



Planning, Environmental &
Development Services
Department



Orange County Board of Zoning Adjustment

Recommendations Booklet

Hearing Date:

August 6, 2020

Zoning Division

BOARD OF ZONING ADJUSTMENT (BZA)

ORANGE COUNTY GOVERNMENT

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

BZA Staff

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

**ORANGE COUNTY BOARD OF ZONING ADJUSTMENT
RECOMMENDATIONS
AUGUST 6, 2020**

<u>PUBLIC HEARING</u>	<u>APPLICANT</u>	<u>DISTRICT</u>	<u>BZA RECOMMENDATIONS</u>	<u>PAGE #</u>
VA-20-08-077	Peter Valente	1	Approved w/Conditions	1
VA-20-08-071	Suze Tessier	6	Denied	12
VA-20-08-074	Northern Tool + Equipment (Kory Schmidt)	3	Approved w/Conditions	24
VA-20-08-076	Joseph Neal	1	Approved w/Conditions	38
ZM-20-08-072	Fishback Dominick (A. Kurt Ardaman)	1	Continued to December 3, 2020	50

ORANGE COUNTY ZONING DISTRICTS

Agricultural Districts

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

Residential Districts

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

Non-Residential Districts

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

Other District

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

SITE & BUILDING REQUIREMENTS

Orange County Code Section 38-1501. Basic Requirements

District	Min. lot area (sq. ft.) <i>m</i>	Min. living area (sq. ft.)	Min. lot width (ft.)	Min. front yard (ft.) <i>a</i>	Min. rear yard (ft.) <i>a</i>	Min. side yard (ft.)	Max. building height (ft.)	Lake setback (ft.)
A-1	SFR - 21,780 (½ acre)	850	100	35	50	10	35	<i>a</i>
	Mobile Home - 2 acres							
A-2	SFR - 21,780 (½ acre)	850	100	35	50	10	35	<i>a</i>
	Mobile Home - 2 acres							
A-R	108,900 (2½ acres)	1,000	270	35	50	25	35	<i>a</i>
R-CE	43,560 (1 acre)	1,500	130	35	50	10	35	<i>a</i>
R-CE-2	2 acres	1,200	250	45	50	30	35	<i>a</i>
R-CE-5	5 acres	1,200	185	50	50	45	35	<i>a</i>
R-1AAAA	21,780 (1/2 acre)	1,500	110	30	35	10	35	<i>a</i>
R-1AAA	14,520 (1/3 acre)	1,500	95	30	35	10	35	<i>a</i>
R-1AA	10,000	1,200	85	25 <i>h</i>	30 <i>h</i>	7.5	35	<i>a</i>
R-1A	7,500	1,200	75	20 <i>h</i>	25 <i>h</i>	7.5	35	<i>a</i>
R-1	5,000	1,000	50	20 <i>h</i>	20 <i>h</i>	5 <i>h</i>	35	<i>a</i>
R-2	One-family dwelling, 4,500	1,000	45 <i>c</i>	20 <i>h</i>	20 <i>h</i>	5 <i>h</i>	35	<i>a</i>
	Two dwelling units (DUs), 8,000/9,000	500/1,000 per DU	80/90 <i>d</i>	20 <i>h</i>	30	5 <i>h</i>	35	<i>a</i>
	Three DUs, 11,250	500 per DU	85 <i>j</i>	20 <i>h</i>	30	10	35	<i>a</i>
	Four or more DUs, 15,000	500 per DU	85 <i>j</i>	20 <i>h</i>	30	10 <i>b</i>	35	<i>a</i>
R-3	One-family dwelling, 4,500	1,000	45 <i>c</i>	20 <i>h</i>	20 <i>h</i>	5	35	<i>a</i>
	Two DUs, 8,000/ 9,000	500/1,000 per DU	80/90 <i>d</i>	20 <i>h</i>	20 <i>h</i>	5 <i>h</i>	35	<i>a</i>
	Three dwelling units, 11,250	500 per DU	85 <i>j</i>	20 <i>h</i>	30	10	35	<i>a</i>
	Four or more DUs, 15,000	500 per DU	85 <i>j</i>	20 <i>h</i>	30	10 <i>b</i>	35	<i>a</i>
R-L-D	N/A	N/A	N/A	10 for side entry garage, 20 for front entry garage	15	0 to 10	35	<i>a</i>
R-T	7 spaces per gross acre	Park size min. 5 acres	Min. mobile home size 8 ft. x 35 ft.	7.5	7.5	7.5	35	<i>a</i>
R-T-1								
SFR	4,500 <i>c</i>	1,000	45	25/20 <i>k</i>	25/20 <i>k</i>	5	35	<i>a</i>
Mobile home	4,500 <i>c</i>	Min. mobile home size 8 ft. x 35 ft.	45	25/20 <i>k</i>	25/20 <i>k</i>	5	35	<i>a</i>
R-T-2	6,000	SFR 500	60	25	25	6	35	<i>a</i>
(prior to 1/29/73)		Min. mobile home size 8 ft. x 35 ft.						
R-T-2 (after 1/29/73)	21,780 ½ acre	SFR 600	100	35	50	10	35	<i>a</i>
		Min. mobile home size 8 ft. x 35 ft.						

District	Min. lot area (sq. ft.) <i>m</i>	Min. living area (sq. ft.)	Min. lot width (ft.)	Min. front yard (ft.) <i>a</i>	Min. rear yard (ft.) <i>a</i>	Min. side yard (ft.)	Max. building height (ft.)	Lake setback <i>(b)</i>
NR	One-family dwelling, 4,500	1,000	45 <i>c</i>	20	20	5	35/3 stories <i>k</i>	<i>a</i>
	Two DUs, 8,000	500 per DU	80/90 <i>d</i>	20	20	5	35/3 stories <i>k</i>	<i>a</i>
	Three DUs, 11,250	500 per DU	85	20	20	10	35/3 stories <i>k</i>	<i>a</i>
	Four or more DUs, 1,000 plus 2,000 per DU	500 per DU	85	20	20	10	50/4 stories <i>k</i>	<i>a</i>
	Townhouse, 1,800	750 per DU	20	25, 15 for rear entry driveway	20, 15 for rear entry garage	0, 10 for end units	40/3 stories <i>k</i>	<i>a</i>
NAC	Non-residential and mixed use development, 6,000	500	50	0/10 maximum, 60% of building frontage must conform to max. setback	15, 20 adjacent to single-family zoning district	10, 0 if buildings are adjoining	50 feet <i>k</i>	<i>a</i>
	One-family dwelling, 4,500	1,000	45 <i>c</i>	20	20	5	35/3 stories <i>k</i>	<i>a</i>
	Two DUs, 11,250	500 per DU	80 <i>d</i>	20	20	5	35/3 stories <i>k</i>	<i>a</i>
	Three DUs, 11,250	500 per DU	85	20	20	10	35/3 stories <i>k</i>	<i>a</i>
	Four or more DUs, 1,000 plus 2,000 per DU	500 per DU	85	20	20	10	50 feet/4 stories, 65 feet with ground floor retail <i>k</i>	<i>a</i>
	Townhouse, 1,800	750 per DU	20	25, 15 for rear entry driveway	20, 15 for rear entry garage	0, 10 for end units	40/3 stories <i>k</i>	<i>a</i>
NC	Non-residential and mixed use development, 8,000	500	50	0/10 maximum, 60% of building frontage must conform to max. setback	15, 20 adjacent to single-family zoning district	10, 0 if buildings are adjoining	65 feet <i>k</i>	<i>a</i>
	One-family dwelling, 4,500	1,000	45 <i>c</i>	20	20	5	35/3 stories <i>k</i>	<i>a</i>
	Two DUs, 8,000	500 per DU	80 <i>d</i>	20	20	5	35/3 stories <i>k</i>	<i>a</i>
	Three DUs, 11,250	500 per DU	85	20	20	10	35/3 stories <i>k</i>	<i>a</i>
	Four or more DUs, 1,000 plus 2,000 per DU	500 per DU	85	20	20	10	65 feet, 80 feet with ground floor retail <i>k</i>	<i>a</i>
	Townhouse	750 per DU	20	25, 15 for rear entry driveway	20, 15 for rear entry garage	0, 10 for end units	40/3 stories <i>k</i>	<i>a</i>
P-O	10,000	500	85	25	30	10 for one- and two-story bldgs., plus 2 for each add. story	35	<i>a</i>
C-1	6,000	500	80 on major streets (see Art. XV); 60 for all other streets <i>e</i> ; 100 ft. for corner lots on major streets (see Art. XV)	25	20	0; or 15 ft. when abutting residential district; side street, 15 ft.	50; or 35 within 100 ft. of all residential districts	<i>a</i>

District	Min. lot area (sq. ft.) ^m	Min. living area (sq. ft.)	Min. lot width (ft.)	Min. front yard (ft.) ^a	Min. rear yard (ft.) ^a	Min. side yard (ft.)	Max. building height (ft.)	Lake setback
C-2	8,000	500	100 on major streets (see Art. XV); 80 for all other streets ^f	25, except on major streets as provided in Art. XV	15; or 20 when abutting residential district	5; or 25 when abutting residential district; 15 for any side street	50; or 35 within 100 feet of all residential districts	^a
C-3	12,000	500	125 on major streets (see Art. XV); 100 for all other streets ^g	25, except on major streets as provided in Art. XV	15; or 20 when abutting residential district	5; or 25 when abutting residential district; 15 for any side street	75; or 35 within 100 feet of all residential districts	^a

District	Min. front yard (feet)	Min. rear yard (feet)	Min. side yard (feet)	Max. building height (feet)
I-1A	35	25	25	50, or 35 within 100 ft. of any residential use or district
I-1 / I-5	35	25	25	50, or 35 within 100 ft. of any residential use or district
I-2 / I-3	25	10	15	50, or 35 within 100 ft. of any residential use or district
I-4	35	10	25	50, or 35 within 100 ft. of any residential use or district

NOTE: These requirements pertain to zoning regulations only. The lot areas and lot widths noted are based on connection to central water and wastewater. If septic tanks and/or wells are used, greater lot areas may be required. Contact the Health Department at 407-836-2600 for lot size and area requirements for use of septic tanks and/or wells.

FOOTNOTES

^a	Setbacks shall be a minimum of 50 feet from the normal high water elevation contour on any adjacent natural surface water body and any natural or artificial extension of such water body, for any building or other principal structure. Subject to the lakeshore protection ordinance and the conservation ordinance, the minimum setbacks from the normal high water elevation contour on any adjacent natural surface water body, and any natural or artificial extension of such water body, for an accessory building, a swimming pool, swimming pool deck, a covered patio, a wood deck attached to the principal structure or accessory structure, a parking lot, or any other accessory use, shall be the same distance as the setbacks which are used per the respective zoning district requirements as measured from the normal high water elevation contour.
^b	Side setback is 30 feet where adjacent to single-family district.
^c	For lots platted between 4/27/93 and 3/3/97 that are less than 45 feet wide or contain less than 4,500 sq. ft. of lot area, or contain less than 1,000 square feet of living area shall be vested pursuant to Article III of this chapter and shall be considered to be conforming lots for width and/or size and/or living area.
^d	For attached units (common fire wall and zero separation between units) the minimum duplex lot width is 80 feet and the duplex lot size is 8,000 square feet. For detached units the minimum duplex lot width is 90 feet and the duplex lot size is 9,000 square feet with a minimum separation between units of 10 feet. Fee simple interest in each half of a duplex lot may be sold, devised or transferred independently from the other half. For duplex lots that: <ul style="list-style-type: none"> (i) are either platted or lots of record existing prior to 3/3/97, and (ii) are 75 feet in width or greater, but are less than 90 feet, and (iii) have a lot size of 7,500 square feet or greater, but less than 9,000 square feet are deemed to be vested and shall be considered as conforming lots for width and/or size.
^e	Corner lots shall be 100 [feet] on major streets (see Art. XV), 80 [feet] for all other streets.
^f	Corner lots shall be 125 [feet] on major streets (see Art. XV), 100 [feet] for all other streets.
^g	Corner lots shall be 150 [feet] on major streets (see Art. XV), 125 [feet] for all other streets.
^h	For lots platted on or after 3/3/97, or unplatted parcels. For lots platted prior to 3/3/97, the following setbacks shall apply: R-1AA, 30 feet, front, 35 feet rear, R-1A, 25 feet, front, 30 feet rear, R-1, 25 feet, front, 25 feet rear, 6 feet side; R-2, 25 feet, front, 25 feet rear, 6 feet side for one (1) and two (2) dwelling units; R-3, 25 feet, front, 25 feet, rear, 6 feet side for two (2) dwelling units. Setbacks not listed in this footnote shall apply as listed in the main text of this section.
^j	Attached units only. If units are detached, each unit shall be placed on the equivalent of a lot 45 feet in width and each unit must contain at least 1,000 square feet of living area. Each detached unit must have a separation from any other unit on site of at least 10 feet.
^k	Maximum impervious surface ratio shall be 70%, except for townhouses, nonresidential, and mixed use development, which shall have a maximum impervious surface ratio of 80%.
^m	Based on gross square feet.

These requirements are intended for reference only; actual requirements should be verified in the Zoning Division prior to design or construction.

VARIANCE CRITERIA:

Section 30-43 of the Orange County Code Stipulates specific standards for the approval of variances. No application for a zoning variance shall be approved unless the Board of Zoning Adjustment finds that all of the following standards are met:

1. **Special Conditions and Circumstances** – Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. Zoning violations or nonconformities on neighboring properties shall not constitute grounds for approval of any proposed zoning variance.
2. **Not Self-Created** – The special conditions and circumstances do not result from the actions of the applicant. A self-created hardship shall not justify a zoning variance; i.e., when the applicant himself by his own conduct creates the hardship which he alleges to exist, he is not entitled to relief.
3. **No Special Privilege Conferred** – Approval of the zoning variance requested will not confer on the applicant any special privilege that is denied by the Chapter to other lands, buildings, or structures in the same zoning district.
4. **Deprivation of Rights** – Literal interpretation of the provisions contained in this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter and would work unnecessary and undue hardship on the applicant. Financial loss or business competition or purchase of the property with intent to develop in violation of the restrictions of this Chapter shall not constitute grounds for approval.
5. **Minimum Possible Variance** – The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building or structure.
6. **Purpose and Intent** – Approval of the zoning variance will be in harmony with the purpose and intent of this Chapter and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

SPECIAL EXCEPTION CRITERIA:

Subject to Section 38-78, in reviewing any request for a Special Exception, the following criteria shall be met:

1. The use shall be consistent with the Comprehensive Policy Plan.
2. The use shall be similar and compatible with the surrounding area and shall be consistent with the pattern of surrounding development.
3. The use shall not act as a detrimental intrusion into a surrounding area.
4. The use shall meet the performance standards of the district in which the use is permitted.
5. The use shall be similar in noise, vibration, dust, odor, glare, heat producing and other characteristics that are associated with the majority of uses currently permitted in the zoning district.
6. Landscape buffer yards shall be in accordance with Section 24-5, Orange County Code. Buffer yard types shall track the district in which the use is permitted.

In addition to demonstrating compliance with the above criteria, any applicable conditions set forth in Section 38-79 shall be met.

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **AUG 06, 2020**

Case Planner: **Nick Balevich**

Case #: **VA-20-08-077**

Commission District: **#1**

GENERAL INFORMATION

APPLICANT(s): PETER VALENTE

OWNER(s): PETER VALENTE, DONNA VALENTE

REQUEST: Variance in the R-1A zoning district to allow an existing 8 ft. high fence to remain within the 25 ft. front yard setback in lieu of 4 ft.

This is the result of Code Enforcement action.

PROPERTY LOCATION: 7037 Carlene Dr., Orlando, Florida, 32835, north side of Carlene Dr., west of S. Hiawasse Rd.

PARCEL ID: 35-22-28-4464-01-040

LOT SIZE: 0.31 acres

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 124

DECISION: Recommended **APPROVAL** of the Variance request in that the Board made the finding that the requirements of Orange County Code, Section 30-43(3) have been met; further, said approval is subject to the following conditions (6 in favor and 1 opposed):

1. Development shall be in accordance with the site plan dated June 10, 2020, 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 applicant shall obtain a permit for the fence within 180 days of final action on this application by Orange County, or this approval is null and void.

SYNOPSIS: Staff presented the case covering the location of the property, the site plan, and photos of the site. The applicant stated that they replaced an old deteriorated fence, and that the neighbors were very happy and signed a petition in favor of the request.

The BZA confirmed that the fence is 20 feet from the edge of the road, and that the work was done without a permit, and the neighbors are in support.

Staff received eighteen (18) commentaries in favor of the application, and one (1) in opposition to the application.

Two residents spoke in favor of the request, stating that the original fence was there for 30 years, and that the new fence is attractive, well-constructed, and an improvement to the area. One resident spoke in opposition to the request, stating that the fence is too high.

Code Enforcement confirmed that the case was in response to a citizen complaint.

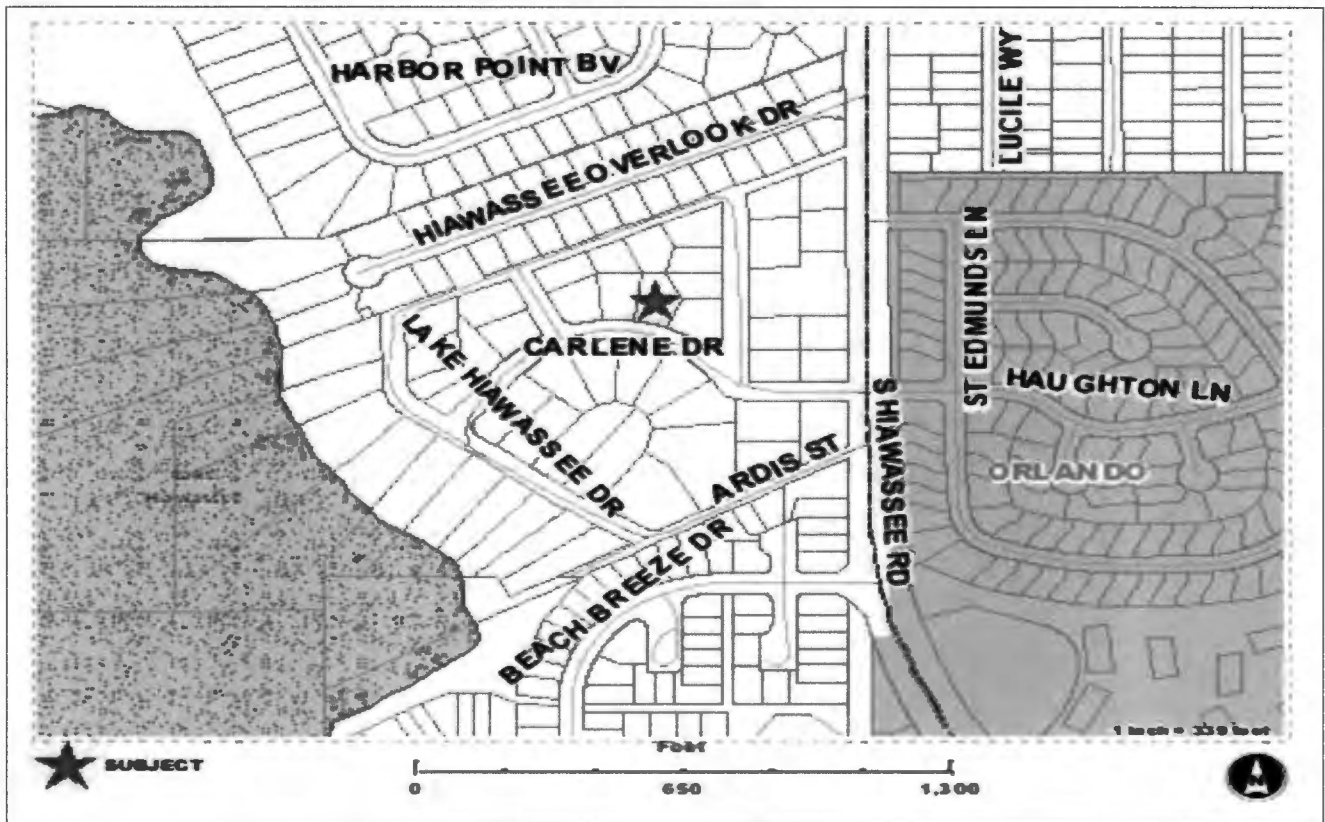
The BZA noted that there are many different sizes and types of fences in the area, but that this fence is the most attractive, and that it looks good from either side.

The BZA recommended approval of the variance by a vote of 6-1, subject to the four (4) conditions found in the staff report.

STAFF RECOMMENDATIONS

Denial. However, if the BZA should find that the applicant has satisfied the criteria for the granting of a variance, staff recommends 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-1A	R-1A
Future Land Use	LDR	LDR	LDR	LDR	LDR
Current Use	Single-family residence	Single-family residence	Single-family residence	Single-family residence	Single-family residence

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located in the R-1A, Single-Family Dwelling district, which allows single-family homes and associated accessory structures on lots a minimum of 7,500 sq. ft. or greater.

The subject property is a 0.31 acre conforming lot of record that is a part of the Lake Hiawassa Terrace Replat, platted in 1952. The neighborhood is comprised of single-family homes. There is an existing 1,599 sq. ft. single family home on the lot which was constructed in 1979. The applicant purchased the property in 1988.

The applicant installed an 8 ft. high fence, along the east (side) property line, in 2020 without a permit. There was an existing 6 ft. high fence in the same location (staff could not locate a permit for said fence). The County Code allows a fence to be a maximum of 4 ft. high within the front setback, which is the first 25 ft. of the lot within the R-1A district.

Code Enforcement cited the applicant in April of 2020 for installation of a fence without permits (Incident 568415). The applicant is requesting the height variance for the portion of the fence that is within the front setback.

The applicant has submitted a petition of support from area residents, including the most impacted neighbor to the east.

District Development Standards

	Code Requirement	Proposed
Max Fence Height:	4 ft. (within 25 ft. front setback)	8 ft. (within 25 ft. front setback)
Min. Lot Width:	75 ft.	84 ft.
Min. Lot Size:	7,500 sq. ft.	13,806 sq. ft.

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

There are no special conditions and circumstances, as the fence could have been installed in a manner that would not have required a variance through the installation of a 4 ft. high fence, instead of an 8 ft. high fence within 25 ft. front setback.

Not Self-Created

The need for the variance is self-created and is as a result of the applicant installing an oversized fence without permits.

No Special Privilege Conferred

Approval of the variance as requested will confer special privilege that is denied to other properties in the same area and zoning district, as the applicant may rectify the issue through the installation of a fence with a conforming height and/or location.

Deprivation of Rights

The applicant is not being deprived of the right to have a fence on the property since the owner has the ability to meet County Code for fence height and location requirements.

Minimum Possible Variance

The request to have the 8 ft. high fence in the current location is not the minimum possible variance as the applicant could instead install a 4 ft. high fence in the 25 ft. setback from the front property line, which would meet the code requirements, and negate the need for the variance.

Purpose and Intent

Approval of this request will not be in harmony with the purpose and intent of the zoning regulations and could be detrimental to the neighborhood. The height of the fence potentially blocks the visibility to the road from the adjacent driveway.

CONDITIONS OF APPROVAL

1. Development shall be in accordance with the site plan dated June 10, 2020, 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 applicant shall obtain a permit for the fence within 180 days of final action on this application by Orange County, or this approval is null and void.

C: Peter A. Valente
P.O. Box 616643
Orlando, FL 32861

COVER LETTER

To Whom It May Concern :

Please be patient with me as I am 71 years old. I'm requesting a variance for a replacement fence which we erected along the property line between 7037 and 7029 Carlene Drive. The previous fence has been in that location since the early nineties. The new fence is eight feet tall (six feet of shadow box made of cypress topped with two feet of lattice). The fence ends six inches shy of county property and is twenty plus feet from the bottom of the driveway. Orange County has paved (used to be a dirt road) a twenty two foot road in our neighborhood without sidewalks. The fence does not obscure any sight lines in either direction and meets triangulation requirements for our neighborhood.

Enclosed please find a petition signed by several neighbors to keep the fence as is. Enclosed also please find a letter and copy of driver's license from the owner of 7029 Carlene Drive, Mary Fawkes. A notarized letter is being mailed to me by Mary Fawkes from Miami .

Please also review the enclosed photos which show the pre-existing fence and clear , unobscured sightline from all angles.

Thank you for your consideration,

Peter a. Valente
Donna J. Valente

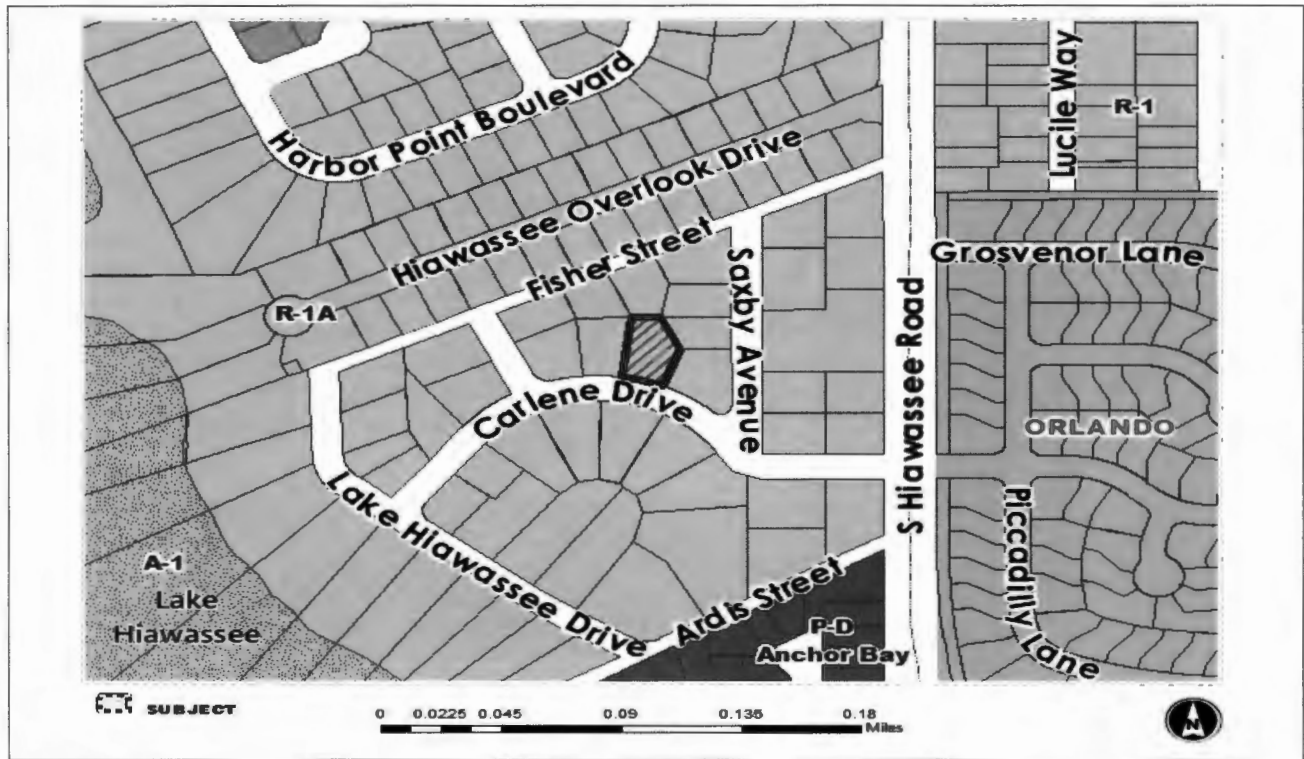
Peter and Donna Valente
7037 Carlene Drive
Reference # 568415

**To whom it may concern,
Regarding Variance case # VA-20-08-077 : Reference #568415 -
fence variance**

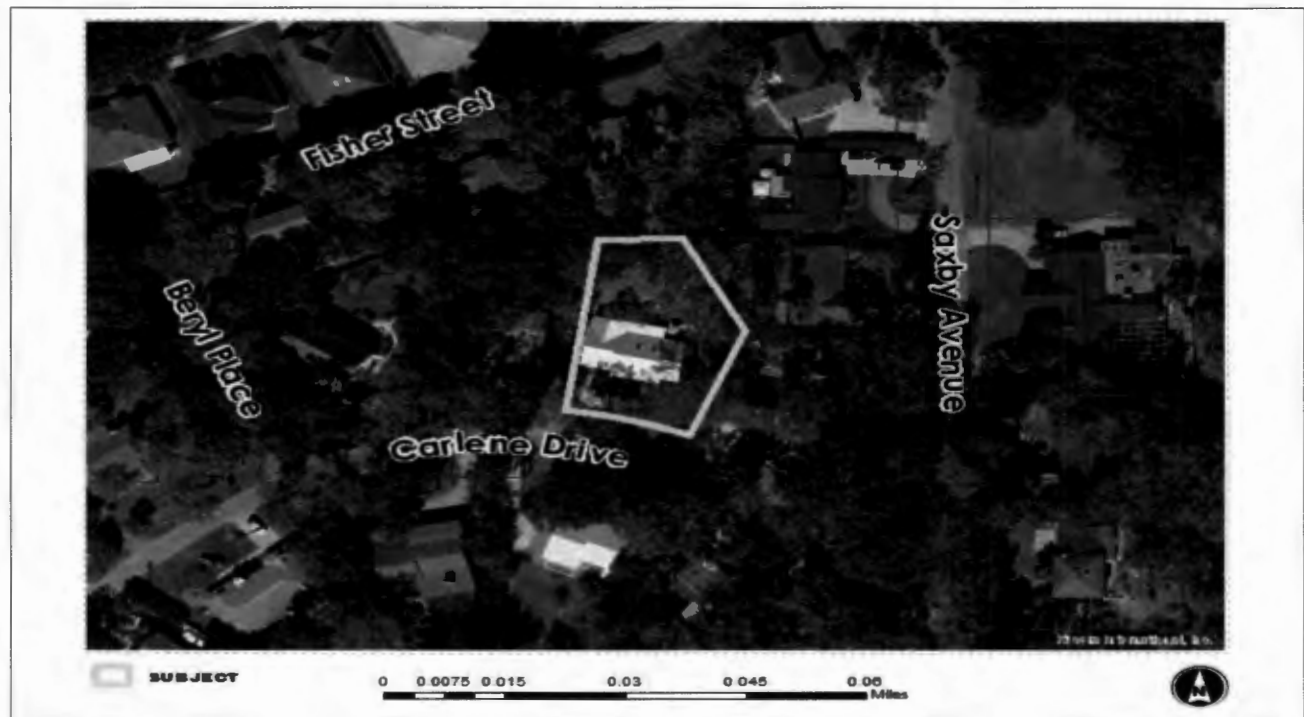
1. **Special conditions and Circumstances.**
 - **The property is located on Carlene Dr. and the property boundary is 20 feet from the edge of pavement. This is not a standard condition in the surrounding communities.**
 - **This area has always been maintained by the owner since ownership in a well groomed manner.**
2. **Not self created**
 - **This fence replaced an existing fence previously erected not by this owner and was in disrepair.**
 - **The replacement fence was installed to the same location parameters with the exception of height. The replaced fence was 6 feet tall and the replacement fence is 6 foot with 2 foot of 50% free air lattice.**
3. **No Special privilege.**
 - **All sight lines are maintained with the fence in its current location per Orange County ordinances.**
4. **Deprivation of right**
 - **Removal of this fence would create a disparaging visual effect with the neighboring property that never existed by this owner and the neighboring property since ownership.**
 - **Both properties feel this fence is appropriate and maintains desirability of each property without impact to county, adjoining properties, or neighborhood in general.**
5. **Minimum possible variance.**
 - **We request that the fence be left as is in its current location.**
6. **Purpose and intent.**
 - **With the edge of pavement being 20 feet from the beginning of the fence and that all sightlines are maintained in accordance with county ordinances the construction of the fence is of the highest quality , construction and architecturally very pleasing.**
 - **The Architecture fits well with the surrounding properties building types and fences in the neighborhood.**

Peter and Donna Valente

ZONING MAP



AERIAL MAP

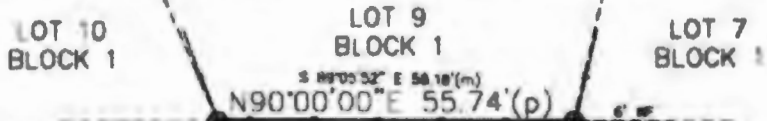


SITE PLAN

BOUNDARY SURVEY

DESCRIPTION (As Furnished)

LOT 4, BLOCK 1, LAKE HIAWASSA TERRACE REPLAT, according to the plat thereof as recorded in Plat Book S, Page 101 of the Public Records of Orange County, Florida.



FOUND 1/2\"/>

FOUND 1/2\"/>



LOT 3 BLOCK 1

FOUND 1/2\"/>

BASE OF ROTATION IS FROM SE PROPERTY CORNER TO NW PROPERTY CORNER

C1
Delta = 13-54-41
Radius = 346.50'
Arc length = 84.13'
Chord Bearing & Distance =
S74°03'17\"/>



FOUND 1\"/>

FENCE CORNER IS 14' E
LOT 5 BLOCK 1

FOUND 5/8\"/>

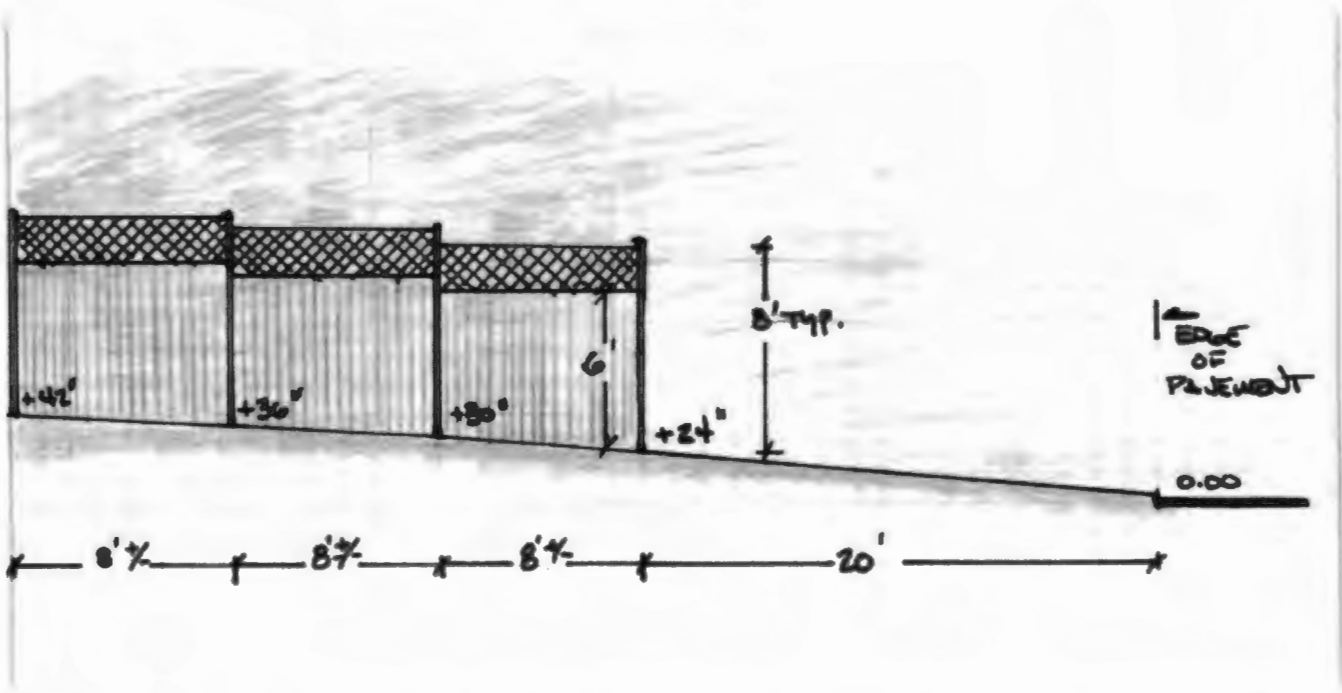
AREAS OF INTEREST:
#1 DRIVEWAY EXTENDS THROUGH EASEMENT

CERTIFIED TO:
PETER A. VALENTE
DONNA L. VALENTE

CRESCENT DRIVE
60' PLATTED RIGHT OF WAY
Now named:
CARLENE DRIVE



FENCE DETAIL



SITE PHOTO



Fence looking east along Carlene Dr.

SITE PHOTOS



Front and fence to the right from Carlene Dr.



Fence from neighboring property at 7029 Carlene Dr., looking west

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **AUG 06, 2020**

Case Planner: **Nick Balevich**

Case #: **VA-20-08-071**

Commission District: **#6**

GENERAL INFORMATION

APPLICANT(s): SUZE TESSIER

OWNER(s): BIENVENUE GISLAINE LIFE ESTATE, REM: GISLAINE BIENVENUE, REM: SUZE TESSIER

REQUEST: Variance in the R-1A zoning district to allow a separation distance of 912 ft. between a residence that meets the definition of a community residential home and another such home, in lieu of 1,000 ft.

PROPERTY LOCATION: 2020 Chicotah Way, Orlando, Florida, 32818, west side of Chicotah Way, south of Hennepin Blvd., east of N. Hiawassee Rd.

PARCEL ID: 13-22-28-3529-00-500

LOT SIZE: 80 ft. x 110 ft./ 0.20 acres

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 110

DECISION: Recommended **DENIAL** of the Variance request in that there was no unnecessary hardship shown on the land; and further, it did not meet the requirements governing variances as spelled out in Orange County Code, Section 30-43(3) (unanimous; 7-0).

SYNOPSIS: Staff presented the case covering the location of the property, the site plan, and photos of the properties.

The applicant stated that a zoning verification letter was received in 2018 but they were recently told a new letter is needed.

Staff noted that verification letters are only good for 6 months.

The BZA confirmed that the use is allowed within single or multi-family zoning districts, subject to the distance measurement.

Staff received no commentaries in favor of the application, and received forty (40) commentaries in opposition to the application.

Four residents spoke against the request, referencing problems with other group homes in the area and a concentration of such homes, as well as a desire to preserve the character of the neighborhood. There was no one who spoke in favor of the request.

In rebuttal, the applicant stated that they only want to take care of people with mental illness.

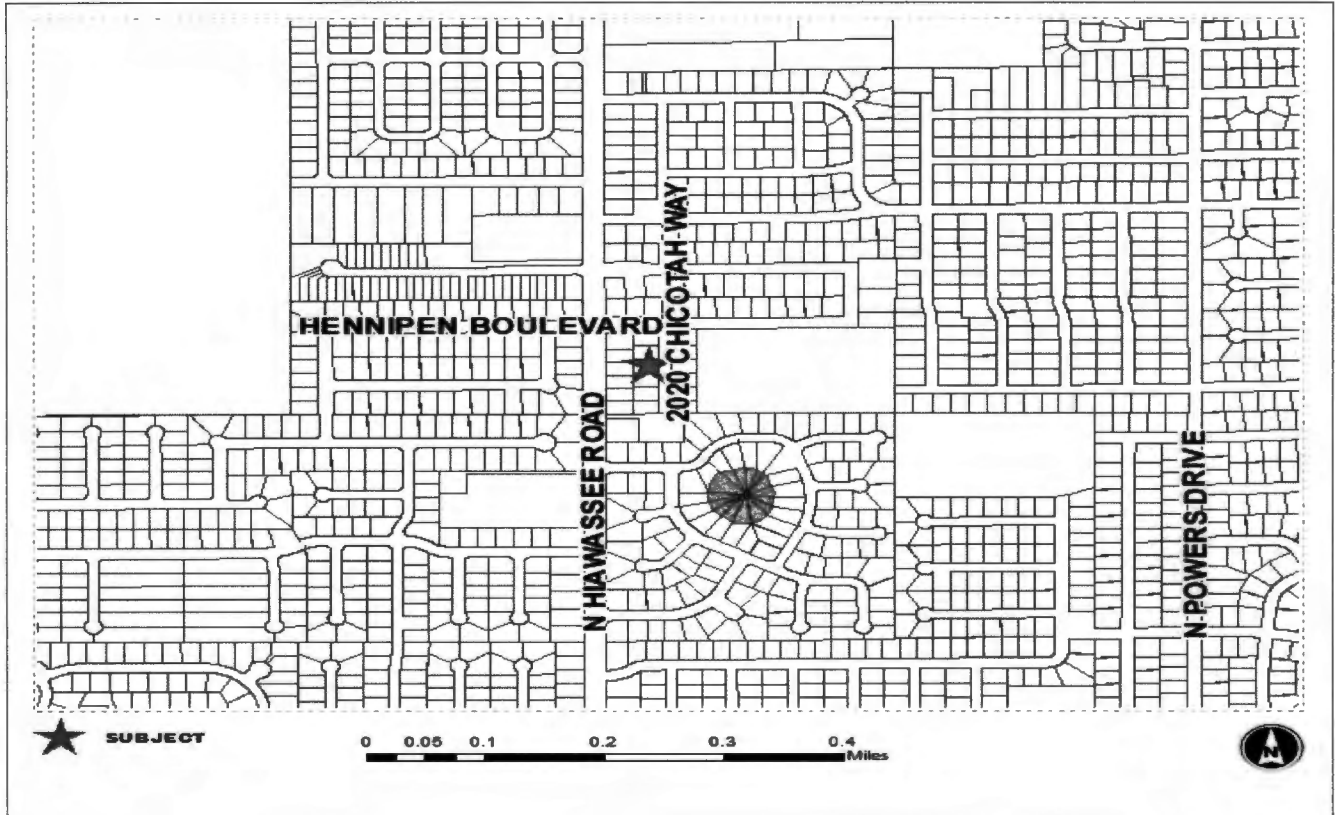
The BZA stated that the public has an expectation that the code regulations are enforced, that the distance separation was not met, and noted the overwhelming community objection.

The BZA unanimously recommended denial of the variance.

STAFF RECOMMENDATIONS

Denial. However, if the BZA should find that the applicant has satisfied the criteria for the granting of a variance, staff recommends 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-1A	R-1A
Future Land Use	LDR	LDR	LDR	LDR	LDR
Current Use	Single-family residence	Single-family residence	Single-family residence	Single-family residence	Single-family residence

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located in the R-1A, Single-Family Dwelling district, which allows single-family homes and associated accessory structures on lots a minimum of 7,500 sq. ft. or greater.

The subject property is a 0.20 acre lot located in the Hiawassa Highlands Second Addition Plat, which was platted in 1960, and is considered to be a conforming lot of record. There is an existing 1,652 sq. ft. single-family home on the lot, constructed in 1969. The applicant purchased the property in 2018.

The applicant is proposing to establish a residence that meets the definition of community residential home, but contains six (6) or fewer residents. Section 38-1 defines a Community Residential Home as follows:

Community residential home shall mean a dwelling unit licensed to serve clients of the State of Florida pursuant to F.S. ch. 419, which provides a living environment for seven (7) to fourteen (14) unrelated residents who operate as the functional equivalent of a family, including such supervision and care by support staff as may be necessary to meet the physical, emotional, and social needs of the "residents." The term "resident" as used in relation to community residential homes shall have the same meaning as stated in F.S. § 419.001(1)(e), as may be amended or replaced.

Further, Section 38-79(12) of the Orange County Code states that: A home of six (6) or fewer residents which otherwise meets the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use. Such a home shall be allowed in single-family or multifamily zoning without approval by the county, provided that such a home shall not be located within a radius of one thousand (1,000) feet of another existing such home.

These homes provide supervision and care by support staff as may be necessary to meet the physical, emotional, and social needs of the residents. They are licensed and regulated by the State of Florida, which permits local governments to enforce zoning regulations, and typically requires approval by local governments, before issuing a State license. The type of home proposed by the applicant is considered by the State as equivalent to a single-family home.

In December 2019, the applicant submitted a request for a Zoning Verification Letter to verify that the subject property could be used as an equivalent use to a community residential home, but containing six (6) or fewer residents. The applicant was advised that while the use is permitted, due to the presence of a similar operation at 7049 Hennepin Blvd., the subject property failed to meet the 1,000 ft. separation distance. The two homes are approximately 912 ft. apart.

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

The purpose of the separation distance is to avoid an over-concentration of this type of use in neighborhoods. There is a similar such home at 7049 Hennepin Blvd., located to the west, but it is in a different neighborhood, and is physically separated by Hiwassee Rd., which is a special conditions and circumstance.

Not Self-Created

The need for the variance is self-created and does result from the applicant's request. The applicant could acquire a residence that meets the 1,000 ft. separation distance.

No Special Privilege Conferred

Approval of the variance will confer special privilege that is denied to other properties in the same area and zoning district, since the owner has the ability to purchase a residence that meets the requirements of the County Code.

Deprivation of Rights

The owner is not being deprived of rights since the property can be used as a single-family residence.

Minimum Possible Variance

The request is not the minimum possible variance, as the applicant could use the residence as a single-family home, or find a property outside the 1,000 ft. separation, and negate the need for a variance.

Purpose and Intent

As previously stated, the purpose of the code required separation distance is to avoid an over concentration of this type of such residences. The proposed location is separated by Hiawassee Road, a County minor arterial road, which physically and functionally separates the other existing such residence, therefore the request meets the purpose and intent.

CONDITIONS OF APPROVAL

1. Development shall be in accordance with the survey dated June 4, 2020 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 variance shall become null and void with any change of ownership.

C: Suze Tessier
2020 Chicotah Way.
Orlando, FL 32818

COVER LETTER



Lippman Law Offices

4767 New Broad St
Orlando, Florida 32814
407-648-4213 Telephone
407-839-3948 Facsimile

March 12, 2020

Orange County Government
Zoning Division
PO Box 2687
Orlando, FL 32802

Re: 2020 Chicotah Way, Orlando, FL
Parcel Id# 13-22-28-3529-00-500
Variance Request Cover Letter

To the Zoning Development Board:

Please be advised that this office has been retained by Fritz Dort and Suze Tessier regarding the variance application. My client (the petitioner) received a letter in October 17, 2018 identifying that the property located at 2020 Chicotah Way ("The Property") is located in an R-1A Single Family Residential district. The letter further states that the R-1A district allows a home of six or fewer residents which otherwise meets the definition of a community residential home subject to the requirements in the district. The letter identifies that the property could be used as a Residential Home with six or fewer clients and that it was not located within a radius of 1000 feet of another Residential Home.

Since then, and without an explanation, Orange County Zoning has required that the petitioner request a variance for the group home that the petitioner wants to create at the property. My client received the required documentation for all variance requests including Section 30-43 (3) of the Orange County Code that stipulates specific standards for the approval of variances. The specific standards that are required to be met are discussed below:

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 building in the same zoning district. Zoning violations or nonconformities on 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. In the instant case there are special conditions attached to the property that do not generally apply to other properties in the area. The petitioner is not requesting a variance which would be contrary to the public interest or that would pose a threat to the public health and safety such as fire safety, structural stability, clearance, preservation of air, light or open space, and visual or aesthetic concern
 - b. Moreover a literal enforcement of the provisions of the zoning ordinance will result an unnecessary hardship. Specifically, the petitioner for this variance can demonstrate that a strict enforcement of the ordinance would prohibit the development of the property.
 - c. The Petitioner is requesting that the property be allowed to be used for a community residential home. The petitioner has stated that the home will be six or fewer residents with the R-1A district allows.
 - d. As previously provided, the existing location where the community residential home will be located satisfies the 1000 feet distance requirement from any

COVER LETTER PAGE 2

- other existing Residential Home.
- e. The variance request is necessary for the preservation of a property right of the applicant that is substantially the same as that possessed by owners of other property in the same zoning district.
 - f. The Petitioner can (and at the request of the board will) demonstrate to the Board that there variance the petitioner is seeking is a property right that is generally enjoyed by other property owners in the same zoning district. The request for a variance to allow the community home is not some additional privilege not generally enjoyed by others in the area. If the variance is granted then the spirit of the zoning ordinance is observed and substantial justice is done.
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.
- a. In the instant case the hardship was not created by the petitioner. Specifically the petitioner was told in October 17, 2018 that the request for a community residential home met three requirements of an R-1a Single Family Residential district.
 - b. Nothing the Petitioner has done changes the basis for the finding by Amy Bean, Zoning Development Coordinator III for the Orange County Government.
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.
- a. As the petitioner has demonstrated by the paperwork previously submitted and attached to this application, no special privilege would be conferred if the variance was granted.
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.
- a. With the instant case, the petitioner, who purchased the property with the understanding that the property was in an R-1A district anticipated a reasonable return as a community residential home with six or fewer clients. While the Petitioner understands that financial loss shall not constitute grounds for approval or object, based on the October 17, 2018 some consideration should be given by the Board to the petitioner due to the idea that the petitioner would not have any other beneficial use of the property without the variance.
 - b. The variance is not substantial as the variance would not disrupt the harmonious nature of the community.
 - c. This harmonious nature should further should be considered by the Board as the documents submitted by the Petitioner demonstrate that the essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer substantial detriment as a result of the variance.
 - d. Further examination of the variance requested also demonstrates that a home of six or fewer residents would not adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
 - e. With regard to the variance, the petitioner purchased the property with knowledge of the zoning restrictions and further thought that based on the letter by Amy Bean that there would be no issue.
 - f. With the instant case the property owner's predicament feasibly can not be obviated through some method other than a variance; and as the primary use of the property would not change.
 - g. Granting of the zoning variance would not necessarily diminish the spirit and intent behind the zoning requirement. The zoning requirement would be observed and substantial justice done by granting a variance.
5. **Minimum Possible Variance** - The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building, or structure.
- a. In the instant case the minimum possible variance is all that is being requested.
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.
- a. The particular physical surroundings, shape, or topographical condition of the property involved would result in a practical difficulty or unnecessary hardship upon or for the owner, lessee, or occupant, as distinguished from an

COVER LETTER PAGE 3

- inconvenience, if the provisions of the Zoning Code were literally enforced
- b. The request for a Variance is not based primarily upon the desire of the owner, lessee, occupant or applicant to secure a greater financial return from the property;
 - c. The granting of the Variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the property is located; and
 - d. The proposed Variance will not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

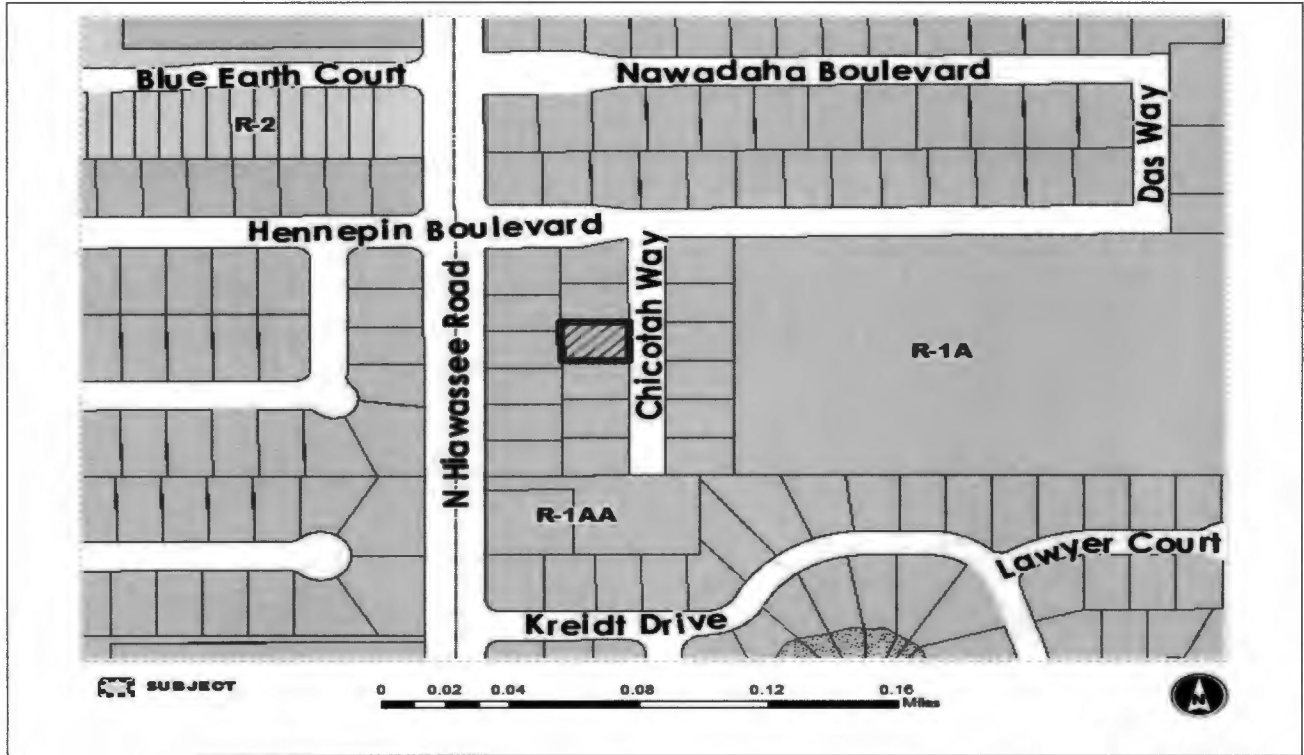
If the Board would like to discuss any of these prongs further or needs further review of any of the documentation attached, please contact Lippman Law Offices, P.A. at 407-648-4213.

Respectfully,

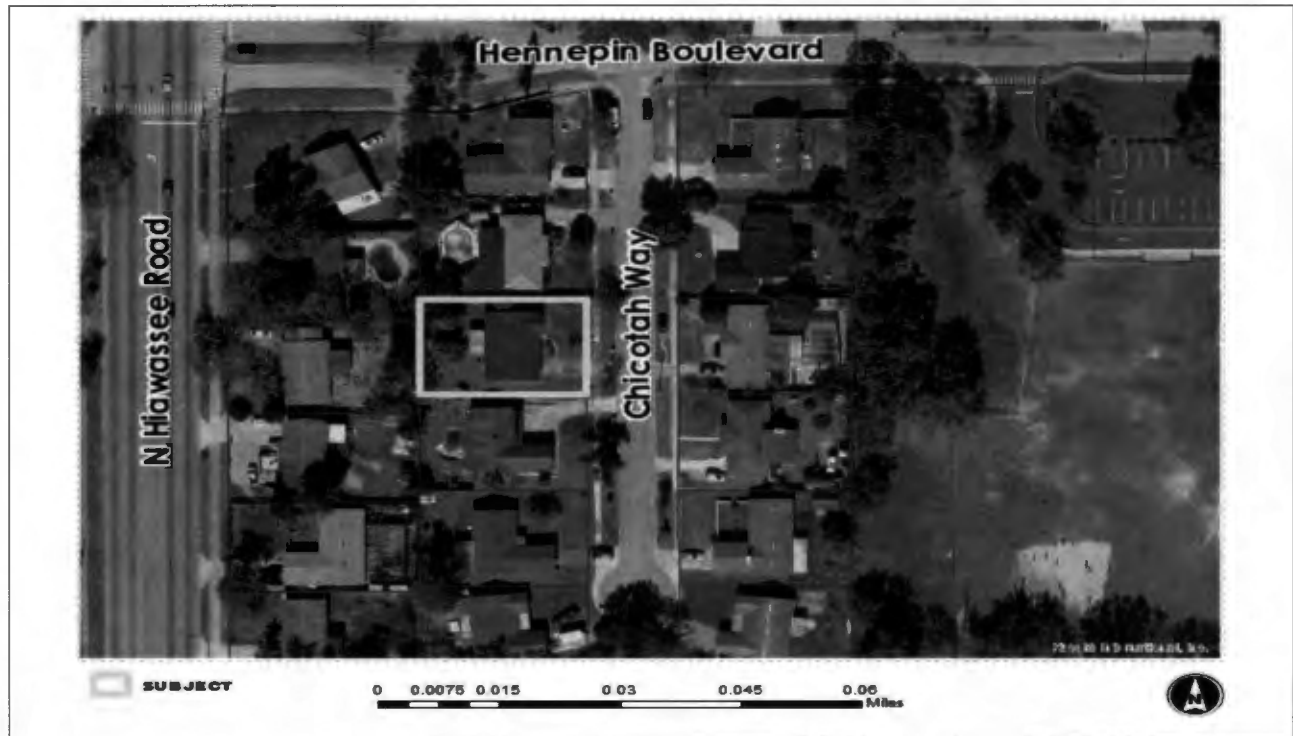
Lippman Law Offices, P.A.

www.llopa.com

ZONING MAP

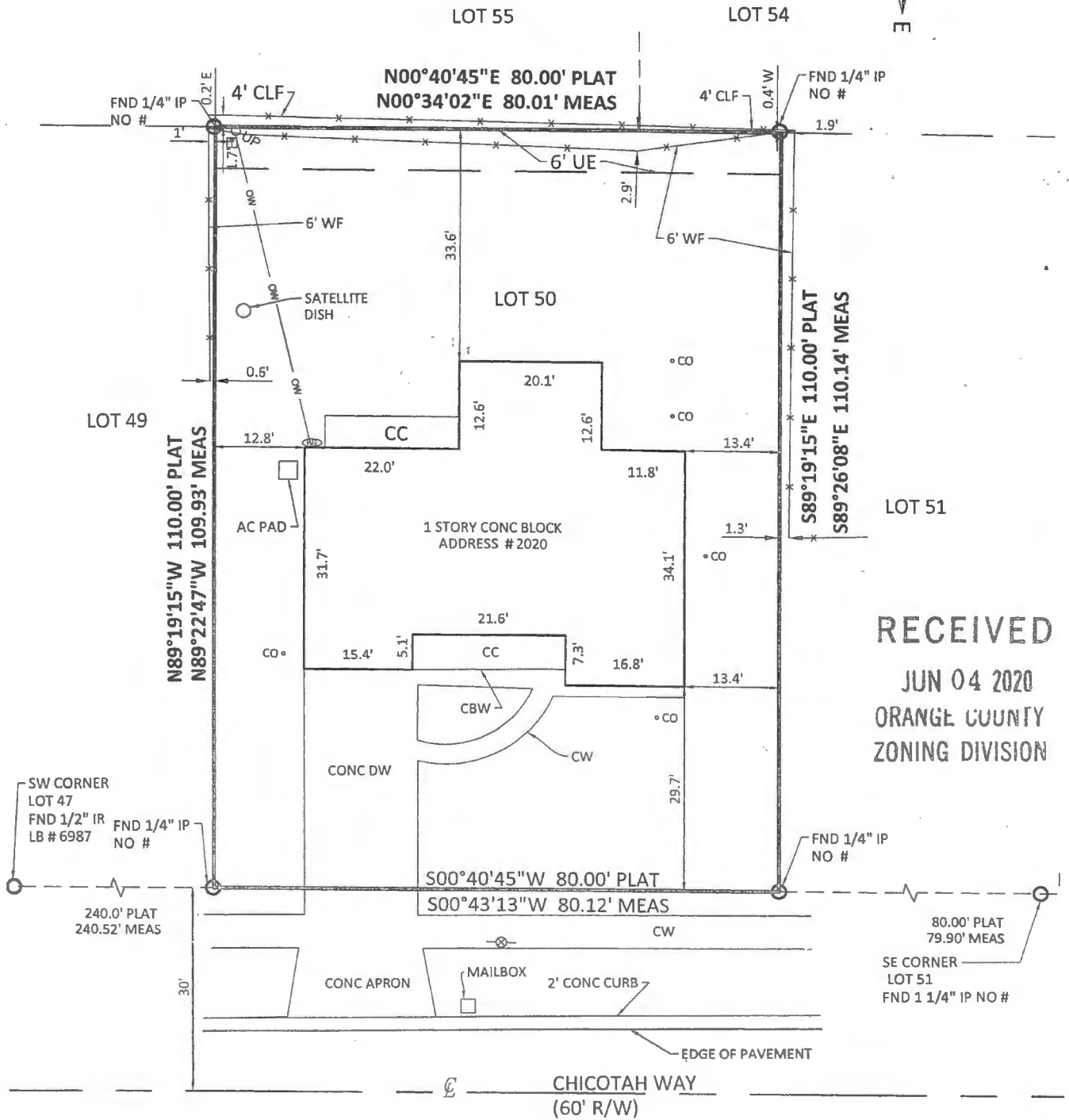
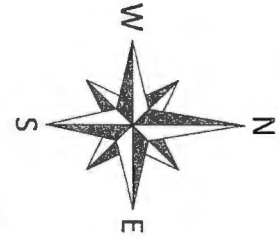


AERIAL MAP



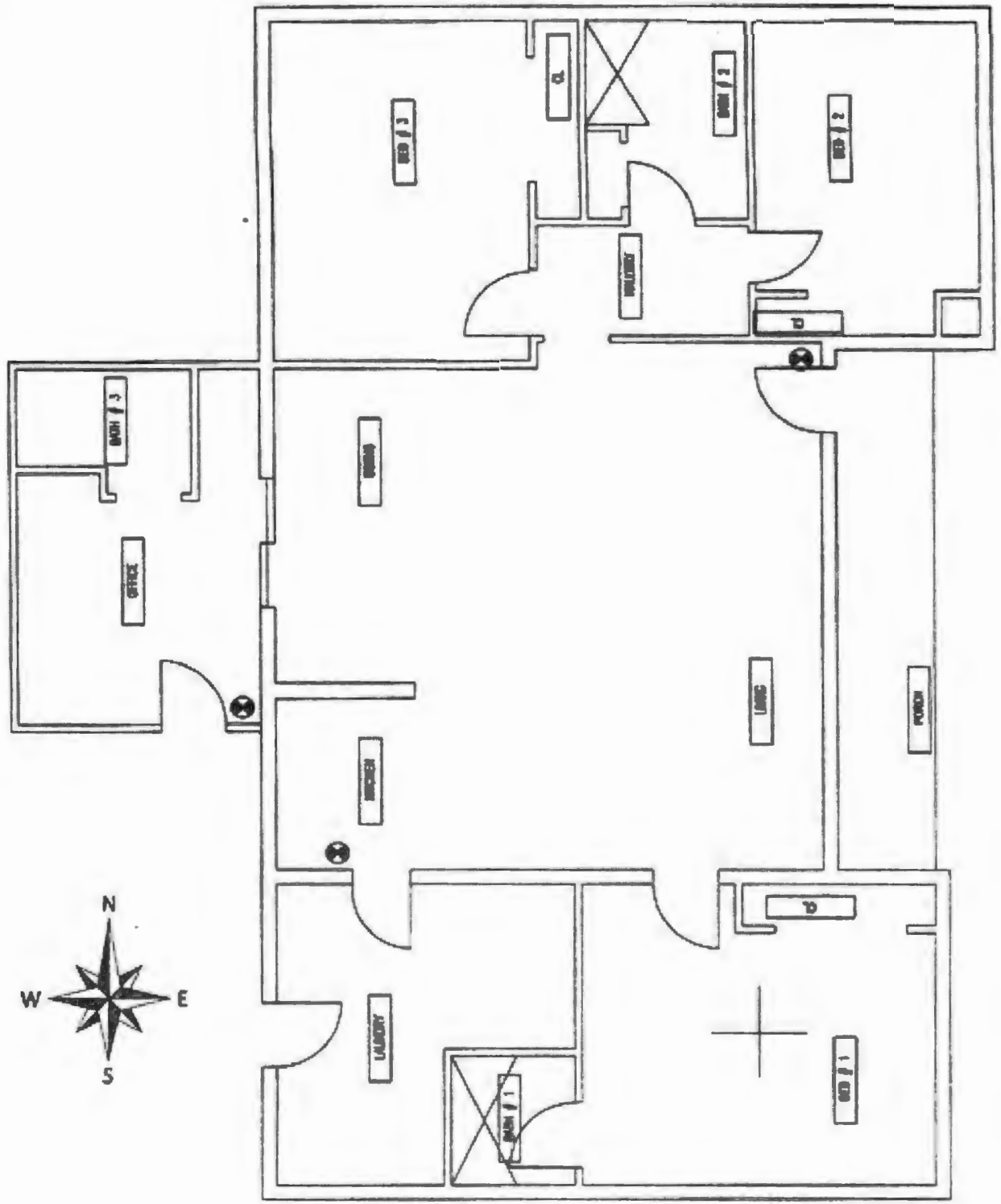
SURVEY

AGE 49, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

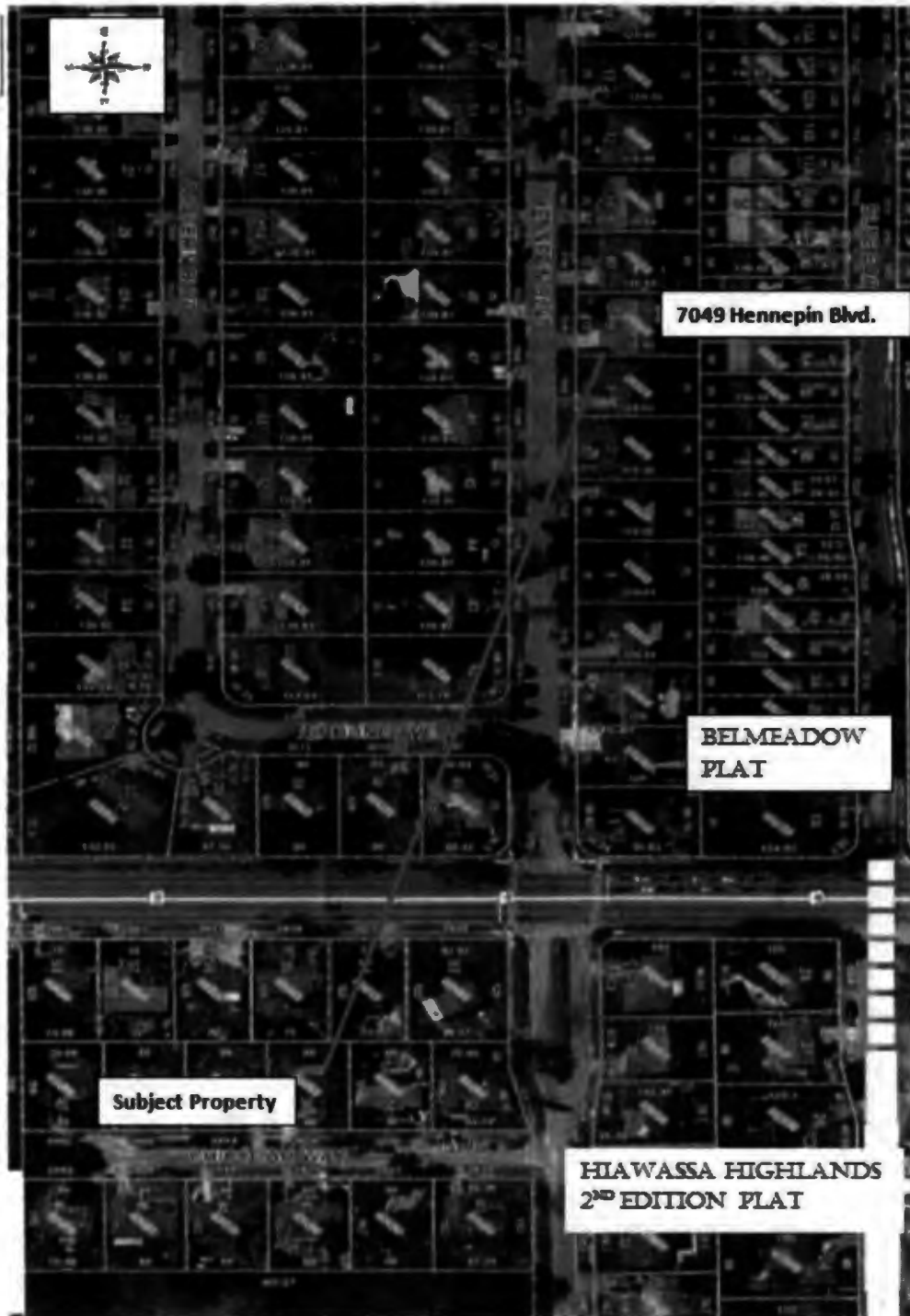


RECEIVED
JUN 04 2020
ORANGE COUNTY
ZONING DIVISION

FLOOR PLAN



REQUESTED 912 FOOT DISTANCE SEPARATION



SITE PHOTOS



7041 Chicotah Way front



Nearest Residential Home at 7049 Hennepin Blvd., in the neighborhood to the west.

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **AUG 06, 2020**

Case Planner: **David Nearing, AICP**

Case #: **VA-20-08-074**

Commission District: **#3**

GENERAL INFORMATION

APPLICANT(s): **NORTHERN TOOL + EQUIPMENT (KORY SCHMIDT)**

OWNER(s): **REALTY INCOME PROPERTIES 21 LLC**

REQUEST: **Variance to allow a total of 225 square feet of wall sign copy area in lieu of 211.2 sq. ft.**

PROPERTY LOCATION: **795 W. Sand Lake Road, Orlando, Florida, 32809, north side of W. Sand Lake Rd., approximately 500 ft. west of Winegard Rd.**

PARCEL ID: **26-23-29-0000-00-109**

LOT SIZE: **422 ft. x 282 ft. (avg.)/ 3.08 acres**

NOTICE AREA: **800 ft.**

NUMBER OF NOTICES: **446**

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

1. Development shall be in accordance with the site plan dated June 9, 2020, 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. If there is a need to modify any existing vegetation on the site to accommodate the new sign, the applicant shall provide a revised landscape plan which must be approved by a County arborist prior to issuance of a sign permit.
5. If there is a need to replace existing wall signage, any new wall signage shall meet the Orange County Sign Code.

SYNOPSIS: Staff described the property, the surrounding area, the retailer's commercial operations, the existing signage and the available wall sign area based on the east building frontage. Staff provided an analysis of the six (6) criteria, and the reasons for a recommendation for denial, including the fact the retailer has other options, including the reduction of the existing wall signs or the removal of one of the existing wall signs, in order to meet sign code requirements. Staff noted that that no comments were received in support or in opposition.

The applicant's representative, the sign contractor, explained the need for the additional wall sign based upon the signed contractual agreement between the retailer and the vendor. He understood the logic behind staff's recommendation but he emphasized that the requested excess wall sign area was only a few square feet higher than the sign code requirements. He also noted the condition of landscaping on the site and its superior condition in comparison with other similar businesses. There was no one in attendance to speak in favor or in opposition to the request.

The BZA briefly discussed the applicant's contractual need and asked clarifying questions regarding the existing ground signage and its inclusion with staff's review of the proposed variance.

The BZA felt that due to the branding of the retailer, that there was no special privilege was conferred due to the contract obligations, and since the request included a relatively a small sign, it was a minimum possible variance, and that there were special conditions and circumstances regarding this application. Further, the BZA stated that there is a need for the variance, which is not self-created, since it is needed in order to promote the retailer. After discussion, the BZA supported the addition of a condition that any future replacement of existing walls signs meet the Orange County Sign Code.

The BZA unanimously recommended approval of the Variance, subject to the four (4) conditions in the staff report and a new Condition #5, which states, "If there is a need to replace existing wall signage, any new future wall signage shall meet the Orange County Sign Code".

STAFF RECOMMENDATIONS

Denial. However, should the BZA find that the applicant has satisfied the criteria necessary to grant a variance, 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	C-2	P-D	P-D	C-2	C-2 & P-D
Future Land Use	C	PD-HDR	PD-C/IND & O	C & PD-HDR	C
Current Use	Commercial	Multifamily	Vacant	Commercial	Convenience retail

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located in the C-2, General Commercial district. The C-2 district allows a variety of commercial businesses including automotive repair/sales, selected trade shops, and provides a larger area than that of the retail commercial district.

The subject property is a 3.08 acre parcel which was created through a lot split (LS 2003-154). The property is developed with a 30,607 sq. ft. structure for an existing business which specializes in the sale of power tools and equipment. The subject property was conditionally rezoned from I-3 to C-2 in June, 1998 with two (2) conditions

which have been met. The first condition requires a masonry wall between the residential to the north and the commercial. The second condition prohibits outdoor storage and display. A masonry wall was installed along the north property line of the subject property, and no outdoor storage was observed on the site.

Per the sign code, the building is allowed up to 211.2 sq. ft. of wall signage per Sec 31.5-15, which is 1.5 sq. ft. for each foot of building frontage. For the purposes of calculating allowable sign area, frontage is determined based on the location of the primary entrance to the building, which in this case is the east elevation. With an east elevation of 140.8 ft., there is 205.37 sq. ft. of signage installed, including two (2) circular signs, each 38.48 sq. ft. in size totaling 76.96 sq. ft., and one rectangular sign totaling 128.41 sq. ft.; therefore, there is a remaining balance of 5.83 sq. ft. of available wall sign. The existing wall signage was installed through permit #B06012020. In addition to the existing wall signage, the site also contains a 30 ft. tall 144.84 sq. ft. pole sign, and a 24 sq. ft. ground sign, also installed through permit #B06012020, both of which are double sided.

The applicant’s cover letter indicates that they are under contractual obligation to provide a particular sign on the wall of the building advertising a particular brand of power tool. The proposed sign is 9’ 9” x 2’ (19.5 sq. ft.) in size. With the 5.83 sq. ft. still available, the applicant's requested addition results in a total sign area of 224.87 sq. ft. of sign copy area, an excess of 13.67 sq. ft.

Staff notes that the applicant could reduce the size of one or more existing signs by the required amount to forgo the variance and still fulfill their contractual obligation. The diameter of one (1) or both of the circular signs could be reduced to accommodate the needed square footage, and the reduced size would be imperceptible. Or they could remove one (1) of the circular signs to accommodate the new sign proposed.

District Development Standards

	Code Requirement	Proposed
Max Height:	35 ft.	30 ft.
Min. Lot Width:	100 ft. (Major street)	438 ft.
Min. Lot Size:	8,000 sq. ft.	138,165 sq. ft./3.08 acres

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

	Code Requirement	Proposed
Front:	60 ft. (Major street setback)	81 ft. (West)
Rear:	25 ft. (Abuts residential)	65 ft. (North)
Side:	5 ft.	27 ft. (West)/250 ft. (East)

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

There are no special conditions or circumstances particular to this site. The site is rectangular and has over 450 ft. of frontage with good visibility.

Not Self-Created

The need for additional signage is the result of the applicant entering into a contractual obligation with a particular merchant. The need for additional signage is over and above what the sign code permits, and is self-created.

No Special Privilege Conferred

Staff did not find any other nearby examples where additional wall or ground sign area was granted through the variance process. Granting this variance will confer a special privilege, and potentially establish a precedent.

Deprivation of Rights

Failure to grant this variance will not deprive the applicant of the ability to install signage. Existing signage could be modified to accommodate the contractual signage.

Minimum Possible Variance

Since the applicant has available wall copy area, this is not the minimum possible variance.

Purpose and Intent

The purpose of the sign code is to ensure that a consistent amount of signage is permitted for all properties, and to avoid sign clutter. The granting of a variance for an additional 13.8 sq. ft. of wall sign copy area will exceed the amount of signage above which is allowed by the sign code. This would be contrary to the purpose and intent of the code since the request is based on convenience and financial considerations and not a proven hardship.

CONDITIONS OF APPROVAL

1. Development shall be in accordance with the site plan and sign specifications dated June 9, 2020, 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. If there is a need to modify any existing vegetation on the site to accommodate the new sign, the applicant shall provide a revised landscape plan which must be approved by a County arborist prior to issuance of a sign permit.

c: Kory Schmidt
2800 Southcross Dr. W
Burnsville, MN 55306

C: Samantha Gensler
821 Fentress Ct.
Daytona Beach, FL 32117

COVER LETTER

Monday, June 8, 2020

**RE: Variance
Northern Tool + Equipment
795 Sand Lake Rd
Orlando, FL 32809**

To Whom It May Concern:

We are seeking a variance to add (1) 9'9" x 2' (19.5 square foot) sign to the front East elevation of the existing building located at 795 Sand Lake Road.

The current sign code for wall signs allows a total of one and one-half (1½) square feet of copy area for one (1) linear foot of building frontage per establishments, having up to two hundred (200) linear feet of building frontage. An additional one-half (½) square foot of copy area shall be allowed for each linear foot over two hundred (200) linear feet provided the total copy area for signage shall not exceed four hundred (400) square feet per establishment. Per the code, we would exceed the allowance by 19.5 square feet. Currently there is 400 square feet of sign area on the property and the addition of the Stihl sign would bring the total area to 419.5 square feet.

The special circumstances are:

Not Self-Created

Under Northern Tool + Equipment's partnership with Stihl, it is a requirement that a Stihl sign is placed on the exterior of the building in a similar manner as an implement dealer or car dealership represents and displays their brands. For Northern Tool + Equipment to meet the criteria required to become a vendor at the said property, we are asking for the variance on these grounds.

No Special Privilege Conferred

This is not a special privilege unique to this business and does not pose nor create any special exceptions other than the right to display one vendor sign as shown.

Deprivation of Rights

Northern Tool + Equipment should be allowed the right to advertise a brand that is sold on premise that is a condition of the agreement between Stihl and Northern Tool + Equipment.

Minimal Possible Variance

The sign size being sought is 19.5 square feet. This is a sign just large enough to be visible, but not excessive in size. The size and placement on the building is proportionate to the area the sign is placed.

Purpose and Intent

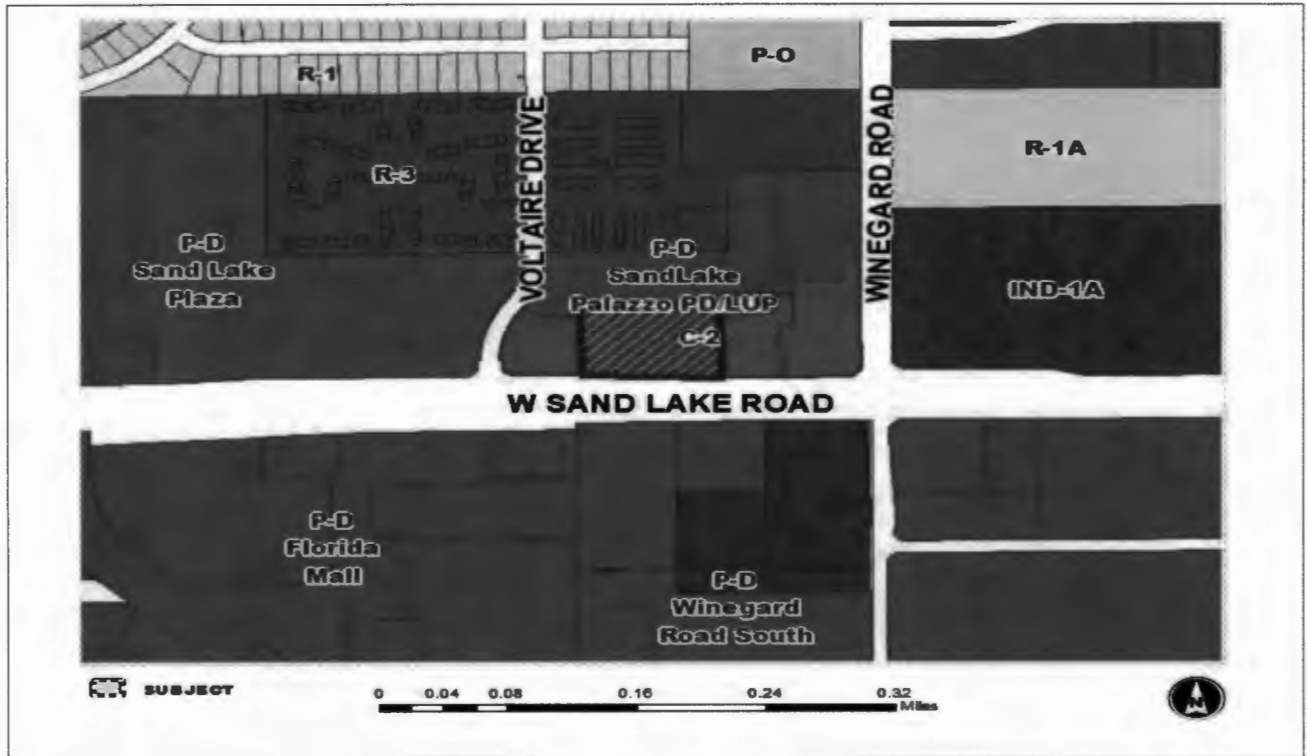
The intent of the sign is to display that the location sells Stihl tools. The sign poses no harm or danger to the public and will not distract the public in any way.

Thank you,

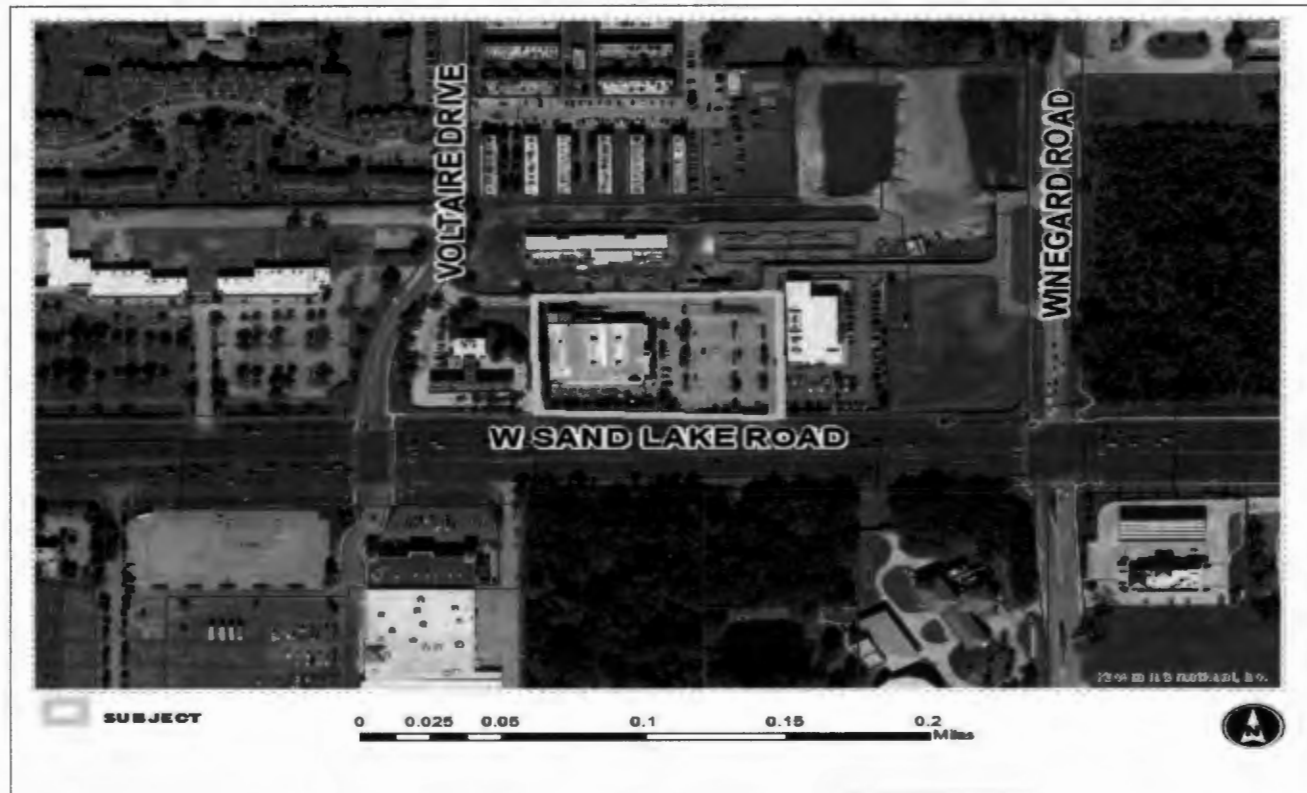


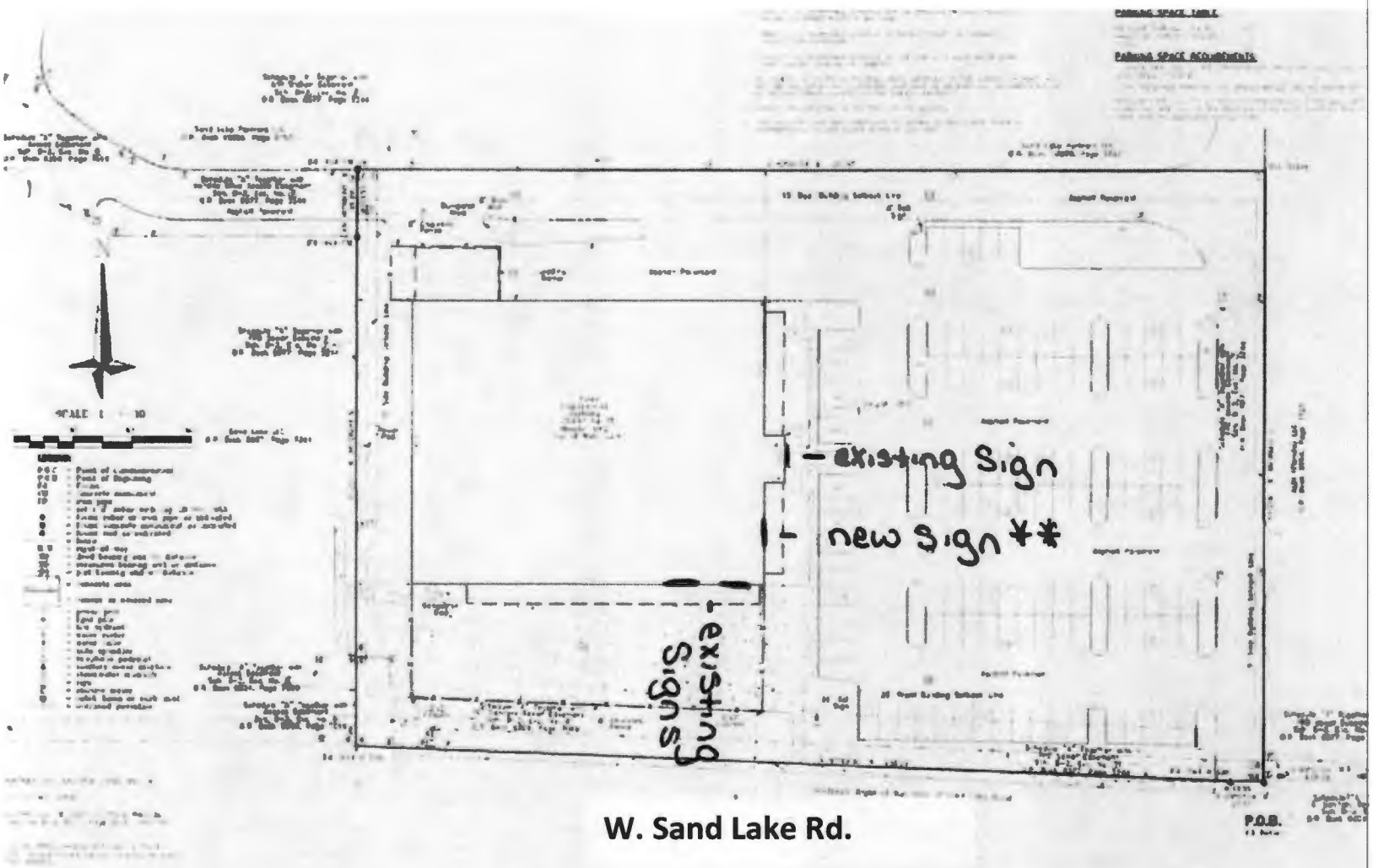
**Kory Schmidt
Northern Tool + Equipment**

ZONING MAP



AERIAL MAP



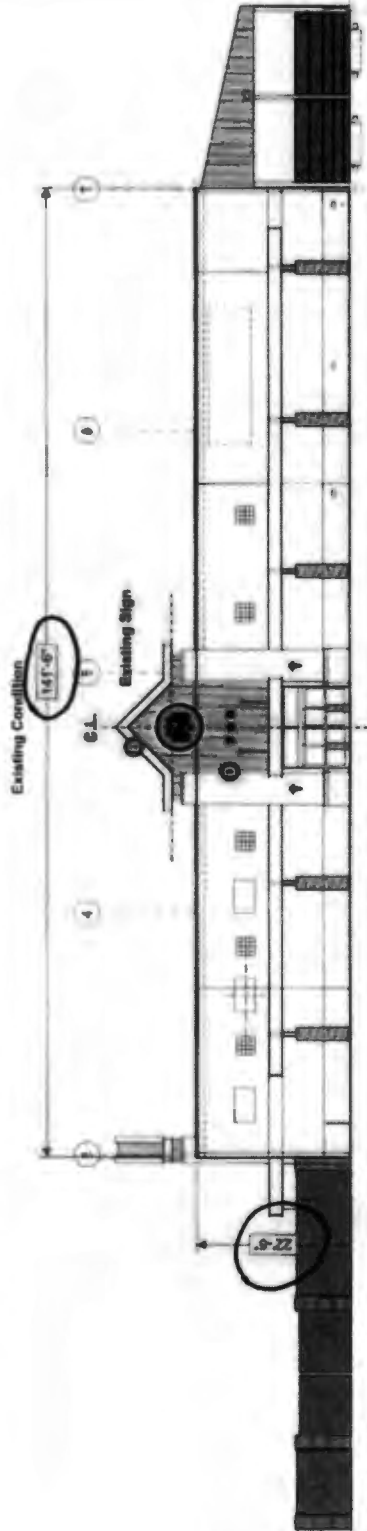


SITE PLAN

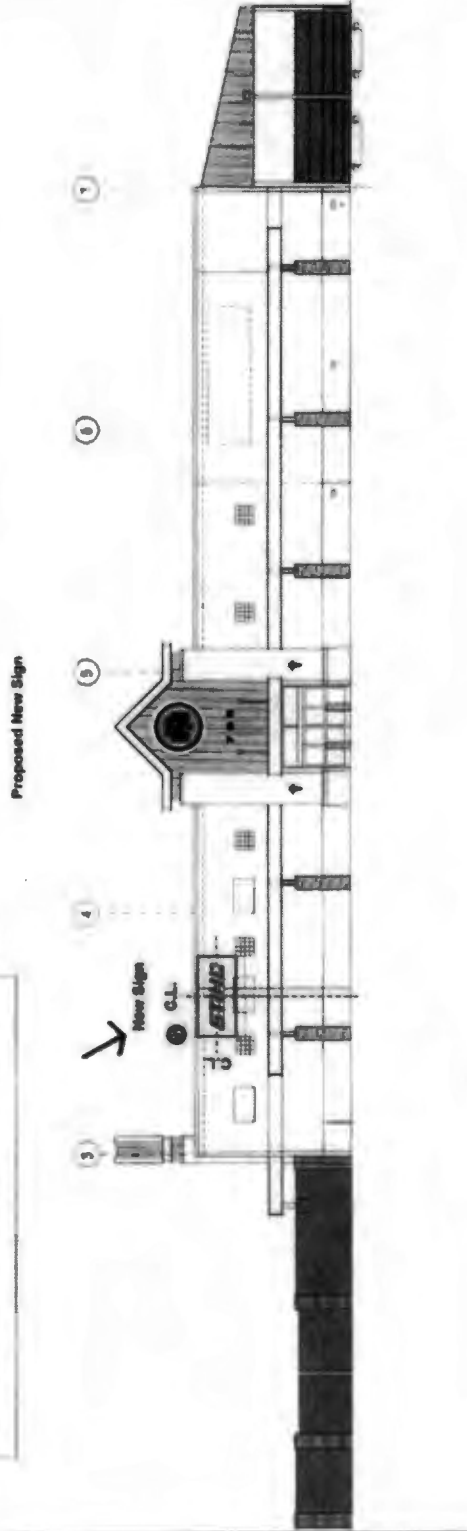
FRONT/EAST ELEVATION

SCALE 1/16" = 1'-0"

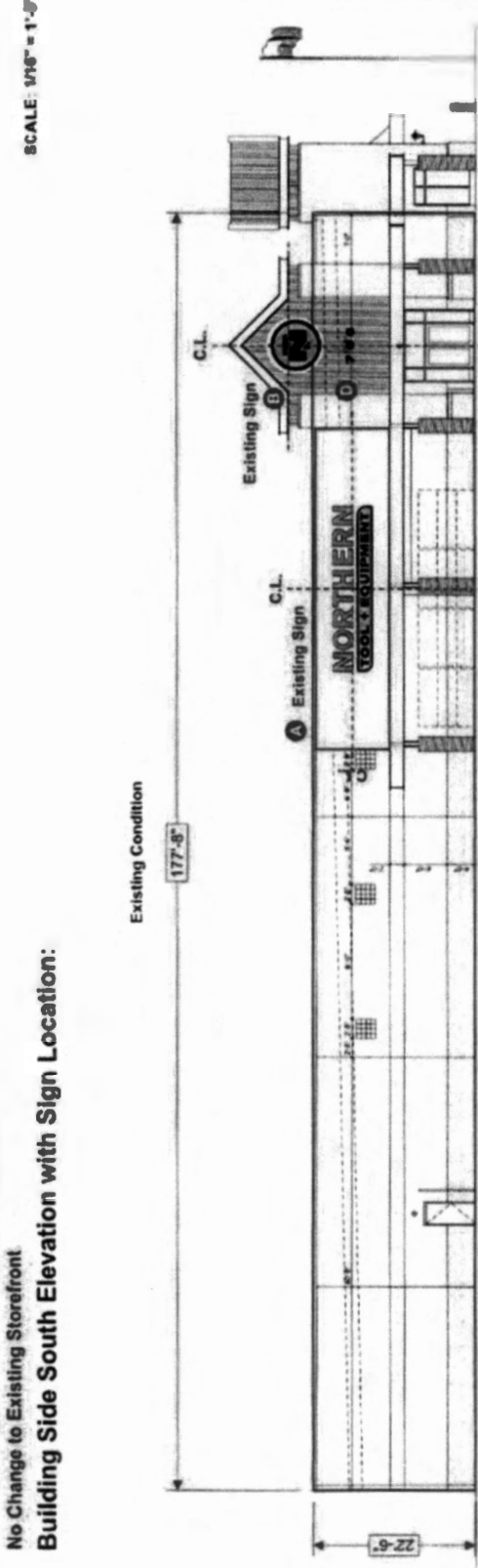
ADD New Sign Letters onto Existing Storefront
 Building Front East Elevation with Sign Location:



INSTALLATION INSTRUCTIONS:
 CENTER the (S&H letters) Left to Right in the space as shown.
 INSTALL the (S&H letters) at an agreed upon height as shown.



SOUTH SIDE ELEVATION



No Change to Existing Storefront
Building Side South Elevation with Sign Location:

EXISTING SIGNS

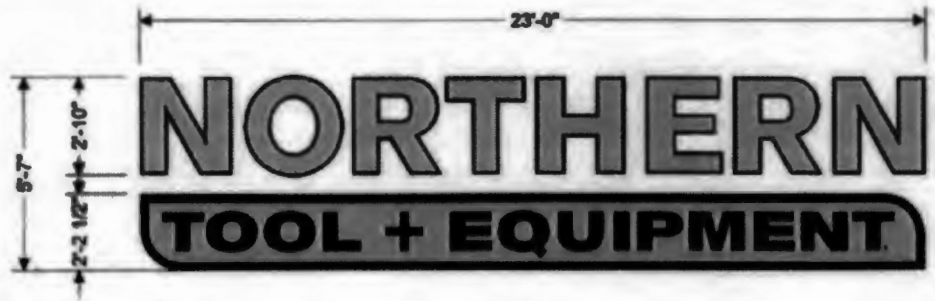


ⓑ Sign Area: 49 sq. ft. Existing Sign

Front elevation sign



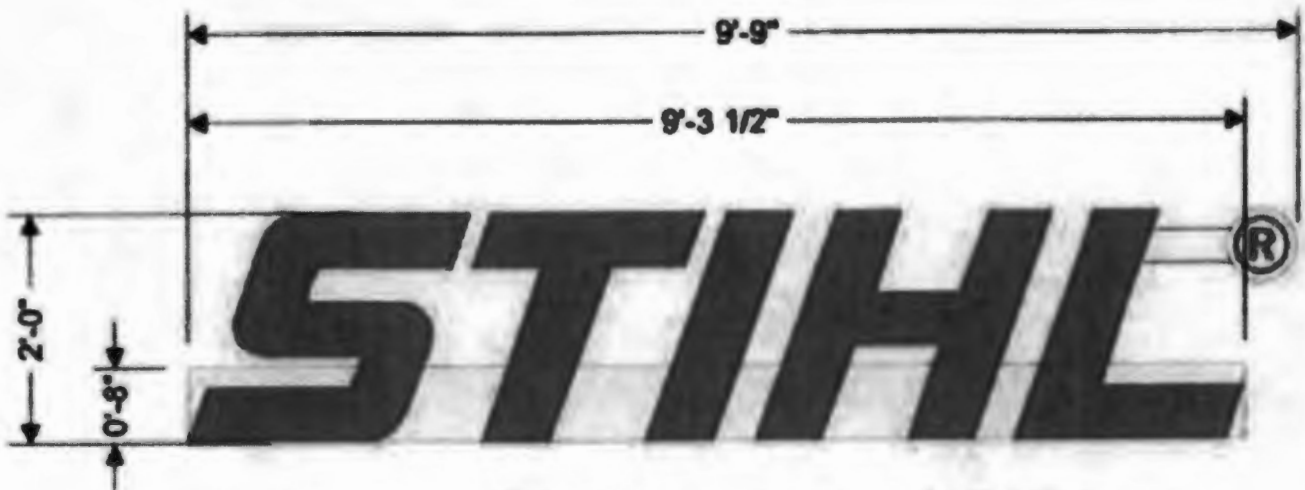
ⓑ Sign Area: 49 sq. ft. Existing Sign



Ⓐ Sign Area: 128.41 sq. ft. Existing Sign

Side elevation signs

PROPOSED SIGN



Ⓢ Sign Area: 19.5 Sq. Ft. New Sign

SITE PHOTOS



Front façade of subject property looking west



Approximate location of proposed sign looking west

SITE PHOTOS



Approximate location of proposed sign looking northwest



Existing sign looking northwest

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **AUG 06, 2020**

Case Planner: **David Nearing, AICP**

Case #: **VA-20-08-076**

Commission District: **#1**

GENERAL INFORMATION

APPLICANT(s): JOSEPH NEAL

OWNER(s): JOSEPH NEAL & ALLISHA NEAL

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

- 1) To allow a covered porch to be 16 ft. from the rear (east) setback in lieu of 30 ft.
- 2) To allow a covered porch 46 ft. from the centerline of a minor urban collector roadway in lieu of 55 ft.

PROPERTY LOCATION: 2551 Meadowview Circle, Windermere, Florida, 34786, east side of Meadowview Cir., and the west side of Hempel Ave.

PARCEL ID: 04-23-28-9332-00-580

LOT SIZE: 0.44 acres

NOTICE AREA: 500 ft.

NUMBER OF NOTICES: 87

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

1. Development shall be in accordance with the site plan dated June 10, 2020, 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.

SYNOPSIS: Staff briefly described the property, including the year the existing screen enclosure was installed and the rationale for the location of the 420 sq. ft. covered porch, as it will be located in the same footprint as existing. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation for approval. Staff noted that five comments were received in support and no comments were received in opposition.

The applicant agreed with the staff recommendation and emphasized that the replacement to the screen enclosure will also include a partial wall, beginning at grade. There was no one in attendance to speak in favor or in opposition to the request.

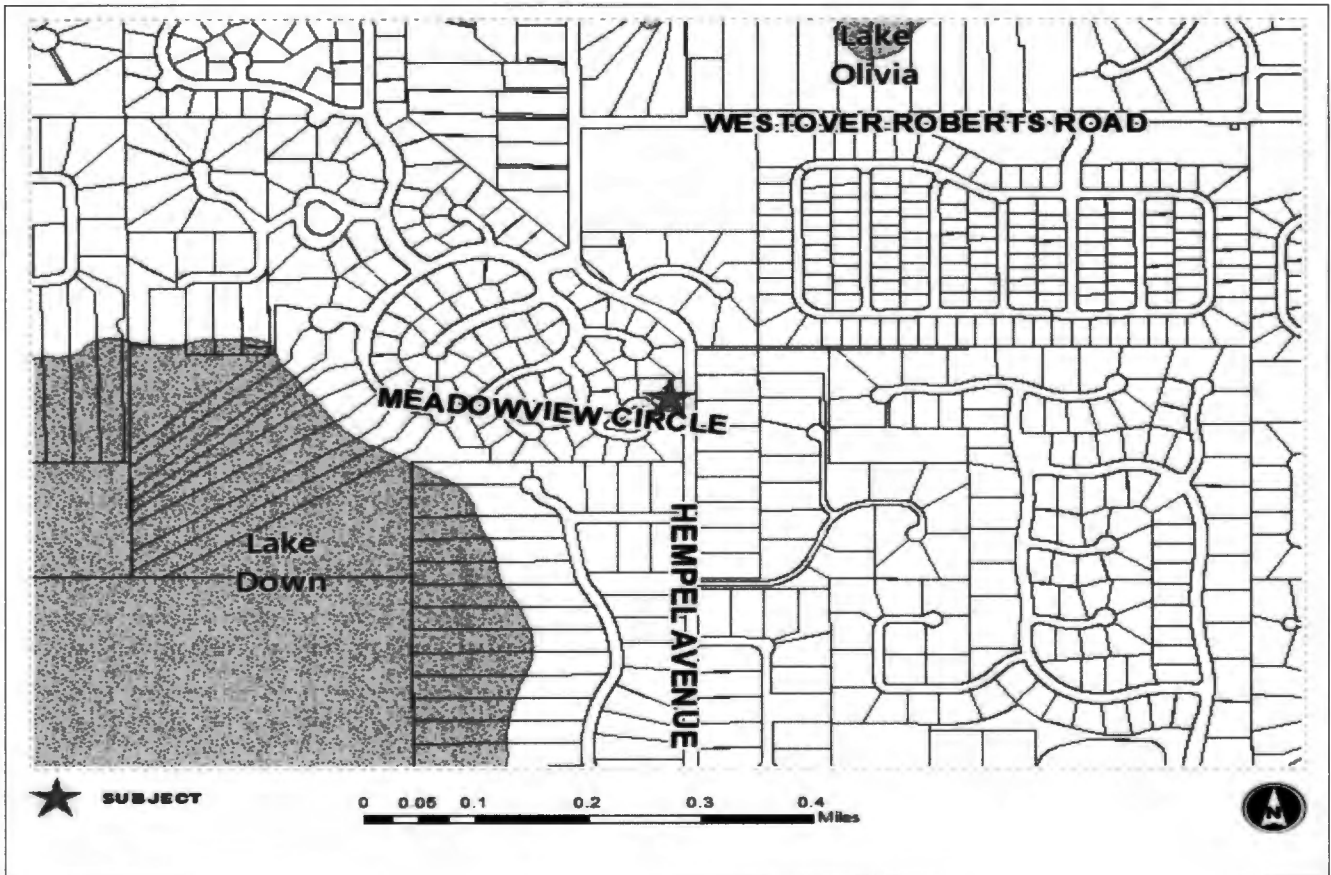
The BZA briefly discussed the applicant's plans and asked questions clarifying the difference between the setback requirements between a screen enclosure and the proposal.

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

STAFF RECOMMENDATIONS

Approval, 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-CE	R-1A
Future Land Use	RS 1/1 West Windermere Rural Settlement	RS 1/1 West Windermere Rural Settlement	RS 1/1 West Windermere Rural Settlement	RS 1/1 West Windermere Rural Settlement	RS 1/1 West Windermere Rural Settlement
Current Use	Single-family residence	Single-family residence	Single-family residence	Single-family residence	Single-family residence

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located in the R-1A, Single-Family Dwelling district, which allows single family homes and associated accessory structures on lots a minimum of 7,500 sq. ft. or greater in area.

The subject property is an irregularly shaped 0.44 acre lot in the Windermere Downs subdivision, recorded in late 1971. It is located within the West Windermere Rural Settlement, which is an area designated by the Comprehensive plan for limited urban types of development. The designation comes with certain limitations on locating certain uses in the settlement, and limitations on the intensity of certain types of development, such as commercial. The intent is to preserve the character of the area, but not to restrict the use of residential properties.

The property is developed with a 6,072 sq. ft. single-family home with an attached four (4) car garage. In 2001, the owner at the time installed the existing pool and pool enclosure (B01017414); and, in 2007, extensively renovated the house, including the construction of a 624 sq. ft. detached garage (B07005155). The applicant, the current owner, purchased the property in December 2019.

The request is to convert the portion of the pool enclosure at the south end of the pool to a screened lanai with a permanent roof to match the existing residence, covering a 420 sq. ft. portion of existing pool deck. Since the construction of the proposed enclosure conversion requires the same setback as the primary structure, the applicant requires a variance to allow a rear setback of 16 ft. in lieu of 30 ft. The rear yard of the subject property is completely enclosed by a six (6) ft. tall opaque wood fence. The setback for the existing screen enclosure is 13 ft., which exceeds the five (5) foot code requirement.

The subject property backs up to Hempel Avenue, which is classified as a minor urban collector. The code requires that any permanent structures be set back 55 ft. from the centerline of a minor urban collector. This section of Hempel Ave. has 60 ft. of right-of-way. Therefore, with the new lanai addition the setback will be 46 ft. from the centerline, a requested reduction of variance of nine (9) ft.

The applicant provided letters of support from the two most impacted homeowners to the north and south, and another from a nearby neighbor, for a total of three.

District Development Standards

	Code Requirement	Proposed
Max Height:	35 ft.	14.5 ft.
Min. Lot Width:	75 ft.	96 ft. @ Building line
Min. Lot Size:	7,500 sq. ft.	19,553 sq. ft.

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

	Code Requirement	Proposed
Front:	25 ft.	48 ft. (West)
Rear:	30 ft.	16.5 ft. (East)
Side:	7.5	7.5 ft. (North)/18 ft. (South)

STAFF FINDINGS

VARIANCE CRITERIA

Special Conditions and Circumstances

Since Windermere Downs was platted prior to the current requirements, the special conditions and circumstances particular to this lot are the irregular shape of the lot and the siting of the home. Due to the shape, the majority of useable rear yard is located away from the home to the northeast corner of the property, leaving limited feasible options for minor future improvements. The house is set over 33 ft. from the front property line, where the front setback is only 25 ft. This places the rear of the home right at the required 30 ft. rear setback line. Had the home been built to the front setback line, there would still be a need for a variance to construct the addition, but the request would have been less for the rear setback, and considerably less for the setback from the centerline of Hempel Ave.

Not Self-Created

The current owners are not responsible for the configuration of the lot, or the orientation of the residence, including the setback from the centerline of Hempel Ave., since they purchased the property in 2019.

No Special Privilege Conferred

Granting the variance will not grant any special privilege. Due to the configuration of the lot and the location and layout of the home on the lot, this is the only logical location for such an addition.

Deprivation of Rights

The orientation and location of the existing improvements makes it difficult to locate the proposed addition elsewhere on the property. Without the variance, the applicant would not be able to construct the addition as proposed.

Minimum Possible Variance

To minimize the required variance, the applicant angled the southeast corner of the lanai to lessen the rear setback and major street centerline setback and thereby making this the minimal variance possible.

Purpose and Intent

Part of the purpose and intent of the rear setback is to provide a distance between occupied areas on one property and the neighboring residence to the rear to minimize intrusion of privacy, including noise and visual effects. There are no neighbors to the rear since the lot backs up to Hempel Avenue at the rear.

Further, the purpose of requiring a major street setback is to provide adequate separation from the major street to permit light and air circulation, and to buffer from the effects typically experienced with large major streets, such as traffic and pedestrian noise, dust, and fumes. Hempel Avenue, while classified as a major street, functions more as a residential neighborhood street. Since the existing fence and landscaping provides added buffering from the impacts of the road, the purpose and intent of this code section is being met.

CONDITIONS OF APPROVAL

1. Development shall be in accordance with the site plan and elevations dated June 10, 2020, 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.

c: Joseph Neal
2551 Meadowview Cir.
Windermere, FL 32786

COVER LETTER

To: **Orange County Zoning Division**
201 S. Rosalind Ave. 1st Floor
Orlando, FL 32801

Project: 2551 Meadowview Cir. Windermere, FL 34786

To Whom it May Concern,

Please find enclosed our Variance application and submittal. We are proposing to replace a portion of our existing aluminum screen enclosure with stucco wrapped wood frame columns, gable wood trusses, and asphalt single roof open air structure matching existing main house. The proposed 420 SF structure/roof will remain open on the sides with aluminum screen enclosure. The proposed columns will bear on the existing 4' CMU knee wall. We essentially want to just replace the screen covering with a shade structure to create a shaded sitting area adjacent to the pool. The height of the roof will match the existing home at 14.5' to the peak of the gable.

The variance is to reduce the rear setback. We are asking to reduce the setback from 30' to 16.5.' Our rear property abuts the Hemple Ave. ROW, so we do not have a rear neighbor. Please also find enclosed the letters from our neighbors supporting the approval for this request.

The following are the justifications to the six standards for variance approval:

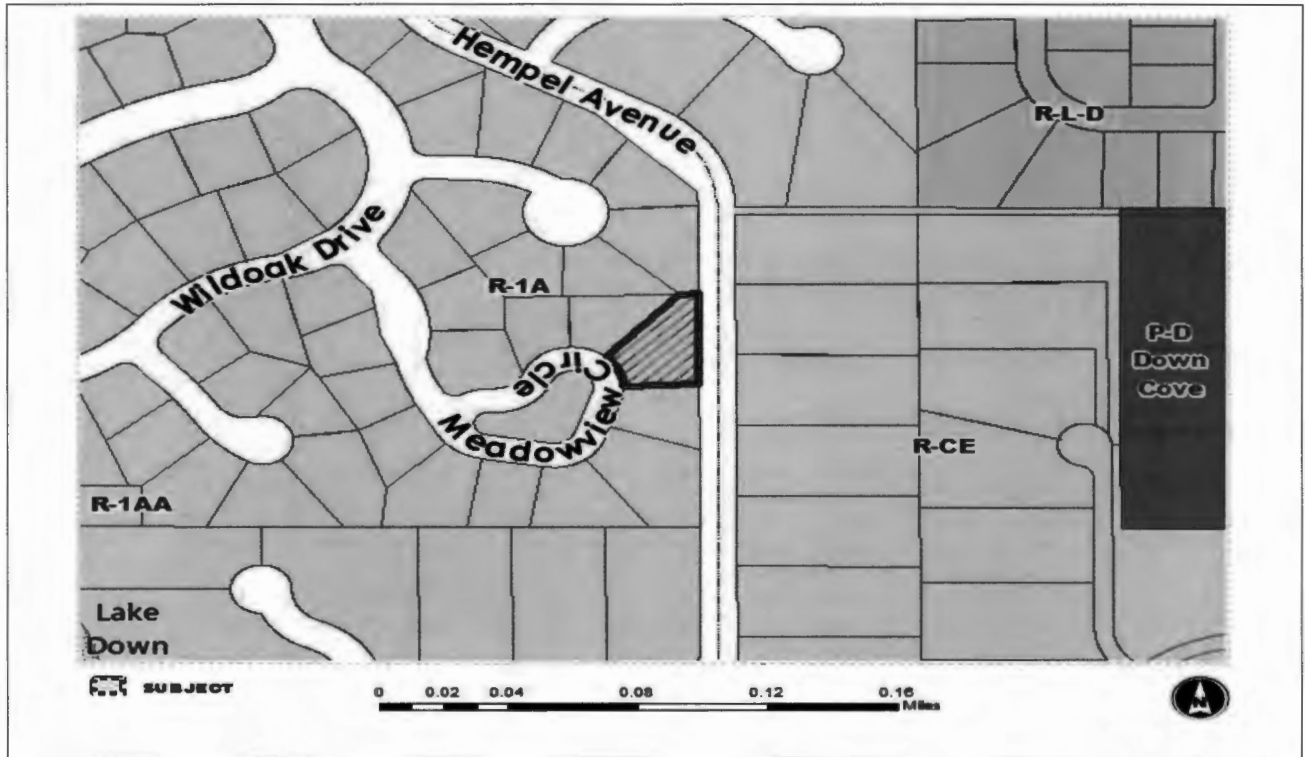
1. Special conditions exist as we do not have a rear neighbor. We abut the Hemple Ave. ROW, so we will not encroach on any neighbor's privacy. Our lot also sits further back than our neighbors, so it will cause no disturbance to them.
2. This request is not self-created as the variance of 30' is standard for this zoning.
3. No special privilege is made on this approval as our lot does not have a neighbor to our rear.
4. No deprivation of rights. This project is for person use and not intended for financial or business use.
5. The minimal possible variance is being requested as we are replacing an existing aluminum screen structure. We are also building on the existing CMU screen wall.
6. This variance will not be injurious to the neighborhood or detrimental to the public welfare as it is simply a shade structure. With no neighbor to the rear, no one's lot will be compromised in any way.

If you have any questions, or if we may be of further assistance, please feel free to contact us at your convenience.

Joe Neal P.E.
JoeN@meconstruction.com
(407) 637-8308

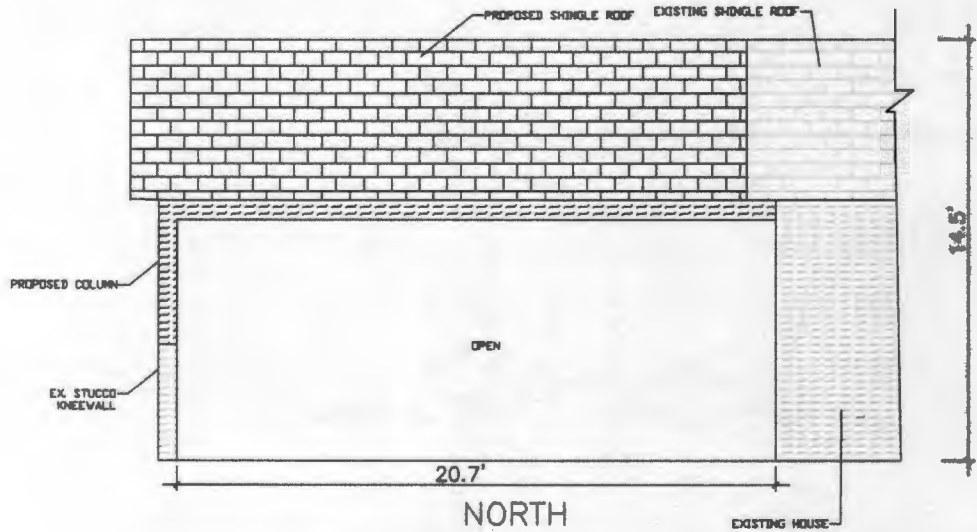
2551 Meadowview Cir. Windermere, FL 34786 Variance

ZONING MAP



AERIAL MAP





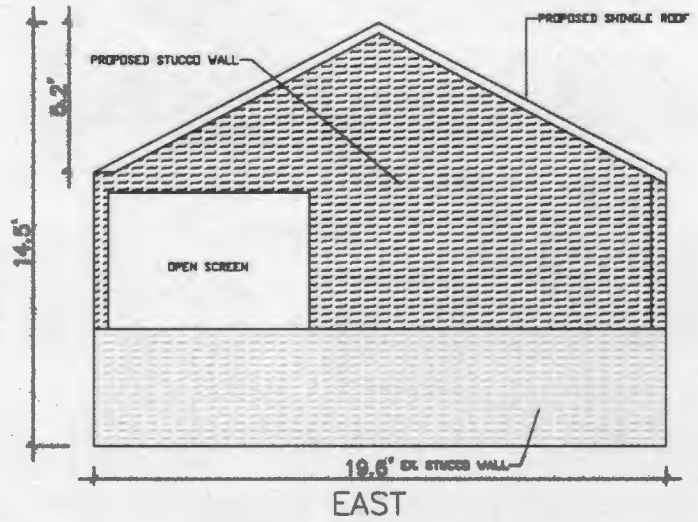
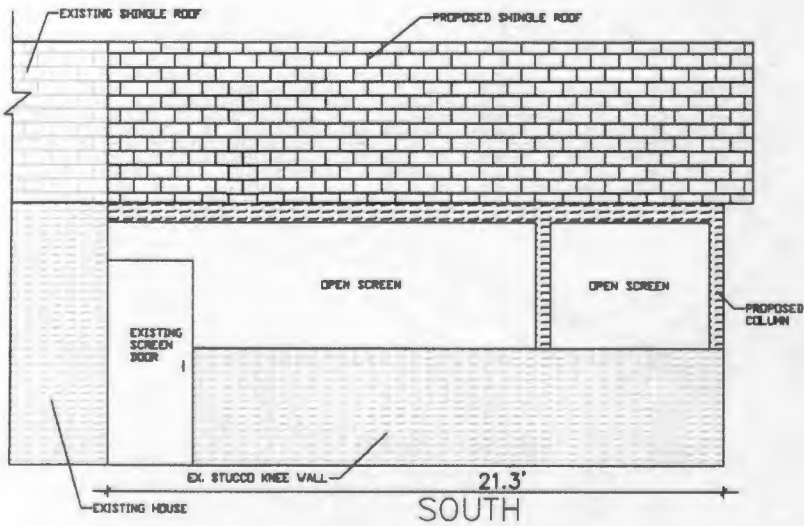
ENGINEERS CERTIFICATION
 NOTE: NOT VALID WITHOUT ORIGINAL SIGNATURE, DATE, AND SEAL.
JOSEPH H. NEAL PE #79418

SIGNATURE _____
 DATE **JUNE 05, 2020**

DATE _____

CLIENT/OWNER:
 JOSEPH AND ALLISHA NEAL
 2551 MEADOWVIEW CIR.
 WINDERMERE, FL 34786
 PHONE: (407) 637-6308

ELEVATIONS



ELEVATIONS

SITE PHOTOS



Subject property looking east



Rear yard looking north

SITE PHOTOS



Proposed location of covered porch addition looking north



Portion of existing screen enclosure proposed to be converted to covered porch addition looking west

SITE PHOTOS



Majority of rear yard looking north



Hempel Ave. looking east over rear fence

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **AUG 06, 2020**

Case Planner: **Ted Kozak, AICP**

Case #: **ZM-20-08-072**

Commission District: **#1**

GENERAL INFORMATION

APPLICANT(s): FISHBACK DOMINICK (A. KURT ARDAMAN)

OWNER(s): DB RETAIL STORES, LLC.

REQUEST: Appeal of a Zoning Manager's Decision that the proposed improvements are considered signage and not art.

PROPERTY LOCATION: 12399 S. Apopka Vineland Rd., Orlando, Florida, 32836, east side of S. Apopka Vineland Rd., approximately 325 ft. south of Palm Parkway, north of I-4

PARCEL ID: 22-24-28-0000-00-023

LOT SIZE: 1.15 acres

NOTICE AREA: 1,500 ft.

NUMBER OF NOTICES: 44

DECISION: This case was **CONTINUED** at the request of the applicant to the December 3, 2020 BZA Meeting (unanimous; 7-0).

STAFF RECOMMENDATIONS

Staff recommends that the Board uphold the Zoning Manager Determination that the proposed improvements are considered a "sign", not art, as the term "sign" is defined in Orange County Code Section 31.5-5.

LOCATION MAP



SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	Vista Centre PD	Vista Centre PD	C-1	Vista Centre PD	C-1
Future Land Use	ACMU	ACMU	ACMU	ACMU	ACMU
Current Use	Commercial	Commercial	Commercial	Commercial	Commercial

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located on the east side of S. Apopka Vineland Rd, on 1.15 acres in the Vista Centre Planned Development (PD) district, which allows a range of retail, services, and other tourist commercial uses and is located in the Tourist Commercial Signage overlay district. The property was originally developed within the Vista Centre PD in the early to mid-1980s with a Ponderosa steakhouse. The site was redeveloped in 2015 with the demolition of the existing building and the construction of a new building with a gift shop and a Black Angus restaurant, totaling 19,480 sq. ft. in gross building area.

The request is to appeal the Zoning Manager's determination that the proposed 26-foot tall by 31-foot wide genie depiction totaling 430 sq. ft. in area is considered signage and not art. There are a series of Exhibits attached to this report for reference. The Exhibits are provided as follows: Exhibit 1 – March 24th Email to Zoning Manager; Exhibit 2 – Proposed Genie Per April 10, 2020 Email; Exhibit 3 – Zoning Manager Response; Exhibit 4 – Appeal; Exhibit 5 – Dimensioned Rendering; Exhibit 6 – Proposed Entry Waterfall for CDR-17-05-176; Exhibit 7 – Proposed Request for Building Enhancements in 2018.

BACKGROUND

The Vista Centre PD master sign plan, approved in 1986, included the subject site and limited the signage on that site to a maximum of 1 fascia/wall sign with 20 sq. ft. of copy area, one ground sign at 50 sq. ft. of copy area, and 20 sq. ft. of copy area on an off-site pylon sign located along I-4.

In 2017, a request was approved to remove the subject site from the Vista Centre PD master sign plan (CDR-17-05-176). As a result, the site is now subject to the requirements of the Tourist Commercial sign code. That request also included a proposal to install a waterfall feature above the entrance to the gift shop (Exhibit 6), which was included as an illustration, but was not part of the scope of approval.

The building has approximately 90 ft. of frontage along S. Apopka Vineland Road, with 40 ft. of frontage occupied by the Black Angus Steakhouse, and 50 ft. of frontage occupied by the gift shop. The gift shop has two wall signs, permitted in 2017 (B17015919), each with 25 sq. ft. of copy area, which is consistent with the Tourist Commercial Sign Code.

The Tourist Commercial sign code, Sec. 31.5-163(a)(2), allows for signs erected on buildings to be a total of one square foot of copy area for each one linear foot of building frontage per establishment, provided that the total

copy area for signage shall not exceed two hundred (200) square feet per establishment. Since the gift shop contains 50-feet of building frontage, no more wall signage is permitted to be installed on the building.

In 2018, a representative for the owner approached County Zoning staff, asking for approval of “building enhancements”, which consisted of a large pirate graphic to encompass the entire gift shop entry and projecting higher than the building (Exhibit 7). It was determined that the “enhancement” was considered signage as it was meant to direct attention to the business operation.

On March 24, 2020, the owner’s representative, Attorney Kurt Ardaman, emailed the Zoning Manager requesting approval of a “three-dimensional genie architectural feature in the center of the front portion of the gift shop as a work of art” (Exhibit 1). The email stated the following:

1. The genie will contain no words, logos, or textual images;
2. The building where the genie is to be located was designed, engineered and structurally constructed to include an artistic architectural feature;
3. The genie architectural feature as a work of art is in close proximity to Disney Springs and is consistent with the magical ideas, themes, and environs;
4. The County adopted definitions that identify differences between signage and works art. Examples of works of art approved by the County include the architectural features approved by the County at the Sand Lake Road/ International Drive McDonald’s with the Ronald McDonald imagine and French fry figure and Club Champion at 7720 Turkey Lake Road with semi-sphere golf balls features.

The Zoning Manager responded with further questions, requesting details on the actual image/exact proposal, including where and how it would be added to the building. On April 10, 2020, the applicant emailed the requested genie feature (Exhibit 2) and the general structural engineering plans for the building, but not specific plans for how it would be attached to the building.

Upon review of the information provided, the Zoning Manager sent an email determining that the proposed improvement was considered signage, and not an architectural feature or art, as the applicant had argued (Exhibit 3).

While the Orange County Code does not define “architectural feature”, the Zoning Manager determined that an “architectural feature is something that is built into the design and construction of a building, not something that is attached or affixed to the building after the fact.” In his March 24, 2020 email, Mr. Ardaman states that “the building where the genie is to be located was designed, engineered and structurally constructed to include an artistic architectural feature” However, in 2017 the detailed site and elevation plans provided for the Change Determination Review (CDR-17-05-176), which included and assessed all aspects of the exterior improvements, including architectural embellishments, materials, themes and proposed colors, only indicated the installation of an integrated waterfall feature where the genie improvements are now proposed (Exhibit 6). This appears to contradict the suggestion that the genie was part of the building’s architectural vision at the time of construction.

Further, per the Orange County Code’s definition of a sign in Section 31.5-5, included below, the genie, if it can be considered a “display or illustration,” is clearly meant to direct attention to the gift shop and is therefore a sign (emphasis added):

Sign shall mean any surface, fabric, device, name, identification, image description, message, display or illustration using graphics, symbols, words, letters, or numbers which is affixed to, painted on, or represented directly or indirectly upon a building, structure, or parcel of property, and which directs attention to an object, product, place, activity, facility, service, event, attraction, person, issue, idea,

*institution, organization, **development, project or business for the purpose of advertising, identifying or conveying information to the public.** The definition of sign shall not be construed to mean a sign located in the interior of any building or structure which sign is not visible from outside the structure, or dynamic art as defined in section 38-869 of the I-Drive District Overlay Zone. A sign may include the sign face and sign structure.*

The definition of “work of art” is provided below for context, as the definition further supports the Zoning Manager’s determination that the genie is a “sign” and not a “work of art” (emphasis added):

Work of art shall mean a tangible creation by an artist or artists, including but not limited to paintings, sculptures, stained glass, statues, bas reliefs, engravings, carvings, frescoes, mobiles, murals, collages, mosaics, tapestries, photographs, drawings, monuments and fountains; **provided, however, that any work of art that** either contains text or **conveys information visually or to attract the public to any place, subject, person, firm, corporation,** public performance, article, machine or merchandise **shall be considered a “sign” and shall comply with the requirements of this chapter,** and provided that dynamic art, as defined in section 38-869 of the I-Drive District Overlay Zone, shall not be deemed a 'work of art' under chapter 31.5.

On June 5, 2020, Mr. Ardaman submitted an Appeal of the Zoning Manager’s determination (Exhibit 4) that the proposed illustration is a “sign” under Orange County Code and must meet the requirements of the sign code. The genie illustration is shown as a color rendering on the building (Exhibit 2) and is dimensioned as a 26-foot tall by 31-foot wide depiction (Exhibit 5), totaling 430 sq. ft. in area as calculated per the sign code (169.7 sq. ft. as calculated by the applicant, presumably using only the perimeter). The applicant’s primary claim is that the proposed genie is an artistic architectural feature/work of art and as such is not subject to the sign code and the size limitations therein. The applicant argues that the genie does not “identify or convey information to the public” and is therefore not a sign. However, the genie is clearly meant “to attract the public” by “direct[ing] attention” to the building “for the purpose of advertising, identifying or conveying information to the public,” and should therefore be considered a sign.

Also, because this is an appeal of a Zoning Manager Determination regarding proposed improvements within the purview of the sign code, decisions or actions taken on this sign code determination case may set a precedent for the evaluation of future, analogous or similar requests or applications.

Additionally, although the applicant’s appeal includes conceptual plans, should the BZA recommend, and should the BCC later decide, that the Zoning Manager Determination should be overturned, such action does not constitute an approval of the conceptual plans. Building permits would still be required prior to installation in accordance with the standards and regulations of the Orange County Code and all other applicable regulations.

Based on the above analysis, staff recommends that the BZA uphold the Zoning Manager Determination that the proposed genie illustration or display is considered a “sign,” as defined by Section 31.5-5 of the Orange County Code.

C: Mr. A. Kurt Ardaman
1947 Lee Rd
Winter Park, FL 32789

C: Ms. Nadeem Battla
12399 S. Apopka Vineland Rd
Orlando, FL 32835

ZONING MAP



AERIAL MAP



EXHIBIT 1 – MARCH 24TH EMAIL TO ZONING MANAGER

From: Kurt Ardaman <ardaman@fishbacklaw.com>
Sent: Tuesday, March 24, 2020 12:25 PM
To: Moreau, Jennifer C <Jennifer.Moreau@ocfl.net>
Cc: Michelle Lindsay <michellel@fishbacklaw.com>
Subject: 12399 South Apopka Vineland Road, Orlando

Jennifer:

My client, DB Retail Stores, LLC, owns and operates a gift shop on a portion of the Property located within the Vista Centre PD as reflected on the attached map. Pursuant to our prior discussion in which you requested additional information, the below and the attached information support a three-dimensional genie architectural feature in the center of the front portion of the gift shop as a work of art. Please see the attached photograph reflecting the gift shop storefront where the feature is to be located in the center of the front wall, and please consider the following:

1. The genie will contain no words, logos, or textual images;
2. The building where the genie is to be located was designed, engineered and structurally constructed to include an artistic architectural feature;
3. The genie architectural feature as a work of art is in close proximity to Disney Springs and is consistent with the magical ideas, themes, and environs; and
4. The County adopted definitions that identify differences between signage and works of art. Examples of works of art approved by the County include the architectural features approved by the County at the Sand Lake Road/International Drive McDonald's with the Ronald McDonald image and french fry figure and Club Champion at 7720 Turkey Lake Road with semi-sphere golf balls features.

Please let me know if you agree and approve so we can move forward. If you need anything else, please let me know.

Thank you.

Kurt

PLEASE NOTE: Florida has a very broad public records law (F. S. 119). All e-mails to and from County Officials are kept as a public record. Your e-mail communications, including your e-mail address may be disclosed to the public and media at any time.

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Genie Concept Artwork Measurements

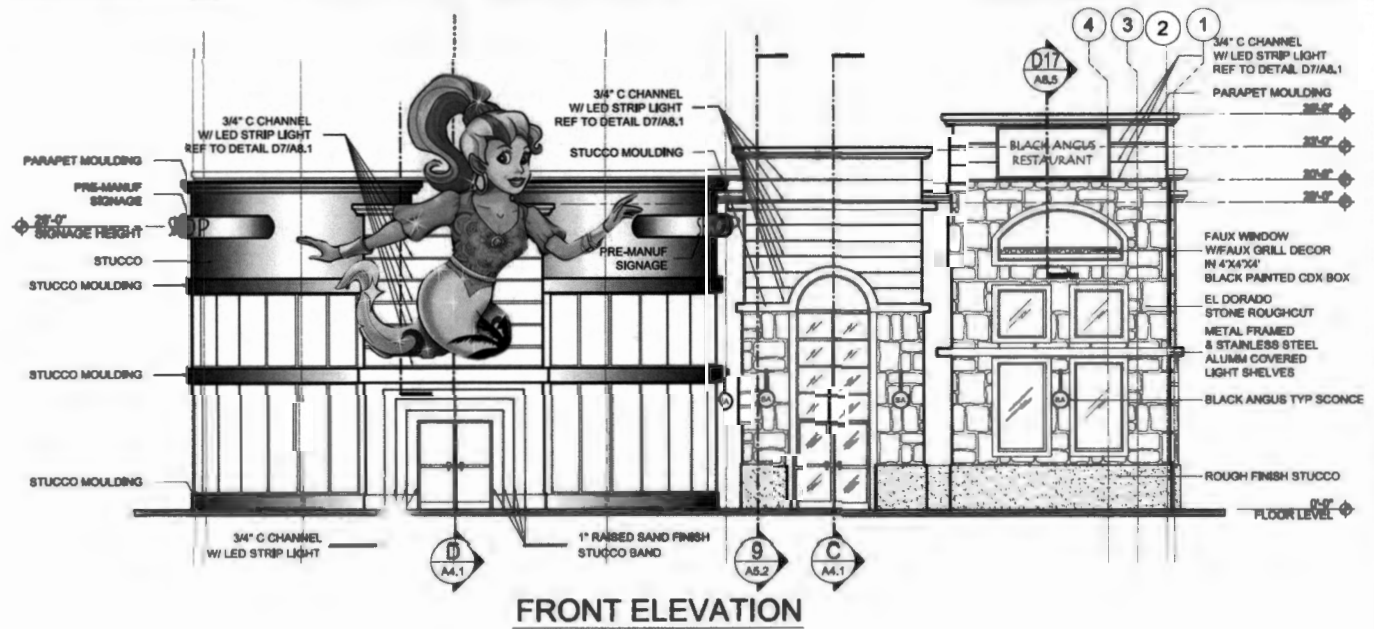


EXHIBIT 2 -- PROPOSED GENIE PER APRIL 10, 2020 EMAIL

EXHIBIT 3 – ZONING MANAGER RESPONSE

From: Jennifer.Moreau@ocfl.net
Sent: Wednesday, May 6, 2020 11:02 AM
To: Kurt Ardaman
Cc: Taylor.Jones@ocfl.net; Michelle Lindsay; Jason.Sorensen@ocfl.net
Subject: RE: 12399 South Apopka Vineland Road, Orlando
Attachments: Gift Shop Genie Concept.pdf; Structural Engineering Plans 9-28-15.pdf

Kurt,

Thank you for the updated information. In regards to your request for consideration that this is an architectural feature, I would disagree. An architectural feature is something that is built into the design and construction of a building, not something that is attached or affixed to the building after the fact.

Also, in regards to your statement that the proposal does not include any words, logos or textual images, I would still determine the proposal to be signage, and as such it would need to meet the requirements of the Tourist Commercial sign code . The illustration is clearly meant to draw attention to the gift shop. Our definition of signs is as follows:

Sign shall mean any surface, fabric, device, name, identification, image description, message, display or illustration using graphics, symbols, words, letters, or numbers which is affixed to, painted on, or represented directly or indirectly upon a building, structure, or parcel of property, and which directs attention to an object, product, place, activity, facility, service, event, attraction, person, issue, idea, institution, organization, development, project or business for the purpose of advertising, identifying or conveying information to the public. The definition of sign shall not be construed to mean a sign located in the interior of any building or structure which sign is not visible from outside the structure, or dynamic art as defined in section 38-869 of the I-Drive District Overlay Zone. A sign may include the sign face and sign structure.

Furthermore, it is my understanding that your client has attempted to get this or other, similar images/illustrations approved through various staff members in both planning and zoning, and our answer has been consistent throughout.

Please let me know if you have any additional questions.

Thanks,
Jennifer Moreau, AICP
Manager, Zoning Division
Planning, Environmental and Development Services Department
201 S. Rosalind Avenue, First Floor
Orlando, FL 32801
Division - 407-836-3111
Office - 407-836-5856
Fax - 407-836-5507
www.ocfl.net/zoning

EXHIBIT 4 – APPEAL

FISHBACK ♦ DOMINICK
ATTORNEYS AND COUNSELORS AT LAW

1947 LEE ROAD
WINTER PARK, FLORIDA 32789-1834

• BEN FISHBACK (1893-1963)
• JULIAN K. DOMINICK (1924-2003)

• MARK F. AHLERS
• A. KURT ARDAMAN
• JOHN F. BENNETT
• J. GIFFIN CHUMLEY
• CHRISTOPHER R. CONLEY
• RICHARD S. GELLER
• ERIC B. JONTZ
• JEFFRY R. JONTZ
• J. MICHAEL KELLY
• LANCE D. KING
• DANIEL W. LANGLEY
• CHARLES R. STEPTER, JR.
• MICHAEL D. TEMPKINS

TEL (407) 262-8400
FAX (407) 262-8402
WWW.FISHBACKLAW.COM

• FLORIDA BAR BOARD CERTIFIED IN CITY,
COUNTY AND LOCAL GOVERNMENT LAW

June 5, 2020

Via Electronic Mail & Hand Delivery

Orange County Board
of Zoning Adjustment
201 South Rosalind Avenue
Orlando, FL 32801

**Re: *Appeal of Zoning Manager Determination for
DB Retail Stores LLC – 12399 South Apopka Vineland Road (“Property”)***

Dear Board Members:

In response and rebuttal to Jennifer Moreau’s May 6, 2020 determination regarding DB Retail Stores LLC’s (“DB Retail”) request that Ms. Moreau determine the proposed genie is an artistic architectural feature/work of art, the following information and enclosures support DB Retail’s appeal and request for a determination that the genie is a work of art or is otherwise not subject to the sign requirements under the Orange County Code:

DB Retail owns and operates a gift shop on a portion of the Property located within the Vista Centre PD. The front of the building was designed and constructed to support a genie-themed architectural feature in the center of the front wall. Please consider the following:

1. The genie has no words, logos, or textual images.
2. The front of the building where the genie is to be located was designed, engineered and structurally constructed to include an artistic architectural feature, and the building was specifically constructed to provide for the genie feature to be a part of the building.
3. The genie architectural feature is a work of art on the gift shop, is in close proximity to Disney Springs, and is consistent with the magical or whimsical ideas, themes, characters, and environs associated with the area.
4. The County’s definitions of “work of art” and “sign” support the genie feature as a work of art and not a sign. Examples of works of art approved by the County include the

FISHBACK, DOMINICK, BENNETT, ARDAMAN, AHLERS, LANGLEY & GELLER LLP

EXHIBIT 4 – APPEAL

architectural features approved by the County at the Sand Lake Road/International Drive McDonald's with the Ronald McDonald image and french fry figure, and Club Champion at 7720 Turkey Lake Road with semi-spherical golf ball features.

5. The Zoning Manager has misinterpreted the definition of "sign" and disregarded the applicable "work of art" definition.

The Orange County Code definitions for "sign" and "work of art" under Section 31.5-5, County Code, make clear that the genie feature is a "work of art" and not a "sign." The relevant words are underlined below:

"Sign shall mean any surface, fabric, device, name, identification, image description, message, display or illustration using graphics, symbols, words, letters, or numbers which is affixed to, painted on, or represented directly or indirectly upon a building, structure, or parcel of property, and which directs attention to an object, product, place, activity, facility, service, event, attraction, person, issue, idea, institution, organization, development, project or business for the purpose of advertising, identifying or conveying information to the public. The definition of sign shall not be construed to mean a sign located in the interior of any building or structure which sign is not visible from outside the structure, or dynamic art as defined in section 38-869 of the I-Drive District Overlay Zone. A sign may include the sign face and sign structure."

"Work of art shall mean a tangible creation by an artist or artists, including but not limited to paintings, sculptures, stained glass, statues, bas reliefs, engravings, carvings, frescoes, mobiles, murals, collages, mosaics, tapestries, photographs, drawings, monuments and fountains; provided, however, that any work of art that either contains text or conveys information visually or to attract the public to any place, subject, person, firm, corporation, public performance, article, machine or merchandise shall be considered a "sign" and shall comply with the requirements of this chapter, and provided that dynamic art, as defined in section 38-869 of the I-Drive District Overlay Zone, shall not be deemed a 'work of art' under chapter 31.5."

A. The genie structure does not contain or use any graphics, symbols, words, letters, or numbers.

B. Under the definition of "sign," a structure is not a sign unless it has the "purpose of advertising, identifying or conveying information to the public." It is indisputable that the genie structure does not "identify or convey information to the public," as it contains no text and conveys no information about the business or items being sold or about any other matter.

C. The genie structure does not constitute "advertising." The County Code does not define advertising. However, courts and other legal authorities make clear that the essence of "advertising" is the conveyance of information to the public. See *Rast v. Van Deman & Lewis Co.*, 36 S. Ct. 370 (Fla. 1915) (advertising is "identification and description of the article sold, apprising of quality and space . . ."); *Ballentine's Law Dictionary* (2010) ("the idea underlying the word ["advertisement"] has reference not so much to the vehicle or instrumentality used for getting the notice before the public, as to

EXHIBIT 4 – APPEAL

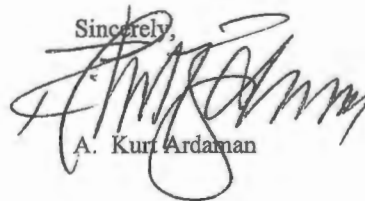
the diffusion, or bringing home to the public, of the information or matter contained in the notice.”)

D. In order to constitute a “sign,” a structure must convey information to the public. This is made express by the County Code’s definition of “work of art,” which carves out certain works of art as signs: “any work of art that either contains text or conveys information visually or to attract the public to any place . . . shall be considered a ‘sign.’” Importantly, the genie structure does not convey information. If the genie architectural feature was a “sign”, then the definition of “sign” would include every work of art, which is clearly not the intent of the County Code.

6. Enclosed are: (i) a photograph of the front of the existing building; (ii) structural engineering plans prepared by HB Associates LLC consisting of 10 pages; (iii) Architectural pages A0.0 and A3.1 by Harter-Adams P.A. reflecting the building dimensions; (iv) the site (geometry) plan by Jordan & Associates Consulting reflecting the site dimensions, setbacks, and location of existing improvements; and (v) color rendering of the genie feature.
7. The Gift Shop business does not sell genies, does not have any relationship to genies, and is not used in any advertising for the Gift Shop. Further, the genie does not either identify or convey any information to the public.
8. The genie is a tangible creation by Artistic Adventures that is a sculpture, statue, bas relief, or monument which does not contain text and does not convey any information or attract the public. It is art work for the public’s viewing.
9. The genie is not a registered trademark and is not otherwise used or recognized as a logo or emblem of DB Retail in any of its business activities.

We look forward to a favorable recommendation from the Board of Zoning Adjustment. If you would like to discuss, please feel free to contact me.

Sincerely,



A. Kurt Ardaman

AKA/ml
Enclosures

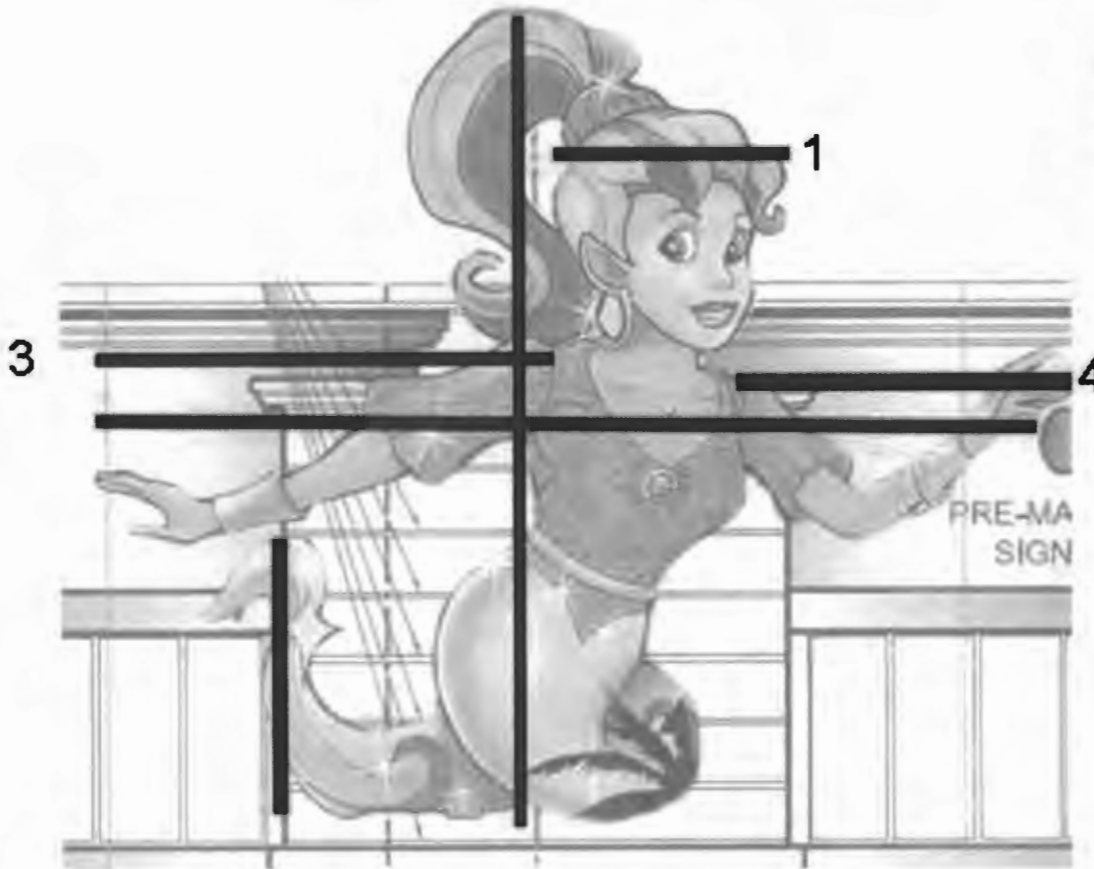
EXHIBIT 5 – DIMENSIONED RENDERING

Height 26 Ft

Total Height 26 Feet
Total Width 31 Feet

Misc. Measurements

- (1) 9.5 Feet
- (2) 11 Feet
- (3) 18.5 Feet
- (4) 13.5 Feet



Width 31 Ft

2

Genie Concept Artwork Measurements

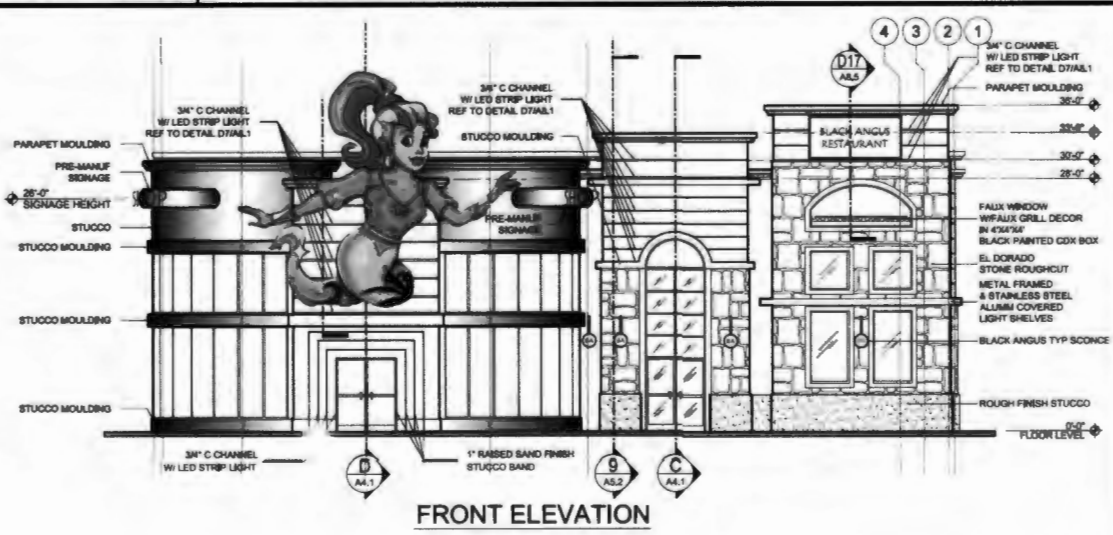
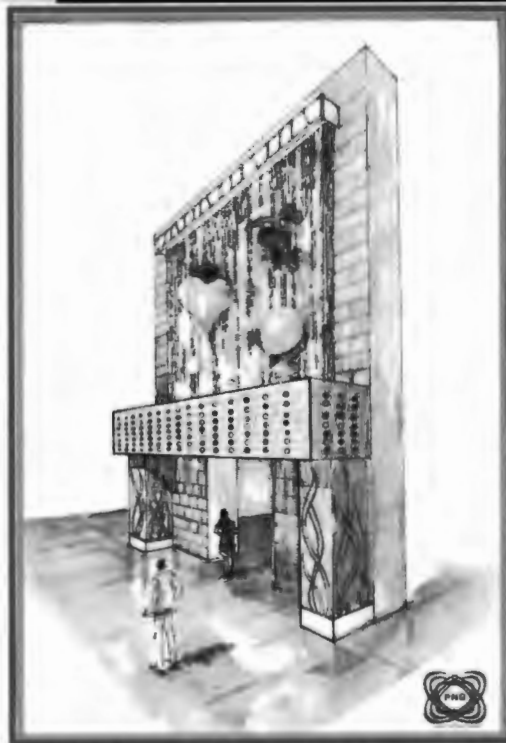
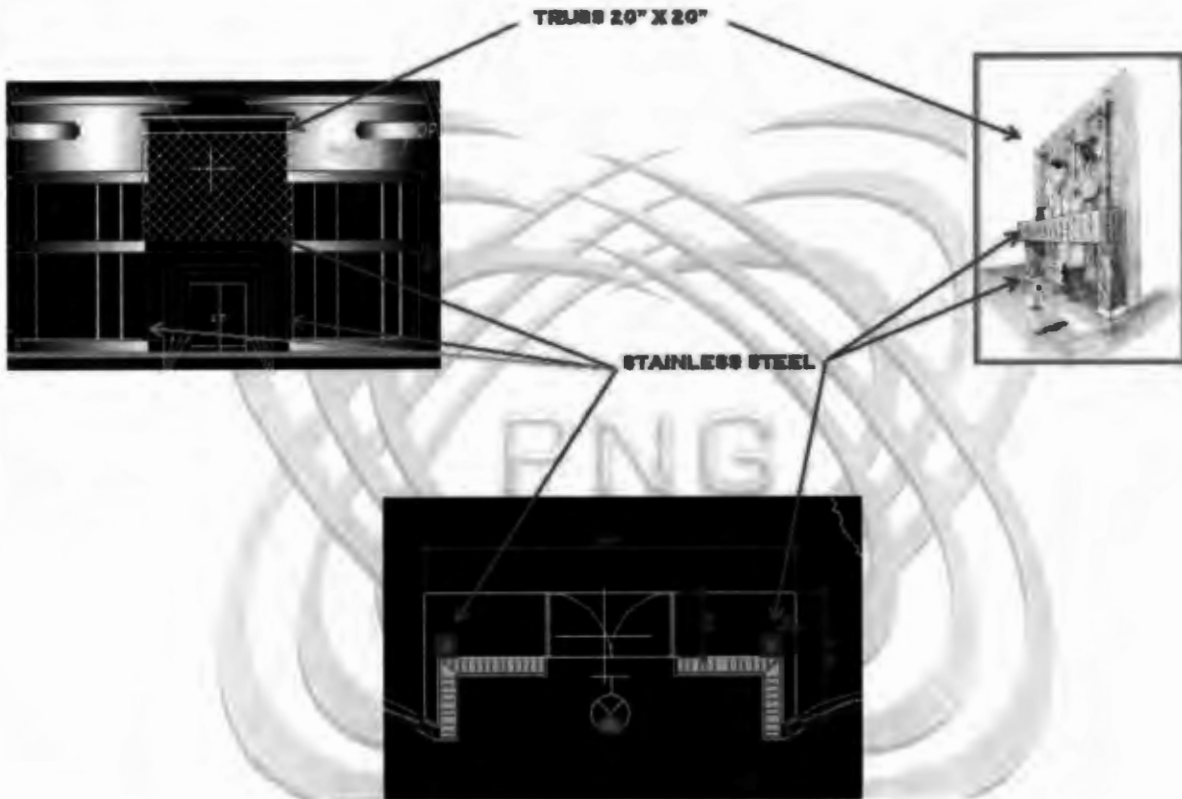


EXHIBIT 6 – PROPOSED ENTRY WATERFALL FOR CDR-17-05-176



WATER FALL IN FRONT OF BUILDING
THE FOUNTAIN WILL NOT PROJECT
NO IMAGES TEXT



SITE PHOTOS



View of west building frontage along S. Apopka Vineland Road facing east



View of north side of building along S. Apopka Vineland Road facing south

SITE PHOTOS



View of west building frontage along S. Apopka Vineland Road facing northeast



View of west building frontage along S. Apopka Vineland Road facing east



BOARD OF ZONING ADJUSTMENT