SUPPLEMENT TO APPLICATION FOR VARIANCE ZONING

Petition Request and Summary of Facts – Detail how the project varies from the code:

While no longer the standard practice, for years, the common way of splitting a lot in Naples was to petition the Property Appraiser for approval. Once approved, the petitioner suffers the new ad valorem tax consequences but is free to use the transfer the lot as he so chooses. However, traditionally, the Property Appraiser has not been required to disclose the approval of a lot split to local government. As a result of the prior process of splitting lots not requiring City approval, City staff has interpreted the City Code to consider all lots with existing structures on them to be legal buildable lots even if the lot does not comply with the underlying zoning district’s development standards. This interpretation is known to the local construction and development industry and has been in place for several years. In reliance upon the City interpretation, the applicant acquired a lot with a structure on it that does not meet the minimum lot width criteria. The applicant spent $2,795,000 to acquire the lot and existing residence. The applicant intends to re-develop the property with a single story home excepting the setback requirements in the R1-10 District.

There are a number of lot owners, besides the Applicant, in the R1-10 zoning district with lots that have been approved by the property Appraiser but violate the minimum lot size requirements found in the Land Development Code. As a consequence, these lots are now considered illegal lots and as result, the owners of said lots are prohibited from making improvements to any existing structures on the lot and/or developing the lot in the event that it is vacant. Those lots will no longer be able to be sold as a result of their being illegal.

There are a very limited number of lots in the R1-10 zoning district that have been approved after the minimum lot size requirements were passed in 1953. Most lots located in the R1-10 district that do not conform to the minimum lot size requirements, were created before the minimum lot size ordinances were passed. As such, under the Land Development Code, they are considered “nonconforming lots,” which means that the non-conforming lot was legal when it was created but would not be permitted under the Code as it exists today. In most instances, a non-conforming lot is considered “grandfathered” into compliance with the existing code and therefore, the owner can make improvements to the existing structures and/or develop the lot.

The R1-10 zoning district contains a considerable number of nonconforming lots that do not conform with the minimum lot size requirements of the Land Development Code yet are still considered legal lots. As such, owners have been allowed to develop these lots as nonconforming lots based on the fact that they were split and approved by the Property Appraiser’s Office prior to 1967.

In this particular case, the Petitioner’s plight is unique. No other lot owner has been denied the right to construct a home due to the change in interpretation/policy. His special circumstances include the fact that he owns one of a limited number of remaining lots approved and taxed by the Property Appraiser, yet he is unable to develop the lot due to the fact that it does not meet the minimum lot size requirements. Moreover, he is unable to make the necessary

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1 The City Code now specifically requires approval from the City before a lot split is approved.
improvements and/or upgrades to the existing structure. The failure to grant a variance would create a substantial hardship on the owner as the lot is no smaller in width or total area than a number of lots in the R1-10 zoning district. The variance will allow the owner to develop the property thereby removing the existing, unsafe structure and replacing it with a structure that brings the property into substantial conformity with the large number of lots in the district that also fail to meet the minimum lot size requirements. The community will benefit economically and from a health, safety and welfare perspective as there will no longer be an abandoned residence on the property that does not meet code requirements nor conform with the Comprehensive Plan. Granting the Owner a Variance will be consistent with the code as the code allows almost every lot that does not meet the minimum lot size requirements to develop under the theory that they are nonconforming lots. The granting of the variance is much more practical than changing the Land Development Code to contemplate the lack of communication that occurred between the local government and the Property Appraiser’s Office that occurred prior to 2010. The development of the subject property will increase the beauty, safety, consistency and value of the surrounding properties and the resulting construction will bring the property into greater conformity with the character of the surrounding properties and the Comprehensive Plan. Also of significances is the fact that absent the granting of the variance, the property will be unalienable and the Petitioner will be prevented from making any reasonable use of the property.

Respectfully,

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