MINUTES OF THE CITY OF LAKE MARY, FLORIDA, BOARD OF ADJUSTMENT MEETING HELD ON JANUARY 5, 2005, 7:00 P.M., CITY HALL, 100 N. COUNTRY CLUB ROAD

TAPE 1, SIDE A

I. Call to Order

The meeting was called to order at 7:00 p.m.

II. Moment of Silence

III. Pledge of Allegiance

IV. Roll Call - Determination of a Quorum

The following members were present:

Chairman Jim Lormann
Vice Chairman Eileen Hoppen
Member Frank Martin
Member Nancy Vallianatos
Member Shawn O'Brien
George Ludwig (Alternate)

City staff present were Juan (John) A. Omana, Jr., Community Development Director; Gary Schindler, City Planner; and Diana T. Adams, Administrative Secretary.

Also present were Nirmal Panchal, Ronald McGrath, Joseph and Laura Cipolla, John T. DeVan and Robert Vann.

V. Approval of Minutes - November 3, 2004 (Postponed to the next BOA meeting.)

VI. Old Business

None

VII. New Business

A. 2004-VA-14: Request for a variance from § 154.57 (C) (3), City of Lake Mary Code of Ordinances, to construct a residence on property located off Leslie Lane, Lake Mary, Florida; Applicant: Nirmal Panchal

Gary Schindler, City Planner, presented the request and the related Staff Report. It is noted that the overhead projector was not working for this hearing. Mr. Schindler stated that this variance request relates to the minimum street frontage for property located on the unopened portion of Leslie Lane. He said to the west of the subject property is the CSX Railroad. To the east of the property is Countryside Subdivision, and to the south of the property is Meadow Brooke Subdivision.

Chairman Lormann suggested to the Board members that they look at their maps attached to the Staff Report.

Mr. Schindler explained that the subject property was kind of what was left over from the creation of the two subdivisions (Countryside and Meadow Brooke). He stated that Countryside was platted in 1975 and Meadow Brooke was replatted in 1991.

Mr. Schindler pointed out that the subject property is accessible only from the unopened portion of Leslie Lane, which is 50' wide, and the R-1AAA section of the Code, (C) (3), states that R-1AAA-zoned properties must have a minimum of 35' of frontage on a road, which the subject property does not meet. He said that the subject property only has 25' because there is a lot in Meadow Brooke (see Location Map attached to the Staff Report) which is a flag lot and which abuts the subject property to the south and it takes up the other 25' of the right of way on Leslie Lane.

Mr. Schindler mentioned, as a point of information, that this is one of two variances that the Applicant is requesting; one is before the Board of Adjustment tonight and the other is from Chapter 160, Resource Protection Standards, City of Lake Mary Code of Ordinances, that will be reviewed by the Planning and Zoning Board on January 11, 2005, and then will go onto the City Commission in February. He stated that the variance from Chapter 160 relates to the opening of Leslie Lane, variances from the 25-foot-wide environmental buffer and the 75-foot setback on Leslie Lane itself. He said the Applicant is proposing, at his own expense, to open Leslie Lane and put down a stabilized base and sub-base sufficient in width and compaction to accommodate emergency vehicles.

Mr. Schindler made it clear that the subject property itself is not environmentally sensitive. He stated that it is out of the 100-year floodplain and there are no

wetlands shown on the property. He said it is only the right of way of Leslie Lane that is environmentally sensitive.
Mr. Schindler stated, to be precise, the variance requested tonight at this hearing is for a variance of 10' from the minimum road frontage requirement of 35' for the R-1AAA zoning designation, which is § 154.57 (C) (3), City of Lake Mary Code of Ordinances.

Mr. Schindler reviewed the six variance criteria listed in the Staff Report, stating that the Applicant has met all the criteria to grant the requested variance.

Mr. Schindler discussed a similar variance on property located at the end of Sun Oaks Court which is listed in the Staff Report and was granted a year or so ago by the Board of Adjustment.

Mr. Schindler concluded his presentation, directing the Board to the second from the last page behind the Staff Report, a graphic that shows a residence upon the property. He pointed out that this is for information purposes only, and if the Board should elect to grant the requested variance tonight, it, in no way, says that the Applicant has met all of the criteria for the placement of the dwelling and the Applicant would need to apply for a building permit and submit an application and the City would review it like it would any other property.

Chairman Lormann requested the Applicant to come forward and address the Board.

Nirmal Panchal, 108 Commerce Street, Longwood, Florida 32750, addressed the Board in favor of the requested variance. He stated that he is the owner of the subject property, and the 10' variance is needed because of the "opening off our lot that makes it difficult". He reiterated Mr. Schindler that this would be at their own expense.

Chairman Lormann asked staff if they have received any letters or telephone calls in opposition to the requested variance.

Mr. Schindler answered that he has received a couple of telephone calls and they were simply asking what was happening, what was proposed. He said that he has not received any letters or telephone calls in opposition.

Chairman Lormann opened the hearing to public comment.

Ronald McGrath, residing in Meadow Brooke Subdivision, Lot 48, 337 Leslie Lane, Lake Mary, Florida, came forward in opposition. His main concern was with regard to the construction of the proposed street in an environmentally-sensitive area and

where it would drain to. He stated that he can only build on about 50 percent of his lot because the other half is environmental, and the Applicant is proposing to build a street in that same vicinity. He said the environmental area in the back of his property constantly has water on it. He stated that the proposed street will not have any curbing or gutters, drainage provisions, and is simply proposing to blacktop whatever roadbed is provided by the Applicant. He requested an explanation on how the Applicant can do this in an environmentally-sensitive area.

Juan (John) A. Omana, Jr., Community Development Director, explained that the item currently before the Board is a variance from the minimum road frontage requirements of the City's Land Development Code. He said that the right of way leading into the property is encumbered by environmentally-sensitive areas, wetland delineation areas, and so forth, that will be subject of a separate variance. He stated that when the Applicant comes in for a building permit, those issues will have to be looked at with respect to runoff, saving vegetation, trees, and so forth. He said there is still an additional level of review that the Applicant will have to go through to ensure that, number one, the environmentally-sensitive areas around the subject property are maintained and complied with and, number two, access is complied with. He emphasized that what is before the Board tonight is a variance for frontage, not the technical, environmental issues, which are valid issues, but, technically, this is not the forum for that this evening.

Mr. McGrath commented that, technically, what he would like to point is it is like we have got the cart before the horse here. He stated that it appeared to him that these things are, each one, dependent on the other. He questioned why you would go ahead and give a variance on the frontage pending this other variance that appears to be the more important. He requested this variance be continued until the other variance is concluded.

Mr. Omana suggested to Mr. McGrath that he address Chairman Lormann and then the Chairman could then address staff. He requested Chairman Lormann to allow him to address Mr. McGrath's comments, question/request.

Chairman Lormann so allowed.

Mr. Omana explained that, from a due process standpoint, anybody can petition the City for the process, and the Applicant has petitioned for this variance, which falls under the section of the Code that falls under the jurisdiction of the Board of Adjustment, and they also have currently petitioned for the section of the Code that falls under the jurisdiction of the Planning and Zoning Board and the City Commission. He said, from a procedural due process standpoint, the Applicant can do this, so it is not really an issue of a cart before a horse. He clarified that even if the Board of Adjustment were to approve this variance tonight, this does not

guarantee any development on the property. He stated that the Applicant still has to go to the City Commission for those environmental-type variances, and on top of that, they still have to go through the permitting requirements of the City with respect to the building code and zoning setbacks and things of that nature.

Mr. Schindler explained that the blacktopping that Mr. McGrath is speaking of is cold mix, which is pervious. He said that St. Johns does not require the City to provide stormwater retention adjacent to the roads that it covers with cold mix, because you can take a bucket of water and pour on a cold mix road and it will absorb and drain through.

Chairman Lormann commented that he appreciated that information, but the Board was only supposed to be authorized to address/make decisions on the variance before it currently. He stated that the other variance related to Chapter 160 will be addressed at a later time in a different, more proper forum.

Mr. McGrath, at this time, claimed that he did not know who Mr. Schindler was.

Mr. Schindler and Mr. Omana introduced themselves to Mr. McGrath.

Mr. McGrath requested someone to summarize to him what he was just told.

Member O'Brien so complied.

Laura Cipolla, also residing in the Meadow Brooke subdivision came forward on behalf of herself and her husband, Joseph, 323 Leslie Lane, Lake Mary, Florida, and addressed the Board in "complete opposition" to any variances being done with this subject property due to drainage reasons and for other reasons she did not mention. She directly abuts the subject property to the south.

John T. DeVan, also residing in the Meadow Brooke subdivision at 235 Meadow Bay Court, Lake Mary, Florida, came forward in opposition to the requested variance. He said his family lives in a deed-restricted subdivision and they have no idea what kind of a home Mr. Panchal intends to construct. He stated that this area that is being discussed is water and you definitely could not walk there without getting water up to your waist in many places. He said the water has got to go somewhere so he was against it.

Chairman Lormann questioned if the subject property is zoned R-1AAA.

Mr. Schindler answered affirmatively.

Chairman Lormann asked if R-1AAA has a minimum square footage requirement.

Mr. Schindler answered affirmatively.
Mr. DeVan came forward again asking about another unrelated matter having to do with a placard that was posted at the Countryside Baptist Church property near the subject property. He questioned Mr. Schindler if he could speak to him later about this.

Mr. Schindler answered, sure.

Ms. Cipolla, from her seat in the audience, requested staff to explain to them what the R-1AAA zoning consists of.

Mr. Schindler complied, reading from code and explained the setbacks on the subject property.

Mr. DeVan came forward again questioning what would be the minimum from the Leslie subdivision from the back lot line.

Mr. Schindler responded, saying, as shown, it is 30' from the southern property line. He stated that it is 32' from the line parallel to Leslie Lane, 30' from the southern property line, which would be with Meadow Brooke, and it is 53' from the railroad.

Mr. DeVan asked if the home on the flag lot in Meadow Brooke is back as far as it is allowed to go, based upon St. Johns.

Mr. Schindler replied, stating that he did not know if St. Johns impacts that lot or not.

Chairman Lormann requested Mr. DeVan to address the Board.

Mr. DeVan explained that another issue from the people that live in his subdivision (Meadow Brooke) is that the house on the flag lot could be coming right up to a part of Mr. Panchal's proposed house. He requested a copy of where the proposed home is going to sit.

Mr. Schindler and Mr. Omana both explained that everything staff has is public record.

Mr. Omana requested, through Chairman Lormann, if Mr. Schindler could pass to the audience the one map showing where Mr. Panchal's proposed residential dwelling is going to be located.

Chairman Lormann okayed that and Mr. Schindler so complied.

Mr. DeVan further informed the Board that the flag lot just sold and he was not aware if the new buyers were aware of this variance request or not, or Mr. Panchal's other variance request going to the Planning and Zoning Board on January 11, 2005. He wanted to speak up on their behalf.

Mr. Schindler said that staff did notify everyone within 300' per the Seminole County Property Appraiser's records. He stated that when this item is scheduled for the City Commission meeting, again everyone within 300' will be notified.

Mr. McGrath came forward again and confirmed that the flag lot just sold on December 22, 2004, and the new buyers just recently moved in. He added that probably the people that owned the lot before that did get the information.

Mr. Schindler said that staff is required to make its best effort to notify people.

Chairman Lormann questioned Mr. Schindler if the subject property was posted.

Mr. Schindler answered affirmatively. He added that this request was advertised as well.

Robert Vann, also residing in Meadow Brooke subdivision at 245 Meadow Bay Court, Lake Mary, Florida 32746, came forward pointing out that he was concerned about half of the proposed road hits onto the flag lot's property. He was also concerned about car lights coming at night shining into the rear of the homes in Meadow Brooke.

Mr. McGrath came forward again questioning if the flag lot was part of any existing subdivision in the area.

Mr. Schindler responded, saying that he had no idea.

Mr. McGrath asked how would one go about finding that out.

Member O'Brien replied, it's public record.

Mr. Schindler added that even if it were part of a property that, say, had been on the west side of the railroad tracks, there is no connection from the west property.

Chairman Lormann requested Mr. McGrath to approach and indicate his property's location to him.

Mr. McGrath complied.

Mr. Schindler pointed out that he did not know for sure, but it appeared to him that the extension of Leslie Lane was for the expressed purpose of providing access to the subject lot. “Otherwise, there would have been no need for the extension of Leslie Lane”.

Chairman Lormann commented that he was not sure that the Board could deny Mr. Panchal’s request; that this discussion is another jurisdiction’s issue. He stated the Board’s issue is whether or not the Applicant has met the criteria and the Board is obligated to grant this variance.

Mr. McGrath came forward again questioning, if the subject property were part of another subdivision, would there not be covenants there that this property would then fall under in terms of minimum house size, square footage, et cetera.

Chairman Lormann and Member O’Brien both answered affirmatively.

Mr. McGrath asked what everybody means by public record.

Member O’Brien directed Mr. McGrath to the Seminole County Property Appraiser’s website and pointed out that the covenants and restrictions are with the Clerk of Court.

Mr. Schindler announced that he has the Seminole County Property Appraiser’s information in the file with him and it does appear that the property, at one point, may have been part of Eagle’s Crossing, Plat Book 47, Page 17.

Chairman Lormann suggested Mr. McGrath make a note of the Plat Book and Page numbers in order to assist him in getting that information quickly.

Member O’Brien added that Mr. McGrath could also look up the Eagle’s Crossing subdivision’s covenants and restrictions, but said whether or not that parcel was released, sold, or something, is a separate issue as well as whether or not that subdivision would ever enforce the covenants and restrictions on a lot that really is not connected or has no rhyme or reason to do with their subdivision. He stated that there are a lot of other balls in the air that this Board cannot address. All the Board is here for is to address/decide on the 10 foot-variance.

Mr. Omana added that the City does not enforce private covenants and restrictions. Staff’s job is to enforce the regulations passed by the City Commission.

Chairman Lormann commented that the homeowners association of a subdivision typically are the ones that initiate any challenge to the restrictions.

Mr. Vann came forward again stating that he is the Vice President of the homeowners association in Meadow Brooke and their square footage minimum is 2400 square feet and most of the homes go quite beyond that range. He was concerned about the 1300 minimum square footage of Mr. Panchal's property.

Chairman Lormann also requested Mr. Vann to approach and indicate his property's location to him.

Mr. Vann complied. He added that Meadow Brooke has currently raised about $110,000 to put up a wall along that railroad track to help alleviate some of the noise and taking down even more trees from that area is not going to help at all. He added there is also going to be a six to eight-foot berm that is going to be constructed there. He said even with that, they have a huge noise problem.

Chairman Lormman commented that if a train goes through there you are going to hear it.

Chairman Lormann also requested Mr. DeVan and Ms. Cipolla to approach and indicate their property's location to him.

Mr. DeVan and Ms. Cipolla complied.

Mr. DeVan came forward again stating that some of the residents were confused by the placard saying the subject property was located off Humphrey Road (application signed by Mr. Panchal states the location is off Humphrey Road).

Ms. Cipolla came forward again stating that their high homeowners fees In Meadow Brooke go towards maintaining the front entrance at Country Club Road and Leslie Lane as well as the fence that runs down the side, and they usually chip in and also help with the tree work and things to even take some away from the City. She did not see how this would be fair if they are putting all these monies in where this lot would benefit from that and have absolutely no partake in any of the fees.

Mr. Panchal came forward again and addressed the issue of the square footage of the proposed house. He stated that everything under roof is estimated at 6200 square feet. He said that it will be a single-story home. He stated this exceeds the Meadow Brooke standards as well as city standards.

Chairman Lormann closed the hearing to public input and opened it to board discussion and/or a motion.

Mr. DeVan requested to speak further.

Chairman Lormann reopened the hearing to public comment.

Mr. DeVan commented that it was stated before that someone did not receive a letter and he said most of them did not know that that was an option that they should have.

Chairman Lormann stated that if you are within 300', staff is required to notify you in writing.

Mr. DeVan questioned if it would make any difference/an impact to the Board if more people from the subdivision had told it that they did not want this variance to occur.

Member O'Brien responded, stating that the Board makes it decision on the facts that are presented to them, but certainly they take into account all relevant comments that are helpful to address the issues that they have to address.

Chairman Lormann added that more commentary is fine. He said one of the reasons he particularly asked where everybody lived is if Ms. Cipolla is sitting right behind Mr. Panchal's house, then he is going to weigh her comments probably a whole lot more than maybe some of you that are a half-mile down the road. "So yes and no, to be honest".

Mr. DeVan reminded the Board that the person or persons who have the second most impact are not even in the home yet (on the flag lot) and are not even aware this is even going on.

Mr. Omana stated that these proceedings fall under what is called quasi-judicial process, which is based on substantial, competent evidence presented by staff. He said certainly all public comment is welcomed via letters, petitions, or what have you.

Chairman Lormann added that the Board takes the staff's recommendations pretty serious.

Chairman Lormann again closed the hearing to public comment and entertained board discussion and/or a motion.

Member Martin commented that he had a problem overcoming the sixth variance criteria. He stated that previously the Board granted a variance very similar to this; however, with that particular variance the Board did not see or hear anything that indicated that it would be detrimental to the public welfare or those surrounding that

piece of property. He said there does seem to be concerns here that concern him relative to the sixth variance criteria.

Member O'Brien commented that he thought about that too, but the person or persons, when they purchased the flag lot, did have notice that there is right of way in that area and not only would it be Mr. Panchal but if the City had just decided for whatever odd reason to pave that area, they could do it for any reason they want. He stated that he is torn by that as well, but he was leaning toward answering the sixth variance criteria with a yes based on the information that this person or persons would have had available.

Member Martin commented that that was true.

Alternate Ludwig commented that it is easy to identify with the citizens' concerns. He mentioned that when he went out to look at the subject property he saw that there was a good bit of it that was under water and he wondered whether the City was going to be prepared to invest the resources necessary to get the road out there. He said that question was answered immediately, but building back there is going to have an impact, but the question currently before the Board is the 10'. He stated that he is sympathetic, but this is not the forum for those comments/concerns.

Chairman Lormann commented that he was sure that those issues would be more appropriate at the next meeting.

Member Vallianatos commented that her concern is simply has the Applicant met the criteria.

MOTION:

Member O'Brien moved to approve the request by Nirmal Panchal for a variance from § 154.57 (C) (3), City of Lake Mary Code of Ordinances, to construct a residence on property located off Humphrey Road and Leslie Lane, Lake Mary, Florida, due to the Applicant meeting all of the criteria. "This lot, again, is one of those unique situations abutting the CSX Railroad that is kind of situated between two developments and, at some point, had a plan that that road would go through. Because of the situation of the lot abutting this platted, raw road". Vice Chairman Hoppen seconded the motion.

Member O'Brien commented that he does feel for the home that has a road being put in their backyard, but with the facts presented to him he still feels that all six

criteria have been met and “it is not caused by these owners; the piece of property is uniquely situated”.

Vice Chairman Hoppen commented, and that would be the only access to the property. “To deny them access to their property is…..”

Chairman Lormann commented, “that is probably even a more egregious issue than…..”

Member O’Brien commented that, otherwise, it is a fishing camp basically or a mosquito nest. “That it would be denying them access to their property. And this is unique”.

TAPE 1, SIDE B

Chairman Lormann requested a roll-call vote on the motion, and was taken as follows:

Member Vallianatos - Yes
Member Martin - Yes
Vice Chairman Hoppen - Yes
Member O’Brien - Yes
Chairman Lormann - Yes

The motion carried unanimously 5-0.

Chairman Lormann explained that anybody may appeal this decision of the Board of Adjustment to the City Commission within 30 days.

Mr. Schindler pointed out that whereas the meeting started tonight at 7:00 p.m., the meeting next Tuesday night regarding Mr. Panchal’s other variance before the Planning and Zoning Board will start at 6:00 p.m. in the Chambers. He said there are a number of items on that Agenda and he could not guarantee that it will be the first item because the Agenda has not yet been finalized.

VIII. Other Business

Alternate Ludwig requested more detailed directions on how to get to future subject properties.

Chairman Lormann requested if staff could provide the Board with a vicinity map that has at least some kind of a main road intersection shown or very explicit

directions. “Play like we’re all real dumb and that you got to hand walk us to the site”.

Juan (John) A. Omana, Jr., Community Development Director, replied that staff will do one better. Staff will mail each one of the Board members a copy of the newly created City of Lake Mary Street Map from the Lake Mary GIS section.

Alternate Ludwig also commented that he was not aware of what the R-1AAA Zoning District was comprised of and he went to the City’s website to find this out and noticed that several of the links do not work.

Mr. Omana informed the Board that just recently Andy Walch came on board as one of the City’s tech persons and he just finished doing a revamping of the entire website. He stated that he would check with Mr. Walch and follow-up on that.

IX. Reports of Other Members

None

X. Adjournment

The meeting was adjourned at 7:50 p.m.

Jim Lormann, Chairman	Diana T. Adams, Administrative Secretary