



Interoffice Memorandum

August 16, 2023

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

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

CONTACT PERSON: Jennifer Moreau, AICP, Manager
Zoning Division
(407) 836-5856

SUBJECT: September 12, 2023 - Appeal Public Hearing
Applicant/ Appellant: Julio Barona
BZA Case # VA-23-07-043, July 6, 2023; District 5

Board of Zoning Adjustment (BZA) Case # VA-23-07-043, located at 1218 Kingston Avenue Orlando, Florida, 32807, in District 5, is an appeal to the Board. The applicant is requesting variances in the R-1A zoning district as follows: 1) To allow an attached accessory structure to remain with a north side setback of 5 ft. in lieu of 7.5 ft. 2) To allow an attached accessory structure to remain with a west rear setback of 10 ft. in lieu of 30 ft. 3) To allow an existing residence with a west rear setback of 18 ft. in lieu of 30 ft.

At the July 6, 2023 BZA hearing, staff recommended denial of variances #1 and #2, and approval of variance #3. The BZA recommended denial of variance requests #1 and #2, and approval of variance #3, subject to conditions. The applicant subsequently appealed the BZA decision.

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

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

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

JW:ag

Attachments

**PLANNING, ENVIRONMENTAL, AND DEVELOPMENT SERVICES DEPARTMENT
ZONING DIVISION PUBLIC HEARING REPORT
September 12, 2023**

The following is a public hearing on an appeal before the Board of County Commissioners on September 12, 2023 at 2:00 p.m.

APPLICANT/ APPELLANT: JULIO BARONA

REQUEST: Variances in the R-1A zoning district as follows:
1) To allow an attached accessory structure to remain with a north side setback of 5 ft. in lieu of 7.5 ft.
2) To allow an attached accessory structure to remain with a west rear setback of 10 ft. in lieu of 30 ft.
3) To allow an existing residence with a west rear setback of 18 ft. in lieu of 30 ft.
Note: This is a result of Code Enforcement.

LOCATION: 1218 Kingston Ave., Orlando, FL 32807, west side of Kingston Ave., north of Old Cheney Hwy., east of N. Semoran Blvd., and northwest of E. Colonial Dr.

TRACT SIZE: +/- 0.36 acres (15,998 sq. ft.)

ZONING: R-1A

DISTRICT: #5

PROPERTIES NOTIFIED: 73

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 Variances #1 and #2 and approval of Variance #3. Staff noted that no comments were received in favor or in opposition to the request.

The owner discussed the need for the requests and indicated that the improvements have been in the same location since at least 2004.

Code Enforcement discussed the citation and provided a brief history of the case.

There was no one in attendance to speak in favor of the request and one person was in attendance to speak in opposition to the request.

The BZA discussed the history of the construction, the location of the existing improvements and unanimously recommended denial of Variances #1 and #2 and approval of Variance #3 by a 4-0 vote,

with two absent and one vacant, subject to the three (3) conditions in the staff report, as amended to delete Condition #4.

BZA HEARING DECISION:

A motion was made by John Drago, seconded by Thomas Moses and carried to recommend **DENIAL** of Variance requests #1 and #2, 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); and further, **APPROVAL** of the Variance request #3, in that the Board finds it meets the requirements of Orange County Code, Section 30-43(3); further, said approval is subject to the following conditions as amended: (4 in favor, none opposed, 2 absent, 1 vacant).

1. Development shall be in accordance with the site plan ~~and elevations~~* received June 14, 2023, as modified to reflect removal of the accessory structure in accordance with the recommendation of denial of Variances #1 and #2*, 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).

*The Condition has been modified to clarify that, in accordance with the BZA's recommendation of denial of Variances #1 and #2, the applicant must modify the site plan to delete depictions of the accessory structure and to remove reference to the elevations as they are no longer applicable.

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.



Board of Zoning Adjustment (BZA) Appeal Application

Appellant Information

Name: Julio Borona

Address: _____

Email: julioborona2010@gmail.com Phone #: 689-2504069

BZA Case # and Applicant: VA-23-07-043

Date of BZA Hearing: 07-06-23

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

a. neighbor came to the BZA meeting and lie regardless the shed he said it was not walls to the back and rear at the time I did not have the prooffe but I submit for photo that show the rear part that was encluce from you

Signature of Appellant: Julio Borona Date: 7-11-23

STATE OF (Orange) - Florida
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 11 day of July, 2023, by Julio Borona who is personally known to me or who has produced FL Driver License as identification and who did/did not take an oath.

[Signature]
Notary Public Signature

Notary Stamp:  Katherine Vasquez
Notary Public
State of Florida
Comm'n HHDM496
Expires 8/3/2024

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: **JUL 06, 2023**

Commission District: **#5**

Case #: **VA-23-07-043**

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

Jenale.Garnett@ocfl.net

GENERAL INFORMATION

APPLICANT(s): JULIO BARONA

OWNER(s): JULIO BARONA, JUAN PABLO GONZALEZ, DINA MORALES

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

- 1) To allow an attached accessory structure to remain with a north side setback of 5 ft. in lieu of 7.5 ft.
 - 2) To allow an attached accessory structure to remain with a west rear setback of 10 ft. in lieu of 30 ft.
 - 3) To allow an existing residence with a west rear setback of 18 ft. in lieu of 30 ft.
- Note: This is a result of Code Enforcement.

PROPERTY LOCATION: 1218 Kingston Ave., Orlando, FL 32807, west side of Kingston Ave., north of Old Cheney Hwy., east of N. Semoran Blvd., and northwest of E. Colonial Dr.

PARCEL ID: 21-22-30-4084-05-040

LOT SIZE: +/- 0.36 acres (15,998 sq. ft.)

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 73

STAFF RECOMMENDATIONS

Denial of Variances #1 and #2, subject to the conditions in this report, and approval of Variance #3. However, if the BZA should find that the applicant has satisfied the criteria for the granting of all 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	R-1A	R-1A	R-1A	R-3	R-1A
Future Land Use	LDR	LDR	LDR	LDR	LDR
Current Use	Single-family residential	Single-family residential	Single-family residential	Single-family residential	Single-family residential

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located in the R-1A, Single-Family Dwelling district, which allows single-family homes and associated accessory structures and requires a minimum lot area of 7,500 sq. ft. It is also within the S.R. 436 / S.R. 50 Corridor Overlay District which prohibits specific uses including labor pools, check cashing businesses, tattoo/body art shops, pawnshops, bail bond agencies, fortune tellers, and bottle clubs. The overlay does not impact residential uses. The Future Land Use is Low Density Residential (LDR), which is consistent with the R-1A zoning district.

The area around the subject site is comprised of single-family homes. The subject property is a 0.36 acre lot, located in the J.J. Kates Subdivision, recorded in 1948, and is considered to be a conforming lot of record. It is currently developed with an 838 gross sq. ft. one story single-family home that was constructed in 1964.

There is also a 71.4 sq. ft. attached accessory structure which appears in 2018 via aerial photography and a 167 sq. ft.

detached accessory structure, a gazebo identified on the site plan as a pavilion, which appeared in 2023. There are no permits on record for the attached accessory structure, and a permit has been submitted for the gazebo (B23010709). The property was purchased by the current owners in 2022, who are constructing an 807.1 sq. ft. addition on the east side of the house for which an application for a permit has been submitted (B22008214).

Code compliance cited the property owners on February 2, 2023 (CE#: 618280) to obtain all required permits and to meet the required development standards for the addition/alteration on the north side of the property and the gazebo or remove the structures.

The current proposal is to recognize the existing location of the 10.5 ft. by 6.8 ft., 7.7 ft. tall attached accessory structure located on the north side of the existing residence. Per Sec. 38-1426 (a) (3) a. 3., of Orange County Code, an attached accessory structure and any connecting passageway shall comply with all principal structure setbacks. The existing attached accessory structure has a north side setback of 5 ft., which requires a 7.5 ft. setback, requiring Variance #1 and a west rear setback of 10 ft., which requires a 30 ft. setback, necessitating the request for Variance #2. The proposal also includes a request to recognize the existing residence, constructed in 1964, with an 18 ft. west rear setback in lieu of 30 ft., requiring Variance #3.

Staff recommends denial of Variance #1 and #2 since the attached accessory structure was built without permits in a non-conforming location. The rear yard provides sufficient space for a detached accessory structure to be built in a conforming location.

Per Sec.38-1426 (a) (3) b. 3., of the Orange County Code, a detached accessory structure may not be located in front of the principal structure unless the entire principal structure is located in the rear half (1/2) of the lot/parcel. The newly installed gazebo located in the front yard meets the code as the existing residence is in the rear half of the lot. Additionally, the gazebo and proposed addition meet the required zoning setbacks.

As of the date of this report, one comment has been received in favor of this request and no comments have been received in opposition to this request.

District Development Standards

	Code Requirement	Proposed
Max Height:	35 ft.	7.7 ft. (shed)
Min. Lot Width:	75 ft.	100 ft.
Min. Lot Size:	7,500 sq. ft.	15,998 sq. ft.

Building Setbacks (that apply to structure in question)

	Code Requirement	Proposed
Front:	25 ft.	126 ft. residence (East) 140 ft. shed (East) 96 ft. gazebo (East)
Rear:	30 ft. 5 ft. (gazebo)	18 ft. residence (West – Variance #1) 10 ft. shed (West – Variance #2) 52 ft. gazebo (West)
Side:	7.5 ft. 5 ft. (gazebo)	53.2 ft. residence (South) 5 ft. shed (North – Variance #1) 15 ft. gazebo (South)

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

Variations #1 and #2: There are no special conditions or circumstances peculiar to the land or building which are not applicable to others in the same district. An attached accessory structure or detached accessory structure could be built in conformance with code on this site.

Variance #3: The special condition and circumstance particular to the subject property is the age of the residence, built in 1964, which has been in the same location since construction with the existing non-conforming setbacks.

Not Self-Created

Variations #1 and #2: The request is self-created since the structure was constructed without permits and there are alternatives to build an accessory structure in a location that will meet code.

Variance #3: The request is not self-created since the owner is not responsible for the existing location of the residence for over 59 years.

No Special Privilege Conferred

Variations #1 and #2: Granting the Variations as requested would confer special privilege not conferred to others since the property can continue to be used for a single-family residence, and a structure could be installed in a location that meets code.

Variance #3: Due to the orientation of the residence and the year built, granting the requested Variance will not confer any special privilege conferred to others under the same circumstances.

Deprivation of Rights

Variations #1 and #2: There are no deprivation of rights to use the property for a single-family residence with structures that meet code.

Variance #3: Denial of this Variance would result in the non-conforming setback remaining.

Minimum Possible Variance

Variations #1 and #2: The request is not the minimum possible as the front and side yard provides sufficient space to locate an accessory structure that meets the required setbacks.

Variance #3: Due to the existing setbacks and location of the residence, the Variance is the minimum possible.

Purpose and Intent

Approval of the requests will be in harmony with the purpose and intent of the Code, as the Code is primarily focused on minimizing the impact that structures have on surrounding properties. Since the request will allow the existing rear setback to remain, the proposed request will not be detrimental to the surrounding neighborhood. Furthermore, the attached accessory structure is not significantly visible from any of the surrounding properties due to the landscape in the front and rear of the property, thereby limiting any quantifiable negative impact to surrounding property owners.

CONDITIONS OF APPROVAL

1. Development shall be in accordance with the site plan and elevations received June 14, 2023, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. A permit shall be obtained for the existing accessory structure 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.

Julio Barona
1218 Kingston Avenue
Orlando, FL 32807

Respectfully I ask the board of zoning to allow me to keep the shed that is on my property before for several years and its not injurious to the neighborhood and the full house it is all the way back on my property and do not self create the special equidition circumstances the house was build before 1957 and at that time it was to different the set backs or not existing the approval of the Varionce will allow me to keep having enough space for storage without ineterfer the public welfare and the peace of the neighborhood.

It was not noticed until I painting the shed and after the two hurricanes survivor an inspector make it know that the mention shed that is there several years before I bought the house its not legal but is there for many years and give me all the store I dont have in my small farme the full house its not code and the shed is attach to the house build before 1957.

Thank you.

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.

Respectfully I ask for special condition exist for the shed that is attach to the house for several years and when I bought the property existed there

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.

This shed it is there for several years. Before I got the property and I did not know that was not legal construction until the city let me know.

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.

Respectfully I ask to the board of zoning to allow me to keep the mentioning shed that's not cause any damage to the neighbors

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.

there is a few others properties next to me that have existing sheds not conforming the set back of the city requirements

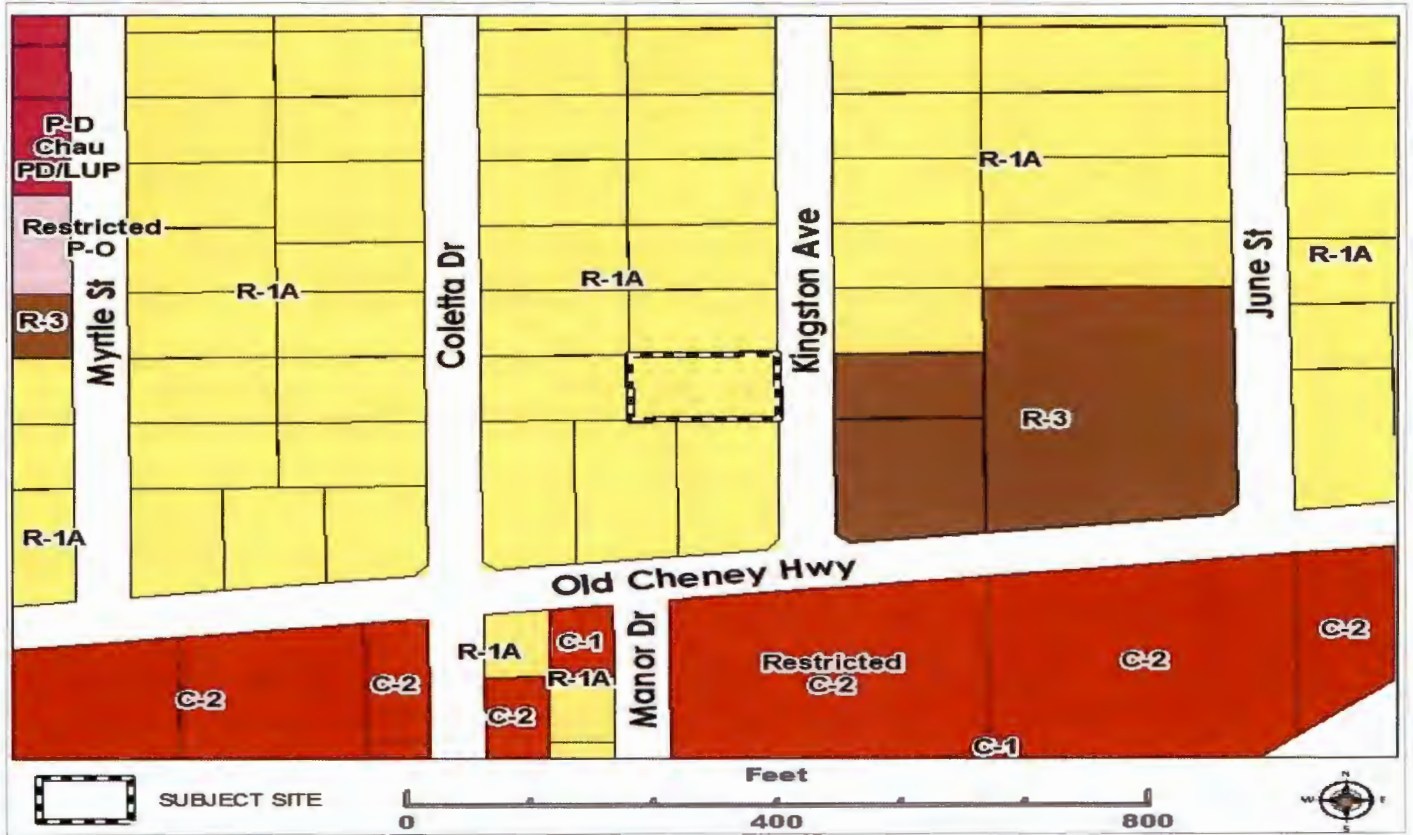
5. **Minimum Possible Variance** - The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building, or structure.

The House it's small and the shed give extra space to storage without interfere the common peace of the neighbors

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.

if they have goal look to harmonizing the neighborhood and not interfere the public welfare.

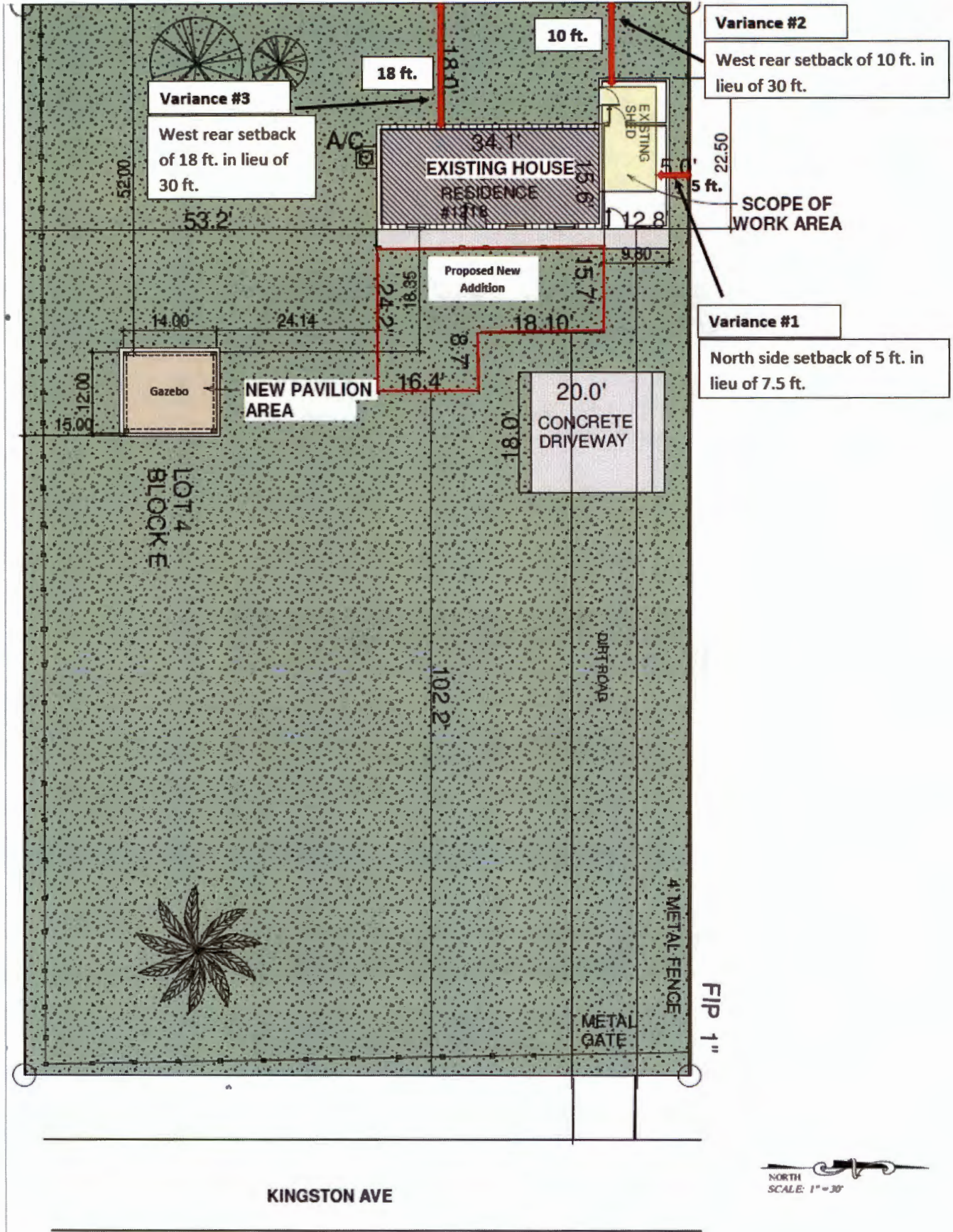
ZONING MAP



AERIAL MAP

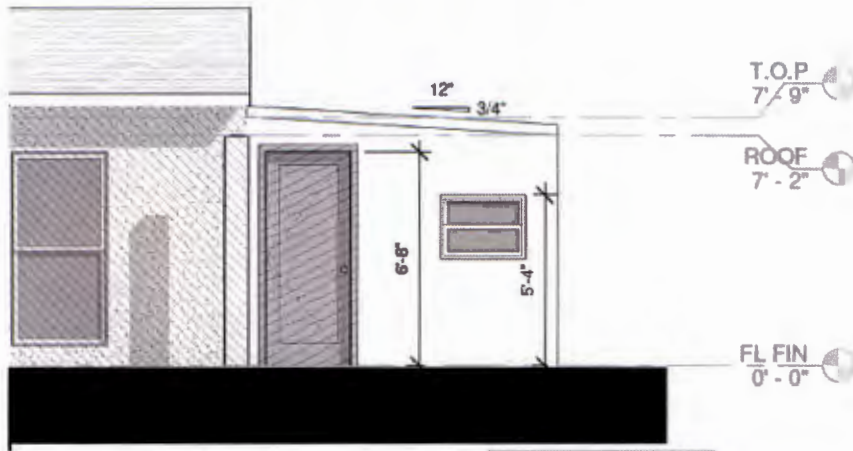


SITE PLAN

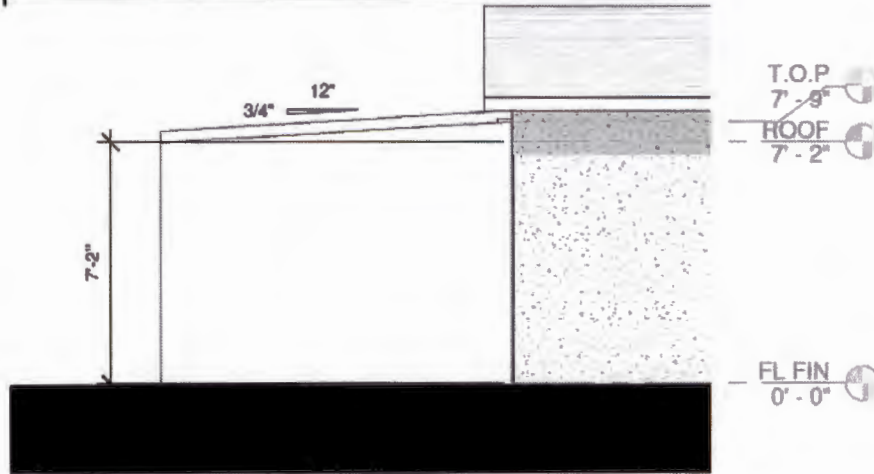


ELEVATIONS FOR ACCESSORY STRUCTURE

Front Elevation - East



Rear Elevation - West



Left Elevation - North



Right Elevation - South



SITE PHOTOS



Facing northwest from Kingston Ave. toward the front of subject property



Front yard, facing northwest toward the existing residence and gazebo

SITE PHOTOS



Front yard, west toward front of attached accessory structure



Front yard, facing west toward Variance #1

SITE PHOTOS



Rear yard, facing north toward Variances #2 and #3