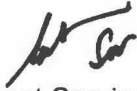




Interoffice Memorandum

December 15, 2023

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

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

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

SUBJECT: January 9, 2024 - Appeal Public Hearing
Applicant/ Appellant: Nadav Korem
BZA Case # VA-23-09-073, October 5, 2023; District 1

Board of Zoning Adjustment (BZA) Case # VA-23-09-073, located at 14354 Ellerbee St., Winter Garden, FL 34787, in District 1, is an appeal to the Board. The applicant is requesting variances in the A-1 zoning district as follows: 1) To allow an 8 ft. high fence/wall and gates in the front yard in lieu of 6 ft. high along Ellerbee St; 2) To allow an 8 ft. high fence/wall and gate within the clear view triangle along Ellerbee St; and 3) To allow an 8 ft. high fence/wall and gate within the clear view triangle along Siplin Rd.

At the October 5, 2023 BZA hearing, staff recommended denial of the variances. There was 1 in attendance to speak in opposition to the request pertaining to safety concerns and the negative visual impact of the fence/wall and gates. There was no one in attendance to speak in favor of the request. It was also noted that prior to the BZA hearing, no comments were received in favor of the request, and 4 comments were received in opposition. The BZA recommended denial, and the applicant subsequently appealed the BZA decision as he believes the denial is unreasonable and unfairly burdens the use of the subject property. This case was the result of code enforcement action.

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

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

AS/TK/js

Attachment: Zoning Division public hearing report, appeal form, BZA staff report

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

January 9, 2024

The following is a public hearing on an appeal before the Board of County Commissioners on January 9, 2024 at 1:30 p.m.

APPLICANT/APPELLANT: NADAV KOREM

REQUEST: Variances in the A-1 zoning district as follows:
1) To allow an 8 ft. high fence/wall and gates in the front yard in lieu of 6 ft. high along Ellerbee St.
2) To allow an 8 ft. high fence/wall and gate within the clear view triangle along Ellerbee St.
3) To allow an 8 ft. high fence/wall and gate within the clear view triangle along Siplin Rd.
Note: This is a result of Code Enforcement

LOCATION: 14354 Ellerbee St., Winter Garden, FL 34787, southeast corner of Ellerbee St. and Siplin Rd., north side of Black Lake, east of Avalon Rd., west of Winter Garden Vineland Rd., south of Florida's Turnpike

TRACT SIZE: +/- 1.39 acres (+/- 1.1 acres upland)

ZONING: A-1

DISTRICT: #1

PROPERTIES NOTIFIED: 39

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

Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for denial of the Variances due to safety concerns. Staff noted that no comments were received in favor of the request, and four (4) comments were received in opposition to the requests.

The owner discussed the ownership of the two adjacent right-of-ways, described the rationale for the height and location of the fence/ wall and gates to provide security and to avoid the septic drainfield.

There was one (1) in attendance to speak in opposition of the request pertaining to safety concerns and the negative visual impact of the fence/wall and gates. There was no one in attendance to speak in favor of the request.

Code enforcement staff briefly discussed the history of the code citation.

The Deputy Director of Public Works discussed County corner triangle requirements and confirmed that Orange County retains ownership of the Ellerbee Street and Siplin Road right-of-ways.

The BZA discussed the rationale for the request, noted that the fence/ wall and gates deviated from the information indicated on the approved permit, discussed the Code requirements, life safety concerns, and concerns about future growth and development in the area creating increased traffic and safety conflicts, and unanimously recommended denial of the Variances by a 5-0 vote, with two absent.

BZA HEARING DECISION:

A motion was made by Thomas Moses, seconded by Deborah Moskowitz and carried to recommend to **DENIAL** of the Variance requests in that there was no unnecessary hardship shown on the land; and further, they do not meet the requirements governing Variances as spelled out in Orange County Code, Section 30-43(3) (5 in favor, none opposed, 2 absent).



Appellant Information

Name: Nadav Korem c/o S. Brent Spain, Esquire, Theriaque & Spain

Address: 1809 Edgewater Drive Orlando, Florida 32804

Email: sbs@theriaquelaw.com Phone #: (407) 347-5388

BZA Case # and Applicant: VA-23-09-073

Date of BZA Hearing: 2023-10-05

Reason for the Appeal (provide a brief summary or attach additional pages of necessary):

The requested variance for my existing fence satisfied the County's variance criteria and should have been granted. The BZA's denial of the requested variance is unreasonable and unfairly burdens the use of the subject property. The BZA's decision also deprives me of the same use as similarly situated properties.

Signature of Appellant: [Signature] Date: 10/19/2023

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 19 day of October, 2023, by Nadav Korem who is personally known to me or who has produced [redacted] as identification and who did/did not take an oath

[Signature]
Notary Public Signature

Notary Stamp:  **XOMARA LOPEZ BOWERS**
Notary Public
State of Florida
Comm# HH227719
Expires 2/10/2026

NOTICE: Per Orange County Code Section 30-45, this form must be submitted within 15 days after the Board of Zoning Adjustment meeting that the application decision was made.

Fee: \$691.00 (payable to the Orange County Board of County Commissioners)

Note: Orange County will notify you of the hearing date of the appeal. If you have any questions, please contact the Zoning Division at (407) 836-3111.

See Page 2 of application for the Appeal Submittal Process.

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **OCT 05, 2023**

Commission District: **#1**

Case #: **VA-23-09-073**

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

Jenale.Garnett@ocfl.net

GENERAL INFORMATION

APPLICANT(s): NADAV KOREM

OWNER(s): NADAV KOREM 50% INT, PATRICIA WINANS KOREM 50% INT

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

1) To allow an 8 ft. high fence/wall and gates in the front yard in lieu of 6 ft. high along Ellerbee St.

2) To allow an 8 ft. high fence/wall and gate within the clear view triangle along Ellerbee St.

3) To allow an 8 ft. high fence/wall and gate within the clear view triangle along Siplin Rd.

Note: This is a result of Code Enforcement

PROPERTY LOCATION: 14354 Ellerbee St., Winter Garden, FL 34787, southeast corner of Ellerbee St. and Siplin Rd., north side of Black Lake, east of Avalon Rd., west of Winter Garden Vineland Rd., south of Florida's Turnpike

PARCEL ID: 34-22-27-0000-00-031

LOT SIZE: +/- 1.39 acres (+/- 1.1 acres upland)

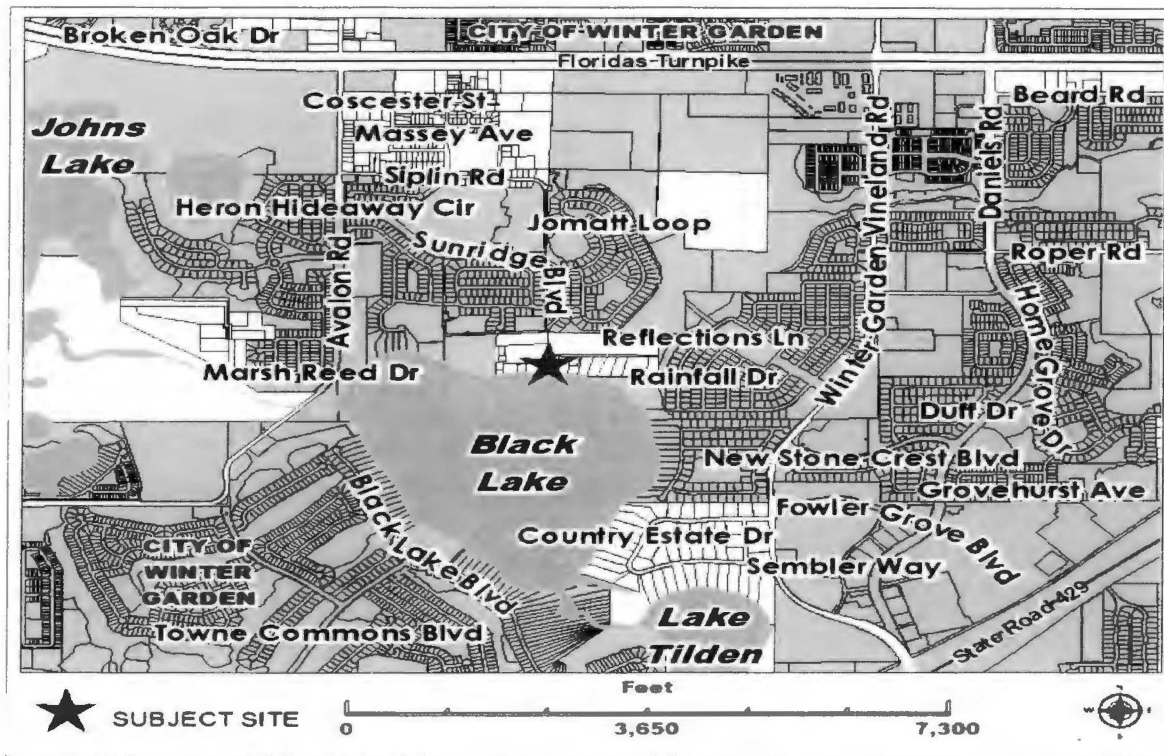
NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 39

STAFF RECOMMENDATIONS

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

LOCATION MAP



SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	A-1	A-1	Black Lake	A-1	A-1
Future Land Use	R	R	Black Lake	R	R
Current Use	Single-family residential	Single-family residential, Vacant	Black Lake	Single-family residential	Vacant

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located in the A-1, Citrus Rural zoning district, which primarily allows agricultural uses, as well as mobile homes and single-family homes on larger lots. The Future Land Use is Rural/Agricultural (R), which is consistent with the A-1 zoning district.

The area around the subject site is comprised of single-family homes, many of which are lakefront, and vacant parcels to the immediate north and west. The subject property is an unplatted 1.39 acre lot, of which +/- 1.1 acres is upland, and is considered to be a conforming lot of record. The remainder of the parcel is either wetland or submerged property under Black Lake. The property is located on the corner of Ellerbee Street and Siplin Road and is developed with a 10,344 gross sq. ft. single-family home (B19015942) and a 2,207 sq. ft. detached garage (B19015945), constructed in 2021. The frontage is considered Ellerbee Street since it is the narrowest portion of the lot abutting a public street and the side street is Siplin Road. The owners acquired the property in 2021.

A Code Enforcement citation was issued in October 2022 (CE#: 613998) for the installation of the fence/wall in the setbacks and not meeting all development standards. The applicant had obtained a permit for the fence/wall (B20026096) however it was not installed according to the approved plan which met code and the fence/wall never received final inspection. Therefore, the permit expired and a new permit (B22025840) was applied for after the citation was issued to replace the original permit which had expired. The new plan is consistent with what was installed but does not meet the zoning code.

In 2022, the applicant installed an 8 ft. high metal fence/wall along the front property line adjacent to Ellerbee St., with two 8 ft. high metal gates (Gate #1, Gate #2), in lieu of 6 ft. high, requiring Variance #1. Per Sec. 38-1408, of Orange County Code, fences in the A-1 district are limited to maximum height of 6 ft. in the front yard setback, unless abutting a collector or arterial right-of-way. Ellerbee Street is considered a local street. The same 8 ft. high fence/wall and Gate #1 along Ellerbee St. is within the 15-foot clear view triangle, requiring Variance #2. Additionally, there is an 8 ft. tall fence/wall and gate (Gate #3) along the side street property line adjacent to Siplin Rd. within the 15-foot clear view triangle, requiring Variance #3. Per Sec. 38-1408 (b), "A fence of any style or material shall maintain a clear view triangle from the right-of-way line for visibility from driveways on the lot or on an adjacent lot. The clear view triangle area for a driveway is formed on each side of a driveway by measuring a distance of fifteen (15) feet along the right-of-way and fifteen (15) feet along the edge of the driveway".

Additionally, there is an 8 ft. tall fence/wall encroaching into the 15-foot property corner triangle at the street intersection of Ellerbee St. and Siplin Rd. Per Sec. 38-1408 (a), "A fence shall be uniform in construction, design, material, color and pattern, and the fence material shall be a standard material conventionally used by the fence industry. No fence or wall shall be erected so as to encroach into the fifteen (15) foot for residentially and agriculturally zoned property, or twenty-five (25) foot for commercially and industrially zoned property corner triangle at a street intersection unless otherwise approved by the county engineer". The County Engineer viewed the location of the fence/wall at this intersection and is requiring that it be relocated to meet code.

Staff has reviewed the request and recommends denial of the Variances. Although the Ellerbee Street frontage has no existing sidewalk, the provision of an 8 ft. tall fence/wall in the front yard setback could obstruct the view of motorists. The 8 ft. tall Gate #1 along Ellerbee Street and Gate #3 along Siplin Road, along with the 8 ft. high metal fence/wall within the clear view triangle is a safety concern. Furthermore, the fencing and gate could be reduced in height and relocated to meet code, eliminating the need for the Variances. Comparatively, the home to the east of the subject property received a Variance in July 2021 to allow a 5 ft. high fence and 6 ft. high sliding gate within the 15 ft. visibility triangle along the front property line in the A-1 zoning district. However, the property had an existing drain field and septic tank in the front yard and other natural constraints that made it difficult to install a fence that meets code.

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

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

There are no special conditions or circumstances, as the existing fence/wall and gates height and location could be relocated to comply with the requirements of the code.

Not Self-Created

The need for the Variances are self-created since the fence/wall and gates could be constructed in a manner which would not impair sight distance visibility and safety of pedestrians or motorists.

No Special Privilege Conferred

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

Deprivation of Rights

There is no deprivation of rights as a fence/wall and gates could be installed without the need for the Variance requests and they could be modified or relocated to be compliant with code.

Minimum Possible Variance

The requested Variances are not the minimum possible, as the applicant could relocate or modify the height of the fence/wall and gates to eliminate the need for the Variances.

Purpose and Intent

Approval of the Variances will not be in harmony with the purpose and intent of the zoning regulations since the proposed height and location of the fence/wall and gates could impair the visibility of pedestrians and motorists along Ellerbee Street and Siplin Road. Further, no other similar requests have been granted within the immediate area for an 8 ft. tall fence/wall and gates and there are options to eliminate the need for the Variances, and thereby minimize the impact to the surrounding area.

CONDITIONS OF APPROVAL

1. Development shall be in accordance with the site plan and fence/wall and gate details received August 25, 2023, as modified by Condition #3 subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. The site plan shall be modified to show the corner fence/wall encroaching within the street intersection of Ellerbee Street and Siplin Road relocated to a code compliant location.
5. A permit for the approved fence/wall shall be issued and final inspection completed within 180 days of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.
6. Prior to the issuance of a building permit, the property owner shall record in the Official Records of Orange County an Indemnification/Hold Harmless Agreement which indemnifies and holds harmless Orange County from any claims, lawsuits, and any other damage caused by the locating of the fence/wall in the clear view triangles adjacent to Ellerbee Street and Siplin Road as requested by the property owner, and shall inform all interested parties, including any future purchasers of the property, that the fence is located within the clear view triangles and that the property owner, and the property owner's heirs, successors, and assigns shall be responsible for any claims, lawsuits, and other damage caused by installing the fence/wall and gates in that location. As part of this agreement the property owner shall maintain commercial insurance or a homeowner's policy that includes liability coverage in the amount of \$1,000,000 per occurrence and shall name Orange County, Florida as the additional insured.

C: Nadav Korem
14354 Ellerbee Street
Winter Garden, FL 34787

Cover Letter

Dear Orange County Zoning Division,

Allow me to introduce myself. I am a Florida resident, Nadav Korem, residing at 14354 Ellerbee Street, Winter Garden, FL 34787. I want to apply for a Variance To allow an 8 Ft high fence & wall in front and an 8 Ft. gate instead of a 6 Ft.

I want to apply for Variance approval to allow an 8 Ft high fence & wall in the front and an 8 Ft. gate in the view triangle.

I want to apply for Variance approval to allow an 8 Ft. gate in the view triangle on the side of the home.

I want to apply for Variance approval to allow an 8 Ft high fence & wall in the property corner triangle for two reasons:

1. There is no intersection between Siplin Road and Ellerbee Street. Siplin Road ends at the corner of Ellerbee Street. The Right-of-Way Agreement covers the road that continues to the gate entry. The Right-of-Way Agreement also covers Ellerbee Street.
2. Under the Health Department's instruction, my septic tank and drain field are in this corner with a permit for this location.

BZA has approved my next-door neighbor at 14302 Ellerbee St for the 5 Ft. fence gate and in the view triangle. If I remember correctly, it was in 2021.

Regards



Nadav Korem
14354 Ellerbee St
Winter Garden FL 34787
(407) 797-0498

COVER LETTER

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

A eight foot fence is needed because we have three big Great Danes that stand over six feet tall on their hind legs and can easily jump a four foot fence. The dogs are motivated to run and jump when they joggers running past, people walking, their dogs or the smell of a wild animal. One neighbor has already threatened to shoot our dogs if they ever come on to their land. To mitigate such potential problems we must contain our dogs securely behind a higher fence; see § 90.11 FENCE REQUIREMENTS on next page.

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 area is located near patches of forest with a lot of small wild animals and an occasional bear with cubs in the trees. Prior to having a higher fence, when the dogs smelled a nearby wild animal, the dogs would jump the fence jump and run into the forest to hunt and it would create a panic because humans would see the unleashed dogs charging toward a target and would be screaming for dear-life wondering if they were going to be attacked by the dogs. We feared a mis-aimed shooting at the dogs would endanger or even unintentionally kill us.

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

This variance being requested is purely for the sake of safety and a calm neighborhood and will not provide any special privileges. In most Florida cities, a six foot fence is recommended when fencing a yard for a dog; see § 90.11 FENCE REQUIREMENTS. We are asking for a eight foot fence only to contain our powerful athletic dogs.

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.

On the same road where our property is located, another house has fence and such has already been approved by the BZA. Not being able to have our five foot fence would cause an undue hardship for passers-by, as they will feel threatened, and undue hardship for my family because we would constantly have capture our dogs before someone unintentionally gets hurt.

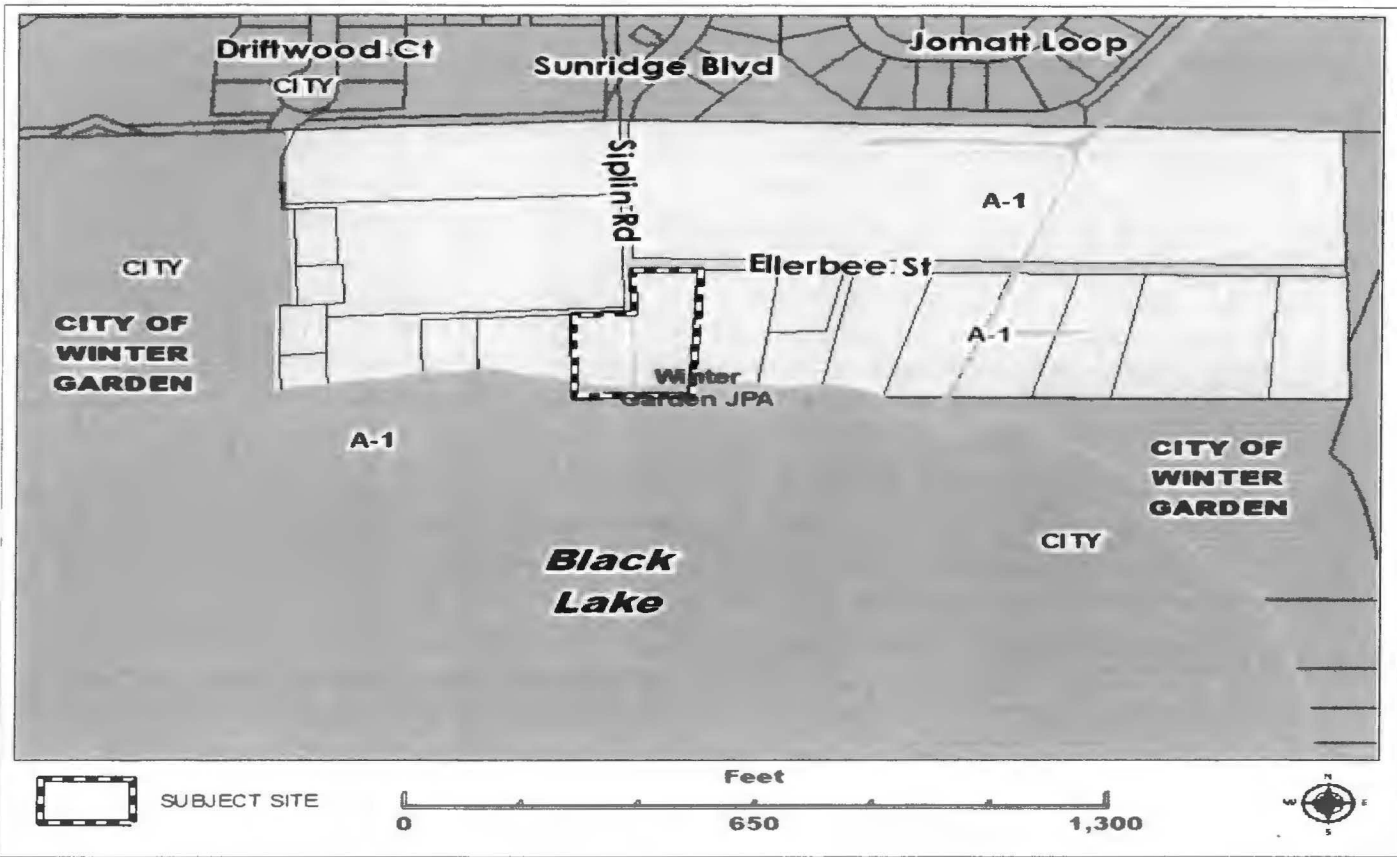
5. **Minimum Possible Variance** - The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building, or structure.

The minimum possible variance for a fence is six feet. As previously stated, we are asking for only eight as it makes it harder for our dogs to jump over, it keeps our neighbors safe and it prevents unnecessary violent escalations and threats.

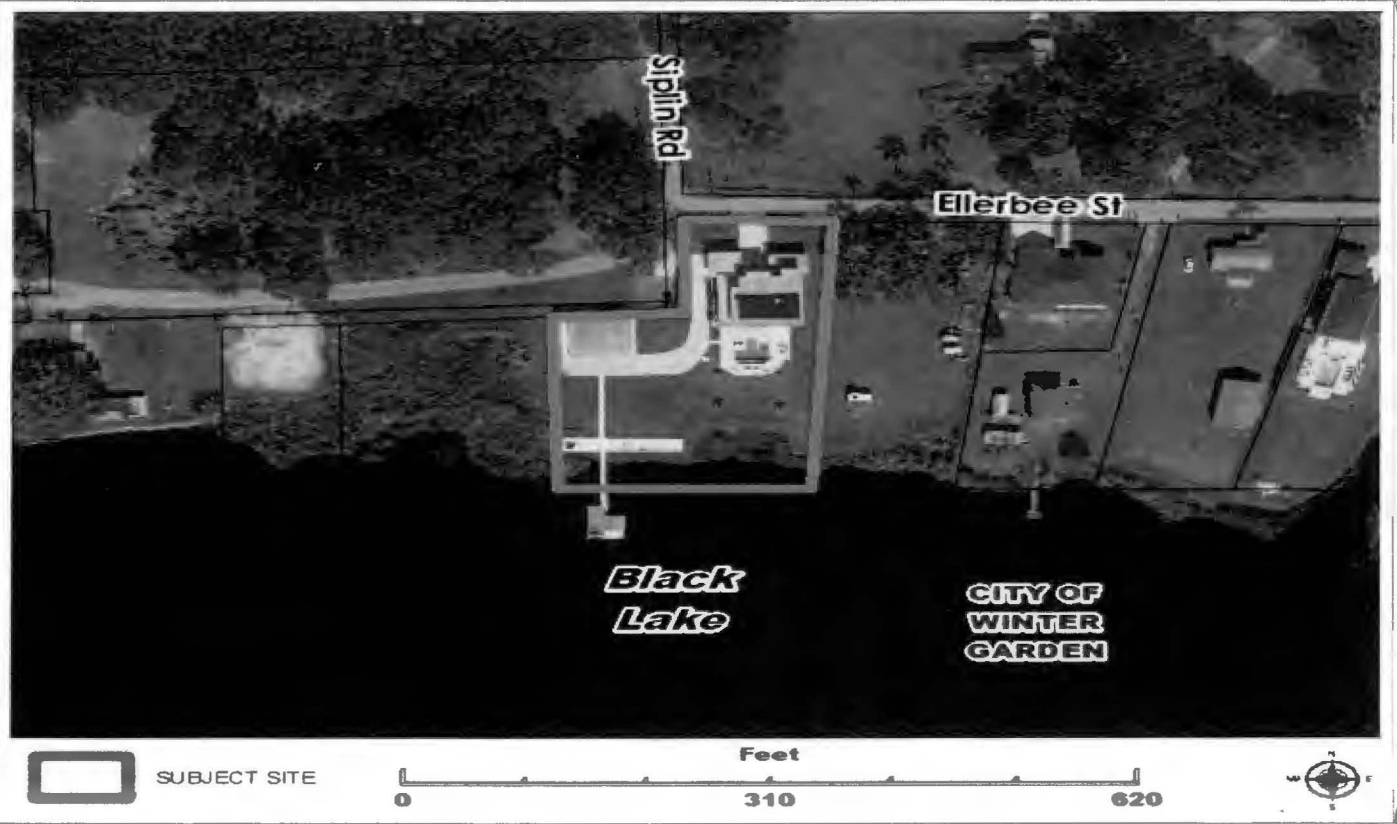
6. **Purpose and Intent** - Approval of the zoning variance will be in harmony with the purpose and intent of the Zoning Regulations and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

In no way shape-or-form is this fence injurious to the neighborhood, quite the opposite as explained we need to ensure by-passers are safe and that shooting does not occur as a result of dogs running unleashed.

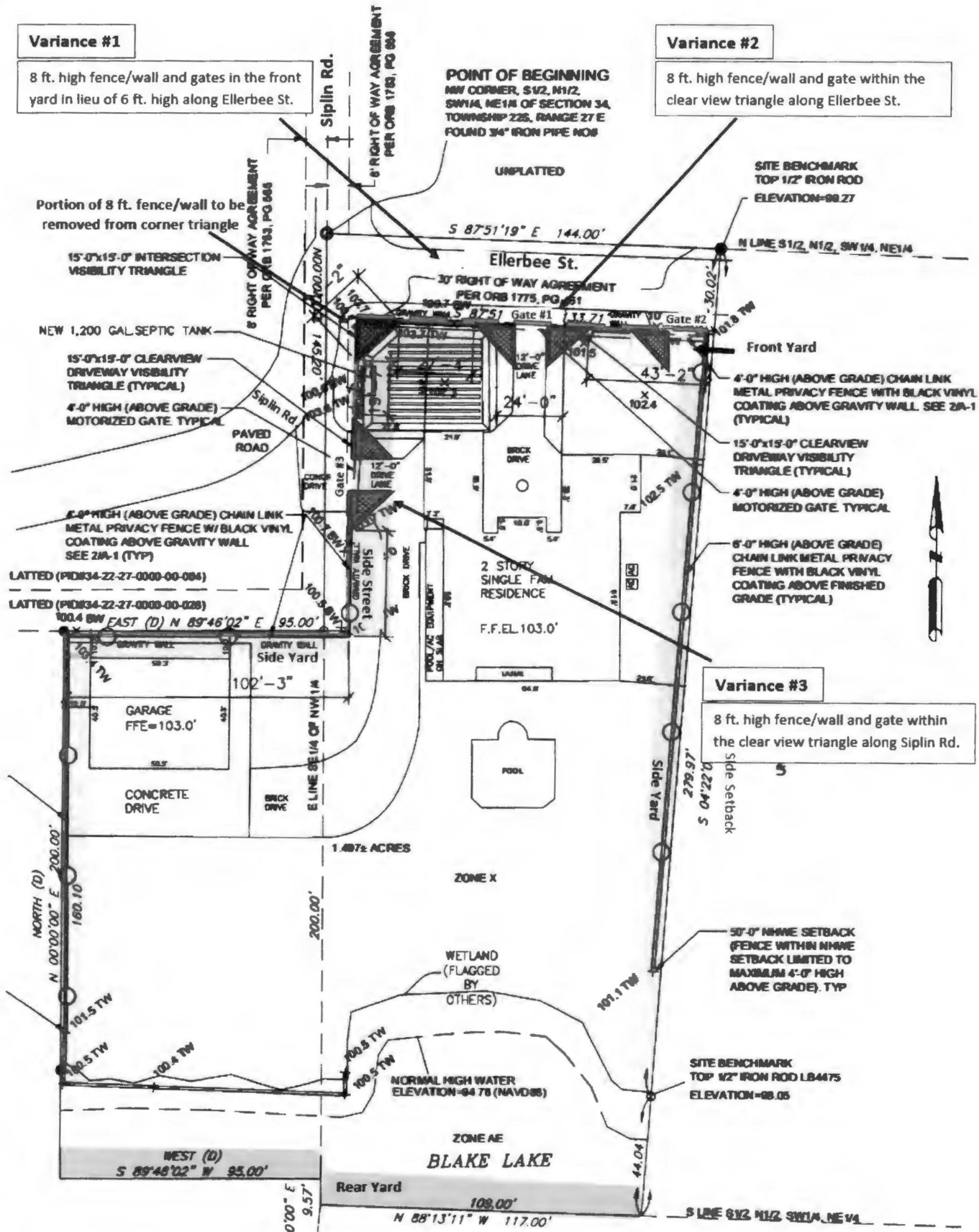
ZONING MAP



AERIAL MAP



SITE PLAN



Variance #1

8 ft. high fence/wall and gates in the front yard in lieu of 6 ft. high along Ellerbee St.

Variance #2

8 ft. high fence/wall and gate within the clear view triangle along Ellerbee St.

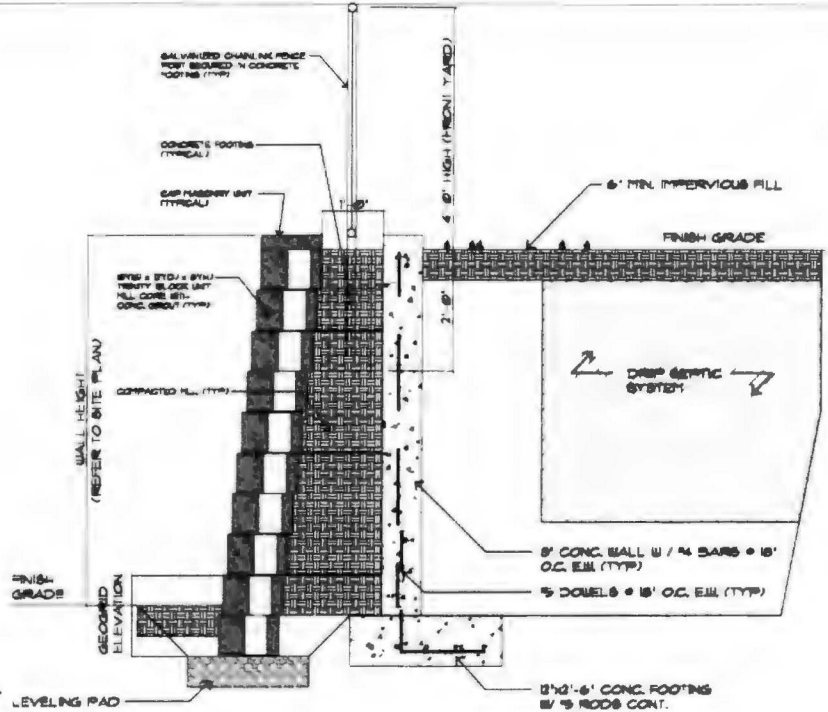
Variance #3

8 ft. high fence/wall and gate within the clear view triangle along Siplin Rd.

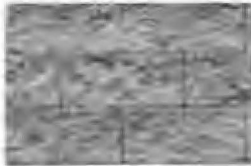
GRAVITY WALL DETAILS

TRINITY

Segmental Block Wall System



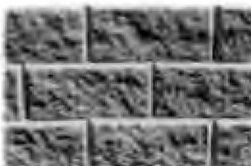
Multi-Split



Straight

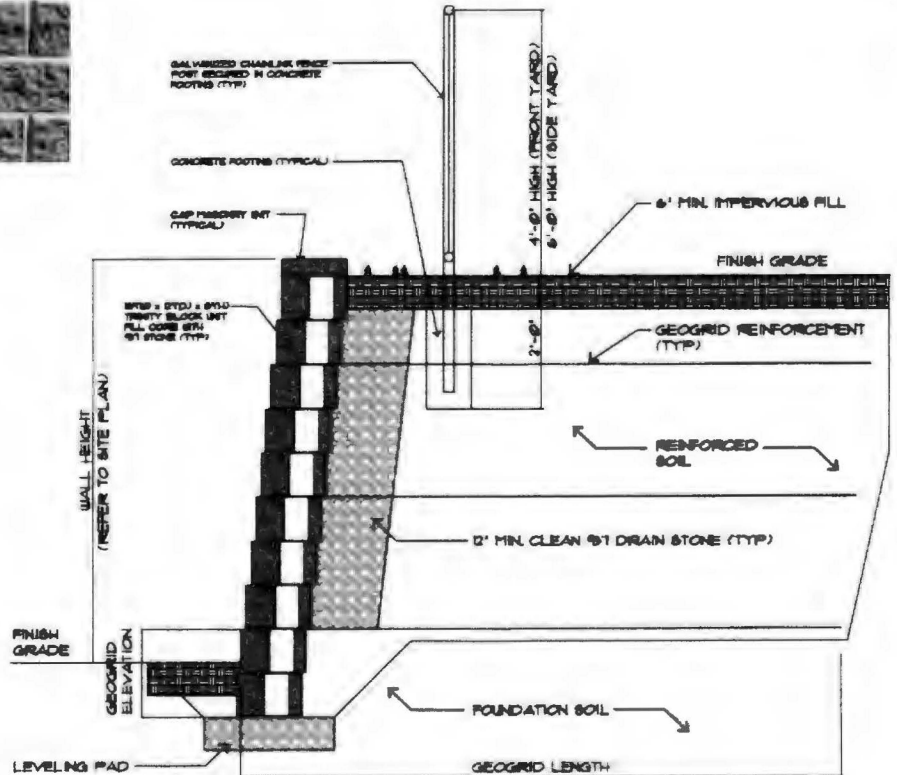


Stonescore



Chiseled No Climb

- 8" H x 18" W x 12" D (1 SF Unit and approx 75 lbs per unit)
- 5/4" Setback 3/4" Per Course
- Mechanical positive geogrid connector available
- Vertically aligned cores for efficient stone filling
- Rear hand holds assist in string



SITE PHOTOS

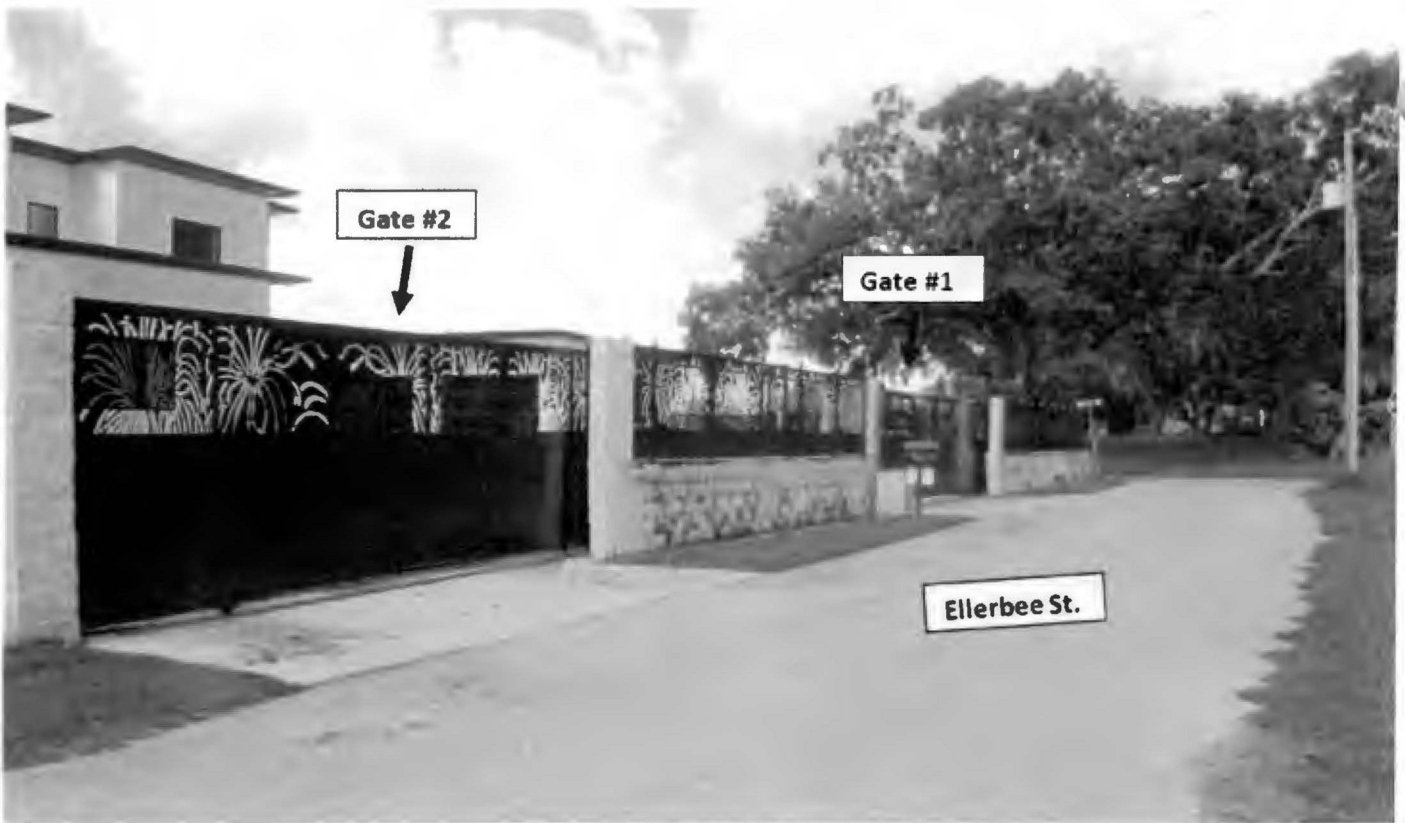


Facing southwest from Siplin Rd. towards Ellerbee St. and front of subject property



Facing east towards street side of subject property

SITE PHOTOS



Facing southwest from Ellerbee St. towards 8 ft. high fence/wall and gates within front yard

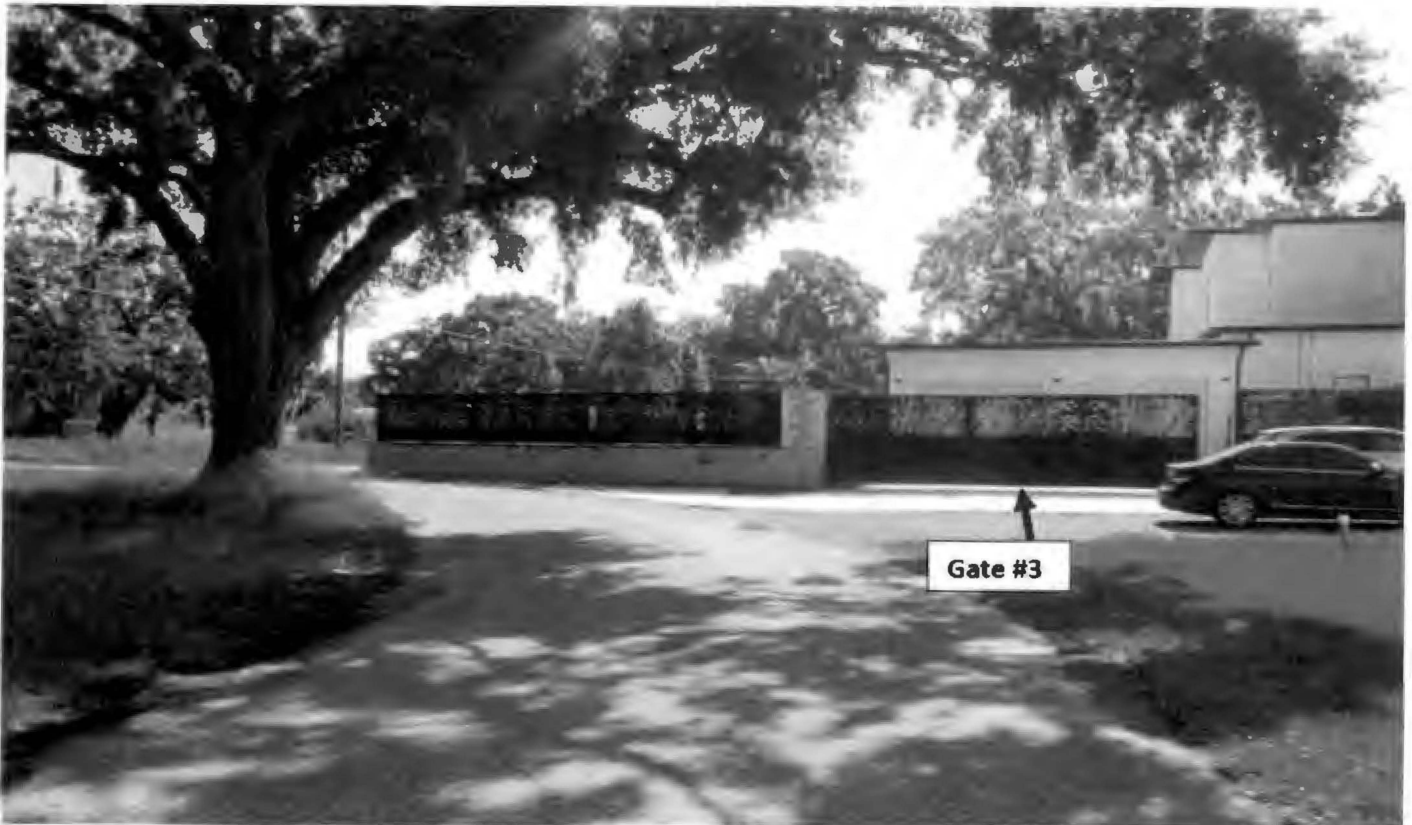


Front porch, facing north towards Gate #1 within clear view triangle

SITE PHOTOS



Front yard, facing northeast towards Gate #2

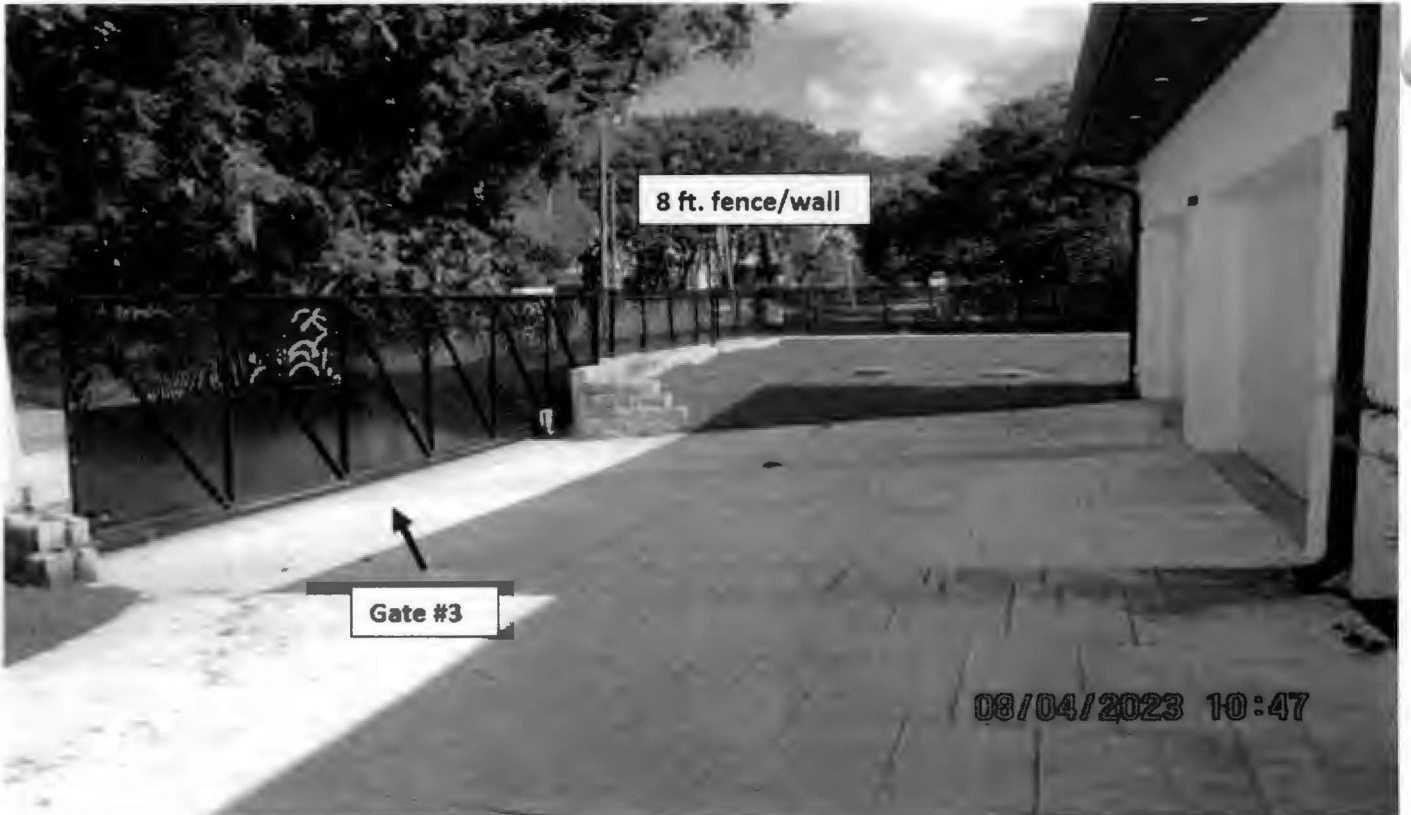


Facing east from Siplin Rd. towards Gate #3 within clear view triangle

SITE PHOTOS



Facing southeast from corner of Siplin Rd. and Ellerbee St. towards 8 ft. fence/wall within corner triangle



Side street driveway, facing northwest towards 8 ft. fence/wall within corner triangle and Gate #3

SITE PHOTOS



Facing south from corner of Ellerbee St. and Siplin Rd. towards detached garage