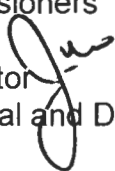




Interoffice Memorandum

DATE December 7, 2018

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director 
Community, Environmental and Development Services Department

**CONTACT PERSON: Carol L. Knox, Manager, Zoning Division
407-836-5585**

SUBJECT: December 18, 2018 – Board Appeal Public Hearing
Applicant/Appellant: Aracelia Cuevas
BZA Case #VA-18-09-119, October 4, 2018

Board of Zoning Adjustment (BZA) Case #VA-18-09-119, located at 8262 Fort Thomas Way, in District #3, is an appeal public hearing to be heard on December 18, 2018. The applicant is requesting variances in the R-2 zoning district to allow an existing enclosed porch to remain 24 ft. from the rear property line in lieu of 25 ft. and to allow a lanai to remain 14 ft. from the rear property line in lieu of 25 ft.

The subject property is located at the southwest corner of Fort Thomas Way and Fort Jefferson Blvd.

At the September 6, 2018 hearing, the BZA made a series of motions however they failed to make a recommendation to the BCC. At the direction of the County Attorney's office, the case returned to the BZA for a recommendation to the BCC.

At the October 4, 2018 hearing, the BZA discussed the case at length. The BZA concluded that there was no hardship on the lot making variance #2 necessary. The BZA recommended approval of variance #1 for the enclosed porch and denial of variance #2 for the lanai with 4-1 vote.

The application for this request is subject to the requirements of Ordinance 2008-14, which mandates the disclosure of expenditures related to the presentation of items or lobbying of items before the BCC. A copy is available upon request in the Zoning Division.

**ACTION REQUESTED: Approve the applicant's request; or approve the applicant's request with modifications and/or conditions; or approve the applicant's request in part and deny it in part; or deny the applicant's request.
District #3.**

**COMMUNITY ENVIRONMENTAL DEVELOPMENT SERVICES DEPARTMENT
ZONING DIVISION PUBLIC HEARING REPORT**

The following is a public hearing on an appeal before the Board of County Commissioners on December 18, 2018 at 2:00 p.m.

APPELLANT/APPLICANT: ARACELIA CUEVAS

REQUEST: Variances in the R-2 zoning district as follows:

- 1) Variance to validate a completely enclosed porch 24 ft. from the rear (east) property line in lieu of 25 ft. (APPROVED w/CONDITIONS)
- 2) Variance to validate a lanai with a permanent roof 14 ft. from the rear property line in lieu of 25 ft. (DENIED)

This is the result of code enforcement action.

LOCATION: 8262 Fort Thomas Way
Southerly corner of the intersection of Fort Thomas Way and Fort Jefferson Blvd.

TRACT SIZE: 75 ft. x 109 ft. (AVG): 0.19 ac.

ZONING: R-2

DISTRICT: #3

PROPERTIES NOTIFIED: 116

BOARD OF ZONING ADJUSTMENT (BZA) HEARING SYNOPSIS ON REQUEST:

Staff explained that the reason this case has returned to the BZA is due to the fact that at its September 6th hearing the BZA, after four (4) attempts failed to successfully pass a motion. Staff explained that at the County Attorney's office direction, the BZA must make a recommendation on each case brought before it. Staff provided a recap of the case.

Because this item was advertised as being for decision only, there was no further testimony from the applicant nor the public. The BZA discussed the aspects of the case at length. A great deal of discussion centered on the special conditions and circumstances of the case. After lengthy discussion, a motion was made to approve Variance #1 and deny Variance #2. The motion passed by a vote of 4-1.

BZA HEARING DECISION:

A motion was made by Jose Rivas, Jr. seconded by Eugene Roberson to APPROVE variance #1, (variance to validate a completely enclosed porch 24 ft. from the rear (east) property line in lieu of 25 ft.) in that the Board made the finding that the requirements of the Orange County Code, section 30-43(3) have been met; further said approval is subject to the following conditions as amended; and DENIED variance #2 (Variance to validate a lanai with a permanent roof 14 ft. from the rear property line in lieu of 25 ft.) in that there was no unnecessary hardship shown on the land; and further if did not meet the requirements governing variances as spelled out in Orange County Code, Section 30-43(3) (4 in favor, 1 opposed and 2 absent)

1. Development in accordance with the site plan dated July 18, 2018 and all other applicable regulations. Any deviations, changes, or modifications to the plan are subject to the Zoning Manager's approval. The Zoning Manager may require the changes be reviewed by the Board of Zoning Adjustment (BZA) for administrative approval or to determine if the applicant's changes require another BZA public hearing.
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability of the part of the County for issuance of the permit if the applicant fails to obtain requisite approval or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of Zoning Adjustment shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. The applicant shall obtain permits for the unpermitted improvements within 180 days of final action of this application by Orange County, or this approval becomes null and void.
5. The color of the roof shall be maintained in a monochromatic fashion.

**ACTION REQUESTED: Approve the applicant's request; or approve the applicant's request with modifications and/or conditions; or approve the applicant's request in part and deny it in part; or deny the applicant's request.
District #3.**



Appellant Information

Appellant: Aracelia Cuevas
 Address: 8262 Ft. Thomas Way, Orlando, FL 32822
 Email: Aracelia_Cuevas@yahoo.com Phone #: 407-929-7495
 BZA Case # and Applicant: VA-18-09-119
 Date of BZA Hearing: 10/4/18

Reason for the Appeal (provide a brief summary or attach additional pages if necessary):

In 2010 the property was under code enforcement action and nothing was brought up regarding the existing roof. There are other properties in the subdivision deeper into set back that have been approved. The homeowner was not properly represented due to strong language barrier.

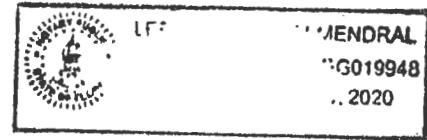
Date: 10/19/2018 Signature of Appellant: Aracelia Cuevas

STATE OF Florida
 COUNTY OF Orange

The foregoing instrument was acknowledged before me this 19 day of October, 2018, by Aracelia Cuevas who is personally known to me or who has produced Florida Driver license as identification and who did did not take an oath.

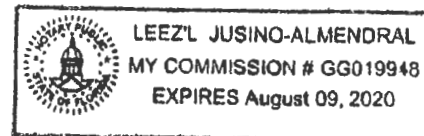
[Signature]
 Notary Public Signature

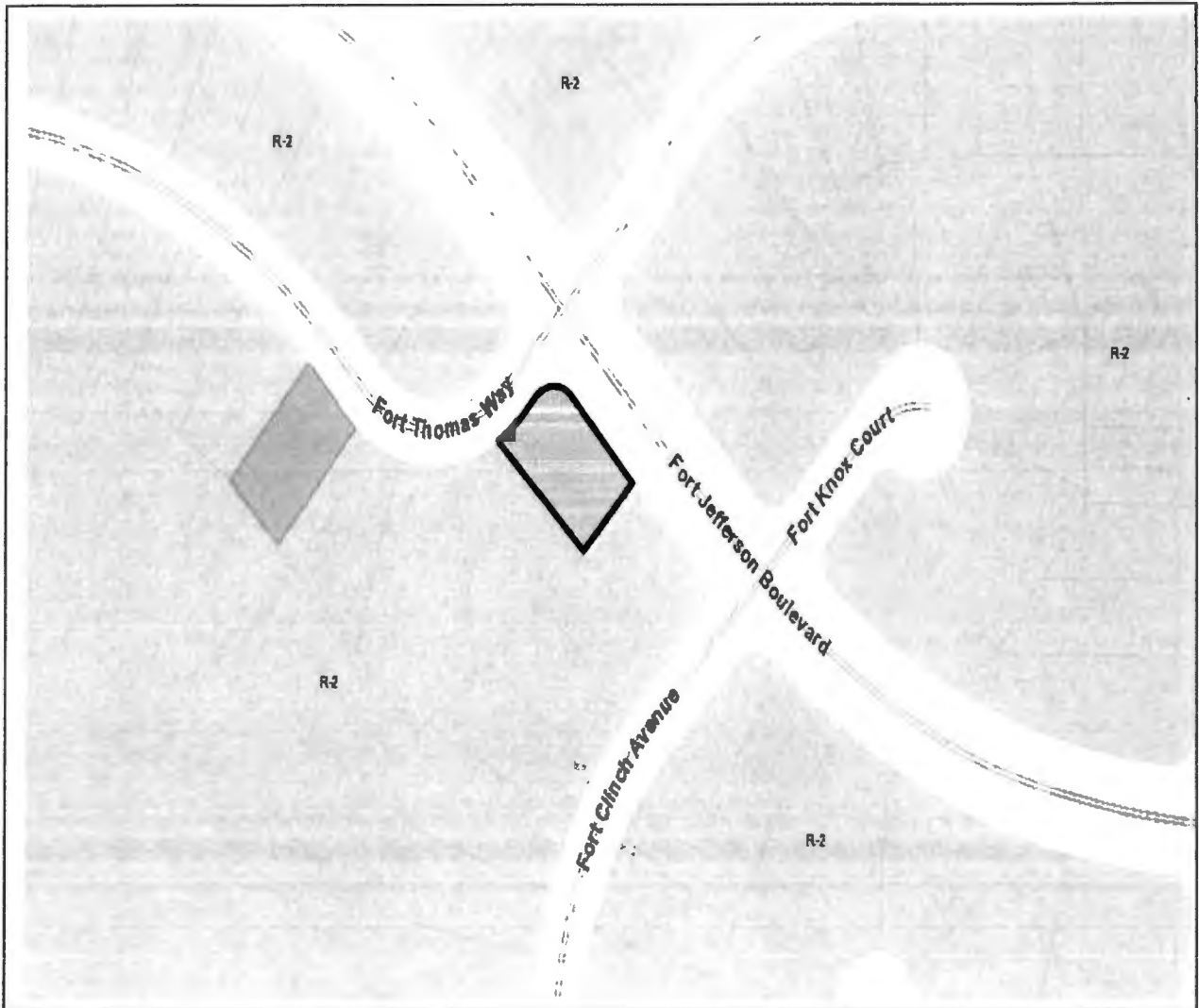
Notary Stamp:



Fee: \$691.00 (make check payable to the Orange County Zoning Division)

Note: The Clerk of the Board will notify you of the hearing date of the appeal. If you have any questions, please contact the Zoning Division at (407) 836-3111.





Applicant: ARACELIA CUEVAS

BZA Number: VA-18-09-119

BZA Date: 10/04/2018

District: 3

Sec/Twn/Rge: 13-23-30-SW-C

Tract Size: 75 ft. x 109 ft. (AVG): 0.19 acres

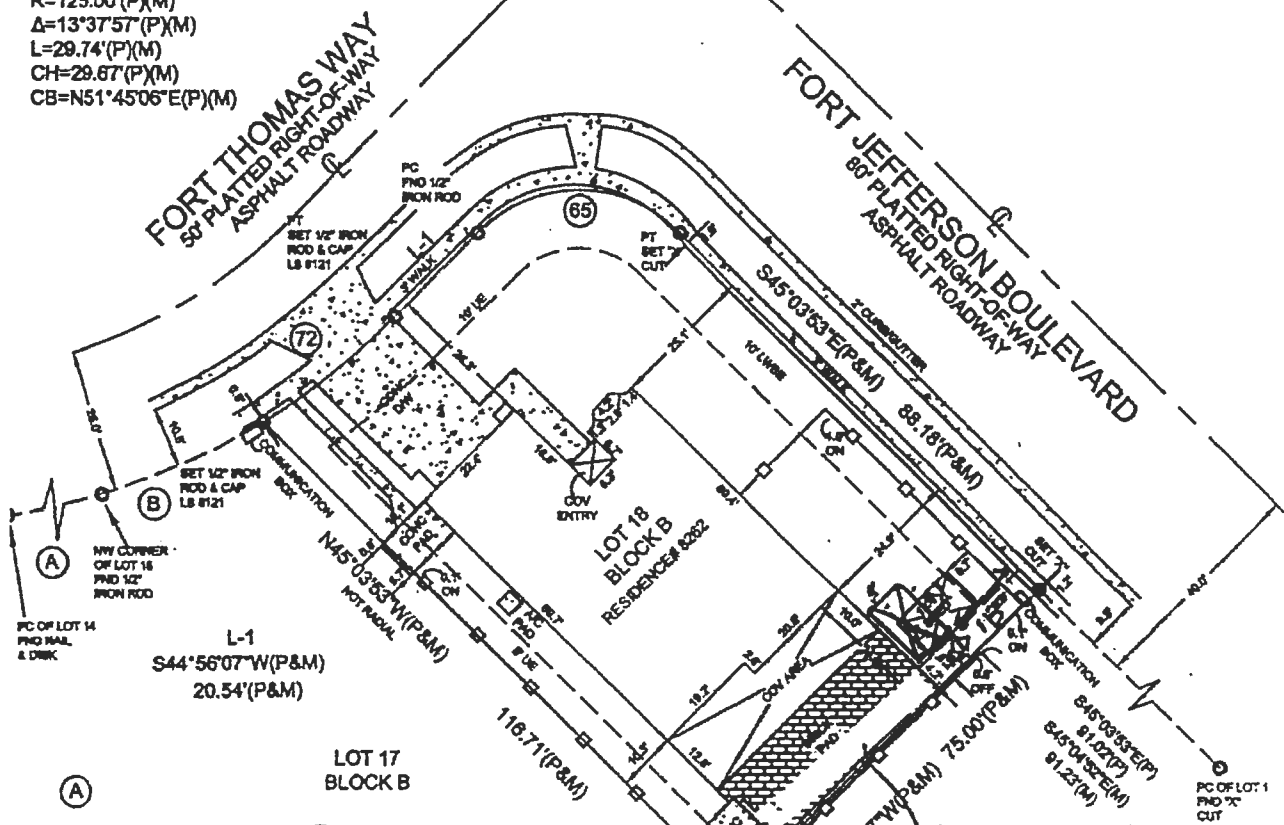
Address: 8262 Fort Thomas Way, Orlando FL 32822

Location: Southerly corner of the intersection of Fort Thomas Way and Fort Jefferson Blvd.

Boundary Survey

(72)
 R=125.00'(P)(M)
 $\Delta=13^{\circ}37'57''$ (P)(M)
 L=29.74'(P)(M)
 CH=29.87'(P)(M)
 CB=N51 $^{\circ}$ 45'06"E(P)(M)

(65)
 R=25.00'(P)(M)
 $\Delta=90^{\circ}00'00''$ (P)(M)
 L=39.27'(P)(M)
 CH=35.36'(P)(M)
 CB=S89 $^{\circ}$ 56'07"E(P)(M)



(A)
 R=125.00'(P)(M)
 $\Delta=30^{\circ}44'21''$ (P)
 $\Delta=30^{\circ}27'12''$ (M)
 L=87.08'(P)
 L=66.44'(M)
 CH=68.28'(P)
 CB=S58 $^{\circ}$ 11'40"E(P)
 CB=S58 $^{\circ}$ 11'40"E(M)

(B)
 R=125.00'(P)(M)
 $\Delta=47^{\circ}52'05''$ (P)
 $\Delta=47^{\circ}48'27''$ (M)
 L=104.43'(P)
 L=104.30'(M)
 CH=101.42'(P)
 CH=101.38'(M)
 CB=N82 $^{\circ}$ 30'07"E(P)
 CB=N83 $^{\circ}$ 01'58"E(M)

CERTIFY THAT
 THE ABOVE LOCATIONS
 ARE THE CORRECT
 LOCATIONS FOR THE
 PROPOSED STRUCTURE.
 I HEREBY CERTIFY THAT
 THE ABOVE LOCATIONS
 ARE THE CORRECT
 LOCATIONS FOR THE
 PROPOSED STRUCTURE.
 DATE: 7-16-18
 SIGNATURE: [Handwritten Signature]

RECEIVED
 JUL 18 2018
 BLOCK B
 ORANGE COUNTY
 ZONING DIVISION

ADDRESS
 8262 FORT THOMAS WAY
 ORLANDO, FLORIDA 32822

LEGAL DESCRIPTION: (AS FURNISHED)

LOT 19, BLOCK B, STONEBRIDGE PHASE 1, ACCORDING TO THE PLAT THEREOF.





08/14/2018 14:13



STAFF REPORT
CASE #: VA-18-09-119
Orange County Zoning Division
Planner: David Nearing, AICP
Board of Zoning Adjustment
October 4, 2018
Commission District: 3

GENERAL INFORMATION:

APPLICANT: Aracelia Cuevas

REQUEST: Variances in the R-2 zoning district as follows:

- 1) Variance to validate a completely enclosed porch 24 ft. from the rear (east) property line in lieu of 25 ft.
- 2) Variance to validate a lanai with a permanent roof 14 ft. from the rear property line in lieu of 25 ft.

This is the result of code enforcement action.

LOCATION: Southerly corner of the intersection of Fort Thomas Way and Fort Jefferson Blvd.

PROPERTY ADDRESS: 8262 Fort Thomas Way, Orlando, FL 32828

PARCEL ID: 14-23-30-8325-02-180

PUBLIC NOTIFICATION: 116

TRACT SIZE: 75 ft. x 109 ft. (AVG)/.19 acres

DISTRICT #: 3

ZONING: R-2

EXISTING USE(S): Single family residence w/fully enclosed porch and lanai w/permanent roof

PROPOSED USE(S): Fully enclosed porch and lanai w/permanent roof

SURROUNDING USES: N - Single family residence
S - Single family residence
E - Single family residence
W -Single family residence

STAFF FINDINGS AND ANALYSIS:

1. The subject property is situated in the R-2, Residential District. This zoning district provides for a variety of single-family residential units both detached and attached. The number of units is regulated by the underlying Future Land Use (FLU), which regulates the density of the development. The FLU for the subject property is LMDR, Low-Medium Density Residential, which permits up to 10 units per acre.
2. The subject site is a corner lot. The property was platted in 1992. The required setbacks for principle structures are 25 feet in the front and rear, and 6 feet on the interior side yard, and 15 feet on the side street yard. However, lots platted after March 3, 1997, are required to meet 20 feet front and rear yard setbacks, and 5 feet side setbacks, and 15 feet for the side street setback.
3. The existing setbacks for the home are 28.3 feet on the front, 24.9 feet on the side street, 10.1 feet on the side, and 14 feet on the rear. The requested variances are to validate the existing 14 feet rear yard setback where 25 feet is required.
4. The home was originally constructed in 1993. The applicant purchased the property in 2004. In 2006, a permit was issued to construct a screen porch onto the rear of the home (permit #B06013217). The permit was finalized in 2012.
5. Aerial photos show what appears to be a roof over the screen room sometime in 2010, and sometime in 2013, the addition and covered lanai were added. An approval letter was issued by the HOA for an "extended porch" on September 10, 2013. The applicant has indicated that the contractor told her the original permit would cover all of the additional work.
6. Code Enforcement cited the property on July 10, 2013, for new construction of an accessory structure in their backyard with no active permit. The violation was cleared in August 9, 2013, after construction on that structure ceased and the materials were removed. Code Enforcement cited the property again with multiple citations on April 11, 2018, for work without zoning approval and/or permits for a metal gazebo; driveway expansion and concrete slab; fencing; pavers; relocated shed; side entry door; and, additions to rear of structure and conversion of permitted screened porch to enclosed living space.
7. An existing 8 feet x 12 feet shed was permitted in 2013 (B13010101), for the southwest corner of the lot. However, that shed, subsequently, was relocated further into that corner, and into the required setbacks. After being cited by code enforcement for the sheds location, the applicant intended to relocate the shed to a new location. However, due to the age of the shed, and the fact that the new location would block windows, the applicant chose to remove the old shed through a demolition permit (B18015576), and construct a new 8 feet x 8 feet shed (B18015523), in a compliant location.

8. The current survey adequately depicts all of the improvements listed above as violations with the exception of the gazebo, which more resembles a tiki-hut for entertainment. Either, because the structure was not on the property at the time the survey was prepared, or because it is not a permanent structure nor tied down as an accessory structure should be, it is not on the survey. In order to retain all of the unpermitted improvements including the tiki-hut, required permits must be obtained or the improvements must be removed.
9. Staff located two other previously granted variances for similar improvements in the same neighborhood. One granted in 2013, allowed a rear setback of 18 feet in lieu of 25 feet, and another granted in 2014, approximately 1/2 block away allowed a rear setback of 16 feet in lieu of 25 feet.

Variance Criteria

1. Staff does not find any special conditions or circumstances regarding the subject property. The house does fill out most of the building envelope from front to rear. There is some room between the side of the house and the side street setback line.
2. If the applicant's recount of what her contractor stated regarding permits is accurate, it could be argued that the hardship is not entirely self-imposed.
3. Given that similar variances have been granted in this neighborhood, granting the variance will not confer any special privilege.
4. Denial of the variance will not deprive the applicant of rights enjoyed by others, in that they could construct an enclosed or open porch along the street side yard of their property between the residence and Fort Jefferson Blvd.
5. Again, since the applicant could construct a covered porch along the side of the residence, this is not the least variance necessary.
6. There will be 14 feet of rear setback open to the sky. This provides a setback from the rear yard, which is consistent with the purpose and intent of the Zoning Code.

STAFF RECOMMENDATION:

Staff recommends denial. However, should the BZA find that the applicant has met the criteria for the granting of the requested variances, staff recommends that the following conditions be attached to the BZA's recommendation:

1. Development in accordance with the site plan dated July 18, 2018, and all other applicable regulations. Any deviations, changes, or modifications to the plan are subject to the Zoning Manager's approval. The Zoning Manager may require the

changes be reviewed by the Board of Zoning Adjustment (BZA) for administrative approval or to determine if the applicant's changes require another BZA public hearing.

2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of Zoning Adjustment shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. The applicant shall obtain permits for the unpermitted improvements within 180 days of final action on this application by Orange County, or this approval becomes null and void.

c: Aracelia Cuevas
8262 Fort Thomas Way
Orlando, Florida 32822

ADDENDUM

On September 6, 2018, the BZA reviewed the following materials to consider validating existing unpermitted improvements made to the subject property at 8262 Fort Thomas Way. Specifically, the improvements consist of a screen room, which was constructed through a valid permit, but converted to living area and fully enclosed without a permit, and which is located 24 feet from the rear property line instead of the 25 feet required for the rear yard setback (Variance #1). In addition, a lanai was constructed without permits and with a permanent roof, and is located 14 feet from the rear property line instead of the 25 feet required for the rear setback (Variance #2).

After its deliberation, the BZA acted upon a series of four (4) motions, each of which failed for lack of a majority vote. The first motion was to approve Variance #1 and deny Variance #2. This motion failed by a vote of 3-4. The second motion was a similar motion to approve Variance #1 and deny Variance #2, but with a condition that the color of the roof over the enclosed porch be made to match that of the remainder of the roof. This motion also failed by a vote of 3-4. A third motion to deny both variances failed by a vote of 2-5. Finally, a fourth vote to recommend approval of both variances, subject to six conditions of approval recommended by staff, failed by a vote of 2-5. The BZA, after some discussion, concluded that the effect of the failed votes, and particularly the third failed vote for approval of both variances, constituted a recommendation for denial.

However, the County Attorney's office has determined that as an advisory board to the Board of County Commissioners (BCC), the BZA must forward to the BCC a clear recommendation passed by a majority vote. The only exception to this rule is in a case where only an even number of the members of the BZA are seated to act on a case and there is a tie vote. In this instance, as has occurred in the past, when there is a tie vote, and no subsequent vote can garner a majority, the result is a de facto recommendation of denial.

The purpose of this hearing is to provide the BZA with the opportunity to fulfill its responsibility to provide a recommendation to the BCC that is supported by four or more BZA members. The hearing will be for a decision only, without further testimony by the applicant or members of the public, since testimony was already taken at the hearing on September 6th.