

## SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

**SUBJECT:** Appeal of the Board of Adjustment's decision to DENY the following requested variances: (1) Variance from 10 feet to 7.5 feet for the required accessory building setback on west side; (2) Variance from 25 feet to 18 feet for the required side street setback in an R-1AA district; and (3) Variance of maximum fence height from 3 feet to 6 feet within 25 feet of a street. (Raquel Galdo Morales, appellant) **ITEM CONTINUED FROM 10/22/02;** OR, Variance of required accessory building setback from 10 feet to 3 feet for the west property line (Raquel Galdo Morales, applicant).

**DEPARTMENT:** Planning and Development **DIVISION:** Planning

**AUTHORIZED BY:** *DF* Donald S. Fisher **CONTACT:** Jeff Hopper **EXT:** 7431

<b>Agenda Date</b> <u>11/26/02</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 type="checkbox"/> <b>Public Hearing – 7:00</b> <input checked="" type="checkbox"/>

**MOTION/RECOMMENDATION:**

1. UPHOLD the Board of Adjustment's decision of August 26, 2002 to deny one or all requested variances. (Raquel Galdo Morales, appellant)
2. OVERTURN the Board of Adjustment's decision of August 26, 2002, granting one or all requested variances. (Raquel Galdo Morales, appellant)
3. APPROVE the alternate variance request based upon a plan submitted by the appellant.
4. DENY the alternate variance request.
5. CONTINUE the request to a time certain.

(Commission District #1, Maloy) (Jeff Hopper, Senior Planner)

**BACKGROUND:**

This item was continued from the October 22 BCC hearing to give the appellant an opportunity to return to the Board with a new request. Her application for side street setback and maximum fence height variances was denied by the Board of Adjustment based on the BOA's reservations over issues of sight visibility and appearance in a currently unobstructed side yard. Echoing those concerns, BCC members suggested that the appellant make an alternate proposal which would be less intrusive to the side yard.

Reviewed by: <u><i>KJC</i></u> Co Atty: <u><i>KJC</i></u> DFS: _____ Other: <u><i>AMW</i></u> DCM: <u><i>SS</i></u> CM: <u><i>JL</i></u> File No. <u>ph700pdp01</u>
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In response to that suggestion, the appellant wishes to propose a new location for the tool shed she plans to build on the property, as shown in the revised site plan. Although she still desires that the Board consider her original request for a location 18 feet from the south property line, the new proposal shows the structure a distance of 3 feet from the rear (west) property line but in compliance with the required 25-foot side street setback on the south. This proposal would require a variance of the accessory building setback requirement established by Code from 10 feet to 7 feet. The variance would be contingent upon vacating a portion of a 7.5-foot drainage and utility easement along the rear lot line. This separate review process is handled by the Development Review Division.

As Ms. Morales' request for appeal was continued at the previous hearing, it is still a viable option at this point. The Board may approve either of the following alternatives:

- A. Variances of side street setback from 25 to 18 feet, accessory building setback from 10 to 7.5 feet, and maximum fence height from 3 to 6 feet; or
- B. Variance of accessory building setback from 10 to 3 feet on the west property line.

While in the opinion of staff all criteria for granting a variance are still not met, the proposed location closer to the rear property line is less conspicuous than the earlier request, and will have no impacts on visibility or traffic safety in the neighborhood.

The appellant's original variance application was heard by the Board of Adjustment in August 2002. She is proposing to construct a tool shed in her rear yard, at a distance of 7.5 feet from the rear lot line, on the edge of a platted drainage and utility easement. Due to the presence of a 1,000 square-foot screen enclosure on the rear of the house, the proposed location of the shed is offset some distance to the south to provide greater use of yard space around the existing structure. Accommodating this proposal would entail variances of the side street setback and accessory building setback requirements, and a variance of the fence height limit from 3 feet to 6 feet within the side street setback. The proposed setback for the appellant's 6-foot privacy fence is 15 feet.

At the hearing, BOA members expressed a concern that the requested variances would result in an inappropriate intrusion into the required street side yard along Walnut Grove Place. This 25-foot yard is currently unobstructed by fences or other structures, either on the appellant's property or that of her neighbor to the west. The proposed fence and accessory building would reduce the open area within the side yard from 25 feet to 15 feet.

Although recommending denial of this application, Planning staff suggested an alternative variance in the event BOA members felt that some hardship relief was appropriate. This option would entail a different request meeting some of the appellant's needs without intruding on the established side yard adjacent to Walnut Grove Place. A greater variance to the accessory building setback requirement would allow the shed to be placed farther to the rear while maintaining the street side yard in its current, unobstructed form. This action would require a new application to the Board of Adjustment, and also would be subject to vacation of the drainage and utility easement at the rear of the property. However, it would

maintain the setback pattern of existing structures along the street, and maximize visibility for motorists in a low intensity residential area.

**STANDARDS FOR GRANTING VARIANCES:**

In order to grant a variance, the Land Development Code requires a finding that literal enforcement of applicable regulations will result in an unnecessary and undue hardship upon the applicant. Any variance approved must comply with all of the following criteria:

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.

**BOARD OF ADJUSTMENT DECISION:**

At its August 26, 2002 meeting, the Board of Adjustment denied the request by a vote of 3 to 2.

**STAFF FINDINGS AND RECOMMENDATION:**

Staff recommends that the BOA's decision be UPHELD based on the following findings:

1. The request does not comply with Section 30.43 (b)(3)(a), since the lot is more than ¼ acre in area, and has no peculiarities in its size or shape.
2. The request does not comply with Section 30.43 (b)(3)(d), in that neighboring properties are not subject to lesser side street setback requirements than the subject property, and do in fact meet those requirements.
3. The request does not comply with Section 30.43 (b)(3)(e), in that the site already contains a 1,600 square foot home and the appellant has a full and reasonable use of the property without the requested variances.
4. Approval of the variances would permit an obstruction in an otherwise structure-free side yard area along the north side of Walnut Grove Place, running the length of two blocks extending east from Erskine Drive.

If the BCC wishes to approve a variance, Staff makes the following recommendations:

1. In accordance with the appellant's revised site plan, a variance from 10' to 3' should be granted to the 10-foot accessory building setback. Approval should be contingent upon vacating a portion of the 7.5-foot drainage and utility easement. (A preliminary review by the Development Review Division indicates that no County utility services would be disrupted by the granting of this request.)
2. The fence height variance, if granted, should be conditioned upon meeting a specific setback from the Walnut Grove Place right-of-way.
3. In granting the variance(s), the BCC should state whether its decision is specific to the structures shown on the submitted site plan, or if larger/additional structures not presented at this time could be permitted in the future.

**Attachments:**

1. Location map
2. Original site plan
3. Revised site plan
4. Decision on appeal
5. Minutes from the August 26, 2002 Board of Adjustment meeting
6. Appeal letter



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30	1.0	30
29.0	1	
29	2	29
1.0	2.0	
28	3	28
27	4	27
7.0	4.A	
26	5.0	25.0
5.0	5	26
25	6	25
24	6.0	23.0
23	7	24
22	8	23
21	9	22.0
20.0	9.0	22
20	10	21.0
19.0	11	20
19	12	19
18	13.0	18
17.0	14	17
17	14.0	16.0
16	15	16

23	1	20
		19.0

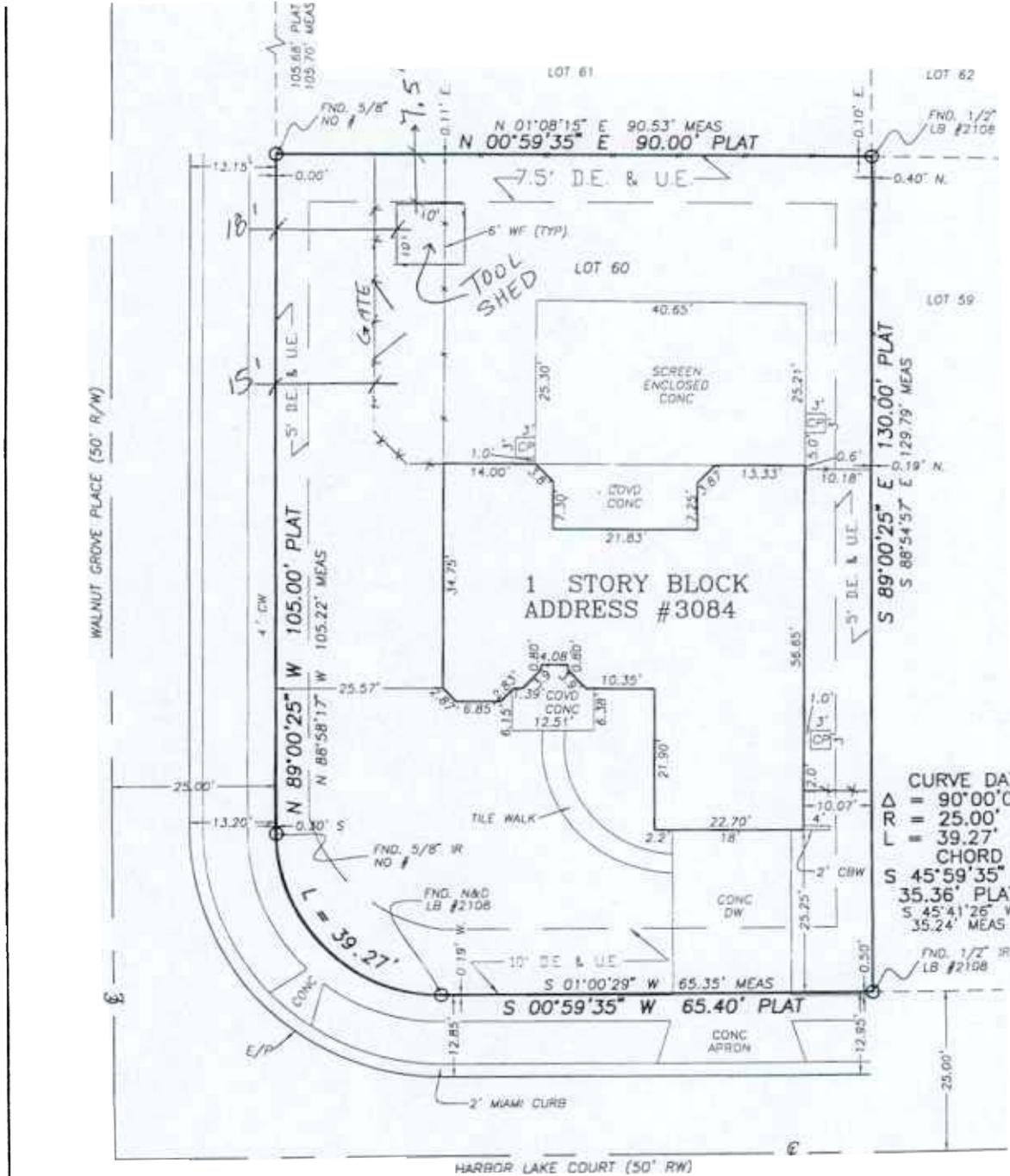
# PLAT OF SURVEY

## DESCRIPTION

LOT 60, STILLWATER - PHASE 2, AS RECORDED IN PLAT BOOK 36, PAGES 93, 94, 95, 96, 97, 98, AND 99, PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA.

### ORIGINAL SITE PLAN

FND. "X" CUT  
NO #



CF# SC39-93LO160  
DATE: JUNE 20, 2002  
SCALE: 1" = 20'  
DRAWN BY: C.J.L.

BOUNDARY SURVEY CERTIFIED TO: RAQUEL GALDO MORALES

REVISIONS	

**ACCURIGHT SURVEYS**  
of Orlando Inc., LB 4475  
2012 E. Robinson St.  
Orlando, Florida 32803  
PHONE (407) 894-6314 FAX (407) 897-3777

- NOTES:
- BEARING STRUCTURE BASED ON: THE NORTH R/W LINE OF WALNUT GROVE PLACE.
  - THIS BUILDING/LOT IS NOT IN A FLOOD PRONE AREA, ZONE X, BASED ON FLOOD INSURANCE RATE MAP, NO. 120289 0165 E, SEMINOLE COUNTY, FLORIDA.
  - THIS SURVEY REFLECTS ONLY MATTERS OF RECORD AS PROVIDED BY CLIENT.
  - UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED.
  - BUILDING TIES SHOWN ON THIS SURVEY SHOULD NOT BE USED TO RECONSTRUCT PROPERTY LINES.

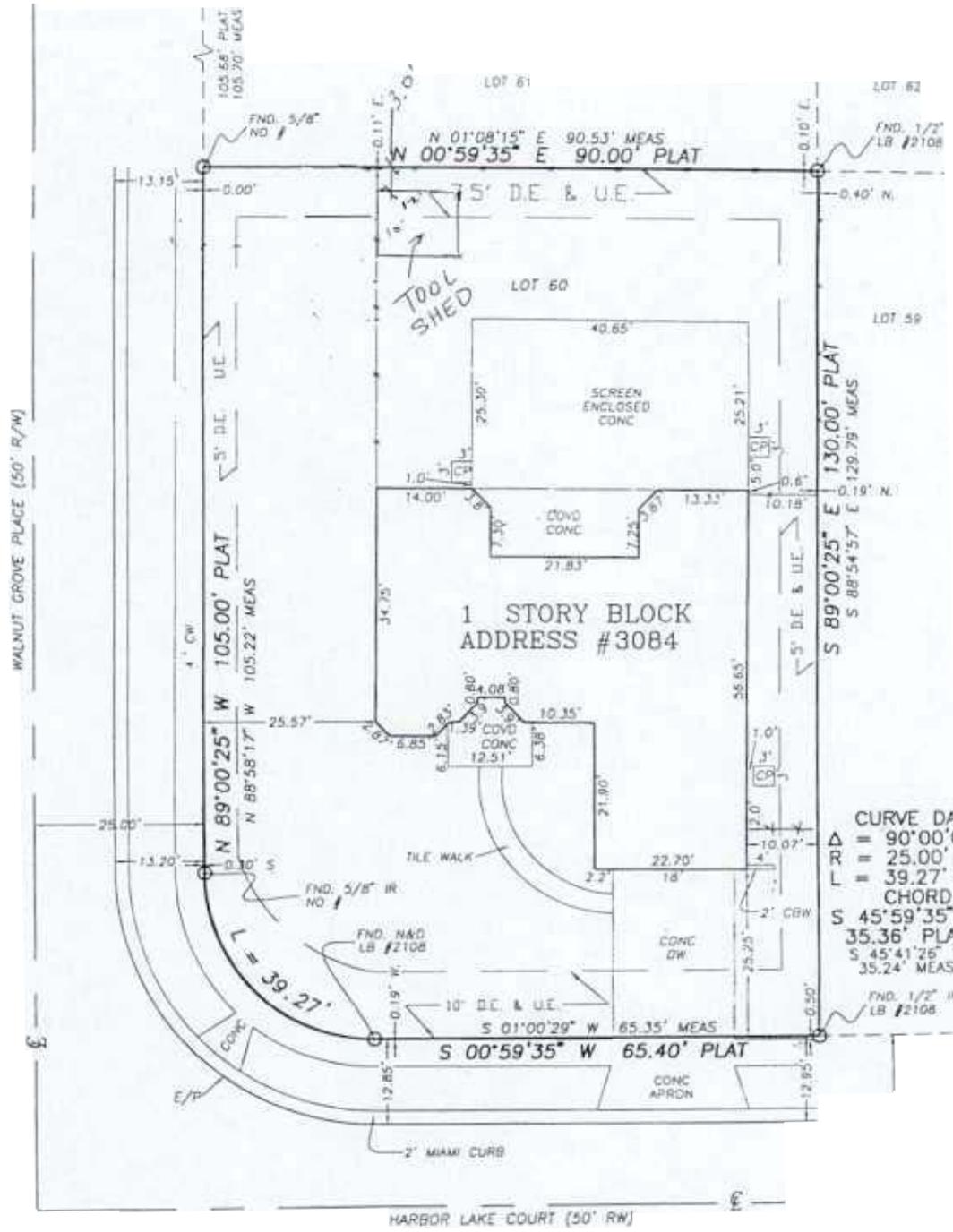
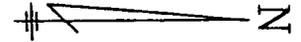
LEGEND

CL - CENTERLINE	LSA - LANDSCAPE AREA
CCW - COVERED CONCRETE	MEAS - MEASURED
CLF - CHAIN LINK FENCE	MS - METAL SHED
CM - CONCRETE MONUMENT	M&D - MAIL & DISK
CONC - CONCRETE	OW - OVERHEAD WIRE
CP - CONCRETE PAD	ORB - OFFICIAL RECORDS
CW - CONCRETE WALKWAY	PC - POINT OF CURVATURE
CA - CENTRAL ANGLE	PAGE - PAGE
D&M - DIMENSIONED & MEASURED	POB - POINT OF BEGINNING
DE - DRAINAGE EASEMENT	POC - POINT OF COMMENCEMENT
DESC - DESCRIPTION	R - RADIUS
DW - DRIVEWAY	R/W - RIGHT OF WAY
E/P - EDGE OF PAVEMENT	TYP - TYPICAL
ESMT - EASEMENT	UE - UTILITY EASEMENT
FFE - FINISHED FLOOR ELEVATION	UP - UTILITY POLE
FND - FOUND	WF - WOOD FENCE
IR - IRON PIPE	# - NUMBER

*Frank A. Raymond III*  
FRANK A. RAYMOND III PLS 5325  
"NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF THIS FLORIDA LICENSED SURVEYOR AND MAPPER."

# PLAT OF SURVEY

## REVISED SITE PLAN



CURVE DATA  
 $\Delta = 90.00^\circ$   
 $R = 25.00'$   
 $L = 39.27'$   
 CHORD  
 $S 45.59'35''$   
 $35.36'$  PL  
 $S 45.41'26''$   
 $35.24'$  MEAS

CF# SC39-9310160  
 DATE: JUNE 20, 2002  
 SCALE: 1" = 20'  
 DRAWN BY: C.J.

BOUNDARY SURVEY CERTIFIED TO: RAQUEL GALDO MORALES

REVISIONS

**ACCURIGHT SURVEYS**  
 of Orlando Inc., LB 4475  
 PHONE (407) 894-6314

- NOTES
1. BEARING STRUCTURE BASED ON: THE NORTH R/W LINE OF WALNUT GROVE PLACE.
  2. THIS BUILDING/LOT IS NOT IN A FLOOD PRONE AREA, ZONE X, BASED ON FLOOD INSURANCE RATE MAP, NO 170289 0185 E, SEMINOLE COUNTY, FLORIDA.
  3. THIS SURVEY REFLECTS ONLY MATTERS OF RECORD AS PROVIDED BY CLIENT.
  4. UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED.
  5. BUILDING TIES SHOWN ON THIS SURVEY SHOULD NOT BE USED TO RECONSTRUCT PROPERTY LINES.

LEGEND	
CL	- CENTERLINE
CBW	- CONCRETE BLOCK WALL
CC	- COVERED CONCRETE
CLF	- CHAIN LINK FENCE
CM	- CONCRETE MENT
CONC	- CONCRETE
COVD	- COVERED
CP	- CONCRETE PAD
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## **SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS DECISION ON APPEAL**

This decision is made by the Board of County Commissioners of Seminole County, Florida, this 26th day of November, 2002, in accordance with Section 30.43, Land Development Code of Seminole County (LDC), amending a decision by the Board of Adjustment to deny a request for the following variances: (1) variance of 2.5 ft. from the required 10-foot accessory building setback on west side; (2) variance of 7 ft. from the required 25-foot side street setback in an R-1AA district; and (3) variance of maximum fence height from 3 feet to 6 feet within 25 feet of a street.

### **A. FINDINGS OF FACT**

1. On August 26, 2002, the Board of Adjustment denied a request by Raquel Galdo Morales on property described as LOT 60, STILLWATER PHASE 2 PB 36 PG 93-99 (herein referred to as the "subject property").

2. The subject property is assigned the Low Density Residential future land use designation under the terms and provisions of the Vision 2020 Plan and the R-1AA (single family dwelling district) zoning classification under the terms and provisions of the LDC.

3. On September 10, 2002, Raquel Galdo Morales filed a letter of appeal with Seminole County, seeking an appeal of this approval before the Board of County Commissioners.

4. On October 22, 2002, the Board of County Commissioners continued the appeal to allow the Applicant and staff to consider alternate variances.

4. The Board of County Commissioners (BCC) 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 Board of Adjustment's decision to deny the requested variances is in conformance with Section 30.43(b)(3) of the Land Development Code of Seminole County. The requested variances do not meet the criteria set forth in Section 30.43 (b)(3) for granting variances because:

1. No special conditions or 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.
2. Any special conditions and circumstances result from the actions of the appellant.
3. Granting the variance requested will confer on the applicant special privileges that are denied by Chapter 30 to other lands, buildings, or structures in the same zoning classification.
4. Literal interpretation of the provisions of Chapter 30 would not deprive the appellant of rights commonly enjoyed by other properties in the same zoning classification and would not work unnecessary and undue hardship on the appellant.
5. The variances requested exceed the minimum necessary to make possible the reasonable use of the land, building, or structure.
6. Granting of the requested variances would not 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.

The BCC also finds that a variance reducing the 10-foot accessory building setback requirement to 3 feet is in accordance with the Land Development Code.

### **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 November 26, 2002, 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 **UPHELD** and adopted in full, and further granting to the Applicant a variance of the accessory building setback requirement from 10 feet to 3 feet.

**DATED** this 26th day of November, 2002.

Board of County Commissioners  
Seminole County, Florida

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Daryl G. McLain, Chairman