

Item # 52

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Appeal of the Board of Adjustment's decision to grant (1) a minimum lot size variance from 8,400 square feet to 7,150 square feet; and (2) a minimum lot width at the building line variance from 70 feet to 65 feet on Lot 19 of Longwood Park.

DEPARTMENT: Planning & Development **DIVISION:** Planning

AUTHORIZED BY: Donald S. Fisher **CONTACT:** Earnest McDonald **EXT.** 7430

Agenda Date <u>04-08-03</u>	Regular <input type="checkbox"/>	Consent <input type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>	Public Hearing – 7:00 <input checked="" type="checkbox"/>		

MOTION/RECOMMENDATION:

1. UPHOLD the Board of Adjustment's decision to grant (1) a minimum lot size variance from 8,400 square feet to 7,150 square feet; and (2) a minimum lot width at the building line variance from 70 feet to 65 feet on Lot 19 of Longwood Park; or
2. REVERSE the Board of Adjustment's decision to grant (1) a minimum lot size variance from 8,400 square feet to 7,150 square feet; and (2) a minimum lot width at the building line variance from 70 feet to 65 feet on Lot 19 of Longwood Park; or
3. CONTINUE the request to a time and date certain.

(District #4, Commissioner Henley) (Earnest McDonald, Principal Coordinator)

Due to scheduling conflicts, this item was continued from the March 25, 2003 to the April 8, 2003 regular meeting of the BCC (7:00 p.m. public hearing agenda).

GENERAL INFORMATION:

Subject Property: Lot 19 (Marjorie Boulevard), Longwood Park

Proposed Uses: Single-Family

Existing Zoning: R-1 (Single-Family Dwelling District)

Applicable Regulations: LDC; Sections 30.185 (a) (Building Site Area Requirements)

Attachments: Site Plan, Development Order, Proposed Decision on Appeal, Minutes of the January 27, 2003 BOA Regular Meeting, & Location Map

Reviewed by:	
Co Atty:	<u>RJC</u>
DFS:	
Other:	<u>MW</u>
DCM:	<u>[Signature]</u>
CM:	<u>[Signature]</u>
File No.	<u>ph700pdp03</u>

BACKGROUND:

Atlantic Development Corporation proposes to build a single-family home on Lot 19 of Longwood Park. The property is a non-conforming lot of record, which does not meet the minimum lot size or width at the building line of the R-1 (Single-Family Dwelling District). To build the proposed home, variances from the minimum lot size (8,400 square feet) and lot width at the building line (70 feet) are required on the property. According to Planning Department records, no prior variances or special exceptions have been granted for this property.

On January 27, 2003, the Board of Adjustment granted variances from the minimum lot size and lot width at the building line for Lot 19, as requested by Atlantic Development Corporation. On February 25, 2003, the Board of County Commissioners agreed to appeal the decision of the Board of Adjustment at the request of the district commissioner.

STANDARDS FOR GRANTING VARIANCES:

Prior to upholding the Board of Adjustment's decision, the Board of County Commissioners must reach a finding that literal enforcement of applicable regulations would result in an unnecessary and undue hardship upon the applicant and determine compliance with all of the criteria presented in Section 30.43(3) of the Land Development Code. The Board of County Commissioners should apply the following standards in the decision-making process:

Section 30.43 (b)(3)(a)	That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning classification.
Section 30.43(b)(3)(b)	That the special conditions and circumstances do not result from the actions of the applicant.
Section 30.43(b)(3)(c)	That granting the variance requested will not confer on the applicant any special privilege that is denied by Chapter 30 to other lands, buildings, or structures in the same zoning classification.
Section 30.43(b)(3)(d)	That literal interpretation of the provisions of Chapter 30 would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification and would work unnecessary and undue hardship on the applicant.
Section 30.43(b)(3)(e)	That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.
Section 30.43(b)(3)(f)	That the grant of the variance will be in harmony with the general intent and purpose of Chapter 30, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

STAFF FINDINGS:

Staff recommends the Board of County Commissioners consider the following findings:

Section 30.43 (b)(3)(a)	FINDINGS: The subject property comprises Lot 19 of a platted Subdivision (Longwood Park) recorded on March 30, 1957, and prior to Seminole County's adoption of comprehensive zoning regulations on May 31, 1960. The lot in question thereby fails to meet the minimum lot size, width and yard regulations established for the R-1 District. The subsequent application of R-1 zoning to the subject property resulted in a non-conforming lot of record or a developable lot, which does not meet the minimum standards defined by Section 30.185(a) of the Land Development Code. For this reason, the application of R-1 zoning to lots of this type is unique and would not otherwise create similar non-conforming conditions on lots created today.
Section 30.43(b)(3)(b)	FINDINGS: The special circumstances described above did not result from any actions by the applicant.
Section 30.43(b)(3)(c)	FINDINGS: Granting the variances requested would not confer on the applicant any special privileges denied to similar developments in the R-1 District.
Section 30.43(b)(3)(d)	FINDINGS: The literal interpretation and application of the minimum lot size and width requirements to the subject properties would result in an unbuildable lot and thereby deprive the applicant of the ability to develop a single-family home, which is expressly permitted in the R-1 District.
Section 30.43(b)(3)(e)	FINDINGS: The variances requested by the applicant are the minimum that would make possible the reasonable use of the lots in question.
Section 30.43(b)(3)(f)	FINDINGS: Most of the surrounding lots have been combined, and the resulting development pattern includes properties that exceed the size and width of lots in the original 1957 plat. The grant of the requested variances would result in a density inconsistent with the character of the surrounding neighborhood. For this reason, staff believes the granting of the variance request would not be in general harmony with Chapter 30 of the Land Development Code and would be injurious to adjoining properties and the public welfare in general.

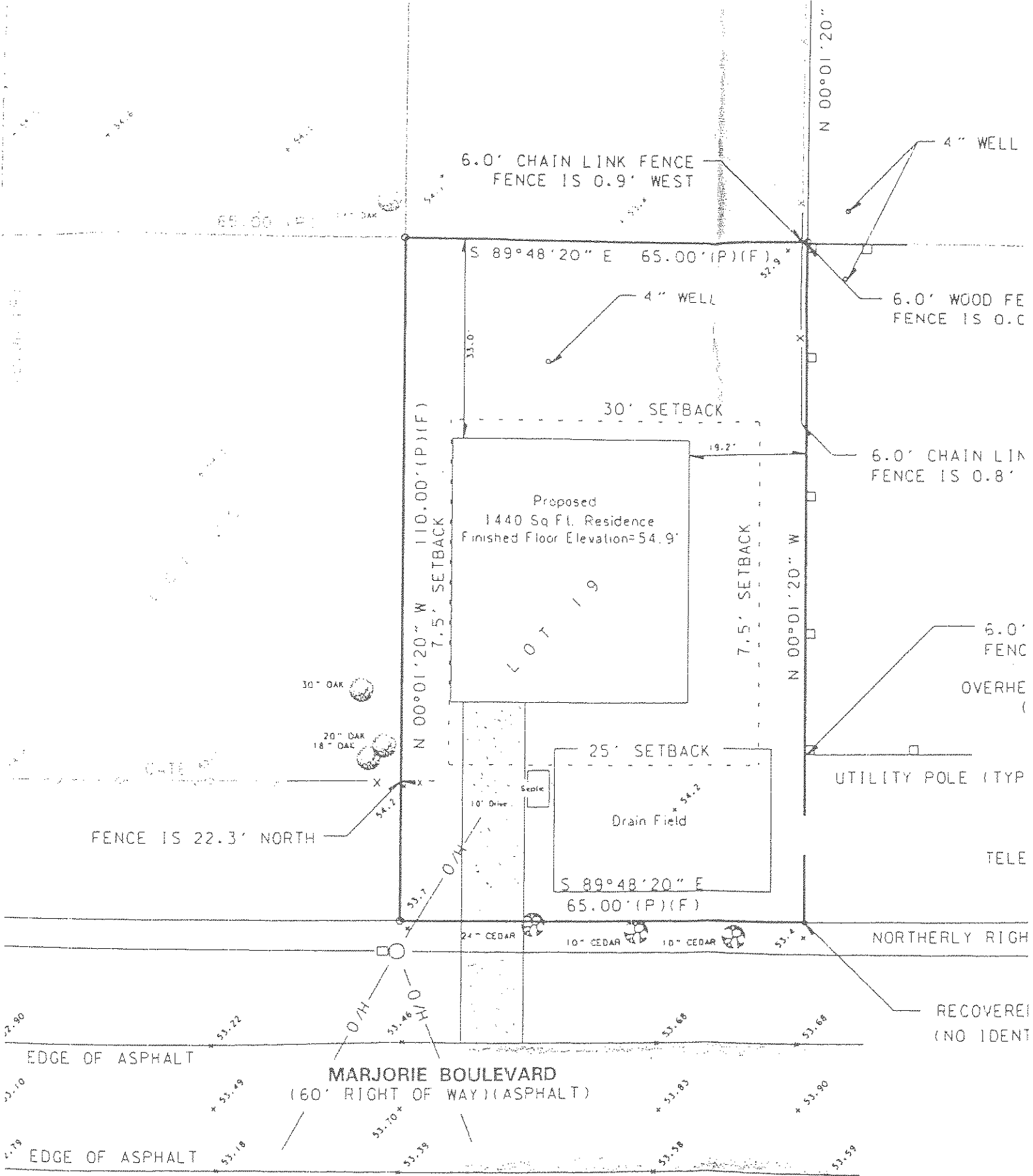
STAFF RECOMMENDATION:

The lot in question was created prior to the 1960 adoption of countywide zoning and comprises part of an antiquated plat. Policy FLU 3.2 (Antiquated Plats) of the Seminole County Vision 2020 Comprehensive Plan requires the combination and replatting of antiquated lots that predate the code and reads as follows:

“Policy FLU 3.2 Antiquated Plats. The County shall continue to resolve land use compatibility, environmental and infrastructure issues related to antiquated plats by way of, but not limited to (A) requiring the combining of lots; and (B) allowing for replatting and vacating and abandonment procedures.”

Historically, the County has applied this policy in cases where the opportunity existed to combine two (2) or more properties in order to create a conforming lot and thereby eliminate the need for a variance. Because the property owner of record is the same for Lot 19 and the adjoining property (Lot 20), the opportunity clearly exists to combine the two properties pursuant to the creation of a conforming lot in the R-1 District.

Based on the above Standards for Granting Variances and the findings presented in this report, staff recommends the Board of County Commissioners reverse the decision of the Board of Adjustment to approve (1) a minimum lot size variance from 8,400 square feet to 7,150 square feet; and (2) a minimum lot width at the building line variance from 70 feet to 65 feet on Lot 19 of Longwood Park.



6.0' CHAIN LINK FENCE
FENCE IS 0.9' WEST

4" WELL

6.0' WOOD FE
FENCE IS 0.6'

30' SETBACK

Proposed
1440 Sq Fl. Residence
Finished Floor Elevation=54.9'

LOT 19

7.5' SETBACK

6.0' CHAIN LIN
FENCE IS 0.8'

6.0' FENC
OVERHE

UTILITY POLE (TYP

TELE

FENCE IS 22.3' NORTH

Drain Field

S 89°48'20" E
65.00' (P) (F)

NORTHERLY RIGH

RECOVERED
(NO IDENT

MARJORIE BOULEVARD
(60' RIGHT OF WAY) (ASPHALT)

EDGE OF ASPHALT

EDGE OF ASPHALT

FILE # BV2002-184

DEVELOPMENT ORDER # 02-30000185

SEMINOLE COUNTY DEVELOPMENT ORDER

On February 17, 2003, the Seminole County Board of Adjustment issued this Development Order relating to and touching and concerning the following described property:

LOT 19, BLK H, LONGWOOD PARK, PB 11, PG 10

(The aforescribed legal description has been provided to Seminole County by the owner of the aforescribed property.)

FINDINGS OF FACT

Property Owner: JAMES C. PARSONS, SR.
5020 ELI STREET
ORLANDO, FL 32804

Project Name: HOWARD BLVD (LOT 19, BLK H)

Requested Development Approval:

1. MINIMUM LOT SIZE VARIANCE FROM 8,400 SF TO 7,150 SF; AND
2. MINIMUM LOT WIDTH AT BUILDING LINE VARIANCE FROM 70 FT TO 65 FT;

Order:

The Development Approval sought is consistent with the Seminole County Comprehensive Plan and will be developed consistent with and in compliance to applicable land development regulations and all other applicable regulations and ordinances.

- (1) The aforementioned application for development approval is **GRANTED** subject to the attached site plan.
- (2) All development shall fully comply with all of the codes and ordinances in effect in Seminole County at the time of issuance of permits including all impact fee ordinances.
- (3) This Development Order touches and concerns the aforescribed property and the conditions, commitments and provisions of this Development Order shall perpetually burden, run with and follow the said property and be a servitude upon and binding upon said property unless released in whole or part by action of Seminole County by virtue of a document of equal dignity herewith.

Prepared by: Earnest McDonald
1101 East First Street
Sanford, Florida 32771

FILE # BV2002-184

DEVELOPMENT ORDER # 02-30000185

(4) The terms and provisions of this Order are not severable and in the event any portion of this Order shall be found to be invalid or illegal then the entire order shall be null and void.

Done and Ordered on the date first written above.

By:

Mike Hattaway, Chairman
Seminole County Board of Adjustment

FILE # BV2002-184

DEVELOPMENT ORDER # 02-30000185

OWNER'S CONSENT AND COVENANT

COMES NOW, the owner, James C. Parsons, Sr., on behalf of himself and his heirs, successors, assigns or transferees of any nature whatsoever and consents to, agrees with and covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this Development Order.

Witness

James C. Parsons, Sr.
Property Owner

Witness

STATE OF FLORIDA)

)

COUNTY OF SEMINOLE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Tim Voss who is personally known to me or who has produced _____ as identification and who did take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2003.

Notary Public, in and for the County and State
Aforementioned

My Commission Expires:

SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS DECISION ON APPEAL

This decision is made by the Board of County Commissioners of Seminole County, Florida, this 25th day of March 2003, in accordance with Section 30.43 of the Land Development Code of Seminole County (LDC), as amended, and Future Land Use Element Policy FLU 3.2 (Antiquated Plats) of the Vision 2020 Plan, reversing a decision by the Board of Adjustment to grant (1) a minimum lot size variance from 8,400 square feet to 7,150 square feet; and (2) a minimum lot width at the building line variance from 70 feet to 65 feet on Lot 19 of Longwood Park.

A. FINDINGS OF FACT

1. On January 27, 2003, the Board of Adjustment granted variances from the minimum lot size and lot width at the building line for Lot 19, as requested by Atlantic Development Corporation, on the property further described by the following legal description:

LOT 19, BLK H, LONGWOOD PARK, PB 11, PG 10

2. On February 24, 2003, the Board of County Commissioners decided to hear an appeal of this decision.

3. The Board of County Commissioners has the authority and responsibility to adjudge this appeal by virtue of Section 30.43, LDC.

B. CONCLUSIONS OF LAW

The Board of County Commissioners finds that the subject variances are not in conformance with Section 30.43(b)(3) of the Land Development Code of Seminole County, and with Future Land Use Element Policy FLU 3.2 (Antiquated Plats) of the Vision 2020 Plan, due to the following:

1. As reflected in the staff recommendation, which is incorporated herein by reference, the subject variances do not meet all of the criteria in Section 30.43 (b)(3), LDC, for granting variances because:

- a. The subject variances would allow development that would be out of character and inconsistent with the trends of residential development in the area.
- b. The proposed use is not consistent with the Vision 2020 Plan Future Land Use Element which seeks to reduce uses that are inconsistent with community character, future land uses and service and facility plans through a systematic program to reduce nonconforming uses, eliminate nonconforming zonings and resolve issues related to antiquated plats:
 - 1) FLU 3.2 (Antiquated Plats) – The county shall continue to resolve land use compatibility, environmental and infrastructure issues related to antiquated plats by way of, but not limited to (A) requiring the combining of lots and (B) allowing for replatting and abandonment procedures.

C. DECISION

Based upon the foregoing and having fully considered the application submitted, and the testimony presented at the Board of County Commissioners public hearing on March 25, 2003, it is determined by majority vote of members of the Board of County Commissioners of Seminole County, Florida, that the subject decision of the Board of Adjustment is **OVERTURNED** and the variances requested are denied.

DATED this 25th day of March 2003.

Board of County Commissioners
Seminole County, Florida

Daryl G. McLain, Chairman

**Minutes for the
Seminole County Board of Adjustment
January 27, 2003, 6:00 P.M.**

Members present: Wes Pennington, Dan Bushrui, Acting Chairman, Lila Buchanan, and Alan Rozon

Members absent: Mike Hattaway

Alternate present: Bob Goff

Also present: Earnest McDonald, Principal Coordinator, Karen Consalo, Deputy County Attorney, John Thomson, Principal Coordinator, Cynthia Sweet, Planner, Cathleen Consoli, Planner, Jeff Hopper, Senior Planner, Kathy Fall, Senior Planner, Bernadette Smith, Senior Technician

Consent Agenda:

Variances:

1. **ATLANTIC DEVELOPMENT CORPORATION; FRANCES SANTA DONATO;** Marjorie Blvd (lot 6); R-1 (Single-Family Dwelling); request for (1) minimum lot size variance from 8,400 square feet to 7,150 square feet; and (2) minimum lot width variance from 70 feet to 65 feet; located on the south side of Marjorie Street, approximately 349 feet east of the Middle Lane and Marjorie Street intersection; (BV2002-188)
District 4 – Henley Earnest McDonald, Principal Coordinator

Mr. Bushrui requested that the Board consider Lot 6 first, since it had been on the Consent Agenda.

Mr. McDonald stated that the hardship criteria had been met, since there is a small lot with no opportunity to acquire more property to bring it into compliance with the code. Without a variance, the applicant cannot make a reasonable use of the property. The property was platted in 1957, prior to the implementation of the R-1 zoning.

Mr. Rozon asked if the landlord lived locally.

Mr. McDonald stated that the owner lives in New York and Atlantic is representing the purchasers.

Jeff Lance, of Atlantic Development Corporation, spoke next. He stated that there are several undeveloped lots in the area, platted in 1957 before zoning was imposed. All of the lots in this area are 65 feet wide by 110 feet deep. Ever lot in the neighborhood is non-conforming. Mr. Lance stated that his intention is to purchase these lots and put a single family residence on each to be put up for sale. The difficulty was that the other 4 lots he is applying for

are side to side and back to back. This one lot has no abutting property to meld with. He is presenting these lots together because if he came in independently, he could qualify for consent, but the others would not qualify. These lots will have 1400 -1600 square foot homes. We shall meet all of the criteria for setbacks.

Lots 6 is owned by an individual who wants to sell the lots for building.

Mr. Goff made a motion to approve the request.

Mr. Pennington seconded the motion.

The vote was 5 – 0 to approve the requests.

Regular Agenda:

- 11. ATLANTIC DEVELOPMENT CORPORATION; FRANCES SANTA DONATO** - Marjorie Blvd (lot 15); R-1 (Single-Family Dwelling); request for (1) minimum lot size variance from 8,400 feet to 7,150 feet; and (2) minimum lot width variance from 70 feet to 65 feet; located on the south side of Marjorie Street, approximately 175 feet west of the Middle Lane and Marjorie Street intersection; (BV2002-186)
District 4 – Henley Earnest McDonald, Principal Coordinator
- 12. ATLANTIC DEVELOPMENT CORPORATION/FRANCES SANTA DONATO** - Marjorie Blvd (lot 16); R-1 (Single-Family Dwelling); request for (1) minimum lot size variance from 8,400 square feet to 7,150 square feet; and (2) minimum lot width variance from 70 feet to 65 feet; located on the south side of Marjorie Street, approximately 105 feet west of the Middle Lane and Marjorie Street intersection; (BV2002-187)
District 4 – Henley Earnest McDonald, Principal Coordinator
- 13. ATLANTIC DEVELOPMENT CORPORATION/JAMES C. PARSONS** - Marjorie Blvd (lot 19); R-1 (Single-Family Dwelling); minimum lot size variance from 8,400 square feet to 7,150 square feet; and (2) minimum lot width variance from 70 feet to 65 feet; located on the north side of Marjorie Street, approximately 100 feet west of the Middle Lane and Marjorie Street intersection; (BV2002-184)
District 4 – Henley Earnest McDonald, Principal Coordinator
- 14. ATLANTIC DEVELOPMENT CORPORATION/JAMES C. PARSONS** - Marjorie Blvd (lot 20) R-1 (Single-Family Dwelling); request for (1) minimum lot size variance from 8,400 square feet to 7,150 square feet; and (2) minimum lot width variance from 70 feet to 65 feet; located on the

north side of Marjorie Street, approximately 163 feet west of the Middle Lane and Marjorie Street intersection. (BV2002-185)
District 4 – Henley Earnest McDonald, Principal Coordinator

The Board now considered items 10, 11, 12, and 13 from Atlantic Development.

Dr. Buchanan asked Mr. McDonald what made these four requests different from the request for Lot 6 that was just approved.

Mr. McDonald stated that the difference was that the lots now being considered are multiple lots owned by the same person. There is an opportunity to combine property and bring lots into compliance with the code. Policy FLU 3.2 clearly indicates that this shall be done in dealing with antiquated plats. When there is an opportunity to combine lots and negate the need for a variance, that is desired according to this policy. The staff recommendation is not the same as the applicant's request.

Mr. Bushrui reiterated that the circumstances for these four lots is different, due to the ownership by one person who has the ability to combine them.

Mr. McDonald agreed.

Mr. Goff asked if all of the other lots in the area were of similar size.

Mr. Lance stated that they were.

Mr. Goff stated that the hardship in these cases would be that we are requiring the owner to create lots that far out-price adjacent the immediate area lots.

Mr. Lance concurred. He stated that building a house on double lots would bring in a property that far exceeds the average selling price in the neighborhood. He said that the county cannot force a land owner to sell two lots at a time. If he came back on 4 successive months with each lot being presented separately, he could get approval.

Mr. McDonald stated that such a circumstance would not be true. If the lots applied separately, with the owner still being the same for the adjacent parcels, the Staff recommendation would still be for denial.

Mr. Goff stated that if the ownership were transferred to family members, then the request could possibly be approved.

Mr. McDonald stated that such would be the case, but in the instances under consideration here now, there is an opportunity to combine lots and bring the parcels into conformity without variances being needed.

Mr. Goff stated that there is a way around this if the owner takes the time to transfer titles and such. Because he is trying to do the entire operation in one meeting, the County will not accommodate the owner.

Mr. Lance stated that Lot 6 is adjacent to another lot owned by the same owner, but it was not included in the request just heard and approved by the Board, because it is not for sale. Clearly, this is not very fair.

Mr. Bushrui pointed out that the Staff is working with the County Code. It is not being arbitrary.

Mr. Rozon asked what lot had a structure on it.

Mr. Lance stated that Lot 19 had a structure on it that was going to be demolished.

Mr. Bushrui stated that if you combine these lots, it would be difficult to have all conforming lots. You could wind up with a 50 foot lot.

Mr. Goff stated that Lot 19 already had had a building on it, with permits and all. Lots 19 and 20 are therefore different from the others.

Mr. Goff made the motion to approve the granting of the variances on the four lots.

Dr. Buchanan seconded the motion.

Mr. Pennington stated that the County is penalizing someone who is buying undersized lots. We should not penalizing someone for trying to make some money on these lots.

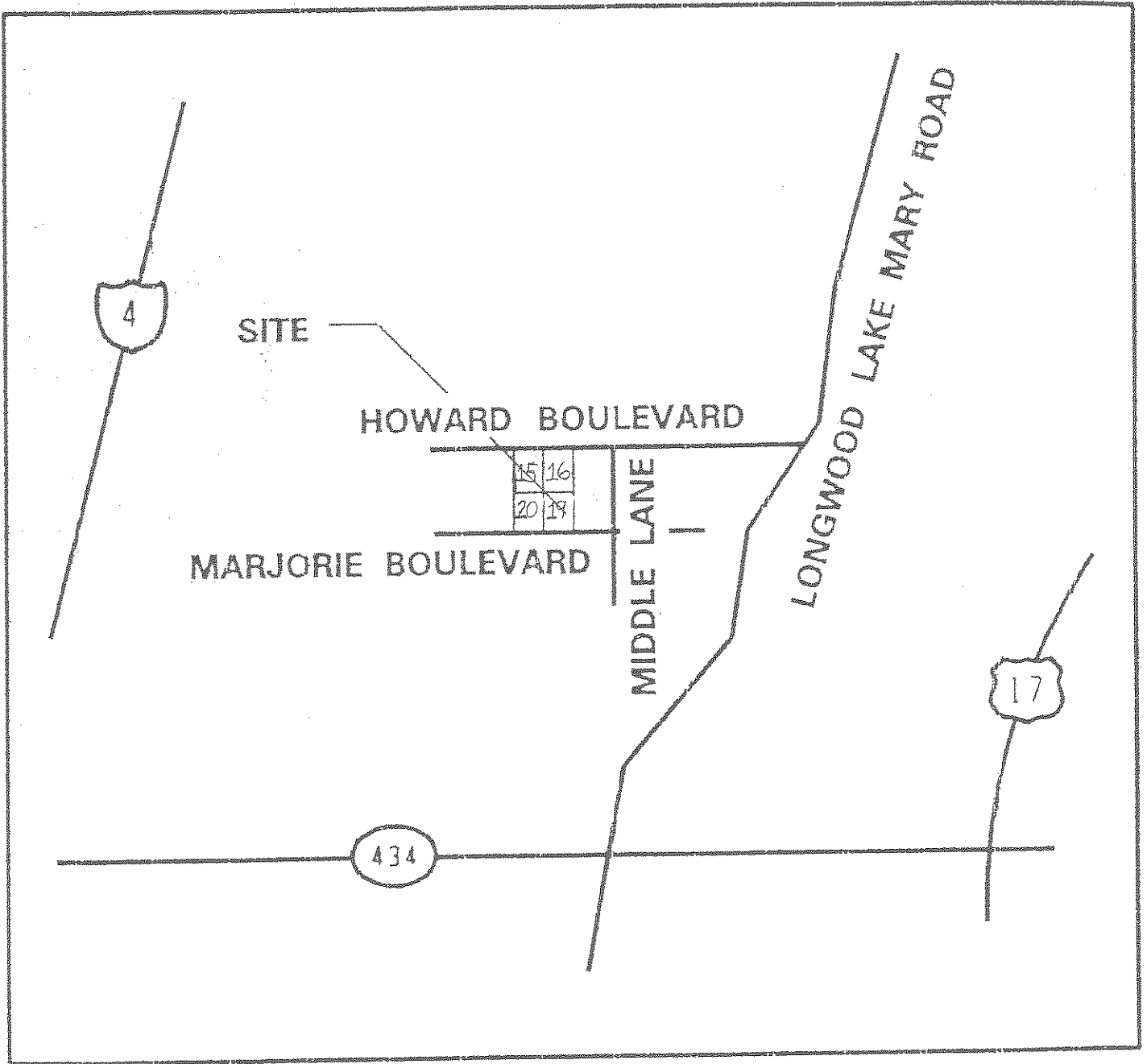
Mr. Rozon stated that someone would be living in the houses and paying taxes to the county.

Mr. McDonald pointed out that there were instances in the neighborhood of houses occupying more than one lot.

Mr. Pennington stated that the County should not penalize someone for owning old lots.

Mr. Bushrui stated that you cannot penalize someone for buying lots in good faith years ago.

The vote was unanimous to approve the granting of the variances on items 11, 12, 13, and 14.



VICINITY MAP
(NOT TO SCALE)