




Interoffice Memorandum

July 30, 2024

TO: Mayor Jerry L. Demings  
-AND-  
County Commissioners

FROM: Tanya Wilson, AICP, Director   
Planning, Environmental, and Development Services  
Department

**CONTACT PERSON: Brandy Driggers, Assistant Manager  
Zoning Division  
(407) 836-5329**

SUBJECT: August 13, 2024 Board-Called Public Hearing  
Applicant: Alexander Montoya  
BZA Case # VA-24-05-027, June 06, 2024; District 1

Board of Zoning Adjustment (BZA) Case # VA-24-05-027, located at 5416 Turkey Lake Rd., Orlando, FL 32819, in District 1, is a Board-Called public hearing. The applicant is requesting a variance in the R-1A zoning district to allow a pool and deck with a 12.4 ft. setback from the Normal High Water Elevation (NHWE) in lieu of 30 ft.

At the April 4, 2024 BZA hearing, staff recommended denial of a variance to allow a pool and deck with a 4 ft. setback from the NHWE in lieu of 30 ft. There was no one in attendance to speak in favor or in opposition to the request. It was noted that no comments were received in support of or in opposition to the request. The BZA recommended to continue the case to June 6, 2024 BZA meeting to allow the applicant to submit a revised plan.

At the June 6, 2024 BZA hearing, staff recommended denial of the revised variance request to allow a pool and deck with a 12.4 ft. setback from the NHWE in lieu of 30 ft. One individual in attendance spoke in favor of the request, and one individual in attendance spoke in opposition to the request, citing concerns about the creation of additional impervious area and potential water contamination and run-off into the adjacent lake. It was noted that no comments were received in support of the request and one comment was received in opposition. The BZA recommended approval of the variance, subject to three standard conditions, with the addition of the requirement to record an Indemnification/Hold Harmless Agreement and planting enhanced landscaping along Turkey Lake Road to buffer the use.

July 30, 2024  
Board-Called Public Hearing – Alexander Montoya  
Variance  
Page 2

At the June 18, 2024 Board meeting, this item was pulled for a separate public hearing at the request of Commissioner Wilson.

The application for this request is subject to the requirements of Article X, Chapter 2, Orange County Code, as may be amended from time to time, which mandates the disclosure of expenditures related to the presentation of items or lobbying of items before the BCC. A copy is available upon request in the Zoning Division.

If you have any questions regarding this matter, please contact Brandy Driggers at (407) 836-5329.

**ACTION REQUESTED: Deny the applicant's request; or approve the applicant's request with conditions. District 1**

BD/ag

Attachment: Zoning Division public hearing report, BZA staff report

**PLANNING, ENVIRONMENTAL, AND DEVELOPMENT SERVICES DEPARTMENT  
ZONING DIVISION PUBLIC HEARING REPORT  
August 13, 2024**

The following is a public hearing before the Board of County Commissioners on August 13, 2024 at 2:00 p.m.

**APPLICANT:** ALEXANDER MONTOYA

**REQUEST:** Variance in the R-1A zoning district to allow a pool and deck with a 12.4 ft. setback from the Normal High Water Elevation (NHWE) in lieu of 30 ft.

**LOCATION:** 5416 Turkey Lake Rd., Orlando, FL 32819, west side of Turkey Lake Rd., east side of Lake O'Dell, north of Lake Marsha Dr., south of Conroy Windemere Rd., east of Dr. Phillips Blvd. and west of Florida Turnpike.

**TRACT SIZE:** +/- 0.23 acres (+/- 0.17 acres upland)

**ZONING:** R-1A

**DISTRICT:** #1

**PROPERTIES NOTIFIED:** 105

**BOARD OF ZONING ADJUSTMENT (BZA) HEARING SYNOPSIS ON REQUEST:**

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

The applicant discussed the staff recommendation of denial, noted that open space requirements are met and stated that the owner is willing to screen the pool from the street with trees and shrubs.

There was one (1) individual in attendance to speak in favor of the request, and one (1) individual in attendance to speak in opposition to the request with concerns about the creation of additional impervious area and potential water contamination and run-off into the adjacent lake.

The BZA discussed the Variance, determined that the design as proposed will not extend towards the lake more than the existing residence, noted the consistency with the other pools and decks within the surrounding area, and recommended approval of the Variance by a 4-1 vote, with one absent and one seat vacant, subject to the four (4) conditions in the staff report with the addition of Condition #5, which states, "Enhanced

landscaping shall be installed with 6 ft. high shrubs planted 3 ft. on-center along the entire length of the fence facing Turkey Lake Road.”

**BZA HEARING DECISION:**

A motion was made by Thomas Moses, seconded by Roberta Walton Johnson and carried to recommend APPROVAL of the Variance request in that the Board finds it meets that the requirements of Orange County Code, Section 30-43(3); further, said approval is subject to the following conditions as amended (4 in favor; 1 opposed; 1 absent; 1 vacant).

1. Development shall be in accordance with the site plan date stamped April 10, 2024, 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 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 the pool and deck are located no closer than 12.4 feet from the Normal High Water Elevation (NHWE) of Lake O'Dell.
5. Enhanced landscaping shall be installed with 6 ft. high shrubs planted 3 ft. on-center along the entire length of the fence facing Turkey Lake Road.

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 06, 2024**

Commission District: **#1**

Case #: **VA-24-05-027**

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

**Jenale.Garnett@ocfl.net**

## GENERAL INFORMATION

**APPLICANT(s):** ALEXANDER MONTOYA

**OWNER(s):** JIMENEZ JESUS VICENTE HIDALGO

**REQUEST:** Variance in the R-1A zoning district to allow a pool and deck with a 12.4 ft. setback from the Normal High Water Elevation (NHWE) in lieu of 30 ft.

**PROPERTY LOCATION:** 5416 Turkey Lake Rd., Orlando, FL 32819, west side of Turkey Lake Rd., east side of Lake O'Dell, north of Lake Marsha Dr., south of Conroy Windemere Rd., east of Dr. Phillips Blvd. and west of Florida Turnpike.

**PARCEL ID:** 14-23-28-4352-03-010

**LOT SIZE:** +/- 0.23 acres (+/- 0.17 acres upland)

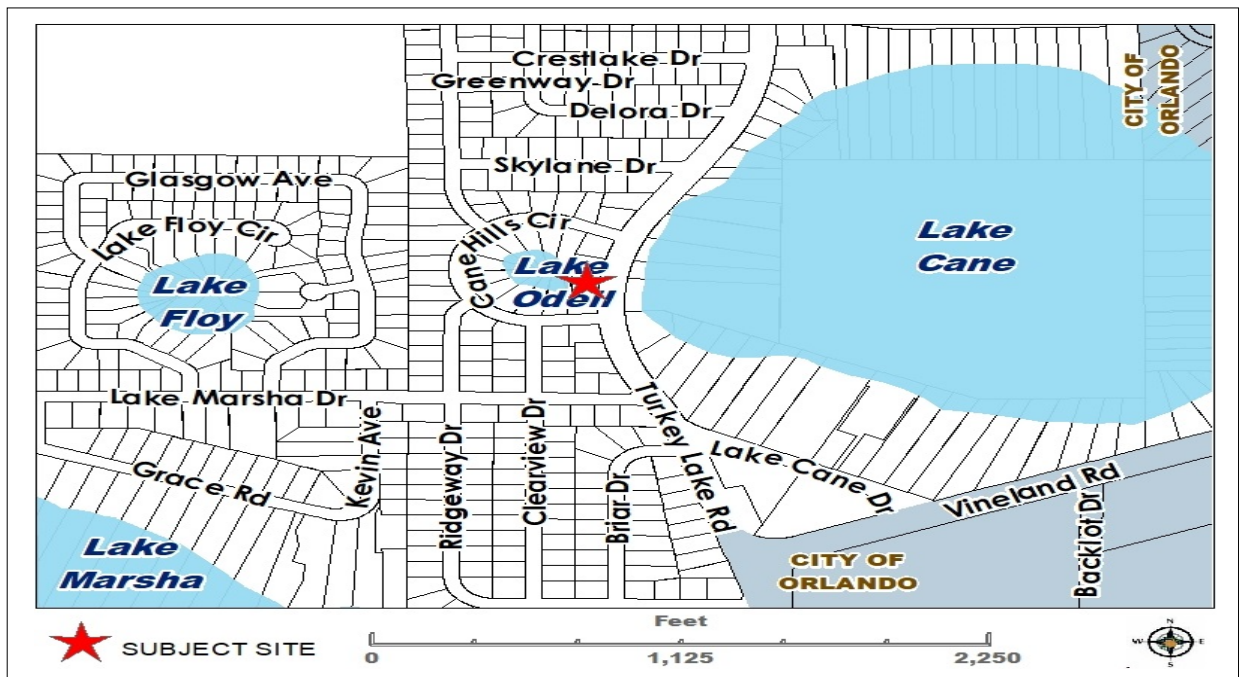
**NOTICE AREA:** 500 ft.

**NUMBER OF NOTICES:** 105

## STAFF RECOMMENDATIONS

Denial. However, if the BZA should find that the applicant has satisfied the criteria necessary for the granting of the Variance, staff recommends that the approval be 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-1A	R-1A	R-1A	Lake O'Dell	R-1A, Lake Cane
Future Land Use	LDR	LDR	LDR	Lake O'Dell	LDR, Lake Cane
Current Use	Single-family residential	Single-family residential	Single-family residential	Lake O'Dell	Dock and pergola , Lake Cane

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

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

The area around the subject site consists of single-family homes, many of which are lakefront and Lake Cane to the east. The subject property is Lot 1 of the Lake Cane Hills Plat, recorded in 1958, and is considered to be a conforming lot of record. It is a +/- 0.23 acre platted lot, of which +/- 0.17 acres is upland. The remainder of the parcel is either wetland or submerged property under Lake O'Dell. The property is developed with a one-story 2,100 gross sq. ft. single-family home (B02016938) constructed in 2003. There is a 10 ft. utility easement along the front east property line, and a 5 ft. drainage easement along the north property line. None of these easements are affected by the Variance requested. The property was purchased by the current owner in 2020.

In April 2002, Variances (VA-02-03-032) were approved to allow for the construction of the residence zero ft. from the south side lot line in lieu of 7.5 ft, and 20 ft. from the NHWE in lieu of 30 ft.

The proposal is to install a 273 sq. ft. pool and spa on the north side of the existing house with a 12.4 ft. setback from the Normal High Water Elevation (NHWE) in lieu of 30 ft., requiring the Variance. The initial request was for a 4 ft. setback from the NHWE, which was considered at the April 4, 2024, BZA hearing. At the BZA hearing it was discussed that the request was excessive, and the applicant continued the case to the June BZA meeting to consider lessening the impact to the NHWE. The revised request has reduced the size of the pool deck and pool area from 300 sq. ft. to 273 sq. ft. and has increased the setback by 8.4 ft. Staff is recommending denial of the Variance since the site appears to be fully developed and such a significant reduction in the NHWE is excessive and not in line with the purpose and intent of code. Further, after the installation of the pool and spa it may be difficult to meet the open space requirements of the property. Per Sec. 24-29 of the Orange County Code, forty (40) percent open space is required in the residential zoning districts, and no Variance requests in relation to landscape codes are allowed. Furthermore, the pool and deck location as proposed would be significantly visible from Turkey Lake Road, and the neighboring parcels appear to contain pool, spa, and decks that are located at the rear of the existing residence on the lot which provides adequate screening from the road.

The Orange County Environmental Protection Division has reviewed the requests and has no objections.

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

**Building Setbacks for the pool and deck**

	Code Requirement	Proposed
Front:	Not allowed	27.1 ft. pool and deck (East)
Rear:	5 ft.	48.6 ft. (West)
Side:	5 ft.	5 ft. (North)
NHWE:	30 ft.	12.4 ft. (West – Variance)

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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 fairly shallow lot on a lake where setbacks from the NHWE are required.

**Not Self-Created**

The request is self-created since the lakefront home can continue to be enjoyed without the installation of a pool and deck.

**No Special Privilege Conferred**

Granting the Variance as requested would confer special privilege not conferred to others as the request for reduction in the NHWE is excessive and beyond the scope of similarly granted requests.

**Deprivation of Rights**

There is no deprivation of rights since the owner could continue to enjoy the lakefront property without the installation of a pool and deck.

**Minimum Possible Variance**

Given the location of the existing home and the fairly shallow lot, the request is the minimum possible Variance.

**Purpose and Intent**

Approval of the request will not be in harmony with the purpose and intent of the Code, as the Code is primarily focused on minimizing the impact to surrounding properties and setbacks required. Furthermore, the pool and deck location as proposed would be significantly visible from Turkey Lake Road, and the neighboring parcels appear to contain pool and decks that are located at the rear of the existing residence on the lot which provides a screen from the road.

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**CONDITIONS OF APPROVAL**

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1. Development shall be in accordance with the site plan date stamped April 10, 2024, 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 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 the pool and deck are located no closer than 12.4 feet from the Normal High Water Elevation (NHWE) of Lake O'Dell.

C: Alexander Montoya  
4855 Distribution Court, Unit #2  
Orlando, FL 32822





4855 Distribution Court Suite 2, Orlando FL 32822  
888-390-0194 [info@grunit.com](mailto:info@grunit.com) CPC # 1459109

April 19<sup>th</sup>, 2024

Residential Property Located:

5416 Turkey Lake Rd, Orlando, FL 32819

Ref: In-ground Pool Construction

COVER LETTER

To whom it may concern:

We are requesting a variance to construct a 273 SF pool and spa with 12'5" setback to the edge of SPA and 15'2" to the edge of water of the pool in lieu of the required 30' as shown on the site plan. This pool will be located approximately 12'.5" from the existing sea-wall wich is the location of the NHWE line as shown in the property survey. To the west, 7' to the north, 27'1 to east and 81' to the south of the property lines. This pool will be an in ground pool construction at existing grade level.

We would like to request a variance from the Orange County Municode Section 38-79 Conditions for permitted uses, special exceptions, etc (10)-e, and to allow this pool to be build in less than minimum setback requirement of 30ft per Zoning reviewer Lidia Barrios' comment. We have also attached an aerial view o f the property and it's surrounding neighbors with existing pool for your review.

Please refer to the application and construction plans provided.

Respectfully,

Alexander Montoya  
Signed

Alexander Montoya, CPC# 1459109  
Print name

Date  
04/19/2024

CEO  
Title

- 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 house is located in a neighborhood near a small body of water.

- 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.**

We are asking for a variance to build a pool. We have not self-created any violation.

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

We are not requesting any special privileges. But, we noticed that there are approved pool constructions within the same neighborhood and around body of water

- 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 the variance is not approved, this decision will deprive my rights to enjoy an outdoor pool in my property . while others in the same neighborhood has been granted permits to build theirs.

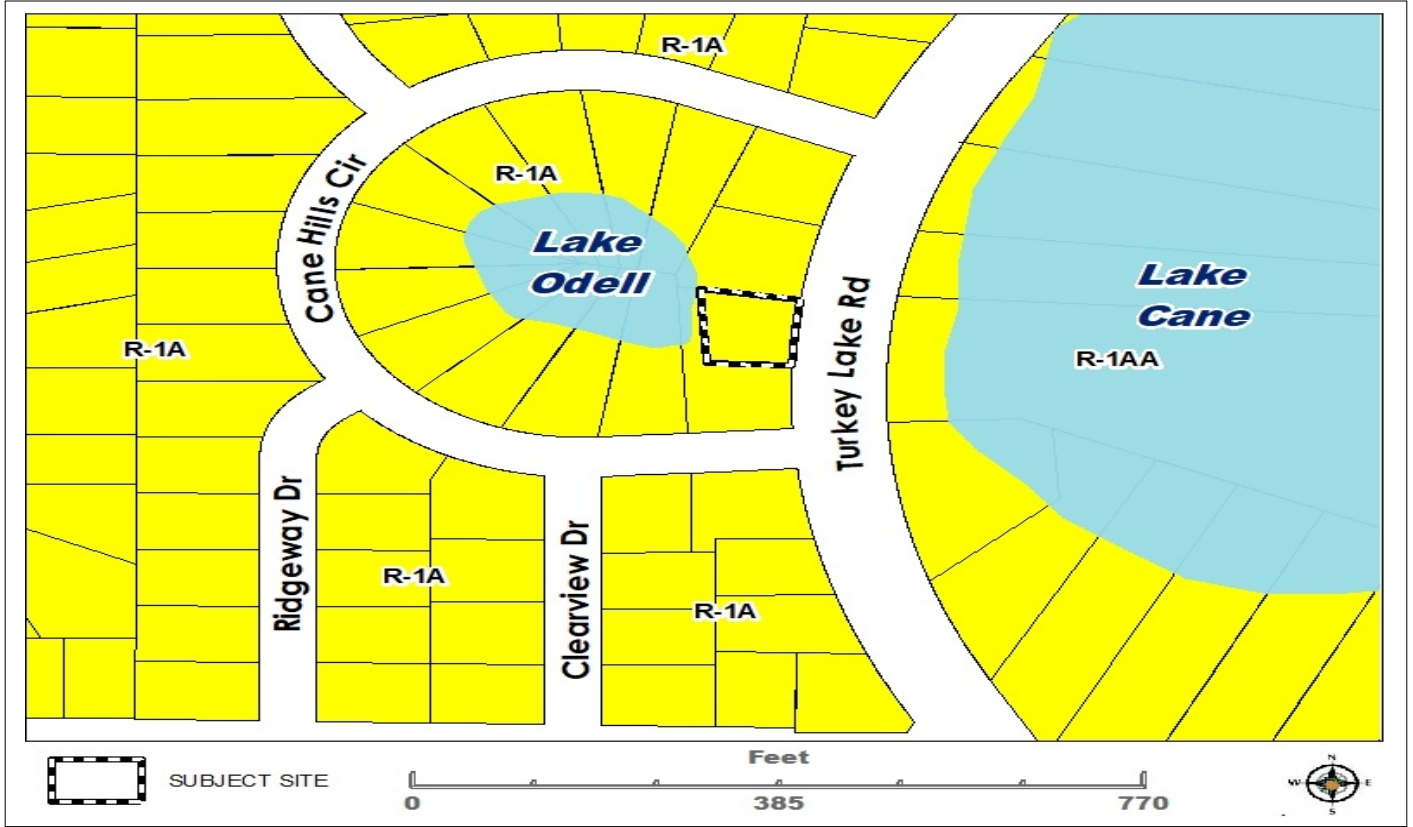
- 5. Minimum Possible Variance - The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building, or structure.**

We are asking for a variance of the setback since this will be the most suitable location to build the pool

- 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 pool construction will not affect any public welfare. It would be build in a private property

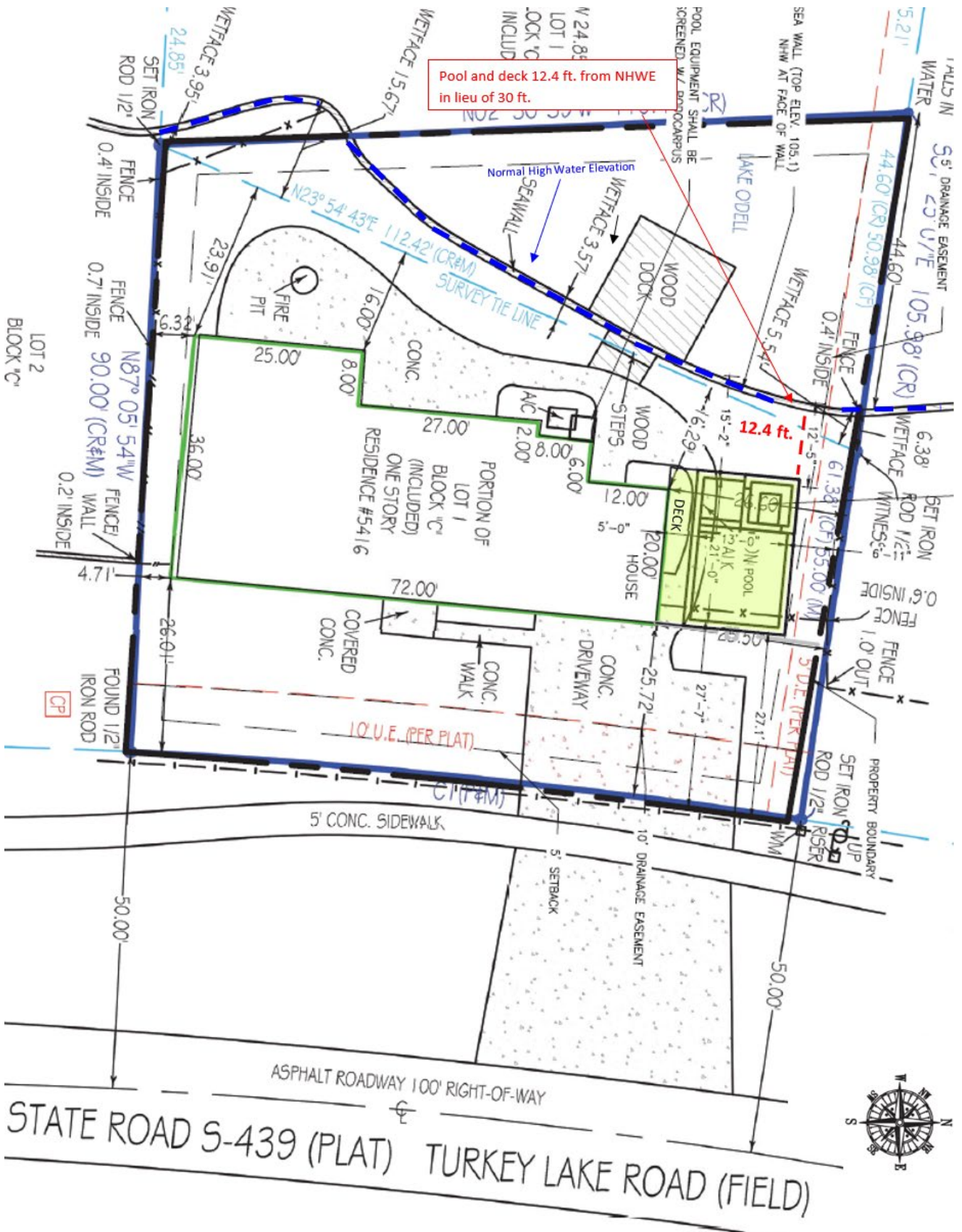
ZONING MAP



AERIAL MAP



SITE PLAN



**SITE PHOTOS**



**Facing west from Turkey Lake Rd. towards front of subject property**



**Rear yard, facing north towards existing rear of residence and Lake O'Dell**

**SITE PHOTOS**



**Rear yard, facing northeast towards proposed pool and deck location**



**Rear of existing wall from inside property facing east**