



Interoffice Memorandum

DATE December 7, 2018

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

FROM: Jon V. Weiss, P.E., Director
Community, Environmental and Development Services Department

CONTACT PERSON: **Carol L. Knox, Manager, Zoning Division**
407-836-5585

SUBJECT: December 18, 2018 – Board Called Public Hearing
Applicant: Hudson Fortune
BZA Case #SE-18-07-077, September 6, 2018; District #4

Board of Zoning Adjustment (BZA) Case #SE-18-07-077, located on Tindall Road, in District #4, is a board called public hearing to be heard on December 18, 2018. The applicant is requesting a special exception and variances in an R-CE-2 District to allow an existing Accessory Dwelling Unit (ADU) to remain on site.

The subject property is located at 11111 Tindall Road on the north side of Tindall Rd., southwest of Lake Hart.

At the September 6, 2018 BZA hearing, staff recommended approval of the special exception and variances. The BZA noted that the structure existed on site, in some form, for years and the applicant remodeled the structure to match the existing residence. The renovations, including enlargement of the structure, were completed by the applicant without the benefit of permits. One neighbor spoke in opposition to the request stating they have concerns with noise and that ADU's should not be allowed in Rural Settlements. The BZA recommended approval of the special exception and variances on a 4-3 vote.

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: Approve the applicant's request; or approve the applicant's request with modifications and/or conditions; or approve the applicant's request in part and deny it in part; or deny the applicant's request.
District #4.

COMMUNITY ENVIRONMENTAL DEVELOPMENT SERVICES DEPARTMENT ZONING DIVISION PUBLIC HEARING REPORT

The following is a public hearing on a board called hearing before the Board of County Commissioners on December 18, 2018 at 2:00 p.m.

APPELLANT/APPLICANT: HUDSON FORTUNE

REQUEST: Special Exception and Variances in the R-CE-2 zoning district as follows:

- 1) Special Exception: To allow an existing 1 story detached Accessory Dwelling Unit (ADU) to remain.
- 2) Variance to allow an ADU on a lot with 2.11 acres in lieu of 3 acres.
- 3) Variance to allow a minimum lot width of 199 ft. in lieu of 250 ft.

This is the result of code enforcement action.

LOCATION: 11111 Tindall Road
North of Tindall Road., southwest of Lake Hart

TRACT SIZE: 200 ft. x 460 ft.

ZONING: R-CE-2

DISTRICT: #4

PROPERTIES NOTIFIED: 33

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

The applicant expanded and converted an existing accessory building into an Accessory Dwelling Unit. The applicant would like to keep the structure to allow a living unit for their daughter.

Staff explained the area, outlined the zoning district, provided site photos, and gave background on the case.

Staff received 55 letters in favor of the request and 10 letters in opposition.

The applicant explained the property history and presented the permit for original accessory structure. The applicant stated when they purchased the property it was run down and after he purchased it they cleaned up the property. They also altered the accessory building and converted it into a living unit. He also explained that the front house was renter occupied and that family has moved out and his older daughter moved in to the front house. There was discussion regarding the size and use of the original structure.

Four neighbors spoke in favor of the request. They stated that the family had done a good job remodeling the property and believe allowing the ADU to remain would be a benefit to the area.

One neighbor spoke in opposition of the request. She stated that the family living in the rear structure is a nuisance to her property and she does not believe ADUs should be allowed in the rural settlement.

Code Enforcement spoke regarding the case and described that the code enforcement officer cited the applicant for an unpermitted ADU in in late 2017. The applicant was again cited in April 2018 due to the change in ownership.

The BZA discussed the alterations made to the original structure and the homestead exemption on the property. They also discussed the location of the structure and the facts of the case.

The BZA felt the ADU met the special exception criteria and approved the request.

BZA HEARING DECISION:

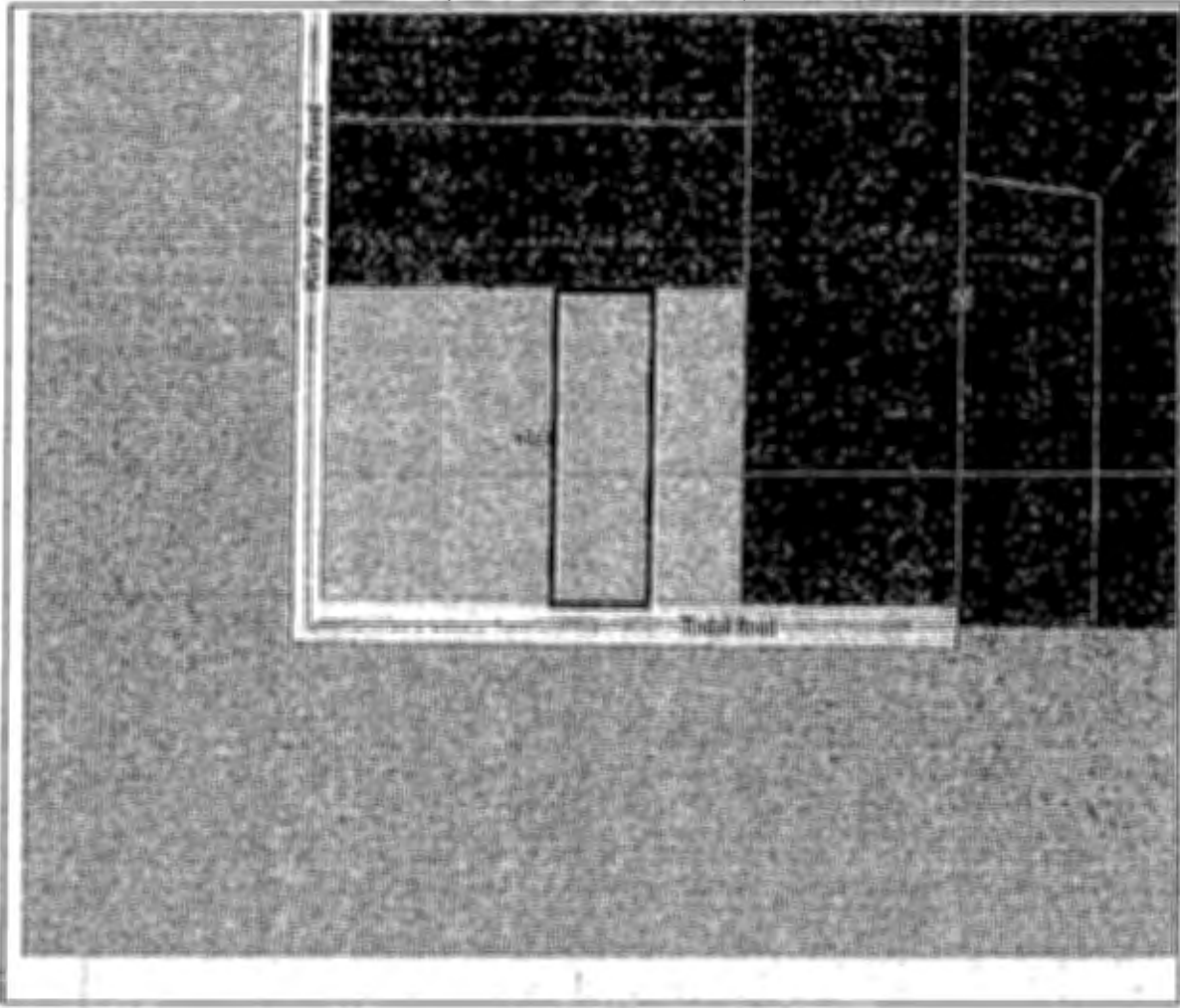
A motion was made by Jessica Rivera, seconded by Wes A. Hodge and carried to APPROVE the Special Exception request in that the Board finds it met the requirements governing Special Exceptions as spelled out in Orange County Code, Section 38-78, and that the granting of the Special Exception does not adversely affect general public interest; and APPROVE 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 in accordance with the site plan dated May 8, 2018 and all other applicable regulations. Any deviation, changes, or modifications to the plan are subject to the Zoning Manager's approval. The Zoning Manager may require the changes be reviewed by the Board of Zoning Adjustment (BZA) for administrative approval or to determine if the applicant's changes require another BZA public hearing.
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 action 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 Zoning Adjustment 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 ADU within ninety (90) days of final approval or this approval becomes null and void.

5. The Accessory Dwelling Unit (ADU) shall be occupied by an immediate family member for a minimum of three (3) years. The ADU may be occupied by a nonrelative three (3) years after being initially occupied by a relative or after the relative has died, whichever occurs first.

6. The applicant shall be responsible for payment of all applicable fees and assessments including but not limited to, impact fees.

**ACTION REQUESTED: Approve the applicant's request; or approve the applicant's request with modifications and/or conditions; or approve the applicant's request in part and deny it in part; or deny the applicant's request.
District #4.**



Applicant: HUDSON FORTUNE

BZA Number: SE-18-07-077

BZA Date: 09/06/2018

District: 4

Sec/Twn/Rge: 28-24-31-SW-C

Tract Size: 200 ft. x 460 ft.

Address: 11111 Tindall Road, Orlando FL 32832

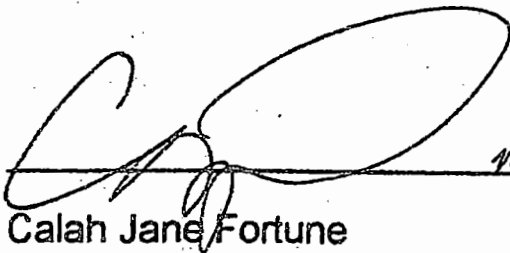
Location: North of Tindall Rd., southwest of Lake Hart

Affidavit of Calah Jane Fortune

Subject: Hardship Case Consideration

My name is Calah Fortune. I am a 29-year-old full-time public school teacher at the Title 1 School, Ventura Elementary. I am a single mother with one child who is 1 year old. My daughter is disabled and has special needs. Because of this I had to take unpaid medical leave last year for several weeks and continue to do so every Monday from work to take her to her medical appointments and therapies. When I am at school teaching my daughter is being taken care of by a private nurse paid for by Medicaid or she is attending a Prescribed Medical Pediatric Extended Care facility because of her feeding tube and pump machine. She is not able to digest or eliminate food on her own. Last year my income was under \$22,000 because of taking unpaid medical leave multiple times for my baby. I love my job and believe in public education. I cannot afford the apartment prices in this area, but I need to stay close to my parents who help with Anna Bee.

I am requesting a special consideration to live in an Accessory Dwelling Unit that we fixed up on a property owned by my family. The address is 11111 Tindall Rd, Orlando Florida, 32832.



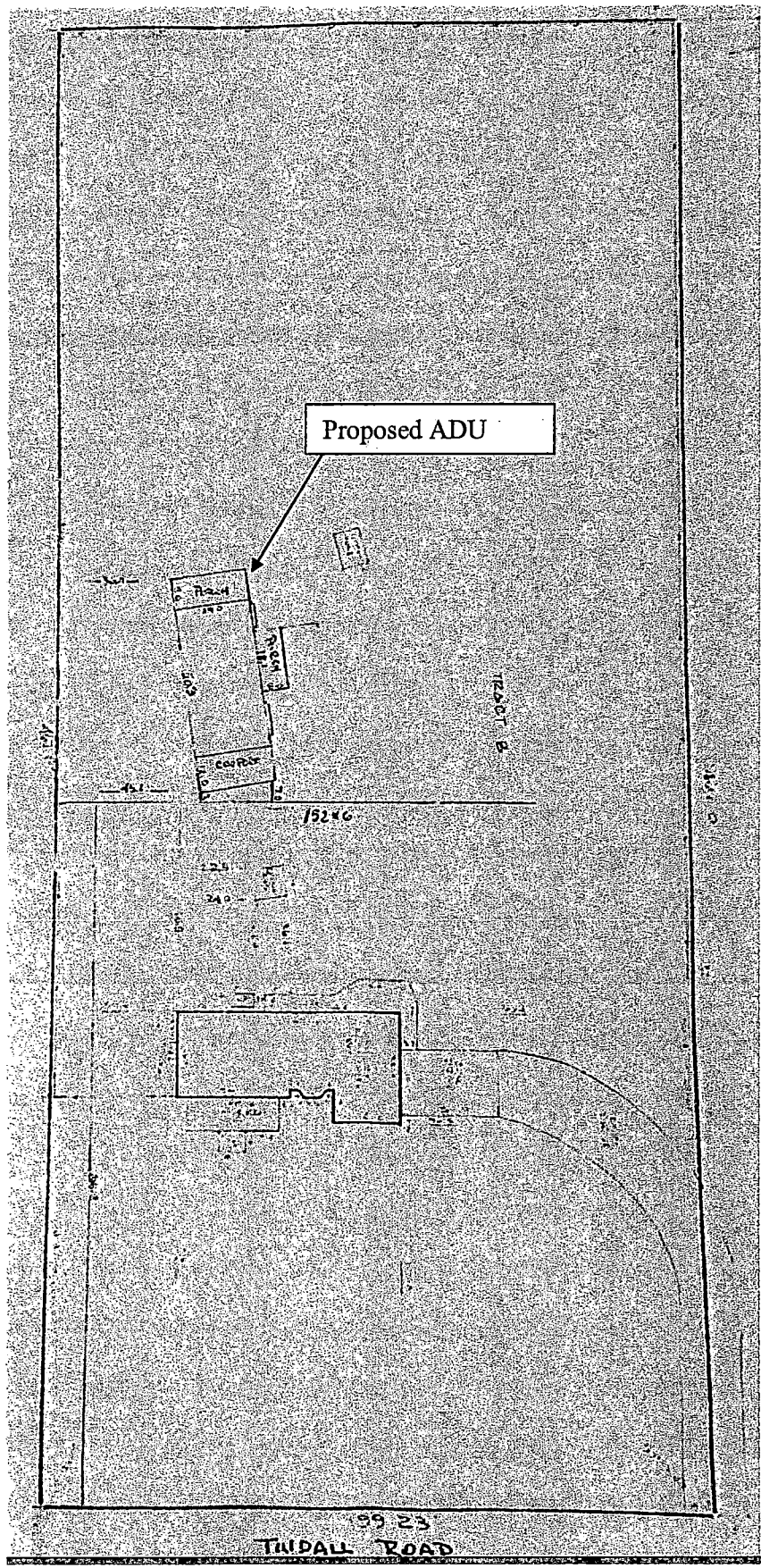
*March 16th 2018
Calah Jane Fortune*

Calah Jane Fortune

11111 Tindall Rd. Orlando,

Orange County, Florida 32832

March 16, 2018



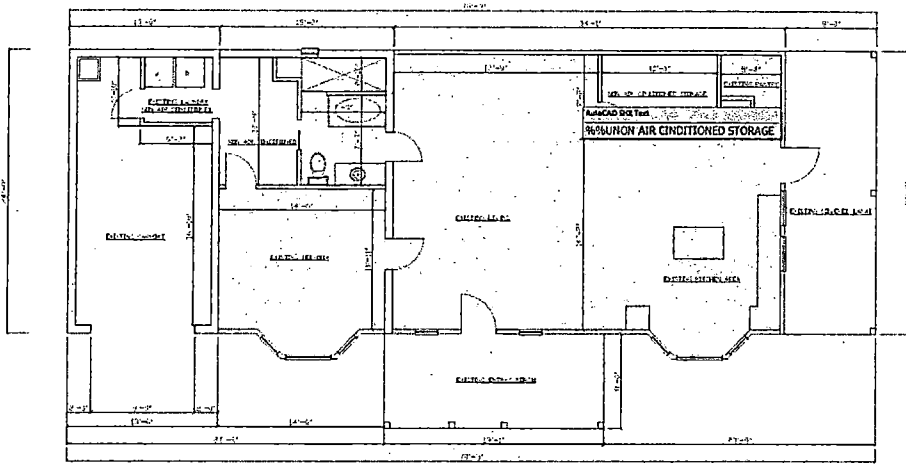
Proposed ADU

15246

17201 B

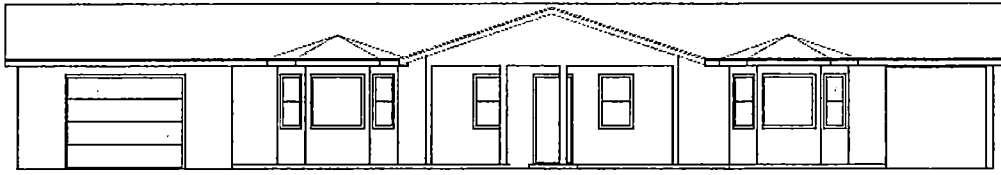
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TUDALL ROAD

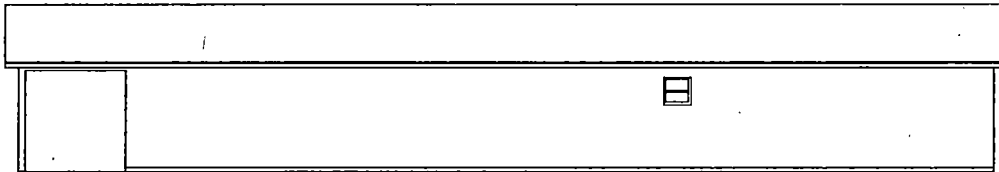


50 FOOT TAPERATION-ACCESSORY DWELLING UNIT	
ACCESSORY DWELLING UNIT AIR CONDITIONED	394 SQ. FT.
ACCESSORY DWELLING UNIT NOT AIR CONDITIONED	93 SQ. FT.
EXTERIOR	
PERMIT DEPTH PERCH	5.0 FT.
EXISTING COVERED LEVEL	192 FT.

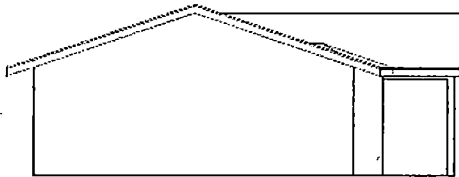
ACCESSORY DWELLING UNIT (EXISTING)



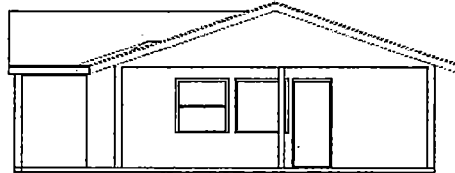
FRONT ELEVATION



REAR ELEVATION



LEFTSIDE ELEVATION



RIGHTSIDE ELEVATION



STAFF REPORT
CASE #SE-18-07-077
Orange County Zoning Division
Planner: Sean Bailey
Board of Zoning Adjustment
September 6, 2018
Commission District: 4

GENERAL INFORMATION:

APPLICANT: HUDSON FORTUNE

HEARING TYPE: Board of Zoning Adjustment

REQUEST: Special Exception and Variances in the R-CE-2 zoning district as follows:

- 1) Special Exception: To allow an existing 1 story detached Accessory Dwelling Unit (ADU) to remain.
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- 3) Variance to allow a minimum lot width of 199 ft. in lieu of 250 ft.

This is the result of code enforcement action.

LOCATION: North of Tindall Rd., southwest of Lake Hart

PROPERTY ADDRESS: 11111 Tindall Rd., Orlando, FL 32832

PARCEL ID: 28-24-31-0000-00-031

PUBLIC NOTIFICATION: 33

TRACT SIZE: 200 ft. x 460 ft., 2.11 acres

DISTRICT #: 4

ZONING: R-CE-2

EXISTING USE(S): Single Family Residence

PROPOSED USE(S): Accessory Dwelling Unit

SURROUNDING USES: N – Residential
S – Vacant
E – Residential
W – Residential

STAFF FINDINGS AND ANALYSIS:

1. The subject property is zoned R-CE-2, Rural Residential District, which allows for primarily single family development on two (2) acre lots and certain rural uses.
2. The current owner purchased the property in 2016, and there was an existing accessory structure on the site. The applicant remodeled, expanded, and converted the structure to an ADU without permits and was cited by Code Enforcement in April 2018.
3. The applicant is requesting a special exception and variance to allow the structure to remain as an ADU.
4. The ADU is located behind the main residence and is 36 feet from the closest side property line. The structure meets all setback and height requirements per code.
5. The lot was created in 1984 via a lot split, and is located in the Lake Hart/Lake Whippoorwill Rural Settlement. This is a rural area with larger lots located on the west side of Lake Hart.
6. The future land use is Rural Settlement 1/2, which requires at least two (2) acres for each parcel, the subject property is 2.11 acres. The code states that ADUs shall only be allowed on lots with at least 1 1/2 times the minimum lot area required in the zoning district. The applicant is requesting a variance from this code section.
7. This property and the three (3) properties adjacent are zoned R-CE-2, however, the remainder of the properties in the Rural Settlement are zoned R-CE and A-2, which require a minimum of 1 acre and 1/2 acre lots, respectively. If the property were zoned R-CE or A-2, the variances would not be required.

Special Exception Criteria

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

ADUs are specifically mentioned in the Comprehensive Policy Plan as being compatible with residential zoning through the Special Exception process. By their nature, ADUs are living units which are similar and compatible with the surrounding development pattern.

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

The residential use of the ADU is compatible with the area and the lot is large enough to support two (2) residential units.

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

The ADU is located behind the main residence and is not noticeable from the right-of-way. It also located 36 feet from the side property line and shall not be an intrusion in the area.

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

The ADU meets the setback, height, and square footage requirements and with granting of the variance the lot size will also conform with code.

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 ADU is essentially a residential unit and does not have any attributes that would produce any uncharacteristic noises, odors, or vibrations.

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.

There is no landscaping buffer required between residential properties.

Variance Criteria

Special Conditions or Circumstances

The variances required are due to the size of the existing lot, however, the lot is large enough to support two (2) dwelling units and has ample space for both residences. Also, were the property zoned R-CE or A-2, no variances would be required.

No Special Privilege

Other properties in the immediate area have been approved to allow multiple dwelling units and numerous properties of a similar size or smaller have been approved to allow ADUs throughout the county.

Minimum Possible Variance

The lot width variance represents a 20% deviation from code, which is minor, and the lot is 1.05 times the minimum lot size in lieu of 1.5 times the size. While the lot size variance is rather large, the lot is adequate for the development proposed.

Purpose and Intent

Approval of the variances will not be injurious to the neighborhood or cause a detriment to the public welfare.

STAFF RECOMMENDATION:

Staff recommends approval of the request subject to the following conditions:

1. Development in accordance with the site plan dated May 8, 2018, and all other applicable regulations. Any deviations, changes, or modifications to the plan are subject to the Zoning Manager's approval. The Zoning Manager may require the changes be reviewed by the Board of Zoning Adjustment (BZA) for administrative approval or to determine if the applicant's changes require another BZA public hearing.
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c: David Fortune
10424 Kirby Smith Road
Orlando, FL 32832