

Item # 51

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Appeal of the Board of Adjustment's decision to grant variances for side yard setbacks from 10 feet to 7.5 feet (June Staggs, appellant)

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

**AUTHORIZED BY:** Donald S. Fisher **CONTACT:** Kathy Fall <sup>KF</sup> **EXT.** 7389

<b>Agenda Date:</b> <u>05/27/03</u> <b>Regular</b> <input type="checkbox"/> <b>Consent</b> <input type="checkbox"/> <b>Work Session</b> <input type="checkbox"/> <b>Briefing</b> <input type="checkbox"/>
<b>Public Hearing – 1:30</b> <input checked="" type="checkbox"/> <b>Public Hearing – 7:00</b> <input type="checkbox"/>

**MOTION/RECOMMENDATION:**

1. Uphold the decision of the Board of Adjustment to approve variances for side yard setbacks from 10 feet to 7.5 feet, located at 9730 Bear Lake Road, based on attached site plan. (June Staggs, appellant); or
2. Overturn the decision of the Board of Adjustment to approve variances for side yard setbacks from 10 feet to 7.5 feet, located at 9730 Bear Lake Road, based on staff findings. (June Staggs, appellant); or
3. Continue the appeal to a time and date certain.

( District 3 – Commissioner Van Der Weide) (Kathy Fall, Senior Planner)

**GENERAL INFORMATION:**

<b>Applicant:</b>	David Keisari
<b>Address:</b>	9730 Bear Lake Road
<b>Proposed Use:</b>	Single Family Home
<b>Existing Zoning:</b>	R-1AA (Single-Family Dwelling)

**BACKGROUND:**

The applicant proposes to construct a single family home consisting of approximately 4,200 square feet. The previous home that existed on the property was demolished by the applicant to allow for the proposed home. The property is 75 feet wide and deficient of the 90 feet width at building line requirement. The proposed home would also encroach 2.5 feet into the minimum 10' foot side yard setbacks on the north and south side of the

<b>Reviewed by:</b> <b>Co Atty:</b> <u>KJC</u> <b>DFS:</b> _____ <b>Other:</b> <u>MW</u> <b>DCM:</b> _____ <b>CM:</b> <u>VB</u>  <b>File No.</b> <u>ph130pdp03</u>
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property. To accommodate the proposed structure, a variance for width at the building line and variances from the minimum side yard setbacks are required.

According to available records, no variances or special exceptions have been previously granted for this property.

On March 24, 2003, the Board of Adjustment approved the width at the building line and variances from the minimum side yard setbacks as requested by the applicant. The Board of Adjustment made separate motions for each variance request. On March 27, 2003, June Staggs appealed the Board of Adjustment's decision to grant the side yard setback variances from 10 feet to 7.5 feet on the north and south side of the property.

**STANDARDS FOR GRANTING VARIANCES:**

Prior to granting a variance, 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:

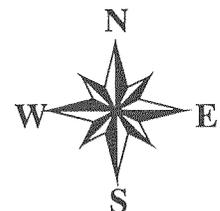
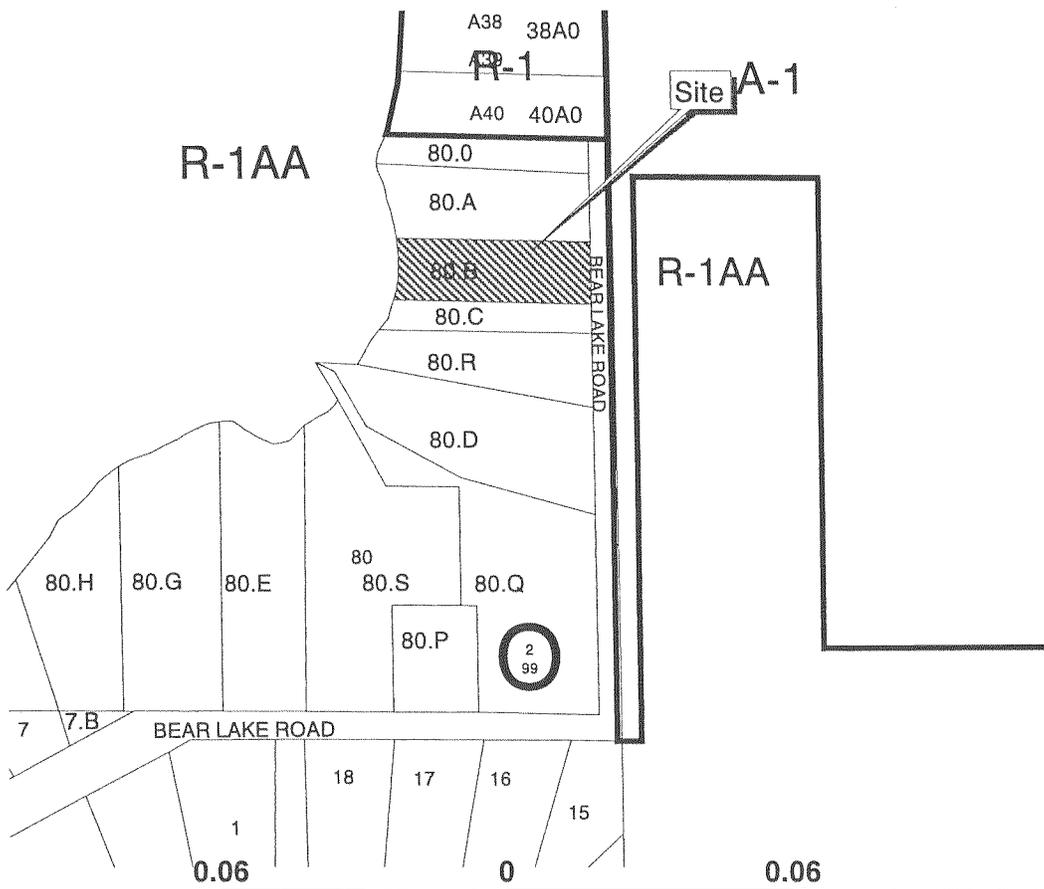
Section 30.43 (b)(3)(a)	<b>FINDING:</b> The character and dimensions of the subject property are consistent with those of adjoining residential properties, which conform to the rear yard setback standard. Therefore, no special
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	conditions or circumstances peculiar to the subject property have been demonstrated by the applicant.
Section 30.43(b)(3)(b)	<b>FINDING:</b> Since no special conditions or circumstances have been demonstrated, this provision of the standard is not applicable.
Section 30.43(b)(3)(c)	<b>FINDING:</b> Granting the variance request would confer on the applicant special privileges denied to similar developments in the R-1AA, since no special conditions or hardship circumstances warranting the granting of a variance have been demonstrated.
Section 30.43(b)(3)(d)	<b>FINDING:</b> The literal interpretation and application of the minimum rear yard setback provision would not deprive the applicant of rights commonly enjoyed by other properties in the R-1AA zoning district.
Section 30.43(b)(3)(e)	<b>FINDING:</b> The applicant would retain full and reasonable use of the subject property without the requested variance.
Section 30.43(b)(3)(f)	<b>FINDING:</b> The granting of the variance would not be in harmony with the general intent and purpose of the Land Development Code.

**STAFF RECOMMENDATION:**

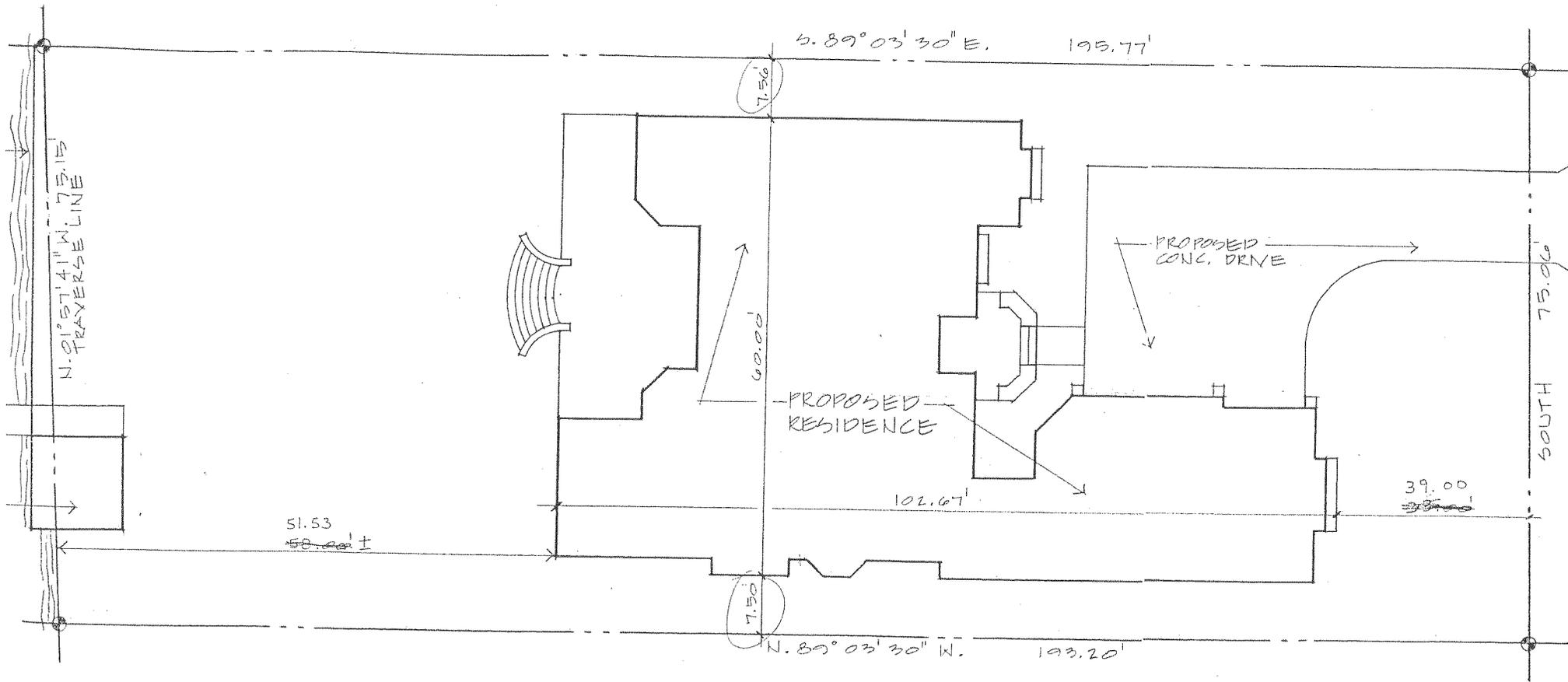
Based on the above Standards for Granting Variances and staff findings, staff recommends the Board of County Commissioners overturn the Board of Adjustment's decision to grant a side yard setbacks from 10 feet to 7.5 feet on the north and south side of the property.

# David Keisari 9730 Bear Lake Road



BV2003-019

David Keisari - 9730 Bear Lake Road. BV2003-019



ADDRESS:  
 9730 BEAR LAKE RD  
 APOPKA, FLORIDA 32112



RECEIVED

MAR 27 2003

MICHAEL & JUNE STAGGS  
9726 BEAR LAKE Rd.  
Apopka, FL 32703  
407-523-1445

Seminole COUNTY BOARD of Commissioners -

MIKE & JUNE STAGGS of 9726 BEAR LAKE Rd  
REQUEST AN APPEAL TO VARIANCE BV 2003-019  
ON THE SIDE SETBACKS FROM 10' (THE LAW) TO  
7.5'. THE BOARD OF ADJUSTMENT APPROVED BY A  
3 TO 2 VOTE ON MARCH 24, 2003. ENCLOSED IS  
THE \$150.00 CHECK REQUIRED. PLEASE, ADVISE  
US OF THE DATE THIS WILL BE HEARD BY THE  
COUNTY COMMISSIONERS.

THANK-YOU -  
June H. Staggs 3-27-03  
JUNE H. STAGGS

**Regular Agenda**

Prior to the hearing of the Regular Agenda, Kathy Fall reviewed the criteria from the Seminole County Land Development Code for the granting of a variance.

8. **MICHAEL F. MCARDLE** – 1707 Cedar Stone Court; RC-1 (Country Homes District); Minimum side yard setback variance from 20 feet to 15.67 feet for a room addition; located on the south side of Cedar Stone Court, approximately 180 feet south of Fieldwood Boulevard. (BV2003-020).

District 5 - Commissioner McLain

Kathy Fall, Senior Planner

**This item was moved to the Consent Agenda and approved with the consent items.**

9. **MICHAEL S. WILSON** - 386 Banyan Drive; R-1AA (Single-Family Dwelling District); Minimum west side yard setback variance from 10 feet to 4 feet for an existing garage; located on the south side of Banyan Road, approximately 212 feet west of the Banyan Road and Oranole Road intersection

(BV2003-006).

District 3 – Commissioner Van Der Weide

Kathy Fall, Senior Planner

Kathy Fall stated that staff does not recommend approval, being that the application does not meet the six criteria for the granting of a variance from the LDC. If approved, she asked that approval be tied to a site plan.

Mr. Wilson stated that he had a code violation. He had enclosed a preexisting structure. It is a third garage that is under consideration. Mr. Wilson stated that he did not have permits to build this.

Doris Scott, of 386 Banyon, stated that this is an improvement to what was already there. She is the neighbor closest to the project and she has no objection.

**Dr. Buchanan made a motion to approve the granting of the variance.** She stated that she does not like to be forced into approving existing structures, but since this enhances the property, she has no objection.

**Mr. Goff seconded the motion.**

**The motion passed by unanimous consent.**

10. **DAVID KEISARI** - 9730 Bear Lake Road; R-1AA (Single-Family Dwelling District); (1) Minimum lot width at the building line variance from 90 feet to 75 feet; and (2) side yard setback variance from 10 feet to 7.5 feet for a proposed home; located on the west side of Bear Lake Road, approximately .10 mile north of the Linneal Beach Circle and Bear Lake Road intersection (BV2003-019).

Kathy Fall stated that staff recommended denial of the side yard setback variance. Staff recommendation was for approval of the minimum lot width variance. Approval should be tied to a site plan.

Mr. Goff stated that if the Board approves a site plan, the applicant is limited to a specific design for the rest of time. Setback limitation is better.

Mr. Hattaway stated that future variances could be granted.

Kathy Fall stated that the Board would be granting a reasonable use of the land.

Mr. Goff again objected to the use of a site plan in this instance.

Karen Consalo agreed with Mr. Goff that the site plan is being tied to the variance. If you just grant the variance, it is more general.

Mr. Hattaway said that if a future rebuild occurs and the new house is different, that would trigger another variance.

Karen Consalo stated that if a variance is granted, setbacks are from front to back.

Mr. Goff stated that tying the variance to a site plan in this instance is an unnecessary restriction of property rights.

Mr. Hattaway stated that in certain instances, a site plan is beneficial.

Dr. Buchanan said that Mr. Goff's point was well taken. Someone may wish to have a different footprint for the house in the future.

Mr. Keisari said that there was a house there prior to this request that was demolished. The 90 feet to 70 feet makes the lot usable. The second problem was the mistake made by his architect concerning the side yard setbacks.

Mr. Hattaway asked what the setbacks of the old house had been.

Mr. Keisari stated that they were 10 feet.

Mr. Hattaway pointed out that separate motions should be made on the variances.

**Mr. Goff made a motion to approve the lot width variance.**

**Dr. Buchanan seconded the motion.**

**The motion passed by unanimous consent.**

**Mr. Pennington made a motion to approve the west side setback from 10 feet to 7.5 feet.**

**Dr. Buchanan seconded the motion.**

**The motion passed 3 – 2. Mr. Hattaway and Mr. Rozon voted “no.”**

11. **MICHAEL NEWCOMB** - 692 Carrigan Woods Trail; PUD (Planned Unit Development); Minimum rear yard setback variance from 15 feet to 11.5 feet for a covered screen room; located on the south side of Carrigan Woods Trail,



### Order

#### **NOW, THEREFORE, IT IS ORDERED AND AGREED THAT:**

(1) The aforementioned application for development approval is **GRANTED**.

(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) The conditions upon this development approval and the commitments made as to this development approval, all of which have been accepted by and agreed to by the owner of the property are as follows:

- a) The variance granted will apply only to the proposed home as shown on the attached site plan.

(4) 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. The owner of the said property has expressly covenanted and agreed to this provision and all other terms and provisions of this Development Order.

(5) 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: Matthew West  
Matthew West  
Planning Manager

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 Matthew West who is personally known to me or who has produced \_\_\_\_\_ as identification and who executed the foregoing instrument.

WITNESS my hand and official seal in the County and State last aforesaid this 23 day of April, 2003.

 Karen Mathews  
My Commission DD144950  
Expires August 26, 2006

Karen Mathews  
Notary Public, in and for the County and State  
Aforementioned

My Commission Expires:

