



Planning, Environmental &  
Development Services  
Department



Orange County Board of Zoning Adjustment

# Recommendations Booklet

Hearing Date:

**June 4, 2020**

Zoning Division

# BOARD OF ZONING ADJUSTMENT (BZA)

## ORANGE COUNTY GOVERNMENT

<u>Board Member</u>	<u>District</u>
Carolyn Karraker (Chairperson)	1
John Drago	2
Juan Velez	3
Deborah Moskowitz (Vice Chair)	4
Wes A. Hodge	5
Charles J. Hawkins, II	6
Roberta Walton	At Large

### BZA Staff

Ted Kozak, AICP	Chief Planner
Nick Balevich	Planner II
David Nearing, AICP	Planner II

**ORANGE COUNTY BOARD OF ZONING ADJUSTMENT  
RECOMMENDATIONS  
June 4, 2020**

<u>PUBLIC HEARING</u>	<u>APPLICANT</u>	<u>DISTRICT</u>	<u>BZA Recommendations</u>	<u>PAGE #</u>
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# ORANGE COUNTY ZONING DISTRICTS

## Agricultural Districts

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

## Residential Districts

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

## Non-Residential Districts

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

## Other District

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

## SITE & BUILDING REQUIREMENTS

Orange County Code Section 38-1501. Basic Requirements

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

District	Min. lot area (sq. ft.) <i>m</i>	Min. living area (sq. ft.)	Min. lot width (ft.)	Min. front yard (ft.) <i>a</i>	Min. rear yard (ft.) <i>a</i>	Min. side yard (ft.)	Max. building height (ft.)	Lake setback (ft.)
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>

District	Min. lot area (sq. ft.) <sup>m</sup>	Min. living area (sq. ft.)	Min. lot width (ft.)	Min. front yard (ft.) <sup>a</sup>	Min. rear yard (ft.) <sup>a</sup>	Min. side yard (ft.)	Max. building height (ft.)	Lake setback (ft.)
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	<sup>a</sup>
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	<sup>a</sup>

District	Min. front yard (feet)	Min. rear yard (feet)	Min. side yard (feet)	Max. building height (feet)
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**

<sup>a</sup>	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.
<sup>b</sup>	Side setback is 30 feet where adjacent to single-family district.
<sup>c</sup>	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.
<sup>d</sup>	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: (i) are either platted or lots of record existing prior to 3/3/97, and (ii) are 75 feet in width or greater, but are less than 90 feet, and (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.
<sup>e</sup>	Corner lots shall be 100 [feet] on major streets (see Art. XV), 80 [feet] for all other streets.
<sup>f</sup>	Corner lots shall be 125 [feet] on major streets (see Art. XV), 100 [feet] for all other streets.
<sup>g</sup>	Corner lots shall be 150 [feet] on major streets (see Art. XV), 125 [feet] for all other streets.
<sup>h</sup>	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.
<sup>j</sup>	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.
<sup>k</sup>	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%.
<sup>m</sup>	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: **JUN 04, 2020**

Case Planner: **Nick Balevich**

Case #: **SE-19-12-139**

Commission District: **#2**

## GENERAL INFORMATION

APPLICANT(s): WHEATLEY ADULT LEARNING CENTER (STEVEN THORP)

OWNER(s): SCHOOL BOARD OF ORANGE COUNTY FLORIDA

REQUEST: Special Exception and Variances in the R-3 zoning district as follows:

- 1) Special Exception to allow a 4,800 sq. ft. 2-story Orange County Public School (OCPS) community center/adult learning center.
- 2) Variance to allow 5 parking spaces in lieu of 16.
- 3) Variance to allow a 10 ft. side street setback in lieu of 15 ft.
- 4) Variance to allow a 15 ft. front street setback in lieu of 25 ft.

PROPERTY LOCATION: 1410 S. Central Avenue, Apopka, Florida, 32703, northwest corner of S. Central Ave. and W. 18th St.

PARCEL ID: 16-21-28-6044-03-090

LOT SIZE: 81 ft. x 116 ft./0.22 acres

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 221

**DECISION:** Recommend **APPROVAL** of the Special Exception request in that the Board finds it met 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, **APPROVAL** of the Variance requests in that the Board made the finding that the requirements of Orange County Code, Section 30-43(3) have been met; further, said approval is subject to the following conditions as amended (unanimous; 7-0):

1. Development shall be in accordance with the site plan dated April 30, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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. There shall be no outdoor activities or events on the site.
5. Hours of operation shall be limited to 8 am to 10 pm.
6. The project shall comply with Article XVI of Chapter 9 of the Orange County Code, "Exterior Lighting Standards."
7. Fences shall be reduced to 4 ft. high within the front and side street setbacks.

**SYNOPSIS:** Staff gave a presentation on the case covering the location of the property, the site plan, and photos of the site.

The BZA inquired about who will own and maintain the lift station, and discussed the restriction to Monday to Friday use, noting that weekend use should be allowed to serve the community.

The applicant confirmed that OCPS will own and maintain the lift station, and stated that they are open to a revised condition allowing for use of the facility 7 days per week. The applicant also stated that they completed a Land Use Amendment to achieve consistency, and that the demolition of the previous structure on the site was permitted at the State level, since OCPS does not pull County permits. They further expressed objection to condition # 7, since OCPS always uses 6 foot high fences for security, but stated that they will address this after and apply for a variance as needed.

Staff received no commentaries in favor of the application and none in opposition to the application. There was no one present to speak in favor or in opposition to the request.

The BZA unanimously recommended approval of the special exception and variances subject to amending condition # 5 to state: "Hours of operation shall be limited to 8 am to 10 pm.," subject to the seven (7) conditions, including revised condition # 5, as included in the staff report.

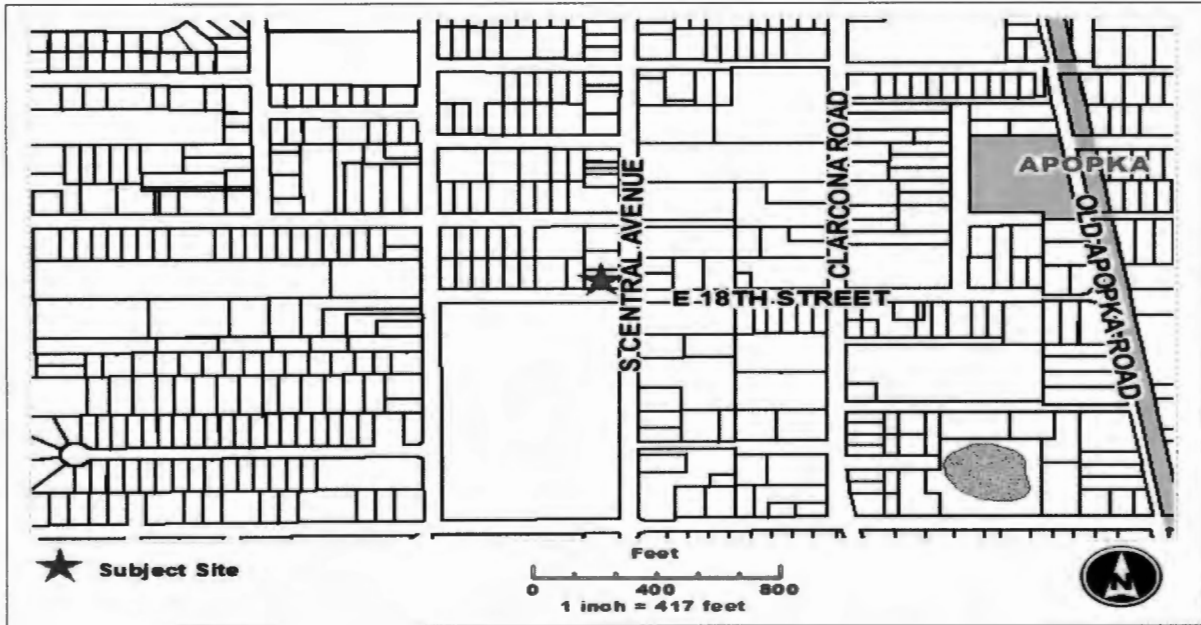
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#### STAFF RECOMMENDATIONS

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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-3	R-3	R-3	R-3	R-3
Future Land Use	MDR	LDR	INST	LMDR	LDR
Current Use	Vacant	Single Family Residence	School	Single Family Residence	Single Family Residence

**BACKGROUND AND ANALYSIS**

**DESCRIPTION AND CONTEXT**

The property is located in the R-3, Multiple-family Residential zoning district, which allows single-family homes, multifamily development, and associated accessory structures, as well as community centers and job training facilities through the Special Exception process.

The subject property is a 0.22 acre parcel that consists of 3 combined lots that were platted in 1926, as part of the Oak Lawn First Addition plat. It is a corner lot with frontage on both S. Central Ave. and W. 18th St. It is considered to be a conforming lot of record. The property is currently vacant.

The property was previously used as a convenience store (non-conforming since 1977). The building was demolished between January of 2016 and January of 2017, however there is no demolition permit on record.

The area consists of single family homes to the north, east and west, and the Wheatley Elementary School to the south.

In May of 2019, The Board of County Commissioners (BCC) approved a Land Use Amendment for this property (2019-1-S-2-2, Wheatley Adult Learning Center), from Low Density Residential (LDR) to Medium Density Residential (MDR). A Community meeting was held for this Land Use Amendment case on January 31, 2019, and was attended by the District Commissioner and staff, the applicant team, and a small number of residents, with a generally positive tone.

The applicant, Orange County Public Schools (OCPS) is proposing a 4,800 sq. ft., 2-story community center. The property is zoned R-3, which allows a community center via Special Exception. The facility will be used primarily for job training and seminars, and also will be used for county meetings and community events, and other educational functions. Vehicular access to the site will be from W. 18th St.

The applicant is requesting a variance to allow for 5 parking spaces to be provided on site, in lieu of 16 required parking spaces. Among other things, a Contribution Agreement was approved by the Orange County BCC on November 13, 2018, which includes in Condition 12 that parking for the proposed facility will be located on the adjacent Wheatley Elementary School. If either property is sold, an easement shall be recorded encumbering Wheatley Elementary School, benefitting the subject property.

The applicant is also requesting a variance for a side street setback of 10 ft. in lieu of 15 ft. on the south side along W. 18th St., and a variance for a 15 ft. front setback in lieu of 25 ft. on the east side along S. Central Ave.

These requests are due to the small size of the site, and adherence to the landscape buffer requirements to adjacent residential properties. As a School District, the OCPS is exempt from landscaping code; however, they are voluntarily providing these buffers for the residential neighbors to the north and west.

The applicant is proposing a 6 ft. high vinyl fence on the north and west property lines. Code allows a fence to be a maximum of 4 ft. high within the front and side street setbacks. These fences will be required to be reduced to 4 ft. high within these areas.

**District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	35 ft.
Min. Lot Width:	50 ft.	81 ft.
Min. Lot Size:	5,000 sq. ft.	9,520 sq. ft.

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

	Code Requirement	Proposed
Front:	(South Central Ave.) 20 ft.	15 ft.
Rear:	(west) 30 ft.	61.67 ft.
Side:	(north) 10 ft.	11 ft.
Sidestreet:	(W. 18 <sup>th</sup> St.) 15 ft.	10 ft.

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## STAFF FINDINGS

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### **SPECIAL EXCEPTION CRITERIA**

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

The Special Exception process allows for the provision of community centers, which could be considered consistent with the Comprehensive Plan, since a needed community facility is proposed. The Applicant completed a Land Use Amendment process prior to this application to achieve consistency with the Zoning District.

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

The area is developed with single family homes to the north, east and west, and the Wheatley Elementary School to the south. The size of the property (0.22 acres) allows for adequate buffering and separation from the residential uses. The proposed building will be adequately setback from the nearest residential property lines. The use will be similar in nature, at a smaller scale than the existing Wheatley School to the south, with all uses and activities contained in the building.

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

The use will be similar in nature, but less intense than the adjacent Wheatley Elementary School to the south. A community center will be complimentary to a residential neighborhood. Due to the fact that all uses and activities will be contained within the building, combined with the proposed landscaping buffer, the use of the site will not be a detrimental intrusion to the nearby area.

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

Contingent upon approval of the requested variances, the use will meet the performance standards of the district. All activities will be contained within the building. The proposed hours of operation will be limited to Monday to Friday from 8 am to 10 pm. Parking lot lighting will be required to comply with Orange County Lighting Code Standards which includes dark sky provisions.

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

This proposed use has similar characteristics as those associated with the majority of uses currently permitted in the zoning district.

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

Although the OCPS is exempt from landscaping code, they are voluntarily providing buffers for the benefit of the adjacent residential areas to the north and west.

### **VARIANCE CRITERIA for Variance #2 (Parking)**

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

The limited size of the property may be considered to be a special circumstance. On such a constrained site, it is difficult to provide the required number of parking spaces without a parking reduction. This issue is addressed

in the Contribution Agreement that was approved by the Orange County BCC on November 13, 2018. Condition 12 of this agreement states that parking for the proposed facility will be located on the adjacent Wheatley Elementary School property in order to satisfy parking needs.

**No Special Privilege Conferred**

The required overall number of parking spaces will be provided with a combination of on-site and off-site spaces. Due to the parking provision contained in the Contribution Agreement, the issue of parking was considered and resolved prior to this application being presented.

**Deprivation of Rights**

Literal interpretation of the code will deprive OCPS of the right to establish this use at the scale required to serve the needs of the community effectively. Adequate parking will be provided on the adjacent Wheatley Elementary School property.

**Minimum Possible Variance**

The request is the minimum possible variance to allow the applicant to use the site in the manner required to serve the needs of the community, by providing the number of parking spaces that will fit on the site to accommodate the operation and use of the facility with the balance being provided on the adjacent Wheatley Elementary School property.

**Purpose and Intent**

Approval of this request will be in harmony with the purpose and intent of the Zoning Regulations and will not be detrimental to the area.

**VARIANCE CRITERIA for Variances #3 and 4 (Setbacks)**

**Special Conditions and Circumstances**

The size of the property could be considered as a special circumstance that necessitates a variance for this development. The site is constrained to allow the operation of the proposed use as well as installation of infrastructure such as a required lift station. Thus the reduction of the front and side street setbacks will allow room to maintain other setbacks and to provide buffers between adjacent residential uses on the north and west sides.

**Not Self-Created**

The need for the variances is not self-created, as the existing parcel is small and any reasonable development of the property will require variances.

**No Special Privilege Conferred**

Approval of these variances will not confer any special privileges to the applicant, but rather will allow the site to develop with the required infrastructure and maintain setbacks and buffers on other sides of the property.

### **Deprivation of Rights**

Literal interpretation of the code will deprive this applicant of the right to develop the property in the manner required to serve the needs of the community while maintaining setbacks and buffers on other sides of the property.

### **Minimum Possible Variance**

The requests are the minimum possible to allow the applicant to develop the site in a manner required to most efficiently serve the community, while maintaining setbacks on other sides of the property, and buffers between adjacent residential uses on the north and west sides.

### **Purpose and Intent**

Approval of this request will be in harmony with the purpose and intent of the Zoning Regulations and will not be detrimental to the area.

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## **CONDITIONS OF APPROVAL**

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1. Development shall be in accordance with the site plan dated April 30, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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. There shall be no outdoor activities or events on the site.
5. Hours of operation shall be limited to Monday to Friday from 8 am to 10 pm.
6. The project shall comply with Article XVI of Chapter 9 of the Orange County Code, "Exterior Lighting Standards."
7. Fences shall be reduced to 4 ft. high within the front and side street setbacks.

C: Steven Thorp  
6501 Magic Way, Bldg. 200  
Orlando, FL 32809

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COVER LETTER

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6501 Magic Way · Building 200 · Orlando, Florida 32809 · (407) 317-3700 · www.ocps.net

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April 28, 2020

Nick Balevich  
Planner II – Board of Zoning Adjustment  
Orange County Zoning Division  
201 S. Rosalind Avenue  
Orlando, FL 32801

**RE: Wheatley Adult Education Center Resubmittal – BZA Case #SE-19-12-139**

Mr. Balevich:

Please see the attached revised site plan and new landscape plan for our proposed Wheatley Adult Education Center (OCPS Site #204-U-N-7) project.

The revised site plan shows a movement of the building and parking to the east, encroaching into the required front setback to allow for increased provisions of buffers adjacent to the residential uses. A 3rd Variance for that encroachment is requested with this resubmittal.

Also, per your request, please see the requested information below regarding the proposed use of this site:

**Clarification of the Use of the Property**

While the project is named the “Wheatley Adult Education Center,” and is operated by Orange County Public Schools, the use of the property is more aligned as a community and job/vocational training center per the Orange County Code, than a traditional school facility, as determined via communication between OCPS and Orange County in 2018. The following are various programs, events, and opportunities that can be expected to occur within this facility:

- Adult job/vocational training and education classes administered by Orange County Public Schools
- Community outreach and events administered by Orange County Government
- A space for community members to meet locally to hold cultural, social, religious, or recreational activities.
  - Examples: Scout Organizations, Small Religious Groups, Community Outreach Groups, Support Organizations, and Election Polling.
- Room and facility rentals for the general public or businesses

**Hours of Operation**

The proposed hours of operation, as shown on the plan, are Monday to Friday from 8am to 10pm.

**Outdoor/Special Events**

Due to the small size of the site, there are no outdoor events proposed.

**Prohibitions**

There are no prohibitions of certain uses proposed on this site.

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“The Orange County School Board is an equal opportunity agency.”



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**COVER LETTER PAGE 2**

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I trust that this submittal will allow this project to proceed to the June 4, 2020 Board of Zoning Adjustment meeting.

If you have any questions or need additional information, please contact me at (407) 317-3700 x2022139.

Sincerely,



Steven Thorp, AICP  
Senior Administrator, Facilities Planning

Attachments:

Revised Site Plan

Landscape Plan

Variance Justifications

Email between OCPS and Orange County dated July 27, 2018

Orange County Zoning Verification Letter dated December 6, 2018

Orange County Future Land Use Consistency Letter dated December 13, 2018

April 29, 2020

**Special Exception Justification – SE-19-12-139 – Wheatley Adult Education Center**

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

This BZA application was preceded by an approved Future Land Use Map amendment (2019-1-S-2-2) from Low Density Residential (LDR) to Medium Density Residential (MDR) to allow the property's R-3 zoning gain consistency with its Future Land Use designation.

Additionally, the request is consistent with the following Orange County Comprehensive Plan Objectives and Policies:

- PS1.1.2 - Support and encourage community and business partnerships for educational support services, to include, but not be limited to, magnet programs, work training and job placement.
- PS2.1 - Enhance community/neighborhood design through the joint use of educational facilities.
- PS2.1.1 - Encourage the location of parks, recreation and community facilities in new and existing communities in conjunction with school sites.
- PS2.1.2 - Where feasible, OCPS and OC shall work jointly to co-locate parks, libraries, and community centers with public schools. Where such co-location occurs, both entities shall establish an ongoing management relationship via written agreement that permits the school's use of the public facilities and the public's use of school facilities for community meetings and sports activities.
- PS2.2.7 - Orange County shall support the School Board in locating appropriate school services, such as administrative offices, night classes and adult education, in alternative locations, such as but not limited to commercial plazas, shopping malls, and community centers.

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

The proposed Community Center use is similar to the prior retail commercial use that existed on this property, as well as similar in nature to the Wheatley Elementary School use that has co-existed with the surrounding neighborhood for years.

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

The proposed Community Center use is similar to the prior retail commercial use that existed on this property, as well as similar in nature to the Wheatley Elementary School use that has co-

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COVER LETTER PAGE 4

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April 29, 2020

existed with the surrounding neighborhood for years. There are no further intrusions into the neighborhood that don't already exist and will not act as a detrimental intrusion.

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

Assuming approval of the requested variances, the use will meet all other required performance standards of the R-3 district.

**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.**

Given the prior retail commercial use of the property, as well as the operation of the adjacent Wheatley Elementary School, the proposed use will not introduce any additional noise, vibration, dust, odor, glare, or heat that already occurs within the surrounding neighborhood.

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

The proposed use will comply with all landscaping requirements for educational facilities operated by the School Board as required by Florida Statutes and/or County Code.

April 29, 2020

**Variance Justifications – SE-19-12-139 – Wheatley Adult Education Center**

**1) A variance from Section 38-1476 to reduce the quantity of off-site parking from 16 parking spaces to five (5) parking spaces**

***• 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.***

Due to the small size of the parcel, this site is constrained to allow the operation of the proposed use on this parcel, while maintaining the overall number of required off-street parking spaces. The reduction of the number of on-site parking spaces allows for the structure of the proposed use to be designed to the scale required to serve the needs of the community effectively. This variance also reflects the special circumstance of this project having an approved donation agreement between Orange County and Orange County Public Schools permitting the off-site parking for this project.

***• 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 is not self-created as the approved donation agreement between Orange County and Orange County Public Schools permits the location of parking for this project off-site due to the small size of the property, which already constrains the amount of parking we can provide. This variance is only a formality to recognize the reduction in the number of parking spaces.

***• 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.***

There will be no special privilege conferred as the overall required number of spaces will continue to be provided both on-site and off-site on the Wheatley Elementary School campus, as permitted in the approved Donation Agreement between Orange County and Orange County Public Schools.

***• 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.***

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## COVER LETTER PAGE 6

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April 29, 2020

Due to the small size of the parcel, this site is constrained to allow the operation of the proposed use on this parcel, while maintaining the overall number of required off-street parking spaces. The reduction of the number of on-site parking spaces allows for the structure of the proposed use to be designed to the scale required to serve the needs of the community effectively.

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

This variance will still permit the minimum number of parking spaces that can physically fit on the property with the proposed structure that will accommodate the operation of the use on the property, meanwhile recognizing that the rest of the required parking spaces will be located on the adjacent Wheatley Elementary School campus.

• ***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 parking variance as proposed is in harmony with the purpose and intent of the Zoning Regulations, will not be injurious to the neighborhood, and is not detrimental to the public welfare.

April 29, 2020

**2) A variance from Section 38-1501 to reduce the R-3 side street (south) setback from 15 feet to 10 feet**

**• *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.***

Due to the small size of the parcel, this site is constrained to allow the operation of the proposed use on this parcel, while maintaining the overall number of required off-street parking spaces. The reduction in the side street setback will allow this project to maintain other required setbacks and provide adequate buffers between the adjacent residential uses and the proposed use. Lastly, this variance will allow for the inclusion of necessary infrastructure on the property, such as parking and a lift station.

**• *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 variance is not self-created, as the parcel is inherently small and any development of the property, for the proposed use or another, likely requires a variance to the required setbacks to achieve code compliance elsewhere.

**• *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 confer any special privileges to the applicant that is denied to other lands, as this variance will allow the site to develop with the required infrastructure and maintain the setbacks and buffers on other sides of the property.

**• *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.***

Due to the small size of the parcel, this site is constrained to allow the operation of the proposed use, while maintaining the required setbacks per Code. The reduction of the side street setback allows for the structure to be designed to the scale required to serve the needs of the community effectively while allowing the construction of the necessary infrastructure on-site.

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COVER LETTER PAGE 8

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April 29, 2020

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

This is the minimum possible variance to maintain the required setback along the northern property line and allow for the adequate provisions of buffers.

• **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 parking variance as proposed is in harmony with the purpose and intent of the Zoning Regulations, will not be injurious to the neighborhood, and is not detrimental to the public welfare.

April 29, 2020

**3) A variance from Section 38-1501 to reduce the R-3 front street (east) setback from 20 feet to 15 feet**

• ***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.***

Due to the small size of the parcel, this site is constrained to allow the operation of the proposed use on this parcel, while maintaining the overall number of required off-street parking spaces. The reduction in the front setback will allow this project to maintain other required setbacks and provide adequate buffers between the adjacent residential uses and the proposed use. Lastly, this variance will allow for the inclusion of necessary infrastructure on the property, such as parking and a lift station.

• ***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 variance is not self-created, as the parcel is inherently small and any development of the property, for the proposed use or another, likely requires a variance to the required setbacks to achieve code compliance elsewhere.

• ***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 confer any special privileges to the applicant that is denied to other lands, as this variance will allow the site to develop with the required infrastructure and maintain the setbacks and buffers on other sides of the property.

• ***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.***

Due to the small size of the parcel, this site is constrained to allow the operation of the proposed use, while maintaining the required setbacks per Code. The reduction of the front setback allows for the structure to be designed to the scale required to serve the needs of the community effectively while allowing the construction of the necessary infrastructure on-site.

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

This is the minimum possible variance to maintain the required setback along the western property line and allow for the adequate provision of buffers.

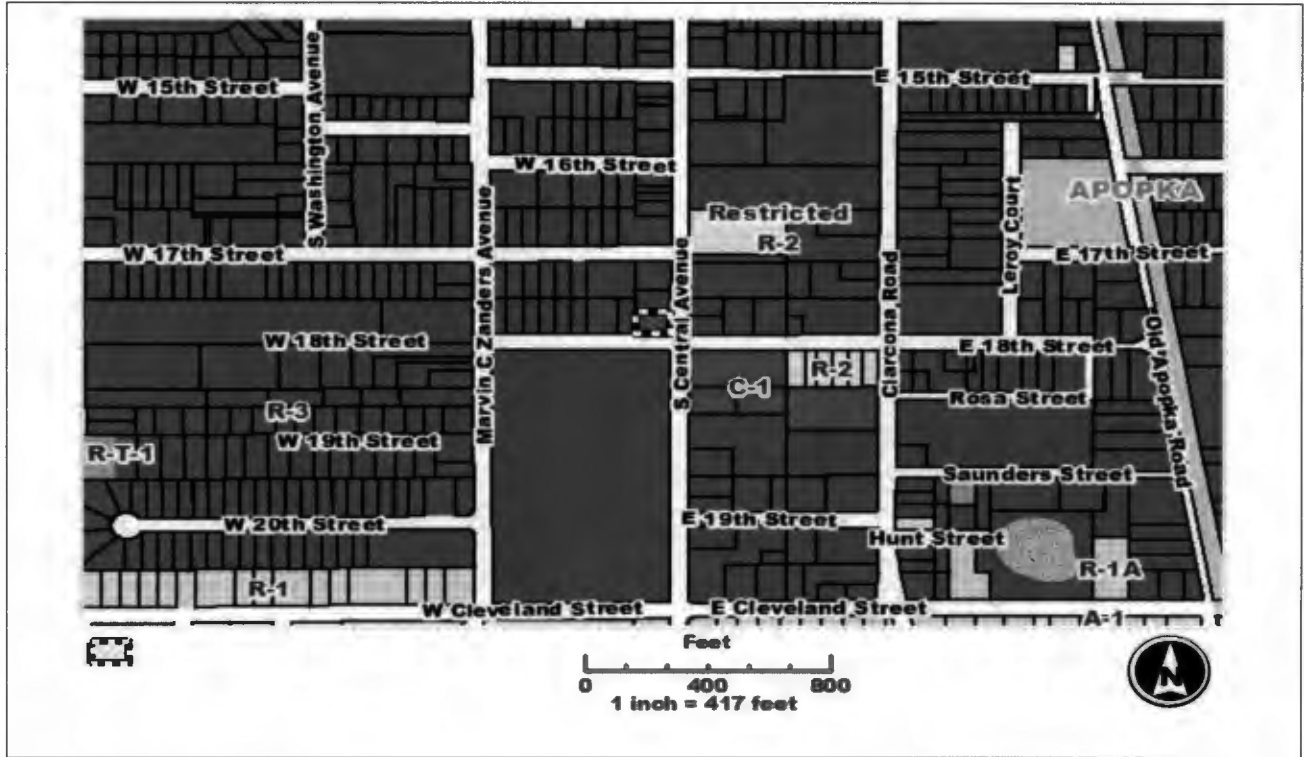
• ***Purpose and Intent - Approval of the zoning variance will be in harmony with the purpose and intent of the Zoning Regulations and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.***

April 29, 2020

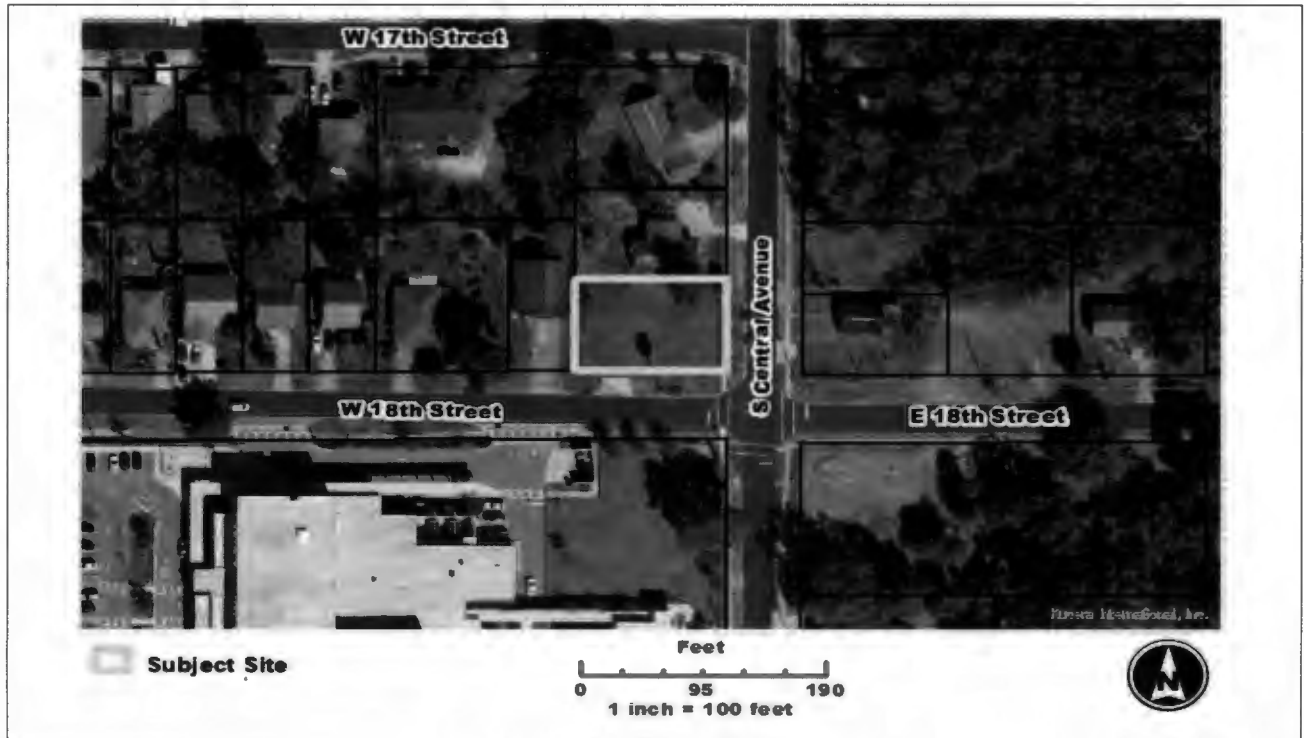
This parking variance as proposed is in harmony with the purpose and intent of the Zoning Regulations, will not be injurious to the neighborhood, and is not detrimental to the public welfare.



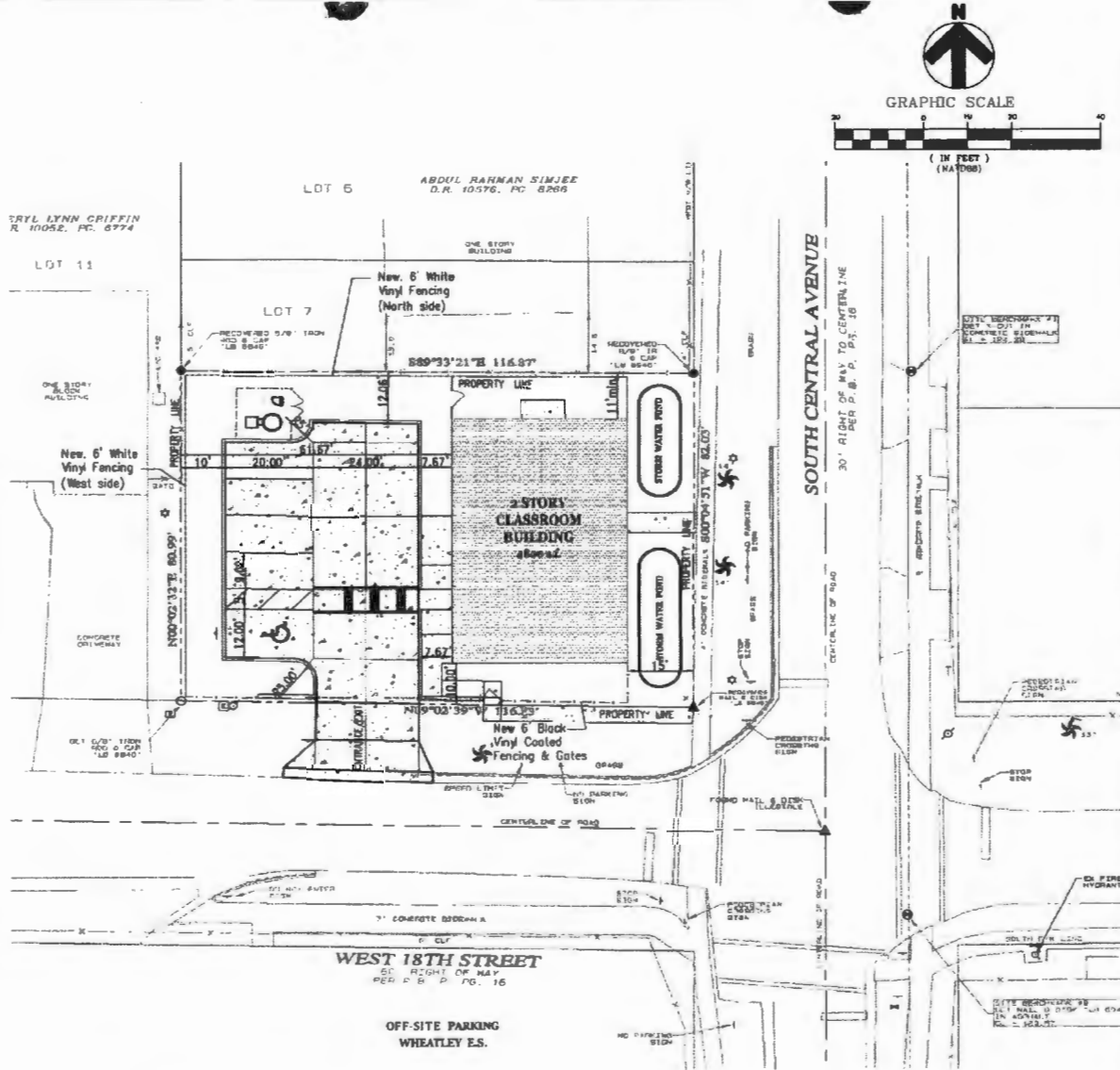
ZONING MAP



AERIAL MAP



# SITE PLAN



**OCPs ADULT LEARNING CENTER**  
 1410 S. Central Ave., Apopka, Fl. 32703

- 1) Cover letter attached.
- 2) Existing Zoning R-3  
 Adjacent Zoning  
 Front(South): R-3  
 Side(East): R-3  
 Side(West): R-3  
 Rear(North): R-3
- 3) Legal Description shown on plan.

**LEGAL DESCRIPTION**  
 LOTS 8, 9 AND 10, BLOCK 3, OF OAK LAWN FIRST ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK - P. PAGE 16 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA. Site Ac. 0.219

- 4)
  - A) Boundary and adjacent streets shown on plan.
  - B) Existing Building square footages: Previous convenience store was demolished.
  - C) New Building square footage: 4,800 sf
  - D) BLDG. setbacks shown on plan.  
 Required setbacks Proposed setbacks:  
 Front(E): 20' 15' (Central)  
 Side(S): 15' 10' (18th)  
 Rear(W): 30' 61.67'  
 Side(N): 10' 11'
  - E) Site is currently vacant after previous building demolished.
  - F) Proposed Hours of Operation: M-F 8 am - 10 pm
  - G) Existing entrance shown on plan. Proposed to be modified.
  - H) Existing landscape and proposed fencing shown on plan.
  - I) Outdoor activities and special events: n/a
  - J) Floor plan attached.
  - K) New Building ht. 35' (R-3).

- L) Parking: Required is 16 spaces.  
 (General Business 1 space/300 SF)
 

Onsite	1 handicap spaces
	4 regular spaces
Offsite	11 spaces on adjacent Wheatley ES campus.
- M) Elevation plan attached.

REVIEWS

DATE	BY

PROJECT No: 0002100

DATE: 04/30/2020

PROJECT: ADULT LEARNING CENTER

CLIENT: ORANGE COUNTY PUBLIC SCHOOLS

ADDRESS: 1410 S. CENTRAL AVE., APOPKA, FL 32703

PHONE: (407) 239-3300

EMAIL: info@bakerbarrios.com

WEBSITE: www.bakerbarrios.com

**Baker Barrios**

**ADULT LEARNING CENTER**

NEW PROJECT

OCPs PROJ. No: 00145

**SITE PLAN**

**ORANGE COUNTY PUBLIC SCHOOLS**

FACILITIES SERVICES

BLDG. 200, 6501 AMSC WAY, ORLANDO, FLORIDA, 32809

RECEIVED

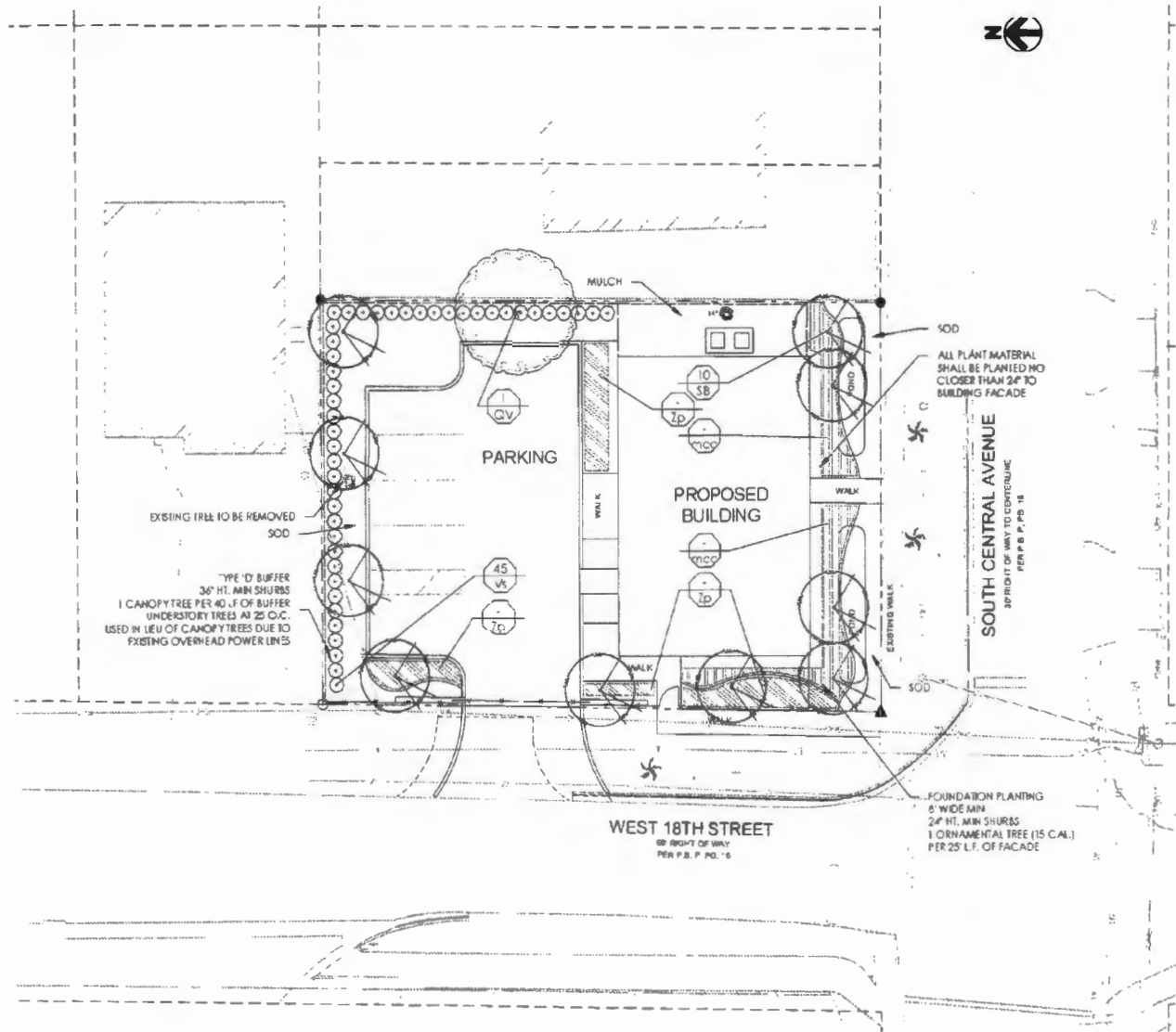
APR 30 2020

ORANGE COUNTY

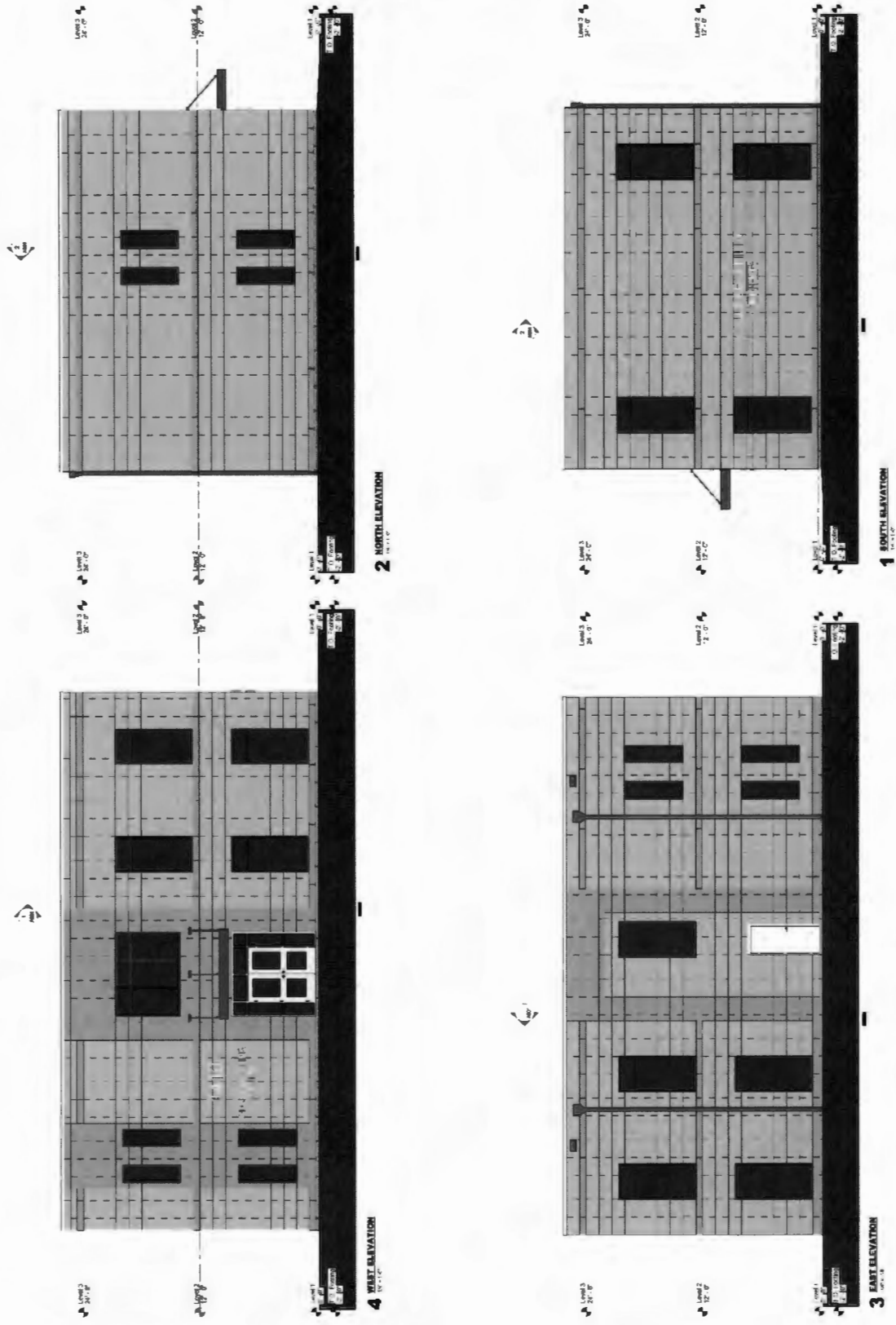
ZONING DIVISION



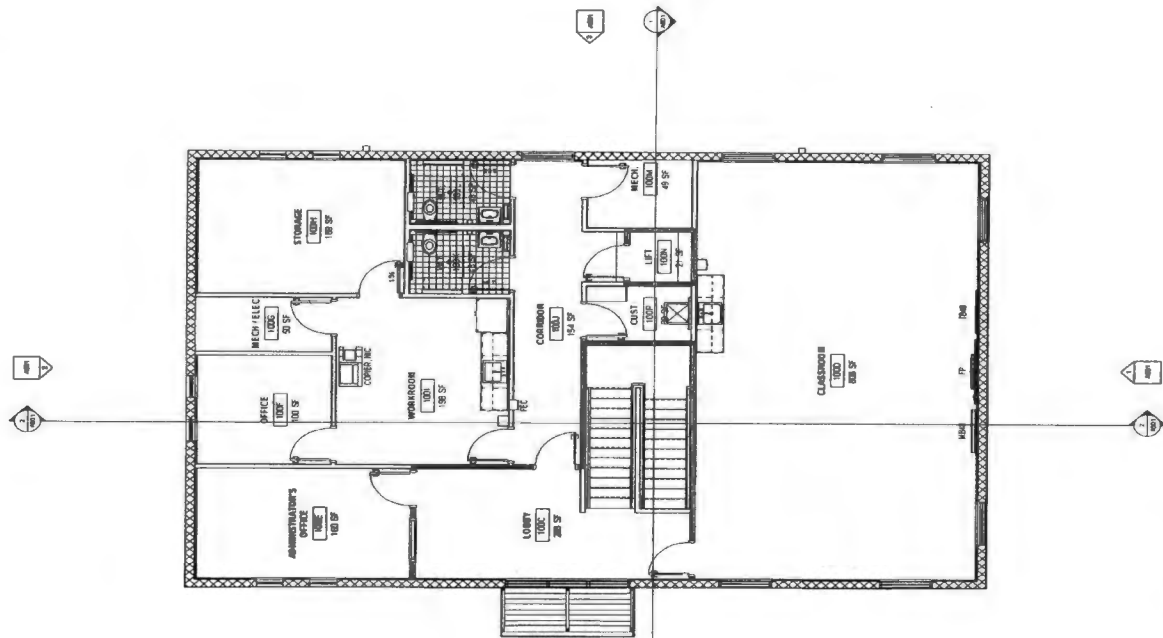
# LANDSCAPE PLAN



# ELEVATIONS

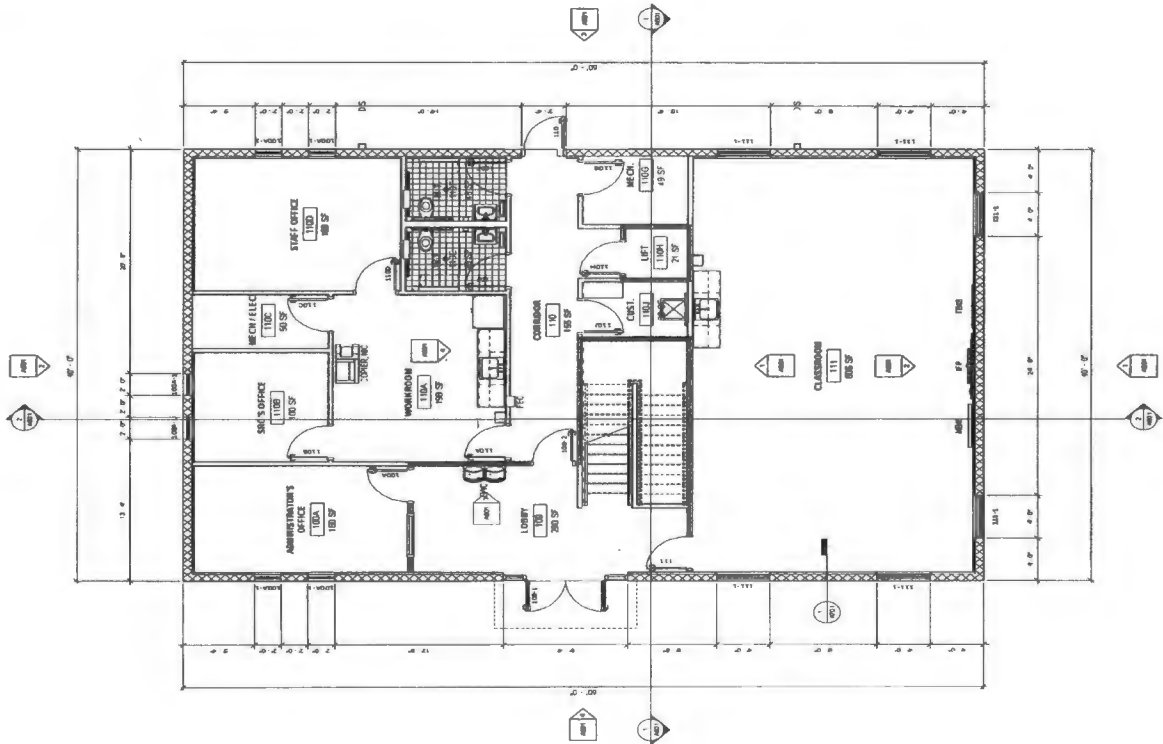


FLOOR PLANS



2 2ND FLOOR PLAN  
10'-11"

DFAP11F



1 1ST FLOOR PLAN  
10'-11"

**SITE PHOTOS**



**Property from S. Central Ave.**



**Property from W. 18th St.**

**SITE PHOTOS**



**Adjacent Wheatley School parking from W. 18th St.**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 04, 2020**

Case Planner: **Nick Balevich**

Case #: **SE-19-11-133**

Commission District: **#1**

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## GENERAL INFORMATION

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APPLICANT(s): **MONTESSORI WORLD SCHOOL (STEVEN ALLEN)**

OWNER(s): **YEE REAL ESTATE LLC**

REQUEST: **Amendment to an existing Special Exception in the R-CE zoning district for to allow for redevelopment of a portion of a private school to consolidate four buildings totaling 6,447 sq. ft. and replace with a 6,444 sq. ft. building.**

PROPERTY LOCATION: **11601 Ruby Lake Road, Orlando, Florida, 32836, east side of Ruby Lake Rd., north side of 7th St., west side of Commercial St., and east of S. Apopka Vineland Rd.**

PARCEL ID: **15-24-28-4092-31-010**

LOT SIZE: **1.94 acres**

NOTICE AREA: **1,100 ft.**

NUMBER OF NOTICES: **130**

**DECISION:** Recommend **APPROVAL** of the Special Exception request in that the Board finds it met the requirements governing Special Exceptions as spelled out in Orange County Code, Section 38-78, and that the granting of the Special Exception does not adversely affect general public interest; further, said approval is subject to the following conditions (unanimous; 7-0):

1. Development shall be in accordance with the site plan dated April 30, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 gave a presentation on the case covering the location of the property, the site plan, and photos of the site.

The applicant had nothing to add.



The BZA felt that this would be a great addition.

Staff received no commentaries in favor or in opposition to the application and there was no one present to speak in favor or in opposition to the request.

The BZA unanimously recommended approval of the Special Exception, subject to the three (3) conditions found in the staff report.

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### STAFF RECOMMENDATIONS

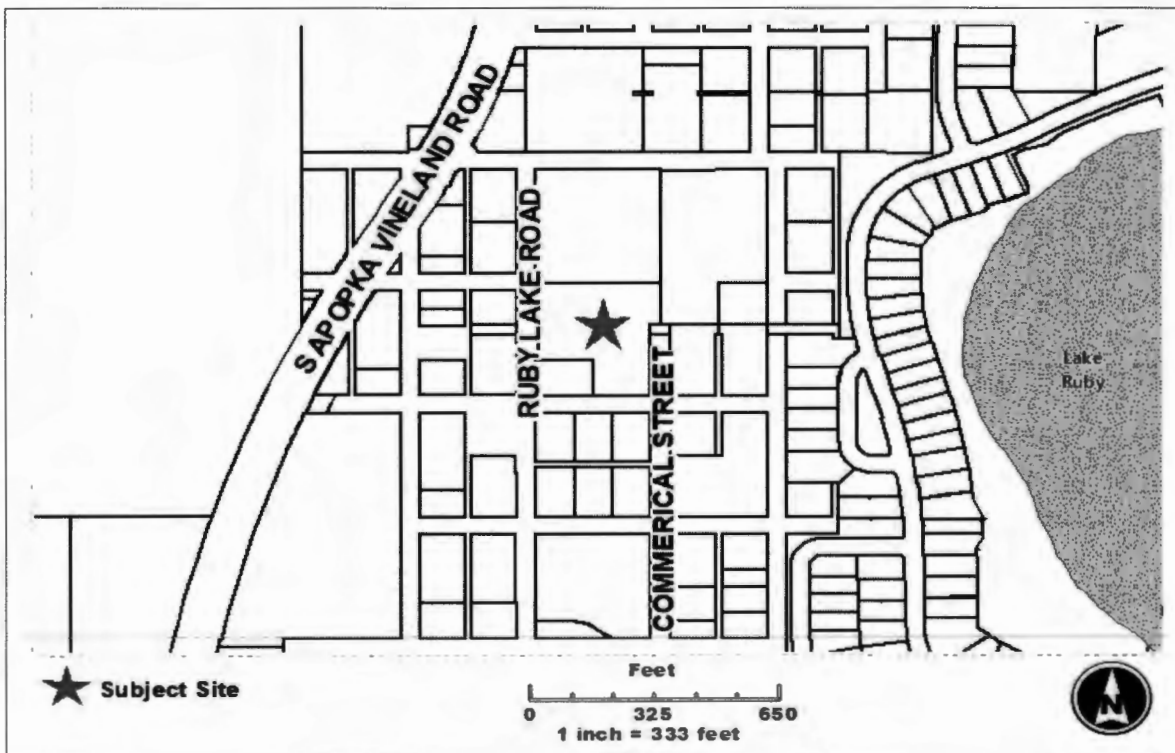
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Approval, subject to the conditions in this report.

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### LOCATION MAP

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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	R-CE	R-CE	R-CE	R-CE	R-CE
Future Land Use	ACMU	ACMU	ACMU	ACMU	ACMU
Current Use	Educational Facility	Religious use	Single Family Residence	Vacant	Single Family Residence

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

The subject property is zoned R-CE, Rural Country Estate, which allows for single family development on one (1) acre lots and certain rural uses, as well as educational facilities through the Special Exception process.

The subject property is a 1.94 acre parcel that consists of 18 combined lots, and vacated alleyways and roadways that were platted in 1911. It is considered to be a conforming lot of record. The property has 4 main buildings, 2 of which were built in 1950, and the others in 1998 and 2004. The property also has a gazebo that was built in 1997, a cabana from 2007, and a shed from 2010.

The area consists of single family homes and vacant land to the south, east and west, and religious use facilities to the north.

The BZA has approved the following Special Exceptions and Variances for this property:

- 1980 - Special Exception # 22 on October 2, 1980, to allow religious uses and educational facilities.
- 1984 - Variance #16 on December 6, 1984, to allow a daycare center (Montessori School).
- 1989 - Special Exception # 18 on July 6, 1989, to allow a school, and variances for unpaved parking and landscape buffer.
- 1991 - Special Exception # 16 on May 2, 1991, to expand a daycare center (Montessori School), and elementary school, and variances for unpaved parking and landscape buffers.
- 2003 - Special Exception # 4 on January 2, 2003, to expand the private school by adding a 5,700 sq. ft. building.

The applicant is proposing to remove a 4,528 sq. ft. building, a 1,069 sq. ft. building, a 775 sq. ft. covered pavilion, and a 75 sq. ft. covered gazebo, totaling 6,447 sq. ft. and to replace these with a single 6,444 sq. ft. building.

This property is located within the Buena Vista North Overlay District. Orange County Code Section 38-1391.1(a) requires rezoning to Planned Development (P.D.) for any new development or redevelopment within this district. However, Section 38-1391.1(b)(3) exempts rezoning to P.D. for redevelopment if there is not an increase in gross floor area or increase in land size. This proposal complies with these requirements.

**District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	22.5 ft.
Min. Lot Width:	130 ft.	325 ft.
Min. Lot Size:	1 ac.	1.94 ac.

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

	Code Requirement	Proposed
Front:	(7th St.) 35 ft.	39 ft.
Rear:	(north) 50 ft.	121 ft.
Side:	10 ft.	19 ft. (west)
Sidestreet:	(Ruby Lake Rd.) 15 ft. (Commercial St.) 15 ft.	111 ft. 21 ft.

---

**STAFF FINDINGS**

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**SPECIAL EXCEPTION CRITERIA**

**Consistent with the Comprehensive Plan**

The continued provision of educational facilities as conditioned through the Special Exception process could be considered consistent with the Comprehensive Plan since they provide needed services to the adjacent community.

**Similar and compatible with the surrounding area**

The area is developed with single family homes and vacant land to the south, east and west, and religious use facilities to the north. The educational facility has been operating on the property for the last 40 years. Furthermore, demolition of multiple structures will consolidate operations into a single building, located behind an existing building, and allows for additional parking to be provided, with improved traffic flow.

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

The use is already established on the property, and the consolidation of multiple structures into a single building may be considered an upgrade and a positive improvement to the area.

**Meet the performance standards of the district**

The use and proposal, as proposed will meet the performance standards of the R-CE district.

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

This proposal is a consolidation of buildings with the existing use, which has similar characteristics as those associated with the majority of uses currently permitted in the zoning district.

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

The applicant has not provided detailed landscape information. At the time of permitting, the applicant will comply 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 and elevations dated April 30, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager’s review and approval. Any proposed substantial deviation, change, or modification shall 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: Steven Allen  
630 N Wymore Rd., Ste. 310  
Maitland, FL 32751

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## COVER LETTER

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CivilCorp Engineering, Inc.  
630 N Wymore Rd, Ste 310  
Maitland, FL 32751  
Certificate of Authorization No. 29390  
407-516-0437

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April 29, 2020

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

Re: Montessori World School – Special Exception Request  
BZA Case SE-19-11-133  
Revised Cover Letter

Mr. Balevich:

Attached please find the Special Exception Application and documents for Montessori World School.

Montessori World School has operated their school on the property located at 11601 Ruby Lake Rd (Parcel No. 15-24-28-4092-31-010) since 1985. The property is currently zoned R-CE and the school is operating under an existing Special Exception. The school is proposing to replace four (4) buildings totaling in 6,447 SF with one (1) new 17' high building at 6,447 SF. No additional classrooms will be added. The net square footage of the site will go from 15,035 SF to 15,032 SF, resulting in the loss of 3 total SF.

Because the owner intends to operate in similar fashion to how it has for decades, the resulting changes will blend in with the intent of the R-CE Zoning District. There will be no change in the use of the property and therefore is compliant with Section 38-78 of the Orange County Code and demonstrated below:

**1. The use shall be consistent with the comprehensive plan.**

*The comprehensive plan allows the use of a school in the R-CE zoning district with a Special Exception. Therefore the use is consistent with the comprehensive plan. Furthermore, the applicant has been operating as a school on this property for several decades.*

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

*The use of the property as a school is pre-existing and not a new use. The changes will add much needed improvements to the property and will continue to be compatible with the surrounding areas which contains a mixed use of residential, church and commercial developments. As the residential development grows, the need for schools is increased.*

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

Orlando Building Department  
April 29, 2020  
Page 2

*Since the square footage is being reduced, we expect to there to be no detrimental change to the surrounding area. In fact, the change is being considered an upgrade and improvement to the existing facilities and surrounding area with the addition of more parking spaces and redesigned drop off and pick up to improve traffic flow.*

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

*All performances standords within the zoning district, R-CE, are being met with the upgrade.*

**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 use the property as o school will be similar in noise, vibration, dust, odor, glore, heat production and other characteristics that are associated with the majority of uses currently permitted in the zoning district. Moreover, the property has been in use as a school since 1985. If anything, the new building will improve these characteristics by conforming to newer code requirements.*

**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.**

*Notes have been added on the Special Exception Plan to show landscape buffers in conformance with section 24-5 of the Orange County code.*

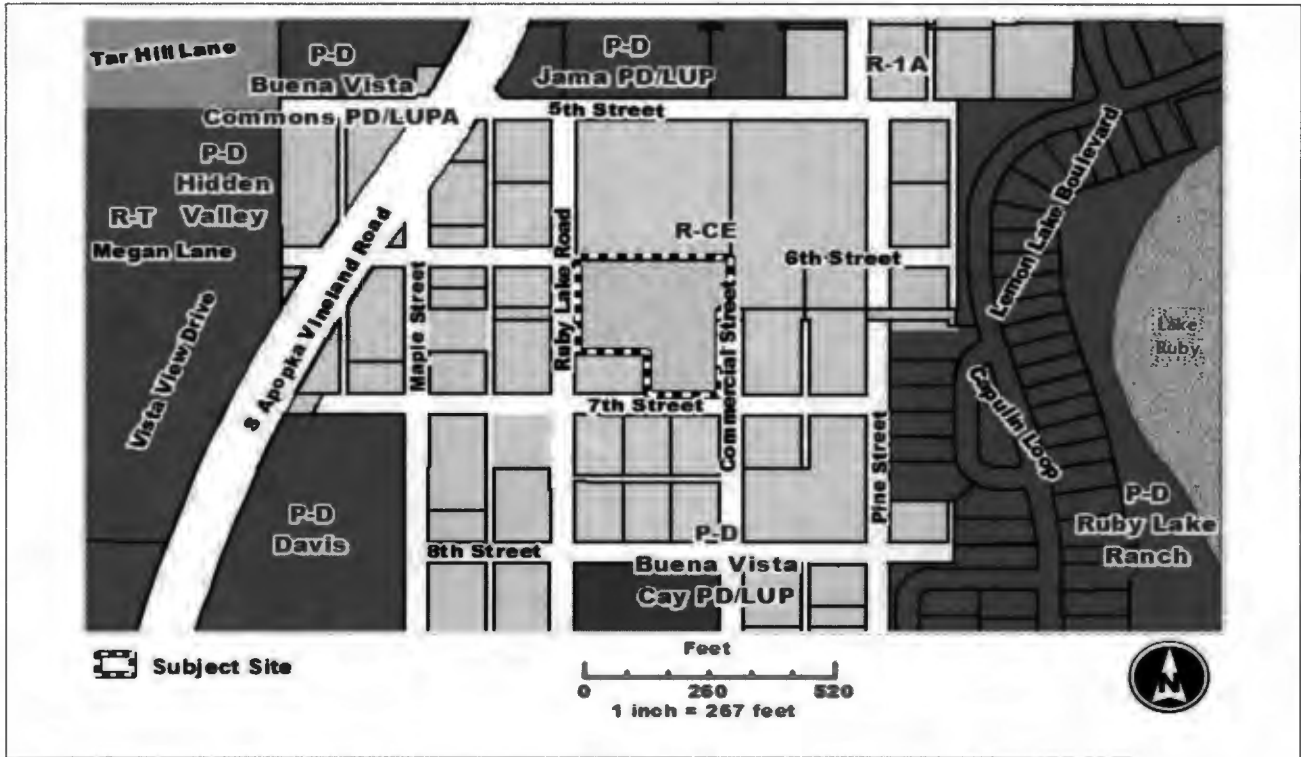
Should you have any questions or comments, please give me a call.

Sincerely,  
CivilCorp Engineering, Inc.

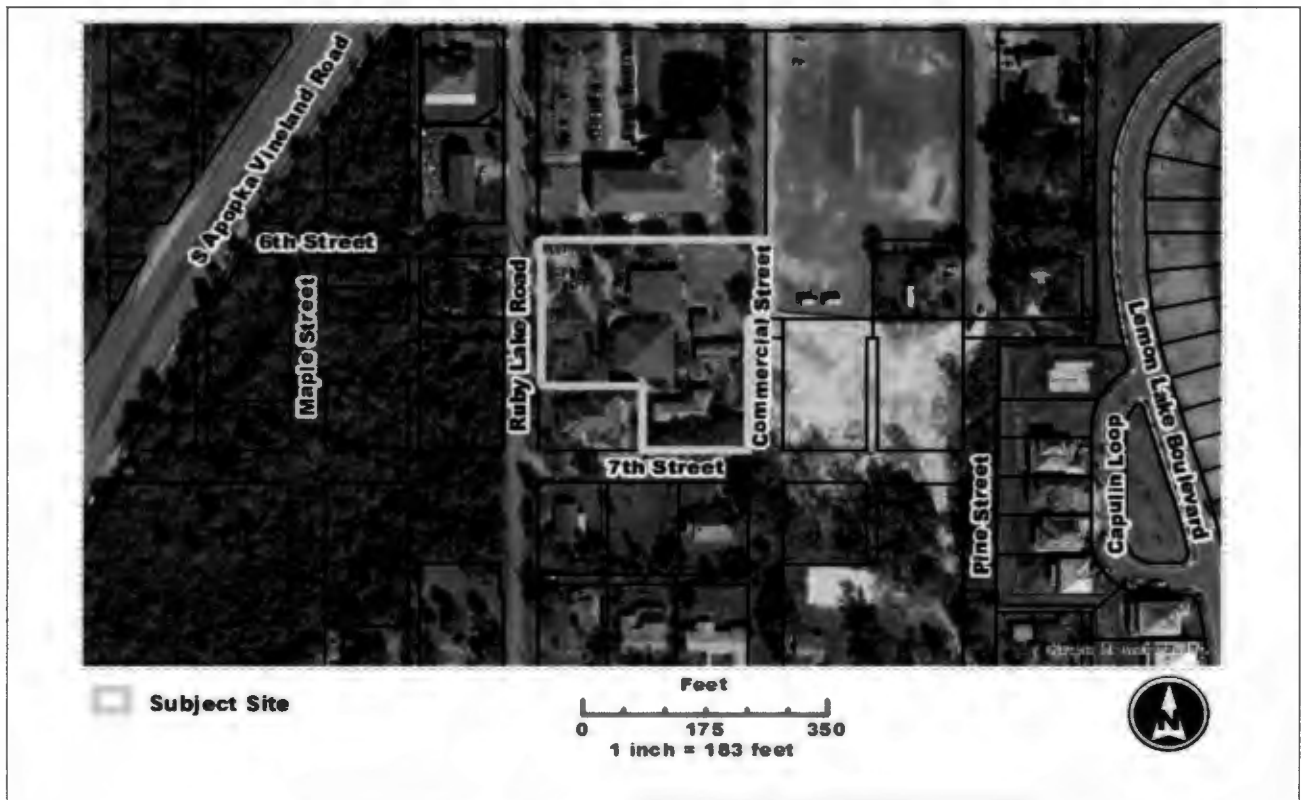


Stephen Allen, PE #59994  
President

ZONING MAP



AERIAL MAP

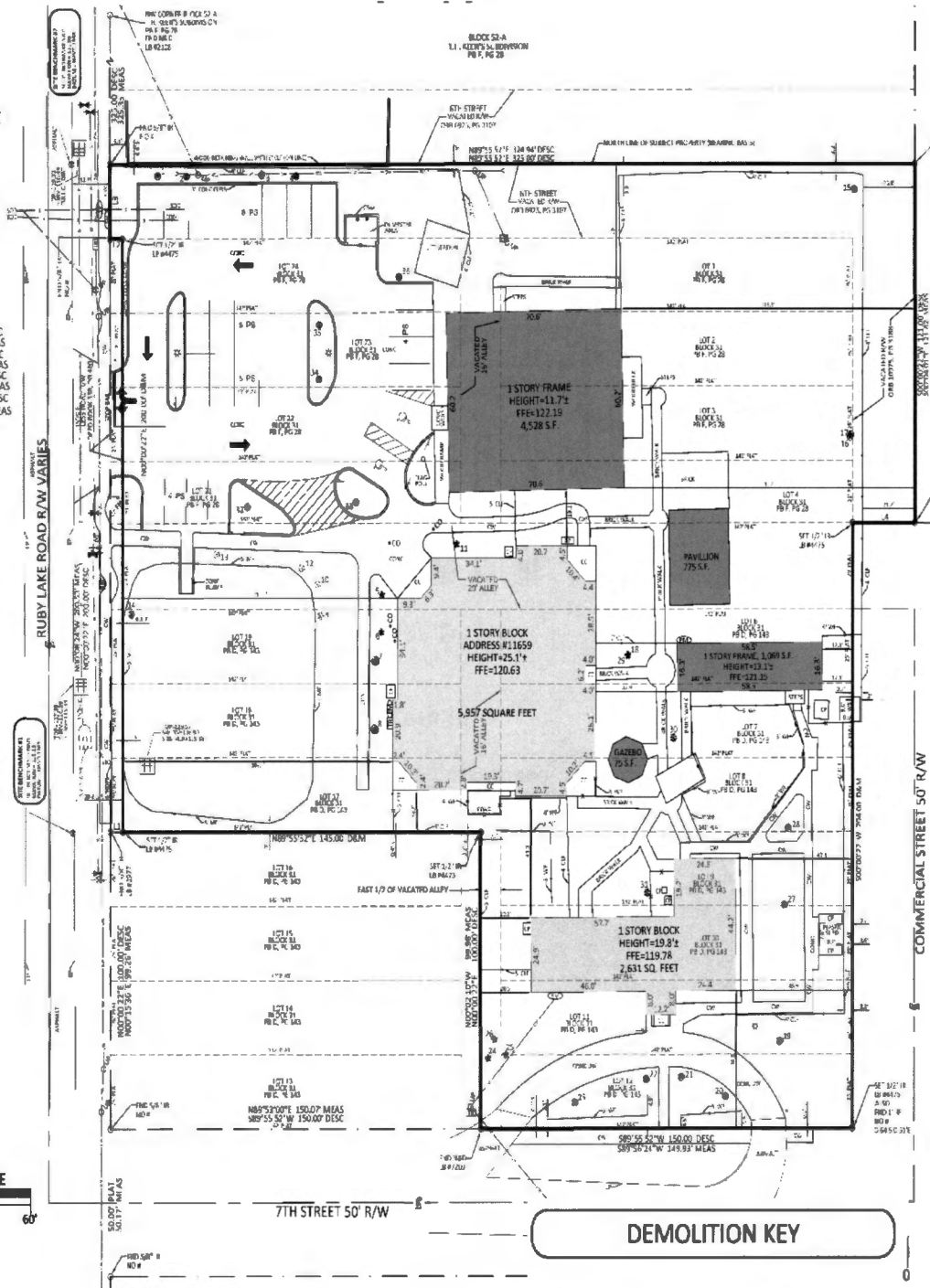
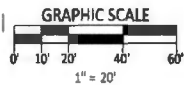


# EXISTING CONDITIONS/DEMOLITION PLAN



**LINE TABLE**  
 L1 N89°55'52"E 5.00' DESC  
 N86°57'32"E 4.57' MEAS  
 L2 S89°55'52"W 5.00' DESC  
 N86°43'23"W 5.08' MEAS  
 L3 N80°07'22"E 25.00' DESC  
 N01°01'24"E 24.71' MEAS  
 L4 S89°55'52"W 25.00' DESC  
 S89°31'19"W 25.46' MEAS

**TREE CHART**  
 1- 10" OAK  
 2- 9" CRAPE MYRTLE  
 3- 14" OAK  
 4- 8" CRAPE MYRTLE  
 5- 14" PALM  
 6- 13" PALM  
 7- 14" PAPER  
 8- 10" PAPER  
 9- 6" CYPRESS  
 10- 9" CYPRESS  
 11- 14" PALM  
 12- 6" CYPRESS  
 13- 12" CYPRESS  
 14- 13" OAK  
 15- 14" OAK  
 16- 14" OAK  
 17- 16" OAK  
 18- 10" PALM  
 19- 95" OAK  
 20- 18" OAK  
 21- 18" OAK  
 22- 15" OAK  
 23- 20" OAK  
 24- 8" PALM  
 25- 6" PALM  
 26- 9" PALM  
 27- 13" OAK  
 28- 6" OAK  
 29- 8" PALM  
 30- 10" TREE  
 31- 8" TREE  
 32- 12" PAPER  
 33- 10" PAPER  
 34- 9" PAPER  
 35- 9" PAPER  
 36- 9" PAPER

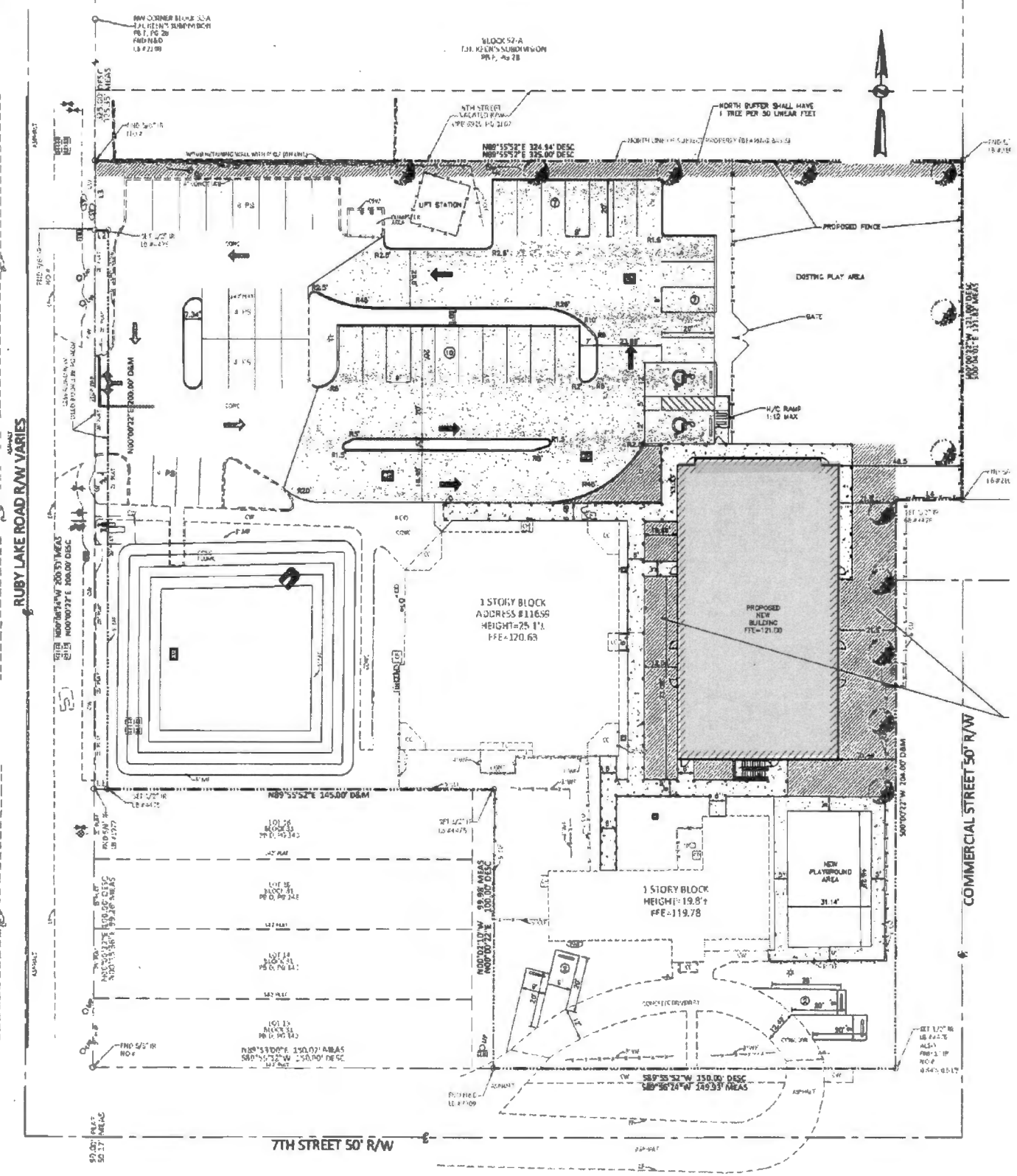


## DEMOLITION KEY

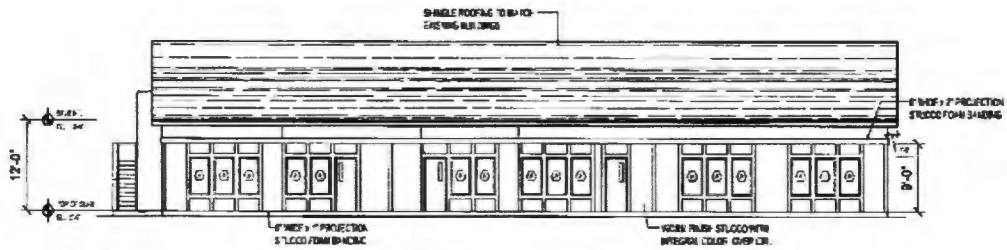
- = EXISTING BUILDINGS TO REMAIN
- = EXISTING BUILDINGS TO BE REMOVED, 6,447 S.F. TOTAL



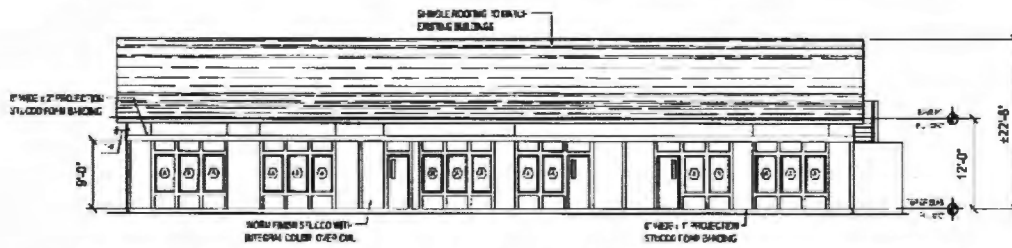
# SITE PLAN



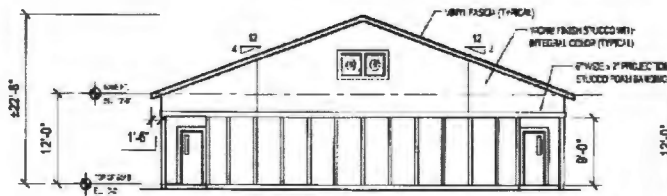
# ELEVATIONS



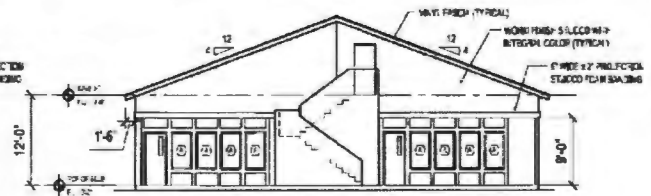
**EAST ELEVATION (REAR)**  
SCALE: 1/8" = 1'-0"



**WEST ELEVATION (FRONT)**  
SCALE: 1/8" = 1'-0"

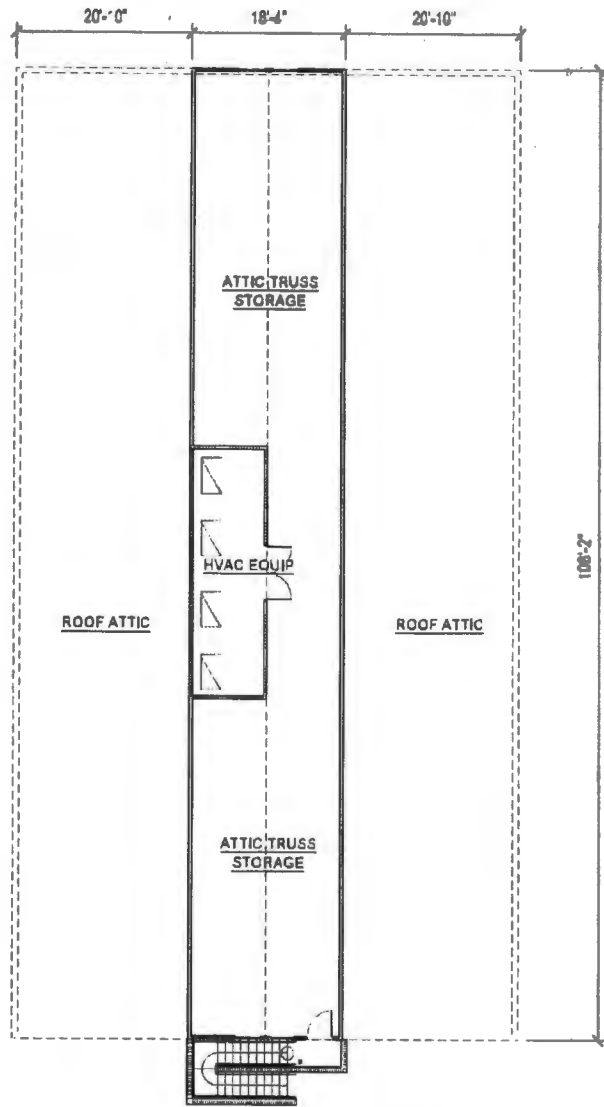


**NORTH ELEVATION**  
SCALE: 1/8" = 1'-0"

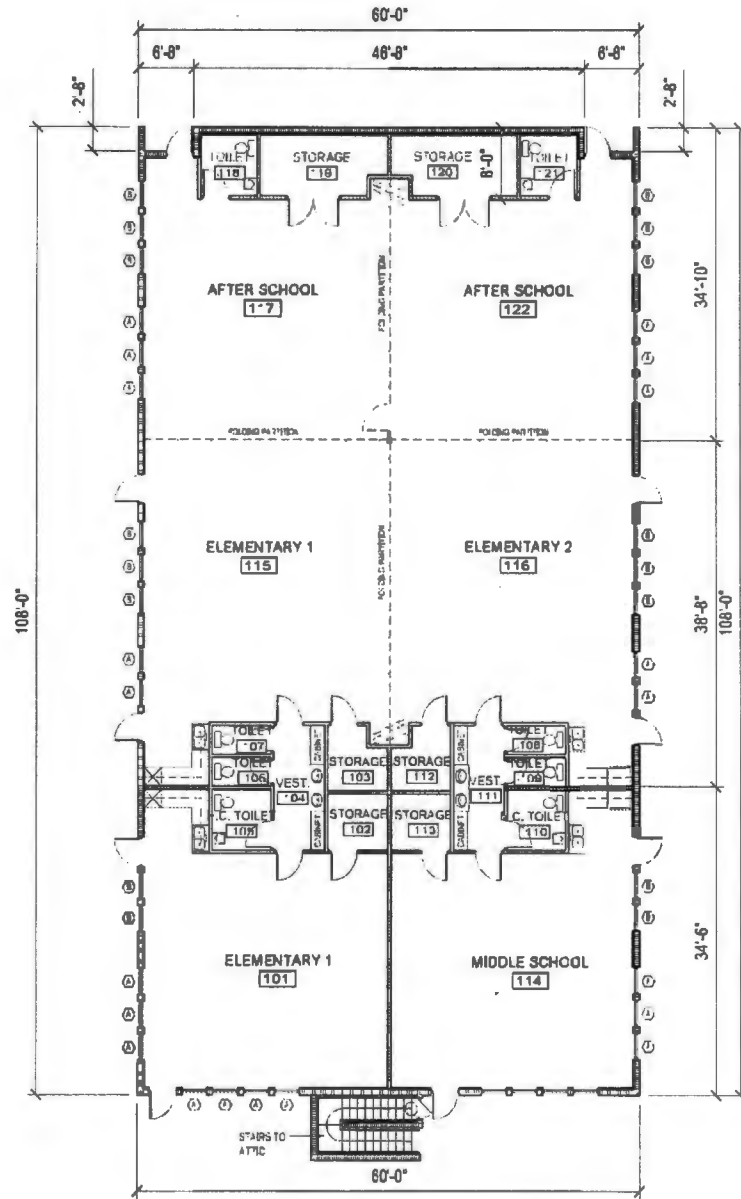


**SOUTH ELEVATION**  
SCALE: 1/8" = 1'-0"

FLOOR PLAN



**ATTIC PLAN**  
SCALE: 1/8" = 1'-0"



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

**SITE PHOTOS**



**View from Ruby Lake Rd.**



**4528 sq. ft. bldg. to be removed**

**SITE PHOTOS**



**4528 sq. ft. bldg. to be removed**



**775 sq. ft. pavilion to be removed**

SITE PHOTOS



775 sq. ft. pavilion to be removed



New parking area

**SITE PHOTOS**



**1069 sq. ft. bldg. to be removed. Location of new bldg.**



**1069 sq. ft. bldg. to be removed. Location of new bldg. Viewed from rear**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUNE 4, 2020**

Case Planner: **Nick Balevich**

Case #: **VA-20-02-163**

Commission District: **#6**

## GENERAL INFORMATION

APPLICANT(s): LUIS MORALE

OWNER(s): VELEZ GLORIA N

REQUEST: Variance in the R-1 zoning district to allow an existing Accessory Dwelling Unit (ADU) 2 ft. from the east side property line in lieu of 6 ft.

Note: This is the result of a Code Enforcement action.

PROPERTY LOCATION: 4045 Castlegate Drive, Orlando, Florida, 32839, north side of Castlegate Dr., west of S. John Young Pkwy., north of W. Oak Ridge Rd.

PARCEL ID: 20-23-29-1162-01-160

LOT SIZE: 65 ft. x 105 ft./0.156 acres

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 147

**DECISION:** Recommended **APPROVAL** of the Variance request in that the Board made the finding that the requirements of Orange County Code, Section 30-43(3) have been met; further, said approval is subject to the following conditions (4 in favor and 3 opposed):

1. Development shall be in accordance with the site plan dated February 10, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 applicant shall obtain permits for the structure within 180 days of final action on this application by Orange County, or this approval is null and void.
5. The shed in the rear yard that encroaches into the easement shall be removed prior to issuance of permits for the accessory dwelling unit.



6. The ADU shall be painted to match the color of the primary dwelling unit.

**SYNOPSIS:** Staff gave a presentation on the case covering the location of the property, the site plan, and photos of the site.

The applicant confirmed that they will facilitate the removal of a portion of the structure that extends into the rear easement.

The BZA pointed out that similar variances had not been approved in the area, and asked about neighbor opposition to the request. The BZA inquired how the applicant would remove the rear part of the structure, and questioned the reason he could not remove the entire structure, which was built in 2019.

Staff received no commentaries in favor of the application and one (1) in opposition to the application. There was no one present to speak in favor or in opposition to the request.

The BZA made a motion to approve the requested variance, which passed with a 4-3 vote, subject to the six (6) conditions found in the staff report.

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### STAFF RECOMMENDATIONS

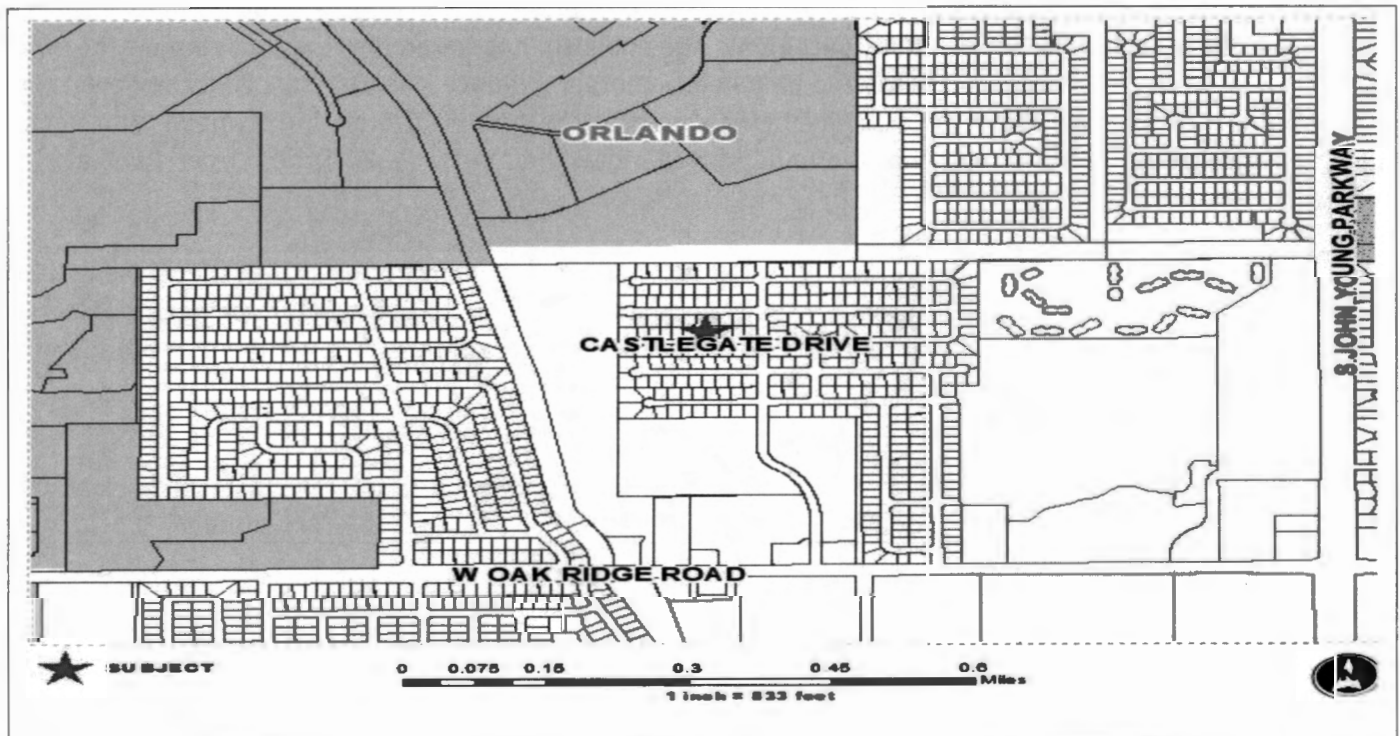
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Denial, however if the BZA recommends approval then staff recommends the conditions of approval found in this report.

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### LOCATION MAP

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**SITE & SURROUNDING DATA**

	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 Residence	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence

**BACKGROUND AND ANALYSIS**

**DESCRIPTION AND CONTEXT**

The subject property is zoned R-1, Single Family Dwelling district, which allows single family homes and associated accessory structures on lots a minimum of 5,000 sq. ft. or greater.

The subject property is a 0.16 acre lot that was platted in 1971, and is considered to be a conforming lot of record. The property is located in the Imperial Estates Unit Five Plat, which is comprised of single family homes. There is a 1,276 sq. ft. single family home on the lot which was constructed in 1971, and a pool that was added in 1995. There is also a metal shed that was installed in 2003 without permits. The applicant purchased the property in 2018.

The applicant constructed a 16.7 ft. x 30.7 ft. Accessory Dwelling Unit (ADU) behind the house without permits in 2019. The structure is currently 2 ft. from the east side property line, and 7 inches from the rear property line, where it encroaches into a 6 ft. utility easement. The applicant has stated that they will remove the north part of the structure that encroaches into the utility easement, and reduce it to 16.7 ft. x 23 ft. however, they cannot modify the east side of the building, due to the length, the bathroom location, the plumbing, and electric lines. The applicant has also stated that the unpermitted metal shed in the rear of the property will also be removed.

Code Enforcement cited the applicant in June of 2019 for building a structure to the rear of the house without permits (Incident # 546908). The applicant is requesting the variance due to the structure being in violation of the side setback. If the variance is granted, with the proposed modification, the ADU will meet all other Zoning Code requirements.

**District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	12 ft.
Min. Lot Width:	50 ft.	65 ft.
Min. Lot Size:	5,000 sq. ft.	6,827 sq. ft.

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

	Code Requirement	Proposed
Rear:	5 ft. (ADU)	6.5 ft.(ADU)
Side:	6 ft.	2 ft. (east side)

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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 structure could have been designed in a manner that would not require any variances.

**Not Self-Created**

The need for the variance is self-created and does result from the applicant constructing the structure without permits, in a non-conforming location.

**No Special Privilege Conferred**

Approval of the variance as requested will confer special privilege that is denied to other properties in the same area and zoning district, as the applicant could propose a site layout utilizing conforming locations.

**Deprivation of Rights**

The applicant is not being deprived of the right to have an Accessory Dwelling Unit on the property in a conforming location. There is space in the back yard that would allow the structure in a location that would comply with the zoning code standards.

**Minimum Possible Variance**

The request to have the structure in the current location is not the minimum possible variance as the structure can be placed on the property in a manner that would not require variances.

**Purpose and Intent**

Approval of this request will not be in harmony with the purpose and intent of the Zoning Regulations and could be detrimental to the neighborhood.

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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan dated February 10, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 applicant shall obtain permits for the structure within 180 days of final action on this application by Orange County, or this approval is null and void.
5. The shed in the rear yard that encroaches into the easement shall be removed prior to issuance of permits for the accessory dwelling unit.
6. The ADU shall be painted to match the color of the primary dwelling unit.

C: Luis Morale  
4045 Castlegate Dr.  
Orlando, FL 32839

COVER LETTER

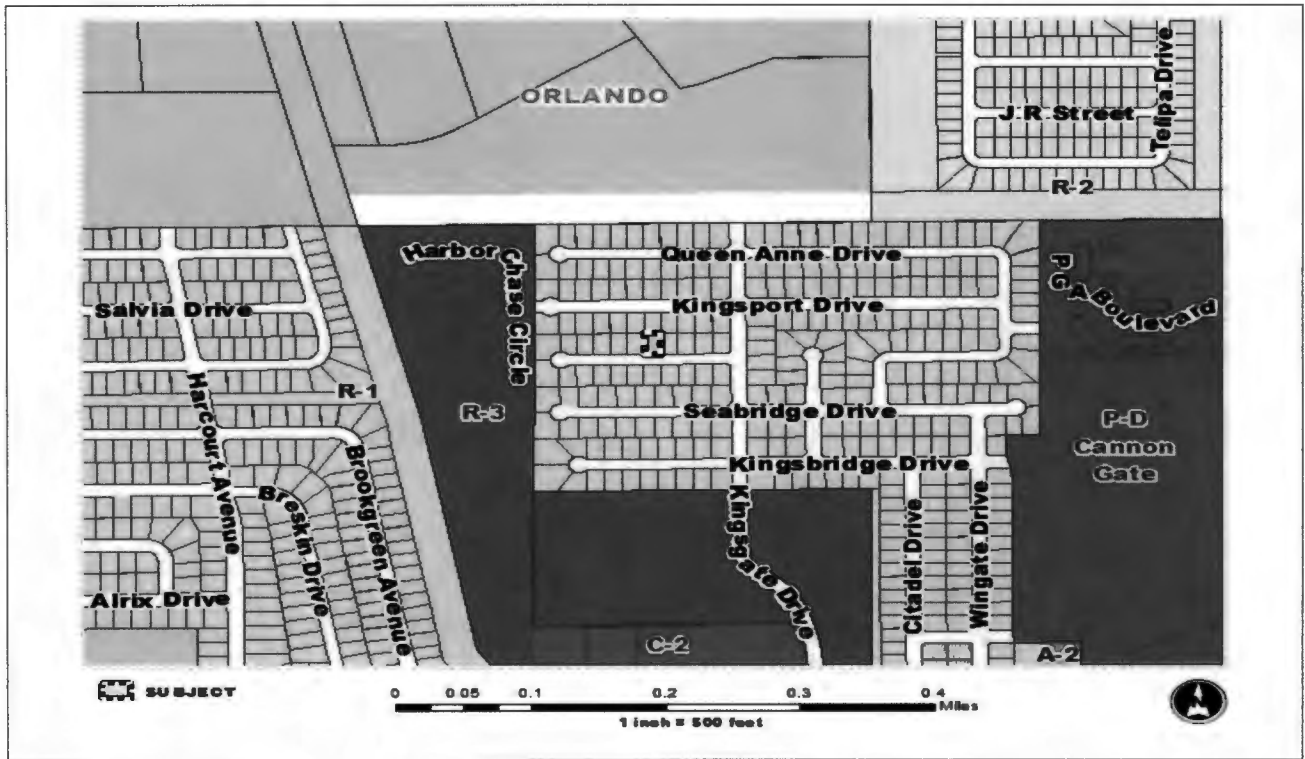
In 1970 when this house was constructed the fence was done in a measure that was not corrected according to the survey. The request is for a variance of 2 feet. The type of construction made was a cement floor with walls in block.

Variance Criteria :

- 1- We constructed in this dimensions because the pool is to close to the construction.
- 2- We don't know that the distance between the fence and the construction need to have 5 feet.
- 3- This construction is for my mother, familiar used.
- 4- For familiar used.
- 5- We ask for 2 feet variance that its wrong.
- 6- the purpose is for the use of my mother. she lives there.

*Bernie Delany*

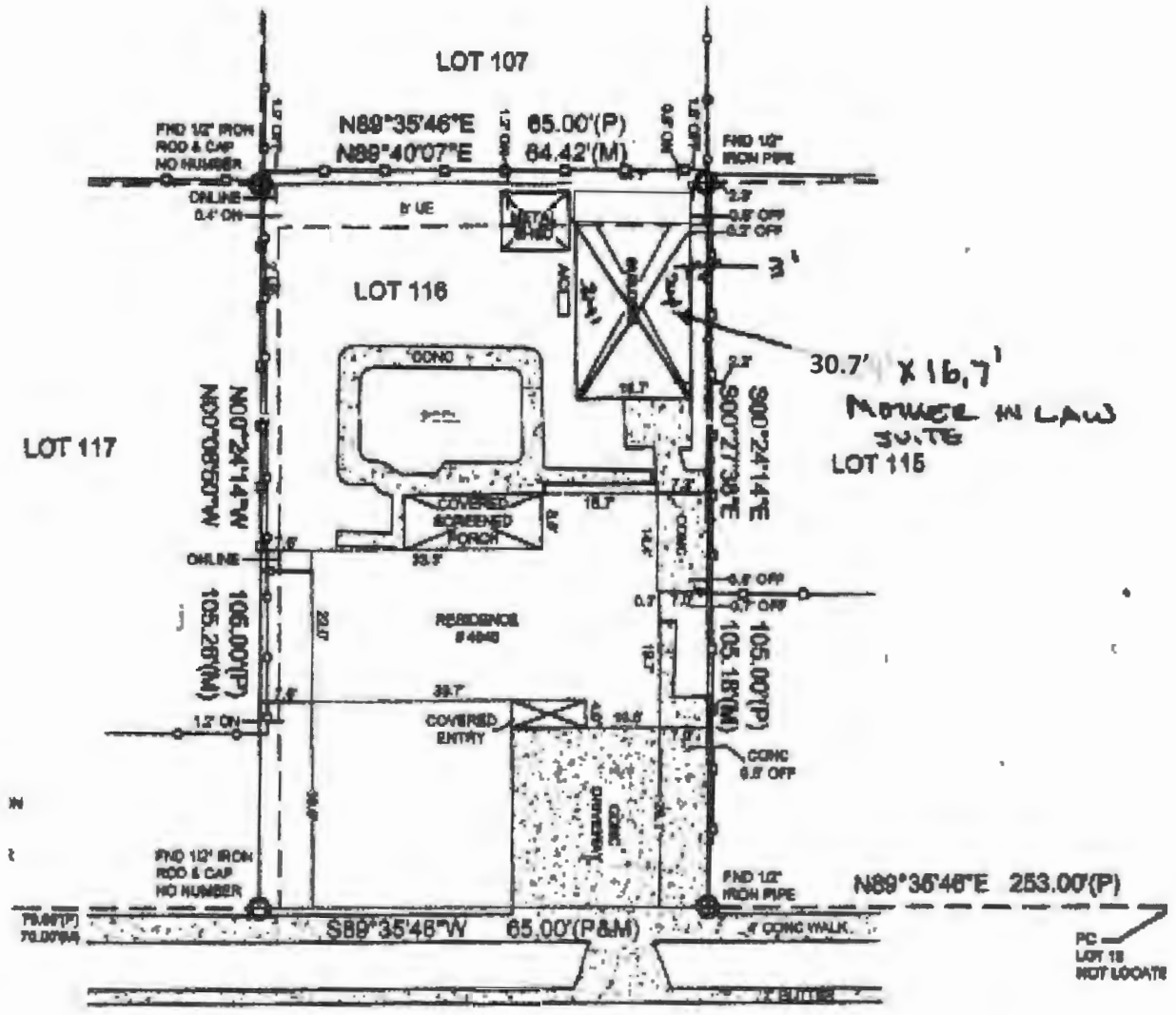
ZONING MAP



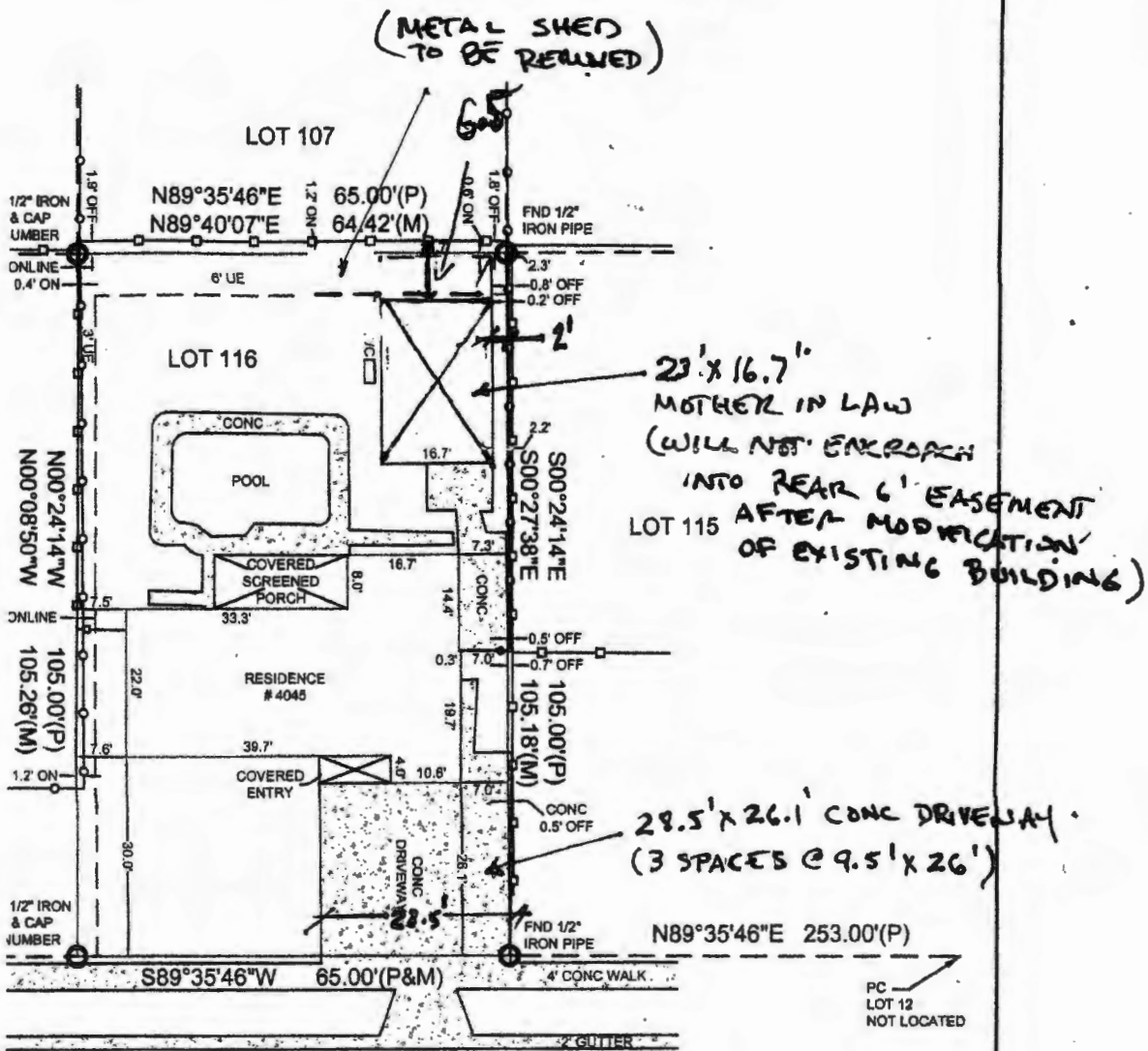
AERIAL MAP



SURVEY (MODIFIED)

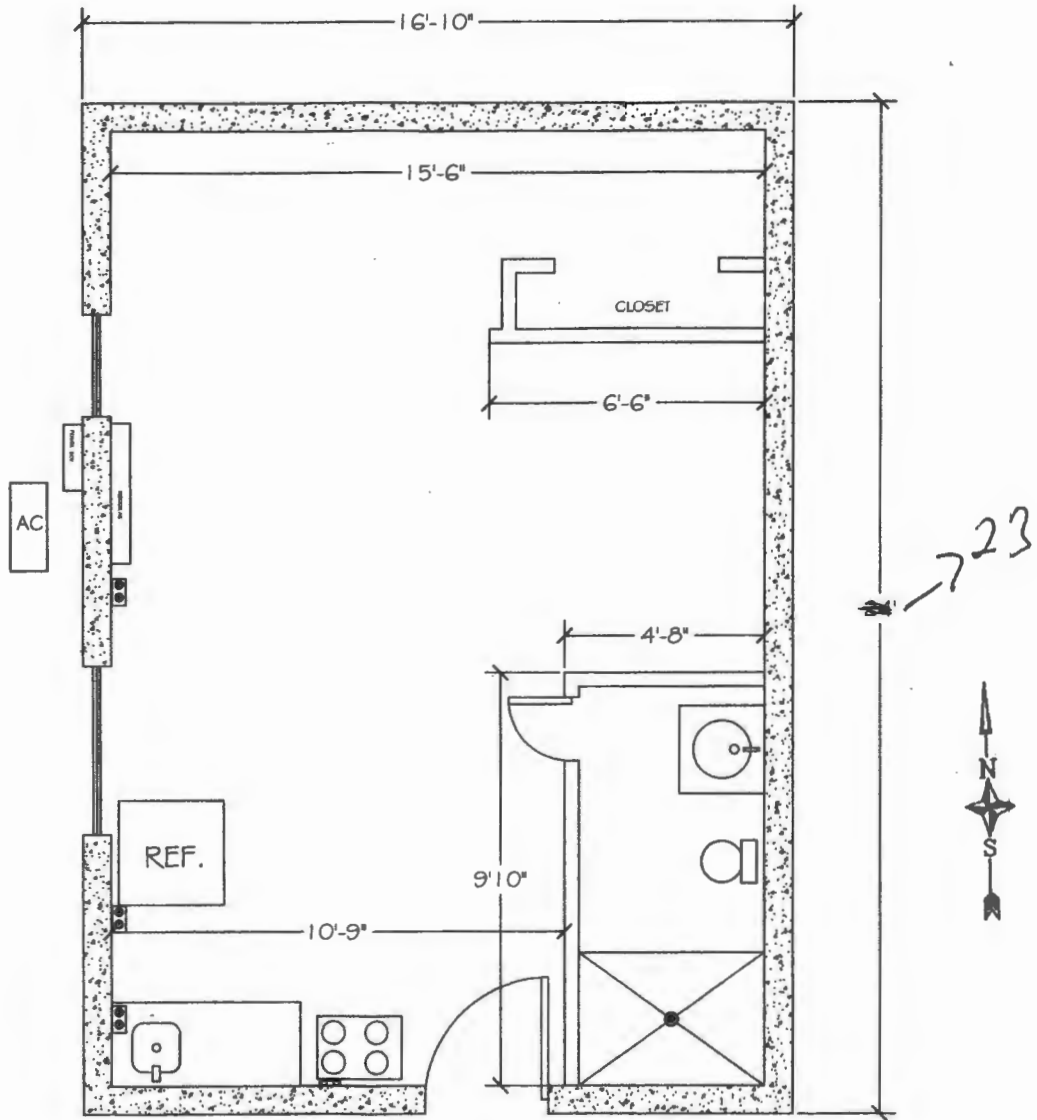


PROPOSED SITE PLAN



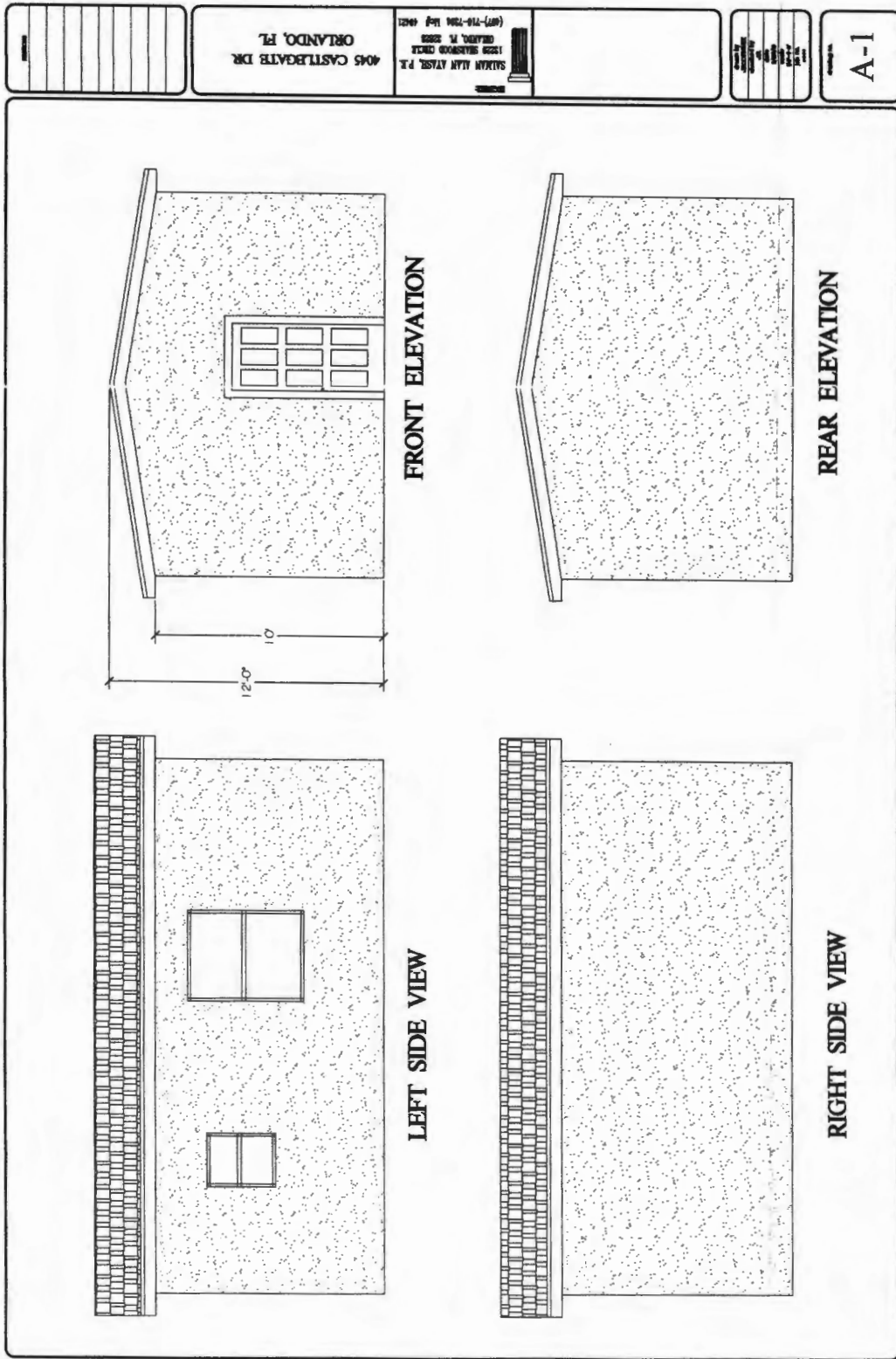


FLOOR PLAN



FLOORPLAN

ELEVATIONS



**SITE PHOTOS**



**Front from Castlegate Drive**



**Rear Yard**

**SITE PHOTOS**



**East side setback**



**North rear setback. Existing metal shed to be removed.**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 04, 2020**

Case Planner: **Nick Balevich**

Case #: **VA-20-06-037**

Commission District: **#5**

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## GENERAL INFORMATION

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APPLICANT(s): CHARLES SGAMMATO

OWNER(s): CHARLES SGAMMATO, JOANN SGAMMATO

REQUEST: Variance in the R-1AA zoning district to allow a one story addition 24 ft. from the rear property line in lieu of 35 ft.

PROPERTY LOCATION: 7919 Thurmond Court, Orlando, Florida, 32817, east side of Thurmond Ct., east of Hall Rd., south of Aloma Ave.

PARCEL ID: 01-22-30-0118-00-870

LOT SIZE: 0.27 acres

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 107

**DECISION:** Recommended **APPROVAL** of the Variance request in that the Board made the finding that the requirements of Orange County Code, Section 30-43(3) have been met; further, said approval is subject to the following conditions (unanimous; 7-0):

1. Development shall be in accordance with the site plan dated April 15, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 the roof materials and color.

**SYNOPSIS:** Staff gave a presentation on the case covering the location of the property, the site plan, and photos of the site. The applicant had no additional comments.

The BZA noted that a number of neighbors were in support of the request. They also discussed the number of similar prior variance approvals in the area and the unique shape of the lot. The BZA believed that approval of this variance would not have a negative effect on the neighborhood.

Staff received six (6) commentaries in favor of the application and none in opposition and there was no one present to speak in favor or in opposition to the request.

The BZA unanimously recommended approval of the Special Exception, subject to the four (4) conditions found in the staff report.

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### STAFF RECOMMENDATIONS

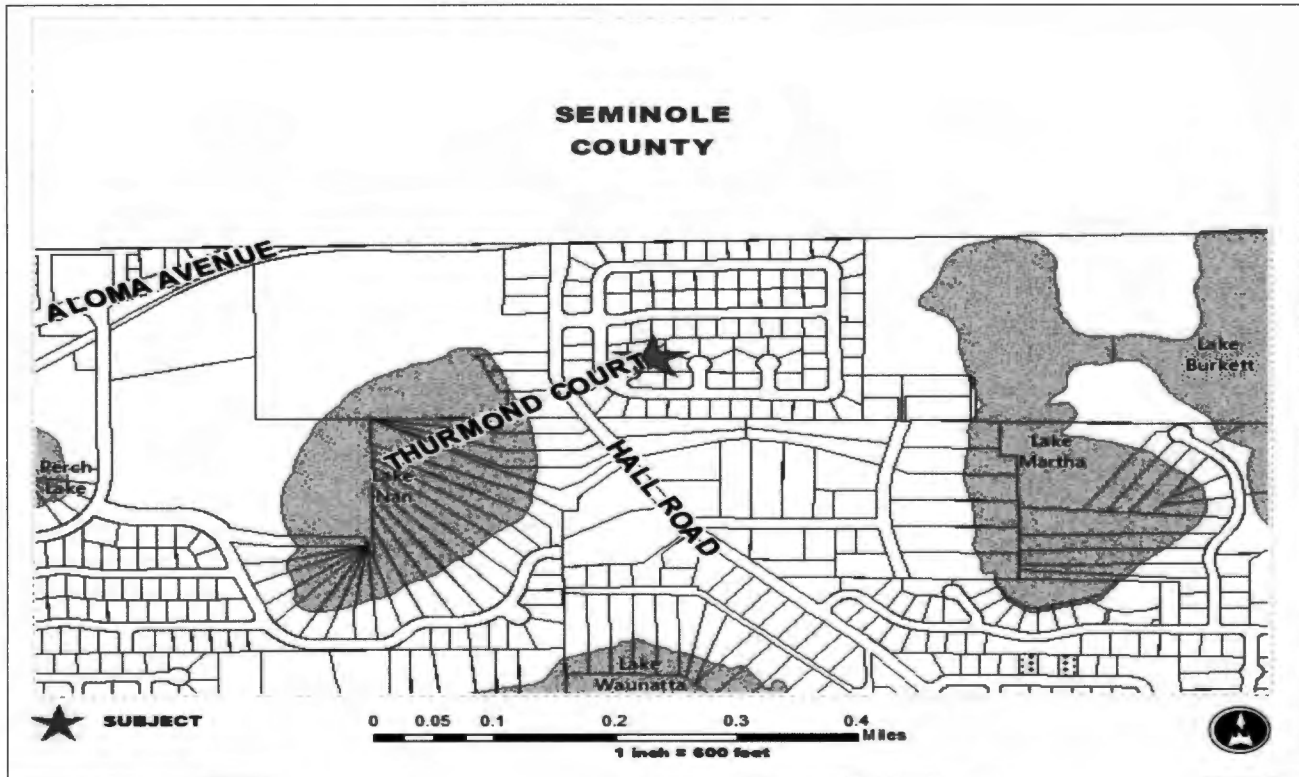
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Approval, subject to the conditions in this report.

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### LOCATION MAP

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**SITE & SURROUNDING DATA**

	<b>Property</b>	<b>North</b>	<b>South</b>	<b>East</b>	<b>West</b>
<b>Current Zoning</b>	R-1AA	R-1AA	R-1AA	R-1AA	R-1AA
<b>Future Land Use</b>	LDR	LDR	LDR	LDR	LDR
<b>Current Use</b>	Single family residence	Single family residence	Single family residence	Single family residence	Single family residence

**BACKGROUND AND ANALYSIS**

**DESCRIPTION AND CONTEXT**

The subject property is zoned 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 area consists of single family homes. The subject property is a 0.27 acre, uniquely shaped lot that was platted in 1983, as part of the Aloma Estates Plat, and is a conforming lot of record. There is a 1,793 sq. ft. single family home on the lot. The applicant purchased the property in 1985 and the home was constructed in 1986.

In 1988, the BZA granted a variance to allow a screen room 24 ft. from the rear property line in lieu of 35 ft. to allow for an addition. However, only the slab was installed.

The applicant is proposing to add a one story addition to the rear, consisting of 295 sq. ft. of air conditioned space (180 sq. ft. addition to the kitchen and a 115 sq. ft. addition to the hobby room), and 716 sq. ft. of non-air conditioned space (a 216 sq. ft. Florida room and a 500 sq. ft. workshop). They are also proposing a 12 sq. ft. window nook on the front of the house on the 2nd floor, which meets Code. The additions will have siding and a shingle roof that will match the existing house.

The property is a uniquely shaped triangular/trapezoidal lot. The house is oriented towards the street, which places the house at an angle to the rear property line, which leaves less rear yard space for the portion of the lot directly behind the house.

The applicant has submitted letters of no objection from adjacent property owners.

**District Development Standards**

	<b>Code Requirement</b>	<b>Proposed</b>
<b>Max Height:</b>	35 ft.	21.8 ft.
<b>Min. Lot Width:</b>	85 ft.	90 ft.
<b>Min. Lot Size:</b>	10,000 sq. ft.	11,930 sq. ft.

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

	Code Requirement	Proposed
Front:	30 ft.	39.7 ft.
Rear:	35 ft.	24 ft.
Side:	7.5 ft.	9.3 ft. (south), 10.2 ft. (north)

---

**STAFF FINDINGS**

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**VARIANCE CRITERIA**

**Special Conditions and Circumstances**

The subject property is uniquely shaped, and thus any additions to the existing house are constrained. The house is oriented towards the street, which places the house at an angle to the rear property line, and thus leaves less rear yard space for the portion of the lot directly behind the house.

**No Special Privilege Conferred**

The lot was platted in this unique configuration, and the house was built to be parallel with the street, which places the house at an angle to the rear property line. Given the location of the house on the property, the request is the only way to allow this addition to the property.

**Deprivation of Rights**

Literal interpretation of the code will deprive this applicant of the right to install additions that would be allowed on a similar sized, but more rectangular shaped lots.

**Minimum Possible Variance**

This is the minimum possible variance to allow the addition to the house in the useable area adjacent to the rear of the existing house.

**Purpose and Intent**

Approval of this request will be in harmony with the purpose and intent of the Zoning Regulations and will not be detrimental to the neighborhood, in that the adjacent neighbors and the HOA support the proposal.



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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan and elevations dated April 15, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 the roof materials and color.

C: Charles Sgammato  
7919 Thurmond Ct.  
Orlando, FL 32817

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## COVER LETTER

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This document serves as a cover letter in support of a zoning variance request being submitted by Charles and JoAnn Sgammato for our residence at 7919 Thurmond Court, Orlando, FL 32817 within the Aloma Estates subdivision. A detailed site plan along with all supporting architectural drawings accompany this cover letter. In addition, we are submitting letters of support from our neighbors and our, Aloma Estates Home Owners Association, expressing no objections to our home improvement project.

- 1) **Special Conditions and Circumstances:** We are longtime residents of Aloma Estates and like a number of our friends and neighbors, original (over 30 year resident) owners of our property. As we are nearing retirement, we desire to remain at our property and make improvements to better enjoy our home as well as enable our hobbies and to also share our talents of cooking, painting, woodworking and model railroading with our children and grandchildren who all live nearby. These improvements we are pursuing have been on our dream list for a long time and are finally within reach to realize. We are truly looking forward to all the joy and happiness these home improvements will bring to our retirement days.
- 2) **Not Self Created:** As mentioned in the introductory paragraph, we love the memories and neighborhood and only desire to modify the house in an unobtrusive fashion to continue to blend into the fabric of the neighborhood. As evidenced by the attached letters of support, our friends and immediate neighbors agree that they will not be negatively impacted with our dream project.
- 3) **No Special Privilege Conferred:** We intend to keep the profile of our addition low and unobtrusive to our neighbors. We are maintaining a large amount of green space separating our house from our neighbor. The trapezoidal shape of our property makes it difficult to not encroach on the setbacks, but, because of the angle of the site plan, the intrusion is soft and the house will remain distant from the property lines.
- 4) **Deprivation of Rights:** We will not impact the neighbors in a negative way, which is the reason our neighbors have all indicated support for our project.
- 5) **Minimum Possible Variance:** this requested house footprint expansion represents the smallest footprint for the usage of the spaces which we require when all of woodworking tables, saws, easels, hobby tools, our desire for a kitchen with an eating area and island as well as a covered exterior seating area (Florida Room) for us our children and grandchildren.
- 6) **Purpose and Intent:** The nature of this request comprises two facets, (a) first is to repurpose an existing patio to build a kitchen extension and Florida room, and (b) the second for a new variance to the 35 foot setback requirement from the rear of our property in order to construct a modest sized Hobby shop and hobby room extension.

We plan to build a kitchen extension (180 Sq Ft living space) and Florida room (216 Sq ft) on the existing patio slab in lieu of the screened porch room we originally intended many years ago. This slab was constructed in obedience of the granted 24 foot setback and per the approved permit. The enlarged kitchen will enable us to comfortably manage our growing family around the dinner table and provide a long sought after improved atmosphere and experience in the kitchen.

We request a new 24 foot setback variance from the rear of property to construct the new Hobby shop (500 Sq Ft attached to existing garage) and Hobby room extension (115 Sq Ft), which are also a single story wood framed structure with roof, siding and trim to match the existing house. The 20 x 25 ft Hobby shop is minimally sized to accommodate my tools and offer adequate working space to support my hobbies. The hobby room expansion will enable me to realize another dream of building a model railroad for my family and grandchildren to enjoy.

It is noteworthy to mention that our rear property line is not parallel to our house, its runs askew with increasing distance from south to north. As with our existing patio slab its southern most corner is at the

Unrestricted

---

## COVER LETTER

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24 foot setback, the new Hobby shop will similarly maintain an increasing setback of greater than the 24 foot setback to the rear property line. The additional build falls within the permissible green space specifications. We feel that our proposed new build addition will offer no downside to any of our neighbors and be a warmly received improvement to our property and neighborhood. As our back yard is fenced and flanked by taller hedges and trees on two sides, visual line of sight to the new structures shall offer minimal difference.

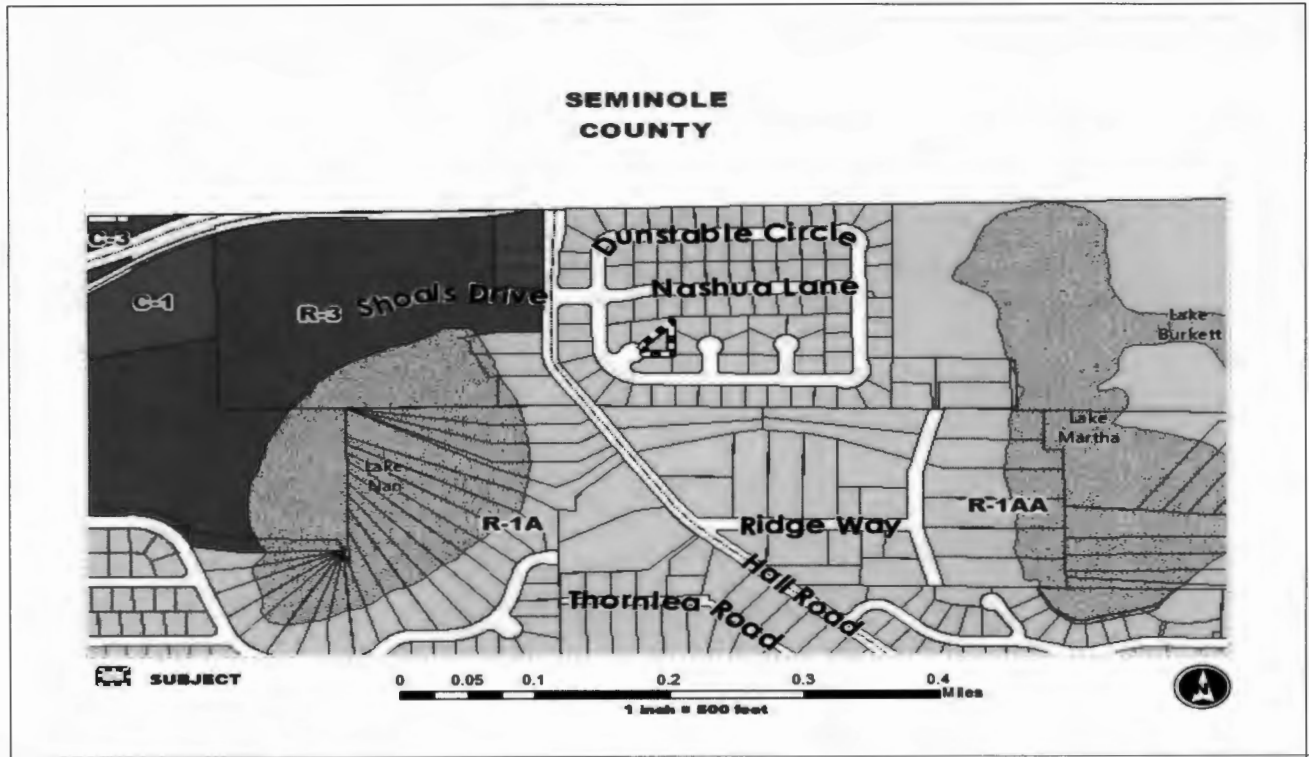
In closing, we appreciate your time and efforts in reviewing this request for variance and eagerly await your acceptance and granting our request so we can begin to make these dreams come true as we enter our retirement years.

With kind regards,

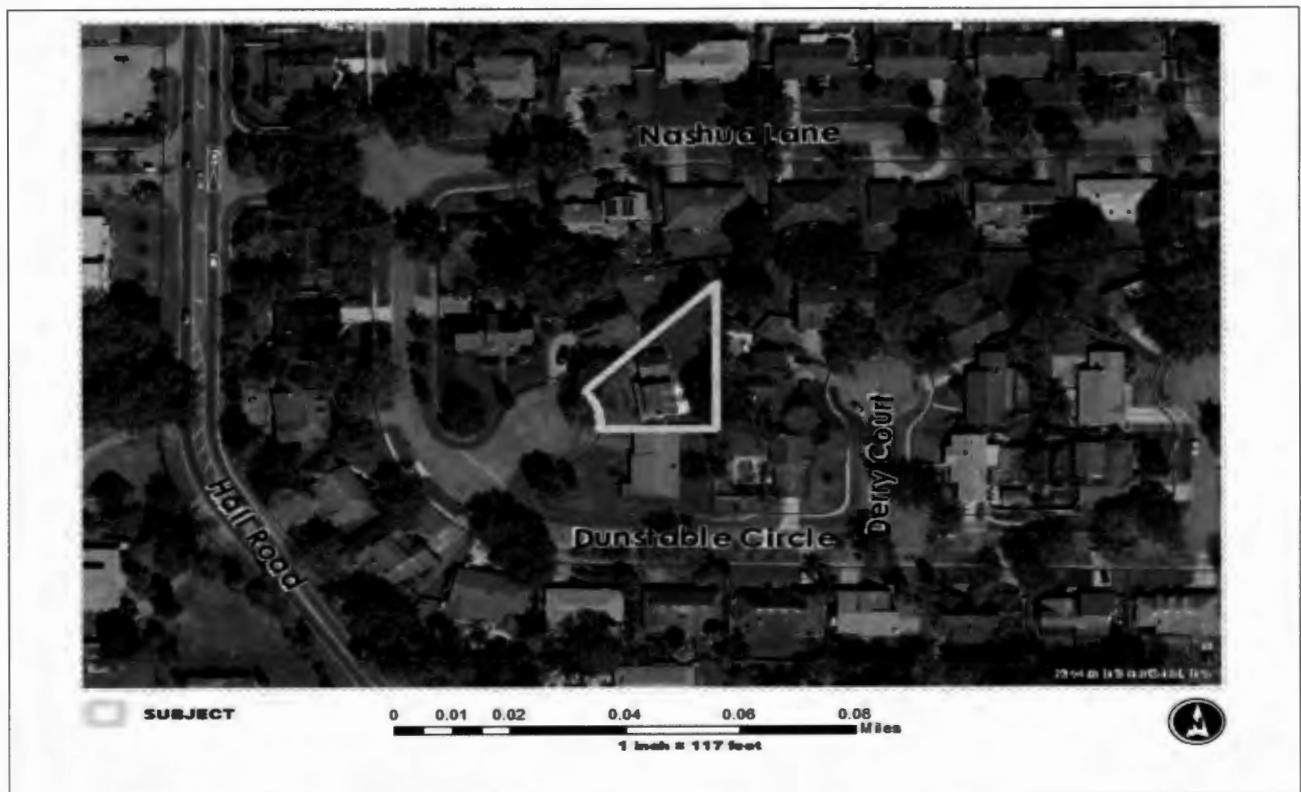
Sincerely,

Charles and JoAnn Sgammato

ZONING MAP



AERIAL MAP



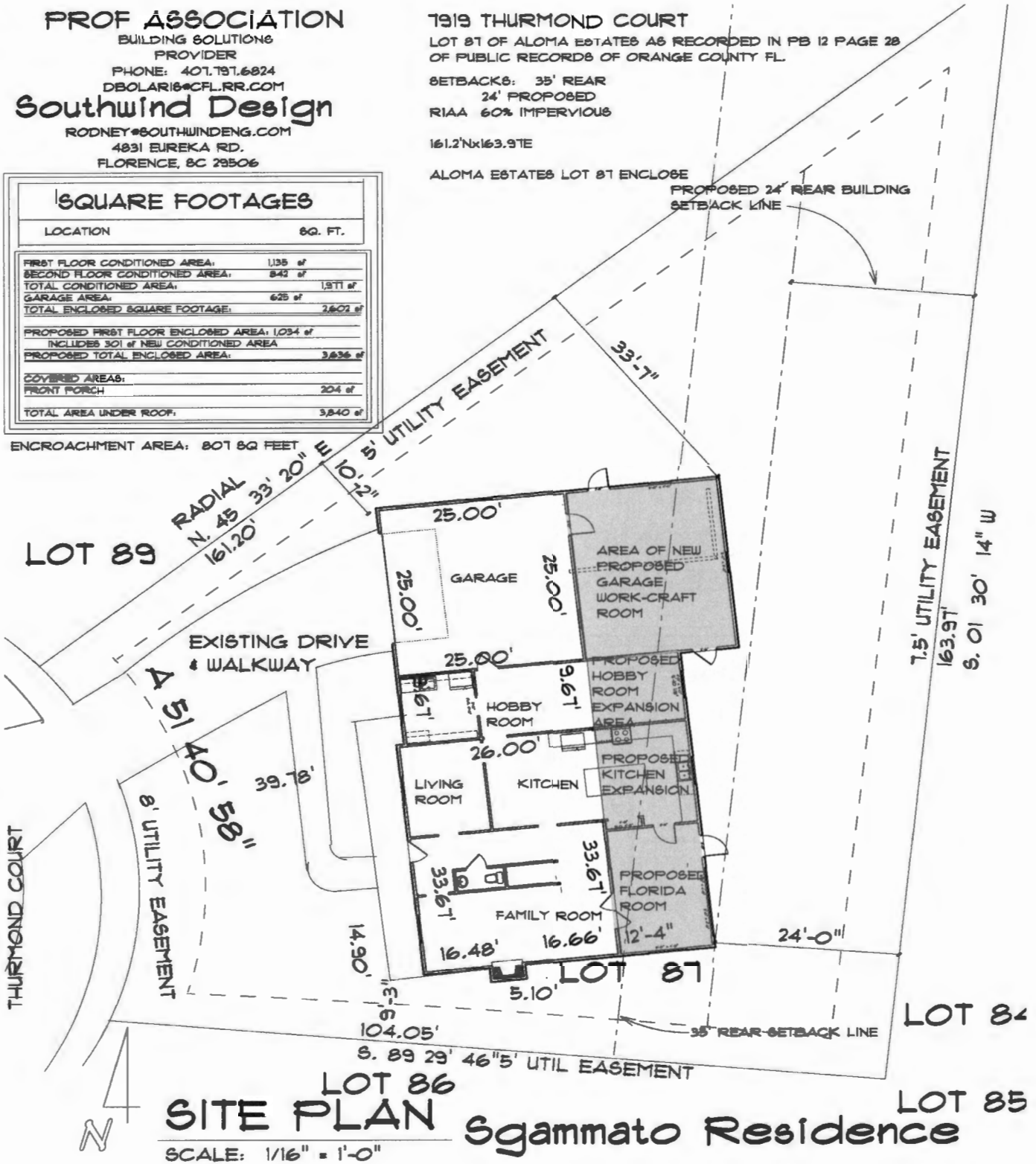
**SITE PLAN**

**PROF ASSOCIATION**  
 BUILDING SOLUTIONS  
 PROVIDER  
 PHONE: 407.197.6824  
 DBOLARI6@CFL.RR.COM  
**Southwind Design**  
 RODNEY@SOUTHWINDENG.COM  
 4831 EUREKA RD.  
 FLORENCE, SC 29506

7919 THURMOND COURT  
 LOT 87 OF ALOMA ESTATES AS RECORDED IN PB 12 PAGE 28  
 OF PUBLIC RECORDS OF ORANGE COUNTY FL.  
 SETBACKS: 35' REAR  
 24' PROPOSED  
 RIAA 60% IMPERVIOUS  
 161.2'Nx163.9' E  
 ALOMA ESTATES LOT 87 ENCLOSE

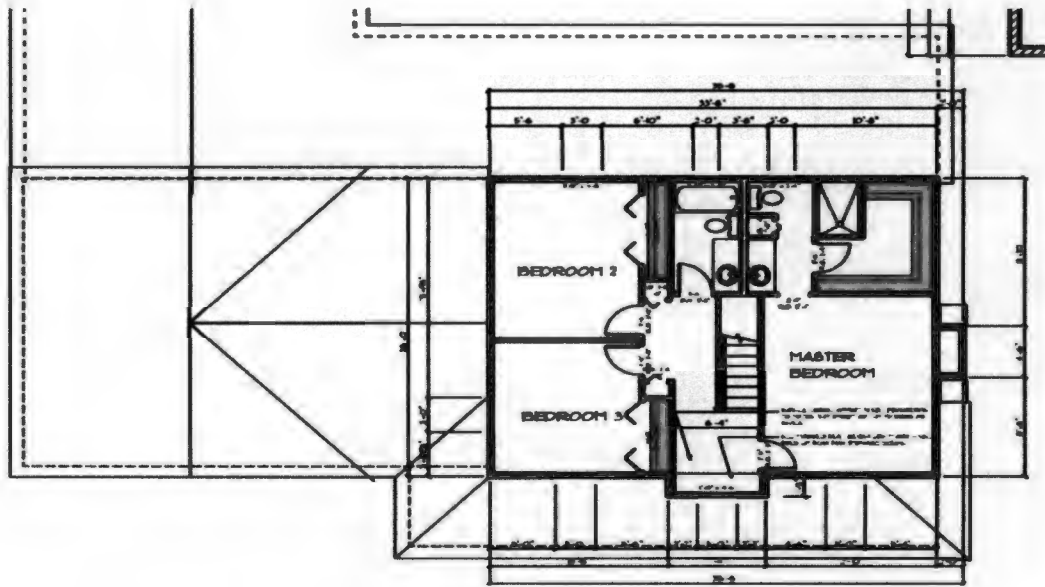
SQUARE FOOTAGES	
LOCATION	SQ. FT.
FIRST FLOOR CONDITIONED AREA:	1,135 sf
SECOND FLOOR CONDITIONED AREA:	842 sf
TOTAL CONDITIONED AREA:	1,977 sf
GARAGE AREA:	625 sf
TOTAL ENCLOSED SQUARE FOOTAGE:	2,602 sf
PROPOSED FIRST FLOOR ENCLOSED AREA:	1,034 sf
INCLUDES 301 sf NEW CONDITIONED AREA	
PROPOSED TOTAL ENCLOSED AREA:	3,636 sf
COVERED AREAS:	
FRONT PORCH	204 sf
TOTAL AREA UNDER ROOF:	3,840 sf

ENCROACHMENT AREA: 801 SQ FEET



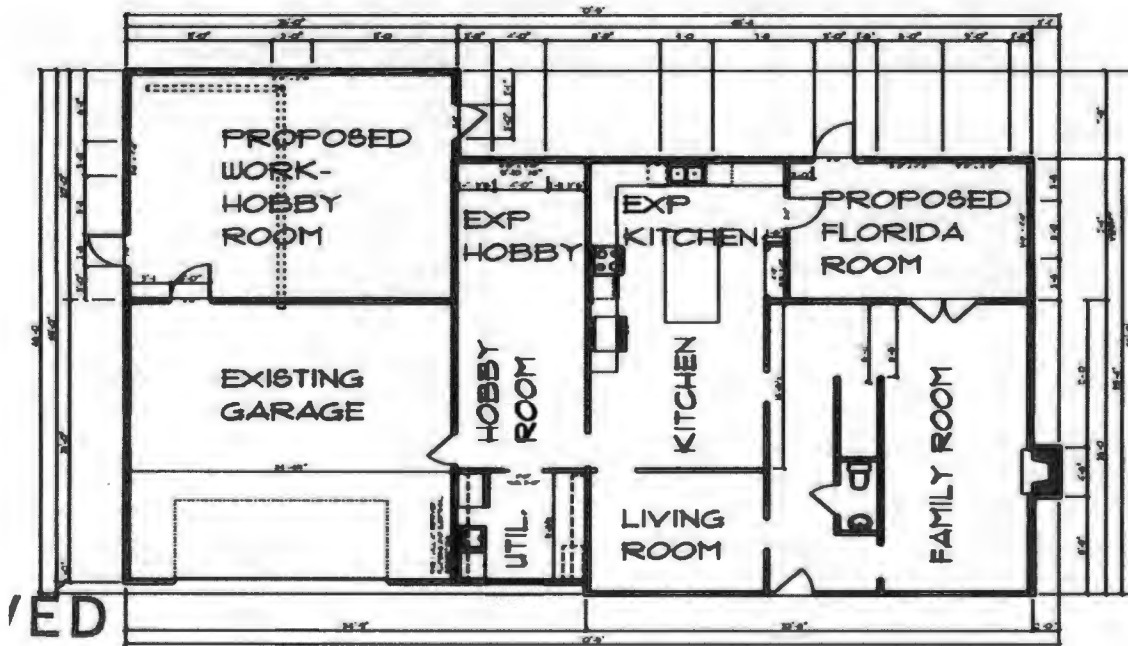
**SITE PLAN**  
 SCALE: 1/16" = 1'-0"  
**Sgammato Residence**

FLOOR PLAN



**SECOND FLOOR PLAN**

SCALE: 1/16" = 1'-0"



**FIRST FLOOR PLAN**

SCALE: 1/16" = 1'-0"

2020  
COUNTY.



PROPOSED ELEVATIONS

RODNEY@SOUTHWINDENG.COM  
 4831 EUREKA RD.  
 FLORENCE, SC 29506

114'-8"  
 PEAK HEIGHT  
 108'-0"  
 BEARING HEIGHT

PROPOSED EXPANSION, ROOF  
 SHINGLES TO MATCH EXISTING



121'-8"  
 PEAK HEIGHT  
 117'-4"  
 BEARING HEIGHT  
 108'-0"  
 BEARING HEIGHT  
 100'-0"  
 REF FIN FLOOR

WEST ELEVATION

SCALE: 1/16" = 1'-0"

PROPOSED EXPANSION, ROOF  
 SHINGLES TO MATCH EXISTING

114'-8"  
 PEAK HEIGHT  
 108'-0"  
 BEARING HEIGHT



121'-8"  
 PEAK HEIGHT  
 118'-2"  
 PEAK HEIGHT  
 117'-4"  
 BEARING HEIGHT  
 108'-0"  
 BEARING HEIGHT  
 100'-0"  
 REF FIN FLOOR

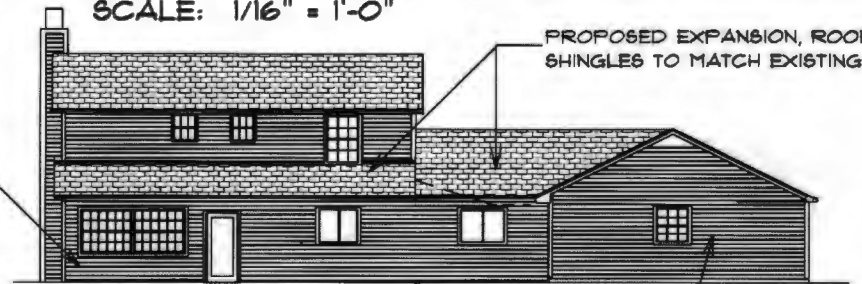
PROPOSED EXPANSION, SIDING  
 TO MATCH EXISTING

PROPOSED EXPANSION | EXISTING RESIDENCE

NORTH ELEVATION

SCALE: 1/16" = 1'-0"

PROPOSED EXPANSION,  
 SIDING TO MATCH  
 EXISTING



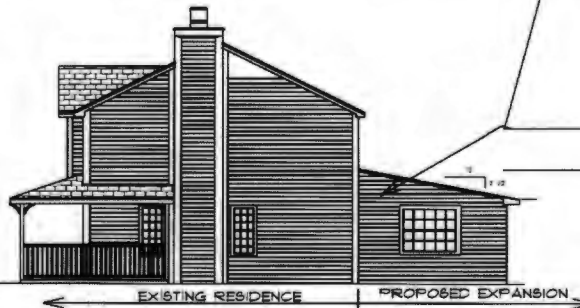
PROPOSED EXPANSION, ROOF  
 SHINGLES TO MATCH EXISTING

121'-8"  
 PEAK HEIGHT  
 114'-8"  
 PEAK HEIGHT  
 108'-0"  
 BEARING HEIGHT  
 100'-0"  
 REF FIN FLOOR

EAST ELEVATION

SCALE: 1/16" = 1'-0"

121'-8"  
 PEAK HEIGHT  
 118'-2"  
 PEAK HEIGHT  
 111'-4"  
 BEARING HEIGHT  
 108'-0"  
 BEARING HEIGHT  
 100'-0"  
 REF FIN FLOOR



PROPOSED EXPANSION, SIDING TO  
 MATCH EXISTING  
 111'-4"

SOUTH ELEVATION

SCALE: 1/16" = 1'-0"

DocuSigned by:

Musa Abdel-Haleq

D1A3C92CCA44432



Musa Abdel-Haleq

**SITE PHOTOS**



**Front from Thurmond Ct.**



**Area of expansion in rear yard**



**SITE PHOTOS**



**Area of expansion in rear yard**



**Area of expansion in rear yard**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 04, 2020**

Case Planner: **Nick Balevich**

Case #: **VA-20-06-034**

Commission District: **#3**

## GENERAL INFORMATION

APPLICANT(s): INNOVATIVE HOME CONSTRUCTION LLC (MICHAEL NUNEZ)

OWNER(s): BROOK BARGES, GREGORY DE JESUS

REQUEST: Variances in the R-3 zoning district as follows:

- 1) To allow an existing residence to remain 20 ft. from the front property line in lieu of 25 ft.
- 2) To allow a 6 ft. high fence within the front setback in lieu of 4 ft. on a lot with double frontage.

PROPERTY LOCATION: 2414 Newberry Street, Orlando, Florida, 32806, west side of Newberry St., and east side of Homeland St., north of E. Michigan St.

PARCEL ID: 06-23-30-1424-08-060

LOT SIZE: 55 ft. x 150 ft./ 8,250 sq. ft. (0.189 acres)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 155

**DECISION:** Recommended **APPROVAL** of the Variance requests in that the Board made the finding that the requirements of Orange County Code, Section 30-43(3) have been met; further, said approval is subject to the following conditions (unanimous; 7-0):

1. Development shall be in accordance with the site plan dated April 14, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 applicant shall obtain permits for the fence and shed within 180 days of final action on this application by Orange County, or this approval is null and void.

**SYNOPSIS:** Staff gave a presentation on the case covering the location of the property, the site plan, lot frontages in the area, and photos of the site. The applicant was not present.

Staff received one (1) commentary in favor and one (1) in opposition to the application, and there was no one present to speak in favor or in opposition to the request.

The BZA felt that the case was straightforward and unanimously recommended approval of the variances, subject to the four (4) conditions found in the staff report.

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### STAFF RECOMMENDATIONS

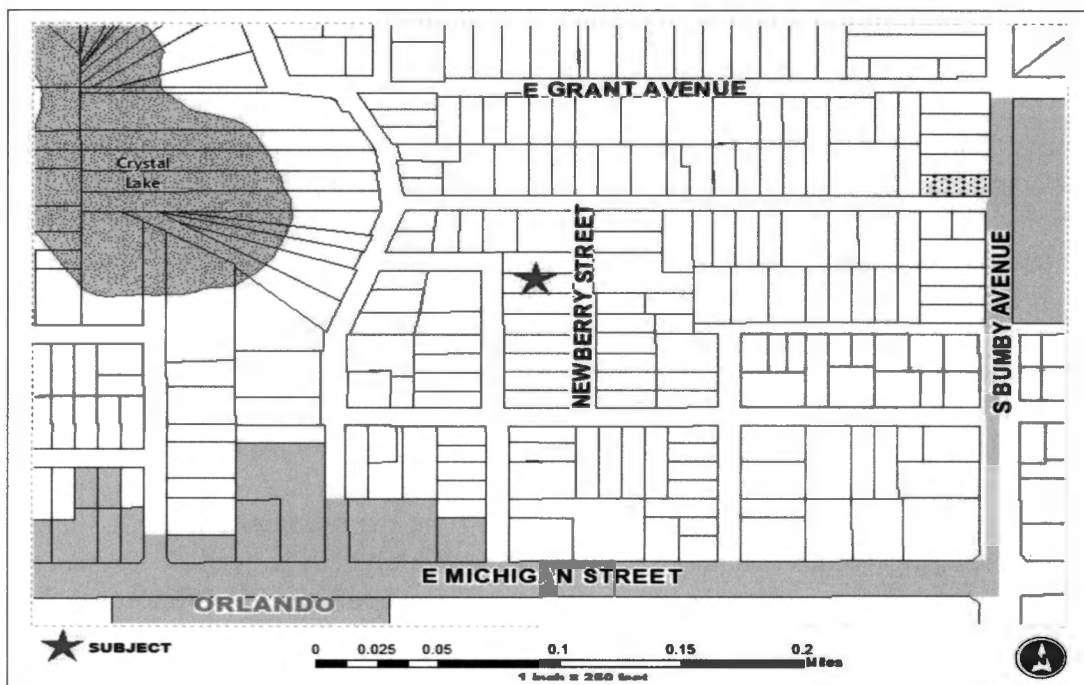
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Approval, subject to the conditions in this report.

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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-3	R-3	R-3	R-3	R-3
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 property is located in the R-3, Multiple-family Residential zoning district, which allows single-family homes, multi-family development, and associated accessory structures.

The area consists of single family homes. The subject property is a 0.19 acre lot with double frontage that was platted in 1925, as part of the Clover Heights Replat, and is a conforming lot of record. There is a 1,790 sq. ft. single family home on the lot that was constructed in 1937, and a shed that was added in 2016 without a permit. The applicant purchased the property in 2019.

The lot is a double frontage lot with frontage on both Newberry Street and Homeland Street, and is required to conform to the front setback on both streets. This requires a 6 ft. high fence to be setback 25 ft. from both property lines, rather than being allowed to be installed up to the property line, as in a rear yard. The house was built such that the front faces Newberry Street, and the rear faces Homeland Street.

The applicant is proposing to install a 6 ft. high fence 15 ft. from the property line along Homeland St., which meets the clear view triangle requirement (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.) The applicant also proposes the 15 ft. setback to preserve a specimen oak tree at the rear of the property.

All lots on the block are double frontage lots with frontage on both Newberry Street, and Homeland Street. The house on the lot to the north of the subject property was built with the front facing Newberry Street. The other 6 houses to the south of the subject property were built with the front facing Homeland Street. The proposed 15 ft. setback is a reasonable alternative front setback that would not be out of character with the area.

The existing house is located 24.7 ft., and the open front porch is located 20 ft. from the Newberry Street/east front property line in lieu of the required 25 ft.

### District Development Standards

	Code Requirement	Proposed
Max Height:	4 ft. fence in front setback	6 ft. fence
Min. Lot Width:	50 ft.	55 ft.
Min. Lot Size:	5,000 sq. ft.	8,258 sq. ft.

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

	Code Requirement	Proposed
Newberry Street:	25 ft.	20 ft. (existing house)
Homeland Street:	25 ft. for a 6 ft. fence	64.8 ft. (house), 15 ft. (fence)
Side:	5 ft.	6.5 ft. (south) and 11.9 ft. (north)

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### STAFF FINDINGS

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#### VARIANCE CRITERIA for Variance # 1 (existing residence)

##### Special Conditions and Circumstances

The subject property is a platted lot with a house that was constructed in 1937, prior to the establishment of zoning in 1957.

##### Not Self-Created

The need for the variance is not self-created, as the house was constructed in 1937, and the applicant purchased the property in 2019.

##### No Special Privilege Conferred

The request to allow a house that was constructed in 1937 to remain will not grant special privilege to the applicant.

##### Deprivation of Rights

Literal interpretation of the code will deprive this applicant of the right to keep an existing house on an existing platted lot.

##### Minimum Possible Variance

This is the minimum possible variance to allow the house to remain, and the lot to be utilized.

##### Purpose and Intent

Approval of this request will be in harmony with the purpose and intent of the Zoning Regulations and will not be detrimental to the neighborhood.

## **VARIANCE CRITERIA for Variance # 2 (fence height)**

### **Special Conditions and Circumstances**

The subject property has double frontage. It is a platted lot that is uniquely situated, with frontage on 2 streets.

### **No Special Privilege Conferred**

The lot was platted in this unique configuration, and the house was built to front on Newberry Street, with Homeland Street on the rear, and is thus considered to be a double frontage lot, and is required to conform to the front (street) setback on both streets. This situation forces the applicant to comply with a code that does not affect the majority of properties which only have a single frontage.

### **Deprivation of Rights**

Literal interpretation of the code will deprive this applicant of the opportunity to install a 6 ft. fence that would be afforded to other similar sized but single frontage lots.

### **Minimum Possible Variance**

This is the minimum possible variance to allow the proposed fence on the property in this height and configuration.

### **Purpose and Intent**

Approval of this request will be in harmony with the purpose and intent of the Zoning Regulations and will not be detrimental to the neighborhood. All lots on the block are double frontage lots, with the house on the lot to the north of the subject property facing Newberry Street. The other 6 houses to the south face Homeland Street. The proposed 15 ft. setback is a reasonable front setback that would not be out of character with the area, and would avoid creating a canyon effect for the properties addressed along Homeland Street.

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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan dated April 14, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 applicant shall obtain permits for the fence and shed within 180 days of final action on this application by Orange County, or this approval is null and void.

C: Innovative Home Construction LLC (Michael Nunez)  
618 E South St. Suite 500  
Orlando, FL 32801

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COVER LETTER

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April 3, 2020

To Whom It may concern,

The following request for variance is in regards property address 2414 Newberry St Orlando, FL 32806. Due to this lot being considered a double frontage lot we are requesting for a 6'high vinyl PVC fence that will be located at the "back" of the property (Homeland Street) in order to provide privacy, safety and containment of a 150lb large breed pet dog. We have attached the proposed location of the privacy fence on the respective copy of the property survey for your reference along with pictures of the front of the home (Newberry Street) and the driveway located at the back of the property (Homeland Street). Fence will connect and close the gap/opening between the neighbors on either side of the property. The length of this will be 42' linear ft with a double gate opening of 10' wide for entry and exit access. The following issue has not been self-created as this home has been previously owned and the adjacent neighbors had previously installed 6' high fences.

Given the size and the physical power of their San Bernardo breed dog a 6' high privacy fence is crucial and will be needed in order to provide safety for pedestrians and privacy and containment for the homeowners. We ask that you please consider and approve this request.

Please see the attached documentation provided.

Thank you,

Gregory De Jesus.



RECEIVED

APR 07 2020

ORANGE COUNTY  
ZONING DIVISION



**Variance Criteria:**

**Special Conditions and Circumstances**

- Property considered to be a Double frontage lot. Customers Backyard and rear access to his driveway is from Homeland St.

**Not Self-Created**

- Customer purchased this home on June 10, 2019 AS IS. No self-imposed conditions were created.

**No Special Privilege Conferred**

- homeowner wishes to secure rear yard for privacy, pet containment and security reasons

**Deprivation of Rights**

- Homeowner will not have full use of yard without this variance approval

**Minimum Possible Variance**

- In order to preserve oak tree, we are pulling back 20'LF from the paved road therefor exceeding the 15'LF set back (site triangle) required. This will be the minimum variance necessary

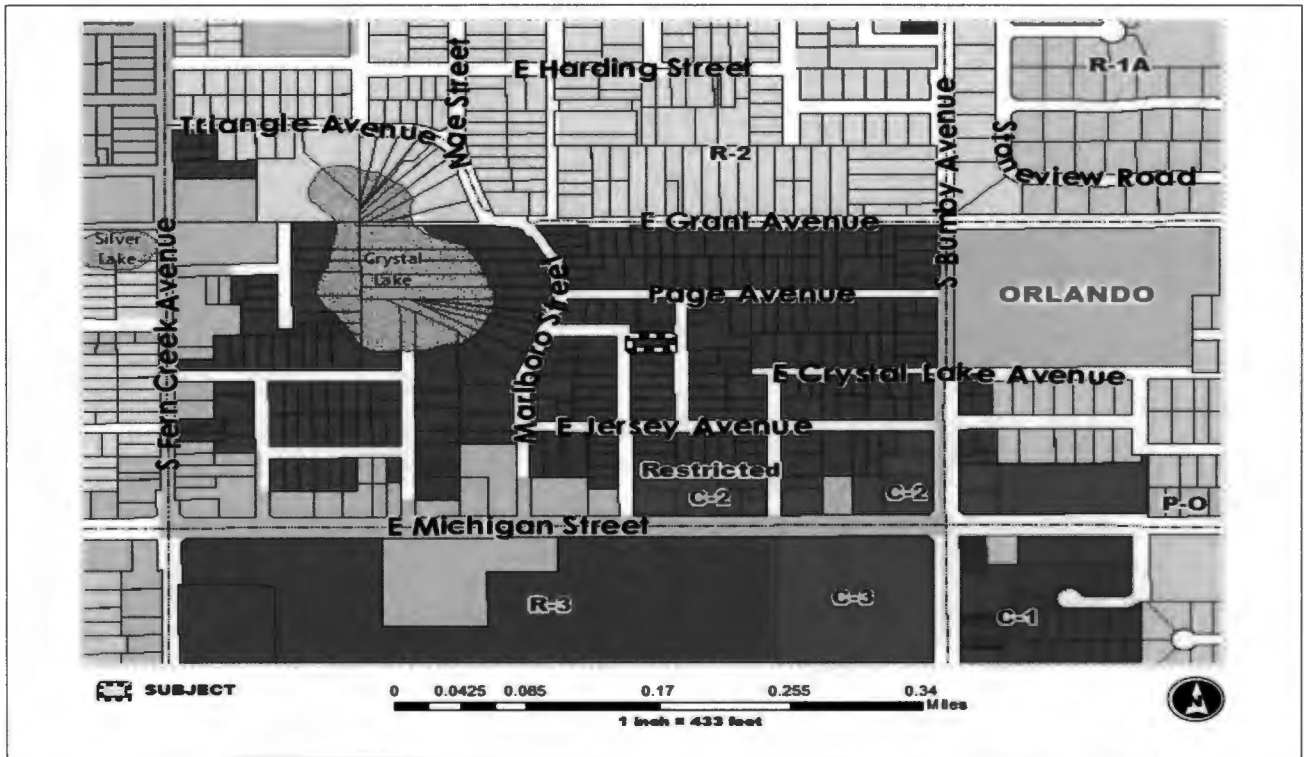
**Purpose and Intent**

- Homeowner fears that his 150lbs dog will run out on the street and get hit by a vehicle, putting his life and the life of other pedestrians in danger. Therefore, it is imperative that client encloses his backyard in order to provide containment and security while being fully in compliance with city/county regulations.

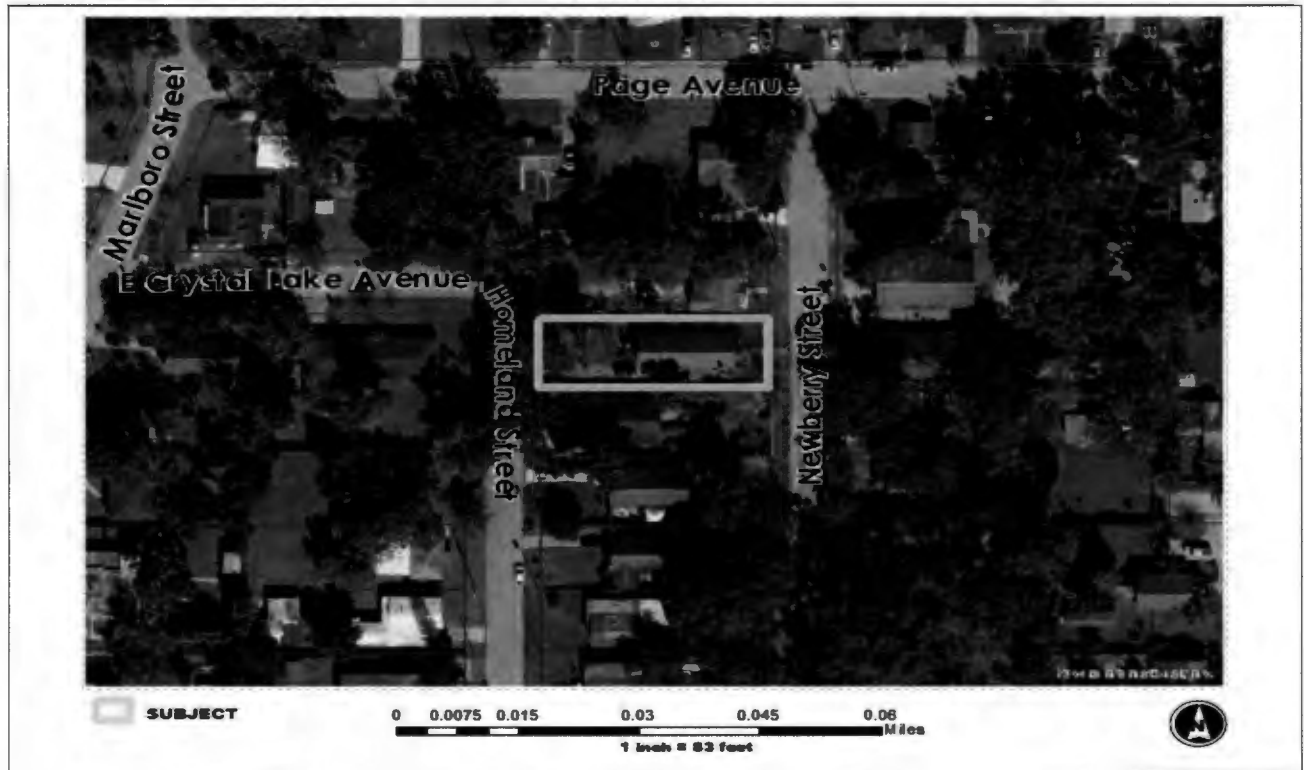
Thank You,  
Michael Nunez



ZONING MAP



AERIAL MAP



SITE PLAN

**HOMELAND STREET**

50' R/W (IMPROVED) 24' ASPHALT

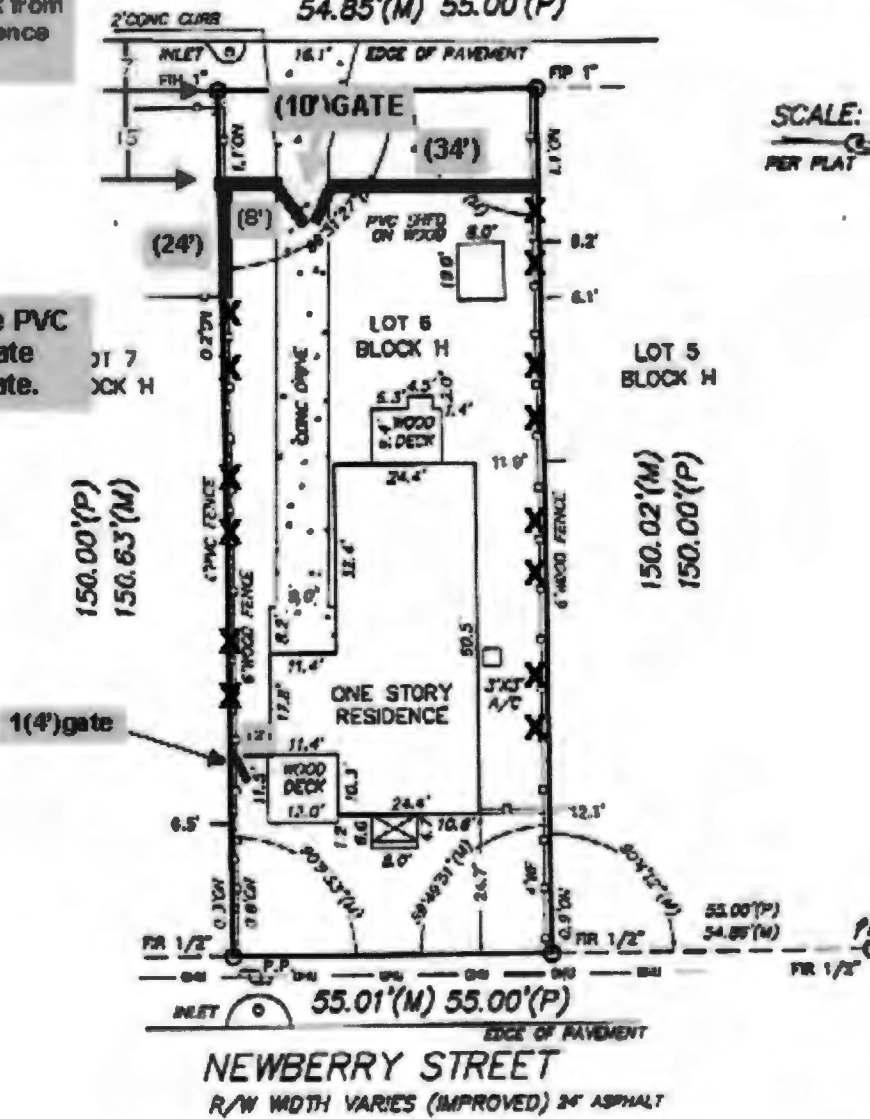
54.85'(M) 55.00'(P)

LOCATION SKETCH  
NOT TO SCALE

There will be a 15' Setback from the property line to the fence line.

Install 6ft High White PVC 85'LF with 1(4') gate & 1(10') Double Gate.

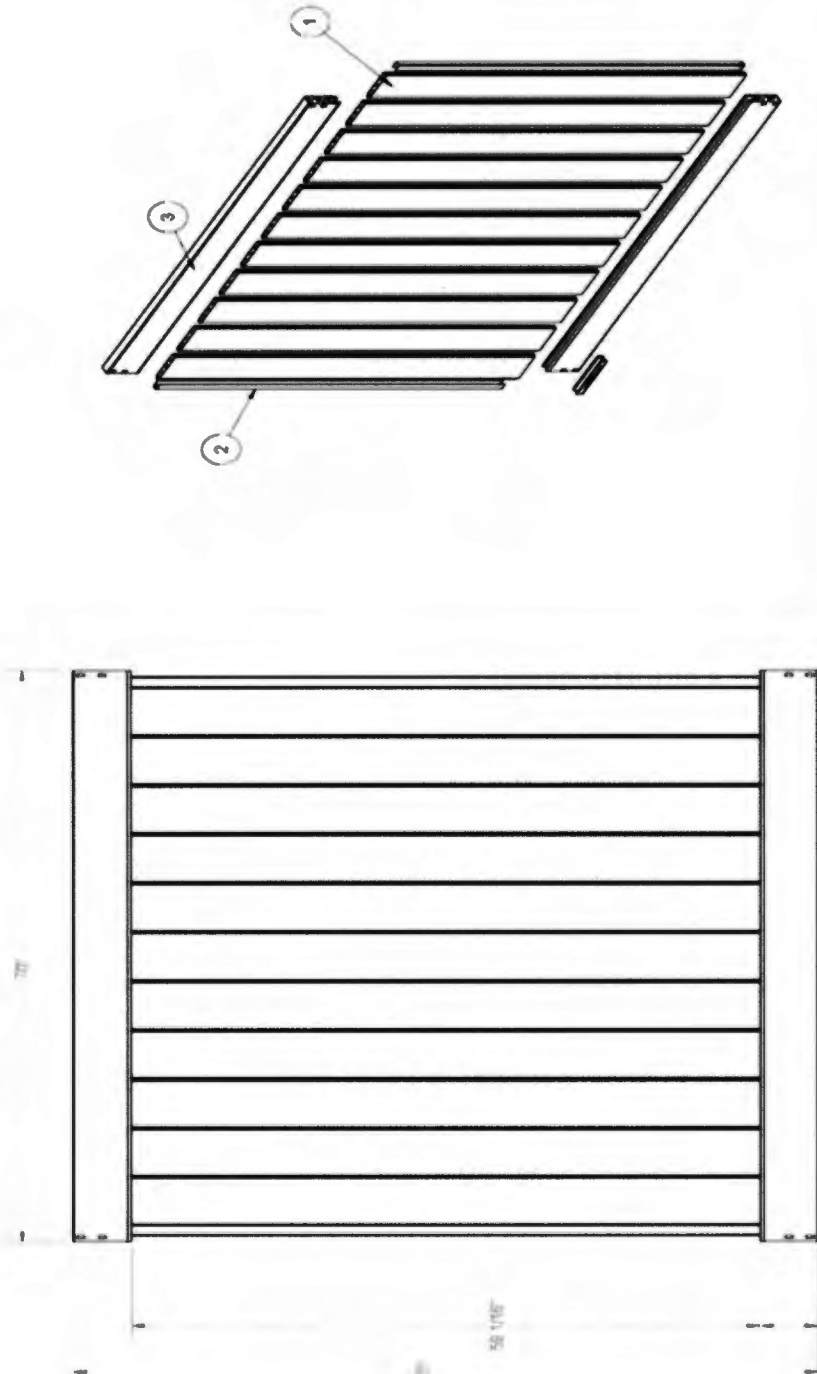
SCALE: 1"=30'  
PER PLAT



Property Address:  
2414 Newberry Street  
Orlando, FL 32806

Survey number: PS 11774

FENCE DETAIL



**Impressions®**  
 The Impressions privacy panel features solid performance and lasting appeal.

**Features:**

- 1 3/4" x 5 1/2" smooth rail
- Tongue-and-groove boards
- 6" wide panels - no aluminum insert needed
- 8" wide panels feature an aluminum insert in the bottom rail for added support

THROUGH LOT FRONTAGE ANALYSIS FOR BLOCK



**SITE PHOTOS**



**View of subject site from Newberry St.**



**Front of house and porch on Newberry St. at 20 ft. setback**

**SITE PHOTOS**



**Looking west towards Homeland St.**



**View of subject site from Homeland St.**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUNE 4, 2020**

Case Planner: **Nick Balevich**

Case #: **VA-20-04-014**

Commission District: **#4**

## GENERAL INFORMATION

APPLICANT(s): JAMES THOMAS

OWNER(s): JAMES T THOMAS

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

1) To allow an existing 6 ft. high fence to remain within the front setback in lieu of 4 ft.

2) To allow a 6 ft. fence within the clear view triangle area for the driveway.

Note: This is the result of a Code Enforcement action.

PROPERTY LOCATION: 1316 Grayson Drive, Orlando, Florida, 32825, west side of Grayson Dr., south of E. Colonial Dr., west of Rouse Rd.

PARCEL ID: 20-22-31-6348-01-044

LOT SIZE: 100 ft. x 143 ft./0.33 acres

NOTICE AREA: 500 FT

NUMBER OF NOTICES: 80

**DECISION:** Recommended **APPROVAL** of Variance request #1 in that the Board made the finding that the requirements of Orange County Code, Section 30-43(3) have been met; further, said approval is subject to the following conditions as amended; and, **DENIAL** of Variance request #2, in that there was no hardship shown on the land; and further it did not meet the requirements governing variances as spelled out in Orange County Code, Section 30-43(3) (unanimous; 7-0):

1. Development shall be in accordance with the site plan dated January 24, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 applicant shall obtain a permit for the fence within 180 days of final action on this application by Orange County, or this approval is null and void.
5. The applicant shall obtain a permit for the shed within 180 days of final action on this application by Orange County, or this approval is null and void.
6. Approval is subject to compliance with the 15-foot clear view triangle area for the driveway.

**SYNOPSIS:** Staff gave a presentation on the case covering the location of the property, the site plan, and photos of the site.

During his presentation, the applicant stated that he needs the fence for safety, and that a similar fence was on the property when he purchased it.

The BZA confirmed the clear view triangle and fence setback requirements, and asked the applicant's contractor why he did not obtain a permit. The contractor stated that he thought he could rebuild a fence using the previous permit that was on file. He also stated that a reduction of the height would require the current fence to be replaced.

The BZA felt that the 6-foot fence height was acceptable, but there was concern about preserving the clear view triangle.

Staff received sixty-two (62) commentaries in favor of and none in opposition to the application, and there was no one present to speak in favor or in opposition to the request.

The BZA unanimously recommended approval of variance #1 and denial of variance #2, subject to the addition of a new condition #6, which states: "Approval is subject to compliance with the 15 foot clear view triangle area for the driveway," subject to the conditions as amended.

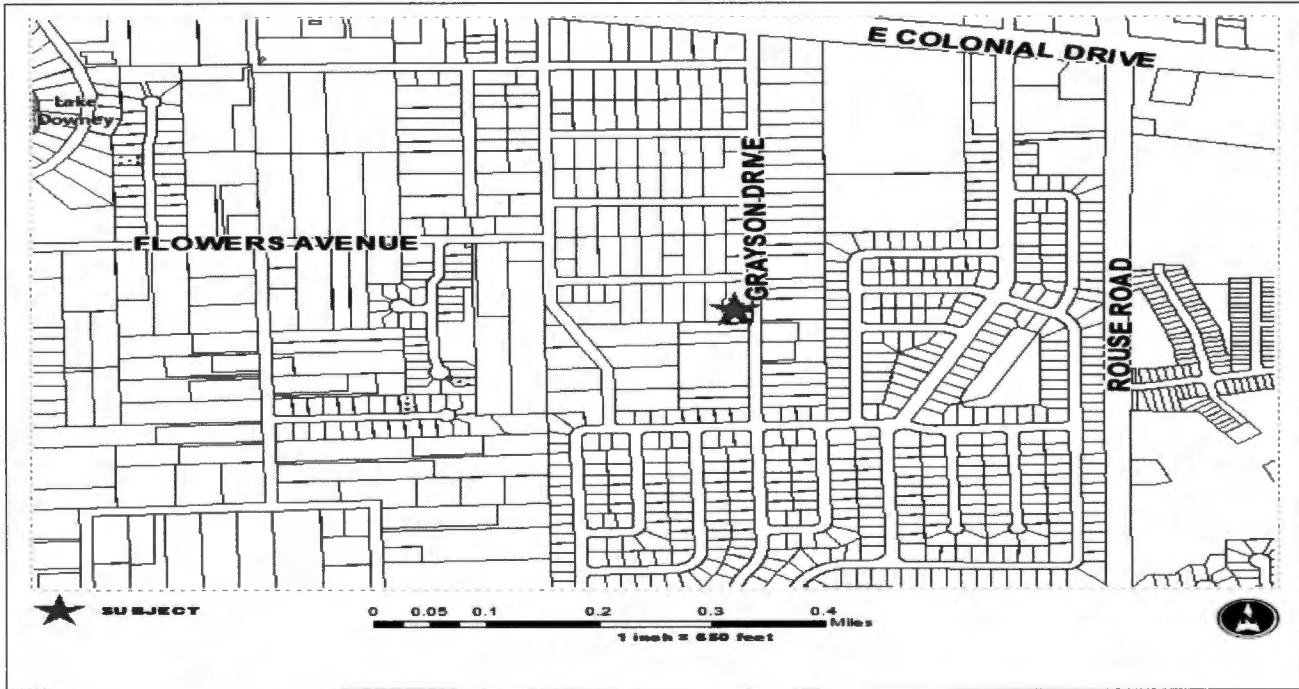
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#### **STAFF RECOMMENDATIONS**

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Denial, however if the BZA recommends approval then staff recommends the conditions of approval found in this report.

**LOCATION MAP**



**SITE & SURROUNDING DATA**

	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	Vacant & Single Family Residential	Single Family Residential

**BACKGROUND AND ANALYSIS**

**Description and Context**

The subject property is zoned R-1, Single Family Dwelling district, which allows single family homes and associated accessory structures on lots a minimum of 5,000 sq. ft. or greater.

The subject property is a 0.33 acre lot that was platted in 1952, and is considered to be a conforming lot of record. The property is located in the Orlando Improvement Co. No. One Plat, which is comprised of single family homes. There is a 1,452 sq. ft. single family home on the lot which was constructed in 1949 and a shed that was added in 2000. There is no record of a permit for the shed. The applicant purchased the property in 2018.

The applicant installed a 6 ft. high vinyl fence around the property without a permit. The Code allows a fence to be a maximum of 4 ft. high within the front setback, which is the first 25 ft. of the lot. However, the Code prohibits fences 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. The current fence blocks visibility from the driveway for automobiles and pedestrians.

Code Enforcement cited the applicant in January of 2020 for building a fence without permits (Incident 561972). The applicant is requesting the height variance for the portion of the fence that is within the front setback, and to allow the fence to block the clear view triangle for the driveway.

**District Development Standards**

	Code Requirement	Proposed
Max Height:	4 ft. for fence within 25 ft. front setback	6 ft. for fence along the front property line
Min. Lot Width:	50 ft.	143 ft.
Min. Lot Size:	5,000 sq. ft.	14,382 sq. 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 could have been installed in a manner that would not require any variances, either by constructing a 4 ft. high fence within 25 ft. front setback, or by moving the 6 ft. fence beyond 25 ft. setback, which would still allow for a sizeable fenced front yard. The fence could also have been installed in compliance with the clear view triangle, which is required for safety.

**Not Self-Created**

The need for the variances are self-created and does result from the applicant constructing the fence without permits, in a non-conforming location.

**No Special Privilege Conferred**

Approval of 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 utilize a conforming height and location.

**Deprivation of Rights**

The applicant is not being deprived of the right to have a fence on the property with a conforming height or location.

**Minimum Possible Variance**

The request to have the 6 ft. high fence in the current location is not the minimum possible variance as the location of the house would allow a 6 ft. high fence to be located 25 ft. back from the front property line, which would meet setbacks for a 6 ft. fence, and negate the need for the variance. If the fence was located 15 ft. back from the front property line, the 2nd variance for the clear view triangle would not be needed, and this would allow for landscaping to be placed between the fence and the sidewalk/road.

### **Purpose and Intent**

Approval of this request will not be in harmony with the purpose and intent of the zoning regulations and could be detrimental to the neighborhood.

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### **CONDITIONS OF APPROVAL**

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1. Development shall be in accordance with the site plan dated January 24, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 applicant shall obtain a permit for the fence within 180 days of final action on this application by Orange County, or this approval is null and void.
5. The applicant shall obtain a permit for the shed within 180 days of final action on this application by Orange County, or this approval is null and void.

C: James T. Thomas  
1316 Grayson Dr.  
Orlando, FL 32825

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## COVER LETTER

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January 15, 2020

Dear Members of Zoning Board of Appeals,

I am writing to seek a fence variance for my single family home in Park Manor neighborhood at 1316 Grayson Drive Orlando, Florida 32825. Current zoning regulations permit fences to be a maximum of 4 feet tall in the front of our property. I respectfully request a variance to install a 6-foot fence.

### **Property Fence**

I request a variance for the 6-foot fence around my property for the primary reason of


1. Bringing the property into visual harmony with the existing landscape allowing the fence to better blend in and visually disappear into the landscape.
2. Another equally important need for this fence is to ensure harmony and peaceful coexistence with the neighbors, with regard to my two dogs. It has long been a factor that when neighbors are walking past my residence, my dogs begin barking and running back and forth. With this fence, it secures their safety as well as the neighbors and keeps them quieter since they are not really able to see through or over it.
3. Another main need is increased crime in the community. You can tell by police reports and Nextdoor website that my neighborhood has had car break ins within the last week and has other crimes as well like any other neighborhood. This 6-foot fence will protect my family, pets, property and vehicles better by having a stronger perimeter giving it less ease of access to help prevent burglaries and car break ins.
4. Safety of children and rescue pets. This will help protect them while they are playing making sure nothing and no one go in the road and possibly get hurt or worse.

5. Noise abatement. We are on one of the most used roads in the area and truthfully the speed limit of 25 miles per hour is not respected making the noise levels absurdly high whether day or night. This 6-foot fence alleviates the extra noise as our last one was a 6 foot.
6. Shelter. This new fence is in much better shape than the last one which was rotting, falling apart, and warped therefore making it much safer in Florida's weather including but not limited to its well-known tropical storms and hurricanes.
7. Home value. This fence will increase my home value as is it a newer fence, safer, and more expensive replacement. Not to mention helps the neighborhood look nicer since I am being responsible with my property.

I am not requesting special privileges as there are multiple properties in the neighborhood with 6-foot fences including but not limited to the county's property at the end of Park Manor having a 6-foot fence in the front. Also this fence will enable me to have more privacy due to the fact that Grayson Drive is approximately 2ft higher in elevation than my property line.

I hope you agree that my request would produce an aesthetically proper addition if not an enhancement to my property and also to the community. Thank you for your time and thoughtful consideration!

Respectfully Submitted,

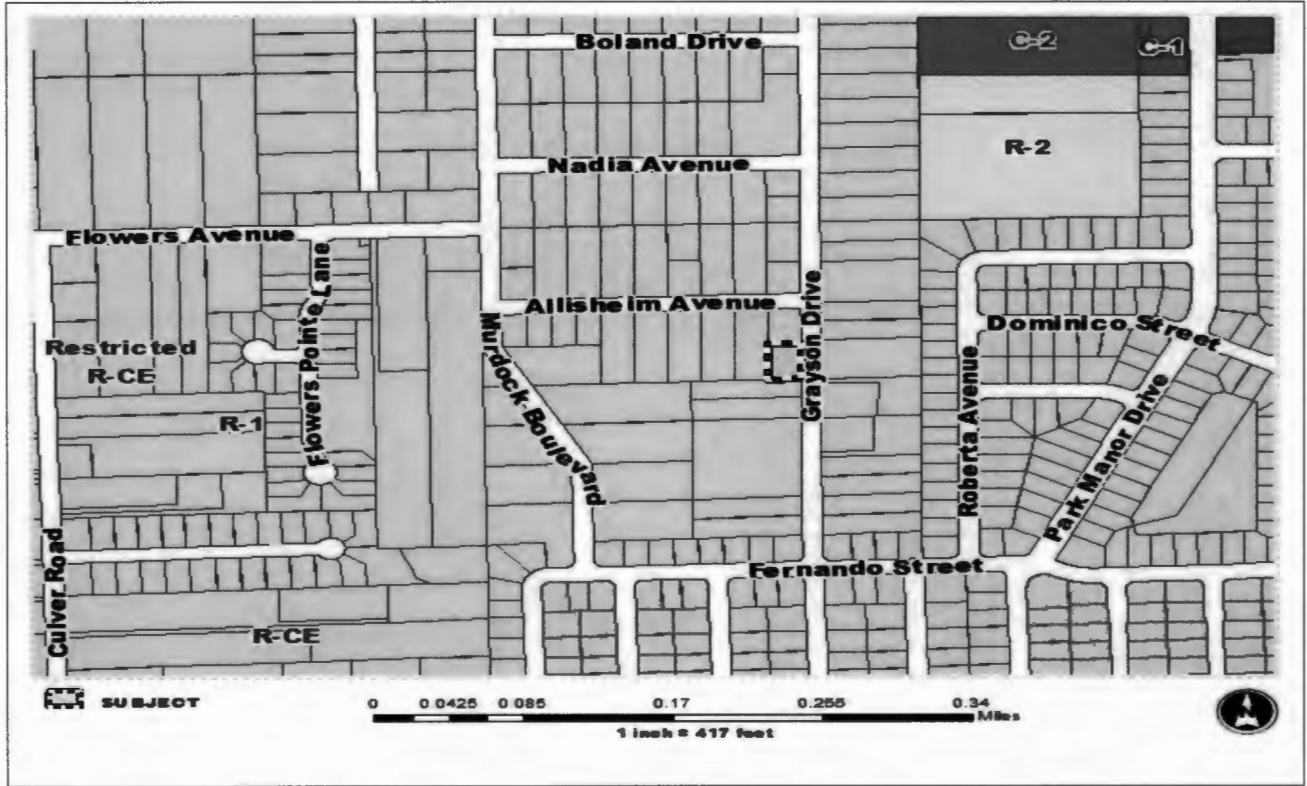
A handwritten signature in black ink that reads "James Thomas". The signature is written in a cursive style with a long horizontal line extending to the right.

James Thomas

1316 Grayson Dr

Orlando, FL 32825

ZONING MAP



AERIAL MAP



SITE PLAN

PER PLAT 

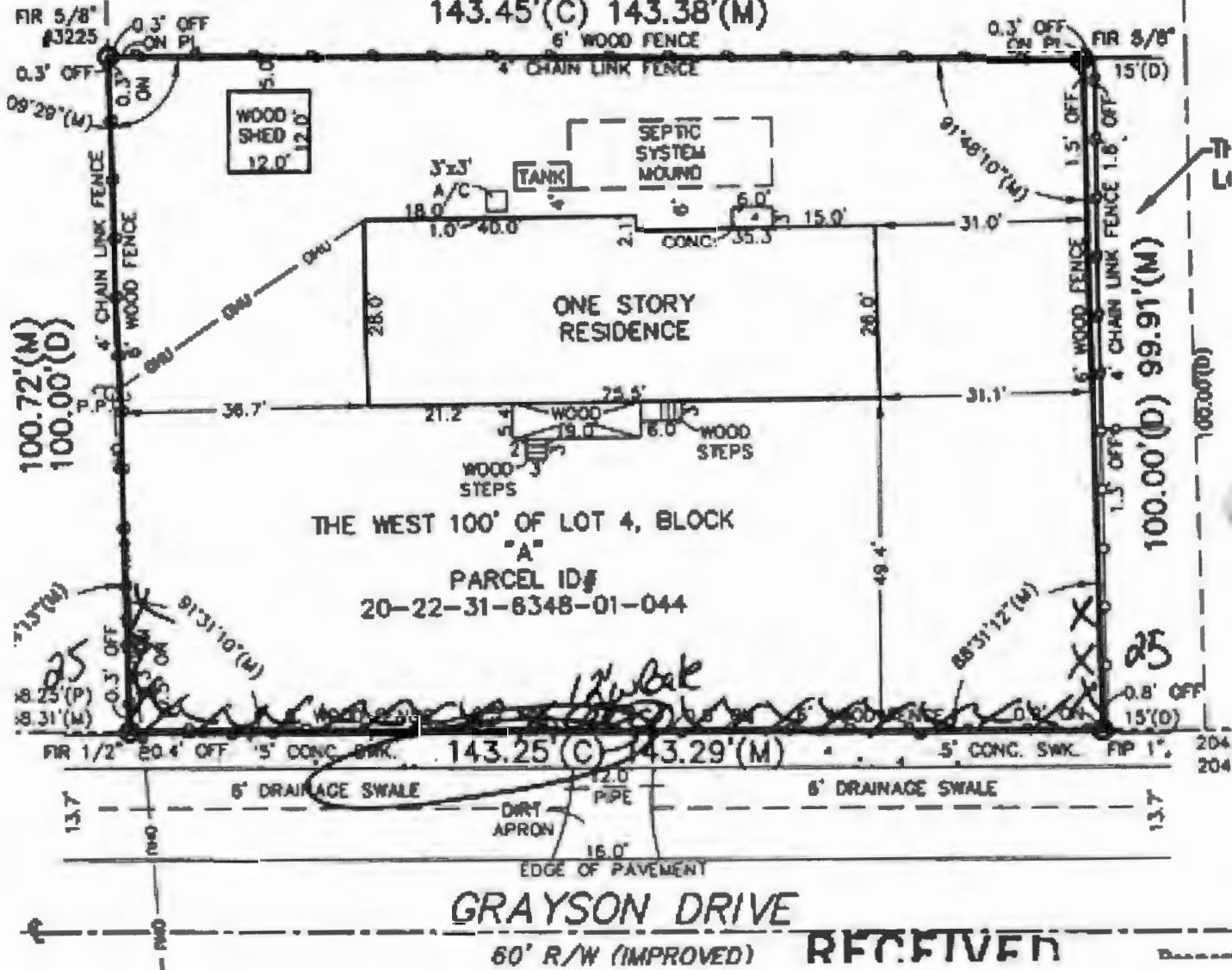
ADJACENT PARCEL ID#  
20-22-31-6348-01-038

SCALE: 1"=30'

REMAINDER OF LOT

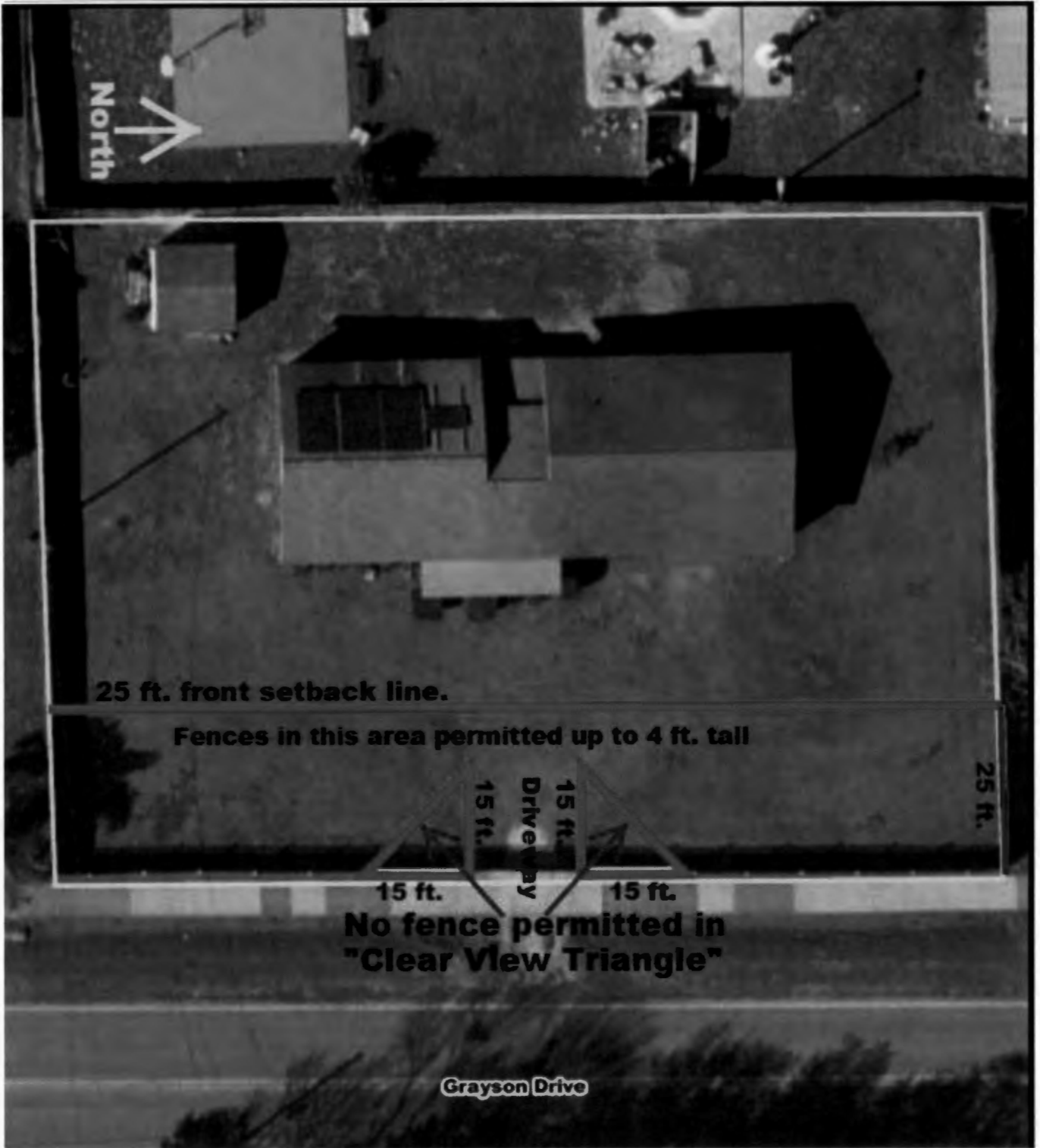
4  
BLOCK "A"

143.45'(C) 143.38'(M)

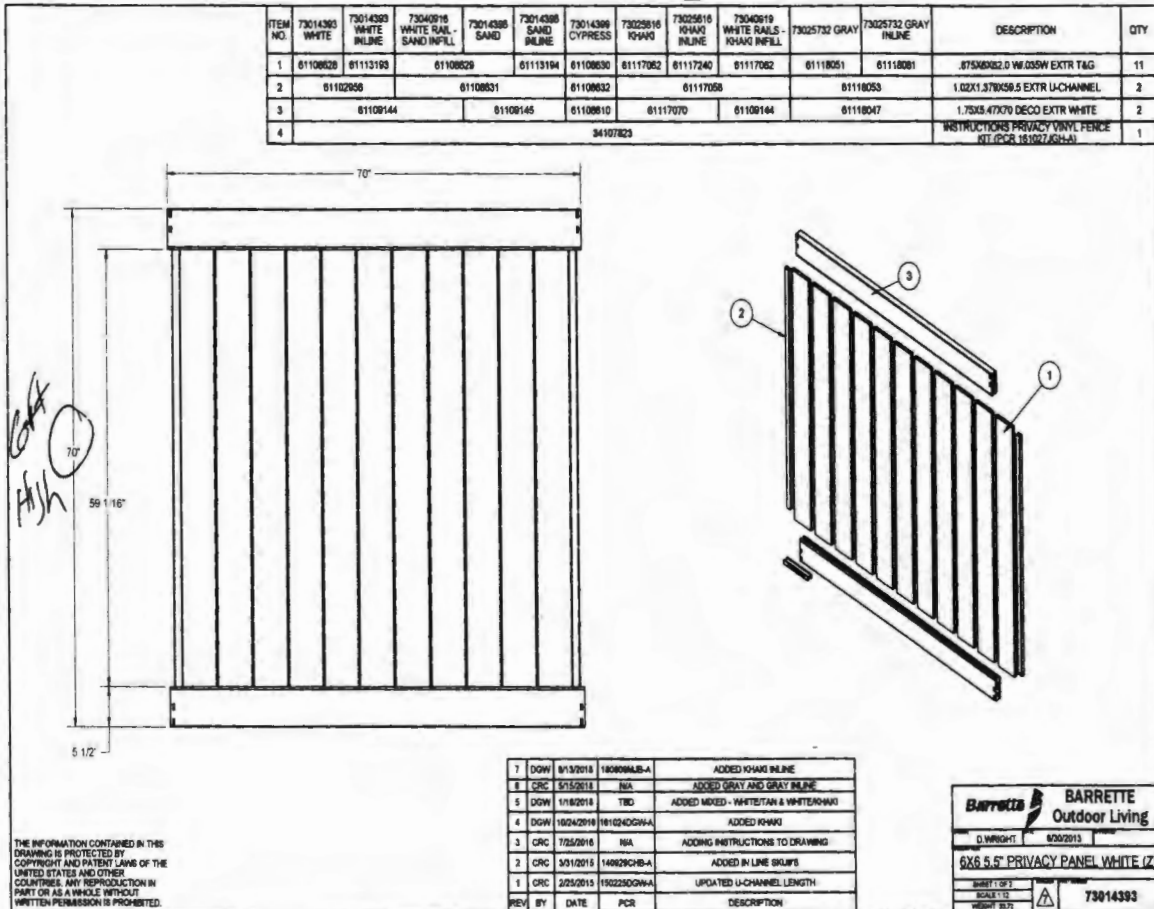




**CLEAR VIEW TRIANGLE/PERMITTED FENCE LOCATION DETAIL**



# FENCE DETAIL



**SITE PHOTOS**



**Front from Grayson Dr.**



**North side of property**

**SITE PHOTOS**



**South side of property from Grayson Dr.**



**Neighbor with a conforming fence**

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**SITE PHOTOS**

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**Property across the street with a conforming fence**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 04, 2020**

Case Planner: **David Nearing, AICP**

Case #: **VA-20-07-039**

Commission District: **#6**

## GENERAL INFORMATION

APPLICANT(s): **MADISON LANDING (STACY BANACH)**

OWNER(s): **CENTRAL PARK SHOPPING PLAZA LLC**

REQUEST: **An amendment to the following previously granted variances in the R-3 zoning district to allow for updated site plan and elevations:**

- 1) **To allow two multifamily buildings with a maximum height of 86 ft. in lieu of 35 ft.**
- 2) **To allow 177 parking spaces in lieu of 343.**

PROPERTY LOCATION: **5800 S. Rio Grande Ave., Orlando, FL 32809, west side of S. Rio Grande Ave., approximately 400 ft. north of W. Oak Ridge Rd.**

PARCEL ID: **22-23-29-7268-40-008**

LOT SIZE: **540 ft. x 434 ft./5.39 acres**

NOTICE AREA: **500 ft.**

NUMBER OF NOTICES: **278**

**DECISION:** Recommended **APPROVAL** of the Variance requests in that the Board made the finding that the requirements of Orange County Code, Section 30-43(3) have been met; further, said approval is subject to the following conditions (unanimous; 7-0):

1. **Development shall be in accordance with the site plan and elevations dated May 7, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 noted that this project is the same one reviewed by the BZA at its March 2020 hearing where they approved variances for increasing the height and reducing the required parking. Subsequent to that, the applicant submitted for building permits. However, the site plan and architecture differed from that reviewed by the BZA in March. It was determined that the changes were significant enough to warrant a return to the BZA. Due to the parking variance granted in March, the applicant was able to eliminate the structured parking on the first floor of each building, allowing 100% surface parking. As such, the first floor building plans were modified to add social and activity rooms, and the buildings were reoriented to create a courtyard where a single swimming pool is to be located, as opposed to the two pools previously shown. Access was moved to the north and south sides of the site and the central access point was eliminated.

The applicant was in agreement with the staff report and recommendation. Staff noted that they had received one (1) commentary in favor and none in opposition and there was no one in attendance to speak in favor of or in opposition to the request.

The BZA concurred that the overall changes improved the project, and unanimously recommended approval of the revised plans and elevations with the three (3) conditions found in the staff booklet.

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### STAFF RECOMMENDATIONS

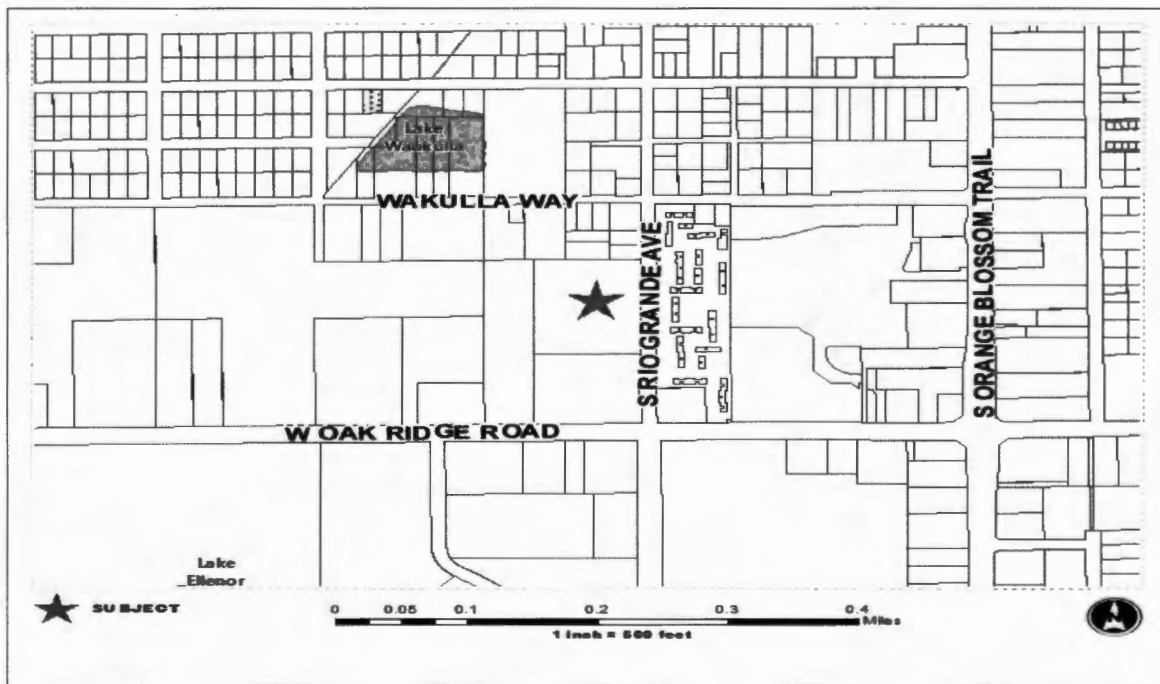
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Approval subject to the conditions in this report.

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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-3	R-3	IND-2/IND-3 & C-2	R-3	IND-/IND-3
Future Land Use	HDR	LDR	IND & C	MDR	IND
Current Use	Vacant	Vacant & Single Family Residential	Commercial	Apartments	Industrial

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

The property is located in the R-3, Multiple-family Residential zoning district, which allows single-family homes, multi-family development, and associated accessory structures.

The subject property consists of 5.39 acres of vacant land, which is currently heavily treed. The property was created in 2018 through a lot split (LS-18-11-083), which separated it from the developed commercial property to the south.

The property's Future Land Use was changed from IND, Industrial, to HDR, High Density Residential, and was rezoned from IND-2/IND-3 to R-3 in late 2016. In July 2016, the applicant applied to allow the height of the buildings to exceed 50 feet through a Special Exception, which was the method used to accomplish this at that time. However, before the application could be brought in front of the BZA, Chapter 38 was amended to eliminate the Special Exception process for added height, and it then required a variance. In December 2016, the BZA recommended approval of a variance to allow the structure to be 72 feet in height. However, when the applicant submitted for building permits in early 2020, they were informed that certain elements of the roof were not exempt from the height requirements, and exceeded the 72 feet permitted by the 2016 variance. While the footprint of the buildings and the architecture were exactly that which was submitted for the prior variance, staff determined that, while elevator equipment is exempt, the structure housing the equipment, which accentuated the appearance of the building, was not exempt, and a variance would be needed to accommodate the buildings.

The applicant subsequently applied for variances to allow a height of 86 ft. in lieu of 35 ft. and to allow for 177 parking spaces in lieu of 343 parking spaces, which were heard at the March 5, 2020 BZA meeting. At that meeting, the BZA voted unanimously to recommend approval of the two (2) variances, and on March 24, 2020, the BCC affirmed the BZA's recommendation.

Upon review of the permits submitted for land development and construction of Phase I (the northern building, associated parking, and the stormwater management facilities), it was determined that the plans were substantially different from those reviewed by the BZA and approved by the BCC. These deviations violate condition 1 of the March 24, 2020 BCC approval which states in part "Any proposed substantial deviation,



change, or modification shall 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).” Due to the substantial differences, it was determined that the site plan and elevation drawings should be returned to the BZA for their review and recommendation as revisions to the previously approved variances.

The proposal is still for a 196 unit senior affordable housing complex consisting of two (2) identical buildings constructed in two phases. The project will continue to provide needed affordable housing to the low-income senior community. The primary change to the building elevations is the roofline. The previously approved elevations showed a building with a variable height roofline. While the tallest section of the building was seven (7) stories tall, portions of the building varied between five (5) and six (6) stories. The current proposal is a full seven (7) story roofline for the entire structure. One advantage to the new elevations is the ability to reduce the total footprint of the buildings, making for a more compact development. The revised elevations are still compatible with the architecture of the taller buildings located south of W. Oak Ridge Rd.

One major change to the design of the buildings is the elimination of the parking on the ground floor. The original concept called for enclosed parking to be located on the first floor of the buildings. However, as a result of the variance to reduce the required parking, the applicant found that all required parking could be provided as surface parking. This allows the first floor to be used as a common gathering area for socializing, or for use as arts and craft studios, hobby rooms, libraries, etc., which will add to the amenities available to the residents.

As was discussed at the March 5<sup>th</sup> BZA meeting, the County's parking standards do not differentiate between general multifamily development and age restricted multifamily development. The BZA recognized that those who live in age restricted communities have less need for personal vehicles. Based on a parking study provided by the applicant, which included an evaluation of eight (8) comparable sites which they have developed around the State, on average, a parking ratio of 0.78 spaces per unit would be sufficient.

As a result of the reduction to the parking, the applicant was able to redesign the site. The original design had one (1) access from S. Rio Grande Ave. located in the center of the site. This drive bisected the site, and physically separated it into two (2) separate projects, much the way a public street would. Each building had its own pool and amenities. The current proposal shows two (2) access points at the north and south ends of the site, and the buildings have been reoriented. Instead of facing each other, they now mirror each other to form a common courtyard. This will facilitate a co-mingling of the residents of the two (2) buildings, better fostering a sense of unified community, rather than two (2) separate communities. Surface parking lots have been placed at the north and south ends of the pond, which has been deepened and slightly reconfigured. However, the pond continues to serve as an amenity.

The applicant now proposes an 85 ft. tall structure, which includes the decorative cupolas at the corners of the buildings. Also, while approved to provide 177 parking spaces, the proposed redesigned site plan shows 190 parking spaces.

**District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	85 ft.
Min. Lot Width:	85ft.	540 ft.
Min. Lot Size:	15,000 sq. ft.	235,180 sq. ft./5.39 ac.

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

	Code Requirement	Proposed
Front:	20 ft.	23 ft.
Rear:	30 ft.	210 ft.
Side:	10 ft.	96 ft. (south)/96 ft. (north)

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**STAFF FINDINGS**

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**VARIANCE CRITERIA**

**Special Conditions and Circumstances**

Regarding building height, at the March 5<sup>th</sup> meeting the BZA concluded that the special condition and circumstance regarding this property was the Future Land Use (FLU) of High Density Residential (HDR). The HDR FLU allows for a maximum of 50 units per acre. The applicant is proposing 196 total units, while the FLU would allow 269 units. Without the variance for height, buildout at maximum code density could result in a significantly higher lot coverage.

With respect to the variance for parking, the BZA found that the special condition and circumstance was the parking demand of the occupants. The parking study submitted by the applicant clearly showed that due to the demographics, the code parking requirements were excessive. The study showed that the actual parking demand is less than one (1) parking space per unit.

**Not Self-Created**

The BZA found that the need for an increase in building height was a function of the zoning assigned to the property. In order to achieve the unit count needed to have a successful project, while still accommodating the other required improvements, it was necessary to increase the height of the building to lessen the impact of the building footprint. The new proposal does that even more than the original plan.

The BZA also concluded that the applicant was requesting to provide only the parking necessary to serve the development.

**No Special Privilege Conferred**

The BZA noted that there were several buildings located on W. Oak Ridge Rd. with seven (7) or more stories.

The BZA also found that the applicant’s parking study clearly demonstrated that only the needed parking was being proposed.

### **Deprivation of Rights**

The BZA concurred that without the requested height, the applicant would not be able to attain the needed density to make reasonable use of the land without covering a larger percentage of the site.

Without the reduction in parking, the applicant would be providing unnecessary parking.

### **Minimum Possible Variance**

The BZA concluded that both the height and parking variances were the minimum necessary to make possible the reasonable use of the land.

### **Purpose and Intent**

Approval of this request will be in harmony with the purpose and intent of zoning code, ensuring that development occurs in a safe, orderly, and efficient manner. The revised design of the project, as proposed, continues to accomplish the purpose and intent of the zoning regulations, and will not be injurious to 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 dated May 7, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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: Stacy Banach  
558 W New England Ave.  
Winter Park, FL 32789

COVER LETTER

PARAMETRIC DESIGN &  
DEVELOPMENT, LLC

558 West New England Ave, Suite 230  
Winter Park, FL 32789  
P: 407-758-4866  
E: sbanach@pddmetric.com

May 11, 2020

Orange County Zoning Division  
201 South Rosalind Ave., 2nd Floor  
Orlando, FL 32801

**RE: Madison Landing - Variance Application**

**COVER LETTER**

**Background:**

Madison Landing is a proposed 2-phase affordable housing development for elderly persons. In November 2019, with financial support from Orange County, Madison Landing Phase I won an award of tax credits from Florida Housing Finance Corporation for Phase I of the development. Madison Landing Phase I is now moving forward with development and construction plans for 110 affordable housing units for elderly Orange County citizens.

The subject property is 5.4 acres of vacant land located approximately 800' north of the intersection of West Oak Ridge Road and Rio Grande Avenue. The site underwent comprehensive plan and zoning amendments in 2017. A variance was approved for Madison Landing by the BOCC on March 24<sup>th</sup> of this year for a reduction in parking for the elderly to allow 177 parking spaces in lieu of 343 parking spaces, and an increase in building height to a maximum of 86 feet (#VA-20-03-010).

As part of the March 24<sup>th</sup> Variance approval process, Madison Landing submitted a site plan dated January 15, 2020 (a copy of which is attached hereto as **Attachment "B"**).

On April 27<sup>th</sup>, 2020, Madison Landing submitted site and building permit applications for the development. The permit numbers are as follows:

Site: B20902428  
Building: B20902399  
Address Change: Z20002560

On April 29<sup>th</sup>, 2020, the project was assigned the following address: 5800 S Rio Grande Avenue, Orlando, FL 32809

On May 5<sup>th</sup>, 2020, Madison Landing was notified by the County that a hold was to be put on the zoning review because in staff's view, the site plan submitted for permitting was substantially different than the site plan submitted for the Variance approval on March 24<sup>th</sup>, 2020. We have had several communications with Jennifer Moreau since then, and although we did not view the site

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**COVER LETTER (PAGE 2)**

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plan changes as substantial, we agreed to go back to the BZA for further Variance approval of the changes.

The following are the changes in the site plan that are represented in the permit plans submitted:

1. The buildings' orientation has been mirrored, although they are still "L" shaped buildings, still 7-stories and still located along the ROW. The facade of the project along Rio Grande Avenue is now all 7-stories to minimize the overall footprint of the building.
2. The original plan showed parking under the building. Now, there is only surface parking.
3. There are two driveways off of Rio Grande in lieu of one.
4. Two pools were originally shown because the driveway split the developments. Now the developments can share the amenities.

This development's inception was back in 2016; the overall scope of work has not changed significantly. The project has always been a 100% affordable elderly development, consisting of two phases and two 7-story buildings with a large retention pond to the rear of the property. Originally, the parking was shown under the building in case a parking reduction was not approved. This is an expensive design alternative that is only used when trying to maximize parking because of site limitations. As demonstrated by the new site plan (attached hereto as **Attachment "C"**), the buildings, parking and retention pond fit on the site without changing the overall intent of the development.

We would like to point out that the original variance was only for a reduction in parking and a height increase. Madison Landing is not deviating from the prior variance approvals. There will still be 177 parking spaces for both phases and the building will meet the maximum requirement of 86 feet in height.

**Attachments:**

- A: BZA Application (Site Plan Change)
- B: Original Site Plan & Elevations (from March 24<sup>th</sup> Variance Approval)
- C: New Site Plan & Elevations (submitted with building permit applications on April 27<sup>th</sup>)
- D: Variance Criteria

If there are any questions or concerns in regards to the information above, please do not hesitate to contact me.

Sincerely,



Stacy Banch

**Madison Landing Affordable Elderly Apartments  
Orange County BZA 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 nonconformities on neighboring properties shall not constitute grounds for approval of a proposed zoning variance.

This variance approval is for deviations from the originally approved site plan dated January 15, 2020. The originally approved variance reduced the parking spaces and increased the building height. The current request is not requesting any new variances to codes or regulations. Rather, the purpose of this variance is only for approval of deviations within the framework of the site plan and development parameters established in the original variance. Again, all deviations meet current land use regulations.

**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 applicant did not know the changes in the site plan would trigger the need for a variance approval. No changes are being made to the originally approved variance items and there is no variance request to current land use regulations.

**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, buildings, or structures in the same zoning district.

This variance request is unique because there are no real waivers of land use regulations being requested, and the key development parameters established in the first variance remain unchanged. The application does not seek to alter or exceed the parking or heights limits approved in March 2020. Therefore, the granting of this variance does not confer on the applicant any special privilege that is denied by this Chapter to other lands.

**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 literal interpretation of the LDC requirements in this case would deprive the applicant the right to construct a building as previously approved through the variance process for this zoning district. Further, the literal interpretation of the LDC requirements would work unnecessary and undue hardship on the applicant, because the applicant reasonably relied on the prior county variance approval to design its affordable housing project in accordance with the previously approved variance. The applicant has remained within the design limits set out in the code and the March 2020 variance.

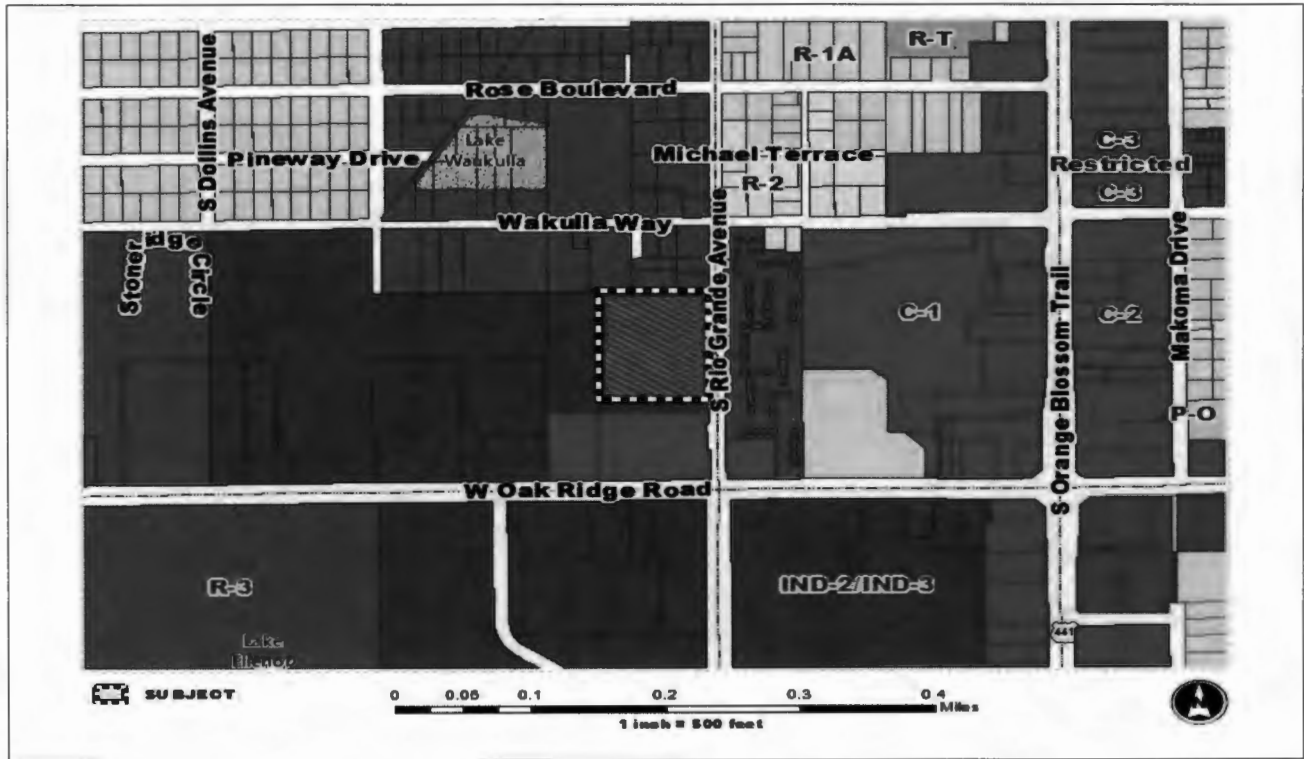
**5. Minimum Possible Variance** - The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building, or structure.

Same as #1 above: The current request is not requesting any new variances to codes or regulations. The purpose of this variance is only for approval of deviations from the site plan dated January 15, 2020. Again, all deviations meet current land use regulations and the prior variance approval.

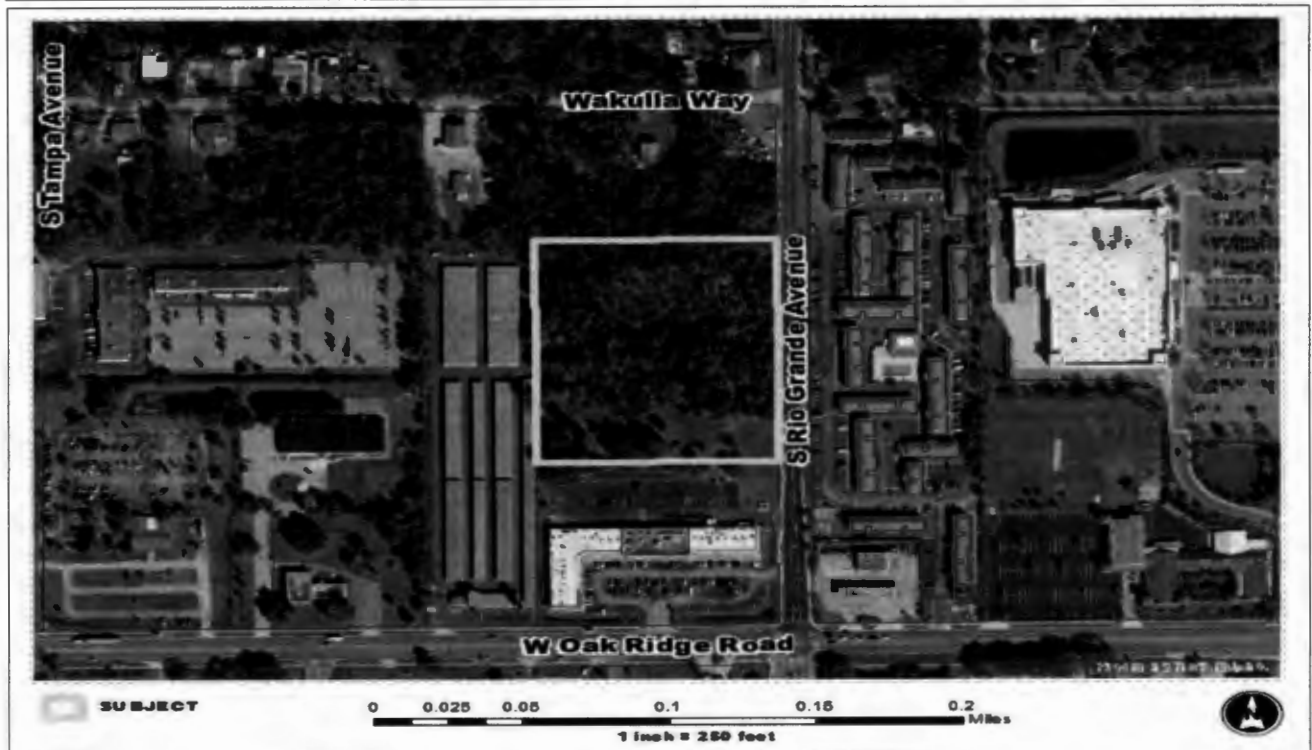
**6. Purpose and Intent** - Approval of the zoning variance will be in harmony with the purpose and intent of the Zoning Regulations and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The proposed site plan changes will not be not be injurious to the neighborhood or otherwise detrimental to the public welfare. In fact, the changes to the development will help make a more harmonious development by allowing both phases to share common amenities.

ZONING MAP



AERIAL MAP

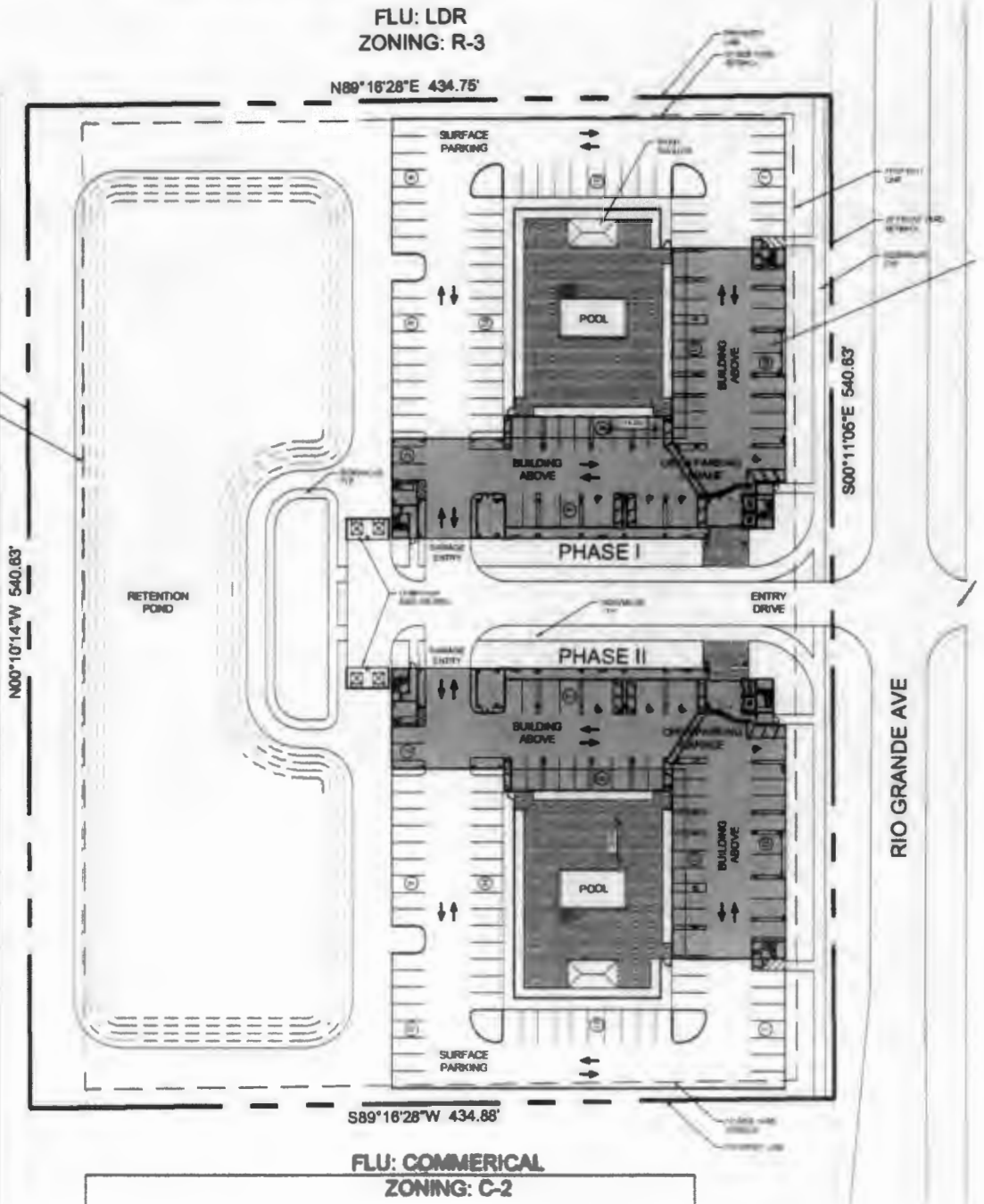




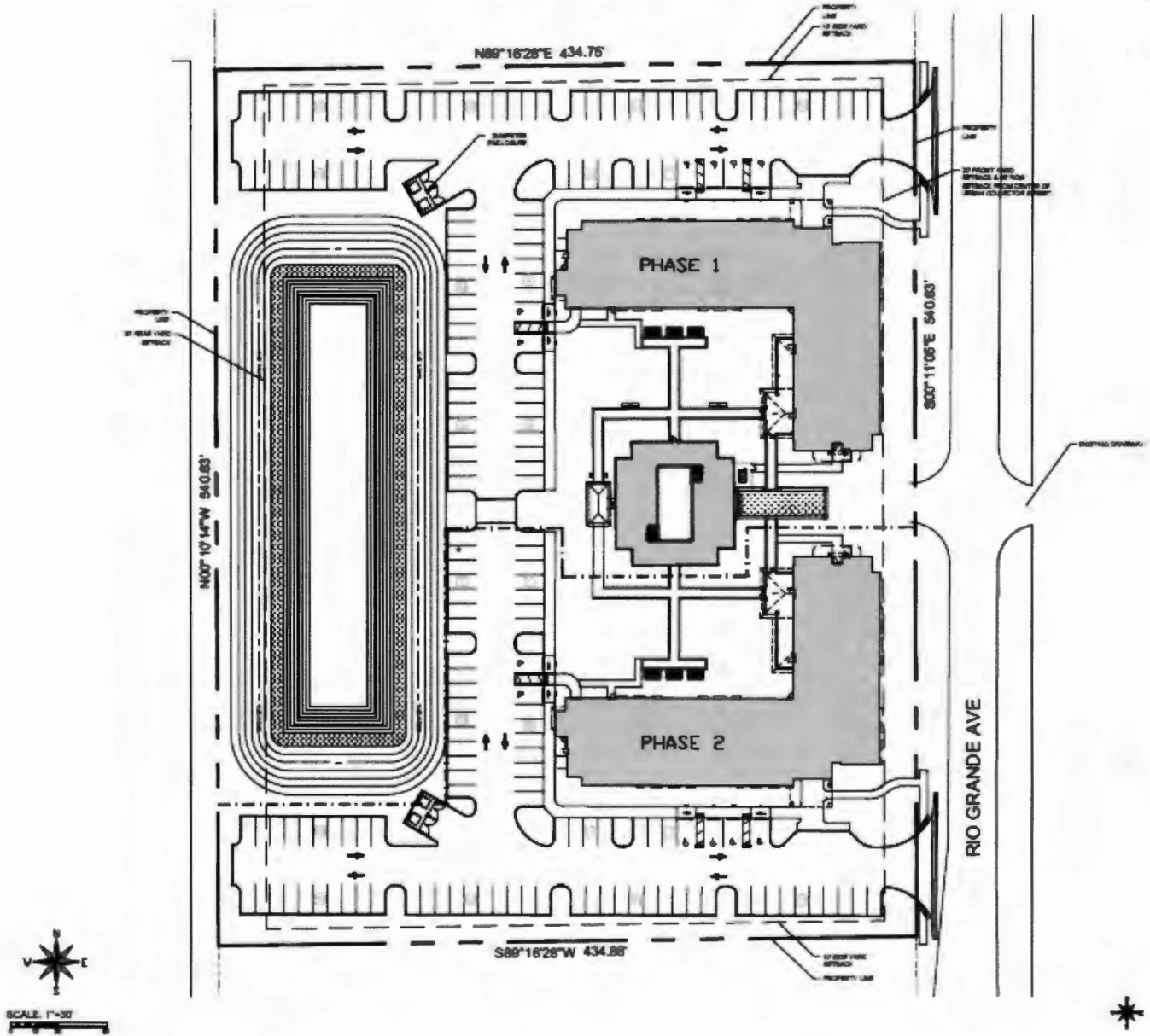
SITE PLAN FROM MARCH 5, 2020 BZA MEETING

RECEIVED  
JAN 15 2020  
ORANGE COUNTY  
ZONING DIVISION

FLU: INDUSTRIAL  
ZONING: IND-2/IND-3

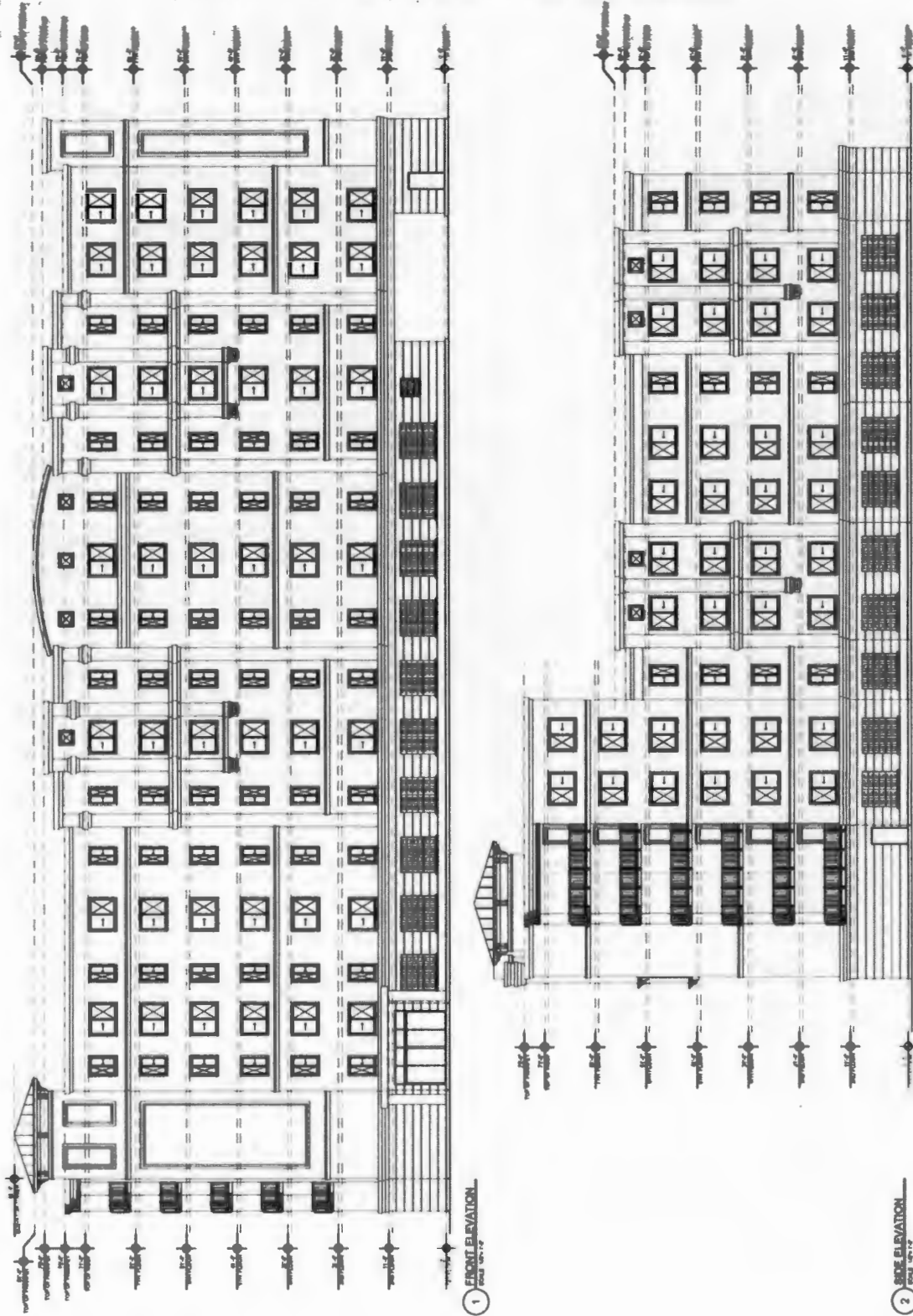


PROPOSED SITE PLAN

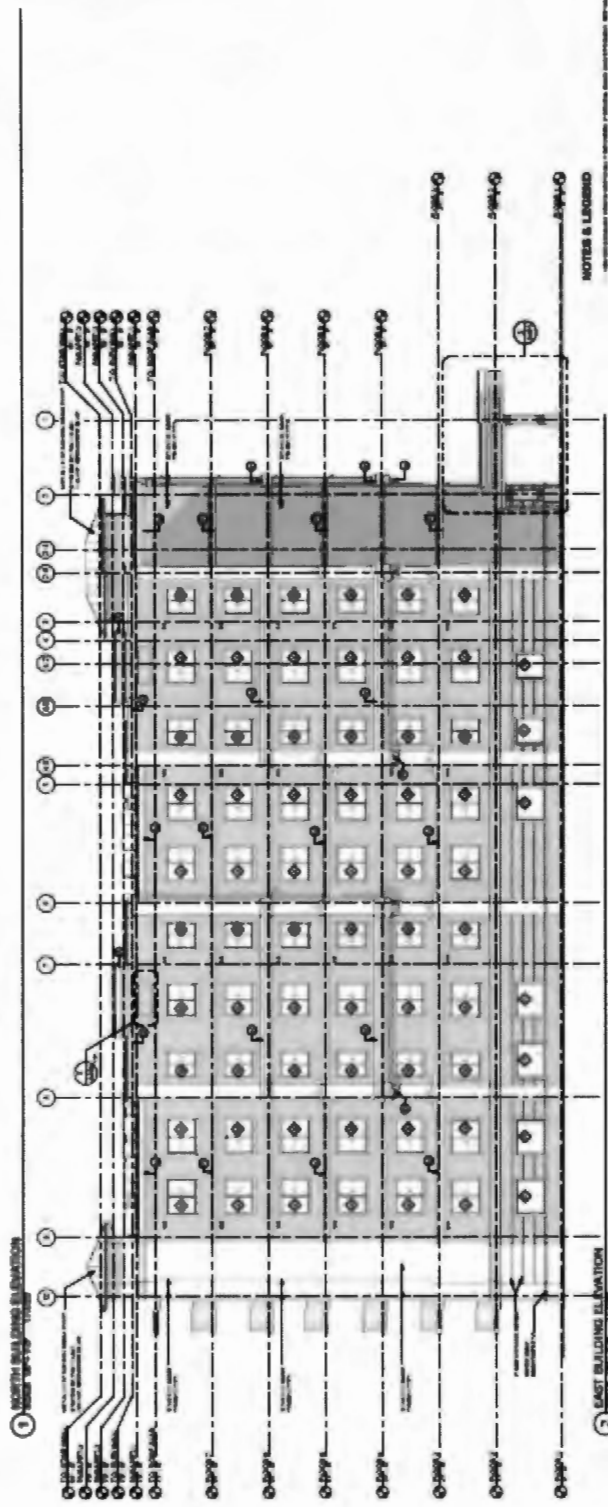
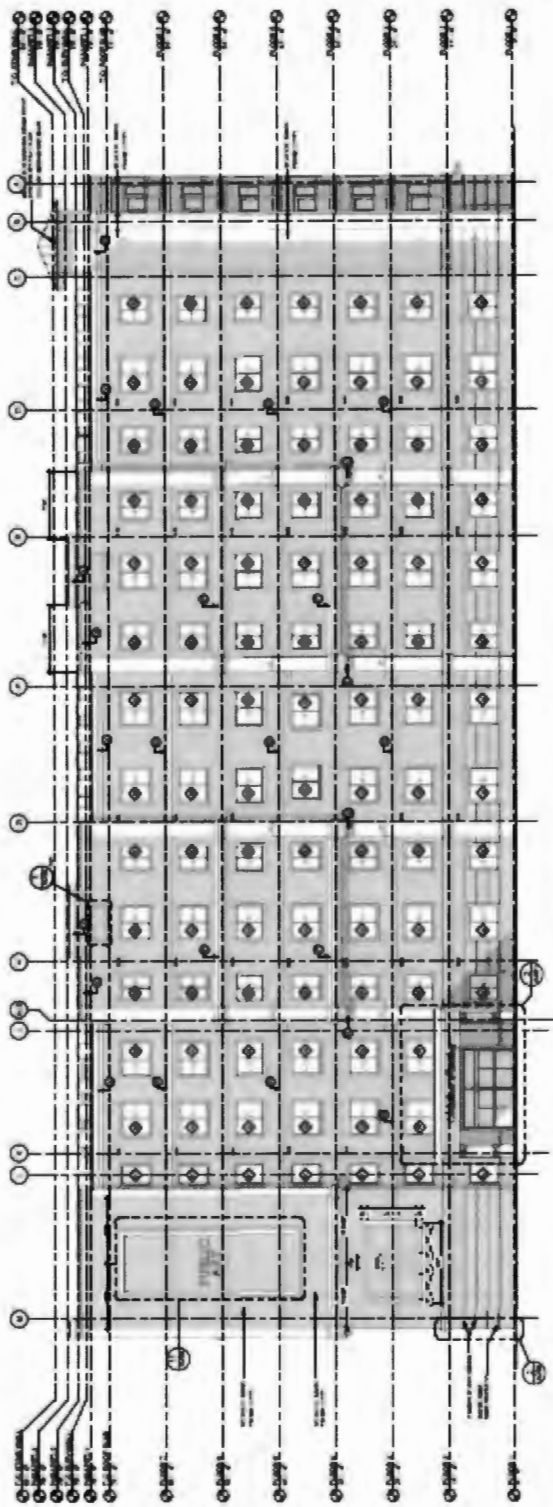




ELEVATIONS FROM MARCH 5, 2020 BZA MEETING



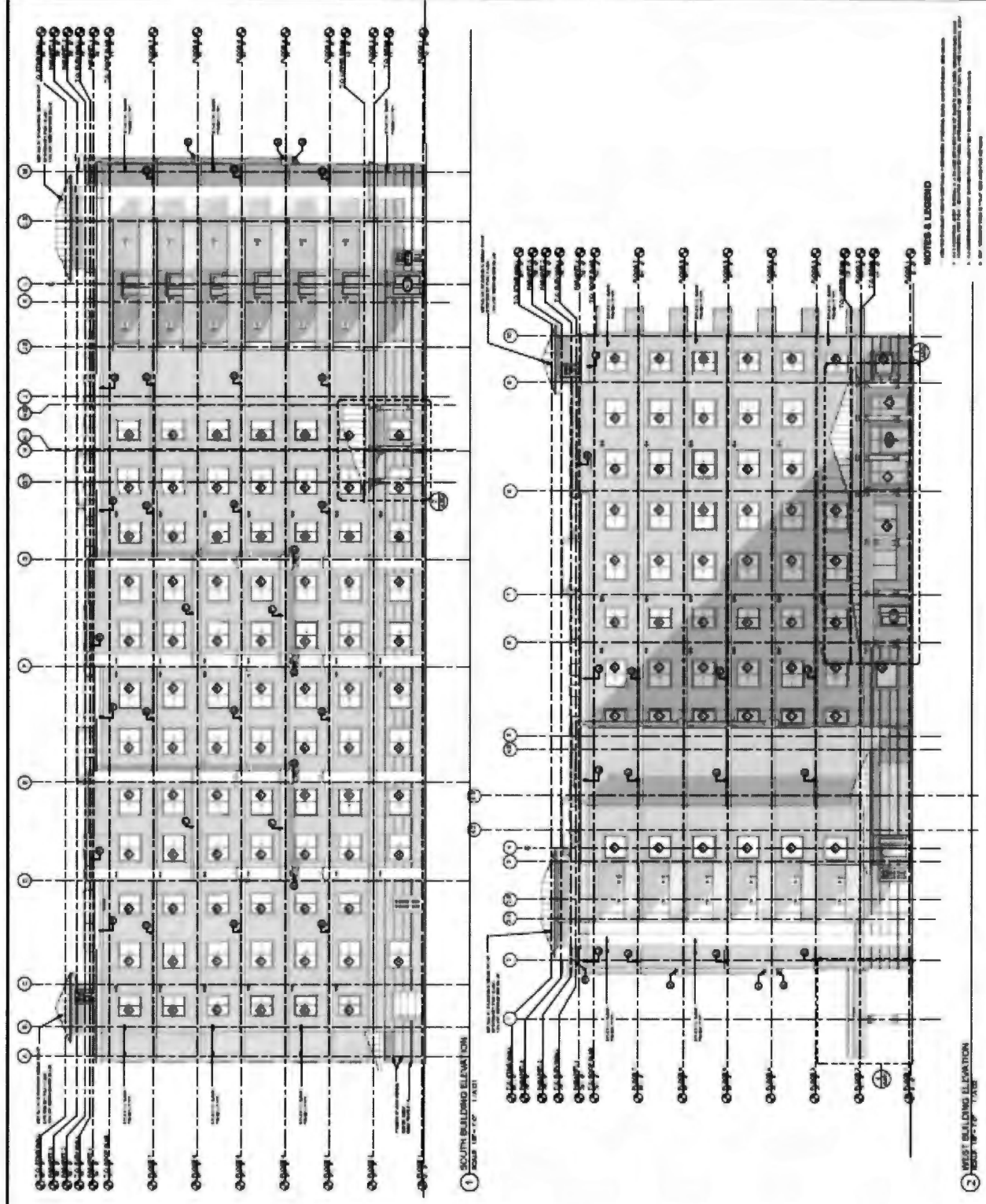
PROPOSED NORTH AND EAST ELEVATIONS



NOTES & LEGEND

1 NORTH ELEVATION  
2 EAST ELEVATION

# PROPOSED SOUTH AND WEST ELEVATIONS



**SITE PHOTOS**



02/03/2020 13:13

**Subject property looking north**



02/03/2020 13:15

**Subject property looking west from S. Rio Grande Ave.**

**SITE PHOTOS**



**Subject property to left looking north on S. Rio Grande Ave.**



**Nearby tall building looking southeast from intersection of S. Rio Grande Ave. and W. Oak Ridge Rd.**



# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUNE 4, 2020**

Case Planner: **DAVID NEARING, AICP**

Case #: **VA-20-03-006**

Commission District: **#2**

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## GENERAL INFORMATION

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APPLICANT(s): THARPE BELOTE

OWNER(s): ALMUT BELOTE and THARPE BELOTE

REQUEST: Variance in the R-1 zoning district to allow an existing open front porch 16.6 ft. from the front property line in lieu of 20 ft.

Note: This is the result of Code Enforcement action.

PROPERTY LOCATION: 7218 Mott Ave., Orlando, FL 32810, west side of Mott Ave., approximately 250 ft. north of the intersection of Mott Ave. and Edgewater Dr.

PARCEL ID: 32-21-29-0000-00-017

LOT SIZE: 75 ft. x 199 ft. (avg.)/0.32 acres

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 89

**DECISION:** Recommended **APPROVAL** of the Variance request in that the Board made the finding that the requirements of Orange County Code, Section 30-43(3) have been met; further, said approval is subject to the following conditions (unanimous; 7-0):

1. Development shall be in accordance with the site plan and elevations dated April 9, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 applicant shall obtain a permit for the covered porch within 180 days of final action on this application by Orange County, or this approval becomes null and void.

**SYNOPSIS:** Staff explained the history of the property, including the fact that the applicant was unaware that a tenant had removed the original covered porch and replaced it with what is there today. In addition, the tenant had installed a fence, pavers, and a storage container in the rear yard, along with equipment associated with a business. The applicant became aware of these improvements and activities by way of a code violation notice. Since being notified, the applicant has corrected all of the violations but the porch, which requires a variance in order to remain. The applicant could reconstruct the original porch without the need for a variance.

The applicant explained that to make the porch meet the setback they would need to completely remove and replace the porch. This would force the current tenants to use the rear entry as the only means of access.

The BZA noted the other structures along Mott Ave. which are in the front setbacks, and that the porch enhances the home and is a nice improvement to the neighborhood.

There were no correspondences in favor or in opposition and there was no one present to speak in favor or in opposition to the request. The BZA unanimously recommended approval of the variance with the four (4) conditions in the staff booklet.

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### STAFF RECOMMENDATIONS

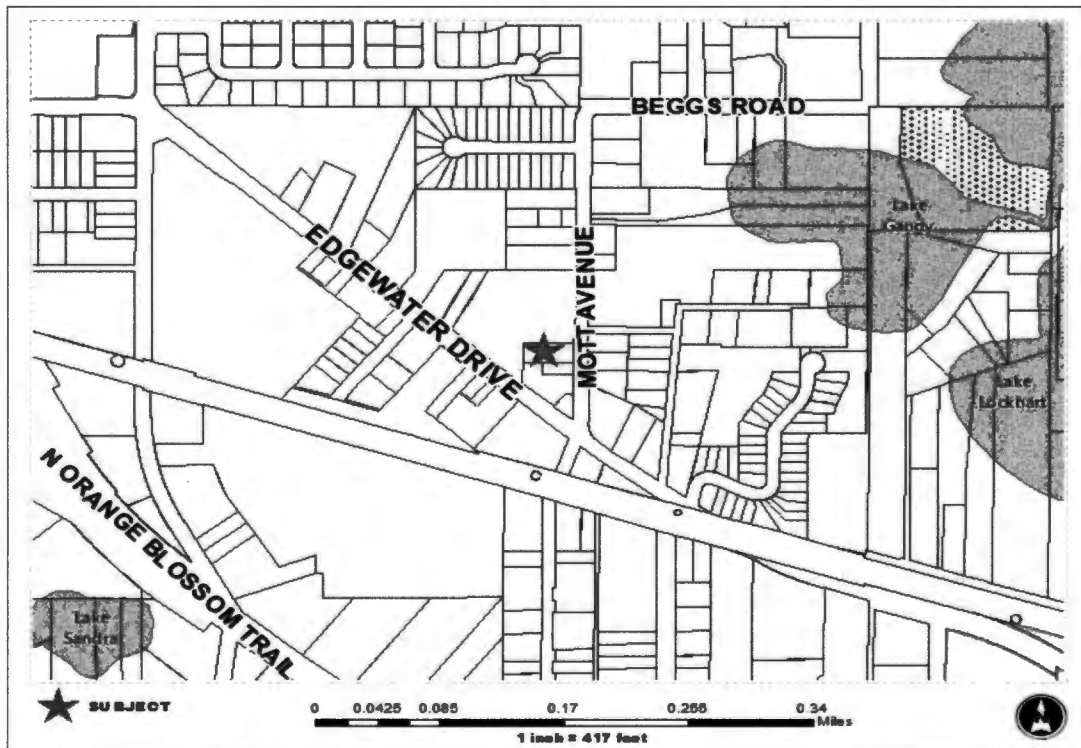
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Denial. However, should the BZA find that the request satisfies the criteria for granting a variance, staff recommends that the approval be subject to the conditions in this report.

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### LOCATION MAP

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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	R-1	R-1	R-1 & C-2	R-1	R-1
Future Land Use	LDR	LDR	LDR & C	LDR	LDR
Current Use	Single Family Residence	Religious Institution	Single Family Residence & Commercial	Single Family Residence	Religious Institution

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

The subject property is zoned R-1, Single Family Dwelling District, which allows single family homes and associated accessory structures on lots a minimum of 5,000 sq. ft. or greater in size.

The subject property consists of a 0.32 acre unplatted parcel of land. The property is developed with a single family residence built in 1935, containing 1,096 gross sq. ft. of floor area. The applicant purchased the property in 2007.

As originally built, the home had a covered porch which measured 6.7 ft. in width and 4 ft. in depth and did not encroach into the front setback. However, as represented by the applicant, a tenant living in the home, who had expressed interest in purchasing the home, removed the original covered porch and constructed a new porch, which measures 8 ft. x 16 ft. (128 sq. ft.), without obtaining the owners' authorization. The tenant also installed 425 sq. ft. of pavers in the front and rear of the house, and fenced the rear yard. All of this work was done without permits. The owners were cited by code enforcement (Incident #552577) in August 2019 for work done without permits, storage of commercial equipment, and a metal storage container which the tenant had placed on the property.

Since being notified of the violations, the owners have removed all commercial equipment and the storage container. In addition, they obtained a fence permit (F19023115), and a permit for the pavers (Z19010397). Rather than demolish the front porch, the applicant has requested this variance to attempt to retain the work. If granted, the applicant will obtain all necessary permits and inspections.

The front setback for this property is 20 ft. The applicant could reconstruct a porch matching the original porch without the need for a variance.

In evaluating the aerial photography for the area, staff found that there are several structures which are relatively close to the road. Performing rough measurements, it was found that the church sanctuary to the north is approximately 18 ft. from the front property line and the residence to the south appears to be similarly situated on that parcel. In addition, several structures on the east side of Mott Avenue also measure several feet into the 20 ft. setback.

**District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	14 ft.
Min. Lot Width:	50 ft.	75 ft.
Min. Lot Size:	5,000 sq. ft.	13,765 sq. ft.

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

	Code Requirement	Proposed
Front:	20 ft.	16.6 ft.
Rear:	20 ft.	128 ft.
Side:	5 ft.	13 ft. (North)/36 ft. (South)

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**STAFF FINDINGS**

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

Because the property is a parcel of record as opposed to a platted lot, the front setback is 20 ft. rather than 25 ft. Since the home is 24.6 ft. from the front property line, there is ample room to provide a covered entry porch the same size as existed before the tenant demolished it and replaced it with the current unpermitted porch. There are no special conditions peculiar to the land or structure.

**Not Self-Created**

The tenant constructed the improvements without the owner's knowledge. The actions were not self-created.

**No Special Privilege Conferred**

Granting the variance will confer a special privilege. Having a front porch or covered entry way is a common amenity. However, the applicant could replace the unpermitted porch with a functional porch such as that which existed before the unpermitted construction without the need for a variance.

**Deprivation of Rights**

There is no deprivation of rights. The applicant can have a front porch which is fully compliant with the setbacks.

**Minimum Possible Variance**

Since the applicant can construct a front porch which meets the setbacks, any variance would be more than the minimum possible variance.

**Purpose and Intent**

Since the applicant can construct a front porch which meets the front setbacks, denial of the variance would be in keeping with the purpose and intent of the code.

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## CONDITIONS OF APPROVAL

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1. Development shall be in accordance with the site plan and elevations dated April 9, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 applicant shall obtain a permit for the covered porch within 180 days of final action on this application by Orange County, or this approval becomes null and void.

C: Tharpe Belote  
529 W. Winter Park St.  
Orlando, FL 32804

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COVER LETTER

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Tharpe D Belote

02/01/2020

Request for Variance of Front Porch

7218 Mott Ave.

Orlando, Fl. 32810

Parcel# 32-21-29-0000-00-017

I am requesting a variance to finish a wooden front porch onto my rental property at 7218 Mott Ave. Orlando, fl. 32810.

**Special Conditions and Circumstances:** I have a small rental property which was built in the 30's before zoning to which a tenant has made repairs and modified the front porch. Being that the zoning regulations put the easement up to the front wall of the house I can no longer remove and replace the front porch back into its original state.

**Not Self-Created:** The tenant said he was going to fix a leak where the roofline and original front porch met. He decided, without my knowledge, to enlarge the porch as he was fixing the leak. I found this out by receiving a code violation in the mail. Ref# 552577.

**No Special Privilege Conferred:** Many houses in this neighborhood have front porches.

**Deprivation of Rights:** If no variance is granted, I would not be able to go back to the original configuration, since this would also be in violation of existing code. This would put undue burden on any occupants because they would no longer be able to use the front door, as the house is on a raised foundation.

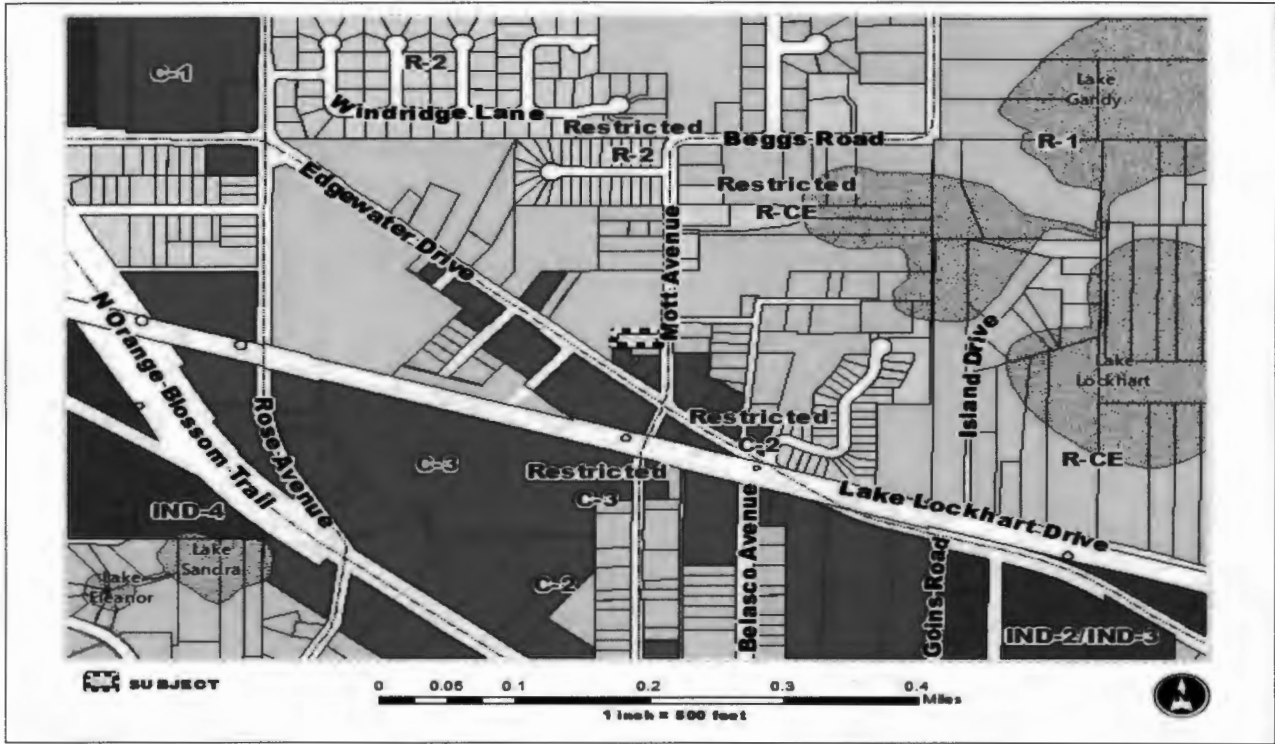
**Minimum Possible Variance:** As noted, the previous tenant has already begun the construction of the porch. It just remains to me to bring it up to code.

**Purpose and Intent:** The said porch is wooden with a base of 8' x 16', one story high with a metal roof that blends into the existing house. This structure adds to curb appeal and brings up the beauty and value of the surrounding houses in the neighborhood.

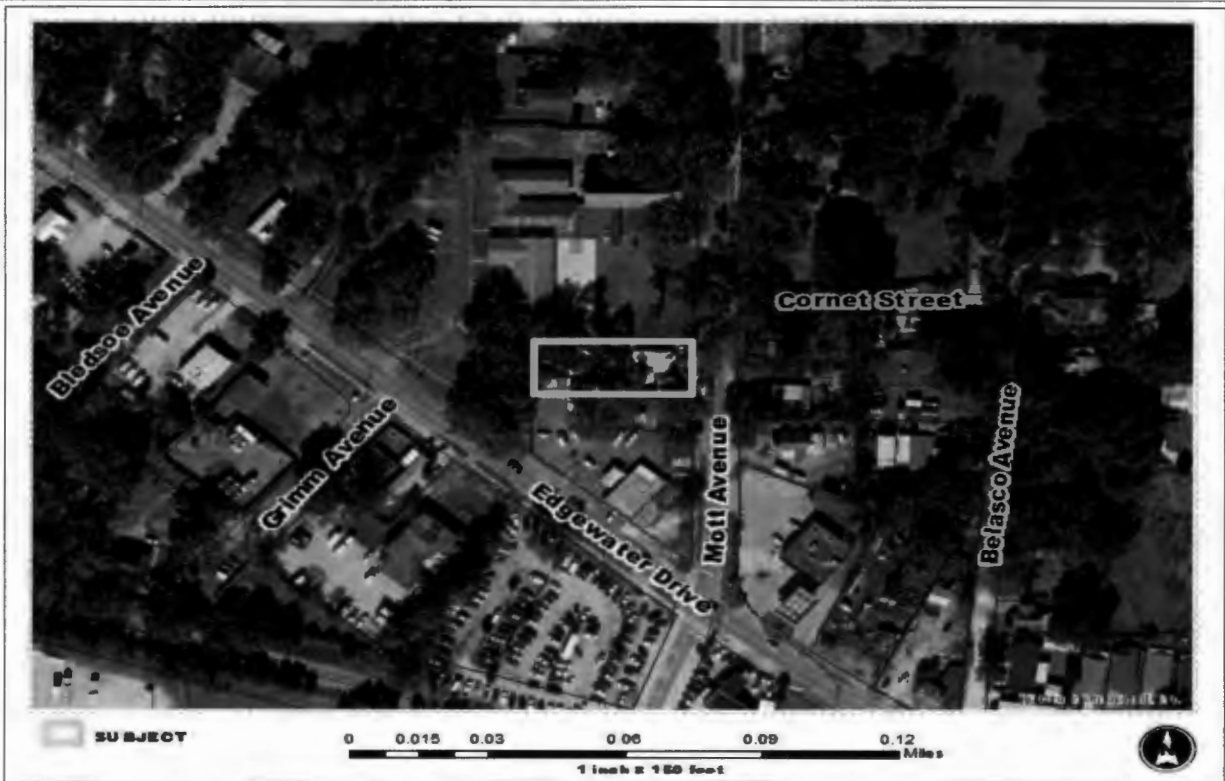
Thank you for your consideration,

Tharpe D. Belote

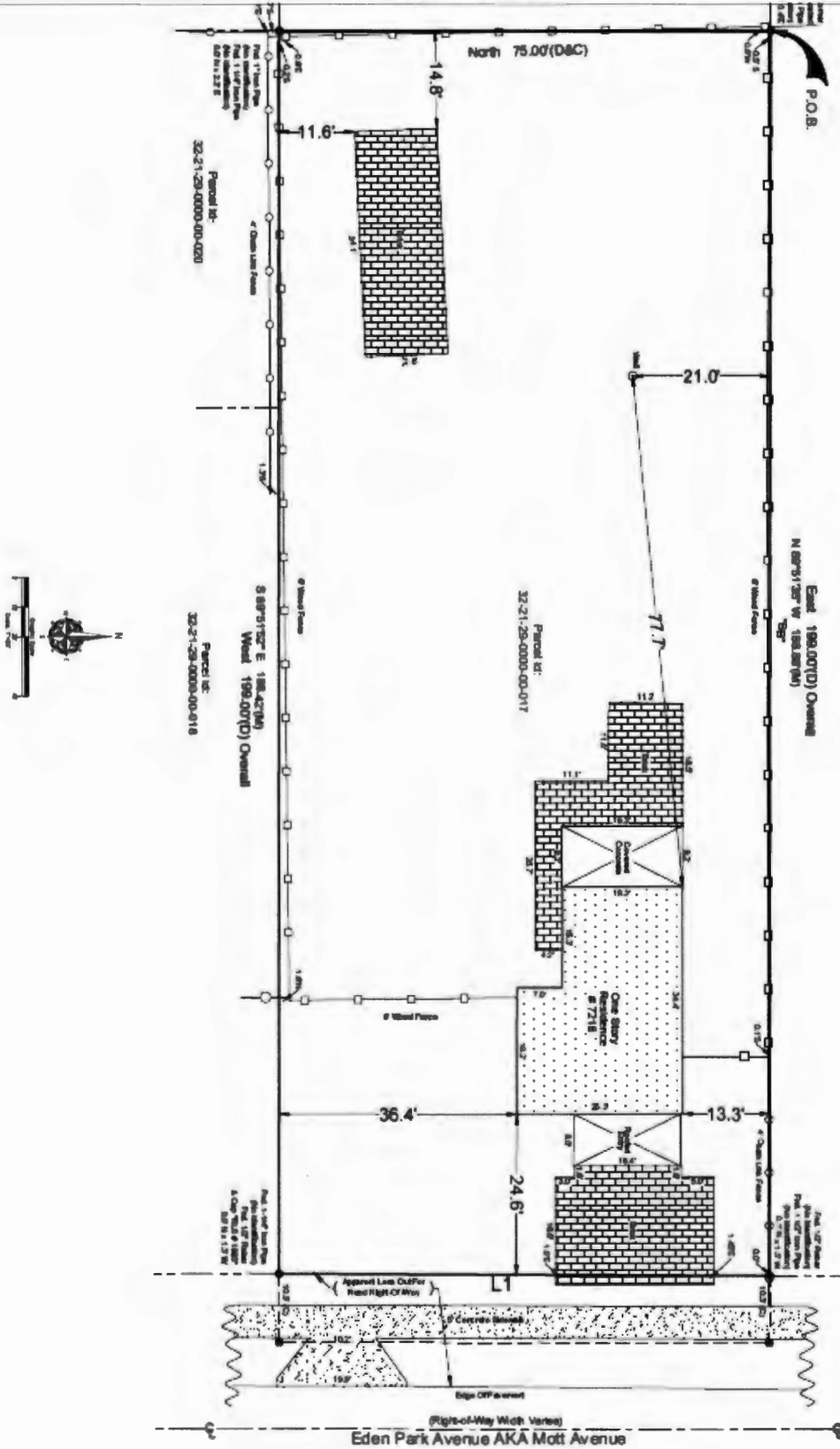
ZONING MAP



AERIAL MAP

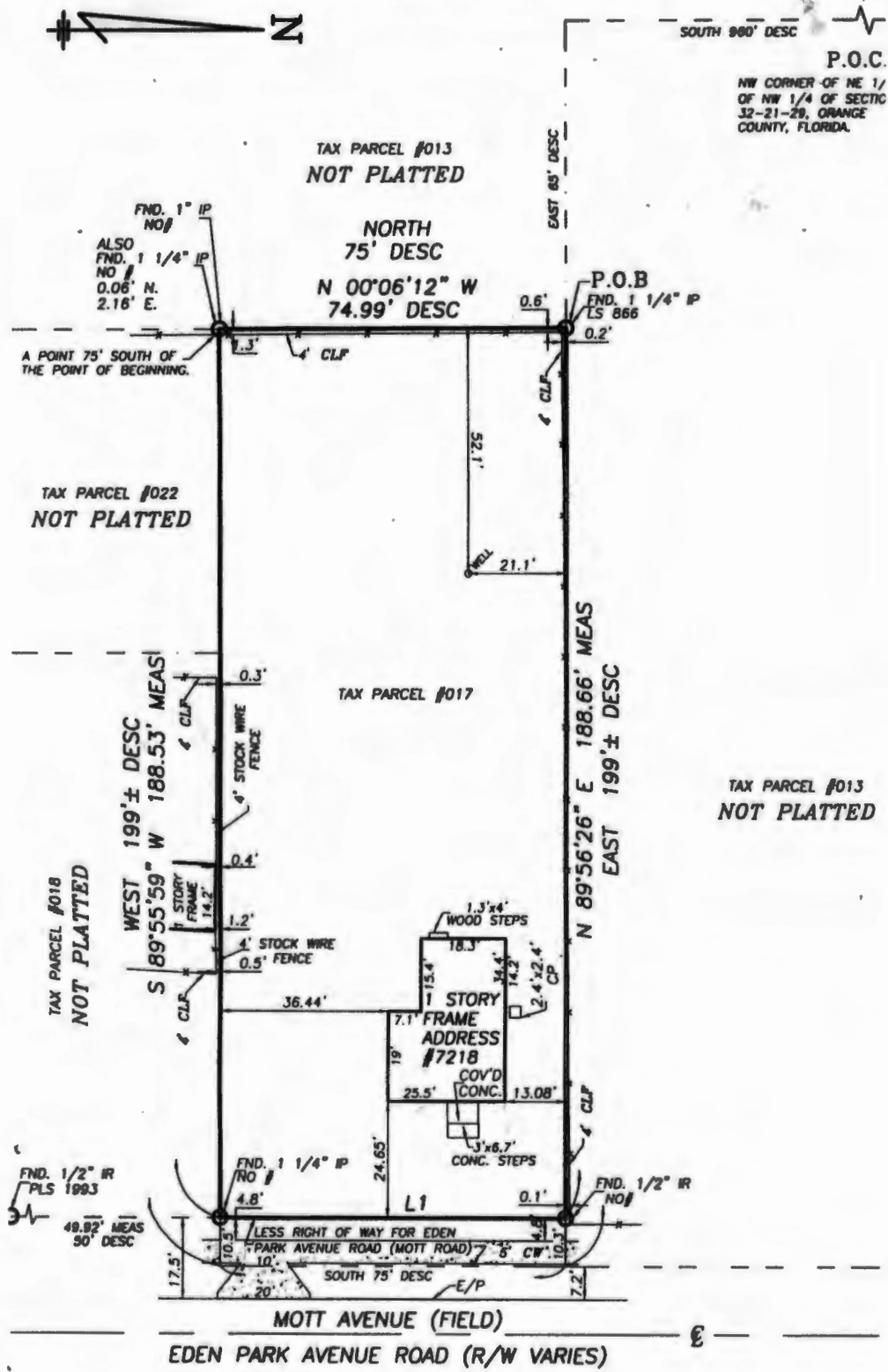


CURRENT SURVEY

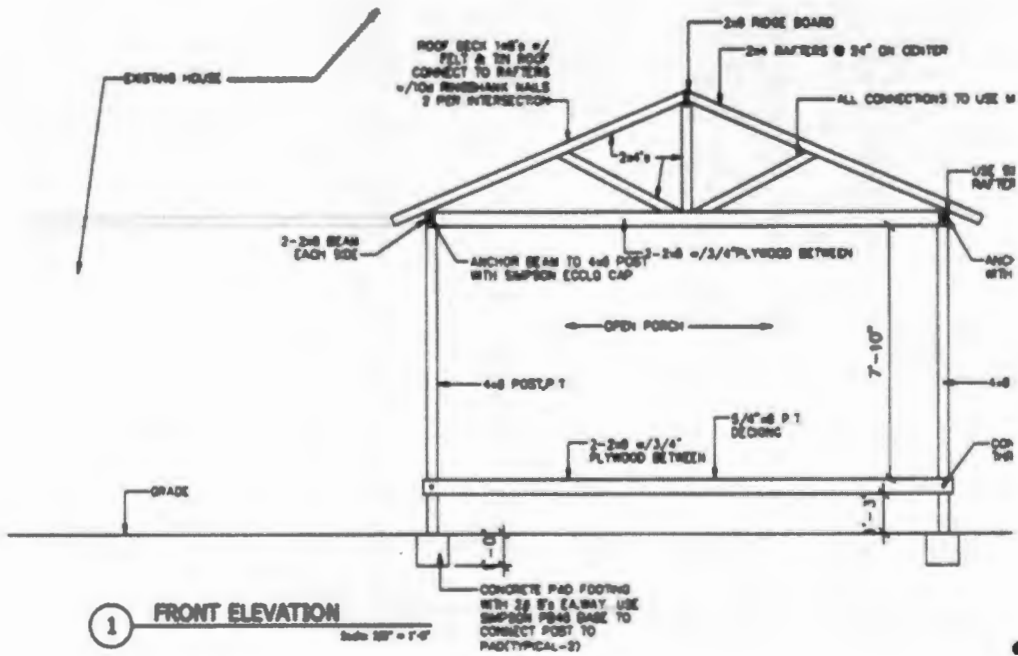
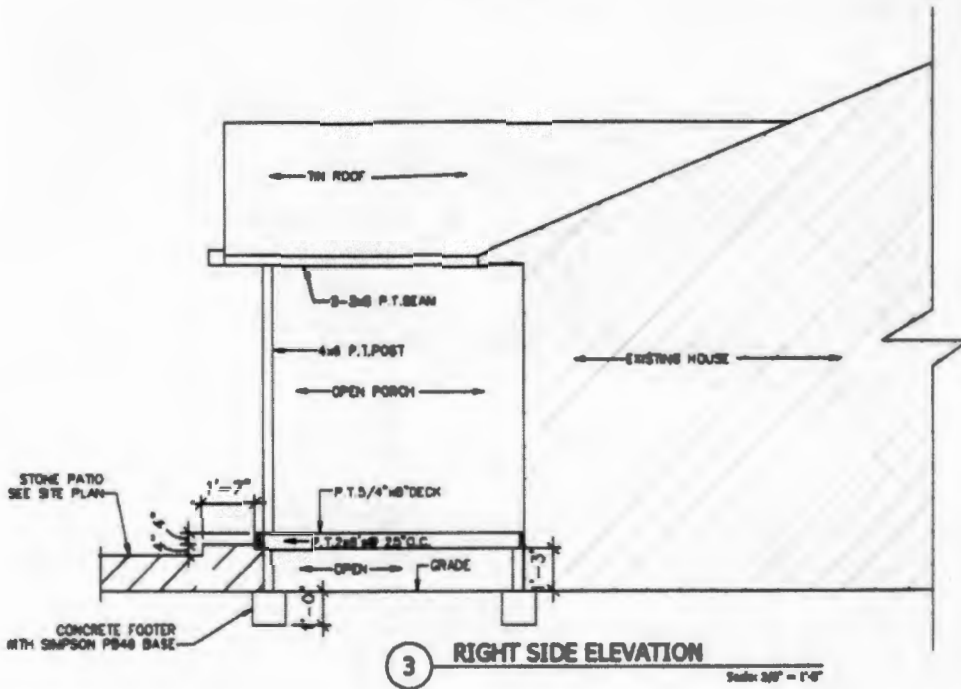




PREVIOUS SURVEY



# ELEVATIONS



**SITE PHOTOS**



**Subject property looking west**



**Subject property before new porch looking northwest**

**SITE PHOTOS**



**Neighboring residence looking south**



**Neighboring religious institution viewed from steps of porch, looking north**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 04, 2020**

Case Planner: **David Nearing, AICP**

Case #: **VA-20-06-026**

Commission District: **#5**

## GENERAL INFORMATION

APPLICANT(s): **ASHLEY HEAFY**

OWNER(s): **MATTHEW HEAFY and ASHLEY HEAFY**

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

- 1) **To allow an existing residence to be located 32 ft. from the rear property line in lieu of 35 ft.**
- 2) **To allow a allow a generator to be located 5.8 ft. from the north side property line (adjacent to the house) in lieu of 10 ft.**

PROPERTY LOCATION: **1815 Palm Ln., Orlando, FL 32803, east side of Palm Ln., approximately 275 ft. north of Corrine Dr.**

PARCEL ID: **18-22-30-4748-00-331**

LOT SIZE: **90 ft. x 130 ft./12,600 sq. ft. (0.29 acres)**

NOTICE AREA: **500 ft.**

NUMBER OF NOTICES: **94**

**DECISION:** Recommended **APPROVAL** of the Variance requests in that the Board made the finding that the requirements of Orange County Code, Section 30-43(3) have been met; further, said approval is subject to the following conditions as amended (unanimous; 7-0):

1. **Development in accordance with the site plan dated April 23, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 approval of a permit for the generator, the applicant shall submit permits for the wood deck. Failure to complete the permitting process for the deck shall result in code enforcement action.**

**SYNOPSIS:** Staff noted that the addition to the rear was properly permitted, however, because it is now living space which encroaches into the rear setback, Variance #1 was added. Staff further explained that the applicants had purchased a permanent generator, and they discovered during the permitting process that if they wanted to locate it alongside the home, a 10 ft. setback was required. Staff noted that there is an area in the northeast corner of the yard where the generator could be placed to meet setbacks. Staff also noted that they had received nine (9) correspondence in support of the request and none in opposition. One (1) correspondence was received from the most impacted applicant abutting the north property line where the applicant wished to place the generator.

The applicant stated that the proposed generator location was advised by not only the generator manufacturer, but also the installer of the underground propane tank. Both advised against long runs of either gas or power lines. Since the applicant and their spouse work from home, they need a reliable source of power for their home office equipment. The BZA asked the applicant when they had purchased the home, which was built in 1952 before zoning. The applicant responded that they purchased the home in 2012. There being no one else present to speak in favor or opposition to the request, the public hearing was closed.

The BZA concluded that the home's age and the location of the power panel was the special condition and circumstance supporting the request, and that since the applicant purchased the home long after it was constructed it is not self-created. The further the generator is from the connection to the home the less efficient it operates therefore no special privilege is conferred by allowing it to be near the panel. It will be a deprivation of rights if they are not allowed to have the ability to maintain power after hurricanes. The BZA unanimously recommended approval of both variances with the three (3) standard conditions, plus Alternate Condition #4.

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#### **STAFF RECOMMENDATIONS**

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Approval of Variance #1 and denial of Variance #2. However, should the BZA find that the applicant has satisfied the criteria for the granting of both variances; staff recommends that the approval be subject to the conditions in this report substituting Alternative Condition #4 for Condition #4.

**LOCATION MAP**



**SITE & SURROUNDING DATA**

	Property	North	South	East	West
Current Zoning	R-1AA	R-1AA	R-1AA	R-1AA	R-1AA
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 zoned 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 subject property consists of a 0.29 acre lot in Lake Sue Park. The property is developed with a 2,649 sq. ft. single family home constructed in 1952, including an attached two-car garage. The applicant purchased the subject property in July 2012.

The house has a room at the rear with a structural roof attached to the main residence which is located 32 ft. from the rear (east) property line. This room was formerly a lanai, which was enclosed in 2018 (B18007182). A field visit revealed that the pillars supporting the roof were constructed of the same materials as the home and

may have been constructed with the home in 1952. It was determined at the time of permitting that while the porch was nonconforming as to setbacks, the amount of nonconformity was not being increased, therefore they were allowed to enclose the room. In converting the lanai, an open-air covered porch, to an enclosed glassed in space, the living area of the home was extended into the rear setback, resulting in the need for Variance #1. There is also an existing wood deck located behind the glassed room. No permit could be found for this deck.

The applicant wishes to have a permanent generator for the home to protect their family during power outages. They purchased the generator and pad in 2019, which currently sit next to the residence on the north side of the home adjacent to the A/C compressor where they wish to connect it to the home’s main power box. When they attempted to permit the generator, they became aware that if a generator is located on the side of a home, it must have a setback of 10 ft. from the side property line, resulting in the need for Variance #2.

The applicant indicates that the only area to the rear of the home is on the southeast corner of the home, which is currently their children's play area. It is also on the opposite side of the home from the main power box. Staff notes that it could also go in the northeast corner of the yard.

The applicant has submitted letters of support from seven (7) adjacent property owners, including the most impacted neighbor to the north. In addition, as of the preparation of this report staff had received two (2) correspondences in support and no correspondence in opposition.

**District Development Standards**

	Code Requirement	Proposed
Max Height:	35 ft.	15 ft.
Min. Lot Width:	85 ft.	90 ft.
Min. Lot Size:	10,000 sq. ft.	12,600 sq. ft.

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

	Code Requirement	Proposed
Front:	30 ft.	34 ft.
Rear:	35 ft.	32 ft.
Side:	7.5 ft. (House)/10 ft. (Generator)	10 ft. (House)/5.8 ft. (Generator)

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**STAFF FINDINGS**

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**VARIANCE CRITERIA**

**Special Conditions and Circumstances**

Regarding Variance #1 the rear setback, the home is set back 34 ft. from the front property line where a 30 ft. setback is sufficient. If the home were at the 30 ft. front setback, Variance #1 would not be needed.

Regarding Variance #2 for the generator, the property is not irregularly shaped, and is generally level. There are no special conditions or circumstances particular to the subject property.



### **Not Self-Created**

Regarding Variance #1, built in 1952, the current owners purchased the home in 2012, and are not responsible for the siting of the home.

Regarding Variance #2, the applicant could place the generator behind the home, but prefers it to be located alongside the home, which is considered a self-created hardship.

### **No Special Privilege Conferred**

Regarding Variance #1, the home was constructed prior to the inception of zoning in Orange County with no required rear setbacks.

Regarding Variance #2, other applicants for permanent generators elsewhere have placed their generators to the rear of their homes to comply. Granting the variance would confer a special privilege not afforded to others.

### **Deprivation of Rights**

Regarding Variance #1, granting the variance for rear setback will definitively establish the home as a lawful nonconforming structure as to the location within the rear setback.

Regarding Variance #2, the applicant has the room to place the generator behind the home.

### **Minimum Possible Variance**

Regarding Variance #1, the applicant has no plans to cause the home to encroach any further into the rear setback.

Regarding Variance #2, since the applicant can comply with the siting requirements for the generator, this is not the minimum possible variance.

### **Purpose and Intent**

Regarding Variance #1, since ample open space in the rear yard for light and air circulation exists, the purpose and intent are being met for the rear setback variance.

Regarding Variance #2, the purpose for generator setback on the side of the home is to prevent the noise and fumes from the generator from impacting the occupants of a neighboring residence, and as a result placing the generator 5.8 ft. from the property line does not meet the purpose and intent.

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## CONDITIONS OF APPROVAL

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1. Development in accordance with the site plan dated April 23, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 applicant shall obtain permits for the deck within 90 days or the deck will become a code enforcement violation.
- Alt. 4. Prior to approval of a permit for the generator, the applicant shall submit permits for the wood deck. Failure to complete the permitting process for the deck shall result in code enforcement action.

C: Ashley Heafy  
1815 Palm Ln.  
Orlando, FL 32803

To Whom It May Concern:

We are the owners of 1815 Palm Lane in unincorporated Orange County and are applying for a variance for an emergency-use, propane whole home generator to install on the side of our home. Our neighborhood loses power frequently during the rainy season and especially during hurricanes. Mrs Ashley Heafy is often home alone during these seasons with our young twins, and we both work from home requiring power at all times.

Propane generators are quiet, safe, low-emissive, and better for the environment than traditional temporary gas generators. It is also completely covered from view by our new, high-quality fence and landscaping. The structure (propane, whole-home generator) is 48"L X 25"W X 29" H.

The county currently has a zoning requirement of 10 feet from the property line, however, the generator takes up 3 feet of space leaving us just a few feet shy of the setback requirement. We have tried to resolve installing this on other areas of our property, however, the only area that would meet setback requirements is in the middle of our children's safe play space and would make the only exterior home appliance placed in a random location. The side of our home where we hope to install the generator already houses our electrical boxes and wires, AC units, propane line, gas water heater, and all other home appliances that we can keep safely away from our family use spaces.

We have explained in detail our plans with our neighbors

and there have been no objections. We have received letters of support from both our immediate and surrounding neighbors.

Thank you so much for your consideration.

*Ashley M. O'Connell*

1. **Special Conditions and Circumstances:** If granted, this variance will do no harm to any neighboring homes or the neighborhood itself. The generator is fully covered at all sight-lines by a very nice fence. The distance to the nearest neighbor is more than enough; and that next-door neighbor has given us full approval for the variance to allow this generator to be fully installed and completed.

2. **Not Self-Created:** This was not a self-created issue. Our home, neighborhood, and properties in our neighborhood do not have the modern constrictions due to the era they were planned and built. We need to ask for this variance to help fit the 1950's home distances to today's modern codes.

3. **No Special Privilege Conferred:** This would not be granting special privilege to us. It simply is to protect our family in times of emergency. Other homes nearby have the same sorts of generators installed by their home and have better land clearances. Our home and property lines don't have the spacing required due to the year the home was built.

4. **Deprivation of Rights:** Modern homes in modern neighborhoods in our county have better setbacks than our 1950's home allotment. The sides of our home simply do not have the required lengths to pull off the setback. The back of the home isn't an option as we have a deck there, and the far side will eventually have a pool for the children.

5. **Minimum Possible Variance:** We are asking for a simple few feet variance that doesn't exist anywhere else on our 1950's home. The setbacks required to today's codes are not a thing that existed with the 50's style homes. The extremely minimal, few feet we're asking for will allow this whole home, propane, safe generator to be hooked up to power our home in times of dire emergency.

6. **Purpose and Intent:** The purpose of this whole home generator is to protect Mrs. Ashley Heafy and our infant children while Mr. Matthew Heafy is away. Going with the propane generator is already so much safer than the typical gasoline generator. Those are both highly risky for neighbors and home-owners alike. Even bystanders are affected by the lethal gases produced. The propane generator does not do this, and ours is so far from any neighbors that it absolutely will be 0 hassle in sound, smell, and anything else.

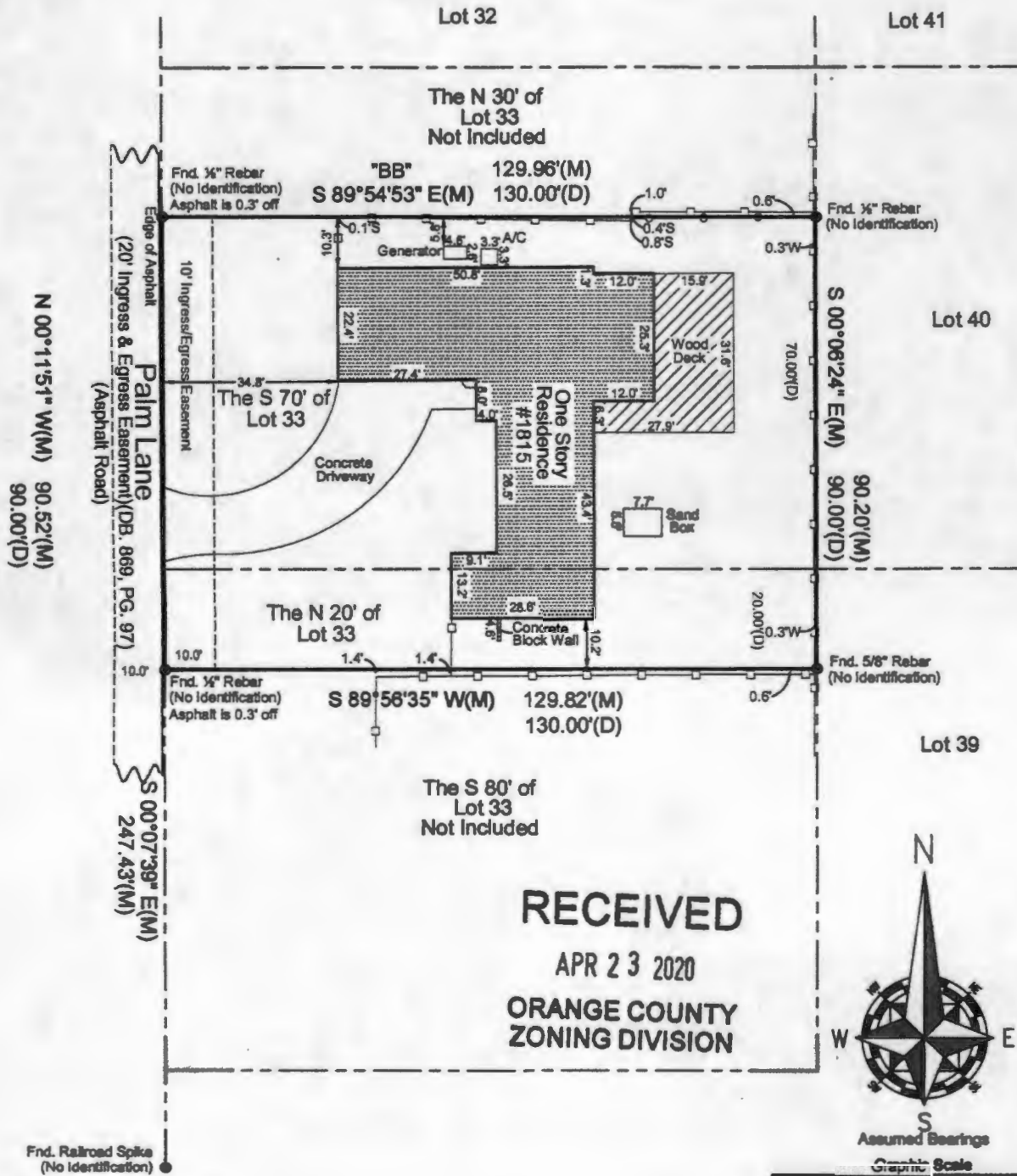
ZONING MAP



AERIAL MAP



**SURVEY**



N 00°11'51" W(M) 90.52'(M)  
90.00'(D)

Edge of Asphalt  
Palm Lane  
(20' Ingress & Egress Easement)(DB. 869, PG. 97)  
(Asphalt Road)

Frnd. Railroad Spike (No Identification)

Revised Survey: 3/11/20 - MKS

**SITE PHOTOS**



**Subject property looking east**



**Rear yard looking north**



SITE PHOTOS



North side yard looking west



A/C pad and preferred generator location looking west

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 04, 2020**

Case Planner: **David Nearing, AICP**

Case #: **VA-20-06-029**

Commission District: **#5**

## GENERAL INFORMATION

APPLICANT(s): DEAN FOGG

OWNER(s): DEAN FOGG and MARGARET FOGG

REQUEST: Variance in the R-1A zoning district to allow an existing accessory structure to remain 4.4 ft. from the east side property line in lieu of 5 ft.

Note: This is the result of a Code Enforcement action.

PROPERTY LOCATION: 20233 Macon Parkway, Orlando, Florida, 32833, north side of Macon Pkwy., east of Bancroft Blvd., west of S.R. 520

PARCEL ID: 01-23-32-7597-16-090

LOT SIZE: 80 ft. x 125 ft./0.229 acres

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 56

**DECISION:** Recommended **APPROVAL** of the Variance request in that the Board made the finding that the requirements of Orange County Code, Section 30-43(3) have been met; further, said approval is subject to the following conditions as amended (unanimous; 7-0):

1. Development in accordance with the site plan dated April 8, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 applicant shall obtain permits for the shed within 180 days of final action on this application by Orange County or this approval is null and void.
5. If the shed is ever destroyed or removed, any replacement shed shall meet Code.

**SYNOPSIS:** Staff explained the history of the property, including the fact that the applicant constructed the existing home in 2017. In 2018, they hired a contractor to build a shed who stated that no permits would be needed. After they were cited by Code Enforcement, the applicant attempted to permit the shed, and discovered that the shed was partially located in the side setback, and in two (2) utility easements. They applied for a partial vacation of the two (2) easements, which was granted by the BCC in March 2020 and submitted the variance request to remedy the setback violation. Staff indicated that four (4) correspondence in support and three (3) in opposition were received.

The applicant noted that they came to Florida from Texas where permits for sheds are not required. They also indicated that they had gone through the abandonment process, and they now needed the variance to finish the permitting process. The BZA asked the applicant if they had the name of the contractor, to which the applicant replied they did, however, the phone number was disconnected. There was no one else present to speak in favor or in opposition to the request.

The BZA concluded that the reliance on a contractor who misinformed them was both a special condition and circumstance, which also indicated that the need for a variance was not self-imposed. Others in the same situation have been able to locate a shed in a similar location, so the variance is not conferring any special privilege, and that this is the minimum variance needed. The BZA unanimously recommended approval of the variance request with the four (4) conditions recommended in the staff booklet, plus a 5th condition that if the shed is ever destroyed or removed, any replacement must meet the setbacks in effect at that time.

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### STAFF RECOMMENDATIONS

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

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### LOCATION MAP



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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	R-1A	A-2	R-1A	R-1A	R-1A
Future Land Use	LDR	PRE	LDR	LDR	LDR
Current Use	Single Family Residential	Vacant/Retention	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 zoned R-1A, Single Family Dwelling district, which allows single family homes and associated accessory structures on lots a minimum of 7,500 sq. ft. or greater.

The subject property consists of a 0.229 acre lot created through the Rocket City Unit 1 plat recorded in 1963. The property is developed with a 2,550 sq. ft. single family residence constructed in 2017, and a 140 sq. ft. wood shed constructed in late 2018 or early 2019. The shed was constructed without permits.

The applicant hired a contractor who they say told them that no permits were needed for a shed, and the shed was installed without a permit. The applicant was cited by Code Enforcement in March 2019 (Incident #535955).

After being cited, the applicant attempted to apply for a permit to correct the issue (B19008703). The permit could not be issued due to the fact that the shed was located 0.6 ft. into the side setback, 1.6 ft. into a six (6) ft. utility easement along the east side of the property and 1.4 ft. into an eight (8) ft. utility easement along the rear property line.

The applicant submitted a Petition to Vacate (PTV #19-05-020) to vacate a portion of the two (2) easements. On March 24, 2020, the Board of County Commissioners approved a resolution to grant the partial vacations. They are now requesting a variance to the side yard setback to allow the shed to remain 4.4 ft. from the east side property line.

The applicant obtained approval of the shed from the HOA, and a letter of support from four (4) adjacent neighbors, including the neighbor to the west. The lot to the east is currently vacant; however, a permit was issued in April for construction of a new home (B20005920). Staff did receive one (1) correspondence in opposition.

**District Development Standards**

	Code Requirement	Proposed
Max Height:	15 ft. (accessory structure)	12 ft.
Min. Lot Width:	75 ft.	80 ft.
Min. Lot Size:	7,500 sq. ft.	10,001 sq. ft.

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

	Code Requirement	Proposed
Front:	25 ft.	25.3 ft.
Rear:	5 ft. (accessory structure)	6.6 ft. (accessory structure)
Side:	5 ft. (accessory structure)	4.4 ft. (accessory structure east side)

**STAFF FINDINGS****VARIANCE CRITERIA****Special Conditions and Circumstances**

The subject property is rectangular and there is a large backyard in which the shed could have been placed to meet code. There are no special conditions or circumstances.

**Not Self-Created**

The shed was installed without a permit. Had a permit been requested, the shed could have been relocated to a conforming location.

**No Special Privilege Conferred**

Approval of the permit would confer a special privilege as others in the same district are required to meet code.

**Deprivation of Rights**

The applicant could extend the existing slab and move the shed 0.6 ft.

**Minimum Possible Variance**

Given that the shed is existing, if the variance were granted this would be the minimum needed.

**Purpose and Intent**

Given the minimal amount of variance needed, the purpose and intent of the code would be met if the variance were granted.

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## CONDITIONS OF APPROVAL

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1. Development in accordance with the site plan dated April 8, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 applicant shall obtain a permit for the shed within 180 days of final action on this application by Orange County or this approval becomes null and void.

C: Dean Fogg  
20233 Macon Pkwy.  
Orlando, FL 32833

## COVER LETTER

Dean Fogg  
20233 Macon Parkway  
Orlando FL 32833  
[dfogg00@gmail.com](mailto:dfogg00@gmail.com)

Please grant us a variance for our storage shed located at 20233 Macon Parkway Orlando FL 32833. We are requesting a variance to allow an accessory structure to remain with a 4.4 foot side setback in lieu of 5 foot.

We worked with Ranger Drainage District and obtained a permit and variance. We applied for and were granted, by the Board of County Commissioners a petition to vacate, 3 feet of the drainage and utility easement on the side and rear property lines.

We hired a general contractor to pour a concrete foundation and install a shed (accessory building) in our backyard. The contractor assured us we did not need a building permit for the work being done. We learned the hard way, when code enforcement showed up that permits were required.

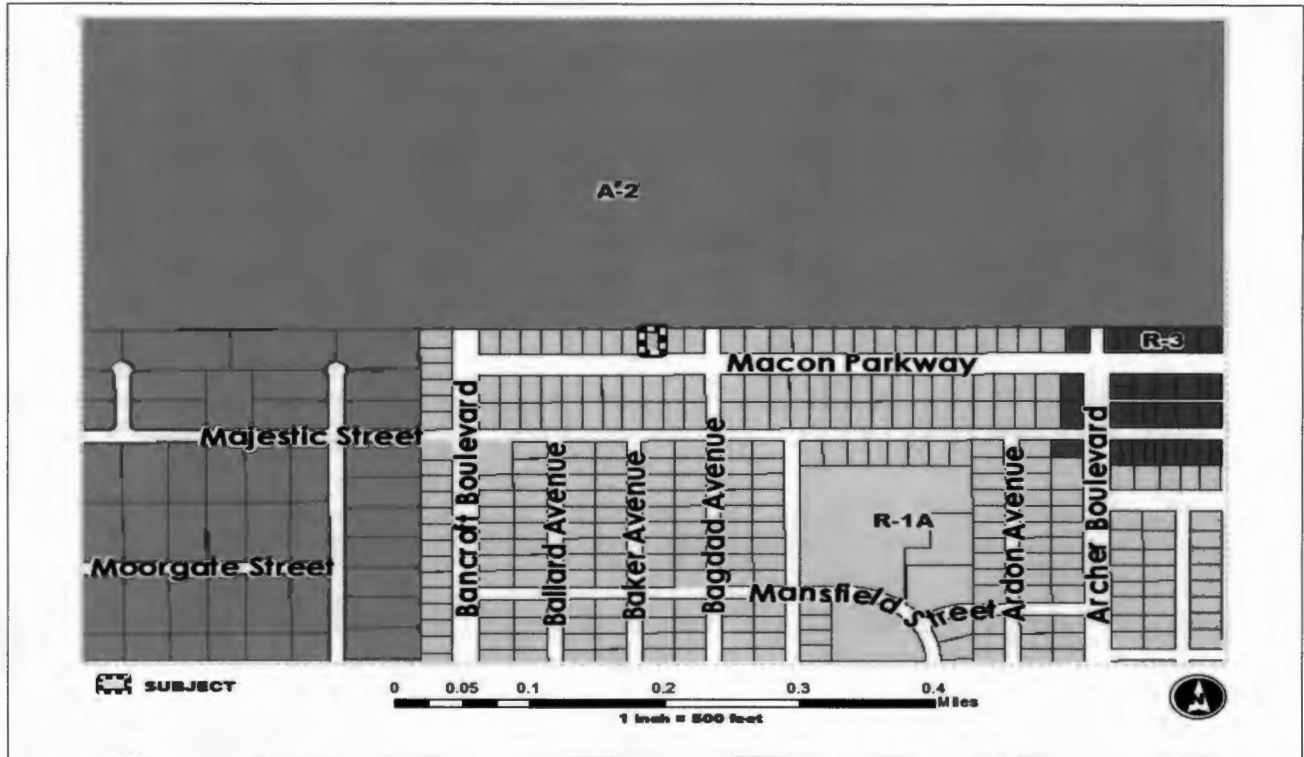
The storage shed is constructed from stick framing, hardie board siding and home matching assault roof shingles. The measurements are 10 feet wide by 14 feet long and 12 feet tall equaling 120 square feet.

We are not requesting any special privilege to any additional properties. Our intention is not to deprive any other properties of their rights, we are simply requesting that we be granted a variance of 0.6 feet in order to obtain the proper building permits to bring the property into compliance and keep our shed. W

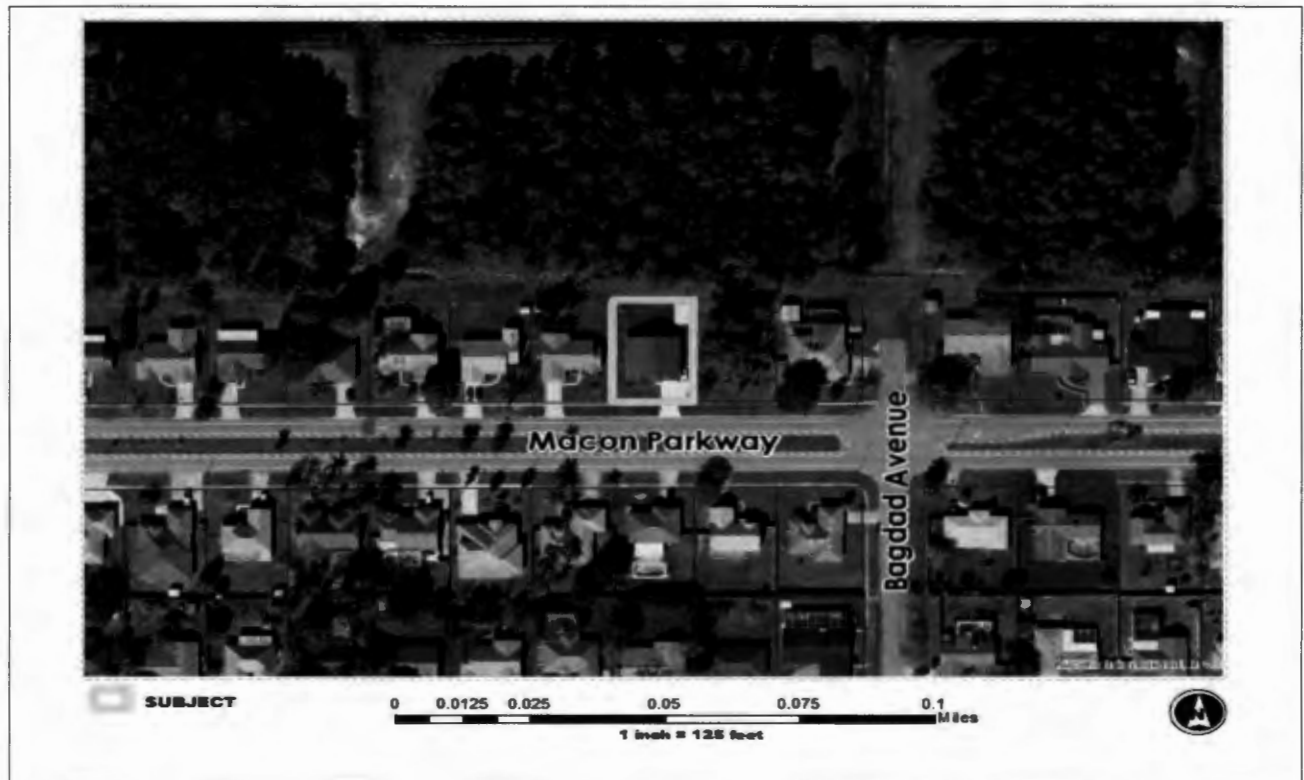
When petitioning for the vacation of the easement area Orange County issued us a pole sign to post in our front lawn. Please issue us the same type of sign.

1. **Special Conditions and Circumstances:** Special conditions are we hired a general contractor that did not adhere to the property line locations.
2. **Not Self-Created:** The special condition does not result from the actions of the application.
3. **No Special Privilege Conferred:** No special privilege that is normally denied others is being requested.
4. **Deprivation of rights:** No deprivation of rights of other properties is being requested. The shed will increase the value of the property and properties around our home.
5. **Minimum Possible Variance:** We are requesting the minimum possible variance be approved in order to keep the shed.
6. **Purpose and Intent:** The zoning variance requested in the minimum variance that will make possible the reasonable use of the land in order to have the shed at its current location.

ZONING MAP



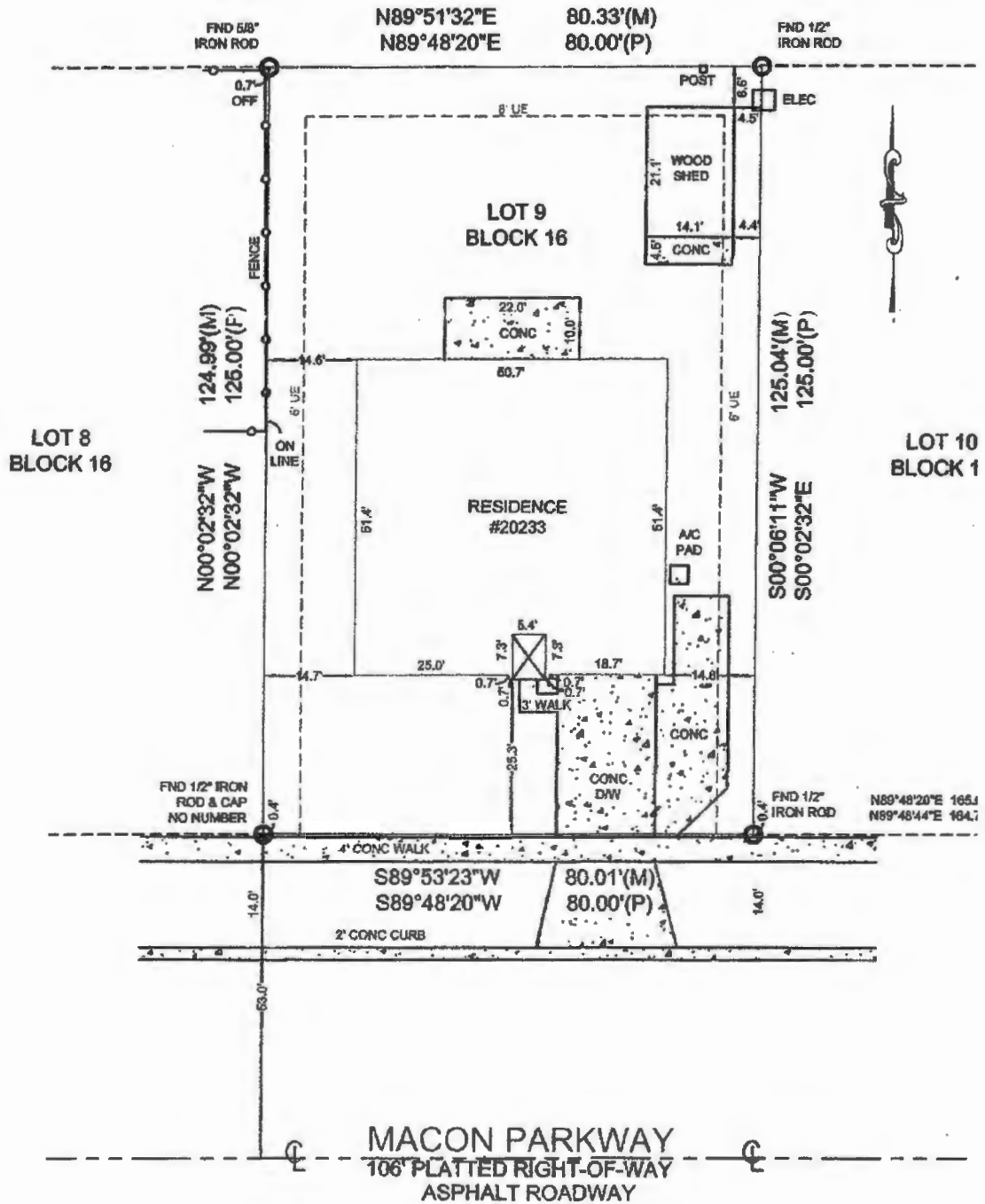
AERIAL MAP

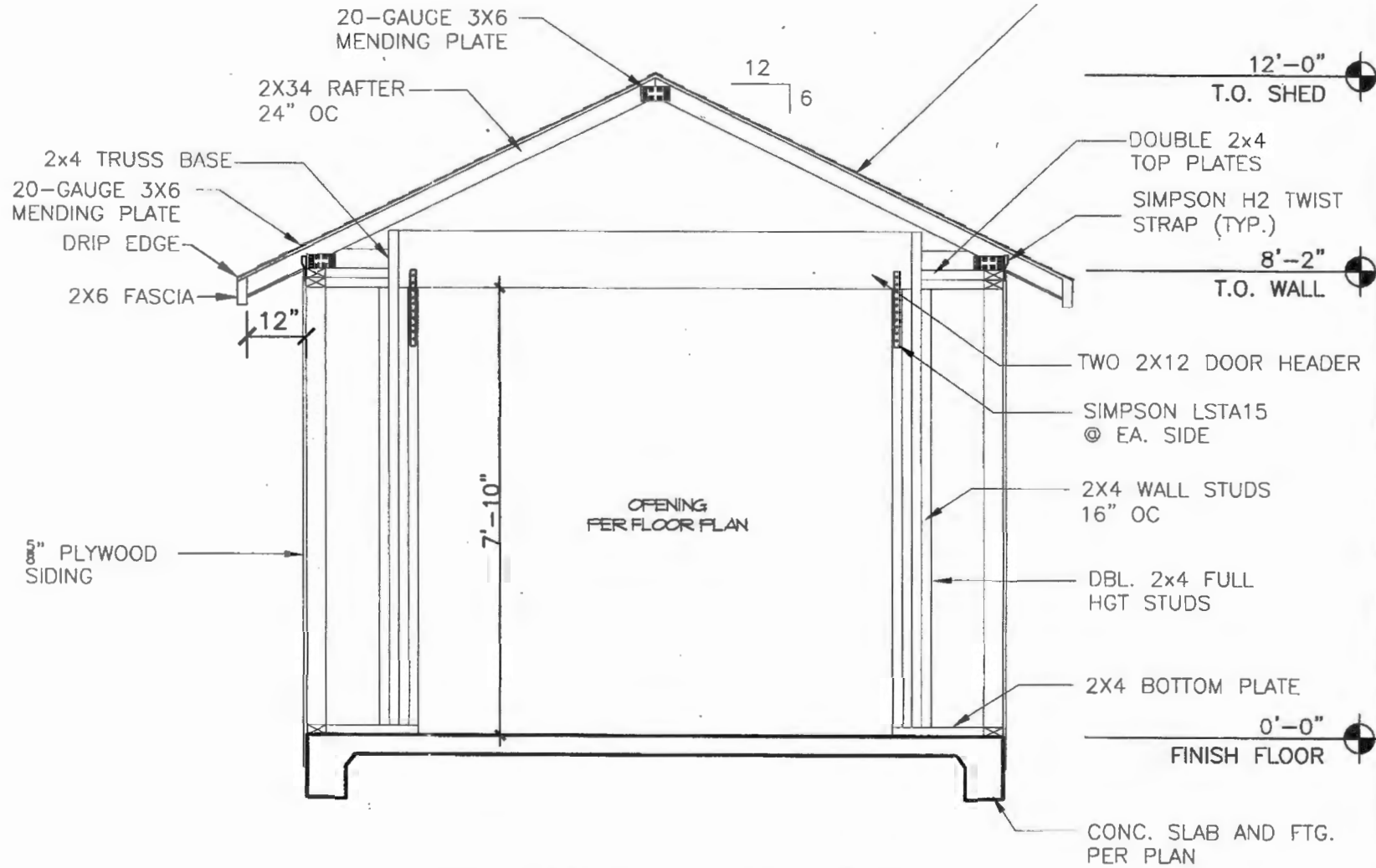




SURVEY

UNPLATTED  
PARCEL ID# 01-23-32-0000-00-004





SHED DETAIL

1 SHED FRONT VIEW  
A-3 SCALE: 3/8" = 1'-0"

**SITE PHOTOS**



**Front from Macon Pkwy.**



**Shed from front**

**SITE PHOTOS**



**Shed from rear yard**



**Shed from rear**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 04, 2020**

Case Planner: **David Nearing, AICP**

Case #: **VA-20-05-025**

Commission District: **#4**

## GENERAL INFORMATION

APPLICANT(s): RUDY CALLAHAN

OWNER(s): WILBUR STONE

REQUEST: Variances in the A-2 zoning district:

- 1) To allow a cumulative total of 5,500 sq. ft. of accessory floor area in lieu of 3,000 sq. ft.
- 2) To allow an existing accessory structure greater than 15 ft. in height to remain 5 ft. from the side (south) property line in lieu of 10 ft.

Note: This is the result of Code Enforcement Action.

PROPERTY LOCATION: 1501 Oberry Hoover Rd., Orlando, FL 32825, east side of Oberry Hoover Rd., approximately 400 ft. south of Iroquois Trail

PARCEL ID: 22-22-31-0000-00-044

LOT SIZE: 306 ft. x 200 ft./1.4 acres

NOTICE AREA: 700 ft.

NUMBER OF NOTICES: 69

**DECISION:** Recommended **APPROVAL** of the Variance requests, modifying #1 to reflect 4,250 sq. ft. rather than 5,500 sq. ft. in that the Board made the finding that the requirements of Orange County Code, Section 30-43(3) have been met; further, said approval is subject to the following conditions as amended (unanimous; 7-0):

1. Development in accordance with the site plan stamp-dated March 11, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed substantial deviation, change, or modification shall 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 to remove the “kitchen” in Accessory Building #1 shall be obtained with the permit for the structure itself, or the applicant shall obtain the required permits to allow this structure to be used as an Accessory Dwelling Unit. “Kitchen” shall include any 220 v outlets, overhead cabinets, full size refrigerator, stove, and full size sink.
5. The applicant shall obtain a permit for all unpermitted structures within 180 days of final action on this application by Orange County, or this approval becomes null and void.
6. The variance shall be limited to a cumulative total of 4,250 sq. ft. of accessory floor area.

**SYNOPSIS:** Staff explained the history of the property, stating that when the current owner acquired the property in 2007, the building was already located in the southeast corner of the property. Staff added that the majority of the structures and code violations were the result of a prior tenant. A 2010 prior variance request which was partially approved was explained, including the fact that two (2) of the existing structures that were required to be demolished by the 2010 BZA decision had not been removed. The applicant is now attempting to retain the remaining structures. Staff concluded by noting that they had received three correspondence in favor of the request from neighboring property owners and no correspondence in opposition.

The owner’s agent explained the history between the property owner and the tenant. After the code enforcement action, the tenant would tell the owner that they were working on the issue with Code Enforcement and Zoning, so the two buildings could stay which were to have been demolished after the 2010 variance. Meanwhile, fines kept accruing. There is now a potential buyer, however, the accessory structure issue must be resolved first. There was no one else in attendance to speak in favor or in opposition to the request.

The BZA discussed how much less of a variance would be needed if the pole barn structure in front of the building in the southeast corner of the property was removed. Staff noted that it would reduce the request between 40 and 50%. The BZA unanimously recommended approval of the variance requests with the five conditions in the staff booklet and a new sixth condition capping the square footage of accessory structures at 4,250 sq. ft.

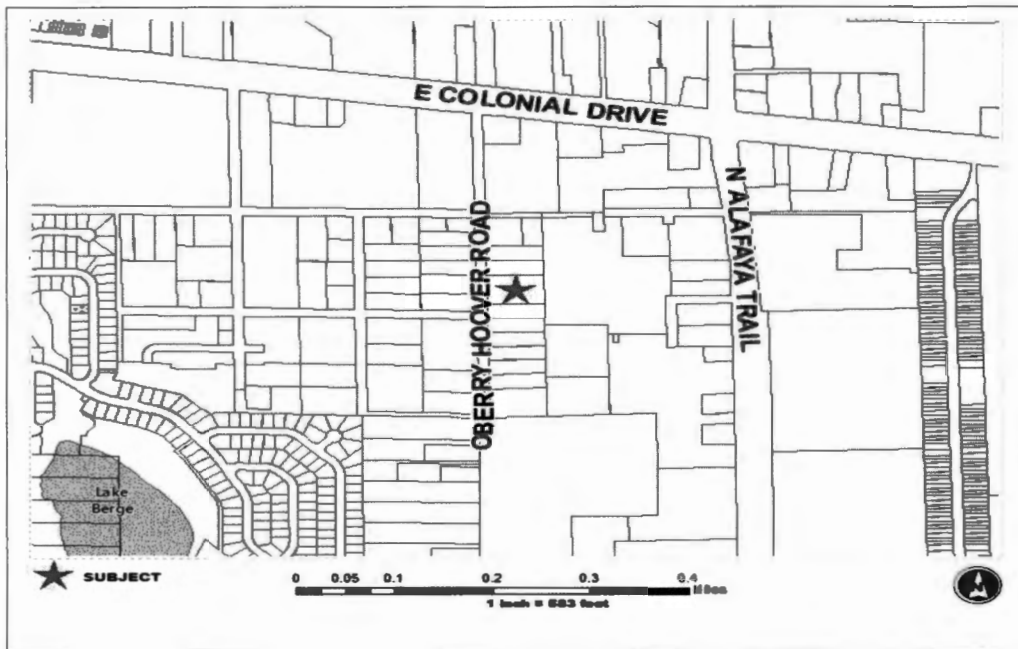
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#### **STAFF RECOMMENDATIONS**

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Denial. However, should the BZA find that the request satisfies 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	A-2	A-2	A-2	P-D	A-2
Future Land Use	LDR	LDR	LDR	P-D	LDR
Current Use	Single Family Residential	Single Family Residential	Single Family Residential	Commercial	Single Family Residential

**BACKGROUND AND ANALYSIS**

**DESCRIPTION AND CONTEXT**

The 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 subject property is 1.4 acres in size and is unplatted. It is developed with a 2,400 sq. ft. home built in 2011 (B11003423) located in the southern center of the property. In addition, there is a 2,984 sq. ft. garage and storage area that is 17 ft. tall (labeled as Accessory Structure #1 on the attached site plan), with a 1,256 sq. ft. attached pole barn (labeled as Accessory Structure #2) located in the southeastern corner of the property, and another 1,253 sq. ft. accessory structure (labeled as Accessory Structure #3) located in the northeast corner of the property. At the time it was constructed, the required rear and side setbacks for accessory structures were

five (5) ft. In 2019, a code amendment changed the setbacks for accessory structures over 15 ft. in height to 10 ft.

According to the applicant, the garage portion of the southeast accessory structure was constructed with a building permit. However, as of the date of the preparation of this report, no permit has been located. Also according to the applicant, the addition to the west side of that structure was constructed by the tenant at the time, a contractor, as a place to live while he rebuilt the home. No permit was found for the addition which contains a kitchen. At the time, a Special Exception would have been needed for the addition, which would be considered an accessory dwelling unit (ADU). The applicant has indicated that the kitchen facilities will now be removed, and the entire structure will be used for storage.

The accessory structure in the northeast corner of the site was also constructed by the same tenant, for use as equipment repair, as well as personal vehicle storage. The owner of the property was cited by code enforcement in 2009, for operating several businesses, storing construction equipment, and for construction of accessory structures without permits.

In January 2010, the owner applied for a variance (VA-10-01-002), to allow for the retention of six (6) accessory structures, totaling 5,930 sq. ft. of total cumulative floor area. At that time, the property contained an approximate 1,200 sq. ft. house, which was later demolished in 2010 (B10008578). Three of the structures identified in the staff report were Accessory Structure #1, Accessory Structure #2, and Accessory Structure #3. At the hearing, the BZA agreed to allow Accessory Structure #1 and a carport located to the south of the existing house (labeled as Accessory Structure #6, on the attached 2010 Site Plan) to remain, totaling 1,577 sq. ft. The four (4) remaining structures were required to be removed (labeled as Accessory Structure #2, #3, #4, #5), including the pole barn addition to the garage (Accessory Structure #2). At this time three (3) of the six (6) existing structures have been removed including the carport, but only 2 of the 4 that was required to be removed has been removed.

The applicant's current request is to allow for the 17 foot high as-built Accessory Structure #1, to remain in its current location in lieu of a 10 foot side setback and to allow for a total of 5,493 sq. ft. of accessory building area to remain.



**District Development Standards**

	Code Requirement	Proposed
<b>Max Height:</b>	25 ft. (Accessory structure)	17 ft. (Accessory structure #1) 9 ft. (Accessory structure #2) 13 ft. (Accessory structure #3)
<b>Min. Lot Width:</b>	100 ft.	306 ft.
<b>Min. Lot Size:</b>	0.5 ac.	1.4 ac.

**Building Setbacks and Area for Accessory Structures**

	Code Requirement	Proposed
<b>Front (West):</b>	35 ft.	107 ft. (Residence)/220 ft. (Accessory structures #1 and #2)/265 ft. (Accessory structure #3)
<b>Rear (East):</b>	5 ft.	5 ft. (Accessory structure #3)/14 ft. (Accessory structures #1 and #2)
<b>Sides (North/ South):</b>	10 ft. (Accessory structure # 1)/ 5 ft. (Accessory structures #2 and #3)	140 ft. (N)/ 5 ft. (S)(Accessory structure #1) 120 ft. (N)/ 53 ft. (Accessory structure #2) 30 ft. (N) / 114 ft. (S)(Accessory structure #3)
<b>Total Accessory Floor Area</b>	3,000 sq. ft.	2,984 sq. ft. (Accessory structure #1) 1,256 sq. ft. (Accessory structure #2) 1,253 sq. ft. (Accessory structure #3) 5,493 sq. ft.

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**STAFF FINDINGS**

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**VARIANCE CRITERIA**

**Special Conditions and Circumstances**

Regarding the height of the structure as a function of its setback, the applicant asserts that there could be special circumstances pertaining to the timing of construction. While not properly permitted, when the original garage and the addition were constructed, the side and rear setbacks for any accessory structure was five (5) ft. It was not until 2019, that the setback was increased to 10 ft. for structures in excess of 15 ft.

Regarding the variance for total accessory square footage, a potential special condition could be the size of the property. At 1.4 acres, the site falls 0.6 acres short of qualifying for a Special Exception instead. Another consideration to the size of the site could be its location since the site is adjacent to a developed commercial property to the east.

However, considering the fact the site is fairly large, it is possible to meet the setback requirements of Code. Further, this limitation is similar to other properties in the general area and the owner has had many opportunities over the past ten years to correct not only the past setback deficiencies and the aggregate area of accessory structures through the acquisition of permits. In fact, the 2010 BZA decision required the removal of four of the accessory structures, of which two of the structures continue to remain.

**Not Self-Created**

While the applicant states that most of the improvements over time were made by a tenant, apparently without the owner's knowledge, the owner is ultimately responsible. Since the two remaining structures were required to be removed by the 2010 BZA decision, the owner has been aware of the presence of these unpermitted installations of structures for at least the past 10 years. For the size of the property, the site appears to be overbuilt, and the proposal, albeit with the past removal of unpermitted structures, does not meet minimum Code requirements.

**No Special Privilege Conferred**

Approval of the as-built setback and accessory floor area requests could confer the owner special privilege that is denied by the Code to other lands, buildings, or structures in the same land use district. While the site is large, it is ultimately capped at 3,000 sq. ft. of accessory square footage, and according to the Code, it does not qualify for a Special Exception due to the smaller size of property for the current request for a total of 5,493 sq. ft. The recognition of the location and area of as-built structures is not required to reasonably enjoy use of the property. The location of Accessory Structure #1 is closer to the south property line than the Code allows. Had the owner obtained the required permits prior to the 2019 code change, a variance would not be required to allow the structure to remain at the 5 ft. setback. Allowing for the as-built improvements as proposed could establish special privilege.

**Deprivation of Rights**

Without the variance for the square footage, the applicant will be required to demolish the structure in the northeast corner of the site, which is relatively new, and appears to be in good condition. They will also need to remove the pole barn addition to the garage and addition, as well as five (5) ft. or the rear of the structure. While it is understandable that the owner wishes to keep the existing structures as constructed, the existing location and total area of the 3 after-the-fact structures does not grant vesting rights since no permits were sought at the time of construction. Furthermore, the owner has had opportunities to rectify deficiencies over the past ten years.

**Minimum Possible Variance**

This request does not appear to be a minimum request. The owner currently is able to reasonably use the property without the need of variances. As discussed above, the owner has been cited over the past ten years for the construction of structures without permits. Since compliance is possible to comply with the code regarding square footage without the need for a variance, the request is not the least possible variance. Granting the variance for the garage and addition to remain as-is would be considered as a convenience, not a necessity.

**Purpose and Intent**

Although it could appear that the property has room on the property for the existing structures, granting the variance would not meet the purpose and intent of the code since the after-the-fact improvements pertaining to the height and accumulated area of accessory structures are generally over ten years old and have been subject of a prior BZA decision requiring removal.

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**CONDITIONS OF APPROVAL**

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1. Development in accordance with the site plan stamp-dated March 11, 2020, subject to the conditions of approval and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviation, change, or modification shall be subject to the Zoning Manager's review and approval. Any proposed

substantial deviation, change, or modification shall 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 to remove the "kitchen" in Accessory Building #1 shall be obtained with the permit for the structure itself, or the applicant shall obtain the required permits to allow this structure to be used as an Accessory Dwelling Unit. "Kitchen" shall include any 220 v outlets, overhead cabinets, full size refrigerator, stove, and full size sink.
5. The applicant shall obtain a permit for all unpermitted structures within 180 days of final action on this application by Orange County, or this approval becomes null and void.

C: Rudy Callahan  
935 Oasis Ct.  
Apopka, FL 32712

COVER LETTER

Re: Request for Variance  
1501 O'berry Hoover Rd.  
Orlando, Fl. 32825

March 11, 2020

I am requesting a variance for the square footage of the out buildings at 1501 O'berry Hoover Rd. Orlando Fl. 32825. There are 3 structures on the property with a total square footage of 5503.2. An existing structure at time of purchase which is part of the 5503.2 is 2720 square feet. This lot is 1.44 acres which is larger than surrounding lots that have more sq. footage of out buildings.

I am asking for a variance to allow me to pay permit cost for the additional 2783.2 sq. ft to bring the property in compliance with Orange County. I have removed all commercial equipment and material from the property as requested by code enforcement. All commercial activities and business operations have ceased as requested by code enforcement. The setback requirements have been met and a new survey has been submitted to Orange County zoning. All buildings are for personal use to include storage of personal items and garage for personal vehicles since the residence does not have an attached garage.

I have expressed with code enforcement my intention to correct this situation and get back in the guide lines asked for. I have submitted the application for a variance to the Board of zoning adjustments for Orange County.

1. Special conditions and circumstances: If my request is granted this property will be without any special conditions and will be escalated in value to benefit neighboring properties and property taxes for Orange County.

2. Not self created: 1. On or about August 2007, I agreed to pursue a mortgage in my name, Wilbur C. Stone, on the above property, this was understood and agreed to be a short term venture on my behalf. I was told by Mr. Ellingwood, that he would search his relationships and partners to pay in full the mortgage that I acquired within 2 years. At this time Mr. Ellingwood had credit issues and could not qualify for a mortgage. Being a long time friend and knowing Mr. Ellingwoods abilities both in construction and auto body repair, I felt he would be able to fulfill his promise to pay me with a new source of financing. **It has been 12 years with consistent issues collecting the funds and continued code violations with Orange County.**

Mr. Ellingwood being very familiar with the codes and permits required took advantage of his construction abilities, without permitting he built structures that required permits and code inspections. Today the code lien on the property is over \$ 500,000.00 due to his negligence and attitude toward rules and regulations in Orange County; Code violation personnel have visited the property many times only to be promised corrections by Mr. Ellingwood and of course this is all in my name and my property and my credit since I made the purchase. I have lived in family turmoil for making this dumb decision.

The original structure on the above property at time of purchase burned down, shortly after Mr. Ellingwood took occupancy, the insurance paid for the new structure to be built with some excess funds, Mr. Ellingwood used these funds to build a mother- in- law suite which is part of the code violation. Mr. Ellingwood used the insurance money to his discretion without my knowledge of any violations.

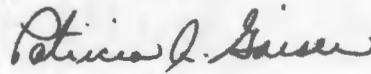
COVER LETTER (PAGE 2)

These violations were created by another person without my knowledge or permission. I have spent the last 10 years suffering the financial burden, health issues and stress he has caused. I am 88 years old with numerous medical issues. Please approve this request so I can enjoy the property and try to enjoy the last years of my life without this burden.

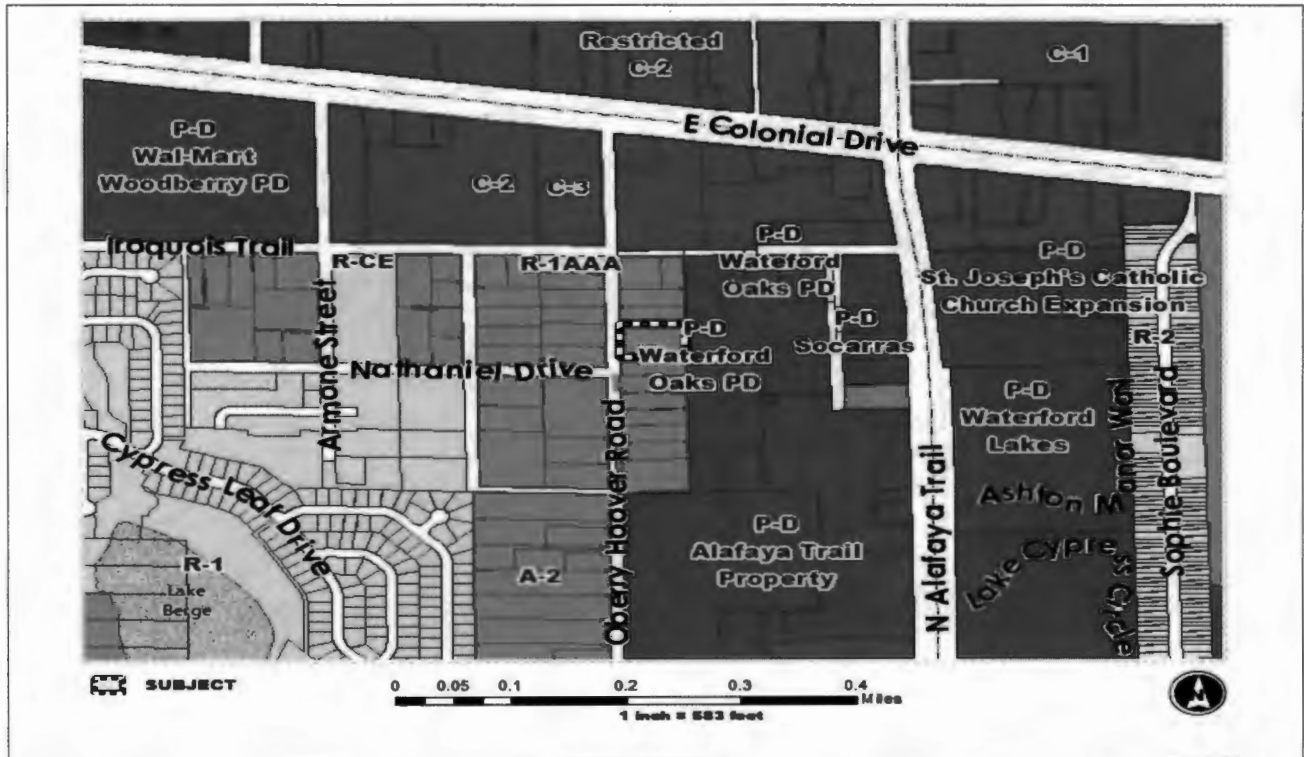
3. No Special Privilege Conferred: None expected.
4. Deprivation of Rights: Agreed and understood.
5. Minimum Possible Variance: If approved this property will be a single family residence.
6. Purpose and Intent: Approval will improve all neighborhood standards and welcome a positive public welfare.

Regards,

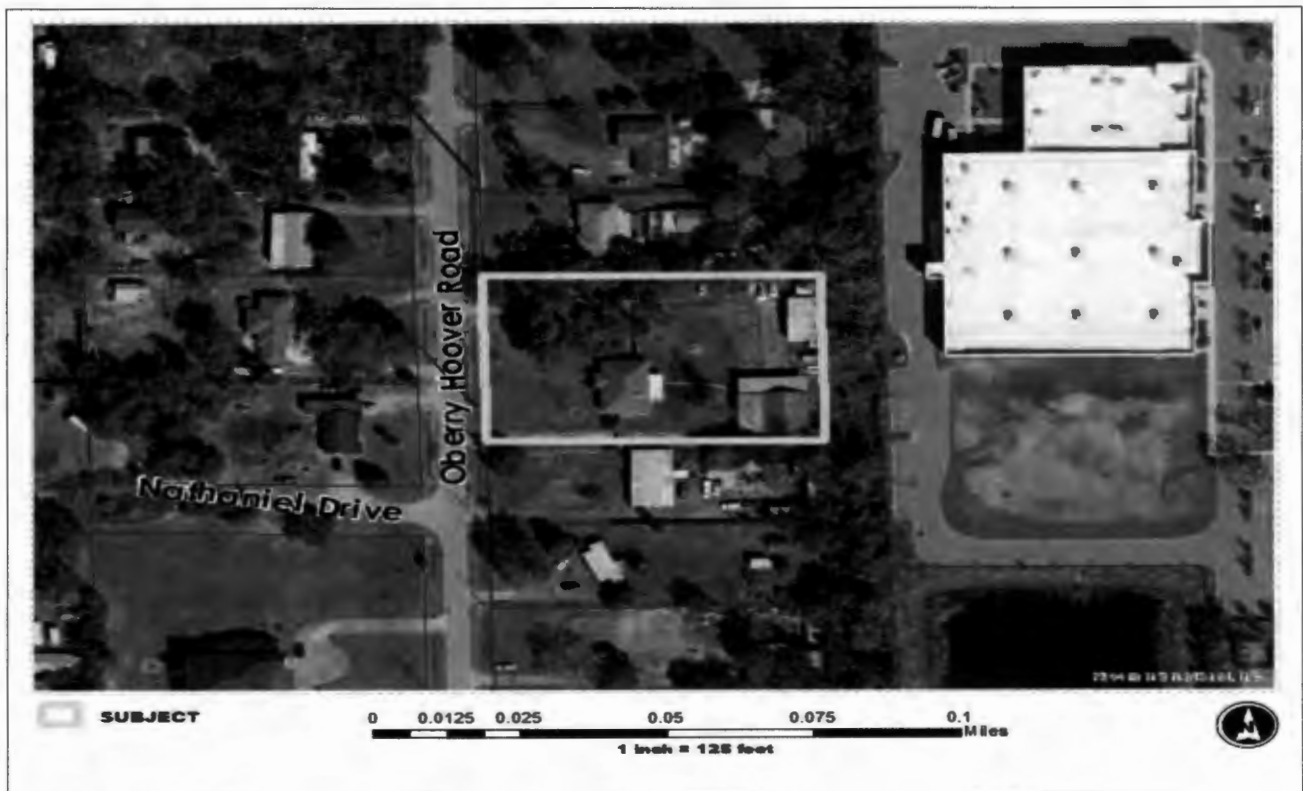
Wilbur Stone



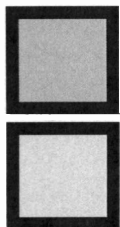
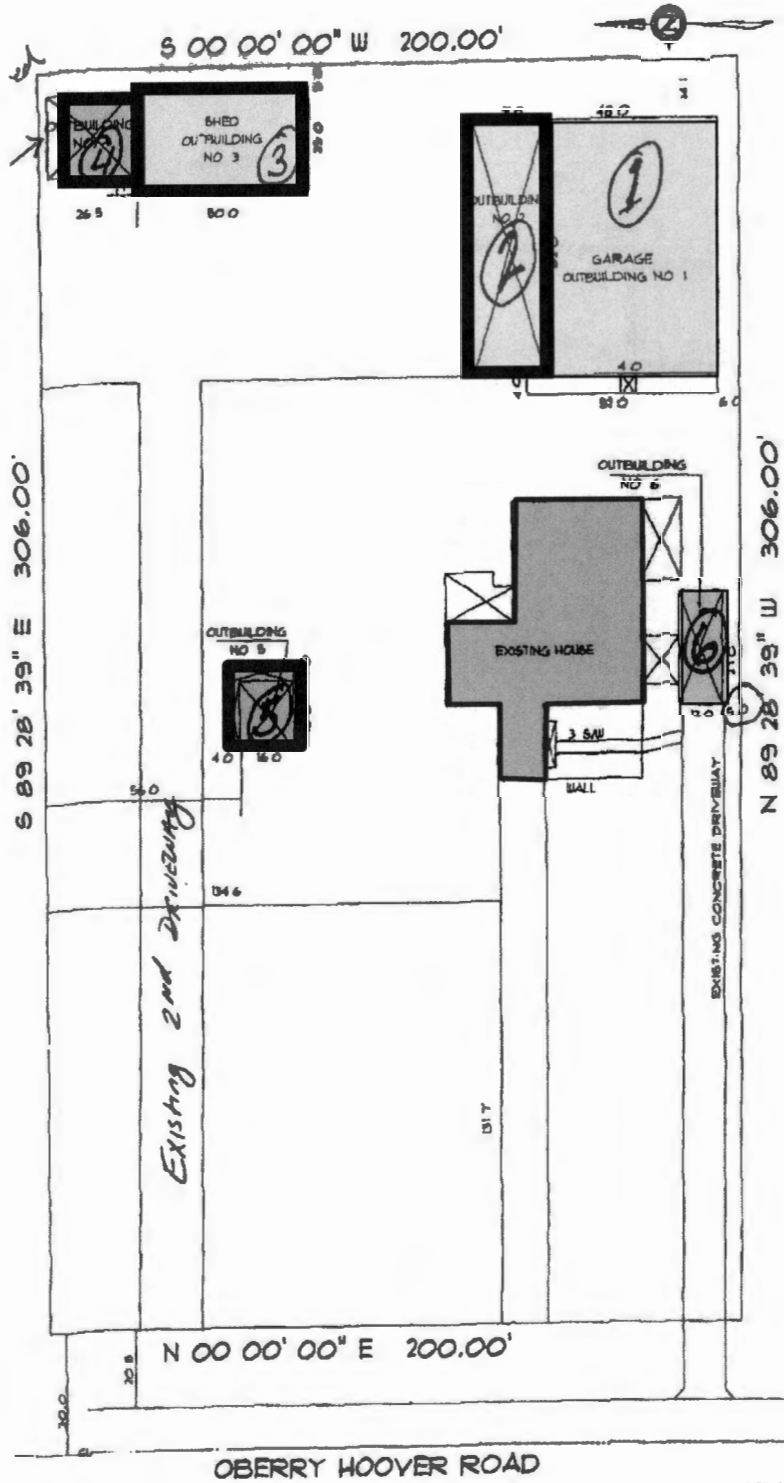
ZONING MAP



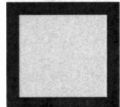
AERIAL MAP



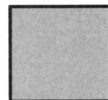
2010 SURVEY/ SITE PLAN SUBMITTED WITH VA-10-01-002



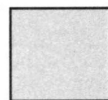
Existing in 2010, required to be removed, now removed



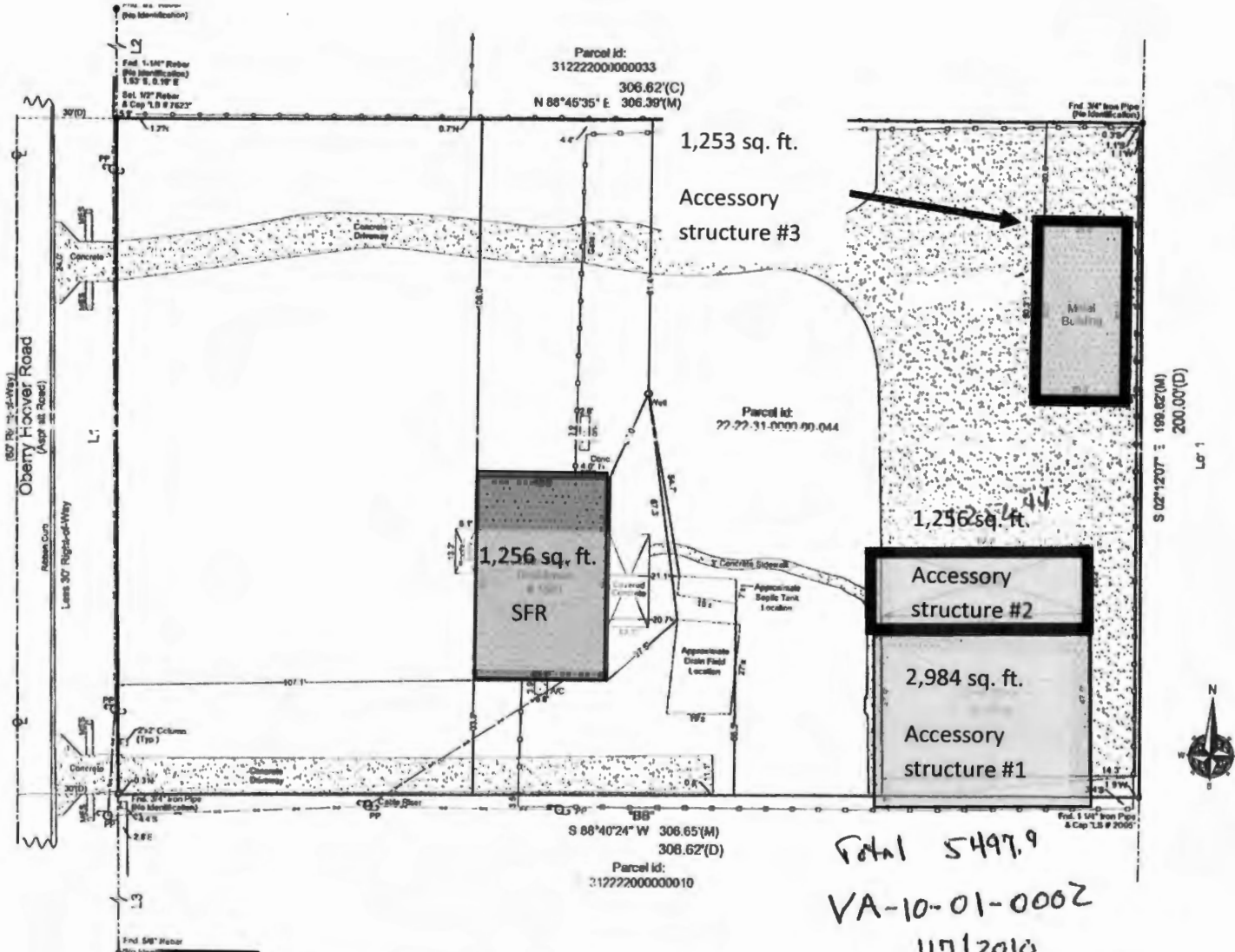
Existing in 2010, required to be removed. still existing



Existing in 2010, approved to remain, now removed



Existing in 2010, approved to remain, still existing



Single-Family home, not existing in 2010



Existing in 2010, required to be removed, still existing



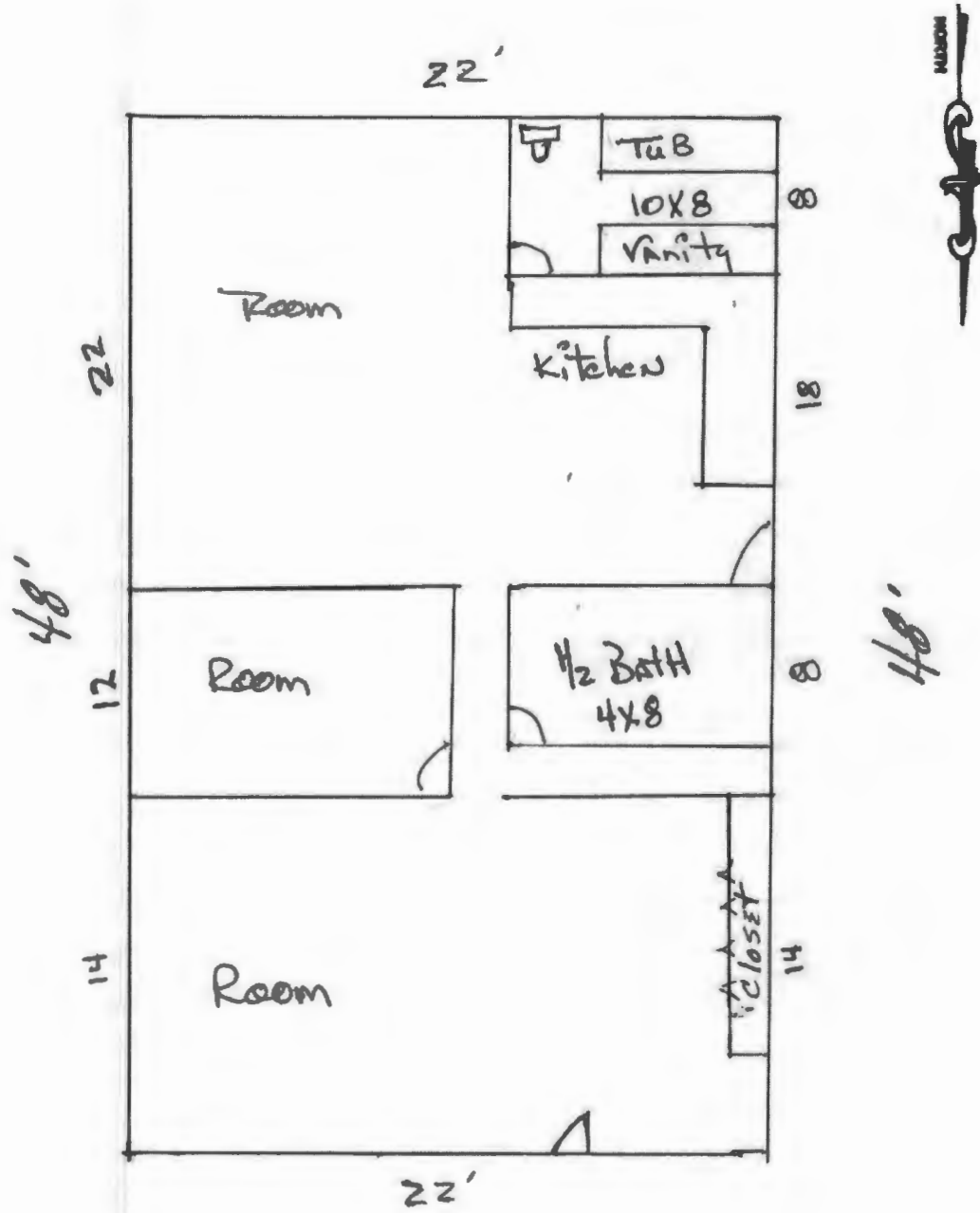
Existing in 2010, approved to remain, still existing

EXISTING SURVEY/ SITE PLAN

MES - Mirrored End Section



FLOOR PLAN FOR WEST PORTION OF ACCESSORY STRUCTURE #1 - ADU



SITE PHOTOS



Subject property, looking east



View into site from Oberry-Hoover Rd. looking east

**SITE PHOTOS**



**Structure in northeast corner of site looking east**



**Structure in southeast corner of site looking south**

# BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JUN 04, 2020**

Case Planner: **Anoch Whitfield**

Case #: **ZM-20-06-035**

Commission District: **#3**

## GENERAL INFORMATION

APPLICANT(s): ASTRO SKATE CENTER (CHRISTOPHER MAGANIAS)  
OWNER(s): MTP ENTERPRISES INC, ASTRO SKATING CENTER OF ORLANDO LLC  
REQUEST: Request to appeal the zoning manager's determination that the proposed use is an outdoor amateur level competitive sports venue.  
PROPERTY LOCATION: 866 S Goldenrod Rd., Orlando, Florida, 32822, East side of S. Goldenrod Rd., south of Lake Underhill Rd., north of Hager Way  
PARCEL ID: 35-22-30-5820-01-001; 35-22-30-5820-01-002; 35-22-30-5820-01-003; 35-22-30-5820-00-001  
LOT SIZE: 5.27 acres  
NOTICE AREA: 700 ft.  
NUMBER OF NOTICES: 214

**DECISION:** Recommended to **UPHOLD** the Zoning Manager's Determination that the proposed use is an outdoor amateur level competitive sports venue. (unanimous; 6-0 and 1 absent):

**SYNOPSIS:** Staff presented the history of the applicant's request which included a Zoning Verification Letter (ZVL), a pre-review meeting, a request for additional information, a Zoning Manager's Determination, a rebuttal letter, an amended Zoning Manager's Determination, and a written appeal.

The applicant made a presentation in the form of a verbal appeal, similar to the submitted written appeal.

There were two residents who spoke in favor and one in opposition to the application. The opposition's concerns were relative to noise pollution and deprivation of rights to live in peace and quiet. Those in favor stated that this is just a sports facility that will benefit the community as a whole.

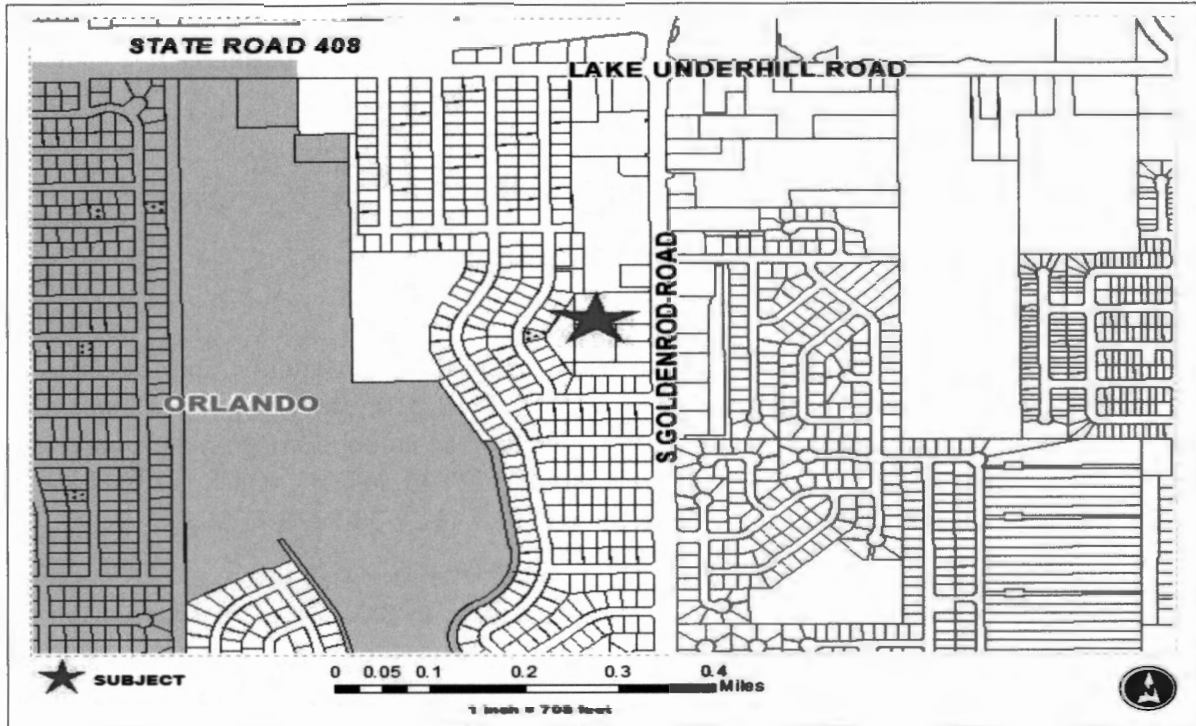
BZA members asked questions regarding number of expected participants at the special events. Staff indicated that at the national and international events, there would be upwards of 600 participants. The Chairperson asked if this would be overall or each event. Staff confirmed, based on request for additional information, it would be each event. The applicant clarified that the 600 participants would be for national/international events but the local events would be contain 300 participants. One Board member asked whether the homes were there before or after the skating rink; staff confirmed that the homes were there before the rink.

The BZA unanimously voted (with 1 member absent) to uphold the Zoning Manager's Determination that the proposed outdoor park/multi-purpose sports track/velodrome falls under SIC 7941.

**STAFF RECOMMENDATION**

Staff recommends that the Board upholds the Zoning Manager Determination that the proposed use resembles most closely those uses listed in SIC 7941 as described by the Standard Industrial Classification (SIC) Manual.

**LOCATION MAP**



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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	C-2	C-2, R-1A	P-O, C-2	C-1	R-1A
Future Land Use	Commercial	Commercial	Office	Commercial	Low Density Residential
Current Use	Indoor Skating Rink, Stormwater Pond, Vacant	Commercial, Vacant Residential	Commercial, Vacant Residential	Commercial	Single-family residential

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**BACKGROUND AND ANALYSIS**

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**DESCRIPTION AND CONTEXT**

The subject site consists of four (4) parcels totaling 5.27 acres in the C-2 (General Commercial District), which allows a variety of retail, services, and other commercial uses. Two of the parcels (PID numbers 35-22-30-5820-01-001 and 35-22-30-5820-01-003) are currently developed with an indoor skating rink and associated parking accessed off of South Goldenrod Road. Tract A (PID 35-22-30-5820-00-001), which is the triangular-shaped westernmost parcel, is a retention pond, and the last parcel (PID 35-22-30-5820-01-002) is vacant.

This request is to appeal a Zoning Manager Determination that the proposed use is an outdoor amateur level competitive sports venue that resembles most closely the uses in SIC 7941. To support the appeal, the applicant's attorney provided a 15-page appeal document that details their request, counter arguments and, as Exhibit B, a conceptual site plan.

This staff report summarizes the dates and history of events relative to this request with the details of each event provided as an Exhibit (Exhibits 1 through 8) to this staff report. The applicant's appeal document is Exhibit 8, and as such, the staff report does not present the applicant's "cover letter" separately. Also, for purposes of this case, the land uses and SIC Codes that are discussed in this staff report have been extracted from the Use Table in Section 38-77 of the Zoning Code and are provided in the table in the next page.

Because this is an appeal to a Zoning Manager Determination regarding a proposed land use within a specific zoning district, decisions or actions taken on this land use determination case will be applicable county-wide to all properties with a C-2 zoning classification. Additionally, although the applicant's appeal includes a conceptual site plan, should the BZA overturn the Zoning Manager Determination, such action does not constitute an approval of said conceptual site plan. Development of the site would still be required to obtain the appropriate site work permit and building permit in accordance with the standards and regulations of the Zoning Code and all other applicable regulations.

Uses Per Zoning Code	SIC Group	Land Use	P-O	C-1	C-2	C-3	I-1A	I-1, I-5	I-2, I-3	I-4
Stadiums & arenas	7941	Sports clubs (franchise sports)		S	S	S		S	S	S
Stadiums in conjunction with schools	7941	Sports clubs (non-franchise sports)	S	S	S	S		S	S	S
Health spas, exercising centers, aerobic classes	7991	Physical fitness facilities	65 S	P	P	P	107 P S	P	P	P
Golf courses	7992	Golf courses	S	S	S	P	107 PS	P	P	P
Outdoor clubs, golf and country clubs, private outdoor clubs, tennis clubs, swimming clubs, nonprofit parks and recreation areas, outdoor recreation uses, private recreation areas for a single family development	7997	Membership Sports & Recreation Clubs (Outdoor uses)	132 S	132 S	132 P	132 P	107 PS	P	P	P
Outdoor gun ranges/private clubs, shooting galleries and ranges	7997	Membership Sports & Recreation Clubs (Outdoor uses)						P	P	P
Golf driving ranges, Golf cart rentals, ski instruction, swimming pools, tennis courts, little league and softball fields, outdoor skating rinks, amusement rides, paintball operations, day camps, rodeos, and go-cart raceway	7999	Amusement & Recreation (Outdoor Uses)		85 S	85 P	85 P	P	P	P	P

## Staff Analysis

**October 17, 2019 Zoning Verification Letter:** On September 19, 2019, a Zoning Verification Letter (ZVL) request (Exhibit 1) was submitted by the Soto Law Office, P. A., stating that the proposed use was an “open space park for the purpose of promoting healthy activities by encouraging exercise through roller skating and providing amateurs and professionals an opportunity to compete”. It also requested confirmation that “there is no special exception required pursuant to Orange County’s indoor Codes because Condition 85 does not apply as the creation of the open space park can be done outdoors pursuant to SIC 7999”. The County issued a ZVL on October 17, 2019 (Exhibit 2) which stated that an open space park under SIC 7999 in the C-2 zoning district does not require a special exception approval; however, as called out in the ZVL, a skating rink in the C-2 zoning district is required to be completely enclosed within a soundproof building per Section 38-79(85).

**December 13, 2019 Pre-Review Meeting:** Following the issuance of the ZVL, the applicant requested a pre-review meeting (Exhibit 3) again requesting confirmation from the Zoning Manager that the proposed open air park/multi-purpose sports competitive venue is allowed in the C-2 zoning district, is not a skating rink (and as such is not subject to Condition 85) and does not require a special exception. The applicant also expressed that he did not want to build an enclosed facility due to construction costs. The pre-review meeting was held on December 13, 2019, and County staff reiterated that open space parks for outdoor recreational activities are a permitted use by right in C-2; however, pursuant to Condition 85, if such recreational activities are specifically a skating rink, billiard parlor or bowling alley, such uses would have to be completely enclosed within a soundproof building.

The applicant explained that he wanted his facility to be a place where he could promote the speed blading sport and to promote health and fitness. At the conclusion of the meeting, the Zoning Manager requested additional information on hours of operation, what types of daily activities would be occurring at the facility, number of special events/participants, etc.

**December 23, 2019 Zoning Manager Determination Letter:** On December 16, 2019, the applicant’s attorney submitted a letter (Exhibit 4) which provided the additional information requested. This letter detailed the types of events, hours of operation, daily business operations, and ownership for the proposed development and requested a Zoning Manager Determination on what use category the proposed use would fall under. This letter is summarized below:

- The proposed development would operate 7 days a week for both office business hours and rink and track hours. Rink and Track operations would be from 9am to 9pm daily, except that on Saturdays, the facility is open an hour longer, closing at 10pm.
- Events include local events 6 to 12 times per year (300 participants each event), national events 1 to 2 times per year, and an international event 1 time per year. The national and international events are high level competitive speed blade racing events with participation anticipated at 600 persons at each event. Race participants are by invitation only, but admission is at a fee open to the general public.
- Day to day operations include child, youth and adult speed blading, speed cycling and foot track running training and education sessions.



This development/facility will be a for-profit corporation, no memberships and daily training and education sessions are by entry fee.

Based on the discussion at the pre-review meeting and additional information provided in the December 16, 2019 letter, the Zoning Manager determined that the proposed facility and use focused on promoting professional, semi-professional and to a limited extent, amateur level competitive sports, specifically speed blading, speed cycling and foot racing, by providing a venue for daily speed blading, speed cycling and track training and education sessions and for hosting local and highly competitive national roller sports and international speed skating events annually where the general public could pay an admission fee and watch the races.

Based on the Occupational Safety and Health Administration (OSHA) Standard Industrial Classification (SIC) Manual (which is the statistical classification system for the many industry groups used in evaluating land uses), SIC 7941 includes “establishments primarily engaged in operating and promoting professional and semiprofessional athletic clubs, promoting athletic events, and managing individual professional athletes. Stadiums and athletic fields are included only if the operator is actually engaged in the promotion of athletic events. Uses in this SIC code include “athletic field operation (sports promotion)”, “sports field operation (sports promotion)”, “promoters, sports events”, “stadiums (sports promotion)”, and “sports promotion: baseball, football, boxing, etc.” Therefore, based on this information and in consultation with the County Attorney’s Office, the Zoning Manager issued a formal determination letter on December 23, 2019 (Exhibit 5) stating that the proposed use most closely resembles and aligns with those uses listed in SIC 7941. Per the Use Table in Section 38-77, uses falling in SIC 7941 require approval of a Special Exception in the C-2 zoning district.

Staff notes that, other than promoting opportunities for healthy activities and a healthy lifestyle, no other sporting activity or physical fitness activity or facility was called out by the applicant at this point.

**February 21, 2020 Amended and Restated Zoning Manager Determination Letter:** On January 9, 2020, the applicant’s architect, Mr. Anthony Ewen, submitted a rebuttal letter (Exhibit 6) to the December 23, 2019 Zoning Manager Determination. In his rebuttal letter, Mr. Ewen declared that:

- There was confusion as to whether or not the facility is a membership only facility or club;
- The proposed use does not focus on the operation of promoting professional or semi-professional sports;
- All users are amateurs, including the local, national and international events, and that no participants are paid or provided a monetary winning. By Mr. Ewen’s definition provided in his letter, a professional is a person engaged in a specified activity as a main paid occupation;
- There is no stadium or arena, but rather, standing only spectator areas;
- This facility will only include three (3) sports: running, bicycling and inline blading; and
- All activity is focused on reducing, exercise and physical fitness conditioning, with trainers on duty any time the track is occupied;

Mr. Ewen’s letter also made reference to SIC 7991 Physical Fitness Facilities, stating that these facilities do not require memberships but are open to the public and to SIC 7997 Membership Sports and Recreation Clubs Outdoor uses, stating that these uses do not require a soundproof building. Mr. Ewen stated that the applicant is not building an amusement facility or a skating rink but rather is proposing an amateur exercise and sporting track/multi-purpose facility. Mr. Ewen requested that the facility be treated as and allowed to fall under SIC 7991 (Physical Fitness Facility) for day to day operations open to the public and under SIC 7997 Membership

Sports and Recreation Clubs outdoor uses for membership sporting events, declaring that neither SIC 7997 nor 7991 require the building to be completely enclosed and soundproofed.

Staff wishes to point out that the County's Zoning Manager Determination letter did not specifically state or emphasize that the use is for professional athletes only. Rather, the letter stated that the proposed facility and use was focused on sports promotion, in this case, those sports are speed blading, speed cycling and foot track racing (as called out in Exhibit 4) because the entirety of the facility would either be providing a venue for the training and education on these sports or providing a venue for local events 6 to 12 times per year and "highly competitive national and international Skate World events" promoting only these three (3) sports.

In response, on February 21, 2020, the County issued an amended Zoning Manager Determination Letter (Exhibit 7) which explained and clarified that:

- Mr. Ewen's reference to SIC 7991 Physical Fitness Facilities not being required to be membership-only facilities is not valid or relevant because in Ms. Escoffery's December 16, 2019 letter (refer to Exhibit 4), there was no mention that the proposed facility would be a physical fitness facility for purposes of "reducing, exercise and physical fitness conditioning". Furthermore, the County's letter was not based on any assumption that the proposed facility would be for membership only as all documentation provided by the applicant's agents clearly stated that this was not to be a membership only facility.
- Mr. Ewen's statement that the third row of SIC 7997 Membership Sports and Recreation Clubs (Outdoor Uses) are not required to be within an enclosed, soundproof building is also not valid or relevant because, based on the information provided and evaluated for the first Zoning Manger Determination Letter, the owner/applicant stated verbally and in writing that proposed facility will not be a membership only sports and recreation club. Thus, the County's letter made no reference to and did not contemplate the application of that SIC code.
- Mr. Ewen's statement that Condition 85 is only required when indicated in the Use Table is correct. Condition 85 is not indicated on the Use Table in any rows under SIC 7991 (Physical Fitness Facilities) or SIC 7997 (Membership Sports and Recreation Clubs). The County did not contemplate the application of either of these SIC codes for the proposed use.

In reference to the applicant's request that the facility fall under SIC 7991 (Physical Fitness Facility) for day to day operations open to the public and under SIC 7997 Membership Sports and Recreation Clubs outdoor uses for membership sporting events, the Amended Zoning Manager Determination Letter clarified that based on guidance from OSHA's SIC Manual, "Physical Fitness Facilities" are classified in SIC 7991 and "Recreation and Sports Clubs" fall under SIC 7997, which per the Manual specifically "excludes physical fitness". Therefore, the Letter explained that the facility would have to fall under one SIC code or the other, not both.

The County's February 21, 2020 Amended Zoning Manager Determination Letter, based on an evaluation of the details and arguments in Mr. Ewen's letter, maintained the position that the proposed outdoor, non-membership only, multi-purpose sporting track or velodrome/ patinodrome most closely resembles the uses under SIC 7941.

**March 24, 2020 Applicant's Formal Appeal to Amended and Restated Zoning Manager Determination Letter:**

On March 24, 2020, the applicant's attorney, Ms. Melissa Escoffery, submitted a formal written appeal of the Zoning Manger Determination Letter (Exhibit 8). To summarize this 20-page appeal, Ms. Escoffery essentially

argues that the facility would be utilized as a venue for international organization speed blading events (1 time a year), national organization speed blading events (1 to 2 times per year) and youth field trips and special events, offering a standing space only spectator gallery, and as a venue for day to day speed blading, speed cycling and foot track running training and education sessions and that this facility most closely resembles a physical fitness facility governed by SIC 7991 (Physical Fitness Facilities).

Ms. Escoffery's written appeal raised three (3) arguments as follows:

- Argument 1: The County's determination that SIC 7991 Physical Fitness Facilities are only indoors is too narrow an interpretation;
- Argument 2: The County "failed to account for the primary purpose of the facility in determining that SIC 7941 applies, arguing that "day to day, this is a gathering space where individuals can come to train and obtain instruction in speed skating, speed cycling and foot track running"; and
- Argument 3: The fact that the facility is outdoor rather than indoor has no relevance to whether it can be classified as a "physical fitness facility".

In response to argument 1, Section 38-74(d)(1), Orange County Code, provides that, when the need arises, the Zoning Manager shall be the person responsible for interpreting Chapter 38 of the Orange County Code,

including Sections 38-77, 38-78, and 38-79, after considering the factors set forth in Section 38-74(d)(2), which include the functional and locational requirements of the use, whether the interpretation is consistent with the intent, purpose and description of the particular zoning district, and whether the interpretation is compatible with the permitted uses in the district. In addition, the Zoning Manager is empowered by Section 30-41(a), Orange County Code, to administer and enforce the zoning provisions of the Code. Furthermore, the Zoning Manager makes orders, requirements, decisions and/or determinations, which may be appealed to the BZA pursuant to Section 30-43(1), Orange County Code. In accordance with these provisions, the Zoning Manager has properly determined, for the reasons expressed herein, that the proposed use in question is most consistent with SIC 7941 and not SIC 7991.

In addition, the full description in SIC 7941 Professional Sports Clubs and Promotes states that this industry classification is for "establishments primarily engaged in operating and promoting professional and semi-professional athletic clubs; promoting athletic events, including amateur; and managing individual professional athletes ... stadiums and athletic fields are included only if the operator is actually engaged in the promotion of athletic events". The County acknowledged and explained that the list of uses in SIC 7941 was not all inclusive or exhaustive and that the proposed facility most closely resembles a facility where the use and activities offered promotes sports.

In response to argument 2, the County considered both the day to day operations of the facility as well as the anticipated use of the facility in totality and determined that it more closely aligned with SIC 7941 than with SIC 7991. SIC 7991 specifically states "establishments primarily engaged in operating reducing and other health clubs, spas and similar facilities featuring exercise and other physical fitness conditioning... sports and recreation clubs are classified in Industry 7997 if operated on a membership basis and in Industries 7992 and 7999 if open

to the general public". SIC 7992 is specific to just golf courses, and SIC 7999 requires skating rinks and other like uses to obtain a special exception approval. County staff finds that the proposed facility is not one geared towards providing physical fitness and exercise conditioning for purposes of "reducing" (i.e. weight reduction, fat reduction, stress reduction, etc.) but rather for daily sports education and training, specifically for three sports: speed blading, speed cycling, and foot track running and sporting competitions during special events.

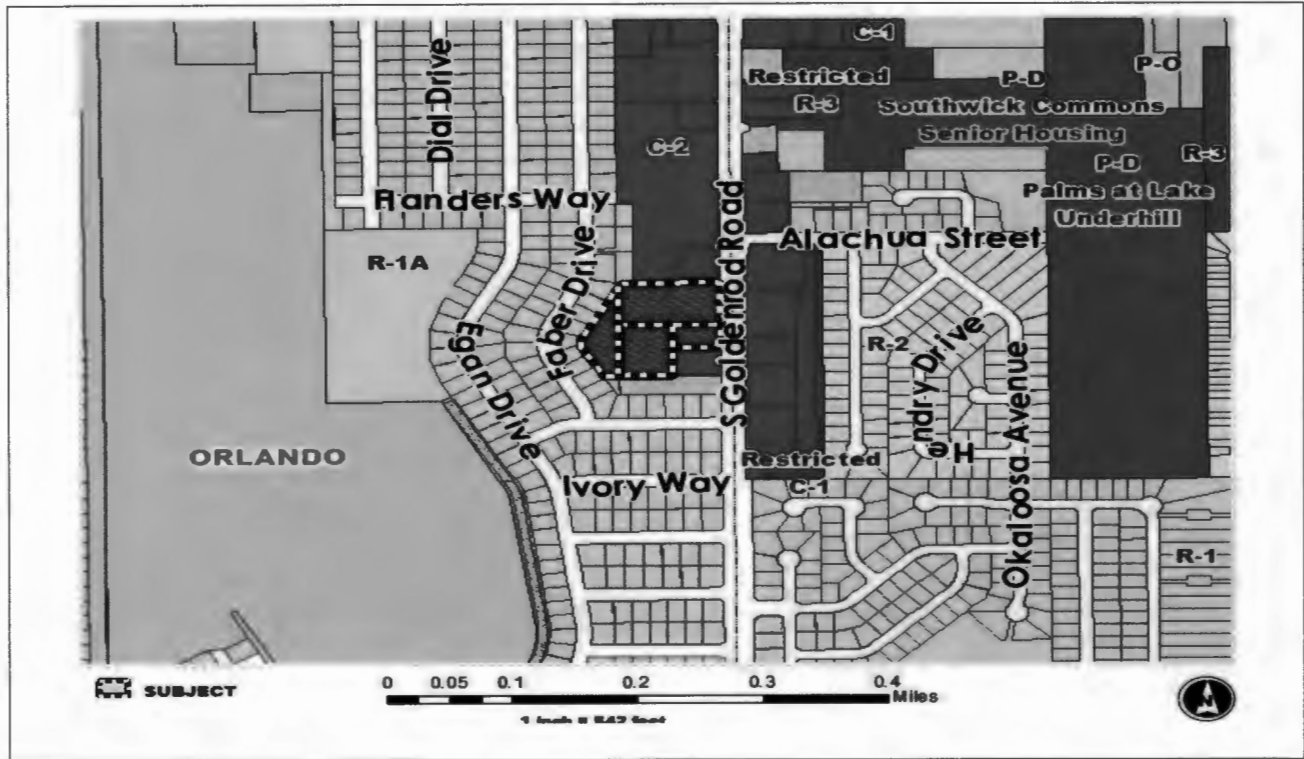
In response to argument 3, SIC 7941 makes no distinction on whether the use or activity occurs outdoors or indoors. Staff's determination is based on the proposed sports-related activities and services to be provided at the facility.

Based on the above analysis, staff recommends that the Board upholds the Zoning Manager Determination that the proposed use resembles most closely those uses listed in SIC 7941 as described by the Standard Industrial Classification (SIC) Manual.

C: Mr. Christopher Maganias  
875 Cypress St.  
Tarpon Springs, FL 34689

C: Ms. Melissa Escoffery  
415 Montgomery Rd. Suite 111  
Altamonte Springs, FL 32714

ZONING MAP



AERIAL MAP



ZOOMED IN AERIAL OF SITE





**THE SOTO LAW OFFICE, P.A.**

*Kimberly Soto, Esq.*  
*www.thesotolawoffice.com*

*Wekiva Springs Office Park  
415 Montgomery Road, Suite 111  
Altamonte Springs, Florida 32714*

*Phone (321) 972-2279  
Fax (407) 386-7165  
ksoto@thesotolawoffice.com*

September 19, 2019

Orange County Zoning Division  
Orange County Government Florida  
201 S. Rosalind Avenue  
Orlando, FL 32801

Re: REQUEST FOR ZONING VERIFICATION LETTER for  
Parcel Identification Numbers: 35-22-30-5820-01-001  
35-22-30-5820-01-002  
35-22-30-5820-01-003

Dear Sir/Madam:

This law office has the pleasure of representing Christopher Maganias, President of Astro Skating Center of Orlando, LLC. Mr. Maganias and his Company have a Lease with an Option to Purchase the above-referenced parcels. After my client purchases the property, he would like to create a new "open space park" which will be constructed outdoors, on a vacant lot, and on the three (3) parcels identified above. My client intends to create an open space park for the purpose of promoting healthy activities by encouraging exercise through roller skating and providing amateurs and professionals an opportunity to compete.

On September 17, 2019, this office spoke with Nick Balevich at Orange County Zoning Division. Mr. Balevich reviewed the Standard Industrial Codes and informed this office that a special exception would not be required. Therefore, please provide this office with a zoning verification letter and confirm that there is no special exception required pursuant to Orange County's indoor Codes because Code 85 does not apply, as the creation of the open space park can be done outdoors pursuant to the Standard Industrial Code 7999.

Finally, enclosed is the firm's check in the amount of one hundred twenty-eight dollars and zero cents (\$128.00) which represents the fee to have your office prepare the zoning verification letter. After the zoning verification letter is prepared, please return it to this office so we can forward same to my client.

Should you have any questions or concerns regarding this matter, please contact this office.

Sincerely,

Kimberly Soto, Esq.

Enclosure

Cc: Client (w/o enclosure) – via email only

---

EXHIBIT 2

---



October 17, 2019

Kimberly Soto, Esq., Applicant  
The Soto Law Office, P. A.  
Wekiva Springs Office Park  
415 Montgomery Road, Suite 111  
Altamonte Springs, FL 32714  
Email: [ksoto@thesotolawoffice.com](mailto:ksoto@thesotolawoffice.com)

RE: Zoning Verification Letter (# Z19008386)

Dear Ms. Soto:

This is in response to your request for verification of zoning relating to three (3) properties located off of South Goldenrod Road in Orange County, Florida jurisdiction. Verification of zoning pertains only to uses permitted on the property and does not imply fulfillment of any development standard required for improvement of the property.

This will serve to verify that the following properties:

- 35-22-30-5820-01-001,
- 35-22-30-5820-01-002, and
- 35-22-30-5820-01-003

is located in a C-2 (General Commercial District) Zoning District. An open space park for outdoor recreational activities (SIC 7999), including roller skating, is a permitted use in the C-2 zoning district subject to condition Section 38-79(85). A Special Exception approval is not required for such open space park use; however, if the open space park is to be a membership sports or recreational club type of use (SIC 7997) operated by a nonprofit organization, a Special Exception will be required per Condition Section 38-79(132). The Orange County Zoning regulations are available on the internet at [www.municode.com](http://www.municode.com). To access our code online click on *Library*; then click on *Florida* and select *Orange County*.

We appreciate the opportunity to provide this information and should you require further assistance please contact our office at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Anoch P. Whitfield".

Anoch P. Whitfield, AICP  
Chief Planner

ZONING DIVISION

201 South Rosalind Avenue, 1st Floor ■ Reply To: Post Office Box 2687 ■ Orlando, FL 32802-2687  
Telephone 407-836-3111 ■ FAX 407-836-9611 ■ [orangecountyfl.net](http://orangecountyfl.net)

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# Division of Building Safety

Exhibit 3

[www.ocfl.net/building](http://www.ocfl.net/building)  
Phone: 407-836-5550

## Pre-Review Request Form

Please provide the following information in order for staff to prepare for your meeting and give you the most well-informed assistance:

1. Permit numbers of any plans we may already be reviewing: \_\_\_\_\_

2. When would you like to meet? Please give 5 dates and times that everyone who is attending on your end will be able to attend.

Date: 12 / 10 / 19 Date: 12 / 10 / 19 Date: 12 / 11 / 19 Date: 12 / 12 / 19 Date: 12 / 13 / 19

Time: 9:00am Time: 11:00 am Time: 10:00 am Time: 10:00 am Time: 10:00am

3. How many people will be coming to the meeting? 4

4. Name and phone number of contact we can call in advance if we need more information.

Anthony E. Ewen 321 214 4762 (v) - 407 310 7551 (c)

5. Is this building:  New Construction  Existing Building

6. What kind of building is this?

- Hotel/Timeshare
- Apartments/Condos
- Office/Warehouse
- Church
- Other: Open Air Park - Multi-Purpose Sports Competition Venue

7. Location/Address/Parcel ID (required):

Goldenrod Road S of Lake Underhill / 878 Goldenrod Rd, Orlando FL/35-22-30-5820-01-002

8. If this is a hotel, timeshare, apartment(s), condo(s), how many units are in the project? \_\_\_\_\_

9. If this is another building type, what is the square footage of the building? 36,887

10. How many stories are in the building? 0

11. If stories do not apply, how tall is the building? 5'

12. What major questions would you like answered at the pre-review?

Confirmation on use as described in attached narrative and exhibits.

Confirmation on proposed cross access cross parking easement configuration.

**Building Division:** Bruce Dixon/Cindy Nielsen

**Fire Rescue:** Scott Workman

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EXHIBIT 3 (Cont'd)

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Page 1 of 2



*eDesign Management, LLC*  
Architecture, Interior Design, Project Management  
941 W Morse Blvd Ste 100  
Winter Park, FL 32789  
Voice 321-214-4762  
Fax 407 982 7139  
sales@edesignllc.us  
AA26002398

Exhibit 1 to Orange County Division of Public Safety Pre-Review Request  
Form for property at 866 S Goldenrod Road, Orlando FL 32822

Owner Name: Astro Skating Center of Orlando, LLC  
Name of Project: Multi-Purpose Velodrome Addition to **MTP  
ENTERPRISES INC lot.**

A multi-purpose outdoor **velodrome / patinodrome** is an open park for track cycling, speed blading, and other specialized sport competitions, (such as running, bicycling, etc.). Modern multi-purpose velodromes and patinodromes feature slightly banked to steeply banked oval tracks, consisting of two 180-degree circular bends connected by two straights. The straights transition to the circular turn through a moderate easement curve

The proposed track is 317 feet by 127 feet and encompasses an area of 36,887 SF and measuring 660 LF in length around the track.

This open-air track will be surrounded by an open-air park. Spectator seating will be provided on a very limited basis. Generally, spectator viewing will be standing room only around the limited perimeter area.

The facility will be provided with approximately 69 additional parking spaces to the already 125 existing spaces for a total of 194 spaces. Access to the site will be facilitated with a new cross access and utility easement with the adjacent parcel to the south.

The site already has a large storm-water pond and we do not anticipate any issue with providing the needed additional capacity.

The site and the parcel to the south will be serviced by a new lift station and connected to an existing force main at the SE corner of the parcel to the south.

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### EXHIBIT 3 (Cont'd)

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The structural slab track is supported by steel frames covered with a specialized polymer surface which provides for safety to the user and provides for reduction in acoustic volume.

The park will conform with the county landscape ordinances, architectural site lighting ordinances and all other applicable codes and ordinances.

The park will cater to the youth of the area as a means to solidify a healthy lifelong athletic lifestyle. The park will also offer numerous incentives for the youths to participate in a healthy lifestyle. The operators will bring international competition to the park as a means to achieve the incentives of the goals of the park to the youth. These "special events" and "special competitions" might be held approximately 2 or 3 times a year. Special arrangements will be made for these special events – and- permits will be applied for these competitions to maintain safety, parking, and crowd control as may be required by the County ordinances.

The operators of the park will provide special attention to maintain a cooperative relationship with the homeowners to the west and the other owners of the adjacent commercial properties. The operators will maintain special sensitivity at all times to the peace and quiet enjoyment of all adjacent property owners.

Therefore, we request that the county confirm the use of the property may be utilized as an open air park with the open air multi-purpose velodrome / patinodrome for track speed cycling, speed blading, and other specialized sport competitions, (such as running, endurance bicycling, etc.) and that the concept is acceptable as proposed without the need for any Special Exemption.

Anthony E. Ewen, RA NCARB  
RA0009781

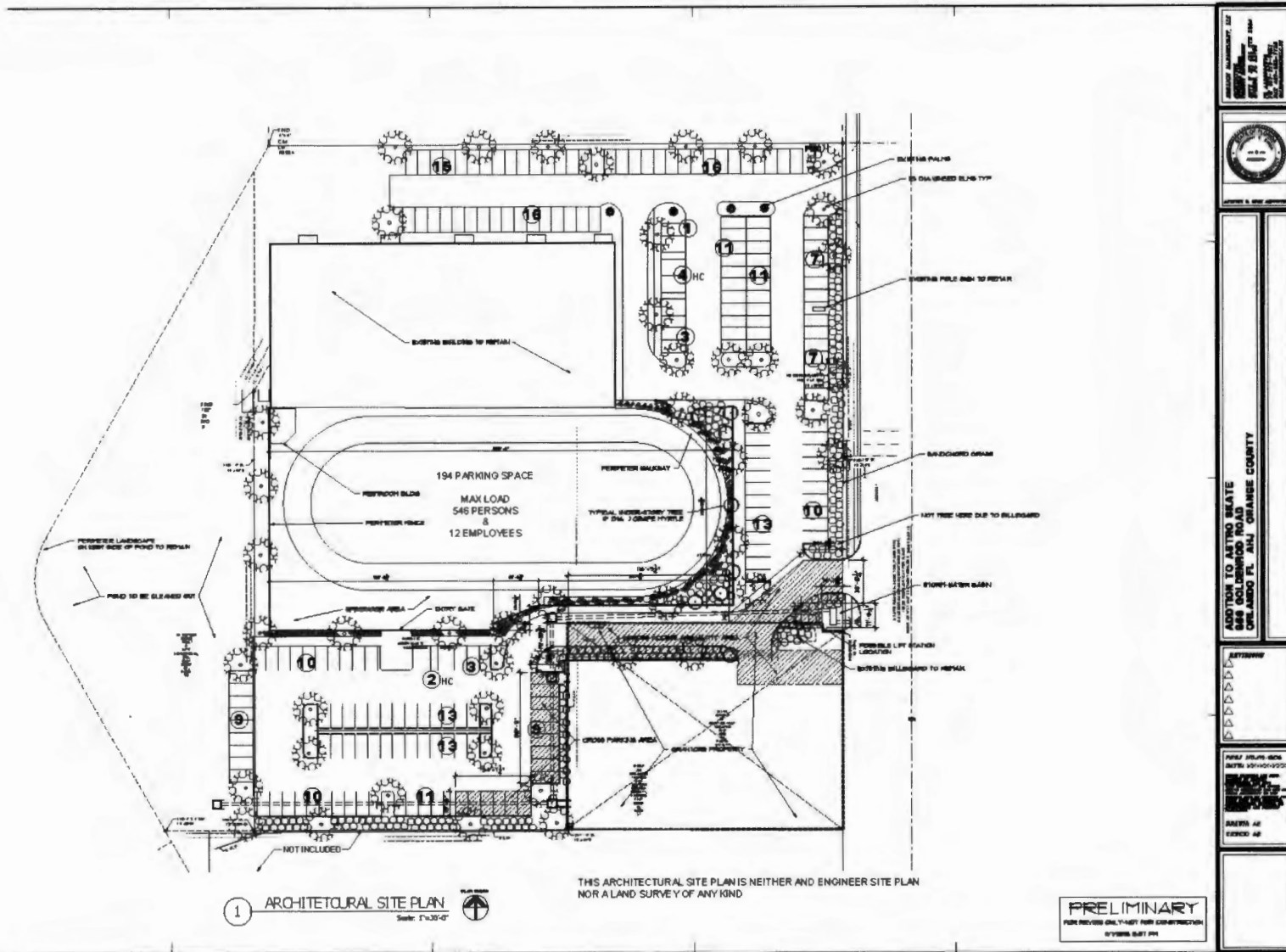
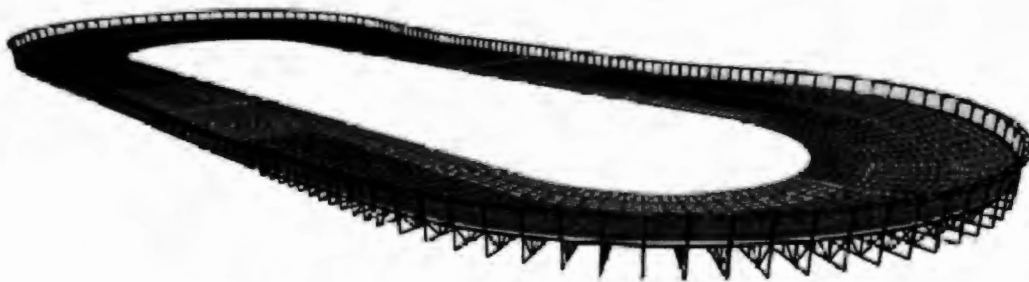
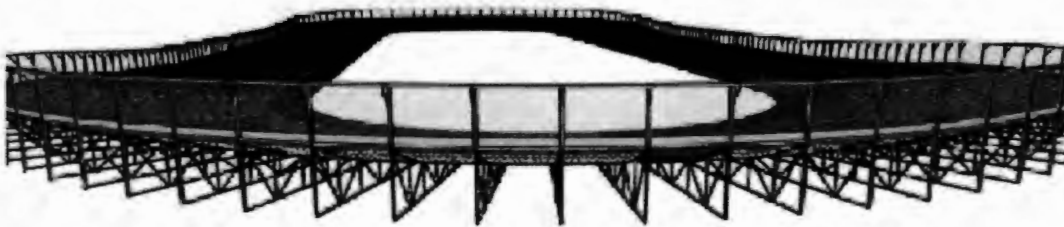
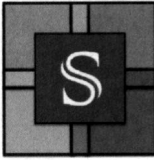


EXHIBIT 3 (Cont'd)



EXHIBIT 3 (Cont'd)





**THE SOTO LAW OFFICE, P.A.**

*Kimberly Soto, Esq.*  
*www.thesotolawoffice.com*

*Wekiva Springs Office Park  
415 Montgomery Road, Suite 111  
Altamonte Springs, Florida 32714*

*Phone (321) 972-2279  
Fax (407) 386-7165  
ksoto@thesotolawoffice.com*

December 16, 2019

Jennifer Moreau, AICP Manager  
Orange County Zoning Division  
Orange County Government Florida  
201 S. Rosalind Avenue, 1<sup>st</sup> Floor  
Orlando, FL 32801

Re: Pre-Review Meeting – December 13, 2019  
Parcel Identification Numbers: 35-22-30-5820-01-001  
35-22-30-5820-01-002  
35-22-30-5820-01-003

Dear Ms. Moreau,

As a follow up to our Pre-Review Meeting which was held on Friday, December 13, 2019, and pursuant to your request, the following is additional information regarding the pertaining to the upcoming project for the multipurpose outdoor velodrome / patinodrome.

**1. Number of Speed Blade Special Events**

International	WORLD SKATE-	1 time / year
National	USA Roller Sports	1 – 2 times / year
High level competitive racing		

Local 6 to 12 times / year  
Local youth field trips from local public and private elementary, middle, and high schools

**2. Estimated Overall expected crowd sizes for Speed Blade Special Events**

International and National Events	600 each event
Local Special Events	300 each event

(Note: this is in addition to the occupants at the existing Roller Skate Facility)

**3. Type of Events / Operations**

A. International and National Organization Speed Blading Special Events for high level competitive speed blading.

**EXHIBIT 4 (Cont'd)**

B. Local youth field trips and special events from local public and private elementary, middle, and high schools for child and youth education training in low and medium level speed blading.

C. Day to day operations

- a. Adult speed blading, including speed training and education sessions.
- b. Youth speed blading training and education sessions.
- c. Child speed blading training and education sessions.
- d. Adult speed cycling sessions.
- e. Youth speed cycling training and education sessions.
- f. Adult foot track running sessions.
- g. Youth foot track running sessions.

D. Spectator Gallery is standing space only. No grandstands. Minimum seating to the extent required to handle occupancy load for putting on and taking off speed blades. Spectator access and egress aisle of a minimum 44" shall be provided around the entire track. Track shall be approx. 8 to 10 feet from existing building.

E. No spectators or waiting patrons allowed in the track infield.

4. **Estimated Track Occupancy Load for Non-Special Event operations**

	<u>On-Track</u>	<u>Spectator/waiting</u>
a. Adult speed blading sessions.	20	30-40
b. Youth speed blading training and education sessions.	25	40-50
c. Child speed blading training and education sessions.	30	50-60
d. Adult speed cycling sessions.	8	40-50
e. Youth speed cycling training and education sessions.	10	50-60
f. Adult foot track running sessions.	12	40-50
g. Youth foot track running sessions.	20	60-70

Please note: 3 to 5 employees at all times will be present on the track when track is in operation

5. **Hours of Operations**

- A. Standard Typical Business operation hours / both sides
  - Office Business Hours      9 am to 6 pm - 7 Days a week
  - Rink and Track Operation    9 am to 9 pm - MTWTF and Sunday
  - 9 am to 10pm - Saturday
  
- B. International and National Special Event Competitions    9 am to 7 pm
  
- C. Local Special Events      9 am to 4 pm (then open to public after until close)

6. **Preliminary Typical Schedule of Operation for Typical Day**

Cycling	8 am to 10 am
Running	11 am to 2 pm



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**EXHIBIT 4 (Cont'd)**

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Speed Blading      4 pm to 9 pm  
(schedule may change slightly based on demand)

7. **Ownership**

- Florida For Profit Corporation
- No memberships. All day to day operations are open to public with entry fee paid.
- Special events are by invitation only for competition participants. Spectator gallery open to public with entry fee paid.

8. **Miscellaneous business operations**

- a. Equipment rentals (existing in the existing building)
- b. Food and nonalcoholic beverages sales (existing in the existing building)
- c. Private parties inside existing building party rooms (existing)
- d. Food trucks during special events.
- e. Off site parking and shuttles during special events.

9. **Maintenance Building**

A small maintenance building (200 sf addition to the existing building) will be needed for electrical gear, track maintenance equipment, etc.

I do hope that the above addresses your concerns and questions regarding the upcoming project. However, should you or your office have any further questions or concerns, please do not hesitate to contact this office.

Sincerely,

*/s/ Kimberly Soto*

Kimberly Soto, Esq.

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EXHIBIT 5

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December 23, 2019

Ms. Melissa Escoffery, Esq.  
The Soto Law Office, P. A.  
415 Montgomery Road, Suite 111  
Altamonte Springs, FL 32714  
Email: [MEscoffery@TheSotoLawOffice.com](mailto:MEscoffery@TheSotoLawOffice.com)

Subject: Interpretation of Land Use in Section 38-77  
Parcel ID #'s: 35-22-30-5820-01-001, 35-22-30-5820-01-002 & 35-22-30-5820-01-003

Dear Ms. Escoffery:

This letter is in response for your request for a Zoning Manager interpretation of the Use Table in Section 38-77 relative to your client's proposed development and use of a multi-purpose outdoor velodrome/patinodrome.

Section 38-74(d) of the Orange County Code authorizes the Zoning Manager to make interpretations of Sections 38-77, 38-78 and 38-79, when necessary. In interpreting those sections, consideration is given to the functional and locational requirements of the use, consistency of the proposed use with the intent, purpose and description of the zoning district, compatibility of the proposed use with the permitted uses in such zoning district and assurance that the proposed use is similar to other uses permitted in the district relative to noise, traffic generation, dust, odor, glare, and any other noxious characteristics.

I understand that your office has spoken with Nick Balevich, a Planner with the Zoning Division, and was informed by him that a special exception would not be required. I also understand that you submitted a Zoning Verification Letter application requesting confirmation that "no special exception [would be] required pursuant to Orange County's indoor Codes because Code 85 does not apply, as the creation of the open space park can be done outdoors pursuant to the Standard Industrial Code 7999". You were issued a letter by Anoch Whitfield on October 17, 2019 which verified that the above-listed properties are zoned C-2 and that such zoning district permits open space parks for outdoor recreational activities (SIC 7999), including roller skating, subject to the conditions in Section 38-79(85). The letter further explained that a special exception approval would not be required for an open space park unless it is operated by a nonprofit organization, pursuant to Section 38-79(132).

The direction provided to you by my staff is correct to the extent that a special exception is not required for amusement or recreational uses (SIC 7999) in the C-2 zoning district, whether indoors or outdoors, because such uses are allowed by right in that zoning district, subject to condition 85.

ZONING DIVISION

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## EXHIBIT 5 (Cont'd)

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Ms. Escoffery, Esq.  
December 23, 2019  
Page 2

However, by its terms, condition 85 only applies to skating rinks, billiard parlors and bowling alleys, and requires that those uses be located within an enclosed, soundproof building.

On December 4, 2019, you requested a Pre-review meeting to request confirmation on use of the properties as an open air park - multipurpose sports competition venue. At the Pre-review meeting, held on December 13, 2019, you and your client explained in greater detail the purpose of the facility and the intended uses. County staff reiterated that open space parks for outdoor recreational activities are a permitted use by right; however, pursuant to the condition in Section 38-79(85), if such recreational activities are specifically a skating rink, billiard parlor or bowling alley, such uses would have to be completely enclosed within a soundproof building. You and your client emphasized that the use is not a skating rink and requested a formal Zoning Manager determination on whether the proposed open air multi-purpose park would constitute a "skating rink," or would fall under a different category. At the Pre-review meeting, I requested additional detailed information in order to make a determination. You provided the requested additional information via email on December 16, 2019.

I have reviewed the additional information that you provided via email on December 16, 2019, as well as the information provided during the December 13, 2019, Pre-review meeting, information provided in the Zoning Verification Letter application dated September 19, 2019, and the relevant list of permissible uses and Standard Industry Codes (SIC) in the Use Table in Section 38-77.

Based on the discussion and explanation of the proposed use during the Pre-review meeting and my review of the above listed documents, it appears that the proposed use focuses on promoting professional, semi-professional and, to a limited extent, amateur level competitive sports, specifically speed blading, speed cycling and running, by providing a venue for daily speed blading, cycling and track training and education sessions, local special events six (6) to twelve (12) times per year, national roller sports special event competitions once to twice per year, and an international world skate special event competition once a year. The proposed use also includes a spectator gallery area, with standing room and limited seating, for the general public to spectate competitive sporting events.

Therefore, it is my determination that the proposed use most closely resembles and aligns with uses listed in SIC 7941, which includes establishments primarily engaged in operating and promoting professional and semi-professional athletic clubs, promoting athletic events, including amateur, and stadiums and athletic fields, where the operator is engaged in the promotion of athletic events. Specific uses in SIC 7941 include, but are not limited to, sports promotion, sports field operation, professional and semi-professional sports clubs, and stadiums for sports promotion.

Per the County's Use Table in Section 38-77, uses falling in SIC 7941 require approval of a special exception in the C-2 zoning district.

In regards to your other question on whether the vested use provisions in Section 38-75 could be invoked for the proposed expansion of the existing Astro Skating Center, Section 38-75 specifically states that "any **established use** [emphasis added] on a lot or parcel in any commercial or industrial zoning districts (as the term "established use" is defined in subsection 38-75(a)(4)) which is made nonconforming as a result of amending the permitted uses and special exceptions in the commercial and industrial zoning districts effective July 20, 1995, shall be vested as of July 20,

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EXHIBIT 5 (Cont'd)

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Ms. Escoffery, Esq.  
December 23, 2019  
Page 3

1995." Subsection 38-75(a)(4) defines an established use as "a use for which a valid occupational license or an unexpired building permit was issued by Orange County not more than one hundred eighty (180) days after July 20, 1995."

Based on County records, the building located at 866 South Goldenrod Road was issued a building permit in 1980 and a certificate of occupancy in 1980 for a roller skating rink. Permitting and construction of this building would have had to comply with the 1973 Zoning Code. Based on the 1973 Zoning Code, skating rinks were a permitted use in both the C-1 and C-2 zoning districts, provided that such activities and facilities were enclosed in a soundproof building. If building and/or land use permits have been issued by Orange County, with subsequent inspections and Certificates of Occupancy issued to allow existing improvements/operations, then it is assumed said improvements/operations met applicable minimum development requirements (i.e., building, zoning, fire, health, utilities, engineering, environmental, etc.) at the time such permits were issued.

The existing Astro Skating Center is not a use that was made a nonconforming use as a result of amendments to permitted land uses because a roller skating rink within a sound-proofed building was, and is, a permitted use by right.

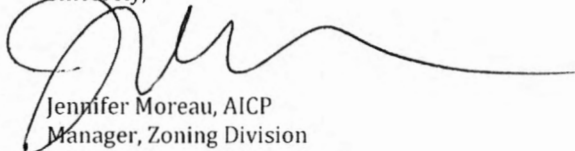
Therefore, the provisions of Section 38-75 relating to vested uses do not apply in this situation.

Should you believe that any part of my determination in this letter is inaccurate or made in error, then pursuant to Section 30-43(1), you can appeal such determination to the Board of Zoning Adjustments (BZA) for its consideration at a noticed public hearing. The appeal must be provided in writing, must specify the grounds of the appeal, and must be filed with the Office of the Zoning Manager not later than thirty (30) calendar days from the date of the Zoning Manager's determination.

Should the BZA confirm my determination you have the option of appealing the BZA's determination in a timely manner to the Orange County Board of County Commissioners for another noticed public hearing.

If you would like to discuss this matter further, please let me know.

Sincerely,



Jennifer Moreau, AICP  
Manager, Zoning Division

JM/apw

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EXHIBIT 6

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Page 1 of 3



**eDesign Management, LLC**  
Architecture, Interior Design, Project Management  
941 W Morse Blvd Ste 100  
Winter Park, FL 32789  
Voice 321-214-4762  
Fax 407 982 7139  
[sales@edesignllc.us](mailto:sales@edesignllc.us)  
AA26002398

01/09/2020

**Orange County Zoning Division**  
201 South Rosalind Ave, 1<sup>st</sup> Floor  
Orlando FL 32801  
Attn Jennifer Moreau

Re: Response to email from Anoch Whitfield OC Zoning received 1-7-19 4:25pm **AND** response to Official interpretation of Land Use in Section 38-11 for ID 35-22-30-5820-01-001/002/003 dated 12-23-2019.

Ms. Moreau

Please consider this a request a meeting with you with the intent and purpose to discuss your determination in the refenced letter. We believe that your determination may be based on misinterpreted, mis-spoken, or misunderstood information that may have been provided to you at the 12-13-19 meeting and the subsequent information sent to your office on 12-16-19. Apparently, there was some confusion with respect to if a membership club was to be required and if the athletes during the events were professional or not. We wish to provide in this letter some clarification.

We requested a determination as to under what SIC code in the USE TABLE this proposed facility as described might be allowed.

The proposed use DOES NOT focus on the operation of Promoting Professional or Semi-professional sports. ALL users are amateur, including at the local, national, and international events. No user is paid or provided with any monetary winning in any manner, shape, or form. Use 7941 per US Dept of Labor is titled "Professional Sports Clubs and Promoters". Under the "Uses Per Zoning Code", column 7941 is for 'Stadiums and Arenas'. We intend to build no sort of seating or structure (it will be all standing room only for spectators). The only mention at the meeting was that during the special events (under special permit, if required) the event director shall, if required, secure a permit for any small temporary seating structure that will be of very limited capacity. The owner/operators will not be promoting professional sports.

Webster definitions:

**Professional:** (noun) a person engaged in a specified activity, especially a sport or branch of the performing arts, as a main paid occupation rather than as a pastime.

**"Stadium":** A large usually roofless building with tiers of seats for spectators at sports events.

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## EXHIBIT 6 (Cont'd)

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**"Arena"**: An enclosed area used for public entertainment.

Therefore, it is our position that your determination of the use of 7941 is inaccurate because there are other use codes that are more appropriate and perhaps were not considered by us or you as a possibility. Perhaps we failed to explain exactly what we propose or perhaps we did not fully or properly explore all the uses to determine which one best fits the intended use.

The main item to be constructed can be described as nothing more than an exercise (running) track with banked curves which is about one fifth the size of standard 400m running track. This track will serve as a multi-purpose track for reducing, exercise, and active physical fitness conditioning for adolescents and adults in a non-professional capacity. The reducing and conditioning exercises of running, bicycling, and inline blading are the uses. All 3 are recognized outdoor reducing and conditioning exercise as they are all cardio exercises. The 7991 Physical Fitness Facilities use is allowed in C2 without a special exception and without a sound proof building. The use is allowed in C2 under both rows of 7991 in the Use Table. The day to day 'use' we propose does not involve activities in which an individual or teams competes against another or others. All activity is focused on reducing, exercise, and physical fitness conditioning. Trainers will be on duty anytime the track is occupied. Body conditioning and fitness tracking will be provided. Person to person or team to team **competition** will not take place other than at special events permitted (if required) by the county. The DOL description for SIC 7991 specifically indicates the "operation" of facilities featuring reducing, exercise, and other active physical fitness conditioning. It should be noted that 7991 does not require a membership club basis and thus the facility can be open to the public.

Further, under the first row of Section 7997, 'Membership Sports and Recreation Clubs outdoor uses', the use is allowed without a soundproof building. (The use is allowed as we do not operate on a 'not for profit' basis). The DOL description for SIC 7997 specifically indicates 'amateur sports'. All 3 uses are recognized as international amateur sports. Any inference that this use (7997 Sports Outdoor) would be, in my humble opinion, only allowed in conjunction with Single Family Developments (under the first row) is inconsistent with the fact that the use is allowed without restriction in most Industrial zones and in C2 and C3 commercial zones with only the non-for-profit restrictions. *It should be noted that roller speed or inline speed skating is also an internationally recognized 'sport' included at the World Games since their inception in 1981.*

Again, anytime the operator conducts a **competitive**, amateur local, national, or international event he will, if required, secure a special event permit from the county for any temporary seating. All competitors and users in any sport during these sporting events will be required to have membership in a local, national, or international recognized club of that sport.

Webster definitions:

**"Sport"** An activity involving physical exertion and skill in which an individual or team **competes** against another or others for entertainment.

**"Exercise"** to use repeatedly in order to strengthen or develop.

The owner respectfully requests that the Orange County Zoning Divison re-visit the decision as to which SIC code use the proposed facility and operations may be allowed under without a

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## EXHIBIT 6 (Cont'd)

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sound proof building, and respectfully request that the SIC code of 7991 Exercise Center be granted for day to day operations (open to the public), and under 7997 Membership Sports and Recreation Clubs outdoor uses, and be granted for the membership sporting events. We contend that the 7997-membership use is allowed (without a sound proof building) and thus special permits for membership 'sports' is not required by the code.

The owner further contends that the facility will be, primarily, engaged in the operation of a reducing and health club facility featuring exercise and other physical fitness conditioning which will be open to the public, day to day basis, as described and allowed under 7991. Further the secondary operation occurring a few times a year are membership sports and recreation described and are allowed under 7997. Neither 7997 or 7991 is required to have a sound proof building because condition 85 does not appear above the P under the C2 column for these 2 uses.

The owner further contends that condition 85 (sound proof building) is only required when indicated in the use table; and that the numbered condition #85 is not listed under any of 7991 or 7997 rows under the C-2 Column.

Per article 38-79 Conditions for permitted uses, special exceptions, etc.

"The following numbered conditions shall correlate with the numbers listed in the use table set forth in section 38-77".

Finally, the owner is not building a skating rink. In fact, there is already one in the existing building so we do not need another one. However, what we propose is an amateur exercise and sporting track.

The owner suggests to you that an exercise track and a skating rink are not the same thing. "Roller skating rink operation" is specifically listed under DOL SIC 7999-AMUSEMENT and Recreation Services Not Elsewhere Classified". It is **not** listed under 7997, 7941, nor 7991.

Webster definitions:

**Amusement** 1 : a means of amusing or entertaining; 1a. 'Amusing': to appeal to the sense of humor of. 2. the state or experience of finding something funny.

This is not an 'amusement' facility. We propert that this is a multi-purpose facility. An amateur fitness exercise facility which will be open to the public daily and an amateur membership sports facility at a few special times a year. Both outdoor uses are both allowed in C2 (without a special exception or a sound proof building) under 7991 and 7997.

Thank you for considering meeting with us to discuss this matter, and we hope to hear from you soon.

Anthony E Ewen

Anthony E. Ewen, RA NCARB (Florida RA0009781)



February 21, 2020

Ms. Melissa Escoffery, Esq.  
The Soto Law Office, P. A.  
415 Montgomery Road, Suite 111  
Altamonte Springs, FL 32714  
Email: [MEscoffery@TheSotoLawOffice.com](mailto:MEscoffery@TheSotoLawOffice.com)

Subject: Interpretation of Land Use in Section 38-77  
Parcel ID #'s: 35-22-30-5820-01-001, 35-22-30-5820-01-002 & 35-22-30-5820-01-003

Dear Ms. Escoffery:

On December 23, 2019, I issued a Zoning Manager interpretation letter based on information provided at the pre-review meeting and via email on December 16, 2019 stating that the proposed development and use of a multi-purpose outdoor velodrome/patinodrome most closely resembles and aligns with uses listed in SIC 7941 and noting that uses falling under SIC 7941 in the C-2 zoning district requires approval of a special exception. On January 9, 2020, Mr. Antony Ewen, architect with eDesign Management, LLC, submitted to the County a response/rebuttal letter (attached for reference) detailing his position. This letter serves as my amended and restated Zoning Manager Interpretation Letter based on my consideration of the details in Mr. Ewen's letter as further elaborated below.

1. **Proposed Use of SIC 7991 (Physical Fitness Facilities):** In paragraphs 3 and 6, Mr. Ewen made the argument that "the proposed use does not focus on the operation of promoting professional or semi-professional sports. All users are amateur, including at the local, national and international events". Mr. Ewen further provided definitions for "professional", "stadium" and "arena" and stated that the owners/operators will not be promoting professional sports. He argued that the proposed facility is "nothing more than an exercise (running) track with banked curves" for "a multi-purpose track for *reducing, exercise and active physical fitness conditioning* ... in a non-professional capacity". He further argued that these uses (italicized above for emphasis) are cardio/physical fitness exercises and that they should fall under SIC 7991.

Mr. Ewen also noted that SIC 7991 "does not require a membership club basis and thus the facility can be open to the public".

**County's Response:** Relative to Mr. Ewen's comment that SIC 7991 does not require a membership, that point is not relevant as the County has not and is not requiring that a use

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## EXHIBIT 7 (Cont'd)

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Ms. Melissa Escoffery, Esq.  
February 21, 2020  
Page 2

under SIC 7991 be a membership only facility. To reiterate, my December 23, 2019 Interpretation Letter makes no reference to membership only facilities.

Relative to Mr. Ewen's argument that the proposed use is a facility for exercise/physical fitness conditioning, which is a permitted use under SIC 7991, an exercise facility under SIC 7991 would be an indoor facility. The example uses listed in the SIC Code under 7991 are all indoor facilities, e.g. health clubs, facilities providing aerobic dance and exercise classes, spas and similar facilities featuring exercise and active physical fitness conditioning. Since this facility is proposed to be outdoors, we do not believe this classification applies.

- 2. Proposed Use of SIC 7997 (Membership Sports and Recreation Clubs):** In paragraph 1, Mr. Ewen stated that "there was some confusion with respect to if a membership club was to be required and if these athletes during the events were professional or not". In paragraph 7, Mr. Ewen made the argument that "under the first row of SIC 7997, Membership Sports and Recreation Clubs Outdoor Uses", the use is allowed without a soundproof building". In this paragraph, he stated that all three uses (*reducing, exercise and active physical fitness conditioning*) "are recognized as international amateur sports". He stated with *emphasis added* that "roller speed or inline speed skating is also an internationally recognized 'sport' included at the World Games since their inception in 1981".

**County's Response:** First, in terms of Mr. Ewen's argument regarding soundproofing, "the first row of SIC 7997" does not require uses to be in a sound proof building as this land use row speaks only to indoor uses (for membership clubs). Therefore, citing this provision of SIC 7997 (first row of SIC 7997) relative to sound proofing of buildings is not relevant.

Second, in terms of any confusion regarding membership, I do not believe there has been any confusion. My staff, Ms. Anoch Whitfield, emailed you on December 5, 2019 asking for confirmation on whether the facility would be open to the general public through a paid admission fee or a membership only club or other type of membership. You responded on December 6, 2019 stating that it will be open to the general public. In your letter dated December 16, 2019, you further stated that the proposed facility would be open to the public with entry fee paid. Based on the information you previously provided, when I issued my December 23, 2019, Interpretation Letter, I did not find or even assume that the proposed facility would be a membership only facility. Additionally, there is no reference to "membership only" uses in my December 23, 2019 Interpretation Letter.

Third, in terms of whether or not the facility is a membership only facility, Mr. Ewen's letter states that, "all competitors and users in any sport during these sporting events will be required to have a membership in a local, national or international recognized club of that sport". That these individuals are members of or are otherwise affiliated with a sports club or organization for a particular sport is not the same thing as the proposed facility itself being a membership only facility. For example, a person being a member of the local track club does not mean that he/she is also a member of your client's proposed facility. Examples of membership facilities include Planet Fitness, Gold's Gym, etc. Therefore, the argument that this facility falls under SIC 7997 as a membership only sports and recreation facility because special events participants have to have membership in a sport organization/club does not apply. Furthermore, the County's evaluation of land uses is not based on uses occurring during a special event or based on ancillary use but rather on the principal use.

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EXHIBIT 7 (Cont'd)

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Ms. Melissa Escoffery, Esq.  
February 21, 2020  
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3. **Owner/Developer's Request:** Mr. Ewen stated that the owner further contends and requests that the facility be allowed as an exercise facility for reducing, exercise and other physical fitness conditioning open to the public, as described and allowed under SIC 7991 (Physical Fitness Facilities), for day to day operation and as a membership sports and recreation use under SIC 7997 (Membership Sports and Recreation Clubs) during special sporting events.

**County's Response:** As previously stated, land use determination is made based on the principal use, not on uses occurring during special events or ancillary uses. Furthermore, per the SIC Codes, "physical fitness facilities are classified in Industry 7991", and the "recreation and sports club use" listed in SIC 7997 specifically "excludes physical fitness". Therefore, the facility would have to fall under one SIC code or the other, not both.

4. **Condition 85:** Mr. Ewen stated that "the owner further contends that condition 85 is only required when indicated in the use table; and that the numbered condition 85 is not listed under any of 7991 or 7997 rows under the C-2 column".

**County's Response:** This is correct. Condition 85 is not listed in any of the rows under SIC 7991 (Physical Fitness Facilities) or SIC 7997 (Membership Sports and Recreation Clubs). Condition 85 states "a skating rink, billiard parlor or bowling alley shall be a permitted use, provided that such activity and facility is enclosed within a completely enclosed, soundproofed building". SIC 7991 uses are indoor facilities (such as exercise facilities, facilities featuring aerobics and dance classes, health clubs and spas), and SIC 7997 (per the description in the SIC Code) are sports and recreation clubs which are restricted to use by members and their guests, e.g., country, golf, tennis, yacht, and amateur sports and recreation clubs. As you have confirmed and Mr. Ewen and the property owner have contended, the primary or principal use is not a membership only club; therefore, the proposed use would not fall under SIC 7997. The fact that Condition 85 is not listed in any SIC 7991 and SIC 7997 land use rows is irrelevant.

Based on Mr. Ewen's January 9, 2020 letter, it is unclear what the property owner/operator wishes to develop: a physical fitness facility under SIC 7991 or an outdoor sports and recreation facility. If it is a membership only outdoor recreation and sports club/facility, it would fall under SIC 7997 and be subject to Condition 132 (which requires a special exception approval if the recreation area is owned or operated by a nonprofit organization). If it is not a membership only facility but is an outdoor recreation and sports facility open to the general public, the available SIC codes are SIC 7941 (Sports Club) (establishments primarily engaged in operating and promoting professional and semiprofessional athletic clubs, promoting athletic events, including amateur events, athletic/sports field operation for sports promotion and like uses) and SIC 7999 (Amusement and Recreation) (establishments primarily engaged in the operation of sports, amusement and recreation services not elsewhere classified, including skating rinks). SIC 7941 requires a special exception approval, and SIC 7999 is subject to Condition 85, which requires that a skating rink, billiard parlor or bowling alley be completely enclosed in a soundproofed building.

Based on all of the information provided, as listed below,

- That "all activity is focused on reducing, exercise and physical fitness conditioning..."
- That "all three uses are recognized as international amateur sports",

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February 21, 2020  
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- That "roller speed or inline speed skating is an internationally recognized 'sport' since its inception in 1981",
- That "the facility is an outdoor amateur exercise and sporting track" for athletes to train in the three (3) activities focused on at this facility,
- That "trainers will be on duty any time the track is occupied",
- That the facility is not a membership only facility,
- That local, national and highly competitive international sporting competitions in these three "sports" will occur during special sporting events (promotion of sports), and
- That the facility will provide an area for spectators, though standing room only, for viewers to spectate sports training and special sporting events,

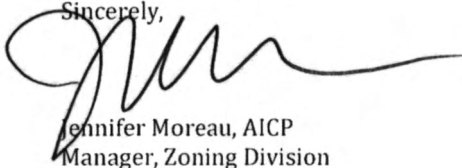
I stand by my previous determination from December 23, 2019, that the proposed outdoor, non-membership only multi-purpose sporting track or velodrome/patinodrome to be used for and by athletes resembles most closely those uses listed in SIC 7941.

I recognize that the list provided in the SIC Code is not an all-inclusive or exhaustive list of uses but rather provides examples of uses that fall under that SIC Code. The proposed multi-purpose sporting track/velodrome/patinodrome most closely aligns and resembles a facility that provides for athletic field operation (for sports promotion), sports field operation (for sports promotion), stadiums (for sports promotion) and other establishments primarily engaged in operating and promoting professional and semi-professional athletic clubs, athletic events (including amateur events) and stadiums and athletic fields where the operator is engaged in the promotion of athletic events. Uses under SIC 7941 require approval of a special exception in the C-2 zoning district.

Should you believe that my amended and restated interpretation in this letter is inaccurate or in error, then pursuant to Section 30-43(1), Orange County Code, you have the right to appeal such determination to the Board of Zoning Adjustments (BZA) for its consideration at a noticed public hearing. Any such appeal will need to be filed in writing with the Office of the Zoning Manager not later than thirty (30) calendar days from the date of this Amended and Restated Interpretation Letter.

If you file a timely appeal but the BZA recommends to affirm my Amended and Restated Interpretation, you may appeal the BZA's recommendation in a timely manner to the Orange County Board of County Commissioners for another noticed public hearing.

Sincerely,



Jennifer Moreau, AICP  
Manager, Zoning Division

JM/apw

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**EXHIBIT 8**

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**CHRISTOPHER MAGANIAS,**

**Appellant,**

v.

**ORANGE COUNTY ZONING  
DIVISION,**

**Appellee.**

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**APPEAL FROM INTERPRETATION LETTER RE: LAND USE OF PARCEL  
ID #S: 35-22-30-5820-01-001; 35-22-30-5820-01-002; &  
35-22-30-5820-01-003**

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On Behalf of Appellant**

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**EXHIBIT 8 (Cont'd)**

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**EXHIBIT 8 (Cont'd)**

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**ISSUES PRESENTED**

- I. WHETHER THE COUNTY ERERD IN FINDING THAT THE FACILITY SHOULD BE CLASSIFIED AS A “SPORTS CLUB” GOVERNED BY SIC 7941.

**FACTS & FACILITY DESCRIPTION**

Appellant, Christopher Maganias (hereinafter “Appellant”) is the President of the duly registered Florida Limited Liability Company, Astro Skating Center of Orlando (hereinafter “Astro”). As of September 2019, Appellant and Astro are the lawful lessee of property identified by parcel identification numbers: 35-22-30-5820-01-001; 35-22-30-5820-01-002; and 35-22-30-5820-01-003 (hereinafter “the Future Park Site”).

Appellant is not only a lawful lessee, but also has a valid and enforceable option to purchase with respect to the Future Park Site and intends to exercise said option. *See* Exhibit A. However, Appellant first requires verification and determination regarding his ability to construct a multi-purpose outdoor velodrome (hereinafter “Facility”) at the Future Park Site. *See* Exhibit B and *See* Exhibit C. The Facility will be utilized for the following purposes:

1. International and National Organization Speed Blading Special Events (international events: one (1) time per year and national events: one (1) to two (2) times per year);
2. Local youth field trips and special events from local public and private elementary, middle and high schools for child and youth education training in low and medium level speed blading;
3. Child, Youth and Adult speed blading sessions, training, and education;
4. Adult and Youth speed cycling sessions, training and education; and
5. Adult and Youth foot track running sessions.

The Facility will offer a “spectator gallery” which will not contain a grandstand or designated seating. Instead, the gallery will be standing space only. *See* Exhibit D and *See* Exhibit E. It is

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## EXHIBIT 8 (Cont'd)

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estimated that the overall “crowd size” for speed blading events will total approximately six hundred (600) people per international and national event and approximately three hundred (300) people per local special event.

It is important to note that the Facility will be open to the public. The public will be required to pay per entry, and no membership will be offered or required. As to the hours of operation, the Facility office will be open during standard business hours from 9:00 AM through 6:00 PM seven (7) days per week. The Facility rink and track will be open Monday through Friday and Sunday between 9:00 AM and 9:00 PM and on Saturdays the Facility rink and track will be open between 9:00 AM and 10:00 PM. When there are international and national special event competitions, the Facility rink and track will be open between 9:00 AM and 7:00 PM. Additionally, when there are local special events, the Facility rink and track will be open between 9:00 AM and 4:00 PM, then the Facility rink and track will be open to the public until the normal closing time.

Ultimately, the “day to day” operations will consist of training, education, and exercise availability/facility for speed racing, speeding cycling and foot track running. These operations will occur on a daily basis by paying patrons who will gather for the purpose of exercise and perfection of craft.

The Future Park Site is located in a C-2 General Commercial District as defined by Section 83-851, Orange County Code. See Orange Cnty Code § 38-851 (2019). Accordingly, any “use” identified by the letter “P” in the Section 38-77 “use table” may be made for the property. Further, any “use” identified by the letter “S” in the Section 38-77 “use table” may be made only upon special exemption.

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**EXHIBIT 8 (Cont'd)**

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PROCEDURAL HISTORY & THE DETERMINATION BELOW

This case was initiated on or about September of 2019 when Appellant requested a zoning verification letter from the County. More specifically, Appellant sought a written verification that no special exception would be required for the construction and ultimate operation of the Facility at the Future Park Site. Such representation had previously been made orally by Mr. Nick Balevich of the Orange County Zoning Division.

Appellant obtained a written confirmation that “no special exception” would be required by letter issued from Mr. Anoch Whitfield of the Orange County Zoning Division. Such letter indicated that the proposed Facility would be classified under SIC 7999 and pursuant to Section 38-79 of the Code, no special exception approval would be required.

Thereafter, however, Ms. Jennifer Moreau, Manager of the County Zoning Division (hereinafter “the County”) rendered an opinion that a special exception would be required finding that the Facility should be classified as a “Sports Club” governed by SIC 7941. According to the County, the Facility “most closely resembles” a facility for athletic field operation, sports field operation, stadiums and other establishments engaged in operating and promoting professional and semi-professional athletic clubs and events. As such, SIC 7941 requires approval of a special exception in the C-2 zoning district.

Appellant maintains in this appeal, as it did in the County determination below, that the Facility “most closely resembles” a “Physical Fitness Facility” governed by SIC 7991 or an “Amusement & Recreation (Outdoor)” facility governed by SIC 7999. Either of which classifications would not require a special exception for the pertinent zoning district. It is the County’s determination that SIC 7941 rather than SIC 7999 or SIC 7991 govern the Facility which the Appellant challenges herein.



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## EXHIBIT 8 (Cont'd)

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### ARGUMENT

There are three specific Code classifications at issue in the present appeal: SIC 7991; SIC 7999 and SIC 7941. SIC 7991 governs “Physical Fitness Facilities” and lists “Health spas, exercising centers, and aerobic classes” as examples of the classification. See Orange County Code § 38-77 (2019). All of these examples share a common feature of seeking to maintain health and strength through exercise.

SIC 7999 governs “Amusement & Recreation (Outdoor Uses)” and lists “Golf driving ranges, Golf Car rentals, ski instruction, swimming pools, tennis courts, little league and softball fields, outdoor skating rinks, amusement rides, paintball operations, day camps, rodeos and go-cart raceway” as examples of the classifications. *Id.* Each of these examples share a common feature of purely recreational, “for fun” activities.

Finally, SIC 7941 governs “Sports Clubs” and lists “Stadiums & arenas” as examples of the classification. *Id.* Each of these examples share a common characteristic of having a main purpose of hosting competitive sporting events, for patrons and generally providing seating for said patrons. Generally, “stadiums” and “arenas” have a sole or primary purpose of competition and are generally not open to the public for training, classes, or simple recreational use.

The County determined that the Facility most closely resembled a “Sports Club” and was accordingly governed by SIC 7941. SIC 7941, in a C-2 Commercial Zone requires a special exemption prior to operation. In finding that the Facility does not qualify as a physical fitness facility governed by SIC 7991, the County determined that “the example uses listed in the SIC Code under 7991 are all indoor facilities.” According to the county, “since this facility is proposed to be outdoors, [the County] [does] not believe this classification applies. This is the sole rationale under which the County has denied classification under SIC 7991.

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## EXHIBIT 8 (Cont'd)

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The County's determination is erroneous for a number of reasons. First, the County failed to afford the definitions provided in SIC 7991 a broad interpretation. This was required. Second, the County failed to consider the primary purpose of the use of the Facility. Third, the County incorrectly determined that the outdoor nature of the facility excluded it from classification as a SIC 7991 facility.

As to the first error, Florida law is clear that Code provisions must be broadly, rather than narrowly interpreted since they are in derogation of property rights. More specifically, general rules of statutory interpretation govern the application and consideration of the zoning and land development code. *See Stroemel v. Columbia Cnty*, 930 So. 2d 742, 745 (Fla. 1st DCA 2006).

To that end, words and definitions within the Code must: (1) be given their plain and obvious meaning; (2) must be interpreted in a manner that renders them Constitutional; and (3) "since zoning regulations are in derogation of private rights of ownership, words in a zoning ordinance should be given their broadest meaning." *Id. See also Colonial Apartments, L.P. v. Deland*, 577 SO. 2d 593 (Fla. 5th DCA 1991) (noting that zoning regulations are in derogation of private rights of ownership and as such their words must be given the broadest meaning).

Defining "fitness facility" to only include "indoor" facilities, is too narrow a reading of the class. Each of the examples stated "health clubs, exercise classes, spas" feature exercise and active physical fitness activities. Speed skating and running on a track are certainly physical exercise activities regardless of whether they are undertaken in or out of doors. There is simply no support for the proposition that because the physical fitness activities that the facility will support are to be engaged outdoors, makes this proposal any less of a "fitness facility" as defined in SIC 7991. Accordingly, under a broad reading of SIC 7991, the Facility does qualify as a Physical Fitness

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## EXHIBIT 8 (Cont'd)

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Facility as the primary purpose of activities engaged in at the facility will be training, education, and engaging in the physical sports of speed blading, cycling, and running.

Next, the County failed to account for the primary purpose of the facility, rather than isolated or minor occurrences in determining that SIC 7941 rather than 7991 governed the classification. SIC 7941 applies for “Sports clubs” with examples including “Stadiums and arenas”. The information provided by Appellant to the County makes clear that the Facility is not in the nature of a stadium. More specifically, the facility is intended to host “special” speed blading events and/or races only 1-3 times per year. Accordingly, such events would be limited and not the primary purpose of the Facility.

In addition, the Facility will have “day to day operations” that include youth, children, and adult training and education sessions in speed blading, speed cycling, and foot track running. As such, the main operations of the Facility will be to have pay to play training and access to speed blading, cycling and track running exercise activity. Further, the Facility is not expected to have any grandstands and will only contain a gallery for standing room to spectators.

The Facility does not have common characteristics of a “stadium” which is generally not open to the public; does not facilitate training sessions or pay to play exercise availability. What is more, a key feature of a stadium is grandstand seating and availability for spectators to have vantage points of whatever competition is presently scheduled. The Facility will have limited viewing area for spectators, and said area will be at grade level “standing room only”.

In contrast, the Facility does have common characteristics of a Physical Fitness Facility governed by SIC 7991. Generally, a physical fitness facility provides an environment where individuals can gather to engage in exercise, aerobic, or athletic activities. Most physical fitness

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**EXHIBIT 8 (Cont'd)**

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facilities also provide training (either personal or class) for group or individual (private) lessons. The Facility shares these common characteristics. The Facility is a gathering space where individuals can come to train and obtain instruction in speed skating, speed cycling, and foot track running. The Facility further provides “lessons” and/or instruction to hone these skills.

Third, the fact that the Facility is outdoor rather than indoor has no relevance to whether it can be classified as a “Physical Fitness Facility.” The County’s determination to the contrary is arbitrary and improperly focuses on the nature of the facility environment in which the training and exercise occur, rather than on the characteristics of training and exercise which occur at such facilities.

For these reasons, Appellant asserts that the County erred in classifying the Facility under SIC 7941. The County should classify the Facility under SIC 7991, which classification does not require a special exception nor a soundproof building when located in a C-2 Zone. This determination is in accord with general principles of statutory interpretation; the primary purpose of the Facility activities; and the goals of the Facility.

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**EXHIBIT 8 (Cont'd)**

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**CONCLUSION**

WHEREFORE, Appellant, respectfully requests that the Board reconsider, reevaluate and ultimate reverse the previous zoning determination made by the County, for the reasons set forth specifically herein, and find that no special exception nor soundproof building is required for the operation of the Facility addressed and discussed herein.

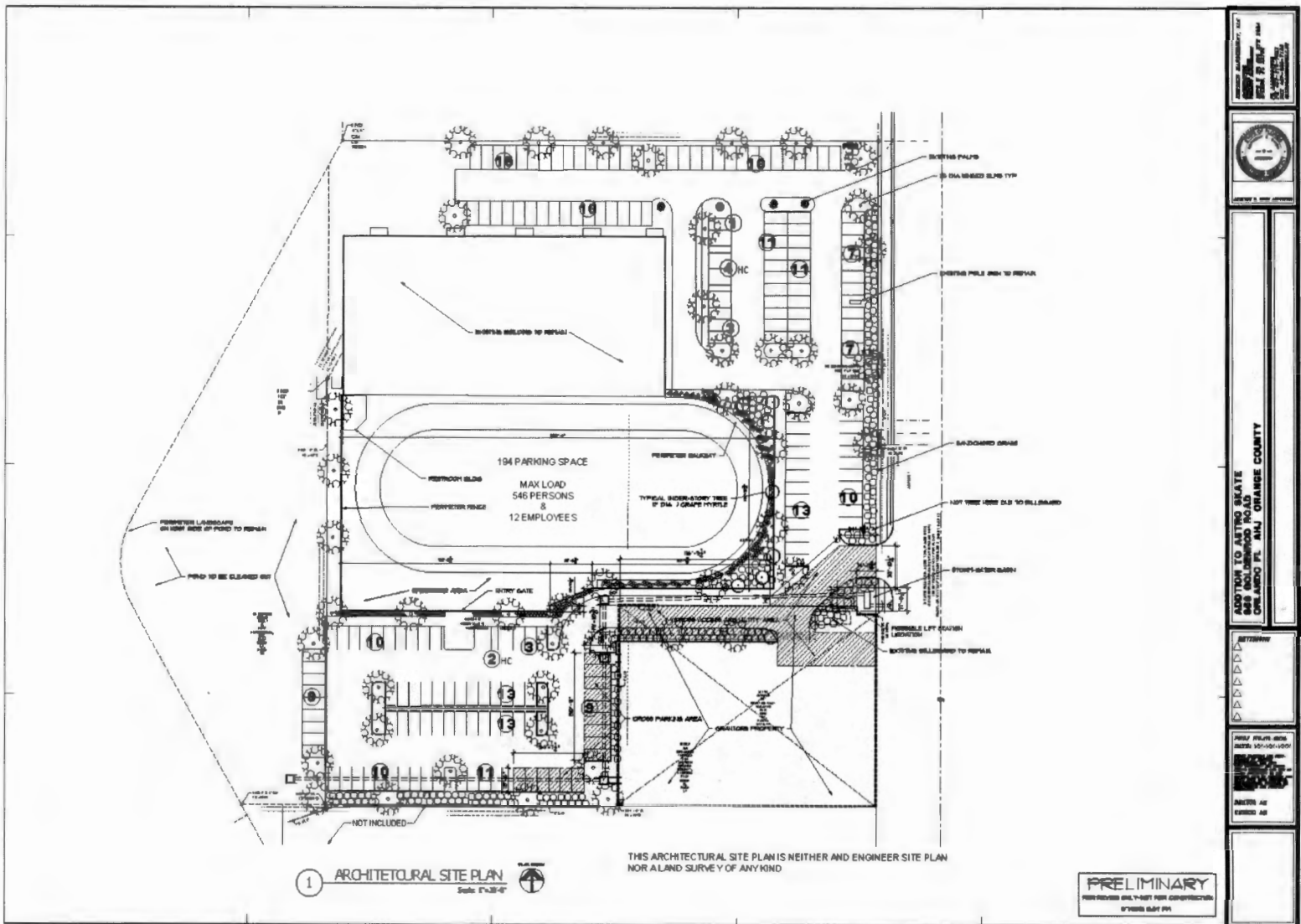
Respectfully submitted on this 20<sup>th</sup> day of March, 2020.

By: /s/ Kimberly Soto  
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On Behalf of Appellant

EXHIBIT 8 (Cont'd)



EXHIBIT 8 (Cont'd)



1 ARCHITETORAL SITE PLAN  
 Scale: 1"=32'-0"

THIS ARCHITECTURAL SITE PLAN IS NEITHER AN ENGINEER SITE PLAN  
 NOR A LAND SURVEY OF ANY KIND

PRELIMINARY  
 FOR REVIEW ONLY-NOT FOR CONSTRUCTION  
 07/2008 BAY PVI

<p>APPROVAL TO LISTING STATE          AND LOCAL ROAD          ONE AND A HALF ACRES          ORANGE COUNTY</p>
<p>ATTORNEY</p>
<p>PROJ. FILE NO. 08-00-0000-0000</p>
<p>DATE: 07/2008</p>

EXHIBIT 8 (Cont'd)





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EXHIBIT 8 (Cont'd)

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**SITE PHOTOS**



**View of site along S. Goldenrod Road facing north**



**View of existing Indoor Skating Rink**

**SITE PHOTOS (Cont'd)**



**View facing west from existing parking area**



**View facing south from center of site**

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**SITE PHOTOS (Cont'd)**

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**View facing east toward existing Indoor Skating Rink**



**BOARD OF ZONING ADJUSTMENT**