



Interoffice Memorandum

DATE April 22, 2019

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

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

CONTACT PERSON: **Sean Bailey, Chief Planner, Zoning Division
407-836-5806**

SUBJECT: May 21, 2019 – Appeal Public Hearing
Applicant: Dr. Francelis Gonzalez/ Frank Chase
Appellant: Fernando Mariano
BZA Case #VA-19-03-010, March 7, 2019; District 1

Board of Zoning Adjustment (BZA) Case # VA-19-03-010, located at 8701 Scenic Oak Court, in District 1, is an appeal public hearing to be heard on May 21, 2019. The applicant is requesting a variance to construct a two-story addition in the R-L-D zoning district with a rear setback of 31 ft. in lieu of 50 ft. The appellant, Fernando Mariano, is the neighbor directly to the west of the subject property who objects to the request, stating it would set a precedent and does not meet the variance criteria.

The subject property is located on the east end of Scenic Oak Court, north of Boca Point Dr. and west of S. Apopka Vineland Rd.

At the March 7, 2019 BZA hearing staff recommended denial of the variance. The BZA stated that the proposed location of the addition would not be intrusive to the neighbors and that the 50 ft. rear setback is too restrictive. The BZA approved the variance with a 6-1 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.

If you have any questions regarding this matter, please contact Sean Bailey at 6-5806.

ACTION REQUESTED: Approve the applicant's request; or approve the applicant's request with modifications and/or conditions; or deny the applicant's request. District 1.

**PLANNING, ENVIRONMENTAL DEVELOPMENT SERVICES DEPARTMENT
ZONING DIVISION PUBLIC HEARING REPORT
May 21, 2019**

The following is a public hearing on an appeal before the Board of County Commissioners on May 21, 2019 at 2:00 p.m.

APPLICANT: DR. FRANCELIS GONZALEZ

APPELLANT: FERNANDO MARIANO

REQUEST: Variance in the R-L-D zoning district to allow a rear (north) setback of 31 ft. in lieu of 50 ft.

LOCATION: 8701 Scenic Oak Ct., Orlando, FL 32836; east end of Scenic Oak Ct., north of Boca Point Dr. and west of S. Apopka Vineland Rd.

TRACT SIZE: 124 ft. x 222 ft. (AVG)/.57 acres

ZONING: R-L-D

DISTRICT: #1

PROPERTIES NOTIFIED: 58

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

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

The applicant stated that the HOA was withholding determination pending BZA approval. The applicant also noted that the other options such as adding space over the garage, or relocating the pool will be much more costly and is not what the owner wants, as they prefer 1st floor space closer to the existing pool. The applicant showed photos of the wall separating the neighborhoods, and stated that the neighbors pool enclosures were closer to the rear property line. The applicant stated that the 2nd floor is just for storage, and they can remove the rear windows.

The owner stated that they need to live within a certain radius to nearby hospitals, so they cannot build a new house to their specifications. The applicant also stated that they need this space to store items for charity events. They further noted that there is significant vegetation along the back wall to buffer the adjacent subdivision.

A neighbor spoke in opposition, noting the size of the existing house and the addition. He also commented on the windows on all sides and felt that this would set a precedent.

The BZA asked the applicant if the proposal was the least intrusive way to do the expansion. The BZA confirmed that the square footage was not an issue, just the setback. The BZA also noted that the property abuts the neighborhood recreation area/tennis courts on one side, and noted that the R-L-D zoning encourages creative and innovative design, and felt that the request meets that intent. The BZA observed that the applicant was being required to adhere to a limitation because they abut R-CE zoning.

Staff received 0 commentaries in favor of the application, and 2 in opposition to the application.

The BZA approved the variance.

BZA HEARING DECISION:

A motion was made by Carolyn Karraker, seconded by Wes A. Hodge and carried to 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 (6 in favor, 1 opposed):

1. Development in accordance with the site plan dated January 15, 2019, 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.
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.

March 19, 2019

Orange County Zoning Division
Board of Zoning Adjustment
201 S. Rosalind Ave
Orlando, FL 32801

Dear Members of the Board,

I respectfully file this appeal to the decision taken during the Public Hearing held on March 7, 2019, regarding the Variance Request no. VA-19-03-010, to reduce the rear setback of the house located at 8701 Scenic Oak Court in Turtle Creek subdivision, from 50 ft. to 31 ft. I indulge your attention to refuse the recommendation approved during that meeting, considering reasons 1 to 6, plus important additional points noted below, and enclosed documents.

Reasons 1 to 6:

1. The staff of the BZA that analyzed the case recommended on the record the denial of such variance, based on facts investigated and presented by them.
2. The meeting ignored the petition filled on March 5 by our attorney Mr. Scott Baker (Doc. 1). My assistance confirmed on the same day with the assistant to Mr. Nick Balevich that the petition has been properly received. During the meeting however there was no mention to it.

Among other points, our attorney Mr. Scott Baker, who has nearly three decades of practice and land use law and is a member of the real estate board of the Bar Association, highlighted that for such variance to be approved it would need to meet all of the six standards outlined in Section 30-43(3) of the Orange County Code – none were met:

- Special Conditions and Circumstances Do Not Exist;
- There is No Deprivation of Rights Commonly Enjoyed by Others in the Same Zoning District;
- The Special Conditions and Circumstances Result from the Actions of the Applicant;
- Granting the Variance Requested Will Confer on the Applicant a Special Privilege Denied to Others in the Same District;
- The Variance is Not the Minimum Variance that will Make Possible the Reasonable Use of the Land, Building or Structure; and
- The Granting of the Variance is Not in Harmony with the General Purpose and Intent of the Zoning Ordinance, and Will Be Injurious to the Neighborhood.

3. The vice-chair in charge allowed the 3 people interested in the approval – the homeowner Dr. Gonzalez, her husband and her General Contractor – to speak. However, to the best of my recap, they did not start the 3-minute timer for any of them.
4. They counted the 3-minute timer only for me, and were going to cut the microphone right when I finished my points, within exactly these 3-minute timeframe.
5. The new building proposed by Dr. Gonzalez has windows on all sides, even on the 2nd floor (Docs. 2 and 3). This will eliminate the current privacy that my family, other neighbors and even users of the Turtle Creek recreation area experience.

6. The HOA association did not answer in writing to Dr. Gonzalez HOA request before the meeting, as Dr. Gonzalez had promised to the BZA (Doc. 4).

Important Additional Points:

My wife and I are the owners of the house located at 8707 Scenic Oak Court, next door to the house of Dr. Gonzalez. We bought this house, which was built well before the rear setback limit of 50 ft in 2001, at least two years before Dr. Gonzalez bought the lot and started building her huge house.

Dr. Gonzalez's house is already one of the biggest in Turtle Creek, with 5,400 sq. ft. of air conditioning area. It includes 5 bedrooms and 5 bathrooms. This over 2,000 sq. ft. 2-story construction that Dr. Gonzalez is planning represents an additional 40% of air conditioning area, to a total of more than 7,500 sq. ft. It is to note that if this request is approved there is nothing that will prohibit Dr. Gonzalez now or in the future to double such current expansion up to almost 10,000 sq. ft. of air conditioning area. She lives solo with her husband in that house.

I moved to Orlando in 1991 to create Multimedia, Inc., for many years already one of the most important media representative companies in the country. We represent on an exclusive worldwide basis leading newspapers and digital media from all over the world, as you may verify on our website – www.multimediausa.com – employing at our highest level more than 15 local people.

My wife and I celebrate this coming October our 40th Wedding Anniversary. We are happy members of the Orlando community and live in this great Turtle Creek subdivision since 2001, the same year that we proudly became American citizens. My wife is a longtime volunteer at the Give Kids The World Foundation.

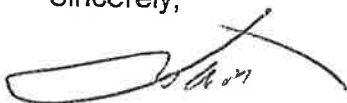
I followed Dr. Gonzalez's construction since the very beginning and may affirm you that it is just not true that Dr. Gonzalez did not know about the rear setback limit as her General Contractor states (Doc. 5). I personally heard from construction workers that Dr. Gonzalez decided to build up to the limit of 50 ft. If this GC is a new provider for Dr. Gonzalez he is misinformed. If he is the builder, he is just not recapping things that happened over 15 years ago. It is to highlight, as I had mentioned above, that our house was built, as others in our street, well reasonably away from that 50 ft. rear setback (Doc. 6).

More than one time Dr. Gonzalez promoted social parties without caring for her neighbors, with high volume music. Once we had to call the police to stop the high volume music late evening. The next day my wife had to pick up empty alcohol containers and cups thrown by Dr. Gonzalez's guests over the fence into our lot. Of course the Orlando Police has records about this case.

If this request is granted it will devalue every property in our street and will create a precedent that will degrade Turtle Creek as a whole.

Thank you for your attention. I sincerely hope that the Board of County Commissioners deny this Variance Request.

Sincerely,



Fernando Mariano

BZA STAFF REPORT

Planning, Environmental, & Development Services/ Zoning Division

Meeting Date: **MAR 07, 2019**

Case Planner: **Nick Balevich**

Case #: **VA-19-03-010**

Commission District: **#1**

GENERAL INFORMATION

APPLICANT(s): DR. FRANCELIS GONZALEZ

OWNER(s): DR. FRANCELIS GONZALEZ

REQUEST: Variance in the R-L-D zoning district to allow a rear (north) setback of 31 ft. in lieu of 50 ft.

PROPERTY LOCATION: 8701 Scenic Oak Ct., Orlando, FL 32836, East end of Scenic Oak Ct., north of Boca Point Dr. and west of S. Apopka Vineland Rd.

PARCEL ID: 09-24-28-8935-00-040

LOT SIZE: 124 ft. x 222 ft. (AVG)/.57 acres

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 58

DECISION: APPROVED 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 (6 in favor and 1 opposed):

1. Development in accordance with the site plan dated January 15, 2019, 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.
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 stated that the HOA was withholding determination pending BZA approval. The applicant also noted that the other options such as adding space over the garage, or relocating the pool will be much more costly and is not what the owner wants, as they prefer first floor space closer to the existing pool. The applicant showed photos of the wall separating the neighborhoods, and stated that the neighbor's pool

enclosures were closer to the rear property line. The applicant stated that the second floor is just for storage, and they can remove the rear windows.

The owner stated that they need to live within a certain radius to nearby hospitals, so they cannot build a new house to their specifications. The applicant also stated that they need this space to store items for charity events. They further noted that there is significant vegetation along the back wall to buffer the adjacent subdivision.

A neighbor spoke in opposition, noting the size of the existing house and the addition. He also commented on the windows on all sides and felt that this would set a precedent.

The BZA asked the applicant if the proposal was the least intrusive way to do the expansion. The BZA confirmed that the square footage was not an issue, just the setback. The BZA also noted that the property abuts the neighborhood recreation area/tennis courts on one side, and noted that the R-L-D zoning encourages creative and innovative design, and felt that the request meets that intent. The BZA observed that the applicant was being required to adhere to a limitation because they abut R-CE zoning.

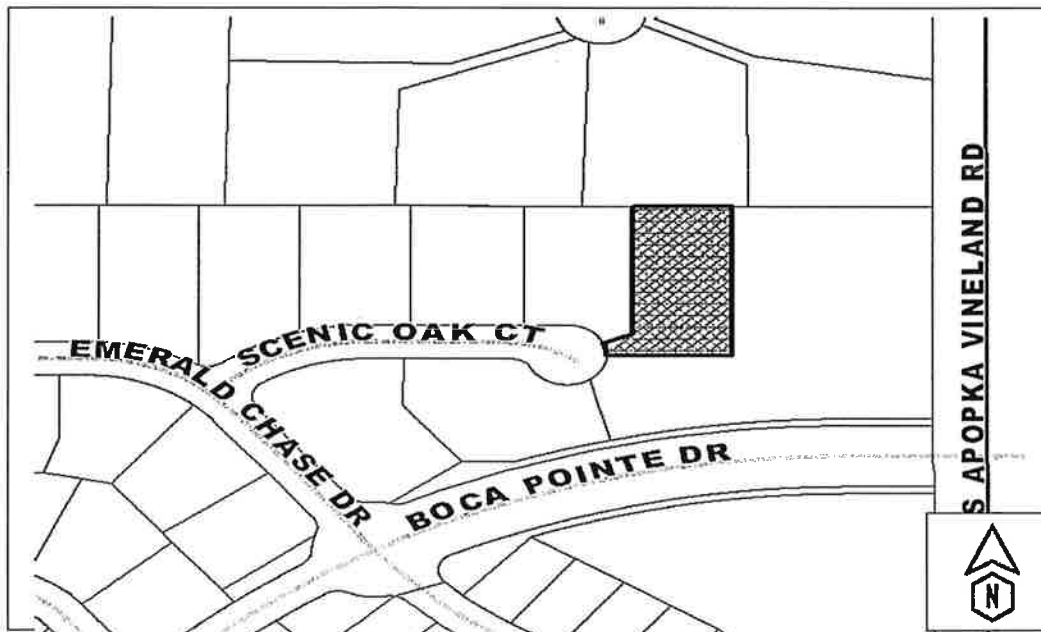
Staff received 0 commentaries in favor of the application, and 2 in opposition to the application.

The BZA approved the variance.

STAFF RECOMMENDATIONS

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-L-D	R-CE	R-L-D	R-L-D	R-L-D
Future Land Use	LDR	R	LDR	LDR	LDR
Current Use	Single Family Residence	Single Family Residence	Single Family Residence	Recreation tract	Single Family Residence

BACKGROUND AND ANALYSIS

Description and Context

The property is located in the R-L-D zoning district. This district is intended to encourage creative and innovative design techniques to provide a variety of both detached and attached residential development with the low density residential Future Land Use designation, and to provide for compatibility with adjacent development.

The lot was platted in 1996, as lot 4 in the Turtle Creek Subdivision and is considered to be a conforming lot of record. There is a 7,978 sq. ft. (gross area) 5,401 sq. ft. (living area) single family home and swimming pool on the lot, which was constructed in 2004. The applicant purchased the property in 2004.

The applicant is proposing to construct a 2,112 sq. ft. two story addition to the rear of the house, which will be 31 ft. from the rear property line. The existing home sits at the 50 ft. setback line.

The request constitutes a 38% deviation from code. Per code, the required rear setback for the R-L-D District is 15 ft., however in an effort to match the R-CE zoning to the north, a 50 ft. setback was required by the Development Review Committee for lots 4-21 which abut the R-CE.

There are other options for the applicant to build an addition to the property without the need for a variance.

District Development Standards

	Code Requirement	Proposed
Max Height:	35 ft.	27 ft.
Min. Lot Width:	110 ft.	110 ft.
Min. Lot Size:	0.50 ac.	0.57 ac.

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

	Code Requirement	Proposed
Front:	30 ft.	31 ft.
Rear:	50 ft.	31 ft.
Side:	10 ft.	10 ft.
Sidestreet:	n/a	n/a

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

The applicant has not demonstrated any special conditions or circumstances that are unique to this property that do not apply to all other properties with the same zoning and in the same subdivision. The lot meets the minimum lot area, and there are other areas where an addition could be placed without a variance.

No Special Privilege Conferred

Approval of the request will grant the applicant special privilege that is denied to other lands, building, or structures in the same zoning district. No other variances have been approved on the lots which abut the R-CE to the north.

Deprivation of Rights

The applicant would not be deprived of rights commonly enjoyed by other properties in the same zoning district adjacent to the R-CE residential neighborhood to the north.

Minimum Possible Variance

The request is not the minimum variance at a 38% deviation from code.

Purpose and Intent

Approval of this request will not be in harmony with the purpose and intent of the zoning regulations and will set a precedent in the neighborhood for those lots adjacent to the R-CE.

CONDITIONS OF APPROVAL

1. Development in accordance with the site plan dated January 16, 2019, 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.
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: Frank Chase
PO Box 100
Windermere, FL 34786

COVER LETTER

Dr. Francelis Gonzalez
8701 Scenic Oak CT
Orlando, FL 32836
(407) 346-2999

January 15, 2019

Orange County Zoning Division
201 South Rosalind Ave, 1st Floor
Orlando, FL 32801

RE: Application for Variance – 8701 Scenic Oak CT (Parcel ID 09-24-28-8935-00-040)

To Whom It May Concern,

This letter summarizes our request for a variance to the rear setback requirement for an addition to our home to lie within the 50 ft requirement. The proposed addition would be 30 feet from the rear property line. The plan, as proposed is for a two-story addition. The first floor would be used as a recreation room and the second floor would primarily be additional storage/closet space. As designed, the peak of the roof of the addition would be lower than the highest point of the current existing roof line and the side yard setback would not be encroached.

We have worked with our Architect and Contractor looking at other ways to avoid the need for a variance. The front yard is the only area where there is space for the addition and we have come to the conclusion that the current design of the existing house does not allow us to add this type of space to the front home. Locating the addition in proximity to the pool is also an important factor to us. As shown in the attached picture, our rear property line has a 6-foot solid block/brick wall separating our property from our neighbor to the rear and there is dense tree growth on the other side of the wall that blocks all visibility of either home from the other.

Several of our neighbors that enjoy a similar buffer of trees with their rear neighbors have installed expansive (in both height and width) screen enclosures well within the 50' rear setback. We feel that our addition would be no more or less impactful than those structures.

Application is being made to the Architectural Review Board of the Turtle Creek Master Homeowners Association and a determination will be arrived at prior to the Orange County Public Hearing date of March 7, 2019.

Thank you for your time and assistance with our request.

Sincerely,



Dr. Francelis Gonzalez
8701 Scenic Oak CT
Orlando FL 32836



January 15, 2019

To: Orange County Zoning Division
201 South Rosalind Avenue, 1st Floor
Orlando, FL 32801
From: Frank Chase

**RE: Variance Criteria Compliance for 8701 Scenic Oak Ct, Orlando, FL 32836
Home Addition**

The *Special Conditions and Circumstances* that exist on site are the fact that the home is placed too far to the rear of the lot to allow enough room for an addition, and the design of the home with its attached garage does not provide a way to accomplish the addition in the front yard.

The hardship was *not self-created*. The Homeowner having no knowledge of construction or land development was not aware that the location of the home on the property would limit her ability to add an addition to the rear of the home or would require a variance for this addition.

There would be *no special privilege conferred* as other rear yard setback variances have been allowed in Orange County in the in the R-L-D zoning district.

Regarding *Deprivation of Rights*, if this variance isn't allowed Dr. Gonzalez will not be able to fully enjoy the use of her large lot as she intended with a recreation room in close proximity to the existing pool, in a neighborhood she loves and feels secure in.

We are requesting the *Minimum Possible Variance* as Dr Gonzalez has worked with a designer and discussed her plans for the use and furnishings of the room. It was lengthened in the east-west direction and narrowed in the north-south direction in an effort to maintain a 30+ foot setback from the rear property line. The second floor will be for much needed storage and closet space.

The addition is being located away from the immediate neighbor and where it is screened from the view of the rear neighbor. The rear yard location allows proximity to the Pool and the Lanai so as to use and enjoy these areas simultaneously. If it were constructed in the front of the home it would be located next to the immediate neighbor and create an odd and ungainly flow to the entire home and reduce its usability. This is a great example of the *Purpose and Intent* of such a zoning variance

P. O. Box 100 ~ Windermere, FL 34786 ~ (407) 509-6614 ~ CBC 047749

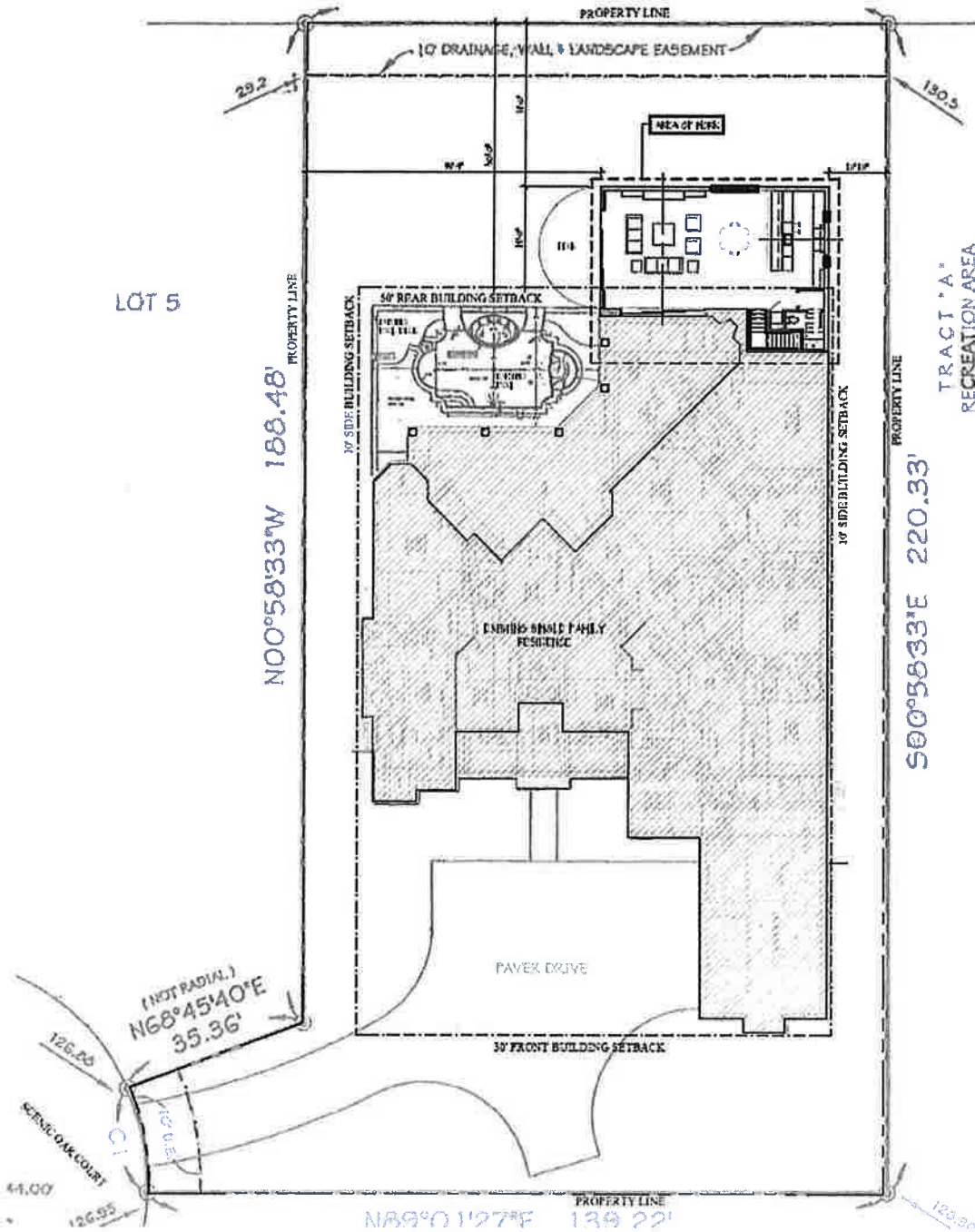
ZONING MAP



AERIAL MAP



SITE PLAN / SURVEY



LEGAL DESCRIPTION
 LOT 5, WATERS EDGE AND SOCA POINTS AT TUPLES CREEK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 30, PAGES 54 THROUGH 55, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

DESCRIPTION OF WORK
 THE WORK DESCRIBED IN THESE DOCUMENTS INCLUDES THE FOLLOWING:
 1. TWO STORY APARTS AT THE REAR OF LOT 5 TO INCLUDE RECREATION ROOM, CLOSET AND STORAGE.

FLOOR AREA

EXISTING MAIN HS A/C	= 5,401 SF
NEW ADDITION A/C	= 2,812 SF
GRAND TOTAL A/C	= 8,213 SF
NON A/C	= 2,877 SF
GRAND TOTAL UNDER ROOF	= 11,090 SF

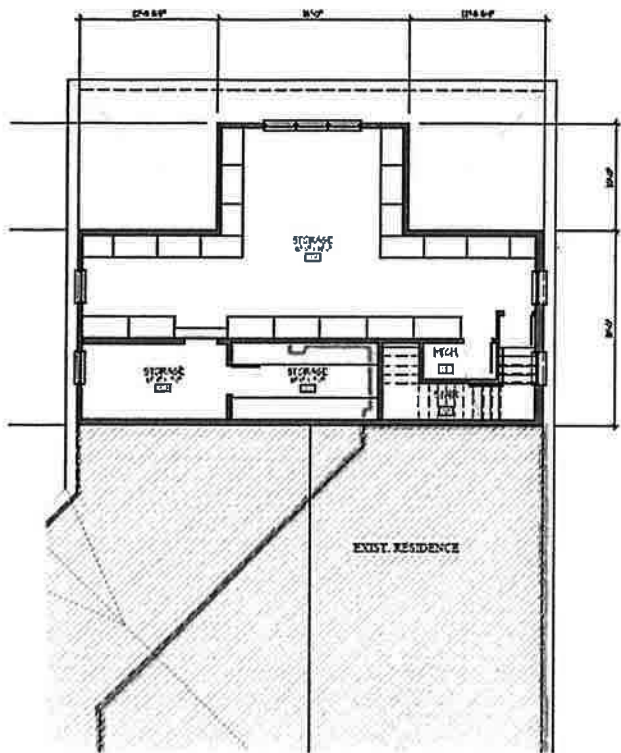
LOT AREA
 TOTAL LOT AREA:
 25,032 SF = 0.57 ACRES


PERCENT IMPERVIOUS
 TOTAL LOT AREA:
 25,032 SF = 0.57 ACRES
 AREALY IMPERVIOUS:
 11,091 SF OR 47.5%
 AREALY IMPERVIOUS:
 13,101 SF OR 52.3%

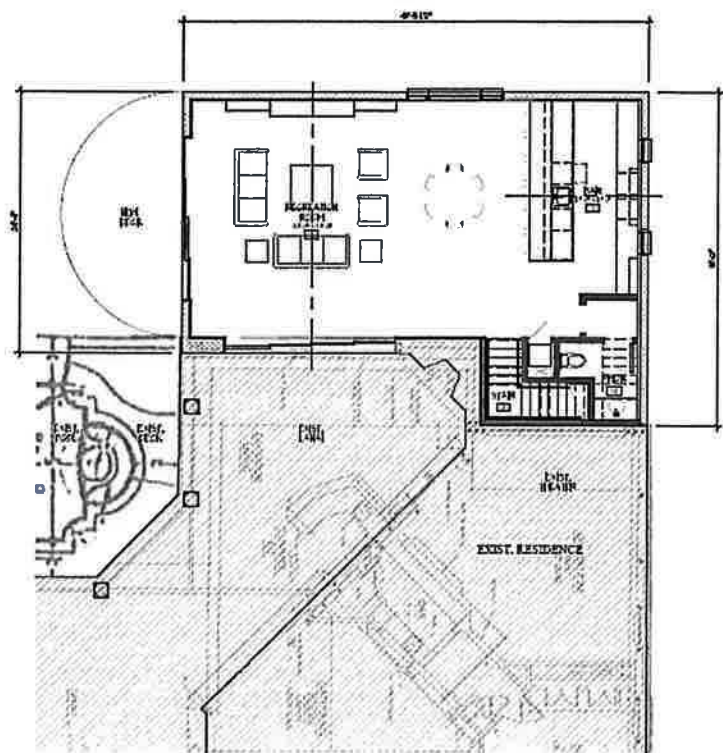
SETBACKS

BUILDING:	30'
FRONT:	30'
SEE YARD:	10'
REAR:	50'






 PARTIAL UPPER FLOOR PLAN
 U4 - P-2




 PARTIAL MAIN FLOOR PLAN
 U4 - P-2

LEGEND

	EXIST. RESIDENCE
	EXIST. TO REMAIN
	NEW CONSTRUCTION
	EXIST. TO BE DEMOLISHED

Floor Plan



02 PARTIAL LEFT SIDE ELEVATION
1/4" = 1'-0"

Elevations

SITE PHOTOS



Front from Scenic Oak Drive



Rear yard



Rear yard



Rear yard