

CU&V MEETING
JUNE 22, 2017
MINUTES

Verbatim

Conditional Use and Variance Board

June 22, 2017

Tab B – Blue Potato Properties, LLC

7:11:31 Chair Gillette – Thank you, Mr. Mullin. Madam Clerk, are there evidence or items you want to be identified into the record for Tab B, D, E, F, and G?

Deputy Clerk – That was for B right?

Mr. Pope and Chair Gillette – All of them.

Deputy Clerk – Okay the following items are entered into the records for Tab B, that's V16002, we have an application, this is the applicant's evidence; Application for a Variance – 2 pages; Application background – 7 pages; Boundary Survey of a Subject Lot – Parcel C – 1 page; Survey B – Parent Trap Tract (Applicant, yay applicant EB, Exhibit B) – 1 page; Applicant's Exhibits 1 thru 11 – 2 pages; There is a 2009 Aerial of Stellmach Property (Subject Lot) – 1 page; Indenture dated 5-25-75 from Rhein to Stellmach and a legal description – 4 pages; an Indenture dated 11-12-58 from Skipper to Rhein – 2 pages; Survey, Survey Notes from Adams and Malcolm – 1 page; Property Appraiser website information for 38 various riverfront lots in the general area – 38 pages; There's five photos of septic tanks, that's the same photo it look like five pages of it; Conditional Use and Variance Application V14001 dated 2-27-14 – 10 pages; There is various pages of Conditional Use and Variance Minutes from 6-25-15 from Bill Hazes Court Reporting – 64 pages; There's a copy of Municode Section 5.05 Variance from Municode Online Library – 1 page; and copy of Law Enforcement Short Forms – 2 pages. Staff Evidence is a staff report for V16002 – 10 pages. 7:13:35

7:16:30 Chair Gillette – Thank you Madam Clerk, can I get a motion to put those documents into record?

Board Member VanDelinder – So Moved

Board Member Zetterower – Second

Chair Gillette – All in favor?

Board Members - Aye

Chair Gillette – For the record, Tab B is a request for a Variance and Tab D through G are Conditional Use Applications. Is there any ex-parte disclosure? Zetterower?

Board Member Zetterower – No

Board Member VanDerlinder – None

Chair Gillette – None

Board Member Brock – None

Board Member Hartley – None

Chair Gillette – I will say though for the record that although I have no direct contact with Tabs E and F, my firm prepared those applications and I will be abstaining for on those.

Deputy Clerk – E and F

Chair Gillette – Yay. Is any Board Member received any email communications or letters?

Board Member Zetterower – I have not

Board Member VanDerlinder – None

Chair Gillette – None

Board Member Brock – None

Board Member Hartley - None

7:17:24 Chair Gillette – Moving on to Tab B. Can I get a motion to open the public hearing?

Board Member Zetterower – So moved.

Board Member VanDelinder – Second.

Chair Gillette – All in favor. All ayes.

Mr. Pope – All Right, Good Evening, this is Tab B.

Mr. Mullin – Just a minute, just a minute, did you swear him in?

Deputy Clerk – No. Raise your right hand. Do you solemnly swear for the testimony you are about to give is the truth, the whole truth, nothing but the truth so help you God?

Mr. Pope – Taco Pope, Director of Department of Planning and Economics Opportunity and I affirm the oath.

Mr. Mason – Chris Mason, Department of Economic Opportunity and Planning, Planner II and I do.

Ms. Bowen – Kristina Wright Bowen, Assistant Director, Department of Planning and Economics Opportunity and I affirm the oath.

Deputy Clerk – Thank you.

Mr. Pope – All right, Tab B, V16-002, Blue Potato Properties, LLC. The applicant requests relief from Section 9.04 (a) of the Land Development Code to reduce the minimum lot width from 90 feet to 73.44 feet. This will be the third time that you addressed this particular property in this situation. April 2014, it came before you. Mr. Malcolm Adams had brought this. He was the owner. In June 2015, Mr. Dukes

brought this application to you. Both the 2014 application and 2015 application were denied. Tonight will be the third application. The local ordinances require a twelve month stay between a decision made by the Conditional Use and Variance Board. That has clearly been met. Mr. Dukes is here this evening to present new evidence and to go through the application and review criteria. The property is located in Yulee, north of State Road 200 at the northern terminus of Chester Road. To put this in perspective, the a...I apologize, it's a little bit difficult to see in the lighting, but the yellow-dashed road here is Blackrock Road; the blue-dashed road is Chester. Where Chester makes a ninety degree turn to the west, it becomes Belleville Lane. From the outside of that ninety degree turn is the subject property highlighted in red. The property is located in the Residential Single Family-One zoning district. It is located in the Medium Density Residential land use category. The property measures approximately one-half acre. It was previously a part of a 1.7 acre estate owned by the Adams family. It was purchased in 1993. In 2001, the subject parcel was divided into three individual parcels; one heir received Parcels A and B, the second heir received Parcel C. The width of the estate lot, the parent tract, was 25 feet. When Parcel C was created, it was created at a width of 75 feet. That is where the issue arises. The Residential Single Family-One zoning district has a minimum lot width requirement of 90 feet that has been in place since 1974. In Section 29.07(b) of the Land Development Code, it prohibits the creation of non-conforming uses. So, when you create a new parcel of land, it has to be done so based on the minimum lot and yard requirements of the zoning district as it exists at that point in time. We attempted to use the Lot of Record provision which acknowledges building sites that were created prior to the adoption of our zoning code; unfortunately, it does not meet the criteria to be considered a Lot of Record.

Just real quickly, we are going to touch on access just so we can clarify its role in this discussion. The historical access to the estate lot, the parent parcel, was the intersection with Belleville Lane. That has not changed. That remains the same. What has changed is the individual who took control of Parcels A and B purchased some additional property and created a secondary access. So, on the ground, one individual owns the yellow, another individual owns the red and that access point has not changed. So, it's not a discussion of the access; it is a discussion of the width of the building site. This is a picture taken from the intersection of Belleville Lane and Chester Road. The signs that you can see and the gate to the right hand side of your screen is the entrance to the property. Looking into the property from the roadway, you can notice over here a home that is on the adjacent property and likewise to the left, looking out at the river down both of the banks, and looking back into the property. We'll walk you through this virtual tour just to make that you all fully understand and grasp the physical components of the site, 75-foot wide roughly, 300-feet deep. Based on everything that we've seen hereto forth is comprised of material that would facilitate the construction of a home. The issue is not whether or not the dirt is capable of holding a home; I think that's been established. The issue is, it was created in a manner that is non-conforming and not consistent with the Land Development Code. I know that Mr. Dukes has prepared some additional information and evidence for you all to take into consideration and so, with that, if there's not any questions, we will wait and answer anything or respond...and, thank you very much.

Chair Gillette: Thank you, Taco. Mr. Dukes...is the applicant here to present?

Mr. Dukes: Yes sir.

Chair Gillette: Mr. Dukes, do you have anybody else that you'll be asking to present as well?

Mr. Dukes: Uh, Mr. Patrick Higgins, formerly with the Florida Department of Health.

Chair Gillette: Okay, we can have him come up and we'll swear everybody in at one time.

Mr. Dukes: Okay.

Deputy Clerk: Will you raise your right hand? Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Dukes and Mr. Higgins: I do.

Deputy Clerk: State your name and address.

Mr. Dukes: John Dukes, Blue Potato Properties.

Patrick Higgins: 1705 Blue Heron Lane.

Chair Gillette: Thank you. Go ahead, Mr. Dukes.

7:24:06 Mr. Dukes: Thank you, Mr. Gillette. Gentlemen, we presented a rather thick binder here a while back. It's not that intimidating. About 90 percent of it's air. Just a back-up copy of what I'm going to make. So, where a lot of it makes no sense without explanation anyway. Mr. Chairman, I'm going to be as brief as I can. I would ask for a little bit of patience on the time as we go through this. Let me just take everybody back to the beginning to tell you what exactly ...I think everybody knows what's going on here and what the issues are. Uh, Susan and I decided to come to Fernandina. We liked everything about the town. We reeled the New Year's of 13 looking, driving and looking for property and we found this piece of ground. I called Patti Center, the listing agent, and asked for permission to go on the property. She said "sure, but the neighbors are going to come out and tell you can't build on it, it's not wide enough, you'll never get a septic tank." That's exactly what happened. Mike Adams walked out...he was very nice " Pretty private area, you can't build on it, it's not wide enough. You'll never get a septic tank on it." At the time, I wasn't familiar with the 90-foot rule. In fact, I had no dimensions on this lot; but, I didn't believe him. There was a nice clearing right there between the Oak trees and consequently, I called the septic experts out and everybody agreed that there shouldn't be no issue with getting a septic tank. Yes, so we just did some due diligence. Doing all that, I discovered this Board, Conditional Use and Variance Board and I've never run into this board before. Typically, variance issues and related matters are handled by Planning and Zoning Boards. So, this first time. I was excited to know that we had a board just to take care of situations like this. They run through the crack. This property was on the market for four years without a single offer; not even a low ball offer. Mr. Adams was very persuasive in discouraging anyone from buying it during that time and, so, he had the quiet enjoyment of it all those years, and it was family property and rightly so. Uh, if you haven't been out there, and I think Taco showed some pictures. If you take a quick look at the photos in exhibit 1, they are just taken from the marsh side, there's a couple that show you the size of the tree, and one that shows we have a power pole on the property. It shows the fire truck going...going around by the gate, and it shows the big Oak tree which is the oldest Oak tree that the arborist tells me dates back to maybe Henry Gates and Anne Boleyn so, he places the road here, I think, so we nicknamed him Gene Henry. The next photos are of what I believe to be a telephone outlet connection that once served a mobile home that sat here. If you gentlemen will move over to Exhibit 6 which is the fold out.....

Mr. Mullin: Mr. Dukes, can I ask you...the book you're reading from, is that the same information that is in the record? Is this new information?

Mr. Dukes: No sir, exact book that I presented and handed out to each member the last time we were here.

Mr. Mullin: Do you recall what date that was, Mr. Dukes, because it's been several times. I just want to make sure everyone...

Mr. Dukes: I believe that was in February...

Mr. Mullin: Because, what the Board has before them tonight is this document; I'm not sure it's the same that your referring to or referencing when you talk about exhibits. I just want to make sure, to be fair to you, that they have these exhibits. Is that your book?

Mr. Dukes: I understand, I don't know how.....

Chair Gillette: Taco, are they the same ones that we put on the website after the last meeting we had? I'm thinking it might be.

Board Member Brock: I think it was the same as this one.

Mr. Dukes : February 23rd. Taco, remember I gave you a copy of this... I gave each member one.

Chair Gillette: He did do a handout at that last....at that meeting and that was the first time we'd actually seen that,

Mr. Dukes: Right, and this had not changed since then.

Mr. Mullin: I know Mr. Brock has shown me a binder...

Mr. Dukes: That appears to be identical to this one.

Chair Gillette: He did hand that out.

Mr. Mullin: I don't see the other members...

Board Member Brock: He gave each one a book.

Mr. Mullin: I just want to make sure to be fair to you when you're referring....

Mr. Dukes: I understand, I'm talking about exhibits, you'll don't know where I'm at.

Mr. Mullin: Yes, sir.

Mr. Dukes: Yes, sir, I understand.

Mr. Mullin: We need to make sure that each member of the board has those exhibits.

Chair Gillette: He, he, okay, he did hand those out, I do remember that, and I looked at them.

Board Member Hartley: Yeah, I mean I received a book as well and went through it.

Mr. Mullin: You did? Does everyone, does everybody recall getting the book from...

Board Member VanDelinder: I must not have been here.

Board Member Zetterower: I did.

Mr. Mullin: Board Member VanDelinder was not here.

Mr. Dukes: That's correct.

Mr. Mullin: Do you have an additional copy of the exhibits you're talking to that you can distribute to the Board now?

Mr. Dukes: I do not, sir.

Mr. Mullin: Did you have those in your book?

Mr. Dukes: The exhibit I'm talking about is a blow up of this in the book. It's in the notebook as Exhibit 6.

Mr. Mullin: Okay, what I'm talking about, when you have a copy of that, don't you? As you refer to that, can you hand that to the Clerk and then she can pass those....

Mr. Dukes: This is the only copy I have.

Mr. Mullin: Can you take it out of your book after you refer to it so that.....

Mr. Dukes: Sure

Mr. Mullin: Each member of the Board, including Reverend VanDelinder, will have the benefit of seeing that so that we're clear on which exhibits you're talking about. That's all, if you just...

7:30:25 Mr. Dukes: I understand. Gentlemen, I'll be glad to pass them around.

Mr. Mullin: Okay.

Mr. Dukes: Let me comment first on what this actually is. It's a map of all the development on the Bell's River. This is Waterman's Bluff, Belleville, Chester area and Pirates Woods.

Mr. Mullin: Mr. Dukes, for the purposes of the record since this is a quasi-judicial, when you start referring to something that needs to be in the record. You have to state clearly what that is because if we're in a different venue where a court is looking at this, they have no idea what you're pointing to.

Mr. Dukes: Okay, this a copy, just a blow-up....

Mr. Mullin: You say "this"...you are holding in your hand a cardboard ...

Mr. Dukes: The cardboard is bigger copy of this exhibit.

Mr. Mullin: Which is Exhibit....what's the number on that exhibit.

Mr. Dukes: Exhibit 6.

Mr. Mullin: Okay...okay.

Mr. Dukes: And this will be a little easier to see, I guess.

Mr. Mullin: When you're finished, can you hand that to the Clerk, the cardboard?

Mr. Dukes: Absolutely, yes, sir.

Mr. Mullin: All right.

Mr. Dukes: I'll be glad to hand this but my notes are on it too.

Mr. Mullin: Go ahead, go ahead.

Mr. Dukes: But, gentlemen, I'll hold it up. What you've got here, and I know the zoning's different throughout, but this is all the Bells River developed lot; Waterman's Bluff, Belleville Chester and Pirates Woods. That's all the development on the Bells River. There are 62 lots, waterfront lots, on the Bells River. My point in presenting this....21 of those lots are less than 90 feet. They don't meet the 90-foot rule. And, that's when I say a lot of this is backup that's in this notebook showing the lots and the sizes of them. Now, let me just put this aside as you like me to hand this out. But 34 percent of all the waterfront lots on the Bells River do not meet the 90 foot rule. Should I hand this out now or could I get through this exhibit first?

Mr. Mullin: Why don't you...whatever makes you more comfortable. Why don't you....

Mr. Dukes: Let me get through this Exhibit 6 because you may want me to hand some other out.

Mr. Mullin: Yes, sir.

Mr. Dukes: All right, there's other... just maps, not a big deal. Mr. Brock, you may have this in your exhibit there. This is Waterman's Bluff, gentlemen. They're 18 deep-water lots on Waterman's Bluff; 16 of them do not meet the 90 foot rule. In fact, there are nine titled in the creek-front and of the 93 lots in there, 35 of them don't meet 38 percent of them. This is also an Exhibit back in November that Waterman's Bluff had that option. They...

Chair Gillette: Mr. Dukes, Waterman's Bluff is a PUD. It's its own district.

Mr. Dukes: I understand, I understand the difference in the zonings. I know it has public water and sewer. And, none of the lots 10 through 16 meet the 90-foot rule. I'm simply demonstrating like sizes and that smaller lots are available. The same is true in Pirates Woods with these lots not meeting the 90 foot rule. So, that's my whole point about Exhibit C. There's a number of lots on the river that don't meet, and obviously, right next door, there's an 80-foot lot that I'll address. Would you like me to pass this around, Mr. Mullin?

Mr. Mullin: If you're finished with it, Mr. Dukes, you just hand that to the Clerk next to Mr. Pope.

Mr. Dukes: Certainly,

Mr. Mullin: She can circulate that or pass it around so that members of the Board who may not have that with them tonight can see that, then, go ahead, Mr. Dukes.

Mr. Dukes: Okay. All right, in Exhibit 7 which we don't have, I understand, it's a bunch of legal stuff that really doesn't necessarily pertain to this; but, what the reason I've included it, it talks about variances in carrying out the strict interpretation or the literal interpretation of an ordinance and the higher courts have guarded against that and they talk about the principles of fairness which means that you shouldn't treat an individual different from other similarly situated landowners. And as we discussed a little bit, Mr. Mullin, I'm not getting into any of them but the Florida Land Use Environmental Resolution Dispute Act, the Administrative Procedure Act, excreta. The Florida State Senate, it just says "principles of fairness are violated when the literal interpretation of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons." So, my point is, of 21 similarly situated and I'm the only one not allowed to build. It goes to the equal protection claim of the equal protection clause, a property owner's right to be treated the same in the Florida Statutes. So, all this legal wasn't meant to be confusing. I just wanted to point out that that has been addressed in the past. I'm at a disadvantage, gentlemen, because when I go to Exhibit 2, you all don't have Exhibit 2 in front of you. So, let me...let me just walk through it because this is some of....a part of this, I think, is very acute.

Mr. Mullin: Mr. Dukes, can you identify what Exhibit 2 iswhat is that?

Mr. Dukes: Exhibit 2 is a pictorial hand drawn and a demonstration purposes only, history of what happened to the property. For instance, it was two and a quarter to begin with. There were three homes on it, two mobile homes. In 1976, Mr. Stellmach came by. He bought 65 feet and 15 feet. There was an easement...it's not an easement; there was a marshland and a wetlands encroaching on the west side of Mr. Stellmach's property. That's why he had to buy the additional 15 feet. He didn't have room to move his home in there. This is all collaborated by Mike Adams' testimony.

Mr. Mullin: Mr. Dukes, I hate to keep interrupting. When you say "this", the record doesn't reflect what "this" is, so, you have to state that.

Mr. Dukes: Mr. Adams stated, basically, it's a little off because what I just stated was Mr. Steelmach bought 65 feet and an additional 15 feet. Mr. Adams was close. He said he bought 70 feet and 10 feet.

Mr. Mullin: And, which Mr. Adams are you referring to?

Mr. Dukes: Mr. Mike Adams, I'm sorry. So, that's close enough as far as we're saying he bought two pieces of ground coming in here. And, Mr. Mike Adams says "there's only room between his house and the fence to walk through." That's in the minutes. So, my point is, he moved his house in here, he is up by my property line. That's fine. There were two little notations here that represent his will...

Mr. Mullin: When you say "here", again, Mr. Dukes, the record does not know what you are pointing to. You have to identify what you're pointing to for the record.

Mr. Dukes: What I'm pointing to are two X's to the west side of his property that represent the approximate location...

Mr. Mullin: What document are you pointing to? To be fair to you, the record will not show...

Mr. Dukes: Right, I'm in Exhibit C...

Mr. Mullin: Exhibit C.

Mr. Dukes: I mean 2, I'm sorry. Exhibit 2.

Mr. Mullin: Okay, thank you.

Mr. Dukes: Um, I'll try to....the whole point of this....there's no record of any permitting for the house, for the well, for the septic, for anything. With the wetlands, he probably only has 50 to 60 feet of usable riverfront. This happened in '76. He doesn't meet the sideline setbacks; however, there's nothing wrong with his lot. He's been living there happily for 40 years. His lot works fine and I have no problem with it being up. I'm just pointing out this happened two years after the land code went into effect. And, so, basically, if I don't meet the criteria, he doesn't either. That's what it amounts to. The same document, Exhibit C, after Mr. Stellmach bought his property, that left 1.7 acres as Mr. Pope. It had three...it had a house and two mobile homes on it. Now, what we're really asking for tonight ...this property was developed. We're just asking what was historically here. But here's where it gets a little interesting. In 1993, Mr. Willis and Ms. Dorothy Adams bought two-thirds of the property, Mr. Mike Adams bought one-third of the property. In Mr. Mike Adams' testimony, said "me and my father went in in 1993...

Mr. Mullin: Mr. Dukes...Mr. Dukes, when you say Mr. Mike Adams' testimony, he had not testified. If you are referring to....

Mr. Dukes: I probably got it from the minutes of a previous....

Mr. Mullin: Can you identify which minutes you are referring to? What date?

Mr. Dukes: I didn't date this page. No, sir.

Mr. Mullin: Then that...there's no way for the record to reflect when you say "to his testimony". There's no way to properly identify that, so, I suggest you might want to move on unless you can identify the date and what document you are referring to as to "his", Mr. Mike Adams' testimony.

Mr. Dukes: But what he said regardless of the day, was that he bought a third, his dad bought two-thirds.

Mr. Mullin: Mr. Dukes, I'm trying...I'm trying to help you. The record won't say; he has not testified tonight.

Mr. Dukes: I understand...

Mr. Mullin: When you say, "he said".

Mr. Dukes: Yes sir.

Mr. Mullin: When did he say it, that's what's missing.

Mr. Dukes: I understand.

Mr. Mullin: Okay.

Mr. Dukes: Good. This is a copy dated the third...I mean the 24th of March 1993 of the deed and page book where Mr. Mike Adams took....bought one third ..his one-third of the property. He actually bought that one-third of the property. That's a depiction only of what he had approximately of .38 acres of \$130,000....

Chair Gillette: Mr. Dukes, if you would...if those are official surveys...

Mr. Dukes: They're not.

Chair Gillette: Okay, they're....they're hand drawn maps that we really can't validate if they're true or not.

Mr. Dukes: They're...they're only for demonstration purposes. They are not...it doesn't matter. Here's my...here's my point with this, gentlemen, Mr. Chairman. Mr. Adams bought a third. What he left his dad with was an L-shaped lot. Dad had one lot with two mobile homes on it, approximately 1.32 acres. And, I would like to....again, I don't have a date on it. Mr. Martin asked a question and I guess I'm not allowed to...to read that.

Mr. Mullin: Again, Mr. Martin, we don't know which Mr. Martin you're referring to.

Mr. Dukes: Mr. Josh Martin, he used to...he was a former member of this Board.

Mr. Mullin: Yes, sir, but we don't have a date on that, Mr. Dukes.

Mr. Dukes: Yes, sir. Okay.

Chair Gillette: If you have official surveys though, we would like to see them. I just didn't see any in the package.

Mr. Dukes: There are none. This is demonstration only. I'm not trying to put any footage or any numbers to anything. So, let me explain my point here, Mr. Chairman. Dad had an L-shaped lot. He wanted to leave a lot to both his sons, a portion of his lot. One to his son, Malcolm, and one to his son, Mike, so, he arbitrarily drew the line and divided it into two. And, that was surveyed into Parcel A, B, and C. Dad had this in a living trust. He lived in the mobile home behind Mr. Mike Adams' house. When he passed away, Mr. Mike Adams inherited Parcel B and son, Malcomb inherited Parcel C. So where it gets interesting here, gentlemen, all municipalities have a land development code; some kind of rules and regulations. Florida alone's got 67 counties with some 412 cities. They are all different, but the intent is the same everywhere, to foster new development. Everybody wants to grow but they want controlled growth. In Nassau County Land Development Code, the definition of "development" is "the division of land into more than two parcels." That didn't happen here. This was the division of land in the....

Mr. Mullin: Mr. Dukes, I hate to interrupt you, but that has...it's not relevant to the issue. The definition of development is not the issue before the Board tonight, so....

Mr. Dukes: Let me, let me....if I may clarify your question, Mr. Mullin, we're talking about a land development code that refers to development. We're talking about only dividing the lot. Again, I want to give....I got a lot I'm going to give, some to my son.

Mr. Mullin: Mr. Dukes, the land development code is the same as the zoning code. The zoning code has specific definitions and sections in it that pertains to your application.

Mr. Dukes: Yes, sir.

Mr. Mullin: Your requirement is to address that criterion, not the definition of what development is. No one is asserting that yours is a development. If you have to, as Mr. Pope identified, which are the relevant portions of the zoning code that you need to address, so..

Mr. Dukes: That's...that's where I'm probably not explaining myself well. Mr. Pope in his presentation talked about a Parcel B divided into three parcels. That is not what happened. That's where we missed it in the presentation. No, it was only one lot divided into two; it wasn't three lots subdivided.

Mr. Mullin: But the issue, just to be fair to you, Mr. Dukes, is not how many lots; it's the width of the lot that Mr. Pope identified and the date upon which that lot was created.

Mr. Dukes: I understand.

Mr. Mullin: And it was created, and that has a bearing on the issue before the board.

Mr. Dukes: I understand.

Mr. Mullin: And...and, so to try to help you, that would be relevant to your request tonight before the Board.

Mr. Dukes: Yes, sir. My....I don't mind....

Mr. Mullin: Peggy, are you keeping time?

7:47:09 Chair Gillette: We're way behind on the timer.

Mr. Mullin: We need to keep.....we need to keep time because it's not fair to everybody to everybody else.

Mr. Dukes: Right, if this would've of, If this went in front of everybody...

Chair Gillette: You did...uh, you did give us that at the last meeting, I'll recognize that. I think all the board members except for possibly Mr. VanDelinder, have reviewed that. Because you did know your part of the record with us.

Mr. Dukes: Yes, yes, sir.

Chair Gillette: I know I reviewed it. I don't think there's a need to go through...at least, unless the Board feels otherwise, I'm not sure I feel the need to go through every item in that packet.

Board Member Brock: The only thing I'm concerned is what's new other than ...

Chair Gillette: Exactly.

Board Member Brock:what we went through the last time...

Chair Gillette: Very good point.

Board Member Brock:and I don't see anything new.

Mr. Dukes: Well, to me what's new is that Mike Adams bought and had a deed to his lot that only left one lot for dad. I'll get off that point, Mr. Mullin, understanding what you say here. Alright, will get back to...

Mr. Mullin: Mr. Dukes, I think, for the record, Madam Clerk, what time has elapsed since the start of this so the record's clear?

Deputy Clerk: 7:19 is when it began.

Mr. Mullin: So, you have exceeded your time limit.

Mr. Dukes: Yes sir, I understand that, Mr. Mullin, but I've been three years trying to get to move to Fernandina...

Mr. Mullin: And, they certainly want to be fair but they have a long agenda tonight and the time limit, if you need it, what additional time do you think you need, you have to ask the Chair.

Mr. Dukes: Well, I'll get through it in another five or six minutes.

Chair Gillette: You do have another presenter with you, correct?

Mr. Dukes: Yes sir, it's very short. But, if we hadn't had this, we had this back and forth, it would be a lot quicker, and that's eating into my time. But, anyway, staff says, and everybody agrees, this is a buildable lot. This lot works. It's big enough, it's wide enough, it's deep enough. Staff says it would construct a single-family ...let me back up. February 22, 2014, the Conditional Use and Variance Board Staff Report, Functionality and Pragmatic Approach, "If the future owner can meet the requirements of the State of Florida for the installation of a private well and onsite sewage disposal system", and that was an issue in the previous meetings if you don't have water and sewer. On the July 28, 2016 presentation by the staff, they said Parcel C, you can build a single-family home if you meet the customary requirements for building a septic tank, well separation, and setbacks.

Chair Gillette: Mr. Dukes, we read the record. We understand what's in there.

Mr. Dukes: Yes, sir.

Chair Gillette: Is there something new that you have that is not part of the record that we have reviewed?

Mr. Dukes: All right, let me run through. There's a letter from a prominent engineering firm here. I guess you guys read that. We had an expert witness testify to the same. We discovered a septic tank on the property...

Mr. Mullin: Mr. Dukes, I hate to interrupt you again, but what the Chairman is asking you is this application has been before this board several times and the board has taken action to deny the application. The record is clear. What they are asking you is, is there any new information other than what you're reading from the book that each member was presented the last time you were here? Reverend VanDelinder was not present but you certainly handed out the exhibit you referred to earlier. Is there anything new for this application that you did not present previously?

Mr. Dukes: Prior to this book....

Mr. Mullin: Prior to tonight.

Mr. Dukes: Okay, I presented a deed page book when Mike Adams actually bought.

Chair Gillette: Yes, sir,

Mr. Dukes: yes, alright, I have...we have discovered an existing septic tank.

Mr. Mullin: Yes, sir, and that was brought forth, I think, in the last time you had this before the board where they denied your request and there was testimony regarding the septic tank and the issue was not whether or not the septic tank could be placed on the property. That was not the issue, and I believe the testimony you presented was that you could place a septic tank, and, in fact, perhaps a septic tank may have existed on that now lot previously.

Mr. Dukes: Well, may have has to be but Chairman Avila had the questions and "where's your house going to be", "where's the septic tank going to be", "where's the drain field", all these great we need to knows so he had problems with the septic tank.

Mr. Mullin: And, what was the vote that night of the full board.

Mr. Dukes: I don't recall but I was denied. But, ah....

Mr. Mullin: What they're asking you is there any new evidence that the board didn't have the last time the application was considered? Any new evidence?

Mr. Dukes: The last time, the application, we did not, I don't believe, we actually had a septic tank. We didn't know that it was there. We presented a site plan where we said the property is capable of supporting a septic tank.

Chair Gillette: And...and I think you're right. I think that the presence of that septic tank is maybe some new evidence that, at least from what I gathered in the record.

Mr. Dukes: And real briefly, we'd like to invite Mr. Higgins up here.

Mr. Higgins: How are you guys doing? My name is Patrick Higgins. I worked for the Health Department for 12 years. I'm no longer with the Health Department. I'm here as a private citizen but before I left the Health Department, Mr. Dukes came in with his application and we issued him an existing septic permit based on his application. Everything was fine. He had an existing septic system; since he didn't increase the sewage flow, he was allowed to reuse that system as is. So, there was no issues, he received an existing letter from us so he essentially has a septic permit from us to put the building on his property. You guys have any questions regarding that, I'm here.

Mr. Mullin: When you say "us", when was that issued?

Mr. Higgins: Excuse me, when I say us, I'm referring to the Health Department.

Mr. Mullin: And when was that issued?

Mr. Higgins: That was issued...I left in August of last year and it was probably issued, I would say, within the month before I left.

Mr. Mullin: Okay, thank you. August being August 2016?

Mr. Higgins: 2016. Hasn't been a full year yet.

Chair Gillette: Any questions for Mr. Higgins? Thank you.

Mr. Higgins: All right, thank you.

Mr. Dukes: We have an existing septic tank, existing drain field, and the sketch for a well....well, a well site. That...that's information we did not know last time. Mr. Adams knew he told.....admitted to the Health Department, Mr. Higgins is here to verify, that he knew the septic tank was there all the time. I don't know. Gentlemen, I am in my binder at Exhibit 5. This has not been presented before. I have a lot of comments from the neighbors that are not dated. I mean, I know which meeting they were from but ah...they won't be allowed.

Chair Gillette: These won't be allowed, Mr. Dukes, if people can speak, we have a laundry list of people that want to speak.

Mr. Dukes: Yeah, I'm saying I'm not going to be allowed to go through that, I know. So, that's going to change things. This is the Chester area. This is where the neighbors who spoke before live. None of them go around the curve.

Mr. Mullin: Mr. Dukes, I hate to interrupt. That is not relevant to your application. Those who will speak in favor of or against are here tonight and can certainly speak. Where they live, the proximity with which they live to this property is not relevant to the issue tonight.

Mr. Dukes: So, it's not an issue that 21 property owners pass my lot and....

Mr. Mullin: No sir, that is not relevant to your application tonight. Do you have any new evidence that the board, when they denied it the last time, does not have before them tonight? That's what the request is, any new evidence other than you had...testimony.

Mr. Dukes: Well, I guess I can save the rest of it in rebuttal. I do have pictures of a firetruck in front of my property.

Mr. Mullin: And the firetruck is not ...the firetruck is not relevant to you application.

Mr. Dukes: If it's one that can't get down here.

Chair Gillette: Mr. Dukes, if I can, let me let everybody else come up to speak and then if you want to have a chance for rebuttal, we can do that..

Mr. Dukes: I appreciate that.

Chair Gillette: Thank you.

Mr. Dukes: Thank you, sir. Any questions from anyone?

Mr. Mullin: We open a public hearing.

Chair Gillette: Is there anyone in the audience to speak for or against this application? Please come up and state your name and address for the record.

Ms. Boyett: Cathryn Boyett , 97081 Iris

Deputy Clerk: Can you speak into the mic?

7:56:44 Ms. Boyett: Cathryn Boyett , 97081 Iris Lane, Yulee. I live on Iris Lane which is in very close proximity to this and I think most of you are aware that Chester is a very small community for dirt roads and we have limited along space to pass one another on the roads. And, I think, it would a terrible thing to do to make a lot smaller because once you do it, then everybody's going to start asking for a smaller lot and then our population is going to get unbearable and unpassable on our streets. So, I don't think that a variance should be given on this. This was denied before this man bought this property and I think he knew that and he should have given up on it then. Thank you.

Mr. Dukes: Rebuttal?

Chair Gillette: We'll do rebuttal at the end.

7:58:08 Michael David Adams: Michael David Adams, my address is 97030 Pirates Point Road in Yulee. Excuse me, I apologize, I'm all hoarse. I've been a little frustrated for the last 31 minutes and 27 seconds and I'll tell you why. There's been a lot of comments that have just been false, untrue. Whether it goes to his building on the lot or not; not an issue. I'm offended because I feel that my time was wasted by Mr. Dukes; your time was wasted by Mr. Dukes. He's not presenting anything new that's relevant in this situation. Active duty Navy for the last 25 years. We live in a world, we live in a nation that is governed by rules and laws. I don't like them all, I follow them. This is a rule, this is a law that was made back in 1974 and there's a reason for it. Mr. Dukes continuously mentions how beautiful this property is and how much he wants to live here. What you're seeing is a picture from almost five years ago. If you go and drive that property now, it doesn't look the same. It hasn't been mowed in over a year. An eight foot fence that didn't even meet code at the time was built and had to be changed just to meet code and it actually encroaches on my father's property and that's being addressed separately. What I'm trying to say here, 31 minutes, 27 seconds, encroaching onto someone else's property with a fence, you go outside and see the parking job, it's a standard here. He doesn't want to follow the rules. I actually had an offer. I was stationed overseas for several years. When I returned, I spoke to my uncle and put in an offer on the property. Mr. Dukes had put one in right before I even had the opportunity. When we discussed it, we knew that it was not a buildable lot without getting additional properties either from my father or just using it as a lot. Mr. Dukes actually signed documentation from Mr...uh...Ms. Patti Center stating that he understood and he attended that meeting, that very first one with my uncle, Malcomb Adams, stating that, you know, whenever the Board denied it the first time. He was well informed when he met and entered into this agreement. Another point, I think it's kind of insulting to the Board here as well when he gets up here and states that he owns a company, Blue Potato Properties, and he's going to tell you he's never heard of a land variance? I'm offended. I'm offended that someone that states he has a company; and an organization that develops property, and he's going to tell you he's never heard of land variance and an organization of such. Bottom line is, I'd appreciate the board continuing on, following the...our county rules of 90 feet wide. It doesn't meet the requirements, no substantial evidence stating why it should be changed, and we would like to keep the community at a standard and that standard is 90 feet and there may be 21 properties that don't meet that width, I'll tell you, they are not, with the exception of Mr. Stellmach's property, they are in communities that were already preplanned and are on public water and sewage, so.. thank you very much for your time.

Chair Gillette: Thank you Mr. Adams. Anyone else in the audience? State your name and address for the record, please.

Michael Raymond Adams: Michael Raymond Adams, 97275 Belleville Lane, Yulee, Florida 32097.

Chair Gillette: Thank you.

Mr. Mullin: Peggy, can you swear him in?

Deputy Clerk: Do you solemnly swear or affirm the testimony you're about to give is the truth, the whole and nothing but the truth, so help you God?

Michael Raymond Adams: I do.

Deputy Clerk: Malcolm Raymond Adams:

Michael Raymond Adams: No, Michael.

Deputy Clerk: Oh, Michael.....sorry.

Michael Raymond Adams: M-I-C-H-A-E-L

Deputy Clerk: Thank you.

Michael Raymond Adams: Kinda like Mickey Mouse.

Deputy Clerk: Okay.

Michael Raymond Adams: Uh, as my son just stated, he did have an offer....my brother had an offer on the property, and Mr. Dukes decided to buy it anyway after the board....variance board, denied him the right to build on it. That was Mr. Dukes' choice. I've also....we've also got testimony in the past where his attorney, Buddy Jacobs, said that Mr. Dukes was a grown man, over 21, and knew what he was getting into; so, I'll leave it at that. Also, we had, when this land was divided up in the will of my father, Buddy Jacobs was the attorney and all the paperwork is in the documents that you all have received. And, I do have a copy of the map. There is a ...a variance on the property...an easement, I'm sorry....an easement on the property of 206 foot.

Chair Gillette: That hasn't changed, right?

Mr. Adams: It has not changed, no sir. My property is listed as "working waterfront" through the State of Florida. I've got commercial vessels out at my dock. I am considered working waterfront and I have to use this easement to get my equipment and my boats in and out of the property to do maintenance on them. And, that is a Florida State Statute, it has nothing to do with Nassau County. Like I said, the parcels...if you all don't have a copy of that, I got the Parcels 1, 2, Exhibit A, B and C.

Chair Gillette: Part of the record.

Mr. Mullin: Can you give that to the Clerk, Mr. Adams.

Mr. Adams: But, Mr. Dukes had an out to get out of it when he first came and realized that it was not a buildable lot before he ever purchased the property. I think the variance board ought to stand up and continue this practice. I don't know how he's going to build on this property with awith me having the use of a 30 by 206-foot variance on it....where's he going to put a septic tank and well. I'm a member of the St. Marys River Keeper, Rick Frye is the St. Marys River Keeper, he's been out on my property; we've done fundraisers out there for keeping the pollution down and trying to restore the rivers in Nassau County. He has looked at the property. He says he does not see any way he can put a septic system on there that will not pollute the waterway. And, also, they said that they've discovered a septic tank, and, the Health Department, I can't remember his name. Yeah, there's septic tank system

on there but the drain field's on my property. So, if he wants to come take the drain field up, have at it. It's an abandoned septic tank that was on the property whenever he bought the property.

Chair Gillette: Thank you very much. Anybody else to speak for or against?

Deputy Clerk: Raise you right hand. Do you solemnly swear or affirm the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Charles Wilder: I do.

Deputy Clerk: Your name and address for the record.

Mr. Wilder: Charles Fletcher Wilder, Junior, 97013 Chester River Road

Chair Gillette: Thank you.

Mr. Wilder: 32097. And, I've been down here, I reckon, five or six times. Mr. Dukes is a very smart man. He knows when to hold them; he knows when to fold them. The ...the variance board has done a real real great job for my father-in-law, as I'm not going to go into details of anything else. You're doing a good job and keep it up. Thank you.

Chair Gillette: Thank you. Anybody else?

Deputy Clerk: Do you solemnly swear or affirm the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. McGarrett: I, Terrell McGarrett, I do.

Deputy Clerk: Thank you.

Chair Gillette: Thank you.

Mr. McGarrett: Thank you. Good evening. I'm an avid fisherman. I fish over here often from the docks and the boat. And putting a property in between there, that crowd...you know, that crowds up the water space there. So, it's a concern to me as a fisherman. Thank you.

Chair Gillette: Okay.

Mr. McGarett: Thank you.

Deputy Clerk: I'm sorry, what was your name again

Mr. McGarrett: Terrell McGarrett.

Deputy Clerk: Terrell McGarrett. Thank you.

Mr. McGarrett: Thanks.

Deputy Clerk: Do you solemnly swear or affirm that the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

Robert Eric Jones: Yes, maam.

Deputy Clerk: Your name?

Robert Eric Jones: My name is Robert Eric Jones. I live at 97634 Chester River Road on the corner of Chester River and Belleville. And um, I've lived there for close to forty years. I moved in the woods because I didn't like being stuck up on people. I think everybody else moved in the woods for that reason too. As you start breaking this down in little lots like this here, you're going to have everybody moving in on top of everybody and it, just, it don't seem right. I mean. If I wanted to live in a subdivision, I would have went to Pirates Woods or I would have went on up to the Bluffs up there and lived in a subdivision, but I didn't want to live in ..in no subdivision, I wanted to live in the woods. Ya'll ..ya'll are doing a fine job and ya'll keep up the good work. Thank you.

Chair Gillette: Thank you Mr. Jones. Anybody else?

Mr. Mullin: And let me just...as an abolition, please don't repeat or restate the same information as the previous speaker.

Deputy Clerk: Do you solemnly swear or affirm that the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God?

Barbara Adams: Yes, please.

Deputy Clerk: Can you state your name for the record?

Barbara Adams: Barbara Adams, 97275 Belleville Lane, Yulee, Florida 32097.

Deputy Clerk: Thank you.

Barbara Admas, My main concern about this is as my stepson said a few minutes ago. This picture was taken five years ago. There's a big fence up there now. If you go take a look at that fence that is there now, you will understand that if you build a house on that piece of property over there.... **(recorder stopped 8:08:57)**

8:08:57 – 8:10:43 Missing recording

David James: It get a little close and that's just another aspect to look at it. I don't like being jammed together either. You all are doing a great job.

Chair Gillette: Thank you.

Deputy Clerk: Thank you.

Chair Gillette: Anybody else? Mr. Dukes, rebut.

Mr. Dukes: I'll be brief. Responding to Mr. Mike Adam, I've never concerned about that easement from day one.

Chair Gillette: The easement's not part of the application right now.

Mr. Dukes: It's part of a comment though that he made.

Mr. Mullin: That easement has no bearing, Mr. Dukes.

Mr. Dukes: but, it doesn't because I can build without the easement., so...

Mr. Mullin: We...we...we agree with you.

Mr. Dukes: And in response to Mr. David Adams, Patti Center's records show 9 phone calls or emails giving him an opportunity to buy this lot, so...they're upset because they don't have it. They presented no evidence at all from the opposition of why we should or shouldn't build here. I'll just close ...it's ...it's a buildable lot. If I were in over ten or twenty acres of land, I would expect to meet code and subdivide as _____ would expect to meet code. This is one that just fell through the cracks. Dad gave his son a piece of property. We had....my drain field is not on Mr. Adams' property, it's on my side...so that's not the issue either, I guess. So, I hope you gentlemen look favorably on it. We all know it's a buildable lot.

Chair Gillette: Thank you, Mr. Dukes.

Mr. Dukes: Thank you, gentlemen.

Chair Gillette: Can I have a motion to close the public hearing?

Board Member VanDelinder: I move to close it.

Board Member Brock: Second.

Chair Gillette: All in favor?

Board Members: Aye

Chair Gillette: What's the pleasure of the Board?

Board Member VanDelinder: I move that the Board finds competent substantial evidence in the testimony received to deny application V16-002 , a request to reduce the minimum width from 90' to 73.44' to accommodate the construction of a family dwelling in the Residential Single Family-1 (RS-1) zoning district citing specifically the failure to demonstrate consistency with standards of review A, B, C and F for the issuance of the variance as defined by Section 3.05(B)2.c of the Land Development Code of Nassau County.

8:13:30 ???? Does the _____ ?

Mr. Mullin: Just a minute, Mr. Pope.

8:13:42 Mr. Pope: I just want to clarify one specific criteria, if you turn to _____

Board Member VanDelinder: I said A, B, C, and F.

Mr. Dukes: A & C?

Chair Gillette: That's straight from your staff findings?

Mr. Pope: I...ah... are we looking at the staff report dated...just to make sure that we're looking at the staff report dated February 23, 2017. When you look at page ten, it cites our findings at a staff level; obviously at the Board's discretion of their own findings based on evidence as presented this evening. Our finding was that it failed to meet criteria A and C. Criteria A being there are no special conditions that this was part of the....

Board Member VanDelinder: I can amend it to A and C.

8:14:42 _____: So we're looking at an old staff report.

Chair Gillette: So the motion is to deny. Do I have a second? We need a second.

Board Member Brock: Second.

Chair Gillette: We have a motion and a second. Madam Clerk, will you call the roll?

Deputy Clerk called the vote:

Board Member Zetterower – Yes,
Board Member Brock – Yes
Board Member VanDelinder – Yes
Board Member Hartley – Yes
Chair Gillette – Yes

Chair Gillette: We'll take a three minute recess if we could real quick.