

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
November 19, 2020**

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 Frank T. Bruno, Jr. County Council Chambers of the Thomas C. Kelly Administration Center, 123 West Indiana Avenue, Room 204, DeLand, Florida. On roll call, the following members answered present, to wit:

COMMISSION PRESENT:

RONNIE MILLS, Chair – Physically
JEFFREY BENDER, Vice-Chair – Physically (Late Arrival)
WANDA VAN DAM, Secretary - Physically
JAY YOUNG - Physically
STEVE COSTA - Physically
FRANK COSTA - Physically
EDITH SHELLEY - Physically

STAFF PRESENT:

PAOLO SORIA, Senior Assistant County Attorney - Physically
SCOTT ASHLEY, AICP, Senior Zoning Manager - Physically
SUSAN JACKSON, AICP, Senior Planning Manager - Physically
PATRICIA SMITH, Planner III - Physically
DARREN EBERSOLE, Planner II - Physically
TREVOR BEDFORD, Planner II - Physically
JESSICA R. FLOWERS, Staff Assistant II - Virtually
YOLANDA SOMERS, Staff Assistant II - Physically

PLEDGE OF ALLEGIANCE

Chair Ronnie Mills led the pledge of allegiance.

APPROVAL OF MINUTES

October 15, 2020

Nothing Discussed.

Member Edith Shelley MOVED to APPROVE the October 15, 2020 minutes. Member Jay Young SECONDED the motion. Motion CARRIED unanimously (6:0). Member Jeffrey Bender was not present.

LEGAL COMMENT

Paolo Soria, Senior Assistant County Attorney, provided legal comment.

Disclosure of Ex Parte Communications

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

None.

PUBLIC HEARING ON APPLICATIONS

ITEMS TO BE CONTINUED OR WITHDRAWN

Items to be continued or withdrawn will not be discussed unless requested by a commission member, the applicant, or any other affected party.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

PUD-20-068 – Application of Robert A. Merrell, III, attorney for Scott Vanacore, agent for Halifax Plantation Section M, LLC, and Halifax Plantation Section O, LLC, owners, requesting a major amendment to Resolution 89-99 to amend certain dimensional requirement and lot classifications.

Susan Jackson, Senior Planning Manager, provided that staff received an email requesting a continuance to the December 17, 2020 hearing. This would allow the applicant time to continue to work with staff on the park land issue.

Member Edith Shelley MOVED to CONTINUE case PUD-20-068 to the December 17, 2020 hearing. Member Wanda Van Dam SECONDED the motion. Motion CARRIED unanimously (6:0). Member Jeffrey Bender was not present.

NEW BUSINESS

PUD-20-012 – Application of Michael Wojtuniak, agent for Highway Evangelistic Ministries of the Bible Baptist Church, Incorporated, owner, requesting a rezoning from the Urban Single-Family Residential (R-3) and Rural Residential (RR) classifications to the Planned Unit Development (PUD) zoning classification.

Patricia Smith, AICP, Planner III, presented the staff report. Ms. Smith explained to the commission that the applicant was requesting to rezone the subject property from R-3 and RR to a BPUD in order to make improvements to the existing worship center, remove two single-family

homes from the property, and to build a larger worship hall. The application went through two technical staff reviews in order to work out an agreeable plan with staff. Additional regulations for setbacks, landscaping, signage, and non-residential design standards were applicable because the subject property was in the county's thoroughfare overlay zone and the airport overlay zone for the DeLand Airport. The goal of the PUD was to help the facility blend with the neighborhood. The development agreement limited the site to a 30 percent lot coverage with a maximum building height of 35 feet. Landscape buffers would be 40 feet wide on the thoroughfare road, 25 feet on Glenwood Road, and 20 feet along the remaining property boundaries with a 50-foot setback for all of the buildings. Potable water and central sewer would be provided by the City of DeLand. The main entrance would be from State Road 15A with a second entrance from Glenwood Road. The applicant was working with Traffic Engineering staff to determine the appropriate traffic improvements. There were 59 parking spaces, however a total of 112 spaces were proposed which met the requirements of the zoning ordinance. Ms. Smith concluded that the applicant would need to go through the final site plan process should the PUD be approved. Staff recommended forwarding the request to county council for final action with a recommendation of approval, subject to staff recommended conditions.

Chair Ronnie Mills inquired about the surrounding businesses and how it would impact them since there was a bar next to the subject property and that type of use could only be within so many feet of a church facility.

Paolo Soria, Senior Assistant County Attorney, provided that in this instance, the bar would be considered a legal nonconforming use so they would be allowed to continue, however any expansion would require a variance for the alcohol provision. The county would not shut down a business just because a new business established itself next to it.

Chair Ronnie Mills inquired if the bar sold, would they be able to continue to operate as a bar.

Mr. Soria provided he would have to look into the permitting to see what happens if the ownership changes.

Member Edith Shelley inquired if the existing owner of the bar would need to come in and have their business declared an existing nonconforming use.

Mr. Soria provided it would happen automatically.

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

Michael Wojtuniak, EPI, 311 South Woodland Boulevard, DeLand. Mr. Wojtuniak inquired what business was being referred to as he was only aware of a restaurant being adjacent to the subject property.

Chair Ronnie Mills provided it was on the property on the north side of the subject property.

Mr. Wojtuniak stated that he was not aware of it, but the distance would be hundreds of feet away from the building to the strip mall on that property.

Chair Ronnie Mills provided that they would not be restricted, the adjoining business would be restricted.

Mr. Wojtuniak had nothing else to add.

Member Wanda Van Dam inquired about the traffic count and wanted to know if activities would happen every day of the week or on the weekends.

Mr. Wojtuniak provided that it would predominately be on the weekends but there might be some activities throughout the week.

Public Participation. None.

Commission Discussion.

Member Edith Shelley expressed concern for the bar and restaurant's property values based on what the usage was. She inquired if there was a limit for how long the use had to be abandoned before they could not come back to have that same use. She was fine with the church project but wanted to make sure rights were protected for the adjoining parcels.

Member Frank Costa concurred with Member Edith Shelley and provided that they would turn a conforming property into a legal nonconforming property by approving the request.

Chair Ronnie Mills stated that was his concern too. He did not have an issue with approving the church as long as they could protect the properties around it.

Mr. Soria clarified that there was already a church there and that they were only proposing to expand the worship center. The distance from the church to the bar was not changing and they were both already existing.

Member Edith Shelley just pointed out that the board did not seem to have a problem with the request but they wanted it on record so that there would not be any issues for either property owner.

Mr. Soria stated that the church was in existence as a religious establishment. Approving the expansion of the church would not affect the restaurant or bar as the distance from each establishment would be the same and their rights would be retained.

Chair Ronnie Mills inquired about the church originally being approved and the bar being there, was it something that was considered at the time.

Mr. Soria provided it was unclear.

Chair Ronnie Mills commented that he was not against the church expanding, he was simply concerned with protecting the rights of other businesses that were already in existence.

Mr. Soria provided the uses had not yet been stopped.

Chair Ronnie Mills inquired if it could be written into the PUD to protect those uses.

Mr. Soria stated that they could forward the recommendation to county council to recognize that there was an existing alcohol establishment and that the applicant was not objecting to that. It is just recognition of the existing surrounding development on the date the PUD would be approved.

Mr. Wojtuniak provided that they did not have an issue with that being added as a condition; however, he felt that the other business would more so want that as a condition because they wouldn't be infringing on someone else's property.

Chair Ronnie Mills stated the applicant would definitely want that if they had been there first. He clarified that there were restrictions that a bar could not operate within so many feet of a house of worship. The commission did not want to infringe on their right to operate as they were there before the church was established.

Mr. Soria stated that the language was just a clarification that takes a snapshot in time of what the development around the subject property was when the PUD was approved. It said that the county council and the PLDRC acknowledged that the surrounding development was in place.

Member Edith Shelley inquired if that prevented the surrounding existing businesses from expanding their footprint.

Mr. Soria provided that it would not change the legal relationship between the bar and the church as they were both already there. Whatever expansion restrictions were on the bar already existed because the church already existed. Approving the PUD would not prevent them from expanding.

Member Edith Shelley clarified if they were allowed to expand prior to the church being there, they would still be allowed to expand after the PUD was approved.

Mr. Soria answered in the affirmative and stated that in kind if they were not allowed to expand prior to the church being there, they would not be able to if the PUD was approved. The decision to approve the PUD would not affect the existing legal relationship between the church and bar since they were both existing.

Chair Ronnie Mills provided that he would be in favor of adding language to the county council with the motion that the surrounding properties are able to retain their uses.

Ms. Jackson provided she was unsure how that could be a condition as that affected a different property but stated it could be included in the minutes.

Mr. Soria concurred with Ms. Jackson and stated they could not affect the rights of the bar property as they were dealing with the church property.

Chair Ronnie Mills stated they were not affecting it, they were trying to protect it.

Member Jay Young inquired if the restriction was from property line to property line or building to building.

Ms. Jackson provided she believed it was property line to property line.

Member Steve Costa stated if it were an issue of small business owners and property rights, they should make a recommendation to amend the ordinance and not handle it within this particular case. The ordinance should be modified to protect small businesses all across the county with existing uses.

Chair Ronnie Mills concurred with Member Steve Costa.

Member Steve Costa felt that approving the expansion would not infringe on the bar owner's property rights and tying it to that PUD would then make it dependent on the church. If the bar owner wanted to protect his property rights, he could go to the county and create his own PUD.

Member Edith Shelley concurred and thanked Chair Ronnie Mills for being familiar with the surrounding area so that this matter could be brought to light and felt it was important to highlight

it to the county council and have it brought to them, as Member Steve Costa suggested, to be looked at all across the county.

Member Edith Shelley MOVED to forward case number PUD-20-012, a rezoning from the Urban Single-Family Residential (R-3) and Rural Residential (RR) classifications to the Planned Unit Development (PUD) zoning classification, to the county council with a recommendation of approval, subject to the following conditions:

- 1. Approval is subject to the staff-recommended order and resolution.**
- 2. The property owner or authorized agent(s) shall apply for and obtain final site plan approval through the Land Development office.**

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

Member Jeffrey Bender not present.

V-21-008 – Application of Jacob S. Brush and Linda A. Garofolo-Brush, owners, requesting variances to the minimum yard requirements, maximum dock size and cumulative size of accessory structures on Urban Single-Family Residential (R-4) zoned property.

Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson explained to the commission that the applicant was requesting after-the-fact variances for several existing structures on their property. The parcel was developed with a single-family residence and several accessory structures including a detached garage with an attached carport, an enclosed pool, a boat dock, and two sheds. The applicant purchased the property in August of 2018 and began to make improvements to the property without permits. The detached garage and attached carport were considered one structure which was over 500-square-foot and that meant it had to meet the principle structure setbacks. The carport was setback approximately four feet from the front property line and half a foot from the side property line. If the variance was not approved and the carport was removed, the garage would be considered a lawful nonconforming structure as it was acknowledged on the tax rolls at the same time as the house even though it would be 24.3 feet from the property line. Between 2019 and 2020, a vinyl shed and a metal canopy structure were placed on the property by the applicants. The shed could not be moved as it would interfere with the air conditioning unit and the metal canopy was constructed in order to provide cover over a table on the pool deck. Both encroached into the side yard setbacks and needed variances to obtain permits. Ms. Jackson went on to explain that a six-foot high fence was erected in the front yard to act as a screen for the parking area. The maximum fence height in a front yard was four feet so it also needed a variance. A dock was constructed in 1973 to which a permit could not be located. The dock was 756 square feet and did not meet setbacks. In 2019, the applicants added an 80-square-foot platform and received a complaint from code enforcement for the unpermitted addition. The original dock would need a setback variance and it would also need a variance to increase the size to 836 square feet for the addition. Ms. Jackson explained that the accessory structures cumulatively measured to 1,538 square feet. The maximum size of all of the accessory structures could not exceed 50 percent of the principle structure, which in this case, they could not exceed 1,311 square feet. A variance would be needed to increase the maximum cumulative area of accessory structures from 50 percent to 58.7 percent. Ms. Jackson concluded that staff recommended approval of variance 7 as it met all five criteria for granting the variance; however, staff recommended denial of variances 1-6, 8, and 9 as they failed to meet all of the criteria for granting the variances. Conditions were provided for consideration if competent and substantial evidence was presented to support approval of the request.

Member Frank Costa inquired about the letters of support from the neighbors and if there were any neighbors against.

Ms. Jackson answered in the negative.

Member Wanda Van Dam inquired about the carport and wanted to know how close it was to the edge of the pavement and if it hindered the neighbors from being able to get in and out of their property.

Ms. Jackson referred to a photo and provided that she did not believe that it interfered with the adjacent neighbors' ability to get in or out of their property.

Member Wanda Van Dam expressed concern over it being a line of sight issue.

Ms. Jackson provided it was 18 feet based on the survey to be able to back out.

Chair Ronnie Mills inquired as to why the variances were brought forward.

Ms. Jackson provided it was a complaint for the expansion of the dock.

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

Jacob Brush, 2289 River Ridge Road, DeLand. Mr. Brush stated that the majority of the variances being requested were in regards to structures that were on the property prior to his ownership. He provided letters from his immediate neighbors that stated they did not have any issues with the requests.

Ms. Jackson provided an explanation of the proposed conditions to the applicant.

Public Participation.

Michael Asher, 2291 River Ridge Road, DeLand. Mr. Asher provided a letter of support for the requests and did not have anything to add.

Commission Discussion. None.

Member Frank Costa MOVED to approve the following variances for case number V-21-008;

Variance 1: A variance to reduce the front yard setback from the required 25 feet to four feet for an existing garage with an attached carport; and,

Variance 2: A variance to reduce the side yard setback from the required eight feet to 0.5 feet for an existing carport; and,

Variance 3: A variance to Section 72-286(2) to reduce the minimum setback of a parking space from five feet to 0.5 feet for an existing driveway located under an existing carport; and,

Variance 4: A variance to reduce the side yard setback from the required five feet to four feet for an existing vinyl shed; and,

Variance 5: A variance to reduce the side yard setback from the required five feet to 0.7

feet for an existing metal canopy; and,

Variance 6: A variance to increase the maximum front yard fence height from four feet to six feet for an existing wood fence; and,

Variance 7: A variance to reduce the side yard setback for an existing dock from the required 15 feet to 2.5 feet; and,

Variance 8: A variance to increase the maximum dock size from 750 square feet to 836 square feet; and,

Variance 9: A variance to increase the maximum cumulative size of accessory structures from 50 percent to 58.7 percent on Urban Single-Family Residential (R-4) zoned property, subject to the following conditions:

1. The variances are limited to the size and location of the structures shown on the variance site plan. Any enlargement or alteration that is not consistent with the site plan shall require approval of a separate variance application.
2. If any accessory structure identified in the variance site plan attached to this report is damaged in excess of 50% of its assessed value, as assessed by the Property Appraiser, any reconstruction of the structure shall thereafter comply with the applicable requirements of the zoning ordinance, or obtain approval for a new variance.
3. The property owner or authorized agent(s) shall obtain and complete all required building permits and inspections for the existing, unpermitted accessory structures within 90 days of rendition of the variance determination.

Member Edith Shelley SECONDED the motion. Motion CARRIED unanimously (6:0). Member Jeffrey Bender not present.

Member Jeffrey Bender arrived.

S-21-009 – Application of Elizabeth Sullivan, owner, requesting a special exception for a bed and breakfast on Urban Single-Family Residential (R-9) zoned property.

Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson explained to the commission that the applicant was requesting a special exception for a bed and breakfast to allow short-term rentals. The property owner was cited for conducting short-term rentals in July of 2020. A rental period less than one month is not permitted in the R-9 zoning classification; however, it may be permitted with an approved special exception for a Bed and Breakfast. The property owner occupies the second story as her residence and the bottom floor would be utilized as guest accommodations. The owner desires to host one guest or family at a time. The guest suite included a bedroom, living area, study, and a bathroom. At the time the owner was cited, a full kitchen was included in the guest accommodations, which has since been removed since. According to the applicant, the guest suite has been utilized for short-term rentals since 2017 and it has been reserved approximately 45 times. There had not been complaints from the neighbors. The survey indicated that there was a small wood dock, a small vinyl shed, and a fence on the property that had not been permitted. The owner was aware of those items and committed to either obtaining the proper permits, or removing them from the property. Ms. Jackson provided that the request met all of the special exception criteria for a bed and breakfast, and recommended forwarding the request to county council with a recommendation of approval,

subject to staff recommended conditions. She concluded that public comment was provided via emails expressing concern over the special exception and if there would be a limitation on the number of guests allowed, and one in opposition. Staff had not expressed a limitation on the number of guests; however, condition one limited it to one guest accommodation at a time, meaning there would be one reservation at a time which could potentially be a family. If the board would like to add an additional condition to restrict the amount of people, they could.

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

Elizabeth Sullivan, 889 Bullhead Avenue, New Smyrna Beach. Ms. Sullivan stated that she had a conversation with her neighbors and they had expressed concern over the term bed and breakfast as opposed to short term rental. She explained that their neighborhood was very quiet and she attracts a very certain type of guest. She only took six people at a time and did not have an issue with adding a condition for that as there is maybe two couples and two small children at the most. She did not allow guests to have other guests or parties. Ms. Sullivan explained that the rental income had allowed her to make necessary improvements after hurricane Matthew and the loss of her husband and their business. She wished to come into compliance so everyone was comfortable. She stated that the neighbors were worried about the home selling and the next owners turning the property into an investment home with two different units. She stated it was safer for it to be a bed and breakfast as the likelihood of it being utilized as a non-homesteaded property was high.

Member Frank Costa inquired about how she advertised the property.

Ms. Sullivan stated that since she found out she was out of compliance, she changed her advertisements on AirBnB and Vrbo to require a 30-day minimum.

Member Frank Costa inquired what the average number of nights stay was over the 45 bookings she had.

Ms. Sullivan provided it was on average of four to five days. During the winter it was typically rented out for two months at a time by the same person. She prefers a long term rental but it is mostly empty in the summer which is when a family from Orlando might stay for a few nights.

Chair Ronnie Mills stated that Ms. Sullivan referenced that she had not had any complaints from the neighbors; however, a letter dated July 20, 2020 stated that one of her guests had trespassed and went up onto a neighbor's porch. He wanted to know how she handled that.

Ms. Sullivan stated she was unaware that a formal complaint had been made. The neighbor had sent her a video of someone walking their dog in their front yard. By Ms. Sullivan's assumption, it was an issue of confusion as it was dark outside and there were not a lot of lights due to the sea turtles. She apologized to the neighbor and now makes sure she is very clear with guests to make sure it does not happen again. She stated it had not happened since.

Chair Ronnie Mills clarified that the letter stated they were on their front porch.

Ms. Sullivan stated that they did not even have a porch, it was more of a landing. The guest was walking their dog, there was no reason for them to be on the neighbor's porch.

Public Participation.

Derek Griffith, 5750 South Atlantic Avenue, New Smyrna Beach. Mr. Griffith stated that he summarized his concerns in an email to the commission. Mr. Griffith stated that the Bethune

Beach area was a private secluded area that did not have high-rises or motels. He believed it created a safety issue for the neighborhood.

Chair Ronnie Mills inquired if he would be more amiable to the request if they limited it to six to eight guests at a time.

Mr. Griffiths stated that the definition of bed and breakfast was that the guests actually stay in the house with the host which created a heightened sense of caution for who you are letting into your home. The way Ms. Sullivan had it set up currently, she did not even have to interact with the guests if she did not wish to at all.

Kevin Hogan, 875 Catfish Avenue, New Smyrna Beach. Mr. Hogan stated that he was concerned with this being out of character for the neighborhood. He had an issue with his neighbor doing the same thing, renting out the bottom of his home, and since there was no type of background check or anything, the guests were a nuisance. He has been woken up early in the mornings by fisherman going past his house to the canal. He concluded that he was concerned that approving this would set a precedent for the rest of the neighborhood.

Maurice Moore, 6320 Engram Road, New Smyrna Beach. Mr. Moore stated that he concurred with Mr. Hogan. They have had issues with short-term rentals for years in the area. Calling it a bed and breakfast was just covering up the truth that it is a short term rental. There was no continuity and it would propagate the problem that has been going on for a long time. Mr. Moore concluded that several people in the neighborhood would like to put the issue to rest as it is a residential area, not commercial.

Brian Fisher, 888 Bonita Avenue, New Smyrna Beach. Mr. Fisher provided that he submitted a letter via email into the record. His primary concern was whether or not it ran with the land or if it was just a special exception for Ms. Sullivan's short term rentals. His other concern was for how many people would be allowed to stay at a time.

Chair Ronnie Mills inquired if the amount of people were limited, would there be an issue.

Mr. Fisher provided that limiting the amount of people would make him more comfortable with it; however, he was concerned about the special exception running with the land. He stated he had no issues with Ms. Sullivan and how she was operating, but expressed concerns with the property changing hands and how someone else might utilize it. He wondered what measures would be in place for the adjoining property owners if a problem arose once it came under new ownership.

Wendy Rowan, 6395 Engram Road, New Smyrna Beach. Ms. Rowan expressed concern over this being approved setting a precedent for the rest of the area. There has been issues with short-term rentals for a while in the Bethune Beach area and if this one is approved, a flood of applications for bed and breakfasts will come in for the area. Ms. Rowan stated that since the kitchen was taken out, how can anyone want to stay for an extended time. She is concerned that it will be put back in after the fact.

Robert Brown, 890 Bullhead Avenue, New Smyrna Beach. Mr. Brown sent a letter via email with a few questions in regards to the business being transferred on resale, would there be a minimum night stay, would pets be allowed, and would breakfast be subject to health department inspection.

Ms. Jackson provided that staff would not be prohibiting anything in regards to pets. That would be up to the proprietor of the bed and breakfast. She did not believe the applicant would be serving breakfast and that was not a requirement that it had to be. Ms. Jackson touched on the

concern over the kitchen and explained that a microwave, coffee pot, and small refrigerator were allowed; however, a stove was not permitted. Staff did not have a condition for there to be a limit on the amount of people able to stay, but as discussed earlier, it could be added.

Mr. Brown clarified that there would not be a requirement for a health department inspection for breakfast.

Ms. Jackson stated that if she was preparing and serving breakfast, then it would be subject to a health department inspection. She went on to point out that if the rental was for 30 days or more, it was permitted in residential classifications. Short-term rentals that were less than 30 days were not allowed unless it was a hotel or motel use or an approved bed and breakfast.

Member Edith Shelley asked for clarification on if the rentals that were for a month or more, they were permitted with or without the commission's approval.

Ms. Jackson answered in the affirmative.

Member Edith Shelley stated that she stayed at bed and breakfasts a lot and they were typically in residential areas. She was stunned to hear that breakfast was not included. Generally bed and breakfasts were ran by the property owners and they definitely interacted with the guests.

Chair Ronnie Mills directed the conversation back to Mr. Brown's inquiry about the special exception staying with Ms. Sullivan's ownership or if it went with the property.

Ms. Jackson clarified that the special exception would run with the land and directed a question to legal staff, asking if it could be conditioned that the special exception extinguish upon transfer of the property.

Mr. Soria provided that it could be conditioned that way as long as it was property identified what the ownership currently was. The use would extinguish upon conveyance to another entity.

Mr. Brown inquired if it was transferrable or not.

Chair Ronnie Mills provided it had not yet been decided on.

Mr. Brown went on to explain to the commission that a few years ago, one of the tenants of Ms. Sullivan's home potentially discarded hypodermic needles on the beach, which his daughter got stuck by. This resulted in an emergency room visit and testing for six months. There was no way to trace anything because they did not know who had stayed the night before. He inquired if they could track who the renters were. It was a private residential neighborhood with one beach access and he wanted to be able to protect it.

Chair Ronnie Mills inquired how Mr. Brown knew that the needles came from Ms. Sullivan's renters.

Mr. Brown indicated that without testing, it was inconclusive. However, he was concerned that bringing in all of the different renters would cause similar issues.

Liz Fisher, 888 Bonita Avenue, New Smyrna Beach. Ms. Fisher stated that Ms. Sullivan was her neighbor and friend. She did not wish to speak against Ms. Sullivan's efforts to stay in her home as she did not have an issue with how Ms. Sullivan managed the rentals. Her concern was if the special exception transferred into someone else's hands and they allowed spring break rentals with people cramming into the rooms. She knew Ms. Sullivan would not allow that; however,

someone that owned it in the future might. She went on to say that the definition of a bed and breakfast allowed up to five dwelling units and while there were no immediate plans for expansion, a subsequent owner could expand. Ms. Fisher touched on the owner living on property and how it had not been specified. She envisioned someone living there seven months of the year, and remotely managing it from up north. She inquired if it could be conditioned that this was a homestead primary residence for the owner and that the owner is there all the time when renters are there. Ms. Fisher concluded that it was a very quiet neighborhood that had environmental issues and many people chose to live there because of the special character of the neighborhood. She desired to be cautious about how they open up to development and short-term rentals not just for the immediate moment, but for the future as well.

Chair Ronnie Mills welcomed Ms. Sullivan back to the podium to rebut the comments made by the public.

Ms. Sullivan stated that she felt similarly as they did. She understood that the use had to be abandoned for 180 days. She was not trying to sell her property. She moved there because it was quiet and had lived at the beach and on the shore her whole life. Florida is a tourist state so accommodations had to be made for that because most people cannot live at the beach full time. She never allowed more than three vehicles including her own, never allowed family reunions, and never allowed large groups. She explained that she had to apply for the bed and breakfast license with the Department of Business and Professional Regulation which stayed with her. She had to be an on-site host and live there, which she did. She did not take vacations. She greeted everyone personally, she did not have a keypad for them to use themselves. She had a security system all over the property. She spoke to the rules she had, including not allowing smokers. Moving forward, someone else could be a different host, but if they weren't homesteaded property and lived on site, they could not be a bed and breakfast. They could be an investor though and rent out the top and bottom separately. She has lost the homestead on the business portion of her home and had paid separate taxes for the past two years.

Chair Ronnie Mills inquired if the applicant had disclosures for her renters.

Ms. Sullivan answered in the affirmative and stated that both AirBnB and Vrbo had leases that the renters had to sign. She did not allow for an instant book, she had to talk to the renters before she would approve their booking. She did not know who the public participants down the road were that had the issues with the fisherman, the only issue she knew of was the incident with the dog for which she was very sorry for the confusion.

Chair Ronnie Mills inquired what her feeling was on limiting the occupancy.

Ms. Sullivan stated that absolutely the maximum was six people as there was only one bathroom in the unit. She had a couple that booked that desired to take their adult kids around the area as they were looking to move to the area and towards the end they had small children that the other grandparents could no longer watch so they joined, but that was really all she felt comfortable with.

Chair Ronnie Mills inquired if the ownership was in her name specifically.

Ms. Sullivan stated that the house was in her name, but the business on AirBnB and Vrbo was under a corporation for tax purposes.

Mr. Soria provided that the verbiage for the condition would be to issue the special exception to the LLC that operated the bed and breakfast and if that LLC ceased to operate it, the special exception was terminated. The caveat would be that the LLC could switch managers.

Chair Ronnie Mills inquired if they could tie it specifically to Ms. Sullivan.

Mr. Soria believed so with the LLC as the operator and Ms. Sullivan as the property owner.

Ms. Sullivan stated that she applied for the bed and breakfast with the state in her name.

Member Van Dam inquired what percent of the applicant's business was less than 30 days and how much it would impact her to not need the bed and breakfast special exception.

Ms. Sullivan stated that she needed the less than 30 day rentals for the spring and summer time when kids were out of school. She normally gets a husband and wife with two kids or an older couple without kids. The taxes each month on her home were too great to lose the income. She touched on the subject of serving breakfast and she stated she did not offer that previously for short-term rentals. The state had two different licenses for a kitchen. One was for serving and preparing which had the same requirements as a restaurant, the other would be for prepared foods. As a host, you had to serve breakfast so she proposed to use individually wrapped foods like muffins and crackers especially with the pandemic going on. Ms. Sullivan stated that she did not do this because she wanted to, it was because she had to in order to have an income and keep her home.

Commission Discussion. None.

Member Frank Costa requested the definition of a special exception.

Mr. Soria read from section 72-2 that stated that a special exception was "a use expressly so designated that would not be appropriate generally or without restriction throughout a particular zoning classification but that would not adversely affect the public health, safety, comfort, good order, appearance, convenience, morals or general welfare, if controlled in number, area, location, relation to the neighborhood, or in other appropriate respects. The term 'conditional use' is synonymous." He explained that a special exception was built into the zoning classification as a listed use, not by right. It had to go through a process to be approved. If the special exception met certain criteria outlined in the zoning ordinance and the additional conditions to any mitigations or incompatibilities, it should be approved. If it did not meet the conditions, then it should be denied.

Member Frank Costa clarified that R-9 zoning allowed for rentals without a special exception for 30 days or more.

Mr. Soria answered in the affirmative.

Member Frank Costa clarified if there was a difference between the terms bed and breakfast and short-term rental.

Mr. Soria provided that the term short-term rental was not utilized in the zoning ordinance, it was in the state statute. A bed and breakfast was a form of public lodging that did not need to meet the 30 day requirement with approval from the county council. They could have rentals less than 30 days as long as it met the criteria and was approved. A person cannot just rent out a single family home for less than 30 days if it did not meet the criteria for the bed and breakfast special exception.

Member Frank Costa inquired if there was a restriction or minimum on the duration of stay.

Mr. Soria stated there was no restriction on the frequency of rentals.

Member Frank Costa inquired if they put a restriction on the minimum number of days for the stay, how that could be policed.

Mr. Soria provided that would be difficult as we were a complaint driven county so someone would have to document and submit a complaint that a person was there for less than the required duration.

Ms. Sullivan stated that there was a way to track it as she had to pay taxes to the tourism division which were based on the length of stay. Prior to changing the requirement to a 30 day stay, she imposed a three night, four day stay minimum.

Mr. Soria provided they would not have access to that as that was protective tax information.

Member Jay Young commented that he was familiar with the area and he was reluctant to vote in favor of the request as the people that live in the area want seclusion.

Chair Ronnie Mills stated that he would normally agree with Member Jay Young; however, he saw this as a hardship for Ms. Sullivan to retain her home and pay her taxes. She was providing concessions to address the concerns of the public that were heard. She wished to keep it homeowner occupied and she would limit the special exception to her specifically, and would limit the amount of people allowed per booking to six. He commented on the frequency of people coming in or out and stated she could rent it month to month, 30 days or more, and not even need the special exception or be required to stay there while the renters were there. He felt the bed and breakfast special exception was more restrictive than what was currently allowed. He was inclined to forward the case to county council with a recommendation of approval subject to the conditions she agreed to.

Member Frank Costa concurred with Chair Ronnie Mills and went on to comment on the public's comments on not knowing who was coming or going and pointed out that you did not have to pass a background check to purchase a home much less for a short term rental and it did not sit well with him that they had thoughts of background checks to let people into the neighborhood.

Member Wanda Van Dam had concerns over the issue of setting the precedent. She did agree that in this particular situation, and with the concessions it certainly helped; however, she was worried it would open the door for others to come forward requesting the same thing.

Chair Ronnie Mills provided that everyone had a right to request it regardless. Every case was decided individually, not based on what happened before. The criteria had to be looked at for each case and he felt that Ms. Sullivan was doing this out of need, not to create a big business in the neighborhood.

Member Edith Shelley proposed to have a minimum night stay condition, which would prevent people from coming in and out on a daily basis. She also proposed signage for a maximum occupancy of six only. She went on to comment that it was important that, if they move it forward, the actual property owner be verified so there was no issue with that condition later on.

Chair Ronnie Mills clarified all of the conditions that the applicant agreed to.

Member Steve Costa inquired if they were to require a minimum night stay, how she would implement it.

Ms. Sullivan stated that she sets the calendar in AirBnb and Vrbo and if the renter tried to book for less than the required minimum, the booking would not go through. She stated that a minimum night stay of three nights and four days seemed to work for her and it helped to deter certain kinds of people.

Member Steve Costa stated that she had to live with the renters along with her neighbors.

Ms. Sullivan concurred with his statement and said it was a beautiful place to share.

Member Edith Shelley clarified if she was willing to do a minimum night stay.

Ms. Sullivan answered in the affirmative and was amicable to a three night minimum.

Member Edith Shelley referred to page three of the staff report and called out the unpermitted structures and that Ms. Sullivan committed to removing them or obtaining the proper permits.

Ms. Sullivan stated she was working with environmental for the wetlands permits that were needed, and that some of the structures were removed due to storm damage. The other structure she was working on moving to be permitted.

Chair Ronnie Mills clarified that if something were to happen to Ms. Sullivan, the special exception would cease to exist.

Ms. Sullivan answered in the affirmative and stated that if anything happened to her or she sold the property, the new owner would have to reapply with the county and to get the proper licensing.

Member Steve Costa MOVED to forward the special exception case number S-21-009, a special exception for a bed and breakfast on Urban Single-Family Residential (R-9) zoned property, to county council with a recommendation of approval, subject to the following amended conditions:

Motion Discussion.

Member Edith Shelley asked that the ownership be verified.

Mr. Soria clarified that the verbiage would be that the special exception was granted to Elizabeth Sullivan doing business as Soulvivn', LLC, and shall not be transferrable to another person, entity, or location.

- 1. Special exception approval is limited to the bed and breakfast use being limited to one guest accommodation reservation with a maximum of six guests at a time, subject to a three night minimum stay. The accommodation shall include one bedroom, one bathroom, one living area and one study for a total of 840 square feet. There shall be no kitchen facilities within the guest accommodation area.**
- 2. Lots 15, 16 and 17, Block 25, of Bethune-Volusia Beach Unit 1, shall be combined into one unified lot thru the exempt subdivision process within 90 days of rendition of approval.**
- 3. All unpermitted accessory structures, including the dock, shed and fence shall be permitted or removed from the site within 90 days of rendition of approval.**

4. **The special exception is granted to Elizabeth Sullivan doing business as Soulvivn', LLC, and shall not be transferrable to another person, entity, or location.**

Member Frank Costa SECONDED the motion. Motion CARRIED (6:1) with Member Jay Young opposed.

V-21-010 – Application of Karen Harvill, owner, requesting a variance to the minimum yard requirements on Rural Mobile Home (MH-3) zoned property.

Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson explained to the commission that the applicant was requesting a variance to reduce the south front yard from the required 50 feet to 34.45 feet for an existing accessory structure. The subject property exceeded the minimum standards for the MH-3 classification and in 1993 a single-family home was constructed on the lot. In addition to the single-family home, there was a detached garage, metal carport, and a large prefabricated building with a kennel on the subject property. Ms. Jackson went on to explain that the subject property was a corner lot which meant it had two front yards. In MH-3 zoning, accessory structures were required to meet principle structure setbacks. The applicant constructed a 1,277-square-foot accessory structure for a dog kennel without a permit and it encroached 15.55 feet into the south front yard. The applicant chose the location due to the existing tree cover and the presence of wetlands on other portions of the property. In June of 2019, a Notice of Violation was issued. Ms. Jackson concluded that staff recommended denial of the request for failure to meet one of the five criteria for granting a variance; however, conditions were provided for consideration should competent substantial evidence be provided to support the request.

Chair Ronnie Mills inquired if the kennel would be permitted if it met the setbacks.

Ms. Jackson answered in the affirmative.

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

Applicant not present.

Paolo Soria, Senior Assistant County Attorney. Mr. Soria provided that the applicant not being present did not prevent the commission from acting on the case. She waived her right to rebut or speak to the commission.

Public Participation. None.

Commission Discussion.

Member Frank Costa commented that if it was a side yard, they would not be having the issue with the setback.

Member Frank Costa MOVED to approve case number V-21-010, a variance to reduce the south front yard from the required 50 feet to 34.45 feet for an existing 1,277-square-foot accessory structure on Rural Mobile Home (MH-3) zoned property, subject to the following conditions:

- 1. The variance shall apply to the 1,277-square-foot accessory structure as depicted on the variance site plan attached to this report. Any enlargement or alteration, which increases its nonconformity shall require approval of a separate variance application.**

2. **The applicants shall obtain and complete all required building permits and inspections for the kennel, metal carport, and two concrete block structures depicted on the survey dated January 1, 2020 prepared by Layout Services, Inc. within 90 days of rendition of the PLDRC determination.**

Motion Discussion.

Member Steve Costa commented that the kennel was very nice and he would hate to see it torn down.

Member Jay Young commented that if they had come in to get a permit, they would have known the setbacks and the variance could have been avoided.

Member Edith Shelley SECONDED the motion. Motion CARRIED unanimously (7:0).

V-21-012 – Application of Jeffrey and Kathy Gonano, owners, requesting variances to the minimum yard and fence height requirements on Urban Single-Family Residential (R-9) zoned property.

Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson explained to the commission that the applicants were requesting variances to reduce the front yard setback for an existing pool and screen enclosure, to allow for a six-foot fence in a front yard, and to reduce the side yard setback for an existing shed. The subject property was a through lot with frontage on Oriole Avenue and Atlantic Avenue. Both were considered front yards and were subject to front yard setbacks of 25 feet. In 1988, a variance was approved to allow development of the lot with conditions for landscape buffers and non-vehicular access along South Atlantic Avenue. In 1989, a single-family residence was constructed with a shed and a brick walkway from South Atlantic Avenue onto the property. The applicants purchased the property in 2011 and desired to construct a pool with a screen enclosure in the front yard facing South Atlantic Avenue. Pools were not permitted to be located in a front yard within the setback and as proposed, the pool would be 10 feet from the property line. The screen enclosure would be five feet from the property line. Variances would be needed to allow the placement of the pool and screen enclosure and negate the previous variance conditions. Ms. Jackson went on to explain that the applicants desired to construct a six-foot fence along the south property line that would encroach into both of the front yards. There was an existing six-foot fence that was unpermitted and likely belonged to the neighbors. An after-the-fact permit would be required to allow an existing shed to remain two feet from the south property line. Ms. Jackson concluded that staff recommended denial of the requests for failure to meet all of the criteria for granting the variances; however, conditions were provided for consideration if competent substantial evidence be provided to support approval of the requests.

Member Wanda Van Dam inquired if there was a septic or drain field that would restrict the relocation of the pool.

Ms. Jackson provided that she believed they were on central utilities.

Member Jay Young inquired if there were any other pools in the neighborhood that were in the front of the house like this was proposed to be.

Patricia Smith, AICP, Planner III, provided that there were photos included in the staff report that showed one two parcels to the north that had one on the Oriole side.

Chair Ronnie Mills stated that there was a fence there that was six feet high already and wanted to clarify if it was the neighbors.

Ms. Jackson provided that it appeared to be the neighbor's fence due to the way it was facing, although it was unpermitted, so that was an assumption.

Chair Ronnie Mills inquired if it extended down to the area where the applicant was proposing to place their fence.

Ms. Jackson answered in the affirmative.

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

Jeff Gonano, 3913 Oriole Avenue, Port Orange. Mr. Gonano provided that the fence belonged to his neighbor. He also stated that there was a home one block away from him who had constructed a pool in the front yard along South Atlantic Avenue. He provided a letter of support from his neighbor for the record. When he purchased the home, he did not know it was considered to have two front yards.

Chair Ronnie Mills clarified which direction his home was facing.

Mr. Gonano provided that it faced towards Oriole. He went on to speak to the shed and how it was facing his neighbor's back yard as they face a different road. He did not know he needed a permit for it, but none of his neighbors had an issue.

Member Edith Shelley inquired if the applicant would be agreeable with keeping the palm trees outside of his fence.

Mr. Gonano had no issue with that. He went on to clarify that in the report it stated that he had 44 feet, but he really only had 39 feet. The further he pushed the pool towards his home, he felt it was a safety issue and he wouldn't be able to walk around the pool. He desired to construct the fence for protection so no one could get in the pool.

Member Edith Shelley commented that the existing fence was unpermitted and stated that permits were needed for just about everything.

Chair Ronnie Mills spoke to the staff recommendation of turning the pool horizontally versus vertically from the house and inquired if he could do that.

Mr. Gonano stated that he could, but he was trying to be able to enjoy as much of his backyard as he could.

Chair Ronnie Mills inquired what that space was going to be used for that was not pool area.

Mr. Gonano provided that it would be yard space.

Chair Ronnie Mills stated if the pool were horizontal, it would lessen the request for variances one and two.

Mr. Gonano stated he could work with the 25-foot range if that was a compromise the board would be willing to accept.

Ms. Jackson provided that if he kept the screen enclosure and pool within 25 feet he would not need a variance; however, there was a requirement for a certain distance between the house and the pool. She believed it was three feet, but it could have been five feet.

Chair Ronnie Mills provided he believe it was one-foot from the house per one-foot of depth of the pool. If the pool was eight feet deep, it had to be 8 feet from the home.

Member Frank Costa inquired if the applicant was on septic or sewer.

Mr. Gonano provided he was on septic and stated it was to the right of the property towards the shed. He went on to clarify that he meant if he had 25 feet to work with from the house, not from the property line. If it was from the property line, he would only have 14 feet to work with, and that would be impossible to get a pool and screen enclosure into.

Chair Ronnie Mills stated that the septic and drain field would affect the pool area too. If it were ever needed to be repaired, he would have to get a bigger one to meet the standards.

Member Wanda Van Dam clarified he could not turn the pool to reduce the amount of the variance.

Member Frank Costa commented it could be a challenge that he is not aware of yet.

Chair Ronnie Mills stated that a septic and drain field had to be five feet away from the house and the property line, plus whatever the width it was.

Ms. Jackson provided that the pool and screen enclosure could be shifted towards the other side property line, opposite of where the septic and drain field was, as it could be within five feet of that property line. He had four feet for the pool and seven feet for the screen enclosure to be able to play with and shift it.

Member Wanda Van Dam stated that he would need the same distance from the house regardless if it was horizontal or vertical and did not feel there was a reason it could not be horizontal.

Mr. Gonano stated he could turn it the other way, he was just trying to keep the pool and enclosure in line with the house and stay away from the drain field.

Chair Ronnie Mills inquired if he would still need a variance if he turned the pool.

Ms. Jackson answered in the affirmative and stated the variance request would be reduced to 14.2 feet, which she would suggest for the screen enclosure.

Chair Ronnie Mills inquired how wide the pool was.

Mr. Gonano desired to make it 12 feet wide if possible.

Chair Ronnie Mills inquired how far off the pool the screen enclosure would be.

Mr. Gonano indicated it would be five feet.

Member Frank Costa inquired if he could continue or withdraw variances one and two and move forward with voting on variances three and four.

Ms. Jackson suggested that it all be continued at the same time to avoid paying an additional application fee.

Member Frank Costa clarified if they were to be denied, he would have to wait a year before he could apply for the variances again, as opposed to continuing it, clarifying the drawings, and coming back again.

Chair Ronnie Mills inquired if it was suggested to give him 14 feet instead of the required 25 feet.

Ms. Jackson provided that the variance to 14 feet would give the applicant the ability to utilize 25 feet of his rear yard and still maintain 14 feet of the setback from South Atlantic Avenue. The existing vegetation needed to remain as it was part of the requirements for the previous variance.

Chair Ronnie Mills inquired if the applicant would be able to do what he wanted to do with that 14 feet.

Ms. Jackson indicated that without a survey or a site plan, it was undetermined and did not know if the trees would be protected.

Mr. Gonano provided that if he could have the 25 feet from his house, he would have enough room to do what he wanted to do and save the palm trees.

Chair Ronnie Mills clarified that he understood that was from his screen enclosure.

Mr. Gonano affirmed that he understood.

Ms. Jackson stated that it was critical that the trees be maintained and untouched and without a site plan there was no certain way to provide a true measurement.

Chair Ronnie Mills inquired about what would happen if he could not meet it.

Ms. Jackson stated he would have to go back further and redesign the pool to be smaller.

Mr. Gonano stated that the trees were 36 feet from his house.

Ms. Jackson clarified that the hedges were on his property and she did not know the distance from the property line.

Mr. Gonano stated that he measured himself from the house to the palm trees and it was 36 feet and he believed the hedges were partially in the right-of-way.

Ms. Jackson provided that if the conditions were that he was able to utilize 25 feet from the rear face of the home towards the South Atlantic Avenue property line, subject to the maintenance of the shrubs and trees to be maintained perpetually on the property.

Mr. Gonano provided he would agree to that.

Member Frank Costa inquired where the fence would go.

Ms. Jackson stated that was a separate issue and wanted clarification if he was proposing a fence along that property line.

Mr. Gonano provided he thought he needed to do that by code.

Ms. Jackson stated that a barrier was needed for the pool, but it did not need to be a fence as the screen enclosure would provide that. A separate variance would be needed to place a fence along that property line. He could by right, place a four foot fence along the property line without needing any type of variance.

Mr. Gonano provided he would agree to that.

Member Frank Costa stated there was a variance already being requested for a fence.

Ms. Jackson stated that the proposed fence that was being looked at for a variance was on the other property line.

Member Frank Costa provided he thought that was the neighbors' fence.

Ms. Jackson stated his neighbor did have a fence there, the applicant desired to place one right next to it. He needed the fence height variance for the portions of that fence that would go within 25 feet of both front yard property lines. Any other property line was not discussed for a fence variance.

Chair Ronnie Mills clarified if variances one and two were to be changed to 14 feet and nine feet.

Ms. Jackson provided that she would recommend putting it at 14 feet and letting the applicant figure it out from there. He could decide to not have a screen enclosure and the pool could go to the 14 feet or he could have the screen enclosure at 14 feet and reduce the size of the pool.

Chair Ronnie Mills stated that the applicant was agreeing to the 14 feet and 5 feet for the side yard.

Mr. Gonano answered in the affirmative.

Member Wanda Van Dam clarified that he desired to have a fence where there already was one.

Mr. Gonano stated he could take the fence off the table because he thought he needed it for safety reasons for the pool but if the screen enclosure took care of that, he could just put up a four foot fence later on.

Member Frank Costa inquired where he meant to put the fence.

Mr. Gonano clarified that he intended to fence in the whole yard including along South Atlantic Avenue.

Ms. Jackson inquired if he was withdrawing variance three.

Mr. Gonano answered in the affirmative.

Chair Ronnie Mills commented that if he withdrew it, he could not come back for a year.

Member Edith Shelley clarified that variance three stated to raise the fence height from four to three in the west and east front yard which would include South Atlantic Avenue. She went on to say that she did not feel comfortable voting on anything with the way everything was changing and not having a solid answer.

Mr. Gonano stated he would be happy with the 14 feet and dropping the fence variance if the commission was ok with that.

Member Jay Young asked for clarification for what was being changed.

Chair Ronnie Mills clarified that he was dropping variance three and reducing the setback request to 14 feet.

Mr. Gonano addressed the shed and stated that it was abutting the neighbor's backyard. He had never received any complaints about it and desired to keep it.

Public Participation. None.

Commission Discussion.

Member Edith Shelley provided that she would love for him to have the pool, but felt he should continue.

Member Frank Costa clarified again if this were to get denied, what would happen. He went on to say that he was dealing with issues with the septic and drain fields that he was not even aware of yet. He would hate to grant the variance and it go nowhere due to having partial knowledge.

Member Jeffrey Bender inquired what the setback would be if that were truly considered a rear yard.

Ms. Jackson clarified that the pool could be eight feet from the property line while the screen enclosure could be five feet from the property line if it were a rear yard.

Member Jeffrey Bender felt that the applicant should be able to enjoy his property with the drawing as it were now.

Member Wanda Van Dam commented that she had concerns over the amount of traffic on South Atlantic Avenue in relation to proposing a pool next to it. She was hoping to be able to turn it in order to keep it further from the roadway while still allowing him to have the pool he desired.

Member Jay Young concurred with Member Wanda Van Dam.

Member Edith Shelley provided that she agreed that she did not want to punish someone from being able to utilize their property. Her concern was over it being possibly denied and the applicant not being able to return for a year versus continuing it, hashing out the details, and bringing it back before the commission. There was confusion over what he could find and if he gets this pushed through then starts to pull permits and begin construction, he could then find out that he is not actually able to do what he is trying to do. She recommended a continuance to be able to address all of the concerns and address them as she felt everyone was supportive of him being able to enjoy his own property.

Chair Ronnie Mills provided that he was comfortable with giving him five feet; however, the palm trees would not fit within that. They could not remove the palm trees due to the previous variance. He asked for clarification from legal if they could word it to not give a specific foot but that the existing vegetation not be removed and that be the variance since the palm trees were further off the property line than five feet.

Paolo Soria, Assistant Senior County Attorney, provided that they could protect the existing vegetation by granting the variance subject to preservation of existing palm trees on site. He stated if that required an oddly shaped pool or enclosure, the applicant would have to work that out.

Chair Ronnie Mills stated that he felt the existing vegetation would help with screening from South Atlantic Avenue. He wanted to avoid having the pool or enclosure go around any of the trees. He inquired how they could word it to use the existing vegetation.

Mr. Soria provided that would be difficult to determine without a survey. You could do it from the house or from the right-of-way as they did not move. He recommended continuing the requests unless the commission felt comfortable that there was a sufficient amount of distance without running into issues during construction.

Member Edith Shelley provided she personally did not have an issue with the applicant having a six-foot fence along South Atlantic Avenue for privacy and safety for his family.

Member Jeffrey Bender inquired if a survey would be required to pull permits anyway.

Chair Ronnie Mills answered in the affirmative.

Mr. Gonano provided that he would like to continue to the next month so he could get the palm trees placed on the survey and site plan to scale so everyone was comfortable.

Member Frank Costa felt that in the long run, having it done that way would probably get him more real estate inside the fence line than what he was requesting currently. The location of the septic and drain field would be important as well since they have setbacks as well.

Member Jeffrey Bender stated that he needed to make sure that all improvements on the site would be included on the survey.

Member Edith Shelley provided it should be a site plan.

Chair Ronnie Mills stated that everything needed to be on the inside of the vegetation to protect the palm trees.

Ms. Jackson stated that staff would be willing to work out the details with the applicant. She clarified that the continuance would not go to the following month, it would go to the January 21, 2021 hearing.

Chair Ronnie Mills stated that the applicant should include the fence in his survey as well.

Mr. Soria provided that they should continue it to a date certain.

Chair Ronnie Mills asked the applicant to be sure to add the fence, pool, and screen enclosure and make sure he had enough room if the drain field had to be replaced in the future that there would be enough room for it to be replaced.

Member Frank Costa MOVED to continue case number V-21-012, requesting variances to the minimum yard and fence height requirements on Urban Single-Family Residential (R-9) zoned property, to the January 21, 2020 Planning and Land Development Regulation Commission Hearing. Member Jay Young SECONDED the motion. Motion CARRIED unanimously (7:0).

V-21-013 – Application of Joseph F. and Shirley A. Peak, agents for the Peak Family Revocable Trust, owner, requesting variances to the minimum yard requirements on Urban Single-Family Residential (R-9) zoned property.

Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson explained to the commission that the applicant was requesting variances to reduce the south side yard from five feet to 3.6 feet for a proposed deck and the north side yard from 15 feet to 1.5 feet for an existing dock. The subject property was a legal nonconforming lot and in 1990 a single-family residence, pool, and pool deck was constructed. The applicants purchased the property in September of 2019 and at the time, a staircase existed from the balcony to the pool deck which provided little space between the stairs and the pool creating a safety hazard. The applicants removed the staircase and now wished to construct a new one along the side of the home for additional access to the second floor. Ms. Jackson explained that an unenclosed staircase could encroach into a required yard by up to three and a half feet so the proposed staircase did not need a variance as it encroached 3.4 feet. However, due to the slope of the lot, the staircase could not extend entirely to the ground and would need a raised platform in order to connect to the pool deck. The applicant wished to extend the pool deck to be even with the edge of the proposed staircase to provide a landing for it. The applicable setback for the deck extension was five feet from the property line and it was proposed to encroach 1.4 feet. Ms. Jackson went on to explain that during the review of the request, it was discovered that the existing dock was built without permits. It was constructed in 1993 and was only 1.5 feet from the north property line due to the angle it was constructed in. From looking at aerial photographs of the area, it appeared that other docks in the area were constructed in a similar manner. Ms. Jackson concluded that staff recommended denial of the request to extend the deck as it failed to meet three of the five criteria for granting a variance, and approval of the request for the setback from the dock as it successfully met all five criteria for granting the variance. Conditions were provided for consideration should competent substantial evidence be presented to support approval of both requests.

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

Joseph Peak, 6120 Turtlemound Road, New Smyrna Beach. Mr. Peak referred to page 16 of the staff report and spoke to the photographs provided. He explained to the commission the overview of the area where the stairs were and where they had been removed. The platform of the stairs hung over the pool. The previous owners had video of someone jumping from the platform into the five and a half-foot deep pool. He did not want to risk having that type of hazard for his family or friends. He provided additional photographs into evidence that depicted how narrow around the pool the deck was and he outlined what they desired to add. Mr. Peak referred back to the photo on page 17 of the staff report and stated he originally desired to extend the deck further, but for the purposes of minimizing his variance request, he modified it back to the be in line with the stairs to provide the landing. He worked in insurance and stressed the importance of having two types of ingress and egress from a second floor home in case of a fire.

Chair Ronnie Mills went over the proposed conditions with Mr. Peak.

Mr. Peak had no objections to the conditions.

Public Participation. None.

Commission Discussion. None.

Member Wanda Van Dam MOVED to approve case number V-21-013, a variance to reduce

the south side yard from the required five feet to 3.6 feet for a proposed deck and a variance to reduce the north side yard setback from the required 15 feet to 1.5 feet for an existing dock on Urban Single-Family Residential (R-9) zoned property, subject to the following conditions:

1. The variances are limited to the size and location as shown on the variance site plan attached to this report.
2. If the existing dock is removed or damaged in excess of 50% of its assessed value, as assessed by the Property Appraiser, any reconstruction of this structure shall thereafter comply with the applicable requirements of the zoning ordinance, or obtain approval for a new variance.
3. The property owner or authorized agent(s) shall obtain and complete all required building permits and inspections for the existing dock within 90 days of rendition of the variance determination.

Member Jeffrey Bender SECONDED the motion. Motion CARRIED unanimously (7:0).

The Commission recessed for ten minutes and reconvened at 12:30 p.m.

V-21-014 – Application of Michael and Ann Graziotti, owners, requesting variances to the minimum yard and to the maximum fence height requirements on Urban Single-Family Residential (R-9) zoned property.

Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson explained to the commission that the applicants were requesting variances to reduce the east front yard from 25 feet to 11 feet for a proposed swimming pool and to increase the fence height within the front yard from four feet to six feet. The subject property exceeded the minimum requirements for the zoning classification and was a through lot with frontage on East Sovereign Lane to the west and Starlight Drive to the east. Since it was a through lot, it was subject to two front yards with a setback of 25 feet. In 1998, a single-family residence was constructed on the property facing East Sovereign Lane. The applicants desired to install a pool in the rear of the house, facing Starlight Drive. The location of the proposed pool would encroach 14 feet into the east front yard. There was a 12-foot in depth area where the pool could be located without a variance and the pool could also be shifted to the north side of the patio which would reduce the variance request. Ms. Jackson went on to explain that a variance was needed to legitimize an existing six-foot high privacy fence that was adjacent to Starlight Drive that had been erected in March of 2020. Fences in a front yard could not exceed four feet in height unless they were less than 25 percent opaque and erected to meet the minimum requirements of the Florida Building Code for a safety barrier to a pool. The applicant was proposing a six-foot high opaque fence to be the safety barrier for the pool; therefore, a variance was needed to maintain the six-foot high privacy fence. Ms. Jackson noted that it was a previous practice by the county to allow owners of through lots to record a one-foot non-vehicular access easement along the 'rear' road frontage. The recording of such easement prohibited future driveway connections. This practice affectively converted a front yard to a rear yard for setback purposes. The property to the immediate north had benefited from this practice when they permitted their pool in the 1990's. Recent legal interpretation asserted that recordation of such an easement did not change the applicable yard setbacks. Ms. Jackson concluded that staff recommended denial of the requests for failure to meet all of the required criteria for granting a variance and provided conditions for consideration should competent substantial evidence be presented to support approval of the requests.

Paolo Soria, Senior Assistant County Attorney, provided that additional correspondence had been provided by the applicant indicating that a septic and drain field was on the property that interfered with the proposed alternative location by staff.

Member Jeffrey Bender inquired as to what triggered the thought process behind the non-vehicular access easement no longer creating a rear yard.

Ms. Jackson stated that it should not be a lot by lot consideration, it should be applied at the subdivision stage to provide continuity for how the rear of the properties were treated. Recording the easement did not mean it affected the application of the setbacks just because there was no access, as it was still considered a front yard.

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

Michael and Ann Graziotti, 4 East Sovereign Lane, Ormond Beach. Mr. Graziotti explained to the commission that the septic tank was to the north and there was also a storm drain that ran under the house as well so moving the pool would not work. They tried to come up with alternatives to lessen the variance, but it was not going to work out. He went on to explain that the fence in the side yards were both six feet in height and he did not feel comfortable for safety reasons with a four-foot fence since they were not going to screen it in. Starlight Drive was a circle that serviced only the neighborhood. The two homes on either side of them had their garages facing their home.

Public Participation. None.

Commission Discussion. None.

Member Frank Costa MOVED to approve case number V-21-014, a variance to Section 72-277(1)a of the Zoning Ordinance to reduce the east front yard from the required 25 feet to 11 feet for a proposed swimming pool and a variance to Section 72-282(2) of the Zoning Ordinance to increase the maximum allowed fence height within the front yard from four feet to six feet on Urban Single-Family Residential (R-9) zoned property, subject to the following conditions:

- 1. The variance shall apply to the swimming pool and fence as depicted on the variance site plan. Any enlargement or alteration that does not conform to the site plan and further encroaches into the required setback shall require approval of a separate variance application.**
- 2. The property owner or authorized agent(s) shall obtain and complete all required building permits and inspections for the existing six-foot privacy fence within 90 days of rendition of the variance determination.**

Member Edith Shelley SECONDED the motion. Motion CARRIED unanimously (7:0).

V-21-015 – Application of Ronald L. and Dena H. Hale, owners, requesting a variance to the minimum yard requirements on Rural Residential (RR) zoned property.

Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson explained to the commission that the applicants were requesting to reduce their rear yard from the required 40 feet to 24 feet to construct a 25-foot by 30-foot detached metal building. The applicants proposed placing the structure in an area that would mitigate disruption to the existing trees and vegetation, but it would encroach 16 feet into the rear yard. Since the proposed

structure was over 500 square feet, it had to meet the principle structure setbacks. The property was adjacent to a large retention area for the Woodlands Crossing commercial development in DeLand so the rear yard abutted a 90-foot wide retention area. It was 240 feet to the nearest road from their property line with a six-foot tall block wall that separated the rear yard from the retention area. The subject property was a legal nonconforming lot as it was considerably smaller than a standard RR lot. The subdivision was created in 1977, and prior to 1980, the area was zoned A-1. In 1980, it was administratively rezoned to A-3 and in 1994, it was administratively rezoned to RR. Both A-3 and RR required a one-acre lot size, however the subdivision was an anomaly to the area as the lots were smaller than one acre. None of the lots in the subdivision had ever met the minimum lot size requirement of any of the zoning classifications assigned to them. The R-3 zoning classification would be more appropriate for the whole subdivision and if it were zoned as such, a variance would not be needed for what the applicant was proposing. Ms. Jackson concluded that staff recommended denial of the request for failure to meet all five criteria for granting the variance; however, a condition was provided for consideration if competent substantial evidence was presented to support approval of the request.

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

Ronald Lee and Dena Hale, 1945 Violet Terrace, DeLand. Ms. Hale explained to the commission that they purchased the home in July to relocate here from Illinois. The MLS had the property listed as A-1 and they always had the intention of constructing a building to keep landscaping tools and other miscellaneous things secured. They did not desire to remove any of the trees from their backyard and they reduced the size of the building as much as they could to reduce the size of the request.

Mr. Hale explained that he had originally needed a 30-foot by 30-foot building but in speaking with contractors in the area, he discovered that he needed to reduce the size.

Chair Ronnie Mills clarified that even if it had been zoned A-1, they still would have been subject to setbacks without having a bonafide agricultural use.

Mr. Hale stated that one of the issues they had was that the realtor thought the easement was from the wall in, and they thought their property line was from the wall in.

Public Participation. None.

Commission Discussion. None.

Member Edith Shelley MOVED to approve case number V-21-015, a variance to reduce the rear yard from the required 40 feet to 25 feet to construct a 25-foot by 30-foot metal building on Rural Residential (RR) zoned property, subject to the following condition:

- 1. The variance shall apply to the 25-foot by 30-foot metal building as depicted on the variance site. Any enlargement or alteration, which increases its nonconformity shall require approval of a separate variance application.**

Member Frank Costa SECONDED the motion. Motion CARRIED unanimously (7:0).

V-21-016 – Application of Daniel W. Lawrence, agent for Betty R. Lawrence, Trustee of The Lawrence Family Revocable Trust, owner, requesting variances to separate nonconforming lots and to the minimum yard requirements on Rural Mobile Home (MH-4) zoned property.

Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson explained to the commission that the applicant was requesting a variance to separate nonconforming lots and to reduce both side yards and the front yard setbacks in order to obtain permits for two existing sheds and legitimize them. The subject property had been held in common ownership with the other lot since the early 1980's. Both lots were corner lots which were subject to two front yards and two side yards. In 1982, the Lawrence Unrecorded subdivision was determined exempt from the county subdivision regulations. When it was approved, the property was zoned MH-5 which required a minimum lot size of 6,000 square feet. In the 1980s, the adoption of the Rural future land use happened rendering much of the area nonconforming. The two parcels contained two mobile homes from the early 1980s to 1995 when permits were issued to replace the units. In 2015, a permit was issued again to replace the units. There was currently only one dwelling on Parcel B, and the applicant was proposing to add a new single-family residence on Parcel A. Ms. Jackson went on to explain that variances two through four were in regards to two sheds that were located on Parcel B. One was an actual storage shed, the other was a well house and both were constructed in 1997 without the benefits of permits. Variances to the setbacks would be needed in order to obtain after-the-fact permits to legitimize the locations. Ms. Jackson concluded that staff recommended approval of variance one to separate nonconforming lots and denial of variances two through four for failure to meet three of the five criteria for granting the variances. Staff provided conditions for consideration should competent and substantial evidence be provided to support approval of the requests.

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

Daniel W. Lawrence, 276 John Anderson Drive, Ormond Beach. Mr. Lawrence provided that it was low income housing in the area and since his father passed away, he was taking care of his mother and her properties himself. It was a cost issue and they needed to develop the property with the lowest cost possible. They rented out the second parcel to low-income families. He was hoping to get the variances for the sheds as they were built when his father was maintaining the properties and was unaware they were unpermitted.

Public Participation. None.

Commission Discussion. None.

Member Frank Costa commented that what the applicant was proposing fit in with the surrounding area and he did not have an issue with approving the requests.

Member Frank Costa MOVED to approve case number V-21-016, a variance to separate Parcel A and Parcel B of the Lawrence #965 Unrecorded (variance 1), a variance to reduce the north side yard from the required 15 feet to 11 feet to legitimize the location of an existing aluminum shed (variance 2), a variance to reduce the east front yard from the required 40 feet to 37 feet to legitimize the location of an existing aluminum shed (variance 3), and a variance to reduce the west side yard from the required 15 feet to three feet to legitimize the location of an existing aluminum shed (variance 4) on Rural Mobile Home (MH-4) zoned property, subject to the following conditions:

- 1. Variance 1 is limited to the lot dimensions and configuration, as depicted on the variance plan/survey dated April 25, 2019, and prepared by J.J. Matejka and Associated, Inc., and pursuant to the approved plan for the Lawrence #965 Unrecorded.**
- 2. Variances 2-3 shall be limited to a 11-foot north side yard and a 37-foot east front yard, for the existing 10.1-foot x 15.8-foot accessory shed structure, as depicted on**

the variance site plan. These specific yard variances shall not apply to any future accessory structures. In addition, the proposed accessory structure shall not be enlarged or increased in size without approval of a separate variance.

3. Variances 4 shall be limited to a three-foot west side yard, for the existing 6.8-foot x 6.8-foot accessory shed structure, as depicted on the variance site plan. This specific yard variance shall not apply to any future accessory structures. In addition, the proposed accessory structure shall not be enlarged or increased in size without approval of a separate variance.
4. The property owner or authorized agent(s) shall obtain and complete all required building permits and inspections the two existing sheds, or remove them from the property, within 90 days from the date of rendition.
5. The property owner shall comply with the referenced comments provided by Environmental Management staff, attached herein, during the building permit review process.

Member Wanda Van Dam SECONDED the motion. Motion CARRIED unanimously (7:0).

V-21-017 – Application of Michael Vitale, agent for Melvin K. and Ann M. Anderson; Thomas R. and Kimberly L. Lowe; Egeneto Investments, LLC; and Sandra L. Evans, owners, requesting variances to exceed the maximum fence height on Urban Single-Family Residential (R-4) zoned property.

Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson explained to the commission that the applicant was requesting variances to increase the fence heights in a front yard from the required four feet to six feet. There were four properties that fronted on State Road 40 within a thoroughfare overlay zone. All of them were corner lots with frontage on State Road 40 and their respective side streets; however, they were all facing an internal subdivision. As corner lots, they all had two front yards and two side yards and within the thoroughfare overlay zone, a 50-foot setback in the front yard was required. The side streets required a 25-foot setback. A six-foot high wood fence had existed in the front yard along State Road 40 since 1997. The Florida Department of Transportation widened State Road 40 from a two lane road to a four lane divided highway. Sections of the fence had deteriorated over time and the owners removed their existing fences. A permit to replace the fence was approved in error for 1 Riverdale Drive in 2019 and the permit expired due to a lack of final inspection being obtained. The remaining owners desired to erect a six-foot high vinyl fence to match the already erected fence at 1 Riverdale Drive to provide a consistent fence height and material along State Road 40. Ms. Jackson concluded that staff recommended approval of the requests as they met all of the criteria for granting the variances and provided conditions for consideration.

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

Michael Vitale, 50 Bayberry Drive, Ormond Beach. Mr. Vitale had nothing to add to the staff report.

Public Participation. None.

Commission Discussion. None.

Member Jay Young MOVED to approve case number V-21-017, a variance to Section 72-282(2) of the Zoning Ordinance to increase the maximum allowed fence height in the south

front yard from four feet to six feet on 1 Riverdale Avenue, Ormond Beach (PID 412500000139)(variance 1), and a variance to Section 72-282(2) of the Zoning Ordinance to increase the maximum allowed fence height in the south front yard from four feet to six feet on 1 Bayberry Drive, 2 Riverdale Drive, and 2 Twin River Drive, Ormond Beach (PID: 412500000132, 412500000141, and 412500000142, respectively)(variance 2) on Urban Single-Family Residential (R-4) zoned property, subject to the following conditions:

Variance 1:

1. The applicant shall request the re-instatement of building permit 20190206075 to complete the required building permit final inspection.
2. The variance for a six-foot high fence in a front yard is limited to the south front yard area only as shown on the variance site plan. The fence shall not cause any obstruction to vision of motorists in accordance with the provisions for obstructions to vision in division 4 of the Land Development Code [article III of Chapter 72 Code of Ordinances of Volusia County].

Variance 2:

1. The applicant or property owners, shall obtain the required permits and inspections to install the proposed six-foot fence in the south front yard of 2 Twin River Drive, 2 Riverdale Drive and 1 Bayberry Drive only.
2. The variance for a six-foot high fence in a front yard is limited to the south front yard area only as shown on the variance site plan. The fences shall not cause any obstruction to vision of motorists in accordance with the provisions for obstructions to vision in division 4 of the Land Development Code [article III of Chapter 72 Code of Ordinances of Volusia County].

Member Edith Shelley SECONDED the motion. Motion CARRIED unanimously (7:0).

V-21-018 – Application of Steven and April Edwards, owners, requesting variances to the minimum yard and the maximum fence height requirements on Osteen Commercial Village (OCV) zoned property.

Susan Jackson, AICP, Senior Planning Manager, presented the staff report. Ms. Jackson explained to the commission that the applicants were requesting variances to increase the maximum fence height from four feet to six feet in a front yard, to reduce the side yard setback from 10 feet to six feet for a metal shed with an attached carport, and to reduce the side yard setback from 10 feet to two feet for a well house. The subject property was a corner lot within the Osteen Commercial Village (OCV) zoning classification. Osteen zoning classifications did not have typical setback standards in that they were governed by adjacency. The front yards for the subject property were subject to a 15-foot setback as that was the OCV landscape buffer adjacent to the abutting right-of-ways. The side yard was subject to a 10-foot setback, same as the adjacent buffer widths. In 1997, a single-family residence was constructed on the subject property and soon after, improvements were made without permits, including a 580-square-foot shed with an attached carport, a 16-square-foot well house, an above ground pool, and a six-foot privacy fence that enclosed the rear of the property. The house was constructed when the property was zoned R-4, and it was administratively rezoned to OCV in 2012 rendering it a lawful nonconforming structure. The unpermitted structures were not considered lawful nonconforming structures and had to meet the development standards of the current OCV zoning classification. Ms. Jackson explained that the owner had recently replaced the fence in the same location it had previously been for 23 years and was cited for construction without a permit. The fence enclosed the back yard of the property and it was 190 feet from the corner of the intersection so it did not

interfere with the sight line triangle. The applicants were aware that other structures needed permits along with the ones that needed a variance. Ms. Jackson concluded that staff recommended denial of the requests as they failed to meet all of the criteria for granting the variances; however, a condition was provided for consideration should competent substantial evidence be presented to support approval of the requests.

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

Steve Edwards, 200 Longwood Drive, Osteen. Mr. Edwards provided that he did not know that a permit was required to replace a fence that was already in existence. He did not know that certain permits were required, but he had not added any extra structures in almost 21 years.

Public Participation. None.

Commission Discussion. None.

Member Jay Young MOVED to approve case number V-21-018, a variance to Section 72-282(1) to increase the maximum height of a fence in the front yard from four feet to six feet (variance 1), a variance to Section 72-1309 to reduce the side yard setback from 10 feet to six feet for a 580-square-foot metal shed with an attached carport (variance 2), and a variance to Section 72-1309 to reduce the side yard setback from 10 feet to two feet for a 16-square-foot well house (variance 3) on Osteen Commercial Village (OCV) zoned property, subject to the following condition:

- 1. The variance shall apply to the fence and structures as depicted on the variance site plan. Any enlargement or alteration, which increases their nonconformity, shall require approval of a separate variance application.**

Member Wanda Van Dam SECONDED the motion. Motion CARRIED unanimously (7:0).

OLD BUSINESS

None.

OTHER PUBLIC ITEMS

None.

STAFF ITEMS

None.

STAFF COMMENTS

None.

COMMISSION COMMENTS

Member Wanda Van Dam asked that directional indicators be put on the maps, surveys, site plans, and photos in the future.

PRESS AND CITIZEN COMMENTS

None.

ADJOURNMENT

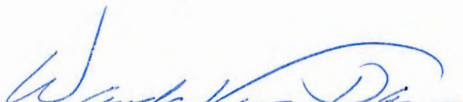
Having no further comments from the public, staff, or commissioners, Chair Ronnie Mills thanked everyone and adjourned the meeting at 1:20 p.m.

ADOPTED



Ronnie Mills, Chair

01/21/2021
Date



Wanda Van Dam, Secretary

01/21/2021
Date