

DRAFT

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
MAY 16, 2019**

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

COMMISSION PRESENT:

- RONNIE MILLS, Chair**
- JEFFREY BENDER, Vice-Chair**
- WANDA VAN DAM, Secretary**
- JAY YOUNG**
- STEVE COSTA**
- FRANK COSTA**
- VACANT**

STAFF PRESENT:

- MICHAEL RODRIGUEZ, Assistant County Attorney**
- SUSAN JACKSON, AICP, Senior Planning Manager**
- PATRICIA SMITH, AICP, Planner III**
- DAVID STALLWORTH, AICP, Planner II**
- SAMANTHA J. WEST, Planner II**
- JESSICA R. FLOWERS, Staff Assistant II**
- YOLANDA SOMERS, Staff Assistant II**

PLEDGE OF ALLEGIANCE

Vice-Chair Mills led the pledge of allegiance.

APPROVAL OF MINUTES

March 21, 2019

There was no discussion.

Member Van Dam MOVED to APPROVE the minutes for March 21, 2019 as presented. Member Young SECONDED the motion. Motion CARRIED unanimously (6:0).

LEGAL COMMENT

Michael Rodriguez, Assistant County Attorney, provided legal comment.

1 **Disclosure of Ex Parte Communications**

2
3 Members of the Volusia County Planning & Land Development Regulation Commission
4 were asked to disclose, for the record, the substance of any ex parte communications
5 that had occurred before or during the public hearing at which a vote is to be taken on
6 any quasi-judicial matters. All members present disclosed any communication as listed
7 below.

8
9 No members presented any ex parte communications.

10
11 **PUBLIC HEARING ON APPLICATIONS**

12 **ITEMS TO BE CONTINUED OR WITHDRAWN**

13 Items to be continued or withdrawn will not be discussed unless requested by a
14 commission member, the applicant, or any other affected party. If you wish to speak on
15 any of these items, please advise the commission clerk so that the chair can be advised.
16 It is requested that applicants attend the hearing to answer any questions, which may
17 arise.

18
19 **V-19-047** – Application of Darrell and Marla Nance, owners, requesting a variance to the
20 minimum yard requirements on Urban Single-Family Residential (R-9) zoned property.

21
22 Susan Jackson, AICP, Senior Planning Manager, explained to the commission that the
23 applicants requested additional time to review the staff report to prepare for the hearing.

24
25 **Member Frank Costa MOVED to CONTINUE case number V-19-047, a variance to**
26 **reduce the front yard from the required 25 feet to 14 feet for a principal structure**
27 **on Urban Single-Family Residential (R-9) zoned property, to the June 20, 2019**
28 **hearing.**

29
30 **Member Steve Costa SECONDED the motion. Motion CARRIED unanimously (6:0).**

31 **NEW BUSINESS**

32 **S-19-016** - Application of Steven P. Sprague, agent for 1430 County Line Road, LLC,
33 owner, requesting a special exception for a rural event center on Prime Agriculture (A-1)
34 zoned property.

35
36 Susan Jackson, AICP, Senior Planning Manager, presented the staff report, explaining
37 that the request was for a rural event center on A-1 zoned property, located on County
38 Line Road in Oak Hill. The request encompasses about thirty acres that was subdivided
39 from a larger 250-acre parcel in November 2017. The property is within the
40 Environmental Core Overlay (ECO), the Natural Resource Management Area (NRMA),
41 and the Indian River Lagoon Surface Water Improvements and Management Overlay
42 (SWIM). The property owners were cited by Code Compliance in November 2018 for
43 operating a business where not permitted. The barn is an existing structure that has been
44 used for various gatherings and events since the 1960's, per the applicant. The barn
45 structure has been converted and no longer functions as an agricultural barn. It has
46 dressing rooms, restrooms, and food prep and storage areas. Ms. Jackson went on to
47 discuss the special exception criteria for a rural event center. This request exceeds the

1 minimum lot area requirement of 10 acres. The site must be served by a public road and
2 have a maintenance agreement if the road is unpaved. County Line Road is a county
3 maintained dirt road, and the applicant will need to enter a maintenance agreement for
4 the road. However, the county road maintenance traffic engineers have said that the road
5 does not need to be maintained at this time and the agreement will be drafted to reflect
6 that. The applicant has stated that the events are required to end by 10:00 p.m., although
7 clean up continues to 11:00 p.m. This meets the criterion of having no events between
8 11:00 p.m. and 8:00 a.m. The outdoor lighting is to be directed inward to the site and
9 cannot spill onto adjoining properties and that parking must be provided onsite. Based
10 on the capacity of 150 guests, fifty parking spaces and two ADA accessible spaces will
11 be required. There is plenty of space on site to accommodate this requirement. There
12 are a couple of criterions this request does not meet that are the focus of the companion
13 variance case V-19-052. The landscape requirement of a 20-foot landscape buffer
14 between the facility, or any area used for an event and adjacent properties is one. The
15 applicant's submittal did not delineate any landscape buffers. There is natural vegetation
16 buffers along three of the property lines that the applicant may use to meet this criteria.
17 The barn and other out-buildings are situated near the eastern property line and the
18 applicant would like to have the curb appeal remain as it exists. The companion variance
19 case will address the applicant's request. Also, the landscape buffers and use of native
20 vegetation will be addressed further during the final site plan process. Another criterion
21 of the special exception that will not be met is that all permanent and temporary structures
22 must be located a minimum of fifty feet from property lines. The existing barn, being used
23 as the event venue, is located 32.30 feet from the eastern property line. Per the applicant,
24 the barn was constructed in the 1960's. The companion variance case V-19-052, will
25 address this issue. The criterion that all permanent structures used by the public for
26 events shall be constructed and maintained in accordance with the Florida Building Code
27 and Florida Fire Prevention Code has not been met. There are no active building permit
28 applications for this business, and per the applicant's website, the site continues to have
29 events without meeting this criterion. The fire inspector has made several inspections of
30 the site and has provided that an after-the-fact building permit be obtained. The criterion
31 that there be adequate parking spaces available on-site, located outside the required 20-
32 foot landscape buffer, is partially met by this request. The property has adequate space
33 for on-site parking. There are fifty spaces on the northwest side of the rural event center
34 which meets the venue capacity of 150 people; however, the applicant requests that a
35 "VIP" parking space be located within the required landscape buffer area. The companion
36 variance case V-19-052 addresses this request. The applicant has reported to staff that
37 they cannot meet the criterion that requires that no outdoor loudspeaker or call system
38 be audible from adjoining properties. It is a criterion of the special exception for a rural
39 event center and the applicant will have to comply or the special exception could be
40 revoked through the code enforcement process. The applicant is not proposing any
41 overnight stays in conjunction with the rural event center, therefore the criterion for a
42 special exception for a bed and breakfast has been met. Staff finds that with the proposed
43 staff recommended conditions, and subject to the companion variance case, the special
44 exception criteria for a rural event center can be met. Therefore, staff recommends that
45 the commission forward the request to county council with a recommendation of approval,
46 subject to the staff recommended conditions.

47
48 Chair Mills asked for legal opinion on hearing the special exception and the variance
49 cases at the same time.

1
2 Michael Rodriguez, Assistant County Attorney, replied that the two cases should be
3 separate, as you cannot consider variances to special exception criteria standards that
4 you have not been granted. The variances, if approved, would not be effective until the
5 special exception is approved.

6
7 Member Van Dam asked if the applicant has stated that he cannot comply with the noise
8 ordinance, can the special exception be approved.

9
10 Ms. Jackson replied that the special exception can be revoked through the code
11 enforcement process for failure to comply with any of the criteria and conditions of
12 approval.

13
14 Chair Mills asked if the road was currently county maintained.

15
16 Ms. Jackson replied affirmatively.

17
18 Member Frank Costa asked what triggered the notice of violation.

19
20 Ms. Jackson replied that a neighbor had filed a complaint about the noise from the event
21 venue.

22
23 There being no further questions of staff, the applicant was provided the floor.

24
25 Steven Sprague, 4235 Will Scarlet Drive, Titusville, stated that the rural event center
26 ordinance is relatively new and the barn has existed since 1968/1969 functioning as it
27 does. He stated he is not changing anything, or building anything, or moving things. He
28 said that his request, as compared to the other special exceptions for rural event centers
29 that have recently been before the commission, is an existing structure. It is agritourism,
30 which the others did not reference. He stated they are carrying on a legacy and presented
31 a PowerPoint presentation (Evidence 1) providing the history of the property. The barn
32 was built in the 1960s by the Parrish family for race horse. In 2002, the property was
33 bought by S. Truett Cathy family for citrus grove operations that was managed by the
34 Watson family. The Watson family now co-owns the Big Red Barn Event Venue, LLC,
35 with the Sprague family. It became a full-time event venue in 2013. Mr. Sprague spoke
36 to the history and accomplishments of the Parrish and Cathy families. He also provided
37 information on the manager of the Big Red Barn, Jimmy Watson. His presentation
38 provided for famous guests of the property throughout the Parrish family ownership. The
39 Titusville Rotary Club met at the Parrish grove in the 1970s and 1980s. The presentation
40 included some information about his agritourism claims and events that have been held
41 there, including customer reviews.

42
43 Member Frank Costa inquired about the legacy that was being continued.

44
45 Mr. Sprague replied the Parrish family, the Chick-fil-A owner, and our ownership have
46 used the barn. The barn was initially built for racing horses, but was converted to a party
47 barn by the Parrish family within the first two years. Through the years there have been
48 so many events at the barn, that not to carry on that legacy would be a travesty.

49

1 Member Frank Costa asked how long it has been a wedding center.

2

3 Mr. Sprague replied since 2013.

4

5 Member Frank Costa asked if it held weddings prior to that.

6

7 Mr. Sprague replied that to his knowledge there were events such as get-togethers and
8 barbecues, but could not speak to whether there were weddings.

9

10 Member Frank Costa asked if there have been any emergency vehicles called to the
11 property under the current ownership.

12

13 Mr. Sprague replied, "Never". He stated that the Fire Inspector had been to the property
14 several times and all of their requests have been addressed. The police have been called
15 for noise but no citations have been given, and he has copies of the police reports. He
16 also mentioned the twenty-three support letters in the staff report package and the two
17 additional letters submitted today (Evidence 2), all of which say the noise is fine.

18

19 Member Frank Costa asked about why he states he cannot meet the noise ordinance.

20

21 Mr. Sprague replied that this was an outdoor venue. The DJ sets up on the main floor,
22 and we have a professional sound meter used to monitor the sound levels during events.
23 He said that they are always within the requirements of the Volusia County noise
24 ordinance.

25

26 Member Frank Costa commented that the sound requirement can be met then.

27

28 Mr. Sprague explained that there are two different standards. Whereas they can meet
29 the county noise ordinance of a maximum of 75 decibels, they can't meet the criterion of
30 the rural event center which requires no noise at adjoining properties.

31

32 Member Frank Costa commented that there was no decibel standard for a rural event
33 center.

34

35 Chair Mills commented that Mr. Sprague mentioned he had a video and asked the
36 commission if they wanted to view it. No commissioner asked to view it and Chair Mills
37 suggested that Mr. Sprague provide the video if he wanted it to be part of the record. He
38 also explained the public participation would be called and he did not want any back and
39 forth between the speakers and the applicant. He assured Mr. Sprague that he would
40 have a chance for rebuttal.

41

42 Mr. Sprague agreed.

43

44 Public Participation

45

46 Kelly Shank, 1431 County Line Road, Oak Hill, stated that she lived across the street
47 from the property. She mentioned that she has not complained about noise and cannot
48 hear the activities inside her home. She mentioned that a sheriff came to her home and

1 asked if she had complained about the noise. She commented that she had lived there
2 for thirty-two years and had no complaints.

3
4 George and Linda Louden, P.O. Box 242, Mims. Ms. Louden mentioned that they had
5 their daughter's wedding in 2015 at the Big Red Barn and has attended other events on
6 the property. The property is beautiful with majestic oak trees, there are no loudspeakers,
7 and the event was done by 10:00 p.m. They have a professional website and the
8 operation has always been professional.

9
10 Member Van Dam asked if the reception was held inside the barn or outside the barn.

11
12 Ms. Louden replied the ceremony and reception were outside.

13
14 Member Van Dam asked whether people were inside the barn.

15
16 Ms. Louden replied that her daughter used the building to get dressed and the restrooms
17 were inside the building, but the cake table and beverages and such were outside.

18
19 Member Van Dam asked if there were tables set up inside for eating or drinking.

20
21 Ms. Louden replied no, it was all outside.

22
23 Tom Shelter, 1278 South US Highway 1, Oak Hill, mentioned that the property is located
24 on the west side of US Highway 1 and as the crow flies it is at least a mile away from him.
25 He stated that he can hear the music on wedding nights at his house with his windows
26 open. He has not called law enforcement but the music can be very loud at times. He
27 mentioned that agritourism statute in general is to promote agriculture within the state of
28 Florida. There are a lot of farms and places that have bona fide agriculture pursuits that
29 should be able to generate money from their property in addition to their agriculture
30 operation. He mentioned that he bought his property at the same time as Mr. Cathy
31 bought the Big Red Barn. He provided information about the barn. It was part of a bona
32 fide agriculture operation when it was with the Parrish and Cathy families as part of the
33 citrus grove and would have been considered under the bona fide agriculture clause.
34 However, this property has been split from the grove property and lost its bona fide
35 agriculture tax exemption. The property could not support a bona fide agriculture pursuit
36 on it, the property appraiser has provided agriculture tax exemption on between 9.2 and
37 11 acres on the northern end of the property where the gentleman raises cattle and the
38 wedding venue sits outside that area. The wedding barn venue property has a rental unit
39 on it that was rented out at one time by Chick-fil-A. This is stretching the agritourism
40 statute for non bona fide agricultural pursuit.

41
42 Jason L. Harr, 517 South Ridgewood Avenue, Daytona Beach, attorney for Greg
43 McKinley, who lives at 1530 County Line Road, Oak Hill. He concurred with Mr. Shelter
44 that this is not bona fide agriculture and is a violation of state statute. He stated that there
45 is litigation between the Big Red Barn and his client for the excessively loud events. The
46 Big Red Barn does have an attorney, but he is not present here today. He agreed that
47 the Parrish and Cathy families are legacies in this area. He spoke to Mr. Cathy, the
48 founder of Chick-fil-a. He was religious and insisted on his businesses being closed on
49 Sunday and would not approve of the excessive drinking and such that goes on at this

1 facility. He stated that Mr. Sprague makes no attempts to control the noise or work with
2 the neighbors, which is why law enforcement was called and is why there is current
3 litigation in the courts of Volusia County. Mr. Sprague has been in violation of the county
4 code for years and has offered no reason for this or offered to stop events on the property.
5

6 Member Frank Costa asked how long Mr. McKinley has lived at his residence.
7

8 Greg McKinley, 1530 County Line Road, Oak Hill, replied six years. He used to reside in
9 a mobile home on the property but has built a new block home with new insulation and
10 can still hear the noise. He provided that there are recordings of the loud music and un-
11 neighborly confrontations. He asked if the commission could ask Mr. Sprague what his
12 agriculture pursuit was.
13

14 Member Frank Costa asked where Mr. McKinley's residence was located in relation to
15 the Big Red Barn.
16

17 Mr. McKinley replied that his property is southwest of the barn and when the DJ's
18 speakers are out back they are directed through the grove towards his property.
19

20 Member Frank Costa asked if he knew the distance.
21

22 Mr. McKinley responded that it was about 1,000 feet, or so, between the properties.
23

24 Member Frank Costa commented that Mr. McKinley has lived there since the facility
25 began operating.
26

27 Mr. McKinley replied that he had been fighting the noise for a solid four years. He
28 complained to Chick-fil-A owners, and then to the Land of Milk and Honey with no solution.
29 He said that he stopped calling law enforcement because the facility started paying law
30 enforcement for events and he felt he was not getting any relief. He sought legal
31 representation as a last result. He explained that he lives here, the Watsons live on US
32 1, and the Spragues live in another county. He asked the commission what his rights
33 were. He feels confined and trapped by excessive noise and trash from this facility. Law
34 enforcement suggested he put up cameras on his property and so he has cameras that
35 have recorded the issues.
36

37 Member Frank Costa asked if he was willing to compromise on hours of music or did he
38 want it to cease completely.
39

40 Mr. McKinley responded at this point he wants it to cease.
41

42 Mr. Harr commented that Mr. McKinley has small children. He is a subcontractor for the
43 power company and can be called out at any time for outages. He is not able to rest due
44 to the drinking and celebrations that the operators of the facility have no interest in
45 controlling.
46

47 Member Van Dam requested the aerial map (page 67 of the staff report) be displayed on
48 the overhead as she asked Mr. McKinley to locate his property in relation to the subject
49 property.

1
2 Mr. McKinley described that his property starts to the south of the rows of trees on the
3 bottom of the map.

4
5 Member Van Dan commented that his house was not visible on this map.

6
7 Mr. McKinley replied that it is not, if the map was maybe another ½ inch, you could see
8 it.

9
10 Chair Mills asked Mr. Harr if the recommended conditions of approval in the staff report
11 would alleviate some of the issues for his client.

12
13 Mr. Harr replied that it would not address the excessive drinking and trash debris nor the
14 violations of the law.

15
16 Member Steve Costa commented that the subject today is a rural event center not an
17 agriculture exemption. Should this special exception be approved, the condition is that
18 no noise is to be heard on adjoining properties. If the facility does not comply with this,
19 and a complaint is filed, the special exception can be revoked. The burden of compliance
20 is on the applicant.

21
22 Mr. Harr continued to address the state statute.

23
24 Mr. McKinley commented that law enforcement will not enforce the ‘no audible on
25 adjoining properties’ even though the ordinance has been in effect since August.

26
27 Member Bender asked Michael Rodriguez to comment on the commission’s purview.

28
29 Michael Rodriguez requested the last slide from the applicant’s presentation (Evidence
30 1) to be displayed. He provided for the record that there were two applications before the
31 commission. The commission is hearing the special exception, of which there are certain
32 objective criteria that if met, may be granted. That criteria is what the commission is to
33 evaluate. The applicant has mentioned his variance request, however the variance case
34 is not before you at this moment. The applicant cannot ask for variances to standards for
35 a use that is not currently allowed. That said, moving of the barn is not a part of the
36 special exception criteria, nor are the landscape buffers. Those are items for the variance
37 case, because those standards do not apply unless the special exception is granted. His
38 site plan will need to comply with the special exception if granted, then with the variances
39 if granted, then with any land development regulations as reviewed by the development
40 review committee. The issues of driveway entrance, parking and ADA compliance, are
41 site plan issues not to be considered by this commission. He spoke to the legality of this
42 ordinance. The ordinance echoes the state statute, which states that a building that is
43 altered to solely have gatherings is not agritourism. The commission is not deciding
44 whether this is agritourism. The applicant has provided testimony that the barn has been
45 used as a party barn since the 1960s, and therefore, by definition is not covered by any
46 state exemption for agritourism. The commission is reviewing the criteria for a special
47 exception for a rural event center. The criteria of noise not being audible off-site can be
48 met. If it is not and a complaint is filed, the special exception could be revoked through
49 the code compliance process. Law enforcement does not enforce zoning ordinances and

1 this is a zoning ordinance, so the matter of law enforcement not enforcing the law is not
2 of issue. He mentioned that the New Hampshire court is the only court system to rule on
3 such issues, however the county ordinance is verbatim of the Florida state statute,
4 therefore there is no question of agritourism.

5
6 Member Bender asked about Mr. McKinley's recourse.

7
8 Mr. Rodriguez responded that currently this activity does not have an approved special
9 exception, so if law enforcement were to be called, they would have to measure the
10 audibility from the property and if it does not exceed the decibels allowed in agriculture,
11 which is roughly 75 dBs, then there is nothing for law enforcement to do. If there is a
12 special exception in place, and it is audible on an adjoining property, that is a matter for
13 code compliance as it would be in violation of the special exception.

14
15 Member Frank Costa asked for clarification on the difference of the standards.

16
17 Mr. Rodriguez replied that the county ordinance allows a maximum of 75 dBs for
18 agricultural areas and is enforced by law enforcement. The special exception standard
19 for a rural event center is not to be audible on adjoining property and it is enforced by
20 code compliance.

21
22 Member Bender asked about limits of the number of events.

23
24 Ms. Jackson replied that the criteria does not require limitation of the number of events.

25
26 Member Young asked about the variances being effective.

27
28 Mr. Rodriguez replied that the variances would not become effective unless, and until, the
29 county council granted the special exception.

30
31 There being no further discussion from the commission, Chair Mills provided the floor to
32 Mr. Sprague for rebuttal of the public participation and advised him to direct his comments
33 to the commission.

34
35 Mr. Sprague stated that there has been comments from two attorneys. Mr. Harr would
36 have the commission believe that we need to fence the property and have cattle on the
37 whole thing in order to be agritourism. Mr. Rodriguez said that we are not agritourism
38 because we cannot do any agritourism in an existing building. Mr. Rodriguez mentioned
39 the New Hampshire court case. I relied on the synopsis of that case, which allowed
40 agritourism operations simply because New Hampshire does not have an ordinance that
41 says not to, and Florida does. That seems to be the part everyone is missing. He
42 mentioned Mr. McKinley's lawsuit with the Big Red Barn and that they did have an
43 attorney for that litigation, however not for this issue at this time, but will retain an attorney
44 prior to the council hearing. There is one neighbor in opposition regarding noise and
45 twenty-five letters of support have been provided. The commission would need to
46 evaluate that.

47
48 There being no further public participation, the chair closed public participation and
49 opened for commission discussion and/or motion.

1
2 Member Steve Costa asked Mr. Sprague about his testimony about not moving any dirt
3 or changing anything on this site.
4

5 Mr. Sprague replied that they are not making any changes to the site. They will have to
6 have two handicapped parking spaces and will provide those, but there are no other
7 improvements to be made.
8

9 Member Steve Costa asked if Mr. Sprague was aware of the land development
10 regulations that would be required on this site and whether he had met with an engineer
11 to discuss them.
12

13 Mr. Sprague responded that he does not believe there are any other requirements that
14 he does not already meet.
15

16 Member Young asked about events when it rains.
17

18 Mr. Sprague replied that the facility has a pavilion that has no walls where guests can be
19 out of the weather.
20

21 Member Frank Costa asked the applicant if he reviewed the staff report and if he could
22 tell the commission which recommended condition he would not comply with.
23

24 Mr. Sprague replied that condition five may not be necessary under agritourism. He
25 addressed condition six by referring to page 31 of the staff report, comments from Chris
26 Weir, Fire Services. He does not agree with all buildings but it is still being discussed.
27 He does not agree with condition seven, as he does not believe the barn needs fire
28 sprinklers.
29

30 Member Frank Costa replied that it was a site plan issue and not for this commission. He
31 was particularly interested in condition eight regarding the loudspeakers.
32

33 Mr. Sprague replied that they comply with the county's noise ordinance and measure at
34 the property line. It is not reasonable to have no audible off-site as sound carries
35 differently with wind direction and weather. He provided that Debbie and Gail have turned
36 down events that wanted to go later and be noisier. He called Debbie to the floor to
37 address the issue.
38

39 Debbie Sprague, 4235 Will Scarlet Drive, Titusville, mentioned that she and Gail were
40 aware of the noise issue and that their neighbors love them. She commented that it is in
41 the venue contract that the decibels are limited, no subwoofer or base is allowed. The
42 DJs are told to point speakers to the tree line to help buffer the sound and they are
43 monitored for compliance. There are no events past 10:00 p.m., and not every weekend
44 and usually not during the summer because of the heat.
45

46 Member Frank Costa asked the applicant if they will comply with condition eight.
47

48 Mr. Sprague replied that he did not believe he could successfully comply as an outdoor
49 venue.

1
2 Member Frank Costa continued, moving on to condition nine.

3
4 Mr. Sprague commented that he has been complying with the county noise ordinance
5 and will continue to do so as he believes it to be the appropriate standard. He spoke to
6 condition nine, and stated that events end at 10:00 p.m. He stated he agrees to condition
7 ten.

8
9 Member Frank Costa asked about condition eleven as to ceasing operations.

10
11 Mr. Sprague said they expect to continue to operate. He wanted to speak to condition
12 eight in relation to Mr. McKinley's property.

13
14 Mr. Rodriguez clarified for the record that adjoining property, as defined by the code, is
15 any property that touches a property. He further stated that by adjoining properties, Mr.
16 McKinley's property is not adjoining. Mr. McKinley's property would be subject to the
17 county noise ordinance standard of 75 decibels and not the special exception standard.

18
19 Chair Mills asked Mr. Sprague if he had any comments to add in light of Mr. Rodriguez's
20 comments.

21
22 Mr. Sprague replied Mr. Rodriguez's answer was excellent.

23
24 Member Bender commented to Mr. Rodriguez that he understood from a legal stand
25 point, but it makes no sense. If I was two or three properties away and can hear it, then
26 I know the adjoining properties definitely can hear it.

27
28 Mr. Rodriguez provided an experience where it was possible that adjoining properties to
29 the west could not hear noise and the properties two miles to the east could hear the
30 noise. It depends on wind direction and which way the speakers are facing. The intent
31 of the ordinance is to minimize the impacts on adjoining properties since, in essence, a
32 commercial use is being brought to an agricultural area.

33
34 Member Young asked if the commission can take into account that the applicant may not
35 meet some of the conditions.

36
37 Mr. Rodriguez stated that the commission can take into account the fact that an applicant
38 testifies that they will not meet conditions. It can be a part of the recommendation to
39 county council for discussion. The two conditions, to my knowledge, at issue are the
40 noise and the ceasing operation until properly approved. The noise condition is
41 somewhat handled with prior discussion and the other can be dealt with by the Fire
42 Marshall and/or the Building Official. Both have the power within their duties to shut the
43 facility down if they deem it necessary. By the applicant's testimony, the barn has been
44 used as assembly since the 1960s and must obtain proper after-the-fact building permits
45 and inspections.

46
47 Member Frank Costa asked Ms. Jackson about whether any of the fines have been levied
48 as a result of the continued violations on the property.

49

1 Ms. Jackson replied that she thought the fines were in abeyance since the applicant is
2 trying to come into compliance.

3
4 Member Frank Costa asked if they would continue to hold them in abeyance until after
5 heard by county council or would they be effective based on the commission decision
6 today.

7
8 Ms. Jackson replied that she thought it would continue until after the county council
9 decision.

10
11 Chair Mills commented that a lot of what has been discussed here today has not been
12 within our purview, and he thought that not applying the recommended conditions of
13 approval to the recommendation would be to circumvent the ordinance.

14
15 Member Frank Costa commented that this is the third special exception that the
16 commission has seen and the other two have been given the same recommended
17 conditions of approval. He found no reason or evidence to deviate from the conditions.

18
19 Member Young commented that the facility will need to cease operation per the
20 recommended conditions.

21
22 Chair Mills commented that he did not think we have the authority to recommend a
23 condition to cease operation.

24
25 Mr. Rodriguez stated that the condition can be recommended by the commission, as the
26 condition is to cease operation without an approved special exception.

27
28 **Member Frank Costa moved to forward case S-19-016, to county council with a**
29 **recommendation of approval, subject to all staff recommended conditions:**

- 30
31 **1. Special exception approval is limited to the existing venue as identified on**
32 **the county's 2019 Pictometry map series, the "Watson Property Exception"**
33 **identified on the survey dated August 22, 2017, prepared by Sliger and**
34 **Associates, documents submitted by the applicant for the special exception,**
35 **and floorplans submitted by the applicant, dated April 2, 2019.**
36
37 **2. The seating capacity of the proposed rural event center building shall not**
38 **exceed 150 seats.**
39
40 **3. On-site parking shall be limited to fifty (50) parking spaces, including two (2)**
41 **accessible parking spaces.**
42
43 **4. Any proposed expansion of the proposed use, or increase in seating, or**
44 **change of use, will require approval of a new special exception.**
45
46 **5. The project shall comply with the Final Site Plan Approval Procedures as**
47 **set forth by Article III, Division 3, of the land development code, as amended.**
48 **The first step in the process is submission of a Conceptual Site Plan**
49 **application, pursuant to Section 72-577(c)(1), of the land development code.**

- 1
- 2 **6. All structures used for the rural event center shall be renovated and**
- 3 **maintained in accordance with the Florida Building Code and the Florida Fire**
- 4 **Prevention Code.**
- 5
- 6 **7. The applicant is required to apply for an after-the-fact building permit for the**
- 7 **converted barn upon approval of the special exception by the county**
- 8 **council.**
- 9
- 10 **8. No loudspeaker or call system shall be audible on adjoining properties.**
- 11
- 12 **9. Hours of operation shall be between the hours of 8 a.m. and 11 p.m.**
- 13
- 14 **10. All exterior lighting shall be directed away from adjoining properties.**
- 15
- 16 **11. The applicant shall cease rural event center activities until all life/safety**
- 17 **issues identified by the fire department have been met, the applicant applies**
- 18 **for an after-the-fact building permit for the barn, the special exception is**
- 19 **approved by the Volusia County Council, and a Development Order is**
- 20 **issued.**

21

22 **Member Young seconded the motion.**

23

24 Motion Discussion

25

26 Member Young commented on the motion that he would ask that the county council

27 review these issues closely.

28

29 Member Frank Costa commented that the sticking point of condition eleven is that it is

30 now in the hands of code compliance, the fire marshal, and building official.

31

32 **Motion CARRIED unanimously (6:0).**

33

34 **V-19-052** - Application of Steven P. Sprague, agent for 1430 County Line Road, LLC,

35 owner, requesting a variance to minimum yard requirements, landscape requirements

36 and parking setback for a rural event center on Prime Agriculture (A-1) zoned property.

37

38 Susan Jackson, Senior Planning Manager, provided that the staff report was a companion

39 application to the previously heard special exception. She explained that variance one

40 was a variance to the rural event center requirement that required all buildings to be fifty

41 feet from any property line. The existing barn is located 32.3 feet from the property line.

42 She explained that variance four was a technicalty since the zoning classification requires

43 a front yard setback of 100 feet from the property line to accommodate the existing barn.

44 These two variance are required to allow the special exception for a rural event center

45 should it be granted by county council. Variance two is to the rural event center landscape

46 buffer requirement. The property has sufficient buffer along most of the property lines,

47 but there are areas where plantings would be necessary. The applicant is requesting not

48 to comply with the landscape buffer requirement. staff finds there is adequate area to

1 accommodate the required landscape buffer. Variance three is to the rural event center
2 requirement that no off-street parking be located within the landscape buffer. The
3 applicant requests an off-street parking space for VIP within the required landscaping
4 buffer area next to the barn. Staff finds there is adequate area for off-street parking on
5 the property outside the landscape buffer areas. Therefore, staff recommends approval
6 of variances one and four as the barn is an existing structure built in the 1960s, and it
7 would cause undue hardship on the applicant to move or reduce the barn size. Staff also
8 recommends denial of variance two and three as they do not meet the five criteria
9 necessary to grant a variance.

10
11 Member Frank Costa asked for legal opinion about voting on the variances individually or
12 all together.

13
14 Michael Rodriguez, Assistant County Attorney, responded that it was the commission's
15 preference.

16
17 There being no further questions of staff, the applicant was provided the floor.

18
19 Steven Sprague, 4235 Will Scarlet Drive, Titusville, expressed his desire to keep the
20 current curb appeal of the site.

21
22 Chair Mills asked if the current VIP parking space was existing.

23
24 Mr. Sprague replied that it was an existing grass parking.

25
26 Public Participation

27 Jason L. Harr, 517 South Ridgewood Avenue, Daytona Beach, attorney for Greg
28 McKinley, who lives at 1530 County Line Road, Oak Hill, asked that the commission agree
29 to the staff recommendation.

30
31 There being no further public participation, the Chair opened for commission discussion.

32
33 Member Frank Costa asked staff about variance number two and if there was any lee
34 way regarding the size of number of trees.

35
36 Ms. Jackson replied that staff calculated the amount of buffer to be eleven subcanopy
37 trees and thirty-two scrubs.

38
39 During the commission discussion, the members concurred with Chair Mills's comment
40 that the landscape buffer could act as a sound barrier and the parking space can be
41 relocated.

42
43 **Member Young MOVED to DENY the variance from section 72-293(26)(c), Rural**
44 **Event Centers, to reduce the required landscape buffer from 20 feet to zero feet**
45 **along the east property line (variance 2) and the variance from section 72-293(26)(i),**
46 **Rural Event Centers, to reduce the off-street parking setback from the required 20**

1 feet to one foot for a “VIP” parking space (variance 3) and APPROVE variance from
2 section 72-293(26)(d), Rural Event Centers, to reduce the required setback from 50
3 feet to 32.30 feet from the east property line for an existing event center (variance
4 1) and a variance to reduce the front yard in the Prime Agriculture (A-1) zoning
5 classification from 100 feet to 32.30 feet for an existing barn structure (variance 4)
6 subject to the following conditions:

- 7 1. All structures used for the rural event center shall be renovated and
8 maintained in accordance with the Florida Building Code and the Florida Fire
9 Prevention Code.
- 10
11 2. The applicant is required to apply for an after-the-fact building permit for the
12 converted barn upon approval of the special exception by the county
13 council.
- 14
15 3. The project shall comply with the Final Site Plan Approval Procedures as
16 set forth by Article III, Division 3, of the land development code, as
17 amended. The first step in the process is submission of a Conceptual Site
18 Plan application, pursuant to Section 72-577(c)(1), of the land development
19 code.
- 20
21 4. The applicant shall cease rural event center activities until all life/safety
22 issues identified by the fire department have been met, the applicant applies
23 for an after-the-fact building permit for the barn, the special exception is
24 approved by the Volusia County Council, the final site plan is approved, and
25 a Development Order is issued.

26
27 **Member Van Dam SECONDED the motion. Motion CARRIED unanimously (6:0).**

28
29 **V-19-044** – Application of Dennis and Nancy Clark, owners, requesting a variance to
30 separate nonconforming lots on Prime Agriculture (A-1) zoned property.

31
32 Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson
33 explained that the requested variance was to separate nonconforming lots. She stated
34 that parcel A was two acres and parcel B was 5 acres which deemed neither property
35 conforming. The owner of parcel A was wishing to construct an accessory building and
36 was unable to obtain building permits. She concluded that it met all five criteria for
37 granting a variance and staff recommended approval.

38
39 Being that there were no questions of staff, the applicant was provided the floor.

40
41 Dennis and Nancy Clark, 430 Quay Assisi, New Smyrna. Mr. Clark explained to the
42 commission that they wished to construct a storage facility to the rear of their property.

43
44 Member Frank Costa asked how long they had owned the property.

45
46 Mr. Clark stated they had owned it since November of 2018.

47
48 Public Participation.

1
2 Marvin Wilkes, 430 North Samsula Drive, New Smyrna Beach. Mr. Wilkes provided a
3 record into evidence and touched on the talking points outlined in the document
4 (Evidence). He was the owner of the parcel B and was opposed to the request.

5
6 Member Frank Costa inquired if it had come up when Mr. Wilkes purchased the property
7 in 2006 that the lot was nonconforming.

8
9 Mr. Wilkes answered in the negative.

10
11 Commission Discussion.

12
13 Member Bender asked if both owners had to agree to the split for them to separate the
14 lots.

15
16 Ms. Jackson explained that they were only legitimizing something that has already been
17 this way and that it's a technicality to separate the lots.

18
19 Member Frank Costa inquired if it was strictly record keeping and if there was a primary
20 residence on parcel A.

21
22 Ms. Jackson answered affirmatively to both questions.

23
24 Chair Mills outlined that the issue was that the parcels were separated in 1972 and then
25 an administrative rezoning occurred in 1992 which made the lots nonconforming.

26
27 Member Steve Costa if a fence permit had been issued.

28
29 Ms. Jackson stated that it was unclear.

30
31 **Member Bender MOVED to APPROVE case number V-19-044, a variance to Section**
32 **72-206(1), Nonconforming lots, to separate parcel 7212-01-03-0111 from parcel**
33 **7212-01-03-0121 on Prime Agriculture (A-1) zoned property.**

34
35 **Member Young SECONDED the motion. Motion CARRIED (5:1) with Member Frank**
36 **Costa OPPOSED.**

37
38 **V-19-045** – Application of Raymond A. Biernacki, Jr., attorney for Glenda Sue Wilson and
39 Donna H. Conerly, owners, requesting a variance to separate nonconforming lots on
40 Urban Single-Family Residential (R-3) zoned property.

41
42 Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson
43 explained to the commission that the requested variance was to separate nonconforming
44 lots. She stated that the properties were zoned R-3 which required at least 10,000 square
45 feet of area and an 85-foot lot width, with Parcel A conforming and Parcel B not
46 conforming. She went on to explain that the lots were under common ownership due to
47 an inheritance situation and that the owners would like the opportunity to sell them

1 separately. She concluded by stating that the request met all five of the criteria for
2 granting the variance and recommended approval with a condition.

3
4 Being that there were no questions of staff, the applicant was provided the floor.

5
6 Ray Biernacki, 2667 Enterprise Road, Orange City, FL. Mr. Biernacki highlighted that
7 both properties had single family homes on them with the most recent having been built
8 in 1988.

9
10 Public Participation. None.

11
12 Commission Discussion. None.

13
14 **Member Van Dam MOVED to APPROVE case number V-19-045, a variance to**
15 **Section 72-206(1) nonconforming lots, to separate parcel 7010-00-00-0160 from**
16 **parcel 7010-00-00-0161 on Urban Single-Family Residential (R-3) zoned property,**
17 **subject to the following staff-recommended condition:**

- 18
19 **1. A lot line adjustment is required through the subdivision exemption process**
20 **for Parcel 7010-00-00-0160.**

21
22 **Member Young SECONDED the motion. Motion CARRIED unanimously (6:0).**

23
24 *The Commission recessed for fifteen minutes 11:35 a.m. to 11:50 a.m.*

25
26 **V-19-046** – Application of Marshall and Donna McKendree, owners, requesting a variance
27 to the cumulative area of accessory structures and the minimum yard requirements for
28 an accessory structure on Rural Residential (RR) zoned property.

29
30 Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson
31 explained to the commission that the requested variances were requested to construct a
32 carport. She stated that the first variance was to reduce the side yard setback from 15
33 feet to eight feet, a variance to reduce the rear yard setback from 40 feet to 27 feet, and
34 a variance to the cumulative area for accessory structures on a property less than one
35 acres in size, the first two being necessary due to the fact that the proposed building was
36 to be over 500 square feet in size. The applicants proposed to construct the carport
37 in front of an existing accessory structure that was in line with the current driveway. She
38 explained that they proposed to have it there so they would not have to remove the current
39 landscaping and because they had a fence that prevented them from pulling the vehicles
40 to be covered anywhere else on the property. Ms. Jackson went on to go over the five
41 criteria for granting a variance and explained which variances failed to meet the criteria,
42 provided a recommendation of denial, and provided conditions suggested by staff for
43 consideration if the commission approved the request.

44
45 Being that there were no further questions of staff, the applicant was provided the floor.
46

1 Marshall McKendree, 2430 Whooping Crane Drive, DeLeon Springs. Mr. McKendree had
2 no further comment.

3

4 Public Participation. None.

5

6 Commission Discussion.

7

8 Member Van Dam commented that she would rather grant a variance that remove trees.

9

10 **Member Van Dam MOVED to APPROVE case number V-19-046, a variance to reduce**
11 **the minimum side yard from 15 feet to 8 feet for an accessory structure exceeding**
12 **500 square feet in size, a variance to reduce the minimum rear yard from 40 feet to**
13 **27 feet for an accessory structure exceeding 500 square feet in size and a variance**
14 **to Section 72.277(d) regulating the cumulative area of accessory structures on**
15 **properties less than one-acre in size on Rural Residential (RR) zoned property,**
16 **subject to the following staff-recommended conditions;**

17

18 **1. The variance is limited to the proposed carport, as depicted on the variance**
19 **site plan. The variance shall not apply to any future accessory structures.**

20

21 **2. The property owner or authorized agent(s) shall obtain and complete all**
22 **required building permits and inspections for the proposed carport.**

23

24 **Member Young SECONDED the motion. Motion CARRIED unanimously (6:0)**

25

26 **V-19-048** – Application of Nikki Holland, agent for Russell T. Meyer, Joshua R. Meyer,
27 and Jesse J. Meyer, owners, requesting a variance to the minimum yard requirements on
28 Urban Single-Family Residential (R-3) zoned property.

29

30 Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson
31 explained to the commission that the requested variance was to reduce the front yard
32 setback from 30 feet to 20 feet. She went on to say that the lot was a corner lot that
33 wasn't a corner lot when it was originally platted, as Ridge Boulevard did not go through.
34 She explained that the request failed to meet two of the five criteria, but staff
35 recommended conditions for consideration should the commission approve the variance.

36

37 Member Frank Costa asked if the variance request affected both front yards and wether
38 or not they needed to indicate that in the motion.

39

40 Ms. Jackson stated that the variance would only affect one of the front yards and that it
41 would be subject to the approved variance site plan.

42

43 Being that there were no further questions of staff, the applicant was provided the floor.

44

45 Nikki Holland, 3994 North Spring Garden Avenue, DeLand, Florida. Ms. Holland spoke
46 to the fact that a 21-foot home would be extremely narrow and that she tried to design

1 the lot multiple ways before settling on the proposed design that would be the least
2 impactful to the surrounding properties. She indicated that the entire setback wasn't
3 necessary for the whole length of the home, on only one piece of it.

4
5 Kyla Holland, 2820 Tayton Trace, New Smyrna Beach, Florida. Ms. Holland explained
6 that when they originally requested the variance, it was for a variable line as they hadn't
7 had plans drawn up yet. She said they wanted to be congruent with the surrounding
8 homes and match the curb appeal.

9
10 Public Participation. None.

11
12 Commission Discussion. None.

13
14 **Member Frank Costa MOVED to APPROVE case number V-19-048, a variance to**
15 **reduce the minimum required front yard from 30 feet to 20 feet on Urban Single-**
16 **Family Residential (R-3) zoned property, subect to the following staff-**
17 **recommended conditions;**

- 18
19 **1. The variance is limited to the proposed encroachments of the single-family**
20 **dwelling, as depicted on the variance site plan. The variance shall not apply**
21 **to any future accessory structures.**
22
23 **2. The property owner or authorized agent(s) shall obtain and complete all**
24 **required building permits and inspections for the proposed single-family**
25 **dwelling.**

26
27 **Member Van Dam SECONDED the motion. Motion CARRIED unanimously (6:0).**

28
29 **V-19-049** – Application of Robert and Samantha Brannen, agents for Middle River
30 Management, Inc., owner, requesting a variance to separate nonconforming lots on Prime
31 Agriculture (A-1) zoned property.

32
33 Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson
34 explained to the commission that the requested variance was to separate nonconforming
35 lots in order to obtain building permits. Ms. Jackson explained that the request met all
36 five criteria for granting the variance and provided a technical condition with a
37 recommendation of approval.

38
39 Being that there were no questions of staff, the applicant was provided the floor.

40
41 Robert and Samantha Brannen, 6186 Quail Ridge Drive, Port Orange, Florida. Mr.
42 Brannen explained to the commission that they wanted to build their family a home near
43 their school. He explained that they weren't looking to clear off any more of the trees that
44 were on the property other than an acre to build the home.

45
46 Public Participation. None.

1
2 Commission Discussion. None.

3
4 **Member Van Dam MOVED to APPROVE case number V-19-049, a variance to**
5 **Section 72-206(1) nonconforming lots, to separate parcel 9537-01-00-0020 from**
6 **parcel 9537-02-0-0140 on Prime Agriculture (A-1) zoned property, subject to the**
7 **following staff-recommended conditions;**

- 8
9 **1. A lot combination is required through the Subdivision Exemption process**
10 **for parcel 9537-01-00-0020.**

11
12 **Member Bender SECONDED the motion. Motion CARRIED unanimously (6:0).**

13
14 **V-19-050** – Application of Kenneth R. Lewis, owner, requesting a variance to the minimum
15 yard requirements on Rural Residential (RR) zoned property.

16
17 Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson
18 explained to the commission that the requested variance was to reduce the front yard
19 setback to accommodate a garage addition. She explained the lot was a conforming
20 corner lot and by expanding their garage, they would remove one of the driveways and
21 align the remainder to allow for a side loading garage that would encroach five feet into
22 the 40-foot setback. She concluded that the request met three of the five criteria for
23 granting a variance, therefore staff recommended denial. Conditions were provided by
24 staff for consideration should the commission choose to approve the request.

25
26 Being that there were no questions of staff, the applicant was provided the floor.

27
28 Kenneth Lewis, 209 Riverbend Road, Ormond Beach. Mr. Lewis explained that he
29 understood they didn't meet all of the criteria, but they were trying to avoid the well and
30 leaching field. He stated that they proposed a side entrance garage for safety purposes
31 with traffic as well.

32
33 Public Participation. None.

34
35 Commission Discussion. None.

36
37 **Member Young MOVED to APPROVE case number V-19-050, a variance to reduce**
38 **the east front yard setback from 40 feet to 35 feet for an attached garage on Rural**
39 **Residential (RR) zoned property, subject to the following staff-recommended**
40 **conditions;**

- 41
42 **1. The proposed building addition shall be located in the area as indicated on**
43 **the site plan submitted to county staff on March 27, 2019.**
44
45 **2. The applicant shall obtain and complete all required building and**
46 **development permits and inspections for the proposed building addition.**

1
2 **Member Frank Costa SECONDED the motion. Motion CARRIED unanimously (6:0).**

3
4 **V-19-051** – Application of Michael Wojtuniak, agent for Timothy Ross, owner, requesting
5 a variance to the minimum yard requirements on Prime Agriculture (A-1) zoned property.

6
7 Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson
8 explained to the commission that the request included two variances to the side yard
9 setbacks for an accessory structure. She explained that the request came forward due
10 to a code compliance case, as improvements had been made to the property without
11 permits. The original building had been a barn and was converted into a home. She
12 pointed out the setback issues on the site plan for the carports that were attached. She
13 concluded by explaining to the commission what criteria the variances met, and staff
14 recommended denial, but provided conditions for consideration should the commission
15 decide to approve the requests.

16
17 Member Frank Costa asked for clarification on the variances being requested due to code
18 compliance issues.

19
20 Ms. Jackson answered in the affirmative. She explained that there was a complaint filed
21 and when the inspection happened, they found work that had been done without permits.

22
23 Chair Mills asked if they had submitted for the permits, would they not need the variances.

24
25 Ms. Jackson clarified that if the applicant had submitted for permits, it would have been
26 kicked to zoning staff for review and it would have been outlined at that time for them to
27 either move the carport over or obtain a variance prior to versus after the fact.

28
29 Being that there were no further questions of staff, the applicant was provided the floor.

30
31 Michael Wojtuniak, 311 South Woodland Boulevard, DeLand, (Evidence) presented a
32 powerpoint presentation. Mr. Wojtuniak stated that the conversion happened without a
33 permit and it was a mistake. He went on to explain that most of the adjoining properties
34 were smaller than the required 10 acres. He explained that the owner believed that he
35 had a 25 foot setback indicative of an A-4 zoning classification since he had two and a
36 half acres, not the required 40. Mr. Wojtuniak indicated that they had no problem with
37 relocating the carport, but that the primary structure had been built and well thought out.
38 He went on to explain that it is considered a corner lot due to a paper road that had been
39 platted but not built.

40
41 Member Frank Costa asked if he no longer needed variance two.

42
43 Mr. Wojtuniak stated that yes, they would either take the carport down or move it to the
44 other side.

45

1 Member Van Dam clarified if they would be withdrawing the request for the second
2 variance.

3
4 Mr. Wojtuniak answered in the affirmative and indicated that they would remove or move
5 the carport.

6
7 Public Participation. None.

8
9 Commission Discussion.

10
11 Member Van Dam asked legal if variance two needed to be in the motion.

12
13 Michael Rodriguez, Assistant County Attorney, replied that it would not be necessary as
14 the applicant withdrew the request.

15
16 **Member Van Dam MOVED to APPROVE case number V-19-051, a variance to reduce
17 the north side yard from the required 50 feet to 27.66 feet for a principal structure
18 and accepted withdrawal of a request for a variance to reduce the north side yard
19 from the required 50 feet to 35 feet for an accessory structure (metal carport),
20 subject to the following staff-recommended conditions;**

- 21
- 22 **1. The variance is limited to a principal structure with a north side yard of 27.66**
23 **feet, at its closest point, as shown on the variance site plan dated April 16,**
24 **2019, attached as part of the application. The depicted principal structure**
25 **footprint subject to this variance application shall not be enlarged,**
26 **increased, or extended further to occupy any greater area or other part of the**
27 **side yard, or other required yards of the property as described by the Zoning**
28 **Ordinance of the Volusia County, Florida, without approval of a separate**
29 **variance and building permits and inspections. Any proposed addition to**
30 **the principal structure, such as a garage or carport, open or enclosed porch,**
31 **deck or other similar appurtenances, shall comply with all applicable**
32 **minimum yard requirements of the A-1 zoning classification.**
 - 33
 - 34 **2. The applicant shall remove or relocate the westernmost carport accessory**
35 **structure to comply with the minimum yard requirements of the A-1 zoning**
36 **classification.**
 - 37
 - 38 **3. The applicant shall apply and obtain all required building and development**
39 **permits, and inspections for the principal structure and all accessory**
40 **structures within six months of the letter of rendition.**

41
42 **Member Young SECONDED the motion. Motion CARRIED unanimously (6:0).**

43
44 **V-19-054** - Application of Martin and Beulah Chandler, owners, requesting a variance to
45 the minimum yard requirements on Rural Residential (RR) zoned property.

46

1 Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson
2 explained to the commission that the requested variance was to reduce the rear yard
3 setback from 40 feet to 25 feet, to accommodate an accessory structure over 500 square
4 feet. She pointed out the aerial depicting the tree coverage and explained that they
5 wanted to utilize an area that was already cleared. She concluded by stating that the
6 request failed to meet two of the five criteria for granting a variance, to which staff
7 recommended denial. Conditions were provided by staff for consideration should the
8 commission choose to approve the request.

9
10 Being that there were no questions of staff, the applicant was provided the floor.

11
12 Martin Chandler, 2230 Depot Street, DeLand. Mr. Chandler state that the subject
13 property was bought for his son to retire to and he explained that due to where the well is
14 located, that is why they are proposing to located the garage building where they are. He
15 concluded that he had no objection to the conditions.

16
17 Public Participation. None.

18
19 Commission Discussion. None.

20
21 **Member Bender MOVED to APPROVE case number V-19-054, a variance to reduce**
22 **the rear yard setback from 40 feet to 25 feet for an accessory structure on Rural**
23 **Residential (RR) zoned property, subject to the following staff recommended**
24 **conditions;**

- 25
26 **1. The proposed garage shall not encroach any further into the rear yard**
27 **setback than what is indicated on the site plan attached to this staff report.**
28
29 **2. The applicant shall obtain and complete all required building and**
30 **development permits and inspections for the proposed garage.**

31
32 **Member Frank Costa SECONDED the motion. Motion CARRIED unanimously (6:0).**

33
34 **Z-19-040** – Application of the County of Volusia, requesting an administrative rezoning of
35 approximately 1,940 properties from the Urban Single-Family Residential (R-4) zoning
36 classification to the Urban Single-Family Residential (R-5) zoning classification on
37 property located east of John Anderson Drive, west of Ocean Shore Boulevard, north of
38 Sandcastle Drive and south of Michael Crotty Bicentennial Park.

39
40 Susan Jackson, AICP, Senior Planning Manager, presented the staff report by describing
41 the location of the 1,940 properties that are being proposed to be rezoned. She explained
42 that this was an area that the 2015/16 Smart Growth Policy Committee recommended for
43 rezoning and county council directed to staff to process administratively. The area has a
44 future land use designation of Urban Medium Intensity (UMI) and both the R-4 and R-5
45 zoning classification are compatible. She provided that the parcels colored yellow on the
46 map displayed on page 19 of the staff report are the only properties in the area that

1 comply with the current R-4 zoning classification. The intent of this rezoning is to
2 streamline permitting for the properties that do not comply with the R-4 but will be more
3 compatible with the R-5 zoning classification. She explained the process that
4 nonconforming lots have to go through in order to apply for building permits for home
5 improvements. Because it is so onerous, it is suspected that improvements either do not
6 get done or are done without permits. The majority of the properties will conform to the
7 standards of R-5 and will not be required to go through the process as a nonconforming
8 lot. She went on to explain the history of the zoning classifications of this area (page 5
9 and 6 of the staff report). In 1953, the area was being developed and subdivided and
10 there wasn't any particular zoning. Then the area was administratively rezoned to R-1 in
11 1961, and then in 1980 the area was administratively rezoned to R-4 with the uniform
12 zoning ordinance. A workshop was held on April 2, 2019, at Grace Lutheran Baptist
13 Church. There were about eighty citizens in attendance. Staff fielded several questions
14 from the audience such as: would annexation be required, would the homes be required
15 to connect to central sewer service, will the rezoning allow more development, and if a
16 developer was behind the rezoning request. There are no proposals for annexation, there
17 are no central sewer services being installed or required, the rezoning will not allow
18 additional development because the area is already fully developed, and there is no
19 developer behind this request. This administrative rezoning is to assist the property
20 owners with the permitting process and potentially make home sales easier. Home sales
21 are jeopardized when a lender does their due diligence on a lot and finds that it is
22 nonconforming and may not be able to be rebuilt if destroyed. The uses that are different
23 between R-4 and R-5 is that cluster subdivisions are not an allowed use in R-5 and the
24 dimensional requirements of R-5 are more compatible with the development pattern of
25 the area (pages 8 and 9 of the staff report). Staff finds there would be de minimus impacts
26 environmentally, or to natural resources or government services as the area is already
27 developed. There may be a positive economic affect as this rezoning will streamline
28 permitting and may facilitate home improvements. Staff recommends the commission
29 forward case Z-19-040 to the county council with a recommendation of approval.

30
31 Member Young commented that the area has been waiting for this rezoning for a long
32 time.

33
34 Member Van Dam asked for clarification that this rezoning will not allow further
35 development.

36
37 Ms. Jackson replied that the area is already developed and very few properties exceed
38 the minimum lot requirements of the R-5 zoning classification. They would not be able to
39 be subdivided into more lots because they are not big enough.

40
41 Member Van Dam asked if staff was saying that the homes are already at five-foot side
42 yards. She commented that ten feet between houses seemed small.

43
44 Ms. Jackson replied that the majority of the homes were already at five not the eight feet
45 as required by the current R-4 zoning classification. She asked for the Lot Size
46 Comparison Powerpoint (Evidence 1) to be shown. She explained that staff used an

1 existing property survey and spoke to the differences between the R-4 and R-5 zoning
2 classification as related to the property. She explained that the staff report included
3 graphics per subdivision as to which are conforming and the differences between the R-
4 4 and R-5 standards.

5
6 Member Bender asked that staff notify the commission of such workshops in the future
7 so they could attend.

8
9 Ms. Jackson replied that Member Van Dam had also asked staff to do so and that in the
10 future staff would notify the commission.

11
12 Chair Mills reminded the commission that the sunshine laws would be in effect for such
13 workshops.

14
15 There was no public participation.

16
17 **Member Young MOVED to FORWARD case Z-19-040 to Council with**
18 **recommendation of APPROVAL. Member Bender SECONDED the motion. Motion**
19 **CARRIED unanimously (6:0).**

20 **OLD BUSINESS**

21
22 **V-19-024** - Application of Benjamin B. Hedrick, agent for Laura J. Ortiz, owner, requesting
23 a variance to the minimum yard requirements and maximum fence height on Urban
24 Single-Family Residential (R-3) zoned property.

25
26 Applicant not present. The commission moved to continue the case for 30 days.

27
28 **Member Young MOVED to CONTINUE case number V-19-024, requesting a variance**
29 **to Section 27-277(1) and (2) to reduce the front yard from the required 30 feet to 11**
30 **feet in order to construct a two-car carport with an enclosed shed and a variance**
31 **to Section 72-282(2) to the maximum fence height in a front yard from the allowed**
32 **four feet to six feet on Urban Single-Family Residential (R-3) zoned property, to the**
33 **June 20, 2019 hearing.**

34
35 **Member Van Dam SECONDED the motion. Motion CARRIED unanimously (6:0).**

36

37 **OTHER PUBLIC ITEMS**

38
39 None.

40 **STAFF ITEMS**

41
42 None.

1 **STAFF COMMENTS**

2
3 None.

4 **COMMISSION COMMENTS**

5
6 Member Frank Costa asked legal and staff to consider coinciding the 75db, instead of
7 the subjectivity of it being audible to the neighbors for the rural event centers.

8
9 Michael Rodriguez replied that staff can take it under advisement.

10
11 Member Frank Costa explained that the noise issue would come up again and again
12 and it would be easier to have a limit to follow.

13
14 Member Van Dam asked about the definition of adjoining.

15
16 Michael Rodriguez explained that the adjoining property had to touch the subject
17 property. He indicated that staff would look into clarifying the language.

18
19 Member Steve Costa asked if a code enforcement officer would be working on a
20 Saturday evening.

21
22 Michael Rodriguez stated that they would need to call law enforcement to file a noise
23 complaint and submit that to code enforcement.

24
25 Member Bender stated that if someone bought the adjoining property, and the previous
26 owner didn't have a problem with it, but now the new person did, it could cause the
27 business owner a lot of money.

28
29 Michael Rodriguez stated that they would be bound to the noise ordinance and could
30 apply to any property.

31
32 Member Young stated that it might be better if they had a definitive.

33
34 Michael Rodriguez indicated staff would look into it.

35
36 Chair Mills asked at what point would he be able to shorten public participation by
37 preventing an appeal. He stated he didn't want them to feel as if they haven't been
38 heard.

39
40 Michael Rodriguez stated the public does not have the same rights at the applicant and
41 if the information is no longer relevant to the subject matter, it can be asked for them to
42 wrap it up.

43
44 Chair Mills asked about ID cards to access the chambers for the members.

45
46 Susan Jackson indicated that staff would implore into what would be possible.

47

1 Member Steve Costa inquired if the timer could be utilized and could give extra time if it
2 was relevant.

3

4 Chair Mills stated that if something hadn't been presented at the PLDRC, it couldn't be
5 heard at council.

6

7 Member Young indicated that through presentations, more information could be
8 provided without the timer.

9

10 Member Frank Costa stated it would be better if they utilized the timer and added extra
11 time after.

12

13 Michael Rodriguez indicated that it was up to the chair whether or not they wanted to
14 utilize the timer, but that it wasn't necessary.

15

16 **PRESS AND CITIZEN COMMENTS**

17

18 None.

19 **ADJOURNMENT**

20

21 Having no further comments from the public, staff, or commissioners, Vice-Chair Mills
22 thanked everyone and adjourned the meeting at 1:14 p.m.