



Planning, Environmental &  
Development Services  
Department



Orange County Board of Zoning Adjustment

# Recommendations Booklet

Hearing Date:

**June 2, 2022**

Zoning Division

**BOARD OF ZONING ADJUSTMENT (BZA)**  
**ORANGE COUNTY GOVERNMENT**

<b><u>Board Member</u></b>	<b><u>District</u></b>
Thomas Moses	1
John Drago (Vice Chair)	2
Juan Velez	3
Deborah Moskowitz (Chair)	4
Joel Morales	5
Charles J. Hawkins, II	6
Roberta Walton Johnson	At Large

**BZA Staff**

Ted Kozak, AICP	Chief Planner
Taylor Jones	Chief Planner
Nick Balevich	Planner II
Laekin O'Hara	Planner I
Michael Rosso	Planner II
Jenale Garnett	Planner I



**ORANGE COUNTY BOARD OF ZONING ADJUSTMENT  
RECOMMENDATIONS  
JUNE 2, 2022**

<b><u>PUBLIC HEARING</u></b>	<b><u>APPLICANT</u></b>	<b><u>DISTRICT</u></b>	<b><u>BZA RECOMMENDATIONS</u></b>	<b><u>PAGE #</u></b>
SE-22-04-017	Donald Josefczyk	2	Request #1, Approved w/Conditions Request #2, Denied	1
VA-22-06-036	Marvin Spratley	1	Approved w/Conditions	15
VA-22-04-023	Keyvan Falahat For Chick-Fil-A	6	Continued	27
VA-22-06-027	Robert Stirna	5	Approved w/Conditions	39
SE-22-06-038	Kevin Hand	1	Approved w/Conditions	53
VA-22-06-039	Robert Londeree	1	Approved w/Conditions	68
VA-22-06-033	Marina Baranska	5	Approved w/Conditions	81
VA-22-07-046	Marcus Fuggi	2	Approved w/Conditions	94
VA-22-04-024	Gail Fournier	1	Approved w/Conditions	107
VA-22-06-037	Sandra Bernal For El Molcajete	5	Denied	118
VA-22-06-042	James Hurst For Phase II LLC	6	Requests #1-3, Approved w/Conditions Request #4, Denied	132
VA-22-06-044	Daniel Wagner	1	Approved w/Conditions	142
ZM-22-04-019	McGregor Love For Idrive Investments #5 LLC	6	Overtured	143

**Please note that approvals granted by the BZA are not final unless no appeals are filed within 15 calendar days of the BZA's recommendation and until the Board of County Commissioner (BCC) confirms the recommendation of the BZA on Jun 21, 2022.**

# ORANGE COUNTY

## ZONING DISTRICTS

### Agricultural Districts

- A-1** Citrus Rural
- A-2** Farmland Rural
- A-R** Agricultural-Residential District

### Residential Districts

- R-CE** Country Estate District
- R-CE-2** Rural Residential District
- R-CE-5** Rural Country Estate Residential District
- R-1, R-1A & R-1AA** Single-Family Dwelling District
- R-1AAA & R-1AAAA** Residential Urban Districts
- R-2** Residential District
- R-3** Multiple-Family Dwelling District
- X-C** Cluster Districts (where X is the base zoning district)
- R-T** Mobile Home Park District
- R-T-1** Mobile Home Subdivision District
- R-T-2** Combination Mobile Home and Single-Family Dwelling District
- R-L-D** Residential -Low-Density District
- N-R** Neighborhood Residential

### Non-Residential Districts

- P-O** Professional Office District
- C-1** Retail Commercial District
- C-2** General Commercial District
- C-3** Wholesale Commercial District
- I-1A** Restricted Industrial District
- I-1/I-5** Restricted Industrial District
- I-2/I-3** Industrial Park District
- I-4** Industrial District

### Other District

- P-D** Planned Development District
- U-V** Urban Village District
- N-C** Neighborhood Center
- N-A-C** Neighborhood Activity Center

# SITE & BUILDING REQUIREMENTS

Orange County Code Section 38-1501. Basic Requirements

District	Min. lot area (sq. ft.) <i>m</i>	Min. living area (sq. ft.)	Min. lot width (ft.)	Min. front yard (ft.) <i>a</i>	Min. rear yard (ft.) <i>a</i>	Min. side yard (ft.)	Max. building height (ft.)	Lake setback (ft.)
A-1	SFR - 21,780 (½ acre)	850	100	35	50	10	35	<i>a</i>
	Mobile Home - 2 acres							
A-2	SFR - 21,780 (½ acre)	850	100	35	50	10	35	<i>a</i>
	Mobile Home - 2 acres							
A-R	108,900 (2½ acres)	1,000	270	35	50	25	35	<i>a</i>
R-CE	43,560 (1 acre)	1,500	130	35	50	10	35	<i>a</i>
R-CE-2	2 acres	1,200	250	45	50	30	35	<i>a</i>
R-CE-5	5 acres	1,200	185	50	50	45	35	<i>a</i>
R-1AAAA	21,780 (1/2 acre)	1,500	110	30	35	10	35	<i>a</i>
R-1AAA	14,520 (1/3 acre)	1,500	95	30	35	10	35	<i>a</i>
R-1AA	10,000	1,200	85	25 <i>h</i>	30 <i>h</i>	7.5	35	<i>a</i>
R-1A	7,500	1,200	75	20 <i>h</i>	25 <i>h</i>	7.5	35	<i>a</i>
R-1	5,000	1,000	50	20 <i>h</i>	20 <i>h</i>	5 <i>h</i>	35	<i>a</i>
R-2	One-family dwelling, 4,500	1,000	45 <i>c</i>	20 <i>h</i>	20 <i>h</i>	5 <i>h</i>	35	<i>a</i>
	Two dwelling units (DUs), 8,000/9,000	500/1,000 per DU	80/90 <i>d</i>	20 <i>h</i>	30	5 <i>h</i>	35	<i>a</i>
	Three DUs, 11,250	500 per DU	85 <i>j</i>	20 <i>h</i>	30	10	35	<i>a</i>
	Four or more DUs, 15,000	500 per DU	85 <i>j</i>	20 <i>h</i>	30	10 <i>b</i>	35	<i>a</i>
R-3	One-family dwelling, 4,500	1,000	45 <i>c</i>	20 <i>h</i>	20 <i>h</i>	5	35	<i>a</i>
	Two DUs, 8,000/ 9,000	500/1,000 per DU	80/90 <i>d</i>	20 <i>h</i>	20 <i>h</i>	5 <i>h</i>	35	<i>a</i>
	Three dwelling units, 11,250	500 per DU	85 <i>j</i>	20 <i>h</i>	30	10	35	<i>a</i>
	Four or more DUs, 15,000	500 per DU	85 <i>j</i>	20 <i>h</i>	30	10 <i>b</i>	35	<i>a</i>
R-L-D	N/A	N/A	N/A	10 for side entry garage, 20 for front entry garage	15	0 to 10	35	<i>a</i>
R-T	7 spaces per gross acre	Park size min. 5 acres	Min. mobile home size 8 ft. x 35 ft.	7.5	7.5	7.5	35	<i>a</i>
R-T-1								
SFR	4,500 <i>c</i>	1,000	45	25/20 <i>k</i>	25/20 <i>k</i>	5	35	<i>a</i>
Mobile home	4,500 <i>c</i>	Min. mobile home size 8 ft. x 35 ft.	45	25/20 <i>k</i>	25/20 <i>k</i>	5	35	<i>a</i>
R-T-2	6,000	SFR 500	100	35	50	10	35	<i>a</i>
(prior to 1/29/73)		Min. mobile home size 8 ft. x 35 ft.						
R-T-2 (after 1/29/73)	21,780 ½ acre	SFR 600						
		Min. mobile home size 8 ft. x 35 ft.						



<i>District</i>	<i>Min. lot area (sq. ft.)<sup>m</sup></i>	<i>Min. living area (sq. ft.)</i>	<i>Min. lot width (ft.)</i>	<i>Min. front yard (ft.)<sup>a</sup></i>	<i>Min. rear yard (ft.)<sup>a</sup></i>	<i>Min. side yard (ft.)</i>	<i>Max. building height (ft.)</i>	<i>Lake setback (ft.)</i>
NR	One-family dwelling, 4,500	1,000	45 <i>c</i>	20	20	5	35/3 stories <i>k</i>	<i>a</i>
	Two DUs, 8,000	500 per DU	80/90 <i>d</i>	20	20	5	35/3 stories <i>k</i>	<i>a</i>
	Three DUs, 11,250	500 per DU	85	20	20	10	35/3 stories <i>k</i>	<i>a</i>
	Four or more DUs, 1,000 plus 2,000 per DU	500 per DU	85	20	20	10	50/4 stories <i>k</i>	<i>a</i>
	Townhouse, 1,800	750 per DU	20	25, 15 for rear entry driveway	20, 15 for rear entry garage	0, 10 for end units	40/3 stories <i>k</i>	<i>a</i>
NAC	Non-residential and mixed use development, 6,000	500	50	0/10 maximum, 60% of building frontage must conform to max. setback	15, 20 adjacent to single-family zoning district	10, 0 if buildings are adjoining	50 feet <i>k</i>	<i>a</i>
	One-family dwelling, 4,500	1,000	45 <i>c</i>	20	20	5	35/3 stories <i>k</i>	<i>a</i>
	Two DUs, 11,250	500 per DU	80 <i>d</i>	20	20	5	35/3 stories <i>k</i>	<i>a</i>
	Three DUs, 11,250	500 per DU	85	20	20	10	35/3 stories <i>k</i>	<i>a</i>
	Four or more DUs, 1,000 plus 2,000 per DU	500 per DU	85	20	20	10	50 feet/4 stories, 65 feet with ground floor retail <i>k</i>	<i>a</i>
	Townhouse, 1,800	750 per DU	20	25, 15 for rear entry driveway	20, 15 for rear entry garage	0, 10 for end units	40/3 stories <i>k</i>	<i>a</i>
NC	Non-residential and mixed use development, 8,000	500	50	0/10 maximum, 60% of building frontage must conform to max. setback	15, 20 adjacent to single-family zoning district	10, 0 if buildings are adjoining	65 feet <i>k</i>	<i>a</i>
	One-family dwelling, 4,500	1,000	45 <i>c</i>	20	20	5	35/3 stories <i>k</i>	<i>a</i>
	Two DUs, 8,000	500 per DU	80 <i>d</i>	20	20	5	35/3 stories <i>k</i>	<i>a</i>
	Three DUs, 11,250	500 per DU	85	20	20	10	35/3 stories <i>k</i>	<i>a</i>
	Four or more DUs, 1,000 plus 2,000 per DU	500 per DU	85	20	20	10	65 feet, 80 feet with ground floor retail <i>k</i>	<i>a</i>
	Townhouse	750 per DU	20	25, 15 for rear entry driveway	20, 15 for rear entry garage	0, 10 for end units	40/3 stories <i>k</i>	<i>a</i>
P-O	10,000	500	85	25	30	10 for one- and two-story bldgs., plus 2 for each add. story	35	<i>a</i>
C-1	6,000	500	80 on major streets (see Art. XV); 60 for all other streets <i>e</i> ; 100 ft. for corner lots on major streets (see Art. XV)	25	20	0; or 15 ft. when abutting residential district; side street, 15 ft.	50; or 35 within 100 ft. of all residential districts	<i>a</i>

<i>District</i>	<i>Min. lot area (sq. ft.)<sup>m</sup></i>	<i>Min. living area (sq. ft.)</i>	<i>Min. lot width (ft.)</i>	<i>Min. front yard (ft.)<sup>a</sup></i>	<i>Min. rear yard (ft.)<sup>a</sup></i>	<i>Min. side yard (ft.)</i>	<i>Max. building height (ft.)</i>	<i>Lake setback (ft.)</i>
C-2	8,000	500	100 on major streets (see Art. XV); 80 for all other streets <i>f</i>	25, except on major streets as provided in Art. XV	15; or 20 when abutting residential district	5; or 25 when abutting residential district; 15 for any side street	50; or 35 within 100 feet of all residential districts	<i>a</i>
C-3	12,000	500	125 on major streets (see Art. XV); 100 for all other streets <i>g</i>	25, except on major streets as provided in Art. XV	15; or 20 when abutting residential district	5; or 25 when abutting residential district; 15 for any side street	75; or 35 within 100 feet of all residential districts	<i>a</i>

<b>District</b>	<b>Min. front yard (feet)</b>	<b>Min. rear yard (feet)</b>	<b>Min. side yard (feet)</b>	<b>Max. building height (feet)</b>
I-1A	35	25	25	50, or 35 within 100 ft. of any residential use or district
I-1 / I-5	35	25	25	50, or 35 within 100 ft. of any residential use or district
I-2 / I-3	25	10	15	50, or 35 within 100 ft. of any residential use or district
I-4	35	10	25	50, or 35 within 100 ft. of any residential use or district

**NOTE:** These requirements pertain to zoning regulations only. The lot areas and lot widths noted are based on connection to central water and wastewater. If septic tanks and/or wells are used, greater lot areas may be required. Contact the Health Department at 407-836-2600 for lot size and area requirements for use of septic tanks and/or wells.

#### FOOTNOTES

<i>a</i>	Setbacks shall be a minimum of 50 feet from the normal high water elevation contour on any adjacent natural surface water body and any natural or artificial extension of such water body, for any building or other principal structure. Subject to the lakeshore protection ordinance and the conservation ordinance, the minimum setbacks from the normal high water elevation contour on any adjacent natural surface water body, and any natural or artificial extension of such water body, for an accessory building, a swimming pool, swimming pool deck, a covered patio, a wood deck attached to the principal structure or accessory structure, a parking lot, or any other accessory use, shall be the same distance as the setbacks which are used per the respective zoning district requirements as measured from the normal high water elevation contour.
<i>b</i>	Side setback is 30 feet where adjacent to single-family district.
<i>c</i>	For lots platted between 4/27/93 and 3/3/97 that are less than 45 feet wide or contain less than 4,500 sq. ft. of lot area, or contain less than 1,000 square feet of living area shall be vested pursuant to Article III of this chapter and shall be considered to be conforming lots for width and/or size and/or living area.
<i>d</i>	For attached units (common fire wall and zero separation between units) the minimum duplex lot width is 80 feet and the duplex lot size is 8,000 square feet. For detached units the minimum duplex lot width is 90 feet and the duplex lot size is 9,000 square feet with a minimum separation between units of 10 feet. Fee simple interest in each half of a duplex lot may be sold, devised or transferred independently from the other half. For duplex lots that: <ul style="list-style-type: none"> <li>(i) are either platted or lots of record existing prior to 3/3/97, and</li> <li>(ii) are 75 feet in width or greater, but are less than 90 feet, and</li> <li>(iii) have a lot size of 7,500 square feet or greater, but less than 9,000 square feet are deemed to be vested and shall be considered as conforming lots for width and/or size.</li> </ul>
<i>e</i>	Corner lots shall be 100 [feet] on major streets (see Art. XV), 80 [feet] for all other streets.
<i>f</i>	Corner lots shall be 125 [feet] on major streets (see Art. XV), 100 [feet] for all other streets.
<i>g</i>	Corner lots shall be 150 [feet] on major streets (see Art. XV), 125 [feet] for all other streets.
<i>h</i>	For lots platted on or after 3/3/97, or unplatted parcels. For lots platted prior to 3/3/97, the following setbacks shall apply: R-1AA, 30 feet, front, 35 feet rear, R-1A, 25 feet, front, 30 feet rear, R-1, 25 feet, front, 25 feet rear, 6 feet side; R-2, 25 feet, front, 25 feet rear, 6 feet side for one (1) and two (2) dwelling units; R-3, 25 feet, front, 25 feet, rear, 6 feet side for two (2) dwelling units. Setbacks not listed in this footnote shall apply as listed in the main text of this section.
<i>j</i>	Attached units only. If units are detached, each unit shall be placed on the equivalent of a lot 45 feet in width and each unit must contain at least 1,000 square feet of living area. Each detached unit must have a separation from any other unit on site of at least 10 feet.
<i>k</i>	Maximum impervious surface ratio shall be 70%, except for townhouses, nonresidential, and mixed use development, which shall have a maximum impervious surface ratio of 80%.
<i>m</i>	Based on gross square feet.

***These requirements are intended for reference only; actual requirements should be verified in the Zoning Division prior to design or construction.***

## VARIANCE CRITERIA:

Section 30-43 of the Orange County Code Stipulates specific standards for the approval of variances. No application for a zoning variance shall be approved unless the Board of Zoning Adjustment finds that all of the following standards are met:

1. **Special Conditions and Circumstances** – Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. Zoning violations or nonconformities on neighboring properties shall not constitute grounds for approval of any proposed zoning variance.
2. **Not Self-Created** – The special conditions and circumstances do not result from the actions of the applicant. A self-created hardship shall not justify a zoning variance; i.e., when the applicant himself by his own conduct creates the hardship which he alleges to exist, he is not entitled to relief.
3. **No Special Privilege Conferred** – Approval of the zoning variance requested will not confer on the applicant any special privilege that is denied by the Chapter to other lands, buildings, or structures in the same zoning district.
4. **Deprivation of Rights** – Literal interpretation of the provisions contained in this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter and would work unnecessary and undue hardship on the applicant. Financial loss or business competition or purchase of the property with intent to develop in violation of the restrictions of this Chapter shall not constitute grounds for approval.
5. **Minimum Possible Variance** – The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building or structure.
6. **Purpose and Intent** – Approval of the zoning variance will be in harmony with the purpose and intent of this Chapter and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

## SPECIAL EXCEPTION CRITERIA:

Subject to Section 38-78, in reviewing any request for a Special Exception, the following criteria shall be met:

1. The use shall be consistent with the Comprehensive Policy Plan.
2. The use shall be similar and compatible with the surrounding area and shall be consistent with the pattern of surrounding development.
3. The use shall not act as a detrimental intrusion into a surrounding area.
4. The use shall meet the performance standards of the district in which the use is permitted.
5. The use shall be similar in noise, vibration, dust, odor, glare, heat producing and other characteristics that are associated with the majority of uses currently permitted in the zoning district.
6. Landscape buffer yards shall be in accordance with Section 24-5, Orange County Code. Buffer yard types shall track the district in which the use is permitted.

**In addition to demonstrating compliance with the above criteria, any applicable conditions set forth in Section 38-79 shall be met.**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUNE 02, 2022**

Commission District: **#2**

Case #: **SE-22-04-017**

Case Planner: **Ted Kozak, AICP (407) 836-5537**  
**Ted.Kozak@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): DONALD JOSEFCZYK

OWNER(s): DONALD JOSEFCZYK

REQUEST: Special Exception and Variance in the A-1 zoning district as follows:

- 1) Special Exception to allow 5,020.8 cumulative sq. ft. of detached accessory structure area in lieu of 3,000 sq. ft. (BZA approved 5,000 sq. ft.)
- 2) Variance to allow a 5,020.8 sq. ft. detached accessory structure in lieu of a maximum of 5,000 sq. ft.

PROPERTY LOCATION: 6904 Wright Ave., Mount Dora, FL 32757, south side of Wright Ave., west of N. Orange Blossom Trl., north of Sadler Rd.

PARCEL ID: 09-20-27-0000-00-091

LOT SIZE: +/- 2 acres

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 71

**DECISION:** Recommended **APPROVAL** of the Special Exception request #1, in that the Board finds it meets the requirements governing Special Exceptions as spelled out in Orange County Code, Section 38-78, and that the granting of the Special Exception does not adversely affect general public interest; further, said approval is subject to the following conditions as amended; and, **DENIAL** of the Variance request #2, in that there was no unnecessary hardship shown on the land; and further, it does not meet the requirements governing variances as spelled out in Orange County Code, Section 30-43(3) (unanimous; 4 in favor, 0 opposed and 3 absent):

1. Development shall be in accordance with the site plan received March 3, 2022, and the elevations received February 16, 2022, as modified to reduce the detached accessory structure area to 5,000 sq. ft., subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a

violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.

3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. Permits shall be obtained for the proposed detached accessory structure within 2 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.
5. Enhanced landscaping shall be provided along the entire length of the north facing accessory building foundation identified on the Site Plan. This enhanced landscaping shall consist of 3 canopy shade trees, installed 17 feet on center at a minimum distance of 8 feet from the building foundation, minimum 3 inches caliper, minimum 10 feet high, Florida #1 grade or better, supplemented with a continuous row of 7-gallon Podocarpus shrubs installed 3 feet on center, for a total of 17 shrubs.
6. The accessory structure shall be painted to match the color of the house.

**SYNOPSIS:** Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) special exception and variance criteria and the reasons for a recommendation for approval of the special exception due to compatibility with the area and the provision of landscape screening and denial of the variance since there are other options to reduce the size without the need for a variance. Staff noted that no comments were received in favor and one was received in opposition to the request.

The applicant responded to the staff recommendation for denial, noting that he proceeded to purchase the unassembled building without first obtaining County approval with reliance on information provided during the purchase of the property.

There was no one in attendance to speak in favor or in opposition to the request.

The BZA discussed the variance, the proposed size and aesthetics and the ability to reduce the structure to eliminate the need for the variance. The BZA offered a compromise by recommending a lesser special exception for the size of the cumulative detached building area and unanimously recommended approval of the special exception and denial of the variance by a 4-0 vote, with two absent and one seat vacant, subject to the six (6) conditions in the staff report, and an amended Condition #1, which states "Development shall be in accordance with the site plan received March 3, 2022, and the elevations received February 16, 2022, as modified to reduce the detached accessory structure area to 5,000 sq. ft., subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC)."

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## STAFF RECOMMENDATIONS

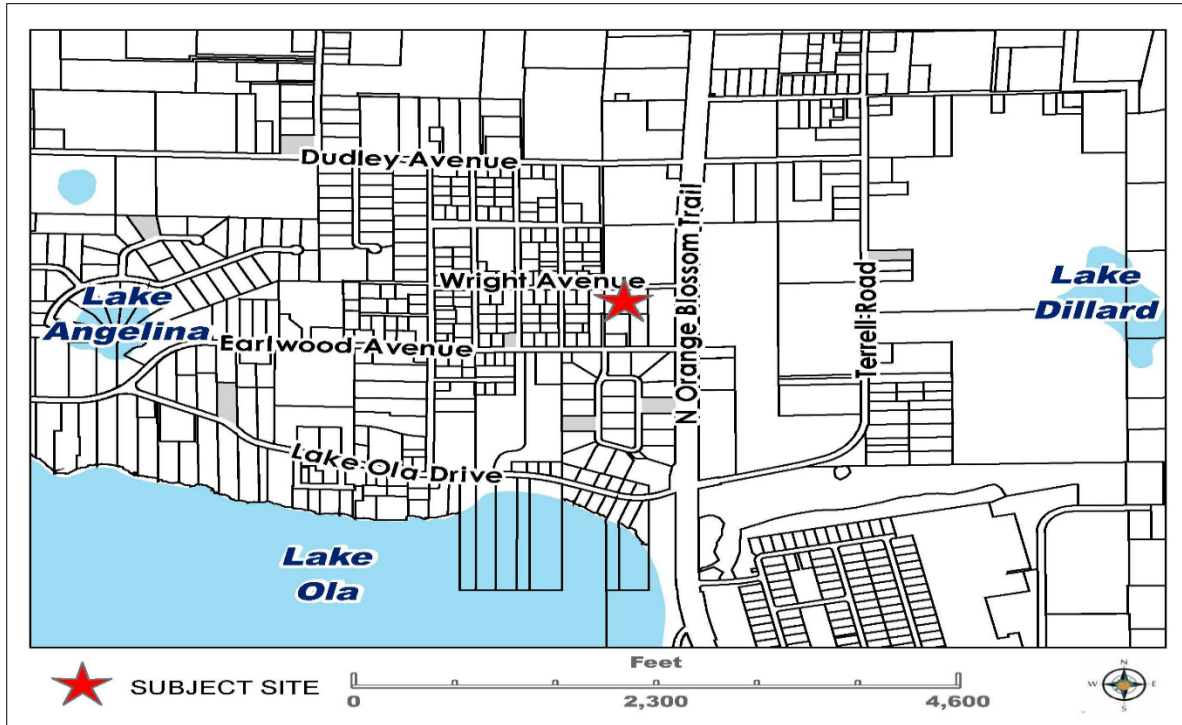
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Approval of the Special Exception, subject to conditions in this report and denial of the Variance. However, should the BZA find that the applicant has satisfied the criteria necessary to grant the variance, staff recommends that the approval be subject to conditions in this report.

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## LOCATION MAP

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## SITE & SURROUNDING DATA

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	Property	North	South	East	West
Current Zoning	A-1	A-1	A-1	A-1	R1-AA
Future Land Use	LDR	LDR	LDR	LDR	LDR
Current Use	Single-family residence	Vacant	Single-family residence	Vacant	Single-family residence

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## BACKGROUND AND ANALYSIS

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### DESCRIPTION AND CONTEXT

The property is located in the A-1 Citrus Rural zoning district, which allows agricultural uses, mobile homes, and single-family homes with accessory structures on larger lots. The Future Land Use is Low Density Residential (LDR), which is inconsistent with the zoning district. Per Comprehensive Plan Policy FLU8.2.5.1, a rezoning may not be required for properties with inconsistent zoning and Future Land Use Map (FLUM) designations for residential uses when the proposed use is single-family detached residential and the Zoning



and Future Land Use are both residential. Further, since the property is a lot of record, single-family detached development of the property is allowed.

The property is also located in the Tangerine Rural Settlement. Rural settlements are areas of the County identified in the Comprehensive Plan, where a particular rural character is desired to be preserved by its residents. Rural settlements typically limit certain uses, such as institutional uses, or commercial development, and control densities. However, it does not impact the development of this individual residential property.

The area around the subject site is comprised of single-family homes in a semi-rural setting and vacant lots. The subject property is just over 2 acres in size according to the Orange County property appraiser, and is considered to be a conforming lot of record. The lot is wider than it is deep, with over 330 ft. of frontage on Wright Avenue, providing visibility to almost the entire site from the street. The site is developed with a 4,644 gross sq. ft. one-story single-family home that was constructed in 2021.

The proposal is to construct a 17.9 ft. high, 5,020.8 sq. ft. metal accessory structure (also known as a Quonset hut), at the southwest corner of the property, labeled on the site plan as Building #1. While the cover letter states that the owner's original preferred location is at the southeast corner of the property, the requested location, as shown on the site plan, is near the southwest corner. No other accessory structures are proposed. The maximum total accessory structure square footage permitted by right is 3,000 sq. ft. However, per Sec 38-1426 (b)(6), detached accessory structures located in agricultural zoning districts on a parcel greater than two (2) acres may exceed 3,000 sq. ft. through the Special Exception process contingent upon any detached accessory structure not exceeding five thousand (5,000) square feet in gross floor area and thirty-five (35) feet in overall height; and increased minimum setbacks of 50 ft. front, 25 ft. side/side street, and 35 ft. rear.

The applicant is requesting a Special Exception to allow 5,020.8 cumulative sq. ft. of detached accessory structures in lieu of a maximum of 3,000 sq. ft., and a variance to allow a 5,020.8 sq. ft. detached accessory structure in lieu of a maximum of 5,000 sq. ft. The code defines an accessory structure as "a subordinate building or structure, including an accessory dwelling unit, situated on the same lot or parcel as the principal building or structure, or a subordinate use of land, and which building, structure or use is customarily incidental to and typically found in association with such principal building or use. Factors to be considered in determining whether a building, structure or use is "subordinate" and "customarily incidental" include the size of the lot or parcel, the uses of adjacent lots or parcels, and the size, shape, height, and roof type (if any) of the building or structure." The proposed accessory structure is clearly not subordinate to the principal structure as it is greater than the size of the house. The special exception process allows for more cumulative sq. ft. on larger agriculturally zoned lots to ensure compatibility with the surrounding area, and code further caps the total size of any one accessory structure. As proposed, at 5,020.8 sq. ft., the detached accessory structure is larger than the existing 4,644 sq. ft. residence. Staff has created a graphic representation of the proposed detached accessory structure in the proposed location compared with the existing residence to better understand the scale and massing of what is being proposed. The graphic representation is provided below.



Graphic Representation of proposed Quonset hut in relation to existing single family home

In review of the extended area within the Tangerine Rural Settlement, staff found a mix of agricultural and other detached accessory structures existing that appear to be generally consistent with the proposed structure. Given the size of the lot and the surrounding area, staff is recommending approval of the Special Exception for the increase in cumulative square footage. However, considering that all of the cumulative sq. ft. is being proposed to be utilized in only one structure, thereby increasing the size and scale of the accessory structure, staff is recommending denial of the variance.

Since the construction of the house, the tree canopy on the property has been mostly eliminated, and in order to screen the proposal from the adjacent public street to the north, Condition #5 contains a requirement to install 3 canopy trees and 17 full-size Podocarpus shrubs along the building foundation at a distance of least 8 feet from the foundation of the structure. In addition, Condition #6 has been added that requires the accessory structure to be painted to match the color of the house, to ensure further compatibility.

At the time of writing this report, one comment has been received in opposition to the requests, no comments have been received in favor, as well as one neutral phone call and one negative phone call.

#### District Development Standards

	Code Requirement	Proposed
Max Height:	35 ft.	17.9 ft. accessory structure 27.2 ft. residence
Min. Lot Width:	100 ft.	331.7 ft.
Min. Lot Size:	21,780 sq. ft. (0.5 acres)	+/- 2 acres

**Building Setbacks (that apply to structure in question) (Measurements in feet)**

	Code Requirement, accessory structure	Proposed
Front:	N/A, not allowed in front	125.7 ft. (North)
Rear:	35 ft.	35.3 ft. (South)
Side:	25 ft.	25.3 ft. (West) 255.7 ft. (East)

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**STAFF FINDINGS**

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**SPECIAL EXCEPTION CRITERIA****Consistent with the Comprehensive Plan**

The provision of accessory structure square footage above 3,000 sq. ft., is permitted in the A-1 zoning district through the Special Exception process contingent upon performance standards being met. As such, with the approval of the Special Exception, the proposal is consistent with the Comprehensive Plan.

**Similar and compatible with the surrounding area**

The proposal will be compatible with the surrounding area, since the area is a mix of agricultural uses and large lot residential properties with a number of larger, detached accessory metal structures.

**Shall not act as a detrimental intrusion into a surrounding area**

The provision of additional accessory structure area is compatible with the surrounding area, will not act as a detrimental intrusion and will not negatively impact the surrounding area. The accessory structure will meet the increased required setbacks.

**Meet the performance standards of the district**

With the exception of the variance requested, the detached accessory structure will meet the performance standards as required by County Code for cumulative accessory structure area greater than 3,000 sq. ft.

**Similar in noise, vibration, dust, odor, glare, heat producing**

The provision of additional accessory structure square footage will not generate any more noise, vibration, dust, odor glare or heat than any other typical agricultural/residential uses in the area.

**Landscape buffer yards shall be in accordance with Section 24-5 of the Orange County Code**

The property is used primarily for single-family residential purposes, and therefore perimeter landscaping is not required by Section 24-5 of the County Code. However, additional enhanced landscaping for screening is proposed as Condition #5.



## **VARIANCE CRITERIA**

### **Special Conditions and Circumstances**

Although the distance of the proposed structure is setback over 125 feet from the front property line, there are no special conditions and circumstances particular to this request since the size of the structure could be reduced to eliminate the need for the Variance.

### **Not Self-Created**

The request is self-created since the owner could build a smaller structure that would meet the standards required by Orange County Code, or several smaller structures with the same cumulative building area.

### **No Special Privilege Conferred**

Granting the variance as requested will confer special privilege that is denied to other properties in the same area and zoning district, since there are other options available in order to meet code requirements, including the reduction of the size of the proposed structure less than 5,000 sq. ft.

### **Deprivation of Rights**

Literal interpretation of the code will not deprive the applicant of the right to have conforming accessory structures on the property.

### **Minimum Possible Variance**

The request is not the minimum, since the applicant could modify the request to remove the need for the variance by reducing the square footage by 21 sq. ft.

### **Purpose and Intent**

Approval of the requested variance will not be in harmony with the purpose and intent of the Zoning Regulations, as the building will not meet the additional performance standards required for structures that fall within the requirement for a Special Exception. The size and scale of the proposed 5,020.8 sq. ft. structure will be greater than the size of the existing house. The purpose of an accessory structure is to be accessory to the residence, not greater than it.

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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan received March 3, 2022, and the elevations received February 16, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. Permits shall be obtained for the proposed detached accessory structure within 2 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.
5. Enhanced landscaping shall be provided along the entire length of the north facing accessory building foundation identified on the Site Plan. This enhanced landscaping shall consist of 3 canopy shade trees, installed 17 feet on center at a minimum distance of 8 feet from the building foundation, minimum 3 inches caliper, minimum 10 feet high, Florida #1 grade or better, supplemented with a continuous row of 7-gallon Podocarpus shrubs installed 3 feet on center, for a total of 17 shrubs.
6. The accessory structure shall be painted to match the color of the house.

C: Donald Josefczyk  
6904 Wright Ave.  
Mount Dora, FL 32757

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## COVER LETTER

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Request special exception and variance to build parabolic shaped accessory structure.

Reason for the request is that it was purchased at dimensions larger than typically allowed.

Type of construction is Galvalume Plus steel. The build out kit is part of a fully inclusive package with end panels, doors (garage and utility), east side window, and apex turbine fans (five non-electric).

Proposed usage is storage for Kubota tractor and implements (discus and bush-hog), pontoon boat, grounds maintenance equipment and boxed personal items.

Proposed preferred location is southeast corner (could also go in southwest corner).

Proposed square feet is 5,020.83.

Proposed dimensions are 100' -5" by 50'.

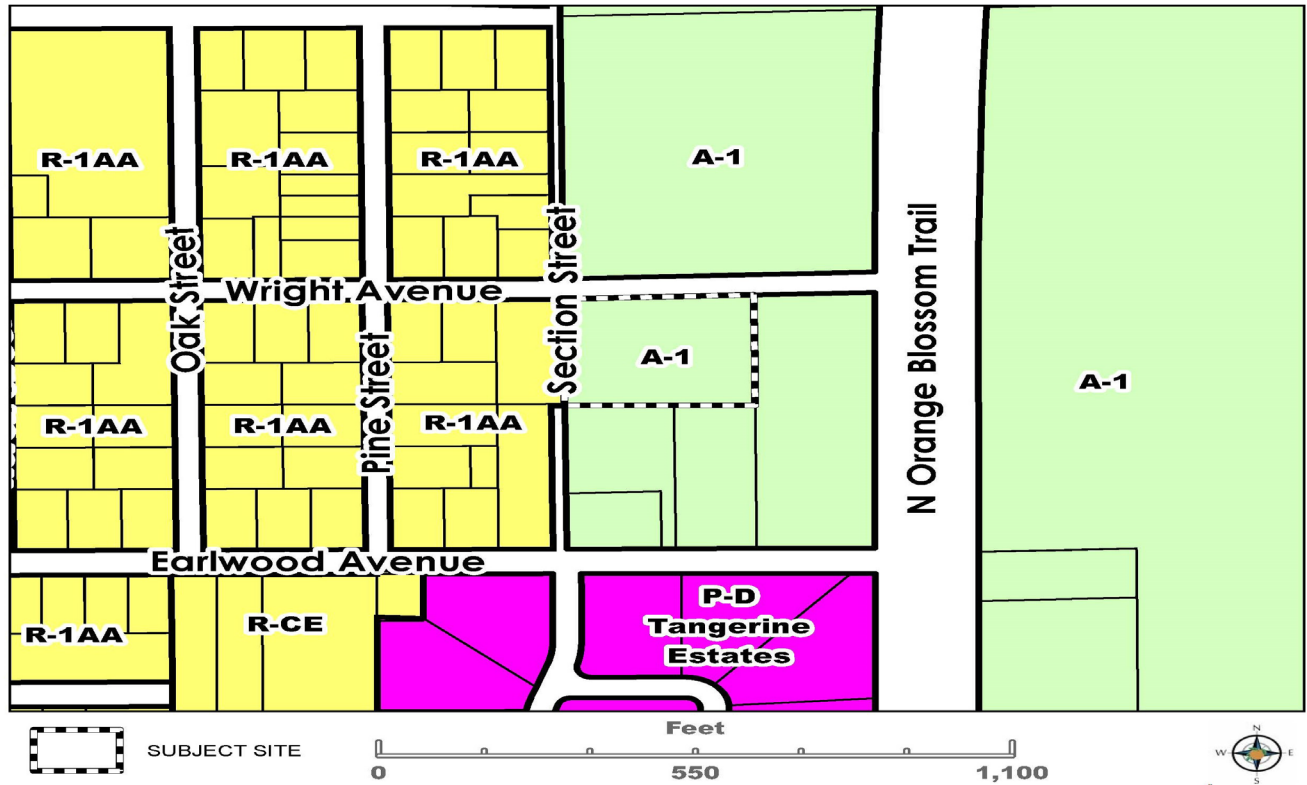
Distance from property lines as follows- Eastern- 256', Southern- 35.3', Western- 25.3, Northern- 124.3'

Proposed height is 17' 8 and 5/8" apex only (parabolic shaped structure).

Numerical 's- 3000 sq. ft versus 5,020.83 sq. ft.

- Justification based on special conditions and circumstances related to the land. During the process of determining whether or not the property to house accessory structure would be suitable for purchase (2020), applicant was denied the ability to obtain accurate parcel restriction information (and assistance with interpretation) directly from the county. I was referred by the zoning department to the protected sellers agent for any questions pertaining to the property.
- The special conditions and circumstances do not result either directly or indirectly from any actions of the applicant. Applicant was provided with totally inaccurate accessory structure restriction information. It was communicated by the seller who had a vested interest in making the parcel appear more attractive than it actually was. To be clear, the sellers agent was provided a mock blueprint and was asked to communicate with the seller and have him contact Zoning for confirmation relating to its compatibility. His reply communicated by that same agent is paraphrased as follows. "Yes you can have this farm style accessory structure wide and long enough to block the view of the two large railroad cars on the adjacent property. How do you think the people down the road were able to get their buildings? While the address for this property would be Mount Dora, it is not really in Mount Dora but rather unincorporated Tangerine. The square footage to acreage ratio posted online is not the same in areas of the county that do not have their own governing bodies". Again I contacted zoning and asked just for confirmation or rejection of that restriction related information. Again, I was denied any access to any information. Three months later, I was given access to correct restriction data, but by then I had already purchased the 5,020.83 sq. ft. structure.
- Approval of this application will not confer any special privilege denied to others in the same zoning district. No privilege of any type has been made available to applicant.
- Literal interpretations of the provisions contained in this Chapter would in fact deprive the applicant of rights commonly enjoyed by other properties in the same district. Unnecessary and undue hardship has been imposed on the applicant causing both financial and mental instability. It should also be noted that (even though Zoning does not like to acknowledge what it has allowed to occur in the past) two other residents of the community already have larger than 5000 sq. ft. accessory structures on properties that are physically smaller than the applicants, and are not zoned agricultural. Applicant owns the only inhabited agricultural zoned parcel in Tangerine. Applicant was not afforded the same rights made available to those and all other residents. Applicant was totally blocked by the County from receiving information that was relevant to his decision whether or not to purchase the property, and if that single focus restriction data had been made available, no error in purchase size would have occurred.
- Purpose and intent harmonization related regulations will in no way be compromised nor will approval be in any way injurious or detrimental to public welfare. On the contrary, if allowed to build the structure, it will be made available to any members of the community or general area seeking shelter during a hurricane or national defense emergency.

# ZONING MAP

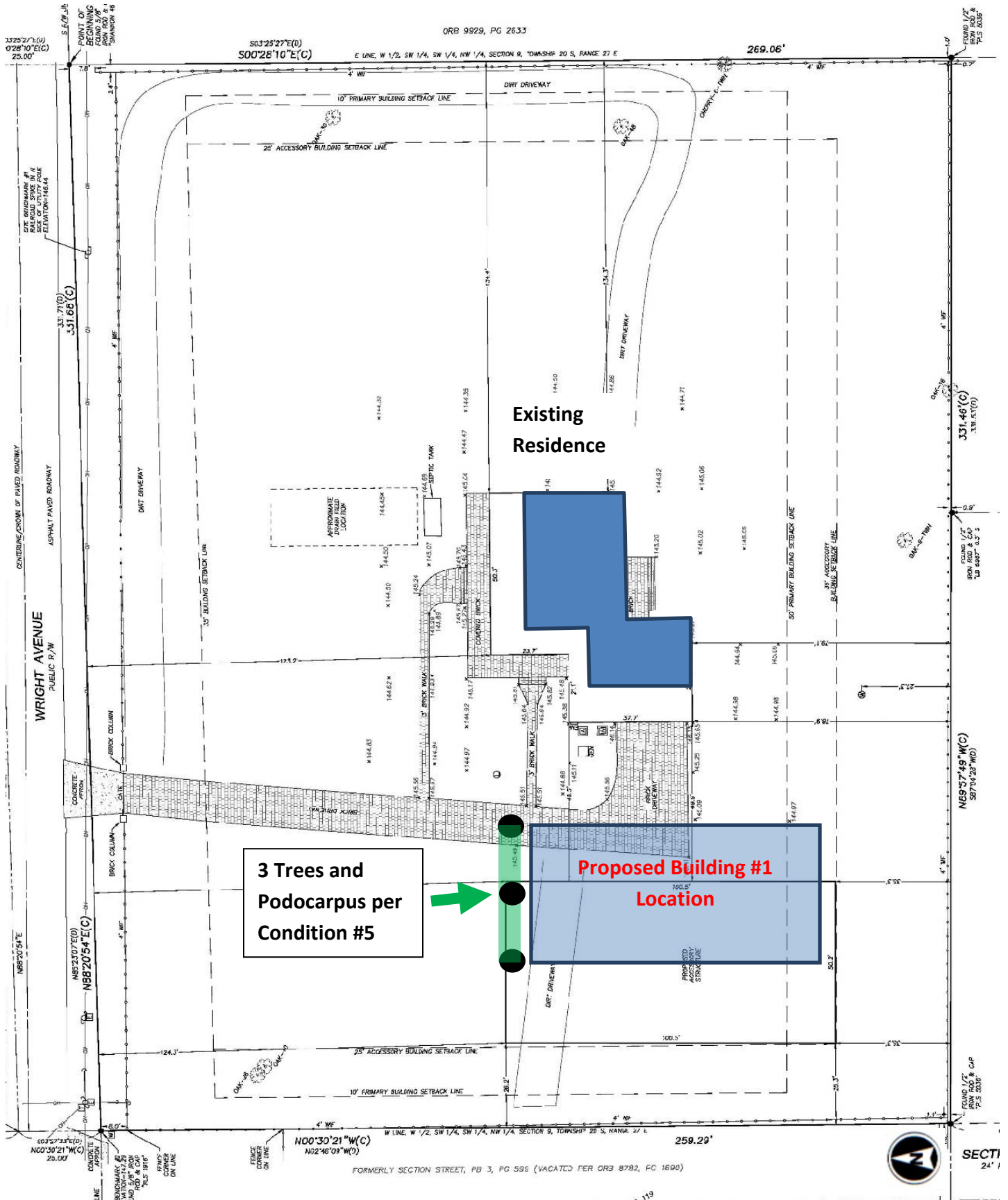


# AERIAL MAP

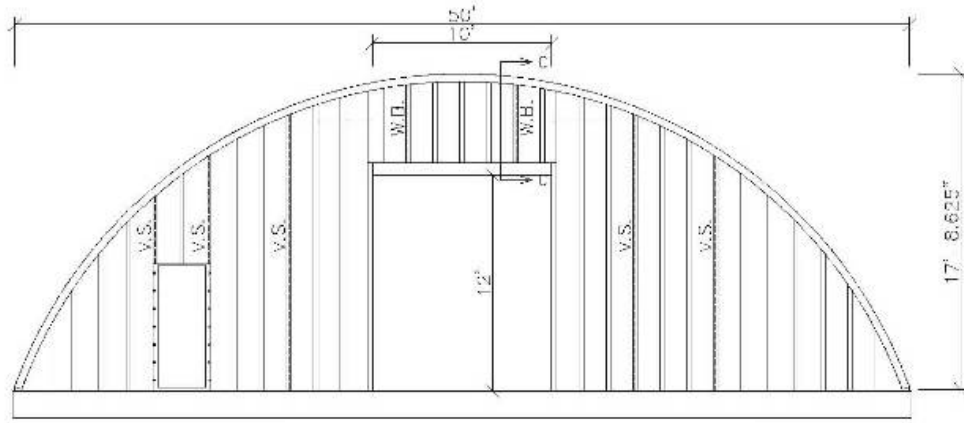




# SITE PLAN

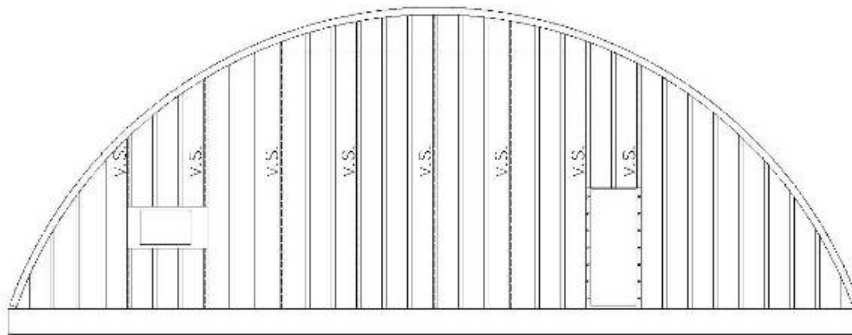


## ELEVATIONS

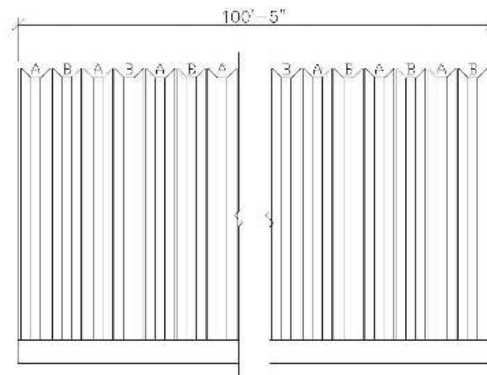


**Front North Elevation**

OVERHUNG ROOF TO BE DESIGNED  
AND SUPPLIED BY OTHERS



REAR ELEVATION



**East and West Elevations**



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## SITE PHOTOS

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**Front from Wright Ave. facing south towards proposed location**



**Facing southwest from north property line**



## SITE PHOTOS



**Facing north towards proposed building location from southwest property line**



**Facing west from southeast property line towards proposed building location**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 02, 2022**

Commission District: **#1**

Case #: **VA-22-06-036**

Case Planner: **Michael Rosso (407) 836-5592**  
**Michael.Rosso@ocfl.net**

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## GENERAL INFORMATION

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APPLICANT(s): MARVIN SPRATLEY

OWNER(s): MARVIN SPRATLEY

REQUEST: Variance in the P-D zoning district to allow a screen enclosure with a north side setback of zero in lieu of 5 ft.

PROPERTY LOCATION: 8872 Bismarck Palm Dr., Winter Garden, FL, 34787, west side of Bismarck Palm Drive, north of Seidel Rd., northeast of S.R. 429.

PARCEL ID: 05-24-27-5330-00-480

LOT SIZE: +/- 0.10 acres (4,246 sq. ft.)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 112

**DECISION:** Recommended **APPROVAL** of the Variance request in that the Board finds it meets the requirements of Orange County Code, Section 30-43(3) ; further, said approval is subject to the following conditions (unanimous; 4 in favor, 0 opposed and 3 absent):

1. Development shall be in accordance with the site plan and elevations received April 6, 2022, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.

**SYNOPSIS:** Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for approval. Staff noted that 2 correspondences were received in favor, and that no correspondences were received in opposition.

The applicant declined to speak.

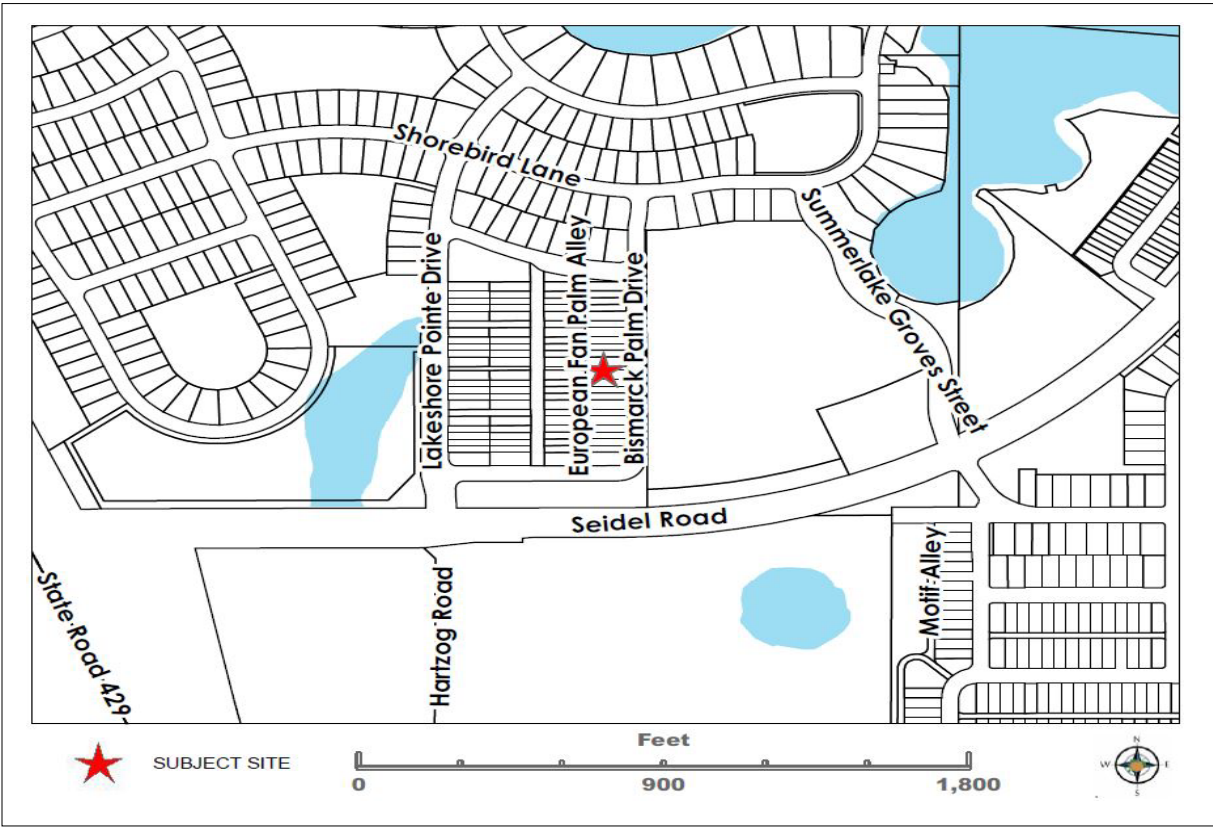
There was no one in attendance to speak in favor or in opposition to the request.

The BZA unanimously recommended approval of the variance with a 4-0 vote, with three absent, subject to the three (3) conditions in the staff report.

**STAFF RECOMMENDATIONS**

Approval, subject to the conditions in this report.

**LOCATION MAP**



**SITE & SURROUNDING DATA**

	Property	North	South	East	West
Current Zoning	Village F Master PD	Village F Master PD	Village F Master PD	Village F Master PD	Village F Master PD
Future Land Use	Village	Village	Village	Village	Village
Current Use	Townhouse	Open Space Tract	Townhouse	Bismarck Palm Drive	Townhouse

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## BACKGROUND AND ANALYSIS

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### **DESCRIPTION AND CONTEXT**

The property is located in the Village F Master Planned Development (PD) district, which allows a range of uses including single-family, townhouses and multi-family. This property is within Parcel S-24 of the PD, and is designated on the approved Land Use Plan as a Townhome District. The Future Land Use is Village, which is consistent with the zoning.

The area is comprised of townhomes and single-family homes. The subject property is a rear loaded lot, accessed from European Fan Palm Alley. The front yard faces Bismarck Palm Drive and the north side yard faces an open space tract. It was platted in 2015 as part of the Lakeshore Preserve Phase 1 Plat, and is considered to be a conforming lot of record. There is a 3,552 sq. ft. an end-unit townhouse on the lot, which was constructed in 2018.

Townhome Districts are regulated by Sec. 38-1387 of the Orange County Code. The applicant is proposing to add a 54 ft. wide, 6 ft. tall screen enclosure on top of an existing 7 ft. block wall, which will cover the entire outdoor area between the existing townhome and the wall. The screen enclosure is proposed to have a 0 ft. north side setback in lieu of the minimum 5 ft. side setback for screen enclosures, requiring a variance. The north side property line abuts a 14 ft. wide open space tract therefore no neighbors will be directly impacted by this request. The proposal is for a screen enclosure, which will have a screen roof, as opposed to a screen room with a structural roof. A building permit, B22901333, has been submitted for the screen enclosure, and is on hold pending the outcome of this variance request.

As of the date of this report, one response has been received in favor of the request; and no responses have been received in opposition to the request.

### **District Development Standards**

	Code Requirement	Proposed
Max Height:	55 ft.	13 ft. (screen enclosure)
Min. Lot Width:	16 ft.	35 ft.
Min. Lot Size:	1,600 sq. ft.	4,246 sq. ft.

### **Building Setbacks (that apply to structure in question)**

	Code Requirement	Proposed
Front:	15 ft. (screen enclosure)	36 ft. (East)
Rear:	5 ft. (screen enclosure)	30 ft. (West)
Side:	5 ft. (screen enclosure)	0 ft. (North) – Variance

**VARIANCE CRITERIA****Special Conditions and Circumstances**

Per code, the side setback for screen enclosures is 5 feet. Therefore, if two directly-adjacent end-unit townhomes each had a screen enclosure that met the 5 ft. side setback requirement, those screen enclosures would be separated by a distance of 10 ft., which is exactly the same as if they had a 0 ft. side setback for screen enclosures and were separated by a 10 ft. open space tract. In this case, the end-unit townhome lot requesting the variance is separated from the adjacent end-unit townhome lot to the north by a 14 ft. wide open space tract. If both lots were to have screen enclosures with 0 ft. side setbacks, the resulting separation between the screen enclosures would be 4 ft. larger than if these two townhomes shared a side lot line.

**Not Self-Created**

The need for the requested variance is not self-created as it allows for the applicant to be able to install a screen enclosure in the only location possible.

**No Special Privilege Conferred**

Approval of the variance as requested will not confer special privilege as the County has granted variances to several other end-unit townhomes in this subdivision for the same 0 ft. screen enclosure side setback.

**Deprivation of Rights**

Literal interpretation of the code will deprive this applicant of the right to add a screen enclosure in the only location that would be possible.

**Minimum Possible Variance**

This is the minimum possible variance to allow a screen enclosure of an appropriate, useable size.

**Purpose and Intent**

Approval of the requested variance would be in harmony with the purpose and intent of the Zoning Regulations as the code is primarily focused on minimizing the impact that structures have on surrounding properties. As previously mentioned, there are several other properties in this townhome subdivision that have screen enclosures with the same 0 ft. side setback. Furthermore, the screen enclosure is proposed to be installed on top of an existing block wall, adjacent to a 14 ft. wide open space tract.

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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan and elevations received April 6, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.

C: Marvin Spratley  
8872 Bismarck Palm Drive  
Winter Garden, Florida, 34787

COVER LETTER FOR VARIANCE APPLICATION

Owner: Marvin Lee Spratley

PARCEL ID 05-24-27-5330-00740

April 6, 2022

Re: 8872 Bismarck Palm Drive, Winter Garden, FL 34787

To Whom It May Concern:

We are requesting a variance to approve an aluminum screen enclosure with mesh panels at 8872 Bismarck Palm Dr., Winter Garden, FL 34787.

The proposed aluminum screen enclosure will be installed on top of an existing 7' block privacy wall located on the side of the property line. The side setback for this specific property is 7', however the previously constructed privacy wall is on the property line, therefore encroaching the setback by 7'.

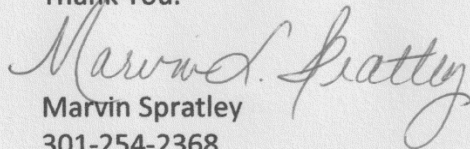
On the North side of the property there is public access and utility easement so no future structure will be built on that property.

In the same neighborhood, properties at 8897 Fountain Palm Aly and 8938 Bismarck Palm Dr. also have screen enclosures that enclose the entire courtyard and attach to the top of the existing privacy wall.

The screen will be installed on top of the existing wall and have a maximum wall height of 10'. The center of the screen will have a maximum height of 13'. The total square feet of the roof panel will be 546 sq ft. The total square feet of the wall panels will be 222 sq ft. The screen will be constructed out of bronze aluminum posts with 18X14 mesh panels.

Due to the unique property and configuration on the side yard at this property it is not feasible to have a screen enclosure installed anywhere but on the existing wall. The enclosure is meant to serve as protection to the courtyard patio. The proposed screen enclosure was approved by the HOA.

Thank You.



Marvin Spratley

301-254-2368

8872 Bismarck Palm Dr.

Winter Garden, FL 34787



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## COVER LETTER

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1. **Special Conditions and Circumstances** - Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. Zoning violations or nonconformities on neighboring properties shall not constitute grounds for approval of a proposed zoning variance.

The previously constructed privacy wall is within the property line but encroaches on the setback line by 7'. It is not feasible to have a screen enclosure installed anywhere but on the existing wall.

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2. **Not Self-Created** - The special conditions and circumstances do not result from the actions of the applicant. A self-created or self-imposed hardship shall not justify a zoning variance; i.e., when the applicant himself by his own conduct creates the hardship which he alleges to exist, he is not entitled to relief.

The existing wall and configuration of the side yard at this property were not created by the owner and all approved under the original building permits for the Lakeshore community.

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3. **No Special Privilege Conferred** - Approval of the zoning variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other lands, building, or structures in the same zoning district.

In the same neighborhood, multiple properties of the same configuration have screen enclosures on top of the existing privacy walls, all within the owners property lines but outside the setback line.

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4. **Deprivation of Rights** - Literal interpretation of the provisions contained in this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter and would work unnecessary and undue hardship on the applicant. Financial loss or business competition or purchase of property with intent to develop in violation of the restrictions of this Chapter shall not constitute grounds for approval or objection.

Existing properties in the same neighborhood with the same configuration have screen enclosures on top of the existing privacy walls.

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5. **Minimum Possible Variance** - The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building, or structure.

The existing side setback for this specific property is 7' which is the amount requested for this variance.

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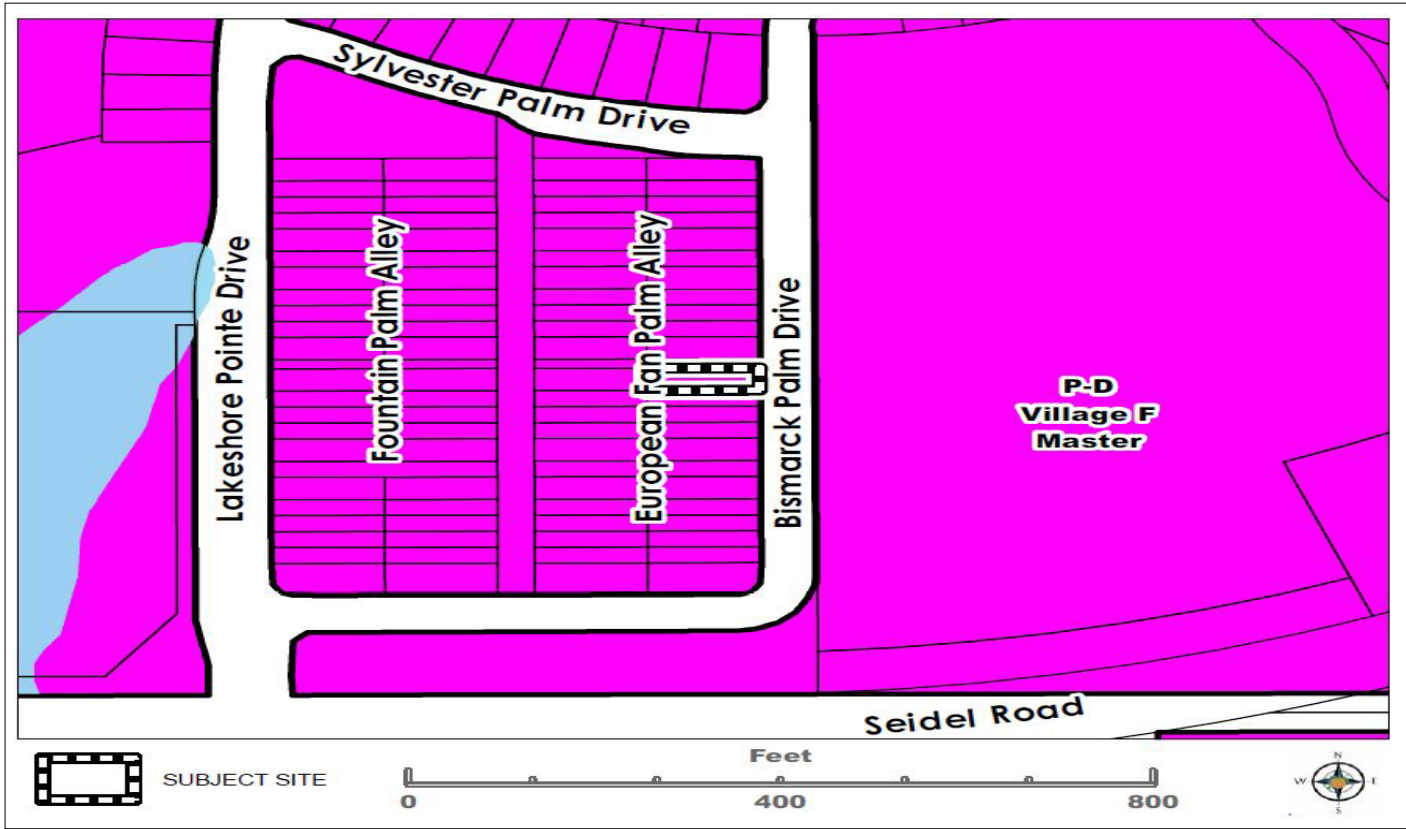
6. **Purpose and Intent** - Approval of the zoning variance will be in harmony with the purpose and intent of the Zoning Regulations and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The request will not be injurious to the neighborhood. Multiple other properties including one on the same street as this property (8938 Bismarck Palm Dr.) had have variance approvals consistent with this request. In between this property and the adjacent properties there is public access and utility easement so no future structures will be built on that property.

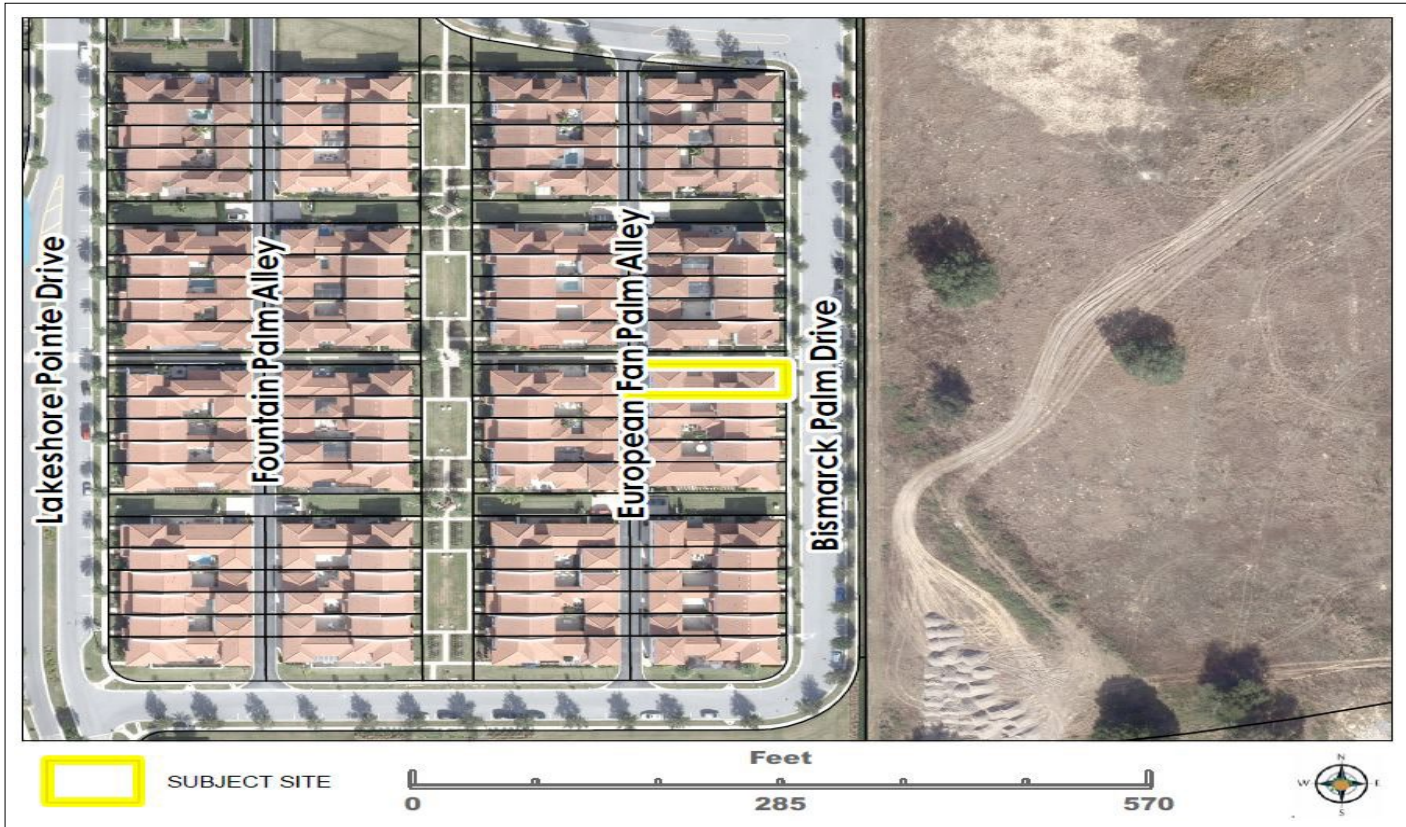
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ZONING MAP

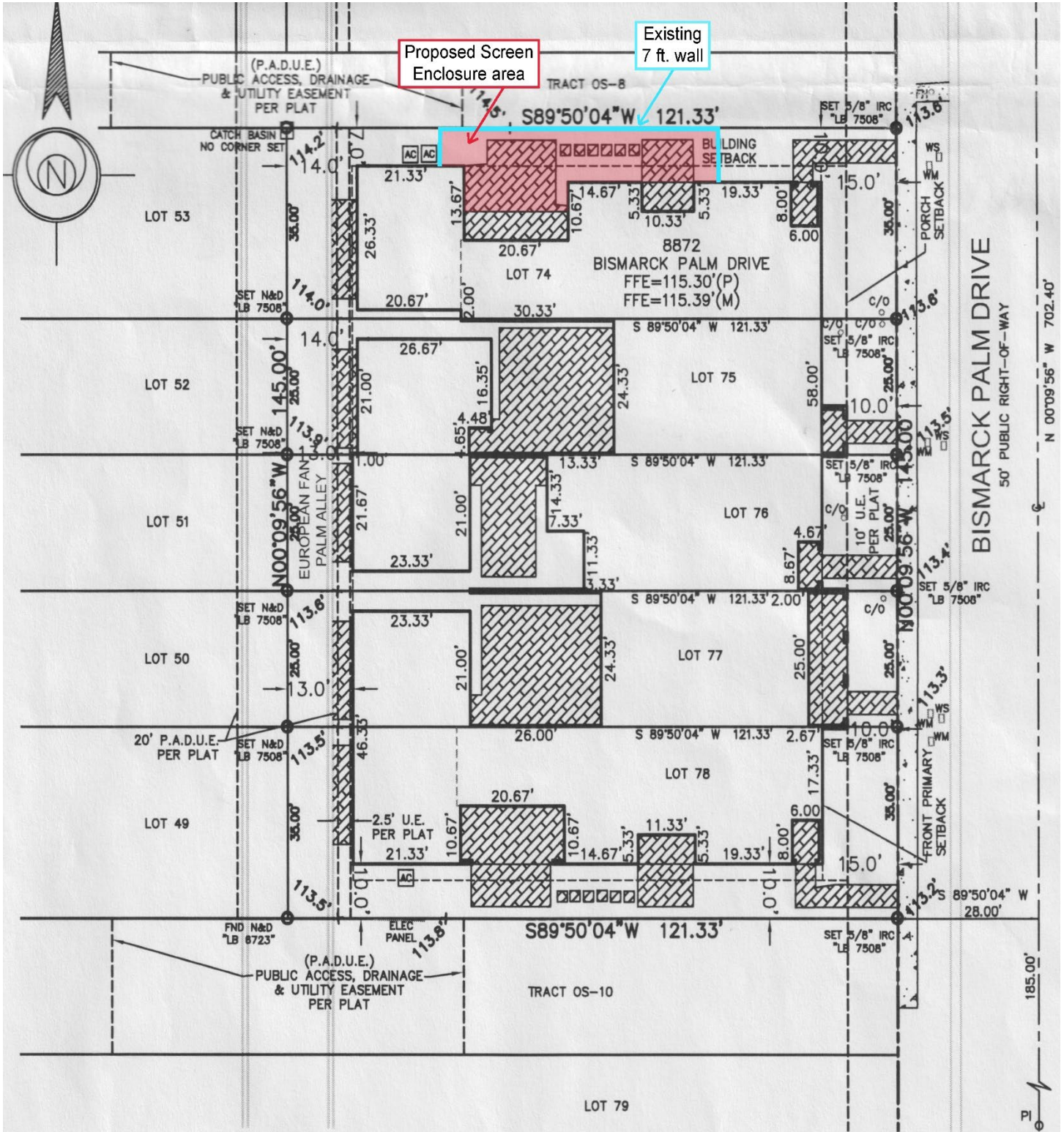


AERIAL MAP





# SITE PLAN

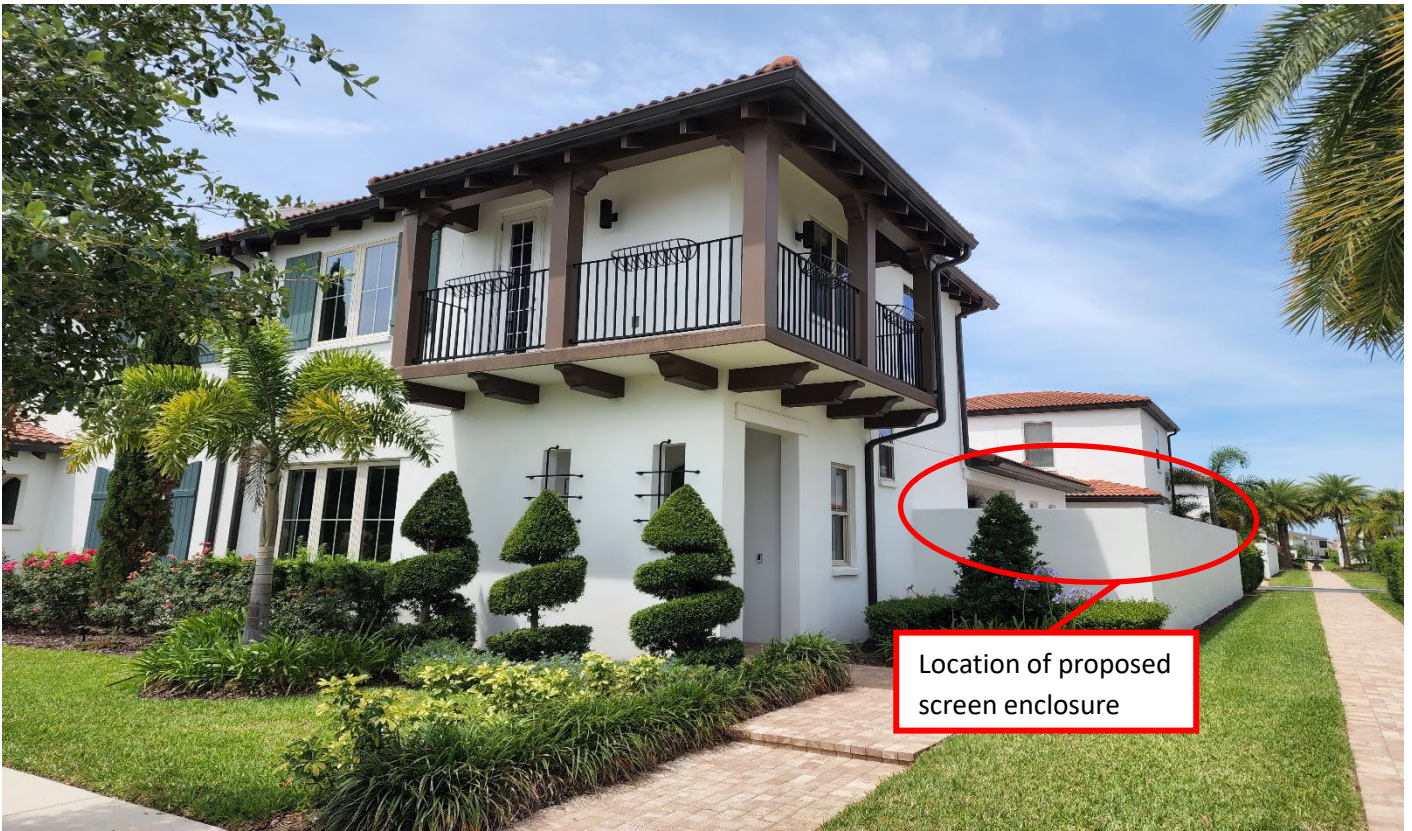


The architectural drawings consist of three views: EAST SIDE, ROOF, and WEST SIDE.

- EAST SIDE:** Shows the elevation of the building from the east. It features an existing 7' block wall and a new 7' block wall. The roofline is indicated by a dashed line. Dimensions include 13'-0" for the total height, 10'-0" for the existing wall height, 3'-0" for the new wall height, and 9'-6" for the width. Structural members are labeled as 1x2 Typ, 2x4 Typ, and 2x2 Typ.
- ROOF:** Shows the plan view of the roof. It details the layout of roof trusses (2x4 Typ), rafters (2x2 Typ), and structural members (2x2 Typ). The roof is labeled as "Existing Lateral Under House Roof". Dimensions include 54'-0" for the total length, 6'-0" for the width, and 9'-6" for the depth. A note indicates "Overlaid w/ 7' Super-Gutter".
- WEST SIDE:** Shows the elevation of the building from the west. It features an existing 7' block wall and a new 7' block wall. The roofline is indicated by a dashed line. Dimensions include 13'-0" for the total height, 10'-0" for the existing wall height, 3'-0" for the new wall height, and 9'-6" for the width. Structural members are labeled as 1x2 Typ, 2x4 Typ, and 2x2 Typ. A note indicates "7' Super Gutter".



## SITE PHOTOS



**Facing southwest towards front/side of subject property**



**Facing east towards side of subject property**



## SITE PHOTOS



**Facing northeast inside area proposed to be enclosed**



**Facing northwest inside area proposed to be enclosed**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **June 2, 2022**

Commission District: **#6**

Case #: **VA-22-04-023**

Case Planner: **Laekin O'Hara (407) 836-5943**

**Laekin.O'Hara@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): KEYVAN FALAHAT FOR CHICK-FIL-A

OWNER(s): AGRE ORLANDO SQUARE OWNER LLC

REQUEST: Variance in the P-D zoning district to allow a drive-through canopy with a north front setback of 20 ft. in lieu of 40 ft.

PROPERTY LOCATION: 1700 W. Sand Lake Rd., Orlando FL 32809, south side of W. Sand Lake Rd., west of S. Orange Blossom Trl., east of S. John Young Pkwy.

PARCEL ID: 34-23-29-7268-00-500

LOT SIZE: 23.79 acres (+/-)

NOTICE AREA: 700 ft.

NUMBER OF NOTICES: 388

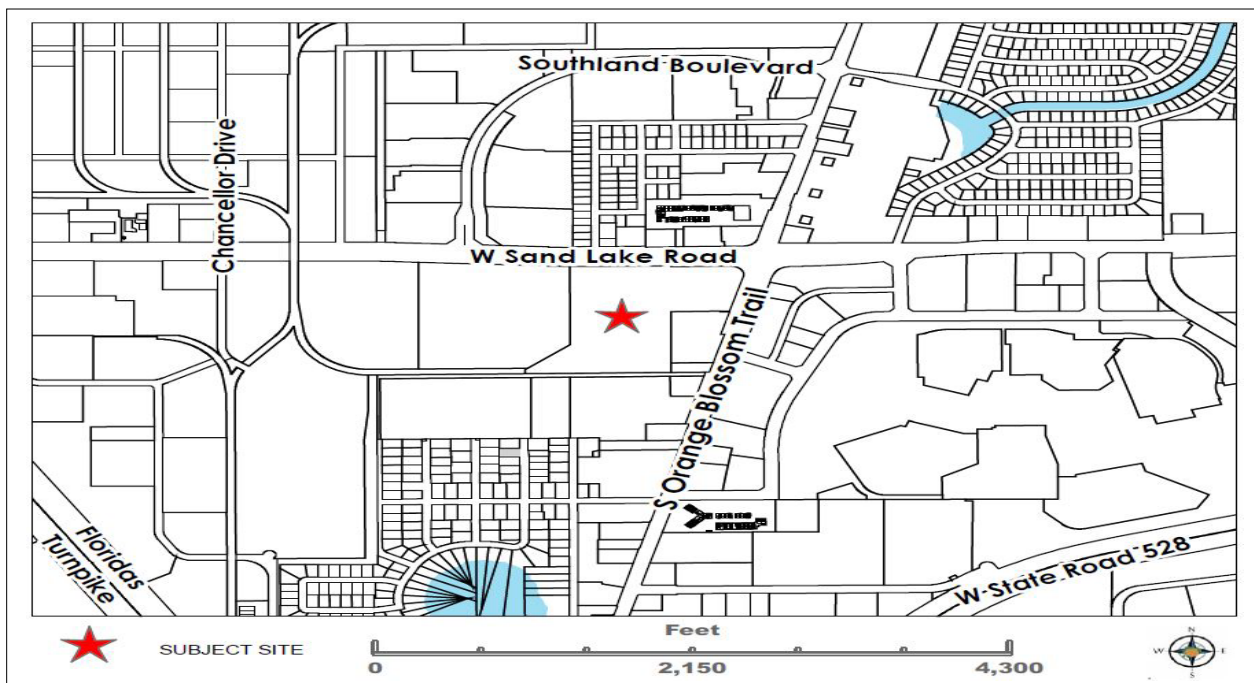
**DECISION:** This case was **CONTINUED** to the July 7, 2022 BZA Meeting.

**SYNOPSIS:** The Chair of the BZA stated that due to a member's conflict of interest, the hearing would be continued to the July 7<sup>th</sup> BZA date due to a lack of quorum.

## STAFF RECOMMENDATIONS

Approval, subject to the conditions in this report.

## LOCATION MAP



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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	P-D (Orlando Square Planned Development)	R-2, C-1, A-2	I-2 / I-3, C-2	C-1, C-2, P-D	I-2 / I-3
Future Land Use	IND	LMDR / C	C / IND	C	IND
Current Use	Commercial Shopping Center	Commercial / Vacant / Residential	Commercial	Commercial	Commercial

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

The subject property is located in the Orlando Square Planned Development, which allows uses permitted under C-1 and I-1A Zoning Districts, which includes drive-thru restaurants. The future land use is IND (Industrial), which is consistent with the P-D zoning district.

The subject property is 23.79 acres in size, and is comprised of portions of Lots 6 and 7 of the Prosper Colony Plat, recorded in 1910. The property is a lot of record. The overall site is developed with a commercial shopping center, which includes an outparcel on which the subject 4,989 sq. ft. Chick-fil-A drive-thru restaurant, built in 2016, is located. The Chick-fil-A is located on northwest portion of the property, as shown on the Overall Site Plan. As advertised, the address of the overall center is 1700 W. Sand Lake Rd., however the address of the Chick-Fil-A is 1800 W. Sand Lake Rd. The property was purchased by the current owner in 2019.

The applicant is proposing to construct two new drive-thru canopies, one to the northeast of the existing building and one to the west. In the cover letter, the applicant identified the western canopy as encroaching on the building setback, however as this is not a property line and is just a lease line, there is no setback and the proposed canopy to the west meets all required code standards. The cover letter also identifies the northeastern canopy as encroaching 8 inches on the 40 ft. setback, however they are actually showing a 20 ft. encroachment, consistent with the requested variance. The proposed canopy is 54 ft. by 20.66 ft., 1,116 sq. ft., and will be located over the drive-thru at the eastern side of the existing restaurant. The proposed canopy extends over the existing drive-thru lanes, behind the existing menu board directional signage at a distance of 20 ft. from the north W. Sand Lake Rd. property line, in lieu of 40 ft. required by the PD, necessitating a Variance. The canopy is proposed to provide shade relief for Chick-fil-A employees, as the current ordering model in Chick-fil-A drive-thru's has employees taking orders in the lanes. This canopy design is standard for all new Chick-fil-A stores, and new sites are designed to accommodate the canopy within the setback requirements.

As of the date of this report, no comments have been received in favor or in opposition to this request.

**District Development Standards**

	Code Requirement	Proposed
Max Height:	50 ft.	24 ft. (Existing building) 10.75 ft. (Canopy)
Min. Lot Width:	Entire parcel, per PD	394 ft.
Min. Lot Size:	No Minimum, per PD	23.79 acres

**Building Setbacks (that apply to structure in question)**

	Code Requirement	Proposed
W. Sand Lake Road (North):	40 ft.	40 ft. (Existing Building) (North) 20 ft. (Canopy - Variance) (North)
S. Orange Blossom Trail (East):	40 ft.	(+/-) 881.3 ft. (Existing Building) (East) (+/-) 808 ft. (Canopy) (East)
West:	25 ft.	(+/-) 274 ft. (Existing Building) (+/-) 360 ft. (Canopy)
South:	25 ft.	(+/-) 958 ft. (Existing Building) (+/-) 1,088 ft. (Canopy)

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**STAFF FINDINGS**


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**VARIANCE CRITERIA****Special Conditions and Circumstances**

The placement of the existing building and drive-thru in relation to the W. Sand Lake Rd. property line would not allow for a canopy structure to be built which conforms to setback requirements.

**Not Self-Created**

The need for the variance is not self-created, as at the time of construction of the existing Chick-fil-A it was not standard practice to have canopies over the drive-thru lanes and was therefore not accounted for at that time.

**No Special Privilege Conferred**

Due to the orientation and location of the improvements on the lot, granting the requested variance will not confer any special privilege conferred to others under the same circumstances.

**Deprivation of Rights**

Denying the variance for the canopy would deprive the applicant of the right to provide a canopy over the drive-thru lane, as no portion of the existing drive-thru is outside of the setback.

**Minimum Possible Variance**

The request is the minimum possible as the canopy is proposed only over the existing drive-thru lane adjacent to W. Sand Lake Rd.

## **Purpose and Intent**

Approval of the requested variance would be in harmony with the purpose and intent of the Zoning Regulations as the code is primarily focused on minimizing the impact that structures have on surrounding properties and within the PD. The canopy will be partially screened by the existing landscaping, and is consistent with the building design.

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## **CONDITIONS OF APPROVAL**

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1. Development shall be in accordance with the site plan and elevations received April 11, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. A permit shall be obtained within 3 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.

C: Keyvan Falahati  
220 Technology Drive  
Irvine, CA 92618



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## COVER LETTER

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March 4, 2022

Office of Planning and Zoning  
201 South Rosalind Ave, 1<sup>st</sup> Floor  
Orlando, Florida 32801  
(407) 836-3111

Re: Variance Narrative

Dear Planning and Zoning Department,

Chick-Fil-A is respectfully submitting the following documents as they are seeking a setback variance for their existing site located at 1800 West Sand Lake Road.

Chick-Fil-A has seen success with the order point menu boards located in the queuing aisle, and they would like to install two canopies in the existing drive-thru lane to help enhance their operations. The Face-to-Face canopy is 54'-0" x 20'-8" (1,116 sf) steel structure and is 10'-9" high. Its proposed location will be over the existing North drive-thru lane adjacent to the existing menu boards and order points. The canopy will encroach 8" beyond the existing 40'-0" building setback from the North property line. The Meal Delivery Canopy is 40'-0" x 10'-8" (425 sf) steel structure and is 10'-9" high. Its proposed location will be over the existing west drive-thru lane adjacent to the building and drive-thru window. The canopy will encroach 2'-11" beyond the existing 25'-0" building setback from the West property line.

Chick-Fil-A has recognized that at times their sites during peak hours of operation that the existing drive-thru practice cannot process the orders promptly. At times this has led to on-site traffic congestion as well as vehicles blocking entrances to other businesses, and/or cars backing up onto the public streets potentially creating a public safety issue. To remedy this Chick-Fil-A employees are outfitted with Smart Tablets and take orders for the customers during the peak hours of operation. This facilitates a faster than average drive-thru period reducing traffic backups because of quicker meal deliveries. The canopies also allow the employees to work longer shifts because of a more comfortable working environment. Many municipalities across the country have allowed Chick-Fil-A to install these types of canopy structures. Those communities have benefited from these canopies by reducing traffic back-ups while creating a better working environment for the employees and customer experience.

The canopies will be independent open-sided free-standing structures, constructed of steel framing, cantilevered beams with caisson footings. The supporting columns are exposed with powder coat paint that matches the existing exterior restaurant building. The structures are architecturally harmonious with the rest of the Chick-Fil-A and adjacent properties. The new canopies will be outfitted with recessed L.E.D. lighting installed within a premanufactured metal deck with a powder-coat paint finish. Fans and heaters are installed to provide relief to the employees due to various weather conditions as mentioned previously.

The installation of the canopies will not adversely affect the site or alter the existing drainage water flow patterns. The construction of the canopies allows rainwater to drain from the canopies via internal rain downspouts onto the existing paving. Fire danger is non-existent as the canopies are constructed of steel. Existing landscaping will not be affected as no trees or shrubs will need to be removed for the canopy installation, pervious and non-pervious areas will not be altered either.

Chick-Fil-A is excited about this proactive opportunity in providing a healthier work environment for their employees as well as helping provide public safety before it becomes a matter of contention. We believe the canopies are a much-needed accessory to this site and we are looking forward to working Planning and Zoning Division and staff to help achieve Chick-Fil-A's goals for this amenity.

1. **Special Conditions and Circumstances** - Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. Zoning violations or nonconformities on neighboring properties shall not constitute grounds for approval of a proposed zoning variance.

Adding canopies for the safety of employees which in turn increase the processing time for orders easing vehicle congestion.

2. **Not Self-Created** - The special conditions and circumstances do not result from the actions of the applicant. A self-created or self-imposed hardship shall not justify a zoning variance; i.e., when the applicant himself by his own conduct creates the hardship which he alleges to exist, he is not entitled to relief.

The popularity of Chick-Fil-A has created a vehicle congestion. Adding canopies for the safety of employees which in turn increase the processing time for orders easing vehicle congestion.

3. **No Special Privilege Conferred** - Approval of the zoning variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other lands, building, or structures in the same zoning district.

Current Chick-Fil-A stores have the canopies designed into the project. If this CFA was new the canopies would have been part of the project and within the setbacks.

4. **Deprivation of Rights** - Literal interpretation of the provisions contained in this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter and would work unnecessary and undue hardship on the applicant. Financial loss or business competition or purchase of property with intent to develop in violation of the restrictions of this Chapter shall not constitute grounds for approval or objection.

Chick-Fil-A will be deprived of the right to provide a safe environment for its team members and customers. Traffic backup and congestion introduces a greater risk of safety to the public along with the safety of their team members. Because of this condition, Chick-Fil-A will be unable to serve their community in a safe manner that is responsive to changes brought about by the past year and would be unable to practice proper stewardship of their property.

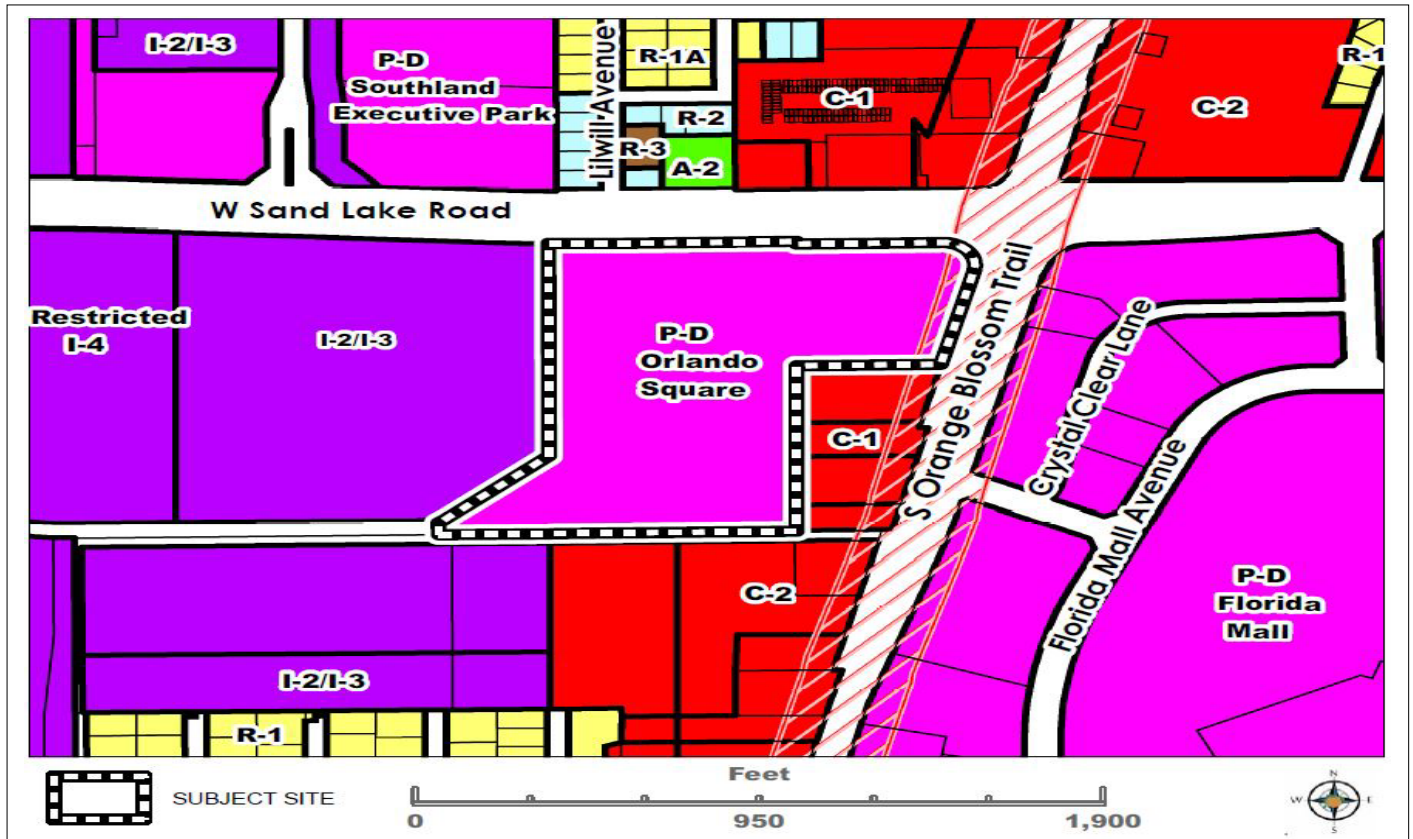
5. **Minimum Possible Variance** - The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building, or structure.

Canopies are design to be placed on the existing drive-thru lanes which happen to be within the setbacks. A minimal or alternate design will not change where the canopies are required to be placed.

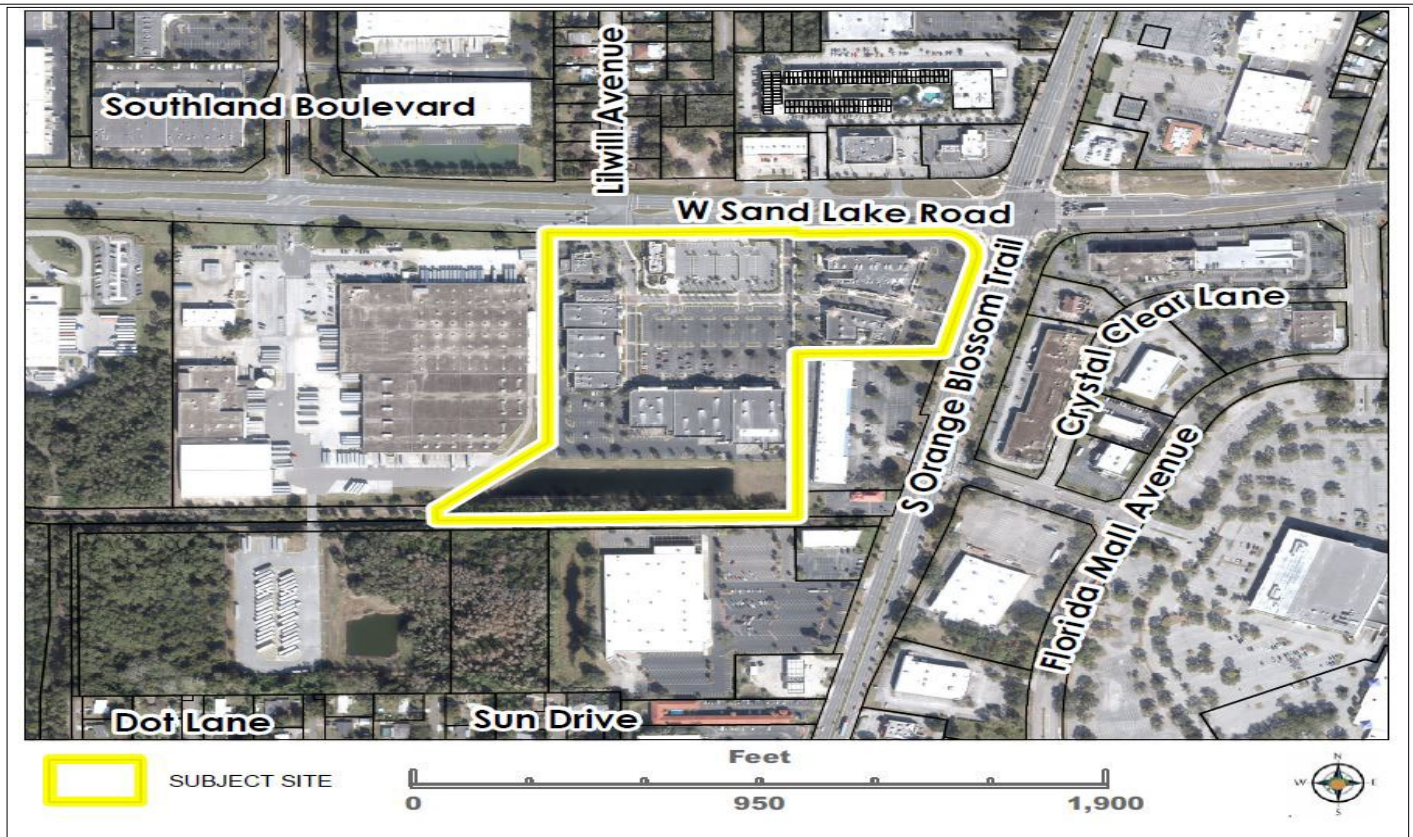
6. **Purpose and Intent** - Approval of the zoning variance will be in harmony with the purpose and intent of the Zoning Regulations and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The canopy design and finishes match the exiting Chick-Fil-A building and will look as though it was part of the original project when built.

## ZONING MAP

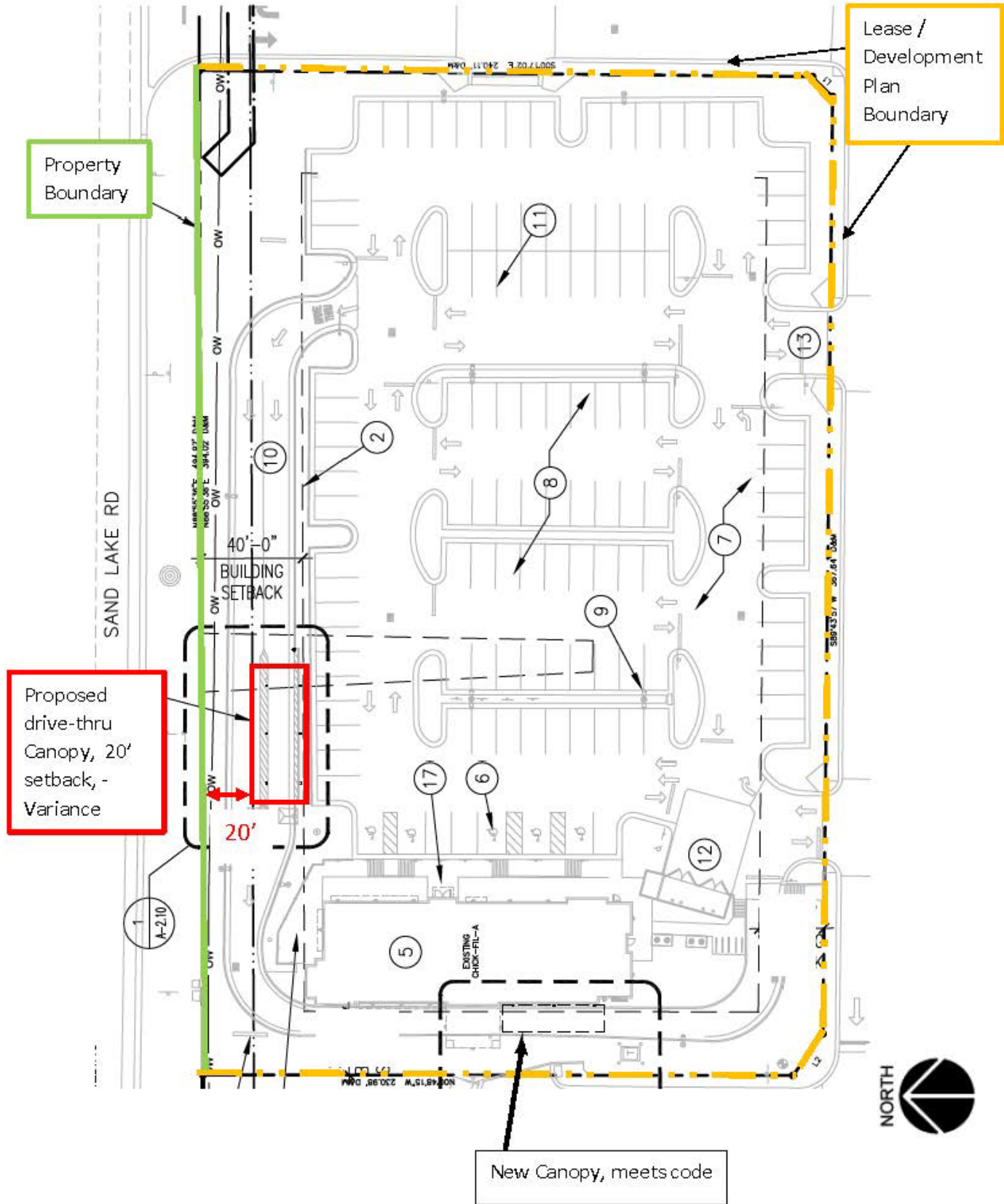


## AERIAL MAP



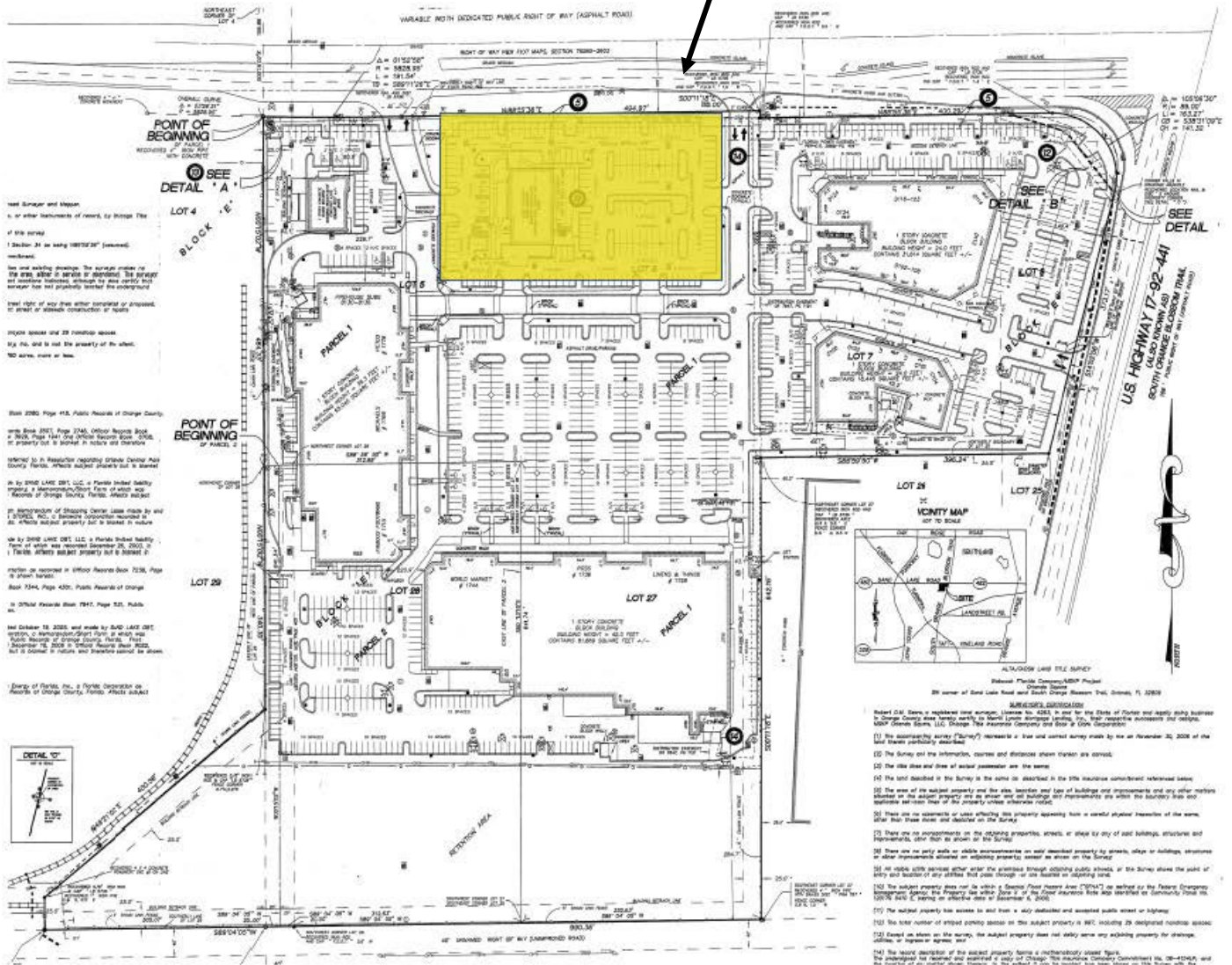


# SITE PLAN

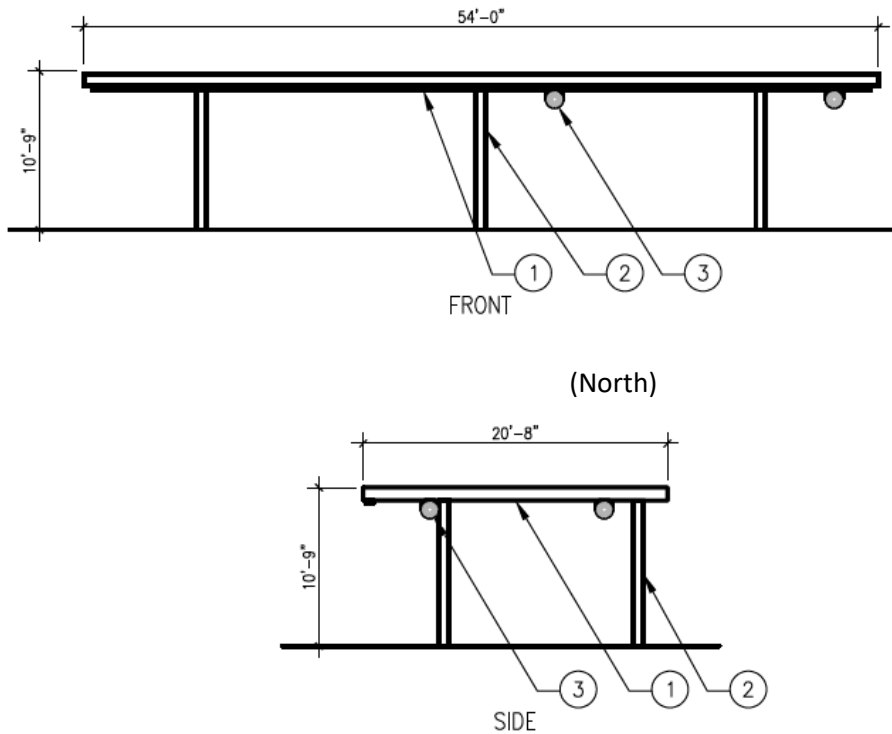


# OVERALL SITE PLAN

Location of Chick-fil-A



## ELEVATIONS



### FACE TO FACE CANOPY EXTERIOR ELEVATIONS

SCALE: 1/8" = 1'-0"

1

(East / West)

### RENDERING FACING SOUTH FROM W. SAND LAKE RD.

- WHITE SOFFIT PANELS
- FAN (COLOR: BLACK)
- RECESSED LIGHT FIXTURE
- PREFINISHED BRONZE METAL FASCIA, METAL TO MATCH EXISTING BUILDING METAL
- PREFINISHED BRONZE METAL WRAPPED COLUMNS, METAL TO MATCH EXISTING BUILDING METAL



### FACE TO FACE CANOPY RENDERING

FOR CANOPY REFERENCE ONLY, NOT SITE SPECIFIC

1



## SITE PHOTOS



**Facing southeast from W. Sand Lake Rd. towards proposed canopy location**



**Facing east towards proposed canopy, W. Sand Lake Rd. is to the left**



## SITE PHOTOS



Proposed  
Canopy location

**Facing west along W. Sand Lake Rd. towards proposed canopy**



**Facing north from parking lot towards proposed canopy and W. Sand Lake Rd.**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 02, 2022**

Commission District: **#5**

Case #: **VA-22-06-027**

Case Planner: **Jenale Garnett (407) 836-5955**

**Jenale.Garnett@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): ROBERT STIRNA

OWNER(s): JASON ALPHONSO, LAURA ALPHONSO

REQUEST: Variance in the R-2 zoning district to allow the conversion of a garage to an accessory dwelling unit (ADU) with an existing setback of 3.5 ft. in lieu of 6 ft.

PROPERTY LOCATION: 1655 Harmon Ave., Winter Park, FL 32789, north side of Harmon Ave., east of Clay St., northwest of N. Orange Ave., east of I-4.

PARCEL ID: 12-22-29-4996-14-180

LOT SIZE: +/- 0.16 acres (7,166 sq. ft.)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 147

**DECISION:** Recommended **APPROVAL** of the Variance request in that the Board finds it meets the requirements of Orange County Code, Section 30-43(3) ; further, said approval is subject to the following conditions (unanimous; 4 in favor, 0 opposed and 3 absent):

1. Development shall be in accordance with the site plan received May 19, 2022 and elevations received March 10, 2022, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. A permit for the ADU conversion shall be obtained within 3 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.

**SYNOPSIS:** Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for approval. Staff noted that one (1) comment was received in favor of the application, and no comments were received in opposition.

The applicant was not present to speak.

There was no one in attendance to speak in favor or in opposition to the request.

The BZA unanimously recommended approval of the variance by a 4-0 vote, with three absent, subject to the four (4) conditions in the staff report.

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### STAFF RECOMMENDATIONS

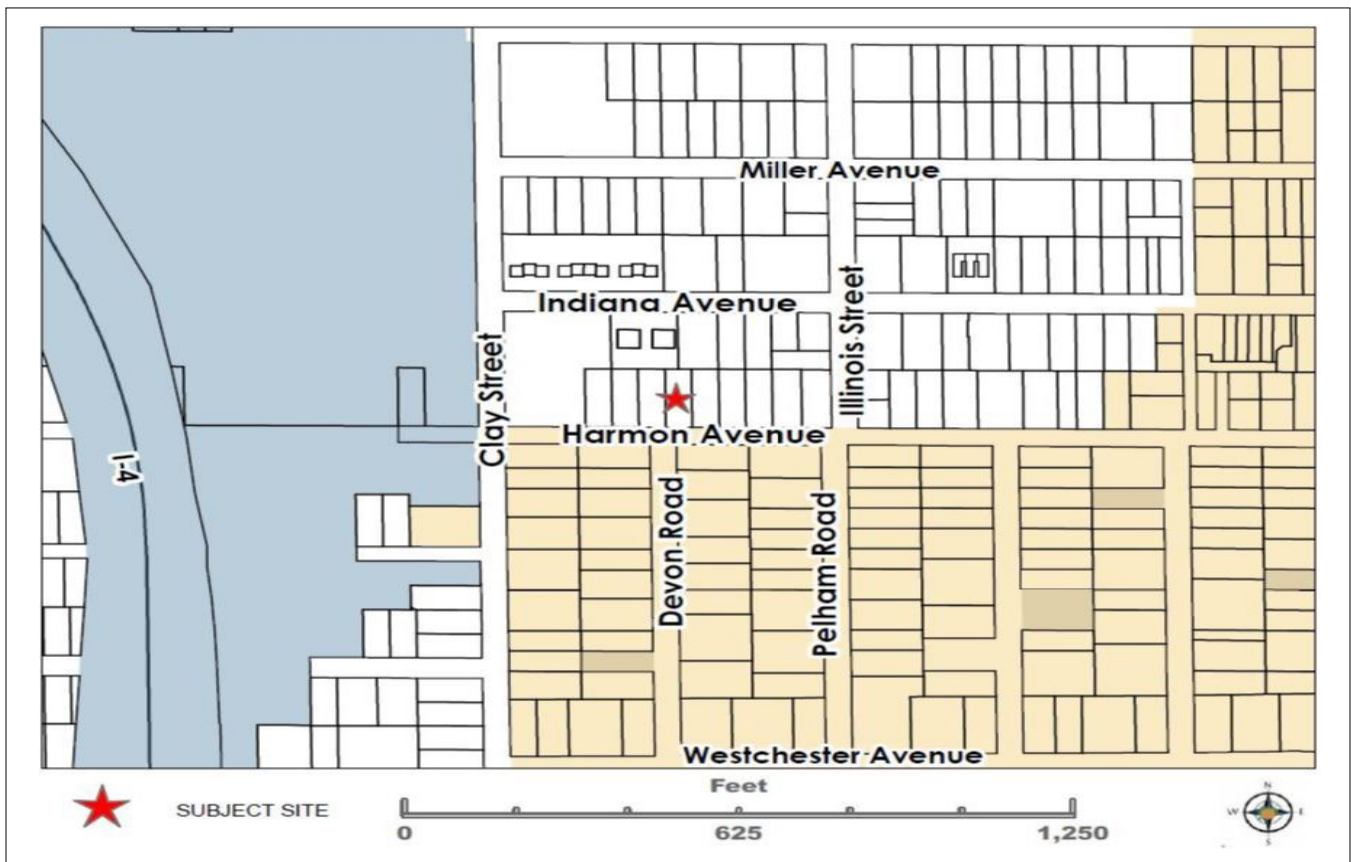
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Approval, subject to the conditions in this report.

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### LOCATION MAP

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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	R-2	R-2	City of Winter Park	R-2	R-2
Future Land Use	LMDR	LMDR	City of Winter Park	LMDR	LMDR
Current Use	Single-family residential	Single-family residential	City of Winter Park	Single-family residential	Single-family residential

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

The subject property is located in the R-2, Residential district, which allows single-family homes, duplexes, and multi-family development as well as accessory dwelling units. The future land use is Low-Medium Density Residential (LMDR), which is consistent with the R-2 zoning district.

The subject property is a 0.16 acre lot, platted in 1922 as Lot 18 in Block N of Lawndale, and is a conforming lot of record. The subject property is developed with a 2,428 gross sq. ft. one story single-family home and a 432 sq. ft. detached two-car garage constructed in 1930. The property was purchased by the current owners in 2018.

The existing detached garage is 22.3 ft. x 18.2 ft., and 14.16 ft. in height with an existing 3.5 ft. west side setback that appears to have been unchanged since construction of the structure in 1930.

The current proposal is to convert the existing detached garage to an Accessory Dwelling Unit (ADU) using the footprint of the existing garage, with a west side setback of 3.5 ft. in lieu of 6 ft., necessitating the requested variance. Per Sec. 38-1426 (a) (b) (2) of Orange County Code, a detached accessory structure with a height of fifteen (15) or less shall be set back a minimum of five (5) feet from any side or rear lot. Whereas Sec. 38-1426 (b) (3) (f) (2), requires detached ADU's to meet the minimum side and side street setbacks for the principal structure in the zoning district, which is 6 ft. for R-2. The conversion of the garage to an ADU will meet all other zoning requirements.

As of the date of this report, one comment has been received in favor of this request and no comments have been received in opposition to this request.

**District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	14.16 ft.
Min. Lot Width:	45 ft.	50 ft.
Min. Lot Size:	4,500 sq. ft.	7,166 sq. ft.

**Building Setbacks (that apply to structure in question)**

	Code Requirement (ADU)	Proposed
Front:	Not Allowed	105 ft. (South)
Rear:	5 ft.	16.39 ft. (North)
Side:	6 ft.	28.3 ft. (East) 3.5 ft. (West– Variance)

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**STAFF FINDINGS**

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**VARIANCE CRITERIA****Special Conditions and Circumstances**

The special condition and circumstance particular to the subject property is the age of the existing detached garage and residence, built in 1930 in the same location, and the existing non-conforming setback. Any proposed conversion of the garage to living area would require a variance or the demolition of a portion of the structure to meet the current setback requirements.

**Not Self-Created**

The request is not self-created since the owner is not responsible for the existing location of the garage for over 92 years.

**No Special Privilege Conferred**

Due to the orientation of the detached garage on the lot, granting the requested variance will not confer any special privilege conferred to others under the same circumstances.

**Deprivation of Rights**

Denial of this variance would deprive the owner of the right to utilize and enjoy the existing structure for living area.

**Minimum Possible Variance**

Given the existing nonconforming setback, the requested variance is the minimum possible.

**Purpose and Intent**

Approval of the request will be in harmony with the purpose and intent of the of the Code, and the proposed request will not be detrimental to the neighborhood since the conversion as proposed would allow for the utilization of the existing detached garage.



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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan received May 19, 2022 and elevations received March 10, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
  2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
  3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
  4. A permit for the ADU conversion shall be obtained within 3 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.
- C: Robert Stirna  
1440 Buckingham Road  
Winter Park, FL 32789
- C: Jason Alphonso and Laura Alphonso  
1655 Harmon Avenue  
Winter Park, FL 32789

Jason and Laura Alphonso  
1655 Harmon Avenue, Winter Park, Florida 32789

February 17, 2022

Orange County Zoning Division  
201 South Rosaline Avenue, 1<sup>st</sup> Floor  
Orlando, Florida 32801

Dear Orange County Zoning Division,

We are writing to provide detail of our request for a variance to convert our detached garage into an accessory dwelling unit. Our home was built in 1930 and we suspect the garage was built at the same time or shortly thereafter. Originally the property on which our home was built included property to the left and right which were sold during subsequent years to other individuals who built homes on the property. A cement wall exists between our property and the property to the west side of the property line which is three feet from our garage. We presume this wall was built to divide the properties when the current home was built over thirty-five years ago. The garage was built 15 feet from the rear property line and 29 feet from the property line to the east. For these reasons, we reason this variance request to meet the criteria of special conditions and circumstances.

We know the homeowners to the west of our property well and they provided a letter of support for this variance request.

Regarding our request for a variance, we are seeking to keep the same footprint of approximately 432 square feet, appx. 18.5 x 22.5 feet, and the same height, 14.2 feet. Due to our driveway being narrow, because of the wall, and our driveway draining into the garage, we are not able to use our garage as intended to house our cars. We are interested in converting the 432 square feet into additional living space with a living area, sleeping area, full bathroom, and full kitchen. The accessory dwelling unit would be used by family visiting for a week or longer and as additional living space when no one is visiting.

To avert the drainage issue, our construction plans would include tearing out part of the concrete driveway to run drains, replacing the concrete with grass in one area, and then pebbles in the area right in front of the current garage for a seating area. We will need to raise the cement floor of the garage to ensure there is no drainage issue. The existing walls of wood and exterior of plaster would be used but brought up to code and then covered with insulation and drywall. We want to keep the same aesthetic of the home with a garage renovation because we love the look and feel of our old home.

This letter comes from both of us as the home owners however Jason is the only one that signed the application and documents that were notarized.

Thank you for taking the time to review of our documentation for this variance request.

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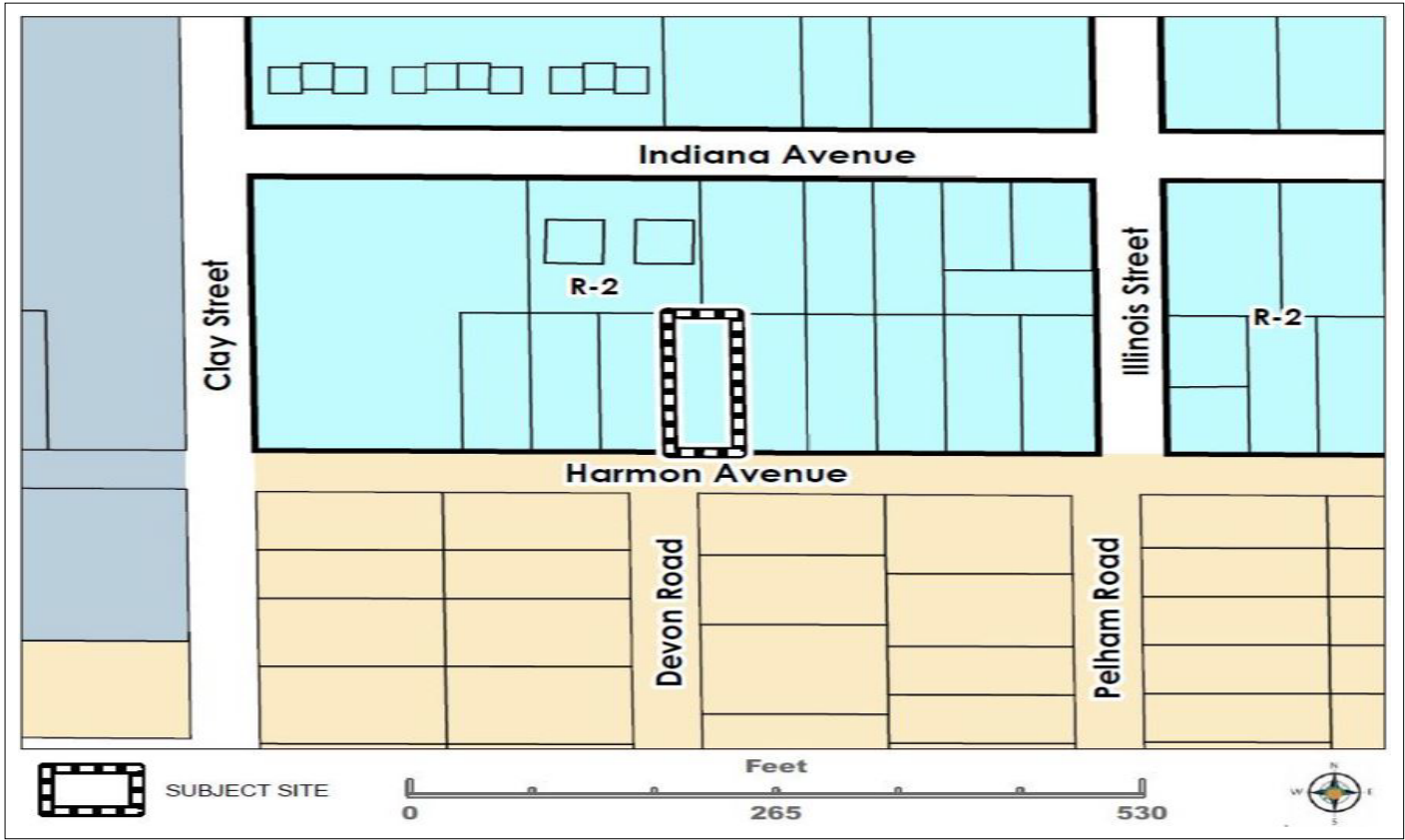
## 6 CRITERIA RESPONSE

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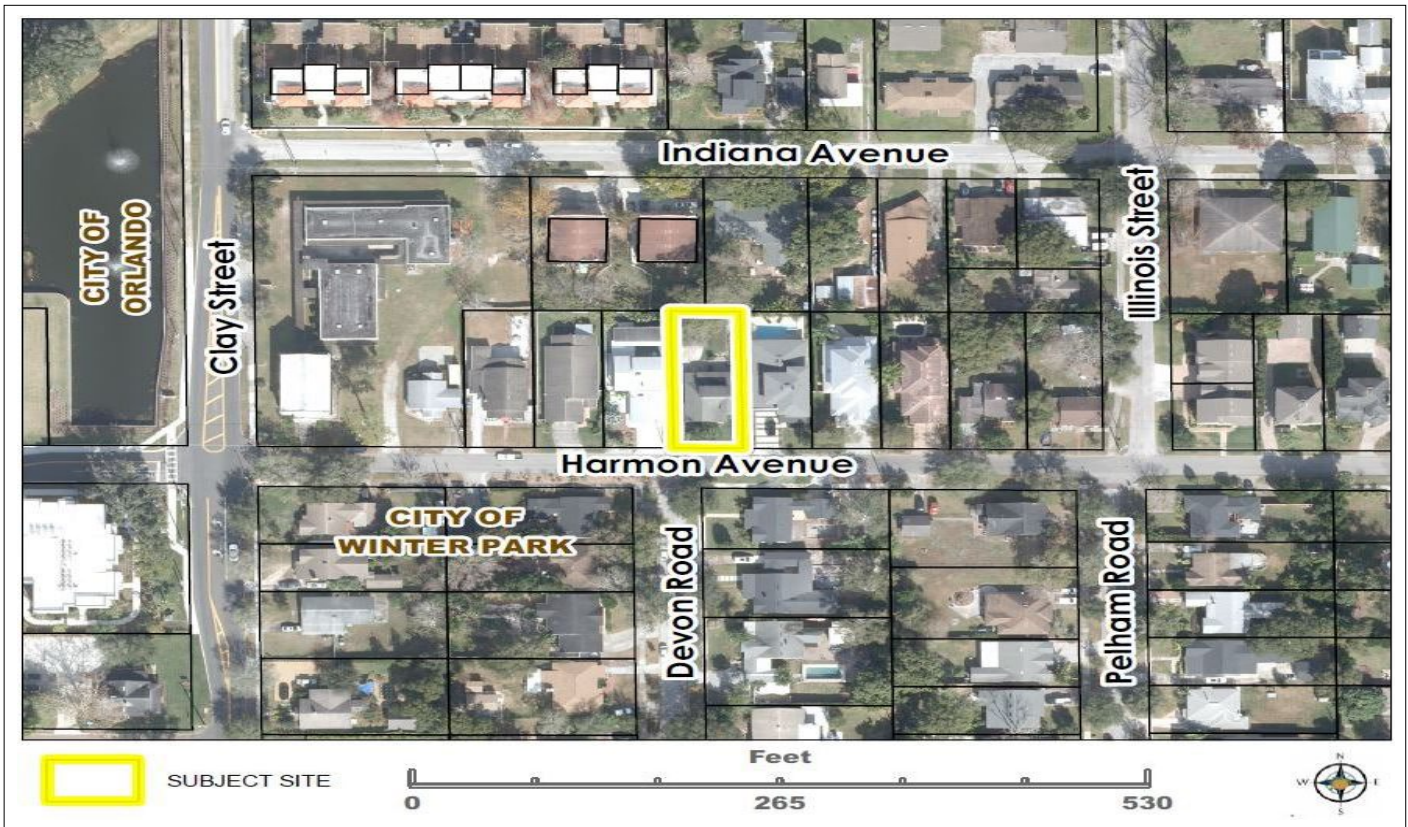
1. **Special Conditions and Circumstances** - Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. Zoning violations or nonconformities on neighboring properties shall not constitute grounds for approval of a proposed zoning variance.  
Existing 432 sqft. garage structure located 15' from rear property line (PL), 3' from west side PL, and 29' for east side PL. No addition to sqft requested.  
\_\_\_\_\_  
\_\_\_\_\_
2. **Not Self-Created** - The special conditions and circumstances do not result from the actions of the applicant. A self-created or self-imposed hardship shall not justify a zoning variance; i.e., when the applicant himself by his own conduct creates the hardship which he alleges to exist, he is not entitled to relief.  
The property line being too close to the current garage is not a self imposed issue.  
The property line was drawn this way over thirty-five years ago when the property to the west of the garage was built. This is not self-created.  
\_\_\_\_\_  
\_\_\_\_\_
3. **No Special Privilege Conferred** - Approval of the zoning variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other lands, building, or structures in the same zoning district.  
The request is to repurpose the current garage maintaining the same footprint,  
therefore no special privilege would be bestowed by approving this variance request.  
\_\_\_\_\_  
\_\_\_\_\_
4. **Deprivation of Rights** - Literal interpretation of the provisions contained in this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter and would work unnecessary and undue hardship on the applicant. Financial loss or business competition or purchase of property with intent to develop in violation of the restrictions of this Chapter shall not constitute grounds for approval or objection.  
The garage cannot be fully utilized due to drainage issues into the garage and the extremely narrow driveway for ingress or egress. All the yards surrounding the backyard are draining into the backyard of the property which is depriving the homeowner's right to use the garage in its current state or purpose  
\_\_\_\_\_
5. **Minimum Possible Variance** - The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building, or structure.  
This request is for the minimum possible variance to re-purpose the garage since the only issue is the property line to the west of the garage.  
\_\_\_\_\_
6. **Purpose and Intent** - Approval of the zoning variance will be in harmony with the purpose and intent of the Zoning Regulations and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.  
Approval of the variance will not be injurious to the neighborhood or detrimental to the public welfare since it is re-purposing an existing space and maintaining the same footprint and aesthetic of the neighborhood.  
\_\_\_\_\_  
\_\_\_\_\_



ZONING MAP



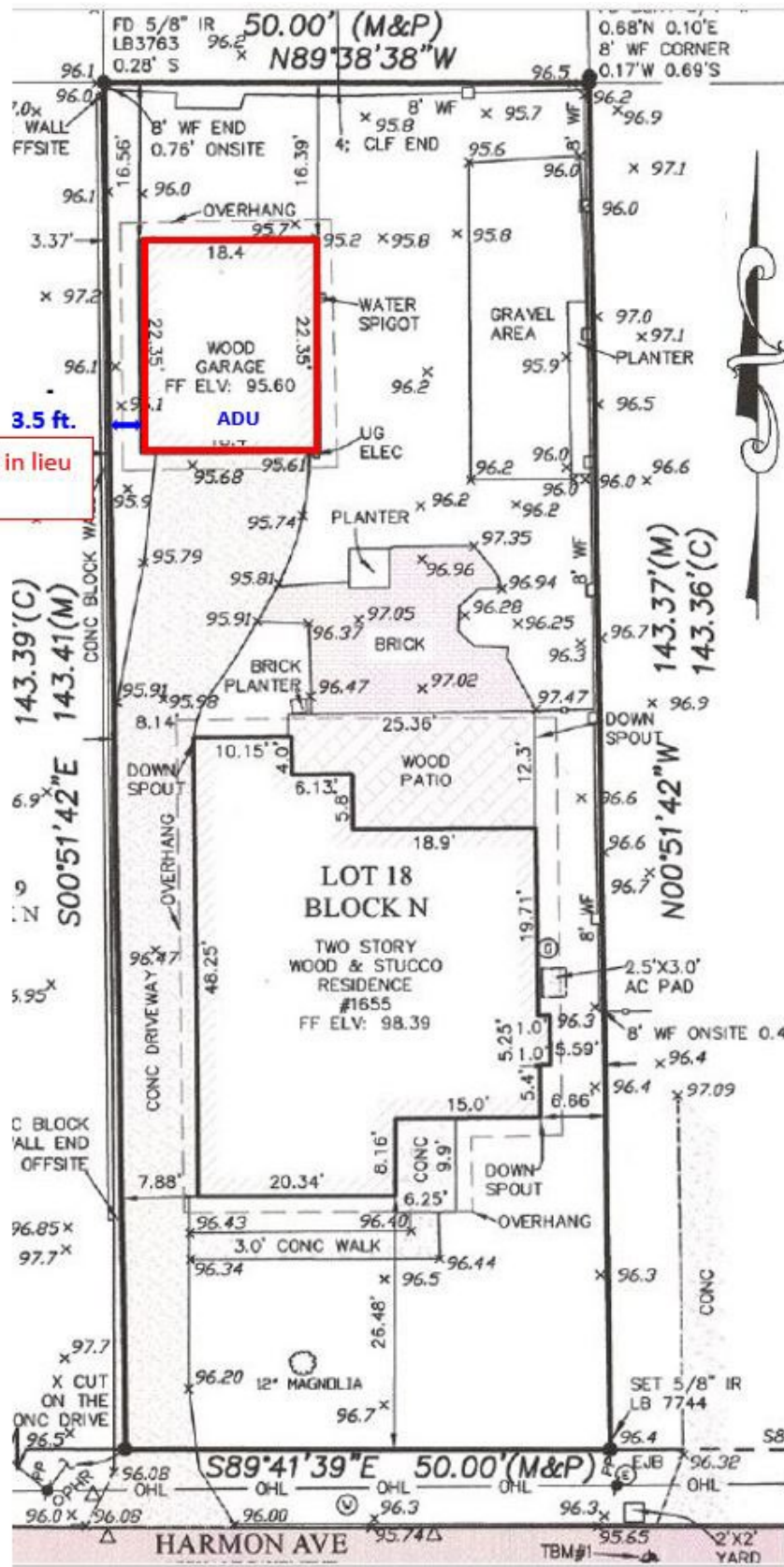
AERIAL MAP



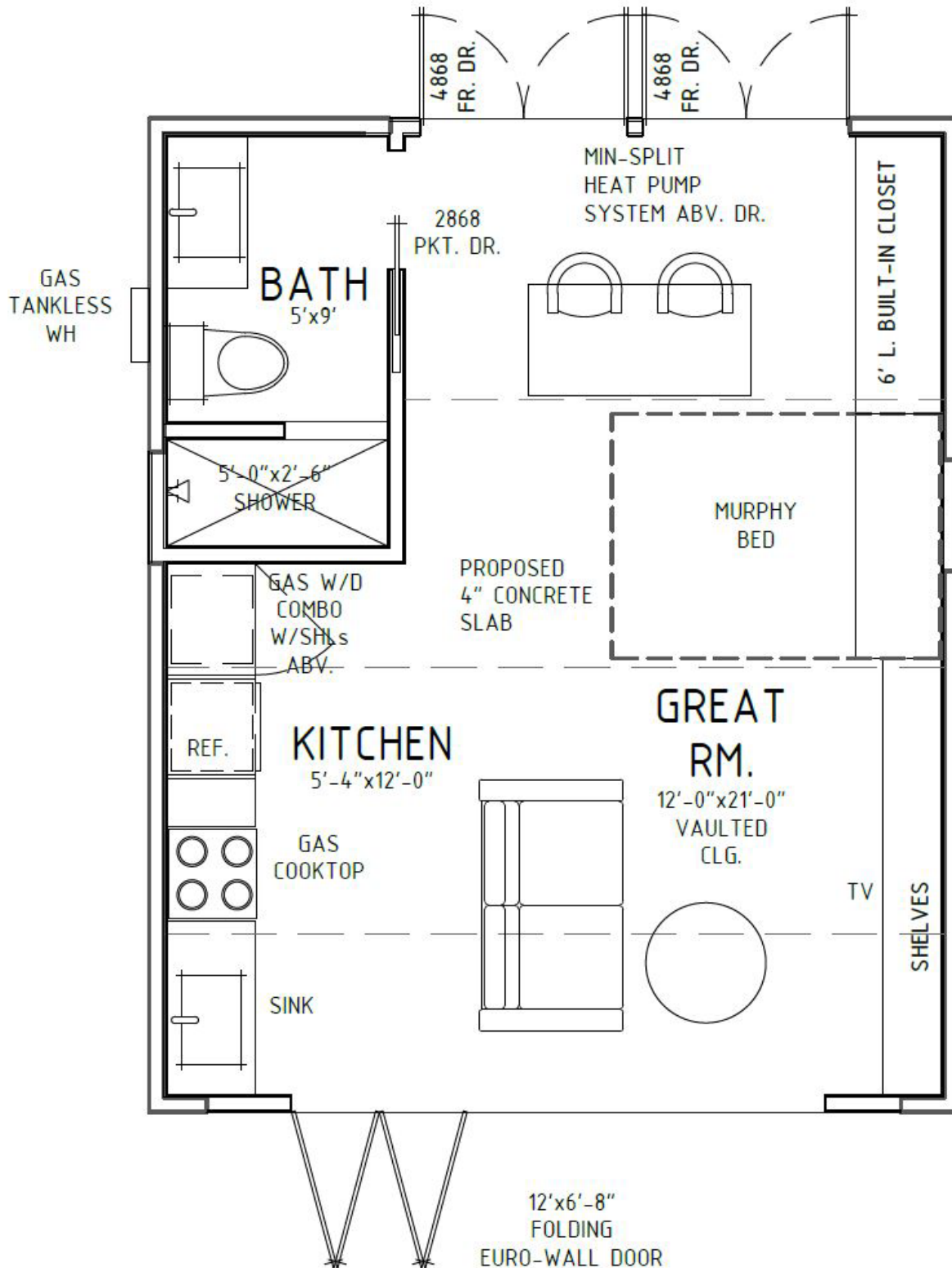
SITE PLAN



West setback of 3.5 ft. in lieu of 6 ft.



## FLOOR PLAN

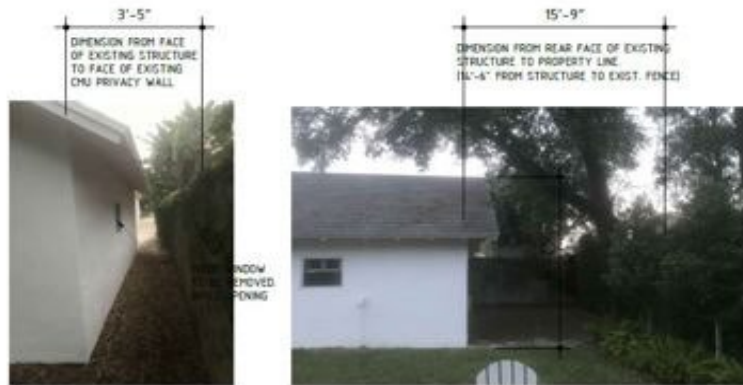


## ELEVATIONS



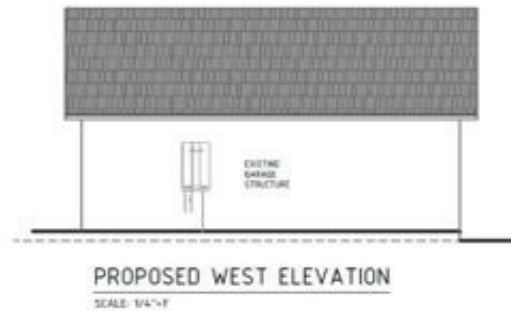
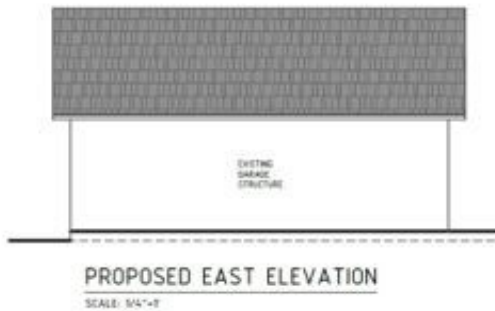
SOUTHEAST VIEW

NORTH VIEW



WEST VIEW

EAST VIEW





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**SITE PHOTOS**

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**Facing north towards front of subject property**



**Rear yard, facing south towards residence and proposed ADU**

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**SITE PHOTOS**

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**Facing north towards garage**



**Rear yard, facing northwest towards proposed ADU**



**SITE PHOTOS**



**Rear yard, facing south towards side of proposed ADU**



**Rear yard, facing west towards rear of proposed ADU**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 02, 2022**

Commission District: **#1**

Case #: **SE-22-06-038**

Case Planner: **Jenale Garnett (407) 836-5955**

**Jenale.Garnett@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): KEVIN HAND

OWNER(s): KEVIN HAND, SUSAN HAND, DIANE KOERNER

REQUEST: Special Exception in the A-1 zoning district to allow a cumulative of 3,469 sq. ft. detached accessory structure area in lieu of 3,000 sq. ft.

PROPERTY LOCATION: 16120 Sandhill Rd., Winter Garden, FL 34787, south side of Sandhill Rd., north side of Dangler Rd., east of Avalon Rd., west of S.R. 429.

PARCEL ID: 06-23-27-4292-04-471

LOT SIZE: +/- 4.87 acres

NOTICE AREA: 1,100 ft.

NUMBER OF NOTICES: 36

**DECISION:** Recommended **APPROVAL** of the Special Exception request in that the Board finds it meets the requirements governing Special Exceptions as spelled out in Orange County Code, Section 38-78, and that the granting of the Special Exception does not adversely affect general public interest; further, said approval is subject to the following conditions (unanimous; 4 in favor, 0 opposed and 3 absent):

1. Development shall be in accordance with the site plan and elevations received April 11, 2022, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. A permit for the accessory structure shall be obtained within 3 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.



**SYNOPSIS:** Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for approval. Staff noted that two (2) comments were received in favor of the application, and nine (9) comments were received in opposition.

The owner agreed with the staff presentation, described the intended use for the proposed detached accessory structure and discussed the concerns of the septic tanks as stated in some of the letters of opposition.

There was no one in attendance to speak in favor of the request and one person in attendance in opposition to the request, citing concerns of providing an additional septic system for the new building.

The BZA discussed the concerns of the larger septic system and unanimously recommended approval of the variance by a 4-0 vote, with three absent, subject to the four (4) conditions in the staff report.

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### STAFF RECOMMENDATIONS

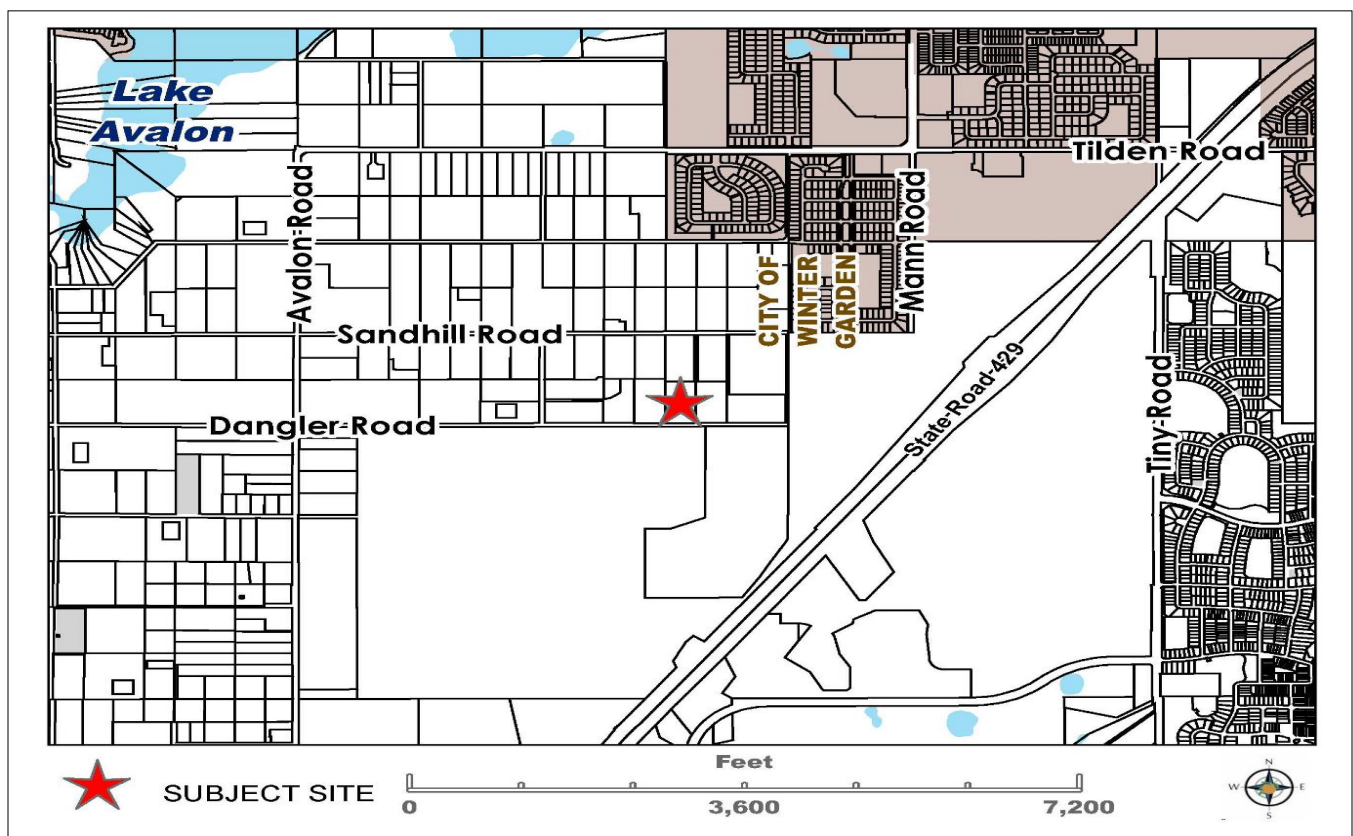
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Approval, subject to the conditions in this report.

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### LOCATION MAP

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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	A-1	A-1	A-1	A-1	A-1
Future Land Use	Lake Avalon Rural Settlement RS 1/5	Lake Avalon Rural Settlement RS 1/5	Institutional INST	Lake Avalon Rural Settlement RS 1/5	Lake Avalon Rural Settlement RS 1/5
Current Use	Single-family residential	Single-family residential, Horse Farm	Orange County Utilities Facility	Single-family residential	Horse Training Facility

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

The subject property is located in the A-1, Citrus Rural zoning district, which primarily allows agricultural uses, as well as mobile homes and single-family homes on larger lots. The Future Land Use is RS 1/5 and it is located in the Lake Avalon Rural Settlement. Rural settlements are established through the Comprehensive Plan, and are intended to identify areas with unique traits and characteristics which the residents of those area wish to preserve. The rural settlement designation typically impacts such development factors as residential density, location and intensity of commercial and other nonresidential uses, and with the exception of density, have no impact on single-family development. In the Lake Avalon Rural Settlement, the maximum density is one (1) unit per five (5) acres for new development. The property is also located in the Lake Avalon Rural Settlement Commercial Design overlay, but per County Code Sec. 38-1092(c), applicability is to commercial/office uses and is not applicable to this proposal. The A-1 district is consistent with the Future Land Use.

The area around the subject site consists of single-family homes, horse training facilities, and an Orange County utilities facility. The subject property is a +/- 4.87-acre lot, and is comprised of a portion of Lot 47 of the Lake Avalon Groves Replat, recorded in 1927. It was created by a lot split in January 1987 (Application #86-326). It is considered a conforming lot of record as the lot was created prior to the adoption of the Comprehensive Plan in 1991, which established the minimum of 1 du/5 acre requirement. The property is developed with a 6,082 gross sq. ft. single-family home constructed in 2014 (B14006434), labeled as Building #3 on the site plan and an 1,865 sq. ft. ADU constructed in 1987 (Building #2). The site plan provided includes a 77 sq. ft. shed (labeled as Building #4), however the shed has since been removed from the subject property. The current owners acquired the property in November 2013.

In March 2014, a special exception and variances (SE-14-03-007) were approved to allow the existing residence at the time to be converted to a detached Accessory Dwelling Unit (ADU), and to allow 1,865 sq. ft. of living area in lieu of 1,500 sq. ft. A request for a variance to allow 4 bedrooms in lieu of 2 bedrooms was denied.

The current proposal is to construct a 1,036 sq. ft., 17 ft. tall detached accessory structure near the west property line (Building #1), with living area containing a bath, laundry, storage areas, a media room, a billiard room, and a bar. The proposed accessory structure in addition to the existing 1,865 sq. ft. ADU (Building #2)

totals 3,469 sq. ft. of cumulative detached accessory structure area, where a maximum of 3,000 sq. ft. is permitted, requiring a special exception. A permit, B22001969, to construct the detached accessory structure is on hold pending the outcome of this request.

Per Section 38-1426 (6), the cumulative square feet of all detached accessory structures shall be limited to 10% of the net land area, or 500 square feet, whichever is greater, and in no case shall the cumulative total exceed 3,000 square feet; however, detached accessory structures located within agriculturally zoned parcels with greater than 2 developable acres may exceed 3,000 cumulative square feet, subject to obtaining a special exception. Additionally, the cumulative square feet of all detached accessory structures shall not exceed 5,000 sq. ft. in gross floor area and 35 ft. in overall height, and require a 50 ft. front, 25 ft. side, and 35 ft. rear setbacks. The proposed accessory structure and the existing accessory structure will meet the additional requirements of code.

The surrounding properties contain similarly sized accessory structures and the area is comprised of various facilities containing increasingly larger sized accessory structures.

The Orange County Comprehensive Planning Division has no objection to the request as the proposed detached accessory structure building is residential in nature.

As of the date of this report, no comments have been received in favor and ten comments have been received in opposition to this request.

#### District Development Standards

	Code Requirement	Proposed
Max Height:	35 ft.	19 ft. (Building #1)
Min. Lot Width:	100 ft.	330.91 ft. (at the building setback line)
Min. Lot Size:	21,780 sq. ft. (1/2 acre)	4.87 acres

#### Building Setbacks (that apply to structure in question)

	Code Requirement (Accessory Structures)	Proposed
Front:	50 ft.	301.3 (North)
Rear:	35 ft.	263 ft. (South)
Side:	25 ft.	25 ft. (West - Building #1) 114.9 ft. (West - Building #2) 276.6 ft. (East - Building #1) 152.9 ft. (East - Building #2)

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## STAFF FINDINGS

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### **SPECIAL EXCEPTION CRITERIA**

#### **Consistent with the Comprehensive Plan**

The provision of accessory structure square footage above 3,000 sq. ft., is permitted in the A-1 zoning district through the Special Exception process contingent upon performance standards being met. As such, with the approval of the Special Exception, the proposal is consistent with the Comprehensive Plan.

#### **Similar and compatible with the surrounding area**

The proposal will be compatible with the surrounding area, which consists of large lot residential properties with a number of detached accessory structures, and the proposed building will meet code requirements.

#### **Shall not act as a detrimental intrusion into a surrounding area**

The provision of additional accessory structure area is compatible with the surrounding area, will not act as a detrimental intrusion and will not negatively impact the surrounding area. All of the existing and proposed accessory structures will meet the increased required setbacks and will likely not be visible from the street as the accessory structures are set in rear of property and is heavily wooded, reducing visibility from the adjacent properties.

#### **Meet the performance standards of the district**

The detached accessory structures will comply with the additional square footage and setback restrictions as required by a Special Exception for cumulative accessory structure sq. ft. greater than 3,000 sq. ft.

#### **Similar in noise, vibration, dust, odor, glare, heat producing**

The provision of additional accessory structure square footage will not generate any more noise, vibration, dust, odor glare or heat than any other typical agricultural/ residential uses in the area.

#### **Landscape buffer yards shall be in accordance with Section 24-5 of the Orange County Code**

The property will be used for single-family residential purposes, and therefore landscaping buffers are not required by Section 24-5 of the County Code.



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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan and elevations received April 11, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. A permit for the accessory structure shall be obtained within 3 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.

C: Kevin Hand, Christine Hand, and Diane Koerner  
16120 Sandhill Road  
Winter Garden, FL 34787

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## COVER LETTER

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### SPECIAL EXCEPTION REQUEST NARRATIVE

April 7, 2022  
Orange County  
Board of Zoning Adjustment

Re: Special Exception Request  
Kevin Hand (Owner)  
16120 Sandhill Road  
Winter Garden, FL. 34787

Dear Orange County Board of Zoning Adjustment,

This cover letter is to provide written details in conjunction with the architectural drawings in accordance with the requirements of application for the proposed special exception. The property Owner is requesting a special exception to build a single 1,036 square foot accessory structure for the intended use of family recreation and hobby space with a height of 17' on a 4.87 acre parcel within agricultural zoning A-1, pursuant of Orange County Florida - Code of Ordinances Sec. 38-1426, which states the following:

- The cumulative square feet of all detached accessory structures shall be limited to ten (10) percent of the net land area, or five hundred (500) square feet, whichever is greater, and in no case shall the cumulative total exceed three thousand (3,000) square feet; however, detached accessory structures located within agriculturally zoned parcels with greater than two (2) developable acres may exceed three thousand (3,000) cumulative square feet, subject to obtaining a special exception and complying with all of the following standards:
- No detached accessory structure shall exceed five thousand (5,000) square feet in gross floor area and thirty-five (35) feet in overall height; and
- ii. These detached accessory structures shall be set back as follows:
  - Front - Fifty (50) feet.
  - II. Side/side street - Twenty-five (25) feet.
  - III. Rear — Thirty-five (35) feet.
  - IV. Normal high water elevation — Fifty (50) feet.

The property currently has a two-story single-family residence totaling 6082 sqft in gross area and a single-story Accessory Dwelling Unit, approved by this board in 2014, totaling 2433 sqft in gross area and 1865 sqft in living space. The parcel has a mix of field fencing and wood fencing around the perimeter. The existing landscape is dominated by a mix of medium to large oak trees. The landscaping surrounding the proposed accessory structure will be consistent with the main house and the residential nature of the property.

Section 38-78, Orange County Code stipulates specific criteria to be met for all Special Exception request.

**1. *The use shall be consistent with the Comprehensive Policy Plan.***

The property has a future land use of Rural Settlement 1/5 (RS 1/5) with a Zoning correlation of R-CE-5, A-1, A-2, PD. The property use will not change from the current Zoning of A-1 making it consistent with the Comprehensive Policy Plan and the Future Land Use and Zoning Correlation. Therefore, the proposed special exception should meet the above criteria.



**2. The use shall be similar and compatible with the surrounding area and shall be consistent with the pattern of surrounding development.**

The surrounding properties are the same or similar in zoning and future land use. The use as single family residential is compatible with the surrounding area and is consistent with the pattern of development. The neighbors to the north, east, and west, are all single-family residences with all also having multiple detached accessory structures. Therefore, the proposed special exception should meet the above criteria.

**3. The use shall not act as a detrimental intrusion into a surrounding area.**

The property use will not change from the current Zoning of A-1, and the proposed detached accessory structure is consistent to the surrounding area. The architecture and construction of the accessory structure will be similar in nature as the main residence and meets all zoning and building requirements. The location of the proposed accessory structure was selected to serve as a buffer from increased commercial activity including, but limited, to vehicle traffic, storage, noise, and light pollution, occurring along the east property line. Therefore, the proposed special exception should meet the above criteria

**4. The use shall meet the performance standards of the district in which the use is permitted**

The accessory structure meets all performance standards of the district and has been designed to meet all requirements set forth in the Florida Building Code 7th Edition 2020 Residential, and the 2017 National Electrical Code. Therefore, the proposed special exception should meet the above criteria.

**5. The use shall be similar in noise, vibration, dust, odor, glare, heat producing and other characteristics that are associated with the majority of uses currently permitted in the zoning district**

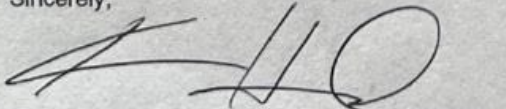
The intended use is similar in noise, vibration, dust, odor, glare, heat producing and other characteristics that are associated with the majority of uses currently permitted in the A-1 zoning designation. The architecture of the accessory structure matches the main residence and is similar in all the above criteria as the surrounding properties and the greater area. Therefore, the proposed special exception should meet the above criteria.

**6. Landscape buffer yards shall be in accordance with section 24-5 of the Orange County Code. Buffer yard types shall track the district in which the use is permitted.**

The A-1 zoning of the parcel does not require any buffer yards. The accessory structure is sited well with in all applicable setbacks. Required side set back 25'-0" — actual location of accessory structure is 25' from left/west side property line; required rear set back 35'-0" — actual location of accessory structure is 263' from rear property line. The accessory structure is buffered from the street by the existing accessory dwelling unit and over 600' of driveway due to the flag shaped nature of parcel as shown in the Site Plan. Therefore, the proposed special exception should meet the above criteria.

I appreciate the time and effort the Board of Zoning Adjustment has taken to review this letter and the supporting drawings in reference to this request for a special exception.

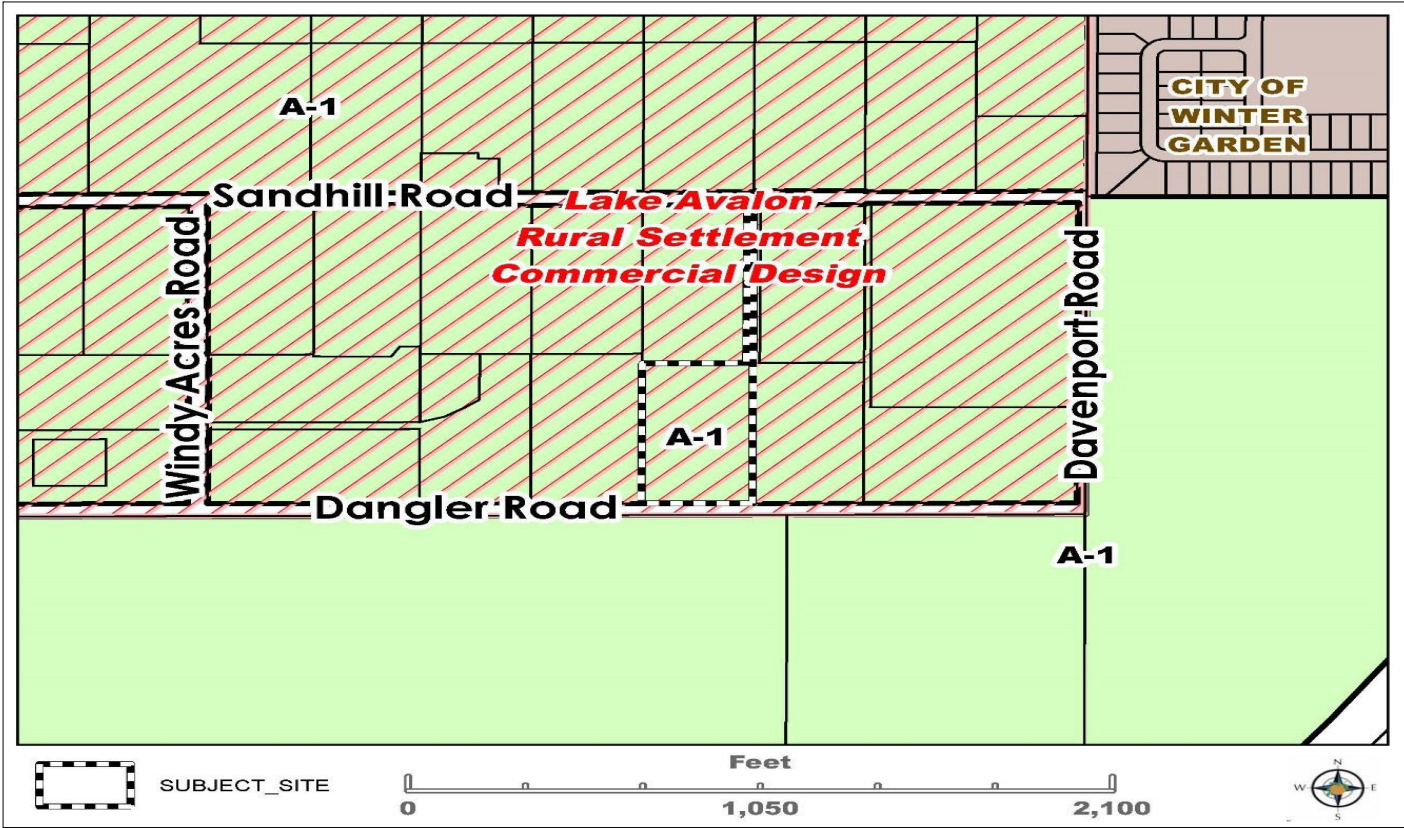
Sincerely,



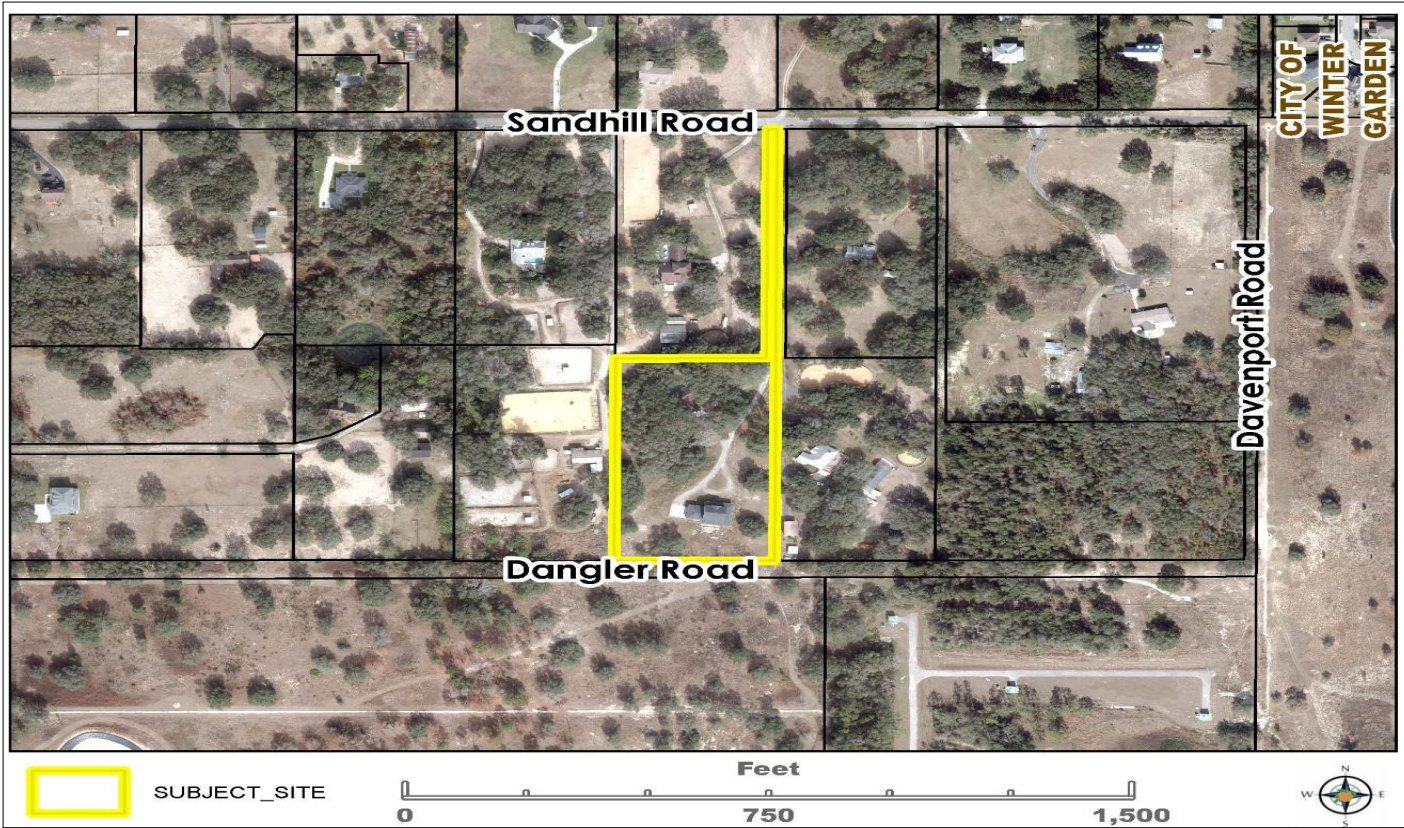
Kevin Hand



ZONING MAP

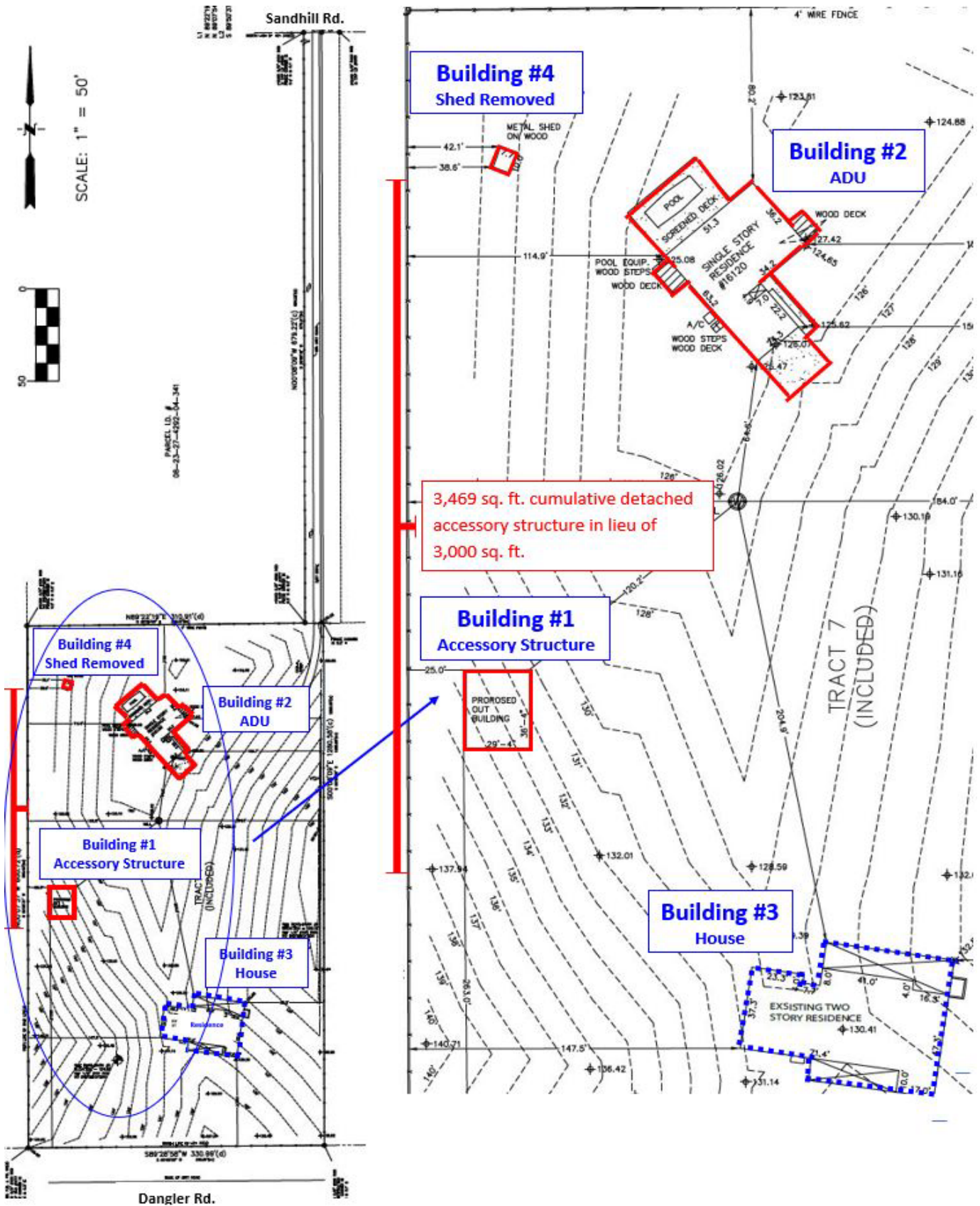


AERIAL MAP





## SITE PLAN

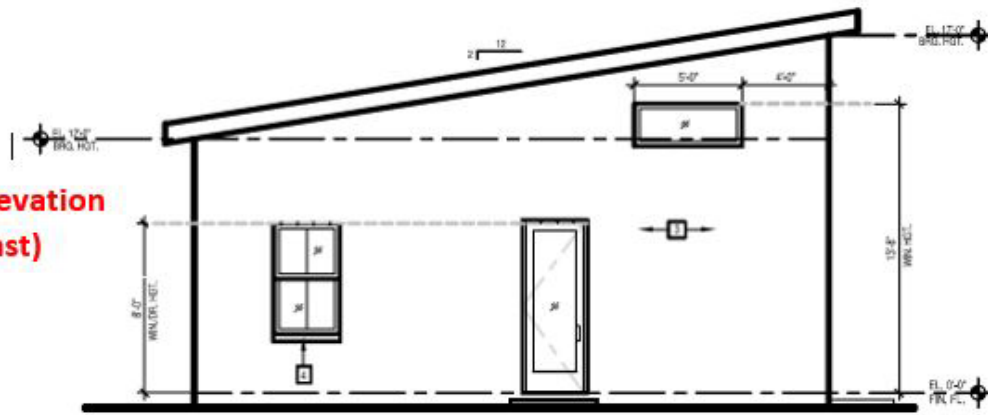


## FLOOR PLANS

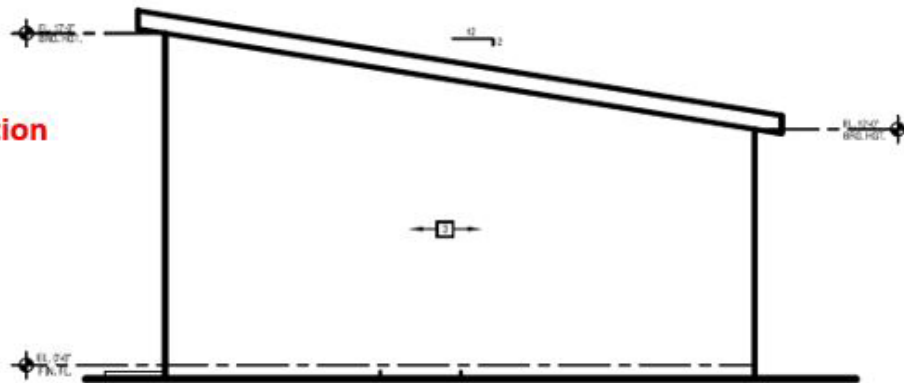


## ELEVATIONS

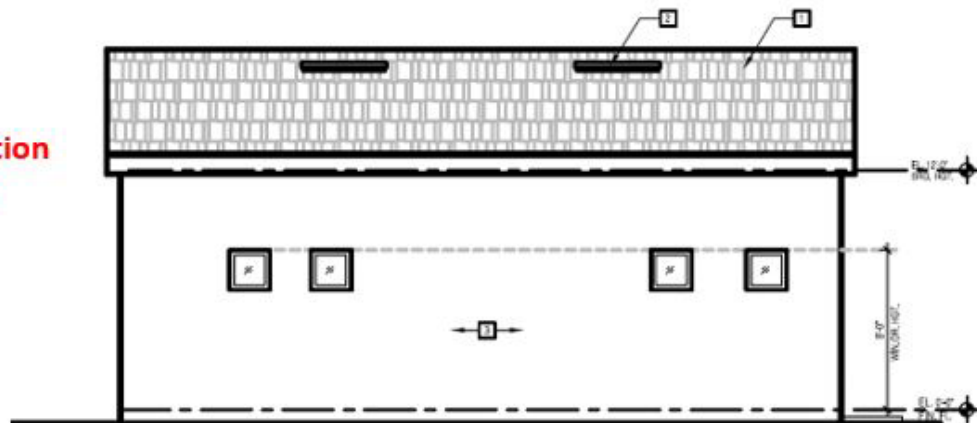
**Left Elevation  
(East)**



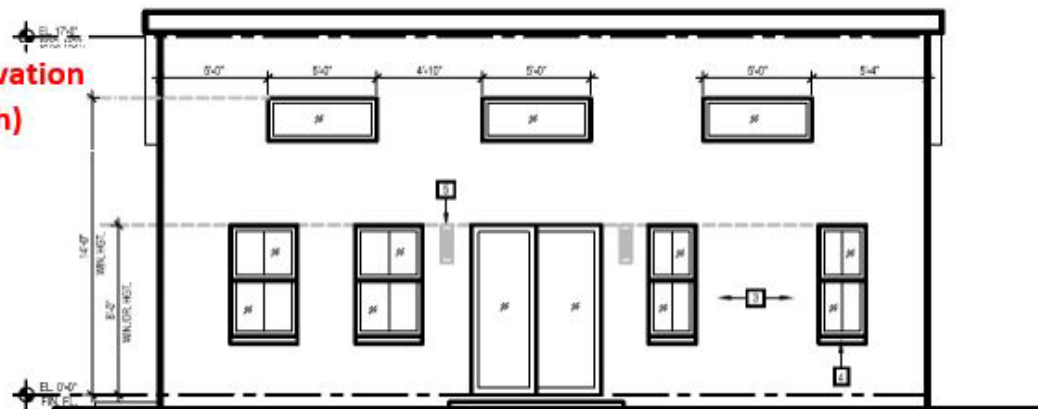
**Right Elevation  
(West)**



**Rear Elevation  
(South)**



**Front Elevation  
(North)**





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**SITE PHOTOS**

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**Facing south from Sandhill Rd. towards driveway**



**Facing south towards entrance of subject property**



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**SITE PHOTOS**

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**Facing south towards front of subject property**



**Facing northwest towards rear of ADU**



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## SITE PHOTOS

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**Facing southwest towards proposed accessory structure**



**Rear yard, facing northwest towards proposed accessory structure**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 02, 2022**

Commission District: **#1**

Case #: **VA-22-06-039**

Case Planner: **Jenale Garnett (407) 836-5955**

**Jenale.Garnett@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): ROBERT LONDEREE

OWNER(s): EDWARD TCHEN, MELISSA POORBAUGH

REQUEST: Variance in the R-1A zoning district to allow an addition to a residence with a west side setback of 4.5 ft. in lieu of 7.5 ft.

PROPERTY LOCATION: 8459 Clematis Ln., Orlando, FL 32819, north side of Clematis Ln., east of S. Apopka Vineland Rd., south of Banyan Blvd., west of Dr. Phillips Blvd.

PARCEL ID: 22-23-28-7806-00-970

LOT SIZE: +/- 0.37 acres (16,165 sq. ft.)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 108

**DECISION:** Recommended **APPROVAL** of the Variance request in that the Board finds it meets the requirements of Orange County Code, Section 30-43(3) ; further, said approval is subject to the following conditions (unanimous; 4 in favor, 0 opposed and 3 absent):

1. Development shall be in accordance with the site plan and elevations received April 12, 2022, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. A permit for the addition shall be obtained within 3 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.

5. A permit shall be obtained for the pool or the pool shall be removed prior to obtaining a permit for the addition.

**SYNOPSIS:** Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for denial since there are options to redesign or reconfigure the addition to meet setback requirements. Staff noted that one (1) comment was received in favor of the application, and no comments were received in opposition.

The owners discussed the staff recommendation and the fact the neighborhood association does not allow detached accessory structures and the provision of alternate locations of the proposed addition would not be consistent with the architectural design of the residence.

There was no one in attendance to speak in favor or in opposition to the request.

The BZA discussed the possible alternate locations of the addition on the property, the shape and configuration of the lot, the consistency of the addition with the architectural design of the house, the appropriateness of proposed setback and unanimously recommended approval of the variance by a 4-0 vote, with three absent, subject to the five (5) conditions in the staff report.

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### STAFF RECOMMENDATIONS

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Denial. However, if the BZA should find that the applicant has satisfied the criteria necessary for the granting of a variance, staff recommends that the approval be subject to the conditions in this report.

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### LOCATION MAP

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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	R-1A	R-1A	R-1A	R-1A	R-1A
Future Land Use	LDR	LDR	LDR	LDR	LDR
Current Use	Single-family residential	Single-family residential	Single-family residential	Single-family residential	Single-family residential

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

The subject property is located in the R-1A, Single-Family Dwelling district, which allows single-family homes and associated accessory structures and requires a minimum lot area of 7,500 sq. ft. The Future Land Use is Low Density Residential (LDR), which is consistent with the R-1A zoning district.

The subject property is a +/- 0.37 acre lot, platted in 1972 as Lot 15 of the Sand Lake Hills subdivision, and is a non-conforming lot of record due to having a 69.89 ft minimum lot width, when 75 ft. is required. The property is developed with a 1-story, 2,766 gross sq. ft. single-family home with an attached 2-car garage constructed in 1973, screen enclosed patio installed in 1997 (B96011110), and pool that was installed in 1981 with no permit. There is a 15 ft. drainage and utility easement along the north side of the property line which is not affected by the variance requested. The property was purchased by the current owners in 2008.

The proposal is to construct a 31 ft. by 24 ft., 14 ft tall, 740 sq. ft. addition with a west side setback of 4.5 ft in lieu of 7.5 ft., requiring a variance. The proposed addition will consist of 1 bedroom and bathroom, walk-in closet, and pantry and a 22 ft. by 11 ft. garage with a separate exterior entry to be used as a workshop with additional storage.

Staff is recommending denial of this request as there are options to redesign or reconfigure the addition to meet setback requirements. Based on staff analysis, the proposed garage/ workshop could be relocated as a detached structure elsewhere in the rear yard or attached to the rear east side of the residence, both of which would eliminate the need for the requested variance.

As of the date of this report, one comment has been received in favor of this request and no comments have been received in opposition to this request.

**District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	14 ft. (addition)
Min. Lot Width:	75 ft.	69.89 ft. (at building setback line)
Min. Lot Size:	7,500 sq. ft.	16,165 sq. ft.

**Building Setbacks (that apply to structure in question)**

	Code Requirement	Proposed
Front:	25 ft.	32 ft. (South)
Rear:	30 ft.	48.5 ft. (North)
Side:	7.5 ft.	11.4 ft. (East) 4.5 ft. (West – Variance)

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**STAFF FINDINGS**

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**VARIANCE CRITERIA****Special Conditions and Circumstances**

There are no special conditions or circumstances regarding the property. The proposal could have been redesigned to meet the setback without impacting the functionality or usability of the addition.

**Not Self-Created**

The need for the variance is self-created, as a smaller addition could have been constructed in a manner which would not have encroached into the side setback or by relocating the garage/workshop as a detached structure or attached structure elsewhere on the property.

**No Special Privilege Conferred**

Granting this variance will confer a special privilege as the owner has the ability to construct an addition that can be reduced in scale to lessen the setback, to meet code, and/ or modify the location and layout of the addition to meet code.

**Deprivation of Rights**

There is no deprivation of rights as the existing residence could continue to be enjoyed as originally constructed, and an addition could be built which complies with code setback requirements.

**Minimum Possible Variance**

The variance request is not the minimum since there are alternatives to eliminate the request.

**Purpose and Intent**

Approval of the requested variance would not be in harmony with the purpose and intent of the Zoning Regulations as the code is primarily focused on minimizing the impact that structures have on surrounding properties. The locational requirements for the proposed addition could have been met; therefore, eliminating the impact to the surrounding properties.

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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan and elevations received April 12, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. A permit for the addition shall be obtained within 3 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.
5. A permit shall be obtained for the pool or the pool shall be removed prior to obtaining a permit for the addition.

C: Robert Londeree  
4201 Vineland Road, 17  
Orlando, FL 32811

C: Edward Tchen and Melissa Poorbaugh  
8459 Clematis Lane  
Orlando, FL 32819



# RBL Designs Inc

4201 Vineland Road, Suite I7, Orlando, FL 32811

Robert Londeree – CGC 1529080 – (352) 638-0036 – [brad@rbl designsinc.com](mailto:brad@rbl designsinc.com)

## Variance Cover Letter

8459 Clematis Lane, Orlando, FL 32819

Parcel: 22-23-28-7806-00-970

Property Owner(s), **Melissa and Edward Tchen**, are proposing **a variance of 4.5 feet from the west side property line to build on a single-story addition to their home.**

The Tchen's are looking to expand their home to accommodate their current need for more bedroom and garage to be used as a workshop/storage space.

The type of construction off the single-story addition will be the same as existing, concrete with stucco finish. The square footage of the single-story addition is proposed to be 740 SF. The dimensions of the proposed addition are 31' x 24'.

The existing building footprint abides by all property setbacks. The proposed single-story addition to add on to their home, is proposed to be 4.5 feet from the current 7.5 the setback on the West side.

The single-story addition proposed construction will be:

- Approximately 71 feet from the South property line.
- Approximately 67 feet from the East property line.
- Approximately 80 feet from the North property line.
- Approximately 4.5 feet from the West property line, setback is currently 7.5 feet.

The proposed single-story addition height will be the same as existing, approximately 14'.

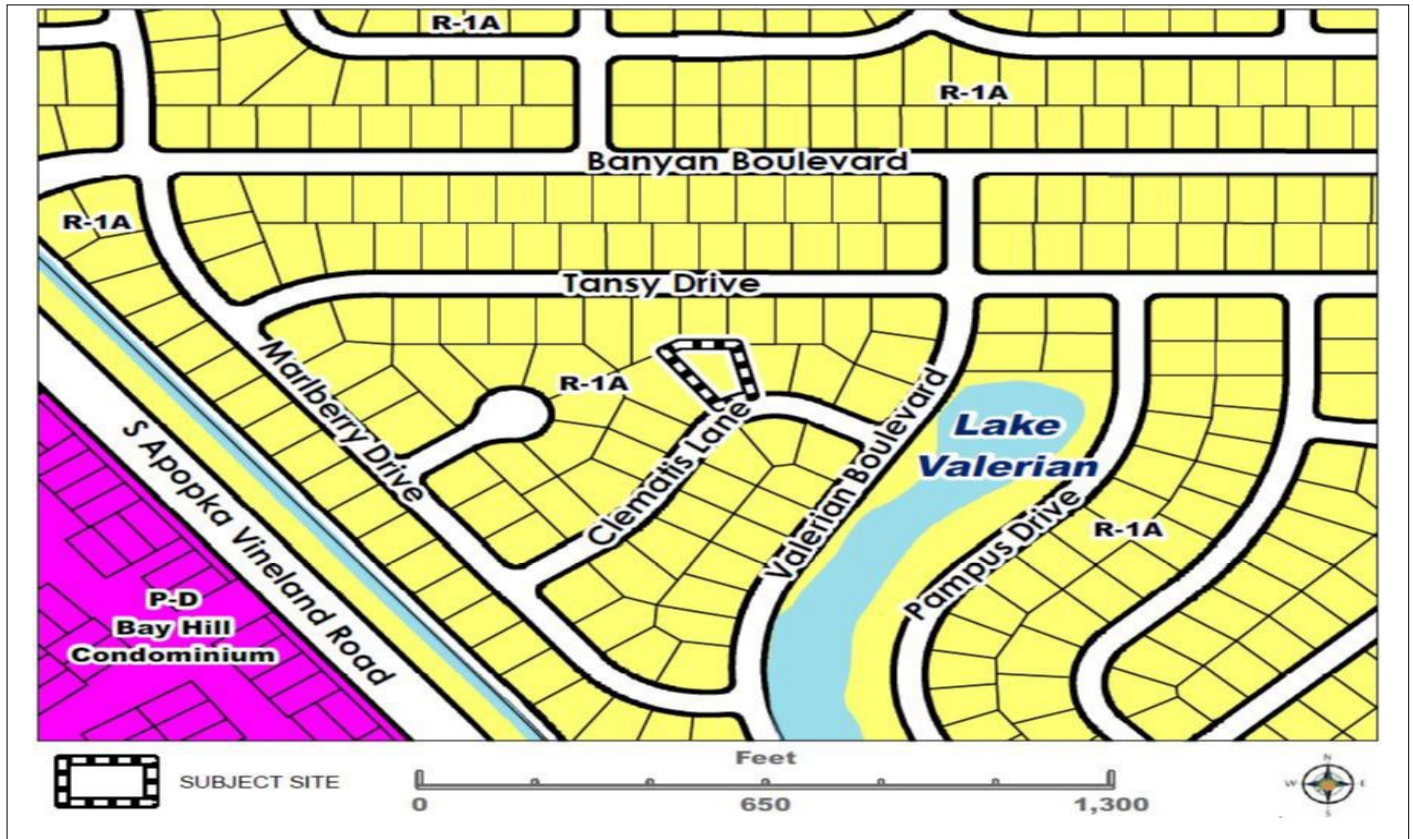
Variance Criteria provides justification for how the proposed single-story addition meets the six standards for variance approval as outlined below:

1. **Special Conditions and Circumstances** - The shape of the Tchen's property is triangular, with the side property lines pinching in towards the front of the house. Our house is built squarely on the plot, and by adding the extension, it causes a corner to sit within the set-back by 3.5 feet. This is only for a few feet, as the property line then extends out.
2. **Not Self-Created** - The property lines were set with the original construction of the house, and not created by the property owners.

3. No Special Privilege Conferred - The variance is only on our property, and will not affect any other party negatively, nor confer special privilege to the property owners. The Tchen's have secured HOA approval as well as approval from the neighbor on the West side of the property line.
4. Deprivation of Rights - Without variance approval, we would not be able to complete the home extension, which is available to other houses in our neighborhood.
5. Minimum Possible Variance - We have designed the structure in a way to be as close to the stated variance as possible. It only is needed for a single corner of the new structure.
6. Purpose and Intent - The property is in an older neighborhood with many neighboring homes from the 1970s. Many single-family homes in the neighborhood have had additions added to grow with their families. Our proposed addition is in line with the sizes and type of homes in our neighborhood.



## ZONING MAP

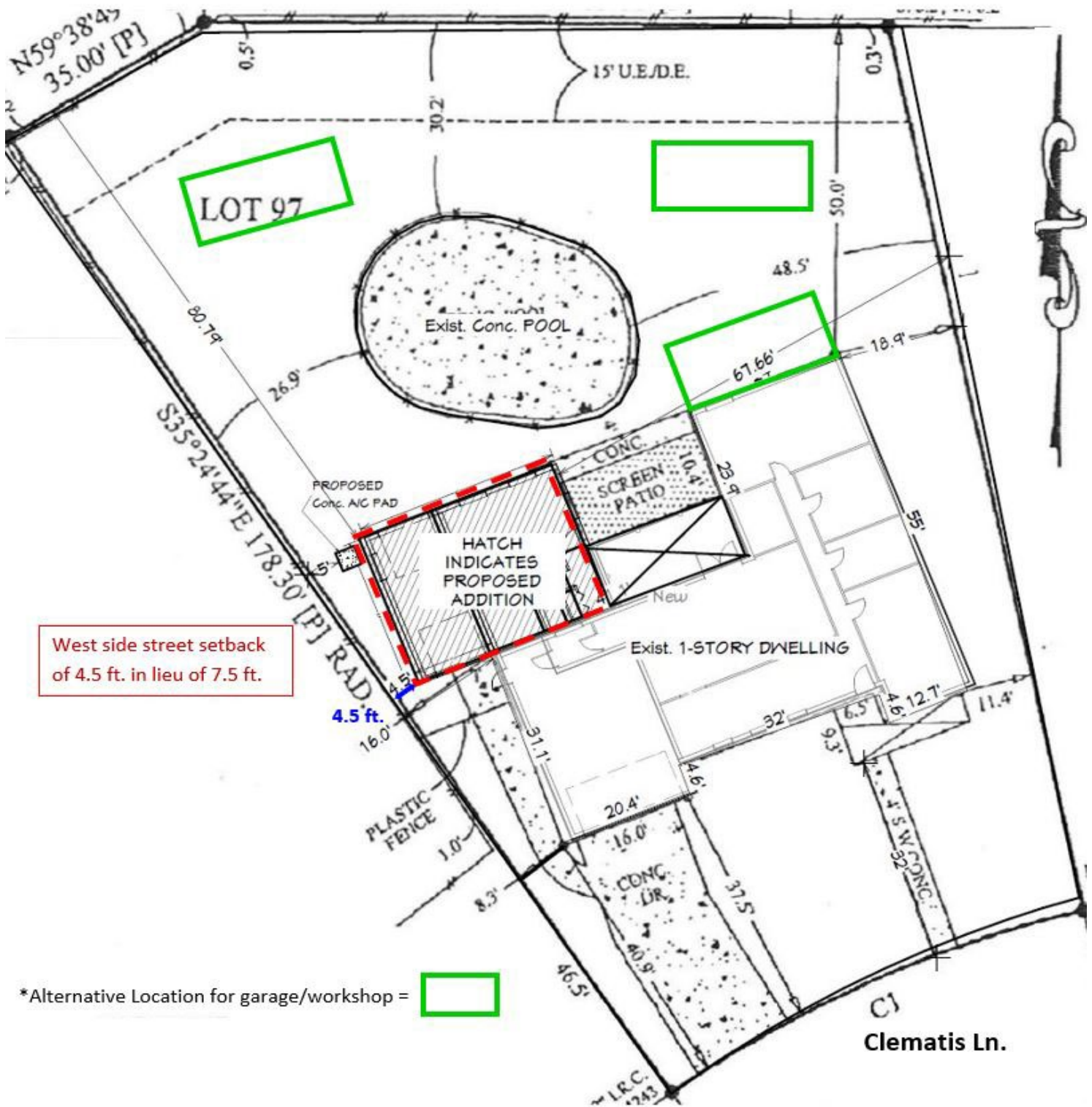


## AERIAL MAP

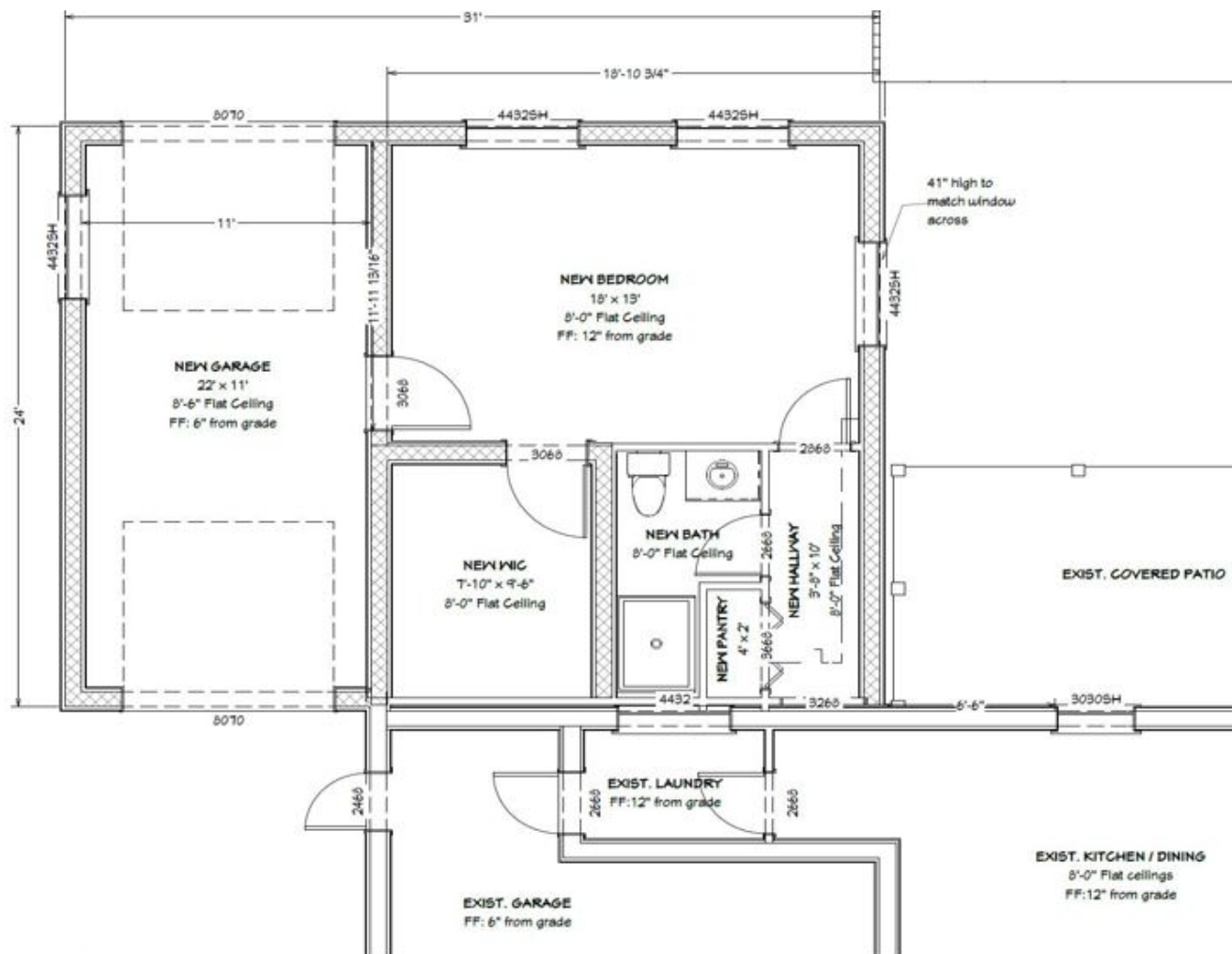




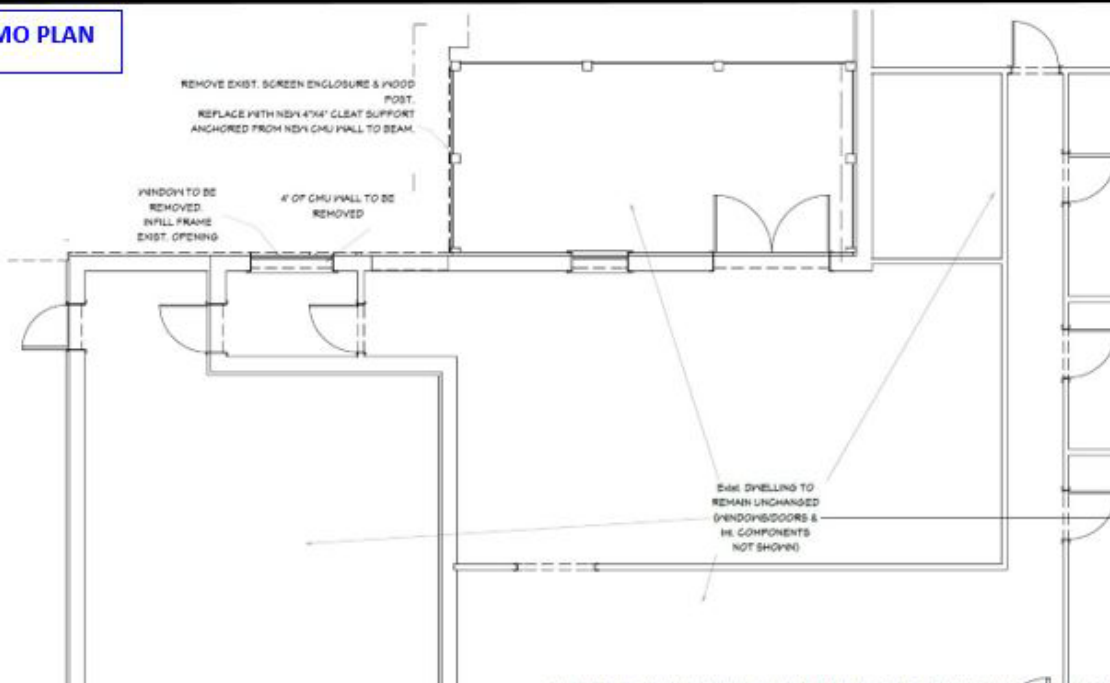
# SITE PLAN



## FLOOR PLAN



## DEMO PLAN



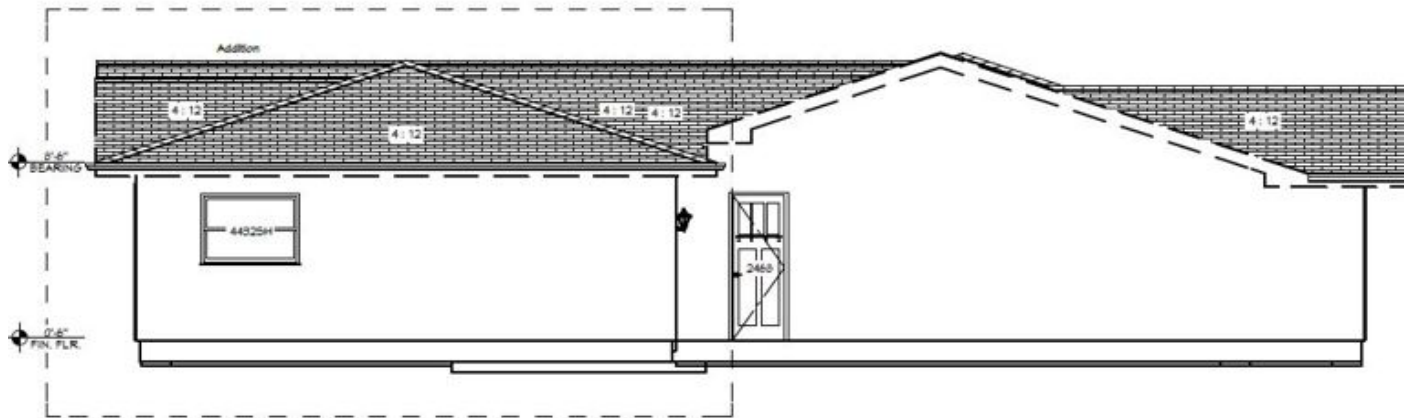
## ELEVATIONS



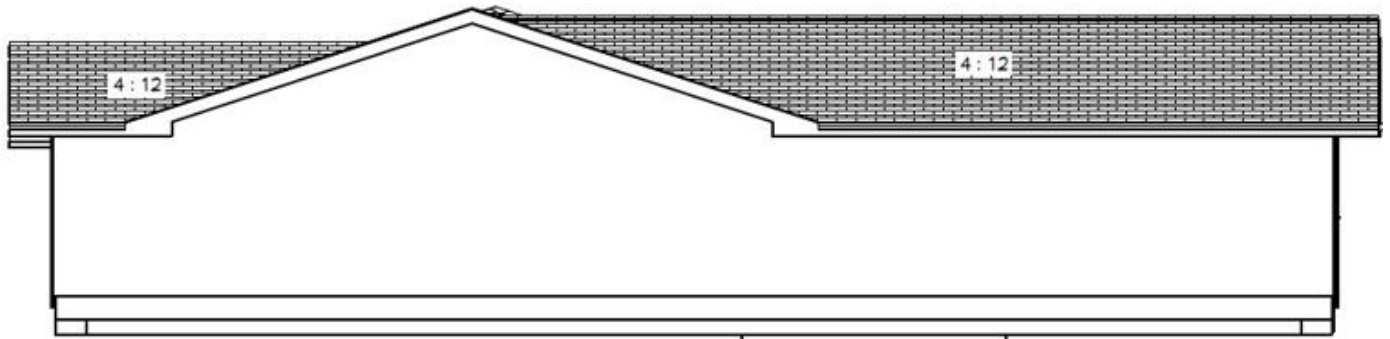
**Front Elevation – South**



**Rear Elevation – North**



**Left Elevation – West**



**Right Elevation – East**



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**SITE PHOTOS**

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**Facing north from Clematis Lane towards front of subject property**



**Rear yard, facing south towards proposed addition**



## SITE PHOTOS



**Facing west towards rear side yard**



**Rear yard, facing north towards rear property line**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 02, 2022**

Commission District: **#5**

Case #: **VA-22-06-033**

Case Planner: **Jenale Garnett (407) 836-5955**

**Jenale.Garnett@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): MARINA BARANSKA

OWNER(s): MARINA BARANSKA, VALENTINA DYACHKOVA

REQUEST: Variances in the R-1A zoning district as follows:

1) To allow an addition with a south rear setback of 21.5 ft. in lieu of 30 ft.

2) To allow an addition with an east side setback of 7.4 ft. in lieu of 7.5 ft.

PROPERTY LOCATION: 8506 Buckley Ct., Orlando, FL 32817, south side of Buckley Ct., south of University Blvd., west of N. Econolockhatchee Trl.

PARCEL ID: 01-22-30-0170-00-150

LOT SIZE: +/- 0.20 acres (8,762 sq. ft.)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 80

**DECISION:** Recommended **APPROVAL** of the Variance requests in that the Board finds they meet the requirements of Orange County Code, Section 30-43(3); further, said approval is subject to the following conditions (unanimous; 4 in favor, 0 opposed and 3 absent):

1. Development shall be in accordance with the site plan and elevations received May 16, 2022, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. A permit for the addition shall be obtained within 3 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.



**SYNOPSIS:** Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for approval. Staff noted that three (3) comments were received in favor of the application, and no comments were received in opposition.

The applicant did not wish to speak.

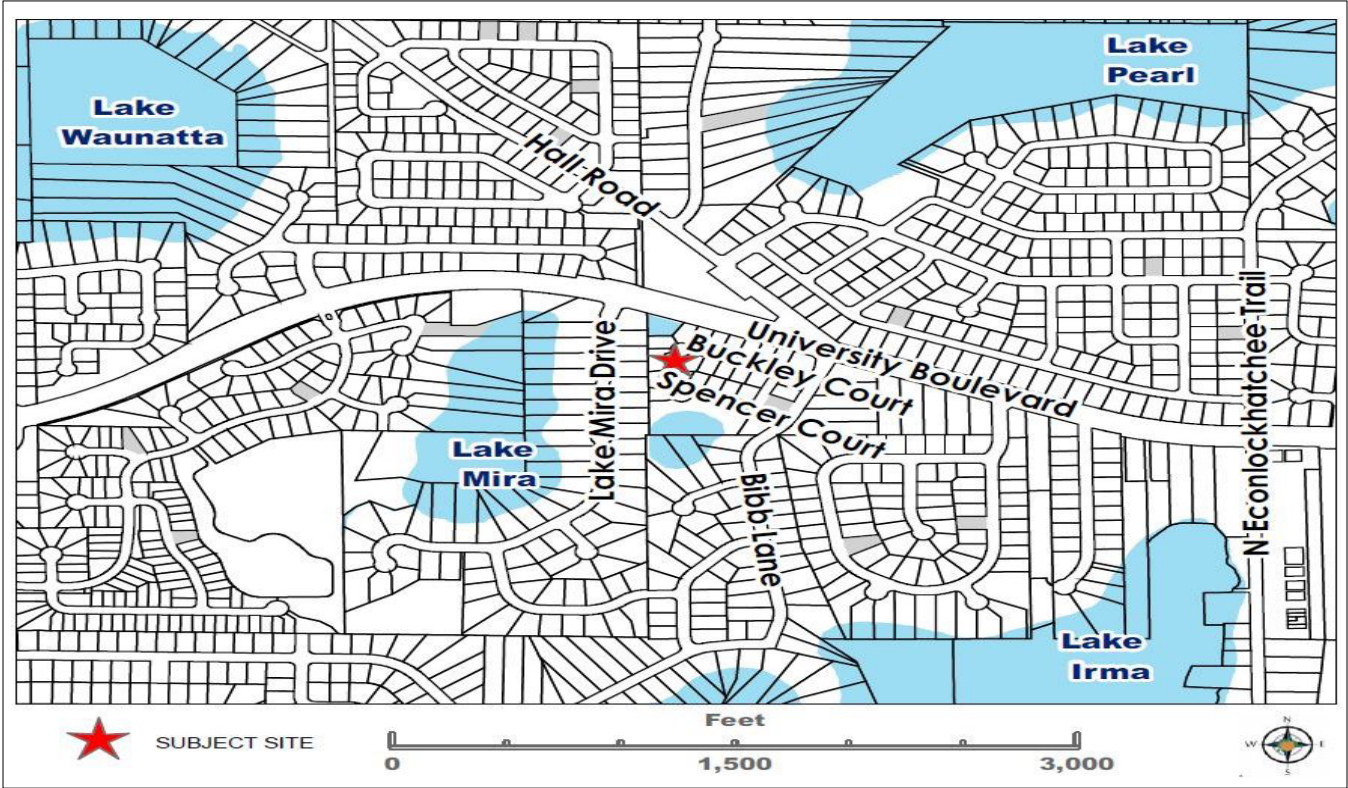
There was no one in attendance to speak in favor or in opposition to the request.

The BZA unanimously recommended approval of the variances by a 4-0 vote, with three absent, subject to the four (4) conditions in the staff report.

**STAFF RECOMMENDATIONS**

Approval, subject to the conditions in this report.

**LOCATION MAP**



**SITE & SURROUNDING DATA**

	Property	North	South	East	West
Current Zoning	R-1A	R-1A	R-1A	R-1A	R-1A
Future Land Use	LDR	LDR	LDR	LDR	LDR
Current Use	Single-family residential	Single-family residential	Single-family residential	Single-family residential	Single-family residential

**BACKGROUND AND ANALYSIS**

## **DESCRIPTION AND CONTEXT**

The subject property is located in the R-1A, Single-Family Dwelling district, which allows single-family homes and associated accessory structures and requires a minimum lot area of 7,500 sq. ft. The Future Land Use is Low Density Residential (LDR), which is consistent with the R-1A zoning district.

The subject property is a +/- 0.20 acre lot, platted in 1988 as Lot 15 of the Andrew Place Phase One Plat, and is a conforming lot of record. It is an irregularly shaped lot located at the end of a cul-de-sac. The property is developed with a 1-story, 2,407 gross sq. ft. single-family home, attached garage, and a 203 sq. ft. screen room (B94019821) constructed in 1995. There is a 10 ft. utility easement along the north of the property and a 5 ft. utility easement runs along the south, east, and west of the property lines. None of these easements are affected by the variances requested. The property was purchased by the current owners in 2020.

The proposal is to remove an existing 203 sq. ft screen room at the rear of the existing residence and replace it with 596 sq. ft. of living area, including a bathroom and a family room. Due to the irregular configuration of the lot and the location of the home in relation to the surrounding property line and easements, a 21.5 ft. rear south setback is proposed in lieu of 30 ft., requiring Variance #1.

There is an existing east side setback of 7.4 ft. to the existing residence that has received an administrative waiver. Per Sec.38-1508 (a) (b) of the Orange County Code, "the zoning manager shall have the authority to grant administrative waivers from the performance standards set forth in section 38-1501 ..., provided that no such administrative waiver shall exceed three (3) percent of the applicable requirement for the side yards... for existing improvements." The proposed addition has an east side setback of 7.4 ft. in lieu of 7.5 ft., allowing the addition to align with the existing residence, requiring Variance #2.

As of the date of this report, three comments have been received in favor of this request and no comments have been received in opposition to this request.

### **District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	18.1 ft.
Min. Lot Width:	75 ft.	88.3 ft. (at building setback line)
Min. Lot Size:	7,500 sq. ft.	8,762 sq. ft.

### **Building Setbacks (that apply to structure in question)**

	Code Requirement	Proposed
Front:	25 ft.	25 ft. (East)
Rear:	30 ft.	21.5 ft. (South – Variance #1)
Side:	7.5 ft.	7.4 ft. (East – Variance #2) 7.5 ft. (West)

## **VARIANCE CRITERIA**

### **Special Conditions and Circumstances**

The special conditions and circumstances particular to the subject property are its configuration and angle at which the house was constructed in relation to the property lines, which renders any addition or improvements of sufficient size difficult without the variances.

### **Not Self-Created**

The request is not self-created since the owners are not responsible for the configuration and location of the home in relation to the surrounding property line.

### **No Special Privilege Conferred**

Due to the orientation of the house on the lot, granting the requested variances will not confer any special privilege conferred to others under the same circumstances.

### **Deprivation of Rights**

Denial of these variances would deprive the owner of the right to utilize and enjoy improvements to the property that is consistent with the architectural design of the existing house.

### **Minimum Possible Variance**

The request is the minimum possible as the design of the addition as proposed is consistent with the architectural design of the existing residence.

### **Purpose and Intent**

Approval of the requested variance would be in harmony with the purpose and intent of the Zoning Regulations as the code is primarily focused on minimizing the impact that structures have on surrounding properties. The proposed request will not be detrimental to the neighborhood since the design of the addition as proposed is consistent with the architectural design of the existing house and would be compatible with other residences in the surrounding area.



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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan and elevations received May 16, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
  2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
  3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
  4. A permit for the addition shall be obtained within 3 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.
- C: Marina Baranska and Valentina Dyachkova  
8506 Buckley Court  
Orlando, FL 32817

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**COVER LETTER**

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I, Valentina Dyachkova, would like to request the variance from Orange County in order to extend my house located at 8506 Buckley Ct, Orlando, FL 32817.

I would like to build up to 6-10' feet extension along the back wall of my house, all in single story. The current setback in the rear is 30' and would like to ask for a 8.5' reduction to make it to a 21.5' rear setback. The sides and the front setbacks will remain the same.

The additional structure will consist of the additional bathroom, and a Florida room (glassed in). My son with his family will be moving with me to help me (I'm 76 years old) and we need extra space. There aren't any existing structures on the property besides the main house.

The extension will have the same height as the main house and will be under the same roof style. The current heated area of the house is 1748 sq ft and it has 3 bedrooms and 2 bathrooms. The projected extension will be about 550-570 sq ft (15'x35'+) and by adding this area the house will not be within the common size in the community. The neighboring properties are 2011 sq ft and 1831 sq ft. The largest home in the community 2244sq ft.

The immediate neighbors do not object the project. The HOA has approved the project as well. Please see the attached affidavits.

The project will be performed by the licensed contractor and all necessary permits will be pulled.

My daughter, Marina Baranska, who is also on the title, will be my agent and all correspondence should go through her. Her phone is 321-689-5275 and email- [marinabaranska@yahoo.com](mailto:marinabaranska@yahoo.com)

Sincerely,

Valentina Dyachkova- valyarus45@gmail.com

## COVER LETTER

1. **Special Conditions and Circumstances** - Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. Zoning violations or nonconformities on neighboring properties shall not constitute grounds for approval of a proposed zoning variance.

No violations  
The main house is in need of the additional bathroom,  
that needs to be attached to the back bedroom

2. **Not Self-Created** - The special conditions and circumstances do not result from the actions of the applicant. A self-created or self-imposed hardship shall not justify a zoning variance; i.e., when the applicant himself by his own conduct creates the hardship which he alleges to exist, he is not entitled to relief.

The variance is requested to build the extension  
to the main house

3. **No Special Privilege Conferred** - Approval of the zoning variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other lands, building, or structures in the same zoning district.

The additional structure will be the same  
style as a main house, in conformity with  
the surrounding homes.

4. **Deprivation of Rights** - Literal interpretation of the provisions contained in this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter and would work unnecessary and undue hardship on the applicant. Financial loss or business competition or purchase of property with intent to develop in violation of the restrictions of this Chapter shall not constitute grounds for approval or objection.

I'm not aware if other homeowners in the  
neighborhood have extensions and understand  
that the county has a right to accept or  
deny my application

5. **Minimum Possible Variance** - The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building, or structure.

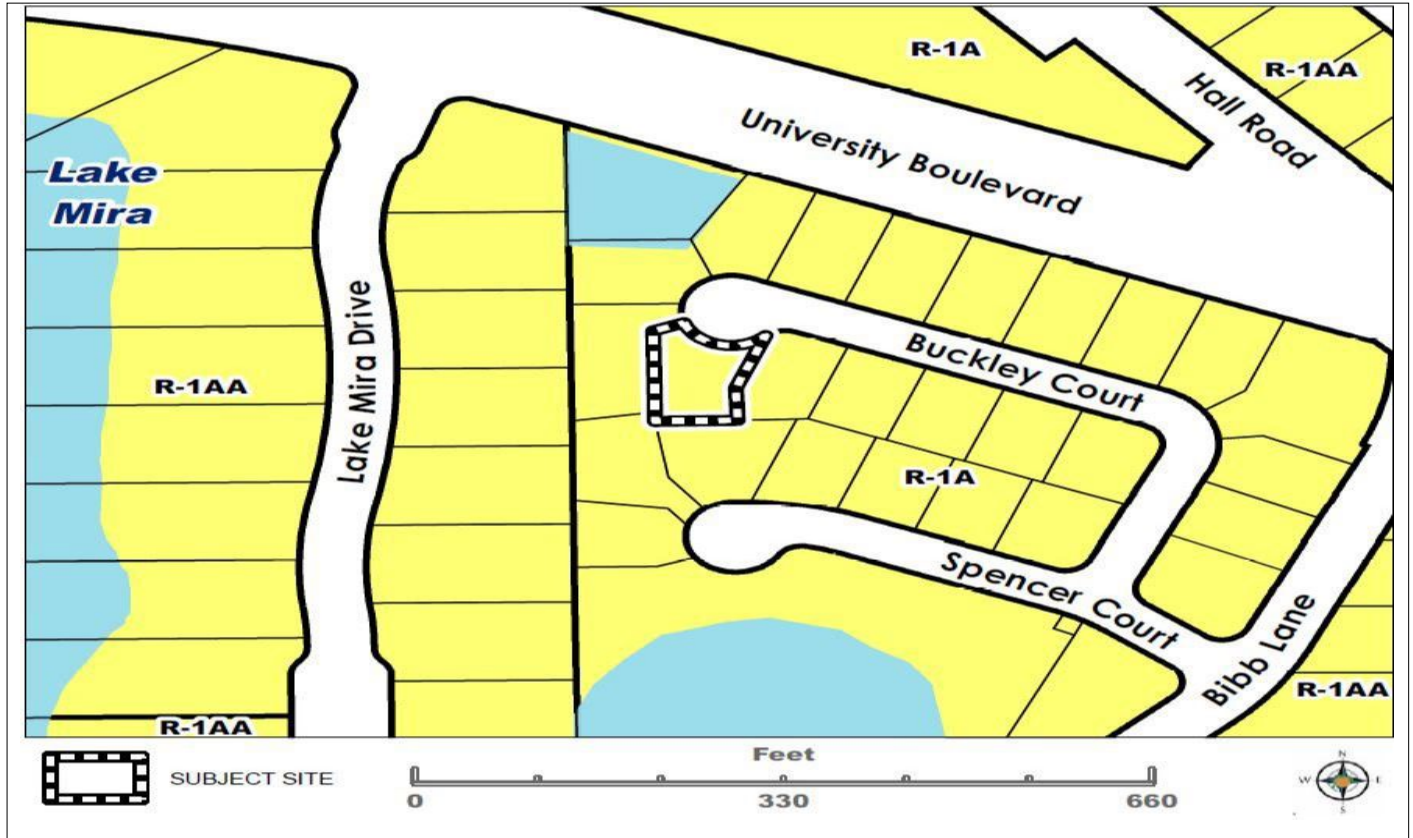
10 feet reduction in the the 30' rear setback

6. **Purpose and Intent** - Approval of the zoning variance will be in harmony with the purpose and intent of the Zoning Regulations and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

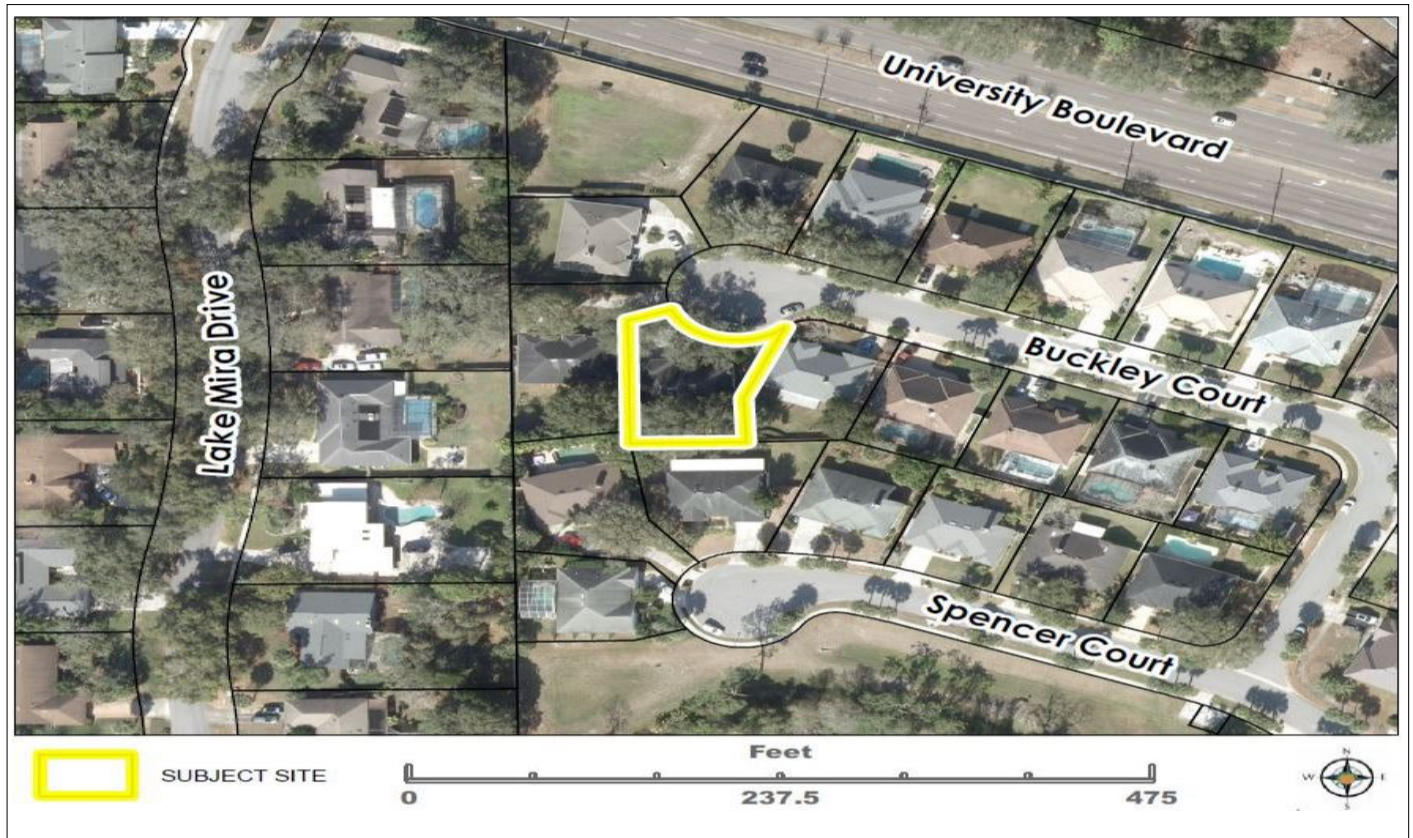
The property extension will be under the  
same roof style, made with cinder block and  
shingle roof according to the current code.



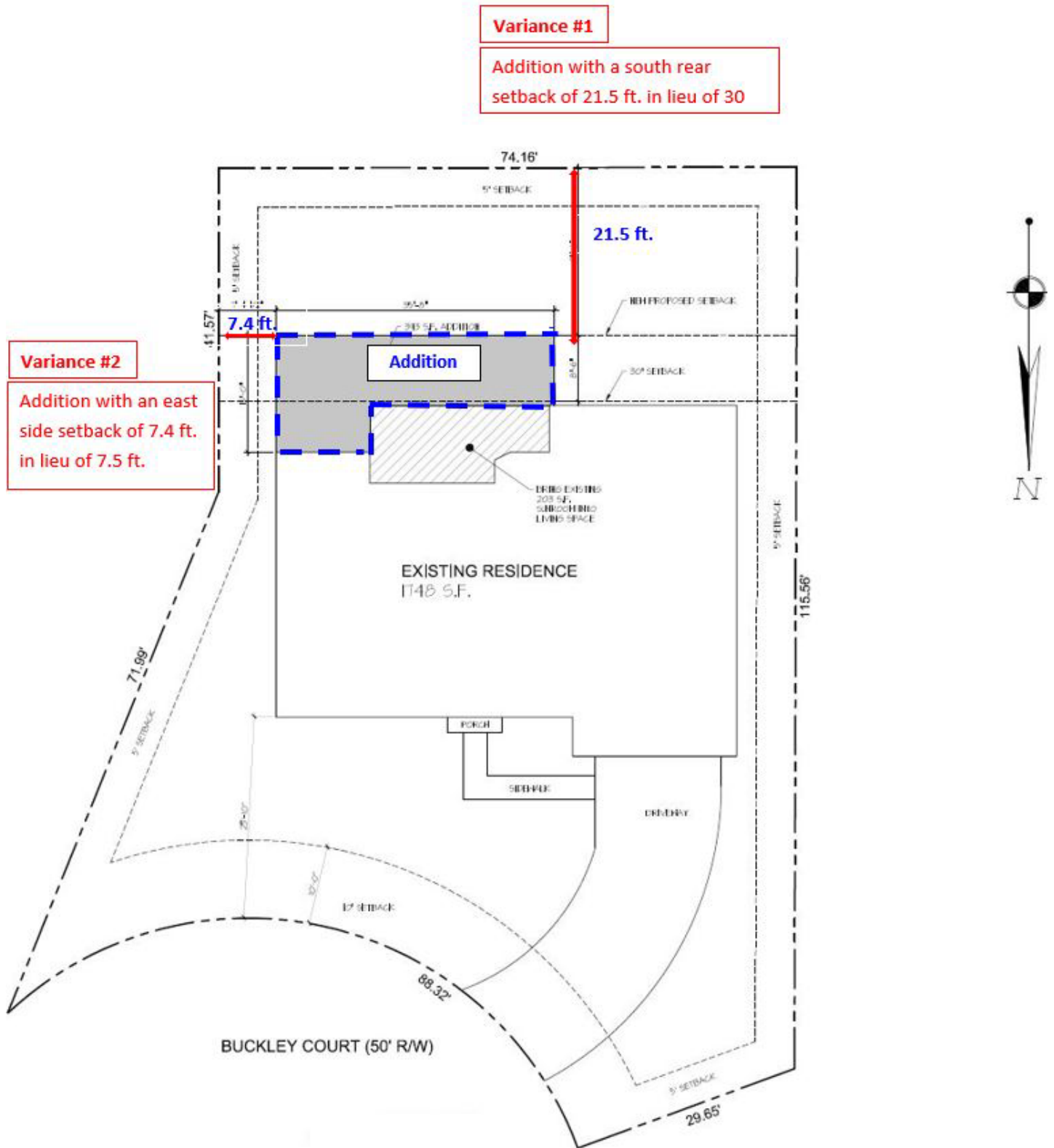
## ZONING MAP



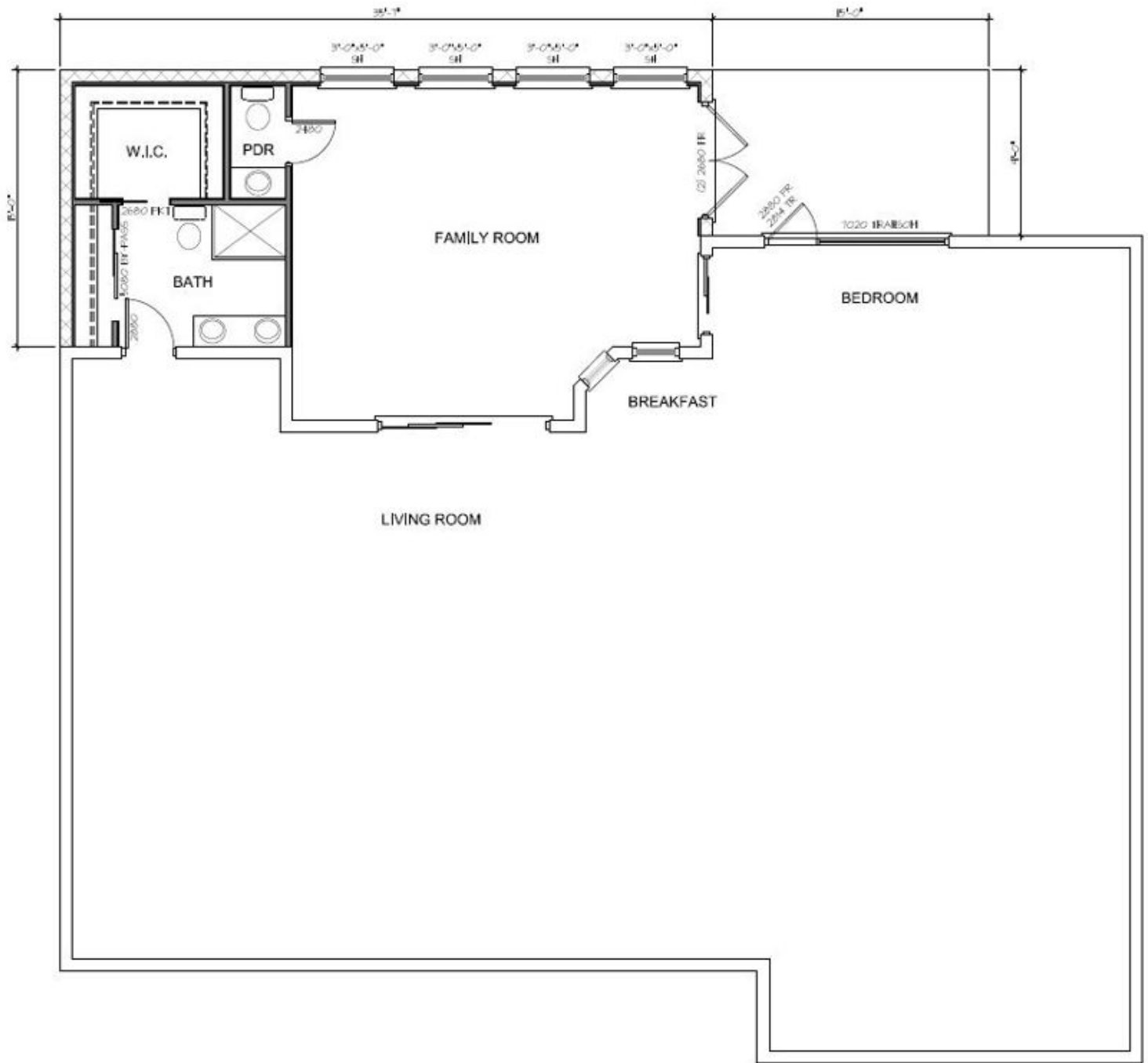
## AERIAL MAP



## SITE PLAN

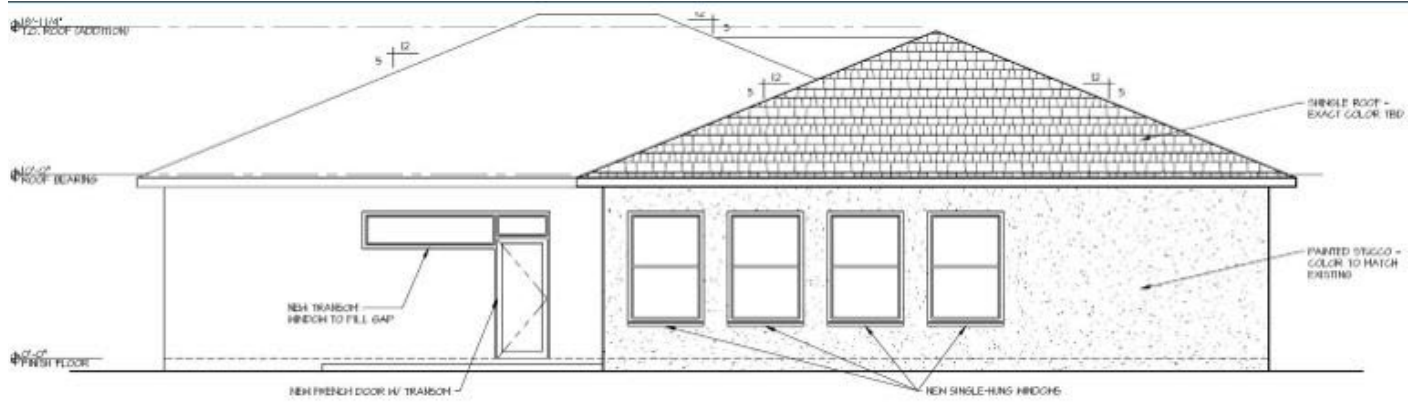


## FLOOR PLAN

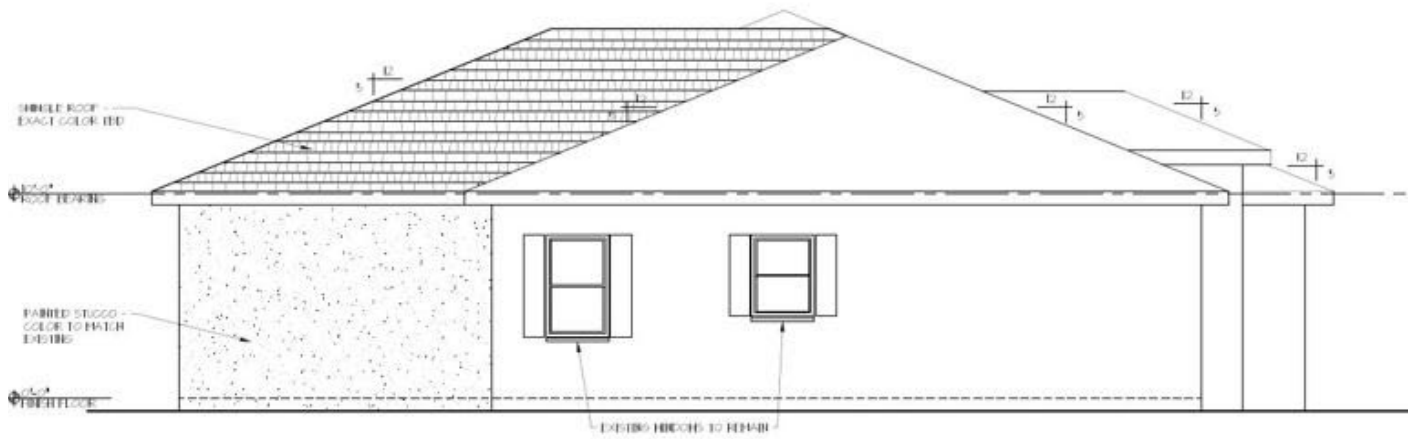




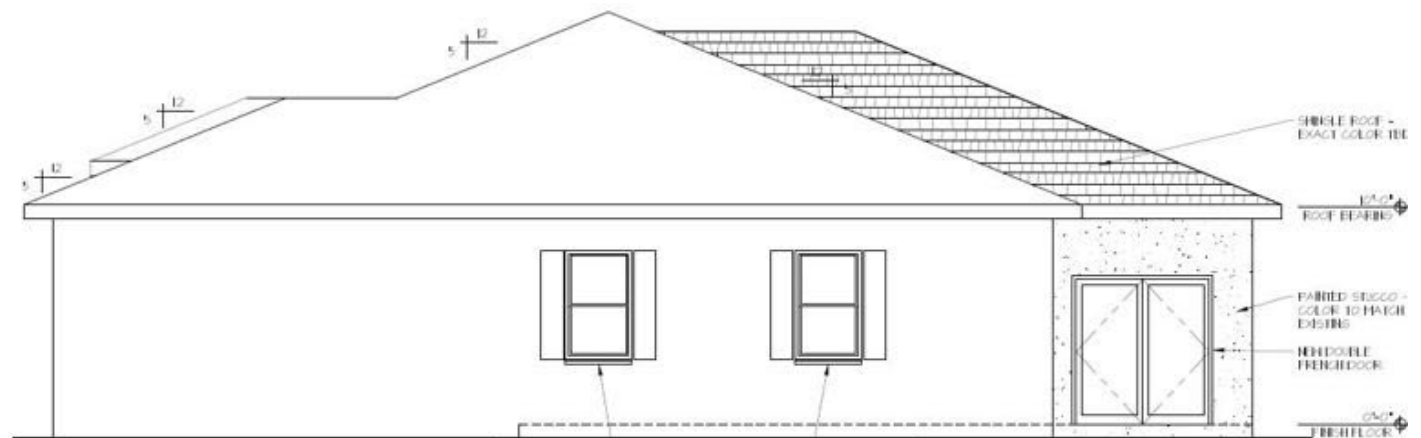
## ELEVATIONS



**Rear Elevation – South**



**Right Elevation – East**



**Left Elevation – West**

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**SITE PHOTOS**

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**Facing south from Buckley Court towards front of subject property**



**Facing south towards east side facing proposed addition location**



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**SITE PHOTOS**

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**Rear yard, facing north towards proposed addition location**



**Rear yard, facing northeast towards rear of proposed addition location**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 02, 2022**

Commission District: **#2**

Case #: **VA-22-07-046**

Case Planner: **Jenale Garnett (407) 836-5955**

**Jenale.Garnett@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): MARCUS FUGGI

OWNER(s): CHARLES CARTWRIGHT, KARA CARTWRIGHT

REQUEST: Variance in the R-CE zoning district to allow a pool, pool deck and screen enclosure with a northwest setback of 24.4 ft. in lieu of 50 ft. from the Normal High Water Elevation (NHWE).

PROPERTY LOCATION: 1383 Elysium Blvd., Mount Dora, FL 32757, terminal end of Elysium Blvd., east side of Lake Beauclair, west of N. Orange Blossom Trl.

PARCEL ID: 05-20-27-2494-02-190

LOT SIZE: +/- 1.03 acres (+/- 0.9 acres upland)

NOTICE AREA: 1,500 ft.

NUMBER OF NOTICES: 61

**DECISION:** Recommended **APPROVAL** of the Variance request in that the Board finds it meets the requirements of Orange County Code, Section 30-43(3) ; further, said approval is subject to the following conditions (unanimous; 4 in favor, 0 opposed and 3 absent):

1. Development shall be in accordance with the site plan and elevations received April 14, 2022, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. A permit for the pool, pool deck, and screen enclosure shall be obtained within 3 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.

5. Prior to the issuance of any building permit, the property owner shall record in the official records of Orange County, Florida an Indemnification/Hold Harmless Agreement, on a form provided by the County, which indemnifies Orange County, Florida from any damages caused by flooding and, which shall inform all interested parties that the pool deck and screen enclosure is located no closer than 24.4 feet from the Normal High Water Elevation (NHWE) of Lake Beauclair.
6. Prior to the issuance of the permit for the pool, pool deck, and screen enclosure, a permit for the 4 ft. fence shall be obtained or the fence shall be removed.

**SYNOPSIS:** Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for denial since there are other options to lessen or eliminate the request. Staff noted that five (5) comments were received in favor of the application, and no comments were received in opposition.

The owners discussed the staff recommendation and noted the rationale for the proposal was for safety.

There was no one in attendance to speak in favor or in opposition to the request.

The BZA discussed the owner's safety concerns, the configuration of the property, the compatibility of the proposal with the neighborhood and unanimously recommended approval of the variance by a 4-0 vote, with three absent, subject to the six (6) conditions in the staff report.

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### STAFF RECOMMENDATIONS

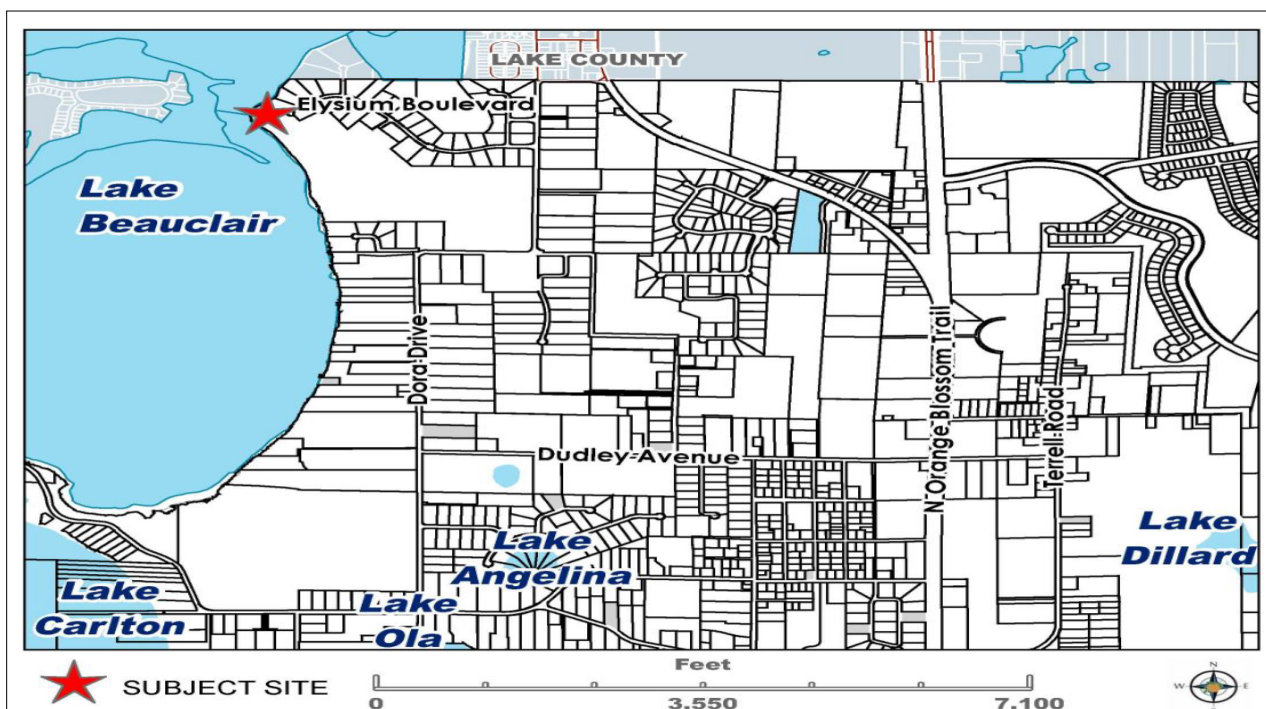
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Denial. However, if the BZA should find that the applicant has satisfied the criteria necessary for the granting of a variance, staff recommends that the approval be subject to the conditions in this report.

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### LOCATION MAP

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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	R-CE	R-CE	R-CE	R-CE	Lake Beauclair
Future Land Use	Tangerine Rural Settlement RS 1/1	Tangerine Rural Settlement RS 1/1	Tangerine Rural Settlement RS 1/1	Tangerine Rural Settlement RS 1/1	Lake Beauclair
Current Use	Single-family residential	Single-family residential	Single-family residential	Single-family residential	Lake Beauclair

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

The subject property is located in the R-CE, Country Estate District, which allows single-family homes and associated accessory structures on a minimum of one acre lots. The Future Land Use is RS 1/1 and it is located in the Tangerine Rural Settlement. Rural settlements are established through the Comprehensive Plan, and are intended to identify areas with unique traits and characteristics which the residents of those area wish to preserve. The rural settlement designation typically impacts such development factors as residential density, location and intensity of commercial and other nonresidential uses, and with the exception of density, have no impact on single-family development. In the Tangerine Rural Settlement, the maximum density is one (1) unit per one acre for new development. The R-CE district is consistent with the future land use.

The area surrounding the subject site consists of single-family homes many of which are lakefront. The subject property is Lot 19 of the Elysium Club Plat, recorded in 1981, and is considered to be a non-conforming lot of record. It is a +/- 1.03 acre platted parcel of land, of which +/- 0.9 acres is upland. The remainder of the parcel is either wetland or submerged property under Lake Beauclair. It is currently developed with a 6,433 gross sq. ft. two story single-family home with an attached 2-car garage and screen enclosed patio and second floor balcony (B90014709) constructed in 1991, and boat dock/gazebo (B96009851) constructed in 1996. There is also 4 ft. aluminum picket fence in the rear that was constructed without permits. The current owners acquired the property in January 2019.

According to the applicant, Lake Beauclair has a significant population of large alligators, snakes, and other wildlife which has made swimming from the dock off limits. The proposal is to install a 437 sq. ft. pool, and 620 sq. ft. pool deck that wraps around the northwest/rear of the house, as well as a 1,524 sq. ft., 18 ft. tall screen enclosure to enclose the proposed pool improvements. The rear of property abuts Lake Beauclair and requires a Normal High Water Elevation (NHWE) setback of 50 ft. for the residence. The proposed pool, pool deck, and screen enclosure will be 24.4 ft. from the NHWE setback in lieu of 50 ft., requiring a variance. A permit to install the pool and pool deck (B21021031), is on hold pending the outcome of this request.

While the request meets some of the standards for variance criteria, it does not meet all of the standards. Therefore, staff is recommending denial of this request. Based on staff analysis, a smaller, code compliant proposal could have been constructed in a way that lines up with the northwest edge of the existing home, which would reduce or remove the encroachment into the NHWE setback. The surrounding adjacent properties appear to have similar screen enclosures and pools, which appear to have been installed prior to

the NHWE code setback requirements that came into effect in 1991, or they meet the NHWE code requirements.



The Orange County Environmental Protection Division has no objection to the request.

As of the date of this report, five comments have been received in favor of this request and no comments have been received in opposition to this request.

#### **District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	18 ft.
Min. Lot Width:	130 ft.	27.93 ft.
Min. Lot Size:	43,560 sq. ft.	1.03 acres (0.9 acres upland)

#### **Building Setbacks (that apply to structure in question)**

	Code Requirement	Proposed
Front:	Not allowed	275.8 ft. (South)
Rear:	5 ft.	24.4 ft. (Northwest)
Side:	5 ft.	20.4 ft. (West) 17.8 ft. (East)
NHWE	50 ft.	24.4 ft. (Northwest – Variance)

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### **STAFF FINDINGS**

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#### **VARIANCE CRITERIA**

##### **Special Conditions and Circumstances**

There are no special conditions or circumstances regarding the property. The applicant could redesign and rotate the proposed larger screen enclosure or replace the existing screen enclosure and further enclose the rear yard with a fence.

##### **Not Self-Created**

The need for the variance is self-created, as there are alternatives to lessen the request or eliminate it.

##### **No Special Privilege Conferred**

Granting the variance as requested would not confer special privilege as several other properties in the area appear to have screen enclosures that also encroach into the Normal High Water Elevation (NHWE).

##### **Deprivation of Rights**

Denial of this variance would not deprive the owner as there are alternatives to lessen the request or eliminate it.

##### **Minimum Possible Variance**

The request is not the minimum possible as there are alternatives to lessen the request.

## **Purpose and Intent**

Approval of the requested variances will allow improvements to the site, which will be in harmony with the purpose and intent of the Zoning Regulations, and will not be detrimental to adjacent properties and will be consistent with similar sized single-family residences surrounding the property. The pool, pool deck, and screen enclosure will not be significantly visible from any of the surrounding properties due to the property being at the terminal end of the street, thereby limiting any quantifiable negative impact to surrounding property owners.

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## **CONDITIONS OF APPROVAL**

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1. Development shall be in accordance with the site plan and elevations received April 14, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
  2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
  3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
  4. A permit for the pool, pool deck, and screen enclosure shall be obtained within 3 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.
  5. Prior to the issuance of any building permit, the property owner shall record in the official records of Orange County, Florida an Indemnification/Hold Harmless Agreement, on a form provided by the County, which indemnifies Orange County, Florida from any damages caused by flooding and, which shall inform all interested parties that the pool deck and screen enclosure is located no closer than 24.4 feet from the Normal High Water Elevation (NHWE) of Lake Beauclair.
  6. Prior to the issuance of the permit for the pool, pool deck, and screen enclosure, a permit for the 4 ft. fence shall be obtained or the fence shall be removed.
- C: Marcus Fuggi  
14616 Royal Pines Court  
Clermont, FL 34711
- C: Charles Cartwright and Kara Cartwright  
1383 Elysium Boulevard  
Mount Dora, FL 32757

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## COVER LETTER

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1383 Elysium Blvd. Mount Dora, FL 32757

Variance request for Pool and pool deck with screen.

We are requesting a setback of 25 feet in the rear of the home, where the setback is 50 feet from the Natural High-water elevation (NHWE) resulting in a variance of 25 feet in order to build a pool and pool deck with screen enclosure. The pool will be built above grade with a retaining wall. We purchased our home 3 years ago and have wanted to add a pool for our daughters to swim in. The lake has a significant population of Large Alligators, snakes and other wildlife that make swimming off the dock, Off Limits. We have little room for our children to play outside with the constant worry of alligators. This pool and pool deck would create a safe environment as my daughters (6 and 7 months old) a safe place to play.

Our home was built in 1992 and is well within the 50-foot setback of the Natural High-Water Elevation.

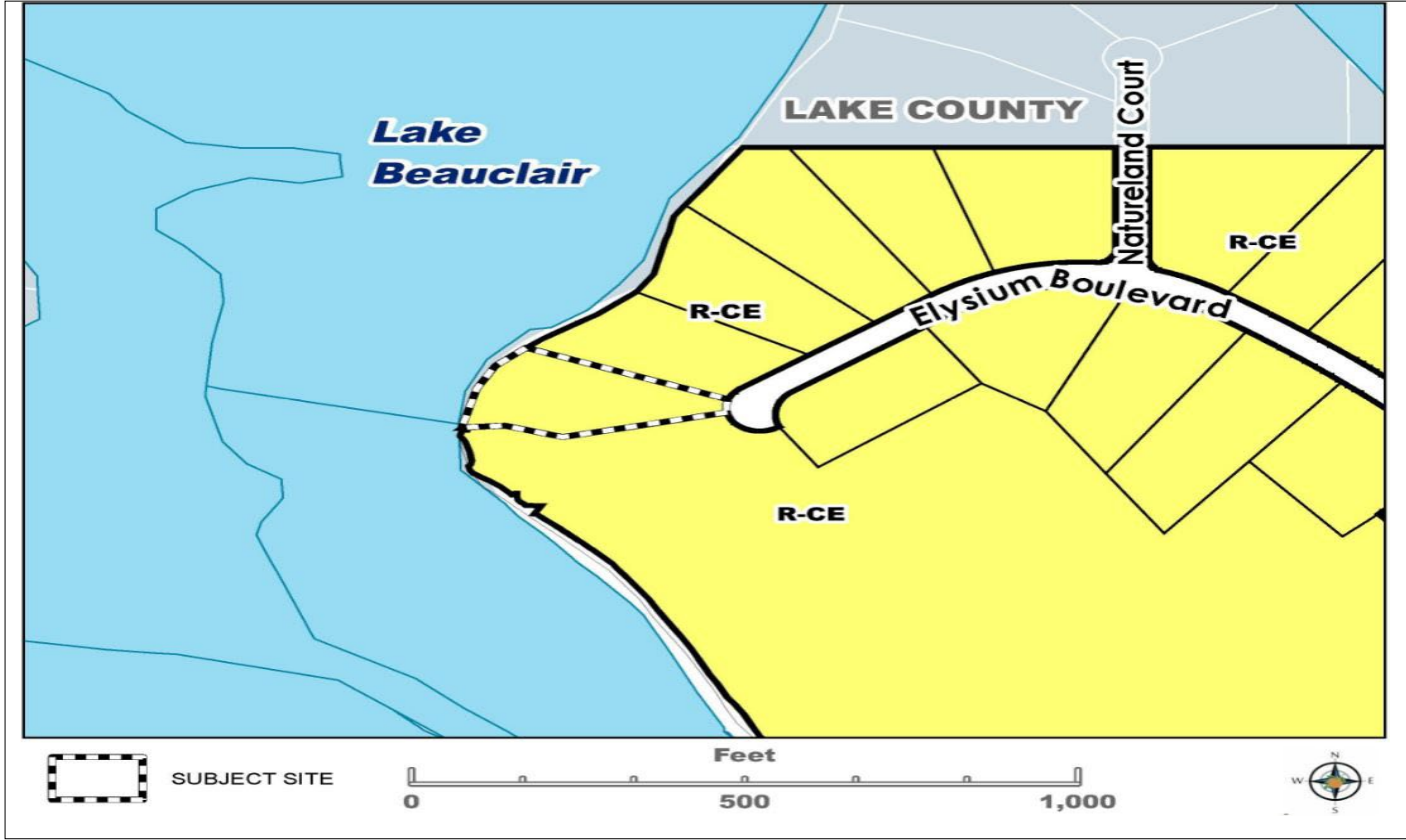
We are requesting a variance to build a Screen enclosed pool and pool deck. Without a Variance any type of additional pool and pool deck will be difficult.

This property meets the 6 Variance criteria in the following ways:

1. The Canal/lake to the rear of the homes wraps around the house and increases in proximity to the home as you get further from the home thus decreasing the amount of usable land due to the current setback. This would make any addition of a pool and pool deck difficult without a Variance.
2. The hardship wasn't created by me or the previous owners.
3. This request does not ask for special privileges that might not be granted to another property. Other Homes on the Lake Dora and Beauclair are able to have pools within the 50 ft limit per measurements from Google Earth.
4. Without the Variance, we would have to build the pool deck in a spot that makes little sense to where the home sits in regards to the NWHE.
5. The variance requested is the minimal possible variance that will make reasonable use of the land with respect to the surrounding flora and fauna.
6. This variance would have no affect on either of my neighboring properties and will be in harmony with the purpose and intent of the Zoning Regulations.



ZONING MAP

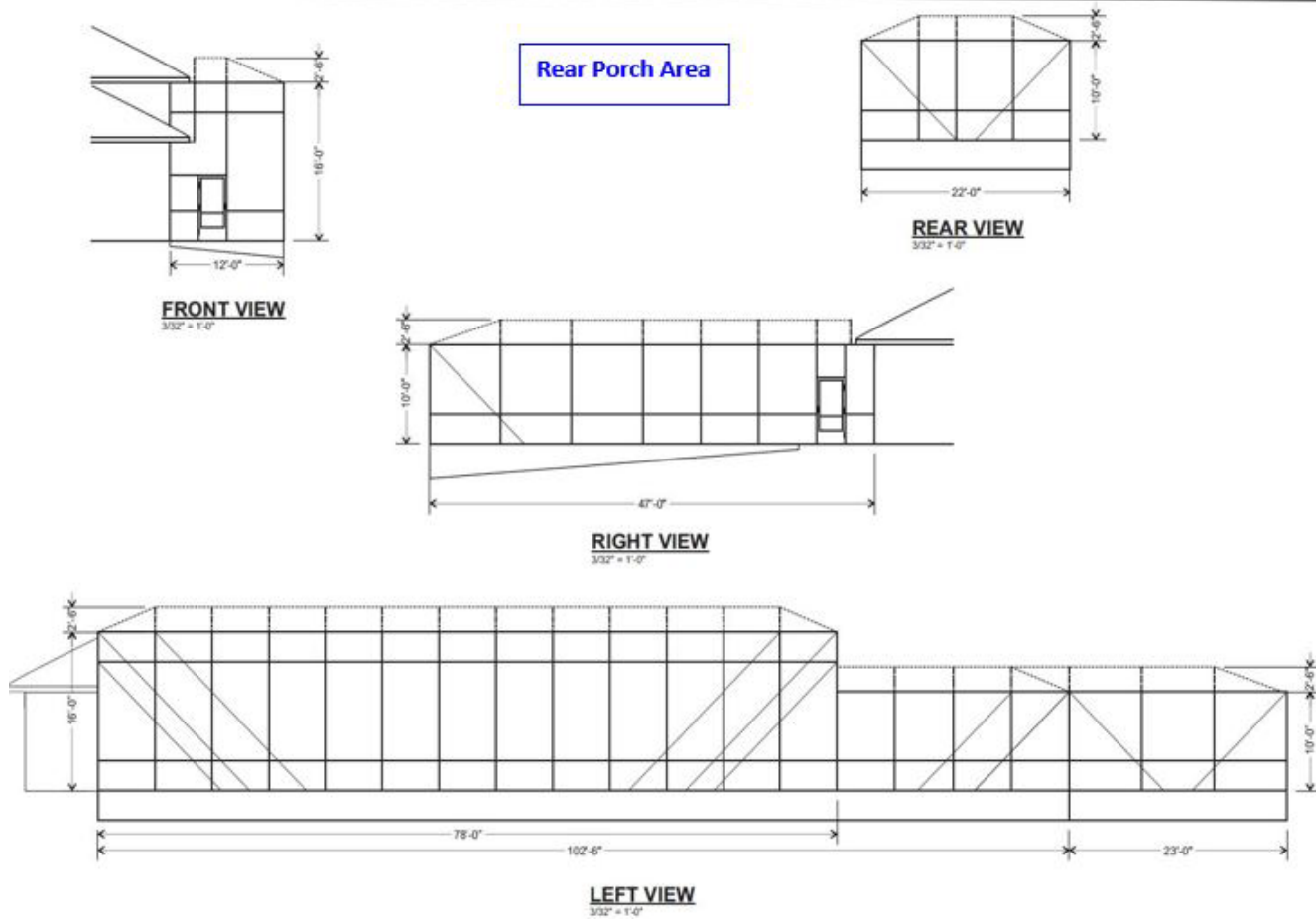
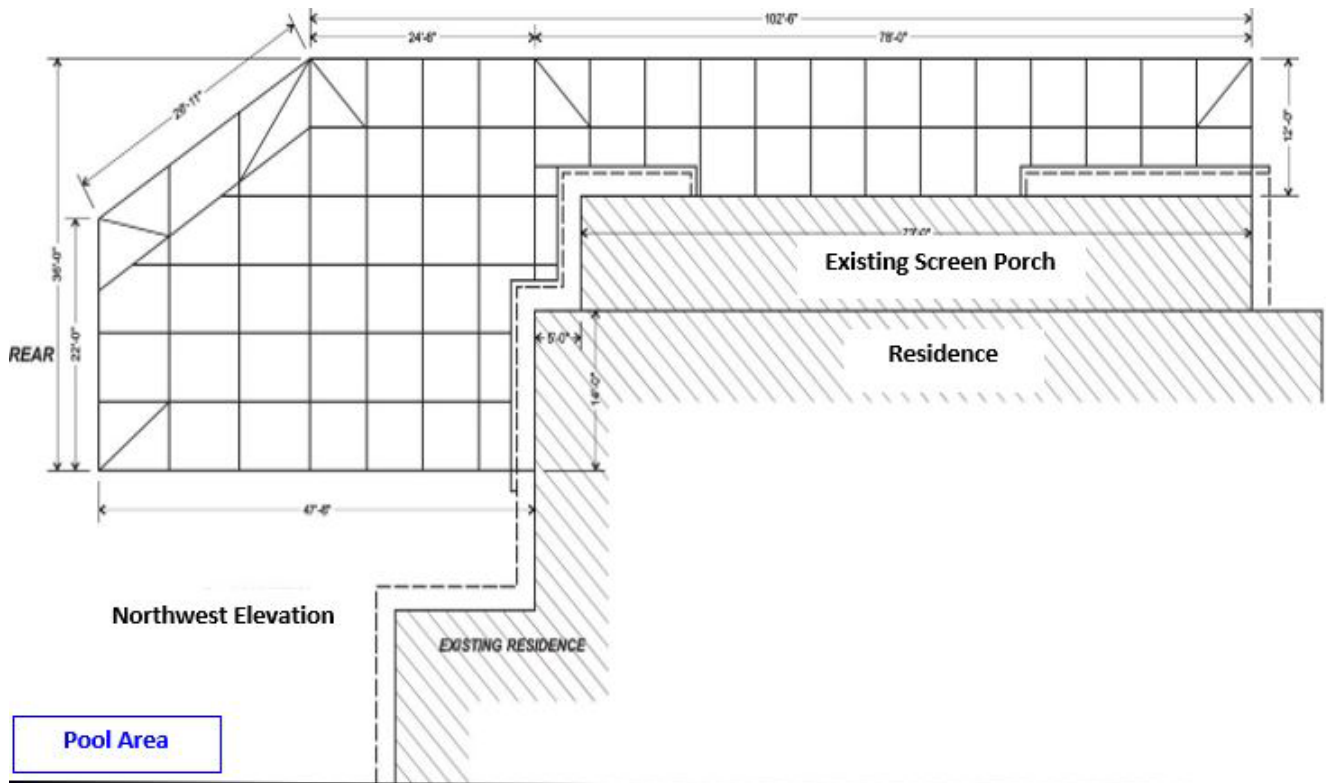


AERIAL MAP





# ELEVATIONS





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**SITE PHOTOS**

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**Facing northwest from Elysium Blvd. towards front of subject property**



**Facing northwest towards front of residence**



## SITE PHOTOS



**Rear yard, facing south towards proposed pool deck and screen enclosure**



**Rear yard, facing west towards side of proposed pool deck and screen enclosure**



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**SITE PHOTOS**

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**Rear yard, facing east towards proposed pool, pool deck, and screen enclosure**



**Rear yard, facing north toward proposed pool, pool deck, and screen enclosure**



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**SITE PHOTOS**

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**Rear yard, facing north towards Lake Beauclair**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 02, 2022**

Commission District: **#1**

Case #: **VA-22-04-024**

Case Planner: **Nick Balevich (407) 836-0092**

**Nick.Balevich@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): GAIL FOURNIER

OWNER(s): GAIL FOURNIER, ASHLEY BALBI

REQUEST: Variances in the A-1 zoning district for the construction of a single-family residence as follows:

1) To allow a lot size (upland) of 9,541 sq. ft. in lieu of a minimum of 21,780 sq. ft.

2) To allow a lot width of 50 ft. in lieu of a minimum of 100 ft.

PROPERTY LOCATION: 17036 Lake Ingram Rd., Winter Garden, FL 34787, south side of Lake Ingram Rd., north side of Lake Inghram, west of Avalon Rd., south of New Independence Pkwy.

PARCEL ID: 19-23-27-5840-08-050

LOT SIZE: +/- 0.7 acres (+/- 9,541 sq. ft. upland)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 15

**DECISION:** Recommended **APPROVAL** of the Variance requests in that the Board finds they meet the requirements of Orange County Code, Section 30-43(3); further, said approval is subject to the following conditions (unanimous; 4 in favor, 0 opposed and 3 absent):

1. Development shall be in accordance with the lot width and dimensions shown on the site plan received May 3, 2022, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.

4. The wood deck and plastic shed on the west property line shall be removed prior to issuance of a permit for the house.

**SYNOPSIS:** Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for approval. Staff noted that no comments were received in favor or in opposition to the request.

The applicant indicated that they had nothing to add to the staff presentation.

There was no one in attendance to speak in favor or in opposition to the request.

The BZA discussed the requested variances and stated justification for the six (6) criteria, noted that the lot is not developable without the requests as proposed and that the lot was platted in 1928. The BZA unanimously recommended approval of the variances by a 4-0 vote, with three absent, subject to the four (4) conditions in the staff report.

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### STAFF RECOMMENDATIONS

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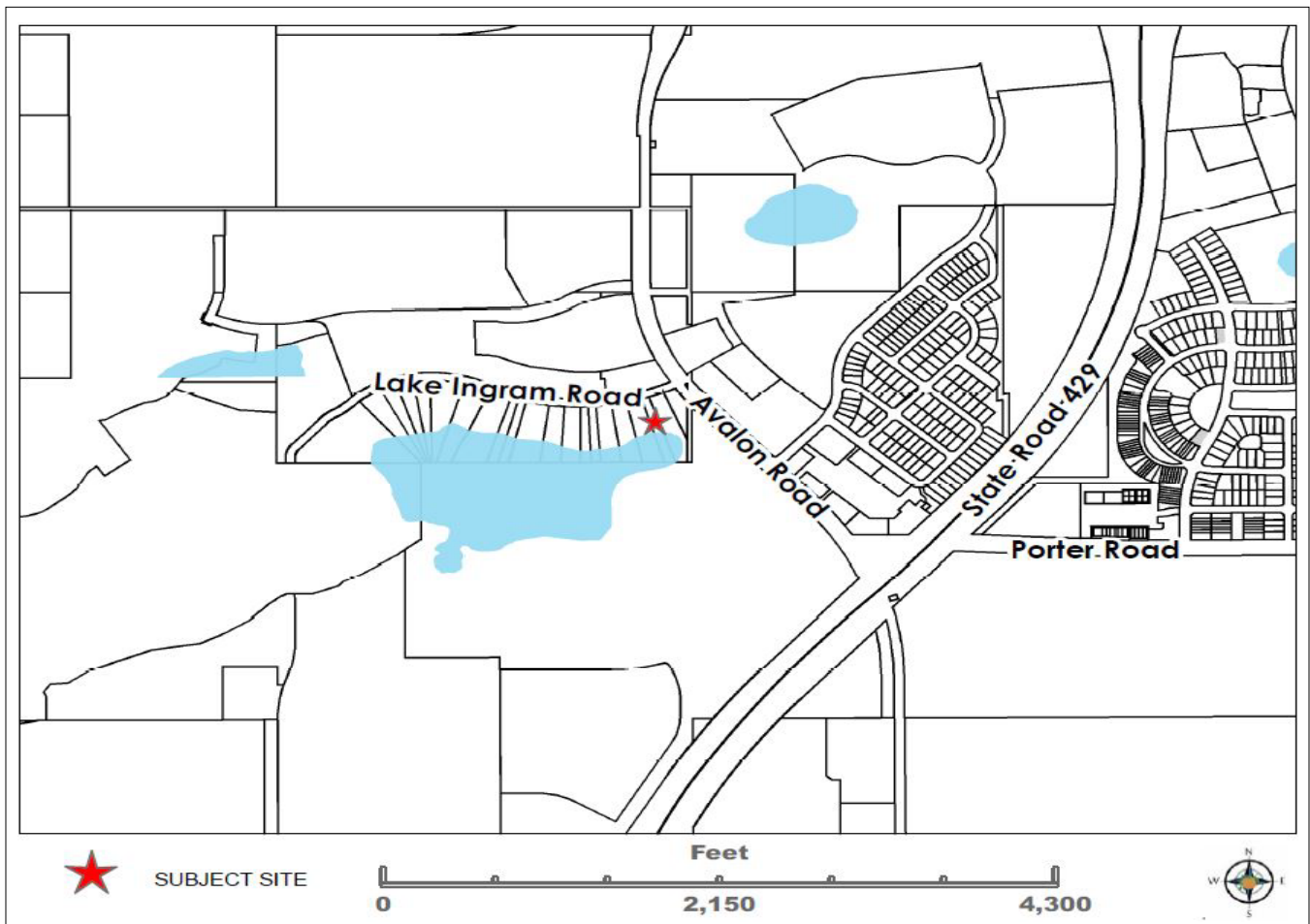
Approval, subject to the conditions in this report.

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### LOCATION MAP

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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	A-1	Sliver Grove Boulevard PD	Silverleaf PD	A-1	A-1
Future Land Use	Village	Village	Village	Village	Village
Current Use	Vacant	Vacant	Lake Inghram	Single-family residence	Single-family residence

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

The subject property is located in the A-1, Citrus Rural zoning district, which primarily allows agricultural uses, as well as mobile homes and single-family homes on larger lots. The future land use is Village (V), which is consistent with the zoning district for 1 single-family home on a lot of record.

The area around the subject site consists of single-family homes and vacant lots. The subject property is a 30,672 gross sq. ft. (9,541 sq. ft. upland) vacant lakefront lot. The site plan provided shows a wood deck and a plastic shed, both unpermitted, that straddle the property line with the subject site and the site to the west. The lot was platted in 1928 as lot 5, block 8, located in the Mountain Park Orange Groves Plat, and is a non-conforming lot of record, as it does not meet the minimum lot width or size. The entire plat was designated A-1 in 1957. The owners purchased the property in 2021.

Per Orange County Code Sec. 38-1401, if two or more adjoining lots were under single ownership on or after October 7, 1957, and one of the lots has a frontage or lot area less than what is required by the zoning district, such substandard lot or lots shall be aggregated to create one conforming lot. The subject property was purchased on December 3, 2021, with Ashley Balbi as one of the owners. The 2 lots to the west, lots 6 and 7, block 8 were also purchased on December 3, 2021, with Ashley Balbi also listed as one of the owners. Thus, the parcel cannot be considered to be a substandard lot of record, and variances are required for the lot width and lot size. There is an existing single-family home on lots 6 and 7 that was built in 2003.

The parcel is 9,541 sq. ft. upland in size but the A-1 zoning district requires a minimum lot area of 21,780 sq. ft., requiring Variance #1, and is 50 feet wide, but the A-1 zoning district requires a minimum lot width of 100 ft., requiring Variance #2. The applicant is proposing to construct a single story 1,603 gross sq. ft. single-family home on the property which will meet the meet all setback requirements for the district, including the required 50 ft. Normal High Water Elevation setback from Lake Inghram to the south.

Comparatively, within the surrounding area, a parcel on the same street, which is located 100 ft. to the east, was granted variances in 2017 for an 83 ft. lot width in lieu of 100 ft., as well as 4 other lots located to the west on the same street that are developed in their original platted configuration with a 50 ft. lot width and a similar lot size.

The Orange County Environmental Protection Division has reviewed the variance and has no objection to the request.

As of the date of this report, no comments have been received in favor or in opposition to this request.

**District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	15.9 ft.
Min. Lot Width:	100 ft.	50 ft. (Variance #2)
Min. Lot Size:	1/2 ac.	9,541 sq. ft. upland (Variance #1)

**Building Setbacks (that apply to structure in question)**

	Code Requirement	Proposed
Front:	35 ft.	50 ft. - North
Rear:	50 ft.	72.4 ft. - South
Side:	10 ft.	12.8 ft. - West, 10 ft. - East
NHWE:	50 ft.	72.4 ft. - South

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**STAFF FINDINGS**

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**VARIANCE CRITERIA****Special Conditions and Circumstances**

The existing parcel size and configuration are considerations of special conditions and circumstances. The property would be undevelopable without the variances for lot width and area. The lot was platted in this configuration in 1928, prior to the establishment of zoning regulations in 1957.

**Not Self-Created**

The lot was platted in 1928 and therefore the owners are not responsible for the lot configuration.

**No Special Privilege Conferred**

Granting the variances will not establish special privilege since there are other platted substandard developed lots in the area with single-family homes containing a similar size and width.

**Deprivation of Rights**

Without the requested width and size variances, the owners will be deprived of the ability to construct a residence on the parcel, as the adjacent parcels to the east and west are developed.

**Minimum Possible Variance**

The requested variances are the minimum necessary to construct any improvements on the property, due to the lot width and size. Furthermore, a home design that does not require any setback variances has been proposed.

### **Purpose and Intent**

Approval of these requests will be in harmony with the purpose and intent of the Code, which is to allow infill development with lawfully constructed residences. The proposed lot size and width, which will allow for the construction of a new home will not be detrimental to the neighborhood as the proposed lot will be consistent with the similar sized lots in the area.

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### **CONDITIONS OF APPROVAL**

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1. Development shall be in accordance with the lot width and dimensions shown on the site plan received May 3, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
  2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
  3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
  4. The wood deck and plastic shed on the west property line shall be removed prior to issuance of a permit for the house.
- C: Gail Fournier  
17044 Lake Ingram Rd.  
Winter Garden, Florida, 34787



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## COVER LETTER

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March 7, 2022

Zoning/Planning Orange County FL

Re: Variance Request: 17036 Lake Ingram Rd, Winter Garden, FL 19-23 27-5840-08-050

To Whom It May Concern:

My name is Gail Fournier owner of 17036 Lake Ingram Rd, Winter Garden, FL 34787 but my daughter Ashley Balbi is on it too as I like to have her on anything I own. The purpose of this letter is to provide a detailed cover letter for the Variance request package. My desire is to build a small single family home of approximately 1,118 sq ft under AC and 1,600 with porch and garage. The house plan and site plan are included, It meets the set backs of 35 ft from front and 10 ft on the sides and not anywhere near the little lake 161 feet down. The house my daughter and her husband bought (17044 Lake Ingram Rd )was sold with the next door lot (17036) which the people who sold it to us knew our intention was for me to build on it since our houses are always right by each other and we thought it would be perfect for all of us.

Back in 1928 the plan (map included) was drawn for 50 feet wide lots. This is a little road of about 15 or so houses on only one side of the street. Some look like shacks and a few RV's and a few newer homes. Most of the area was sold possibly to the county because at the end of the street they are building a dry pond and across from that they are building an elementary/middle school. Somehow now they want the lots to be 100 ft wide now and there are only 2 vacant lots left one of which is a wooded lot on the other side of my daughter. We were told he never wants to sell it for some reason. There is a house being built next to my lot now. We have become friendly with the older couple and they love to sit and watch my grandkids play all sorts of sports and they chat with my son in law about mutual hobbies. We never know when the neighbors will come since they don't live there yet so I asked them if they would sign a letter saying they support me building this house next to them. It is hand written and very unprofessional but does serve the purpose since it was spur of the moment and we had no printer.

I hope you will honor this variance and allow me to build next to my daughter as there is no where near here affordable and this little house would only enhance this little neighborhood.

Sincerely,

Gail Fournier

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## COVER LETTER

---

March 7, 2022

Zoning/Planning of Orange County , FL

I believe this request meets the variance criteria of the Orange County Code for the following reasons:

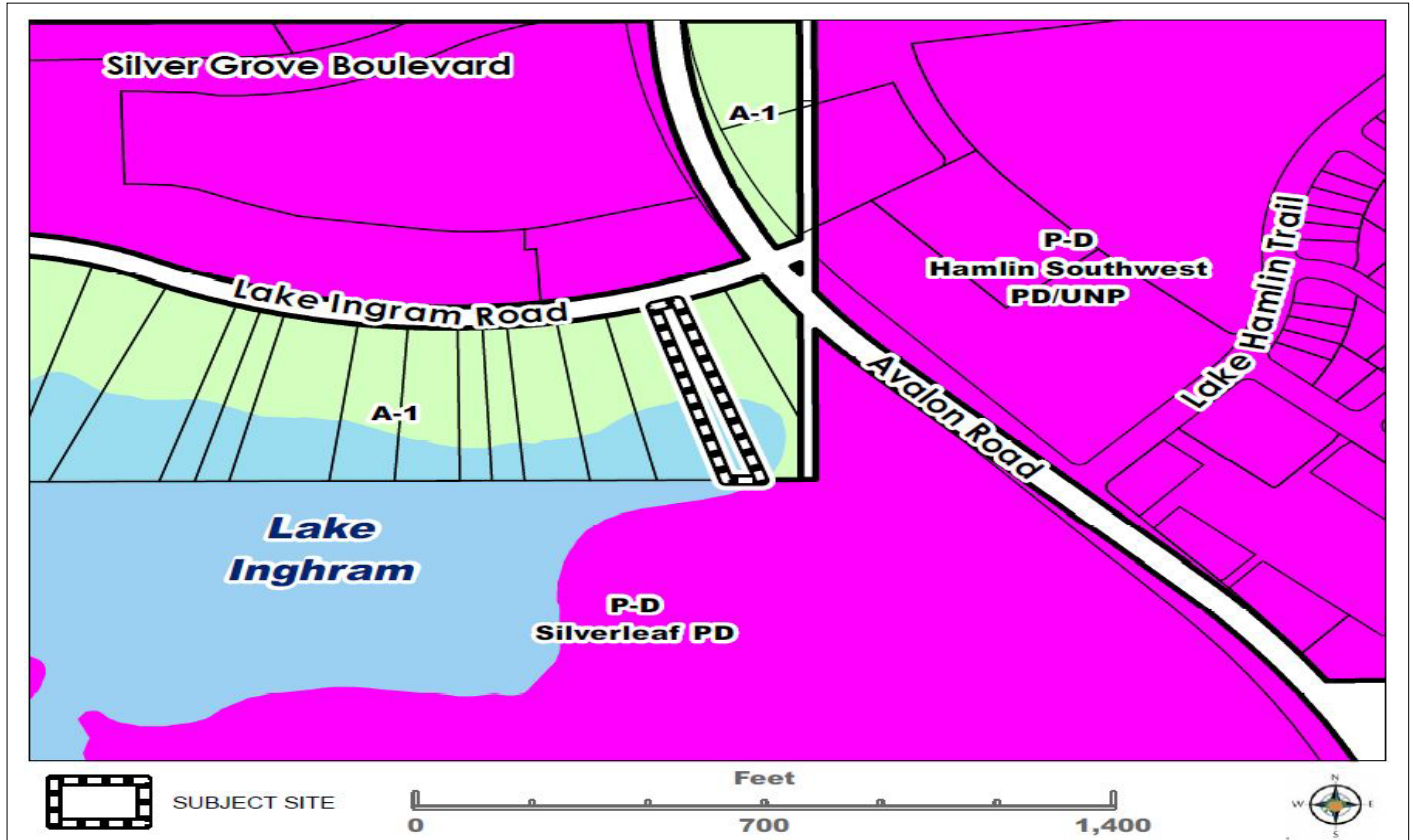
1. Special Conditions : Special conditions exist due to the changes in lot width which originally was 50 feet back in 1928 when they did the plat map, now it is changed to 100 feet.
2. Not self -Created: The lot was purchased by my family in 2021 under the belief that it was buildable with a single-family home. We did not create it's size or location.
3. No Special Privilege Conferred: This is a residential street with different homes which are all single family homes. To build on this lot would not create or confer a special privilege.
4. Deprivation of Rights: The lot width is smaller than the latest requirement but can meet the set backs. Prohibiting me from building on this Real Property would deprive me of the use and enjoyment thereof.
5. Minimum Possible Variance: I am requesting a variance from the lot size requirement in order to build a single -family home on the parcel in keeping with all setback requirements and height restrictions otherwise applicable to the parcel.
6. Purpose and Intent: The Real Property on this street are all single-family homes. I intend to build a single-family home, which would be in keeping with the surrounding use and not be injurious to the neighborhood.

I look forward to a positive resolution of this variance request.

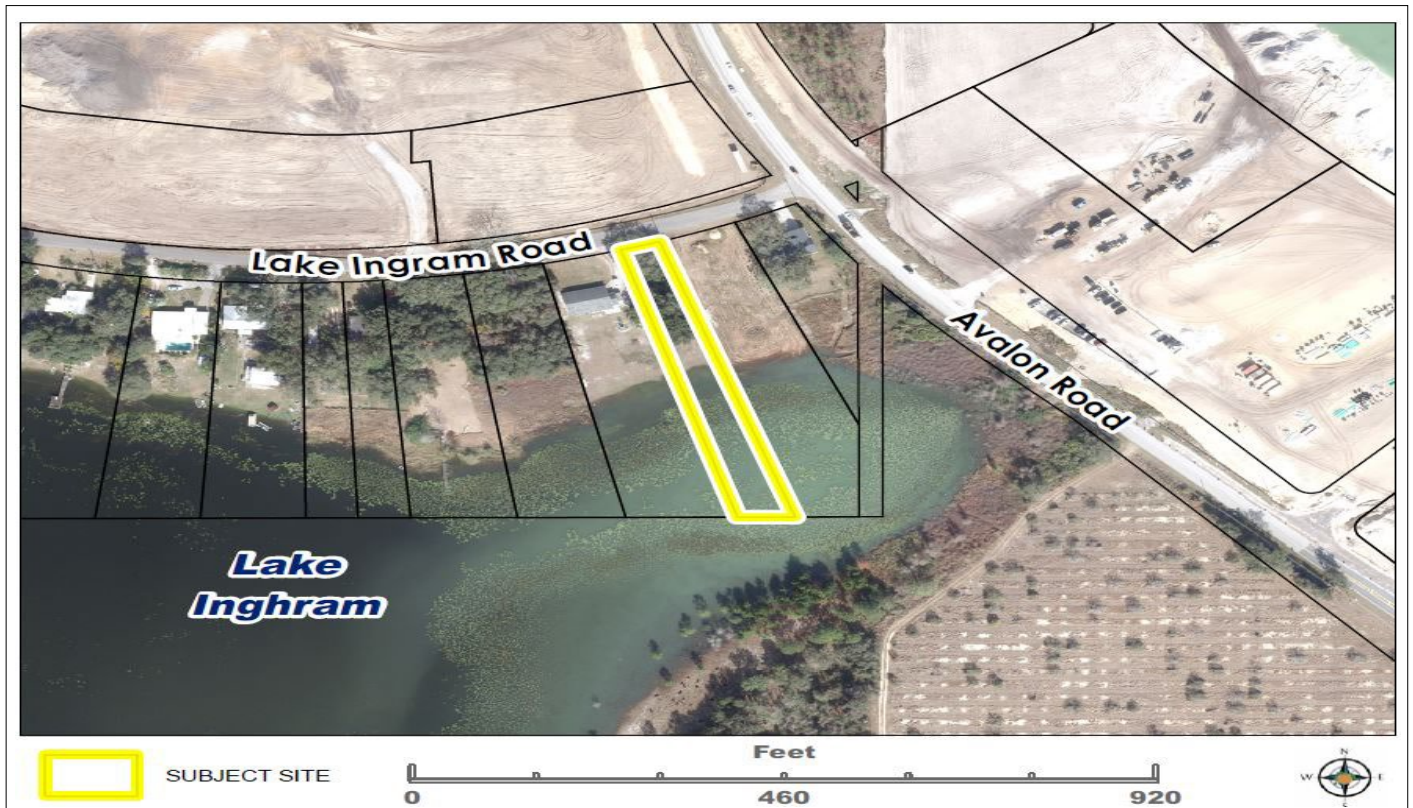
Sincerely,

Gail Fournier

## ZONING MAP

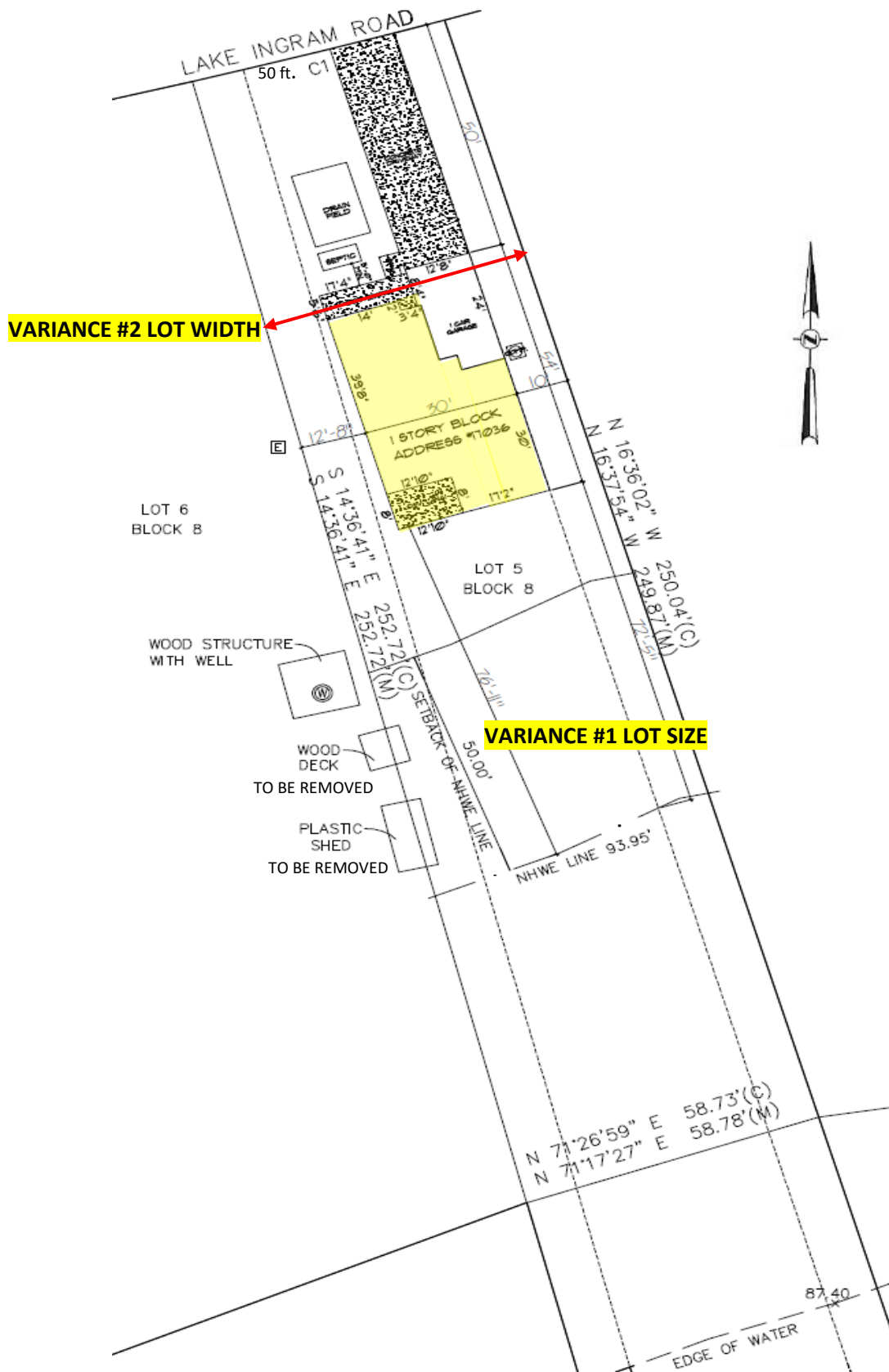


## AERIAL MAP

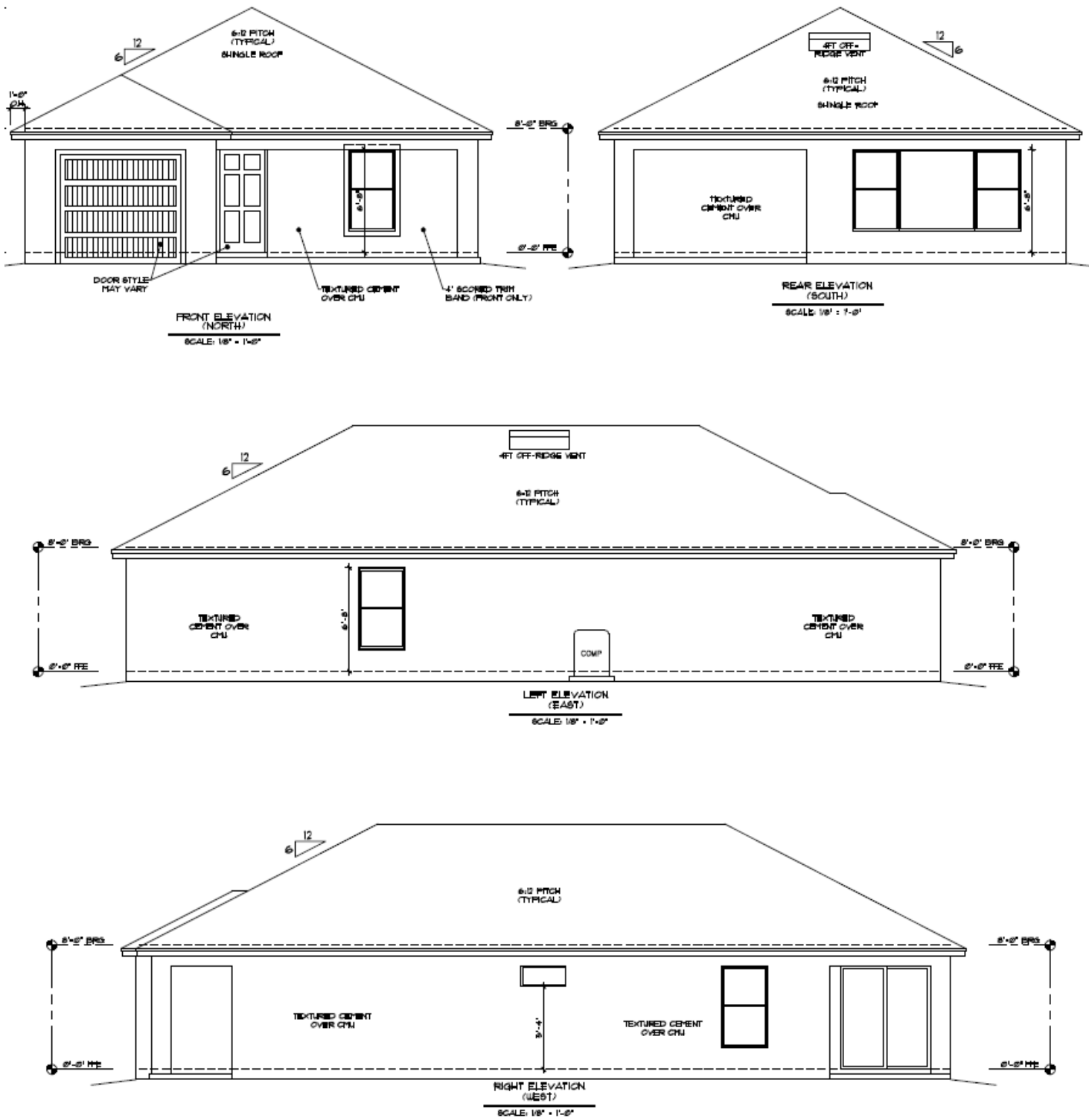




# SITE PLAN



## ELEVATIONS





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**SITE PHOTOS**

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**Property from Lake Ingram Rd. facing south**



**Similar sized developed lots to the west**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 02, 2022**

Commission District: **#5**

Case #: **VA-22-06-037**

Case Planner: **Nick Balevich (407) 836-0092**

**Nick.Balevich@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): SANDRA BERNAL-CRUZ FOR EL MOLCAJETE

OWNER(s): T & N INVESTMENT CORP

REQUEST: Variance in the C-2 zoning district to allow a 2COP license for consumption of beer and wine on premises located 312 feet and 687 feet, respectively, from a religious institution in lieu of 1,000 feet.

PROPERTY LOCATION: 1718 N. Goldenrod Rd., Orlando, FL 32807, west side of N. Goldenrod Rd., north of E. Colonial Dr., east of N. Semoran Blvd.

PARCEL ID: 14-22-30-0000-00-046

LOT SIZE: +/- 0.8 acres (34,994 sq. ft.)

NOTICE AREA: 1 mile

NUMBER OF NOTICES: 3,197

**DECISION:** Recommended **DENIAL** of the Variance request in that there was no unnecessary hardship shown on the land; and further, it does not meet the requirements governing variances as spelled out in Orange County Code, Section 30-43(3) (3 in favor, 1 opposed and 3 absent).

**SYNOPSIS:** Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for approval. Staff noted that three (3) comments were received in support, and seven (7) comments were received in opposition.

The applicant stated that they are a full-service restaurant, not a bar, that it has been in operation for over five years, and that the proposal would allow them to offer customers a full dining experience. The applicant also stated that verbal approval was received from one of the affected churches.

There was no one in attendance to speak in favor or in opposition to the request.

The BZA discussed the letters of opposition and noted that the 2 adjacent churches did not provide letters of no objection. The BZA discussed the inconsistency of the requested variance with similar prior requests, noted the close proximity of the closest church, how the proposal did not meet the six (6) variance criteria and recommended denial of the variance by a 3-1 vote, with three absent.

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## STAFF RECOMMENDATIONS

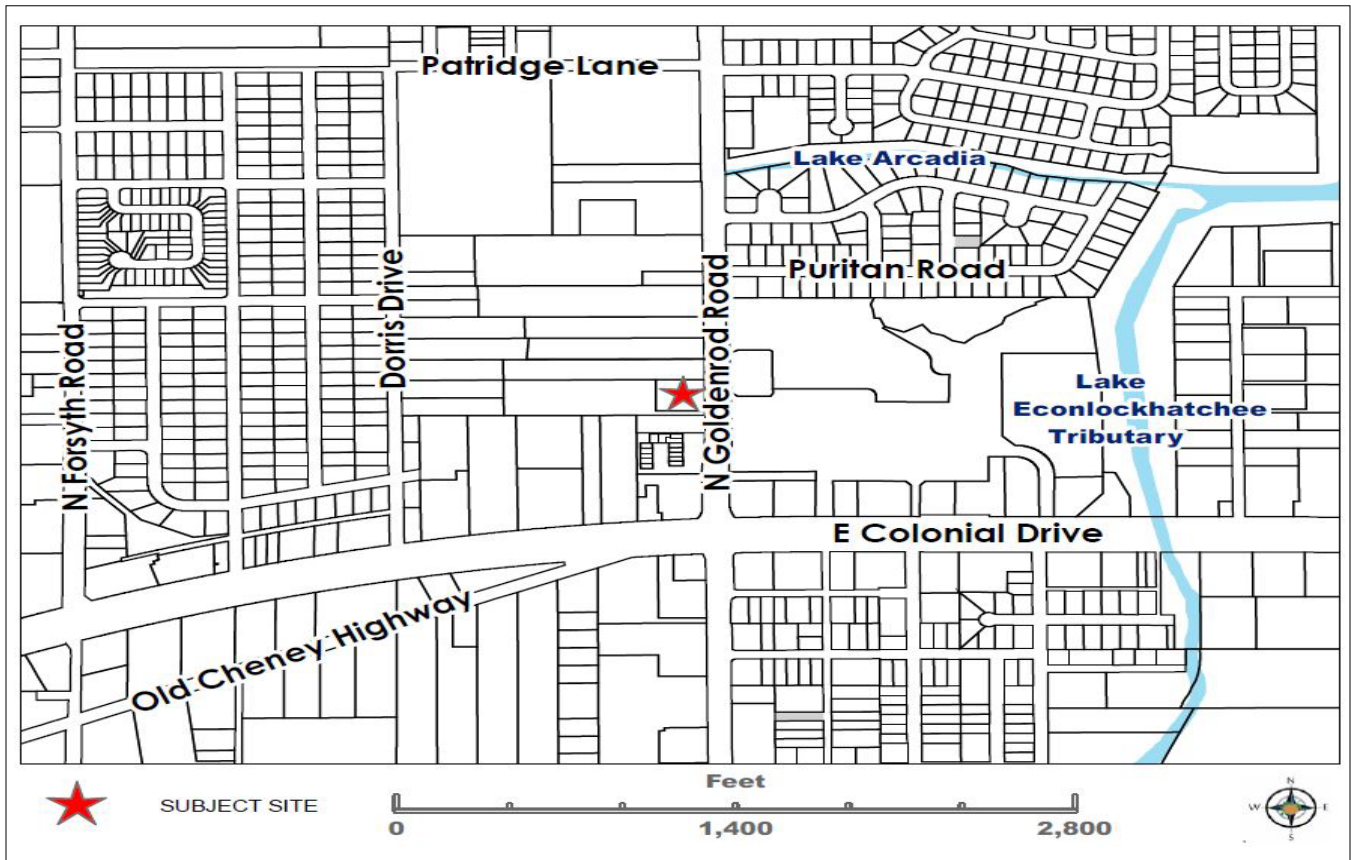
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Approval, subject to the conditions in this report.

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## LOCATION MAP

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## SITE & SURROUNDING DATA

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	Property	North	South	East	West
Current Zoning	C-2	C-2	C-2	C-2	C-2
Future Land Use	C	C	C	C	C
Current Use	Commercial	Commercial	Commercial	Commercial	Commercial

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## BACKGROUND AND ANALYSIS

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### **DESCRIPTION AND CONTEXT**

The subject property is located in the C-2, General Commercial district, which allows a wider variety of commercial uses including automotive repair/sales and selected trade shops, in addition to restaurants and retail, and requires a larger lot area than the C-1 Retail Commercial district. The future land use is Commercial (C), which is consistent with the C-2 zoning district.

The subject property is 0.8 acres in size, and conforms with the C-2 zoning requirements. The property is developed with a 9,885 square foot commercial strip center with 11 bays that was constructed in 1981. The subject site abuts commercial uses in all directions. Directly to the north is an 830 ft. deep lot with a 500 ft. long multi-unit commercial building with a variety of commercial businesses as well as an existing church, El Tabernaculo Pentecostal, located near the rear. The next lot to the north is another existing church, Mision La Cosecha.

The request is to allow for a 2COP license to allow consumption of beer and wine on premises for El Molcajete Restaurant, a 1,795 square foot restaurant in Suites 6 and 7, located in the middle of the 11 Suite commercial building on the property. Sec. 38-1415 requires any business serving alcohol on site to be located at least one thousand (1,000) feet away from any established religious institution or school. The code has a provision allowing businesses that derive more than fifty-one (51) percent of their business from the sale of food and nonalcoholic beverages to be at least 500 ft. away from the primary door of a school, but this exemption does not apply to churches. The distance is measured by following the ordinary route of pedestrian travel along the public thoroughfare from the main entrance of the place of business to the main entrance door of the church. El Molcajete is located 312 feet from Mision La Cosecha church, and 687 feet from El Tabernaculo Pentecostal church, where 1,000 ft. is required, resulting in the requested variance. Both churches are located to the north of the subject property within the C-2 zoning district. There are other restaurants to the south on Goldenrod Rd., and on Colonial Dr., with licenses to serve alcohol in the area.

As of the date of this report, no comments have been received in favor or in opposition to this request.

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## STAFF FINDINGS

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### **VARIANCE CRITERIA**

#### **Special Conditions and Circumstances**

The location of religious institutions in a commercial zoning district is a special condition as the area is intended primarily for commercial uses. The applicant is requesting a 2COP license to allow consumption of beer and

wine on premises for an existing restaurant, and will not have any noticeable impacts on adjacent commercial properties. There are other restaurants with licenses to serve alcohol in the area, and the addition of a 2COP license to this property will not have any negative effects on the area which contains commercial uses.

#### **Not Self-Created**

The need for the variance is not self-created, as many restaurants request licenses to allow consumption of alcohol on premises. Furthermore, this property is in a commercial strip center and is adjacent to a commercial plaza containing many other businesses in addition to the church.

#### **No Special Privilege Conferred**

Granting the variance as requested will not confer special privilege, as many other similar businesses in the area offer on premise consumption in conjunction with their restaurant.



### **Deprivation of Rights**

Not allowing this applicant to serve beer and wine on premises would deprive them of the rights commonly enjoyed by neighboring properties and similar restaurants.

### **Minimum Possible Variance**

The variance requested is the minimum possible to allow the consumption of beer and wine at an existing restaurant in a commercial plaza within 1,000 ft. of existing churches.

### **Purpose and Intent**

Approval of this variance will be in harmony with the zoning code as the commercial zoning districts in the area allows restaurants and bars, including the property containing the churches. Allowing on-site consumption at this location would not be detrimental or injurious to the adjacent commercial properties, or the churches.

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### **CONDITIONS OF APPROVAL**

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1. Development shall be in accordance with the site plan received May 3, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.

C: Sandra Bernal-Cruz  
7415 Hollow Ridge Circle  
Orlando, Florida, 32822

C: John R. Samaan, Esq.  
1600 E. Robinson St., Suite 100  
Orlando, Florida, 32803

JOHN R. SAMAAN, P.A.

ATTORNEY AT LAW \*

WWW.SAMAAN-LAW.COM JOHN@SAMAAN-LAW.COM

RECEIVED

APR 08 2022

ORANGE COUNTY  
ZONING DIVISION

1600 E. Robinson Street  
Suite 100  
Orlando, Florida 32803  
Phone 407.740.0500

\* Supreme Court Certified  
Circuit Court Mediator

April 7, 2022

Orange County Zoning Division  
201 South Rosalind Avenue  
1<sup>st</sup> Floor  
Orlando, Florida 32802-2687

Re: Variance Request for El Molcajete Mexican Restaurant Beer and Wine License

To Whom It May Concern:

This firm represents El Molcajete LLC and Sandra Bernal-Cruz with regard to their application for beer and wine 2COP license dated May 3, 2017 for the restaurant property located at 1718 North Goldenrod Road, Orlando, Florida 32807 (the "Property") and their enclosed Application for Variance.

We are in receipt of your letter dated May 12, 2017, a copy of which is attached hereto as **Exhibit "A"**, which states that zoning approval could not be issued for new alcoholic beverage license due to the location of the Property not satisfying the 1,000 feet separation requirement from the nearest religious institution as required by Orange County Code. More specifically, a distance check was conducted that revealed that the Property is located 312 feet from a religious institution, Mison La Cosecha, located at 1732 North Goldenrod Road and the Property is located 687 feet from another religious institution, El Tabernaculo Pentecostal, located at 1720 North Goldenrod Road. (See pictures from distance check attached hereto as **Exhibit "B"**).

We are hereby requesting a variance to allow El Molcajete LLC to procure a 2COP liquor license for the Property, as the liquor license is necessary for the success of the Mexican restaurant, El Molcajete, located at the Property with the enclosed Application for Variance. Additionally, Please find enclosed a copy of El Molcajete LLC's previously submitted application (see **Exhibit "C"**). The enclosed variance application is to specifically request the following:

- 1) A variance for separation of 312 feet from Mison La Cosecha, a religious institution located at 1732 North Goldenrod Road where the requirement is 1,000 feet, which is a variance of 688 feet; and
- 2) A variance for separation of 687 feet from El Tabernaculo Pentecostal, another religious institution located at 1720 North Goldenrod Road where the requirement is 1,000 feet, which is a variance of 313 feet.

The following is El Molcajete's justification for how the proposed variances requested meet the six (6) standards for variance approval:

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## COVER LETTER

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- 1) **Special Conditions and Circumstances** – El Molcajete has not been able to obtain their requested 2COP beer and wine license for the Property it leases pursuant to unique zoning restrictions. These zoning restrictions requiring separation from religious institutions have created special circumstances and conditions which are peculiar to the Property involved and which are not applicable to similar structures in the same zoning district.
- 2) **Not Self-Created** – The special conditions and circumstances do not result from the actions of the applicant. The principal agents of El Molcajete were unaware that a beer and wine license for El Molcajete would not meet the unique zoning separation requirements from religious institutions prior to the restaurant entering into a lease for the Property and occupying the Property.
- 3) **No Special Privilege Conferred** – Approval of the zoning variances requested herein will not confer on the applicant any special privilege that is denied to other lands, buildings, or structures in the same zoning district. In fact, there are currently similar operating full-service restaurants in the same zoning district approved to serve alcohol.
- 4) **Deprivation of Rights** – Literal interpretation of the provisions contained in the separation requirement from religious institutions would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would result in unnecessary and undue hardship on the applicant. Other restaurants in this same zoning district have obtained licenses to serve alcohol at their locations. Additionally, there are gas station convenience stores and other retail stores in this same zoning district that have been approved for selling packaged alcohol.
- 5) **Minimum Possible Variance** – The zoning variance requested is the minimum variance required to make possible the reasonable use by the restaurant for the Property.
- 6) **Purpose and Intent** – Approval of the zoning variances requested herein will undoubtedly be in harmony with the purpose and intent of the existing zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. El Molcajete is a family friendly Mexican restaurant located in a commercial zoning district. The restaurant has reasonable hours, which means they would not be serving alcohol past reasonable times. The intended alcohol sales would only be a small, yet important, portion of its business with food sales being the highest portion. El Molcajete will have policies in place to ensure that its patrons practice safe and reasonable alcohol consumption. The religious institutions that are the subject of this request for variances are only generally open and hold services approximately two (2) times per week.

I hope after reading this letter and considering the attached application for variance for El Molcajete LLC that approval is granted for the variances requested herein to allow El Molcajete LLC to procure a 2COP beer and wine license. Should you have any questions or require any additional information, please don't hesitate to contact me at (407) 740-0500 or by email to [john@samaan-law.com](mailto:john@samaan-law.com) and [support@samaan-law.com](mailto:support@samaan-law.com).

Respectfully,



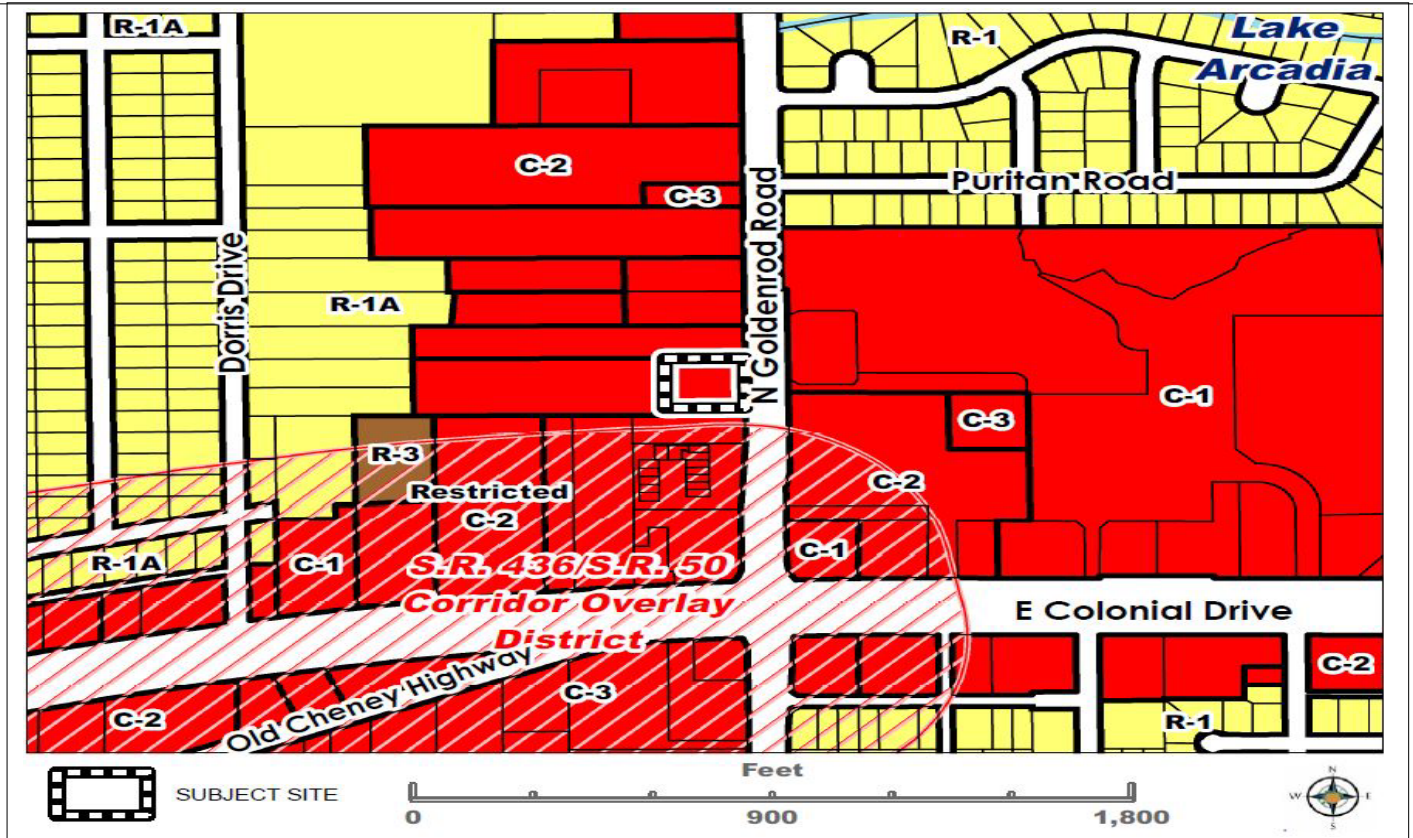
John R. Samaan  
(Signed in his absence to avoid delay)

Enclosures

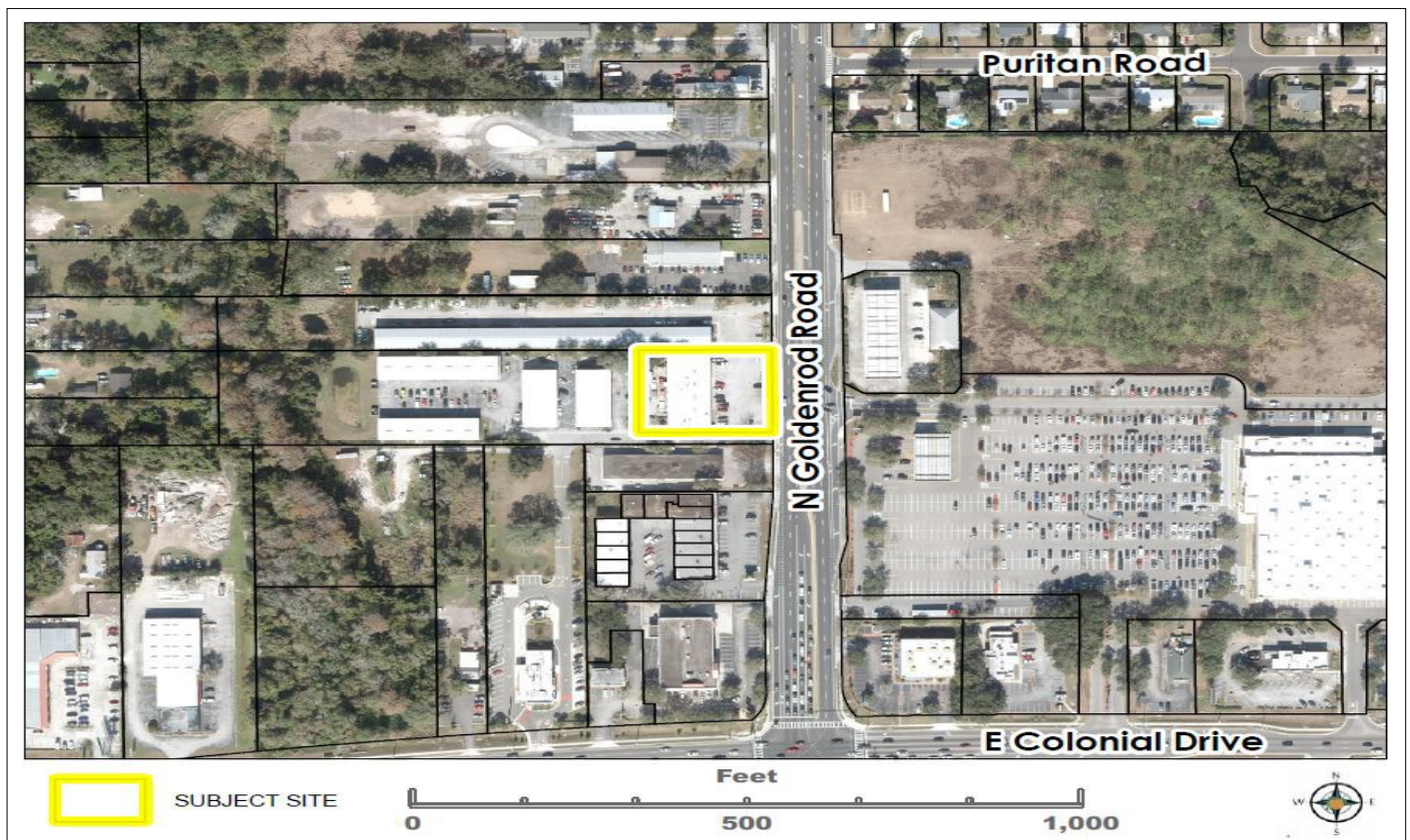
Cc: Sandra Bernal-Cruz, Authorized Agent for El Molcajete LLC



## ZONING MAP



## AERIAL MAP





DISTANCE SEPARATION TO ADJACENT CHURCH

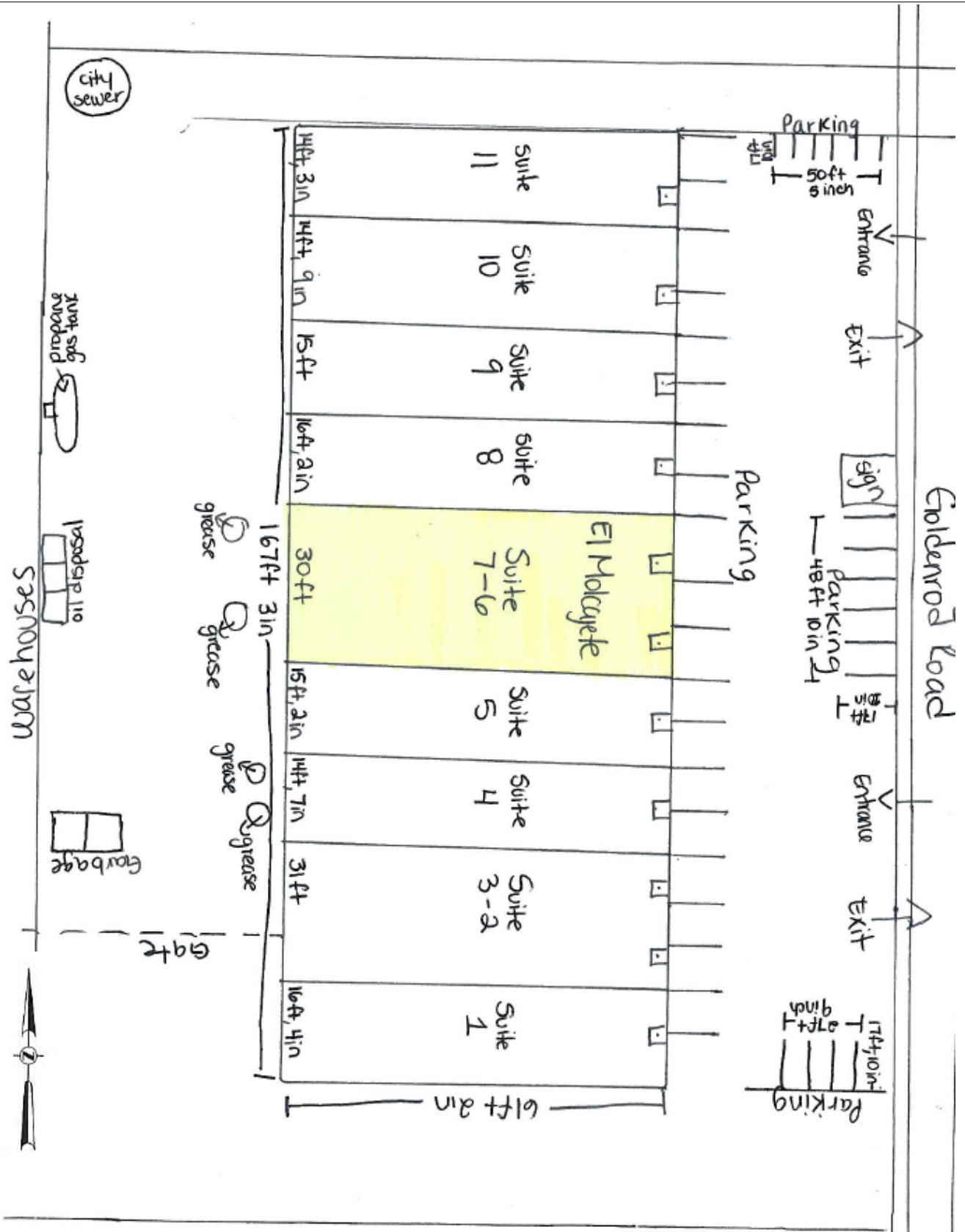


DISTANCE SEPARATION TO ADJACENT CHURCH

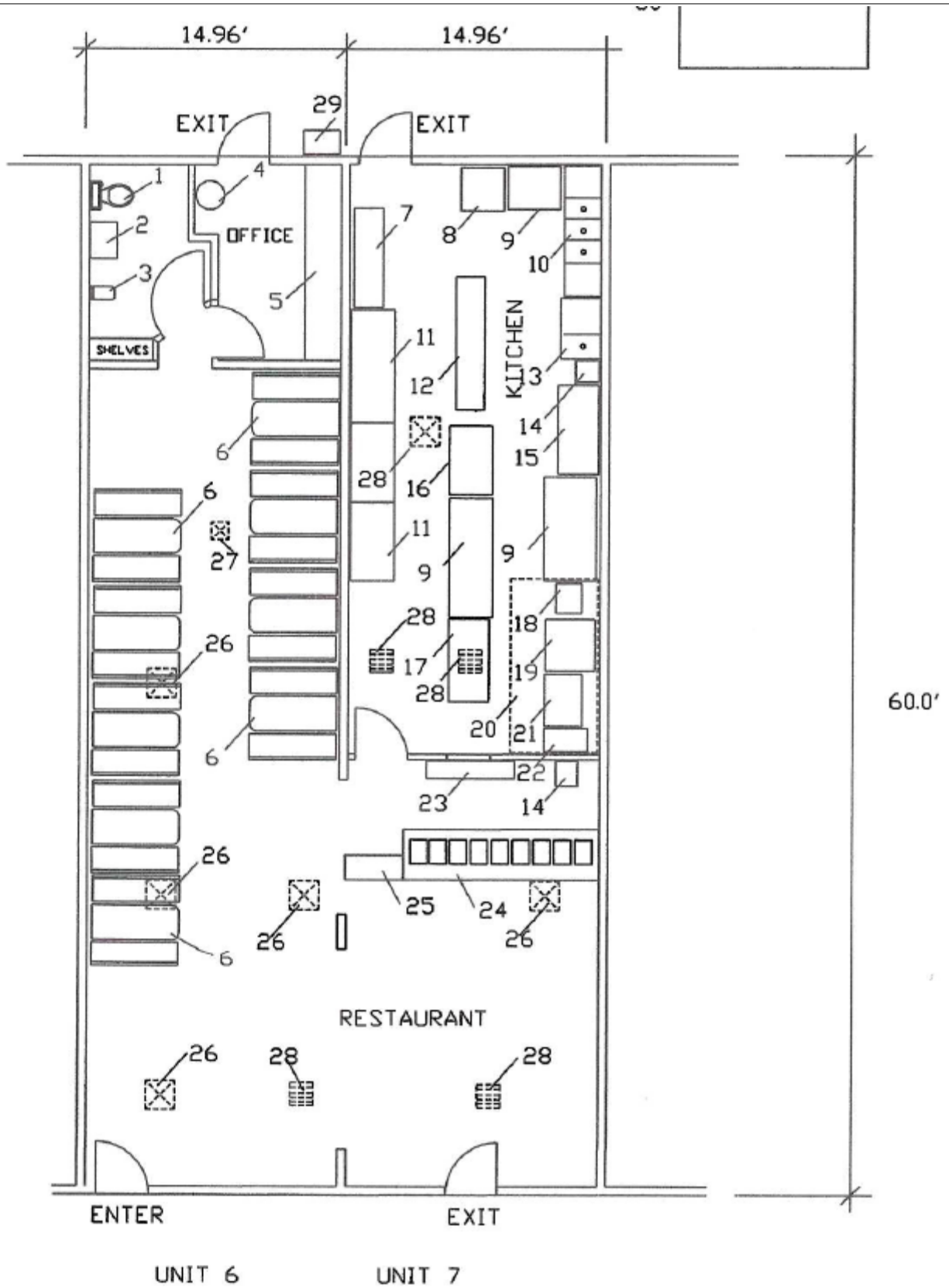




# SITE PLAN



# RESTAURANT FLOOR PLAN



## SITE PHOTOS



Building from N. Goldenrod Rd. facing west



Business facing west



## SITE PHOTOS



**Building containing El Tabernaculo Pentecostal Church 687 ft. separation**



**El Tabernaculo Pentecostal Church 687 ft. separation**

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**SITE PHOTOS**

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**Mision La Cosecha Church 312 ft. separation**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 02, 2022**

Commission District: **#6**

Case #: **VA-22-06-042**

Case Planner: **Nick Balevich (407) 836-0092**

**Nick.Balevich@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): JAMES HURST FOR PHASE II LLC

OWNER(s): PHASE II LLC

REQUEST: Variances in the R-1A zoning district for the construction of a single-family residence as follows:

- 1) To allow a lot size of 4,261 sq. ft. in lieu of a minimum of 7,500 sq. ft.
- 2) To allow a lot width of 50 ft. in lieu of a minimum of 75 ft.
- 3) To allow a west rear setback of 25.7 ft. in lieu of 30 ft.
- 4) To allow an east front setback (front porch) of 20 ft. in lieu of 25 ft.

PROPERTY LOCATION: 3624 Woods St., Orlando, FL 32805, west side of Woods St., east of S. Orange Blossom Trl., south of I-4.

PARCEL ID: 03-23-29-0182-96-221

LOT SIZE: +/- 0.09 acres (4,261 sq. ft.)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 132

**DECISION:** Recommended **APPROVAL** of the Variance requests #1, #2 and #3, in that the Board finds they meet the requirements of Orange County Code, Section 30-43(3); further, said approval is subject to the following conditions as amended; and, **DENIAL** of the Variance request #4, in that there is no unnecessary hardship shown on the land; and further, it does not meet the requirements governing variances as spelled out in Orange County Code, Section 30-43(3) (unanimous; 4 in favor, 0 opposed and 3 absent):

1. Development shall be in accordance with the dimensions as shown on the site plan, as modified to provide a minimum 25 ft. front setback, received May 18, 2022, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.



3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.

**SYNOPSIS:** Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for approval of Variances #1 and #2, due to the existing property size, and denial of Variances #3 and #4, since there are other options available to meet the district setback requirements. Staff noted that no comments were received in favor or in opposition.

The applicant discussed the property and house size as well as the requested front porch which encroaches the front setback.

One spoke in opposition regarding another adjacent property, describing noise disturbances.

The BZA inquired about the front porch and confirmed that a 3 ft. overhang would not be included in the front setback. The BZA discussed the variances and the options to eliminate Variance #4, and stated justification for the six (6) criteria for Variances #1 through #3 and unanimously recommended approval of the Variances #1, #2, and #3 and denial of variance #4 by a 4-0 vote, with three absent, subject to the three (3) conditions in the staff report, and an amended Condition #1, which states, "Development shall be in accordance with the dimensions as shown on the site plan, as modified to provide a minimum 25 ft. front setback."

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### STAFF RECOMMENDATIONS

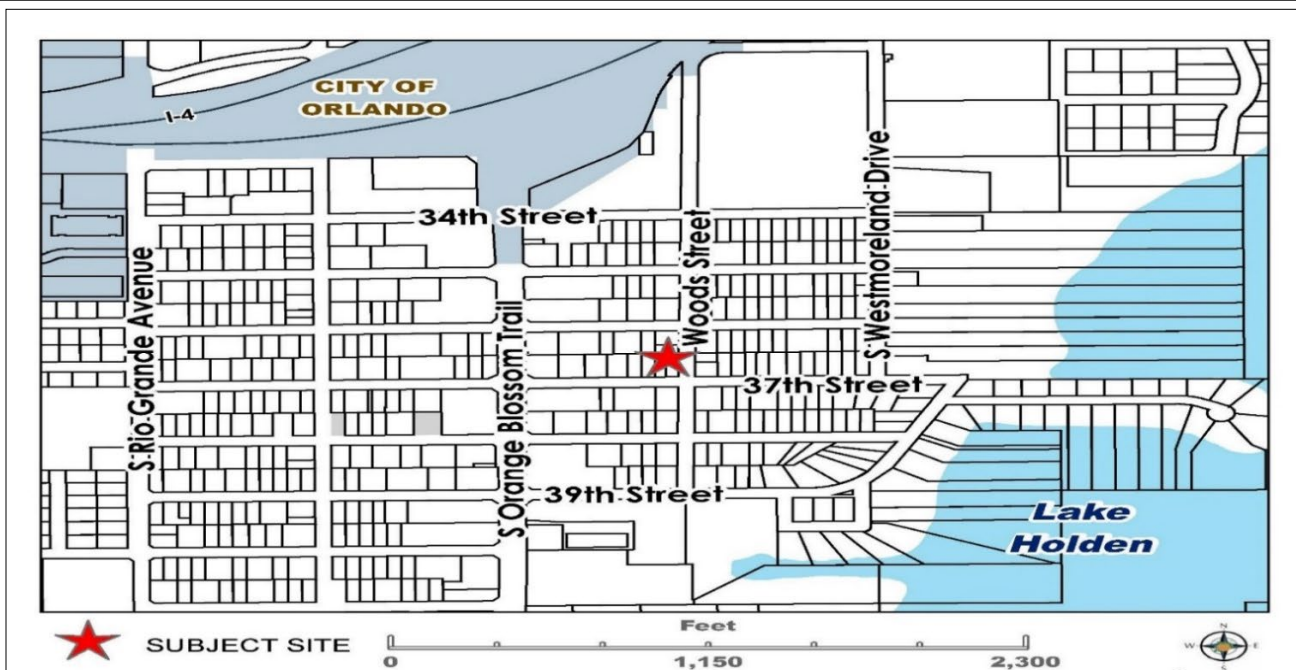
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Approval, of variances #1 and #2, subject to the conditions in this report, and denial of variances #3 and #4. However, if the BZA should find that the applicant has satisfied the criteria for the granting of all variances, staff recommends that the approval be subject to the conditions in this report.

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### LOCATION MAP

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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	R-1A	R-1A	R-1A	R-1A	R-1A
Future Land Use	LDR	LDR	LDR	LDR	LDR
Current Use	Single-family residential	Single-family residential	Single-family residential	Single-family residential	Single-family residential

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

The subject property is located in the R-1A, Single-Family Dwelling district, which allows single-family homes and associated accessory structures and requires a minimum lot area of 7,500 sq. ft. The Future Land Use is Low Density Residential (LDR), which is consistent with the R-1A zoning district.

The area around the subject site consists of single-family homes and vacant lots. The subject property is a 4,261 sq. ft. lot, consisting of the northern portion of platted lot 22, block 96, located in the Angebilt Addition Number 2 Plat, recorded in 1924. The lot is non-conforming, as it does not meet the minimum lot width or size. The property was previously developed with a single-family home that was demolished in 2013 (permit B13003894). The owner purchased the property in 2019.

Per Orange County Code Sec. 38-1401, if two or more adjoining lots were under single ownership on or after October 7, 1957, and one of the lots has a frontage or lot area less than what is required by the zoning district, such substandard lot or lots shall be aggregated to create one conforming lot. The subject property was combined through ownership with the south 50 ft. of lot 1, block 96 in 2018 and it was then conveyed/ sold in the combined format from September 27, 2018 to December 11, 2019. Thus, the parcel cannot be considered to be a substandard lot of record, and variances are required for the lot width and lot size. The parcel is 4,261 sq. ft. in size but the R-1A zoning district requires a minimum lot area of 7,500 sq. ft., requiring Variance #1, and is 50 feet wide, but the R-1A zoning district requires a minimum lot width of 75 ft., requiring Variance #2. The applicant is proposing to construct a single story 1,219 sq. ft. single-family home with an 80 sq. ft. front porch on the property which will meet the north and south side setback requirements for the district, but with a west rear setback of 25.7 ft. in lieu of 30 ft., requiring Variance #3, and an east front setback of 20 ft. in lieu of 25 ft., requiring Variance #4.

If the lot was platted after March 3, 1997 then the rear setback would have been required to be 25 ft., and the front setback would have been required to be 20 ft., and Variances #3 and #4 would not be necessary. However, there are other options that would eliminate the front and rear setback variances, such as reorienting the structure by resizing the footprint, or by constructing a 2-story residence.

Within the surrounding neighborhood, the abutting parcel to the southeast was granted variances in 2003 for: 1) 3,900 sq. ft. lot size in lieu of 7,500 sq. ft.; 2) 43.7 ft. lot width in lieu of 75 ft.; 3) 23 ft. rear setback in lieu of 30 ft.; and 4) 5 ft. from side setback in lieu of 7.5 ft. and the parcel across the street to the east was granted variances in 1989 for: 1) 4,414 sq. ft. lot size in lieu of 7,500 sq. ft.; and 2) 55 ft. lot width in lieu of 75 ft. Although comparatively the abutting parcel to the southwest is 3,581 sq. ft. in size, and is 40 ft. wide, it was developed with a house in 1953, prior to the establishment of zoning regulations in 1957.

While the request meets some of the standards for variance criteria, it does not meet all of the standards for variances #3 and #4. Therefore, staff is recommending denial of variances #3 and #4.

As of the date of this report, no comments have been received in favor or in opposition to this request.

#### **District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	17 ft.
Min. Lot Width:	75 ft.	50 ft. - Variance #1
Min. Lot Size:	7,500 sq. ft.	4,261 sq. ft. Variance #2

#### **Building Setbacks (that apply to structure in question)**

	Code Requirement	Proposed
Front:	25 ft.	22 ft. (East -Variance #4)
Rear:	30 ft.	25.73 ft. (West - Variance #3)
Side:	7.5 ft.	7.5 ft. (North) 7.5 ft. (South)

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### **STAFF FINDINGS**

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#### **VARIANCE CRITERIA**

##### **Special Conditions and Circumstances**

The existing parcel size and depth are considerations of special conditions and circumstances. Demolition of the previous residence in 2013 has rendered the property undevelopable without the variances for lot area and lot width since all adjacent parcels are developed. Further, the parcel depth of 85 ft. makes it difficult to develop the property with a reasonable sized residence without a setback variance.

##### **Not Self-Created**

**Variances #1 and #2:** The lot was combined through ownership with 50 ft. to the north in 2018, and therefore the owners are not responsible for the size and configuration of the parcel, since the property was purchased in 2019, and the substandard aspects are not self-created.

**Variances #3 and #4:** The requested variances are self-created, as the proposal is for new construction which could be modified to meet the required setbacks.

##### **No Special Privilege Conferred**

**Variances #1 and #2:** Granting the variances will not establish special privilege since there are other substandard developed lots in the area with similar size and width.

**Variances #3 and #4:** The requested variances would grant special privilege, as a different design could be utilized that would meet required setbacks.



### **Deprivation of Rights**

**Variances #1 and #2:** Without the requested lot size and width variances, the owner will be deprived of the ability to construct a residence on the parcel.

**Variances #3 and #4:** The owner is not being deprived of the ability to construct a residence on the property that complies with setbacks by utilizing a different design.

### **Minimum Possible Variance**

**Variances #1 and #2:** The requested variances are the minimum necessary to construct any improvements on the existing property.

**Variances #3 and #4:** The requested variances are not the minimum necessary, as a modified floorplan could be proposed in order to comply with setbacks, including modifying it to be a 2-story residence.

### **Purpose and Intent**

Approval of these requests will be in harmony with the purpose and intent of the of the Code, which is to allow infill development of lawfully constructed residences. The proposed home will not be detrimental to the neighborhood as the proposed the residence will be consistent with the predominant construction of similar sized single-family residences on small lots in the area.

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### **CONDITIONS OF APPROVAL**

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1. Development shall be in accordance with the dimensions as shown on the site plan received May 18, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.

C: James Hurst  
P.O. Box 593776  
Orlando, FL 32859

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## COVER LETTER

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### VARIANCE COVER LETTER

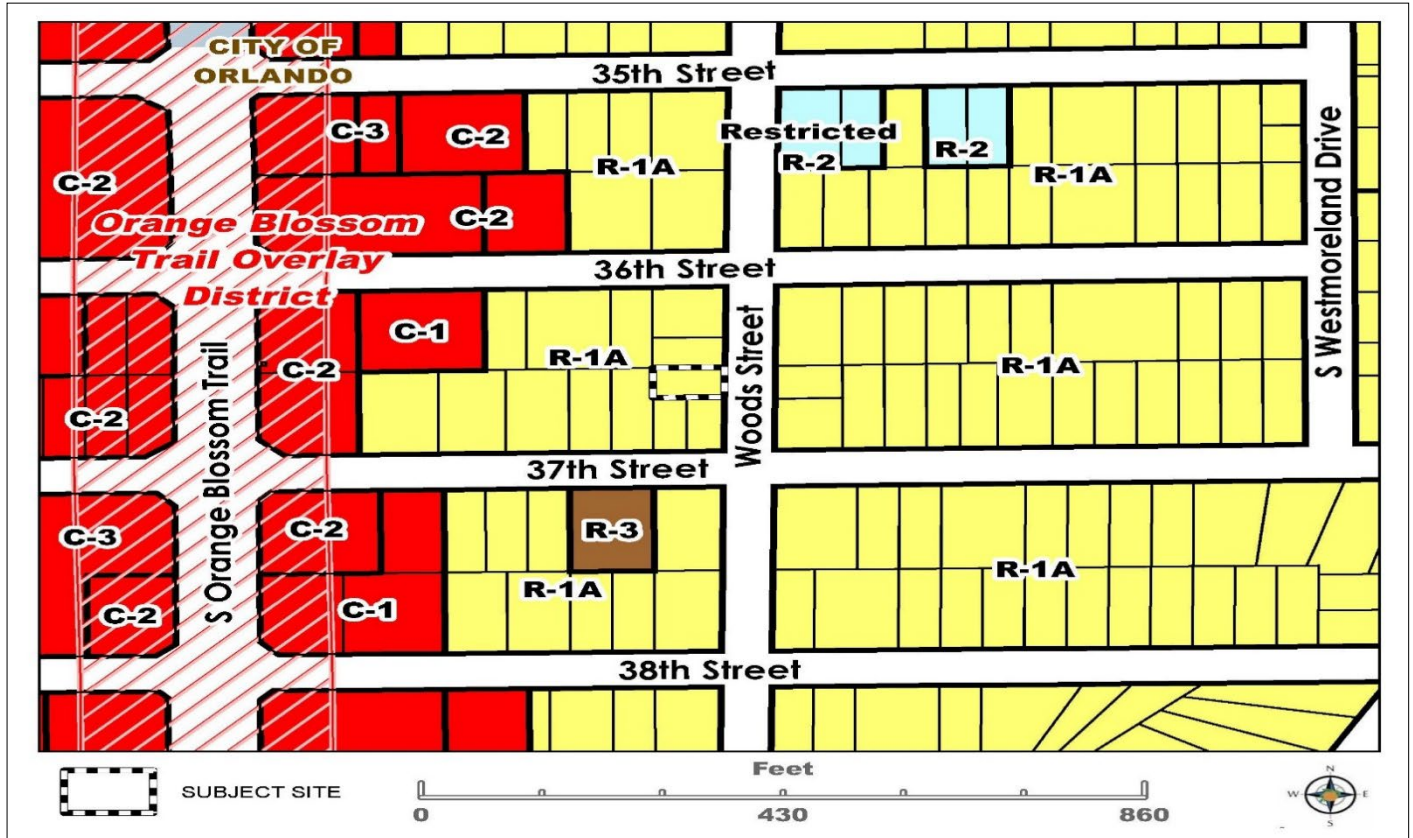
Orange County Zoning Review  
3624 Woods Street  
Orlando Florida, 32805  
4-12-2022

We are proposing a 25.73' rear setback in lieu of a 30.00' setback, that allows for reasonably proportioned living area within the residence. We are also proposing a front porch projection that is 20.00' from the front property line in lieu of a 25.00' setback. The design was developed based on a post 1997 plat record that allows for 25ft rear setbacks and 20ft front setbacks.

1. Special Conditions and Circumstances: The site was platted in 2012 per the orange county Plat related record 20120589073. The site small and requires an increase from the pre-1997 setback requirements.
2. Not Self-Created -The site condition is existing and not changed from the time of original purchase
3. No Special Privilege Conferred: To our knowledge this variance would not provide any special privilege.
4. Deprivation of Rights – These increased setbacks are commonly enjoyed by many other R1A properties in the neighborhood
5. Minimum Possible Variance – We consider this to be a minimal variance to make the new residence well proportioned and provide a comfortable living condition for the occupant.
6. Purpose and Intent – The variance would not negatively impact the neighborhood and is consistent with other property setbacks in this neighborhood.

Phase 2 LLC  
P.O. Box 593776  
Orlando, Fl. 32859  
407-383-4561

## ZONING MAP



## AERIAL MAP



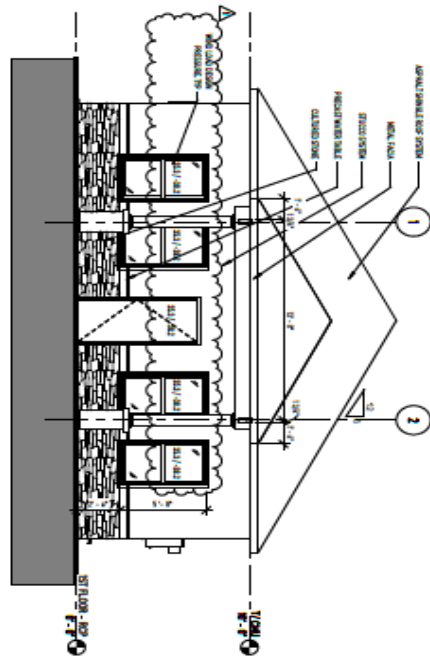


## SITE PLAN

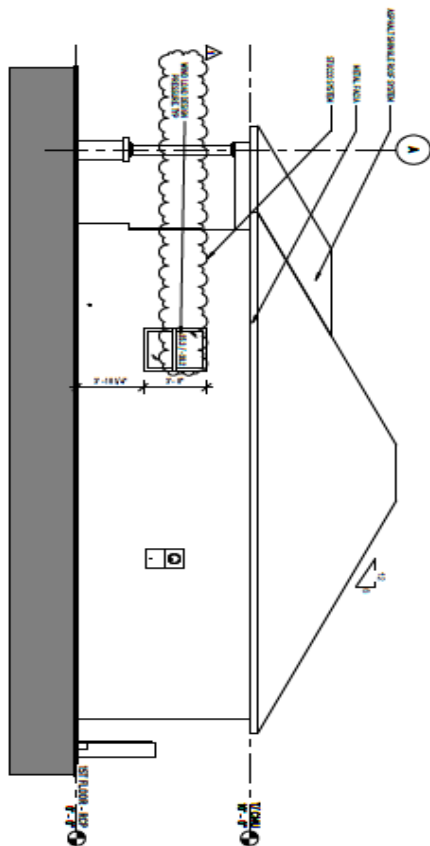


# ELEVATIONS

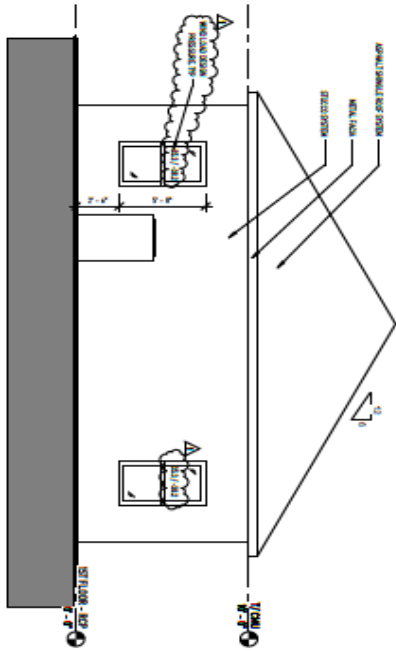
1 EAST ELEVATION  
1/8" = 1'-0"



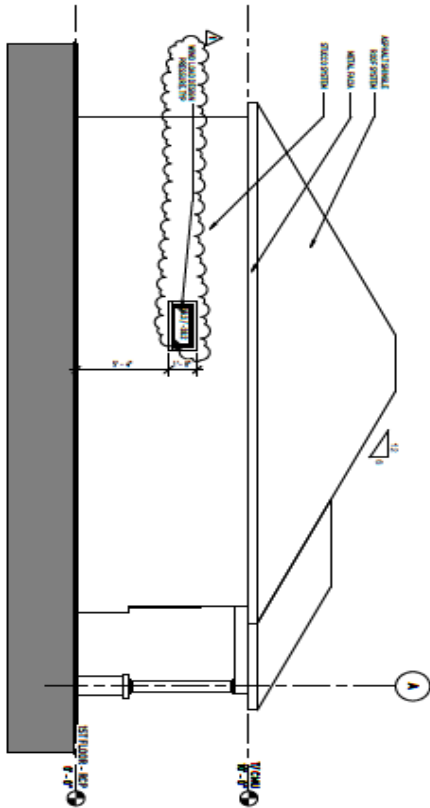
2 NORTH ELEVATION  
1/8" = 1'-0"



3 WEST ELEVATION  
1/8" = 1'-0"



4 SOUTH ELEVATION  
1/8" = 1'-0"





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**SITE PHOTOS**

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**Front from Woods Street facing west**



**Property to the north with similar sized lot**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 02, 2022**

Commission District: **# 1**

Case #: **VA-22-06-044**

Case Planner: **Nick Balevich (407) 836-0092**

**Nick.Balevich@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): DANIEL WAGNER

OWNER(s): 9470 KILGORE TRUST

REQUEST: Variance in the R-CE zoning district to allow a ground mounted solar system in the front yard in lieu of the side or rear yard.

PROPERTY LOCATION: 9470 Kilgore Rd., Orlando, FL 32836, west side of Kilgore Rd., east side of Lake Sheen, south of W. Sand Lake Rd., west of S. Apopka Vineland Rd.

PARCEL ID: 04-24-28-0000-00-027

LOT SIZE: +/- 4.56 acres

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 53

**DECISION:** Recommended **APPROVAL** of the Variance request in that the Board finds it meets the requirements of Orange County Code, Section 30-43(3); further, said approval is subject to the following conditions (unanimous; 4 in favor, 0 opposed and 3 absent):

1. Development shall be in accordance with the site plan and elevations received May 16, 2022, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. The solar panels shall be shielded by an opaque fence or wall between six (6) feet and eight (8) feet in height, equal to or greater than the height of the panels.

**SYNOPSIS:** Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for approval. Staff noted that no comments were received in favor or opposition.

The applicant described the proposal and stated that there is no other place to install the solar panels on the property due to the location of the residence at the rear of the property.

There was no one in attendance to speak in favor or in opposition to the request.

The BZA discussed the variance, noted that there are no other options for installation of solar panels, including the inability to install roof-mounted equipment, described the consistency with the six (6) criteria and unanimously recommended approval of the variance by a 4-0 vote, with three absent, subject to the four (4) conditions in the staff report.

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### STAFF RECOMMENDATIONS

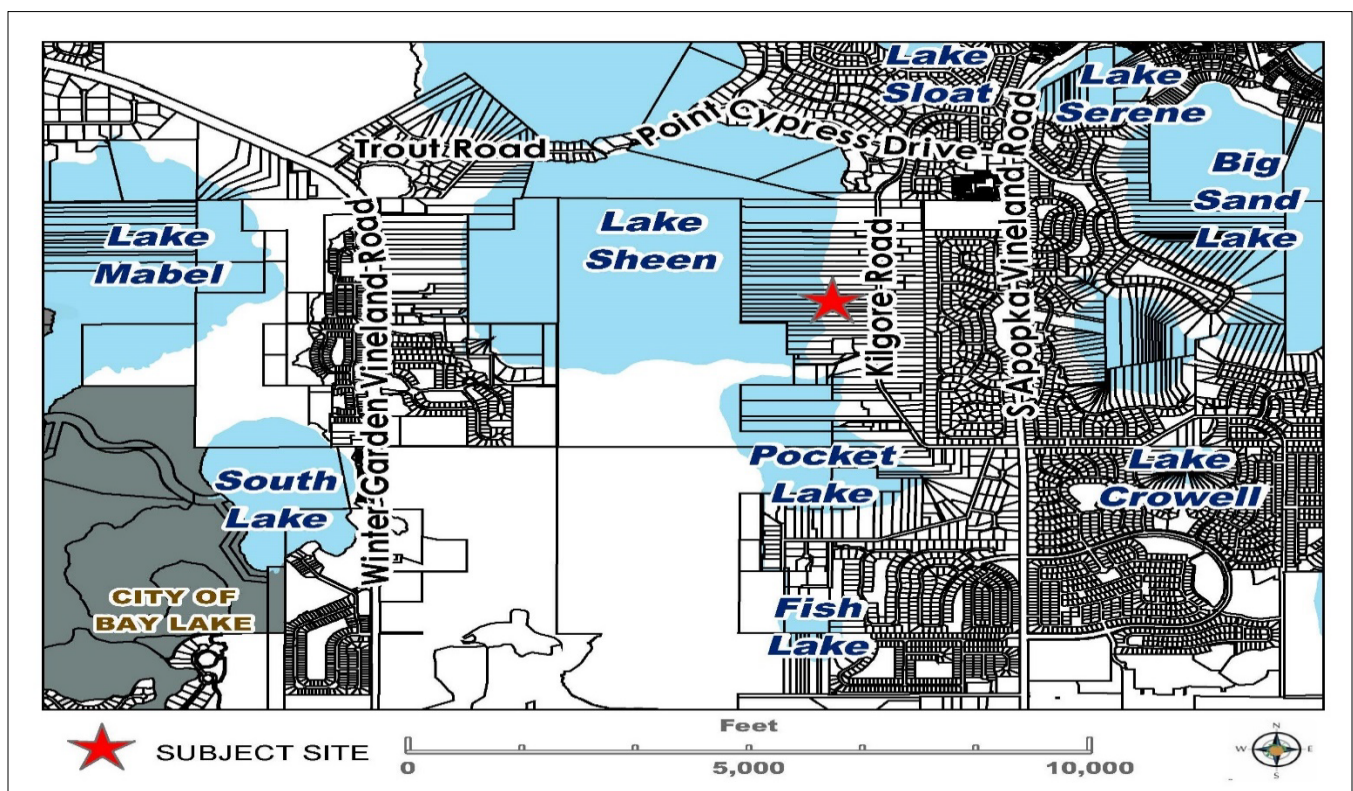
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Approval, subject to the conditions in this report.

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### LOCATION MAP

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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	R-CE	R-CE	R-CE	R-CE	R-CE
Future Land Use	LDR, R	LDR, R	LDR, R	LDR, R	LDR, R
Current Use	Single-family residence	Single-family residence	Single-family residence	Single-family residence	Lake Sheen

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

The subject property is located in the R-CE, Rural Country Estate district, which allows for single-family development on one (1) acre lots and certain rural uses. The Future Land Use is Rural (R) which is consistent with the R-CE zoning district, and Low Density Residential (LDR) which is inconsistent with the zoning district. However, per FLU 8.2.5.1, a rezoning was not required since single-family residential uses are permitted within all zoning districts consistent with the LDR district.

The area around the subject site consists of single-family homes, many of which are lakefront. The subject property is a 4.56 acre unplatted parcel that has existed prior to 1955, and is considered to be a non-conforming lot of record, as it does not meet the minimum lot width. It is a lakefront lot located on Lake Sheen. A 13,156 gross sq. ft. single family home is currently being constructed on the property (permit #B20001365). The owner purchased the property in 2015.

The applicant is seeking approval to install an array of 24 solar panels totaling 524 sq. ft. on the property. Although solar panels are permitted in the side and rear yards, the proposal is to install the panels in front of the house, which requires a variance. The house is being constructed at the rear of the lot, leaving no other location to place the panels. The Orange County Code allows a detached accessory structure to be located in front of the principal structure if the principal structure is located in the rear half ( $\frac{1}{2}$ ) of the lot/parcel, however this allowance does not apply to solar panels. The proposal will comply with all of the performance standards pertaining to solar panels, as outlined in Orange County Code Sec. 38-79(83) including:

- The maximum height of solar panels shall be 8 feet. The height of the solar panels will be 7.4 feet
- Solar panels shall be shielded by an opaque fence or wall between six (6) feet and eight (8) feet in height. The property has an opaque wall along the front (east side). An opaque fence or wall is required on the other 3 sides, to either connect to the front wall, or a separate opaque fence or wall shall be installed to shield the solar panels in all directions.
- Minimum setback shall be 5 feet from side and rear property lines. The solar panels will be: 621 feet from the rear (west) property line; 5 feet from the side (north) property line; 84 feet from the side (south) property line. While the variance is for location in the front yard, the proposal will meet the front building setback requirement of 35 feet.
- In a residential area, the square footage of solar panels shall not exceed 25 percent of the living area of the principal structure. The home under construction will be 7,424 sq. ft. of living area, and the array of solar panels will total 524 sq. ft., which is 7 percent.

As of the date of this report, no comments have been received in favor or in opposition to this request.



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## STAFF FINDINGS

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### **VARIANCE CRITERIA**

#### **Special Conditions and Circumstances**

The special conditions and circumstances particular to this application are the location of the house that is under construction at the rear of the property, leaving no alternative for installation of ground mounted panels, except as proposed in front of the house.

#### **Not Self-Created**

The need for the variance is not self-created, as there is no other option for placement of the solar panels.

#### **No Special Privilege Conferred**

Granting the variance as requested will not confer special privilege due to the orientation of the residence under construction on the lot.

#### **Deprivation of Rights**

Literal interpretation of the code would deprive the applicant of the ability to have ground mounted solar panels on the property.

#### **Minimum Possible Variance**

The variance requested is the minimum possible to allow the ground mounted solar panels to be placed in the only location available in this situation.

#### **Purpose and Intent**

Approval of this variance will be in harmony with the purpose and intent of the of the Code. The solar panels will not be detrimental to the neighborhood as they will be shielded from view by an opaque fence/wall per code.

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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan and elevations received May 16, 2022, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. The solar panels shall be shielded by an opaque fence or wall between six (6) feet and eight (8) feet in height, equal to or greater than the height of the panels.

C: Daniel Wagner  
350 S. Ronald Reagan Boulevard  
Longwood, Florida, 32750

# 15 lightyears

April 11, 2022

Orange County Building Department  
201 Rosiland Avenue  
Orlando, FL 32801

Re: Permit B22001566

To The Board of Zoning Adjustment:

We are requesting a variance for permit B22001566, property address 9470 Kilgore Road, Orlando, FL 32836.

A ground mounted solar system has been installed on the northeast corner of the property alongside the driveway. The zoning reviewer's comment is, "If solar panels cannot be located on the side or rear yard of the primary structure or cannot meet required side and NHWE setbacks then a variance may be required to be submitted to the Board of Zoning Adjustment."

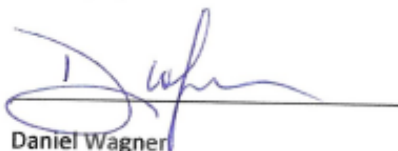
To address the 6 criteria, the ground mounted solar system measures 43'5" x 10'10" x 5' tall. It is 5' from the side property line and 35.1' from the front property line. The system is more than 50' from the high-water elevation contour line and there is a 6' opaque barrier around the property which blocks the view of the solar system from the road. The square footage of the solar panels is less than 25% of the living area of the principal structure, as the total square footage of the home is 7,424sq.ft. and the square footage of the solar system is 524sq.ft.

Our rebuttal to the zoning reviewer's comment is that the property is waterfront, and the high-water elevation line extends all the way down to Lake Sheen, which would make the "back yard" the "front yard". If this statement is true, then the ground mounted solar system is in the rear of the property. Please reference page PV2.1 from the submitted engineering plans.

We are requesting approval for the ground mounted solar location as it stands.

Please feel free to reach out to Daniel Wagner with any further questions or concerns, 855-438-1515 or [dwagner@15lightyears.com](mailto:dwagner@15lightyears.com).

Thank you,



Daniel Wagner

License Holder/ Chief Electrician

15 Lightyears

350 S Ronald Reagan Blvd., Longwood, FL 32750

855-435-1515



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## COVER LETTER

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1. **Special Conditions and Circumstances** - Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. Zoning violations or nonconformities on neighboring properties shall not constitute grounds for approval of a proposed zoning variance. We are asking that you reference the waterfront as the "front" of the property instead of the entrance from the road way.

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2. **Not Self-Created** - The special conditions and circumstances do not result from the actions of the applicant. A self-created or self-imposed hardship shall not justify a zoning variance; i.e., when the applicant himself by his own conduct creates the hardship which he alleges to exist, he is not entitled to relief.

The location of the ground mounted solar system was submitted in the engineering plans for the main building permit B20001365, which was approved.

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3. **No Special Privilege Conferred** - Approval of the zoning variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other lands, building, or structures in the same zoning district.

We are not asking for any special privileges. This home was built to be energy efficient. We are asking that you look at this property as a whole and to see that the ground mounted solar system is located at the best viable spot on the property.

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4. **Deprivation of Rights** - Literal interpretation of the provisions contained in this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter and would work unnecessary and undue hardship on the applicant. Financial loss or business competition or purchase of property with intent to develop in violation of the restrictions of this Chapter shall not constitute grounds for approval or objection. There is no financial loss or business competition. This property was not purchased with intent to develop in violation of the restriction of this Chapter. This property was purchased and home was built to be an energy efficient home.

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5. **Minimum Possible Variance** - The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building, or structure.

The ground mount solar system is in the best location the property has to offer.

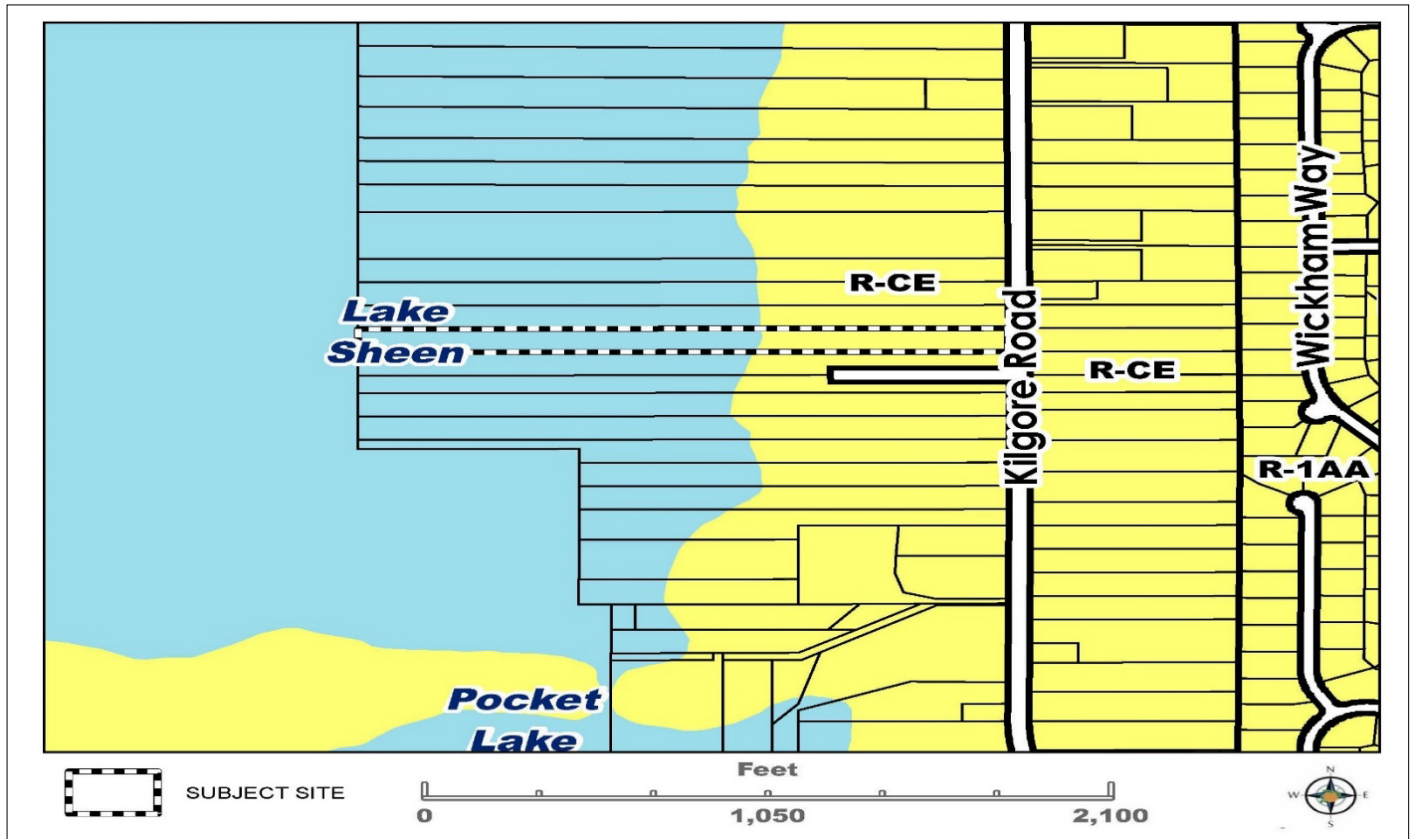
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6. **Purpose and Intent** - Approval of the zoning variance will be in harmony with the purpose and intent of the Zoning Regulations and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

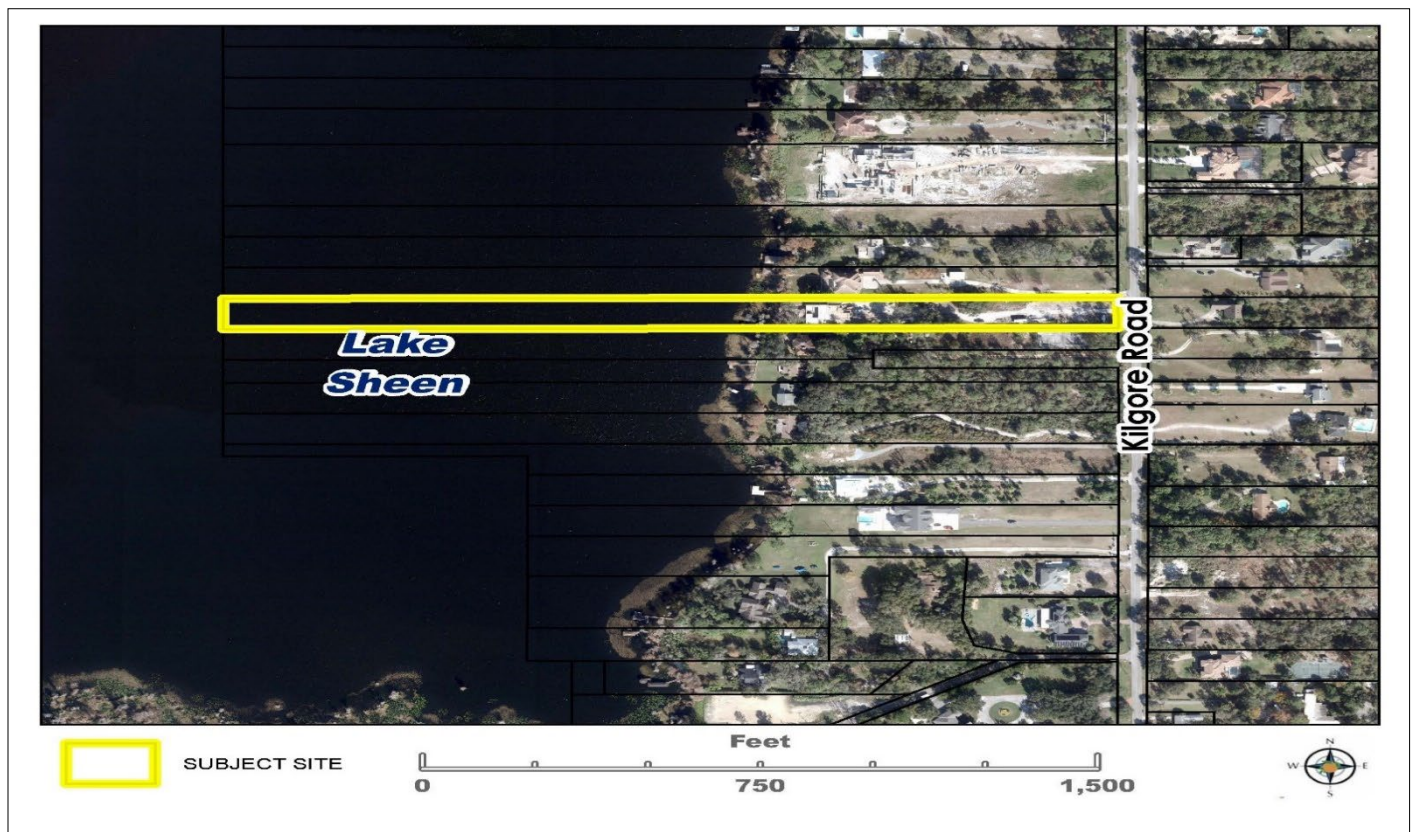
We feel that the location of the ground mount solar system is not injurious to the neighborhood or detrimental to the public welfare. There is landscape and a 6ft wall around the perimeter of the property which blocks the view from the road and neighboring properties. The ground mounted system is to help with the energy efficiency of the home and the environment.

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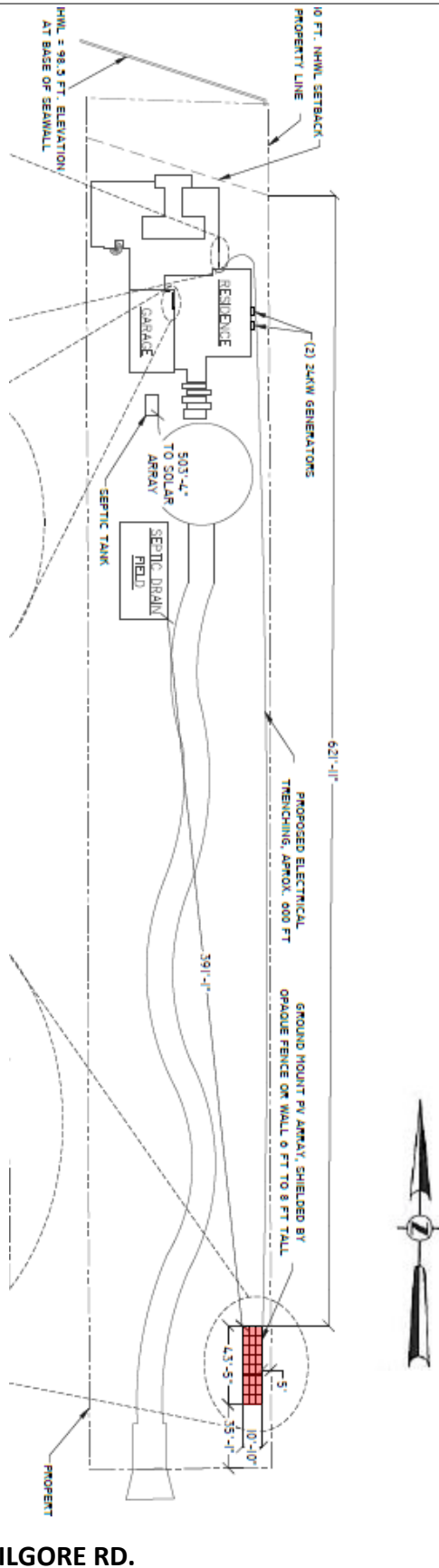
## ZONING MAP



## AERIAL MAP



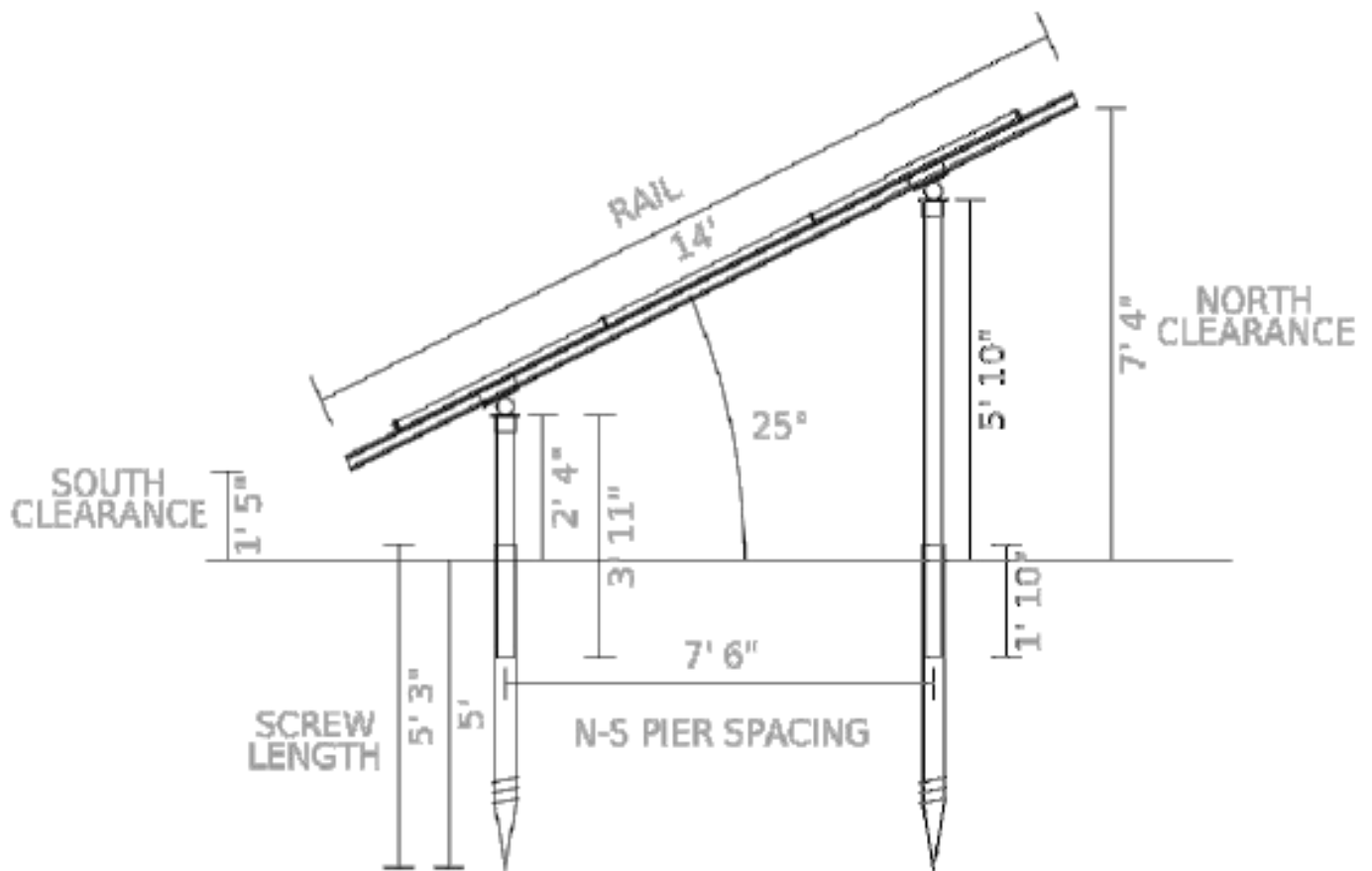
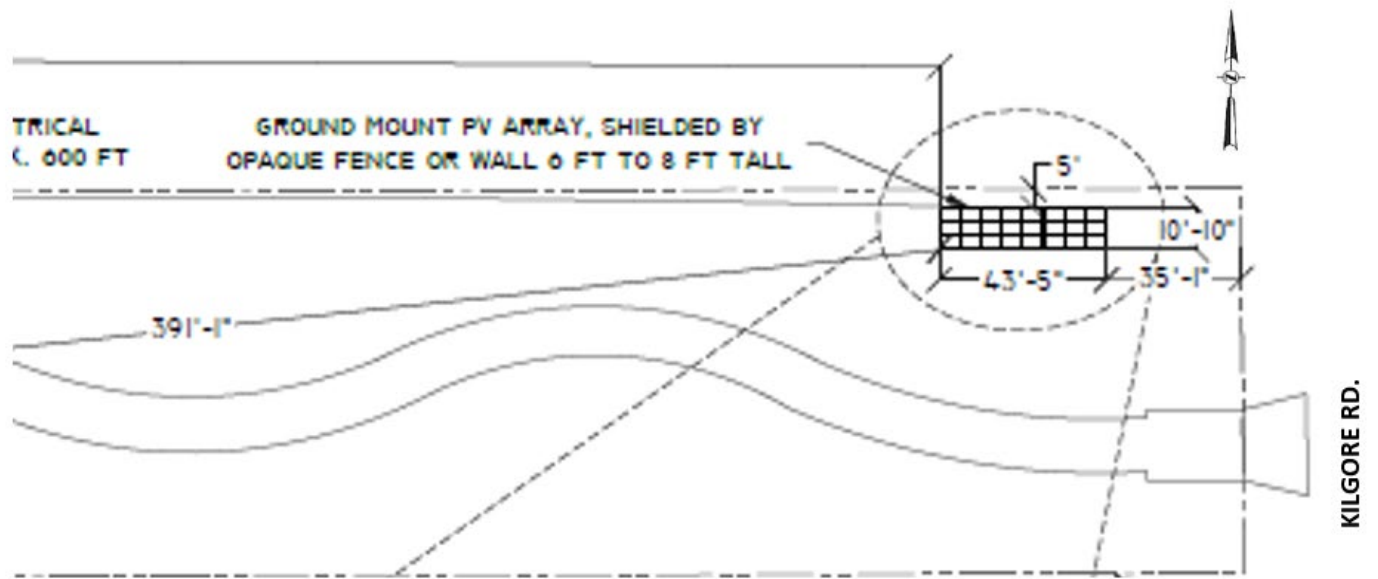
# SITE PLAN



KILGORE RD.



### ARRAY PLAN DETAIL AND SOLAR PANEL TYPICAL ELEVATION





## SITE PHOTOS



**Front from Kilgore Rd. facing east**



**Solar panels facing north (opaque fence or wall to be installed)**



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## SITE PHOTOS



**Solar panels facing east (opaque fence or wall to be installed)**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUNE 02, 2022**

Commission District: **#6**

Case #: **ZM-22-04-019**

Commission District: **Taylor Jones (407) 836-5944**

**Taylor.Jones@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): MCGREGOR LOVE

OWNER(s): IDRIVE INVESTMENTS #5 LLC

REQUEST: Appeal of the Zoning Manager's Determination that the detached accessory ancillary structure located in front of the principal structure, used for retail, is not a legal non-conforming use.

PROPERTY LOCATION: 7527 International Drive., Orlando, FL 32819, east side of International Dr., north of W. Sand Lake Rd, east of I-4.

PARCEL ID: 25-23-28-0000-00-060

LOT SIZE: +/- 0.8 acres (36,998 sq. ft.)

NOTICE AREA: 700 ft.

NUMBER OF NOTICES: 178

**DECISION:** Recommended to **OVERTURN** the Zoning Manager's Determination that the detached accessory ancillary structure located in front of the principal structure, used for retail, is not a legal non-conforming use (unanimous; 4 in favor, 0 opposed and 3 absent).

**SYNOPSIS:** Staff described the background of the Zoning Manager's Determination pertaining to the non-conforming status and the abandonment of the existing ticket booth, including the location of the property and photos of the site. Staff also provided a detailed analysis of the appeal documents provided by the appellant, as well as an analysis of the timeline of events which lead to the determination of abandonment of the non-conforming use.

The appellant team presented at length, providing the timeline of tenant occupancy of the ticket booth and provided case law examples, illustrating intent to maintain legal non-conforming status.

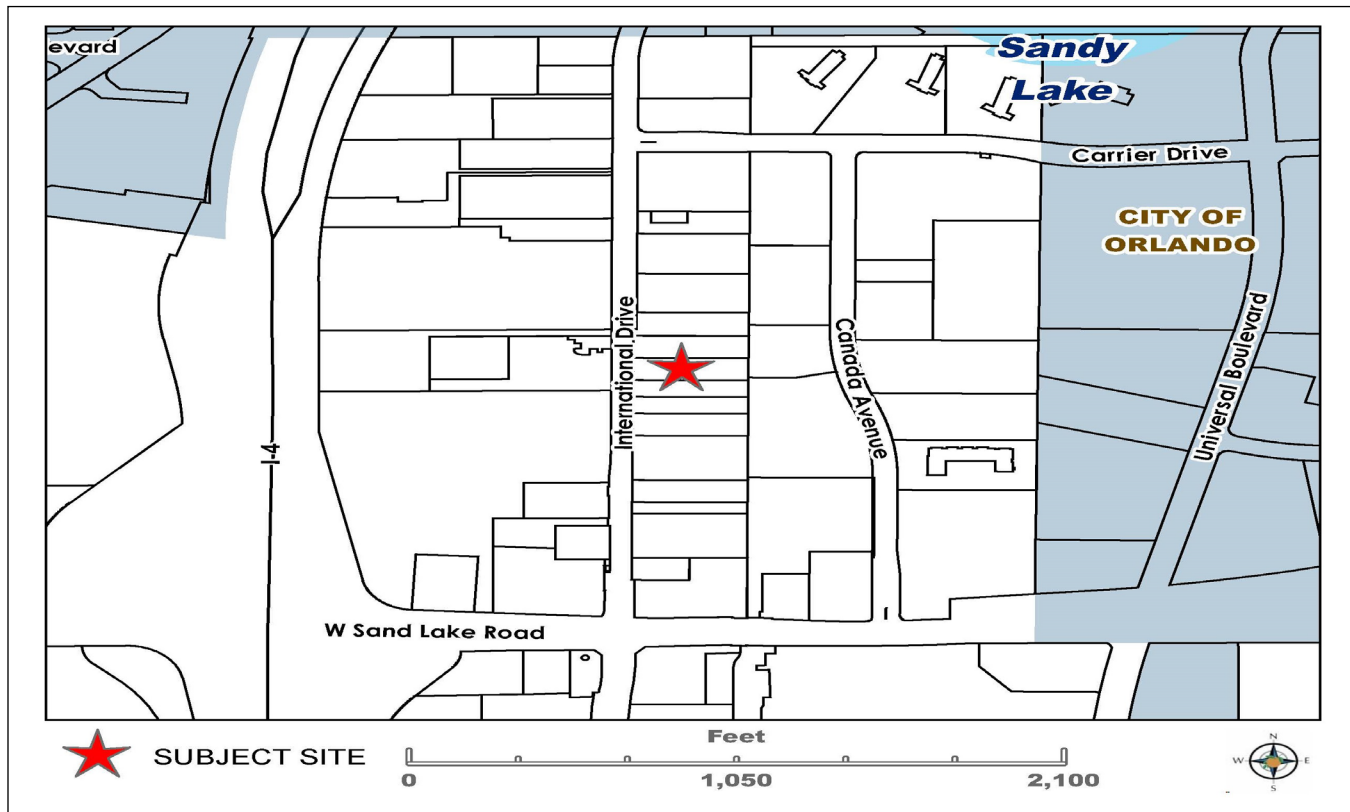
There was one in attendance to speak in favor of the request and there was no one in attendance to speak in opposition to the request.

The BZA discussed the sequence of events, the intent of the continuation of occupancy in comparison with the caselaw presented, and unanimously recommended to overturn the Zoning Manager's Determination by a 4-0 vote, with three absent.

## STAFF RECOMMENDATIONS

Staff recommends that the Board upholds the Zoning Manager Determination that the use of the accessory structure for retail purposes in front of the principal structure is not a legal, non-conforming use.

## LOCATION MAP



## SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	C-2	C-2	C-2	C-2 & Skyplex Orlando PD	C-2
I-Drive District Overlay Zone Transect	T-6 I-Drive & T-6 General (Entertainment Subdistrict)	T-6 I-Drive & T-6 General (Entertainment Subdistrict)	T-6 I-Drive & T-6 General (Entertainment Subdistrict)	T-6 General (Entertainment Subdistrict)	T-6 I-Drive & T-6 General (Entertainment Subdistrict)
Future Land Use	C	C	C	C	C
Current Use	Commercial	Commercial	Vacant Commercial	Commercial & Vacant Commercial	Commercial

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## BACKGROUND AND ANALYSIS

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### **DESCRIPTION AND CONTEXT**

The subject property is located on the east side of International Drive, and is in the C-2 commercial zoning district. While the property is zoned C-2, it is also located within the I-Drive District Overlay Zone. The I-Drive District Overlay Zone (Sec. 38-860 – Sec. 38-869 of the Orange County Code) regulates all development in the overlay, including both site development standards and permissible uses, and specifically states that if the District requirements are inconsistent “with any other portion of Orange County code, the provision in Sections 38-860-38-869 shall govern and supersede the conflicting Code provision to the extent of the inconsistency.” Within the I-Drive District Overlay Zone, the parcel is in both the T-6 I-Drive Transect and the T-6 General Transect zones. The Overlay Zone allows a mixture of uses, including commercial uses such as retail, service, restaurants, and hotels, however, it specifically lists, among other uses, “Accessory buildings in the front or side yards for retail purposes” as a prohibited use.

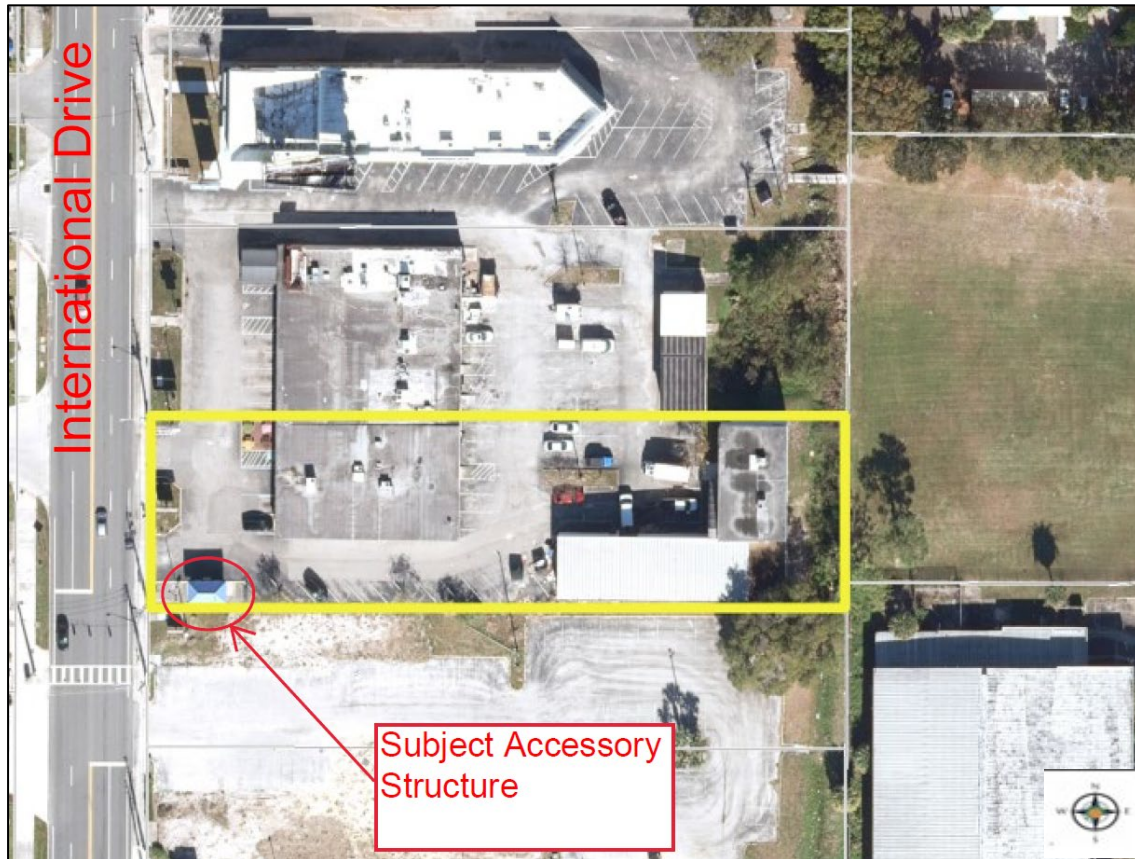
The site currently contains a principal structure that is a multi-tenant retail building, as well as 3 accessory structures. Two of the accessory structures are in the rear of the building, and the third is in the front. The accessory structure located in front of the principal structure is the subject of this request.

This request is to appeal a Zoning Manager’s Determination that the use of the accessory structure for retail purposes in front of the principal structure is not a legal, non-conforming use, and therefore must conform to the requirements of code. On January 13, 2022, in response to a non-conforming use determination application, the Zoning Manager determined that the detached accessory structure in front of the principal structure (herein referred to as the “subject structure”) was not a legal non-conforming use, as the use of the structure for retail had been discontinued for longer than 180 days. This formal determination is included in this staff report as **Exhibit 1 – Nonconforming Use Determination.**

This staff report summarizes the dates and history of events, in chronological order, relative to the Zoning Division determination and subsequent appeal, with the details of each event provided as an Exhibit to this staff report. The applicant’s appeal documentation is also included for reference, as is a timeline of events.



**Aerial Map Showing Subject Structure**



## **BACKGROUND**

The subject structure was permitted in 1994, with permit number B94902200, as a new Ticket Booth for Travel Time Tours, Inc. Travel Time Tours, Inc. applied for the permit on 11/03/1994 and the permit was issued on 12/20/1994. At the time of permitting, the ticket booth structure would have been subject to Sec. 38-1424 of County Code, which was adopted via Ordinance 94-16, and effective 8/9/1994. This structure was permitted as, and met the definition of, an ancillary structure ticket booth: detached ticket booth. Sec. 38-1424(d)(2)(a) defines detached ticket booths as follows: A freestanding ticket booth which is not integrally attached to a primary structure, but which is instead ancillary to a primary structure. A copy of the permit application, and approved plans, has been included with this determination, titled **Exhibit 2- 1994 Building Permit**.

On February 2, 2017, Orange County adopted Ordinance No. 2017-03, which created the I-Drive District Overlay Zone, codified as Chapter 38, Article VII, Division 4.5 of County Code (the “I-Drive Code”). The I-Drive Code created new development standards, including permitted and prohibited uses within specific transects in the I-Drive Overlay Zone. Rather than the permitted uses for the C-2 zoning district in Sec. 38-77 of County Code, the permitted and prohibited uses listed in the I-Drive Code would be the applicable regulations for this property. Section 38-865(e)(1) of the I-Drive Code prohibits accessory buildings in the front or side yards of principal structures for retail purposes. Therefore, an ancillary structure ticket booth is now prohibited in the I-Drive District Overlay Zone. Any existing accessory structure in front of a principal structure used for retail purposes, including an ancillary structure ticket booth, was rendered non-conforming with the adoption of the ordinance.

On May 27, 2021 a code violation was reported with regard to the operation of the subject structure, as well as signage, without permits. On June 1, 2021, Orange County Code Compliance issued a code violation (violation # 591924) for operation of the subject structure without permits.

On August 4, 2021, Florida Resort Xchange, LLC applied for a zoning permit to obtain approval of the proposed use of the subject structure, as the first step in obtaining a new Business Tax Receipt (BTR), to properly permit the business in the subject structure and correct the code compliance violation. This application was denied by the Zoning Division, as the use of accessory structures in front of principal structures for retail purposes is now prohibited in the I-Drive District Overlay Zone pursuant to Section 38-865(e)(1) of the Orange County Code.

Upon denial of the BTR application, the Zoning Division informed the applicant that the proposed use is now prohibited because the nonconforming use had been discontinued for more than 180 days, and under Section 38-51 of the Orange County Code the nonconforming use is deemed abandoned. Section 38-51 provides the following:

When a nonconforming use of land, a building or a structure has been discontinued for one hundred eighty (180) days or more, the land, building or structure shall thereafter not be used except in compliance with the regulations of the district in which it is located. However, for a commercial or industrial building or structure or use only, upon application the nonconforming use may be extended up to an additional ninety (90) days subject to approval by the zoning manager. The applicant for the extension shall submit documentation to the zoning manager which clearly demonstrates that the nonconforming commercial or industrial building or structure has been actively marketed for the nonconforming use or has been undergoing repairs during the majority of the above-referenced 180-day period.

Tax Collector records show that Travel Time Tours, Inc made the original application for a Business Tax Receipt (BTR) at 7543 International Drive on 11/20/1990, and that the BTR was renewed yearly until 2020. The approved use on the BTR is for “Time Share” which is the retail sale of timeshares, which was permitted in the ancillary structure ticket booth at the time of application. The last renewal of the BTR occurred on 1/15/2020, for the 2019 -2020 cycle that ended on 09/30/2020. On October 1, 2020, the BTR had expired. Following the 10/01/2020 expiration date, no further BTR renewal was requested or processed for the 2020 - 2021 cycle, a period from 10/01/2020 to 9/30/2021, which is more than 180 days.

In August 2021, the BTR office advised the Zoning Manager that they had also marked this specific business “Out of Business” on 5/31/2021. The BTR office records indicated that they had received a phone call from a gentleman named David who informed the them that the business had ceased operating in September of 2020. David Kelly is the name of the husband of Laurie Kelly, the owner of Travel Time Tours, Inc. The BTR history of the subject site, and correspondence between the Zoning Manager and BTR office are included as **Exhibit 3 – BTR History**. Also, the State of Florida database of registered corporations, Sunbiz, indicates that Travel Time Tours did not register as an active business in the succeeding year of 2021.

Additionally, on 08/13/2021, Duke Energy staff informed Orange County Code Compliance staff that the power usage, in the form of kilowatt hours, for the subject structure went to zero on 11/12/2020, and stayed as such until 6/1/2021, indicating that no power was being generated by the structure, supporting the conclusion that the structure was not utilized to operate a business. This was further supported by a copy of a Duke Energy Electric Bill from August 23, 2021 that was provided by Mr. Arvind Nandu, the property owner’s representative, to the District 6 Commissioner’s Office. Mr. Nandu’s Duke Energy bill shows the average daily usage history for

the subject structure was zero-kilowatt hours as far back as August of 2020 and that the power usage did not increase until May of 2021, a span of at least 10 months, or more than 180 days.

County staff informed the applicant that based on the previously mentioned information available, the BTR application could not be approved. The applicant was informed an official determination could be submitted as a Request for Nonconforming Use Determination to the Zoning Manager.

The applicant submitted a Request for Nonconforming Use Determination (NC-21-12-001) that was reviewed by the Zoning Manager. Based on the facts and information presented in this staff report and all other information available, the Zoning Manager made the determination that the use of the subject structure for retail had been discontinued for greater than 180 days prior to 08/04/2021, and therefore does not qualify as a legal non-conforming use in accordance with Section 38-51 of Orange County Code.

The applicant is appealing the determination, and contends that the subject structure is a legal non-conforming use, as its use for retail had not been discontinued for a period more than 180 days, and also contends that they did not intentionally abandon the use.

#### **APPLICANT CONTENTIONS & COUNTY REBUTTAL: TIMELINE OF ABANDONMENT**

In both their request for a non-conforming use, and the appeal of the Zoning Manager Determination, the applicant contends that the subject structure was in use until December of 2020. To support their contention, the applicant has provided sworn affidavits from various tenants of a property that is defined as “7511-7527 International Drive Orlando, FL 32819,” stating that to their knowledge, the free-standing ticket booth has been continuously operating at 7543A International Drive, and did so until December 2020.

The applicant contends that the previous tenant, Travel Time Tours Inc, continued to utilize the ticket booth structure until December of 2020. The applicant provided Duke Energy bills for the subject structure address, showing continued use of power to the structure until November 12, 2020, which matches with the date provided to County Code Compliance staff. The applicant further contends that the previous tenant utilized the structure for retail until December of 2020, even without power. Based on the applicant’s timeline of events in their appeal letter, the applicant contends that the structure was utilized in December of 2020 by the previous tenant, then leased in April of 2021, with subsequent operation of the structure for retail purposes on May 1, 2021 by the new tenant Florida Resort Xchange, LLC.

The County rebuts the applicant’s contentions by stating that in all scenarios the subject structure ceased legally operating for more than 180 days prior to the date of 08/04/2021, when the BTR application for Florida Resort Xchange, LLC was submitted.

Following the expiration of the BTR for Travel Time Tours, Inc. on 10/1/2020, any use of the subject structure after 10/1/2020 was conducted illegally. Therefore, even if the subject structure was used by Travel Time Tours, Inc. until December 2020, such use was not a legal and recognized use. Similarly, any use of the subject structure by Florida Resort Xchange, LLC was illegal as no permits or other approvals had been issued for the use of the subject structure.

The applicant states that Florida Resort Xchange, LLC began operating on or around 05/01/2021, and as previously stated, code compliance cited them for operating without permits on 6/01/2021. When the application for a zoning permit was submitted on 08/04/2021 the legal use of the subject structure for retail purposes had been discontinued for greater than 180 days from the 10/1/2020 date. Even if the last date of



operation was recognized as 11/12/2020 (when power went to zero), more than 180 days would have passed between the period from 11/12/2020 and the submission of the BTR application on 8/04/2021. Additionally, even if the County recognized 12/31/2020 as the last date of operation, more than 180 days passed prior to the submission of the application on 8/04/2021.

#### **APPLICANT CONTENTIONS & COUNTY REBUTTAL: DUKE ENERGY & BTR OFFICE INFORMATION**

The applicant contends that the reason the Duke bills provided by Mr. Arvind Nandu in September 2021 show zero kilowatt hours used from August 2020 until May 2021 is because this is only the bill for the new tenant *Florida Resort Xchange, LLC*, and not for the overall address. The Florida Resort Xchange Duke bill shows power being utilized beginning in May 2021. The bill history in the appeal letter of the applicant for the subject address (without a specific tenant listed – but presumed to be Travel Time Tours, Inc) shows power was used throughout 2020, up until 11/12/2020.

The applicant also argues that it cannot be confirmed that Travel Time Tours, Inc. notified the BTR office of the closure of its business. The applicant states the request to close Travel Times Tours' business was received by David Rodriguez – a BTR field rep. The applicant argues that the reference to "David" in the BTR records refers possibly to the BTR employee David Rodriguez, instead of David Kelly, the husband of the owner of Travel Times Tours. The applicant states that in the original non-conforming use determination, undue weight was given to the Duke bills and BTR office information provided.

The County rebuts the applicant's contentions by stating that while the dates and details for Duke Energy and the BTR Office do differ in instances, ultimately, the information in the Duke Energy bills and information from the BTR office still show that the subject structure ceased to maintain a legal operation status for greater than 180 days prior to 8/04/2021. As stated in the non-conforming use determination, more credence was given to the information provided by Duke Energy and the Orange County Tax Collector as they are uninterested parties. The Duke bills show that the power went to zero on 11/12/2020, with no power used again in the subject structure until May 2021, approximately a 5-month gap. However, as previously stated, any use of the subject structure in May of 2021 would not have been legal or a recognized use by the County, as no permits were obtained.

Also, the information provided by the BTR office shows that no renewal was applied for by the 10/01/2020 expiration date, and that on 5/25/2021 the BTR office changed the previous BTR to a status of "Out of Business" in the system, based on a call they received from David, who stated business closed in September 2020. In a conversation with the BTR office in regard to their internal process about how BTRs get closed out in their system, the BTR office noted that it can occur from either the owner or the owner's representative calling and reporting the business closed, or by a field representative from the BTR office doing a site inspection and providing notes in the system accordingly. The BTR office's written note in their system for this specific BTR states "Per caller David business closed 9/2020." In discussion with the BTR office, they noted that if it states "caller David" it would have been from the owner since their field representatives do not call in to close accounts. Therefore, the BTR records indicate that the owner, and not a BTR Field representative named David, was the caller who reported the business closed. Regardless of who called in to report the business closed, whether the previous business owner or the field rep, the information provided by the BTR office still indicated that no BTR renewal occurred by the 10/01/2020 expiration date and that based on what was reported, irrespective of the actual identity of the reporter, the business closed in September of 2020.

## **APPLICANT CONTENTIONS & COUNTY REBUTTAL: SPECIFICS OF ABANDONMENT APPLICABILITY**

The applicant also contends that the use was not abandoned, even when not in legal operation, as the owner was actively trying to find a tenant, to continue the non-conforming use. They contend that the temporary cessation of the ticket booth was involuntary and therefore not considered “abandonment” under cited caselaw. The applicant states that Florida case law deems abandonment as an action that is voluntary. All of the applicant’s contentions and reasoning for appeal can be found in **Exhibit 4 – Appeal**.

The County rebuts the applicant’s contention by stating that, in accordance with Section 38-51 of the County Code, abandonment occurred when the use was not in legal operation for more than 180 days prior to the submission of the application on 8/04/2021. In addition, the County concludes that the owner’s failure to comply with Section 38-51 was voluntary.

As staff understands from consultation with the County Attorney’s office, the owner’s failure to use the property would not be deemed “involuntary” as described by the Florida case cited by the applicant. Florida caselaw notes that Florida courts have rejected an “abandonment” determination by a government entity in limited circumstances where property owners were prohibited, typically by government action, from using their property in accordance with a permitted use or license. In the present case, Orange County did not prohibit or otherwise interfere with the owner’s opportunities to obtain an extension of its non-conforming use or to obtain a BTR or other zoning approvals. Opportunities remained open for the owner to either apply for an extension of the non-conforming use as provided in Section 38-51 of the Orange County Code (see below) prior to the expiration of the 180-day period, or for the owner to ensure that any tenant that occupied the subject structure obtained a BTR and any other permits or approvals required to maintain the non-conforming use status.

Section 38-51: “.....However, for a commercial or industrial building or structure or use only, upon application the nonconforming use may be extended up to an additional ninety (90) days subject to approval by the zoning manager. The applicant for the extension shall submit documentation to the zoning manager which clearly demonstrates that the nonconforming commercial or industrial building or structure has been actively marketed for the nonconforming use or has been undergoing repairs during the majority of the above-referenced 180-day period.”

The owner did not obtain the appropriate permits or approvals, nor did the owner apply for an extension of the non-conforming use, as allowed under Section 38-51. Such failures are not deemed involuntary under Florida caselaw. Thus, the County is not prohibited from determining that the owner’s failures constituted abandonment in accordance in Florida law.

Therefore, the Zoning Division recommends that the Board of Zoning Adjustment uphold the Zoning Manager’s determination that the use of the accessory structure for retail purposes in front of the principle structure is not permitted as retail use of the subject structure is no longer a legal, non-conforming use.

C: McGregor Love  
215 N. Eola Drive  
Orlando, Florida 32801



This map illustrates the I-Drive District Overlay Zone, which is highlighted in red with diagonal hatching. The zone is bounded by International Drive to the west, Canada Avenue to the east, and W Sand Lake Road to the south. Key features include:

- Zoning Districts:** The map shows various zoning districts, including T6 I-Drive, T6 General, T6 Universal, C-2, C-1, P-D, and I-2/I-3.
- Landmarks and Roads:** Landmarks such as the Skyplex Orlando PD, Wyndham Orlando Resort & Shops PD/LUP, and Tourist Commercial Signage are marked. Major roads like International Drive, Canada Avenue, and Universal Boulevard are also shown.
- City Boundaries:** The map indicates the boundaries of the City of Orlando.
- Scale and Orientation:** A scale bar at the bottom indicates distances in feet (0, 950, 1,900). A north arrow is located in the bottom right corner.
- Subject Site:** A dashed rectangular box in the bottom left corner identifies the subject site.

**CITY OF ORLANDO**

**CITY OF ORLANDO**

Carrier Drive

Canada Avenue

International Drive

W Sand Lake Road

Universal Boulevard

**Feet**

0 950 1,900

**Legend**

**SUBJECT\_SITE**

**North Arrow**

N  
E  
S  
W





MCGREGOR T. LOVE

mcgregor.love@lowndes-law.com  
215 North Eola Drive, Orlando, Florida 32801-2028  
T: 407-418-6311 | F: 407-843-4444  
MAIN NUMBER: 407-843-4600



November 29, 2021

Whitney Evers  
Assistant County Attorney  
Orange County, Florida  
201 S. Rosalind Avenue  
3rd Floor  
Orlando, FL 32801

**Re: Legal Nonconforming Use of Property Located at 7527 International Drive**

Dear Whitney:

As you are aware, this law firm represents the owner of the Property located at 7527 International Drive (the "Property"), Benzer & RM Investments, LLC ("Benzer"), in connection with a Code violation (Ref: 591924) issued for the operation of a stand-alone ticket booth (the "Ticket Booth") on the Property. Thank you and County staff for meeting with us earlier this month to discuss the Ticket Booth and the Code violation. As discussed at the meeting, this letter is meant to provide the factual basis for the Ticket Booth's legal nonconforming use status. As outlined below, at no point during the three (3) decades of the Ticket Booth's use on the Property has the use of the Ticket Booth been discontinued for one hundred eighty (180) days or more:

- In 1978, the Ticket Booth (along with a 5,520 sq. ft. commercial building) was constructed on the Property. A copy of the County's building detail for the Ticket Booth is attached as **Exhibit "A."**
- On November 20, 1990, Travel Time Tours, Inc. ("Travel Time") obtained a business license from the Orange County Tax Collector and listed the Property's address as its business address. Travel Time most recently paid to renew its business license on January 15, 2020. A copy of the County Tax Collector Records for Travel Time is attached as **Exhibit "B."**
- Beginning in 1990 and continuing through December 2020, Travel Time continuously operated the Ticket Booth on the Property. As shown in the attached **Exhibit "C,"** Travel Time's website provided: *"Since 1990, the primary outlet for Travel Time Tours, Inc. has been at 7543A International Drive."* Affidavits from the Property's other tenants regarding Travel Time's operation of the Ticket Booth are attached as **Composite Exhibit "D."**



Whitney Evers  
November 29, 2021  
Page 2

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- On September 22, 2015, the County adopted Ordinance 2015-17, which created the Code section (Section 38-1424) that is the subject of the instant Code violation.
- On October 6, 2020, Benzer purchased the Property. Around the time that Benzer purchased the Property, Benzer became aware that Travel Time, along with several other tenants of the Property, owed past-due rent. Travel Time, which rented the Ticket Booth for \$1,200 per month, had failed to pay rent for the months of July through October 2020.
- On October 30, 2020, Arvind Nandu, owner of Benzer, emailed Laurie and David Kelly, owners of Travel Time, to notify Travel Time that Benzer had purchased the Property. A copy of the new ownership notice is attached as Exhibit "E."
- On November 2, 2020, Benzer's attorney, Stephen M. Stone, sent a letter to Travel Time demanding payment of the past-due rent in addition to the rent for November 2020. A copy of the past-due rent notice is attached as Exhibit "F."
- Rather than requiring Travel Time to pay past-due rent, Travel Time and Benzer agreed to allow Travel Time to vacate the Property on or before December 31, 2020 so that Benzer could market the premises to prospective tenants<sup>1</sup>.
- On November 11, 2020, Travel Time delivered one of the Ticket Booth's two (2) keys to Benzer's attorney, Mr. Stone, so that Benzer could access and market the Property. Travel Time retained a second key to the Ticket Booth and continued to operate the Ticket Booth through December 2020.
- On November 12, 2020, electrical power to the Ticket Booth was turned off as a result of Travel Time's failure to make payment to Duke Energy. Notwithstanding discontinuation of electrical power at the Ticket Booth, Travel Time continued to use the Ticket Booth to operate its business.
- On November 16, 2020, Mr. Nandu sent a letter to Travel Time regarding Travel Time's use of the Ticket Booth and the parties' agreement that Travel Time vacate the premises on or before December 31, 2020. A copy of the vacating property notice is attached as Exhibit "G."
- Beginning on or around October 6, 2020 and continuing through December 2020, Mr. Nandu and other individuals acting on behalf of Benzer personally observed Travel Time possessing and operating the Ticket Booth. A copy of an affidavit executed by Mr. Nandu regarding Travel Time's

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<sup>1</sup> Benzer reached similar agreements with several other tenants who opted to vacate rather than pay past-due rent.



Whitney Evers  
November 29, 2021  
Page 3

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Operation of the Ticket Booth is attached as **Exhibit "H."** A copy of a letter from Benzer's broker, John Kryzminski, regarding Travel Time's operation of the Ticket Booth is attached as **Exhibit "I."**

- In February 2021, Benzer began negotiating a lease of the Ticket Booth to Florida Resort Xchange, LLC ("FRX"). On April 30, 2021, Benzer entered into a Lease Agreement with FRX to lease the Ticket Booth to FRX for a one-year term commencing on May 1, 2021 (the "Commencement Date"). On or about the Commencement Date, FRX commenced use of the Ticket Booth and has continuously operated the Ticket Booth through the date of this letter.

As outlined above, less than 180 days elapsed between Travel Time's cessation of use of the Ticket Booth and FRX's commencement of use of the Ticket Booth. Moreover, the Ticket Booth has been continuously operated on the Property for the past three (3) decades. As the use of the Ticket Booth has not been "discontinued for one hundred (180) days or more," the legal nonconforming use status of the Ticket Booth has not been "abandoned" under Section 38-51 of the County's Code. Accordingly, **Benzer requests a determination from the County that the Ticket Booth is a legal nonconforming use and Benzer may be permitted to operate the Ticket Booth on the Property.**

Sincerely,



McGregor T. Love





January 13, 2022

**VIA: Electronic Mail**

McGregor T. Love, Esq.  
Lowndes  
215 N. Eola Drive  
Orlando, FL 32801  
[McGregor.Love@lowndes-law.com](mailto:McGregor.Love@lowndes-law.com)

**Re:** Request for Nonconforming Use Determination - Accessory building (detached ancillary structure used for retail purposes in front of a principle structure within the I-Drive District Overlay).

**Parcel ID #:** 25-23-28-0000-00-060

**Address:** 7543 International Drive (aka 7543A International Drive)

**Zoning Case #:** NC-21-12-001

Dear Mr. Love,

The following is in response to your letter on behalf of Benzer & RM Investments, LLC (the "Current Owner") requesting a legal non-conforming use determination on parcel ID: 25-23-28-0000-00-060 ("Your Letter"), which you listed as having an address of 7527 International Drive (the "Parent Parcel"). Although 7527 International Drive is the address assigned to the Parent Parcel by the Property Appraiser, your request is actually specific to a legal nonconforming use determination for an accessory structure (a detached ancillary structure, the "Subject Structure") located on the Parent Parcel with a separate address of 7543 International Drive (aka 7543A International Drive) (the "Subject Site"). For clarity, I have included with this determination an aerial map of the Subject Site with the Subject Structure circled in red, title *Exhibit 1- Aerial Map*. The remainder of this response will be specific to the Subject Site and the Subject Structure.

The documentation you submitted has been reviewed, along with County records, and other relevant information. After reviewing all of the relevant facts and information, the Zoning Division has determined that the use of the Subject Structure for retail purposes in front of the principle structure is not a legal, nonconforming use, as the use has been abandoned for a period of greater than 180 days.

Therefore, consistent with Section 38-51 of Orange County Code, the Subject Structure can only be used in compliance with the regulations of the district in which it is located. The district in which it is

ZONING DIVISION  
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located, T-6 I-Drive, prohibits accessory buildings used for retail purposes in front of principle structures, see Section 38-865.e., Orange County Code.

The basis for the determination is as follows:

- The Subject Structure was permitted in 1994, with permit number B94902200, as a new Ticket Booth for Travel Time Tours Inc. The permit was applied for on 11/03/1994 and issued on 12/20/1994. At the time of permitting, the ticket booth structure would have been subject to Sec. 38-1424, which was adopted via Ordinance 94-16, and effective 8/9/1994. This structure was permitted as, and met the definition of, an ancillary structure ticket booth: detached ticket booth. Sec. 38-1424(d)(2)(a) defines detached ticket booths as follows: *Detached ticket booth. A freestanding ticket booth which is not integrally attached to a primary structure, but which is instead ancillary to a primary structure.* A copy of the permit, and approved plans, has been included with this determination, titled *Exhibit 2 – 1994 Permit for Ticket Booth Structure.*
- On 02/02/2017, Orange County adopted Ordinance No. 2017-03, which created the I-Drive District Overlay Zone, codified as Chapter 38, Article VII, Division 4.5 of County Code (the “I-Drive Code”). The I-Drive Code created new development standards, including permitted and prohibited uses within specific transects in the I-Drive Overlay Zone. As stated above, the Subject Site is located within the T-6 transect in the I-Drive District Overlay Zone, and is subject to these code requirements. Section 38-865(e)(1) of the I-Drive Code prohibits accessory buildings in the front or side yards of principle structures for retail purposes. Therefore, an ancillary structure ticket booth is now prohibited in the I-Drive District Overlay Zone.
- Orange County Tax Collector records show that Travel Time Tours Inc made the original application for a Business Tax Receipt (BTR) at 7543 International Drive on 11/20/1990, and that the BTR was renewed yearly until 2020. The approved use on the BTR is for “Time Share” which is the retail sale of timeshares, which would have been permitted in the ancillary structure ticket booth at the time of application. The last renewal of the BTR occurred on 1/15/2020, and would have been for the 2019/2020 cycle, making it valid until 10/01/2020; after that date, the BTR would have expired. Following the 10/01/2020 expiration date, no further BTR renewal was requested or processed for the 2020/2021 cycle (which would have run from 10/01/2020 to 9/30/2021). Via an email exchange in August of 2021 between the Manager of the Zoning Division and the Orange County Tax Collector’s BTR Office staff, the BTR Office advised that they had marked this specific business “Out of Business” on 5/31/2021 because that was the date the BTR Office received a phone call from a gentleman named David (who we believe to be David Kelly, the husband of Laurie Kelly, the owner of Travel Time Tours Inc) who informed the BTR Office that the business had ceased operating in September of 2020. I have included a copy of the information provided by the BTR office, titled *Exhibit 3 – BTR History.*
- On 05/27/2021, a code violation was reported with regard to the operation of the Subject Structure, as well as signage, without permits. On 06/01/2021, Orange County Code Enforcement issued a code violation (violation # 591924) for operation of the Subject Structure without permits. On 08/04/2021, an application for Zoning Division approval of a new BTR was

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submitted by Florida Resort Xchange, LLC (according to Your Letter, Florida Resort Xchange signed a lease to occupy the Subject Structure on 04/30/21, referred to herein as the “Tenant”), for the Subject Structure. This application was made in an attempt to properly permit the business in the Subject Structure and correct the code enforcement violation. This application was denied by the Zoning Division, as the use is now prohibited in the I-Drive District Overlay Zone pursuant to Section 38-865(e)(1) of the Orange County Code.

- On 08/13/2021, Orange County Code Enforcement Officer Steve Marconi spoke to a Duke Energy representative named Melissa who informed him that the power usage, in the form of kilowatt hours, for the Subject Property went to zero on 11/12/2020, and stayed as such until 6/1/2021. This indicates that the structure was not being used, as no power was being generated by the structure. Your Letter indicates that the power was actually shut off on 11/12/2020 for failure to pay the bill. Further proof of this was provided by Mr. Arvind Nandu to the District 6 Commissioner’s Office (specifically to Commissioner’s Aide Rose Nancy Joseph on September 21, 2021) in the form of a copy of a Duke Energy Electric Bill for the Subject Property dated August 23, 2021 (the “Duke Bill”). The Duke Bill shows the average daily usage history for the Subject Property was zero-kilowatt hours as far back as August of 2020 and that the power usage did not increase until May of 2021, a span of at least 10 months. A copy of the Duke Bill is included with this determination, titled *Exhibit 4 - Duke Energy Bill*.

Based on the information provided by Duke Energy, zero power was used by the Subject Structure for 10 months. Based on the information obtained from the Orange County Tax Collector BTR Office, no BTR renewal occurred after the 10/01/2020 expiration date and the BTR office has confirmed that the previous occupant stated its business closed in September of 2020, indicating that the Subject Structure was not being used for at least 11 months. To the best of the County’s knowledge, the Subject Structure was not used again until 06/01/2021, and at that time it was being used illegally, without permits. The 06/01/21 date comports with the information provided in Your Letter indicating that the Current Owner entered into a new lease on April 30, 2021, with the Tenant for rental of the Subject Structure. An application to legally use the Subject Structure was not made by the Current Owner/Tenant until 08/04/2021.

Although the County has received differing dates from Duke Energy and the Tax Collector’s office as to when the Subject Structure stopped operating, under either scenario, the Subject Structure had ceased operating for more than 180 days prior to the 08/04/21 application date by the Current Owner/Tenant. Even if we were to look back to the 06/01/2021 date when the County became aware of the use of the Subject Structure again, that date would still be more than 180 days past the last use of the Subject Structure under either the dates provided by Duke Energy or the date provided by the Tax Collector’s BTR office.

You have provided various documents in support of your request for a legal non-conforming use determination, including copies of affidavits from what appear to be various tenants of a property that is defined as “7511-7527 International Drive Orlando, FL 32819.” Collectively, those affidavits state that it is the respective affiants’ “knowledge and understanding that since their occupancy at the Property, a stand-alone ticket booth...has been continuously operating at 7543A International Drive Orlando, FL 32819...” In reviewing all of the facts and information we had in our possession,

**ZONING DIVISION**

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we had two competing sets of information. Therefore, we had to weigh the strength of all of the information at our disposal. In doing so, we felt we needed to give more credence to the factual information provided by Duke Energy and the Tax Collector's BTR Office, both uninterested parties, than to the affidavits from tenants of the Current Owner. Even if we were to give more credence to the affidavits you provided, they all indicate that the Subject Structure was being used through December of 2020 by the former owners. If this were true, the Subject Structure would have been used illegally, as the prior BTR expired on 10/01/2020 and no BTR renewal had been processed or requested for the subsequent year. As such, any use of the Subject Structure after 10/01/2020 would not have been a legal and recognized use of the property.

For all of the foregoing reasons, we have determined that the use of the Subject Structure has been abandoned for a period of greater than 180 days and does not qualify as a legal non-conforming use in accordance with Section 38-51 of Orange County Code. As a result of this determination, the Subject Structure is now required to comply with the I-Drive Code which prohibits accessory buildings used for retail purposes in front of principle structures.

Should you wish to appeal this determination, you may do so in accordance with the procedures set forth in Section 30-43(1) of the County Code. Should you have any questions, please feel free to reach out to me at 407-836-5856 or [Jennifer.moreau@ocfl.net](mailto:Jennifer.moreau@ocfl.net).

Sincerely,



Jennifer Moreau, AICP  
Manager, Orange County Zoning Division

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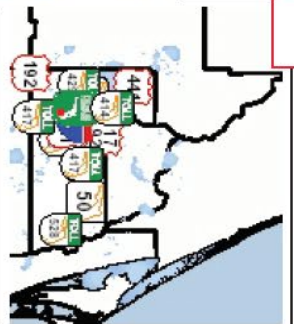


7543 International Drive Aerial Map

Exhibit 1: Aerial Map



Subject accessory structure  
(detached ancillary structure  
ticket booth), located at 7543  
International Drive (aka 7543A  
International Drive)



Legend

- Route Shields
- CR 15
  - CR 419
  - CR 420
  - CR 423
  - CR 424
  - CR 424A
  - CR 425
  - CR 427
  - CR 429
  - CR 431
  - CR 435
  - CR 437A
  - CR 438
  - CR 438A
  - CR 439
  - CR 448
  - CR 500A

1: 1,000



Notes



0 0 0.02 0.0 Miles  
NAD\_1983\_StatePlane\_Florida\_East\_FIPS\_0901\_Feet  
Orange County, FL BCC

This map is a user-generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION



# EXHIBIT 2 - 1994 BUILDING PERMIT

## Exhibit 2 - 1994 Building Permit for ticket booth structure

APPLICATION FOR LAND USE/BUILDING PERMIT  
ORANGE COUNTY, FLORIDA

PERMIT NUMBER B94902200

PROJECT ADDRESS 7543 A INTERNATIONAL DR. CRL, FLA ZIP 32819

PROPERTY OWNER TRAVEL TIME TOURS INC PHONE 407 291-8871

OWNER'S ADDRESS 9843 MATTHEW CIRCLE WINTER HRS STATE FLA ZIP 32786

CONTRACTOR SIERRA CONSTRUCTION CO LICENSE NO. CC0010197 PHONE 407 895 4649

ARCHITECT CONCEPCION HEYDICH DESIG LICENSE NO. AA0016835 PHONE 407 894 3366

CIVIL ENGINEER N/A LICENSE NO. — PHONE —

NATURE OF PROPOSED IMPROVEMENTS: new Ticket Booth (7'4" x 16')

NOTE = PRELIMINARY REVIEW OF THIS PROJECT  
BY ZONING DEPT. HAS BEEN DONE BY MITCHELL GORDON.

Travel Time Tours, Inc Ticket Booth Area not included

FOR ZONING DEPARTMENT USE ONLY:

TAX ID. NUMBER 25-23-28 (E) SUB. 000 B&L 000 COORDINATE SW 1/4

LEGAL DESCRIPTION LOT N/A BLOCK N/A SUBDIVISION N/A

ZONING CLASS C-2 HEIGHT LIMIT 15' NO. OF PARKING SPACES 9 DATE 10/27/94

ZONING TECH 12 (12/13/94) FLOOD PERMIT NO. — N.E.A. NO. —

P.L.U. DESIGNATION — SIDEWALKS REQ'D. (y/n) — PAVED DRIVE REQ'D. (y/n) —

YARDS: F-25' R-15' S-15' E-35' MAJOR STS. Bldg. — C.V.R.C.#: —

SPECIAL CONDITIONS: one 24" pipe for sewer, 11/7/94 - for side s/s to be 3.8" in lieu of 5' and  
15' light in lieu of 15' / ex. main Hdg. 14,420/300 = 48' office Hdg. 1700/200 = 10' 1 ap.  
in ticket booth = 54 parking spaces req'd. 72 spaces provided 200' x 370' = 74,000

FOR BUILDING DEPARTMENT USE ONLY:

NATURE OF WORK: 01 CONSTRUCTION TYPE: 01 TYPE OF STRUCTURE: 17

DATE OF APPLICATION 11-3-94 DATE READY TO ISSUE 11/3/94 DATE ISSUED 12/20/94 BY CL

CONTRACT VALUE 15,000.00 BLDG. DEPT. VALUES 15,000.00 SPRINKLERS REQ'D. YES

OCCUPANCY GROUP B #BLDG. 01 #UNITS 00 #STORIES 01 C.O. REQUIRED YES

TOTAL SQ. FT. 117 SQUARE FEET/FLOOR 117 GOVT. OWNED NO

MAX FLOOR LOAD 50 MAX OCC. PNCY. 1 THRESH. INSP. REQ'D. YES

MIN. FLOOD ELEV. 50.00 SIER — PLAN (FORMAT) 2

SUBMITTAL FEES 115.00 TOP — OTHER PERMITS REQ'D.: YES NO

RECEIPT # 6941103-015 AUTHORIZATION # 3070252 ELECTRICAL YES NO

REG. PERMIT FEES 115.00 LOW FLOOR ELEV. — MECHANICAL YES NO

IMPACT LAWS 16,416 WATER SERVICE — PLUMBING YES NO

IMPACT FIRE 152,416 WASTEWTR. SRVC. — ROOFING YES NO

IMPACT ROADS 251,416 REVIEWER an HOLD C/O: YES NO DEPRIV. FEE: 16.00

IMPACT SCHOOL 1.17 O.C. WATER & WASTEWATER — ZONING YES NO ENGINEERING YES NO

RADON FEES — ACTG. DEPT. FEES PAID IN FULL — FIRE LOSS MGT. YES NO PUBLIC UTILITY YES NO

VIOLATIONS — AS OF — BY — ENVIRO. PROT. YES NO PLANNING YES NO

OTHER FEES — AUTH. NO. — HEALTH YES NO BUILDING YES NO

FINANCE YES NO

I hereby make Application for Permit as outlined above, and if same is granted I agree to conform to all Building Department Regulations and County Ordinances regulating same and in accordance with plans submitted. The issuance of this permit does not grant permission to violate any applicable Orange County and/or State of Florida codes and/or ordinances.

Personally appeared J. Sierra, who on oath says, that she/he is the applicant for the foregoing, that all the above statements are true to the best of her/his knowledge, and that the work to be done is authorized by the County and will be done by contract with Contractor/Owner.

NAME J. Sierra ADDRESS 1516 Hillcrest St CRL, FLA 32803 ZIP —

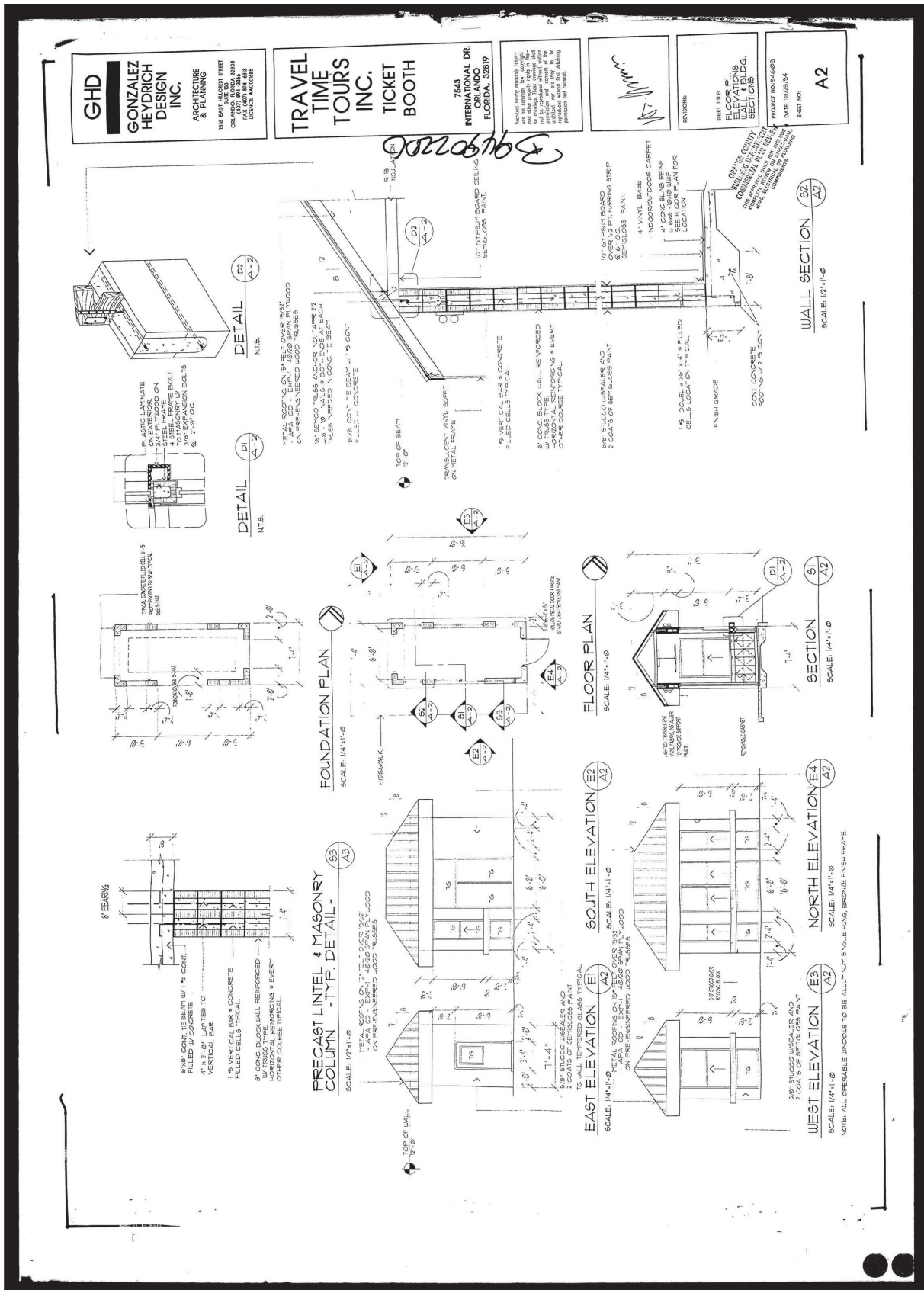
SWORN TO AND SUBSCRIBED BEFORE ME THIS 24 DAY OF DEC, 19 94

Notary Public NOTARY PUBLIC, ORANGE COUNTY, FLORIDA

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXPIRES APR. 27, 1995  
BONDED 14,420 FEDERAL INS. UND.







# EXHIBIT 3 – BTR HISTORY

Local Business Tax 80146

Account Number: 3400-0080146



## ORANGE COUNTY TAX COLLECTOR

Exhibit 3 - BTR History

**Business Address:**  
TRAVEL TIME TOURS INC  
7543 INTERNATIONAL DR  
ORLANDO, FL 32819

**Mailing Address:**  
TRAVEL TIME TOURS INC  
KELLY LAURIE  
843 MEADOW GLADE DR  
WINTER GARDEN, FLORIDA 34787-2426

**Description:** TIME SHARE

**Business Owners:**  
KELLY LAURIE

**Application:** 11/20/1990  
**New Business:** 11/20/1990  
**Out of Business:** 05/25/2021

**Tax Status:** DELETED  
**Parcel ID:** 25-23-28-0000-00039

**Paid Status:** NOT PAID  
**Amount Due:** \$0.00

### Active Categories

Code	Description	NB Date	Zoning	Local Business Taxes		
				State	City	County

### Local Business Tax Payments

08/20/1998	0009-00004964	PAYMENT				\$75.00
09/13/1999	0006-00007954	PAYMENT				\$75.00
11/03/2000	0022-00003941	PAYMENT				\$82.50
08/09/2001	0099-00001625	PAYMENT				\$75.00
08/14/2002	0099-00309442	PAYMENT				\$75.00
09/19/2003	0099-00200114	PAYMENT				\$75.00
11/17/2004	0023-00008244	PAYMENT				\$86.25
10/27/2005	0024-00010061	PAYMENT				\$82.50
06/18/2007	0023-00010130	PAYMENT				\$93.75
01/25/2008	0023-00007481	PAYMENT				\$93.75
09/22/2008	0098-00411509	PAYMENT				\$75.00
11/24/2009	0098-00453311	PAYMENT				\$86.25
07/26/2010	0098-00468016	PAYMENT				\$75.00
02/10/2012	0098-00531876	PAYMENT				\$93.75
11/12/2012	0098-00571003	PAYMENT				\$86.25
02/05/2014	0098-00614187	PAYMENT				\$93.75
12/23/2014	0098-00660763	PAYMENT				\$90.00
01/29/2016	0098-00712941	PAYMENT				\$93.75
01/25/2017	0098-00765308	PAYMENT				\$93.75
10/24/2017	0098-00817049	PAYMENT				\$82.50
11/16/2018	0098-00873837	PAYMENT				\$86.25
01/15/2020	0281-05820058	PAYMENT				\$93.75

Date Printed: 8/5/2021

Page 1 of 1



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## EXHIBIT 3 – BTR HISTORY

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**From:** [Donna Ulichny](#)  
**To:** [Moreau, Jennifer C](#); [Kevin Page](#)  
**Cc:** [Jones, Taylor S](#); [Evers, Whitney](#)  
**Subject:** RE: I -Drive Ticket Booth  
**Date:** Monday, August 23, 2021 10:14:25 AM

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Morning,

Last time they renewed was 1/15/2020 and that was the cycle for 2019/20. The closed date is based on when We “Orange County” closed the actual acct per request “David” stated business closed 9/2020

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**From:** Jennifer.Moreau@ocfl.net <Jennifer.Moreau@ocfl.net>  
**Sent:** Thursday, August 12, 2021 10:31 AM  
**To:** Kevin Page <kpage@octaxcol.com>  
**Cc:** Taylor.Jones@ocfl.net; Whitney.Evers@ocfl.net; Donna Ulichny <DUlichny@octaxcol.com>  
**Subject:** I -Drive Ticket Booth

**[EXTERNAL] - This email originated from outside of the Orange County Tax Collector organization. Do not click links or open attachments unless you recognize the sender.**

Kevin,

I am hoping you can assist me in understanding the attached records from the BTR office. Based on the payment history it looks like they last paid on 1/15/20 – presumably for the payment that was due in October 2019 – Sept. 2020 cycle.

I don't see a payment for the 2020/2021 cycle, but then the history notes it was out of business on 5/25/21. How is the “out of business date” determined by your office?

This is a non-conforming use and we are trying to figure out when they last had a legal business tax receipt and/or went out of business. Any clarification you can provide would be helpful.

Thanks,

Jennifer Moreau, AICP  
Manager, Zoning Division  
Planning, Environmental and Development Services Department  
201 S. Rosalind Avenue, First Floor  
Orlando, FL 32801  
Division - 407-836-3111  
Office - 407-836-5856  
Fax - 407-836-9611  
[www.ocfl.net/zoning](http://www.ocfl.net/zoning)

PLEASE NOTE: Florida has a very broad public records law (F. S. 119). All e-mails to and from County Officials are kept as a public record.



MCGREGOR T. LOVE

Associate

mcgregor.love@lowndes-law.com

215 North Eola Drive, Orlando, Florida 32801-2028

T: 407-418-6311 | F: 407-843-4444

MAIN NUMBER: 407-843-4600

 MERITAS® LAW FIRMS WORLDWIDE

February 11, 2022

Ted Kozak  
Chief Planner  
Orange County Zoning Division  
201 S. Rosalind Ave., 1st Floor  
Orlando, FL 32801

RECEIVED  
FEB 11 2021  
ORANGE COUNTY  
ZONING DIVISION

**Re: Appeal of Use Determination**

Dear Ted:

This law firm represents the owner of the Property located at 7527 International Drive (the "Property"), Benzer & RM Investments, LLC ("Benzer"), in connection with its application for a Nonconforming Use Determination (NC-21-12-001) (the "Use Determination Application") for the operation of a stand-alone ticket booth (the "Ticket Booth<sup>1</sup>") on the Property. The Use Determination Application asserted that the Ticket Booth, which had been operated continuously for over thirty (30) years, had not been "discontinued for one hundred (180) days or more" and should be considered a legal nonconforming use. On December 6, 2021, Benzer submitted its Use Determination Application to the County. A copy of the Use Determination is attached as **Exhibit "A."** On January 14, 2022, the County sent a letter to Benzer's counsel denying the Use Determination Application (the "County's Determination"). In the County's Determination, the County concluded that *"the use of the Subject Structure has been abandoned for a period of greater than 180 days and does not qualify as a legal non-conforming use."* As discussed in detail below, the factual conclusions contained within the County's Determination are not supported by the record, and the legal conclusions are not supported by Florida law. For the following reasons, the Board of Zoning Adjustment should overturn the County's Determination:

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<sup>1</sup> Section 28-1424(c) of Code provides: "the term 'ticket booth' means a booth, kiosk, stand, or similar structure situated outdoors or affixed to the exterior of another structure at which tickets, coupons, timeshares, and/or real estate are marketed."



Ted Kozak  
February 11, 2022  
Page 3

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- On February 2, 2017, Orange County adopted Ordinance No. 2017-03, which created the I-Drive District Overlay Zone (the “I-Drive Code”). Section 38-865(e)(1) of the I-Drive Code prohibits accessory buildings in the front or side yards of principle structures for retail purposes.
- On October 6, 2020, Benzer purchased the Property. At all times, Benzer intended to continue the legal nonconforming use of the Ticket Booth for the operation of a ticket sales business.
- Around the time that Benzer purchased the Property, Benzer became aware that Travel Time, along with several other tenants of the Property, owed past-due rent. Travel Time, which rented the Ticket Booth for \$1,200 per month, had failed to pay rent for the months of July through October 2020.
- On October 30, 2020, Arvind Nandu, owner of Benzer, emailed Laurie and David Kelly, owners of Travel Time, to notify Travel Time that Benzer had purchased the Property. A copy of the new ownership notice was attached to the Use Determination Application as Exhibit “E.”
- On November 2, 2020, Benzer’s attorney, Stephen M. Stone, sent a letter to Travel Time demanding payment of the past-due rent in addition to the rent for November 2020. A copy of the past-due rent notice was attached to the Use Determination Application as Exhibit “F.”
- Rather than requiring Travel Time to pay past-due rent, Travel Time and Benzer agreed to allow Travel Time to vacate the Property on or before December 31, 2020, so that Benzer could market the premises to prospective tenants<sup>2</sup>.
- Shortly after Benzer and Travel Time agreed that Travel Time would no longer rent the Property, Benzer began looking for a new tenant for the Ticket Booth. Due to the impact of the COVID-19 pandemic on theme park ticket sales, Benzer initially had difficulty finding a replacement tenant.
- On November 11, 2020, Travel Time delivered one of the Ticket Booth’s two (2) keys to Benzer’s attorney, Mr. Stone, so that Benzer could access and market the Property. Travel Time retained a second key to the Ticket Booth and continued to operate the Ticket Booth through December 2020.

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<sup>2</sup> Benzer reached similar agreements with several other tenants who opted to vacate rather than pay past-due rent.



Ted Kozak  
February 11, 2022  
Page 4

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- On November 12, 2020, electrical power to the Ticket Booth was turned off by Duke Energy. Notwithstanding discontinuation of electrical power, Travel Time continued to use the Ticket Booth to operate its business through December 2020<sup>3</sup>.
- On November 16, 2020, Mr. Nandu sent a letter to Travel Time regarding Travel Time's use of the Ticket Booth and the parties' agreement that Travel Time vacate the premises on or before December 31, 2020. A copy of the vacating property notice was attached to the Use Determination Application as Exhibit "G."
- Beginning on or around October 6, 2020 and continuing through December 2020, Mr. Nandu and other individuals acting on behalf of Benzer personally observed Travel Time possessing and operating the Ticket Booth. A copy of an affidavit executed by Mr. Nandu regarding Travel Time's operation of the Ticket Booth was attached to the Use Determination Application as Exhibit "H." A copy of a letter from Benzer's broker, John Kryzminski, regarding Travel Time's operation of the Ticket Booth was attached to the Use Determination Application as Exhibit "I."
- In February 2021, Benzer began negotiating a lease of the Ticket Booth to Florida Resort Xchange, LLC ("FRX"). On April 30, 2021, Benzer entered into a Lease Agreement with FRX to lease the Ticket Booth to FRX for a one-year term commencing on May 1, 2021 (the "Commencement Date"). On or about the Commencement Date, FRX commenced use of the Ticket Booth and has continuously operated the Ticket Booth through the date of this letter.

#### **ANALYSIS**

For the following reasons, the Board of Zoning Adjustment should overturn the County's Determination.

*I. Key factual conclusions that were used as the bases for the County's Determination are plainly incorrect.*

The factual conclusions reached by the County regarding when Travel Time ceased its use of the Ticket Booth are contradicted by the facts. In the County's Determination, the County concluded that Ticket Booth had not been used since August of 2020. The County's Determination offered the following explanation of how it weighed competing evidence to come to this conclusion:

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<sup>3</sup> The particular way Travel Time used the Ticket Booth—as a meeting place to complete transactions—made it possible for Travel Time to continue using the Ticket Booth without electrical power during November and December 2020.

Ted Kozak  
February 11, 2022  
Page 5

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In reviewing all of the facts and information we had in our possession we had two competing sets of information. Therefore, we had to weigh the strength of all of the information at our disposal. In doing so, we felt **we needed to give more credence to the factual information provided by Duke Energy and the Tax Collector's BTR Office**, both uninterested parties, than to the affidavits from tenants of the Current Owner. (Emphasis added).

The County misinterpreted the Duke Energy records and, as a result, assigned improper weight to an email from a staff person at the Tax Collector's BTR Office.

The County plainly misinterpreted the Duke Energy records (attached to the County's Determination as Exhibit 4). In the County's Determination, the County stated "[t]he Duke Bill shows the average daily usage history for the Subject Property **was zero-kilowatt hours as far back as August of 2020 and that the power usage did not increase until May of 2021**, a span of at least 10 months." (Emphasis added). As shown on the document itself, the Duke Energy bill attached to the County Determination was for FRX, the current tenant of the Ticket Booth (the "FRX Bill"). The FRX Bill does not show usage in 2020 because FRX was not Benzer's tenant until April 30, 2021 and was not in possession of the Ticket Booth until May 1, 2021. The Duke Energy bills for Travel Time (the "Travel Time Bills") show that Travel Time used electricity at the Ticket Booth until November 12, 2020. A copy of the Travel Time Bills is attached hereto as **Exhibit "B."** Accordingly, the County misinterpreted the FRX Bill, which resulted in the incorrect conclusion that no electrical power was used at the Ticket Booth from August 2020 through May 2021.

The County's misinterpretation of the FRX Bill caused the County to give undue weight to an uncertain and unverifiable account of a conversation between a staff person at the Tax Collector's BTR Office and someone *believed to be* the husband of the owner of Travel Time (the "BTR Email"). Specifically, the County Determination provided:

In an email exchange in August of 2021 between the Manager of the Zoning Division and the Orange County Tax Collector's BTR Office staff, the BTR Office advised that they had marked this specific business "Out of Business" on 5/31/2021 because that was the date the BTR Office received a phone call from a gentleman named David (who we believe to be David Kelly, the husband of Laurie Kelly, the owner of Travel Time Tours Inc) who informed the BTR Office that the business had ceased operating in September of 2020.

The BTR Email referenced above was sent by Donna Ulichny on August 23, 2021 and provided: "Last time [Travel Time] renewed was 1/15/2020 and that was the cycle for 2019/20. The closed date is based on when We 'Orange County' closed the actual acct per request 'David' stated business closed 9/2020." In

Ted Kozak  
February 11, 2022  
Page 6

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the BTR Email, Ms. Ulichny did not state, or even imply, that “David” was David Kelly or anyone else affiliated with Travel Time. Following receipt of the County’s Determination, the owner of Benzer contacted Ms. Ulichny regarding the BTR Email, and was sent the following response by Ms. Ulichny:

**From:** Donna Ulichny <[DUlichny@octaxcol.com](mailto:DUlichny@octaxcol.com)>  
**Date:** January 27, 2022 at 4:21:57 PM EST  
**To:** [benzerorlando@gmail.com](mailto:benzerorlando@gmail.com)  
**Subject:** orange county tax collector

Afternoon,

The Orange County received a request to close the BTR- 1226764 on May 25,2021 by David Rodriguez -Field Rep

The above email suggests that “David” referenced in the BTR Email could have been David Rodriguez, a field representative, not the husband of the owner of Travel Time. In any case, the County’s misinterpretation of the FRX Bill resulted in it applying undue weight to the BTR Email. As a result, key factual conclusions reached by the County in denying the Use Determination Application were plainly incorrect.

*II. The only credible evidence on record supports Benzer’s assertion that the use of the Ticket Booth has not been abandoned for more than 180 days.*

As a result of the County’s misapplication of the facts described above, the only credible evidence on record supports Benzer’s assertion that the use of the Ticket Booth has not been abandoned for more than 180 days. Benzer attached sworn affidavits from existing tenants of the Property and from the owner of Benzer attesting that Travel Time used the Ticket Booth in December 2020. In the Use Determination, the County stated that it weighed these affidavits against “competing sets of information” in order to “weigh the strength of all of the information at our disposal.” As described above, the County misinterpreted key facts, which caused it to improperly dismiss the sworn testimony provider by Benzer. The Travel Time Bills show that electrical power was used through November 12, 2020 and the affidavits attest that Travel Time continued to operate its business into December 2020. Accordingly, the only credible evidence on record does not compete with Benzer’s evidence, but rather supports it.



Ted Kozak  
February 11, 2022  
Page 7

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III. Benzer's cessation of the Ticket Booth use was involuntary and not considered abandonment under Florida law.

The temporary cessation of the Ticket Booth use was involuntary and not considered abandonment under Florida law. At all times prior to and following Benzer's purchase of the Property, Benzer intended to continue the legal nonconforming use of the Ticket Booth for the operation of a ticket sales business. When it became clear to Benzer that Travel Time would no longer use the Ticket Booth, Benzer immediately began searching for a new tenant. Due to the impact of the COVID-19 pandemic on theme park ticket sales, Benzer initially had difficulty finding a replacement tenant. Under Florida law, "abandonment occurs when the landowner **intentionally and voluntarily** foregoes further non-conforming use of the property." *Hobbs v. Dep't of Transp.*, 831 So. 2d 745, 748 (Fla. 5th DCA 2002). (Emphasis added). "Temporary cessation of a nonconforming use or the temporary vacancy of buildings used for the nonconforming use does not operate to effect abandonment of the nonconforming use." *Lewis v. City of Atl. Beach*, 467 So. 2d 751, 755 (Fla. 1st DCA 1985).

No reasonable assessment of Benzer's extensive and persistent efforts to continue the legal nonconforming of the Ticket Booth could conclude that Benzer "intentionally and voluntarily" abandoned the use of the Ticket Booth. At all times, Benzer actively sought to use the Ticket Booth, and certainly never sought to intentionally abandon it. Accordingly, as a matter of Florida law, the temporary cessation of the Ticket Booth use was not "abandonment" that would allow the removal of the Ticket Booth's legal nonconforming use status.

IV. If upheld, the Use Determination would be grossly inequitable.

If upheld, the Use Determination would be grossly inequitable, as it would result in the Ticket Booth becoming effectively unusable for any purpose. Section 38-865(e)(1) of the I-Drive Code prohibits accessory buildings in the front or side yards of principle structures for retail purposes. The Ticket Booth was purpose-built to be used for ticket sales at a time when such structures were not prohibited under Code, and is too small to be effectively used for any other purpose. At the time Benzer purchased the Property, the Ticket Booth had been used for ticket sales continuously by a single tenant for thirty (30) years. When Travel Time terminated its lease, Benzer worked diligently to find a replacement tenant as soon as possible. Accordingly, the County's Determination, which would render the Ticket Booth effectively useless, would be grossly inequitable.

Ted Kozak  
February 11, 2022  
Page 8

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**CONCLUSION**

The County's Determination lacks factual and legal support. As a matter of fact and law, Benzer has not "abandoned" the Ticket Booth use, and should be permitted to continue it as a legal nonconforming use. For the foregoing reasons, Benzer asks the Board of Zoning Adjustment to overturn the County's Determination.

Sincerely,

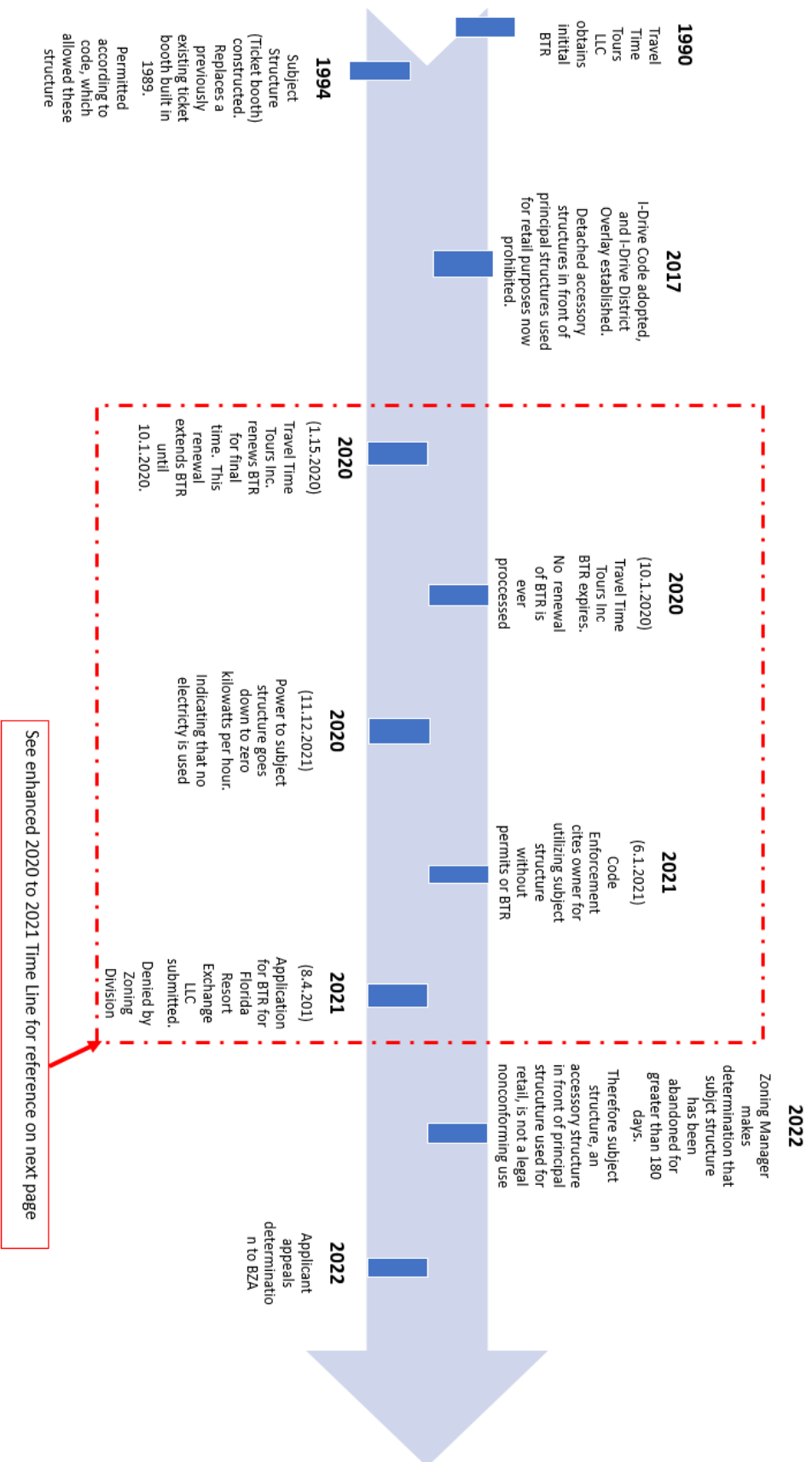


McGregor T. Love

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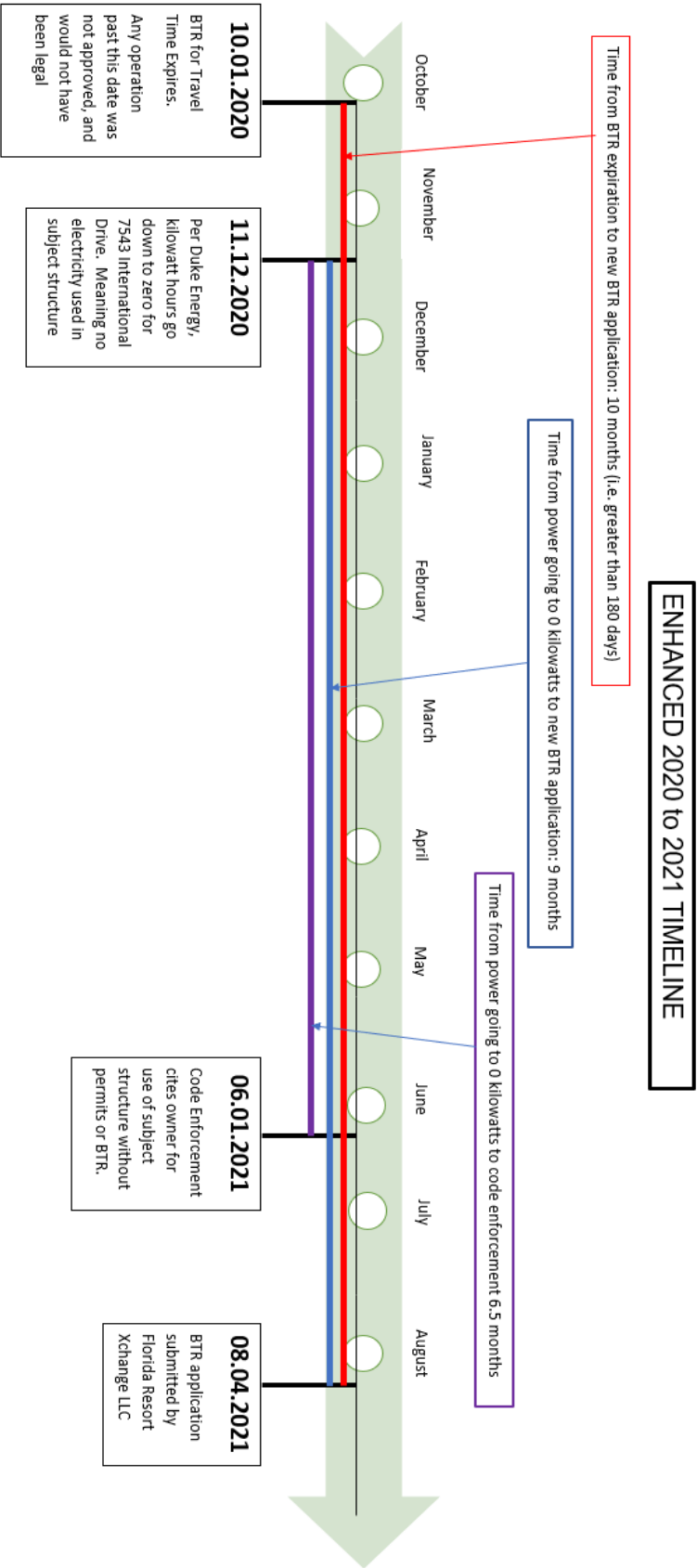
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**TIME LINE**





TIME LINE



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## SITE PHOTOS

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**View of building frontage along International Drive, facing east**



**View of south side of structure, facing north on International Drive**



## SITE PHOTOS



View of structure across International Drive, facing East



North side of structure, facing South from subject property





**BOARD OF ZONING ADJUSTMENT**  
**201 S. Rosalind Ave**  
**Orlando, FL 32801**