



Interoffice Memorandum

September 18, 2023

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

FROM: Andres Salcedo, P.E., Acting Director *Andres*
Planning, Environmental, and Development Services
Department

CONTACT PERSON: Ted Kozak, AICP, Chief Planner
Zoning Division
(407) 836-5537

SUBJECT: October 10, 2023 Board-Called Public Hearing
Applicant: Asima Azam for Barbara Phelps and
Antonio Penaroque
BZA Case # VA-23-08-052, August 3, 2023; District 5

Board of Zoning Adjustment (BZA) Case # VA-23-08-052, located at 14157 Lake Price Dr., Orlando FL 32826, in District 5, is a board-called public hearing. The applicant is requesting variances in the R-1A zoning district as follows: 1) To allow an existing detached accessory structure (carport) in front of the principal structure in lieu of the rear or side, 2) To allow a south front setback of 6 ft. in lieu of 25 ft. for an existing detached accessory structure (carport), 3) To allow a 6 ft. high fence within the clear view triangle, 4) To allow an 8.55 ft. high gate within the clear view triangle.

At the August 3, 2023 BZA hearing, staff recommended denial of the variance requests. The BZA recommended approval of the variance requests, subject to six conditions.

At the August 22, 2023 Board meeting, this item was pulled for a separate public hearing at the request of Commissioner Emily Bonilla.

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 Board. A copy is available upon request in the Zoning Division.

If you have any questions regarding this matter, please contact Ted Kozak at (407) 836-5537.

ACTION REQUESTED: Deny the applicant's request; or approve the applicant's request with conditions. District 5

TK:ag
Attachment

**PLANNING, ENVIRONMENTAL, AND DEVELOPMENT SERVICES DEPARTMENT
ZONING DIVISION PUBLIC HEARING REPORT
October 10, 2023**

The following is a public hearing before the Board of County Commissioners on October 10, 2023 at 2:00 p.m.

APPLICANT: ASIMA AZAM FOR BARBARA PHELPS, ANTONIO PENAROQUE

REQUEST: Variances in the R-1A zoning district as follows:
1) To allow an existing detached accessory structure (carport) in front of the principal structure in lieu of the rear or side.
2) To allow a south front setback of 6 ft. in lieu of 25 ft. for an existing detached accessory structure (carport).
3) To allow a 6 ft. high fence within the clear view triangle.
4) To allow an 8.55 ft. high gate within the clear view triangle.

Note: This is the result of Code Enforcement.

LOCATION: 14157 Lake Price Dr., Orlando FL 32826, northwest side of Lake Price Dr., northwest of Lake Price, southwest of N. Tanner Rd., south of Mcculloch Rd., northwest of Lake Pickett Rd.

TRACT SIZE: +/- 0.34 acres (15,033 sq. ft.)

ZONING: R-1A

DISTRICT: #5

PROPERTIES NOTIFIED: 45

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 denial. Staff noted that four (4) comments were received in support, and five (5) comments were received in opposition.

The applicant described the history of the property's ownership, and the years the fence and carport were installed without permits, as they believed that permits were not required at that time. The need for the requests were noted, including the existing location of the septic system and the lack of impact to neighbors since the owners purchased the property over 30 years ago.

Code Enforcement described the history of the citation, in response to a complaint, and noted that permits were required when these items were built, and that the item has gone to the Code Enforcement Board and there is a lien on the property.

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

The BZA described the safety issues of the fence and gate and the existing location of the septic system as rationale to recognize the location of the carport, and made a motion to approve Variances #1, and #2, and to deny Variance #3, and #4, which failed by a vote of 2-3. The BZA subsequently recommended approval of the requested Variances, by a 3-2 vote, with one absent and one vacant, subject to the five (5) conditions in the staff report and the addition of Condition #6, which states, "The gate shall be transparent."

BZA HEARING DECISION:

A motion was made by Roberta Walton Johnson, seconded by Juan Velez and carried to recommend APPROVAL of the Variance requests in that the Board finds they meet the requirements of Orange County Code, Section 30-43(3); further, said approval is subject to the following conditions: (3 in favor, 2 opposed, 1 absent, 1 vacant).

1. Development shall be in accordance with the site plan and fence specifications received July 17, 2023, 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 2 sheds at the rear of the property, or they shall be removed, prior to the issuance of building permits for the carport and fence.
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 Lake Price Dr., 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 is 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.

6. The gates shall be transparent.

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **AUG 03, 2023**

Commission District: **#5**

Case #: **VA-23-08-052**

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

Nick.Balevich@ocfl.net

GENERAL INFORMATION

APPLICANT(s): ASIMA AZAM

OWNER(s): BARBARA PHELPS, ANTONIO PENAROQUE

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

- 1) To allow an existing detached accessory structure (carport) in front of the principal structure in lieu of the rear or side.
- 2) To allow a south front setback of 6 ft. in lieu of 25 ft. for an existing detached accessory structure (carport).
- 3) To allow a 6 ft. high fence within the clear view triangle.
- 4) To allow an 8.55 ft. high gate within the clear view triangle.

Note: This is the result of Code Enforcement.

PROPERTY LOCATION: 14157 Lake Price Dr., Orlando FL 32826, northwest side of Lake Price Dr., northwest of Lake Price, southwest of N. Tanner Rd., south of McCulloch Rd., northwest of Lake Pickett Rd.

PARCEL ID: 01-22-31-6532-16-100

LOT SIZE: +/- 0.34 acres (15,033 sq. ft.)

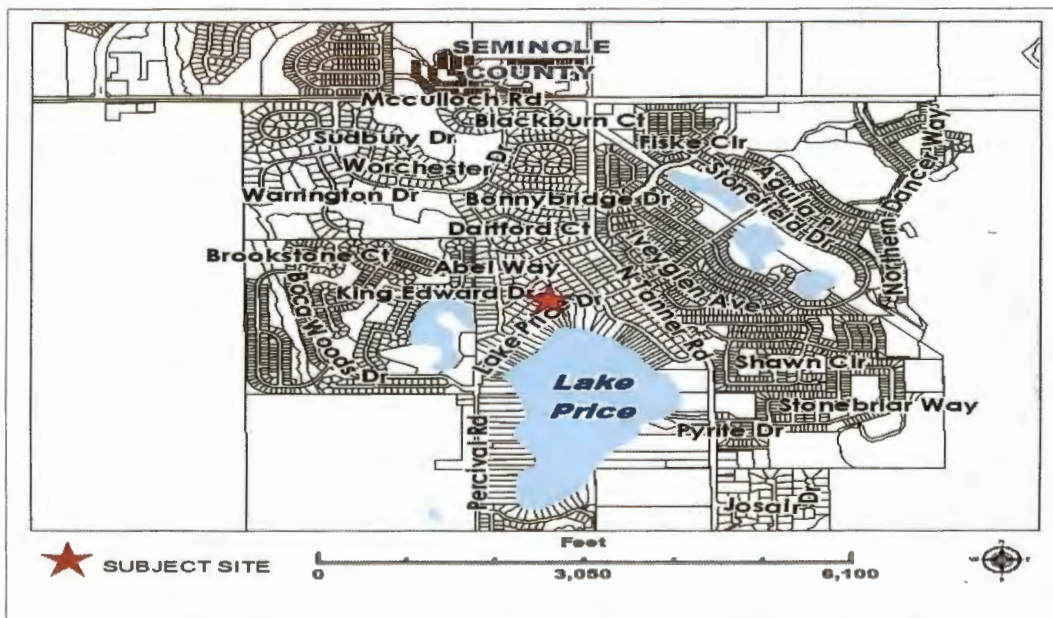
NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 45

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



SITE & SURROUNDING DATA

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

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located in the R-1A, Single Family Dwelling District, which allows for single family uses. 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 a 15,033 sq. ft. lot, located in the Palm Lakes Estates Second Addition Plat, recorded in 1956, and is considered to be a conforming lot of record. It is developed with a 2,640 gross sq. ft. single-family home, constructed in 1988, and an unpermitted carport, (the Property Appraiser states that it was constructed in 2005, the applicant states it was constructed in 1995). There are also 2 sheds at the rear of the property that were constructed prior to 2001. Staff could not locate permits for these sheds. The owner purchased the property in 1987.

The proposal is to recognize several improvements constructed without permits. In 1995, the applicant installed a 200 sq. ft. detached accessory structure (carport) in front of the house, requiring Variance #1. Accessory structures located within the front yard are required to meet the front setback requirement for the district. The carport is located 6 ft. from the front property line in lieu of 25 ft. requiring Variance #2. The applicant asserts that also in 1995 a 6 ft. high fence and an 8.55 ft. high metal gate were installed in their current location. There are no permits on file for the fence or the gate. The front of the property is adjacent to Lake Price Dr., which is classified as an Urban Minor Collector and per Sec. 38-1408(g), a fence is permitted to be up to 6 ft. high within the front setback. However, 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 road and 15 ft. along the edge of the driveway. A clear view triangle which extends from the neighbor's driveway to the east also encroaches onto the subject property and according to the applicant has been complied with. The fence and gate are located within the clear view triangle, requiring Variances #3 and #4, respectively.

A Code Enforcement citation was issued in June, 2022 for the installation of a fence with gates without a permit, that does not comply with development standards, and the location of multiple accessory structures in the front yard (Incident 609340). Except for the requested carport, all other accessory structures in the front yard have been removed. The applicant subsequently applied for a permit (B23001003) in January, 2023 for the carport which is on hold pending the outcome of the request.

Staff recommends denial of the requests since all 6 Variance criteria are not met. The request to encroach into the clear view triangle raises safety considerations regarding pedestrian safety when using the adjacent sidewalk since the fence and gate are completely opaque and could block visibility. Also, the applicant is not being deprived of having a carport on the property, as there is room elsewhere to place a carport in a conforming location. Furthermore, there are no other properties within the immediate vicinity that have been granted similar Variances.

As of the date of this report, 4 comments have been received in favor, which include the adjacent neighbors to the north and south. No comments have been received in opposition to this request.

District Development Standards

	Code Requirement	Proposed
Max Height:	15 ft. accessory structure 6 ft. fence (residential property adjacent to collector roadway)	8.75 ft. accessory structure 6 ft. high fence within the clear view triangle (Variance #3) 8.55 ft. high gate within the clear view triangle (Variance #4)
Min. Lot Width:	75 ft.	95 ft.
Min. Lot Size:	7,500 sq. ft.	15,033 sq. ft.

Building Setbacks (that apply to structure in question)

	Code Requirement	Proposed
Front:	25 ft.	6 ft. accessory structure/metal carport (South - Variance #2)
Rear:	30 ft. 5 ft. accessory structure	58 ft. existing home (North) 5.1 ft. accessory structure-labelled as wood frame shed (North)
Side:	7.5 ft. 5 ft. accessory structure	9.4 ft. existing home (West) 48.7 ft. accessory structure-labelled as wood frame shed (West) 19.5 ft. existing home (East) 6.3 ft. accessory structure-labelled as wood frame building (East)

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

There are no special conditions and circumstances particular to the subject property, as the fence/gate and carport 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 improvements could be relocated or modified to conform with Code requirements.

Deprivation of Rights

There is no deprivation of rights. A fence/gate and carport 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 relocate or modify the fence/gate and carport to meet Code requirements.

Purpose and Intent

Approval of the requested Variances would not be in harmony with the purpose and intent of the Zoning Regulations and will be detrimental to the surrounding neighborhood, as encroachment into the clear view triangle is a safety issue, and such requests do not meet the standards for purpose and intent and could be detrimental to the surrounding area. There is room on the property to place a carport in a conforming location, thereby limiting any quantifiable negative impacts to surrounding property owners.

CONDITIONS OF APPROVAL

1. Development shall be in accordance with the site plan and fence specifications received July 17, 2023, 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 2 sheds at the rear of the property, or they shall be removed, prior to the issuance of building permits for the carport and fence.
 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 Lake Price Dr., 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 is 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.
- C: Asima Azam
3208 E. Colonial Drive, Suite 419
Orlando, Florida 32803



A Z A M L A W

May 4, 2023

Orange County Zoning Division
201 S. Rosalind Ave., 1st floor
Orlando, Florida 32801

Re: Letter of Request for Variance(s)
Parcel ID# 1-22-31-6532-16-100

Dear Planning and Zoning Members:

This firm represents Antonio and Barbara Penaroque, the owners of the property located at 14157 Lake Price Drive, Orlando, Florida 32826 ("Property"). Please accept this letter in support of our application for a request for 5 (five) separate variances on the Property. Each separate variance requested is described below.

1. History:

This Property was purchased by the applicants in 1987. The home is 1,287 feet and sits on approximately a ¼ of an acre lot in the Palm Lakes Estates subdivision, an older established neighborhood in East Orlando. The home is not in a homeowner's association. When applicants purchased the Property, the shell of the home was complete, but applicants finished the interior. Applicants have resided in the home as their homestead **since 1987**.

In approximately, 1995, the applicants constructed **a metal carport, fence and gate on the Property**. Applicants believe that the law governing detached carports was adopted after this date and that the fence, carport and gate were in compliance with the then applicable fence, gate and detached accessory code in place in 1995. The carport is listed as extra feature in the property valuation card by the OCPA as of 2005.

In October 2022, nearly 30 years after construction of the fence, gate and carport, the applicants received notice from the Orange County Code Enforcement Division that the fence, gate and carport constructed on the Property were in violation of the following Orange County Code; Section 38-1426 related to Detached Accessory Structures and Section 38-1408 Fences and Walls. The applicant seeks 5 variances for non-compliance with these provisions as detailed below:

3208 E. Colonial Drive #419, Orlando, FL 32803
Phone: (407) 349-1577 | Fax: (407) 349-1544
Azamlawandmediation@gmail.com

A. Section 38-1426 Detached Accessory Structure

- a. carport must be located to the rear of the residence
- b. the carport must be set back at least fifty (50) feet from the front yard line
- c. the carport must be set back at least 25 feet from the side yard line

Accordingly, the applicant seeks a 3 variances from 3 separate code provisions, as detailed below:

1. Variance #1 for open carport to be in the front yard

As previously stated, the un-enclosed metal carport was constructed in approximately 1995, and it is located in the front of the home. The details for the carport is as follows:

- a. square footage- 260 feet
- b. height- 8 feet, 9 in.
- c. material- aluminum
- d. distance from the main home- 56 feet
- e. distance from the front yard line varies from 6- 10 feet as shown on survey
- f. distance from side yard line varies from 13 feet to 14 feet as shown on survey

A copy of the plat showing the carport location and photos are attached.

The relevant section 38-1426 provides that:

In addition, a detached accessory structure shall be located only to the side or rear of the primary dwelling unit...

2. Variance #2 for open carport to be set back 13 feet from the side street.

The un-enclosed is located between 13-14 feet from the side yard line.

A copy of the plat showing the carport location and photos are attached.

The relevant section 38-1426 provides that:

These detached accessory structures shall be set back as follows:

- I. Side 25 feet

3. Variance #3 for open carport to be set back 6 feet from the front yard lot line.

The relevant section 38-1426 provides that:

These detached accessory structures shall be set back as follows:

I. Front -50 feet

We are requesting 3 variances for the carport to seek relief from (1) the required rear yard location of the detached accessory structure, and allowing it to remain in its current location which is the "front" of the lot, (2) allowing it to remain in its current location with is 13 feet from the side lot line and (3) allowing it to remain in its current location 6-10 feet from the front lot line. In support applicant states as follows:

a. the detached accessory structure is an open metal carport and has been in this location for 30 years, and was erected prior to the code provision on accessory structures being adopted.

b. the carport is in character with the surrounding homes along Lake Price Drive

c. The topography of this lot is unique in that it slopes into a hill preventing construction of the carport in the side yard.

d. the existing cement driveway leads to the carport, and requiring applicant to re-pour a driveway would cost \$3,000-\$5,000 dollars.

e. given the location of the home and topography of the lot, there is no room, and it is impossible to place a carport in the side yard.

f. the strict application of the requirements of this applicable zoning chapter would deprive the existing property owner of rights and privileges currently enjoyed in this neighborhood and by other property owners in the neighborhood who have a carport.

g. the carport is almost completely shielded from view from the fence and dense landscaping so is not aesthetically displeasing.

h. granting the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.

i. the granting of the variance would have no effect on any adjoining properties, and we have submitted with this application letters of no objection from the neighbors.

j. this zoning relief requested will not cause any detriment to the common good, as the literal interpretation and strict application of the applicable zoning requirements of this chapter would cause substantial undue and unnecessary hardship to the current property owner not just a casual/discretionary inconvenience to the property owner.

k. the requested variance would be consistent with the spirit and purpose of this Chapter and the Orange County Zoning code as the carport blends in with the existing homes in the neighborhood and will be well within the spirit of the law.

B. Section 38-1408 Fences and Walls

a. fence shall maintain 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 is formed on each side of the driveway by measuring a distance of 15 on either side of the driveway.

Accordingly, the applicant seeks a 2 variances from the code provisions, as detailed below:

1. Variance #4 for existing 6 foot fence to remain in 15x15 clear view driveway triangle

The existing fence and gate anchor columns were constructed in approximately 1995, and located along the perimeter of the entire lot. A black metal gate is located into the entrance of the lot on the SE corner of the lot.

The details for the fence are as follows:

- a. height- 6 feet all around including in clear view triangle
- b. material: wood board on board
- c. gate height: 6 feet sloping to 8 feet and 9 inches
- d. distance from neighbor adjacent driveway: 13.3 feet

A copy of the plat showing the fence location and photos are attached.

2.. Variance #5 for existing gate and columns to remain in 15x15 clear view driveway triangle

The existing fence and gate anchor columns were constructed in approximately 1995, and located along the perimeter of the entire lot. A black metal gate is located into the entrance of the lot on the SE corner of the lot.

The details for the gate are as follows:

- a. material: iron
- b. gate height: 6 feet sloping to 8 feet and 9 inches
- d. distance from neighbor adjacent driveway: 13.3 feet

A copy of the plat showing the fence location and photos are attached.

We are requesting 2 variances to seek relief from the required clear view triangle area which is formed in a 15 by 15 foot triangle along the driveway. In support thereof applicant states as follow:

- a. the existing fence and gate has been in existence in this location for 30 years.
- b. the fence is in character with the surrounding homes along Lake Price Drive
- c. due to the location of the home this lot, the entry gate is located on the SE corner of the lot, and not in the "front" of the home like most traditional orientations. As shown in the pictures, one side of the fence (the white PVC) is owned by the neighbors and not applicant, so we cannot comply on that side.

e. given the location of the fence on the corner of the lot, if application were required to modify the fence to reduce the height in the corner in the clear view triangle,

the fence would not be compatible with the surrounding homes and the fence would be aesthetically displeasing.

f. the existing gate is approximately 50% transparent. The photos taken by code enforcement showed a removable tarp. Applicant has not removed the tarp and the gate meets code requirements. See photo attached.

g. the strict application of the requirements of this applicable zoning chapter would deprive the existing property owner of rights and privileges currently enjoyed in this neighborhood and by other property owners in the neighborhood, in that many homes on Lake Price Drive do not meet this fence and gate requirement.

h. granting the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.

i. the granting of the variance would have no effect on any adjoining properties, and we have submitted with this application letters of no objection with this application.

j. this zoning relief requested will not cause any detriment to the common good, as the literal interpretation and strict application of the applicable zoning requirements of this chapter would cause substantial undue and unnecessary hardship to the current property owner not just a casual/discretionary inconvenience to the property owner.

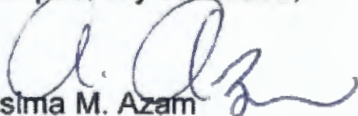
k. the requested variance would be consistent with the spirit and purpose of this Chapter and the Orange County Zoning code as the fence blends in with the existing homes in the neighborhood and will be well within the spirit of the law.

Based on the foregoing, the applicants respectfully request that the BZA consider granting the 5 variances required for the existing fence and carport which are currently not in compliance with the current code.

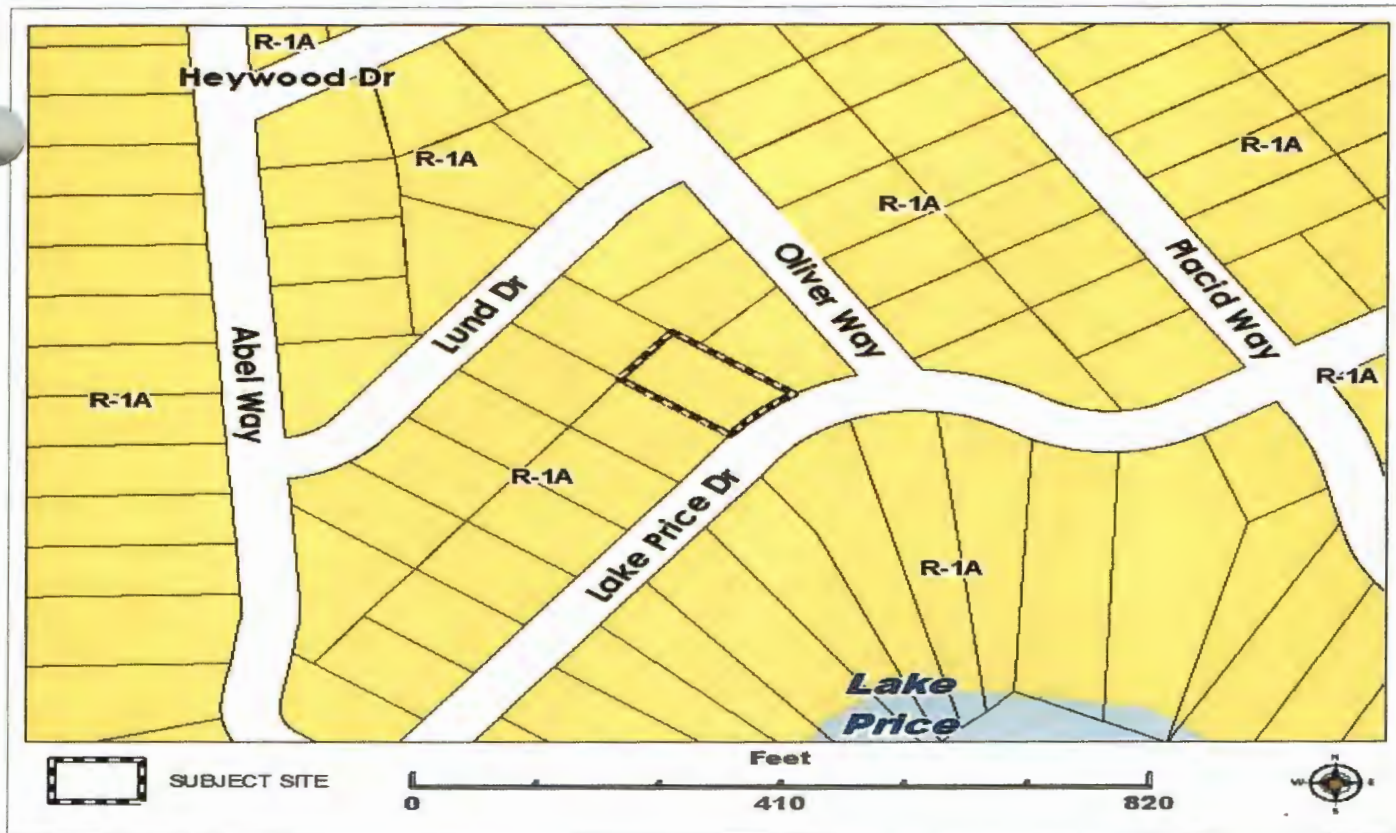
While it is not relevant to this application, the owner applicants would like to take a final opportunity to impress upon the Board that the fence and carport have been in existence on the Property for almost 30 years and is and has always been consistent with the surrounding homes and character of the neighborhood. And while the CEB or Zoning Board may not be subject to application of traditional statute of limitations bars or estoppel arguments, under simple principles of equity we would argue that these principles should be considered by the Board in reviewing and making its determination to grant the applicant's request.

If additional information is required, please do not hesitate to contact the undersigned.

Respectfully submitted,


Asima M. Azam

ZONING MAP

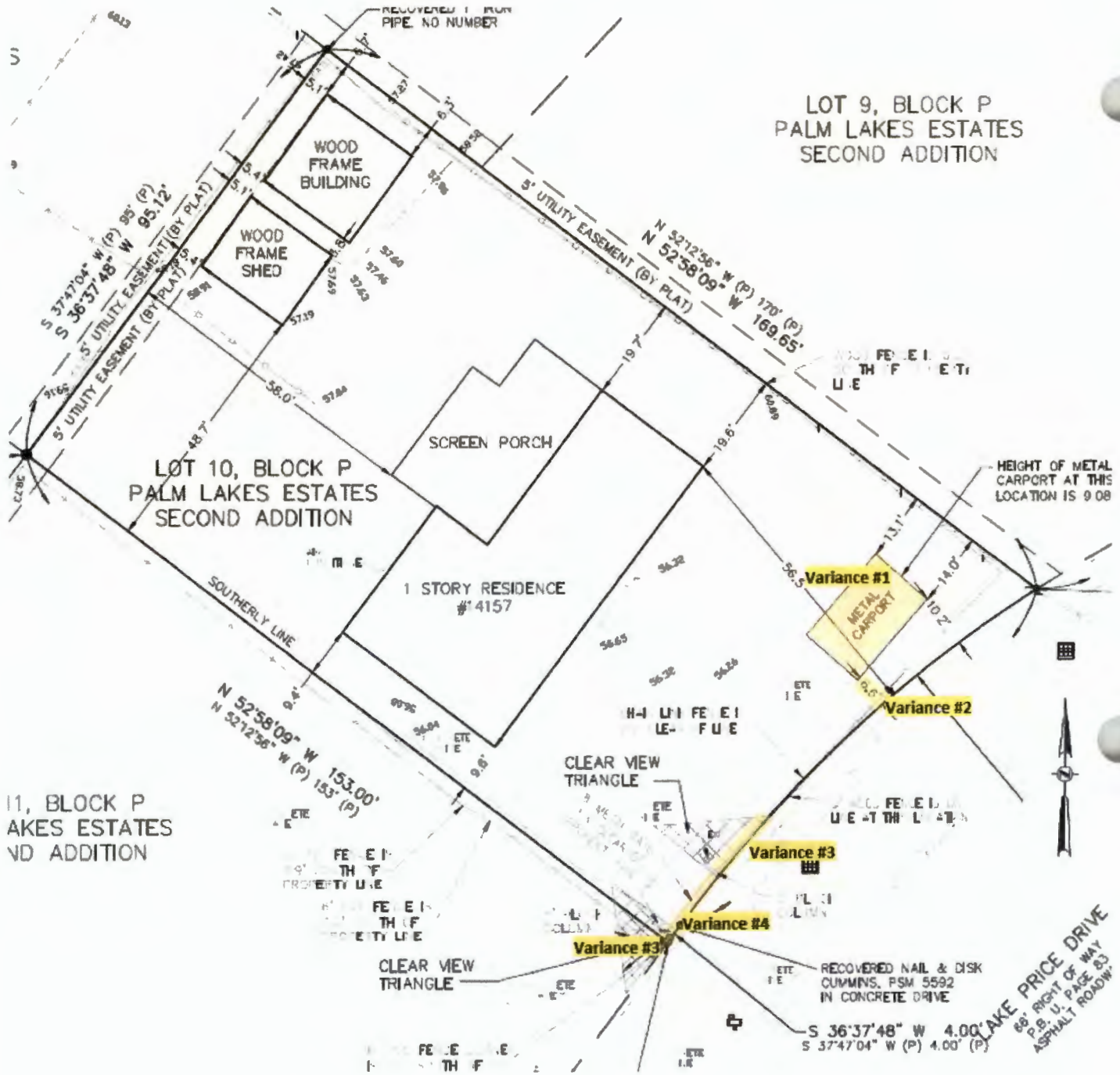


AERIAL MAP



SITE PLAN

**LOT 9, BLOCK P
PALM LAKES ESTATES
SECOND ADDITION**



FENCE DIMENSIONS



SITE PHOTOS



07/10/2023 16:06

Front from Lake Price Dr. facing west



07/10/2023 16:10

Front of the property from Lake Price Dr. facing north

SITE PHOTOS



Accessory structure in front of the house with a 6 ft. front setback facing north



Accessory structure with a 6 ft. front setback facing north