



AGENDA
PLANNING COMMISSION
CITY OF PORT ORANGE

Meeting Date: Thursday, September 28, 2023

Time: 5:30 PM

Location: Council Chambers, City Hall
1000 City Center Circle
Port Orange

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call

B. DISCUSSION/ACTION

3. Consideration of Minutes - August 24, 2023
4. APPLICATION: Variance/ Chapter 17, Section 27 of the Land Development Code
CASE NO.: VARC-23-0007
APPLICANT: Dexter and Linda Copp
STAFF CONTACT: Gwen Perney, Planner (386) 506-5673

A request for variances from the Land Development Code to allow 1) a lot size less than 1 acre, 2) a lot width less than 150 feet, and 3) a side building setback less than 25 feet for a property located at 917 Boyte Street in the Agriculture (A) zoning district.

5. APPLICATION: Varinace / Chapter 17, Section 27 and Chapter 13, Section 3(d)(1)(c) of the Land Development Code
CASE NO.: VARC-23-0009
APPLICANT: Robert T. Braun, Trustee, Fraternal Order of Eagles Port Orange Aerie 4089
STAFF CONTACT: Gwen Perney, Planner (386) 506-5673

A request for variances from the Land Development Code to reduce the rear building setback from 10' to 2.5' and landscape buffer along a right-of-way from 10' to 2.5'.

C. OTHER BUSINESS

6. Commissioner Comments
7. Staff Comments

D. PUBLIC COMMENTS

E. ADJOURNMENT

NOTICES – PURSUANT TO SECTION 286.0105 OF THE FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE PLANNING COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY DOES NOT PREPARE OR PROVIDE SUCH A RECORD.



FOR SPECIAL ACCOMMODATIONS, PLEASE NOTIFY THE CITY CLERK'S OFFICE (PHONE: 386-506-5563) AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE.



HELP FOR THE HEARING IMPAIRED IS AVAILABLE THROUGH THE ASSISTIVE LISTENING SYSTEM RECEIVERS CAN BE OBTAINED FROM THE CITY CLERKS' OFFICE.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA), IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

REGULAR PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
AUGUST 24, 2023

THE REGULAR PLANNING COMMISSION MEETING of the City of Port Orange was called to order by Chairman Lance Green at 5:30 p.m.

Pledge of Allegiance

Roll Call

Present:

“Bo” Bofamy
Thomas Jordan
John Junco
Newton White
Stan Schmidt
Maria Mills-Benat, Vice Chair
Lance Green, Chairman

Also Present:

Shannon Balmer, Assistant City Attorney
Tracee Cody, Deputy City Clerk

DISCUSSION/ACTION

3. Consideration of Minutes - July 27, 2023

Motion to approve the meeting minutes as presented from July 27, 2023 was made by Commissioner Bo Bofamy and seconded by Commissioner Thomas Jordan. Motion carried unanimously by roll call vote.

4. APPLICATION: Variance/4500 Eastport Parkway - Communication Tower Setback - LDC, Chapter 16, Section 9(c)(8)

CASE NO.: VARC-23-0006

APPLICANT: Harolds Timmons, Tower Engineering Professionals

STAFF CONTACT: Gwen Perney, Planner (386) 506-5673/gperney@port-orange.org

A request for a variance from the Land Development Code to reduce the required 165-foot building setbacks for a 150-foot communication tower. The applicant is proposing the following setbacks for the communication tower: 1) north side from 165 feet to 55 feet, 2) east side from 165 feet to 118 feet, and 3) west side from 165 feet to 59 feet.

Motion to approve Case No. VARC-23-0006 was made by Commissioner Thomas Jordan and seconded by Commissioner Stan Schmidt.

Gwen Perney, Planner, provided details of the request.

James Johnston, with Shutts and Bowen LLP on behalf of the applicant, and Harolds Timmons with Tower Engineering Professionals both answered questions from the Commissioners in regards to the tower's break point, choice of location, and the structure of the design for wind speeds.

Motion carried unanimously by roll call vote.

5. APPLICATION: 4th Amendment to the MDA and CDP for The Pavilion at Port Orange PCD
CASE NO.: PRZA-23-005
APPLICANT: Steven Schlossberg, Dunlawton Investments, LLC
STAFF CONTACT: Penelope Cruz, Planning Manager (386) 506-5671/pcruz@port-orange.org

A request to amend the Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for The Pavilion at Port Orange Planned Commercial Development (PCD). The amendment adds an automated car wash as an allowed use on either Lots 1A or 1B and modifies the CDP to remove the requirement for a cross-access driveway to be built along the front of Lots 1A and 1B.

Motion to approve Case No. PRZA-23-005 was made by Vice Chair Maria Mills-Benat and seconded by Commissioner Thomas Jordan.

Penelope Cruz, Planning Manager, provided details of the request and clarified the direction of the traffic entrance for the Commissioners.

Steven Schlossberg, Applicant, explained the Splash Car Wash is for the west side of the Pavilion instead of going to Herbert Street.

Motion carried unanimously by roll call vote.

OTHER BUSINESS

6. Commissioner Comments

Chairman Green commented on the Riveryard item at the last council meeting and commended staff for their hard work and getting the project together. He also asked Tim Burman, Community Development Director, for an update on the area under the bridge as there are decrepit boats and he feels the area needs to be re-vamped. Mr.

Burman explained that the area is still in planning stages and takes time due to permits and grant funding.

7. Staff Comments

There were none.

PUBLIC COMMENTS

There were none.

ADJOURNMENT – 5:51 p.m.

Chairman Lance Green



STAFF REPORT

VARIANCE/ CHAPTER 17, SECTION 27 OF THE
LAND DEVELOPMENT CODE
CASE NO. VARC-23-0007

REQUEST: Variances from the Land Development Code (LDC) to allow 1) a lot size less than 1 acre, 2) a lot width less than 150 feet, and 3) a side building setback less than 25 feet for a parcel zoned Agriculture (A).

LOCATION: 917 Boyte Street

APPLICANTS/PROPERTY OWNERS: Dexter and Linda Copp

STAFF RECOMMENDATION: Approval

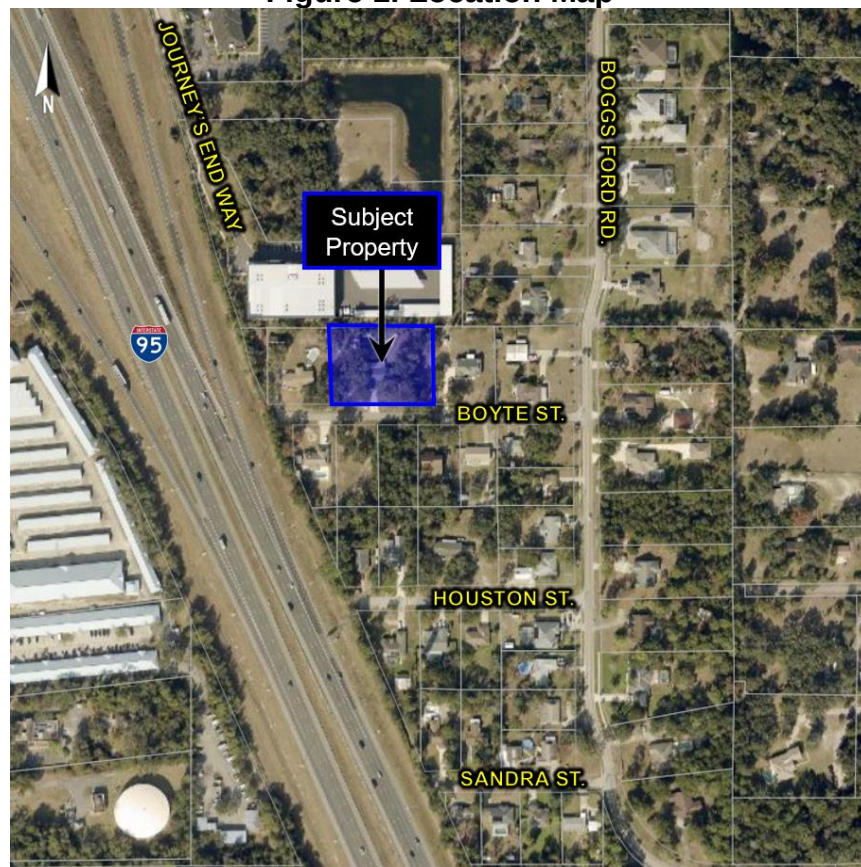
STAFF CONTACT: Gwen Perney, Planner (386) 506-5673

PLANNING COMMISSION DATE: September 28, 2023

DISCUSSION:

The applicants and property owners, Dexter and Linda Copp are requesting variances from the dimensional requirements in the Land Development Code (LDC) for their property located at 917 Boyte Street. The subject property is currently zoned Agriculture (A) and is located on the north side of Boyte Street, west of Boggs Ford Road (Figure 1 – Location Map).

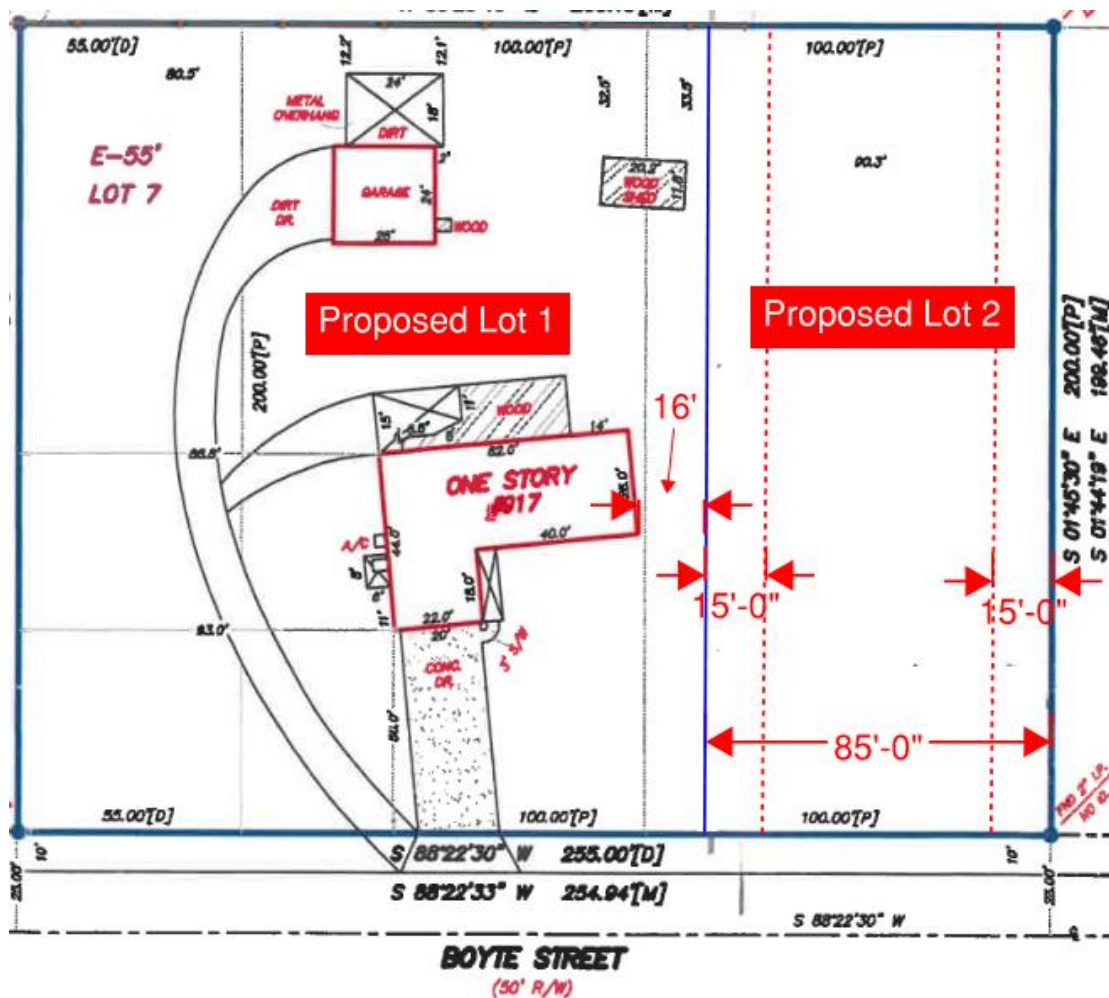
Figure 1. Location Map



According to the applicants, the requested variances are to subdivide a portion of the subject property to create a new lot and build a new single-family house on the new lot (Exhibit 1 – Letter of Request) for their daughter and her family. The applicants are requesting the following variances from the dimensional requirements for the “A” zoning district to subdivide the subject property into two lots:

- **Lot 1.** The area for Lot 1 is proposed to be 0.78 acres (34,000 square feet) in lieu of the 1 acre (43,560 square feet) required by the LDC. The side building setback on the east side of Lot 1 is requested to be reduced to 16 feet instead of 25 feet. The existing house would remain.
- **Lot 2.** The area for Lot 2 is proposed to be 0.39 acres (17,000 square feet) in lieu of the 1 acre (43,560 square feet) required, and the width of Lot 2 is proposed to be 85 feet in width in lieu of the 150 feet required. The applicants propose constructing a single-family house on Lot 2 with a 15-foot side building setback in lieu of the 25 feet required by the LDC.

Figure 2. Proposed Lots 1 and 2 and Requested Variances



The variances requested are the following:

1. Reduce the lot area requirement for proposed Lot 1 from 1 acre to 0.78 acres (34,000 square feet) and proposed Lot 2 from 1 acre to 0.39 acres (17,000 square feet) - Chapter 17, Section 27 of LDC.
2. Reduce the lot width requirement for proposed Lot 2 from 150 feet to 85 feet- Chapter 17, Section 27 of LDC.
3. Reduce the east side building setback for proposed Lot 1 from 25 feet to 16 feet - Chapter 17, Section 27 of LDC; and
4. Reduce side building setbacks from 25 feet to 15 feet for proposed Lot 2 - Chapter 17, Section 27 of LDC.

The subject property is in the Mac John Subdivision. The Mac John Subdivision was platted in 1964, and all the lots in the subdivision are currently zoned Agricultural (A). In 1964, the lots in the subdivision were platted at 100' x 200' or 20,000 square feet. Therefore, the platted lots in the subdivision are smaller than the current lot area (43,560 square feet) and lot width (150-foot) requirements for the "A" zoning district (Figure 3 – Lot Acreage Map – See Page 4). Over time, some property owners have combined or split and recombined some lots within the subdivision, but overall, the majority of the lots in the Mac John Subdivision developed with a single-family are less than a half-acre and have a lot width less than 150 feet (Table 1).

Table 1. Lot Acreage in the Mac John Subdivision

Acreage	1 acre or more	0.75 acres to 1 acre	0.50 acres to 0.75 acres	0.50 acres or less
Number of Lots	1	2	3	26

The subject property is the largest lot within the Mac John Subdivision and currently consists of two previously platted lots: Lot 5, Lot 6, and a portion of Lot 7. The LDC allows combined lots to be divided based on previously platted lot lines without having to go through the minor subdivision process. The applicants could potentially split the previously platted 100' X 200' easterly Lot 5 from the current Lots 6 and 7; however, a variance would still be required for the existing house as it would only be approximately two feet from the side property line and the LDC requires a 25-foot setback.

The most compatible city zoning district for the lots in this subdivision, based on lot area and lot width and existing Future Land Use (*Rural Transition 0 to 2 units per acre*), would be the City's R-20SF (Single-family Residential) zoning district, which requires a minimum lot area of 20,000 square feet and a minimum lot width of 100 feet. Based on historic zoning maps, the lots in the Mac John Subdivision have been zoned "A" since the early 1960s. The current "A" zoning district is generally considered a holding zoning district until a property owner requests the property be rezoned for development. However, rezoning of this subdivision has not been requested to date as it would require all lot owners to agree to the rezoning. In addition, the applicants cannot request only the subject property be rezoned to R-20SF as that would be considered a spot

zone among properties zoned "A." In order to rezone to R-20SF, it would require a coordination effort with all of the property owners in the Mac John subdivision.

Figure 3. Lot Acreage Map



If the Mac John subdivision had been rezoned R-20SF, which is the most compatible zoning district for the lot sizes within the subdivision, only a side yard setback variance would be necessary.

Table 2. Lot Dimensional Requirement Comparison

	Minimum Lot Size	Minimum Lot Width	Side Setback	Front Setback	Rear Setback
"A Zoning District	43,560 SF (1 acre)	150 feet	25 feet	50 feet	40 feet
R-20SF Zoning District	20,000 SF (0.46 acres)	100 feet	10 feet	30 feet	25 feet
Mac John Subdivision Plat (1964)	20,000 SF (0.46 acres)	100 feet	25 feet	50 feet	40 feet
Proposed Lot 1 - Existing House	34,000 SF (0.78 acres)	170 feet	16 feet & 88 feet	50 feet	40 feet
Proposed Lot 2 - Vacant Lot	17,000 SF (0.39 acres)	85 feet	15 feet & 10 feet	50 feet	40 feet

REVIEW OF VARIANCE CRITERIA:

Chapter 19, Section 1, LDC, lists the review criteria that are used to determine whether the variances requested should be granted. These criteria, accompanied by staff analysis, are as follows:

- a) *Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which do not apply to other lands, structures, or buildings in the same zoning district.*

According to the applicants, the unique circumstance for the subject property is that the prior property owner constructed the existing home on the subject property in a manner that prevents Lot 5 from being split off. If the existing house was constructed further to the west, about 23 feet, then Lot 5 could be split from the subject parcel using the previously platted lot lines without the need for variances.

All the lots in the Mac John Subdivision were platted in 1964 and are smaller in size than the current dimensional requirements for the current zoning for this subdivision. The subject property consists of two and a half previously platted lots.

- b) *The special conditions and circumstances are not a result of the actions of the applicant.*

The special conditions and circumstances are not result of the actions of the applicants. The subdivision was platted in 1964, and the existing house was constructed in 1989. The applicants purchased the property as it is currently configured in 2016.

- c) *Literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same*

zoning district under the terms of the development code and would work an unnecessary and undue hardship on the applicant.

Literal interpretation of the LDC would not deprive the applicants of rights commonly enjoyed by other properties within the same zoning district. As part of the development approval process, all new subdivisions are required to comply with the current development requirements of the LDC or obtain a variance from the requirements in the LDC.

According to the applicants, the variances are necessary for their proposed lot configuration to accommodate the existing house on Lot #1 and to construct a new home on Lot #2 for their daughter and her family. The subject property is the largest lot within the subdivision and currently consists of two previously platted lots: Lot 5, Lot 6, and a portion of Lot 7. The LDC allows combined lots to be divided based on previously platted lot lines without having to go through the minor subdivision process. The applicants could potentially split the previously platted 100' X 200' easterly Lot 5 from the current Lots 6 and 7; however, a variance would still be required for the existing house as it would only be approximately two feet from the side property line and the LDC requires a 25-foot setback. The applicants could also demolish the existing home and then subdivide the property along the existing platted lot lines and construct a new home on Lot 5, a new home on Lot 6, and a portion of Lot 7.

Figure 4. Subject Property with Previously Platted Lot Lines and Proposed Lot Line



- d) *The variances, if granted, are the minimum variances necessary to make possible the reasonable use of the land, building, or structure.*

Staff has worked with the applicants to reduce the overall number of necessary variances and minimize the requested variances. The applicants stated that the proposed lot configuration and setbacks provide adequate lot sizes and setbacks to meet the intent of the LDC for separation between buildings to minimize the visual appearance of the structures from adjacent properties, for air movement, and room for maintenance and repairs while maintaining the overall character of the subdivision. According to the applicants, the requested variances are the minimum variances needed to provide the required lot size to maintain their existing single-family home and provide a lot to construct a new single-family home for their daughter and her family. The applicants have indicated that they will be able to meet all other dimensional requirements for the "A" zoning district (i.e. front and rear setbacks, building coverage, open space, living area, driveway size, building height, etc.).

According to the applicants, the proposed 85-foot lot width (Lot 2) allows the existing house to have sufficient side setbacks from the proposed property line. The applicants also state that the requested side yard setbacks are consistent with the R-20SF zoning district, the most compatible city zoning district for the lots in this subdivision, and the separation distance between homes would generally be consistent with other houses built in the Mac John Subdivision.

- e) *Granting the variances requested will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings, or structures in the same zoning district.*

All lots that are subdivided must meet the requirements of the current zoning district in the LDC or secure variances from said requirements. A majority of the lots within the Mac John Subdivision do not meet the current dimensional requirements for lot width, lot size, and, in some cases, side building setbacks. Additionally, the applicants have the option to subdivide the property on the previously platted lot line, but doing so would create a non-conformity with the side setback of the existing house. According to the applicants, the requested variances allow for their property to be subdivided in a manner generally consistent with the majority of the lots in the subdivision.

- f) *The granting of the variances will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare.*

The intent of the minimum lot size requirement is to provide for consistent and uniform character of an area. The Mac John Subdivision was platted in 1964 with 20,000 square foot lots, which is smaller than the current "A" zoning district requires. Although some property owners have combined or split and recombined some lots within the subdivision, overall, the majority of the currently developed properties are less than a half-acre and have a lot width of less than 150 feet.

The intent of the building setback requirements in the LDC is to provide adequate separation between buildings to minimize the visual appearance of the structures from adjacent properties, ensure adequate separation between structures for air movement, and provide room on the subject property for maintenance and necessary repairs. A majority of the lots within the subdivision do not meet the current A zoning district dimensional requirements for lot width, lot size, and, in some cases, side building setbacks. According to the applicants, the proposed variances will provide adequate lot sizes and setbacks to meet the intent of the LDC while maintaining the overall character of the subdivision.

- g) *The variances represent a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has unreasonably burdened the applicant's property, based upon the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.*

The variances requested are not based on a claim brought under the Bert J. Harris Private Property Rights Protection Act.

PUBLIC NOTICE:

Public Notices regarding the variance were mailed and the property was posted on the site on September 13, 2023, per the LDC. As of September 22, 2023, staff has received one letter of opposition (Exhibit 2). No other inquiries from the public or letters were received.

RECOMMENDATION:

Based on the findings of this report, staff recommends approval of the variances request for property located at 917 Boyte Street to:

1. Reduce the lot area requirement for proposed Lot 1 from 1 acre to 0.78 acres (34,000 square feet) and proposed Lot 2 from 1 acre to 0.39 acres (17,000 square feet);
2. Reduce the lot width requirement for proposed Lot 2 from 150 feet to 85 feet;
3. Reduce the east side building setback for proposed Lot 1 from 25 feet to 16 feet; and
4. Reduce the building setbacks from 25 feet to 15 feet proposed Lot 2.

ATTACHMENT:

1. Exhibit 1. Letter from Applicant
2. Exhibit 2. Letter from Adjacent Property Owner

Exhibit 1

RECEIVED

AUG 18 2023

CITY OF PORT ORANGE
BUILDING DEPT

Port Orange Planning and Zoning

We are writing to request another buildable lot at our property located at 917 Boyte Street. We are requesting an 80'x200' variance, currently the property is 255'x200' (1.17 acres, homesteaded for the last 8 years).

We'd like to gift this to our daughter and her husband to build a home next door to us. This would not only give us some security as we get older, having her close to look out for us (or just one of us, should one of us pass away) but also improve the neighborhood and increase property values of our neighbors.

We understand that the current zoning is for a 20,000 sq ft lot; but the existing home is right at the 100-foot mark. This is why we are asking for this variance of 80' with a set-back of 15' from the east property line (our current neighbor) and a 10' set-back from the west property line (our home). Front set-back remains 50' and rear set-back remains 40' per current zoning. This would allow a 55' wide house built by Paytas Homes.

Thank you for your kind consideration.

Sincerely,

  
Dexter and Linda Copp

EXHIBIT 2

To The Port Orange Planning Commission

IN RESPONSE OF .

Case# VARC-23-0007

I willie Jason Wofford owner of 925 Boyte st, Port Orange Fl 32127, house adjacent to the parcel NO 6320-01-00-0050 which is in this public hearing petition respond to that with a **NO IN AGREEMENT**. I cannot assist to the meeting due to work, my work is traveling out of state and cant not be back by the time of this meeting.

Mrs. Dexter who is the petitioner of this change has mentioned before to us and everyone in the street his intentions of renting his property and no staying on it. He is a realtor with multiple houses been rented, and land in New Smyrna and other cities that he can develop.

After the last new construction done in this street, the street and our house sewer system has had problems which makes us believe that it is at capacity already on this street. This is one of the streets lefts in the city with some land/green areas in which we don't have houses on top of each other. I ask you to drive around and check, we do not need to add another house to be rented, we are a quiet family-oriented street, and we are at capacity. Also, this area is considered grandfather land. The street as well was built on when it was a country area so doesn't have the modern updated capabilities for that many houses around. We have a hotel been built behind us, we do not need more construction.

I moved to this street because it was quite and because the privacy that gives you no having houses on top of you, because the green areas left and space, and Mrs. Dexter has mentioned to everyone here and to us, very clearly his wished and intentions of having his property as rental property and moving out. We do not need in this area more rental properties and the disruption of the peace and nice green area street. This street doesn't have proper sidewalks, updated sewer systems, updated good electricity post or maintenance in general. He has asked us about, and we have been very clear in our opposition to this as it is in opposition all houses on the street if you ask them.

Please Help us to protect the integrity of this street.

Willie Jason Wofford
256-412-9250
925 boyte st,
Port orange Fl 32127



Sep 19 of 2023



STAFF REPORT

VARIANCE / CHAPTER 17, SECTION 27 AND
CHAPTER 13, SECTION 3(d)(1)(c) OF THE LAND
DEVELOPMENT CODE
CASE NO. VARC-23-0009

REQUEST:	Variances from the Land Development Code (LDC) to reduce the minimum rear building setback and landscape buffer along the Westridge Avenue right-of-way from 10' to 2.5' and reduce the landscape buffer along the Crowell Street right-of-way from 10' to 2.5'.
LOCATION:	5130 Ridgewood Avenue
PROPERTY OWNER:	Fraternal Order of Eagles Port Orange Aerie 4089
APPLICANT:	Robert T. Braun, Trustee for the Fraternal Order of Eagles Port Orange Aerie 4089
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Gwen Perney, Planner (386) 506-5673
PLANNING COMMISSION:	September 28, 2023

DISCUSSION:

The subject property is ±2 acres and is located on the west side of Ridgewood Avenue, south of Howes Street (Figure 1. Location Map). The applicant has requested two variances to reduce the width of the 10-foot right-of-way/landscape buffer along Westridge Avenue to construct a covered structure over an existing patio and reduce the width of the 10-foot right-of-way landscape buffer along Crowell Street to expand an overflow parking lot.

Figure 1. Location Map



In 2010, the Fraternal Order of Eagles Port Orange Aerie 4089 (Eagles) demolished their former meeting building at this location and constructed their current $\pm 8,719$ square foot meeting building, along with associated site improvements, including the minimum number of required parking spaces per the LDC. Over the last 13 years, the Eagles purchased the adjacent lot to the south for overflow parking and have made additional improvements in the rear yard of their property for the use of their members.

According to the applicant's Letter of Request (Exhibit 1), the Eagles membership is growing, and the proposed improvements are necessary to accommodate their growing membership and ensure that all members can attend events at the subject property. In addition, the applicant has stated that the Eagles have been at this location since 1990 and, over the years, have made improvements to the subject property, including redeveloping the property where the meeting building is located, acquiring adjacent properties, and demolishing abandoned structures, and beautifying the corridor by maintaining the perimeter buffers.

If the requested variances are approved, the applicant proposes constructing a permanent covered canopy over the existing patio along the rear of the building for outdoor meetings and entertainment uses (Figure 2) and expanding the number of parking spaces in an overflow parking lot (Figure 3). The variances requested include the following:

1. Reduce the building setback/landscape buffer along Westridge Avenue right-of-way from 10 feet to 2.5 feet and
2. Reduce the landscape buffer along Crowell Street right-of-way from 10 feet to 2.5 feet.

Westridge Avenue Right-of-Way Landscape Buffer/Building Setback Variance:

The rear of the subject property abuts the Westridge Avenue right-of-way, which includes a gravel road, established trees on the east side of the gravel road, a drainage ditch on the west side of the gravel road, and overhead utilities (Figure 2). The Westridge Avenue right-of-way is considered a limited-use road, not a primary travel route in the city roadway network. Currently, the city does not have plans to improve the right-of-way.

Figure 2. Pictures of the Westridge Avenue Right-of-way



According to the applicant, the existing rear patio area is currently covered with shade cloth material sails, but a permanent structure to provide complete coverage from sun and rain is their preference. If the variance is approved, the Eagles will submit a building permit to construct a permanent canopy with a metal roof that will be setback 2.5 feet from the Westridge right-of-way line (Figure 3).

The subject property currently has a 6-foot tall privacy fence along the Westridge Avenue right-of-way that screens the rear of the property from adjacent property owners and the Westridge Avenue right-of-way. Additional ± 25 to 30 feet of vegetation and trees between the Eagle's fence and the gravel roadway provide additional buffering (Figures 2 and 3). There is only one residential home along this portion of Westridge Avenue, along with the American Legion fraternal organization. According to the applicant, a covered canopy would have little to no impact on the adjacent property owners across the right-of-way.

Figure 3. General Location of Proposed Canopy



Crowell Street Right-of-Way Landscape Buffer Variance:

The Crowell Street right-of-way is an unimproved right-of-way separating the subject property from the adjacent property to the south (Figure 4). The Eagles request a reduced landscape buffer to accommodate improvements to an overflow parking lot. If the variance is approved, the Eagles are proposing to improve the layout of the overflow parking lot to increase the number of spaces along with wheel stops or striping, signage, drainage swales, and associated landscaping.

Figure 4. Location of Overflow Parking Lot

Before submitting the variance request, the Eagles attempted to work with the property owner on the south side of Crowell Street to request the Crowell Street right-of-way be vacated, but the other property owner did not want to be part of the application. A request to vacate a right-of-way requires both adjacent property owners to sign the application because if the right-of-way vacation is approved, the right-of-way is split, and an additional 25 feet of property would be transferred to each property owner. The Eagles prefer the right-of-way be vacated as that would provide more room to expand the overflow parking lot. As part of the variance request, Public Works, Public Utilities, and Engineering staff reviewed the right-of-way and determined there are no current plans to pave the right-of-way or make underground improvements. (Figure 4). Since the Eagles could not submit a right-of-way vacation application, the Eagles are requesting to reduce the required 10-foot landscape buffer along Crowell Street to 2.5 feet to accommodate the reconfiguration of the overflow parking lot.

According to the LDC, a 10-foot landscape buffer is required along any right-of-way, whether improved or unimproved. If the subject property abutted a privately owned commercial property instead of a right-of-way, the LDC would require a 2.5-foot landscape buffer. Currently, it does not appear that the Crowell Street right-of-way will be vacated or improved; therefore, the applicant requests that the landscape buffer width along this unimproved right-of-way be 2.5 feet and not 10 feet.

Figure 5. Pictures of the Crowell Street Right-of-way



REVIEW OF VARIANCE CRITERIA:

Chapter 19, Section 1, LDC, lists the review criteria used to determine whether the variances request should be granted. These criteria, accompanied by staff analysis, are as follows:

- a) *Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which do not apply to other lands, structures, or buildings in the same zoning district.*

The subject property is unique because it abuts right-of-way on all four sides: Ridgewood Avenue, Crowell Street, Westridge Avenue, and Howes Street. This special condition creates a development challenge in that there are four required landscape buffers that the property must accommodate in addition to other site dimensional criteria. If the subject property were directly abutting another property on the side instead of right-of-way, a 2.5-foot buffer would be required rather than a 10-foot-wide buffer.

When the site was redeveloped, the new building was located towards Westridge Avenue to accommodate the parking lot, drainage, landscape buffer along Ridgewood Avenue and Howes Street, and lot configuration. This created a limited area at the rear of the building for future building expansion or outdoor improvements. However, as membership has grown, additional improvements are needed to accommodate the increased number of members utilizing the site.

- b) *The special conditions and circumstances are not a result of the actions of the applicant.*

The special condition/circumstance associated with the subject property does not result from the current property owner.

- c) *Literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same*

zoning district under the terms of the development code and would work an unnecessary and undue hardship on the applicant.

Literal interpretation of the LDC would not deprive the property owner of rights commonly enjoyed by other properties within the same zoning district. As part of the development approval process, all properties must be brought into compliance with the current development requirements of the LDC when a site is being redeveloped or improved.

The intent of building setback and landscape buffer requirements adjacent to a right-of-way is to minimize the impact on adjoining properties and maintain and enhance an attractive environment within the City.

The applicant states that the covered canopy over the existing patio would generally meet the intent of the LDC as impacts to adjacent property owners are buffered by the existing 6-foot-tall privacy fence along the Westridge Avenue right-of-way and the additional $\pm$ 25 to 30 feet between the fence and gravel roadway that containing mature trees that provide additional buffering. As indicated above, there are no plans for utility or roadway improvements along Westridge Avenue that would require these trees to be removed.

The applicant states that the requested variance to reduce the landscape buffer along Crowell Street will allow them to reconfigure and improve the overflow parking lot and still provide a landscaping buffer consistent with other sites along Ridgewood adjacent to private property rather than a right-of-way. According to the applicant, improving the overflow lot would improve vehicular and pedestrian safety for the Eagles members and improve the appearance along the Ridgewood Corridor.

- d) *The variances, if granted, are the minimum variances necessary to make possible the reasonable use of the land, building, or structure.*

Staff has worked with the applicant to minimize the requested variances or identify design options for the off-site parking lot and covered canopy that would not require a variance.

According to the applicant, to reconfigure and add parking spaces to the overflow lot, the variance to reduce the landscape buffer along Crowell Street to 2.5 feet is necessary. As indicated above, while the property abuts a right-of-way, the right-of-way is unimproved, and there are no plans to improve this right-of-way. Therefore, the right-of-way functions as a vacant property, and if the subject property abutted a vacant commercial property, the LDC would require a 2.5-foot landscape buffer.

According to the applicant, the covered canopy structure could be constructed with a 10-foot building setback; however, it would not provide cover to the entire patio area. As indicated above, the rear lot line for the subject property abuts a seldomly used or visible right-of-way, and there is a 6' fence and sufficient

vegetation within the right-of-way that buffers the subject property from adjacent properties.

- e) *Granting the variance request will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings, or structures in the same zoning district.*

All properties developed, redeveloped, or expanded within the city are required to meet the development requirements of the LDC or secure variances from said requirements. According to the applicant, the proposed expanded overflow parking lot and covered canopy, if approved, will allow the Eagles to provide their members with better accommodations without reducing the aesthetics or security for the adjacent private property.

- f) *The granting of the variance will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare.*

The LDC is intended to protect the city's citizens' health, safety, and general welfare and enhance the city's appearance, function, and livability. However, the LDC was created to generally regulate new "green field" development rather than infill redevelopment. Typically, infill redevelopment projects require variances or flexibility in development regulations to allow underutilized properties to redevelop. Overall, the proposed redevelopment will improve the existing conditions by adding more overflow parking spaces for members of the Eagles and providing a permanent cover from the weather over the outdoor space. Although the proposed projects do not bring the site into full compliance with the current code, the proposed variables are not anticipated to increase impacts on the surrounding properties.

- g) *The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has unreasonably burdened the applicant's property, based upon the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.*

The variance requested is not based on a claim brought under the Bert J. Harris Private Property Rights Protection Act.

PUBLIC NOTICE:

Public Notices regarding the variance were mailed and the property was posted on the site on September 13, 2023, per the LDC. As of September 22, 2023, no inquiries from the public have been received.

RECOMMENDATION:

Based on the findings of this report, staff recommends approval of the variances:

- 1) allow a 2.5-foot building setback and landscape buffer along Westridge Avenue for the area behind the existing building for a proposed canopy structure; and
- 2) allow a 2.5-foot landscape buffer along Crowell Street.

ATTACHMENT:

1. Exhibit 1. Letter from the applicant with exhibits

Exhibit 1



FOE #4089
5130 S Ridgewood Ave
Port Orange, FL 32127

August 23, 2023

Mr. Tim Burton
Community Development Director
1000 City Center Circle
Port Orange, FL 32129

Dear Mr. Burton,

I am writing on behalf of the Port Orange Fraternal Order of Eagles, Aerie 4089. We are a non-profit organization with over 3,400 members and growing and are a very active organization. For example, our recent Forth of July events drew over 350 people. That is a typical attendance for like events. Through these efforts we have been able to donate over \$400k to local charities over the last several years.

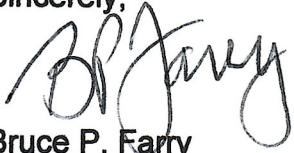
Our officers and finance committee have investigated and looked at various options to expand our facilities to accommodate are members, most of which are elderly and the majority residents of Port Orange. It appears the most affordable option would be to cover our backyard area. It currently is somewhat covered by cloth material sails but the need for permanency and complete shading from the sun for our members is needed.

We are located on Ridgewood Avenue and our backyard property abuts to a seldom used dirt road, West Ridge Rd. It is our understanding that the city will probably never pave or need this road for any reasons. We also would like to fix up our South parking area and proceed with securing the abandoned road (Cowell St.) abutting that area.

Since our proposed cover will be a permanent structure (pole barn type, picture attached) and the Crowell St. request somewhat unusual, we are aware there could be variances and other items involved.

This is to request your assistance in helping us achieve are plans and goal.

Sincerely,

A handwritten signature in black ink, appearing to read "B. P. Farry". The signature is stylized with a large, looped initial "B" and a long, sweeping underline.

Bruce P. Farry
Worthy President

Cc B. Braun, J Schaivo

A photograph of a large, long, tan-colored metal building with a corrugated metal roof, situated in a grassy field under a blue sky with clouds. The building has a covered walkway supported by wooden posts along its side. A smaller, brown metal building is visible in the background.





