

codification; severability; and effective date. The motion carried by the following vote:

Aye: 5 - Chairman Flescher, Vice Chairman O'Bryan, Commissioner Adams, Commissioner Solari, and Commissioner Zorc

The Chairman called for a recess at 10:30 a.m., and reconvened the meeting at 10:41 a.m., with all members present.

10.A.4. [17-0674](#) Appeal by Hal & Martha McAdams of a Decision by the Planning & Zoning Commission to Deny a Side Yard Setback Variance of 5' Feet for a Pool Enclosure on Lot 3, Block 1, Diana Park Subdivision [VAR-17-05-01 / 92080125-78723] [Quasi-Judicial]

Recommended Action: Based on the analysis, staff recommends that the Board of County Commissioners make a finding that the Planning & Zoning Commission adequately evaluated the variance application and uphold the Planning & Zoning Commission decision and deny the appeal.

Attachments: [Staff Report](#)
[Appeal Letters](#)
[Location Map](#)
[PZC Staff Report with Attachments](#)
[May 25, 2017 Approved PZC Meeting Minutes](#)

Each Commissioner, as requested by the Chairman, disclosed ex parte communications, site visits, or independent investigations. They also affirmed that they have an open mind and can base their decisions on the evidence presented and the applicable law.

The Chairman opened the Public Hearing. The Deputy Clerk administered the Oath to all persons who wished to speak at the hearing.

Community Development Director Stan Boling, in his PowerPoint Presentation, gave background, on the appeal by Hal and Martha McAdams for a variance request for a side yard setback variance of 5 feet from 15' to 10' for a pool screen enclosure on Lot 3, Block 1, Diana Park Subdivision, and the process of the appeal. He recapped a timeline for the particular place, stating the house was built in 1984 under R-1 zoning which required a 10' side yard setback; however, in 1985, the subject lot and subdivision was rezoned from R-1 to RS-3 which increased the setback from 10' to 15'. He continued that the pool and deck was constructed on the subject property in 1992, but no pool enclosure was proposed at the time. He pointed out that requests for variances were rare and that there had been a total of two in the last 10 years. The Planning & Zoning Commission (PZC) considered the request based on eight (8) specific criteria (must meet all eight) and took the action to deny. Director Boling

concluded that both staff and the applicant agreed that the PZC did not fail under the appeal criteria to properly handle the request and was justified in its decision to deny the variance; however, the applicant wished to appeal before the Board. Director Boling pointed out that when the PZC looked at the particular application, one of their concerns was that the County-initiated rezoning action in 1985 created the situation, so as a follow-up to the PZC's discussion, staff included as an alternative, the possibility of an amendment to the LDR to grandfather-in setbacks for accessory structures attached to legal non-conforming structures that were a result of the County-initiated rezoning.

Mr. Hal McAdams, 540 61st Avenue, displayed photos of the pool area where the pool screen enclosure would be placed with the setback at 15' as requested. He asked the Board for their consideration for a change in the Code for a request for a side yard setback variance of 5' feet for a pool enclosure. He offered copies of letters from their neighbors stating that they had no objection to a pool screen enclosure being placed with a setback variance of 10' feet.

Director Boling and Mr. McAdams responded to the Board's questions on the variance request and setbacks.

Mrs. Martha McAdams asked the Board for their consideration of a variance request and she pointed out that the screen enclosure would have been approved at the time the pool was built.

R.J. MacMillian, Vero Beach resident, was sworn in and stated that he had sat on the Board of Variances for the City of Vero Beach and opined that the rules need to be changed. He felt that the application for variance request should be approved and in the future make it easier to get variances.

Joseph Paladin, President of Black Swan Consulting, agreed with the applicants and felt the McAdams' should be granted a variance.

The Chairman asked for any final arguments, ensured that all documents and tangible evidence were in the hands of the Deputy Clerk, and there being no further speakers, he closed the Public Hearing.

Commissioner Solari stated the following reasons on why he voted to deny the request of variance: 1) the Eighth Criteria in the Indian River County Code; and 2) that the PZC followed the code.

A motion was made by Vice Chairman O'Bryan, seconded by Commissioner Solari, to find that the Planning and Zoning Commission adequately evaluated the variance application under the appropriate variance criteria and to uphold the PZC's decision to deny the request of variance. The motion carried by the following vote:

Aye: 5 - Chairman Flescher, Vice Chairman O'Bryan, Commissioner Adams, Commissioner Solari, and Commissioner Zorc

A motion was made by Vice Chairman O'Bryan, seconded by Chairman Flescher, to direct staff to prepare a Land Development Regulation revision allowing for non-conformity screen enclosure or accessory structure which was prohibited because of a County-initiated rezoning action and bring back to the Board for approval at a near future meeting. The motion carried by the following vote:

Aye: 5 - Chairman Flescher, Vice Chairman O'Bryan, Commissioner Adams, Commissioner Solari, and Commissioner Zorc

10.A.5. [17-0705](#) Ordinance Concerning Medical Cannabis (Continued from June 13, 2017 and June 20, 2017) [Legislative]

Recommended Action: The County Attorney's Office recommends that the chair open the public hearing and after taking public comment vote to deny the proposed ordinance.

Attachments: [Staff Report](#)
[Ordinance Concerning Medical Cannabis](#)

Attorney Reingold referred to the draft Ordinance that would have regulated what was previously under Florida Statutes, described as Medical Cannabis in the same manner as Medical Marijuana. Subsequently, the Florida Legislation during its special session, passed and the Governor signed, a Bill that would provide local Governments with two options in regulating Medical Marijuana: 1) to ban Medical Marijuana Treatment Center Dispensary Facilities; or 2) allow them per pharmacy regulations. Since the legislation nullifies the proposed Ordinance, the County Attorney's Office recommends that the Board hold the Public Hearing to take public comment and after the public comments, vote to deny the proposed Ordinance.

Chairman Flescher opened the Public Hearing. There being no speakers, the Chairman closed the Public Hearing.

A motion was made by Vice Chairman O'Bryan, seconded by Commissioner Solari, to deny the Proposed Medical Cannabis Ordinance, amending Chapter 315 (Pain Management Clinics, Controlled Substances and Medical Marijuana) of the Code of Indian River County to revise regulations and prohibitions of certain activities relating to low-THC and Medical Cannabis. The motion carried by the following vote:

Aye: 5 - Chairman Flescher, Vice Chairman O'Bryan, Commissioner Adams, Commissioner Solari, and Commissioner Zorc

B. PUBLIC DISCUSSION ITEMS

10.B.1. [17-0669](#) Request to Speak from Ardra Rigby and Bill Rigby Regarding Drainage and Sewer Services in the Wabasso Community