

# BOARD OF ADJUSTMENT

## MINUTES

THURSDAY  
SEPTEMBER 11, 2008

1:11  
PM

COMMISSIONER CHAMBERS,  
ADMINISTRATION BUILDING

<b>CALLED TO ORDER BY</b>	Donald Schreiner, Chairman, noted for the record that there was a quorum present. He confirmed Proof of Publication for each case and noted that the meeting had been advertised pursuant to the Sunshine Statute.
<b>RECORDING SECRETARY</b>	Anna Ely
<b>BOARD ATTENDEES</b>	Donald Schreiner Mary Link Bennett Ruth Gray Howard B. (Bob) Fox, Jr. Lloyd Atkins, Jr. Steven Berk Marie Wuenschel
<b>NOT PRESENT</b>	
<b>DEPARTMENT OF GROWTH MANAGEMENT REPRESENTATIVES</b>	Terrie Diesbourg, Director, Zoning Division Anita Greiner, Chief Planner, Zoning Division Paul Simmons, Planner, Zoning Division Anna Ely, Public Hearing Coordinator, Zoning Division
<b>BOARD ATTORNEY</b>	Melanie Marsh, Deputy County Attorney Erin Hartigan, Assistant County Attorney

**MINUTE APPROVAL**

APPROVAL OF MINUTES OF AUGUST 14, 2008 MEETING

<b>MOTION READS:</b>	To approve the minutes of the August 14, 2008 Board of Adjustment hearing.		
<b>MOTION BY:</b>	<b>MARY LINK BENNETT</b>	<b>SECONDED BY</b>	<b>STEVE BERK</b>
<b>MOTION APPROVED: 7-0</b>	<b>FOR:</b> Donald Schreiner Mary Link Bennett Ruth Gray Howard B. (Bob) Fox, Jr. Lloyd Atkins, Jr. Steven Berk Marie Wuenschel		<b>AGAINST:</b> None

BOA #44-08-2  
OWNER: TOBY BEST, JEFFERY STOREY, AND KENNETH M. KELLY, JR.  
APPLICANT: TOBY BEST

BOA #45-08-2  
OWNER: ZULFIQUAR RAHAMAN AND SHAHANAZ RAHAMAN  
APPLICANT: ZULFIQUAR RAHAMAN

**CONSENT AGENDA**

BOA #46-08-2  
OWNER: AWARD HOME SERVICES, INC.  
APPLICANT: TINA HOLLAND WHEELER

BOA #48-08-4  
OWNER/APPLICANT: ADAM GUTMAN

BOA #51-08-4  
 OWNER/APPLICANT: JULIAN & JAYNE KEPLER

BOA #52-08-4  
 OWNER: ROBERT W. MAXWELL FAMILY TRUST AND BARBARA GRAHAM  
 APPLICANT: CHRISTOPHER J. SHIPLEY

BOA #54-08-2  
 OWNER: FABIOLA R. GILLIS  
 APPLICANT: IVAN URIBE

<b>DISCUSSION</b>	There was no objection to BOA #44-08-2, BOA #45-08-2, BOA #46-08-2, BOA #48-08-4, BOA #51-08-4, BOA #52-08-4 and BOA #54-08-2 remaining on the consent agenda.		
<b>MOTION READS:</b>	To approve BOA #44-08-2, BOA #45-08-2, BOA #46-08-2, BOA #48-08-4, BOA #51-08-4, BOA #52-08-4 and BOA #54-08-2 with conditions of staff.		
<b>MOTION BY:</b>	<b>MARY LINK BENNETT</b>	<b>SECONDED BY</b>	<b>RUTH GRAY</b>
<b>MOTION APPROVED: 7-0</b>	<b>FOR:</b> Donald Schreiner Mary Link Bennett Ruth Gray Howard B. (Bob) Fox, Jr. Lloyd Atkins, Jr. Steven Berk Marie Wuenschel		<b>AGAINST:</b> None

**BOA #42-08-2**  
 BOA #42-08-2  
 OWNER: LAKE VALLEY COMMUNITY ASSOCIATION, INC.  
 APPLICANT: FLORIDA DOCK, INC. /CHERYL HILDERBRAND

<b>DISCUSSION</b>	<p>Anita Greiner, Chief Planner, presented the staff report and showed the aerial from the staff report. She also showed the plat of the subdivision and explained the history of the subdivision and subject parcel and surrounding area.</p> <p>Ms. Greiner explained that the subject property did not meet the required codes for setbacks for a dock. She also showed a proposed plan for the dock from the staff report, and stated that staff believed that the applicants had shown proof of hardship and meeting the intent of the code. She stated that staff recommended approval with the conditions that the dock would be centered between north and south property lines and that a landscape buffer would be required along those property lines. She stated that staff recommended imposing parking and mooring restrictions.</p> <p>Mary Link Bennett, Board member had questions regarding the size and length of the proposed dock, and Ms. Greiner responded that the proposed size is four feet wide and 64 feet long.</p> <p>Don Schreiner, Board Chairman, verified with Ms. Greiner that only docks could be built to the north and south of the proposed dock and that no personal residences could be built.</p> <p>In response to questions from Ms. Bennett regarding the traffic, parking and playground usage of the lot, Ms. Greiner explained that although the Code does not allow for parking, that staff wanted to</p>
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ensure that it was understood and has recommended parking restrictions on the lot as a condition of the variance. This would mean that people would have to park in the subdivision and walk across to the lot. She stated that it is not up to the County to control children playing on the lot.

In response to Mr. Schreiner, Cheryl Hildebrand, agent for the applicant, stated the applicants are in agreement with the conditions and restrictions suggested by staff.

Diane Russ, adjoining property owner spoke in regards to the intent of the Code. She stated that she felt that the Code requiring a 100-foot setback was in place to protect the individual property owners along the lake and that if the variance is granted in this case that it would not protect the individual properties along the lake. She stated that use by the owners of the 59 lots in the subdivision would greatly impact the risk level for that one lot in relation to the individual uses of the other properties.

In response to Ruth Gray, Board member, Ms. Russ stated that her property is located to the north of Anderson Hill Road about five lots to the north of the subject property. She also stated that she has had problems with people using their dock without permission.

Ms. Bennett had questions regarding the homeowner's association responsibility and liability in case of accidents on the property.

Melanie Marsh, Deputy County Attorney stated that it would be the Homeowners' Association's responsibility to provide liability in case of accidents and that it fell under the State's jurisdiction and not the County's.

Mr. Schreiner had questions regarding whether the association would be responsible for policing the property to prevent trespassing and illegal parking.

Ms. Hildebrand stated that the subdivision has a Neighborhood Crime Watch system and that even without a dock on the property that the 59 owners would be able to use the property. She stated that there will be no overnight moorings, and no parking.

Mr. Schreiner asked about putting a locked gate at the entryway to the dock, and Ms. Hildebrand stated that the association would be in agreement with that.

In response to a question by Ms. Bennett, Ms. Hildebrand stated that there would not be a boat ramp.

Ms. Gray asked if there would be a fence and Ms. Hildebrand stated there would be a picket gate at the entrance to the dock, and railings along the dock.

Mel Couch, adjacent property owner, three lots to the north of Anderson Hill Road was present to speak in opposition. Mr. Couch stated that there is another association that already shares a common area next to his property, where he has ongoing problems of litter and

vandalism and trespassing. He stated that the residents can use the property as it is, but when you put a dock on vacant property with no house across from it, it will look like a public dock and people will assume it is for public access. Mr. Couch stated that he still has people trespassing on his property even with signs and chains. He stated that the proposed location is near a dangerous intersection and that at this time people park all the way down Lakeshore Drive and even along his property to get to the subject property.

John Toth, adjacent property owner directly to the north of the subject property was present to speak in opposition. He stated that even though his lakeside property is not developed, he does have a home on the property across the street from the lake. Mr. Toth stated that it is a dangerous intersection and that people speed down the road and there has already been one traffic fatality in front of his house. He felt it would be dangerous for people to walk across the street to the dock property. He also stated that it was even dangerous for him to go across and mow the grass on his lakeside property.

Mr. Schreiner asked the speed limit and Mr. Toth stated that is posted at 35 mph. He stated that the daytime people using the property have been very nice and clean up after themselves; but, night use by teenagers has led to vandalism. He stated that people use the lot in question to launch boats and park illegally at this time. He felt that if it is approved that it should be to the stipulation that if it is not kept policed or has multiple code violations that the dock would be removed. He stated that he can't spend his time calling Code Enforcement and policing the property. He stated that he doesn't object to the people and what they want to do, but he felt it should be conditioned.

In response to questions from Ms. Gray, Mr. Toth stated that the cause of the fatal accident was excess speed and that the driver lost control and hit a tree in his yard. He also stated that he felt that the easement from the lake to the subdivision actually looks like it should have been a platted road that was never put in.

Ms. Gray asked about fencing, and Mr. Toth explained that you really couldn't fence the right-of-ways and that he felt that fencing along the right-of-way would present more of a hazard.

Ms. Hilderbrand stated that she has discussed the parking issue with the Association. She stated that she had mentioned metal guards with a walk-thru, such as you see along roadways to prevent parking and the association was fine with that kind of restriction. The owners do not want to upset the adjacent individual property owners, and are willing to do whatever it takes.

Lloyd Atkins, Board member, asked about whether the subdivision would have needed a variance to place a dock on the lot at the time it was platted and Ms. Greiner verified that it would have. Mr. Atkins stated that he didn't think that denying a dock would keep people from walking across the street or would cause people to get killed. He also stated that he believed that most communities that have lake access do have docks and that he didn't think that denying the dock would stop theft. Mr. Atkins felt that it would be the Sheriff

	<p>Department's jurisdiction regarding any criminal activity and any speeding. He stated that it was a platted recreational area and that he didn't feel the Board had the right to take the recreation area away from the subdivision.</p> <p>Steve Berk, Board member, stated that he felt that 59 homes using one dock would magnify any problems.</p> <p>Ms. Greiner stated that even without a dock it would still be a recreational area and they could put tables on the property.</p> <p>Ms. Schreiner stated that denying the variance would not prevent theft and vandalism, and that he felt that fencing would not stop parking and trespassing. He stated that he felt that the only thing it would do is deny the people use of their property.</p> <p>Ms. Gray felt that to approve the variance would compound an error on top of an error and would increase and compound the problem instead of decreasing the problem. She stated that people in the subdivision bought their property knowing there wasn't a dock.</p> <p>Marie Weunschel, Board member, asked if the dock to the south was private, and she was told that it was.</p>		
<b>MOTION READS:</b>	To DENY the request for variance.		
<b>MOTION BY:</b>	<b>STEVEN BERK</b>	<b>SECONDED BY</b>	<b>RUTH GRAY</b>
MOTION APPROVED 5-2	<b>FOR:</b> Mary Link Bennett Ruth Gray Howard B. (Bob) Fox, Jr. Steven Berk Marie Wuenschel		<b>AGAINST:</b> Lloyd Atkins, Jr. Donald Schreiner

**BOA#43-08-5**

BOA #43-08-5

OWNER/APPLICANT: WILLIE & SANDRA WILSON

<b>DISCUSSION</b>	<p>Anita Greiner, Chief Planner, presented the staff report and showed the aerial from the staff report. She explained the variance request for an accessory structures square footage to be greater than 80 percent of the footage of the main dwelling unit living space and the request for less than the required setback of 25 feet along the secondary road frontage.</p> <p>She showed the requested location on the aerial, the access to the property and the three roads surrounding the property. She showed the site plan from the staff report. Ms. Greiner stated that most parcels in the area are developed as single-family dwelling units. She stated that staff feels they have shown a hardship, but have not shown proof of meeting the intent of the Code. Staff is recommending denial of the eighty percent request, but approval of the setback request.</p> <p>Willie Wilson, owner was present to explain his request. He stated that he had equipment he needed to store. He explained that Code Enforcement told him that he could not just store it behind fencing, it had to be stored inside a building. He showed a sketch (Applicant</p>
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	<p>Exhibit "A") to show what he wants to build to store his equipment in.</p> <p>Ms Greiner stated that this is a new Code and that this is the first variance request since it became effective.</p> <p>Melanie Marsh, Deputy County Attorney, explained that if there is not an active building permit, that Code requires building supplies and equipment to be totally enclosed.</p> <p>Mr. Wilson, in response to questions from Steve Berk, Board member, stated that the structure will be block and stucco and he needs the size he is requesting to store all of his equipment. He asked whether attaching it to his home would change the greater than eighty percent issue.</p> <p>Ms. Greiner stated that even with a breezeway it would still be considered an accessory structure and has to meet the eighty percent restriction.</p> <p>The Board discussed the setback issue and Ms. Greiner stated that staff does not have an issue with the setback request.</p> <p>Ms. Bennett asked whether there was going to be a bathroom and Mr. Wilson stated that there would be no bathroom.</p> <p>Ms. Greiner stated that no letters of objection were received.</p>		
<b>MOTION READS:</b>	TO APPROVE BOA#43-08-5 with the condition that exterior of the new accessory structure would match the exterior of the existing dwelling unit.		
<b>MOTION BY:</b>	<b>STEVE BERK</b>	<b>SECONDED BY</b>	<b>HOWARD B. FOX, JR.</b>
<b>MOTION APPROVED 7-0</b>	<b>FOR:</b> Donald Schreiner Mary Link Bennett Ruth Gray Howard B. (Bob) Fox, Jr. Lloyd Atkins, Jr. Steven Berk Marie Wuenschel		<b>AGAINST:</b> None

**BOA#47-08-5**

BOA #47-08-5

OWNER/APPLICANT: SCOTT M. BERRY & ELIZABETH A. CORNELL

<b>DISCUSSION</b>	<p>Anita Greiner, Chief Planner, presented the staff report and showed the aerial from the staff report. She explained the livestock building's required setbacks. She showed the plot plan in the staff report and explained the odd shape of the property and the wetlands. She pointed out the riding and drainage areas. Ms. Greiner stated that the Ocala National Forest is to the south, and pointed out the parcels on the aerial and stated that where they are proposing to place the barn is the least obtrusive location. She stated that staff believes they have shown a hardship and meet the intent of the Code and that staff recommends approval.</p> <p>Elizabeth Cornell, property owner and applicant, was present to speak regarding their request. She stated that the central part of the</p>
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	<p>property has a ditch and that water collects there when it rains. She stated that they also wanted to place the structure as far away from the neighbors as possible. She stated that putting the barn in the center of the property would impact Buck Horn Road as well, as it is a wet road.</p> <p>In response to Mary Link Bennett, Board member, who asked about current water conditions and whether the requested area was still dry after all the recent rain, Ms. Cornell stated that through all the recent rain it has been the driest and best location.</p> <p>Charles Davies, adjacent property owner, was present to speak regarding the request. He stated that he lives to the north of the subject property and pointed out on the plot plan where his property is located. He stated that he was concerned about the livestock runoff into the pond, but after seeing the proposed location, he doesn't have any objections.</p>		
<b>MOTION READS:</b>	TO APPROVE BOA#47-08-5 with conditions of staff.		
<b>MOTION BY:</b>	<b>RUTH GRAY</b>	<b>SECONDED BY</b>	<b>MARY LINK BENNETT</b>
MOTION APPROVED 7-0	<b>FOR:</b> Donald Schreiner Mary Link Bennett Ruth Gray Howard B. (Bob) Fox, Jr. Lloyd Atkins, Jr. Steven Berk Marie Wuenschel		<b>AGAINST:</b> None

**BOA#49-08-3**

BOA #49-08-3  
OWNER: SUPERIOR INTERNATIONAL INVESTMENT, CORP.,  
PETE BENEVIDES  
APPLICANT: SIGNS AND WONDERS OF FLORIDA, INC., DAVID HOENIG

<b>DISCUSSION</b>	<p>Anita Greiner, Chief Planner, presented the staff report and showed the aerial from the staff report. She explained the request for the signs to be off-premise and billboard signs. She showed an aerial and indicated the requested location of the signs. She stated that staff does not believe that the applicants have shown proof of meeting intent of the code or proof of a substantial hardship and that staff recommended denial.</p> <p>Ms. Melanie Marsh, Deputy County Attorney stated that it was her opinion that the Board does not have authority to grant this request. She stated that the request is expressly prohibited by the Land Development Regulations and such a request falls outside the Board's jurisdiction.</p> <p>Gary Hoenic was present to represent the sign company. He asked for clarification of where to take their request, if this process was not the correct process.</p> <p>Ms. Marsh explained the Special Master proceeding.</p>		
<b>MOTION READS:</b>	TO DENY BOA#49-08-3		
<b>MOTION BY:</b>	<b>RUTH GRAY</b>	<b>SECONDED BY</b>	<b>STEVE BERK</b>

MOTION APPROVED 7-0	<b>FOR:</b> Donald Schreiner Mary Link Bennett Ruth Gray Howard B. (Bob) Fox, Jr. Lloyd Atkins, Jr. Steven Berk Marie Wuenschel	<b>AGAINST:</b> None
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**BOA#50-08-2**

BOA #50-08-2

OWNER/APPLICANT: DONNIE & SHERRY RIFE

<p><b>DISCUSSION</b></p>	<p>Anita Greiner, Chief Planner, presented the staff report and showed the aerial from the staff report. She stated that there had been several variances on the property in the past. She explained the approved 2006 Family Lot Split Variance. She also explained Family Lot Split conditions. She stated that due to divorce and financial difficulty another variance had been granted to sell one of the parcels. Ms. Greiner stated that staff believes that the Applicant has not presented enough information to show proof of hardship. She also stated that she had requested additional information from the applicant and had not received it.</p> <p>Donnie Rife was present to speak regarding his request. He stated that his parents are living out of state with family. He presented a list of medications and diagnosis's (Applicant Exhibit "A") from her doctor and stated that his parents are living near an aunt and a niece who is a registered nurse, so that they can assist his parents and monitor medications. He read a letter from the niece and stated that he also has one from his aunt. He stated that his parents are not able to move back to the property and live on their own.</p> <p>Marie Weunschel, Board member, asked his mom's age and Mr. Rife stated she is 82.</p> <p>In response to questions by Ruth Gray, Board member, Mr. Rife stated that his parents are living in Ohio at this time.</p> <p>Steve Berk, Board member, had questions of staff as to whether the property could be split further. Ms. Greiner stated that there could be additional family lot splits allowed, per Code at this time.</p> <p>Ms. Weunschel asked if the property was paid for and Mr. Rife stated that he still owes \$50,000 on the home and that the property is paid for.</p> <p>In response to questions from the Board, Ms. Greiner verified that the variance request was concerning just one lot and that the other lot had already been sold after a variance approval to do so.</p> <p>There was discussion regarding proof of hardship, the Health Insurance Portability and Accountability Act (HIPAA) and the Board's responsibility.</p> <p>A motion was made by Mr. Berk to APPROVE BOA#50-08-2 with the condition that the property cannot be split any further in perpetuity. The motion was seconded by Bob Fox. The motion was defeated 5-2.</p>
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	<p>A motion was made by Mary Link Bennett, Board member to APPROVE BOA#50-08-2 with the condition that the property can not be split any further until the restriction time frame for the Family Lot Split has ended.</p> <p>Lloyd Atkins, Board member, questioned whether proof of hardship had been shown. He felt that the applicant should be able to provide further proof from the doctor. There was discussion among the Board as to what kind of proof should be shown.</p> <p>Mr. Schreiner stated that each Board member had to decide for themselves whether they felt that hardship had been shown.</p> <p>Ms. Weunschel asked Mr. Rife where he is living at this time and he stated that he now lives in Cocoa Beach and has been living there about a year.</p> <p>Mr. Rife stated that he doesn't have the cash to move his parents to where he is and take care of them without selling the property. He stated that if he could sell the property he planned on bringing them back to be near him, so that he could help pay for their care.</p> <p>Ruth Gray, Board member, felt that they should give him time to get further proof of his mother's illness and hardship.</p> <p>Don Schreiner, Board Chairman, stated that he felt that the hardship is on Mr. Rife and not his parents.</p>		
<b>MOTION READS:</b>	TO POSTPONE for up to 60 days to allow the applicant time to obtain additional medical certification proving that his mother needs constant care and monitoring.		
<b>MOTION BY:</b>	<b>RUTH GRAY</b>	<b>SECONDED BY</b>	<b>LLOYD ATKINS</b>
MOTION APPROVED 6-1	<b>FOR:</b> Donald Schreiner Mary Link Bennett Ruth Gray Howard B. (Bob) Fox, Jr. Lloyd Atkins, Jr. Steven Berk		<b>AGAINST:</b> Marie Wuenschel

Ms. Greiner spoke to the Board regarding a prior case that was postponed.  
Ms. Marsh spoke to the Board regarding the Sunshine Law.

The meeting was adjourned at 3:17 p.m.

Respectfully submitted.

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Anna Ely, Recording Secretary

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Donald Schreiner, Chairman