development
10 requirements per Chapter 72 county code. Before it may open to the
11 public, the flea market must obtain site plan approval and complete all
12 required improvements. Any waivers or variances from site development
13 requirements must be formally requested with justification as part of the
14 site plan application.
- 15
16 2. The special exception project area must maintain a 10-foot distance from
17 the building just to the east for that building to meet its side-yard setback
18 for the I-1 zoning classification.
- 19
20 3. The special exception is limited to 80 vendor stalls. Any future increase in
21 the number of vendor stalls or flea market area beyond the project area
22 indicated on the site layout plan prepared by RC Engineering, LLC,
23 signed December 21, 2016, and not in compliance with I-1 classification
24 yard requirements shall require approval of a new special exception.
- 25
26 4. The existing buildings shall not be used as part of the flea market
27 operation unless they are brought into compliance with all applicable
28 health and building code permit requirements.
- 29
30 5. The flea market shall comply with Health Department requirements
31 regarding the use of portable toilets, and so shall be limited to operating
32 no more than 120 days within any 365-day period.
- 33
34 6. Flea market hours of operation shall be limited to Saturday and Sunday,
35 5:00 a.m. to 6:00 p.m. only.
- 36
37 7. The flea market must be completely clear of litter and other refuse after
38 each day of operation.
- 39
40 8. No merchandise shall be stored on the property overnight until it can first
41 be demonstrated to comply with the storage requirements of Section 72-
42 293(7)g.
- 43
44 9. The flea market shall not sell automobiles, motorcycles, watercraft, or any
45 item prohibited by local, state or federal law.
46

10. The applicant shall obtain and complete all required Building and Health Department permits and inspections before opening to the public.

11. The applicant, or his representative, shall notify the Home Owners Associations (HOA), or other appropriate entities within the Hontoon Island study area, of the proposed flea market prior to the county council hearing of February 16, 2017. Sufficient proof of such communication shall be provided for the record before the county council hearing.

Member Young seconded the amended motion. Motion CARRIED (4:1) - Member Mills opposed.

V-17-006 – Application of Stephanie Mikell, owner, requesting a variance to minimum yard requirements on Prime Agriculture (A-1) zoned property. The property is located at 1808 Stone Road, Pierson; ± 3.76 acres; 5822-00-00-0110.

Scott Ashley, AICP, Senior Zoning Manager, gave the staff report. Mr. Ashley explained the applicant desires to place an accessory storage structure on the subject property and cannot obtain a building permit because the structure does not meet the side yard requirement. He said because of the shape of the lot, placement of the accessory structure is limited due to the septic system and a utility pole. He stated that the applicant is also requesting a variance from certain A-1 yard standards for the existing nonconforming single-family dwelling. Mr. Ashley said that a change in zoning during an administrative action that took place in 1994 made the property nonconforming in size and setback standards; hence, the applicant is seeking to legitimize the existing setbacks of the principal structure. The applicant is concerned if the dwelling was destroyed, the footprint and position of the well and septic could not be preserved or rebuilt at the current A-1 yard requirement.

Member Mills requested further explanation regarding limiting the setbacks to existing structures and not future expansion beyond the yard established in the variance.

Mr. Ashley explained any future expansion to the structures, as long as it maintains the setbacks granted, would be acceptable. He explained the variance being requested for the principal structure is a 95-foot setback, and as long as the applicant stays within that 95-foot setback, the structure can be expanded or altered. He said if the applicant expands beyond the 95-foot setback, a variance would be required. He stated any expansion of structures that currently have areas that conform to A-1 standards will be required to continue to meet A-1 standards.

There being no further questions of staff, the floor was opened to the applicant.

Stephanie Mikell, owner, 1808 Stone Road, Pierson, Florida. Ms. Mikell stated she has spoken with her neighbor and they do not have any issues with where the accessory structure will be placed. She said she had nothing to add to the staff report.

Member Mills asked the applicant if she agreed with the recommended conditions.

Ms. Mikell answered in the affirmative.

1 There being no further questions of the applicant, the floor was opened to public
2 participation.

3
4 There being no public participation, the floor was opened for commission discussion.

5
6 Acting Chair Gove asked if there was no commission discussion to move forward with a
7 motion.

8
9 **Member Mills moved to APPROVE variance case V-17-006, a variance for a north**
10 **side yard from the required 50 feet to 30 feet for a proposed accessory structure**
11 **(storage building (Variance 1)), and a variance for a west side yard from the**
12 **required 50 feet to 30 feet for a proposed accessory structure (storage building**
13 **(Variance 2)), and a variance for a front yard from the required 100 feet to 95 feet**
14 **for an existing principal structure (single-family dwelling (Variance 3)), and a**
15 **variance for a south side yard from the required 50 feet to 47.6 feet for an existing**
16 **principal structure (single-family dwelling (Variance 4)) on Prime Agriculture (A-1)**
17 **zoned property, subject to the following staff-recommended conditions:**

- 18
19 **1. The property owner(s) or authorized agent(s) shall obtain and complete**
20 **all required permits and inspections for the accessory structure.**
21
22 **2. The north and west side yard variances are limited to the 30-foot x 36-foot**
23 **proposed accessory structure as shown on the enclosed site plan**
24 **drawing based on a property survey from Land Tec Surveying, signed**
25 **November 15, 2016. Any future expansion of the accessory structure**
26 **beyond the required yards established by this variance or the A-1 zoning**
27 **classification shall require a separate variance.**
28
29 **3. Variance 3 and 4 are limited to the principal structure shown on the**
30 **enclosed site plan drawing based on a property survey prepared by Land**
31 **Tec Surveying, signed November 15, 2016. Any future expansion of**
32 **alteration of the principal structure beyond the required yards established**
33 **by this variance or the A-1 zoning classification shall require a separate**
34 **variance.**

35
36 **Member Young seconded the motion. Motion CARRIED unanimously (5:0).**
37

38 **V-17-009 – Application of Dane Hymore and Greg Henderson, owners, requesting a**
39 **variance to minimum yard requirements and maximum fence height on Urban Single-**
40 **Family Residential (R-4) zoned property. The property is located at 37 San Jose Drive,**
41 **Ormond Beach; ± 10,005 square feet; 3221-09-00-0480.**
42

43 Scott Ashley, AICP, Senior Zoning Manager, gave the staff report. Mr. Ashley explained
44 the applicants' desire to increase the available building area for a proposed swimming
45 pool on a corner lot and to increase the maximum fence height allowed around the pool
46 and yard. He said that the lot is unique in nature because roads front three sides of the
47 lot, thus making one continuous front yard setback. Because a swimming pool is
48 considered an accessory structure, per code, no accessory structure is permitted in a
49 front yard. He stated the dwelling was constructed in 1981 under the old R-1 standards,

1 which allowed for a 20-foot front yard setback, and under the current R-4 zoning, the
2 front yard setback requirement is 25 feet. He stated because of the unique shape of the
3 lot and placement of the septic system, the applicants are limited to where they can
4 install a swimming pool. He said the applicants are requesting variances to install a
5 swimming pool in a front yard at the front yard setback standard when the home was
6 built.

7
8 He then explained the applicants' request for a variance to the maximum fence height
9 allowed. He said that because the lot is all front yard, the height limitation for a fence is
10 four feet. He also explained the property is elevated and a four-foot fence would not
11 provide privacy from pedestrian or automobile traffic passing by. The applicants
12 presented a design, and have agreed to redesign their plan, directing the fence away
13 from the intersection of San Jose Circle and San Jose Drive. He indicated this design
14 would give the applicants the privacy they desire for the area to utilize as their back
15 yard.

16
17 Member Mills inquired why staff has restricted a screen enclosure within the 20-foot
18 setback.

19
20 Mr. Ashley stated a screen enclosure is an accessory structure, and by code, not
21 permitted in a front yard. He said if the applicants desire a screen enclosure, it is limited
22 to the pool area only.

23
24 Member Van Dam asked staff to clarify if the principal structure meets the former R-1
25 setback requirements but not the current R-4 setbacks (staff report page 3 of 21), would
26 they need a variance for the placement of the fence.

27
28 Mr. Ashley said a fence can be placed in a front yard but it cannot exceed four feet.
29 Because the applicants desire a six-foot fence in a front yard, they need a variance to
30 fence height. He confirmed a four-foot fence can be placed on the property line in a
31 front yard as long as it does not exceed four feet in height.

32
33 Acting Chair Gove asked of staff to clarify the placement of the fence for privacy.

34
35 Mr. Ashley confirmed the fence would be installed around the swimming pool, as well as
36 the east side yard and the northern portion of the property. He said a site visit was done
37 and in staff's opinion, the placement and height should give adequate privacy and
38 indicated the design would not interfere with the adjacent properties.

39
40 There being no further questions of staff, the floor was opened to the applicant.

41
42 Greg Henderson, owner, 37 San Jose Drive, Ormond Beach, Florida. Mr. Henderson
43 had nothing to add to the staff report and agreed with the recommended conditions. He
44 then explained because of the unique shape of the lot, it is extremely exposed and the
45 fence will address the desire for privacy.

46
47 Member Young asked the applicant to confirm he agreed with the new fence line.

48
49 Mr. Henderson said he agreed with the revised fence line.
50

1 There being no further questions of the applicant, the floor was opened to public
2 participation.

3
4 Rose Mary Stumpf, 35 San Jose Circle, Ormond Beach, Florida. Ms. Stumpf expressed
5 her concern if the variance for the six-foot fence is approved, in the future, it would
6 encourage others in the neighborhood to want the same in their front yard. She
7 supports the applicants' desire to install a pool but not the height of the fence.

8
9 Acting Chair Gove explained that all variances are looked at individually. He said
10 anything that is installed in a front yard taller than four feet without a variance would be
11 subject to code enforcement and most likely taken down.

12
13 Ms. Stumpf expressed her concern that the fence would be a visual hindrance at the
14 intersection of San Jose Circle and San Jose Drive.

15
16 Mr. Ashley had the revised site plan displayed onto the overhead (staff report page 15
17 of 21) and explained the green line indicated where the fence would be placed. Acting
18 Chair Gove added there would be 20 feet of green area before the intersection is
19 reached.

20
21 Acting Chair Gove read into the record opposition submitted by Carmen Cook, 38 San
22 Jose Drive, Ormond Beach, who opposes the variance request for the fence height and
23 pool.

24
25 There being no further public participation, the floor was opened for commission
26 discussion.

27
28 Acting Chair Gove asked if there was no commission discussion to move forward with a
29 motion.

30
31 **Member Young moved to APPROVE variance case V-17-009, a variance to Section**
32 **72-277(1) and (2) for a front yard from the required 25 feet to 20 feet for an**
33 **accessory structure (swimming pool (Variance 1)), and a variance to Section 72-**
34 **282(2) to maximum permitted fence height in a front yard from four feet to six feet**
35 **limited to the location shown on the revised site plan (Variance 2), on Urban**
36 **Single-Family Residential (R-4) zoned property, subject to the following staff-**
37 **recommended conditions:**

- 38
39 **1. The variances are limited to the proposed swimming pool and six-foot tall**
40 **fence in the location shown on the alternate variance site plan prepared**
41 **by county staff, and attached to the staff report as Revised Site Plan.**
42
43 **2. No screen enclosure shall be permitted within the 20-foot swimming pool**
44 **setback.**
45
46 **3. The property owner or authorized agents shall obtain and complete all**
47 **required building permits and inspections for the swimming pool and**
48 **fence.**
49

- 1 **4. Should the pool and/or fence be demolished or destroyed by more than**
2 **50%, the variance approval shall be deemed invalid and any new**
3 **construction or rebuild shall meet all applicable zoning code**
4 **requirements, including setbacks.**

5
6 **Member Van Dam seconded the motion. Motion CARRIED unanimously (5:0).**

7
8 **OLD BUSINESS**

9
10 **V-16-003** – Application of Alex Ford, Esquire, attorney for The Estate of John A.
11 Bollman III, owner, requesting a variance to the minimum yard requirements for an
12 accessory structure (dock) on Urban Single-Family Residential/Indian River Lagoon
13 Surface Water Improvements and Management Overlay Zone (R-9W) zoned property.
14 The property is located at 6750 Turtlemound Road, New Smyrna Beach; ± 7,200 square
15 feet; 8505-01-49-0210.

16
17 Scott Ashley, AICP, Senior Zoning Manager, gave the staff report. Mr. Ashley explained
18 the applicant is requesting variances to the yard requirement for an existing dock. A
19 dock permit issued in 2002 expired with no final inspection. In the process of re-opening
20 the permit, staff discovered that a portion of the dock walkway encroached into the north
21 side yard which needed to be resolved to enable the completion of the building permit
22 application for the dock revision. He added a property boundary dispute has developed
23 between the subject property owner and an adjacent property owner over the perceived
24 location of a waterfront property boundary. This dispute affects the western section of
25 the existing dock. He stated the parties have entered into a settlement agreement of the
26 dispute, which is subject to approval by the Probate Court. He said this variance request
27 also addresses the boundary dispute.

28
29 There being no questions of staff, the floor was opened to the applicant.

30
31 Alex Ford, Esquire, attorney for The Estate of John A. Bollman III, owner, Landis
32 Graham French, 145 E. Rich Avenue, DeLand, Florida. Mr. Ford stated he agrees with
33 the staff recommended conditions. He then gave a presentation on the overhead
34 (Evidence 1), which included an overview of the deed settlement agreement and issues
35 that led up to the litigation. He then showed the proximity of the dock, discussed the
36 design of the dock, and why it did not comply with the original plan submitted with the
37 permit in 2002. He then showed a letter from the Department of Environmental
38 Protection approving the current dock configuration as an after-the-fact approval, and
39 discussed an affidavit from the deceased owner's attorney attempting to hold the
40 contractor responsible for the design error. He further stated that because statute of
41 limitations ran out in 2011, the contractor absolved himself of any responsibility. He
42 discussed the differences in the survey, the legal description, the original plat and how it
43 affected the need for the variances requested. He said that Probate Court approval is
44 necessary for the settlement agreement to be finalized. Mr. Ford stated if, for some
45 reason, the Probate Court will not approve the settlement agreement, he asked to have
46 the ability to return for a rehearing before the commission.

47
48 Member Mills inquired if the settlement agreement is approved, would the applicant
49 require a variance for a setback from the north side lot line of the subject property.
50

1 Mr. Ford answered in the affirmative and referred to Variance 2 (staff report page 1 of
2 40).

3
4 Member Van Dam inquired if the adjacent property owner's claim to ownership of the
5 lagoon and surrounding area has been addressed in the settlement agreement (staff
6 report page 3 of 40).

7
8 Mr. Ford answered in the affirmative.

9
10 There being no further questions of the applicant, the floor was opened to public
11 participation.

12
13 Glenn Storch, attorney for an adjacent property owner, 420 S. Nova Road, Daytona
14 Beach, Florida. Mr. Storch stated that he and the applicant disagree on a number of
15 facts and legal issues but he supports the concept of keeping the dock where it is. He
16 said if there is no settlement made, the heirs would be burdened with the continued
17 litigation. He stated if the Probate Court approves the settlement agreement, he is in
18 support of the requested variances. Mr. Storch clarified that if the Probate Court does
19 not approve the settlement agreement and the case is reheard before the commission,
20 he has made it known he disagrees with the facts and legal issues for the need of the
21 variances.

22
23 Member Young inquired if the possibility of the dock being destroyed has been
24 addressed in the settlement agreement.

25
26 Mr. Storch answered in the affirmative.

27
28 Acting Chair Gove inquired if Mr. Storch was in support of an approval by the
29 commission of the variances as presented.

30
31 Mr. Storch answered in the affirmative.

32
33 Acting Chair Gove inquired if the distance of 38.5 feet stated in Variance 2 would
34 change due to the change of ownership of the affected piece of property.

35
36 Mr. Ford confirmed the 38.5 feet, as stated in Variance 2, would not change. He
37 explained the number was calculated from a known point derived from the westerly
38 extension of the lot line of Lot 1.

39
40 There being no further public participation, the floor was opened for commission
41 discussion.

42
43 Acting Chair Gove asked if there was no commission discussion to move forward with a
44 motion.

1 **Member Mills moved to APPROVE variance case V-16-003, a variance to section**
2 **72-278(5) to the minimum north side yard from the required 15 feet to 4 feet for an**
3 **existing dock (Variance 1); and a variance to section 72-278(5) to maintain a north**
4 **side yard of 38.5 feet from the north side lot line extension for an existing dock**
5 **(Variance 2) on Urban Single-Family Residential/Indian River Lagoon Surface**
6 **Water Improvements and Management Overlay Zone (R-9W) zoned property,**
7 **subject to the following staff-recommended conditions:**
8

- 9 1. The applicant, property owner or authorized agent(s) shall submit the
10 approved variance site plan to obtain and complete the required building
11 permit and inspection for the dock along with the rendition letter as
12 verification of approval of the granted variances to the Volusia County
13 Building and Zoning Division within 60 days of the PLDRC action.
14
- 15 2. The variance is limited to the dock structure as depicted on the as-built
16 survey/variance site plan dated October 30, 2012, prepared by Daniel W.
17 Cory Surveyor, LLC, and the dock shall not be enlarged, increased, or
18 extended further to encroach or occupy any greater area of the property
19 without approval of a separate variance and/or building permits.
20
- 21 3. If the dock is removed, destroyed or damaged in excess of 50%, as
22 assessed by the property appraiser at the time of proposed
23 reconstruction, Variance 1 will be deemed invalid, and any reconstruction
24 of the dock shall comply with all applicable requirements of the zoning
25 code.
26
- 27 4. The variance is conditional upon the approval of the Settlement
28 Agreement entered into by the parties resolving the dispute in the Circuit
29 Court case by the Probate Court in the *Estate of John A. Bollman*, Case
30 No. 2015-11616-PRDL. In the event the Probate Court does not approve
31 the Settlement Agreement, this variance is null and void, without
32 prejudice to the applicant. The applicant may be heard at a subsequent
33 re-hearing of this variance request. At such re-hearing, the parties shall
34 have the same rights as they currently possess.
35

36 **Member Bender seconded the motion. Motion CARRIED unanimously (5:0).**
37

38 **V-16-067** – Application of Michael and Catherine Iacobellis, owners, requesting a
39 variance to separate lots on Rural Agriculture/Low Impact Urban (A-2(1)) zoned
40 property. The property is located at 6157 Harbor Road, Port Orange; ± 7,800 square
41 feet; 6323-00-00-0080.
42

43 Scott Ashley, AICP, Senior Zoning Manager, gave the staff report. Mr. Ashley explained
44 the requested variance is to separate nonconforming lots that the zoning code requires
45 to remain together under common ownership. The applicant recently purchased two
46 separate developed lots but was not able to provide a good nonconforming lot letter
47 because of prior common ownership. He explained that the lots should be combined but
48 because each parcel has been developed with a mobile home dwelling on it, if
49 combined, only one mobile home would be allowed to remain. The applicant desires to

1 keep both mobile homes intact and does not want to combine the lots. He said the
2 approval of this variance request will allow the owner to apply for a building permit.

3
4 Member Mills inquired if the two parcels are on a septic system and asked to confirm
5 the lot size of each parcel and the lot size required for a septic system. He questioned if
6 any consideration had been made to what the environmental impact would be to the
7 Halifax River, and if there would be a need for a variance from the Department of Health
8 to develop each parcel if divided.

9
10 Mr. Ashley answered in the affirmative that both parcels are on septic. He confirmed
11 that the subject parcel is approximately 7,800 square feet and could only speculate the
12 other parcel would be comparable. Mr. Ashley confirmed that septic is allowed by code
13 on ¼-acre lots if connected to central water and ½-acre lots if on well. He said he is not
14 aware of any complaints or violation issues as the result of the existing septic systems
15 or any impact on the Halifax River. He explained that the applicant is not subdividing the
16 property, only asking to have it separated, as required by code, due to common
17 ownership of a prior owner. If the lots are not separated, the applicant cannot pull
18 permits for improvements.

19
20 Member Mills inquired if there was a record of permitting for the parcels.

21
22 Mr. Ashley said the tax records indicate the parcels were developed in the late 1960s or
23 early 1970s and could not confirm any permitting issues going that far back.

24
25 Acting Chair Gove asked if there had been any administrative zoning changes to the
26 area after it was zoned A-2 in 1980.

27
28 Mr. Ashley said there were no changes after 1980 and gave a brief overview of the
29 zoning and history of the area.

30
31 Acting Chair Gove inquired about the roads serving the parcel.

32
33 Mr. Ashley responded that he understood that Harbor Road, where the parcel sits, is a
34 prescriptive road publicly maintained.

35
36 There being no further questions of staff, the floor was opened to the applicant.

37
38 Michael Iacobellis, owner, 338 Boush Street, Unit 306, Norfolk, Virginia. Mr. Iacobellis
39 explained he purchased his property from two sisters who inherited the property and
40 would not sell unless the properties were purchased separately. He said this property is
41 his retirement home. He stated his plans are for one unit to remain and the other to be
42 replaced by an improved unit (Evidence 1).

43
44 Member Van Dam asked the applicant to confirm his intent is to replace one unit in
45 order to live in and maintain the second unit as a rental unit.

46
47 Mr. Iacobellis answered in the affirmative.

1 There being no further questions of the applicant, the floor was opened to public
2 participation.

3
4 Glenn Storch, attorney for adjacent property owner, 420 S. Nova Road, Daytona Beach,
5 Florida. Mr. Storch gave a PowerPoint presentation (Evidence 2). Mr. Storch stated his
6 client owns several acres of property surrounding the subject property and intends to
7 develop it in compliance with the comprehensive plan and zoning regulations. He
8 reviewed the existing conditions of the area and showed that the applicants were
9 attempting to legitimize two nonconforming lots and how this action is inconsistent with
10 the zoning regulations and the comprehensive plan. He then reviewed the types of
11 nonconformity and why he contends the applicants' do not meet the required five criteria
12 for approval of a variance. He said he is not opposed to the applicants developing the
13 property. He stated the applicants could combine the lots, eliminate the two mobile
14 homes and replace it with a single-family dwelling with septic tank provisions. By doing
15 so, they would be keeping in compliance with the comprehensive plan and zoning
16 regulations. In conclusion, Mr. Storch asked the commission not to grant the variance
17 since the applicants have not met the required five criteria for a variance and the
18 request does not support the goals of the county.

19
20 There being no further public participation, the floor was opened for commission
21 discussion.

22
23 Member Young inquired of staff if the applicants could do improvements to the mobile
24 homes without the lot separation.

25
26 Mr. Ashley confirmed the structures can be maintained as is and gave the example of a
27 new roof and general maintenance. He said the applicants could not move, replace or
28 add an accessory structure to the property without the lot separation.

29
30 Member Van Dam inquired of staff to clarify, since the development was done prior to
31 the 1980 administrative rezoning, and the lots were owned by two different owners, that
32 the lots were considered legal nonconforming until the lots were purchased in 2008.

33
34 Mr. Ashley explained that the lots were combined under common ownership and not
35 through the county subdivision approval process. He said even though both parcels are
36 two legal parcels of record, in 2008, when the two parcels were purchased under
37 common ownership, the parcels were considered under the zoning regulations as one
38 parcel. He stated the lots were not physically combined.

39
40 Member Young inquired of staff if the parcels were not in common ownership when the
41 applicants purchased the properties, would the parcels be considered two separate
42 parcels.

43
44 Mr. Ashley said if the applicants purchased the properties from two independent
45 owners, it would be presumed the applicants could demonstrate each parcel was a legal
46 nonconforming lot and the request would be for setback issues.

47
48 Member Mills inquired of staff if the property appraiser assigns two parcel numbers on a
49 piece of property, would that make it a legal subdivision.

1 Mr. Ashley responded that action would not constitute a legal subdivision.

2
3 Member Mills asked if staff could confirm if the different ownership of the two parcels
4 that made up the one under common ownership happened because of an inheritance.

5
6 Mr. Ashley answered in the affirmative and clarified that the applicant's purchase of the
7 two lots does not create a legal subdivision.

8
9 Member Mills commented he is concerned the lots that would be legitimized by the
10 variance for separation would increase the density in an environmentally sensitive area.

11
12 Member Young concurred and added the property could be left as is and maintained,
13 giving the applicant reasonable use of his land.

14
15 Member Van Dam commented the goal of the county is to improve properties and
16 legitimizing the two parcels through the variance process is not an improvement for the
17 area.

18
19 Acting Chair Gove asked if there was no further commission discussion to move forward
20 with a motion.

21
22 **Member Mills moved to DENY variance case V-16-067, a variance to Section 72-**
23 **206(1) Nonconforming lots to separate parcels 6323-00-00-0080 and 6323-00-00-**
24 **0090 on Rural Agriculture/Low Impact Urban (A-2(1)) zoned property.**

25
26 **Member Young seconded the motion. Motion CARRIED unanimously (5:0).**

27
28 Acting Chair Gove advised the applicant that he could appeal the decision to the
29 Volusia County Council.

30
31 **V-16-075** – Application of Bruce Rose, owner, requesting a variance to front yard
32 requirements for an addition to an existing single-family dwelling on Urban Single-
33 Family Residential/Indian River Lagoon Surface Water Improvements and Management
34 Overlay Zone (R-9W) zoned property. The property is located at 900 Drum Avenue,
35 New Smyrna Beach; ± 5,000 square feet; 8505-01-32-0390.

36
37 Scott Ashley, AICP, Senior Zoning Manager, gave the staff report. Mr. Ashley explained
38 the single-family dwelling was permitted and constructed in 2004 with part of the
39 construction including two 3.5 foot by 14-foot balconies facing Drum Avenue. The
40 applicant desires to convert the balconies into two 5-foot by 14-foot elevated decks,
41 encroaching into the required setbacks 1.5 feet.

42
43 There being no questions of staff, the floor was opened to the applicant.

44
45 Bruce Rose, owner, 900 Drum Avenue, New Smyrna Beach, Florida. Dr. Rose stated
46 his desire is to convert two decorative balconies into two functional decks. He said the
47 majority of the lots in his area have the required front yard setback of 25 feet and side
48 yard setback of 7.5 feet. He explained that since his lot has two front yards, he must
49 meet the 25-foot required setback on one side, and 15-foot requirement for the other.

1 He expressed that because of this requirement, he has an additional requirement
2 placed on his lot. He said converting the balconies does not affect public safety,
3 encroach onto any adjacent property, obstruct anyone's view, and would make his
4 home more like the surrounding homes. Dr. Rose asked for the aerial, shown on page 3
5 of the staff report, to be displayed on the overhead and pointed out the house next to
6 his enjoys the same amount of extension he is asking for. He asked the commission to
7 grant the requested variance so he could improve his home and complete it in
8 compliance.

9
10 Member Mills asked the applicant to confirm that he is asking to increase the width of
11 the decks by 18 inches and how the decks would be supported.

12
13 Dr. Rose confirmed the increase is 18 inches and the deck would be ground supported
14 and not cantilevered. He stated if the decks were cantilevered, it would not conform to
15 what exists within the neighborhood.

16
17 Member Mills inquired of staff if there would be a need for a variance if the decks were
18 cantilevered.

19
20 Mr. Ashley confirmed a variance would be required because there was no change in the
21 encroachment into the setback.

22
23 Member Young asked the applicant if the ground support columns for the decks would
24 align with the entryway columns.

25
26 Dr. Rose indicated the ground support columns would be within inches but could not
27 confirm the specific measurements.

28
29 There being no further questions of the applicant, the floor was opened to public
30 participation.

31
32 There being no public participation, the floor was opened for commission discussion.

33
34 Member Young commented he had made a site visit to the subject property and could
35 confirm the applicant's statement that there are other homes in the neighborhood with
36 similarly designed decks.

37
38 Acting Chair Gove asked if there was no further commission discussion to move forward
39 with a motion.

40
41 **Member Young moved to APPROVE variance case V-16-075, a variance to the**
42 **front yard from the required 15 feet to 10 feet for an addition (elevated decks) to**
43 **an existing single-family dwelling on Urban Single-Family Residential/Indian River**
44 **Lagoon Surface Water Improvements and Management Overlay Zone (R-9W)**
45 **zoned property, subject to the following staff-recommended conditions:**

- 46
47 1. **The variance is limited to the two 5-foot x 14-foot ground supported**
48 **decks proposed on the north side of an existing single-family dwelling**
49 **as depicted on the Variance Site Plan, and permit 20160809005 building**

plans prepared by PAE by Design, Inc., dated August 3, 2016. The front decks shall not be enlarged, increased, or extended further to encroach further into the front yard, or occupy any greater area of the property without approval of a separate variance application. The front decks shall not be roofed, walled, enclosed, or converted to a room, or other structure.

2. The property owner or authorized agents shall obtain and complete all required building permits and inspections for the deck.

Member Van Dam seconded the motion. Motion CARRIED unanimously (5:0).

OTHER PUBLIC ITEMS

- None

STAFF ITEMS

- None

STAFF COMMENTS

- None

COMMISSION COMMENTS

Member Bender requested staff to give an overview of Section 72-206(3), by addressing adding onto nonconforming structures. He stated that he was contacted by an attorney to discuss a particular property owner who had added onto a nonconforming structure without applying for permits or requesting a variance. Member Bender indicated he could not confirm if the property would need a variance and thought it would benefit the commission to have a better understanding of this ordinance. He requested staff to present this information at the February 14, 2017, PLDRC hearing.

PRESS AND CITIZEN COMMENTS

- None

ADJOURNMENT

Having no further comments from the public, staff, or commissioners, Acting Chair Gove thanked everyone and adjourned the meeting at 11.38 a.m.