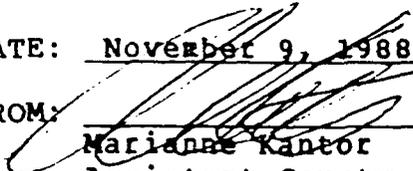


MEMORANDUM
FROM
THE OFFICE OF
LEE COUNTY ATTORNEY

DATE: November 9, 1988

TO: Pauline M. Camelia, Director
Zoning & Development Review

FROM: 
Marianne Kantor
Assistant County Attorney

RE: Single Family Determination in Lieu of
Variance or Rezoning

On November 3, 1988, the Annotations Committee discussed whether a Single Family Determination can be made for all properties even if located in the urban land use classifications where a Single Family Determination may not be necessary for purposes of density. With recent changes to the Zoning Ordinance which clarifies the Board's previous direction with regard to single families and the relationship to the Zoning Ordinance, it has now become clear that a Single Family Determination could be used in lieu of a rezoning or variance. This is with reference to Section 202.09.C.2.a. of the Zoning Ordinance which provides that any favorable Single Family Determination would exempt the property owner from any minimum lot area and minimum lot dimension requirements of the Ordinance. This Section would preempt the need for a variance or rezoning in order to build a single family residence. This provision further provides that the setbacks will be pursuant to those already established in the RS-1 District.

It is the opinion of this office that application for a Single Family Determination may be made on any properties whether or not the density requirements are met for the applicable land use classification. This is based upon the language of the Single Family Residence provision which begins with the qualifying words "notwithstanding any other provision of this plan . . ." This language clearly sets out the Single Family Residence provision as a separate regulation which is not dependent upon any particular land use classification. Therefore, it is permissible under the present regulations for a property owner to apply for a single family residence provision and, if favorable, be entitled to construct the house pursuant to Section 202.09.C.2.a. without the need for a variance or rezoning if the RS-1 setbacks could be met.

Contrary to our prior discussion, there does not seem to be a need to annotate this issue inasmuch as the language is rather straight forward. However, you may wish to consider whether it

Pauline M. Camelia
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would be appropriate to note the favorable Single Family Determinations and subsequent reversals of any denials either in the public records, on the Zoning Maps, or through the Building Department's records by strap number. Obviously, without a record noted somewhere in the system, a subsequent property owner could be subject to no defense for a potential code violation for constructing an addition which would be permitted on a structure that had been properly placed pursuant to a favorable Single Family Determination. Additionally, the subsequent property owner may be subject to obtaining a variance or rezoning if no record showed that such favorable determination would allow him to proceed without such a requirement. I am certain you will need to discuss this with various departments to establish what procedure would best be used to properly reflect these determinations. Please note that this would apply not only to future determinations but any previous determinations which would vest the property owners with rights under the new regulations.

Please advise if you have any questions regarding any of the above.

MK/jm

cc: Michael J. Ciccarone, Assistant County Attorney
Timothy Jones, Assistant County Attorney
Paul H. Chipok, Assistant County Attorney
Gregory S. Hagen, Assistant County Attorney
James T. Williams, Director, Community Development
Hans Behrens, Director, Codes & Building Services
Robert Hutcherson, Development Review
Robert Gurnham, Planning
Susan Gauthier, Planning
Bryan Kelner, Zoning

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