

Town of Grant-Valkaria  
Planning and Zoning Board Meeting Minutes  
Monday, April 28, 2008 at 7:00 p.m.  
Town Hall Building, 5120 Highway US1, Grant, FL 32949

The meeting of the Town of Grant-Valkaria, Planning and Zoning Board was called to order at 7:00 p.m. by Chairperson Lisette Kolar followed by the Pledge, and roll call to the Board Members, with the following present:

Chairperson Lisette Kolar,	Sue Krueger, Acting Town Manager
Board Member Christine King	Linda Munroe, Assistant to the Clerk
Board Member Allen Webb	Town Planner Jamie Coker
Board Member Don Whitehouse	
Board Member Denni Burr	
Board Member Regina Mahaney	
Board Member Dan Robino, Alternate 1	

**ADDITIONS AND DELETIONS TO AGENDA**

Moved by Board Member King, seconded by Board Member Burr to excuse Vice Chairperson Mafera and Alternate Board Member Thiem. Motion carried unanimously.

**APPROVAL OF MINUTES**

Moved by Board Member Webb, seconded by Board Member Burr to approve the minutes of March 24, 2008. Motion carried unanimously.

**UNFINISHED BUSINESS**

- 1) Variance No. V-2008-1. Request by Robert and Melissa Branagh on property located at 1540 Valkaria Road. A variance to minimum lot size required in RR-1 zoning designation. The RR-1 (Rural Residential) zoning designation has a minimum lot size requirement of one acre/43,560 square feet; therefore, the lot is short 11,644.8 square feet or 0.267 acres to meet the required one acre lot size.

Chairperson Kolar stated that this item was tabled and not *unfinished business*. Moved by Board Member Whitehouse, seconded by Board Member Webb to take this item off the table. Motion carried unanimously. Chairperson Kolar also asked to have tabled items on the agenda first before anything else. Attorney Bob Beals did a mass swearing in of Bob Branagh, Jamie Coker and Bob Hay who would be testifying on behalf of this request. Chairperson Kolar then read the rules of quasi judicial hearing. Planner Coker stated that Matt Boerger from her office reviewed this variance request. They believe it is a valid hardship and recommend a variance be granted. Attorney Beals told the Board and audience a story about a class he took in college and compared it to this request. He said he and Karl began talking about precedents; anyone with a short lot may want a variance due to someone else having gotten a variance. "What is unusual is not even unique in that there are variables that would not apply to the average person. What he and Karl Bohne want to present in this situation is that there is an approval to be found to present are the findings of fact: 1) conflict in surveys; not likely to happen with any other applicant, 2) this

applicant relied on the incorrect but unintentionally incorrect representation of the seller which included the identification of monuments put on the property by the seller, 3) the plat in which he acquired the property (plat book and page) is inclusive as to whether his property met the 1 acre requirement. What you do is a resolution; you don't just say we hereby approved this variance. You start with saying we make the following findings of fact. Findings of fact and conclusions of law are what is a part of the quasi judicial board. You are empowered to do this. You have the jurisdiction and authority to do this. We recommend/ suggest to you that your findings of fact include that what is unique to this applicant and the resolution is based on those findings of fact; if you so choose to approve. His whole point is this takes away the threat of the opportunity of another person saying I only have  $\frac{3}{4}$  of an acre but your policy is to approve variances, so give me one. No, you don't meet the criteria in our resolution that justifies it." Chairperson Kolar asked if "we are absolutely sure this is a unique situation", Attorney Beals said his experience in real estate law is that this wouldn't be common. There were letters from residents about similar issues that the Board discussed but concluded these were not the same issue. Attorney Beals stated these are not before the Board. He told the Board that the plat for Mr. Branagh is inconclusive and that a piece of the puzzle is not before them. Board Member Webb stated that "it doesn't look like a precedent when the fact that when Valkaria Road came through it was changed." The Board asked the applicant about the survey that was used at the closing, Mr. Branagh told the Board that the title company did not have the closing survey; that "the guy moved the stakes". Mr. Branagh stated that "if he thought he bought less than an acre he would have gone back to seller". Larry Hopkins, the neighbor to the west of Mr. Branagh was sworn in by Attorney Beals and spoke. Mr. Hopkins stated that Mr. Branagh told him personally that he had an opportunity to buy more property from the seller (John Roth) if his property was not big enough to build a home on, but he choose not to. He also was given the opportunity to sell the land back to Mr. Roth but choose not to because the value went up. Mr. Hopkins also stated that the town was incorporated to keep houses from going on little lots. He said Mr. Branagh had 3-4 surveys done and he even got permission from Mr. Hopkins to get a copy of his survey. Chairperson Kolar asked Mr. Hopkins if he had to buy more property to build his house. He told her that he was not the original owner of his property but he knows that the original owner did have to buy some more property to make that property an acre so it could be built on. Mr. Beals understood that the original owner did have to buy more property to build there. Extra property had to be purchased to build a pool. Mr. Branagh said that Mr. Roth offered to sell him only 40' not 58' that he would need. Planner Coker asked when the property was platted. She was concerned with the setback issue that came from Non-conforming lots and the law from Brevard County Codes. Mr. Branagh said he was not told that the property was unbuildable. Attorney Beals said there are credibility issues and that it could be tabled again for more documents. Chairperson Kolar said they are supposed to make their decision on facts and this is not a clear issue. Mr. Branagh said it was stated as being buildable. Chairperson Kolar asked if they could get more facts. Attorney Beals said they need the closing documentation and not hearsay. You can only take what is factual

and was an opposing party present at the meeting. Board Member King suggested that the seller, Mr. Roth should be present and that they get the closing papers from him or the attorney present at the closing. Mr. Beals said they cannot subpoena the documents. Alternate Board Member Robino stated that he wanted to see the survey from the closing as well as the closing papers. Board Member Webb again mentioned the Valkaria Road right-of-way being changed by the County. He was concerned with setting a precedent due to that fact and that the County made all those lots non-conforming. Alternate Board Member Robino said that was done years before Mr. Branagh purchased the land. Board Member Webb said "it is the responsibility of the agency, the County caused it". Chairperson Kolar stated that the Town could vacate all or part of the easement so Mr. Branagh would have an acre of property; not build on it just use it to make a calculated acre. She was informed by Attorney Bohne that the Town of Malabar is doing that now. If the Town could do something like that she would support it; her concern is as to whether they have all the facts. If they find some uniqueness to this then she would support it. Board Member Whitehouse agreed with contacting Mr. Roth or his attorney for more information that would clear up the conflict. Mr. Branagh told the Board about the conflict between his and Mr. Hopkins' survey in that the starting point was different in the two of them. He also told them that the County cannot answer why it was plotted the way it was. He said Mr. Roth would not sign a paper stating that Mr. Branagh was not encroaching on his property behind him. Attorney Beals asked Mr. Branagh if there was a loan on the property. A seller's affidavit is needed for a title policy which is required by the bank. An accurate survey would be needed for this. Chairperson Kolar asked what else is needed so this variance does not need to be tabled again; knowing they would need to table it that evening. Board Member Webb thought there was no reason to table it again since they have the survey has the ORB Book and Page # of the plat showing the property one acre in size. Board Member King told the Board that she looked on the Clerk's website site and did some research. She also wanted the Board to reference the Warranty Deed which has Exhibit "A" missing which describes the property when he purchased it. It described the property and she did the calculations showing that everything states the amount of property purchased was .73 acres. Alternate Board Member Robino stated that is why they needed to see the closing papers. Attorney Beals said that "giving the benefit of the doubt to a layman this doesn't mean anything. The average person doesn't know how many square feet are in an acre. The problem is there are so many inferences you can make. You really need the whole closing papers to decide on the applicant's credibility." Board Member King asked where the information for the packets came from due to the fact that the description of the property was not there. Mr. Branagh told the Board that he supplied what was required. Alternate Board Member Robino asked Mr. Branagh if he had any real estate attorney or other attorney. He said no, but he can supply the closing papers if he needs to. Mr. Branagh said the application required paperwork and he supplied them. He said he did not know how to read any of these papers but has learned to in the past 3 years. The dimensions for Mr. Hopkins property are exactly the same as his before the extra property was added to the lot. The Town can have the 58' on the front.

Someone at the County said If Mr. Roth would sign the affidavit then his legal description could be changed. He would be sitting home in his living room on Valkaria Road watching television. He bought property on a handshake because he didn't have \$30,000 to spend on a lawyer. He keeps running into a block wall, he is not trying to gain anything. Chairperson Kolar asked "if the documents show, and his testimony shows that he thought he bought property on a buildable piece of land, and he told the truth under oath, we know the County took his land and we can require him to put in a request for the Town to vacate". Board Member Webb said he shouldn't have to do that since the maps show he had an acre before the County took land on Valkaria Road, the other side of the road will have the same issue. He didn't make the property non-conforming, the County did. Chairperson Kolar asked who pays the taxes on the 50' and Town Clerk/Acting Town Administrator Krueger said that the Town owns it now since we acquired the roads from the County. Mr. Branagh said if you pull the taxes up the previous owners were paying on it. Board Member Webb said it is time to move forward, additional information is not needed. Chairperson Kolar stated there should be a resolution done on this. Board Member Webb reiterated that Valkaria Road and some other roads in Town may have the same issue with road rights-of-way from the County taking them, Valkaria Road has two rights-of-way. Mr. Branagh went to closing assuming County records were correct and should have had a lawyer. Mr. Hopkins blurted out, Chairperson Kolar told him not to blurt out that the public had their say and it was before the Board. She then asked Attorney Beals what his recommendation was if he had one. He stated that he was not the one determining the finding. He was pointing the Board to an avenue about not setting a precedent and keeping any personal feeling out. The Town could adopt either position in good faith. Mr. Webb has a valid point in that this applicant was victimized by what the County did with the platting, or that the applicant knew what was happening at closing and is trying to take advantage of the system and you could request more information. You may approve it by Mr. Webb's reasoning or you can decide you are not sure based on credibility and get more information. Moved by Board Member Webb to grant the variance based on Attorney's advice with specific criteria, seconded by Board Member Mahaney. Chairperson Kolar said that he gave testimony, said it was true, under oath and that he didn't know what he was buying, he assumed what he was buying was buildable and she will give him the benefit. Board Member King stated that a lot of people have testified under oath then and a month ago; Mr. Branagh and Mr. Hopkins; and that one of them is lying. Just because people are only oath doesn't mean someone is not lying. She would like to see more information. Board Member Webb said he based his information on ORB and plat books and that it is a County right-of-way issue. It doesn't matter to him if one of them is lying; he is looking at what books are saying. Chairperson Kolar said it is not based on who is lying. Mr. Hopkins said it should be based on what he bought; Chairperson Kolar told Mr. Hopkins he was going to be asked to leave if he was going to continue to blurt out. Board Member Whitehouse said Mr. Branagh has spent a lot of money trying to resolve this issue; it is not based on "he said, she said, Mr. Branagh just wants to build on it. Chairperson Kolar said he is not trying to build a little house on a little

lot and that he is keeping with what the Town wants and will be changed with the Comprehensive Plan grandfathered in. Board Member Burr agreed with Chairperson Kolar and she is all for it. Vote was aye for all present except Board Member King who was opposed. Attorney Beals asked the Board what guidance the Board was giving him; credibility is not being considered, there is a conflict in various surveys as to compliance of lot and points of time in which r-o-w was in existence and then expanded prior to applicant's purchase date. He thought plat was inclusive. The applicant relied upon what he was furnished; that is not credibility that is just testimony. He told the Board he would draft a resolution with findings of fact and conclusion of law and bring it back to them. While the Board was discussing when to meet again, Town Clerk/Acting Town Administrator Krueger told all that her understanding of how variances are was that the Board makes a recommendation to the Council and then they approve the resolution drafted by the Attorney and it does not come back to them. He said he wanted to make sure his order has no objections. Board Member Webb asked if it would go through Sue, he would email it as an attachment. Chairperson Kolar asked Ms. Krueger when it would be and she said May 14<sup>th</sup>.

**FINDINGS: from Karl Bohne, Town Attorney**

- 1) The requested variance is to the minimum lot size required in RR-1 zoning designation. The minimum lot size thereunder is one acre (43,560 square feet). The Applicant's lot is short 11,644.8 square feet, or 0.267 acres, to meet the required minimum lot size.
- 2) The lot was a part of a larger parcel that was platted in Plat Book 1 at Page 165. The Plat appears to show the lot as a one acre parcel, but it is not conclusive in the judgment of the Board
- 3) Subsequent to platting, Brevard County acquired right of way along Valkaria Road, and it is not clear that the County Appraiser's office reflected the change in lot size that resulted from the entire right of way. The property is short of one acre in exactly the same number of square feet that are included within the existing right of way.
- 4) The surveys available before and at the closing of the purchase are in conflict. The Applicant was shown physical monumentation of the property by the Seller, and the location of the monuments could lead a reasonable person to believe the boundaries to include a full acre. This was ultimately determined to be false.
- 5) The Applicant testified to the due diligence he performed prior to closing on the purchase of the property, and said emphatically that he would not

have purchased it knowing that it was of insufficient size for building a single family home.

- 6) The grounds for a variance are set forth in Sec. 62-253. They are cumulative, not alternative, thus each condition must be satisfied. Those grounds are as follows:

Sec. 62-253. Prerequisites to granting of variance.

(a) A variance may be granted when it will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship; provided, specifically, however, that personal medical reasons shall not be considered as grounds for establishing undue hardship sufficient to qualify an applicant for a variance. Economic reasons may be considered only in instances where a landowner cannot yield a reasonable use and/or reasonable return under the existing land development regulations. In order to authorize any variance from the terms of this chapter, the board of adjustment shall find all of the following factors to exist:

- (1) That special conditions and circumstances exist which are not applicable to other lands, structures or buildings in the applicable zoning classification;
- (2) That the special conditions and circumstances do not result from the actions of the applicant;
- (3) That granting the variance requested will not confer on the applicant any special privilege that is denied by the provisions of this chapter to other lands, buildings or structures in the identical zoning classification;
- (4) That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the identical zoning classification under the provisions of this chapter and will constitute unnecessary and undue hardship on the applicant;
- (5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure; and

(6) That the granting of the variance will be in harmony with the general intent and purpose of this chapter and that such use variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

(b) In no case shall the board of adjustment grant a variance which will result in a change of land use that would not be permitted in the applicable zoning classification

- 7) The Board finds that Subsection (1) has been met. The Board acknowledges that other properties along Valkaria Road may suffer from the same problem due to the widening of Valkaria Road; however, those properties would be grandfathered because of the actions of the County in widening of Valkaria Road. Therefore, the property as originally platted was conforming. Under the circumstances presented it would be inequitable and possibly unconstitutional to deny the requested relief. Furthermore, the provisions of Subsection (2) have been met because the “special conditions and circumstances do not result from the actions of the applicant”. In fact they were the result of the County.
- 8) Subsections (3) and (4) have been met. Literal interpretation of the zoning code would deprive the applicant the right to build a single family residence on the property which right is enjoyed by others in the zoning classification. As a result an unnecessary and unreasonable hardship exists. No special privilege is conferred upon the applicant because the applicant will only be permitted to develop the property as a single family residence consistent with applicable building codes. The variance requested is the minimum variance necessary to make possible the reasonable use of the land. The variance is for the exact amount taken by the County when it widened Valkaria Road.
- 9) Finally, the granting of the variance will allow the applicant to apply for a building permit for the construction of a single family residence which will be in harmony with the zoning classification and will not be injurious or detrimental to the public welfare.
- 10) A majority of the Board recommends that the Application for Variance be approved.

Mr. Frank Colletta spoke up to offer property to the Town for purchase so it was decided that it was an LPA issue and he would speak then.

Motion made by Board Member Whitehouse, seconded by Board Member Webb to adjourn the meeting at 8:30 p.m. Motion carried unanimously. Mr. Beals was excused to leave also since he was not needed at the LPA meeting which immediately followed this meeting.

(signature on file)

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Lisette Kolar, Chairperson

ATTEST:

(signature on file)

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Linda Munroe, Assistant to the Clerk

