

SPEAKER:

If you would please join me for the Pledge of Allegiance.

(Pledge of Allegiance).

SPEAKER:

Good morning everyone. I would like to thank everyone for joining us this morning. Those of you in the chambers and also we are doing this by webinar also. You'll see some of our commissioners are doing this virtually. We have two of them today. And anyone else joining us on the webinar. Mrs. Summers, can I please have a rollcall?

(roll call).

SPEAKER:

Steve Costa? He does not appear to be online.

(roll call).

SPEAKER:

Thank you Miss Summers. I will be asking all motions today to be voted on to be done by rollcall because we do have some of our commissioners at home with us virtually. Now we do have minutes from August 20, 2020 this morning. Is there any discussion on the minutes?

SPEAKER:

I moved to approve the minutes as submitted.

SPEAKER:

I will second i.

SPEAKER:

Thank you. We have a motion from Ms. Shelley and a second from Mr. Young. Miss Summers, can I have a rollcall?

(roll call).

SPEAKER:

Motion passes unanimous.

SPEAKER:

Thank you. For those of you joining us through the webinar after staff has presented your case and the commissioners have had an opportunity to ask any questions of staff, Miss Summers will engage your mics at that time. I ask you state your name and address for the record. This will give you an

opportunity to add any pertinent information and answer any questions the commissioner may have about your case. We may have request to speak for or against the cases heard today. For those of you joining us in the chambers, I will ask you to come forward so you can be recognized. For those of you joining us through the webinar, miss Summers will engage your mics. You can be recognized. I will like you to state your name and address for the record and we will be limiting all of the public participation to a three minute time limit. After the comment has been heard, I will give the applicant an opportunity to address any concerns the speakers have an answer any questions the commissioners may have. At this time I would like to turn it over to Mr. Soria for legal comments.

SPEAKER:

decisions by this body on special exception cases and cases which rezone real property from one classification to another pursuant to the Zoning Ordinance are recommendations only to the county council and do not constitute a final hearing. New evidence may be introduced at the county council public hearing. Decisions on variances made by this body constitute final action, subject to an appeal to the county council. What this means is that no new evidence may be presented at the time of the county council public hearing on the appeal. An aggrieved party that appeals such a decision is confined to the record made before this body. Hearings by this body on rezonings, special exceptions, and variances are quasi-judicial in nature meaning that this body is acting more like a court and must take into account all oral, written or demonstrative evidence presented. Their decisions on these cases must be based on competent, substantial evidence in the record. Competent, substantial evidence has been defined as that evidence a reasonable mind would accept to support a conclusion. Thank you Mr. chair.

SPEAKER:

While we are on legal comments I would like the commission to disclose any ex parte communications either before or during the public hearing on which a vote is to be taken on any quasijudicial matter. I would like to make note that Mr. Steve Costa has joined us and I would start with him.

(roll call)

we don't have any items to be continued or withdrawn this morning so we will start out with our new business if I can get Mr. Bender to read the first case.

SPEAKER:

Application of Norman and Amanda Hale, owners, requesting a variance to the minimum yard requirements on Urban Single-Family Residential (R-4) zoned property.

SPEAKER:

The location is at the southwest corner of the intersection of the Hamas Circle and Surfside Drive in the Ormond Beach area. The property zoned (R-4). The property - - the background for this case, the property contains a single-family home constructed in the late 1960s. In 1986, previous owners added a 249 square-foot Florida room and it appears it was without a permit in 2016, hurricane Matthew destroyed the Florida room. And in 2018, the current owners purchased the property and they recently inquired about constructing a new Florida room over the existing slab. As you can see on the

photograph, there is the old brick wall or foundation wall for the Florida room still on sites. When they inquired about doing that, they found building over the existing slab, because it didn't have a previous permit, that it actually exceeded the setbacks. When the house was originally built, the area zoned R-1, and at that time, the setbacks were different. The front was 20, the side was six and the rear yard was 20 percent of the lot depths. If you look at the graphic on the left, you'll see portions of the house exceed the current setbacks. The yellow indicates the current setbacks. The main body of the house is a lawful, nonconforming structure. But the Florida room was constructed, and even at that time it didn't meet the rear yard setbacks of the 20 percent. And so, it is not considered a lawful, nonconforming structure and therefore, in order for the current owners to rebuild that Florida room, the variance is required. If the variance is approved it will - - into the rear yard. When we review the criteria we find we have to recommend denial as the variance fails to meet four of the five criteria. There's nothing peculiar about the land or structure that would necessitate the variance, however, it is recognized a similar sized structure had been there. Existed for 30 years. However, there's no evidence of a building permit and therefore the structure cannot be considered a lawful, nonconforming structure. The proposed location is a direct choice of the applicants. It's their desire to use the existing slab. Literal interpretation of the code would not deprive the applicants of being - - it would deprive the applicants of being able to reconstruct the Florida room in the same location that it's been for the past 30 years. However, because it appears it was never properly permitted, it is not a common right to exceed the prescribed setbacks. Again, it's not the minimum variance to make minimal use of the land. Technically, they could make it a little smaller. Although they do say the existing French doors, to be able to open those doors and have meaningful, usable space, that they need that. However, you can redesign the doors to the sliding doors or a different design in order to make reasonable use of the property. We do find it does meet criteria five, however. It existed for 30 years without any issues. Should the PLDRC find the applicant provided substantial evidence to support approval of the variance, we have provided one condition for your consideration.

SPEAKER:

Thank you Mrs. Jackson. Any questions for staff? Okay. I've got a question Miss Jackson. Why wasn't the front yard and side yard considered in this variance to clear up that that nonuse?

SPEAKER:

It's a lawful nonconforming structure and it doesn't require the variances.

SPEAKER:

That answers my question. Is the applicant present? If you want to come forward, please. If I can get you to state your name and address for the record please.

SPEAKER:

Amanda Hale, 20 Surfside Drive, Ormond Beach. (Inaudible).

SPEAKER:

You heard the staff report on this. Is there anything you'd like to add?

SPEAKER:

Yes. We've gone back after we got the report from the county. You can barely see it in this photo but there's a vertical cleaning along the edge of the back wall. We went out and actually dug out in that area. And we find - - first of all, there are two different sets of bricks there. Two structures that joined at that point. We find the bricks closest to you in the photo actually have been cut back from what appears to have been the original slab in the area. This is telling us a structure preexisted - - the one that appeared to be modified from something, to something, in 1986. Not only has something been there for 30 years, it's been there for much longer than that. I think that's something to indicate - - it doesn't indicate about permits. That I can't speak to. But there's an even longer history.

SPEAKER:

Okay. Anything else? Okay, let me see if anyone has questions of you. Do we have any questions for the applicant? Miss Shelley.

SPEAKER:

It's just a point of clarification only. I'm making some assumptions based on the report. You are strictly talking about the concrete which does not include the wood decking. And then with the wood decking remain?

SPEAKER:

No, that would be removed.

SPEAKER:

Great. Thank you.

SPEAKER:

For clarity, we are not proposing enclosing the entire area. We are talking a reduced area.

SPEAKER:

Yes, thank you.

SPEAKER:

But using most of that existing slab.

SPEAKER:

Any other questions for the applicant? All right, you may have a seat. Do we have any public participation on this Miss Summers?

SPEAKER:

No sir.

SPEAKER:

We will close the floor to public participation and open it up for commission discussion or a motion.

SPEAKER:

I'd be willing to make a motion. I was going to make a motion but - -

SPEAKER:

I just had a comment that everything looks normal. I went out there and that looks normal for the neighborhood. Their buildings are close by and that setbacks would not be a problem. There are some in the neighborhood that look similar to it. That's just a comment I have.

SPEAKER:

Okay, thank you Mr. Young.

SPEAKER:

I'd like to make a motion for approval subject to staff,

SPEAKER:

I will second that.

SPEAKER:

Motion from miss Shelley to approve V-21-001 subject to staff recommendation.

(roll call).

SPEAKER:

Motion passes unanimous.

SPEAKER:

Now we will move to the next case.

SPEAKER:

Application of Mark Rakowski, agent for William and Alicia Duke, owners, requesting a variance to separate nonconforming lots on Prime Agriculture (A-1) zoned property.

SPEAKER:

Thank you Mr. Bender.

SPEAKER:

The property is zoned A-1 and it requires a 10 acre lot minimum size. Parcel a, which is the northern parcel, that's parcel 0041, is five acres in size and is nonconforming. Parcel B is 10.7 acres and that one is conforming. The background history is between 1999-2003, a mobile home was placed on parcel A. in 2003, the home was placed on parcel B. the owners purchased parcel B and they are the applicants for this case. In 2017, the applicants purchased parcel A. Apparently, there were tenants on that parcel that were severe nuisance. In order to protect themselves and their property, they decided they needed to purchase that property and evict the tenants in order to resell the property and rid themselves of that nuisance. So they purchased the property. But when they went to deal with the house, they found it was contaminated and it required demolition. So when they came into the permit,

getting a mobile home on that property, they found out it was a nonconforming parcel and the prior ownership - - in order to achieve obtaining a permit for that property, they needed to have a variance to separate the lots. In reviewing the criteria, we find it needs all five of the criteria for granting a variance and therefore recommend approval. Happy to answer any questions.

SPEAKER:

Pink you Miss Jackson. Do you have any questions from staff? Okay. Hearing none, is the applicant present?

SPEAKER:

Mark Rakowski, 1141 Eugenia Boulevard, New Smyrna Beach. - - They didn't realize the neighbors to the north were drug manufacturers, illicit drug manufacturers and dealers. Had all kinds of problems with them so what kind of made their lives not so great. They kept calling the sheriff. They said were just going to buy the property and then we will fix it up and sell the property. That was the first part of their problem. Then they came to the county and they said no. They said once you bought it kind of becomes one piece of property. They met with city staff and they thought they needed help so they hired me to help them out with it. We applied for the variance and I appreciate the staff recommendation. I think the Dukes, all they want to do is go on with their lives and live happily ever after. We just ask that you follow staff recommendation and granting the variance.

SPEAKER:

Okay. Thank you sir. Any questions for the applicant? Hearing none. Do we have any public participation on this Miss Summers?

SPEAKER:

I received an email this morning from Julian Swan. But it didn't have information in it and there is no one on the line.

SPEAKER:

At this time I will close for public participation and open it up for commission discussion or a motion.

SPEAKER:

I will be glad to make a motion to approve case V-21-002.

SPEAKER:

I will second that.

SPEAKER:

Mr. Young, are you seconding that? I have a motion to approve V-21-002. I've got a second from Jay Young. Any discussion? Hearing none, I will ask for a roll call.

SPEAKER:

(roll call) Motion passes unanimous.

SPEAKER:

Mr. Bender, next case sir.

SPEAKER:

Owner requesting a rezoning of the heavy commercial B-5 classification to the general commercial B-4 zoning classification.

SPEAKER:

It's located on the south side of Florida Avenue, about 280 feet east of the intersection with U.S. highway 1792. If you can see over here, can you see my cursor? No.

SPEAKER:

I can.

SPEAKER:

Let me see if I can do this. Now you can. So this lot is right here and actually, it's comprised of three lots. The two Eastern lots are zoned B-4 anti-Western lot is zoned B-5. The house has been there for quite a long time. The people that have purchased the property want to move there swim school there and they want to put a pool in the rear yard. In order not to deal with internal setbacks, they're just asking to have a unified zoning classification and they picked B-4. B-4 and B-5 both allow - - it's simply to create unified zoning and the three lots will be combined into one parcel. When we review the request we find it meets all the criteria for a rezoning. It's consistent with the comp plan. It's not likely to have any greater impact on natural resources. The house is already there and it's not likely to have an impact on the economy or value of the area. It's a mixed area of commercial and residential use in this whole area. Its impact on governmental services will be minimus and we don't find it to be injurious to the health, safety and welfare to the public. With that, staff recommends the board forward the application to the County Counsel with final action, with a recommendation of approval. Happy to answer any questions.

SPEAKER:

Thank you Miss Jackson. Any questions for staff? Hearing none, is the applicant present? Good morning. You've heard the staff report. If you state your name and address for the record.

SPEAKER:

I am Rebecca Puh. My address is - - (Inaudible), but the property address is 140 Florida Avenue.

SPEAKER:

You mentioned the property was 140 East? Should we add East? On here it just states 140 Florida Avenue.

SPEAKER:

Okay. If we don't have any other comments or questions for you. If you have a seat, I will see if we

have public participation. Do we have any public participation for this case? All right. Hearing known, we will close the floor to public participation and open for commission discussion or a motion. Does the need to be east or west on that address?

SPEAKER:

We will confirm the address and make sure that's correct.

SPEAKER:

Thank you.

SPEAKER:

I will make a motion on this that we approve with no conditions. And sent to the County commission with the recommendation of approval.

SPEAKER:

Thank you Mr. Young. Thank you Miss Shelley for the second. I have a motion to forward this rezoning application case Z-21003. Any discussion on the motion? Hearing none, I will ask Miss Jackson to do a phone call.

SPEAKER:

(roll call) Motion passes unanimous.

SPEAKER:

Thank you Miss Summers. Mr. Jeffrey Bender, next case please.

SPEAKER:

Application of Ed and Donna Hitchner, owners, requesting a variance to the cumulative area of accessory structures on Urban Single-Family Residential (R-5) zoned property.

SPEAKER:

Miss Jackson, can I get the staff report on this one?

SPEAKER:

Yes sir. The location of the property is on the east side of San Jose Boulevard, approximately 200 feet north of its intersection with Aragon Street in the Daytona Beach area. R-5 Requires a lot area of - - and the property is - - it is a nonconforming lot. So the parcel contains 1140 square foot home constructed in about 1954. It also contains 166 square foot shed and a pool that was just recently constructed in 2020. The applicants are requesting to build a 19 foot by 24 foot aluminum carport roof structure over the full. That equals 456 square feet. The reason for the roof structure versus your typical screen enclosure is that there's medical reasons within the family that require people to be not in direct sunlight. The structure will be open on all sides. A typical carport with the support poles approximately every four feet but it will not be an enclosed structure. Assessor restructures less than 500 square feet, which this is. Require a minimum setback of five feet from both the side and the rear yards. And this structure will meet that it is proposed that five fee on the side and 5.75 feet on the rear.



In the residential zoning classifications, the cumulative area of assessor restructures is limited to 50 percent of the primary structure. With the existing home at 1140 square feet, it would allow up to 570 square feet of structure. The proposed pool cover is 456 square feet. The shed is 166 square feet for a total of 622. There requesting a variance to allow an additional 52 square feet of assessor restructures. I'd like to make sure we note that a typical screen enclosure does not count toward the cumulative requirement. So if it was a screen enclosure, they would be allowed to do this without a variance. I'd also like to point out there's no record of building permits for the shed and there's apparently a fence - - you can see on the left-hand side that it's off their actual property line. These items, the applicant is aware. They need to be permitted and the fence needs to either be removed or relocated onto the applicants property. So when we review the actual variance request, we have to recommend denial as we find it fails to meet four of the five criteria. It doesn't meet criteria 1-4. There's nothing peculiar about the land for the structure that would necessitate the variance. We recognize it may be medically necessary for the applicants family, but it's not a special circumstance associated with the land or the structure. And the need for the variance due to the desires and needs of the applicant due to medical conditions, it's again not acutely or to the property or the structure. Little interpretation would deprive the applicants of being able to shaded the pool with the proposed structure. And maintain the existing shed. However, it's not a common right to exceed the cumulative area of assessor restructures allowed in a residential zoning district. I want to point out, the applicants came in with a larger structure in the beginning they have worked with staff considerably to reduce the size of the structure to reduce the number of variances being requested. But nevertheless, it still not the minimum variance to make reasonable use of the land. The structure could either be shrunk or the shed could be shrunk as well in order to get down 52 more square feet. And the variance would be eliminated. We do find it meets criteria for. We don't find it to be injurious to the area. The neighboring property as you see on the aerial photograph in front of you. There's a big garage that seems to have been built pretty close to the property line. Plus there's a sense in the rear as well. That would be the area most impacted and so we don't feel building the assessor restructure in this location would be injurious to the area. With that, I am happy to answer any questions.

SPEAKER:

Thank you Mr. Jackson. Mr. Young, did you have any questions?

SPEAKER:

Not right now.

SPEAKER:

Any others? Okay. Is the applicant present? Would you like to come forward sir? If I can get your name and address for the record sir.

SPEAKER:

1209 San Jose Boulevard, Daytona Beach

SPEAKER:

You've heard the staff report, anything to add to that?

SPEAKER:

No. Just needed the shade for my wife. I didn't think it would be a problem to add a carport. I didn't know I needed a permit.

SPEAKER:

All right. Let's see if anyone has questions of you? I don't hear any so we will see if we have any public participation in this. Miss Summers, do we have any public participation?

SPEAKER:

Hearing none, we will open it up for commission discussion or a motion.

SPEAKER:

I'd like to make a comment, chairman. This is near my neighborhood. I've been by that house 1 million times. I don't see any problem with it either. It's common to the neighborhood. So I would be inclined to go with it.

SPEAKER:

All right.

SPEAKER:

In fact if no one has any combat, I will make a motion.

SPEAKER:

Go ahead Jay, I will accept it.

SPEAKER:

I make a motion we approve V-21-005 with staff conditions. .

SPEAKER:

Any discussion on the motion?

SPEAKER:

I just have a question. When I was looking at the conditions again. Just a point of clarification. The pool roof structure shall not be in close without first obtaining an additional variance. How would that not change - - you said if it was an enclosed structure now, he wouldn't need a variance.

SPEAKER:

No, if it was a screen enclosure. It doesn't count towards cumulative accessory structures.

SPEAKER:

(Inaudible).

SPEAKER:

In all honesty, I think we should scratch with screen.

SPEAKER:

Okay, Mr. Young, did you hear that conversation? Are you willing to strike the screen out of condition number two.

SPEAKER:

Just put enclosed solid wall.

SPEAKER:

Thank you.

SPEAKER:

Thank you for pointing that out.

SPEAKER:

We are removing with the screen out of that sentence for the staff recommendations. All right. So that's in your favor. I guess you don't have comment on that? All right.

SPEAKER:

(Inaudible).

SPEAKER:

All right sir, thank you. Just wanted you to be aware we are taking that out of the staff recommended conditions. We do have a motion to approve V-21-005 and we also have a second from Mr. Bender. Any other discussion? Hearing none, can I get a roll call please?

SPEAKER:

(roll call).

SPEAKER:

Motion passes unanimous.

SPEAKER:

Mr. Bender.

SPEAKER:

Application of James and Marissa Reilly, owners, requesting variances to separate nonconforming lots and to the minimum yard requirements on Rural Agriculture (A-2) zoned property.

SPEAKER:

There are three variances associated with this case. The first one is 0450 and possible 0460. It's the top parcels from the bottom parcel. Also, this will be on the northern two parcels variance to reduce the Westside yard from 50 feet to 27.4 feet for an existing garage and variance three is to reduce the North front yard from 50 feet to 10.70 for a covered accessory structure. The property is located at 790

Rasley Road in the new Smyrna Beach area. It has a 200 foot lot with. Parcel B is 1.25 acres in size and 180 4C in lot width. The background history for the nonconforming lots, here's the graphic that shows the two parcels. It's comprised of two adjacent mods. Since 1999, it has contained a single-family home. A detached garage and the covered structure. Prior to 2006, the property included parcel B to the south. In 2006, parcel B was sold to somebody else and in 2007, parcel A was sold to a second party. And in -- the current owners purchased parcel A. in terms of setbacks, if you look on the left side of the screen, you'll see the two yellow structures. Those have existed. This is in an abundance of caution to deal with the additional issues on this property so they don't get hung up any further in their permitting. These have existed since 1999. So this property is subject to two platted right away easements along the west and north side. In this zoning classification, it requires a 50 foot setback. The garage for variance to is only 24.7 feet from the easement line. Because the setbacks measure from the easement rather than the property line. They are just on paper. The request is to reduce - - it would be the Westside yard from 50 feet to 27.4 feet for the existing garage even though it's 52.4 feet from the actual property line. In variance three, it's 10.7 feet from the actual easement or right-of-way line. But it's 35 feet from the actual property line. It's these two sides were considered side yards instead of front yards, they would meet setbacks. When we reviewed these requests for variances, we find they meet all five criteria for granting said variance and therefore recommend approval subject to conditions.

SPEAKER:

Thank you Mr. Jackson. Do we have any questions for staff? Hearing none, is the applicant present? State your name and address for the record.

SPEAKER:

Marissa O'Reilly.

SPEAKER:

You've heard the staff report. Any questions?

SPEAKER:

No.

SPEAKER:

Any questions for the applicant? Hearing none. You didn't receive any of these conditions?

SPEAKER:

No.

SPEAKER:

Would you like to look at them real quick.

SPEAKER:

When you say conditions, do you mean something I'm going to have to do if it is approved?

SPEAKER:

Yes.

SPEAKER:

Okay.

SPEAKER:

Maybe I can explain them a little bit. So your parcel. Let me go back to the drawing. I'm hoping this was discussed with you at the pre-application meeting. Your parcel is comprised of two parcels and you need to combine them.

SPEAKER:

Right. For the pool permit.

SPEAKER:

So that's condition number one. Condition two and three just a the variances apply to those particular structures and that they cannot be enlarged to increase or encroach further without approval of another variance.

SPEAKER:

Okay, that's fine. Sorry.

SPEAKER:

That's okay. Just want to make sure you're familiar with the recommendations. You can have a seat and we will see if we have any public participation? Do we have public participation this summer's?

SPEAKER:

No sir.

SPEAKER:

Hearing none, we will close the floor to public participation. Any questions from the commission?

SPEAKER:

I will move for v-21-006 subject to staff conditions.

SPEAKER:

I will second.

SPEAKER:

I've got a motion from Ms. Shelley with staff conditions and a second from Mr. Jay Young. Any discussion on the motion? Having none. Can I get a roll call please this summer's?

SPEAKER:

(roll call) Motion passes unanimous.

SPEAKER:

Okay, that takes care of the new business we have today. Do we have any old business Ms. Jackson? Hearing none. Do we have any other public items.

SPEAKER:

No sir.

SPEAKER:

Staff items?

SPEAKER:

No sir.

SPEAKER:

Just a reminder this is the very last meeting that we can hold completely virtually. The governor's executive order that allowed virtual public meetings or a waiver of the quorum requirement to be physically present expires November 1. The governor has issued a memorandum stating there will be no further extensions. So after November 1, we will need at least four members physically present here. The ability to participate virtually is limited by some Attorney General opinions to extraordinary conditions such as illness or physical disability. So a mere scheduling conflict or the fact a member doesn't want to attend, does not qualify as an extraordinary circumstance. Those extraordinary circumstances must be taken on a case-by-case basis and be determined by the board in question. My office will be writing kind of a memo and procedures in examining this situation closely. We will issue those to the staff liaisons for guidance for the members on how to conduct themselves. But our advice right now is if you can attend physically, do so. There's not going to be a lot of leeway from the Attorney General in expanding extraordinary conditions.

SPEAKER:

Thank you Mr. Soria. Just to clarify, can you still participate through virtual as long as we have a quorum?

SPEAKER:

As long as you have a quorum physically present. The Attorney General has of the member not physically there may participate so long as the reason is due to extraordinary circumstances such as illness or physical disability. Mere scheduling conflicts does not rise to the level of allowing a member to participate in the virtual manner.

SPEAKER:

Because I know in the past, County Counsel meetings, they've had commissioners participate virtually and their vote counted and they were able to participate as long as there was a quorum. If we have a quorum in the diocese, if Mr. Young were to stay home to participate virtually, would his vote count?

SPEAKER:

He can so long as the reason for him not being here physically is due to an extraordinary circumstance. Not just a scheduling conflict. You need an actual physical quorum present and the member who is going to participate virtually, needs to do so because of some extraordinary condition.

SPEAKER:

So the answer is no.

SPEAKER:

I have no problem being present.

SPEAKER:

Okay Mr. Young. Okay, any other staff items or comments?

SPEAKER:

No sir.

SPEAKER:

Commission comments? I don't have any. Mr. Frank Costa, do you have your mic on?

SPEAKER:

Yes sir. I'd like to thank Susan and her staff are getting these packets out to us early and complete. It's been very helpful preparing for these meetings. Thank you.

SPEAKER:

I agree. I'm really thankful to Yolanda. Thank you.

SPEAKER:

Okay. All right. And I'd like to make a comment here on the parking. How come we are not having our parking lot the last two months? Last month and this month

SPEAKER:

We will have to check into that. With everything being virtual, they may have just forgotten to continue doing that, so we will find out.

SPEAKER:

Okay. Because it wasn't done this month or last month. I didn't know if something had changed.

SPEAKER:

Okay.

SPEAKER:

Any other commission comments? Hearing none. Okay. Press and citizen comments. Hearing none. This meeting is adjourned.