

1 **MINUTES OF THE CITY OF LAKE MARY, FLORIDA, BOARD OF ADJUSTMENT**  
2 **MEETING HELD ON JUNE 6, 2007, 7:00 P.M., CITY HALL, 100 N. COUNTRY CLUB**  
3 **ROAD**

4  
5 **TAPE 1, SIDE A**

6 I. Call to Order

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

8 II. Moment of Silence

9 III. Pledge of Allegiance

10 IV. Roll Call - Determination of a Quorum

11  
12 The following members were present:

13  
14 Chairman Jim Lormann  
15 Member Shawn O'Brien (7:02 p.m.)  
16 Member Nancy Vallianatos  
17 Member George Ludwig  
18 Meryem Stanek (Alternate)

19  
20 Vice Chairman Frank Martin was absent.

21  
22 City staff present were Juan (John) A. Omana, Jr., Community Development  
23 Director; Gary Schindler, City Planner; Tom Connelly, P.E., Planning Engineer; and  
24 Diana T. Adams, Administrative Secretary.

25  
26 Also present were Bobby Von Herbulis, Jeff Anderson and David Rodd.

27 V. Approval of Minutes - February 21, 2007

28 **MOTION:**

29 **Member Ludwig moved to approve the Minutes of the February 21, 2007,**  
30 **Board of Adjustment meeting, as presented. Member Vallianatos seconded**  
31 **the motion. Vice Chairman Martin and Member O'Brien were absent. The**  
32 **motion carried unanimously 5-0.**

33  
34 It is noted that Member O'Brien entered the meeting here late at 7:02 p.m.

1 VI. Old Business

2 None

3 VII. New Business

4 A. 2005-SP-19: Request for two variances from the minimum building setback,  
5 § 154.63 (C) (2), City of Lake Mary Code of Ordinances, properties located at  
6 135 (Parcel B) and 145 (Parcel A) Middle Street, Lake Mary, Florida;  
7 Applicant: McKee Construction Company for Beach Brothers, LLC (Parcel B)  
8 and Beach Brothers II, LLC (Parcel A)  
9

10 Tom Connelly, P.E., Planning Engineer, presented the request and the related  
11 Staff Report. The aerial attached to the Staff Report was on the overhead  
12 projector. He said that this involves a request for two variances to City Code for  
13 the required building setback from the property line at 135 Middle Street and 145  
14 Middle Street. He stated that as regards the variance that is being requested for  
15 property at 135 Middle Street, northern portion of the subject site, that is along  
16 the south property line, and instead of the building as shown on the plans,  
17 instead of being 25 feet from the property line, the Applicant is asking for it to be  
18 14.2 feet from the property line, which would be a decrease of 10.8 feet from  
19 what is required by code. He said that variance no. 2 that the Applicant is  
20 requesting, for 145 Middle Street, the southern property also identified as Parcel  
21 A, that variance that is being requested is from 25 feet to 16.2 feet, a reduction of  
22 8.8 feet.  
23

24 Mr. Connelly gave history related to the subject property. He stated that the  
25 requested variances originated from the original site plan application and  
26 submittal of plans back in December of 2005 when it was identified that this was  
27 going to be a single ownership, which is Beach Brothers. He said that in the  
28 layout that was presented at that time the two buildings were shown on the site  
29 plan with a distance of approximately 31 feet between them. He stated that a  
30 year later when the Applicant came back for the first review from the City's DRC  
31 comments and was resolving some other issues, the Applicant brought it to our  
32 attention that the parcel was not just one ownership, which was Beach Brothers,  
33 but was also Beach Brothers II, so we actually had two parcels in this one  
34 proposed site plan. He said at that time staff informed the Applicant that as two  
35 separate parcels, that they would not be in compliance with City Code on this 25-  
36 foot setback and the plans were returned. He stated that in April of this year, the  
37 Applicant resubmitted and after his evaluation and decision he decided he  
38 wished to request these variances from the Code.  
39

1 Mr. Connelly said that in staff's evaluation of the requested variances, staff  
2 basically did not find justification within the six variance criteria. What staff did  
3 ask the Applicant was to look at the same section of City Code which calls out for  
4 the six criteria to be used as a gauge and to respond to those. These six  
5 responses are for each parcel, 135 and 145, are shown on the set of plans on  
6 the cover sheet. He stated that he has made one annotation that, in the  
7 submittal, the Applicant's engineer flip-flopped the two addresses and the two  
8 basic variances, but the basic justifications for these variances were the same for  
9 both parcels.

10  
11 Mr. Connelly said that there is one clarification that he would like to get from the  
12 Applicant. He stated that staff was informed that the Applicant basically was  
13 informed that the two parcels existed because there had been a split of the  
14 original parcel. He said that in staff's review of the County Property Appraiser's  
15 record, it appeared that the split occurred in June of 2005, which would mean  
16 that the application, as originally submitted, was in error, and, like I say, the  
17 Applicant did clarify it a year later, but they decided to stay with the original  
18 design.

19  
20 Mr. Connelly concluded, saying that staff's review of the justifications is we do  
21 not find justification for granting these two variances and are recommending  
22 denial of both of these.

23  
24 Member O'Brien asked if there are two separate parcel IDs.

25  
26 Mr. Connelly answered affirmatively.

27  
28 Chairman Lormann questioned if staff has received any opposition to the  
29 proposed variances.

30  
31 Mr. Connelly answered, saying that he sent out letters to 10 of the property  
32 owners within 300 feet of the subject site and he received no responses back.

33  
34 Member Stanek expressed her concern of parking.

35  
36 Mr. Connelly stated that staff mainly concentrated on the two variances/setback  
37 requirements here, but the one sheet staff did pull from the plans shows the  
38 proposed parking layout, the entrance in and trash dumpster and there is  
39 adequate parking shown for the buildings that are being proposed.

40  
41 Gary Schindler, City Planner, added that the parking is shown between the  
42 buildings and Middle Street.

1 Member Stanek commented that the parking will be in front of the buildings by  
2 Middle Street just like the other buildings have their parking in front of them, too.

3  
4 Mr. Schindler concurred.

5  
6 Member O'Brien asked if the side setbacks are okay on both.

7  
8 Mr. Connelly responded, the setbacks on all the remaining property boundaries  
9 are acceptable; yes.

10  
11 Member O'Brien questioned if the two parcels were combined into one lot, would  
12 all the side setbacks still be okay for the property.

13  
14 Mr. Connelly replied, everything would be acceptable, including the distance  
15 between the two buildings. He said that the difficulty is that the property line  
16 now, as shown, runs basically between the two buildings and thus they are short  
17 the distances that they are requesting in these variances.

18  
19 Member Ludwig asked if there were two separate owners.

20  
21 Mr. Connelly answered affirmatively; that there are two separate owners for this  
22 project.

23  
24 Member O'Brien questioned, if the properties were combined, is there any  
25 moratorium on office condominium, Chapter 720 or 718 type of real property  
26 structuring that could be permitted for this site.

27  
28 Mr. Schindler answered, saying that local governments are prohibited by state  
29 statutes to become involved in condominium platting.

30  
31 Member O'Brien commented, depending on what they wanted to file.

32  
33 Mr. Schindler agreed.

34  
35 Chairman Lormann requested the Applicant to come forward and address the  
36 Board.

37  
38 Bobby Von Herbulis, President of McKee Construction, 790 Monroe Road, Sanford,  
39 Florida 32771, announced that he was working with Beach Brothers, LLC (Parcel  
40 B) and Beach Brothers II, LLC (Parcel A) on this project and addressed the  
41 Board in favor of the two proposed variances. He clarified that this overall project  
42 was submitted as one user as indicated, but the previous lot split had taken place  
43 in June of 2006 and not 2005 as was previously stated by Mr. Connelly. He

1 stated that the original piece of property had a small lot up here (indicating to  
2 overhead) that was purchased secondary to the main lot, which was  
3 approximately two-thirds of this, so the owners ended up buying it all and then  
4 they developed the plan accordingly. He said that in the process of doing that,  
5 they ran into several hurdles in reference to drainage. There was some drainage  
6 situation with the nursing facility next door that was initially intended to take the  
7 water off of their site that they had to spend the better part of nine months trying  
8 to get accomplished and actually failed in that because they did not have proper  
9 piping to get out to actually receive their water. He stated that during that  
10 timeframe the ownership went in and did a lot split centered between the two in  
11 June of 2006, and it was for a couple of reasons that was done; one, there are  
12 three principals in each of Beach Brothers and Beach Brothers II. Two principals  
13 are common in both Beach and Beach II, so two of the people own the interest in  
14 both of those. The third person in each one of those is different. Chris Dapore is  
15 the third person in one and Mitch Raymond is the third person in the other. He  
16 said that we have got common denominators with both of these, and not only  
17 was the overall project developed originally as one project and two buildings, but  
18 they have put a blanket easement over top of both of these lots that are cross-  
19 access easements, drainage easement, irrigation easement, well easement,  
20 dumpster enclosure and dumpster easements. Everything on these sites are all  
21 crossed over and crosshatched so that they are tied together and will be tied  
22 together for eternity. The easements are perpetuity, so these two pieces of  
23 property -- although there is an imaginary line that shows up on paper, that is the  
24 only place that this is going to show up. The utilities are individual for each  
25 building, which is the way it would be typically. Actually the sewer lines actually  
26 tie together and run in as one connection point at this location (indicating to  
27 overhead). So the sites are one site.

28  
29 Mr. Von Herbulis went on to say that he sits on the City of Sanford's Planning and  
30 Zoning Board and they are the board of adjustments and appeals and knows this  
31 Board's side of it and understands what they are looking at and the decisions the  
32 Board has to make.

33  
34 Mr. Von Herbulis stated that this site is, in all practical purposes, one location, and it  
35 was divided for a couple of other reasons; one being they can get two one-million  
36 loans easier than you can get a two million-dollar loan. The other reason is the only  
37 way to separate out the ownerships with the third person was to condo out the  
38 units, and right now with the insurance industry, the word, condominium, is taboo,  
39 and the insurance on these two buildings would have made it not even feasible to  
40 build. He said that he is dealing with a condo that he just completed up in Sanford  
41 and their insurance went up over 1,000 percent from it being a condo versus a  
42 multi-tenant building.

43

1 Mr. Von Herbulis stated that they meet all aspects of the City's criteria and have  
2 spent 18 months going through this project, and the only thing that they have is  
3 between these two buildings, that imaginary line that is there that basically does not  
4 meet the full aspect of the land development regulations in the City of Lake Mary.  
5 Everything else does. He said that if this was one parcel, they would meet the  
6 separation, and just because that line is there does not mean a fire is going to jump  
7 from here to here (indicating). They are fire-sprinkled, fully covered, landscaped.  
8 They have even taken landscaping from the common buffering area and spread it  
9 around the property.

10  
11 Mr. Von Herbulis concluded, requesting that the Board look at this closely to see  
12 that they have gone to great lengths to make sure that this is one project. It just  
13 happens to have a little hickey in it with two different ownerships but they are tied  
14 together with multiple, multiple overlayments [sic] of easements to accommodate  
15 and make sure that it acts as one site.

16  
17 Chairman Lormann requested Mr. Von Herbulis to restate his hardship position;  
18 what creates the hardship that he, himself, has not created.

19  
20 Mr. Von Herbulis stated, the hardship in it is that the site was designed overall as  
21 being one piece of property. The lot split in the middle being done for, again,  
22 multiple other reasons. We have gone through -- you know, to create everything  
23 except for the minor setbacks of it. The actual hardship is mainly financial. He said  
24 that if they have to cut this building back, the 18 months of engineering and  
25 architectural planning, and then cutting back each one of these buildings, one ten  
26 feet and the other one eight feet, is starting over again.

27  
28 Chairman Lormann commented that what the Board would like to hear is a  
29 hardship that is not financial or something that the Applicant has not created. He  
30 stated that this Board is very easy-going if it can hang its hat on something, but it  
31 cannot hang it on something if the Applicant has created the issue.

32  
33 Mr. Von Herbulis said that the problem was created by the lot split. He reiterated  
34 that they meet every criteria on the overall project and that they have gone through  
35 the lengths of tying both of these lots together with cross-access easement, cross-  
36 drainage easements, cross-landscaping easements, well easements, dumpster  
37 easements, blanked easement that might have not even been thought of yet. He  
38 stated that they have a blanket blank easement over top of this. He said, that is  
39 what he is asking the Board to hang its hat on, is that the sites have been  
40 meticulously placed together except for a line that shows up on the paper at the  
41 County. That's all. Other than that, the site is one piece of property. Two of the  
42 owners own here. Two of the owners own here. They are going to be paying the  
43 bills back and forth. It is centrally one piece of property. It just happens to have the

1 lot in between. It is an imaginary line. He stated, the other aspects are, if you look  
2 at the development to the north of it, which is one that they have typically copied  
3 (copy of site plan put on overhead), that building, in my estimation, does not create  
4 the same distance from its north property line as they have on any of theirs. We  
5 have got 25 feet, which would put it somewhere in here (indicating to overhead).  
6

7 Mr. Von Herbulis said that they do not believe that they are asking anything that  
8 has not been done before.  
9

10 Chairman Lormann asked Mr. Von Herbulis if he was suggesting that possibly a  
11 precedent has been set on the adjoining property.  
12

13 Mr. Von Herbulis responded, I'm going to throw that one up against the wall, but I  
14 am not going to ask it to stick. Our project is stand alone. I'm just showing that as  
15 something that is right on the same piece of property – or, you know, just north,  
16 adjacent piece. I'm not trying to indicate or trying to throw sticks and stones that  
17 this is a precedence anywhere else. Our project, I feel and I believe is stand alone-  
18 ish in the fact that we have gone to great lengths to tie the two together. They do  
19 have two different ownerships, but they are tied and interwoven very, very well. If  
20 we would condo the unit out, it wouldn't be tied any better than it is today, and that  
21 is what I'm asking you to hang your hat on, is that they have everything but unity of  
22 title.  
23

24 Chairman Lormann questioned Mr. Von Herbulis if these easements are recorded.  
25

26 Mr. Von Herbulis answered affirmatively.  
27

28 Member O'Brien asked what the cost sharing is for the easements; who pays for  
29 the parking lot, etc.  
30

31 Mr. Von Herbulis deferred the question to Mr. Anderson.  
32

33 Jeff Anderson, Principal of both Beach Brothers and Beach Brothers II, of both  
34 buildings, replied, it is split 50/50. He stated that in the easement agreement, we  
35 have got financial of billing each other.  
36

37 Member O'Brien questioned what the ramifications are in the easement agreement  
38 if one party fails to pay.  
39

40 Mr. Anderson answered, lien law. It would just lien.  
41

42 Member O'Brien commented, simple, simple lien.  
43

1 Mr. Anderson concurred.

2  
3 Member O'Brien asked, lien over the real property, not to terminate the easement.

4  
5 Mr. Anderson responded, yes, sir. Correct. He said easement cannot be  
6 terminated. It would be a lien. If Beach Brothers did not pay their half and Beach  
7 Brothers II would pay the entire bill, Beach Brothers II would go ahead and lien the  
8 other party. Lien their property. He stated that the main issue here is the financial  
9 in that the bank kind of required doing this. We are getting a little bit of pressure  
10 from Pinnacle splitting this way due to financial reasonings; over a million-dollar  
11 loan compared to a two-million-dollar loan. He said, it is the same entity. If we left  
12 it alone and was able to qualify that way, we would not even be needing these  
13 variances.

14  
15 Alternate Stanek commented, so basically that is why you did all this. You split this  
16 property because of the financial benefit from it, then.

17  
18 Mr. Anderson stated, to be able to get the project done.

19  
20 Member O'Brien questioned if it was to also get it financed.

21  
22 Mr. Anderson replied, to get it financed and get the project on and going. He  
23 said that he has had three business tenants that have asked to come in and  
24 because of the timeline of this, that this has been drawn out, they have had to  
25 cancel their letter of intents because they could not get the project underway. He  
26 stated, as Mr. Von Herbulis stated before, we thought this was all done on the  
27 drainage part when we found out that the pipes were insufficient to handle the  
28 water that were put in there a few years ago.

29  
30 Alternate Stanek commented, so that is why you keep referring to it as the  
31 imaginary line because there are two people that jointly own both sides of it.

32  
33 Mr. Anderson said, yes, ma'am. It is in two different corporations.

34  
35 Chairman Lormann commented that he was still searching for hardship in order  
36 to grant the variances.

37  
38 Mr. Anderson stated that he is not going to point fingers, but one hardship would  
39 be that if they had the proper piping that was CO'd and would have been properly  
40 sized in there, they wouldn't be in this cross-easement situation. He said that  
41 100 percent has to be retained whereas before they would be sending 100  
42 percent of it to the ACLF's retention.

1 Alternate Stanek suggested scaling back the buildings.  
2

3 Mr. Anderson stated that would involve a redo of the entire project. He added  
4 that the stormwater issues is the fact that the As-Builts that were submitted by  
5 the engineer of record for this project showed larger pipe sizes being stubbed out  
6 for connection than what was built. What was put in does not match the As-  
7 Builts that were submitted to the City and St. Johns, and that is obviously what  
8 was utilized to do planning and the fact that St. Johns' situation has all of these  
9 lots and this parcel all draining into this one pond.  
10

11 Mr. Schindler said that everything that Mr. Anderson has said has certainly  
12 strengthened the case for the development being one, but he still did not see the  
13 issue of ownership. He stated, in this instance, we have two owners of which  
14 there are two people who are common in each, but it does not always mean that  
15 it is going to be that way. Also, we could have another situation where we had  
16 someone who had created an illegal subdivision, had sold it to two different  
17 parties. Everything they have said supports the need for unity, but I don't see the  
18 issue of ownership being addressed.  
19

20 Chairman Lormann asked, if this was considered one parcel, would this be an  
21 issue.  
22

23 Mr. Schindler answered negatively. He added that the City Commission has not  
24 seen fit to adopt regulations that say that creating illegal subdivision of property is  
25 acceptable if you pull everything together with easements.  
26

27 **TAPE 1, SIDE B**  
28

29 Chairman Lormann opened the hearing to public comment. Hearing none, he  
30 closed that portion and entertained board discussion and/or a motion.

31 **MOTION:**

32 **Alternate Stanek moved to approve the request by McKee Construction**  
33 **Company for Beach Brothers, LLC (Parcel B) and Beach Brothers II, LLC**  
34 **(Parcel A) for two variances from the minimum building setback, § 154.63**  
35 **(C) (2), City of Lake Mary Code of Ordinances, properties located at 135**  
36 **(Parcel B) and 145 (Parcel A) Middle Street, Lake Mary, Florida.**

37 **The motion failed due to lack of a second.**

38 **MOTION:**

1 **Member Ludwig moved to deny the request by McKee Construction**  
2 **Company for Beach Brothers, LLC (Parcel B) and Beach Brothers II, LLC**  
3 **(Parcel A) for two variances from the minimum building setback, § 154.63**  
4 **(C) (2), City of Lake Mary Code of Ordinances, properties located at 135**  
5 **(Parcel B) and 145 (Parcel A) Middle Street, Lake Mary, Florida. Member**  
6 **Vallianatos seconded the motion.**

7 Chairman Lormann reopened the public comment portion of the hearing so  
8 Applicant Anderson could come back to further address the Board.

9 Mr. Anderson came forward and said that there were originally two parcels when  
10 there was the two separate closings, so if you want to look at it is it necessarily  
11 where we created our own problem by splitting it, the other way to look at it is we  
12 moved the line south, I think it was 25 or 30 feet. He said that originally when they  
13 bought the property to the south, they came in for zoning, and he tried buying the  
14 property to the north but she would not sell, and as I was walking into the City  
15 Commission meeting for the zoning change, she changed her mind and wanted to  
16 close in four days, and at that time I cancelled with Mr. Schindler and said, can we  
17 cancel. This just happened ten minutes ago. He stated, after the property to the  
18 north was closed on, they came back in for the rezoning, so there were two  
19 separate parcels, just the other one was smaller. You can look at it as I moved the  
20 line 25, 26 feet to the south.

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

23  
24 **Member Vallianatos - Yes**  
25 **Member Ludwig - Yes**  
26 **Alternate Stanek - No**  
27 **Member O'Brien - Yes**  
28 **Chairman Lormann - No**

29  
30 **Member Martin was absent. The motion carried 3-2.**

31  
32 Chairman Lormann explained the appeal process to the Applicant; that anybody  
33 may appeal this decision of the Board of Adjustment to the City Commission  
34 within 30 days, or to the Courts.

35  
36 VIII. Other Business

37 None

38 IX. Reports of Other Members

1 None

2 X. Adjournment

3 The meeting was adjourned at 8:02 p.m.

4

5

6

7

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8 Jim Lormann, Chairman

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9 Diana T. Adams, Administrative  
10 Secretary