



Planning, Environmental &  
Development Services  
Department



Orange County Board of Zoning Adjustment

# Recommendations Booklet

Hearing Date:

**September 1, 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  
SEPTEMBER 1, 2022**

<b>Case #</b>	<b>Applicant</b>	<b>Commission District</b>	<b>Staff Recommendation</b>	<b>BZA</b>	<b>Page #</b>
SE-22-06-034	Brent Spain	2	Request #1 Approval w/Conditions Requests #2-3 Denial	Approval w/Conditions	1
VA-22-09-079	Guillermo Azocar	1	Denial	Approval w/Conditions	17
VA-22-09-082	Benjamin Kim	1	Approval w/Conditions	Approval w/Conditions	30
VA-22-09-089	Iv Simaku	3	Denial	Approval w/Conditions	43
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VA-22-09-091	Jeff Battaglia	5	Approval w/Conditions	Approval w/Conditions	67
VA-22-09-086	Steven Johnson	2	Approval w/Conditions	Approval w/Conditions	78
VA-22-08-058	Victor Romero	3	Denial	Approval w/Conditions	97
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VA-22-09-098	Patricia Ortiz For Wash City	5	Denial	Approval w/Conditions	157
SE-22-08-063	Juan Rodriguez For Sci Funeral Services	1	Approval w/Conditions	Approval w/Conditions	175
VA-22-10-097	Sean Lackey	2	Denial	Denial	192
SE-22-06-041	Jeffrey McMillian For J & J's Lawn & Tree	2	Approval w/Conditions	Approval w/Conditions	207
VA-22-09-085	Edward Tombari For Foxpoint Media	5	Denial	Denial	221
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**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 September 27, 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

<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>
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	60	25	25	6	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	100	35	50	10	35	<i>a</i>
		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 <sup>f</sup>	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 <sup>g</sup>	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: **SEPT 01, 2022**

Commission District: **#2**

Case #: **SE-22-06-034**

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

**Nick.Balevich@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): BRENT SPAIN

OWNER(s): MANG HYUN CHO, JUNG SOON CHO

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

1) Special Exception to allow a cumulative total of 5,628 sq. ft. detached accessory structure area in lieu of 3,000 sq. ft.

2) Variance to allow a 5,628 sq. ft. detached accessory structure in lieu of a maximum of 5,000 sq. ft.

3) Variance to allow an accessory structure to be located in front of the principal structure in lieu of the side or rear.

Note: This is the result of Code Enforcement.

PROPERTY LOCATION: 4550 Cemetery Road, Mount Dora, FL 32757, west side of Cemetery Rd., north of Sadler Rd., east of N. Orange Blossom Trl.

PARCEL ID: 16-20-27-0000-00-012

LOT SIZE: 4.78 acres

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 21

**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 and, recommended **APPROVAL** the Variance requests 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 (Motion by John Drago, Second by Juan Velez; unanimous; 6 in favor: Thomas Moses, John Drago, Juan Velez, Deborah Moskowitz, Joel Morales, Charles Hawkins, II; 0 opposed; 1 absent: Roberta Walton Johnson):

1. Development shall be in accordance with the site plan and elevations received June 24, 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 unpermitted structure(s) within 1 year 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 landscape buffer shall be planted in front of the accessory structure to consist of a row of shrubs for a distance of 80 ft. which will be centered at the midpoint of the accessory structure, said hedge able to reach a height of five (5) ft. in three (3) years with an opacity of not less than 60 percent from ground to height. A minimum of four (4) canopy trees shall be installed adjacent to the shrubs with a spacing of 30 ft. on center.

**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 the Special Exception and denial of the Variances. Staff noted that no comments were received in support or in opposition.

The applicant discussed the history of the request and noted that the same proposal was previously approved in 2019 and that nothing has changed, however, the owner did not obtain a permit for the improvements currently in violation within 180 days, as conditioned by the prior approval.

Code Enforcement noted the history of the violation and the recent citation.

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

The BZA noted the prior approval, discussed the research of the prior BZA case, consistency with the six (6) Special Exception and Variance criteria, and unanimously recommended approval of the Special Exception and Variances by a 6-0 vote, with one absent, subject to the five (5) conditions in the staff report.

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#### **STAFF RECOMMENDATIONS**

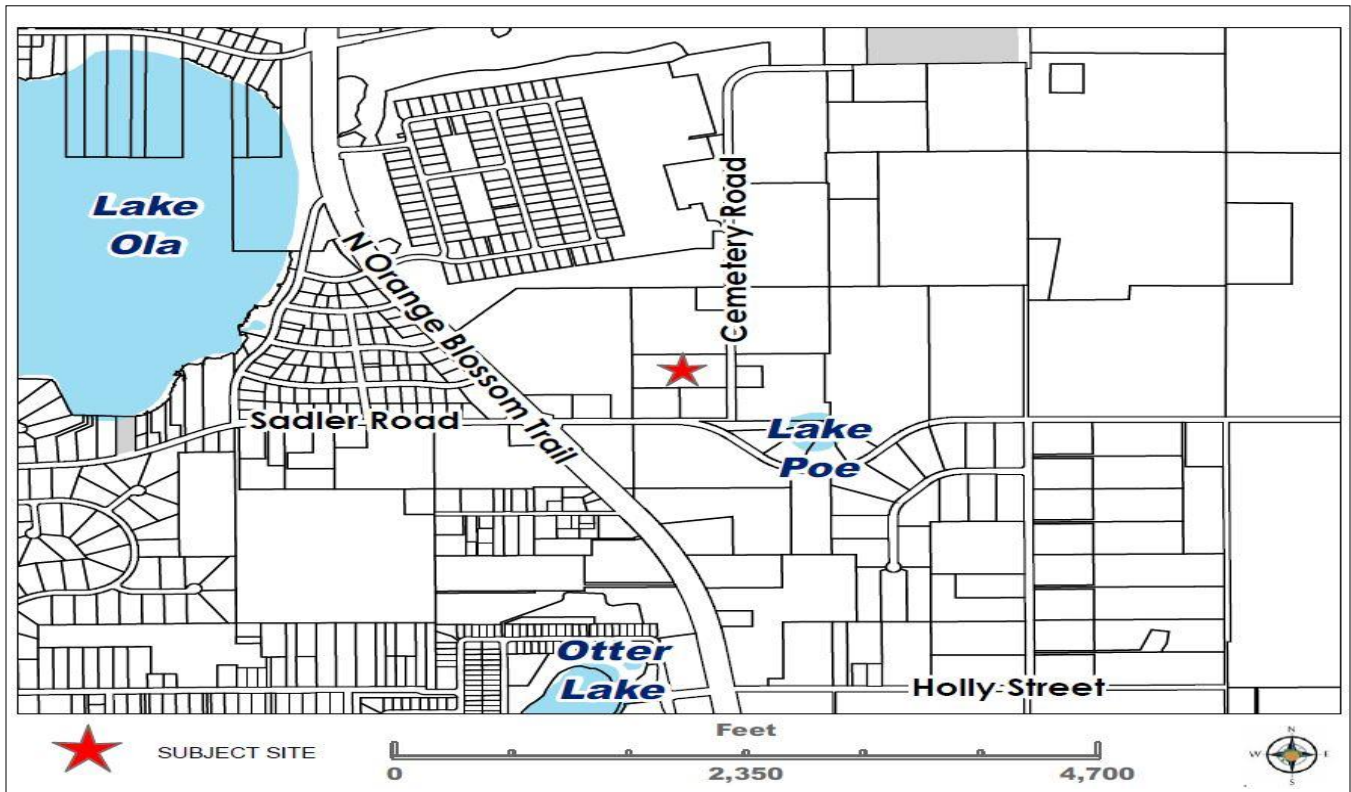
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Approval of the Special Exception, subject to conditions in this report and denial of the Variances. However, should the BZA find that the applicant has satisfied the criteria necessary to grant the variance, staff recommends that the approval be subject 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	A-1
Future Land Use	R	R	R	R	R
Current Use	Single-family residential	Agriculture	Single-family residential	Single-family residential	Vacant

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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 a single-family residence with associated accessory structures on larger lots. The future land use is Rural (R), which is consistent with the zoning district.

The area around the subject site is comprised of single-family homes, vacant land, and agricultural uses in a semi-rural setting. The subject property is a 4.78 acre unplatted lot that conforms with the A-1 requirements. It is developed with a 2,416 gross sq. ft. single-family home, constructed in 1987 (B87022771), and a detached accessory structure with a cumulative total of 5,628 sq. ft. The accessory structure appears to have been constructed in 1995, based on a review of historic aerials, with 2,412 sq. ft. of floor area. A 3,216 sq. ft. addition to the accessory structure was built in 2018, that had an additional 2,412 sq. ft. of floor area and an 804 sq. ft. outdoor covered breezeway. Based on a review of historic

aerials, it appears that several additions were added to the home without permits sometime around 2001. The owner purchased the property in 2017.

The original 2,412 sq. ft. accessory structure was on the property prior to purchase by the current owner in 2017. The addition to the accessory structure was constructed by the current owner in 2018 in front of the existing structure (extending beyond the front of the house), to create a single structure with a cumulative total of 5,628 sq. ft., with a maximum height of 18 ft. The owner was cited by code enforcement in March, 2019 for the construction of the detached accessory structure without permits (Incident 537704).

In July, 2019, the following variances were approved with 6 conditions of approval, including a condition that the unpermitted structure obtain a permit within 180 days, (VA-19-06-052):

- 1) To allow an accessory structure with 5,628 sq. ft. of floor area in lieu of 2,000 sq. ft. of floor area.
- 2) To allow an accessory structure with a 2:12 roof pitch to be 18 ft. in height in lieu of 15 ft.
- 3) To allow an accessory structure in front of the principal structure in lieu of the side or rear.

The owner did not obtain a permit for the unpermitted structure(s) within 180 days, per Condition #5 of the approval, thus rendering the approval null and void.

The owner was again cited by code enforcement in July, 2022 for an accessory structure erected without permits (Incident 610820).

The County Code pertaining to accessory structures has changed since the 2019 approval, since the maximum total accessory structure square footage now permitted by right is 3,000 sq. ft. Further, 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 5,628 cumulative sq. ft. of detached accessory structures in lieu of a maximum of 3,000 sq. ft., Variance #2 to allow an accessory structure to be located in front of the principal structure, and Variance #3 to allow a 5,628 sq. ft. detached accessory structure in lieu of a maximum of 5,000 sq. ft. The intent of the Code provision pertaining to accessory structures is that each individual building be subordinate to primary residence. As proposed, at 5,628 sq. ft., the detached accessory structure is larger than the existing 2,416 sq. ft. residence. In order to screen the proposal from the adjacent public street to the east, 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.

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:	25 ft. accessory structure	18 ft.
Min. Lot Size:	0.5 acres	4.78 acres
Min. Lot Width:	100 ft.	330 ft.

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

	Code Requirement	Proposed
Front:	N/A, not allowed in front (35 ft., when requested)	233 ft. house (East) 186 ft. accessory structure (East)
Rear:	10 ft.	334 ft. (West) accessory structure
Side:	10 ft.	36 ft. (North) 250 ft. (South) accessory structure

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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 detached accessory 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 186 feet from the front property line, there are no special conditions and circumstances particular to this request since the structure was built without permits and in a non-compliant location.

**Not Self-Created**

The requests are self-created since the accessory structure was built without permits, and smaller structures could have been built in conforming locations that would meet the standards required by Orange County Code.

**No Special Privilege Conferred**

Granting the variances 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 structure to less than 5,000 sq. ft. and building in a conforming location.

**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 variances.

**Purpose and Intent**

Approval of the requested variances 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 5,628 sq. ft. structure will be greater than the size of the existing house. The purpose of an accessory structure is to be accessory in size and scale 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 and elevations received June 24, 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 unpermitted structure(s) within 1 year 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 landscape buffer shall be planted in front of the accessory structure to consist of a row of shrubs for a distance of 80 ft. which will be centered at the midpoint of the accessory structure, said hedge able to reach a height of five (5) ft. in three (3) years with an opacity of not less than 60 percent from ground to height. A minimum of four (4) canopy trees shall be installed adjacent to the shrubs with a spacing of 30 ft. on center.

C: Brent Spain  
1809 Edgewater Drive  
Orlando, FL 32804

C: John Sprinkle  
1205 Lexington Parkway  
Apopka, FL 32712

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COVER LETTER

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REPLY TO: ORLANDO

March 30, 2022

**VIA HAND DELIVERY AND ELECTRONIC MAIL**

Nick Balevich, Planner II  
Orange County Zoning  
201 S. Rosalind Avenue  
Orlando, Florida 32801

**Re: 4550 Cemetery Road Application for Variance & Special Exception**

Dear Mr. Balevich:

Our firm represents Jung Soon and Mang Hyun Cho (the "Chos"), who are the owners of approximately 4.78 acres located at 4550 Cemetery Road in unincorporated Orange County (Parcel Id. No. 16-20-27-0000-00-012) ("Property"). Enclosed is an Orange County Board of Zoning Adjustment Application, together with the applicable fee of \$1,993.00, requesting reinstatement of a previously approved variance (VA-19-06-052), together with approval of a special exception as required by more recent code amendments, for an existing accessory structure on the Property: (1) to allow 5,628 square feet of floor area in lieu of 3,000 square feet; and (2) to be located in front of the principal structure in lieu of the side or rear.

Briefly stated, on July 8, 2019, the Orange County Board of Zoning Adjustment ("BZA") approved a variance (*i.e.*, VA-19-06-052) for the existing accessory structure on the Property to allow: (1) 5,628 square feet of floor area in lieu of 2,000 square feet; (2) a 2:12 roof pitch to be 18 feet in height in lieu of 15 feet in height; and (3) the accessory structure to be located in front of the principal structure in lieu of the side or rear ("2019 Variance"). As a condition of approval, the 2019 Variance required the Chos to obtain a permit for the existing accessory structure within 180 days or the approval would become null and void. The Chos initially attempted to handle the required permitting by themselves, but were not able to complete the process. Thereafter, the Chos retained John Sprinkle of KTS Construction Consultants to prepare and file the required permitting documents. Upon the filing of such documents, however, County Staff notified Mr. Sprinkle that the 2019 Variance had expired due to the lapse of time. Consequently, County Staff advised Mr. Sprinkle that the Chos would need to file a new application for a variance, together with a request for a special exception in light of recent Code amendments. Accordingly, consistent with the foregoing and the 2019 Variance, the Chos hereby file the enclosed Application which essentially seeks to reinstate the 2019 Variance together with approval of the required special exception.

**TALLAHASSEE**  
433 NORTH MAGNOLIA DRIVE  
TALLAHASSEE, FLORIDA 32308  
(850) 224-7332  
FAX: (850) 224-7662

**ORLANDO**  
1809 EDGEWATER DRIVE  
ORLANDO, FLORIDA 32804  
(407) 347-5388  
FAX: (407) 264-6132

As discussed separately below, the enclosed Application satisfies the review criteria for the requested variance and special exception. Accordingly, the Chos request the BZA's approval of the same.

**A. VARIANCE CRITERIA**

**1. Special Conditions or Circumstances**

One special circumstance arises from the fact that the existing mobile home was placed on the Property by the original owner, not the Chos. Had the residence been located slightly closer to the front property line, the variance for the placement of the existing accessory building would not be needed. Another special circumstance is the fact that the older portion of the existing accessory building was on the Property when purchased by the Chos.

**2. Not Self-Created**

Based upon historic aerials, the older portion of the existing accessory building was built in 1995 long before the Chos purchased the Property in 2017. In 2018, the Chos hired a contractor to install an addition to the original accessory building. The contractor told the Chos that he would obtain permits for the addition, and the Chos were under the impression that the needed permits had been obtained. It was not until the initial Code Enforcement citation that the Chos learned that the necessary permits for the addition to the accessory building had not been obtained.

**3. No Special Privilege Conferred**

Given the rural nature of the area and the generally isolated location of the existing accessory building, granting the requested variance for the size and placement of the existing accessory building will not grant any special privilege. Indeed, larger and taller structures are not unusual in this type of rural setting.

**4. Deprivation of Rights**

Without granting the requested variance, the Chos will be required to demolish both the addition to the existing accessory building as well as the original portion of the accessory building, which was already on the Property when purchased by the Chos.

**5. Minimum Possible Variance**

The requested variance is the minimum needed to allow the existing accessory building to remain on the Property in its current size and location.



**6. Purpose and Intent**

The purpose and intent of the Code regarding the amount of permissible accessory building area is to ensure that parcels are not overdeveloped. Given the size of the Property and its location in a rural area, the granting of the requested variance would comply with the purpose and intent of the Code.

**B. SPECIAL EXCEPTION CRITERIA**

**1. Consistent with the Comprehensive Plan**

Pursuant to FLU Policy 1.1.4.H, agricultural and agricultural-related activities predominate in areas designated as Rural on the County's Future Land Use Map, such as the Property. The Rural Future Land Use designation "promotes long-term viability of agricultural uses . . . while allowing single family residential on large lots." The requested special exception is consistent with such policies. Further, the scale and intensity of the existing accessory building is consistent with the scale and intensity of development within the surrounding Rural area and "promotes the intended rural character," as stated in FLU Policy 6.1.2. The existing accessory building is also compatible with the surrounding uses, consistent with FLU Objective 8.2.

**2. Similar and Compatible with Surrounding Development**

The surrounding area consists primarily of large lots that are zoned A-1 with a Rural Future Land Use designation. As previously noted, larger and taller structures are not unusual in this type of rural setting. In fact, to the east of the Property is a nursery with multiple structures that are significantly larger than the existing accessory building at issue.

**3. Not a Detrimental Intrusion**

Given the rural nature of the area and the generally isolated location of the existing accessory building, granting the requested special exception will not result in a detrimental intrusion of any kind.

**4. Performance Standards**

Contingent upon the approval of the Chos' concurrent variance request, the existing accessory building complies with the applicable performance standards of the A-1 zoning district.

**5. Similar in Characteristics Associated with Majority of Uses in Zoning District**

As discussed above, the surrounding area consists primarily of large lots that are zoned A-1 and have a Rural Future Land Use designation. The size, location, and materials of the existing accessory building are similar in characteristic to structures located in this type of rural setting within the A-1 zoning district.

**6. Compliant Buffer Yards**

Contingent upon the approval of the Chos' concurrent variance request, the existing accessory building complies with the applicable performance standards, including any required buffer yards. Additionally, the 2019 Variance included a vegetative buffer condition that the Chos do not oppose being incorporated into an approval of the requested special exception.

We appreciate County Staff's support of the requested variance and special exception for the Chos' existing accessory structure, which is consistent with the previously approved 2019 Variance. As always, please do not hesitate to contact me if you have any questions or need additional information.

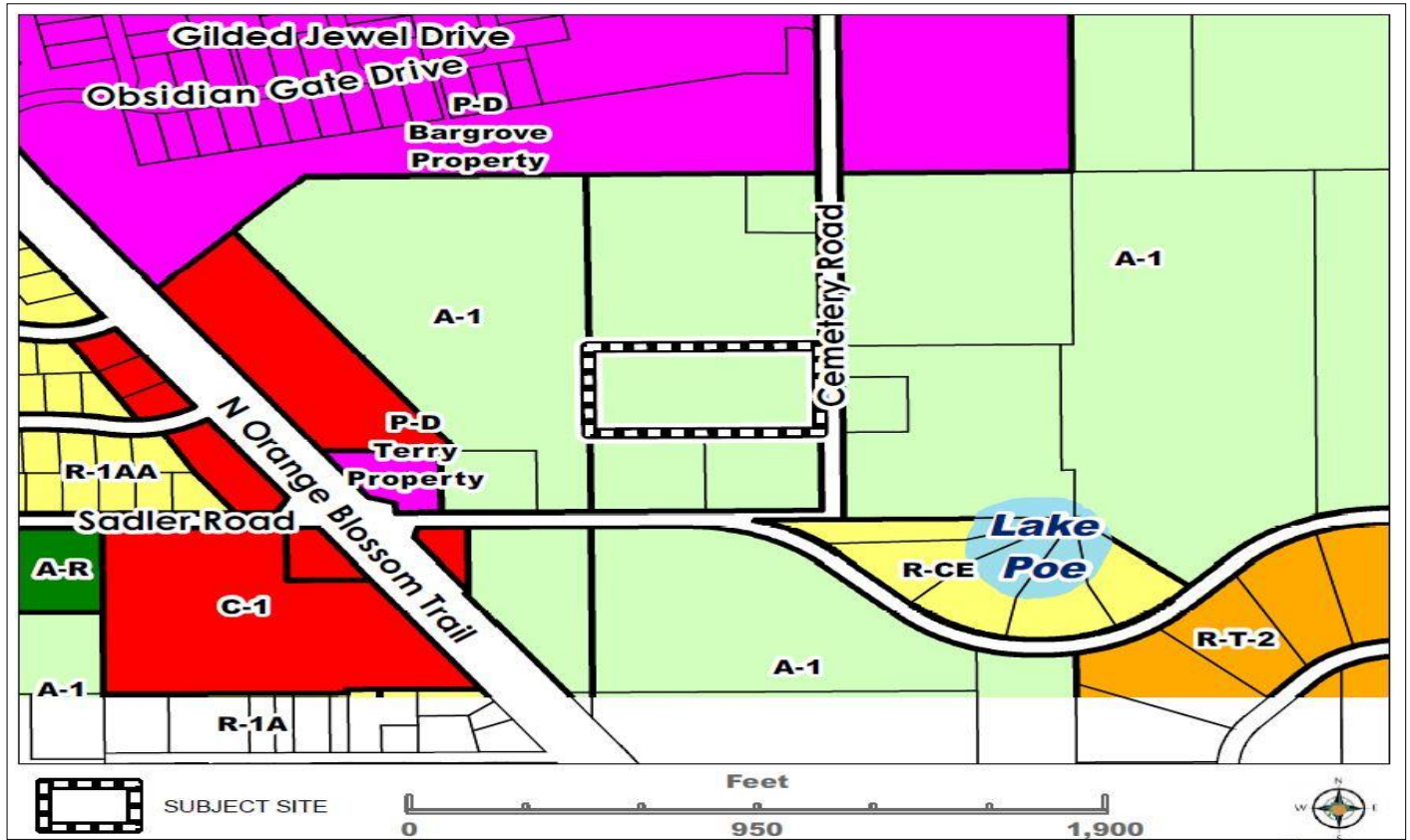
Sincerely,



S. Brent Spain

Enclosures

## ZONING MAP

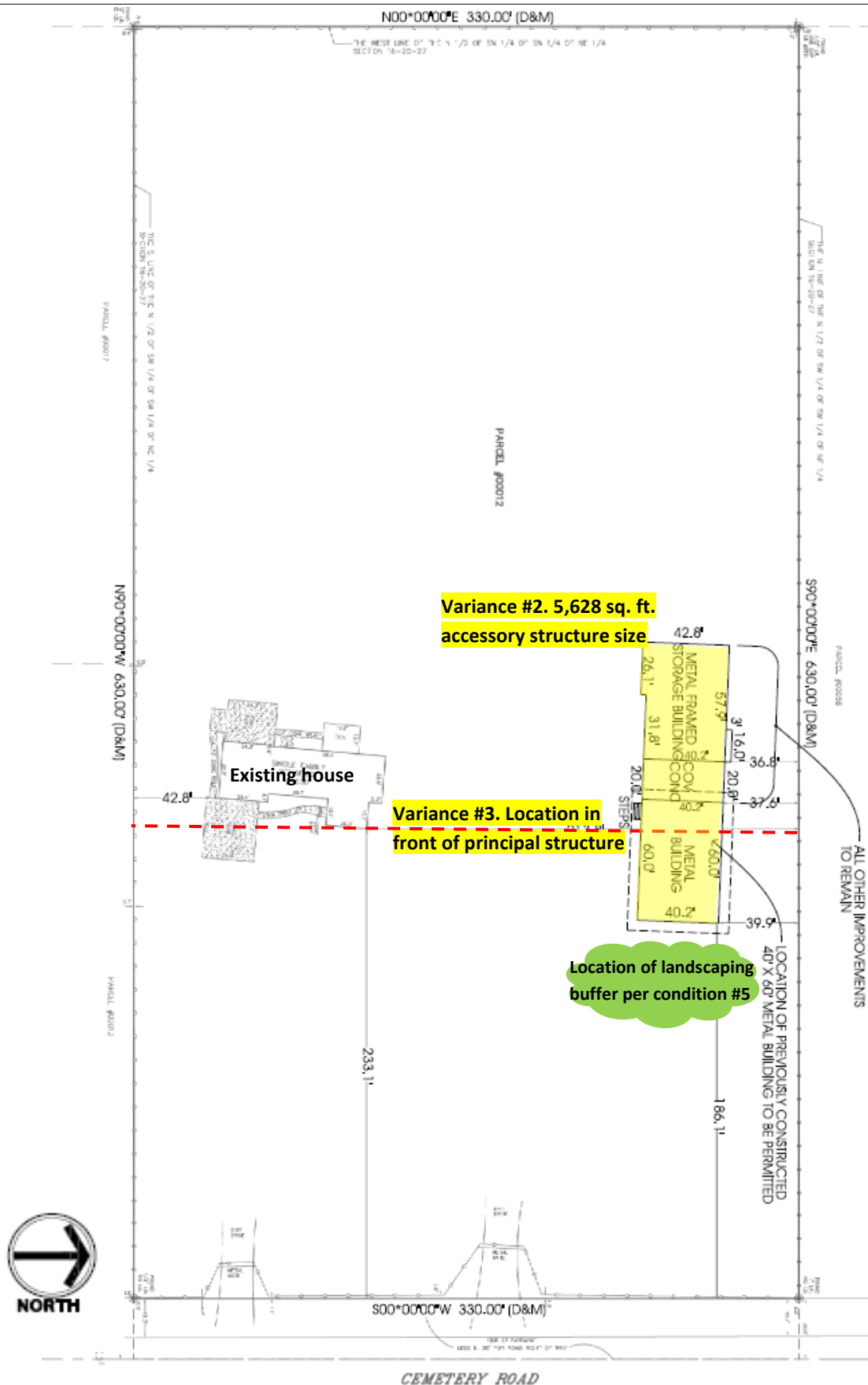


## AERIAL MAP





## SITE PLAN



## ELEVATIONS



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**SITE PHOTOS**

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**Front from Cemetery Rd. facing west**



**House and accessory structure facing north**



**SITE PHOTOS**



**Accessory structure facing north**



**Accessory structure facing west**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#1**

Case #: **VA-22-09-079**

Case Planner: **Nick Balevich (407) 836-0092**  
**Nick.Balevich@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): GUILLERMO AZOCAR

OWNER(s): JOHN S GOMATOS

REQUEST: Variance in the PD zoning district to allow a covered patio with a south rear setback of 6.5 ft. in lieu of 15 ft.

PROPERTY LOCATION: 5980 Chesapeake Park Unit 42, Orlando, FL 32819, Southwest side of Chesapeake Park, southwest of S. Apopka Vineland Rd., northwest of W. Sand Lake Rd., south of Banyan Blvd.

PARCEL ID: 22-23-28-0557-00-420

LOT SIZE: +/- 0.1 acres (6,874 sq. ft.)

NOTICE AREA: 500 FT

NUMBER OF NOTICES: 109

**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 (Motion by Thomas Moses, Second by John Drago; unanimous; 7 in favor: Thomas Moses, John Drago, Juan Velez, Deborah Moskowitz, Joel Morales, Charles Hawkins, II, Roberta Walton Johnson; 0 opposed):

1. Development shall be in accordance with the site plan and elevations received June 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. Permits shall be obtained for the pavers and covered patio within 1 year 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 support, and no comments were received in opposition.

The applicant did not have anything to add.

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

The BZA noted the two nearby prior similar approvals, the lack of alternatives to provide backyard shade, the restricted property size, the limited impact to adjacent residences since the proposed patio partially backs up to a street, Savannah Park, stated consistency with the six (6) Variance criteria and unanimously recommended approval of the Variance by a 7-0 vote, subject to the four (4) 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	Bay Hill Condominium PD	Bay Hill Condominium PD	Bay Hill Condominium PD	Bay Hill Condominium PD	Bay Hill Condominium PD
Future Land Use	LMDR	LMDR	LMDR	LMDR	LMDR
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 Bay Hill Condominium Planned Development (PD) District, which allows for single family uses. The Future Land Use is Low Medium Density Residential (LMDR), which is consistent with the zoning district.

The area around the subject site consists of single-family homes. The subject property is a 6,874 sq. ft. lot, located in the Bay Hill Village North Plat, recorded in 1981, and is considered to be a conforming lot of record. It is developed with a 3,214 gross sq. ft. single-family home, constructed in 1983. The owner purchased the property in 2021.

The request is to construct a 16 ft. x 22 ft. covered patio (which the applicant has referred to as a pergola in the cover letter) on the rear of the house, located 6.5 ft. from the rear property line, in lieu of 15 ft., requiring a Variance. The patio will have a structural roof, and therefore is considered an addition to the principle structure and is required to meet the 15 ft. rear setback for principal structures. Although the existing house was built with a deficient front (north) setback of 19.9 ft. in lieu of 20 ft., and a rear (south) setback of 14.9 ft. in lieu of 15 ft., they have been approved administratively per Sec. 38-1508(a), which allows for the Zoning Manager to approve an Administrative Waiver up to 6 percent of the applicable requirement for the front or rear yards for existing improvements. The owner applied for a permit for the covered patio and pavers (B21027518), but it is on hold pending the outcome of this request. The covered patio is proposed to be installed over existing pavers in the rear yard.

While the request meets some of the standards for variance criteria, it does not meet all of the standards, since there are other options, such as reducing the size of the covered patio. The applicant has indicated that they want shade in the rear yard, which is the reason for the request. However, there are other options to provide shade, such as building a 7.5 ft. wide covered patio that meets code and/or planting a tree or trees in the rear yard. Therefore, staff is recommending denial of this request.

As of the date of this report, no comments have been received in favor or in opposition to this request. The applicant has obtained approval from the Bay Hill Village Club Architectural Review Committee.

**District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	18 ft.
Min. Lot Width:	55 ft.	55 ft.

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

	Code Requirement	Proposed
Front:	20 ft.	19.9 ft. (North – Administrative Variance)
Rear:	15 ft.	6.5 ft. covered patio (South - Variance) 14.9 ft. existing house (South – Administrative Variance)
Side:	0 ft., minimum 10 ft. between structures	11.5 ft. (East) 10 ft. (West)

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**STAFF FINDINGS**


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

The special conditions and circumstances particular to this property are the placement of the existing home, and the size of the lot, which restricts the area where any addition could be built.

**Not Self-Created**

The requested variance is self-created, as a smaller covered patio (7.5 ft. deep) could be constructed in a manner which would not encroach into the rear setback.

**No Special Privilege Conferred**

Granting the variance would confer special privilege since a smaller structure could be constructed in a manner to meet code. Furthermore, no other interior lots have been granted similar variances.

**Deprivation of Rights**

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

**Minimum Possible Variance**

The request is not the minimum possible as a code compliant covered patio could be constructed in a manner that meets code.

**Purpose and Intent**

Approval of the requested variance would not be in harmony with the purpose and intent of the Zoning Regulations, and will be detrimental to adjacent properties due to the close proximity to the adjacent residence to the southwest.

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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan and elevations received June 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. Permits shall be obtained for the pavers and covered patio within 1 year 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: Guillermo Azocar  
9876 Caroline Park Drive  
Orlando, Florida 32832

## **Cover Letter**

Applicant:  
Guillermo Azocar for John Gomas  
5980 Chesapeake Park  
Orlando, FL 32819


June 9th, 2022

BZA  
Orange County Zoning  
201 South Rosalind Ave.  
Orlando, FL 32801

Request for zoning variance for setback revision for the property located at 5980 Chesapeake Park, Orlando, FL 32819. Parcel ID 22-23—28-0557-00-420 for the purpose of adding a patio aluminum pergola of 352 square feet (16 feet deep by 22 feet wide and 13 feet high) aluminum frame with composite roof paneling (3 inches) over pavers.

The reason of this request is the actual setbacks for that property are 15 feet to the rear of property line, we are requesting a variance to end up with a setback of 6.5 feet get to the rear of property line.

Approval of this variance will give an opportunity to get an already started building permit for this project (permit request #B21027518) to get a well necessary shade for the back patio of this property without affecting the community or the environment.

  
\_\_\_\_\_  
Guillermo J Azocar  
CGC1528432

Owner Name: John Gomas  
Address: 5980 Chesapeake Park, Orlando, FL 32819  
Parcel ID 22-23—28-0557-00-420



## 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.

There are pavers and our request is to cover those pavers with a pergola

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.

This case is not self created and we are asking a variance for our pergola to have a little bit of shade in that area

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 approval of this variance will not give a special privilege

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.

By not approving this request will not be a loss of rights of any other property in the same zoning

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.

We will accept the minimum set back allowed after our request to make it work

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 approval of this variance will not affect or hurt the public welfare or neighborhood.



## ZONING MAP



## AERIAL MAP

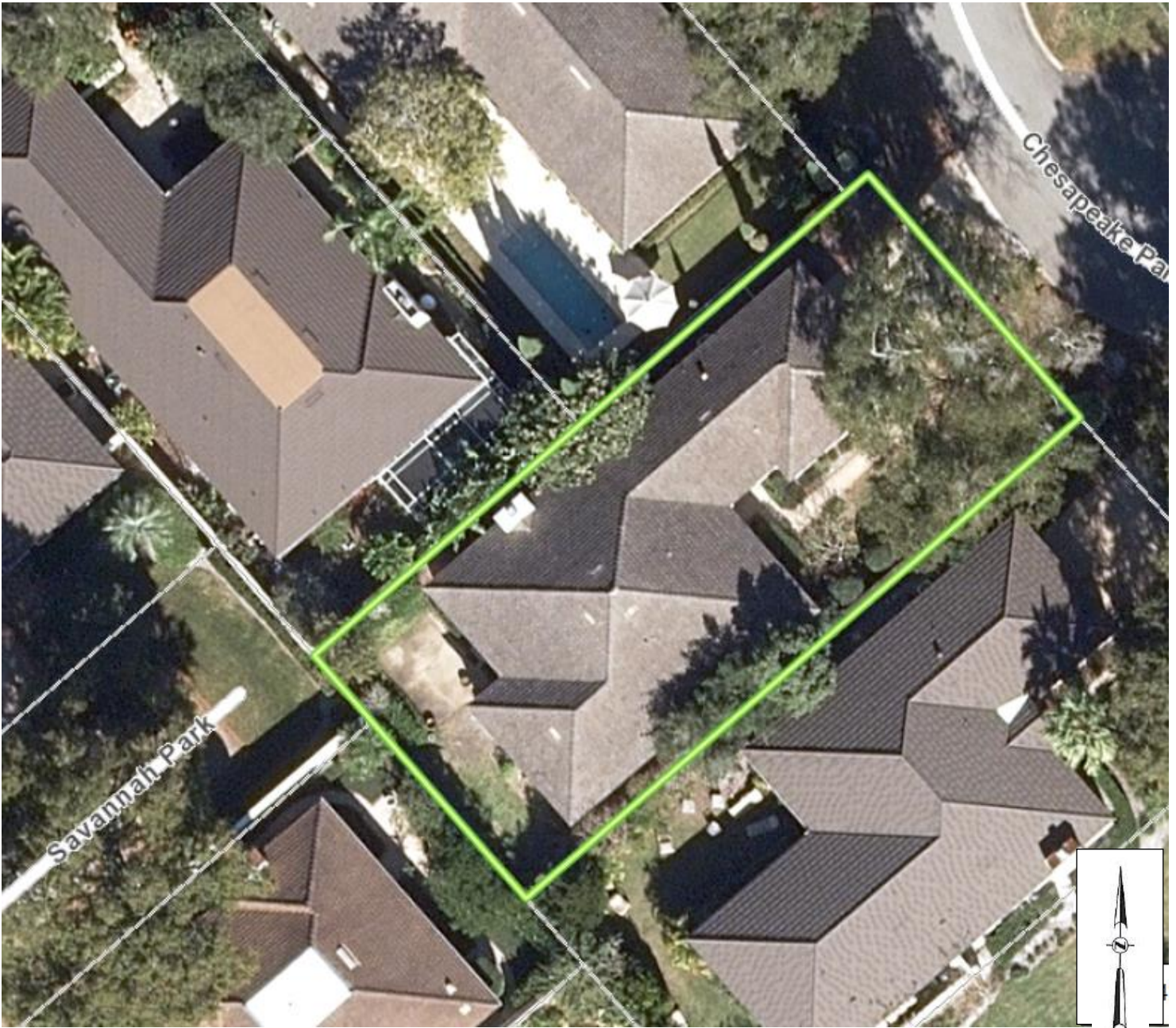




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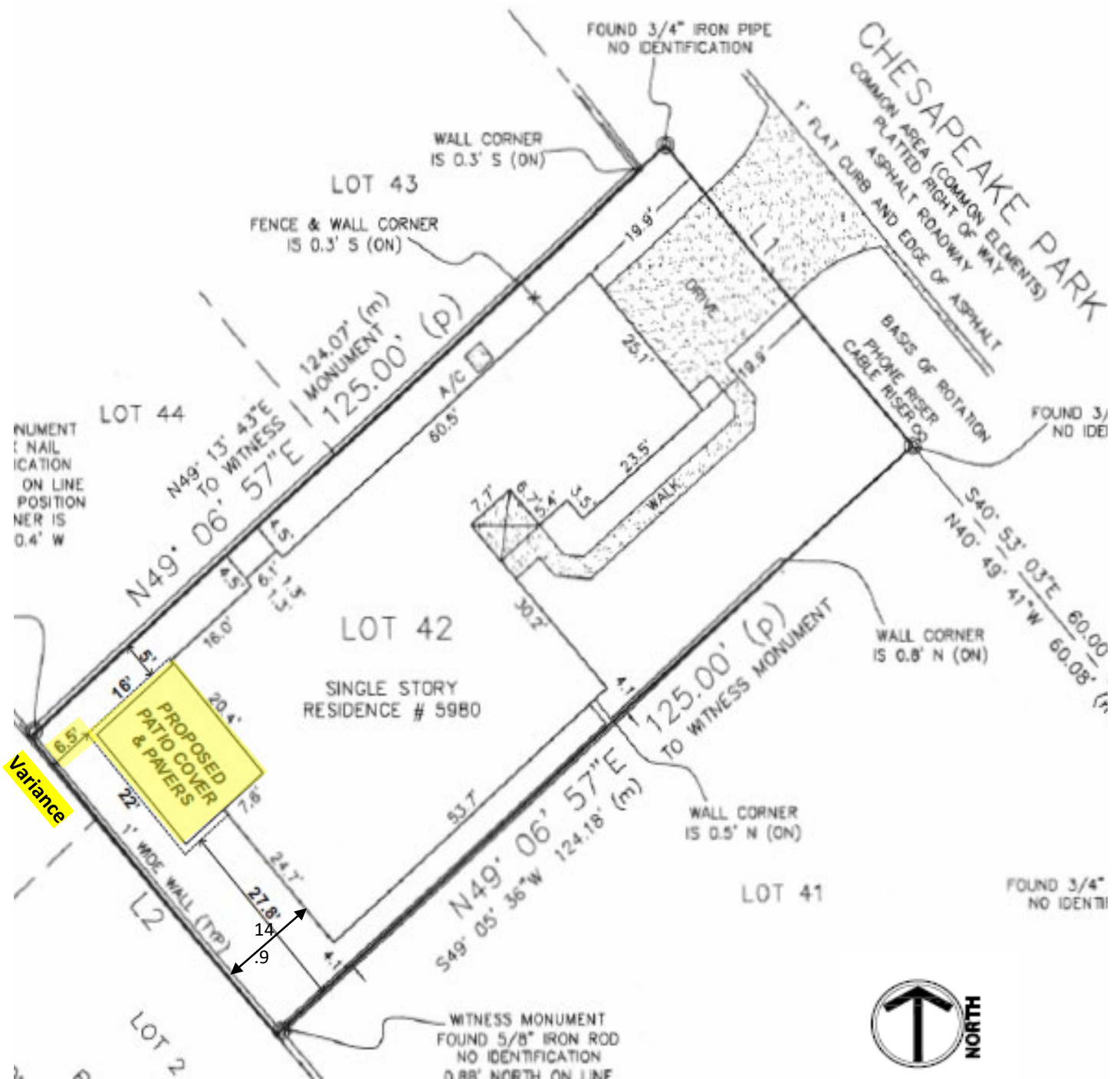
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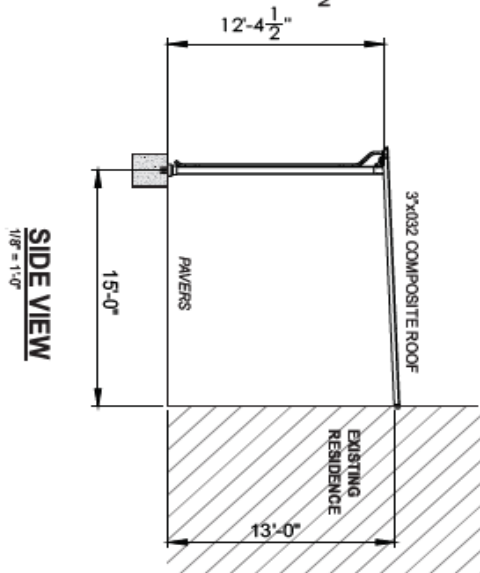
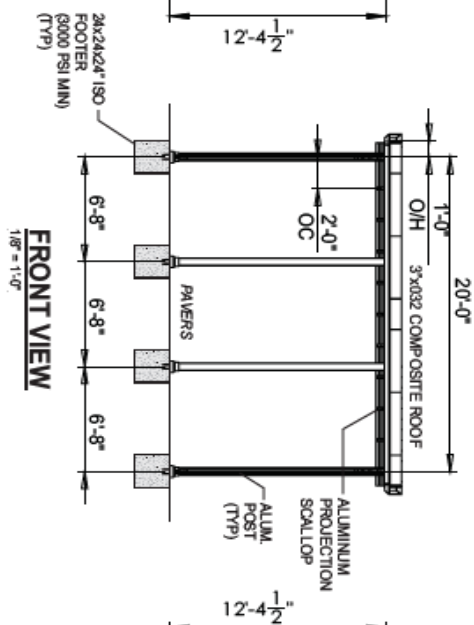
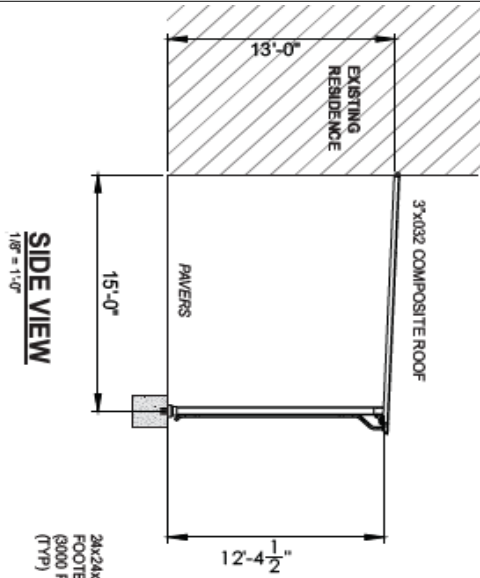
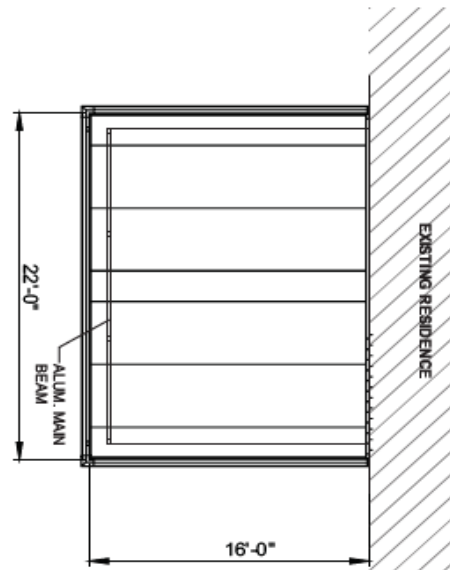




## SITE PLAN



## ELEVATIONS



**SITE PHOTOS**



**Front from Bittersweet Ln. facing south**



**Patio location facing south**



## SITE PHOTOS



Patio location facing north



Patio location facing west

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#1**

Case #: **VA-22-09-082**

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

**Nick.Balevich@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): BENJAMIN KIM

OWNER(s): SUN O KIM, BENJAMIN KIM

REQUEST: Variance in the PD zoning district to allow a covered lanai and an addition to an existing residence with a west rear setback of 25 ft. in lieu of 35 ft.

PROPERTY LOCATION: 6612 Bittersweet Ln., Orlando, FL 32819, West side of Bittersweet Ln., east of Dr. Philips Blvd., north of W. Sand Lake Rd., west of Turkey Lake Rd.

PARCEL ID: 26-23-28-6264-00-420

LOT SIZE: +/- 0.6 acres (27,164 sq. ft.)

NOTICE AREA: 500 FT

NUMBER OF NOTICES: 79

**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 (Motion by Thomas Moses, Second by Roberta Walton Johnson; unanimous; 7 in favor: Thomas Moses, John Drago, Juan Velez, Deborah Moskowitz, Joel Morales, Charles Hawkins, II, Roberta Walton Johnson; 0 opposed):

1. Development shall be in accordance with the site plan and elevations received July 5, 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 exterior of the addition shall match the exterior of the existing house, including materials and color.

**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 support, and no comments were received in opposition.

The applicant was not present.

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

The BZA noted that the configuration makes any improvements difficult, stated justification for the six (6) criteria and unanimously recommended approval of the Variances by a 7-0 vote, subject to the four (4) conditions in the staff report.

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### STAFF RECOMMENDATIONS

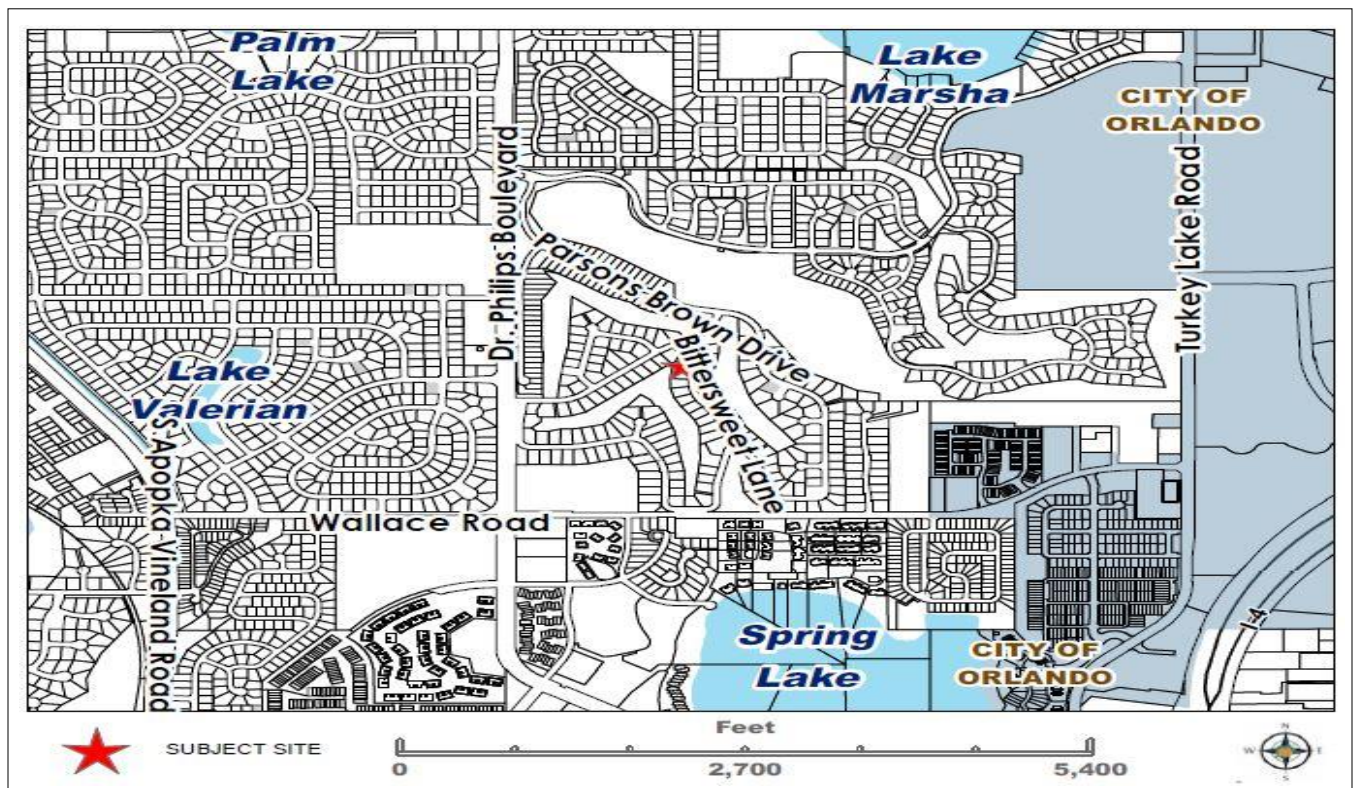
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Approval, subject to the conditions in this report.

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### LOCATION MAP

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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	Orange Tree Country Club PD	Orange Tree Country Club PD	Orange Tree Country Club PD	Orange Tree Country Club PD	Orange Tree Country Club PD
Future Land Use	LDR	LDR	LDR	LDR	PR-OS
Current Use	Single-family residential	Single-family residential	Single-family residential	Single-family residential	Orange Tree Golf Course and Country Club

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

The subject property is located in the Orange Tree Country Club Planned Development (PD) district, which allows single-family uses. The Future Land Use is LDR, which is consistent with the zoning district.

The area around the subject site consists of single-family homes, and a golf course, which backs up to the rear of the property to the west. The subject property is a 0.62 acre lot consisting of Lots 42 and 43 of the Orange Tree Country Club Plat, recorded in 1974, and is considered to be a conforming lot of record. It is developed with a 3,443 gross sq. ft. single-family home, constructed in 1980. The applicant purchased the property in 2017.

A similar variance proposal was approved in November, 2021, to allow the construction of an enclosed porch with a west rear setback of 29.6 ft. in lieu of 35 ft. This was never built, as the owner decided to modify the request to the current proposal.

The proposal is to construct a 1 story addition on the north side of the house, of which 149.5 sq. ft. will extend into the rear yard setback, located a minimum of 25 feet from the rear property line, in lieu of 35 ft., requiring a Variance. Also proposed is a lanai addition on the south side and rear of the house, of which 71.84 sq. ft. will extend into the rear yard setback, located a minimum of 27.3 feet from the rear property line, in lieu of a 35 ft. setback. Since the rear of the subject property abuts a golf course, no residences at the rear will be affected. The lot has an irregular rear property line, with an indent, and the house was constructed at an angle in relation to the property lines, both of which render any addition difficult without a variance.

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.	18 ft.
Min. Lot Size:	0.3 acres	+/- 0.6 acres

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

	Code Requirement	Proposed
Front:	30 ft.	30.17 ft. (East)
Rear:	35 ft.	25 ft. (West-Variance) And 27.3 ft. (West)
Side:	10 ft.	39.7 ft. (South) 49.9 ft. (North)

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**STAFF FINDINGS**

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**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, and the angle of the rear property line, which renders any addition difficult without a variance. Further, the rear yard backs up to a golf course.

**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 rear property line. The home was constructed over 42 years ago in its current location, and due to the configuration of the lot, any upgrades to the residence is difficult without the need for a variance.

**No Special Privilege Conferred**

Granting the requested variance will not confer any special privilege conferred to others under the same circumstances since meeting the literal interpretation of the code would prohibit any new construction along the rear of the house beyond a small unusable expansion in the rear.

**Deprivation of Rights**

Without the requested variance, improvement to the home of a reasonable size would be difficult.

**Minimum Possible Variance**

The requested variance is the minimum necessary to construct any improvements at the rear of the property, due to the irregular shape of the lot, and the placement of the home at an angle on the lot.

**Purpose and Intent**

Approval of the requested variance 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. Furthermore, no rear neighbors will be affected by this expansion, as the property backs up to a golf course.



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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan and elevations received July 5, 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 exterior of the addition shall match the exterior of the existing house, including materials and color.
- C: Benjamin Kim  
6612 Bittersweet Ln.  
Orlando, FL 32819

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## COVER LETTER

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**JWB ARCHITECTS**

2245 S. HAVASSER ROAD SUITE 200 ORLANDO, FL 32801  
WEB: [www.jwb-arch.com](http://www.jwb-arch.com)

TEL: 407.298.5020

LICENSE NO: AA26001266

FAX: 407.298.5030

Orange County Zoning Division  
201 S. Rosalind Avenue, 1<sup>st</sup> Floor  
Orlando, FL 32801  
407-836-3111  
E: [BZA@ocfl.net](mailto:BZA@ocfl.net)

May 11, 2022

**RE: Application-Board of Zoning Adjustment – 6612 Bittersweet Lane, Orlando 32819**

To whom it may concern,

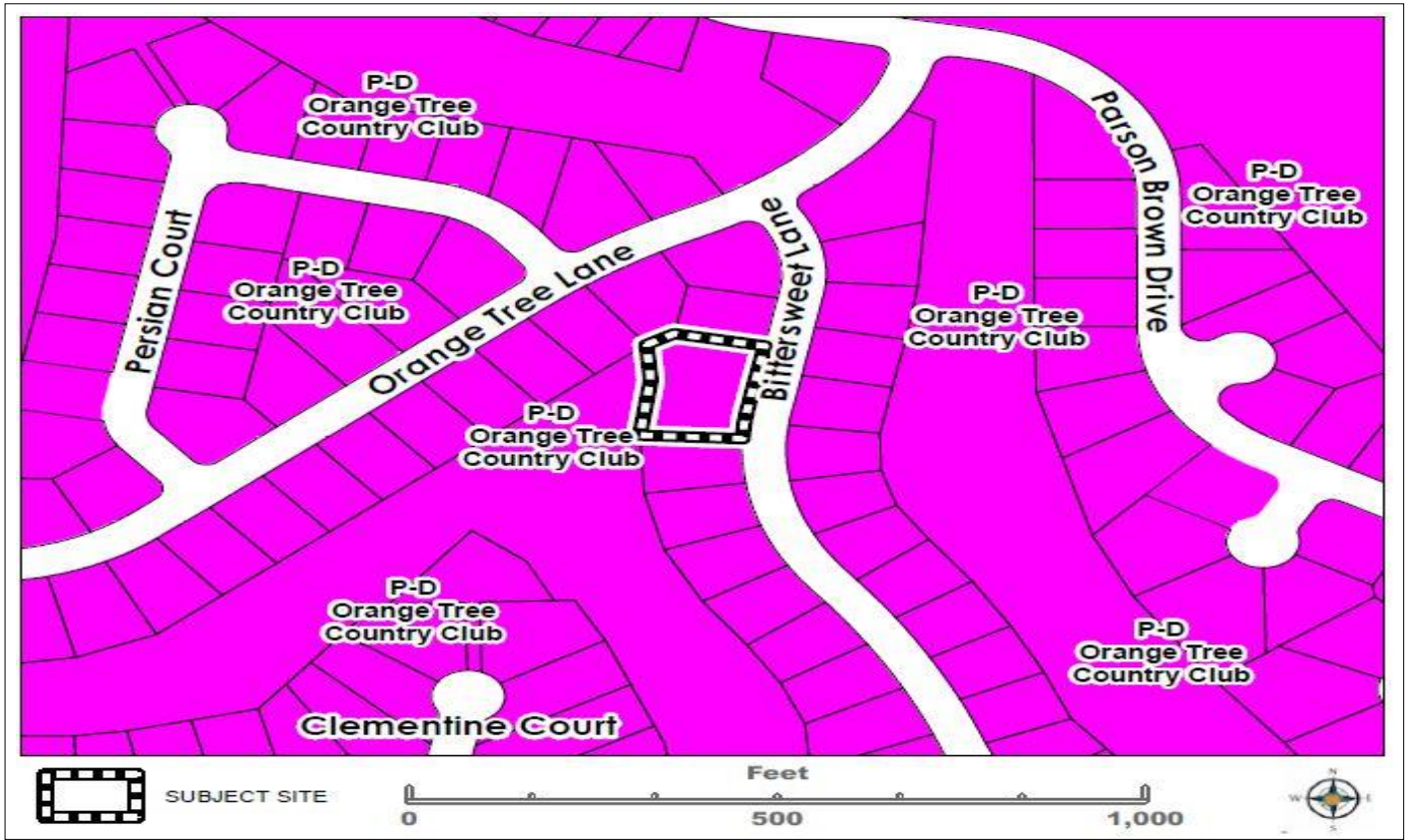
This letter is to request an adjustment to the governing rear yard setback on the subject property. The homeowner has requested a rear Lanai structure that will provide covered rear living space and the angle of the rear yard and setback create a small triangular shape that encroaches on the setback limit. As well there is a new under-air living space with a similar small triangular shape that is requested to be reviewed for a variance approval.

1. Special Conditions & Circumstances – the rear yard setback limits are increased due to the proximity of the adjacent golf course. The irregular shape lot as designed by the original plat creates a setback limit that may have been imposed after the original home was permitted.
2. Not Self Created – the existing original home was constructed in 1980 possibly before the rear yard setback was imposed.
3. No Special Privilege Conferred – due to the extremely minor impact to the setback limits, no special privilege is implied.
4. Deprivation of Rights – No apparent deprivation of rights is implied under this request. We have seen similar minor variances granted for these small triangular shapes that encroach into setbacks in other areas of Orange Cty.
5. Minimum Possible Variance – due to the home design where the core living space enjoys patio door access to the rear patio, the requested design shows a minimum area of encroachment to place a patio roof cover over this area that could be constructed without an unusual shape and provide minimum useable space.
6. There is an existing outdoor fireplace that is requested to remain and will be integrated into the new Lanai roof area.
7. Purpose and Intent – The covered patio design provides a covered outdoor living space that adds aesthetic quality and added protection from the golf course. The minor triangular shape of the variance request has virtually no impact on the neighborhood and public welfare.

We appreciate the board's consideration of this request.  
Kind regards,

Mitchell Powers  
Sr. VP/JWB Architects

ZONING MAP

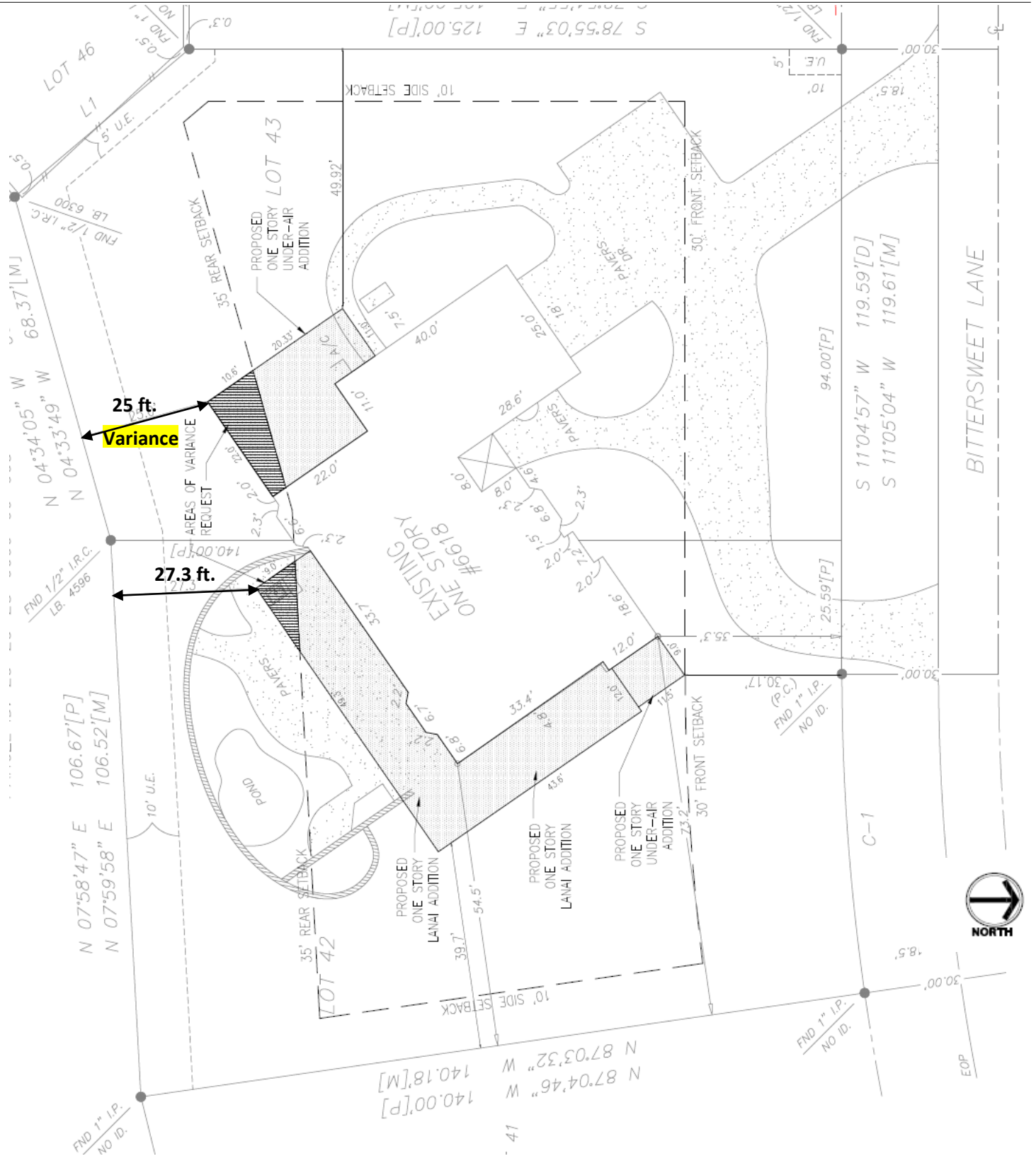


AERIAL MAP

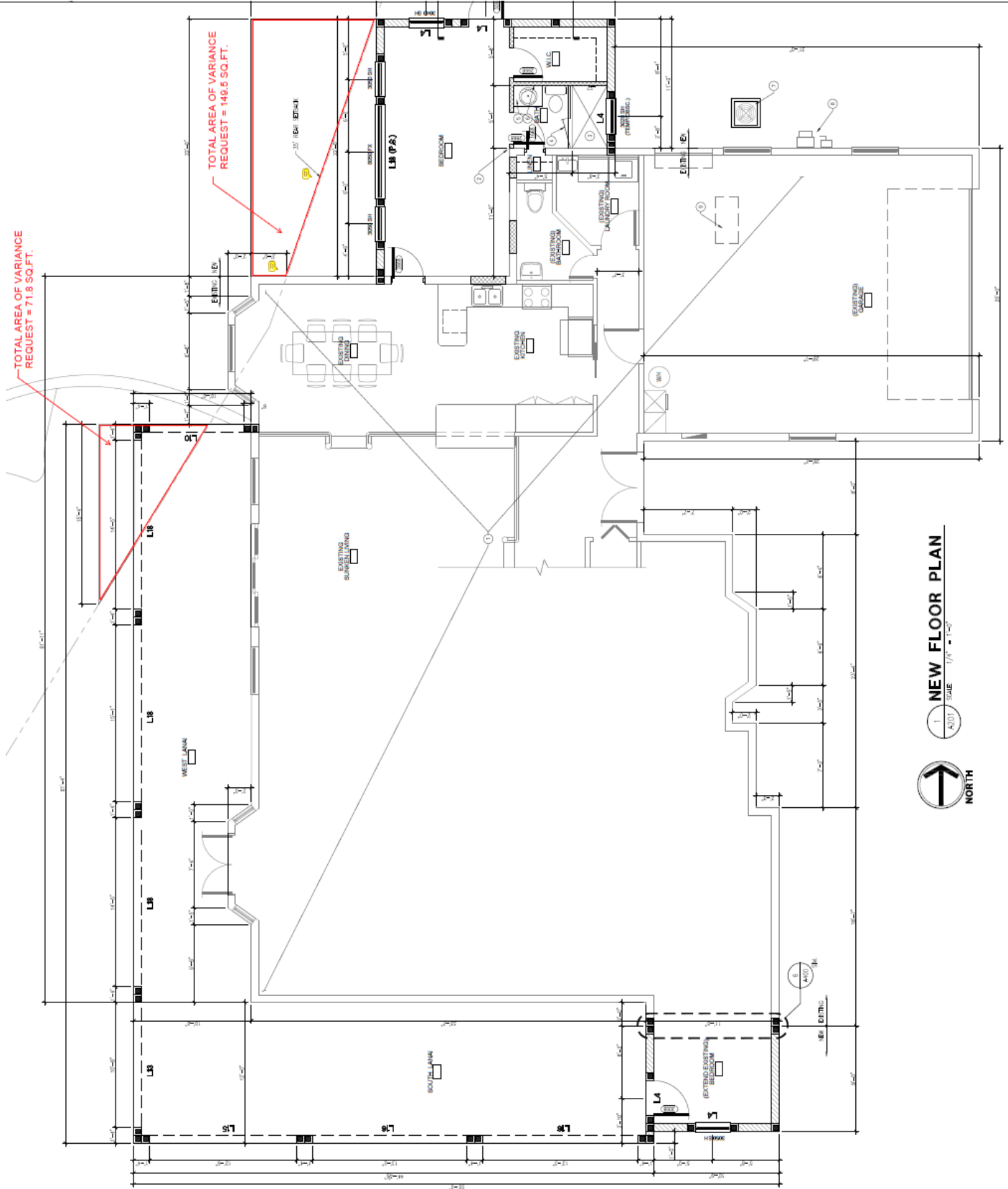




# SITE PLAN



# FLOOR PLAN

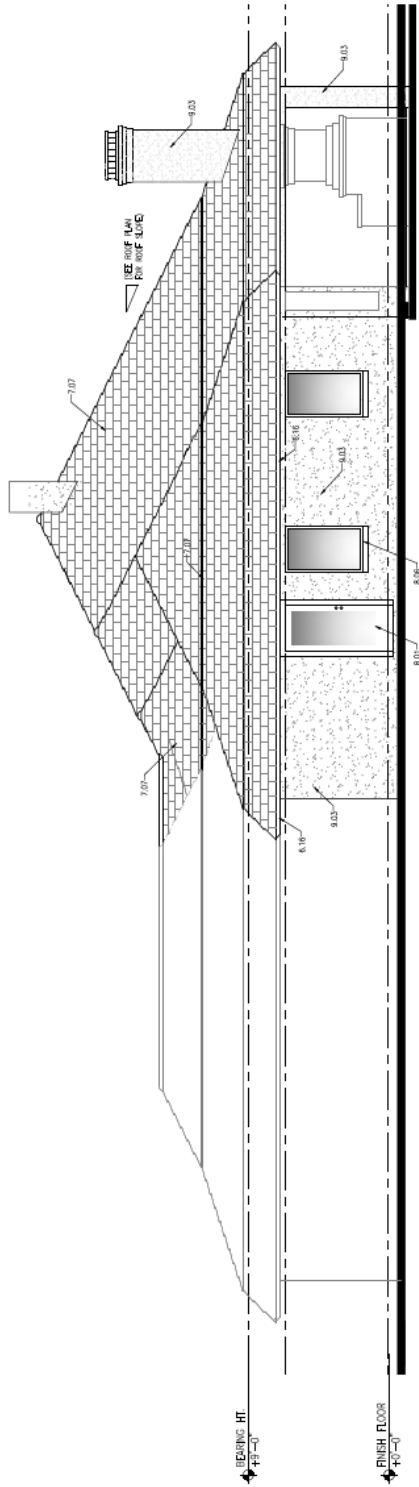


1  
200' 3/4" = 1'-0"

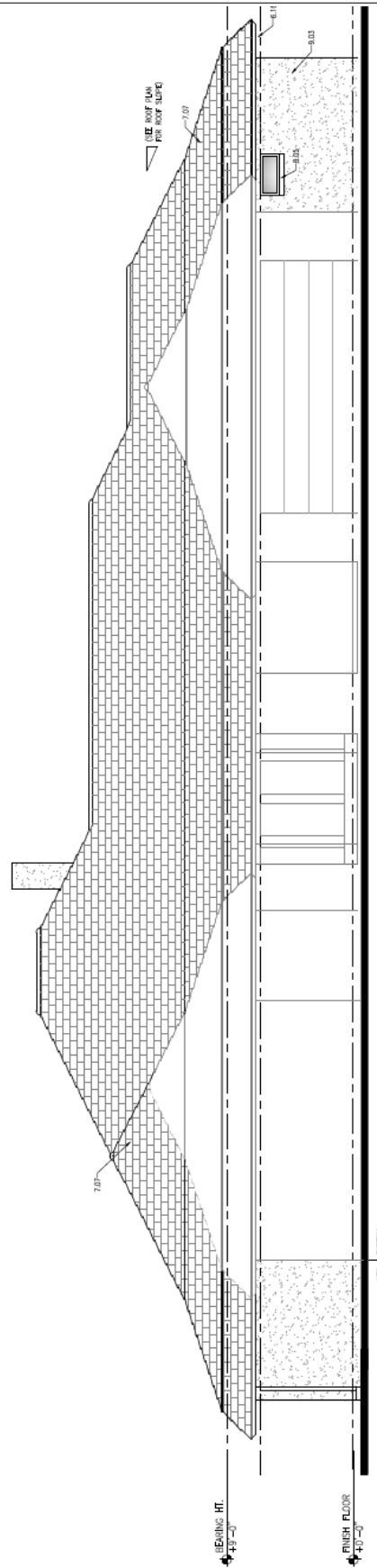
**NEW FLOOR PLAN**

**NORTH**

# ELEVATIONS

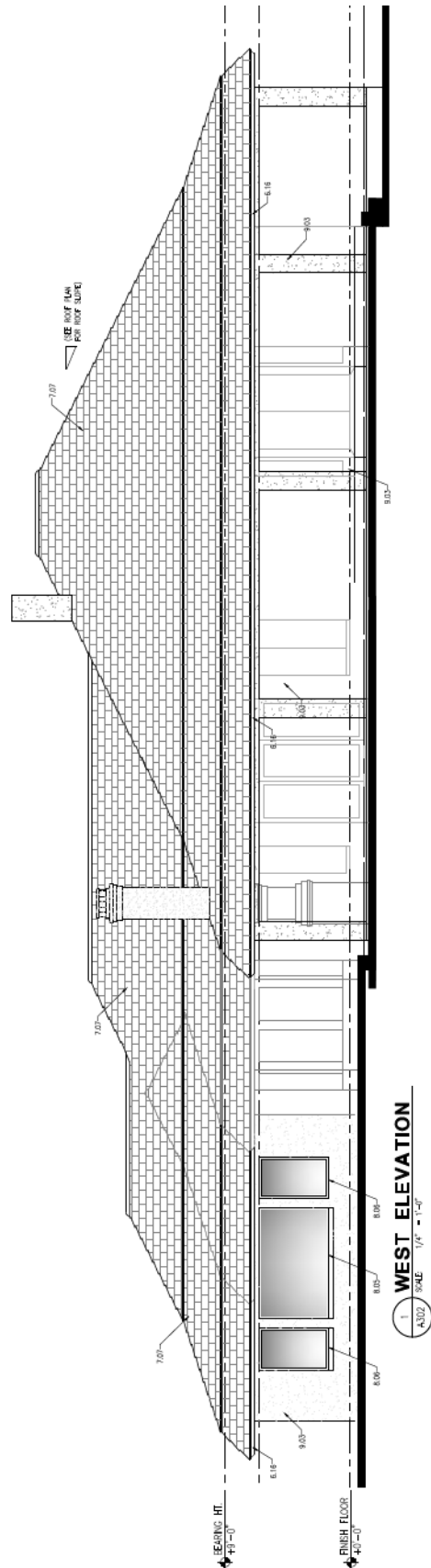
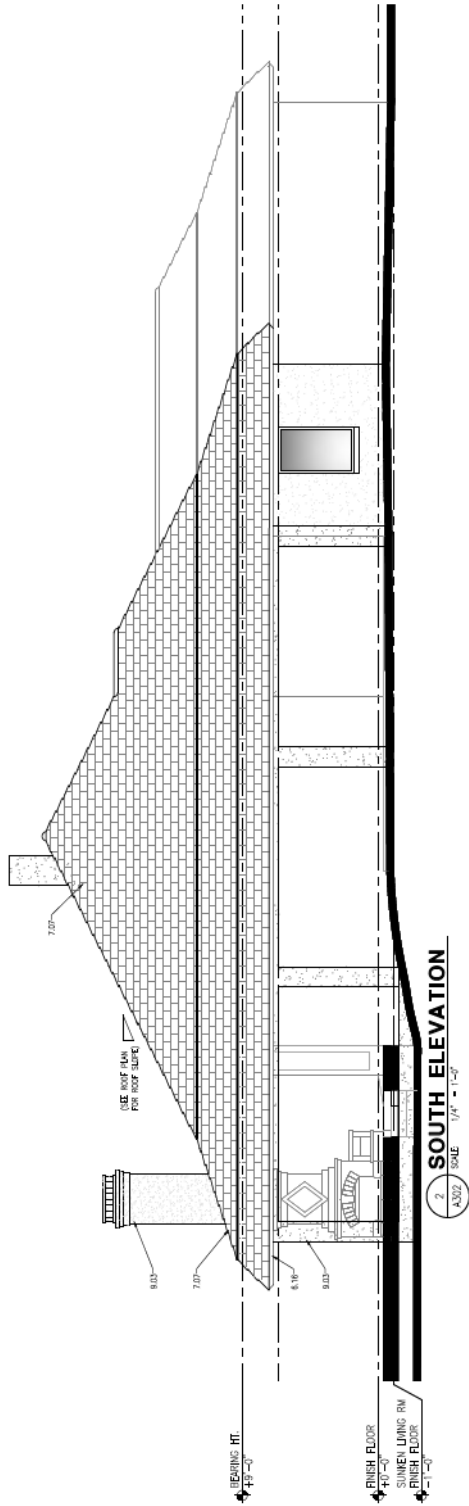


2 NORTH ELEVATION  
SCALE 1/4" = 1'-0"



1 EAST ELEVATION  
SCALE 1/4" = 1'-0"

# ELEVATIONS





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## SITE PHOTOS



**Front from Bittersweet Ln. facing west**



**Location of future addition facing east**



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**SITE PHOTOS**

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**Location of future addition facing north**



**Rear yard backs up to golf course facing west**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#3**

Case #: **VA-22-09-089**

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

**Nick.Balevich@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): IV SIMAKU

OWNER(s): IV SIMAKU

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

1) To allow a 5 ft. high fence in the front yard in lieu of 4 ft. high.

2) To allow a 5 ft. high fence with 6 ft. high gates within the clear view triangle.

Note: This is the result of Code Enforcement.

PROPERTY LOCATION: 1608 Selma Ave., Orlando, FL 32825, west side of Selma Ave., south of E. Colonial Dr., west of N. Econlockhatchee Trl., east of S.R. 417.

PARCEL ID: 19-22-31-2872-02-110

LOT SIZE: +/- 0.15 acres (6,556 sq. ft.)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 86

**DECISION:** Recommended **APPROVAL** of the Variance requests 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 as amended (Motion by Juan Velez, Second by John Drago; unanimous; 7 in favor: Thomas Moses, John Drago, Juan Velez, Deborah Moskowitz, Joel Morales, Charles Hawkins, II, Roberta Walton Johnson; 0 opposed):

1. Development shall be in accordance with the site plan and fence and gate details received July 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. Permits shall be obtained within 180 days 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 a building permit, the property owner shall record in the Official Records of Orange County an Indemnification/Hold Harmless Agreement which indemnifies and holds harmless Orange County from any claims, lawsuits, and any other damage caused by the locating of the fence and gates in the clear view triangles adjacent to Selma Avenue as requested by the property owner, and shall inform all interested parties, including any future purchasers of the property, that the fence and gates are located within the clear view triangles and that the property owner, and the property owner's heirs, successors, and assigns shall be responsible for any claims, lawsuits, and other damage caused by installing the fence and gates in that location.

**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 of the Variances. Staff noted that no comments were received in support, and no comments were received in opposition.

The applicant stated that the house is for his parents, and that they did not intend to violate the code, and were only concerned about safety.

The BZA noted that the fence is not against the roadway, and that it is not opaque, and that when the gate is opened, there is still visibility. The BZA also noted that the tree obstructs visibility more than the fence, and they do not see the possibility for a precedent.

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

The BZA discussed the variance and stated justification for the six (6) criteria and unanimously recommended approval of the Variances by a 7-0 vote, subject to the four (4) conditions in the staff report and the addition of Condition #5, which states, "Prior to the issuance of a building permit, the property owner shall record in the Official Records of Orange County an Indemnification/Hold Harmless Agreement which indemnifies and holds harmless Orange County from any claims, lawsuits, and any other damage caused by the locating of the fence and gates in the clear view triangles adjacent to Selma Avenue as requested by the property owner, and shall inform all interested parties, including any future purchasers of the property, that the fence and gates are located within the clear view triangles and that the property owner, and the property owner's heirs, successors, and assigns shall be responsible for any claims, lawsuits, and other damage caused by installing the fence and gates in that location."

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## STAFF RECOMMENDATIONS

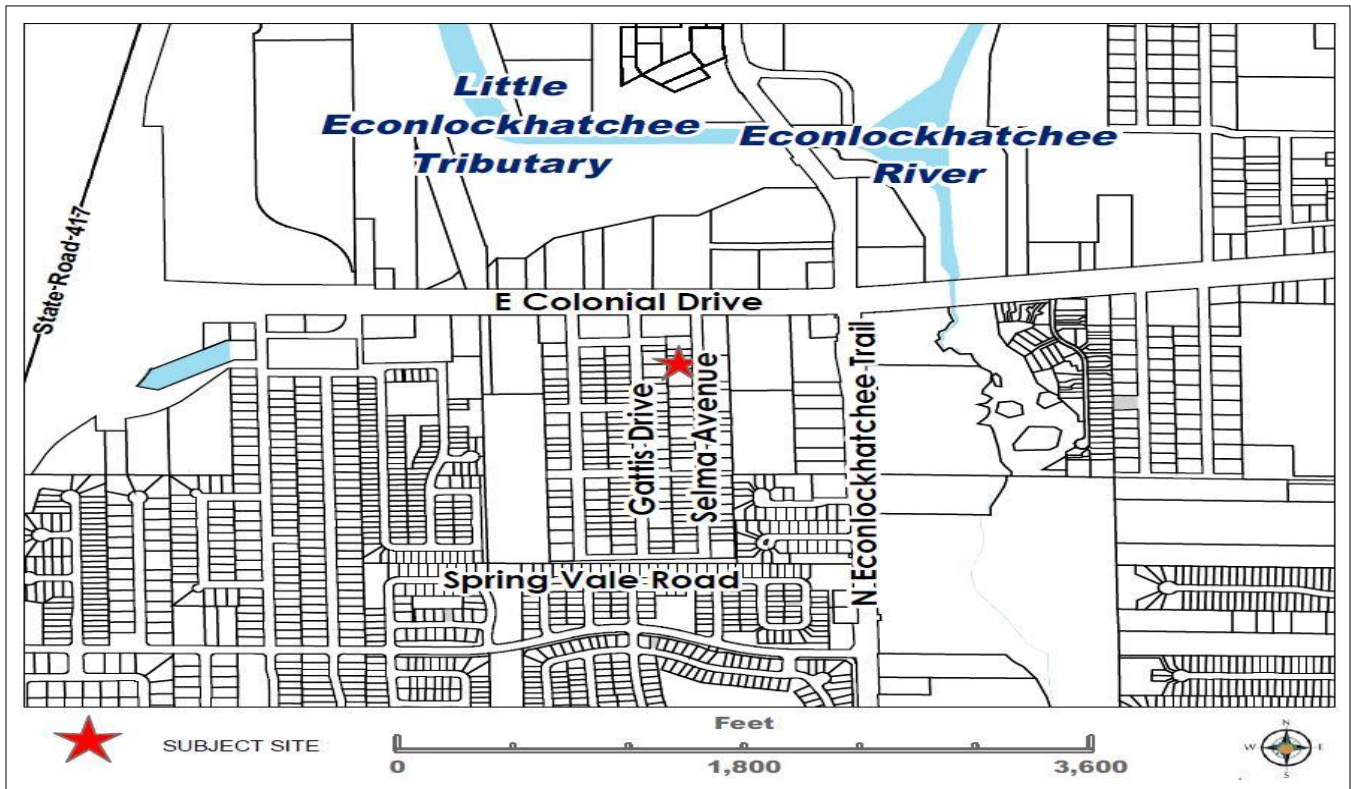
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Denial. However, if the BZA should find that the applicant has satisfied the criteria necessary for the granting of the variances, staff recommends that the approval be subject to the conditions in this report.

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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-1	R-1	A-2	A-2	R-1
Future Land Use	LMDR	LMDR	LMDR	C	LMDR
Current Use	Single-family residential	Vacant	Single-family residential	Retention/stormwater	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-1, Single Family Dwelling District, which allows for single family uses. The Future Land Use is Low Medium Density Residential (LMDR), which is consistent with the zoning district.

The area around the subject site consists of single-family homes, vacant land and a retention pond to the east. The subject property is a 6,556 sq. ft. lot, located in the Franklin Heights Plat, recorded in 1926, and is considered to be a conforming lot of record. It is developed with a 1,963 gross sq. ft. single-family home, constructed in 2021. The owner purchased the property in 2019.



The property was rezoned in 2019 (RZ-19-06-012) from A-2 to R-1 to be consistent with the Future Land Use of Low Medium Density Residential (LMDR) in order to build a single-family residence.

In 2022, the applicant installed (without permits) a 5 ft. high metal picket fence along the front of the property, in lieu of 4 ft. high, requiring Variance #1, with 5.7 ft. high pillars and a 6 ft. high gate within the clear view triangle, requiring Variance #2 to encroach into the clear view triangle. Code Sec. 38-1408(g)(1) allows fences to be a maximum of 4 ft. high within the front setback, and Sec. 38-1408(c) allows pillars and posts to extend an additional 24 inches. However, code Sec. 38-1408(b) prohibits fences to be within the clear view triangle area, which is an area on each side of the driveway that is formed by measuring 15 ft. along the right-of-way and 15 ft. along the edge of the driveway.

A Code Enforcement citation was issued in April, 2022 for the installation of a fence with gates without a permit that does not comply with the location and height requirements (Incident 606451). The applicant subsequently applied for a permit (B22012499) in June, 2022 to install 3 columns with a fence and gate which is on hold pending the outcome of the request.

While the fence is more than 50% transparent, allowing for visibility, staff recommends denial, as the request does not meet the 6 standards for variance criteria. Furthermore, there are no other properties in the vicinity that have been granted similar variances. Also, since the owner also owns the vacant property to the north, also zoned R-1, granting this request could set a precedent.

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:	4 ft. fence within front setback	5 ft. fence (Variance #1), 6 ft. gate within the clear view/ site distance triangle (Variance #2)
Min. Lot Size:	5,000 sq. ft.	6,556 sq. ft.
Min. Lot Width:	50 ft.	50 ft.

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#### **STAFF FINDINGS**

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#### **VARIANCE CRITERIA**

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

There are no special conditions and circumstances, as the fence and gate could have been installed in compliance with the requirements of the code.

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

The need for the variances is self-created and do result from the applicant constructing the improvements without a permit.

**No Special Privilege Conferred**

Granting the variances as requested will confer special privilege that is denied to other properties in the same area and zoning district, as the applicant could relocate or modify the improvements requested to a conforming height and location.

**Deprivation of Rights**

There is no deprivation of rights as a fence could be installed in a location and manner compliant with code.

**Minimum Possible Variance**

The requested variances are not the minimum possible, as the applicant could reduce the height of the fence or relocate or modify the fence to a conforming height and location.

**Purpose and Intent**

Approval of the variance will be in harmony with the purpose and intent of the Zoning Regulations and will not be detrimental to the surrounding area since the fence is located 18 feet from the edge of the road, is more than 50% transparent, there is no adjacent sidewalk and there appears to be about 10 ft. of driveway before the pavement.

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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan and fence and gate details received July 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. Permits shall be obtained within 180 days 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: IV Simaku  
1608 Selma Avenue  
Orlando, Florida, 32825

Cover Letter: Variance Request

This Request is for 5ft fences and 3 columns in live of 4ft.

Fences are black iron and columns are cement.

The project is 50ft long and 5ft high.

The construction is 25ft yard setback.

- This street has many old mobile homes and many homeless people who spend the nights at the end of this road.
- For my safety, not allowing the homeless to approach the windows, I had to set up the fences.
- Almost all plots on this road are A-2 zoning, so was my parcel, and I applied and changed it to R-1 zoning.
- I bought the parcel next to me, and again changed the zoning from A-2 to R-1, in the hope that this road will change its appearance.
- My fence is completely transparent, and the house looks very clear from the street.
- My fence gives the street a correct and appreciated presence by the neighbors.

July 11 , 2022



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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.

*This street has many mobile homes and many homeless people, who spend the nights at the end of this road.*

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.

*Almost all plots on this road are A-2 zoning and so was my parcel.*

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.

*My fence is completely transparent, and the house looks very clear from the street.*

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.

*For my safety, not allowing the homeless to approach the windows, I had to set up the fence.*

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.

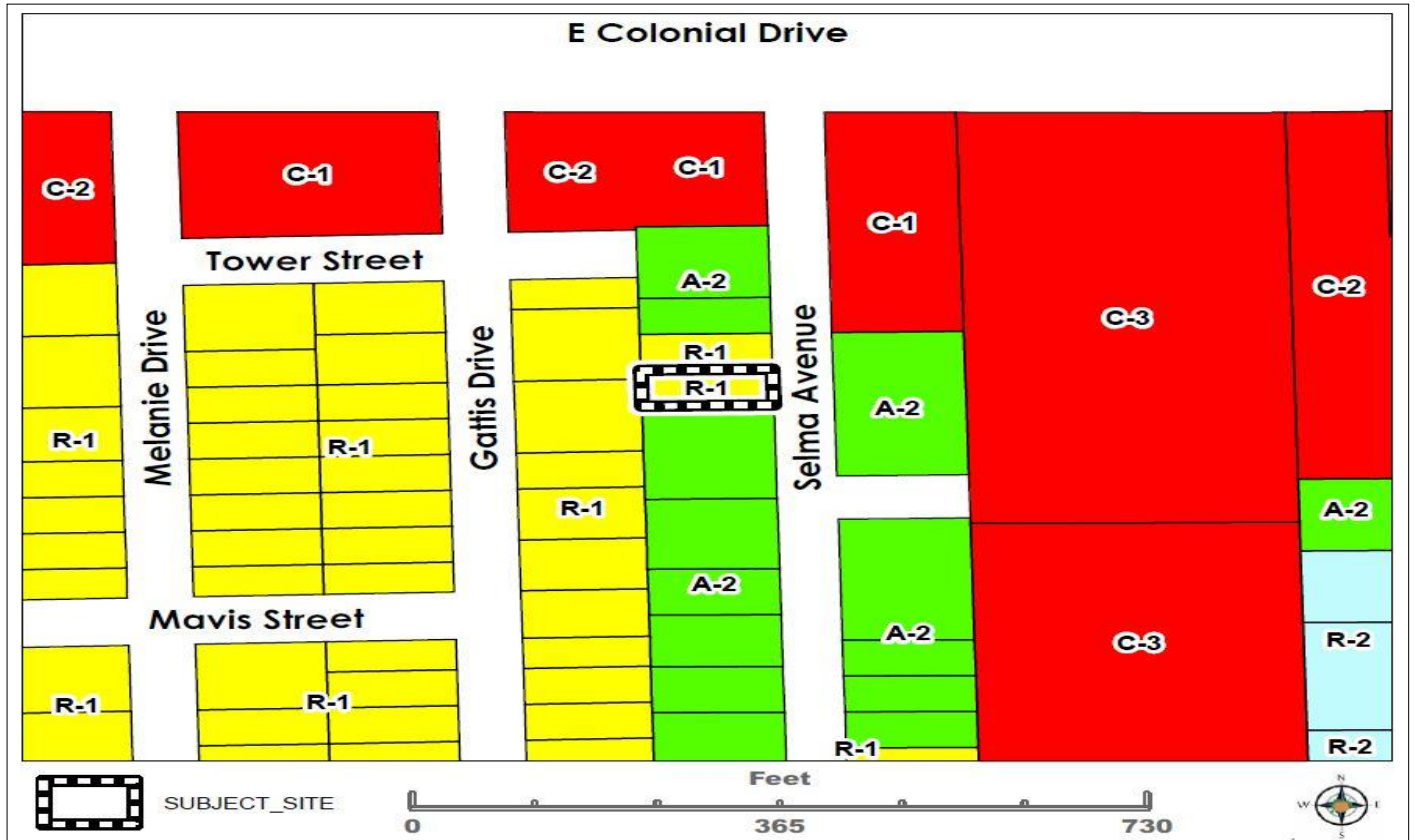
*I bought the parcel next to me, and again changed the zoning from A-2 - to R, hoping this street will change its appearance.*

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.

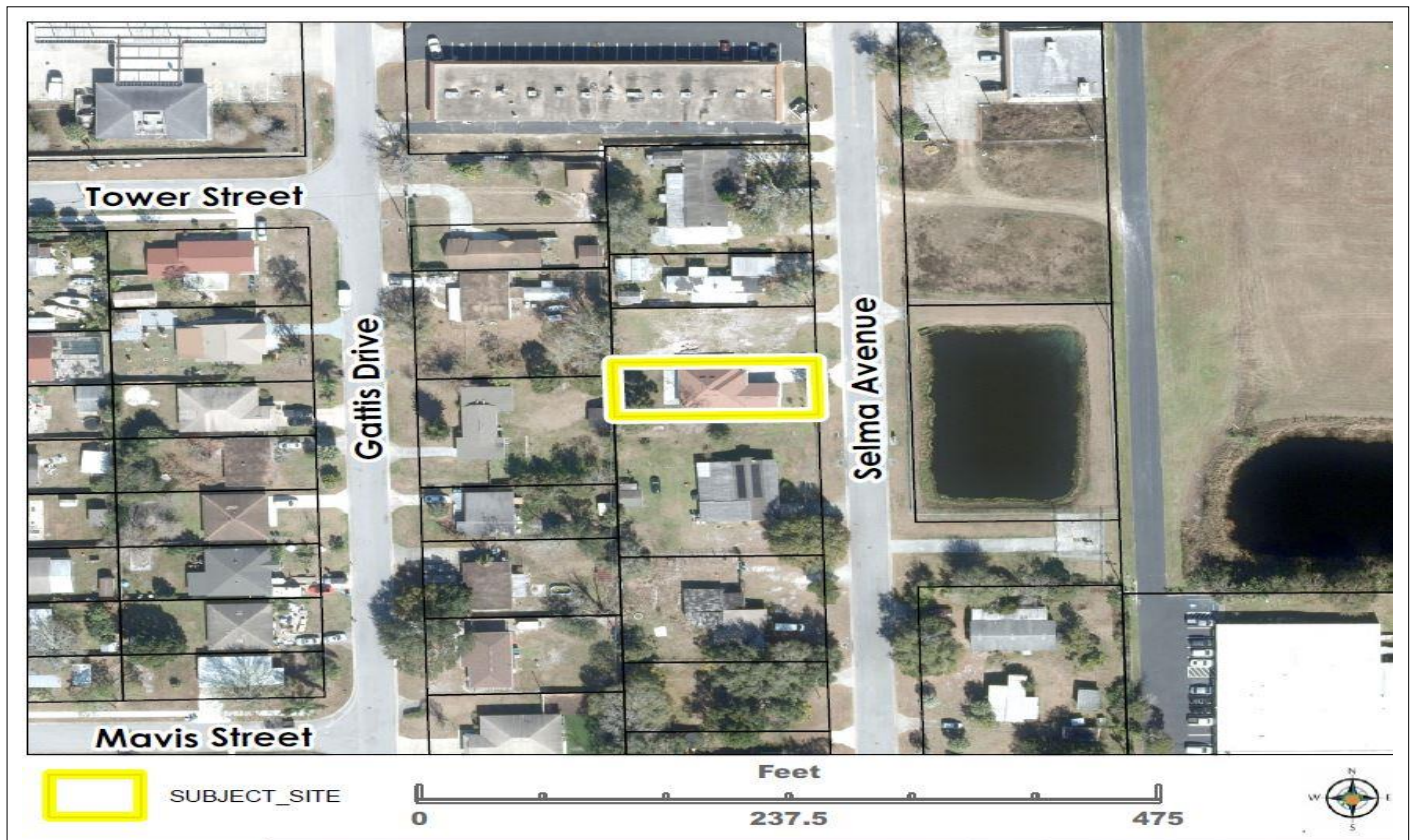
*My fence gives the street a correct and appreciated presence by the neighbors.*



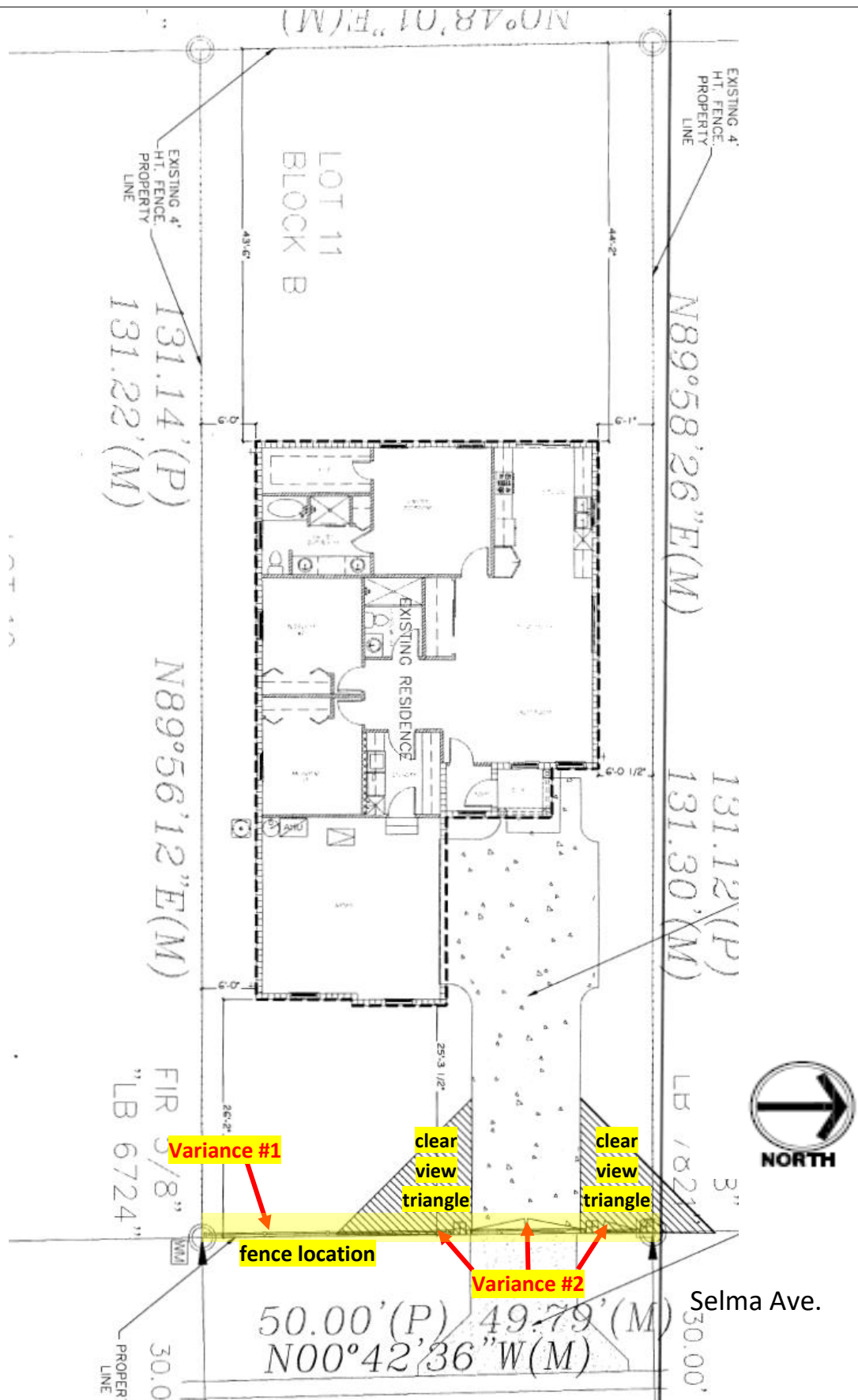
## ZONING MAP



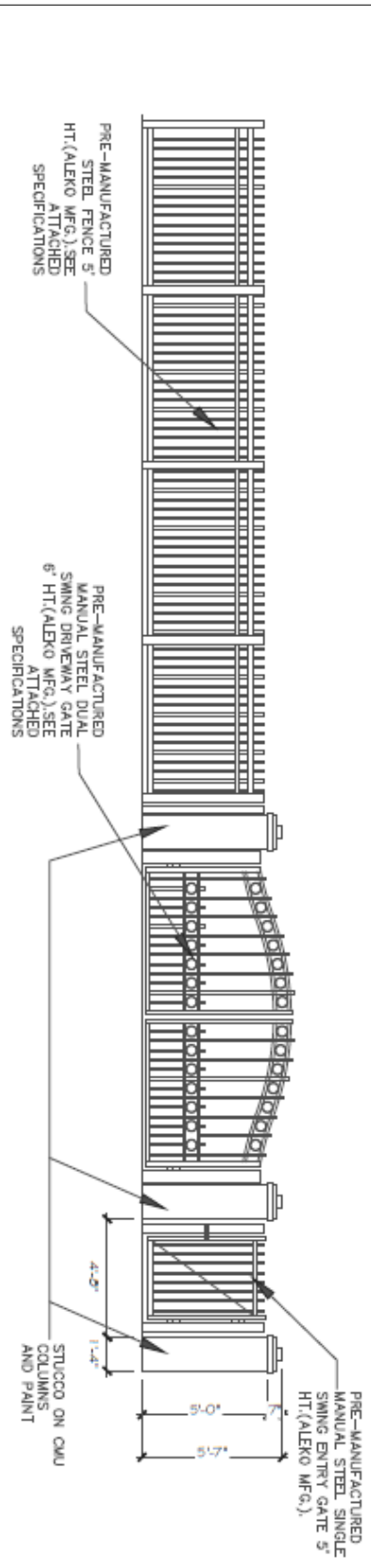
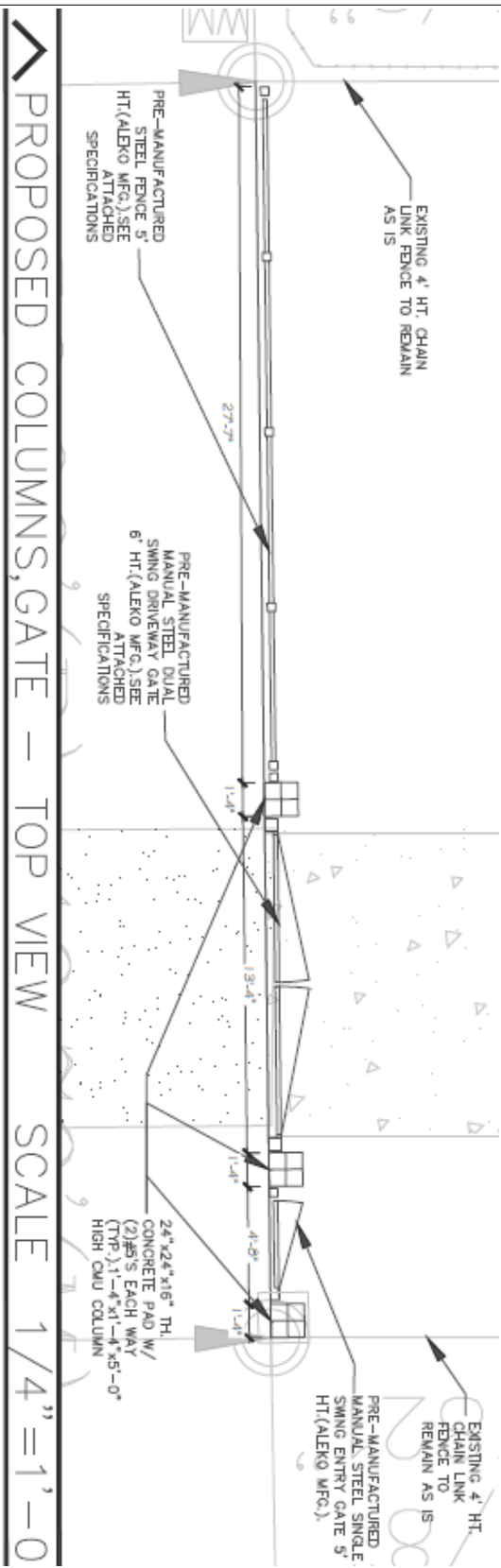
## AERIAL MAP



# SITE PLAN



FENCE DETAILS





## SITE PHOTOS



**Front from Selma Ave. facing west towards fence and gates**



**Gate, driveway and adjacent property facing north from Selma Ave.**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#5**

Case #: **VA-22-09-090**

Case Planner: **Nick Balevich (407) 836-0092**  
**Nick.Balevich@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): DEREK FOUST

OWNER(s): TIFFANY FOUST, DEREK FOUST

REQUEST: Variance in the PD zoning district to allow a covered front porch to remain with a south front setback of 18.8 ft. in lieu of 25 ft.

Note: This is the result of Code Enforcement.

PROPERTY LOCATION: 10101 Moultree Ct., Orlando, FL 32817, northeast corner of Kinnon Dr. and Moultree Ct., east of N. Dean Rd., south of University Blvd., southeast of S.R. 417.

PARCEL ID: 08-22-31-0200-00-720

LOT SIZE: +/- 0.19 acres (8,445 sq. ft.)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 88

**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 (Motion by Joel Morales, Second by Roberta Walton Johnson; unanimous; 7 in favor: Thomas Moses, John Drago, Juan Velez, Deborah Moskowitz, Joel Morales, Charles Hawkins, II, Roberta Walton Johnson; 0 opposed):

1. Development shall be in accordance with the site plan and elevations received August 15, 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 for the covered concrete/tile area, attached to the rear of the house, with a minimum 15 ft. side street setback, prior to issuance of permits for the front porch.
5. Permits shall be obtained for the front porch within 1 year 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 twenty-four (24) comments were received in support, and no comments were received in opposition.

The applicant agreed with the staff presentation and briefly discussed the history and aesthetics of the front porch and the intent to satisfy the Code citation. The architect further clarified site improvement setbacks.

Code Enforcement noted the recent violation citation as a recent citizen complaint. There was no one in attendance to speak in favor or in opposition to the request.

The BZA discussed the variance and stated justification for the six (6) criteria and unanimously recommended approval of the Variance by a 7-0 vote, subject to the five (5) conditions in the staff report.

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#### STAFF RECOMMENDATIONS

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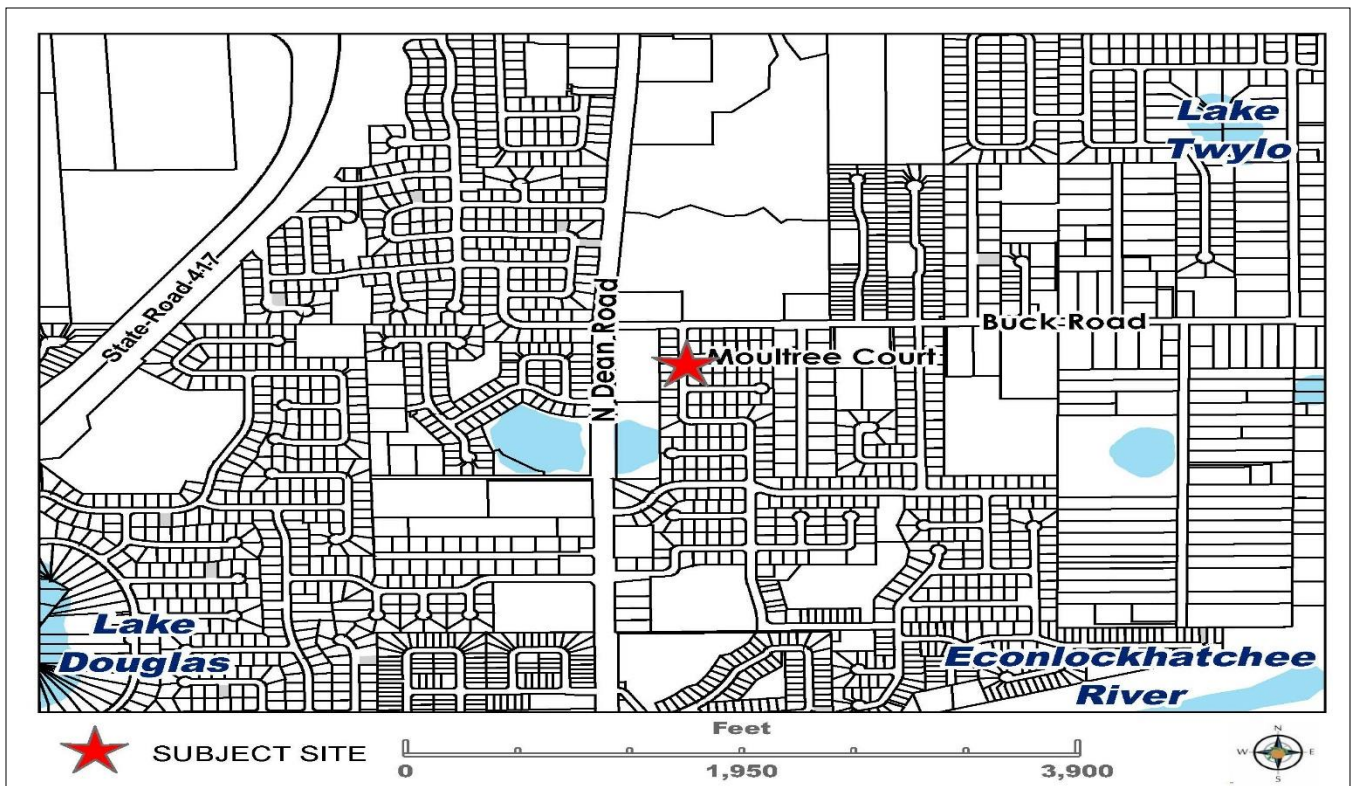
Approval, subject to the conditions in this report.

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#### LOCATION MAP

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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	Arbor Ridge PD	Arbor Ridge PD	Arbor Ridge PD	Arbor Ridge PD	Arbor Ridge PD
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 Arbor Ridge Planned Development (PD) district, which allows for single family residential. The Future Land Use is Low Density Residential (LDR), which is consistent with the zoning district.

The area around the subject site consists of single-family homes. The subject property is an 8,445 sq. ft. lot, located in the Arbor Ridge Subdivision Unit 1, recorded in 1975, and is considered to be a conforming lot of record. The property is located on the corner of Moultrie Ct. and Kinnon Dr., with the frontage considered to be Moultrie Ct., since it is the narrowest portion of the lot abutting a public street, and Kinnon Dr. is considered the side street. It is developed with a 1,471 gross sq. ft. single-family home, constructed in 1975, and a shed that was permitted in 2022 (B22006039). While the aeriels show a structure at the northeast corner of the property that was not identified on the site plan, a site visit and Demo permit (B22007576) confirms that it was demolished earlier this year. The owner purchased the property in 1994.

Based on County aeriels, it appears that the existing single-family residence had a 7 ft. x 15.7 ft. covered entry porch on the same footprint that exists today for several decades, at a distance approximately 18.8 ft. from the front south property line. However, County Staff could not locate the original house permits in order to verify when the front porch was installed. When the roof was replaced in 2012, the contractor at that time replaced any wood that needed to be replaced on the front porch. The requested Variance is to allow the covered front porch to remain with a south front setback of 18.8 ft. in lieu of 25 ft.

In February of 2022, Code Enforcement issued a citation for the reconstruction of the front porch without permits (Incident 604437).

The property also has an unpermitted covered concrete/tile area, attached to the rear of the house, which is currently located 12 ft. from Kinnon Dr., the side street, requiring a 15 ft. setback. The owner has stated that they will remove 4 feet of the roof to achieve a setback of 16 ft, meeting the side street setback requirement.

As of the date of this report, 22 comments have been received in favor, including the 2 most impacted neighbors to the north and east, and none in opposition to this request.



**District Development Standards**

	Code Requirement	Proposed
Min. Lot Size:	8,030 sq. ft., typical	8,445 sq. ft.
Min. Lot Width:	73 ft.	78 ft.

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

	Code Requirement	Proposed
Front:	25 ft.	18.8 ft. Front porch (South - Variance)
Rear:	25 ft.	44 ft. Existing covered patio (North)
Side:	6 ft.	8.2 ft. (East)
Side Street:	15 ft.	12 ft. (West) Will be modified to 16 ft.

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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 that the front porch was rebuilt in the same location as constructed over 40 years ago.

**Not Self-Created**

The request is not self-created since the owners are not responsible for the existing location of the rebuilt porch since the house has been in its current location for over 40 years, and the current owners purchased the property in 1994.

**No Special Privilege Conferred**

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

**Deprivation of Rights**

Without the requested variance, the refurbished porch would not be allowed to remain as currently constructed and would require demolition.

**Minimum Possible Variance**

Given the year the house and front porch were built and the orientation of the house on the property, the requested variance is the minimum possible.

**Purpose and Intent**

Approval of the requested variance will allow the refurbished porch to remain as constructed, which will be in harmony with the purpose and intent of the Zoning Regulations, will not be detrimental to adjacent properties and will maintain the character of the neighborhood.

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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan and elevations received August 15, 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 for the covered concrete/covered tile area, attached to the rear of the house, with a minimum 15 ft. side street setback, prior to issuance of permits for the front porch.
5. Permits shall be obtained for the front porch within 1 year 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:     Derek Foust  
       10101 Moultrie Ct.  
       Orlando, Florida, 32817

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**COVER LETTER**

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**Derek and Tiffany Foust**

**10101 Moultrie Court**

**Orlando, FL 32817**

**Parcel ID# 08-22-31-0200-00-720**

**Dear BZA Members:**

**We are requesting a variance for the above address for a relief of the required front yard setback of 25' from the front property line. We are asking for a reduction in the required front setback to 18'8" for the front porch. Front porch footprint would remain as is currently. The granting of this variance would have no effect on adjoining properties. The current state of this front porch has been this way since 2012 when the re-roof of the home was completed. The porch is about 16' wide x 11' high at its peak x 7' out from house front. It is constructed from dimensional lumber and post's with architectural foam wrapped around post's and Hardiboard siding on the gable front. Post bases are wrapped in stone about 28" up from ground. Front porch was updated at that time due to the rotten post's and rafters that had been there since 1979, we purchased the home in 1993. We were under the impression we could redo it at the time under the re-roof permit but not the case. So now we are trying to get it permitted and during that process we found out we are in the front setback thus requesting a variance. We have included numerous signatures of support from our fellow homeowners in this neighborhood. We believe that the current state of this front porch, is well within the spirit of this neighborhood and surrounding homes.**

**Thank you for your consideration,**

**Derek and Tiffany Foust**

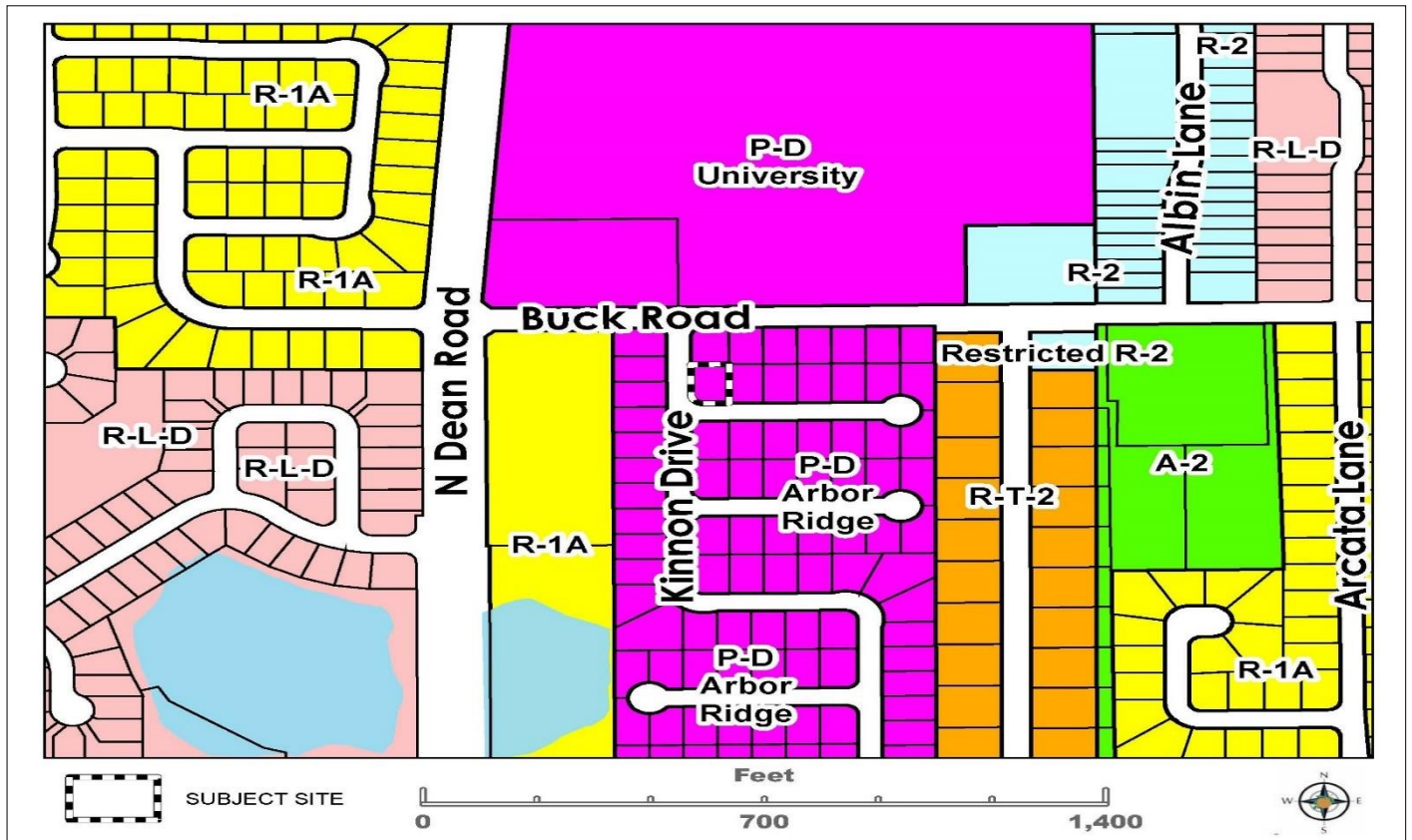
**Property Owners**

## 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.  
In our opinion its been here since 1979 with no complaints ever about it even when we re-roofed the Code enforcement guys were thru here and never a problem. No maliciousness was ever intended.
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 front porch was here in 1993 when we purchased home, porch was originally built in 1979 and when we re-roofed in 2012 it was updated over to original structure no longer being second.
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.  
Others have done the same, not asking for special privilege just to get our front porch that has been since 1979 up to par that was unknown to us.
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.  
It will for sure a hardship for us and a big disappointment to our neighbors if this is not granted. Being a corner lot everyone sees it and enjoying it just helps the curb appeal of neighborhood
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.  
We are requesting a variance of 9', to go from setback of 25' from front property line to a setback of 16' from front property line.
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 current occupancy of this front will have no ill effect on adjoining properties.



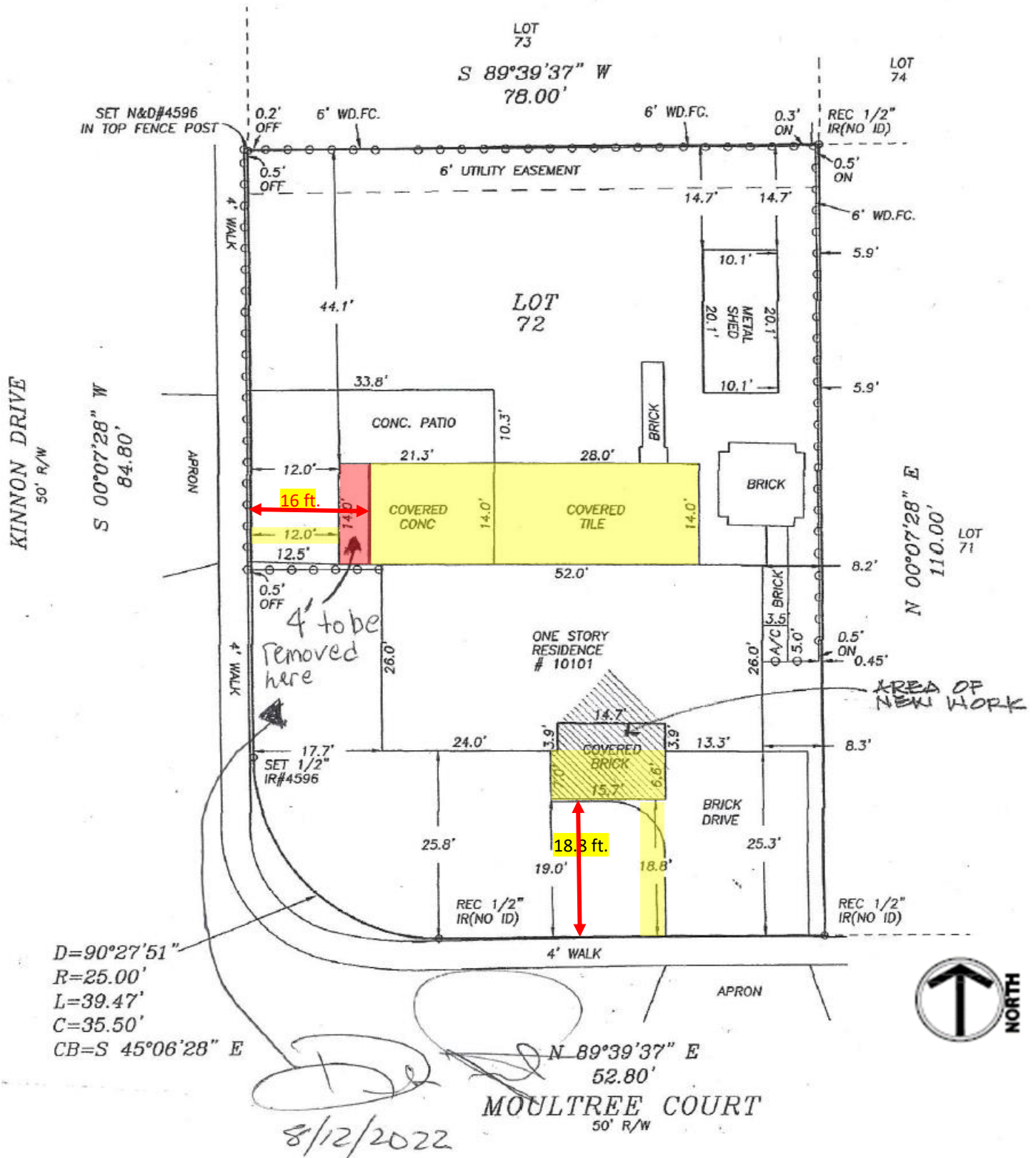
## ZONING MAP



## AERIAL MAP



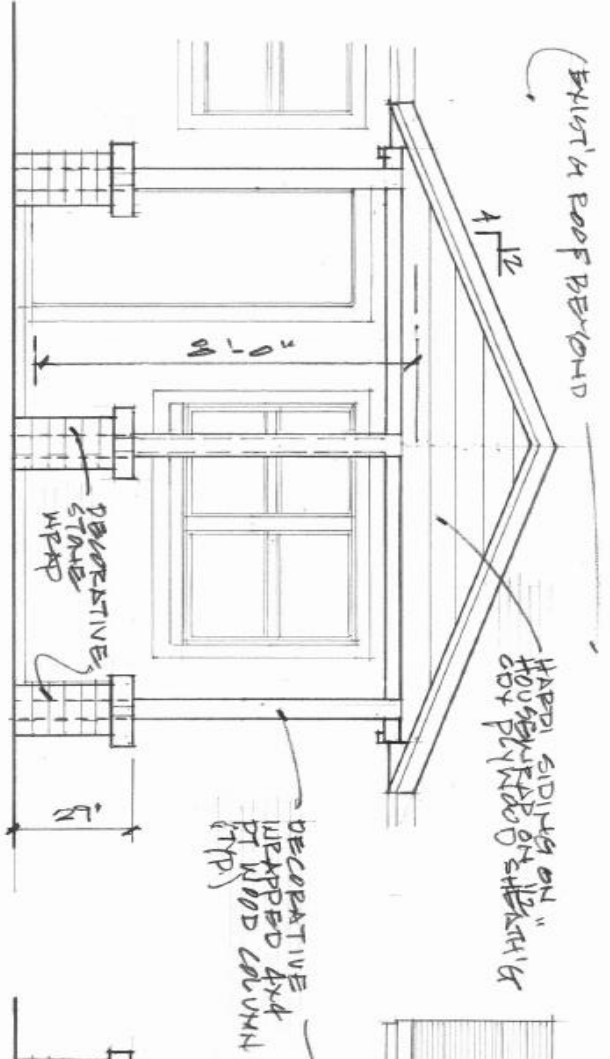
# SITE PLAN



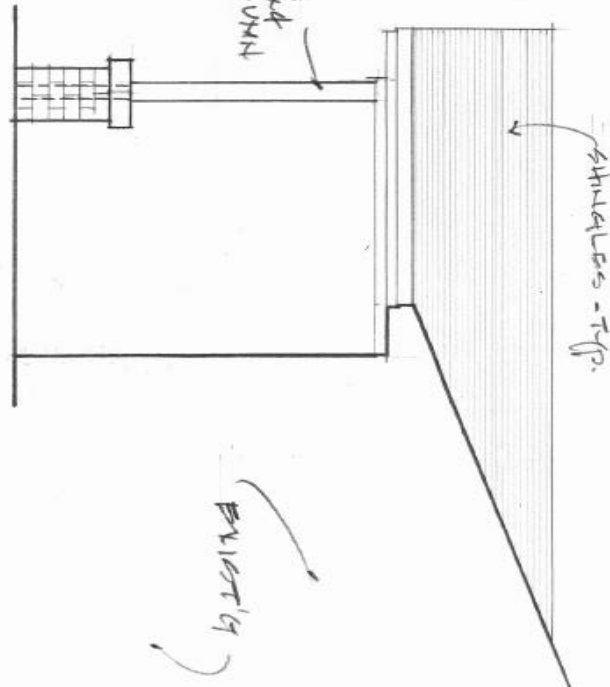
# ELEVATIONS

PARTIAL FRONT ELEVATION

1/4"=1'-0"



PARTIAL EAST ELEVATION  
WEST SAME BUT OPPOSITE





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## SITE PHOTOS

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**Front and porch from Moultrie Ct. facing north**



**Front porch and rear covered patio from Kinnon Dr. facing east**



## SITE PHOTOS



**Rear covered patio facing north**



**Rear of property containing shed, facing east**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#5**

Case #: **VA-22-09-091**

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

**Nick.Balevich@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): JEFF BATTAGLIA

OWNER(s): LISA MURPHY, JEFF BATTAGLIA

REQUEST: Variance in R-1A-C zoning district to allow the conversion of an existing 276 sq. ft. screen enclosure to a screen room with a south rear setback of 8.1 ft. in lieu of 15 ft.

PROPERTY LOCATION: 13820 Riverpath Grove Dr., Orlando, FL 32826, south side of Riverpath Grove Dr., west of Percival Rd., south of Mcculloch Rd., northwest of Lake Pickett Rd.

PARCEL ID: 02-22-31-7839-00-070

LOT SIZE: +/- 0.17 acres (7,508 sq. ft.)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 59

**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 (Motion by Joel Morales, Second by John Drago; unanimous; 7 in favor: Thomas Moses, John Drago, Juan Velez, Deborah Moskowitz, Joel Morales, Charles Hawkins, II, Roberta Walton Johnson; 0 opposed):

1. Development shall be in accordance with the site plan received August 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.



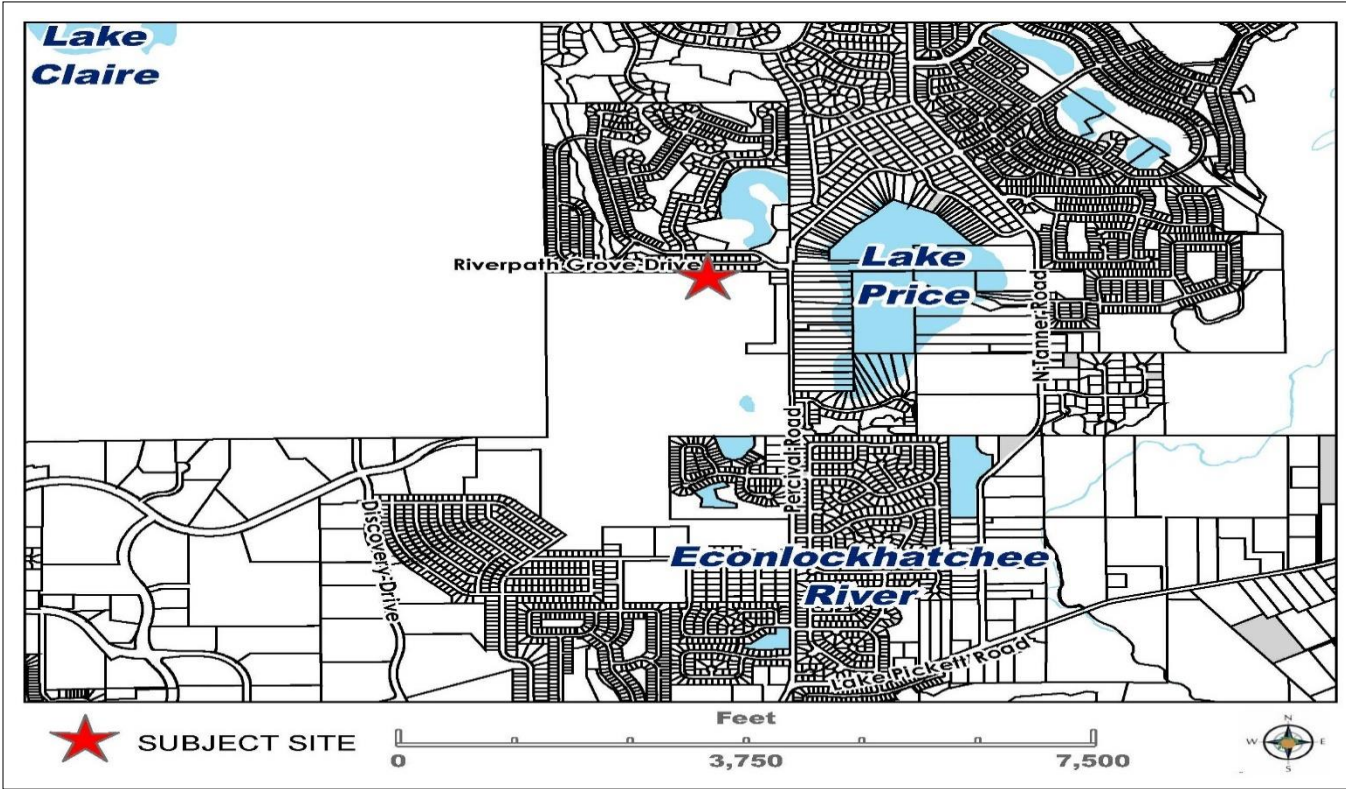
**SYNOPSIS:** Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for approval. Staff noted that two (2) comments were received in support and no comments were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

The applicant discussed the proposed improvements and stated the reasons for the requested Variance in order to renovate the residence.

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

The BZA discussed the request and how it wouldn't interfere with other properties in the area, stated justification for the six (6) criteria and unanimously recommended approval of the Variance by a 7-0 vote, subject to the three (3) conditions in the staff report.

LOCATION MAP



SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	R-1A-C	R-1A-C	I-2/I-3	R-1A-C	R-1A-C
Future Land Use	LDR	LDR	IND	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-C district, which allows single-family uses. The Future Land Use is LDR, which is consistent with the zoning district.

The area around the subject site consists of single-family homes, and vacant land that backs up to the rear of the property. The subject property is a 0.17 acre lot, located in the Sanctuary Plat, recorded in 1990, and is considered to be a conforming lot of record. It is developed with a 2,522 gross sq. ft. single-family home, constructed in 1996, and a 12 ft. x 23 ft. screen enclosure (B98009650) constructed in 1998. The applicant purchased the property in 2022.

The existing screen enclosure is located 8.1 ft. from the rear property line, which conforms with the 5 ft. rear setback requirement for screen enclosures. The applicant is proposing to add a solid insulated aluminum panel roof to the screen enclosure, which will then be required to meet the same setback as the house which is 15 ft. Thus, a variance is being requested to allow an 8.1 ft. rear setback in lieu of 15 ft. The property backs up to a 9.96 ft. wide tract, owned by the East Orlando Sanctuary Homeowner's Association immediately to the south, and a 217 ac. vacant property zoned I-2/I-3, owned by the University of Central Florida, further to the south. Thus, no rear neighbors will be impacted by the proposal. The property has a 10 ft. utility easement along the front property line, a 5 ft. utility easement along each side, and a 7.5 ft. utility easement along the rear. The request does not impact the utility easement.

As of the date of this report, two comments have been received in favor of this request, from the neighbors to the immediate west and east. No comments have been received in opposition to this request.

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

	Code Requirement	Proposed
Front:	20 ft.	20.5 ft. (North)
Rear:	15 ft.	8.1 ft. (South-Variance)
Side:	6 ft.	12.5 ft. (East and West)

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## STAFF FINDINGS

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### **VARIANCE CRITERIA**

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

The special conditions and circumstances particular to the subject property are its size and location of the house, which renders any addition difficult without a variance. Further, the rear yard backs up to an open space tract.



**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 rear property line. Any improvements to the residence is difficult without the need for a variance.

**No Special Privilege Conferred**

Granting the requested variance will not confer any special privilege conferred to others under the same circumstances since meeting the literal interpretation of the code would prohibit any new construction along the rear of the house beyond a small unusable expansion in the rear.

**Deprivation of Rights**

Without the requested variance, improvement to the home of a reasonable size would be difficult.

**Minimum Possible Variance**

The requested variance is the minimum necessary to construct any improvements at the rear of the property, due to the lot size and location of the house.

**Purpose and Intent**

Approval of the requested variance will allow improvements to the site which will be in harmony with the purpose and intent of the Zoning Regulations, will not be detrimental to adjacent properties. Furthermore, no rear neighbors will be affected by this expansion, as the property backs up to open space.

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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan received August 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.

C: Jeff Battaglia  
13820 Riverpath Grove Drive  
Orlando, Florida, 32826

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## COVER LETTER

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Battaglia  
13820 Riverpath Grove Drive  
Orlando, FL 32826  
(407) 790-6289  
[Jeff.battaglia.72@gmail.com](mailto:Jeff.battaglia.72@gmail.com)

June 16, 2022

To whom it may concern;

I am writing to request a variance to all me to have a screened room with a solid roof to replace my existing screened porch with a screened roof. Currently, the porch is not usable much of the time due to the heat during Florida summers and the routine rain this areas experiences. By updating the porch to a solid roof, my family and I can fully use the area.

The screened room will be attached to the house with a metal frame, screens on the three open sides of the porch and a solid roof consisting of insulated aluminum composite panels. The new room will be the same dimensions/square footage as the existing porch which is 12' x 23' (or 276 sq ft).

The porch currently sits 8' from the property line in the back of the house, 19' from the property line on the west side of the house, and 40' from the property line on the east side of the house. The porch will use the existing frame, but cleaned and primed with new screws/bolts to prevent rust and corrosion. The height of the existing frame is 11.5' at its highest position.

I am requesting a variance because the zoning code requires a distance of 20' from the edge of the porch to the rear property line and there is only an 8' separation. However, from a line extended from the fence of my neighbor to the west, there is 25'. Furthermore, the UCF arboretum is behind my property; therefore, I have no rear neighbors.

Thank you for your consideration;

Jeff Battaglia

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## COVER LETTER

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Jeff Battaglia, Lisa Murphy  
13820 Riverpath Grove Dr  
Orlando, FL 32826

Orange County Zoning Division  
201 S. Rosalind Ave  
1<sup>st</sup> Floor  
Orlando, FL 32801

RE: Variance for 13820 Riverpath Grove Drive

To whom it may concern;

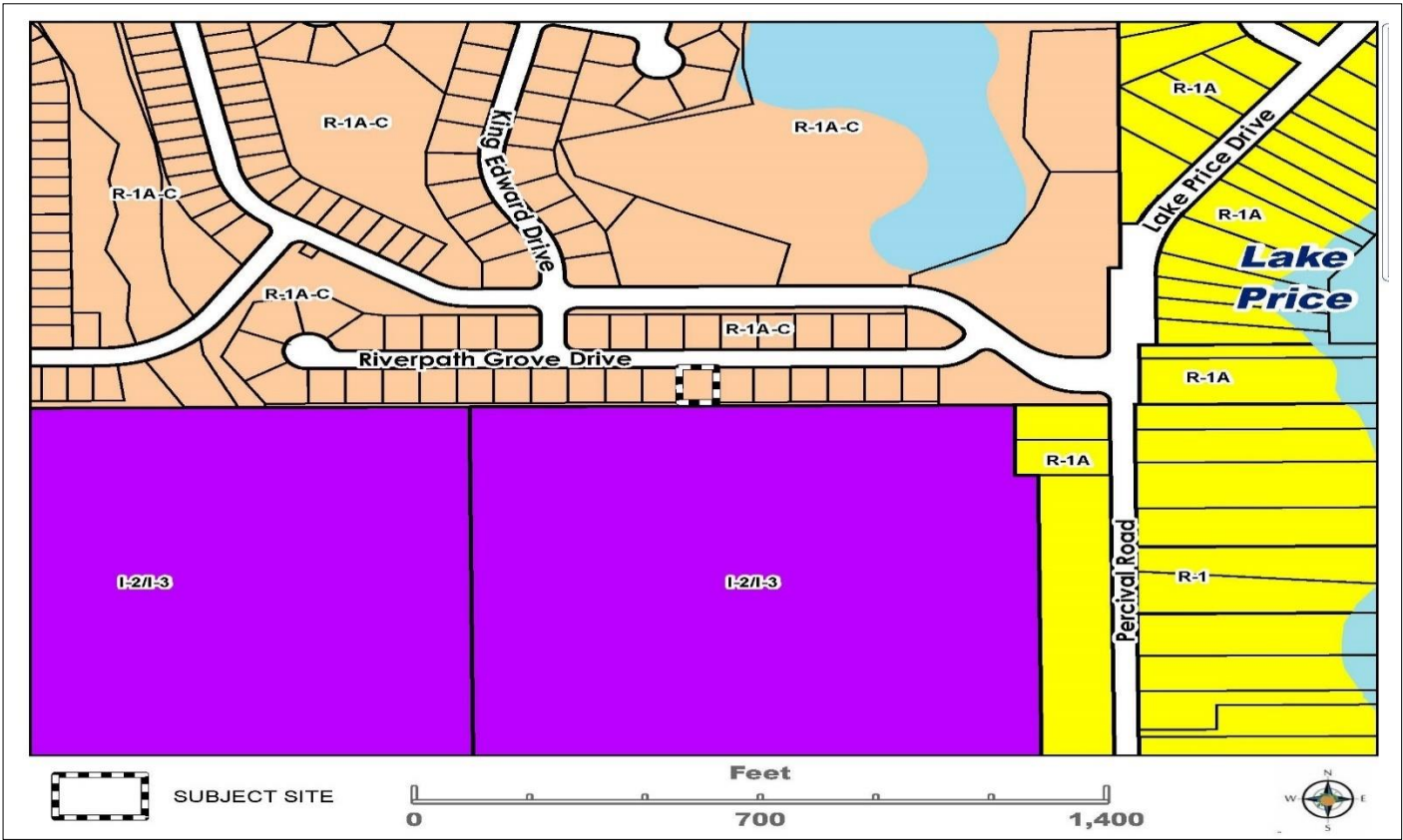
We are requesting a variance for the property listed above to allow a solid roof be installed on a screened in porch. The distance from the edge of the porch to the property line is 8'. However, the distance from the edge of the porch to a line matching the neighbor's fence line is 25'.

Responses to the variance criteria are as follows:

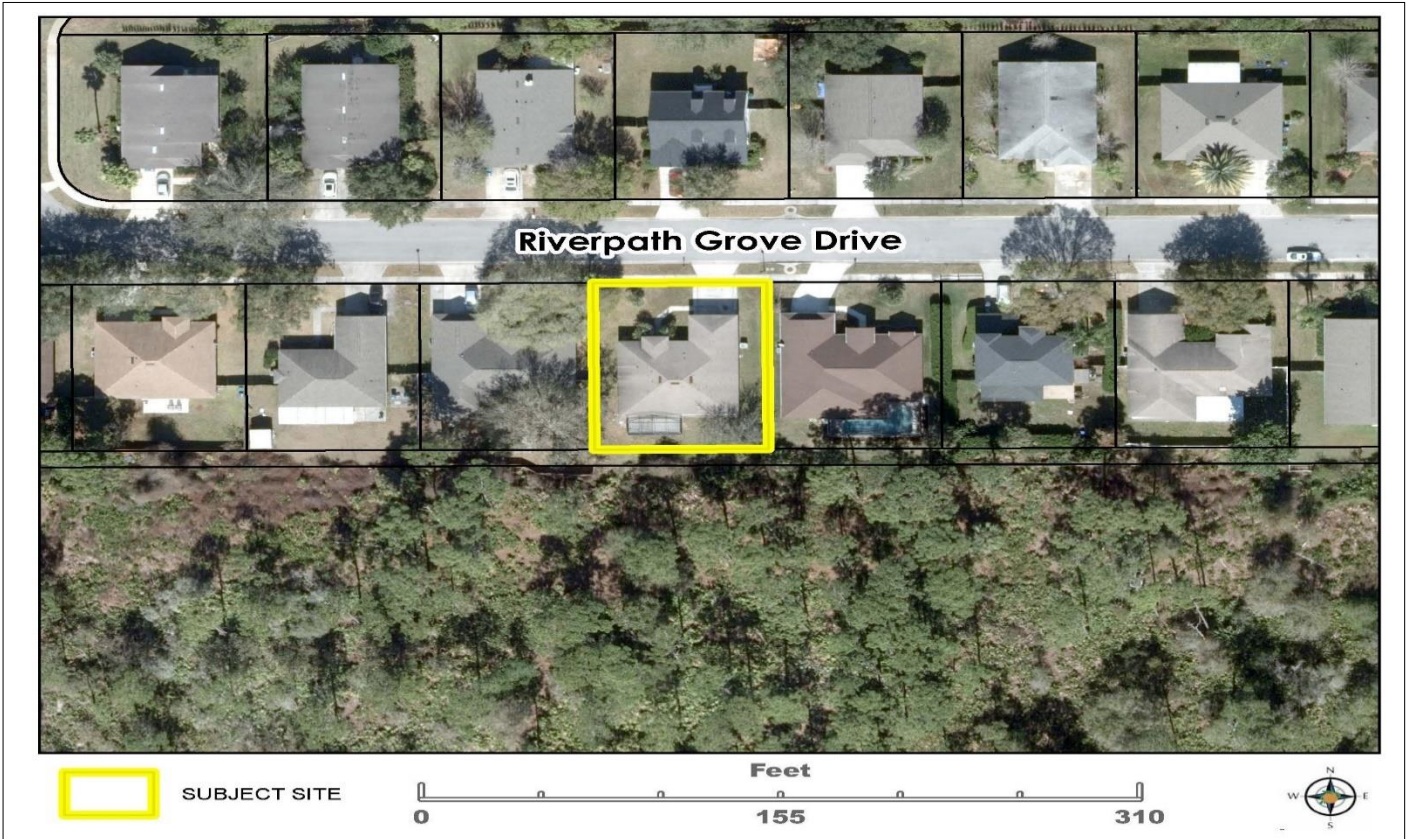
- A. Special Conditions and Circumstances: The property in the rear of 13820 Riverpath Grove Drive is a nature preserve (Arboretum of the University of Central Florida). Therefore, no building can occur.
- B. Not Self-Created: The Arboretum of the University of Central Florida was established in 1983 and we (Lisa Murphy & Jeff Battaglia) did not purchase the property at 13820 Riverpath Grove until April of 2022.
- C. No Special Privilege Conferred: We certify that no special privilege to other lands. The variance will only allow us to fully use the property on our land.
- D. Deprivation of Rights: Other properties in this district are allowed to have a solid roof for a porch. This property does not include a pool and the use of a porch without a solid roof limits our ability to use the structure. Without a solid roof, we cannot use the porch for relaxation, cooking/grilling, or entertaining during inclement weather or high heat.
- E. Minimum Possible Variance: We are requesting a total of a 20'-25' foot variance to allow us to build a solid roof onto our porch. As the current distance from the porch to our property line is 8', we are requesting a total of 12'-17' variance.
- F. Purpose and Intent: This variance will only affect the property on 13820 Riverpath Grove Drive and will serve to increase its property value. Therefore, the value of the surrounding property will either be increased or not affected in any way. We understand the purpose of the zoning requirement is to avoid infringing on a neighbor's property line; however, as there will never be any rear neighbors, no such infringement can occur.



ZONING MAP



AERIAL MAP



## SITE PLAN





**SITE PHOTOS**



**Front from Riverpath Grove Dr. facing south**



**Existing screen enclosure to be replaced facing north**



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## SITE PHOTOS

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**Existing screen enclosure to be replaced facing west**



**Area behind rear yard facing south**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#2**

Case #: **VA-22-09-086**

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

**Jenale.Garnett@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): STEVEN JOHNSON

OWNER(s): STEVEN JOHNSON, CHRISTA JOHNSON

REQUEST: Variances in the R-CE zoning district as follows:

1) To allow a proposed addition to the north with:

- a. Normal High Water Elevation (NHWE) of 39.15 ft. in lieu of 50 ft.
- b. Normal High Water Elevation (NHWE) of 20.92 ft. in lieu of 50 ft.
- c. West rear setback of 20.92 ft. in lieu of 50 ft.

2) To allow a proposed new lanai with:

- a. Normal High Water Elevation (NHWE) of 8.94 ft. in lieu of 50 ft.
- b. West rear setback of 8.94 ft. in lieu of 50 ft.

3) To allow the existing single-family residence with:

- a. Normal High Water Elevation (NHWE) of 27.65 ft. in lieu of 50 ft.
- b. West rear setback of 27.65 ft. in lieu of 50 ft.

4) To allow a proposed addition to the south with:

- a. Normal High Water Elevation (NHWE) of 28.77 ft. in lieu of 50 ft.
- b. West rear setback of 28.77 ft. in lieu of 50 ft.

5) To allow an existing storage building with a Normal High Water Elevation (NHWE) of 40.04 ft. in lieu of 50 ft.

PROPERTY LOCATION: 5056 Lake Carlton Dr., Mt. Dora, FL 32757, west side of Lake Carlton Dr., east side of Lake Carlton, north of Sadler Rd., west of N. Orange Blossom Trl.

PARCEL ID: 07-20-27-0000-00-034

LOT SIZE: +/- 1.57 acres (+/- 1.1 acres upland)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 46

**DECISION:** Recommended **APPROVAL** of the Variance requests 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 (Motion by John Drago, Second by Juan Velez; unanimous; 7 in favor: Thomas Moses, John Drago, Juan Velez, Deborah Moskowitz, Joel Morales, Charles Hawkins, II, Roberta Walton Johnson; 0 opposed):

1. Development shall be in accordance with the site plan and elevations received August 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 additions 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 and losses arising out of or related in any way to the activities or operations on or use of the improvement resulting from the County's granting of the variance request and, which shall inform all interested parties that Addition #1 is located no closer than 20.92 feet west and 39.15 ft. north, Addition #2 28.77 west, the lanai 8.94 west, and the detached storage building 40.04 ft. west from the Normal High Water Elevation (NHWE) of Lake Carlton.

**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 the Variances.

Staff noted that one (1) comment was received in favor of the application, and no comments were received in opposition.

The applicant agreed with the staff presentation and had nothing further to add.

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

The BZA commented that the proposal was appropriate due to existing site considerations and unanimously recommended approval of the Variances by a 7-0 vote, subject to the five (5) conditions in the staff report.

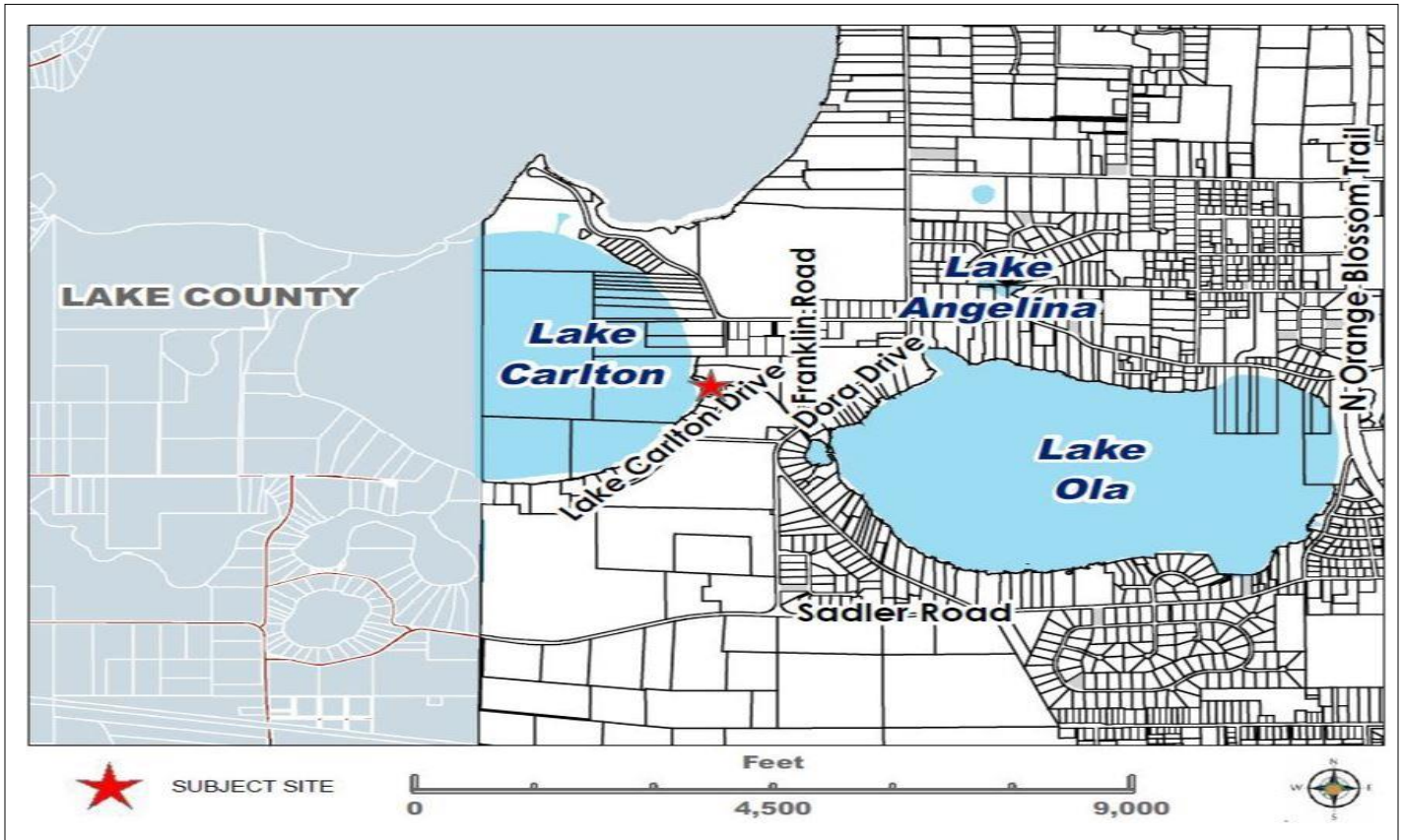
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#### **STAFF RECOMMENDATIONS**

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Approval, subject to the conditions in this report.

## LOCATION MAP



## SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	R-CE	Canal	P-D	P-D	Lake Carlton
Future Land Use	Tangerine Rural Settlement RS 1/1	Canal	Tangerine Rural Settlement RS 1/1	Tangerine Rural Settlement RS 1/1	Lake Carlton
Current Use	Single-family residential	Canal	Single-family residential	Vacant	Lake Carlton

## BACKGROUND AND ANALYSIS

### 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

Page | 80 Board of Zoning Adjustment [BZA]



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 lakefront subject property is an unplatted +/- 1.57 acre parcel of land located on the east side of Lake Carlton and on the south side of a canal, of which +/- 1.1 acres is upland. The remainder of the parcel is either wetland or submerged property under Lake Carlton. The property meets the minimum lot standards of the R-CE zoning district. It is an irregular shaped parcel at the northern end of Lake Carlton Drive with a 12 ft. drainage easement along the north side of the property, which is not affected by the variances requested. The property is uniquely shaped with Lake Carlton on the west side and a canal on the north side of the property. The subject property is developed with a 4,358 gross sq. ft. one story single-family home, constructed in 1973, with an attached 2-car garage, screen enclosed pool and deck, and boat slip. Also, there is a detached 501.9 sq. ft. storage building constructed in 1974 (Permit #74800) with an attached 214.5 sq. ft. metal shed, and 43.8 sq. ft. well house. The metal shed is proposed to be removed. As per Sec. 38-1501, the NHWE setback requirements for accessory structures are the same as the district setbacks, which in this case is the R-CE zoning district requirements. No record of permits for the existing structures, with the exception of the storage building, are available and due to pixelated imagery prior to 1978, the year of installation cannot be ascertained via aerial photography. The owners acquired the property in May, 2022.

The proposal is to construct a 1,975 sq. ft. addition, labeled as Addition #1 on the Site Plan, on the north side of the residence with a 39.15 ft. north NHWE setback, 20.92 ft. west NHWE setback, and 20.92 ft. west rear setback in lieu of the 50 ft., requiring Variance #1 a, b, and c respectively. The proposal also includes the removal of the existing screen enclosure over the pool and the connection of a new 299 sq. ft. covered lanai on the west side of the house with an 8.94 ft. NHWE setback and 8.94 ft. south setback in lieu of 50 ft., requiring Variance #2 a and b respectively, a 685.1 sq. ft. addition, labeled as Addition #2 on the Site Plan, on the south side of the home, and another addition on the southwest side of the residence which will accommodate space for storage with a 28.77 ft. NHWE setback and 28.77 ft. west rear setback in lieu of 50 ft., requiring Variance #4 a and b respectively. The proposal also includes a request to allow the existing residence's 27.65 ft. NHWE setback and 27.65 ft. west rear setback in lieu of 50 ft., requiring Variance #3 a and b, and an existing 35.1 ft. by 14.3 ft., 15 ft. high storage building with an existing 40.4 ft. NWHE setback in lieu of 50 ft., requiring Variance #5.

Additionally, the owners are proposing to construct a 1,200 sq. ft. 2-car garage with a 28 ft. long breezeway connected to the house. The 2-car garage is considered a detached accessory structure since the breezeway connection is more than 20 ft. Per Sec. 38-1426 (a) (3) (a) of the Orange County Code, "attached accessory structures include those that are physically connected to a principal structure by a fully enclosed or open-sided passageway that does not exceed twenty (20) feet in length". The proposed detached accessory structure meets the standards of code.

The NHWE setback requirements came into effect in 1991, which now impacts the property's original

construction. The existing non-conforming setbacks are due to location of the residence, rendering any addition or improvements difficult.

The Orange County Environmental Protection Division has no objection to the request and a Conservation Area Determination (CAD) is not required.

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. (house) 25 ft. (accessory structure)	28 ft. 15 ft. (storage building) 18 ft. (detached garage)
Min. Lot Width:	130 ft.	231.2 ft. at the building setback line
Min. Lot Size:	1 acre	1.57 acres (1.1 acres upland)

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

	Code Requirement	Proposed
Front:	35 ft.	193.8 ft. (East)
Rear:	50 ft.	20.92 ft. Addition #1 (West – Variance #1c) 8.94 ft. lanai (West – Variance #2b) 27.65 ft. residence (West – Variance #3b) 28.77 ft. Addition #2 (West – Variance #4b)
Side:	10 ft.	39.15 ft. (North) 28.8 ft. (East)
NHWE:	50 ft.	39.15 ft. (North – Variance #1a) 20.92 ft. Addition #1 (West – Variance #1b) 8.94 ft. lanai (West – Variance #2a) 27.65 ft. residence (West – Variance #3a) 28.77 ft. Addition #2 (West – Variance #4a) 40.04 ft. storage building (West – Variance #5)

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### **STAFF FINDINGS**

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#### **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 and accessory structure were constructed in relation to the NHWE on the west and canal on the north of the property, which renders any addition or improvements 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 and accessory structure in relation to the surrounding NHWE line since they were built prior to the NHWE requirements. Also, any addition or improvement will require a variance due to the configuration and location of the existing home.

**No Special Privilege Conferred**

Granting the requested variances will not confer any special privilege conferred to others under the same circumstances since meeting the literal interpretation of the code would prohibit any additions due to the irregular configuration of the lot and the location of the home in relation to the surrounding NHWE line.

**Deprivation of Rights**

Without approval of the requested variances, the owners will be deprived of the ability to construct an addition that will work with the existing floor plan. Denial would also deprive the owners of use of the storage building that has been in the same location, since 1978, prior to the implementation of the NHWE requirements.

**Minimum Possible Variance**

The requested variances are the minimum necessary to construct improvements on the property, due to the irregular shape of the lot and the NHWE line to the west and the northern canal. Additionally, the design of the additions as proposed is consistent with the architectural design of the existing residence.

**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. Also, it will allow for the existing structures non-conforming setbacks to remain, which were built prior to the NHWE setback requirements in 1991. Furthermore, the additions 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 August 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 additions 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 and losses arising out of or related in any way to the activities or operations on or use of the improvement resulting from the County's granting of the variance request and, which shall inform all interested parties that Addition #1 is located no closer than 20.92 feet west and 39.15 ft. north, Addition #2 28.77 west, the lanai 8.94 west, and the detached storage building 40.04 ft. west from the Normal High Water Elevation (NHWE) of Lake Carlton.

C: Steven Johnson and Christa Johnson  
812 Northside Dr.  
Mount Dora, FL 32757



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## COVER LETTER

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Variance

5056 Lake Carlton Dr

Mt. Dora FL 32757

I recently purchased a house that was built in 1973. I am looking to remodel the house and add an addition so I can raise my family on the lake in a quiet little town of Tangerine FL. The house was built closer to the lake than what zoning currently allows (back in the 70's the setback requirements were different). My addition will be no closer than where the existing house currently sits. Below are the variances that I am requesting.

- 1) To allow a proposed north addition with a normal high water elevation (NHWE) of 39.15 ft. in lieu of 50 ft.
- 2) To allow a proposed northwest addition with:
  - a. Normal high water elevation (NHWE) of 20.92 ft. in lieu of 50 ft.
  - b. West rear setback of 20.92 ft. in lieu of 50 ft.
- 3) To allow a proposed new lanai with:
  - a. Normal high water elevation (NHWE) of 8.94 ft. in lieu of 50 ft.
  - b. West rear setback of 8.94 ft. in lieu of 50 ft.
- 4) To allow the existing single family residence with:
  - a. Normal high water elevation (NHWE) of 27.65 ft. in lieu of 50 ft.
  - b. West rear setback of 27.65 ft. in lieu of 50 ft.
- 5) To allow a proposed south addition with:
  - a. Normal high water elevation (NHWE) of 28.77 ft. in lieu of 50 ft.
  - b. West rear setback of 28.77 ft. in lieu of 50 ft.
- 6) To allow an existing storage building with a normal high water elevation (NHWE) of 40.04 ft. in lieu of
  - We will be removing the metal shed that was attached to the detached storage shed.
  - The house is protected by a seawall along the lake which protects the house.

Residence on Lake Carlton would love to see this home remodel so it would fit in with existing homes on the street and on the lake.

Steven Johnson

321-228-2841

[Steve.johnson81@yahoo.com](mailto:Steve.johnson81@yahoo.com)

[Sjohnson@dewittcc.com](mailto:Sjohnson@dewittcc.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.

The special conditions to the property are in configuration and angle at which the house was built in 1973 before there was a code regarding WHWE that surrounds the property

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 request is not self-created since the owners are not responsible for the position and location of the existing house is located on the property

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 would be unable to do any additions to the house if we are not granted the variance. we are following the existing lines of the house

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.

without approval of the variances, we will be deprived of the ability to construct any addition the house has been in this location since 1973

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.

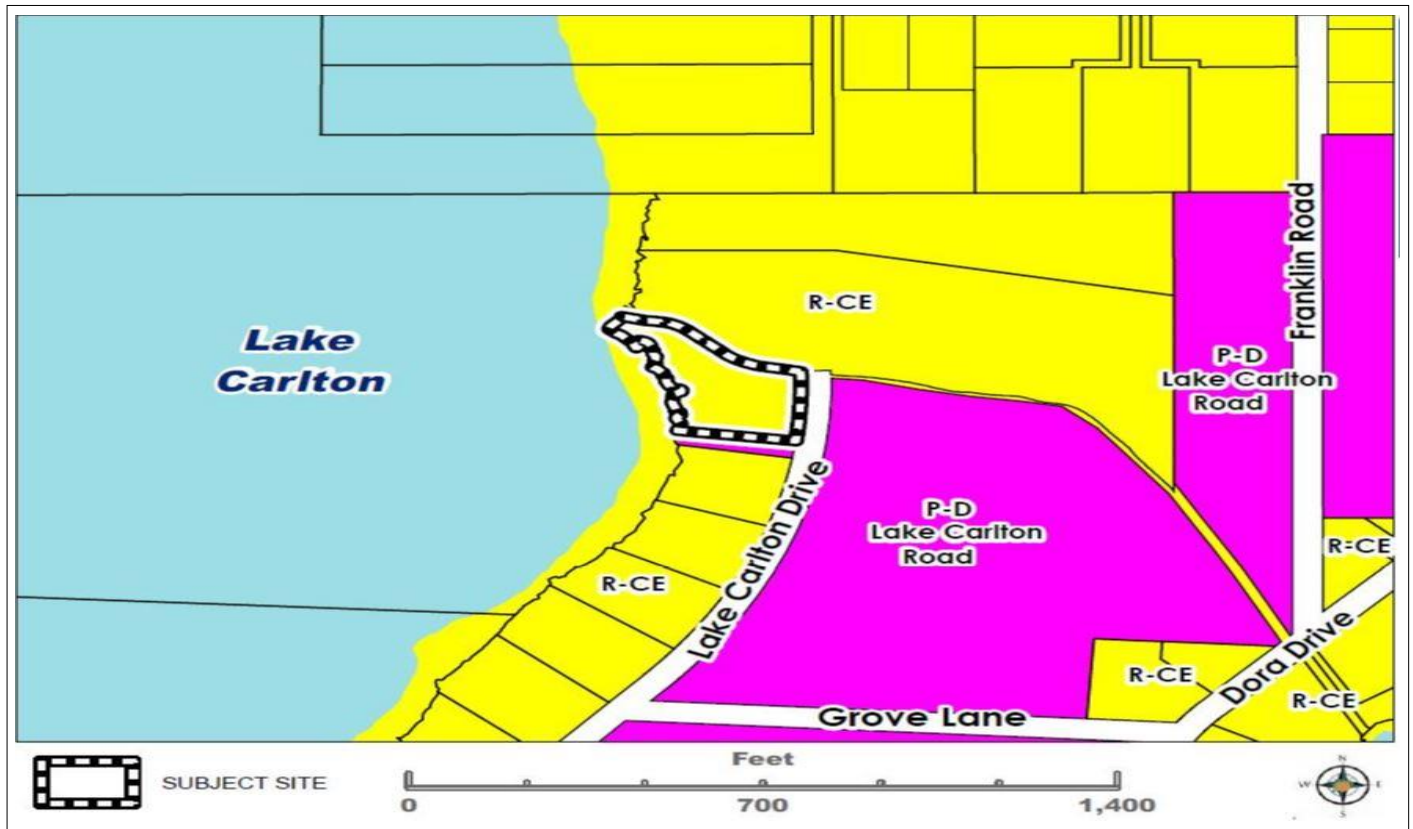
The variance is what needed to match the existing home and community that were built in the same time period. It is the minimum we can do.

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.

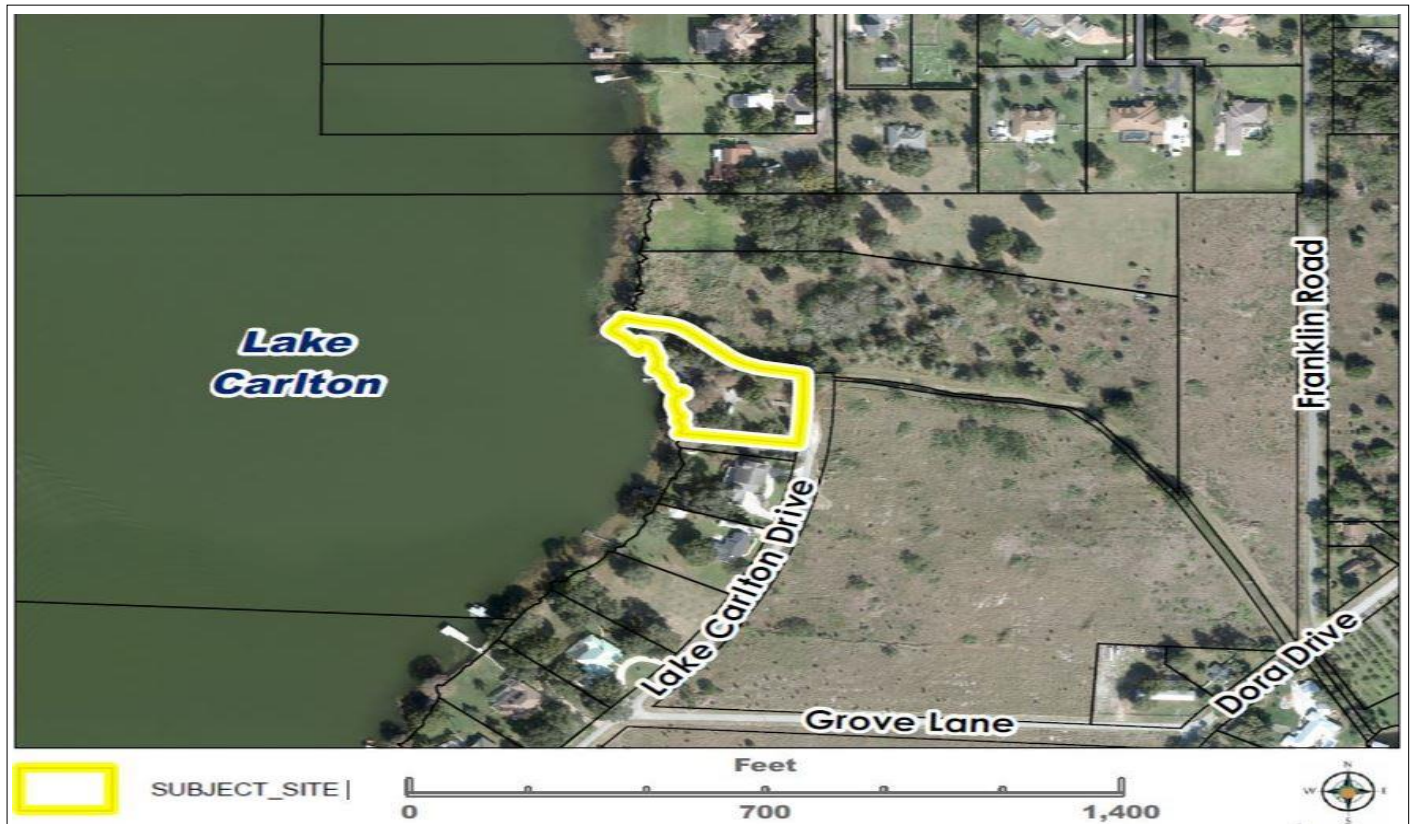
It will be in harmony with the existing homes on Lake Carlton



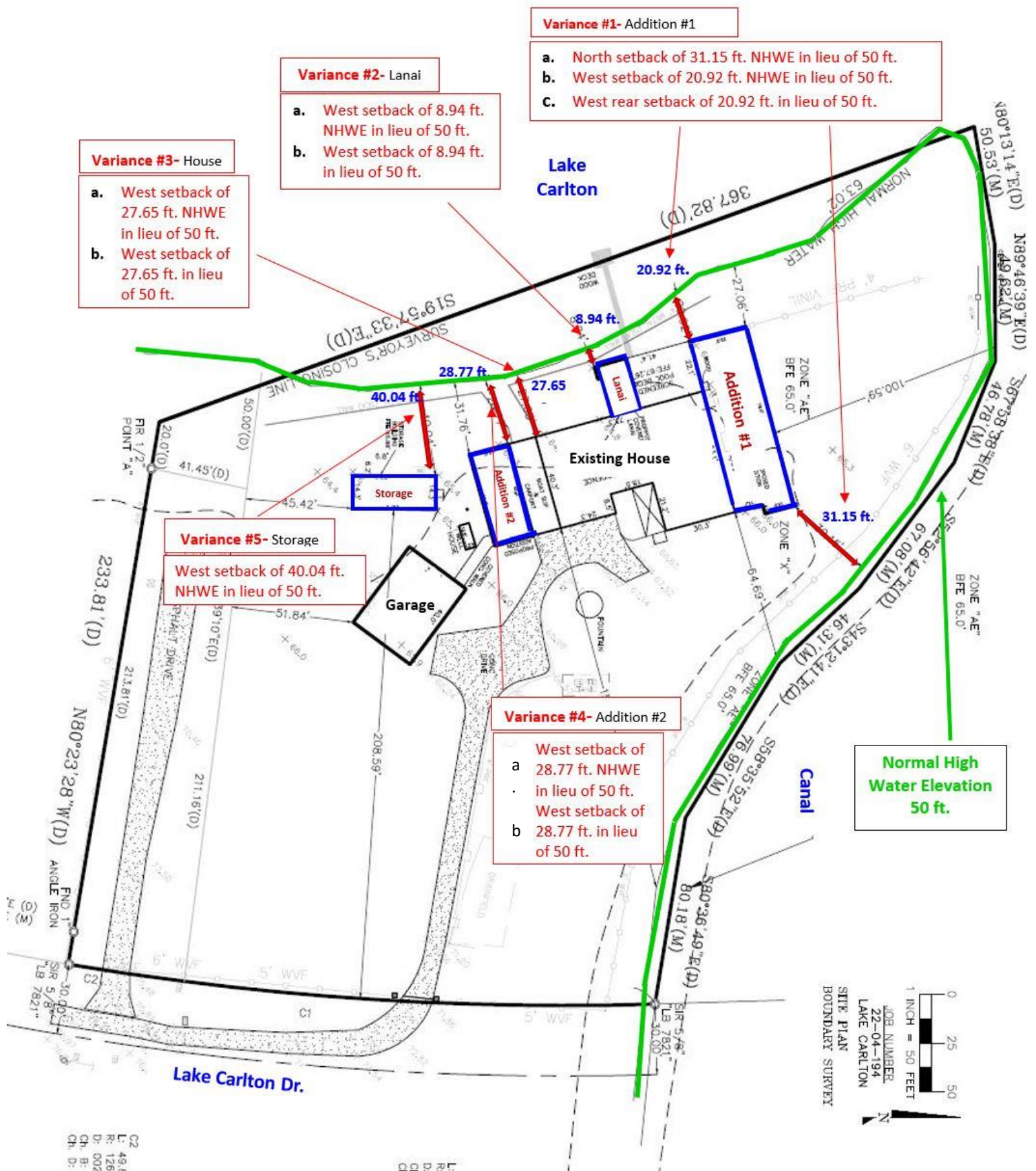
## ZONING MAP



## AERIAL MAP

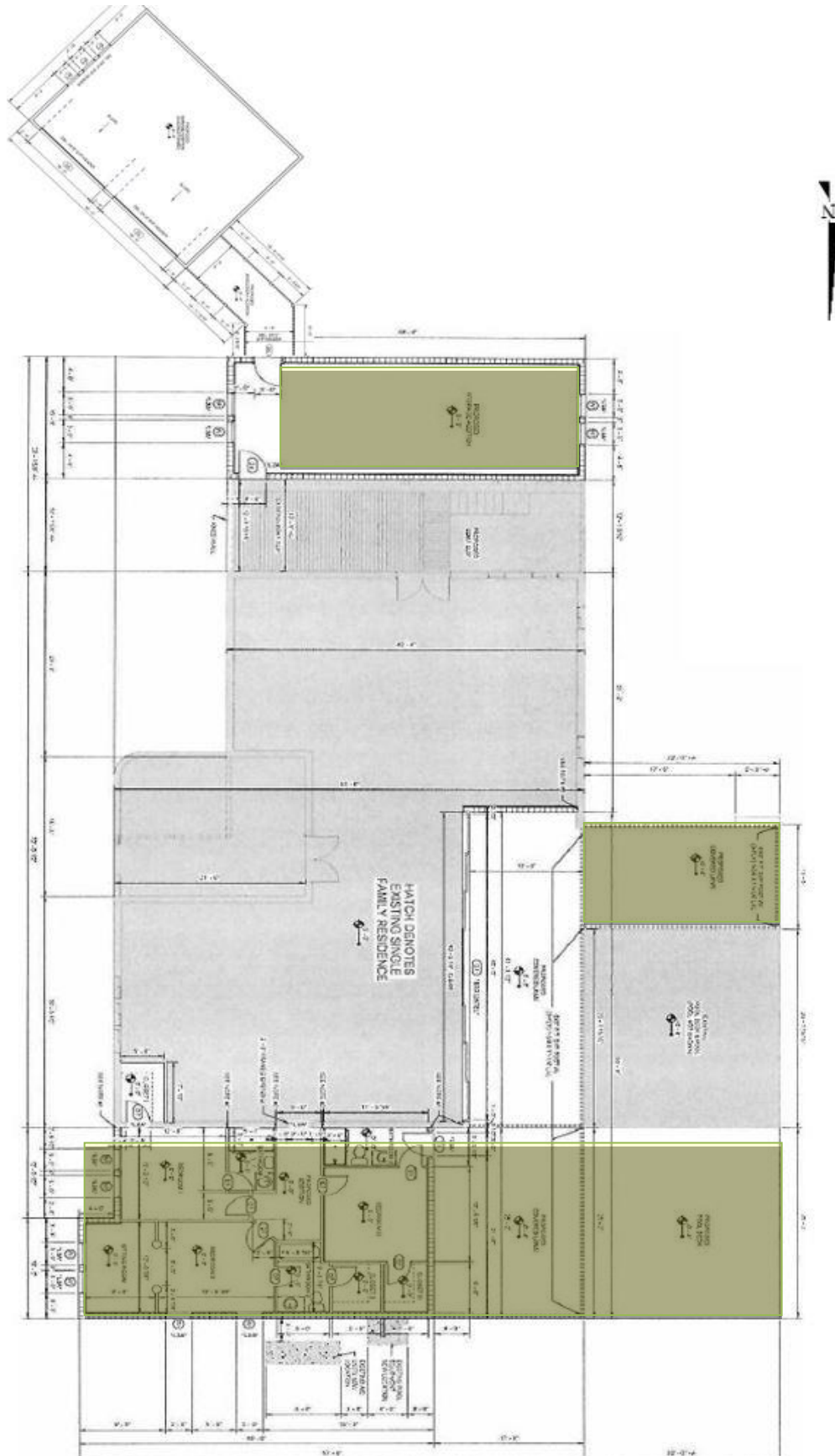


## SITE PLAN





## FLOOR PLAN



## ELEVATIONS





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## SITE PHOTOS

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**Facing south towards terminal end of Lake Carlton Dr.**



**Facing west towards entrance of subject property**



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**SITE PHOTOS**

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**Rear yard, facing north towards property and Lake Carlton**



**Front yard, facing west towards existing residence**



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## SITE PHOTOS

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**Front yard, facing west towards boat slip**



**Rear yard, facing east towards proposed Addition #2**



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**SITE PHOTOS**

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**Rear yard, facing northeast towards proposed lanai**



**Rear yard, facing south towards proposed Addition #1**



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## SITE PHOTOS

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**Front yard, facing west towards existing storage building and well house**



**Rear yard, facing east towards rear of existing storage building**



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## SITE PHOTOS

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**Front yard, facing east towards proposed garage and breezeway**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#3**

Case #: **VA-22-08-058**

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

**Jenale.Garnett@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): VICTOR ROMERO

OWNER(s): VICTOR ROMERO, VERONICA ROMERO

REQUEST: Variances in the A-2 zoning district as follows:

- 1) To allow a detached accessory dwelling unit (ADU) with a living area of 849.2 sq. ft. in lieu of a maximum 644 sq. ft.
- 2) To allow an existing 313 sq. ft. detached accessory structure (shed) with a west rear setback of 4.29 ft. in lieu of 5 ft.
- 3) To allow an existing 313 sq. ft. detached accessory structure (shed) with a north side setback of 3.76 ft. in lieu of 5 ft.
- 4) To allow an existing 282 sq. ft. detached accessory structure (shed) with a north side setback of 3.89 ft. in lieu of 5 ft.

PROPERTY LOCATION: 1708 Renee Ave., Orlando, FL 32825, west side of Renee Ave., south of E. Colonial Dr., east of N. Chickasaw Trl., west of SR. 417

PARCEL ID: 24-22-30-8068-01-020

LOT SIZE: +/- 0.34 acres (15,075 sq. ft.)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 47

**DECISION:** Recommended **APPROVAL** of the Variance requests 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 (Motion by Juan Velez, Second by Roberta Walton Johnson; unanimous; 7 in favor: Thomas Moses, John Drago, Juan Velez, Deborah Moskowitz, Joel Morales, Charles Hawkins, II, Roberta Walton Johnson; 0 opposed):

1. Development shall be in accordance with the site plan and elevations received June 24, 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. Prior to the issuance of the permit for the ADU, a permit shall be obtained for the shed in the rear, the pergola, the attached covered patio, and the driveway, or they 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 of the Variances. Staff noted that five (5) comments were received in favor of the application, and no comments were received in opposition.

The applicant discussed the staff recommendation of denial and noted the reasons for the required ADU and the financial hardship to relocate the sheds. There was no one in attendance to speak in favor or in opposition to the requests.

The BZA discussed the requests, the prior ADU approval, the limited impacts of allowing the location of the existing sheds to remain since there is fence and landscaping screening and since they abut commercial uses, and unanimously recommended approval of the Variances by a 7-0 vote, subject to the four (4) conditions in the staff report.

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### STAFF RECOMMENDATIONS

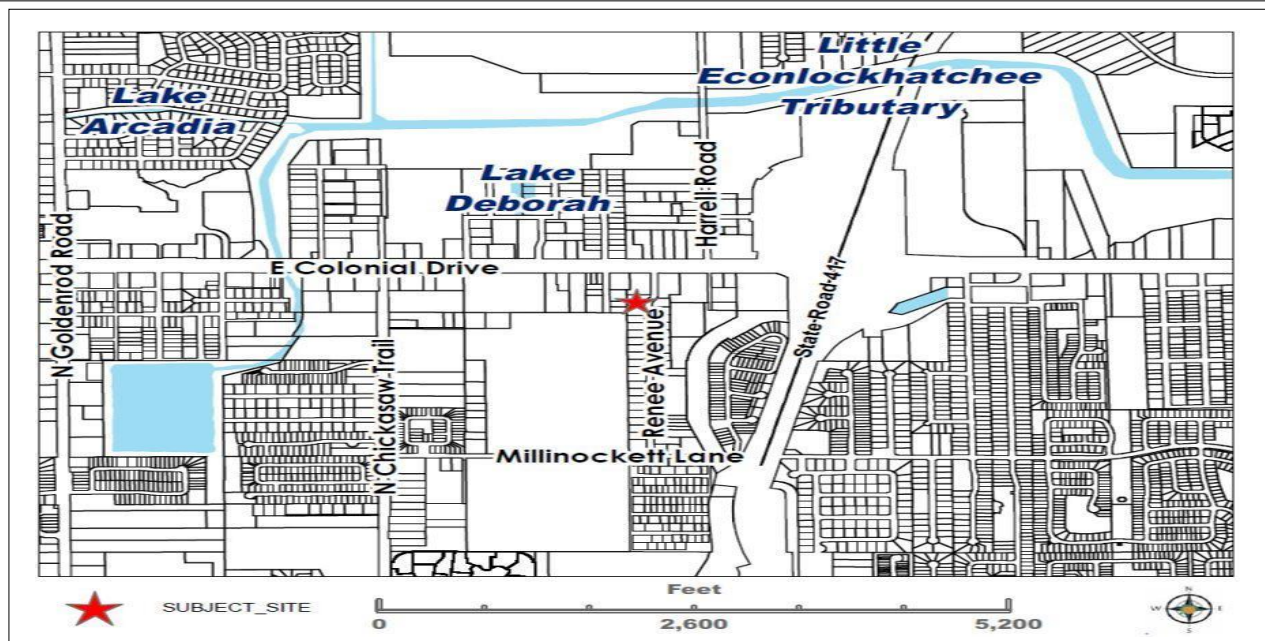
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Denial. However, if the BZA should find that the applicant has satisfied the criteria for the granting of all variances, staff recommends that the approval be subject to the conditions in this report.

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### LOCATION MAP

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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	A-2	C-2	A-2	A-2	A-2
Future Land Use	LMDR	C	LMDR	LMDR	LMDR
Current Use	Single-family residential	Vacant	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 A-2, Farmland 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-Medium Density Residential (LMDR), 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.

The area around the subject site consists of single-family homes and a vacant lot to the north of the property. The subject property is a +/- 0.34 acre lot, platted in 1957 as Lot 2 of the Sinclair Park plat, and is a non-conforming lot of record due to having a 1/3 acre of land area, when a 1/2 acre is required. It is considered a non-conforming lot of record as a Variance for minimum lot size of 1/3 acre was approved in November 2005 (SE-05-11-006). The property is developed with a 1-story, 1,525 gross sq. ft. (1,288 sq. ft. of living area) single-family home constructed in 1960. Improvements to the property include a 238 sq. ft. attached covered patio constructed in 2019, 313 sq. ft. detached accessory structure installed in 2003 (Shed#1), 282 sq. ft. detached accessory structure installed in 2001 (Shed #2 – B03009299), 304 sq. ft. pergola installed in 2022, and 1,344 sq. ft. concrete driveway constructed in 2006 (B06018429). There are no permits for the covered patio, pergola, and Shed #1. A permit for the driveway had been submitted but expired before it was issued. The property was purchased by the current owners in 1999.

In November 2005, a Special Exception and Variances (SE-05-11-006) were approved to allow for a detached Accessory Dwelling Unit (ADU), and Variance requests to allow 847 sq. ft. of living area in lieu of 580 sq. ft. and 1/3 acre land area in lieu of 1/2 acre, but the proposed ADU was never built, and the Special Exception subsequently expired.

The proposal is to construct a one story 38.6 ft. by 22 ft., 14 ft. high ADU in the rear of the property. Currently, the existing residence has 1,288 sq. ft. of living area and the proposed 2-bedroom detached ADU will contain 849.2 sq. ft. of living area. Per Sec. 38-1426 (b) (3) (d) of the Orange County Code, “The maximum living area of an accessory dwelling unit shall not exceed fifty percent (50%) of the primary dwelling unit living area or one thousand (1,000) sq. ft., whichever is less”. The proposed ADU meets the maximum two (2) bedroom requirement, however, the 849.2 sq. ft. of living area exceeds the maximum 644 sq. ft. of living area allowed per code, requiring Variance #1. Since 2005, the ADU code has been modified,



removing the Special Exception requirement and providing different size thresholds. The prior proposal was not constructed and was approved by a different code requirement, which is why a new variance has been requested.

The existing Shed #1 in the rear of the property is 25.5 ft. by 12.2 ft., 10 ft. in height, and appears to have been installed in 2003, via aerial photography, without permits. The additional existing 23.8 ft. by 11.8 ft., 10 ft. high Shed #2, located to the north of the residence was installed in 2001 with a permit (B03009299), however, it does not appear to have been installed in conformance with the building permit, which showed it meeting the 5 ft. north side setback. Per Sec. 38-1426 (b)(2) of Orange County Code, a detached accessory structure with a height of 15 ft. or less shall be set back a minimum of 5 ft. from any side or rear lot line.” The existing Shed #1 has a west rear setback of 4.29 ft. and a north side setback of 3.76 ft. which requires a 5 ft. setback, requiring Variance #2 and Variance #3. Additionally, the existing Shed #2 has a north side setback of 3.89 ft, where a 5 ft. setback is also required, necessitating the need for Variance #4. Alternatively, Shed #1 can be shifted 0.71 ft. to the east and 1.24 ft. south, and Shed #2 can be shifted 1.11 ft. to the south to meet code requirements.

While the requests meet some of the standards for variance criteria, they do not meet all of the standards. Therefore, staff is recommending denial of the variances. Based on staff analysis, a smaller, code compliant ADU could be designed. The intent and purpose of the ADU code is to allow for the development of ADUs, to support greater infill development and affordable housing opportunities, while maintaining the character of existing neighborhoods. As such, Accessory Dwelling Units do not count towards the maximum density and are charged impact fees at a lower rate than 2 single-family homes, and are therefore intentionally meant to be small in relation to the home and property, thus the limitation on maximum square footage and number of bedrooms. Further, the detached accessory structures setbacks can be reduced to meet the code requirements in Sec. 38-1426 (b) (20).

As of the date of this report, fifteen 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.	14 ft. (ADU)
Min. Lot Width:	100 ft.	102.12 ft.
Min. Lot Size:	21,780 sq. ft. (1/2 acre)	15,075 sq. ft.

**Building Setbacks**

	Code Requirement	Proposed
Front:	not allowed	not allowed
Rear:	5 ft.	20.17 ft. (West - ADU) 4.29 ft. (West – Variance #2, Shed #1)
Side:	10 ft. (ADU) 5 ft. (shed)	10 ft. (South – ADU) 3.76 ft. (North – Variance #3, Shed #1) 3.89 ft. (North – Variance #4, Shed #2)

**STAFF FINDINGS****VARIANCE CRITERIA**

There are no special conditions or circumstances peculiar to the land or building which are not applicable to other lands in the same zoning district. The owner could modify the design of the ADU and there are other options to shift the detached accessory structures to a location that will meet code requirements.

**Not Self-Created**

**Variance #1:** The request for the variance is self-created, as there are alternatives to construct a code compliant ADU.

**Variances #2, #3, and #4:** The request is self-created due to the options available to shift the detached accessory structures to a location that will meet code.

**No Special Privilege Conferred**

Granting these requests would not confer special privilege since there appears to be similar structures that do not meet code within the surrounding properties.

**Deprivation of Rights**

**Variance #1:** There is no deprivation of rights as the owner can construct an ADU that complies with code.

**Variances #2, #3, and #4:** There is no deprivation of rights since code compliant options are available to shift Shed #1 and Shed #2.

**Minimum Possible Variance**

**Variance #1:** The request is not the minimum possible as a code compliant ADU could be constructed.

**Variance #2, #3, and #4:** The request is not the minimum possible as Shed #1 and Shed #2 can be relocated to meet code requirements.

**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 as the ADU and Shed #1 will not be significantly visible from any of the surrounding properties due to the landscaping and fence surrounding the property, thereby limiting any quantifiable negative impact to surrounding property owners. Furthermore, the north side of Shed #1 and Shed #2 abuts a vacant lot that is commercially zoned and will have no negative impact.

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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan and elevations received June 24, 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. Prior to the issuance of the permit for the ADU, a permit shall be obtained for the shed in the rear, the pergola, the attached covered patio, and the driveway, or they shall be removed.

C: Victor Romero and Veronica Romero  
1708 Renee Avenue  
Orlando, FL 32825



# Victor M. Romero

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1708 Renee Ave. Orlando, Fl. 32825 | 407-970-8782 | [victorromeromusic@gmail.com](mailto:victorromeromusic@gmail.com)

5/6/2022

Board of Zoning Orange County

**Dear Board of Zoning Orange County:**

This letter intends to explain my request for a Variance.

**History:**

On November 3<sup>rd</sup>, 2005 this board had previously approved my request (case SE-05-11-006) finding that the requirements of Orange County Code, Section 3-43 had been met. After being approved with a commencement permit, the ground was not broken, because Mr. Anibal Martinez and Mrs. Adia Ruiz (father and mother-in-law) decided to return to Puerto Rico.

**Current:**

Currently, the situation has changed, and there is a need to request approval for this once again.

My wife Veronica Romero, and I Victor M. Romero live in a single-house dwelling located on 1708 Renee Ave. in Orlando, Florida with two of our children.

My wife's father Anibal Martinez passed away on December 28<sup>th</sup>, 2016, but her elderly mother Adia Ruiz is still with us and doing well. Currently, Mrs. Ruiz lives in an assisted living facility located at 13533 Madison Dock Rd., in Orlando, Fl. since October 2020. Here she receives care 24 hours a day, 7 days a week. Physically she is in good shape and suffers from mild dementia. We desire to bring Mrs. Ruiz to live with us in a separate dwelling with a caretaker. This would allow Mrs. Ruiz to live out her life surrounded by her daughters, grandchildren, and pets. I have included a letter from Mrs. Veronica Prospero, our friend for over 24 years. She is more than willing to become Mrs. Ruiz's caretaker along with the rest of the close family members.

We intend to build an A.D.U of 849.2 Sq. Ft. detached two-bedroom block frame dwelling. This dwelling would be equipped with a kitchen, bath, air-conditioning, etc. suitable for an elderly person, and a caretaker. Architectural drawings had been approved in 2005, and are on record. My lot size is 15,372 sq. ft. and the detached unit is 849.2 sq. ft. I am again requesting the variance due to the unimposed limitations of my current lot.

If necessary, I will upgrade all electric, septic, and well systems to accommodate adequacy according to county codes. I hope you see this request favorably since I did not create the limitations posing hardship on myself or my family. I understand that I am not being given any special privileges and that I am not deprived of my rights if you see this request unfavorably.

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COVER LETTER

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I have two storage structures on my property. Storage unit one which is located next to my residence as I poorly recall was permitted approximately in 2001. This unit's side setback is 3.89", and even though this unit was permitted if necessary, I request a setback variance. Storage unit two which is in the rear of my property has been in this location since 2003. I request a setback variance because it currently sits at 4.29" from the rear and 3.76" from the side.

I made the effort to find out the cost of moving these storage structures. I spoke with Nikki from Shed Moving of Orlando Inc. and was quoted \$1,000 for moving each structure. Their cost doesn't include emptying the contents, removing and reinstalling the floating deck, or releveling the storage unit. This additional cost proves too high, and would dramatically injure the budget for building the A.D.U. for my mother-in-law.

If necessary, I will upgrade all-electric, septic, and well systems to accommodate adequacy according to county codes. I hope you see this request favorably since I did not create the limitations posing hardship on myself or my family. I understand that I am not being given any special privileges and that I am not deprived of my rights if you see this request unfavorably.

I would appreciate it if you see my request favorably so that I can provide comfort to my wife, family, and my mother-in-law. Bringing the family together will allow us to help our loved Adia have the best final years she can enjoy. I swear that Mrs. Adia Ruiz is my mother-in-law and that the information submitted is true to the best of my knowledge.

I also understand and agree that the provisions of the sections of all Orange County Codes about my request shall be complied with, that I will be responsible to the county for ensuring that the provisions are complied with and that I shall be responsible for any failure to comply with the provisions.

Submitted for your consideration,



**Victor M. Romero - Homeowner**



## 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.

We want to remove my mother-in-law from assisted living, and take care of her. We now would like to break ground on the ADU since we didn't when we had previous approval

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 size of our lot does not meet requirement, but this is not self-imposed. I request a variance for lot size, and setbacks for rear and side of my storage sheds. I need my sheds for storage of Vintage Music Gear and other expensive music Gear.

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.

If approved I understand that I'm not receiving special privileges. Other neighbors also have other structures which they enjoy for their particular purposes.

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.

If denied I will not be able to provide my mother-in-law with the benefit of living with her family during her final years of life.

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.

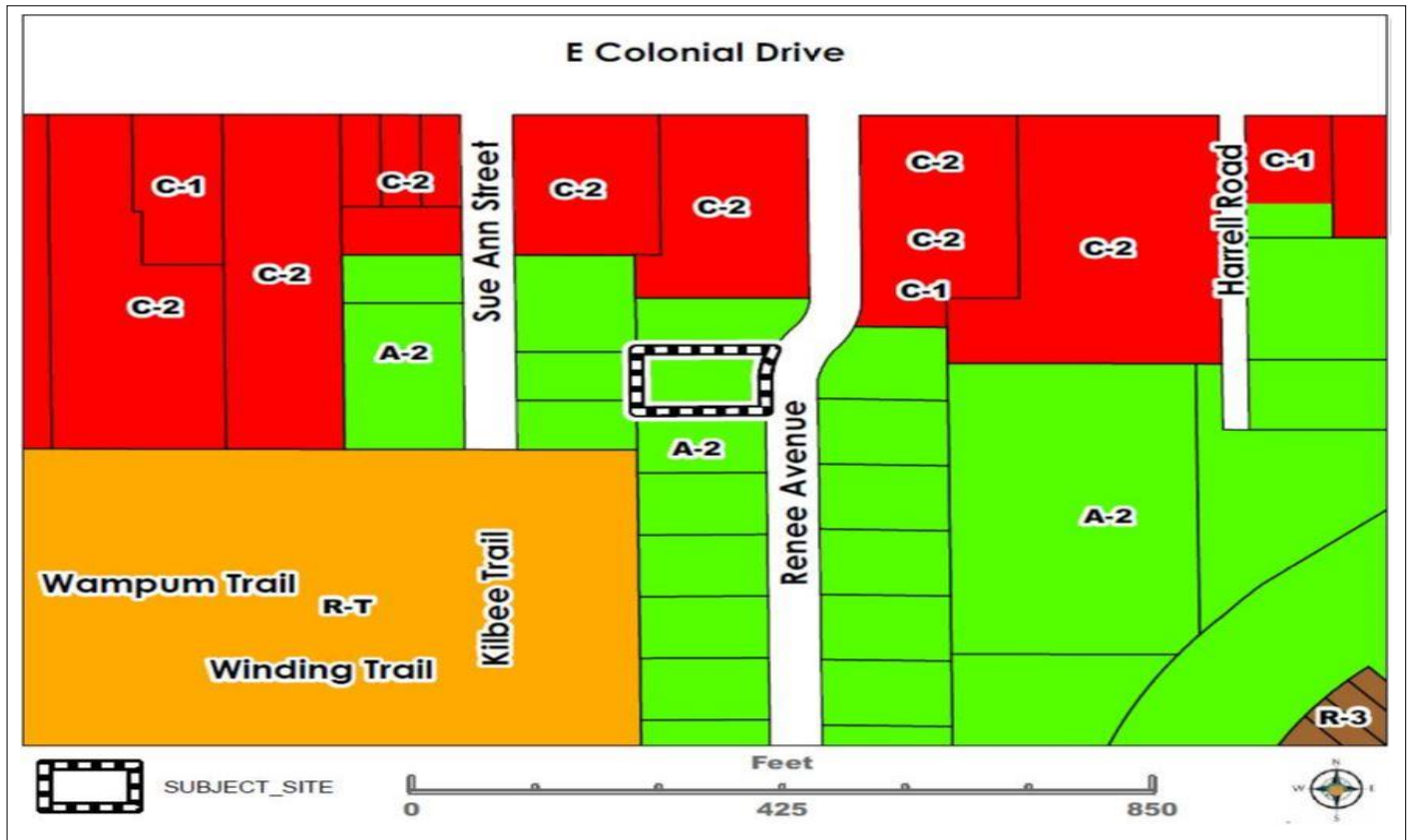
I only request variance for lot size and setbacks. We need this ADU to provide my mother in law and a caregiver appropriate living space.

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.

This zoning will not adversely impact this community or be intrusive to any area. Very little if any will be viewed from most viewable areas.



## ZONING MAP



## AERIAL MAP

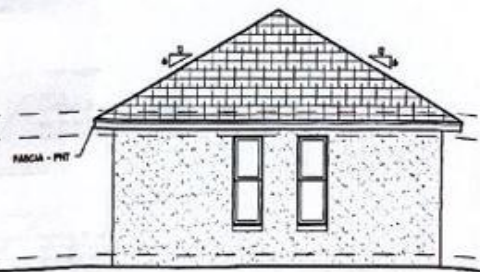
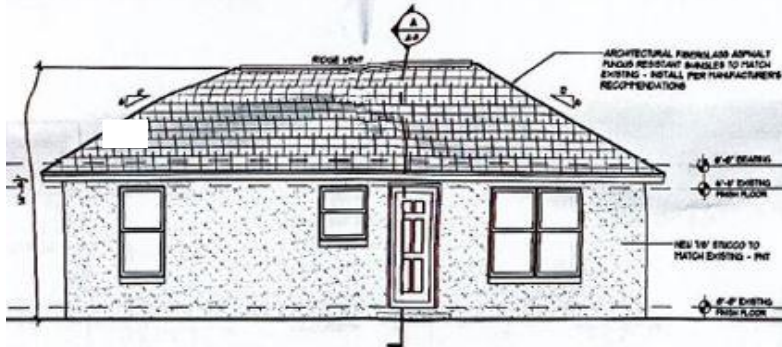
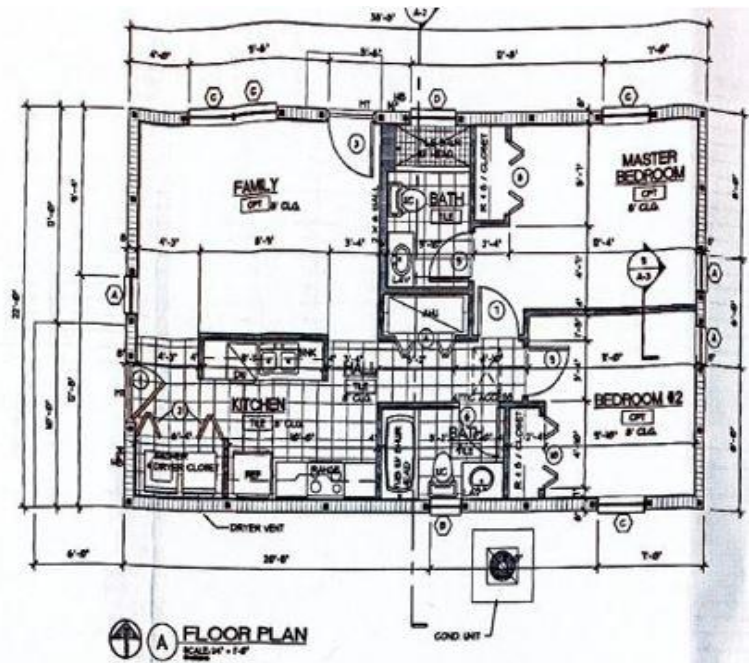
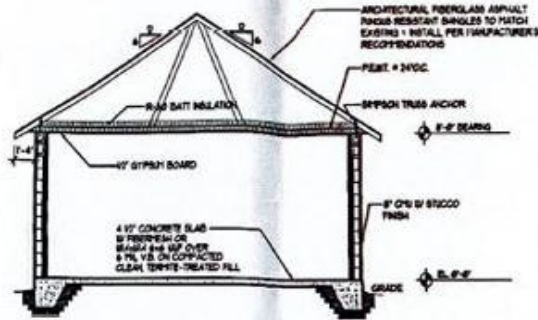


## SITE PLAN





## FLOOR PLAN/ELEVATIONS OF PROPOSED ADU





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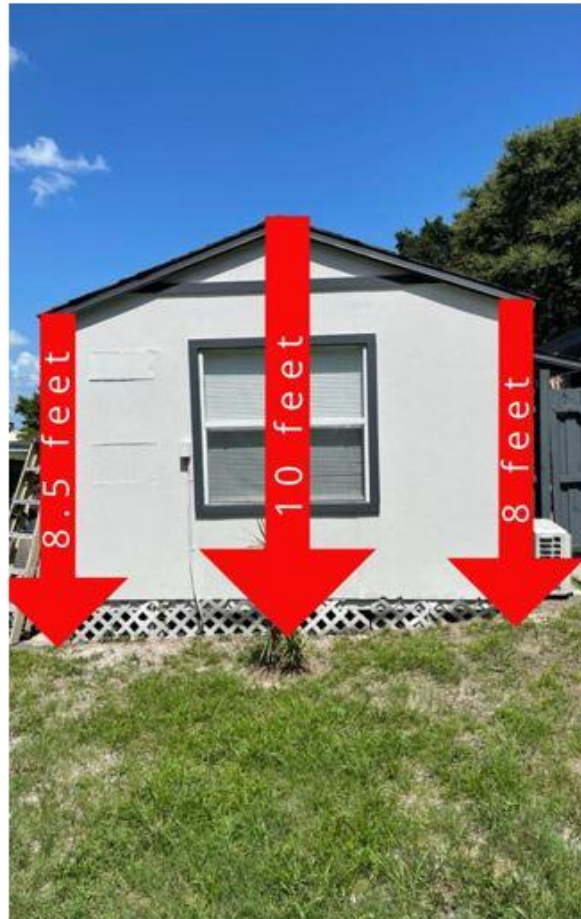
## PHOTOS OF EXISTING SHEDS

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Shed #1



Shed #2





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**SITE PHOTOS**

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**Facing west from Renee Ave. towards front of subject property**



**Rear yard, facing south towards rear of subject property**



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## SITE PHOTOS

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**Rear yard, facing east towards covered patio (right) and side of pergola**



**Rear yard, facing west towards front of pergola**



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**SITE PHOTOS**

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**Rear yard, facing southeast towards front of proposed ADU**



**Rear yard, facing west towards front of Shed #1**



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## SITE PHOTOS

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**Rear yard, facing north towards rear of Shed #1**



**Rear yard, facing west towards side of Shed #1**



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**SITE PHOTOS**

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**Facing north towards front of Shed #2**



**Rear yard, facing east toward side of Shed #2**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#6**

Case #: **VA-22-08-070**

Case Planner: **Jenale Garnett (407) 836-5955**  
**Jenale.Garnett@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): EUGENE MARISE

OWNER(s): EUGENE MARISE

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

1) To allow an existing 200 sq. ft. addition with a north side street setback of 8.7 ft. in lieu of 15 ft.

2) To allow an existing 210 sq. ft. addition with an east rear setback of 9.4 ft in lieu of 25 ft.

3) To allow an existing residence with an east rear setback of 20.8 ft. in lieu of 25 ft.

Note: This is the result of Code Enforcement.

PROPERTY LOCATION: 5705 Wingate Dr., Orlando, FL 32839, southeast corner of Wingate Dr. and Kingsbridge Dr., west of S. John Young Pkwy., north of W. Oak Ridge Rd.

PARCEL ID: 21-23-29-4995-03-120

LOT SIZE: +/- 0.18 acres (7,912 sq. ft.)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 105

**DECISION:** Recommended **APPROVAL** of the Variance requests 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 (Motion by Charles Hawkins, II, Second by John Drago; unanimous; 6 in favor: Thomas Moses, John Drago, Deborah Moskowitz, Joel Morales, Charles Hawkins, II, Roberta Walton Johnson; 0 opposed; 1 absent: Juan Velez):

1. Development shall be in accordance with the boundary survey and elevations received June 28, 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 for the existing additions within 180 days 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 issuance of a permit for the additions, the shed and the portion of the fence that encroaches onto the adjacent property 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 approval of the Variances due to the limited impact to adjacent properties. Staff noted that one (1) comment was received in favor of the application, and one (1) in opposition to the application.

The applicant described the need for the Variances and requested additional time for obtaining required permits due to an upcoming procedure. Code enforcement discussed the history of the citation. There was no one in attendance to speak in favor or in opposition to the request.

The BZA discussed the rationale for the Variances, discussed the appropriate length of time to obtain permits, the ability to request an administrative extension, and unanimously recommended approval of the Variances by a 6-0 vote and one absent, subject to the five (5) conditions in the staff report.

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#### STAFF RECOMMENDATIONS

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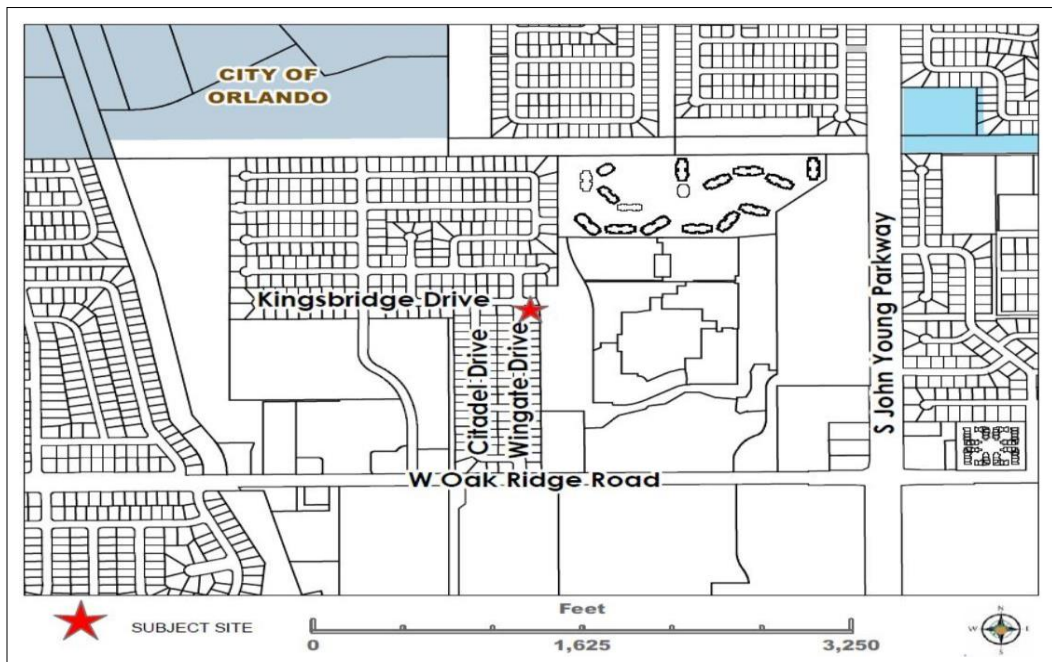
Approval, subject to the conditions in this report.

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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-1	R-1	R-1	P-D	R-1
Future Land Use	LDR	LDR	LDR	MDR	LDR
Current Use	Single-family residential	Single-family residential	Single-family residential	Vacant	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-1, Single-Family Dwelling District, which allows single-family homes and associated accessory structures on a minimum of 5,000 sq. ft. lots. The Future Land Use is Low Density Residential (LDR), which is consistent with the R-1 zoning district.

The subject property is a 0.18 acre lot, platted in 1965 as Lot 12 in Block C of the Laurel Park First Addition, and is a conforming lot of record. The property is located on the corner of Wingate Drive and Kingsbridge Drive and is developed with a 1-story, 2,819 gross sq. ft. single-family home and an unpermitted 836.8 sq. ft. shed. Based on aerials, the shed appears to have been installed in 2020. The frontage is considered Wingate Drive since it is the narrowest portion of the lot abutting a public street and the side street is Kingsbridge Drive. There is a 6 ft. utility easement that runs along the east side of the property, but is not affected by the variance request. The property was purchased by the current owner in 2009.

Beginning in 2020, several improvements were made to the property without permits, including a 17.7 ft. by 11.3 ft., 200 sq. ft. addition on the north side street of the home (Addition #1), and an 18.4 ft. by 11.4 ft., 209.7 sq. ft. addition at the rear of the home (Addition #2). Addition #1 is located 8.7 ft. from the north side street property line, in lieu of 15 ft., requiring Variance #1. Addition #2 is located 9.4 ft. from the east rear property line, in lieu of the 25 ft., requiring Variance #2. Currently there is a 52.3 ft. by 16 ft., 12 ft. high shed in the rear yard which is proposed to be removed since it encroaches into the 6 ft. utility easement. The proposal also includes a request to recognize the existing 1,366 sq. ft. home, constructed in 1965, with a 20.8 ft. east rear setback in lieu of 25 ft., requiring Variance #3. Furthermore, there is a fence that encroaches into the adjacent property to the east, which will be removed.

Code enforcement cited the property owner on November 21, 2019 (CE#: 559728) for work without permits. As of August 19, 2022, there is lien on the property in the amount of \$124,800, with fines of \$150 a day.

The existing location of the home in relation to the surrounding property line would render any addition or improvements to the property difficult without the need for variances. Staff recognizes that the requested Variance #1 for Addition #1 is appropriate since Kingsbridge Drive is the terminal end with no through



traffic. Further, the abutting property to the east has been approved to construct three to five story multi-family buildings, and as such the requested Variance #2 for Addition #2 will not be a detrimental intrusion and will not negatively impact that property. Additionally, the applicant proposes to remove the shed encroaching into the 6 ft. easement as well as remove the portion of the fence that encroaches into the adjacent property to the east.

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.	12.6 ft. (additions)
Min. Lot Width:	50 ft.	91.4 ft.
Min. Lot Size:	5,000 sq. ft.	7,912 sq. ft.

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

	Code Requirement	Proposed
Front:	25 ft.	27.2 ft. (West)
Rear:	25 ft.	9.4 ft. Addition #2 (East – Variance #2) 20.8 ft. residence (East – Variance #3)
Side:	6 ft.	9.9 ft. (South)
Side Street:	15 ft.	8.7 ft. Addition #1 (North – Variance #1)

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## STAFF FINDINGS

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### VARIANCE CRITERIA

#### Special Conditions and Circumstances

The special conditions and circumstances particular to the subject property is the location of the existing home in relation to the property lines, built in 1965, which renders any addition or improvements difficult without the requested variances.

#### Not Self-Created

The request is not self-created since the owners have no options available to modify or relocate the additions to meet code requirements. Also, the owners are not responsible for the location of the existing home in relation to the rear property line.

#### No Special Privilege Conferred

Granting the requested variances will not confer any special privilege conferred to others under the same circumstances since meeting the literal interpretation of the code would prohibit any additions due to the

location of the home in relation to the surrounding property line. Additionally, it appears there are homes in the surrounding area with similar rear setbacks as the subject property.

**Deprivation of Rights**

Without approval of the requested variances, the owners will be deprived of the ability to keep the existing residence as constructed or the additions. Denial would also deprive the owners of the use of an existing house that has been in the same location since 1965.

**Minimum Possible Variance**

The request is the minimum possible to continue enjoyment of the existing residence and existing improvements.

**Purpose and Intent**

Approval of the requested variances 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 most impacted property to the east will be a multifamily property that will not be impacted by the request.

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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the boundary survey and elevations received June 28, 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 for the existing additions within 180 days 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 issuance of a permit for the additions, the shed and the portion of the fence that encroaches onto the adjacent property shall be removed.
- C: Eugene Marise  
5795 Wingate Drive  
Orlando, FL 32839



**COVER LETTER TO THE BOARD OF VARIANCE ADJUSTMENT DEPARTMENT**

I am, **Marise Eugene**, the present owner  
**5705 Wingate Dr. Orlando FL 32839**  
**Parcel ID# 21-23-29- 4995-03-120**

To:

Orange County Variance Division  
201 South Rosalind Avenue, 1st floor  
Orlando FL 32801

**Variance Application cover letter**

This cover letter is for a variance from the requirements to keep an existing outdoor kitchen, 2 existing extensions to the as built house, and the remodeling front porch bought as built to be approved for this address:

When I purchased the property, Porch, extensions, and outdoor kitchen were already built to the house, which totalized 40.5 feet extension to the left side and 38.7 to the right side.

**Side setback 8.7' in lieu of 15'**

**Rear setback 9,4' in lieu of 25'**

So, I am requesting 15 feet for the rear left side setback for the extension to the already "As Built "And 6 feet for the front left side set back

A 25 feet setback must be available, but the previous owner went farther. Fortunately, there will be no loss or deprivation of rights by any other property in the same zoning district. The location of the requested variance is not affecting, hurt or harm the public welfare or neighborhood. Matter fact, my neighbors who lives right on my side on Kingsbridge or across on Wingate have some adding similar to mine who has a big family also. This is not a nuisance to them.

I believe this request meets the six standards for variance approval outlined below:

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## COVER LETTER

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Therefore, I am requesting Variance in the R-1 zoning district to allow a 200sq ft addition to the rear side of the existing house to the already built a family room, with a 9.4 ft rear setback in lieu of 25 ft.

Variance in the R-1 zoning district to allow a 200 sq ft addition to the left side of the existing house to relocate the existing kitchen, with 8.7 ft side street setback in lieu of 15 ft.

### **SPECIAL CONDITIONS AND CIRCUMSTANCES**

My residence falls into the R-1 district category, which allows a 25ft rear setback and 15 ft side street setback. The property was bought as built and there are some improvements need to be made.

The existing kitchen is in a very limited space and obsolete, and there's not enough room from the living room to the existing kitchen to cook for the extended family who usually come to visit or spend time together. Also, the ancient house does not allow enough space to allow a playroom, by according to keep this built place that we called a playroom will do a lot good to the grand-children.

### **NOT SELF-CREATED**

We are just proposing to make some improvements to the existing conditions to it more livable and be able to accommodate the extended family. The additions are not conflicting with any neighbors, we are locating at the end corner of the street, at the back of an abandoned site where no one will affect by this change.

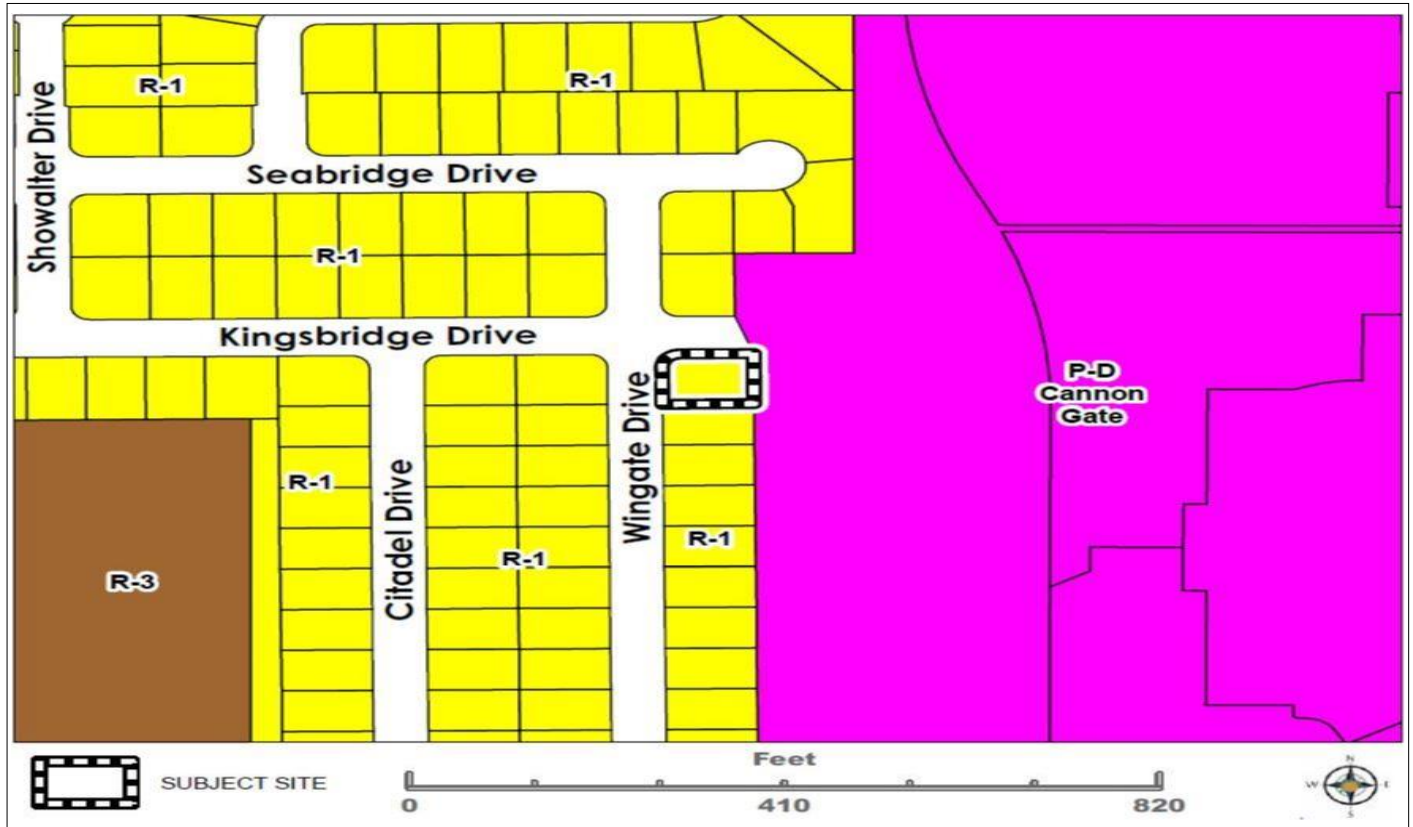
### **NO SPECIAL PRIVILEGED CONFERED**

Granting the variance for these two additions would not confer any special privilege. This is a unique situation where this property is located will arm or act a detrimental intrusion into the surrounding area.

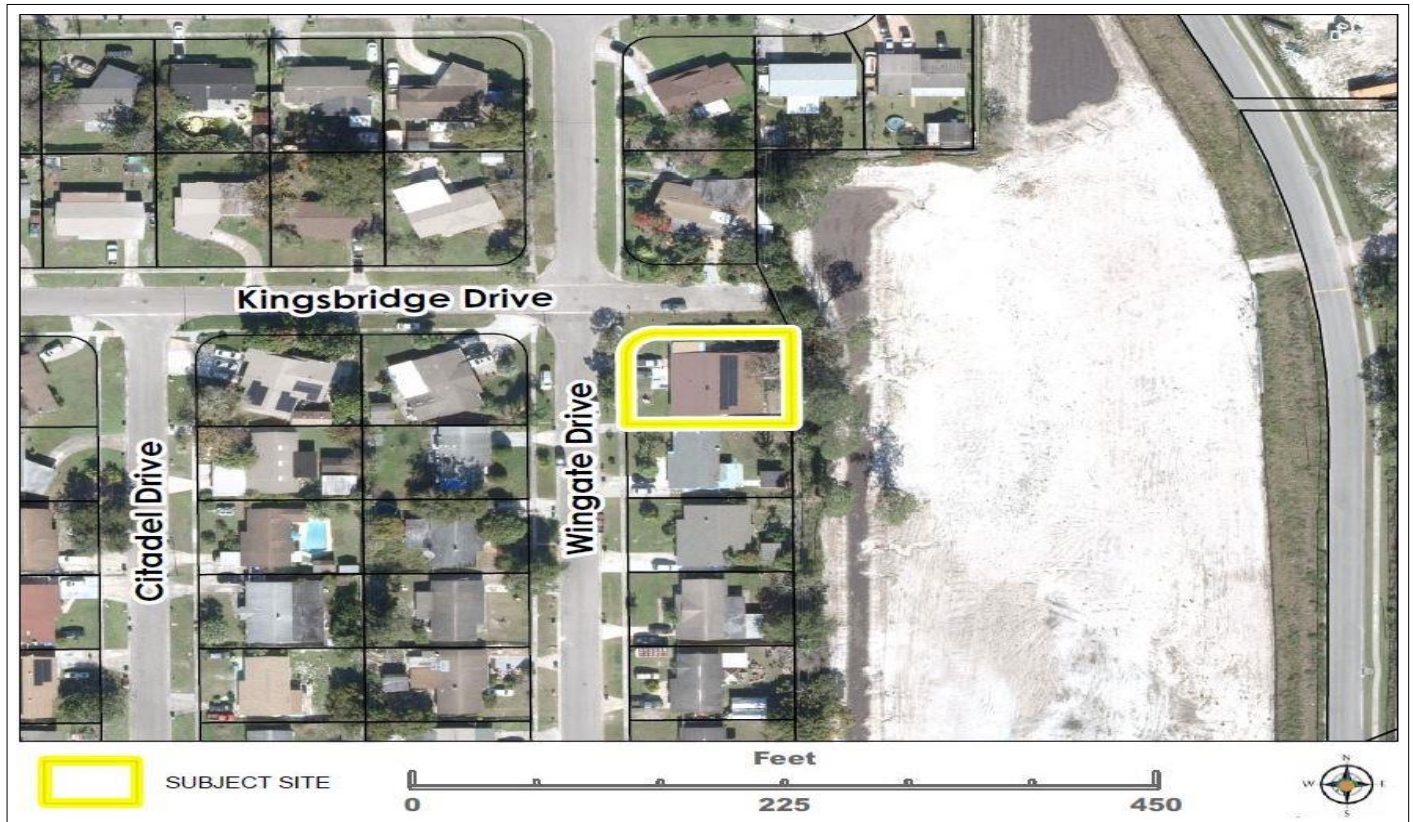
### **DEPRIVATION OF RIGHTS**

The project will be part of the existing house, the kitchen is to be accessible from the dining room, and the playroom will be a living space, accessible from the hallway. There is no intention to build to develop or violate any restrictions. it not be used as other than the permitted uses.

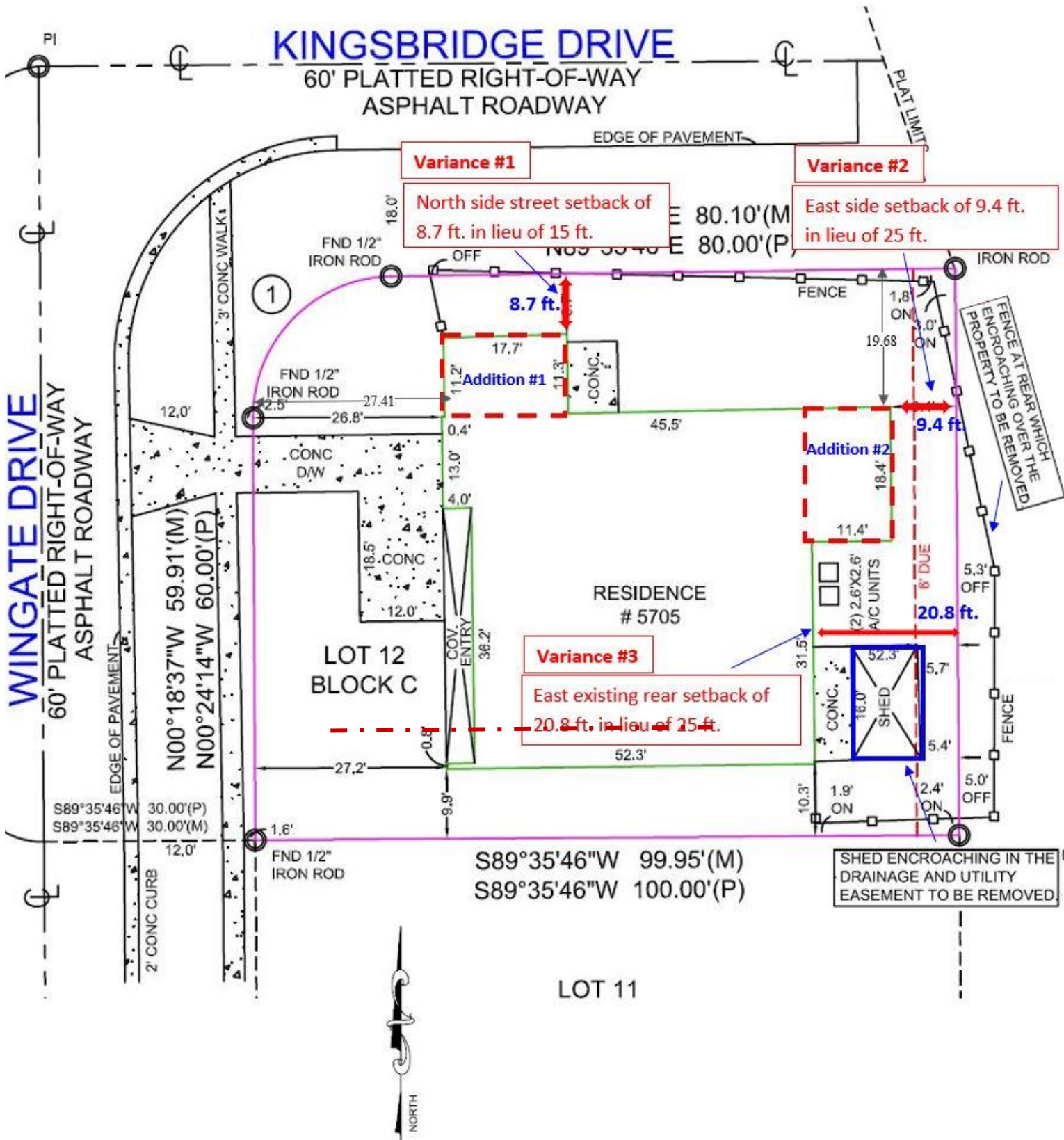
## ZONING MAP



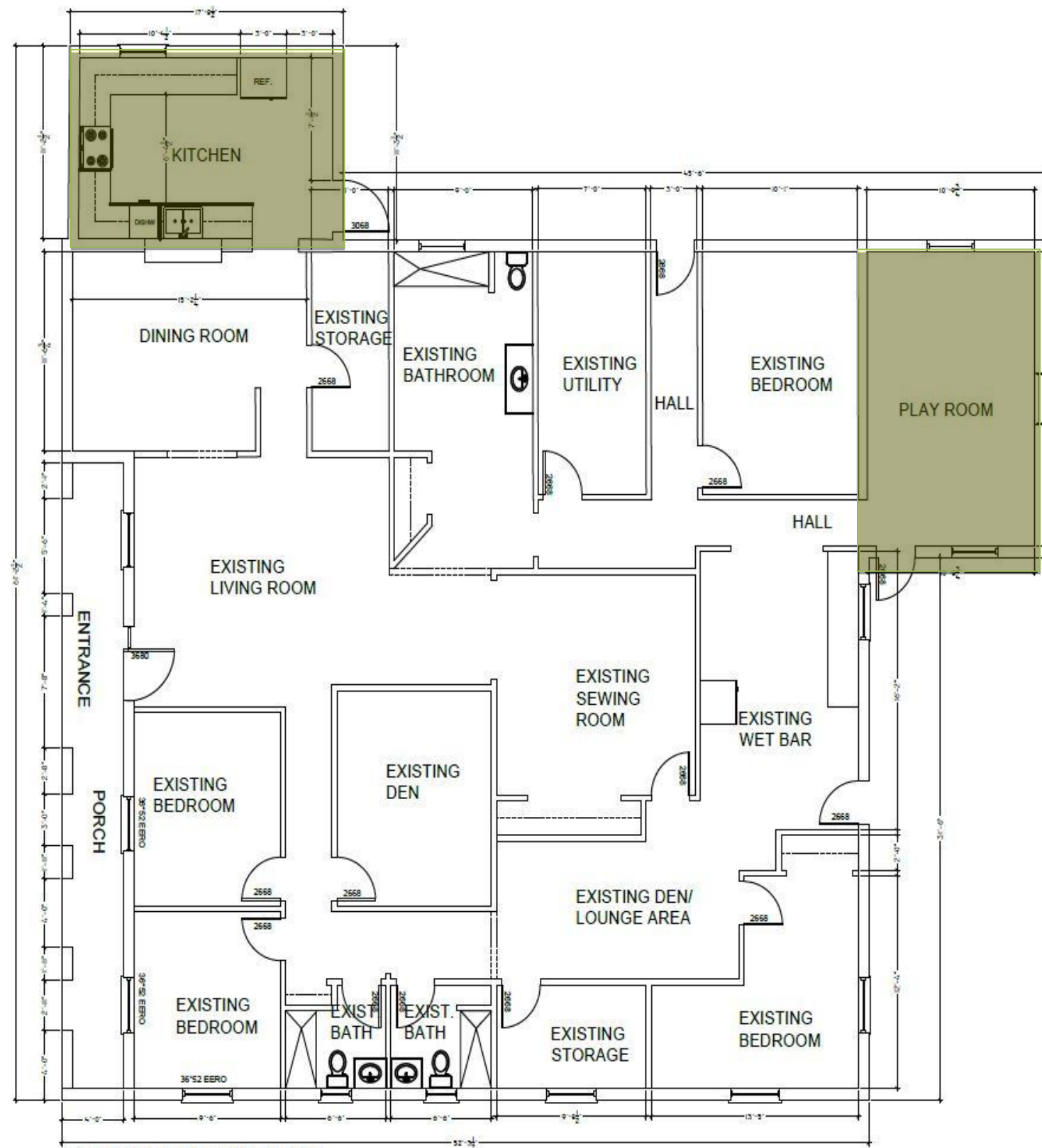
## AERIAL MAP





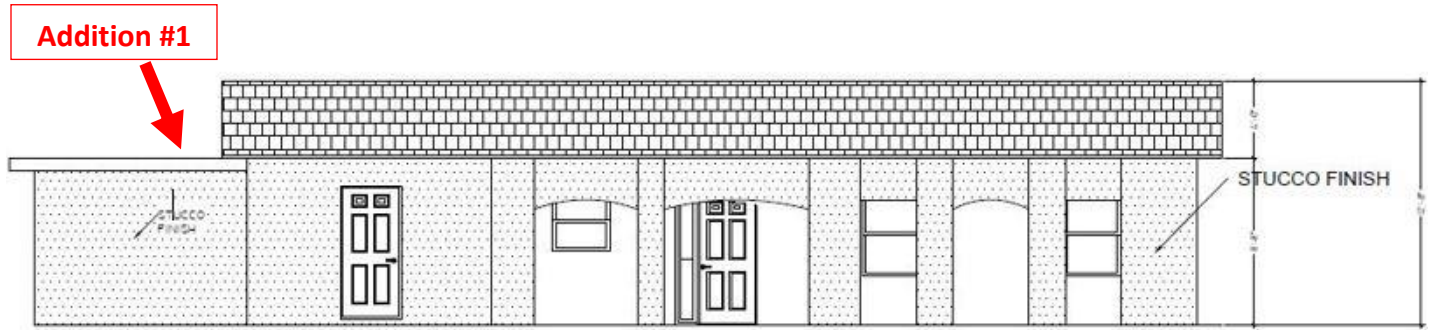


**FLOOR PLAN**

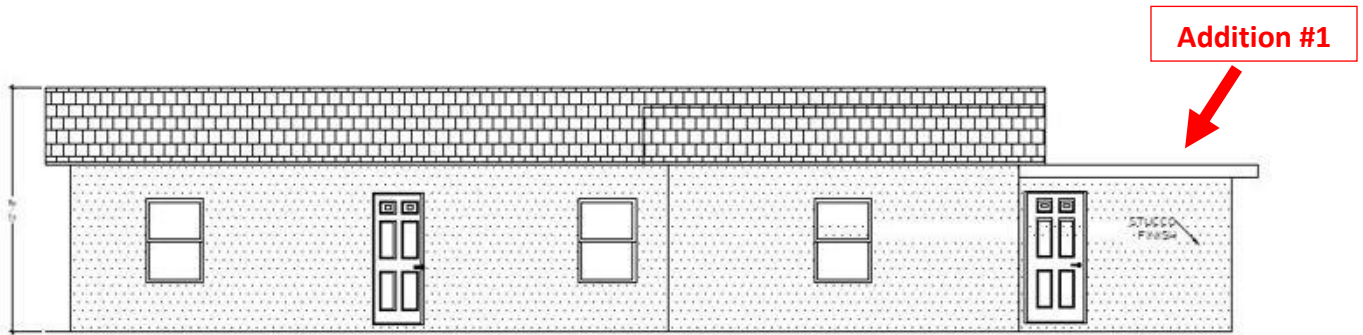


AS-BUILT FLOOR PLAN  
SCALE: 1/8" = 1'-0"

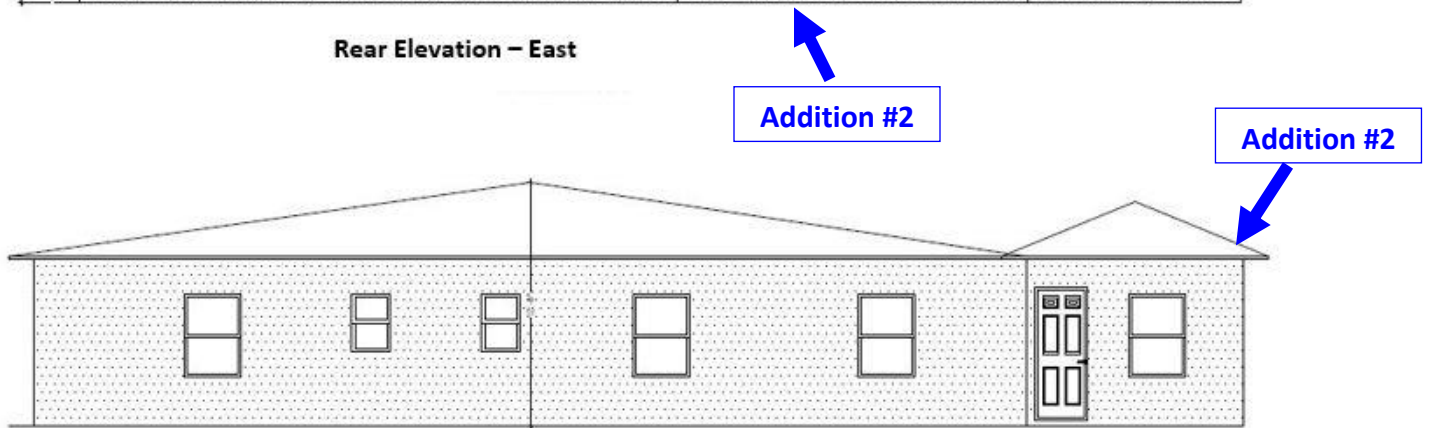
## ELEVATIONS



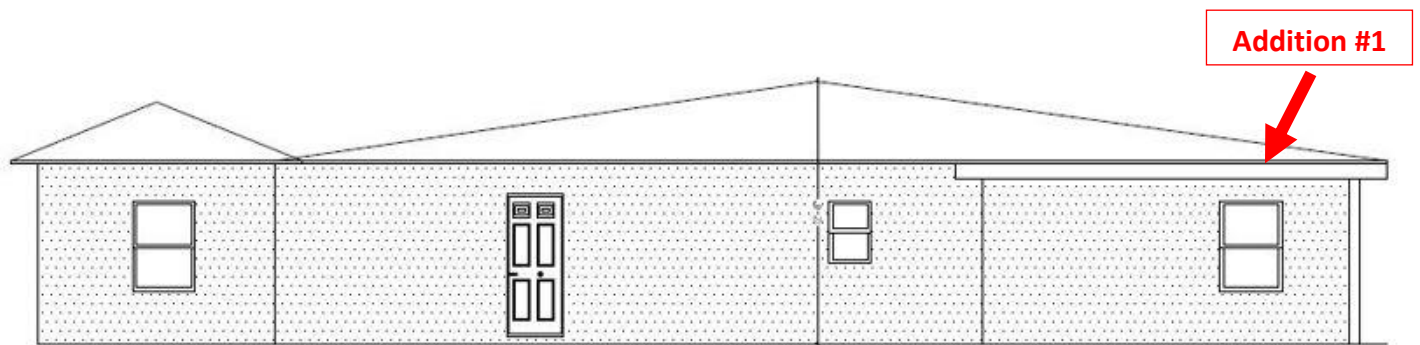
Front Elevation – West



Rear Elevation – East



Right Elevation – North



Left Elevation – South

Addition #2



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**SITE PHOTOS**

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**Facing east from Wingate Dr. towards front of subject property and Addition #1**



**Facing southeast from corner of Wingate Dr. and Kingsbridge Dr. towards subject property**



## SITE PHOTOS



Facing east from Wingate Dr. towards the eastern end of Kingsbridge Dr.



Rear yard, facing north towards rear of shed (foreground) and Addition #2 (background)



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**SITE PHOTOS**



**Rear yard, facing east towards side of Addition #2**



**Rear yard, facing west towards side Addition #1**



SITE PHOTOS



Rear yard, facing north towards existing rear of residence



Rear yard, facing southeast towards rear portion of fence encroaching adjacent property

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEP 01, 2022**  
Case #: **VA-22-09-083**

Commission District: **#2**  
Case Planner: **Jenale Garnett (407) 836-5955**  
**Jenale.Garnett@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): EDNERT THOMAS

OWNER(s): DAVID FRITZ

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

- 1) To allow a lot width of 25 ft. in lieu of 50 ft.
- 2) To allow a lot area of 2,745 sq. ft. in lieu of 5,000 sq. ft.
- 3) To allow a north side setback of 3 ft. in lieu of 6 ft.
- 4) To allow a south side setback of 3 ft. in lieu of 6 ft.

PROPERTY LOCATION: 3776 Glover Ln., Apopka, FL 32703, west side of Glover Ln., north of McCormick Rd., east of Ocoee Apopka Rd., west of S.R. 429.

PARCEL ID: 29-21-28-6640-26-180

LOT SIZE: +/- 0.06 acres (2,745 sq. ft.)

NOTICE AREA: 500 ft.

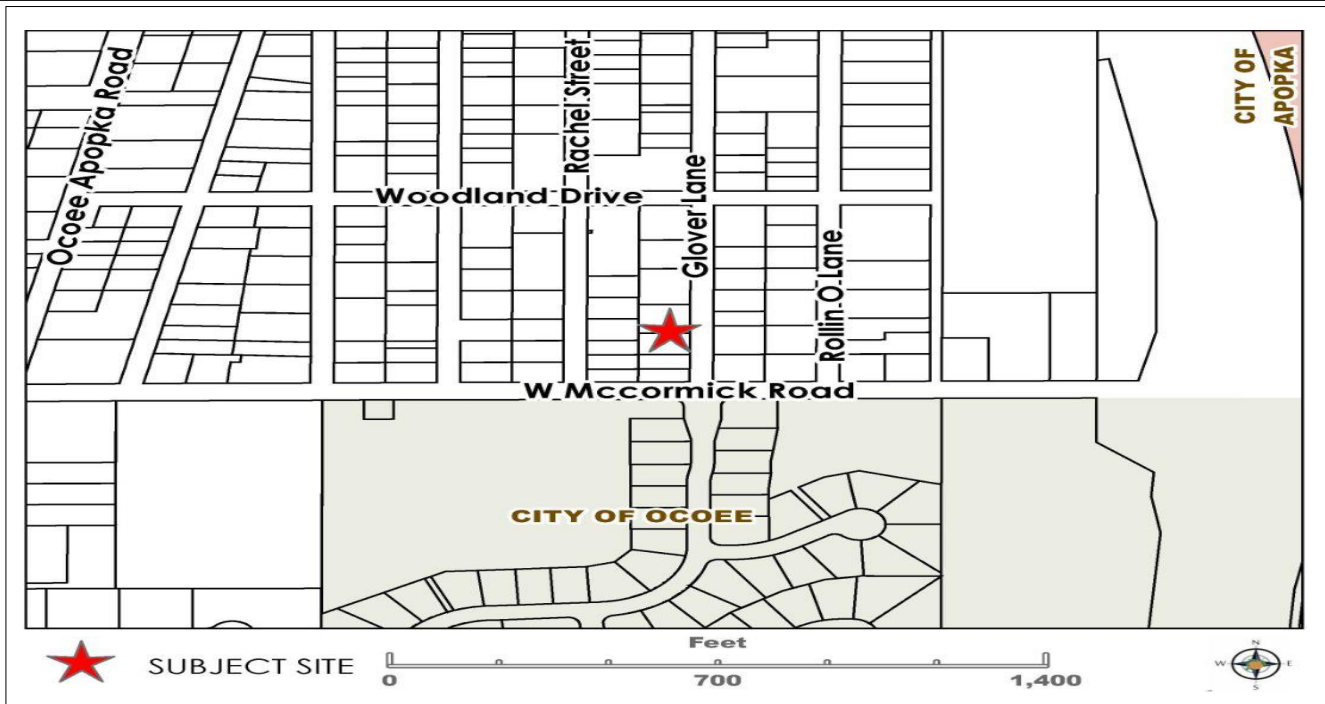
NUMBER OF NOTICES: 88

**DECISION:** **CONTINUED** at the request of the applicant

## 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	R-1	R-1	R-1	R-1	R-1
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-1, Single-Family Dwelling District, which allows single-family homes and associated accessory structures and requires a minimum lot area of 5,000 square ft. The Future Land Use is Low Density Residential (LDR), which is consistent with the R-1 zoning district.

The property is located in the Paradise Heights 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, they typically have little impact on the development of individual residential properties, as is the case for this request, which is not impacted by the Paradise Heights Rural Settlement.

The area surrounding the subject site consists of single-family homes. The subject property is a vacant 0.06 acre lot with the exception of a concrete pad for parking, platted in 1926 as Lot 18 in Block 26 of the Paradise Heights Subdivision. The subject property was under the same ownership as the parcel to the south (Parcel # 29-21-28-6640-26-190) from 1988 to 2021, which then were sold separately. The current owners acquired the property in March 2022.

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. As stated previously, since the lot was under common ownership with an adjacent one, it cannot be considered to be a substandard lot of record, and Variances are required for the lot width and lot size. The lot is 25 feet wide, but the R-1 zoning district requires a minimum lot width of 50 ft., requiring Variance #1, and 2,745 sq. ft in size but the R-1 zoning district requires a minimum lot area of 5,000 sq. ft., requiring Variance #2.

The applicant is proposing to construct a 1,236 gross sq. ft., 26.8 ft. high two-story single-family home. The proposal meets the east rear and west front setbacks required by the R-1 zoning district, as well as the 1,000 sq. ft. of minimum living area. However, due to the narrow width of the lot, a 3 ft. north side setback and 3 ft. south side setback is proposed in lieu of 6 ft., requiring Variances #3 and #4. The proposed 3 ft. south side setback is applicable to the bay window only, while the setback for the remaining portion of the house on



the south meets the 6 ft. setback requirement. The surrounding properties appear to meet the lot width standards and the side setback standards, presumably as a result of the increased lot width. Whereas, the subject property is a single lot that is smaller in width in comparison to the lots in the surrounding area.

The Orange County Comprehensive Planning Division reviewed the request and determined the R-1 zoning classification is consistent with the LDR FLUM designation and the Paradise Heights Rural Settlement per Comprehensive Policy FLU8.1.1.

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.	26.8 ft.
Min. Lot Width:	50 ft.	25 ft. (Variance #1)
Min. Lot Size:	5,000 sq. ft.	2,745 sq. ft. (Variance #2)

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

	Code Requirement	Proposed
Front:	25 ft.	25 ft. (East)
Rear:	25 ft.	25 ft. (West)
Side:	6 ft.	3 ft. (North – Variance #3) 3 ft. (South – Variance #4)

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### **STAFF FINDINGS**

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#### **VARIANCE CRITERIA**

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

The special conditions and circumstance particular to the subject property is that it will be undevelopable without the variances for lot width and size, and renders any house design difficult without the need for side setback Variances.

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

The owners are not responsible for the existing lot configuration or the combination of the lots through ownership. Therefore, the substandard aspects of the lot are not self-created.

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

Granting the variances will not establish special privilege since there are other properties in the area developed with single-family homes.

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

Without approval of the requested variances, the owners will be deprived of the ability to construct a residence on the parcel.

**Minimum Possible Variance**

The requested variances are the minimum necessary to construct a house on the property. The lots to the north and south are already developed with a single-family home, so there is no possibility of acquiring additional land to meet the code requirements.

**Purpose and Intent**

Approval of the requested variances 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 requests will not be detrimental to the neighborhood since the design of the house as proposed is meeting the minimum living area requirement, and the architectural design is compatible with 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 August 15, 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: Ednert Thomas  
2121 Hammock Moss Drive  
Orlando, FL 32820

C: David Fritz  
1018 Alder Tree Drive  
Apopka, FL 32703



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## COVER LETTER

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August 15, 2022

To whom it may concern:

I, Ednert Thomas, as agent for Fritz David, owner of property 3776 Glover Lane, Apopka FL 32703.

As you will see the use of this lot will be consistent with the comprehensive Policy plan as shown by architect engineer Theodore F Weppelmann. The use of this residential lot will be in harmony with the surrounding area and will be consistent with the pattern of surrounding development as proposed by the architect engineer. The Architect Engineer has proposed a structure for the site plan that would not cause a detrimental intrusion into the surrounding area as shown on the site plan and attached picture. The variance request to use 3 feet side setback au lieu 6 feet side setback for swale consideration , only 3 foot short for side setback will not cause any prejudice to anyone as proposed by the architect engineer. The proposed structure would allow us to enjoy the same rights other neighbors enjoy in the neighborhood while respecting the zoning division. The proposed structure will have minimum possible variance due to the fact we are only requested 3 feet north and 3 feet South side setback au lieu 6 feet side setback, and allow the 25 Feet wide au lieu 50 feet wide, in the meantime, we will maintain all setbacks: 25 feet front setback, 25 feet rear setback, 28'-10" feet height and total living area 1140 square footage. We will maintain all other setbacks requested by the zoning division. As shown on the attached floor plan the structure will be 19 feet by 59'-8" feet. Our main goal is to develop this residential lot which has water, electricity available and road access to the property as soon as possible.

Please find the following documents attached:

1. Signed survey of the lot
2. Signed site plan by Architecture Engineer Theodore with elevations
3. Picture of the proposed structure
4. Variance requests
5. Detail of floor plan

Sincerely,

Ednert Thomas

Ednert Thomas

407 459-3771

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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 use will be consistent with the comprehensive policy plan.

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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 use will be similar and compatible with the surrounding area and will be consistent with the patten of surrounding development.

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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.

The use will not act as a detrimental intrusion into the surrounding area.

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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.

The use will meet performance standards of the district in which the lot is located.

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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 use will be similar characteristics that are associated with the majority of uses currently Permitted in the zoning district.

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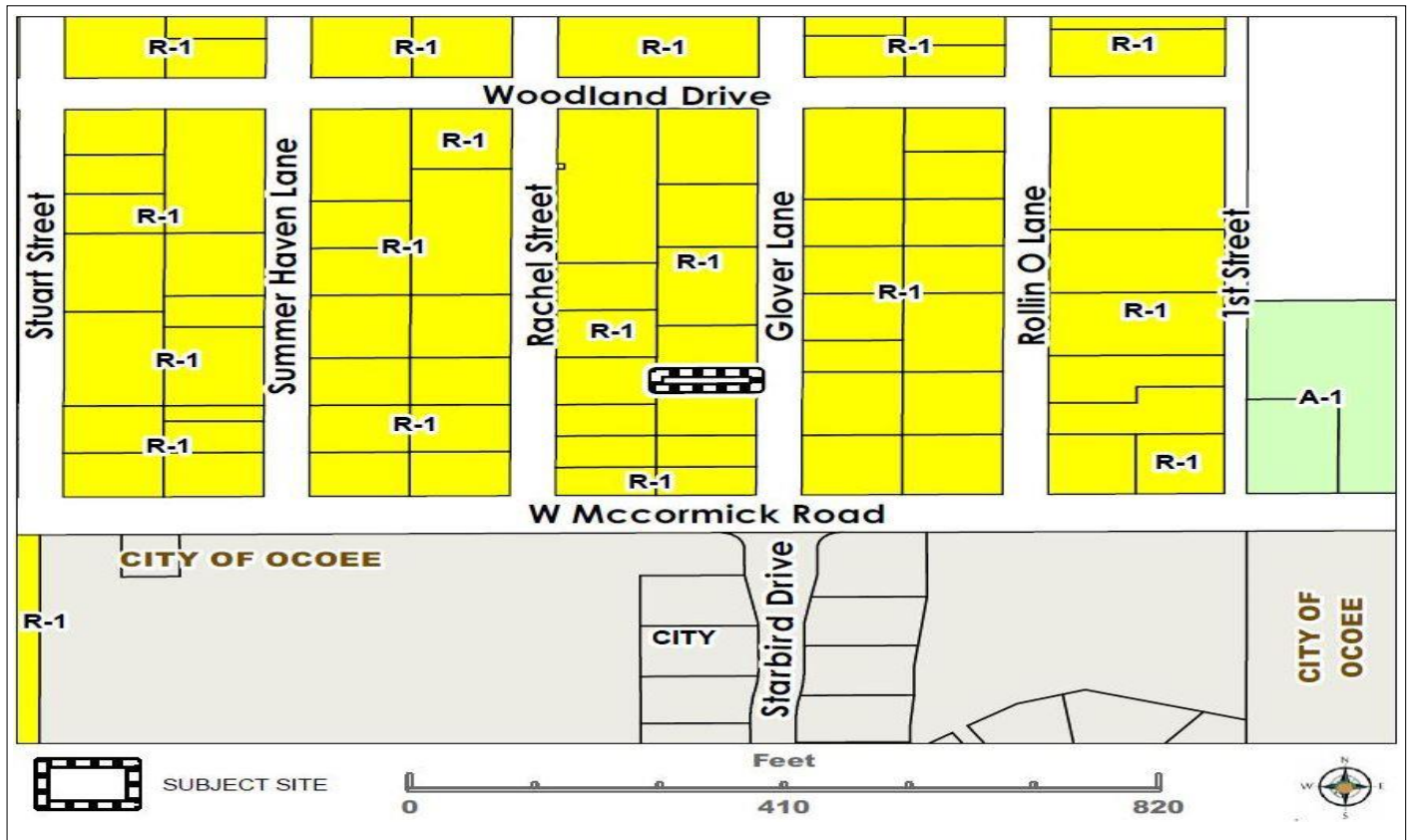
6. **Purpose and Intent** - Approval of the zoning variance will be in harmony with the purpose and intent of the Zoning Regulations and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The landscape buffer yards will be in accordance with Orange County Code and the buffer yard types will track the district in that area the use is permitted.

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## ZONING MAP



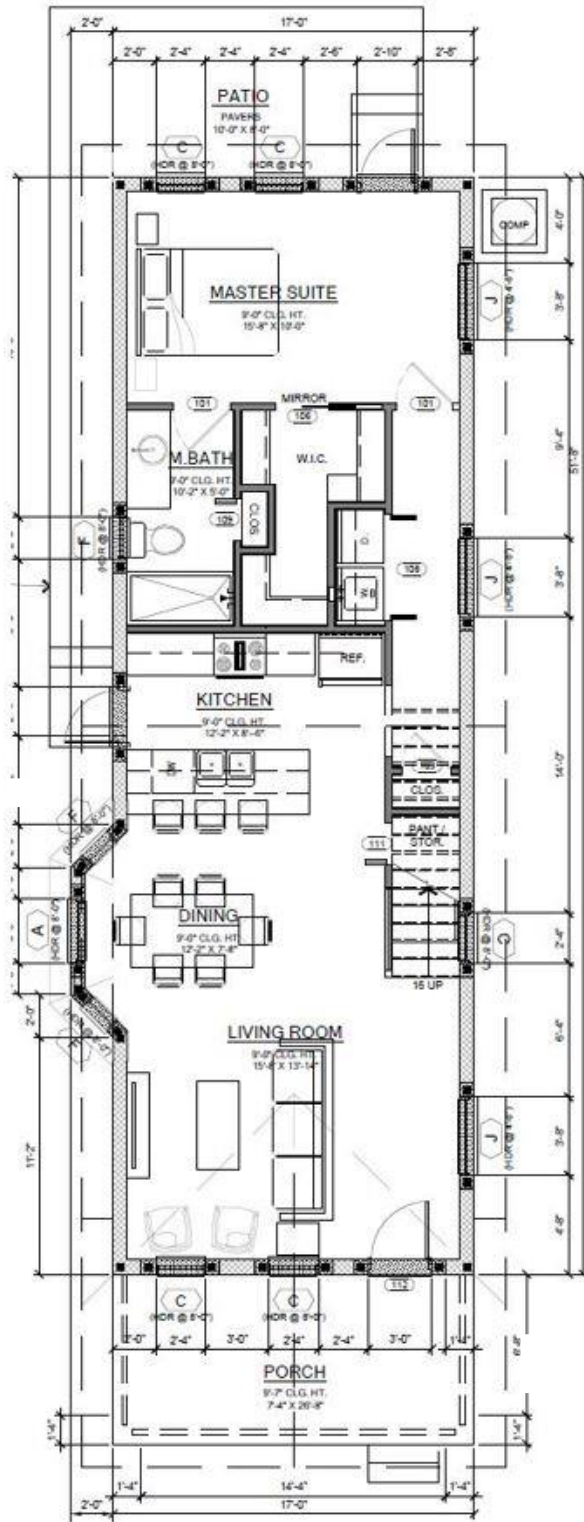
## AERIAL MAP







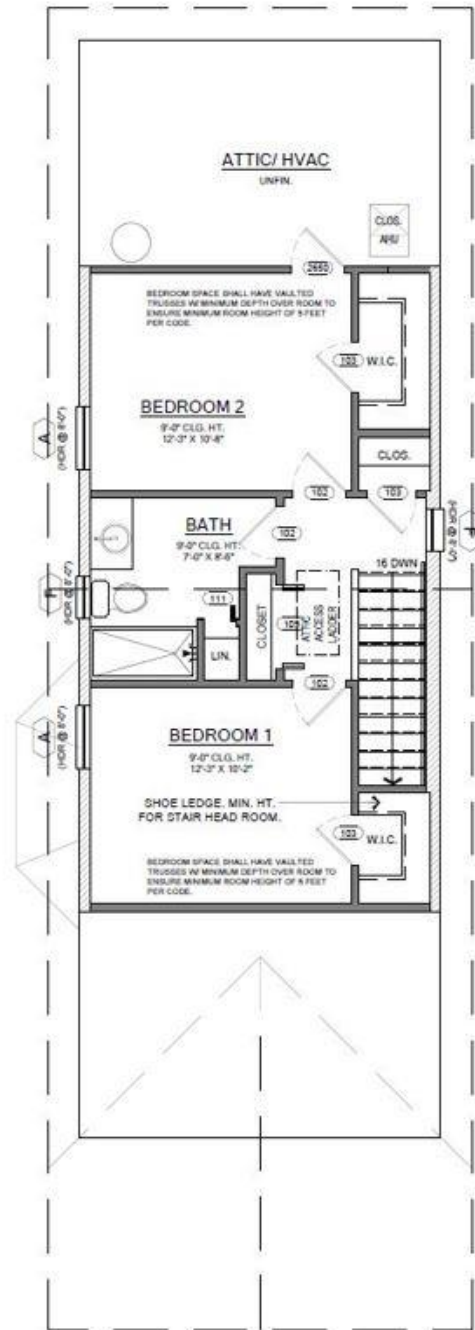
# FLOOR PLAN



## FIRST FLOOR

688 SFT UNDER AIR  
 120 SFT COVERED PORCH  
 80 SFT REAR PATIO  
 TOTAL FOOTPRINT: 975

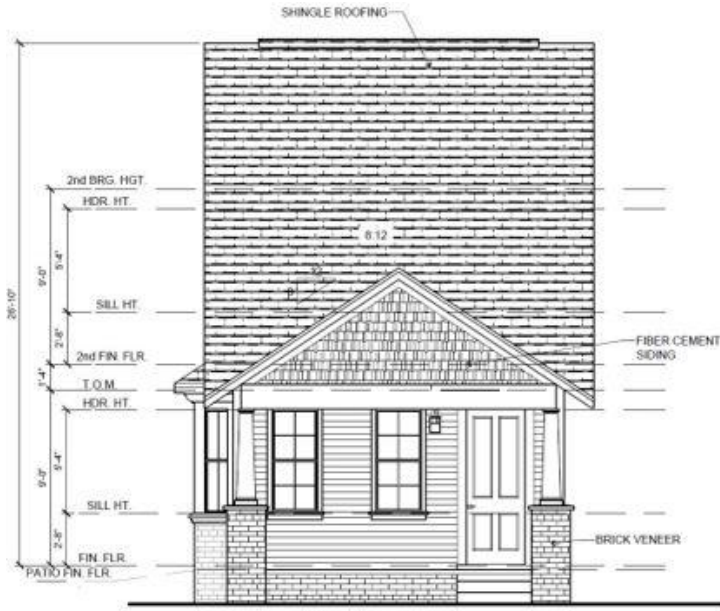
SCALE: 1"=20'



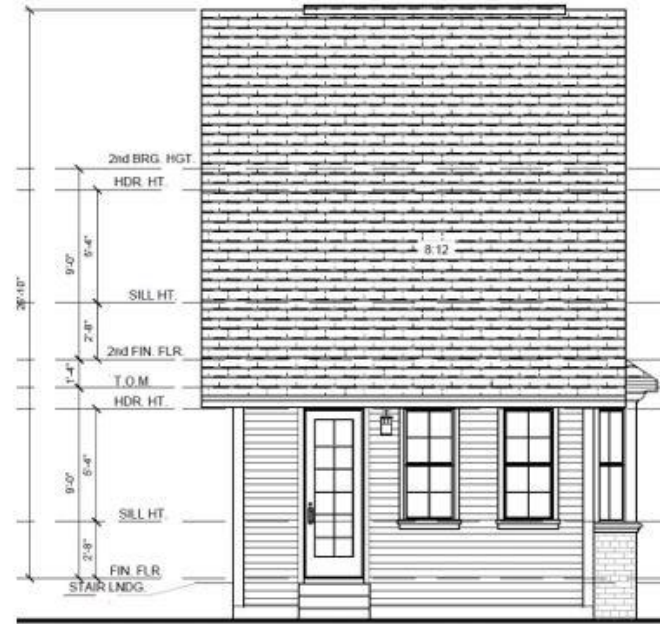
## SECOND FLOOR

428 SFT UNDER AIR

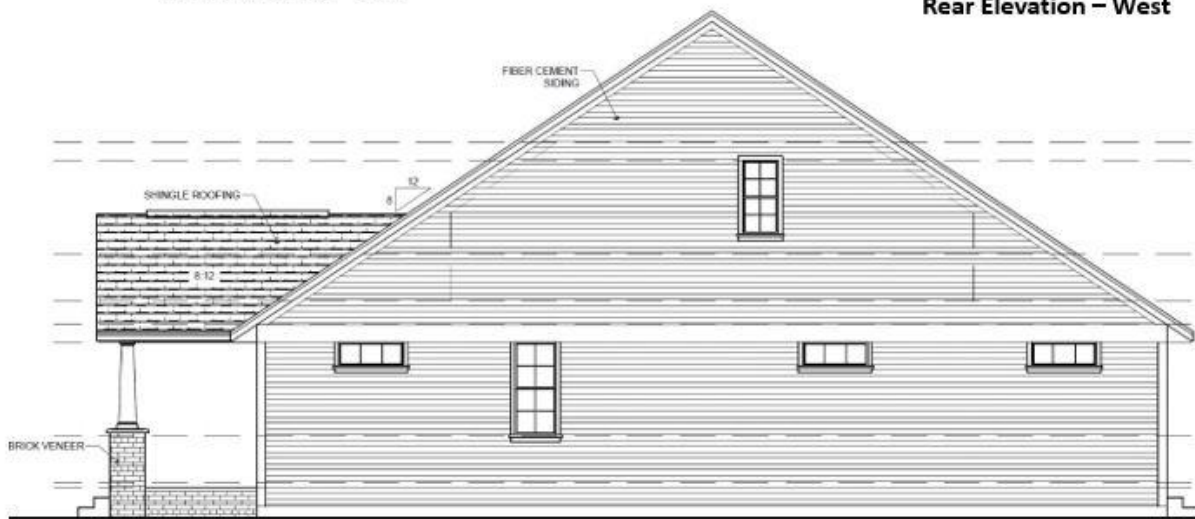
## ELEVATIONS



**Front Elevation – East**



**Rear Elevation – West**



**Right Elevation – North**



**Left Elevation – South**



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**SITE PHOTOS**



**Facing west towards front of subject property**



**Facing east from existing fence towards Glover Lane**



## SITE PHOTOS



**Rear yard, facing northwest towards rear of property**



**Rear yard, facing east towards proposed new residence**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#1**

Case #: **VA-22-09-087**

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

**Jenale.Garnett@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): MAHMUDUL ALAM

OWNER(s): MAHMUDUL ALAM, SUNJIDA ALAM

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

- 1) To allow a 6 ft. high masonry wall in the front yard in lieu of 4 ft. high.
- 2) To allow a 6 ft. high masonry wall with 6 ft. high gates within the clear view triangle.

PROPERTY LOCATION: 8180 Darlene Dr., Orlando, FL 32836, south side of Darlene Dr., north side of Lake Crowell, east of S. Apopka Vineland Rd., west of Interstate 4, north of Daryl Carter Pkwy.

PARCEL ID: 03-24-28-0000-00-012

LOT SIZE: +/- 1.34 acres (+/- 0.7 acres upland)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 108

**DECISION:** Recommended **APPROVAL** of the Variance request #1 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 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). (Motion by Thomas Moses, Second by Deborah Moskowitz; 6 in favor: Thomas Moses, John Drago, Deborah Moskowitz, Joel Morales, Charles Hawkins, II, Roberta Walton Johnson; 0 opposed; 1 abstained: Juan Velez):

1. Development shall be in accordance with the site plan and fence specifications received June 7, 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 minimum of 50 percent transparent opaque gate shall be provided.\*

\*The BZA's decision pertained to the opaqueness of the gate, not the wall. The recommended condition was modified to remove the words "wall and".

**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 of the variances. Staff noted that no comments were received in favor of the application, and one (1) was received in opposition.

The applicant discussed the need for the requested Variances for security and noted the similar walls and gates in the surrounding area, including the property located directly adjacent to the proposal.

There was one (1) in attendance to speak in favor of the request and noted along the Darlene Drive there are similar height of fences and walls. There was no one in attendance to speak in opposition to the request.

The BZA discussed Variance #1 and the rationale for the requested wall height and discussed Variance #2 and the concerns about the location of the wall and gate in the clear view triangle, noted the safety concerns with the proposal located in close proximity to the street and a curvature in the road, determined that there are other alternatives to meet the clear view triangle, and unanimously recommended approval of Variance #1 and denial of Variance #2 by a 6-0 vote, with one abstention, subject to the four (4) 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.

## LOCATION MAP



## SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	R-1AA	R-1AA	Lake Crowell	R-1AA	R-1AA
Future Land Use	LDR	LDR	Lake Crowell	LDR	LDR
Current Use	Single-family residential	County Retention Pond	Lake Crowell	Single-family residential	Single-family residential

## BACKGROUND AND ANALYSIS

### DESCRIPTION AND CONTEXT

The subject property is located in the R-1AA, Single-Family Dwelling district, which allows single-family homes and associated accessory structures on lots a minimum of 10,000 sq. ft. or greater. The Future Land Use is Low Density Residential (LDR), which is consistent with the R-1AA zoning district.

The area around the subject site is comprised of single-family homes, many of which are lakefront, and a retention pond to the north. The subject property is an unplatted 1.34 acre lot, of which +/- 0.7 acres is upland, that was created by a lot split in 2002 (LS #2002-001). The remainder of the parcel is either wetland or submerged property under Lake Crowell. The property meets the minimum lot standards of the R-1AA zoning district. It was purchased by the current owners in February 2021, who are constructing a two story 7,782 gross sq. ft. single-family home (B22007591) that complies with all zoning requirements, including setbacks.

Proposed is the installation of 649 linear ft. of a 6 ft. high masonry wall along the front property line, with a 6 ft. high gate, in lieu of 4 ft. high, requiring Variance #1. Per Sec. 38-1408 of Orange County Code, fences in residential districts are limited to maximum height of 4 ft. in the front yard setback, unless abutting a collector or arterial right-of-way. Darlene Drive is considered a local road.

The proposed 6 ft. high masonry wall with a 6 ft. high gate encroaches into the clear view triangle, requiring Variance #2. Per Sec. 38-1408 (b), "a fence of any style or material shall maintain a clear view triangle from the right-of-way line for visibility from driveways on the lot or on an adjacent lot. The clear view triangle area for a driveway is formed on each side of a driveway by measuring a distance of fifteen (15) feet along the right-of-way and fifteen (15) feet along the edge of the driveway."

The subject property is located prior to a curve in Darlene Rd. and a 6 ft. high masonry wall in the front yard could obstruct the view of motorists. Furthermore, there is a 5 ft. sidewalk that runs along the front of the property and a 6 ft. high opaque wall and gate, especially within the clear view triangle, is a safety concern. The company constructing the wall has provided one option that would eliminate the need for the clear view triangle variance request, however a variance is still being requested. A permit, F22009847, to install the 6 ft. high masonry wall is on hold pending the outcome of this request.

Comparatively, the home to the immediate west of the subject property received a variance in October 2007 to construct a 6 ft. high wall along the front property line in the R-1AA zoning district. However, the code was amended in 2016 to require a clear view triangle for visibility concerns. There are no other properties in the vicinity that have been granted variances for the clear view triangle.

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**

There are no special conditions and circumstances, as a masonry wall could be constructed to meet the requirements of the code since there are other options available.

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

The need for the variances are self-created since security fencing or walls could be constructed in a manner which would not impair sight distance visibility and safety of pedestrians.

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

**Variance #1:** Granting the variance as requested would not confer special privilege as the property to the immediate west has an approved variance for a similar request.

**Variances #2:** Granting this request would confer special privilege since there are no other similar requests approved within the area.



**Deprivation of Rights**

There is no deprivation of rights as the residence under construction could be enjoyed without the need for the proposed height and location of the masonry wall with gates.

**Minimum Possible Variance**

The requested variances are not the minimum possible, as the applicant could relocate or modify the improvements requested to a conforming height and location.

**Purpose and Intent**

Approval of the variance will not be in harmony with the purpose and intent of the zoning regulations. The proposed masonry will be detrimental to the neighborhood due to the curve on Darlene Rd. and can have a negative impact on the safety of motorists and pedestrians. Further, the wall and gates within the clear view triangle could significantly block the view of pedestrians/cyclists along the sidewalk.

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**CONDITIONS OF APPROVAL**

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1. Development shall be in accordance with the site plan and fence specifications received June 7, 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 minimum of 50 percent transparent opaque wall and gate shall be provided.
- C: Mahmudul Alam and Sunjida Alam  
8180 Darlene Drive  
Orlando, FL 32836

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COVER LETTER

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Dear Orange County Zoning Division,

I, Mahmudul Alam of 8180 Darlene Dr. Orlando, FL 32836 (Residence) would like to apply for a "Variance" approval for 6' Fence and Entry gate over the standard 4' allowance.

Variance in a single-family home, zone to construct 6' high wall along Front, Side and Back of the property line of Darlene Drive instead of a 4' high wall. Along with a Front, Side, and Back entry gate of 6' allowance, please.

My next-door neighbor at 8196 Darlene Dr has a 6' wall and 6' high front entry, and side gates. Their application was approved for a 6' fence and entry gates back in 2007.

I have my elderly parents and 2 kids will be residing at the property. Front of the home runs into the main road hence for their safety and security, I am applying for this variance application.

I have submitted all related forms that were part of this application process. Hoping to get your approval, soon. Here are the names of my 2 contractors who are insured and licensed:

Florida Wall Concepts & American All Secure Gates and Fence, LLC.

Note: Attached below is the approval that was given to my next-door neighbor.

Sincerely,

Mahmudul Alam  
8180 Darlene Dr  
Orlando, FL 32836  
(571) 289-3739



## 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.

I have elderly Parents & 2 kids Under 8 years old residing with me at the Property therefore I am Requesting 6' Fence & Entry Gate Allowance, please. Also My next Door Neighbor has 6' Fence & Entry Gates.

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.

I am requesting this for my family's safety & protection due to Elderly Parents & children residing at the property. Few neighbors in the community also have 6' Fence & Gates.

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.

Most of my neighbors in the community have 6' Fence & Entry Gates. This is for the safety of my family.

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.

Main Reason for the 6' Fence and Entry Gate is for my family's safety and well being of my Elderly Parents. My next door neighbors have same 6' Fence & Gate Entry.

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.

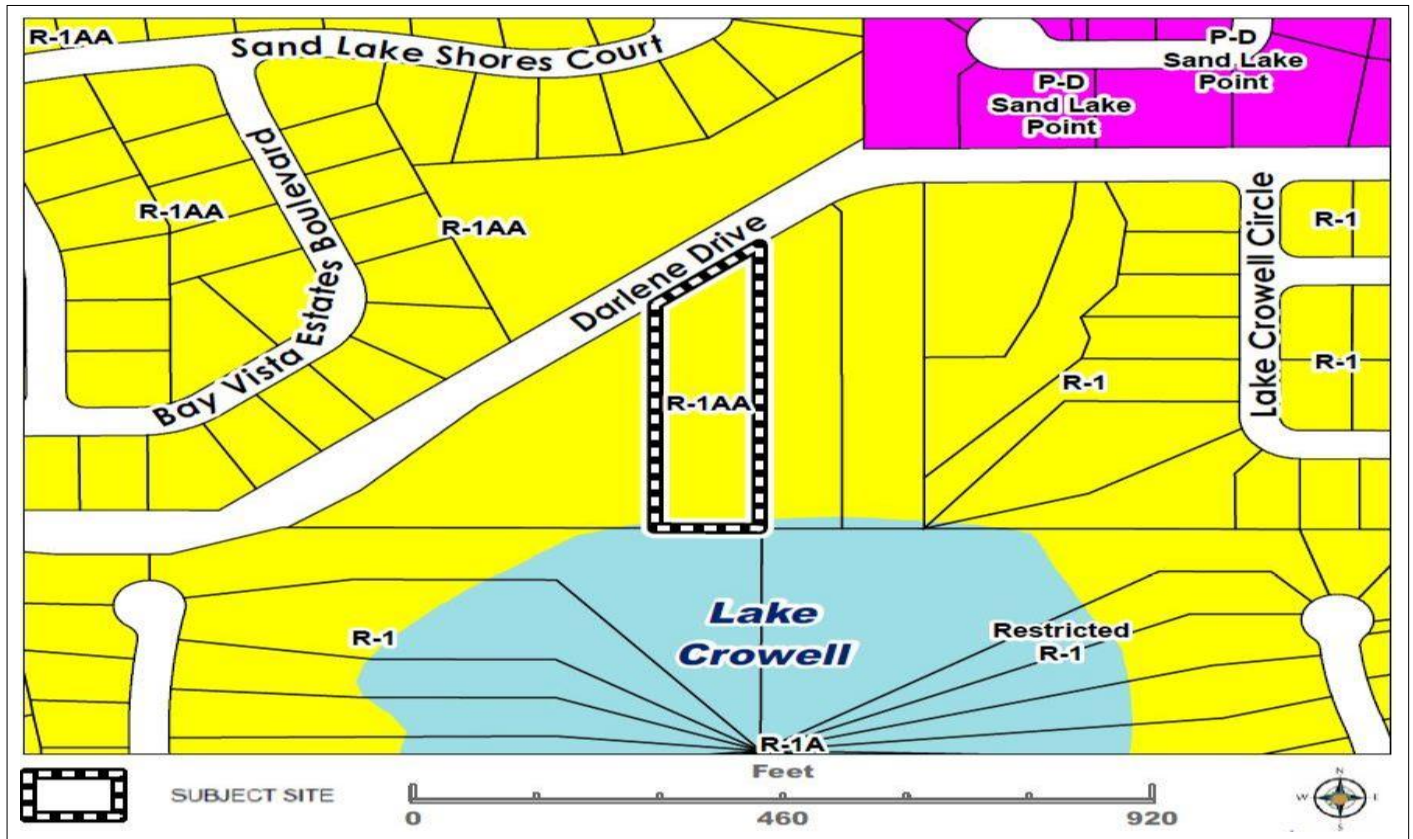
Requesting 6' Fence and Gate Entry For the safety of my young ~~children~~ children & Elderly Parents

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.

6' Fence & Gate will be very similar to my next door neighbors fence & Gate. This is for the safety of my family.



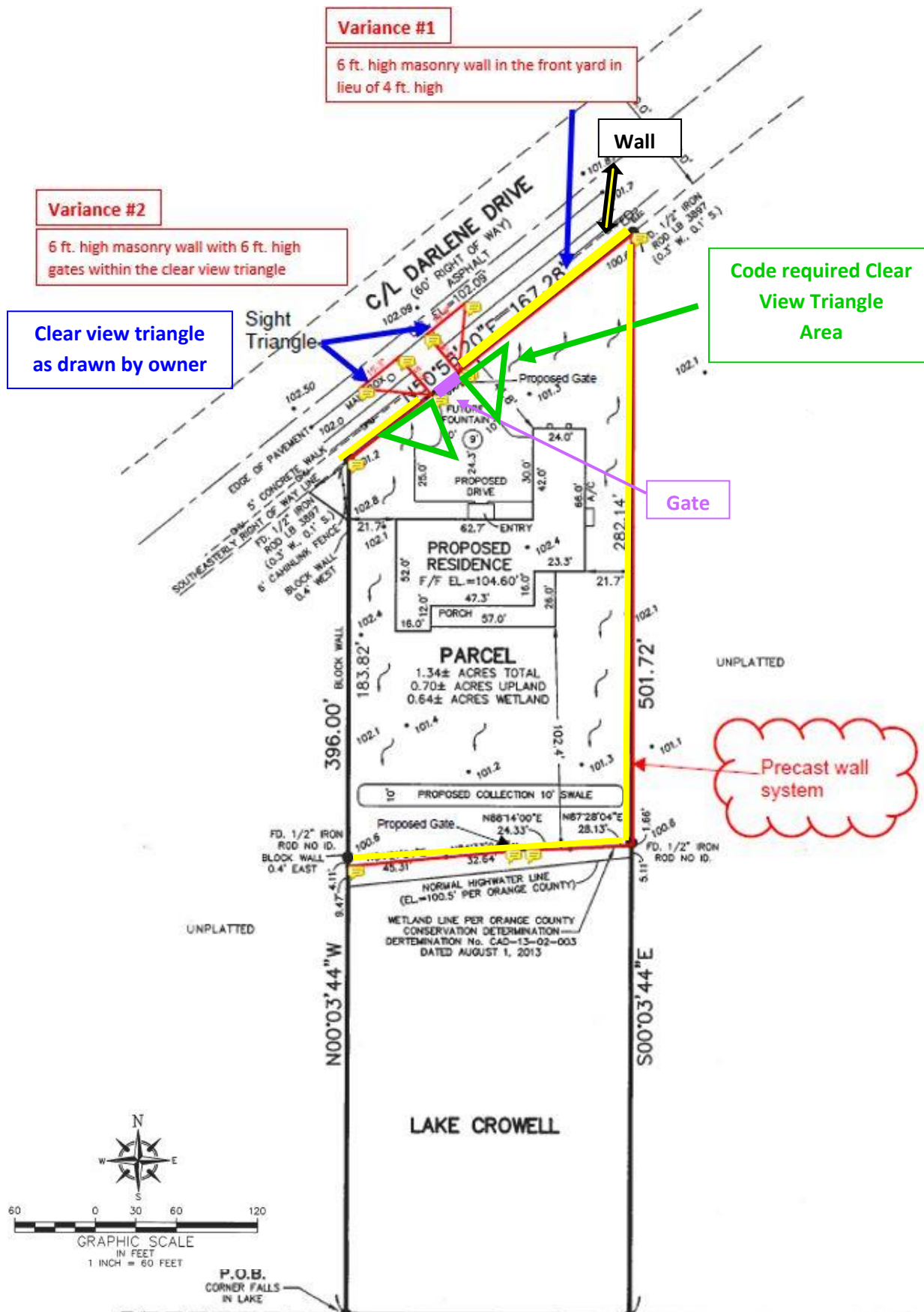
## ZONING MAP



## AERIAL MAP

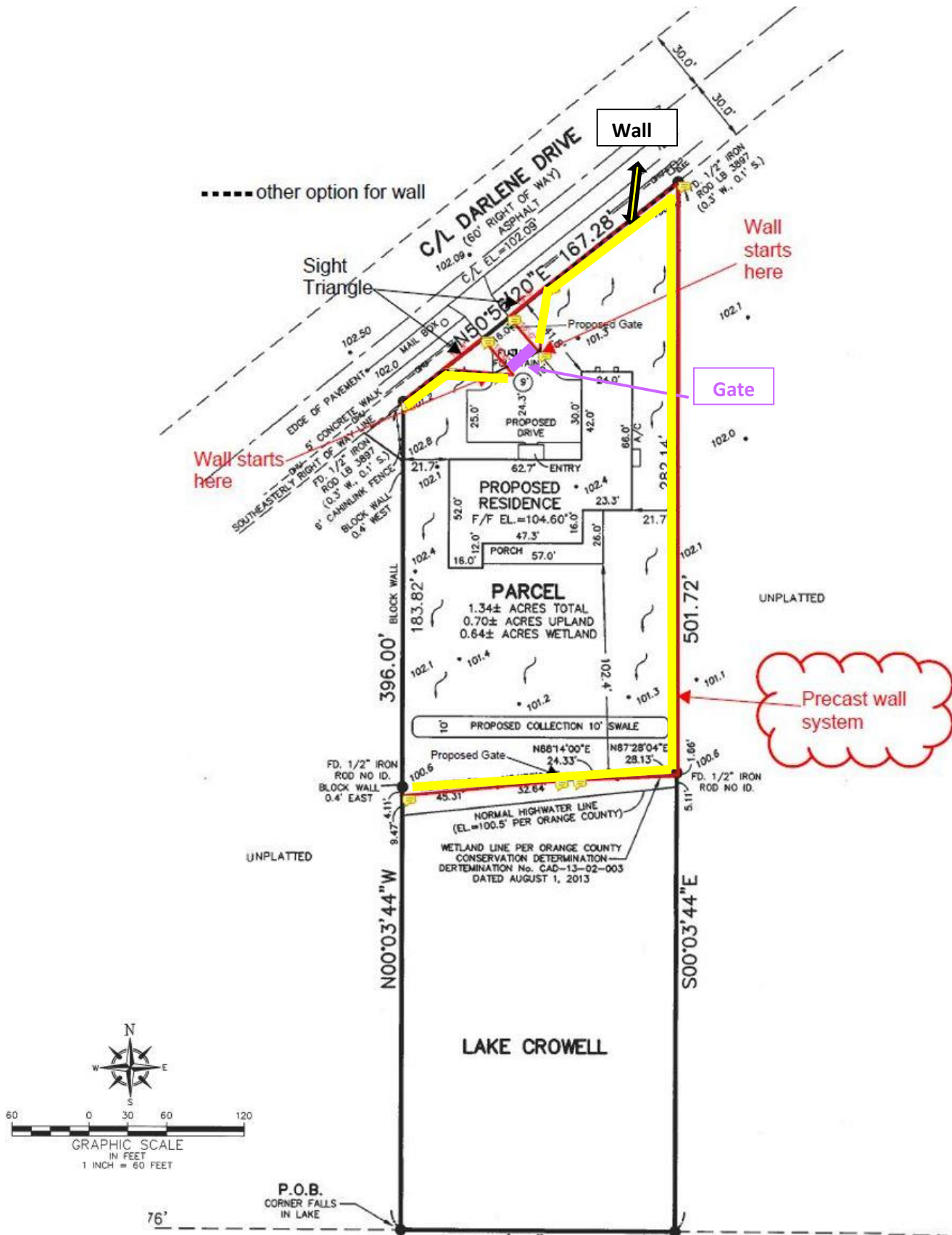


## SITE PLAN



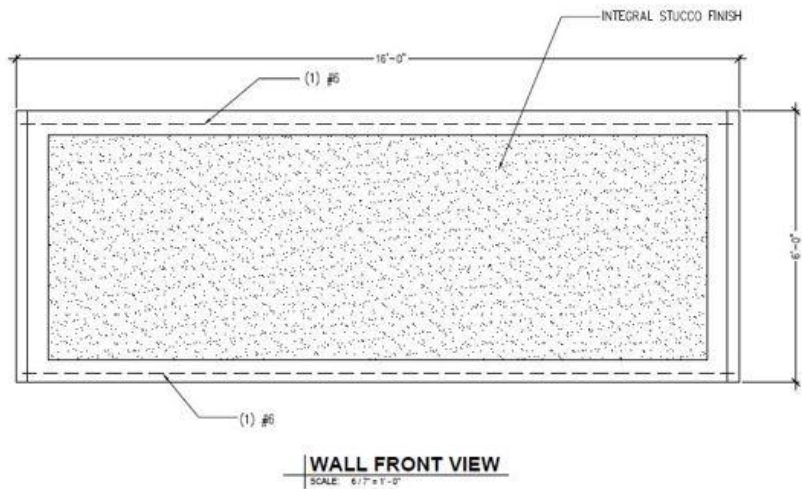
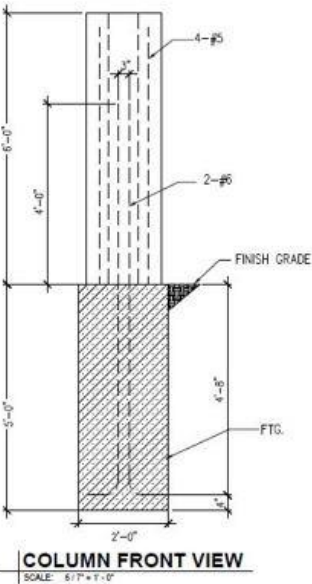
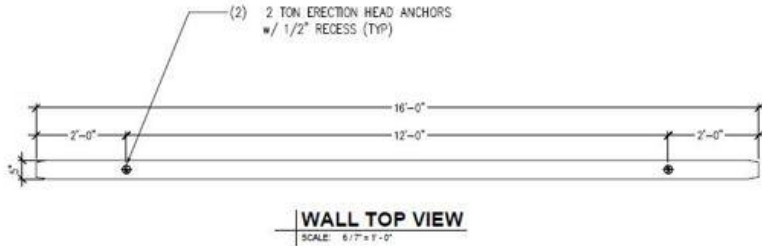
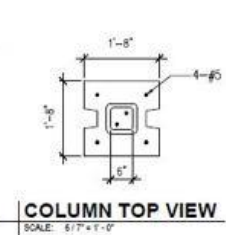


# ALTERNATIVE WALL AND GATE LOCATION PROVIDED BY CONTRACTOR

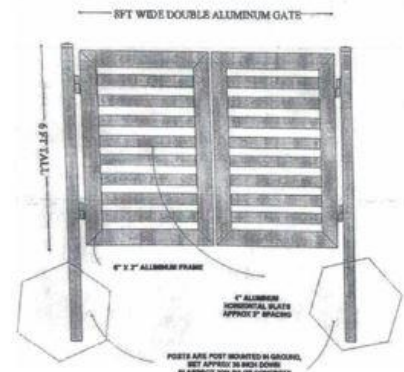
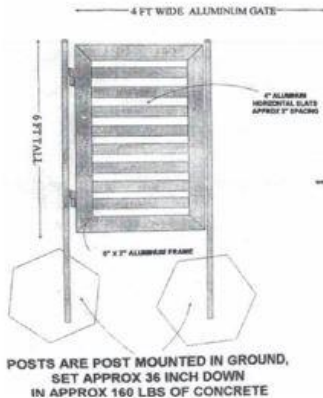
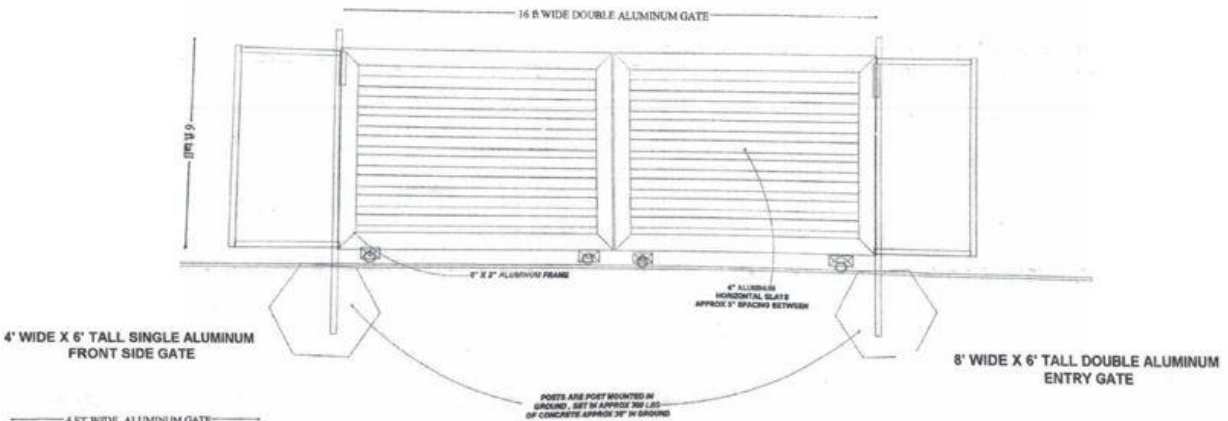




# PROPOSED WALL AND GATE



## 16' WIDE X 6' TALL DOUBLE ALUMINUM FRONT ENTRY GATE



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## SITE PHOTOS

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**Facing south towards front of subject property**



**Facing southeast towards location of proposed front wall and gate**



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**SITE PHOTOS**

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**Facing west from Darlene Dr. towards proposed front wall and gate**



**Facing west from Darlene Dr. towards adjacent property**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#5**

Case #: **VA-22-09-098**

Case Planner: **Jenale Garnett (407) 836-5955**  
**Jenale.Garnett@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): PATRICIA ORTIZ FOR WASH CITY

OWNER(s): 7651 UNIVERSITY BLVD LLC

REQUEST: Variance in the C-1 zoning district to allow the new construction of a carwash with a north rear 10 ft. setback in lieu of 20 ft.

PROPERTY LOCATION: 7651 and 7701 University Blvd., Winter Park, FL 32792, north side of University Blvd., east of N. Goldenrod Rd., south of Aloma Ave., west of S.R. 417.

PARCEL ID: 02-22-30-8803-00-020; 02-22-30-8803-00-030

LOT SIZE: +/- 1.48 acres

NOTICE AREA: 700 ft.

NUMBER OF NOTICES: 99

**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 (Motion by Joel Morales, Second by Roberta Walton Johnson; unanimous; 7 in favor: Thomas Moses, John Drago, Juan Velez, Deborah Moskowitz, Joel Morales, Charles Hawkins, II, Roberta Walton Johnson; 0 opposed):

1. Development shall be in accordance with the site plan received May 20, 2022, and elevations received May 9, 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. Prior to the issuance of a building permit, the property owner shall combine parcels 02-

22-30-8803-00-020 and 02-22-30-8803-00-030.

5. Prior to the issuance of the permit for the carwash an encroachment agreement will need to be obtained or vacate the easement.
6. The carwash shall comply with Section 15-183, Orange County Code Chapter 15 Environmental Control, Article V Noise Pollution Control, Section 15-182 Maximum permissible sound levels.

**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. Staff noted that no comments were received in favor of the application, and one (1) was received in opposition.

The applicant presented the rationale for the wider drive aisles than the Code minimum requirements in order to provide greater maneuvering area for the cleaning of larger vehicles in work station spaces and not for general parking spaces. Also discussed was the adjacent undeveloped tract to the north and the distance to the closest residences and how the proposal meets all performance standards, setbacks and utility requirements.

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

The BZA discussed the requested Variance, noted the retention areas and drainage requirements, the rationale for the requested extended drive aisle width and unanimously recommended approval of the Variance by a 7-0 vote, subject to the six (6) conditions in the staff report.

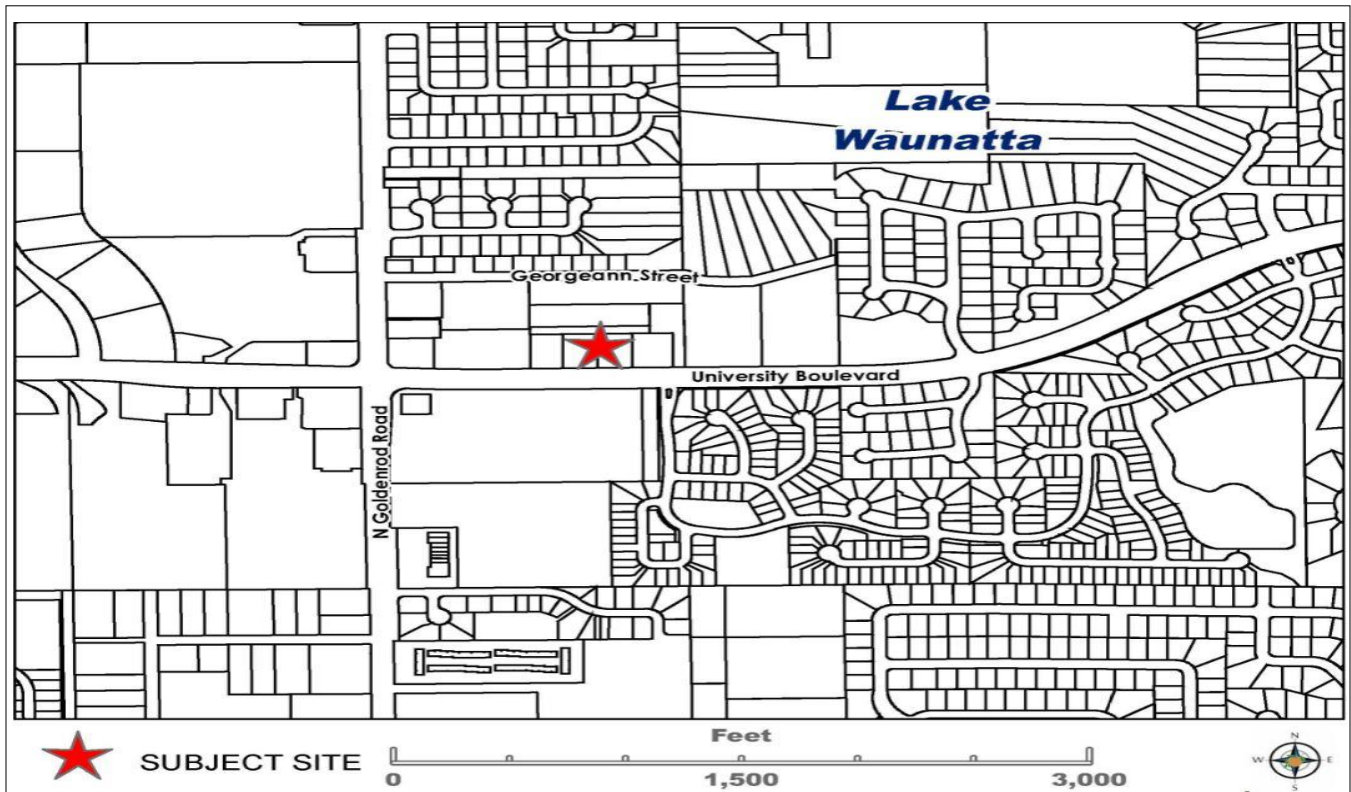
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#### **STAFF RECOMMENDATIONS**

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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.

## LOCATION MAP



## SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	C-1	C-1	C-1	C-1	C-1
Future Land Use	C	C	C	C	C
Current Use	Retail Fast Food, Carwash	Retention Area	Retail	Tire Dealer	Auto Repair

## BACKGROUND AND ANALYSIS

### **DESCRIPTION AND CONTEXT**

The subject property is located in the C-1, Retail Commercial district, which allows for restaurants, retail stores, offices and various other commercial businesses. Car washes are permitted by right in the C-1 district subject to additional requirements, or through the Special Exception process if one or more of the requirements is not met. The Future Land Use is Commercial (C), which is consistent with the C-1 zoning district.

The subject site is comprised of 2 parcels, totaling approximately 1.48 acres in size, Lot 2 (parcel 02-22-30-8803-00-020) and Lot 3 (parcel 02-22-30-8803-00-030) of the University Commercial Subdivision, recorded in 1998. The property consists of a vacant Sonic Drive-In restaurant building and a vacant carwash operation, and separately each parcel is considered to be a conforming lot of record. There is a 25 ft. utility easement that runs along the south front of the property, and a retention pond to the north. The area



consists of a tire center to the east, car service to the west, and the Uni Gold Shopping Center to the south. The owner purchased Lot 2 in 2021 and Lot 3 in 2022.

In December 2000, the BCC approved a Special Exception (SE-19-12-139) for the use of a free-standing carwash on Lot 3, subject to the following conditions:

1. Development in accordance with site plan dated October 13, 2000 and all other applicable regulations;
2. Landscaping shall be in accordance with landscape plan dated September 22, 2000;
3. Only one (1) monument sign shall be permitted for this project. Maximum height shall be limited to 12 feet and copy area shall be in accordance with Section 31.5-15, Orange County Code;
4. Light poles shall be limited to 10 feet in height;
5. Roof design and building materials shall be in accordance with site plan dated December 7, 2000.

The current proposal is to demolish both buildings and all existing improvements on the cumulative parcel area, for the new construction of a one-story automated carwash with a 5,890 sq. ft., 22.1 ft. high building, located 10 ft. from the rear property line, where 20 ft. is required, which is the subject of this variance request. The proposed site improvements will include three payment kiosks along the eastern property line leading to a drive-thru vehicle washing station, a 34 stall self-serve vacuum court, and 12 vehicle prep spaces.

As proposed, the carwash meets the following performance standards, Sec. 38-79 (38) of the Orange County Code, and therefore does not require a Special Exception:

- a. Hours of operation shall be limited from 6:00 a.m. to 10:00 p.m.;
- b. The equipment shall be on timers and shall be shut down before and after the hours of operation listed above;
- c. A six (6) foot high masonry wall or PVC fence shall be constructed along any property lines abutting single family residential uses or zoning; and
- d. A security system shall be installed to include electronic cameras, with signs posted notifying patrons of the security cameras.

Parking requirements for the subject property are as follows:

- General business establishments (carwash): 5,890 sq. ft., at 1 parking space per 300 sq. ft., requiring 20 spaces.
- The site currently has a total of 51 paved spaces (27 vacuum stalls, 10 vehicle prep spaces, 10 flex spaces, 1 handicap space, and 3 staff spaces), exceeding the parking requirements per Orange County Code Sec. 38-1476 for quantity of off-street parking for general business establishments.

The site plan shows drive aisles in the parking areas that are significantly wider than the minimum 22 ft. width required, at 30 ft. and 24.5 ft., and provides more than double the parking spaces required by code. Since this is new construction, the internal circulation could be modified to meet code requirements by reducing both drive aisle widths to the Code minimum 22 feet, and/or reduce the amount of parking provided, which is significantly more than code requires. With the reduced drive aisle widths, and/or the

removal of a row of parking, the building could easily be shifted 10 ft. to the south, which would eliminate the need for a Variance Since the proposed parking area located adjacent to University Boulevard encroaches the 25 ft. utility easement, per recommended Condition #5, prior to the issuance of the permit for the carwash, an encroachment agreement will need to be obtained or the easement will need to be vacated.

The Orange County Environmental Protection Division for Air commented that a “permit is required to submit a Notice of Asbestos Renovation (with asbestos survey) and Demolition at least 10 days prior to any regulated activity”; and for Noise commented the carwash will have to comply with Section 15-183, Orange County Code Chapter 15 Environmental Control, Article V Noise Pollution Control, Section 15-182 Maximum permissible sound levels.

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.	22.1 ft.
Min. Lot Width:	75 ft.	300 ft.
Min. Lot Size:	6,000 sq. ft.	1.48 acres

#### **Building Setbacks**

	Code Requirement	Proposed
Front:	60 ft.	168.1 ft. (South)
Rear:	20 ft.	10 ft. (North – Variance)
Side:	0 ft.	10 ft. (East) 10 ft. (West)
Major Street:	60 ft. building (from street centerline) 55 ft. parking area (from street centerline)	229.1 ft. (South) 74.3 ft. (South)

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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 proposed internal circulation could have been designed in a manner such that the building would meet setback requirements without impacting the functionality or usability of the carwash.

**Not Self-Created**

The need for the variance is self-created as several options are available to eliminate the variance such as reducing the drive aisles from 30 ft and 24.5 ft. to 22 ft., which will provide space to shift the building 10 ft toward the south property line, or removing some of the excess parking.

**No Special Privilege Conferred**

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

**Deprivation of Rights**

There is no deprivation of rights as new construction can be redesigned to comply 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 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 adjacent property to the north of the carwash is a retention area that will not be developed, thereby negating any quantifiable negative impact.



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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan received May 20, 2022, and elevations received May 9, 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. Prior to the issuance of a building permit, the property owner shall combine parcels 02-22-30-8803-00-020 and 02-22-30-8803-00-030.
5. Prior to the issuance of the permit for the carwash an encroachment agreement will need to be obtained or vacate the easement.
6. The carwash shall comply with Section 15-183, Orange County Code Chapter 15 Environmental Control, Article V Noise Pollution Control, Section 15-182 Maximum permissible sound levels.

C: Patricia Ortiz  
2810 Central Avenue  
Tampa, FL 33602

C: 7651 University Blvd LLC  
13454 White Cypress Road  
Astatula, FL 34705

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**COVER LETTER**

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June 28, 2022

Board of Zoning Adjustment  
Orange County, Florida

RE: Variance Proposed: Reduction of Rear Yard Setback from 20-feet to 10-feet/LDC  
Division 3 C-1 Retail Commercial District Section: 38-830 Performance Standards:  
Minimum Rear Yard 20-feet seeking to develop an automated car wash with 5200  
square foot masonry building

Dear Board Members:

Please accept this request for variance seeking to reduce the rear yard building setback of property located on 7651 and 7701 University Blvd. The intent is to redevelop the site with an automated carwash. As proposed the carwash building will be 5200 square feet in size and constructed of masonry. All development parameters will be met save for the rear yard building setback. A detailed project narrative and variance justification is included.

Thank you for your time and attention to this matter.

Sincerely,

Patricia Ortiz, AICP  
Land Use Planner  
Ortiz Planning Solutions, LLC  
2810 N. Central Ave.  
Tampa, FL 33602  
813.817.8492

[ortizplanningsolutions@gmail.com](mailto:ortizplanningsolutions@gmail.com)

**Project Narrative:**

The intent is to raze the existing, defunct, fast-food restaurant and antiquated carwash then develop the site with modernized car wash with drive thru vehicle washing and a 34 stall, self-serve vacuum court. Three payment kiosks are located along the eastern property line which accept payment and direct cars, one at a time, through the carwash building. Upon exiting, drives will have the opportunity to use one of the 34 self-serve vacuum stations, which are covered by a shade canopy.

This intersection of Goldenrod Road and University Blvd. is a well functioning commercial node, with a mix of higher and lower intensity commercial, office uses, and apartments extending ¼+/- mile in each direction. Outside the node and to the east are mostly of a single-family residential type, and to the west the typical uses are industrial and high density residential. These conditions support the carwash use.

As located within the C-1 zone, the proposed car wash is required to provide a 20-foot rear yard setback which intends to ensure appropriate distance between buildings on abutting lots. As proposed, the carwash building will be located along the northern/rear property line and setback 10-feet from the property line. The reduced building setback is mitigated for by the location two large tracts of land designated for use as retention and stormwater management. These heavily vegetated lands have a width of 186+/- feet and effectively buffer and screen the commercial uses along University Blvd from the residential uses to the north which access from Georgann Street.

**Variance Criteria**

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 non-conformities on neighboring properties shall not constitute grounds for approval.

*Tracts A and B of the University Commercial Subdivision abut the property subject to this variance along the north, and separate the commercial development along University Blvd. from the residential development to the north accessed from Georgann Street. These tracts are owned and controlled by the University Commercial Subdivision Property Owner Association, and the use of is limited to stormwater management and retention uses. The combined width of these tracts is 186+/- feet. The location and very limited use of these tracts provides a special circumstance which significantly increases the distance of separation between buildings on adjacent parcels exceeding the distance of setback and ensuring the impacts of uses upon one another are mitigated.*



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 him/her self by his own conduct creates the hardship which he/she alleges to exist, he/she is not entitled to relief. *The special conditions result from the thoughtful design of the plat and are do not result from actions of the applicant.*

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

*Approval of the zoning variance as requested will not confer upon the applicant any special privilege denied to others. The LDC is clear in regard to the intent of performance standard; and specifically the intends to: assure adequate levels of light, air, building space, lot coverage and density and to promote functional compatibility of uses. As proposed, the carwash building will be set 10-feet from the property line and more than 196-feet from the abutting lot line of the nearest parcels eligible for development.*

4. **Deprivation of Rights:** Literal interpretation of the provision 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.

*In this instance two relatively small parcels fronting University Blvd and within the commercial node will be joined for the development of an appropriate and reasonable use, an automated carwash. However, the limited lot depth complicates compliance with the setback regulation of the zone and the functional design of the carwash use. Yet, the unique circumstances of the development site create a situation which brings balance: specifically, the reduce building setback is compensated for by the location of intervening tracts of land with extremely limited development potential and which have the functional effect of a building setback far greater than that required of any zone.*

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. *Yes, the 10-foot reduction of required building setback is the most minimal variance that will make possible this most reasonable use of the land. Development of a functional and aesthetically pleasing carwash site requires consideration of several factors including but not limited to: parking lot landscaping; front, side and rear building setbacks; vacuum stall and parking space length; area needed for shade canopy; two way drive aisle width, size of carwash building and the area needed for shade canopies.*
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*

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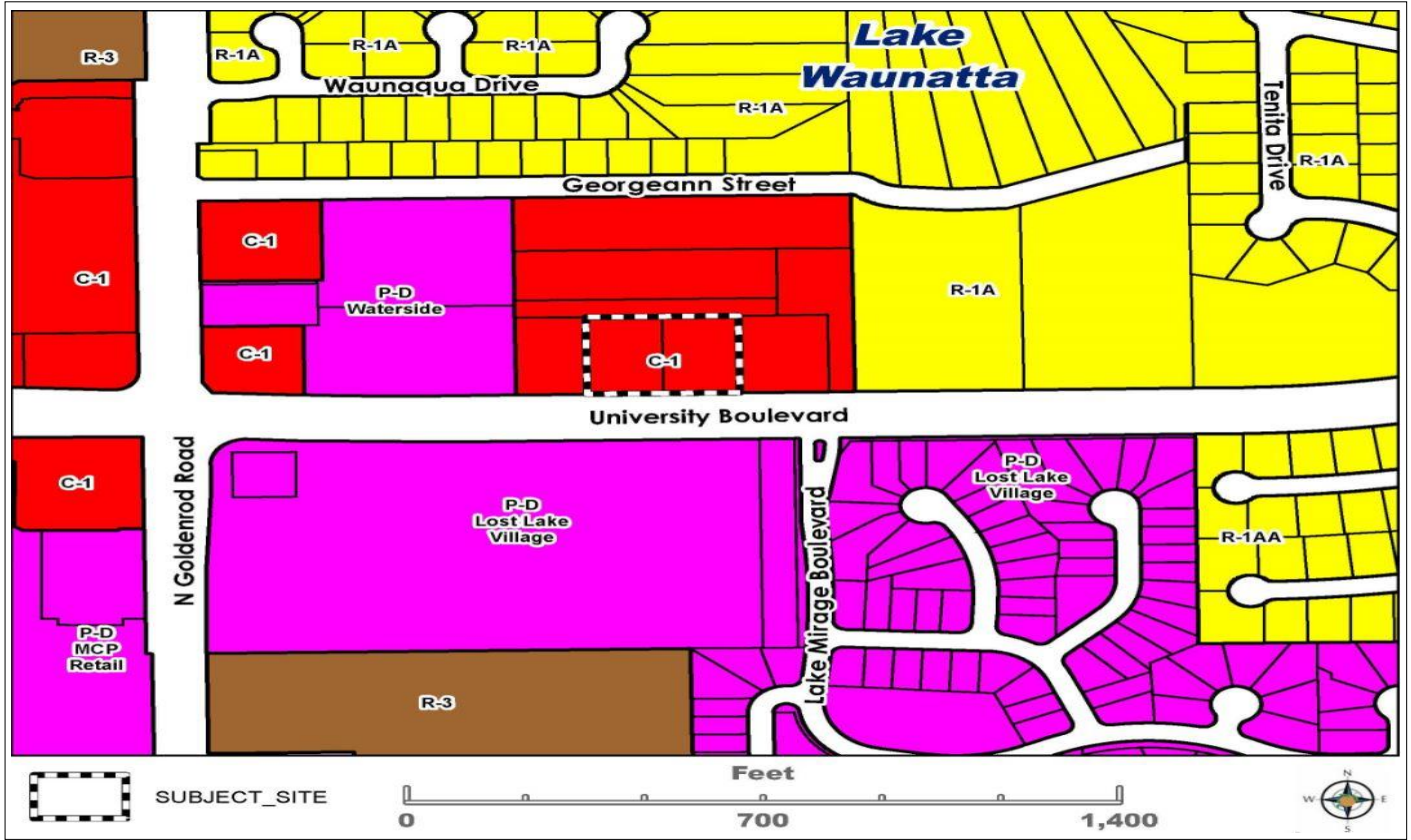
## COVER LETTER

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*of the variance as presented will be in harmony with the purpose and intent of the C-1 zone which seeks to provide for land and structures for commercial use and services. This zone is intended to be located at intersections of higher intensity roadways where adequate public facilities are available and grouped with like uses. The carwash use is an allowed use within this zone; and this use is complimentary to the abutting uses which include a Valvoline Instant Oil Change and a Firestone retail center. It is also consistent and compatible with the existing development within the commercial node which includes big box retailers, smaller retail strip centers, apartments and restaurant. Approval will not be injurious to the neighborhood; the proposed carwash is located within a cluster of like uses and appropriately separated from single family residential development.*



## ZONING MAP



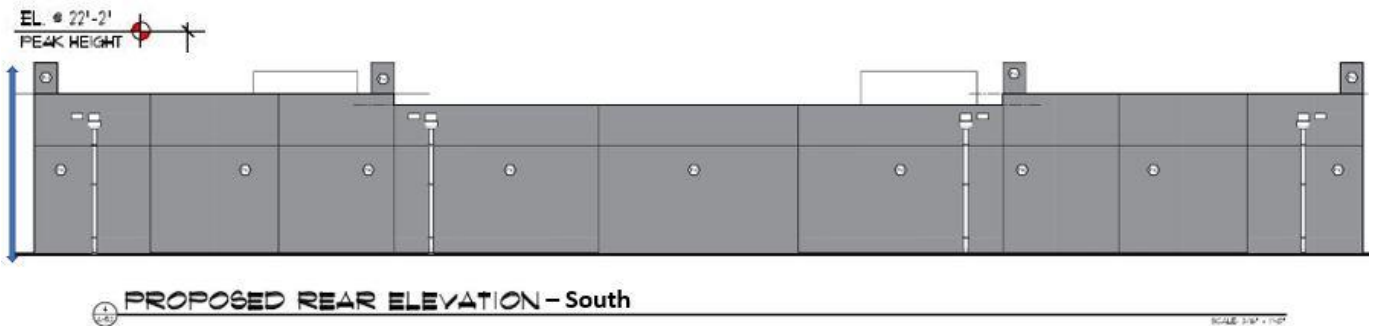
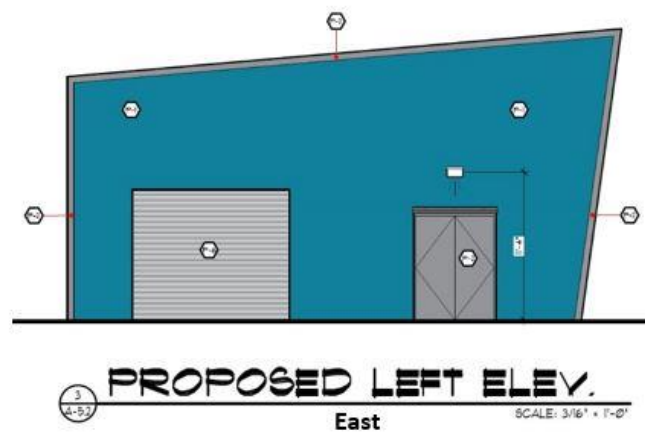
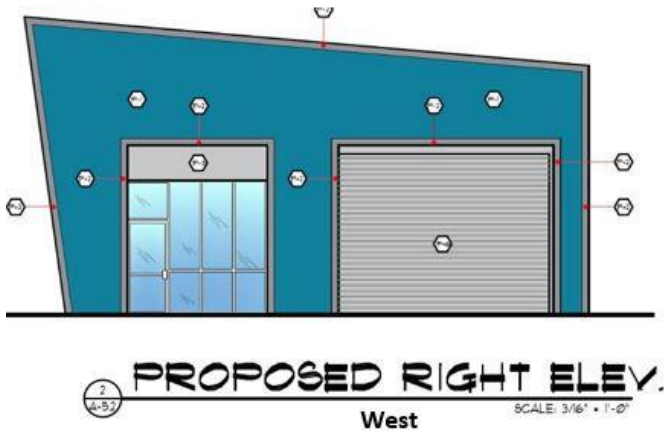
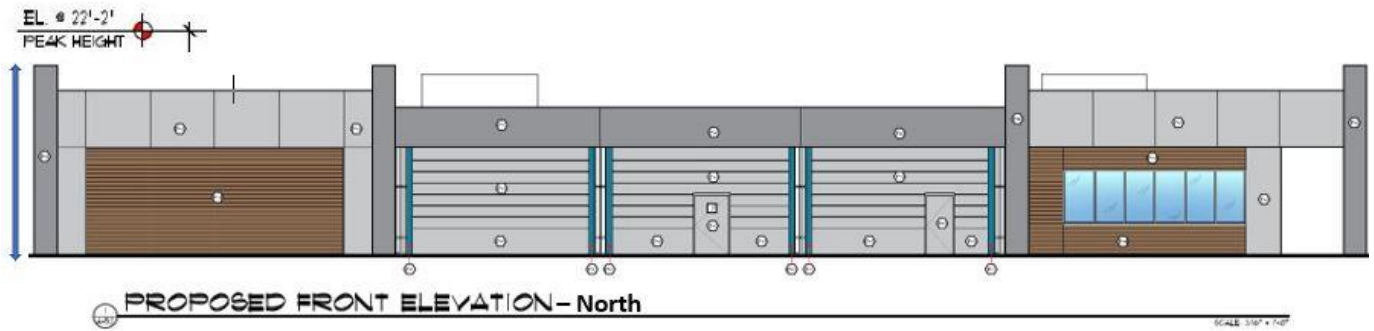
## AERIAL MAP







## ELEVATIONS





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## SITE PHOTOS

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**Facing north from Goldenrod Plaza parking lot across University towards front of subject property**



**Facing southeast from adjacent lot (auto repair) towards subject property with existing restaurant**



## SITE PHOTOS



**Facing east towards rear of subject property with existing Sonic restaurant**



**Facing west from adjacent lot (tire center) towards subject property with existing carwash**



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**SITE PHOTOS**

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**Side drive aisle of existing carwash, facing north towards rear of subject property**



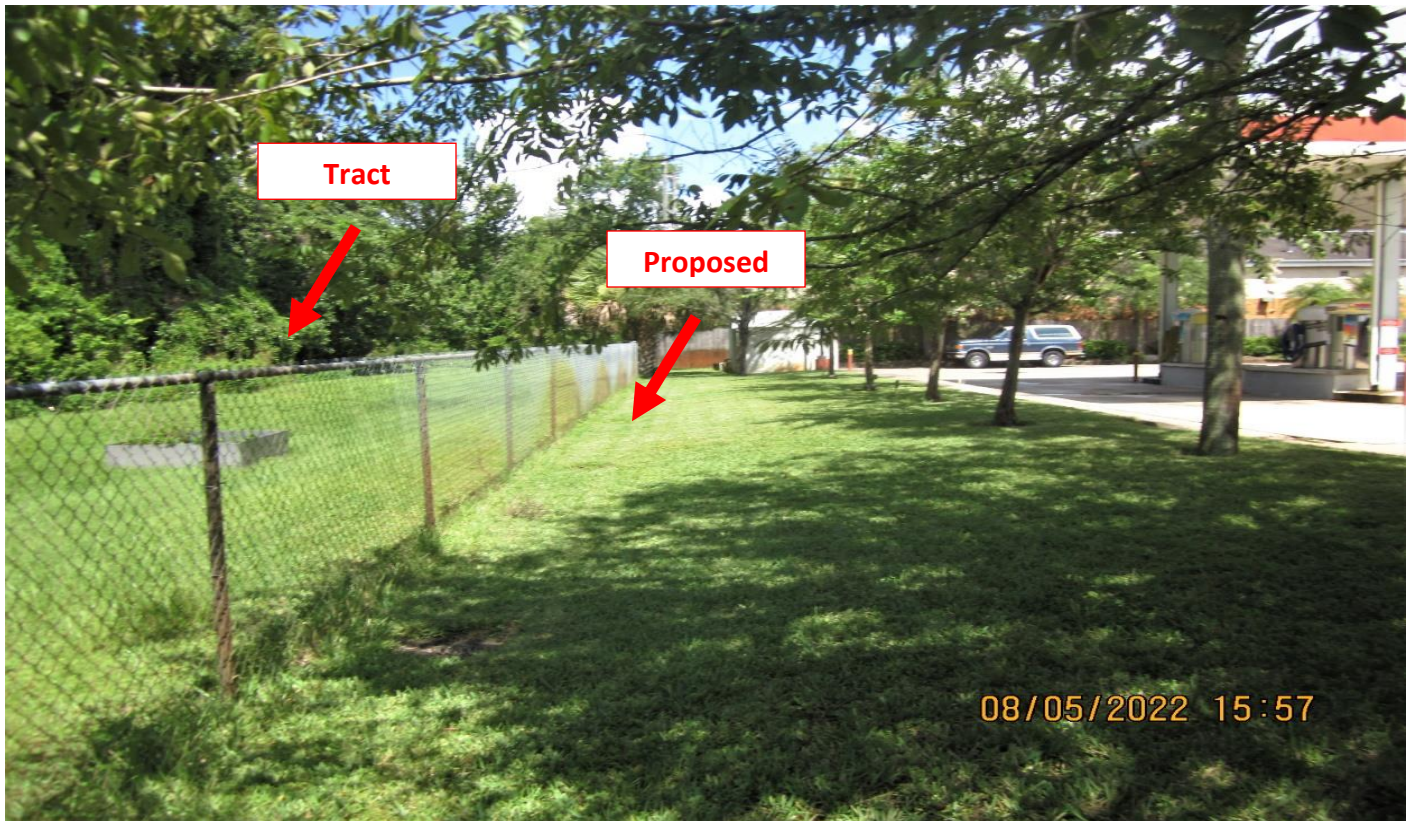
**Rear of existing carwash, facing west towards proposed**



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**SITE PHOTOS**

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**Rear of existing carwash, facing east towards proposed and retention pond tract**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#1**

Case #: **SE-22-08-063**

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

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

## GENERAL INFORMATION

APPLICANT(s): JUAN RODRIGUEZ FOR SCI FUNERAL SERVICES

OWNER(s): SCI FUNERAL SERVICES OF FLORIDA LLC

REQUEST: Amendment to a Special Exception in the A-1 and P-D zoning districts to allow the construction of a new 19,236 sq. ft. funeral home to replace an existing 14,000 sq. ft. funeral home.

PROPERTY LOCATION: 544 Woodlawn Cemetery Road, Gotha, Florida, 34734, west side of Woodlawn Cemetery Rd., south of Old Winter Garden Rd., west of S. Apopka Vineland Rd., north of Florida's Turnpike

PARCEL ID: 33-22-28-0000-00-001; 27-22-28-4880-00-470

LOT SIZE: +/- 103 acres

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 216

**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 as amended (Motion by Thomas Moses, Second by Juan Velez; 4 in favor: Thomas Moses, Juan Velez, Deborah Moskowitz, Joel Morales; 2 opposed: John Drago, Roberta Walton Johnson; 1 absent: Charles Hawkins, II):

1. Development shall be in accordance with the site plan dated August 12, 2022 and elevations dated July 29, 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 Phase I shall be obtained within 5 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 issuance of a final Certificate of Occupancy for the new funeral home, the existing funeral home on Parcel 27-22-28-4880-00-470 shall be demolished.
6. Specifications for lighting installation shall be restricted to downlighting.
7. The current capabilities of the existing sound system shall remain.
8. The security entrance gates shall be locked from 9pm to 5am.
9. The new entrance areas will be equipped with CCTV cameras and signage noting that recording is occurring.

**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 support, and two (2) comments were received in opposition.

An attorney representing the applicant agreed with staff's presentation, and briefly discussed the issues brought up during the community meeting. The applicant stated that they would feel comfortable with conditions related to noise and lighting being added, and would be willing to enter into a private agreement with neighboring property owners related to security, but would not be in support of a condition related to this being added.

The BZA asked for clarification on the floor plans related to the increase in size, which the applicant clarified is not increasing the number of viewing rooms but to provide larger viewing rooms and more space for employees.

There was no one in attendance to speak in favor of the request. There were five (5) members of the public in attendance to speak in opposition to the request. The concerns raised included traffic, access points, safety & security, lighting, exterior sound, and drainage.

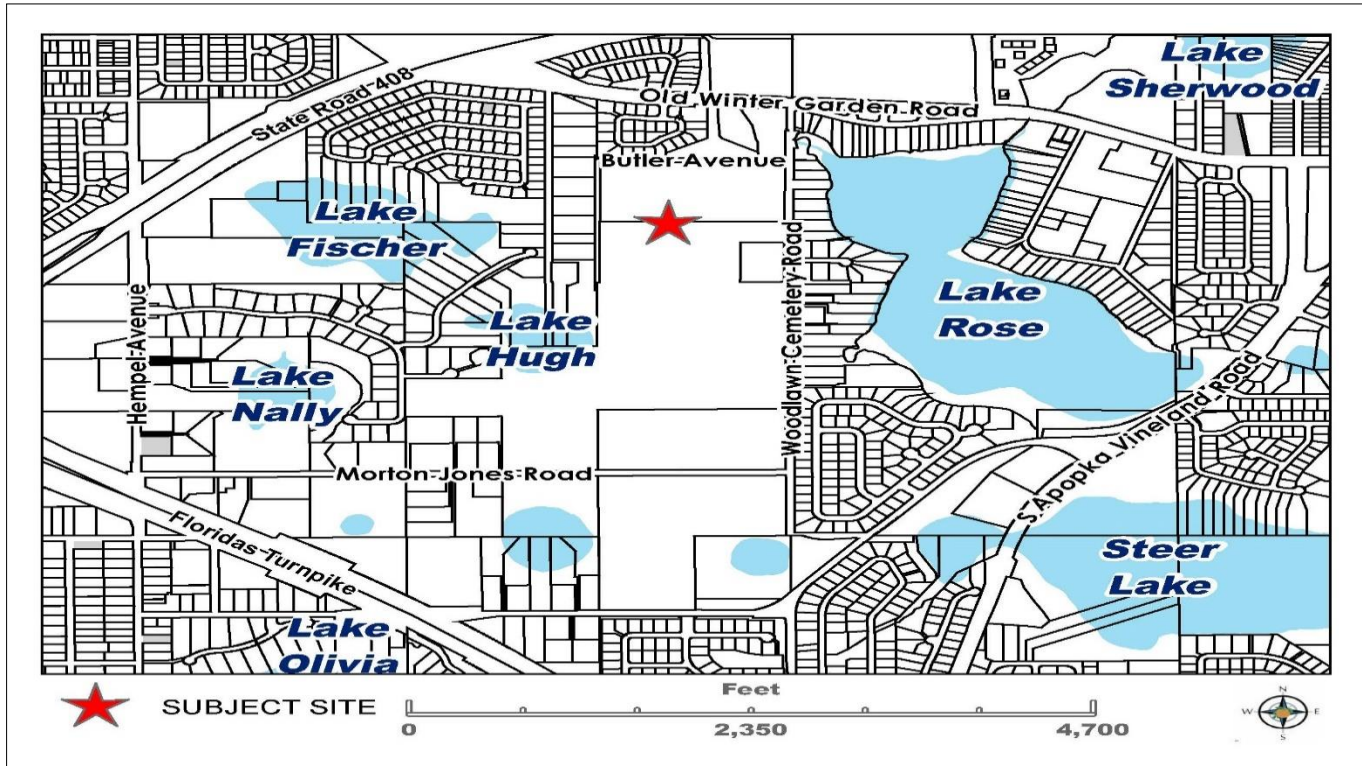
In the rebuttal, the applicant noted the addition of a new stormwater pond with this request which will address drainage concerns. He also stated that they will work with the community to reduce noise and light intrusion.

The BZA discussed the special exception and asked for further clarification of the gates and security. The BZA recommended approval of the special exception by a 4-2 vote, with one absent, subject to the five (5) conditions in the staff report, and four (4) additional conditions which state, Condition #6, "Specifications for lighting installation shall be restricted to downlighting.", Condition #7, "The current capabilities of the existing sound system shall remain.", Condition #8, "The security entrance gates shall be locked from 9pm to 5am.", and Condition #9, "The new entrance areas will be equipped with CCTV cameras and signage noting that recording is occurring."

## STAFF RECOMMENDATIONS

Approval, subject to the conditions in this report.

## LOCATION MAP



## SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	A-1, PD Woodlawn Funeral Planned Development	A-1, PD, R-CE	R-CE, A-1, PD	R-1	R-CE, A-1, PD
Future Land Use	Gotha Rural Settlement RS 1/1, INST	LDR, INST	Gotha Rural Settlement RS 1/1, INST	LDR	Gotha Rural Settlement RS 1/1
Current Use	Cemetery, Funeral Home, Crematorium	Single Family, Communication Tower, Vacant	School, Single- family	Single-family	Single-family

## BACKGROUND AND ANALYSIS

### DESCRIPTION AND CONTEXT

The subject property is located in the A-1, Citrus Rural district, and the Woodlawn Funeral Planned Development, which allows funeral homes by Special Exception. The future land use is Institutional, which



is consistent with all zoning districts, and Rural Settlement 1/1, which is consistent with the A-1 zoning district.

The subject property is located in the Gotha Rural Settlement. The Gotha Rural Settlement is identified in the Orange County Future Land Use Element as one of five Rural Settlements within the County that has maintained its historically rural character, and mandates that every effort shall be made to preserve this rural character as part of Orange County's heritage and historic preservation efforts. Rural Settlements restrict non-residential uses to those that support existing residential uses and serve the residents of the community. The portion of property with the Rural Settlement 1/1 future land use is cemetery plots, and no improvements are proposed on this portion.

The subject property is +/- 103 acres in size, with an existing 14,000 sq. ft. funeral home, constructed in 1976, crematory, cemetery, mausoleum buildings, and associated accessory structures including a barn. The existing funeral home is on its own parcel, parcel ID 27-22-28-4880-00-470, which is zoned PD. The rest of the cemetery and associated structures are on parcel ID 33-22-28-0000-00-001, zoned A-1. This parcel has right-of-way frontage on Hart Ave., Morton Jones Road, Woodlawn Cemetery Road, Lake Hugh Drive, and Butler Avenue. Woodlawn Cemetery Road is considered the front, as, frontage for commercial property is determined by the width of the lot abutting the street with heaviest traffic usage. Given the unique shape and multiple street frontages, it has been determined that for the purposes of zoning and yards, Hard Ave. and Lake Hugh Dr. are also considered front yard, and Butler Ave. and Morton Jones Rd. are side streets. A portion of Lake Hugh is located on the southwest portion of the property, and is not impacted by the development area. The area consists of one-story single-family homes in the immediate vicinity, a communications tower to the north, a middle school, and some vacant lots.

Proposed is a 19,236 sq. ft. funeral home building to replace the existing 14,000 sq. ft. funeral home. The project is proposed to be constructed in two phases. Phase I will consist of the demolition of the existing barn and the construction of the new funeral home and associated parking and access. The existing funeral home, located within the P-D zoned property, will continue operation until the time of issuance of the Certificate of Occupancy for the proposed new funeral home, at which time the existing will be demolished. Phase II includes the demolition of the existing funeral home and associated parking, and the construction of an additional parking area and access to the west, connecting to internal roadways. The existing funeral home site will be reverted to grass area as part of the Phase II demolition, and is intended to be used as expanded cemetery area in the future. Vehicular access to the site will be provided from Woodlawn Cemetery Road to the east. Two new points of access from Woodlawn Cemetery Road are proposed, in addition to the existing connection from the crematory. The proposed landscaping plan for the project provides a landscape buffer with canopy trees and shrubs along the perimeter, meeting code. There are trees existing on site that are proposed to be removed, which is subject to Chapter 15 of the Orange County Code. The existing buffer to the north of the proposed funeral home site, and to the west of the proposed retention area are intended to remain.

Previous approvals include:

- December 6, 1973: Special Exception approval to allow a cemetery that had existed on site since 1926.
- September 17, 1974: Parcel 27-22-28-4880-00-470 was rezoned to Planned Development (Woodlawn Funeral PD) to allow a funeral home as part of the Planned Development.
- September 16, 1975: Development Plan approval for the existing funeral home.
- March 1, 1990: Special Exception approval on both parcels to expand the existing cemetery.
- September 4, 1997: Special Exception approval on both parcels for a crematory as an ancillary use to an existing cemetery and funeral home operation.
- October 5, 2000: Special Exception approval on both parcels to add two mausoleum buildings and one pavilion structure adjacent to the existing mausoleum buildings.
- April 3, 2003: Special Exception approval to construct a 3,500 sq. ft. crematorium as an ancillary use to an existing cemetery and funeral home – replacing the previous 1997 approval which expired.

The parking requirements for the proposed funeral home:

Type	Parking Requirement	Number of seats in chapel	Number of commercial vehicles	Required # of Spaces	Provided # of Spaces with Phase I	Provided # of Spaces after Phase II
Mortuaries	1 space for each 4 seats in chapel, plus 1 space for each commercial vehicle	245	18	80	127	187

Based upon the above seating and commercial vehicles, the total parking spaces required is 80 parking spaces. The applicant is proposing a 127 space parking lot with Phase I, and proposes an additional 60 spaces with Phase II, for a total of 187 spaces, which meets the requirement. Parking for the other uses on site has been met on an individual basis at the time of construction.

Transportation Planning indicated that since there will be no increase in employees associated with the request that a traffic study will not be required at this time.

A Community Meeting will be held on Wednesday, August 31, 2022, at Gotha Middle School to allow for input. The meeting attendance and results will be provided at the Board of Zoning Adjustment hearing since the Staff Report will be printed prior to the meeting.

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

## District Development Standards

	Code Requirement	Proposed
Max Height:	35 ft.	35 ft.
Min. Lot Width:	100 ft.	1,272 ft.
Min. Lot Size:	21,780 sq. ft. (0.5 acres)	103 acres

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

	Code Requirement	Proposed
Front (Woodlawn Cemetery Rd., Hart Ave., & Lake Hugh Drive):	35 ft.	2,611 ft. (East, Woodlawn Cemetery Rd.) 1,056 ft. (West, Hart Ave.) All other streets not applicable to the proposed development area
Side:	10 ft.	350 ft. (South)
Side Street (Butler Ave. & Morton Jones Rd.):	15 ft.	293 ft. (North, Butler Ave.) All other streets not applicable to the proposed development area

The Woodlawn Funeral Planned Development did not identify specific building setback requirements, as the development was specific to the existing funeral home as shown in the Development Plan.

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## STAFF FINDINGS

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### SPECIAL EXCEPTION CRITERIA

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

The Future Land Use is Institutional and Gotha Rural Settlement – Rural Settlement 1/1 and with approval of the special exception, the project will be consistent with the Comprehensive Plan. The intent of the Rural Settlements is to preserve the existing character of the area, and consistent with the Comprehensive Plan, the property serves as a necessary resource for public services.

#### **Similar and Compatible with the Surrounding Area**

The proposed one-story building is internal to the site, and is consistent with the other one-story buildings already existing on site. The proposed maximum height of 35 ft. is consistent with the surrounding single-family residences and institutional uses. Furthermore, after demolition of the existing funeral home, there will be only a slight increase in building area on the property.

#### **Shall Not Act as a Detrimental Intrusion into a Surrounding Area**

The development as proposed will not act as a detrimental intrusion into the surrounding area. The proposed funeral home is consistent with the existing development, as the cemetery has been in existence since 1926 and the existing funeral home has been in existence since 1976. After the completion of Phase II, the funeral home square footage will have only increased by 5,236 sq. ft.



**Meet the performance standards of the district**

The development as proposed will meet the performance standards of the districts.

**Similar in Noise, Vibration, Dust, Odor, Glare, Heat Producing**

The proposed funeral home is replacing an existing funeral home and the characteristics and impacts of the proposed development will not change.

**Landscape Buffer Yards Shall be in Accordance with Section 24-5 of the Orange County Code**

The applicant has provided a landscaping plan which addresses perimeter landscaping in compliance with Section 24-5 of Orange County Code.

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**CONDITIONS OF APPROVAL**

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1. Development shall be in accordance with the site plan dated August 12, 2022 and elevations dated July 29, 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 Phase I shall be obtained within 5 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 issuance of a final Certificate of Occupancy for the new funeral home, the existing funeral home on Parcel 27-22-28-4880-00-470 shall be demolished.

C: Juan Rodriguez  
189 S Orange Avenue, Suite 1000  
Orlando, Florida, 32801



July 29, 2022

Orange County  
Zoning Division  
201 S. Rosalind Ave., 1<sup>st</sup> Floor  
Orlando, FL 32801

### Project Narrative

#### **SCI Funeral Services of Florida, LLC – 544 Woodlawn Cemetery Road, Gotha, Florida 34734 Proposed Funeral Home and Cemetery Office**

#### **Special Exception Project Description:**

The proposed project site is owned by SCI Funeral Services of Florida, LLC d/b/a Woodlawn Memorial Park & Funeral Home (“**SCI**”) and is located at 544 Woodlawn Cemetery Road, Gotha, Florida 34734, Orange County, Florida (the “**Property**”). The Parcel ID is 33-22-28-0000-00-001 and is currently zoned for Light Agriculture (A-1), which allows for funeral service, but requires a Special Exception.

SCI will be developing the ±100.12-acre tract for a ±19,236 square foot funeral home, at 35 feet in height, and cemetery office (the “**Proposed Project**”) to replace an existing ±14,000 square foot building at Woodlawn Memorial Park and Funeral Home (the “**Existing Project**”). The Existing Project is located at the southwest corner of Woodlawn Cemetery Road and Butler Avenue in Gotha, FL (lots 47 and 48 of Parcel ID is 27-22-28-4880-00-470) – which also contains an already approved cremation structure by the County. The Proposed Project will be located on parcel 33-22-28-0000-00-001 and will not re-locate the existing cremation structure on Parcel ID is 27-22-28-4880-00-470.

Once built, the Proposed Project will not create increased traffic. The Existing Project on-site will function as it did previously during construction and the Existing Project will be removed once the Proposed Project is built and operational.

#### **Why this request is consistent with Orange County's Special Exception Criteria (38-78):**

#### **The use shall be consistent with the comprehensive plan**

GOAL FLU1 URBAN FRAMEWORK. Orange County shall implement an urban planning framework that provides for long-term, cost-effective provision of public services and facilities and the desired future development pattern for Orange County.

According to the Orange County Comprehensive Plan, the Property already serves as a necessary resource of public services; therefore, the Proposed Project and Existing Project qualify and serve the purposes as enumerated therein.



The use shall be similar and compatible with the surrounding area and shall be consistent with the pattern of surrounding development; the use shall not act as a detrimental intrusion into a surrounding area; the use shall meet the performance standards of the district in which the use is permitted; and 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.

As noted above, the Property and Proposed Project will merely serve as a replacement structure for an already existing, approved, funeral chapel pursuant to the County's Land Development Code.

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

As evinced in the attached application, the Proposed Project meets all applicable criteria of the County's Land Development Code regarding buffering and landscaping.

If you have any further questions, please do not hesitate to contact me at 407-768-3230 or by email at [juanp.rodriguez@kimley-horn.com](mailto:juanp.rodriguez@kimley-horn.com).

Sincerely,

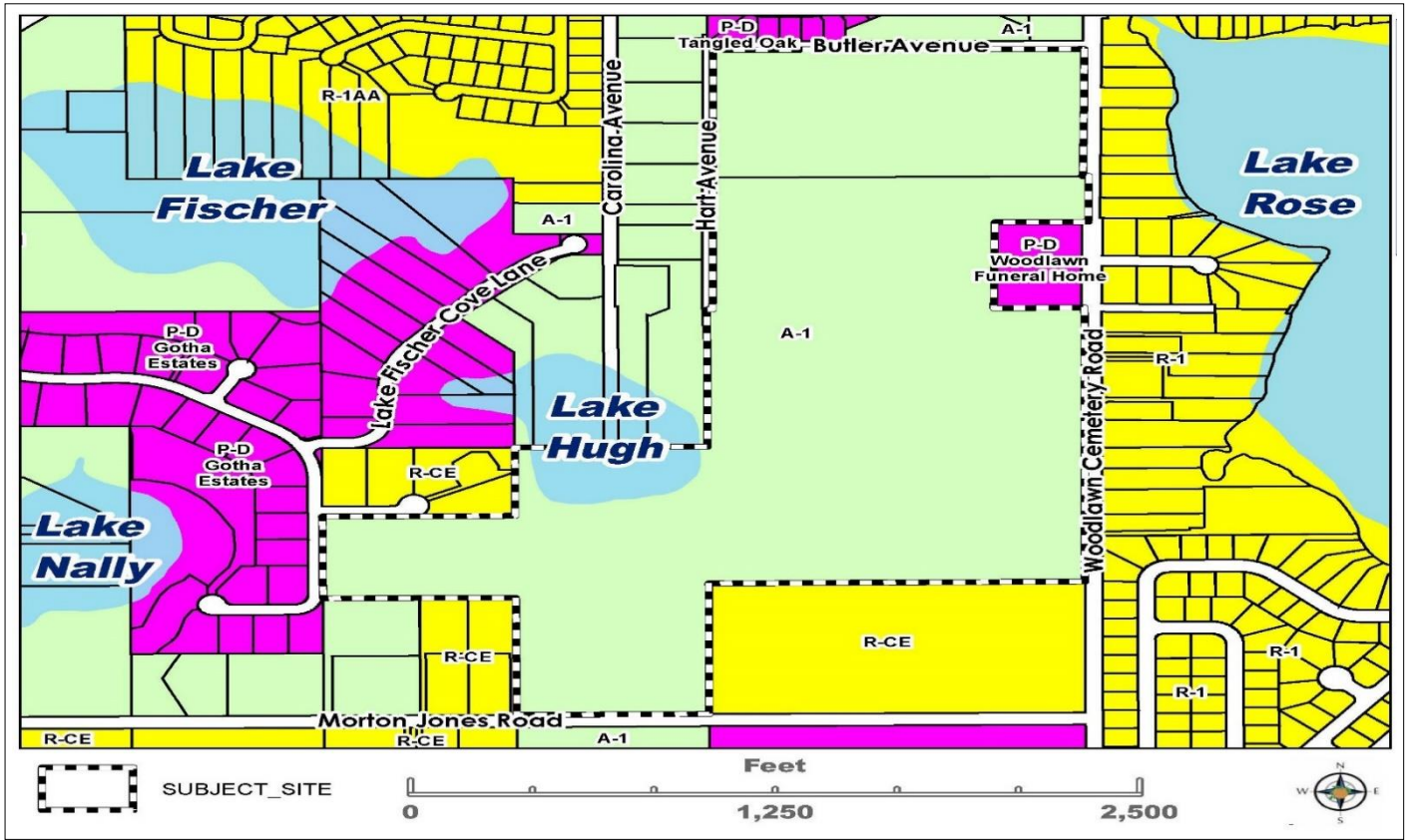
**KIMLEY-HORN AND ASSOCIATES, INC.**

A handwritten signature in blue ink, appearing to read "Juan P. Rodriguez", followed by a period.

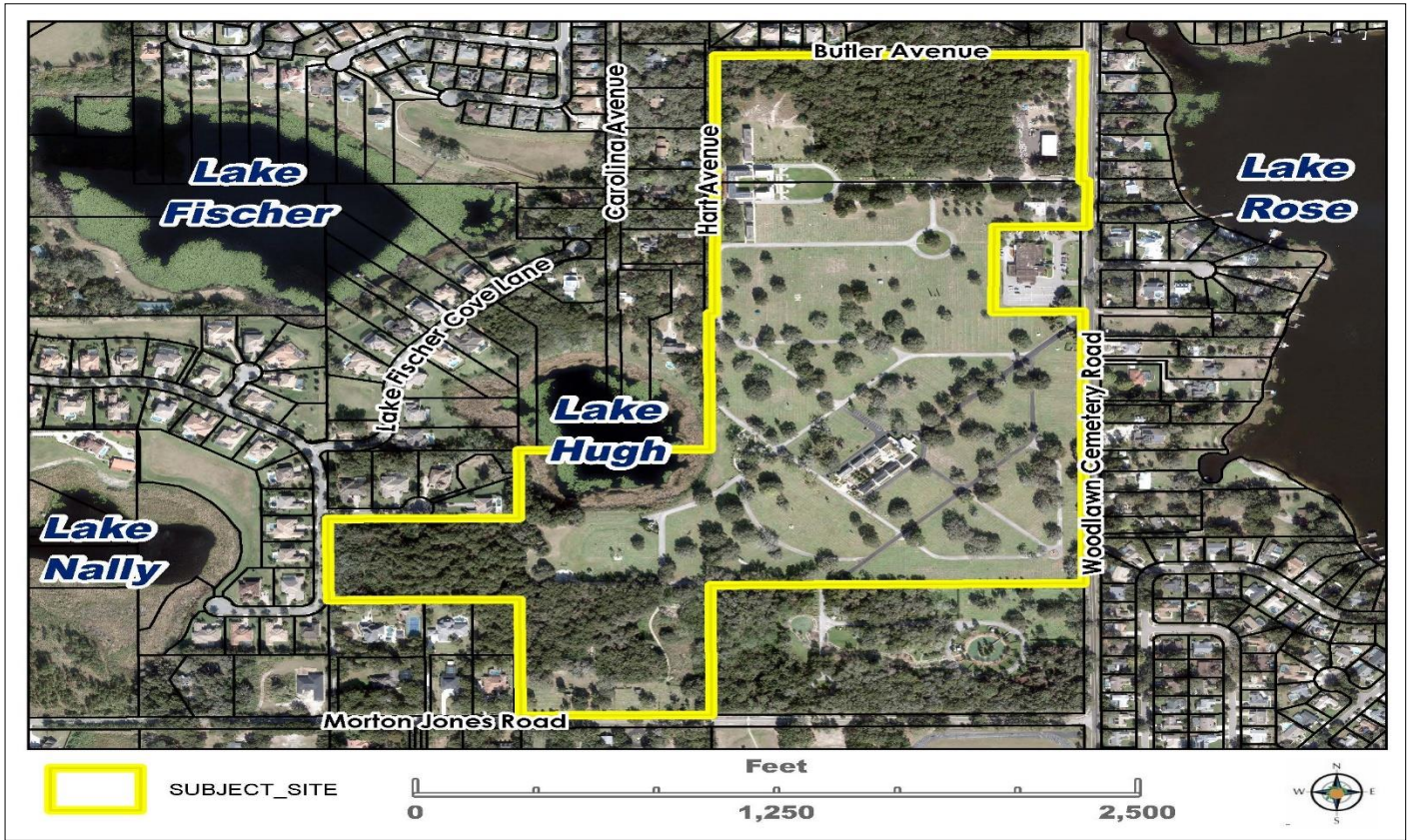
Juan P. Rodriguez, P.E.



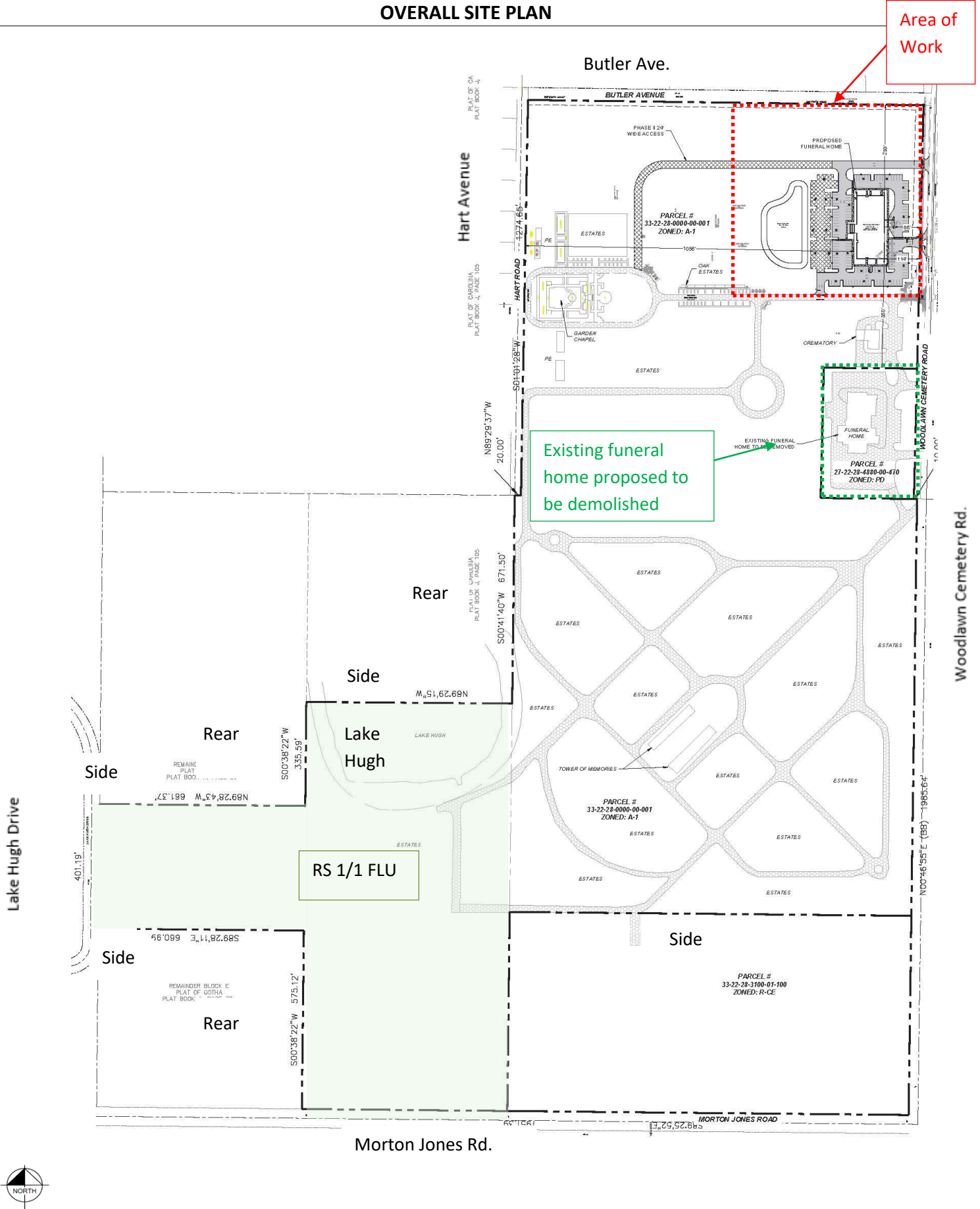
ZONING MAP



AERIAL MAP

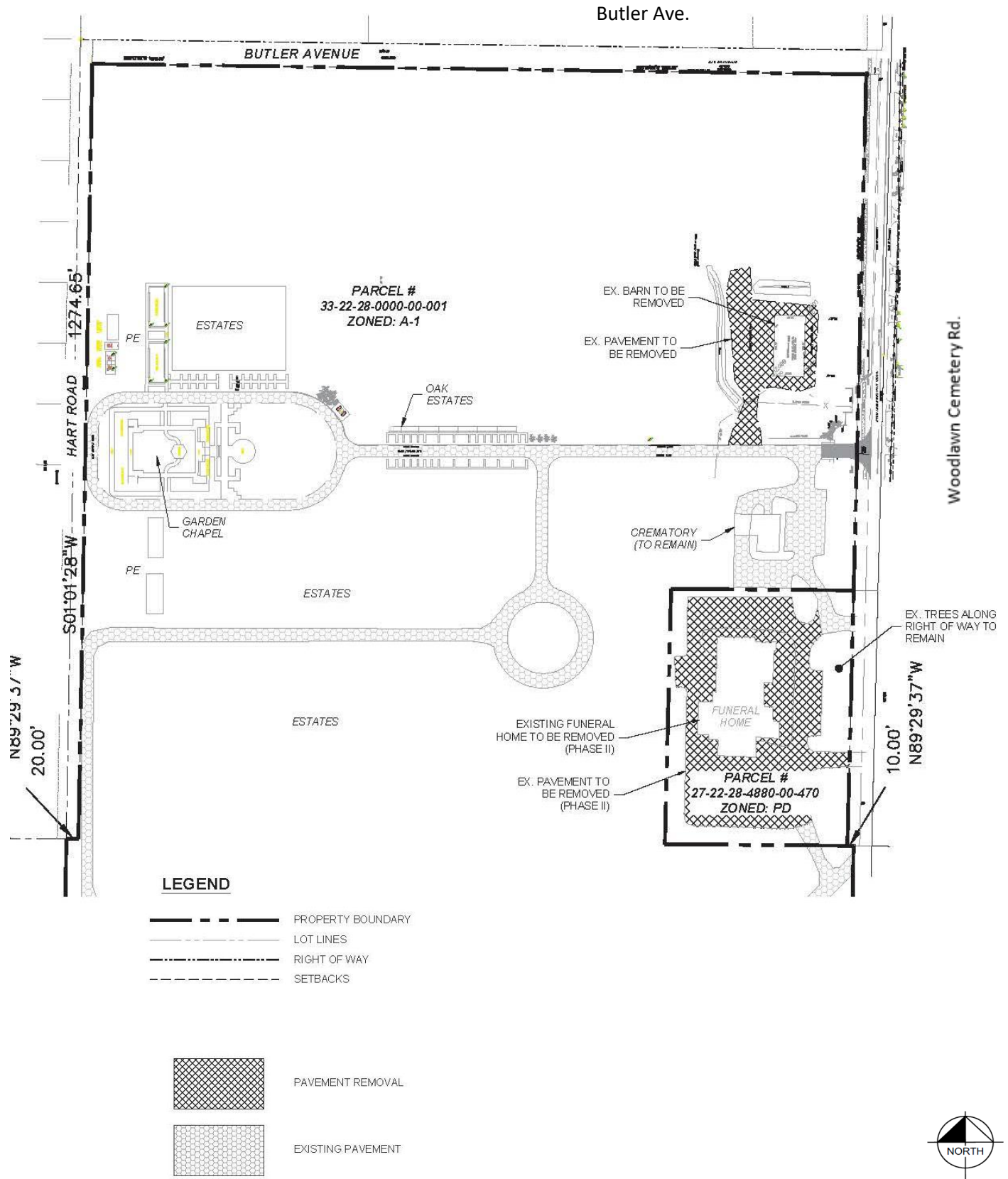


# OVERALL SITE PLAN



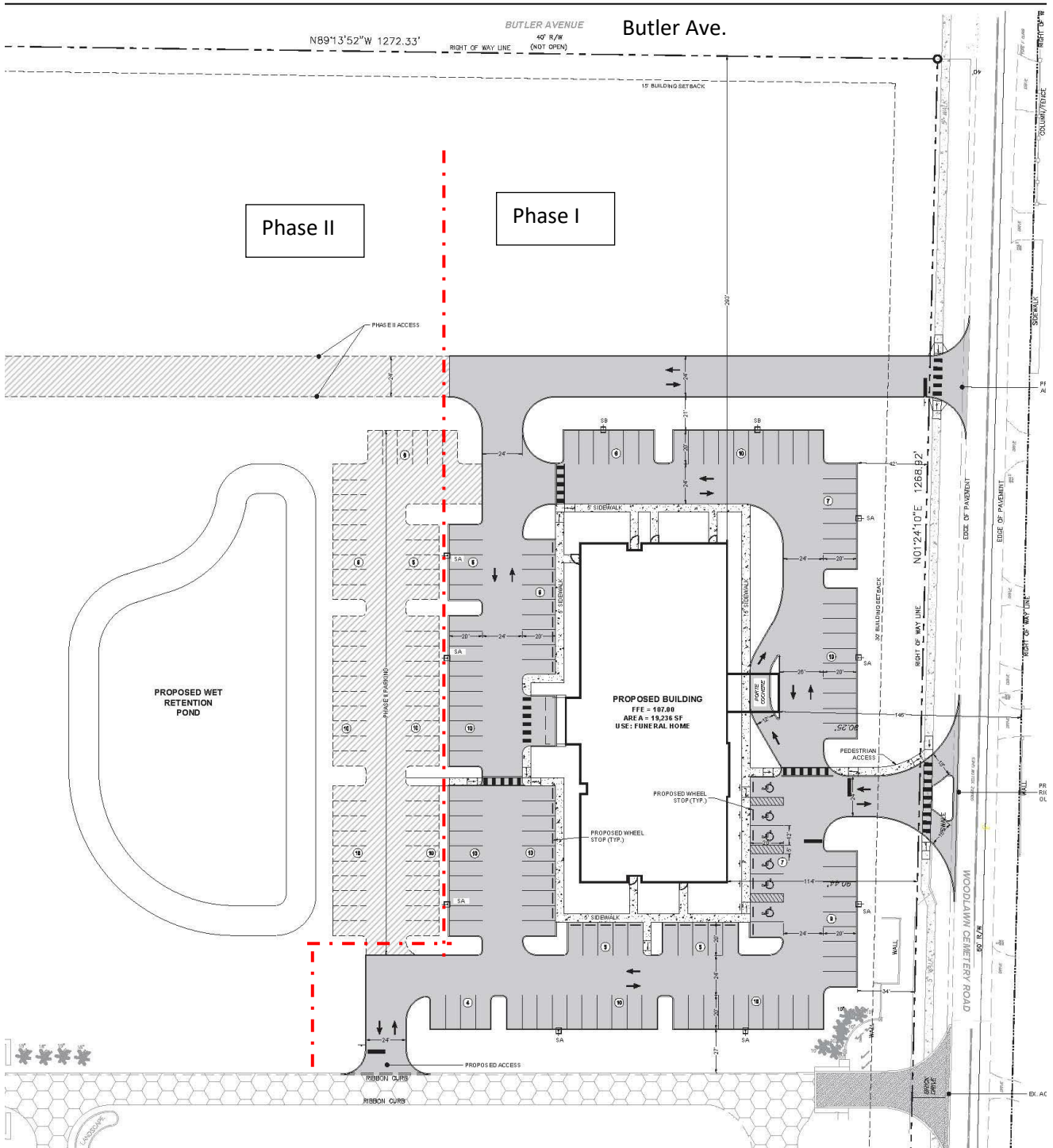


# DEMO PLAN



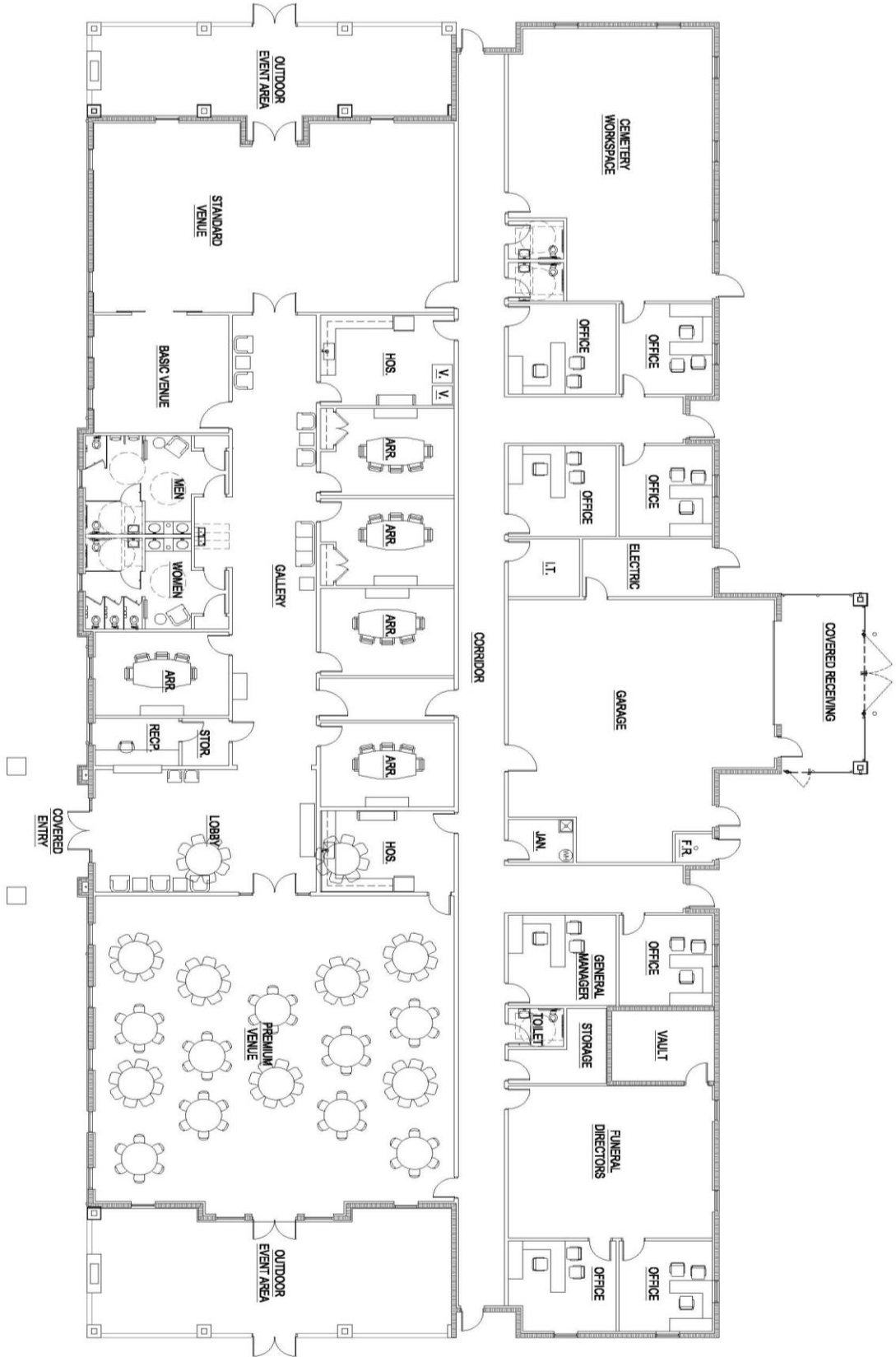


# SITE PLAN

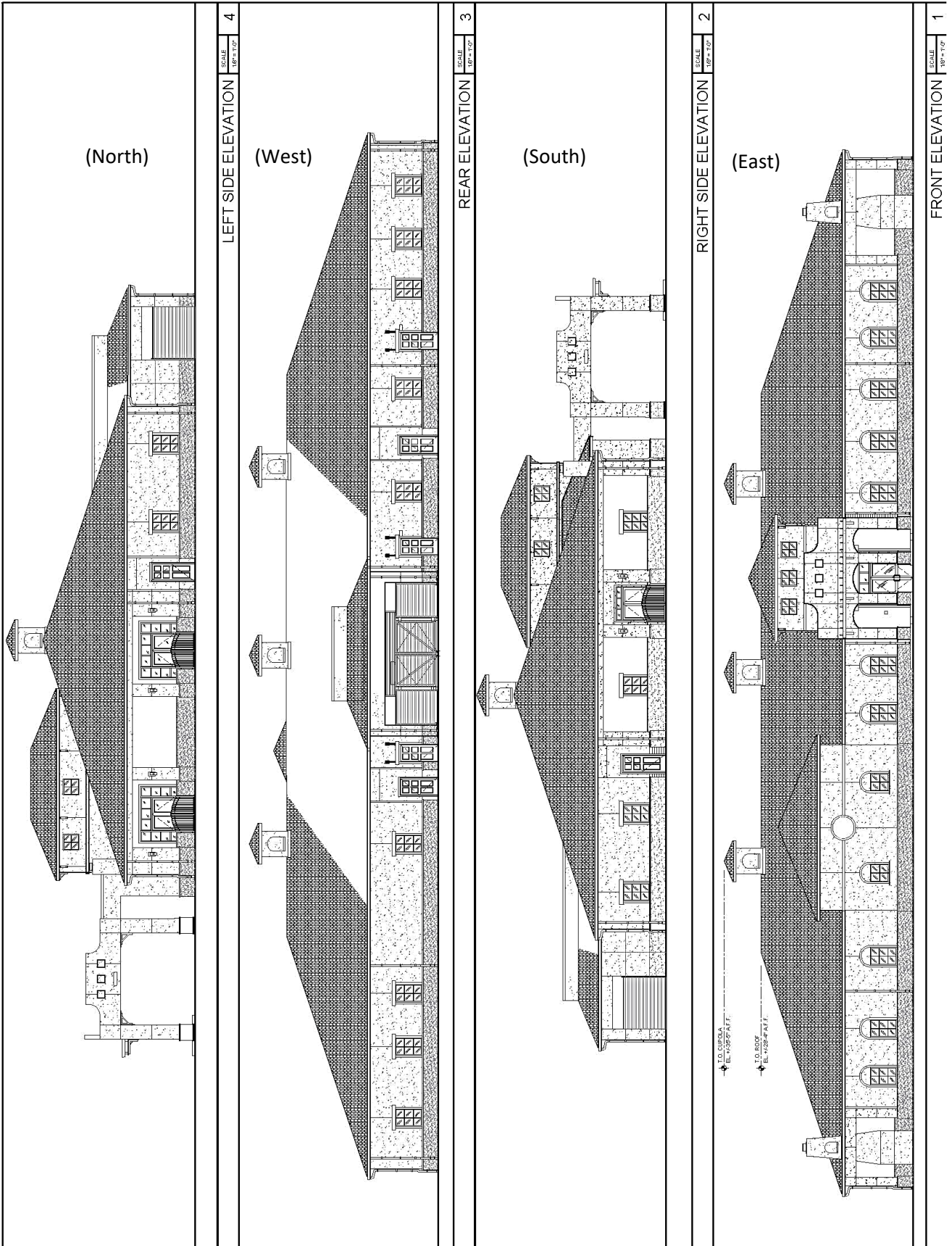


# FUNERAL HOME FLOOR PLAN

WOODLAWN  
GARDEN OF MEMORIES  
GOTHA, FLORIDA  
August 12, 2022



# FUNERAL HOME ELEVATIONS





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## SITE PHOTOS

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**Facing south on Woodlawn Cemetery Rd., subject property to the right**



**From Woodlawn Cemetery Rd. facing north, subject property to the left**



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## SITE PHOTOS

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**Facing proposed funeral home location from internal road adjacent to crematory**



**Existing barn area proposed to be demolished and replaced with funeral home**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#2**

Case #: **VA-22-10-097**

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

## GENERAL INFORMATION

APPLICANT(s): SEAN LACKEY

OWNER(s): HORACE ROBUCK, ELIZABETH ROBUCK

REQUEST: Variances in the R-CE zoning district to allow the construction of a detached accessory structure as follows:

1. To allow a detached accessory structure (garage) in front of the primary structure.
2. To allow a front south setback of 22.5 ft. in lieu of 35 ft.

PROPERTY LOCATION: 4635 Sloewood Drive, Mount Dora, FL 32757 northeast side of Sloewood Dr., north of Sadler Rd., west of N. Orange Blossom Trl., located on the west side of Lake Ola.

PARCEL ID: 17-20-27-4704-02-090

LOT SIZE: +/- 1 acre

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 31

**DECISION:** Recommend **DENIAL** of the Variance requests in that there was no unnecessary hardship shown on the land; and further, they do not meet the requirements governing variances as spelled out in Orange County Code, Section 30-43(3) (Motion by John Drago, Second by Thomas Moses; 4 in favor: Thomas Moses, John Drago, Juan Velez, Roberta Walton Johnson; 2 opposed: Deborah Moskowitz, Joel Morales; 1 absent: Charles Hawkins, II).

**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 of the Variances since there are other alternatives to meet Code requirements. Staff noted that no comments were received in favor of the application, and two comments were received in opposition.

The applicant noted the need for the Variances was due to the soil conditions, the configuration of the property and that the proposal will not negatively affect adjacent properties.

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

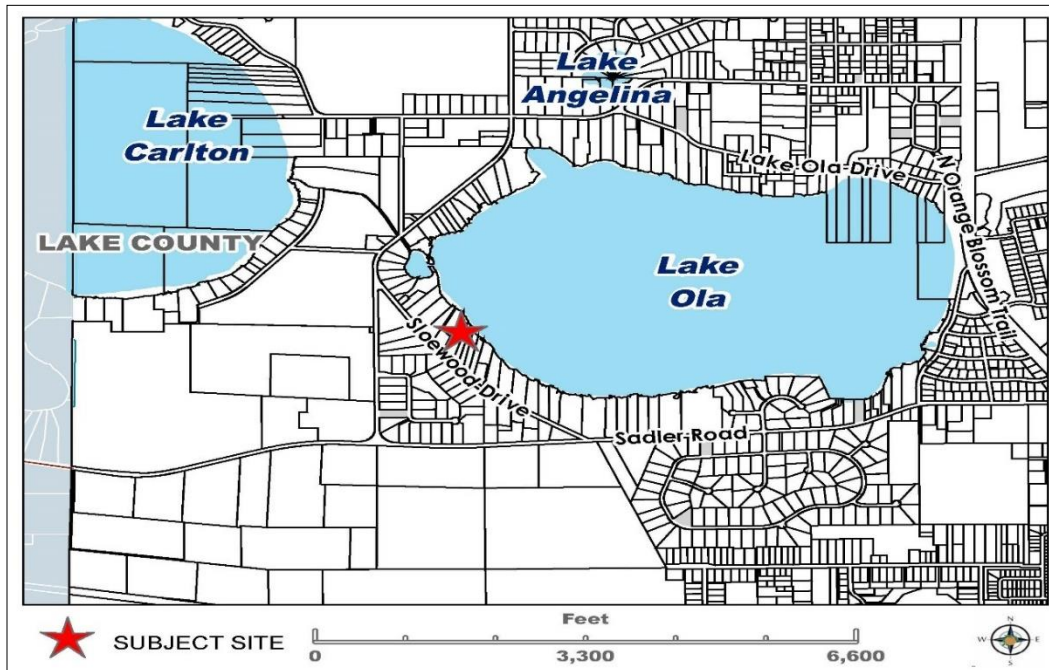
The BZA discussed the configuration of the property, the soil conditions and the ability for the improvements to be redesigned and relocated to meet Code requirements, the inconsistency of the proposal with the 6 Variance criteria, and recommended denial of the variances by a 4-2 vote, with one absent.

## STAFF RECOMMENDATIONS

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



## LOCATION MAP



## SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	R-CE	R-CE	R-CE	R-CE	R-CE
Future Land Use	RS 1/1 (Tangerine RS)	N/A	RS 1/1 (Tangerine RS)	RS 1/1 (Tangerine RS)	RS 1/1 (Tangerine RS)
Current Use	Single-Family Residence	Lake Ola	Vacant w/ shed; Vacant	Single-Family Residence	Single-Family Residence

## BACKGROUND AND ANALYSIS

### **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 Rural Settlement 1/1 (RS 1/1), which is consistent with the zoning. The property is 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 consists of single-family lakefront homes, with vacant residential properties to the south. The subject property is a lakefront lot along Lake Ola, and is approximately 1 acre in size, with essentially the same amount of upland acreage. It consists of a portion of Lot 9 of the Lake Ola Farm and Gardens Subdivision, platted in 1921. It is a conforming flag lot created via lot split in 1992 (#92-17). The property contains an existing 2-story single-family home with 2,584 sq. ft. of living area constructed in 1995.

A Normal High Water Elevation (NHWE) line runs along the north side of the property, adjacent to Lake Ola. The adjacent property to the south, which is the other part of the original Lot 9, has the same owners as the subject parcel.

The proposal is for the construction of a 25 ft. tall, 1,356 sq. ft. detached 3-car garage, including a plunge room, sauna and storage room, to be located in front of the primary structure (Variance #1) and to be set back 22.5 ft. from the front property line, where 35 ft. is required (Variance #2). The garage is considered detached as, per code, in order to be considered attached, an accessory structure must be connected to the primary structure via a fully enclosed or open-sided passageway that does not exceed 20 ft. in length. In this case, the connection from the primary structure to the proposed garage exceeds that 20 ft. maximum distance.

Per Code Sec. 38-1426(a)(3)b.3. a detached accessory structure cannot be located in front of the principal structure unless the principal structure is located in the rear half of the parcel, or when located on an agriculturally zoned lot/parcel with ten (10) or more developable acres. This lot does not meet either stipulation of this code section, requiring Variance #1 for the garage being located in front of the principal structure. Variance #2 is required as this same code section stipulates that when located in front of the principal structure, the detached accessory structure shall comply with all principal structure setbacks. No variance is required for the size of the proposed 1,356 sq. ft. garage as it will be the only accessory structure on the site and is less than the 3,000 sq. ft. maximum for accessory structures on the property.

Staff is recommending denial of the requested variances as there are other options to eliminate the need for the Variances. The proposed garage could be located on the east side of the house which would meet code requirements. There is also room at the rear of the existing home where additional living area could be constructed. If the additional living space proposed to be gained by converting the existing garage was built as an addition on the rear of the existing home, the existing garage would not have to be converted into living space. The existing garage could then possibly even be expanded to include space for a third vehicle, which would not require any variances. Alternatively, it appears that the proposed garage could be easily connected to the primary structure via a passageway that does not exceed 20 ft., thus eliminating the need for Variance #1, and possibly reducing the setback request for Variance #2.

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

#### **District Development Standards**

	Code Requirement	Proposed
Max Height:	25 ft. (detached accessory structure)	25 ft. (proposed garage)
Min. Lot Width:	130 ft.	133.6 ft. (at front setback line)
Min. Lot Size:	1 ac.	+/- 1ac.

**Building Setbacks**

	Code Requirement	Proposed
Front:	35 ft.	22.5 ft. (South – Variance) (to proposed garage)
Rear (NHWE):	50 ft.	141.8 ft. (North) (to existing residence)
Side:	10 ft.	26.8 ft. (East) (to proposed garage) 62.1 ft. (West) (to proposed garage)

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**STAFF FINDINGS**

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

There are no special conditions or circumstances as the lot is wide enough and large enough to garner additional living and garage space without requiring either variance.

**Not Self-Created**

The need for the requested variances is self-created as the proposed garage could be relocated as previously mentioned and not require either variance. There are also additional ways in which the desired result of more living area and more garage space could be accomplished without the need for variances.

**No Special Privilege Conferred**

Approval of the variances as requested would confer special privilege as the County has not granted any similar variances to nearby properties along Lake Ola, or in the neighborhood south of Sloewood Drive.

**Deprivation of Rights**

There is no deprivation of rights as the existing home and garage could continue to be enjoyed without the need for any variances. Furthermore, as previously mentioned, there are other alternatives for garnering additional living area and garage space on the site that would not require variances.

**Minimum Possible Variance**

These are not the minimum possible variances as there are other alternatives for additional living area and garage space which would not require any variances. Additionally, even if locating the proposed garage in front of the primary structure, it could be easily connected via a passageway which is less than 20 ft. in length, eliminating the need for Variance #1, and reducing the setback request for Variance #2.

**Purpose and Intent**

Approval of the requested variances 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. There is a tall hedge surrounding the property and many trees on the property which would significantly screen the proposed garage from surrounding properties and from Sloewood Drive. Furthermore,



the parcel directly south of this flag lot is owned by the same owners of the lot in question, and that is the only property which would have a clear view of the proposed structure.

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**CONDITIONS OF APPROVAL**

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1. Development shall be in accordance with the site plan and elevations received July 29, 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: Sean Lackey  
1624 Illinois Street  
Orlando, Florida 32803

C: Horace Robuck, Elizabeth Robuck  
4635 Sloewood Drive  
Mount Dora, Florida 32757

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## COVER LETTER

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### Orange County Variance Request ---Cover Letter---

The Robuck Residence at 4635 Sloewood Drive, Mt. Dora      Zoned R-CE

July 13, 2022

Hello, thank you for your time to review this proposal for a Setback Variance and a request for a "Detached" structure in front of an existing classical architecture home.

The Homeowners wish to make additions and alterations throughout. One of which, the *addition to the front* of the home with a three car garage and adjacent rooms, (with a future build-out attic) prompts the need for the variance process. Due to soil conditions, the addition needed to be placed in a strategic manner.

We've met with Chief Planner Ted Kozak and appreciate his time coordinating.

We would continue to be reliant to the county staff members for the nuances of any other possible needed variances for the project in the drawing set provided to conform to the county ordinances and process, thank you.

#### Setback variance

In lieu of a front setback requirement of 35 feet, the homeowners are asking for 22'-5".

The lot is a flag shape lot accessed by a 300 foot + long driveway. The placement of the home due to soil conditions relates the need to pinpoint the location of the addition to this area.

Refer to sheet a1 of the drawing set for site plan.

#### Detached Structure in Front Yard Position

County planning staff has advised that this home would need a variance for allowing the placement of what it considers a detached garage (since the covered connecting breezeway distance is interpreted as exceeding 20 feet.) in the Front yard instead of the normal backyard position. The height of the structure does not exceed the 25' maximum.

Note the "L" shape to the layout of the breezeway to avoid constructing the garage smack in the middle of the lot.

It has been mentioned that since the addition is less than 3,000 total under roof, then there is not a variance need for the size of the structure, just the front yard position.

#### CONSIDERATIONS for the variances....

- While the home would be closer to the front property line, the distance to the street is still over 300+ feet back. It will be especially difficult for anyone to perceive that a variance was granted.
- *The Robucks also own the property in front so the visual of a home being closer to a property is not an encroachment to any other homeowner.*
- Also note, the side of the home's addition will be over twice the required 10' side setback at 26'-10".

#### 'Required Justifications for how proposed meets the six standards for variance approval'

Refer to the next sheet attached.

#### Other technical information:

2,436 a/c square feet is added to the home, however, 801 square feet is under the existing (garage & porch areas become a/c) roof line.

'New Structure Portion' is  $(2,436 - 801 =) 1,635$  square feet. (Includes covered breezeway.)

Note, the attic may become a future build-out of an additional 648 square feet  $(1,635 + 648 = 2,283)$  for total new structure.)

#### Background information:

The homeowners look to create additions to the home which match the existing classical architecture. Unrelated to the variance are some changes towards the back of the property where an existing covered porch is being closed in some portions. Also an existing garage will change to air-conditioned living space.

***They are wanting to make sure the additions were consistent in size and in harmony to the existing ---not overwhelming which is the reason the Garage addition does not attach directly in front of the existing garage in an unfortunate 'center of lot' garage placement.***

Soil conditions also come into play.

Thank you for your time and consideration,  
Sean Lackey, Architect

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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.

*Concern over soil conditions on the site make for the better placement of the structure in the position prompting the variance request.*

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*Also note the Owners also own the separate property affected by this variance request.*

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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 Owners have taken no above described actions.*

---

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 applicants are not asking for a special privilege as described.*

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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.

*The use of the land with plenty of distance between structures is consistent with the applicant's zoning district and consistent with the distances far apart from others in this application. Front yard placement for a position hundreds of feet back from the road relates an odd anomaly easily quelled with the Owner's ownership of the separate front lot.*

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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.

*Yes, the maneuvering of the cars on the site and the clearances away from poor soil conditions.*

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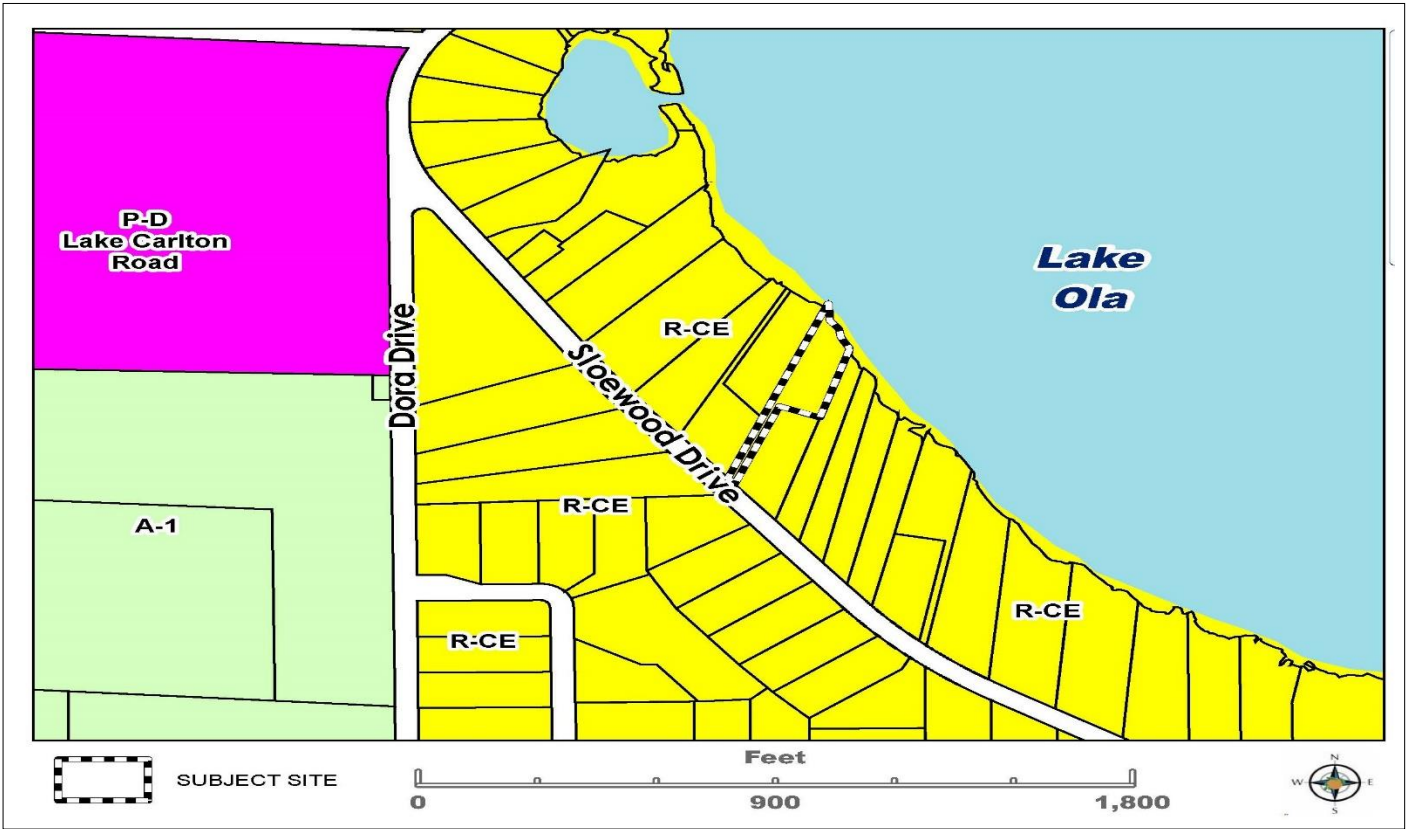
6. **Purpose and Intent** - Approval of the zoning variance will be in harmony with the purpose and intent of the Zoning Regulations and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

*The position of the walls on the land with much distance between structures from this zoning district continues to be well maintained. The addition is still more than double behind its side setback in how it affects its next closest neighbor.*

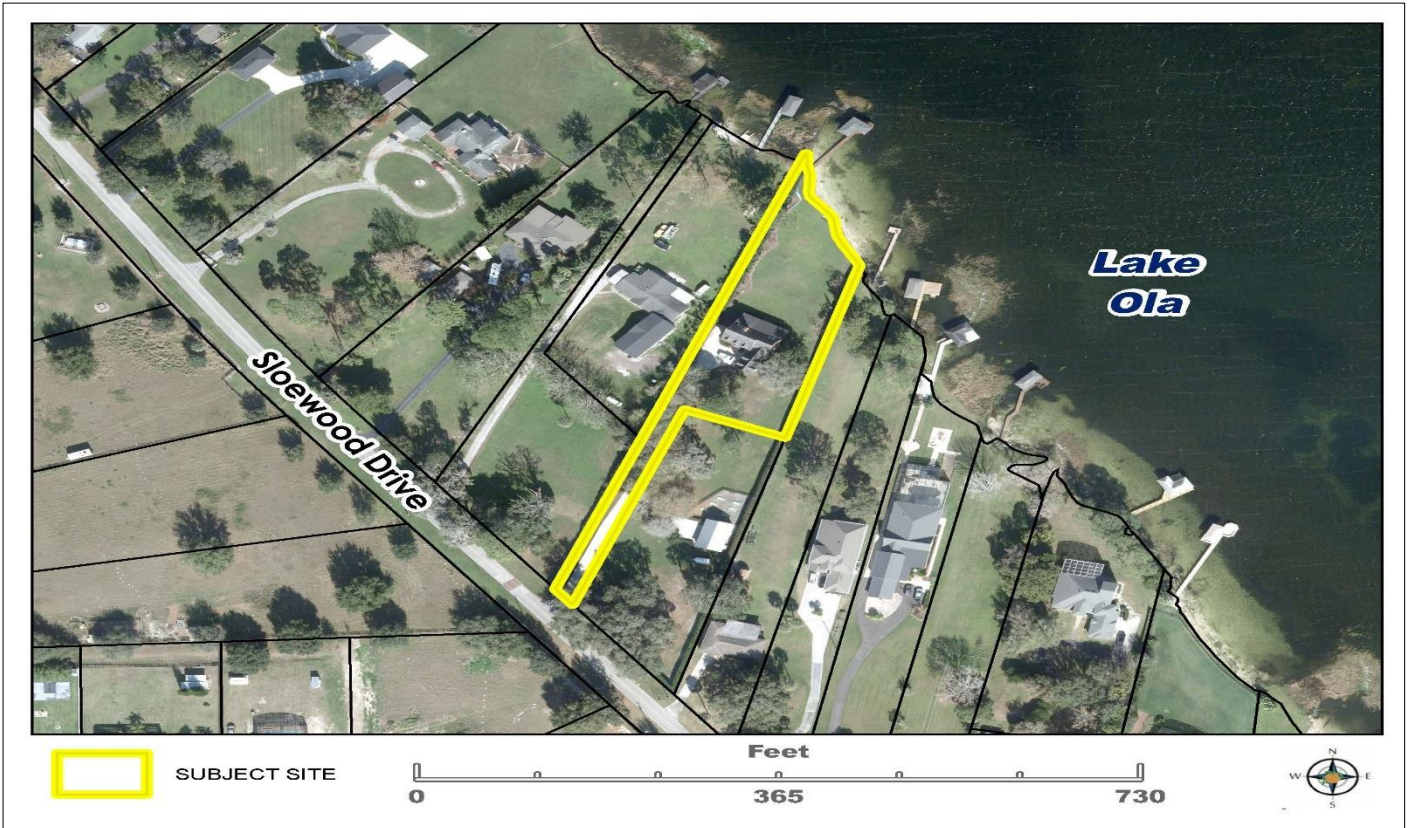
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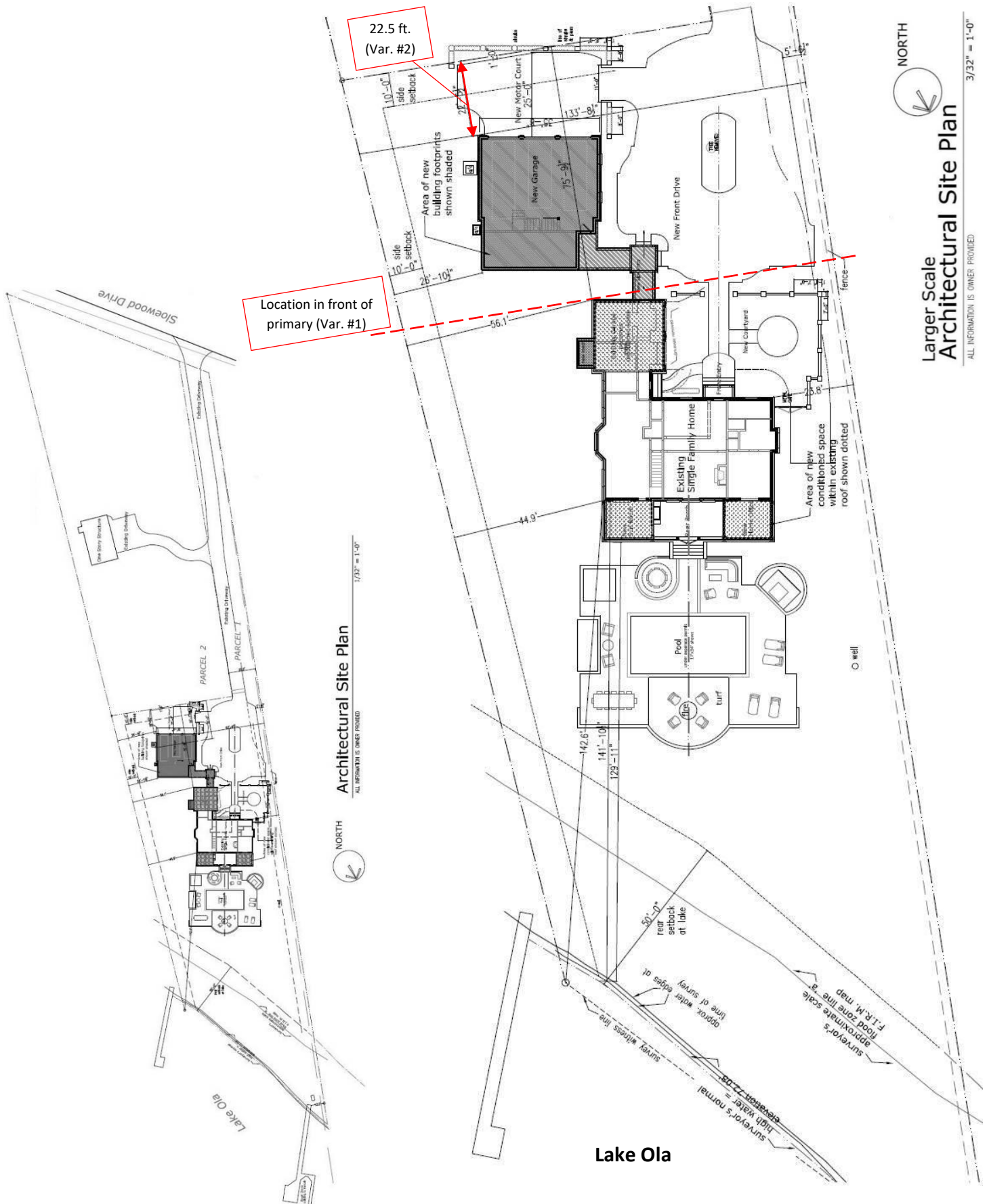
ZONING MAP



AERIAL MAP

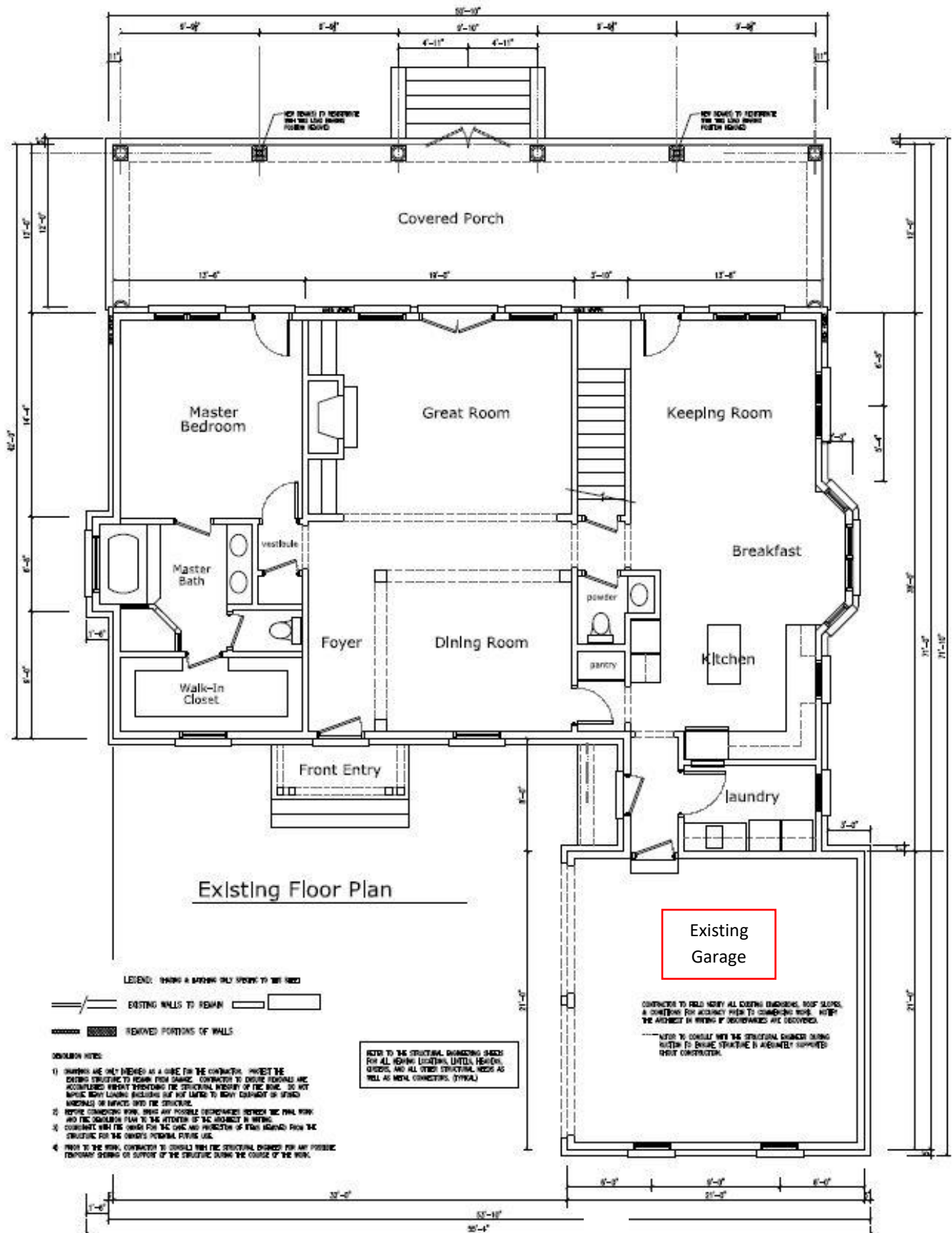


# SITE PLAN



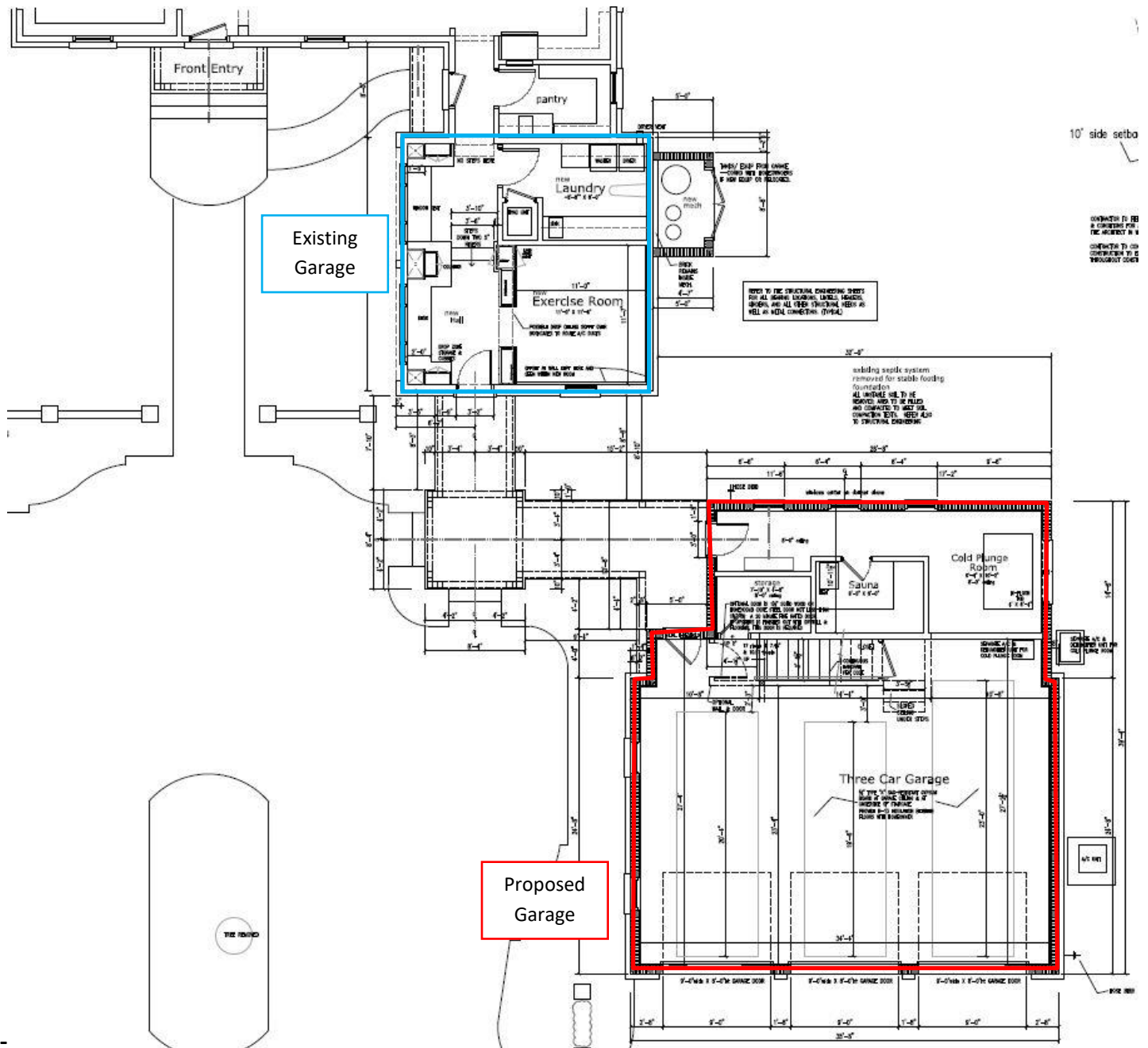


## EXISTING FLOOR PLAN

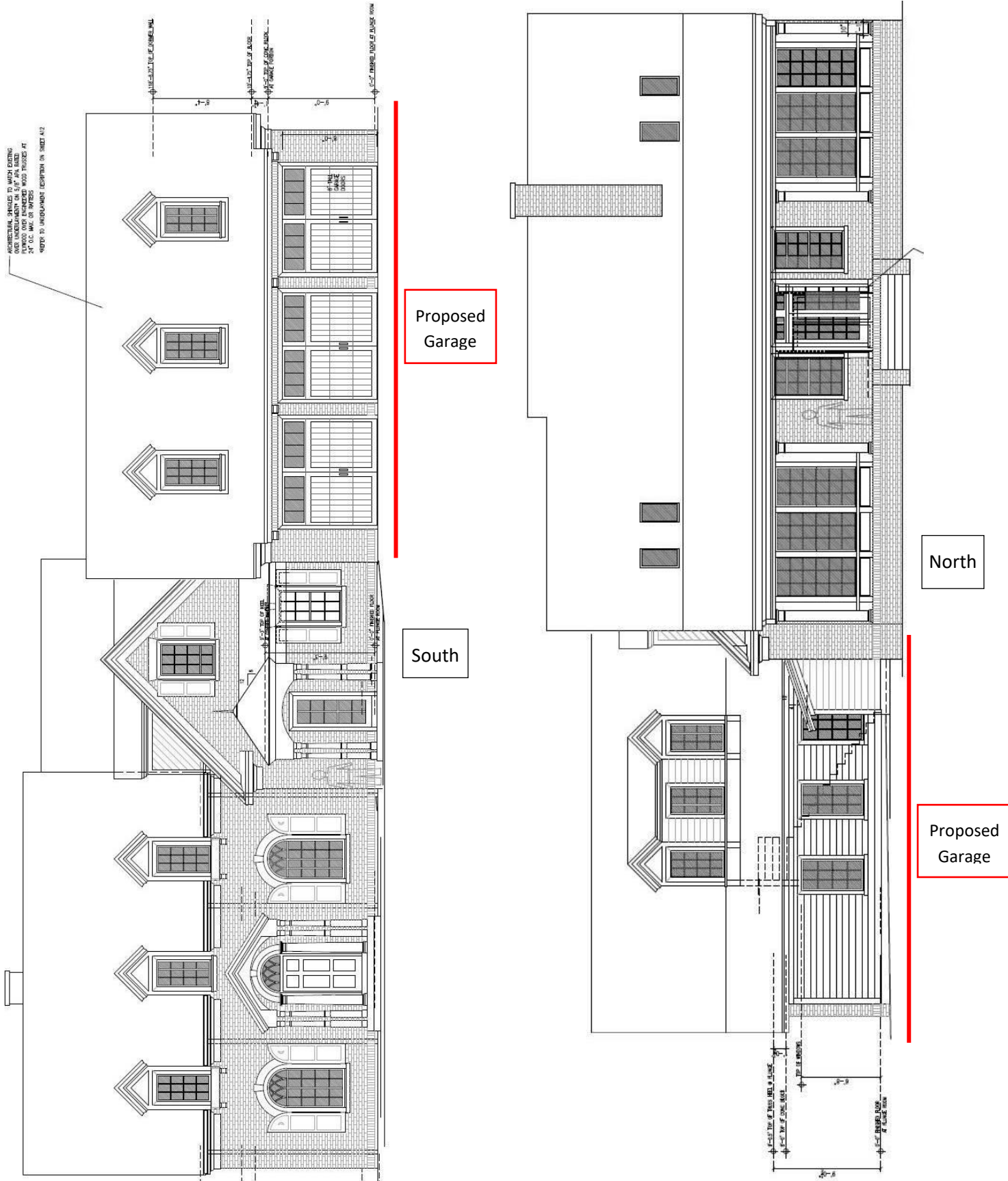




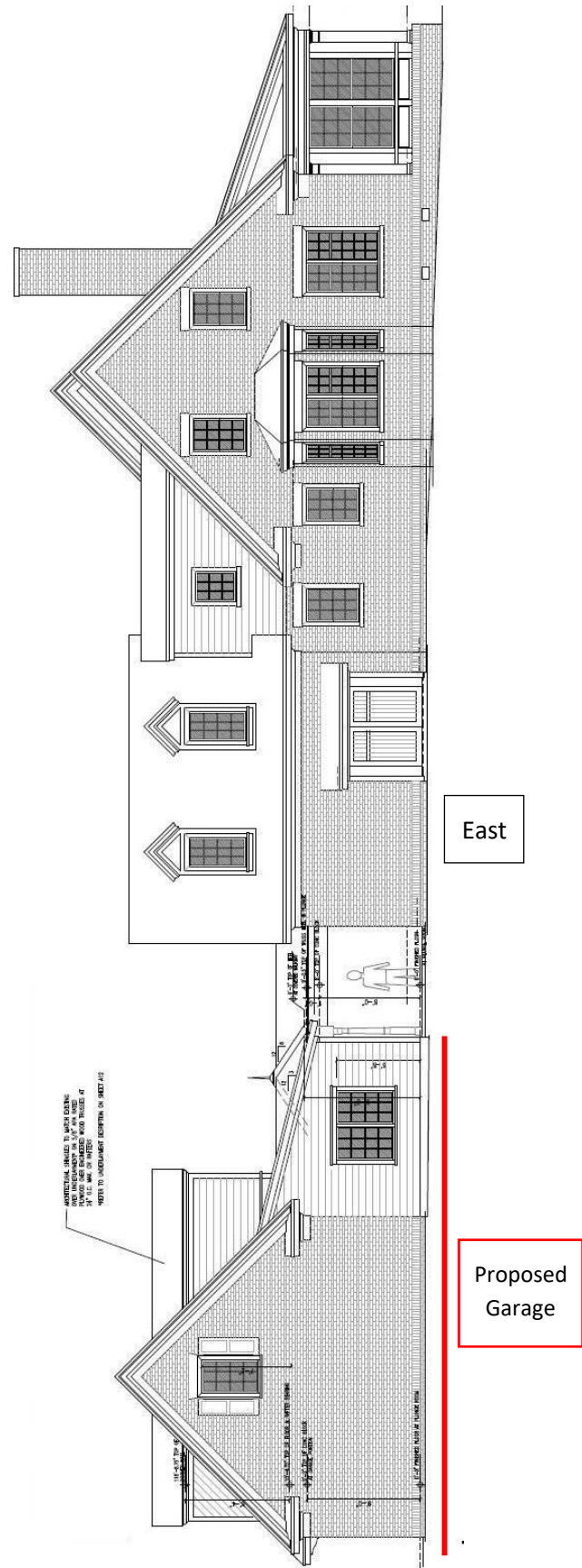
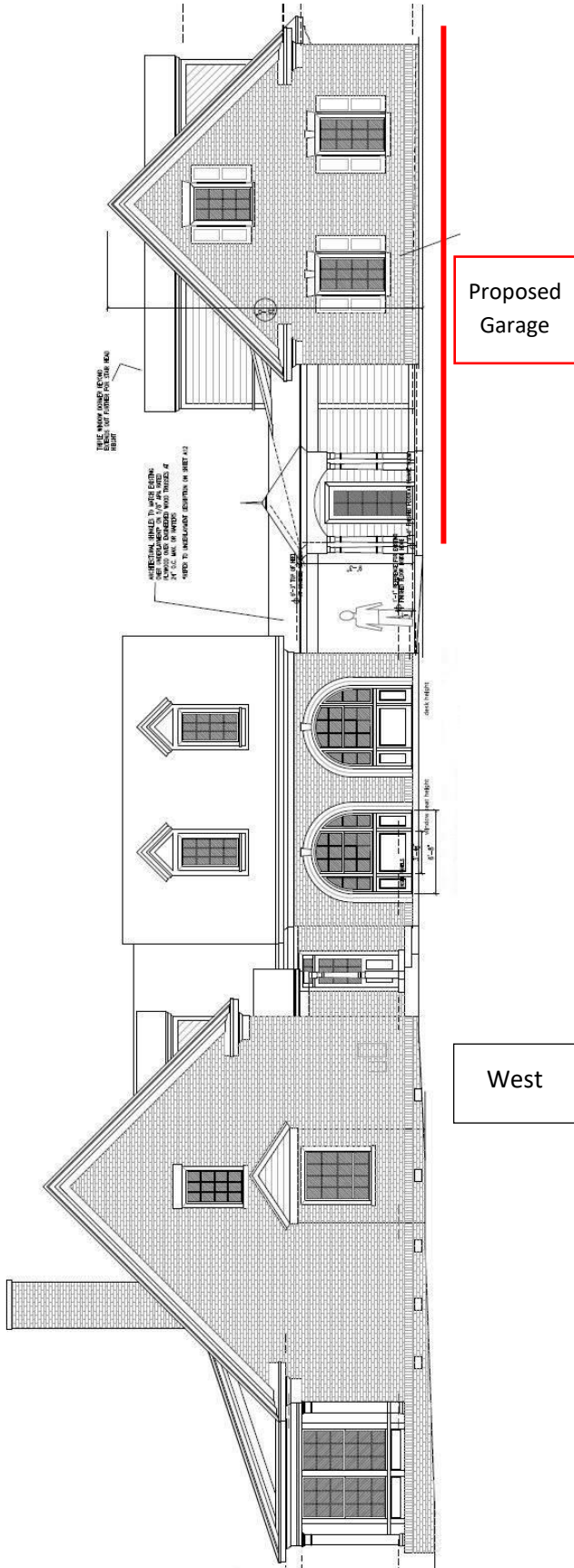
# FLOOR PLAN FOR EXISTING GARAGE CONVERSION AND PROPOSED NEW GARAGE



# ELEVATIONS



# ELEVATIONS





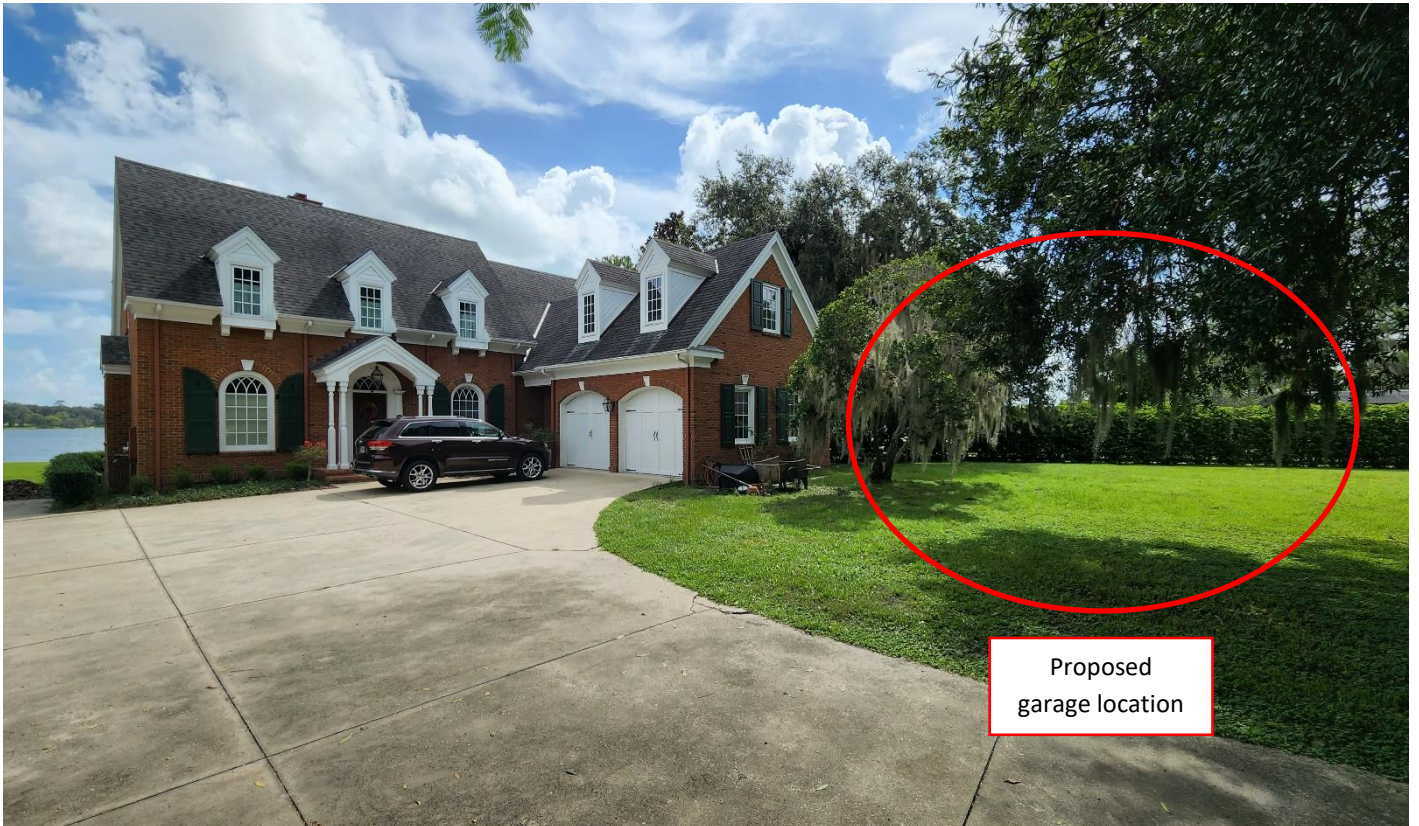
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## SITE PHOTOS

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**Facing north towards front of subject property**



**Facing northeast towards front of residence, garage (to be converted), and proposed garage location**



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## SITE PHOTOS

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**Facing southeast towards garage (to be converted) and proposed garage location**



**Facing south towards Sloewood Drive from existing residence**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#2**

Case #: **SE-22-06-041**

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

## GENERAL INFORMATION

APPLICANT(s): JEFFREY MCMILLIAN FOR J & J'S LAWN & TREE

OWNER(s): REBECCA ANN HANES

REQUEST: Special Exception in the A-1 zoning district to allow a Yard Trash Processing Facility.

PROPERTY LOCATION: 5750 Ondich Rd., Orlando, FL 32712, south side of Ondich Rd., west of Round Lake Rd., east of N. Orange Blossom Trl., north of W. Kelly Park Rd.

PARCEL ID: 10-20-27-0000-00-019

LOT SIZE: +/- 18.9 acres

NOTICE AREA: 1 mile

NUMBER OF NOTICES: 747

**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 (Motion by John Drago, Second by Roberta Walton Johnson; 4 in favor: Thomas Moses, Juan Velez, Joel Morales, Roberta Walton Johnson; 2 opposed: John Drago, Deborah Moskowitz; 1 absent: Charles Hawkins, II):

1. Development shall be in accordance with the site plan received July 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.



4. Permits 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. The use of the site as a Yard Trash Processing Facility shall be for private use and shall not be open to the general public.
6. Prior to obtaining a Site Work permit, a demolition permit shall be obtained to remove all existing structures and improvements from the property.
7. The 150 ft. limits of operations shall be protected and shall be defined by 2 inch by 4 inch posts, installed 6 ft. on center, with horizontal top and bottom rails at 2 ft. and 4 ft. high.
8. Hours of operation shall be limited to 7:00 a.m. to 5:00 p.m., Monday through Saturday.

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

The applicant agreed with the staff presentation and provided further clarification about the overall limited scope of the proposed operations relative to the overall size of the property, discussed the hours and days of operation and the number of trucks, the location and type of grinder and the limited noise and air impacts due to the proposed smaller machinery, the location of the grinder at the center of the property which would be mitigated by the presence of existing heavy tree cover.

There was no one in attendance to speak in favor of the request and nine were in attendance in opposition to the request, citing concerns about traffic, noise, air, groundwater pollution, impacts to wildlife, and neighborhood intrusion to adjacent residences and future planned residential and school developments located to the west.

The BZA discussed noise, air, wildlife and drainage impacts at length, discussed the six (6) of the criteria for a Special Exception, noted the limited impacts due to the size of the property and the limited scope of the operation and recommended approval of the Special Exception by a 4-2 vote, with 1 absent, subject to the eight (8) conditions in the staff report.

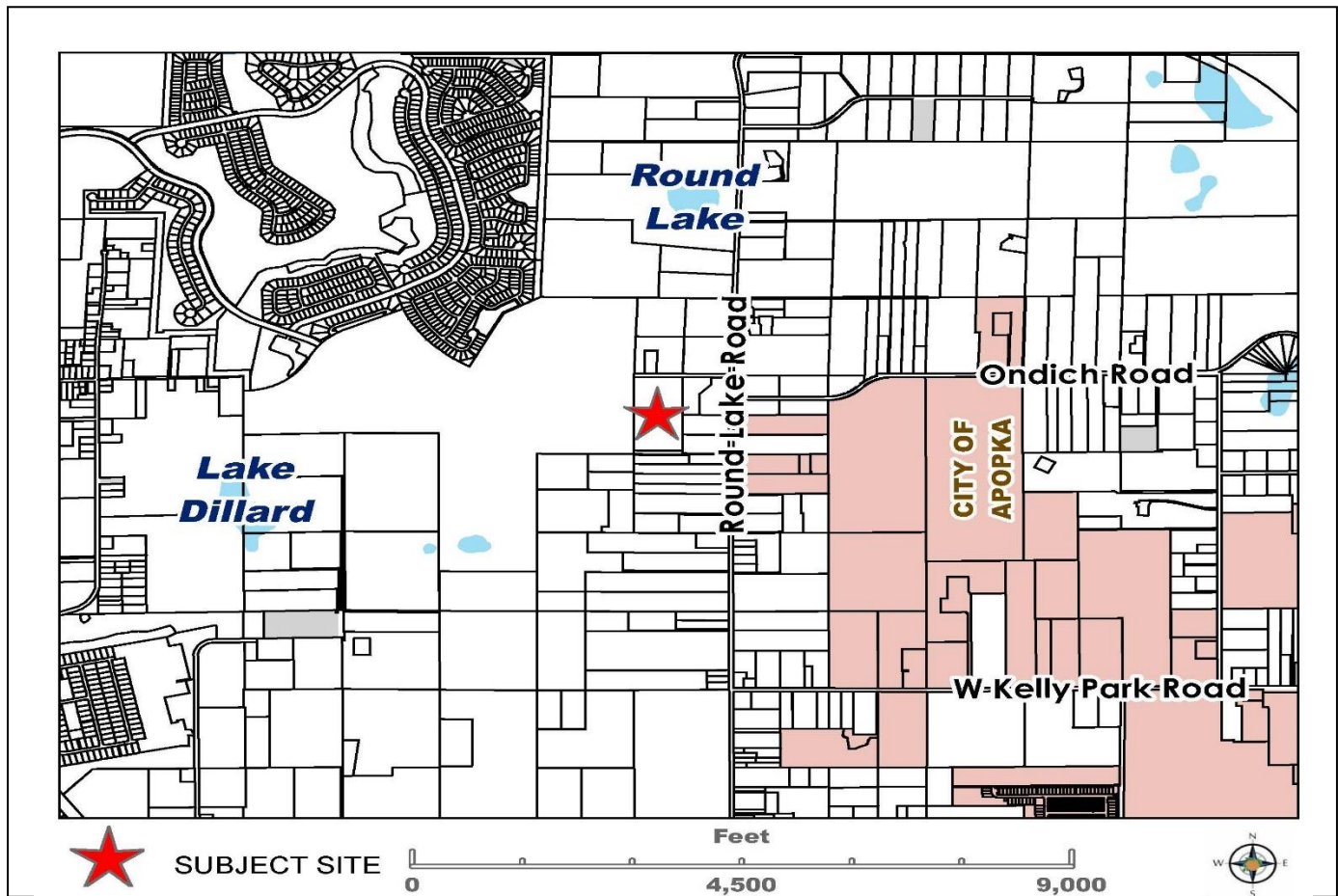
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#### **STAFF RECOMMENDATIONS**

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Approval, subject to the conditions in this report.

## LOCATION MAP



## SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	A-1	A-1	A-1	A-1	Foothills of Mount Dora PD
Future Land Use	Rural	Rural	Rural	Rural	LDR
Current Use	Vacant/ abandoned structures	Single-family residential	Vacant	Tree nursery	Vacant

## BACKGROUND AND ANALYSIS

### DESCRIPTION AND CONTEXT

The subject property is located in the A-1 Citrus Rural zoning district, which allows agricultural uses such as wholesale plant nurseries, as well as mobile homes and single-family homes with accessory structures on larger lots. In addition, certain agricultural uses, such as Yard Trash Processing Facilities, which are typically associated with tree and landscaping businesses, are permitted through the Special Exception process. The Future Land Use is Rural (R), which is consistent with the zoning district.

The area consists of vacant land, large lot single family homes, citrus groves and nurseries. The subject property consists of 18.9 acres and is considered a conforming parcel. The current owner purchased the property in 1992.

A Duke Energy easement within a high-voltage corridor crosses the center of the property. Duke Energy has provided comments to the applicant pertaining to limitations of traversing the easement.

There are currently 4 existing structures on site, two mobile home buildings, which are labeled on the site plan as Building #1 and Building #2, and two detached accessory structures, which are labeled on the site plan as Buildings #3 and #4. Prior to development, all existing structures will be removed.

Proposed is a Special Exception for a Yard Trash Processing Facility, which will be used as a staging area for the processing of tree debris for off-site distribution. The proposed operation will be a private facility and the general public will not be allowed to enter the property. There are no proposed structures, with the exception of the installation of a mobile grinder for the crushing of tree debris. A 57-stone entry drive aisle for access to the site and a parking area is also proposed.

As required by Sec. 38-79 (120) of the County Code, the proposal meets all the following general performance standards for Yard Trash Processing Facilities and performance standards within the A-1 and A-2 zoning districts:

a. General requirements:

- i. The site shall meet the permit exemption requirements in subsection 32-214(c)(9)iii. or iv.
- ii. The site shall meet the requirements of chapter 30, article VIII, the Orange County Site Development Ordinance (pertaining to site plans);
- iii. Landscaping, including, screening of open storage areas of yard trash and yard trash derived materials, shall be installed in accordance with chapter 24, Orange County Code.
- iv. Machinery, when used for yard trash processing related activities, shall not be operated within any required yard, open storage setbacks, or within a two hundred (200) foot setback from any residence or residentially-zoned property. In addition, processing equipment shall be set back from property boundaries a sufficient distance to prevent potential thrown/falling objects from leaving the site.
- v. Meet the noise and sound requirements of chapter 15, article V, the Noise Pollution Control Ordinance of Orange County, Florida.
- vi. Pile height shall not exceed twenty-five (25) feet in overall height from natural grade.
- vii. Burning is prohibited.
- viii. Firewood sales and storage as an ancillary use to a yard trash processing facility shall be subject to the requirements of 38-79(120) and not section 38-79(43) (conditions for permitted uses and special exceptions).
- ix. Wood chipping, wood mulching, and wood composting operations that store no more than two hundred (200) cubic yards of a total combined volume of yard trash or yard trash derived



materials are subject to the requirements set forth in section 38-79(96) and not the requirements set forth in section 38-79(120).

b. In A-1 and A-2 zoned districts:

- i. The processing and open storage of yard trash and yard trash derived materials is subject to a setback of one hundred fifty (150) feet of any property boundary line.
- ii. Commercial parking, for yard trash processing related activities, shall not be located within twenty-five (25) feet of any property boundary line; and
- iii. The hours of operation for yard trash processing related activities shall be limited to between 7:00 a.m. and 7:00 p.m.;
- iv. In addition to any other landscaping requirements, outer perimeter buffering shall be Type C, opaque buffer, as outlined in section 24-5, Orange County Code.

For buffering, 150 ft. landscape buffers will be provided around the perimeter of the site, exceeding the 15 ft. minimum buffer requirements, required by Sec. 24-5 of the Landscape Code. The buffer will primarily consist of existing mature Live Oak trees, supplemented along the north property line adjacent to Ondich Rd. and along the east property line, with 15 ft. high Live Oak trees planted 40 ft. on center, and 3 ft. high Viburnum shrubs, planted 3 ft. on center. Furthermore, as indicated on the Site Plan, the heavily forested southwest and southeast corners of the property will remain undeveloped.

Approximately 4 people are employed by the company, however, only 1 to 3 of them will be on the site at any given time. The days and hours of operation will be 7:00 a.m. to 5:00 p.m., Monday through Saturday.

No structures are proposed and as such the parking code requires than no use shall have less than 3 parking spaces per Sec 38-1476(a) for uses deemed equivalent to general businesses. Provided are 3 parking spaces, thus meeting the requirement.

On March 1, 2022, the applicant submitted to the Environmental Protection Division (EPD) an Annual Notice of Intent to Operate a Permit Exempt Yard Trash Processing Facility under the requirements of Chapter 32, Article V. In order to maintain the status with the EPD, the operation cannot expand its storage above 12,000 cubic yards of material. EPD has also determined that the proposed operation will not impact or exceed County air quality or noise standards.

County Transportation Planning has reviewed the request and has provided comments that no traffic study is required since the number of trips generated by the use will be minimal.

As of the date of the writing of this report, 1 letter of support for the request has been submitted by the most impacted property owner to the north and 2 correspondences have been received in opposition to the request, including the most impacted property owner to the east.

On Monday, August 29, 2022, a Community Meeting will be held at Wolf Lake Elementary School to allow for input. The meeting attendance and results will be provided at the Board of Zoning Adjustment hearing since the Staff Report will be finalized prior to the meeting.

## District Development Standards

	Code Requirement	Proposed
Max Height:	25 ft. Mulch piles	20 ft. Mulch piles
Min. Lot Width:	100 ft.	664 ft.
Min. Lot Size:	0.5 acres	18.9 acres

## Building Setbacks (that apply to proposal in question) (Measurements in feet)

	Code Requirement	Proposed
Front: (Ondich Rd.)	150 ft. Materials setback 200 ft. Equipment setback	150 ft. Materials setback/ 200 ft. Equipment setback (North)
Rear:	150 ft. Materials setback 200 ft. Equipment setback	150 ft. + Materials setback/ 200 ft. + Equipment setback (South)
Side:	150 ft. Materials setback 200 ft. Equipment setback	150 ft. + Materials setback/ 200 ft. + Materials setback (East and West)

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## STAFF FINDINGS

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### SPECIAL EXCEPTION CRITERIA

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

The provision of a yard waste processing facility as conditioned through the Special Exception process is consistent with the Comprehensive Plan since such a use provides a benefit and service to the surrounding residential areas.

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

The proposed yard waste processing facility is compatible with other existing nearby similar agricultural uses such as plant nurseries. As proposed, it is substantially setback from all property lines and will not impact adjacent properties.

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

The proposed operations on the subject property will not negatively impact the surrounding area. The proposed use meets and exceeds all performance standards for this type of facility.

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

The use meets all setbacks, height limits, parking requirements, and other performance standards as required for Yard Trash Processing Facilities. With the installation of trees and hedge materials, as proposed, the adjacent properties will be afforded enhanced buffering.

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

The applicant has not proposed any activity on the property that would generate noise, vibration, dust, odor, glare, or heat that is not similar to the adjacent and nearby nurseries and will not be impacting the adjacent residence located to the north since both properties are heavily landscaped and buffered.

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

The proposal is entirely located within a heavily forested, substantially buffered property. Further, the applicant has provided a landscape plan that shows a continuous hedge and the addition of trees installed with a separation 40 ft. on center, around the north and east property lines.

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**CONDITIONS OF APPROVAL**

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1. Development shall be in accordance with the site plan received July 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.
4. Permits 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. The use of the site as a Yard Trash Processing Facility shall be for private use and shall not be open to the general public.
6. Prior to obtaining a Site Work permit, a demolition permit shall be obtained to remove all existing structures and improvements from the property.
7. The 150 ft. limits of operations shall be protected and shall be defined by 2 inch by 4 inch posts, installed 6 ft. on center, with horizontal top and bottom rails at 2 ft. and 4 ft. high.
8. Hours of operation shall be limited to 7:00 a.m. to 5:00 p.m., Monday through Saturday.

C: Jeffrey McMillan  
522 S. Hunt Club Blvd., #333  
Apopka, FL 32703



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## COVER LETTER

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February 8, 2022

Jeffrey McMillan  
522 Hunt Club Blvd #333  
Apopka, FL 32712  
(407) 919-9420



### Application for Special Exception to allow a Yard Trash Processing Facility

**Zoning A-1**  
**5750 Ondich Rd Apopka, FL 32712**  
**102027000000019**

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The purpose of this request is to allow the applicant to use the land at 5750 Ondich Rd as a "Yard Trash Processing Facility" via special exception.

I have run a local tree service for over 20 years in Orange County. The use of this land will be as a staging area for the clean tree debris my company generates as we trim and remove trees in the Greater Orlando area. We are in control of our truck loads of tree debris and desire to create a location that will allow a renewable source of recycling the vegetation obtained from my business. Locally sourced mulch is the most sustainable and environmentally friendly source of landscape mulch. We would like to help Orange County with a source of homeowner landscape mulch that they can say came from pruning of Orange County trees. We need alternatives to the landscape industry use of vitally important cypress trees that are part of our Central Florida ecosystems!

I can adhere to requirements under Sec. 38-79 (96) and (120) as defined in the zoning code. I will operate with no more than 12,000 cubic yards of yard trash on the property at any point in time. The property will turnover yard debris into mulch products as frequently as necessary to stay below the code limit of 12,000 yd<sup>3</sup>. The yard waste will be reduced by a mechanical grinder and will follow all code requirements for sound, dust, and hours of operation. I do not plan to build any structures. As a local resident of Apopka, I want to continue to be a good neighbor and help my community. Within this application is letters of support from the surrounding neighbors.

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

The Comp plan support agricultural uses within A-1 zoning. My tree service business is a supported agricultural based industry and the exception will permit me to provide mulching of clean tree debris.

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

The surrounding area has large open plots of land along with a number of nursey businesses in this area of Orange County. My tree service company is very compatible with these businesses.

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

The use will not be detrimental but compliment the agricultural businesses in the area.

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

Acknowledged and all performance standards will be met.

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## COVER LETTER

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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 18+ acres of land will allow me to situate my mulching operation with sufficient buffers to surrounding homes or businesses. The use of any mulching equipment will take place during normal business hours and all efforts to reduce dust will be taken.

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.**

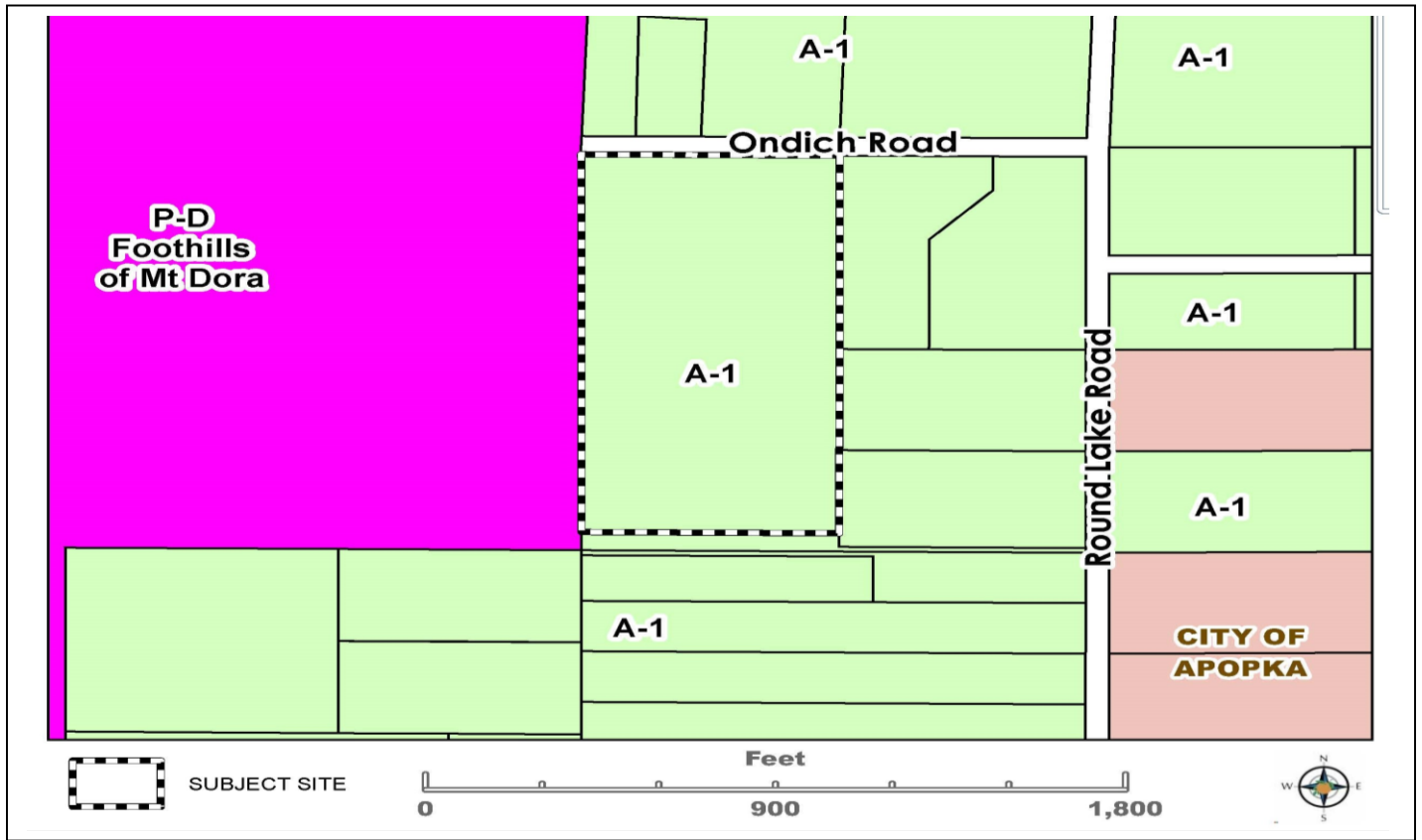
Type C, opaque buffer per Sec 24-5 will be met around the entire perimeter.

Sincerely:

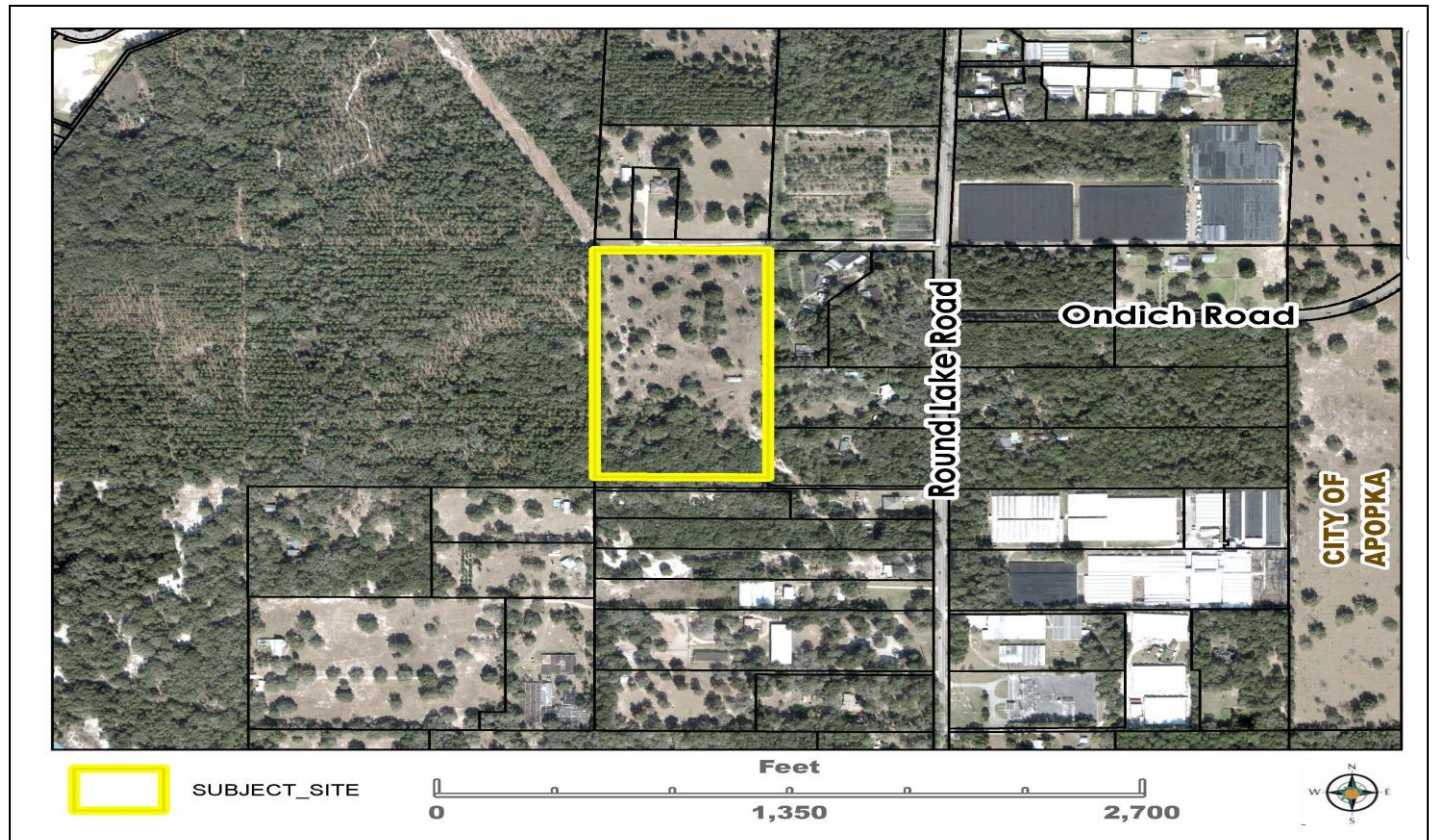
  
Jeffrey McMillan

J&J Lawn and Tree Service

## ZONING MAP

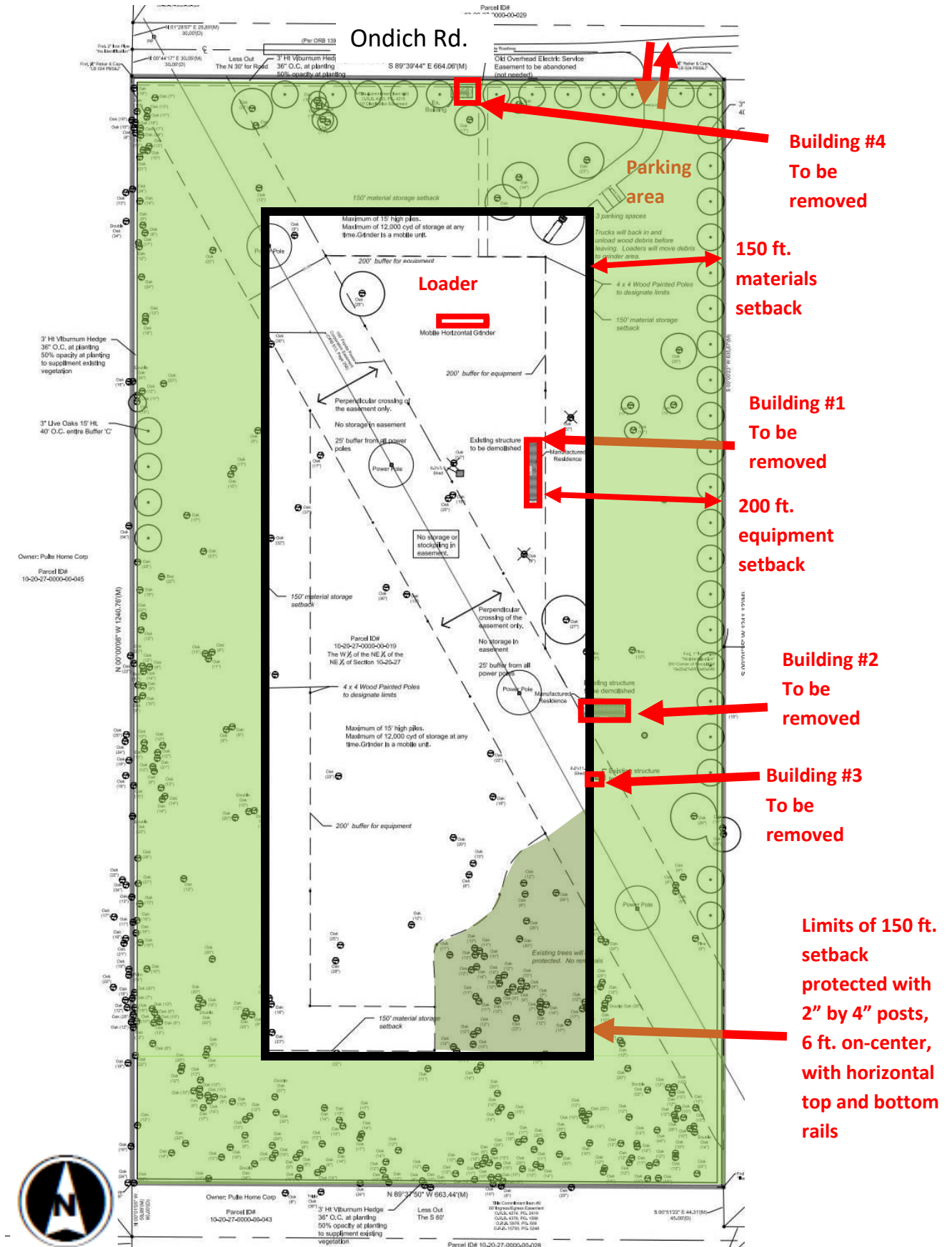


## AERIAL MAP





# SITE PLAN





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**SITE PHOTOS**

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**Facing west from Ondich Rd. towards Building #4 on the left to be removed**



**Facing south at the west property line from the terminal end of Ondich Rd.**



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## SITE PHOTOS

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**Facing S. at the center of property under power lines with Buildings #2 & #3 to be removed in background**



**Facing northeast at center of property towards Building #1 to be removed**



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**SITE PHOTOS**

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**Facing northeast towards proposed location of grinder, proposed parking to the left**



**Facing northeast at east property line towards adjacent nursery and structures**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#5**

Case #: **VA-22-09-085**

Case Planner: **Taylor Jones (407) 836-5944**  
**Taylor.Jones@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): EDWARD TOMBARI FOR FOXPOINT MEDIA

OWNER(s): GG AND J HOLDINGS LLC

REQUEST: Variances in the C-1 zoning district to allow the construction of a 2-sided, V-shaped, 378 sq. ft. electronic message center (EMC) billboard as follows:

1. Setback of 145 ft. from a residential district to the north in lieu of 200 ft.
2. Setback of 5 ft. from a residential district to the east in lieu of 200 ft.

PROPERTY LOCATION: 12049 E. Colonial Drive, Orlando, FL 32826, north side of E. Colonial Dr., east of N. Alafaya Tr., northwest of S.R. 408.

PARCEL ID: 22-22-31-9461-00-021

LOT SIZE: +/- 0.6 acres (26,184 sq. ft.)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 73

**DECISION:** Recommend **DENIAL** of the Variance requests in that there was no unnecessary hardship shown on the land; and further, they do not meet the requirements governing variances as spelled out in Orange County Code, Section 30-43(3) (Motion by Joel Morales, Second by John Drago; 4 in favor: Thomas Moses, John Drago, Juan Velez, Joel Morales; 2 opposed: Deborah Moskowitz, Roberta Walton Johnson; 1 absent: Charles Hawkins, II).

**SYNOPSIS:** Staff described the proposal, including the history and location of the property, the site plan and sign specifications, the location of the billboard in relation to the adjacent uses in the area 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 alternatives that would allow for the construction of a billboard without the need for Variances. Staff noted that no comments were received in support or in opposition.

The applicant discussed the history of the use of the adjacent property and the recent conversion to student housing from commercial, stated that the proposal complies with the intent of the sign code and further stated that the property was uniquely situated and located adjacent to E. Colonial Dr. in a manner that would not negatively affect adjacent properties.

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

The BZA discussed the intent of the billboard code requirements and inquired about the zoning history of the adjacent property, the ability to reduce the request to eliminate the need for the Variances, and expressed concerns about deviating from residential separation requirements of the billboard code. The BZA recommended denial of the Variances by a 4-2 vote, with one absent.

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## STAFF RECOMMENDATIONS

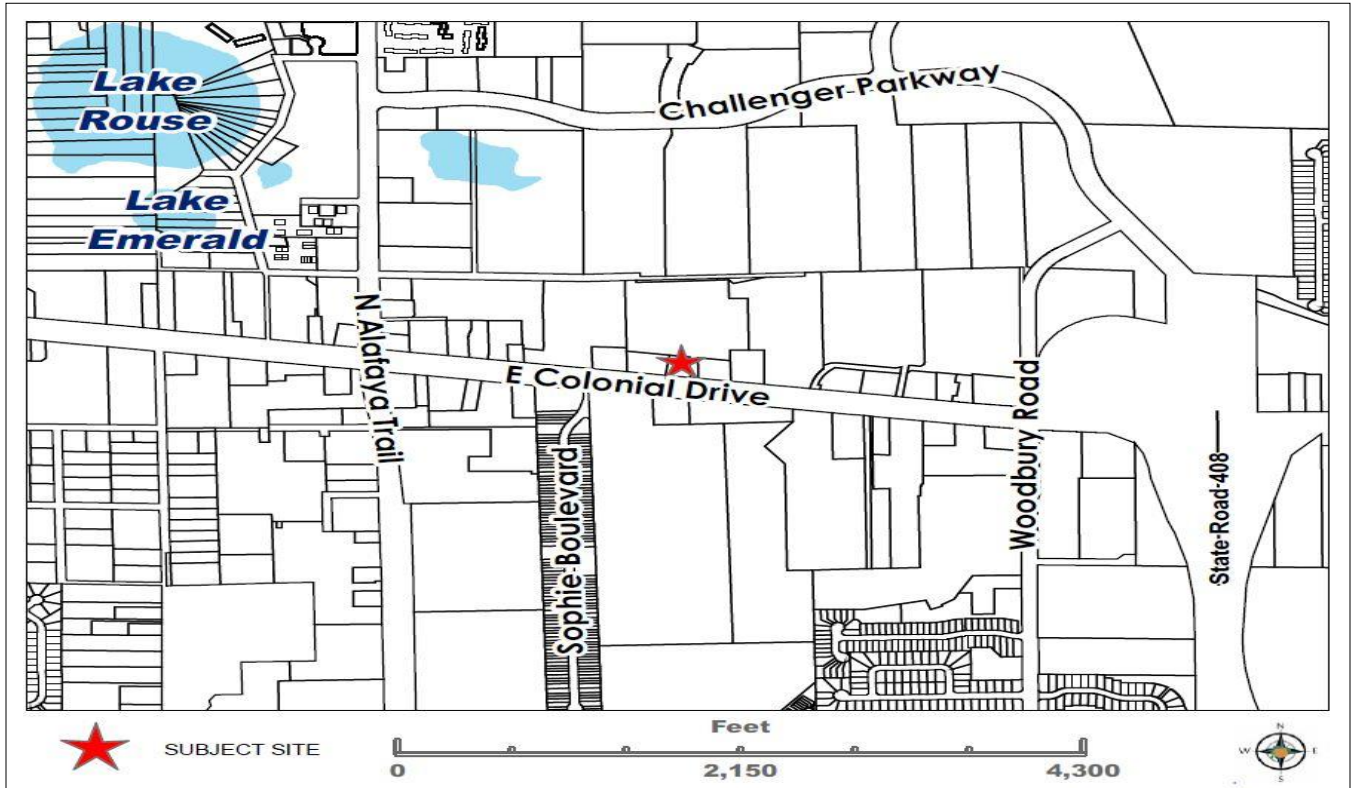
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Denial. However, if the BZA should find that the applicant has satisfied the criteria necessary for the granting of a variance, staff recommends that the approval be subject to the conditions in this report.

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## LOCATION MAP

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## SITE & SURROUNDING DATA

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	Property	North	South	East	West
Current Zoning	C-1	Burlington Student Housing PD	C-1	Burlington Student Housing PD	C-1
Future Land Use	C	PD-C/ MDR	C	PD-C/ MDR	C
Current Use	Parking for abutting Student Housing	Student Housing	Retail Commercial	Student Housing (driveway)	Restaurant Commercial

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## BACKGROUND AND ANALYSIS

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### DESCRIPTION AND CONTEXT

The subject property is located in the C-1, Retail Commercial District, which allows retail commercial uses. Billboards are permitted in the C-1 zoning district, subject to compliance with the standards of code.



The subject property is 26,184 sq. ft. in size, and is comprised of a portion of Lot 2 of the Wintergreen Short Form Subdivision plat, recorded in 1990. The property consists of an overflow parking lot with 31 spaces, constructed in 2020, used by the abutting student housing complex. The subject property is bordered to the north and the east by the Burlington Planned Development, which is zoned for 162 student housing residential dwelling units. To the west is a restaurant, and to the south is a retail plaza.

The request is to construct a 378 sq. ft., 30 ft. high, 2-sided, V-shaped electronic message center (EMC) billboard sign adjacent to E. Colonial Drive, in the southeastern corner of the property. While the originally submitted cover letter states only a 330 sq. ft. billboard is proposed, a corrected application and plans submitted show the proposed billboard is 378 sq. ft. Orange County Sign Code Section 31.5-126(n)(3) requires that billboards not be erected within 200 feet of the nearest property line of a residential district. However, a non-illuminated billboard that is less than 75 sq. ft., with a maximum height of 16 ft. tall can be erected within 100 ft. of a residential district. The proposed billboard is proposed to be located 145 ft. from the residential district to the north, which is abutting the actual dwelling units, necessitating Variance #1. The proposed billboard is also to be located 5 ft. from the residential district to the east, which is the entry drive into the student housing development, necessitating Variance #2.

The proposed billboard is meeting the front, rear, and side setbacks from property lines required by the provision of Section 31.5-126 and is also meeting the distance separation from other billboards on the same side of the street, agricultural zoning districts, and parks, as well as copy area, height, and sign face requirements.

The applicant contends they were in negotiations to locate a billboard on the site at a time when the abutting student housing parcel was still commercially zoned, prior to 2019. The abutting student housing/residential property was rezoned from commercial to a PD for student housing in May, 2019. Prior to that time, the parcel was commercially zoned, and a retail store built in 1990 (originally a K-Mart and later a Burlington Coat Factory) existed. The rezoning, and amendment to comprehensive plan associated with the rezoning, required a community meeting, a public hearing before the Planning and Zoning Commission, and a public hearing before the BCC. The subject property was included in the notice area for all 3 hearings, and as such was notified that the subject parcel had a proposed rezoning to residential. These meetings took place on April 18th and May 21st of 2019 respectively. Further, the Development Plan for the student housing complex also required a community meeting, and a public hearing before the BCC. These 2 additional meetings also required notification of the abutting properties, and occurred on October 10, 2019, and January 28<sup>th</sup> 2020. Permits were submitted for the student housing development in July of 2020.

While the Code allows for billboards, the provisions are intentionally restrictive. Over the years the code has become increasingly more restrictive with respect to billboards. Further, the County's standard practice over the past 20-30 years has been to add a prohibition on any new billboards for any rezoning to commercial or industrial or PD that is approved to further restrict the allowable locations of billboard in the county and further limit the total number of billboards. There is a code allowance to erect smaller, non-illuminated billboards in closer proximity to residential districts, which is one of the few points of relief given in code as it relates to distance separation. A code compliant billboard could be erected on the west side of the site.

**District Development Standards**

	Code Requirement	Code requirements within 100 ft. of residential	Proposed
Maximum Height:	40 ft.	16 ft.	30 ft.
Minimum Clearance (to bottom of sign)	13.5 ft.	9 ft.	17.5 ft.
Maximum copy area (per sign face)	400 sq. ft.	75 sq. ft.	378 sq. ft.

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

	Code Requirement	Proposed
Front:	15 ft.	15 ft. (South)
Rear:	15 ft.	145 ft. (North)
Side:	5 ft.	5 ft. (East) 130 ft. (West)
Separation from billboard on same side of non-limited access highway	1,000 ft.	1,173 ft. (to West) 4,300 ft. (to East)
Separation from park	200 ft.	311 ft. (located across E. Colonial Dr., to the southwest)
Separation from agriculturally zoned property	100 ft.	311 ft. (located across E. Colonial Dr., to the southwest)
Separation from residential district	200 ft.	5 ft. (East -Variance #2) 145 ft. (North - Variance # 1)

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**STAFF FINDINGS**

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

There is nothing peculiar to the land which is not applicable to other lands in the same zoning district. There are no special conditions and circumstances particular to this site relative to the distance from the abutting residential district. While the applicant may have begun negotiations prior to the rezoning to a residential district, ultimately no permit applications for a billboard were submitted. The rezoning to a residential district was approved by the Board of County Commissioners on May 21, 2019. Further, many of the commercial properties existing on the same block between N. Alafaya Trail and Woodbury Road abut multifamily or residential development on the sides and rear, similar to the subject parcel, as indicated in the map of the block below. Residential, specifically multi-family, is a common use in this area.



### Not Self-Created

The need for the variances is self-created since a there is the ability to install a billboard which meets code on this site. Therefore, the request for a variance to allow a billboard of this size is self-created.

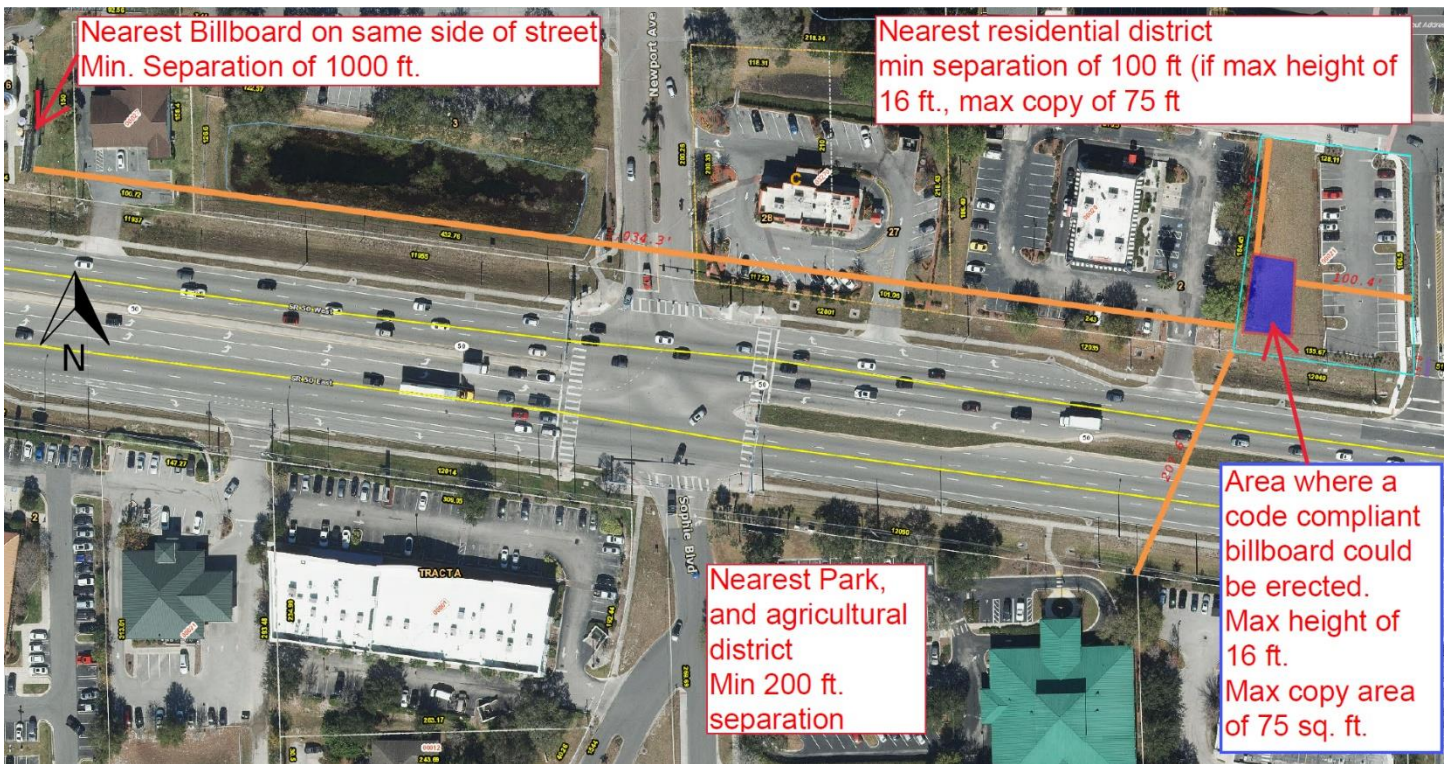
### Deprivation of Rights

Since there are other alternatives, which will eliminate the need for the variances, denying the request will not deprive the applicant the ability to install a billboard on this site. Further, there is no specific right that the property has to a billboard. The property is currently used, and can continue to be used for various commercial uses that are permitted with no variances needed.

### Minimum Possible Variance

The request is not the minimum possible as a smaller, code compliant billboard could be erected on the property without need for variances. As depicted in the below graphic, there is a location on the site where a billboard could meet all setbacks, and separation requirements.

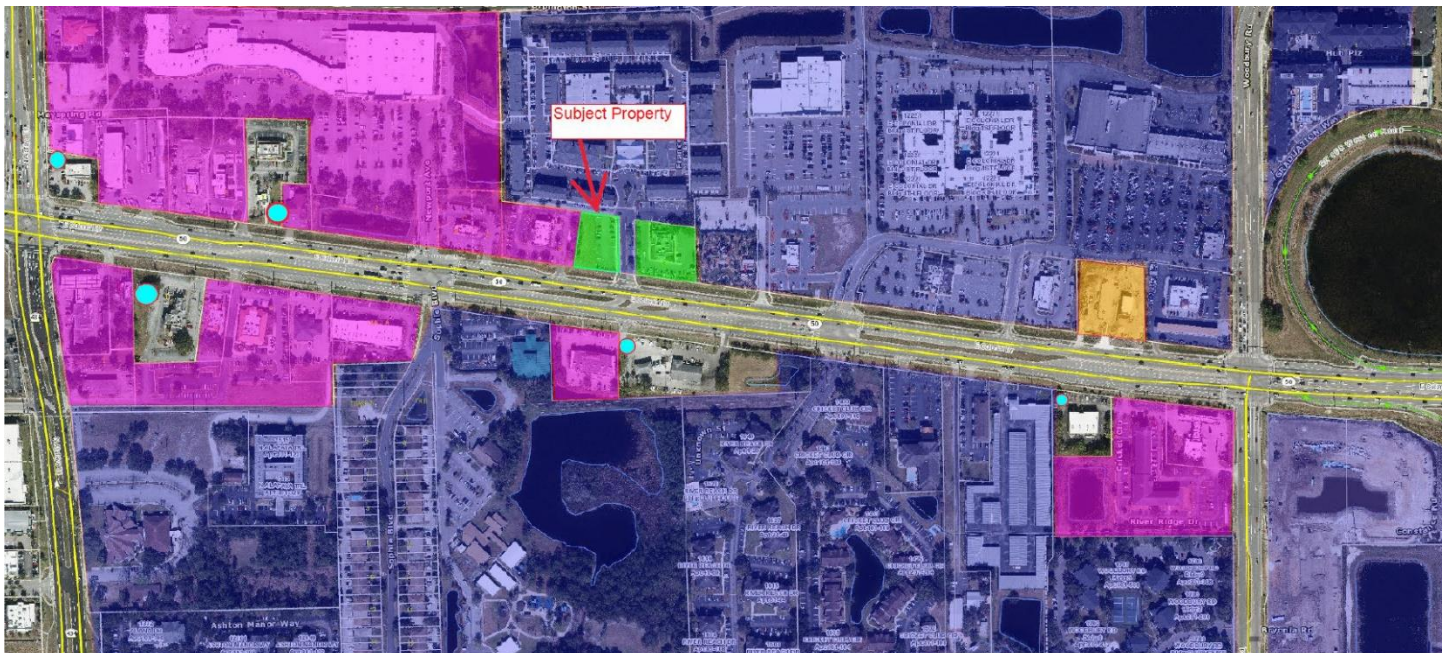




### No Special Privilege Conferred

Granting the variances as requested would confer special privilege denied to other properties. All billboards on commercial properties are required to meet the same standards. Further, many properties in the area are outright prohibited from having billboards, based on their zoning district (either PD, residential, or a restriction upon a rezoning to commercial). There are also already 5 billboards on the portion of E. Colonial Dr. between N. Alafaya Trl. and Woodbury Rd., 3 on the north side and 2 on the south side. As new billboards are required to be located 1,000 ft from billboards on the same side of the street, most of parcels along this block face would require a variance to accommodate a billboard. This parcel is one of only 2 on the block that would potentially allow for a billboard without need for a variance, as indicated on the following map:





- Existing Billboard**
- Subject Property**
- Properties that do not allow billboards based on the zoning district**
- Properties that could potentially allow a billboard (16 ft. tall, 75 ft. of copy, no illumination) without variance.**
- Property that would require a variance due to proximity to limited access highway off ramp (within 500 ft)**
- Properties that would require variance to have a billboard, due to proximity to billboard on same side of road (within 1000 ft)**

### Purpose and Intent

Per Sec. 31.5-126(n) of the sign code, control of billboards in areas adjacent to residential districts is declared to be necessary to protect property values of residential districts, as well as to attract visitors and residents to the county by preserving the natural beauty of the County. Further, the purpose of the sign code is to ensure that a consistent amount of signage is permitted for all properties and to avoid sign clutter. Approval of the requested variance would effectively allow for increased signage area, sign height, and illumination than code would allow for a billboard on this site. Approval of the variances would conflict with the purpose and intent of the Zoning regulations, and will be detrimental to the surrounding area, as the request is significantly larger than a conforming billboard.

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### CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan and sign specifications dated August 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 for the billboard 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. The billboard sign faces shall be static, and shall not be an Electronic Message Center.

C: Edward Tombari  
8590 Shea Boulevard, Suite 130  
Scottsdale, Arizona 85260





June 9, 2022

Orange County Board of Zoning Adjustments  
Zoning Division  
Orange County Government  
201 Rosalind Avenue, First Floor  
Orlando, FL 32801

Dear Board Chairman,

On behalf of Foxpoint Media, please accept this application for a variance to Section 31.5-126 (n) (3) of the Orange County Code of Ordinances for property located at 12049 E. Colonial Drive in Orlando. We respectfully request that we be placed on the September 1, 2022 Board Meeting agenda for your consideration. The applicant is requesting a variance from the above code section requiring a minimum 200 feet between billboards and residential districts to allow for construction of a billboard at this location. The proposed maximum setback would be 145 feet to a residential district, thus requiring a variance of 55 feet from the code minimum.

The applicant is proposing a "v-shaped" digital billboard sign with monopole support design meeting all design requirements of Section 31.5-126 (p). The proposed billboard will be a maximum 30 feet in height. The sign area will be 10 feet six inches in height and 30 feet in length and maximum sign face area will be 330 square feet. The proposed sign will meet all setback requirements of Section 31.5-126 (j) with a proposed front setback of 15 feet and a side setback of 5 feet.

Foxpoint Media believes the proposed sign soundly meets the six justification criteria as described in the following:

#### NO SPECIAL CONDITIONS AND CIRCUMSTANCES

The subject site is located within the C-1 Zoning District, which is the most common commercial zoning district running along Colonial Drive in this vicinity of Orange County. The county allows for billboards within the C-1 Zoning District and there are several billboards located nearby along Colonial Drive that are located in C-1 Zoning Districts. However, due to a recent change of zoning on an adjacent parcel from C-1 to PD Residential our proposed structure no longer meets minimum distance requirements to residential. This is the only location within this vicinity of Colonial Drive where a rezoning from C-1 Commercial to PD residential has occurred, leading to special conditions and circumstances. Furthermore, aerial photography indicates that as recently as 2019, the adjacent property was functioning as a big box retail location. Our company entered into negotiations with the property owner prior to 2019 to lease this location for a billboard. Our due diligence and good faith indicated that the neighboring property was commercial. Due to the

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## COVER LETTER

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COVID -19 Pandemic, our negotiations and design for the site were delayed, another circumstance out of our control.

### NOT SELF CREATED

Our company negotiated in good faith and undertook due diligence, and invested in substantial soft costs under the belief that the adjacent property was commercial and that we met all required setbacks to adjacent residential. The County, by rezoning the property from commercial to residential during our negotiation process created the situation in which we now do not meet residential setbacks.

### NO SPECIAL PRIVILEGE CONFERRED

Granting a variance would not confer upon our company any special privilege. All the adjacent properties abutting Colonial Drive in this vicinity of Orange County are zoned C-1 and are commercial in nature. There are several billboards located in the immediate vicinity as they are located on and adjacent to commercial property. The variance if granted would allow our company to have all the rights of adjacent property owners that have billboards located in commercial districts in the immediate vicinity. Therefore, this variance would confer no special privileges to our company.

### DEPRIVATION OF RIGHTS

Due to the unique condition of a rezoning from commercial to residential during our negotiation process our company has been deprived of our right to entitlements on property zoned C-1 as we initially determined during our good faith and due diligence process. Based on that due diligence and good faith effort, our property would suffer substantial financial loss for soft costs already invested in the site, including legal, survey, engineering and planning costs.

### MINIMUM POSSIBLE VARIANCE

As indicated on the attached site plan, we have located the proposed billboard as close to Colonial Drive as possible while still meeting all setback requirements to the front property line. Therefore, the sign will be located at the greatest distance possible from the adjacent residential property to the north. Therefore, we are requesting the minimum possible variance.

### PURPOSE AND INTENT

Approval of the variance will be consistent with the purpose and intent of both the Orange County Zoning Ordinance and the Orange County Comprehensive Plan. An analysis of this area clearly shows that the immediate vicinity along Colonial Drive (State Road 50), a major state highway running across the entire state of Florida, is commercial in nature. The County must agree that the re-zoning of a commercial big box parcel to PD residential is the outlier land use for this area rather than the norm. There are no new residential developments other than this one in the entire vicinity of this major commercial corridor. Our company has determined that, based on the commercial character and the other billboards in the immediate vicinity, the

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## COVER LETTER

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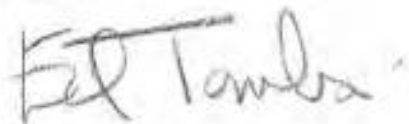
variance granted will meet both the purpose and intent of both the Orange County Zoning Ordinance as well as the Orange County Comprehensive Plan. (SEE EXHIBIT D)

In addition, Foxpoint Media only constructs state of the art advertising facilities that will not only meet but exceed the building code standards, including wind loads, of Orange County and will be a safer structure than any existing or aging billboard located in the vicinity. In doing so, the health, safety and welfare of the people of Orange County are well protected in terms of our proposed advertising facility and the variance requested.

Based on these justifications, we respectfully request that the Board of Zoning Adjustments grant us a variance to Section 31.5 – 126 (n) (3). **We would also like to further discuss with you how we may offer Orange County incentives to further help mitigate the variance to the setback requirement. We are more than happy to discuss free state-of-the-art digital Community Messaging and Emergency Information provided to Orange County at this vital, high traffic corridor.**

We thank you in advance for your time and consideration and look forward to working with Orange County. If you have any questions, please do not hesitate to contact my office at (312) 513 – 6715 or at [ed@foxpointmediaco.com](mailto:ed@foxpointmediaco.com).

Sincerely,

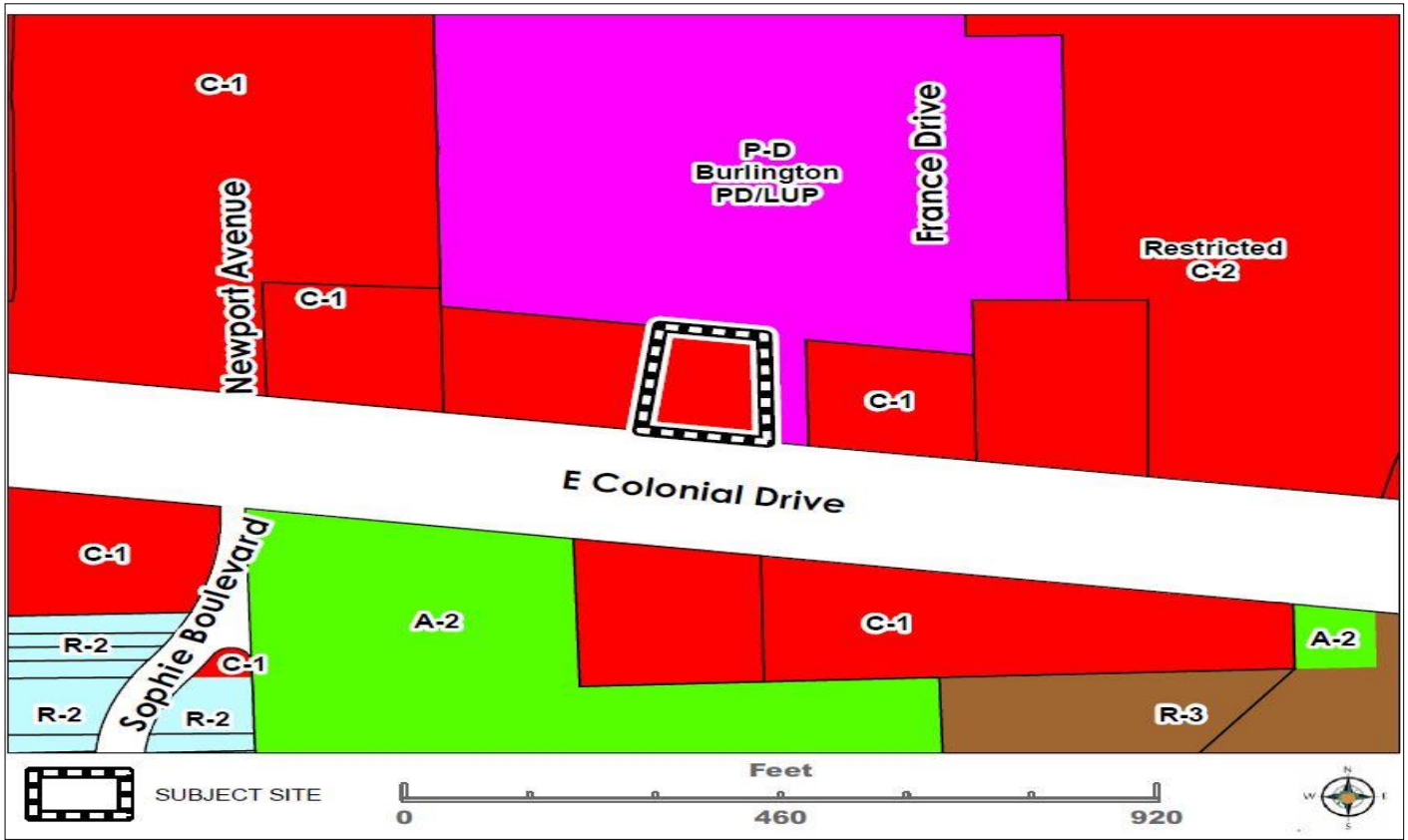
A handwritten signature in dark ink, appearing to read "Ed Tombari". The signature is fluid and cursive, with a large initial "E" and "T".

Edward A. Tombari, AICP

Director of Real Estate and Development



ZONING MAP

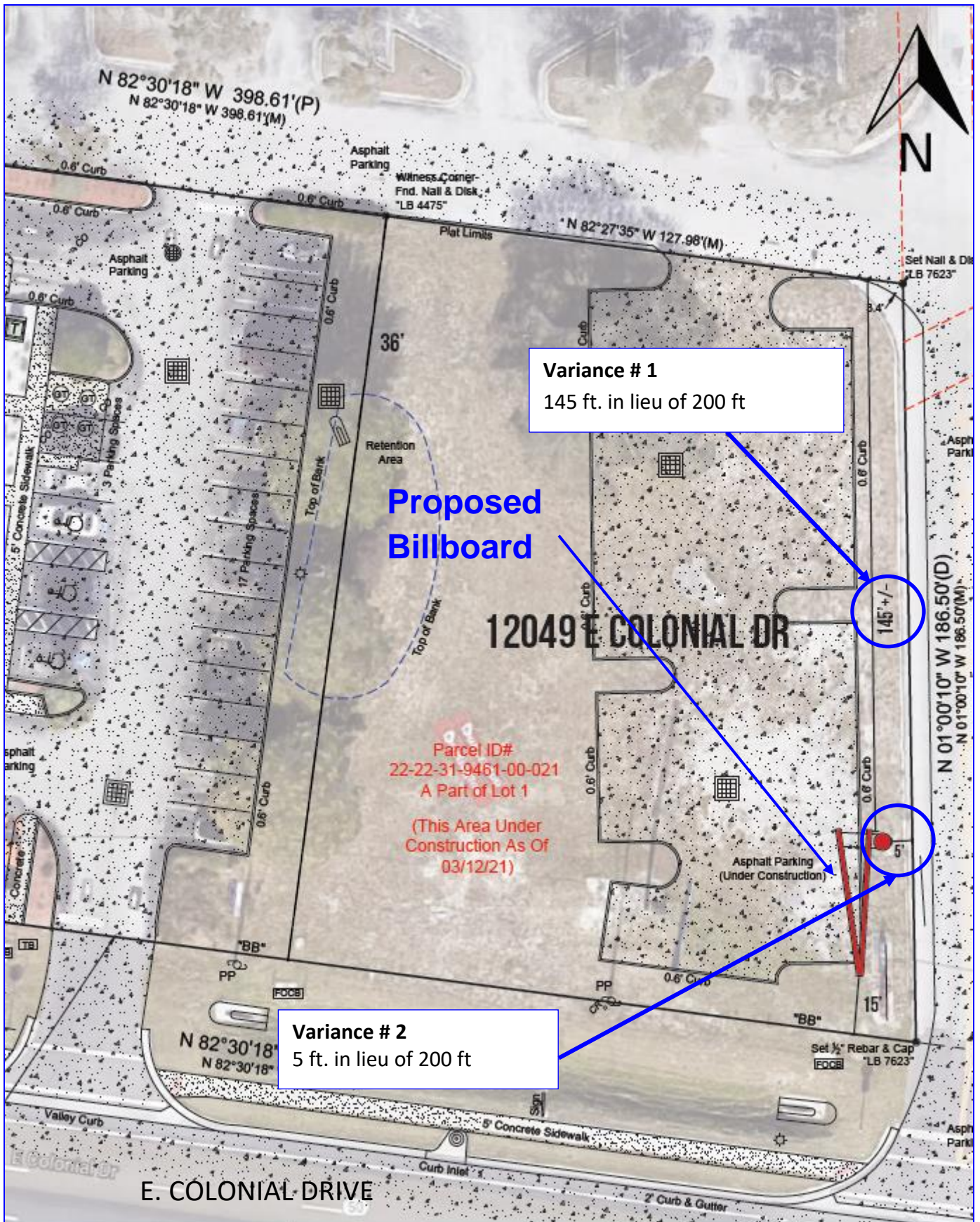


AERIAL MAP



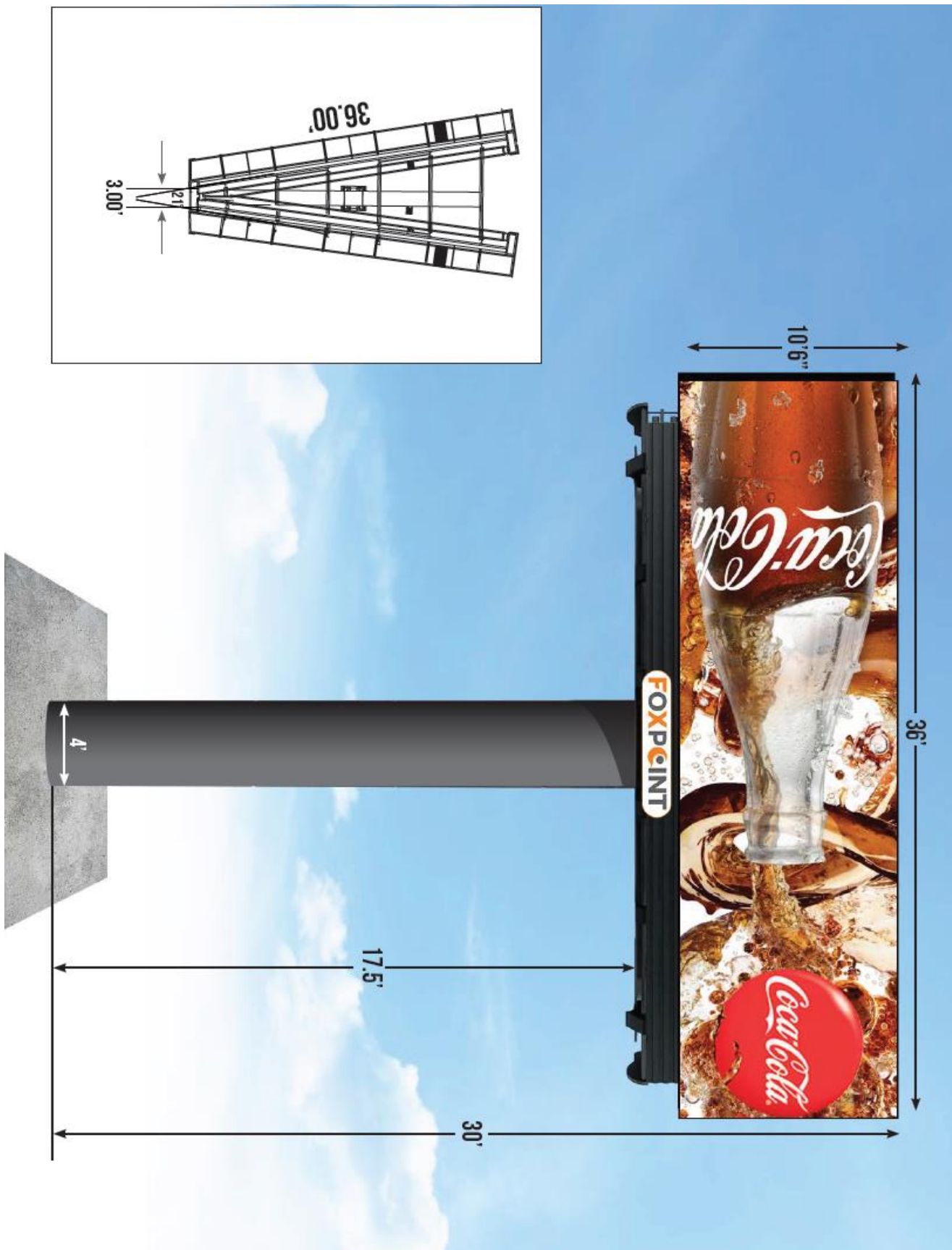


## SITE PLAN





BILLBOARD ELEVATION





## RENDERINGS





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## SITE PHOTOS

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Approximate billboard location

**View of property, looking northwest (facing student housing development)**



**View of property, looking northeast (facing student housing development)**



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## SITE PHOTOS

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**View of property, facing south (toward E. Colonial Dr.) as viewed from student housing**



**View of property, from E. Colonial Dr., facing west**



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## SITE PHOTOS

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**View of property from E. Colonial Dr., facing east**



**View of property from across E. Colonial Dr., facing north**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 01, 2022**

Commission District: **#3**

Case #: **VA-22-09-080**

Case Planner: **Taylor Jones, 407-836-5944**  
**Taylor.Jones@ocfl.net**

## GENERAL INFORMATION

APPLICANT(s): CRAIG SWYGERT FOR CLEAR CHANNEL

OWNER(s): FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)

REQUEST: Variances in the C-2 zoning district to allow an existing non-conforming 672 sq. ft. billboard to be modified as follows:

- 1) To allow a northwest side setback of 2 ft. in lieu of 5 ft.
- 2) To allow a 2 ft. setback in lieu of 50 ft. of the nearest edge of the right-of-way of a limited access highway (Interstate 4).
- 3) To allow a south setback of 20.9 ft. in lieu of 200 ft. from the nearest property line of a residential district.
- 4) To allow a maximum height of 75 ft. in lieu of 40 ft.
- 5) To allow a northeast 1,025 ft. distance separation from a billboard in lieu of a 2,640 ft. distance separation along the same side of a limited access highway (Interstate 4).
- 6) To allow a southwest 1,350 ft. distance separation from a billboard in lieu of a 2,640 ft. distance separation along the same side of a limited access highway (Interstate 4).
- 7) To allow a west 480 ft. distance separation from a billboard in lieu of a 1,000 ft. distance separation along the same side of a non-limited access highway (W. Michigan St.).

PROPERTY LOCATION: 722 W. Michigan St., Orlando, FL 32805, south side of W. Michigan St., southeast of Interstate 4, east of S. Orange Blossom Trl.

PARCEL ID: 03-23-29-0180-58-070, 03-23-29-0180-58-010

LOT SIZE: +/- 0.9 acres (40,079 sq. ft.)

NOTICE AREA: 700 ft.

NUMBER OF NOTICES: 130

**DECISION:** Recommend **DENIAL** of the Variance requests in that there was no unnecessary hardship shown on the land; and further, they do not meet the requirements governing variances as spelled out in Orange County Code, Section 30-43(3) (Motion by Deborah Moskowitz, Second by John Drago; 4 in favor: Thomas Moses, John Drago, Deborah Moskowitz, Joel Morales; 2 opposed: Juan Velez, Roberta Walton Johnson; 1 absent: Charles Hawkins, II).

**SYNOPSIS:** Staff described the proposal, including the history and location of the property relative to Interstate 4, the site plan and sign specifications, the location of the nearest residences to the south of the property, the location of the three nearest billboards in the area and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for denial.

Staff noted that no comments were received in support and three comments were received in opposition.



The applicant stated that the proposal complies with the intent of the previous administrative sign approval and the location of the sign would remain the same as existing, but only would be raised to a height of 75 feet, and further stated that the visibility of the existing sign was negatively affected by the recent Interstate 4 redesign.

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

The BZA discussed the intent of the billboard code requirements, the negative visual effects of the proposal to the closest residences, including the distance requirements between billboards located adjacent to limited access roads and non-limited access roads, and expressed concerns about deviating from distance separation and height requirements of the billboard code. The BZA made a motion to recommend approval of the Variances which failed with a 4-2 vote, with one absent. The BZA subsequently recommended denial of the Variances by a 4-2 vote, with one absent.

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### STAFF RECOMMENDATIONS

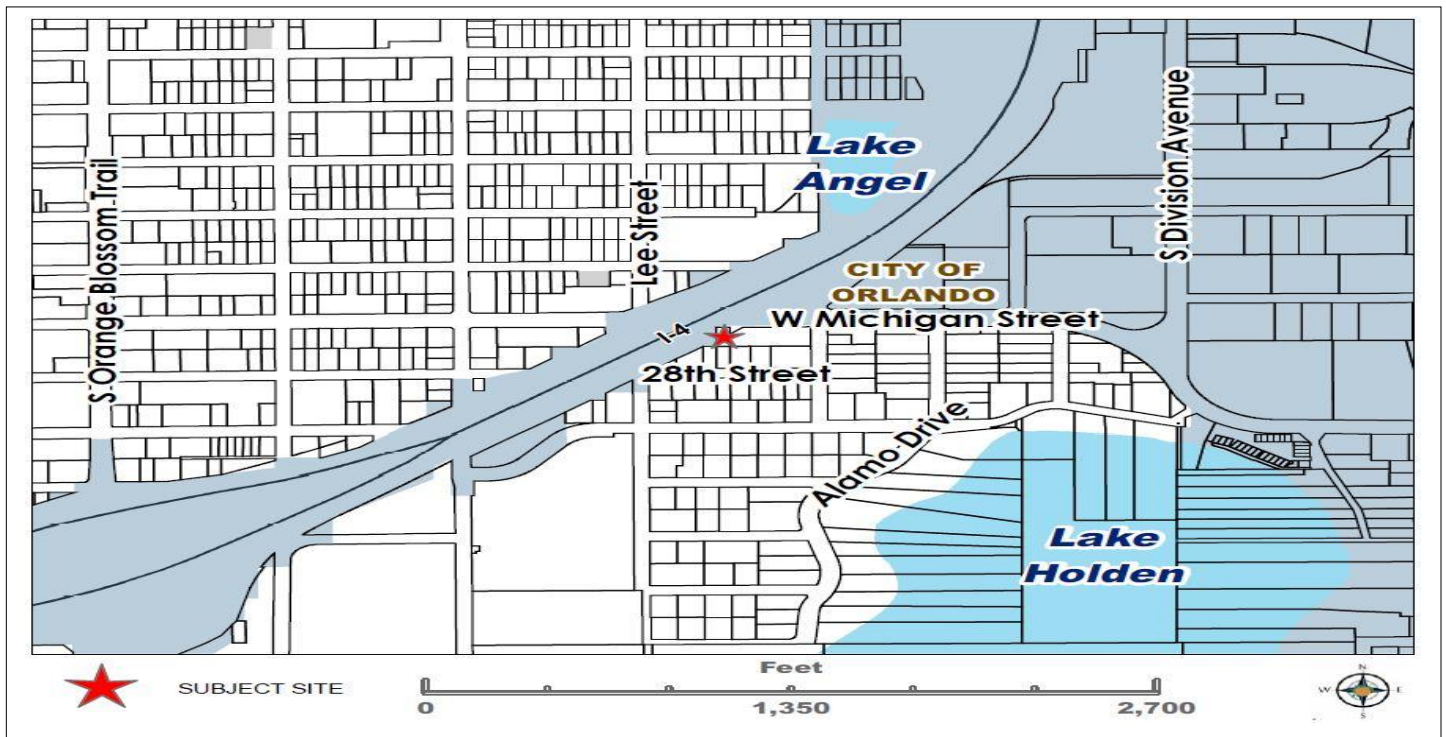
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Denial. However, if the BZA should find that the applicant has satisfied the criteria necessary for the granting of a variance, staff recommends that the approval be subject to the conditions in this report.

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### LOCATION MAP

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## SITE & SURROUNDING DATA

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	Property	North	South	East	West
Current Zoning	C-2	City of Orlando	R-2, R-1A	C-2	City of Orlando
Future Land Use	C	N/A	LMDR	C	N/A
Current Use	Retention Pond	Interstate 4 On-ramp	Single-family residential	Commercial	Interstate 4

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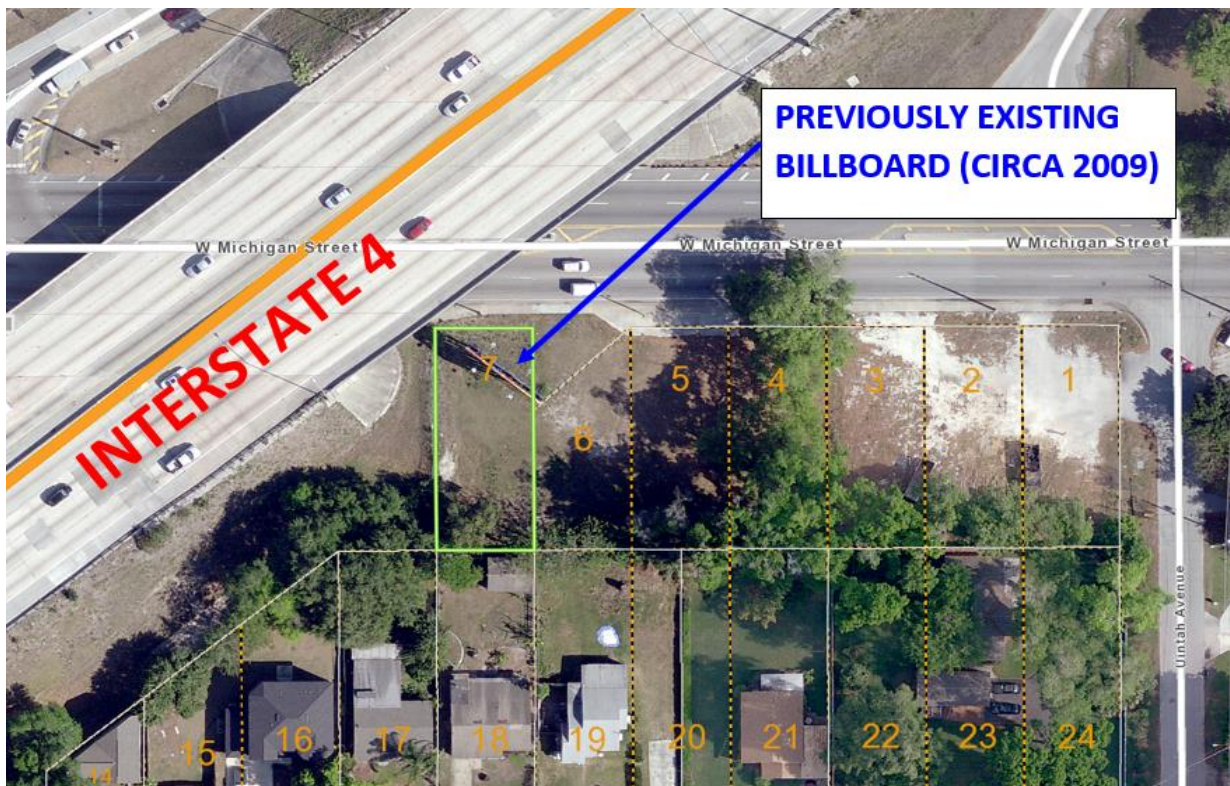
## BACKGROUND AND ANALYSIS

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### **DESCRIPTION AND CONTEXT**

The subject property is located in the C-2, General Commercial district. The C-2 district allows general commercial uses. Billboards are a permitted use in the C-2 zoning district, subject to compliance with all code standards.

The subject property is 0.9 acres in size, and is comprised of portions of Lots 1 through 7 of the Angebilt Addition plat, recorded in 1923. The property is owned by the Florida Department of Transportation (FDOT), and in addition to the existing non-conforming billboard that is the subject of the variance request, also contains a retention pond, which was completed recently as part of the Interstate 4 widening project. The FDOT acquired the property as part of the road widening of Interstate 4, acquiring lots 1 through 6 in 2006 and lot 7 in 2009. Lot 7 was acquired from Clear Channel Outdoor. At the time FDOT acquired the property, a 45 ft. tall, 672 sq. ft. non-conforming billboard, built in 1976, existed on the site. An aerial photograph from 2009, as well as a picture from 2009 (taken from Google Street view) shows the previous sign.



2009 Aerial Photo



**2009 Google Street View Image of Previous Billboard**

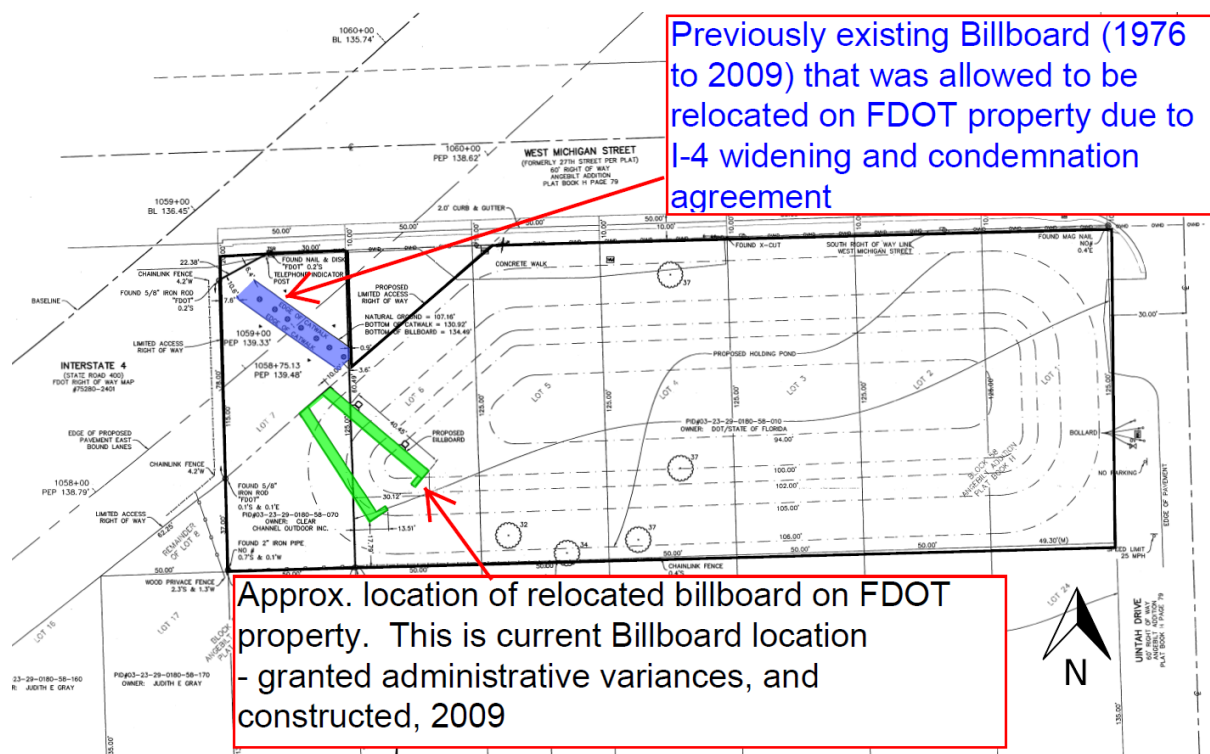
As part of the acquisition of the parcel from Clear Channel, the FDOT offered an initial \$1.3 million (for both the billboard, and underlying property). Clear Channel however valued the property and billboard at \$3.1 million. The two parties then came to a final agreement, in which the FDOT would pay Clear Channel \$1.1 million dollars for the property, and grant Clear Channel an easement over the property they had just acquired, to allow for the relocation of the existing billboard on FDOT property (out of the line of the new road construction but still adjacent to I-4).

In 2009, in conjunction with the agreement with FDOT, Clear Channel was granted several administrative variances by the Zoning Manager at the time, to relocate and rebuild the existing non-conforming billboard elsewhere on the property (now owned by FDOT), with the same overall copy area and height. Sec. 30-640(2) of County Code allows the Zoning Manager to make a determination that the relocation of a sign that is the subject of condemnation or taking by the government is as close to code as possible or practical, and grant any such needed variances. State statutes, specifically Statue 70.20, allows for local governments to enter into relocation agreements for billboards, with the purpose of saving taxpayer money, as should the local government not allow for the relocation, they would be responsible for the compensation of the asset taken by the State.

The administrative variances granted by the Zoning Manager allowed a new 45 ft. tall, V-shaped billboard to be erected in place of the previous billboard. Those variances included the following:

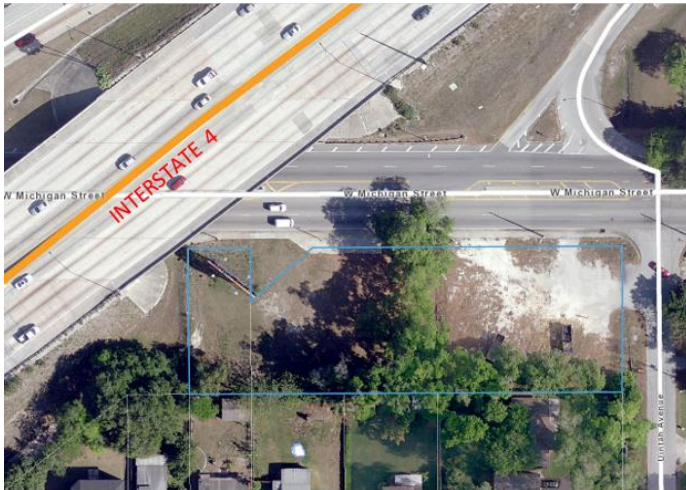
1. Distance Separation from residential districts to the south (varying distances in lieu of 200 ft.)
2. Height of 45 ft. tall (same as existing was) in lieu of 40 ft.
3. Distance separation from existing billboards on same side of interstate 4 (approx. 1000 ft in lieu of 2500)
4. Distance from a limited access highway (0 ft. in lieu of 50ft)

The new billboard was permitted and constructed in accordance with the administrative variances granted in 2009. The billboard that was constructed is the currently existing, non-conforming billboard that is the subject of this variance request. The site plan below shows the previously existing billboard in relation to the relocated billboard (that was granted administrative variances and constructed).





The below side by side aerials show that Interstate 4 was ultimately widened to the approximate edge of the relocated (and currently existing) billboard.



**2009 AERIAL PHOTO**



**2022 AERIAL PHOTO**

The request is to increase the non-conformity by raising the existing non-conforming billboard from a height of 45 ft. tall, to a height of 75 ft. tall, so that it has visibility from Interstate 4. By raising the height of the billboard, the overall non-conformity is increased, therefore necessitating new variance requests for separation distances that are already not satisfied. These include separation from the abutting limited access highway (Interstate 4) and side property line to the northwest (Variances # 1 and # 2), residential zoning districts to the south (Variance # 3), separation from existing billboards along the same side of a limited access highway to both the northwest and southwest (Variances # 5 & 6), and separation from a billboard on the same side of a non-limited access highway (W. Michigan St.), which is Variance # 7. The increase in height to 75 ft. tall is Variance # 4.

While the Code allows for billboards, the provisions are intentionally restrictive. Over the years the code has become increasingly more restrictive with respect to billboards. Further, the County's standard practice over the past 20-30 years has been to add a prohibition on any new billboards for any rezoning to commercial or industrial or PD that is approved to further restrict the allowable locations of billboard in the county and further limit the total number of billboards.

While Clear Channel may have worked with FDOT in regard to reducing the amount paid by FDOT, and avoided a formal condemnation process, ultimately, they were compensated for the land they sold both monetarily, as well as in the ability to relocate a billboard onto FDOT property, and Clear Channel agreed to relocate the sign in its current location and height, rather than lose the billboard altogether. The current billboard is a legal non-conforming billboard, and still has the ability to be utilized for purposes of off-site advertising, as it is still visible from W. Michigan Street.

The current billboard is already in close proximity to the homes along 28<sup>th</sup> Street to the south of the subject property, being only 21 feet from the nearest residential rear yard. The previously approved administrative variances already increased the impact on the residential districts by moving the billboard some 50 ft. closer

than it had previously existed. The increase in height will further impact the abutting residences to their detriment. At its current height, the billboard is partially screened in some instances from the residences by rear yard vegetation and tree cover, which helps to mitigate the billboards effects. This is evident in some site photos included in this staff report. Increasing the height of the billboard an additional 30 ft. (to an overall height of 75 ft. tall) will negate any sort of existing screening, and make the billboard more visible, and thus increase the already existing negative impact on the abutting residences. While the horizontal distance to the residential districts may not be changing, the impact on the abutting residences is increased with any increase in height.

As of the date of the writing of this report, two correspondence from the abutting residential neighborhood to the south have been received in opposition to the request.

### **Special Conditions and Circumstances**

There are no special conditions and circumstances particular to this site relative to the distance of the building from the adjacent right-of-way, residential districts, or other billboards. The existing billboard has already been granted administrative variances to be in its current location at its current height with respect to the separation requirements. The billboard owner was already previously compensated for the land they owned, as well as allowed to relocate a billboard on FDOT property that doesn't meet code requirements, due to the road widening of Interstate 4, so has already benefited from any special conditions and circumstances that may have existed. The existing billboard has visibility on W. Michigan St., and is already recognized as a legal, non-conforming billboard, and thus can remain in its current location consistent with Sec. 38-53(c).

Additionally, there is nothing preventing the applicant from finding a code compliant location for a billboard with visibility from Interstate 4. The sign regulations permit signage along limited access highways, subject to meeting various code requirements. This location is substandard to those code requirements. The billboard is permitted to remain in its current location, and still be utilized for off-site advertising, as the sign has visibility from W. Michigan Street.

### **Not Self-Created**

The need for the variance is self-created, as an existing, non-conforming billboard has already been allowed to remain on the site, and is currently in use, and visible from W. Michigan Street. The applicant agreed to sell the property where their previous billboard was located, and entered into the voluntary purchase agreement with FDOT at their own behest. The applicant has been granted an easement by FDOT, and administrative waivers from Orange County to allow this sign to be in its current location, and as such has been compensated relative to the widening of Interstate 4. The request to increase the non-conformity of the existing sign is therefore self-created.

While the applicant contends that no variance would be needed if not for the FDOT's acquisition under threat of condemnation, a variance would still be needed if the sign was not required to have been relocated. The previous billboard was also only 45 ft. tall and non-conforming, so even if it did not need to be relocated for

the widening, any raising of the height of the Interstate 4 would have resulted in the billboard not being visible from Interstate 4.

### **No Special Privilege Conferred**

Approval of the request will grant the applicant special privilege denied to others. Other billboards along I-4 have been impacted by the widening and raising of the interstate, either due to visibility issues, or condemnation. Many of the billboards are already non-conforming, but would not be able to be increased in height, given their zoning district, or location in an overlay district. Any billboards that were removed as a result of the interstate widening would have received compensation as part of the taking. The current billboard was allowed to be relocated onto FDOT property, and compensation received for underlying land, and administrative variances already granted. As such, the current billboard has already been the beneficiary of a special privilege conferred. Increasing the non-conformity already granted would be an increase of an existing special privilege that other properties are denied of.

### **Deprivation of Rights**

There is no deprivation of rights, as the applicant was already granted the ability to relocate a non-conforming billboard, and granted administrative waivers. The existing billboard has visibility on W. Michigan St., and as such is not being deprived of rights to off-site advertising. It can remain as an existing legal non-conforming billboard.

### **Minimum Possible Variance**

The request is not the minimum possible, as the request is asking to increase a non-conformity that already exists. By increasing the overall height, a variance is needed from all already existing non-conformities, increasing the impact on abutting residential districts, and limited access highway traffic. While the setback to the limited access highway and residential districts is not increased horizontally, the vertical increase in signage has an increased, negative impact on both the residential districts and limited access highway travelers. The increased height will also negatively impact the aesthetics of the newly installed Pylons on the overpass portion of I-4 over W. Michigan St., which were specifically built as overall beautification elements of the I-4 ultimate project. The below side by side comparisons show the existing conditions relative to the abutting residences and interstate, and what the increased height may look like, based on renderings created by the Planning Division:



**Actual conditions (existing sign at 45 ft. tall)**



**Rendering of sign at 75 ft. tall**





**Actual conditions (existing sign at 45 ft. tall)**



**Rendering of sign at 75 ft. tall**

### **Purpose and Intent**

Per Sec. 31.5-126(n) of County code, the control of billboards in areas adjacent to limited access highways and residential districts within the County is declared to be necessary to protect the public investment in limited access highways, attract visitors and residents to the County by preserving the natural beauty of the County near limited access highways and residential districts, and to assure that information in the specific interest of the traveling public is presented safely and aesthetically. Approval of the increase in height, and thus increase in non-conformity in regard to separation from the limited access highway itself, and abutting residential districts, would go against the purpose and intent of the billboard regulations, by further impacting areas near limited access highways, and residential districts. Further, the purpose of the sign code is to ensure that a consistent amount of signage is permitted for all properties and to avoid sign clutter. Adding another sign visible from the Interstate, already in conflict of the zoning code in regard to separation of such signs, increases the number of signs and sign clutter.

Additionally, while the existing sign was granted administrative variances to be relocated, as code allows, Sec. 30-641(2) of code specifically does not allow the existing nonconformity of a sign, other than setback or distance separation, to be granted an administrative variance to be increased, which is referring to the sign height. While this is a variance application to allow an increase in height, and making the request is permitted through this process, it would seem such a request would go against the intent of code in regard to relocation of signs due to condemnation and taking. Approval of the requested increased height, and resulting separation impacts, would not be in harmony with the purpose and intent of the Zoning Regulations and will be detrimental to 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 sign specifications dated June 8, 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 for the billboard 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. The sign faces of the billboard shall be limited to static faces, and shall not be converted to electronic message center (EMC) faces.
- C: Craig Swygert  
5333 Old Winter Garden Rd  
Orlando, FL 32811

**EXHIBIT “B”**

*The items listed in this exhibit correspond to requests (1) through (6), inclusive, at pages 13 and 14 of the variance application.*

This section of the variance application outlines how the request meets the 6 listed criteria for the variance.

Criteria: Section 30-43 (3) of the Orange County Code stipulates specific standards for the approval of variances.

1. ***Special Conditions and Circumstances*** - Special conditions and circumstances exist which are not applicable to other lands, structures or buildings in the same zoning district.

CCO's structure was subject to an acquisition under threat of condemnation by the Florida Department of Transportation (“FDOT”) for the widening of State Road No.: 400(I-4) in November 2009. The property now consists of 0.378 acres (16,508/SF) of irregularly shaped land, owned in fee simple by FDOT and having an Orange County use code of 8078. That acquisition created unique conditions and circumstances peculiar to the subject property and structure which are not applicable to other lands, structures, or buildings in the same zoning district.

FDOT designated the property, including an existing sign structure owned by CCO, as Parcel 199. FDOT acquired Parcel 199 for roadway improvements and for stormwater management purposes. FDOT constructed I-4 as a design/build project. The subject property is located generally on the north side of Michigan Ave. west of its intersection with I-4. The property is at an existing grade of approximately 107 feet, and the current elevation of I-4 is approximately 140 feet. I-4's height obscures visibility to the sign structure for east bound and west bound I-4 traffic. Because FDOT did not have final construction plans detailing the I-4's final elevation, CCO accommodated FDOT's project with the goal of later securing variances and permits to increase the structure's height if I-4 obscured its visibility.

FDOT's initial offer was for \$1,299,200.00 for the land and sign structure. CCO's counteroffer was for \$3,100,000.00, exclusive of statutory attorneys' fees and costs. FDOT and CCO subsequently



negotiated a voluntary purchase agreement in lieu of condemnation. That agreement included an exchange of the fee simple interest FDOT acquired with a perpetual sign easement to construct a new sign in the area of the easement.

This agreement resulted in the FDOT paying compensation of \$1,100,000.00, inclusive of attorneys' fees and costs, thereby resulting in a net savings to FDOT of \$2,000,000.00 based on CCO's counteroffer. FDOT did not compensate CCO for the taking of the structure or the loss of visibility to the structure.

Under the terms of the agreement with FDOT, CCO owns a perpetual easement over the remainder of Parcel 199 for its outdoor advertising structure. *See*, Composite Exhibit "1;" (Closing statement, settlement justification, perpetual sign easement).

2. ***Not Self-Created*** - The special conditions and circumstances supporting this variance application do not result from CCO's actions.

These special conditions and circumstances do not result from CCO's actions. Rather they are a result of FDOT's acquisition. But for FDOT's acquisition under threat of condemnation, the pre-existing structure would have remained without the need of a variance.

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.

CCO worked diligently with FDOT to limit FDOT's I-4 right of way acquisition costs. Granting this variance affords CCO no special privilege because, but for FDOT's acquisition under threat of condemnation, CCO would not need a variance. The reason for the variance is because of an acquisition, under threat of condemnation, which resulted in the construction of I-4 at an elevation of approximately 140 feet.

4. ***Deprivation of Rights*** - Literal interpretation of the provisions contained in this Chapter would deprive CCO 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 CCO.

Literal interpretation of the Code would deprive CCO of the opportunity to enjoy the use of this asset in its portfolio of structures. Approval of this application will allow CCO to enjoy the benefits of its perpetual easement. A literal application of the terms of the code

conversely would deny CCO of all beneficial use of its perpetual easement. Denial would require CCO to bear the burdens of a public project which obscured visibility to its structure.

5. ***Minimum Possible Variance*** - The zoning variance is the minimum variance that will make possible the reasonable use of the easement and structure.

The requested variance is the minimum needed to reestablish visibility to the sign structure for east bound and west bound I-4 traffic.

The structure will be in the same location and footprint before and after granting the variance.

Attached as Exhibit "2" is a survey of the proposed location of the new structure. Exhibit "3" are copies of plans indicating the structure's proposed height.

6. ***Purpose and Intent*** - Approval of the zoning variance will be in harmony with the purpose and intent of Orange County's Code of Ordinances and will not be injurious to the neighborhood or otherwise detrimental to public welfare.

The structure will maintain its same footprint and will be no closer to any adjacent structures or property after granting the variance. Granting this variance request will not change the character of the neighborhood since the variance will result in raising a preexisting sign structure. Moreover, the structure will comply with all applicable building codes and standard and, therefore, will not be injurious the neighborhood or detrimental to the public welfare.

Approval of this variance application is consistent with the policy behind the Zoning Regulations and the remedial measures expressed in Sec. 30-367:

It is the intent of this article to establish a fair procedure by which the appropriate county staff can grant waivers and exceptions to county land development, sign and engineering codes and regulations, or to seek such waivers or variances before the appropriate boards, in order that property owners who have been subjected to the condemnation process have a *viable and fair alternative in preventing any adverse impact upon their property as a result of the condemnation process and allow the continued use of their property in a manner similar to its precondemnation condition*. Further, it is the intent of this article to establish procedures which will reduce the cost

of acquisitions of real property needed for public improvements. (emphasis added).

Similarly, Sec. 30-641 of the Orange County Code of Ordinances provides:

A sign which is located on a parcel that is subject to condemnation action by a governmental or public agency may be allowed to be relocated on the remaining portion of the parcel in accordance with the following:

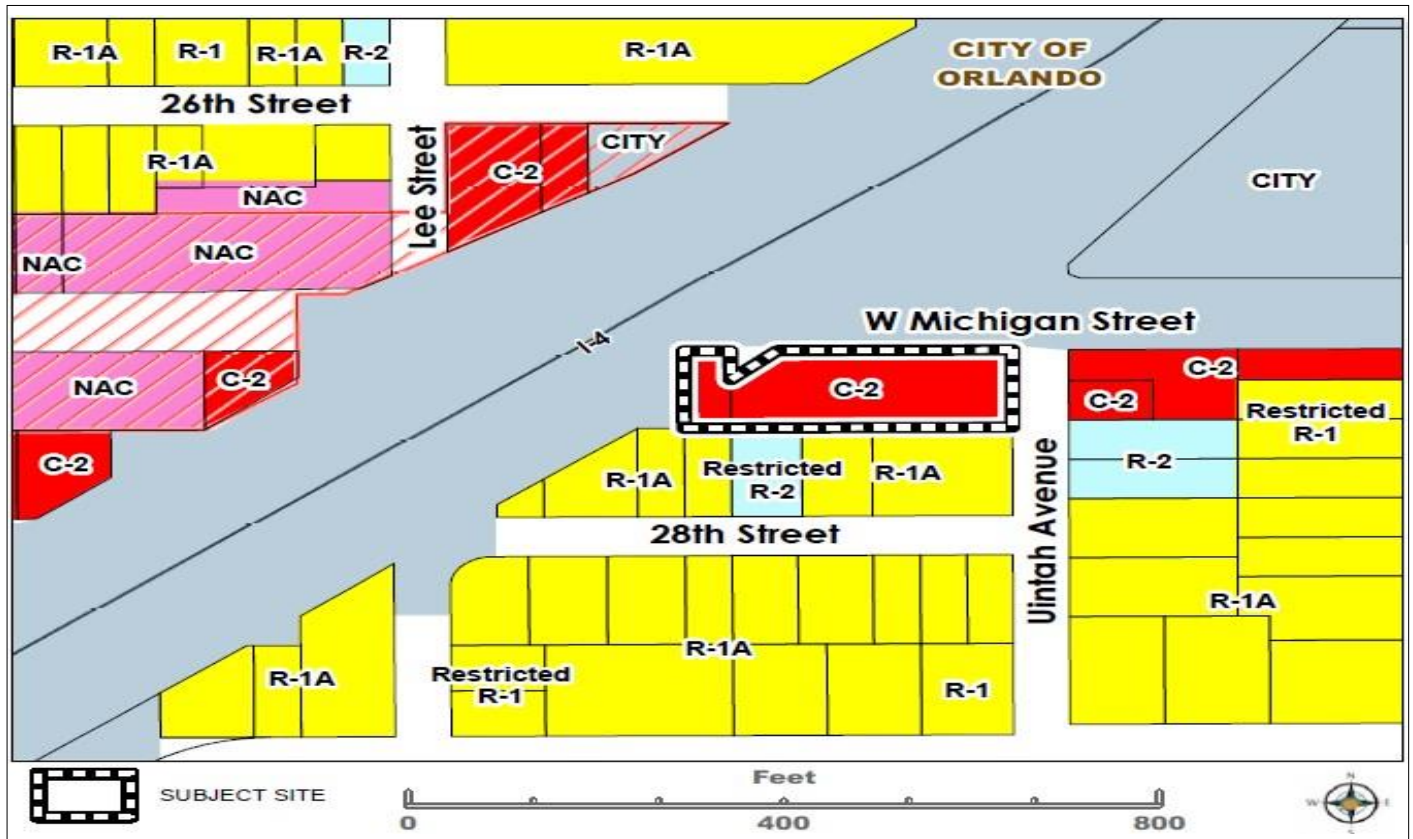
(1) The sign is to be relocated on the remaining parcel in such a manner as to meet the setback and distance separation requirements. If due to the size and/or configuration of the remaining parcel setback and distance separation requirements cannot be met, then, subject to the zoning manager's discretion, the sign may be relocated so as to comply with such regulations to the greatest extent practicable as determined by the zoning manager.

(2) Any existing nonconformity of a sign, other than setback or distance separation, shall not be increased upon relocation.

(3) If the sign to be relocated is a nonconforming sign, upon proof submitted by the applicant and subject to the determination by the zoning manager that public harm would not occur, then such sign may be relocated pursuant to this subsection notwithstanding the provisions of subsection 31.5-12(a) of the county sign ordinance as codified in chapter 31.



## ZONING MAP



## AERIAL MAP





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ENHANCED AERIAL MAP

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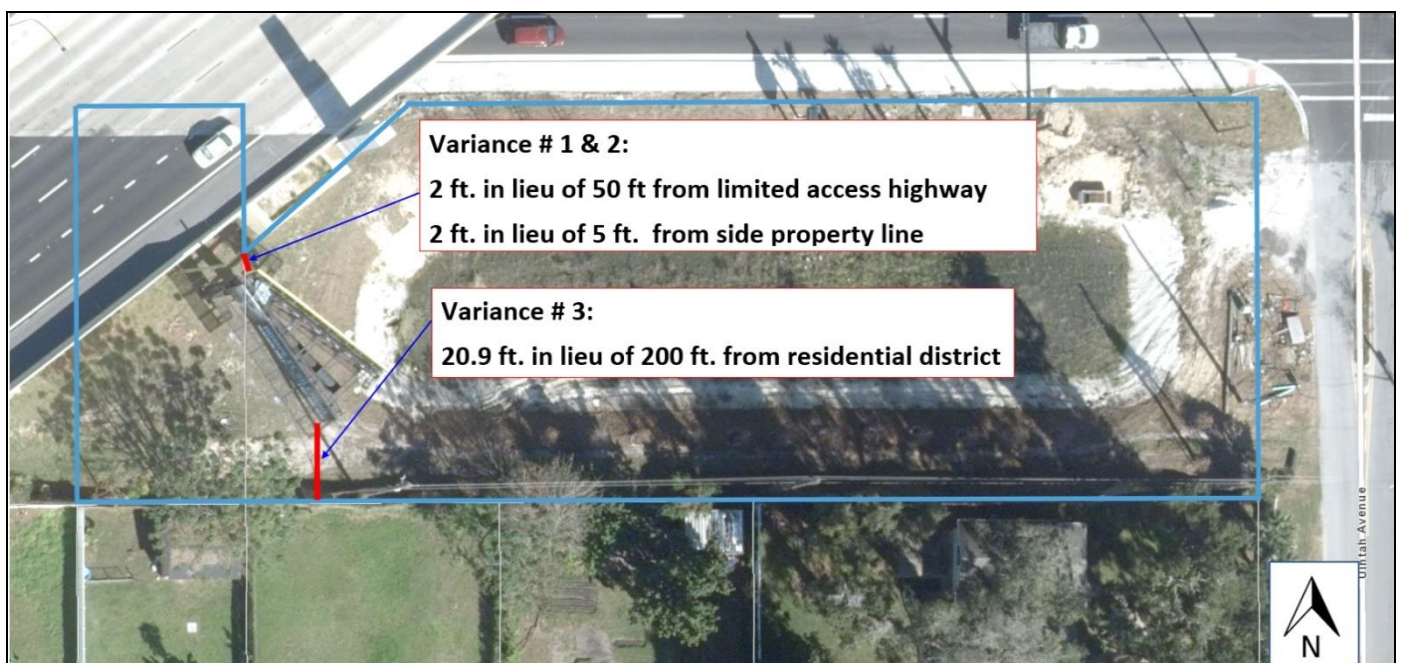
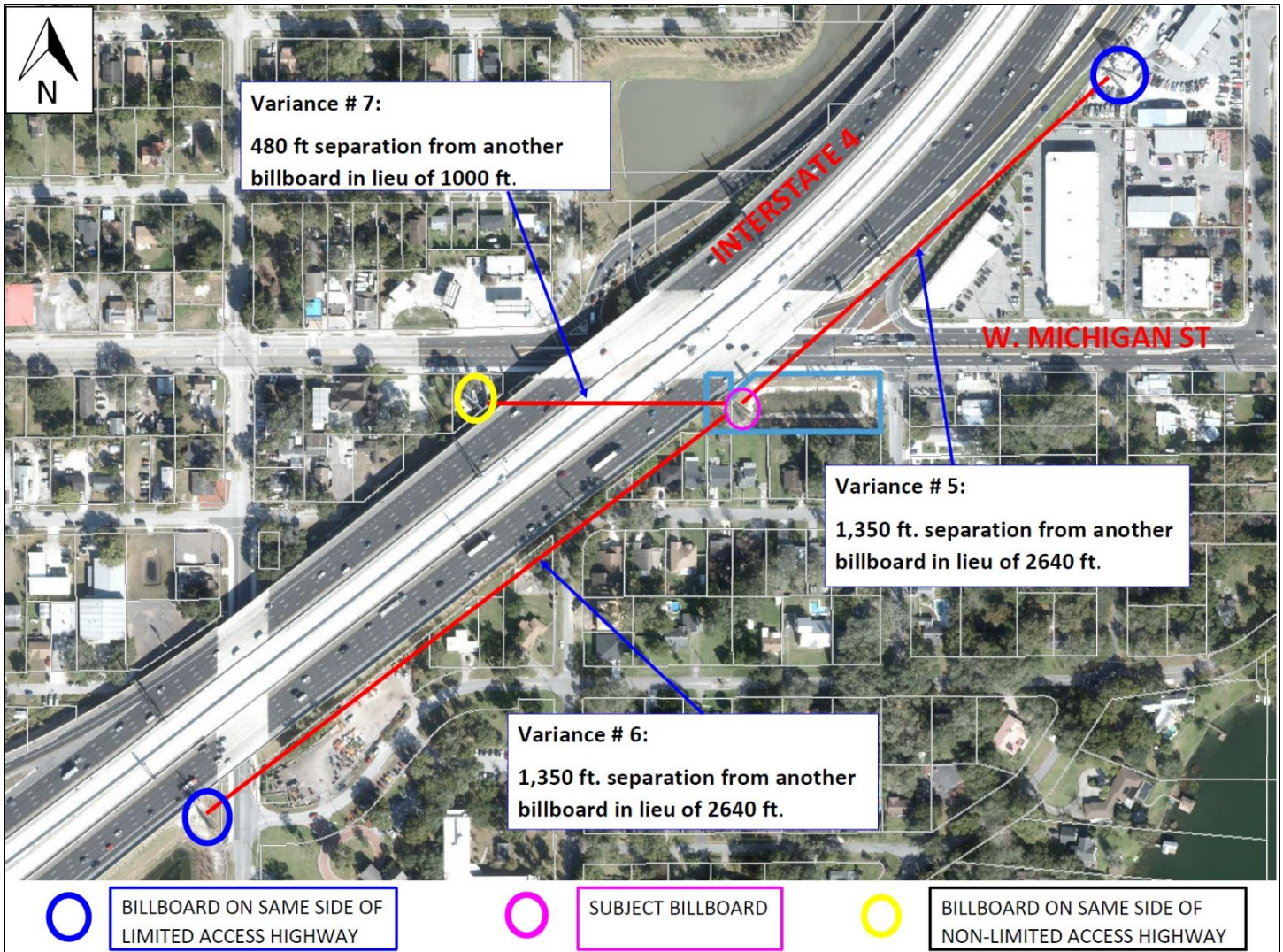
BILLBOARD FROM W. MICHIGAN STREET

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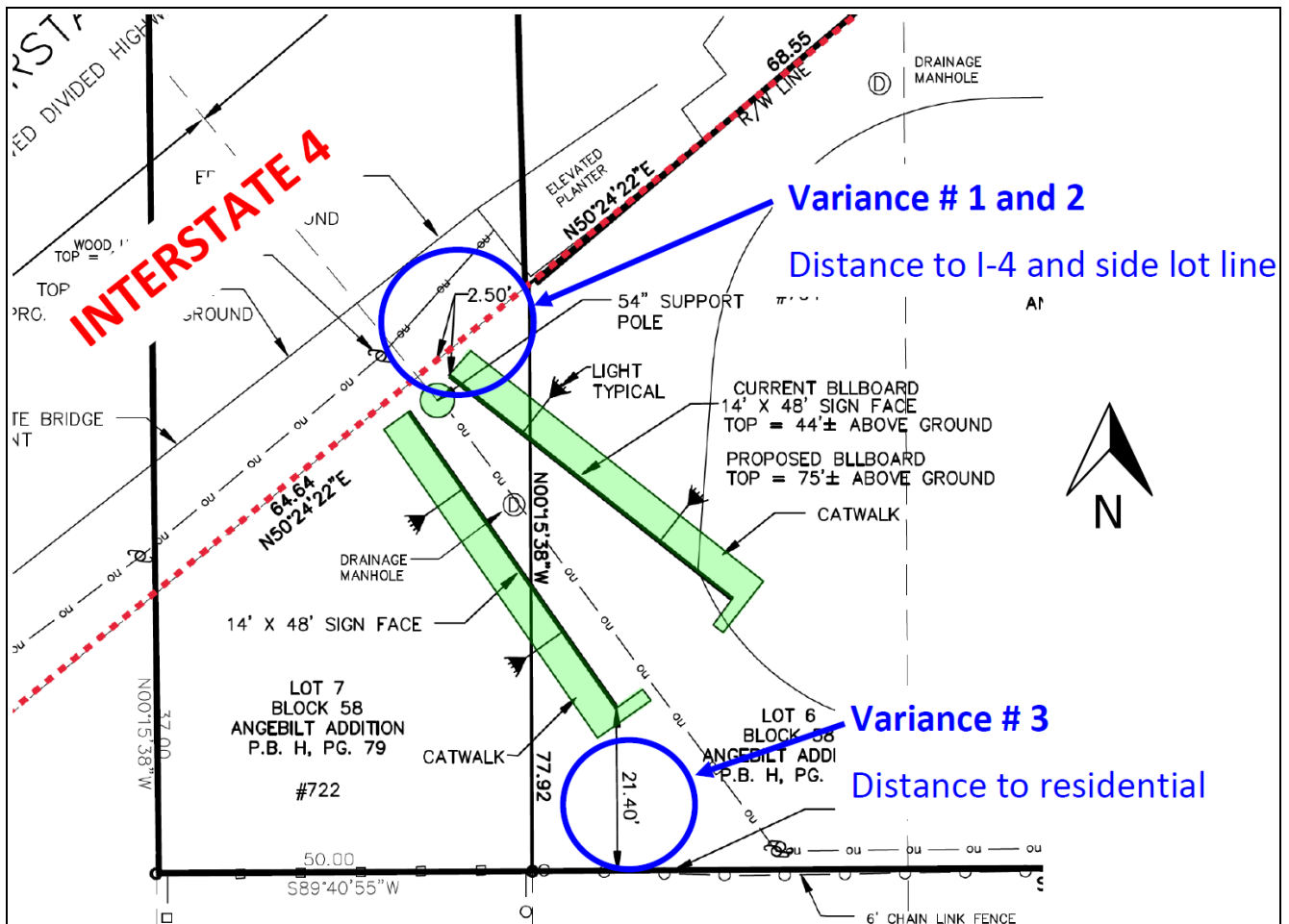
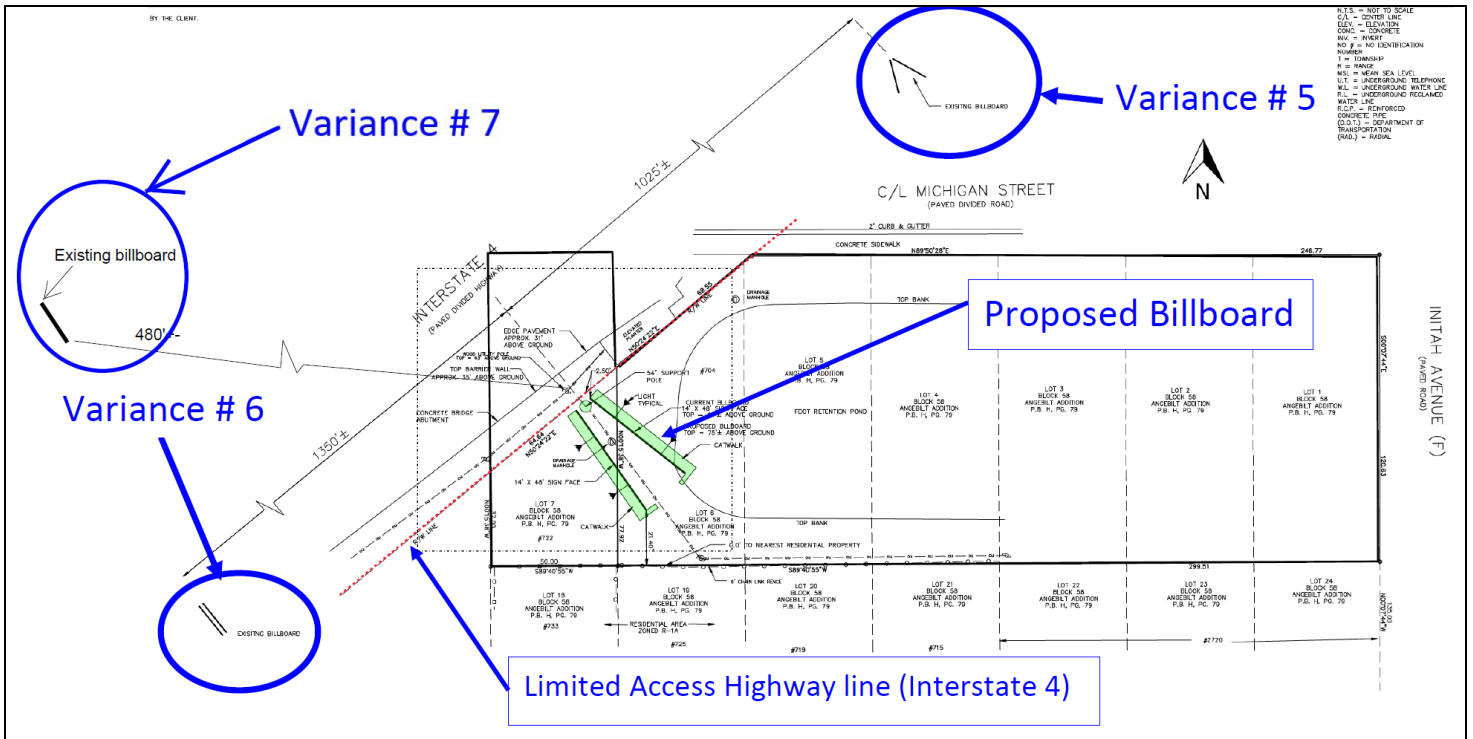


## VARIANCE REQUESTS EXHIBIT

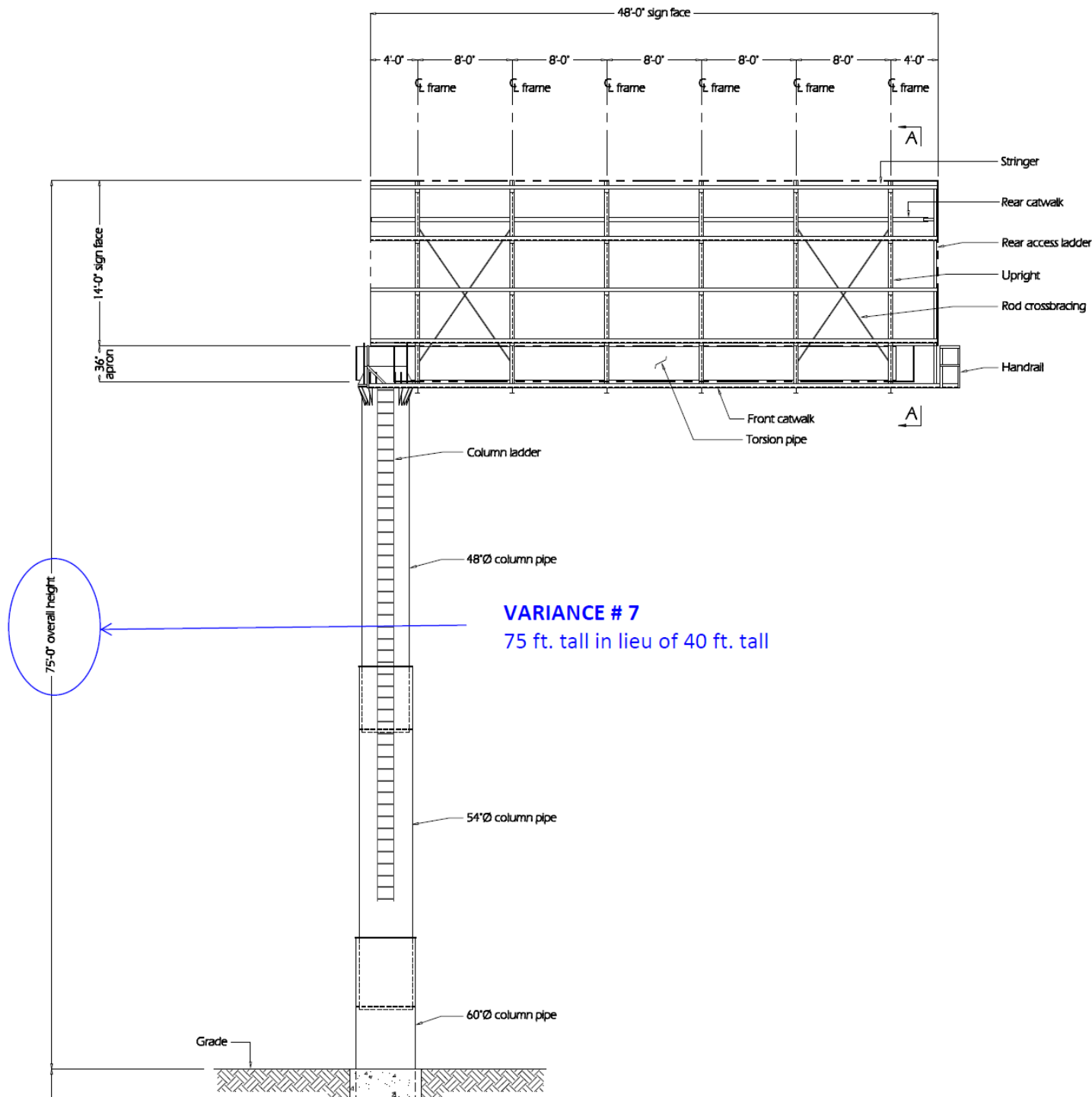




# SITE PLAN



BILLBOARD ELEVATION



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## SITE PHOTOS

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**Billboard, view facing southwest from W. Michigan Street**



**Billboard, view facing southwest from W. Michigan St, from under Interstate 4 overpass**



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## SITE PHOTOS

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**Billboard, view facing west from Unita Ave (at west property boundary)**



**Billboard, view facing north from 28<sup>th</sup> Street (front yards of abutting residences)**



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## SITE PHOTOS

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**Billboard, view facing northwest from 28<sup>th</sup> Street (from street)**



**Billboard, viewed facing northwest from 28<sup>th</sup> Street (front yards of abutting residences)**



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**SITE PHOTOS**

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**Billboard, view facing northeast from 28<sup>th</sup> Street (front yards of abutting residences)**



**Billboard, view facing northeast from 28<sup>th</sup> St & Lee St. intersection**



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**SITE PHOTOS**

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**View of Billboard, approaching from East Bound Interstate 4**



**View of Billboard, approaching from eastbound Interstate 4, with pylon in view**



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